



The Global Forum on Oceans, Coasts, and Islands

Reports from the Third Global Conference on Oceans, Coasts, and Islands

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ISSUES RELATED TO MARINE AREAS BEYOND NATIONAL JURISDICTION: CO-CHAIRS' REPORT

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During the Third Global Conference, several new and emerging issues were addressed, including issues related to governance of marine areas beyond national jurisdiction. The following is intended to provide a reflection of the discussions that took place at the session dealing with issues in marine areas beyond national jurisdiction at the Conference.

The Session was structured in the form of one panel and two dialogue sessions. It was the outcome of the collective efforts by members of the Working Group that was set up prior to the Conference to help structure the Session and the Conference participants that attended it. Their contribution is recognized and much appreciated.

The panel was co-chaired by Mr. Alfonso Ascencio Herrera of the Permanent Mission of Mexico to the United Nations and by Dr. Salvatore Arico of UNESCO. Presenters included the co-chairs as well as Professor Tullio Scovazzi, Università degli Studi di Milano, Bicocca, Italy; Mr. Alex Rogers, British Antarctic Survey; Ms. Lee Kimball, IUCN-The World Conservation Union; Dr. Vladimir Golitsyn, UN Division for Ocean Affairs and the Law of the Sea; Ms. Marjo Vierros, Convention on Biological Diversity; Mrs. Norma Taylor Roberts, Permanent Mission of Jamaica to the United Nations and Dr. Frida Armas-Pfirter, Austral University, Argentina. The related dialogue sessions were chaired by Dr. David

VanderZwaag, Dalhousie University and Mr. Michael Lodge, High Seas Task Force, and included presentations from contributors Ms. Fernanda Millicay, Hamilton Shirley Amerasinghe Fellowship on the Law of the Sea, Dr. David Leary, Centre for Environmental Law, Macquarie University, and Ms. Kristina Gjerde, IUCN.

Principles guiding the work related to session were:

- it was not intended and should not be a negotiating session;
- it was intended to be an educational process for all participants;
- it was intended to contribute towards a better understanding of the various issues involved;
- it would not lead to a policy statement;
- participants would operate on the basis that they did not need to reach consensus, which meant that all ideas expressed during the panel and dialogue sessions would stand on equal footing;
- the Session aimed at stating what we know and where we are with regard to the issues involved; and
- it was also intended to be an exercise to collect views.

Although the Panel was termed “*Improving High Seas Governance*,” in reality it covered broader issues relating to marine areas beyond

national jurisdiction. This was based on the fact that the 1982 Convention on the Law of the Sea (UNCLOS) provides a specific regime for the high seas in Part VII of the Convention, while the international seabed area, or the “Area” – term used in the Convention – is governed by Part XI of the Convention, as elaborated by the 1994 Agreement relating to the Implementation of Part XI of UNCLOS.

The Panel featured presentations on:

- general trends in marine scientific research and in bioprospecting in the deep seabed, noting a shift from geophysical expeditions to ecological, biological and bioprospecting ones;
- trends in scientific discoveries in the deep oceans, noting the high degree of diversity found on seamounts and other deep ocean ecosystems;
- current scientific knowledge on the vulnerability of certain marine ecosystems;
- gaps in knowledge and the need for further studies on scientific, legal and socioeconomic aspects – among others;
- uncertainties regarding the definition of and regime for bioprospecting and its relationship to marine scientific research in the international seabed area, and the legal status of the biodiversity of the deep seabed in areas beyond national jurisdiction and ways to address these uncertainties;
- the potential of UNCLOS in dealing with issues related to marine areas beyond national jurisdiction, including the possibility to strengthen UNCLOS;
- the role of existing organizations and bodies, including the role of the United Nations General Assembly;
- the need to rely on recognized common principles to move the discussions forward; and
- the need to further discuss ways and means for the possible establishment of marine protected areas in areas beyond national jurisdiction.

Although both dialogue sessions, 1) *Deep Seabed Genetic Resources*, and 2) *High Seas Fisheries Governance*, dealt with issues related to marine areas beyond national jurisdiction, those issues were dealt with in their own merit, so as not to prejudice possible connections between those issues.

In relation to high seas fisheries, the following points were discussed:

- Opportunities for improving high seas fisheries governance:
 - o the role of the High Seas Task Force in dealing with Illegal, Unreported and Unregulated fisheries, whose report will be launched in early March, and future steps;

- o the UN Fish Stock Agreement Review Conference and related outcomes;
- o emphasis was put on the situation of discrete high seas fish stocks, including ways to manage them;
- o the review of measures taken by Regional Fisheries Management Organizations and States regarding destructive fishing practices in vulnerable marine ecosystems, with particular emphasis on the inputs to, and mechanisms for discussion at, that process;
- That strong sectoral governance nested within a broader framework is key to addressing the WSSD fisheries targets;
- That governance objectives for high seas fisheries should include:
 - o eliminating Illegal Unreported and Unregulated fishing (as called for in the WSSD goals);
 - o improving regional governance arrangements i.e. Regional Fisheries Management Organizations;
 - o bringing unregulated high seas fisheries under international governance;
 - o applying the precautionary approach;
 - o applying ecosystem-based management principles in order to combine high seas fisheries with broader biodiversity considerations;
 - o the need for cooperation and coordination approaches between Regional Fisheries Management Organizations and international processes;
 - o the need for coastal States, market States, port States and beneficial owners to work together.

In order to deal with issues relating to the conservation and sustainable use of deep seabed genetic resources in areas beyond national jurisdiction, the following points were discussed:

- Differences of opinions about what principles should be guiding bioprospecting in areas beyond national jurisdiction e.g. freedom of use as opposed to common heritage of humankind;
- There also are differences of opinions on:
 - o what bioprospecting really covers, recognizing that there is no internationally agreed definition of it (In this regard, it was also mentioned that in practice distinctions between marine scientific research and bioprospecting were blurred since it was difficult to ascertain the “intent” from the beginning);
 - o whether a new international regulatory framework is required;
 - o it remains uncertain at this point what are the institutional and legal ways for dealing with bioprospecting beyond national jurisdiction; (Some mentioned that UNCLOS is the starting point for discussions on these issues)

- Next steps could include:
 - o facilitating further constructive dialogue sessions to promote understanding of differing perspectives and exploring options for moving forward;
 - o launching key studies in support of cooperation e.g.:
 - examination of ways to address environmental consequences of bioprospecting;
 - Studies on the nature and operation of public/academic-private marine biotechnology partnerships,
 - study of patents already granted to genetic resources in areas beyond national jurisdiction and other intellectual property rights;
 - the role of international legal principles in addressing bioprospecting in areas beyond national jurisdiction (Some participants referred to equitable use, sustainable use, environmental impact assessments, cooperation at all levels);
 - a review of international legal and institutional options for managing activities connected to marine biodiversity of the international seabed area, including binding and non-binding approaches (Some referred specifically, as non-binding approaches, the conclusion of codes of conduct, while others favoured mandatory approaches based on existing legal principles/frameworks);
 - survey of adequacy of existing national legal and institutional frameworks for controlling national and state flag vessels engaged in marine scientific research/bioprospecting in areas beyond national jurisdiction;
 - the scale of bioprospecting;
 - o strengthening capacity- building , e.g. targeted training/ learning sessions on key topics such as understanding of intellectual property rights and patent issues, understanding the socioeconomics of the industry and environmental effects, understanding legal dimensions and scientific aspects;
 - o promoting scientific cooperation;
 - o considering different ways of moving forward ensuring that bioprospecting is linked to broader discussions e.g. the possible establishment of marine protected areas in areas beyond national jurisdiction;
 - o exploring opportunities for existing organizations to assist in these steps.

A concrete outcome of the Session as a whole was that this process was very useful in terms of creating a cooperative environment for dialogue and joint work. In that regard, there was a strong sentiment to continue sharing information informally; continue floating ideas regarding all the aspects of the topics, including areas on

which further studies are needed; and continue the analytical work and research in order to fill gaps in knowledge. It should be stressed that this will be an open-ended and flexible approach, and that everyone is welcome to join in.

The Co-Chairs thank all participants and contributors for their help, which was essential in making the Session a success and the Organizers of the Conference – indeed a very important and successful one – for their guidance, assistance and encouragement.

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