



INTERVENTION ON BEHALF OF THE GROUP OF 77 AND CHINA BY MS. PRIM MASRINUAN, COUNSELLOR, ON MARINE GENETIC RESOURCES INCLUDING QUESTIONS ON THE SHARING OF BENEFITS AT THE 2ND PREPCOM MEETING ON CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION (BBNJ) (New York, 26 August 2016)

Mr. Facilitator,

I have the honour to speak on behalf of the Group of 77 and China. At the outset, I wish to reassure you of our full support in the discussion of this informal working group. I also wish to thank the Chair for his indicative list of questions aiming at assisting discussions in the informal working groups. This document, together with the Chair's overview were very helpful in the preparation ahead of this meeting. Although at this stage, we are not yet in a position to find answers to a certain number of indicated questions, we are of the view that they are relevant and we are open to hear views from all delegations.

Mr. Facilitator,

Regarding marine genetic resources (MGRs) and their related issues, we bear in mind that the main objective of this process is to develop new instrument under UNCLOS on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction as mandated by the UNGA resolution 69/292. MGRs is one of the topics of the 2011 package to be addressed, including questions on the sharing of benefits. Thus, our task is to ensure that, under the new instrument, MGRs, as part of marine biodiversity must be conserved and sustainably used.

We would like to reaffirm our view that the principle of common heritage of mankind is central to our discussions and would come into play in this consideration. We are of the view that there is regulatory ambiguity on how to sustainably use MGRs of areas beyond national jurisdiction (ABNJ). We are dealing with the resources that represent tremendous potential for science development, healthcare and economic interests. Those resources are out of reach for many countries. The status quo would increase disparities in the distribution of global welfare and economic wealth. We are of the view that different elements of the principle of common heritage of mankind are critical in the consideration of a new regime governing MGRs of areas beyond national jurisdiction.

Firstly, the areas beyond national jurisdiction where the MGRs are taken should not be subject to any appropriation. The benefit from the exploration and exploitation or utilization of those MGRs should equitably be shared. Furthermore, the common heritage of mankind also underpins the need to preserve it for the benefit of future generations which is also an objective of the new instrument.

The principle of common heritage of mankind will then provide the rationale and legal foundation for a fair and equitable regime of access and sharing of benefit that we would like to see the new instrument address.

Mr. Facilitator,

We would like to stress the importance of the access to marine genetic resources. We trust that

guaranteeing access to marine genetic resources is prerequisite for the development opportunities for developing countries we expect from MGRs. The new instrument could facilitate all relevant accesses to resources by defining them. The definition can be adapted from the existing relevant instruments. As this exercise is of technical nature, we expect to see the working concepts from other delegations on how to adapt the definition into the context of BBNJ. Furthermore, there should be a provision to define access obligation in the new instrument and the related procedure or guidelines for access would be developed under the new instrument. The access should also be done in accordance with the existing general obligation regarding the protection and preservation of marine environment, as well as those regarding marine scientific research.

Mr. Facilitator,

The Group of 77 and China would also like to confirm that the benefits resulting from the use of MGRs be fairly and equitably shared. In this regard, the interests and needs of developing States, particularly the least developed and the land-locked should also be taken into account. An appropriate regime or modalities for sharing of benefits can be reflected upon the principle of common heritage of mankind. The benefit should be both monetary and non-monetary. The challenge is also to define how the utilization of marine genetic resources can trigger the sharing of benefit, especially monetary benefit. The commercial implication can be one of the determining factor. However we need to reflect further on when and how it comes into consideration. As for non-monetary benefit, we are of the view that this form of benefit sharing can be linked to access to all forms of resources, data and related knowledge, transfer of technology and capacity building as well as facilitation of marine scientific research on MGRs of ABNJ. We recognize that the benefit sharing under the new instrument will be without prejudice to freedom of scientific research as recognized by UNCLOS.

As for the question on how the new instrument could address issues related to intellectual property rights, at this stage, for us, the question remains very complex. There were discussions of similar nature in other frameworks such as TRIPs or CBD that we should carefully study. If the principle of common heritage of mankind implies non-expropriation of any resources taken in areas beyond national jurisdiction, we will need to consider how the principle can be applied so that the new instrument will not be detrimental to the promotion of research and science development. Then we are open to hear more views on this before coming back at a later stage.

Lastly, in order to implement the provisions concerning MGRs in the new instrument, we should reflect on the institutional arrangements. We recognize the need for a cost-effective approach. We can consider from the existing institutions in other frameworks in terms of lessons learned or best practices in order to reflect on how the new institutional mechanism will be. We welcome the idea to study different institutions or mechanisms which carry out similar mandates and functions, such as an access and benefit sharing mechanism of CBD which is dealing with the genetic resources or an institution like ISA which is specifically charged with developing, conserving and protecting the resources in areas beyond national jurisdiction on behalf of all humankind. It is important to crystallize the reflection on what mandates we would like the new instrument to cover. This question is of cross-cutting nature as the implementation of other topics will also require the institutional arrangements.