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**Intergovernmental Conference on 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 – Second substantive session**

**Item 6: Informal Working Group on *Marine genetic resources, including the sharing of benefits (points 3.2.2 onwards)***

**Intervention by Jeem Lippwe  
Deputy Permanent Representative**

**New York, 26 March 2019**

**Check against delivery**

Thank you, Madam Facilitator for giving me the opportunity to speak. Good morning to you and Colleagues!

I wish to make the following intervention:

1. Regarding 3.2.2 (benefit-sharing modalities), voluntary basis of sharing of benefits is not complete; therefore, it is not acceptable. Rather, sharing of benefits should be on a firm and predictable basis, noting that these benefits could be both monetary and non-monetary.
2. Regarding 3.1, we reiterate the views expressed by Fiji on behalf of PSIDS that on geographical scope, our preference is Option A: Of the high seas and the Area. We wish to add that the extended continental shelf should not be included in a BBNJ instrument, since an area of continental shelf, both within the 200 nautical miles from the baseline and beyond that distance, falls within national jurisdiction.
3. With respect to the extended continental shelf, it is our further view that in accordance with the Law of the Sea Convention, a State “exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.” There might be an issue there with respect to pending extended continental shelf claims before the Commission on the Limits of Continental Shelf. Should the BBNJ instrument apply over the extended continental shelf while the claim is not yet settled with the CLCS? It is noted that it could take several years, even decades before many of these pending claims are taken up and resolved. Worse, where there is a

dispute, the CLCS would not even examine and resolve a claim until the dispute is settled. And there is no deadline for settlement of dispute. In any case, we would like to believe that since the UNCLOS recognizes states' sovereign rights over the continental shelf, therefore, the BBNJ instrument shall respect that.

4. In relation to the issue of geographical scope, we must mention that the BBNJ instrument needs to take into consideration the impacts of sea-level rise on baselines and, therefore, on how to determine what are areas beyond national jurisdiction. Sea-level rise is happening and will continue to happen, at least throughout this century. A major gap in the Law of the Sea Convention is its failure to foresee sea-level rise and its impacts on the drawing of maritime zones. The BBNJ instrument is meant to fill in gaps in the Law of the Sea Convention. In that respect, the BBNJ instrument needs to be future-proof, or else there will be significant confusion in the future over the true geographical scope of the instrument as a whole as well as with respect to MGRs.

5. Regarding 3.2.3 on Intellectual property rights, we reiterate the views expressed by Fiji on behalf of PSIDS that we prefer sub-options 1 and 2 under Option I; and that we also prefer Option B. In addition to that, we also recommend that there should be some provision here that would require States Parties to a BBNJ instrument not to take any action, or allow any action to be taken, in the context of intellectual property rights that would undermine the benefit sharing and traceability of MGRs that would necessitate their disclosure of origin.

6. Regarding benefit arising from MGRs, we respectfully oppose the views expressed yesterday challenging the special case and circumstances of certain states, in particular, small island developing states. "We join the views and observations made by Belize on behalf of AOSIS regarding the special attention and consideration that SIDS deserve in light of our specific challenges and circumstances due to our remoteness, greater dependence on the Ocean and its resources, and connectivity to the marine biodiversity, including in terms of relevant traditional knowledge developed over millennia of close interactions with the Ocean. In addition to these circumstances, small island developing states are more exposed to sea level rise and climate change impacts. Because of these circumstances, small island states are more vulnerable to any misuse of biodiversity or adverse impacts of unsustainable practices towards MGRs and marine biodiversity in general.

7. Furthermore, in reaction to some views expressed yesterday that benefits arising from MGRs should be treated on a global basis, implying that no special considerations could be given to particular groups, some States are more dependent on the Ocean and its resources than others, economically and socially. And they are more exposed to vulnerabilities arising from misuse of marine resources. They are the ones bearing more direct impacts of marine pollution, ocean acidification and sea level rise. This BBNJ instrument should consider that reality.

I thank you.