Editorial Note

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Volume 9, Number 2 of the *Korean Journal of International and Comparative Law* is a special issue on regional cooperation and protection of the marine environment. The articles in this volume were presented at the Fifth International Conference on the Law of the Sea, held on 3 and 4 December 2020, in Seoul, Korea. The theme of the conference was ‘Regional Cooperation and Marine Environmental Protection under the UNCLOS Regime.’ The articles in this special issue provide valuable insights about the cooperation obligations stipulated in the United Nations Convention on the Law of the Sea (UNCLOS) and regional cooperation for marine environment protection, marine scientific research cooperation in overlapping waters, regulation and prevention of marine pollution, and peaceful resolution of marine environment disputes.

The first article in this issue, ‘Advancement of the Duty to Cooperate in Marine Environmental Protection in the Jurisprudence of ITLOS’, by Judge Markiyana Z. Kulyk of the International Tribunal for the Law of the Sea (ITLOS), provides a brief survey of the ‘duty to cooperate’ in the provisions of UNCLOS, particularly concerning the protection and preservation of the marine environment. Judge Kulyk highlights several decisions of ITLOS, which have enriched the understanding of the duty to cooperate as comprising specific obligations to consult, exchange information, monitor and assess relevant activities, develop measures to prevent pollution or other environmental harm, which constitute the basis for the implementation of the duty to cooperate and the criteria for determining compliance.

The next article, written by Nilufer Oral, Director of the Centre for International Law at the National University of Singapore, and Member of the International Law Commission, is entitled, ‘Implementing the Duty to Cooperate under the 1982 UNCLOS for the Conservation and Sustainable Use of Biodiversity in Areas beyond National Jurisdiction under a New BBNJ Agreement’. The article examines the duty to cooperate under UNCLOS in relation to the

obligations of States to protect and preserve the marine environment and in relation to the protection of the marine environment in areas beyond national jurisdiction. Professor Oral underscores the importance of the new Biodiversity Beyond National Jurisdiction (BBNJ) Agreement in creating the necessary mechanisms for cooperation to fulfil the multiple obligations of UNCLOS States parties to cooperate in the protection and preservation of areas beyond national jurisdiction.

The article, 'Protection of the Marine Environment: Rights and Obligations in Trade Agreements', written by Margaret A. Young from Melbourne Law School, at the University of Melbourne, Australia, demonstrates how UNCLOS norms and institutions interact with the regimes of trade, including the World Trade Organisation (WTO) and bodies that service regional trade agreements. It examines selected legal developments, particularly provisions in regional trade agreements on marine capture fisheries, marine litter and waste management infrastructure. Professor Young explores rules on the use of trade measures to eliminate harmful fishing practices and the prohibition of certain subsidies, as well the impact of these developments on dispute settlement between States under UNCLOS, support for marine protected areas, and the capacity for regime interaction between relevant bodies.

The following article, entitled, 'Towards Integrated Management of Regional Marine Protected Area Networks – A Case Study of Regime Interaction in the Southern Ocean', was written by James Harrison of University of Edinburgh School of Law, United Kingdom. The article explores the development of integrated regional networks of MPAs through a case study of regime interaction between the Antarctic Treaty and the Convention on the Conservation of Antarctic Marine Living Resources, as well as other relevant institutions, in order to identify the key opportunities and challenges for promoting the integrated management of regional Marine Protected Area (MPA) networks in practice. In the "absence of fundamental reform of international ocean governance", Professor Harrison argues, "integrated management of MPAs can at present only be achieved through cross-sectoral cooperation and coordination between relevant international institutions", which requires an understanding of regime interaction analysing both the relevant legal framework and the manner in which coordination mechanisms operate in practice.

The next article was written by Minchul Kim, Director of the Yumin International Law Institute in Seoul, Republic of Korea, provocatively entitled, 'Cutting the Gordian Knot: Is an Effective Cooperation Regime for Marine Scientific Research in Northeast Asia Feasible?' The article addresses the causes of disputes related to marine scientific research (MSR) in undelimited maritime areas in Northeast Asia. It specifically examines the legality of unilateral

research or survey activities in undelimited maritime areas, considering Articles 74(3) and 83(3) of UNCLOS. The article argues that despite the challenges, there is merit in considering a “regime-building suggestion in alignment with the original spirit of MSR” and “recommends a cooperative regime led by international institutions and a joint research regime as a *modus vivendi*”.

In the article, ‘Marine Scientific Research in Japan’s Practice’, Sookyeon Huh of the Faculty of Law, Rikkyo University, Japan, examines Japan’s State practices on marine scientific research. Professor Huh highlights two main points: first, that unlike other countries that use domestic legislation in MSR upon ratification of UNCLOS, Japan oversees MSR activities in its waters according to a non-legal instrument or a guideline; and second, there are challenges that Japan faces in respect of MSR in its undelimited exclusive economic zone. The article outlines Japan’s MSR guideline, its response to illegal or unregulated MSR activities in its waters, its relationships with neighbouring countries, and the failure of its attempt to legislate the MSR law in 2007.

The next article examines the State practice, laws, and policies of China on MSR, was written by Nong Hong, Executive Director and Senior Fellow of the Institute for China-America Studies, in Washington, D.C., United States, entitled, ‘China’s Approach to Marine Scientific Research: Legislation, Policy and Practice’. Dr Hong draws attention to “legal controversies or ambiguities with regard to the governance of MSR conducted by foreign parties within China’s national jurisdiction”, whilst acknowledging that “views on the relationship between jurisdiction on scientific research and military survey in exclusive economic zone (EEZ) differ among States and scholars.” The article underscores that “the disputed ownership of waters between and/or among coastal States often attributes to problems for MSR” and further complicates the situation.

The article written by Irini Papanicolopulu of the University of Milano-Bicocca, Italy, ‘Maritime Spatial Planning and Protection of the Marine Environment’, challenges the sufficiency of UNCLOS and other legal instruments in ensuring the protection of the marine environment. Professor Papanicolopulu argues that, “The fact that seas and oceans currently face many threats, read together with the existence of legal rules that bind States to protect and preserve the marine environment, point towards the conclusion that the current regulation is unable to stop degradation of the marine environment”. Against this backdrop, the article discusses tools including marine (or maritime) spatial planning (MSP) and integrated coastal zone management (ICZM) and their role in ensuring protection of the marine environment, both within and beyond areas under national jurisdiction.

The next article, entitled, ‘Jurisdiction and Applicable Law in the Settlement of Marine Environmental Disputes under UNCLOS’, was written by Lan Ngoc

Nguyen of the School of Law and the Netherlands Institute for the Law of the Sea, Utrecht Centre for Water, Ocean and Sustainable Law, at Utrecht University in the Netherlands. The article interrogates “whether and how the courts and tribunals under UNCLOS have managed to ensure a balance in dealing with marine environmental disputes through the prism of the relationship between jurisdiction and applicable law.” Professor Nguyen examines the techniques used by UNCLOS tribunals to examine external sources of international law in the course of settling environmental disputes arising from UNCLOS and assesses the implications of the use of such techniques for determining the jurisdictional parameters of UNCLOS tribunals in the settlement of marine environmental disputes under UNCLOS.

The final main article of this volume, by Judge Tomas Heidar, Vice-President of ITLOS and Director of the Law of the Sea Institute of Iceland in Reykjavík, Iceland, is on ‘The Contribution of the International Tribunal for the Law of the Sea to the Protection of the Marine Environment’. Judge Heidar observes that the jurisprudence of ITLOS in its 25 years’ history, has dealt with a number of environmental cases, primarily in the context of proceedings relating to the prescription of provisional measures and in advisory proceedings. The article elucidates the critical role of the Tribunal is reaffirming and developing the basic environmental principles in Part XII of UNCLOS, including the obligation to protect and preserve the marine environment, the precautionary approach, the duty to conduct environmental impact assessments, and the duty to cooperate, as well as the duty of due diligence, thereby contributing to the protection of the marine environment. Judge Heidar underscores that “Part XII of the Convention is a product of the 1970s and its provisions therefore reflect the state of international environmental law at that time”. Nonetheless, he concludes that, “the Tribunal has interpreted and applied the aforementioned principles consistently with the contemporary state of international environmental law.”

The featured articles of this volume are followed by a summary of important Korean judicial decisions that pertain to international law from the second half of 2020 to the first half of 2021, written by Professor Buhm-Suk Baek of Kyung Hee University, Korea and Hosung Ahn from the Korea Military Academy.