Governance Principles in Practice

Principles Side Event

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Duncan Currie LL.B. (Hons.) LL.M.
duncanc@globelaw.com

High Seas Alliance

Why Principles?

… systematize relevant rules within the legal system

- rules further elaborate principles and set out specific measures concerning the rights and obligations of States.

…set out normative frameworks for integrating various legal, economic, social and political considerations into specific fields of international law

…Provide guidance for the interpretation and application of relevant rules.

- In multinational environmental agreements, principles
  - set out critical ways in which the objective of the agreement will be achieved
  - provide context for the rules which are elaborated in the agreement.

Protection and restoration of the health, productivity and resilience of oceans and marine ecosystems, and maintenance and restoration of their biodiversity, in areas beyond national jurisdiction

- **UNCLOS** Arts 192, 194.5
- **Rio+20**, called on States to restore the health and integrity of the Earth's ecosystem and committed to protect, and restore, the health, productivity and resilience of oceans and marine ecosystems, and to maintain their biodiversity. Add: **restoration** of biodiversity. (para 158)
- Important to add a specific layer about protection and preservation and **restoration** of biodiversity as well as the marine environment.
- Should include obligations to maintain and **restore** ecosystem integrity.

Ongoing cooperation between and among States to achieve the purposes of this Agreement

- Rio Principle 7: *Cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem*
- *I*TLOS *Mox Case*: *The duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law.*
- UNCLOS art 117: *all States have the duty to take or cooperate with other states in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas*.

- Cooperation is at the heart of the international instrument.
- Cooperation between States for the conservation of biodiversity, cooperation by States in their work in international organizations and cooperation between international organizations, accountability and transparency all go hand in hand.
- Enhanced cooperation.

Use of the best available scientific information

UNCLOS art. 119: States to base fisheries conservation and management measures on *the best scientific evidence available*
FSA Art 5(b): In implementing the precautionary approach, States required to *improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty*

Using the best available science is an important principle for all aspects of the new international instrument, including the conservation and sustainable use of marine genetic resources, and is obviously closely related to the transfer of technology and capacity building, to ensure that the best science is available when needed.

Stewardship of the global marine environment for present and future generations

UNCLOS art 136 *The Area and its resources are the common heritage of mankind*

ILC Draft Articles: States must be held responsible for a breach of an international obligation

Rio+20 *commit to protect, and restore, the health, productivity and resilience of oceans and marine ecosystems, and to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations– para 158*

Rio Principle 2 *responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

Shared responsibility by States incorporates the recognition that States are not only responsible for activity within their own jurisdictions but also carry a shared responsibility for the global commons, particularly the high seas and seabed Area. Forming part of stewardship is accountability, broader stakeholder participation, and corporate responsibility. States have a common responsibility, particularly for areas outside national jurisdiction that are thought of as global commons for example the oceans and the atmosphere.

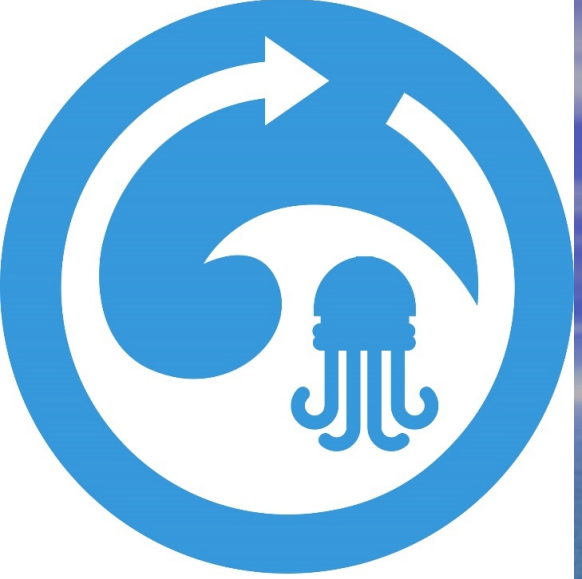
Precautionary principle

Rio Principle 15 *In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities*

ITLOS *Seabed Advisory Opinion: precautionary approach has been incorporated into a growing number of international treaties and other instruments, many of which reflect Principle 15 of the Rio Declaration.*

ICJ: Gabčíkovo-Nagymaros vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage

States and international organizations shall always apply the precautionary principle when considering the conservation and management of marine biodiversity in areas beyond national jurisdiction in order to protect the living marine resources and preserve the marine environment.



Ecosystem-based management

2000 CBD Decision V/6 principles for guidance in applying the ecosystem approach,
2001 Reykjavik Declaration recognised the importance of interactions between fishery resources, all components of the ecosystem, and the need to conserve marine environment. The Johannesburg Programme of Implementation (JPOI) called for the application of the ecosystem approach by 2010.
Climate change, ocean acidification & other stressors mean that the ocean is rapidly changing so challenges may outrun the international community's ability to manage them.
Ecosystem based management, coordination between sectoral agencies and cross-sectoral and integrated management all have an important role to play in addressing challenges in the face of scientific uncertainty.

Ecosystem-based management

States and international organizations should apply ecosystem based management widely to the conservation and management of marine biodiversity through an integrated approach under which decisions in relation to the conservation and management of marine biodiversity are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.

Rio Declaration Principle 4: *in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it*

ICJ , *Gabčíkovo-Nagymaros: need to reconcile economic development with protection of the environment*

Continued existence of the natural world and its life forms, and the ability of the natural world to regenerate itself through its own natural evolution, has intrinsic value.

Sustainable and equitable use of marine life for the benefit of present and future generations

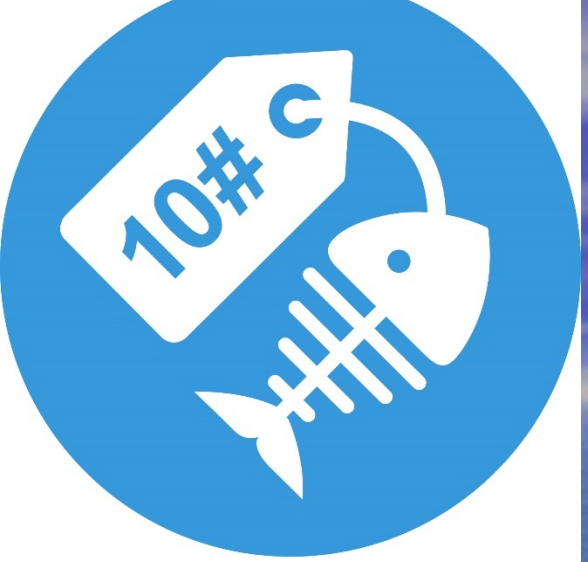
Universal Declaration of Human Rights Article 29 enshrined the right to freedom of opinion and expression

Stockholm Declaration Principle 19 reinforced the role of individuals and communities in the protection and improvement of the environment.

Rio Declaration Principles 10 establishes three pillars that form a 'right to participation.' The three pillars are access to information, public participation and access to justice.

Aarhus Convention – and Almaty Guidelines

Good environmental governance, including transparency through access to information, public participation, and access to review procedures



The Polluter Pays Principle

Rio Declaration Principle 16: polluter should, in principle, bear the cost of pollution

OECD 1972

Polluter pays principles covers pollution prevention, pollution control measures, liability and clean-up costs for environmental damage.

High Seas Alliance

Respect for the Law of the Sea / Conditional Freedom of the Seas

UNCLOS Art 97: freedom of the high seas is *to be exercised under the conditions laid down by this Convention and the other rules of international law.*

UNCLOS article 117, 118 : obligations to cooperate with other States
article 118 : obligation to base those measures on the best scientific evidence available, environmental and economic factors
article 119 “generally recommended international minimum standards”.

Give equal weight to the rights and responsibilities of States in undertaking activities in the high seas would provide an important legal basis for future mechanisms, including those related to monitoring and compliance.

Operationalizing the Principles

- A framework for cooperation between member States.
- Establishment of a system of effectively and equitably managed ecologically representative and well-connected marine protected areas, including marine reserves in ABNJ.
- A framework for prior environmental impact assessment (EIA) of activities where they may have significant adverse effects on the marine environment or marine biodiversity of ABNJ, and the ability for conditions to be imposed on the proposed activity to avoid significant adverse effects or to prevent the proponents from proceeding where significant adverse effects will be unavoidable.
- Requirements for strategic environmental assessments (SEA) of plans and programmes under their jurisdiction or control where they may have significant adverse effects on the marine environment or marine biodiversity of ABNJ.

Operationalizing the Principles

- Sustainability - ABM, EIAs, SEAs, framework for cooperation etc.
- MGR: about access to marine genetic resources together with a comprehensive set of benefit sharing provisions for a multilateral system.

Operationalizing the Principles

- Cooperation is likely to be at the heart of the agreement.
- The agreement could include a duty to cooperate on a global and regional basis for the conservation and sustainable use of marine biodiversity in ABNJ, and provide for co-operation at the sub-regional scale, emphasizing the importance of cooperation at all scales.
- Other provisions can include provisions for cooperation between and within relevant organizations, such as the International Maritime Organization (IMO) and regional fisheries management organizations.

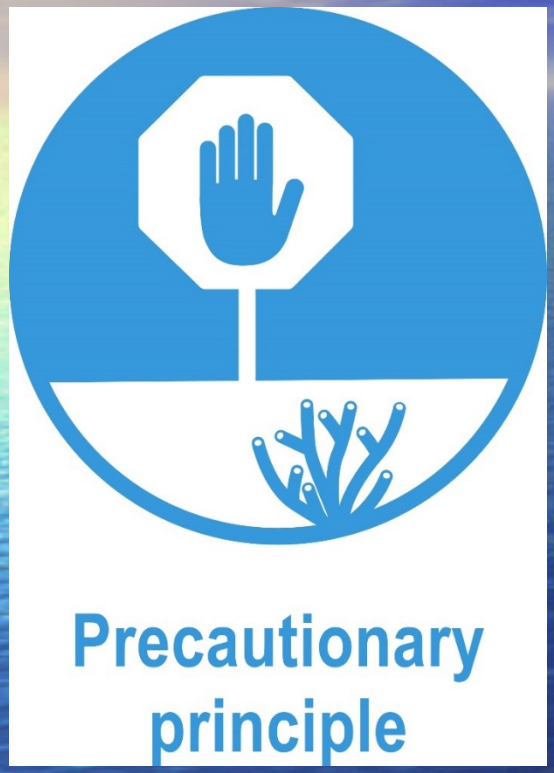
Operationalizing the Principles

- Best available scientific information.
- Establishment of an independent scientific committee.
- The sharing of scientific information.
- To promote and conduct scientific research and develop appropriate technologies in support of conservation and management of marine biodiversity and its components in ABNJ.

Operationalizing the Principles

- A principle for State responsibility for activities in ABNJ, for damage caused to ABNJ, for responsibility for the fulfillment of international obligations concerning the protection and preservation of the marine environment in ABNJ, and for compensation and redress.
- States are responsible for conserving biological diversity in ABNJ, are responsible for safeguarding marine biodiversity in ABNJ for future generations.
- States have responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of areas beyond the limits of national jurisdiction.

Operationalizing the Principles



- An overarching obligation to apply the precautionary principle.
- The precautionary principle being integrated and incorporated in relevant provisions.
- Provisions for interim and precautionary measures in marine protected areas including marine reserves.
- E.g. requirements to refrain from authorizing or permitting activities or expanding existing activities that undermine the objectives of an MPA pending establishment and emergency measures.
- The precautionary approach should guide the assessment and control of any activities that have potential adverse effects.
- It is crucial that the precautionary principle be applied consistently.

Operationalizing the Principles

- Ecosystem based management provisions can be incorporated in relevant provisions, as well as being provided for in an overarching provision.
- Provision can be made to establish a system of ecologically representative and well-connected marine protected areas including marine reserves and to adopt other area-based management measures where special measures need to be taken to conserve marine biological diversity in ABNJ.

Operationalizing the Principles

- Transparency can be included in a stand-alone provision.
- Requiring transparency in the decision making process and other activities of global, regional and sub-regional organisations with mandates relevant to the agreement
- Requiring that States shall cooperate through the organisations they are members of to improve transparency and the exchange/flow of information among the different relevant organisations and between the agreement and civil society.
- Provide for public participation in decisions on activities in ABNJ, for public participation in and review of strategic environmental assessments and environmental impact assessments, for information to be provided to stakeholders and for stakeholder participation in compliance, review and dispute resolution processes.

Operationalizing the Principles

- MGR/Benefit sharing
- Capacity building
- Transfer of marine technology
- Clearing house
- Shared research, include access to samples, data and knowledge, the publication and sharing of scientific knowledge, collaboration and international cooperation in scientific research,
- Scientific training and access to resources such as research infrastructure and technology, and research directed to health and food security
- Monetary benefit sharing including milestone payments, royalties