



SUMMARY OF THE SIXTH MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 19-23 AUGUST 2013

The sixth meeting of the Ad Hoc Open-ended Informal Working Group (hereinafter, the Working Group) to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ) convened from 19-23 August 2013 at UN Headquarters in New York. The meeting was called by the General Assembly in resolution 67/78 and was held in light of paragraph 162 of the 2012 UN Conference on Sustainable Development's (UNCSD or Rio+20) outcome document "The Future We Want," which contains a commitment to address on an urgent basis, building on the work of the Working Group, the issue of BBNJ including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea (UNCLOS), before the end of the sixty-ninth session of the UN General Assembly. The meeting aimed to identify gaps and ways forward with a view to ensuring an effective legal framework on BBNJ, drawing upon inputs provided by intersessional workshops, which were held in early May 2013 to improve understanding of BBNJ issues and lead to a more productive debate in the Working Group.

The meeting was attended by close to 300 participants, including national delegations, intergovernmental organizations and non-governmental organizations. Delegates delivered general statements on Monday, and engaged in brief plenary discussions of the conservation and sustainable use of BBNJ, and on gaps and ways forward on Monday and Tuesday. Draft recommendations on next procedural steps were then discussed by a Friends of the Co-Chairs' group that was open only to national delegations from Wednesday through Friday. Delegates agreed by consensus to establish a preparatory process in the Working Group to fulfill the Rio+20 commitment by focusing on the scope, parameters and feasibility of an international instrument under UNCLOS. The Working Group is thus expected to be convened twice in 2014 and at least once in 2015, with a view to preparing for a decision on BBNJ by the General Assembly before the end of its sixty-ninth session.

This briefing note summarizes the discussions and the recommendations adopted by the Working Group and is organized according to the agenda.

OPENING SESSION

On Monday morning, 19 August 2013, Patricia O'Brien, Under-Secretary-General for Legal Affairs and UN Legal

Counsel, opened the meeting and delivered opening remarks on behalf of the UN Secretary-General Ban Ki-moon. She emphasized that in 2012 the Working Group was called upon to embark on a "new journey" to ensure an effective legal framework to address BBNJ, and recalled the commitment on BBNJ included in the Rio+20 outcome document. Co-Chair Palitha Kohona (Sri Lanka) reported that the two intersessional workshops contributed to developing significant understanding, but that gaps and significant divergence of views remain. Co-Chair Liesbeth Lijnzaad (Netherlands) emphasized that Rio+20 identified August 2015 as the deadline for discussions on BBNJ and encouraged delegates to identify a way forward.

ORGANIZATIONAL MATTERS: Co-Chair Lijnzaad introduced the provisional agenda and the organization of work (A/AC. 276/L.9-10). She also drew attention to the summary of proceedings of the intersessional workshops (A/AC. 276/6) and to a note verbale dated 23 July 2013 submitted by Lithuania on behalf of the European Union (EU) and addressed to the UN Secretary-General, which was issued as an official document (A/AC. 276/7) at the request of the EU. On the organization of work, Co-Chair Lijnzaad proposed to create an open-ended Friends of the Co-Chairs' group to assist in the elaboration of draft recommendations for discussion and adoption by consensus by the Working Group. The agenda and organization of work were adopted without amendment.

GENERAL STATEMENTS

On Monday, delegates delivered general statements, with many referring to the commitment on BBNJ in the Rio+20 outcome document. Fiji, on behalf of the Group of 77 and China (G-77/China) reiterated: the central role of the UN General Assembly and UNCLOS for the conservation and sustainable use of BBNJ; the understanding that the seabed beyond the limits of national jurisdiction (the Area) and its resources include biological ones, in accordance with UN General Assembly resolution 27/49 as part of customary international law; the greatest implementation gap concerns technology transfer; the paramount importance of intellectual property rights (IPRs) to the understanding of the exploitation of marine genetic resources (MGRs); and the mandate emerging from Rio+20, calling for an intergovernmental conference on a new legal instrument on BBNJ.

Jamaica underscored the need for: taking early action on a new international instrument under UNCLOS as a priority; reinforcing the work of the Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access and Benefit-sharing, while ensuring coherence with the work of the UN Food and Agriculture Organization (FAO), the World Trade Organization (WTO) and the World Health Organization (WHO) in the proposed implementing agreement, taking into account

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best practices from regional programmes; and considering ongoing work under the International Seabed Authority and its implications for BBNJ.

South Africa supported initiatives to jump-start negotiations on a new implementing agreement, expressing concern that fora other than the UN General Assembly may take over these discussions and issue global standards. Papua New Guinea, on behalf of Pacific small island developing states, recommended that negotiations on a new implementing agreement include: environmental impact assessment (EIA) and strategic environmental assessment (SEA), marine protected areas (MPAs), MGRs, including sharing of benefits, and taking into account IPRs, scientific research, capacity building and technology transfer. Sri Lanka underscored the need for a new legal regime to address benefit-sharing and legal adjudication, and draw a distinction between pure and applied marine scientific research.

Mexico called for a discussion on a process to start negotiation of a new legal instrument to address access and benefit-sharing (ABS) from MGRs, MPAs and EIA, capacity building and technology transfer, with a view to transforming the Working Group into an intergovernmental committee. Chile remarked that fisheries are entirely covered by existing agreements and that a new implementing agreement should recognize the relevance of the common heritage principle over MGRs, taking into account economic issues, IPRs, international trade and environmental law. He proposed that the Working Group discuss the scope and content of a new implementing agreement. Brazil suggested more frequent, focused meetings to determine the scope of a future implementing agreement.

Lithuania, for the EU, stated that Rio+20 established a clear political mandate to further advance and timely conclude deliberations on BBNJ; and that the elements addressed in the intersessional workshops taken together and as a whole should form the main building blocks of a future implementing agreement under UNCLOS. He recommended starting a preparatory process to enable the required political discussion on an implementing agreement to be concluded within the deadline agreed at Rio+20. Australia supported negotiations on a new implementing agreement, noting the absence of a global framework on: area-based management including identification and management of MPAs; the scope and content of EIAs; and coordination among key sectoral and regional regimes. She called for a formalized process to deliver on the Rio+20 commitment and expressed readiness to explore the scope of a future implementing agreement. New Zealand proposed to focus on how to implement the mandate from Rio+20 in an informed and meaningful way by engaging in a more detailed discussion of the scope of future negotiations, stressing that the elements of the package agreed by the Working Group in 2011 are the core of the future negotiations and of the future agreement.

Japan underscored the need to promote scientific research in areas beyond national jurisdiction (ABNJ), while respecting the freedom of research in these areas, and to find agreement on implementation gaps in existing instruments. He stated that he is not convinced of the need for a new implementing agreement. The Republic of Korea proposed discussing MGRs separately from marine scientific research, and focusing on enhanced enforcement of existing instruments rather than setting up new mandatory rules. The US pointed to the need to strengthen implementation of existing commitments and enhance coordination and cooperation among states, institutions and sectors; and noted that the EU proposal raised some concern.

She stated, supported by Canada, that she is unconvinced that an implementation agreement is necessary or helpful to move discussions forward on BBNJ; and opposed the view that MGRs in ABNJ fall under the high seas regime or that MGRs are to be considered common heritage of mankind under customary international law.

Iceland argued that negotiating a new implementing agreement is not the only possible way forward; opposed dealing with fisheries in a new agreement; and suggested focusing on substantive issues tackled during the intersessional workshops. The Russian Federation considered it too early to discuss a new implementing agreement under UNCLOS, expressing openness to consider that possibility once regulatory gaps are demonstrated. Norway stated that he was not opposed to negotiating a new implementing agreement, but called for a detailed discussion of possible weaknesses of UNCLOS first, noting that lack of political will not be “cured” by new rules. He also underscored the difficulty of starting negotiations without first having clarified whether the common heritage principle and further regulation of fisheries are relevant for BBNJ.

WWF, the Pew Environment Group, the High Seas Alliance and the Deep Sea Conservation Coalition called for a new implementing agreement to: create a mandate to establish and enforce management measures for MPAs; develop and adopt uniform requirements for EIA and SEA for all sectoral uses in all regions; choose and create a mechanism for sharing benefits derived from MGRs; establish an effective framework for state responsibility and control of nationals, including vessels, for monitoring, control, surveillance and enforcement/compliance mechanisms for all maritime activities; establish an effective framework for coordination and cooperation among existing organizations charged with managing different types of human maritime activity, especially high-impact extractive industries, including fisheries and seabed mining; and establish an annual plenary meeting to openly discuss issues facing the high seas and to make decisions on behalf of the international community as a whole.

Greenpeace pointed to clear progress made under the CBD on ecologically and biologically sensitive areas (EBSAs) and called for fast-tracking negotiations of a new implementing agreement before a tipping point is reached. The World Ocean Council urged including in the Working Group’s discussions the fishing, shipping, oil and gas, seabed mining and aquaculture industries, noting opportunities for sharing oceans data and public-private partnership.

CONSIDERATION OF CONSERVATION AND SUSTAINABLE USE OF BBNJ

On Monday afternoon, Co-Chair Kohona invited delegates to provide a policy assessment based on the discussions at the intersessional workshops on all the elements of the “package” contained in resolution 66/231, namely: MGRs, including questions on the sharing of benefits, measures such as area-based management tools, including MPAs and EIA, capacity building and the transfer of marine technology.

The EU underscored the need for an implementing agreement to establish: a specific instrument for the creation of a network of MPAs with global recognition, international regulation of the conservation and sustainable use of MGRs, and a regime for ABS from MGRs. China stressed that the intersessional workshops did not resolve differences of views on the legal status on MGRs, calling for an innovative approach to benefit-

sharing from MGRs; and pointed to disagreement on basic questions related to MPAs and EIAs, suggesting further exploration of these issues by the Working Group.

On Tuesday morning, the G-77/China called on the Working Group to address the way forward to fulfill the Rio+20 commitment, and suggested focusing on concrete recommendations in the form of a process for political discussion on a future multilateral instrument.

GAPS AND WAYS FORWARD

On Tuesday, Co-Chair Lijnzaad invited delegates to identify gaps and ways forward with a view to ensuring an effective legal framework on BBNJ, in light of the Rio+20 outcome document and drawing upon the inputs provided by the intersessional workshops.

Iceland noted that the intersessional workshops did not provide enough opportunity for discussion among delegations, and proposed that the Working Group recommend the start of a substantive discussion, but not negotiations, with the possibility of closed sessions, in preparation for a decision by the General Assembly to be taken in 2015.

The EU argued that further progress cannot be achieved under the Working Group's current mandate, and called for a new process to determine the feasibility, scope and negotiating parameters of a new implementing agreement in the form of an intergovernmental committee. Mexico preferred turning the Working Group into an intergovernmental committee tasked to negotiate a new implementing agreement, cautioning that the deadline set by Rio+20 should not preclude negotiations from starting as soon as possible.

Trinidad and Tobago suggested that the Working Group recommend to the UN General Assembly ways and means to begin discussions on the need for the elaboration of a new implementing agreement. Argentina proposed to enhance the focus of the Working Group, with a view to providing a process that delimits the parameters and scope of negotiations for a new implementing agreement within the mandate of the Working Group. Brazil called for more frequent meetings to allow for frank substantive discussions at an expert level.

Iceland and Norway reiterated the need to entertain a substantive discussion of BBNJ issues before taking a decision on the need to negotiate an implementing agreement. The US stated that discussions on the scope and parameters of possible negotiations of a new implementing agreement should be without prejudice to the decision on how to fulfill the Rio+20 mandate and on the possible content of a decision to be taken by the UN General Assembly at its sixty-ninth session. The Russian Federation cautioned that substantive discussions on BBNJ issues should precede a decision on the way forward and proposed to hold intersessional expert meetings within the framework of the Working Group.

The G-77/China proposed initiating a preparatory process to address the feasibility, scope and general parameters of expedited negotiations on a new implementing agreement, within the mandate of the Working Group and with a view to preparing the decision to be taken by the General Assembly at its sixty-ninth session. He also enquired about the possibility to hold Working Group meetings at more frequent intervals. The EU and Norway considered the proposal by the G-77/China as a good basis for discussion. Australia noted that discussion of "feasibility" would respond to the concern voiced by another delegation not to prejudice the content of the decision to be taken by the UN

General Assembly at its sixty-ninth session, and proposed to invite a submission of views from governments on feasibility, scope and parameters.

NEGOTIATION OF THE DRAFT RECOMMENDATIONS

On Tuesday afternoon, the G-77/China circulated a written proposal calling for: a preparatory process to be established with a view to preparing the decision to be taken by the UN General Assembly at its sixty-ninth session; the UN General Assembly to task the Working Group within its mandate to address the feasibility, scope and draft parameters of a new implementing agreement, with a view to making recommendations to the General Assembly; and the task of the Working Group to be time-bound.

On Wednesday morning, following informal consultations, the EU reiterated its support to work on the basis of G-77/China's proposal. The US noted that while the proposal can provide a basis for discussion, its language should resemble more closely that of the Rio+20 outcome. Co-Chair Lijnzaad proposed to convene the Friends of the Co-Chairs' group, noting that similarly to previous meetings of the Working Group it would only be open to national delegations. Discussions continued in the Friends of the Co-Chairs' group from Wednesday to Friday.

On Thursday, an NGO statement was circulated expressing grave concern at the exclusion of civil society from the deliberations. Noting that negotiations on the high seas as a responsibility for all humankind linked to providing ecosystem services and food security for all, the NGOs argued that the negotiations must be conducted in a transparent and democratic manner and not behind closed doors. Furthermore, they said that the exclusion of civil society is a breach of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and its Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums; and called on governments to restore transparency to the BBNJ process by opening the deliberations to civil society representatives.

On Friday afternoon, Co-Chair Kohona announced that the Friends of the Co-Chairs' group had concluded its work and presented a consensus text to plenary on a process within the Working Group to prepare for a decision on BBNJ by the General Assembly before the end of its sixty-ninth session, according to the Rio+20 commitment. The draft text provided for the Working Group to meet three times to make recommendations to the General Assembly on the scope, parameters and feasibility of an international instrument under UNCLOS, and requests states to submit their views for circulation as an informal working document prior to the next meeting of the Working Group. Co-Chair Kohona further noted that delegations agreed to reflect in the Co-Chairs' meeting report the following understanding:

- reference to resolution 67/78 is for information purposes only;
- the Working Group will develop its recommendations in order to meet the deadline established at Rio+20;
- the Working Group will meet twice in 2014 and once in early 2015;
- the General Assembly in its resolution on oceans and the law of the sea at its sixty-ninth session may call for additional meetings of the Working Group; and
- if additional meetings are called for, they will be convened so as to provide sufficient time to take the decision mandated by Rio+20 before the end of the sixty-ninth session of the General Assembly.

The EU requested to include in the meeting report the understanding that every effort must be made to prepare the Working Group’s recommendations before the start of the sixty-ninth session of the General Assembly. The Russian Federation requested to include in the meeting report the understanding that the informal working document will be a compilation of views submitted by states without editing or summarizing. Co-Chair Kohona proposed to reflect these points in the meeting report, and delegates adopted the recommendations developed by the Friends of the Co-Chairs’ group without amendment.

CLOSING PLENARY

WWF, on behalf of the Deep Sea Conservation Coalition and the High Seas Alliance with other NGOs, expressed grave concern about the closed-door sessions of the Friends of the Co-Chairs’ group; reminded delegates of the commitments to civil society engagement in international forums enshrined in the Rio Declaration; and emphasized the role of civil society in initially raising concerns about BBNJ and constructively contributing to the international negotiations. He underscored that the nature of the discussions held in the Friends of the Co-Chairs’ group was far from being sensitive and justifying closed negotiations and urged requiring at future meetings of the Working Group consensus or a recorded vote before closing sessions to ensure that decisions on closing sessions to observers follow an open discussion of the justification for any closure. The Pew Environment Group stressed that the procedure followed during the Working Group meeting was a “real low in the practice of transparency by the UN,” considering that the text under discussion contained uncontroversial matters such as timelines; and recommended that the next meetings be held before September 2014.

Greenpeace welcomed the final outcome of the Working Group to continue discussions on BBNJ, while lamenting that deliberations will continue informally rather than in a formal negotiating process as called for by several delegations at the start of the meeting. She urged concluding deliberations by the start of the sixty-ninth session of the General Assembly, to take into account the urgency of the global oceans crisis, and showing political leadership to take a historical decision on oceans governance.

IUCN welcomed the decision to establish a specific preparatory process focused on scope, parameters and feasibility of a new international instrument, but cautioned against foreclosing the opportunity to take a decision earlier. He expressed deep concern that intergovernmental organizations and NGOs were excluded from the Friends of the Co-Chairs’ group and that states had not lived up to their commitment contained in the Rio+20 outcome document to enhance the participation and effective engagement of civil society in relevant international forums. He suggested adherence to the UN Rules of Procedure whereby meetings of the General Assembly and its subsidiary bodies must be held in public unless under exceptional circumstances. He also recommended establishing a formalized process for the electronic submission of views not only by states but also by organizations prior to future meetings of the Working Group.

The EU expressed sympathy for the concerns expressed by NGOs, sharing the view that public participation and transparency are important elements of global environmental governance; and stated that the working methods of the Working Group need to live up to international obligations and take into account the views of all relevant actors. Mexico supported the NGO statements and expressed willingness to move forward “in

any format.” Australia favored open sessions at future meetings of the Working Group to ensure better understanding of different perspectives including those of civil society, noting that closed sessions should not be the norm. The G-77/China took note of the interventions made by NGOs and thanked them for their patience, noting continued appreciation for their role in UN discussions. Co-Chair Kohona thanked delegations for their guidance on the conduct of future meetings.

Venezuela welcomed the new preparatory process and called for a new instrument on BBNJ to contain effective rules on the conservation and sustainable use of BBNJ by developing the principles of precaution and responsibility, and criteria to differentiate the levels of participation on the basis of equity and the duty of cooperation and solidarity. He noted the need to ensure compatibility between regimes on marine biodiversity under national jurisdiction and a future regime on BBNJ, taking into account the common heritage principle and the fact that healthy ecosystems are a benefit to humankind. Argentina emphasized that Rio+20 had injected new political momentum into the process and expressed the desire to comply with the deadline set in “The Future We Want.”

Co-Chair Kohona drew the meeting to a close at 4:07 pm.

RECOMMENDATIONS

The Working Group recommended that the General Assembly at its sixty-eighth session:

- welcome the intersessional workshops, which provided valuable scientific and technical expert information as an input to the work of the Working Group;
- reaffirm the commitment made by states at Rio+20 on BBNJ, and decide to establish a process within the Working Group to prepare for a decision by the General Assembly before the end of its sixty-ninth session on BBNJ, including by taking a decision on the development of an international instrument under UNCLOS;
- request the Working Group, within its mandate established by resolution 66/231 and in light of resolution 67/78, to make recommendations to the General Assembly on the scope, parameters and feasibility of an international instrument under UNCLOS;
- decide that the Working Group will meet for three meetings of four days each, with the possibility for the General Assembly to decide to hold additional meetings, if needed, within existing resources; and
- request the Co-Chairs to invite states to submit their views on scope, parameters and feasibility of an international instrument under the Convention for compilation and circulation as an informal working document no later than three weeks before the next meeting of the Working Group.

GLOSSARY

ABS	Access and benefit sharing
BBNJ	Marine biodiversity in areas beyond national jurisdiction
CBD	Convention on Biological Diversity
EIA	Environmental impact assessment
IPRs	Intellectual property rights
MGRs	Marine genetic resources
MPAs	Marine protected areas
Rio+20	United Nations Conference on Sustainable Development
SEA	Strategic environmental assessment
UNCLOS	UN Convention on the Law of the Sea