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## MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: MONDAY, 7 MAY 2012

The fifth 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 Monday, 7 May 2012, at the UN Headquarters in New York. In the morning delegates addressed organizational issues, discussing the wording and sequence of agenda items. In the afternoon, delegates delivered opening statements and started substantive discussions on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ).

### *OPENING*

Stephen Mathias, Assistant Secretary-General for Legal Affairs, welcomed participants to the meeting. He highlighted, *inter alia*: oceans as an important focus of Rio+20; marine biodiversity loss as hampering efforts to meet the Millennium Development Goals; and the need to identify gaps and ways forward.

Co-Chair Palitha Kohona (Sri Lanka) emphasized the mandate of the fifth meeting of the Working Group to initiate a process on the legal framework addressing MGRs, including questions on benefits-sharing, measures such as EIAs and area-based management tools, including MPAs, capacity building and the transfer of marine technology. Noting that ten years have passed since the UN General Assembly's establishment of the Working Group, Co-Chair Liesbeth Lijnzaad (the Netherlands) emphasized the need to focus on the legal framework, including on whether a new multilateral agreement is necessary.

**ORGANIZATIONAL ISSUES:** Co-Chair Lijnzaad introduced the provisional agenda (A/AC.276/L.7), and the draft format, annotated provisional agenda and organization of work (A/AC.276/L.8).

ICELAND, with JAPAN, the RUSSIAN FEDERATION, NORWAY, the REPUBLIC OF KOREA and CANADA, supported the adoption of the provisional agenda. The EU, supported by ARGENTINA, BRAZIL, AUSTRALIA, INDIA, the PHILIPPINES and others, proposed rearranging the agenda items to discuss first the conservation and sustainable use of BBNJ including MGRs, MPAs, EIA, capacity building and technology transfer (item 4); then the identification of gaps and ways forward (item 6); and finally intersessional workshops (item 5). ARGENTINA, supported by BRAZIL, GUATEMALA and COSTA RICA, proposed including, under the item on gaps and ways forward, "within the process initiated by the General Assembly in accordance with resolution 66/231." ICELAND opposed, cautioning against placing unequal importance on this item.

JAPAN, supported by ICELAND and the RUSSIAN FEDERATION, noted that the discussion on gap identification is premature, with the RUSSIAN FEDERATION favoring merging agenda items on gap identification and intersessional workshops. ARGENTINA, BRAZIL and INDIA opposed, with ARGENTINA noting that agenda items 4 and 6 are part of the package adopted by the General Assembly, and should be discussed as such by the Working Group.

The US emphasized the workshops as the next procedural step to identify common ground among country positions. ICELAND cautioned against viewing the three agenda items in isolation. ARGENTINA stressed that the package agreed by the General Assembly did not include the workshops but only substantive issues, and that a discussion on workshops must take place after a discussion on gaps and ways forward. She also noted that the same delegations who, during the second "informal informal" consultations for Rio+20, supported work on these issues in the Working Group, are currently the ones blocking progress.

Following informal consultations, Co-Chair Lijnzaad proposed, and delegates agreed on: amending the sequence of agenda items to address, in the following order, the conservation and sustainable use of BBNJ (item 4), gaps and ways forward (item 6), and the intersessional workshops (item 5); adding reference to "within the process initiated by the General Assembly in accordance with Resolution 66/231" after each item; and clarifying that workshops will concern the issues identified in the first two items, as an input to the Working Group.

On the organization of work, BRAZIL proposed, and delegates agreed, to refer to the possibility of "informal," rather than "closed," sessions during the fifth meeting of the Working Group. BRAZIL, supported by NEW ZEALAND, AUSTRALIA, ICELAND, ARGENTINA and the PHILIPPINES, also suggested including, as part of the work of the Working Group, presentations by experts to inform the

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Working Group's discussions. Following consultations with regional groups, Co-Chair Lijnzaad proposed including expert presentations and delegates adopted the organization of work.

**GENERAL STATEMENTS:** The EU recommended that the Working Group develop its mandate towards launching negotiations of an UNCLOS implementing agreement as soon as possible and that workshops should be complementary, inclusive and restricted in time and number. Algeria for the G77/CHINA emphasized: the role of the General Assembly and UNCLOS; the relevance of common heritage as a guiding principle and part of customary international law; the implementation gap concerning UNCLOS provisions on capacity building and technology transfer; and the need to address intellectual property rights in the Working Group. VENEZUELA stated that he did not identify himself with the statement of the G77/China. ARGENTINA, CHILE and BRAZIL supported the G77/China position, with BRAZIL pointing to the precautionary principle, the Working Group as the forum for negotiations, and workshops as an alternative format to continue the Working Group's work intersessionally.

AUSTRALIA recommended bringing discussions to the point of decision and action in a limited time-period rather than in an open-ended fashion, and focusing on substantive options for enhanced conservation and sustainable use of BBNJ. JAPAN expressed doubts about the need for a new UNCLOS implementing agreement and called for building consensus on implementation gaps. NORWAY, supported by ICELAND, recommended including in the Rio+20 outcome document a clear message to support the Working Group's work.

Acknowledging the central role of the General Assembly in the conservation and sustainable use of BBNJ, MEXICO called for the Working Group to work towards the establishment of an intergovernmental negotiating committee for an UNCLOS implementing agreement. SOUTH AFRICA called for a new implementing agreement and supported reference to this in the Rio+20 outcome document. The PHILIPPINES emphasized the precautionary principle, technology transfer and capacity building. VENEZUELA pointed to the need to discuss a new legal regime based on the Rio Declaration on Environment and Development. ICELAND and the RUSSIAN FEDERATION prioritized finding common understanding on implementation gaps.

The Natural Resources Defense Council, on behalf of the DEEP SEA CONSERVATION COALITION, called on the Working Group to recommend to the General Assembly the establishment of a formal process for negotiating an UNCLOS implementing agreement along the lines of the UN Fish Stocks Agreement; and emphasized the need for intersessional workshops to begin in 2012. GREENPEACE underscored that the vast majority of states expressed support for a new UNCLOS implementing agreement in the Rio+20 process, noting that certain states expected the Working Group to inform their position on this at Rio+20, and called upon the Working Group to request the General Assembly at this next session to initiate negotiations on such an agreement in 2013.

### *CONSERVATION AND SUSTAINABLE USE OF BBNJ*

The EU indicated that an UNCLOS implementing agreement should not enter into direct management of activities that are already regulated by existing competent authorities and legally binding instruments; and that Rio+20 is an opportunity for the international community to endorse, at the highest political level, the decision to launch the negotiations of an UNCLOS implementing agreement. JAPAN reiterated that: UNCLOS Part XI (the Area) is only applicable to mineral resources in the deep seabed; scientific research and international cooperation on MGRs in ABNJ should be encouraged; and cooperation on MPAs could be improved among regional fisheries management organizations (RFMOs), the Food and Agriculture Organization (FAO) and International Maritime Organization (IMO).

CANADA stated that UNCLOS Part XI applies only to mineral resources and not to genetic resources, and that it is premature to discuss gaps and ways forward before having conducted workshops. ARGENTINA argued that the principles contained in Part XI are applicable to the Area as a whole and not only mineral resources, while Part VII (high seas) does not apply to marine areas other than the water column beyond national jurisdiction.

The REPUBLIC OF KOREA requested clarification on the nature of an "implementing" agreement. The EU explained that an implementing agreement under UNCLOS is to implement the Convention, and would be compatible with it. ICELAND noted that the two existing implementing agreements on fish stocks and on Part XI actually amended the Convention. BRAZIL urged developing a legal framework for the conservation and sustainable use of BBNJ as a fundamental matter of sustainable development.

### *IN THE CORRIDORS*

The Working Group started off with impassioned discussions on the agenda of its fifth meeting, with rifts emerging as to what is considered "part of the package" under its new mandate as agreed last year by the General Assembly. Some were concerned that those pushing for in-depth discussion of intersessional workshops were using this as a delaying tactics vis-à-vis discussions of the "real" issues, notably the legal framework for the conservation and sustainable use of BBNJ, and in particular progress on the long-standing proposal for a new UNCLOS implementing agreement. Others insisted that holding discussions on gaps in the current legal regime at this meeting would be impractical without first having reached a sufficient common understanding of key issues through the convening of the "knowledge-enhancing" workshops.

While the underlying substantive positions in this apparently procedural discussion were not new to the veterans of the process, the numerous references to the role of the Rio+20 process represented a novel turn in the Working Group discussions. Following intense negotiations on "paragraph 80" on BBNJ held last week at the second "informal informal" consultations for UNCSD, views differed as to the relationships between the Rio+20 process and the Working Group, and which of the two has the highest chance of making progress, ten years after the establishment of the Working Group.