

*Cross Cutting Issues 4 April morning: Dispute Resolution Mechanisms*

Thank you Mr. Chair, good afternoon delegates

This statement is delivered by Greenpeace on behalf of the High Seas Alliance and relates to dispute resolution and, under final clauses, provisional application.

First we will make some overall observations, and then we will answer the questions posed on dispute resolution.

In our view, dispute resolution and good governance go hand in hand and a strong dispute settlement mechanism is necessary to ensure implementation under the new instrument.

We have in the past given the example of the South Pacific RFMO, which in Article 17 includes an innovative mechanism, whereby a party can object to a proposed measure, following which a Review Panel examines the reasons for an objection. This procedure has been successfully used, so that necessary measures are not delayed but the objecting party has an avenue for its objections.

Two other examples are the Espoo Convention's Implementation Committee and the Aarhus Committee's Compliance Committee. What these have in common are innovative, non-confrontational and non-binding review provisions whereby problems can be identified and resolved in a collaborative way. The Espoo Convention also has the possibility of an Inquiry Commission, which has been used successfully.

Other useful mechanisms are fact finding mechanisms, referred to in Article 5 of Annex VIII, special expert panels as suggested by Jamaica, such as are included in article 29 of the Fish Stocks Agreement, to resolve technical disputes, and conciliation mechanisms included in articles 284, 297 and 298 of UNCLOS.

On the question of whether there should be a special tribunal: firstly we want to observe that the International Tribunal for the Law of the Sea, or ITLOS is a standing tribunal under UNCLOS under Art. 287 already paid for from the public purse with no additional cost, whereas arbitration, such as Annex VII or Special Arbitration in Annex VIII, is very expensive and prohibitive. Having said that, It may well be appropriate for a special chamber of ITLOS to be established on marine biodiversity, and this is possible under Article 15 of the ITLOS Statute.

In response to the question of who should have access to dispute settlement mechanisms, we join Tonga in suggesting that non-State parties should have access, and we suggest using article 20 of the ITLOS Statute in allowing other entities to have standing. That provides that the Tribunal shall be open to entities other than States Parties in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.

At present, ITLOS only permits States Parties to make submissions and has rejected amicus curiae briefs. In keeping with contemporary legal developments, it is appropriate for other stakeholders to have access to dispute resolution mechanisms, according the third pillar of the Aarhus Convention, access to justice, as well as to ensure that the hearings are held in public. So this this is responsive to the question of who should have access to the dispute resolution mechanisms.

As to whether the dispute resolution mechanism allow for the issuance of advisory opinions: we agree with the suggestions of many delegations that this would be a good idea, and there have been some very helpful advisory opinions recently, particularly on seabed mining and on fisheries, but we have two observations. Firstly, current procedures do not provide for access to ITLOS even for advisory opinions for non-State parties, and secondly, we want to emphasise that there also needs to be provision for compulsory binding decisions of ITLOS in appropriate circumstances when resolution such as through the other means we have discussed could not be reached.

Finally, to address the question of the relationship between a possible dispute resolution mechanism under the instrument and existing dispute resolution mechanisms under regional and sectoral instruments, we would observe that disputes between parties arising under the International Instrument would be resolved under the dispute resolution provisions of the Instrument. Many sectoral and regional instruments have their own dispute resolution provisions, which can result in forum shopping, confusion, and expense. In our view, disputes arising from this Instrument should be resolved under this Instrument.

Finally, Mr Chair, a word on final clauses: on provisional application, we support the provisional application of the instrument. It may take some time to enter into force, and the purpose of provisional application is to give immediate effect to the substantive provisions of a treaty without waiting for the the formal requirements for entry into force. The Fish Stocks Agreement itself provided for provisional application in article 41 and we can build on that.

Thank you

