Annex

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avoid duplication. Several delegations recalled that the focus of the discussions of the Working Group within the process established in resolution 67/78 should not be to negotiate issues, but rather to clarify them. (See also paras. 82-85.)

12. Delegations reiterated the importance of the Convention as the legal framework for addressing the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Several delegations recalled that the Convention provided the legal framework within which all activities in the oceans and seas must be carried out. Several other delegations emphasized the principle of the common heritage of mankind enshrined in the Convention, expressing the view that it applied to marine genetic resources beyond areas of national jurisdiction. Some delegations stated that marine biodiversity beyond areas of national jurisdiction was the common heritage of mankind. A view was expressed that those who still opposed the application of the principle of the common heritage of mankind in that context had the burden of proof to show what other options would be more appropriate to avoid the tragedy of the commons.

13. Many delegations expressed the view that the development of an international instrument under the Convention, in the form of an implementing agreement, was necessary to effectively address issues related to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Several delegations stated that such an agreement was the only feasible option to ensure that developing countries and small island developing States, in particular, benefited equitably from the conservation and sustainable use of biodiversity beyond areas of national jurisdiction. Many delegations also noted that an implementing agreement would ensure a coordinated, integrated and collaborative approach and assist in addressing shortcomings in implementation and existing gaps by establishing an overarching legal and institutional framework. To that end, several delegations suggested that an implementing agreement should aim at operationalizing the relevant principles of the Convention. Many delegations suggested that an implementing agreement could implement, strengthen and elaborate on obligations already embodied in the Convention, such as the general obligation to protect and preserve the marine environment, the obligation to protect and preserve rare or fragile ecosystems as well as the habitats of depleted, threatened or endangered species or other forms of marine life, the duty to cooperate on a global or regional basis for the protection and preservation of the marine environment, the duty to undertake environmental impact assessments and publish or communicate reports of the results of such assessments to the competent international organizations, as well as other relevant parts of the Convention related to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

14. Several delegations considered that, without an implementing agreement, it would be difficult to ensure coherent application of modern conservation and management principles; establish a network of multi-purpose marine protected areas in areas beyond national jurisdiction; undertake the strategic assessment of multiple activities that may have a cumulative impact on marine biodiversity beyond areas of national jurisdiction; develop a benefit-sharing regime for marine genetic resources; or effectively address the necessary cooperation and coordination between existing global and regional bodies. Several delegations also noted that the majority of existing bodies entrusted with competencies potentially affecting marine biodiversity beyond areas of national jurisdiction had a sectoral and/or regional mandate, and none had global responsibility concerning the subject as a whole. In

instrument should recognize and respect and not duplicate or interfere with existing legal instruments and the mandates of existing organizations with sectoral mandates at the global and regional levels and their ongoing efforts. A view was expressed that the scope of a new agreement should be limited to areas for which existing institutions did not have a mandate, noting that there were already regimes for ecosystem-based management, environmental impact assessments and fisheries. In particular, some delegations emphasized that for fisheries, existing regimes and regional fisheries management organizations should be further utilized. It was suggested that it would be useful to more fully understand the extent of overlapping activities in the oceans. The need to avoid creating conflicting processes or a system that would allow for forum shopping was highlighted.

20. Several delegations expressed the view that an implementing agreement should address the

the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology.

24. Many delegations noted that the existing international framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction was fragmented and did not address cumulative impacts. In that regard, the package of issues was considered a basis to address all relevant activities in a comprehensive manner, with a view to resolving current fragmentation and lack of integration and to dealing with cumulative impacts in a cooperative and coordinated manner, as well as to address gaps in the current framework. In that regard, several delegations expressed the view that an international instrument should aim at providing a platform for improving cooperation and coordination among and between States and international organizations. A view was expressed that any new instrument should not be limited to coordination, but should also establish a strong framework for, inter alia, management of activities and capacity-building.

25. In relation to legal and regulatory gaps, several delegations highlighted the legal gap in relation to marine genetic resources, including questions relating to the sharing of benefits. Some delegations believed that only legal gaps in the current framework for relevant activities should be addressed in an international instrument, such as in relation to marine genetic resources. In their view, this would exclude issues relating to fisheries, for which the Convention, the United Nations Fish Stocks Agreement and regional fisheries management organizations and arrangements provided the legal framework. In particular, it was noted that regional fisheries management organizations and arrangements already had the mandate to implement area-based management tools, including marine protected areas, both in relation to particular stocks and the effects of fishing activities on vulnerable marine ecosystems in the high seas. Some other delegations indicated that, in the light of the impact of fishing activities on marine biodiversity and the need to implement an ecosystem approach, such activities should be included in an international instrument. Another suggestion was made that existing fisheries-related instruments and organizations could be further utilized to minimize impacts of fishing activities on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

26. In relation to the need to address gaps in participation in, and implementation of, existing instruments, some delegations noted that a new international instrument would not, in itself, address these challenges, which they believed were mostly due to a lack of political will. Instead, they suggested that such gaps should be addressed by strengthening cooperation among States and international organizations. It was further pointed out that a new international instrument would exist in parallel to existing instruments but, as in the case of those instruments, would apply only to States that would become parties to it. Hence a new international instrument would not necessarily ensure universal participation, but might generate duplication. Another view was expressed that States that were not parties to existing instruments, such as the United Nations Fish Stocks Agreement, would not necessarily reject a new instrument.

27. It was noted that an examination of each element of the package to determine where gaps existed would be helpful and would likely lead to the conclusion that an

implementing agreement was the appropriate solution for each element of the well-balanced and interlinked package.

28. While several delegations observed that it was sufficient at this stage of the process to identify the broad scope and parameters of a possible instrument without detailing all specific areas that should be included or excluded, some delegations expressed the need for further detail, clarity and predictability on the scope of the proposed instrument.

Legal framework for an international instrument

29. Many delegations reiterated that the Convention provided the legal framework for an international instrument governing the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. In that regard, it was noted that although the term “biodiversity” was not used in the Convention, it clearly addressed marine living resources and referred to rare or fragile ecosystems, habitats, species and other forms of marine life, which encompassed biodiversity. Some delegations also underscored that the two implementing agreements to the Convention also formed part of this legal framework along with other relevant

32. A view was expressed that achieving harmony should be an important objective of an international instrument. Some delegations noted, in this context, the difference between seeking harmonization through cooperation and coordination

A view was expressed that while such an approach would be acceptable in relation to the work of regional seas organizations, it would not be in the case of fisheries for which a global framework already existed.

36. Several delegations expressed the view that it was not necessary to choose between global and regional approaches, since both were mutually supportive through regional implementation of global goals and commitments. In this context, they suggested that the value of an international instrument would lie in its promotion of a collaborative approach and the identification of common principles, for example, to identify areas in need of protection, conduct environmental impact assessments and implement an integrated approach and ecosystem approach, to be implemented by regional and global sectoral organizations. These delegations expressed the view that such an approach would not require a cumbersome institutional structure. In that regard, some delegations emphasized the need to avoid establishing a costly and cumbersome institutional mechanism.

37. Some delegations expressed the view that the mandates of existing institutions could be analysed with a view to determining how to optimize their respective roles. In particular, several delegations stated that the mandate of the International Seabed Authority could be interpreted more broadly or expanded, in particular in relation to marine genetic resources. On the other hand, a view was expressed that this would dilute the mandate of the Authority, which, in addition, may not have the necessary expertise.

38. A suggestion was made that a single reporting entity be established under an international agreement. Another delegation supported a centralized monitoring

arising from the utilization of those resources, in light of the knowledge showing commercial exploitation of these resources, as well as the conservation and management of those resources, including with a view to ensuring that the collection of specimens would be sustainable and avoiding damage to ecosystems, was highlighted by many delegations. In particular, several delegations stated that governance gaps allowed those States with technical capabilities and resources to exploit these resources without sharing the benefits, and this could also contribute to damaging the marine environment. It was observed, however, that acquiring marine genetic resources in areas beyond national jurisdiction often did not require ongoing access or ongoing harvesting and may have almost no impacts on marine biodiversity in those areas.

46. Many delegations considered that such a legal gap existed in the current legal framework in respect of marine genetic resources of areas beyond national jurisdiction, in particular in relation to access and the sharing of benefits arising from their exploitation, while some delegations considered that there was no such gap. Different views were expressed on whether the gap existed in respect of such resources of both the Area and the high seas or only in respect of those of the Area. While a view was expressed that an international instrument could address marine genetic resources of the Area, as this was where a clear legal gap existed, some delegations stressed that an international instrument should apply to marine genetic resources of both the seabed and the water column in order to ensure a uniform regime. Several delegations expressed the view that an implementing agreement should provide for substantial arrangements for equitable access to and the sharing of benefits from marine genetic resources, capacity-building and the transfer of marine technology, so as to ensure that developing countries could benefit from the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

47. Different views continued to be expressed regarding the legal regime applicable to marine genetic resources of areas beyond national jurisdiction. Several delegations reiterated their view that, in accordance with the Convention and General Assembly resolution 2749 (XXV), the resources of the Area were the common heritage of mankind, and that activities in the Area shall be carried out for mankind as a whole, taking into particular consideration the interests and needs of developing States. Thus, in their view, the principle applicable to marine genetic resources of areas beyond national jurisdiction was that of the common heritage of mankind and a specific legal regime needed to be developed based on that principle. Several delegations emphasized, in that regard, the importance of incorporating the provisions in articles 136 and 137 of the Convention in an implementing agreement.

48. Some other delegations reiterated their view that the principle of the common heritage of mankind did not apply to marine genetic resources of areas beyond national jurisdiction, and that the freedom of the high seas applied to those resources instead. It was also noted that if marine scientific research was involved, the provisions of the Convention on marine scientific research applied as well. It was stressed in this regard that designating any part of the high seas water column as the common heritage of mankind would be inconsistent with the Convention and would require an amendment, which should be avoided. Several other delegations acknowledged the importance of both principles and stressed that, while they could not support the application of the common heritage of mankind to marine genetic resources of areas beyond national jurisdiction, as those resources were not included

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network under an international instrument, as these measures could be binding on all parties to such an instrument.

62. The need for guidelines on the designation of marine protected areas to ensure compatibility between different bodies was noted. It was suggested, in that regard, that an international instrument could further elaborate on the duty to cooperate under article 197 of the Convention. In particular, some delegations noted that an international instrument could aim to develop a framework of recommendations, standards and procedures, criteria and guidelines for existing bodies to identify and manage marine protected areas.

63. Several delegations suggested that an international instrument would facilitate the establishment of a global network of ecologically representative marine protected areas through the identification and designation of globally recognized areas, the establishment of management objectives for the designated areas, the monitoring and surveillance of activities in those areas, and procedures for the recognition and establishment of marine protected areas to be implemented by

overarching body binding on States that had not become party to the international instrument. In this regard, a preference was expressed for the establishment of marine protected areas by States through existing organizations. The need for some degree of centrality to avoid fragmentation at the regional level and for coherence among regional approaches, given the common nature of the resources, was noted. It was suggested, in that regard, that it would be necessary to analyse regional undertakings to assess whether they were compatible with the global approach envisaged by the Working Group.

65. Environmental impact assessments. With regard to environmental impact assessments, it was pointed out that such assessments were an effective tool to ensure the sustainability of activities in areas beyond national jurisdiction. Some delegations expressed the view that an international instrument would facilitate the use of such assessments in the context of globally agreed standards.

66. Several delegations reiterated the obligation under article 206 of the Convention to assess the potential effects of activities that may cause substantial pollution of or significant and harmful changes to the marine environment. Some delegations indicated that environmental impact assessments were already implemented through national measures, in accordance with article 206. It was pointed out, however, that this obligation was only partially implemented and carried out on an activity-specific basis, without the consideration of cumulative impacts of multiple stressors on the marine environment. It was also observed that the current approach did not allow for a coherent assessment of impacts in areas beyond national jurisdiction. In that regard, several delegations emphasized that an implementing agreement should reiterate and strengthen the obligation in article 206 so that potential impacts were considered before activities were undertaken, including cumulative and strategic assessments of such impacts. Attention was also drawn by some delegations to the need to assess the potential impacts of emerging and future uses of the oceans, such as carbon sequestration. A view was expressed

instrument and existing bodies with sector- or area-specific assessment requirements. A delegation queried whether ongoing activities would be subject to assessments.

69. Several delegations noted the need to consider the threshold that would apply for the obligation to conduct an environmental impact assessment with respect to different activities to take effect. Some delegations noted, in this context, that article 206 of the Convention already contained an established threshold. Another delegation suggested that some activities might not meet the threshold and not require an environmental impact assessment. It was suggested that activities with little or no expected impact might only be subject to monitoring and reporting obligations. It was also considered that there may be some types or groups of activities that could already be

74. It was noted that the Convention already included provisions on capacity-building and transfer of marine technology, and questioned whether additional provisions in a new instrument would enhance implementation, which was lacking due to an absence of political will.

75. The critical importance of the transfer for technology as an essential tool of capacity-building was highlighted by some delegations. In particular, it was noted that States possessing advanced technologies already had an obligation under Part XIV of the Convention to share those technologies with developi

Next meeting of the Ad Hoc Open-ended Informal Working Group

82. In considering the way forward in the work of the Working Group and the process established in paragraphs 198 and 199 of resolution 68/70, many delegations proposed that the next meeting of the Working Group scheduled to be held from 20 to 23 January 2015 be dedicated to the finalization of recommendations to the General Assembly. In this regard, delegations requested the Co-Chairs to prepare a draft document containing elements of recommendations to the General Assembly for circulation to Member States in advance of that meeting. Delegations emphasized that the draft elements should be based strictly on the package of issues set out in resolution 66/231 and include areas of convergence that had emerged through the discussions. Several delegations also suggested that the draft elements establish the principles upon which the negotiations for an instrument would be conducted, such as the value of consensus and conduct of negotiations in good faith. Some delegations also emphasized that a prospective instrument should not seek to impose obligations contained in the Convention on States that had not yet consented to be bound by its provisions. It was also recalled that being a party to the Convention should not be a prerequisite to be a party to an eventual implementing agreement.

83. While several delegations expressed the view that the draft document should