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Oceans and the law of the sea

Letter dated 5 May 2014 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly

Pursuant to paragraph 80 of General Assembly resolution [60/30](#), we were reappointed as Co-Chairs 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, which was established pursuant to paragraph 73 of General Assembly resolution [59/24](#). In accordance with paragraphs 199 and 200 of General Assembly resolution [68/70](#), the Working Group met from 1 to 4 April 2014.

We have the honour to submit to you the Co-Chairs' summary of discussions at the meeting (see annex).

It would be appreciated if the present letter and the annex thereto could be circulated as a document of the General Assembly, under agenda item 75 (a).

(Signed) Palitha T. B. **Kohona**
Liesbeth **Lijnzaad**
Co-Chairs

* [A/69/50](#).



Annex

Co-Chairs' summary of discussions at 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*

1. In paragraph 198 of its resolution [68/70](#), the General Assembly requested the Ad Hoc Open-ended Informal Working Group, within its mandate established by resolution [66/231](#) and in the light of resolution [67/78](#), and in order to prepare for the decision to be taken at the sixty-ninth session of the Assembly, to make recommendations to the Assembly on the scope, parameters and feasibility of an international instrument under the United Nations Convention on the Law of the Sea. To that end, the Assembly decided that the Working Group should meet for three meetings of four days each, with the possibility of the Assembly deciding that additional meetings would be held, if needed, within existing resources.
2. The first of these meetings of the Working Group was held at United Nations Headquarters from 1 to 4 April 2014, in accordance with paragraphs 199 and 200 of General Assembly resolution [68/70](#).
3. The meeting of the Working Group was presided over by two Co-Chairs, Palitha T. B. Kohona (Sri Lanka) and Liesbeth Lijnzaad (Netherlands), appointed by the President of the General Assembly in consultation with Member States.
4. The Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Miguel de Serpa Soares, delivered opening remarks on behalf of the Secretary-General.
5. Representatives of 70 Member States, one non-Member State, eight intergovernmental organizations and other bodies and eight non-governmental organizations attended the meeting of the Working Group.
6. The Working Group adopted the agenda without amendment ([A/AC.276/9](#)) and agreed to proceed on the basis of the proposed format and annotated agenda and organization of work ([A/AC.276/L.12](#)).
7. At the request of the Working Group, the Co-Chairs prepared the present brief summary of discussions on key issues, ideas and proposals referred to or raised during the deliberations. An informal Co-Chairs' overview of issues raised during the meeting is attached as an appendix to the summary (see also paras. 75 and 76).

General considerations

8. Delegations recalled the importance of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Some delegations noted that conserving and managing biodiversity in those areas required broad international cooperation.
9. Concerns were expressed over the unprecedented rate of loss of marine biodiversity. It was also emphasized that, with increased human activity in areas beyond national jurisdiction, both in terms of extent and scope, there was an

* The summary is intended for reference purposes only.

increased chance of putting at risk and damaging biodiversity, ecosystems processes and function and, in some instances, permanently altering the marine environment. The unsustainable use of marine biodiversity and the disruption of marine ecosystems were considered by several delegations to be threatening the survival of mankind given that the healthy functioning of those diverse systems sustained life on Earth.

10. Some delegations highlighted the accumulation of a number of threats to ecosystems beyond areas of national jurisdiction, including unsustainable resource utilization, destruction of habitats, pollution, ocean acidification and climate change. A view was expressed that unsustainable fishing, in particular overfishing, illegal, unreported and unregulated fishing and certain destructive fishing practices, was the greatest threat to marine biodiversity in those areas.

11. It was noted that increasing scientific knowledge of the oceans was a major challenge. In that regard, a call was made to prioritize research, monitoring and assessment of the impacts of human activities on marine biodiversity beyond areas of national jurisdiction.

12. Many delegations recalled the commitment of States, in paragraph 162 of “The future we want”,¹ building on the work of the Ad Hoc Open-ended Informal Working Group and before the end of the sixty-ninth session of the General Assembly, to address, on an urgent basis, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea.

13. In that regard, some delegations noted that the General Assembly remained the appropriate forum through which to address the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. A view was expressed that the Assembly should initiate negotiations for an international instrument under the Convention in order to underscore its mandate in matters relating to oceans and the law of the sea. It was also noted that if progress could not be made at the Assembly, the issues would be taken up in other forums, with resulting overlapping agendas and mandates, as well as fragmentation.

14. Many delegations recalled the mandate of the Working Group, established in General Assembly resolution [66/231](#), to address the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology. In that regard, they highlighted that those issues constituted the package that formed the building block for discussions on an international instrument under the Convention. It was noted that the process within the Working Group had now reached a critical phase, that of decision-making, and the enhanced mandate of the Working Group, through which discussions could take place on the scope, parameters and feasibility of an international instrument under the Convention, was welcome. Some delegations emphasized the importance of discussions within the Working Group in developing a common ground and in

¹ General Assembly resolution 66/288, annex.

addressing concerns, so that negotiations on an international instrument could be entered into in good faith.

15. Several delegations stated that the informal working document compiling the views of Member States on the scope, parameters and feasibility of an international instrument under the Convention, prepared and circulated pursuant to paragraph 201 of resolution 68/70, had been very useful in preparing for the meeting.

16. Delegations reiterated the role of international law, in particular the Convention, in addressing issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Many delegations noted that, while the Convention lacked specific provisions on marine biodiversity beyond areas of national jurisdiction, it provided the legal framework for all activities in the oceans and seas and included the relevant principles.

17. Many delegations, while noting existing efforts, identified legal or regulatory and implementation gaps in relation to marine biodiversity beyond areas of national jurisdiction, which, they noted, evidenced the need for an international instrument that would focus on addressing those gaps. In particular, many delegations expressed the view that a legal or regulatory gap existed in respect of marine genetic resources, including the sharing of benefits. Among other gaps identified by several delegations were area-based management, including with regard to the establishment of marine protected areas, and the conduct of environmental impact assessments, for which no overarching global framework or mechanism existed. The need to address existing legal or regulatory and implementation gaps within the jurisdictional framework established by the Convention was highlighted by several delegations.

18. Concern was expressed by several delegations regarding unilateral measures by a few States at the regional level without coordination and global legitimacy. Several delegations also noted that exploitation by a few States of resources of areas that were a common heritage of mankind was inconsistent with the general principles of international law, including equity. Some delegations expressed the view that no activities should be carried out in that respect until an international instrument was adopted. The need to increase the legitimacy of current regulations for certain activities, which currently lacked universal participation, was also highlighted.

19. Several delegations observed that international cooperation and coordination among and between States and competent sectoral organizations should be strengthened.

20. Recognition was given by several delegations to the importance of levelling the playing field between developed and developing countries and of enhancing the capacity of developing countries to benefit from the conservation and sustainable use of oceans and seas and their resources beyond areas of national jurisdiction, including through benefit-sharing, transfer of technology and information-sharing. A view was expressed that strengthening capacity to allow developing countries to control areas within their jurisdiction might be of greater necessity.

21. Many delegations indicated that the status quo was not acceptable. However, different views were expressed on how to address that status quo. Many delegations expressed support for the development of an international instrument in the form of an implementing agreement under the Convention to effectively address the

conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

22. Several delegations noted that they did not wish to change the existing legal regime for the oceans as set out in the Convention, but rather wished to fill existing gaps and avoid fragmentation through an implementing agreement. Those delegations also observed that, without an implementing agreement, it would be difficult to establish marine protected areas networks, assess cumulative impacts or develop a benefit-sharing regime for marine genetic resources. It was noted that an international instrument would greatly assist in addressing both the present and future threats to marine biodiversity beyond areas of national jurisdiction. A view was expressed that an implementing agreement to the Convention would also allow holding States accountable for implementation. Many delegations also stressed that an implementing agreement would strengthen the Convention and elaborate on the principles and provisions enshrined in it. In that regard, several delegations also highlighted the principles contained in General Assembly resolution 2749 (XXV).

23. However, some delegations stressed that a number of global and regional instruments and organizations with relevant mandates existed and suggested that States should focus on implementing existing instruments, which already provided a basis for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. The need to strengthen existing commitments by building on structures and mechanisms already in place was highlighted. It was pointed out, in response, that not all States were parties to those instruments or implemented them effectively. The lack of oversight to ensure compliance with those instruments was also highlighted.

24. A view was expressed that greater details and information, including on the objective and nature of an international instrument, were needed, as well as a common understanding of what the problems were and how to best address them.

25. Some delegations stated that they remained unconvinced about the need for an international instrument, noting that that might not be the optimal approach and that focusing on the implementation of existing instruments would be preferable.

26. Attention was drawn to the need to consider whether a legally binding instrument or a “soft law” approach, including through General Assembly resolutions, would be more effective. Some delegations noted, in that regard, that General Assembly resolutions on sustainable fisheries had been successfully implemented, in particular with regard to the provisions of resolution 61/105 addressing bottom fishing. A view was expressed that it was unrealistic to consider General Assembly resolutions as a suitable mechanism for the purposes sought under a new international instrument.

Scope, parameters and feasibility of an international instrument under the United Nations Convention on the Law of the Sea

27. Delegations recalled that the overall objective of an international instrument should be the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. In that context, many delegations emphasized that an international instrument under the Convention should address the package of issues set out in resolution 66/231, namely, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-

based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology. Several delegations also considered that marine scientific research and intellectual property rights were part of the package.

28. Some delegations considered that there was a need to further elaborate on, and consider in greater detail, each element of the package in order to identify what the problems might be and how to address them. In particular, it was pointed out that not all aspects of the package would necessarily be better addressed by means of an international instrument under the Convention, and that other options might be considered to address issues for which there were no legal gaps.

29. Some delegations also noted the need to have a common understanding of key terms relating to the issues included in the package, including “marine biodiversity”, “marine genetic resources”, “areas beyond national jurisdiction”, “area-based management tools” and “marine protected areas”.

30. Several delegations called for a pragmatic approach to addressing the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. The need to proceed to the negotiations on the basis of consensus as well as a “package deal” approach, as had been done in the case of the negotiations leading to the adoption of the Convention, was also highlighted by some delegations.

Scope and parameters of an international instrument under the United Nations Convention on the Law of the Sea

31. Several delegations noted the absence of a clear distinction between the questions of scope and parameters. Some delegations also noted a link between scope, parameters and feasibility, noting that feasibility largely depended on agreement on the scope and parameters.

32. Delegations expressed different views on the extent to which the scope and parameters needed to be defined prior to taking a decision on whether to commence negotiations for an international instrument. Some delegations considered that the precise scope and parameters should be determined during the negotiations, while other delegations considered that it would be important to have a clear idea of the scope prior to deciding whether to commence negotiations.

33. Many delegations reiterated that the package of issues established in resolution [66/231](#) was the basis for discussions on the scope of an international instrument. The identification of possible gaps in respect of those issues was considered by several delegations as the starting point for determining the scope.

34. However, different views were expressed as to what constituted gaps in the existing regime. In that regard, the need to distinguish between legal or regulatory gaps and implementation gaps was underscored. While some delegations considered that an international instrument should focus on addressing legal or regulatory gaps, several delegations also expressed the view that an international instrument could promote a more comprehensive approach to, and strengthen implementation of, existing obligations and therefore also address implementation gaps. The need to determine how to identify whether an activity was regulated or not was underscored in that context.

35. A view was expressed that all human activities currently affecting marine biodiversity beyond areas of national jurisdiction were already regulated under existing mechanisms and an additional international instrument might therefore not be necessary. In that regard, some delegations pointed out that, in order to meet the challenge of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, States should seek to strengthen and optimize existing applicable tools. It was also noted that further analysis was needed to ensure that the scope of an international instrument was limited to areas where institutions did not already exist.

36. Several delegations sought to clarify the meaning of the term “parameters”. The following were cited as parameters for an international instrument: overarching legal framework; applicable legal instruments, rules and norms; guiding principles; institutional and operational mechanisms; and procedural issues.

37. Many delegations noted that the Convention and relevant General Assembly resolutions provided the overarching legal framework under which an international instrument should be developed. Some delegations observed that, in order to maximize the possibility of universal participation, a prospective instrument could be based on the principles reflected in the Convention, but that did not exclude the possibility of an instrument separate from it, as the preamble of the Convention itself recognized that matters not regulated by it continued to be governed by the rules and principles of general international law. It was also emphasized that a prospective instrument should not seek to impose obligations contained in the Convention on States that had not yet consented to be bound by its provisions.

38. Many delegations proposed that an international instrument should operationalize the objectives, principles and norms contained in the Convention. In that regard, several delegations made specific reference to the principle of the common heritage of mankind and the provisions related to marine scientific research in the Area. Several other delegations stressed the requirements related to the protection and preservation of the marine environment, the duty to cooperate and the duty to undertake impact assessments. Some delegations also underscored the freedom of the high seas.

39. It was also stated that an implementing agreement to the Convention should include a number of guiding principles, including modern principles of governance. In that regard, several delegations highlighted a science-based approach, the use of the best available scientific information, an integrated approach, an ecosystem approach, the precautionary approach, sustainable and equitable use, equitable access and benefit-sharing, transparency, participation in decision-making, public availability of information and the polluter-pays principle. Other principles advanced included the sovereignty of States over their natural resources, common but differentiated responsibilities, solidarity, adaptive management and accountability. Some delegations also stressed that the problems of ocean space were closely interrelated and needed to be considered as a whole. The application of the principles of marine spatial planning was also underscored by some delegations. It was also suggested that an international instrument should take into account emerging best practices. The need to consider the interests of present and future generations was noted, and several delegations highlighted the responsibility of States as stewards of the global marine environment. It was also observed that, in order to be effective, any measure for the conservation and sustainable use of

marine biodiversity beyond areas of national jurisdiction would need to take into account the views of relevant stakeholders.

40. The need to respect the careful balance of interests, rights and obligations achieved in the Convention, its implementing agreements and other relevant instruments was highlighted by some delegations. The need to examine the issues from a variety of viewpoints, including environmental, economic, scientific and legal perspectives was also emphasized. Some delegations also made reference to the balance of interests in the package of issues established in resolution 66/231. In that regard, it was noted that the focus of an international instrument should not be restricted to conservation and management but should also address matters relating to the exploration and exploitation of resources for the benefit of all members of the international community.

41. The need to address the relationship between a new international instrument and existing instruments was highlighted by several delegations. In that context, many delegations noted that any new international instrument should complement, and not duplicate and undermine, existing sectoral instruments and organizations at the global and regional levels, in particular the International Seabed Authority, the International Maritime Organization (IMO), the Food and Agriculture Organization of the United Nations and regional fisheries management organizations and arrangements. The need to avoid creating a system that would allow forum shopping was highlighted. Some delegations also noted the need for a third implementing agreement under the Convention to complement, and to be consistent with, the existing implementing agreements to the Convention. With a view to ensuring complementarity and consistency and identifying gaps, several delegations suggested that a review should be undertaken of relevant existing instruments.

42. Several delegations proposed that an international instrument could provide a global framework for cooperation and coordination between existing mechanisms, while respecting their respective mandates. In that regard, some delegations emphasized that an international instrument should address the fragmented action of regional organizations. A question was raised about how coordination and consultation with existing organizations would work, in particular whether a new instrument would dictate measures to existing organizations in cases where agreement could not be reached.

43. A number of enabling elements and means of implementation were advanced. A suggestion was made that an international instrument should include provisions on the peaceful settlement of disputes, including by replicating the relevant provisions of the Convention. Several delegations also noted that institutional arrangements would be required to operationalize a new instrument. In that regard, some delegations proposed a meeting of States Parties or a Conference of the Parties, as well as subsidiary bodies. The need for reporting, a financial mechanism as well as procedures for data collection, assessment, monitoring, control and surveillance and enforcement was also highlighted by some delegations. A view was expressed that an international instrument should entail penalties for offenders, whether private or State entities. A suggestion was made that a system of notification and reporting for new and emerging uses of marine biodiversity beyond areas of national jurisdiction, including experimental activities, be developed.

44. With regard to the scope *ratione personae* of an international instrument, the need for universal participation was highlighted.

45. It was noted that the scope *ratione loci* could be either the water column or the seabed beyond the limits of national jurisdiction or both. Many delegations expressed the view that the scope *ratione loci* of an international instrument was constituted by the areas beyond national jurisdiction, namely the high seas and the Area. In that context, however, several delegations stressed that measures adopted in relation to the water column must respect the sovereign rights of the coastal State over its continental shelf.

46. The need to precisely define which resources would be part of the scope *ratione materiae* of an international instrument was highlighted, as was the need to consider the significant threats to marine biodiversity. In that regard, a view was expressed that all marine resources beyond areas of national jurisdiction should be encompassed by an international instrument.

47. Different views were expressed on whether high seas fisheries should be included in the scope. Some delegations noted that fisheries were already addressed through the Convention and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the United Nations Fish Stocks Agreement), which provided the global legal framework for measures at the regional level, including conservation measures such as area-based management. In that regard, they pointed out that the gap was rather one of implementation than a legal one, and fisheries should therefore not be included within the scope of an international instrument. They further noted that lack of political will to implement existing instruments would not be resolved by a new international instrument. Some delegations also expressed the view that many States were parties to the United Nations Fish Stocks Agreement, including most major fishing States. However, other delegations expressed the view that there was a legal or regulatory gap in relation to fisheries on the high seas, including as a result of lack of universal participation in the United Nations Fish Stocks Agreement, which left some fisheries unregulated, and in view of the limited species and geographic coverage by current regional fisheries management organizations and arrangements. It was also noted by some delegations that regional fisheries management organizations and arrangements had a sectoral approach and did not take into account broader biodiversity concerns beyond the specific stocks under their purview.

48. A question was raised as to what other human activities, beyond fishing, shipping and mining, would be regulated by a new instrument. A view was expressed that an international instrument should focus on the interrelationships in ecosystems, the understanding of the relationship between different activities and how to manage those relationships as opposed to the activities themselves.

Marine genetic resources, including questions on the sharing of benefits.

49. Many delegations considered that there was a legal gap with regard to access to marine genetic resources of areas beyond national jurisdiction and the sharing of benefits arising from their exploitation. Some delegations considered that the Convention set out the applicable principles, in particular the principle of the common heritage of mankind, but noted that provisions relating to the implementation of those principles were currently lacking, leading to a regulatory gap instead of a legal gap. In that regard, many delegations stressed the need to

address, in an international instrument, issues related to access to, and the sharing of benefits from, marine genetic resources of areas beyond national jurisdiction. It was noted that that would enable parity between developed and developing countries and would also help in eradicating poverty. Some delegations stressed the need to also address the conservation and management of those resources, including with a view to ensuring that the collection of specimens would be sustainable and not damage ecosystems. Several delegations acknowledged that a “first come, first serve” approach to resources undermined sustainability.

50. Different views continued to be expressed regarding the regime applicable to marine genetic resources of areas beyond national jurisdiction. Several delegations expressed the view that those resources were the common heritage of mankind and that regime should therefore apply. Some delegations indicated that the freedom of the high seas applied to those resources. Several other delegations stressed that, while they could not accept that marine genetic resources were the common heritage of mankind as those resources were not contained within the notion of “resources of the Area”, they were nevertheless open to discussing practical measures for benefit-sharing.

51. Some delegations called for the application of the regime established in Part XI of the Convention to marine genetic resources of areas beyond national jurisdiction and for the expansion of the mandate of the International Seabed Authority. Other delegations observed that the regime established in Part XI of the Convention could provide a model or be drawn upon to address issues related to access to, and benefit-sharing from, marine genetic resources. It was noted, however, that there was a difference between seabed mining, which required a long-term presence, and the exploitation of marine genetic resources, which did not given that, in some cases, limited samples were enough to enable replication in a laboratory. In that regard, the question was raised as to how, if applicable, the principle of the common heritage of mankind would be applied to genetic material that had originated from the Area but was later synthesized in a laboratory. A view was expressed that the existing Part XI regime dealt with consumption of minerals, whereas a system with respect to marine genetic resources of areas beyond national jurisdiction would be in relation to sampling.

52. Some delegations noted that the relevant work being carried out under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) and under other organizations, such as the World Intellectual Property Organization (WIPO), could also be beneficial, while acknowledging that these may not be directly applicable to marine genetic resources of areas beyond national jurisdiction. In particular, such work showed a pathway that enabled access and benefit-sharing without impeding research and commercial development. A view was expressed that issues related to intellectual property should be left to WIPO. A view was also expressed that the Nagoya Protocol should be considered as the most comprehensive existing international framework to address the issue of access to, and benefit-sharing from, marine genetic resources of areas beyond national jurisdiction.

53. Some delegations stressed that a benefit-sharing regime should promote and not create disincentives to further research, investment and innovation. It was also suggested that the use of marine genetic resources for commercial purposes should

be distinguished from non-commercial purposes to ensure that scientific discovery was not impeded. It was observed that activities related to marine genetic resources were nascent and quickly evolving and that care should be taken not to create a system that could be rendered obsolete or irrelevant. Preference was expressed by a delegation for sharing data and research results, capacity-building, and scientific collaboration related to the exploration, protection and study of marine genetic resources over the development of a benefit-sharing regime. In that regard, it was observed that the greatest benefits to humanity from marine genetic resources of areas beyond national jurisdiction would stem from the worldwide availability of products and scientific knowledge and the contributions those products and information brought to advancements in public health, food affordability and science, all of which could be impeded by a benefit-sharing regime.

54. Questions were raised as to: the exact nature of the benefits to be shared; what type of activities would be subject to benefit-sharing; whom the benefits would go to; and on what basis they would be distributed. Some delegations proposed that benefits could include both monetary and non-monetary benefits. A view was expressed that the distribution of benefits should reflect the common heritage status of marine genetic resources of areas beyond national jurisdiction.

55. Suggestions were made that an international instrument should include disclosure requirements; mechanisms that encourage, rather than discourage, cooperation and compliance with access and benefit-sharing arrangements; mechanisms for data-sharing, such as databanks, sample collections and open-access gene pools; and incentives for the development of such mechanisms on a more comprehensive basis.

56. The need to ensure and promote the effective participation of developing countries in partnerships between scientific research institutions and private biotechnology companies was underscored. It was recalled that marine scientific research on the high seas and in the Area should be conducted only for peaceful purposes and must adopt appropriate scientific methodologies and procedures in accordance with the Convention. It was further observed that marine scientific research activities should not interfere with lawful activities in areas beyond national jurisdiction and must follow the rules established to protect and preserve the marine environment.

57. The need to define which marine genetic resources were under discussion was highlighted. In particular, a distinction was made by some delegations between genetic resources of the water column and those of the seabed. It was also suggested by some delegations that the relevant genetic material had to be defined in a practical manner to facilitate identification. A view was expressed that an international instrument should encompass marine genetic resources that were currently known or that might be discovered at any time in the future.

Measures such as area-based management tools, including marine protected areas

58. Several delegations highlighted the need to advance implementation of the commitments related to the establishment of marine protected areas and networks of such areas contained in the 2002 Johannesburg Plan of Implementation, Aichi Target 11 under the Convention on Biological Diversity and “The future we want”, including beyond national jurisdiction. Some delegations observed that marine protected areas, if properly established, could be an effective mechanism through which

conservation and sustainable use could be achieved. In that regard, it was observed that area-based management tools had to take into account the objectives of both conservation and sustainable use. The establishment of multi-purpose marine protected areas was highlighted in that context by several delegations. The need to strike a balance between the interests of affected States and conservation and management was also highlighted. Some delegations stressed that the freedom of the high seas should not be hampered by area-based management tools.

59. Noting the absence of global criteria and a global framework for the selection and establishment of area-based management tools, including marine protected areas, beyond national jurisdiction, several delegations expressed the view that a legal gap existed and that there was a need for an overarching framework. A suggestion was made that a framework for regional cooperation similar to that in place for regional fisheries management organizations and arrangements under the United Nations Fish Stocks Agreement could be contemplated for regional seas organizations. Alternatively, it was noted that a global approach could be considered. It was stressed, however, that a global framework should not be used to legitimate the unilateral establishment of marine protected areas by regional organizations.

60. It was recalled by some delegations that a number of existing global and regional organizations, such as IMO, the International Seabed Authority and regional fisheries management organizations and arrangements, had competence to establish area-based management tools. Reference was also made to the criteria for identifying ecologically and biologically significant areas established under the Convention on Biological Diversity and to the work under way to identify such areas. In that regard, delegations asked how the progress achieved in relevant forums would be taken into account in the context of an international instrument and a possible global overarching mechanism. Several delegations highlighted that the aim of establishing a global framework should not result in the creation of a supranational organization that would impose obligations on existing competent international organizations; rather, the aim should be to provide a mechanism for enhanced cooperation and coordination among those organizations.

61. A question was raised as to why an international instrument would be necessary to establish marine protected areas beyond national jurisdiction when willing States were already capable of establishing such areas. Clarification was also sought on how an international instrument might overcome unwillingness on the part of some States to establish marine protected areas beyond national jurisdiction. A question was raised concerning the advantages of an agreement to increase coordination rather than using a body such as the General Assembly.

62. The need to take into consideration the characteristics of the ecosystem of each individual area as well as of the protected species when establishing marine protected areas was underscored. The need to develop mechanisms for the identification of priority regions to be considered for conservation measures, including, as appropriate, protected areas was underscored. It was suggested by some delegations that the results of research carried out in marine protected areas should be made publicly available. A suggestion was made to identify ways of sharing the benefits resulting from the closure of an area. A call was made to develop multilateral and inclusive monitoring and control of activities carried out in marine protected areas in order to assess whether intended goals were being

achieved. The need for a mechanism for funding and management of marine protected areas was furthermore noted by some delegations.

Environmental impact assessments

63. Several delegations recalled the obligation to carry out impact assessments under article 206 of the Convention and noted the need to operationalize that obligation beyond areas of national jurisdiction. They observed, however, that a gap existed in regard to environmental impact assessments in the light of the absence of a global framework for the conduct of such assessments beyond areas of national jurisdiction. An international instrument should therefore address such assessments, as well as strategic environmental assessments, in the view of those delegations. Some delegations also stressed the need to address cumulative impacts.

64. It was noted that the International Seabed Authority and the Conference of the Parties to Convention on Biological Diversity had developed guidance on environmental impact assessments and that that work could be drawn upon. Questions were raised regarding the effect that a global framework for environmental impact assessments beyond areas of national jurisdiction would have on the work of existing processes. In particular, it was asked whether an international instrument would set out the elements required to be considered in conducting environmental impact assessments, who would be required to follow them and whether the assessments would be provided to existing organizations for their consideration.

65. A view was expressed that sound science and the involvement of stakeholders would be crucial elements of a global mechanism for the conduct of environmental impact assessments.

Capacity-building and the transfer of technology

66. Several delegations highlighted the importance of including capacity-building and the transfer of technology in the scope of an international instrument. The need to develop structures and programmes to enable developing countries to benefit from the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction was highlighted by some delegations. Others emphasized the need to support the capacity of developing countries to take part in marine scientific research. In particular, it was suggested that funding be provided for the participation of scientists from developing countries in research. A call was made for incentives for research and development of technology that are compatible with local, national and regional realities.

67. It was suggested that an international instrument should promote and establish specific rules for the transfer of technology, including with a view to enhancing the implementation of Part XIV of the Convention. The relevance of the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology was highlighted in that regard by some delegations.

Feasibility of an international instrument under the United Nations Convention on the Law of the Sea

68. Some delegations indicated that the question of feasibility was directly linked to the issues of the scope and parameters of an international instrument and noted the lack of agreement on those issues. In that regard, they stressed the need for

further detailed discussions before any decision was made to negotiate an international instrument. They also noted that problems in implementing the existing legal regime would continue under an international instrument, particularly if there was no agreement on its scope and parameters. In that regard, it was pointed out that the needed level of participation and implementation for the instrument to be effective might not be achieved.

69. Many delegations indicated that the question of feasibility was not a legal one, but one of political will and commitment, since an international instrument was legally, technically and practically feasible. In particular, those delegations noted that two implementing agreements already existed under the Convention, which demonstrated its dynamic character and its ability to identify and respond to new challenges. They further stated that an overwhelming majority of States had the political will to decide to begin negotiations on an international instrument.

70. Some delegations provided specific views on the concept of “feasibility” and what it entailed. It was suggested that “feasibility” included the issue of necessity and, in that context, legal and implementation gaps in the current system, as well as the problem of fragmentation in current management approaches were highlighted. Another view was expressed that “feasibility” entailed the utility of addressing gaps in the existing legal framework and the practicalities of reaching agreement on an international instrument. Another delegation noted that a discussion on feasibility should focus on whether the negotiation of an international instrument was advisable and whether it would add value, given the number of existing instruments and institutional frameworks. In that regard, some delegations highlighted the need to review existing instruments and mechanisms to determine what could be viable or effective.

71. Some delegations noted difficulties in speculating on whether an international instrument would, in reality, address the problems relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, since its effectiveness would depend on the degree to which it was accepted and implemented, as was the case for existing instruments.

72. It was suggested by some delegations that a new implementing agreement to the Convention would not be a panacea in addressing problems in the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, but was the best option to ensure legitimacy and the development of common principles and approaches. Many delegations reiterated, in that regard, that the status quo was not acceptable. In that context, several delegations highlighted the benefits of an implementing agreement in giving effect to certain principles and provisions contained in the Convention, filling gaps and improving cooperation and coordination among and between States and competent international organizations. A new international instrument would also address, in a cross-sectoral and integrated manner, problems that were currently dealt with unilaterally, or in a sectoral manner and without coordination. Several delegations also highlighted the importance of an international instrument in order to meet relevant international commitments made at the United Nations Conference on Sustainable Development and in other forums.

73. Other delegations noted that a new implementing agreement to the Convention might not provide suitable solutions to address the identified problems and gaps and emphasized the need to consider alternatives to the negotiation of such an

instrument, including strengthening existing frameworks, enhancing the implementation of existing instruments, ensuring the adoption of integrated approaches and improving cooperation and coordination among existing bodies. Some delegations noted that an international instrument could overlap with existing instruments and mechanisms and undermine the work of current bodies, especially regarding fisheries, or create conflicts in the exercise of rights and obligations. It was suggested, in that regard, that narrowing the scope of any new international instrument could provide a way forward. It was also noted that a new instrument might necessitate lengthy negotiations over years, which would have budgetary implications.

74. Several delegations indicated that a soft law approach to addressing the identified challenges would not be sufficient and would result in a fragmented approach to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Those delegations stressed the need for a comprehensive, universal and legally binding regime. In that context, the need to ensure that a symmetrical approach between an international instrument for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction and existing instruments was highlighted.

Informal Co-Chairs' overview of issues raised in the meeting

75. On the basis of the discussions on the scope, parameters and feasibility of an international instrument under the Convention, the Co-Chairs introduced, on 3 April, an informal Co-Chairs' overview of issues raised during the discussions and invited comments from delegations, noting that the document was for information purposes only and was not open to negotiation. The Co-Chairs stressed that comments should therefore focus on adding any missing issues that might have been raised during the discussions but were not captured in the overview.

76. A revised informal Co-Chairs' overview incorporating the comments received was circulated on 4 April and further commented upon. The final Co-Chairs' informal overview of issues raised is included in the appendix to the present summary.

Next meeting of the Ad Hoc Open-ended Informal Working Group

77. The Co-Chairs invited delegations to share their views concerning the structure and possible outcome of the next meeting of the Working Group, scheduled to be held from 16 to 19 June 2014. Several delegations expressed their flexibility regarding the format of the meeting, while noting the need to have concrete and focused discussions. In that regard, several delegations suggested that the next meeting could focus on specific issues where consensus was lacking. It was also proposed that the next meeting could address possible strategies to overcome differences among delegations.

78. Many delegations observed that the informal Co-Chairs' overview of issues raised was a useful basis for moving forward and could serve as a guide in setting the agenda for the next meeting, in particular the headings contained therein.

79. While acknowledging the mandate established in General Assembly resolution [68/70](#) for the Working Group, within its mandate established by resolution [66/231](#) and in the light of resolution [67/78](#), and in order to prepare for the decision to be

taken at the sixty-ninth session of the Assembly, to make recommendations to the Assembly on the scope, parameters and feasibility of an international instrument under the Convention, several delegations expressed the view that it would be premature to start drafting recommendations at the next meeting of the Working Group. However, some delegations noted the time constraints associated with the requirement of reaching an agreement before the end of the sixty-ninth session of the General Assembly. In that regard, a suggestion was made that the Working Group, at its next meeting, could start drafting ideas that could serve as a basis for the recommendations that would be drafted at the third meeting, to be held from 20 to 23 January 2015. It was also suggested that, should a communication to the General Assembly from the next meeting of the Working Group be required, it could take the form of a factual account of the current situation.

Appendix

Informal Co-Chairs' overview of issues raised during the first round of discussions on the scope, parameters and feasibility of an international instrument under the United Nations Convention on the Law of the Sea^a

A. Scope and parameters of an international instrument under the United Nations Convention on the Law of the Sea

Overall objective and starting point

- Address gaps (legal/regulatory) in relation to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction
- Address implementation gaps (legal/regulatory) in relation to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction
- Address fragmentation in relation to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction
- Package agreed in 2011 (General Assembly resolution [66/231](#), annex) constitutes the starting point for defining the scope: “address the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology”
- Recognition of the need to improve efforts in marine biodiversity conservation
- Improved implementation of the United Nations Convention on the Law of the Sea and related instruments
- Strengthen cooperation and coordination among relevant States, organizations and sectors, on the basis of existing instruments and mechanisms

Legal framework for international instrument

- United Nations Convention on the Law of the Sea provides the legal framework upon which an international instrument governing the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction should be based
- Need to preserve the integrity and balance of rights and duties under the United Nations Convention on the Law of the Sea
- United Nations Convention on the Law of the Sea should be read as a whole without emphasizing some aspects
- Should not amend the United Nations Convention on the Law of the Sea

^a The present overview is for information purposes and does not purport to be exhaustive.

- Need to operationalize relevant principles and obligations found in the United Nations Convention on the Law of the Sea and customary international law
- Should not imply any obligations related to existing instruments to those States that are not parties to them, while maintaining a balance with existing instruments

Relationship to other instruments

- Should not undermine, duplicate or change existing instruments (for example, United Nations Fish Stocks Agreement, Convention on Biological Diversity)
- Respect and complement the existing mandates of relevant organizations and avoid duplications
- Should not subordinate existing instruments
- Decision-making for regional and sectoral activities should remain with the relevant regional and sectoral organizations
- Support and complement application of existing instruments
- Consistency with principles of the United Nations Fish Stocks Agreement

Guiding approaches

- Package approach
- Need to strengthen cooperation and coordination and avoid fragmentation and duplication
- Global versus regional approach
- Effective integration of global, regional and sectoral approaches
- Avoid burdensome supranational governance system
- Sectoral versus integrated approach
- Legally binding versus soft law
- Address only gaps in legal regimes
- Include/exclude implementation gaps
- Complement existing instruments and processes under their purview

Guiding principles

- Balance between competing uses of the oceans and between conservation and sustainable use
- Protection and preservation of the marine environment
- Equitable utilization
- Cooperation
- Precautionary approach
- Decision-making based on best available science

-
- Ecosystem approach
 - Integrated approach
 - Adaptive management
 - Public participation in decision-making processes
 - Involvement of regional and sectoral stakeholders
 - Open and transparent processes
 - Public availability of information
 - Common heritage of mankind
 - Freedom of the high seas
 - Principle of common but differentiated responsibilities
 - Special requirements of developing countries, including landlocked States
 - Duty not to transfer damage or hazards or transform one type of pollution into another
 - Polluter-pays principle
 - Cumulative impacts
 - Flexibility and ability to address cumulative pressures
 - Solidarity
 - Flag State jurisdiction as a basis for enforcement on the high seas

Scope *ratione personae*

- Universal participation

Scope *ratione loci*

- Areas beyond national jurisdiction — both high seas and the Area
- Measures adopted in relation to the water column must respect the sovereign rights of the coastal State over its continental shelf

Scope *ratione materiae*

- Need to define “marine biological diversity”, “marine genetic resources”, “area-based management tools”, “areas beyond national jurisdiction”, etc.
- Include/exclude fisheries management measures
- Include/exclude fisheries-related measures
- Include/exclude measures related to other activities and sectors
- How to deal with fisheries?
- United Nations Fish Stocks Agreement and the United Nations Convention on the Law of the Sea already provide sufficient legal regime for high seas fisheries

- Lack of universality of the United Nations Fish Stocks Agreement and the Compliance Agreement of the Food and Agriculture Organization of the United Nations requires that fisheries issues be addressed in an implementing agreement
- Legal framework may be required for regional environmental organizations, similar to that provided by the United Nations Fish Stocks Agreement for regional fisheries management organizations and arrangements

Marine genetic resources, including questions on the sharing of benefits

- Legal/regulation gap
- Need to define notion of marine genetic resources
- Take into account article 2 of the Convention on Biological Diversity when addressing definition
- Marine genetic resources from the Area only
- Marine genetic resources from both the Area and the high seas
- Consistency with the terminology of the United Nations Convention on the Law of the Sea, in particular Part XIII
- Adopt a pragmatic approach
- Equitable access and benefit-sharing
- Should not create disincentives for innovation and research into and development of marine genetic resources
- Consider both sustainable use and conservation of marine genetic resources
- Promote scientific collaboration
- Effective participation of developing countries in research programmes as well as in public-private partnerships
- Facilitate access to data, including through databanks, sample collections and open access gene pools
- Distinguish between non-commercial use and commercial use of marine genetic resources
- Distinguish between consumptive and non-consumptive uses
- Define which activities are a use that requires benefit-sharing
- Establish appropriate modalities and mechanisms for non-monetary and monetary sharing of benefits
- Non-monetary benefits (for example, access to, and exchange of, samples, data, research results and information, capacity-building, transfer of technology) and monetary benefits
- Define who would be required to share benefits
- Define beneficiaries of benefits
- Address intellectual property rights

- Leave intellectual property rights to the World Intellectual Property Organization
- Establish new regime/mechanism (*sui generis*) or use existing ones (for example, flag state jurisdiction; Part XI and International Seabed Authority; Nagoya Protocol)
- Drawing from existing models of access and benefit-sharing
- Role of the International Seabed Authority
- Need for mechanism to encourage cooperation and compliance with access and benefit-sharing arrangements
- Common heritage of mankind versus freedom of the high seas
- Recognition of shared interest in marine genetic resources
- Would a benefit-sharing regime also require a regime to control or condition access to marine genetic resources?
- On what basis would benefits be distributed?

Area-based management tools, including marine protected areas

- Need for common understanding of “area-based management tools” and “marine protected areas” (for example, complete protection or multipurpose)
- Need to address multiple uses and cumulative impacts
- Need to achieve balance between conservation and sustainable use, taking into account the interests of specially affected States
- Must be based on the best available science and in accordance with established principles, in particular those in the United Nations Convention on the Law of the Sea
- Use of existing tools through better implementation of existing agreements
- Respect mandate of existing bodies to establish area-based management tools (for example, fisheries closures and vulnerable marine ecosystems by regional fisheries management organizations and arrangements, particularly sensitive sea areas by the International Maritime Organization, areas of particular environmental interest by the International Seabed Authority)
- Need for coordination among sectoral bodies in identifying areas requiring protection (for example, ecologically and biologically sensitive areas, vulnerable marine ecosystems) and establishing marine protected areas (regional fisheries management organizations and arrangements, Food and Agriculture Organization of the United Nations, International Maritime Organization, International Seabed Authority, regional seas bodies)
- Need global framework to ensure legitimacy of area-based management tools, including marine protected areas
- Need global framework for the identification, designation and establishment of marine protected areas in areas beyond national jurisdiction and establishment of global network of marine protected areas

- Global framework possible if fisheries-related issues excluded
- Develop criteria for the establishment of marine protected areas
- Need mechanism for monitoring compliance
- Achieve globally agreed targets (United Nations Conference on Sustainable Development, Convention on Biological Diversity: Aichi Target 11)
- Need to ensure long-term conservation on behalf of future generations

Environmental impact assessments

- Operationalize article 206 of the United Nations Convention on the Law of the Sea
- Need criteria to identify the activities that might require environmental impact assessments and threshold for environmental impact assessments
- Need standards or guidelines for conduct of environmental impact assessments, drawing on guidance developed by international organizations, including the Convention on Biological Diversity and the International Seabed Authority
- Need procedures for reporting, assessment, and monitoring of environmental impact assessments
- Assessment of cumulative impacts over time and across sectors
- Monitoring of ongoing activities
- Need for strategic environmental assessments
- Need for strategic environmental assessments to address cumulative impacts
- Environmental impact assessments and strategic environmental assessments also required for new and emerging activities
- Determine required follow-up action following environmental impact assessments

Capacity-building and transfer of technology

- Build capacity to ensure benefits from the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction
- Promote transfer of technology
- Sharing of data and research results
- Implementation of Part XIV of the United Nations Convention on the Law of the Sea
- Relevance of the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology

Enabling elements and means of implementation

- Promote and encourage marine scientific research
- Monitoring, control, and surveillance

- Reporting
- Enforcement mechanism
- Compliance mechanism
- Dispute settlement mechanism in the United Nations Convention on the Law of the Sea
- Good governance
- Institutional mechanism (for example, Conference/Meeting of the Parties)
- Financial mechanism

B. Feasibility of an international instrument under the United Nations Convention on the Law of the Sea

- Status quo is unacceptable
- Desirability

Pros

- Optimal approach, for example, to address gaps, strengthen cooperation and coordination and address shortcomings in implementation
- Need for an overarching legal and institutional framework
- Ensure multilateral/collaborative approach
- Maintain symmetry in legal status of rules relating to marine biodiversity beyond areas of national jurisdiction
- Ensure that the United Nations Convention on the Law of the Sea effectively addresses emerging issues and challenges
- United Nations Convention on the Law of the Sea lacks specific norms on marine biodiversity beyond areas of national jurisdiction

Cons

- New instrument not necessary — objectives can be achieved through existing instruments
- Possible overlap with existing instruments
- Could hamper current progress in existing organizations
- Lack of expertise and knowledge of regional characteristics
- Cost of negotiations
- Length of negotiations
- Could impede research and development
- Legal/technical feasibility
 - Legal basis found in the United Nations Convention on the Law of the Sea and relevant General Assembly resolutions (for example, resolution 2749 XXV)

- Outcome document “The future we want” (General Assembly resolution 66/288, annex)
- Already two implementing agreements to the United Nations Convention on the Law of the Sea
- Sufficient/insufficient information
- Should allow participation of non-parties to the United Nations Convention on the Law of the Sea
- Feasibility depends on political will
- Not clear how a new instrument would overcome political unwillingness under existing instruments
- Feasibility depends on agreement on what problems are and on the best way to address them
- Effective implementation of existing instruments depends on political will
- Feasibility closely linked to scope and parameters
- Feasibility contingent on definition of scope and parameters, namely, what will be included and what will not be included in an international instrument
- Form of an international instrument
 - legally binding, for example, implementing agreement to the United Nations Convention on the Law of the Sea
 - soft law, for example, General Assembly resolutions
