



International Council of Environmental Law

- toward sustainable development -



**Statement of Hiroko Muraki Gottlieb
Head of Delegation, International Council of Environmental Law**

**Intergovernmental conference on 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 (UNGA Res. 72/249)**

Item 7: Marine genetic resources—cluster 2

New York, Thursday, 13 September 2018

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Madame Facilitator,

On 3.2.1(a), maximizing the facilitated access to MGRs will be important, particularly for the developing States. It is also important to avoid overly complex or burdensome requirements that could discourage scientific research and investments. Therefore, achieving a balance on the burden and the benefits of the ABS is important to ensure a fair, equitable and an effective ABS.

On 3.2.1(b)(i), two types of access mechanism—notice/permit—have been discussed, with strong support and many ideas from the floor on a notice system. We highlight that researchers prefer a user friendly and non-burdensome notice based approach that is designed to foster sharing of data and information.

On 3.2.1(b)(iii), there could be different *in situ* access requirements based on the sampling location and/or the methodology to be used. For example, if *in situ* access is to be conducted in an MPA, additional access requirements, such as an EIA, could be considered based on the *in situ* collection methodology.

On 3.2.1(b)(iv), a distinction between pure scientific research activities (such as ocean observation activities) and bioprospecting may be explored as the two research activities may have different objectives and different stakeholders. The scientific community can help in defining the different objectives and stakeholders so that we can avoid unintended negative consequences on research.

On 3.2.2(i), one of the overall objectives of benefit sharing could include fostering fulfilment of the States' rights and obligations under UNCLOS and the ILBI, including the duty to cooperate in marine scientific research, and to foster capacity building and technology transfer. The ILBI could provide a mechanism to specify, coordinate, promote and monitor implementation that would operationalize parts XII, XIII and XIV of UNCLOS. Article 244 of UNCLOS, concerning the publication and dissemination of information and knowledge, with respect to marine scientific research, is particularly relevant.

On 3.2.2(ii)(b), the principles and approaches guiding benefit sharing could be explicitly listed and operationalized to achieve clarity. In that regard, we heard about the option of utilizing an existing principle(s) or creating a *sui generis* principle. However, should it not be possible for a consensus to be reached on the applicable principle, remaining silent on the specific principle but operationalizing the elements that reflect the concepts in a principle could be sufficient.

On 3.2.2(iii), if a specific list of benefits would be listed under the categories, the ILBI could take an inclusive approach and allow for flexibility to address scientific and technological advancement as well as changes in the ecosystem to ensure effectiveness of the list.

As for technology, among other resources, the following could be included:

- Information and data; and
- Expertise, knowledge, skills, technical/scientific/legal know-how and analytical methods relating to scientific research and observation.

On 3.2.2(iv)(a)(i), the ILBI could allow for benefits to accrue at different stages of the collection/transfer of a marine organism of ABNJ and utilization/transfer of genetic material/resource. Such an approach could allow consideration of the role of different stakeholders (e.g. public/private academic institution, private entity, philanthropic organization, etc.).

On 3.2.2(c), relationships with the Antarctic Treaty Area conventions that overlap with ABNJ (i.e. Madrid Protocol and Commission on the Conservation of Antarctic Marine Living Resources) may be explored.

On 3.2.2(d), to operationalize the ABS, a clearing house mechanism could include many elements, including but not limited to, the notice of upcoming *in situ* collection and terms and conditions for access. The ABS would need to clearly define the obligations and rights of the stakeholders to avoid unintentional non-compliance.

On 3.2.2(e), which existing database to incorporate into the ILBI and how the ABS modalities would be linked to the overall clearing house mechanism of the ILBI could be explored to maximize the use of existing systems and to achieve a coherent and a holistic approach.

On 3.2.2(f), lack of capacity and technology may vary among the countries in question. Therefore, "one size fits all" approach could be avoided by consultations on the specific needs of each country or region that desires to participate in benefit sharing.

Finally, in designing ABS measures, we believe that the two key questions to keep in mind are:

1. Is the level of burden on the institutional arrangement and the regulated community *proportional* to a fair, equitable and an effective ABS?
2. Will the ABS ensure conservation and sustainable use of BBNJ?

Thank you