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**Oceans and the law of the sea**

**Advance and unedited**

**Report on the work of the United Nations 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**

**Letter dated XX March 2006 from the Co-Chairpersons of the Working Group addressed to the President of the General Assembly**

1. Pursuant to General Assembly resolution 60/30, of 29 November 2006, we were appointed as the Co-Chairpersons 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, established pursuant to paragraph 73 of General Assembly resolution 59/24, of 17 November 2004.
2. We now have the honour to submit to you the attached report on the work of the Working Group, which was held at United Nations Headquarters from 13 to 17 February 2006. The report presents the Co-Chairpersons' summary of discussions under the various agenda items (for the agenda of the meeting see Attachment). The report also presents, in Annex I, a summary of trends prepared by the Co-chairpersons, representing our general understanding of issues, possible options and approaches that emerged from the meeting. A list of studies suggested by delegations is provided in Annex II, but this list should be read in conjunction with the summary of discussions.
3. We kindly request that the present letter and the report of the Working Group be circulated as a document of the sixty first session of the General Assembly under the agenda item "Oceans and the law of the sea" in accordance with paragraph 76 of resolution 59/24, which recognized the importance of making the outcomes of the Working Group widely available.

(Signed) Juan Manuel **Gómez-Robledo** and Philip D. **Burgess**  
Co-Chairpersons

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## **Co-Chairpersons' summary of discussions**

### **Agenda item 1: opening of the meeting**

4. The meeting of the Ad Hoc Open-ended Informal Working Group established by the General Assembly<sup>1</sup> to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction had before it the report of the Secretary-General prepared in response to the request contained in General Assembly resolution 59/24, paragraph 74 (A/60/63/Add.1). In conformity with the same paragraph of the resolution, the meeting was convened in New York, from 13 to 17 February 2006, within six months of the release of the report. The meeting was attended by States Members of the United Nations, Parties to the United Nations Convention on the Law of the Sea, and observers, including global and regional inter-governmental organizations, United Nations specialized agencies and bodies and non-governmental organizations, in accordance with previous practice.

5. At the opening of the meeting Mr. Vladimir Golitsyn, Director, Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs delivered a statement on behalf of Mr. Nicolas Michel, the Legal Counsel, Under-Secretary-General for Legal Affairs, recounting the process that led to the establishment of the Working Group and recalling the mandate bestowed upon it by the General Assembly. In this connection, Mr. Golitsyn introduced the report of the Secretary-General emphasizing the importance of a deep understanding of all relevant scientific, socio-economic and environmental aspects of biodiversity for ensuring a productive discussion. Mr. Golitsyn also underlined the central role of the United Nations Convention on the Law of the Sea and of the General Assembly with regard to a wide-ranging and cross-cutting issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

### **Agenda items 2 and 3: adoption of the agenda and organization of work**

6. In their introductory statements, the two Co-Chairpersons briefly reflected on the purpose of the Working Group as well as on the challenges it faced. They highlighted, in particular, the unique opportunity that the Working Group offered to promote cooperation and coordination in the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In recalling the recent work of the General Assembly, as well as other bodies, in this area, the Co-Chairpersons reminded delegations that the Working Group provided an ideal occasion to study a wide range of issues in an integrated manner. The Co-Chairpersons presented the format, provisional agenda and the programme of work for the meeting, as circulated to delegations through a letter signed by them dated 20 January 2006 (see Attachment). The meeting adopted these proposals without amendments.

### **Agenda item 4: General exchange of views**

7. Under this agenda item, delegations were invited to deliver their general statements.

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<sup>1</sup> See A/RES/59/24, para. 73.

They reiterated the view that the 1982 United Nations Convention on the Law of the Sea (UNCLOS) establishes the legal framework within which all activities in the ocean, including in areas beyond national jurisdiction, should be carried out.

8. Delegations expressed their appreciation to the Secretary-General and the staff of the Division for Ocean Affairs and the Law of the Sea for the report prepared in accordance with paragraph 74 of resolution 59/24. In particular, they commended the report for its comprehensive nature and for its high quality contribution towards a fruitful discussion within the Working Group. It was noted that the report refers to various options and approaches regarding the promotion of international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Delegations concurred with the conclusion in the report that time had come for the international community to address in greater depth and, if necessary, to clarify various complex issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, in the light of the general principles under UNCLOS. Nevertheless, it was emphasized by one delegation that discussions on these issues should not overshadow the fact that various activities pose serious threats to marine ecosystems in areas within national jurisdiction, which contain the largest proportion of marine living resources. It was emphasized that the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction should be approached through integrated ocean management. In this regard, the establishment of the Working Group offered a unique opportunity for the international community to study such issues in an integrated and comprehensive manner.

9. Delegations also welcomed the decision of the General Assembly to establish the Working Group emphasizing that the opportunity of addressing marine biological diversity beyond national jurisdiction in a forum such as this was an historic one. In particular, the broad mandate of the Working Group provided the possibility of examining all issues relating to marine biological diversity, instead of focusing only on some of its aspects. The importance and complexity of the topic under review was emphasized by most delegations, which highlighted the geographical magnitude of the oceans, biological significance, and fragility of ecosystems beyond areas of national jurisdiction, as well as the inter-linkages between these systems and terrestrial ones. It was further emphasized that although little is known about these aspects, scientific studies consistently show an alarming decrease in biological diversity in all areas of the ocean whether within national jurisdiction or beyond. Delegations also noted the high economic importance of marine ecosystem goods and services, and thus the importance to conserve and manage them in a sustainable manner.

10. In view of the multifaceted and cross-cutting nature of the topic, the General Assembly was generally considered as the appropriate forum for addressing marine biological diversity beyond national jurisdiction, given its role as the global forum with competence to deal comprehensively and in a multi-disciplinary way with complex issues. Delegations expressed particular appreciation for the informal nature of the Working Group, which encouraged an open and productive discussion. In fact, many delegations hoped that this would be only the first of a series of meetings either by the Working Group in its present form or in any other format decided upon by the General Assembly.

11. During the general statements, preliminary views were presented on the mandate of the Working Group and the need to agree on a focused agenda and priority issues for consideration. Desired outcomes for the meeting were described, including preferred options for enhancing the conservation and sustainable use of marine biological diversity

beyond areas of national jurisdiction. Details regarding the various positions presented in this regard are elaborated below in the summary of discussions under the relevant agenda items.

**Agenda item 5: Consideration of issues identified in General Assembly resolution 59/24, paragraph 73**

*5 (a) Past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction*

12. Under this agenda item, delegations were invited to comment on and/or present an update of activities of relevant international organizations which were not already included in the comprehensive overview of activities presented in the Secretary-General's report (report A/60/63/Add.1). Delegations provided an update on the recent work undertaken by the FAO Committee on Fisheries meeting, by CCAMLR, and by the Asia-Pacific Economic Cooperation forum (APEC). The role and importance of RFMOs in managing high seas fisheries was highlighted, as well as the need for enhancing cooperation amongst them and for continued support of the efforts underway to strengthen their mandates. In this regard, the upcoming work of the General Assembly under resolutions 59/25 and 60/31 on sustainable fisheries was noted. The outcomes of the Saint John's Conference on the Governance of High Seas Fisheries and the UN Fish Stocks Agreement and of the First International Marine Protected Areas Congress were also presented. A progress report was provided to the Working Group on the meeting to commence negotiation of a new South Pacific Regional Fisheries Management Organization being held in Wellington, New Zealand from 14 to 17 February 2006. Delegations noted that the review of activities of relevant organizations contained in the report of the Secretary-General confirms that there is urgent need to effectively implement existing measures within the relevant institutions. It was also noted in this context that existing mechanisms and institutions need to apply a multi-sectoral and integrated approach to management, and cooperate and coordinate to that end, thus moving away from their present sectoral approach. A view was expressed that transparent decision-making should be encouraged in regional and global organizations, which should be strengthened and subject to performance review

13. A number of representatives of organizations provided additional information on their activities.

14. The Secretary-General of the International Seabed Authority (ISA) elaborated on various aspects of the ISA's activities relating to marine biological diversity, including environmental protection and marine scientific research, carried out in conformity with the mandate under the United Nations Convention on the Law of the Sea (UNCLOS) and of the Agreement relating to the implementation of Part XI of UNCLOS. In particular, the Secretary-General announced the establishment by the ISA of a trust fund to promote marine scientific research and to provide opportunities for scientists from institutions in developing countries to participate in research activities conducted by international scientists at sea or in laboratories of scientific institutions. A detailed proposal on the establishment of the voluntary trust fund and the programme for training will be presented for consideration at the twelfth session of the Authority in 2006.

15. IUCN informed the Working Group that it has been working with numerous partners (e.g. High Seas Task Force on IUU Fishing, CBD, the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR)) to draw attention to the ongoing

scientific research findings on the state of marine biodiversity in areas beyond national jurisdiction and threats to it, as well as to develop a number of policy recommendations.

16. UNEP presented information on relevant scientific and environmental aspects and informed delegations of its work in the context of major international ocean programmes.

17. The Secretariat of the Convention on Biological Diversity (CBD) provided an update of the relevant work carried out in the context of CBD following the publication of the report of the Secretary-General. The first meeting of the CBD Ad hoc Open-ended Working Group on Protected Areas took place from 13-17 June 2005 in Montecatini (Italy), and put forward recommendations that will be considered by the 8th COP (March 2006, Brazil). COP-8 will also discuss the issue of deep seabed genetic resources, on the basis of recommendation XI/8 adopted by the 11th meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) in December 2005.

18. A number of delegations expressed their concern that the FAO was not present at the meeting, noting the particular importance of sustainable fisheries management, and the work of FAO to address marine biodiversity beyond national jurisdiction.

*5 (b) - Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction*

19. The debate on the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction generated a broad range of questions, observations and suggestions. The questions, raised by both the Co-Chairpersons and the delegations, were intended to develop a common understanding of the mandate of the Working Group and to highlight the issues that should be the focus of discussions under this agenda item. The discussions covered a broad range of issues from conceptual points to practical suggestions for specific measures.

Scientific and technical aspects

20. Considerable attention was devoted to the scientific aspects of the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. The complexity of the issue was compounded by ongoing scientific discoveries, the development of new technologies and the lack of legal certainty on some key aspects.

21. At the outset, delegations agreed that research plays a fundamental role with regard to conservation and management of marine biological diversity but that knowledge about the marine biodiversity beyond national jurisdiction remained insufficient. While acknowledging the importance of the studies carried out to date, several delegations advocated further scientific studies as a precondition for a meaningful examination of the topic of biodiversity and in order to better understand the complexities of marine biodiversity and in particular seamounts, hydrothermal vents, cold water coral reefs and other sensitive underwater features. The important role of new technologies was highlighted in that they could enhance the knowledge related to deep-sea ecosystems and also contribute to their conservation. Although available scientific information showed an accelerated loss of biological diversity, delegations underlined that too little is still known. It was generally considered essential to build a stronger scientific basis on marine biological diversity beyond areas of national jurisdiction, in order to facilitate the adoption and implementation of improved sustainable management and conservation measures of

these marine resources. In this regard, since systematic observations were considered essential to acquire basic information, it was also considered important to support long-term observation systems which monitor the deep-sea floor and associated biological communities, for example the ones undertaken by the Intergovernmental Oceanographic Commission of the United Nations Education, Science and Cultural Organization (UNESCO-IOC). Others noted that although more research would be welcome, enough information is already available to take immediate and necessary policy and management decisions, including on the basis of the precautionary approach.

22. Referring to the gaps in knowledge about climate change and uncertainty of future models, some delegations called for a better understanding of the interaction between ocean and climate, especially ocean temperatures and how they affect the marine environment, fish stocks and biodiversity. It was recognized that these studies require additional resources, both financial and technological and entail the development of States involvement, in particular small islands developing States (SIDS).

23. Delegations recognized the need for increased capacity building programmes, through training, sharing of data and information as well as transfer of technology to support developing countries in the management, sustainable use and conservation of resources and biodiversity in areas beyond national jurisdiction. It was noted that UNCLOS provides for capacity building and transfer of technology to developing countries, and that its relevant provisions should be better implemented.

24. To illustrate some of the ongoing research activities, scientific cooperation projects, and the use of new technologies for the exploration of biological diversity; presentations were made by Barbara Moore, United States National Oceanic and Atmospheric Administration, Elva Escobar Briones, Mexico's National Autonomous University and by Kazuhiro Kitazawa, Japan Marine Science and Technology Center. In addition, an NGO representative highlighted the recommendations of the conference Defying Ocean's End.

#### Legal and institutional aspects

25. Regarding legal aspects, most delegations re-emphasized that UNCLOS provides the legal framework for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In this regard, it was stated by **some** delegations that, in conformity with UNCLOS, the coastal State is fully entitled to adopt any conservation and management measure it may deem necessary to protect its sedentary species on the continental shelf. That may include the possibility of imposing restrictive measures for fishing activities in the high seas over its continental shelf, including on fishing practices that are deemed to have a negative impact on sedentary species.

26. Some delegations reaffirmed that under existing international instruments there are a set of generally accepted principles which may provide the ground to build global consensus for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. These principles include those embodied in UNCLOS and the 1992 Rio Declaration.

27. Delegations also noted the complementary role of other instruments, such as the Convention on Biological Diversity (CBD). In relation to the role of CBD, it was pointed out that although that Convention is complementary to UNCLOS, its jurisdictional scope does not extend to the conservation and sustainable use of components of marine biological diversity in areas beyond national jurisdiction, since it applies only to processes and activities carried out under the control of States in those areas. This implies that certain CBD provisions are applicable, such as the obligation to identify and monitor

processes and activities which are likely to have significant adverse impacts, the need for environmental impact assessments, research and training. In considering the need for the management, conservation and sustainable use of marine biological diversity in an integrated manner, other delegations also pointed out the role of international organizations such as the IMO, FAO, regional fisheries management organizations and regional seas conventions in this regard.

28. With regard to fisheries, some delegations noted that destructive fishing practices and IUU fishing should be addressed in the context of the UN Fish Stocks Agreement, FAO instruments and RFMOs, since these instruments and organizations provided for measures to deal with all issues related to fisheries management, enforcement and monitoring measures and trade. Concern was expressed by a few delegations that some measures adopted by RFMOs in respect of the high seas establish restrictions on States which are not parties to these organizations, in breach of the principle of general international law stating that an agreement between States cannot benefit nor harm third States without their consent.

29. Some delegations were sceptical that existing RFMOs had the capabilities or the competence to tackle relevant issues, including bottom trawling and other destructive fishing practices, or to adopt holistic approaches in their management of fisheries, since many of them were single species management organizations.

30. In this connection, it was noted by some delegations that existing mechanisms provide only sectoral governance structures and there are no clear mechanisms or set of policy approaches in place to foster cooperation and coordination in a way that can effectively tackle the problem of conserving certain sensitive marine ecosystems. It was suggested by some delegations that this gap could be addressed through the adoption of an Implementing Agreement to UNCLOS. Other delegations were of the view that there was no need for new institutions and legal frameworks to be devised for specific problems and vulnerabilities.

31. A number of non-governmental organizations called for an interim prohibition of high seas bottom trawling, on the basis of the precautionary principle, while governance and management measures for areas beyond national jurisdiction are being negotiated. One non-governmental organization noted the highly endangered status of some species of turtles and called for a moratorium of long-lining in particular areas in the Pacific Ocean.

32. As regards marine scientific research, it was pointed out by a number of delegations that if not conducted with due care, or carried out in an intrusive manner, marine scientific research could itself have adverse impacts on biodiversity. In this regard, it was stressed that marine scientific research should be conducted in conformity with UNCLOS' provisions on the protection and preservation of the marine environment. At the same time, some delegations cautioned against trying to impose restrictions on the freedom of marine scientific research. They recalled the principle of freedom of marine scientific research on the high seas under UNCLOS, and noted that undue regulatory mechanisms would only inhibit the work of and impose difficulties on the scientific community. They favoured self-regulatory codes of conduct to be adopted by the scientific community over international rules on scientific activities. The document in preparation by the organization InterRidge was cited as a good example of the scientific community's commitment to responsible research practices. In addition, and with respect to genetic resources, they argued that the importance of marine genetic resources for medical, scientific and industrial use warranted the fullest use of information and knowledge gained from both marine scientific research and marine genetic resources.

33. Another view was expressed by a number of other delegations, which emphasized that marine scientific research should be conducted in conformity with Part XIII of UNCLOS and in particular its article 240 on general principles for the conduct of MSR, as well as in accordance with article 241 of UNCLOS, which provides that marine scientific research activities shall not constitute the legal basis of any claim to any part of the environment and its resources. Furthermore, these delegations noted that article 143 provides that activities carried out in the Area should be conducted for peaceful purposes and for the benefit of mankind as a whole and noted that the International Seabed Authority (ISA) has a central role in collecting and disseminating information on marine scientific research on the seabed.

34. In addition, it was stated by a number of delegations that in accordance with their understanding of the principle of the common heritage of mankind, access to genetic resources in the deep seabed beyond national jurisdiction should be in principle, like the mineral resources in the Area, subject to the sharing of benefits based on consideration of equity. To emphasize this point of view, the symbiotic relationship that genetic resources have with non-living marine resources and other living resources in the surrounding water column was also noted. These delegations contended that a regulatory mechanism, including the adoption of improved norms and/or an implementing agreement to UNCLOS, may become necessary to clarify, in particular, matters such as the relationship between marine scientific research and bioprospecting. Such a mechanism could also consider the question of access to these resources and legal options for benefit-sharing, including non-monetary benefits, international cooperation in marine scientific research through the exchange, sharing and dissemination of information on research programmes, their objectives and results, as well as cooperation for the transfer of technology. The mandate of the ISA, which presently covers the protection of the marine environment, including biodiversity, under article 145, could potentially be expanded to deal with all issues relating to deep sea biodiversity, including genetic resources. In this regard, an objection was expressed to any provisions purporting to grant free access or unrestricted freedom of exploitation of genetic resources in areas beyond national jurisdiction. Several delegations referred to bioprospecting, calling for a definition of both marine scientific research and of bioprospecting. Others were of the idea that it was not necessary to differentiate between the two activities. Any development of a regulatory framework should not be developed in isolation from wider provisions for the conservation and sustainable use of marine biodiversity.

35. Referring to the legal status of genetic resources, a view was expressed that any measures that may be taken in areas beyond national jurisdiction must be consistent with international law, including freedom of navigation and of marine scientific research. Some delegations stated that these resources were covered by the regime of the high seas, under Part VII of UNCLOS. They argued that there is no legal gap with respect to living resources in areas beyond national jurisdiction, and that the freedoms of the high seas were applicable to activities relating to marine genetic resources. On this basis, those delegations did not see the need for a new regime to address the exploitation of marine genetic resources in areas beyond national jurisdiction, nor to expand the mandate of the International Seabed Authority.

36. Other delegations were of the view that clarification was needed with regard to the legal status of genetic resources in areas of the seabed and subsoil beyond national jurisdiction.

#### Environmental aspects



37. It was highlighted that oceans are to be viewed as an integrated ecosystem and a critical component of the Earth's regulatory system. At the same time, many delegations noted the serious impacts on oceans from a range of anthropogenic activities.

38. Delegations identified illegal, unreported and unregulated (IUU) fishing and destructive fishing practices as the greatest threat to marine biodiversity in areas beyond national jurisdiction. However it was recognized that other growing human pressures, including from ocean noise and dumping, required urgent action through international cooperation and coordination. In this regard, the precautionary and ecosystem-based approaches were considered fundamental principles, which have received wide acceptance within the international community. Many delegations acknowledged that with reference to these principles, the international community needed to act to close both the implementation and governance gaps. Recalling the scientific uncertainty still prevailing in many areas regarding deep ocean biological diversity, it was argued that such uncertainty warranted the application of a precautionary approach in decision-making processes. It was also cautioned that a lack of comprehensive understanding of marine biological diversity and of conclusive scientific research should not lead to delays in the adoption of cost-effective measures aimed at preventing further loss of marine biological diversity. This implied a call to take pro-active, rather than re-active, measures. The use of best available scientific information should be the basis for action. With regard to the ecosystem approach, delegations pointed out that its implementation required a holistic approach to management rather than one focused on sectoral aspects, such as, for example, fisheries. Such an approach could be based on multiple-use protected areas for vulnerable and unique habitats.

39. It was also stated that environmental management tools should be more widely used in the management of marine resources beyond national jurisdiction, including for example, the use of environmental impact assessment.

40. Delegations provided some suggestions for actions/studies to be undertaken by the international community. For example, the need was suggested for a process of evaluation of the features of particular ecosystems which are put at risk by specific activities, and assessment of the effectiveness of various tools to mitigate the impacts of these activities. The need for objective criteria to identify and establish areas in need for protection, such as marine protected areas (MPAs) or other area based management was mentioned by many. It was reported that a compilation of ecological and biological criteria for the identification of MPAs was being developed, on the basis of recommendations of the first CBD Working Group on Protected Areas (Montecatini, Italy, June 2005). Several delegations also stressed the need to further study of the connections between climate change, the increased vulnerability of marine species and ecosystems and the need for urgent action.

#### Economic and socio-economic aspects

41. Regarding economic and socio-economic aspects, it was pointed out that sustainability is inextricably linked to the conservation of marine biodiversity and that achieving sustainable use and exploitation of marine resources called for further studies and greater understanding of conservation, use and impacts. It was proposed that the value of marine ecosystems and resources be further studied and taken into account in policy and decision making. It was noted that the economic benefits derived from the protection and use of marine biological diversity in areas beyond national jurisdiction needed further study. One delegation also stressed the lack of public awareness due to the insufficient

attention given to efforts to mobilize people at the grass-root level to understand the issue of conservation and sustainable use of marine resources.

42. One delegation emphasized that the conservation of biodiversity should be an integral part of social and economic development, and suggested using economic incentives to improve sustainable utilization of marine biodiversity, since its loss could limit the socio-economic benefits for developing countries. The question of perverse incentives and profit from IUU fishing was also raised.

*5 (c) Key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction*

43. Developing some of the issues which were identified under previous agenda items, delegations made several suggestions as to key issues and areas that needed further study by the international community. Many delegations stated their willingness to participate in furthering cooperation and coordination in relation to the issues of conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In this regard, a number of delegations emphasized that a study of the level of cooperation and coordination among programmes and agencies within and outside the UN system, as well as cooperation among States at the multilateral, regional and bilateral levels should be a necessary component of further studies. The degree to which existing information was shared, should also be assessed.

44. A summary of the studies suggested by various delegations is contained in Annex II of this report. A number of delegations noted that there was already considerable work underway in relation to many of the suggested studies and that the suggestions for further studies would need to be refined and assessed by the General Assembly to take into account that work.

45. Following the views expressed on key aspects of the conservation and sustainable use of marine biological diversity, issues, some delegations called for comprehensive studies on the existing legal framework to identify relevant common principles for the conservation and sustainable use of marine biodiversity beyond national jurisdiction, including those relating to the genetic resources of the seabed beyond national jurisdiction. Some delegations suggested the consideration of the current governance and management framework to identify best practices and to ascertain whether new institutions were required. In this regard, some delegations drew attention to the work of multilateral environmental agreements on the conservation of marine biodiversity in the high seas, such as the work under Convention on Migratory Species and Convention on International Trade of Endangered Species.

46. Several delegations highlighted the importance of consolidating information and harmonizing and standardizing information in a way that assists informed decision making and that is policy relevant. Some delegations underlined that further studies were needed on existing threats to marine biodiversity and on available tools to address those threats, both within and outside the scope of the current legal regime. The need for studies regarding current measures and actions taken to manage the environmental impacts of scientific research in the deep seabed, by States and researchers was also noted.

47. It was stressed that more efforts, both technological and financial, were required in order to document, information on biodiversity and environmental conditions of the bathypelagic zone, trenches and seamounts. In this regard, targeted technologies and

environmentally sound sampling techniques are needed. Additionally, the need to further study cold-water and deep-water coral ecosystems, including those associated with seamounts to further understand the reproduction, recruitment and resilience from human impacts was also raised. The need for the initiation and continuation of long-term time-series studies of marine biodiversity beyond national jurisdiction with a view to evaluating natural variability, climate change impacts and understanding of the resilience of deep sea ecosystems to the impacts of anthropogenic stresses through enrichment projects, was also underlined.

48. Some delegations proposed studies on how marine scientific research could be conducted in a way that increased the participation of developing countries. A number of delegations stated that developed States and relevant international organizations and financial institutions, through bilateral, regional or global cooperation programmes and technical partnership, could better support capacity building of developing countries in deep sea scientific research. It was noted that information sharing was particularly important in this regard, including through the establishment of additional databases made available to scientists from developing countries and, where necessary, the consolidation of different data models and formats by competent international fora. Technology transfer, on fair and reasonable terms and conditions, and wider and more effective participation of developing countries in global ocean management was also highlighted. Several delegations stressed the need to gather information that could provide a basis to improve capacity building for the conservation and sustainable use of marine biodiversity. One suggestion to learn more about the questions and opportunities and gaps in science and technological capacity was through a questionnaire to identify possible training opportunities, as well as the current needs of developing countries.

49. The need for a common understanding and definition of the ecosystem approach and further work on the concept of marine protected areas (MPAs) beyond national jurisdiction was expressed by many delegations. In this regard several studies were suggested to clarify a number of issues concerning MPAs or area-based management, including: the type of ecological criteria which would apply; criteria which would assist in identifying priority areas; the management objectives of those areas, including management or restriction of certain types of activities; enforcement and compliance measures, temporal measures for protection; and possible regulations of activities outside MPAs. The CBD representative informed the meeting that knowledge gaps were highlighted by the first meeting of the Ad Hoc Working Group on Protected Areas, as contained in recommendation 1/1, paragraph 4(h) of its report to the COP.

50. In relation to fisheries, due consideration should be given to studying the reasons why existing relevant instruments have not been adequately implemented with a view to developing strategies and modalities to promote their improved implementation. Additionally, a number of delegations stated that further studies were needed on ways to combat IUU fishing. Several delegations also noted that although information and databases existed on high seas fisheries, including those established under the FAO Compliance Agreement, basic information was often missing with regard to the nature and extent of activities carried out in areas beyond national jurisdiction. Others noted that existing information was focused on individual sectors, such as scientific research and fisheries, and suggested that this information be gathered in a way that allowed scientific comparisons. A proposal was made for the establishment of an independent expert panel as well as the development of a framework for RFMOs to improve their data gathering and exchange. Other areas such as bottom trawling, methods of improving port State control,

market mechanisms, and the impacts of shipping and accidents related thereto, including the transshipment of nuclear waste were also proposed to be the focus of further studies.

51. A number of delegations stated that further work was needed on economic incentives, including market-based approaches. It was stated by one delegation that cost-benefit analyses should be undertaken with regard to the conservation and sustainable use of marine biodiversity beyond national jurisdiction. Studies on possible sanctions for States that violated existing international rules and allowed activities that were likely to harm the environment were proposed.

52. Delegations highlighted knowledge gaps and the need for further studies on the current range and nature of activities associated with the use of deep seabed resources, the nature and significance of the benefits generated, how widely these benefits were shared, and whether these benefits supported the conservation and sustainable use of marine biodiversity beyond national jurisdiction. Furthermore, there was a need to study the legal arrangements and modalities of operation of existing partnerships between scientific research institutions and the marine biotechnology industry, both public and private, and ways to broaden participation of developing countries in such endeavours. The issue of intellectual property rights (IPRs) over deep seabed genetic resources also required further studies as well as clarification. There was a need to gather information on trends on the implementation of IPRs-related international obligations, such as the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in particular, the manner in which patent requirements were being implemented in national legislation. Calls for other studies included, the relationship between the IPRs legal framework and UNCLOS.

53. It was stressed that all proposed studies depended on securing funds to finance their undertaking.

*5 (d) Possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction*

54. In the interventions made under this agenda item, several delegations underlined how the discussions within the Working Group had shown the emergence of some trends on how to enhance cooperation and coordination for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. While some proposals for options and areas for further cooperation and coordination were widely accepted, other proposals were identified as needing further discussion in order to address fundamental differences.

Implementation of existing instruments

55. It was generally agreed that a key priority should be an improvement in the level of implementation of existing instruments, including the principles and tools available under such instruments to address the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (e.g. precautionary approach, the ecosystem-based approach, etc.).

56. This requires increased cooperation and coordination in the context of existing mechanisms and represents one possible short-term measure to enhance the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Existing agreements and mechanisms should be used to the greatest extent possible, to

achieve optimum conservation and management under existing sectoral mandates, which in some instances needed to be updated, strengthened and modernized. In the view of some delegations existing instruments already provide an adequate legal framework for tackling the challenges posed by the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In particular, this was highlighted with regard to destructive fishing practices and IUU fishing, which were generally identified as the major threats to biodiversity. In this regard, special reference was made to the important work done at the regional level, in the context of RFMOs, and of the upcoming work of the General Assembly provided for in resolutions 59/25 (paragraphs 66-71) and 60/31.

57. The improvement of flag State enforcement as well as port state measures, was referred to in relation to improved implementation of existing instruments. The need to increase the number of ratifications of existing instruments and to undertake an assessment of their performance was highlighted. At the same time, it was noted that improvement in the degree of implementation of existing agreements was largely sectoral in nature and therefore should be carried out in conjunction with an effort to improve co-operation and co-ordination amongst existing mechanisms.

#### Cooperation/coordination

58. The cross-cutting nature of marine biological diversity as well as the existence of numerous, and often competing, legal frameworks and bodies lead numerous delegations to stress the importance of improving coordination and cooperation among international organizations, as well as among sectors and regimes with varying competencies in areas beyond national jurisdiction. UN Oceans was identified as a coordinating mechanism within the UN system with a key but as yet unrealized role in this respect. In addition, a greater degree of cooperation among States was called for, in conformity with the cooperation duties imposed by UNCLOS in the conservation and management of living resources on the high seas, as well as in the protection and preservation of the marine environment. Delegations also underlined the need for greater coordination at the domestic level among agencies and ministries. The need for cooperation in the development of liability rules, including strict liability for harm to vulnerable deep sea ecosystems from various activities, was noted.

#### Integrated management approaches

59. While the need to improve sectoral governance was widely accepted, many delegations agreed that integrated management approaches were needed to bring current sectoral authorities and tools together. This would require compatibility of governance in marine areas within and outside national jurisdiction, a cooperative rather than competitive agenda and States acting uniformly in different international fora. As regards integrated ocean management, the difficulty and the need to have a collective understanding of the concept in order to develop and implement appropriate measures was highlighted.

60. In light of the fact that existing mechanisms generally provide only sectoral governance approaches and there are no clear mechanisms or policies in place to foster cooperation and coordination for the conservation of certain sensitive marine ecosystems, the negotiation of an implementing agreement to UNCLOS was proposed as a medium/long-term measure. An implementing agreement could create the necessary legal framework for enhancing cooperation for the integrated conservation and management of marine biological diversity beyond areas of national jurisdiction, including through the establishment of networks of marine protected areas (MPAs) based on scientific evidence.

Such an agreement may help overcome the fragmentation and sectoral nature of the current international regulatory framework, providing for the possibility for instance for cumulative impact assessments across different sectors. It would need to be in conformity with UNCLOS and international law. In relation to this proposal, other delegations recognized that the adoption of any new legal instrument would not necessarily stop the rate of loss of marine biological diversity. In addition, some delegations fundamentally disagreed with the need to adopt a new instrument and warned about the complex and time-consuming nature of any negotiation of new legal instruments, as opposed to improvement in the implementation of existing instruments.

61. A view was expressed to the effect that some aspects of the issue of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction could be dealt with in the context of the CBD.

62. In the view of some delegations, the short-term and the long-term approaches were not mutually exclusive. Improved implementation of existing instruments represented, according to them, a short-term goal that could be achieved, for instance, through the adoption of measures aimed at reducing destructive fishing practices and protecting marine biodiversity and, in particular, vulnerable ecosystems, or through other tools such as the establishment of marine protected areas, or particularly sensitive sea areas. This short-term goal could then be complemented with a longer-term objective of developing new measures and regulations.

63. Representatives of NGOs stressed the need for the development of a new ocean governance regime for areas beyond national jurisdiction, which would account for all sectors and uses of the oceans on an equal footing and in an integrated manner, and would take into account the biological interactions between living resources of the seabed and those of the water column. It was argued that this regime should be based on the ecosystem approach, the precautionary principle, sustainability and equity, and remain adaptable to allow for new and emerging threats to marine biodiversity in areas beyond national jurisdiction, such as bioprospecting. They also stressed the need for a global network of marine protected areas including both strictly protected areas and multi-use areas. Support was expressed for a new UNCLOS implementing agreement to develop a new governance and management regime on the basis of the existing international framework. One observer noted the need to address systemic issues, in particular that of flag state jurisdiction and control on activities undertaken in areas beyond national jurisdiction in order to address IUU fishing and flags of convenience, and proposed the appointment by the Secretary-General of a Special Representative for the Oceans to provide for consensus building in support of the work related to the issue.

Area based management measures, including representative networks of marine protected areas (MPAs)

64. The establishments of area based management measures, including representative networks of MPAs and temporal and spatial closures for fisheries management, consistent with international law and based on scientific information, was identified by most delegations as a key tool to improve integrated conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

65. In this context it was noted that further cooperation was necessary to further develop criteria for the identification of ecologically and biologically significant areas, the development of systems of MPAs, and biogeographic classification systems. Further consideration should also be given to how to establish, manage and enforce such

designations, recognizing in this context the existing role and mandate of bodies such as FAO, IMO, CBD and of regional seas convention. It was proposed that the General Assembly could assume a leading role in the identification of criteria for the establishment of MPAs, and that under-utilized bodies such as the Meeting of States Parties of the Convention could be considered for this purpose. A presentation was given on the experience of the 1992 Oslo-Paris Convention (OSPAR) regarding the identification and establishment of MPAs beyond national jurisdiction.

66. A number of delegations stated that multi-purpose MPAs would be a key tool in the future to manage biodiversity in areas beyond national jurisdiction and noted that an Implementing Agreement to UNCLOS could create a new regulatory and governance regime for their establishment and management. Such a regime would be based on principles of ecosystem management and precaution, including imposing prior environmental impact assessments (EIA) and placing the burden of proof for harm on the users. Other delegations supported the establishment of MPAs within existing regulatory regimes.

67. Others considered high-seas MPAs as one possible tool, but not a necessary one to obtain a multi-sectoral approach and indicated that the establishment of MPAs should focus on the type of marine resource and the type of activity threatening it. In their view there should be a strong causal link between the impacts being addressed and the management measures proposed, consistent with customary international law, as reflected by UNCLOS.

#### Marine scientific research.

68. Delegations agreed that marine scientific research plays a fundamental role with regard to marine biological diversity and they focused their statements on several aspects relating to cooperation and coordination in this field. One of the areas of growing agreement within the Working Group was the need to promote cooperation and coordination for both multi-purpose and specific marine scientific research to improve the understanding of marine biological diversity and therefore facilitate better informed policy and decision-making. A more direct connection between increased scientific knowledge and the policy debate on marine biodiversity conservation and management was called for.

69. In order to increase the common benefits derived from marine scientific research, and the degree of cooperation in this regard, proposals were made including the creation of a network of ocean observatories, the systemization of knowledge and the establishment of easily accessible standardized data management and archiving systems.

70. An area where the need for further international cooperation has been identified relates to the status of marine scientific research addressing biological diversity beyond national jurisdiction, in particular in the deep seabed. Delegations held very different views in this regard. Some delegations stressed that freedom of scientific research is a prerequisite for discovering what the oceans may offer, and research should therefore not be subjected to a burdensome regulatory regime. Other delegations reiterated that scientific research in the deep sea beyond national jurisdiction is regulated by the provisions dealing with MSR in the Area under Parts XI and XIII of UNCLOS.

71. Several delegations indicated that, in order to ensure that the conduct of marine scientific research does not constitute a threat to marine biological diversity, codes of conduct by marine researchers could be adopted to self-regulate their activities. Others preferred the establishment of internationally agreed codes of conduct, such as an

international code of conduct for responsible marine scientific research, based on the model of the FAO Code of Conduct for Responsible Fisheries.

72. The representative of UNESCO highlighted the work of UNESCO and its Intergovernmental Oceanographic Commission (IOC), in particular to promote international scientific cooperation and provide a platform for developing and implementing cooperative programmes on marine science and capacity building. Noting that UNESCO cooperates with other UN agencies and programmes, multilateral environmental agreements and non-governmental organizations to carry out its work, he stated that key areas of work for UNESCO with regard to marine biodiversity beyond national jurisdiction included international scientific cooperation, scientific monitoring and the Global Observing System, scientific information and the science of marine protected areas. It was noted that UNESCO also cooperated with the United Nations University to produce studies on issues related to marine biodiversity, as well as with the Global Forum on Oceans, Coasts and Islands to host the Third Global Conference on Oceans, Coasts and Islands, which also discussed issues relating to marine biological diversity beyond national jurisdiction.

#### Capacity-building and the transfer of marine technology

73. The need to encourage capacity-building programmes, the sharing of data and information, as well as the transfer of relevant technologies was advocated by several delegations. Greater international cooperation in this field, in accordance with the relevant provisions of UNCLOS, was advocated by most delegations. Developed States and relevant international organizations and financial institutions were invited to support capacity building of developing countries in deep sea scientific research, through bilateral, regional or global cooperation programmes and technical partnership. Some delegations advocated the training and/or the direct participation of scientists from developing countries in research projects on biodiversity. Some delegations stated that a Trust Fund to facilitate this activity should be established. The compilation of a list of relevant experts from developing countries was also recommended. Programmes aimed at building scientific capacity of some developing States in this area were described.

74. The need to increase wider and more effective participation of developing countries, including small islands developing States (SIDS), in global ocean management was also highlighted. It was stressed that this should be done in a way that takes into account the concerns of developing countries, especially in the process of formulating relevant standards or criteria.

75. The transfer of marine science and marine technology to developing States on fair and reasonable terms and conditions, in accordance with UNCLOS, was also identified by several delegations as an important element in the discussion.

#### Genetic resources

76. Several delegations reiterated their understanding that the marine genetic resources beyond national jurisdiction constitute the common heritage of mankind and recalled article 140 of UNCLOS, which provides that the activities in the Area shall be carried out for the benefit of humankind and that particular consideration shall be given to the interests and needs of developing States, the need for these resources to be used for the benefits of present generations and also be preserved for future generations. The provisions of UNCLOS regarding the protection of the marine environment in the Area, under article 145, were also recalled. Urgent cooperation to consider a new or improved legal and/or institutional mechanism in this regard and for the development of options and



approaches to address, in particular, current and possible modalities for access to and sharing of benefits arising from the use of genetic resources of the Area was suggested by several delegations. A number of delegations also mentioned that the ISA provides a potential existing mechanism to this end and consideration should accordingly be given to the possibility of extending its mandate. One delegation stated that the Working Group should not focus on the definition of the legal regime applicable to the genetic resources of the seabed, but on the drafting of norms regarding the access and the distribution of benefits derived from their exploitation and for the conservation of biodiversity in the context of its exploitation.

77. Other delegations reiterated that any measures that may be taken in relation to genetic resources in areas beyond national jurisdiction must be consistent with international law, including freedom of navigation. In their view these resources are covered by the regime of freedom of the high seas, which provides the legal framework for all activities relating to them, in particular marine scientific research. Those delegations did not agree that there was a need for a new regime to address the exploitation of marine genetic resources in areas beyond national jurisdiction, nor to expand the mandate of the International Seabed Authority.

78. Some delegations affirmed the need to better understand this issue before developing legal, policy and institutional options. In addition, they indicated the need to encourage compliance with existing obligations, especially in relation to marine scientific research and the protection of the marine environment. It was indicated that the issue could be addressed, taking into account the legitimate interests of all States, through the development of guidelines, codes of conduct, including internationally agreed codes of conduct, and impact assessments.

#### **Agenda item 6: other matters**

79. On the last day of the meeting, the Co-chairpersons' presented to the Working Group a summary of trends (included in Annex I of this document), which represented their general understanding of issues, possible options and approaches. The Co-Chairpersons underlined that the summary of trends should be read in conjunction with the summary of discussions of the Working Group, which would provide a more elaborated summary of the various positions expressed at the meeting. In this light, the summary of trends was not intended to be exhaustive, nor to prejudice national positions and future discussion of these issues, and may not necessarily reflect each and every delegation's particular position.

80. Delegations generally acknowledged that the document represented the Co-Chairpersons' understanding of issues, as stated in the first paragraph of the document. It was therefore understood that the language was not open to negotiation by the Working Group.

81. Several delegations made statements on the summary of trends prepared by the Co-Chairpersons. While the document was generally described as representing a useful reflection of the outcomes of the meeting, some delegations pointed out that certain paragraphs did not accurately reflect, in their view, a general understanding of issues. Some of the paragraphs were described as being inaccurate or incomplete and some issues were lacking the necessary emphasis. It was therefore proposed that some paragraphs should be deleted.

82. In connection with the list of studies annexed to the summary of trends, the list was welcomed as a useful indication of areas where further work was needed. It was also noted

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that it was, on one hand, too extensive to be of practical guidance for the determination of areas that required further examination in the future, and, on the other hand, it contained studies that had already been undertaken or were under way. As a consequence, a suggestion for deletion was made. It was also clarified that the completion of the studies listed was not a condition for the undertaking of future actions on biodiversity.

83. In their closing statements delegations generally expressed appreciation for the work carried out during the Meeting, acknowledging that it had often exceeded their expectations. Delegations also generally agreed that the work initiated by the Working Group should continue on the basis of a cooperative but more focused agenda, through an on-going process of discussions under the auspices of the General Assembly. The General Assembly would decide on any relevant course of action at its 61st session.

84. The summary of trends, which reflects the Co-chairs' understanding of issues discussed during the meeting, could be refined on the basis of the discussion that took place on the last day of the Working Group. Any further elaboration should be carried out in the context of future discussions on this subject.

## **Annex I**

### **Summary of trends prepared by the Co-Chairpersons**

1. The trends which are summarized herein are the Co-chairpersons' general understanding of issues, possible options and approaches, and should be read in conjunction with the summary of discussions 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. These trends are not exhaustive, are not intended to prejudice national positions and future discussion of these issues, and may not necessarily reflect each and every delegation's particular position.
2. It was reaffirmed that the General Assembly, as the global institution that has the competence to undertake review of issues relating to oceans and the law of the sea, has a central role in addressing issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Other organizations, processes and agreements also have an essential complementary role within areas of their respective competence and can, and should contribute to an integrated consideration of these issues by the General Assembly.
3. The United Nations Convention on the Law of the Sea (UNCLOS) sets out the legal framework within which all activities in the oceans and seas must be carried out and any action relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction should be consistent with its legal regime. A number of other conventions and instruments complement UNCLOS and together provide the current framework for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.
4. UNCLOS and other relevant legal instruments need to be more effectively implemented, including through capacity-building to developing States.
5. The conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction should be based on the precautionary and ecosystem approaches using the best available science, and prior environmental impact assessments.
6. It is important to improve the management of sectoral activities that have an impact on marine biological diversity beyond areas of national jurisdiction, including by strengthening the relevant sectoral and regional organizations and mechanisms for their accountability.
7. Destructive fishing practices, identified as one of the major threats, should be addressed on an urgent basis in the relevant fora, including the General Assembly, FAO and RFMOs (both existing and developing). The General Assembly will consider this issue at its 61st session in accordance with its resolutions 59/25 and 60/31. It is important that States and RFMOs provide the necessary and sufficient information on relevant actions taken for inclusion in the report that the General Assembly requested the Secretary-General to prepare, in cooperation with FAO.
8. IUU fishing remains a major impediment to conservation and sustainable use of marine biological diversity and an accelerated and integrated approach across all relevant fora to address issues such as flag States responsibilities, port State measures, compliance and enforcement is essential.
9. It was acknowledged that the coastal State has the right under UNCLOS to regulate the activities which have negative impacts on the sedentary species of its continental shelf and

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the right to adopt the necessary measures, including restrictive measures to protect these resources.

10. Area-based management tools such as marine protected areas, including representative networks, and temporal and spatial closures for fisheries management are widely accepted and further elaboration of criteria for identification, establishment and management is required.

11. There is a need to study and determine whether there is a governance gap in marine areas beyond national jurisdiction. In case such a gap is identified, there is a need to clarify how it should be addressed, including assessing the need for the development of an implementing agreement under UNCLOS to address, inter alia, the establishment and regulation of multi-purpose marine protected areas on a scientific basis, as well as other related issues.

12. In this context, further discussion on the legal status of marine biological diversity, including genetic resources beyond national jurisdiction is needed in order to clarify how such resources may have to be regulated, or whether existing tools and arrangements are sufficient or new tools are required for their conservation and sustainable use, including consideration of access and benefit sharing. The symbiotic relationship between the genetic resources of the deep seabed, the biological diversity of the deep sea water column and the non-living resources beyond national jurisdiction was also noted and needs to be further clarified. Any further discussion on this issue should take into account the legitimate interests of all States and could also address the development of codes of conduct (e.g. an international code of conduct for responsible marine scientific research), guidelines and impact assessments.

13. Given the range of fora and sectoral interests dealing with issues related to the conservation and management of marine biological diversity beyond areas of national jurisdiction both nationally, regionally and globally, there is a need to enhance coordination and cooperation within and among States and within and among relevant United Nations programmes, funds and the specialized agencies and other organizations of the United Nations system and other relevant intergovernmental organizations.

14. The international community needs to improve the sharing amongst all States of knowledge from research programmes, including the availability and maintenance of data, samples and research findings and how to facilitate greater participation of scientists from developing countries in such research. The International Seabed Authority, amongst others, has an important role in this regard.

15. There is a corresponding need also for the increased transfer of marine science and marine technology to developing States on fair and reasonable terms and conditions.

16. A need for increased study on the following issues emerged: 1) improved understanding of the extent and nature of the marine biological diversity and anthropogenic impacts beyond areas of national jurisdiction, particularly in the areas of greatest vulnerability; 2) greater research to assist with the development of management options, including economic incentives and area based management; 3) improved understanding of the economic and socio-economic aspects; and 4) related legal and institutional issues. Requests for specific studies mentioned during the discussions are attached to this summary of trends.

17. It was noted that while scientific knowledge is limited nonetheless there is currently sufficient evidence of impacts, particularly in relation to seamount and cold water coral reef ecosystems.

18. Marine scientific research (MSR), including research addressing genetic resources, should be conducted in conformity with UNCLOS. In particular, scientific information and knowledge should be published and disseminated and MSR in the Area must be carried out for the benefit of humankind as a whole (articles 143 and 244 of UNCLOS).

19. While much of the concern related to conservation and sustainable use of marine biological diversity is related to national jurisdictions, conservation and management issues in areas beyond national jurisdiction have emerged as a major issue, which requires urgent attention and action.

20. There is wide support for the continuation of an on-going process of discussions under the auspices of the General Assembly and the need for a cooperative focused agenda across all relevant fora. It was recognized that the General Assembly would decide on any relevant course of action at its 61st session.

## Annex II

### Requests for Specific Studies Mentioned During the Discussions

- A. Biological diversity and environment conditions of the bathypelagic zone, the trenches and the seamounts; and mapping of cold-water coral ecosystems associated with seamounts.
- B. Environmental impacts of anthropogenic activities, including illegal unreported and unregulated (IUU) fishing, bottom trawling, shipping, noise pollution, and marine scientific research (MSR), as well as actions taken to address these impacts by various actors (States, researchers, etc.)
- C. Impacts of climate change on marine biological diversity in high seas and deep seabed
- D. Long term time-series studies of marine biological diversity beyond areas of national jurisdiction to evaluate natural variability and understand the resilience of deep sea ecosystems to the impacts of anthropogenic stresses.
- E. Policy relevant scientific assessment of existing available information to inform decision making.
- F. The number of vessels fishing on the high seas, and detailed catch record by area and species.
- G. Available management tools for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, including multiple use Marine Protected Areas (MPAs)
- H. What has been done and further work to be done in particular in relation to the criteria for the identification of potential MPAs in areas beyond national jurisdiction and for the development of systems of MPAs, and on biogeographic classification systems. Further consideration should also be given to how to establish, manage and enforce such designations.
- I. Economic aspects of various activities, including IUU fishing, exploitation of deep seabed genetic resources.
- J. Economic assessment techniques for both restoration and non-use values.
- K. Economic incentives, including market-based incentives, and disincentives for conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.
- L. The nature and level of interests in marine biological diversity beyond national jurisdiction, particularly commercial interest in genetic resources from deep sea.
- M. The socio-economic value of marine biological diversity beyond areas of national jurisdiction
- N. Reasons why some legal instruments are not widely ratified and/or implemented.
- O. Existing legal framework to identify relevant principles to the conservation and sustainable use of marine biological diversity including the genetic resources of the international seabed area.
- P. Options for developing legal mechanisms for benefit-sharing which include non-monetary benefits, including the need for international cooperation in MSR through the exchange, sharing and dissemination of information on the research programmes, its objectives and results as well as cooperation in the transfer of technology.
- Q. Study on the legal arrangement and modalities of operation of existing partnerships of scientific research institutions with the marine biotechnology industry, both public and private and ways to broaden participation in such partnerships to involve developing countries.

- R. Regimes or applicability of Intellectual Property Rights (IPR) and the use of genetic resources in areas beyond national jurisdiction.
- S. Trends on the implementation of IPRs international obligations, such as WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and in particular the manner in which the patent requirements are being implemented in national legislation.
  - S. Clarification of the relationship between IPRs legal framework and UNCLOS.
- T. Level of dissemination of results of scientific research.
- U. Gaps in science and technological capacity in developing countries including through the use of questionnaires.
- V. Knowledge gaps not included in the list above, highlighted by the first meeting of the CBD Ad Hoc Working Group on Protected Areas (recommendation 1/1, paragraph 4(h))
  - (i) The distribution of all Red-Listed marine species;
  - (ii) Information on distribution of seamounts and cold-water coral reefs, their ecosystem functioning and the ecology of associated species, from a range of different depths, in particular from poorly sampled areas;
  - (iii) Information on distribution of other habitats as listed in annex I, table 1, to the note by the Executive Secretary on options for cooperation for the establishment of marine protected areas in marine areas beyond the limits of national jurisdiction (UNEP/CBD/WG-PA/1/2) and the ecology of associated species;
  - (iv) Studies of the ecology of marine species and their behaviours that determines their vulnerability to human activities, including those listed in annex I, tables 2 and 3, to the note by the Executive Secretary on options for cooperation for the establishment of marine protected areas in marine areas beyond the limits of national jurisdiction (UNEP/CBD/WG-PA/1/2)

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20 January 2006

To the Permanent Representatives to the  
 United Nations in New York

**United Nations 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.**

Excellency,

We have the honor to refer to the letter of 6 January 2006 from His Excellency Mr. Lars-Hjalmar Wide, Ambassador/Chief of Cabinet, Office of the President of the General Assembly, to the Chairpersons of the Regional Groups in which, pursuant to paragraph 80 of General Assembly resolution 60/30 of 29 November 2005, he informed delegations of our appointment as co-chairpersons 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 (the Working Group). The Working Group is scheduled to meet at United Nations Headquarters from 13 to 17 February 2006 (Conference Room 1, from 10 a.m. to 1 p.m. and from 3 to 6 p.m.).

Taking into consideration paragraph 73 of General Assembly resolution 59/24 of 17 November 2004, which established the Working Group, and bearing in mind the report of the Secretary-General relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (document A/60/63/Add.1), prepared and released in response to the request in paragraph 74 of resolution 59/24, we have elaborated a format (see annex I), a provisional agenda (see annex II) and a proposed organization of work (see annex III) for the meeting of the Working Group.

The meeting will be invited to consider the format and the provisional agenda and as appropriate proceed with their adoption.



We wish to draw your attention to paragraph 75 of resolution 59/24 which encourages States to include relevant experts in their delegations attending the meeting of the Working Group.

To facilitate the discussions at the meeting, DOALOS will establish a list of speakers. Participants wishing to make statements (general and/or specific under each agenda item) are invited to inform DOALOS accordingly prior to the meeting. Such requests should be sent to DOALOS by fax (212-963-5847), or email (hicuburundi@un.org; germani@un.org).

Please accept, Excellency, the assurances of our highest consideration.



JUAN MANUEL GOMEZ-KOBIEDO  
Ambassador, Deputy Permanent  
Representative of Mexico  
to the United Nations



Philip D. Burgess  
Manager International  
Department of the Environment and  
Heritage of Australia

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## Annex I

### **Format for the Ad Hoc Open-ended Informal Working Group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction**

Pursuant to General Assembly resolution 60/30 of 29 November 2005, two co-chairpersons were appointed by the President of the General Assembly, in consultation with Member States and taking into account the need for representation from developed and developing countries, to coordinate the meeting of the Working Group. The two Co-chairpersons elaborated a format for the discussions at the Working Group that best facilitates its work, in accordance with the rules of procedure and practices of the General Assembly.

#### **Methods of work**

1. The meeting of the Working Group will work through plenary sessions, which will be open to participation by all those listed in paragraph 79 of General Assembly resolution 60/30 of 29 November 2005. In conformity with that resolution, the meeting may be conducted in closed sessions, as appropriate, in accordance with the relevant rules of procedure applicable to the meeting of the Ad Hoc Open-ended Informal Working Group.

#### **Agenda**

2. The two co-chairpersons will propose to the meeting of the Working Group a draft agenda setting out a proposed programme of work for the meeting. The meeting will consider such proposals and adopt its agenda accordingly.

3. The draft agenda is based on paragraph 73 of General Assembly resolution 59/24 of 17 November 2004, in which the Assembly decided that the Working Group will study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. In particular the Working Group will:

(a) Survey the past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;

(b) Examine the scientific, technical, economic, legal, environmental, socio-economic and other aspects of these issues;

(c) Identify key issues and questions where more detailed background studies would facilitate consideration by States of these issues;

(d) Indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

4. The outcomes of the meeting will consist of:

- (a) A summary of trends that emerged in the course of the meeting under each agenda item; and
  - (b) A report by the co-chairpersons of issues and ideas raised during the meeting, to be made available to the General Assembly, in accordance with paragraph 76 of resolution 59/24.
5. An advance and unedited version of the report, as mentioned in paragraph 6 (b) above, in English only, will be posted on the website of the Division for Ocean Affairs and the Law of the Sea at [www.un.org/Depts/los](http://www.un.org/Depts/los) within one week of the end of the meeting.
6. The report by the co-chairs will be made available to the 61<sup>st</sup> session of the General Assembly in the form of an addendum to the Secretary-General report on oceans and the law of the sea.
7. The report to be made available to the General Assembly may identify key issues and questions where more detailed background studies would facilitate consideration by States of issues relating to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.
8. The report may also identify issues which require further attention from a policy perspective, including possible options and approaches to promote international cooperation and coordination.
9. In that regard it should be noted that the Secretary-General report (A/60/63/Add.1), requested in paragraph 74 of General Assembly resolution 59/24, also highlighted key issues and questions requiring further consideration and more detailed background studies, as well as possible options and approaches for the promotion of cooperation and coordination in the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

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## **Annex II**

### **Agenda**

#### **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**

**13-17 February 2006  
United Nations, New York**

1. Opening of the Ad Hoc Open-ended Informal Working Group (WG) to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction
2. Adoption of the Agenda.
3. Organization of work.
4. General exchange of views.
5. Consideration of issues identified in General Assembly resolution 59/24, paragraph 73:
  - (a) Past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
  - (b) Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
  - (c) Key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
  - (d) Possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.
6. Other matters.

### Annex III

#### Proposed organization of work

**Monday, 13 February 2006**

**10 a.m.-1 p.m.**

*Item 1. Opening of the meeting.*

*Item 2. Adoption of the Agenda.*

*Item 3. Organization of work.*

*Item 4. General exchange of views.*

**Monday, 13 February 2006**

**3-6 p.m.**

*Item 5. Consideration of issues identified in General Assembly resolution 59/24, paragraph 73:*

- (a) *Past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;*

**Tuesday, 14 February 2006**

**10 a.m.-1 p.m.**

- (b) *Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;*

**Tuesday, 14 February 2006**

**3-6 p.m.**

- (b) *Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction; (continued)*

**Wednesday, 15 February 2006**

**10 a.m.-1 p.m.**

- (b) *Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction; (continued)*

**Wednesday, 15 February 2006**

**3-6 p.m.**

- (b) *Scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction; (continued)*

**Thursday, 16 February 2006**

**10 a.m.-1 p.m.**

- (c) *Key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;*

**Thursday, 16 February 2006**

**3-6 p.m.**

- (d) *Possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.*

**Friday, 17 February 2006** **10 a.m.-1 p.m.**  
(d) *Possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (continued).*

**Friday, 17 February 2006** **3-6 p.m.**  
*Item 6. Other matters.*