

MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: TUESDAY, 14 FEBRUARY 2006

On Tuesday, 14 February, the *Ad Hoc* Open-ended Informal Working Group of the General Assembly to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction (the Working Group) concluded the general exchange of views and considered past and present activities of the United Nations (UN) and other relevant international organizations, in the morning. In the afternoon, delegates commenced discussions on the scientific, technical, economic, legal, environmental, socioeconomic and other aspects of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

GENERAL EXCHANGE OF VIEWS

Noting the symbiotic relationship between deep seabed biodiversity and its ecosystems, INDIA supported the application of the regime of the common heritage of mankind to both living and non-living resources in areas beyond national jurisdiction. He further argued that the principles of the UN Convention on the Law of the Sea (UNCLOS) on marine scientific research (MSR) should also apply to bioprospecting, and called for internationally agreed definitions of both.

ACTIVITIES OF THE UN AND OTHER INTERNATIONAL ORGANIZATIONS

Austria, on behalf of the EUROPEAN UNION (EU), gave an account of past and present resolutions and initiatives of international organizations pertaining to marine biodiversity, underlining the need to address, as a short-term measure, the existing implementation gap. Referring to the present governance gap that does not allow for an integrated impact assessment of human activities on the marine ecosystems and for the establishment of marine protected areas (MPAs), he reiterated his call for an implementation agreement under UNCLOS on the conservation and sustainable use of marine biodiversity.

JAPAN emphasized the importance of implementing existing instruments rather than establishing new ones, noting that any new agreement or initiative should focus on preventing only illegal high seas fishing. ICELAND said most threats to marine biodiversity, both within and beyond national jurisdiction, could be addressed by implementing measures in the existing framework, without the need for establishing new instruments.

CANADA outlined discussions at the 2005 meeting of the Committee on Fisheries (COFI) of the UN Food and Agriculture Organization (FAO), highlighting: the present implementation gap; illegal, unregulated and unreported (IUU) fishing; deep sea fisheries; scientific criteria for MPAs; urgent reforms of regional fisheries management organizations (RFMOs); and market-based instruments. Supported by ARGENTINA, she stressed the importance of coherent government positions in different forums. NATURAL RESOURCES DEFENSE COUNCIL noted that COFI emphasized the need for further information on past and present deep water fishing activities and their effects on deep sea fish stocks and ecosystems.

AUSTRALIA underlined the importance of implementing resolutions on deep sea fisheries and on the sustainable management of deep sea resources, and the role of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). VENEZUELA highlighted the work under the Convention on Biological Diversity (CBD).

The US encouraged the Working Group to acknowledge the efforts of RFMOs to respond to the General Assembly resolution on destructive fishing practices and the action of States to better control fishing vessels. The EUROPEAN COMMUNITY expressed support for existing RFMOs and for the development of new ones, noting the establishment of MPAs for fisheries conservation and biodiversity protection. AUSTRALIA favored coordinating the different purposes and objectives of MPAs, such as biodiversity protection and fisheries management, as RFMOs cannot be assumed to establish MPAs for broader purposes. Given the time-consuming effort to create new RFMOs, NATURAL RESOURCES DEFENSE COUNCIL called for effective interim measures. GREENPEACE urged the Working Group to identify interim short-term measures for the most pressing threats to marine biodiversity, as well as timelines for long-term measures.

ARGENTINA called for new regulations on access and benefit-sharing related to marine genetic resources and emphasized the unique role of the Working Group. SIERRA LEONE highlighted the link between the implementation and governance gaps and the negative impacts of poor implementation on developing countries. INDIA emphasized the need to adopt new measures for the conservation and sustainable use of marine biodiversity, and, with SIERRA LEONE, called for greater involvement in MSR of developing country scientists. CANADA suggested addressing the implementation gap, particularly at the sectoral level, by developing new *ad hoc* arrangements for integrating existing legal frameworks and

defining the role of specialized agencies. She stressed that such efforts should be cooperative rather than competitive. MEXICO said the Working Group's future meetings should evaluate resources and activities not covered in the Secretary-General's report, and called for a cross-reference analysis on the situation of marine biodiversity in its entirety.

The INTERNATIONAL SEABED AUTHORITY (ISA) described its mandate and activities, highlighting: the 2001 regulations for the exploration and exploitation of polymetallic nodules in the Area; the licensed contractors' monitoring and reporting responsibilities; and scientific collaboration between ISA, scientists and contractors, stressing the importance of participation by developing country scientists. The CBD reported on its recent work on marine biodiversity, including: compiling information to identify MPAs in areas beyond national jurisdiction; identifying options for cooperation between UNCLOS and CBD, especially on IUU fishing; and capacity building for developing countries to implement existing regulations on marine biodiversity. IUCN highlighted its work on marine biodiversity, awareness raising and supporting the development of MPAs for fisheries management and biodiversity conservation.

ASPECTS OF THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIODIVERSITY

SCIENTIFIC ASPECTS: Barbara Moore, the US National Oceanic and Atmospheric Administration, made a presentation on ocean science, highlighting discoveries during a recent expedition to study submarine volcanoes and procedures for publishing the information gathered. Elva Escobar Briones, Mexico's National Autonomous University, underscored the role of marine science for sustainability, and the difficulties of predicting how ecosystems will recover from the adverse impacts of mining operations, deep sea trawling and prospective genetic research. She also highlighted capacity building needs of developing countries for carrying out marine scientific activities. JAPAN presented a DVD illustrating how MSR is carried out, what technologies are used and what kinds of species have been found in deep waters.

Marine protected areas: CANADA noted that a compilation of existing ecological and biological criteria for the identification of MPAs is being elaborated, as agreed during the first CBD Working Group on Protected Areas. She reported that a scientific expert workshop, hosted by Canada in December 2005, identified criteria such as uniqueness or rarity, use for critical life species, vulnerability, biological diversity and representativity. AUSTRALIA highlighted experience on high sea MPAs, and encouraged involving experts in the Working Group to discuss scientific information on developing criteria for the identification of MPAs.

LEGAL ASPECTS: IUCN emphasized the need for clarifying the rights and obligations of coastal States with regards to the protection of marine biodiversity. BRAZIL noted the symbiotic relationship between high seas resources, underlining that new measures for the protection of marine biodiversity have to be consistent with UNCLOS.

Marine genetic resources: Stressing the need for applying the common heritage of mankind regime to bioprospecting, INDONESIA emphasized difficulties in distinguishing pure marine scientific research from commercial activities. JAPAN indicated that UNCLOS Part XI (the Area) only covers non-living resources, questioning the need for a new legal framework, and highlighting that ISA's role should not be changed. Drawing attention to UNCLOS negotiation history, PALAU stated that the term "minerals and mineral resources" in Part XI was never meant to be strictly interpreted. The US argued that marine

living resources in areas beyond national jurisdiction fall under the regime of the high seas, thus contesting the existence of a governance gap in this regard.

ARGENTINA suggested solving the disagreement regarding the regulation of access to, and benefit-sharing from, high seas genetic resources in this Working Group. MEXICO proposed setting aside the question of the status of marine genetic resources in areas beyond national jurisdiction, favoring instead the development of benefit-sharing mechanisms including non-monetary benefits. He also highlighted the role of liability rules in the protection of marine vulnerable ecosystems.

Marine scientific research: The REPUBLIC OF KOREA called for encouraging and facilitating MSR rather than creating obstacles to it. The US suggested focusing on ways to minimize the negative impacts of MSR on marine ecosystems and sharing the results with developing countries. IUCN reiterated the need for improved international collaboration regarding MSR.

BRAZIL noted the need for an increased focus on MSR, with broader cooperation and participation by developing countries. ARGENTINA called for an increased role of ISA in disseminating information on deep seabed MSR.

MEXICO proposed further studies on the national implementation of intellectual property rights (IPRs) related to MSR, and suggested focusing on harmonizing IPRs with UNCLOS provisions, rather than negotiating definitions for MSR and bioprospecting. AUSTRALIA called for more research on uses of biodiversity in areas beyond national jurisdiction to inform resource management.

Marine protected areas: MEXICO underscored that the current international framework provides sufficient legal basis for the establishment of high seas MPAs, without the need for a new international agreement. He suggested that CBD and FAO address the scientific aspects of high seas MPAs, whereas the General Assembly and the Working Group concentrate on the legal and technical aspects, to ensure consistency with UNCLOS. INTERNATIONAL COALITION OF FISHERIES ASSOCIATIONS cautioned against the envisaged network of MPAs, expressing reservations about the role of MPAs as a fisheries management tool.

ENVIRONMENTAL ASPECTS: IUCN argued that the greatest threats to marine biodiversity are destructive fishing practices and overfishing.

Co-Chair Burgess identified questions that still need to be addressed, such as the economic aspects of marine biodiversity, and emphasized that many issues will not be resolved this week. Calling for constructive cooperation, he encouraged delegates to identify areas for further study and practical options for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

IN THE CORRIDORS

With the snow melting outside, the Working Group continued ice-breaking discussions on possible steps forward in protecting marine biodiversity in areas beyond national jurisdiction. Many dwelled on the EU's proposal for a new UNCLOS implementation agreement: some welcomed the attention devoted to high seas MPAs, while others expressed concern about the silence on access and benefit-sharing related to marine genetic resources. Notwithstanding those contesting the long and uncertain path of negotiating a new international instrument, the possibility of agreeing on the first steps towards the establishment of an implementation agreement seemed to gain momentum among delegates, subject to further consideration. In the end, most delegates agree that it is still too early in the week to say what will emerge from this sea of possibilities.