

**DEVELOPMENT OF AN INTERNATIONAL LEGALLY-BINDING  
INSTRUMENT UNDER UNCLOS ON THE CONSERVATION AND  
SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF  
AREAS BEYOND NATIONAL JURISDICTION (BBNJ PROCESS)**

**WRITTEN SUBMISSION OF THE EU AND ITS MEMBER STATES**

**MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE  
SHARING OF BENEFITS**

**22 February 2017**

## **1. Overall approach**

The EU and its Member States consider that, as with the other elements of the 'package', this part of the UNCLOS Implementing Agreement (IA) should be conducive to attaining the objective of the future treaty, i.e. the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (ABNJ).

Secondly, the EU and its Member States welcome a pragmatic approach whereby progress in the negotiations is not dependent on the determination of the legal status of marine genetic resources (MGRs) in areas beyond national jurisdiction. Determination of the legal status is not a precondition for addressing relevant provisions concerning potential benefit-sharing with respect to MGRs in a future Implementing Agreement.

Thirdly, the EU and its Member States reiterate that the UNCLOS Implementing Agreement should not regulate the management of fish stocks and fisheries. On the other hand, the future instrument should cover fish and other biological resources used for the research on their genetic properties.

Fourthly, we believe that IPRs, including disclosure-of-origin requirements in patent applications, should not be within the scope of the UNCLOS IA, as this issue has to be dealt with within the existing institutional frameworks competent in this subject-area (WIPO and WTO).

## **2. Definitions**

The EU and its Member States note that there was a convergence of views expressed during the second session of the PrepCom, as well as in submissions sent to the Chair thereafter, that it is useful to tentatively agree on working definitions of marine genetic resources, with the aim of facilitating further discussions.

The EU and its Member States believe that these working definitions should draw on definitions contained in existing instruments, such as the Convention on Biological Diversity (CBD). For consistency any adaptation of existing definitions should be limited only to technical and necessary changes.

Additionally, the EU and its Member States are of the opinion that it is not necessary at this stage of negotiations to attempt to develop an exhaustive list of working definitions. Instead, there is a need to concentrate on the most crucial ones required for the purposes of achieving clarity in our negotiations of the UNCLOS Implementing Agreement.

Lastly in this context, the EU and its Member States believe that we should avoid predefining the functional and geographical scope of the UNCLOS IA through definitions.

### 3. Access and benefit sharing

In the view of the EU and its Member States any benefit-sharing under the UNCLOS Implementing Agreement should be in line with the pragmatic approach outlined above and the overall goal of the UNCLOS Implementing Agreement. Hence, it should be conducive to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, marine scientific research conducted in accordance with UNCLOS, as well as to the promotion of knowledge generation and innovation. Noting that to date there have been no concrete proposals that demonstrate how such benefit-sharing would operate in practice, the EU and its Member States remain ready to consider such specific proposals that delegations may wish to put forward.

It is the position of the EU and its Member States that *in situ* access to MGRs in ABNJ should be based on, in particular, the following principles:

- access to MGRs should remain free, in line with UNCLOS provisions concerning marine scientific research in ABNJ;
- the conservation and sustainable use of marine biological diversity in ABNJ, in line with applicable UNCLOS provisions;
- rights and obligations of coastal States over the resources in the maritime zones within their jurisdiction, as provided for in UNCLOS, should be respected.

With regard to the questions on the sharing of benefits, as raised at the previous session of the PrepCom, the characteristics of living organisms are distinct and markedly different from those of minerals. In particular, while the latter have a monetary value already at the exploration phase, marine genetic resources possess only potential value. A lengthy (between at least 10 to 15 years) and costly research and development phase is usually needed before an actual product is put on the market. Moreover, in a vast majority of cases research on MGRs will not generate a product or any financial benefit. Finally, a variety of genetic material, coming from different jurisdictions, can be used in the same product. Hence, it is not always possible to associate one specific source of genetic material with a specific product.

For these reasons the EU and its Member States are of the opinion that discussions relating to this issue should primarily concentrate on non-monetary benefits. This conclusion is all the more pertinent while bearing in mind that non-monetary benefits are the most practical and readily available option whereas monetary benefits depend on many factors outlined above and, most importantly, may never materialize.

The point of departure with regard to types of non-monetary benefit sharing are provisions contained in Part XIII ('Marine Scientific Research') and Part XIV UNCLOS ('Development and Transfer of Marine Technology'). We can also draw on the indicative list of non-monetary benefits provided for in the Nagoya Protocol.

By way of example, it could be recalled here that UNCLOS provisions related to marine scientific research (MSR) already foresee different forms of non-monetary benefit-sharing, such as:

- promoting international cooperation in MSR (Article 242 UNCLOS);
- making knowledge resulting from MSR available by publication and dissemination (Article 244 para. 1 UNCLOS);
- promoting data and information flow and the transfer of knowledge (Article 244 para. 2 UNCLOS).

In this regard the new UNCLOS Implementing Agreement could provide for a framework to specify, coordinate, promote and monitor the implementation, with respect to MGRs from ABNJ, of the above mentioned benefit-sharing provisions to make the best use of the available diverse non-monetary benefit-sharing activities. Such an approach could be further strengthened and integrated with capacity-building activities that could be based on Part XIV UNCLOS, as well as with activities to enhance, facilitate and stimulate the sharing of material, information and knowledge. In particular, it could be useful to draw upon such provisions of Part XIV UNCLOS as Articles 266 ('promotion of the development and transfer of marine technology') and 269 (establishment of, *inter alia*, programmes of technical cooperation, seminars, conferences, promote the exchange of scientists).

Overall, the objective of such an approach would be to make the benefit-sharing activities under UNCLOS IA practical, effective and efficient.