



# Environmental Impact Assessment in areas beyond national jurisdiction

Workshop on the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction through a new legally binding instrument under UNCLOS

Portuguese Diplomatic Institute

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# Trends

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- Use of EIA widespread and growing
- Many barriers to good EIA; poor quality EIA common
- EIA threatened by economic imperatives
- Development of marine-specific processes
- Strategic Environmental Assessment (SEA)

# Outcomes

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Outcomes are mixed:

- Mainstreaming the environment



- Awareness and dialogue



- Changing decisions?



# Good practice

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- Focus on the environment, impacts, biodiversity
- Ensure transparency
- Include a review mechanism
- Involve stakeholders/consider their interests
- Include the ability to:
  - Impose conditions to mitigate adverse impacts; or
  - Disallow the activity where there is the potential for substantial harm.

# Potential contribution of a new agreement

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- Reaffirm obligation; renew focus & impetus
- Bring coherence to global EIA system
- Set out a clear & uniform process
  
- Cover activities outside sectoral regimes
- Cumulative assessment
- Transboundary EIA
- Strategic Environmental Assessment
  
- Support other aspects of the agreement
  
- Technical support & capacity

# Progress to date

## Discussion of EIA

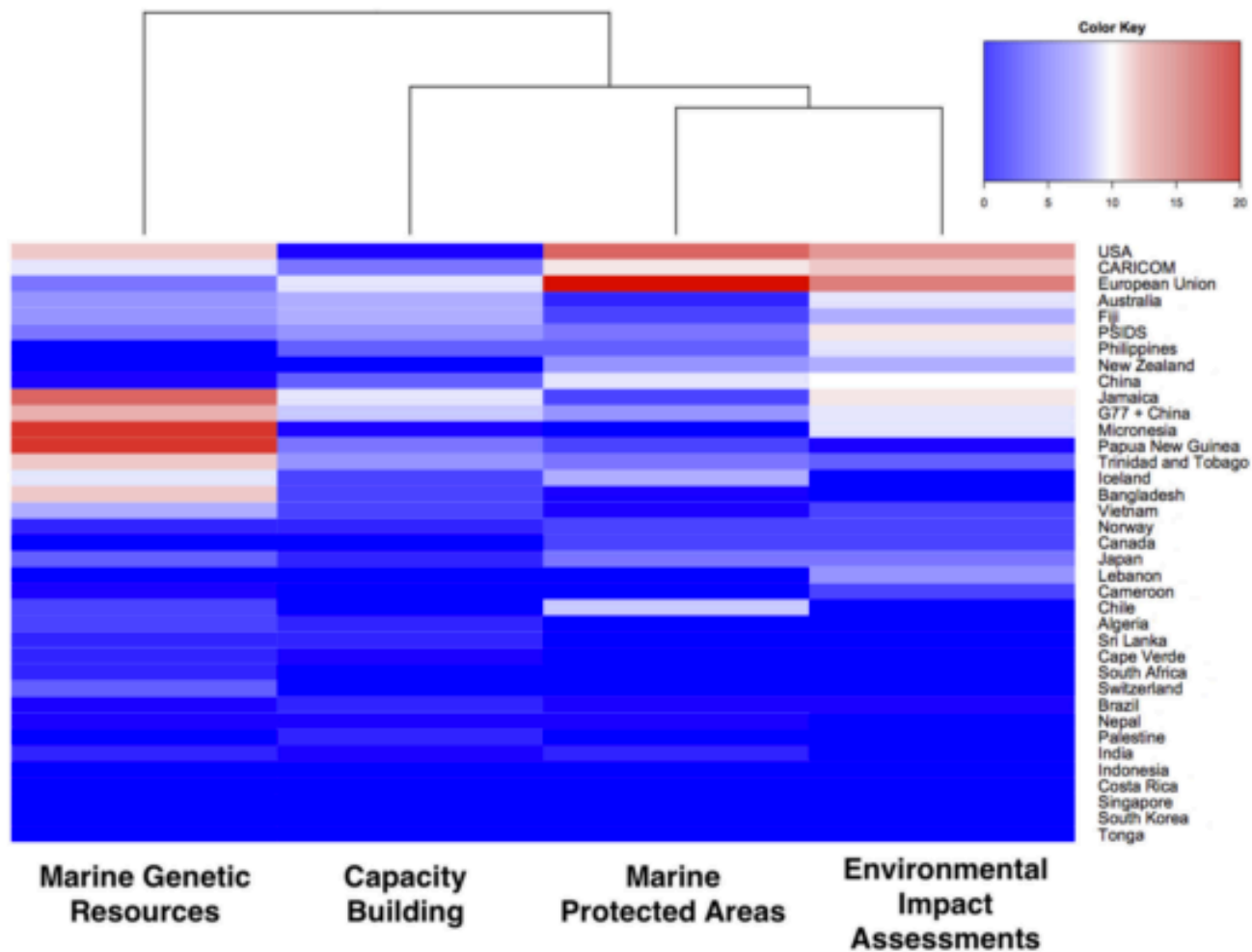


FIGURE 5 | Overall frequency with which package elements were identified by States and Groups in official statements during first meeting of the preparatory committee on biodiversity in areas beyond national jurisdiction, with overarching cluster analysis.

Blasiak et al. (2016)

# Progress to date

## Areas of convergence

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- Four identified areas of convergence in Chair's overview of PrepCom 2:
  1. EIAs should contribute to the conservation and sustainable use of marine biological diversity of ABNJ
  2. Existing relevant legal instruments and frameworks should not be undermined
  3. The need for transparency in the EIA process, including through involvement of States/relevant stakeholders and dissemination of assessment reports
  4. Reports should be made publicly available



# Progress to date

## Areas for further discussion

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- 26 identified areas for further discussion in Chair's overview of PrepCom 2.
- Key themes:
  - Thresholds
  - Procedure
  - Oversight
  - TEIA
  - SEA

# Submissions to PrepCom3

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- Some States/Groups discuss EIA in submissions; few in detail
  - Canada
  - Caricom
  - EU
  - Fiji
  - G77/China
  - New Zealand
  - Norway
- NGOs actively and extensively contributing – reflected in Chair's non-paper
- A long way to go to narrow down the options

# Advancing the discussion

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- Building upon:
  - UNCLOS
  - Areas of convergence
  - Emerging areas approaching convergence
  - International instruments/guidelines



# Advancing the discussion

## Building on UNCLOS Articles 204-206

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- Obligation on States
- Threshold at least “may cause substantial pollution of or significant and harmful changes to the marine environment”
- Publication of reports
- Doesn't take us much further than existing areas of convergence

# Advancing the discussion

## Building on areas of convergence

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1. Conservation and sustainable use
  - Strong thresholds
  - Principles
  - SEA
2. Existing instruments and frameworks
  - “not undermining”
  - Coherence; standards; review
3. Transparency in the EIA process
  - Consultation – wide participation and inclusive process
4. Reports should be made publicly available

# Advancing the discussion

## Emerging areas of convergence(?)

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- Include an obligation to conduct EIAs
- States should be responsible for conducting EIAs
- Principles: ecosystem-based and precautionary approaches; use of best available science
- Minimum content of EIS
- Build on existing instruments

# Advancing the discussion

## Building on international instruments/guidelines

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- ATS - Madrid Protocol (1991)
  - Three level screening process
- Espoo Convention (1991)
  - Parties required to implement EIA for listed activities likely to cause significant adverse transboundary impact
  - Protocol on Strategic Environmental Assessment (Kiev Protocol)
- CBD Guidelines

# Areas for further discussion

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- Thresholds
  - Significant adverse effects? More than minor/transitory?  
Always in VMEs, EBSAs etc.?
- Procedure
  - What institutional framework?
  - Role of existing organisations? New institutions?
  - Potentially huge range of stakeholders
- Oversight
- TEIA/SEA
  - If/how to include



# General challenges

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- EIA in the marine environment
  - Lack of knowledge/need for precaution
  - Technical challenges/cost
- Good practice vs. status quo
- Pragmatism vs. ambition
- Negotiation challenges



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