



## SUMMARY OF THE THIRD MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY IN AREAS BEYOND NATIONAL JURISDICTION: 1-5 FEBRUARY 2010

The third meeting of the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (hereinafter, the Working Group) convened from 1-5 February 2010 at UN Headquarters in New York. In accordance with Resolution 59/24 whereby the General Assembly established the Working Group and Resolution 63/111 by which the Assembly decided to reconvene the Working Group for the third time, the meeting examined the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, including activities of the United Nations and other relevant international organizations. Participants discussed possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (ABNJ), as well as key issues and questions for more detailed background studies. For the first time, the Working Group was asked to provide recommendations to the General Assembly. In accordance with General Assembly Resolution 64/71 of 4 December 2009, the third meeting was mandated in particular to continue discussions of the legal regime on marine genetic resources, as well as marine protected areas and environmental impact assessment processes in areas beyond national jurisdiction.

The meeting was attended by over 200 participants, including national delegations, intergovernmental organizations and non-governmental organizations. Delegates delivered general statements on Monday, and engaged in discussions of possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biodiversity in ABNJ, as well as key issues and questions for more detailed background studies, from Tuesday to Thursday. Draft recommendations to the General Assembly, prepared by the Group of Friends of the Co-Chairs, were considered in plenary on Thursday and Friday. Delegates eventually agreed by consensus to a package of recommendations to the General Assembly, that although largely considered not ambitious or

reflective of the constructive proposals made during the week, was accepted as the only possible outcome at this point in time. One of the recommendations calls for reconvening the Working Group in 2011.

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

### OPENING SESSION

On Monday morning, 1 February 2010, Asha-Rose Migiro, Deputy Secretary-General of the United Nations, opened the meeting highlighting that 2010 is the international year of biodiversity. She stressed the need for: national, regional and international action for the conservation and sustainable use of biodiversity in ABNJ; improved governance; and implementation and enforcement of existing instruments.

Working Group Co-Chair Palitha Kohona (Sri Lanka) underlined that the General Assembly requested the Working Group to make further progress on the legal regime on marine genetic resources (MGR), calling attention to the lack of clarity on areas covered by existing regimes and institutions with regard to marine biodiversity in ABNJ. Co-Chair Liesbeth Lijnzaad (Netherlands) encouraged participants to agree on concrete recommendations to forward to the General Assembly.

**ORGANIZATIONAL MATTERS:** Co-Chair Lijnzaad introduced the provisional agenda of the meeting (A/AC.276/L.3 and A/AC.276/L.4). Argentina, supported by Trinidad and Tobago, Mexico, Brazil, Sri Lanka and Ecuador, proposed inserting a specific reference to the mandate of the Working Group to address the question of the legal regime applicable to MGR in ABNJ in accordance with the UN Convention on the Law of the Sea (UNCLOS). Venezuela supported this proposal, but opposed specific reference to UNCLOS. Spain, on behalf of the European Union (EU) and its member states, and the Russian Federation favored retaining reference to UNCLOS. The US, supported by Canada and Japan, recommended following closely the language of General Assembly Resolution 64/71, requesting the Working Group to further consider the issue of the relevant legal regime. Co-Chair Lijnzaad proposed adding to Agenda Item 4 (examination of the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of biodiversity in ABNJ) “to further consider the issue of the relevant legal regime of marine genetic resources in ABNJ in accordance with law of the sea and in particular UNCLOS.” Delegates adopted the agenda as amended.

This *Briefing Note* was written by Elisa Morgera, Ph.D. The Editor is Pamela Chasek, Ph.D. <pam@iisd.org>. The Director of IISD Reporting Services is Langston James “Kimo” Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Earth Negotiations Bulletin* are the United Kingdom (through the Department for International Development – DFID), the Government of the United States of America (through the Department of State Bureau of Oceans and International Environmental and Scientific Affairs), the Government of Canada (through CIDA), the Danish Ministry of Foreign Affairs, the German Federal Ministry for Economic Cooperation and Development (BMZ), the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the Netherlands Ministry of Foreign Affairs, the European Commission (DG-ENV), and the Italian Ministry for the Environment, Land and Sea. General Support for the *Bulletin* during 2010 is provided by the Government of Australia, the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management, the Ministry of Environment of Sweden, the New Zealand Ministry of Foreign Affairs and Trade, SWAN International, Swiss Federal Office for the Environment (FOEN), the Finnish Ministry for Foreign Affairs, the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES), the Japanese Ministry of Economy, Trade and Industry (through the Global Industrial and Social Progress Research Institute - GISPRI), the Government of Iceland, the United Nations Environment Programme (UNEP), and the World Bank. The opinions expressed in the *Briefing Note* are those of the authors and do not necessarily reflect the views of IISD or other donors. Excerpts from the *Briefing Note* may be used in non-commercial publications with appropriate academic citation. For information on the *Bulletin*, including requests to provide reporting services, contact the Director of IISD Reporting Services at <kimo@iisd.org>, +1-646-536-7556 or 300 East 56th St., 11A, New York, New York 10022, USA.

Co-Chair Lijnzaad proposed to create a Group of Friends of the Co-Chairs to assist in the elaboration of draft recommendations, for discussion and adoption by consensus by the Working Group. The programme of work was agreed without amendment. Delegates appointed the US, Ireland, Slovenia, Croatia, Guatemala, Argentina, Senegal, South Africa, the Philippines and India as Friends of the Co-Chairs.

### **GENERAL STATEMENTS**

On Monday, delegates delivered general statements under the agenda item devoted to the examination of the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of biodiversity in ABNJ (A/64/66/Add.2). The Pacific Islands Forum proposed recommendations on: reaching the 2012 target on marine protected areas (MPAs) networks; improving the availability, flow and assessment of information; and improving cooperation, coordination and integration within the existing institutional framework. Australia underscored inconsistencies in the standards and approaches related to environmental impact assessment (EIA) and called for setting up a targeted programme of action to realize the 2012 MPA target in ABNJ. He further supported ongoing discussions on possible gaps in the legal and institutional framework related to marine genetic resources (MGR), noting that possible measures targeting the regulatory gaps as a medium to long-term activity must be completed by short-term measures within the existing framework.

The EU called for a two-step approach in the short-term, including a General Assembly resolution on the implementation of EIA, and the development of international guidance on EIA and strategic environmental assessment (SEA), taking into account work of the Convention on Biological Diversity (CBD). Noting that there are currently no overarching principles for the cross-sectoral and cross-regional conservation of biodiversity in ABNJ, he called for a parallel, integrated approach in the medium term.

Canada prioritized more effective implementation of existing instruments through improved cooperation and coordination among existing ocean sectors, noting that high seas MPAs are one of many tools for ensuring the conservation and sustainable use of marine biodiversity and that best available science is necessary for decision-making. Norway emphasized that regional fisheries management organizations (RFMOs) are crucial in protecting biodiversity in ABNJ. The Russian Federation noted that UNCLOS suffices to regulate activities related to biodiversity in ABNJ, pointing to the irrelevance of the common heritage principle for resources other than minerals in the Area. Opposing a new international regime on MGR in ABNJ, the US prioritized discussions of practical measures on EIA and MPAs, requiring consistency with the freedoms of the high seas including that of marine scientific research (MSR).

Iceland supported continuing debate on equitable, fair and practical solutions on MGR in ABNJ including benefit-sharing within the existing legal framework. New Zealand encouraged focusing on compliance with MPAs in ABNJ and further discussing the legal regime on MGR in ABNJ, provided that the outcome does not prevent MGR utilization in new scientific and medical processes. China stressed the role of sustainable development in avoiding over-emphasis on protection over sustainable use of marine biodiversity in ABNJ.

Palau called attention to current and projected impacts of climate change on oceans and suggested encouraging enhanced efforts to better understand and reduce such impacts. Venezuela noted the possibility to amend the CBD scope of application to include components of biodiversity in ABNJ, underscoring the need to develop a transparent and inclusive legal framework for states that are not parties to UNCLOS.

Argentina prioritized addressing the question of the legal regime applicable to MGR, arguing, with Brazil, South Africa, Sri Lanka, Trinidad and Tobago, and India, that MGR are subject to the common heritage approach. South Africa further proposed recommending that the Working Group be explicitly mandated to negotiate an implementation agreement to UNCLOS in this regard.

Yemen, on behalf of the Group of 77 and China (G-77/China) stressed: the importance of the General Assembly and UNCLOS, and the complementary role of the CBD, with regard to biodiversity in ABNJ; the applicability of the common heritage principle to MGR in the seabed, ocean floor and subsoil beyond national jurisdiction; the fact that the Working Group is the only international forum in which all aspects of biodiversity in ABNJ are considered through an open and participatory process; and the need to implement UNCLOS provisions on capacity building, and transfer of technology and scientific knowledge.

IUCN suggested calling on states to implement EIA and develop SEA procedures, develop guidelines for EIAs and SEAs to ensure consistent application, and establish MPAs based on the relevant criteria elaborated by the CBD and the Food and Agriculture Organization of the UN (FAO) with a report on progress in 2012. Greenpeace prioritized adopting an international mechanism to establish MPAs in the high seas, require EIA and SEA, and address new and emerging activities, as well as MGR, by convening a diplomatic conference in 2011. The Deep Sea Conservation Coalition suggested that such a diplomatic conference lead to the adoption of a free-standing agreement or an UNCLOS implementation agreement providing for: modern conservation principles for existing, new and emerging activities in ABNJ; a mechanism for EIA and the establishment of MPAs; and effective compliance and enforcement mechanisms.

### **IDENTIFICATION OF OPTIONS, APPROACHES AND BACKGROUND STUDIES**

**STRENGTHENING THE INFORMATION BASE:** Delegates initially discussed strengthening the information base, in particular with the aim of filling knowledge gaps and addressing management, access and dissemination of information, on Tuesday. Japan suggested promoting MSR in unexplored areas. Australia called for the application of the precautionary principle, and noted the possibility of recognizing a broader role for the Intergovernmental Oceanographic Commission (IOC) and creating a single repository linking existing and new databases. Australia, the US, Canada, the EU and Iceland emphasized the role of the Regular Process for global reporting and assessment of the state of the marine environment, including socio-economic aspects (Regular Process) in addressing fragmentation in collecting and sharing information, with the EU stressing the need to rely on UN System-wide coherence. Canada noted that the Regular Process will use traditional knowledge and allow experience sharing between regional and national experts.

Argentina cautioned against a central role for the Regular Process, noting some states' reservation about the Assessment of Assessments, and recommended focusing on the role of the International Seabed Authority (ISA) in the Area. Brazil proposed strengthening participation from developing countries to overcome the Regular Process shortcomings. Mexico proposed adjusting the mandate of the ISA to oversee implementation of a mechanism to ensure the environmental sustainability of MSR in ABNJ and fair and equitable participation in the commercial and non-commercial uses of the results of MSR.

#### **CAPACITY BUILDING AND TECHNOLOGY**

**TRANSFER:** Delegates initially discussed capacity building and technology transfer on Tuesday. New Zealand drew attention to the role of UN Oceans and its task force on biodiversity in ABNJ, as well as on IOC Criteria and Guidelines on the Transfer of Marine Technology (IOC Guidelines). South Africa urged discussions on funding related to capacity building and technology transfer. Trinidad and Tobago stressed that lack of implementation of UNCLOS provisions on capacity building and technology transfer undermines the realization of the common heritage principle.

The EU suggested establishing a UN programme of cooperation in the development and transfer of marine technology to be applied on a regional level and to support developing and small island developing states in protecting marine biodiversity. The EU further suggested: MSR joint projects; specific training for EIA and MPAs, as well as for climate change mitigation and adaptation; support for research activities in areas of interest for developing countries; and capacity building in monitoring marine activities of developing country nationals.

Argentina requested focusing on capacity building specifically to evaluate the status of biodiversity in ABNJ, and technology transfer in this respect, making reference to capacity building-related provisions in UNCLOS Part XI (the Area) and the IOC Guidelines. Brazil and Sri Lanka stressed the need for MSR to be conducted with the participation of developing countries. The US noted links between capacity building and EIA, MPAs and MSR, encouraging discussion on how to better connect needs and resources. The G-77/China urged political will to implement provisions on scientific information and technology transfer.

WWF called for institutional and procedural arrangements at the global and regional levels to: ensure transposing available scientific information into the recommendations adopted by sectoral bodies; oversee sectoral bodies' activities in ensuring integrated management; ensure inter-sectoral and cumulative impact assessments; and provide a framework for the development of MPA networks. He suggested that the ISA establish and maintain a clearing house mechanism to link information available and clarify who is responsible for which type of information. The ISA and WWF prioritized taxonomy as a key area for capacity building. The Natural Resources Defense Council (NRDC) proposed establishing in the medium term a single regional overarching body to ensure communication between different sectors, and in the short term calling through a General Assembly resolution on regional and international bodies to: notify each other if planned activities may affect an ocean area of shared interest; notify each other about MPA

establishment; and refrain from authorizing activities in an area protected by another body without a prior cumulative environmental impact assessment.

**IMPLEMENTATION GAPS:** Delegates initially discussed implementation, with a focus on implementation gaps in the international legal and policy framework, on Tuesday. The EU proposed: continuing efforts to encourage universal participation in UNCLOS, regional seas agreements and RFMOs; developing a common methodology under existing international agreements for MPA designation and a global methodology for carrying out EIA at the regional level; and considering implementation of the FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas and CBD scientific criteria for the identification of significant marine areas in need of protection. The EU also suggested taking into account in the long term the possibility to develop an UNCLOS implementation agreement, and setting up a process to this end. South Africa argued that an UNCLOS implementation agreement will fill an implementation gap, rather than a regulatory gap, given the need to find a common understanding of UNCLOS broadly framed obligations, with a view to confirming the applicability of the common heritage principle to non-mineral resources, and supported the proposal to convene an intergovernmental conference in 2011. Argentina expressed willingness to accept a package that would prioritize biodiversity conservation and focus at a later stage on the legal regime of MGR and benefit-sharing. WWF underscored the need for a new legal agreement on benefit-sharing related to MGR.

Norway preferred increasing efforts to strengthen regional fisheries and environmental organizations, and, with Japan, the US, the Russian Federation and Canada, opposed negotiations of a new international legal instrument. Canada proposed instead: tasking the Regular Process to support an evaluation of existing processes to enhance cooperation and coordination; increasing participation in organizations at the national, regional and global levels; improving coordination domestically; establishing joint or coordinated work programmes among different organizations; creating cooperative arrangements at the regional level; and developing memoranda of understanding between sectoral and regional bodies. China also preferred to strengthen implementation of existing rules rather than creating new ones, cautioning against using trade barriers when tackling illegal activities.

Mexico called attention to the relationship between intellectual property rights (IPRs) and UNCLOS. The International Ocean Noise Coalition identified policy and legal gaps related to ocean noise, and suggested calling on the General Assembly to request a Secretary-General's report on the matter with possible options and approaches for further cooperation and coordination.

**INTEGRATED OCEAN MANAGEMENT AND ECOSYSTEM APPROACHES:** Delegates initially discussed integrated ocean management and ecosystem approaches, as well as cross-sectoral cooperation and coordination, on Tuesday. The EU, supported by NRDC, proposed formalizing the application of modern management principles to marine biodiversity in ABNJ through an UNCLOS implementation agreement, including: respect for the law of the sea; protection of the marine environment; international cooperation; a science-based, precautionary, ecosystem-based and integrated approach; sustainable and equitable use; public availability of information;

transparent and open decision-making; and responsibility of states as stewards of the global marine environment. Argentina expressed willingness to consider the possibility of an UNCLOS implementation agreement on principles for biodiversity in ABNJ, provided that the relevant UNCLOS provisions on the high seas and the Area were reflected.

Australia supported articulating modern management principles through a General Assembly resolution calling upon states and RFMOs to implement: long-term conservation and sustainable use, prioritizing ecosystem conservation; management based on best available information and precaution; and avoidance of adverse impacts of human activities including cumulative impacts. Japan noted different understandings of the ecosystem approach in different sectors. Canada suggested highlighting the need to: use integrated scientific advice; incorporate biodiversity objectives into sectoral management plans; and focus on the regional level.

**ENVIRONMENTAL IMPACT ASSESSMENTS:** Delegates initially discussed EIA on Wednesday. New Zealand stressed that UNCLOS Article 206 (Assessment of potential effects of activities) is binding on states, not on entities carrying out activities in ABNJ. The US encouraged international and regional bodies to use existing EIA requirements or guidelines, and suggested, with Australia, including in the Regular Process an analysis of EIAs in ABNJ, including cross-sectoral and cumulative impacts, and of capacity building for EIA. Canada called for preparatory work including adapting relevant CBD guidelines for application in ABNJ and sharing best practices, before supporting the potential application of EIA to emerging or unregulated activities in ABNJ. Mexico stressed the need to develop protocols for the protection of ecosystems in MSR and to share MSR results.

Australia recommended adopting a General Assembly resolution analogous to the process established by Resolution 61/105 on bottom fisheries to address activities in ABNJ that may have significant adverse impacts on the marine environment, so that such activities do not occur unless appropriately managed. The EU, supported by New Zealand and NRDC, proposed as an immediate measure the adoption of a General Assembly resolution on implementation of EIAs, incorporating a general process similar to that established for bottom fisheries by Resolution 61/105 to assess whether human activities have significant negative impacts on marine biodiversity in ABNJ, subject to periodic review; as well as the development of a framework for international cooperation on technical and financial support, and technology transfer for assessing, monitoring and controlling impacts of human activities. The US opposed extending the provisions of Resolution 61/105 to all possible activities in ABNJ, regardless of the nature of the activity, sector or type of areas concerned. Australia clarified that only activities with “significant adverse impacts” on the marine environment should be subject to EIA.

Greenpeace supported an approach based on Resolution 61/105 in the short term, suggesting that General Assembly discussions on fisheries and oceans resolutions occur in plenary, and noting that in the medium term a separate agreement on EIA should be negotiated. IUCN supported a General Assembly resolution calling on states to develop assessment processes, including cumulative impacts, ensure that activities are subject to prior authorization by responsible states, and share and make publicly available collected data. WWF supported a General

Assembly resolution establishing a technical body to develop EIA sector-specific and cross-sectoral guidelines, ensure public participation, require review of the implementation of guidelines by states and bodies, and create a publicly available information system.

**AREA-BASED MANAGEMENT:** Delegates initially discussed area-based management tools, in particular MPAs, on Wednesday. Australia proposed an international systematic, coordinated process to identify candidate representative areas, with the General Assembly considering areas for inclusion in an international register, thus leaving competent states and organizations to determine management and policy arrangements in the identified areas. Canada supported a regional intergovernmental process to identify priority areas, with the participation of international and country experts, building upon existing institutions.

Japan noted that MPAs are one of various options, which should be used only to respond to a scientifically-proven need for protection. New Zealand advocated for consistent international guidelines to plan and establish MPAs through a transparent approach prioritizing compliance. The US recommended establishing conservation measures in ABNJ in a manner consistent with high seas freedoms, ensuring implementation and enforcement consistent with UNCLOS, and encouraging states and relevant organizations to take management measures to protect biodiversity in these areas.

Mexico proposed identifying areas where human activities lead to irreversible ecosystem deterioration and areas requiring urgent mitigation measures, through a participatory regime. Venezuela stressed the role of the CBD in the area of MPAs. China stressed the need for developing countries to participate in the governance of MPAs, giving consideration to developing countries’ needs, including capacity building.

The EU called for developing: a common methodology for identifying areas, taking into account FAO and CBD criteria, for application at the regional level; a standard model for regional cooperation through a template memorandum of understanding for MPA designation in ABNJ; and, supported by WWF, an international list of ecologically or biologically significant marine areas to be considered by relevant organizations. The EU, supported by NRDC and WWF, recommended convening the Working Group annually, to assess progress and provide guidance for further work in an open and transparent manner.

IUCN proposed in the short term a General Assembly resolution calling on states and organizations to protect vulnerable and representative MPAs based on the CBD and FAO criteria, inviting progress reports in 2012. NRDC supported a General Assembly resolution to task the CBD, or the Working Group with the CBD and FAO, to identify areas that meet existing criteria, which should be separate from a process to take management decisions. Greenpeace underscored the need for: a systematic process to identify areas, with the General Assembly actively involved in its regular assessment and management, in the short term; a specific mandate to designate, implement, manage, monitor, control and enforce high seas MPAs, in the medium term; and in the long term, the creation of new institutions and arrangements.

**MARINE GENETIC RESOURCES:** Delegates initially discussed MGR, with a particular focus on the relevant legal regime, on Wednesday. The G-77/China indicated the common heritage regime as applicable to MGR in the Area, and proposed

strengthening the Working Group's role to regulate access to MGR. Cuba encouraged the Working Group to include in its recommendations explicit reference to the common heritage principle with regard to MGR in the Area.

Venezuela expressed preference, in the event that it is impossible to achieve progress on MGR under the CBD, for an independent international regime based on: sustainable development, conservation and sustainable use of biodiversity, fair and equitable benefit-sharing, transfer of technology and funding, participation in biotechnological research, precaution, common heritage, notification, safeguards, and respect for developing countries' development objectives.

The EU proposed addressing fair and equitable benefit-sharing as part of an integrated approach to the conservation and sustainable use of biodiversity in ABNJ, in the context of an UNCLOS implementation agreement. He therefore suggested: developing international guidance for EIA on MGRs in ABNJ, with potential further work on codes of conduct, certification and/or detailed EIA requirements at the national level for MGR collection with potential adverse effects; increasing developing countries' participation in relevant research projects; identifying realistic options to manage, store and access marine genetic materials and samples, and share benefits. The EU further noted the need to take into account CBD negotiations on an international instrument on access and benefit-sharing, and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR). South Africa and China questioned the reference to the ITPGR as it refers to genetic resources found in areas subject to national jurisdiction. China supported an implementation mechanism for MGR, covering their legal status, management, technology transfer and benefit-sharing, but expressed doubts as to the need for other elements of marine biodiversity in ABNJ to be covered.

Sri Lanka and India supported an UNCLOS implementation agreement, provided it constitutes a package including the common heritage principle. Sri Lanka also noted the need for clear understanding of criteria for regional or national patenting of MGR and derivatives, and the need for transparency in regional and national patenting processes of MGR. Trinidad and Tobago favored further discussing the elaboration of an UNCLOS implementation agreement on the governance of MGR in ABNJ, noting the need also to recommend to the General Assembly interim measures utilizing existing arrangements such as the ISA to ensure benefit-sharing. South Africa reiterated the request for an explicit mandate for the Working Group to work towards an UNCLOS implementation agreement, as well as to recommend interim measures. Argentina, supported by Ecuador and India, argued that any interim measure should be seen as part of a package taking into account the general principles applicable to the Area.

Mexico underscored the need to establish mechanisms for the administration and protection of marine biodiversity in ABNJ, recommending starting negotiations in the short term, including the designation of an institutional regime, taking into account the possibility of using existing institutions such as the ISA. As intermediate steps, Mexico proposed measures on MSR, cooperation, benefit-sharing and MPAs, consistent with UNCLOS.

Norway noted that the need for a new regime for MGR should be assessed, and that negotiations within the UN need to elicit broad support. The Russian Federation reiterated the

need to focus on the implementation of existing agreements. The US strongly opposed a new implementation agreement or a restatement of principles related to MGR, cautioning that a new legal regime on benefit-sharing would impede research. The US, Canada, Japan and Norway stressed that the common heritage regime is only applicable to mineral resources in the Area. Noting limited activities related to MGR in ABNJ, their high costs and uncertainty of their commercial viability, Canada proposed instead: developing codes of conduct for research activities; endorsing an approach for discovery of MGR based on conservation, sustainable development and precaution; and seeking a balance between environmental protection, scientific freedom and benefit-sharing.

**BACKGROUND STUDIES:** Delegates first discussed key questions where more detailed background studies would facilitate consideration by states of these issues on Thursday. Argentina noted the need for a study on the norms applicable to IPRs in relation to MGR, benefit-sharing and disclosure of origin. The US argued that policy and legal questions related to patenting are not relevant for the Working Group.

China proposed a study of capacity-building activities and needs. Palau requested a study on the adverse impacts of climate change on marine biodiversity in ABNJ. Australia suggested studies to: identify options for improved institutional and governance arrangements on information sharing; clarify the gaps, strengths and weakness of existing frameworks, which was opposed by Argentina; and, with Canada, refine biogeographic classification in ABNJ to support the creation of representative MPA networks. Canada also proposed a study on experience in conducting EIAs in ABNJ.

The ISA underscored the need for further studies on: standardizing techniques for sample collection; standardizing previously collected data; better understanding of species distribution in ABNJ; utilizing studies already carried out within national jurisdiction to better understand the environment in ABNJ; and establishing databases not only on environmental information, but also on entities conducting studies to facilitate collaboration. Co-Chair Lijnzaad informed delegates that a section on background studies would be added to the draft recommendations.

#### **DISCUSSION OF THE DRAFT RECOMMENDATIONS**

On Thursday afternoon, Co-Chair Lijnzaad presented the "draft recommendations by the Co-Chairs, in consultation with the Friends of the Co-Chairs Group," dated 4 February 2010 (hereinafter, the draft recommendations), praising the Group's collaborative atmosphere and noting that the draft covered areas where delegates "do not agree yet." She noted that another outcome of the Working Group will be a procedural report to be elaborated after the meeting, providing an overview of views expressed on the legal regime of MGR and implementation gaps. She invited delegates to adopt the draft recommendations as a whole. The G-77/China requested a brief suspension of the meeting. When the meeting resumed 15 minutes later, Co-Chair Lijnzaad again invited delegates to adopt the draft recommendations as the best achievable outcome in a spirit of compromise.

The EU considered the draft recommendations "very disappointing" and reflecting "the common lowest denominator." He questioned the lack of reference to the reasonable options discussed during the week that were supported by the EU and

states outside the EU, such as: an UNCLOS implementation agreement, a General Assembly resolution on EIA, a global methodology on EIA in ABNJ at regional or sectoral levels, a standard model for regional cooperation through a memorandum of understanding for MPA designation in ABNJ, and a list of ecologically or biologically significant marine areas for MPA designation, and continued discussion on MGR including benefit-sharing. The EU also expressed disappointment at the proposal that the meeting report only refer to one topic, and called for more progress to be achieved before the end of the meeting. Co-Chair Lijnzaad suspended the meeting to allow for consultations and proposed resuming the meeting on Friday.

On Friday late morning, Co-Chair Lijnzaad noted continuing concerns among delegates about the draft recommendations, proposed to reflect comments on the draft recommendations in the meeting report and reiterated the proposal to adopt the draft recommendations as whole by consensus. Co-Chair Kohona added that the meeting report will also include constructive suggestions made earlier in the week, noting the need to proceed “one step at a time.”

South Africa expressed dissatisfaction with the draft recommendations, noting that they did not “go far enough” on conservation and on MGR. He nonetheless appealed to delegates to keep the package intact, referring to the draft recommendations as “the best we can do this week.” Argentina stressed that like many other delegations she did not like the draft recommendations, but preferred them to having no recommendations at all. Notwithstanding possible proposals for amendments that Argentina could suggest, she encouraged delegates not to open the draft recommendations, but to accept them with the understanding that it is the minimum consensus outcome possible.

New Zealand remarked that they expected a more ambitious outcome than the draft recommendations but recognized that the draft offered a reasonable balance among the wide range of views expressed. The US considered the draft recommendations a step forward. Australia pointed to the lack of reference in the draft recommendations to the strong positive sentiment for an ecosystem approach to oceans including improved application of EIA and MPAs in ABNJ that emerged during the week, as well as the general acknowledgement of the need to accelerate efforts. The EU reiterated disappointment with the formal outcome of the meeting, noting that exchanges during the week showed broader progress than what is reflected in the draft recommendations. He underscored the desire to make a step forward by offering concrete proposals on EIA and MPAs, as well as expressing openness to discuss MGR and benefit-sharing. He proposed that concrete suggestions be reflected in the meeting report to facilitate discussion in the General Assembly and maintain momentum.

Canada proposed reflecting in the meeting report the need for: consolidated databases for integrated scientific advice on conservation and sustainable use; capacity building and technology transfer for area-based management; adapting CBD guidelines on EIA for application in ABNJ; reviewing experience in implementing EIA in marine areas to support an assessment of opportunities and challenges in carrying out EIAs in ABNJ; refining bioregionalization; and noting the relevance of the Regular Process as well as the need to ensure better regional engagement for governmental experts. China expressed concern at the various possible meanings of “cumulative impacts” and

cautioned that a “common methodology” for the identification and selection of MPAs may not be practical or appropriate. Trinidad and Tobago reiterated his position that: UNCLOS is the legal framework for the conservation and sustainable use of biodiversity in ABNJ; MGRs should be regulated by UNCLOS Part XI, including a role for the ISA; and in due course an UNCLOS implementation agreement should provide details in this respect. He noted that the draft recommendations do not reflect the majority’s views.

Venezuela, Turkey, Iran, Syria, Ecuador, Colombia and Thailand raised concerns about draft recommendations inviting states to conduct MSR and make progress on the discussions on the legal regime of MGR in accordance with UNCLOS, requesting a distinction for states that are not party to UNCLOS. Co-Chair Lijnzaad remarked that the draft recommendations did not change the mandate of the Working Group as per General Assembly Resolution 59/24 and did not have implications for the obligations of states that are not parties to UNCLOS. She explained that the draft recommendations on MGRs closely followed the relevant text of Resolution 64/71. Nevertheless, delegates continued to discuss, without reaching agreement, whether to insert language on non-parties in the draft recommendations, with some arguing that it would be a mere technical amendment and others that it would mean opening the text. Following protracted discussions and interruptions, delegates eventually agreed to make specific reference to: General Assembly Resolution 65/71, paragraph 142 (on MGR), and to “accordance with international law, in particular UNCLOS” in relation to MGR; and to “accordance with international law, in particular UNCLOS” in relation to MSR. With these amendments, delegates adopted the draft recommendations by consensus.

**Recommendations:** In the chapeau of the adopted “Draft recommendations by the Co-Chairs, in consultation with the Friends of the Co-Chairs Group,” dated 4 February 2010, the Working Group recalls the central role of the General Assembly in addressing marine biodiversity in ABNJ, highlights the important role of the Working Group, and recalls that 2010 is the International Year of Biodiversity.

On strengthening the information base, the Working Group recommends to the General Assembly that states and international competent organizations:

- use the best available scientific information in the development of sound policy relating to the conservation and sustainable use of marine biodiversity in ABNJ;
- conduct further MSR to increase the understanding of the conservation and sustainable use of marine biodiversity in ABNJ, in accordance with international law, in particular UNCLOS; and
- develop and strengthen mechanisms that facilitate the participation of developing countries in MSR, including through the ISA Endowment Fund, IOC activities and joint projects.

In addition, the General Assembly is recommended to recognize the need to consolidate and harmonize data, including by improving functional links among existing databases, and to identify measures and institutional arrangements that may be required to establish such links.

On capacity building and technology transfer, the Working Group recommends to the General Assembly that:

- it is necessary to promote, facilitate and strengthen capacity building and technology transfer, including South-South cooperation, for the conservation and sustainable use of biodiversity in ABNJ;
- competent organizations, in cooperation with states, develop capacity-building programmes and workshops for sharing skills related to scientific and technical aspects of the conservation and sustainable use of marine biodiversity in ABNJ, as well as training opportunities;
- relevant organizations collect and disseminate information on available capacity-building opportunities and on the needs expressed by developing countries, and consider how cooperation and coordination can be enhanced in this area;
- it recognizes the need to make progress on the implementation of UNCLOS provisions on the development and transfer of marine technology, applying the IOC Criteria and Guidelines in the Transfer of Marine Technology.

On cooperation and coordination in implementation, the Working Group recommends to the General Assembly that:

- states apply relevant approaches for the conservation and sustainable use of marine biodiversity in ABNJ, effectively implement relevant global and regional instruments, and consider becoming parties to these instruments;
- states and competent international organizations facilitate and enhance cooperation and coordination, including, as appropriate, through participation in regional seas conventions and RFMOs, exchange of information on best practices, and establishment of joint or coordinated programmes of work and activities.

On cooperation and coordination for integrated ocean management and ecosystem approaches, the Working Group recommends to the General Assembly that states and competent international organizations work towards a more integrated and ecosystem-based approach to the conservation and sustainable use of marine biodiversity in ABNJ to strengthen cross-sectoral cooperation and effectively address sectoral and cumulative impacts.

On EIA, the Working Group recommends that the General Assembly:

- recognize the importance of EIA, in particular for the implementation of the ecosystem and precautionary approaches;
- request the Secretary-General to include in the annual report on oceans and the law of the sea information on EIA undertaken for planned activities in ABNJ, including capacity-building needs, on the basis of information requested from states and international organizations;
- recognize the importance of further developing scientific and technical guidance on the implementation of EIA on planned activities in ABNJ, including consideration of assessments of cumulative impacts.

On area-based management, the Working Group recommends that the General Assembly:

- recognize the importance of establishing MPAs consistent with international law and based on scientific information, including representative networks by 2012;
- call upon states to work through competent international organizations towards the development of a common methodology for the identification and selection of marine

areas that may benefit from protection based on existing criteria, with a view to facilitating achievement of the 2012 MPA target.

On MGRs, the Working Group recommended that the General Assembly call upon states, in the context of the Working Group's mandate, to make progress in the discussions as referred to in Resolution 64/71, para. 142, on the relevant legal regime and implementation gaps on the conservation and sustainable use of MGR in ABNJ in accordance with international law, in particular UNCLOS, taking into account the views of states on UNCLOS Parts VII (high seas) and XI (the Area).

Finally, the Working Group recommends that the General Assembly decide to convene a meeting of the Working Group in 2011, to provide further recommendations to the General Assembly.

### CLOSING PLENARY

Following the adoption of the draft recommendations, Japan expressed concern about the budgetary implications of the recommendation calling for reconvening the Working Group in 2011, recommending specific consideration of this point by the General Assembly. The G-77/China expressed dismay at the process used in reaching consensus, stressing the importance of fairness and transparency in the Working Group.

WWF, Greenpeace and the Deep Sea Conservation Coalition: regretted that the progressive tone of the week's discussions was not reflected in the recommendations; welcomed the recommendation to reconvene the Working Group in 2011; and encouraged delegates to meet informally intersessionally to facilitate progress, in particular on global guidelines on EIA, SEA and MPA networks.

Co-Chair Lijnzaad expressed hope that the General Assembly will endorse the recommendations to reconvene the Working Group in 2011, and gaveled the meeting to a close at 7:00 pm.

### GLOSSARY

ABNJ	Areas beyond national jurisdiction
CBD	Convention on Biological Diversity
EIA	Environmental impact assessment
IOC	Intergovernmental Oceanographic Commission
IOC Guidelines	IOC Criteria and Guidelines on the Transfer of Marine Technology
IPRs	Intellectual Property Rights
ISA	International Seabed Authority
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
MGR	Marine genetic resources
MPAs	Marine protected areas
MSR	Marine scientific research organizations
RFMOs	Regional fisheries management organizations
SEA	Strategic environmental assessment
UNCLOS	United Nations Convention on the Law of the Sea
Working Group	<i>Ad Hoc</i> Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction