



THE GROUP OF 77
New York

The Chairman

N-136/2016

The Permanent Mission of the Kingdom of Thailand to the United Nations, in its capacity as Chair country of the Group of 77, presents its compliments to the Division for Ocean Affairs and the Law of the Sea (DOALOS) and has the honour to attach hereto a written submission of the views of Group of 77 and China on the elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

In this connection, the Permanent Mission has further the honour to request that the attached submission be transmitted to H.E. Mr. Eden Charles, Chair of the Preparatory Committee established by the General Assembly resolution 69/292.

The Permanent Mission of the Kingdom of Thailand to the United Nations, as Chair of the Group of 77, avails itself of this opportunity to renew to the Division for Ocean Affairs and the Law of the Sea the assurances of its highest consideration.

New York, 5 December 2016.

Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs
United Nations
NEW YORK

Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (A/RES/69/292)

Group of 77 and China's Written submission

5 December 2016

Marine Genetic Resources (MGRs) and the Sharing of benefits

1. The Group of 77 and China reaffirm their view that the principle of common heritage of mankind must underpin the new regime governing MGRs of areas beyond national jurisdiction. Given its cross-cutting nature, the principle should be at the core of the new instrument. The Group is of the view that the principle of the common heritage of mankind provides the legal foundation for a fair and equitable regime of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including the access and sharing of benefit of MGRs.

Among the elements of the principle of common heritage of mankind that are critical to a fair and equitable regime for the conservation and sustainable use of marine biological diversity, of which MGRs are part, include the following;

- Since the objective of the new instrument is to conserve and sustainably use marine biological diversity, this implies the need to carry out activities pertaining to that objective for the benefit of mankind as a whole, irrespective of their geographical location, and taking into particular consideration the interests and needs of the developing countries (regardless of sub-categorization of countries under 'developing countries').

- No claim or exercise of sovereignty or sovereign rights of the areas beyond national jurisdiction nor any appropriation shall be recognized.

- Use of areas beyond national jurisdiction and their resources by all States shall be exclusively for peaceful purposes.

- The benefits shall be equitably shared.

- In addition, this implies that the activities regarding the exploration, exploitation of the resources in the said areas should be governed by an international regime.

Furthermore, in the context of the implementation of the 2030 Agenda for Sustainable Development, the new instrument could contribute to the conservation and sustainable use of oceans and their resources for the full benefit of all, for today's generation and for future generations.

Desiring by this new instrument to develop an effective regime of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through a fair and equitable regime of access to and sharing of benefits of marine genetic resources. The principle of common heritage of humankind will contribute to the realization of the said objective as, through the application of this principle, the interests and needs of humankind as a whole, especially those of developing countries will be fairly addressed and taken care of.

2. The Group reaffirms the importance of the access to marine genetic resources. The Group is open to discuss about the different forms of access to MGRs which would make their sharing of benefit most

effective and responsive to the protection and preservation of marine environment, and the needs and interests regarding marine scientific research as well as the development opportunities of the developing countries, including future generations. Bearing in mind that any access within the scope of the new instrument will not hamper marine scientific research, the Group is of the view that there is interest to include a provision on access to marine genetic resources. A clearinghouse mechanism could be established and a protocol or code of conduct or guidelines could be developed within the said mechanism in order to ensure environmental protection compliance and ensure transparency in the use of marine genetic resources of areas beyond national jurisdiction. The Group believes that any consideration of a mechanism should take into account existing mechanisms, such as the International Seabed Authority.

3. The Group of 77 and China are of the view that the benefits should be both monetary and non-monetary. As previously mentioned, the benefit-sharing of MGRs should be fair and equitable on the basis of the principle of common heritage of mankind. The following factors should also be borne in mind;

- The non-monetary benefit should comprise of access to all forms of resources, data and related knowledge, transfer of technology and capacity building as well as facilitation of marine scientific research on MGRs of areas beyond national jurisdiction.

- MGRs can bring about monetary benefits and, consequently, the Group of 77 and China are open to discuss the different modalities of monetary benefits which may include, but would not be limited to those mentioned in the Annex of the Nagoya Protocol as well as the conditions triggering the monetary benefits. A trust fund within the possible clearinghouse mechanism on access and benefit-sharing could be established with a view to ensuring a fair and concrete sharing of benefit.

Measures such as area-based management tools (ABMTs), including marine protected areas (MPAs)

1. The Group of 77 and China are of the view that there is a need to understand area-based management tools, including marine protected areas as measures to achieve the objective of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. To this end, the Group of 77 and China is open to discuss working concepts for ABMTs, MPAs and Marine spatial planning (MSP).

In line with the aforementioned, the Group would like to proffer that:

- A possible working definition of ABMTs as tools designed and applicable in a specified area located beyond national jurisdiction with a view to achieving a defined objective (environmental conservation or/and resource management)

- A possible working definition of a MPA is “a geographically defined area which is designated, regulated and managed to achieve specific conservation objectives” (Convention on Biological Diversity (CBD))

Such measures would contribute to conserve and sustainably use marine biodiversity of areas beyond national jurisdiction in an integrated manner.

2. *Identification of priority areas for ABMTs including MPAs* general criteria and/or guidelines to identify priority areas should be developed on the basis of the existing internationally recognized criteria for area-based conservation measures as follows (1) the uniqueness and rarity of the areas; (2) vulnerability; (3) fragility, sensitivity of the area; (4) biological or ecological productivity and diversity.
3. Regarding the process for the designation or establishment of ABMTs, any proposal can be submitted by States parties to the new instrument. The proposal should comprise of the objective of the measure, the delimitation of the area, the conservation or management measures needed to reach the specified objective on the basis of best available scientific evidence.
4. The process of designation or establishment of ABMTs shall be consistent with the purposes and principles of the UN Charter.
5. The proposal to establish an ABMT should take into account the best available science and be based on the precautionary approach/principle and could be reviewed by a scientific and technical body, without prejudice to the sovereignty and territorial integrity of coastal States.
6. Without prejudice to the consideration whether an ABMT should be time-framed or not, the ABMT should be kept under review and be monitored on the basis of best available science and within the objective to conserve and sustainably use marine biological diversity.
7. Further to the guiding principles and approaches around which there was a convergence of views, e.g. ecosystem approach, precautionary approach, science-based approach as well as transparency, the Group would like to assert that relevant approaches or principles in this context include 1) the protection and preservation of the marine environment; 2) concept of sustainable and equitable use which also relates to the principle of common heritage of mankind; 3) accountability which will be the basis for establishing a system of review and compliance; 4) liability in case that the activities or measures under the purview of this new instrument cause damage to marine environment.

Environmental impact assessments (EIAs)

1. It is essential that EIAs process under the new instrument should take into account the special needs of developing countries, including necessary technical and financial assistance as well as development of institutional capacity and transfer of marine technology.
2. Possible working definition of the EIAs
A process to evaluate the environmental impacts of activity to be carried out in areas beyond national jurisdiction, with an effect on areas within or beyond national jurisdiction, taking into account inter-related socioeconomic, cultural and human health impacts, both beneficial and adverse.
3. In the context of EIAs of a proposed activity to be carried out in areas beyond national jurisdiction, the EIA could be done, taking into consideration principles and approaches such as : 1) ecosystem approach; 2) science – based approach as any decision making on this issue should be based on the best scientific information available; 3) precautionary approach as the activities in areas beyond national

jurisdiction relate to the scientific knowledge, the decision making should be based on precautionary approach; 4) transparency in decision making; 5) inter- and intra-generational equity as the EIAs aim at predicting environmental impacts and providing ways and means to mitigate those adverse impact; 6) responsibility to protect and preserve marine environment.

Procedural steps for a conduct of EIA

4. *Screening* - in order to trigger a conduct of EIAs, qualitative threshold such as “reasonable grounds to believe that a proposed activity may cause significant and harmful changes to the environment” could be used. In addition, the Group of 77 and China are open to explore a list of activities which require an EIA or/and can be exempt from an EIA requirement in order to determine the necessity of having such a list of activities to complement the qualitative threshold. If there is a necessity to have such list, it must be possible to review or to update it.

5. *Scoping* – there is a need to identify which potential impacts are relevant to assess. To this end, some standard components of an EIA, such as the description of the proposed activity; the potential environmental impact of that activity, including specific information necessary for identifying and assessing the environmental effects of the proposed activity; and a description of the proposed measures to mitigate the predicted adverse impact should be included.

6. *Assessment and evaluation of impacts* - an assessment of the potential impacts of the proposed activities in every dimension should be taken into account.

The related evaluation and analysis of the risks and potential impacts or effects of the proposed activities to marine environment should be done on the basis of recognized scientific methods.

7. *Reporting of the Environmental Impact Statement (EIS)* – consistent with Article 205-206 UNCLOS, the reports of the results of the assessments shall be published and communicated

8. *Review / Monitoring* – consistent with Article 204 UNCLOS

States shall keep under surveillance the effects of any activities being undertaken following the positive outcome of any EIA.

Capacity building and transfer of marine technology

1. Capacity-building and transfer of marine technology under the new instrument should enhance and develop the capacity and ability of developing countries, taking into account the special needs for assistance of land-locked and geographically disadvantaged developing States, small island developing States, least developed countries, coastal African States as well as the specific development challenge of developing middle-income States, with a view to enabling them to assume their responsibility and obligations under the new instrument as well as to conserve and sustainably use the marine biological diversity.

2. Capacity-building and transfer of marine technology under this the new instrument should be promoted and carried out on fair and reasonable terms and conditions as well as through favorable terms and conditions.

3. Enhancing cooperation in the development of capacity and transfer of marine technology should be encouraged at all levels, including North-South / South-South cooperation and partnerships with relevant stakeholders with specific expertise as this will prove beneficial to strengthening human and institutional capacities and ultimately achieving the objectives of the new instrument.
4. There is a genuine need to ensure adequate, predictable and sustainable funding for capacity building and transfer of relevant marine technology. In addition to the voluntary trust fund, any funding mechanism under the new instrument should be complemented by the contribution resulting from the sharing of benefit aspect in order to promote meaningful projects on capacity building.
5. The new instrument should define the general obligations in promoting cooperation to develop capacity and transfer of marine technology while recognizing the relevance of marine scientific research for developing countries.
6. The capacity-building and/or transfer of marine technology under the existing instruments and mechanisms (such as UNCLOS, ISA, IOC-UNESCO capacity development) should be enhanced. The new instrument shall not undermine or duplicate the existing programmes/mechanisms and shall address the specific aspects relating to the new instrument, while building upon the lessons learned from different international instruments that are of technical nature such the UNCLOS, the Convention on Biological Diversity (CBD), and the United Nations Framework Convention on Climate Change (UNFCCC) including the Paris Agreement. The instrument should also build upon the existing capacity building frameworks/mechanisms and focus on coordinating efforts and make them responsive to the objective of conservation and sustainable use of marine biological diversity, such as the IOC Medium-Term Strategy 2014-2021.
7. The scope of the needs and priorities for capacity building can include scientific, educational, technical assistance as well as individual capacity building through short-term, medium-term and long-term training and scholarships, exchange of experts, and research cooperation programmes, awareness raising and knowledge sharing. The possible areas are, *inter alia*, marine science (including in the context of access to and use of MGRs), area based management tools, the conduct of EIAs under the new instrument; establishment or strengthening the capacity of relevant organizations/ institutions in developing countries to deal with conservation of marine biological diversity in areas beyond national jurisdiction; access and acquisition of necessary knowledge and materials, information, data in order to inform decision making of the developing countries; development of necessary technology in marine science; development of necessary infrastructure and acquisition of necessary equipment to sustain and further develop R&D capabilities in the country. The needs identified and priorities for capacity building can be reviewed by an advisory or decision-making body under the new instrument.
8. The new instrument should be related to the areas which require increased scientific knowledge, the development of research capacity, promoting, *inter alia*, an effective implementation of the existing relevant provisions on transfer of marine technology, including those provided by the Intergovernmental Oceanographic Commission. It concerns, for instance, Criteria and Guidelines on the Transfer of Marine Technology, with the possibility to revise and update them (among others, the definition of marine technology therein) so as to include all aspects of needs in the context of conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction.

9. The idea of a clearing-house mechanism and a capacity-building network could be developed, using, *inter alia*, web-based tools. Those tools can be a platform to access, evaluate, publish and disseminate information, as well as to provide a case-by-case option upon request. The experience of the CBD and the UNFCCC (Climate Technology Centre and Network as well as the Technology Needs Assessment), for example, could be instrumental in this regard.

Cross-cutting issues

Institutional arrangements

1. The institutional arrangements under the new instrument should consider 2 considerations 1) the high technicality of the concerned issues and 2) the need for an effective institution to operationalize the provisions of the new instrument. To this end, the Group of 77 and China believe that there is merit in looking at structure of existing organisations and convention bodies (ISA, International Maritime Organisation (IMO), UNFCCC bodies), to consider lessons learned and best practices, while accomplishing universality, in an effort to determine the most effective mechanisms going forward. At this juncture and without prejudice to the further consideration of the nomenclature of institutional bodies of the new instrument, institutional bodies could include 1) a secretariat; 2) a decision-making body such as Conference of Parties (COP); 3) a scientific and technical body with an advisory competence which can play a role in the establishment of ABMTs, including MPAs; 4) a clearinghouse mechanism to promote and facilitate technical and scientific cooperation, knowledge and data sharing as well as 5) a mechanism in charge of access and benefit sharing of MGRs.

Relation to other agreements

2. The new instrument should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

Relationship between the new instrument and UNCLOS

3. Nothing in the new instrument shall prejudice the rights, jurisdiction and duties of States under UNCLOS. The new instrument shall be interpreted and applied in the context of and in a manner consistent with UNCLOS.

Universal participation

4. The new instrument shall consider universal participation, where parties and non-parties to UNCLOS can become party to it.
