**Submission of proposals related to the Further revised draft text of an agreement 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**

**Template**

*Please fill out one form for each article which your delegation(s) or group(s) wish(es) to propose, amend or delete.*

1. **Name(s) of Delegation(s) and/or Group(s) making the proposal in the order that they should be listed in any conference room papers or other documents:**

United States of America, United Kingdom, and Australia

1. **Please indicate the relevant part of the Further revised draft text (as reflected in A/CONF.232/2022/5) that this proposal relates to, using the drop-down menu below.**

PART II MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

1. **Please indicate the relevant article of the Further revised draft text (as reflected in A/CONF.232/2022/5) that this proposal relates to (if applicable) or indicate if this is a proposal for an additional article**

Article 8(3)bis

1. **Kindly provide the amendments to the article that are being proposed in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the article that are being amended or deleted - examples are attached for reference.**

Article 8(3)bis: The obligations in Part II shall not apply to a Party's military activities, including military activities by government vessels and aircraft engaged in non-commercial service.

1. **Rationale for the proposal, if any.**

The previous draft text (post IGC 4) provided for non-application of the BBNJ treaty to all sovereign immune vessels. This approach was based on Article 236 UNCLOS which provides for the non application of Part XII obligations - regarding the protection and preservation of the marine environment - to sovereign immune vessels.

In response to concerns that this wording may strip Part II of the Agreement of utility, because most MGR collection in ABNJ is carried out by state-owned vessels, the further refreshed text contains an Article 3bis which, in respect of Part II only, provides an exception to this position in respect of ‘*other* *vessels or aircraft owned or operated by a Party and used, for the time being, only on government non-commercial service’.* This would allow MGR requirements to attach to activities conducted by, for example, state owned research vessels. In principle, the UK, US, and Australia support an approach which allows for the broadest possible application of Part II.

However, in practice this wording could have unintended consequences as regards vessels which have a dual function in carrying out scientific and military activities. It is appropriate therefore that to the extent those scientific activities fall within the remit of Part II, the obligations relating to MGRs apply. However, to the extent that such a vessel is carrying out military activities it must benefit from the protections set out in the first sentence of Article 3 bis: In those scenarios, the provisions of Part II must not apply, just as they do not apply to any warship, naval warship, military aircraft or naval auxiliary.

To ensure legal clarity and to avoid any inadvertent application of the Part II requirements to vessels with a dual purpose carrying out military activities, the UK, US, and Australia made the following text proposal at IGC 5 in August 2022. Article 8(3)bis:  *The obligations in Part II shall not apply to a Party's military activities, including military activities by government vessels and aircraft engaged in non-commercial service.*This language comes, in part, from Article 298(1)(b) of the Law of the Sea Convention.  As the BBNJ treaty is an UNCLOS implementing agreement, it is appropriate, where possible, to use language mirroring that of the Law of the Sea Convention.  We consider the application provisions (Article 8) of Part II to be the most appropriate place for this language.  Inclusion of this language in the Agreement is essential for the UK, US, and Australia.