

# EU Presidency Statement - Working Group on Marine Biodiversity

Summary: EU Presidency Statement - Working Group on Marine Biodiversity (13 February 2006: New York)

**Ad Hoc Open-ended Informal Working Group of the United Nations General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction; Statement on behalf of the European Union by Prof. Dr. Gerhard Hafner, Austrian Federal Ministry for Foreign Affairs, New York**

Mr Co-Chairman,

I am speaking on behalf of the European Union.

The EU welcomes the establishment of this working group, which potentially can play an important role in securing our shared objectives of conserving effectively biodiversity in areas beyond national jurisdiction (ABNJ). We welcome a full and frank discussion of the issues, but we also think it timely to move to agreement on necessary actions. The EU, therefore, calls for this meeting to develop concrete conclusions and recommendations for action by the international community. Inter alia this will enable the 61st Session of the General Assembly to address effectively issues relating to biodiversity in ABNJ, identifying any shortcomings in the current regime and agreeing on action under this year's Oceans and Fisheries Resolutions.

The EU underlines that in the framework of a holistic and integrated approach to ocean governance the effective protection of biodiversity will only be achieved if measures taken in areas beyond and within national jurisdiction are coherent, compatible and without prejudice to the rights and obligations of coastal states under international law.

The subject of this Ad Hoc Open ended Working Group is the issue of conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Such a discussion is needed since substantial threats to marine biodiversity exist today, and will further increase in the future. Areas beyond national jurisdiction contain sensitive and biodiversity rich ecosystems such as seamounts and cold water corals. As well as demonstrating high levels of endemism, these ecosystems appear to be important also for key migratory species, such as turtles, birds and mammals.

There is a continuous need for the international community to address this issue in view of the growing pressures on these ecosystems and mounting evidence of actual destruction. Impacts currently are largely known from fisheries but new technologies and interests are growing from other sectors. Ecosystems in the oceans are interconnected and there is an urgent necessity to consider ways to integrate and improve the management of all activities that affect or risk adversely affecting the marine biodiversity, in particular those of seamounts, cold water corals, hydrothermal vents and other vulnerable eco systems.

Such an urgent need to protect the marine biodiversity has been expressed in the recent Millennium Ecosystem Assessment Synthesis Report.

Today there are several international instruments concerning the protection of the marine environment that contribute to the conservation and sustainable use of biological diversity in areas beyond the limits of national jurisdiction.

The mandates of existing bodies and fora are consistent with the basic legal framework which is provided by UNCLOS. The CBD can be seen as having a particular and complimentary role in contributing to international action on the protection of sensitive ecosystems in ABNJ, including the assessment of scientific information and through the establishment of marine protected areas. This role, which could also be played by other bodies, would usefully focus on establishing scientific, precautionary and ecosystem based arguments, including through the development of ecological criteria, and the establishment of a register of representative networks of MPAs. Parties to the CBD, under its marine and coastal work programme, are committed to the establishment by 2012 of "a global network of marine protected areas, building upon national and regional systems".

Several organizations or international mechanisms of universal or regional and sub-regional nature are competent to regulate different types of human activity in areas beyond the limits of national jurisdiction (such as fishing, navigation and mining for instance). They also have certain competences in the field of the protection of marine biodiversity and take measures for this purpose such as the Antarctic Treaty Consultative Meeting, the FAO, IMO, IOC, Regional Fisheries Management Organizations or Arrangements, OSPAR and the Barcelona Convention.

However, these existing mechanisms provide only sectoral governance structures as they address only specific activities, specific species or specific geographical areas. There are currently no clear mechanisms or set of policy approaches in place to foster co-operation and co-ordination of biodiversity conservation activities across ABNJ in a way that can effectively tackle the problem of conserving certain sensitive marine ecosystems.

Mr Co-Chairman,

We believe the international community should urgently consider ways to integrate and improve the management of all activities that affect or risk adversely affecting the marine biodiversity of seamounts, cold water corals, hydrothermal vents and other vulnerable eco systems. In applying the precautionary approach, the absence of further detailed scientific information on certain parts of the oceans should not be a reason for postponing or failing to take conservation and management measures. Also, the international community should assess and address the gaps in scientific knowledge, management and ocean governance necessary to protect biodiversity and to ensure the sustainability of fisheries. The EU also recognises that there are issues relating to genetic resources and marine scientific research which need to be addressed.

The measures in ABNJ have to be based on the best available scientific information and the precautionary principle. According to an integrated and ecosystem approach, protective measures

taken within national jurisdiction and in areas beyond national jurisdiction will need to be coherent and compatible in order to be effective.

For the EU it is important to differentiate between the medium term track and the short term track.

In the short term, urgent action as referred to in Paragraphs 66 to 69 of Resolution 59/25 to address destructive practices and to protect marine biodiversity and particularly vulnerable ecosystems must be taken. The EU remains fully supportive of the initiatives undertaken in this field by the UN General Assembly, the Conference of Parties of the Convention on Biological Diversity, and other bodies. The EU also considers that the conservation powers of existing RFMOs should be strengthened urgently where current management powers are inadequate and is committed to carrying forward the Review established under paragraph 71 of Resolution 59/25. The EU believes that States must be ready to take full account of the outcome of this exercise. The EU and its Member States have already taken actions to protect vulnerable marine ecosystems and are committed to pursue their efforts at all levels, international, communitarian and national.

Mr Co-Chairman,

As far as medium term measures are concerned, the EU reiterates its call for the development of an Implementation Agreement consistent with the United Nations Convention on the Law of the Sea which will provide for the conservation and management of marine biological diversity in areas beyond the limits of national jurisdiction, including the establishment and regulation, on an integrated and precautionary basis, of marine protected areas where there is a scientific case for establishing these areas.

In the view of the EU the following preliminary listing of elements should be considered with the view of adopting an Implementation Agreement:

- (i) An integrated and precautionary based approach to the management of biodiversity protection and conservation, including through MPAs, taking into account the impacts of all human activities such as destructive fishing practices, harmful marine scientific research practices, and the handling of genetic resources, deep seabed mining and deep-sea tourism in all marine areas, including those beyond the limits of national jurisdiction, whilst recognising to be coherent with and respecting existing mandates and competencies of international organisations, including regional organisations, inter-governmental bodies and States;
- (ii) Co-operation and co-ordination between existing regulatory frameworks and bodies that are competent to exercise their respective mandates to regulate activities under their responsibility, such as ISBA, the Antarctic Treaty Consultative Meeting, the Intergovernmental Oceanographic Commission (IOC), IMO, FAO and RFBs (insofar as RFBs adequately secure the conservation and sustainable use of biodiversity), as well as the CBD with a view to promoting integrated management based on the ecosystem approach;
- (iii) According to the WSSD Plan of Implementation the establishment of a representative and

integrated network of marine protected areas within and beyond the limits of national jurisdiction to protect vulnerable marine ecosystems, without prejudice to the jurisdiction and sovereign rights of the coastal state over its territorial sea, contiguous zone, exclusive economic zone and Continental Shelf;

(iv) Identification of vulnerable ecosystems and species in marine areas beyond the limits of national jurisdiction, based on the best available scientific information and the precautionary principle;

(v) Measures in areas beyond national jurisdiction will be based on the best available scientific information and the precautionary principle and be coherent and compatible with measures taken within national maritime zones;

(vi) The Implementation Agreement will be interpreted and applied in the context of UNCLOS and in a manner consistent with international law.

In order to achieve this objective it is necessary to take steps in order to initiate the process for the elaboration of such an instrument. The EU expects that this Ad Hoc Working Group sets this process into motion by recommending, in the final document of this meeting, to the forthcoming General Assembly the convening of the appropriate body for the elaboration of such an instrument.

Mr. Co-Chairman,

To sum up, the EU would like to reiterate the call made at the beginning of the intervention to develop concrete conclusions and recommendations for action by the international community so that the 61st General Assembly will be enabled to address effectively issues relating to biodiversity in ABNJ.

## **EU Presidency Statement - Working Group on Marine Biodiversity, EU list of priorities**

Summary: EU Presidency Statement - Working Group on Marine Biodiversity, EU list of priorities (17 February 2006)

**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; Emerging trends on the conservation and sustainable use of marine biodiversity in ABNJ; Statement by Prof. Dr. Gerhard Hafner, Austrian Federal Ministry for Foreign Affairs, on behalf of the European Union.**

Mr. Co-Chairman,

In order to assist your work in this meeting we would like to offer you our perspective on our deliberations of the past few days. You may wish to reflect emerging trends on the conservation and sustainable use of marine biodiversity in ABNJ in your summary. These emerging trends are in strict consistency with UNCLOS, which provides the legal framework for all ocean activities - including its obligation to protect and preserve the marine environment:

Moving from words to actions: the **improved implementation of existing instruments and commitments**, e.g. through a concerted focus on IUU fishing and the implementation of paras 66-69 of UNGA-Res. 59/25.

**Key approaches for achieving such improved implementation** include: capacity building; ratification of existing instruments; a strengthened role of RFMOs including through applying UNFSA principles; cooperation, coordination and coherence among the existing institutions; an increasing focus on enforcement and compliance by flag states; and performance assessment of existing instruments.

**An integrated approach in oceans management** is crucial to achieve sustainable development, a balance conservation and sustainable use. This requires: compatibility of governance in marine areas within and outside of national jurisdiction; a cooperative rather than a competitive agenda; states acting coherently in different international fora.

Application of the **precautionary and ecosystem approaches, using the best available science, and prior environmental impact assessment**.

**Acknowledgement of multiple and multi-faceted threats** to marine biodiversity in ABNJ from traditional sectors such as fisheries and shipping, but new threats, such as resulting from human-induced climate change, deep sea tourism, deep seabed mining are emerging.

The **need to develop appropriate criteria** for the identification, development, establishment and management of MPAs, recognizing in this context the existing role and mandate of bodies such as FAO, IMO, CBD and regional seas conventions.

**Multi-purpose MPAs** are a key integrationist tool to manage biodiversity in ABNJ. They are an essential element towards reaching the widely agreed WSSD target to establish a global **representative network of MPAs by 2012**, which is only six years from now. The need to address, without prejudice to the sovereign rights of coastal states over natural resources, the issue of **genetic resources**, taking into account the legitimate interests of all states. This could include the development of guidelines, codes of conduct, and impact assessments.

A further **advancement of scientific research into marine biodiversity** including a wide sharing, dissemination and systemization of knowledge.

Full implementation of the **marine scientific research provisions of UNCLOS**.

Finally, the development of **an UNCLOS implementation agreement** on which I will be elaborating in my statement this afternoon.

## **EU Presidency Statement – Working Group on Marine Biodiversity, Agenda Item 5 d**

### **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; Possible options and approaches to promote international cooperation and coordination; Statement by Prof. Dr. Gerhard Hafner, Austrian Federal Ministry for Foreign Affairs, on behalf of the European Union.**

Mr. Co-Chairman,

Coming to the end of our deliberations, I would like to explain our view on the future steps to be taken and offer some comments on the Implementation Agreement as proposed by the EU.

We acknowledge with great satisfaction that there exists a broad consensus that urgent action as referred to in paras 66 to 69 of Resolution 59/25 to address destructive practices and to protect marine biodiversity and particularly vulnerable ecosystems. These are important short term measures. The EU shares the view of other delegations that these short term measures must include the better implementation of existing relevant obligations, increased adherence to existing international instruments and strengthening existing bodies in the interest of the protection of marine biodiversity. The EU remains fully supportive of the initiatives undertaken in this field by the General Assembly and is committed to carrying forward the review established under para 71 of Resolution 59/25.

Permit me now to offer some explanations concerning the Implementation Agreement proposed by the EU. I hope that these explanations could assuage the doubts expressed by some delegations in the last days concerning this issue. Existing institutions only tend to apply a sectoral approach. An Implementation Agreement would allow for a cumulative impact assessment across different sectors. Of course, it would not be a rigid and bureaucratic way of imposing a set of cumbersome rules on existing institutions. The Implementation Agreement would help to implement already existing obligations for international cooperation with respect to the protection of marine ecosystems already contained in UNCLOS.

Such an Implementation Agreement could draw on the experiences gained in regional organizations. However, these regional bodies have a limited scope of application as well as limited membership. The envisaged Implementation Agreement under UNCLOS would undoubtedly be an important supplement to these regional bodies.

Mr. Co-Chairman,

Let me continue by making some comments on how the work should now proceed for the sake of the protection of marine biodiversity:

Many states have called for a continuation of these discussions. The EU, too, would support this, and would in particular suggest that the next General Assembly decides to convene another Ad hoc informal working group in 2007 which in our view should consider how to develop an Implementation Agreement and should suggest the terms of reference for the negotiation of this agreement.

We believe that an Implementation Agreement should be developed along the following lines:

- (i) The instrument should be based on an integrated and precautionary approach to the management of biodiversity protection and conservation in ABNJ, taking into account the impact of all human activities.
- (ii) The instrument should facilitate and enhance co-operation and co-ordination between existing regulatory frameworks and bodies that are competent to exercise their respective mandates to regulate activities under their responsibility;
- (iii) The intent is not to take away the existing powers or independent decision-making from RFMOs, IMO, ISBA or any other sectoral body.
- (iv) It should provide for the establishment of MPAs based on the identification and designation of vulnerable ecosystems and species in marine areas beyond the limits of national jurisdiction, using the best available scientific information and the precautionary principle;
- (v) Measures in areas beyond national jurisdiction must be based on the best available scientific information and the precautionary principle and be coherent and compatible with measures taken within national maritime zones;
- (vi) The Implementation Agreement must be elaborated and applied in the context of, and consistent with, UNCLOS and international law, and be without prejudice to the jurisdiction and sovereign rights of the coastal state over its territorial sea, contiguous zone, exclusive economic zone and Continental Shelf.

Mr. Co-Chairman,

We agree with the need expressed by several delegations that MPAs be established on the basis of solid scientific data. While the international community is developing the policy framework for the establishment of MPAs in ABNJ, we believe it is important that work on the development of scientific criteria for their identification and establishment is carried forward.