

SUMMARY OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 13-17 FEBRUARY 2006

The *Ad Hoc* Open-ended Informal Working Group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (hereinafter, the Working Group) convened from 13-17 February 2006, at United Nations headquarters in New York.

The Working Group was established by General Assembly resolution 59/24 of 17 November 2004, to:

- survey the past and present activities of the UN and other international organizations on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction;
- examine the scientific, technical, economic, legal, environmental, socioeconomic and other aspects of the conservation and sustainable use of such biodiversity;
- identify key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of such biodiversity; and
- indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of such biodiversity.

Over 250 participants attended the meeting, representing governments, UN agencies, intergovernmental and non-governmental organizations (NGOs), and the fishing industry. During the week, the Working Group recognized the need to address the full range of issues related to marine biodiversity in an integrated way, including: the legal framework for marine biodiversity beyond areas of national jurisdiction; the impacts of fishing practices on such biodiversity; high seas marine protected areas; marine genetic resources beyond areas of national jurisdiction; marine scientific research; and coordination and cooperation. The Working Group also identified issues and questions requiring further studies.

The informal setting and non-negotiated outcome facilitated a frank exchange of views that enabled participants to find common ground on both institutional coordination and the need for short-term measures to address illegal, unregulated

and unreported fishing and destructive fishing practices as the most urgent threats to marine biodiversity. Many delegates also wished to continue this process and resume discussions on long-term measures and more complicated questions, such as sharing the benefits from marine genetic resources, avoiding the adverse impacts of marine scientific research on marine biodiversity, and facilitating the establishment of high seas marine protected areas.

The outcome of the meeting – 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 marine biodiversity beyond areas of national jurisdiction – will be transmitted as an addendum to the report of the Secretary-General on oceans and the law of the sea to the 61st session of the General Assembly.

A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

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

IN THIS ISSUE

A Brief History of Marine Biodiversity Beyond Areas of National Jurisdiction	1
Working Group Report	3
Options and Approaches to Promote International Cooperation and Coordination	3
Issues and Questions Requiring Further Background Studies	7
Closing Session	8
A Brief Analysis of the Working Group	8
Upcoming Meetings	9
Glossary	10

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

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

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

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

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

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

SBSTTA-8: At its eighth meeting (March 2003, Montreal, Canada), the CBD Subsidiary Body on Scientific, Technical and Technologic Advice (SBSTTA) noted the increasing risks to biodiversity beyond areas of national jurisdiction and recommended that the goal of the CBD’s work in this area should be the establishment and maintenance of MPAs, to conserve the structure and functioning of the full range of marine and coastal ecosystems, and provide benefits to both present and future generations.

UNICPOLOS-4: At its fourth meeting (June 2003, New York), the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) recommended

that the General Assembly, *inter alia*, invite relevant international bodies at all levels to urgently consider how to better address, on a scientific and precautionary basis, threats and risks to vulnerable and threatened marine ecosystems and biodiversity beyond areas of national jurisdiction, consistent with international law and the principles of integrated ecosystem-based management.

FIFTH WORLD PARKS CONGRESS: At the fifth IUCN World Parks Congress (September 2003, Durban, South Africa), participants adopted a recommendation on the protection of marine biodiversity and ecosystem processes through MPAs beyond national jurisdiction, in which they recommended that the international community as a whole, *inter alia*, establish a global system of effectively managed representative networks of MPAs.

UNGA-58: In resolution 58/240, the General Assembly invited the relevant global and regional bodies to urgently investigate 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 beyond areas of national jurisdiction.

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

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

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

THIRD WORLD CONSERVATION CONGRESS: The third IUCN World Conservation Congress (November 2004, Bangkok, Thailand) called for cooperation to establish

representative networks, and develop the scientific and legal basis for the establishment, of MPAs beyond national jurisdiction, and contribute to a global network by 2012. The Congress also requested States, RFMOs and the General Assembly to protect seamounts, deep sea corals and other vulnerable deep sea habitats from destructive fishing practices, including bottom trawling, on the high seas.

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

CBD WORKING GROUP ON PAs: The CBD Working Group on PAs (June 2005, Montecatini, Italy) discussed options for cooperation for the establishment of MPAs beyond areas of national jurisdiction. Delegates initiated work to compile and synthesize existing ecological criteria for future identification of potential sites for protection, and recommended that the COP note that the establishment of such sites must be in accordance with international law, including UNCLOS, and based on the best available scientific information, the precautionary approach and the ecosystem approach.

UNGA-60: In resolution 60/30, the General Assembly 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.

SBSTTA-11: At its eleventh meeting (November-December 2005, Montreal, Canada), SBSTTA recommended that the CBD COP: recognize the urgent need to enhance scientific research and cooperation for the conservation and sustainable use of deep seabed genetic resources, and the preliminary range of options for the protection of these resources beyond national jurisdiction; and request the Executive Secretary, in collaboration with UNCLOS and other relevant organizations, to further analyze options for preventing and mitigating impacts of some activities on selected seabed habitats.

WORKING GROUP REPORT

On Monday, 13 February 2006, Juan Manuel Gomez-Robledo (Mexico), Co-Chair of the Working Group, opened the meeting. UNDOALOS Director Vladimir Golitsyn recalled General Assembly resolution 59/24 that established the Working Group, and highlighted capacity building as a key issue, especially for developing countries. Co-Chair Gomez-Robledo encouraged participants to be: visionary in addressing the full range of issues related to marine biodiversity in an integrated and multidisciplinary fashion; aware of the impacts of anthropogenic activities on marine biodiversity, including vulnerable marine ecosystems; and guided by the principles of UNCLOS and the CBD.

Noting the challenges posed by jurisdiction, the complexity and the different interests at stake related to marine biodiversity, Working Group Co-Chair Philip Burgess (Australia) also highlighted the opportunity to address all relevant issues in the same forum, and looked forward to a frank and engaged debate. The Working Group adopted the agenda and the organization of work prepared by the Co-Chairs, without amendments.

From Monday to Thursday, the Working Group: held a general exchange of views on marine biodiversity beyond areas of national jurisdiction; considered past and present activities of the UN and other relevant international organizations; discussed the scientific, technical, economic, legal, environmental, socioeconomic and other aspects of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction; addressed key issues and questions requiring more detailed background studies; and considered possible options and approaches to promote international cooperation and coordination. On Friday, the Working Group discussed a draft Co-Chairs' summary of trends, distributed to the delegates on Thursday evening, that is to be read in conjunction with the summary of discussions of the Working Group, which will be circulated after the meeting.

This report summarizes the discussions and the draft Co-Chairs' summary of trends, focusing on the options and approaches to promote international cooperation and coordination, and issues and questions requiring further background studies.

OPTIONS AND APPROACHES TO PROMOTE INTERNATIONAL COOPERATION AND COORDINATION

LEGAL FRAMEWORK: Discussions on the legal framework for the protection and sustainable use of marine biodiversity beyond areas of national jurisdiction focused on the need for better implementation of existing instruments ("implementation gap") and on the questions of whether there is a "governance gap" and whether such gap should be addressed through a new UNCLOS implementation agreement.

On the governance gap, Austria, on behalf of the European Union (EU), proposed a new UNCLOS implementation agreement to protect marine biodiversity beyond areas of national jurisdiction. This was supported by Greenpeace for a coalition of NGOs including the Natural Resources Defense Council, Marine Conservation Biology Institute, WWF and Conservation International. The EU suggested the agreement:

- be based on an integrated and precautionary approach;
 - respect the mandates of existing bodies, such as regional fisheries management organizations (RFMOs), the International Seabed Authority (ISA) and the International Maritime Organization (IMO), and facilitate their cooperation and coordination;
 - provide for the establishment of MPAs, using the best available scientific information; and
 - be elaborated in the context of UNCLOS, without prejudice to the sovereign rights of coastal States.
- Greenpeace identified as necessary elements of the agreement:
- specific obligations to protect high seas biodiversity based on precaution, the ecosystem approach, sustainability and equity;

- the recognition of the high seas as an area of scientific value and a natural reserve, part of the common heritage of mankind;
- the prohibition of highly destructive fishing practices and sustainable fisheries management;
- definition of criteria and guidelines for MPAs;
- an obligation to establish regional environmental management organizations and a management plan for marine reserves, based on prior environmental impact assessment;
- the creation of a centralized monitoring, control and surveillance agency, a secretariat and a scientific committee; and
- the provision for long-term funding and a timetable for review.

Cuba said a new UNCLOS implementation agreement should ensure genetic resources are managed for the benefit of mankind. Australia highlighted that more time was needed to consider the proposal for a new implementation agreement, which should improve coordination and harmonization, clarify the duty to cooperate, and define an agreed basis for setting up MPAs beyond national jurisdiction.

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. Venezuela and China highlighted the need to review existing legal instruments governing the high seas before establishing a new regime. Iceland and Japan questioned the need for a new agreement, and Norway indicated that the existing legal framework, if fully implemented, is sufficient to protect marine biodiversity beyond areas of national jurisdiction. Japan also noted that any new agreement or initiative should focus only on preventing illegal high seas fishing. The Republic of Korea favored empowering regional fisheries bodies and focusing on better management of the Exclusive Economic Zones, before introducing new legal frameworks.

Sierra Leone highlighted the link between the implementation and governance gaps and the negative impacts of inadequate implementation on developing countries. 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.

In discussing the draft Co-Chairs' summary of trends on Friday, Iceland, Norway, Japan and the US called for prioritizing action on the implementation gap, while the EU emphasized that no further studies on the governance gap are needed before moving forward in considering a new UNCLOS implementation agreement. The US objected to and suggested deletion of text on the need for conservation of marine biodiversity to be based on prior environmental impact assessment, as well as on the rights of coastal States that do not accurately reflect the provisions in UNCLOS.

FISHERIES: Illegal, Unreported and Unregulated (IUU) Fishing: Many delegates identified IUU fishing as one of most urgent threats to marine biodiversity beyond areas of national jurisdiction. Canada and Mexico encouraged States to enhance implementation of measures to combat IUU fishing. The Marshall Islands expressed particular concern about IUU fishing

in areas with vulnerable ecosystems, while Fiji and the Group of 77 and China (G-77/China) called for the elimination of fisheries subsidies contributing to IUU fishing. Argentina highlighted the importance of strengthening flag State measures.

Japan and the Republic of Korea favored addressing IUU fishing within the framework of RFMOs and the FAO, rather than within this Working Group. The International Ocean Institute drew attention to the link between IUU fishing, flags of convenience and bottom trawling. The CBD noted its ongoing work on identifying options for cooperation between UNCLOS and CBD on IUU fishing. Palau highlighted the inability of RFMOs to regulate destructive fishing practices by vessels flagged to a non-Party.

Destructive fishing practices: Numerous delegates identified destructive fishing practices as yet another urgent threat to marine biodiversity beyond areas of national jurisdiction. Nigeria underscored the need to avoid destructive fishing practices particularly in "the Area," which is the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. The Natural Resources Defense Council reiterated the need for further information on past and present deep water fishing activities and their effects on deep sea fish stocks and ecosystems. Mexico favored improving States' implementation of measures to reduce destructive fishing practices in vulnerable marine ecosystems.

The US underlined the efforts of RFMOs to respond to General Assembly resolution 59/25 on destructive fishing practices and the action of States to better control fishing vessels. The Republic of Korea maintained that the FAO is the most suitable forum to address IUU fishing.

During Friday's discussions on the draft Co-Chairs' summary of trends, Palau noted that sufficient evidence exists on destructive fishing practices for action to be taken promptly, and highlighted the inability of RFMOs to regulate destructive fishing practices by vessels flagged to a non-Party. With Greenpeace, he reiterated the call for an interim prohibition on bottom trawling to be addressed by the 61st session of the General Assembly. The Republic of Korea said destructive fishing practices should only be used to describe bottom trawling, and no other kind of trawling.

MARINE PROTECTED AREAS: Discussions on MPAs focused on the WSSD goal to establish global representative networks of MPAs by 2012, as well as the need to develop multipurpose MPAs, and define criteria for their identification, establishment and management.

New Zealand, the EU and Greenpeace prioritized the establishment of a global representative network of high seas MPAs. Greenpeace further noted that the creation of a global network of no-take marine reserves should be based on prior environmental impact assessment, the precautionary principle and the ecosystem-based management approach, and the European Community highlighted the need to establish MPAs for fisheries conservation and biodiversity protection.

The International Coalition of Fisheries Associations expressed reservations about the role of MPAs as a fisheries management tool, and cautioned against the envisaged network of MPAs. The US clarified that the WSSD goal refers to representative "networks," rather than to "a network," of MPAs,

stressing that MPAs must have a clearly delineated impact area, and opposing the conception of MPAs conceived as “no-go zones.” Argentina said that the establishment of high seas MPAs in the proximity of a coastal State should take into account the interests of that State.

The EU, Australia, New Zealand and Greenpeace stressed the need to develop scientific criteria for the establishment, identification and management of MPAs. The EU also noted the importance of recognizing the existing role and mandate of the FAO, CBD, IMO, and the Regional Seas Conventions. Mexico suggested that the CBD and FAO address the scientific aspects of high seas MPAs, while the General Assembly promotes cooperation and coordination in the identification of relevant criteria.

The US supported existing mechanisms to create MPAs, such as RFMOs and the IMO, while Argentina cautioned against giving RFMOs the mandate to establish MPAs in the high seas, giving their limited membership. Australia proposed coordinating the different purposes and objectives of MPAs, such as biodiversity protection and fisheries management, since RFMOs cannot be expected to establish MPAs for purposes other than fisheries conservation.

During Friday’s discussions on the draft Co-Chairs’ summary of trends, the US objected to, and requested deletion of, paragraphs referring to: area-based management tools that failed to mention the linkage between threats and management measures; and establishing and regulating MPAs, which lacked reference to the need to previously determine if an activity adversely impacts marine biodiversity. The Sea Turtle Restoration Project emphasized the need to distinguish between urgency of action and urgency of discussion, calling for prompt action on the establishment of time and area closure and MPAs.

The Republic of Korea underscored his country’s opposition to the establishment of MPAs in the high seas. Australia and New Zealand reiterated the need for prioritizing further work on criteria for the identification of MPAs, with the EU stressing that multipurpose MPAs are the key tool to manage biodiversity and vital for establishing a global representative network of MPAs before 2012.

MARINE GENETIC RESOURCES: Discussions on marine genetic resources focused on the legal status of marine genetic resources beyond areas of national jurisdiction, and on the possible regulation of access to, and the equitable sharing of, benefits arising from such resources.

The G-77/China argued that while the principle of the common heritage of mankind applies to all resources of the deep seabed, norms could be developed to implement access to, and benefit-sharing from, genetic resources beyond areas of national jurisdiction. Emphasizing the role of the ISA and the integrity of UNCLOS, the G-77/China also called for consideration of new or improved implementation mechanisms and options for institutional arrangements, including the ISA’s existing capacity.

Chile elaborated that the Area is governed by the *jus cogens* principle of common heritage of mankind, which also applies to UNCLOS non-parties, and Indonesia said this principle should be applied to bioprospecting. Brazil suggested that biological resources in the Area be used for the benefit of present generations and preserved for future generations. Argentina

suggested, as a first step, establishing norms on access to, and distribution of benefits deriving from, marine genetic resources. Cuba stressed that access to genetic resources should not be a privilege of developed countries.

Japan, opposed by Palau, indicated that UNCLOS Part XI (the Area) only covers non-living resources, questioning the need for a new legal framework, and highlighting that the ISA’s role should not be changed. The US argued that marine living resources beyond areas of national jurisdiction fall under the regime of the high seas, thus contesting the existence of a governance gap. The EU argued that marine genetic resources do not fall under the competence of the ISA, and that the UNCLOS regime on high seas fisheries may not be appropriate for genetic resources. Alternatively, he proposed: clarifying their legal status; ensuring effective environmental management guided by the precautionary and ecosystem approaches; and, as an initial step, adopting voluntary instruments.

The US and Mexico suggested setting aside the question of the status of marine genetic resources beyond areas of national jurisdiction, with Mexico favoring instead the development of benefit-sharing mechanisms including non-monetary benefits. IUCN encouraged States to reconfirm principles under existing regimes that apply to activities beyond areas of national jurisdiction, which could provide the basis for voluntary codes and guidelines on deep seabed genetic resources.

During Friday’s discussions on the draft Co-Chairs’ summary of trends, the US, opposed by Sierra Leone, reaffirmed the view that marine biodiversity resources beyond areas of national jurisdiction are not part of the common heritage of mankind, arguing that UNCLOS provisions in this regard apply only to mineral resources. The US disagreed with, and asked for deletion of, text implying that genetic resources have to be regulated.

MARINE SCIENTIFIC RESEARCH: Discussions on marine scientific research focused on the need for: regulation of marine scientific research (MSR) and bioprospecting; further information and knowledge sharing on research programmes; and transfer of marine science technology.

Bangladesh suggested exploring possible mandatory regulations on MSR and bioprospecting. Mexico proposed further studies on the national implementation of intellectual property rights (IPRs) related to MSR, as well as focusing on harmonizing IPRs with UNCLOS provisions, rather than negotiating definitions for MSR and bioprospecting. Brazil argued that MSR in the Area should benefit mankind and entail broader cooperation and participation by developing countries. Nigeria highlighted the need for further research in the Area and the equitable sharing of MSR outcomes.

Cautioning against the “hasty imposition” of regulations on MSR, Japan said the Working Group should focus on existing agreements, guidelines, and conservation and management measures, rather than discussing new instruments or amendments. The Republic of Korea called for promoting and facilitating MSR rather than creating obstacles to it. Many others said MSR should entail capacity building and technology transfer to enable developing country participation.

The US opposed the development of a regulatory regime on MSR, favoring instead the consideration of guidelines on the conduct of MSR. She suggested focusing on ways to minimize the negative impacts of MSR on marine ecosystems and sharing MSR results with developing countries.

The EU noted that MSR is regulated by UNCLOS Part XIII and UNCLOS provisions on environmental protection. Australia called for more research on uses of biodiversity beyond areas of national jurisdiction to strengthen resource management. IUCN reiterated the need for improved international collaboration regarding MSR.

During Friday's discussions on the Co-Chairs' summary of trends, Norway, the US, and Iceland reiterated the call to prioritize the promotion of MSR beyond areas of national jurisdiction and capacity building for developing country scientists and resource managers. The US also said that the right of all States to conduct MSR was not accurately reflected in the Co-Chairs' summary, and called for deletion of references to carrying out MSR in the Area for the benefit of mankind.

COORDINATION AND COOPERATION: Highlighting the overlapping forums on marine biodiversity, Canada, Brazil and Australia called for better cooperation and coordination among intergovernmental bodies and agencies addressing oceans-related issues. Australia also emphasized cooperation between governments, with Argentina and Canada highlighting that it is important for States to express coherent government positions in different forums. Monaco highlighted the need to coordinate international and regional regimes, including the Convention on Migratory Species and RFMOs. Australia proposed accounting for the work on the conservation of high seas biodiversity undertaken by other multilateral environmental agreements, such as the Convention on Migratory Species and the Convention on International Trade in Endangered Species, and called for an update on the activities of UN-OCEANS.

On Friday, in discussing the draft Co-Chairs' summary of trends, the Russian Federation and Venezuela highlighted the relevance of the CBD and indicated that it should be listed as part of the relevant legal framework applicable to marine biodiversity beyond areas of national jurisdiction.

FUTURE PROCESS: Discussions on the future process focused on how to continue the consideration of issues addressed by the Working Group. The EU, the G-77/China, the Marshall Islands, Norway, Palau and the Philippines supported continuing the discussions under the auspices of the General Assembly. Trinidad and Tobago favored an extension of the Working Group's mandate, with the EU proposing to convene a second Working Group in 2007, mandated to develop the terms of reference of a new UNCLOS implementation agreement. On Friday, when discussing the draft Co-Chairs' summary of trends, the US reserved her country's view on the future process, pending the finalization of the Co-Chairs' summary of trends and report of discussions.

Draft Co-Chairs' Summary of Trends: The draft Co-Chairs' summary of trends reflects the Co-Chairs' general understanding of the issues, possible options and approaches, without prejudice to national positions and future discussions, and is to be read in conjunction with the summary of discussions of the Working Group.

On the legal framework, the Co-Chairs report that:

- the General Assembly plays a central role in addressing issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction;
- other organizations, processes and agreements have an essential complementary role and should contribute to an integrated consideration of these issues by the General Assembly;
- UNCLOS sets out the legal framework within which all activities in the oceans must be carried out;
- other conventions and instruments complement the current legal framework for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction;
- UNCLOS and other relevant instruments need to be effectively implemented, including through capacity building;
- the conservation and sustainable use of marine biodiversity should be based on the precautionary and ecosystem approaches, and prior environmental impact assessment;
- coastal States have the right to regulate activities with adverse impacts on their continental shelf; and
- there is a need to study and determine whether a governance gap exists in marine areas beyond national jurisdiction and, if so, whether there is a need for the development of a UNCLOS implementation agreement to address the establishment and regulation of multipurpose MPAs as well as other issues.

On fishing practices, the Co-Chairs report that:

- destructive fishing practices should be addressed on an urgent basis in, *inter alia*, the General Assembly, FAO and RFMOs, noting that the issue will be addressed during the 61st session of the General Assembly;
 - IUU fishing is a major obstacle to the conservation and sustainable use of marine biodiversity; and
 - an integrated approach to address flag States responsibilities, port State measures, compliance and enforcement is essential.
- On MSR, the Co-Chairs report that:
- the international community needs to improve knowledge-sharing from research programmes;
 - greater participation of scientists from developing countries is needed, and the role of the ISA in this regard is important;
 - the transfer of marine science and technology to developing States on reasonable and fair terms and conditions is vital;
 - MSR should be conducted in conformity with UNCLOS, and MSR in the Area must be carried out for the benefit of mankind; and
 - the development of codes of conduct, such as an international code of conduct for responsible MSR, guidelines and impact assessments should be addressed.

On genetic resources, the Co-Chairs report that:

- further discussion is necessary on the legal status of marine biodiversity, including genetic resources beyond areas of national jurisdiction, to clarify how such resources may have to be regulated, and whether existing tools are sufficient or new tools are required for the conservation and sustainable use of, including access to, and sharing of benefits arising from genetic resources;

- the symbiotic relationship between genetic resources of the deep seabed, the biodiversity of the deep sea water column and the non-living resources beyond areas of national jurisdiction needs to be further clarified; and
- any further discussion should take into account the legitimate interests of all States.

On MPAs, the Co-Chairs report that area-based management tools, such as MPAs, are widely accepted and further elaboration of criteria for the identification, establishment and management of MPAs is required.

On coordination and cooperation, the Co-Chairs report that, given the range of forums and sectoral interests dealing with issues relating to marine biodiversity, there is a need to improve coordination and cooperation within and among States and relevant UN bodies and other organizations.

On the future process, the Co-Chairs note the wide support for an ongoing process of discussions on marine biodiversity under the auspices of the General Assembly, and the need for a focused agenda across all relevant forums. The Co-Chairs recognize that the General Assembly will decide on any relevant course of action at its 61st session.

ISSUES AND QUESTIONS REQUIRING FURTHER BACKGROUND STUDIES

Venezuela identified institutional coordination between organizations, programmes and agencies within and outside the UN system as an issue for further study, recommending it be conducted with the participation of developing country experts. Canada highlighted: better understanding of deep seas ecosystems; consolidating available information and data for assisting decision-making processes; gathering information on capacity building and the role of incentives; and analyzing governance and management issues. Canada also called for further studies on: commercial interests in deep seabed genetic resources; environmental impacts of deep seabed research; and benefit-sharing.

Trinidad and Tobago emphasized the need to clarify the legal framework applicable to marine biodiversity and listed as other issues requiring further attention: IUU fishing; bottom trawling; inter-State cooperation; capacity building; and shipping, including possible accidents involving nuclear waste. Japan noted the lack of definitions of MPAs, ecosystem approach and precautionary approach. Norway suggested a study on the threats to marine biodiversity beyond the scope of the current legal framework and on the tools presently available, while India recommended focusing on the legal regime for marine genetic resources in the high seas in the framework of UNCLOS. Australia prioritized: combining fisheries, mining and other data; allowing for scientific comparison of collected data; developing frameworks for RFMOs' cooperation in harmonizing and exchanging data; and undertaking further studies on measures to address IUU fishing and, with the US, on other human impacts on marine biodiversity.

Brazil requested further consideration of the applicability of the Agreement on Trade-Related Aspects of Intellectual Property Rights to genetic resources beyond areas of national jurisdiction. Nigeria suggested considering the reasons for the lack of political will to ratify and implement existing instruments, and the possibility of imposing sanctions on States that violate

existing rules. Mexico said further studies were needed on: marine science and socioeconomic issues related to deep seabed biodiversity; trends in national implementation of IPRs; and principles in the existing legal instruments on the conservation and sustainable use of biodiversity, including genetic resources.

China, with Brazil, emphasized the close relationship between genetic and mineral resources in the Area, and between genetic resources in the Area and in the high seas, and called for further studies. Brazil highlighted the need to mobilize financial resources for undertaking these studies and taking into account work done by the ISA. The CBD suggested prioritizing research on the distribution of seamounts and other ecosystem functioning in a range of different depths, and on the behavior of marine species.

During Friday's discussions on the Co-Chairs' summary of trends, Canada suggested omitting an annex on needed background studies, and with the EU expressed concern that the Working Group would send a message that background studies should be undertaken before taking concrete action. The Sea Turtle Restoration Project disagreed with the knowledge gap referred to regarding the distribution of marine species, seamounts and cold-water corals, stressing that existing data indicate the need for urgent action.

Draft Co-Chairs' Summary of Trends: In the draft summary of trends, the Co-Chairs identify the need for more research for the improved understanding of:

- the extent and nature of marine biodiversity beyond areas of national jurisdictions;
- anthropogenic impacts on marine biodiversity, particularly in areas of greatest vulnerability;
- economic and socioeconomic aspects; and
- legal and institutional issues.

In the annex to the draft summary of trends, the Co-Chairs also identify the need for more research for improved understanding of: the extent and nature of marine biological diversity beyond areas of national jurisdictions; anthropogenic impacts on marine biodiversity, particularly in areas of greatest vulnerability; economic and socioeconomic aspects; and legal and institutional issues.

Listing requests for specific studies in an annex, the Co-Chairs mention the need for research on, *inter alia*:

- the bathypelagic zone, trenches and seamounts, cold water coral ecosystems and associated seamounts;
- anthropogenic impacts of IUU fishing, bottom trawling, noise pollution, MSR and shipping;
- impacts of climate change in the high seas and deep seabed;
- number of vessels fishing in the high seas;
- existing and further work on MPAs;
- available management tools, including multiple-use MPAs;
- economic impacts of various activities, including IUU fishing and exploitation of deep seabed genetic resources;
- economic and market-based incentives;
- socioeconomic value of marine biodiversity beyond areas of national jurisdiction;
- existing legal framework and principles;
- mechanisms for benefit-sharing, including non-monetary benefits;

- applicability and implementation of IPRs, and their relationship with UNCLOS;
- gaps in science, scientific cooperation and technological capacity of developing countries;
- dissemination of scientific research; and
- knowledge gaps identified by the first meeting of the CBD *Ad Hoc* Working Group on Protected Areas (recommendation 1/1, paragraph 4(h)).

CLOSING SESSION

Closing the discussion on the draft Co-Chairs' summary of trends, Co-Chair Gomez-Robledo thanked participants for the frank exchange of views and for a constructive week of deliberations.

Co-Chair Burgess informed delegates that the comments expressed on the draft Co-Chairs' summary will be taken into account in the finalization of the document. He congratulated delegates for having addressed a complex web of issues, and underscored the general willingness to continue discussions on marine biodiversity beyond areas of national jurisdiction, highlighting the need for an integrated and focused approach. He also stressed the need to combine short- and long-term action, and remarked that there is not as much time to address threats to marine biodiversity as there was for drafting UNCLOS. Co-Chair Burgess gaveled the meeting to a close at 1:27 pm.

A BRIEF ANALYSIS OF THE WORKING GROUP

Characterized by a cooperative atmosphere, the Working Group on marine biodiversity marked the first opportunity to address the full range of complex issues related to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction in an integrated way and within the framework of the General Assembly. The informal setting of the meeting appealed to many delegates, who felt comfortable enough to make frank statements about their concerns on the status of marine genetic resources, marine scientific research and bioprospecting, marine protected areas, and IUU fishing and destructive fishing practices.

This brief analysis will map out the country positions that emerged from the sea of possibilities during the week-long meeting of the Working Group, chart the options for improving coordination among oceans- and biodiversity-related bodies and processes, and conclude with an assessment of the Working Group's achievements.

EMERGING POSITIONS

The Working Group inspired an honest debate among participating States on their diverse positions and priorities on the many, intertwined issues at stake. One of the key issues was the daunting question of the legal status of marine genetic resources, namely whether they are subject to the freedom of the high seas or the regime of the common heritage of mankind. The G-77/China's common position prioritized the common heritage principle, highlighting that the benefits arising from marine genetic resources should not be the privilege of economically and technologically advanced countries, but shared with developing countries through new international regulations. Within the

G-77/China, however, some countries advocated expanding the competence of the International Seabed Authority (ISA), while others favored a new institutional mechanism altogether. Either way, the G-77/China was alone in supporting the application of the common heritage regime to marine genetic resources. The US and Japan opposed the application of UNCLOS Part XI (the Area) to genetic resources, arguing that this regime applies only to mineral resources. The EU was not persuaded by applying either UNCLOS Part XI or the regime of the high seas to marine genetic resources beyond national jurisdiction, thus highlighting the need to clarify their legal status.

Clearly, a one-week meeting was not nearly enough time to allow countries to come to terms with this dilemma, and many feared that even years of negotiation may not suffice. Some, therefore, came to the conclusion that leaving aside the legal status of marine genetic resources and focusing on pragmatic rather than principled approaches would be the best way forward. Interestingly, this suggestion came from countries on opposing sides of the debate, namely Mexico, favoring the common heritage approach, and the US, invoking the freedom of the high seas. Trying to find common ground, the EU supported developing guidelines on the "handling" of marine genetic resources, and the US, supported by Canada and, to a certain extent, the G-77/China, proposed drafting a code of conduct on responsible marine scientific research (MSR) to avoid adverse effects on marine ecosystems. All of these options will be in the report to be submitted by the Working Group to the General Assembly.

Another theme that often surfaced during the discussions was the "implementation gap" – inadequate implementation of existing agreements and mechanisms – and its contraposition (according to some) or coexistence (according to others) with the "governance gap" – the need for further international instruments on currently unregulated issues. The EU insisted that these two gaps need to be addressed at the same time, and put forward a proposal for a new UNCLOS implementation agreement, mainly focusing on high seas MPAs, to fill the governance gap. Supported by NGOs, who also wished to focus on destructive fishing practices and the creation of a surveillance agency, the idea of a new implementation agreement found some potentially interested countries in Australia, Canada and New Zealand. These countries, however, needed more time to consider the merit of the proposal, to ensure its contribution to institutional coordination and harmonization, and inter-State cooperation. The EU proposal sounded less attractive to the G-77/China, since it said little or nothing on the issue of marine genetic resources, the number one priority for the developing world. The idea of a new agreement also met with opposition from the US, Japan, the Republic of Korea, Norway and Iceland, who contested the long and uncertain path of negotiating a new international instrument and argued that the full implementation of existing agreements will suffice to address the most pressing threats to marine biodiversity. All in all, while the proposal was not fast-tracked as the EU hoped, it did not fall on deaf ears either, and will be open for further discussion.

A third recurring theme of the meeting was the need to focus on short-term measures to address the most critical threats to marine biodiversity beyond areas of national jurisdiction, as

mandated by the seventh Conference of the Parties to the CBD. In this respect, early in the week delegates agreed that such threats are IUU fishing and destructive fishing practices, with Mexico, New Zealand, the EU, IUCN and Greenpeace calling for urgent measures. Palau, supported by the NGOs, was the advocate for an immediate moratorium on unregulated high seas bottom-trawling, highlighting the incompetence of RFMOs to regulate such practice by vessels under non-parties' flags. Canada pointed to RFMOs' reform and the upcoming review of the Fish Stocks Agreement as pragmatic and necessary short-term measures. Thus, an important result of the Working Group is the acknowledgment of the need for immediate action to preserve marine biodiversity beyond areas of national jurisdiction.

COORDINATED OR COMPETITIVE AGENDAS?

Since the 2002 World Summit on Sustainable Development, several diverse forums and processes have been examining the pressing issues related to marine biodiversity beyond areas of national jurisdiction in a sectoral fashion: FAO and IMO have dealt with IUU fishing; ISA with the environmental impacts of mining on the deep seabed; UNICPOLOS with bioprospecting and destructive fishing practices; and the CBD with high seas MPAs. Another area of broad agreement in the Working Group was, accordingly, the need to effectively coordinate the work of all forums and also to avoid inconsistent government positions in each of these processes.

The majority agreed that the General Assembly was the body to tackle this challenge. Venezuela and the Russian Federation, however, maintained that the role of the CBD should be prioritized in this endeavor. Mexico, on the other hand, preferred that the CBD provide input to the General Assembly on the scientific aspects related to high seas MPAs, but not on legal and technical aspects. Australia drew attention to the work on high seas biodiversity conservation of other multilateral environmental agreements, such as the Convention on Migratory Species and the Convention on International Trade in Endangered Species.

The resulting call for coordinated work and enhanced dialogue among oceans- and biodiversity-related bodies and processes will be particularly important for the upcoming CBD COP, which will have to review the work of its working group on protected areas. It will be crucial also in the busy oceans-related calendar ahead, with the upcoming Fish Stock Review Conference, UNICPOLOS-7 focusing on the ecosystem approach, the General Assembly's review of the implementation of its resolution on destructive fishing practices, and the review of the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities. Effectively protecting marine biodiversity and achieving the WSSD target on networks of MPAs will only be possible by bringing on board "green" and "blue" agencies and processes.

EVERY JOURNEY BEGINS WITH THE FIRST STEP...

Some participants arrived in New York expecting a difficult meeting with an agenda fraught with sensitive issues, such as bioprospecting and high seas protected areas, and the fear that bottom trawling would dominate the debate. Others had low expectations, especially given that the outcome would be a non-negotiated Co-Chairs' summary of trends and options. At the end of the week, the vast majority left the UN building positively

surprised that work had been concluded by lunchtime on Friday, rather than at midnight following the UNICPOLOS tradition. Participants were also fairly pleased that a non-negotiated outcome and the informal setting of the Working Group helped achieve more progress than was expected.

Countries will need to discuss further, and at length, the need for a new UNCLOS implementation agreement, the establishment of high seas MPAs and the legal regime for marine genetic resources. However, the spirit of cooperation that was palpable during the week reflects a shared understanding of the complexity of the problems and a willingness to address them.

This meeting can probably be seen as the first step of a journey into the intricacies of deep sea biodiversity, given the desire expressed by many to continue the process and convene again in the same format. When the 61st session of the General Assembly considers the Co-Chairs' report, and particularly the possibility of a future process, delegates will need to discuss increased participation of relevant international organizations, particularly those notable for their absence in the Working Group, such as IMO, FAO and major RFMOs. They will also need to look into ways to "focus discussions," perhaps by framing the agenda in terms of overarching principles, as suggested by Co-Chair Burgess, to cut across the various threats to marine biodiversity and the numerous tools for its conservation and sustainable use. Now that the first step has been taken, many pointed out the importance of completing this journey as time may be running out for deep sea biodiversity.

UPCOMING MEETINGS

13TH OCEAN SCIENCES MEETING: This meeting will take place from 20-24 February 2006, in Honolulu, Hawaii. For more information, contact: AGU Meetings Department; tel: +1-800-966-2481, ext. 333 or +1-202-777-7333; fax: +1-202-328-0566; e-mail: os-help@agu.org; internet: <http://www.agu.org/meetings/os06/>

SHARING THE FISH CONFERENCE 2006: This conference will be held from 23 February to 2 March 2006, in Perth, Australia. Organized by the Western Australian Department of Fisheries in cooperation with the FAO, this conference will focus on resource allocation and the sustainability of fisheries and will provide a neutral forum for the multi-disciplinary discussion of the elements of effective allocation of fisheries resources to ensure their sustainability. For more information, contact: Conference Secretariat; tel: +61-8-9387-1488; fax: +61-8-9387-1499; e-mail: info5@eventedge.com.au; internet: <http://www.fishallocation.com.au/>

WORLD MARITIME TECHNOLOGY CONFERENCE: This conference, organized by the Institute of Marine Engineering, Science and Technology (IMarEST), will take place from 6-10 March 2006, in London, UK. Conference themes will include: biodiversity of submarine reefs; eco-security: exotic species translocation; food security; climate change effects on reefs; and oceans policy. For more information, contact: IMarEST Events Department, tel: +44 (0)20-7382-2655; fax: +44 (0)20-7382-2667; e-mail: events@wmtc2006.com; internet: <http://www.wmtc2006.com>

EXPERT WORKSHOP ON PROTECTED AREAS: This workshop will be held on 17-18 March 2006, in Curitiba, Brazil. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=PAWS-01>

CBD COP-8 AND BIOSAFETY COP/MOP-3: The eighth meeting of the CBD Conference of the Parties is scheduled to meet from 20-31 March 2006, in Curitiba, Brazil. This meeting will be preceded by the third meeting of the Conference of the Parties serving as the Meeting of the Parties to the Biosafety Protocol, which will convene from 13-17 March 2006. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/meetings/default.aspx>

FIRST INTERNATIONAL SYMPOSIUM ON MANGROVES AS FISH HABITAT: This symposium will be held from 19-21 April 2006, in Miami, Florida, US. The symposium will seek to provide an exchange of ideas, approaches, methods and pertinent data on the linkages between mangrove forests and the fishes and fisheries associated with them. For more information, contact: Joseph Serafy (NOAA); tel: +1-305-361-4255; fax: +1-305-361-4562; e-mail: mangrovesasfishhabitat@noaa.gov; internet: <http://www.rsmas.miami.edu/conference/mangrove-fish-habitat>

ENVIROWATER 2006 CONFERENCE: The Ninth Inter-Regional Conference on Environment-Water ("Envirowater 2006") will take place from 17-19 May 2006, in Delft, the Netherlands. The conference will focus on concepts for water management and multifunctional land-uses in lowlands, with a particular focus on: opportunities and threats; water and climate change; groundwater and salt water intrusion; and water management systems as a steering instrument for planning. For more information, contact: Organizing Committee; tel: +31-317-483-849; fax: +31-317-482-166; e-mail: envirowater2006@wur.nl; internet: <http://www.isomul.com/envirowater2006/>

REVIEW CONFERENCE FOR THE STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS AGREEMENT: This conference will take place from 22-26 May 2006, at UN headquarters in New York. It will be preceded by preparatory consultations from 20-24 March 2006. For more information, contact: UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/convention_agreements/review_conf_fish_stocks.htm

UNICPOLOS-7: The seventh meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea will take place from 12-16 June 2006, at UN headquarters in New York. UNICPOLOS-7 will focus its discussions on ecosystem approaches and oceans. For more information, contact: UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-2811; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

FIRST ASIA PACIFIC CORAL REEF SYMPOSIUM: This symposium will be held from 18-24 June 2006, in Hong Kong, China, and will seek to provide a forum for scientists, educators, managers, environmentalists and other stakeholders in the Asia Pacific region to share their knowledge and experiences

on all aspects of coral reef biology, ecology, management and conservation strategies. For more information, contact: Symposium Secretariat; tel: +852-2609-6770 or +852-2609-6133; fax: +852-2603-5391; e-mail: apcrs.secretariat@cuhk.edu.hk; internet: <http://www.cuhk.edu.hk/bio/APCRS/index.htm>

41ST EUROPEAN MARINE BIOLOGY SYMPOSIUM: This symposium will take place from 4-8 September 2006, in Cork, Ireland. The theme of the symposium will be: Challenges to Marine Ecosystems. For more information, contact: Conference organizers; fax: +353 (0)21 490-4664; e-mail: EMBS41@ucc.ie; internet: <http://www.embs41.ucc.ie/index.htm>

ASCOBANS MOP-5: The fifth meeting of the Parties to the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) is scheduled to take place from 19-22 September 2006, in Egmond aan Zee, the Netherlands. For more information, contact: ASCOBANS Secretariat; tel: +49-228-815-2416; fax: +49-228-815-2440; e-mail: ascobans@ascobans.org; internet: <http://www.ascobans.org/index0401.html>

GPA IGR-2: The Second Intergovernmental Review of the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA) will take place from 16-20 October 2006, in Beijing, China. For more information, contact: GPA Secretariat; tel: +31 (0)70 311 4460; fax: +31 (0)70 345 6648; e-mail: igr2@unep.nl; internet: <http://www.gpa.unep.org/bin/php/igr/igr2/index.php>

ICRI GENERAL MEETING: This meeting of the International Coral Reef Initiative will take place from 22-23 October 2006, in Cozumel, Mexico. For more information, contact: Emily Corcoran, ICRI Secretariat; tel: +44 (0)1223 277314 ext. 289; fax: +44 (0)1223 277136; e-mail: icri@unep-wcmc.org; internet: <http://www.icriforum.org/secretariat.html>

GLOSSARY

CBD	United Nations Convention on Biological Diversity
FAO	United Nations Food and Agriculture Organization
IMO	International Maritime Organization
ISA	International Seabed Authority
IUU	Illegal, unreported and unregulated fishing
MPAs	Marine protected areas
MSR	Marine scientific research
PAs	Protected areas
RFMOs	Regional fisheries management organizations
SBSTTA	CBD Subsidiary Body on Scientific, Technical and Technologic Advice
UNCLOS	United Nations Convention on the Law of the Sea
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNICPOLOS	United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea