

MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: TUESDAY, 31 MAY 2011

The fourth 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 Tuesday, 31 May 2011 at UN Headquarters in New York. Delegates addressed organizational issues, delivered opening statements and heard expert presentations. An open-ended Friends of the Co-Chairs group convened in the evening.

OPENING PLENARY

Co-Chair Liesbeth Lijnzaad (Netherlands) opened the meeting urging participants to agree on the way forward regarding conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ). Co-Chair Palitha Kohona (Sri Lanka) encouraged delegates to identify the areas and types of living resources to be discussed, and consider access, benefit sharing and intellectual property.

Stephen Mathias, Assistant Secretary-General for Legal Affairs, delivered opening remarks on behalf of UN Legal Counsel Patricia O'Brien, recalling the "modest but nonetheless important" recommendations of the Working Group at its third meeting; stressing that the General Assembly is the only global forum with multidisciplinary and cross-sectoral competence to provide policy guidance on all issues related to BBNJ; and highlighting the importance of the Working Group's recommendations for Rio+20.

ORGANIZATIONAL ISSUES: Co-Chair Lijnzaad introduced the provisional agenda (A/AC.276/L.5). Argentina, on behalf of the Group of 77 and China (G-77/CHINA), proposed referring to: the legal regime on MGRs, MPAs and EIA processes together, rather than as separate items; and, opposed by the US and ICELAND, discussion of possible options and approaches to "the legal regime," rather than "international cooperation and coordination," on BBNJ. Following a short suspension, the G-77/CHINA offered compromise language on considering options and approaches "on all aspects under examination within the mandate of the Working Group taking into account in particular section 10 of General Assembly Resolution 65/37." Delegates adopted the agenda as amended.

Co-Chair Lijnzaad introduced the draft format and annotated provisional agenda and organization of work (A/AC.267/L.6), noting that an open-ended Friends of the Co-Chairs group will assist in drafting recommendations for plenary consideration. Delegates adopted the document without amendment. During the

afternoon plenary, Co-Chair Lijnzaad clarified that the Friends of the Co-Chairs group is open only to national delegations.

GENERAL STATEMENTS

The G-77/CHINA emphasized that: the common heritage principle applies to biological resources of the Area, based on General Assembly Resolution 2749 (XXV) as part of customary international law; further studies on BBNJ should not be conceived as a precondition for the examination of issues related to conservation, sustainable use and benefit-sharing; the Working Group should address intellectual property rights (IPRs) relating to BBNJ; and the legal regime on conservation, sustainable use, benefit-sharing, capacity building and technology transfer should be addressed holistically by initiating a negotiation process. CHINA called for further research on BBNJ, cautioning against rushed decisions; striking a balance between conservation and sustainable use, accommodating the legitimate concerns of developing countries to use BBNJ; and relying on MSR to formulate and implement provisions on MPAs, MGRs and EIA processes. TRINIDAD AND TOBAGO called for the creation of a system to ensure developing country scientists participate in MSR in the Area.

MEXICO lamented the Working Group's slow progress on MPAs and benefit-sharing from MGRs, and called for addressing both issues as a package by providing a mandate for an intergovernmental conference. SOUTH AFRICA supported Mexico, noting that the intergovernmental conference would be without prejudice to the need for and content of a new UNCLOS implementation agreement. SOUTH AFRICA also cautioned that in the absence of progress under the General Assembly, other fora may take action, pointing to the possible relevance of the Nagoya Protocol.

The EU pointed to the gap in the current international legal and policy framework; called for a coordinated cross-sectoral approach taking into account cumulative impacts of human activities; stressed the need for an UNCLOS implementation agreement constituting a package to enable better application of existing tools such as MPAs and EIAs, and new ones such as access to and benefit sharing from MGRs. VENEZUELA called for a transparent and inclusive framework clarifying states' rights and responsibilities concerning the conservation and sustainable use of BBNJ, including access to and benefit-sharing from MGRs.

AUSTRALIA proposed: discussing conservation and sustainable use of BBNJ as a component of the "blue economy"; identifying practical action towards tangible results, including cooperation among states and intergovernmental organizations

to generate information for integrated ecosystem-based management of the oceans; understanding needed forms of assistance and capacity building; and exploring the full range of potential solutions to weaknesses and possible gaps in existing legal and governance frameworks. CANADA favored: a discussion of the regime applicable to MGRs in the high seas, separately from MGRs in the Area; regulation promoting research while ensuring responsible collection and management of MGRs; recognizing the responsibility of regional management bodies for selecting area-based management tools based on local conditions; discussing next steps in identifying EBSAs; designating and implementing pilot sites to evaluate modalities for high seas MPAs, without creating new institutions or frameworks; and sharing best practices and capacity building on EIA processes. NORWAY stressed that action is still needed within areas under national jurisdiction, and prioritized increasing effectiveness of regional management bodies. JAPAN underscored: support for establishing MPAs, cautioning against a one-size-fits-all approach; applicability of the freedom of the high seas regime to MGRs; and the need to use and publish MSR. The US stated that the freedom of high seas apply to MGRs; opposed a new legal regime on MGRs as it would impede research and development; urged states to ensure compliance with existing regional and international agreements; and called on the General Assembly to encourage competent bodies to collaborate to protect EBSAs and share relevant information. ICELAND opposed a new implementation agreement, stressing the need to focus on practical measures to address implementation gaps. The REPUBLIC OF KOREA stressed the need for science to underpin decisions on MPAs and MGRs; and improved coordination and cooperation among regional management bodies.

MONACO, supported by BRAZIL and ECUADOR, called on the international community to adopt a collective policy to ensure full and permanent protection of cetaceans on the high seas, urging states to cease to authorize catches of cetaceans on the high seas by vessels or operations under their jurisdiction. NORWAY and ICELAND opposed, stressing that the International Whaling Convention is the appropriate forum to address the sustainable use of cetaceans. PALAU called attention to shark-finning, bottom-trawling and ocean acidification.

The CBD presented the outcomes of the CBD COP 10 relevant for the Working Group, including the new Strategic Plan for 2011-2020 and its target on MPAs, and the Nagoya Protocol on access to genetic resources and fair and equitable sharing. The Food and Agriculture Organization (FAO) reported on activities relevant to the Working Group, including the Technical Guidelines on By-catch Management and Reduction of Discards and on MPAs and Fisheries, and work on deep-sea fisheries and on aquatic genetic resources for food and agriculture. The North East Atlantic Fisheries Commission (NEAFC) cautioned against duplication of work on oceans management in the UN System.

The INTERNATIONAL OCEAN NOISE COALITION drew attention to increased general recognition that ocean noise is a problem within and beyond areas of national jurisdiction, and supported the development of an UNCLOS implementation agreement as a matter of urgency. Pew Environment Group, on behalf of the DEEP SEA CONSERVATION COALITION, underscored the: importance of the blue economy for the green economy and Rio+20; need for a new UNCLOS implementation agreement to address the governance gap on BBNJ; call for a negotiating conference to provide momentum on more complete implementation of UNCLOS and increased cooperation among existing institutions, including governance reforms of RFMOs and oversight by the General Assembly; usefulness of strategic

environmental assessments of new and emerging activities in ABNJ; and urgent need to take action to end destructive fishing practices, including high seas bottom trawling. GREENPEACE welcomed the support by the G-77/China and the EU for launching a formal negotiation process on an UNCLOS implementation agreement, and encouraged delegates to focus discussions on areas of common interest.

PRESENTATIONS

Nii Allotey Odunton, ISA Secretary-General, presented on the work of the Authority, including on the protection of the marine environment. He lamented shortage of taxonomists worldwide and encouraged scientific research on biodiversity associated with inactive vents where mining could take place and cause negative impacts on marine biodiversity. He also drew delegates' attentions to the limited funds for research at the disposal of the ISA.

Rama Rao, World Intellectual Property Organization (WIPO), presented on the functions of intellectual property and the role of WIPO. He stressed that it is not possible to patent MGRs as such; and that WIPO could undertake a professional patent landscape related to products derived from MGRs in the Area, showing general innovation/technology trends and the correlation between investment in research and development and patenting, among other things.

Lyle Glowka (CBD) presented on the Nagoya Protocol, highlighting its innovations related to access, benefit-sharing and compliance. Glowka indicated that the geographic scope of the Protocol covers areas under national jurisdiction, and explained that a provision on a global multilateral benefit-sharing mechanism served to deal with irresolvable scope-related issues associated with transboundary situations or situations where prior informed consent is not possible to grant or obtain.

Harlan Cohen (IUCN) discussed EIAs, MPAs and capacity building. He outlined the requirements for EIAs under existing agreements and instruments, including UNCLOS, the FAO deep-sea fisheries guidelines and ISA mining code and highlighted relevant provisions applicable to Antarctica as an example of an EIA requirement in ABNJ. On area-based management, he supported the use of marine spatial planning for cross-sectoral alliances. He also pointed out ongoing projects on capacity building.

In ensuing discussions, delegates queried, *inter alia*: the socio-economic impacts of scientific research on livelihoods; the contribution of protected areas to research; the extent of interaction between scientists and the ISA in research programs and in result dissemination; the feasibility of organizing ISA technical seminars at the UN headquarters in New York; and responsible and shorter-term patenting.

IN THE CORRIDORS

Following a series of detailed general statements, participants in the Working Group immediately began to assess whether delegations' positions have inched closer to one another since the last meeting, particularly in light of reported intense intersessional informal consultations among developed and developing countries. While according to many it is too early in the meeting to come to any conclusion, several sensed that the time has come for the Working Group to prove its worth and produce a tangible outcome. So, although NGO representatives were surprised at being left out from the open-ended Friends of the Co-Chairs group that promptly started working on draft recommendations in the evening, they seemed willing to let the Co-Chairs find the conditions most conducive for delegations to reach a common ground.