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# *The Ecosystem Approach and/in the BBNJ process*

International Conference

«New Knowledge and Changing Circumstances in the Law of the  
Sea»

Reykjavik, 28-30 June 2018

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# Introduction

- The Ecosystem Approach (EA) is an increasingly central concept/strategy for biodiversity conservation
- EA is one of the suggested guiding principles and/or approaches for a future BBNJ agreement
- This presentation will look at the role of EA in the BBNJ process and, most importantly, in a future BBNJ agreement

## EA in brief

- “strategy for the integrated management of land, water and living resources” (CBD, COP Decision V/6, 2000)
- Key characters (the 4 Is)
  - Integration (ecological, jurisdictional, epistemic)
  - Integrity
  - Information
  - Iteration
- However, complex and contested concept (De Lucia 2015)

## EA in the BBNJ process

- The Question(s):
  - What should be the role of the ecosystem approach in the new BBNJ agreement?
  - How should it be articulated?
  - Is it enough to simply refer to it as one of the guiding principles/approaches?

## EA in the BBNJ Process so far

- **Ad hoc Working Group**

- Recognition that a future agreement should incorporate widely accepted principles of ocean governance, such as EA

- **PREPCOM (Report)**

- The scope of its inclusion is limited, listed as one of the (many) possible general guiding principles and approaches for the future ILBI
- Unclear at this stage whether it will be included in a separate article or in preamble
- EA also included as possible guiding principle/approach in relation to two agenda items: ABMTs/MPAs and EIAs
- No definitions, few suggestions in this respect (e.g. Norway, WWF)
- Without definition, its contents needs to be drawn from elsewhere. Where?

## EA and UNCLOS

- There is a great variety of reference points and normative clusters wrt EA
- However, UNCLOS is the reference point and overarching legal framework for the governance of the oceans, so focus on oceans cluster
- But what is EA articulated in UNCLOS/oceans cluster?

## EA in UNCLOS

- UNCLOS pre-dates the rise of EA in International law
- Yet some suggest that UNCLOS already contains, at least in implicit and precursory ways, an ecosystem approach to marine environmental protection and to fisheries management (Besky 1995; Morishita 2008; Fabra and Gascon 2008; Wang 2010)

## EA: Wide Concept

- Two routes (part of a larger analytical framework) by which the relationship between EA and UNCLOS can be approached
  - The «ecosystem» route
  - The «essential equivalence» route



# EA in UNCLOS: Ecosystem route

## **Ecosystem route**

- EA is fundamentally linked to the concept of ecosystem
- Thus, any environmental regime that employs and deploys the concept of ecosystem, from which specific legal consequences can be drawn, is characterized, to a larger or smaller extent, by an EA
- EA then can be considered included in e.g. CCAMLR, FSA, International Watercourses Convention, International Dolphin Conservation Program, Polar Bear Convention

# EA in UNCLOS: Essential equivalence route

## Essential equivalence route

- EA can be read into legal regimes based on whether a particular regime *essentially* or *effectively* incorporates an ecosystem approach, even if there is no formal deployment of the concept or language of ecosystem
- the implicit inclusion of an ecosystem approach can be inferred from ‘broad consideration of biodiversity and the importance of the natural environment and its related functions and services’ (Metzer 2009)
- Examples
  - FSA, CCAMLR, Code of Conduct (assessment based on effective inclusion of EA’s underlying principles and conceptual objectives)
  - But also Ramsar Convention (wise use concept) and CITES (based on wide listing criteria)

# EA in UNCLOS?

## Essential equivalence route

- The notion of the interdependence of species (art. 119, 61 etc.) may be taken to represent the concept of the ecosystem approach at the time of the conclusion of the negotiations for UNCLOS (Morishita, 2008, p. 20).
- ‘the effects on species associated with or dependent upon harvested species’ (art. 194)
- Art. 192, integrative norm, as it encompasses all aspects of the marine environment and all maritime zones
- Art. 192 also opens for the inclusion of more recent IEL principles in UNCLOS (cfr. e.g. South China Sea, para 941)

## Ecosystem route

- ‘rare and fragile *ecosystems* as well as habitat of depleted, threatened or endangered species and other forms of marine life’ (art. 194(5))

## EA in UNCLOS

But, even assuming EA is already, somehow, part of UNCLOS, what does this add?

- EA remains vague
- A simple reference in a BBNJ agreement would not make much difference
- Will this become a lost opportunity?
- What would be a useful set of ideas/mechanisms to introduce in a BBNJ agreement wrt EA then?

# EA: Key issues in a BBNJ Agreement

- Units of management. Which ecosystems? (example: Arctic LME)
- Compatibility across maritime zones
  - In PREPCOM report compatibility associated with ABMTs (and related to adjacency)
    - (“relationship between measures under the instrument and those established by adjacent coastal States, including issues of compatibility”)
  - Horizontal and vertical compatibility
  - Compatibility key to “not undermine the effectiveness of [...] measures” taken in other maritime zones (cfr. Art. 7(2)(a) FSA)
- But Is compatibility enough? Multiple boundaries of governance?
- Coordination among relevant bodies and institutions
  - Ecosystem Monitoring Programs (like e.g. CCAMLR)
- Need to include fisheries management

# The End

- Thanks for your attention