

## SUMMARY OF THE THIRTEENTH MEETING OF THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA: 29 MAY - 1 JUNE 2012

The thirteenth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-13) took place from 29 May - 1 June 2012, at UN Headquarters in New York. The meeting brought together representatives from governments, intergovernmental organizations, non-governmental organizations and academic institutions to examine this year's topic—marine renewable energies (MREs).

Delegates convened in plenary sessions throughout the week to discuss: views on MREs; inter-agency cooperation and coordination; the process for the selection of topics and panelists so as to facilitate the work of the UN General Assembly; issues that could benefit from attention in future work of the General Assembly on oceans and the law of the sea; and the outcome of the meeting. In addition, three discussion panels were held to consider: MREs: types, uses and role in sustainable development; ongoing or planned MREs projects and work at the global and regional levels; and opportunities and challenges in the development of MREs, including for cooperation and coordination.

The Co-Chairs, Amb. Don MacKay (New Zealand) and Amb. Milan Jaya Meetarbhan (Mauritius), distributed a Co-Chairs' summary of discussions on Friday morning. After all the paragraphs of the report had been discussed and delegates had received an update on the voluntary trust fund and on the activities occurring to commemorate the 30th anniversary of the UN Convention on the Law of the Sea (UNCLOS), Co-Chair MacKay gavelled the meeting at 12:32 pm.

### A BRIEF HISTORY OF THE LAW OF THE SEA AND THE CONSULTATIVE PROCESS

On 1 November 1967, Malta's Ambassador to the UN, Arvid Pardo, asked the nations of the world to recognize a looming conflict that could devastate the oceans. In a speech to the General Assembly, he called for "an effective international

regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction." The speech set in motion a process that spanned 15 years and saw the creation of the UN Seabed Committee, the signing of a treaty banning nuclear weapons on the seabed, the adoption of a declaration by the General Assembly that all resources of the seabed beyond the limits of national jurisdiction are the "common heritage of mankind," and the convening of the Stockholm Conference on the Human Environment. These were some of the factors that led to the Third UN Conference on the Law of the Sea during which UNCLOS was adopted.

**UNCLOS:** Opened for signature on 10 December 1982, in Montego Bay, Jamaica, at the Third UN Conference on the Law of the Sea, UNCLOS 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. UNCLOS entered into force on 16 November 1994, and is supplemented by the 1994 Deep Seabed Mining Agreement and the 1995 Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

**GENERAL ASSEMBLY RESOLUTION 54/33:** On 24 November 1999, the General Assembly adopted resolution 54/33 on the results of the review undertaken by the UN Commission

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on Sustainable Development at its seventh session on the theme of "Oceans and Seas." In this resolution, the General Assembly established an Open-ended Informal Consultative Process to facilitate the annual review of developments in ocean affairs. The General Assembly decided that the Consultative Process would meet in New York and consider the Secretary-General's annual report on oceans and the law of the sea, and suggest particular issues to be considered by the General Assembly, with an emphasis on identifying areas where intergovernmental and inter-agency coordination and cooperation should be enhanced. The resolution further established the framework within which meetings of the Consultative Process would be organized, and decided that the General Assembly would review the effectiveness and utility of the Consultative Process at its 57th session.

**ICP-1 to 3:** The first three meetings of the Consultative Process identified issues to be suggested and elements to be proposed to the General Assembly, and highlighted issues that could benefit from attention in its future work. The first meeting of the Consultative Process (30 May - 2 June 2000) held discussion panels addressing fisheries and the impacts of marine pollution and degradation. The second meeting (7-11 May 2001) focused on marine science and technology, and coordination and cooperation in combating piracy and armed robbery at sea. The third meeting (8-15 April 2002) held discussion panels on the protection and preservation of the marine environment, capacity building, regional cooperation and coordination, and integrated oceans management.

**GENERAL ASSEMBLY RESOLUTION 57/141:** On 12 December 2002, the 57th session of the General Assembly adopted resolution 57/141 on "Oceans and the law of the sea." The General Assembly welcomed the previous work of the Consultative Process, extended it for an additional three years, and decided to review the Consultative Process' effectiveness and utility at its 60th session.

**ICP-4 and 5:** The fourth meeting of the Consultative Process (2-6 June 2003) adopted recommendations on safety of navigation, the protection of vulnerable marine ecosystems, and cooperation and coordination on ocean issues. The fifth meeting (7-11 June 2004) adopted recommendations on new sustainable uses of oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction.

**ICP-6:** The sixth meeting of the Consultative Process (6-10 June 2005) adopted recommendations on fisheries and their contribution to sustainable development, and considered the issue of marine debris.

**ICP-7:** The seventh meeting (12-16 June 2006) enhanced understanding of ecosystem-based management, and adopted recommendations on ecosystem approaches and oceans.

**ICP-8:** The eighth meeting (25-29 June 2007) discussed issues related to marine genetic resources. 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 recommendations were adopted. However, a Co-Chairs' summary report was forwarded to the General Assembly for consideration.

**ICP-9:** The ninth meeting (23-27 June 2008) adopted recommendations on the necessity of maritime security and safety in promoting the economic, social and environmental pillars of sustainable development.

**ICP-10:** The tenth meeting (17-19 June 2009) produced a Co-Chairs' summary report collating outcomes of its discussions on the implementation of the outcomes of the Consultative Process, including a review of achievements and shortcomings in its first nine years, which was forwarded to the General Assembly for consideration.

**ICP-11:** The outcome of the eleventh meeting (21-25 June 2010) was a Co-Chairs' summary of discussions, including: capacity building for marine science; inter-agency cooperation and coordination; issues that could benefit from attention in future work of the General Assembly on ocean affairs and the law of the sea; and the process for the selection of topics and panelists so as to facilitate the work of the General Assembly.

**ICP-12:** The outcome of the twelfth meeting (20-24 June 2011) was a Co-Chairs' summary of discussions, including: sustainable development, oceans and the law of the sea; an overview of progress to date and the remaining gaps in the implementation of oceans- and seas-related outcomes of the major summits on sustainable development; new and emerging challenges for the sustainable development and use of oceans and seas; the road to the UN Conference on Sustainable Development (UNCSD or Rio+20) and beyond; inter-agency cooperation and coordination; the process for the selection of topics and panelists for consideration by the General Assembly; and issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea. The Co-Chairs' summary was forwarded to the General Assembly for consideration.

## ICP-13 REPORT

Co-Chair Amb. Milan Jaya Meetarbhan opened ICP-13 on Tuesday, 29 May, noting the theme for this year is part of a wider debate on sustainable development. He highlighted the increased energy demand and the need for more sustainable sources of energy, recalling that this year was proclaimed the International Year of Sustainable Energy for All.

Co-Chair Amb. Don MacKay highlighted challenges related to: costs, legal framework, financing, and potential environmental impacts of marine renewable energies. He underscored their potential for contributing to the energy challenges facing small island developing states (SIDS).

Under-Secretary-General for Economic and Social Affairs Sha Zukang recalled the following objectives of the UN Secretary-General's Sustainable Energy for All initiative: universal access to energy; doubling global energy efficiency; and doubling global renewable energy sources, all by 2030.

Highlighting that oceans contain a reservoir of untapped potential, Stephen Mathias, Assistant Secretary-General for Legal Affairs, for the Secretary-General and for Patricia O'Brien, Under-Secretary-General for Legal Affairs and the Legal Counsel, underscored that ICP-13 provides a unique opportunity to enhance awareness of MREs and identify areas for cooperation.

Co-Chair Meetarbhan introduced the annotated provisional agenda (A/AC.259/L.13), which was adopted.

**DISCUSSION PANELS**

**MARINE RENEWABLE ENERGIES: TYPES, USES AND ROLE IN SUSTAINABLE DEVELOPMENT:** On Tuesday afternoon, Alain Piquemal, University of Nice Sophia Antipolis, presented an overview of current implementation frameworks for MREs. John Huckerby, International Energy Agency’s (IEA) Ocean Energy Systems Implementing Agreement (OES), explained that MREs are widespread and situated close to a third of the world’s population, and that they make limited demands for space because of their high-energy density. Jay Batongbacal, University of the Philippines, discussed the implications of MREs for distributive and social justice in the context of sustainable development.

In the ensuing discussion, delegates addressed, *inter alia*:

- extending the scope and jurisdiction of the International Seabed Authority (ISA) beyond its current focus on mineral extraction to also cover bio-derived resources;
- the environmental impacts of the world’s oldest tidal barrage, La Rance, France;
- that the transfer of technologies for ocean thermal energy conversion (OTEC), specifically to tropical countries, is accelerating, but presently there is little beyond pilot-scale activities;
- the limited engagement of the International Renewable Energy Agency (IRENA) with MREs to date;
- the Philippines’ engagement with local communities through their Energy Regulation 1-94;
- potential MRE investment policies; and
- how to tackle the maintenance and removal of MRE installations.

A more detailed summary of the presentations and discussion is available at: <http://www.iisd.ca/vol25/enb2585e.html>

**ONGOING OR PLANNED MARINE RENEWABLE ENERGIES PROJECTS AND WORK AT THE GLOBAL AND REGIONAL LEVELS:**

On Wednesday morning, participants convened for this second discussion panel. Arjoon Suddhoo, Mauritius Research Council, spoke on the implications of MREs for small islands, focusing on Mauritius as a case study. Masahiro Matsuura, University of Tokyo, described slow progress in Japan towards widespread usage of MREs, citing opposition from fishing communities as one reason. Omar bin Yaakob, University of Technology of Malaysia, outlined MRE initiatives in Malaysia and South East Asia. Segen Estefen, Federal University of Rio de Janeiro, presented the ocean-related segments of the Intergovernmental Panel on Climate Change’s report on “Renewable Energy Sources and Climate Change Mitigation.”

The subsequent discussion covered:

- an international regime for control and regulation of MREs in areas beyond national jurisdiction;
- the loss of sunset views as a landscape impact of offshore wind technologies;
- the potential of closed-circuit technology for minimizing environmental impacts of OTEC;

- Mauritius’ proposed cooperative activities between the government, private sector and community stakeholders in MRE development;
- how commonalities among South East Asian countries and Pacific SIDS can aid development of OTEC, ocean, and tidal technologies;
- the synergies between the oil and gas industries and MREs;
- the role of UNCLOS for regulating activities related to MREs;
- the potential for replicating rules modeled on the ISA;
- the impact of MRE devices on the rights of passage for navigation;
- the importance of political commitment for developing MREs in SIDS; and
- examples of successes with MREs in the UK and New Zealand.

A more detailed summary of the presentations and discussion is available at: <http://www.iisd.ca/vol25/enb2586e.html>

**OPPORTUNITIES AND CHALLENGES IN THE DEVELOPMENT OF MARINE RENEWABLE ENERGIES, INCLUDING FOR COOPERATION AND COORDINATION:**

On Wednesday afternoon, Vanessa E.H. Stewart, Soltag, LLC., drew on the history of solar and wind industries to discuss conditions needed to create a stable investment environment for MREs, reviewing a number of risks facing the development of MRE markets. Martin J. Attrill, University of Plymouth, presented research showing minimal negative impacts on populations of organisms from operational noise, collisions and electromagnetic radiation caused by certain MREs and that the presence of physical structures could have positive benefits. Dengwen Xia, National Ocean Technology Centre, outlined policy and technical developments in China’s MRE sector, detailing some opportunities, challenges, and suggestions for future work. Joseph Williams, Caribbean Community Secretariat, outlined the opportunities and challenges in the development of MREs in the Caribbean, noting that most Caribbean countries are currently dependent on imported petroleum.

In the subsequent discussion, comments covered, *inter alia*:

- the potential for a global repository of environmental impact assessments (EIAs);
- the inclusion of impacts on vessel navigation in EIAs;
- the possibilities of feed-in tariffs that differentiate the stage of technology development;
- country involvement in site identification assessments to reduce investor risks;
- the possibility of using instruments like the Green Climate Fund;
- using non-commercially viable technologies developed by countries that can bear the risks;
- the ecological, social and economic impacts concerning the cumulative effects of additional noise from large-scale MRE projects;
- the need for policies separating development from technological risks; and
- the recommendation that discharge water that is brought up by thermal gradient projects should be disposed of above the surface to limit the spread of invasive species.

A more detailed summary of the presentations and discussion is available at: <http://www.iisd.ca/vol25/enb2586e.html>

## PLENARY

### GENERAL EXCHANGE OF VIEWS ON MARINE

**RENEWABLE ENERGIES:** On Tuesday and Thursday mornings, delegates convened in plenary for a general exchange of views on MREs.

Denmark, for the European Union (EU), and supported by the Pacific Islands Forum, Viet Nam, Argentina, China, South Africa, Bangladesh, Fiji, Morocco, and the UN Environment Programme (UNEP), emphasized capacity building and technology transfer to developing countries. He also highlighted a potential role for the IRENA in this.

Algeria, for the Group of 77 and China (G-77/China), commended the balanced participation of panelists from developed and developing countries, and sought clarification on the scope and definition of MREs. Several delegates, including Malaysia, Trinidad and Tobago, Brazil, the Philippines, Argentina, and Indonesia, supported the G-77/China's statement.

New Zealand, for the Pacific Islands Forum, highlighted signing the 2011 Waiheke Declaration on sustainable development, which includes language on promoting clean and affordable renewable energy. Malaysia expressed the wish to assist in advancing discussions on MREs with relevance for other developing countries.

Bangladesh expressed support for the Millennium Development Goals (MDGs) and discussions of sustainable development goals within the preparatory process of the UN Conference on Sustainable Development (UNCSD or Rio+20). With China and South Africa, he noted MREs can assist in creating jobs and energy security. China said countries should set their own goals for the development of MREs.

Fiji, supporting the G-77/China and the Pacific SIDS, noted MREs provide opportunities for reducing reliance on fossil fuels. The US noted that MRE is promising for remote areas and SIDS. Morocco underlined the importance of access to energy for all, and cooperation on sharing the costs and benefits of renewable energy.

Japan said countries must cooperate to mobilize markets, technology and finance through public and private mechanisms to promote low-carbon growth.

South Africa, supporting the G-77/China, added that MREs should not negatively affect wildlife and seascapes. The Philippines highlighted the importance of distributive justice regarding access to resources and distribution of benefits and burdens. Federated States of Micronesia, for the Pacific SIDS, cautioned of being mindful of the social, cultural and environmental impacts of MREs. Recalling the Secretary-General's report on oceans and the law of the sea (A/67/79), Brazil noted the potential environmental impacts of MREs.

The Parliamentary Assembly of the Mediterranean highlighted its renewable energy-related activities and the need for a regulatory framework for public and private investments. Monaco emphasized that the absence of legislation should not discourage states from developing MRE technologies. Trinidad and Tobago underscored the need to expand research on MRE, stressing that UNCLOS is the legal framework for addressing

this. Mexico stressed the need for national frameworks for MREs that are aligned with UNCLOS.

Norway described MRE projects on offshore, floating wind power, and industrial cultivation of kelp.

IUCN underscored the importance of tools, such as: strategic environmental assessments (SEAs); EIAs; ecosystem-based management; marine spatial planning (MSP); ecologically or biologically significant areas; and marine protected areas (MPAs). UNEP noted its renewable energy programmes mostly focus on terrestrial sources, highlighting its experience with EIAs, SEAs, MSP and MPAs. Ocean Care and International Ocean Noise Coalition said further research is needed to ensure the impacts of MREs on marine life are minimized. The International Ocean Institute described a new Master's Degree program and web-based, interactive mapping platform for oceans, which includes considerations for MREs.

A more detailed summary of the discussion is available at: <http://www.iisd.ca/vol25/enb2585e.html> and <http://www.iisd.ca/vol25/enb2587e.html>

### INTER-AGENCY COOPERATION AND

**COORDINATION:** On Thursday, Andrew Hudson, UN-Oceans, provided an update of the activities of UN-Oceans, highlighting, *inter alia*, the review of UN-Oceans by the UN Joint Inspection Unit and the new terms of reference for UN-Oceans that are expected to come from the review.

Responding to China on working mechanisms, Hudson clarified that UN-Oceans is a coordination mechanism, not an organization or agency. To Brazil's question on participation of states in the deliberations of UN-Oceans, he noted the ICP's role for this purpose, underscoring that specific states' participation is beyond the mandate of UN-Oceans. On Argentina's question on ensuring coherence within the UN system, he pointed to UN-Oceans' terms of reference, which requires its work to align with the desires of the General Assembly, and processes and outcomes such as Agenda 21 and the MDGs.

A more detailed summary of the presentation and discussion is available at: <http://www.iisd.ca/vol25/enb2587e.html>

### PROCESS FOR THE SELECTION OF TOPICS AND

**PANELISTS SO AS TO FACILITATE THE WORK OF THE GENERAL ASSEMBLY:** On Thursday, Co-Chair Meetarban recalled the recommendation of the General Assembly in Resolution 66/231 that the ICP devise a transparent, objective and inclusive process for selecting topics and panelists.

Argentina commended the Co-Chairs for attempting to improve methods for selecting and approving topics. She urged for an earlier presentation of topics to improve the understanding on the part of delegations of the topics prior to their being adopted, and prevent the too-hasty adoption of topics, as has happened in previous years. She also stressed, as was decided at ICP-10, that topics should be chosen from the perspective of sustainable development.

A more detailed summary of the discussion is available at: <http://www.iisd.ca/vol25/enb2587e.html>

### ISSUES THAT COULD BENEFIT FROM ATTENTION

**IN THE FUTURE WORK OF THE GENERAL ASSEMBLY ON OCEANS AND THE LAW OF THE SEA:** On Thursday, Co-Chair Meetarban referred to the Co-Chairs' composite streamlined list of issues that could benefit from attention in the

future work of the General Assembly on oceans and the law of the sea. He explained that the topics come from the reports on the work of the fourth to twelfth meetings of the Consultative Process. The topics include: MPAs; implementation of international instruments; uses of the oceans; science, technology and data, including capacity building; ecosystem approaches to oceans; food security; conservation and management of living marine resources; international cooperation and coordination; marine environment; issues discussed at previous meetings; marine biological diversity and genetic resources; flag state responsibilities; human rights and labor rights; maritime security; maritime safety; settlement of disputes; hazard preparedness and mitigation; social aspects of oceans and the law and the sea; climate change and oceans; and oceans and sustainable development. Co-Chair Mehtarbhan said delegates will be informed of other topics proposed during the meeting.

Considering the upcoming review of the ICP at the 67th session of the General Assembly, Brazil suggested that ICP-14 examine the outcomes of the UNCSD, in particular how these outcomes impact or benefit international cooperation and coordination on items that were under the purview of the UNCSD. Denmark, for the EU, suggested an alternative topic: climate change and oceans, particularly as they relate to security and survival for low-lying nations and islands.

A more detailed summary of the discussions is available at: <http://www.iisd.ca/vol25/enb2587e.html>

#### **CONSIDERATION OF THE OUTCOME OF THE MEETING**

**CO-CHAIRS' SUMMARY OF DISCUSSIONS:** On Friday, Co-Chair MacKay introduced the Co-Chairs' summary of discussions.

The report collated the week's discussions on: MREs: types, uses and role in sustainable development; ongoing or planned MREs projects and work at the global and regional levels; opportunities and challenges in the development of MREs, including for cooperation and coordination; inter-agency cooperation and coordination; the process for the selection of topics and panelists for consideration by the General Assembly; and issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea.

Co-Chair MacKay reminded delegates that the document is not a "negotiated text" and thus serves only for reference purposes, and he encouraged delegates to just identify major errors, noting that: "the perfect is the enemy of the good." He added that all the panelists' presentations will be available on the website of the UN Division on Oceans and the Law of the Sea (DOALOS) to complement the discussion in the Co-Chairs' summary of discussions. Delegates considered the summary document by sections and paragraphs. Sections that received comments are discussed below.

**General exchange of views:** Responding to China, Co-Chair Mackay clarified that the substantive points made by delegations during the general exchange of views were woven throughout the document rather than being presented in a stand-alone section.

Brazil, supporting China's question, asked for the insertion of language referencing the UN Secretary-General's report on oceans and the law of the sea (A/67/79) and its attention to the importance of studying the impacts of MREs.

Argentina, supported by South Africa and Mexico, asked that the reference to Part XIV of UNCLOS on the transfer of marine technology be given more emphasis, as many delegations made interventions that noted the importance of this issue. Trinidad and Tobago, also in support, noted that it should be clearer that UNCLOS provides the legal framework for the discussions contained in the report.

South Africa added that reference should be made to the common themes of many delegations' interventions, particularly: transfer of technology, sustainable development, and environmental concerns with MREs.

China asked for reference to two points: MREs should be developed according to targets and goals set by individual countries according to their needs and circumstances; and concerning the opportunities and challenges presented by MREs, states should increase cooperation and collaboration as specified in the current international legal framework.

**Marine renewable energies: types, uses and role in sustainable development:** Trinidad and Tobago asked that the discussion of the possible role MREs can play in helping to alleviate the high reliance of SIDS on fossil fuel imports include a point about the need to make the use of MREs more feasible. The Philippines asked that the report better reflect the importance it places on distributive justice as a guide for how the world's oceans, including potential MREs, are utilized. Argentina suggested clearer language be used to ensure that the Area is discussed commensurate with its legal definition as specified in UNCLOS.

**Opportunities and challenges in the development of marine renewable energies, including for cooperation and coordination:** New Zealand recalled the presentation by Dengwen Xia, National Ocean Technology Centre, who called for increased regional cooperation and coordination, and especially increased participation in the IEA's OES, which is the main international platform for cooperation on MREs.

Brazil noted that a reference to the experiences with tidal barrages that were mentioned by panelists could be included here or in another part of the Co-Chairs' summary.

On impacts of MREs on other existing uses of oceans, Singapore suggested a broad understanding of impacts of large-scale MRE facilities on navigation, which are not just "due to" but the consequence of several effects "including from" changes in speed and direction of currents.

**Inter-agency cooperation and coordination:** On inter-institutional cooperation, Monaco suggested including reference to IRENA and possibilities to strengthen cooperation with this agency, which is working on renewable energy internationally. Co-Chair MacKay responded that reference to IRENA is made earlier in the Co-Chairs' summary, in a paragraph that deals specifically with technology transfer and capacity building. Brazil noted that one of the panelists referred to an agreement between the IEA and IRENA on MRE.

Regarding UN-Oceans, Argentina suggested adding reference to the new terms of reference for UN-Oceans that is expected to come from the review by the UN Joint Inspection Unit.

**Issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea:** Co-Chair MacKay mentioned that, regarding topics for ICP-14,

it was brought to his attention that the paragraph does not fully capture what delegations intended and this will be changed accordingly.

This concluded discussion of the Co-Chairs' summary of discussions, which will be forwarded by the Co-Chairs to the General Assembly for consideration at its 67th session.

### **CLOSING PLENARY**

Serguei Tarassenko, Director, DOALOS, provided an update on the financial status of the voluntary trust fund, which was established by the General Assembly to assist the participants of developing states, in particular least developed states, SIDS, and landlocked developing states, to attend the meetings of the Consultative Process by covering travel costs. He thanked New Zealand for its contributions in 2010 and 2011, and Turkey for its contribution in 2012. He mentioned that in 2011 US\$20,000 of the Trust Fund was used. For 2012, it is expected that US\$31,000 will be used, which results in a net balance of the Trust Fund of US\$68,000, including administrative costs.

Tarassenko also provided information on two activities for the commemoration of the 30th anniversary of the opening for signature of UNCLOS: a panel discussion at World Oceans Day on 8 June 2012, with welcoming remarks by UN Secretary-General Ban Ki-moon; and two days of plenary meetings during the UN General Assembly, on 10-11 December 2012, to consider "Oceans and the law of the sea" and the commemoration of the 30th anniversary. He thanked all delegations for their financial and in-kind support for these activities.

Co-Chair MacKay thanked delegates for their constructive discussions. He gavelled the meeting to a close at 12:32 pm.

### **A BRIEF ANALYSIS OF ICP-13**

The thirteenth session of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-13) convened in the shadow cast by the concurrent proceedings of the third round of "Informal-Informal" Negotiations on the zero-draft outcome document of the UN Conference on Sustainable Development. Nevertheless, ICP-13's theme of marine renewable energies (MREs) provided a good opportunity for participants to engage with a new topic that is critical to both ocean affairs and sustainable development. During the four-day session, delegates highlighted key opportunities and challenges, from energy-security concerns, such as dependence on fossil-fuel imports, to the need to identify, assess and address the economic, environmental and social effects of new energy-generating technologies. Given the salience of energy supply and demand issues, especially in remote and isolated regions, such as small island developing states, many participants agreed that MREs merit attention and a sound governance regime.

This brief analysis assesses the content and proceedings of ICP-13, particularly in light of the upcoming review of the effectiveness and utility of the Consultative Process scheduled for the 67th session of the General Assembly in October 2012.

### **FINDING THE RIGHT MIX OF ENERGY SOURCES**

According to the Secretary-General's report on oceans and the law of the sea (A/67/79), MREs derive from natural processes

in the marine environment. They can be usefully categorized into four types: ocean energy; wind energy from turbines located in off-shore areas; geothermal energy derived from sub-marine geothermal resources; and bio-energy derived from marine biomass, particularly ocean-derived algae. Throughout the week, panelists presented on ongoing, pilot and future MRE initiatives. Topics covered ranged from: available MRE technologies; investment opportunities; country-specific experiences; the use of MREs in the context of climate change; and the role of distributive justice as an element of MREs in the context of sustainable development. All presentations touched upon both the challenges and opportunities for furthering the use of MREs.

The mix of topics covered spurred two central themes. First, delegates focused on the legal and governance gaps presented by MREs. Several presentations noted the need for regulatory frameworks and increased coordination and cooperation among states, and the volume of questions from the floor seeking greater clarification on this highlighted that these issues demand further investigation. A number of delegates made general statements recognizing that the legal framework for MRE is the UN Convention on the Law of the Sea (UNCLOS). However, UNCLOS does not specifically refer to MREs, and possible ways to operationalize attention to MREs within UNCLOS were not discussed in depth. For some this was not a cause for concern, since they wanted to learn more about the technologies before engaging in legal discussions; for others, the question was when and where the legal issues would be addressed, since MREs will likely not be revisited again in this forum. Delegates were also not clear about the allocation of responsibility for dealing with MREs among existing international bodies. They raised a number of questions about the roles of the well-established International Energy Agency and the recently established International Renewable Energy Agency, and some delegates noted the logical role the former might play on this topic. These concerns reflect that when discussing technical issues, such as MREs, the ICP provides an opportunity to identify and consider the relevant global governance gaps and opportunities.

A mere discussion of technical issues and potential governance gaps, however, does not skirt the ongoing challenge the ICP faces in finding an acceptable balance among the different social, economic and environmental issues relevant to ocean affairs. This issue was the second central theme throughout the week. Participants raised concerns that, while informative and interesting, the scope of presentations did not really cover all the potential adverse impacts of all types of MREs, with some delegates seeking more information on the impacts referenced in the Secretary-General's report. These include: reduction of marine current velocity; decrease in the heights of waves, caused by the extraction of wave or tidal energy; alteration of benthic habitats; killings or changes in the behavior of fish and mammals from noise in electromagnetic fields; and interference with movement, feeding, spawning and migration paths of marine fauna. These gaps in coverage could have been addressed by presentations and plenary discussions on well-known tools that contribute to the implementation of ecosystem-based management, such as environmental impact assessments, as required by Part XII of UNCLOS on the protection and preservation of the marine environment, and also marine spatial

planning, strategic environmental assessments, and marine protected areas (MPAs). Other participants were more content with the lack of specific focus on environmental concerns, given that the mandate of the Consultative Process is to address ocean issues in the context of sustainable development. Similarly, an overarching point that was raised throughout the week from all sides, especially in accordance with Part XIV of UNCLOS on marine technology transfer, was the need for the transfer of knowledge and technology from developed to developing countries. It was widely acknowledged that, at present, the greatest proportion of know-how and financial resources for the design and implementation of MREs are within developed countries and therefore the need for cooperation, and especially co-development of these technologies, should be encouraged. Many delegates also stressed the sustainable-development benefits of these transfers, noting how MREs can help address the heavy reliance of certain countries on fossil-fuel imports, while also reducing greenhouse gas emissions.

#### **OFF-THE GRID, BUT STILL SUSTAINABLY FUELED**

Attendance at this year's ICP was notably lower than previous years. The Co-Chairs' summary of discussions from ICP-13 reported 78 delegations from states and other participant bodies, compared to 117 during ICP-12. Speculation was rife as to the underlying reasons. The most frequently cited explanation was the concurrent meeting of the "Informal-Informal" Rio+20 negotiations. In some instances, delegations were splitting their attention between the two processes; in others, priority was given to Rio+20. This was particularly the case for civil society representatives. In addition, questions were also raised about whether the presentation of the technical side of the chosen subject matter was an additional deterrent. Many concluded that it was likely a bit of both.

In spite of the lackluster reception for this year's topic, delegates showed support for a continuation of the ICP. For one, this is linked to leadership. During ICP-13, many commented on the skillful leadership provided by the Co-Chairs and noted its importance for the ICP's future. Participants praised the selection of geographically well-balanced panels with panelists from developed and developing countries, with the latter, in particular, expressing appreciation to the Co-Chairs and the Secretariat.

Additionally, several delegates acknowledged that the Consultative Process presents a unique forum to transparently discuss ocean affairs, including emerging and challenging issues, within the context of the three pillars of sustainable development. However, some cautioned that continuation is conditional on the non-negotiating nature of the process. This latter point follows from the fact that during ICP-8 delegates were unable to agree to a set of elements on marine genetic resources. As a result, during ICP-10 in 2009—a year dedicated to a review of the Consultative Process—delegates decided that a recommendatory process was counterproductive, since each year they had to re-negotiate the text during the sessions of the General Assembly on oceans and the law of the sea. Not having a negotiated outcome avoids turning the Consultative Process into a political process, which would limit the possibility of an open and informal discussion of ocean issues.

#### **CAN MARINE RENEWABLE ENERGIES FUEL THE FUTURE OF ICP?**

Considering the many challenges facing the world's oceans, the role of the Consultative Process, established in 1999 to facilitate the annual review of developments in ocean affairs by the General Assembly, has never been more important. The Co-Chairs prepared a long list of issues identified by delegates at previous ICP meetings that could benefit from the General Assembly's attention, suggesting that the ICP can still serve a useful function in assisting its annual ocean deliberations. Some of these issues include: MPAs; implementation of international instruments; uses of the oceans; science, technology and data, including capacity building; ecosystem approaches to oceans; food security; conservation and management of living marine resources; marine environment; marine biological diversity and genetic resources; flag state responsibilities; hazard preparedness and mitigation; social aspects of oceans and the law and the sea; and climate change and oceans. While some expected extensive discussions on the suitability of any of these topics for a future theme of the ICP, this was not the case. In plenary, only two delegations spoke on the matter, putting forward the following topics for the General Assembly's consideration: assessing the outcomes of the UNCSO; and climate change and oceans, particularly as they relate to security and survival for low-lying nations and islands. While climate change and oceans was on the original list, the suggestion of a review of Rio+20 was new. In spite of this, no further opinions were expressed in plenary on the topic.

Even though debate was lacking on the floor, this was not necessarily a sign of consensus among delegates. This year was different from previous years when strong opinions on the selection of topics were expressed in plenary. However, some delegates commented that neither of the two proposed topics are adequate and envisaged that the real debate over this would occur during the upcoming debate at the General Assembly. Debate is also expected with respect to the criteria for the selection of topics. One delegate noted that priority should be given to topics that feed directly into existing processes, such as the General Assembly's *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Others referred to the need to select topics on the basis of their relevance for sustainable development.

It remains to be seen what topic will be selected for ICP-14, in the event that, as many delegates expect, the Consultative Process is renewed. One key tension that will have to be dealt with is the following: Should ICP focus on highly technical issues that have little probability of politicization, as the topic of MRE during ICP-13 has shown? Or should the focus be on less technical yet potentially more political issues, such as Rio+20 or climate change, as suggested for next year? Some clearly showed preference for the former approach, indicating that ICP-13 was successful as a "non-political process to inform delegates," while others found that a less technical topic could give the Consultative Process greater relevance, even though most delegates do not want it to become a forum for negotiations. The question then is which of these two approaches could mostly benefit the General Assembly in advancing the oceans agenda.

## UPCOMING MEETINGS

**Third PrepCom for UNCSD:** This Third Preparatory Committee Meeting for the United Nations Conference on Sustainable Development will take place in Brazil prior to the Conference. **dates:** 13-15 June 2012 **location:** Rio de Janeiro, Brazil **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org>

**SD-Learning:** “SD-Learning: Reaching sustainable development through knowledge” is a capacity-building event in the context of the UNCSD, consisting of multiple courses on sustainable development, such as food security and sustainable agriculture, energy access and efficiency, sound water and land management, sustainable cities, management of the oceans, improving resilience and disaster preparedness, and transition to a green economy. The courses seek to provide participants with practical knowledge and hands-on training from experts around the world. SD-Learning courses are open for accredited participants that have registered and been selected through the website. The deadline for applications is 3 June 2012. **dates:** 13-22 June 2012 **location:** Rio de Janeiro, Brazil **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** [http://www.uncsd2012.org/rio20/meetings\\_sdlearning.html](http://www.uncsd2012.org/rio20/meetings_sdlearning.html)

**Oceans Day at UNCSD:** The Global Ocean Forum will organize “Oceans Day” during the thematic days immediately preceding the UNCSD. The meeting will bring together representatives from governments, international organizations, NGOs, industry, and the science community to: push for a strong oceans outcome at the negotiations of the UNCSD; showcase major funded initiatives to spur action on oceans, coasts, and small island developing states (SIDS) in the post-Rio+20 world; and consider the opportunities and challenges for implementation of the “oceans package” emanating from the Rio+20 conference. **date:** 16 June 2012 **location:** Rio de Janeiro, Brazil **contact:** Miriam Balgos, Program Coordinator, Global Ocean Forum **phone:** +1-302-831-8086 **email:** mbalgos@udel.edu **www:** <http://www.globaloceans.org>

**Sustainable Development Dialogues:** Organized by the Government of Brazil with the support of the UN, this event is a forum for civil society, to be held in the context of the UNCSD. Civil society representatives will debate 10 topics: sustainable development for fighting poverty; sustainable development as an answer to the economic and financial crises; unemployment, decent work and migrations; the economics of sustainable development, including sustainable patterns of production and consumption; forests; food and nutrition security; sustainable energy for all; water; sustainable cities and innovation; and oceans. Their recommendations will be conveyed directly to the Heads of State and Government present at the High Level Segment of Rio+20. **dates:** 16-19 June 2012 **location:** Rio de Janeiro, Brazil **www:** <http://www.uncsd2012.org/rio20/index.php?page=view&nr=596&type=13&menu=23>

**International Network on Offshore Renewable Energy (INORE) Symposium 2012 - USA:** This first US symposium, which is supported by the New England Marine Renewable Energy Center, will bring together early stage researchers in offshore renewable energy, including wave, tidal, and offshore wind energy, with industry representatives and policy makers. The symposium includes keynote speeches, roundtable

discussions on the state of the industry, presentations by all attendees, collaborative tasks, and a visit to the Energy Oceans Conference in Boston. **dates:** 17-21 June 2012 **location:** Buzzards Bay, Massachusetts, USA **contact:** Alana Duerr **phone:** +1-509-710-5617 **email:** [info@inore.org](mailto:info@inore.org) **www:** [http://inore.org/events/inore\\_2012\\_us\\_symposium/](http://inore.org/events/inore_2012_us_symposium/)

**22nd International Ocean and Polar Engineering Conference:** This conference, organized by the International Society of Offshore and Polar Engineers (ISOPE), will bring together researchers and engineers to discuss, *inter alia*: Offshore Technology and Ocean Engineering; Frontier Energy Resources Technology; Renewable Energy and Environment; Geotechnical Engineering; Nanotechnologies For Clean Energy; and Hydrodynamics. **dates:** 17-22 June 2012 **location:** Rhodes, Greece **contact:** ISOPE Meetings Department **phone:** +1-650-254-1871 **fax:** +1-650-254-2038 **email:** [meetings@isope.org](mailto:meetings@isope.org) **www:** <http://www.isope2012.org/index.htm>

**UN Conference on Sustainable Development:** The UNCSD will mark the 20th anniversary of the UN Conference on Environment and Development, which convened in Rio de Janeiro, Brazil in 1992. **dates:** 20-22 June 2012 **location:** Rio de Janeiro, Brazil **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/>

**Know our Ocean, Protect our Marine Treasures, Empower Ocean Citizens:** This UNCSD side event, which is organized by the Intergovernmental Oceanographic Commission (IOC) of the UN Educational, Scientific and Cultural Organization (UNESCO), will present and discuss a number of initiatives that support the Rio+20 ocean targets leading to the sustainable use of the ocean. The side event will be structured around three inter-connected themes: knowledge for an improved management of the oceans; protection of the natural and cultural heritage of the ocean and coasts and the essential services they provide to society; and empowerment of ocean citizens and society. **date:** 20 June 2012 **location:** Rio de Janeiro, Brazil **contact:** Julian Barbière, UNESCO IOC **phone:** +33-14-568-3983 **e-mail:** [j.barbiere@unesco.org](mailto:j.barbiere@unesco.org) **www:** <http://www.uncsd2012.org/rio20/index.php?page=view&type=1000&nr=103&menu=126>

**Third Official EU-OEA Annual Conference: Ocean Energy 2012:** This conference, organized by the European Ocean Energy Association, will bring together policy makers and industry representatives from the entire ocean energy supply chain to discuss latest technologies, the development of policies, and investment opportunities. **dates:** 26-27 June 2012 **location:** Brussels, Belgium **contact:** Anna Watson **phone:** +44-203-355-4216 **email:** [anna.watson@greenpowerconferences.com](mailto:anna.watson@greenpowerconferences.com) **www:** <http://www.greenpowerconferences.com>

**Fourth East Asian Seas Congress 2012:** With the theme “Building a Blue Economy: Strategy, Opportunities and Partnerships in the Seas of East Asia,” the Congress will address new opportunities for the ocean economy of East Asia, the range of partnerships that have developed and are required in order to realize the full potential of a blue economy, and the progress and achievements in governance of regional/sub-regional seas within the framework of the Sustainable Development Strategy for the Seas of East Asia. **dates:** 9-13 July 2012 **location:** Changwon,

Republic of Korea **contact:** EAS Congress Secretariat **phone:** +63 (2) 929-2992 **fax:** +63 (2) 926-9712 **email:** congress@pemsea.org **www:** <http://eascongress.pemsea.org/>

**Southern Indian Ocean Regional Workshop to Facilitate the Description of Ecologically or Biologically Significant Marine Areas (EBSAs):** This workshop aims to facilitate the description of EBSAs through the application of scientific criteria adopted at the ninth session of the Conference of the Parties to the Convention on Biological Diversity (CBD) as well as other relevant compatible and complementary nationally and intergovernmentally-agreed scientific criteria, as well as the scientific guidance on the identification of marine areas beyond national jurisdiction. **dates:** 30 July - 3 August 2012 **location:** Mauritius **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/doc/?meeting=EBSA-SIO-01>

**Oceans of Potential Conference:** The “Oceans of Potential” conference is an initiative of Plymouth’s marine science organizations and coordinated by Plymouth Marine Laboratory. It will bring together stakeholders from a broad range of disciplines to discuss the opportunities offered by oceans, including renewable energy, carbon sequestration, human health, bioengineering and new approaches to food production. **dates:** 11-12 September 2012 **location:** Plymouth, United Kingdom **contact:** Conference Secretariat **email:** [pde@plymouth.ac.uk](mailto:pde@plymouth.ac.uk) **www:** [www.oceansofpotential.org](http://www.oceansofpotential.org)

**67th Session of the UN General Assembly:** The 67th regular session of the UN General Assembly (UNGA 67) will convene at UN Headquarters on Tuesday, 18 September 2012. The General Debate will open on Tuesday, 25 September. This session will include a review of the effectiveness and utility of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Resolution 65/37A). The preliminary list of items to be included in the provisional agenda is contained in document A/67/50. A draft programme of work of the plenary is expected to be issued in July 2012. **date:** 18 September 2012 **location:** UN Headquarters, New York **www:** <http://www.un.org/ga/>

**Third Symposium on the Ocean in a High-CO2 World:** This symposium is sponsored by the Scientific Committee on Oceanographic Research (SCOR), the IOC of UNESCO, and the International Geosphere-Biosphere Programme. The symposium aims to attract over 300 of the world’s leading scientists to discuss the impacts of ocean acidification on marine organisms, ecosystems, and biogeochemical cycles. It will also cover socioeconomic consequences of ocean acidification, including policy and management implications. **dates:** 24-27 September 2012 **location:** Monterey, California, USA **email:** [secretariat@scor-int.org](mailto:secretariat@scor-int.org) **www:** <http://www.highco2-iii.org>

**Sixth Meeting of the Parties to the UNECE Water Convention:** The sixth session of the Meeting of the Parties (MOP) to the UN Economic Commission for Europe (UNECE) Convention on the Protection and Use of Transboundary Watercourses and International Lakes will mark the 20th anniversary since its adoption. The MOP will adopt a work programme for 2013-2015 and will address the future evolution of the Convention becoming a global instrument with a forthcoming entry into force of the amendments opening it to countries outside the UNECE region. **dates:** 28-30 November

2012 **location:** Rome, Italy **contact:** Cammile Marcelo **phone:** +41-22-917-1606 **fax:** +41-22-917-0621 **email:** [cammile.marcelo@unece.org](mailto:cammile.marcelo@unece.org) **www:** <http://www.unece.org/env/water/mop6.html>

**Ad Hoc Open-ended Informal Working Group to Study Issues Relating to the Conservation and Sustainable Use of Marine Biological Diversity Beyond Areas of National Jurisdiction:** The sixth meeting of the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction is expected to be convened by the General Assembly at its sixty-seventh session. It will be preceded by two intersessional workshops at dates to be determined. **dates:** second half of 2013 **location:** UN Headquarters, New York **contact:** UN-DOALOS **phone:** +1-212-963-3962 **fax:** +1-212-963-5847 **email:** [doalos@un.org](mailto:doalos@un.org) **www:** <http://www.un.org/depts/los/biodiversityworkinggroup/biodiversityworkinggroup.htm>

**14th Meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea:** The meeting is expected to take place in May or June 2013, at UN Headquarters in New York. The decision to hold this meeting will be taken by the UN General Assembly in December 2012. For more information, **contact:** UN-DOALOS **phone:** +1-212-963-3969 **fax:** +1-212-963-5847 **email:** [doalos@un.org](mailto:doalos@un.org); **www:** <http://www.un.org/Depts/los/>

### GLOSSARY

DOALOS	UN Division for Ocean Affairs and the Law of the Sea
EIA	Environmental impact assessment
ICP	UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea
IEA	International Energy Agency
IRENA	International Renewable Energy Agency
ISA	International Seabed Authority
MDGs	Millennium Development Goals
MPA	Marine protected area
MREs	Marine renewable energies
MSP	Marine spatial planning
OES	Ocean Energy Systems Implementing Agreement
OTEC	Ocean thermal energy conversion
Rio+20	UN Conference on Sustainable Development (UNCSD)
SEA	Strategic environmental assessment
SIDS	Small island developing states
UNCLOS	UN Convention on the Law of the Sea
UNCSD	UN Conference on Sustainable Development (Rio+20)
UNEP	UN Environment Programme



## International Institute for Sustainable Development Reporting Services (IISD RS) Knowledge Management Resources

IISD RS, publisher of the *Earth Negotiations Bulletin*, also maintains online knowledgebases that are updated daily with information regarding meetings, publications and other activities related to international sustainable development policy and its implementation.

Each knowledgebase project consists of several integrated resources, to help the sustainable development policy and practice communities assess trends and activities at the international level. These resources are:

- Daily news reports researched and written by our own experts and organized in a **freely accessible, searchable on-line knowledgebase**;
- A **comprehensive calendar of upcoming events** related to international sustainable development policy, which can be downloaded to your own online calendar;
- And a **community listserve**, which exclusively delivers email updates of the most recent additions to our knowledgebases, as well as announcements by listserve members regarding their organizations' sustainable development activities.

Each knowledgebase focuses on a specific environmental challenge or region, as noted below:



**Sustainable Development Policy & Practice**  
<http://uncsd.iisd.org/>



**Climate Change Policy & Practice**  
<http://climate-l.iisd.org/>



**SIDS Policy & Practice**  
<http://sids-l.iisd.org/>



**Biodiversity Policy & Practice**  
<http://biodiversity-l.iisd.org/>



**Sustainable Energy Policy & Practice**  
<http://energy-l.iisd.org/>



**Latin America & Caribbean Regional Coverage**  
<http://larc.iisd.org/>



**African Regional Coverage**  
<http://africasd.iisd.org/>