
THE SIENA NEGOTIATIONS – A MULTILATERAL SIMULATION EXERCISE: AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION¹

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1 Overview

1.1 Introduction

This paper describes the elements, structure, course and outcomes of a negotiation simulation exercise for the University of Eastern Finland – UN Environment

¹ This paper is partly drawn from the description of negotiation exercises on the previous UEF – UN Environment MEA Courses, conducted by Cam Carruthers.

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Course on Multilateral Environmental Agreements (MEAs), held in Siena on 22-23 October 2019.

The scenario for the negotiation simulation focused on marine biodiversity of areas beyond national jurisdiction. These areas comprise of the high seas and the international seabed area, which are jointly referred to as areas beyond national jurisdiction (ABNJ). These areas cover more than 50 per cent of the oceans. Marine biodiversity underpins a variety of ecosystem services of crucial importance to humans, but faces growing threats due to, inter alia, accelerating exploitation of these resources, growing shipping and fishing activities, developed seabed mining and bioprospecting, climate change and ocean acidification.⁷

It is generally recognized that the current governance system for the protection and management of global oceans has weaknesses.⁸ The current governance framework, based on the United Nations Convention on the Law of the Sea (UNCLOS),⁹ negotiated in the 1970s, regulates ocean activities in multiple jurisdiction areas that have been defined based on their distance from the coast. Furthermore, new types of resources, such as marine genetic resources, are not included in the current governance framework. UNCLOS also does not provide guidelines on how states should cooperate to realize the protection of marine biodiversity or the transfer of marine technology.¹⁰ The negotiations for an ‘international legally binding instrument for the conservation and sustainable use of marine biodiversity in areas beyond the limits of national jurisdiction’ aim to address gaps in the current governance framework, to be nested in and building on existing obligations under UNCLOS. The new agreement would complement existing international agreements on issues such as high seas fisheries, deep sea mining, marine pollution, intellectual property rights and biodiversity protection.¹¹

⁷ See, for instance, IUCN, ‘Governing areas beyond national jurisdiction’, IUCN issues brief of March 2019, <https://www.iucn.org/sites/dev/files/issues_brief_governing_areas_beyond_national_jurisdiction.pdf> (visited 27 February 2020).

⁸ See, for instance, Jeff A. Ardron et al, ‘The sustainable use and conservation of biodiversity in ABNJ: What can be achieved using existing international agreements?’, 49 *Marine Policy* (2014) 98-108; Glen Wright et al, ‘The long and winding road: negotiating a treaty for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction’, Institut du développement durable et des relations internationales (IDDRI) study no. 08/18 (2018), available at <<https://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20Iddri/Etude/20180830-The%20long%20and%20winding%20road.pdf>> (visited 27 February 2020) at 31-40.

⁹ United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, in force 16 November 1994, 21 *International Legal Materials* (1982) 1261.

¹⁰ See, for instance, Aguiar Branco, ‘INSIDER: What to Look for in the Latest Round of BBNJ Negotiations’ (World Resources Institute, 2019), available at <<https://www.wri.org/blog/2019/08/insider-what-look-latest-round-bbnj-negotiations>> (visited 29 February 2020).

¹¹ See, for instance, Rachel Tiller et al, ‘The once and future treaty: Towards a new regime for biodiversity in areas beyond national jurisdiction’, 99 *Marine Policy* (2019) 239-242; Wright et al, ‘The long and’, *supra* note 8; and Dire Tladi, ‘An institutional framework for addressing marine genetic resources under the proposed treaty for marine biodiversity in areas beyond national jurisdiction’, 19 *International Environmental Agreements* (2019) 485-495.

The participants' key task was to negotiate a number of provisions in a draft agreement under the UNCLOS on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. The negotiations were set at the 4th session of the Intergovernmental Conference (IGC-4) on the issue.

As participants convened in the plenary, the IGC Co-Presidents advised delegations that, after hearing plenary discussion on the three topics under negotiation, three previously established drafting groups resumed their work, with the aim of producing agreed texts to be adopted by the final plenary of IGC-4. In concrete terms, the IGC Co-Presidents proposed that the established drafting groups start negotiations, aiming to produce agreed text on the following issues:

- 1) benefit-sharing;
- 2) environmental impact assessment; and
- 3) the scientific and technical body or network and the clearing-house mechanism.

In addition, the drafting groups and the plenary were to negotiate procedural issues, including the election of officers and agreement on how to proceed with the draft agreement.

The overall objective of the exercise was to strengthen participants' understanding of the challenges and opportunities related to negotiating more specific infrastructure in a new MEA. The theme also provided an opportunity for participants to gain understanding about evolving legal architectures in international environmental governance.

1.2 Simulation objectives

This simulation focused on negotiations on issues related to regulating marine biodiversity in areas beyond national jurisdiction. The scenario was set at the fourth meeting of an Intergovernmental Conference negotiating on an international legally binding instrument (ILBI) on the issue. The general objectives were to promote among participants, through simulation experience:

- understanding of the challenges and opportunities related to negotiating more specific infrastructure in a new MEA;
- understanding of the principles and practices of multilateral environmental negotiations, and appreciation of the value and role of the rules of procedure; and
- familiarity with specific substantive and drafting issues.

Within the exercise, the specific objective was to conduct negotiations on the following issues: (1) election of officers; (2) benefit-sharing; (3) environmental impact assessment; (4) the scientific and technical body or network and the clearing-house

mechanism; and (5) arrangements for the next steps with the draft agreement with a focus on how to take the IGC-4 outcomes forward and how to proceed with issues that potentially remain outstanding after IGC-4.

1.3 The IGC's mandate and previous negotiations¹²

The negotiation simulation scenario and the issues set out within it were hypothetical but based on actual and recent discussions which had not yet concluded.

The scenario was set as the fourth meeting 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. The IGC was established by the United Nations General Assembly Resolution¹³ in 2017 to consider the recommendations of an earlier Preparatory Committee¹⁴ on the elements and to elaborate the text of an ILBI under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with a view to developing the instrument as soon as possible. According to the IGC's mandate, the negotiations on the ILBI were to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology. It was further stated that the work and results of the IGC should be fully consistent with the provisions of UNCLOS and that this process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

The IGC held its first session (IGC-1) in September 2018. In the session, the IGC agreed that its work would be guided by two Co-Presidents, one from a developed and one from a developing country. Delegates exchanged views on their expectations for the IGC, including their preferred procedural way forward towards a zero draft, and on the content of the legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. A 'Co-Presidents' aid to negotiations' document¹⁵ was a useful basis for the discussions.

¹² This is a slightly modified account of the real-life negotiations of the IGC.

¹³ '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', UNGA Res. 72/249 of 24 December 2017.

¹⁴ Established by 'UNGA Res. 69/292 of 19 June 2015 ('Development of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction').

¹⁵ See 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, Second session, 'President's aid to negotiations', UN Doc. A/CONF.232/2019/1* (2018).

The document had the aim of facilitating focused discussions and text-based negotiations, and it included treaty language and options concerning the identified key issues and some cross-cutting issues of the legally binding instrument under negotiation. Several delegates urged the ‘Co-Presidents’ Aid to Negotiations’ to be developed into a zero draft text of a legally binding instrument. Others preferred the preparation of an ‘informal, comprehensive but not exhaustive, preliminary draft as a basis for negotiations’ which would not be written in a treaty form. Delegates agreed that the negotiation text should reflect the diversity of views involved in the negotiations.

IGC-2 was held in March – April 2019. In the session, delegates continued discussion on potential elements for the legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, based on another ‘Aid to Negotiations’ document prepared by the Co-Presidents. During the session, delegates continued to elaborate their positions on issues previously identified as areas of divergence, achieving convergence on a few areas but unable to agree on a number of major issues. Many delegates urged for the creation of a ‘no options’ document containing treaty text as the basis of the continued negotiations.

The third session of the IGC (IGC-3) took place in August 2019. The basis for the negotiations was the draft text for the ILBI on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, prepared by the Co-Presidents. The draft text was structured in a form akin to a treaty. This was the first time that the IGC negotiated on a concrete text. The delegates negotiated in a good spirit but were not able to reach agreement on several major issues. It was agreed that the Co-Presidents produce a revised draft of the treaty text, including textual proposals presented in IGC-3.

IGC-4 constituted the penultimate scheduled negotiating session of the Conference tasked with producing a legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The IGC aimed to complete its work in its fifth session, forthcoming in 2020.

The ICG-4 has two Co-Presidents previously elected who continued in office, so no elections were required. In practice, two Course participants were pre-selected to act as IGC Co-Presidents. At the Conference, the main focus was assumed to be on three drafting groups working on benefit-sharing, environmental impact assessment, and on the Scientific and Technical Body or Network and the clearing-house mechanism, respectively. Each of the three drafting groups had one Facilitator and one Rapporteur, selected by the delegates at the opening plenary. Facilitators and Rapporteurs for the drafting groups were identified in advance through consultations, noting that in real life chairs are identified in advance of meetings to facilitate preparation. It is often an established practice to seek to balance developed country and developing country representation in these elected positions by having co-facilitators, but in the current negotiating environment, due to lack of numbers, a single

facilitator was selected for each group. An attempt had to be made to have a balance of regions, interests and gender in these positions.

The Co-Presidents, Facilitators and Rapporteurs were provided with separate supplementary instructions before the exercise. Facilitators managed the negotiation process in the drafting groups. The tasks of drafting group Rapporteurs included keeping a speaker's list and typing the text on the screen as negotiations proceeded. The Rapporteur was also to report on the discussions held and progress achieved within his/her drafting group to the Co-Presidents and the plenary.

One of the purposes of the simulation exercise was to familiarize participants in some of the key procedural issues related to multilateral negotiations. The IGC's rules of procedure were included in the general instructions of the exercise. Accordingly, the IGC operated on the basis of a consensus rule. This is a common approach in MEA negotiations. In light of this, it was recommended for the IGC Co-Presidents and other delegates to consult informally, trying to reach agreement on the appointment of the drafting group Facilitators already before the IGC-4 opening plenary on the morning of Day 1 of the exercise.

1.4 Simulation scenario

The exercise began with the opening plenary meeting of IGC-4 where delegates were expected to adopt the agenda and agree to the organization of work. At the opening plenary, delegates had to also choose three drafting group Facilitators and three Rapporteurs by consensus.

After the opening plenary, participants proceeded to the drafting groups in accordance with their individual instructions. For the purposes of the exercise, the drafting groups had already been established at previous sessions of the IGC and their existence and mandate were not among the issues under negotiation.

The drafting groups' respective mandates focused on the following issues:

- 1) benefit-sharing;
- 2) environmental impact assessment; and
- 3) the scientific and technical body or network and the clearing-house mechanism.

Each drafting group was to work based on relevant parts of a negotiating text forwarded by IGC-3. Each drafting group was chaired by the Facilitator appointed by the IGC at the opening plenary. The drafting groups were to work on the remaining three draft texts that were still heavily bracketed, showing lack of consensus among the parties.

After the opening of the IGC-4 plenary on Day 1, the exercise was to continue in the drafting groups. The groups were to negotiate until the end of the first day of the exercise, report to the plenary at 10am on Day 2 and continue negotiations through the second day, before returning to the plenary at 4pm for discussions and possible agreement that the draft decisions were ready to be forwarded for adoption.

At its next session in 2020, the IGC was expected to adopt a new legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. In light of this, the ideal outcome from IGC-4 was for the drafting groups to complete their work and for the IGC to forward agreed text to its final scheduled session. However, as it often happens, it was possible that not all drafting groups could reach agreement. In such a case, the closing plenary of IGC-4 – scheduled to take place on Day 2 of the exercise – was to agree on how to take the work forward to IGC-5. For instance, the IGC could agree to continue working through the three drafting groups at an extra session, based on the texts developed at IGC-4; or it might wish to give the IGC Co-Presidents a mandate to prepare a compromise text to be considered in a future negotiating setting that is different from the three drafting groups.

1.5 Participants' roles¹⁶

Each participant played a specific role of a country representative. Participants were expected to represent their national interests based on their individual instructions. Participants were to play their part in the overall scenario for the simulation following general and individual instructions. Where possible, it was a good idea to make alliances and develop coordinated strategies to intervene in support of others, or to take the lead in other cases. Some roles, namely the Co-Presidents and Facilitators, played a resource function and could be useful to participants. Those playing such roles were to serve all participants and work for a positive outcome in addition to their individual instructions.

Participants were to work hard to achieve their objectives. Participants were strongly urged to carefully follow their instructions, and to elaborate interventions with a compelling rationale to advance their positions. Participants were also encouraged to take the initiative and be inventive and to intervene in drafting groups and in plenary even if they had no specific instructions on a particular issue. Participants were further strongly encouraged to seek support from other participants for, and identify opposition to, their positions. To this end, participants had to consider developing joint drafting proposals and making interventions on behalf of more than one party, and they might wish to consider using regional and country negotiation groups as

¹⁶ This section of the instructions was based on: Cam Carruthers, 'The Grenada Ad Hoc Joint Working Group. A Multilateral Simulation Exercise of an Ad Hoc Joint Working Group Meeting on Climate-related Geoenvironment', in Ed Couzens, Tuula Honkonen and Melissa Lewis (eds), *International Environmental Law-making and Diplomacy Review 2012* (University of Eastern Finland, 2012) 173-226.

a point of departure. Participants were to note that even though the exercise used fictional country names, most delegates were assigned to represent specific real-life country groups that have joint interests and positions. Participants were strongly encouraged to liaise with their country groups during the negotiations.

Participants were to follow their interests and positions with respect to the issue assigned to their drafting group. The groups were to narrow their focus as quickly as possible to identify the main issues to be addressed, and to dispose of issues (and agree on text) expeditiously where possible. Participants had to work hard to achieve their objective of providing the final IGC-4 plenary with a clean text.

The simulation was designed to be difficult, with failure to reach agreement a real possibility. Unavoidably, a random distribution of positions was likely to result in making some parties appear more or less constructive, and indeed for simulation purposes some positions were designed to cause difficulties. It is important to note that the positions in individual instructions were developed and assigned randomly. They were entirely hypothetical and were not intended to reflect specific positions of particular parties or the views of organizations or individuals.

Individual delegates often face situations similar to this exercise, where they have little opportunity to prepare, but should still define objectives and develop a strategy. Informal diplomacy is where most progress toward agreement on concepts is made, while drafting group and plenary discussion is often required for agreement on specific texts. Drafting often involves a fine balance between accommodation and clarity. Decision-making on the final text in plenary may be pro-forma, but there can be surprises. Decisions in the plenary are critical and can sometimes move very quickly, at times moving back and forth on an agenda, so that being prepared with an effective intervention at any moment is essential.

The two Co-Presidents and the drafting group Facilitators played an important role, setting up and managing the process – and managing time – to produce agreement. They were encouraged to consult broadly, including with each other and Party representatives (note that the simulation organizers could possibly provide advice acting as senior secretariat officials). The key to success was thoughtful organization of the work of the groups, including strategic management of how the smaller drafting groups and the plenary sessions functioned and were linked.

Finally, participants were asked to think about issues for discussion in the feedback session following the exercise, including issues of both process and substance within the exercise, as well as issues relating to the structure and management of the exercise itself.

2 Instructions

2.1 Individual instructions¹⁷

The core of the simulation was set out in confidential individual instructions. They provided very brief positions and fall-back positions on each of the issues being negotiated and showed the positions of the Party with regard to the issues being negotiated in the drafting group to which a participant had been assigned. It was to be noted that the confidential individual instructions provided some guidance on the rationale for positions outlined (the rest was to be developed by each participant), but unanticipated issues could arise and negotiators needed to react in a manner that was consistent with their overall instructions. In some cases, the instructions could seem contradictory (this happens in real life, and is interesting to watch!). In some cases, instructions stipulated that a position could not be abandoned for a fall-back without consulting a designated senior official in the state's capital. For the purposes of this simulation, the simulation coordinators served in this capacity. For further guidance in dealing with procedural and strategic issues, the participants were advised to see the *MEA Negotiators' Handbook*.¹⁸

2.2 General instructions

The general instructions were conveyed as follows:

- 1) At a minimum, please review the general and individual instructions and the key simulation documents as well as the rules of procedure for the IGC. The remaining material is for reference / use as needed, but should not be overlooked.¹⁹
- 2) Each participant will be assigned a role as a representative of a country delegate. They have been sent with full credentials from their governments to participate in the meeting of the IGC, using their confidential individual instructions as a guide. Delegates *should do their best to achieve the objectives laid out in their instructions*. They should develop a strategy – but not too rigid – and an integrated rationale to support their positions.
- 3) Do not share your confidential individual instructions with other participants. Do not concede to a fall-back position without a serious effort to achieve your primary objective (and certainly not on the first day!). If possible, consult with others before the session, to identify and coordinate with those who have similar instructions, and even prepare joint interventions. *You should build alliances and try to support anyone with a similar position who is out-numbered. You should try to identify participants with opposing views, and influence them both in formal*

¹⁷ This section of the instructions was based on *ibid*.

¹⁸ *MEANegotiators' Handbook*, available in English and French at <<https://www.uef.fi/documents/241889/0/Negotiator%27s+handbook/6f8b7a8b-b39c-4192-af54-15d4eccad355>> and <<https://www.uef.fi/documents/241889/0/French+handbook/32acc474-7708-4a0d-8bad-d2e802870455>> (both visited 29 February 2020).

¹⁹ See also the *MEA Negotiators' Handbook*, in particular, sections 3.1, 3.2, 3.3, 3.6, 2.4, 4.3 and 5.

negotiations, as well as in informal settings. Also note that during the exercise, you may receive supplementary instructions. Participants should, of course, always be respectful of each other's views and background.

- 4) The Simulation Coordinators will remain as far as possible outside of the simulation and should not be consulted unless necessary. Questions on procedure, etc. should *a priori* be addressed to the Co-Presidents, drafting group Facilitators or Rapporteurs. The Simulation Coordinators may, as needed, play the role of a Senior Secretariat official and/or one of the designated senior government officials in a state's capital authorized to provide supplementary instructions to their delegations.
- 5) In the IGC plenary, the Co-Presidents sit at the head of the room, with the Secretariat officials beside them. Each participant will be provided a country nameplate (fold it twice, so the name is in the mid panel). To speak, please raise your 'flag' and signal the Secretariat official keeping the speakers' list.
- 6) The IGC will begin work in plenary. As explained above, the IGC has previously agreed to continue working in drafting groups established at IGC-3 based on text forwarded from the previous session.
- 7) In addition to adopting the agenda and agreeing to the organization of work, the IGC plenary will need to elect Facilitators and Rapporteurs for the three drafting groups.
- 8) When IGC-4 breaks into the drafting groups, please join the group identified in your individual instructions. The groups will operate much like an informal drafting group (see the *MEA Negotiator's Handbook*).
- 9) The drafting groups must reach agreement on what to report back to the plenary. The group Rapporteur will do the reporting (see the *MEA Negotiator's Handbook* on drafting, especially use of brackets).
- 10) Co-Presidents, Facilitators and Rapporteurs must play their roles throughout the negotiation simulation exercise, and generally refrain from openly taking positions, and only do so when explicitly indicating that they are 'taking their Chair's hat off'. Please note that for the purpose of the simulation, the Co-Presidents play delegate roles in the drafting groups.
- 11) Please use only the materials provided, as well as advice and information from other participants, and don't be distracted by internet resources or use any precedent found there or elsewhere (even though this is often a good idea in real life!).
- 12) The exercise will take place over a two-day period. Participants are encouraged to consult informally before the exercise for nominations to the drafting group Facilitator and Rapporteur positions and in the evening of the first day to form alliances and broker solutions (as often happens in real life).

2.3 Evaluation

Following the exercise, participants were requested to respond to the evaluation questions in the course evaluation in relation to the exercise. In addition, there was a specific wrap-up and evaluation session immediately after the conclusion of the exercise.

3 Background materials

3.1 Marine genetic resources and their utilization in deep seabeds²⁰

The vast majority (approximately 98 per cent) of known marine species lives on the ocean floor, which includes extreme-temperature and -pressure environments at great depths such as seamounts, hydrothermal vents and cold-water coral reefs. International concerns have been growing about the increasing pressure posed by existing and emerging human activities that may destroy these unique forms of life before we even begin to know and understand them.

Marine genetic resources (the genetic material of, for instance, deep-sea marine sponges, krill, corals, seaweeds, bacteria) in these remote and mysterious areas of the oceans are attracting increasing scientific and commercial attention as they are likely to possess unique characteristics that may lead to ground-breaking innovations in the pharmaceutical and food industries, among others.

The potential of marine genetic resources for development is substantial and of growing importance, but information is scattered and difficult to access for the non-specialized public. Public-private partnerships are usually involved in efforts to explore and develop these resources ('bioprospecting'): private companies fund academic and public-sector researchers to collect marine genetic samples from the depths of the oceans, or to obtain access to samples already held by research institutions. There are also prominent cases of global expeditions that are at present collecting marine genetic resources in the deep sea with the purpose of promoting universal access to samples and data for the benefit of scientific progress.

There is also an increasing trend of 'privatizing' innovations derived from marine genetic resources by protecting them through intellectual property rights (IPRs). According to a 2011 *Science* article, only 10 countries account for 90 per cent of patents related to marine genetic resources (the US, Japan, certain EU countries, Switzerland and Norway). Developing countries, therefore, are clearly not part of current bioprospecting efforts, due to technological barriers in accessing marine genetic resources in the deep seas. For the past ten years or more, developing countries have thus demanded that an international regime be put in place to ensure that all countries benefit from the economic returns deriving from living organisms that do not belong only to technologically advanced states on the basis of the general principle of equity.

²⁰ This section is based on Elisa Morgera, 'Benefit-sharing in marine areas beyond national jurisdiction: where are we at? (Part I)', BeneLex blog (23 May 2014), available at <<https://benelexblog.wordpress.com/2014/05/23/benefit-sharing-in-marine-areas-beyond-national-jurisdiction-where-are-we-at-part-i/>> (visited 29 February 2020).

3.2 Environmental impact assessment (EIA) in areas beyond national jurisdiction

Environmental impact assessment (EIA) is a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse. The effective participation of relevant stakeholders, including indigenous and local communities, is a precondition for a successful EIA.²¹

The relevant EIA types for the ILBI under negotiation have been defined as follows:²²

Environmental Impact Assessment (EIA) is a process of evaluating the likely environmental impacts of, and proposing appropriate mitigation measures for, a proposed development, taking into account interrelated socio-economic, cultural and human health impacts, both beneficial and adverse.

Cultural heritage impact assessment is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development on the physical manifestations of a community's cultural heritage including sites, structures and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological or aesthetic value or significance.

Social impact assessment is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development that may affect the rights (which have an economic, social, cultural, civic and political dimension), as well as the wellbeing, vitality and viability, of an affected community — that is, the quality of life of a community as measured in terms of various socio-economic indicators, such as income distribution, physical and social integrity and protection of individuals and communities, employment levels and opportunities, health and welfare, education, and availability and standards of housing and accommodation, infrastructure and services.

Strategic environmental assessment (SEA) is one type of EIA. SEA is a process of evaluating the likely environmental impacts of proposed policies, plans or programmes to ensure that they are fully included and addressed at an early stage of decision-making, together with economic, social and cultural considerations.

²¹ 'Voluntary guidelines on biodiversity-inclusive environmental impact assessment', CBD Decision VIII/28 (2006), Annex.

²² Daniela Diz, 'Maximising ecosystem benefits through EIAs in areas beyond national jurisdiction', IIED Briefing (April 2019), available at <<https://pubs.iied.org/pdfs/17700IIED.pdf>> (visited 29 February 2020).

4 Key simulation documents

4.1 Agenda for IGC-4

4.1.1 Provisional Agenda

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

Fourth Session

22-23 October 2019, Siena, Italy

Provisional Agenda UNEP/IGC.4/1, 1 October 2019

1. Opening of the session
2. Election of Officers
3. Organizational Matters
 - (a) Adoption of the agenda
 - (b) Organization of work
4. Preparation of a Legally Binding Instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
5. Other matters
6. Adoption of the report
7. Closure of the session

4.1.2 Annotated Agenda

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

Fourth Session

22-23 October 2019, Siena, Italy

Annotations to the Provisional Agenda UNEP/IGC.4/1/Add.1, 1 October 2019

Item 1 Opening of the session

1. The fourth session of the Intergovernmental Conference to prepare 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, to be held from 22 to 23 October 2019, will be opened at 10 am on Tuesday, 22 October 2019.

Item 2 Election of Officers

2. It is expected that the Intergovernmental Conference will elect Facilitators to the drafting groups at the beginning of its fourth session.

Item 3 Organizational Matters

3. The Conference may wish to adopt the agenda for its fourth session based on the provisional agenda set forth in document UNEP/IGC.4/1.
4. The Conference may wish to decide that it shall meet on Day 1 from 10 a.m. to 5 p.m. and on Day 2 from 10 p.m. to 5:30 p.m., subject to adjustments as necessary.
5. The Conference may wish to proceed on the basis of the agreement reached at the previous meeting (UNEP/IGC.3/Add.1) that the three drafting groups established at the Conference's third session continue their work at the fourth session. During the session, the Conference may wish to establish such other in-session working groups as it deems necessary and specify their mandates.

Item 4 Preparation of an international legally binding Instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

6. The Conference may wish, as agreed at its third session, to begin discussions on this agenda item in drafting groups.

Item 5. Other matters

7. The committee may wish to consider other matters raised during the session.

Item 6. Adoption of the report

8. At its closing meeting, the Conference will be invited to consider and adopt the report on the work of its fourth session prepared by the rapporteur.

Item 7. Closure of the session

9. It is expected that the Conference will conclude its work by 5:00 p.m. on Wednesday, 23 October 2019.

4.2 Negotiation texts

4.2.1 Negotiation text for drafting group 1

Article 11 [Fair and equitable] sharing of benefits

1. States Parties, including their nationals, that have accessed marine genetic resources of areas beyond national jurisdiction [shall] [may] share benefits

- arising therefrom [in a fair and equitable manner] with other States Parties, with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.
2. Benefits [shall] [may] include [monetary and] non-monetary benefits.
 3. Benefits arising from the access to marine genetic resources of areas beyond national jurisdiction shall be shared at different stages, in accordance with the following provisions:
 - [(a) Monetary benefits [shall] [may] be shared upon the commercialization of products that are based on marine genetic resources of areas beyond national jurisdiction. [Payments shall be made to the special fund];]
 - (b) Non-monetary benefits, such as access to samples and sample collections, sharing of information, transfer of technology and capacity-building, [shall] [may] be shared upon access to, research on and utilization of marine genetic resources of areas beyond national jurisdiction.
 4. Benefits shared in accordance with this Part shall be used in the manner determined by the Conference of the Parties, which may include using the benefits for the following purposes:
 - (a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
 - (b) To promote scientific research on [and facilitate access to] marine genetic resources of areas beyond national jurisdiction;
 - (c) To build capacity to access and utilize marine genetic resources of areas beyond national jurisdiction [, including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States may be invited to participate, taking into account the varying economic circumstances of States that wish to participate];
 - (d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, [with a focus on small island developing States];
 - (e) To support the transfer of marine technology.
 5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from access to and the utilization of marine genetic resources of areas beyond national jurisdiction by natural or judicial persons under their jurisdiction are shared in accordance with this Agreement.
 - [6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, in order to ensure that the benefits arising from the utilization of traditional knowledge referred to in article 10, paragraph 6, are shared in a fair and equitable way with indigenous peoples and local communities holding such knowledge.]

Article 52 Funding: Special Fund

[Alt. 1. A special fund [may] [shall] be established by the Conference of the Parties with [voluntary][mandatory] contributions from States [and royalties and milestone payments resulting from the utilization of marine genetic resources] to:

- (a) Fund capacity-building projects, including effective projects on the conservation and sustainable use of marine biological diversity;
- (b) Fund activities and programmes, including training, related to the transfer of technology;
- (c) Assist developing States Parties to implement this Agreement;
- (d) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;
- [(e) Support conservation and sustainable use programmes by holders of traditional knowledge in local communities;]
- (f) Support public consultations at the national and regional levels;
- (g) Undertake any other functions as agreed by the States Parties.]

[Alt.2 States Parties shall cooperate to establish appropriate funding mechanisms to assist developing States Parties with achieving the objectives of capacity-building and the transfer of marine technology under this Agreement.]

Background information (not for negotiation!): Draft Art. 10(6):

[6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that traditional knowledge [associated with marine genetic resources of areas beyond national jurisdiction that is held by indigenous peoples and local communities] [of indigenous peoples and local communities that is useful for unlocking the value of marine genetic resources of areas beyond national jurisdiction] is accessed with the prior informed consent or approval and involvement of those indigenous peoples and local communities, and that mutually agreed terms have been established.]

4.2.2 Negotiation text for drafting group 2

Article 23 Relationship between this Agreement and environmental impact assessment processes under other [existing] relevant legal instruments and frameworks and relevant global, regional and sectoral bodies

1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with the obligations under the Convention.
2. The environmental impact assessment process set out in this Agreement shall not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

- [3. Alt. 1. The Scientific and Technical [Body] [Network] shall consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment.]
- [3. Alt. 2. States shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional and sectoral bodies for planned activities that meet or exceed the threshold contained in this Agreement.]
- [4. Alt. 1. Global minimum standards and guidelines for the conduct of environmental impact assessments under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be developed by the Scientific and Technical [Body] [Network] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.]
- [4. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.]
- [5. Alt. 1. Relevant global, regional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.]
- [5. Alt. 2. No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant global, regional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.]
- [5. Alt. 3. No environmental impact assessment is required under this Agreement where relevant global, regional or sectoral bodies with mandates for environmental impact assessments for planned activities [with impacts] in areas beyond national jurisdiction already exist, regardless of whether or not an impact assessment is required for the planned activity.]
- [5. Alt. 4. Where a planned activity [with impacts] in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another environmental impact assessment of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [the Scientific and Technical [Body] [Network]] [, following consultation with relevant legal instruments and frameworks and relevant global, regional and sectoral bodies,] determines that:
 - (a) The outcome of environmental impact assessment under those obligations or agreements is effectively implemented;
 - (b) The environmental impact assessment already undertaken is comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts;

- (c) The threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in this Part.]

Article 24 Thresholds and criteria for environmental impact assessments

[Alt.1

When States have reasonable grounds for believing that planned activities under their jurisdiction or control [may cause substantial pollution of or significant and harmful changes to] [are likely to have more than a minor or transitory effect on] the marine environment [in areas beyond national jurisdiction], they shall, [individually or collectively,] as far as practicable, [assess the potential effects of such activities on the marine environment] [ensure that the potential effects of such activities on the marine environment are assessed].]

[Alt.2

1. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control are likely to have more than a minor or transitory effect on the marine environment, they shall conduct a[n] [initial] [simplified] environmental impact assessment on the potential effects of such activities on the marine environment in the manner provided in this Part.
2. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall [conduct] [ensure that] a [full] [comprehensive] environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment [and ecosystems] and shall [communicate] [submit] the results of such assessments [for technical review] in the manner provided in this Part.]

[Alt.3

Environmental impact assessments shall be conducted in accordance with the threshold and criteria [set out in this Part and as further elaborated upon pursuant to the procedure set out in paragraph [...] [, which shall be developed by the [Scientific and Technical [Body] [Network]]].

4.2.3 Negotiation text for drafting group 3

Article 49 Scientific and Technical [Body] [Network]

1. A Scientific and Technical [Body] [Network] is hereby established to provide scientific and technical advice to the Conference of the Parties.
2. The [Body] [Network] shall be composed of experts, taking into account the need for multidisciplinary expertise [, including traditional knowledge expertise], gender balance and equitable geographical representation.

3. The [Body] [Network] may also draw on appropriate advice from existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection, as well as other scientists and experts, as may be required.
- [4. Alt. 1. Under the authority and guidance of the Conference of the Parties, the [Body] [Network] shall:
 - (a) have advisory competence with regard to marine genetic resources[, including questions on the sharing of benefits;]
 - [(b) elaborate a benefit-sharing mechanism;]
 - [(c) monitor the utilization of marine genetic resources of areas beyond national jurisdiction;]
 - (d) make recommendations to the Conference of the Parties with respect to environmental impact assessments;
 - (e) Review environmental impact assessment standards to ensure consistency with the requirements under this Agreement;
 - (f) Advise on ways and means to promote the development and transfer of marine technology;
 - (g) Elaborate programmes for capacity-building and the transfer of marine technology.]
- [4. Alt. 2. The functions of the [Body] [Network] shall be elaborated by the Conference of the Parties.]

Article 51 Clearing-house mechanism

1. A clearing-house mechanism is hereby established as: an open-access web-based Platform, and a network of experts and practitioners in relevant fields.
- [2. Alt. 1. The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to and disseminate information with respect to:
 - (a) Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming *in situ* collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected;
 - (b) Data and scientific information on, as well as [, in line with the principle of prior informed consent,] traditional knowledge associated with, marine genetic resources of areas beyond national jurisdiction, including through lists of databases, repositories or gene banks where marine genetic resources of areas beyond national jurisdiction are currently held, a registry of such resources, and a track-and-trace mechanism for marine genetic resources of areas beyond national jurisdiction and their utilization;

- [(c) The sharing of benefits, including through reports on the status of monetary benefits shared and on their use through the publication of the proceedings of the meetings of the Conference of the Parties;]
 - [(d) Environmental impact assessments, including: assessment reports; statements of reasons; guidelines and technical methods on environmental impact assessments; best practices; and indications of areas in which proposed planned activities will take place;]
 - (e) Opportunities and requests for capacity-building and the transfer of marine technology;
 - (f) Research collaboration and training opportunities, including study grants, equipment and opportunities for research and training, and offers of cruise studies at the global, regional and subregional levels;
 - (g) Information on sources and availability of technological information and data for the transfer of marine technology and opportunities for facilitated access to marine technology.]
- [2. Alt. 2. The types of information submitted to the clearing-house mechanism shall be elaborated by the Conference of the Parties.]
- [3. Alt. 1. The clearing-house mechanism [shall] [should]:
- [(a) Match capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and [provide] [facilitate] access to related know-how and expertise;]
 - [(b) Promote linkages to existing relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks [, including experts in traditional knowledge];]
 - [(c) Link to private and non-governmental platforms for the exchange of information;]
 - [(d) Build on existing regional and subregional clearing-house institutions, if applicable, when establishing regional and subregional mechanisms under the global mechanism;]
 - (e) Facilitate enhanced transparency, including by providing baseline data and information;
 - (f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration.]
- [3. Alt. 2. The functions of the clearing-house mechanism shall be elaborated by the Conference of the Parties.]

4.3 Rules of procedure

A. Rules of procedure for 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

I. Purposes

These rules of procedure shall govern the negotiation of a legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

II. Definitions

Rule 1

1. “Party” means a State, or a regional economic integration organization that is a member of a specialized agency of the United Nations, participating in the work 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 (hereinafter referred to as the IGC). “Regional economic integration organization” means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters covered by the committee’s work. Participation of such a regional economic integration organization shall in no case entail an increase in the representation to which the member States of that organization would otherwise be entitled.
2. “Co-President” means the Co-President elected in accordance with rule 8, paragraph 1, of these rules of procedure.
3. “Secretariat” means the secretariat provided by the Executive Director required to service the negotiations.
4. “Executive Director” means the Executive Director of the United Nations Environment Programme.
5. “Session” means any series of meetings convened in accordance with the present rules of procedure.
6. “Representatives present and voting” means representatives of Parties present and casting an affirmative or negative vote. Representatives who abstain from voting are considered as not voting.

III. Place and dates of sessions

Rule 2

The venue and dates of the sessions shall be decided by the committee in consultation with the secretariat.

IV. Agenda

Drawing up of the provisional agenda for a session

Rule 3

The Executive Director shall, after approval by the Bureau referred to in paragraph 1 of rule 8 below, submit to the committee at each session the provisional agenda for the following session. The provisional agenda shall include all items proposed by the committee.

Adoption of the agenda

Rule 4

At the beginning of each session, the committee shall adopt its agenda for the session based on the provisional agenda.

Revision of the agenda

Rule 5

During a session, the IGC may revise the agenda for the session by adding, deleting or amending items. Only items that the IGC considers to be urgent and important may be added to its agenda during the session.

V. Representation

Composition of delegations

Rule 6

The delegation of each Party participating in any session shall consist of a head of delegation and such alternate representatives and advisers as may be required.

Alternates and advisers

Rule 7

The head of delegation may designate an alternate representative or an adviser to act as a representative.

VI. Officers

Elections

Rule 8

1. The committee shall elect from among the representatives of the Parties a Bureau comprising two Co-Presidents.
2. In electing the officers referred to in the previous paragraph, the committee shall have due regard to the principle of equitable geographical representation.

Replacement of the Co-President

Rule 9

If one of the Co-Presidents is unable to continue to perform his or her functions, a new Co-President shall be elected for the unexpired term, with due regard to rule 8, paragraph 2.

VIII. Conduct of business

Quorum

Rule 10

1. A Co-President may declare a session open and permit the debate to proceed when at least one third of the Parties participating in the session are present. The presence of a majority of Parties so participating shall be required for any decision to be taken.

Powers of the Co-Presidents

Rule 11

In addition to exercising the powers conferred upon him or her elsewhere by the present rules, a Co-President shall declare the opening and closing of each session; direct the discussion; ensure observance of the present rules; accord the right to speak; put questions to the vote; and announce decisions. The Co-President shall rule on points of order and, subject to the present rules, shall have control over the proceedings of the sessions and over the maintenance of order at sessions. A Co-President may propose to the session the limitation of the time to be allowed to speakers, the limitation of the number of times each Party may speak on any subject, the closure of the list of speakers or the closure of the debate. A Co-President may also propose the suspension or the adjournment of the session or of the debate on the question under discussion.

Rule 12

The Co-Presidents, in the exercise of their functions, remains under the IGC's authority.

Speeches

Rule 13

No one may address a session without having previously obtained the Co-President's permission. Subject to these rules, the Co-President shall call upon speakers in the order in which they signify their desire to speak. The Co-President shall call a speaker to order if his or her remarks are irrelevant to the subject under discussion.

Points of order

Rule 14

1. During the discussion of any matter, a representative of a Party may at any time raise a point of order and the point of order shall be immediately decided upon by the Co-President in accordance with these rules. A representative of a Party may appeal against a Co-President's ruling. The appeal shall be put to the vote immediately and the Co-President's ruling shall stand unless overruled by a majority vote of the representatives present and voting.
2. A representative of a Party raising a point of order may not speak on the substance of the matter under discussion.

Time limit on speeches

Rule 15

The IGC may limit the time allowed to each speaker and the number of times that each person may speak on any question, except on procedural questions, in respect of which the Co-President shall limit each intervention to a maximum of five minutes. When debate is limited and a speaker has spoken for his or her allotted time, the Co-President shall call him or her to order without delay.

Closing of list of speakers

Rule 16

During the course of a debate, the Co-President may announce the list of speakers and, with the committee's consent, declare the list closed. The Co-President may, however, accord the right of reply to any Party if, in his or her opinion, a speech delivered after he or she has declared the list closed renders this justified. When the debate on an item is concluded because there are no other speakers, the Co-President shall, with the IGC's consent, declare the debate closed.

Adjournment of debate

Rule 17

During the discussion of any matter, a representative of a Party may move the adjournment of the debate on the subject under discussion. In addition to the proponent of the motion, one representative of a Party may speak in favour of the motion and one against it, after which the motion shall be immediately put to the vote.

Closure of debate

Rule 18

A representative of a Party may at any time move the closure of the debate on the subject under discussion, whether or not any other representative of a Party has signified his or her wish to speak. Permission to speak on the closure of the debate shall be accorded only to two representatives of Parties opposing the closure, after which the motion shall be immediately put to the vote. If the committee is in favour of the closure, the Co-President shall declare the closure of the debate.

Suspension or adjournment of a session

Rule 19

During the discussion of any matter, a representative of a Party may move the suspension or the adjournment of any session. Such motion shall not be debated, but shall immediately be put to the vote.

Order of procedural motions

Rule 20

Subject to rule 22, and regardless of the order in which they are submitted, the following motions shall have precedence, in the following order, over all other proposals or motions before the session:

- (a) To suspend the session;
- (b) To adjourn the session;
- (c) To suspend the debate on the subject under discussion;
- (d) To adjourn the debate on the subject under discussion.

Decisions on competence

Rule 21

Any motion calling for a decision on the IGC's competence to adopt any proposal or any amendment submitted to it shall be put to the vote before a vote is taken on the proposal or amendment in question.

Withdrawal of motions

Rule 22

A motion may be withdrawn by its proponent at any time before voting on it has commenced, provided that the proposal or the motion has not been amended. A motion that has thus been withdrawn may be reintroduced by another representative of a Party.

Adoption of decisions

Rule 23

1. The IGC shall make every effort to reach agreement on all matters of substance by consensus.
2. Decisions of the IGC on procedural matters shall be taken by a majority of the representatives present and voting.

3. Where there is disagreement as to whether a matter to be voted on is a substantive or procedural matter, that issue shall be decided by a two-thirds majority of the representatives present and voting.

Method of voting

Rule 24

The IGC shall normally vote by show of hands, but any representative of a Party may request a roll-call, which shall then be taken in the English alphabetical order of the names of the Parties, beginning with the Party whose name is drawn by lot by the Co-President. If, however, at any time a Party requests a secret ballot, that shall be the method of voting on the issue in question.

Recording of roll-call

Rule 25

The vote of each Party participating in a roll-call shall be recorded in the relevant documents of the session.

Conduct during voting

Rule 26

After the Co-President has announced the beginning of voting, no representative of a Party shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The Co-President may permit representatives of Parties to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The Co-President may limit the time to be allowed for such explanation. The Co-President shall not permit the proponent of a proposal or of an amendment to explain his or her vote on his or her own proposal or amendment.

IX. Languages and records

Languages of the sessions

Rule 27

English shall be the languages of the sessions.

5 Review of the exercise

The following is a brief summary of the proceedings and analysis based on our observation of the exercise, as well as written evaluations from participants.

There were 30 official participants in all, not including the facilitators and the other resource people who supported or played various roles in respect of the simulation. The participants were mainly from Ministries of Foreign Affairs or from ministries responsible for environmental matters of their respective countries. Academic, non-governmental organizations and intergovernmental organizations were also represented among the participants.

The simulation commenced with the first-day plenary of IGC-4. The session followed the agenda distributed in advance to the participants. The Co-Presidents first established the quorum, and then opened each agenda item for a brief airing of views by item. Opening statements were given by four country groups. The statements were carefully prepared and reflected a good balance between substance and diplomacy.

The Co-Presidents proposed that the IGC would proceed on the basis of the agreement reached at the previous meeting that the three drafting groups continue their work and negotiate on the issues that remained open. The Co-Presidents then invited the Parties to select a Facilitator and Rapporteur for each drafting group.

The Co-Presidents reminded the Parties of the importance of the negotiation session and of the need to work effectively for the following two days of intense negotiations. Before ending the plenary, the Co-Presidents reminded the Parties that each drafting group's mandate was to provide agreed texts before the closing plenary session for adoption, if possible. The Parties were also advised that the text has previously been negotiated, the outstanding issues are those in square brackets and clean text was not to be re-opened unless by doing so an issue in square brackets could be resolved. After that, the delegates broke immediately into the drafting groups.

The drafting group on benefit-sharing (Group 1) immediately proceeded with paragraph-by-paragraph consideration of their draft text. Another option would have been to first exchange general views on how parties feel about the text in general, and to have a relatively quick first reading of the text so as to get an overview of the positions and what issues were linked. In the course of the negotiations, the parties held extensive discussions on binding/non-binding language and secured some compromise language based on the expectation by some parties that their relevant concerns would be addressed in other parts of the text. Some of the most contentious issues were parked during the first day for the parties to agree on other sections of the text first. There was an apparent need for the participants to be clearer about where the resolution of one set of brackets was dependent on certain proposals in other paragraphs of the negotiation text. Interestingly, no participant raised the issue of linkage with other provisions in other drafting groups (notably institutional provisions).

The drafting group on environmental impact assessment (Group 2) started its work with a paragraph-by-paragraph consideration of the draft text. This had the downside of taking a long time to get to the end of the text and, consequently, some country positions were not known until late in the afternoon of the first day of negotiation. The group also faced the challenge that issues related to the Scientific and Technical Body were being negotiated in two different groups. As Group 3 was negotiating the establishment of the Body, many aspects of the text of Group 2 were made dependent on the outcome in that group. Following a constructive

proposal from the floor to park the discussions that involved the possible Body and to consider other aspects of the text pending agreement in Group 3 (though it was challenging in practice since there were so many references to the Body in the text), the delegates managed to find a way to work around the issue. At a later stage of the first day, the IGC-4 Co-President talked to Group 3 on the issue that was holding discussions in Group 2 'hostage'.

Overall, the participants of the drafting group on EIA recognized the value of having bilateral discussions on identified controversial questions. Once Group 3 had reached agreement on the creation of a Panel, the negotiations in group 2 could be broadened to address the previously parked issues. The group utilized a variety of options in attempts to break negotiation deadlocks from a proposal to add a reservation footnote to merging paragraphs and setting up votes between alternative text formulations.

The drafting group on the scientific body/network and the clearing-house mechanism began its work by opening statements of the delegates. The statements reflected the different views of the parties on the key issues under negotiation. Several delegates were concerned about the cost implications of a new scientific body and questioned the added value of establishing such a body. Others stresses the need to define the functions of the new body/network.

The group decided to negotiate the functions of the body/network first since that appeared the key area of disagreement among the parties. The delegates debated whether already existing bodies cover the functions proposed for the new body/network. Some participants were asking about the reasoning behind others' positions, which is important for finding compromise. The group finally agreed to a creative legal drafting solution: to put the functions on which there is disagreement to be reviewed at the next COP. Agreement was also reached on a scientific 'panel' to be established.

There was also a need to consult group 2 as it was discussing some of the same issues. Parties were also requesting the Facilitator to give a clarification of certain sub-paragraphs of the text, with which parties should actually be very careful because such clarification is very closely related to party positions.

On the morning of day two, the Co-Presidents received progress reports from the drafting group Rapporteurs. According to the reports, all the groups had made progress on their texts, but there were still numerous open issues left to resolve. After the short stocktaking plenary, participants again broke into their respective drafting groups and resumed their negotiations. Interestingly, the Co-President put pressure on delegates to achieve compromise by giving the Facilitators and Rapporteurs the power to eliminate or restrict the coffee breaks of the programme to ensure enough time for convergence on the texts to be formed. The Co-President ended with a statement: 'compromises leave us unhappy. What is important is to be equally unhappy'.

Following the conclusion of the work of the drafting groups, all participants reconvened in the final IGC-4 plenary. In an ideal situation, they all would have had clean texts to present to the plenary. The drafting group Facilitators were asked to present their draft texts and to describe major areas of concern in case a group had not been able to reach a fully agreed text.

The group on benefit-sharing had made significant progress given the tight timeframe. The group had managed to unbracket text on the first paragraph, with good progress on the words *may* or *shall* concerning what the benefits shall or might be. There was some progress with regard to capacity-building. However, little progress had been achieved on indigenous knowledge and transfer of knowledge as well as on the possibility of creating a fund and its conditions.

The group on environmental impact assessment had showed a positive spirit of compromise and had managed to narrow down alternatives in its negotiation text. However, outstanding issues remained concerning the role of the panel in environmental impact assessment. Moreover, discussions continued on whether the activities with impacts on areas beyond national jurisdiction should be covered by the agreement.

The group on the scientific body/network and the clearing-house mechanism had made good progress even though deciding on a body or network had proved to be very challenging. Finally, agreement was reached on a scientific and technical “panel”. The group also agreed that the functions of the panel would be included in the final agreement, and not just be defined by the Conference of the Parties. The group had discussed whether any function concerning environmental impact assessment would be included, ending with the outcome that the panel will make recommendations with regards to this aspect. Some other outstanding issues to be discussed remained. The group had started work on the clearing-house mechanism but did not manage to agree on the issue.

Overall, reporting by the three drafting groups was well articulated. Most of them provided context and clear explanations on the progress achieved and the remaining outstanding issues.

Regarding the way forward to the next negotiation session, it was agreed that clean text from groups 1 and 2 will be forwarded to the next session. The Co-Presidents requested a mandate to put forward a compromise text during the intersessional period, on which parties agreed (however, normally this would be a more sensitive issue and would be subject to consultation).

6 Evaluation of the exercise

The resource people for the exercise were generally very satisfied with how the simulation turned out and with the performance of the participants. The exercise reached its objectives and was run without major difficulties. The participants were well-prepared with their positions and tactics, were meticulous, proposed creative solutions and generally participated very intensively in the negotiations. A few observations and notes of guidance from the resource people:

- It is important to clarify or ask for clarity on positions.
- Co-Facilitators should try to be clear when issues are closed and the negotiations should move on.
- Convoluted text can lead to consensus, but it can also lead to problems later on. Ambiguous text should be last resort.
- Postponing issues can help get consensus, but also has risks: the functioning of the treaty in the longer run may remain unclear.
- In the work of the drafting groups, the key focus was often on the brackets, whereas the text outside of brackets received less attention.
- The drafting groups did not always consider the domino effects of their decisions on other groups or issues.

Based on written evaluations, participants were generally very satisfied with the exercise. They thought that the simulation was a good training opportunity for their negotiation skills, both in terms of substance and on procedural issues. The participants felt that there was a very constructive spirit during the exercise. It was also highlighted that the topic of the exercise was well-chosen since it allows participants to compare their negotiated outcomes with real-life negotiations. Some differences in comparison to real negotiations were highlighted (such as the use of voting, having three parallel drafting groups, individual instructions with similar level of detail). The participants also thanked the organizers of the exercise for having selected negotiation topics that are of recurring nature (benefit-sharing, setting up funds, institutional arrangements) and so useful in other contexts as well.

In their feedback, many participants highlighted the usefulness and relevance of the negotiation exercise for their work. Many participants stated that the Course had significantly improved their skills and understanding of negotiations. It was also pointed out how the exercise made the participants see 'how certain similar words can have enormous repercussions.'

Participants also had suggestions for improvement. An oft-cited suggestion, familiar from previous simulations, was that the exercise would benefit from some more time to be allocated to it. Unfortunately, this is difficult to realize in practice given the tight schedules of the Courses. More generally, the Course feedback indicated a need to dedicate more time for group work and drafting. A participant pointed out that

‘[o]nly certain roles during the negotiation exercise were able to practise drafting’. Another participant stated that it ‘[w]ould have been better to represent a country more similar to my own in negotiation exercise’. This is an understandable opinion, but the participants were purposefully assigned roles that were different from their home countries to ensure learning about different possible viewpoints and positions, and to practice negotiating in favour of a position that one may not hold oneself.

The role of the resource people was also subject to feedback by the participants of the exercise. Some hoped for more feedback during the negotiations, though recognizing the caveat that this would make the exercise itself longer. A participant also wished that the resource persons had proactively intervened with the facilitators instead of waiting for them to ask questions in problematic situations.

In conclusion, the negotiation exercise was a success, in no small part due to the efforts of participants to prepare for the negotiations and take them seriously, working hard to achieve agreed text by the end of the second day. All in all, it was clear that the exercise continues to be an important and popular part of the two-week MEA course.