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Regulating marine genetic resources in areas beyond national jurisdiction

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June 8 has been marked as World Ocean Day by United Nations. This year's theme 'Innovation for a Sustainable Ocean' is indication of proper management and regulation of ocean resources. The area possesses more than 60% of the earth surface with abundance of diverse living and non-living resources having rich variety of organisms. Such valuable resources are potentials for invention of new medicine and drugs, cosmetic, consumption products and other possibilities for greater contribution to humankind in future. UNEP published that compounds from deep seabed organisms have been used as basis for potent cancer fighting drugs, commercial skin protection products providing higher resistance to ultraviolet and heat exposure, and for preventing skin inflammation, anti-viral compounds and anti-allergy agents. Therefore, regulation of the ocean commons and its resources is imminent for the greater interest of international community as a whole in general and developing countries in particular.

One of the significant challenges recently explored by these nations is regulating rich marine genetic resources (MGRs) particularly in areas beyond national jurisdiction (ABNJ) which includes high sea covering water column of the ocean beyond 200nm from the baseline and the Area which consists of the ocean floor, sea bed and subsoil of area beyond outer limits of continental shelf. The reason includes that a number of products are already in the market and more are in the process from these MGRs. This

is surely an opportunity for nations and companies who have capable technologies. But the confrontation is that exploration and exploitation of MGRs from ABNJ cannot be questioned before any forum under existing international legal mechanism. Another concern is the indiscriminate use of such bio components and contamination of their conservation and sustainable use would possibly limit the benefit for future generations and for all nations.

The complexity has further been condensed due to the division of States on the question of freedom of high sea versus common heritage of mankind. UNCLOS, although considered as the constitution of ocean, is silent on this point perhaps for the reason that very little was known about genetic qualities of organisms found on deep seabed or on the high sea during its adoption.

Nations are adamant on their position. Bangladesh, India, China and other G-77 members have raised their concern and regularly participating at the UN working groups and negotiation processes to place their justified demands on regulating MGRs within the spectrum of common heritage principle. According to them, the resources should be governed in the similar model of International Seabed Authority under Part XI of UNCLOS. Their argument has further been justified by the UNU-IAS Report which suggested that in exploring and exploiting mineral resources including polymetallic nodules, biological resources are intrinsically linked with mineral resources in the deep-sea ecosystem.

Therefore, sampling of biological resources may be occurred and would certainly be easy task and hence it has been suggested that several features of Part XI may be extended to MGRs. The support for common heritage and ISA modeled regulation would allow entitlements to the benefits arising out. It seems that the whole debate between countries on common heritage of mankind dividing the world during 1970s had been reinvigorated in the present context. USA, EU, Japan and Korea are asserting that principle of freedom of high sea is governing MGRs and bioprospecting. Arguments put forwarded that activities related to the exploration and exploitation of marine biological resources can be performed without specific regulations since part VII of UNCLOS governs very well.

It is undeniable that there exists a gap in regulating MGRs of ABNJ. Therefore, efforts have been undertaken by UN since 2004 onwards. UN General Assembly (UNGA) established an Ad Hoc Open Ended Informal Working Group to study issues pertinent to conservation and sustainable use of marine biological diversity beyond the areas of national jurisdiction (BBNJ Working Group). In 2011, the Working Group recommended UNGA to initiate a process in order to address that a legal instrument be brought under UNCLOS for conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. BBNJ working group held its final session in 2015 and forwarded recommendation to UNGA on elements of draft text to be adopted under UNCLOS. For the said purpose, organizational session was held in 2018 which set the plan of organising four intergovernmental conference sessions. Three sessions were held and fourth one was postponed. After the forth one, nations will find some possible way out.

We are not well aware about the resources in deep sea and their potential use for curbing global challenges. But it is quite certain that with the advancement of science and technology, nations will be aware and largely benefit from ocean resources that belong to all. Hence, it is imminent to sustainably use the ocean particularly regulate

MGRs in ABNJ. Developing and other disadvantageous nations must continue their efforts to place common heritage regime. The role of Bangladesh in this regard would be well recognised.

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