

BBNJ Treaty Negotiations 2019

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Abstract

Substantive negotiations began in 2019 on an internationally legally binding instrument under the Law of the Sea Convention for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction with two two-week sessions. These negotiations were held pursuant to UN General Assembly resolution A/72/249 of 24 December 2017. This chapter brings up to date the intergovernmental conference previously described in the author's chapter in the Center for Ocean Law and Policy's book on its annual conference in Beijing in mid-2018, 'BBNJ: Developments since Yogyakarta.' The chapter describes the two substantive sessions held in 2019: 25 March–5 April and 19–30 August 2019.

Keywords

marine biological diversity – intergovernmental conference – areas beyond national jurisdiction – treaty negotiations – marine genetic resources – area-based management tools – environmental impact assessment – capacity-building – marine technology

1 Background

The immediate three previous annual conferences of the Center for Oceans Law and Policy of the University of Virginia School of Law have included examination of various issues involved in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ), in 2016 at UN Headquarters in New York,¹ in 2017 in Yogyakarta,

1 In two chapters by Dire Tladi, 'The Common Heritage of Mankind in the Proposed Implementing Agreement,' and J. Ashley Roach, 'Update on the BBNJ Negotiations,' in *Legal Order in the World's Ocean: UN Convention on the Law of the Sea*, Myron H. Nordquist, John Norton Moore and Ronán Long (eds.), (London & Boston: Brill Nijhoff, 2018), pp. 72–90 and 91–123 respectively.

Indonesia,² and in 2018 in Beijing.³ The final two sessions of the Preparatory Committee were held in 2017 and the first two sessions of the Diplomatic Conference were held in 2018. This Chapter describes the two substantive negotiating sessions of the Intergovernmental Conference (IGC-2 and IGC-3) that were held in two two-week periods in the spring and summer of 2019.

2 Introduction

In resolution A/69/292, 19 June 2015, the General Assembly decided to convene a preparatory committee (PrepCom) of four sessions to develop an internationally legally binding instrument (ILBI) under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) on conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ).⁴ Two sessions were held in 2016 and two in 2017. Thereafter, notwithstanding the failure to reach consensus on any issue at the PrepCom, on 24 December 2017, the UN General Assembly by resolution A/72/249 decided to convene a diplomatic conference (DipCon) for the same purpose of *at least* four sessions preceded by an organizational session in New York 16–18 April 2018. The first substantive session (IGC-1) was held 4–17 September 2018. The second and third substantive sessions were held for 10 working days each 25 March–April 2019 and 19–30 August 2019, and the fourth substantive session

2 In four chapters: by Kristine Dalaker Kraabel, 'The BBNJ PrepCom and Institutional Arrangements: The Hype about the Hybrid Approach'; by Su Jin Park, 'The Legal Framework and Relevant Issues on the Marine Protected Areas in the Areas beyond National Jurisdiction'; by A. Gusman Siswandi, 'Marine Genetic Resources beyond National Jurisdiction and Sustainable Development Goals: The Perspective of Developing Countries'; and by Robin Warner, 'Realising Biodiversity Conservation and Sustainable Use in Southern Hemisphere Oceans beyond National Jurisdiction: Challenges and Prospects,' in *The Marine Environment and UN Sustainable Development Goal 14: Life Below Water*, Nordquist, Moore and Long (eds.), (London | Boston: Brill Nijhoff, 2019), pp. 137–172, 173–193, 194–226 and 111–136 respectively.

3 In two chapters: by Ronán Long and John Brincat, 'Negotiating a New Marine Biodiversity Instrument: Reflections on the Preparatory Phase from the Perspective of the European Union,' and the other by this author on 'BBNJ: Developments since Yogyakarta,' in *Cooperation and Engagement in the Asia-Pacific Region*, Nordquist, Moore and Long (eds.) (London | Boston: Brill Nijhoff, 2020), pp. 443–468 and 469–506 respectively.

4 For a comprehensive first-hand account of the process leading up to the convening of the PrepCom see Kristina M. Gjerde, 'Perspectives on a Developing Regime for Marine Biodiversity Conservation and Sustainable Use beyond National Jurisdiction,' in Harry N. Schreiber, Nilufer Oral and Moon-Sang Kwon (eds.), *Ocean Law Debates: The 50-Year Legacy and Emerging Issues for the Years Ahead* (Leiden|Boston: Brill Nijhoff, 2018), pp. 354–380.

in the first half of 2020 on dates to be decided. The resolution is silent on future substantive sessions. If needed, that would also require future decisions by UNGA.⁵ The parameters set for the PrepCom were repeated for the DipCon, as follows.

The work and results of the conference should be fully consistent with the provisions of UNCLOS (para. 6). The process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies (para. 7). The conference shall be open to all States Members of the UN, members of specialized agencies and parties to UNCLOS (para. 8). The resolution stressed the need to ensure the widest possible and effective participation in the conference (para. 9). Neither participation in the negotiations nor their outcome may affect the legal status of non-parties to UNCLOS or any other related agreements with regard to those instruments, or the legal status of parties to UNCLOS or any other related agreements with regard to those instruments (para. 10). For the meetings of the DipCon the participation rights of the EU are the same as at the Meetings of States Parties to UNCLOS (para. 11). Attendance as observers is permitted by IGOs, NGOs and UN specialized agencies, organizations, funds and programs (paras. 12–15). The conference is to exhaust every effort in good faith to reach agreement on substantive matters by consensus (para. 17),⁶ but failing that by two-thirds majority of representatives present and voting (para. 19).⁷

5 As was done for the sessions of UNCLOS III. In contrast, the resolution convening the fish stocks conference, resolution A/47/192, 22 Dec. 1992, para. 1, limited its duration to less than two years (“convene in 1993 ... should complete its work before” the 49th session of the General Assembly in November 1995). The fish stocks agreement was adopted 4 August 1995 and has not received nearly as many ratifications (90) as the LOS Convention (168).

6 There is no agreed UN definition of “consensus”. Two treaties include various formulation of such a definition. It is defined in the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (“Antigua Convention”), article 1(5): “consensus” means the adoption of a decision without voting and without the expression of any stated objection. “Consensus” is defined in article 20(1) of the 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean as “the absence of any formal objection made at the time the decision was taken”.

7 This is very similar to the “Gentleman’s Agreement” made by the President and endorsed by the Conference at its 19th meeting on 27 June 1974, A/CONF.62/30/Rev.3, Rules of Procedure, Appendix, p. 17. Rule 37 also called for a cooling off period before the vote was to be taken. The multiple sessions of UNCLOS III were necessary to reach consensus on the package deal. Consensus was not reached at the fish stock conference because of its limited duration.

3 Organizational Meeting

Pursuant to paragraph 5 of resolution A/72/249, the UNGA President, after open and transparent consultations, nominated Ms. Rena Lee of Singapore as President-designate of the conference. On 16 April 2018 she was elected President of the Conference by acclamation. Ambassador Lee is the newly appointed Ambassador for Oceans and Law of the Sea issues and Special Envoy of the Singapore Foreign Minister.

The further proceedings of this organizational session as well as the first substantive session (IGC-1) in September 2018 are described in my earlier chapter (note 3) and need not be repeated here.

4 Second Substantive Session (IGC-2)

To assist delegation in preparing for IGC-2, the President issued her Aid to Negotiations in October 2018.⁸ This extensive compilation of previous proposals was organized along the lines of the President's 2018 Aid to Discussions.⁹ Its principal components were the sections on the four elements of the 2011 "Package": marine genetic resources, area-based management tools, environmental impact assessments, and capacity building and transfer of marine technology, as well as cross-cutting issues. Each of the sections contained major elements and components as well as many textual options. The structure and subject headings of these sections suggested similar provisions may appear in the zero draft of the ILBI.

4.1 *Program of Work*¹⁰

As at IGC-1, after general remarks in plenary, discussion of each of the four elements of the package and cross cutting issues were facilitated in informal working groups.¹¹ The facilitators presented their reports on the last day of IGC-2. The President then gave her concluding remarks.

8 <http://undocs.org/A/CONF.232/2019/1>>. Reissued as A/CONF.232/2019/1*, 1 December 2018.

9 A/CONF.232/2018/3, 25 June 2018.

10 A/CONF.232/2019/3, 25 March 2019.

11 Many Delegations posted their interventions to the UN's PaperSmart website, <<http://papersmart.unmeetings.org/ga/bbnj-intergovernmental-conference/second-session/statements/>>.

4.2 *Facilitators Reports*

The Facilitators Reports do not provide a comprehensive summary of the extensive and complex discussions that took place, but rather give an overview of the main issues discussed and the general trends observed. They are appended to the President's closing remarks, as a matter of convenience.¹² They are set out in the following five sub-sections.

4.2.1 Marine Genetic Resources (MGR), Including the Sharing of Benefits

Ambassador Janine Elizabeth Coyo-Felson (Belize) summarized the work on MGR at IGC-2 as follows:¹³

The discussions proceeded on the basis of the President's aid to negotiations, more specifically section 3 of Part III of that document. The informal working group addressed section 3 in the following sequence:

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

Ambassador Felson welcomed the constructive engagement of delegations in focused text-based negotiations. On the basis of the President's Aid to Negotiations, the discussions in the Informal Working Group were very helpful in further clarifying the various proposals, and identifying areas where streamlining could take place, for example by merging certain options or sub-options or moving some paragraphs of a cross-cutting nature to other sections of the document. Delegations provided suggestions with respect to options which did not necessarily represent their preferred option. Ambassador Felson provided a brief overview of where matters stood in respect of the main issues discussed, in terms of progress achieved and areas which could, in her view, benefit from further consideration going forward.

4.2.1.1 *Introductory Paragraph*

A number of comments were made on the introductory paragraph of section 3 dealing with the relationship between UNCLOS and this Part of the instrument. There seemed to be convergence towards interpreting and applying the Convention and this Part/the instrument as a single instrument. Preference

¹² A/CONF.232/2019/5, 18 April 2019, *infra* note 17.

¹³ A/CONF.232/2019/5, Annex (1), pp. 5–8.

was expressed to reflect this in a general section applicable to the instrument as a whole. Further consideration as to whether the Convention or the instrument would prevail in the event of any inconsistency would be beneficial.

4.2.1.2 *Benefit-Sharing (Section 3.2.2)*

Ambassador Felson addressed the objectives of benefit-sharing and principles and approaches guiding benefit-sharing together, as the issues raised were somewhat similar. Preferences were expressed with respect to each of the options currently in the text, namely listing or not the objectives and principles and approaches guiding benefit-sharing in the section on marine genetic resources. With respect to the objectives currently listed, there seemed to be some convergence towards some objectives, in particular that benefit-sharing should contribute to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction and build the capacity of developing countries to access and use marine genetic resources. Other objectives will benefit from further consideration.

As regards the principles and approaches currently listed in the document, different views were expressed regarding the inclusion of the common heritage of mankind and the freedom of the high seas. Going forward, the placement and content of a list of objectives and of principles and approaches guiding benefit-sharing would benefit from further consideration.

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

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

There seemed to be some convergence towards the inclusion in the instrument of a provision regarding the purposes for which benefits might be used, and that benefits should be used to contribute to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction. The

inclusion of other purposes, however, received different levels of support and would benefit from further consideration.

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

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

4.2.1.3 *Intellectual Property Rights (Section 3.2.3)*

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

4.2.1.4 *Monitoring of the Utilization of Marine Genetic Resources of Areas Beyond National Jurisdiction (Section 3.3)*

Views were expressed in support of each of the two options in the text, namely setting out a monitoring mechanism in the instrument, or not. Going forward, this issue, in particular whether to reflect it in the text and, if so, how, would benefit from further consideration.

4.2.1.5 *Scope (Section 3.1)*

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

Geographical scope—views were expressed in support of each of the options set out in the text, namely referring to marine genetic resources of the high seas and the Area, accessed in areas beyond national jurisdiction, or

of the Area, with modifications proposed to some of these options and an additional option being introduced. Views differed on whether marine genetic resources of areas beyond national jurisdiction should be governed by a single regime or by different regimes for those of the high seas and those of the Area.

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

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

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

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

4.2.1.6 Access (Section 3.2.1)

There seemed to be some convergence towards including a general obligation to cooperate in the conservation and sustainable use of marine genetic

resources of areas beyond national jurisdiction, including questions on the sharing of benefits, with a suggestion made to place it in a general section of the instrument.

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

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

All these issues would benefit from further consideration.

4.2.2 Area-Based Management Tools (ABMTs), Including Marine Protected Areas (MPAs)

Ms. Alice Revell (New Zealand) summarized the work on ABMTs at IGC-2 as follows:¹⁴

The discussions proceeded on the basis of the President's Aid to Negotiations, specifically section 4 of Part III. The Informal Working Group addressed section 4 in the following sequence:

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

¹⁴ A/CONF.232/2019/5, Annex (II), pp. 8–12.

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

4.2.2.1 *Process in Relation to ABMTs, Including MPAs (Section 4.3)*

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

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

4.2.2.2 *Identification of Areas (Section 4.3.1)*

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

4.2.2.3 *Designation Process (Section 4.3.2)*

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

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

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

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

Scientific assessment—there seemed to be a convergence of views that assessment of a proposal needed to take place. However, the modalities for such assessment would benefit from further consideration, since views were expressed in support of each of the options set out in the text, namely, review by a scientific/technical body set forth under the instrument, a group of experts selected from a pool of scientific experts set forth under the instrument, an ad hoc scientific/technical body, an existing scientific/technical body, or

one or more independent scientists recognized under the instrument. Possible variations on those options were also put forward.

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

4.2.2.4 *Relationship to Measures under Relevant Instruments, Frameworks and Bodies (Section 4.2)*

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

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

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

There seemed to be a convergence of views that the instrument must not prejudice the rights of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, and that a provision be included to that effect. Whether the provision should be placed in the section on ABMTs, including

MPAs, or in the relevant cross-cutting sections of the instrument would benefit from further consideration, as would the potential inclusion of a provision clarifying that the instrument does not prejudice the rights, jurisdiction, freedoms and duties of States under the Convention.

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

4.2.2.5 *Implementation (Section 4.4)*

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

4.2.2.6 *Monitoring and Review (Section 4.5)*

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

4.2.2.7 *Objectives of ABMTs, Including MPAs (Section 4.1)*

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

4.2.3 *Environmental Impact Assessments (EIAs)*

Mr. René Lefeber (The Netherlands) summarized the work on EIAs at IGC-2 as follows:¹⁵

The informal working group addressed section 5 in the following sequence:

¹⁵ A/CONF.232/2019/5, Annex (III), pp. 13–16.

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

He was pleased by the constructive engagement and cooperative spirit of delegations in clarifying their positions on various options presented in the President's Aid to Negotiations, and commenting on options that did not necessarily fully represent their position. He particularly welcomed the concrete proposals made for streamlining the text and for avoiding duplication by moving parts of the text to other sections of the document.

4.2.3.1 *Environmental Impact Assessment Process (Section 5.4)*

As a general observation on the discussions on the EIA process, he noted that the President's Aid to Negotiations provided a very useful guide for our discussions. Moreover, it appeared to have captured all of the options and steps proposed by delegations.

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

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

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

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

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

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

4.2.3.2 *Content of Environmental Impact Assessment Reports (Section 5.5)*

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

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

4.2.3.3 *Monitoring, Reporting and Review (Section 5.6)*

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

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

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

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

With respect to compliance, divergent views were expressed on whether or not to include provisions on compliance and, if so, their placement in this part of the instrument, as well as the modalities of any compliance process. Further consideration on this issue would therefore be beneficial.

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

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

4.2.3.4 *Strategic Environmental Assessments (Section 5.7)*

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

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

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

4.2.3.5 *Activities for Which an Environmental Impact Assessment Is Required (Section 5.3)*

Support was expressed for different options in each of the five subsections presented in the text—the thresholds and criteria for EIAs; list of activities that require or do not require an EIA; cumulative impacts; transboundary impacts and specific provision for EIAs in areas identified as ecologically or biologically significant or vulnerable.

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

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

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

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

4.2.3.6 *Relationship to Environmental Impact Assessment Processes under Relevant Instruments, Frameworks and Bodies (Section 5.2)*

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

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

4.2.3.7 *Obligation to Conduct Environmental Impact Assessments (Section 5.1)*

There was a convergence of views towards the inclusion of an obligation to conduct EIAs in the instrument. Views were expressed in support of elements and combinations of the options in the current text. Further development of

the options in the current text, including in particular, on the operationalization of the general obligation to conduct an EIA set out in UNCLOS, would benefit from further consideration.

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

4.2.4 Capacity-Building and Transfer of Marine Technology (CB-TMT)
Ambassador Ngedikes Olai Uludong (Palau) summarized the work on CB-TMT at IGC-2 as follows:¹⁶

- The informal working group addressed section 6 in the following sequence:
- Types of and modalities for capacity-building and the transfer of marine technology (section 6.2)
 - Funding (section 6.3)
 - Monitoring and review (section 6.4)
 - Objectives of capacity-building and the transfer of marine technology (section 6.1)

She thanked delegations for being responsive in their interventions, not only to each other, but also to the request for focused discussions, as well as their flexibility in adapting to the proposed sequence of discussions. On the basis of the President’s Aid to Negotiations, which provided a very useful guide for the discussions, proposals were made for streamlining some of the text and moving some text to the sections dealing with cross-cutting issues. This active engagement reflects once again the convergence of views that capacity-building and the transfer of marine technology are crucial and central elements to achieving the goal to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction. She was encouraged by the strides made at this session in the discussions.

4.2.4.1 *Types and Modalities for Capacity-Building and the Transfer of Marine Technology (Section 6.2)*

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

Types—there seemed to be a general movement towards the inclusion in the instrument of a non-exhaustive list of broad categories of types of

¹⁶ A/CONF.232/2019/5, Annex (IV), pp. 17–20.

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

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

Modalities—Preferences were expressed for aspects of each of the two main options in the text, with some proposals to combine them. Progress was made in that there seemed to be some convergence of views towards the inclusion of specific modalities in the instrument, bearing in mind relevant existing examples, such as the Criteria and Guidelines for the Transfer of Marine Technology of IOC/UNESCO.

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

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

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

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

4.2.4.2 *Funding (Section 6.3)*

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

4.2.4.3 *Monitoring and Review (Section 6.4)*

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

4.2.4.4 *Objectives of Capacity-Building and the Transfer of Marine Technology (Section 6.1)*

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

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

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

Categories of States and special requirements of developing countries—different views were expressed as to whether to include such a provision and, if so, what level of detail would be appropriate.

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

4.2.5 Cross-Cutting Issues

Ambassador Lee summarized the work on cross-cutting issues at IGC-2 as follows:¹⁷

The informal working group addressed the cross-cutting issues in the following sequence:

- Institutional arrangements (Part IV)
- Clearing-house mechanism (Part V)
- Review (Part VI), financial resources and issues, compliance, dispute settlement, responsibility and liability and final clauses
- Use of terms (Part II.1)
- General principles and approaches (Part III.1)
- Scope (Part II.2)
- Objectives (Part II.3)

¹⁷ A/CONF.232/2019/5, Annex (v), pp. 21–24.

- Relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies (Part II.4)
- International cooperation (Part III.2)

She thanked delegations for their constructive comments on the President's Aid to Negotiations, including by clarifying their positions and proposals, suggesting merging certain options or sub-options, or indicating which parts of the text may be moved to other sections of the document. She particularly appreciated the flexibility of delegations providing suggestions or comments on options which did not necessarily fully represent their position, but that they recognized could form the basis to move forward in the negotiations.

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

4.2.5.1 *Institutional Arrangements (Part IV)*

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

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

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

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

be some convergence towards the view that the decision-making body under the instrument should have the ability to establish other subsidiary bodies, as needed.

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

4.2.5.2 *Clearing-House Mechanism (Part v)*

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

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

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

4.2.5.3 *Review (Part VI), Financial Resources, Compliance, Dispute Settlement, Responsibility and Liability, Final Clauses*

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

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

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

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

Responsibility and liability—different views were expressed on the need for provisions on responsibility and liability in the instrument.

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

Further consideration of these issues will be undertaken in due course, taking into account negotiations on other parts of the instrument.

4.2.5.4 *Use of Terms (Part II.1)*

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

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

4.2.5.5 *General Principles and Approaches (Part III.1)*

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

4.2.5.6 *Scope (Part II.2)*

Geographical scope—There seemed to be convergence towards including the provisions on geographical scope as contained in the President’s Aid to Negotiations, with suggestions being made to replace the provision on the rights and jurisdiction of coastal States with a general “without prejudice” clause, and to provide a definition of the term “areas beyond national jurisdiction”.

Material scope—whether to include either of the two provisions provided for in the aid to negotiations, namely a general provision setting out the elements of the package, and a specific provision relating to vessels owned or operated by a State in government non-commercial service, would benefit from further consideration.

4.2.5.7 *Objectives (Part II.3)*

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

4.2.5.8 *Relationship to the Convention and Other Instruments and Frameworks and Relevant Global, Regional and Sectoral Bodies (Part II.4)*

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

4.2.5.9 *International Cooperation (Part III.2)*

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

4.3 *President’s Concluding Remarks at IGC-2*

The President delivered her concluding remarks, providing her positive views of DipCon-2, intersessional work, and plans for DipCon-3 in August 2019.

Her remarks have been issued as a conference document in all six official languages.¹⁸

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

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

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

5 Preparations for Third Substantive Session (IGC-3)

On 25 June 2019, DOALOS issued an advance, unedited version (English only) of the President's first draft text of an ILBI (zero draft). That was replaced on 8 July with the official text of 70 articles and an annex totaling 42 pages.¹⁹ The President's introductory note stated that the draft text was prepared by her with the assistance of DOALOS. It is structured "in a form akin to a treaty and contains treaty language with provisions addressing each of the four topics" identified in the 2011 package and cross-cutting issues (para. 5). It was aimed at "streamlining" the options contained in the President's Aid to Negotiations. It also contained new provisions on settlement of disputes, non-parties to the agreement, and final provisions prepared with the assistance of the treaty

18 A/CONF.232/2019/5, 18 April 2019, available at <<https://undocs.org/en/a/conf.232/2019/5>>.

19 A/CONF/232/2019/6, 17 May 2019, available at <<https://undocs.org/en/a/conf.232/2019/6>>.

section of the Office of Legal Affairs (para. 6) The President's Note stated the draft "is without prejudice to the structure of the future instrument" and without prejudice to the position of any delegation. Further it does not preclude consideration of matters not included in the draft (para. 9).

5.1 *Omissions and Ambiguities in the Zero Draft*

The zero draft had a number of omissions and problematic provisions. While the draft resembled somewhat the 1995 fish stocks implementing agreement, it lacked a number of its comparable provisions.

Missing are a title for the agreement, definitions of the basic terms used in the A/72/249 convening the diplomatic conference: "conservation", "sustainable use" and "marine biological diversity".

Further, the draft definition of "areas beyond national jurisdiction" is simply "the high seas and the Area".²⁰ The draft text does not address the issue of the application of the agreement to unresolved continental shelf claims beyond 200 nautical miles with superjacent waters being the high seas.²¹ Nor does it address in Article 3(1) its non-application to Antarctica (Antarctic Treaty and CCAMLR) or the Central Arctic Ocean (Fisheries Agreement). Further it does not expressly exclude land and maritime disputes as proposed by some delegations.

In addition, the definition of the "Convention" refers only to the 1982 treaty and does not include either of the two implementing agreements both of which address areas beyond national jurisdiction.²²

Further, various formulations of "traditional knowledge" appear throughout the text but the term is nowhere defined.

In addition, the draft text has a number of provisions that deviate from those in the 1995 Fish Stocks Agreement:

- The definition of "States Parties" in Article 1(12) deviates from the definition in Article 1 of the Fish Stocks Agreement by omitting paragraph 3 and in Article 56 on non-parties omitting Article 17(3) of the Fish Stocks Agreement on fishing entities whose vessels fish on the high seas.
- Article 55 on procedures for the settlement of disputes regarding experts, chambers, advisory opinions and applicable law differ from those in the Convention or 1995 Agreement.

²⁰ Article 1(4).

²¹ This issue is partially addressed in Article 15(6) where an area-based management tool subsequently falls under the national jurisdiction of a coastal State.

²² Article 1(5).

- Omitted are provisions on provisional measures (FSA article 31), responsibility and liability (FSA article 35), and where amendments may enter into force with different members, the relationship with those bound and not bound by such an amendment (FSA article 45(7)).

In addition, ambiguities were introduced when proposing inserting “existing” in many articles.²³ Only one article defines “when”, at time of signature, ratification (by whom), entry into force, or later.

The term “long-term”, although only used twice (in the definition of MPA (Article 1(10) and the Annex para (e)(ii)), is not defined as to “how long is long-term” and thus is ambiguous.

Proposals to address some of these issues were submitted during IGC-3 as mentioned below in section 6.5.

6 Third Substantive Session (IGC-3)

6.1 *Program of Work*

On 25 June 2019, DOALOS also published on its BBNJ website two other documents. One was the provisional program of work, which indicated that only some of the articles in the draft text were scheduled for consideration during the five informal working groups and informal-informals.²⁴ IGC-3 was held at UN Headquarters in New York 19–30 August 2019.

At the beginning of the last day of the first week the President proposed changes to the program of work for the second week to include more parallel sessions and additional informal-informals. As with the first week, the program of work identified which articles would be considered at each session. The changes were approved and adopted.²⁵

The President encouraged delegations to submit proposals to amend the zero draft to DOALOS who compiled them into conference room papers (CRPs). A total of 849 proposals in 33 conference room papers were submitted during IGC-3. They have been compiled and issued in 813 pages, one

23 Articles 4(3), 13(2), (3)(b) & 3(c), 14(1)(a), (b), (d), 15(1)(a), (b)(i), (2 Alt.), (3), (4), 16(4), 18(2)(a)(iii), (b), (b)(iii), 19(1), (Alt 1 (b)(ii), (c), (d)), (Alt. 2 (c)), (3), 20(5) & (7), 21(Alt. 3), 23(2), (3 Alt. 1), (4)(Alt. 1), (5)(Alts. 1, 2, 4), 27(2 Alt. 3), 34(2), 40(1 Alt. 3), (2), (2)(b), 43(1), (2), 44(2), 48(4)(c), 49(3), 50(1 Alt. 2), 51(4)(b), (d), 52(2), and (Alt. 1 5bis(d)). There seemed to be general agreement at IGC-3 that the term “existing” should be deleted.

24 A/CONF.232/2019/L.4, available at <<https://undocs.org/en/a/conf.232/2019/L.4>>. The provisional agenda was also issued at the same time. A/CONF.232/2019/L.3, <<https://undocs.org/en/a/conf.232/2019/L.3>>.

25 A/CONF.232/2019/8/Rev.1, 23 August 2019.

delegation's proposal(s) per article per page.²⁶ Except for the final provisions, there were proposals for changes to all other articles, as well as 11 proposals for new articles. As at IGC-2, many delegations' statements were uploaded to PaperSmart.²⁷

As with IGC-2, summaries of each of the 10 sessions and a final comprehensive summary of the Third Session has been published in the *Earth Negotiations Bulletin* (ENB), 2 September 2019.²⁸ In addition, the UN issued daily coverages of the meetings.²⁹

The final edition of the *Earth Negotiations Bulletin* for IGC-3 summarized the discussions on the zero draft according to the Parts of the draft: General Provisions (pages 3–6), Marine Genetic Resources, including Benefit-Sharing Questions (pages 6–10), Environmental Impact Assessments (pages 10–15), Capacity Building and the Transfer of Marine Technology (pages 15–16), Institutional Arrangements (pages 16–18), Financial Resources and Mechanisms (pages 18–19), Implementation and Compliance (page 19), and Settlement of Disputes (page 19). The title, preamble, non-parties, good faith and abuse of rights, and the final provisions were not discussed in this ENB.

6.2 *Reports of Facilitators*

The reports of the Facilitators were read in Plenary on the last day and the texts appended to the President's closing remarks. Her written report emphasized that the Facilitators' reports do not constitute a summary of discussions nor do they reflect the President's assessment of the discussions. They are set out in the following five sub-sections.

6.2.1 Marine Genetic Resources (MGR), Including the Sharing of Benefits

Ambassador Janine Elizabeth Coye-Felson (Belize) summarized the work on MGR at IGC-3 as follows:³⁰

At the outset, she noted significant progress in moving away from general and conceptual discussions in the past towards identifying textual solutions to

26 Links to the CRPs were posted at <https://www.un.org/bbnj/content/conference_room_papers> along with the compilation of proposals, A/CONF.232/2019/CRP.1, at <https://www.un.org/bbnj/sites/www.un.org.bbnj/files/master_crp_consolidated_rev2.docx>.

27 <<https://papersmart.unmeetings.org/ga/bbnj-intergovernmental-conference/third-session/statements/>>.

28 <<http://enb.iisd.org/oceans/bbnj/igc3/>>.

29 SEA/2008, SEA/2110–2014, 2116–2118, 19–30 August 2019 <<https://www.un.org/press/en/highlights/BBNJ>>.

30 A/CONF.232/2019/10, Annex (1), pp. 5–8.

the issues at hand. In particular, she 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. She noted that a number of proposals seemed to go in a similar direction, and 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, her assessment of progress made and areas requiring further work were as follows.

6.2.1.1 *Objectives*

She 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.

6.2.1.2 *Application*

Concerning application, she 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.

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.

6.2.1.3 *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.

6.2.1.4 *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.

6.2.1.5 *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, she 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 State 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.

6.2.1.6 *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.

6.2.1.7 *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 State 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 State 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. She noted, in this regard, a proposal to establish an access and benefit sharing mechanism which would have monitoring functions among others.

6.2.1.8 *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 of 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.

6.2.2 Area-Based Management Tools (ABMTs), Including Marine Protected Areas (MPAs)

Ms. Alice Revell (New Zealand) summarized the work on ABMTs at IGC-3 as follows:³¹

³¹ A/CONF.232/2019/10, Annex (II), pp. 9–12.

6.2.2.1 *Overall Progress*

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 the 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 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.

She then turned to more specific aspects.

6.2.2.2 *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.

6.2.2.3 *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.

6.2.2.4 *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.

6.2.2.5 *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.

6.2.2.6 *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 State 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.

6.2.2.7 *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.

6.2.2.8 *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 already indicated, this fundamental question will need to be a focus of attention going forward.

6.2.2.9 *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 State 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.

6.2.2.10 *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 "sub-regional" 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.

6.2.3 Environmental Impact Assessments (EIAs)

Mr. René Lefeber (The Netherlands) summarized the work on EIAs at IGC-3 as follows:³²

³² A/CONF.232/2019/10, Annex (III), pp. 13–16.

6.2.3.1 *Overall Progress*

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 “State 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.

He then turned to more specific aspects.

6.2.3.2 *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.

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.

6.2.3.3 *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. He 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.

6.2.3.4 *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.

6.2.3.5 *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.

He 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.

6.2.3.6 *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.

6.2.3.7 *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.

6.2.3.8 *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 State 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.

6.2.4 Capacity-Building and Transfer of Marine Technology (CB-TMT)
Ambassador Ngedikes Olai Uludong (Palau) summarized the work on CB-TMT at IGC-3 as follows:³³

6.2.4.1 *Overall Progress*

She noted that overall, progress was made in the Informal Working Group in relation to a number of articles and paragraphs. She 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. She encouraged delegations to

33 A/CONF.232/2019/10, Annex (IV), pp. 17–19.

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 her summary, she highlighted further those areas where she believed progress was made, and those areas where further focused discussion would be beneficial.

6.2.4.2 *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.

6.2.4.3 *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 she suggested that there could be a way forward in response to concerns regarding the imposition of obligations on industry and the private sector, and encouraged 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-State 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.

6.2.4.4 *Modalities for Capacity-Building and the Transfer of Marine Technology*

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 were 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.

6.2.4.5 *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.

6.2.4.6 *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 were 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 were encouraged to consider the various proposals put forward and whether progress could be made on the basis of those proposals.

6.2.4.7 *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.

6.2.4.8 *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.

6.2.5 Cross-Cutting Issues

Ambassador Lee summarized the work on cross-cutting issues at IGC-3 as follows:³⁴

6.2.5.1 *Overall Progress*

At the outset, she said that she was 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. She noted 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 she did not repeat. She rather provided 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.

6.2.5.2 *Objective*

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.

6.2.5.3 *Application*

With regard to application, there was general convergence on applying the agreement to areas beyond national jurisdiction, while further discussions will

34 A/CONF.232/2019/10, Annex (v), pp. 20–23.

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.

6.2.5.4 *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 stand-alone 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 she understood 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, she noted some proposals to address this issue, including by reflecting this in the preamble.

6.2.5.5 *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.

6.2.5.6 *International Cooperation*

With regard to international cooperation, there seemed to be broad support to set out the obligation for State 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.

6.2.5.7 *Institutional Arrangements*

6.2.5.7.1 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 stand-alone 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.

6.2.5.7.2 Scientific and Technical Body/Network

There seemed to be convergence towards the establishment of a scientific and technical body, although she 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.

6.2.5.7.3 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.

6.2.5.8 *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 clearinghouse 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.

6.2.5.9 *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 State 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.

6.2.5.10 *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.

6.2.5.11 *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.

6.3 *President's Concluding Remarks*

Due to lack of time on the final day the President orally presented a very truncated report outlining the way forward following delegations' interventions.³⁵

35 Interventions on the way forward are summarized in ENB No. 218, 2 September 2019, pp. 19–20.

She announced that IGC-4 will be held 23 March–3 April 2020. Responding to requests for a revised draft text, she confirmed that she would seek input from the Facilitators on the content of the revised text; include discussions at IGC-3, including areas of convergence; and circulate the revised text as soon as possible. On the modalities of work for IGC-4, she indicated support to continue the current format, including parallel informal-informals to “step up the pace”, and the possibility of convening stocktaking plenary sessions rather than informal working groups, to address more holistically the four elements of the 2011 package.³⁶

In her written report, the President summarized the events at IGC-3, some of which have been noted above in section 6.1. Of particular note in her report, the President addressed the following:

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.

36 ENB No. 218, pp. 20–21.

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.

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 her that progress was made on the draft text during this session. She was gratified by the number of proposals submitted by the delegations, and which reflected the careful consideration that delegations devoted to the issues.

She can see areas of progress in the development of the draft text. She thinks 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 there is much to be done to advance the work. In doing so, she encouraged 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 was her belief that we are well-placed to make great strides towards the successful conclusion of our work. She hoped that intersessionally 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.

Her full report, with the Facilitators' reports appended, has been uploaded on the BBNJ website.³⁷

6.4 *Comments on Some Proposals*

During IGC-3 many proposals were introduced but none were debated. Many of the proposals are contradictory; others are inconsistent with the Convention.³⁸ Perhaps during the intersessional discussions some of the proposals will be consolidated and rationalized. A process for taking decisions on the many proposals will need to be provided at IGC-4.

37 A/CONF.232/2019/10, 13 September 2019, pp. 1–4. The unedited version was posted 11 October 2019. The final in all six UN languages was posted 25 October 2019.

38 For example, one amendment would define the high seas of “areas beyond national jurisdiction” as beginning at 200 NM from the baseline, whether or not an EEZ had been claimed. Others would make the compulsory decisions process in Part XV optional, or the default mechanism ITLOS rather than Annex VII arbitration specified in article 287(5). See further Sections 6.5.1 and 6.5.2.

Some of the concerns posed in section 5.1 above were addressed in the proposals. There seemed to be agreement to delete “existing” as many delegations proposed and noted by the Facilitators. There was little consensus on other proposals.

Sections 6.5.1 to 6.5.4 suggest and explain proposals on defining areas beyond national jurisdiction, clarifying procedures for the settlement of disputes, addressing non-parties to the agreement, and clarifying the draft provision on responsibility and liability.

6.4.1 Areas Beyond National Jurisdiction

The President’s zero draft defined “areas beyond national jurisdiction” simply as “the high seas and the Area”.³⁹ The zero draft did not define either term.

The one proposal would define “areas beyond national jurisdiction” as “the High Seas beyond 200 nm from the baselines from which the breadth of the territorial sea is measured and the Area”.⁴⁰ A parallel proposal for article 3(1) would add “Nothing in this agreement can be interpreted as the geographical scope of this agreement applies to the maritime areas within 200 nm from the baselines from which the breadth of the territorial sea is measured”.⁴¹

The EEZ must be claimed; if not claimed the high seas begins at the outer limit of the territorial sea.⁴² In this respect the EEZ differs from the continental shelf which according to the customary rule in article 77(3) provides “The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation”.

Useful definitions could be as follows:

“Beyond areas of national jurisdiction” means those marine areas seaward of the outer limits of the territorial sea, exclusive economic zone where claimed, and continental shelf as those terms are defined in the Convention and whose outer limits are measured from baselines determined in accordance with the Convention.

“High seas” means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.⁴³

39 A/CONF.232/2019/6, article 1(4).

40 A/CONF.232/2019/CRP.1, p. 21/813 (Turkey).

41 *Id.* at page 44/813.

42 Satya Nandan and Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. III (Dordrecht: Martinus Nijhoff, 1993), para. v.2, p. 491.

43 Convention article 86 first sentence.

“Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, and its mineral resources.⁴⁴

In addition, draft article 3(1) on application should be modified to exclude other treaties that apply beyond the limits of national jurisdiction:

1. The provisions of this Agreement apply to areas beyond national jurisdiction. With regard to areas beyond national jurisdiction south of 60°S, the rights and responsibilities of the parties to the Antarctic Treaty and to the Convention on the Conservation of Antarctic Marine Living Resources shall be respected. The rights and responsibilities of the parties to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean shall be respected.

Such an addition would clarify that this Agreement does not undermine those three treaties.

6.4.2 Procedures for the Settlement of Disputes

The procedures for the settlement of disputes in Part IX of the President’s zero draft are considerably truncated from those in Part XV of the Convention and Part VIII of the Fish Stocks Agreement. Article 55(1) of the zero draft incorporates the provisions of Part XV *mutatis mutandis* into the ILBI. There was no consensus at IGC-3 on those procedures. Some delegations proposed accepting the zero draft article 55 *en toto*.⁴⁵ One delegation proposed that those procedures be voluntary.⁴⁶ Others proposed they be omitted all together.⁴⁷ Others proposed that the default choice of forum be ITLOS⁴⁸ rather than Annex VII arbitration as provided in the Convention. Others proposed authorizing ITLOS to form a special chamber for hearing disputes under the ILBI.⁴⁹ Another proposed a panel of experts for disputes of a technical nature,⁵⁰ as appears in article 29 of the Fish Stocks Agreement. One group proposed a new article excluding maritime disputes.⁵¹ The PSIDS proposed that the Conference of the Parties be authorized to request that ITLOS issue advisory opinions on “any

44 Convention articles 1(1)(1) and 133.

45 A/CONF.232/2019/CRP.1, p. 799/813 (CARICOM), 805/813 (High Seas Alliance, with additional provisions).

46 A/CONF.232/2019/CRP.1, p. 803/813 (China).

47 A/CONF.232/2019/CRP.1, pp. 801/83 (Colombia and El Salvador), 803/813 (Turkey).

48 A/CONF.232/2019/CRP.1, p. 802 (South Africa and Algeria).

49 A/CONF.232/2019/CRP.1, pp. 800/813 (PSIDS), 805/813 (High Seas Alliance).

50 A/CONF.232/2019/CRP.1, p. 805/813 (High Seas Alliance).

51 A/CONF.232/2019/CRP.1, p. 806/813 (Core Latin American Countries (CLAM)).

legal question”⁵² not just the interpretation or application of the ILBI as limited by the Convention Part xv.

6.4.3 Non-Parties to This Agreement

Part x article 56 of the President’s zero draft provides “State Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions”.⁵³ This provision is identical to article 33(1) of the Fish Stocks Agreement.

One proposal would adapt article 33(2) of the Fish Stocks Agreement, which reads “State Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement”, by adding as a second paragraph to article 56 “State Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement”.⁵⁴ This seems to be a sensible proposal. However, as discussed below Article 56 also omits Article 17(3) of the Fish Stocks Agreement regarding fishing entities’ participation in RFMOs.

6.4.4 Responsibility and Liability

The President’s zero draft contained no provision on responsibility and liability. One proposal would add article 56*bis*, a provision duplicating article 35 of the Fish Stocks Agreement: “State Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement”.⁵⁵ Article 304 of the Convention provides “The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law”.

As forecast in Article 304, further rules regarding responsibility and liability under international law have developed. The differences between responsibility and liability were clarified in the ILC’s Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001,⁵⁶ the ITLOS seabed disputes

52 A/CONF.232/2019/CRP.1, p. 712/813 (PSIDS).

53 A/CONF.232/2019/6, article 56. The article as a whole is in brackets.

54 A/CONF.232/2019/CRP.1, p. 807/813 (High Seas Alliance).

55 A/CONF.232/2019/CRP.1, p. 807/813 (High Seas Alliance).

56 <http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft_articles/9_6_2001.pdf&lang=EF>.

chamber advisory opinion,⁵⁷ and the ITLOS advisory opinion submitted by the Sub-Regional Fisheries Commission.⁵⁸

A clearer provision thus might read as follows:

1. State Parties and competent international organizations shall be responsible for ensuring that activities in marine areas beyond the limits of national jurisdiction, whether undertaken by them, on their behalf, or by persons under their jurisdiction and/or control, is conducted in accordance with this Agreement.
2. State Parties and competent international organizations are liable in accordance with international law for damage or loss attributable to them, or to those subject to their jurisdiction and/or control, in contravention of this Agreement, and shall provide full reparation or other remedies for the injuries caused in accordance with international law.
3. State Parties and competent international organizations shall be responsible and liable for the measures they take in contravention of this Agreement in respect of marine activities beyond the limits of national jurisdiction conducted by other States, their natural or juridical persons, or by competent international organizations, and shall provide full reparation for the injuries caused or other remedies in accordance with international law.⁵⁹

6.5 *Issues Not Addressed in the Proposals*

A number of issues raised in section 5.1 above were not addressed in the many proposals at IGC-3: title of the agreement; definitions of conservation, sustainable use, marine biological diversity, regional bodies, sectoral bodies, Convention and the 1994 and 1995 Implementing Agreements, traditional knowledge; provisional measures; and entry into force of amendments. They should

57 ITLOS, *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Rep. 2011, p. 10 <https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf>.

58 ITLOS, *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion (2015), paras. 146 & 148, online: <https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion/C21_AdvOp_02.04.pdf>.

59 Adapted from article 263 of the Convention, article 35 of the 1995 Agreement, and articles 28–31 of the 2001 ILC Articles on the Responsibility of States for Internationally Wrongful Acts. See further Nicholas Gaskell, 'Liability and Compensation Regimes: Pollution of the High Seas,' in Beckman, McCreath, Roach and Sun (eds.), *High Seas Governance: Gaps and Challenges* pp. 263–272 (Leiden|Boston: Brill Nijhoff, 2019).

be addressed during IGC-4. Suggest texts are set out in sections 6.5.1 to 6.5.4 immediately below.

6.5.1 Title

The zero draft does not formally propose a title for the new agreement, although the zero draft is headed:

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

Since the agreement will be “under the Convention”, a suitable title could be adapted from the title of the Fish Stocks Agreement:

Draft Agreement for the Implementation of the provisions of under the United Nations Convention on the Law of the Sea relating to on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction

6.5.2 Definitions

The zero draft does not provide definitions for the operative terms in the draft agreement, and no proposals were submitted to IGC-3 to clarify the scope of the agreement despite several requests.⁶⁰ The following definitions of those terms are suggested.

6.5.2.1 Conservation

“Conservation” means actions to ensure the sustainability of the resources being exploited.⁶¹

6.5.2.2 Sustainable Use

“Sustainable use” means the use of components of marine biological diversity in a way and at a rate that does not lead to the long-term loss of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.⁶²

⁶⁰ Japan (19 August 2019); CARICOM (on article 16 criteria for identification of areas requiring protection, 21 August 2019).

⁶¹ FAO, *Marine Fisheries and the Law of the Sea: A Decade of Change*, Fisheries Circular No. 853 (FIDI/853) at 28 note 12 (1993).

⁶² Convention on Biological Diversity (CBD) article 2.

6.5.2.3 *Marine Biological Diversity*

“Marine biological diversity” means the variability among living organisms from marine ecosystems and the ecological complexities of which they are part, including diversity within species, between species, and of ecosystems.⁶³ “Marine biological diversity” thus includes more than marine genetic resources from fish. Focus on MGR limits scope of the negotiations and draft agreement to commercial fish species to the exclusion of 95% of deep-sea fish species which need to be monitored and protected.⁶⁴

6.5.2.4 *Regional Bodies*

“Regional bodies” include regional fishery management organizations (RFMOs), regional fisheries management arrangements, regional seas programs (RSPs) and OSPAR.

6.5.2.5 *Sectoral Bodies*

“Sectoral bodies” include the IMO, FAO, ISA, ICAO, UNEP, WMO and WHO, many of which may be included in “global bodies”.

6.5.2.6 *Convention*

The definition of the “Convention” provided in the zero draft refers only to the 1982 treaty.⁶⁵ It does not include either of the two implementing agreements both of which address areas beyond national jurisdiction.⁶⁶ The 1994 Part XI Implementing Agreement is in effect an amendment of Part XI of the Convention, which is to be “interpreted and applied together as a single instrument”, and in the event of any “inconsistency” between them, the 1994

63 Adapted from CBD article 2.

64 Guillermo Ortuño Crespo, Daniel C. Dunn, Matthew Gianni, Kristina Gjerde, Glen Wright and Patrick N. Halpin, ‘High-seas fish biodiversity is slipping through the governance net,’ *Nature Ecology & Evolution*, 26 August 2019 <<https://www.nature.com/articles/s41559-019-0981-4>> (95% of non-targeted deep seas fish species are not assessed by RFMOs and should be covered in the BBNJ ILBI). For a summary see *Eurasia Review*, ‘New UN High-Seas Treaty Must Close Gaps In Biodiversity Governance’ <<https://www.eurasiareview.com/02092019-new-un-high-seas-treaty-must-close-gaps-in-biodiversity-governance/>> and *Eco*, September/October 2019 at 9.

65 A/CONF.232/2019/6, article 1(5).

66 The International Seabed Authority intervened to suggest adding the 1994 Implementing Agreement to paragraph 1 of article 4 of the zero draft during the informal working group afternoon session on 28 August 2019. During the same session, South Africa said it required more time to reflect on the implications of that proposal. No written proposal for amending “Convention” was submitted during IGC-3. The text that follows provides a rationale for including both the 1994 and 1995 Implementing Agreements.

Agreement prevails. The 1995 Fish Stocks Implementing Agreement expands on articles 63 and 64 of the Convention in part with regard to conservation of certain fish stocks in areas beyond national jurisdiction. The ILBI is tasked with not undermining these agreements which are “existing relevant legal instruments”. Modification of the savings clause, Article 4(1) of the zero draft, to include both implementing agreements, would clearly require the ILBI to be “interpreted and applied in the context of and in a manner consistent” not only with the Convention but also the 1994 and 1995 implementing agreements.

One possible solution would be to include all three definitions in the zero draft of “Convention”, as follows:

“Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982, the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, and the 1995 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.

Alternatively, the two earlier implementing agreements could be separately defined and inserted in the text as appropriate.⁶⁷

6.5.2.7 *State Parties*

State Parties are defined in article 1(12)(b) of the zero draft to include (i) any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and (ii) subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities. While referencing only the 1982 Convention, this subparagraph also follows article 1(2) of the Fish Stocks Agreement. If the Fish Stocks Agreement were added to the definition of “Convention”, then as noted below paragraph 3 of article 1 of the Fish Stocks Agreement should be added to article 1(12)(b) of the draft ILBI, which reads “This Agreement [the Fish Stocks Agreement] applies *mutatis mutandis* to other fishing entities whose vessels fish on the high seas”.

67 Consideration should be given to amending “Convention” where it appears in articles 9(1) (MGR), 14(1)(b) & (l) (ABMT), 15(5), 20(8) and 23(1) (EIAS).

6.5.2.8 *Fishing Entities*

As noted above, the zero draft presently only includes the 1982 Convention and not the two implementing conventions. As also noted above, the zero draft does not define “marine biological diversity”. Further, the zero draft presently does not address most fishing on the high seas, which it should if it is to meet the requirements of resolution A/72/249. The 1995 Fish Stocks Agreement applies to fishing activities on the high seas and thus for the reasons stated above should be added to the zero draft definition of “Convention”.

At the second session of the fish stocks conference in 1993 a FAO report noted the major problem caused by non-parties engaged in high seas fishing:

45. The treatment of non-contracting parties is an important and real issue that should be addressed in the context of high-seas fisheries management. Some nations or *other entities* operating in a fishery may not opt to participate in a high seas management body or they may be excluded from it (e.g., for political or other reasons). The effectiveness of high seas management will therefore be significantly reduced if a *major entity in a fishery* does not participate in determining management decisions and in turn is not bound by those decisions.

46. The exclusion of parties from management bodies for political or other reasons poses particular difficulties. Taiwan (Province of China) is a major international fishing entity. Its high seas fishing capacity is extensive and likely to increase, especially in the Indian and South Pacific Oceans. However, due to political non-recognition, Taiwan (Province of China) does not participate fully in any fishery management bodies.

47. The non-contracting parties problem must be addressed. This is because, despite efforts to manage high seas fisheries, attempts to achieve sustainable use may be thwarted by unregulated fishing by non-contracting parties. Such unregulated activity will erode benefits accruing from measures designed to promote rational exploitation.⁶⁸

68 Report of the Technical Consultations on High Seas Fishing and the Papers Presented at the Technical Consultation on High Seas Fishing, A/CONF.164/INF/2, 14 May 1993, reproduced in *United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: Selected Documents*, compiled and edited by Jean-Pierre Lévy and Gunnar G. Schram 355 (The Hague/Boston/London: Martinus Nijhoff, 1996) (emphasis added). This reasoning is equally applicable 25 years later to the BBNJ negotiations.

This problem was addressed in the Fish Stocks Agreement which specifically applies to fishing entities whose vessels fish on the high seas (article 1(3))⁶⁹ and provides for their participation in relevant RFMOs/RFMA s (article 17(3)).⁷⁰

Article 17(3) provides:

States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

Three later agreements also provide for “entities” or “fishing entities” to participate in their work: the 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (article 9(2) and Annex I);⁷¹ the 2003 Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (“the Antigua Convention”) article XXVIII (as Chinese Taipei),⁷² and the 1993 Convention for the Conservation of Southern Bluefin Tuna, as revised by resolution in 2013.⁷³ The BBNJ ILBI should similarly so provide both for RFMOs and

69 A/CONF.164/37, 8 September 1995. This provision was introduced by the Chairman of the Conference in his negotiating text issued at the conclusion of the first substantive session as document A/CONF.164/13*, 23 November 1993, page 16 note 1. The Chairman first included this provision in his draft agreement A/CONF.164/22, 23 August 1994, at the beginning of the fourth session <https://www.un.org/Depts/los/fish_stocks_conference/fish_stocks_conference.htm>. This provision was agreed in 1993 as a placeholder between the Chairman of the Conference and China, and was retained thereafter in preference to more specific reference to Taiwan fishing vessels.

70 This provision first appeared in article 17(3) of the Chairman's draft text A/CONF.164/22/Rev.1, 11 April 1995, at the beginning of the fifth session.

71 <<https://www.wcpfc.int/convention-text>>.

72 <https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/Antigua_Convention_Jun_2003.pdf>.

73 <<https://www.ccsbt.org/en/content/basic-documents-commission>>.

also for management measures for high seas areas not managed by RFMOs/RFMAS.

In summary, the definition of “Convention” should be expanded, the definition of “fishing entities” should be added to the article defining “States Parties” and participation by fishing entities should be added to article 56 on non-parties by adapting article 17(3) of the Fish Stocks Agreement and including management measures for high seas areas not managed by an RFMO/RFMA.

6.5.2.9 *Traditional Knowledge*

The term “traditional knowledge” is used in a dozen articles, while the phrase “traditional knowledge of indigenous peoples and local communities” is used in two articles (16(1) and 17(3)); a third formulation “indigenous peoples and local communities with relevant traditional knowledge” is used in article 18(2) (c); and a fourth phrase “holders of traditional knowledge in local communities” is used once (in article 52(5)(e) Alt. 1). There should be a consistent formulation, perhaps by adding a definition to article 1.

However, there does not appear to be a recognized definition of “traditional knowledge” at the international level.⁷⁴ WIPO defines the term “traditional knowledge” as “knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity”.⁷⁵ The phrase “indigenous and local knowledge” is used in the preamble to the Central Arctic Ocean fishing agreement.⁷⁶ The undefined term “traditional knowledge” is used in article 31(1) of the 2007 UN Declaration on the Rights of Indigenous Peoples.⁷⁷ A definition of “traditional knowledge” could adopt the WIPO definition, as follows:

“Traditional knowledge” means knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

74 <<https://www.wipo.int/tk/en/tk/>>.

75 *Id.*

76 <https://eur-lex.europa.eu/resource.html?uri=cellar:24702f31-6e24-11e8-9483-01aa75ed71a1.0017.02/DOC_2&format=PDF>.

77 A/RES/61/295, 13 Sept. 2007 <<http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/295>>.

6.5.3 Provisional Measures

The zero draft does not contain a separate article on provisional measures. Rather article 55(1) seeks to incorporate *mutatis mutandis* all of Part xv into the zero draft. Such an approach is insufficient to enable non-parties to the Convention that are party to the ILBI to seek provisional measures. Article 31 of the Fish Stocks Agreement addresses this situation in article 31(3):

A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Drawing on article 31 of the Fish Stocks Agreement, the ILBI should have an article on provisional measures, such as the following:

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.
2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute.
3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention,⁷⁸ the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

⁷⁸ Article 290(5) reads: "Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4."

6.5.4 Entry into Force of Amendments

The provision on entry into force of amendments in the zero draft (article 65) does not address the situation of a State which becomes a Party to the ILBI after the entry into force of amendments. Article 45(7) of the Fish Stocks Agreement addresses this situation, as follows:

A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

- (a) be considered as a Party to this Agreement as so amended; and
- (b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

A similar provision should be added to article 65 of the zero draft as a new paragraph 6.

6.6 *Submarine Telecommunications Cables*

The International Cable Protection Committee (ICPC), a private organization, obtained consultative observer status with the United Nations Economic and Social Council (ECOSOC) in 2018. Accordingly, it participated as an observer at IGC-3⁷⁹ and submitted proposals to amend 11 articles of the zero draft.⁸⁰ Perhaps the most important amendments are to obtain recognition of the concept of “sectoral stakeholder” to be a participant in the BBNJ process, in addition to the global, regional and sectoral bodies mentioned in A/RES/72/249, paragraph 7,⁸¹ as well as in the Conference of Parties. Other amendments addressed cables in the context, *inter alia*, of environmental impact assessments.

6.7 *Common Heritage of Mankind*

One fundamental difference continuing to divide delegations is the scope of the principle of “common heritage of mankind” which article 136 applies to Area and its (mineral) resources. The G-77 argues it should also apply to marine genetic resources found in the Area as they were unknown to the UNCLOS negotiators to exist. Others argue that the freedom of the seas

⁷⁹ Pursuant to A/RES/72/249, para. 13.

⁸⁰ ICPC proposed amendments to articles 14, 15, 17, 23, 27, 29, 31, 32, 35, 48 and 49, A/CONF.232/2019/CRP.1, pp. 196, 225, 269, 397, 450, 471, 497, 511, 571, 721 and 735, respectively.

⁸¹ ICPC proposed amendment to article 15(3) of the zero draft. A/CONF.232/2019/CRP.1, p. 226/813.

should apply to them as well as to the high seas as MGR are not expressly included in article 136 of the Convention. During IGC-3, Algeria speaking on behalf of the African Group, noted that a 2003 study for the CBD provided a rationale for extending the concept of common heritage of mankind to the living/genetic resources found in the Area.⁸² These differences of views will be difficult to resolve.

7 Preparations for the Fourth Substantive Session IGC-4

As at the end of October 2019 the following documents have not been posted on the BBNJ website: revised zero draft, agenda and proposed method of work.

8 Future Substantive Sessions

IGC-5

At IGC-3 there was talk of a fifth session in 2020 as some delegations felt agreement on the ILBI would not be achievable at IGC-4. Resolution A/74/249 did not preclude additional sessions, but if needed a new UNGA decision would be required. It is likely before the end of 2019 that the GA will authorize an IGC-5 in the latter half of 2020.

82 'Study of the relationship between the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea with regard to the conservation and sustainable use of genetic resources on the deep seabed (decision 11/10 of the Conference of the Parties to the Convention on Biological Diversity); UNEP/CBD/SBSTTA/8/INF/3/Rev.1, with Annex, 22 February 2003, pp. 32–33, paras. 128–129 <<http://www.cbd.int/doc/meetings/sbstta/sbstta-08/information/sbstta-08-inf-03-rev1-en.pdf>>. The study was limited to the Area and excluded consideration of the water column. The study erroneously asserted that military activities are prohibited by article 141 of the Convention (which only mentions "peaceful purposes"). Peaceful purposes only exclude activities contrary to UN Charter articles 2(4) and 51.