

## BBNJ ICG-5

### Informal informals on environmental impact assessments

#### Oral Report of the Facilitator

26 August 2022

1. We concluded our work, for now, on environmental impact assessments (EIAs), and I am pleased to be able to report today on the impressive progress we have made over the past two weeks. I thank the participants for their flexibility and their willingness to work and accommodate concerns of other delegations.
2. **On definitions**, we looked at all the definitions in article 1 that are relevant for Part IV. Two of those definitions were deleted: “strategic environmental assessment” and “activity under a State’s jurisdiction or control”. The other two definitions (on “environmental impact assessment” and “cumulative impacts”) were revised in a small group led by Norway, and I commend the group for delivering compromise results in a short time.
3. **On article 21bis**, almost all the delegates support having this article on objectives. The small group led by Trinidad and Tobago presented an updated draft on this article, which we further revised and streamlined during yesterday’s session.
4. **On Article 22**, thanks to the small group led by Norway and the valuable suggestions of delegations, we have been able to find a way forward on the longstanding issue of whether the part on environmental impact assessments should refer to a “planned” or a “proposed” activity. Consistent with the wording in UNCLOS, we are using “planned activity” throughout Part IV now, and to address the concerns of those who perceive a “planned” activity to be potentially already authorized, we have inserted language in paragraph 1 to clarify that planned activities must be assessed before they are authorized. We also moved the former article 23, paragraph 6, to article 22, and considered three options as a compromise for the scope of Part IV, that is whether the scope would be based on activities or impacts in areas beyond national jurisdiction.
5. **On article 23**, I am pleased with the progress the small group led by Singapore has made in streamlining this complex article on the relationship between the agreement and EIAs under other relevant legal instruments, frameworks and bodies. The most difficult issue in this article we still need to resolve is the role of the Scientific and Technical Body and the Conference of the Parties, and whether it should be able to develop binding global minimum standards, or only non-binding guidelines or guidance.
6. **On Article 24**, the central controversial question of whether there should be a tiered approach on the threshold, and if so, what should constitute the tiers, still needs to be resolved. However, a list of factors to be taken into account was developed and included in the text.
7. **On Articles 30, 34 and 35**, I want to thank the small group led by Canada which presented a useful proposal for further streamlining these three articles on the conduct of the environmental impact assessment process.

8. **On Article 38**, delegations remain divided on the central question on decision-making, but compromises are being considered, such as the so-called 'calling mechanism', contained in Article 30, which could be useful, in an expanded form, to address the concern related to so-called 'environmental impact assessments of convenience'.

9. **On articles 39, 40, 41 and 41bis**, the negotiations have enabled us to streamline the text and resolve some of the non-controversial issues in these provisions on monitoring, reporting and review. Some additional work is needed to clarify the role of the Scientific and Technical Body and the Conference of the Parties.

10. **On Article 41ter**, a provision on strategic environmental assessment for plans and programmes as well on strategic environmental assessment for regions was developed in a small group led by the UK. The question whether strategic environmental assessments should be voluntary or mandatory still needs to be resolved, but there is also a potential compromise, which would refer to "shall consider".

11. Madame President, looking back at the past two weeks, I think we have made impressive progress on environmental impact assessments. The previous version of this draft that we had going into this session was rather complicated with a lot of brackets and many options, and we streamlined a lot of that and removed most of the options. We also resolved some contentious issues, such as the wording of "planned" vs. "proposed".

12. I want to thank all delegates for their hard work and dedication, and in particular those who participated in the small groups I assigned homework to which were led by Trinidad & Tobago, EU, Singapore, Canada, the UK and Norway.

13. However, there was not enough progress on the three major issues, namely the questions of decision-making, the impact vs. activity-based approach, and the thresholds for environment impact assessments, to bring Part IV of the agreement over the finish line. I am looking forward to continuing the work on this and, in the spirit of compromise, I am confident that we will be able to resolve these issues in the future.