

# **Report 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**

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## **Agenda item 5 (b)**

### **Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction**

16. The debate on the scientific, technical, economic, legal, environmental, socioeconomic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction generated a broad range of questions, observations and suggestions. The questions, raised by the Co-Chairpersons and the delegations, were intended to develop a common understanding of the mandate of the Working Group and to highlight the issues that should be the focus of discussions under agenda item 5 (b). The discussions covered a broad range of issues from conceptual points to practical suggestions for specific measures.

#### **Scientific and technical aspects**

17. Considerable attention was devoted to the scientific aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The complexity of the issue was compounded by ongoing scientific discoveries, the development of new technologies and the lack of legal certainty on some key aspects.

18. At the outset, delegations agreed that research played a fundamental role with regard to the conservation and management of marine biological diversity and that knowledge about the marine biodiversity beyond areas of national jurisdiction remained insufficient. While acknowledging the importance of the studies conducted to date, several delegations advocated further scientific studies as a precondition for a meaningful examination of the topic of biodiversity and in order to better understand the complexities of marine biodiversity, in particular seamounts, hydrothermal vents, cold-water coral reefs and other sensitive underwater features. The important role of new technologies was highlighted in reference to their potential to enhance knowledge about deep-sea ecosystems and to contribute to the conservation of the ecosystems. Although available scientific information showed an accelerated loss of biological diversity, delegations emphasized that too little was known about the issue. In general, delegations considered that it was essential to build a stronger scientific basis on marine biological diversity beyond areas of national jurisdiction in order to facilitate the adoption and implementation of improved sustainable management and conservation measures of those marine resources. In this regard, since systematic observations were considered essential to acquire basic information, it was also considered

important to support long-term observation systems, which monitored the deep-sea floor and associated biological communities, including the ones undertaken by the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Others noted that although more research would be welcome, enough information was already available for making immediate and necessary policy and management decisions, including on the basis of the precautionary approach.

19. Referring to the gaps in knowledge about climate change and the uncertainty of future models, some delegations called for a better understanding of the interaction between ocean and climate, in particular ocean temperatures and their effect on the marine environment, fish stocks and biodiversity. It was recognized that such studies required additional resources, both financial and technological, and entailed the development of involvement by States, in particular small island developing States.

20. Delegations recognized the need for increased capacity-building programmes, through training, sharing of data and information, as well as transfer of technology to support developing countries in the management, sustainable use and conservation of resources and biodiversity beyond areas of national jurisdiction. It was noted that the Convention provided for capacity-building and the transfer of technology to developing countries and that its relevant provisions should be better implemented.

21. To illustrate some of the ongoing research activities, scientific cooperation projects, and the use of new technologies for the exploration of biological diversity, presentations were made by Barbara Moore, National Oceanic and Atmospheric Administration, United States of America; Elva Escobar Briones, National Autonomous University, Mexico; and by Kazuhiro Kitazawa, Japan Marine Science and Technology Centre, Japan. In addition, a non-governmental organization representative highlighted the recommendations of the conference, on the theme “Defying ocean’s end”.

### **Legal and institutional aspects**

22. Regarding legal aspects, most delegations re-emphasized that the Convention provided the legal framework for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In this regard, some delegations stated that, in conformity with the Convention, the coastal State was fully entitled to adopt any conservation and management measures it deemed necessary to protect its sedentary species on the continental shelf. Those may include the possibility of imposing restrictive measures on fishing activities in the high seas over its continental shelf, including on fishing practices that were deemed to have a negative impact on sedentary species.

23. Some delegations reaffirmed that under existing international instruments there was a set of generally accepted principles, which may provide the ground to build global consensus for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Those principles included those embodied in the Convention and the 1992 Rio Declaration on Environment and Development. Delegations also noted the complementary role of other instruments,

such as the Convention on Biological Diversity. It was pointed out that although that Convention was complementary to the United Nations Convention on the Law of the Sea, its jurisdictional scope did not extend to the conservation and sustainable use of components of marine biological diversity beyond areas of national jurisdiction since it applied only to processes and activities carried out under the control of States in those areas. This implied that certain provisions of the Convention on Biological Diversity were applicable, such as the obligation to identify and monitor processes and activities that were likely to have significant adverse impacts, and the need for environmental impact assessments, research and training. In considering the need for the management, conservation and sustainable use of marine biological diversity in an integrated manner, other delegations highlighted the role played by international organizations such as the International Maritime Organization (IMO), FAO, regional fisheries management organizations and regional seas conventions.

24. With regard to fisheries, some delegations noted that destructive fishing practices and illegal, unreported and unregulated fishing should be addressed in the context of the United Nations Fish Agreement, FAO instruments and regional fisheries management organizations since these instruments and organizations provided for measures to deal with all issues related to fisheries management, enforcement and monitoring measures and trade. Concern was expressed by a few delegations that some measures adopted by regional fisheries management organizations in respect of the high seas established restrictions on States that were not parties to these organizations, in breach of the principle of general international law which states that an agreement between States cannot benefit or harm third States without their consent.

25. Some delegations were sceptical that existing regional fisheries management organizations had the capability or competence to tackle relevant issues, including bottom trawling and other destructive fishing practices, or to adopt holistic approaches in their management of fisheries since many of them were single-species management organizations. In that connection, some delegations noted that existing mechanisms provided only sectoral governance structures and that there were no clear mechanisms or a set of policy approaches in place to foster cooperation and coordination in a way that could effectively tackle the problem of conserving certain sensitive marine ecosystems. Some delegations suggested that this gap could be addressed through the adoption of an implementing agreement to the United Nations Convention on the Law of the Sea. Other delegations were of the view that there was no need for new institutions and legal frameworks to be devised for specific problems and vulnerabilities.

26. A number of non-governmental organizations called for an interim prohibition of high-seas bottom trawling, on the basis of the precautionary principle, while governance and management measures for areas beyond national jurisdiction were being negotiated. One non-governmental organization noted the highly endangered status of some species of turtles and called for a moratorium of longline fishing in particular areas in the Pacific Ocean.

27. A number of delegations pointed out that if marine scientific research were not conducted with due care, or were carried out in an intrusive manner, it could itself have adverse impacts on biodiversity. In this regard, it was stressed that marine

scientific research should be conducted in conformity with the Convention provisions on the protection and preservation of the marine environment. Some delegations cautioned against trying to impose restrictions on the freedom of marine scientific research. They recalled the principle of the Convention dealing with the freedom of marine scientific research on the high seas and noted that undue regulatory mechanisms would only inhibit the work of the scientific community and impose difficulties on it. They favoured self-regulatory codes of conduct to be adopted by the scientific community over international rules on scientific activities. The work being conducted by the organization InterRidge was cited as a good example of the scientific community's commitment to responsible research practices. In addition, delegations argued that the importance of marine genetic resources for medical, scientific and industrial use warranted the fullest use of information and knowledge gained from both marine scientific research and marine genetic resources.

28. A number of other delegations emphasized that marine scientific research should be conducted in conformity with the provisions contained in part XIII of the Convention, in particular article 240 on general principles for the conduct of marine scientific research and article 241, which provided that marine scientific research activities shall not constitute the legal basis of any claim to any part of the environment and its resources. In addition, the delegations noted that article 143 provided that activities carried out in the Area should be conducted for peaceful purposes and for the benefit of mankind as a whole and noted that the International Seabed Authority had a central role in collecting and disseminating information on marine scientific research on the seabed.

29. In addition, a number of delegations stated that, in accordance with their understanding of the principle of the common heritage of mankind, access to genetic resources in the deep seabed beyond areas of national jurisdiction should be, in principle, like the mineral resources in the Area, subject to the sharing of benefits based on consideration of equity. To emphasize this point of view, they noted the symbiotic relationship that genetic resources had with non-living marine resources and other living resources in the surrounding water column. They contended that a regulatory mechanism, including the adoption of improved norms and/or an implementing agreement to the Convention, may become necessary to clarify such matters as the relationship between marine scientific research and bioprospecting. A regulatory mechanism could also address the question of access to those resources and legal options for benefit-sharing, including non-monetary benefits, international cooperation in marine scientific research through the exchange, sharing and dissemination of information on research programmes, their objectives and results, and cooperation in the transfer of technology. The mandate of the Authority, which currently covered the protection of the marine environment, including biodiversity, under article 145 of the United Nations Convention on the Law of the Sea, could potentially be expanded to deal with all issues relating to deep-sea biodiversity, including genetic resources. In this regard, an objection was expressed to any provisions purporting to grant free access or unrestricted freedom of exploitation of genetic resources beyond areas of national jurisdiction. Several delegations referred to bioprospecting, calling for a definition of both marine scientific research and of

bioprospecting. Others were of the idea that it was not necessary to differentiate between the two activities. Any development of a regulatory framework should not be developed in isolation from wider provisions for the conservation and sustainable use of marine biodiversity.

30. Referring to the legal status of genetic resources, a view was expressed that any measures that may be taken in areas beyond national jurisdiction must be consistent with international law, including the freedom of navigation and of marine scientific research. Some delegations stated that the resources were covered by the regime of the high seas, under part VII of the Convention. They argued that there was no legal gap with respect to living resources in areas beyond national jurisdiction and that the freedoms of the high seas were applicable to activities relating to marine genetic resources. On this basis, they did not see the need for a new regime to address the exploitation of marine genetic resources in areas beyond national jurisdiction or to expand the mandate of the International Seabed Authority.

31. Other delegations were of the view that clarification was needed with regard to the legal status of genetic resources in the seabed and subsoil beyond areas of national jurisdiction.

### **Environmental aspects**

32. It was highlighted that oceans were to be viewed as an integrated ecosystem and a critical component of the Earth's regulatory system. At the same time, many delegations noted the serious impacts on oceans from a range of anthropogenic activities.

33. Delegations identified illegal, unreported and unregulated fishing and destructive fishing practices as the greatest threats to marine biodiversity beyond areas of national jurisdiction. However, it was recognized that other growing human pressures, including from ocean noise and dumping, required urgent action through international cooperation and coordination. In this regard, the precautionary and ecosystem-based approaches were considered fundamental principles, which had received wide acceptance within the international community. Many delegations acknowledged that the international community needed to take action to close both the implementation and governance gaps regarding these principles. Recalling that scientific uncertainty continued to be prevalent in many areas regarding deep-ocean biological diversity, it was argued that such uncertainty warranted the application of a precautionary approach in decision-making processes. It was also cautioned that a lack of comprehensive understanding of marine biological diversity and of conclusive scientific research should not lead to delays in the adoption of cost-effective measures aimed at preventing further loss of marine biological diversity.

This implied a call to take proactive, rather than reactive, measures, based on the best available scientific information. With regard to the ecosystem approach, delegations pointed out that its implementation required a holistic approach to management rather than one focused on specific sectors, such as fisheries. Such an approach could be based on multiple-use protected areas for vulnerable and unique habitats.

34. It was also stated that environmental management tools should be more widely used in the management of marine resources beyond areas of national jurisdiction,

including the use of environmental impact assessments.

35. Delegations provided suggestions for actions and/or studies to be conducted by the international community, including the need for a process to evaluate the features of particular ecosystems that were put at risk by specific activities and for a process to assess the effectiveness of tools to mitigate the impacts of those activities. The need for objective criteria to identify and establish areas requiring protection, such as marine protected areas or other area-based management, was raised by many delegations. It was reported that a compilation of ecological and biological criteria for the identification of marine protected areas was being developed, on the basis of the recommendations of the first meeting of the Ad Hoc Working Group on Protected Areas of the Conference of the Parties to the Convention on Biological Diversity. Several delegations also stressed the need for further study of the connections between climate change, the increased vulnerability of marine species and ecosystems and the need for urgent action.

#### **Economic and socio-economic aspects**

36. Regarding economic and socio-economic aspects, it was pointed out that sustainability was inextricably linked to the conservation of marine biodiversity and that achieving sustainable use and exploitation of marine resources called for further studies and greater understanding of conservation, use and impacts. It was proposed that the value of marine ecosystems and resources be further studied and taken into account in policy and decision-making. It was noted that the economic benefits derived from the protection and use of marine biological diversity beyond areas of national jurisdiction needed further study. A delegation also highlighted the lack of public awareness owing to the insufficient attention given to efforts to mobilize people at the grass-roots level to understand the issue of conservation and sustainable use of marine resources.

37. A delegation emphasized that the conservation of biodiversity should be an integral part of social and economic development and suggested using economic incentives to improve sustainable utilization of marine biodiversity since its loss could limit the socio-economic benefits for developing countries. The question of perverse incentives and profit from illegal, unreported and unregulated fishing was also raised.

#### **Agenda item 5 (c)**

##### **Key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction**

38. Expanding upon some of the issues that had been identified under previous agenda items, delegations made several suggestions regarding key issues and areas that needed further study by the international community. Many delegations stated their willingness to participate in furthering cooperation and coordination in relation to the issues of conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In this regard, a number of delegations emphasized that a study of the level of cooperation and coordination among

organizations and bodies within and outside the United Nations system, as well as cooperation among States at the multilateral, regional and bilateral levels, should be a necessary component of further studies. The degree to which existing information was shared should also be assessed.

39. A list of the studies suggested by various delegations is contained in annex II of the present report. A number of delegations noted that there was already considerable work under way in relation to many of the suggested studies and that the suggestions for further studies would need to be refined and assessed by the General Assembly to take into account that work.

40. Following the views expressed on key aspects of the conservation and sustainable use of marine biological diversity, some delegations called for comprehensive studies on the existing legal framework to identify relevant common principles for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, including those relating to the genetic resources of the seabed beyond areas of national jurisdiction. Some delegations suggested consideration of the current governance and management framework to identify best practices and to ascertain whether new institutions were required. In this regard, some delegations drew attention to the work of multilateral environmental agreements on the conservation of marine biodiversity in the high seas, such as the work governed by the Convention on the Conservation of Migratory Species of Wild Animals and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

41. Several delegations highlighted the importance of consolidating information and harmonizing and standardizing information in a way that assisted informed decision-making and that was policy relevant. Some delegations underlined that further studies were needed on existing threats to marine biodiversity and on available tools to address those threats, both within and outside the scope of the current legal regime. The need for studies regarding current measures and actions taken by States and researchers to manage the environmental impacts of scientific research in the deep seabed was also noted.

42. It was stressed that greater effort, in both technological and financial terms, was required in order to document information on biodiversity and the environmental conditions of the bathypelagic zone, trenches and seamounts. In this regard, targeted technologies and environmentally sound sampling techniques were needed. The need was also raised for further study of cold-water and deep-water coral ecosystems, including those associated with seamounts, so as to better further understand their reproduction, recruitment and resilience to human impacts. The need to initiate and continue long-term time-series studies of marine biodiversity beyond areas of national jurisdiction, with a view to evaluating natural variability, climate change impacts and understanding of the resilience of deep-sea ecosystems to the impacts of anthropogenic stresses through enrichment projects, was also underlined.

43. Some delegations proposed studies on ways marine scientific research could be conducted to foster increased participation by developing countries. A number of delegations stated that developed States and relevant international organizations and financial institutions, through bilateral, regional or global cooperation programmes

and technical partnerships, could better support capacity-building of developing countries in deep-sea scientific research. It was noted that information-sharing was of particular importance in this regard, including through the establishment of additional databases made available to scientists from developing countries and, where necessary, the consolidation of different data models and formats by competent international forums. Technology transfer, on fair and reasonable terms and conditions, and wider and more effective participation of developing countries in global ocean management were also highlighted. Several delegations stressed the need to gather information that could provide a basis for improving capacitybuilding for the conservation and sustainable use of marine biodiversity. One suggestion for learning more about the questions and opportunities and gaps in science and technological capacity was to use a questionnaire to identify possible training opportunities and the current needs of developing countries.

44. Many delegations expressed the need for a common understanding and definition of the ecosystem approach and for further work on the concept of marine protected areas beyond areas of national jurisdiction. In this regard, several studies were suggested to clarify a number of issues concerning marine protected areas or area-based management, including the type of ecological criteria that would apply; criteria that would assist in identifying priority areas; the management objectives of those areas, including management or restriction of certain types of activities; enforcement and compliance measures and temporal measures for protection; and possible regulations of activities outside marine protected areas. The Convention on Biological Diversity representative informed the meeting that data gaps had been highlighted at the first meeting of the Ad Hoc Working Group on Protected Areas of the Conference of Parties to the Convention on Biological Diversity (see UNEP/CBD/WG-PA/1/L.6, annex I, recommendation No. 1/1, para. 4 (h)).

45. In relation to fisheries, due consideration should be given to studying the reasons why existing relevant instruments had not been adequately implemented, with a view to developing strategies and modalities to promote their improved implementation. In addition, a number of delegations stated that further studies were needed on ways to combat illegal, unreported and unregulated fishing. Several delegations also noted that although information and databases existed on high-seas fisheries (including those established under the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas), basic information was often missing with regard to the nature and extent of activities carried out beyond areas of national jurisdiction. Others noted that existing information was focused on individual sectors, such as scientific research and fisheries, and suggested that this information be gathered in a way that allowed scientific comparisons. A proposal was made for the establishment of an independent expert panel, as well as the development of a framework for regional fisheries management organizations, to improve data gathering and exchange. Other areas, such as bottom trawling, methods of improving port State control, market mechanisms and the impacts of shipping and accidents related thereto, including the trans-shipment of nuclear waste, were also proposed to be the focus of further studies.

46. A number of delegations stated that further work was needed on economic

incentives, including market-based approaches. It was stated by one delegation that cost-benefit analyses should be conducted, with regard to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Studies were proposed on possible sanctions for States that violated existing international rules and allowed activities that were likely to harm the environment.

47. Delegations highlighted knowledge gaps and the need for further studies on the current range and nature of activities associated with the use of deep seabed resources, the nature and significance of the benefits generated, how widely the benefits were shared and whether the benefits supported the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Furthermore, there was a need to study the legal arrangements and modalities of operation of existing partnerships between scientific research institutions and the marine biotechnology industry, both public and private, and ways to broaden the participation of developing countries in such endeavours. The issue of intellectual property rights over deep seabed genetic resources also required further study, as well as clarification. There was a need to gather information on trends regarding the implementation of international obligations related to intellectual property rights, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization, in particular the manner in which patent requirements were being implemented in national legislation. Calls for other studies included the relationship between the legal framework of intellectual property rights and the Convention.

48. It was stressed that all proposed studies depended on securing funds to finance their undertaking.