



# An International Instrument on Conservation and Sustainable Use of Biodiversity in Marine Areas beyond National Jurisdiction

Exploring Different Elements to Consider

PAPER IV

Governance Principles<sup>\*</sup>

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<sup>\*</sup> DISCLAIMER: The views expressed in this paper do not necessarily reflect those of the German Federal Agency for Nature Conservation or the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety.



## 1. Background

At the 2012 United Nations Conference on Sustainable Development (Rio+20), States committed

The main purpose of formulating a comprehensive set of principles for ABNJ in a future international instrument would be fourfold:

- x Compiling all relevant principles from different sources;
- x Providing an unequivocal reconfirmation that these principles have to be applied to ABNJ;
- x Building a basis for their harmonized interpretation; and
- x Representing a code of good practice and a first important step in the development of a more complete system for governance of marine ABNJ.<sup>5</sup>

### 3. Overview of Relevant Governance Principles

Although generally recognized, the following principles are not yet uniformly applied to marine ABNJ and therefore could be included in a future international instrument.<sup>6</sup>

issue of biodiversity in ABNJ. Listing this principle would reaffirm the general obligations contained in Articles 192 and 194.5 of the UNCLOS, particularly for ABNJ and constitute the basis for creating

amongst others, the duty of all States to ensure decisions affecting biodiversity in ABNJ are consistent with the best available scientific information and are designed to maintain or restore biodiversity, as well as to contribute actively to the collection and analysis of relevant scientific information, including relevant socio-economic information. It would also be a useful mechanism to make a direct link to ongoing and future processes, such as the World Ocean Assessment, the Intergovernmental Panel on Climate Change and the Intergovernmental Science-policy Platform on Biodiversity and Ecosystem Services (IPBES).

x Precautionary approach

The precautionary approach which addresses cases of scientific uncertainty came after the adoption of the UNCLOS but has been recognized in virtually all multilateral environmental agreements and policy declarations, many relating to the marine environment and resources.<sup>14</sup> This approach is especially applicable to marine ABNJ where scientific knowledge about the ecosystems, their functions, the biodiversity that depends on and sustains them, as well as the impacts of human activities is still weaker than for other ecosystems. Therefore, an international instrument could reaffirm that States have the obligation to apply a precautionary approach, i.e. the absence of further detailed scientific information should not be a reason to delay or fail to implement management measures to conserve biodiversity in ABNJ; decisions should be made using conservative estimates; and the introduction of new activities in an area should be done on a progressive and precautionary basis.<sup>15</sup> The content of the specific measures States have to take in applying the precautionary approach in this context is, however, currently not defined and is still largely discretionary.<sup>16</sup> Therefore, an international instrument could further specify its requirements, learning for example from the operational procedures for a precautionary approach set out in Article 6 and Annex II of the 1995 UN Fish Stocks Agreement, or the experiences from the 1972 London

cumulative impacts of different human activities taking place in ABNJ.<sup>18</sup> While the UNCLOS (and the legal framework for oceans governance in general) is largely based on a sectoral approach,<sup>19</sup> a basis for the ecosystem approach can be found in different parts of the Convention, such as the Preamble

x Transparency

The principle of transparency is linked to the principle of accountability, as it is a prerequisite for monitoring, reviewing and supporting compliance. It is not explicitly recog



- x As specific articles of the main text of the instrument (as for example is the approach taken under the UN Fish Stocks Agreement and other instruments).<sup>25</sup>

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<sup>25</sup> Druel, E., Gjerde, K. M. *Z^μ•š ]v]vP u Œ]v o]( Ç}v }μv Œ]•W šZ v (}Œ v UNCLOS Implementing Agreement for marine biodiversity}v v š}}v o iμŒ be publishedXr Marine Policy.*

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