

Advance and unedited version (English only)

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 session, 25 March – 5 April 2019

Statement by the President of the conference at the closing of the second session

Over the past two weeks, following the opening of the second session of the 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, substantive discussions were held on the four elements of the 2011 package set out in paragraph 2 of resolution [72/249](#) and cross-cutting issues.

At the beginning of the session, the President of the Conference, Rena Lee, and the Secretary-General of the Conference, Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, delivered opening remarks, followed by general statements from delegations. General statements were delivered by States, intergovernmental organizations and non-governmental organizations on 25 March 2019.

In their general statements, delegations noted their satisfaction with the President's aid to negotiations (A/CONF.232/2019/1*) as a valuable tool for focusing substantive discussions on the topics identified in the package agreed in 2011 and to serve as a basis for negotiations at the second session of the Conference. They reaffirmed the importance of the United Nations Convention on the Law of the Sea. In particular, it was noted that the instrument should operationalize and strengthen the provisions of the Convention for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, and should seek to promote greater coherence with, and not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. It was also recalled that neither participation in the negotiations nor their outcome may affect the legal status of non-parties to the Convention or any other related agreements with regard to those instruments. The need to ensure the universality of the new instrument was emphasized. Delegations also expressed the view that the future instrument should take into account the special requirements of developing countries with a view to enabling them to assume their responsibilities and obligations under the new instrument. Many delegations expressed their view that the Conference should complete its work by the fourth session in 2020 and that, to that end, negotiations during the second session should aim at identifying and narrowing options to enable a zero draft of an instrument to be made available for negotiations at the third session of the Conference.

Gratitude was expressed for the financial support received under the voluntary trust fund for the purpose of assisting developing countries, in particular the least developed countries, land-locked developing countries and small island developing States, in attending the meetings of the preparatory committee and an intergovernmental conference on the 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 (BBNJ Trust Fund), which made it possible for experts from some

developing countries to attend the sessions of the Conference. A number of delegations expressed concerns over the lack of sufficient funding to cover delegates from some coastal middle-income developing countries. The need for additional funding to facilitate the participation of a larger number of delegates from developing countries in future sessions was underscored. Some delegations also acknowledged the assistance provided by partner countries in terms of training and capacity-building.

The Conference adopted the agenda of the second session without amendment (A/CONF.232/2019/2) and a programme of work (A/CONF.232/2019/3).

With regard to the programme of work, the Conference agreed that, following the consideration of the general statements, it would continue in the format of informal working groups to address the four thematic clusters of the package set out in resolution 72/249, as follows: an informal working group on marine genetic resources, including questions on the sharing of benefits, facilitated by Janine Elizabeth Coye-Felson (Belize); an informal working group on measures such as area-based management tools, including marine protected areas, facilitated by Alice Revell (New Zealand); an informal working group on environmental impact assessments, facilitated by René Lefeber (Netherlands); and an informal working group on capacity-building and the transfer of marine technology, facilitated by Ngedikes Olai Uludong (Palau). An informal working group on cross-cutting issues, facilitated by the President, was also established. The informal working groups met from 25 March to 5 April and proceeded with their discussions on the basis of the President's aid to negotiations (A/CONF.232/2019/1*). The oral reports of the facilitators on the work of the informal working groups, which were presented to the plenary on 5 April, are annexed to the present statement. The reports were prepared under the responsibility of the individual facilitators and are attached for ease of reference only. They do not constitute a summary of discussions nor do they reflect the President's assessment of the discussions.

Also on 5 April, the Conference considered the way forward to the third session of the Conference. The President was requested to prepare, as part of the preparations for the third session of the Conference, a document with the aim of enabling delegations to negotiate the text of the future instrument. Such a document would take into account the negotiations held in the second session of the Conference, as well as the various proposals that were made. These would be studied to enable as concise a document as possible to be developed that would facilitate further negotiations on the draft treaty. The document would likely be structured in a form more akin to a treaty, and containing treaty language.

The President stated that she would make every effort possible to make the document available to delegations well in advance of the third session of the Conference. However, given the limited time frame before the third session, it may not be possible to have the document issued in all official languages of the United Nations well in advance of the third session. However, an advance and unedited version of the document in English only could be made available earlier.

The President also undertook to propose an organization of work in advance of the third session, taking into account further consultations with the Bureau on this issue. Such organization of work may include the convening of informal informal groups and parallel meetings in order to advance text-based negotiations in the third session.

Under other matters, on 5 April, the Secretariat provided information on the status of the BBNJ Trust Fund.

On 5 April, the Chair of the Credentials Committee introduced the report of the Committee (A/CONF.232/2019/4). The Chair also informed the Conference that, since the formal meeting of the Committee, credentials in the form required under rule 27 of the rules of procedure of the General Assembly had been received from the Islamic Republic of Iran, Mauritius, Philippines, Saint Lucia and the State of Palestine. In addition, other information concerning their

representatives had been received from Belize and Hungary. The Conference adopted the draft resolution recommended by the Credentials Committee in paragraph 17 of its report, and accepted the additional credentials mentioned by the Chair of the Committee. The European Union and the following States, Japan, Russian Federation, Venezuela (Bolivarian Republic of), China, Syrian Arab Republic, Cuba, Islamic Republic of Iran, Peru on behalf of a number of States (Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Panama, Paraguay and Peru – States which are members of the Lima Group – as well as Australia, the Czech Republic, the Dominican Republic, Georgia, Israel, the Republic of Korea, the United Kingdom of Great Britain and Northern Ireland, and the United States of America), and Nicaragua made statements during the consideration of the report of the Credentials Committee.

Participants in the Conference also included 23 entities that have received a standing invitation to participate as observers in the work of the General Assembly pursuant to its relevant resolutions, relevant specialized agencies and other organs, organizations, funds and programmes of the United Nations system, and interested global and regional intergovernmental organizations and other interested international bodies, as well as one associate member of a regional commission and 44 non-governmental organizations.

Reflecting on the rich discussions that took place over the past two weeks, I wish to offer the following general remarks.

I was very gratified by the strong commitment and the high level of engagement demonstrated by all delegations, including the observer delegations during the second session. The President's aid to negotiations was not an easy document to navigate, but all of you rose to the challenge. It showed how much hard work everyone put in into this session in familiarising oneself with the aid to negotiations, enabling delegations to participate actively in the second session to make it a success, for which I am very grateful. I also appreciated the cooperation shown by all delegations in following the modalities of our work during the second session, such that we could plunge immediately into our substantive work on the first day.

At the beginning of the second session, I had asked that delegations continue our negotiations with a focus on the mechanisms to be built, the processes to be developed and the roles of the various actors. I was pleased to note that delegations responded, not only by speaking to their preferred options, but also by addressing the other options, including the possibility of merging options, as well as expressing their views on the overall structure of the instrument. This has enabled the identification of areas of convergence, but also at the same time, areas in which much more work is required, in order to build a fair, balanced and effective outcome.

In closing, I wish to thank the Secretary-General of the Conference, Mr. Miguel de Serpa Soares, for his support. I also thank the Secretary of the Conference, Ms. Gabriele Goettsche-Wanli and her colleagues in the Division for Ocean Affairs and Law of the Sea, and colleagues in the Office of the Legal Counsel, as well as conference services, including our interpreters, for the dedication they have shown. I wish to thank the facilitators, who took on the lion's share of facilitating our work during this session, the Bureau members, the ENB team, my own team, and most of all, all of you. I want to thank all of you for your positive energy, your cooperative spirit, your flexibility, and your determination, for which I am most grateful. Of course I do not underestimate the scale and the nature of the work that we have undertaken. There is a popular saying in Jamaica: "One one coco full basket"; it speaks of perseverance and persistence. Our journey is not an easy one but I encourage everyone to keep their spirits up; slowly but surely, one by one, we will eventually get there. Thank you everyone.

Rena Lee
Ambassador for Oceans and Law of the Sea Issues and
Special Envoy of the Minister for Foreign Affairs of Singapore

Annex

Informal working group on marine genetic resources, including the sharing of benefits

Oral report of the facilitator to the plenary Friday, 5 April 2019

I am pleased to report on the discussions of the Informal working group on marine genetic resources, including questions on the sharing of benefits.

The Informal working group met between Monday, 25 March, and Wednesday, 27 March.

The discussions proceeded on the basis of the President's aid to negotiations, more specifically section 3 of Part III of that document. Following your call to focus first on questions of process, Madam President, the Informal working group addressed section 3 in the following sequence:

- Benefit-sharing (section 3.2.2);
- Intellectual property rights (section 3.2.3);
- Monitoring (section 3.3);
- Scope (section 3.1); and
- Access (section 3.2.1)

At the outset, let me say that I welcomed the constructive engagement of delegations in focused text-based negotiations. On the basis of the President's aid to negotiations, the discussions in the Informal working group were very helpful in further clarifying the various proposals, and identifying areas where streamlining could take place, for example by merging certain options or sub-options or moving some paragraphs of a cross-cutting nature to other sections of the document. In that regard, I also appreciated the efforts delegations made to provide suggestions with respect to options which did not necessarily represent their preferred option. Overall, a number of proposals were made during the discussions which I do not intend to repeat here. I will rather provide you with a brief overview of where we stand in respect of the main issues discussed, in terms of progress achieved and areas which could, in my view, benefit from further consideration going forward.

Introductory paragraph

Before I address benefit-sharing, I wish to note that a number of comments were made on the introductory paragraph of section 3 dealing with the relationship between the United Nations Convention on the Law of the Sea and this Part of the instrument. There seemed to be convergence towards interpreting and applying the Convention and this Part/the instrument as a single instrument. Preference was expressed to reflect this in a general section applicable to the instrument as a whole. Further consideration as to whether the Convention or the instrument would prevail in the event of any inconsistency would be beneficial.

Benefit-sharing (section 3.2.2)

With regard to benefit-sharing, I will take objectives of benefit-sharing and principles and approaches guiding benefit-sharing together, as the issues raised are somewhat similar. Preferences were expressed with respect to each of the options currently in the text, namely listing the objectives and principles and approaches guiding benefit-sharing in the section on marine genetic resources or not. With respect to the objectives currently listed, there seemed to be some convergence towards some objectives, in particular that benefit-sharing should contribute to the conservation and sustainable use of marine biodiversity of areas beyond national

jurisdiction and build the capacity of developing countries to access and use marine genetic resources. Other objectives will benefit from further consideration. As regards the principles and approaches currently listed in the document, different views were expressed regarding the inclusion of the common heritage of mankind and the freedom of the high seas. Going forward, the placement and content of a list of objectives and of principles and approaches guiding benefit-sharing would benefit from further consideration.

On the benefits that might be shared, views were expressed in support of each of the two options currently in the text, namely sharing both monetary and non-monetary benefits or sharing non-monetary benefits only. There seemed to be some convergence towards including in the instrument a non-exhaustive list of benefits which would be reviewed and further developed at a later stage. Going forward, these issues would benefit from further consideration.

Based on the views expressed on the options presented, there are also issues in the section on benefit-sharing modalities that would also benefit from further consideration. These include whether benefit-sharing modalities should be set out in the instrument or be determined at a later stage by a body under the instrument; whether benefits should be shared on a voluntary or on a mandatory basis; and who might share benefits and with whom. In this regard, the need for the instrument to set out obligations of States, rather than of other entities, was noted.

There seemed to be some convergence towards the inclusion in the instrument of a provision regarding the purposes for which benefits might be used, and that benefits should be used to contribute to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction. The inclusion of other purposes, however, received different levels of support and would benefit from further consideration.

On how and when benefits might be shared, various arrangements were proposed. Different views were expressed on whether benefit-sharing should take place at different stages or not and what types of benefits might be shared at those stages; and whether monetary benefits would be paid to a fund established under the instrument or not. Further consideration would be beneficial on these issues.

With regard to a clearing-house mechanism, views were expressed in support of each of the two options currently in the text, namely addressing relevant matters of the clearing-house mechanism in the section on marine genetic resources, or not, with suggestions made to address these matters in a separate part of the instrument on the clearing-house mechanism. Different views were also expressed concerning some of the functions currently listed in the text which, going forward, would benefit from further consideration.

Intellectual property rights (section 3.2.3)

Turning to intellectual property rights, views were expressed in support of each of the three options currently in the text, namely addressing intellectual property rights in the instrument in a *sui generis* manner, addressing intellectual property rights by requiring consistency with relevant agreements under the auspices of World Intellectual Property Organization and the World Trade Organization, or not addressing intellectual property rights in the instrument. Going forward, this issue, in particular whether to reflect it in the text and, if so, how, would benefit from further consideration.

Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction (section 3.3)

With respect to monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction, views were expressed in support of each of the two options in the text, namely setting out a monitoring mechanism in the instrument, or not. Going forward, this issue, in

particular whether to reflect it in the text and, if so, how, would benefit from further consideration.

Scope (section 3.1)

The discussions on scope addressed the geographical, material and temporal scope, including the possibility of addressing all these aspects in a single provision placed in a general section of the instrument.

Geographical scope

With regard to the geographical scope of application of the section on marine genetic resources, views were expressed in support of each of the options set out in the text, namely referring to marine genetic resources of the high seas and the Area, accessed in areas beyond national jurisdiction, or of the Area, with modifications proposed to some of these options and an additional option being introduced. Views differed on whether marine genetic resources of areas beyond national jurisdiction should be governed by a single regime or by different regimes for those of the high seas and those of the Area.

There seemed to be convergence towards the inclusion of a “without prejudice” clause relating to the rights and jurisdiction of States under the Convention, with flexibility being expressed concerning the exact formulation and placement of such a provision. Views differed on the inclusion of provisions addressing compatibility between measures for the conservation and sustainable use of marine genetic resources of areas beyond national jurisdiction and those adopted for areas within national jurisdiction; conducting activities with respect to resources of areas beyond national jurisdiction that are also found in areas within national jurisdiction with due regard to the rights and interests of coastal States under the jurisdiction of which such resources are found; as well as consultation with adjacent coastal States that have made a submission to the Commission on the Limits of the Continental Shelf.

Material scope

Turning to the material scope, there seemed to be convergence towards the position that the instrument would not apply to the use of fish as a commodity, but with different views expressed on whether to reflect this explicitly in the instrument or not. Similarly, options to include a reference to a threshold amount beyond which fish would be considered a commodity, to treat a fish species with value for its genetic material as a marine genetic resource regardless of the volume of the catch, or not to include text on this issue all received support. Views continued to differ on whether the instrument should apply to marine genetic resources collected *in situ* only, or also to those accessed *ex situ* and *in silico* and digital sequence data and to derivatives.

Temporal scope

Concerning the temporal scope of the instrument, support was expressed for each of the two options currently in the text, namely including a non-retroactivity clause or not having text at all. The need to clarify whether the instrument would apply to marine genetic resources collected *in situ* before the entry into force of the instrument but accessed or utilized *ex situ* or *in silico* after entry into force was highlighted, as was the need to consider how a non-retroactivity clause would apply to States becoming parties after the entry into force of the instrument.

Given the continued differing views, further consideration on issues related to scope would be beneficial.

Access (section 3.2.1)

With regard to access and benefit-sharing in section 3.2, there seemed to be some convergence towards including a general obligation to cooperate in the conservation and sustainable use of marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits, with a suggestion made to place it in a general section of the instrument.

On access, support was expressed for each of the three options currently in the text, namely that access be governed by the provisions of the Convention, that access be undertaken in accordance with the instrument, with provision made for access modalities, or not addressing access in the instrument. Views were also expressed that access and benefit-sharing should be more closely linked in the instrument.

Different views were expressed with regard to the various access modalities currently set out in the text, such as whether to address all activities or access for certain purposes only; how to address marine scientific research; requirements for pre- or post-collection notification, permits and licenses; specific terms and conditions for access; additional requirements, including whether to undertake environmental impact assessments; whether access to marine genetic resources *ex situ* should be free and open; whether to address traditional knowledge and how; and the need for States to take appropriate and effective legislative, administrative and policy measures to ensure that genetic resources of areas beyond national jurisdiction utilized within their jurisdiction had been accessed in accordance with the instrument.

All these issues would benefit from further consideration.

This brings me to the end of my report. I wish to thank again all delegations for their constructive engagement and the Secretariat for its support.

Informal working group on measures such as area-based management tools, including marine protected areas

Oral report of the facilitator to the plenary Friday, 5 April 2019

I am pleased to report on the discussions in the Informal working group on measures such as area-based management tools (ABMTs), including marine protected areas (MPAs).

The Informal working group met between Wednesday, 27 March, and Friday, 29 March.

The discussions proceeded on the basis of the President's aid to negotiations, specifically section 4 of Part III. Consistent with the President's call to focus first on questions of process, the Informal working group addressed section 4 in the following sequence:

- Process in relation to ABMTs, including MPAs (section 4.3), including identification of areas (section 4.3.1) and the designation process (section 4.3.2);
- Relationship to measures under relevant instruments, frameworks and bodies (section 4.2);
- Implementation (section 4.4);
- Monitoring and review (section 4.5); and
- Objectives of ABMTs, including MPAs (section 4.1)

I will shortly turn to my overview of where we stand in respect of the main issues discussed, in terms of progress achieved and areas which could, in my view, benefit from further consideration. First, though, the comprehensive set of options included in the President's aid to negotiations provided a very useful guide for our discussions. I welcomed the constructive engagement of delegations in clarifying their positions on various options presented, identifying areas where merging certain options or sub-options would be beneficial, indicating which parts of the text may be moved to other sections of the document, as well as in identifying issues that may benefit from further consideration. I particularly appreciated delegations providing suggestions on options which did not necessarily fully represent their position, but that they recognized could form the basis to move forward in the negotiations.

Process in relation to ABMTs, including MPAs

As a general observation, our discussions highlighted the importance of arriving at a common understanding on the different types and functions of ABMTs. Such an understanding is also needed to inform our future consideration of issues relating to decision-making and institutional arrangements in relation to ABMTs, including MPAs.

In particular, one common thread throughout our discussions is the question of whether different processes are required for different types of ABMTs, including MPAs, while ensuring that existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies are not undermined. Therefore, going forward, further consideration of this question would be beneficial, in particular regarding the scope of the process or processes we wish to set out under the instrument and their application to the different types of tools.

I turn now to our discussions on the individual steps in the process in relation to ABMTs, including MPAs.

Identification of areas

On the identification of areas, progress was made in refining the elements to be reflected in the text of the instrument. There seemed to be convergence towards including a requirement that the identification of areas be based on the best available scientific information. There also seemed to be some convergence towards the inclusion of relevant traditional knowledge, noting that further clarification on the circumstances in which traditional knowledge might apply was sought. There also seemed to be a general movement towards the inclusion in the instrument of a list of standards and criteria for the identification of areas. Views were expressed that such a list should not be exhaustive, could draw on other internationally-agreed standards and criteria, and that relevant provisions would need to be drafted with sufficient flexibility to permit the standards and criteria to be reviewed and revised in the future. Going forward, further consideration of the contents of a list of standards and criteria, as well as the modalities of a process to review it, would be beneficial.

Designation process

Regarding the designation process, views were expressed both for and against establishing such a process in the instrument. Nonetheless, our overall discussions reflected progress in distilling the central elements of a process for the development and submission of proposals, and consultation on and assessment of such proposals. In this respect, while preferences were expressed for various options set out in the current text regarding the possible stakeholders that might submit proposals for ABMTs, including MPAs, there seemed to be a convergence of views towards proposals being submitted by States parties, either individually or collectively. Whether proposals could also be submitted by States parties through relevant global, regional and sectoral bodies or in conjunction with other stakeholders, or whether other stakeholders should be permitted to submit proposals in their own right, would benefit from further consideration.

On the content of a proposal, preferences were expressed for the various elements in the current text and additional elements were suggested and therefore further consideration of this issue would be beneficial. There seemed to be some convergence towards the inclusion of certain required elements in a proposal, while also providing for the possibility that further guidance could be set forth in a subsidiary instrument.

On the question of who would receive a proposal, preferences were expressed for each of the three options in the text, although there seemed to be convergence towards the proposition that, for administrative purposes, a proposal could first be submitted to the Secretariat.

Regarding the consultation on and assessment of a proposal, there was convergence that the consultation process set out in the instrument should be inclusive, transparent and open to all stakeholders. However, going forward, further consideration could be given to whether a list of stakeholders should be set out in the instrument or developed at a later stage. In addition, the possibility of identifying certain categories of stakeholders, in particular adjacent coastal States, would benefit from further consideration. Further consideration of the modalities of the consultation process will also be beneficial.

There seemed to be a convergence of views that a scientific assessment of a proposal needed to take place. However, the modalities for such assessment would benefit from further consideration, since views were expressed in support of each of the options set out in the text, namely, review by a scientific/technical body set forth under the instrument, a group of experts selected from a pool of scientific experts set forth under the instrument, an ad hoc scientific/technical body, an existing scientific/technical body, or one or more independent scientists recognized under the instrument. Possible variations on those options were also put forward.

Turning to issues related to decision-making, while I observed a general movement towards a body under the instrument addressing matters related to ABMTs, including MPAs, views were expressed in favour of each of the different options reflected in the text, while various combinations of those options were also proposed. Further consideration of these issues would be beneficial. Such consideration would, of course, also be linked to the underlying question I referred to earlier regarding the possibility of establishing different processes for different ABMTs, including MPAs, and their relationship to measures under relevant instruments, frameworks and bodies.

Relationship to measures under relevant instruments, frameworks and bodies

There was a convergence of views that the instrument must not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. The importance of promoting coherence, complementarity and synergies in measures related to ABMTs, including MPAs was highlighted.

Further consideration as to how the instrument can best promote such coherence, complementarity and synergies would be helpful, since different modalities have been suggested. These include the establishment of a global overarching framework under the instrument; utilising relevant global, regional and sectoral bodies, including establishing new bodies or expanding the mandates of existing bodies, as necessary; and/or identifying mutually supportive roles for these different frameworks, while avoiding potential hierarchies.

There seemed to be a convergence of views that cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, with regard to ABMTs, including MPAs, without prejudice to their respective mandates, could be enhanced through the instrument. Whether or not to provide for the establishment of coordination and/or consultation mechanisms in the instrument and, in the latter case, the type and functions of such mechanisms, would benefit from further consideration. Such consideration would be linked to discussions on the process in relation to ABMTs, including MPAs.

There seemed to be a convergence of views that the instrument must not prejudice the rights of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, and that a provision be included to that effect. Whether the provision should be placed in the section on ABMTs, including MPAs, or in the relevant cross-cutting sections of the instrument would benefit from further consideration, as does the potential inclusion of a provision clarifying that the instrument does not prejudice the rights, jurisdiction, freedoms and duties of States under the Convention.

With respect to the relationship between measures under the instrument and those established by adjacent coastal States, different views were expressed. Further consideration of issues related to compatibility with, due regard for and the need to avoid undermining the effectiveness of measures adopted by adjacent coastal States would also be beneficial as well as whether, and if so, how consultations with adjacent coastal States would take place.

Implementation

On the question of who would ultimately be responsible for implementation of the measures, options focussed on States parties, relevant global, regional or sectoral bodies, or both. As this issue is linked to the overall process to be established under the instrument, it too would benefit from further consideration.

Monitoring and Review

With respect to monitoring and review, views were expressed in support of each of the options reflected in the text, namely specifying that these functions would be performed by a global body, by relevant global, regional, or sectoral bodies, by both, or alternatively not including any text in the instrument. Going forward, this issue would benefit from further consideration bearing in mind the need to distinguish between aspects related to the monitoring and review of the effectiveness of measures for ABMTs, including MPAs, and the monitoring and review of the implementation of the agreement.

Objectives of ABMTs, including MPAs

There seemed to be convergence towards the inclusion of a list of objectives of ABMTs, including MPAs, in the instrument. The content of such a list would benefit from further consideration, as does the question of whether it should be non-exhaustive and open for further development.

This brings me to the end of my report. I wish to thank again all delegations for their constructive engagement and the Secretariat for its support.

Informal working group on environmental impact assessments

Oral report of the facilitator to the plenary Friday, 5 April 2019

I am pleased to report on the discussions in the Informal working group on environmental impact assessments (EIAs).

The Informal working group met between Friday, 29 March, and Tuesday, 2 April.

The discussions proceeded on the basis of the President's aid to negotiations, more specifically section 5 of Part III of that document. Following your call to focus first on questions of process, Madam President, the Informal working group addressed section 5 in the following sequence:

- Environmental impact assessment process (section 5.4);
- Content of environmental impact assessment reports (section 5.5);
- Monitoring, reporting and review (section 5.6);
- Strategic environmental assessments (section 5.7);
- Activities for which an environmental impact assessment is required (section 5.3);
- Relationship to environmental impact assessment processes under relevant instruments, frameworks and bodies (section 5.2); and
- Obligation to conduct environmental impact assessments (section 5.1).

Before providing a brief overview of the main issues discussed, in terms of progress achieved and areas which could, in my view, benefit from further consideration, let me say that I was pleased by the constructive engagement and cooperative spirit of delegations in clarifying their positions on various options presented in the President's aid to negotiations, and commenting on options that did not necessarily fully represent their position. I particularly welcomed the concrete proposals made for streamlining the text and for avoiding duplication by moving parts of the text to other sections of the document.

Environmental impact assessment process

As a general observation on the discussions on the EIA process, I wish to note that the President's aid to negotiations provided a very useful guide for our discussions. Moreover, it appeared to have captured all of the options and steps proposed by delegations.

One common thread throughout our discussions is the need to consider whether, and if so, to what extent, the EIA process under the instrument will be internationalized. Therefore, going forward, further consideration would be beneficial on this topic, in particular on whether existing bodies or those potentially created by the instrument will play a role in the EIA process and the nature of such role.

On how the EIA process should be reflected in the instrument, preferences were expressed for various options. However, there seemed to be general movement towards the inclusion in the instrument of certain steps relating to the EIA process in a streamlined manner.

As regards the steps that could be specifically mentioned in the instrument, there seemed to be convergence towards the inclusion of, for example, screening, scoping, and decision-making. Different views were expressed on the other steps mentioned in the text and further consideration would be helpful to clarify what certain other steps entail and whether these steps should be included in the instrument. It was proposed that public notification should have its own sub-

section in the instrument as there was a view that public notification should take place during various stages of the EIA process.

Different views were expressed concerning the placement of monitoring in this section in addition to the placement in a section on monitoring, reporting and review.

Going forward, further consideration regarding the possible streamlining of the text, including by combining similar elements and moving some elements to other sections, such as the section on the content EIA reports, would be beneficial with a view to identifying the steps of the EIA process to be included in the instrument. In addition, further consideration of the level of detail regarding specific steps would be useful.

Finally, further consideration on whether any steps to be contained in the instrument would be mandatory in nature or indicative, and on how to treat unanticipated effects would also be beneficial given the different views expressed on these matters.

Content of environmental impact assessment reports

With respect to the content of EIA reports, there seemed to be a convergence of views towards the inclusion of the key or essential elements of such reports in the instrument and the development of further details regarding the required content at a later stage. However, further consideration would be useful to determine which particular combination of elements set out in the text should be reflected, as well as on the different options for the formulation of specific elements. A proposal for the addition of a “no text” option for the whole section was also made.

There seemed to be a convergence of views on some of the elements in the text to be included in EIA reports, while the inclusion of other elements would benefit from further consideration. Suggestions were also made for additional elements to be included in EIA reports. Further consideration would, for example, be beneficial in relation to whether and how social, socioeconomic and/or cultural impacts should be reflected in EIA reports. Moreover, further consideration would also be beneficial on whether the provision on the content of EIA reports should be mandatory, potentially constituting a minimum national or international standard, or only be indicative.

Monitoring, reporting and review

There seemed to be a convergence of views that the instrument should include text on the obligation to monitor an activity and report on its impacts.

Different preferences were expressed regarding the level of detail and modalities of this obligation, including in particular, whether the instrument should set out only the duties of States, or also duties of proponents of an activity and/or duties of relevant global, regional and sectoral bodies. Going forward, this issue would benefit from further consideration.

Different views were expressed on whether the text should also contain provisions on review and going forward this issue would also benefit from further consideration.

Views were expressed in support of the various elements in the current text regarding follow-up to the monitoring process. While there seemed to be some convergence that reports resulting from the monitoring should be made publicly available, the modalities and frequency of any reporting obligation would benefit from further consideration.

With respect to compliance, divergent views were expressed on whether or not to include provisions on compliance and, if so, their placement in this part of the instrument, as well as the

modalities of any compliance process. Further consideration on this issue would therefore be beneficial.

Divergent views were also expressed on whether and to what extent adjacent coastal States in particular would be involved in the monitoring, reporting and review process. Further consideration would be useful on whether, and, if so, where to include any provisions to this effect.

In addition to the options in the current text, further consideration of the consequences of monitoring, reporting and review, including whether to provide for adaptive management, would be useful.

Strategic environmental assessments

Regarding strategic environmental assessments (SEAs), views were expressed both in favour and against the establishment of a process for SEAs in the instrument. If SEAs were to be included in the instrument, it was suggested that reference could be made to States parties acting collectively as well as individually, including within regional and sectoral bodies. However, concerns were expressed about the lack of clarity on how such assessments could be carried out in areas beyond national jurisdiction and by whom.

The connection between SEAs and area-based management tools (ABMTs) was raised, as was the idea to include SEAs in the section on measures such as ABMTs, including MPAs.

Further consideration on the scope, content and implementation of SEAs in areas beyond national jurisdiction, and also on potential linkages with ABMTs would be useful.

Activities for which an environmental impact assessment is required

In relation to the activities for which an EIA is required, support was expressed for different options in each of the five subsections presented in the text - the thresholds and criteria for EIAs; list of activities that require or do not require an EIA; cumulative impacts; transboundary impacts and specific provision for EIAs in areas identified as ecologically or biologically significant or vulnerable.

On thresholds and criteria, views were expressed in support of several of the options for possible thresholds for determining when an EIA would need to be conducted and further consideration would be beneficial to further reduce the options under consideration, including by continuing to explore the possibility of refining and merging existing options.

Different views were expressed on whether or not to develop a list of activities that require or do not require an EIA. Different views were also expressed on how such a list would be updated and whether it would be included in the instrument or in an annex. Further consideration would be beneficial on this issue.

Different views were also expressed on whether and, if so, how, to take into account cumulative impacts and transboundary impacts in EIAs in the instrument. Both of these issues would benefit from further consideration, including in relation to their potential placement in the text. Suggestions were made to place them in the sections relating to the process for EIAs or the content of EIA reports.

Further consideration would also be useful as to whether a specific provision for EIAs in areas identified as ecologically or biologically significant or vulnerable should be included in the instrument.

Relationship to environmental impact assessment processes under relevant instruments, frameworks and bodies

There was a convergence of views that the EIA process in the instrument should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. The view was also expressed that the EIA obligation in the instrument would need to respect and be mutually supportive of obligations in other relevant instruments in order to promote coherence. Different views, however, were expressed on whether specific provisions to this effect were necessary, and if so, whether they should be included in a section on general principles and approaches. This issue would therefore benefit from further consideration.

Further consideration would be beneficial on the modalities for operationalizing the relationship between any bodies or processes established by the instrument and relevant global, regional and sectoral bodies since views were expressed in support of different elements in each of the options in the text.

Obligation to conduct environmental impact assessments

There was a convergence of views towards the inclusion of an obligation to conduct EIAs in the instrument. Views were expressed in support of elements and combinations of the options in the current text. Further development of the options in the current text, including in particular, on the operationalization of the general obligation to conduct an EIA set out in the United Nations Convention on the Law of the Sea, would benefit from further consideration.

While the definition of “jurisdiction and control” in the current text received some support, views were expressed that this definition may be too restrictive. This is an element that would benefit from further consideration.

This brings me to the end of my report. I wish to thank again all delegations for their constructive engagement and the Secretariat for its support.

Informal working group on capacity-building and the transfer of marine technology

Oral report of the facilitator to the plenary Friday, 5 April 2019

I am pleased to report to you on the discussions of the Informal working group on capacity-building and the transfer of marine technology.

The Informal working group met between Tuesday, 2 April, and Wednesday, 3 April 2019.

The discussions proceeded on the basis of the President's aid to negotiations, more specifically section 6 of Part III of that document. Following your call to focus first on questions of process, Madam President, the Informal working group addressed section 6 in the following sequence:

- Types of and modalities for capacity-building and the transfer of marine technology (section 6.2)
- Funding (section 6.3)
- Monitoring and review (section 6.4)
- Objectives of capacity-building and the transfer of marine technology (section 6.1)

Before I begin with my report on the issues I just mentioned, I would like to thank delegations for being responsive in their interventions, not only to each other, but also to the request from the President and myself for focused discussions, as well as their flexibility in adapting to the proposed sequence of discussions. On the basis of the President's aid to negotiations, which provided a very useful guide for our discussions, proposals were made for streamlining some of the text and moving some text to the sections dealing with cross-cutting issues. This active engagement reflects once again the convergence of views that capacity-building and the transfer of marine technology are crucial and central elements to achieving our goal to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction. I am encouraged by the strides made at this session in our discussions. In my summary, I will highlight those areas where I believe progress was achieved and where further consideration would be beneficial.

Types and modalities for capacity-building and the transfer of marine technology

Turning to our discussions on types and modalities for capacity-building and the transfer of marine technology, as a general observation, a common thread throughout the discussions was the recognition that provisions on types and modalities, including a clearing-house mechanism, should be included in the instrument, but that there is a need to achieve some balance in terms of the level of detail.

Types

Regarding types of capacity-building and the transfer of marine technology, there seemed to be a general movement towards the inclusion in the instrument of a non-exhaustive list of broad categories of types of capacity-building and the transfer of marine technology. There seemed to be a convergence of views that the current list in the text could benefit from streamlining, and views were expressed in support of developing parts of that list at a later stage or placing it in an annex, particularly if a large number of elements listed in the President's aid to negotiations were to be retained. Proposals were also made for merging or deleting some of the elements. The need to include clearer references to relevant traditional knowledge was also highlighted.

There seemed to be a convergence of views on the need to provide for the updating of the list, in order to take into account technological progress and innovation, and also to respond and adapt to evolving needs of States and regions. Different views were expressed though on who would undertake a review and updating of the list. Going forward, further consideration of the contents of a list of types of capacity-building and the transfer of marine technology would be beneficial, as would further consideration of the modalities for reviewing and updating the list.

Modalities

Turning to modalities for capacity-building and the transfer of marine technology, preferences were expressed for aspects of each of the two main options in the text, with some proposals to combine them. Progress was made in that there seemed to be some convergence of views towards the inclusion of specific modalities in the instrument, bearing in mind relevant existing examples, such as the Criteria and Guidelines for the Transfer of Marine Technology of the Intergovernmental Oceanographic Commission of UNESCO.

With respect to the specific modalities set out in the text, there seemed to be a convergence of views that capacity-building and the transfer of marine technology should be needs-based and country-driven. However, the mechanisms for identifying those needs, including through a needs-assessment, would benefit from further consideration since different views were expressed on how to take this forward.

There was some convergence of views as well on highlighting in the text the duty to cooperate at all levels in support of capacity-building and the transfer of marine technology. Divergent views though were expressed as to the terms on which capacity-building, and particularly the transfer of marine technology, should be carried out, the relationship with intellectual property rights, and the intended beneficiaries of capacity-building and the transfer of marine technology. Going forward, further consideration of these issues would be useful.

Clearing-house mechanism

As a general observation, I would note that there was convergence around the need for a clearing-house mechanism. However, views were expressed both in support of considering matters relating to a clearing-house mechanism at this point; and of leaving such consideration until all of the other parts of the instrument had been discussed.

As regards the functions of a clearing-house mechanism mentioned in the text, proposals were made for additions and deletions. Overall, there seemed to be a convergence of views towards streamlining the functions of a such a mechanism in the text, taking into account the need to avoid duplication with existing mechanisms. Going forward, it would be beneficial to further consider the functions of a clearing-house mechanism.

Funding

In our overall discussions there was some convergence towards the inclusion of some provisions regarding funding in the instrument, and on adopting a flexible approach to sources of funding. In that regard, views were expressed in support of funding both on a voluntary and mandatory basis, or in support of funding on a voluntary basis only. There were divergent views expressed on whether a funding mechanism or mechanisms needed to be established, and if so, whether this would be realized in the instrument, or left to the decision-making body. The need to consider existing mechanisms was also underscored. Different views were also expressed on whether it would be necessary to categorize who would have access to funding. Going forward, further consideration would be useful on all aspects of funding for capacity-building and the transfer of marine technology, including their placement in the instrument.

Monitoring and review

With regard to monitoring and review, there seemed to be some convergence of views towards the need for capacity-building and transfer of marine technology activities to be monitored and reviewed. However, divergent views were expressed as to whether this should be effected on a voluntary or mandatory basis, and on the nature of the modalities for undertaking such monitoring and review. Going forward, these issues would benefit from further consideration.

Objectives of capacity-building and the transfer of marine technology

Introductory paragraphs

Before turning to our discussions on the objectives of capacity-building and the transfer of marine technology, I wish to note that there seemed to be a convergence of views that the instrument would include a general obligation to promote cooperation in relation to capacity-building and the transfer of marine technology, with proposals made to bring the text closer in line with similar provisions in other instruments. Divergent views were expressed though on whether capacity-building and the transfer of marine technology should be provided on a mandatory or voluntary basis. The manner in which the objectives of capacity-building and the transfer of marine technology could be reflected in the instrument, and their placement, would benefit from further consideration.

General objectives and principles

Regarding our discussions on general objectives and principles for capacity-building and the transfer of marine technology, there seemed to be convergence towards the inclusion of streamlined objectives and principles in the instrument. In that regard, while preferences were expressed with respect to each of the options in the text, there was some convergence towards merging elements from both options. Further consideration of how to frame these obligations and principles regarding capacity-building and the transfer of marine technology would be beneficial going forward.

Specific objectives

With respect to specific objectives, views were expressed both in favour of, and against, the inclusion in the instrument of specific objectives for capacity-building and the transfer of marine technology. Therefore, further consideration of this issue would be beneficial.

Categories of States and special requirements of developing countries

As regards the categories of States and special requirements of developing countries in relation to capacity-building and the transfer of marine technology, different views were expressed as to whether to include such a provision and, if so, what level of detail would be appropriate.

There seemed to be some convergence towards including certain categories of States, with some movement towards including in the text special consideration for the Least Developed Countries and recognition of the special circumstances of Small Island Developing States. Proposals were also made to streamline the text, including by merging options. Going forward, this issue could benefit from further consideration including as regards the related question on whether the instrument should provide for “preferential treatment” with regard to capacity-building and the transfer of marine technology.

This brings me to the end of my report. I wish to thank again all delegations for their constructive engagement and the Secretariat for its support.

As I look around the room after very fruitful discussions, I am reminded of the common purpose we have agreed to that has again brought us together to work towards addressing the existing gaps in ocean governance through this effort. The ocean that used to divide us, now unites us and is the reason we are here. Our challenge is to each be willing to lift up our oars and paddle together as we navigate our way to our destination in this canoe we have all agreed to get on. We are all seated in this canoe with a common purpose but we are also cognizant of the need for capacity-building and the transfer of marine technology to get to our destination.

The albatross is unique in that when it commits to a partner that is the partner for its lifetime, despite being in a flock. May we be reminded of our continued commitment on this work which will have lasting impacts beyond our lifetimes.

And as we conclude today, may the albatross help guide you home and just as important may it also bring you back to New York for IGC3.

Informal working group on cross-cutting issues

Oral report of the facilitator to the plenary Friday, 5 April 2019

I am pleased to report on the discussions in the Informal working group on cross-cutting issues.

The Informal working group met between Wednesday, 3 April, and Friday, 5 April.

The discussions proceeded on the basis of the President's aid to negotiations. The Informal working group addressed the cross-cutting issues in the following sequence:

- Institutional arrangements (Part IV)
- Clearing-house mechanism (Part V)
- Review (Part VI), financial resources and issues, compliance, dispute settlement, responsibility and liability and final clauses
- Use of terms (Part II.1)
- General principles and approaches (Part III.1)
- Scope (Part II.2)
- Objectives (Part II.3)
- Relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies (Part II.4)
- International cooperation (Part III.2)

Before I provide an overview of the main issues discussed, in terms of progress achieved and areas which could, in my view, benefit from further consideration, I wish to thank delegations for their constructive comments on the President's aid to negotiations, including by clarifying their positions and proposals, suggesting merging certain options or sub-options, or indicating which parts of the text may be moved to other sections of the document. I particularly appreciated the flexibility of delegations providing suggestions or comments on options which did not necessarily fully represent their position, but that they recognized could form the basis to move forward in the negotiations.

As a general observation, and as was observed by several delegations, I note that cross-cutting issues are intimately linked to the four elements of the package and, as such, further consideration of these issues would benefit from the developments concerning the other parts of the instrument.

Institutional arrangements

The discussions on institutional arrangements focused on the need for and role of the bodies set out in the text, bearing in mind that form might follow function or vice versa.

Starting with a decision-making body, while preferences for each of the options in the text were expressed, there seemed to be a general movement towards the establishment of a global decision-making body under the instrument, in the form of a Conference of the Parties. Views also seemed to converge on certain functions listed in the text that such a body would fulfil, such as facilitating the exchange of information relevant to the implementation of the instrument and promoting cooperation and coordination. Further consideration on these and other functions, as well as on the body's relationship to relevant global, regional and sectoral bodies, would be useful.

There also seemed to be general movement towards the need for a scientific and/or technical body or forum. Different views were expressed on the modalities of such a body or forum, including its nature, composition, the periodicity of its meetings and its precise functions. Suggestions were made to rely on existing arrangements. These issues would benefit from further consideration given the different views expressed, and in the light of developments in the other parts of the instrument.

Different views were also expressed on whether the instrument should establish other subsidiary bodies or whether it would be sufficient to leave this to the decision-making body. This issue, as well as the type and functions of such subsidiary bodies, would benefit from further consideration. There seemed to be some convergence towards the view that the decision-making body under the instrument should have the ability to establish other subsidiary bodies, as needed.

Views converged on the need for a secretariat of the instrument. However, further consideration is needed as to whether the instrument would establish a new secretariat, whether the instrument's decision-making body would designate a secretariat from among existing competent international organizations, or whether the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, would be designated as the secretariat. The functions of the secretariat would also benefit from further consideration, with a preference having been expressed for a streamlined list of functions.

Clearing-house mechanism

There seemed to be convergence towards the need for a clearing-house. However, whether there should be a single, overarching mechanism or multiple mechanisms needs further consideration, as would the questions whether it should operate on a global level only or also include regional and national components, whether it would be web-based or take another form, and whether it would build on and link to existing mechanisms.

As to the functions of a clearing-house mechanism set out in the text, views converged on its central role in the sharing of information and as a tool for information exchange. Further consideration would be useful concerning other possible functions.

Different views were expressed on whether a clearing-house mechanism or mechanisms would be set up by a decision-making body under the instrument or would be established by the instrument itself. This would benefit from further consideration, as would whether such mechanism(s) would be managed by the secretariat under the instrument or by another entity.

Review, financial resources, compliance, dispute settlement, responsibility and liability, final clauses

Review

On review, there seemed to be convergence on the need to periodically review the effectiveness of the instrument in achieving its objectives. Different views were expressed, however, regarding the specific modalities for this review, including whether such review should be carried out by a Conference of the Parties, a review conference or both.

Financial resources and issues

On financial resources and issues, references were made to the views expressed during the discussions on capacity-building and the transfer of marine technology, and also to a number of instruments that could provide inspiration for the development of possible provisions.

Compliance

On compliance, references were made to the views expressed on this issue during the discussions on the substantive elements of the package and some additional views were expressed regarding the modalities of any compliance process.

Settlement of disputes

With regard to the settlement of disputes, the need to settle disputes concerning the interpretation or application of the instrument by peaceful means was underscored. However, views differed on whether provisions in the instrument should be modelled on the dispute settlement procedures set out in the United Nations Convention on the Law of the Sea, or in the United Nations Fish Stocks Agreement, or whether a tailored dispute settlement arrangement would be required.

Responsibility and liability

Different views were expressed on the need for provisions on responsibility and liability in the instrument.

Final Clauses

Views were expressed on provisions that should be included in the final clauses. Suggestions were made to draw from the United Nations Fish Stocks Agreement, in particular, as a potential source of guidance. References were also made to additional clauses in the Paris Agreement and the United Nations Framework Convention on Climate Change.

Further consideration of these issues, namely, review, financial resources, compliance, dispute settlement, responsibility and liability, and final clauses, will be undertaken in due course, taking into account negotiations on other parts of the instrument.

Use of terms

With regard to use of terms, preferences were expressed for the various terms and options set out in the text and possible definitions of certain terms were advanced. Suggestions were made to include additional terms. A number of considerations were put forward to guide a decision on which terms to define, including the scope of the instrument, the need to ensure consistency with terms used in existing instruments, and whether the term had an obvious or ordinary meaning.

While there seemed to be some convergence towards the need to define “area-based management tools”, “marine protected areas” and “marine genetic resources”, further consideration of these and other terms in the context of the other parts of the instrument would be beneficial.

General principles and approaches

With regard to general principles and approaches, there seemed to be some convergence towards including a streamlined list of such principles and approaches in a single general section of the instrument, although the utility of including principles and approaches in each of the substantive parts of the instrument was also noted. Suggestions were made to include or reformulate specific principles and approaches. These and other related issues would benefit from further consideration.

Scope

With regard to the scope of application of the instrument, there seemed to be convergence towards including the provisions on geographical scope as contained in the President’s aid to

negotiations, with suggestions being made to replace the provision on the rights and jurisdiction of coastal States with a general “without prejudice” clause, and to provide a definition of the term “areas beyond national jurisdiction”. On material scope, whether to include either of the two provisions provided for in the aid to negotiations, namely a general provision setting out the elements of the package, and a specific provision relating to vessels owned or operated by a State in government non-commercial service, would benefit from further consideration.

Objectives

Views seemed to converge on the inclusion of a provision for the overall, general objective of the instrument to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies

There seemed to be some convergence on the inclusion of a provision dealing with the relationship of the instrument to the Convention as set out in the text. Further consideration would be beneficial on the formulation of the provision addressing the relationship with other instruments and frameworks and relevant global, regional and sectoral bodies, as support was expressed for elements of all three options provided in the aid to negotiations. Views were also expressed on whether or not to include a provision on the legal status of non-parties to the Convention or any other related agreements.

International cooperation

With regard to international cooperation, there was convergence on including a general provision on this issue in the instrument as currently set out in the text, with suggestions made that such provision should encourage States parties to not only cooperate between themselves, but also with relevant international organizations and also encourage cooperation between relevant global, regional and sectoral bodies.

I wish to thank all delegations for their active participation in the discussions, as well as the Secretariat for its support.
