Briefing Note on the WG on Marine Biodiversity

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SUMMARY OF THE SEVENTH MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 1-4 APRIL 2014

The seventh meeting of the *Ad Hoc* Open-ended Informal Working Group (hereinafter, the Working Group) to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ) convened from 1-4 April 2014 at UN Headquarters in New York. The meeting was the first of three meetings (April 2014, June 2014 and January 2015) convened by the UN General Assembly through its resolution 68/70 to discuss the scope, parameters and feasibility of a possible new international instrument on BBNJ under the UN Convention on the Law of the Sea (UNCLOS). The outcome of these meetings is expected to contribute to a decision to be taken at the sixty-ninth session of the UN General Assembly.

The meeting was attended by close to 200 participants, including national delegations, intergovernmental organizations and non-governmental organizations (NGOs). Delegates delivered general statements on Tuesday, and engaged in plenary discussions on the scope (Tuesday and Wednesday), parameters (Wednesday) and feasibility of a new international instrument under UNCLOS (Wednesday and Thursday). The meeting was considered successful in that it engaged delegations for the first time in an interactive substantive debate that created momentum for more detailed deliberations in June 2014. The meeting was also lauded by NGOs for its transparent proceedings. This briefing note summarizes the discussions and outcome of the seventh meeting of the Working Group, and is organized according to its agenda.

OPENING SESSION

On Tuesday morning, 1 April 2014, Co-Chair Liesbeth Lijnzaad (Netherlands) opened the meeting, encouraging the Working Group to work towards achieving its goal, noting that it was "unusual" for the General Assembly to convene three meetings to ensure progress on BBNJ. Co-Chair Palitha Kohona (Sri Lanka) prompted delegates to discuss the need for a new international instrument on BBNJ, keeping in mind conservation and benefit-sharing needs, as well as the background of all relevant agreements already in existence.

Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel delivered opening remarks on behalf of UN Secretary-General Ban Ki-moon. He recalled the commitment included in the outcome document of the UN Conference on Sustainable Development (Rio+20) to address on an urgent basis the issue of BBNJ, including by taking a decision on the development of an international instrument under UNCLOS, before the end of the sixty-ninth session of the UN General Assembly. He reported that the UN Division for Ocean Affairs and the Law of the Sea circulated to national delegations an informal working document compiling submissions received from states, noting different views on the legal framework on BBNJ, but also emerging common understanding on the need to: preserve the balance of interests, rights and obligations under UNCLOS and other relevant instruments; respect the mandate of existing institutions; and ensure greater coordination and capacity building. He also recalled that the year 2014 marks the 20th anniversary of the entry into force of UNCLOS and the 10th anniversary of the creation of the Working Group, urging delegates to overcome differences and crystallize areas of convergence into concrete recommendations. He further pointed to the UN Secretary-General's support for civil society engagement.

ORGANIZATIONAL MATTERS: Co-Chair Lijnzaad introduced the provisional agenda and the organization of work (A/AC. 276/L.11-12), calling delegates' attention to the proposal to identify areas for further in-depth discussion at upcoming meetings of the Working Group, with a view to contributing to a Co-Chairs' summary of discussions highlighting key issues and proposals, for transmission to the President of the General Assembly. The agenda and organization of work were adopted without amendment.

GENERAL STATEMENTS: Greece, for the European Union (EU), recalled that the EU has been a strong supporter of the development of a new implementing agreement under UNCLOS on BBNJ that would elaborate on UNCLOS obligations on the conservation of the marine environment, the duty of cooperation and environmental impact assessment (EIA), as well as spell out principles for good oceans governance. She also underscored the need to: establish procedures for consultation and coordination among existing international and

This Briefing Note was written by Elisa Morgera, Ph.D. The Editor is Pamela Chasek, Ph.D. <pam@iisd.org>. The Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donor of the *Bulletin* is the European Commission (DG-ENV). General Support for the *Bulletin* during 2014 is provided by the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB), the New Zealand Ministry of Foreign Affairs and Trade, SWAN International, the Swiss Federal Office for the Environment (FOEN), the Finnish Ministry for Foreign Affairs, the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES), the United Nations Environment Programme (UNEP), and the International Development Research Centre (IDRC). The opinions expressed in the *Bulletin* are those of the authors and do not necessarily reflect the views of IISD or other donors. Excerpts from the *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., 11D, New York, NY 10022 USA.

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regional organizations with a mandate to regulate activities in areas beyond national jurisdiction (ABNJ) or to protect the marine environment; address clearly the relationship between a new and existing relevant instruments; and adopt a pragmatic approach on marine genetic resources (MGRs), that is neither the common heritage nor "first come, first served." She also noted that NGO participation is important in these deliberations.

Bolivia, for the Group of 77 and China (G-77/China), asserted that the exploitation by a few states of MGRs from areas subject to the principle of common heritage of mankind is inconsistent with general principles of international law such as equity. He supported the development of an implementing agreement under UNCLOS, based on the common heritage principle, to address the package of issues agreed on by the Working Group in 2011, namely: MGRs, including questions on benefit-sharing, measures such as area-based management tools, including marine protected areas (MPAs), EIAs, capacity building, and the transfer of marine technology. He also recommended considering intellectual property rights (IPRs).

Jamaica underscored the need for legal provisions on equitable access to and benefit-sharing from MGRs in ABNJ as common heritage of mankind, but cautioned against diminishing the role of the International Seabed Authority (ISA) in addressing issues related to the seabed beyond the limits of national jurisdiction (the Area). She also called for the inclusion of provisions on assessment, monitoring and enforcement in a new implementing agreement, and for the development of benefit-sharing arrangements facilitating transparency, information sharing and capacity building. China underscored the need to respect consensus already achieved in the Working Group with regard to the package of elements to be addressed in a new instrument, emphasizing that a new agreement should include substantive arrangements on capacity building and technology transfer and respect the mandate of the ISA, regional fisheries management organizations (RFMOs) and the International Maritime Organization (IMO), as well as rights and obligations derived from other treaties. Argentina cautioned against an "anarchy" of unilateral approaches to conserve BBNJ, expressing preference for a long-term, universal approach through a new international instrument. He also underscored the need to be explicit if an amendment to that mandate of the ISA becomes necessary.

Benin recommended calling for an intergovernmental conference to develop a legally binding instrument on BBNJ, including rules on technology transfer, benefit-sharing and IPRs in relation to MGRs. Costa Rica underscored the need to expand the mandate of the ISA to reflect the applicability of the common heritage principle to MGRs in the Area. Sri Lanka argued that: area-based management could be addressed in a new instrument, but criteria should be established to ensure full use of science; access to and benefit-sharing from MGRs in the Area need to be addressed consistently with established principles, calling for a discussion on whether the model of the ISA could be adapted to that end; and that benefit-sharing should include both monetary and non-monetary benefits. Trinidad and Tobago urged focusing on the common heritage principle, and also on the need to establish principles for ocean governance such as precaution and ecosystem-based management. India called for: ensuring access and benefit-sharing (ABS) to mankind as a whole; addressing IPRs and technology transfer comprehensively; finding a balanced approach between the creation of area-based tools and freedoms of the high seas, as well as the rights of third states; and ensuring the participation of all stakeholders. Peru called for a new instrument to address the close interrelationship between the issues at stake, supporting equitable and sustainable use, and contributing to a more equitable economic order. Brazil asserted that the: scope of a new international agreement should be determined by the package already agreed by the Working Group in 2011, with benefit-sharing being the core in light of the special interests of developing countries protected by UNCLOS.

Australia identified convergence in the identification of gaps on MPAs, EIAs, MGRs, and coordination and cooperation across all sectors and regional regimes; and underscored the need to ensure consistency with UNCLOS, and to complement existing regional and sectoral arrangements. Iceland acknowledged the need to strengthen cooperation among existing instruments and to define gaps before deciding on the need for a new instrument. He mentioned MGRs in the seabed as a possible gap, but cautioned against reopening issues that are already subject to international regimes such as high-seas fisheries.

Canada, Japan and Norway expressed doubts about the need for a new multilateral instrument on BBNJ. Canada expressed openness to discuss this option and recommended engaging all stakeholders and taking all views into account, cautioning that the UN Fish Stocks Agreement (UNFSA) should not be negatively affected by a new instrument, and that MGR-related activities are incipient and capable of rapid evolution. The Republic of Korea highlighted the need to review existing agreements and cautioned against expanding the scope of a new international instrument to areas that are already covered by existing institutions. Norway cautioned against pre-empting discussions as to the nature of a future instrument and its scope, arguing that within the package already agreed by the Working Group in 2011 certain elements may raise different challenges, such as MGRs, on which no specific international regime exists, and area-based management, for which a number of instruments already exist.

The US acknowledged the need to strengthen commitments to conserve and sustainably use high-seas marine resources by building on existing structures and mechanisms. She identified as the greatest threats to BBNJ unsustainable fishing, shipping and mining, questioning whether there are any other activities that would need to be regulated by a new instrument. She also questioned the need for a new international instrument on MPAs, since states are already capable of establishing MPAs in ABNJ. She then argued that UNCLOS provides for broad access to MGRs in ABNJ, from which humanity benefits in terms of world-wide availability of new products and scientific

knowledge contributing to public health and more affordable food, among others. She queried whether a new international instrument would impede research and development from MGRs. The Russian Federation emphasized that an implementing agreement was only one of the options considered at Rio+20, noting the need to better understand the subject matter of a new instrument. He cautioned against threatening the balance of interests protected by existing agreements, such as UNCLOS and UNFSA, and called on "large beneficiaries from the commercial use of MGRs" to offer concrete proposals on benefit-sharing

The ISA reported on progress in implementing UNCLOS provisions on protecting the marine environment and benefit-sharing concerning the Area, cautioning against altering the balance of interests struck in the international regulation of the Area and in the mandate of ISA. The Convention on Biological Diversity (CBD) reported on its work in support of the Working Group, including on ecologically or biologically significant marine areas and on recent discussions on a possible multilateral benefit-sharing mechanism under the Nagoya Protocol on Access and Benefit-Sharing.

IUCN pointed out that the recent contribution of Working Group II of the Intergovernmental Panel on Climate Change to the Fifth Assessment Report underscores the urgency for action to collectively confront challenges facing BBNJ in the face of mounting impacts from climate change, which are additional to those derived from human activities in ABNJ. WWF emphasized that unilateral and regional action cannot solve BBNJ issues. Greenpeace expressed high expectations for constructive and transparent deliberations at this meeting of the Working Group.

SCOPE OF A NEW INTERNATIONAL INSTRUMENT

New Zealand, supported by the EU, Mexico, Brazil, South Africa, China and IUCN, pointed to the package of issues agreed upon by the Working Group in 2011 as a starting point for defining the scope, with Ecuador noting the need to preserve some flexibility to allow for progress. Norway underscored the need to go beyond the package in order to identify specific gaps and problems that need to be addressed by a new instrument.

Australia proposed focusing on gaps such as the absence of a global legal framework for: area-based management, including identification and management of MPAs; the conduct of EIA and strategic environmental assessment (SEA) on cumulative impacts; and the regulation of MGRs in relation to ABS but also environmental protection. Greenpeace and the High Seas Alliance recalled the gap analysis presented at the 2013 workshops held under the auspices of the Working Group, noting regulatory gaps in relation to the establishment of integrated MPAs in ABNJ, the assessment of conflicting uses of ABNJ through cross-sectoral EIA, the assessment and management of cumulative impacts, and the regulation of new and emerging activities such as climate-related geo-engineering.

The EU noted that the geographical scope should cover the high seas and the Area, but measures adopted in the high seas must respect the sovereign rights of states on their continental shelf. Trinidad and Tobago proposed that the scope of a new international instrument cover all marine resources in ABNJ, including MGRs that may be discovered in the future.

Iceland expressed willingness to consider gaps with regard to MGRs and the conservation of BBNJ such as the need for coordination of regional environmental organizations, similar to the coordination provided by the UNFSA for RFMOs, but opposed including fisheries within the scope of a new instrument. He noted that the UNFSA clarifies that RFMOs have the authority to establish conservation measures including MPAs for fisheries purposes, and that a new instrument should not be inconsistent with the regional approach taken by the UNFSA. Japan opposed including fisheries in the scope of a new instrument, emphasizing that the UNFSA addresses bycatch and embodies the ecosystem approach, so it already secures conservation of BBNJ. The US noted that activities already regulated, such as fisheries, should not be part of a new instrument.

New Zealand asserted that sustainable fisheries should not be excluded from a new instrument, noting that there are gaps in RFMOs' area and species coverage, mandate and implementation. Costa Rica identified bottom-trawling as another gap. Argentina suggested considering also when existing international instruments have not reached universal participation. Iceland and Canada proposed to distinguish between regulatory and implementation gaps, with Canada inviting discussion of criteria to determine whether certain activities are "already regulated." Greenpeace, on behalf of the High Seas Alliance and Deep Sea Conservation Coalition, underscored that the UNFSA and the mandate of RFMOs are limited to certain fish stocks and do not extend to all BBNJ; and suggested designing a new implementing agreement to complement the UNFSA so that no sectoral activity is excluded from its scope.

Mexico emphasized that UNCLOS should be the umbrella for a new instrument, with Trinidad and Tobago reiterating that an implementing agreement is necessary. Colombia argued that in order to bring as many states on board as possible, including non-parties to UNCLOS, attention should concentrate on the customary law aspects of UNCLOS, without subordinating a new instrument to UNCLOS. New Zealand, Canada and Norway cautioned against reopening existing agreements. IUCN noted the possibility to use a new instrument to require parties to implement obligations through existing organizations.

Co-Chair Lijnzaad noted:

- the package of issues agreed by the Working Group and endorsed by the General Assembly in 2011 as the starting point for defining the scope;
- the need for more detailed discussion of implementation gaps as opposed to regulatory gaps;
- different perceptions of the role of fisheries, in consideration of UNFSA limited membership and limited geographic and species coverage by RFMOs;
- the need to consider modern management principles such as the precautionary and ecosystem-based principles;

- UNCLOS as the basis for a new instrument that could operationalize existing obligations while preserving the balance of rights and duties in existing instruments, and respecting and complementing the mandates of relevant organizations; and
- the need for a global mechanism with universal participation to ensure coordination and consistency among sectoral and regional approaches to ensure legitimacy.

PARAMETERS OF A NEW INTERNATIONAL INSTRUMENT

The EU, Canada, Argentina and New Zealand noted difficulty in distinguishing between scope and parameters of a new international instrument. Argentina proposed distinguishing between procedural parameters for the negotiation of a new implementing agreement, which should include consensus and a package deal; and substantive parameters, that should be based on UNCLOS. Ecuador suggested understanding parameters are the norms and principles that should be taken into account, such as: UNCLOS; international principles concerning common heritage, precaution, and the ecosystem approach; the CBD and Nagoya Protocol, even if they are not applicable; and the UNFSA and regional agreements. South Africa emphasized that in addition to principles and norms as parameters, a new implementing agreement should spell out steps to give effect to these principles. IUCN noted that in the negotiation of the arms trade treaty, "parameters" referred to governance principles and operational mechanisms; and called for the development of: criteria, procedures and guidelines for the creation and management of MPAs and MPA networks; criteria and guidelines for the conduct of EIA and SEA; and a benefit-sharing mechanism, including facilitated access, international collaboration, capacity building, facilitation of MSR, technology transfer, and funding.

Brazil identified as parameters the form of an implementing agreement to UNCLOS addressing interrelated challenges as a whole, taking a principle-based approach to also bring non-parties to UNCLOS on board, and drawing on best practices and ongoing cooperation mechanisms. Costa Rica identified as parameters not only UNCLOS, but also the CBD, precaution, adaptive management, common but differentiated responsibilities, international cooperation, accountability, and transparency. The EU identified as general principles for good ocean governance: the protection of the marine environment, international cooperation, a science-based approach, precaution, the polluter pays principle, the ecosystem approach, sustainable and equitable use, transparent decision-making, and the responsibility of states as stewards of the oceans. New Zealand opined that a new implementing agreement should be flexible and address cumulative pressures on BBNJ; and that decisions should be based on best available scientific information.

Costa Rica identified as institutional mechanisms to be established under a new instrument: a conference of the parties (COP), a financial mechanism, EIA procedures, and monitoring and oversight for MPAs. IUCN called for the creation of institutional structures such as a COP, a secretariat, a scientific body, a compliance review body, and a funding system.

MGRs: Jamaica recommended that MGRs in ABNJ should be considered common heritage; noted the need for provisions on equitable access and benefit-sharing, including sharing of information and non-monetary benefits; and opined that the Nagoya Protocol should be considered as the most expansive international agreement on ABS. New Zealand favored a pragmatic approach to MGRs, which would encourage research, provide for equitable access and benefit-sharing, and foster data and knowledge sharing. Iceland proposed avoiding discussions on the legal nature of MGRs, and rather concentrating on devising a benefit-sharing mechanism for MGRs both in the high seas and in the deep seabed. Argentina noted that a pragmatic approach to MGRs does not detract from a principled approach to the regulation of access, use and benefit-sharing concerning MGRs in ABNJ that are common heritage.

Singapore stated that the terms "marine biodiversity," MGRs and ABNJ should be defined; and a regime on MGRs must support innovation and research. The Russian Federation noted the need to differentiate between commercial and non-commercial use of MGRs, and questioned mechanisms to implement and control benefit-sharing when research and development proceed without constant access to MGRs. Noting support for sharing data and research findings and for facilitating scientific collaboration, the US queried whether a new instrument would: define MGRs; cover both MGRs in the water column and seabed; identify benefits to be shared; require control of or conditions for access to MGRs; and identify those that are required to share benefits and those that are entitled to receive such benefits. China noted that: distinguishing between marine scientific research and commercial use of MGRs would be useful; the extent to which the Nagoya Protocol could be taken into consideration needs to be further studied; and more concrete ideas on realizing capacity building and technology transfer should be identified. Australia noted that the Nagoya Protocol, while not applicable to ABNJ, shows a path towards regulating ABS that does not impede research and development. Trinidad and Tobago opined that a new implementing agreement should provide the terms for benefit-sharing, and that consideration should be given to expanding the mandate of the ISA.

MPAs: Japan suggested that MPAs should be established by RFMOs when the need arises for the sustainable use of marine living resources and the conservation of biodiversity, in coordination with other regional management tools, the Food and Agriculture Organization (FAO) and IMO. Jamaica favored a mechanism for funding and managing MPAs with specific responsibilities for ongoing research and public availability of scientific data. New Zealand noted that a new implementing agreement could provide an institutional mechanism for setting guidelines on the selection of area-based tools and of areas in need of such tools, as well as information sharing with a view to realizing the Aichi target on MPAs established under the CBD.

Norway queried about the value added of a new instrument on MPAs as compared to work under the CBD. Argentina noted that while CBD parties elaborated criteria for the selection of areas that could be designated as MPAs, they did not determine who would apply the criteria and who should respect MPA management measures. Norway also enquired about a definition of MPAs, noting that RFMOs already establish areas closed to destructive fishing practices. IUCN drew a distinction between area-based management tools and MPAs, noting that the case-by-case establishment of MPAs is unlikely to achieve a coherent network of MPAs as foreseen in the CBD Aichi Target and that the lack of a global mechanism to coordinate regional and sectoral efforts in that regard is likely to cause duplication of efforts or conflicting initiatives. Canada queried whether in establishing MPAs specific conservation measures would automatically be triggered. The EU argued that a new implementing agreement would strengthen the commitment to the creation of a global MPA network. The Intergovernmental Oceanographic Commission reported on MPAs in ABNJ established under the World Heritage Convention.

EIA: New Zealand underscored the importance of operationalizing UNCLOS obligations on EIA, by establishing guidelines and standards, as well as a threshold based on environmental effects below which an EIA should not be required. The EU recalled that international case law clarified that EIA is a general obligation under customary international law, and recommended that a new international instrument require EIA and SEA to prevent significant adverse environmental impacts, including from new and emerging activities. Canada proposed to clarify the extent of overlapping activities to better understand the need for assessing cumulative environmental impacts, and queried whether a new instrument would clarify when such EIAs should be carried out and by whom.

Form: Vietnam supported a new instrument under UNCLOS with legally binding character in line with UNCLOS principles, including common heritage. The EU explained that a new implementing agreement would not change other international regimes, but only elaborate more concrete measures based on UNCLOS general provisions, thereby respecting the competence and mandates of existing organizations. The US queried how a new international instrument that has no impact on existing agreements could have any impact on BBNJ, suggesting that better coordination could be achieved without a new treaty, for instance through General Assembly resolutions. Australia argued that a new implementing agreement providing a coordinating function without creating a new organization that would supplant or displace decision-making and rights of existing bodies, would provide more confidence in achieving coordination than a General Assembly resolution, which does not count on an underlying dispute settlement system. Pakistan opposed developing soft law, arguing that it would not significantly change the status quo, particularly in relation to MGRs.

Iceland argued that a legally binding form is over-estimated, recalling the success of the driftnet fishing resolution. Norway noted the success of the General Assembly resolution on bottom-trawling. Argentina pointed to difficulties in reaching consensus on resolutions on sustainable fisheries in the General Assembly. The Natural Resources Defense Council (NRDC) argued that the General Assembly took several years to ensure state compliance with UNFSA obligations, arguing that a new instrument should establish institutions for oversight and compliance.

FEASIBILITY OF A NEW INTERNATIONAL INSTRUMENT

The G-77/China stated that UNCLOS provides legal principles but not a specific legal regime for BBNJ, and that in the face of lack of coordination and legitimacy of unilateral, sectoral and regional initiatives, there is a need for a specific, binding, forward-looking legal framework in the form of an UNCLOS implementing agreement to be developed in coordination with legal structures established by UNCLOS and its existing implementing agreements.

Jamaica quoted an article from *The Economist* calling for the law of the sea to "be beefed up." Supporting an implementing agreement under UNCLOS, Mexico noted that the common heritage principle concerning MGRs is central, but may be combined with the priorities of other countries. Costa Rica identified as regulatory gaps the lack of follow-up and monitoring mechanisms; and recommended consensus should be sought, but should not block progress on matters of urgency.

Brazil argued that the mere existence of gaps demonstrates the feasibility of a new implementing agreement, asserting that soft law will not be able to achieve international commitments on BBNJ. South Africa, Costa Rica, the EU and others argued legal and political feasibility on the basis of the Rio+20 mandate and the existence of two implementing agreements under UNCLOS. South Africa asserted that a new implementing agreement would protect the centrality of the UN General Assembly in global oceans governance.

New Zealand affirmed that a new implementing agreement under UNCLOS is technically, practically and politically feasible, calling for a shift from fragmented management of activities in ABNJ to the maintenance of the oceans' ecological integrity, and noted that a non-binding instrument would not maintain the symmetry under the UNCLOS framework. Australia expressed commitment to the negotiation of a new implementing agreement, noting that the two fundamental principles of high seas freedoms and common heritage "do not need to be in tension."

China argued that the recognized gaps in the current legal framework and its fragmented nature demonstrate the need for a new instrument, but, with Iceland, noted that feasibility depends on whether the Working Group reaches agreement on scope and parameters. The Russian Federation, Canada, the Republic of Korea and Norway argued that feasibility is linked to scope and parameters. The Russian Federation called for continued discussions on scope and emphasized that other options beyond an implementing agreement could be considered.

Canada queried the value added of a new implementing agreement, and expressed commitment to press forward for better implementation of existing agreements. Japan expressed concern that a new implementing agreement will not provide suitable solutions, but rather overlap with existing mechanisms, and that it may necessitate lengthy negotiations with budgetary implications that will be difficult to meet in the current financial climate. Norway questioned what gaps need to be filled, underscoring the need for further discussion on possible compatibility between existing and new instruments. The Republic of Korea preferred to focus on implementing existing agreements and promote voluntary participation by relevant parties rather than creating new legally binding frameworks, arguing that there are no major regulatory gaps, particularly in high-seas fisheries.

Costa Rica and Pakistan recalled that the report of the 2013 workshops held under the Working Group already specified regulatory gaps, including on fisheries, mining, submarine cables and climate-related geo-engineering. Greenpeace, WWF, Pew, NRDC and the Deep Sea Conservation Coalition considered an implementing agreement essential for a coordinated and integrated approach to BBNJ, noting that it is legally and politically feasible due to the existing international commitments that need to be operationalized or implemented; and welcomed the support for a new implementing agreement by an overwhelming majority of states including the G-77/China, the EU, Australia and New Zealand.

CO-CHAIRS' OVERVIEW OF ISSUES

On Thursday afternoon, Co-Chair Kohona introduced an informal working document prepared by the Co-Chairs to provide an overview of issues raised during the week in relation to: overall objective and starting point; legal framework for an international instrument; relationship to other instruments; guiding approaches; guiding principles; scope *ratione personae* (those subject to an agreement); scope *ratione loci* (geographic scope); and scope *ratione materiae* (subject-matter scope, with sub-sections on each of the elements of the package agreed by the Working Group in 2011); enabling elements and means of implementation; and feasibility. He invited delegations to identify any missing issues that had been raised during the meeting.

The G-77/China noted that it did not seem appropriate to suggest textual amendments to the document, and that more time and translation into official UN languages would be needed to discuss the document back in capitals. Costa Rica proposed to add a footnote to clarify that the list of issues is non-exhaustive. The Russian Federation proposed titling the document "Co-Chairs' overview of issues raised during the first round of discussions on scope, parameters and feasibility of an international instrument under UNCLOS." A revised version of the document was discussed on Friday morning.

Overall objective: New Zealand proposed to refer to fragmentation in relation to the conservation and sustainable use of BBNJ. Australia suggested adding "recognition of the need to improve efforts in marine biodiversity conservation." The US proposed a reference to "implementation gaps," in addition to regulatory and legal gaps. Iceland suggested a reference to strengthening cooperation and coordination among relevant states, organizations and sectors, on the basis of existing instruments and mechanisms.

Legal framework: Canada suggested that decision-making for regional and sectoral activities should remain with regional and sectoral organizations. Singapore emphasized that UNCLOS needs to be read as a whole without over-emphasizing certain aspects and downplaying others. Colombia, supported by Turkey, proposed to add that a new instrument should not imply any obligations related to existing instruments to those states that are not yet party to them, while maintaining a balance with existing instruments.

Relationship with other instruments: Australia proposed to add reference to supporting and complementing the application of existing instruments and to the need for consistency with UNFSA principles.

Guiding approaches: Iceland proposed to consider not only "global vs regional approaches," but also "sectoral vs integrated approaches," as well as to address "only gaps in legal regimes." Canada suggested reference to complementing existing instruments and processes under their purview. Australia recommended a reference to the effective integration of global, regional and sectoral approaches and to avoid burdensome supra-national governance systems.

Guiding principles: New Zealand proposed to refer also to "flexibility" and "ability to address cumulative pressures." Canada suggested adding reference to the involvement of regional and sectoral stakeholders. Colombia requested reference to solidarity and cumulative impacts. The Russian Federation proposed reference to flag state jurisdiction as a basis for enforcement on the high seas.

Scope *ratione loci*: Iceland proposed to refer to "the water column and seabed beyond areas of national jurisdiction" as ABNJ, whereas the EU preferred to refer to "the high seas and the Area." Iceland eventually withdrew his proposal.

Scope *ratione materiae*: Iceland proposed to address the question to include/exclude fisheries management measures "even if UNCLOS and the UNFSA already provide a sufficient legal regime for high seas fisheries." New Zealand reiterated that it is more productive to discuss "how to deal" with fisheries, than to question whether fisheries are "in or out." Argentina proposed adding that the lack of universality of the UNFSA and the FAO Compliance Agreement requires addressing fisheries issues in a new implementing agreement. Iceland suggested adding that a legal framework may be required for regional environmental organizations, similar to that provided by the UNFSA for regional fisheries management organizations. The US proposed reference to including/excluding measures related to other activities and sectors, such as shipping and mining.

MGRs: New Zealand proposed to refer to the "recognition of shared interests in MGRs" and "drawing on existing ABS models." Canada suggested reference to leaving IPRs to the

World Intellectual Property Organization. The US recommended asking whether a benefit-sharing regime would also require control of or conditions for access, and on what basis benefits would be distributed. Costa Rica proposed reference to the role of the ISA. The EU recommended a reference to the need to define MGRs, taking into account CBD Article 2 (use of terms).

MPAs: Iceland proposed to refer to the need for common understanding of MPAs "if fisheries-related issues are excluded," whereas the EU preferred to refer to "multi-purpose MPAs." New Zealand proposed to refer to the "need to address multiple uses and cumulative impacts." The US proposed adding reference to the "use of existing tools through better implementation of existing agreements." Japan suggested adding FAO to a list of sectoral bodies competent to establish MPAs with which coordination should be sought. IUCN proposed reference to the need to ensure the long-term conservation of BBNJ on behalf of present and future generations.

EIA: Australia suggested clarifying that SEAs are needed "to address cumulative impacts."

Feasibility: Iceland proposed to clarify that "feasibility is contingent on the definition of scope and parameters, i.e., what will be included, and what will not be included in an international instrument," rather than referring to feasibility being "closely linked to scope and parameters." The US suggested reference as to whether: the objective could be achieved through existing instruments; a new instrument could impede research and development; and a new instrument could overcome political unwillingness under existing instruments. Norway suggested adding that effective implementation of existing instruments depends on political will. The US then recommended adding that feasibility depends on political will and on agreement on what the problems are and the best ways to address them. Peru proposed linking legal/technical feasibility to the question of whether a new instrument "should allow participation by non-parties to UNCLOS." Costa Rica requested reference to the Rio+20 outcome document.

CLOSING PLENARY

On Friday, Co-Chair Lijnzaad proposed to append the informal Co-Chairs' overview of issues raised during the first round of discussions on the scope, parameters and feasibility of an international instruments under UNCLOS to the more detailed Co-Chairs' summary of discussions that will be produced after the meeting, with a view to its distribution prior to the next Working Group meeting in June 2014. She also suggested inviting national delegations to submit further views in order to update, expand and refine the working document compiling submissions received from states, and invited delegations to share views on how to organize the June meeting.

Several delegations praised the meeting as one of the most fruitful ones the Working Group has ever had, noting the opportunity to engage in substantive and interactive discussions, and expressed support for the compilation of state submissions to be a living document. Iceland noted that after many years where the Working Group was mostly concerned with procedural matters, it has now finally engaged in a dialogue on substantive issues, whereas the 2013 workshops had provided substantive information but had not allowed interactions among delegations. He encouraged the Co-Chairs to use the issues identified in the Co-Chairs' overview of issues to structure a more focused agenda for the June meeting. He cautioned, with the Russian Federation, the US and China, that it would premature in June to engage in drafting recommendations to the General Assembly. The Russian Federation urged the proponents of a new agreement to provide more details about its scope, how a new agreement could work and co-exist with existing regimes and organizations, and how guiding principles would work in practice. He cautioned that the Co-Chairs' informal overview of issues should be seen as a formal basis for decisions within the Working Group

Argentina considered that the Working Group is now engaged in a process of confidence-building and knowledge-acquisition and proposed structuring the June meeting agenda according to the possible chapters of a new instrument. Mexico proposed to focus on possible solutions to controversial points at the June meeting. New Zealand proposed to focus discussions in June on the problems a new instrument would address and the best way to address them. While she agreed that drafting recommendations in June would be premature, she emphasized that time is limited to comply with the deadline for the General Assembly to make a decision by the end of its sixty-ninth session. Brazil proposed to develop preliminary conclusions in June to prepare for drafting at the January 2015 meeting. The EU hoped that the June meeting would be more focused and maintain the momentum generated at this meeting, taking into account a revised compilation of state submissions.

Canada favored a June meeting featuring more structured exchanges but without excessive restrictions on the flow of ideas. Norway encouraged delegations to offer more details on possible solutions to perceived problems. China noted the need to find preliminary consensus on scope, building on agreement on the package of issues reached in 2011. The US invited proponents of a new agreement to reply to the list of questions included in the US submission to this meeting of the Working Group, and expressed willingness to continue with the same format at the June meeting as long as it elicits more detailed discussion. Australia and Ecuador called on the June meeting to focus on points of convergence.

The High Seas Alliance and Deep Sea Conservation Coalition expressed satisfaction with the substantive discussions during the week and their transparent character, reminded delegates of the urgency of the challenges at stake, and called for political will to fill implementation and governance gaps.

Co-Chair Lijnzaad proposed that the Co-Chairs reflect on the views expressed in the closing plenary in developing the agenda and organization of work for the June meeting, and drew the meeting to a close at 12:22 pm.

INFORMAL CO-CHAIRS' OVERVIEW OF ISSUES

The informal Co-Chairs' overview of issues raised during the first round of discussions on the scope, parameters and feasibility of an international instrument under UNCLOS contains sections on: overall objective and starting point; legal framework for an international instrument; relationship to other instruments; guiding approaches; guiding principles; scope *ratione personae*; scope *ratione loci*; scope *ratione materiae* (with sub-sections on each of the elements of the package agreed by the Working Group in 2011); enabling elements and means of implementation; and feasibility.

The overview of issues lists, *inter alia*, under:

- **overall objective and starting point:** addressing legal/regulatory/implementation gaps in relation to the conservation of BBNJ; addressing fragmentation in the conservation and sustainable use of BBNJ; considering the package of issues agreed in 2011 by the Working Group as the starting point in defining the scope; recognizing the need to improve efforts in marine biodiversity conservation; and strengthening cooperation and coordination among relevant states, organizations and sectors, on the basis of existing instruments and mechanisms;
- **relationship to other instruments:** not undermining, duplicating or changing existing instruments; respecting and complementing existing mandates of relevant organizations and avoiding duplication; not subordinating existing instruments; supporting and complementing the application of existing instruments and the need for consistency with UNFSA principles; and leaving decision-making for regional and sectoral activities with the relevant regional and sectoral organizations;
- **guiding approaches:** package approach; need to strengthen cooperation and coordination and to avoid fragmentation and duplication; global vs regional approach; sectoral vs integrated approach; legally binding vs soft law; addressing only gaps in legal regimes; including/excluding implementing gaps; complementing existing instruments and processes under these instruments' purview; and effectively integrating global, regional and sectoral approaches and avoiding burdensome supra-national governance systems;
- **scope *ratione personae*:** universal participation;
- **scope *ratione loci*:** areas beyond national jurisdiction, both high seas and the Area; and the recognition that measures adopted in relation to the water column must respect the sovereign rights of the coastal state over its continental shelf;
- **scope *ratione materiae*:** need to define marine biological diversity, MGRs, ABNJ, etc.; include/exclude fisheries management measures; include/exclude fisheries-related measures; how to deal with fisheries; existence of a sufficient regime for high-seas fisheries under the UNFSA and UNCLOS; lack of universality of the UNFSA and the FAO Compliance Agreement; and possible need for a legal framework for regional environmental organizations, similar to that provided by the UNFSA for RFMOs;
- **enabling elements and means of implementation:** promoting and encouraging marine scientific research; monitoring, control and surveillance; reporting; enforcement mechanism; compliance mechanism; dispute settlement mechanism under UNCLOS; good governance; institutional mechanism (COP); and financial mechanism; and
- **feasibility:** legal/technical feasibility justified by the legal basis found in UNCLOS and relevant General Assembly resolutions, the Rio+20 outcome, the existence of two implementing agreements to UNCLOS, sufficient/insufficient information, and the possibility to allow participation by non-parties to UNCLOS; feasibility depending on political will; feasibility depending on agreement on problems and the best ways to address them; feasibility being closely linked to scope and parameters; feasibility being contingent on the definition of scope and parameters, i.e., what will be included and what will not be included in an international instrument; and the possible form of an international instrument ranging from legally binding, such as an implementing agreement under UNCLOS, to soft law, such as a General Assembly resolution.

GLOSSARY

ABNJ	Areas beyond national jurisdiction
ABS	Access and benefit-sharing
Area	Seabed and its subsoil beyond the limits of national jurisdiction
BBNJ	Marine biodiversity in areas beyond national jurisdiction
CBD	Convention on Biological Diversity
COP	Conference of the Parties
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization
IMO	International Maritime Organization
IPRs	Intellectual property rights
ISA	International Seabed Authority
MGRs	Marine genetic resources
MPAs	Marine protected areas
RFMOs	Regional fisheries management organizations
Rio+20	United Nations Conference on Sustainable Development
SEA	Strategic environmental assessment
UNCLOS	UN Convention on the Law of the Sea
UNFSA	UN Fish Stocks Agreement