

Report of the ANZSIL Oceans and International Environmental Law Interest Group on its inaugural event, Law Beyond Boundaries: innovative mechanisms for the conservation and sustainable use of biodiversity beyond national jurisdiction, Friday 24 February 2017

Introduction

The ANZSIL Oceans and International Environmental Law Interest Group (OIELIG) was established in 2016 to provide a forum for discussion and collaboration between ANZSIL members in all areas of law of the sea and international environmental law. The OIELIG seeks to facilitate the exchange of information and ideas, and development of professional networks between academics, practitioners, public policy makers and students of international law on issues relating to the law of the sea and international environmental law.

On Friday 24 February 2017 the Group held its inaugural event, a workshop on 'Law Beyond Boundaries: innovative mechanisms for the conservation and sustainable use of biodiversity beyond national jurisdiction' in association with the Australian National Centre for Ocean Resources and Security (ANCORS) at the University of Wollongong.

This workshop was convened to facilitate discussions on the progress of the Preparatory Committee established to develop elements of a draft text for an internationally legally binding instrument on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction under the 1982 *United Nations Convention on the Law of the Sea*. The workshop provided an excellent opportunity for participants from academia, government and civil society to engage in fascinating discussions on the broad range of legal and other issues associated with these developments.

The Workshop

The conference theme elicited a wide range of presentations on key issues underpinning ongoing discussions on a prospective international legally binding instrument. An e-booklet containing the program, speaker biographies, and a list of participants is included as **Attachment A** to this report.

In their opening joint keynote address, Alice Revell (MFAT) and Michael Bliss (DFAT) set the scene for biodiversity governance in marine areas beyond national jurisdiction, describing the key developments leading to the UN's decision to develop an internationally legally binding instrument and the current state of play of discussions within the UN, while also sharing their insights as lead delegates for their respective countries to the UN Preparatory Committee.

The thought-provoking and engaging presentations that followed throughout the day generated interesting discussions on the complex and underlying issues involved in developing an effective governance regime, and how international law can be used in innovative ways to conserve and sustainably manage marine biological diversity in areas beyond national jurisdiction. On the first panel, which was directed to the theme of integrated oceans management, Constance Johnson (ANCORS) used a case study of the Antarctic Treaty System's approach to provide an example of an effective governance regime operating without reference to national jurisdiction. This was complemented by a presentation from Dr Piers Dunstan (CSIRO) considering the lessons to be learned from existing policy applications, which emphasised collaboration as key to the effective implementation of integrated oceans management, and showed how policy objectives set at the beginning of the process are critical to the final outcome.

Recognising the requirement that a new legally binding instrument should not undermine existing frameworks and regional bodies, the second panel considered ways in which existing regional and sectoral bodies could be leveraged to inform the conservation and sustainable management of biodiversity, and the role that the principle of competence might play in the upcoming PrepCom

discussions. Zoe Scanlon (Attorney-General's Department) explored the wide range of issues in which regional fisheries management bodies have played a constructive role in improving oceans governance, while Andrew Friedman and Nichola Clark (Pew Charitable Trusts, USA) – who joined us by videoconference from Washington DC – laid out their proposal for an objective framework to determine the 'competence' of existing institutions.

The third panel traversed a range of issues concerning the potential interactions between a new implementing agreement and existing regimes. Joanna Mossop (Victoria University) addressed the wide range of complexities likely to arise in relation to the existing continental shelf regime; Genevieve Quirk (ANCORS) discussed the lessons that can be drawn from the EU deep sea access regime, including the challenges for coherence with existing instruments and frameworks; and Penelope Ridings (New Zealand Bar) outlined her proposal to apply the principle of environmental stewardship as a framework for a *sui generis* regime to resolve the tensions between competing rights of States and uses of marine biodiversity beyond national jurisdiction.

The workshop concluded with a keynote address by Professor Robin Warner (ANCORS) on the challenges and prospects of realising biodiversity governance in marine areas beyond national jurisdiction. While recognising that such a realisation is not without its challenges, Professor Warner emphasised the historic opportunity an international legally binding instrument presents for an integrated and cross-sectoral system of oceans governance, the urgent need to achieve it due to the growing threats to and pressures on the marine environment, and the immense potential a new implementing agreement has to benefit humankind.

The day concluded with a networking event sponsored by the University of Wollongong's Global Challenges Program, which provided a further opportunity for participants to discuss the ideas raised during the workshop, as well as other issues of common interest.

Outcomes

The workshop provided an important opportunity to share perspectives among international law and policy experts from both Australia and New Zealand working across diverse fields, and to strengthen the networks between ANZSIL members working on these issues, and beyond.

In recognition of the significance of this issue and the valuable contributions of the workshop's panellists to ongoing discussions on the topic, the ICES *Journal of Marine Science* will be publishing some of the papers from the workshop in a special edition on biodiversity beyond national jurisdiction.

Expenditure

We were very grateful that ANZSIL agreed to provide \$1500 in financial support for this event, and sought to minimise the costs involved throughout. The University of Wollongong generously provided access to a wonderful venue at no charge, complete with video-conferencing and crockery. We were also able to eliminate the costs of printing by running the workshop as a paperless event. Since the Global Challenges Program sponsored the networking event, the only cost was the catering, which (at \$20 per head) came to a total of \$800. The Workshop Steering Committee agreed that rather than using the remaining \$700 of the ANZSIL sponsorship to provide very small grants to the various speakers from interstate or overseas, we would seek Council's agreement to use it for another OIELIG event later this year or next. To this end, the Co-Chairs of the OIELIG seek the Council's agreement to use the remaining \$700 for a later event, to be developed and organised after consultation with Interest Group members and the Council.