

MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: TUESDAY, 8 MAY 2012

On Tuesday morning, the Working Group heard expert presentations in an informal information session. Delegates then resumed consideration of conservation and sustainable use of BBNJ and in the afternoon started discussions on gaps and ways forward, and on intersessional workshops. In the evening, an Open-Ended Friends of the Co-Chairs group convened to discuss the format of the Working Group's recommendations.

INFORMAL INFORMATION SESSION

Kristina Gjerde, IUCN, gave an overview of area-based management tools for BBNJ, including EIAs, codes of conduct, and strategic environmental assessments (SEAs). She highlighted: progress under the International Convention for the Prevention of Pollution from Ships (MARPOL) in ABNJ; efforts by the CBD on EBSAs; and regional conservation initiatives including those in the Mediterranean, by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), and the Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East Atlantic (OSPAR).

Marjo Vierros, UN University-Institute of Advanced Studies, presented on the sustainable use of MGRs, highlighting that: much of marine biodiversity is still unknown; there is a high probability of finding material of commercial interest in the marine environment; a large number of marine organisms have yielded patented innovation, including from ABNJ; few patents contain the coordinates of collection locations; ten countries account for 90% of patented innovations, revealing a capacity gap that should be addressed; and environmental impact concerns arise relating to ocean fertilization technologies and harvesting techniques. She concluded that the informational base concerning uses of MGRs from ABNJ remains incomplete and the number of patents that have resulted in the commercialization of new products are unknown.

Following questions from delegations, Vierros: pointed to concerns about the negative environmental impacts of continuous harvesting of MGRs for products which cannot be synthesized; linked the lack of indication of geographic origin of MGRs in patent applications to the lack of disclosure requirements in national legislation; and illustrated the uneven distribution of biodiversity in different marine areas and the limited knowledge base in this regard. Gjerde noted: inconsistent levels of accuracy

in carrying out EIA prior to deep-sea bottom-fishing in different regions; collective arrangements between OSPAR and other organizations including the International Seabed Authority (ISA); the role of the CBD in relation to activities and processes under CBD parties' control in ABNJ; and the limitations of sectoral or regional efforts to enhance coordination among different international organizations.

SPAIN questioned the selection of invitees to CBD workshops for the description of EBSAs. NEW ZEALAND and BRAZIL suggested organizing an expert presentation on intellectual property rights (IPRs). ARGENTINA recommended a presentation by ISA on its recent activities on MPAs.

CONSERVATION AND SUSTAINABLE USE OF BBNJ

CANADA underscored the need for full implementation of all agreements on marine biodiversity both within and beyond areas on national jurisdiction. Noting that "full implementation is not enough," AUSTRALIA prioritized discussion on: the process of identification of non-sector specific MPAs; full understanding of principles and approaches embodied in state practice and international guidance relevant for BBNJ; enhanced coordination and cooperation between sectoral and regional activities on conservation and sustainable use; and the technical aspects of the management of MGRs, including learning from domestic experience and improving transparency in access to MGRs.

NORWAY stated that UNCLOS Part XI applies to mineral resources and that regulation of MGRs, if desirable, should be addressed in a new instrument, expressing willingness to discuss whether MGRs should be classified as common heritage. She suggested using intersessional workshops to clarify: the extent of current bioprospecting activities, their commercial implications and IPRs; existing regulation of bioprospecting, including under UNCLOS provisions on MSR, the Nagoya Protocol on Access and Benefit-sharing and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR); detailed guidelines or rules on EIAs for certain activities in ABNJ; regional regulation of, and cooperation on, area-based management; and capacity building and technology transfer to developing countries. She also remarked that gaps could be addressed through General Assembly resolutions, international guidelines or a legally binding agreement.

The US opposed a new implementing agreement, or a regime for benefit-sharing for MGRs in ABNJ; and prioritized discussing the difference between MGRs from the seabed

and from the water column, arguing that UNCLOS Part VII (high seas) is applicable to activities concerning not only the water column but also the seabed. ARGENTINA rejected the application of the freedoms of the high seas principle to MGRs, in particular to those in the seabed, arguing that the rules on the high seas cannot apply to a different maritime area. She stated that: regional undertakings cannot be seen as a way forward on MPAs; the Working Group should not focus on resources that are already regulated such as fisheries; and there is a need to demystify IPR issues in relation to MGRs and understand different kinds of benefit-sharing, including under the CBD and the ITPGR.

NEW ZEALAND noted that: the current “piecemeal approach” concerning ocean governance is failing to protect world oceans; full implementation of existing instruments could be insufficient; and EIA requirements in UNCLOS are generic and inadequate to meet current standards. CHINA supported the position of the G-77/China and noted that: it is imperative to adopt a balanced approach to the protection of BBNJ and the rights of states under UNCLOS; the establishment of MPAs must not contravene existing UNCLOS rules on freedoms of navigation and research; and EIAs need to be conducted before undertaking activities on the seabed, while the different levels of capacity of developing countries should be taken into account. BRAZIL emphasized that UNCLOS needs to be interpreted in an evolutionary way, taking into account other international instruments contributing to the conservation and sustainable use of BBNJ.

VENEZUELA highlighted the need for clarity on the relevant principles within each instrument concerned with conservation and sustainable use of marine biodiversity, cautioning against prioritizing one instrument over others. Calling for in-depth and well-focused workshops, ICELAND stressed full implementation of existing instruments, and focusing on technical and practical issues concerning MGRs. Emphasizing full implementation of existing instruments, the REPUBLIC OF KOREA noted that UNCLOS contains safeguards applicable to the conservation of marine biodiversity. JAPAN emphasized the role of RFMOs.

The EU reiterated that full implementation of existing instruments is insufficient to conserve and sustainably use BBNJ, underscoring the need to achieve progress within the Working Group and Rio+20. He opposed the view that UNCLOS provisions on the high seas are applicable to MGRs and proposed that an UNCLOS implementing agreement provide for: a global process for the recognition of EBSAs; a global approach to EIA and SEA to address cumulative impacts and prevent adverse effects of new and emerging activities; environmental criteria for the conduct of activities related to MGRs; and a practical structure for ABS concerning MGRs in ABNJ. The RUSSIAN FEDERATION opposed the creation of new instruments.

The CBD Secretariat reported on: conducted and planned regional workshops for describing EBSAs; the preparation by SBSTTA 16 of summary reports on areas that meet the scientific criteria of EBSAs for submission to CBD COP 11; the need for refinement of voluntary guidelines for biodiversity-inclusive EIA and SEA in marine and coastal areas before submission to COP 11; and the status of signature and ratification of the Nagoya Protocol.

MEXICO called upon the General Assembly to provide a clearer definition of the scope and limits of the support it requires from the CBD and SBSTTA, reiterating the need to initiate, within the Working Group, a process leading to negotiations on a multilateral instrument and clarification of the roles of relevant international bodies. ARGENTINA noted that information prepared by the CBD and submitted to the General Assembly and this Working Group was not requested by the General Assembly. GREENPEACE praised the CBD for moving forward on marine biodiversity, noting that six years of informal discussions in the Working Group could hardly be called progress. She called for a coherent and integrated approach to MPAs worldwide.

GAPS AND WAYS FORWARD

NEW ZEALAND stated that there is disagreement on the nature of legal, governance or implementation gaps, but agreement that gaps exist, arguing that action needs to be taken quickly. BRAZIL recommended addressing a gap in the definition of a legal regime for the management of MGRs, emphasizing that resources should not be exploited on a first-come-first-served basis. SOUTH AFRICA supported an UNCLOS implementing agreement, noting that if action is not taken soon by the Working Group, other fora will take the lead, such as through the multilateral benefit-sharing mechanism envisaged under the Nagoya Protocol.

ARGENTINA prioritized addressing: the knowledge gap, in order to define the maritime areas to be covered by an UNCLOS implementing instrument; the difference between resources already regulated and those that are not; and the conservation methods to be employed for those resources that are not regulated. AUSTRALIA identified governance, coordination, implementation and information gaps that need to be addressed, reiterating the need to focus more on the technical aspects of issues such as the regulation of access to MGR in the high seas. The INTERNATIONAL OCEAN NOISE COALITION welcomed discussions on an UNCLOS implementing agreement, which should be rooted in the ecosystems approach, precautionary principle and prevention.

INTERSESSIONAL WORKSHOPS

BRAZIL, supported by the EU, proposed that the Co-Chairs, with input from delegates, prepare a guide on the issues to be addressed within the workshops, as a product of the Working Group’s discussions on gaps and ways forward.

IN THE CORRIDORS

While participants sought to measure slight but significant movements in country positions during the initial substantive exchanges on BBNJ, the role of the CBD and of the work that its Subsidiary Body on Scientific, Technical and Technological Advice undertook last week offered an inevitable comparison. Eager actors felt that lack of progress at this session of the Working Group would push them to turn to the CBD to advance on MPAs and EIAs in ABNJ. For others, “hyper-activity” on BBNJ at the CBD could upset the delicate balance evolving at the Working Group, and overload it with information and instruments that it is not able to absorb or act upon yet. Meanwhile the question remains as to whether MGRs in ABNJ would at all surface at upcoming discussions on a possible multilateral benefit-sharing mechanism under the Nagoya Protocol.