



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

Chair's overview of the second session of the Preparatory Committee

1. In its resolution 69/292 of 19 June 2015, the General Assembly decided to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. To that end, it decided to establish, prior to holding an intergovernmental conference, a Preparatory Committee, open to all States Members of the United Nations, members of the specialized agencies and parties to the Convention, with others invited as observers in accordance with past practice of the United Nations, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under UNCLOS, taking into account the various reports of the Co-Chairs on the work 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 Assembly also decided that the Preparatory Committee would start its work in 2016 and, by the end of 2017, report to the Assembly on its progress.
2. Before the end of its seventy-second session, and taking into account the aforementioned report of the Preparatory Committee, the General Assembly will decide on the convening and on the starting date of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee on the elements and to elaborate the text of an international legally binding instrument under UNCLOS.
3. The General Assembly also decided that negotiations shall address the topics identified in the package agreed in 2011, namely the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.
4. By letter dated 4 September 2015, His Excellency Mr. Sam Kahamba Kutesa, President of the sixty-ninth session of the General Assembly of the United Nations, appointed, in accordance with paragraph 1(d) of resolution 69/292, His Excellency Mr. Eden Charles, Ambassador Extraordinary and Plenipotentiary, Deputy Permanent Representative / Chargé d'Affaires a.i. of the Permanent Mission of Trinidad and Tobago to the United Nations, as Chair of the Preparatory Committee.



5. Pursuant to paragraph 1(c) of resolution 69/292, and taking into account official holidays at the United Nations, the second session of the Preparatory Committee was convened by the Secretary-General from 26 August to 9 September 2016. Representatives from 115 Member States of the United Nations, three non-Member States, six United Nations funds and programmes, bodies and offices, 17 intergovernmental organizations, and 23 non-governmental organizations attended the session.

6. In accordance with paragraph 1(e) of resolution 69/292, and given that Mr. Nonomura Kaitaro (Japan) and Mr. Giles Norman (Canada) were no longer in a position to serve as Bureau members, the Preparatory Committee elected Mr. Jun Hasabe (Japan) and Ms. Catherine Boucher (Canada) as members of the Bureau. In light of information received from Japan according to which, in accordance with the agreement reached in the Asia-Pacific Group, Mr. Jun Hasebe would be resigning from his position as a member of the Bureau on 27 October 2016, the Preparatory Committee further elected Ms. Margo Deiye (Republic of Nauru) to serve as member of the Bureau from 28 October 2016 onwards.

7. On 26 August, following opening statements by the Chair and the Assistant Secretary-General for Legal Affairs, the Preparatory Committee adopted the agenda (A/AC.287/2016/PC.2/1) without amendment and agreed to proceed on the basis of the proposed programme of work (A/AC.287/2016/PC.2/L.2).

8. During its plenary sessions, the Committee heard general statements and considered: marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity-building and the transfer of marine technology; and cross-cutting issues. Informal working group sessions were also convened and facilitated as follows: His Excellency Mr. Eden Charles (Trinidad and Tobago)¹ for the Informal working group on marine genetic resources, including questions on the sharing of benefits; Mr. John Adank (New Zealand) for the Informal working group on measures such as area-based management tools, including marine protected areas; Mr. René Lefeber (the Netherlands) for the Informal working group on environmental impact assessments; Ms. Rena Lee (Singapore) for the Informal working group on capacity-building and the transfer of marine technology; and His Excellency Mr. Eden Charles (Trinidad and Tobago) for the Informal working group on cross-cutting issues.

9. On 8 and 9 September, the Preparatory Committee considered, in plenary, the issues addressed by it to date, including on the basis of the oral reports from the Facilitators of the Informal working groups and informal documents containing the Chair's understandings of possible areas of convergence of views and possible issues for further discussion (annex I). Owing to time constraints, no plenary discussions could be held on the Chair's understandings of possible areas of convergence of views and possible issues for further discussion regarding cross-cutting issues, which were presented orally. The Committee also considered the Chair's proposed road map up to and for the next session of the Committee.

¹ The Chair facilitated the Informal working group in light of the unavailability of His Excellency Mr. Carlos Sobral Duarte (Brazil).

Road map

10. In accordance with the road map proposed by the Chair and approved by the Preparatory Committee on 9 September 2016, the Chair prepared the present overview of the second session of the Preparatory Committee, which includes the Chair's understandings of possible areas of convergence of views and possible issues for further discussion revised, where applicable, on the basis of discussions held in plenary on 8 and 9 September (see para.9), and the Chair's general observations (annex II).

11. In advance of the third session of the Preparatory Committee, the Chair will prepare and circulate a rolling compilation of proposals for elements of a draft text of an international legally-binding instrument received from delegations by 5 December 2016.² The Chair will also prepare and circulate a non-paper which will provide a structured presentation of issues and ideas reflected in the rolling compilation as well as of possible areas of convergence from the Chair's understandings and those issues and ideas which were extensively discussed during the second session of the Preparatory Committee. The non-paper will be under the Chair's full responsibility and is not meant to preclude delegations from raising issues that may not be addressed in it.

12. At the third session of the Preparatory Committee, to be held in 2017,³ the Chair intends to devote more time to the issues which have emerged at the second session as requiring further discussions, bearing in mind that in accordance with resolution 69/292, negotiations shall address the topics identified in the package agreed in 2011 together and as a whole.

13. Given the need for additional scientific and technical information on some issues, delegations are encouraged to continue organizing side events and workshops featuring expert presentations both prior to the third session of the Preparatory Committee and on the margins of the sessions of the Preparatory Committee.

14. A preparatory meeting will be convened before the third session of the Preparatory Committee.

² Proposals must be sent to doalos@un.org.

³ Dates to be decided by the General Assembly in its annual resolution on oceans and the law of the sea scheduled for adoption in December 2016.

Annex I

Chair's understandings of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working groups

Appendix 1

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on marine genetic resources, including questions on the sharing of benefits

As revised following plenary discussions on 8 September 2016

Possible areas of convergence of views

- Usefulness of agreeing on working definitions of marine genetic resources and other key concepts at the preliminary stage
- Usefulness of drawing on definitions contained in existing instruments
- Guiding principles and approaches constitute a cross-cutting issue
- Benefit-sharing for non-monetary benefits
- The rights of coastal States over their continental shelf should be respected
- Benefit-sharing should/should also/could contribute to conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction
- Benefit-sharing should be beneficial to current and future generations, build capacity to access marine genetic resources of areas beyond national jurisdiction, and not be detrimental to research and development

Possible issues requiring further discussions

- Whether to take into account the distinction between fish used for its genetic properties and fish used as a commodity when developing a definition
- Whether the common heritage of mankind and the freedom of the high seas are mutually exclusive or could apply concurrently in an international instrument
- Whether access to resources *ex situ*/resources *in silico*/genetic sequence data should be included in an access and benefit-sharing regime
- Whether to include derivatives or not in the scope
- Whether to regulate access to marine genetic resources of areas beyond national jurisdiction or not
- Whether to include monetary benefits or not
- Whether to include marine genetic resources of the water column beyond areas of national jurisdiction in a benefit-sharing regime
- Whether to have a benefit-sharing mechanism
- Whether to address intellectual property rights in an international instrument
- Role of traditional knowledge in the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction

Appendix 2

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on measures such as area-based management tools, including marine protected areas

As revised following plenary discussions on 8 and 9 September 2016

Possible areas of convergence of views

- A number of principles and approaches to be taken in the establishment of ABMTs, including MPAs, such as:
 - Transparency
 - ecosystem approach
 - science-based approach
- States have the obligation to protect and preserve the marine environment
- ABMTs, including MPAs, should collectively contribute to the objective of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Possible issues requiring further discussion

- Whether ABMTs, including MPAs, should contribute to rehabilitation and restoration of ocean ecosystems and health
- Usefulness of defining ABMTs and MPAs
- Whether definitions of/use of terms related to ABMTs, including MPAs, should be based on existing definitions, adapted to the context of marine biodiversity of areas beyond national jurisdiction
- The possible need to include a definition of marine reserves
- Further discussion on what combination of elements, including vertical, horizontal, top-down, and bottom-up approaches would be most effective in delivering on the objectives of the mandate.
- Clarification of what participants understand those different approaches to entail
- A new mechanism/process/global framework/instrument would provide for a consultative, integrated approach to ABMTs, including MPAs
- A new mechanism/process/global framework/instrument would provide for a transparent and inclusive approach to ABMTs, including MPAs
- The need/ways and means to foster better and enhanced cooperation and coordination
- The “architecture” of and need for any institutional mechanisms which would need to be established, including the role of a possible conference of parties or other coordinating mechanism
- Procedural and decision-making processes
- An avenue, such as a scientific committee/process, for seeking the necessary scientific input to any policy-making body/to provide the necessary scientific input for policy-making under the new instrument
- States, individually or through relevant organizations/collectively, would make proposals in relation to ABMTs
- Identification and role of stakeholders

- The decision to designate an MPA, especially in areas which adjoin areas under national jurisdiction, should be taken with the consent of neighbouring coastal States and management of the MPA should be entrusted to the coastal States
- The decision to designate an MPA should be taken after a consultation process which seeks to take into consideration the views and concerns of all stakeholders, including any neighbouring coastal States as well as humankind as a whole
- Follow-up and monitoring mechanism
- Principles and approaches needing further discussion include, but are not limited to:
 - Balance between conservation and sustainable use
 - Precautionary approach/principle
 - Cultural value/traditional knowledge
 - Adjacency
 - Special case of SIDS
 - Integrated approach, the multi-sectoral approach as well as adaptive management
 - Inclusiveness
 - Participatory approach
 - Accountability
 - Cooperation, as provided for in article 197 of UNCLOS
 - Liability and the polluter-pays principle
 - Principles referred to in the United Nations Fish Stocks Agreement (e.g. article 5)
 - States as stewards of the marine environment
 - Flexibility
 - Equitable use in the context of intra- and inter-generational equity
 - Cost-effectiveness
- Ways and means to implement the obligation to protect and preserve the marine environment
- The rights of coastal States with respect to their continental shelf should be respected/taken into account

Appendix 3

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on environmental impact assessments

As revised following plenary discussions on 9 September 2016

Possible areas of convergence of views

- EIAs should contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Existing relevant legal instruments and frameworks, in particular UNCLOS, as well as relevant global, regional and sectoral bodies should not be undermined, as stipulated in resolution 69/292
- The need for transparency in the environmental impact assessment (EIA) process, including through involvement of States and relevant stakeholders, and the dissemination of assessment reports
- The reports of environmental assessments should be made publicly available

Possible issues requiring further discussions

- Capacity-building should address the capacity of SIDS, African States and developing countries, including land-locked countries, to participate in and conduct EIAs
- Whether an international instrument should cover activities in areas within national jurisdiction that may have an impact in areas beyond national jurisdiction bearing in mind the need to not undermine State sovereignty
- An international instrument would address EIAs for activities in areas beyond national jurisdiction that may have an impact that reaches an agreed threshold in areas beyond national jurisdiction
- Article 206 of UNCLOS is the point of departure for the discussion on thresholds and responsibility for EIAs, and guidance is needed in an international instrument for the implementation of this provision in areas beyond national jurisdiction
- Whether transboundary impacts should be included, and if so, as a consideration within EIAs or as a separate procedure of Transboundary Environmental Impacts Assessments (TEIAs)
- The role of coastal States and the United Nations in any TEIAs being conducted for activities in areas beyond national jurisdiction that may have an impact in areas within their national jurisdiction
- What thresholds and criteria should be used for identifying activities requiring EIAs
- Whether to use a list of activities requiring EIAs, including for new and emerging activities, or exempt from EIAs, criteria, or a combination of these approaches
- Whether a lower threshold should apply for areas identified as significant
- The EIA process should follow the following procedural steps: screening; scoping; access to information including environmental information; public notification and consultation at the global level, including effective participation of stakeholders and consultation with States/relevant States/relevant States, including adjacent coastal States,

coordination with existing sectoral and regional organizations; independent scientific review of reports at the global level; consideration of reports; and publication of reports

- Who should be regarded as stakeholders and how should the consultations with stakeholders be conducted
- Whether to develop a list of prohibited activities
- Whether the costs for conducting the EIA should be borne by the proponent of an activity
- Whether, or not, there should be any oversight, or involvement, at the global or regional level in the EIA process? If so, how should this oversight, or involvement, operate? (a) Should it be at the regional or at the global level? (b) At what stage(s) in the EIA process should it occur?
- The stage(s) at which there should be international involvement or oversight, if any, in the EIA processes (notably who should be responsible for deciding that an EIA is required, conducting EIAs, reviewing assessment reports, deciding on the admissibility of an activity, monitoring and reviewing activities
- Whether an international instrument should include provisions for monitoring and review, and if so whether they should be mandatory or voluntary
- Whether an international instrument should include provisions for compliance and liability
- How would EIAs be reviewed, by whom (organization or State) and how the reviews should be conducted
- The need for a clearing house or central repository for EIAs and strategic environmental assessments (SEAs).
- Whether the function of central repository could be fulfilled by existing bodies or should be assigned to a new body
- What is the specific content of assessment reports
- Whether to include SEAs in an international instrument
- Whether SEAs can be linked to marine spatial planning
- Clarification of the concept, scope and procedural aspects of SEAs, including fiscal policy, taking into account existing definitions and approaches
- The interests of people who have not attained full independence or other self-governing status recognized by the United Nations, or people of a territory under colonial domination
- The territorial integrity and sovereignty of States and their sovereign rights must be respected

Appendix 4

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on capacity-building and the transfer of marine technology

As revised following plenary discussions on 9 September 2016

Possible areas of convergence of views

- Capacity-building and transfer of technology are cross-cutting and vitally important to enable developing States to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction
- Capacity-building, including institutional capacity-building, and transfer of marine technology should be responsive to national and regional needs, priorities and requests, with flexibility to adapt as needs and priorities change
- The IOC Criteria and Guidelines on the Transfer of Marine Technology are useful as a guiding tool for further work on the transfer of marine technology in an international instrument
- Importance of the involvement of relevant stakeholders in capacity-building and transfer of marine technology

Possible issues requiring further discussions

- Whether capacity-building and transfer of marine technology should have a broad and general focus or be specific to the issues identified in an international instrument
- The special needs/specific circumstances/particular circumstances/specific challenges of developing countries, including least developed countries, small island developing States, landlocked developing States, African States, middle-income States and geographically disadvantaged States and States that are highly/particularly vulnerable to climate change need to be considered
- How would capacity-building and transfer of marine technology needs and priorities be reviewed periodically
- If and how to address the issue of intellectual property rights
- Whether and how to address innovation with reference to marine science and transfer of technology
- Definition/meaning/scope of marine technology, and which technology should be transferred and from which category of countries
- Consideration of benefits of transferring particular technologies
- Terms and conditions for capacity-building and transfer of marine technology
- The nature of any funding mechanism and its modalities of operation, including whether it is global and provided on a voluntary or mandatory basis
- If and how a funding mechanism should be established, and its modalities of operation, including whether it is provided on a voluntary or mandatory basis
- If and how to link a capacity-building and transfer of marine technology mechanism with a benefit-sharing regime under an international instrument

- Ways to incentivize capacity-building and transfer of marine technology, including with reference to the private sector
- Whether to establish a clearing-house mechanism for capacity-building and transfer of marine technology, if any, or use existing ones
- What mechanisms are required to follow-up on the results of capacity-building and transfer of marine technology programmes
- How to coordinate capacity and transfer of marine technology activities under an international instrument with existing programmes/mechanisms
- How to coordinate and harmonize capacity-building efforts and transfer of marine technology activities under an international instrument vis-a-vis existing programmes/mechanisms across different partnerships/organizations
- How to enhance cooperation
- The role of partnerships
- Traditional knowledge from indigenous peoples and local communities can provide an important source of capacity-building in connection with the elements of the implementing agreement. Similarly, capacity-building can enable indigenous peoples and local communities to engage in activities relevant to the implementing agreement
- Monitoring, reporting and evaluation should be consistent with other existing instruments
- The work and lessons learned from existing instruments and mechanisms should be built upon or improved. Existing mechanisms should not be undermined or duplicated rather should be strengthened, harmonized and/or simplified

Appendix 5

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on cross-cutting issues

As read out by the Chair in plenary on 9 September 2016

Possible areas of convergence of views

- New instrument will take the form of an implementing agreement under the United Nations Convention on the Law of the Sea
- Overall objective of an instrument, consistent with resolution 69/292, would be the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction through the effective implementation of the relevant provisions of the United Nations Convention on the Law of the Sea
- There seemed to be a convergence of views around considering the following as guiding principles and approaches for inclusion in an international instrument:
 - Respect for the balance of rights, obligations and interests enshrined in UNCLOS
 - Incorporation of, and non-derogation from, the relevant principles enshrined in UNCLOS
 - Respect for the law of the sea
 - No undermining of existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
 - Respect for the rights of coastal States over all areas under their national jurisdiction, including their continental shelves beyond 200 nautical miles where applicable
 - Respect for the sovereignty and territorial integrity of coastal States
 - International cooperation and coordination
 - Duty to cooperate
 - Protection and preservation of the marine environment
 - Duty not to transform one type of pollution into another
 - Use of biodiversity of areas beyond national jurisdiction for peaceful purposes only
 - Ecosystem approach
 - Science-based approach
 - Use of the best available scientific information
 - Public availability of information
 - Public participation
 - Good governance
 - Transparency
 - Accountability
 - Intra- and inter-generational equity
 - Capacity-building and technology transfer
 - Due regard for the rights of others
- A distinction should be drawn between principles and approaches
- Definitions should be consistent with those contained in UNCLOS

- Universal participation in the instrument should be sought and participation should be open to all States, regardless of whether they are parties to UNCLOS
- The instrument will be under UNCLOS and, as such, must be consistent with it
- Guidance can be drawn from existing instruments, in particular the United Nations Fish Stocks Agreement, when addressing the relationship of the instrument with UNCLOS
- The instrument should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
- The institutional arrangements established by an instrument would have to be “fit-to-purpose”, cost-effective and efficient
- Some of the functions to be covered by institutional arrangements under an international instrument include: decision-making, enhancement of cooperation and coordination, information-sharing, scientific advice, and capacity-building and transfer of marine technology
- The institutional arrangement at the global level could include:
 - a decision-making forum
 - a scientific forum
 - a clearing-house
 - a secretariat
- The provisions of UNCLOS relating to the peaceful settlement of disputes reflect a good starting point for consideration of dispute resolution under the instrument
- The need for/relevance of capacity-building and transfer of marine technology

Possible issues requiring further discussions

- Whether the objective of an instrument should also include the following:
 - addressing threats and imminent dangers to the oceans
 - revitalization and recovery of damaged marine ecosystems
 - contribution to poverty alleviation
 - contribution to the mitigation of the effects of ocean acidification and climate change
 - addressing existing legal and implementation gaps
 - promotion of international cooperation and coordination
 - benefit-sharing
 - development of an integrated approach
 - attainment of universal participation
- The following guiding principles and approaches would require further discussion:
 - Common heritage of mankind
 - Freedom of the high seas
 - Equal rights of States, whether coastal or land-locked, in areas beyond national jurisdiction
 - Fair and equitable use of resources
 - Fair and equitable benefit-sharing
 - Stewardship for present and future generations
 - Precautionary principle/approach
 - Adaptive management
 - Flexibility
 - Involvement of relevant stakeholders
 - Role of women

- Incorporation of traditional and local knowledge
- Adjacency and the requirement to consult
- No domination by corporate interests
- Common concern of humankind
- Special interests, circumstances and needs of developing countries, in particular small island developing States, least developed countries and land-locked developing States
- Common but differentiated responsibilities
- Avoiding placing disproportionate burden on small island developing States
- Liability of States for damages to or endangerment of the marine environment
- Polluter-pays principle
- What principles proposed for inclusion are recognized as such under international law
- What approaches are sufficiently well established for inclusion in an international instrument
- How would each proposed principle and approach apply to the various elements of the 2011 package
- How and where to reflect applicable guiding principles and approaches within an instrument
- Which terms need to be defined in an international instrument
- Where in the instrument should specific definitions be included
- Relationship to other instruments and frameworks
 - How to set out the relationship with other instruments in the instrument
 - How best to improve the effectiveness of regional and sectoral bodies, where required
 - Should existing regional and sectoral bodies be accountable to an institutional arrangement established under the instrument
 - How would the instrument address the situation where there is no relevant regional or sectoral body
- Whether the instrument should regulate activities with an impact on biodiversity of areas beyond national jurisdiction
- Whether to build on existing institutions, develop new institutional arrangements or a combination of both
- The relationship of the institutional arrangement with existing regional and sectoral bodies
- Whether there would be a role for the International Seabed Authority
- What form might a decision-making forum at the global level have
- What form might a scientific forum have
- The role of existing scientific and technical bodies and processes
- Should institutional arrangements include a compliance mechanism
- Who would perform the functions of the secretariat
- Whether there would be a role for the Division for Ocean Affairs and the Law of the Sea
- Whether it is necessary to include provisions on responsibility and liability, and, if so, what such provisions should cover
- Whether relevant stakeholders should be required to contribute to a liability fund or post a security bond to access resources covered under the instrument

- What, if any, mechanisms for the review of implementation and compliance should be developed
- What, if any, additional mechanisms for dispute resolution should be considered for inclusion in addition to those in UNCLOS
- Should a possible dispute resolution mechanism be developed:
 - Who should have standing to access the dispute resolution mechanism
 - Should the dispute resolution mechanism allow for the issuance of advisory opinions
 - Should the dispute resolution mechanism foresee the creation of a special chamber under the International Tribunal for the Law of the Sea
 - What would be the relationship between a possible dispute resolution mechanism under the instrument and existing dispute resolution mechanisms under regional and sectoral instruments
- Whether the final clauses contained in the United Nations Fish Stocks Agreement could be adapted for the new instrument
- What should be the requirements for entry into force of the instrument

Annex II

Chair's general observations

1. The Chair thanks all delegations for their hard work and constructive engagement during the intersessional period and at the second session of the 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. In particular, the Chair is encouraged by the willingness of delegations to make written submissions to assist the process moving forward, without prejudice to their future positions, and ensure that the Preparatory Committee can deliver on its mandate, as set out in resolution 69/292. In accordance with that resolution, the Preparatory Committee is mandated to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS), taking into account the various reports of the Co-Chairs on the work 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 Chair welcomes the submissions which have tried to identify ways to bridge the gap between different views. The Chair notes that these submissions should not be seen as constituting possible treaty language but as useful bases for concrete proposals of elements of a draft text.

2. The Chair observes that, under the very skilful guidance of the Facilitators, the Informal working groups have continued to serve as a useful mechanism to assist delegations in unpacking the package of issues to be considered by the Preparatory Committee in accordance with resolution 69/292, including by addressing these issues in greater detail with a view to identifying possible areas of convergence and areas requiring further discussions. The Chair welcomes the fact that many delegations were prepared to engage in the discussions with specific ideas of how an international legally binding instrument under UNCLOS might address these issues. Delegations continued to be keenly aware, in particular, of the need to not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. The Informal working groups have also continued to provide a useful mechanism for open, transparent and inclusive discussions.

3. The Chair's understandings of possible areas of convergence and issues where further discussions are required, based on Informal working groups' discussions and as revised, where applicable, following plenary discussions, are attached as annex I.

4. Moving forward, the Chair is of the view that discussions will need to intensify to identify ways to bridge the divergent views of delegations regarding the application of the high seas freedom and the common heritage of mankind in relation to marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits. With regard to measures such as area-based management tools, including marine protected areas, the Chair invites greater focus on the modalities for the designation of such

measures, as well as on issues relating to management, monitoring, control and surveillance and enforcement. The Chair is encouraged by the detailed discussions and suggestions on environmental impact assessments and capacity-building and the transfer of marine technology and invites delegations to carry these discussions forward towards concrete proposals for elements of a draft text. The Chair would like to see more discussions on the cross-cutting issues. In particular, the Chair encourages delegations to be more specific in their suggestions, for example concerning how definitions may be addressed in an international legally binding instrument, how governing or overarching principles may be featured in such instrument, or how provisions from other treaties on dispute settlement may be used in the present context. The Chair further invites delegations to give greater consideration to discussions on the scope of an international legally binding instrument.

5. The Chair is encouraged by the willingness of delegations to discuss the future directions for the Preparatory Committee. As the process progresses, the Chair encourages greater consideration and discussions of alternative proposals seeking to bridge different views. The Chair also envisages that most of the third session of the Preparatory Committee would be focused on addressing contentious issues.

6. The Chair is encouraged by contributions made to the trust fund established pursuant to paragraph 5 of resolution 69/292 and encourages further contributions from Member States, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons.