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Intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

First session

New York, 4–17 September 2018

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

Over the past two weeks, following the opening of the first session of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, substantive discussions were held on the four elements of the 2011 package set out in paragraph 2 of resolution 72/249. The conference also discussed a number of organizational matters.

At the beginning of the first session, the President of the conference, Rena Lee, and the Secretary-General of the conference, Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, delivered opening remarks, followed by general statements from delegations. General statements were delivered by States, intergovernmental organizations and non-governmental organizations on 4 and 5 September 2018.

In their general statements, delegations generally noted their satisfaction with the President's aid to discussions (A/CONF.232/2018/3) as a basis for discussions at the first session of the conference. They reaffirmed that the United Nations Convention on the Law of the Sea was the basis upon which the international legally binding instrument would be built. In particular, it was noted that the instrument should operationalize and strengthen the provisions of the Convention for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, and that it should not prejudice the rights, jurisdiction and duties of States under the Convention or undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. The need to ensure the universality of the new instrument, including by ensuring that it did not affect the legal status of non-parties to the Convention or any other related agreements, was also noted. A number of delegations expressed their views on the four elements of the 2011 package, and various options were proposed on the way forward to a zero draft.

Gratitude was expressed for the financial support received under the voluntary trust fund for the purpose of assisting developing countries, in particular the least developed countries, land-locked developing countries and small island developing States, in attending the meetings of the preparatory committee and an intergovernmental conference on the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ trust fund), which made it possible for experts from some developing countries to attend the organizational meeting and the first session of the conference. The need for additional funding to facilitate the participation of developing countries, in particular the least developed countries, land-locked developing countries and small island developing States, in future sessions was underscored.

In accordance with the decision made at the organizational meeting, the conference elected 15 Vice-Presidents to the Bureau of the conference. Twelve Vice-Presidents, three each from the African States, the Asia-Pacific States, the Eastern European States and the Western European and other States, were elected by acclamation on the first day of the session, while three Vice-Presidents from the Latin American and Caribbean States were elected by secret ballot on 6 September. The Bureau of the conference is therefore composed of the following Vice-Presidents, in addition to the President of the conference: Algeria, the Bahamas, Belgium, Brazil, Bulgaria, Canada, China, Japan, Mauritius, Mexico, the Federated States of Micronesia, Morocco, Poland, the Russian Federation and the United States of America.

The conference adopted the agenda of the first session without amendment (A/CONF.232/2018/4) and a programme of work (A/CONF.232/2018/5).

With regard to the programme of work, the conference agreed that, following the consideration of the general statements, it would create informal working groups to address the four thematic clusters of the package set out in resolution 72/249, as follows: an informal working group on marine genetic resources, including questions on the sharing of benefits, facilitated by Janine Elizabeth Coye-Felson (Belize); an informal working group on measures such as area-based management tools, including marine protected areas, facilitated by Alice Revell (New Zealand); an informal working group on environmental impact assessments, facilitated by René Lefeber (Netherlands); and an informal working group on capacity-building and the transfer of marine technology, facilitated by Ngedikes Olai Uludong (Palau). The informal working groups met from 5 to 13 September and proceeded with their discussions on the basis of the President's aid to discussions. The oral reports of the facilitators on the work of the informal working groups, which were presented to the plenary on 14 September, are annexed to the present statement. The reports were prepared under the responsibility of the individual facilitators and are attached for ease of reference only. They do not constitute a summary of discussions nor do they reflect the President's assessment of the discussions.

Also on 14 September, the conference considered the process for the preparation of the zero draft of the instrument. The President was requested to prepare, as part of the preparations for the second session of the conference, a document with the aim of facilitating focused discussions and text-based negotiations, containing treaty language and reflecting options concerning the four elements of the package. The views and options presented at the first session of the conference and the report of the Preparatory Committee will be taken into account in the preparation of the document, as will other materials produced in the context of the Preparatory Committee. The President will, in the preparation of the document, consider how the document is to be presented, including its title and structure. The President will make every effort

possible to make the document available to delegations well in advance of the second session of the conference.

Under other matters, on 13 September, the conference considered dates for its second and third sessions in 2019, bearing in mind that the decision on the dates would lie with the General Assembly. The following tentative dates were presented by the Secretariat: 25 March to 5 April and 19 to 30 August 2019. Delegations took note of those dates. On 14 September, the Secretariat provided information on the status of the BBNJ trust fund.

On 17 September, the Chair of the Credentials Committee introduced the report of the Committee (A/CONF.232/2018/6). The Chair also informed the conference that, since the formal meeting of the Committee, credentials in the form required under rule 27 of the rules of procedure of the General Assembly had been received from two States (Lithuania and Seychelles). The conference adopted the draft resolution recommended by the Credentials Committee in paragraph 14 of its report, and accepted the additional credentials mentioned by the Chair of the Committee. Participants in the conference included 20 entities that have received a standing invitation to participate as observers in the work of the General Assembly pursuant to its relevant resolutions, relevant specialized agencies and other organs, organizations, funds and programmes of the United Nations system, and interested global and regional intergovernmental organizations and other interested international bodies, as well as 47 non-governmental organizations.

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

I had, at the start of our discussions, asked that delegations take the first steps towards negotiations, consider what would need to be included in the international legally binding instrument and focus on the processes and people. The response from delegations was a demonstration of the hard work and deep thought that went into the preparation of this first session. The substantive nature of the discussions we had and the “rain of ideas” that we heard has resulted in an excellent start to our work.

With regard to capacity-building and the transfer of marine technology, I was pleased to note that delegations continued to recognize the need to provide for capacity-building and the transfer of marine technology in order to achieve the objectives of the instrument to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction. I observed that there were various proposals on how to reflect the objectives and modalities of capacity-building and the transfer of marine technology. I appreciated the progress in the discussions on the functions of a clearing-house mechanism as an important tool to operationalize provisions under the instrument in that regard. I was encouraged by the different options advanced to help move our work forward, including with respect to funding. The discussions we had will put us in good stead in making further progress on the issue of capacity-building and the transfer of marine technology.

With regard to area-based management tools, including marine protected areas, I was encouraged by the detailed discussions and proposals put forward in response to the issues raised in the President’s aid to discussions. I was pleased to note some meeting of the minds on issues related to the objectives of area-based management tools, including marine protected areas, and the steps in the process that could be established under the instrument, including the identification of areas, the designation process, implementation and monitoring and review. I appreciated the thought that had gone into unpacking the spectrum of possible approaches regarding the overall process to be set out in the instrument regarding area-based management tools, including marine protected areas, and the institutional and practical arrangements that might support those processes. The discussions represent a good basis for our future

work in relation to area-based management tools, including marine protected areas, in areas beyond national jurisdiction.

With regard to environmental impact assessments, I was pleased by the substantive and constructive discussions on the possible modalities for addressing environmental impact assessments in the instrument, including the circumstances in which an environmental impact assessment would be required, the processes for and content of such an assessment, the relationship to environmental impact assessment processes in existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies and the potential role of strategic environmental impact assessments. I was encouraged by the level of detail in the proposals. Overall, the efforts to address some of the practical modalities of a possible framework for environmental impact assessments for areas beyond national jurisdiction represent a good basis for our future work on that subject.

In relation to marine genetic resources, including questions on the sharing of benefits, I was encouraged by the focused and constructive engagement of delegations on the issues identified in the President's aid to discussions. I noted the concerted efforts made by delegations towards the development of approaches to move forward on some issues, including in relation to the geographical scope of the instrument as it pertains to that element of the package, access and benefit-sharing, and cross-cutting issues such as a clearing-house mechanism and possible institutional arrangements and their functions. The level of detail provided in those areas and the further elaboration of views on other areas will provide a sound basis for our future work on marine genetic resources as we seek to build common ground.

Looking ahead to the second session, I ask everyone to consider what we have discussed in our first session, including the various proposals that have been made, so that in March of 2019 we can continue to make progress in our development of the international legally binding instrument.

In closing, I wish to thank the facilitators who so capably led our substantive discussions, the Secretary-General of the conference for his support and the Secretary of the conference, Gabriele Goettsche-Wanli, and her team in the Division for Ocean Affairs and the Law of the Sea, for their dedication and hard work. I wish to thank the conference services, including our interpreters, for ensuring that our meetings proceeded smoothly, our reporters from the *Earth Negotiations Bulletin*, my own team and all of you. I thank you all for your trust, support, flexibility and cooperation. I am inspired by the commitment displayed by all delegations and your active participation in the discussions, the many side events you organized and the various small meetings and conversations I observed during the conference. All this reinforces my belief that we are firmly on the path to achieving our mission. It will not always be smooth sailing, we will not always paddle in the same direction, but if we continue in our cooperative, flexible and committed mode, we will reach our destination one day.

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

Annex

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

Oral report of the facilitator to the plenary
Friday, 14 September 2018

Alii and a very good morning to you all. I am pleased to report on the discussions of the informal working group on capacity-building and the transfer of marine technology. For logistical reasons, I will give my report first. As in a canoe, despite our differences, we will end up paddling together in unity.

The informal working group met for a total of one and a quarter days between Wednesday, 5 September, and Friday, 7 September.

The discussions in the informal working group were structured around the sections contained in the President's aid to discussions (A/CONF.232/2018/3) and related to the following:

- Objectives of capacity-building and the transfer of marine technology
- Types of and modalities for capacity-building and the transfer of marine technology
- Funding
- Monitoring and review
- Issues from the cross-cutting elements: use of terms, relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies, general principles and approaches, international cooperation, institutional arrangements and a clearing-house mechanism

Before addressing each of these issues in sequence, let me say that I do not intend to provide a comprehensive summary of the extensive and complex discussions that took place, but will rather give an overview of the main issues discussed and the general trends I observed.

Objectives of capacity-building and the transfer of marine technology

There was strong support for the importance of giving concrete expression to capacity-building and the transfer of marine technology as crucial means of implementing the overarching objective of the international legally binding instrument, namely, the conservation and sustainable use of the marine biological diversity of areas beyond national jurisdiction.

Different approaches were put forward regarding the manner in which the objectives of capacity-building and the transfer of marine technology could be included in the instrument to give effect to the duty to cooperate under the United Nations Convention on the Law of the Sea. In this regard, options that emerged included incorporating multiple objectives focusing on capacity-building and the transfer of marine technology into the elements of the package, preceded by general obligations related to promoting cooperation to develop capacity and the transfer of marine technology, or including a single objective in the instrument linked to its overarching objective, namely, to conserve and sustainably use the marine biological diversity of areas beyond national jurisdiction.

It was generally recognized that capacity-building and the transfer of marine technology should be responsive to the needs of developing countries, in particular those of small island developing States and least developed countries. Reference was also made to landlocked developing countries, geographically disadvantaged States as well as coastal African States, middle-income countries and environmentally challenged and vulnerable countries.

A number of existing instruments and their provisions were mentioned as possible references for how to reflect the need to address the special requirements of developing countries in the instrument. Further consideration should be given to the nature of the commitments to capacity-building and to the transfer of marine technology to be included in the instrument, namely, whether they should be mandatory and/or voluntary.

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

There was convergence towards the idea of including in the instrument an indicative, non-exhaustive and flexible list of broad categories or types of capacity-building and transfer of marine technology that could be updated. Some also suggested that the list could be developed by States subsequently. Several examples of types of capacity-building and transfer of marine technology activities to be included in the instrument were provided during the discussions.

A number of existing instruments were referred to as a useful basis and starting point for the identification of types of capacity-building and transfer of marine technology, including the United Nations Convention on the Law of the Sea, the Criteria and Guidelines for the Transfer of Marine Technology of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, the Convention on Biological Diversity, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention, the United Nations Conference on Trade and Development draft international code of conduct on the transfer of technology and the United Nations Framework Convention on Climate Change.

Specific modalities for capacity-building and the transfer of marine technology were also identified, including the suggestion that the modalities of capacity-building and the transfer of marine technology should be simple, transparent and sustainable. It was also generally recognized that capacity-building and the transfer of marine technology should be meaningful. It was suggested that the needs and priorities of developing countries could be ascertained through needs assessments, possibly including, on a case-by-case basis and/or coordinated at the regional level, to address regional characteristics to be considered by a decision-making body under the instrument. There was also support for the view that developing countries, in particular small island developing States, could be provided with assistance upon request in preparing a needs assessment.

There was some support for the view that capacity-building initiatives should be able to benefit not just Governments, but also other stakeholders, such as groups of indigenous peoples, holders of traditional knowledge and local communities.

It was generally recognized that forms of cooperation for capacity-building and the transfer of marine technology could include North-South, South-South and triangular cooperation, as well as partnerships with relevant stakeholders with specific expertise, including public-private partnerships. The importance of engaging the private sector in capacity-building was also underscored.

The forms of cooperation and assistance in relation to each of the elements of the package could benefit from further elaboration in order to identify what kind of capacity-building and transfer of marine technology would be required with regard to marine genetic resources, including the sharing of benefits, area-based management tools, including marine protected areas, and environmental impact assessments.

It was generally recognized that part XIV of the United Nations Convention on the Law of the Sea, as well as the Criteria and Guidelines for the Transfer of Marine Technology of the Intergovernmental Oceanographic Commission, could constitute useful starting points for the development of modalities or terms for the transfer of marine technology. It was noted that existing obligations in the Convention should not be merely repeated but enhanced. Different options were put forward with respect to the terms and conditions for the transfer of such technology. Different views were also expressed on whether or not to address intellectual property rights in the context of the transfer of marine technology.

There was support for the view that the instrument could enhance transparency, coordination and cooperation, including through a clearing-house mechanism, to assist States, in particular developing countries, in implementing the instrument.

There was convergence on having a clearing-house mechanism and the development of a capacity-building network, in particular through web-based tools that provide an open-access platform. There was also support for the idea that such a clearing house could serve as a platform to access, evaluate, publish and disseminate information, as well as to approve requests for capacity-building and the transfer of marine technology on a case-by-case basis. It could provide greater visibility in allowing States to articulate needs and be aware of existing opportunities and projects. The work of other organizations was mentioned as a source of inspiration with respect to the identification of other functions that the clearing-house mechanism could carry out. It was also suggested that a list of functions could be identified at a later stage.

It was generally recognized that the clearing-house mechanism could be a “one-stop shop” and that it could link to existing clearing-house mechanisms and enable stakeholders to access those networks. I will come back to the issue of a clearing-house mechanism later when reporting on the cross-cutting elements.

Funding

There seemed to be convergence on the idea that funding would be required for capacity-building and on the role of a funding mechanism in this regard. The need for adequate, sustainable and predictable funding was emphasized as well. Different approaches were advanced regarding the provision of funding and resources.

There was support for the idea that existing funding mechanisms, such as the Global Environment Facility, could be considered as a means of contributing to capacity-building and the transfer of marine technology under the instrument. However, there were different views regarding the establishment of a new funding mechanism.

In addition, various views were presented regarding whether funding for capacity-building and the transfer of marine technology should be included as an obligation under the legally binding new instrument and whether funding should be provided on a mandatory or on a voluntary basis.

Monitoring and review

It was generally recognized that capacity-building and the transfer of marine technology would need to be monitored and reviewed regularly. Proposals were made on how such reviews could be carried out, and by whom. There was some support for

the view that a subsidiary body established under the instrument could be entrusted with the monitoring and review functions and could report to the decision-making body to be established under the instrument.

Some examples of functions put forward included the periodic review of the modalities for capacity-building and the transfer of marine technology to ensure, through regular, transparent and comprehensive reports, that the needs of States are being met.

Issues from the cross-cutting elements

Use of terms

Different approaches were advanced regarding whether definitions of key terms should be included in the instrument. The need for consistency with the definitions contained in the United Nations Convention on the Law of the Sea and other relevant instruments was stressed.

Relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies

There seemed to be a general recognition that a specific provision should be included on the relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies, but the question remains whether a specific provision should be included in each of the sections of the instrument or only one general provision should be included.

General principles and approaches

Several principles and approaches were put forward for inclusion in the instrument. Further consideration will need to be given to how the instrument would best give effect to the identified general principles and approaches in the context of capacity-building and the transfer of marine technology.

International cooperation

The need to operationalize the duty to cooperate under the United Nations Convention on the Law of the Sea to address capacity-building and the transfer of marine technology was generally highlighted.

It was suggested that the duty to cooperate could be operationalized in the instrument, including through consultation with adjacent coastal States and through collaborative initiatives among Governments and other stakeholders.

Institutional arrangements

It was generally recognized that a mechanism would be required to oversee the framework for capacity-building and transfer of marine technology under the instrument. Different options for institutional arrangements under the instrument were put forward, including with reference to using existing bodies, institutions and mechanisms.

Clearing-house mechanism

There seemed to be convergence towards the idea that a clearing-house mechanism would be central to the entire instrument. It was suggested that guidance with respect to the establishment of such a mechanism could be drawn from existing clearing-house mechanisms, such as those of the Convention on Biological Diversity,

the Intergovernmental Oceanographic Commission, the International Seabed Authority and the United Nations Framework Convention on Climate Change, also to avoid duplication. There was recognition that linking regional networks could support the effectiveness of such a mechanism.

There also seemed to be convergence on the notion that such a clearing-house mechanism could cover various elements of the instrument beyond capacity-building and the transfer of marine technology, including marine genetic resources, the sharing of benefits, area-based management tools, including marine protected areas, and environmental impact assessments.

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

Oral report of the facilitator to the plenary
Friday, 14 September 2018

I am pleased to report on the discussions of the informal working group on measures such as area-based management tools, including marine protected areas.

The informal working group met on Friday, 7 September, Monday, 10 September, and Thursday, 13 September.

The discussions in the informal working group were structured around the sections contained in the President's aid to discussions and related to the following:

- Objectives of area-based management tools, including marine protected areas
- Relationship to measures under relevant instruments, frameworks and bodies
- Process in relation to area-based management tools, including marine protected areas
- Identification of areas
- Designation process
- Implementation
- Monitoring and review
- Issues from the cross-cutting elements: use of terms, general principles and approaches, relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies, international cooperation, institutional arrangements and a clearing-house mechanism

Before addressing each of these issues in sequence, let me say that I do not intend to provide a comprehensive summary of the extensive and complex discussions that took place, but will rather give an overview of the main issues discussed and the general trends I observed.

Objectives of area-based management tools, including marine protected areas

There was general convergence that area-based management tools, including marine protected areas, are measures to achieve the objective of the international legally binding instrument, namely, the conservation and sustainable use of the marine biological diversity of areas beyond national jurisdiction. There seemed to be convergence towards including certain overarching objectives in the instrument that would apply to the full range of area-based management tools, including marine protected areas, such as the promotion of cooperation and coherence in the use of area-based management tools, including marine protected areas, by regional and sectoral bodies and the implementation of existing obligations, in particular under the United Nations Convention on the Law of the Sea. Reference was also made to the Aichi Biodiversity Targets and Sustainable Development Goal 14. The objective of establishing connected networks of marine protected areas to ensure long-term conservation and sustainable use was also proposed. It was also proposed that the objective of the instrument should not be to create a mechanism to establish area-based management tools in areas beyond national jurisdiction.

There was convergence that area-based management tools, including marine protected areas, are tools to be established to achieve objectives specific to each

identified area. There also seemed to be some convergence towards including specific objectives for different types of tools. In this regard, it was suggested that the instrument could provide a list of such specific objectives or allow for their elaboration at a later stage.

Relationship to measures under relevant instruments, frameworks and bodies

General Assembly resolutions 69/292 and 72/249 were recalled, in particular the recognition that the instrument should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. There was general convergence that the instrument should foster greater cooperation and coherence, including between relevant regional and sectoral bodies. Examples of such cooperation at the regional level were provided. Proposals were made that the instrument should, to a large extent, rely on existing frameworks and bodies to implement measures, and the point was made that no hierarchy between the global instrument and regional instruments should be established. Proposals were also made to set up a process of recognition of existing measures, either explicit or inherent, provided that those measures also comply with the objectives of the instrument. The recognition of measures under existing mechanisms would promote the establishment of a global network.

It was generally recognized that the instrument should respect the rights and jurisdiction 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. There was some convergence on the need for consultations with adjacent coastal States during the process of establishing area-based management tools, including marine protected areas, to address also issues of compatibility with measures established by adjacent coastal States. The issue of whether or not the consent of adjacent coastal States would be necessary to establish area-based management tools, including marine protected areas, in areas beyond national jurisdiction was raised.

Process in relation to area-based management tools, including marine protected areas

It was generally recognized that the process that could be established under the instrument in relation to area-based management tools, including marine protected areas, in particular with respect to decision-making and the institutional set-up, would need to be inclusive, transparent and consistent with relevant international instruments, including the Charter of the United Nations and the United Nations Convention on the Law of the Sea, and enhance cooperation and coordination, while not undermining existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

The point was made that any new process under the instrument and the existing regional and sectoral processes should be mutually supportive, through a collaborative effort designed to contribute to the overall goals of the instrument.

Different approaches were proposed regarding the overall process to be set out in the instrument. While they could be clustered broadly into global, hybrid and regional approaches, it may be more useful to consider the proposals as covering a spectrum of such options.

One approach, which favoured a robust set of functions to be mandated for the process and bodies established under the instrument, emphasized the need to establish a coherent process for the establishment, implementation and enforcement of area-based management tools, including marine protected areas, which would be applicable to all States and address the fragmentation, inconsistencies and gaps in the

mandates of the existing regional and sectoral bodies, while envisaging their participation in the overall process.

Another approach favoured a process that would rely more extensively on existing processes and the responsibilities of existing regional and sectoral frameworks in relation to area-based management tools, including marine protected areas, while envisaging that some decision-making responsibilities and functions would be fulfilled at the global level. The aim of that type of process was to promoting cooperation and coordination and avoiding overlapping mandates. A proposal was made to promote a case-by-case approach to the identification of the area-based management tools required and which body or bodies (whether global, regional or groups of States) would be in the best position to take relevant decisions.

A third suggestion favoured a regional approach, viewing the instrument as a mechanism to strengthen existing regional bodies with the relevant expertise and competence to establish area-based management tools, while promoting enhanced cooperation and coordination between those and other relevant bodies. To that end, model cooperation agreements could be annexed to the instrument.

In a fourth approach, it was envisaged that the instrument would provide general principles and approaches on the establishment of area-based management tools, while recognizing the full authority of regional and sectoral organizations in decision-making, monitoring and review, without oversight by a global mechanism. Where those organizations did not exist, States could decide to establish them.

Notwithstanding the different approaches, there seemed to be growing convergence on the need for a global decision-making body; a mechanism to provide scientific advice to that decision-making body, such as a subsidiary scientific or technical committee, a pool of experts or reliance on existing regional scientific bodies; and a secretariat to discharge administrative functions and possibly also consultation and coordination functions. The possibility of establishing additional subsidiary bodies was also put forward.

Different approaches regarding the roles and responsibilities of the global decision-making body were proposed. One approach envisaged a global body that would take binding decisions, including on the designation of multi-purpose marine protected areas and related conservation and management measures, as well as review, monitoring and compliance. Decisions on the establishment of area-based management tools, including marine protected areas, would be taken following a process of consultation with a wide range of stakeholders, including existing regional and sectoral bodies, and on the basis of the assessment and recommendations of a scientific or expert body. As part of its review, the scientific body would also consult with relevant bodies and organizations that may be affected by any proposed measures, including to ensure that regional characteristics are fully reflected. It would also review and make recommendations to the decision-making body on the standards and criteria to be used for the identification of areas and review the effectiveness of the established marine protected areas and the progress in achieving its objectives.

Another approach envisaged a global decision-making body tasked, for example, with setting overall guidelines, standards and objectives; making high level decisions, including on the identification of priority areas for the establishment of area-based management tools, including marine protected areas; establishing processes for cooperation and coordination among existing regional and sectoral bodies and States; administering a global information database; and undertaking regular reviews of the implementation of the instrument. Another potential role identified for that body was site selection based on the advice of a scientific and technical body, as well as the recommendation of management measures, for consideration by relevant regional and sectoral bodies. The latter bodies would adopt

the relevant conservation and management measures, monitor and enforce those measures, cooperate and coordinate with global, regional and sectoral bodies and States, share information and data, and report on implementation.

Identification of areas

With regard to the process for identifying areas within which protection may be required, there seemed to be convergence that standards and criteria should be developed on the basis of the best available scientific knowledge, including existing international criteria and standards. In addition to the indicative list of criteria included in the elements in section III of the report of the Preparatory Committee (A/CONF.232/2018/1), criteria proposed during the discussions included the adverse impacts of climate change and ocean acidification, as well as traditional knowledge. The need to retain the flexibility to review and update standards and criteria as scientific knowledge develops was generally recognized.

Designation process

In terms of the designation process, it was broadly agreed that proposals to establish area-based management tools, including marine protected areas, could be submitted by States parties to the instrument, either individually or collectively, including through competent organizations. Reference was made to the possibility that proposals could be submitted by other stakeholders, such as States entitled to become parties to the instrument, the scientific and technical body, civil society or natural or juridical persons sponsored by a State party.

With respect to the content of proposals, some elements in addition to those specified in section III of the report of the Preparatory Committee were referenced, including traditional knowledge. Different approaches were proposed with regard to the duration of measures. One approach favoured specifying the duration, which would be linked to the objectives of proposed measures. In another approach, it was suggested that measures not contain a sunset clause, but be regularly reviewed to allow for updating, amendment or revocation as necessary.

Regarding consultation on and assessment of proposals, there seemed to be a general recognition that proposals should be made publicly available and that consultations should be time-bound, inclusive, transparent and open to all relevant stakeholders. To this end, it was proposed that an indicative list of stakeholders might be developed, which could include all States, including adjacent States, and relevant global, regional and sectoral bodies as well as industry, civil society, scientists, academia, and indigenous peoples and local communities with relevant traditional knowledge. The issue was raised as to whether the modalities of the consultation process should be articulated in the instrument itself, and if so, which details should be included. The importance of consultation and cooperation with existing regional and sectoral bodies and fully incorporating their perspectives was emphasized in particular. It was also noted that the special circumstances of small island developing States needed to be taken into account.

A proposal was made that, following the consultations, the proponent or proponents of a measure should be given an opportunity to respond to the views expressed by stakeholders and amend their proposal.

There was general recognition of the need to establish a process for the scientific review or assessment of proposals. In that regard, the importance of regional characteristics and ensuring that any process of scientific review incorporated sufficient regional expertise, including traditional knowledge, was noted.

Different approaches were put forward regarding decision-making on matters related to area-based management tools, including marine protected areas, in the light of the various proposals on institutional arrangements. While the importance of consensus as the basis for decision-making by a global body was generally recognized, it was also proposed that, where consensus could not be achieved, voting might be an option. Different views were put forward on the involvement of adjacent coastal States in decision-making.

It was noted that the establishment of area-based management tools, including marine protected areas, would necessarily take time, meaning that interim measures may need to be applied.

Implementation

There was convergence on the responsibility of States parties to implement measures, including management plans, adopted in the context of area-based management tools, including marine protected areas, by regulating activities and processes under their jurisdiction or control, including their flagged vessels. It was proposed that States not party to the instrument also be encouraged to implement such measures. In this regard, it was noted that nothing in the instrument should prejudice the right of States parties to adopt stricter measures with respect to their flagged vessels, nationals or such activities and processes. Different approaches, which are yet to be fully explored, were put forward regarding enforcement.

Monitoring and review

The need for monitoring and regular review of area-based management tools, including marine protected areas, established under the instrument, including in support of an adaptive management approach, was generally recognized. There was some convergence that reporting requirements should be set out in the instrument. There was also some convergence that monitoring and review functions could be allocated to a subsidiary body established under the instrument. A compliance mechanism was also proposed. In that context, the need for standardized reporting procedures was emphasized.

Issues from the cross-cutting elements

Regarding the cross-cutting elements, it was proposed that some of them would benefit from additional discussion once the text and concepts related to area-based management tools, including marine protected areas, had been further elaborated.

Use of terms

There was convergence that area-based management tools and marine protected areas could be defined in the instrument, and a number of international instruments were cited as possible sources of such definitions. Some specific definitions were proposed.

Relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies and institutional arrangements

Views on the relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies, as well as views on institutional arrangements, were presented earlier in relation to sections 4.2 and 4.3 of the President’s aid to discussion.

General principles and approaches

A number of general principles and approaches relating to area-based management tools, including marine protected areas, were cited. The view was expressed that those general principles and approaches could be operationalized through the measures and processes established by the instrument.

International cooperation

The issue of cooperation was discussed in depth in relation to sections 4.2 and 4.3 of the President's aid to discussion.

Clearing-house mechanism

There was convergence on the need for a clearing-house mechanism to share information relating to area-based management tools, including marine protected areas, which would serve as a repository for baseline data, provide information on relevant activities, facilitate the sharing of best practices among States parties, practitioners and stakeholders, and support capacity-building. One proposal was for such a mechanism to serve as a hub for a network of regional and/or subregional clearing houses.

Informal working group on environmental impact assessments

Oral report of the facilitator to the plenary
Friday, 14 September 2018

I am pleased to report on the discussions of the informal working group on environmental impact assessments.

The informal working group met for a total of one and a quarter days on Monday, 10 September, and Tuesday, 11 September.

The discussions in the informal working group were structured around the sections contained in the President's aid to discussions. The following topics were discussed:

- Obligation to conduct environmental impact assessments
- Relationship to environmental impact assessment processes under relevant instruments, frameworks and bodies
- Activities for which an environmental impact assessment is required
- Environmental impact assessment process
- Content of environmental impact assessment reports
- Monitoring, reporting and review
- Strategic environmental assessments
- Issues from the cross-cutting elements: use of terms, relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies, general principles and approaches, international cooperation, institutional arrangements and a clearing-house mechanism

Before taking each of these issues in sequence, let me say that I do not intend to provide a comprehensive summary of the extensive and complex discussions that took place, but will rather give an overview of the main issues discussed and the general trends I observed.

Obligation to conduct environmental impact assessments

There was convergence that articles 204 to 206 of the United Nations Convention on the Law of the Sea could form the basis for the obligation to conduct environmental impact assessments in the international legally binding instrument. Reference was also made to the general obligation to protect and preserve the marine environment under article 192, relevant case law and customary international law as additional sources of existing obligations. There was also convergence on the view that the obligation to conduct environmental impact assessments related to planned activities under the jurisdiction or control of States that may cause substantial pollution of or significant and harmful changes to the marine environment, and a number of options were presented as to how to determine State jurisdiction and/or control.

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

In the light of General Assembly resolutions 69/292 and 72/249 on the need to ensure that this process and its results do not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, there

was convergence on the importance of avoiding the duplication of existing environmental impact assessment obligations.

The need to establish procedures for consultation, coordination and cooperation with existing instruments, frameworks and bodies was generally recognized. Specific options to foster a mutually supportive and coherent environmental impact assessment framework in areas beyond national jurisdiction were identified during the discussions, including the following:

- The environmental impact assessment threshold in the instrument would constitute the minimum standard. This could be accompanied by a consultation mechanism with relevant regional and sectoral frameworks to facilitate a harmonized approach.
- No environmental impact assessment would be required under the instrument for any activity conducted in accordance with rules and guidelines appropriately established by existing relevant regional and sectoral bodies, irrespective of whether or not an environmental impact assessment was required under those rules or guidelines.
- The instrument would not require environmental impact assessments where relevant sectoral or regional bodies with mandates for such assessments in areas beyond national jurisdiction already existed.
- A functionally equivalent environmental impact assessment undertaken under another framework would meet the requirements of the instrument.

It was suggested that the threshold contained in the instrument should not undermine existing environmental impact assessment requirements with a lower threshold.

Activities for which an environmental impact assessment is required

Various proposals were put forward regarding the threshold for determining the activities for which an environmental impact assessment would be required. Some proposals called for the adoption of the threshold found in article 206 of the United Nations Convention on the Law of the Sea, while other proposals highlighted the threshold set out in the Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol). In that context, there was some recognition of the benefits of a tiered threshold approach in which a comprehensive environmental impact assessment would be required only for activities that met the threshold in article 206 of the Convention.

There was convergence on the benefit of developing guidance to further elaborate on and operationalize the obligation to conduct an environmental impact assessment and the relevant thresholds. Specific modalities for developing such guidance were identified during the discussion, including the suggestions that criteria be developed by a scientific or technical body established under the instrument, that guidance be drawn from existing standards, guidelines and practices, and/or that it be based on the best available scientific evidence. A number of examples of specific criteria that could be considered were also cited.

There seemed to be some convergence on an indicative, non-exhaustive list of activities that would require an environmental impact assessment, provided it could be amended regularly and easily, either by its inclusion in an annex to the instrument or as guidance to be developed later. However, it was noted that the impact of an activity depended on its scope and the area where it was undertaken, making such lists inadequate. It was also noted that lists could be difficult to negotiate and also to amend.

There was convergence on the view that cumulative impacts should be considered in environmental impact assessments. However, different options emerged on how this would be implemented, in particular whether processes originating from land-based activities, such as climate change, would be considered.

There was convergence on the need to protect areas identified as ecologically or biologically significant or vulnerable, and various proposals were made on how to achieve such protection. Some proposals called for a specific provision aimed at ensuring stricter protection for those areas, including by requiring environmental impact assessments for all activities proposed in them. Other proposals noted that the significance of those areas should be considered in the environmental impact assessment process, which would lead to the similar result of granting such areas additional protection.

Environmental impact assessment process

There was convergence on most of the procedural steps that should be included in the environmental impact assessment process as listed in the elements in section III of the report of the Preparatory Committee. Alternative proposals were made on the inclusion of the publication of decision-making documents and the modalities for public notification and consultation, as well as monitoring and review. Several additional steps were proposed, including to address compliance and enforcement. Different proposals were made regarding the level of detail to be included in the instrument as to the requirements in the environmental impact assessment process.

Various proposals were made as to whether the process should be "internationalized"; some called for States to be responsible for the entire process, to promote efficiency and timeliness, while others called for the establishment of institutional arrangements to manage at least part of the process, such as decision-making and monitoring and review, in order to promote global coherence and ensure that the standards in the instrument were met. It was also suggested that the internationalization of the process would assist developing States, in particular small island developing States.

The need to identify a standard for approving an activity following an environmental impact assessment was also raised. While some possible standards were suggested in this context, additional consideration of this question may be needed.

Content of environmental impact assessment reports

There seemed to be convergence on most of the elements that should be included in environmental impact assessment reports, as reflected in the elements in section III of the report of the Preparatory Committee. In addition, it was proposed that environmental impact assessment reports should indicate the sources of information contained in the report, the environmental record of the proponent, and an environmental management plan. It was further proposed that, consistent with article 205 of the Convention, reports should be published and made available to all States.

There appeared to be growing convergence that the instrument should not include too much detail on the content of environmental impact assessment reports, and that such detail could be elaborated on later by an institutional arrangement or be annexed to the instrument.

Proposals were made as to how the instrument would address transboundary impacts. Under the proposed activity-based approach, the instrument would only cover those activities taking place in areas beyond national jurisdiction, while under

the proposed impact-based approach, all activities with impacts on areas beyond national jurisdiction would be covered.

Monitoring, reporting and review

There seemed to be a general recognition that a monitoring, reporting and review mechanism could be set out under the instrument. However, various approaches were proposed as to the manner in which the instrument would set out the obligation to ensure that the impacts of authorized activities in areas beyond national jurisdiction were monitored, reported and reviewed, in particular on whether to internationalize that step in the process. Some proposals called for institutional arrangements, such as a decision-making body, scientific body or compliance committee, to oversee that step in the process to some extent, while other proposals called for it to be solely managed by the State under whose jurisdiction or control an activity was taking place.

There was convergence on the view that adjacent coastal States should be notified about proposed activities. However, there were different approaches regarding the extent to which adjacent coastal States would be consulted and whether they would be involved in decision-making.

Strategic environmental assessments

With regard to the inclusion of provisions relating to strategic environmental assessments in the instrument, different approaches were put forward. Those who supported inclusion proposed different options for the possible scope of such assessments, the level at which those assessments would be undertaken and who would undertake them. Reference was made to possible models for the conduct of such assessments and to relevant guidance material. It was suggested that the assessments could be considered a form of environmental impact assessment to be conducted at an early stage of planning. It was also noted that strategic environmental assessments could inform the development of area-based management tools under the instrument.

Another proposed approach was to exclude strategic environmental assessments from the instrument because of their complexity and cost and the length of time required for their completion. It was also considered unclear who could undertake such assessments in areas beyond national jurisdiction.

Issues from the cross-cutting elements

Use of terms

There was some convergence on the need to include definitions of key terms relevant to environmental impact assessments. A number of such key terms were highlighted in this regard. It was noted that the terms in need of definition would depend on the content of the instrument and could be determined at a later stage, and that they should be consistent with those existing in other instruments. Specific definitions were proposed for the following terms: environmental impact assessment, strategic environmental assessment, environment and cumulative effects.

Relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies

There was convergence on the need to promote cooperation with other instruments, frameworks and global, regional and sectoral bodies. It was suggested that the instrument provide for formal cooperation between existing organizations according to their respective competences and relevant institutions, procedures or

mechanisms established by the instrument. It was also proposed that the instrument should ensure that effective environmental impact assessments were conducted for all activities in areas beyond national jurisdiction.

As work on the instrument progresses, further consideration will need to be given to relationships with specific instruments and relevant global, regional and sectoral bodies.

General principles and approaches

There was convergence on the need to include guiding principles and approaches in relation to environmental impact assessments, in addition to principles and approaches relevant to the entire instrument. A number of possible principles and approaches were proposed.

International cooperation

It was generally recognized that international cooperation would be essential to the conduct of environmental impact assessments in areas beyond national jurisdiction, in accordance with the obligation to cooperate under the United Nations Convention on the Law of the Sea. It was suggested that such cooperation should take into account the special needs of developing countries and address, for example, the need for technical and financial assistance as well as for the development of institutional capacity and the transfer of marine technology. It was further proposed that the special case of small island developing States be recognized.

A number of examples of possible relevant modalities for cooperation were highlighted, including consultation with adjacent States and other States and consultation, cooperation and sharing of information with relevant sectoral and regional bodies.

Institutional arrangements

I wish to recall the proposals that were made regarding the internationalization of the environmental impact assessment process. Those who favoured the internationalization of elements of the environmental impact assessment process put forward options that envisioned roles for a decision-making body, a scientific body and a secretariat. Proposals were also put forward for a fund for the instrument and a compliance body.

Clearing-house mechanism

There was convergence on the importance of a clearing-house mechanism to share information relevant to environmental impact assessments, for example by serving as a repository for baseline data, providing information on planned activities and access to the results of completed assessments subject to confidentiality requirements, sharing best practices and facilitating capacity-building. One proposal was for such a mechanism to serve as a hub for a network of regional and/or subregional clearing houses. Another proposal was for the mechanism to include an international body responsible for ensuring fairness and transparency in the environmental impact assessment process through uniform guidelines and monitoring and review methods. Attention was also drawn to existing instruments, mechanisms and frameworks which could be taken into account in establishing a clearing-house mechanism.

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

Oral report of the facilitator to the plenary
Friday, 14 September 2018

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

The informal working group met for a total of one and a half days between Tuesday, 11 September, and Thursday, 13 September.

The discussions in the informal working group were structured around the sections contained in the President's aid to discussions and related to the following:

- Scope
- Access and benefit-sharing
- Monitoring
- Issues from the cross-cutting elements: use of terms, relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies, general principles and approaches, international cooperation, institutional arrangements and a clearing-house mechanism.

I intend to provide a brief overview of the discussions that took place and share my assessment of the main trends that emerged from those discussions. The present report is not intended to be exhaustive in that it does not reflect all the views expressed and proposals made; it would be difficult to do justice, within a short time frame, to the details and nuances of the various options put forward.

Scope

In response to the question on the manner in which geographical scope would be reflected in the international legally binding instrument, there seemed to be some convergence that the instrument should apply to marine genetic resources of both the Area and the high seas. At the same time, another approach suggested that the instrument would cover marine genetic resources of the Area only. In yet another approach, marine genetic resources of areas beyond national jurisdiction were already considered to be sufficiently regulated in the United Nations Convention on the Law of the Sea.

With regard to whether and how to address marine genetic resources straddling and/or overlapping with areas within national jurisdiction, suggested approaches included ensuring a common approach for marine genetic resources within and beyond national jurisdiction, taking into account an ecosystem approach and without prejudice to the rights and jurisdiction of coastal States; focusing on the place of access of the resources rather than the natural habitat of the resources, meaning that if access took place in areas beyond national jurisdiction, the instrument would apply, while other instruments, such as the Convention on Biological Diversity and its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, would apply if access took place in areas under national jurisdiction; and developing a consultation mechanism or process with coastal States adjacent to the area of collection.

It was generally recognized that the instrument should respect the rights and jurisdiction 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. In that regard, support was expressed for the inclusion of a "without prejudice" clause in the instrument, possibly drawing from article 142 of the United Nations Convention on the Law of the Sea and article 4 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement).

With regard to the material scope, there seemed to be convergence towards distinguishing between the use of fish and other biological resources for research into their genetic properties and their use as a commodity, with the instrument applying only to the former. In that regard, suggestions were made to develop a traceability regime to allow for benefit-sharing in the case of changes in use.

Different approaches were taken to the question of whether the instrument, in addition to marine genetic resources collected in situ, would also apply to ex situ and in silico marine genetic resources and to digital sequence data, as well as to derivatives.

Finally, the temporal scope of the instrument was raised. It was suggested that the instrument should not have retroactive application and would therefore only apply to marine genetic resources collected after its entry into force.

Access and benefit-sharing

In response to the question of the manner in which access would be addressed in the instrument, approaches varied. They ranged from not addressing access to options for regulating access. Whether access was regulated or not, there was convergence that marine scientific research should not be hampered. A suggestion was made that the instrument affirm that marine scientific research activities do not constitute the legal basis for any claim to any part of the marine environment or its resources, as reflected in article 241 of the United Nations Convention on the Law of the Sea.

If access were to be regulated, two models were generally put forward: a licensing or permit-based model, which might borrow elements from the sponsoring State system for the Area; and a notification-based model, which would require notification of sampling or collection activities in areas beyond national jurisdiction to a designated entity under the instrument before or after the activities.

The proposed terms and conditions for regulated access included capacity-building, the transfer of marine technology, a requirement to deposit samples, data and related information in open source platforms such as databases, biorepositories and/or biobanks, and/or contributions to an access and benefit-sharing fund. It was suggested that the prior informed consent of indigenous and local communities whose traditional knowledge was used to unlock the value of marine genetic resources should also be sought.

Proposals were made that different access provisions be included in the instrument depending on where the marine genetic resources are sourced or originate. A suggestion was made that regulated access could be provided for marine genetic resources of the Area. Another suggestion was that there should be different provisions on whether the resources and related data and information are accessed in situ, ex situ or in silico. A suggestion was also made that different levels of access regulation could be envisaged in respect of vulnerable marine ecosystems, ecologically or biologically significant areas or other specially protected areas.

With regard to whether to regulate access for all activities, a proposed approach differentiated scientific research and research for commercial purposes, with only the

latter being subject to regulation. Under that approach, a procedure for changes of use or transfers of material to third parties would be developed.

In addition to the objectives of the sharing of benefits as reflected in the elements in section III of the report of the Preparatory Committee, other objectives were put forward.

With regard to the principles and approaches guiding benefit-sharing, references were made to the common heritage of mankind and the freedom of the high seas, with divergent views on their applicability to marine genetic resources of areas beyond national jurisdiction. A proposal was made that the common heritage of mankind could govern the exploitation of marine genetic resources, while the freedom of the high seas could govern access with proper regulation, as appropriate.

Principles and approaches were proposed in addition to those listed in the elements in section III of the report of the Preparatory Committee. One suggestion was not to explicitly mention principles and approaches for benefit-sharing in addition to a list of principles and approaches for the entire instrument.

With regard to benefits, various approaches were presented, ranging from including both monetary and non-monetary benefits in the instrument to excluding monetary benefits. A number of existing instruments were referred to as a useful basis and starting point for the identification of types of benefits.

Different approaches were proposed on whether to include an indicative and non-exhaustive list of benefits or types of benefits in the instrument or to develop such a list later.

Various practical arrangements for the sharing of benefits were described in great detail during the deliberations. I cannot do justice to them all and their nuances in this short report but wish to highlight the following elements:

It was proposed that different benefits might accrue at different stages and that States parties to the instrument, in particular developing countries, would be the beneficiaries. It was also suggested that the requirement to share benefits would fall on those actors who gained access to marine genetic resources and benefited from their exploitation.

With regard to how benefits might be used, suggestions included ensuring the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, building the capacity of States to that end and to gain access to and use marine genetic resources, and promoting scientific research. Those who supported monetary benefit-sharing suggested that monetary benefits could be shared through a fund to support the implementation of the instrument and the activities of its institutional arrangements. It was also suggested that adaptable benefit-sharing packages and models could more effectively address the different needs and capacities of recipient States.

A number of existing instruments and frameworks to be taken into account in developing modalities for the sharing of benefits were referred to in the discussions.

There was convergence on the potential benefits of entrusting a clearing-house mechanism with the task of administering various aspects of the sharing of benefits, including the sharing of information about samples, data, knowledge and expertise; capacity-building; and promoting cooperation and compliance. It was also proposed that a clearing-house mechanism could disseminate information on access and benefit-sharing and, in this connection, could administer a trust fund to promote the equitable sharing of benefits under the instrument. A further proposal was made to develop a protocol, code of conduct or guidelines within the clearing-house

mechanism in order to ensure environmental protection, compliance and transparency in the use of marine genetic resources.

It was generally recognized that the special circumstances of developing countries, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States and small island developing States, as well as coastal African States, should be taken into account in the modalities for the sharing of benefits.

Different approaches were put forward as to whether to address intellectual property rights in the instrument. While suggestions were made for the development of a sui generis system for marine genetic resources of areas beyond national jurisdiction and for the mandatory disclosure of sources or origins, other options highlighted ongoing work on genetic resources and intellectual property rights in competent international forums, including under the Agreement on Trade-Related Aspects of Intellectual Property Rights and the World Intellectual Property Organization.

Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction

Different approaches were put forward as to whether to monitor the utilization of marine genetic resources.

Those who favoured such monitoring proposed a robust "track and trace" regime that would collect and disclose information concerning the geographic location or source of marine genetic resources as well as research and collection activities. A suggestion was made that it could also provide conditions for access to samples, data and information.

In terms of practical arrangements, proposals were made for an online open-access platform providing for obligatory prior electronic notification, the granting of non-exclusive licences or co-exclusive licences for the use of marine genetic resources, and assigning identifiers to marine genetic resources. Options regarding who would carry out such monitoring included an existing body, a clearing-house mechanism, a secretariat or a scientific and technical body under the instrument.

Issues from the cross-cutting elements

Use of terms

There was convergence on the idea that key terms relevant to this element of the package could be defined and that such definitions should draw on and be consistent with other relevant legal instruments and frameworks. Some specific proposals regarding definitions were put forward. However, it was also noted that which terms would need to be defined would depend on the terms used in the instrument.

Relationship to the United Nations Convention on the Law of the Sea and other instruments and frameworks and relevant global, regional and sectoral bodies

It was generally recognized that all the provisions of the instrument must be consistent with and should not undermine other existing legal instruments and frameworks and relevant global, regional and sectoral bodies. Proposals were made to include a specific provision recognizing this general principle.

General principles and approaches

While some support was expressed for including general principles and approaches specific to marine genetic resources, including questions on the sharing

of benefits, another approach was that no general principles and approaches in addition to those that would apply to the entire instrument would be spelled out in this section of the instrument.

In addition to those mentioned previously for benefit-sharing and those included in the elements in section III of the report of the Preparatory Committee, a number of principles and approaches were mentioned.

As I mentioned previously, different views were expressed as to whether the common heritage of mankind and/or the freedom of the high seas would apply to marine genetic resources, including questions on the sharing of benefits.

International cooperation

There was some convergence on the idea that the instrument should include an obligation to cooperate with respect to marine genetic resources, including questions on the sharing of benefits, and that the special requirements of developing countries for capacity-building and the transfer of marine technology should be recognized in that regard.

Institutional arrangements

It was proposed that the institutional arrangements under the instrument could be responsible for monitoring and managing access and benefit-sharing. Various elements were suggested, including roles for a decision-making body, a scientific and technical body with advisory competence, a secretariat, a clearing-house mechanism and an access and benefit-sharing mechanism. In considering such arrangements, it was noted that best practices and lessons learned should be drawn from existing frameworks. Suggestions were made that existing bodies could be utilized or institutional arrangements under the instrument could have some relationship with such bodies. It was also proposed that consideration should be given to coordination with regional arrangements.

Clearing-house mechanism

There was convergence on the idea of a clearing-house mechanism. In establishing such a mechanism, it was suggested that guidance could be drawn from existing frameworks, including the Convention on Biological Diversity and the Nagoya Protocol, the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, the International Seabed Authority and the United Nations Framework Convention on Climate Change. It was also proposed that a clearing-house mechanism be linked to regional and subregional clearing-house mechanisms. Calls were made for the clearing-house mechanism to be easily accessible, not cumbersome and user-friendly. Suggestions were made that the instrument should provide for a single clearing-house mechanism rather than several, with each related to the different issues of the package.