



**Statement of Hiroko Muraki Gottlieb  
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**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 6: marine genetic resources, including the question of sharing benefits  
(3.2.2)***

**New York, Tuesday, 26 March 2019**

*Check against delivery*

**Madame Facilitator,**

We would like to reflect on some of the robust discussions that have taken place under your able leadership. It is indeed nice to have you lead this challenging item. As you have requested, we will focus on the operational aspects of ABS.

**Benefit Sharing objectives**

We have followed the discussion about whether the objectives should be general objectives at the start of the ILBI or separate objectives for the MGR section. We suggest that wherever they are located in ILBI, it is critical to have clearly defined objectives of the BS in the sense of what countries want to get out of this agreement. It would be the first step for designing an effective system to meet the countries' needs and also to have measurable BS.

**Out of the mix of objectives and principles in 3.2.2 (i) option 1 page 16**, there seem to be two main group of objectives but we note that BS from the use of traditional knowledge, which was highlighted by Nauru and Samoa, seem to be missing

**Benefit Sharing Principles**

From a drafting and more importantly, compliance perspective, it might be better to have a central location where all of the principles are in one place to avoid confusion. However, as Norway, NZ and Indonesia suggested, focusing on the deliverables, the objectives, rather than high level principles could be the best way to design an effective ABS system.

**The “what” - Benefit Sharing (iv)**

As it has been discussed before me, we agree that the scope of what is covered as “benefits” (i.e. organism, DSI, associated research information, etc.) is a key question here. This will be covered in the scope discussion but I emphasize the importance here.

We do have an opportunity to operationalize UNCLOS Art. 202 where scientific and technical assistance to developing States would be fostered. Lack of capacity and technology vary among countries so providing special considerations to those countries with acute resource constraints, including SIDS, as stated by AOSIS and as supported by Holy See, Mauritius, Samoa, Papua New Guinea, Maldives, Federated States of Micronesia, and Tonga could fulfill the obligations of Art. 203 of UNCLOS.

There are various types of monetary benefits, such as subscription payments, membership payments according to certain criteria (e.g. UN membership fees), royalties at certain milestones so there are options, should the countries agreed to pursue it.



An additional innovative approach may be to introduce some type of a certification system--such as a market-based certification that provides recognition on participation and compliance--to encourage voluntary participation in benefit sharing.

### **The ‘Who’- Benefit providers (1)**

Section (iv) Option II (2) Option D on page 19 states that States have the responsibility. This seems to be the most practical option as at the end of the day, ILBI will be implemented under national law. At the national level, the States would have the responsibility to implement this requirement down to, for example, those who collect and access MGRs, in accordance with principles of international law.

One thing to note that this option also recognizes that States Parties have BS responsibility ‘at the time of accessing, conducting research on, as well as exploiting and utilizing’ ABNJ MGRs. This brings up questions about the temporal scope of benefit sharing, as pointed out by Canada and Eritria, and whether countries want to capture benefit sharing at the time of use and subsequent uses of the MGRs and information.

### **The ‘Who’ - Benefit recipients – paragraph (2)**

A focus on acute resource restricted countries is consistent with the objectives of UNCLOS Art. 202 and 203. Section (3) option E on page 19 may be a good option—a focus on States Parties which may need and request technical assistance, via some type of a needs assessment as proposed by PSIDS, particularly focused on resource constrained countries.

### **How benefits will be shared – paragraph (3)**

Before we talk about benefit sharing modalities, the US raised the point that we need a ‘better understanding of the term “use” in the ILBI. Clearly defining what triggers benefit sharing – “is it the collection, utilization or transfer of resources?” is a key question.

The question could have implications on whether new and continuing uses of MGRs previously accessed from ABNJ would also trigger BS. It also brings up questions about whether it is all uses of ABNJ MGRs that trigger benefit sharing or only R&D uses that explore their genetic material potential. This question of scope will be discussed later today but it is central to shaping benefit sharing modalities under the new agreement.

On modalities, it may be better to decide on the infrastructure for ABS before Member States determine how the benefits will be shared. Infrastructure could include a multilateral mechanism similar to the FAO’s Plant Treaty or WHO PIP Framework and apply to a targeted list of ABNJ MGRs, scope of which could be determined by Member States for the ILBI.

There are various options on how multilateral mechanism can govern BS.

ICEL has an information paper on what we have named, the Tiered Approach, and I would be happy to send it to anyone who is interested. It includes various elements relevant to BS including how a multilateral mechanism would work with existing national bilateral ABS laws and how it would connect to a global notification system, which could be integrated into a clearing house mechanism.

Thank you.

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