

PERMANENT MISSION OF JAMAICA

TO THE UNITED NATIONS

**REMARKS BY**

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**ON BEHALF OF**

**THE CARIBBEAN COMMUNITY (CARICOM)**

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**Preparatory Committee established 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) – fourth session**

**INFORMAL WORKING GROUP**

**ON CROSS-CUTTING ISSUES**

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Mr. Chair,

Let me begin by expressing CARICOM’s appreciation at seeing you back in New York. Please be assured of our full support as you ably guide our ongoing deliberations. We would wish to offer the following observations:

1. ***Preamble***

Preambular elements should go beyond conservation and sustainable use to reflect the spirit of our joint stewardship, and the importance of the equitable use of the commons and our common property. All elements of paragraph 2 of resolution 69/292 should be reflected in the Preamble. As an implementing convention under UNCLOS, we see merit in drawing on the language of the Convention, which refers to the equitable and efficient utilisation of the resources of seas and oceans, taking into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries. The importance of the principles embodied in resolution 2749 (XXV) of 17 December 1970 are also specifically highlighted in the Preamble of the Convention. We believe that the inclusion of a more fulsome preamble is only reasonable and note some recognition in the text [p.4, Section III.A, last sentence] that the preamble in its current form needs to be supplemented.

In line with bullet point 4 in the Chair’s indicative suggestions, it was widely held during previous sessions of the PrepCom that the new instrument should assure intergenerational equity. Accordingly, conservation and sustainable use should be for the benefit of present and future generations.  We would recommend that this be reflected going forward. There could also be a further affirmation that the new instrument furthers the objectives of UNCLOS.

Finally, given the advances in marine scientific research and marine technology, which are directly relevant to how we conserve and utilize marine resources, the preamble could emphasize the importance of benefit sharing in this regard and the need to close the marine science and technology gap in order to facilitate such benefit sharing.

2***. General elements***

(i) *Use of Terms*

It is noted that the points highlighted by the Chair captures many of the specific points raised by CARICOM. We wish to recall, as we have done in previous sessions, that the use of terms in IA should be consistent with the use of the same or similar terms under other relevant international legal instruments, and may, where appropriate, provide for definitions of terms that do not as yet have universally agreed definitions, so long as the approach to definitions is pragmatic, workable and scientifically based.

(ii) *Scope/Application*

CARICOM believes that the reference under material scope to the effect that the text could further set out the activities covered by and/or excluded from the scope of application of the instrument might be best placed and considered in the context of the issues relating to “*Relationship to UNCLOS and other instruments*.”

(iii) *Objectives*

Following from the comment in the preamble regarding the significance of ensuring a reference to intergenerational equity, it would be important to reflect that the purpose of the long-term conservation and sustainable use of marine biodiversity is for the benefit of present and future generations. In keeping with 69/292 and the specific reference as part of the package deal to the question of benefit sharing that should be taken into account in respect of marine genetic resources, CARICOM believes that there should be a corresponding reference under this section to the objective of equitable benefit sharing as well as the equitable and efficient use of marine resources.

(iv) *Relationship to UNCLOS and other Instruments and frameworks and relevant global, regional and sectoral bodies*

CARICOM welcomes the reference to the fact that the IA would be interpreted and applied in the context of and in a manner consistent with UNCLOS. We believe that the focus on interpretation is a useful medium through which to minimize the debate around what is meant by the word ‘undermine,’ even though it is recognized that this is the language of 69/292. Consequently, it might be better to express our consensus as regards our common intention in a manner that does not give precedence to an individual subjective assessment and state that the text “should not be interpreted as undermining existing legal instruments.” For CARICOM, the focus continues to be on ensuring that the IA brings coherence, builds on and strengthens existing systems.

We also believe that the inclusion in this section of language that speaks to the fact “that nothing in the instrument shall prejudice the rights, jurisdiction and duties of States under UNCLOS” is significant and could prove useful as we contemplate how we further streamline the text to avoid duplication and repetition.

3. **Conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction**

(v) *General principles and approaches*

While useful and pertinent issues have been noted by the Chair in his indicative suggestions, the section could benefit from some additional points, most notably benefit sharing, polluter pays principle, precautionary principle, ecosystem based approach and of course CHM. We believe that the special case for SIDS and LDCs has a direct bearing across the IA.

On the matter of the structure of the document as well as the treatment of general principles and approaches, and without prejudice to the final decision taken on the matter CARICOM would wish to be assured that the contextual value of having some principles and approaches reflected in specific sections of the text is not lost through a further refining of the document. Consequently, it is imperative that general principles and approaches are not relegated to a section of the document where the context and value that they provide would be lost.

(vi) *International Cooperation*

It is widely accepted that the new instrument should create opportunities for marine scientific research, capacity-building and the transfer of marine technology, which will necessarily be facilitated through cooperation. It would be appropriate, therefore, to have a reference to international cooperation in MSR (UNCLOS Articles 242-244) and international cooperation for the development and transfer of marine technology (UNCLOS Articles 270-274). There is limited reference to technology transfer for ABMTs but a broader provision is required.

4. **Institutional Arrangement**

CARICOM continues to see merit in examining existing institutions as part of the institutional arrangements for the IA, as we believe that it would ensure greater coherence and coordination with respect to ocean governance. We believe that this option of examining existing institutions should be more forcefully reflected in the indicative suggestions.

We believe that whatever is contemplated should allow for monitoring at the global level. The institutional arrangements should naturally allow for the effective consideration of the entire package.

5. **Clearing house mechanism**

CARICOM sees the value of a clearing house mechanism or mechanisms under the IA. The construct and advantages of such a mechanism as distinct to an information platform or mere notice board requires refinement. However, we would have a difficulty accepting any argument that would suggest that such a mechanism should not be contemplated under the IA.

6. **Financial resources and mechanism**

CARICOM welcomes the fact that the issue of financial resources and mechanisms is reflected in the indicative suggestions. We are open to considering whether a new Fund should be established or whether existing funding mechanisms could be utilized. The text should include a provision for funding to facilitate capacity building and the transfer of technology in relation to the entire package.

7. **Implementation**

CARICOM concurs with the broad parametre that the Chair has proffered under this section. We can also support ideas of cooperation and coordination, including with regional and sectoral bodies. Each state party should be responsible for implementing the treaty.

8. **Dispute Settlement**

CARICOM is generally satisfied with the treatment of dispute settlement. In keeping with the importance that we attach to this issue and to reinforce the  need for clarity in dispute settlement provisions, we support the recent statement by the President of ITLOS during the 18th SPLOS to the need to include the possibility of requesting advisory opinions from the Tribunal on matters arising out of the new agreement as well as to clarify the interplay between the application of Part XV of the Convention and other parallel arrangements or declarations conferring jurisdiction on other judicial bodies. Our expectation is that we can substantively delve into these issues going forward.

9**. Responsibility and liability**

This section is general but it maintains the focus on the fact that text could address responsibility and liability. Our preference, however, would be to see stronger language, thereby replacing the word ‘could’ with the word ‘should.’

10**. Review**

As previously noted, there should be a reporting obligation and a global mechanism such as a COP.

11. **Final clauses**

We support the reference by the Chair that this would be set out in the Instrument.