

**Advance and unedited**

**Outcome of the Ad Hoc Open-ended Informal  
Working Group  
to study issues relating to  
the conservation and sustainable use of  
marine biological diversity beyond  
national jurisdiction**

**20-23 January 2015**

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**Outcome 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 and Co-Chairs' summary of discussions**

**I. Recommendations**

1. 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 recommends to the General Assembly that it:

(a) Reaffirm the commitment in paragraph 162 of the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, entitled "The Future We Want", as endorsed by the General Assembly in its resolution 66/288 of 27 July 2012, in which the heads of State and Government committed to address, on an urgent basis, building on the work of the Ad Hoc Open-ended Informal Working Group, the issue of the conservation and sustainable use of marine biological diversity beyond areas of 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 ("the Convention"), before the end of the sixty-ninth session of the United Nations General Assembly;

(b) Note the request of the General Assembly to the Ad Hoc Open-ended Informal Working Group to make recommendations on the scope, parameters and feasibility of an international instrument under the Convention as contained in paragraph 214 of resolution 69/245;

(c) Welcome the exchange of views on the scope, parameters and feasibility of an international instrument under the Convention and the progress made within the Ad Hoc Open-ended Informal Working Group, within its mandate established by resolution 66/231 and in the light of resolution 67/78 to prepare for the decision on the development of an international instrument under the Convention to be taken at the sixty-ninth session of the General Assembly;

(d) Stress the need for the comprehensive global regime to better address the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction and having considered the feasibility of developing an international instrument under the Convention;

(e) Decide to develop an international legally-binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and to that end:

(i) prior to holding an intergovernmental conference, decide to establish a preparatory committee, open to all Member States of the United Nations, members of specialized agencies, and Parties to the Convention, with others invited as observers in accordance with past practice of the United Nations, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally-binding instrument under the Convention, taking into account the various reports of the Co-Chairs on the work of the Ad Hoc Open-ended

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Informal Working Group established pursuant to paragraph 73 of General Assembly resolution 59/24. The preparatory committee will start its work in 2016 and by the end of 2017 will report to the General Assembly on its progress;

(ii) before the end of the seventy-second session of the General Assembly, and taking into account the aforementioned report of the preparatory committee, will decide on the convening and on the starting date of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the preparatory committee on the elements and to elaborate the text of an international legally-binding instrument under the Convention.

(f) Decide that negotiations shall address the topics identified in the package agreed in 2011, namely the conservation and sustainable use of marine biodiversity of 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, environmental impact assessments and capacity-building and the transfer of marine technology;

(g) Recognize that the process indicated in paragraph (e) should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies;

(h) Recognize also that neither the participation in the negotiations nor their outcome may affect the legal status of non-parties to the Convention or any other related agreements with regard to those instruments, or the legal status of parties to the Convention or any other related agreements with regard to those instruments.

## **II. Co-Chairs' summary of discussions\***

2. In paragraph 198 of its resolution 68/70, the General Assembly requested 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 (“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 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.

3. The first and second of these meetings of the Working Group were held at United Nations Headquarters from 1 to 4 April 2014<sup>a</sup> and from 16 to 19 June 2014<sup>b</sup> respectively, in accordance with paragraphs 199 and 200 of General Assembly resolution 68/70. The third of these meetings was held at United Nations Headquarters from 20 to 23 January 2015, in accordance with paragraphs 199 and 200 of General Assembly resolution 68/70 and paragraph 214 of resolution 69/245.

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\* The summary is intended for reference purposes only.

<sup>a</sup> A/69/82

<sup>b</sup> A/69/177

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4. 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.

5. 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.

6. Representatives of 104 Member States, 2 non-Member States, 17 intergovernmental organizations and other bodies and 11 non-governmental organizations attended the meeting of the Working Group.

7. The Working Group adopted the agenda without amendment (A/AC.276/L.10) and agreed to proceed on the basis of the proposed format and annotated agenda and organization of work (A/AC.276/L.16).

8. Following informal consultations, on 23 January 2015, the plenary of the Working Group adopted the recommendations contained in section I above by consensus. The delegations of the Bolivarian Republic of Venezuela and the Republic of Colombia made statements explaining their position after the adoption of the recommendations (see para. 33).

9. In accordance with the format and 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. The general considerations made during the meeting are reflected in paragraphs 10 to 25 below. Comments of a general nature made in the context of the consideration of draft recommendations to the sixty-ninth session of the General Assembly are reflected in paragraphs 26 to 34.

**General considerations, including on the scope, parameters and feasibility of an international instrument under the United Nations Convention on the Law of the Sea**

10. Delegations recalled the importance and urgency of addressing the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Several delegations observed that addressing the issue would also address sustainable development issues, in particular food security and poverty alleviation. Several delegations highlighted, in particular, that oceans were the foundation of small island developing States' economies, environment and societies and that, in recent years, accumulating and compounding human impacts had undermined the health of the oceans thereby gravely threatening the well-being and livelihood of their populations. In this context, marine biodiversity beyond areas of national jurisdiction was considered of critical importance, due to its shared, transboundary nature and its interconnectedness to coastal ecosystems. It was further noted that national and regional efforts to conserve and sustainably use biodiversity could be jeopardized by the challenges posed by activities beyond areas of national jurisdiction. These delegations called for strengthened cooperation and coordination amongst all sectors and at all levels. Several delegations further expressed the view that a global universal governance structure remained the best way to promote sustainable marine biodiversity beyond areas of national jurisdiction.

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11. Delegations recalled paragraph 162 of the outcome document of the 2012 United Nations Conference on Sustainable Development, “The future we want”, in which States committed, 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 (UNCLOS). Many delegations welcomed the progress made at the April and June meetings of the Working Group.

12. In particular, many delegations reiterated that the status quo was not acceptable and considered that there was a growing momentum to recommend to the General Assembly that it decide to launch negotiations to develop an international instrument under UNCLOS. They considered that the elaboration of such an instrument was feasible from a political, legal and technical standpoint. In their view, this instrument would have to be negotiated on the basis of, and address, the package of issues agreed upon in 2011 in resolution 66/231, namely, 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. Many delegations supported negotiating such an instrument as a legally-binding agreement under UNCLOS. Several delegations underlined that a third implementing agreement to UNCLOS would respond to the urgent need to depart from the status quo and bring an added value to the present legal regime for oceans and seas by moving from sectoral and fragmented approaches to a global and more coherent approach. Such an agreement, several delegations noted, would implement, strengthen and elaborate on a number of obligations already embodied in UNCLOS, without altering the existing legal order established in the Convention. Several delegations also pointed out that an agreement would reduce existing governance gaps by providing a comprehensive legal and institutional framework for marine biodiversity beyond areas of national jurisdiction. A view was expressed that such a regime would ensure predictability and uniformity in the conduct of States. It was further emphasized that the response to the challenge of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction could not be left to unilateral action or to organizations with limited participation, and that common goods could not be appropriated or left to the exclusive administration of a few which did not represent the interests of the international community.

13. Some delegations stated that discussions had not been exhausted on the way forward to address issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction and that some questions still needed to be addressed. It was observed that the status quo was mainly due to limited political will to implement existing instruments, which did not constitute a legal gap but one of implementation that would not be addressed by adopting a new instrument. Some delegations observed that focusing on the effective implementation and enforcement of existing legally-binding instruments would better ensure conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. In that regard, in light of the need to tackle issues on an urgent basis and the significant resources and efforts required to negotiate a new

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instrument, preference was expressed for focusing on ways to strengthen the implementation of existing instruments.

14. Some delegations also expressed concern about negotiating a new legally-binding agreement without a clear understanding of what it would cover. In that regard, it was noted that while there was some clarity on the breadth of questions involved, there was not sufficient clarity on possible answers. The view was also expressed that the 2011 package was no more than a description of major topics to be addressed, which did not specify which activities would be covered by a new instrument, nor clarify that a new instrument would not prejudice the rights, duties and interests of States, and not diminish authorities or mandates under existing international law.

15. Several delegations highlighted the need to complement and respect, and avoid duplication with existing instruments, in particular UNCLOS. Some delegations stressed the need to take into account on-going activities. Several delegations suggested that the future arrangement should build on the Agreement relating to the implementation of Part XI of UNCLOS and the United Nations 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 (United Nations Fish Stocks Agreement), as well as other relevant treaties to provide a uniform regime for biodiversity beyond areas of national jurisdiction.

16. The need to take into account the relevant general principles of international law and the rights and duties enshrined in international legal instruments, in particular UNCLOS, such as the principle of the common heritage of mankind and the freedom of the high seas, was emphasized by several delegations. Some delegations also reaffirmed the importance of preserving the balance of interests, rights and obligations enshrined in UNCLOS and between competing uses of the oceans and conservation and sustainable use objectives. It was emphasized that should negotiations be launched, any discussions and resulting instrument should focus on cooperation and collaboration between institutions and ensuring a functioning relationship between the different activities in areas beyond national jurisdiction, not on managing these activities.

17. Many delegations noted with concern the absence of a comprehensive global regime to address the legal gaps relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Some other delegations drew attention to the fact that a number of existing instruments were applicable. A view was therefore expressed that the focus of any new agreement should be on issues where there were shortcomings or gaps in the current framework. In that regard, it was noted that while legal gaps could be addressed in the context of a new agreement, such gaps had yet to be specifically identified.

18. Several delegations underlined the existence of a legal gap concerning access to, and benefit-sharing from, marine genetic resources of areas beyond national jurisdiction. In the view of several delegations, these resources were the common heritage of mankind in accordance with General Assembly resolution 2749 (XXV). They noted that these resources were currently being exploited without the concomitant obligation to share the benefits derived therefrom and that a specific legal regime needed to be developed to implement the common heritage of mankind, taking into account the interests and needs of developing countries, including States

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non-Parties to UNCLOS. It was also highlighted that marine genetic resources beyond areas of national jurisdiction could not be subject to unilateral access and use.

19. It was suggested that the scope of a new instrument should encompass all marine resources in areas beyond national jurisdiction currently known or discovered at any time in the future. In that regard, while support was expressed for the inclusion of fisheries in a new instrument, taking into account the work of existing regional fisheries management organizations, other delegations observed that fisheries in the high seas were already regulated under the United Nations Fish Stocks Agreement, and should therefore not be included in the scope of such instrument.

20. The importance of not deterring scientific research was emphasized, given that research on marine genetic resources was a relatively new and quickly evolving field and that innovation could be hampered by cumbersome and excessive bureaucratic procedures. It was also reaffirmed that intellectual property rights issues should be addressed within the competent fora, such as the World Intellectual Property Organization.

21. The need to enhance scientific understanding of areas beyond national jurisdiction was considered a priority and that sound science should inform decision-making. It was also noted that transfer of technology must be compatible with existing frameworks, including those under UNESCO.

22. Several delegations noted that a legally-binding agreement should incorporate widely accepted principles of ocean governance such as the precautionary principle, integrated ocean management and an ecosystem approach. A view was expressed that it would not be appropriate to use a “one size fits all” approach for every activity in all regions as impacts vary across sectors and regions based on particular circumstances and characteristics. It was observed, with particular reference to transboundary environmental impact assessments, that care should be exercised in applying to marine biodiversity beyond areas of national jurisdiction approaches developed in the context of planned activities within the jurisdiction or control of States.

23. Several delegations suggested that an agreement should establish institutional mechanisms to assist Parties in implementing their obligations. In this regard, they expressed the view that the mandate of the International Seabed Authority could be expanded to oversee the implementation of a future agreement under UNCLOS. Other delegations observed that the International Seabed Authority could serve as a model for any institution developed under a new agreement. A view was expressed that new structures or institutions should only be established if considered necessary.

24. The need to take into account the views of all stakeholders was emphasized. In particular, it was suggested that civil society, international organizations and industry associations that have an interest in activities that could be impacted by any future instrument should be invited to engage and contribute their views and expertise.

25. Some delegations underscored that any new agreement should be open to all States, whether parties or non-parties to UNCLOS. Several delegations stressed that accession to an implementing agreement on the conservation and sustainable use of

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marine biodiversity beyond areas of national jurisdiction under UNCLOS should not prejudice accession to UNCLOS of States non-parties. Some delegations also indicated that acceding to such an agreement would not imply acceptance of any legal obligations arising from instruments that have not been explicitly accepted by States non-Parties. In that regard, some delegations expressed the view that issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction should be regulated under an international instrument other than UNCLOS, such as the Convention on Biological Diversity or as an addition to 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. It was also suggested that the criteria and principles enshrined in various existing instruments could be adapted to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, bearing in mind the principles of responsibility, cooperation, equality, and sustainability.

**Consideration and adoption of draft recommendations to the sixty-ninth session of the General Assembly**

26. The Co-Chairs presented their non-paper entitled “Draft elements of recommendations to the sixty-ninth session of the General Assembly”, dated 17 December 2014, which had been prepared upon the request of delegations at the June 2014 meeting of the Working Group. The Co-Chairs explained that the non-paper compiled the elements submitted by delegations in response to their letter dated 8 July 2014, with a view to facilitating the development of draft recommendations. They further noted that it was not envisaged that the non-paper would constitute the basis for negotiations on the draft recommendations, especially since the elements contained therein did not purport to reflect consensual elements. Delegations expressed their appreciation to the Co-Chairs for preparing the non-paper, which they considered constituted a good basis to elaborate draft recommendations.

27. Many delegations expressed support for recommendations to launch a negotiating process for an international legally-binding agreement. It was observed that under the mandate of the Working Group including as resulting from General Assembly resolution 66/231 and taking into account the commitment made by States in paragraph 162 of the “Future we want”, the option of addressing issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction through the implementation of existing instruments was still available.

28. With regard to the possible content of an international instrument, many delegations expressed the view that the draft recommendations should only reflect consensual elements, highlighting in particular the 2011 package, without touching upon issues which were still under discussion. A view was expressed that the 2011 package was not robust enough to constitute the basis for negotiations of a new instrument.

29. Several delegations stressed that the recommendations should include a reference to the need to recognize, respect and complement the competence and mandates of existing global and regional organizations and frameworks and to foster and strengthen cooperation and coordination between existing bodies. It was proposed that the recommendations include recognition of the primary role of UNCLOS and its principles such as freedom of the high seas and the common heritage of mankind. A suggestion was made that the recommendations could

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include parameters such as taking a practical approach, cost effectiveness, adequate financial incentives and the use of existing frameworks to avoid unnecessary costs. Other delegations cautioned against engaging in de facto treaty negotiation before formal negotiations for an international instrument under UNCLOS had actually commenced as many issues would need to be resolved during such negotiations.

30. With regard to the next stage of the process, many delegations called for the recommendations to include the convening of an intergovernmental conference under United Nations auspices with the mandate to negotiate an implementing agreement under UNCLOS and to address, in particular, together and as a whole, the package of issues set out in the 2011 package. Several delegations suggested that the intergovernmental conference should be convened as soon as possible and should complete its work within an agreed deadline. Several delegations suggested that the resolution to be adopted by the General Assembly could set the timeline for negotiations. Highlighting the complexity of the issues, a delegation stated that it would not be appropriate to pre-set a timetable for negotiations at this stage.

31. Many delegations expressed the view that convening a preparatory process, with the mandate of making recommendations to an intergovernmental conference, could be useful. A view was expressed that the most important task of the preparatory committee should be to determine specifically those areas for which a new agreement was necessary and those areas where it would be sufficient to strengthen cooperation under existing instruments. In that regard, it was observed that the discussions in the Working Group had been very rich and the preparatory process should draw upon and benefit from this work. The view was expressed that the recommendations of the Working Group should be specific enough to provide guidance and framing to the preparatory process, without going into the detail of what needed to be negotiated.

32. Many delegations observed that the preparatory process should be open to all Member States of the United Nations as well as Parties to the Convention. The need to ensure that the negotiations were inclusive and transparent was also underscored.

33. Following informal consultations, which were conducted on the basis that “nothing is agreed until everything is agreed”, the Working Group adopted the recommendations included in section I above by consensus. The delegation of the Bolivarian Republic of Venezuela indicated that, as a non-Party to UNCLOS, the norms of the Convention, including those characterized as customary law, were not applicable to it, except for those it had expressly recognized. It was also stated that lack of objection to the recommendations adopted by the meeting could not be interpreted as a change in position of the Bolivarian Republic of Venezuela with regard to UNCLOS and its role in the framework of a future legal regime for marine resources beyond national jurisdiction. The delegation of the Republic of Colombia indicated that it had joined the consensus on the understanding that this support did not imply the acceptance by the Republic of Colombia of the provisions or the obligations contained in UNCLOS, to which it was not a party. It further stressed that, under no circumstances, could it be inferred that UNCLOS or any other international instrument related to the recommendations were applicable or opposable to it.

34. Delegations expressed appreciation to the Co-Chairs for their leadership and guidance since 2010. They also thanked the Secretariat.