

SUMMARY OF THE SECOND MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 28 APRIL - 2 MAY 2008

The *Ad Hoc* Open-ended Informal Working Group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (hereinafter, the Working Group) convened from 28 April - 2 May 2008, at United Nations headquarters in New York.

The Working Group was mandated by General Assembly resolution 61/223 of 20 December 2006, as reaffirmed by resolution 62/215 of 27 December 2007, to consider:

- the environmental impacts of anthropogenic activities on marine biological diversity beyond areas of national jurisdiction;
- coordination and cooperation among states, as well as relevant intergovernmental organizations and bodies, for the conservation and management of marine biological diversity beyond areas of national jurisdiction;
- the role of area-based management tools;
- genetic resources beyond areas of national jurisdiction; and
- whether there is a governance or regulatory gap, and if so, how it should be addressed.

Over 300 participants representing governments, UN agencies, intergovernmental and non-governmental organizations and the fishing industry, attended the meeting.

During the week, the Working Group exchanged views on the issues, agreed to acknowledge differences of opinion over legal interpretations and the existence or nonexistence of regulatory and governance gaps, and concentrated on practical measures to conserve and protect marine biodiversity beyond national jurisdiction. The informal setting and non-negotiated nature of the outcome facilitated a frank exchange of views that enabled participants to identify common ground on issues, such as the implementation deficit in existing agreements, the need for marine scientific research and the continuation of the Working Group.

The outcome of the meeting – a Co-Chairs’ Draft Joint Statement to be submitted to the 63rd session of the General Assembly – included issues that the General Assembly may wish to consider referring back to the Working Group, including: more effective implementation and enforcement of existing agreements; strengthening of cooperation and coordination; development of effective environmental impact assessments (EIAs) tool for oceans management; development of area-based management tools; practical measures to address the conservation and sustainable use of marine genetic resources; and continued and enhanced marine scientific research.

A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND NATIONAL JURISDICTION

The conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such

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This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Melanie Ashton, Dan Birchall, Kelly Levin, and Wagaki Mwangi. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Director of IISD Reporting Services is Langston James “Kimo” Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are the United Kingdom (through the Department for International Development – DFID), the Government of the United States of America (through the Department of State Bureau of Oceans and International Environmental and Scientific Affairs), the Government of Canada (through CIDA), the Danish Ministry of Foreign Affairs, the Government of Germany (through the German Federal Ministry of Environment - BMU and the German Federal Ministry of Development Cooperation - BMZ), the Netherlands Ministry of Foreign Affairs, the European Commission (DG-ENV), the Italian Ministry for the Environment, Land and Sea, and the Swiss Federal Office for the Environment (FOEN). General Support for the *Bulletin* during 2008 is provided by the Norwegian Ministry of Foreign Affairs, the Government of Australia, the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management, the Ministry of Environment of Sweden, the New Zealand Ministry of Foreign Affairs and Trade, SWAN International, the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES) and the Japanese Ministry of Economy, Trade and Industry (through the Global Industrial and Social Progress Research Institute - GISPRI). Funding for translation of the *Earth Negotiations Bulletin* into French has been provided by the International Organization of the Francophonie (IOF). Funding for the translation of the *Earth Negotiations Bulletin* into Spanish has been provided by the Ministry of Environment of Spain. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD or other donors. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications with appropriate academic citation. For information on the *Bulletin*, including requests to provide reporting services, contact the Director of IISD Reporting Services at <kimo@iisd.org>, +1-646-536-7556 or 300 East 56th St., 11A, New York, NY 10022, USA.

biodiversity, particularly in seamounts, hydrothermal vents and cold-water coral reefs, and concerns grow about the increasing anthropogenic pressure posed by existing and emerging activities, such as fishing and bioprospecting, in the deep sea.

The UN Convention on the Law of the Sea (UNCLOS), which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. Although UNCLOS does not refer expressly to marine biodiversity, it is commonly regarded as establishing the legal framework for all activities in the oceans.

The Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity (Article 2) and aims to promote its conservation, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. In areas beyond national jurisdiction, the Convention applies only to processes and activities carried out under the jurisdiction or control of its parties.

CBD COP-2: At its second meeting (November 1995, Jakarta, Indonesia), the Conference of the Parties (COP) to the CBD agreed on a programme of action called the “Jakarta Mandate on Marine and Coastal Biological Diversity,” which led to the creation of a work programme in this area. COP-2 also adopted a decision requiring the Executive Secretary, in consultation with the UN Division for Ocean Affairs and the Law of the Sea, to undertake a study of the relationship between the CBD and UNCLOS with regard to the conservation and sustainable use of genetic resources on the deep seabed.

WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT: In the Johannesburg Plan of Implementation, the UN World Summit on Sustainable Development (September 2002, Johannesburg, South Africa) underlined the need to: maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas beyond national jurisdiction; facilitate the elimination of destructive fishing practices and the establishment of marine protected areas (MPAs), including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods; and develop international programmes for halting the loss of marine biodiversity.

UNGA-57: In resolution 57/141, the General Assembly in 2002 encouraged relevant international organizations to consider urgently ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts and certain other underwater features within the framework of UNCLOS.

ICP-4: At its fourth meeting (June 2003, New York), the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP) recommended that the General Assembly, *inter alia*, invite relevant international bodies at all levels to consider urgently how to better address, on a scientific and precautionary basis, threats and risks to vulnerable and threatened marine ecosystems and biodiversity beyond national jurisdiction, consistent with international law and the principles of integrated ecosystem-based management.

UNGA-58: In resolution 58/240, the General Assembly in 2003 invited the relevant global and regional bodies to investigate urgently how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction.

CBD COP-7: At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the COP: included in the programme of work on marine and coastal biodiversity new items on MPAs and high seas biodiversity; highlighted an urgent need for international cooperation and action to improve conservation and sustainable use of biodiversity in marine areas beyond national jurisdiction, including through the establishment of further MPAs; and recommended that parties, the General Assembly and other relevant international and regional organizations urgently take the necessary short-, medium- and long-term measures to eliminate and avoid destructive practices. COP-7 also adopted a programme of work and established an *ad hoc* open-ended working group on protected areas (PAs).

ICP-5: At its fifth meeting (June 2004, New York), the ICP held a panel discussion on new sustainable uses of the oceans, focusing on high seas bottom fisheries and biodiversity in the deep seabed, and noting increasing levels of concern over the ineffective conservation and management of such biodiversity. The ICP proposed that the General Assembly encourage regional fisheries management organizations (RFMOs) with a mandate to regulate deep sea bottom fisheries to address the impact of bottom trawling, and urge states to consider on a case-by-case basis the prohibition of practices having an adverse impact on vulnerable marine ecosystems in areas beyond national jurisdiction, including hydrothermal vents, cold water corals and seamounts.

UNGA-59: In resolution 59/24, the General Assembly in 2004 called upon states and international organizations to take action urgently to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems, and established an *ad hoc* open-ended informal working group to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

ICP-6: At its sixth meeting (June 2005, New York), the ICP proposed, in relation to the conservation and management of marine living resources, that the General Assembly encourage progress to establish criteria on the objectives and management of MPAs for fisheries, welcome the proposed work of the UN Food and Agriculture Organization (FAO) to develop technical guidelines on implementation of MPAs, and urge close coordination and cooperation with relevant international organizations, including the CBD.

CBD WORKING GROUP ON PROTECTED AREAS: The CBD Working Group on PAs (June 2005, Montecatini, Italy) discussed options for cooperation on the establishment of MPAs in areas beyond national jurisdiction. Delegates initiated work to compile and synthesize existing ecological criteria for future identification of potential sites for protection, and recommended the COP note that the establishment of such sites must be in

accordance with international law, including UNCLOS, and based on the best available scientific information, and the precautionary and ecosystem approaches.

UNGA-60: In resolution 60/30, the General Assembly in 2005 recommended that states should support work in various forums to prevent further destruction of marine ecosystems and associated losses of biodiversity, and be prepared to engage in discussions on the conservation and sustainable use of marine biodiversity in the Working Group.

CBD EXPERT GROUP ON PROTECTED AREAS: At its first meeting (17-18 March 2006, Curitiba, Brazil), the Expert Group addressed the implementation of activities/elements of the work programme on PAs, noted the difficulties in reporting progress in implementation, and suggested modifications to the evaluation matrix.

CBD COP-8: At its eighth meeting (20-31 March 2006, Curitiba, Brazil), the COP addressed MPAs, with discussion focusing on process and redefining the Convention's role in relation to high seas PAs. The COP also took decisions on: marine genetic resources and noted the preliminary range of options for the protection of deep seabed genetic resources beyond national jurisdiction and emphasized the need for further work in developing these and other options, in particular within the UN framework; and integrated marine and coastal area management (IMCAM) and noted the need to facilitate effective implementation of IMCAM.

ICP-7: The seventh meeting of the Consultative Process (12-16 June 2006, New York) discussed the need for enhanced understanding of ecosystem-based management, and adopted recommendations on ecosystem approaches and oceans.

FIRST MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: The first meeting of the Working Group (13-17 February 2006, New York): exchanged views on marine biodiversity beyond areas of national jurisdiction; considered past and present activities of the UN and other relevant international organizations; discussed the scientific, technical, economic, legal, environmental, socioeconomic and other aspects of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction; addressed key issues and questions requiring more detailed background studies; and considered possible options and approaches to promote international cooperation and coordination.

UNGA-61: In resolution 61/222 the General Assembly in 2006 took note of the report of the Working Group on Marine Biodiversity and requested a second meeting of the Working Group be convened in 2008 to consider, *inter alia*: environmental impacts of anthropogenic activities on marine biological diversity; coordination and cooperation among states; and genetic resources.

ICP-8: The eighth meeting of the Consultative Process (25-29 June 2007, New York) discussed cooperation and coordination on oceans issues, particularly as they relate to marine genetic resources and issues that could benefit from attention in future work of the General Assembly on oceans and the law of the

sea. Nevertheless, delegates were unable to agree on key language referring to the relevant legal regime for marine genetic resources in areas beyond national jurisdiction and, as a result, no consensus text on elements was forwarded to the General Assembly for consideration.

CBD WORKING GROUP ON PROTECTED AREAS: The second meeting of the Working Group on Protected Areas (11-15 February, Rome) focused on the implementation of the Programme of Work on Protected Areas. But while the review of implementation fostered a sense of common purpose, discussion of mobilizing resources highlighted a deep schism between delegates' disparate visions for the future of financing for protected areas. Developing country delegates noted the lack of political will to provide financial resources for their custodianship of the world's genetic heritage and effectively rejected calls to link their PA systems to market-driven mechanisms. The result of the standoff on funding was a heavily bracketed text, indicating there is little if any agreement on funding heading into COP 9 in Bonn beginning on 19 May 2008.

WORKING GROUP REPORT

On Monday morning, 28 April, Co-Chair Robert Hill (Australia) opened the meeting and noted that the session was not a negotiating forum. He elaborated that the aim was to move beyond the work of the first Working Group and to define the challenges to the conservation and sustainable use of marine biodiversity more explicitly.

On behalf of UN Secretary-General Ban Ki-Moon, Nicholas Michel, Under-Secretary-General for Legal Affairs, drew attention to the Report of the Secretary-General (A/62/66/Add.2) prepared in order to facilitate the Working Group's discussions. In his opening remarks, Co-Chair Juan Manuel Gómez-Robledo (Mexico) said the Secretary-General's Report would serve as the basis for the Group's deliberations.

The Working Group adopted the agenda and the organization of work prepared by the Co-Chairs without amendment. This report summarizes the discussions and the Co-Chairs' Draft Joint Statement, and is arranged according to the agenda.

SCIENTIFIC PRESENTATIONS

On Monday morning, delegates heard scientific presentations from experts on issues related to deep seas.

Peter Auster, University of Connecticut at Avery Point, discussed deep sea biodiversity and its linkage to international management needs. He described seamount landscapes and species diversity, the impacts of human activities on the seafloor, and the challenges inherent in meeting both conservation and sustainable use goals. He highlighted the community variation among seamounts and seamount chains, and identified research gaps with regard to seamount ecosystem recovery time and unidentified species.

Elva Escobar Briones, *Ad Hoc* Steering Group of the Assessment of Assessments (AoA), discussed the progress made and ongoing work in the AoA, co-led by United Nations Education, Scientific and Cultural Organization-International Oceanographic Commission (UNESCO-IOC) and United

Nations Environment Programme (UNEP) as the first phase of the United National General Assembly (UNGA) regular process for global reporting and assessment of the state of the marine environment. She noted that a draft of the AoA Group of Experts' report would be distributed in May 2008, with the finished work to be presented in 2009 and finalized in 2010.

Les Watling, University of Hawaii, presented the biogeography of the deep sea benthos. Noting challenges in sampling biodiversity in seamounts and ridges due to topography, the difficulty in measuring vertical and horizontal distribution of species, and variations in the amount of available data on different ocean areas, he delineated biogeographic provinces based on water temperature, oxygenation and organic material content.

Regarding the science-policy nexus, Briones said that classification and bio-regionalization of marine biodiversity is needed for decision-making, stated that research undertaken so far provides a sufficient basis for action, and called for, *inter alia*, a bridge between policy demand and research, and international cooperation to support scientific cooperation.

GENERAL REMARKS

On Monday morning and early afternoon, participants made general remarks on the issue of conserving and sustaining marine biodiversity beyond national jurisdiction. Regarding the environmental impacts of anthropogenic activities, Antigua and Barbuda, for the Group of 77 and China (G-77/China), called for enhanced climate research and monitoring, greater understanding and regulation of several intellectual property aspects and capacity building. Argentina stressed the need for a strong scientific basis for all regional divisions of the high seas. Participants also remarked on fishing, with Kenya highlighting its key concerns on illegal, unregulated and unreported (IUU) fishing, the Marshall Islands calling for a reduction of the financial role of IUU fishing, and United Nations Food and Agriculture Organization (FAO) highlighting its initiatives on mechanisms to manage aquaculture and to discourage IUU fishing. Australia stressed the need to address the causes and impacts of overfishing and destructive fishing practices and focus on threats to, and protection of, vulnerable marine ecosystems. The US called for full implementation of existing agreements and commitments, and measures to regulate unmanaged fisheries.

On the question of governance and regulatory gaps, Slovenia, for the European Union (EU), expressed concern regarding unregulated activities, poor implementation, and existing agreements' fragmented approach, and called for an implementation agreement under UNCLOS to further regime integration, then highlighted several proposals for short-term action. Mexico urged consideration of the principles set forth in UNCLOS and of new or improved legal institutions and mechanisms for the conservation and sustainable use of marine biodiversity. Announcing its discovery of a sponge species in the Bering Sea, Greenpeace called for complementary UNCLOS-related articles to govern this geographic area.

Norway cautioned against establishing "paper parks" that do not deal with the most important issues, and against addressing the issue of marine protected areas for biodiversity conservation beyond national jurisdiction while ignoring action within national jurisdiction. Iceland questioned the need for a new global agreement and called for implementation of UNCLOS and existing related specialized agreements instead.

Palau called for better implementation of existing regimes, such as Regional Fishing Management Organizations (RFMOs). Recalling UNGA's resolutions, Japan emphasized the importance and expertise of FAO and RFMOs. The Northwest Atlantic Fisheries Organization (NAFO) noted the reformulation of its mandate to conform to precautionary and ecosystem approaches. The OSPAR Commission for the Protection of the Marine Environment in the North-East Atlantic and the North East Atlantic Fisheries Commission (NEAFC) underscored the OSPAR Convention as a case study for the consideration of the Working Group. Argentina questioned the capability of RFMOs to guide the international community, noting that their decisions are not binding on non-members.

On the issue of coordination and cooperation among existing organizations, Antigua and Barbuda, for the G-77/China, highlighted the need for coordination among sectors, agencies, parties, and with the Convention on Biological Diversity (CBD). Trinidad and Tobago stressed the need to strengthen or establish mechanisms to encourage sharing of information and knowledge of resources, and Venezuela outlined the relevance of marine biodiversity beyond areas of national jurisdiction to the CBD and emphasized the key role the CBD could play on this issue in the future.

Regarding marine genetic resources (MGRs), Mexico, for the Rio Group, urged that discussions on the exploitation of marine resources consider the benefit to mankind as a whole. China highlighted the role of science and technology in the management of marine biodiversity, and urged greater scientific research; New Zealand urged further exploration of the status of marine genetic resources in areas beyond national jurisdiction, while Brazil called for further studies on the seabed, exploration of the patenting of genetic resources and benefit-sharing from the use of these resources, and examination of the deficit in the legal framework on implementing port- and flag-state measures. India argued that the general principles of marine scientific research contained in UNCLOS related to the benefit of mankind and that the non-recognition of research activities as a legal basis for claims should apply to bio-prospecting.

On the issue of area-based management tools, New Zealand urged the establishment of MPA networks and guidance on multipurpose MPAs; IUCN called for the implementation of a representative network of MPAs and decisive and immediate measures by flag states to regulate activity on the high seas; while WWF called for prior informed environmental impact assessments (EIAs) and progress on MPAs. South Africa emphasized the ecosystem approach and area-based management of the oceans, but said implementation would be crucial.

Commenting on the work programme of the Group, WWF suggested making the Working Group a standing process. Tonga, for the Pacific Islands Forum, stated that the Working Group is the appropriate forum to discuss needs, including enhanced regime implementation, consideration of new approaches and regimes, and the use of caution with regard to ocean sequestration technologies. Venezuela supported strengthening the mandate for the Working Group's research and discussion. Canada suggested that the meeting focus on: identifying facts and threats; finding realistic and pragmatic solutions; and applying ecosystem-based management and the precautionary approach.

During Friday's discussion of the Co-Chairs' Draft Joint Statement, concerning a paragraph on progress made, Iceland urged consideration of regional-level progress, such as improvements within existing RFMOs, negotiations for establishment of new RFMOs, and cooperation between RFMOs and marine protection organizations. He called for referencing "areas beyond national jurisdiction" rather than the Area or high seas. Argentina disagreed with Iceland's request to amend the paragraph.

Japan asked that the reference to FAO's work also mention RFMOs, and highlighted progress on establishing RFMOs in the South Pacific and Northwest Pacific. WWF agreed with Japan and proposed mention of RFMOs' progress on closing geographical and competency gaps under resolution 61/105.

Regarding the legal framework within which all activities in the oceans and seas must be carried out, Venezuela called for specific reference to the CBD.

Concerning the need for increased capacity building for developing states and, in particular, building capacity to mitigate and adapt to climate change, the G-77/China, supported by South Africa and Brazil, requested that the principle of common but differentiated responsibilities be incorporated into the Co-Chairs' Draft Joint Statement. Canada, supported by the US, observed that this principle may not be appropriate, given that the Statement is in relation to capacity building.

ISSUES IDENTIFIED IN GENERAL ASSEMBLY RESOLUTION 61/222

Delegates addressed issues identified in General Assembly resolution 61/222 throughout the week. The issues included the environmental impacts of anthropogenic activities; coordination and cooperation among states and other organizations; the role of area-based management tools; genetic resources beyond areas of national jurisdiction; and the existence of a governance or regulatory gap.

ENVIRONMENTAL IMPACTS OF ANTHROPOGENIC ACTIVITIES: Delegates discussed environmental impacts of anthropogenic activities on marine biological diversity beyond areas of national jurisdiction on Monday afternoon.

IUCN referred to its scientific studies depicting the threats posed by anthropogenic activities and called for an authoritative "state of the world's oceans" report modeled on the Intergovernmental Panel on Climate Change assessment

reports. China called for a report based on a stocktaking of existing scientific studies and, due to the uniqueness of marine biosystems, suggested a case-by-case approach. Singapore highlighted that the UNEP Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities estimates that land-based sources are responsible for 80% of marine pollution, warranting consideration.

Ecuador expressed concern with geo-engineering methods for mitigating the effects of climate change, highlighting uncertainties regarding impacts. South Africa argued that climate mitigation options that endanger the ocean should be avoided. He called for enhanced research and monitoring, establishment of early warning signals, capacity building for RFMOs, and strengthened adaptive capacity. Citing scientific uncertainty, Trinidad and Tobago urged caution regarding ocean fertilization.

Norway argued that anthropogenic activities, especially those related to climate change, should be subject to EIAs. Australia suggested that assessments be carried out before new and unregulated activities are allowed to proceed. New Zealand stated that a global approach to EIAs should take into account existing models, urged consideration of how to contend with cumulative effects of activities, and highlighted its establishment of activity categories – permitted, prohibited or allowed on a discretionary basis – which could be embraced in an EIA rating. Marshall Islands urged global recognition of EIAs, especially with regard to oceans-based climate mitigation activities. He called for the establishment of best practices and EIA guidance to quantify and identify risks, with a focus on methods for evaluating cumulative impacts. Mexico supported the use of EIAs, as well as observation of the precautionary principle. The US, supported by Iceland, expressed concern over the application of EIAs internationally, and supported implementation of existing agreements and enhanced coordination.

WWF discussed how EIAs might be undertaken, including using rules and guidelines established by the UN General Assembly and conducting regular reviews of how regulatory bodies exercise authority. The Natural Resources Defense Council suggested that impact assessment requirements from resolution 61/105 on high seas bottom trawling be applied *mutatis mutandis* to all activities on the high seas. OSPAR called for increased mapping and visualization of uses of the high seas. The Asian African Legal Consultative Organization called for the extension of MPAs to high seas, and greater efforts to combat IUU fishing, including through special tribunals.

Canada urged updating existing instruments to contend with new challenges and, supported by Iceland, highlighted the need to link ocean issues to the climate change agenda. The EU noted the need for urgent steps to conserve marine biodiversity and identified three core problems: the lack of implementation of existing commitments; governance and regulatory gaps; and the absence of an integrated regime. Iran noted the applicability of the common heritage of mankind in the conservation and sustainable use of marine biodiversity, and said states are entitled to share benefits in an equitable manner.

Co-Chair Hill summarized the key points regarding anthropogenic activities: the related deleterious impacts; the contribution of these activities to climate change and pollution; the enhanced application of precautionary and ecosystem approaches and use of EIAs; and the relevance of the AoA.

During Friday's discussion of the Co-Chairs' Draft Joint Statement, New Zealand reiterated its support for drawing upon existing models of EIAs, as well as for designing thresholds for activities, and requested that this be reflected in the Statement. On the need for regular scientific assessments of the state of the oceans to support decision-making, Canada, supported by Japan, suggested that UNESCO-IOC's role could be enhanced.

COORDINATION AND COOPERATION AMONG STATES AND ORGANIZATIONS: Cooperation and coordination among states and organizations were discussed Tuesday. Delegates highlighted current examples of cooperation between bodies, and there was broad support for strengthening cooperation and coordination between existing regional and sectoral bodies and instruments for technology transfer and capacity building. Views diverged on the effectiveness of regional bodies, especially RFMOs, and on whether cooperation and coordination could best be strengthened through the creation of a new overarching body or instrument.

Iceland highlighted the OSPAR, NEAFC and International Maritime Organization (IMO) collaboration as a model of how existing institutions can cooperate. Japan highlighted the cooperation between FAO and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as a good example of coordination. IUCN described a joint project with Conservation International to assess 20,000 marine species, and the International Seabed Authority described its collaborative scientific research projects and a new fund to support marine research in developing states. UNEP explained its mid-term strategy for the period of 2010-2013, and described collaborative projects and publications relating to marine biodiversity in areas beyond national jurisdiction. The CBD Secretariat highlighted relevant CBD reports and conference of the party (COP) decisions, as well as a review of databases containing information on marine areas beyond national jurisdiction.

Mexico called for promoting coordination and cooperation, especially regarding scientific research. Brazil underscored strengthening of UNESCO-IOC as a priority. Trinidad and Tobago stressed adequate provision of technology transfer and capacity building, stating that without such provision, the common heritage principle would become null and void, as developing states would not be able to share benefits. Angola called for knowledge sharing and, with the Marshall Islands, for capacity building. The US supported addressing harmful subsidies and assisting developing states.

Highlighting the usefulness of regional action, Canada said new RFMOs should be created and that a novel overarching mechanism was not required. The US supported: bringing RFMO mandates in line with legal instruments; increasing coordination

among RFMOs and cross-sectorally; enhancing market tools to combat IUU fishing; and reducing by-catch. The Marshall Islands called for greater coordination and cooperation among RFMOs in reducing by-catch and enforcing oceans management.

Australia expressed concern with the failure of existing sectoral institutions to effectively protect marine areas, saying that governance structures, including RFMOs, are characterized by sectoral approaches, and cited the hindrance posed by poor coordination among individual mechanisms. New Zealand emphasized the limitations and variable competence of RFMOs, and suggested the conduct of regular performance reviews. Argentina underscored the limitations of RFMOs. China noted a reluctance by RFMO members to expand RFMO functions. Greenpeace identified the need for better accountability of regional bodies with regard to meeting mandates.

Noting that the current fragmentation of instruments with independent agendas impedes the development of consistent policy, the EU called for organized cooperation among competent bodies, but stressed that implementation and enforcement of specific measures should remain within the competency of respective bodies. He said this concept should be a key element of a future implementation agreement under UNCLOS. Australia expressed openness to exploring avenues for improving institutional support and to the EU concept of organized cooperation.

Brazil urged efforts to improve coordination and cooperation, and to enforce implementation of existing agreements and fund existing competent bodies. Mexico called for ensuring compliance with international norms and standards. Japan underscored the cost effectiveness of strengthening existing coordination frameworks rather than creating new ones. Iceland did not support establishing new arrangements. Argentina argued that institutional mandates should be strengthened before new cooperation structures are created, and called for reaffirming coastal states' rights to their continental shelf resources. Australia called for cross-sectoral coordination concerning MPAs, and Greenpeace identified the need for standardized rules across sectors. WWF called for progress on bioregionalization, embrace of CBD guidance on MPA development, assessment of progress made on MPAs, and strengthened compliance. He urged concrete decisions to address the gap between discussions at the international level and regional outcomes.

Uganda flagged dumping of toxic waste off the Somali coast as a potential future problem. Recalling the work of UNGA and other processes, Venezuela expressed surprise at the reluctance to recognize the cross-cutting nature of marine biodiversity beyond areas of national jurisdiction. Angola expressed concern with deep sea oil exploration and European scientific marine research off its coast.

Co-Chair Hill summarized the key components of the discussion as the need for improved implementation of existing regulatory regimes, as well as improved contact between and among bodies, and the divergent perspectives regarding the creation of a new overarching body.

During Friday's discussion of the Co-Chairs' Draft Joint Statement, WWF agreed with the EU that there was broad support for an integrated approach, while noting that there was no unanimity but remarkable progress had been made toward it.

THE ROLE OF AREA-BASED MANAGEMENT

TOOLS: Area-based management tools were discussed Tuesday afternoon, with interventions focusing largely on the necessity of, and targets for, continued development of MPAs and approaches to their designation and management. Concerns were raised about the limits of management competency within sectoral bodies.

The EU and IUCN noted slow progress toward targets agreed at both the World Summit on Sustainable Development and CBD COP-7 to establish networks of MPAs by 2012, and called for urgent action to meet these targets. The EU, supported by the Deep Sea Conservation Coalition (DSCC), also proposed establishing pilot high seas MPAs.

South Africa called for more consultation on criteria and norms for high seas MPAs. The EU recommended application of scientific criteria to identify MPAs developed by a CBD experts' workshop. Australia concurred, and suggested these criteria be used by an UNGA-led process. DSCC supported convening an expert group to develop guidelines for application of these criteria. The Marshall Islands recommended that criteria evolve with new scientific evidence.

OSPAR noted that while general rules for coastal area-based tools tend to be based on numerous small areas, those relevant to areas beyond national jurisdiction should be fewer in number but larger in scope. South Africa said high seas MPAs should not function in isolation from those under national jurisdiction.

Australia expressed concern over the failure of existing sectoral institutions to effectively protect marine areas, and called for cross-sectoral coordination on MPAs. Canada called for greater focus on implementation gaps, impact assessments and spatial management. IUCN underscored that less than 1% of the world's seas are currently protected and that prior assessment and impact minimalization are prerequisites to effective ecosystem-based management. Iceland stressed that MPAs are means, rather than an end, to protect biodiversity. Canada supported collaboration among FAO, IMO and CBD to reconcile approaches and assist in MPA site selection. New Zealand emphasized the importance of coordination, strong enforcement and compliance.

Mexico underscored an ecosystem-based approach, inclusion of all states' interests and consistency with UNCLOS. The US supported a conservation approach consistent with UNCLOS that identifies the target marine species, effects and the impact area, and causal links and harms being addressed. New Zealand highlighted regional identification of vulnerable marine ecosystems. Japan said MPAs should be considered on a case-by-case basis and be informed by the best available scientific information. Norway noted regional variation among ecosystems and supported establishing new RFMOs or regulatory commissions. Argentina suggested considering the need for

MPAs as well as the implementing institution. Brazil noted her country's approach to designing policies to not only conserve, but also recover, fish stocks.

WWF highlighted the launch of its report, "Conservation of Marine Biodiversity beyond the Limits of National Jurisdiction," and noted its use of case studies. He called for a new implementation agreement under UNCLOS to address gaps for some issues.

During Friday's discussion of the Co-Chairs' Draft Joint Statement, Iceland reiterated its support for the notion that MPAs are not goals in themselves but means to achieve the protection of marine biodiversity in areas beyond national jurisdiction, and requested that this be noted in the Statement. Canada, supported by the US, stressed the notion that the establishment of representative networks of MPAs was a subset of MPA efforts and requested that this be reflected in the text. Regarding support expressed to use scientific criteria developed in the context of the CBD to select MPA sites, Iceland suggested changing the wording to "some" support, given that such criteria development was not supported by all participants. The EU said there was significant support for scientific criteria, and reiterated its preference for an expert group to initiate work on global guidelines for EIAs. Canada requested that reference be made for support for work on biogeographical clarification.

GENETIC RESOURCES BEYOND AREAS OF NATIONAL JURISDICTION: Delegates discussed the issue of MGRs on Wednesday and on Friday.

During the discussion on Wednesday, the EU called for an integrated approach, urged focusing on practical and concrete steps, and highlighted the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) as a relevant model for addressing MGRs. Canada said that the Working Group was the appropriate forum for discussing MGRs beyond national jurisdiction. She called for realism concerning the level of activity occurring, costs and risks, and uncertainty regarding financial dividends. Japan concurred with Canada that MGRs are covered under Part XI (the Area) of UNCLOS, and agreed to study the EU proposal.

South Africa, supported by Mexico, stressed the relevance of the common heritage of mankind principle. He expressed caution regarding the EU's reference to the ITPGRFA, citing the challenges inherent in applying it to shared resources beyond national jurisdiction. The US disagreed with the calls for new international regulation, arguing that MGRs fall under the high seas regime of UNCLOS. She also disagreed with the contention that MGRs are part of the common heritage of mankind, but emphasized the importance of research in MGRs, the significance of these resources for knowledge and livelihoods and the need for capacity building in developing countries. Trinidad and Tobago reiterated that genetic resources in areas beyond national jurisdiction are part of the common heritage of mankind. Kenya stressed a legal regime was the only appropriate way of sharing benefits of MGRs.

Mexico proposed ways to promote cooperation in research on MGRs. Venezuela opposed the commercial exploitation of MGRs, explaining it contravened the Rio and CBD Principles on equitable benefit-sharing and environmental conservation.

Norway called on countries to also regulate MGRs within their own jurisdictions, and said as MGRs fall under the UNCLOS provisions on the conservation and management of the living resources of the high seas, any new regime would require broad support. Australia expressed reservations with the need for a new regime for bioprospecting beyond national jurisdiction and instead supported voluntary codes of conduct. Brazil discussed its commitment to the environmental protection provisions of codes of conduct being developed by the International Seabed Authority, and urged cooperation on capacity building. China called for technology transfer and capacity building in developing countries, and expressed concern with overregulation. Argentina prioritized the issue of access and benefit-sharing over the development of a regime. Venezuela underscored the inability of market incentives to solve environmental problems and stressed the need for creativity in developing a mechanism that would conserve and guarantee fair and equitable distribution of benefits.

The EU clarified its proposal was to use the ITPGRFA as a model for further consideration. IUCN suggested that the ITPGRFA could provide a good example of a benefit-sharing system. The US noted that all countries benefit from the development of products, and said negotiation of a benefit-sharing regime was unnecessary. She suggested that the most productive approach for the Working Group would be to focus on practical areas for potential agreement. South Africa acknowledged UNCLOS' relevance to MGRs, but stressed marine organisms found on the deep seabed are governed by the principle of the common heritage of mankind.

Iceland, supported by Argentina, urged parties to seek common ground and focus on contributions that could unite participants. He called for practical, fair and equitable solutions and said the EU proposal to use ITPGRFA as a model warranted further attention.

IUCN suggested that states give advance notification of all activities in the high seas that might lead to the degradation of marine biodiversity beyond national jurisdiction. He noted that EIAs need not be onerous and proposed that collection of genetic resources be accompanied by information gathering on the associated impacts of collection, purpose of collection and other labeling criteria. WWF argued that all researchers, whether scientific or commercial, should be subject to EIAs, as the means of research could degrade marine biodiversity.

FAO discussed the work on aquatic resources of the Commission on Genetic Resources for Food and Agriculture. United Nations University described its web-based information tool on biological prospecting and a document published with UNESCO, which summarizes this tool. She noted the challenges inherent in finding information on the location of MGR collections.

During Friday's discussion of the Co-Chairs' Draft Joint Statement, the US noted that the Statement generally implied that further work was necessary and clarified that the US did not agree with the need for new activity. Venezuela accepted UNCLOS as the framework for all activities, but said that it was not designed to address MGRs and, therefore, requested deleting the reference to UNCLOS' legal bearing on MGRs.

Concerning a new international regime in relation to MGRs, Iceland reiterated that there was no regulatory gap and that a new international regime not only would impede scientific research and innovation, but was simply not needed. Japan supported Iceland's assertion that a new regime was unnecessary. With regard to the Statement's list of short-term measures on MGRs, Iceland said that these measures should be considered solutions in themselves.

EXISTENCE OF A GOVERNANCE OR REGULATORY GAP: Delegates discussed the existence of a governance or regulatory gap on Wednesday afternoon, Thursday morning and Friday.

The Federated States of Micronesia highlighted by-catch and bottom trawling as issues of concern, and welcomed continued discussion of General Assembly resolution 61/105 on sustainable fisheries. Canada called for effective implementation of and compliance with existing instruments, RFMO reform, capacity building, fulfillment of mandates, and coordination of scientific advice.

The EU identified an implementation agreement under UNCLOS as a medium-term measure to address gaps, as well as several short-term initiatives, including: addressing destructive fishing practices, IUU fishing and by-catch; expanding the geographic coverage of RFMOs; adopting conservation-oriented approach and performance reviews of RFMOs; and strengthening flag- and port-state mechanisms. He stressed that an implementation agreement is a priority and that the proposed agreement on addressing gaps provides a medium-term solution that will increasingly become necessary due to the insufficiency of proposed short-term solutions, such as sectoral cooperation. He suggested treating the short- and medium-term approaches as complementary, stating they would lead to an integrated, coherent and holistic regime framework. He supported the establishment of an expert working group to develop EIA guidelines, an integrated scientific assessment in an intergovernmental setting, and international guidance on the use of impact assessments on MGRs. Concerning MPAs, he supported the development of a list of areas in need of protection and the establishment of pilot MPAs. He suggested the Working Group reconvene in 2009 and report to the UN General Assembly at its 64th session.

Australia expressed willingness to consider new arrangements or regulatory approaches that could address implementation gaps. She highlighted the need for universal participation in existing instruments and called for updating RFMO mandates, efforts to establish a representative network of MPAs, national prior assessments of unregulated activities, and the precautionary approach. She underscored the Commission for the Conservation of Antarctic Marine Living Resources as a best practice model.

New Zealand noted existing governance and regulatory gaps, suggested the issue of implementation gaps as a separate agenda item in the Working Group's future work programme, and expressed interest in, *inter alia*, proposals on the establishment of MPAs on the high seas. Brazil said the establishment of MPAs on the high seas would require the agreement of all parties. China favored the implementation of UNCLOS, the use of EIAs and strengthened cooperation and coordination of international organizations. The Russian Federation said consideration of a new legal instrument would require serious review and consideration of the two existing implementation agreements to UNCLOS.

The Advisory Committee on Protection of the Sea stressed the presence of implementation, regulatory and governance gaps, and said regulatory gaps were evidenced by the unregulated nature of marine activities. She supported the EU proposal for an implementing agreement, citing the UN Fish Stocks Agreement as a relevant example, and said the Working Group should be institutionalized and meet regularly.

Citing UNCLOS and several CBD articles, Venezuela identified the legal gaps on measures to conserve, exploit and share benefits from marine biodiversity beyond areas of national jurisdiction. He suggested promoting scientific research to better understand these issues and further debate within UNGA and in collaboration with CBD and UNCLOS on institutional and scientific issues, prior to debating political and legal issues.

Greenpeace highlighted the "glaring governance gaps," and asked parties to consider why current instruments have not been fully implemented. He urged continued work to meet commitments on MPAs by the 2012 World Summit on Sustainable Development and CBD deadlines, called for centralization of information on IUU fishing and highlighted a website inventorying blacklisted vessels.

The US, Norway and Japan reiterated that there was no governance gap on marine resources beyond national jurisdiction. The US argued that: MGRs are covered by UNCLOS, no single institution could address the myriad of issues identified for action, and all the issues raised are covered under existing institutions. Norway proposed increasing compliance of and collaboration within existing institutions instead. Japan favored enhancing effective implementation of existing instruments, promoting cooperation and coordination among RFMOs, and building on sectoral initiatives to create an integrated global approach. Iceland highlighted governance gaps, but stressed it saw no regulatory gaps, and questioned the need for a new implementation agreement.

Recalling the history of UNCLOS and its provisions, the G-77/China also claimed that there is no governance gap, but rather an implementation deficit, which could be addressed through coordination and cooperation, drawing on inputs from the CBD and UNCLOS, with a focus on capacity building and technology transfer

Argentina challenged the assumptions of a governance gap and the appropriateness of RFMOs and marine conservation measures as implementation tools, and noted the controversy on the legal regime applicable to MGRs on the seabed. He

elaborated that the failure to ratify and implement existing regimes did not constitute a governance gap; that RFMOs, given their exclusionary mandates, could not represent the interests of the international community; and that conservation of biodiversity is a state mandate and, therefore, the exclusion of states when using conservation tools was inconsistent with UNCLOS.

South Africa clarified that given the existence of UNCLOS, there is no regulatory gap in a narrow sense; however, its "broadness" leaves it open to interpretation. He suggested the development of soft law under the UN General Assembly to deal with the perceived gap.

Noting treaty fatigue among small island developing states, the Marshall Islands proposed developing a toolbox using existing mechanisms or informal agreements to harmonize action, and designing EIA guidelines for key activities or, at least, conducting further analyses on the barriers and benefits of EIA application.

Mexico called for better legal mechanisms and institutions, as well as the development of approaches to contend with the access and distribution of benefits from marine resources. He opposed any interpretation of legal instruments that would grant free or unlimited access to biological resources. He called for the embrace of Part XI (the Area) of UNCLOS, the Rio Principles, the ecosystem approach and EIAs, as well as for collaboration with regard to scientific research, information sharing and technology transfer. He highlighted the work carried out by the International Law Commission on the prevention of transborder harm, and the value of existing institutions such as the International Seabed Authority, but acknowledged the possible need to adjust mandates. He said he would consider the EU proposal on measures to contend with regulatory and governance gaps and, in conclusion, recognized consensus regarding the UNCLOS principles constituting a general framework for all activities in the seas, and the appropriateness of the Working Group as the principal forum for discussion.

The International Seabed Authority highlighted the provisions and institutions relevant to EIAs, initiatives underway to develop a network of MPAs and requirements for information disclosure, and, noting the existence of a comprehensive and far-reaching regime, urged delegates to avoid conflict and overlap with existing regimes if they chose to adopt new measures.

IUCN asked states to fully participate in global and regional bodies, programmes and arrangements, and called for the continuation of the Working Group to address governance, regulatory, implementation and enforcement weaknesses and gaps. He urged expansion and strengthening of RFMOs, more transparent cross-sectoral cooperation on EIA and MPAs, application of the precautionary and ecosystem approaches, and use of the best available scientific knowledge.

WWF referenced a proposed binding port-state agreement, and supported the extension of the UN Fish Stocks Agreement to include discrete high seas stocks, and addition of review provisions. He called for states to become parties to all relevant global and regional agreements, and for non-parties to act in accordance with such agreements. Noting that sectoral bodies

address shipping, mining and marine living resources, he supported the establishment of an overall framework to improve inter-sectoral coordination. He suggested this framework also address EIAs and provide for regulation of new uses not covered by existing sectoral regimes.

During Friday's discussion of the Co-Chairs' Draft Joint Statement, Iceland, supported by WWF, stressed the need to achieve full participation in international instruments not only to receive the necessary ratifications to bring them into force, but also after agreements enter into force. While the Statement referred to several states' identification of governance gaps, the US argued that other states were not convinced that such gaps exist.

The EU stressed that a sectoral approach must be supplemented by an integrated approach to address regulatory and governance gaps, and, regarding medium- or long-term approaches, requested that the elements of an implementation agreement be included in the text.

OTHER MATTERS

Delegates addressed other matters on Thursday and Friday. On Thursday, discussion focused on the future of the Working Group and the EU suggested the Working Group be given the mandate to make recommendations to the UN General Assembly at its next session, and meet again in 2009. Noting the Working Group's agreement on the need for criteria for the identification of marine protected areas beyond national jurisdiction, he said the Working Group should send a clear message to the CBD COP. He said the Working Group should focus its third meeting on: the implementation and enforcement of existing instruments; establishment of MPAs in areas beyond national jurisdiction; development of EIAs as a tool for improving ocean management; and practical options for access and benefit sharing of MGRs.

In response, Argentina expressed concern with the focus on MPA establishment without consideration of who should adopt such measures. He highlighted the need to balance priorities, as well as define who was responsible for their execution. Brazil concurred with Argentina on the need to clarify issues related to the enforcement, monitoring, management, location and need for MPAs. Concerning the continuation of the Working Group, he stressed the need to maintain its *ad hoc* and open-ended informal character and urged consideration of the Group's future in light of a possible ICP mandate renewal.

Japan explained it could not support a 2009 meeting of the Working Group if it required extra-budgetary resources, and suggested that the cost of a third meeting should be included in the next UNGA budgetary proposal for the period of 2010-2011. He also suggested that the 2009 ICP meeting be dedicated to marine biodiversity.

The US underscored that the Working Group's recommendations would be a Co-Chairs' summary, not agreed text and, concurring with Argentina, said that taking the recommendations to the CBD COP would constitute "one step too far." She highlighted the value of the Group's informal

nature, called for clarification regarding the Group's focus, and, concurring with Japan, did not support the Group's continuation if it was extra-budgetary.

Mexico supported the EU's proposal on the permanent nature of the Working Group. He noted the need to consolidate the Group's work and called for a clear mandate. He said that it would be "regrettable" if gains were lost due to budgetary issues. South Africa supported the continuation and institutionalization of the Working Group, as well as regular meetings and a mandate to make recommendations to the UN General Assembly. WWF supported annual meetings of the Group and focusing discussion. He urged uptake of the future CBD decision on MPA selection criteria, as well as the CBD progress on bioregionalization, and referenced the work that will be required after the completion of the Assessment of Assessments.

Canada opposed changing the Group's informal nature, which he said could be "its strongest feature," and said the UN was the appropriate forum for discussion. He argued that the two-year period between meetings was helpful, and said that if the Group were continued, the unique value added to international debate, as well as a focused agenda, would require consideration. He called for greater focus on implementation gaps, impact assessments and spatial management. If the meetings become regular, he cautioned against overlapping with other forums, and called for consideration of costs. He noted the need to differentiate between the Group's and the ICP's mandates.

Iceland underscored the importance of the Working Group's informal character, and called for shorter and fewer prepared statements and more focused discussions, such as on implementation gaps and practical solutions on MGR conservation and exploitation, at future meetings. He argued against linkages between the Group and the ICP, and stated that he was flexible on the schedule of the Group's next meeting.

During Friday's discussion of the Co-Chairs' Draft Joint Statement, New Zealand supported the Group reconvening in 2009 but said it should be conditioned on a focused mandate and the resolution of budgetary issues. The US noted its general concern with budget implications.

Argentina referenced the statement made by WWF on Wednesday afternoon regarding a sovereignty dispute between Argentina and the UK on the Malvinas, South Georgia, and South Sandwich Islands and other marine areas. He said that the political and legal problems arising from this sovereignty dispute cannot be remedied by the WWF proposal to establish a South-west Atlantic Squid High Seas MPA, and said such efforts would not be backed by existing international law. The UK responded that it did not recognize the dispute over the Falkland Islands and South Georgia.

CONSIDERATION OF THE OUTCOMES OF THE MEETING

Delegates considered the outcomes of the meeting on Friday morning. The Co-Chairs' Draft Joint Statement was available to delegates at 8:00 am and was introduced to the Working Group mid-morning, when delegates were welcomed to make general comments.

Draft Co-Chairs' Joint Statement: The Statement provides a summary of issues that the UN General Assembly may wish to consider referring to the Working Group:

- more effective implementation and enforcement of existing instruments relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
- strengthened cooperation and coordination at all levels and across all sectors, including enhanced cooperation in capacity building for developing countries;
- development and implementation of effective EIAs as a tool for improving ocean management;
- development and use of area-based management tools, including designation management, monitoring and enforcement, consistent with UNCLOS;
- practical measures to address the conservation and sustainable use of MGRs in areas beyond national jurisdiction, without prejudice to ongoing discussions on the relevant legal regime on MGRs beyond areas of national jurisdiction; and
- continuation and enhancement of marine scientific research in relation to marine biological diversity beyond areas of national jurisdiction.

In the ensuing discussion, Iceland, supported by the US, urged the Co-Chairs to clarify that the list was not a package to be dealt with as a whole. Rather, the General Assembly could elect to embrace a portion of these issues. Argentina preferred that the wording of the Statement not clarify whether the list of issues constituted a package, as discussions will still continue. Iceland clarified that he wanted to provide UNGA with flexibility to decide whether the subpoints were a package. The EU supported the chapeau text as it was, drew attention to proposals from its earlier interventions, and suggested adding reference to governance and regulatory gaps, but said he was flexible on this matter. Italy supported the EU, said that in his understanding the subpoints were intended as a package deal and opposed separating them. He requested that the Co-Chairs inform delegations of their decision on this point. The US noted that UNGA has yet to consider whether to reconvene the Working Group, so UNGA may consider the subpoints itself, rather than refer them to the Working Group.

New Zealand stressed the need to strengthen existing institutions, such as RFMOs, and to continue and enhance marine scientific research, as well as coherence between scientific research and policymaking. Argentina disagreed with New Zealand's request for reference to RFMOs.

Co-Chair Hill thanked delegates for their interventions and agreed to take these points into account when preparing the final version of the Statement, which will be made available prior to the 63rd session of the UN General Assembly.

CLOSING PLENARY

In his closing statement, Co-Chair Hill thanked participants for their spirit of good will and cooperation, as well as his Co-Chair, the staff and Director of the Division for Ocean Affairs and the Law of the Sea, and the translators. He noted the Group's expression of appreciation for the complexity and importance of

the issues, and the support for scientific efforts. He highlighted the progress, especially with regard to the science, that has been made over the past decade. Co-Chair Hill gavelled the meeting to a close at 12:47 pm.

A BRIEF ANALYSIS OF THE WORKING GROUP

The second meeting of the Working Group was mandated by the 61st session of the UNGA in 2006 to consider five issues: the environmental impacts of anthropogenic activities; coordination and cooperation among states and other organizations; the role of area-based management tools; genetic resources beyond areas of national jurisdiction; and the existence of a governance or regulatory gap.

In light of the intransigence of state positions evident during the ICP on marine genetic resources in June 2007, the principle of the common heritage of mankind and benefit-sharing, delegates arrived less than optimistic about the potential for significant progress to be made in the Working Group. At the outset of the meeting, some suggested that disputes over these issues, as well as whether there was a need for a new regime, would serve as impediments to the Group's progress.

Many were, therefore, pleased when delegates agreed to focus on practical measures to conserve and sustainably use marine biological diversity beyond areas of national jurisdiction. This new attitude, combined with the informal nature of the meeting, opened the door to the possibility of new thinking, albeit under the guise of practical matters. Delegates departed with an air of satisfaction, as some progress had been made on practical measures to address issues of marine biodiversity beyond areas of national jurisdiction.

Sanguine delegates pointed toward the potential for future negotiations on some issues, if greater consensus emerges in subsequent meetings. However, participants were quick to point out that such negotiations would not take place within this Working Group, which was established as a non-negotiating forum, but referenced the possibility of raising these issues under the CBD, UNCLOS, or perhaps even a new negotiating body that could be established by General Assembly. This was credited to the cumulative knowledge participants had gained on the subject over the last decade, the narrow mandate assigned to the Working Group by General Assembly that focused discussion, and participants' willingness to focus on practical initiatives while deferring consideration of potentially divisive issues.

This brief analysis examines the progress made by the Working Group at its second meeting through an exploration of the areas of divergence and emerging areas of convergence. It also looks forward to issues that require further consideration by delegates in preparation for a future Working Group meeting, if established by General Assembly.

AREAS OF DIVERGENCE

The two most significant areas of divergence – MGRs and the existence of a governance or regulatory gap – were raised throughout the week. Although discussions were not without

contention, some delegates said that the meeting “far exceeded expectations,” citing the constructive nature of discussion and willingness to focus on practical measures.

Discussions on MGRs were tempered in nature, in stark contrast to the charged atmosphere when the subject was raised at the June 2007 meeting of the Informal Consultative Process. Nevertheless, some areas of divergence remain. While some developing countries consistently underscored the need to account for the common heritage of mankind, many developed countries disagreed, stating that all countries could benefit from the products developed from such resources. Yet, despite this divergence, discussion on the topic was muted. Some speculated that this change of tone was deliberate, because many considered the polarized positions held by key groups un-bridgeable; others conjectured that the issue was secondary to the debate; while others maintained that the matter is under incubation and will no doubt recur.

Another key development was the suggestion by some delegates to use the CBD’s ongoing work on marine biodiversity and by the EU to use International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) as models for work on MGRs. The pragmatic nature of the EU’s evocation surprised some who recalled the EU’s strong preference for an implementation agreement in 2006. While the subject of an implementation agreement was raised at this meeting, it was not the only emphasis of the EU’s position this time around. Most found the proposal to look at ITPGRFA as helpful in advancing the dialogue. Many also praised the EU for its preparedness to shift its focus from a new instrument, which it still maintains is necessary in the medium-term, toward activities that could be implemented in the short-term.

The second meeting of the Working Group may well be remembered for its exploration of the sufficiency of UNCLOS and other existing legal instruments (regulation) and of the decisions, decision-making rules and institutional arrangements (governance) for the conservation and sustainable use of the marine biodiversity beyond national jurisdiction. The conflation of the terms regarding gaps – regulatory, governance, implementation and enforcement – muddled debate. Discussion was further confused by some states’ hesitation to acknowledge any form of a gap, apparently for fear of indicating that the only means of filling a gap was a new regime.

Despite the confusion, there was unanimity that UNCLOS provided the overarching framework, but no agreement on the existence of either a regulatory or governance gap. Three major camps eventually emerged on this issue. The US, Canada, Norway and Japan argued that there is no governance or regulatory gap. However, when discussing coordination and cooperation needs, some in this camp supported proposals to reform and enhance existing regional fisheries management organizations, and establish new ones. A potential explanation for such a position could be the designation by General Assembly of the issue of governance gaps as separate from the issue of coordination and cooperation, yet many noted that institutional arrangements pertain to both topics.

A second camp, comprised of G-77/China, emerged, contending that only an implementation deficit exists. Mexico and the EU populated a third camp, which made the case that UNCLOS was a product of its time, and that the establishment of supplementary institutions to contend with emerging issues and changing conditions was inevitable. Delegates from New Zealand and Australia acknowledged an implementation gap and were open to the possibility of a new regime. Iceland went as far as saying that there was a governance gap, but that this could be addressed without an implementation agreement.

EMERGING AREAS OF CONVERGENCE

Despite the recognized disagreement over the existence of regulatory and governance gaps, delegates were able to agree that enhanced implementation of existing agreements was necessary, with many citing strengthening RFMOs, improving coordination and cooperation, and bolstering the effectiveness of existing MPAs.

Regarding discussion on short-term activities – which were at times referenced together as a toolkit – participants agreed to focus on practical measures to address anthropogenic impacts and area-based management tools, two topics that the delegates felt could be incrementally dealt with and didn’t require significant institutional changes. They discussed a wide range of potential initiatives, including developing MPA selection guidelines, creating a representative MPA network, carrying out EIAs of proposed marine scientific research, strengthening scientific research to facilitate decision-making, and building developing country capacity in research and UNCLOS implementation.

A majority of delegates acknowledged the Working Group’s value as a forum to share knowledge and information and to tackle a specific, yet important, set of emerging issues, which haven’t been covered extensively under related agreements and forums, such as the UN Fish Stocks Agreement, UNCLOS, CBD and ICP. Also, given the Group’s high-level status, potential for regular informal meetings, and membership as a Working Group of UNGA, with resultant participation of all nations, delegates agreed that the Group has the potential to raise understanding on and the profile of the subject, as well as to foster the required international consensus for action.

MOVING FORWARD

Participants departed noting that there were many issues that still required attention. Thus, there was near consensus on the need for a third meeting and on the Co-Chairs’ Draft Statement proposal that UNGA may wish to refer back to the Group the following issues: effective implementation and enforcement of existing instruments; cooperation and coordination; development and implementation of effective EIAs; development and use of area-based management tools; practical measures to address the conservation and sustainable use of MGRs in areas beyond national jurisdiction; and enhanced scientific research.

Most delegates hoped that the Working Group would meet again in 2009, but the US and Japan expressed concern over costs and, with Canada, preferred a 2010 meeting. Delegates who were committed to advancing the efforts of the Working Group

cautioned against the loss of momentum to address the issue of marine biodiversity beyond areas of national jurisdiction as a consequence of a two-year hiatus and stressed they would push for a 2009 meeting during the General Assembly.

Lastly, there seems to be a similarity between the debate on benefit-sharing of marine genetic resources at this meeting and the ICP and that on seabed mining during the UNCLOS 1982 negotiations. In *A Constitution for the Oceans*, a compilation of the statements made at the final conference of the UNCLOS process, UNCLOS III President Singapore's Tommy Koh recalled the principles of UNCLOS. He suggested that: UNCLOS covers all living and mineral marine resources; it was negotiated as a package such that parties cannot pick and choose their favorite portions for political leverage; rights claims come with responsibilities; and that to suggest that UNCLOS codifies customary practice was factually incorrect and legally unsupportable. While keeping delegates' focus on practical measures, perhaps revisiting these and other relevant principles of UNCLOS and other relevant agreements may provide some light to assist in navigating the stormy waters of MGRs and governance and regulation gaps at future meetings.

UPCOMING MEETINGS

INTERGOVERNMENTAL MEETING ON THE MANAGEMENT OF HIGH SEAS BOTTOM FISHERIES IN THE NORTH WESTERN PACIFIC OCEAN:

The second meeting of this new RFMO will take place from 14-16 May 2008, in Vladivostok, Russia, preceded by the scientific working group meeting from 12-13 May 2008. For more information, contact: Miho Wazawa; tel: +81-3-3502-8111 (ext 6747); fax: +81-3-3502-0571; e-mail: miho_wazawa@mm.maff.go.jp; internet: http://www.fpir.noaa.gov/IFD/ifd_nwpbottomtrawl.html

CBD COP-9: The ninth Conference of the Parties to the Convention on Biological Diversity will be held from 19-30 May 2008, in Bonn, Germany. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/doc/meeting.aspx?mtg=COP-09>

FORUM FISHERIES COMMITTEE MINISTERIAL MEETING: This meeting will take place from 19-20 May 2008, in Palau, following the 67th official session of the Forum Fisheries Committee from 12-16 May 2008. For more information, contact: Jean-Paul Gaudechoux; tel: +687-262-000 or +687-260-169; fax: +687-263-818; e-mail: jeanpaulg@spc.int; internet: <http://home.spc.int/coastfish/meetings.htm>

14TH SESSION OF THE INTERNATIONAL SEABED AUTHORITY: This meeting will take place from 26 May - 6 June 2008 in Kingston, Jamaica, preceded by the meeting of the Legal and Technical Commission. For more information, contact the International Seabed Authority: tel: +1-876-922-9105; fax: +1-876-922-0195; internet: <http://www.isa.org.jm/en/home>

11TH SESSION OF SUB-COMMITTEE ON FISH TRADE OF THE FAO COMMITTEE ON FISHERIES (COFI): This meeting will take place from 2-6 June 2008 in

Bremen, Germany. For more information, contact: William Emerson; tel: +39-6-570-57051; fax: +39-6-570-53152; e-mail: william.emerson@fao.org; internet: http://www.fao.org/fi/NEMS/events/detail_event.asp?event_id=36105

18TH MEETING OF STATES PARTIES TO THE UN CONVENTION ON THE LAW OF THE SEA: This meeting will be take place from 13-20 June 2008 at UN headquarters in New York. For more information, contact: Secretary of the Meeting of States Parties; tel: +1-212-963-3972; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/meeting_states_parties/eighteenthmeetingstatesparties.htm

FAO TECHNICAL CONSULTATION ON IUU: The Technical Consultation to draft a legally binding instrument on port state measures to prevent, deter and eliminate IUU fishing will take place from 23-27 June 2008 in Rome, Italy. For more information, contact: David Douman, FAO; tel: +39-6-570-56752; fax: +39-6-570-56500; e-mail: david.douman@fao.org; internet: http://www.fao.org/fi/NEMS/events/detail_event.asp?event_id=36383

NINTH MEETING OF THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA: This meeting is scheduled for 23-27 June 2008, at UN headquarters in New York. The meeting will focus on "Maritime security and safety." For more information, contact: Secretary of the Consultative Process; tel: +1-212-963-3969; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/consultative_process/consultative_process.htm

ELEVENTH INTERNATIONAL CORAL REEF SYMPOSIUM: This symposium will be organized under the theme "Reefs for the Future" and will take place from 7-11 July 2008, in Ft. Lauderdale, Florida, US. This meeting will focus on key concepts of coral reefs, including reef structure and function, pattern and process, ecosystem-based management, and human interactions. For more information, contact: Nancy Copen; tel: +1-301-634-7010; e-mail: ncopen@faseb.org; internet: <http://www.nova.edu/ncri/11icrs/>

INTERNATIONAL SYMPOSIUM ON COPING WITH GLOBAL CHANGE IN MARINE SOCIAL-ECOLOGICAL SYSTEMS: This symposium will take place from 8-11 July 2008, in Rome, Italy. For more information, contact: Kevern Cochrane, FAO Senior Fisheries Officer; tel: +39-6-570-56109; fax: +39-6-570-53020; e-mail: kevern.cochrane@fao.org; internet: http://www.fao.org/fi/NEMS/events/detail_event.asp?event_id=36388

ASIA-PACIFIC FISHERY COMMISSION (APFIC) CONSULTATIVE FORUM MEETING: This meeting on "Adapting to emerging challenges - promoting effective arrangements for managing fisheries and aquaculture in the Asia-Pacific Region" will take place from 6-9 August 2008, in Manado, Indonesia. For more information, contact: APFIC Secretary; tel: +66-2-697-4149; fax: +66-2-697-445; e-mail: simon.fungesmith@fao.org; internet: http://www.apfic.org/RCFM2008/RCFM_home.html

SECOND GLOBAL FISHERIES ENFORCEMENT

TRAINING WORKSHOP: This meeting will be held from 7-11 August 2008 in Trondheim, Norway. This workshop will present traditional and innovative approaches on Monitoring, Control and Surveillance. For more information, contact: Organizing Committee or the Directorate of Fisheries; tel: +47-800-30-179; e-mail: contact@gfetw.org; internet: <http://www.gfetw.org/>

SECOND SESSION OF THE TECHNICAL CONSULTATION ON INTERNATIONAL GUIDELINES FOR THE MANAGEMENT OF DEEP-SEA FISHERIES IN THE HIGH SEAS:

This meeting will take place from 25-29 August 2008 at FAO headquarters in Rome, Italy. This is the second session of the Technical Consultation, which was initiated in February 2008, and is aimed at completing the development of the International Guidelines for the Management of Deep-sea Fisheries in the High Seas through FAO. For more information, contact: Dominique Gréboval, Senior Fisheries Planning Officer; tel: +39-06-570-52122; fax: +39-06-570-56500; e-mail: dominique.greboval@fao.org; internet: <http://www.fao.org/fishery/nems/38028/en>

NORTHWEST ATLANTIC FISHERIES

ORGANIZATION (NAFO): The annual meeting of the Northwest Atlantic Fisheries Organization will take place from 22-26 September 2008, in Vigo, Spain. For more information, contact: Barbara Marshall; tel: +1-902-468-5590; fax: +1-902-468-5538; e-mail: info@nafo.int; internet: <http://www.nafo.int/about/frames/activities.html>

63RD SESSION OF THE UN GENERAL ASSEMBLY:

The 63rd session of the UN General Assembly is scheduled to hold Informal Consultations on the draft resolutions on "Oceans and the Law of the Sea" tentatively from 29 September to 3 October 2008, and 17-21 November, and on sustainable fisheries, including the UNFSA and UN Convention on the Law of the Sea, tentatively on 17-19 September and 10-14 November 2008. For more information, contact: Director, UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/reference_files/calendar_of_meetings.htm

27TH MEETING OF THE COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES (CCAMLR):

The regular meeting of the Commission will take place from 27 October to 7 November 2008, at CCAMLR headquarters in Hobart, Australia. For more information, contact: CCAMLR Secretariat; tel: +61-3-6210-1111; fax: +61-3-6224-8744; email: ccamlr@ccamlr.org; internet: <http://www.ccamlr.org/pu/e/sched-of-mtgs.htm>

POLICY ANALYSES AND MULTISTAKEHOLDER POLICY DIALOGUES ON GOVERNANCE OF AREAS BEYOND NATIONAL JURISDICTION: MANAGEMENT ISSUES AND POLICY OPTIONS:

This meeting is tentatively scheduled for 12-14 November 2008, in Singapore. The meeting will consider applicable principles, management approaches, capacity-building requirements, options for benefit-sharing,

and interface with intellectual property rights obligations under international law. For more information, contact: Miriam C. Balgos, Project Coordinator; tel: +302-831-8086; fax: 302-831-3668; e-mail: mbaldos@udel.edu; internet: http://www.globaloceans.org/highseas/pdf/HighSeas_ProjectLeaflet.pdf

WESTERN AND CENTRAL PACIFIC FISHERIES

COMMISSION SESSION: The 5th regular session of the Commission is provisionally set to take place from 8-12 December 2008, in Busan, Republic of Korea. The meetings of its Northern, Scientific, and Technical and Compliance Committees will take place prior to the session. For more information, contact: Lucille Martinez; tel: +691-320-1992 or +691-320-1993; fax: +691-320-1108; e-mail: wcpfc@mail.fm; internet: <http://www.wcpfc.int/>

EIGHTH ROUND OF INFORMAL CONSULTATIONS OF STATES PARTIES TO THE UN FISH STOCKS AGREEMENT:

This meeting will take place at a date to be determined, by the UN General Assembly in September 2008, at UN headquarters, New York, US. For more information contact: UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

WORLD OCEAN CONFERENCE: This conference will take place from 11-15 May 2009, in Manado, North Sulawesi, Indonesia. This Conference is organized by the Government of Indonesia, Global Forum on Oceans, Coasts and Islands, and other partners and will focus high-level attention on issues of ecosystem-based integrated oceans management in the context of climate change, focusing especially on the policy recommendations emanating from the 2008 Global Conference. For more information, contact: WOC'09 Secretariat; tel: +62 431 861 152; fax: +62 431 861 394; e-mail: info@woc2009.org; internet: <http://www.woc2009.org/>

GLOSSARY

AoA	Assessment of Assessments
EIA	Environmental impact assessment
ICP	Informal Consultative Process on Oceans and the Law of the Sea
IMO	International Maritime Organization
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUU	Illegal, unreported and unregulated fishing
MGR	Marine genetic resource
MPA	Marine protected area
NEAFC	North East Atlantic Fisheries Commission
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
RFMO	Regional fisheries management organization
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO-IOC	United Nations Education, Scientific and Cultural Organization-International Oceanographic Commission