



Briefing Note: Principles of Equity in BBNJ

February 2023

Section of the Further refreshed draft text under consideration:

PART I: GENERAL PROVISIONS

Protecting our ocean is of vital importance to present and future generations. The need to think about the future has never been more urgent, as the ocean and its living resources—on which we all depend—are threatened by the cumulative impacts of human activities. Conservation and sustainable use of the ocean is a key nature-based solution to global crises like climate change, for example by safeguarding ocean carbon transport, storage, and sequestration services provided by the carbon cycle, and by protecting and enhancing ocean resources and ecosystem functions necessary for climate adaptation ([DOSI, Climate Change and Biodiversity Beyond National Jurisdiction 2023](#)).

These impacts—if unresolved—will not be felt equally: the most vulnerable will suffer the greatest hardship and loss. It is therefore essential to consider equity in developing this landmark instrument for marine biodiversity. **The instrument should explicitly include principles of intergenerational and intragenerational equity, as well as provisions on the equitable sharing of benefits.**

The draft text of the BBNJ instrument disseminated in December 2022 lists “The principle of equity” and “The fair and equitable sharing of benefits” as options in the alternative (article 5). **The principle of equity on the one hand and the fair and equitable sharing of benefits on the other represent two distinct concepts in international law.** We propose that both provisions be included, and that “the principle of equity” be expanded to explicitly include intergenerational and intragenerational equity.

The principle of intergenerational equity

The principle of intergenerational equity recognizes the rights of each generation to use and enjoy the natural resources of the planet, and the corresponding duty to conserve these resources for the future (Brown Weiss, *In Fairness to Future Generations* 1989). Intergenerational equity has been consistently recognized as an important principle in international law. The United Nations Framework Convention on Climate Change (UNFCCC) (art. 3), the Convention on Biological Diversity (preamble, art. 2), the World Heritage Convention (art. 4), and the United Nations Economic Commission for Europe (UNECE) Water Convention (art. 2.5) explicitly reference obligations to future generations. The principle also appears, *inter alia*, in the Stockholm Declaration (principles 1, 2), and the Rio Declaration (principle 3). The 2013 Report of the UN Secretary-General on intergenerational solidarity and the needs of future generations recognizes that a responsibility to future generations is:

visible worldwide and across cultures. It is a value universally shared by humanity. This value is fundamental to constitutions and international treaties; it is a driving force in the economy; and in households it manifests itself in religious beliefs, traditions and culture (para. 3).

The principle of intragenerational equity

The complementary principle of intragenerational equity addresses inequality among countries, communities and individuals in the present generation, and is recognized, *inter alia*, in the Sustainable Development Goal (SDG) 10: Reduce inequality within and among countries.

International instruments can include both principles in the concept of “equity”. For example, article 3 of the UNFCCC states that Parties should:

protect the climate system for the benefit of present and future generations of humankind, **on the basis of equity** and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof (art.3.1). [emphasis added]

Fair and equitable sharing of benefits

In the biodiversity context, the phrase “fair and equitable sharing of benefits” developed explicitly in relation to genetic resources. While benefit-sharing itself is a broader concept that can be used in different situations, including natural resource management and ecosystem restoration, **the specific phrase “fair and equitable sharing of benefits” typically applies to benefits arising from utilization of genetic resources** as described in the Convention on Biological Diversity and its Nagoya Protocol.

Similar (but not identical) phrases referring to the equitable use of resources or sharing of benefits arising thereof appear in other contexts. International water law includes the concept of “equitable and reasonable utilization” of shared watercourses (e.g. UN Watercourses Convention art. 5; UNECE Water Convention art. 2). The United Nations Convention on the Law of the Sea (UNCLOS) provides for the equitable sharing of financial benefits derived from activities in the Area (UNCLOS art. 140). In each case, obligations related to equitable utilization or sharing of benefits apply to a specific defined resource or set of activities.

Compatibility of inter-/intragenerational equity and fair and equitable sharing of benefits

The principle of equity and the concept of fair and equitable sharing of benefits are distinct and mutually compatible. For example, the Convention on Biological Diversity incorporates both aspects in its objectives. It explicitly includes as an objective “the fair and equitable sharing of the benefits arising out of the utilization of genetic resources” (art. 1). It integrates the principle of intergenerational equity in the objective on sustainable use of components of biodiversity, defining

“sustainable use” to mean the use of components of biological diversity in a way that maintains the “potential to meet the needs and aspirations of present and future generations” (arts. 1,2).

The Kunming-Montreal Global Biodiversity Framework, adopted in December 2022, also includes both equity and fair and equitable sharing of benefits. It states:

The implementation of the framework should be guided by the principle of intergenerational equity which aims to meet the needs of the present without compromising the ability of future generations to meet their own needs and to ensure meaningful participation of younger generations in decision making processes at all levels.

Target 13 is to take measures:

to ensure the fair and equitable sharing of benefits that arise from the utilization of genetic resources and from digital sequence information on genetic resources, as well as traditional knowledge associated with genetic resources, and facilitating appropriate access to genetic resources.

We therefore suggest inclusion of both the principle of equity, including both intergenerational and intragenerational equity, and the target/approach of fair and equitable sharing of benefits. **Given the current global situation, where people of all ages around the world are crying out on behalf of themselves and future generations, it is vital to give voice to the principles of intergenerational and intragenerational equity in this agreement.**

Proposed text:

(c) ~~Option 4~~: The principle of equity, **including intergenerational and intragenerational equity. Parties should protect and preserve the marine environment and conserve and sustainably use marine biological diversity of areas beyond national jurisdiction for the benefit of present and future generations of humankind.**

(c)bis ~~Option 2~~: The fair and equitable sharing of benefits **of marine genetic resources derived from areas beyond national jurisdiction.**

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