

MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: WEDNESDAY, 9 MAY 2012

On Wednesday morning, the Working Group heard an expert presentation on IPRs in an informal information session. Delegates then resumed consideration of gaps and ways forward, and of intersessional workshops. In the evening, the Open-Ended Friends of the Co-Chairs group reconvened to discuss the Working Group's recommendations.

INFORMAL INFORMATION SESSION

Claudio Chiarolla, Institute for Sustainable Development and International Relations, presented on recent developments in IRPs and MGRs. He illustrated key questions concerning patent law, particularly in the field of biotechnological inventions, its basic functions and mechanics, and its relationship with research and development activities concerning MGRs from ABNJ. He also provided an overview of international developments including: consideration of disclosure of origin of genetic resources in patent applications in the WTO Council for the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), in negotiations of the Nagoya Protocol, and under the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; and other intellectual property-related mechanisms implemented under instruments that are part of the international ABS regime alongside the Nagoya Protocol. He concluded by providing considerations on lessons learned and a possible methodology for addressing the relationship between IPRs and MGRs.

In the ensuing discussion, delegates raised questions on: the disclosure of origin of MGRs, and the potential for using the Nagoya Protocol's provision as a means to track MGRs collected from ABNJ; the sharing of non-monetary benefits under the Nagoya Protocol and ITPGR; the interaction between the CBD, TRIPS and UNCLOS; the role of users and scientists in contributing to policy-making; the definition of biochemicals; and the importance of discussing IPRs at intersessional workshops. Underlining that IPR issues do not belong in the Working Group, the US stressed that patents should not be used for enforcing benefit-sharing. Noting that IPR governance in small island developing states is still in its formative stages, FIJI expressed concern about the involvement of the scientific community and MGRs users in the policy-making process.

GAPS AND WAYS FORWARD

The EU called for an UNCLOS implementing agreement to provide: a global mechanism for establishing an MPA network in ABNJ; ABS from MGRs; and a mechanism to guide the development of new activities that are not regulated by UNCLOS and determine the cumulative impacts of traditional and new marine activities. He urged the Working Group to recommend to the General Assembly at its next session that negotiations on an implementing agreement begin at the earliest possible date, and that one or two workshops be held in 2013 to provide input to the next meeting of the Working Group to facilitate the negotiations of the agreement.

MEXICO emphasized that negotiations towards a multilateral agreement under UNCLOS should address practical options for benefit-sharing from MGRs, including: a list of economic and non-economic benefits, guarantees and promotion of participation of developing countries in strategic partnerships between public and private bodies for the development of products based on MGRs; support for private investment in pharmacological development to address health issues in developing countries; and clarification of the research chain, relevant technology transfer and links with IPRs. He also called for clarifying: the role of international and regional bodies in MPAs and EIAs; the role of third states; the objectives, duration, prohibitions, and enforcement measures related to MPAs; and ways to ensure more efficient collaboration between the General Assembly and the CBD.

SRI LANKA noted that fishing activities can negatively impact MGRs and the existing framework is inadequate to address MGRs in the water column. She called for workshops to identify areas covered by existing regimes and clarify the authority and competence of international bodies, including the Seabed Authority and CBD, and address the ongoing debate over IPRs. ARGENTINA suggested consideration of non-monetary benefit-sharing, of modalities of conduct of MSR, and of its links to development of patented products. With MEXICO, she called for greater compliance with UNCLOS Part XIV (marine technology), and underlined that the CBD should provide scientific advice, with regulatory competence belonging to the General Assembly.

Pew Environment Group, on behalf of the NATURAL RESOURCES DEFENSE COUNCIL (NRDC), praised the momentum from last year's Working Group and last week's SBSTTA, supported calls for a new implementing agreement

and for focused workshops, highlighted unmet commitments under Rio Principle 17 (EIA) and the Johannesburg Plan of Implementation target on MPAs and urged the Working Group to recommend that the General Assembly launch negotiations immediately. GREENPEACE said advances in technology have led to industrial exploitation of marine areas that were formerly *de facto* protected areas by virtue of being inaccessible, and the rights and freedoms of the oceans must be balanced by the responsibility of establishing a framework for MPAs and EIAs in ABNJ. She urged the Working Group to recommend that negotiations start in 2013.

The INSTITUTE OF MARINE ENGINEERING, SCIENCE AND TECHNOLOGY stressed that the full geographic location of MGR samples is always known to scientists through GPS, but scientific publications may not divulge commercially sensitive locations. She emphasized the need to ensure transparency and accessibility of this information.

INTERSESSIONAL WORKSHOPS

Co-Chair Lijnzaad proposed discussing the purpose, objectives, number, duration, timelines, format, participation, location and expected outcomes of the intersessional workshops, as well as the financial resources needed and required assistance to developing country participants.

ICELAND, with AUSTRALIA and CANADA, favored two workshops addressing MGRs, and conservation and area-based management tools, respectively. ICELAND suggested following the format used at a previous workshop on the impacts of bottom-fishing on vulnerable marine ecosystems. AUSTRALIA highlighted that the objective of the workshops should be to increase the collective understanding of issues and options related to the Working Group's mandate, suggesting that participation be open to both states and non-state actors, including experts. She proposed that: the workshops produce a Chair's summary, and be followed by a meeting of the Working Group to formulate recommendations; if states host the workshops, a steering group be established to guide preparations; and the Working Group agree on guidelines for the workshops at this meeting.

CANADA favored: including a range of experts presenting fact-based, options-based, non-prescriptive information to inform the Working Group; creating a setting fostering open dialogue; and calling on the Working Group to consider a process for the nomination of experts. MEXICO proposed that: only one workshop be held intersessionally before the next meeting of the Working Group; the workshop be a non-prescriptive learning space; the Working Group should provide a rigorous definition of subject matters to be considered and guidelines for their considerations; a balanced participation between developed and developing countries experts should be ensured; and the workshop should be held in New York.

BRAZIL favored: holding workshops under the auspices of the General Assembly; establishing a trust fund for supporting developing countries' participation; and addressing area-based management tools, including MPAs, international cooperation and information exchange, EIAs, new and emerging uses of BBNJ including experimental uses, MGRs and options for ABS. NORWAY supported workshops 2-5 days long, based on the best available scientific information on: the identification of gaps and areas of convergence, which was opposed by ARGENTINA; the enhanced implementation of existing instruments; and the

possibility of a new implementing agreement. ARGENTINA preferred: holding three or four workshops open to civil society to identify key issues rather than providing recommendations; and addressing MGRs and their uses, MPAs and EIAs, IPRs and benefit-sharing systems.

THE REPUBLIC OF KOREA highlighted the need to clarify how to make full use of existing instruments on conservation and on MGRs. CHINA stressed that the workshops should be the platform to discuss international and national implementation practices under existing regimes, and should be: complementary to the Working Group; non-prescriptive; and held at the UN headquarters for no less than 3 days.

The RUSSIAN FEDERATION favored two or three non-prescriptive workshops, focusing on MGRs, conservation and area-based management. The EU suggested: involving state and non-state participants in the workshops; making a Chair's summary of the workshops available to the Working Group; and holding the workshops in New York. He suggested that workshops discuss: existing regimes, their scope, and their mode of operation; options for the establishment of an MPA network in ABNJ; and mechanisms for the conservation and sustainable use of MGRs in ABNJ.

The US suggested two workshops focusing on conservation tools and on MGRs respectively and proposed they: include presentations on facts and case studies; be open to all interested states and stakeholders; be balanced in participation and topics; and last 2-3 days each. She also noted the need to: clarify if references to MGRs include only resources from the seabed or also from the water column; analyze possible kinds of benefits and examples of benefit-sharing mechanisms; and draw a distinction between the use of MGRs for developing commercial products and for food. VENEZUELA proposed making reference to CBD COP decision IX/20 (marine and coastal biodiversity) for the organization of the workshops.

ARGENTINA proposed that workshops include complementary technical inputs from the CBD, particularly on the Nagoya Protocol, and from ISA on its area-based measures. JAPAN proposed a workshop on MGRs and another on conservation of BBNJ for two days each.

The DEEP SEA CONSERVATION COALITION called for workshops to be held well before the next meeting of the Working Group and not used as an excuse to delay the start of formal negotiations. She stated that if the Working Group cannot recommend the General Assembly to start formal negotiations, states should push for an agreement on this at Rio+20.

IN THE CORRIDORS

The morning's information session on the relationship between IPRs and MGRs was almost universally well received. Participants appreciated the opportunity offered by the informal setting for framing practical questions on patent law and the lessons learned in the context of TRIPS, CBD and its Nagoya Protocol. As fears of opening up the proverbial Pandora's Box seemed to dissolve, many felt that an increased understanding of the links between intellectual property protection and promoting innovation, transferring technology and sharing benefits from marine organisms could help in outlining options for the Working Group. However, it remains to be seen whether and how these discussions will continue in the intersessional workshops and beyond.