



INTERVENTIONS ON BEHALF OF THE GROUP OF 77 AND CHINA BY MR. EMAD MORCOS MATTAR, COUNSELLOR, PERMANENT MISSION OF EGYPT TO THE UNITED NATIONS, ON AGENDA ITEM 7: MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS, AT THE FIRST SESSION OF THE 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 (New York, 13 September 2018)

Madame Facilitator,

I have the honour to make this intervention on behalf of the Group of 77 and China.

At the outset let me congratulate you for your reappointment to facilitate the work of the Informal Working Group on marine genetic resources (MGRs), including questions on the sharing of benefits, the Group of 77 and China trust that your knowledge and leadership will advance our discussions into the right direction.

3.1 (Scope)

On the scope question, in terms of the geographical and material scope of the application of the MGRs in ABNJ, the Group of 77 and China consider that any access within the scope of the new instrument must not hamper marine scientific research.

The scope of application should cover all marine genetic resources beyond national jurisdictions, in high seas and in the Area in which are not ruled by the Seabed Authority and in accordance to UNCLOS provisions.

The Group of 77 and China believe in the importance to explore possible options to ensure a similar common approach in addressing MGRs within and beyond national jurisdiction, taking into account the ecosystem approach, and without prejudice to the sovereign rights and jurisdiction of Coastal States, as accorded by UNCLOS, over their exclusive economic zone (EEZ), as well as over their continental shelf, including beyond 200 nm, where applicable.

The Group of 77 and China would support a distinction between the use of fish as a source of genetic resources and as a commodity based on the end-use and the manner the fish is processed and exploited after harvesting.

The Group of 77 and China view that the instrument should apply on MGRs collected in situ and MGRs ex situ as well as to in silico MGRs, digital sequence data and all other processing of marine genetic resources, as they are all originated from the collected MGRs samples.

It would be useful to include in the reporting and monitoring mechanism the geographical coordinates of collected marine genetic resources that would be processed, which might be also reflected in the way the benefit-sharing regime will be implemented.

3.2.1(Access)

The Group of 77 and China reaffirm the importance of access to marine genetic resources, bearing in mind that any access within the scope of the new instrument will not hamper marine scientific research.

The Group of 77 and China are open to discuss different forms of access to MGRs, which would make benefit sharing of most effective and responsive to the protection and preservation of marine environment, as well as to the needs and interests of marine scientific research and the development opportunities of the developing states, including future generations.

Regulated access could be provided:

- for bioprospecting, not for marine scientific research purposes,
- and for marine genetic resources of the Area.

Terms and conditions for access could be established, taking into account the possibility of change of use, including capacity building, transfer of marine technology, a requirement to deposit samples, data and related information available in open source platforms such as databases, biorepositories and/or biobanks, and/or contribution to an access and benefit-sharing fund as conditions for access, drawn from the ISA model.

The principles contained in the Nagoya Protocol could be drawn from with respect to knowledge associated with genetic resources and prior consent involving indigenous and local communities.

States could be required to take appropriate and effective legislative, administrative or policy measures to provide that genetic resources utilized within their jurisdiction have been accessed in accordance with established regulations.

3.2.2.(Benefit-sharing)

(Guiding principles and approaches)

The Group of 77 and China firmly reiterate that the principle that should guide and underpin the new regime for the conservation and sustainable use of MGRs of ABNJ, including questions on the sharing of benefits, must be the principle of the common heritage of mankind.

The Group of 77 and China are of the view that this principle provides a legal foundation for a fair and equitable regime of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including the access and benefit sharing of MGRs of ABNJ, and that would allow all countries to benefit from the potential that marine biodiversity represents in terms of global food security and economic prosperity.

The Group of 77 and China would like to highlight the following elements of the principle of common heritage of mankind that are critical to a fair and equitable regime, of which MGRs are part:

- The need to carry out activities pertaining to conserve and sustainably use marine biological diversity for the benefit of mankind as a whole, irrespective of their geographical location, and taking into particular consideration the interests and needs of the developing countries (regardless of sub-categorization of countries under 'developing countries').
- Use of areas beyond national jurisdiction and their resources by all States shall be exclusively for peaceful purposes.
- No claim or exercise of sovereignty or sovereign rights of the areas beyond national jurisdiction

nor any appropriation shall be recognized.

- The benefits shall be equitably shared.
- The activities regarding the exploration, exploitation of the resources in the said areas should be governed by an international regime.

Furthermore, in the context of the implementation of the 2030 Agenda for Sustainable Development, the new instrument could contribute to the conservation and sustainable use of the Ocean and its resources for the full benefit of all, for today's generation and for future generations.

The principles and approaches guiding benefit-sharing should be clearly mentioned in the instrument as a reference for any future interpretation of the instrument clauses.

The instrument should contain both detailed and non-exhaustive list of benefits and of types of benefits, to make the implementation clearer, this list might be developed and reviewed subsequently according to agreed procedures within the instrument.

(Benefits and Benefit-sharing modalities)

Regarding the types of benefits that could be shared from the utilization of marine genetic resources, the Group of 77 and China are of the view that the benefits should be both monetary and non-monetary, and we understand that some benefits could be shared at different stages.

The types of non-monetary benefits to be included should comprise access to all forms of resources, data and related knowledge, transfer of technology and capacity building as well as the facilitation of marine scientific research for MGRs on ABNJ.

On the other hand, the Group of 77 and China are open to discuss the different types and modalities concerning monetary benefits, which may include, but not be limited to those mentioned in the Annex of the Nagoya Protocol. The Group's view is that beneficiaries from exploiting MGR shall be required to share benefits, which will be done equitably with States Parties of the instrument.

The shared benefits shall also be used to:

- Financing the activities of the institutional arrangement.
- Contributing to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction.
- Building capacity to access and use of marine genetic resources of areas beyond national jurisdiction.
- Promote scientific research and facilitate access to marine genetic resources.

The following existing instruments and frameworks would need to be taken into account with regard to modalities for the sharing of benefits:

- CBD Nagoya Protocol.
- ISA.
- FAO's International Treaty on Plant Genetic Resources for Food and Agriculture

3.2.3 (Intellectual property rights)

The Group of 77 and China are of the view that the relationship between the instrument and intellectual property rights should be considered by the IGC; different ideas can be discussed with regard to the traceability of any processing of marine genetic resources either commercial or none

commercial.

The institutional arrangement would be responsible of implementing any practical arrangements to monitor the utilization of marine genetic resources

3.4.1 (Use of terms)

The Group of 77 and China believe that 'Marine genetic resources', 'utilization of marine genetic resources' as well as their related technical notions should be defined.

The Relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies should require specific provisions, to guarantee to possible extent that the implementation would not undermine relevant global, regional and sectoral bodies, including CBD and FAO; rather the instrument should use the expertise and lessons learned from the implementation of similar mechanisms within these relevant bodies.

3.4.3 (General principles and approaches)

The Group of 77 and China underline that general principles and approaches pertaining to marine genetic resources could include the examination of possible complementary approaches of the two principles of common heritage of mankind and freedom of high seas, as the first should govern the exploitation of marine genetic resources, while the second principle can be governing the provisions for access with proper regulation, as appropriate.

3.4.4 International cooperation

(Capacity building and transfer of marine technology)

The Group of 77 and China are of the view that by introducing binding provisions, the instrument would set out the obligation of States to cooperate with respect to marine genetic resources, including questions on benefits sharing.

In order to promote an equitable access to the potential benefits of marine biodiversity and to address properly the conservation and sustainable use of MGRs in ABNJ; the Group of 77 and China reiterate that the special requirements for capacity building and transfer of marine technology of developing countries must be recognized.

3.4.5 Institutional arrangements

The Group of 77 and China believe that there is a merit in studying the structure of existing organizations and convention bodies such as ISA. IMO. FAO. UNFCCC to consider lessons learned and best practices, while accomplishing universality, in an effort to determine the most effective mechanisms going forward for the institutional arrangements bodies.

The institutional arrangements under the new instrument could be responsible for monitoring and management of the implementation of the agreed mechanism of benefit sharing, taking into consideration the high technicality of the concerned issues, and the need for an effective institution to operationalize the provisions of the new instrument.

At this juncture, and without prejudice to the further consideration of the nomenclature of institutional bodies of the new instrument, it can include the following bodies:

- a secretariat;

- a decision-making body such as Conference of Parties (COP);
- a scientific and technical body with an advisory competence;
- a clearinghouse mechanism to promote and facilitate technical and scientific cooperation, knowledge and data sharing,
- a mechanism in charge of access and benefit sharing of MGRs

3.4.6 Clearing-house mechanism

Concerning the modalities and functions of a clearing-house mechanism with regard to marine genetic resources, including questions on the sharing of benefits; the Group of 77 and China are of the view that a protocol or code of conduct or guidelines could be developed within the said mechanism in order to ensure environmental protection, compliance and transparency in the use of marine genetic resources of ABNJ to promote and facilitate technical and scientific cooperation, knowledge and data sharing using, inter alia, web-based tools.

Those tools can be a platform to access, evaluate, publish and disseminate information, as well as to provide a case-by-case option upon request.

A trust fund within the possible clearinghouse mechanism could be established with a view to guarantee a fair, concrete and functional benefits sharing mechanism.

Any consideration of a mechanism should take into account existing mechanisms, such as the ISA, the CBD, the UNFCCC (Climate Technology Centre and Network as well as the Technology Needs Assessment), FAO, The International Treaty on Plant Genetic Resources for Food and Agriculture. IOC-UNESCO.

The Group of 77 and China are of the view that the benefits should be both monetary and nonmonetary. As previously mentioned, the benefit sharing of MGRs should be fair and equitable on the basis of the principle of common heritage of mankind. The following factors should also be borne in mind:

- The non-monetary benefit should comprise of access to all forms of resources, data and related knowledge, transfer of technology and capacity building as well as facilitation of marine scientific research on MGRs of areas beyond national jurisdiction.
- MGRs can bring about monetary benefits and, consequently, the Group of 77 and China are open to discuss the different modalities of monetary benefits, which may include, but would not be limited to those mentioned in the Annex of the Nagoya Protocol as well as the conditions triggering the monetary benefits.
- It will be also essential to provide optional and custom-made models and packages of benefit sharing that are adaptable to address the different needs and capacities of recipient states in order to get the best outcome out of these packages.