ADVANCE AND UNEDITED TEXT (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
Third session
New York, 19-30 August 2019

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

Over the past two weeks, following the opening of the third 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 package of 2011 set out in paragraph 2 of General Assembly 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 19 August 2019.

In their general statements, delegations noted with appreciation the preparation of the draft text of an agreement under the United Nations Convention on the Law of the Sea (the Convention) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (A/CONF.232/2019/6) and commended its timely release. They affirmed that the draft text would serve as a valuable tool for addressing substantive matters on the topics identified in the package agreed in 2011 and would also provide a solid basis for negotiations. Delegations reiterated the importance of the Convention, recalled that the agreement should be fully consistent with the Convention, and called for an effective, practicable and future-proofed agreement. Several delegations called for the agreement to foster cross-sectoral cooperation and coordination and recalled

that it should not undermine relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. It was 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. Some delegations underscored the need to respect sovereign rights over the continental shelf, whether or not delineated or delimited, and over the exclusive economic zone, even if not yet proclaimed. The need to ensure the universality of the agreement was emphasized. It was stressed that the principle of the common heritage of mankind was a bedrock for achieving the goal of conserving and sustainably using marine biological diversity of areas beyond national jurisdiction. Several delegations recalled that, in accordance with General Assembly resolution 72/249, the Conference should complete its work by its fourth session, in 2020. Other delegations noted the importance of taking the necessary time and effort to reach an agreement that would be universally accepted.

Appreciation 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. Concern was expressed that a lack of funding might affect the ability of smaller delegations to participate actively and effectively in the Conference and the need to increase support to the trust fund to facilitate the participation of a larger number of delegates from developing countries was underscored.

The Conference adopted the agenda of the third session without amendment (A/CONF.232/2019/7) and a programme of work (A/CONF.232/2019/8 and Rev.1).

With regard to the programme of work, the Conference agreed that, following the consideration of the general statements, it would proceed in the format of informal working groups and informal informals to address the four thematic issues of the package set out in General Assembly resolution 72/249 as well as cross-cutting issues, and these would be facilitated by the same facilitators as at the previous sessions of the Conference, namely: Janine Elizabeth Coye-Felson (Belize) for marine genetic resources, including questions on the sharing of benefits; Alice Revell (New Zealand) for measures such as area-based management tools, including marine protected areas; René Lefeber (Netherlands) for environmental impact assessments; and Ngedikes Olai Uludong (Palau) for capacity-building and the transfer of marine technology. The President facilitated discussions on cross-cutting issues. The informal working groups and informal informals were convened from 19 to 29 August and proceeded with their discussions on the basis of the draft text of an agreement (A/CONF.232/2019/6). The oral reports of the facilitators on the work on the four thematic issues and on cross-cutting issues were presented to the plenary on 30 August and 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.

On 30 August, the Conference considered the way forward to the fourth session of the Conference. The President was requested to prepare, as part of the preparations for the fourth session of the Conference, a revised draft agreement that would take into account comments made during discussions held during the third session as well as consider textual proposals made by delegations and contained in the various conference room papers issued during the third session of the Conference.

The President stated that she would make every effort possible to make the document available to delegations well in advance of the fourth session of the Conference.

The President also undertook to propose an organization of work in advance of the fourth session, taking into account further consultations with the Bureau on this issue. Such organization of work may include the convening of an increased number of parallel meetings.

On 30 August, the Chair of the Credentials Committee introduced the third report of the Committee (A/CONF.232/2019/9). The Chair 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 Holy See, Islamic Republic of Iran, Mexico, Bolivarian Republic of Venezuela and Viet Nam. In addition, other information concerning their representatives had been received from Ethiopia, Gabon, Honduras and Mali. The Conference adopted the draft resolution recommended by the Credentials Committee in paragraph 14 of its report, and accepted the additional credentials mentioned by the Chair of the Committee. Peru (on behalf of a group of States), the Bolivarian Republic of Venezuela, Cuba, Nicaragua, the Islamic Republic of Iran, China, the Russian Federation and the United States of America made statements during the consideration of the third report of the Credentials Committee.

Participants in the Conference also included 17 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 40 non-governmental organizations.

Under other matters, on 30 August, the Secretariat provided information on the status of the voluntary trust fund established pursuant to General Assembly resolution 69/292 for the purpose of assisting developing countries, in particular the least developed countries, land-locked developing countries and small island developing States in attending meetings of the Conference.

Looking at the work that had been done both in the run-up to the third session and during the session itself, it came as no surprise to me that we made progress on the draft text during this session. I was gratified by the number of proposals submitted by the delegations, and which reflected the careful consideration that delegations devoted to the issues.

I can see areas of progress in the development of the draft text. I think it is possible to eliminate some of the options that have won no support. There are also areas in the draft text where the text can be streamlined. However, there are also areas where we have much to do to advance our work. In doing so, I encourage everyone to study the proposals made during this session and use the proposals as a catalyst to spark creative solutions that can garner consensus in the room. On the whole, it is my belief that we are well-placed to make great strides towards the successful conclusion of our work. I hope that inter-sessionally, delegations will not only work within their own delegations but also reach out to the other delegations, to find ways forward that everyone can converge around.

In closing, I wish to thank first of all the Secretary-General of the Conference, Mr Miguel de Serpa Soares, for his support. I also wish to thank the Secretary of the Conference, Ms Gabriele Goettsche-Wanli and the hardworking and professional team in the Office of Legal Affairs, in particular, colleagues from the Division for Ocean Affairs and the Law of the Sea. My thanks also go out to colleagues in conference services, including the interpreters and translators, as well as colleagues from the Department of Global Communications and reporters from the Earth Negotiations Bulletin. I wish to thank my own team, my Bureau, and the facilitators for all their hard work, with more to come! But most of all, I want to thank each and every one of you. I am truly blessed to be in the same canoe with all of you; you who have inspired me with your passion, your dedication, your spirit of cooperation, your good cheer and willingness to listen and talk to one another. Thank you.

I think we all know that much work lies ahead of us. But as we strive to find a balance across all elements of the package, a balance that can address our different concerns and

interests, as we seek to dot the I's and cross the T's and check for oxford commas, let us not forget why we are here.

At the opening of the session, I referred to the Global Assessment Report on Biodiversity and Ecosystem services by the Inter-governmental Science-Policy Platform on biodiversity and ecosystem services (IPBES). As you know, that report predicts that over one million species, including 33% of reef-forming corals and one-third of marine mammals, could disappear entirely over our lifetimes. Collectively, we can stop this from happening, but only if we continue to act with the same sense of urgency and dedication that we have displayed so far.

Individually, it will be challenging to bring about the necessary transformative change that the areas beyond national jurisdiction need, if we are to conserve and sustainably use its biodiversity. But together, there is so much that we can achieve. You may have noticed that this conference room has an observation window, where visitors to the UN may look in. I sometimes wonder what they think when they look in on our sessions. I hope they know that they are looking into a room where a group of nations, together with our partners, the intergovernmental organizations and civil society, are setting aside our differences, to put our hearts, our minds and our wills together, to build a fair, balanced, and effective agreement for our oceans. Thank you.

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

Annex

Oral reports of the facilitators of the informal working groups to the plenary on 30 August 2019

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

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 on 23 and 28 August. Informal informals on marine genetic resources, including questions on the sharing of benefits, were held on 21, 22, 23, 27 and 29 August. We also had an opportunity to discuss the use of terms.

The discussions in both the Informal working group and in the informal informals proceeded on the basis of the draft text of an agreement contained in document A/CONF.232/2019/6. Proposals submitted by delegations in writing were included in six conference room papers on marine genetic resources.[1]

At the outset, I wish to note significant progress in moving away from general and conceptual discussions we've had in the past towards identifying textual solutions to the issues at hand. In particular, I welcomed the constructive engagement of delegations with the draft text, with several drafting proposals put forward to streamline part II with a view to clarifying the steps of the access and benefit-sharing process and related obligations. I noted that a number of proposals seemed to go in a similar direction, and I encouraged delegations to consult with each other with a view to consolidating these proposals to the extent possible. That being said, going forward, further focused discussions will be required on a number of issues on which there is still a divergence of views. Taking the issues one by one, my assessment of progress made and areas requiring further work is as follows.

Objectives

I noted progress with regard to the objectives, as there seemed to be convergence on most of the objectives listed in article 7. Further discussions will be required, however, with regard to the wording, order and placement of these objectives, and whether or not to include the realization of a just and equitable international economic order among the objectives.

Application

Concerning application, I noted general convergence on the importance of including an article on application addressing the geographical, material and temporal scope, although further discussions will be required on whether such an article would relate to the provisions of part II only or to the agreement as a whole and on its formulation.

There seemed to be convergence on defining the geographical scope of application as "areas beyond national jurisdiction". However, further discussions will be beneficial on whether to refer to marine genetic resources "of", "accessed in", "originating from" or "collected in" those areas, or to a combination of these options.

[1] An additional CRP was issued on 30 August after the delivery of this oral report.

There seemed to be a general understanding among delegations that the material scope of application would not extend to fish and other biological resources used as commodities. Further discussion may be required on whether to reflect this in the agreement and, if so, how. In that regard, progress was made in streamlining the text as the option of referring to thresholds did not seem to generate any support.

Whether the agreement 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/or information, as well as to derivatives, would benefit from further discussion. Terminology concerning ways to refer to access to digital information will also require further consideration. Views also differed on whether or not marine scientific research should be excluded from the material scope of application of the agreement.

There seemed to be convergence on the importance of including language on the temporal scope of the agreement. Further discussion will be required, however, on whether or not marine genetic resources collected before the entry into force of the agreement but accessed *ex situ* or *in silico* afterwards would fall within the temporal scope of the agreement.

Activities

Further discussions will be required on whether to include article 9 in the agreement and, if so, whether the activities to be addressed should be limited to marine scientific research or also include other activities; whether or not such activities should be conducted with due regard for the rights and legitimate interests of coastal States with respect to marine genetic resources found in areas both within and beyond national jurisdiction; whether or not the principle that no State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction, and the principle of non-appropriation, should be stated; whether or not such activities should be for the benefit of mankind as a whole; and whether to specify that such activities should be carried out exclusively for peaceful purposes in part II or in a cross-cutting part of the agreement.

Access

With regard to the issue of access to marine genetic resources of areas beyond national jurisdiction, further discussions will be required concerning the definition of “access”, as views differed on whether this referred to the collection of marine genetic resources *in situ* or also to access *ex situ* and *in silico*. These views were linked to different perspectives on whether or not to regulate access to marine genetic resources of areas beyond national jurisdiction and, if so, how. In particular, further discussions will be required on the need for notification, permitting or licensing for *in situ* access, as well as on whether to set out an obligation to ensure that access *ex situ* is free and open and access to *in silico* information and data is facilitated. While there seemed to be general convergence that the prior consent of coastal States concerned would not be required for activities that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction, further discussions will be required on whether coastal States – whether concerned or adjacent – should nevertheless be notified and consulted.

Sharing of benefits

There seemed to be some progress in the discussions on the sharing of benefits, with some convergence on the inclusion of benefit-sharing modalities in the agreement as opposed to being determined by a Conference of the Parties. There was general support for the sharing of non-monetary benefits. However, further discussions will be required on the sharing of

monetary benefits and on benefit-sharing modalities. Going forward, delegations may wish to focus their discussions on which activities would trigger benefit-sharing, whether benefits should be shared on a voluntary or mandatory basis, what types of benefits might be shared, as well as how and when benefits might be shared. While there seemed to be general support for the inclusion of a provision addressing the purpose for which benefits might be used, further discussions will be needed on some of the purposes listed in the draft text.

With regard to both access and the sharing of benefits, I noted progress concerning the possible way of addressing traditional knowledge of indigenous peoples and local communities in the agreement, and welcomed, in particular, the efforts made by like-minded delegations to submit a joint proposal for a new article addressing that issue specifically.

In general, further discussions will be required on the need to provide for the obligation of States Parties to take necessary measures to ensure compliance with the provisions on access and the sharing of benefits, including on the most appropriate placement of such a provision.

Intellectual property rights

Further discussions will be required on whether the agreement should address intellectual property rights or not and, if so, how, including whether to address intellectual property rights with respect to marine genetic resources of areas beyond national jurisdiction in a *sui generis* manner, or to include a provision setting out the need for consistency with the relevant agreements concluded under the auspices of the World Intellectual Property Organization and the World Trade Organization.

Monitoring

On monitoring, generally, further discussions could clarify how to balance the need for transparency in the utilization of marine genetic resources of areas beyond national jurisdiction with the need to not create disincentives for marine scientific research. Two divergent perspectives were noticeable. One perspective emphasized the need for a robust track-and-trace mechanism and consequently offered proposals on who would be in charge of monitoring, the activities that would be subject to monitoring, and how monitoring would be carried out, including whether it would be through the clearing-house mechanism, a scientific and technical body, an obligatory notification system, or a combination of those mechanisms. Another perspective questioned the feasibility and desirability of a monitoring mechanism that would include the use of identifiers, notifications by databases, repositories and gene banks, and submission of periodic status reports by proponents of marine scientific research in areas beyond national jurisdiction.

While there seemed to be general support for a requirement that States Parties make available to the clearing-house mechanism information on the legislative, administrative and policy measures adopted in accordance with part II, further discussions will be required on the need for States Parties to submit reports on the utilization of marine genetic resources of areas beyond national jurisdiction to a Conference of the Parties and on who should be responsible for reviewing such reports. I noted, in this regard, a proposal to establish an access and benefit sharing mechanism which would have monitoring functions among others.

Use of terms

Delegations also exchanged views on the use of relevant terms as found in article 1. While there seemed to be general convergence on the inclusion of a definition on the term "marine genetic resources", further discussions will be needed on whether or not the terms "access", "marine genetic material" and "utilization of marine genetic resources" should be defined in the agreement and, if so, how they should be defined. Should the terms be defined, further discussions will be required on whether to draw from the definitions in other instruments addressing genetic resources or to consider other formulations. There seemed to be general convergence that geographical aspects should not be included in the terms "marine genetic material" and "marine genetic resources". Further discussions will be required on whether other relevant terms, such as "biotechnology" and "derivatives", should also be defined in the agreement.

Madam President,

This concludes my oral report. I wish to thank again all delegations for their constructive engagement and the Secretariat for its support.

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

I am pleased to report on discussions in the Informal working group and Informal informals on measures such as area-based management tools (ABMTs), including marine protected areas (MPAs), which proceeded on the basis of Part III of the President's draft text.

The Informal working group met on Wednesday, 21 August, and Tuesday, 27 August. Informal informals were held on Tuesday, 20 August; Thursday, 22 August; Monday, 26 August; and Wednesday 28 August.

Our discussions were informed by drafting proposals submitted by delegations to the Secretariat, which are reflected in seven conference room papers.[2] I thank delegations for their constructive proposals, and for their active engagement in working to arrive at a common understanding of our objectives for Part III of the agreement, and to develop and refine the draft text.

Let me now turn to my overview of the main issues discussed, in terms of progress achieved and areas which could, in my view, benefit from further consideration.

Overall process

Progress was made in clarifying the specific steps of the overall process under Part III in relation to measures such as ABMTs, including MPAs. There are still divergent views on the central question of the roles in that process of the bodies established under the agreement; and/or of relevant global, regional and sectoral bodies. This tension underlies delegations' views on the specific steps of the process in relation to measures such as ABMTs, including MPAs.

Another overarching question raised in our discussions, which would still benefit from further reflection, is whether the process in relation to establishing or designating MPAs should be distinguished from the process for other types of ABMTs. That is, whether different processes may be required for different types of tools.

Further discussions on the meaning and scope of the terms "ABMT" and "MPA" would also be beneficial, in order to arrive at a shared understanding of those terms, and of how

[2] An additional CRP was issued on 30 August after the delivery of this oral report.

any relevant definitions in article 1 should be framed. Discussion on the latter issue might usefully be reserved until such time as the substantive provisions of Part III are further refined.

Let me turn now to more specific aspects.

Objectives

There seemed to be general support for the inclusion of a list of objectives in Part III of the agreement, although the possible role of a scientific and technical body and of the Conference of the Parties in further elaborating the objectives would benefit from further consideration.

Another aspect which needs further consideration is whether the objectives under consideration relate to Part III as a whole or to the establishment or designation of specific ABMTs, including MPAs.

There was also general support for streamlining the list of objectives in paragraph 1 of article 14. In this regard, focusing on outcome-oriented rather than process-oriented objectives, and reflecting some of the objectives under the Part on cross-cutting issues were suggested as possible ways in which the list could be streamlined.

International cooperation and coordination and decision-making

Discussions on international cooperation and coordination (article 15) were inextricably linked to those on decision-making (article 19). In particular, there was progress in refining delegations' approaches to the two scenarios captured in these provisions: first, where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies; and second where there are no such instruments, frameworks or bodies.

A range of text proposals were made on these scenarios, which would benefit from further reflection and discussion. The central question remains the extent of any decision-making function for the bodies established under the agreement vis-à-vis the relevant global, regional and sectoral bodies. These provisions are central to the operation of Part III and will need to remain a focus for delegations in order to move forward. They are closely linked to delegations' perception of the risk of the process for decision making "undermining" other bodies.

In addition, discussions advanced on how the relevant legal instruments and frameworks and relevant global, regional or sectoral bodies should cooperate and coordinate. There was general convergence on the objective of enhancing cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, without prejudice to their respective mandates. Different ideas were put forward as to how the relevant provision – currently reflected in article 15, paragraph 3 – might be drafted. It would be beneficial to reflect further on the different possibilities in this regard, in particular, on the role that States Parties and the Conference of the Parties might play, and whether there would be complementary roles for both.

Cross-cutting issues

There was general convergence on the need to include text stating that the instrument would not undermine existing relevant legal instruments and frameworks, and relevant global, regional and sectoral bodies, nor prejudice the rights of coastal States over areas under national jurisdiction and/or the effectiveness of any measures adopted by coastal States therein, but it would be useful to reflect further on the placement of specific provisions to this effect, whether in Part III and/or in the "General Provisions". Such a

discussion might usefully be deferred until the text of the agreement, in its totality, is further developed.

There also seemed to be support for addressing the modalities of decision-making by the Conference of the Parties, and the principle of transparency, in the cross-cutting provisions of the agreement.

There was general convergence that the best available science, traditional knowledge of indigenous people and local communities, the application of the precautionary approach or principle and an ecosystem approach should be the basis upon which areas are identified and proposals are formulated. Further discussion is needed on whether to refer to these elements in relevant articles of Part III, or more generally in article 5.

Identification

Turning then to the individual steps of the process, on the identification of areas, the option of specifying an indicative list of criteria in an annex and/or in guidelines, rather than detailing such criteria in the text of article 16 received strong support.

Going forward, various proposals were put forward regarding the content and organization of the indicative list currently contained in article 16, paragraph 2, including for streamlining and categorizing, which would benefit from further discussion.

Proposals

There was a convergence of views that proposals in relation to the establishment or designation of ABMTs, including MPAs, would only be submitted by States Parties, possibly in collaboration with other States, including States entitled to become Parties, and stakeholders. Further discussion will be needed on the specific elements to be reflected in proposals, as many different alternatives were put forward in this regard, as well as on whether these elements should be included in an annex to the agreement and/or whether they would need to be further elaborated in the future by the bodies established under the agreement.

Consultation and assessment

Among delegations supporting a role for the bodies established under the agreement in the identification and/or establishment of ABMTs, including MPAs, there was general convergence on providing for an open, inclusive and transparent consultation and assessment process in Part III, which would include many of the elements reflected in article 18. Various constructive proposals were put forward to refine and streamline the text, which would benefit from further consideration in future discussions. Important questions were also raised about how the text balances providing for revision of proposals and possible repetition of the consultation process, respecting the procedures of relevant instruments, frameworks and bodies, and providing for an efficient and time-bound consultation process. The sequencing of the consultation and assessment process, in particular, the appropriate point, or points, in the process when the proposal should be submitted to a scientific and technical body for assessment, and whether a preliminary review might be desirable, are also matters requiring further discussion.

Implementation

Regarding implementation, there was general convergence on the need to incorporate some form of article 20 in the instrument, but different views were expressed on which of the elements currently reflected in that article should be retained. Delegations' views on this point were informed by their different perspectives on institutional arrangements with respect to ABMTs, including MPAs, and in particular the role that the bodies established

under the instrument would play (if any) vis-à-vis relevant instruments and frameworks, and relevant global, regional and sectoral bodies. As I have already indicated, this fundamental question will need to be a focus of attention going forward.

Monitoring and review

With respect to monitoring and review, views were expressed in support of each of the three alternatives reflected in the text of article 21.

Among delegations supporting a role for the bodies under the agreement in the establishment or designation of ABMTs, including MPAs, there seemed to be a general preference to work on the basis of the first alternative, which provides for the following three elements: reporting by States Parties on implementation; monitoring and review by a scientific and technical body; and decision-making by the Conference of the Parties with regard to amendments and/or revocation of ABMTs.

Some support was also expressed for the second alternative text which provides that the proponent State should take the lead in monitoring measures and that measures would be time-bound and terminate automatically.

Delegations who do not favour a role for the bodies under the agreement in the establishment or designation of ABMTs, including MPAs, did not favour any of the alternatives reflected in article 21 as a whole, but had different models in mind which incorporated various aspects of those three alternatives.

Going forward, this issue would benefit from further consideration.

Drafting questions

Some general drafting questions will be relevant across all provisions of Part III. A general preference was expressed for removing all references to the term “existing” in relation to relevant instruments and frameworks, and relevant global, regional and sectoral bodies, and for including a reference to “subregional” bodies. As for the use of “establishing” or “designating” in relation to ABMTs, including MPAs, a general preference was expressed for using whichever term encompassed the whole process.

Madam President,

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.

III. Informal working group on environmental impact assessments

I am pleased to report on discussions in the Informal working group and informal informals on environmental impact assessments (EIAs), which proceeded on the basis of Part IV of the President’s draft text.

The Informal working group met on Thursday, 22 August, and Thursday, 29 August, and discussed articles 30 to 32 and 34 to 37. Informal informals were held on Wednesday, 21 August; Friday, 22 August; Monday, 26 August; Tuesday, 27 August; and Wednesday, 28 August.

Our discussions were informed by drafting proposals submitted by delegations to the Secretariat, which are reflected in nine conference room papers.[3] I wish to thank delegations for their constructive proposals, and for their active engagement in working to refine and further develop the draft text.

Let me now turn to my overview of the main issues discussed, in terms of progress achieved and areas which could, in my view, benefit from further consideration.

Overall process

During the course of these two weeks, text-based negotiations helped develop a clear understanding of the various options presented for each step in the EIA process set out in Part IV, as well as how the various provisions fit together. As a result, potential opportunities for further streamlining the text which merit further consideration have been identified, including removing alternatives that no longer enjoy support and merging provisions where appropriate.

Different views continue to be expressed regarding the degree to which the EIA process should be "internationalized", for example, by assigning roles to the Scientific and Technical Body or the Conference of Parties. Questions remain regarding whether additional guidance may be required to facilitate the implementation of various provisions on EIAs, and how such guidance should be developed. Finally, additional focused discussions will be needed to overcome divergent positions in relation to some of the key operational provisions, such as thresholds and criteria and the relationship with EIA processes under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies (relevant processes).

Text based discussions also allowed delegations to begin focusing on questions regarding consistency in drafting, as well as the risk of using different terms interchangeably. For example, delegations identified the need to consider carefully when to use "a State Party" or "States Parties", "impacts" or "effects", "this Part" or "this Agreement" as well as the consequences of such a choice.

Delegations also discussed the consequences of different options for referring to particular provisions of the Convention, "obligations under the Convention" and "in accordance with" or "consistent with" the Convention. Further discussions on whether and how to incorporate references to "economic, social, cultural and health impacts", "adjacent States", "small island developing States" and "traditional knowledge" throughout Part IV are also needed. The incorporation of "subregional" into references to "global, regional and sectoral bodies" throughout the text also received some support.

Let me turn now to more specific aspects.

Objectives, Obligation, Thresholds and Criteria

A proposal to include a new article **on objectives of EIAs**, was widely supported in principle, though its content requires further consideration.

There was broad support for a provision on the **obligation to conduct EIAs** although further discussion is needed on the specific drafting of the article. Support continued to be expressed for both the "impact-oriented" and "activity-oriented" approach to determining which activities would be covered. This vital issue, which relates to the scope of Part IV, would benefit from further consideration.

[3] An additional CRP was issued on 30 August after the delivery of this oral report.

In regard to **thresholds and criteria for EIAs** various options continued to be supported, including adopting the threshold contained in article 206 of the United Nations Convention on the Law of the Sea (the Convention), and a stricter standard which requires EIAs for any planned activity with more than a minor or transitory effect, or a tiered approach that would require a less extensive EIA process for activities that surpassed a lower threshold, and a full/comprehensive EIA for activities that meet the article 206 threshold. Further discussions are needed on this important topic, as well as whether to include a non-exhaustive list of criteria to guide States in applying the article 206 threshold, and the role, if any, for bodies established under the agreement to further elaborate the threshold and criteria.

Relationship

There was some discussion on whether there was a need for a provision on the relationship between the EIA process in the agreement and those under other relevant processes, in light of the overarching obligation currently set out in article 4. Further discussions are needed on how exactly the EIA process under the agreement would relate to those under other processes to avoid duplication, as different options continued to enjoy support. I suggested that rather than providing that the Agreement would set minimum global standards for the conduct of EIAs, as currently proposed, further consideration could be given to the development of "common standards" through a collaborative process with other relevant processes.

Cumulative impacts, Transboundary impacts, and Areas identified as ecologically or biologically significant or vulnerable

With regard to the type of impacts that should be taken into account in the conduct of EIAs, there was broad support for references in the text to **cumulative impacts** and **transboundary impacts**; however, particularly with respect to 'transboundary impacts', the need for a separate article was questioned by some as well as the terminology. Furthermore, it was also clear that further discussion on how these impacts would be taken into account as well on the level of specificity to be included in the text would be beneficial. Questions were also raised regarding the definition of cumulative impacts, which would also benefit from further consideration. Delegations agreed that the provision on **ecologically or biologically significant or vulnerable** areas, as currently drafted, was not needed**.** A new proposal, reflecting a different approach for addressing areas identified as requiring protection, was introduced to replace the provision in its entirety.

Strategic impact assessments and List of activities that require or do not require an EIA

Growing support was expressed for the inclusion of a provision on **SEAs**, but questions remained about how SEAs would be implemented in practice. A proposal to make the preparation of SEAs voluntary was put forward. Discussions on the definitions of "Environmental Impact Assessment" and "Strategic Environmental Assessments" demonstrated that both terms would benefit from further consideration.

Different views were expressed on the need for a **list of activities that require or do not require an environmental impact assessment,** with some delegations supporting the inclusion of a list, and others requesting its exclusion.

I encouraged delegations to consider the possibility of an enabling clause in the agreement that would permit or direct the Conference of the Parties to take up SEAs and a negative and/or positive list of activities at a later stage.

Screening, Scoping, Impact assessment and evaluation, Mitigation, prevention and management of potential adverse effects, Public notification and consultation, Preparation and content of EIA reports, Publication of assessment reports, Consideration and review of assessment reports

Support was expressed for including a provision addressing **screening**, but there was also some support for addressing the issue through guidelines. Among those who favoured a provision, there appeared to be convergence that the State should bear responsibility for the screening and that the outcome of the screening process should be made publicly available. If a provision is included then further discussions are needed regarding whether it should explicitly address areas that have been identified for their significance or vulnerability, and whether a scientific and technical body under the agreement should review screening determinations.

There was wide support to include a provision in the agreement establishing **scoping** as a step in the EIA process. The question was raised as to who would undertake the scoping exercise, with some delegations suggesting that the obligation be on States to "ensure" that scoping is conducted, with others expressing support for the scoping procedure to be established as a collective effort. This is of course also connected to the broader question of whether or not the EIA process should be "internationalized". Different views were also expressed regarding the level of detail to be set out in this provision. While support was expressed for the inclusion of the identification of key environmental impacts, different views were expressed on whether to retain the various elements in square brackets.

There was general agreement on the inclusion of a provision requiring the conduct of **impact assessment and evaluation**, though further discussion is needed on whether it should set out specific rules in this regard or provide that States establish relevant procedures, and on whether there would be a role for bodies under the agreement.

There was general convergence on including a provision on transparent and inclusive **public notification and consultation** in the EIA process, though further discussions are necessary on the exact nature and the modalities of such a process and on a proposal to change the title of the article.

There was also wide support for a requirement for the **publication of reports**, consistent with the Convention, either directly, through the clearing-house mechanism, the Secretariat or a dedicated registry.

Regarding the provision on the establishment of procedures for **mitigation, prevention and management of potential adverse effects**, questions were raised about both the intent and drafting of the provision, in particular, whether it is meant to address a part of the assessment process or the subsequent decision process.

Another aspect which would require further discussion is whether there is a role for the Scientific and Technical Body to **consider and review EIAs**, or a percentage of EIAs, possibly with a view to building an information or best practice repository.

Decision-making

On decision-making, further consideration is needed regarding whether bodies established under the agreement should play any role in deciding whether an activity should be allowed to go forward following the EIA. There was however general support for enhancing transparency in the decision-making process, and growing support for decision-making documents being made publicly available, but further discussion is required on the modalities for this.

Monitoring, Reporting and Review

There appeared to be convergence on the need to include a provision on **monitoring**, and that the responsibility for monitoring should rest with a State Party and not the proponent of an activity. Proposals made for simplifying the text, aligning it more closely with article 204 of the Convention, and for merging the provisions on monitoring and reporting would benefit from additional consideration.

While there appeared to be convergence on the inclusion of a provision on **reporting** on the impacts of authorized activities, additional consideration is needed regarding the scope of the obligation to report, including its link to provisions on monitoring and threshold, as well as article 204 of the Convention. Moreover, while there was broad support for making any reports publicly available, either through a secretariat or the clearing-house mechanism, different views were expressed regarding the potential role of relevant global, regional and sectoral bodies in reporting, and the role of bodies to be established under the agreement in receiving reports.

While there was substantial support for including a provision on **review**, divergent views still exist regarding the substance of such a provision. There seemed to be convergence towards States Parties bearing responsibility for ensuring the review of the environmental impacts of an authorized activity, but further consideration regarding potential additional steps would be beneficial. Divergent views were expressed regarding a possible role in the review process for bodies under the agreement.

There was no support expressed for the inclusion of a non-adversarial consultation process in the review provision, although some saw value in its possible inclusion as part of the dispute settlement or compliance provisions of the agreement. However, in the context of the discussion on the environmental impact assessment process, this issue was taken up again and it appeared that delegations would like to further discuss the role of public notification and consultation in respect of monitoring, reporting and review.

Madam President,

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.

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

I am pleased to report to you on the discussions held with respect to the provisions on capacity-building and the transfer of marine technology in the 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 annexed to the Note by the President and contained in document A/CONF.232/2019/6.

Discussions were held on 20 and 26 August 2019 through the convening of three meetings of the Informal working group and one session of informal informals.

The discussions proceeded on the basis of Part V of the draft text. Discussions also extended to related provisions in Part I on use of terms. Furthermore, preliminary deliberations also took place on article 51 on the clearing-house mechanism in Part VI, with a focus on those paragraphs that include specific references to capacity-building and

the transfer of marine technology. Proposals submitted by delegations in writing were included in two conference room papers.[4]

At the outset, I would like to thank Madam President for facilitating the work on capacity-building and the transfer of marine technology while I was away. My appreciation also goes to all delegations for their active engagement in the discussions and for making concrete textual proposals.

I would like to note that overall, progress was made in the Informal working group in relation to a number of articles and paragraphs. I heard proposals from States which could provide a possible way forward on substantive matters. There seemed to be convergence around the inclusion of certain drafting suggestions, such as deleting some of the references to "existing" in relation to legal instruments and frameworks, and adding a reference to the "subregional" level in relevant provisions. It was also encouraging to hear proposals for streamlining the text and reducing duplication. I would encourage delegations to study the proposals put forward. While there was a constructive exchange of views on issues relating to modalities for capacity-building and the transfer of marine technology, there still remains work to be done with regard to clarifying and elaborating on the obligations in this respect. There is also a need for further consideration and deliberation on the relationship between the future agreement and the United Nations Convention on the Law of the Sea, including to what extent the provisions in the agreement should operationalize relevant articles in the Convention.

In my summary, I will highlight further those areas where I believe progress was made, and those areas where further focused discussion would be beneficial.

Objectives

With regard to the objectives of capacity-building and the transfer of marine technology, there was general convergence towards including most of the provisions proposed in the draft text. Delegations identified specific areas where duplication could be reduced, and the text streamlined. Nevertheless, further discussions are required on whether to include a reference to "peaceful purposes" in relation to access to, and transfer of, marine technology. There is also a need for further deliberations on the relationship between the objectives and the obligations under discussion in other parts of the draft text, with a view to clarifying those obligations and determining to what extent capacity-building and the transfer of technology could assist in their implementation.

Cooperation in capacity-building and transfer of marine technology

Regarding cooperation, there was general convergence towards including provisions on cooperation in capacity-building and the transfer of marine technology which would take place at all levels, including through global, regional, subregional and sectoral bodies. From the discussions I heard, I would suggest that there could be a way forward in response to concerns regarding the imposition of obligations on industry and the private sector, and I would encourage further consideration of this issue. Further deliberations are needed on the nature of any obligation to cooperate, such as whether there should be a duty to "ensure" or "promote" cooperation, whether to include a reference to the Convention, and how the interests of non-States parties to the Convention could be taken into account. Further consideration is also needed on the various categories of States whose special requirements would be recognized under the agreement.

Modalities for capacity-building and the transfer of marine technology

[4] An additional CRP was issued on 30 August after the delivery of this oral report.

As regards modalities for capacity-building and the transfer of marine technology, there was general agreement that capacity-building and the transfer of marine technology should respond to needs. There was also support for streamlining the text. Views were expressed in this respect that there was some duplication with regard to the provisions on modalities, and delegations made concrete proposals as to how that duplication could be reduced.

However, further deliberations are needed on a number of issues, including whether capacity-building is to be provided only on a voluntary or a mandatory and voluntary basis. Delegations are invited to elaborate on the circumstances in which each alternative might apply, and the associated practical implications. Further discussions will also be needed on the implications of a requirement not to duplicate existing efforts; on the level(s) and/or mechanisms through which needs should be identified and assessed; on who should be able to benefit from capacity-building and the transfer of marine technology; and on the role of the Conference of the Parties in elaborating modalities for capacity-building and transfer of marine technology and the timing for such elaboration. The terms and conditions upon which capacity-building and the transfer of marine technology should be provided also require further detailed consideration.

Types of capacity-building and transfer of marine technology

There was general convergence on the categories of types of capacity-building and transfer of marine technology set out in article 46 of the draft text, and on the Conference of the Parties, its subsidiary, or other appropriate body, having some role with regard to determining such types. However, further consideration needs to be given to whether a list of types should be contained in the instrument itself, whether a more detailed list should be included in an annex, and/or whether the list should be developed by the Conference of the Parties and, if so, the timeline for the list's development. A question was also raised regarding the process for amending the list.

Monitoring and review

Turning to monitoring and review, the need for some review relating to capacity-building and the transfer of marine technology was generally recognized. There also seemed to be some convergence on the aims of such a review. However, further consideration is needed as to whether any review should be voluntary or mandatory and whether reference should be made to monitoring in the agreement. Different views were also expressed regarding the intended scope of the review, who would undertake such a review, and whether to provide for performance measurement. These issues require further consideration. In addition, delegations are invited to consider, going forward, what kind of reporting requirements would be needed, if any, and who would provide such reports. There was some convergence of views that any such reporting requirements should not be overly onerous. Delegations are encouraged to consider the various proposals put forward and whether progress could be made on the basis of those proposals.

Clearing-house mechanism

The discussions on the clearing-house mechanism were divided between the cross-cutting Informal Working Group, which considered questions of design and modalities, and the Informal Working Group on capacity-building and the transfer of marine technology, which considered the functions of such a mechanism.

In the preliminary discussions that took place on the clearing-house mechanism, there appeared to be some convergence on the desirability of establishing such mechanism.

There was some support for including functions relating to each of the substantive parts of the agreement, as well as for the Conference of the Parties having a role in expanding those functions. Further discussions will be required on whether the functions should be specified in the article on the clearing house mechanism or whether they should be placed in the relevant parts of the agreement. Further consideration should also be given to the need for and role of a network of experts and practitioners, whether the platform should store scientific data and information or merely provide links to other sources, and whether the mechanism should play an active role in, for instance, collecting information, facilitating cooperation and matching capacity-building needs with the support available.

Definitions

Finally, with regard to definitions, there was general support for reducing duplication and ensuring that definitions were consistent, including with regard to substantive provisions in the draft text. Further consideration is needed on whether specific definitions of capacity-building, marine technology and transfer of marine technology are necessary or useful, and whether definition-type language could be better placed in the provision on types of capacity-building and the transfer of marine technology. Going forward, delegations could consider whether consolidating conceptual language across different provisions would be possible.

Madam President,

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.

V. Informal working group on cross-cutting issues

I am pleased to report on the discussions of the Informal working group on cross-cutting issues. The Informal working group met on 19, 28 and 29 August. Informal informals on cross-cutting issues were held on 27 August.

The discussions both in the Informal working group and in the informal informals proceeded on the basis of the draft text of an agreement contained in document A/CONF.232/2019/6. Proposals submitted by delegations in writing were included in four conference room papers on cross-cutting issues.[5]

At the outset, I wish to say that I am very pleased with the readiness of delegations to engage with the text in a constructive manner in order to identify textual solutions to the issues before us. I note that given the nature of the issues being discussed, the views expressed were preliminary in nature and there will be a need to circle back to these issues, in light of further discussions on the substantive elements. The discussions were very helpful in further clarifying the various approaches favoured by delegations and identifying areas where further streamlining or focused discussions could take place. 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 and in terms of progress achieved and areas that require further consideration, taking into account progress in the substantive sections of the text.

Objective

[5] An additional CRP was issued on 30 August after the delivery of this oral report.

Concerning the objective of the agreement, there seemed to be general support for referring to the "general" objective in the title, bearing in mind that substantive sections of the agreement may also include their own objectives. While support was expressed for this provision, a number of proposals to adjust the text will require further discussion, including whether the objective should be the "long-term" conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, noting concerns that this could exclude short-term measures. Further discussions will also be required on whether international cooperation and coordination should be part of the objective, in light of suggestions that references to international cooperation and coordination in the agreement could be consolidated. A suggestion was also made that the objective could be expanded to include a reference to the sharing of benefits.

Application

With regard to application, there was general convergence on applying the agreement to areas beyond national jurisdiction, while further discussions will be required on the exact formulation of the relevant provision, including possible language regarding specific activities and non-application to enclosed or semi-enclosed seas or maritime areas within 200 nautical miles.

Further discussions will also be required on whether to address sovereign immunity, as well as on a proposal to include a new provision on non-retroactivity of the agreement.

Relationship

Concerning the relationship between the agreement and the United Nations Convention on the Law of the Sea and other existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, there was general convergence towards deleting the word "existing", noting that this would apply throughout the agreement. Support was also expressed for adding a reference to "sub-regional" bodies.

There was general support for the agreement to be interpreted and applied in the context of and in a manner consistent with the Convention. However, further discussions will be needed on whether to also add a requirement for consistency with other international law and on whether to specify that nothing in the agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. There also seemed to be general support for a provision setting out the need to respect coastal States' rights and jurisdiction, possibly as a standalone provision. Discussions will be required on whether to specifically refer to the continental shelf within and beyond 200 nautical miles and the exclusive economic zone.

A number of proposals were made in relation to how to address the need to not undermine relevant instruments, frameworks and bodies, which I understand were aimed at further clarifying how this may work in practice. This issue will require further consideration.

While it was generally recognized that the agreement would not affect the legal status of non-parties to the Convention, further discussions will be required on whether or not to include a specific provision in the agreement, including its placement. In that regard, I noted some proposals to address this issue, including by reflecting this in the preamble.

General principles and approaches

There seemed to be general convergence towards the inclusion of some general principles and/or approaches of relevance to the agreement as a whole. Further discussion will be

required concerning the content and placement of such principles and/or approaches, with suggestions to separate them and to limit principles to those that are well-established in international law. There seemed to be convergence towards not including accountability, flexibility, pertinence and effectiveness. A number of suggestions were made to include other principles and approaches, including the common heritage of mankind, equity, the precautionary principle/approach, an ecosystem approach, as well as other principles and approaches.

International cooperation

With regard to international cooperation, there seemed to be broad support to set out the obligation for States Parties to cooperate for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with drafting suggestions made to adjust the wording related to cooperation among existing instruments, frameworks and bodies. Further discussions will be required, however, on whether to highlight specific issues requiring international cooperation, such as marine scientific research and the transfer of marine technology, including by reference to specific articles of the Convention, and, if so, on the placement of such a provision. Views also differed on whether to address cooperation to establish new bodies.

Institutional arrangements

Conference of the Parties
There was general support for the establishment of a Conference of the Parties and for it to be convened within one year of entry into force of the agreement. Further discussions will be required on the adoption of its rules of procedure and decision-making modalities, including on proposals to deal with issues concerning decision-making and transparency in standalone articles. There was also general support for setting out the main functions of the Conference of the Parties in the agreement, although further discussion will be required on these functions, including its role in reviewing the adequacy and effectiveness of the provisions of the agreement, in light of developments in the other parts of the agreement.

Scientific and Technical Body/Network
There seemed to be convergence towards the establishment of a scientific and technical body, although I also noted opposition. Support was expressed for the possibility for that body to draw on advice from other arrangements, scientists and experts, as well as for including a streamlined list of functions in the agreement. Further discussions will be required on the composition of the body and the main functions to be set out in the agreement, also in light of developments in other parts of the agreement.

Secretariat
General support was also expressed for a secretariat under the agreement, the functions of which would be set out in the agreement. Further discussion would be required on the designation of the secretariat and on its functions, noting that a preference was expressed to restrict these to administrative and logistical functions. The Under-Secretary-General for Legal Affairs and United Nations Legal Counsel was requested to provide information, at the next session of the Conference, on the resources that would be required for the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, to serve in this role.

Clearing-house mechanism
The discussions on the clearing-house mechanism were divided between the cross-cutting Informal Working Group, which considered questions of design and modalities, and the

Informal Working Group on capacity-building and the transfer of marine technology, which considered the functions of such a mechanism.

There seemed to be general convergence on the desirability of establishing a clearing-house mechanism, which could be a web-based platform, with the specific modalities to be determined by the Conference of the Parties, but bearing in mind the need to "future-proof" the mechanism. Further discussions will be required on the possible role of a network of experts and practitioners in the context of both a clearing-house mechanism and a scientific and technical body. There was general support for access to a clearing-house mechanism to be facilitated for all States. While support was also expressed for recognition of the special circumstances of specific categories of States, further discussion will be needed as to the categories so recognized. Further discussion will also be required concerning which entity would manage the mechanism and whether to reflect a concern for the protection of confidential information.

Financial resources

There was general convergence regarding the idea that funding could be provided through a range of sources. Further discussions will be required on whether funding should be voluntary only or mandatory as well in order to support the institutions under the agreement or also to assist developing States in the implementation of the agreement. Further discussions will also be required on whether funding should be adequate, accessible, transparent, sustainable and predictable. Delegations seemed to converge towards the establishment of a voluntary trust fund. Divergent views were expressed, however, regarding the alternative options to establish a special fund or for States Parties to cooperate to establish an appropriate funding mechanism, with a further view expressed that such matters should be decided upon by a Conference of the Parties. Concerning access to funding, further discussions will be required on whether developing States should be granted preference by international organizations in the allocation of funds and technical assistance, as well as the recognition of the special circumstances of certain categories of States.

Implementation and compliance

Regarding implementation and compliance, further discussions will be required on whether or not to include provisions on implementation, including on whether these should also address compliance, and, if so, how. Views were expressed that these issues would need to be considered at a later stage, once the substantive obligations in the agreement have been agreed upon. The most appropriate placement to address such issues would also need further consideration, with different views expressed that such provisions could be streamlined with the substantive obligations or the monitoring and review provisions in the respective parts of the agreement. Discussions would also be beneficial on how to address possible reporting requirements and ways to ensure that these do not become burdensome. A proposal was made to include a separate article on transparency.

Settlement of disputes

There was general support for a provision recognizing the obligation to settle disputes concerning the interpretation or application of the agreement by peaceful means. There was also convergence regarding the inclusion of provisions concerning the procedures for dispute settlement. However, further discussions will be required on whether to use the

procedure set out in Part XV of the Convention. In this regard, suggestions were also made that the International Tribunal for the Law of the Sea could serve as the default procedure for dispute settlement rather than arbitration, and that the Tribunal could be requested to provide advisory opinions. Views were also expressed that the situation of non-parties to the Convention must be accommodated in order to encourage universal participation in the agreement.