

Thank you, madam President, for giving me the floor. Let me at the outset align ourselves with the statement made by the State of Palestine on behalf of G77 and China. Considering the question of time, Madam president I shall limit my intervention only on the para graph 2.1.

We still find it difficult to support para 2.1 Geographical Scope in its present form as we have been trying to give clarity since the beginning of the prepcom and the last IGC, because of the legal issues pertaining to the term areas beyond national jurisdiction, which is not at all found in the legal vocabulary of the UNCLOS.

Madam President, The nature of the marine environment constantly moving and the complexity of the jurisdictional framework in the oceans are such that challenges to the smooth implementation of applicable legal instruments may exist in cases where the biological material is found both in areas within and beyond national jurisdiction. The first of such challenges relates to MGRs which are found both within the EEZ of one or more coastal States and in the high seas, such as the free-floating microbes of the pelagic zone or the genetic resources hosted by migratory species of fish, cetaceans or mammals.

Another challenge originates in the complexity of organisms or other biotic components that may depend on, or be associated with, sedentary species, such as sponge or corals found on the portion of the continental shelf extending beyond 200 nautical miles in accordance with article 76 of UNCLOS, but which are not themselves necessarily sedentary in nature.

Within 200 nautical miles, the coastal State has sovereign rights over resources both on the continental shelf and in the superjacent water column of the EEZ for the purposes of the exploration and exploitation of the resources (where an EEZ has been declared). However, beyond 200 nautical miles, while the sovereign rights of the coastal State apply to the continental shelf beyond 200 nautical miles, those rights do not apply to the superjacent water column – in other words, the high seas. Under UNCLOS, High seas are nowhere termed as areas beyond national jurisdiction and the prior consent of the coastal State is required for research on natural resources on its continental shelf.

The natural resources of the continental shelf include the living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil (UNCLOS, Article 77). However, access to the non-sedentary organisms or compounds secreted by the sedentary species or closely associated with them, but found in the high seas, above the continental shelf would not be subject to any prior consent requirement. It is noteworthy that the Nagoya Protocol, which applies to genetic resources within national jurisdiction as defined by the CBD, also includes within its scope derivatives, which are defined as naturally occurring biochemical compounds resulting from the genetic expression or metabolism of biological or genetic resources, even if they do not contain functional units of heredity.

The dichotomy between the legal boundaries established under UNCLOS and the biological and ecosystem characteristics of the marine environment is perplexing for the purposes of regulating the utilization of marine genetic resources. The legal uncertainty concerning the applicable legal regime may act as a deterrent to researchers and investors in future application specially in the case of developing countries.

My delegation therefore recommends the need for legal clarity for researchers, legal practitioners and investors to be taken into account and hence Paragraph 2.1, sub para 1, The geographical scope should read as “The provisions of this instrument apply to Areas beyond national jurisdiction including water column superjacent to the seabed and subsoil thereof”.

Thank you Madam President.