



PERMANENT MISSION OF JAMAICA

TO THE UNITED NATIONS

**STATEMENT BY**

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**JAMAICA**

**ON BEHALF OF THE CARIBBEAN COMMUNITY (CARICOM)**

**ON CROSS-CUTTING ISSUES (WORKING GROUP)**

**AT THE**

**PREPARATORY COMMITTEE ESTABLLISHED BY GENERAL ASSEMBLY RESOLUTION 69/292: DEVELOPMENT OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT UNDER THE UNITED NATIONS CONVENTION ON**

**THE LAW OF THE SEA ON THE CONSERVATION AND SUSTAINABLE USE**

**OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION (BBNJ) – THIRD SESSION, 4 & 5th APRIL, 2017**

**UNITED NATIONS, NEW YORK**

Mr. Facilitator,

I have the honour to speak on behalf of the Member States of the Caribbean Community (CARICOM). CARICOM also aligns itself with the statements delivered by Ecuador, on behalf of the Group of 77 and China, and the Maldives, on behalf of the Alliance of Small Island States (AOSIS).

**A. Objectives, Principles and Approaches**

Mr. Facilitator,

1. Pursuant to GA resolution 69/292, the objective of the new international legally binding instrument should be to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction for the benefit of all humankind (present and future generations) in compliance with the purpose and objectives of the United Nations Convention on the Law of the Sea. It, therefore, speaks to our stewardship of the BBNJ and the obligation placed on the international community to protect and preserve the marine environment.

2. The issues raised in the first set of sub-bullets under the list of divergent matters could be regarded as multiple objectives that can make a direct contribution to the aforementioned broader, overarching objective of advancing resolution 69/262.

3. The list provided captures some key principles which are of critical importance to CARICOM. We would especially want to highlight the fundamental significance of the CHM, which we regard as non-derogable. We note that there have been suggestions aimed at equating the CHM with common concerns - an approach that we believe would limit the scope and objective of the Implementing Agreement.

4. We would also wish to qualify 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 MSR, as elaborated in Parts XII and XIII. The High Seas principle is a residual concept that is generally applicable to the superjacent waters in the BBNJ. 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.

5.  It is important that there be reference to the special interests, circumstances and needs of developing countries such as SIDS, as has been reiterated in the various deliberations within the different working groups. The special case for SIDS and LDCs is clearly recognised in various international arrangements.

6. On the matter of which principles are recognised under International Law, what approaches are sufficiently well established for inclusion in an international instrument and where they would be applicable, we would wish to highlight the Common Heritage of Mankind (CHM). 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 MGRs and access and benefit sharing as well as to capacity building and transfer of marine technology. The polluter pays principle as well as the precautionary approach would be especially critical in our deliberations on ABMTs and EIAs.

7. CARICOM also believes that it is critical to mention the ecosystem based approach which, as acknowledged in the CBD, is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way.

8. In terms of approaches, there is a basis for the involvement of relevant stakeholders, who are envisaged to be important players in respect of ABMTs and EIA, and in supporting advocacy towards the universalisation of the IA.

9. We also concur with others that on the matter of definitions, the approach  should be pragmatic and workable. Universally accepted definitions should be utilised.

**B. Relationship with other Instruments and Frameworks**

Mr. Facilitator,

10. CARICOM considers that the IA should build on the UNCLOS. Consequently, it should support and if necessary strengthen existing arrangements and should not derogate from key principles, purpose and objective of UNCLOS. Article 4 of the UNFSA is instructive in this regard.

11. 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.

12. The instrument should bring coherence, build on and strengthen the existing systems relating to BBNJ through a global mechanism that provides for the accountability of all involved in activities that impact on biodiversity of areas beyond national jurisdiction.

**C. Institutional Arrangements**

Mr. Facilitator,

13. CARICOM believes that it is important to examine existing institutions as part of the BBNJ. As we have noted throughout this and previous PrepComs, we want to ensure that there is greater coherence and coordination with respect to oceans governance. Institutional arrangements should cut across the elements of the 2011 package.

14. In terms of structure, we concur that there should be a decision-making forum, inclusive of a scientific forum and a clearing house mechanism as well as a Secretariat. We are still reflecting on some of the possible specifics but believe that existing bodies like the International Seabed Authority could play an important role, given its ongoing work in the Area on the development of environmental regulations, its stewardship of the Area for all humankind, as well as the role that the Authority could play in respect of enhancing capacity building.

15. 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.

16. The Authority recently began 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, and recently joined a collaborative initiative on Monitoring Marine Biodiversity in Genomic Era.

17. We thought we would highlight the foregoing in an effort to demonstrate the appropriateness of the ISA undertaking an important role in the effective implementation of the new Agreement.

**D.** **Financial Resources, Responsibility and Liability**

Mr. Facilitator,

18. We continue to reflect on the question of funding mechanisms in keeping with the deliberations to date but concur that funding arrangements should be based both on voluntary and monetary proceeds. We support the arguments that special provisions should be made for developing countries like SIDS. Dedicated funding will be crucial. We will revert on this matter in due course.

19. On the matter of responsibility and liability, we are thinking through the issues but believe that they are important.

**E. Dispute Settlement**

Mr. Facilitator,

20. With respect to dispute settlement, CARICOM is of the view that a useful starting point would be the dispute settlement provisions of the UN *Fish Stocks Agreement* (UNFSA), which is very comprehensive in terms of its dispute settlement provisions, in particular Articles 27 to 32. These provisions would have to be modified to cover the object of the Implementing Agreement – conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction – rather than primarily fisheries.

21. The UNFSA dispute settlement provisions set up a regime complementary to the UNCLOS dispute settlement regime, and which actually relies upon the latter for most of the dispute settlement mechanisms.  This is to be expected since the UNFSA is an agreement to implement UNCLOS.  Disputes are firstly to be settled by peaceful means – see the menu in Art 27.  Regional organisations are also to be utilized (Art 28); technical disputes can be resolved by special expert panels (Art 29); all disputes can be resolved by using Part XV of UNCLOS – even for states not party to UNCLOS.  Provisional measures (interim relief) are also contemplated (Art 31) – which will be necessary for our Implementing Agreement since it covers potential non-reparable harm to the marine environment. Art 32 excludes certain disputes. Consideration could be given regarding its suitability for the purpose of this IA.

22. On the question of who would be able to access dispute settlement provisions, we believe that Article 1(2 & 3) of the UNFSA could be useful since they define the “states parties” to the Agreement.

23. On the matter of advisory opinions, CARICOM is of the view that this would be a useful mechanism to resolve potential disputes before they arise.  Regional organisations should be expressly authorized to request advisory opinions.

24. In terms of the possible establishment of a special chamber of ITLOS, we believe that this could be contemplated only if these types of disputes could not be handled by existing chambers or existing configurations of ITLOS.

25. CARICOM also maintains that Article 27 of the UNFSA could offer useful guidance on what the relationship with existing mechanisms under regional and sectoral instruments would be since that Article specifically authorizes resolution of disputes through “*regional agencies or arrangements*,” thereby preserving this possibility.

26. Interestingly, Art 30(5) also allows a tribunal created under the UNFSA to apply to rules of the regional arrangement to decide the dispute.  This would allow respect for the rules of the regional arrangement even if one did not use the regional arrangement’s dispute settlement mechanism, and instead used the Implementation Agreement mechanism. Such an approach could be replicated in the Implementing Agreement.

**F. Monitoring, Review, Compliance and Enforcement**

Mr. Facilitator,

27. CARICOM believes that there should be a periodic review of the status of the implementation of the new Agreement, in keeping with the elements of the package. Universal participation should be sought and participation should be open to all, whether Parties to the UNCLOS or not. Any mechanism for implementation and enforcement should take account of regional bodies for the purpose of addressing peculiar and shared interests of regions.

**G. Final Clauses**

Mr. Facilitator,

28. 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.

29. The Fish Stocks Agreement would 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.

30. 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.

31. 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 could useful, as mentioned by others, alongside Art. 4 of the UNFSA, which was referenced in the context of the deliberations on the relationship between the Implementing Agreement and other Instruments and Frameworks.

I thank you.