



The Duty to Cooperate in the Protection and Preservation of the Marine Environment

Chie Kojima

Ph.D. (Chuo), LL.M.(Yale), J.S.D.(Yale)

Professor of International Law

Musashino University, Tokyo, Japan



Cooperation

- Action(s)/process(es)
- Joint/coordinated action(s)
- Shared/common goal(s)
- In good faith



Duty to Cooperate in International Environmental Law

- "Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States." (Principle 24, Stockholm Declaration)
- "States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem". (Principle 7, Rio Declaration)
- Duty to discuss in good faith actual and potential environmental risks (Gabčíkovo-Nagymaros Project, 1997)
- An obligation to negotiate does not imply an obligation to reach an agreement (Pulp Mills on the River Uruguay, 2010)



Duty to Cooperate as a Fundamental Principle under UNCLOS Part XII

- *Mox Plant* (Ireland v. United Kingdom), 2001, ITLOS, Provisional Measures
- *Land Reclamation by Singapore in and around the Straits of Johor* (Malaysia v. Singapore), 2003, ITLOS, Provisional Measures
- *Illegal, Unreported and Unregulated Fishing Activities*, 2015, ITLOS, Advisory Opinion
- *South China Sea Arbitration*, 2016



Prevention, Reduction and Control of Marine Pollution

- UNCLOS Arts 198, 199, 200, 201
- In the *Mox Plant and Land Reclamation* cases, ITLOS ordered the parties to consult in order to:
 - exchange information on possible environmental consequences
 - monitor risks and effects of activities in question
 - agree on measures to prevent marine pollution



Conservation and Management of Living Marine Resources

- UNCLOS Arts 61, 64-66, 117-120, Part XII
- High Seas Fisheries
 - Duty to enter into negotiations
 - Duty to contribute and exchange scientific information, catch and fishing effort statistics, and other data
 - Duty to cooperate through global, regional or subregional organizations where all interested States participate



Duty to cooperate through global, regional or subregional organizations

E.g., 1995 United Nations Fish Stocks Agreement

States must give effect to their duty to cooperate by:

- entering into consultations in good faith and without delay with a view to establishing appropriate arrangements (Art 8(2))
- becoming members of organization or participants in arrangement (Art. 8(3))
- agreeing to apply the conservation and management measures established by such organization or arrangement (Art. 8(3))
- (in case of no organization or arrangement) establishing such an organization or enter into other appropriate arrangements (Art. 8(5))



Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), 2014, ICJ

- IWC resolutions adopted by majority without the support of all States/IWC resolutions adopted by consensus
- "[T]he States parties to the ICRW have a duty to co-operate with the IWC and the Scientific Committee and thus should give due regard to recommendations calling for an assessment of the feasibility of non-lethal alternatives." (para. 83)



Illegal, Unreported and Unregulated Fishing

- *Advisory Opinion regarding Illegal, Unreported and Unregulated Fishing Activities, 2015, ITLOS*
- Duty to cooperate "extends also to cases of alleged IUU fishing activities"
- Duty to cooperate with the competent international organizations, whether subregional, regional or global
- Duty to cooperate to ensure the conservation of straddling stocks and highly migratory stocks is a due diligence obligation; States have the duty to consult in good faith



Enclosed or Semi-enclosed Sea

- UNCLOS Art. 123 "should cooperate", "shall endeavour...to coordinate"
- *The South China Sea Arbitration, 2016* "[t]his lack of coordination is not unrelated to China's lack of communication"
- Sovereign rights v. duty to cooperate



Implications of the Duty to Cooperate in the Asia-Pacific Region

- Enforceable obligation?
- Strategies are at parties' choice
- States need to cooperate to develop the liability regime for damage caused by pollution of the marine environment, including ecological damage under Art.235(3) UNCLOS



THANK YOU!