



**Submission on behalf of the Member States of the  
Caribbean Community (CARICOM) for the  
Development of an international legally-binding instrument under the  
Convention on the Law of the Sea on the conservation and sustainable use of marine  
biological diversity of areas beyond national jurisdiction**  
24 April 2017

In accordance with the roadmap approved at the third session of the Preparatory Committee, the CARICOM is pleased to make a further submission to the Chair concerning concrete elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea for the purpose of the preparation of a Chair's streamlined non-paper. As suggested by the Chair, the submission follows the structure of the said non-paper but only addresses certain elements of that structure that the CARICOM wishes to further elaborate upon. This submission shall be read together and as an integral part of the CARICOM Submission of 6 December 2016. CARICOM shall continue to provide further inputs inter-sessionally.

## **A. GENERAL ELEMENTS**

### **Use of Terms**

CARICOM maintains that the use of terms under the new implementing agreement (IA) shall be consistent with the use of the same or similar terms under the United Nations Convention on the Law of the Sea (UNCLOS), the United Nations Fish Stocks Agreement (UNFSA), the Convention on Biological Diversity (CBD) and its Nagoya Protocol and other relevant international legal instruments. The implementing agreement may where appropriate provide for definitions of terms that do not as yet have universally agreed definitions. The approach to definitions shall be pragmatic, workable and scientifically based.

Further to its earlier submission, CARICOM submits the following:

- a) CARICOM supports the inclusion of a definition of "utilization of marine genetic resources" that is consistent with the definition of "utilization of genetic resources" under the Nagoya Protocol which, for ease of reference, is produced following: to conduct research and development on the genetic and/or biochemical composition of

genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention [on Biological Diversity]. CARICOM notes that this definition is consistent with the proposed definition from the IUCN as reflected in the Chair's non paper at footnote 28.

- b) Given the reference to a term that is further defined under the CBD, CARICOM submits that "biotechnology" shall also have the definition as provided for under the CBD and reflected in the Nagoya Protocol, which is reproduced as follows: (d) "Biotechnology" as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use. CARICOM notes that Norway's proposed definition of this term as reflected in the Chair's non paper at footnote 59 is based on the CBD and the Nagoya Protocol.
- c) With respect to a definition of area based management tools (ABMTs), given the range of both objectives and ABMTs, and recognizing that there is no universally accepted definition for ABMTs, CARICOM is of the view that, at this point, it would be best to develop a common understanding of a general definition that could be applied to ABMT. Suggestions, including from the African Group, the European Union, and the WWF, have referenced a geographic or spatial element, a management element, and an objective element which we find useful.
- d) The necessity of defining specific ABMTs would be best addressed at a later stage of negotiation on the implementing agreement itself. At that point and subject to the decision taken, universally accepted definitions should be utilized.
- e) With a view to streamline the Chair's non paper, a definition of marine reserves is not necessary.

#### **Relationship to UNCLOS and Other Instruments**

CARICOM considers that the IA should bring coherence, build on and strengthen the existing systems relating to marine biological diversity of areas beyond national jurisdiction through a global mechanism that provides for the accountability of all involved in activities that impact on marine biological diversity of areas beyond national jurisdiction.

The IA should build on the UNCLOS. It should support and if necessary strengthen existing arrangements and should not derogate from key principles, purpose and objective of UNCLOS. CARICOM agrees with the view that Article 4 of the UNFSA is instructive in this regard.

On the issue of regional and sectoral bodies, CARICOM believes there is merit in facilitating engagement at the regional level but this should be complementary to engagement at the national and international levels. The IA provides an avenue through which to give international legitimacy to regional initiatives and broaden cooperation and global awareness, as well as a sense of responsibility for the conservation of the oceans.

## B. CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION

### General Principles and Approaches

The Chair's non-paper captures some key principles which are of critical importance to CARICOM. Of fundamental significance is the common heritage of mankind (CHM), which we regard as non-derogable. CARICOM does not support equating the CHM with common concerns - as such an approach would limit the scope and objective of the IA.

CARICOM further qualifies that we do not regard the freedom of the High Seas as providing an absolute right to the exhaustible resources of the Ocean. The principle of the High Seas is qualified by customary and emerging rules of international law on conservation and also on marine scientific research, as elaborated in Parts XII and XIII of UNCLOS. The High Seas principle is a residual concept that is generally applicable to the superjacent waters in the areas beyond national jurisdiction. However, the progressive development of international law has greatly limited the context of that right and our focus must be on conservation addressed in UNCLOS.

Articles 240-244 of the UNCLOS underpin the CHM notion and for parties to the UNCLOS are binding statement on the law. We would regard it as especially critical in our deliberations on marine genetic resources (MGRs) and access and benefit sharing (ABS) as well as to capacity building and transfer of marine technology. Its explicit inclusion in general principles and approaches of the IA is therefore a *sine qua non*.

CARICOM also considers that the polluter pays principle, the precautionary approach and the ecosystem based approach would be especially critical in our deliberations on ABMTs and environmental impact assessments (EIAs) and therefore should be included under general principles and approaches.

Finally, it is important that there be reference to the special interests, circumstances and needs of developing countries such as small island developing states (SIDS), as has been reiterated in the various deliberations within the different working groups. The special case for SIDS and least developed countries (LDCs) is clearly recognised in various international arrangements.

### Marine Genetic Resources (MGRs)

#### - Scope

The IA should not exclude any marine genetic resource derived from any area beyond national jurisdiction.

It should apply to in situ collection of samples from ABNJ, access to samples, data and related information of MGR ex situ, in silico and include genetic sequencing data and derivatives of MGRs. The IA must affirm that MSR activities do not constitute the legal basis for any claim to any part of the marine environment or its resources, as recognized in Article 241 of UNCLOS.

- [Guiding Principles and Approaches](#)

CARICOM reasserts that the guiding principle for the development of the IA provisions on marine genetic resources is the common heritage of mankind. We further submit that the core principles that form the basis of the common heritage of mankind should therefore find expression in this part of the IA: peaceful use, non appropriation, an international regime for the management and conservation of resources for present and future generations, equitable benefit sharing.

CARICOM also supports the role of traditional knowledge in the conservation and sustainable use of marine biological diversity of areas beyond jurisdiction.

- [Access and Benefit Sharing](#)

CARICOM supports the view advanced by Jamaica in its Submission on Marine Genetic Resources and the Common Heritage of Mankind (December 2016) that scientific research on MGR derived from areas beyond national jurisdiction, whether or not of direct commercial significance, falls within the scope of the marine scientific research regime under the UNCLOS, including in particular Part XI, Part XII and Part XIII. The Convention on Biological Diversity also has bearing on the conduct of marine scientific research.

The regime for the access and benefit sharing of marine genetic resources under the IA should therefore build on the existing MSR regime with a view to advancing the overarching objective of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction for the benefit of present and future generations. In this context, it will be necessary to determine, as Jamaica points out in its aforementioned submission, whether it is practicable or desirable to distinguish between benthic formations and organisms in the Area and other organisms in the high seas. CARICOM maintains that there is no scientific basis for such a distinction.

- [Access to and collection of MGR](#)

In accordance with the UNCLOS, the IA should reaffirm the right of states to conduct MSR in areas beyond national jurisdiction (ABNJ) subject to the conditions already provided for under UNCLOS and the CBD including provisions for protection and preservation of the environment amongst others, and provisions that the IA may provide for in respect of designated areas subject to area based management tools (ABMTs).

In addition, the IA can reinforce these provisions, strengthen cooperation, enhance sharing of information and so promote MSR, by setting in place a requirement for notification and reporting. As such, some obligation will need to be placed on users of ABNJ to register their activities.

- **Sharing of benefits from the utilization of MGR**

The IA should establish a benefit sharing regime for access to data and related information of MGR in situ, ex situ, in silico and include genetic sequencing data and derivatives.

- **Objectives**

In addition to serving the ultimate objective of the IA i.e. the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction for the benefit of mankind, the benefit sharing regime should promote MSR as well as capacity building and technology transfer and ensure inter-generational equity.

- **Principles guiding benefit sharing**

The common heritage of mankind is axiomatic.

- **Benefits**

The IA should provide for a range of benefits dependent upon the stage of utilization of MGR. Upon collection, CARICOM considers that the IA should provide for open access to samples, data and related information on MGR.

At the point of commercialization, monetary benefits could be derived. CARICOM acknowledges that these benefits may not be immediately available but should be without prejudice to developments in technology which may significantly reduce the costs of access and utilisation of marine genetic resources. These monetary benefits could take the form of milestone payments for example.

References for the types of benefits that could be contemplated under an ABS regime could include Annex 2 of the Nagoya Protocol, Parts XIII and XIV of the UNCLOS and Part IV of the International Treaty on Plant Genetic Resources for Food and Agriculture.

- **Benefit sharing modalities**

For purposes of access, the IA should require deposit of samples and/or the maintenance of data and related information ex situ in an open access platform. Information on genetic sequencing and derivatives should also be kept in a repository. CARICOM considers that such information may or may not be open access in the immediate term. But could be open access after a reasonable period such as five years.

A clearing house mechanism should also be established which should be accessible, user friendly and not overly cumbersome, taking into account the special circumstance of SIDS and LDCs. The clearing house could be linked to IOC-UNESCO and other clearing house mechanisms through a common search engine.

CARICOM also supports the establishment of a Trust Fund to facilitate access and benefit sharing for SIDs and LDCs.

- **Intellectual Property Rights**

Insofar as the common heritage of mankind applies to marine genetic resources, the matter of intellectual property rights will have to be addressed under the IA in a manner that ensures consistency with the work being conducted under the WIPO.

- **Monitoring of the utilization of MGR**

CARICOM considers that the International Seabed Authority (ISA) should have a role to support the monitoring of the utilization of MGR.

- **Special requirements of SIDS**

CARICOM supports the AOSIS submission of the special requirement for capacity building and transfer of technology for SIDS as reflected in the Chair's non paper, at footnotes 274 and 275.

**Measures such as Area-based Management Tools (ABMTs), including marine protected areas (MPAs)**

- **Objectives of ABMTs including MPAs**

CARICOM shares the view that the objectives of ABMTs must necessarily be linked to the general objective of the new instrument - that is the conservation and sustainable use of marine biodiversity for the benefit of mankind. Conservation and sustainable use are complementary objectives; and should be so reflected in the provisions of the IA on ABMTs.

ABMTs can address a range of objectives which will then determine the type of measure and its level of protection. It will have to be determined whether it is practicable for the IA to provide an exclusive list of objectives of ABMTs in ABNJ.

- **Guiding Principles and Approaches**

CARICOM notes that certain approaches are organic to the process for the designation of an area and its monitoring, namely, the science based, ecosystem based, and precautionary approaches. We support as elaborated in the PSIDs supplementary contribution the

importance of an integrated approach which would embed the ABMT in the “broader marine ecosystem context”. Adaptive management is also an approach that is critical especially for monitoring implementation. There are also fundamental principles that the process would give effect to namely, transparency, inclusivity, and accountability.

- [Process for Establishment of ABMTs, including MPAs](#)

CARICOM reiterates its view that the steps in the process for the consideration of and designation of ABMTs will include: submission, consultation and evaluation, recommendation, designation decision, monitoring. CARICOM also acknowledges that there are other international, regional and sectoral bodies that may from time to time employ ABMTs in ABNJ. In those cases a process for recognition will be necessary. CARICOM emphasizes that through the process of designation and recognition of ABMTs we should be able to address the issue of fragmentation; and more importantly the need for improving overall oceans governance including through strengthening regional governance.

- [Identification of areas](#)

CARICOM agrees as submitted by G77 and China, PSIDS, and other delegations including the EU, Monaco, Australia, New Zealand to the need for the development of criteria for the designation of an area requiring an ABMT. As we have submitted previously, reference could be had to scientific criteria for establishment of ecologically or biologically sensitive areas (EBSAs), particularly sensitive sea areas (PSSAs), vulnerable marine ecosystems (VMEs), areas of particular environmental interest (APEI's) or criteria under regional agreements such as the SPAW Protocol which utilizes a criteria based on safeguarding value of an area or addressing threatened or endangered species.

- [Designation decision](#)

### **Proposal**

A Party or parties to the IA, a scientific or technical advisory committee or other international organization may submit a proposal. A standardized format would be required for proposals.

### **Consultation and Evaluation**

Submissions shall be subject to evaluation conducted by a body such as a scientific or technical advisory committee designated under the IA. CARICOM draws reference in this regard to the experience and structure of the ISA and in particular its legal and technical commission. Composition of the evaluating body under the instrument could include sectoral representatives for example from the Food and Agriculture Organization (FAO) and the International Maritime Organization (IMO).

The evaluation process should include a period of consultation with all states and other stakeholders. Consultation modalities should be developed. A proponent could be allowed to submit a final proposal following consultation.

At the conclusion of the evaluation process, the evaluating body shall make a recommendation to the conference/meeting of the parties to the instrument, on the designation of an area and proposed ABMT.

### **Designation**

State Parties shall then take a decision on the recommendation based on the rules of procedure to be decided upon by the governing body of the IA.

- [Follow-up to designation decision/ implementation](#)

A scientific or technical advisory committee designated under the instrument shall be entrusted to monitor the ABMT. Criteria for monitoring would be related to the objectives of the ABMT. Timeframe for review would also have to be addressed. States and other bodies shall have timebound reporting obligations on implementation of activities under their purview. Modalities procedures and guidelines for reporting will have to be developed. The monitoring body may make recommendations for the adjustments to ABMTs to the conference/meeting of the parties to the instrument in its report on status of implementation.

- [Relationship to ABMTs, including MPAs, established prior to the instrument, under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, or by adjacent coastal States](#)

A separate process for the recognition of designations by other bodies, that meet the criteria established under the new instrument, should be developed.

CARICOM stresses that it is not our position that the provisions of the implementing agreement on the process would replace the process that attains in other bodies that have mandates to consider and designate ABMTs in areas beyond national jurisdiction. For clarity, recognition itself does not derogate from the authority of a body to apply measures.

It is our position that the implementing agreement should aim to achieve coherence in the conservation and sustainable use of marine biological diversity of ABNJ and that to this end, ABMTs, whether designated under the implementing agreement or other body, shall represent a connected network of ecologically representative areas.

- [Capacity building and transfer of marine technology](#)

CARICOM supports the AOSIS submission for capacity building and transfer of technology for SIDs.

- Monitoring and review [See 'c' above]

### **Environmental Impact Assessments (EIAs)**

- Obligation to conduct EIAs

CARICOM supports the view that the IA should include a provision for a State to require any proponent, falling within its jurisdiction or control, to conduct an EIA for an activity intended to be carried out in or impacting on ABNJ when that activity meets the threshold requirement for an EIA or is a listed activity requiring an EIA.

- Guiding principles and approaches

The polluter pay's principle is applicable as is the precautionary approach and the ecosystem based approach.

- Activities for which an EIA is required

CARICOM favors a hybrid approach where (a) all activity is assessed against a threshold and (b) a list of activities requiring EIAs is annexed to the IA. Such list should serve as a guide and be flexible as well as subject to change and/or regular re-evaluation. The list should be developed by the institution with responsibility for guiding the conduct of EIAs.

CARICOM also agrees that EIAs should be required for any activity in an area designated for application of ABMTs under the IA or any other area recognized under the IA.

Not only would the threshold / list be used to determine whether an EIA is required, either could also be used to determine the content of an EIA. Article 206 is a useful point of departure for threshold. Reference could also be had to the Protocol on Environmental Protection to the Antarctic Treaty and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo (EIA) Convention).

- EIA Process

The conduct of the EIA process should fall under the responsibility of a body designated under the IA such as a scientific committee with competence, convening power, and funding with a final decision resting with the conference/meeting of the parties.

The process itself would involve notification, consultation, adoption by a conference/meeting of the parties to the IA, and, monitoring and review.

For purposes of consultation, CARICOM maintains that:

- Consultations with stakeholders should be made public via a process that utilizes the

internet for notification and submission of concerns on a project. However targeted stakeholder consultations should also take place for groups identified as having the potential to be particularly impacted by a project.

- If an activity in ABNJ will have an impact on a coastal State, this State should be notified and be allowed to be intimately involved in the EIA process, particularly the evaluation. The activity should not be allowed to proceed without the specific approval of affected coastal States.

For purposes of decision-making,

- The designated body e.g. the scientific committee should make a recommendation to the conference / meeting of the parties to the IA.
- The conference / meeting of the parties would then make a decision on whether an activity is permitted
- Given that COPs meet only once a year, decision making would be prolonged. As an alternate a fast tracked approach could be applied depending on activity.
- Where the activity proceeds, monitoring is key with a feedback into the scientific committee.
- If the activity is not authorized, an appeals process could be provided for.

- [Content of EIAs](#)

Annex I of the Environment Protocol to the Antarctic Treaty and the Espoo Convention could provide guidance. In the case of the Espoo Convention, guidance for the content of assessment reports is outlined below:

- ✓ a description of the proposed activity and its purpose;
- ✓ a description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;
- ✓ a description of the environment likely to be significantly affected by the proposed activity and its alternatives;
- ✓ a description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;
- ✓ a description of mitigation measures to keep adverse environmental impact to a minimum;
- ✓ an explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;
- ✓ an identification of gaps in knowledge and uncertainties encountered in compiling the required information;
- ✓ where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and
- ✓ a non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

- EIAs for Transboundary Impacts

CARICOM underscores that Article 206 of UNCLOS already mandates that States shall, as far as practicable, assess the potential effects of activities in the marine environment. CARICOM is of the view that this applies to the entire marine environment, which includes areas within and beyond national jurisdiction.

Article 206 can serve as a basis thus for conducting EIAs for transboundary impacts.

- Strategic Environmental Assessments

In CARICOM's view, the IA should provide for the conduct of strategic environmental assessments in particular having regard for cumulative impacts. The ISA experience in provisionally establishing Areas of Particular Environmental Interest (APEIs) in the Clarion-Clipperton Zone as a means of preserving biodiversity and as a key design element of a strategic Environmental Management Plan, could be drawn upon.

SEAs can provide a strategic overview for regional objectives as well as provide context for EIAs. An SEA could even serve as a trigger for an EIA when the SEA indicates certain activities are prohibited.

- Capacity Building and Transfer of Marine Technology

The IA should provide for support for the capacity needs of developing countries, including Small Island Developing States (SIDS) and landlocked countries to evaluate and conduct EIAs and engage in monitoring after the EIA has been conducted and a project commences.

- Monitoring and Review

Monitoring and review should be mandatory. There could be an element of self-reporting by the activity's proponent (this would reduce the cost burden on the evaluating body) but the evaluating body should also engage in regular spot checks to ensure that the self-reporting is accurate.

### Capacity Building and the Transfer of Marine Technology

- Objectives of capacity building and transfer of marine technology

Capacity building and transfer of marine technology should be provided pursuant to the general and specific objectives of the new implementing agreement- namely the conservation and sustainable use marine biological diversity beyond areas of national jurisdiction, **for the benefit of all mankind** (emphasis added).

- **Principles guiding capacity-building and technology transfer**

Capacity building and transfer of marine technology should be guided by (a) the duty to cooperate and collaborate; (b) the duty to promote the development of the marine scientific and technological capacity of states; (c) the duty to provide scientific and technical assistance to developing countries; and (d) the duty to provide preferential treatment for developing countries. Provision of data and information should also be based on the best available science. Moreover, capacity building and transfer of marine technology should also be structured to take into the account the special circumstances and needs of SIDS particularly given our stewardship of the oceans.

- **Types of and modalities for capacity building and technology transfer**

CARICOM believes that the IOC-UNESCO Criteria and Guidelines provide an excellent basic framework from which we can draw. CARICOM is also open to consideration of whether there is a need for the new IA to specify the types of capacity building and transfer of marine technology in terms of an indicative list, given the evolving needs of States as well as on-going developments in science and technology. Instead, the implementing agreement could focus on establishing mechanisms, such as a Clearing House Mechanism, to enable and ensure the accessibility of capacity building and technology transfer by developing countries.

- **Repository/clearinghouse mechanism**

The new implementing agreement should seek to build on and strengthen existing clearing house mechanisms. The clearing house mechanism under the IA should be a one stop shop and could therefore be linked to a regional and sectoral network of existing clearing house mechanisms.

It is our view that this mechanism should be managed at the global level and believe that the IOC-UNESCO IODE and OBIS provide the sort of mechanisms that may be considered in the context of the new implementing agreement. In addition, we support the view that the mechanism should have an open access platform.

- **Funding**

CARICOM recognises the need to have a funding mechanism in place to provide dedicated financing for capacity building and transfer of marine technology. We are open to considering whether a new fund should be established or whether existing funding mechanisms could be utilised.

- **Monitoring, review and follow-up**

CARICOM supports a global mechanism for monitoring, review and follow-up of capacity-

building and transfer of marine technology. There should be a review conference/meeting of States Parties to periodically but systematically review the status of implementation of the capacity building and technology transfer provisions of the new Agreement.

## C. INSTITUTIONAL ARRANGEMENTS

CARICOM believes that it is important to examine existing institutions as part of the institutional arrangements for the IA. As we have reiterated throughout the Third PrepCom, we want to ensure that there is greater coherence and coordination with respect to oceans governance. We see a particularly important role for International Seabed Authority, given its ongoing work in the Area on the development of environmental regulations, its stewardship of the Area from all humankind, and the potentially important role it could play in respect of capacity building.

The Authority has recently completed some standardisation work on taxonomy by holding three workshops led by international experts, to which the contractors were invited. Proceedings from a workshop held by the Authority in 2004 to establish environmental baselines and an associated monitoring programme for polymetallic sulphides and cobalt-rich ferromanganese crust deposits have been published. Technical Study 10 on Environmental Impact Assessment is published, and a further workshop on Environmental Impact Assessment was held in 2016. The Authority has also provisionally established Areas of Particular Environmental Interest (APEIs) in the Clarion-Clipperton Zone as a means of preserving biodiversity and as a key design element of a strategic Environmental Management Plan.

The Authority has only recently begun to promote and encourage marine scientific research with respect to activities in the Area (Articles 143 and 147). As stated above it has carried out a number of activities such as conducting seminars and workshops on environmental issues. The Authority has recently joined a collaborative initiative on Monitoring Marine Biodiversity in Genomic Era.

CARICOM intends to elaborate in a further submission on the role of the International Seabed Authority as part of the institutional arrangement for the new IA.

## D. MONITORING REVIEW AND COMPLIANCE MECHANISM

CARICOM believes that any mechanism for implementation and enforcement should take account of regional bodies, for the purposes of addressing peculiar and shared interests of regions. Universal participation should be sought and participation open to all, whether Parties to the UNCLOS or not.

CARICOM believes that this could be the focus of a specifically mandated body duly confirmed by the conference/meeting of parties, with prospects for fast-tracked decisions to be taken depending on the urgency or gravity of non-compliance.

## E. DISPUTE SETTLEMENT AND FINAL ELEMENTS

With respect to dispute settlement procedures under an international instrument, CARICOM believes that the UN Fish Stocks Agreement (UNFSA) provides very useful guidance in this regard, given the very comprehensive terms it outlines through its dispute settlement provisions, most notably Articles 27 to 32. We believe that these provisions could be modified to cover the object of the Implementing Agreement, namely the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction. On the specific question of who would be able to access dispute settlement provisions, we believe that Article 1 (2 & 3) of the UNFSA could be useful given its definition of 'states parties' to the Agreement.

The Fish Stocks Agreement would also be a useful reference tool on the matter of Final Clauses. It strikes a balance by allowing its entry into force with a relatively small number of states parties (30 – see Art 40), and yet is open to signature, accession and ratification by a wide range of entities. Articles 1(2) and 37-39 are equally instructive.

The UNFSA also allows provisional application under Art 41, which we should require for the Implementing Agreement. Provisional application allows states to bind themselves to comply with the norms of the Implementing Agreement even before it enters into force. Art 42 also prohibits reservations and exceptions and this should be emulated in the Implementing Agreement.

As Art. 44 also preserves existing arrangements and allows full participation in those agreements so long as they are compatible with the IA and UNCLOS, we believe that this too could be useful.