

MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: WEDNESDAY, 1 JUNE 2011

On Wednesday, delegates exchanged ideas on various aspects of, and discussed possible options and approaches for, the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ). The Friends of the Co-Chairs group reconvened in the evening.

EXAMINATION OF ASPECTS OF BBNJ

Co-Chair Lijnzaad invited views on the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of BBNJ. MONACO favored a multilateral legal framework for the conservation of BBNJ setting out: conservation and management rules; measures against violations; and means for resolving disputes. The G-77/CHINA emphasized: the need for a legal regime based on equity and the common heritage principle applying to the biological resources of the Area; the relevance of ISA for the protection of the marine environment and MSR; and the need for a discussion of IPRs related to MGRs.

LEGAL REGIME ON MGRs: CANADA suggested the Working Group welcome efforts for developing codes of conduct for research activities, and endorse an approach balancing scientific freedom and marine conservation. The EU affirmed that a 'first come first served' approach to MGR use undermines conservation; expressed willingness to discuss ways to control access to MGRs; and favored benefit-sharing, including monetary and non-monetary benefits such as those listed in the Annex to the Nagoya Protocol.

IUCN called for a regime protecting the rights of all states, including those that have no capacity to access and utilize MGRs; and remarked that Rio+20 provides an opportunity to secure renewed commitment to address implementation gaps and address new challenges. GREENPEACE noted that both discussions on international environmental governance and the green economy at Rio+20 would help advance conservation of MGRs in ABNJ.

MPAs: CHINA highlighted principles for MPAs, including: conformity with international agreements including UNCLOS; the need for an adequate scientific base; and avoiding prejudice to states' rights to assess resources in MPAs.

SOUTH AFRICA pointed to progress at the regional level, reiterating that a possible legal basis for global action on MPAs should be part of a package including benefit-sharing. The OSPAR Secretariat reported on the: establishment of the world's first network of high seas MPAs in the OSPAR area in 2010; entry into force of management arrangements for those areas in April 2011; and ongoing efforts to formalize cooperation with other organizations with responsibility in ABNJ within the OSPAR area, to complement measures to protect biodiversity. NORWAY supported regional approaches to establishing MPAs. CANADA favored coordinated regional efforts and further examination of existing initiatives through pilot sites. The Natural Resources Defense Council (NRDC) pointed to regional cooperation for high seas MPAs as a "cumbersome process" requiring agreement between benthic and pelagic RFMOs, the IMO for shipping and the ISA for mining; and urged to fill the gap between EBSA identification and MPA designation.

The EU, supported by IUCN and GREENPEACE, called for fulfilling the 2012 MPA target set by the World Summit on Sustainable Development, remarking that the gap between EBSA identification and MPA designation in ABNJ stems from the absence of a global forum with such mandate. CHILE stressed the need for guidelines on a common methodology on MPAs. BRAZIL noted the need for a legal basis to provide details on the establishment and management of MPAs. PEW ENVIRONMENT GROUP urged putting forward recommendations to the General Assembly and Rio+20 on a focused negotiation mandate for an intergovernmental conference to address questions on MPA governance.

EIA PROCESSES: CANADA called for integrated, cross-sectoral cooperation at the regional level and more integrated scientific advice to underpin decisions, consistent with UNCLOS, CBD and the context of individual RFMOs. CHINA suggested that EIA guidelines consider the environmental diversity of marine areas and different capabilities of states. The EU, supported by IUCN, favored EIA and strategic environmental assessment (SEA) processes to prevent adverse effects including from new and emerging activities.

POSSIBLE OPTIONS AND APPROACHES

NEW ZEALAND underscored: progress in the Working Group beyond ideological debates and clear willingness from all parties to engage in substantive discussions; convergence in the identification of inadequacies of the current international legal regime related to MGRs and the protection of marine biodiversity; fast developments in IPRs related to MGRs, with incomplete information on whether MGRs originate from ABNJ in granted patents and potential grounds for abuse; and the resulting need to elaborate guidelines, rules or mechanisms.

MEXICO reiterated the need to establish an intergovernmental committee, proposing that its mandate include elaborating a comprehensive approach to MGRs, MPAs, capacity building, technology transfer, and EIA processes. He suggested: focusing on the regulation of MGRs and the creation of a benefit-sharing mechanism; using as source of inspiration the Nagoya Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR); and defining the competent body for the designation of, and definition of management measures for, MPAs, including funding needs. MEXICO also announced the distribution of a concept paper on these suggestions.

AUSTRALIA prioritized the need for the Working Group to find constructive and consensus-based ways to move forward with the debate, particularly on MGRs. He singled out the following elements of a consensus solution: ensuring protection and conservation of MGRs; avoiding or carefully managing potential adverse impacts related to their exploitation; ensuring their sustainable development; exploring different options for the international community to develop fair and practical ways to share benefits while providing ample incentive for exploration and development; and allowing continued progress on MSR activities and technology diffusion. He also expressed willingness to explore all options regarding benefit-sharing, including ideas from the Nagoya Protocol or ITPGR, a combination of the two or other approaches based on technology transfer and capacity building; and proposed considering the possibility of immediate improvement of MGR management in ABNJ and immediate benefit-sharing through technology transfer, participation in research and sharing of scientific information.

The EU called for formalizing a process towards an implementation agreement, including: general principles of conservation and management; a process for the global designation of MPAs; a global approach to EIA and SEA; and sharing of information on, access to and benefit-sharing from MGRs. The G-77/CHINA urged the Working Group to make clear recommendations to the General Assembly for meaningful negotiations on all elements of the “package” at the same speed, including conservation, sustainable use, benefit-sharing, capacity building and technology transfer; and considering conservation as one element, rather than placing specific emphasis on MPAs and EIAs as proposed by Mexico’s concept paper. INDIA favored negotiating a new implementation agreement on MGRs, and pointed to the need for scientific evidence for MPAs. FIJI recommended considering lessons learned in RFMOs, and encouraging those with mandates to form inter-regional and international agreements to do so. SOUTH AFRICA described the “air of excitement” felt from a “groundswell of positive

opinion” and the “meeting of the minds” regarding a package deal for the conservation and preservation of BBNJ on the one hand, and benefit-sharing from MGRs on the other.

Questioning the need for a new implementation agreement and considering the Working Group an adequate forum for discussions, the US encouraged: progress by states and competent organizations in identifying and managing MPAs and cooperating on a case-by-case basis on potential cumulative impacts; using EIAs to understand activities that may cause significant harmful changes to the marine environment, exchanging information about implementation of relevant UNCLOS obligations; and focusing discussion on MGRs on: conservation, potential criteria and guidelines for MSR, capacity-building and training opportunities. CANADA considered starting a negotiation process outside the Working Group premature, urging for a more focused agenda and more in-depth analysis preceding the next meeting of the Working Group on MPAs and MGRs. JAPAN favored intersessional meetings to better identify issues and feasible options, with the RUSSIAN FEDERATION and ICELAND opposing developing an implementation agreement. NORWAY prioritized implementation of existing agreements and the establishment or strengthening of regional fisheries and environmental management organizations; noting that the option of an implementation agreement should be discussed if specific threats to the marine environment are identified as not being addressed by existing frameworks and needing a global response. PEW ENVIRONMENT GROUP and GREENPEACE stressed that an implementation agreement does not need to be complex or long.

AUSTRALIA cautioned against an intergovernmental conference and proposed, instead, one or two informal intersessional workshops before the next Working Group meeting to consider all options without prejudice to national positions, focusing on: benefit-sharing mechanisms and improved management of MGRs; and conservation and management tools, including MPAs and EIAs.

IN THE CORRIDORS

At the first meeting of the Friends of the Co-Chairs group on Tuesday evening, delegates reportedly kept their cards close to their chest, preferring not to engage in in-depth exchanges on the structure or content of the Working Group’s draft recommendations before Wednesday’s plenary discussions on the preferred approach to move the debate on marine biodiversity forward. The EU, Mexico and the G-77/China pressed for an intergovernmental negotiating process, with NGOs hoping that it could be sanctioned by Rio+20 – in a move reminiscent of the mandate related to the Fish Stocks Agreement included in Agenda 21. In spite of the feeling of converging positions, however, a group of countries definitively preferred to continue with the current format, albeit with a more focused agenda and more intense intersessional work. The optimists in the room hailed the fact that the group saying “no” in 2010 is now just saying “more time,” whereas those hoping for a bolder outcome, based on a package that overcomes recent ideological divides, were worried about missing the Rio+20 boat.