

**ADVANCE, UNEDITED
(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**

Fifth session

New York, 15–26 August 2022, 20 February–3 March 2023, and 19–20 June 2023

**Draft report 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 at its
fifth session**

I. Introduction

1. In its resolution [72/249](#) of 24 December 2017, the General Assembly decided to convene an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee established by resolution [69/292](#) of 19 June 2015 on the elements and to elaborate the text 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, with a view to developing the instrument as soon as possible.
2. The General Assembly also decided that negotiations should address the topics identified in the package agreed in 2011, namely, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.
3. The General Assembly further decided that, initially with respect to 2018, 2019 and the first half of 2020, the conference should meet for four sessions of a duration of 10 working days each, with the first session taking place in the second half of 2018, the second and third sessions taking place in 2019, and the fourth session taking place in the first half of 2020.

4. Pursuant to General Assembly resolution [72/249](#), a three-day organizational meeting was held in New York, from 16 to 18 April 2018, to discuss organizational matters, including the process for the preparation of the zero draft of the instrument. The first session of the conference was convened by the Secretary-General from 4 to 17 September 2018 pursuant to resolution [72/249](#), and the second session was convened from 25 March to 5 April 2019 and the third session from 19 to 30 August 2019 pursuant to resolution [73/124](#). The fourth session, which was postponed twice by decisions 74/543 and 75/570 of the Assembly owing to the coronavirus disease (COVID-19) pandemic, was convened from 7 to 18 March 2022 in accordance with decision 75/570. A report on the proceedings of the first to fourth sessions is available in the report of the conference, which was adopted at the fourth session and issued thereafter ([A/CONF.232/2022/4](#)).

5. At the fourth session, the conference considered the way forward in the light of the fact that the fourth session was the last of the four sessions initially mandated by the General Assembly in paragraph 3 of its resolution [72/249](#). It considered that an additional session of the conference was required as soon as possible to make progress. The conference requested the President to take the necessary steps to that end, as set out in section V of the report of the conference. As a result, a fifth session of the conference was convened from 15 to 26 August 2022, pursuant to General Assembly decision 76/564. Following the decision of the conference to suspend the fifth session and to resume it at a later date, the resumed fifth session met from 20 February to 3 March 2023 pursuant to General Assembly resolution [77/248](#). At the end of that meeting, the conference decided to further resume the fifth session at a later date with a view to adopting the agreement. In this connection, the General Assembly, in its decision 77/556, requested the Secretary-General to convene a further resumed fifth session on 19 and 20 June 2023, tentatively, or on a date to be determined in consultation with the President of the conference.

6. In accordance with paragraph 21 of resolution [72/249](#), the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Miguel de Serpa Soares, was appointed by the Secretary-General of the United Nations as Secretary-General of the conference. Support and secretariat services were provided by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, in accordance with paragraph 22 of the resolution.

II. Organizational matters and proceedings of the fifth session of the conference

A. Rules of procedure

7. As decided by the conference at its organizational meeting, the rules of procedure and the established practice of the General Assembly, as modified by resolution [72/249](#), were applied, *mutatis mutandis*, to the fifth session of the conference.

B. Election of officers

8. The same officers elected pursuant to resolution [72/249](#) to serve as President of the conference and members of the Bureau at the first to fourth sessions of the conference ([A/CONF.232/2022/4](#), paras. 8–10) continued to officiate during the fifth session.

C. Documentation

9. The documents of the fifth session of the conference are listed in annex I to the present report.

D. Proceedings of the fifth session of the conference

10. The fifth session of the conference was held from 15 to 26 August 2022, during which substantive discussions were held on the four elements of the package agreed in 2011 set out in paragraph 2 of General Assembly resolution [72/249](#) and on cross-cutting issues.

11. At the beginning of the fifth session, the President of the conference and the Secretary-General of the conference delivered opening remarks.

12. The conference adopted the agenda of the fifth session without amendment ([A/CONF.232/2022/6](#)) and a programme of work ([A/CONF.232/2022/7](#)). The conference agreed that it would proceed in the format of informal informals to address the four thematic issues in the package set out in General Assembly resolution [72/249](#), as well as cross-cutting issues. The President of the conference facilitated the discussions in the informal informals on capacity-building and the transfer of marine technology and on cross-cutting issues, except for the discussions on institutional arrangements, which were facilitated by Thembile Joyini (South Africa), and implementation and compliance and dispute settlement and advisory opinions, which were facilitated by Victoria Hallum (New Zealand). Janine Elizabeth Coye-Felson (Belize) facilitated the discussions in the informal informals on marine genetic resources, including questions on the sharing of benefits; Renée Sauvé (Canada) facilitated the discussions on measures such as area-based management tools, including marine protected areas; and René Lefeber (Netherlands) facilitated the discussions on environmental impact assessments.

13. The discussions in the informal informals proceeded on the basis of the further revised draft text of an agreement ([A/CONF.232/2022/5](#)), which the President had been requested to prepare in advance of the session with a view to facilitating the prompt finalization of the work of the conference. In preparing the further revised draft text, the President took into account proposals made by delegations contained in the various conference room papers issued during the fourth session of the conference, as well as proposals submitted by 31 March 2022. On 21 August, the President released a refreshed draft text of an agreement ([A/CONF.232/2022/CRP.12](#) and [A/CONF.232/2022/CRP.12/Add.1](#)) and, on 26 August, a further refreshed draft text ([A/CONF.232/2022/CRP.13](#) and [A/CONF.232/2022/CRP.13/Add.1](#)). In preparing those documents, the President took into account the views expressed and textual proposals made during the fifth session, either by individual delegations or as the result of small group discussions, until their issuance, while keeping in mind that some small groups were still in discussions.

14. On 26 August 2022, the conference, in considering the way forward, decided to suspend the fifth session and resume it at a later date to be determined. The President issued a statement following the suspension of the fifth session ([A/CONF.232/2022/9](#)).

15. The resumed fifth session of the conference was held from 20 February to 3 March 2023, during which substantive discussions were held on the four elements of the package agreed in 2011 set out in paragraph 2 of General Assembly resolution [72/249](#) and on cross-cutting issues.

16. At the beginning of the resumed fifth session, the President of the conference delivered opening remarks, as did the Secretary-General of the conference on behalf of the Secretary-General of the United Nations.

17. The conference adopted a programme of work ([A/CONF.232/2023/1](#)) for the resumed fifth session. The conference agreed that it would proceed in the same format of informal informals as noted in paragraph 12 of the present report, with two changes in the facilitation of discussions. Ligia Lorena Flores Soto (El Salvador) would now facilitate the discussions in the informal informals on capacity-building and the transfer of marine technology, and Kurt Oliver Davis (Jamaica) would facilitate the discussions on general provisions, including the preamble, in the informal informals on cross-cutting issues.

18. The discussions in the informal informals during the resumed fifth session proceeded on the basis of the further refreshed draft text of an agreement 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 ([A/CONF.232/2023/2](#)), with a view to facilitating the prompt finalization of the work of the conference. On 25 February, the President issued an updated draft text of an agreement as of that date ([A/CONF.232/2023/CRP.1](#) and [A/CONF.232/2023/CRP.1/Add.1](#)), which served as a basis for discussions in the informal informals and the consultations of the President for the remainder of the resumed fifth session.

19. On 4 March, the President announced that the draft text of the agreement 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 was finalized and noted the following:

(1) In relation to article 23 on “Decision-making” in Part III, one delegation had expressed its reservation on voting.

(2) In relation to article 18 on “Area of application” in Part III, the understanding is that the term “the Conference of the Parties shall not consider for decision” means that the Conference of the Parties can look at a proposal but shall not decide on such proposals.

(3) In relation to environmental impact assessments, delegations were of the view that environmental impact assessments shall be State-led. In order to promote transparency, there are provisions in Part IV which allow another Party to register its views on the impacts of a planned activity and for the Scientific and Technical Body to make non-binding recommendations. However, the understanding is that it is the State which decides whether an activity under its jurisdiction or control should proceed.

20. On the way forward, the conference decided to establish an open-ended informal working group tasked with ensuring the uniformity of terminology throughout the text of the draft agreement and harmonizing the versions in the six official languages of the United Nations, incorporating necessary editing and ensuring concordance among the six language versions, and to report on its work to the conference at a further resumed fifth session. It was agreed that there would be no re-opening or discussions of substance in this open-ended informal working group. The conference also decided to further resume the fifth session at a later date once the open-ended informal working group had completed its work, with a view to adopting the agreement and to hearing general statements from delegations.

21. The further resumed fifth session was held from 19 to 20 June 2023. At the beginning of that session, the President of the General Assembly and the Secretary-General of the United Nations delivered remarks.

22. The conference adopted a programme of work ([A/CONF.232/2023/3](#)) for the further resumed fifth session. The conference heard an oral report by the Coordinator of the open-ended informal working group referred to in paragraph 20 of the present

report. The Coordinator noted that a correction needed to be made in Article 7, subparagraph (b), of the Arabic version of document A/CONF.232/2023/L.3. The conference then proceeded to consider and adopt the draft agreement, with a correction in Article 7, subparagraph (b) of the Arabic version (A/CONF.232/2023/L.3). Following a general exchange of views, the conference adopted the report of the conference at its fifth session (A/CONF.232/2023/L.2), as updated by the President. The fifth session of the conference was closed on 20 June 2023.

III. Credentials

23. The composition of the Credentials Committee decided upon at the first plenary meeting of the organizational meeting of the conference remained the same during the fifth session as during the first to fourth sessions (A/CONF.232/2022/4, para. 32).

24. The Credentials Committee provided a report to the conference at the fifth session (A/CONF.232/2022/8). On 26 August 2022 and on 3 March 2023, the Chair of the Credentials Committee, and on 19 June 2023 and on 20 June 2023, the President, informed the conference of additional credentials that had been received. Altogether in the course of the fifth session, the Chair of the Credentials Committee and the President informed the conference that formal credentials were received from Bulgaria, Belize, Colombia, Cook Islands, Croatia, Czechia, Dominica, Ecuador, El Salvador, Fiji, Gabon, Guyana, Honduras, Israel, Jamaica, Malaysia, Maldives, Malta, Mexico, Morocco, Oman, Pakistan, Panama, Papua New Guinea, Philippines, Poland, Russian Federation, Saint Lucia, Samoa, Seychelles, Sri Lanka, Tunisia, Tuvalu, Uganda, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam and information concerning the appointment of representatives to the fifth session of the conference from Antigua and Barbuda, Bolivia (Plurinational State of), Bosnia and Herzegovina, Canada, Chad, Djibouti, Egypt, Gambia, Grenada, Liechtenstein, Mauritania, Mozambique, Namibia, Republic of Moldova, Saint Kitts and Nevis, Sierra Leone and Syrian Arab Republic. On 26 August 2022, the conference adopted the draft resolution recommended by the Credentials Committee in paragraph 13 of its report and on 26 August 2022, on 3 March 2023, on 19 June 2023 and on 20 June 2023 accepted the additional credentials mentioned by the Chair of the Committee and the President, respectively.

IV. Attendance

25. Participants in the fifth session of the conference included representatives of 153 States Members of the United Nations, members of the specialized agencies and parties to the Convention. In addition, 30 organizations and other 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, interested global and regional intergovernmental organizations and other interested international bodies, as well as one associate member of a regional commission and 42 non-governmental organizations, participated as observers.

V. Recommendations of the conference

26. At its further resumed fifth session, on 20 June 2023, the conference decided to request the President of the conference to communicate the outcome of the conference to the President of the General Assembly, and recommended that the General

Assembly take the appropriate action to allow the Secretary-General of the United Nations to assume the functions assigned to him under the agreement.

VI. Consideration and adoption of the final documents of the conference and the report of the conference to the General Assembly

27. On 19 June 2023, the President recalled the following:

(1) In relation to article 18 on “Area of application” in Part III, the understanding is that the term “the Conference of the Parties shall not consider for decision” means that the Conference of the Parties can look at a proposal but shall not decide on such proposals.

(2) In relation to environmental impact assessments, delegations were of the view that environmental impact assessments shall be State-led. In order to promote transparency, there are provisions in Part IV which allow another Party to register its views on the impacts of a planned activity and for the Scientific and Technical Body to make non-binding recommendations. However, the understanding is that it is the State which decides whether an activity under its jurisdiction or control should proceed.

28. The conference adopted by consensus the Agreement 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 (A/CONF.232/2023/4). Delegations expressed their views in support of the Agreement as reflected in document A/CONF.232/2023/INF.5. Two delegations spoke in explanation of positions after the adoption.

29. In its explanation of position, the Russian Federation dissociated itself from the consensus on the text of the Agreement prepared by the conference.¹

30. On 20 June 2023, the President introduced the draft report of conference at its fifth session. The conference adopted its draft report as updated.

1 Without creating a precedent for the future, the conference report reflects the reason for the dissociation provided by the Russian Federation as follows: the Russian Federation stated that the instrument was not acceptable and that the question of its participation was not considered. It expressed its position that provisions of the most important existing international treaties, including the *United Nations Convention on the Law of the Sea* and the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* were undermined, and that its norms would allow for intrusion into the mandate and competence of relevant sectoral and regional international organizations, including regional fisheries management organizations. The Russian Federation indicated that it would carefully monitor that the new agreement and the systems of global bodies created within its framework do not undermine the provisions of international treaties and mandates of intergovernmental organizations in which it was a participant.

Annex I

List of documents

Fifth session (15–26 August 2022)

A/CONF.232/2022/L.4	Provisional agenda
A/CONF.232/2022/L.5	Provisional programme of work
A/CONF.232/2022/5	Further revised draft text of an agreement 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: note by the President
A/CONF.232/2022/6	Agenda
A/CONF.232/2022/7	Programme of work
A/CONF.232/2022/8	Fifth report of the Credentials Committee
A/CONF.232/2022/9	Statement by the President of the conference issued after the suspension of the fifth session
A/CONF.232/2022/INF.4	Information for participants: note by the Secretariat
A/CONF.232/2022/INF.5	Textual proposals submitted by delegations by 25 July 2022, for consideration at the fifth 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, in response to the invitation by the President of the conference in her note of 1 June 2022 (A/CONF.232/2022/5): article-by-article compilation
A/CONF.232/2022/CRP.12	Refreshed draft text of an agreement 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
A/CONF.232/2022/CRP.12/Add.1	Refreshed draft text of an agreement 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 (track changes)
A/CONF.232/2022/CRP.13	Further refreshed draft text of an agreement 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
A/CONF.232/2022/CRP.13/Add.1	Further refreshed draft text of an agreement 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 (track changes)

Resumed fifth session (20 February–3 March 2023)

A/CONF.232/2023/L.1	Provisional programme of work
A/CONF.232/2023/L.2	Draft report 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 at its fifth session
A/CONF.232/2023/1	Programme of work
A/CONF.232/2023/2	Further refreshed draft text of an agreement 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
A/CONF.232/2023/INF.1	Information for participants: note by the Secretariat
A/CONF.232/2023/INF.2	Compilation of outcomes of small group work submitted after the issuance of the refreshed draft text of an agreement 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 (A/CONF.232/2022/CRP.12) and ending point of the Facilitator-led discussions held on 26 August 2022 on measures such as area-based management tools, including marine protected areas, and on environmental impact assessments
A/CONF.232/2023/CRP.1	Updated draft text of an agreement 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 as at 25 February 2023
A/CONF.232/2023/CRP.1/Add.1	Updated draft text of an agreement 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 as at 25 February 2023 (track changes)
A/CONF.232/2023/CRP.2	Draft agreement 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 (27 March 2023)
A/CONF.232/2023/CRP.2/Rev.1	Draft agreement 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 (14 April 2023)
A/CONF.232/2023/CRP.2/Rev.2	Draft agreement 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 (3 May 2023)

A/CONF.232/2023/CPR.3

Draft agreement 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 (6 June 2023)

Further resumed fifth session (19–20 June 2023)

A/CONF.232/2023/L.3	Draft agreement 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
A/CONF.232/2023/L.4	Provisional programme of work
A/CONF.232/2023/3	Programme of work
A/CONF.232/2023/4	Agreement 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
A/CONF.232/2023/5	Report 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 at its fifth session
A/CONF.232/2023/6	Letter dated xx June 2023 from the President of the conference addressed to the President of the General Assembly
A/CONF.232/2023/INF.3	Information for participants: note by the Secretariat
A/CONF.232/2023/INF.4	List of participants
A/CONF.232/2023/INF.5	Compilation of statements