

ICP-8 HIGHLIGHTS: THURSDAY, 28 JUNE 2007

On Thursday morning, delegates to the eighth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-8) reconvened in plenary for a general exchange of views on areas of concern and actions needed. In the afternoon, delegates addressed cooperation and coordination, especially as it relates to marine genetic resources (MGRs), and also addressed issues that could benefit from attention in the UN General Assembly's future work. A revised Co-Chairs' paper on possible elements to be suggested to the UN General Assembly was then distributed, and delegates discussed the text following a recess for group consultations.

PLENARY

EXCHANGE OF VIEWS ON AREAS OF CONCERN AND ACTIONS NEEDED: ICELAND said MGRs in areas beyond national jurisdiction are subject to the high seas regime of UNCLOS, and expressed willingness to engage in a constructive debate to find fair and equitable practical solutions regarding their exploitation. NORWAY said threats to biodiversity beyond national jurisdiction can be addressed using existing legal instruments.

The EU called for the development of a comprehensive and practical framework for the preservation, exploration and exploitation of MGRs in areas beyond national jurisdiction, within the UNCLOS framework, including for access and benefit-sharing. SOUTH AFRICA said the EU's proposal represented "a convergence of ideas."

On rules and guidelines to govern MGRs in areas beyond national jurisdiction, TRINIDAD AND TOBAGO recommended the development of legal rules, while MALAYSIA highlighted, *inter alia*, the need for a code of conduct for the research and commercialization of MGRs in areas beyond national jurisdiction. ARGENTINA said voluntary codes of conduct were unlikely to be effective. MEXICO discussed the need for regulations in areas beyond national jurisdiction, taking into account the ecosystem and precautionary approaches for MGR sustainability, and including technology transfer and international cooperation. The REPUBLIC OF KOREA sought further discussion on establishing a clear and practical legal regime for exploiting MGRs beyond national jurisdiction. KENYA said MGRs beyond national jurisdiction are the common heritage of mankind, and SURINAME emphasized that all activities affecting the Area should be conducted under the

principle of the common heritage of mankind. NORWAY said the principle of common heritage of mankind only applies to mineral resources.

KENYA stressed that the equitable sharing of MGR benefits should be implemented by the international community. The INTERNATIONAL TRANSPORT WORKERS' FEDERATION, on behalf of several NGOS, urged adopting a precautionary approach to bioprospecting, and, with the INTERNATIONAL OCEAN INSTITUTE, called for fair and equitable access and benefit-sharing, taking into account developing countries' needs. UNCTAD highlighted the need for mechanisms concerning access and intellectual property rights to be consistent with protecting biodiversity.

On managing MGRs within national jurisdiction, NORWAY urged states to put national legislation in place to regulate bioprospecting and clarify benefit-sharing, based on the CBD's Bonn Guidelines on Access and Benefit-Sharing. The REPUBLIC OF KOREA sought further discussion on whether MGRs within national jurisdiction are subject to the same legal conditions as fisheries resources. TRINIDAD AND TOBAGO stressed that MGR research partnerships are useful, but benefits must help the source country.

On capacity building, CHINA urged the international community to increase funding for research and encouraged cooperation for developing country capacity building. The BAHAMAS said SIDS need assistance in developing national bioprospecting legislation and using complex databases, and suggested that UN-DOALOS compile information on capacity building opportunities and institutions for developing countries. VENEZUELA called on the UN and international financial institutions to provide technical and financial assistance to strengthen capacities to access MGRs.

On other issues, COSTA RICA, supported by VENEZUELA, IUCN and the HUMANE SOCIETY INTERNATIONAL, discussed sharkfinning as a barrier to achieving sustainable fisheries and healthy ocean ecosystems and called for regulations to prevent unloading fins severed from a shark's body. Emphasizing sea turtles' rare genetic lineage, the TURTLE ISLAND RESTORATION NETWORK sought global protection for turtles through time and area closures and protection of migration corridors. ARGENTINA emphasized that achieving sustainable high seas fisheries would require improved flag state controls, and added that any mechanism to establish MPAs beyond national jurisdiction must be inclusive and take coastal state interests into account. IUCN urged: combating illegal, unreported and unregulated (IUU) fishing; ensuring flag state implementation; establishing a legally binding instrument

on port state control; and understanding the effects of carbon sequestration before embarking on such activities. The DEEP SEA CONSERVATION COALITION said threats to marine biodiversity should not be addressed separately, and called for an UNCLOS implementing agreement, including a network of marine reserves, to address threats in an integrated manner.

UNEP reported on the World Conservation Monitoring Centre's effort to promote an integrated ecosystem-based approach to ocean management. The UN University discussed the work of its Institute of Advanced Studies related to MGRs, including the recent establishment of the Global Marine Governance Project, which assesses bioprospecting in the Antarctic, Arctic, the Pacific Island Countries and marine areas.

FAO described the work of the Intergovernmental Commission on Genetic Resources for Food and Agriculture, and said fisheries management is limited by the lack of effective policies and recognition of the importance of fish genetic resources. The INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION (UNESCO/IOC) noted, *inter alia*, establishment of: an expert group on Biogeographic Classification Systems in Open Ocean and Deep Seabed Areas; and criteria and guidelines on the development and transfer of marine technology.

The INTERNATIONAL MARITIME ORGANIZATION, anticipating ICP-9 discussions on maritime safety and security, expressed concern about acts of piracy disrupting humanitarian aid to Somalia, and human rights violations of migrants at sea.

COOPERATION AND COORDINATION, ESPECIALLY AS IT RELATES TO MARINE GENETIC RESOURCES:

Anne Rogers, UN Department of Economic and Social Affairs, discussed the history and progress of UN-Oceans, presenting a matrix summarizing UN-Oceans' activities from 2006-2007. She noted that the UN-Oceans Task Force on Biodiversity in Marine Areas Beyond National Jurisdiction is still continuing its work. Rogers said a new UN-Oceans Task Force on Marine Protected Areas and Other Area-based Management Tools was established in May 2007 at UN-Oceans' fifth formal meeting. She also highlighted UN-Oceans' work on information sharing and outreach such as the UN Atlas of the Oceans.

Salif Diop, UNEP, reported on progress of the "Assessment of Assessments" of the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects. He said the *Ad Hoc* Steering Group to oversee the "Assessment of Assessments," and the Group of Experts have been put in place. He stressed that the Group of Experts had only mobilized 50% of its required funding, and said the "Assessment of Assessments" summary report is expected to be ready in 2009, and will consist of three parts: a state of the assessment landscape for oceans and coasts; an evaluation of existing assessments; and a framework and options for the regular process.

Delegates discussed participation in the UN-Oceans Task Forces, and Rogers said participation by non-UN actors is not allowed. On regular reporting mechanisms and strengthening transparency for UN-Oceans, Rogers proposed updating the matrix regularly and posting it on the UN-Oceans website.

ISSUES THAT COULD BENEFIT FROM ATTENTION IN FUTURE WORK OF THE GENERAL ASSEMBLY:

Introducing the agenda item, Co-Chair Ridgeway: noted difficulties faced in planning ICP-8, and urged delegates to begin planning well in advance of ICP-9; requested delegates to set parameters for ICP-9's theme of "Maritime security and safety"; encouraged parties to contribute to the Voluntary Trust Fund to allow developing country delegates and panelists to attend future ICPs; and suggested delegates begin providing recommendations for ICP-10's theme.

The EU said the Secretary-General's report should reflect this week's discussions to ensure a follow up to ICP-8. ICELAND suggested the structure of ICP-9 could begin with an examination

of Australia's proposed maritime security framework and outcomes from the conference on Legal Challenges in Maritime Security held in Heidelberg, Germany in May 2007. BRAZIL proposed ICP-10 focus on the social aspects of oceans and the law of the sea. KENYA suggested discussing consequences of and adaptation to climate change, and NORWAY, with ICELAND, suggested IUU fishing as a topic for ICP-10 in 2009.

CONSIDERATION OF ELEMENTS TO BE SUGGESTED TO THE GENERAL ASSEMBLY: The Co-Chairs introduced revised draft text for delegates' consideration. The G-77/CHINA urged more focus on MGRs beyond national jurisdiction, and the EU suggested "greater collaboration" beyond national jurisdiction. MEXICO supported stronger text on benefit-sharing and international cooperation. BRAZIL and INDIA proposed reference to marine scientific research. CANADA and the EU advocated more emphasis on vulnerable ecosystems, and the RUSSIAN FEDERATION stressed sustainable use as well as conservation. CHINA supported keeping the text general as the topic of MGRs is new.

The G-77/CHINA requested reformulation of text on patents and intellectual property relating to MGRs, with EGYPT asserting that any exploitation of MGRs should be for the benefit of all mankind, and the BAHAMAS and INDIA lamenting that intellectual property rights were not specifically mentioned.

The G-77/CHINA supported text that noted "a divergence of views on whether the provisions of UNCLOS relating to the Area also apply to MGRs," and, with INDIA, called for additional reference to the concept of common heritage of mankind. ICELAND and AUSTRALIA said reference to a divergence of views was inappropriate, and, with the EU, NORWAY, US, JAPAN, RUSSIAN FEDERATION and NEW ZEALAND, proposed its deletion. Supporting retention of the language, ARGENTINA said deleting the text would imply that there is no divergence of views.

To those concerned about the limited reference to MGRs in areas beyond national jurisdiction, Co-Chair Ridgeway explained that these issues would also be discussed during the upcoming meeting of the *Ad Hoc* Working Group on marine biodiversity beyond areas of national jurisdiction. She reiterated that the text aims to elaborate on issues where consensus exists. Noting that the ICP's intention is not to negotiate a resolution, Co-Chair Maquieira said the discussions were aimed at "throwing light" on the issues' complexities in order to inform political positions in the future.

IN THE CORRIDORS

Delegates left plenary yesterday evening after a relatively amiable exchange of views on the revised draft text of the possible elements to be suggested to the General Assembly. Some suggested this was merely the calm before the squall. Many participants noted that the negotiation's primary area of contention would continue to be the dispute about whether to mention the divergence of views over the legal framework for MGRs in areas beyond national jurisdiction. One participant predicted that Friday evening would be "tough, and go until midnight." Another delegate feared the issue would merely be swept under the rug. Still, a number of participants highlighted that consensus on many of the other elements represented a success emerging from the in-depth discussions about MGRs. Perhaps the attire for casual Friday will enable a relaxed cooperative atmosphere for Friday's negotiations. But just in case, participants may come armed with umbrellas to protect themselves from the torrent of opposing views.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of ICP-8 will be available on Monday, 2 July 2007, online at: <http://www.iisd.ca/oceans/icp8/>