

**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 indicative suggestions of clusters of issues and questions to assist further discussions in the Informal working groups at the second session of the Preparatory Committee**

*The present indicative list of clusters of issues and questions, which draws from the issues raised at the first session of the Preparatory Committee ("Prep Com I"), is aimed at assisting further discussions in the Informal working groups at the second session of the Preparatory Committee on: marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity-building and transfer of marine technology; and cross-cutting issues. The list is not intended to be exhaustive and does not preclude delegations from raising any issue or question which they would like to address.*

**MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS**

**Concepts / Definitions / Use of terms**

- How might definitions in existing instruments be used and adapted to the specific case of marine genetic resources of areas beyond national jurisdiction?

**Guiding principles and approaches**

- How might the various guiding principles and approaches mentioned at Prep Com I apply in practice in the context of marine genetic resources of areas beyond national jurisdiction?

**Scope**

- How might an international instrument covering marine genetic resources of both the Area and the high seas work?
- How might an international instrument 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?
- How might the rights of coastal States over their continental shelf, including the continental shelf beyond 200 nautical miles where applicable, be respected?
- How might a distinction between fish used as a commodity and fish valued for their genetic properties work in an international instrument?
- How might different activities related to, and the different purposes for the use of, marine genetic resources of areas beyond national jurisdiction be dealt with in an international instrument?
- How might a distinction between marine scientific research and bioprospecting work in practical terms in an international instrument?
- How might an international instrument address conservation of marine genetic resources of areas beyond national jurisdiction?

### **Questions on the sharing of benefits**

- How might the shared interest in marine genetic resources be operationalized?
- How might the special challenges and needs of developing countries, in particular SIDS, be taken into account?
- How might the interests of land-locked countries be taken into account?
- How might an international instrument facilitate and encourage marine scientific research and research and development and avoid creating disincentives?
- How might different benefit-sharing regimes for marine genetic resources of the Area and for the high seas work?
- How might a hybrid/sui generis approach based on both the freedom of the high seas and the common heritage of mankind work?
- How might a single comprehensive regime for marine genetic resources of all areas beyond national jurisdiction work? What might a pragmatic/practical approach look like?

### *Access*

- How might an international instrument facilitate access in situ, ex situ and in silico?
- How might an international instrument ensure that access is sustainable and environmentally sound?

### *Benefit-sharing*

- Which activities related to marine genetic resources of areas beyond national jurisdiction might generate benefit sharing?
- At which point might activities related to marine genetic resources of areas beyond national jurisdiction be subject to benefit-sharing?
- How might an international instrument address sharing of monetary benefits?
- How might an international instrument address sharing of non-monetary benefits?
- Who might be required to share benefits?
- What might a trigger be for a benefit-sharing obligation?
- Who might be the beneficiaries of the benefits?
- How might the benefits be shared?
- How might the shared benefits be used?
- How might an international instrument give special consideration to indigenous communities?
- What monitoring and compliance measures might need to be included in an international instrument?
- How might traceability of marine genetic resources of areas beyond national jurisdiction be ensured?
- How might a prior informed consent requirement work under an international instrument?
- How might existing benefit-sharing approaches be adapted to the specific situation of marine genetic resources of areas beyond national jurisdiction?
- What best practices of the scientific community might be taken into account in an international instrument and how?

### *Intellectual property rights*

- What forms of intellectual property rights are relevant to marine genetic resources of areas beyond national jurisdiction?
- How might an international instrument address issues related to intellectual property?

### **Institutional arrangements**

- What kind of institutional arrangement might be required to administer an access and benefit-sharing regime as well as ensure compliance?
- How might the role of the International Seabed Authority be expanded?
- What might be a light and cost-effective institutional arrangement?

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

### **Concepts and definitions**

- How might existing concepts and definitions of area-based management tools, including marine protected areas, be used and adapted to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction?

### **Guiding principles and approaches**

- How might the various guiding principles and approaches mentioned at Prep Com I apply in practice in the context of area-based management tools, including marine protected areas, in areas beyond national jurisdiction?

### **Scope**

*Criteria for and identification of areas that may require area-based management tools, including marine protected areas*

- Who might define, review and update criteria to be used to identify areas that may require area-based management tools, including marine protected areas, based on best available science?
- Who might make a decision on the identification of areas that may require area-based management tools, including marine protected areas?
- How might an international instrument achieve a balance between conservation and sustainable use?

*Process of designation of area-based management tools, including marine protected areas*

- What might a process for the designation of area-based management tools, including marine protected areas, in areas beyond national jurisdiction look like?
- Who might be entitled to make proposals?
- What information might a proposal contain?
- How might the best available science be taken into account?
- Who might review proposals?
- How might an international instrument address areas straddling areas within and beyond national jurisdiction that may require area-based management tools, including marine protected areas?
- How might the rights of coastal States over their continental shelf, including the continental shelf beyond 200 nautical miles where applicable, be respected?
- Who might make the decision on the designation of area-based management tools, including marine protected areas, in areas beyond national jurisdiction?
- How might stakeholders be involved in the decision-making process?
- How might a decision to designate area-based management tools, including marine protected areas, in areas beyond national jurisdiction address the required management measures?
- What might be the legal effect of a designation on parties to an international instrument and on third States?
- Who might propose management measures?
- Who might decide on management measures?

- Might management measures be time-bound?
- What might management measures encompass (e.g. sectoral measures? cross-sectoral measures? etc.)

#### *Monitoring, review and compliance*

- What monitoring and review measures might be included in an international instrument?
- Who might assess whether an area-based management tool, including a marine protected area, achieved its objective and is no longer required?
- What compliance and enforcement measures might be included in an international instrument?

#### *Institutional arrangements*

- What could be the role for a global mechanism for area-based management tools, including marine protected areas, in areas beyond national jurisdiction?
- What might be the role of existing global sectoral bodies and regional mechanisms?
- What could be the relationship between the various arrangements?

## **ENVIRONMENTAL IMPACT ASSESSMENTS**

### **Concepts**

- How might existing instruments clarify the application of strategic environmental assessments (SEAs), environmental impact assessments (EIAs) and transboundary environmental impact assessments (TEIAs) to areas beyond national jurisdiction?

### **Guiding principles and approaches**

- How might the various guiding principles and approaches mentioned at Prep Com I apply in practice in the context of environmental impact assessments in areas beyond national jurisdiction?

### **Scope**

- How might an international instrument address SEAs, EIAs and TEIAs?
- What projects/activities might EIAs and TEIAs apply to in an international instrument?
- What impacts might SEAs, EIAs and TEIAs cover under an international instrument?
- How might SEAs, EIAs and TEIAs address cumulative impacts?
- How might SEAs, EIAs and TEIAs under an international instrument relate to existing requirements?

### *Criteria and threshold*

- What criteria and thresholds might trigger the requirement to conduct SEAs, EIAs and TEIAs?
- What criteria and thresholds in existing instruments might provide guidance?
- What activities might always be subject to prior EIAs before being authorized?

### *Assessment reports*

- How might an international instrument address assessment reports?
- What information might be required in assessment reports?

### *Procedural elements*

- Who might be responsible for deciding that an SEA, EIA and TEIA is required?
- Who might be responsible for conducting SEAs, EIAs and TEIAs?
- Who might bear the costs of SEAs, EIAs and TEIAs?

- What procedural steps might SEAs, EIAs and TEIAs follow under an international instrument?
- Who might review the SEA, EIA and TEIA reports?
- Who might make the decision on whether an activity should proceed or not on the basis of SEAs, EIAs and TEIAs?
- What role might there be for stakeholders other than the proponent of the policy/project/activity?
- What might be an acceptable nature/level of impact for a policy/project/activity to proceed?
- Within what timeframe might a proposed policy/project/activity proceed following an SEA/EIA/TEIA?

#### *Monitoring and review*

- What monitoring and review measures might be included in an international instrument?
- Who might be responsible to monitor the impacts of a policy/activity/project?
- What information might the monitoring take into account?
- How might SEAs and EIAs for policy/project/activity taking place within areas under national jurisdiction that could impact marine biodiversity of areas beyond national jurisdiction be taken into account?
- What could be the consequences of a change in impacts over time?

#### *Institutional arrangements*

- What institutional arrangements might be needed under an international instrument to address SEAs, EIAs and TEIAs?

## **CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY**

### **Guiding principles and approaches**

- How might the various guiding principles and approaches mentioned at Prep Com I apply in practice in the context of capacity-building and transfer of marine technology for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction?

### **Scope**

- What capacity and technology needs might an international instrument address?
- How might capacity and technology needs be identified?

#### *Capacity-building*

- What capacity-building measures/obligations might an international instrument include?
- How might information, knowledge and data sharing be strengthened in an international instrument?
- How might an international instrument facilitate collaborative research projects and programmes?
- How might an international instrument facilitate participation of scientists from developing countries in research?
- How might an international instrument facilitate international cooperation, including south-south and triangular cooperation?

#### *Transfer of marine technology*

- What technology might be subject to transfer under an international instrument?
- How might existing instruments be built upon?
- What measures to facilitate the transfer of marine technology might an international instrument include?

- How might an international instrument create incentives to address possible limitations of voluntary transfer of marine technology?
- How might an international instrument address intellectual property rights in relation to transfer of marine technology?
- How might an international instrument facilitate involvement of the public and private sectors and multi-stakeholders partnerships for transfer of technology?

#### *Funding and institutional arrangements*

- How might an international instrument ensure consistent and predictable funding for capacity-building and transfer of marine technology?
- How might an international instrument facilitate cooperation and exchange of information?
- How might an international instrument facilitate the establishment of national and regional scientific and technological centres?
- What might a process to follow-up on the results of capacity-building and transfer of marine technology programmes look like?

### **CROSS-CUTTING ISSUES**

#### **Objectives**

What objectives might an international instrument set out?

#### **Guiding approaches and principles**

What guiding principles and approaches might an international instrument include?

#### **Definitions**

- What definitions might an international instrument include in addition to those under each element of the package?
- What definitions in existing instruments might be used?

#### **Scope**

- How might an international instrument ensure universal participation?
- How might an international instrument address activities that might have an impact on marine biological diversity of areas beyond national jurisdiction?

#### **Relationship to other instruments and frameworks**

- How might an international instrument address its relationship to UNCLOS?
- How might an international instrument address its relationship to other existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies,

#### **Institutional arrangements**

- What might be the role(s)/functions of an institutional arrangement(s) global mechanism under an international instrument?
- What type of institutional arrangement(s) might achieve that role(s)/those functions under an international instrument?

- What might be the relationship between institutional arrangement(s) under an international instrument and existing relevant global, regional and sectoral bodies?
- How might the role of the International Seabed Authority be expanded?
- What might be a light and cost-effective institutional arrangement?

**Compliance**

- How might an international instrument ensure compliance?

**Responsibility and liability**

- How might an international instrument address responsibility and liability?

**Dispute settlement**

- How might an international instrument address dispute settlement?

**Final clauses**

- What final clauses might an international instrument include?
- What examples might be relevant for an international instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction?