

THE COMPLEMENTING ROLE OF THE NATIONAL LEGISLATURE IN RATIFYING AND IMPLEMENTING THE BBNJ AGREEMENT

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Manila

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INTRODUCTION



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- Institutional competence (checks and balances);
- The Agreement deals with matters under the legislative competence of the Legislature (*See, e.g., Article 59, German Constitution*);
- Obligations assumed under the Agreement may be performed domestically through “*legislative, administrative or policy measures*” (BBNJ Article 53).

OUTLINE

- I. The role of the Legislature in the ratification of the BBNJ Agreement — What exactly is being ratified?
- II. The role of the Legislature in its implementation — Is internalising the BBNJ Agreement enough?

I. CONCURRENCE IN THE RATIFICATION OF THE BBNJ AGREEMENT: WHAT EXACTLY IS BEING RATIFIED?

When the Executive decides to ratify it, it is not simply ‘accepting the BBNJ Agreement’:

- A. It may make a declaration of “exception” regarding the retroactive application of the regime governing marine genetic resources;**
- B. It may notify the UN that it accepts the provisional application of the BBNJ Agreement;**
- C. It may make interpretive declarations — but cannot make reservations;**
- D. It may make declarations regarding the settlement of disputes (basically, Part XV of UNCLOS, but regarding the BBNJ subject-matter, as per Article 60);

I. CONCURRENCE IN THE RATIFICATION OF THE BBNJ AGREEMENT: WHAT EXACTLY IS BEING RATIFIED?

A. Exception to the application of the regime governing the utilisation of marine genetic resources:

- Article 10: “...The application of the provisions of this Agreement shall extend to the **utilization of marine genetic resources and digital sequence information** on marine genetic resources of areas beyond national jurisdiction **collected or generated before entry into force**, *unless a Party makes an exception in writing* under article 70 when signing, ratifying, approving, accepting or acceding to this Agreement.” (See EU Declaration 2024/1833);



I. CONCURRENCE IN THE RATIFICATION OF THE BBNJ AGREEMENT: WHAT EXACTLY IS BEING RATIFIED?

B. Provisional Application of the BBNJ Agreement:

- Article 69 of the BBNJ Agreement (*not* general international law on the provisional application of treaties, as per Article 25 of the 1969 Vienna Convention on the Law of Treaties);
- Upon ratification, a State may notify the UN of its intention regarding provisional application — e.g., to present itself as a BBNJ champion;

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- Upon ratification, a State may notify the UN of its intention regarding provisional application — e.g., to present itself as a BBNJ champion;
- **In the Philippines, is it subject to the Senate’s concurrence?** (*See* UN Cod. Div. Publications, UN Legislative Series, Book 26, ‘Materials on the Provisional Application on Treaties’ (2023) p 51; Practice in Latin America);

TRANSITION FROM (CONCURRENCE IN) RATIFICATION TO IMPLEMENTATION

C. Interpretive Declarations/Statements under Article 71:

- The Role of National Legislatures:
 - The BBNJ Agreement admits of no reservations (Article 70), but States may still make declarations with a view, *inter alia*, to the harmonisation of its laws and regulations with the Agreement;

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 - The BBNJ Agreement admits of no reservations (Article 70), but States may still make declarations with a view, inter alia, to the harmonisation of its laws and regulations with the Agreement;
 - In concurring in the ratification of the BBNJ Agreement, **does the Legislature understand that the Agreement will simply repel any contrary law or regulation?; Does it want to emphasise the consistency of relevant domestic laws and regulations with the Agreement?; Does it find that some domestic laws and regulations will need to be amended?**

II. THE ROLE OF THE LEGISLATIVE IN ITS IMPLEMENTATION — IS INTERNALISING THE BBNJ AGREEMENT ENOUGH?

Article 53 of the BBNJ Agreement explicitly refers to “legislative, administrative or policy measures” as means to ensure its implementation. Like other Multilateral Environmental Agreements, the BBNJ Agreement is considerate of the diverse domestic legal systems.

In some countries, a ratified treaty is automatically internalised in the domestic legal system. In others, a bill may be passed to this effect. But is internalisation enough?

A. Should relevant laws and regulations be explicitly amended as well?

B. Is the internalised BBNJ Agreement alone sufficient for the Executive to do its part?

II. THE ROLE OF THE LEGISLATIVE IN ITS IMPLEMENTATION — IS INTERNALISING THE BBNJ AGREEMENT ENOUGH?

A. Should relevant laws and regulations be explicitly amended as well?

- The BBNJ Agreement largely regulates activities in areas which States' regulations do not typically reach — Domestic systems of protected areas being the prime example;
- Most States already have agencies, with allocated budgets, dealing with EIA, area-based management tools, the utilisation of genetic resources, and capacity building.

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Still, it is advisable to consider amending legislation in view of possible overlaps, to clarify scopes of application, or to insert 'without prejudice' clauses. Institutional enhancement might be occasionally necessary.

II. THE ROLE OF THE LEGISLATIVE IN ITS IMPLEMENTATION — IS INTERNALISING THE BBNJ AGREEMENT ENOUGH?

- B. Is the BBNJ Agreement alone sufficient for the Executive to do its part?
- Despite its technicalities and procedural aspects, *the BBNJ gives a lot of freedom to States Parties in its implementation* — it focuses on constructive, facilitative, and non-confrontational implementation. However, further domestic legislative action might boost its implementation:
 - Example: A State Party’s right to determine whether activities under its jurisdiction or control may proceed (in view of an EIA) under Article 34(1).
 - The National Legislature can regulate or limit the exercise of rights such as this as well as the performance of several obligations, e.g., “to ensure that information [on marine genetic resources] is notified to the Clearing-House Mechanism” (Article 11).

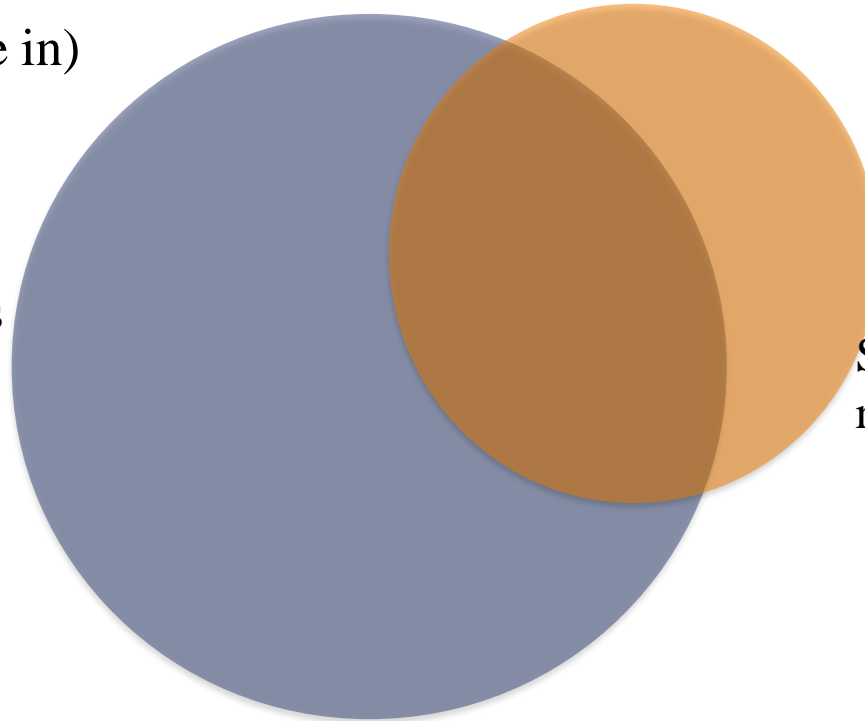
TAKE-HOME MESSAGES?

(Concurrence in)
Ratification

Implementation (by
the Legislature)

What exactly is
being ratified?

Should implementation stop at
ratification/internalisation?



Thank you!

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