

## MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: THURSDAY, 1 MAY 2008

The second meeting of 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) convened for its fourth day on Thursday, 1 May, at the United Nations (UN) headquarters in New York. The Working Group addressed the issues identified in General Assembly resolution 61/222 on the existence of governance and regulatory gaps, and other matters.

### GENERAL ASSEMBLY RESOLUTION 61/222

#### EXISTENCE OF A GOVERNANCE OR REGULATORY

**GAP:** MEXICO called for better legal mechanisms and institutions, as well as the development of approaches to contend with the access and distribution of benefits from marine resources. He opposed any interpretation of legal instruments that would grant free or unlimited access to biological resources. He called for the embrace of Part XI (the Area) of UNCLOS, the Rio Principles, the ecosystem approach and environmental impact assessments, as well as for collaboration with regard to scientific research, information sharing and technology transfer. He highlighted the work carried out by UNESCO-IOC on the prevention of transborder harm, and the value of existing institutions such as the International Seabed Authority, but acknowledged the possible need to adjust mandates. He said he would consider the EU proposal on measures to contend with regulatory and governance gaps and, in conclusion, recognized consensus regarding the UNCLOS principles constituting a general framework for all activities in the seas, and the appropriateness of the Working Group as the principal forum for discussion.

ARGENTINA challenged the assumptions of a governance gap and the appropriateness of RFMOs and marine conservation measures as implementation tools, and noted the controversy on the legal regime applicable to MGRs on the seabed. He elaborated that the failure to ratify and implement existing regimes did not constitute a governance gap; that RFMOs,

given their exclusionary mandates, could not represent the interests of the international community; and that conservation of biodiversity is a state mandate, and, therefore, the exclusion of states when using conservation tools was inconsistent with UNCLOS.

The EU stressed that an implementation agreement is a priority and that the proposed agreement on addressing gaps provides a medium-term solution that will increasingly become necessary due to the insufficiency of proposed short-term solutions, such as sectoral cooperation. He suggested treating the short- and medium-term approaches as complementary, and that they would lead to an integrated, coherent and holistic regime framework.

Citing UNCLOS and several CBD articles, VENEZUELA identified the legal gaps on measures to conserve, exploit and share benefits from marine biodiversity beyond areas of national jurisdiction. He suggested promoting scientific research to better understand these issues and further debate within UNGA and in collaboration with CBD and UNCLOS on institutional and scientific issues, prior to debating political and legal issues.

INTERNATIONAL SEABED AUTHORITY highlighted the provisions and institutions relevant to EIAs, initiatives underway to develop a network of MPAs and requirements for information disclosure, and noting the existence of a comprehensive and far-reaching regime, urged delegates to avoid conflict and overlap with existing regimes if they choose to adopt new measures.

IUCN asked states to fully participate in global and regional bodies, programs and arrangements, and called for the continuation of the Working Group to address governance, regulatory, implementation and enforcement weaknesses and gaps. He urged expansion and strengthening of RFMOs, more transparent cross-sectoral cooperation on EIA and MPAs, applying the precautionary and ecosystem approaches, and making use of the best available scientific knowledge.

GREENPEACE highlighted the “glaring governance gaps,” and asked parties to consider why current instruments have not been fully implemented. He urged continued work to meet commitments on MPAs by the 2012 WSSD and CBD deadlines, called for centralization of information on IUU fishing and highlighted a website inventorying blacklisted vessels.

WWF referenced a proposed binding port-state agreement, and supported the extension of the UN Fish Stocks Agreement to include discrete high seas stocks, and addition of review provisions. He called for states to become parties to all relevant global and regional agreements, and for non-parties to act in accordance with such agreements. Noting that sectoral bodies address shipping, mining and marine living resources, he supported the establishment of an overall framework to improve inter-sectoral coordination. He suggested this framework also address EIAs and provide for regulation of new uses not covered by existing sectoral regimes.

The ADVISORY COMMITTEE FOR THE PROTECTION OF THE SEA stressed the presence of implementation, regulatory and governance gaps, and said regulatory gaps were evidenced by the unregulated nature of marine activities. She supported the EU proposal for an implementing agreement, citing the UN Fish Stocks Agreement as a relevant example, and said the Working Group should be institutionalized and meet regularly.

### **OTHER MATTERS**

The EU suggested the Working Group be given the mandate to make recommendations to UNGA at its next session, and meet again in 2009. He said the Working Group should focus its third meeting on: the implementation and enforcement of existing instruments; establishment of MPAs in areas beyond national jurisdiction; development of EIAs as a tool for improving ocean management; and practical options for access and benefit sharing of MGRs.

In response, ARGENTINA expressed concern with the focus on MPA establishment without consideration of who should adopt such measures. He highlighted the need to balance priorities, as well as define who was responsible for their execution.

DOMINICAN REPUBLIC underscored synergies between the work of the Working Group and that of UNESCO-IOC.

JAPAN explained it could not support a 2009 meeting of the Working Group if it required extra-budgetary resources, and suggested that the cost of a third meeting should be included in the next UNGA budgetary meeting for the period of 2010-2011. He also suggested that the 2009 ICP meeting be dedicated to marine biodiversity.

BRAZIL concurred with ARGENTINA on the need to clarify issues related to the enforcement, monitoring, management, location and need for MPAs. Concerning the continuation of the Working Group, he stressed the need to maintain its *ad hoc* and open-ended informal character and urged consideration of the Group's future in light of a possible ICP mandate renewal.

The US underscored that the Working Group's recommendations would be a Co-Chairs' summary, not agreed text, and, concurring with ARGENTINA, said that taking the recommendations to the CBD COP would constitute "one step too far." She highlighted the value of the Group's informal nature and called for clarification regarding the Group's focus, and, concurring with JAPAN, did not support the Group's continuation if it was extra-budgetary.

MEXICO supported the EU's proposal on the permanent nature of the Working Group. He noted the need to consolidate the Group's work and called for a clear mandate. He said that it would be "regrettable" if gains were lost due to budgetary issues. SOUTH AFRICA supported the continuation and institutionalization of the Working Group, as well as regular meetings and a mandate to make recommendations to UNGA.

CANADA opposed changing the Group's informal nature, which, he said, could be "its strongest feature," and said the UN was the appropriate forum for discussion. He argued that the two-year period between meetings was helpful, and said that if the Group were continued, the unique value added to international debate, as well as a focused agenda, would require consideration. He called for greater focus on implementation gaps, impact assessments and spatial management. If the meetings become regular, he cautioned against overlapping with other forums, and called for consideration of costs. He noted the need to differentiate between the Group's and the ICP's mandates.

ICELAND underscored the importance of the Working Group's informal character, and called for shorter and fewer prepared statements and more focused discussions, such as on implementation gaps and practical solutions on MGR conservation and exploitation, at future meetings. He argued against linkages between the Group and the ICP, and stated that he was flexible on the schedule of the Group's next meeting.

WWF supported annual meetings of the Group and focusing the discussion. He urged uptake of the future CBD decision on MPA selection criteria, as well as the CBD progress on bioregionalization, and referenced the work that will be required after the completion of the Assessment of Assessments.

### **IN THE CORRIDORS**

Having completed the consideration of issues identified in the General Assembly resolution, delegates were finally free to test the waters on the Working Group's future and outcomes of the meeting. Consensus began to emerge with regard to continuing the Working Group, although most delegates were adamant that the forum remain informal. Many recommended the Group convene annually, but others said that if extra-budgetary requirements were involved, this could not happen. Some noted - under their breath - that this was a sure-fire way of maintaining the *status quo*, complaining that a two-year gap would make it near impossible to make progress.

Many sighed in relief to learn that the afternoon's schedule was cleared for the Co-Chairs to write their statement. While many hard workers dedicated the afternoon to attend the side event and meet with other delegates, some out-of-towners were pleased to have a few hours to enjoy the sunlight and finally take a look at the cherry blossoms, which have been visible on the walk into the UN each morning. There was little more to do except await the Co-Chairs' statement, to be released Friday morning.

**ENB SUMMARY AND ANALYSIS:** The Earth Negotiations Bulletin summary and analysis of the Working Group will be available on Monday, 5 May 2008, online at: <http://www.iisd.ca/oceans/marinebiodiv2/>