

WHAT DOES A NEW INTERNATIONAL LEGALLY BINDING INSTRUMENT ON BBNJ “UNDER THE UNCLOS” MEAN?

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NEW INSTRUMENT UNDER THE UNCLOS

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- UNGA Res. 69/292, Paragraph 1

”to develop an internationally binding instrument (new instrument) under the UNCLOS” on the conservation and sustainable use of the marine biodiversity of areas beyond national jurisdiction (BBNJ)

→ What does the new instrument “under the UNCLOS” mean?

I. PLAN OF THE PRESENTATION

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- Focus on the High Seas Regime
 - understanding of the high seas regime under the UNCLOS and its current development
 - evaluation of new agendas to be addressed beyond the current high seas regime under the UNCLOS for the purpose of the conservation and sustainable use of BBNJ
- Two Issues to Be Dealt with
 1. A Tendency for A Change from The Freedom of The High Seas to High Seas Governance
 2. New Agendas That Have Been Raised Due to The Nature of The Common Interest in The Conservation And Sustainable Use of BBNJ

II. A CURRENT SIGNIFICANT TENDENCY FOR A CHANGE FROM THE FREEDOM OF THE HIGH SEAS TO HIGH SEAS GOVERNANCE

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《Meaning of Governance》

Development in Two Aspects

1. The Regulation Aspect
2. The Implementation Aspect

1. The Regulation Aspect

(1) Regulations on A Sector-Specific Basis under The UNCLOS And The Relevant International or Regional Instruments

a sector-specific regulations in the sectors such as:
navigation, fishing, uses harmful to the marine
environment, marine scientific research

→Conditioned High Seas Freedom

II. A CURRENT SIGNIFICANT TENDENCY FOR A CHANGE FROM THE FREEDOM OF THE HIGH SEAS TO HIGH SEAS GOVERNANCE

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(2) Common Interests Recognized on A Sector-Specific Basis

e.g. the safety of navigation, conservation and management of living resources, marine environmental protection

→ Moving beyond Simple Compromise among Individual Uses on The High Seas on An Ad Hoc Basis in Accordance with A Combination between The Traditional “Laissez Faire” Principle and “Due Regard” Requirement

→ A New Emerging Regime of the High Seas

II. A CURRENT SIGNIFICANT TENDENCY FOR A CHANGE FROM THE FREEDOM OF THE HIGH SEAS TO HIGH SEA GOVERNANCE

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2. The Implementation Aspect

(1) Traditional System for The Maintenance of Order on The High Seas

High Seas The Flag State Principle Combined with The Freedom of The Seas

(2) The Decentralized Mechanism of Implementation of Regulations on The High Seas

① Flag State ***Obligations***

e.g. Article 94 of the UNCLOS

e.g. emphasis on the flag State obligations in the sectors, such as fishing regulation and marine environmental protection (vessel-source pollution)

→ Flag State Obligations : A Tool for The Realization of The Common Interests by Implementing The Regulations for That Purpose

II. A CURRENT SIGNIFICANT TENDENCY FOR A CHANGE FROM THE FREEDOM OF THE HIGH SEAS TO HIGH SEAS GOVERNANCE

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② Non-flag State Measures

e.g. enforcement measures taken by non-flag States on the high seas in accordance with Article 105 and Article 110, (1) (a) – piracy

e.g. enforcement measures taken by non- flag States on the high seas in accordance with Articles 20 and 21 of the Fish Stock Agreement (FSA) – conservation and management of fish stocks

e.g. port State jurisdiction under Articles 218 and 219 of the UNCLOS – marine environmental protection

③ Various Enforcing Measures That are Adopted by International or Regional Treaties and Organizations

e.g. reporting systems, listing of fishing vessels (white lists, black lists), vessel monitoring systems, and so on

→ A New Emerging Mechanism of Implementation of Regulations on The High Sea Governance

III. THE NATURE OF THE COMMON INTEREST IN THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY ON THE HIGH SEAS

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1. A New Common Interest in The Conservation and Sustainable Use of Biodiversity on The High Seas

Establishment of A New Common Interest under The New Instrument

- bringing an end to the conflict in interpretation over the relation between the UNCLOS and the Convention on Biological Diversity
- beyond the UNCLOS

Article 194 (5) and Article 211 (6)—touching upon ecosystems without mentioning biodiversity itself

III. THE NATURE OF THE COMMON INTEREST IN THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY ON THE HIGH SEAS

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2. The Ecosystem Approach to Be Applied to The High Seas

(1) The Ecosystem Approach

General Understanding :

the ecosystem approach is different from single-species management, and it requires not only the protection of the species composing the marine communities but also a consideration of the physical structure of the ecosystems and the interaction of the species within the community

III. THE NATURE OF THE COMMON INTEREST IN THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY ON THE HIGH SEAS

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(2) The Ecosystem Approach under The FSA, As an Implementing Agreement of The UNCLOS

The Ecosystem Approach under Article 5 (d) and (e) of The FSA
[coastal States and States fishing on the high seas shall]

Article 5 (d)

assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon target stocks

Article 5 (e)

adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened

→The Ecosystem Approach Applied in The Limited Sector of The Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

III. THE NATURE OF THE COMMON INTEREST IN THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY ON THE HIGH SEAS

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(3) The Ecosystem Approach under The New Instrument on BBNJ

the ecosystem approach to be applied to the high
seas

the ecosystem approach that regulates all human
activities carried out on the high seas for the purpose
of the conservation and sustainable use of BBNJ

→ Cross-sectoral or Integrated Regulations of Uses
on The High Seas and Implementation of These
Regulations Required

III. THE NATURE OF THE COMMON INTEREST IN THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY ON THE HIGH SEAS

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(4) The Cross-sectoral or Integrated Regulation of The High Seas

① Strengthening The High Sea Governance in Comparison with Regulation on A Sector-Specific Basis

The Regulation Aspect

— regulations are required for all human activities including new ones of which international society was not well aware at the adoption of the UNCLOS

every harmful impact exerted by these activities needs to be regulated from a cross-sectoral or integrated perspective

The Implementation Aspect

— a feasible way to implement the regulations is to promote coordination and cooperation within the decentralized implementation mechanism that has developed on a sector-specific basis

III. THE NATURE OF THE COMMON INTEREST IN THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY ON THE HIGH SEAS

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② The Nature of The New Common Interest in The Conservation And Sustainable Use of Biodiversity on The High Seas

the establishment of the cross-sectoral or integrated regulations based upon complicated compromise among the various interests that each use of the high seas reflects

→the issue of the nature of the common interest in the conservation and sustainable use of BBNJ

“Where The New Interest Should be Placed among The Various Common Interests Sought by Uses of The High Seas ?”

“How The Necessary Balancing of Interests Can Be Achieved?”

Two Options

- i) the new common interest has an equal status with other common interests →simple balancing of these interests
 - ii) the new common interest has supremacy over other common interests
→ balancing of the interests, placing weight on the new common interest
- * Precautionary Approach And Matters Closely Related to It

III. THE NATURE OF THE COMMON INTEREST IN THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY ON THE HIGH SEAS

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3. Setting Marine Protected Areas (MPAs) on The High Seas

① Establishment of A Legal Basis for MPAs on The High Seas

② Fragmented MPA Practices

③ A Unified Standard To Set MPAs on The High Seas for The Purpose of The Conservation and Sustainable Use of BBNJ by Taking The Cross-sectoral or Integrated Approach

→ revisit of the issue of the nature of the new common interest in the conservation and sustainable use of BBNJ

④ The Limit Imposed by The Zone Approach under The UNCLOS on The Protection of An Ecosystem As A Whole

Concluding Remarks

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- Furtherance of The High Seas Governance That International Society Has Already Recognized
- Fundamental Issues Remained for The Future Negotiation
 - The Nature of The New Common Interest of The Conservation and Sustainable Use of Biodiversity of The High Seas

Thank You for Your Attention And Patience