



Opening Statement by H.E. Archbishop Bernardito Auza
Apostolic Nuncio, Permanent Observer of the Holy See to the United Nations,
at 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 in areas beyond national jurisdiction
New York, 4-17 September 2018

Madam President,

In his Encyclical Letter *“Laudato Si’*, On Care for our Common Home,” Pope Francis underlined the importance of the rule of law on a global scale to stop the ecological destruction of our earth. The Holy See believes that regulations to protect our environment are not only a moral imperative but are a vital solution to a dire situation requiring immediate action. To reach our shared goals of the conservation and sustainable use of marine biodiversity, there is need for an agreement with a long-term strategy for healthy renewal and development of the oceans that builds on the existing UN Convention on the Law of the Sea.

Madam President,

Given the geographic location of areas beyond national jurisdiction (ABNJ), scientific and commercial activities are at the core of this agreement. The agreement should be broad in application not only to fill the gaps in the present regulatory framework and not undermine the existing zonal, sectoral and regional structures, but to preclude the need to renegotiate a global agreement every time a new resource is discovered or a different commercial activity is pursued in ABNJ. Therefore, as we deliberate during this first session on the four specific elements of marine genetic resources, area-based management tools, environmental impact assessments and capacity building and transfer of technology, a practical approach might include the following six elements:

First, apply a “responsibilities-based” perspective rather than a “rights-based” one. Although economic benefits and equity are at the heart of any debate regarding resources, care for our oceans and the many life forms they hold must be at the center of our regulatory approach. In implementing the term “due regard for the interests of other States” as used in the convention¹, obligations of States and their nationals are central.

¹ UNCLOS Art. 87 (2).

Second, acknowledge the differences between our two distinct mandates of conservation and sustainable use. The application of conservation measures for the most part take away or restrict currently held rights to engage in ocean activity, whereas sustainable use measures are generally applicable where commercial parties are seeking permission for future initiatives. The current regulatory structure is built on a “use” model and therefore recognition of this difference will keep us from undermining existing structures.

Third, focus on the promotion of cooperative research, study, and analysis of ocean resources, and in particular, water, the greatest and most important resource in the ocean. Promotion of research and technology could piggyback on the inevitable aspects of the sustainable development of resources by accessing related funding, framing improved licensing and business concepts, and harnessing the power of commercial activities to include research and technology as a “cost of doing business” in areas beyond national jurisdiction.

Fourth, focus on resources rather than on human activities, and distinguish between those resources with immediate economic value and those resources with potential value. Generally, those with a potential value are sustainable and renewable, for example, wind, solar, water, and most genetic resources, whereas those with an immediate value such as living things and minerals have finite or limited quantity or availability.

Fifth, distinguish and regulate accordingly between “access to” and “use of” resources. “Access,” for the purposes of marine scientific research or shipping, for example, should be controlled only to ensure cooperation, organize competing interests, and prevent any harm to the marine environment that could be caused by it. “Use” on the other hand, should be fully regulated, not only to prevent harm to the marine ecosystem, but to weigh the sustainability of the use of particular ocean resources, the benefit of these to mankind, and the opportunity cost of alternative uses, all the while giving “due regard” to the interests of other States.

Sixth, given that the areas to be regulated are far from shore, consider not only “risk mitigation” measures, but “risk prevention” measures, including the use of economic tools that do not require monitoring, like area-based management tools at sea. This means that we should not only impose an obligation to do environmental impact assessments, which is a procedural measure, but require States to understand the nature of the likely harm and take preventive steps. For example, the agreement could require States to prevent or suppress the financing, sale or supply of technology, or other commercial transactions that pose a significant risk of contributing to prohibited activities that may harm the common environment. This gives a substantive role to due diligence obligations and will ensure that States employ an active interest in reaching good results with respect to common areas far from shore.

Madam President,

With respect to the Part XI Agreement, the background to the informal consultations on the UN Division for Ocean Affairs and Law of the Sea website states that in the eight years following the Convention's adoption, political and economic changes have transformed the general economic climate toward a more market-based economy because of the changing perception with respect to the roles of the public and private sectors.

With respect to natural resources, activity and investment, over time this pattern repeats itself. Just as monarchs financed the first early explorers to the Americas, government investments were later replaced by private commercial enterprise – namely, the Dutch East India Company. Law should be made with this pattern in mind, that public financing will give way to private investment once the initial work has been done, exploitation methods and a profit stream been ascertained, and a level of certainty been established regarding financial, legal and environmental risks.

Mankind's need for resources suggests that the "Blue Economy" is poised for momentous growth. It is our mandate to anticipate these resulting changes, prioritize life in all its forms and place our common home at the forefront.

Thank you, Madam President.