

## FIFTH MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION:

7-11 MAY 2012

The fifth 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 (hereafter, the Working Group) opens today and will continue until 11 May 2012, at the UN Headquarters in New York. The Working Group will focus on: marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity building, and the transfer of marine technology; the organization of intersessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the Working Group; and the identification of gaps and ways forward, with a view to ensuring an effective legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. The Working Group's recommendations will be submitted to the General Assembly at its sixty-seventh session.

### A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

The conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ) is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such biodiversity, particularly in seamounts, hydrothermal vents and cold-water coral reefs, while concerns grow about the increasing anthropogenic pressure posed by existing and emerging activities, such as fishing and bioprospecting, in the deep sea.

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

The Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity and aims to promote its conservation, the sustainable use of its components, and the fair and equitable sharing of the benefits

arising from the use of genetic resources. In areas beyond national jurisdiction (ABNJ), the Convention applies only to processes and activities carried out under the jurisdiction or control of its parties.

**CBD COP 2:** At its second meeting (November 1995, Jakarta, Indonesia), the Conference of the Parties (COP) to the CBD agreed on the "Jakarta Mandate on Marine and Coastal Biological Diversity," which led to the creation of a work programme in this area.

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

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

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

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

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

**CBD COP 8:** At its eighth meeting (20-31 March 2006, Curitiba, Brazil), the CBD COP recognized the CBD role in supporting the General Assembly's work on MPAs in ABNJ, by focusing on the provision of scientific and technical information and advice. The COP also took decisions on marine genetic resources (MGRs), noting a preliminary range of options for the protection of deep seabed genetic resources beyond national jurisdiction and the need for further work in developing these and other options, in particular within the UN framework; and on integrated marine and coastal area management (IMCAM).

**FIRST MEETING OF THE WORKING GROUP:** The first meeting of the Working Group (13-17 February 2006, New York) exchanged views on institutional coordination, the need for short-term measures to address illegal, unregulated and unreported (IUU) fishing and destructive fishing practices, MGRs, avoiding the adverse impacts of marine scientific research (MSR) on marine biodiversity, and facilitating the establishment of high seas MPAs. A Co-Chairs' summary of trends and a report of the discussions on issues, questions and ideas related to the conservation and sustainable use of BBNJ was transmitted to the General Assembly as an addendum to the report of the Secretary-General on oceans and the law of the sea.

**SECOND MEETING OF THE WORKING GROUP:** The second meeting of the Working Group (28 April - 2 May 2008, New York) produced a Co-Chairs' Draft Joint Statement identifying issues for the General Assembly to consider referring back to the Working Group, including: more effective implementation and enforcement of existing agreements; strengthening of cooperation and coordination; development of an effective environmental impact assessment (EIA) tool for oceans management; development of area-based management tools; practical measures to address the conservation and sustainable use of MGRs; and continued and enhanced MSR.

**CBD COP 9:** At its ninth meeting (19-30 May 2008, Bonn, Germany), the CBD COP convened an expert workshop on the scientific and technical aspects of EIAs in ABNJ to contribute to the development of such scientific and technical guidance. It adopted scientific criteria for identifying ecologically or biologically significant marine areas in need of protection (EBSAs), and scientific guidance for selecting areas to establish a representative network of MPAs. The COP also took note of proposed steps to be considered in the development of MPA networks; and requested the Secretariat to transmit them to the relevant General Assembly processes.

**THIRD MEETING OF THE WORKING GROUP:** The third meeting of the Working Group (1-5 February 2010, New York) agreed, by consensus, to a package of recommendations to the General Assembly, *inter alia*, on: including in the Secretary-General's report on oceans and the law of the sea information on EIAs undertaken for planned activities in ABNJ; recognizing the importance of further developing scientific and technical guidance on the implementation of EIAs on planned activities in ABNJ, including consideration of assessments of cumulative impacts; calling upon states to work through

competent international organizations towards the development of a common methodology for the identification and selection of marine areas that may benefit from protection based on existing criteria; calling upon states, in the context of the Working Group's mandate, to make progress in the discussions on MGRs in ABNJ; and reconvening the Working Group in 2011, to provide further recommendations to the General Assembly.

**FOURTH MEETING OF THE WORKING GROUP:** The fourth meeting of the Working Group (1-5 February 2010, New York) adopted, by consensus, a set of recommendations to initiate a process on the legal framework for the conservation and sustainable use of BBNJ, by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS. The recommendations also include a "package" of issues to be addressed as a whole in this process, namely: MGRs, including questions on benefits-sharing; measures such as EIAs and area-based management tools, including MPAs; capacity building and the transfer of marine technology.

#### INTERSESSIONAL HIGHLIGHTS

**UNGA 66:** In resolution 66/231 on oceans and the law of the sea, the General Assembly decided to initiate within the Working Group the process recommended by the Working Group at its fourth meeting, and convened its fifth meeting. It also: reiterated the central role of the General Assembly relating to BBNJ; noted the work done by the CBD COP; and called upon states to urgently take further action to address destructive practices that have adverse impacts on marine biodiversity and ecosystems, including seamounts, hydrothermal vents and cold water corals, and to strengthen, in a manner consistent with international law, the conservation and management of marine biodiversity and ecosystems and national policies in relation to MPAs. In resolution 66/68 on sustainable fisheries, the Assembly called upon states, through regional fisheries management organizations, to take urgent actions in relation to bottom fishing in ABNJ, including on EIAs.

**UNCSD SECOND INFORMAL INFORMAL CONSULTATIONS:** The second round of "informal informal" consultations on the draft outcome document for the UN Conference on Sustainable Development (UNCSD or Rio+20) took place from 23 April - 4 May 2012, at UN Headquarters in New York. Negotiations on oceans and seas proved contentious on: a possible implementing agreements on BBNJ under UNCLOS; references to blue economy; calls for ratification of UNCLOS; commitments regarding MPAs; and calls for ratifying or acceding to and implementing the 1995 Agreement on the Conservation of Straddling and Highly Migratory Fish Stocks.

**CBD SBSTTA 16:** The 16th session of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) to the CBD convened from 30 April - 4 May 2012, in Montreal, Canada. On marine biodiversity, SBSTTA recommended, *inter alia*, requesting the Secretariat to include the summary reports on the description of areas meeting the scientific criteria for EBSAs in the CBD repository and submit them to the General Assembly and its Working Group. SBSTTA could not agree on whether the reports should be 'endorsed' by the CBD COP as a reference for states and competent intergovernmental organizations.

## MARINE BIODIVERSITY WORKING GROUP

### HIGHLIGHTS:

#### MONDAY, 7 MAY 2012

The fifth meeting of the *Ad Hoc* Open-ended Informal Working Group on marine biological diversity beyond areas of national jurisdiction (hereafter, the Working Group) opened on Monday, 7 May 2012, at the UN Headquarters in New York. In the morning delegates addressed organizational issues, discussing the wording and sequence of agenda items. In the afternoon, delegates delivered opening statements and started substantive discussions on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ).

#### OPENING

Stephen Mathias, Assistant Secretary-General for Legal Affairs, welcomed participants to the meeting. He highlighted, *inter alia*: oceans as an important focus of Rio+20; marine biodiversity loss as hampering efforts to meet the Millennium Development Goals; and the need to identify gaps and ways forward.

Co-Chair Palitha Kohona (Sri Lanka) emphasized the mandate of the fifth meeting of the Working Group to initiate a process on the legal framework addressing MGRs, including questions on benefits-sharing, measures such as EIAs and area-based management tools, including MPAs, capacity building and the transfer of marine technology. Noting that ten years have passed since the UN General Assembly's establishment of the Working Group, Co-Chair Liesbeth Lijnzaad (the Netherlands) emphasized the need to focus on the legal framework, including on whether a new multilateral agreement is necessary.

**ORGANIZATIONAL ISSUES:** Co-Chair Lijnzaad introduced the provisional agenda (A/AC.276/L.7), and the draft format, annotated provisional agenda and organization of work (A/AC.276/L.8).

ICELAND, with JAPAN, the RUSSIAN FEDERATION, NORWAY, the REPUBLIC OF KOREA and CANADA, supported the adoption of the provisional agenda. The EU, supported by ARGENTINA, BRAZIL, AUSTRALIA, INDIA, the PHILIPPINES and others, proposed rearranging the agenda items to discuss first the conservation and sustainable use of BBNJ including MGRs, MPAs, EIA, capacity building

and technology transfer (item 4); then the identification of gaps and ways forward (item 6); and finally intersessional workshops (item 5). ARGENTINA, supported by BRAZIL, GUATEMALA and COSTA RICA, proposed including, under the item on gaps and ways forward, "within the process initiated by the General Assembly in accordance with resolution 66/231." ICELAND opposed, cautioning against placing unequal importance on this item.

JAPAN, supported by ICELAND and the RUSSIAN FEDERATION, noted that the discussion on gap identification is premature, with the RUSSIAN FEDERATION favoring merging agenda items on gap identification and intersessional workshops. ARGENTINA, BRAZIL and INDIA opposed, with ARGENTINA noting that agenda items 4 and 6 are part of the package adopted by the General Assembly, and should be discussed as such by the Working Group.

The US emphasized the workshops as the next procedural step to identify common ground among country positions. ICELAND cautioned against viewing the three agenda items in isolation. ARGENTINA stressed that the package agreed by the General Assembly did not include the workshops but only substantive issues, and that a discussion on workshops must take place after a discussion on gaps and ways forward. She also noted that the same delegations who, during the second "informal informal" consultations for Rio+20, supported work on these issues in the Working Group, are currently the ones blocking progress.

Following informal consultations, Co-Chair Lijnzaad proposed, and delegates agreed on: amending the sequence of agenda items to address, in the following order, the conservation and sustainable use of BBNJ (item 4), gaps and ways forward (item 6), and the intersessional workshops (item 5); adding reference to "within the process initiated by the General Assembly in accordance with Resolution 66/231" after each item; and clarifying that workshops will concern the issues identified in the first two items, as an input to the Working Group.

On the organization of work, BRAZIL proposed, and delegates agreed, to refer to the possibility of "informal," rather than "closed," sessions during the fifth meeting of the Working Group. BRAZIL, supported by NEW ZEALAND, AUSTRALIA, ICELAND, ARGENTINA and the PHILIPPINES, also suggested including, as part of the work of the Working Group, presentations by experts to inform the

Working Group's discussions. Following consultations with regional groups, Co-Chair Lijnzaad proposed including expert presentations and delegates adopted the organization of work.

**GENERAL STATEMENTS:** The EU recommended that the Working Group develop its mandate towards launching negotiations of an UNCLOS implementing agreement as soon as possible and that workshops should be complementary, inclusive and restricted in time and number. Algeria for the G77/CHINA emphasized: the role of the General Assembly and UNCLOS; the relevance of common heritage as a guiding principle and part of customary international law; the implementation gap concerning UNCLOS provisions on capacity building and technology transfer; and the need to address intellectual property rights in the Working Group. VENEZUELA stated that he did not identify himself with the statement of the G77/China. ARGENTINA, CHILE and BRAZIL supported the G77/China position, with BRAZIL pointing to the precautionary principle, the Working Group as the forum for negotiations, and workshops as an alternative format to continue the Working Group's work intersessionally.

AUSTRALIA recommended bringing discussions to the point of decision and action in a limited time-period rather than in an open-ended fashion, and focusing on substantive options for enhanced conservation and sustainable use of BBNJ. JAPAN expressed doubts about the need for a new UNCLOS implementing agreement and called for building consensus on implementation gaps. NORWAY, supported by ICELAND, recommended including in the Rio+20 outcome document a clear message to support the Working Group's work.

Acknowledging the central role of the General Assembly in the conservation and sustainable use of BBNJ, MEXICO called for the Working Group to work towards the establishment of an intergovernmental negotiating committee for an UNCLOS implementing agreement. SOUTH AFRICA called for a new implementing agreement and supported reference to this in the Rio+20 outcome document. The PHILIPPINES emphasized the precautionary principle, technology transfer and capacity building. VENEZUELA pointed to the need to discuss a new legal regime based on the Rio Declaration on Environment and Development. ICELAND and the RUSSIAN FEDERATION prioritized finding common understanding on implementation gaps.

The Natural Resources Defense Council, on behalf of the DEEP SEA CONSERVATION COALITION, called on the Working Group to recommend to the General Assembly the establishment of a formal process for negotiating an UNCLOS implementing agreement along the lines of the UN Fish Stocks Agreement; and emphasized the need for intersessional workshops to begin in 2012. GREENPEACE underscored that the vast majority of states expressed support for a new UNCLOS implementing agreement in the Rio+20 process, noting that certain states expected the Working Group to inform their position on this at Rio+20, and called upon the Working Group to request the General Assembly at this next session to initiate negotiations on such an agreement in 2013.

#### **CONSERVATION AND SUSTAINABLE USE OF BBNJ**

The EU indicated that an UNCLOS implementing agreement should not enter into direct management of activities that are already regulated by existing competent authorities and legally

binding instruments; and that Rio+20 is an opportunity for the international community to endorse, at the highest political level, the decision to launch the negotiations of an UNCLOS implementing agreement. JAPAN reiterated that: UNCLOS Part XI (the Area) is only applicable to mineral resources in the deep seabed; scientific research and international cooperation on MGRs in ABNJ should be encouraged; and cooperation on MPAs could be improved among regional fisheries management organizations (RFMOs), the Food and Agriculture Organization (FAO) and International Maritime Organization (IMO).

CANADA stated that UNCLOS Part XI applies only to mineral resources and not to genetic resources, and that it is premature to discuss gaps and ways forward before having conducted workshops. ARGENTINA argued that the principles contained in Part XI are applicable to the Area as a whole and not only mineral resources, while Part VII (high seas) does not apply to marine areas other than the water column beyond national jurisdiction.

The REPUBLIC OF KOREA requested clarification on the nature of an "implementing" agreement. The EU explained that an implementing agreement under UNCLOS is to implement the Convention, and would be compatible with it. ICELAND noted that the two existing implementing agreements on fish stocks and on Part XI actually amended the Convention. BRAZIL urged developing a legal framework for the conservation and sustainable use of BBNJ as a fundamental matter of sustainable development.

#### **IN THE CORRIDORS**

The Working Group started off with impassioned discussions on the agenda of its fifth meeting, with rifts emerging as to what is considered "part of the package" under its new mandate as agreed last year by the General Assembly. Some were concerned that those pushing for in-depth discussion of intersessional workshops were using this as a delaying tactics vis-à-vis discussions of the "real" issues, notably the legal framework for the conservation and sustainable use of BBNJ, and in particular progress on the long-standing proposal for a new UNCLOS implementing agreement. Others insisted that holding discussions on gaps in the current legal regime at this meeting would be impractical without first having reached a sufficient common understanding of key issues through the convening of the "knowledge-enhancing" workshops.

While the underlying substantive positions in this apparently procedural discussion were not new to the veterans of the process, the numerous references to the role of the Rio+20 process represented a novel turn in the Working Group discussions. Following intense negotiations on "paragraph 80" on BBNJ held last week at the second "informal informal" consultations for UNCSD, views differed as to the relationships between the Rio+20 process and the Working Group, and which of the two has the highest chance of making progress, ten years after the establishment of the Working Group.

## MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: TUESDAY, 8 MAY 2012

On Tuesday morning, the Working Group heard expert presentations in an informal information session. Delegates then resumed consideration of conservation and sustainable use of BBNJ and in the afternoon started discussions on gaps and ways forward, and on intersessional workshops. In the evening, an Open-Ended Friends of the Co-Chairs group convened to discuss the format of the Working Group's recommendations.

### INFORMAL INFORMATION SESSION

Kristina Gjerde, IUCN, gave an overview of area-based management tools for BBNJ, including EIAs, codes of conduct, and strategic environmental assessments (SEAs). She highlighted: progress under the International Convention for the Prevention of Pollution from Ships (MARPOL) in ABNJ; efforts by the CBD on EBSAs; and regional conservation initiatives including those in the Mediterranean, by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), and the Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East Atlantic (OSPAR).

Marjo Vierros, UN University-Institute of Advanced Studies, presented on the sustainable use of MGRs, highlighting that: much of marine biodiversity is still unknown; there is a high probability of finding material of commercial interest in the marine environment; a large number of marine organisms have yielded patented innovation, including from ABNJ; few patents contain the coordinates of collection locations; ten countries account for 90% of patented innovations, revealing a capacity gap that should be addressed; and environmental impact concerns arise relating to ocean fertilization technologies and harvesting techniques. She concluded that the informational base concerning uses of MGRs from ABNJ remains incomplete and the number of patents that have resulted in the commercialization of new products are unknown.

Following questions from delegations, Vierros: pointed to concerns about the negative environmental impacts of continuous harvesting of MGRs for products which cannot be synthesized; linked the lack of indication of geographic origin of MGRs in patent applications to the lack of disclosure requirements in national legislation; and illustrated the uneven distribution of biodiversity in different marine areas and the limited knowledge base in this regard. Gjerde noted: inconsistent levels of accuracy

in carrying out EIA prior to deep-sea bottom-fishing in different regions; collective arrangements between OSPAR and other organizations including the International Seabed Authority (ISA); the role of the CBD in relation to activities and processes under CBD parties' control in ABNJ; and the limitations of sectoral or regional efforts to enhance coordination among different international organizations.

SPAIN questioned the selection of invitees to CBD workshops for the description of EBSAs. NEW ZEALAND and BRAZIL suggested organizing an expert presentation on intellectual property rights (IPRs). ARGENTINA recommended a presentation by ISA on its recent activities on MPAs.

### CONSERVATION AND SUSTAINABLE USE OF BBNJ

CANADA underscored the need for full implementation of all agreements on marine biodiversity both within and beyond areas on national jurisdiction. Noting that "full implementation is not enough," AUSTRALIA prioritized discussion on: the process of identification of non-sector specific MPAs; full understanding of principles and approaches embodied in state practice and international guidance relevant for BBNJ; enhanced coordination and cooperation between sectoral and regional activities on conservation and sustainable use; and the technical aspects of the management of MGRs, including learning from domestic experience and improving transparency in access to MGRs.

NORWAY stated that UNCLOS Part XI applies to mineral resources and that regulation of MGRs, if desirable, should be addressed in a new instrument, expressing willingness to discuss whether MGRs should be classified as common heritage. She suggested using intersessional workshops to clarify: the extent of current bioprospecting activities, their commercial implications and IPRs; existing regulation of bioprospecting, including under UNCLOS provisions on MSR, the Nagoya Protocol on Access and Benefit-sharing and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR); detailed guidelines or rules on EIAs for certain activities in ABNJ; regional regulation of, and cooperation on, area-based management; and capacity building and technology transfer to developing countries. She also remarked that gaps could be addressed through General Assembly resolutions, international guidelines or a legally binding agreement.

The US opposed a new implementing agreement, or a regime for benefit-sharing for MGRs in ABNJ; and prioritized discussing the difference between MGRs from the seabed

and from the water column, arguing that UNCLOS Part VII (high seas) is applicable to activities concerning not only the water column but also the seabed. ARGENTINA rejected the application of the freedoms of the high seas principle to MGRs, in particular to those in the seabed, arguing that the rules on the high seas cannot apply to a different maritime area. She stated that: regional undertakings cannot be seen as a way forward on MPAs; the Working Group should not focus on resources that are already regulated such as fisheries; and there is a need to demystify IPR issues in relation to MGRs and understand different kinds of benefit-sharing, including under the CBD and the ITPGR.

NEW ZEALAND noted that: the current “piecemeal approach” concerning ocean governance is failing to protect world oceans; full implementation of existing instruments could be insufficient; and EIA requirements in UNCLOS are generic and inadequate to meet current standards. CHINA supported the position of the G-77/China and noted that: it is imperative to adopt a balanced approach to the protection of BBNJ and the rights of states under UNCLOS; the establishment of MPAs must not contravene existing UNCLOS rules on freedoms of navigation and research; and EIAs need to be conducted before undertaking activities on the seabed, while the different levels of capacity of developing countries should be taken into account. BRAZIL emphasized that UNCLOS needs to be interpreted in an evolutionary way, taking into account other international instruments contributing to the conservation and sustainable use of BBNJ.

VENEZUELA highlighted the need for clarity on the relevant principles within each instrument concerned with conservation and sustainable use of marine biodiversity, cautioning against prioritizing one instrument over others. Calling for in-depth and well-focused workshops, ICELAND stressed full implementation of existing instruments, and focusing on technical and practical issues concerning MGRs. Emphasizing full implementation of existing instruments, the REPUBLIC OF KOREA noted that UNCLOS contains safeguards applicable to the conservation of marine biodiversity. JAPAN emphasized the role of RFMOs.

The EU reiterated that full implementation of existing instruments is insufficient to conserve and sustainably use BBNJ, underscoring the need to achieve progress within the Working Group and Rio+20. He opposed the view that UNCLOS provisions on the high seas are applicable to MGRs and proposed that an UNCLOS implementing agreement provide for: a global process for the recognition of EBSAs; a global approach to EIA and SEA to address cumulative impacts and prevent adverse effects of new and emerging activities; environmental criteria for the conduct of activities related to MGRs; and a practical structure for ABS concerning MGRs in ABNJ. The RUSSIAN FEDERATION opposed the creation of new instruments.

The CBD Secretariat reported on: conducted and planned regional workshops for describing EBSAs; the preparation by SBSTTA 16 of summary reports on areas that meet the scientific criteria of EBSAs for submission to CBD COP 11; the need for refinement of voluntary guidelines for biodiversity-inclusive EIA and SEA in marine and coastal areas before submission to COP 11; and the status of signature and ratification of the Nagoya Protocol.

MEXICO called upon the General Assembly to provide a clearer definition of the scope and limits of the support it requires from the CBD and SBSTTA, reiterating the need to initiate, within the Working Group, a process leading to negotiations on a multilateral instrument and clarification of the roles of relevant international bodies. ARGENTINA noted that information prepared by the CBD and submitted to the General Assembly and this Working Group was not requested by the General Assembly. GREENPEACE praised the CBD for moving forward on marine biodiversity, noting that six years of informal discussions in the Working Group could hardly be called progress. She called for a coherent and integrated approach to MPAs worldwide.

### **GAPS AND WAYS FORWARD**

NEW ZEALAND stated that there is disagreement on the nature of legal, governance or implementation gaps, but agreement that gaps exist, arguing that action needs to be taken quickly. BRAZIL recommended addressing a gap in the definition of a legal regime for the management of MGRs, emphasizing that resources should not be exploited on a first-come-first-served basis. SOUTH AFRICA supported an UNCLOS implementing agreement, noting that if action is not taken soon by the Working Group, other fora will take the lead, such as through the multilateral benefit-sharing mechanism envisaged under the Nagoya Protocol.

ARGENTINA prioritized addressing: the knowledge gap, in order to define the maritime areas to be covered by an UNCLOS implementing instrument; the difference between resources already regulated and those that are not; and the conservation methods to be employed for those resources that are not regulated. AUSTRALIA identified governance, coordination, implementation and information gaps that need to be addressed, reiterating the need to focus more on the technical aspects of issues such as the regulation of access to MGR in the high seas. The INTERNATIONAL OCEAN NOISE COALITION welcomed discussions on an UNCLOS implementing agreement, which should be rooted in the ecosystems approach, precautionary principle and prevention.

### **INTERSESSIONAL WORKSHOPS**

BRAZIL, supported by the EU, proposed that the Co-Chairs, with input from delegates, prepare a guide on the issues to be addressed within the workshops, as a product of the Working Group’s discussions on gaps and ways forward.

### **IN THE CORRIDORS**

While participants sought to measure slight but significant movements in country positions during the initial substantive exchanges on BBNJ, the role of the CBD and of the work that its Subsidiary Body on Scientific, Technical and Technological Advice undertook last week offered an inevitable comparison. Eager actors felt that lack of progress at this session of the Working Group would push them to turn to the CBD to advance on MPAs and EIAs in ABNJ. For others, “hyper-activity” on BBNJ at the CBD could upset the delicate balance evolving at the Working Group, and overload it with information and instruments that it is not able to absorb or act upon yet. Meanwhile the question remains as to whether MGRs in ABNJ would at all surface at upcoming discussions on a possible multilateral benefit-sharing mechanism under the Nagoya Protocol.

## MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: WEDNESDAY, 9 MAY 2012

On Wednesday morning, the Working Group heard an expert presentation on IPRs in an informal information session. Delegates then resumed consideration of gaps and ways forward, and of intersessional workshops. In the evening, the Open-Ended Friends of the Co-Chairs group reconvened to discuss the Working Group's recommendations.

### INFORMAL INFORMATION SESSION

Claudio Chiarolla, Institute for Sustainable Development and International Relations, presented on recent developments in IRPs and MGRs. He illustrated key questions concerning patent law, particularly in the field of biotechnological inventions, its basic functions and mechanics, and its relationship with research and development activities concerning MGRs from ABNJ. He also provided an overview of international developments including: consideration of disclosure of origin of genetic resources in patent applications in the WTO Council for the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), in negotiations of the Nagoya Protocol, and under the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; and other intellectual property-related mechanisms implemented under instruments that are part of the international ABS regime alongside the Nagoya Protocol. He concluded by providing considerations on lessons learned and a possible methodology for addressing the relationship between IPRs and MGRs.

In the ensuing discussion, delegates raised questions on: the disclosure of origin of MGRs, and the potential for using the Nagoya Protocol's provision as a means to track MGRs collected from ABNJ; the sharing of non-monetary benefits under the Nagoya Protocol and ITPGR; the interaction between the CBD, TRIPS and UNCLOS; the role of users and scientists in contributing to policy-making; the definition of biochemicals; and the importance of discussing IPRs at intersessional workshops. Underlining that IPR issues do not belong in the Working Group, the US stressed that patents should not be used for enforcing benefit-sharing. Noting that IPR governance in small island developing states is still in its formative stages, FIJI expressed concern about the involvement of the scientific community and MGRs users in the policy-making process.

### GAPS AND WAYS FORWARD

The EU called for an UNCLOS implementing agreement to provide: a global mechanism for establishing an MPA network in ABNJ; ABS from MGRs; and a mechanism to guide the development of new activities that are not regulated by UNCLOS and determine the cumulative impacts of traditional and new marine activities. He urged the Working Group to recommend to the General Assembly at its next session that negotiations on an implementing agreement begin at the earliest possible date, and that one or two workshops be held in 2013 to provide input to the next meeting of the Working Group to facilitate the negotiations of the agreement.

MEXICO emphasized that negotiations towards a multilateral agreement under UNCLOS should address practical options for benefit-sharing from MGRs, including: a list of economic and non-economic benefits, guarantees and promotion of participation of developing countries in strategic partnerships between public and private bodies for the development of products based on MGRs; support for private investment in pharmacological development to address health issues in developing countries; and clarification of the research chain, relevant technology transfer and links with IPRs. He also called for clarifying: the role of international and regional bodies in MPAs and EIAs; the role of third states; the objectives, duration, prohibitions, and enforcement measures related to MPAs; and ways to ensure more efficient collaboration between the General Assembly and the CBD.

SRI LANKA noted that fishing activities can negatively impact MGRs and the existing framework is inadequate to address MGRs in the water column. She called for workshops to identify areas covered by existing regimes and clarify the authority and competence of international bodies, including the Seabed Authority and CBD, and address the ongoing debate over IPRs. ARGENTINA suggested consideration of non-monetary benefit-sharing, of modalities of conduct of MSR, and of its links to development of patented products. With MEXICO, she called for greater compliance with UNCLOS Part XIV (marine technology), and underlined that the CBD should provide scientific advice, with regulatory competence belonging to the General Assembly.

Pew Environment Group, on behalf of the NATURAL RESOURCES DEFENSE COUNCIL (NRDC), praised the momentum from last year's Working Group and last week's SBSTTA, supported calls for a new implementing agreement

and for focused workshops, highlighted unmet commitments under Rio Principle 17 (EIA) and the Johannesburg Plan of Implementation target on MPAs and urged the Working Group to recommend that the General Assembly launch negotiations immediately. GREENPEACE said advances in technology have led to industrial exploitation of marine areas that were formerly *de facto* protected areas by virtue of being inaccessible, and the rights and freedoms of the oceans must be balanced by the responsibility of establishing a framework for MPAs and EIAs in ABNJ. She urged the Working Group to recommend that negotiations start in 2013.

The INSTITUTE OF MARINE ENGINEERING, SCIENCE AND TECHNOLOGY stressed that the full geographic location of MGR samples is always known to scientists through GPS, but scientific publications may not divulge commercially sensitive locations. She emphasized the need to ensure transparency and accessibility of this information.

### **INTERSESSIONAL WORKSHOPS**

Co-Chair Lijnzaad proposed discussing the purpose, objectives, number, duration, timelines, format, participation, location and expected outcomes of the intersessional workshops, as well as the financial resources needed and required assistance to developing country participants.

ICELAND, with AUSTRALIA and CANADA, favored two workshops addressing MGRs, and conservation and area-based management tools, respectively. ICELAND suggested following the format used at a previous workshop on the impacts of bottom-fishing on vulnerable marine ecosystems. AUSTRALIA highlighted that the objective of the workshops should be to increase the collective understanding of issues and options related to the Working Group's mandate, suggesting that participation be open to both states and non-state actors, including experts. She proposed that: the workshops produce a Chair's summary, and be followed by a meeting of the Working Group to formulate recommendations; if states host the workshops, a steering group be established to guide preparations; and the Working Group agree on guidelines for the workshops at this meeting.

CANADA favored: including a range of experts presenting fact-based, options-based, non-prescriptive information to inform the Working Group; creating a setting fostering open dialogue; and calling on the Working Group to consider a process for the nomination of experts. MEXICO proposed that: only one workshop be held intersessionally before the next meeting of the Working Group; the workshop be a non-prescriptive learning space; the Working Group should provide a rigorous definition of subject matters to be considered and guidelines for their considerations; a balanced participation between developed and developing countries experts should be ensured; and the workshop should be held in New York.

BRAZIL favored: holding workshops under the auspices of the General Assembly; establishing a trust fund for supporting developing countries' participation; and addressing area-based management tools, including MPAs, international cooperation and information exchange, EIAs, new and emerging uses of BBNJ including experimental uses, MGRs and options for ABS. NORWAY supported workshops 2-5 days long, based on the best available scientific information on: the identification of gaps and areas of convergence, which was opposed by ARGENTINA; the enhanced implementation of existing instruments; and the

possibility of a new implementing agreement. ARGENTINA preferred: holding three or four workshops open to civil society to identify key issues rather than providing recommendations; and addressing MGRs and their uses, MPAs and EIAs, IPRs and benefit-sharing systems.

THE REPUBLIC OF KOREA highlighted the need to clarify how to make full use of existing instruments on conservation and on MGRs. CHINA stressed that the workshops should be the platform to discuss international and national implementation practices under existing regimes, and should be: complementary to the Working Group; non-prescriptive; and held at the UN headquarters for no less than 3 days.

The RUSSIAN FEDERATION favored two or three non-prescriptive workshops, focusing on MGRs, conservation and area-based management. The EU suggested: involving state and non-state participants in the workshops; making a Chair's summary of the workshops available to the Working Group; and holding the workshops in New York. He suggested that workshops discuss: existing regimes, their scope, and their mode of operation; options for the establishment of an MPA network in ABNJ; and mechanisms for the conservation and sustainable use of MGRs in ABNJ.

The US suggested two workshops focusing on conservation tools and on MGRs respectively and proposed they: include presentations on facts and case studies; be open to all interested states and stakeholders; be balanced in participation and topics; and last 2-3 days each. She also noted the need to: clarify if references to MGRs include only resources from the seabed or also from the water column; analyze possible kinds of benefits and examples of benefit-sharing mechanisms; and draw a distinction between the use of MGRs for developing commercial products and for food. VENEZUELA proposed making reference to CBD COP decision IX/20 (marine and coastal biodiversity) for the organization of the workshops.

ARGENTINA proposed that workshops include complementary technical inputs from the CBD, particularly on the Nagoya Protocol, and from ISA on its area-based measures. JAPAN proposed a workshop on MGRs and another on conservation of BBNJ for two days each.

The DEEP SEA CONSERVATION COALITION called for workshops to be held well before the next meeting of the Working Group and not used as an excuse to delay the start of formal negotiations. She stated that if the Working Group cannot recommend the General Assembly to start formal negotiations, states should push for an agreement on this at Rio+20.

### **IN THE CORRIDORS**

The morning's information session on the relationship between IPRs and MGRs was almost universally well received. Participants appreciated the opportunity offered by the informal setting for framing practical questions on patent law and the lessons learned in the context of TRIPS, CBD and its Nagoya Protocol. As fears of opening up the proverbial Pandora's Box seemed to dissolve, many felt that an increased understanding of the links between intellectual property protection and promoting innovation, transferring technology and sharing benefits from marine organisms could help in outlining options for the Working Group. However, it remains to be seen whether and how these discussions will continue in the intersessional workshops and beyond.

## MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: THURSDAY, 10 MAY 2012

On Thursday morning, the Working Group heard a report of the work of the Open-ended Friends of the Co-Chairs group, which reconvened throughout the day to discuss a Co-Chairs' non-paper on the Working Group's recommendations. In the evening, Co-Chair Lijnzaad reported that the Friends of the Co-Chairs group had nearly finished a first reading of the draft recommendations and would continue its work into the evening.

GREENPEACE, WWF, PEW ENVIRONMENT GROUP, the DEEP SEA CONSERVATION COALITION, the NATURAL RESOURCES DEFENSE COUNCIL, the MARINE CONSERVATION INSTITUTE and the INTERNATIONAL OCEAN NOISE COALITION urged states favoring an implementing agreement to stand their ground while the closed-door deliberations continue, and ensure this meeting's outcome does not undermine efforts that will be made at Rio+20.

### IN THE CORRIDORS

National delegations spent most of the fourth day of the Working Group's meeting in a state-only informal setting to consider the initial draft of the recommendations in the form of a Co-Chairs' non-paper. Participants from civil society organizations were left wondering about the need for such secrecy, in this age of transparent environmental multilateralism, especially in view of the fact that most of the draft text appeared to focus on the organization of intersessional workshops. Others questioned the informal setting, noting that the Friends of the Co-Chairs group had already allowed certain countries to take "surprising" positions that appeared to diverge from their initial statements in plenary, thereby blocking progress. Certain participants suspended judgment on the format of negotiations, hoping that in all events, progress could be found towards a decision on starting "real" negotiations against a clear deadline, which appears to many as the only acceptable outcome in the face of the urgency of the threats to BBNJ.

By midday, it appeared the work in the informal setting had mostly focused on the format of the Co-Chairs' non-paper rather than its substance, although delegates had broached the issue of workshops. The non-paper made reference to two two-day workshops, to address: MGRs including benefit-sharing; tools for conservation and sustainable use of BBNJ, including area-based management tools such as MPAs and EIA; and capacity building and technology transfer as cross-cutting issues. Some participants

observed with interest that IPRs were included in the list of issues to be addressed in relation to MGRs. Others noted with concern the limited language on impact assessment, and the conspicuous absence of strategic environmental assessments in reference to "options for achieving enhanced implementation of UNCLOS provisions on impact assessment taking into account cumulative impacts across different sectors." Yet another question concerned the funding for the workshops, given that the non-paper included bracketed references to a voluntary trust fund. With much to be discussed, and with delegates wanting the workshops to be as participatory as possible, "this is not an issue to be passed over lightly," remarked one observer.

Several states calling for the official launch of intergovernmental negotiations towards an UNCLOS implementing agreement were ready to seize the opportunity to reflect in the Working Group's outcome what they felt is the position of the vast majority. In particular, they did not want to lose the ground that was hard fought-for and that finally yielded the consensual language adopted a year ago. This was seen as particularly urgent given that the non-paper made reference to reconvening the Working Group in the second half of 2013 to: consider the effectiveness of existing instruments to address the conservation and sustainable use of marine biodiversity; identify gaps in existing instruments; and identify ways forward including through enhanced implementation of existing instruments and the "possible development of additional instruments" – rather than a "possible multilateral agreement under UNCLOS."

Meanwhile, several delegates and NGOs meeting in a lunch-time side event tackled other underlying issues in the negotiations, namely: the interactions between MPAs and fishing activities, the economics of establishing a global MPA network, the possibility for "companion" measures in other fora complementing the likely long-term negotiations in the Working Group, such as fisheries subsidies currently being discussed under the WTO; and the negative impacts of bottom-fishing on BBNJ. Several participants pondered about the pros and cons of the "package" approach adopted at last year's Working Group meeting in achieving a coherent and widely supported deal in time to prevent the deep seas from turning into blue deserts.

**ENB SUMMARY AND ANALYSIS:** The *Earth Negotiations Bulletin* summary and analysis of the meeting will be available on Monday, 14 May 2012 online at: <http://www.iisd.ca/oceans/marinebiodiv5/>



## 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/>

## SUMMARY OF THE FIFTH MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 7-11 MAY 2012

The fifth 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 (hereafter, the Working Group) convened from 7-11 May 2012, at UN Headquarters in New York. The Working Group focused on: marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity building, and the transfer of marine technology; the organization of intersessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the Working Group; and the identification of gaps and ways forward, with a view to ensuring an effective legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

Approximately 250 participants from national governments, intergovernmental organizations, including regional fisheries management organizations, and non-governmental organizations attended the meeting. Following substantive debates on the gaps and ways forward in plenary and intense negotiations, mostly in a government-only informal setting, on whether to recommend the launch of formal negotiations on a new implementing agreement to the UN Convention on the Law of the Sea, the Working Group recommended that the General Assembly task it to continue to consider all issues under its mandate as a package with a view to making progress on ways forward to fulfill its mandate. The Working Group also adopted terms of reference for two intersessional workshops that are expected to improve understanding of issues before the Working Group and thus lead to a more informed and productive debate at its next meeting in the second half of 2013. The Working Group's recommendations will be submitted to the General Assembly at its sixty-seventh session in September 2012.

## A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

The conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ) is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such biodiversity, particularly in seamounts, hydrothermal vents and cold-water coral reefs, while concerns grow about the increasing anthropogenic pressure posed by existing and emerging activities, such as fishing and bioprospecting, in the deep sea.

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

The Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity and aims to promote its conservation, the sustainable use of its

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components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. In areas beyond national jurisdiction (ABNJ), the Convention applies to processes and activities carried out under the jurisdiction or control of its parties.

**CBD COP 2:** At its second meeting (November 1995, Jakarta, Indonesia), the Conference of the Parties (COP) to the CBD agreed on the “Jakarta Mandate on Marine and Coastal Biological Diversity,” which led to the creation of a work programme in this area.

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

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

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

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

**CBD COP 8:** At its eighth meeting (20-31 March 2006, Curitiba, Brazil), the CBD COP recognized the CBD’s role in supporting the General Assembly’s work on MPAs in ABNJ, by focusing on the provision of scientific and technical information and advice. The COP also took decisions on marine genetic resources (MGRs), noting a preliminary range of options for the protection of deep seabed genetic resources beyond national jurisdiction and the need for further work in developing these and other options, in particular within the UN framework; and on integrated marine and coastal area management.

**FIRST MEETING OF THE WORKING GROUP:** The first meeting of the Working Group (13-17 February 2006, New York) exchanged views on institutional coordination, the need

for short-term measures to address illegal, unregulated and unreported fishing and destructive fishing practices, MGRs, avoiding the adverse impacts of marine scientific research (MSR) on marine biodiversity, and facilitating the establishment of high seas MPAs. A Co-Chairs’ summary of trends and a report of the discussions on issues, as well as questions and ideas related to the conservation and sustainable use of BBNJ was transmitted to the General Assembly as an addendum to the report of the UN Secretary-General on oceans and the law of the sea.

**SECOND MEETING OF THE WORKING GROUP:** The second meeting of the Working Group (28 April - 2 May 2008, New York) produced a Co-Chairs’ Draft Joint Statement identifying issues for the General Assembly to consider referring back to the Working Group, including: more effective implementation and enforcement of existing agreements; strengthening of cooperation and coordination; development of an effective environmental impact assessment (EIA) tool for oceans management; development of area-based management tools; practical measures to address the conservation and sustainable use of MGRs; and continued and enhanced MSR.

**CBD COP 9:** At its ninth meeting (19-30 May 2008, Bonn, Germany), the CBD COP convened an expert workshop on the scientific and technical aspects of EIAs in ABNJ to contribute to the development of such scientific and technical guidance. It adopted scientific criteria for identifying ecologically or biologically significant marine areas in need of protection (EBSAs), and scientific guidance for selecting areas to establish a representative network of MPAs. The COP also took note of proposed steps to be considered in the development of MPA networks; and requested the Secretariat to transmit them to the relevant General Assembly processes.

**THIRD MEETING OF THE WORKING GROUP:** The third meeting of the Working Group (1-5 February 2010, New York) agreed, by consensus, to a package of recommendations to the General Assembly, *inter alia*, on: including in the Secretary-General’s report on oceans and the law of the sea information on EIAs undertaken for planned activities in ABNJ; recognizing the importance of further developing scientific and technical guidance on the implementation of EIAs on planned activities in ABNJ, including consideration of assessments of cumulative impacts; calling upon states to work through competent international organizations towards the development of a common methodology for the identification and selection of marine areas that may benefit from protection based on existing criteria; calling upon states, in the context of the Working Group’s mandate, to make progress in the discussions on MGRs in ABNJ; and reconvening the Working Group in 2011, to provide further recommendations to the General Assembly.

**FOURTH MEETING OF THE WORKING GROUP:** The fourth meeting of the Working Group (1-5 February 2010, New York) adopted, by consensus, a set of recommendations to initiate a process on the legal framework for the conservation and sustainable use of BBNJ, by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS. The recommendations also included a “package” of issues to be addressed as a whole in this process, namely: MGRs,

including questions on benefit-sharing; measures such as EIAs and area-based management tools, including MPAs; and capacity building and the transfer of marine technology.

## REPORT OF THE MEETING

On Monday morning, 7 May 2012, Stephen Mathias, UN Assistant Secretary-General for Legal Affairs, welcomed participants to the meeting. He highlighted, *inter alia*: oceans as an important focus of the United Nations Conference on Sustainable Development (UNCSD or Rio+20); marine biodiversity loss as hampering efforts to meet the Millennium Development Goals; and the need to identify gaps and ways forward.

Co-Chair Palitha Kohona (Sri Lanka) emphasized the mandate of the fifth meeting of the Working Group to initiate a process on the legal framework addressing MGRs, including questions on benefit-sharing, measures such as EIAs and area-based management tools, including MPAs, capacity building and the transfer of marine technology. Noting that ten years have passed since the UN General Assembly's establishment of the Working Group, Co-Chair Liesbeth Lijnzaad (the Netherlands) emphasized the need to focus on the legal framework, including on whether a new multilateral agreement is necessary.

Co-Chair Lijnzaad then introduced the provisional agenda (A/AC.276/L.7), and the draft annotated provisional agenda and organization of work (A/AC.276/L.8).

Iceland, with Japan, the Russian Federation, Norway, the Republic of Korea and Canada, supported the adoption of the provisional agenda. The European Union (EU), supported by Argentina, Brazil, Australia, India, the Philippines and others, proposed rearranging the agenda items to first discuss the conservation and sustainable use of BBNJ including MGRs, MPAs, EIA, capacity building and technology transfer (item 4); then the identification of gaps and ways forward (item 6); and intersessional workshops (item 5). Argentina, supported by Brazil, Guatemala and Costa Rica, proposed including, under the item on gaps and ways forward, "within the process initiated by the General Assembly in accordance with Resolution 66/231." Iceland opposed, cautioning against placing unequal importance on this item.

Japan, supported by Iceland and the Russian Federation, noted that the discussion on gap identification is premature, with the Russian Federation favoring merging agenda items on gap identification and intersessional workshops. Argentina, Brazil and India opposed, with Argentina noting that agenda items 4 and 6 are part of the package adopted by the General Assembly, and should be discussed as such by the Working Group.

The US emphasized the workshops as the next procedural step to identify common ground among country positions. Iceland cautioned against viewing the three agenda items in isolation. Argentina stressed that the package agreed by the General Assembly did not include the workshops but only substantive issues, and that a discussion on workshops must take place after a discussion on gaps and ways forward. She also noted that the same delegations who, during the second "informal informal" consultations for Rio+20, which took place the previous week and supported work on these issues in the Working Group, are currently the ones blocking progress.

Following informal consultations, Co-Chair Lijnzaad proposed, and delegates agreed on: amending the sequence of agenda items to address, in the following order, the conservation and sustainable use of BBNJ (item 4), gaps and ways forward (item 6), and the intersessional workshops (item 5); adding reference to "within the process initiated by the General Assembly in accordance with Resolution 66/231" after each item; and clarifying that workshops will concern the issues identified in the first two items, as an input to the Working Group.

On the organization of work, Brazil proposed, and delegates agreed, to refer to the possibility of "informal," rather than "closed," sessions during the meeting. Brazil, supported by New Zealand, Australia, Iceland, Argentina and the Philippines, also suggested including, as part of the work of the Working Group, presentations by experts to inform the Working Group's discussions. Following consultations with regional groups, Co-Chair Lijnzaad proposed including expert presentations and delegates adopted the organization of work.

Two informal information sessions were held during the week. On Tuesday morning, Kristina Gjerde, IUCN, gave an overview of area-based management tools for BBNJ, and Marjo Vierros, UN University-Institute of Advanced Studies, presented on the sustainable use of MGRs. New Zealand and Brazil suggested organizing an expert presentation on intellectual property rights (IPRs). Argentina recommended a presentation by the International Seabed Authority (ISA) on its recent activities on MPAs. On Wednesday morning, Claudio Chiarolla, Institute for Sustainable Development and International Relations, presented on recent developments in IPRs and MGRs. Underlining that IPR issues do not belong in the Working Group, the US stressed that patents should not be used for enforcing benefit-sharing.

A Friends of the Co-Chairs group, open only to national delegations, met from Tuesday through Friday night. The plenary adopted the Working Group's recommendations on Friday night. This report summarizes the discussions on the three substantive issues on the agenda of the Working Group, and the discussion of the Working Group's recommendations.

## GENERAL STATEMENTS

The EU recommended that the Working Group develop its mandate towards launching negotiations of an UNCLOS implementing agreement as soon as possible and that workshops should be complementary, inclusive and restricted in time and number. Algeria, on behalf of the Group of 77 and China (G-77/China) emphasized: the role of the General Assembly and UNCLOS; the relevance of common heritage as a guiding principle and part of customary international law; the implementation gap concerning UNCLOS provisions on capacity building and technology transfer; and the need to address intellectual property rights in the Working Group. Venezuela stated that he did not identify himself with the statement of the G-77/China. Argentina, Chile and Brazil supported the G-77/China position, with Brazil pointing to the precautionary principle, the Working Group as the forum for negotiations, and workshops as an alternative format to continue the Working Group's work intersessionally.

Australia recommended bringing discussions to the point of decision and action in a limited time-period rather than in an open-ended fashion, and focusing on substantive options for enhanced conservation and sustainable use of BBNJ. Japan expressed doubts about the need for a new UNCLOS implementing agreement and, supported by Iceland and the Russian Federation, called for building consensus on implementation gaps. Norway, supported by Iceland, recommended including in the Rio+20 outcome document a clear message to support the Working Group's work.

Acknowledging the central role of the General Assembly in the conservation and sustainable use of BBNJ, Mexico called for the Working Group to work towards the establishment of an intergovernmental negotiating committee for an UNCLOS implementing agreement. South Africa called for a new implementing agreement and supported reference to this in the Rio+20 outcome document. The Philippines emphasized the precautionary principle, technology transfer and capacity building. Venezuela pointed to the need to discuss a new legal regime based on the Rio Declaration on Environment and Development.

The Natural Resources Defense Council (NRDC), on behalf of the Deep Sea Conservation Coalition, called on the Working Group to recommend to the General Assembly the establishment of a formal process for negotiating an UNCLOS implementing agreement along the lines of the UN Fish Stocks Agreement; and emphasized the need for intersessional workshops to begin in 2012. Greenpeace underscored that the vast majority of states expressed support for a new UNCLOS implementing agreement in the Rio+20 process, noting that certain states expected the Working Group to inform their position on this at Rio+20, and called upon the Working Group to request the General Assembly at its next session to initiate negotiations on such an agreement in 2013.

#### **CONSERVATION AND SUSTAINABLE USE OF BBNJ**

This agenda item was discussed on Monday afternoon and Tuesday morning. The EU indicated that an UNCLOS implementing agreement should not enter into direct management of activities that are already regulated by existing competent authorities and legally binding instruments; and that Rio+20 is an opportunity for the international community to endorse, at the highest political level, the decision to launch the negotiations of an UNCLOS implementing agreement. Japan reiterated that: UNCLOS Part XI (the Area) is only applicable to mineral resources in the deep seabed; scientific research and international cooperation on MGRs in ABNJ should be encouraged; and cooperation on MPAs could be improved among regional fisheries management organizations (RFMOs), the Food and Agriculture Organization (FAO) and International Maritime Organization.

Canada stated that UNCLOS Part XI applies only to mineral resources and not to genetic resources and that it is premature to discuss gaps and ways forward before having conducted workshops. Argentina argued that the principles contained in Part XI are applicable to the Area as a whole, and not only mineral resources, while Part VII (high seas) does not apply to marine areas other than the water column beyond national jurisdiction.

The Republic of Korea requested clarification on the nature of an "implementing" agreement. The EU explained that an implementing agreement under UNCLOS is to implement the Convention, and would be compatible with it. Iceland noted that the two existing implementing agreements on fish stocks and on Part XI actually amended the Convention. Brazil urged developing a legal framework for the conservation and sustainable use of BBNJ as a fundamental matter of sustainable development.

Canada underscored the need for full implementation of all agreements on marine biodiversity both within and beyond areas of national jurisdiction. Noting that "full implementation is not enough," Australia prioritized discussion on: the process of identification of non-sector specific MPAs; full understanding of principles and approaches embodied in state practice and international guidance relevant for BBNJ; enhanced coordination and cooperation between sectoral and regional activities on conservation and sustainable use; and the technical aspects of the management of MGRs, including learning from domestic experience and improving transparency in access to MGRs.

Norway stated that UNCLOS Part XI applies to mineral resources and that regulation of MGRs, if desirable, should be addressed in a new instrument, expressing willingness to discuss whether MGRs should be classified as common heritage.

The US opposed a new implementing agreement or a regime for benefit-sharing for MGRs in ABNJ; and prioritized discussing the difference between MGRs from the seabed and from the water column, arguing that UNCLOS Part VII (high seas) is applicable to activities concerning not only the water column but also the seabed. Argentina rejected the application of the freedom of the high seas principle to MGRs, in particular to those in the seabed, arguing that the rules on the high seas cannot apply to a different maritime area. She stated that: regional undertakings cannot be seen as a way forward on MPAs; the Working Group should not focus on resources that are already regulated, such as fisheries; and there is a need to demystify IPR issues in relation to MGRs and understand different kinds of benefit-sharing, including under the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR).

New Zealand noted that: the current "piecemeal approach" concerning oceans governance is failing to protect world oceans; full implementation of existing instruments could be insufficient; and EIA requirements in UNCLOS are generic and inadequate to meet current standards. China supported the position of the G-77/China and noted that: it is imperative to adopt a balanced approach to the protection of BBNJ and the rights of states under UNCLOS; the establishment of MPAs must not contravene existing UNCLOS rules on freedom of navigation and research; and EIAs need to be conducted before undertaking activities on the seabed, taking into account the different levels of capacity of developing countries. Brazil emphasized that UNCLOS needs to be interpreted in an evolutionary way, bearing in mind other international instruments contributing to the conservation and sustainable use of BBNJ. Venezuela highlighted the need for clarity on the relevant principles within each instrument

concerned with conservation and sustainable use of marine biodiversity, cautioning against prioritizing one instrument over others.

Calling for in-depth and well-focused workshops, Iceland stressed full implementation of existing instruments, and technical and practical issues concerning MGRs. Emphasizing full implementation of existing instruments, the Republic of Korea noted that UNCLOS contains safeguards applicable to the conservation of marine biodiversity. JAPAN emphasized the role of RFMOs.

The EU reiterated that full implementation of existing instruments is insufficient to conserve and sustainably use BBNJ, underscoring the need to achieve progress within the Working Group and Rio+20. He opposed the view that UNCLOS provisions on the high seas are applicable to MGRs and proposed that an UNCLOS implementing agreement provide for: a global process for the recognition of EBSAs; a global approach to EIA and strategic environmental assessments (SEA) to address cumulative impacts and prevent adverse effects of new and emerging activities; environmental criteria for the conduct of activities related to MGRs; and a practical structure for access and benefit-sharing (ABS) concerning MGRs in ABNJ. The Russian Federation opposed the creation of new instruments.

The CBD Secretariat reported on: conducted and planned regional workshops for describing EBSAs; the preparation by the sixteenth meeting of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 16) of summary reports on areas that meet the scientific criteria of EBSAs for submission to the eleventh meeting of the CBD Conference of the Parties (COP 11); the need for refinement of voluntary guidelines for biodiversity-inclusive EIA and SEA in marine and coastal areas before submission to COP 11; and the status of signature and ratification of the Nagoya Protocol.

Mexico called on the General Assembly to provide a clearer definition of the scope and limits of the support it requires from the CBD and SBSTTA, reiterating the need to initiate, within the Working Group, a process leading to negotiations on a multilateral instrument and clarification of the roles of relevant international bodies. Argentina noted that information prepared by the CBD and submitted to the General Assembly and this Working Group was not requested by the General Assembly. Greenpeace praised the CBD for moving forward on marine biodiversity, noting that six years of informal discussions in the Working Group could hardly be called progress. She called for a coherent and integrated approach to MPAs worldwide.

#### **GAPS AND WAYS FORWARD**

This item was discussed on Tuesday afternoon and Wednesday morning. New Zealand stated that there is disagreement on the nature of legal, governance or implementation gaps, but that there is agreement that gaps exist, arguing that action needs to be taken quickly. Brazil recommended addressing a gap in the definition of a legal regime for the management of MGRs, emphasizing that resources should not be exploited on a first-come-first-served basis.

South Africa supported an UNCLOS implementing agreement, noting that if action is not taken soon by the Working Group, other fora will take the lead, such as through the multilateral benefit-sharing mechanism envisaged under the

Nagoya Protocol. Norway remarked that gaps could be addressed through General Assembly resolutions, international guidelines or a legally binding agreement.

Argentina prioritized addressing: the knowledge gap, in order to define the maritime areas to be covered by an UNCLOS implementing agreement; the difference between regulated and unregulated resources; and the conservation methods to be employed for those resources that are not regulated. Australia identified governance, coordination, implementation and information gaps that need to be addressed, reiterating the need to focus more on the technical aspects of issues such as the regulation of access to MGRs in the high seas. The International Ocean Noise Coalition welcomed discussions on an UNCLOS implementing agreement, stating that it should be rooted in the ecosystems approach, precautionary principle and prevention.

The EU called for an UNCLOS implementing agreement to provide: a global mechanism for establishing an MPA network in ABNJ; ABS from MGRs; and a mechanism to guide the development of new activities that are not regulated by UNCLOS and determine the cumulative impacts of traditional and new marine activities. He urged the Working Group to recommend to the General Assembly at its next session that negotiations on an implementing agreement begin at the earliest possible date, and that one or two workshops be held in 2013 to provide input to the next meeting of the Working Group to facilitate the negotiation of the agreement.

Mexico emphasized that negotiations towards a multilateral agreement under UNCLOS should address practical options for benefit-sharing from MGRs, including: a list of economic and non-economic benefits, guarantees and promotion of participation of developing countries in strategic partnerships between public and private bodies for the development of products based on MGRs; support for private investment in pharmacological development to address health issues in developing countries; and clarification of the research chain, relevant technology transfer and links with IPRs. He also called for clarifying: the role of international and regional bodies in MPAs and EIAs; the objectives, duration, prohibitions, and enforcement measures related to MPAs; and ways to ensure more efficient collaboration between the General Assembly and the CBD.

Sri Lanka noted that fishing activities can negatively impact MGRs and the existing framework is inadequate to address MGRs in the water column. Argentina suggested consideration of non-monetary benefit-sharing, of modalities of conduct of MSR, and of its links to development of patented products. With Mexico, she called for greater compliance with UNCLOS Part XIV (marine technology), and underlined that the CBD should provide scientific advice, with regulatory competence belonging to the General Assembly.

Pew Environment Group, on behalf of NRDC, praised the momentum from last year's Working Group and last week's SBSTTA meeting, supported calls for a new implementing agreement and for focused workshops, highlighted unmet commitments under Rio Principle 17 (EIA) and the Johannesburg Plan of Implementation target on MPAs, and urged the Working Group to recommend that the General Assembly launch negotiations immediately. Greenpeace said advances in

technology have led to industrial exploitation of marine areas that were formerly *de facto* protected areas by virtue of being inaccessible, and the rights and freedoms of the oceans must be balanced by the responsibility to establish a framework for MPAs and EIAs in ABNJ. She urged the Working Group to recommend that negotiations start in 2013.

The Institute of Marine Engineering, Science and Technology stressed that the full geographic location of MGR samples is always known to scientists through GPS, but scientific publications may not divulge commercially sensitive locations. She emphasized the need to ensure the transparency and accessibility of this information.

### **INTERSESSIONAL WORKSHOPS**

On Wednesday morning, Co-Chair Lijnzaad proposed discussing the purpose, objectives, number, duration, timelines, format, participation, location and expected outcomes of the intersessional workshops, as well as the financial resources needed and required assistance to developing country participants.

Norway suggested using intersessional workshops to clarify: the extent of current bioprospecting activities, their commercial implications and IPRs; existing regulation of bioprospecting, including under UNCLOS provisions on MSR, the Nagoya Protocol on ABS and the ITPGR; detailed guidelines or rules on EIAs for certain activities in ABNJ; regional regulation of, and cooperation on, area-based management; and capacity building and technology transfer to developing countries. Iceland, with Australia and Canada, favored two workshops addressing MGRs, and conservation and area-based management tools, respectively. Iceland suggested following the format used at a previous workshop on the impacts of bottom-fishing on vulnerable marine ecosystems.

Australia highlighted that the objective of the workshops should be to increase the collective understanding of issues and options related to the Working Group's mandate, suggesting that participation be open to both states and non-state actors, including experts. She proposed that: the workshops produce a Chair's summary, and be followed by a meeting of the Working Group to formulate recommendations; if states host the workshops, a steering group be established to guide preparations; and the Working Group agree on guidelines for the workshops at this meeting.

Canada favored: including a range of experts presenting fact-based, options-based, non-prescriptive information to inform the Working Group; creating a setting fostering open dialogue; and calling on the Working Group to consider a process for the nomination of experts. Mexico proposed that: only one workshop be held before the next meeting of the Working Group; the workshop be a non-prescriptive learning space; the Working Group provide a rigorous definition of subject matter to be considered and guidelines for their consideration; a balanced participation between developed and developing country experts should be ensured; and the workshop should be held in New York.

Brazil favored: holding workshops under the auspices of the General Assembly; establishing a trust fund for supporting developing countries' participation; and addressing area-based management tools, including MPAs, international cooperation

and information exchange, EIAs, new and emerging uses of BBNJ including experimental uses, MGRs and options for ABS. Norway supported workshops lasting two-five days, based on the best available scientific information on: the identification of gaps and areas of convergence, which was opposed by Argentina; the enhanced implementation of existing instruments; and the possibility of a new implementing agreement. Argentina preferred: holding three or four workshops open to civil society to identify key issues rather than providing recommendations; and addressing MGRs and their uses, MPAs and EIAs, IPRs and benefit-sharing systems.

The Republic of Korea highlighted the need for the workshops to clarify how to make full use of existing instruments on conservation and on MGRs. China stressed that the workshops should be the platform to discuss international and national implementation practices under existing regimes, and should be: complementary to the Working Group; non-prescriptive; and held at the UN headquarters for no less than three days.

The Russian Federation favored two or three non-prescriptive workshops, focusing on MGRs, conservation and area-based management. The EU suggested: involving state and non-state participants in the workshops; making a Chair's summary of the workshops available to the Working Group; and holding the workshops in New York. He suggested that workshops discuss: existing regimes, their scope, and their mode of operation; options for the establishment of an MPA network in ABNJ; and mechanisms for the conservation and sustainable use of MGRs in ABNJ. Sri Lanka called for workshops to identify areas covered by existing regimes and clarify the authority and competence of international bodies, including the ISA and CBD, and address the ongoing debate over IPRs.

The US suggested two workshops focusing on conservation tools and on MGRs, respectively, and proposed they: include presentations on facts and case studies; be open to all interested states and stakeholders; be balanced in participation and topics; and last two-three days each. She also noted the need to: clarify if references to MGRs include only resources from the seabed or also from the water column; analyze possible kinds of benefits and examples of benefit-sharing mechanisms; and draw a distinction between the use of MGRs for developing commercial products and for food. Venezuela proposed making reference to CBD COP Decision IX/20 (marine and coastal biodiversity) for the organization of the workshops.

Argentina proposed that workshops include complementary technical inputs from the CBD, particularly on the Nagoya Protocol, and from the ISA on its area-based measures. Japan proposed a workshop on MGRs and another on conservation of BBNJ for two days each.

The Deep Sea Conservation Coalition called for workshops to be held well before the next meeting of the Working Group and not used as an excuse to delay the start of formal negotiations. She stated that if the Working Group cannot recommend the General Assembly to start formal negotiations, states should push for an agreement on this at Rio+20.

### **DISCUSSION OF THE RECOMMENDATIONS**

On Friday morning, Co-Chair Lijnzaad reported that the Friends of the Co-Chairs group had met until 10:15 pm on Thursday, and was to reconvene to complete its work.

Argentina, supported by Brazil, and opposed by Iceland, called for the draft recommendations to be developed in an open informal session with NGO participation, rather than in a closed session. The EU and Venezuela regretted the lack of NGO participation, with the EU highlighting limited transparency within the process and Venezuela suggesting that the Working Group employ the rules of procedure of the General Assembly.

Chair Lijnzaad and Sergei Tarassenko, Director, UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS), responded that the Friends of the Co-Chairs group meeting was not closed, but limited to the delegations of UN member states and observer states, and observers with standing invitations. Argentina and Brazil pointed to the precedent of allowing, in related processes serviced by UNDOALOS, a limited number of civil society representatives in the final sessions of drafting groups, noting that any discussions on whether to allow their participation should be held in an open meeting. WWF expressed disappointment on behalf of all NGOs present at the meeting that the Co-Chairs had not asked the Working Group to openly discuss whether to allow the participation of a limited number of civil society representatives.

Opposing any proposal to work late into Friday night, Brazil urged the Friends of the Co-Chairs group to focus on completing the Working Group's recommendations to the General Assembly, before working on the terms of reference for intersessional workshops. The Russian Federation said that the format of the Friends of the Co-Chairs group appeared to be most productive, but open discussions would also be acceptable.

Australia expressed support for moving towards the negotiation of an implementing agreement within a defined period of time, recalling that his proposal about intersessional workshops at last year's meeting of the Working Group was meant "as a mechanism for bringing the bulk of the membership along in the direction proposed by the EU." He stated that the discussions of the Working Group have not provided an adequate level of understanding across the full membership of what those proposing an implementing agreement are seeking to achieve and why. Supported by Japan and Canada, Australia called for the terms of reference of intersessional workshops to include both expert presentations and discussion between delegations, saying that discussions would provide opportunities for views to converge before beginning negotiations on an implementing agreement.

Argentina stressed that the Working Group's mandate was not to discuss workshops, which are not the main concern of the Working Group. The EU highlighted that workshops should be of a "very technical nature" and urged that they play a limited role. Co-Chair Lijnzaad suspended the plenary session and reconvened the Friends of the Co-Chairs group.

On Friday afternoon, Co-Chair Kohona reported to plenary that the Friends of the Co-Chairs group had completed consideration of an annex containing terms of reference for the intersessional workshops, but needed more time to negotiate the recommendations. Brazil, Mexico, India and the EU expressed their preference for continuing negotiations in plenary. NRDC requested the Working Group to reconsider its earlier decision not to allow civil society to hear the debate. Iceland preferred to continue in the Friends of the Co-Chairs group, but expressed

flexibility to continue discussion in plenary. Venezuela underlined that all parties could participate, provided the Working Group follows the rules of the General Assembly.

Introducing a Co-Chairs' paper produced at 3:00 pm, Co-Chair Lijnzaad noted that it contained: a summary of the week's discussions; the mandate for the next meeting; intersessional workshops, including the topics for consideration; the procedure towards negotiating an implementing agreement under UNCLOS; and the establishment of a trust fund to facilitate developing countries' participation.

On a paragraph reflecting the proceedings of the week with reference to MGRs, IPRs, existing instruments, conservation and sustainable use, MPAs and EIAs, Iceland favored including reference to "discussions" and "including on IPRs," as well as the "possible development of a multilateral agreement under UNCLOS." The Republic of Korea opposed an enumeration of the topics discussed. The US, supported by the Russian Federation and Canada, opposed the inclusion of reference to "including IPRs" in the summary of the meeting's discussions, cautioning against expanding the mandate of the Working Group as set out at its fourth session.

On the mandate for the next meeting, the US also suggested that issues included in the package should be considered "in light of discussions from the intersessional workshops." Argentina, supported by Iceland, proposed instead "taking into account" discussions at the workshops. Brazil cautioned against the possibility that workshops change the mandate of the Working Group. Gabon proposed taking note of discussions and various views expressed, and retaining reference to a "multilateral implementation agreement."

Venezuela, supported by Gabon, noted that other international instruments need to be considered alongside UNCLOS; and insisted on including recommendations concerning the future work of the Working Group at its next meeting. Mexico preferred an option with unqualified reference to an "implementing agreement." Canada proposed language on continuing to consider all issues under the mandate of the Working Group.

India preferred taking note of "discussions" at the meeting and including reference to the "possible development of a multilateral agreement." Japan proposed deleting reference to continuing discussions within the process established by the General Assembly in Resolution 66/231. Argentina, opposed by the US, proposed taking note of the "exchange of opinions" on issues within the mandate of the Working Group, including all issues discussed at the meeting, such as benefit-sharing and IPRs. The EU urged retaining reference to an UNCLOS implementing agreement.

Co-Chair Lijnzaad suspended the plenary at 5:45 pm to allow informal consultations on the draft recommendations. At 10:43 pm, Co-Chair Lijnzaad introduced compromise text from the informal consultations. Delegates adopted the draft recommendations with minor amendments. On an annex containing the terms of reference for the intersessional workshops, Argentina proposed replacing reference to "global and regional regimes" with "existing regimes" in a list of topics to be addressed in the intersessional workshop on conservation and management tools. Delegates adopted the annex with this amendment.

**Recommendations:** The Working Group recommended that the General Assembly at its 67th session:

- welcome the “first meeting of the Working Group within the process initiated by the General Assembly” with a view to ensuring that the legal framework for the conservation and use of BBNJ addresses issues by identifying gaps and ways forward including through the implementation of existing instruments, and the possible development of a multilateral agreement under UNCLOS, and takes note of the exchange of views at the meeting on aspects of issues referred to in the Co-Chairs’ summary of discussions, some of which will be discussed during the intersessional workshops;
- request the Secretary-General to convene, within existing resources, two intersessional workshops before the sixth meeting of the Working Group, on the topics set out in the annex;
- request the Working Group, at its next meeting, to continue the consideration of all issues under its mandate, taking into account the discussions at its fifth meeting, as well as the input of the intersessional workshops, and provide recommendations to the 68th session of the General Assembly to make progress on ways forward to fulfill the mandate provided in Resolution 66/231;
- request the Secretary-General to convene a meeting of the Working Group in the second half of 2013; and
- request the Secretary-General to use existing trust funds, through earmarked contributions, to facilitate the participation of panelists and representatives from developing countries in the intersessional workshops, and invite member states, international financial institutions and others to make financial contributions to these trust funds.

An annex contains the terms of reference for two intersessional workshops aimed at improving the understanding of issues related to the conservation and sustainable use of BBNJ, which will be convened at UN Headquarters in the first half of 2013. The workshops will be chaired by the Co-Chairs of the Working Group and participation will be open to: UN member states; states members of the specialized agencies; UNCLOS parties; observers in the General Assembly; specialized agencies; UN funds and programmes; and NGOs and other stakeholders, in accordance with established UN practice. Selected experts will deliver panel presentations and their selection will ensure equitable geographical representation, as well as balanced representation of all relevant areas of expertise.

The first workshop will focus on MGRs and will address: extent and type of research, uses and applications; technological, environmental, social and economic aspects; access-related issues; types of benefits and benefit-sharing; IPR issues; global and regional regimes on genetic resources, experiences and best practices; impacts and challenges on BBNJ; and exchange of information on research programmes regarding BBNJ.

The second workshop will focus on conservation and management tools, including area-based management and EIAs, addressing: types of area-based management tools; key ecosystem functions and processes in ABNJ; assessment of sectoral and cumulative impacts; technological, environmental, social and economic aspects; existing regimes, experience and best practices; new and emerging uses of, and experimental

activities in ABNJ; impacts and challenges to BBNJ; and exchange of information on research programmes regarding BBNJ. The workshops will also consider international cooperation and coordination; and capacity building and transfer of marine technology.

A summary of proceedings of the workshops prepared by the Co-Chairs will be transmitted as an input to the work of the Working Group at its sixth meeting.

### **CLOSING PLENARY**

WWF, on behalf of IUCN, Pew, Greenpeace and other NGOs, expressed disappointment that the meeting did not forward a concrete recommendation to the General Assembly on an UNCLOS implementing agreement, and announced that they would seek high-level support at Rio+20 to launch negotiations towards an implementing agreement.

Brazil and the EU regretted that the meeting did not reach agreement on recommending the start of negotiations towards an implementing agreement, but expressed hope that this could be achieved at the Working Group’s next meeting. Argentina called on delegations to continue working in a consensual manner and push for more progress next year. Co-Chair Lijnzaad gavelled the meeting to a close at 11:03 pm.

### **A BRIEF ANALYSIS OF THE MEETING**

Progress is in the eye of the beholder. Since its establishment in 2004, the perception of time and movement within the Working Group on marine biodiversity in areas beyond national jurisdiction (BBNJ) has always been subjective. This depends on whether one looks at it from the perspective of steadily finding common ground among diametrically opposed views on the gaps of the international legal framework and the type of action needed to fill them, or from the viewpoint of urgently responding to the multiplicity of continuing and emerging threats to the long-term survival of life in the deep seas.

Most participants thought that momentum was finally built last year when the Working Group eventually found consensus on a “new” process on the legal framework on the basis of a “package” of key issues that represent the different interests of countries: marine genetic resources (MGRs), with an unprecedented reference to benefit-sharing; conservation measures such as marine protected areas (MPAs) and environmental impact assessment (EIA); as well as capacity building and technology transfer. For the first time, the Working Group had also reached consensus on referring to “the possible development of a multilateral agreement under UNCLOS,” which encapsulated the broad-based support for starting negotiations on a new UNCLOS implementing agreement that had brought the EU and the G-77/China together.

A year later, however, the Working Group struggled to actually embark on a new process to develop the legal framework. Its final recommendation is limited to ambiguously calling for a continuation of discussion on the package with a view to making “progress on the ways forward to fulfill its mandate.” The only tangible outcome is the definition of the terms of reference for intersessional workshops to feed into next year’s discussions. With most participants left wondering whether this forum is slowly making progress on improving

BBNJ governance or just going in circles, this brief analysis assesses the substantive and procedural issues that characterized this meeting, and concludes by considering other processes that may provide political and technical impetus to the Working Group.

### **ELEPHANTS IN THE ROOM**

The “package” that eventually emerged in 2011 was expected to foster a process in which all participants would feel equally invested by requiring the same amount of attention to the different topics that are considered priorities to some countries but not to others: MGRs are the priority of developing countries, and MPAs and EIAs those of developed ones.

It was quite clear that this approach would not have sped up the process nor would it have allowed the Working Group to pick up some of the low-hanging fruit for conserving BBNJ, such as “interim” conservation measures that had been proposed in previous years, for instance through a General Assembly resolution calling for monitoring EIAs in ABNJ or cooperating on MPAs. Nevertheless, it was considered, at the 2011 meeting, the best way to build trust among delegations and compel them to entertain proposals on issues that were less of a priority for them. While MPAs, EIA and MGRs remain the pillars of the agenda for the 2012 meeting, other key underlying issues surfaced at the meeting as the sticking points in the negotiations.

The first sticking point was intellectual property rights (IPRs). While developing countries had long voiced their interest in discussing IPR issues in relation to BBNJ, the Working Group had never entertained a discussion on the topic, although last year an officer of the World Intellectual Property Organization delivered an expert presentation. This time around, an impromptu expert presentation highlighted the different roles that IPRs can play, such as incentivizing research, facilitating benefit-sharing and eventually leading to the public availability of information. Most participants welcomed the opportunity to “demystify” IPRs in their debate and consider the different options that could balance their diversified interests. This eventually led to the inclusion of IPRs as a topic for further discussion at the intersessional workshop on MGRs. However, the strong opposition from the US to discussing IPRs, in particular, as a tool for enforcing benefit-sharing from the use of MGRs, casts some doubts as to whether it will eventually be possible to shed light on the important role of IPRs in marine scientific research and marine bioprospecting. Indeed, many participants and experts felt that mapping out the existing patent landscape with regard to MGRs from ABNJ could help to increase the visibility of marine biodiversity and eventually provide strong economic arguments to promote its conservation.

The other sticking point was fisheries. In previous meetings Argentina had argued that fisheries are well regulated at the international level and, therefore, do not need to be discussed in the Working Group. Nonetheless, it appears that those concerned with conservation measures in ABNJ, notably MPAs, have in mind the potential negative impacts of these measures on the fishing industry. As a seasoned delegate observed, it is inevitable that an implementing agreement on marine biodiversity would have implications for fishing. The clarification by the EU at this meeting that the proposed implementing agreement would “not regulate what is already regulated” appeared to offer some

comfort to hesitant nations active in distant water fishing. While the negotiations barely touched upon the disquieting threats to BBNJ from fishing activities, one of the side events engaged NGOs and national delegations in a thought-provoking discussion about the benefits of MPAs to the long-term interests of the fishing industry, and the economics of establishing a global network of MPAs. The presenter, Andrés Cisneros, University of British Columbia, suggested that half of the current global volume of fisheries subsidies could provide the necessary funding for protecting key areas in ABNJ, while reducing economically underperforming and ecologically harmful operations. The discussion pointed to the possibility that while the Working Group continues its work, important complementary action can be taken without impinging on the package. Hoping for progress on fisheries subsidies in the context of the Doha negotiations under World Trade Organization may be ingenuous, but some action by the General Assembly on fishing over-capacity may provide a competitive advantage to fishing nations with more economically and eco-efficient fleets.

### **HOW OPEN IS OPEN-ENDED?**

NGOs had already experienced a closed-door drafting group at last year’s meeting of the Working Group. Notwithstanding the initial modification of the organization of work not to refer to “closed” sessions this year, NGOs and IGOs remained outside the shut doors of the Friends of the Co-Chairs group for the whole of Thursday and Friday morning. This procedural approach was discussed at various points in plenary, with certain countries and the whole NGO cohort questioning whether the General Assembly rules of procedure were being applied. Well-informed observers also wondered whether accreditation should be sufficient to grant the right of participation to observers in any session under the process.

The lack of transparency was considered unfortunate from several viewpoints. First of all, on the twentieth anniversary of Rio Principle 10 on public participation, it appeared anachronistic and unwarranted to debate among states only, whereas other processes handling more sensitive issues at much more advanced stages of negotiation welcome inputs from NGOs. In addition, NGOs have been, since the inception of the process, constructive interlocutors who contribute substantively to the discussions on BBNJ. The initial reticence of Iceland, in particular, was also considered surprising by participants aware that the country recently joined the Aarhus Convention, which specifically calls upon its members to promote transparency in international environmental decision-making processes.

More importantly, participants had recognized the need for the deliberations to be informed by inputs from scientists and other experts. However, during the critical stages of the meeting, these experts were excluded. This was particularly significant in light of the fact that the studies that had been suggested throughout the years by the Working Group, such as on patent systems, gaps and weaknesses of the international legal framework, and lessons learned in EIAs that were highlighted in 2010, had not been conducted. It was also significant in the context of other processes that can significantly tackle BBNJ, such as the CBD and Rio+20, both being open to NGOs and thus being seen by many as having a higher degree of transparency and legitimacy than the Working Group.

## WINDOWS OF OPPORTUNITY

With perceptions of the usefulness of the Working Group varying, participants considered, both in plenary and at side events, whether other processes may provide windows of opportunity to bring the BBNJ agenda forward. CBD SBSTTA 16, which convened a week preceding the Working Group's meeting, made progress on scientific and technical tools for BBNJ, notably concerning the description of ecologically and biologically sensitive areas (EBSAs). While most delegations see EBSAs as "information tools" of a purely scientific and technical nature, they may still represent, in the view of many participants, a critical step towards the creation of a global MPA network. A couple of Latin American delegates, however, cautioned against the "hyper-activity" of the CBD, arguing that it could affect progress in the Working Group by overloading it with information and tools that it is unable to process or act upon at this stage. No matter what perspective is taken, it appears in the interest of many that the UN General Assembly clarify the relationship between the CBD and the Working Group, rather than limiting itself to "noting" the CBD work as it did in 2011 in Resolution 66/231. With CBD COP 11 occurring in between the first and second round of negotiations on the General Assembly's omnibus oceans resolution, some participants were already considering the chances of obtaining General Assembly support for the launch of an EBSA repository by the CBD and call on regional fisheries management organizations (RFMOs) to take that information into account. Moreover, NGOs openly made reference to the faster progress at the CBD and warned that it could become a forum preferable to the Working Group to tackle, with urgency, the conservation and sustainable use of BBNJ. In the corridors, however, civil society expressed doubts about the likelihood of a change of forum as an overwhelming majority of countries remains convinced that the CBD should continue to confine its work to scientific and technical advice.

Another relevant CBD process concerns the preparations for the entry into force of the Nagoya Protocol and the possible development of a global multilateral benefit-sharing mechanism for genetic resources for which prior informed consent cannot be provided. The meeting of the Intergovernmental Committee for the Nagoya Protocol, scheduled for July 2012, will consider the development of this mechanism for the first time and it remains to be seen whether BBNJ will be part of the discussions. As an insider observed, "everything is possible as long as states agree to it." From this perspective, the absence of many African countries at this session was notable since they are the strongest proponents of the multilateral mechanism under the Nagoya Protocol.

## WE STILL HAVE RIO

A key negotiator concluded that what the Working Group achieved at this meeting—drafting the terms of reference for workshops that were not controversial per se—could have been done last year. A more optimist delegate instead pointed to the more substantive and interactive discussions at this meeting compared to the past, and sincerely hoped that the intersessional workshops will "loosen up" country positions. "I have seen worse processes eventually reaching their goal," he said. And to those used to the slow motion of New York-based negotiations, a

timeline can be read in the recommendation for the next Working Group meeting to "make progress on ways forward to fulfill its mandate" by the 68th session of the General Assembly in 2013.

Overall, the Working Group did not produce a clear roadmap from this meeting towards the "possible development of a multilateral agreement," which had been the goal for the majority of delegations. The EU and NGOs announced openly that they will now channel all their energies towards the Heads of State and Government who will soon gather in Rio, in hope that a high-level setting will be able to overcome the difficulties encountered within the Working Group process and provide a timeline for text-based negotiations on BBNJ. On the other hand, based on the second round of Rio+20 "informal informal" negotiations (which preceded the Working Group meeting), agreement on a negotiating mandate for the implementing agreement is going to face the same opposition encountered in the Working Group. In addition, the unity of developing countries in this quest remains an unknown factor, as the G-77/China was not always able to speak with one voice in either fora. Regardless, Rio+20 will still be the most prominent process for the future of the Working Group: it will provide more civil society participation and be under immense pressure to achieve concrete outcomes. As one veteran said, leaving the UN complex late on Friday night, "We still have Rio."

## UPCOMING MEETINGS

### Global Conference on Oceans, Climate and Security:

This conference is organized by the Collaborative Institute for Oceans, Climate and Security of the University of Massachusetts, Boston. The theme of the conference is "Collaboration and Action to Address the Impacts of Climate-related Ocean Change on Human, National and International Security." The conference will bring together scientists, policy makers, and intellectual leaders to discuss the inter-connectedness between oceans, climate and security, and will consist of keynote speakers and panels dealing with both policy and science issues, and a plenary focusing on methods of communicating issues associated with climate change impacts. **dates:** 21-23 May 2012 **location:** Boston, Massachusetts, USA **contact:** Tina Stanton **phone:** +1-617-287-5926 **email:** [Info@GCOCS.org](mailto:Info@GCOCS.org) **www:** <http://www.gcoocs.org/>

### UNGA Thematic Debate on Preparations for UNCSD:

The President of the 66th Session of the UN General Assembly (UNGA) will convene this thematic debate on preparations for the UNCSD on the theme "Road to Rio+20 and beyond." The thematic debate will also consider the role of the General Assembly in supporting the objectives of Rio+20. Two panel discussions will focus on the centrality of political commitment, the importance of a sustained and meaningful engagement of all stakeholders for a successful outcome in Rio and the post-2015 Development Agenda. **date:** 22 May 2012 **location:** UN Headquarters, New York **contact:** Office of the President of the General Assembly **phone:** +1-212-963-3577 **fax:** +1-212-963-3301 **email:** [bahamdoun@un.org](mailto:bahamdoun@un.org) **www:** <http://www.un.org/en/ga/president/66/Letters/PDF/Rio+20%20-%202020%20April%202012.pdf>

**13th Meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea:**

The 13th meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea will focus its discussions on “marine renewable energies.” **dates:** 29 May - 1 June 2012 **location:** UN Headquarters, New York **contact:** UNDOALOS **phone:** +1 212-963-3962 **fax:** +1 212-963-5847 **e-mail:** doalos@un.org **www:** [http://www.un.org/depts/los/consultative\\_process/consultative\\_process.htm](http://www.un.org/depts/los/consultative_process/consultative_process.htm)

**Third round of informal-informal negotiations on the zero draft of the Outcome Document:** This round of informal negotiations was announced on 4 May to continue to negotiate the draft outcome document for Rio+20. **dates:** 29 May - 2 June 2012 **location:** UN Headquarters, New York **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/>

**OECD Conference on Marine Biotechnology for Ocean Productivity and Sustainability:** This conference will address opportunities for marine biotechnology to contribute to global challenges such as of food and fuel security, population health, green growth and sustainable industries. The event aims at raising awareness among policy makers of the potential of the marine environment and how this potential could be realized through the use of marine biotechnology, in particular in the areas of generating economic benefit and environmental sustainability. **dates:** 30-31 May 2012 **location:** Vancouver, BC, Canada **contact:** Rachael Ritchie **email:** rachael.ritchie@oecd.org **www:** [http://www.oecd.org/document/48/0,3746,en\\_2649\\_34537\\_49544368\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/48/0,3746,en_2649_34537_49544368_1_1_1_1,00.html)

**Third PrepCom for UNCSD:** This meeting will take place in Brazil prior to the UNCSD. **dates:** 13-15 June 2012 **location:** Rio de Janeiro, Brazil **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/>

**Rio Conventions Pavilion at Rio+20:** This event is a collaborative outreach activity of the Secretariats of the Rio Conventions (UNFCCC, UNCCD and CBD), the GEF, and 25 other international, national and local partners. It aims to promote and strengthen synergies between the Rio Conventions at implementation levels by providing a coordinated platform for awareness-raising and information-sharing about the linkages in science, policy and practice between biodiversity, climate change and combating desertification/land degradation. **dates:** 13-22 June 2012 **location:** Rio de Janeiro, Brazil **contact:** Rio Conventions Pavilion **phone:** +1-514-288-6588 **fax:** +1-514-288-6588 **email:** info@riopavilion.org **www:** <http://www.riopavilion.org/>

**Oceans Day at UNCSD:** The Global Ocean Forum will organize “Oceans Day” during the thematic days immediately preceding the UNCSD. **date:** 16 June 2012 **location:** Rio Conventions Pavilion, Rio de Janeiro, Brazil **contact:** Miriam Balgos, Program Coordinator, Global Forum on Oceans, Coasts, and Islands **phone:** +1-302-831-8086 **fax:** +1-302-831-3668 **email:** mbalgos@udel.edu **www:** <http://www.globaloceans.org/sites/udel.edu.globaloceans/files/Rio20-GOF-Event-Flyer.pdf>

**UN Conference on Sustainable Development (Rio+20):** The UNCSD will mark the 20th anniversary of the UN Conference on Environment and Development (Earth Summit), 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/>

**UNCSD High-level Roundtables:** Four high-level roundtable sessions will convene in parallel with the plenary meetings of the UN Conference on Sustainable Development. They will focus on the theme “Looking at the way forward in implementing the expected outcomes of the Conference.” **dates:** 20-22 June 2012. **location:** Rio de Janeiro, Brazil **contact:** UNCSD Secretariat, **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/rio20/index.php?page=view&nr=1128&type=230&menu=39>

**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 2012 will address the 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/>

**Global Biodiversity Informatics Conference 2012:** The Global Biodiversity Informatics Conference (GBIC) aims to discuss how informatics can best meet the challenges posed by biodiversity science and policy. It will focus on the practical steps needed to provide the information needs of global commitments such as the Aichi 2020 targets to halt biodiversity loss. Attendance at GBIC is by invitation only. **dates:** 2-4 July 2012 **location:** Copenhagen, Denmark **contact:** Conference organizers **email:** gbic2012@gbif.org **www:** [www.gbic2012.org](http://www.gbic2012.org)

**ICNP-2:** The second meeting of the Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and Equitable Sharing of Benefits arising from their Utilization (ABS) will consider, *inter alia*, the need for, and modalities of, a global multilateral benefit-sharing mechanism. **dates:** 2-6 July 2012 **location:** New Delhi, India **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/icnp2/>

**30th Session of the FAO Committee on Fisheries:** The 30th session of COFI will review activities of the COFI Sub-Committees on Aquaculture and Fish Trade, progress on the implementation of the CCRF and associated IPOAs, as well as the priorities for the FAO work programme on these issues. **dates:** 9-13 July 2012 **location:** Rome, Italy **contact:** Hiromoto Watanabe, FAO **email:** hiromoto.watanabe@fao.org **www:** <http://www.fao.org/fishery/about/cofi/meetings/en>

**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 CBD COP 9 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/meetings/

**IUCN World Conservation Congress 2012:** The Congress theme will be Nature+, a slogan that captures the fundamental importance of nature and its inherent link to every aspect of people's lives, including: nature+climate, nature+livelihoods, nature+energy and nature+economics. **dates:** 6-15 September 2012 **location:** Jeju, Republic of Korea **contact:** IUCN Congress Secretariat **phone:** +41-22-999 0336 **fax:** +41-22-999-0002 **email:** congress@iucn.org **www:** http://www.iucnworldconservationcongress.org

**Sixty-seventh 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. 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/search/view\_doc.asp?symbol=A/67/50

**CBD COP 11:** The agenda for the next meeting of the CBD COP includes consideration of, *inter alia*: the status of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization; implementation of the Strategic Plan 2011-2020 and progress towards the Aichi Biodiversity Targets; marine and coastal biodiversity; issues related to financial resources and the financial mechanism; and biodiversity and climate change. This meeting will be preceded by the sixth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety. **dates:** 8-19 October 2012 **location:** Hyderabad, India **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** http://www.cbd.int/doc/?meeting=COP-11

**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:** United Nations Division for Ocean Affairs and the Law of the Sea **phone:** +1-212-963-3962 **fax:** +1-212-963-5847 **email:** doalos@un.org **www:** http://www.un.org/depts/los/biodiversityworkinggroup/biodiversityworkinggroup.htm

## GLOSSARY

ABNJ	Areas beyond national jurisdiction
ABS	Access and benefit sharing
BBNJ	Marine biodiversity in areas beyond national jurisdiction
CBD	Convention on Biological Diversity
COP	Conference of the Parties
EBSAs	Ecologically and biologically significant marine areas in need of protection
EIA	Environmental impact assessment
FAO	UN Food and Agriculture Organization
IPRs	Intellectual property rights
ISA	International Seabed Authority
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
MGRs	Marine genetic resources
MPAs	Marine protected areas
MSR	Marine scientific research
NRDC	Natural Resources Defense Council
RFMOs	Regional fisheries management organizations
Rio+20	United Nations Conference on Sustainable Development (UNCSD)
SBSTTA	CBD Subsidiary Body on Scientific, Technical and Technological Advice
UNCLOS	United Nations Convention on the Law of the Sea
UNCSD	United Nations Conference on Sustainable Development (Rio+20)