

3. MGR, including question on the sharing

Our delegation supports the statements made by EU and Russia yesterday and China this morning on the first paragraph of the MGR section, 3.0 or preamble. The second sentence reads, “in the event of any inconsistency between this Part and the Convention, the provisions of this Part shall prevail” Our delegation concerns that this could allow the new instrument to revise the Convention without taking proper amendment procedures.

We think this provision should be replaced by a provision similar to Article 4 of the UN Fish Stock Agreement, which reads “Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention”. And this should be stipulated as a general principle of the new instrument as a whole.

3.1 Scope [p.12]

(1) Geographic Scope [p.12]

Regarding the **geographical scope of the MGR**, those options of the para. (1) of OPTION I should be discussed after the outline of benefit sharing is agreed to some extent.

Regarding para. (2) OPTION I (a), both Options A and B are important provision which should apply the new instrument as a whole. Actually, these provisions are already in the General element section under the titles of *2.4 Relationship to the Convention and other instrument and frameworks and relevant global, regional and sectoral bodies* (Page 7 of the Aid to negotiations), and *2.1 Geographical scope* (Page 6 of the Aid to negotiations) . Those provisions in General elements are sufficient and no other provision of the same effect may not be necessary in the MGR section separately. In order to keep the instrument simple and clear, duplications should be avoided.

We don't recognize the need for the options in (b), (c) and (d), so we support “No text”.

Especially in respect of (c) , we don't understand why the prior consent of coastal States is needed when exploiting MGR in ABNJ when there are identical MGR in their jurisdiction.

[This (c) Option A draw our attention to an interesting scenario in which an identical MGR collected in ABNJ are found later in Territorial sea or EEZ of coastal States. If such MGR in

ABNJ is to be designated as CHM, we wonder whether these MGR should be regard as CHM living in coastal States' EEZ.]

(2) Material Scope [p.13]

In respect of text options on material scope, Japan supports other delegations' opinions that the new instrument should not cover fish and other biological resources used as commodity. This position is also consistent with CBD and ITPGR (International Treaty on Plant Genetic Resources) . This basic understanding should not be changed.

Regarding (3)(a) and (c), we support OPTION II. and for (3)(b), we support OPTION III

In respect of OPTION I (a), we support Option A (does not apply to; the use of fish and other biological resources as a commodity). We consider, however, the amount of catch threshold only hurts small-scale fisheries, and it is difficult to foresee if a type of fish or other biological resources have economic value as genetic material, so, options in (i) should be deleted.

As for OPTION I (b) and (c), we support Option A that excludes *ex situ* and *in silico*, digital sequence data and derivatives from the scope. We support the statement of Korean delegation yesterday that **genetic information** should be also excluded from the scope.

(3) Temporal Scope [p.14]

Temporal scope Para (5) is an important provision on non-retroactivity that applies to the new instrument as a whole. We support OPTION I and this should be stipulated as a general principle of the new instrument as a whole.

3.2 Access and benefit-sharing [p.14]

Regarding **3.2 Access and benefit-sharing**, our delegation consider OPTION I which provides on cooperation among States parties in the conservation and sustainable use of MGR is an important provision. This should be stipulated as a general principle of the new instrument as a whole.

3.2.1 Access [p.14]

With regard to 3.2.1. **Access**, as we believe that access to MGR in ABNJ should be free access, it is difficult for our delegation to support provisions that imposes regulations on access to MGR.

Global issues such as ocean acidification and global warming, require us more scientific data collected from high seas and deep sea. Marine Scientific Research is needed more than ever. We should not hinder such researches by regulating access to MGR. That would bring a negative impact on those important activities that have a great benefit for mankind.

Regarding the options, we support OPTION I. Our delegation believes access to MGR in ABNJ is governed by the provision of the Convention.

In respect of OPTION II para (4), our delegation would like to make a following comment. The purpose of Article 241 of the Convention is to confirm that how many times you may conduct MSR, it will not provide you a legal basis for any claim for sovereign right or jurisdiction over any part of sea or territories, or exclusive rights on resources. It is thought that the provision is to relieve the concerns of coastal States that hesitate to give consent for MSRs in fears MSRs may impair the sovereign rights over their EEZ. Article 241 does not mean the scientists and researchers cannot possess or own samples they collect from the sea.

Regarding para. (5) (c) Option B that provides that access to MGR shall be subject to EIA, it should be noted that unlike mineral resources, MGR is renewable. In addition, research of MGR is conducted using a sample of MGR in small amount of water, so, it does not deplete MGR. Therefore, usually access to MGR would not meet the threshold set forth in Article 206 of the Convention, which is “planned activities may cause substantial pollution of or significant and harmful changes to the marine environment” and so EIA would not be required.

[Usually we don't need to conduct EIA before taking a bucketful of sea water.]