



**STATEMENT ON BEHALF OF THE GROUP OF 77 AND CHINA BY  
COUNSELLOR FERNANDA MILLICAY OF THE PERMANENT MISSION OF  
ARGENTINA TO THE UNITED NATIONS ON AGENDA ITEM 4 OF THE  
FOURTH MEETING 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 (New York, 1 June 2011)**

Co-Chairs,

I have the honour to speak on behalf of the G77 and China.

This Agenda item is of the utmost importance as it refers to all issues under examination by this WG, as identified in the mandate of the WG and in relevant GA resolutions the last of which is GA resolution 65/37 A.

Regarding the strengthening of the information base, we believe gathering information as to the activities that are being undertaken is essential. The Report of the SG provides useful information, but even though we thank States and international organizations for the provision of such information, there is a lack of information voluntarily provided as to activities regarding microorganisms, in particular those of the seabed and ocean floor beyond the limits of national jurisdiction and the geomorphological formations therein, such as polymetallic sulphides. There are some sources that indicate that marine scientific research is being undertaken and that it has led to the development of products and to the granting of patents.

As regards the legal regime, allow me to reiterate that for the G77 and China, all aspects of the issue: conservation, sustainable use, including the sharing of benefits derived from such use, and capacity building and the transfer of technology are all integral parts of a specific legal regime to be negotiated. In particular we would like to reiterate the role of the UN Convention on the Law of the Sea (UNCLOS) on this issue, as the principle of the Common Heritage of Mankind contained therein is part of customary international law.

As to conservation, the G77 and China believes that all tools should be examined by their own merits. We attach great importance to the ecosystem approach, although, and in line with what we stated in our opening statement, it cannot blur the distinction between the high seas and the Area. All possible conservation tools, including EIAs, are to be considered, but the G77 and China is concerned at some suggestions aimed at adopting "practical measures" or "short term" measures without a definition of the legal regime for the adoption of such measures.

The other aspect of the legal regime is the use of biodiversity of areas beyond national jurisdiction. We stressed how inconsistent this manner of exploitation is with general principles of international law, in particular those on equity; principles that are also enshrined in UNCLOS, as the Area and its resources are to be explored and exploited for the benefit of mankind as a whole.

We need to reiterate, at this point, that we conceive a legal regime based on the CHM principle, which is a part of customary international law following General Assembly resolution 2749 (XXV). The fair and equitable sharing of benefits arising from the use of marine genetic resources of areas beyond national jurisdiction is thus an important element in the examination of the issue. The G77

and China is convinced that the common heritage of mankind principle applies to the biological resources of the area "sea-bed and ocean floor, and the subsoil thereof, beyond the limits of the national jurisdiction", and we recognize the importance of the responsibilities entrusted to the International Seabed Authority regarding marine scientific research and the protection of the marine environment.

We would like to reiterate, also, that the question of intellectual property rights has not been addressed by this Working Group with a view to understanding how the exploitation of genetic resources is made. The G77 and China considers that the intellectual property aspect relating to biodiversity of areas beyond national jurisdiction requires greater understanding and needs to be considered at the WG. We thank the co-chairs for providing a presentation on this issue, as the sharing of the benefits deriving from the exploitation of these resources, in particular of the biodiversity of a maritime area which is itself the Common Heritage of Mankind, needs to be addressed.

Finally, in what relates to capacity-building and the transfer of technology, the G77 and China has repeatedly drawn attention to the fact that the provisions on transfer of technology are the ones where there is the greatest gap in implementation. The transfer of technology is an essential tool for capacity building in the sphere of marine science. There is also an urgent need for a continued and enhanced participation of scientists from developing countries in marine scientific research in the Area. We therefore call for political will to ensure implementation of the provisions of the Convention relating to capacity building, transfer of technology and scientific knowledge to developing countries so that they can access and benefit from the sustainable use of marine biodiversity of areas BNJ, including genetic resources. This should be an integral part of a legal regime of the biodiversity of areas beyond national jurisdiction.

Thank you.