

# Why is the conservation of biological diversity a “common concern of humankind”?

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## ABSTRACT

“Common area”, “common heritage of humankind” and “common concern of mankind” are the three concepts that define the rights and obligations of states in managing the common resources under international environmental law. I clarify why the conservation of biodiversity belongs to the “common concern of mankind”, and the resulting implications in defining the rights and obligations of states in biodiversity conservation. A state has sovereign rights over its biological resources, and other states have an obligation to admit this. Nevertheless, there are no absolute sovereign rights. The state has to use its biological resources in a sustainable way. The core implication is that states should cooperate in managing this issue of common concern.

*Key words:* Common concern of mankind, Biodiversity conservation, CBD, Sovereign rights, The obligation of cooperation.

## Introduction

The management of common natural resources is an essential part of environmental protection. There are three concepts defining the rights and obligations of states in managing the shared resources under international environmental law, (Dupuy, 2018) namely “common area”, “common heritage of humankind” and “common concern of mankind” (Brunnée, J., 2018). The “common area” focuses on the area outside states’ jurisdiction that states could have the freedom to access but should perform their obligations under the no-harm principle and its procedure approaches like cooperation and notification, such as the high seas (Ibid, 557-561). The concept of the common heritage of humankind is prompted to ensure that states with different developing levels could equally share the benefits of exploiting the resources in certain areas (the “Area”, the Moon, etc.) (Ibid, 562-563). Like the “common area”, the “common heritage of humankind” locate out of the

states’ control (Dupuy and Vinuales, note 1 above). However, one important distinction is that relevant authority should be established to manage the activities in these areas (Ibid, 562). Some activities taken by states could have more sensitive and significant environmental impacts on other countries than those in the common areas and the common heritage of humankind. These activities are usually regarded as “common concerns” globally, and thus the object of these activities is called “common concern of mankind” World Conservation Union, 20004. The object of common concern of humankind is the resources that states can easily get access to and exert influence domestically. Hence, it is not appropriate for joint management in this case. The relevant states should have sovereignty rights over these resources and manage them (Dupuy and Vinuales, note 1 above, 98).

According to the definition in the Convention on Biological Diversity (CBD), biodiversity is “the variability among living organisms from all sources”

and contains a diversity of three dimensions: “diversity within species, between species and of ecosystems” (United Nations, 1992). Species are the basic measurement of biodiversity. The actions of states could have a direct impact on it. Daily activities of a state like industrial and agricultural production activities could cause harm to the environment that the species rely on in the state, thus reducing the species in that state. Adversely, if a state takes measures to improve the environment and create some favorable conditions for the reproduction of the species in its territory, then the variety of species will increase. Since a state could easily control the living resources and influence the biodiversity within its territory while other states could not achieve this, and there is also no need for the international authorities to help manage relevant affairs, the conservation of biodiversity does not belong to the “common area” or the “common heritage of humankind”.

In addition, different species are interconnected to form a biological network, and a higher degree of biodiversity means a more robust ecosystem network in resisting natural disasters. The activities of one state will impact the global biodiversity through the biological network and thus affect the performance of the whole ecosystem. Furthermore, from the perspective of other states, although the reduction of biological resources outside the territory of other states may not have a significant impact on their ecological environment in the short term, it is bound to influence the integrity of the whole ecological network and the stability of the global ecological system in the long run. If no adequate measures are taken, it may lead to consequences that could not be made up. Hence, maintaining biodiversity is a global “common concern” (Ibid, Preamble). Therefore, biodiversity conservation satisfies the relevant characteristics and should be regarded as the “common concern of mankind”. That the conservation of biological diversity belongs to the common concern of humankind was formally recognized in the preamble of CBD (Ibid, paragraph 3).

This affirmation has some implications for the delineation of the rights and obligations of states to conserve biodiversity. On the one hand, “states have sovereign rights over their own biological resources” (Ibid, paragraph 4). The convention confers states the freedom to utilize the biological resources within their territories. States could plan to use existing biological resources according to their national

conditions or develop relevant technologies to create new biological resources. In turn, it also indicates that other countries have “limited access” (Dupuy and Vinuales, note 1 above, 98) to the resources of the sovereign state. Other states should admit “the sovereign rights of States over their natural resources” and respect the sovereign state’s right to decide whether other states could access its genetic resources (CBD, note 9 above, Article 15, paragraph 1). To access the genetic resources, they should make agreements with the sovereign state on relevant affairs, including the technology transfer and the distribution of profits (Ibid, Article 15, paragraph 7; Ibid, Article 16).

On the other hand, there is no absolute sovereignty in using biological resources, which is a “common concern” globally. A state has ownership of the biological resources in its territory but needs to use them in a “sustainable manner” (Ibid, Preamble, paragraph 5), meaning it should perform corresponding obligations for its sovereign rights and avoid causing harm to other states. According to CBD, the corresponding obligations for the sovereign states include (1) the establishment of corresponding domestic plans: as a response to this obligation under international environmental law, states should make relevant plans and policies on the conservation of biological resources domestically (Ibid, Article 6) (2) “identification and monitoring”: states need to define the range of endangered species and organisms of significant utility within their territories, locate these species and monitor their movements before taking measures to preserve them (Ibid, Article 7). A set of data about these species should be formed and well saved during this process (Ibid, Article 7) as all these data are the basis of the implementation of the subsequent protective measures (e.g., “in-situ conservation” (Ibid, Article 8), “ex-situ conservation” (Ibid, Article 9). As for harm prevention, states should observe the requirements of the no-harm and prevention principle under international law when conducting activities. They are supposed to conduct an environmental impact assessment on the projects that may cause harm to the biological resources, notify and consult with other states that may be affected by the implementation of the projects, and take active measures to prevent the harm (Ibid, Article 14).

Another important implication is that, since it is a “common concern”, all the states should cooperate on conserving the global biological diversity, which

is the key to biodiversity conservation. The obligation of cooperation is stipulated in article 5 of CBD. It requires that states cooperate directly with each other or indirectly through international institutions, “in respect of areas beyond national jurisdiction and other matters of mutual interest” (Ibid, Article 5). Specific obligations include that states cooperate to give financial, technical, and other support in implementing on-site and off-site conservation, especially for developing countries (Ibid, Article 8). In many cases, the effects caused by ecological issues are extremely disastrous, widespread, and hard to handle. As the resources and capacity of one country are limited, resources from other countries could fill in its shortage of capital and technology and help it repair or reconstruct the ecosystem more quickly. Therefore, a joint force is necessary for the conservation of biological diversity.

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