Preparatory Committee established by General Assembly resolution 69/292: 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

Chair's overview of the first session of the Preparatory Committee

1. In its resolution 69/292 of 19 June 2015, the General Assembly decided to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. To that end, it decided to establish, prior to holding an intergovernmental conference, a Preparatory Committee, open to all States Members of the United Nations, members of the specialized agencies and parties to the Convention, with others invited as observers in accordance with past practice of the United Nations, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under UNCLOS, taking into account the various reports of the Co-Chairs on the work of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The Assembly also decided that the Preparatory Committee would start its work in 2016 and, by the end of 2017, report to the Assembly on its progress.

2. Before the end of its seventy-second session, and taking into account the aforementioned report of the Preparatory Committee, the General Assembly will decide on the convening and on the starting date of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee on the elements and to elaborate the text of an international legally binding instrument under UNCLOS.

3. The General Assembly also decided that negotiations shall address the topics identified in the package agreed in 2011, namely the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, 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.

4. By letter dated 4 September 2015, His Excellency Mr. Sam Kahamba Kutesa, President of the sixty-ninth session of the General Assembly of the United Nations, appointed, in accordance with paragraph 1(d) of resolution 69/292, His Excellency Mr. Eden Charles, Ambassador Extraordinary and Plenipotentiary, Deputy Permanent Representative / Chargé d'Affaires a.i. of the Permanent Mission of Trinidad and Tobago to the United Nations, as Chair of the Preparatory Committee.

5. Pursuant to paragraph 1(c) of resolution 69/292, the first session of the Preparatory Committee was convened by the Secretary-General from 28 March to 8 April 2016. Representatives from 98 States Members of the United Nations, two non-Member States, 12 intergovernmental organizations, five United Nations funds and programmes, bodies and offices, as well as 17 non-governmental organizations attended the meeting.

6. In accordance with paragraph 1(e) of resolution 69/292, the Preparatory Committee elected the Bureau consisting of the following ten members: Mr. Mohammed Atlassi (Kingdom of Morocco) and Mr. Thembile Elphus Joyini (South Africa) for the African Group; Mr. Ma Xinmin (People's Republic of China) and Mr. Kaitaro Nonomura (Japan) for the Asia-Pacific Group;

Mr. Konrad Marciniak (Republic of Poland) and Mr. Maxim V. Musikhin (Russian Federation) for the Eastern European Group; Mr. Javier Gorostegui (Chile) and Ms. Gina Guillen Grillo (Costa Rica) for the Latin American and Caribbean Group; and Mr. Antoine Misonne (Belgium) and Mr. Giles Norman (Canada) for the Western European and Others Group.

7. On 28 March, following opening statements by the Chair and the United Nations Legal Counsel, the Preparatory Committee adopted the agenda (A/AC.287/2016/PC.1/1) without amendment and agreed to proceed on the basis of the proposed programme of work (A/AC.287/2016/PC.1/L.2).

8. The plenary sessions of the Committee heard general statements and considered: the scope of an international legally binding instrument and its relationship with other instruments; guiding approaches and principles of an international legally binding instrument; 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. Informal working group sessions were also convened and facilitated as follows: His Excellency Mr. Carlos Sobral Duarte (Brazil) for the Informal working group on marine genetic resources, including questions on the sharing of benefits; Mr. John Adank (New Zealand) for the Informal working group on measures such as area-based management tools, including marine protected areas; Mr. René Lefeber (the Netherlands) for the Informal working group on environmental impact assessments; and Ms. Rena Lee (Singapore) for the Informal working group on capacity-building and the transfer of marine technology.

9. From 6 to 8 April, the Preparatory Committee considered, in plenary, the issues addressed by it to date, including on the basis of the oral reports from the Facilitators of the Informal working groups, and also considered the Chair's proposed road map up to and for the next session of the Committee.

Road map

10. In accordance with the road map proposed by the Chair and approved by the meeting on 8 April 2016, the Chair prepared the present overview of the first session of the Preparatory Committee, which includes a Chair's non-exhaustive compilation of issues raised during the first session (annex I) and the Chair's general observations (annex II).

11. At the second session of the Preparatory Committee, which will take place from 26 August to 9 September 2016, the Chair will re-convene for a shorter duration of time, the Informal working groups established during the first session. This will provide for longer discussion time in plenary. The Chair also intends to convene and facilitate a new Informal working group to address cross-cutting issues.

12. The Chair intends to set aside the issues on which a convergence of views appears to have emerged at the second session in order to focus on the issues that appear to require further in-depth discussion, bearing in mind that negotiations shall address the topics identified in the package agreed in 2011 together and as a whole. Accordingly, the outcome of the second session is expected to consist of an identification of the issues that would require more time for discussions; and those issues that could already form the basis of draft elements to be included in the recommendations to be provided to the General Assembly at its seventy-second session.

13. The Chair encourages delegations to submit their views intersessionally on the elements of an international legally binding instrument under UNCLOS pursuant to his invitation conveyed by

letter on 18 December 2015. Given the need for additional scientific and technical information on some issues, the Chair further encourages the organization of side events and workshops featuring expert presentations both prior to the second session of the Preparatory Committee and on the margins of the sessions of the Preparatory Committee.

14. The Chair intends to call for a preparatory meeting before the second session of the Preparatory Committee.

Annex I

Chair's compilation of issues raised during the first session of the Preparatory Committee

The present indicative list of issues raised during the first session of the Preparatory Committee established by General Assembly resolution 69/292: 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 aims at assisting delegations in their preparations for the second session of the Preparatory Committee by providing an overview of the main issues raised and organizing these issues around main clusters. The list is not intended to provide an exhaustive account of the range of views, ideas and proposals expressed at the first session of the Preparatory Committee, nor does the list provide any indication of the level of support for the various views, ideas and proposals.

OVERALL OBJECTIVE

- Set out in General Assembly resolution 69/292
- Conserve and sustainably use marine biological diversity of areas beyond national jurisdiction
- Address the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology" (Package agreed in 2011: General Assembly resolution 66/231, annex)
- Address gaps (implementation/legal/regulatory/governance) in relation to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction
- Address fragmentation in relation to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction
- Enhance integration and create synergies, including at the regional level
- Strengthen and implement the framework provided in the United Nations Convention on the Law of the Sea (UNCLOS)
- Strengthen cooperation and coordination and coherence among States and relevant organizations
    - implement article 197 of UNCLOS on the obligation of States to cooperate on a global and regional basis
- Promote good governance
- Universal participation

RELATIONSHIP TO OTHER INSTRUMENTS AND FRAMEWORKS

Relationship to UNCLOS

- UNCLOS is the legal framework for all activities in the oceans and seas
- Preserve the principles contained in UNCLOS
- Preserve the delicate balance of rights, obligations and interests achieved in UNCLOS
- Implement and strengthen UNCLOS

Relationship to other instruments and frameworks

- Do not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
    - no alteration of rights and obligations under existing treaties, or preclusion of the conclusion of new arrangements in the furtherance of international instruments' objectives and purposes

  - no duplications or overlaps with existing instruments
  - no interference with the work of existing bodies
  - Examples of non-prejudice provisions in existing instruments (e.g. articles 237 and 311 of UNCLOS, articles 4 and 44 of the United Nations Fish Stocks Agreement, article 22 of the Convention on Biological Diversity (CBD))
- Complement existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
- Strengthen and enhance the work of existing bodies
- Provide gateways between existing frameworks, including technical bodies and systems for exchanging data
- Act as a global umbrella and promote coherence among existing regional and sectoral structures
- Provide incentives for the strengthening of existing regional structures and establishment of such structures where absent

GUIDING APPROACHES AND PRINCIPLES

- UNCLOS provides the general principles for an international instrument
- Use general principles set out in the United Nations Fish Stocks Agreement (art. 5) and the CBD as a guide
- Consider including other existing principles as well as the guiding approaches, as follows:
  - Balance between rights and obligations
  - Balance between the rights and interests of coastal and other States
  - Respect for the rights and interests of coastal States over the continental shelf, including beyond 200 nautical miles where applicable
  - Due regard for the rights, duties and interests of all States under UNCLOS
  - Balance between conservation and sustainable use
  - Freedom of the high seas
  - Common heritage of mankind
  - Protection and preservation of the marine environment
  - Decision-making based on the best available scientific information
  - Ecosystem approaches
  - Precautionary principle/approach
  - Integrated approach
  - Adaptive management
  - Rule of law
  - Use of best practices
  - Public participation in decision-making
  - Involvement of relevant stakeholders and indigenous communities
  - Public availability of information
  - Accountability
  - Transparency
  - Cooperation and coordination
  - Fairness
  - Equity
  - Equitable utilization
  - Intergenerational equity
  - Intragenerational equity
  - Responsibility and liability
  - Polluter pays principle
  - Common but differentiated responsibilities
  - States as stewards of the marine environment
  - Pragmatic approach

- Universal participation
- No domination by corporate interests
- Attention to the special needs and concerns of developing States, including least developed countries, landlocked developing countries and small island developing States (SIDS)
- No disproportionate burden of conservation and management of ocean resources to be transferred to SIDS
- Central importance of capacity-building

- Placement in international instrument
  - Preamble
  - Operative part
  - Both preamble and operative part, depending on principle/approach

SCOPE

Personal scope

- Universal participation
- Open to parties and non-parties to UNCLOS
- Open to international organizations to which their member States have transferred competence over matters governed by the international instrument, including the competence to enter into treaties in respect of those matters

Geographical scope

- Areas beyond national jurisdiction – high seas and Area – as defined in UNCLOS

Material scope

- Definitions
- Biological diversity and its component parts, including all species and genetic resources
- Package agreed in 2011
- All activities taking place in areas beyond national jurisdiction
- All major activities that might have an impact on marine biological diversity of areas beyond national jurisdiction
  - Fisheries
    - Include/exclude fisheries management measures
    - Include/exclude fisheries-related measures
    - How to deal with fisheries?
  - Other activities and sectors
  - New activities
- Cumulative impacts
- Sustainable use
- Ecosystem based-management
- Marine spatial planning

MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Concepts / Definitions / Use of terms

- Applicable legal regime (common heritage of mankind / freedom of the high seas)
- Possible terms to be defined:
  - Marine genetic resources
  - Biological resources, including fisheries resources
  - Genetic material
  - *In situ* and *ex situ* resources

    - Marine ecosystems
    - Bioprospecting
    - Marine scientific research
    - Utilization of resources
- Definitions to be based on existing instruments (e.g. UNCLOS, the CBD, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD, the Compliance Agreement under the Food and Agriculture Organization of the United Nations (FAO), the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA))
- Definitions to be adapted to the specific case of marine genetic resources of areas beyond national jurisdiction

Scope

- Marine genetic resources of both the Area and the high seas
- Marine genetic resources of "areas beyond national jurisdiction, including waters superjacent to the seabed, ocean floor and subsoil thereof"
- Non-inclusion of marine genetic resources of the high seas
- Respect the rights of coastal States over their continental shelf, including the continental shelf beyond 200 nautical miles where applicable
- Access to marine genetic resources
- Benefit-sharing
- Monetary and non-monetary benefits
- Marine genetic resources *in situ*, *ex situ* and *in silico* analysis
- Derivatives
- How to address marine genetic resources found both within and beyond areas of national jurisdiction?
- How to address organisms moving through the seabed, on the seabed and in the water column through their different life stages and/or because they are migratory?
- Distinction between fish used as a commodity and fish valued for their genetic properties
- Conservation and sustainable use
- Non-military and peaceful purposes
- All activities related to marine genetic resources, whether commercial or not
- Distinction between non-commercial marine scientific research and bioprospecting
    - issue of consistency with UNCLOS in differentiating bioprospecting from marine scientific research
- Distinction between sampling and harvesting
- Parties involved, namely the users and the beneficiaries, to be defined

Questions on the sharing of benefits

Guiding approaches and principles

- Maintain integrity of UNCLOS
- Due regard to the interests of all States and the international community as a whole as well as the interests of future generations
- Fair and equitable sharing of benefits
- Freedom of the high seas
- Common heritage of mankind
- Freedom of the high seas and the common heritage of mankind are not mutually exclusive
- Respect for the rights of coastal States over their continental shelf, including the continental shelf beyond 200 nautical miles where applicable

- Equity
- Fairness
- Transparency
- Accountability
- Inclusiveness
- Take into account the challenges and special needs of SIDS regarding access to resources (issue of technological capacity) and access to data (issue of transparency)
- Take into account the interests of land-locked countries
- Freedom of scientific research on the high seas
- Facilitate and encourage marine scientific research and research and development
- Promote international cooperation in marine scientific research consistent with UNCLOS
- No creation of disincentives for research and development and utilization of marine genetic resource
- No overlap with and undermining of existing instruments
- Consider synergies and complementarities with, and draw lessons from, existing instruments, including UNCLOS, the Nagoya Protocol, the ITPGRFA and the World Health Organization Pandemic Influenza Preparedness Framework
- Practical/pragmatic approach
- Hybrid/*sui generis* approach
- Flexibility
- Cost-effectiveness

Scope

- Establish different benefit-sharing regimes depending on whether marine genetic resources are from the Area or the high seas
- Have a single comprehensive regime covering marine genetic resources of all areas beyond national jurisdiction
- Light regime
- At which point would activities related to marine genetic resources be subject to benefit-sharing?
    - benefit sharing at the stage of the research and development process where it would not act as an obstacle to research
- Access
    - Environmentally-sound
    - Sustainable
    - Facilitate access to marine genetic resources *in situ* and *ex situ* and to analysis *in silico*
- Benefit-sharing
    - Adapt existing approaches to the specific situation of marine genetic resources of areas beyond national jurisdiction
    - Monetary benefits
        - Royalties and mandatory payments
        - Modelled on existing instruments such as arts. 82 and 154 of UNCLOS, FAO ITPGRFA
        - Establish a fund
            - Use of the fund for the purpose of facilitating capacity-building and transfer of technology
            - Grant preferential access to the fund for developing countries sponsoring private contractors
    - Non-monetary benefit-sharing
        - Sharing of information and knowledge, including through publications, information clearing-house and/or gene banks and repositories

    - Dissemination of marine scientific research results and data
    - Public availability of information
    - Access to samples and sample collections, including through gene banks to facilitate ex situ access to resources
    - Access to technology
    - Transfer of technology
    - Effective participation of developing countries in partnerships between scientific research institutions and private biotechnology companies
    - Joint research, participation in research and research cruises by scientists from developing countries
  - Use indicative list of monetary and non-monetary benefits included as an annex to the Nagoya Protocol
  - Give special consideration to indigenous communities, including prior informed consent and share in benefits
  - Best practices of the scientific community, including as regards exchange of information and data
  - Monitoring and compliance measures, e.g.:
    - Traceability
    - Checkpoints
    - Prior informed consent requirement
    - Mandatory disclosure requirement of the source or origin of marine genetic resources in patent applications
- Intellectual property rights
  - Various forms of intellectual property rights
  - Consistency with existing intellectual property frameworks, including under WIPO and WTO
  - Intellectual property issues to be addressed by WIPO
  - Possible sui generis system
  - Disclosure requirement to be dealt with under patent law
  - Disclosure requirement to be a formal contractual requirement
  - Shorter period of protection for patents relating to marine genetic resources of areas beyond national jurisdiction

Institutional arrangements

- Institutional mechanism to administer an access and benefit-sharing regime as well as ensure compliance
- Role of the International Seabed Authority (ISA)
  - expand mandate of ISA
  - establish new scientific committee under ISA
- Light and cost-effective arrangement
- Form follows function

MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Concepts and definitions

- Define the concept of area-based management tools, including marine protected areas
- Build upon existing definitions and examples of area-based management tools: IUCN categories; definition under the CBD; Particularly Sensitive Sea areas (PSSAs) under the International Maritime Organization (IMO); Special Areas under MARPOL 73/78; areas of particular environmental interest under the ISA; quiet ocean regions
- Different types of marine protected areas, including marine reserves

- Marine spatial planning
- Zoning

Objectives

- Establishment and management of a global network of ecologically representative and effectively managed marine protected areas in areas beyond national jurisdiction
- Enhance cooperation and coordination between and amongst States and existing organizations to overcome current fragmentation
- Establishment of a global framework to ensure a more integrated and unified approach to the establishment of area-based management tools, including marine protected areas
- Establishment of a global framework to effectively establish, monitor and control area-based management tools, including marine protected areas, in areas beyond national jurisdiction as well as to promote cooperation and coordination with existing mechanisms
- Area-based management tools, including marine protected areas, are not a goal in themselves, but are tools to address specific impacts in specific areas and, in some cases, within limited timeframes

Guiding approaches and principles

- Balance between conservation and sustainable use
- Balance between freedom of the high seas and the duty to protect and preserve the marine environment
- Use a range of different area-based management tools
- Establishment of different levels of protection, based on scientific advice
- Manage conflict over space and uses and promote coherent approaches to management
- Marine protected areas are not a replacement for sectoral management
- Area-based management tools should not apply to legitimate uses of the oceans that are not incompatible with the objectives of an international instrument
- Maintenance of ecosystem services – e.g. food security, resilience to climate change/ocean warming and ocean acidification
- Global network of ecologically representative and effectively managed marine protected areas in areas beyond national jurisdiction in line with internationally agreed targets
- Balance of rights and obligations under UNCLOS
- Obligation to protect and preserve the marine environment
- Ecosystem approaches
- Decision-making based on the best available scientific information
- Precautionary principle/approach
- Integrated approach
- Accountability
- Cooperation
- Transparency
- Open processes
- Public availability of research results
- Transboundary approach to the management of ecosystems
- Principles referred to in the United Nations Fish Stocks Agreement (e.g. article 5)
- Polluter-pays principle
- States as stewards of marine environment
- Respect for the rights of coastal States over their continental shelf, including beyond 200 nautical miles where applicable
- New area-based management tools must respect existing ones established by coastal States in areas within national jurisdiction adjacent to areas beyond national jurisdiction

- Take into account rights of non-parties to UNCLOS
- Critical importance of capacity-building
- Special needs of SIDS, including to ensure that the burden of conservation is not disproportionately transferred to SIDS
- Interests of people living in territories that have not attained full independence

Scope

Criteria for identification of priority areas
- General and uniform criteria based on best scientific and technical information available
- Global set of criteria binding on States and relevant organizations, including sectoral bodies
- Build upon existing criteria, including in the context of Ecologically or Biologically Significant Marine Areas (EBSAs) under the CBD, Vulnerable Marine Ecosystems (VMEs) under the FAO, IMO PSSAs, area-based management tools used by the ISA and regional fisheries management organizations (RFMOs), the Barcelona Convention, OSPAR, CCAMLR and the Antarctic Treaty
- Mechanism to review and update criteria, based on the best available science

Process of designation of area-based management tools, including marine protected areas
- Based on specific, science-based conservation objectives
- Identify relevant obligations
- Identify impacts/pressures in the specific area
- Defined, user-friendly and science-based geographical boundaries
- Management plans/measures to be linked to harm and adaptable to new uses, information or changes in ecosystem conditions
- Time-bound, temporary, measures to be terminated when conservation objectives are achieved
- Permanent measures
- Respect the rights and interests of coastal States, in particular SIDS, as well as landlocked States, which rely on the areas identified for their livelihoods
- No global approach, rather case-by-case and scientific basis, taking into account specific geographical factors and the ecosystem specificities of a given area
- Limitations to be relevant to specific issues and specific regions
- Proposals for establishment from States Parties, individually or collectively, and civil society
- No cumbersome process for SIDS
- Designation should not result in complete cessation of activities

Decision-making
- Transparent decision-making procedures
- Consultation mechanism open to a wide range of stakeholders, in particular all States, not only States Parties, existing competent international, regional or sectoral, organisations, and civil society
- Engage scientists associated with relevant management sectors, including shipping, fisheries, and mining activities
- Adoption by a centralised body
- If established in accordance with the requirements under an international instrument, area-based management tools, including marine protected areas, would be binding on all Parties without having to be adopted by a centralised body (e.g. art. 8 United Nations Fish Stocks Agreement)

Monitoring, review and compliance
- Monitoring, review and compliance mechanisms

- Multilateral and inclusive monitoring and control
- System of notification and reporting of new and emerging issues, including experimental activities
- Mechanism for reporting on the implementation of management measures and the review of effectiveness of marine protected areas and their management plans
- Compliance and enforcement measures consistent with customary international law as reflected in UNCLOS
- Sanctions

Institutional arrangements

- Global mechanism
  - Establish best practice and international standards and principles and provide an integrated and unified approach for area-based management tools, including marine protected areas, and stimulate action and implementation of those standards at the regional level
  - Focus on general principles for establishing area-based management tools, including marine protected areas, taking into account the experience of RFMOs and other existing bodies and to be implemented through measures adopted under existing mechanisms
  - Provide for complementarity, coordination and coherence and ensure compliance by existing regional or sectoral bodies
  - Review and update criteria
- Mechanism to apply to three situations:
  - No global, regional or sectoral, organization with a relevant mandate exists
  - Such organisations do exist, but have not established any marine protected areas
  - Such organisations do exist and have established marine protected areas, within the limited remit of their mandates
- Scientific and technical committee
- Funding mechanism
- Relationship with existing area-based management tools, including marine protected areas, established by relevant organizations
  - Build upon experience, knowledge of existing structures of regional and sectoral mechanisms and avoid duplication with or undermining of existing instruments and frameworks
  - Promote cooperation and coordination between existing mechanisms and those provided for in an international instrument
  - Adoption or endorsement of existing marine protected areas, provided they comply with adopted global criteria
  - Framework for the designation, establishment, management and monitoring of area-based management tools, including marine protected areas, while the implementation or actual establishment of area-based management tools, including marine protected areas, would be left to regional or sectoral bodies, in accordance with their mandates
- No need for a global mechanism to establish marine protected areas on the high seas

ENVIRONMENTAL IMPACT ASSESSMENTS

Concepts

- Environmental impact assessments (EIAs) relate to specific projects
- Transboundary environmental impact assessments (TEIAs) may cover activities in areas beyond national jurisdiction with impacts in areas under national jurisdiction or activities in areas under national jurisdiction with impacts in areas beyond national jurisdiction
- Strategic environmental assessments (SEAs) relate to plans, programmes and policies

- Existing instruments could assist in clarifying concepts for the application of EAIs, SEAs and TEIAs to areas beyond national jurisdiction and provide guidance (e.g. UNEP Goals and Principles of Environmental Impact Assessment, CBD art.14 and Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment and Voluntary Guidelines for the Consideration of biodiversity in EIAs and SEAs in marine and coastal areas, ISA Regulations on prospecting and exploration of mineral resources in the Area, FAO International Guidelines for the Management of Deep-sea Fisheries, Annexes 1-4 of MARPOL Convention, relevant provisions of the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Espoo Convention on Environmental Impact Assessments in a Transboundary Context, Kyiv Protocol to the Espoo Convention on Strategic Environmental Assessments, relevant provisions of the Antarctic Treaty on Environmental Protection, and environmental assessment guideline of the Secretariat of the Pacific Regional Environment Programme)
- International jurisprudence as a source of potential guidance

Objective
- Further elaborate and strengthen the relevant provisions of UNCLOS, in particular arts. 204-206
- Provide common/minimum standards and clarify the definition, scope and content of EIAs
- Align with best practices

Guiding principles and approaches
- Freedom of the high seas
- Common heritage of mankind
- Respect the freedoms and rights of States in the high seas and in the Area
- Respect the sovereign rights and jurisdiction of coastal States
- Precautionary principle/approach
- Ecosystem approaches
- Integrated management
- Best available science
- Transparency
- Public participation
- Public and independent EIAs
- Accountability
- Polluter pays principle
- Due regard for the rights, duties and interests of States under UNCLOS
- Good ocean governance
- Cooperation and coordination with existing bodies and organizations
- Assess cumulative impacts
- Avoid duplicative layers of assessments
- Flexibility to anticipate future uses
- Carry out EIAs prior to engaging in or authorizing activities in areas beyond national jurisdiction
- Sectoral bodies, such as FAO, RFMOs, IMO and the ISA, to continue determining their own EIA processes
- Ability of a coastal State to conduct EIAs in the areas under its national jurisdiction and approve an activity cannot be impeded by EIAs taking place in an adjacent area beyond national jurisdiction
- Special circumstances of developing countries, in particular SIDS, to undertake EIAs and SEAs
    - Environmental assessment requirements tailored to the technical, financial and institutional capacities of developing countries
    - Assessment could be carried out jointly in order to be less of a burden to developing States
    - Preferential treatment for developing States (art. 203, UNCLOS)

  - New reporting requirements for developing countries would need to be integrated within existing mechanisms, such as CBD or the United Nations Framework Convention on Climate Change
  - No additional restrictions on the limited capacity of developing States that would prevent them from carrying out activities in the high seas
  - Need for capacity-building and transfer of marine technology
- Interests of people living in territories that have not attained full independence

Scope
- Project-level EIAs
- Strategic environmental assessments (SEAs) at the level of policies, plans and programmes
- Transboundary environmental impact assessments (TEIAs)
- Activities taking place in the high seas and in the Area
- SEAs for programmes taking place within areas of national jurisdiction that could impact marine biodiversity of areas beyond national jurisdiction
- Cumulative impacts
- Cross-sectoral assessment of a range of activities
- Assessment of previously unexamined activities
- Include guidelines for EIAs

Threshold for EIAs, TEIAs and SEAs
- One or more thresholds that would trigger the requirement to conduct an EIA
- Full or partial environmental assessments (tiered or layered approach; or a light approach)
- Establishment of criteria to identify which activities require full or partial assessments
- Consistency with the provisions of UNCLOS article 206: only when activities may cause substantial pollution of or significant and harmful changes to the marine environment should EIAs be required
- Other sources of thresholds in UNCLOS in articles 145, 192, 194, 198, 207, and 208
- Other sources of thresholds include: Principle 17 of the Rio Declaration, article 7 of the International Law Commission's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, and the Antarctic Treaty Protocol on Environmental Protection.
- Lists of activities that should always be subject to prior EIAs before being authorized and that should be reviewed on a regular basis to include new and emerging activities
- Activities requiring prior EIAs to include those in sensitive areas, such as EBSAs, VMEs, PSSAs
- Not all activities can be treated equally as technologies used may vary and the impacts will vary depending on the ecosystem

Assessment reports
- Specify the type and minimum amount of information to be included in assessment reports, e.g.:
- activity or activities
- the impacts, including cumulative impacts over time and across sectors, impacts caused by activities outside areas of national jurisdiction, socio-economic impacts, and the risks of impacts
- area where the activity or activities take place and the vulnerability of that area to impacts
- adverse effects on other activities
- alternatives to avoid, mitigate or compensate adverse impacts, in the short term as well as the long term (incorporated in an environmental management plan)
- non-technical summary

Procedural elements

- States with jurisdiction or control over an activity would be responsible for conducting EIAs and SEAs
- States could establish the framework under which the public or private entities will carry out such assessments
- Proponents of an activity could bear the costs of the assessments
- Procedural steps
  - Screening
  - Scoping
  - Access to information, including environmental information
  - Public notification and consultation, including effective participation of stakeholders and consultation with adjacent coastal states
  - Coordination with existing sectoral and regional organizations
  - Independent scientific review of reports
  - Consideration of reports
  - Publication of reports
- Decision-making on the basis of EIAs, TEIAs and SEAs
  - State responsible for taking the decision
  - scientific body with equitable geographical representation could adopt a decision on the admissibility of an activity, or provide advice to a governing body that could adopt such a decision
  - activity should be permitted to take place only when it will not have significant adverse effects and, where such effects are possible, measures are in place to prevent such effects
- Refrain from certain activities while the EIA proposal is being reviewed
- Timeframe within which an approved activity should take place

Monitoring, review and compliance

- Follow-up procedure to monitor and review compliance with the agreed rules and procedures for completed EIAs and SEAs
- Follow-up measures, including adjustment or termination of an activity or redress/reparation/compensation, on the basis of the monitoring results
- Responsibility of States to monitor impacts under UNCLOS
- State could make the proponents of an activity responsible for reporting and providing information on impacts
- Previously unexamined activities should be subject to monitoring
- New information on the environment and impacts on the environment to be taken into account when monitoring the impacts of an activity
- Public availability of the monitoring results
- Establish general rules for reporting
- Mandatory issuance of bond guarantees to ensure compliance
- Develop code of conduct

Institutional arrangements

- Establish international governing body with equitable geographical representation
- Role of the ISA
- Governing body
  - to commission and conduct environmental assessments
  - to oversee monitoring and reporting
- Scientific and technical committee/advisory body
  - to conduct environmental assessments
  - to review reports

  - to define activities subject to environmental assessments
  - to evaluate cumulative impacts
  - to define specific guidelines for activities
  - to accredit independent experts
  - to manage a public database
  - to review State practice
- Compliance committee
- Clearing-house mechanism/central repository to facilitate access to and exchange of information
- Capacity-building mechanism to assist developing countries in monitoring impacts within their national jurisdiction of activities taking place in areas beyond national jurisdiction.
- Fund to finance efforts to repair the harmful effects of pollution (e.g. Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety)
- Build upon regional and sectoral structures and avoid duplications
- Institutional structure to be cost-effective

CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

Objectives

- Ensure that objectives under UNCLOS and under an international instrument and the objectives of conservation and sustainable use are achieved
- Ensure that developing countries can sustainably use and benefit from marine biodiversity of areas beyond national jurisdiction
- Definition of the objectives and general obligations
- Special needs of, and challenges for, developing countries, in particular SIDS, least developed countries, African States and land-locked countries, in enjoying their rights and fulfilling their duties under the law of the sea
- Include tools for capacity-building and transfer marine technology for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Guiding principles and approaches

- Transparency
- Gender equality
- Inclusiveness
- Universality
- Needs and interests of developing States in establishing their own capacities
- Capacity-building delivered not only to individuals but also to organisations and institutions, including civil society, to enable wide stakeholder participation
- Sustainability
- Compatibility with, and responsiveness to, local, national and regional realities and needs
- Include knowledge and technology relating to marine genetic resources in capacity-building and transfer of marine technology initiatives
- Address unfavourable international trade regimes

Scope

Capacity-building

- General obligation to provide capacity-building
- Identification of priority areas for capacity-building
- Development of human and institutional resources
- Information and knowledge-sharing

- Strengthen information-sharing between relevant organizations
- Data exchange
- Scientific and technical training programmes and workshops
- Development of joint scientific research projects in cooperation with institutions in developing countries
- Establishment of national and regional scientific centres, including as data repositories
- Collaborative research and development programmes
- Increased participation from scientists from developing countries in research and development
- Scholarships, fellowships, including PhD programmes, and internship opportunities
- South-South cooperation
- Triangular cooperation
- International cooperation, including better coordination and cooperation between institutions at different levels involved in capacity-building

Transfer of marine technology

- Mandatory requirement for technology transfer
- Obligations for more effective transfer of marine science and technology
- Effectively and efficiently implement Part XIV of UNCLOS and the IOC of UNESCO's Criteria and Guidelines for the Transfer of Marine Technology
- Transfer of marine technology on a voluntary basis and on mutually agreed upon terms and conditions, in accordance with the IOC of UNESCO's Criteria and Guidelines for the Transfer of Marine Technology
- Create incentives to address limitations of voluntary transfer of marine technology
- Marine technology and other technologies, including lab and sampling equipment and analytical methodologies
- Technology to be transferred should be contemporaneous or modern to avoid maintenance burden of less than modern technology
- Facilitate technology transfer from regional to national levels without creating overly cumbersome processes
- Do not prejudice transfer of marine technology through bilateral arrangements
- Create conditions that reward innovation as a core requirement of technology transfer
- Engage adjacent developing coastal States in collaborative research and development programmes in areas beyond national jurisdiction
- Co-ownership of intellectual property rights
- Involvement of the public and private sector
- Multi-stakeholder partnerships

Funding and institutional mechanisms

- Consistent and predictable funding mechanism
- No duplication with existing mechanisms
- Global fund or trust fund to support projects and promote participation of developing countries in the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction
    - voluntary contributions
    - mandatory contributions (e.g. from commercialization of products based on marine genetic resources)
- International financial mechanism, such as the Global Environment Facility
- Establishment of a body to facilitate cooperation and coordination and exchange of information
- Establishment of regional and national centres
- Clearing-house mechanism

- Mechanisms to follow-up on the results of capacity-building and transfer of marine technology programmes

INSTITUTIONAL ARRANGEMENTS, RESPONSIBILITY, DISPUTE SETTLEMENT AND FINAL CLAUSES

Institutional and funding mechanisms

- Form follows function
- Avoid unnecessary decision-making and bureaucracy
- Global mechanism or regulations to allow existing entities to harmonize standards and requirements
- Ensure cost-effectiveness
- Utilize existing institutions as a model (e.g. ISA)
- Utilize existing institutions
    - Role of the ISA (expanded mandate to cover living resources; take into account potential different membership under UNCLOS and international instrument, including with regard to financial contributions; establish additional technical body to deal with living resources)
- Funding mechanisms
- Clearing-house mechanism
- Monitoring and enforcement mechanism

Responsibility and liability

- Art. 235 UNCLOS
- International Law Commission Articles on State responsibility
- Distinction between State responsibility and operator liability
- Establish fund to be used for compensation for damages

Dispute settlement procedures

- Settle disputes by peaceful means
- Choice of procedure
- Compulsory procedures
- Consider UNCLOS and its Implementing Agreements' procedures
- Special competence of the International Tribunal on the Law of the Sea Seabed Disputes Chamber
- Advisory opinions
- Resolving disputes of a more technical nature by experts on the matter (e.g. United Nations Fish Stocks Agreement)

Final clauses

Annex II

Chair's general observations

1. The Chair is pleased with the depth and richness of the discussions at the first session of the Preparatory Committee. The Chair notes, in particular, that the Informal working groups have achieved their objective of assisting delegations in unpacking the package of issues to be considered by the Preparatory Committee in accordance with resolution 69/292 of 19 June 2015, including by addressing these issues in greater detail.

2. The Chair observes that delegations were committed to the mandate of the Preparatory Committee, as set out in resolution 69/292, namely to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS), taking into account the various reports of the Co-Chairs on the work of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Delegations were also committed to the parameters set out in resolution 69/292.

3. The Chair notes that delegations were committed to the elaboration of an instrument under UNCLOS and for the process to proceed in an inclusive manner. Delegations were also keenly aware of the need to not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

4. The Chair observes that several areas of convergence emerged on the issues considered at the first session of the Preparatory Committee but also notes several areas where further in-depth discussions and clarifications will be required. Notwithstanding the present general observations, an indicative list of issues raised during the first session of the Preparatory Committee is attached as Annex I.

Marine genetic resources, including questions on the sharing of benefits

5. The Chair understands that delegations were generally favourable to addressing both access to, and the sharing of benefits arising out of the utilization of, marine genetic resources of areas beyond national jurisdiction. Delegations also seemed to converge on the need to encourage rather than discourage research and development, and on the need to respect the rights of the coastal State over its continental shelf, including beyond 200 nautical miles where applicable. However, the Chair notes different views on the principles and approaches to be used. Bearing in mind the arguments of a legal and policy nature put forward at the meeting, the Chair encourages delegations to consider options on how to move forward in order to achieve the common objective.

Measures such as area-based management tools, including marine protected areas

6. The Chair observes that there seemed to be a convergence of views on the importance of area-based management tools, including marine protected areas, for conservation and sustainable use and that there is a need to balance those objectives. There also appears to be a convergence of views that the rights of the coastal State over its continental shelf, including beyond 200 nautical miles where applicable, should be respected. However, the Chair notes the different views that were expressed on the level of protection to be accorded to marine protected areas. Different views were also expressed on the mechanism to designate those areas, including on whether to adopt a global

or regional approach or a combination of both. The Chair encourages further discussions on these issues as well as on issues relating to management, monitoring, control and surveillance and enforcement.

Environmental impact assessments

7. With regard to environmental impact assessments, the Chair notes that there seems to be a convergence of views on the need for environmental impact assessments and on the need to further elaborate and strengthen the implementation of relevant provisions of UNCLOS, in particular articles 204-206. Delegations also seemed to converge on the need for a clearing-house mechanism to facilitate exchange of information. Differences were detected, however, for example, with regard to the scope and the triggering conditions/thresholds for carrying out impact assessments, as well as regarding who would be responsible for taking the decision for an activity to proceed or not, and under what conditions. The Chair encourages further discussion on these issues as well as on transboundary environmental impact assessments and strategic environmental assessments.

Capacity-building and the transfer of marine technology

8. The Chair notes a general recognition among delegations that meaningful capacity-building and transfer of marine technology are fundamental to conservation and sustainable use. Delegations provided a number of examples to highlight existing frameworks for capacity building and transfer of marine technology initiatives. The Chair notes the positions in favour of preserving transfer of marine technology on a voluntary basis and not prejudicing bilateral arrangements. However, the need for a global clearing-house mechanism and/or regional mechanisms was also considered. Delegations seemed to converge on the need to operationalize Part XIV of UNCLOS and to find avenues to ensure that capacity-building was effectively delivered. The Chair observes that the debate needs to be narrower and focused on a new regime that would be implementable and responsive to identified needs.

Other issues

9. In addition to the issues of the package, the first session also discussed other issues, including with regard to guiding approaches and principles, scope, definitions, a governance structure, liability and dispute settlement, which the Chair considers will need to be further explored. While different views were expressed on several of those issues, the Chair observes that there appears to be some convergence of views regarding several of the guiding approaches and principles.

10. The Chair is of the view that it will be important to also consider final clauses at an early stage of the process.

Conclusions

11. The Chair is encouraged that delegations generally agree on the need to make further progress at the second session of the Preparatory Committee. The Chair is also pleased with the collegiality of the first session and the recognition by delegations of the need for transparency and open discussions. The Chair is also encouraged by pledges to the trust fund established pursuant to paragraph 5 of resolution 69/292 and encourages further contributions from Member States, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons.