



IUCN Briefing for BBNJ negotiators

## Principles and Approaches, Part I, Article V

Because principles and approaches provide guidance for the BBNJ agreement's commitments, agreeing on this section will bring coherence to the other parts. Some of the most important principles and approaches are discussed here; IUCN supports others that are not the focus of

the Convention on Biological Diversity, informed by IUCN guidelines, filling in the placeholder text as follows:

(e) : ~~The precautionary [principle] [approach];~~

## Obligations to future generations

The health of the ocean will be essential for ensuring a planet fit for human habitation now and in the future. Unsustainable use of marine biodiversity endangers the lives and wellbeing of future generations, who have no option to participate in our decisions today. 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 preserve these resources for the future. Intergenerational equity has been consistently recognized as an important principle in international law, *inter alia* in the Stockholm Declaration (principles 1, 2), the Rio Declaration (principle 3), the UNECE Water Convention (art. 2.5(c)), the Convention on Biological Diversity (preamble, art. 2), the UNFCCC (art. 3) and the World Heritage Convention (art. 4).

Add the following principle, based on text in the UNFCCC, Article 3 and the CBD preamble:

## Non-regression

The principle of non-regression creates an obligation not to rescind or downgrade existing levels of environmental protection. It is an important concept in environmental law in order to prevent backsliding and associated potentially catastrophic long-term consequences in favor of short-term interests. It is related to the concept of progression, established under the UNFCCC, which requires Parties to continuously increase their efforts to achieve the purpose of the agreement over time (art. 3), and the established principle of progressive realization of human rights. Adopting the principle of non-regression in the BBNJ agreement would support long term planning and reliance on measures to support sustainable use and conservation of marine biodiversity now and in the future.

Add the following principle, based on text in the IUCN World Declaration on the Environmental Rule of Law:

## Polluter-pays

This principle provides incentives for actors in ABNJ to prevent pollution. It is equitable: innocent parties should not bear the burden of losses that they did not cause. The polluter pays principle places the cost of both chronic and accidental environmental harm on the responsible entity. For example, States have the direct obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction, under UNCLOS, article 235(2), Part XI.

Revise and include the polluter pays principle:

(b) ~~{The polluter pays principle} [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];~~

## Ecosystem Approach

In the context of ABNJ, the recognition of the ecosystem approach is important in order to promote more integrated management of ABNJ ecosystems. This is necessary to overcome the artificial distinction between the water column and the seabed which is unjustified from a natural science perspective; and to take into account the cumulative impacts of different human activities taking place in ABNJ. While UNCLOS (and the legal framework for oceans governance in general) is largely based on a sectoral approach, basis for a cross-sectoral approach can be found in different parts of the Convention,