



**PERMANENT MISSION OF JAMAICA  
TO THE UNITED NATIONS**

**STATEMENT BY**

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



**AT THE INFORMAL WORKING GROUP ON CROSS-CUTTING ISSUES  
DURING THE SECOND SESSION OF THE INTERGOVERNMENTAL  
CONFERENCE ON 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, 25 MARCH - 5 APRIL 2019**

## IV. Institutional arrangements<sup>1</sup>

### 1. *Decision-making body/forum*

CARICOM supports Option I under paragraph 1 of this section, notably Option A, which establishes a COP as a decision-making body/forum. We recognize that there might be limitations associated with Option B, given the mandates of existing institutions. We look forward to the views of others in this regard.

With respect to paragraph 2, CARICOM supports Option 1 as it is necessary to identify and define the key functions of the decision-making body under the Agreement. We do believe, however, that there is scope for further streamlining with the merging, for example, of sub-paragraphs (d), (e) and (f), with the inclusion of option (a) under (f). For sub-paragraph (i), we would be open to the merging of Options A and B, while eliminating the need for the term "cost effective" as it would be deemed to be unnecessary.

Regarding sub-paragraph (k), we would welcome further clarification on the intention behind this provision as agreeing on it at this stage may be premature as we are yet to discuss the mechanism to address non-compliance. As a general observation, the decision making body may need to address the position and participation of States not parties to the UNCLOS or the IA, and other entities in the procedures of the COP.

### 1. Decision-making body/forum

#### (1) OPTION I:

**Option A:** A conference of the parties/meeting of States parties is hereby established as the decision-making body/forum for this instrument.

**Option B:** [...] is hereby designated to serve as the conference of the parties/meeting of States parties of this instrument and shall be the decision-making body/forum for this instrument

#### ~~OPTION II:~~

~~(a) An assembly and a council are hereby established, as the principal organs of this instrument's decision-making body/forum.~~

~~(b) The Assembly shall consist of all States parties.~~

~~(c) The council shall consist of elected members of the decision-making body/forum.~~

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<sup>1</sup> Suggestions were made to take into account the structure, lessons learned and best practices of the following bodies and frameworks in developing provisions on institutional arrangements: the International Seabed Authority; the International Maritime Organization; FAO; and the United Nations Framework Convention on Climate Change. Other suggestions were made to utilize existing bodies, such as the Intergovernmental Oceanographic Commission of UNESCO; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Convention on Biological Diversity; and the International Seabed Authority.

**OPTION III: No text**

(2) **OPTION I:** The decision-making body/forum shall perform the following functions:

- (a) Adopt its rules of procedure;
- (b) Review implementation of this instrument;
- (c) Exchange information relevant to the implementation of this instrument;
- (d) Promote coherence among efforts towards the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (e) Promote the harmonization of appropriate policies and measures for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (f) Promote cooperation and coordination, including with the relevant global, regional and sectoral bodies towards the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

**Option A:** including by establishing processes for cooperation and coordination between relevant global, regional and sectoral bodies;

~~**Option B:** including by conducting cooperation programmes with existing programmes;~~

(g) **Option A:** Follow up on implementation of provisions and progress in meeting global objectives;

~~**Option B:** No text~~

(h) Make decisions and recommendations related to the implementation of this instrument;

(i) **Option A:** Establish subsidiary bodies as necessary for the performance of its functions, in a cost-effective manner;

**Option B:** Establish and coordinate ad hoc working groups or committees, including with other relevant stakeholders and relevant scientific and technical bodies;

(j) **Option A:** Monitoring and review;

~~**Option B:** No text~~

(k) **Option A:** Institute proceedings on behalf of the States parties in cases of non-compliance;

~~**Option B:** No text~~

(l) Set rules and procedures for in situ access to marine genetic resources of areas beyond national jurisdiction based on the recommendations of the scientific/technical body. It shall also coordinate and collaborate with the bodies established pursuant to other relevant instruments;

(m) Set standards and review measures such as area-based management tools, including marine protected areas;

- (n) Receive and consider reports from relevant global, regional and sectoral bodies concerning area-based management tools, including marine protected areas, designated by those bodies;
- (o) Review the recommendations of the scientific/technical body with respect to environmental impact assessments;
- (p) Take decisions with respect to environmental impact assessments based on the recommendations of the scientific/technical body;
- (q) Receive reports from States parties with respect to environmental impact assessments;
- (r) Elaborate types and modalities of capacity-building and the transfer of marine technology;
- (s) Identify needs for capacity-building and the transfer of marine technology;
- (t) Draft procedures for and conduct monitoring and review of capacity-building and transfer of marine technology activities;
- (u) Monitor and review capacity-building and the transfer of marine technology;
- (v) Undertake other functions identified in this instrument.

**OPTION II:** *No text*

- (3) **Option A:** The council set forth in paragraph [...] shall perform the following functions:
  - (a) Make policies, standards and rules in accordance with the provisions of this instrument;
  - (b) Establish standing and non-standing committees as necessary for the performance of its functions.

**Option B:** *No text*

## 2. *Scientific/Technical body*

**CARICOM supports the establishment of a scientific and technical body. We believe that the expertise of such a body is required to ensure evidence-based decision making across all elements of the package. Consequently, we wouldn't support any option for "no text" under this section. It is our view that Options I and II under paragraph 1 aren't mutually exclusive. CARICOM has in the past spoken in favour of using existing arrangements of the framework on scientific and technical advisory functions. The use of existing arrangements would also foster a cross-sectoral approach, reduce duplication of costs and promote consistency in scientific understanding. We'd propose sub-paragraphs (a), (b) and (c) also be merged.**

**Concerning paragraph 2, we are in general agreement with Option I and the functions listed. With respect to sub-paragraph (a), we would be open to consider language that could recognise the potential for this body to also provide advice, as appropriate, to other subsidiary bodies. Sub-paragraphs (c), (d), (i), (j), (k), (l) and (m), may not be necessary as either the COP or a subsidiary body could undertake this function. In our view paragraph**

**2 should focus on identifying the core functions of the Scientific and Technical Body, with additional functions, terms of reference, organisation and operations of the Body being further elaborated by the COP. We also anticipate that the functions and operational procedures of the Scientific and Technical Body will evolve in order to adequately respond to any issues requiring scientific advice that may arise. We'd also suggest that (n) be used as a disclaimer in any other section of the document where listings are provided, which represents a catch-all phrase for functions to be undertaken as may be determined by the decision-making body-forum.**

- (1) **OPTION I:** A scientific/technical body/committee/ad hoc scientific and technical body/pool of independent scientific experts is hereby established.
- (a) It shall be composed of independent experts from different regions, including from existing scientific bodies.
  - (b) The composition shall ensure that the body/committee/ad hoc scientific and technical body/pool of independent scientific experts shall comprise diverse, multi-disciplinary areas of expertise.
  - (c) The composition of the body/committee/ad hoc scientific and technical body/pool of independent scientific experts shall ensure equitable geographical representation.

**OPTION II:** Existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection, shall perform scientific and technical advisory functions.

**OPTION III:** *No text*

- (2) **OPTION I:** The scientific/technical body/committee/ad hoc scientific and technical body/pool of independent scientific experts shall:
- (a) Provide scientific and technical advice to the decision-making body/forum;
  - (b) Have advisory competence with regard to marine genetic resources, including questions on the sharing of benefits;
  - (c) Elaborate a benefit-sharing mechanism;
  - (d) **Option A:** Monitor the utilization of marine genetic resources of areas beyond national jurisdiction;

**Option B:** *No text*

- (e) **Option A:** Possess recommendatory functions with respect to measures such as area-based management tools, including marine protected areas, including regarding:
  - (i) Standard-setting and review;
  - (ii) The assessment of proposals;
  - (iii) The monitoring and review of measures;

**Option B:** *No text*

- (f) Establish guidelines with respect to environmental impact assessments;
- (g) **Option A:** Make recommendations to the decision-making body/forum with respect to environmental impact assessments;  
**Option B:** *No text*
- (h) Review environmental impact assessment standards to ensure consistency with the requirements of this instrument;
- (i) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of marine biological diversity;
- (j) Advise on ways and means to promote the development and transfer of marine technology;
- (k) Assess the effectiveness of the implementation of capacity-building and transfer of marine technology measures and/or programmes, including by assessing whether capacity gaps are decreasing;
- (l) Collaborate with regional capacity-building and transfer of marine technologies committees or regional needs assessment mechanisms;
- (m) Elaborate capacity-building and transfer of marine technology programmes;
- (n) Perform such other functions as may be determined by the decision-making body/forum or assigned to it by this instrument.

**OPTION II:** *No text*

### **3. Other subsidiary bodies**

**CARICOM prefers Option I as we support text speaking to the establishment of certain subsidiary bodies, without prejudice to the ability of the COP to establish additional bodies in the future to deal with specific issues as they arise.**

**We believe that paragraphs 2 and 4 under Option I could be merged to capture the idea to monitor and review CBTMT as well as to cooperate/coordinate, as appropriate, with existing regional or sub-regional mechanisms.**

**Paragraph 5 on an advisory body to be established is vague so we would welcome further clarification so we can determine the utility of its retention in the text.**

**We would also suggest the merging of 6, 7 and 8 whereby an Implementation and Compliance Committee would be established to promote implementation of and review compliance with the provisions of the Instrument, and also address cases of non-compliance. Other details would have to be examined, and without prejudice to the dispute settlement mechanisms under the Instrument.**

**The options in number 10 on financial mechanisms are compatible and could be merged.**

**OPTION I:**

- (1) An ad hoc working group on measures such as area-based management tools, including marine protected areas, is hereby established to examine measures designated under Part [...] in the light of the scientific advice or recommendations and the contributions received during the consultation and assessment process established under Part [...].
- (2) A capacity-building and transfer of marine technology committee is hereby established.
- (3) An access and benefit-sharing mechanism is hereby established to regulate access to marine genetic resources and the sharing of benefits.
- (4) Regional committees on capacity-building and the transfer of marine technology are hereby established to: (a) coordinate activities; (b) explore merging or associations with existing regional or subregional capacity-building and transfer of marine technology mechanisms, where relevant and appropriate; and (c) establish regional mechanisms for capacity and technology needs assessments, where feasible.
- (5) An advisory body is hereby established.
- (6) An implementation committee is hereby established to facilitate compliance with this instrument and measures thereunder.
- (7) A compliance committee is hereby established to review compliance with measures and make recommendations for measures to be taken in cases of non-compliance.
- (8) A monitoring and review committee is hereby established.
- (9) A legal committee is hereby established to provide advice to the decision-making body/forum.
- (10) **Option A:** A financial mechanism to support implementation of this instrument is hereby established.

**Option B:** A finance committee is hereby established to oversee the Fund set forth in Part [...]. This committee shall regularly report to the decision-making body/forum.

**OPTION II:** *No text*

#### 4. Secretariat

**CARICOM 's approach to this section is with a view to determining the best approach that would allow us to benefit from existing arrangements so Option II is important for us. We do recognise that it is the norm for an IA of this nature to provide for the establishment of a secretariat, outline the functions of the secretariat while also allowing for the COP to designate the Secretariat from among existing competent international organisations so maybe the option could be presented with this usual format in mind.**

**In relation to paragraph 2, we generally support the functions outlined but note that some streamlining is necessary to avoid overlap and ambiguity in the role of the secretariat vis-a-vis the subsidiary bodies under the Instrument. So for example, (g) and (k) could be combined; (j) is also accounted for earlier in this chapter so the role of the secretariat and**

**the Committee on Capacity-Building and Tech Transfer would have to be clarified; (f) could be strengthened to give greater credence to the assistance that will be required to support implementation of the IA; (e) is important and might also have to be strengthened - we are mindful of the need for coordination with the Secretariats of other relevant bodies, noting the importance of enhancing efficiency in the exercise of the functions of the Secretariat.**

- (1) **OPTION I:** A secretariat is hereby established.

**OPTION II:** The decision-making body/forum shall designate the secretariat from among those existing competent international organizations that have signified their willingness to carry out the secretariat functions under this instrument.

~~**OPTION III:** The secretariat functions for this instrument shall be performed by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs.~~

- (2) **OPTION I:** Without prejudice to the functions of relevant existing global, regional and sectoral bodies specified in this instrument, the secretariat shall:

- (a) Provide administrative and logistical support;
- (b) Report to States parties on matters related to the implementation of this instrument and developments related to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction as requested by the parties;
- (c) Convene and service the meetings of the decision-making body/forum, and any other bodies as may be established by the decision-making body/forum;
- (d) Circulate information relating to the implementation of this instrument;
- (e) Ensure the necessary coordination with the secretariats of other relevant international bodies;
- (f) Provide assistance for the implementation of this instrument as mandated by the decision-making body/forum;
- (g) Manage the clearing-house mechanism and an access and benefit-sharing fund as part of the Fund established under Part [...];
- (h) Coordinate consultation on proposals and with relevant organizations in relation to measures such as area-based management tools, including marine protected areas;
- (i) Coordinate consultations with the proponent of a planned activity for the purposes of environmental impact assessments;
- (j) Play a facilitation role in regard to capacity-building and the transfer of marine technology, including as a coordinating mechanism;
- (k) Host the clearing-house mechanism set forth in Part [...];



- (l) Perform other secretariat functions specified in this instrument and such other functions as may be determined by the decision-making body/forum.

**OPTION II:** The secretariat shall organize the review conference set forth in Part [...].

**OPTION III:** *No text*

## Clearing-house mechanism<sup>2</sup>

**CARICOM supports the clearing-house mechanism as a cross-cutting issue and reiterates points made during the consideration of the section of the President's Aid to Negotiations on capacity-building and the transfer of marine technology.**

~~**OPTION I:** The decision-making body/forum set forth in Part [...] shall, at its first meeting, determine how to establish a clearing-house mechanism.~~

### **OPTION II:**

- (1) A clearing-house mechanism is hereby established to perform the functions listed in this instrument.
- (2) The clearing-house mechanism shall consist of an open-access web-based platform providing a central repository of information and tools for information exchange enabling centralized access and sharing of information.
  - (a) and including a network of experts and practitioners in relevant fields.
  - (b) and including:
    - (i) Environmental impact assessment reports;
    - (ii) Baseline data/information;
    - (iii) A database of good practice;
    - (iv) Statements of the reasons underlying decisions related to environmental impact assessments and how environmental concerns have been taken into account;
    - (v) States parties' policies, guidelines and technical methods on environmental impact assessments;

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<sup>2</sup> Suggestions were made to take into account existing institutions and frameworks in developing the functions and modalities of a clearing-house mechanism under the instrument, including: the Intergovernmental Oceanographic Commission of UNESCO Ocean Biogeographic Information System and Guidelines on Capacity-Building and the Transfer of Marine Technology; the International Seabed Authority; the Convention on Biological Diversity and Nagoya Protocol; the United Nations Framework Convention on Climate Change Climate Technology Centre and Network and the technology needs assessment; Global Environment Facility; FAO and the International Treaty on Plant Genetic Resources for Food and Agriculture; the United Nations Environment Programme; the environmental impact assessment guidelines for Pacific Island countries and territories.

- (vi) Guidelines and technical methods on environmental impact assessments;
  - (vii) A network/roster of international experts on environmental impact assessments.
- (3) In addition to the functions set out for the clearing-house mechanism under Parts [...], the clearing-house mechanism shall serve as a platform for States parties to:
- (a) Access, evaluate, publish and disseminate information with respect to environmental impact assessments;
  - (b) Provide a case-by-case option upon request for capacity-building and the transfer of marine technology;
  - (c) Promote capacity-building and the transfer of marine technology;
  - (d) Provide access to relevant experience and know-how;
  - (e) Facilitate enhanced transparency;
  - (f) Keep track of cumulative impacts with respect to environmental impact assessments;
  - (g) Indicate areas in which proposed planned activities will take place with respect to environmental impact assessments;
  - (h) Facilitate international cooperation and collaboration;
  - (i) Exchange best practices on environmental impact assessments.
- (4) Due regard shall be given to the confidentiality of information provided under this instrument.
- (5) The clearing-house mechanism shall:
- (a) Link to existing relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other repositories;
    - Option A:** as well as collections and gene banks;
    - Option B:** *No text*
  - (b) Link to private and non-governmental information exchange platforms;
  - (c) Build on existing regional and subregional clearing-house institutions, if applicable, when establishing regional and subregional mechanisms under the global mechanism.
- (6) The clearing-house mechanism shall recognize the special circumstances of small island developing States, afford simplified access to enable small island developing States to utilize the mechanism without undue obstacles or administrative burdens, and include information on activities to promote information-sharing and dissemination in and with small island developing States, as well as provide for specific programmes for small island developing States.
- (7) The clearing-house mechanism shall be managed by
- Option A:** the secretariat set forth in Part [...].
  - Option B:** the Intergovernmental Oceanographic Commission of UNESCO in association with relevant agencies, including the

International Seabed Authority and the International Maritime Organization, and be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology. **(This would be consistent with CARICOM interventions that consideration could be given to utilising an existing platform/arrangement)**

- (8) **Option A:** The clearing-house mechanism shall assist the administration of the fund set forth in Part [...]

**Option B:** *No text*

**Funding (Discussed in context of CBTMT so those points would be applicable as part of institutional arrangements and cross-cutting issues. CARICOM supports voluntary and mandatory funding arrangements)**

**OPTION I:**

- (1) Funding in support of capacity-building and the transfer of marine technology under this instrument shall be adequate, accessible, sustainable and predictable.
- (2) Funding in support of capacity-building and the transfer of marine technology under this instrument shall be:

**Option A:** both voluntary and mandatory.

**Option B:** mandatory.

**Option C:** voluntary.

- (3) Funding shall be provided through:
- (a) Existing private and public sources, including official development assistance;
- (b) Existing funding mechanisms under global and regional instruments;<sup>3</sup>
- (c) Public/private partnerships.
- (4) In addition to relevant existing mechanisms mentioned in paragraph [...], the funding mechanism shall also be composed of:

**Option A:** the voluntary trust fund set forth in paragraph [...]. to facilitate the participation of representatives of developing countries in the meetings of bodies under this instrument.

**Option B:** the special fund composed of: (a) the operational fund, (b) the endowment fund, (c) the contingency fund, and (d) the rehabilitation fund/liability fund. **(CARICOM has said it is open to considering the utility of having 1 mechanism or several to determine the best approach)**

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<sup>3</sup> Suggestions were made to draw from existing mechanisms such as: the Endowment Fund of the International Seabed Authority; the Global Environment Facility; the Global Compact Fund; the Global Forest Financing Facilitation Network; the Convention on Biological Diversity; the Intergovernmental Oceanographic Commission of UNESCO mechanisms; and the Trust Fund hosted under the Association for Sustainable Financing of Mediterranean Marine Protected Areas.

Option 1: and a voluntary trust fund.

- (a) The special fund shall:
- (i) Promote meaningful projects on the conservation and sustainable use of marine biological diversity;
  - (ii) Promote capacity-building and the transfer of marine technology.
- (b) The operational fund shall:
- (i) Fund the participation of developing States parties in this instrument's processes;
  - (ii) Assist developing countries in implementing this instrument, including through the conduct of environmental impact assessments;
  - (iii) Fund capacity-building activities;
  - (iv) Fund technology transfer-related activities and programmes, including training;
  - (v) Support conservation and sustainable use programmes by holders of traditional knowledge in local communities, including in areas within national jurisdiction;
  - (vi) Support public consultations at the national and regional levels.

a. It shall be funded through:

i. Option 1: Mandatory sources, including:

- Contributions from States parties and royalties and milestone payments from exploitation or use of marine genetic resources/resulting from benefit-sharing;
- Payments as a condition of access to and utilization of marine genetic resources, premiums paid during the approval process of environmental impact assessments, in addition to cost recovery, fees and penalties, and other avenues for mandatory payments;

Option 2: *No text*

ii. Voluntary contributions from States parties, States non-parties, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons;

iii. The endowment fund;

iv. Other existing financial mechanisms, such as the Global Environment Facility and the Green Climate Fund.

b. It shall address the special case of small island developing States by:

- i. Providing for a small island developing States' specific allocation in the fund(s)
  - ii. Providing for a special small island developing States procedure with a pre-application process, which shall then trigger a support mechanism to prepare the required application. This procedure shall be clear, simple and accessible.
- (c) The endowment fund shall be funded through initial endowments by States parties and other stakeholders as well as further voluntary contributions and shall [...].
- (d) The contingency fund shall [...].
- (e) (i) The rehabilitation/liability fund shall be used to finance the rehabilitation and/or ecological restoration of marine biological diversity of areas beyond national jurisdiction, including its natural environments, in the event of pollution or other damaging impacts on marine biological diversity and ecosystems of areas beyond national jurisdiction;
- (ii) Private entities wishing to engage in the exploration and exploitation of marine biological diversity of areas beyond national jurisdiction shall be required to contribute to the fund.

**Option C:** *No text*

- (5) Access to funding in accordance with this Part shall be open to:

**Option A:** developing countries taking into account the needs for assistance of landlocked and geographically disadvantaged developing countries, small island developing States, least developed countries, coastal African States as well as the specific development challenges of developing middle income countries.

**Option B:** developing countries taking into account the needs for assistance of landlocked and geographically disadvantaged developing countries, small island developing States, least developed countries, coastal African States as well as the specific development challenges of developing middle income countries as well as environmentally challenged and vulnerable States.

**Option C:** developing countries primarily, with priority granted to countries with special circumstances, such as small island developing States.

- (a) and other stakeholders from small island developing States, including traditional knowledge holders.

**OPTION II:** *No text*