Challenges of the BBNJ Agreement: from the Perspective of Japan's Ratification

January 2026
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1. Introduction

On 12 December (local time), Japan deposited its instrument of accession to the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement)[1] with the UN Secretary-General at UN Headquarters in New York[2]. This was done pursuant to Articles 66 and 75 of the BBNJ Agreement[3]. Hereinafter, unless misleading, Japan's action shall be referred to as having "ratified" the BBNJ Agreement. The Ministry of Foreign Affairs explains:

> The BBNJ Agreement establishes international rules for the conservation and sustainable use of marine biological diversity of the high seas and the Area, namely the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.
>
> Japan places importance on the maintenance and development of the maritime order based on the rule of law and actively participated in the negotiations which led to the adoption of the Agreement. Japan will continue to actively contribute to the effective implementation of the Agreement[4].

The BBNJ Agreement was adopted at the further resumed 5th session of the BBNJ Intergovernmental Meeting on BBNJ on 19 June 2023. According to Article 68, the Agreement shall enter into force on 17 January 2026[5]. The approval for Japan to become a

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＊ All URLs accessed on 12 January 2026.

[1] https://www.mofa.go.jp/files/100810406.pdf. The official Japanese translation is available at: https://www.mofa.go.jp/mofaj/files/100810405.pdf.

[2] https://www.mofa.go.jp/ila/ocn/pagewe_000001_00295.html.

[3] Article 66 stipulates ratification, etc., and Article 75 designates the Secretary-General of the United Nations as the depositary.

[4] *Op. Cit., supra n. 2.*

[5] Paragraph 1 of the provision reads:

party to this Agreement was obtained by the National Diet on 23 May 2025[6].
This paper examines Japan's ratification of the BBNJ Agreement focusing upon the following points.
Firstly, how does Japan, as a sovereign state, realise both the passive aspect of fulfilling obligations under international law, and the positive aspect of modifying or even creating international law[7]? Secondly, what is the intention to realise national interests through ratifying the BBNJ Agreement, as well as the general interest of the international society, namely the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction? National interests encompass both the State's interests and rights, as well as interests and rights of individuals[8]. On the one hand, Japan and individuals bear obligations under international law; on the other hand, they enjoy rights and interests under international law.
Unlike the era when international law was termed "foreign relations law" and functioned as law governing a State's external relations, current international law directly[9] or indirectly[10] confers rights and imposes obligations upon individuals. Consequently, what rights a State acquires and what obligations it assumes under international law are matters of significant concern to individuals. Therefore, when Japan ratifies a treaty and becomes a party thereto,

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This Agreement shall enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance or accession.

[6] *Op. cit., supra* n. 2.

[7] On this point, see A. Kanehara, "Double Aspects of Being a Sovereign State: Positive and Passive Aspects,"
https://cigs.canon/en/article/20240611_8159.html.

[8] When Japan incurs obligations under international law and regulates the conduct of individuals to fulfil them, those individuals are not limited to "Japanese nationals". For example, Japan may regulate the conduct of foreigners within its territory to fulfil its obligations under international law. Therefore, unless otherwise specified, the term "individual" is used below.

[9] Examples exist where international law establishes rights of individuals (e.g., human rights) or imposes obligations on individuals (e.g., the treaties concerning international crimes).

[10] Examples exist where a State enacts domestic legislation to discharge its obligations under treaties or customary international law, thereby imposing obligations on individuals through that domestic law. For instance, domestic laws are enacted to fulfil obligations under treaties on the international environmental protection, thereby imposing obligations on individuals.

the State has a duty to explain what rights and interests the treaty confers upon individuals and what obligations it imposes upon them[11].

It is from this perspective that Japan's ratification of the BBNJ Agreement is examined. In doing so, I primarily refer to Japan's position as expressed in the discussion in the Diet and the explanatory notes on the BBNJ Agreement issued by the Ministry of Foreign Affairs[12]. Furthermore, from this perspective, I also point out the challenges inherent in the BBNJ Agreement. In particular, I highlight areas where the BBNJ Agreement requires clarification, though a detailed examination of each individual point exceeds the scope of this paper[13].

2. Rule of Law

(1) Discussion in the Diet

In the Diet, the rule of law is repeatedly cited as a reason for ratifying the BBNJ Agreement. For example, Mr. Takuma Miyaji, Senior Vice- Minister for Foreign Affairs stated that the significance of Japan's ratification of the BBNJ Agreement lies in its "contribution to the development of an ocean order based on the rule of law[14]."

Furthermore, in the Ministry of Foreign Affairs' explanation regarding the ratification, as noted above, reference is made to the rule of law:

> "Japan places importance on the maintenance and development of an ocean order based on the *rule of law* (emphasis added)[15]."

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[11] This is why it is significant that treaties are to undergo the procedure for approval by the Diet prior to ratification.

[12] A revised version of the explanatory notes for the BBNJ Agreement (in Japanese, https://www.mofa.go.jp/mofaj/files/100810408.pdf, (hereinafter referred to as Explanatory Notes.)

[13] For the historical significance of the BBNJ Agreement, see A. Kanehara, "Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea," https://cigs.canon/en/article/20240510_8077.html.

[14] Remarks by Senior Vice-Minister for Foreign Affairs, Minutes of the Foreign Affairs Committee, House of Representatives, the 217th Session, No. 9 (23 April 2025), p. 17. Similarly, remarks by Mr. Yukiya Hamanot, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs and Defence Committee, House of Councillors, the 217th Session, No. 15 (22 May 2025), p. 9; Remarks by Mr. Takeshi Iwaya, Minister for Foreign Affairs, *ibid.*, p. 10.

[15] "Japan places importance on the maintenance and development of the maritime order based on the rule of law…." *Op. cit., supra* n. 2.

(2) Japan's Contribution to the International Society in the Sense of the "Rule of Law"

① So, what is the meaning of "rule of law" in the discussion in the Diet and the documents of the Ministry of Foreign Affairs above? There is no specific explanation[16].

If the reference to the "rule of law" is a simple description meaning "demanding actions or measures that comply with and are based on law," then there is no objection to this. The "rule of law" in this sense could be said to be used interchangeably with "rule-based[17]."

Furthermore, if the concept of the rule of law is used in this descriptive manner, it could apply to ratification of any treaties. In other words, if the concept of the rule of law is used as such a description, it cannot hold significance as an "inherent" reason for ratifying the BBNJ Agreement.

However, more substantively, for the following three reasons, it is not appropriate to use the concept of the rule of law for the purpose of describing "demanding actions or measures that comply with and are based on the law" without providing explanations.

Firstly, the "rule of law" is a concept with historical roots that has developed within domestic law. While debated, it is a technical term possessing an inherent meaning.

The rule of law is frequently invoked across numerous contexts and may be considered an axiom subject to little dissent. However, it does not necessarily possess a singular, unambiguous meaning. Detailed discussion of the meaning and establishment of the rule of law exceeds the scope of this author's capabilities. Studies on how the rule of law has been established and developed under domestic law[18], and how it is discussed in international law

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[16] The explanation of the rule of law in the Diplomatic Bluebook issued by the Ministry of Foreign Affairs will be discussed later.

[17] For instance, both "rule of law" and "rule-based order" are used in the description of the objectives of the Manila Dialogue, https://scsdialogue.org/, and the agenda for the Plenary Session 7 of the Second Manila Dialogue, https://scsdialogue.org/agenda/.

[18] For a concise and accurate introduction to the "rule of law" accompanied by an explanation of its development, see S. Chesterman, "Rule of Law," *Max Planck Encyclopedia of International Law*, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1676, article last updated: June 2025.

and various contexts[19], are best left to distinguished works[20].

② Secondly, if the rule of law is cited as a reason for ratifying the BBNJ Agreement, it would likely refer to the rule of law in international law, not domestic law. If the concept of the rule of law established in domestic law is to be applied in international law, it is necessary to discuss the rule of law in international law, taking into account the differences between domestic legal system and international legal system[21].

In this regard, the Diplomatic Bluebook published by the Ministry of Foreign Affairs provides some explanation of the rule of law in the international order. This is closely related to the third reason.

③ Thirdly, Japan's contribution to the rule of law concerning the maritime order should not be rendered futile.

As to the international maritime order, as the main pillars of the rule of law, three principles were declared in the Keynote Address by Mr. Shinzo Abe, Prime Minister of Japan at the 13th IISS Asian Security Summit, Shangri-La Dialogue12. These are:

(i) making and clarifying claims based on international law,

(ii) not using force or coercion in trying to drive their claims,

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[19] J. Waldron, "Does the Sovereign Have a Right to Benefit from the Rule of International Law?," *European Journal of International Law*, Vol. 22 (2011), pp. 315–43; I. Hardt, "The Rule of International Law and Domestic Analogy," *Global Constitutionalism*, Vol. 4 (2015), pp. 365–395; M. Kumm, "International Law in Domestic Courts: The Rule of International Law and the Limits of the Internationalist Model," *Virginia Journal of International Law*, vol. 44 (2003), pp. 19-32; K. E. Davis, "What Do Variables of the Rule of Law Tell Us About Rule of Law Reform?," *Michigan Journal of International Law*, Vol. 26 (2004), pp. 141-61; H. Owada, "Reconceptualizing International Law in a Globalizing World," *Japanese Yearbook of International Law*, Vol. 51 (2008), pp. 3-20, S. Eifuku, 'The Significance of the 'Rule of Law' in the International Community (in Japanese)," https://www.nids.mod.go.jp/publication/briefing/pdf/2018/201812.pdf.

[20] On this point, see "Manila Dialogue Report: The Rule of Law and the Function and Responsibilities of Law Enforcement Agencies," https://cigs.canon/en/article/20251212_9454.html, pp. 1, 10. and the report by this author on her participation, https://cigs.canon/en/uploads/2025/12/kanehara_report_manila25110507.pdf, pp. 1, 3-6.

[21] For a clear and detailed discussion of this point, see Owada, *op. cit., supra* n. 19, pp. 5, 8–18.

(iii) seeking to settle disputes by peaceful means[22].

At the second Manila Dialogue in November 2025, Vice Commandant for Operation of the Japan Coast Gurd also reaffirmed the Abe's Three Principles as the rule of law pertaining to the maritime order[23].

While the Diplomatic Bluebook provides some explanation of the rule of law in the international order, its positioning of the Abe's Three Principles in relation to this remains inconsistent[24].

The Diplomatic Bluebook 2024, which introduces Japan's foreign policy, explains as follows:

> The rule of law is, generally, the concept that recognizes the superiority of the law over all forms of power. It is an essential cornerstone of a fair and just society within a country. At the same time, it contributes to peace and stability in the international community and constitutes the basis of the international order that consists of friendly and equitable relations between states. In the international community, under the rule of law, we must not allow rule by force, and all countries must observe international law in good faith, and there must be no unilateral attempts to change the status quo by force or coercion. Japan promotes strengthening of the rule of law as one of the pillars of its foreign policy, and promotes rule-making in various fields as well as ensuring their proper implementation[25].

The same section of the 2017 Diplomatic Bluebook refers to the Abe's Three Principles as follows:

> Japan regards efforts to strengthen the rule of law as one of the pillars of its foreign policy. It opposes unilateral attempts to change the status quo by coercion and strives to maintain its territorial integrity, secure its maritime and economic rights and interests, and protect its citizens. For example, Japan raises the "*Three Principles of the Rule of Law at Sea," advocated by Prime Minister Abe*, at various opportunities including international conferences such as the UN General Assembly, and undertakes initiatives to promote the rule of law in the international community. At the G7 Ise-Shima Summit held in May, the "Three Principles" were

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[22] https://www.mofa.go.jp/fp/nsp/page18e_000087.html.

[23] *Op. cit. supra* n. 20, this author's report, pp. 5-6.

[24] *Ibid.,* pp. 4–5.

[25] Chapter 3, "Diplomacy for Defending National Interests through Co-creation with the World," 6 Rule of Law in the International Community, https://www.mofa.go.jp/policy/other/bluebook/2024/en_html/chapter3/c030106.html.

> supported by G7 leaders and resulted in the shared recognition among the G7 countries. From the perspective of promoting the rule of law in the international community, Japan continues to contribute to the peaceful settlement of disputes between states based on international law, formation and development of a new order of international law, and the development of legal systems and human resources in various countries (emphasis added)[26].

The manner in which Prime Minister Abe's Three Principles in each annual Diplomatic Bluebook since 2018 has varied. Consequently, the Diplomatic Bluebook does not clarify how the Japanese government perceives the relationship between the Abe's Three Principles as the rule of law at sea, and the broader context of the rule of law within Japan's foreign policy.

④ For the three reasons outlined explained here, it is not appropriate to employ the concept of the rule of law without providing reasons or explanations merely to describe the demand for "actions and measures that comply with and are based on the law."

Needless to say, the meaning of the rule of law need not be confined to conventional discussions on the rule of law or solely to the Abe's Three Principles. For instance, by considering the specific context of the BBNJ Agreement, attempts to develop the Abe's Three Principles concerning the rule of law pertaining to the maritime order, or to propose a uniquely Japanese concept of the rule of law, are certainly meaningful. However, such proposals should be accompanied by recognition and explanation on the background and discussions regarding the rule of law.

Using the concept of the rule of law – particularly the concept developed within domestic law – in international law, and specifically in relation to the maritime order under the BBNJ Agreement, without providing explanation, is questionable in light of the significance of the Abe's Three Principles on the rule of law for the maritime order, which can be considered a legacy. It is what Japan has presented to the international society.

(3) Contribution to the International Order

The discussion in the Diet and the document of the Ministry of Foreign Affairs reproduced above, mention contribution to the international order as a reason for ratifying the BBNJ

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[26] Chapter 3 "Japan's Foreign Policy to Promote National and Global Interests," 6. Rule of Law in the International Community, (1) Strengthening the Rule of Law for Japan's Diplomacy, https://www.mofa.go.jp/policy/other/bluebook/2017/html/chapter3/c030106.html

Agreement[27]. For instance, it is explained that "Japan places importance on maintenance and development of the maritime order based on the rule of law...."
Certainly, the significance of contributing to the international order is commendable. However, as stated in the Introduction, sovereign states should, in contributing to the international order, seek to realise both general interests of the international society and their own national interests[28]. Moreover, national interests encompass not only the rights and interests of the State, but also the rights and interests of individuals[29].
The BBNJ Agreement is international law. In the current age, international law is not merely law that regulates relations between states and solely defines their rights, interests, and obligations. International law also defines the rights, interests, and obligations of individuals, whether directly or indirectly[30]. What, then, are the rights, interests, and obligations of individuals under the BBNJ Agreement? If ratification of the BBNJ Agreement creates rights, interests, and obligations for individuals, the reasons for its ratification must be convincing for individuals. From this perspective, the following discussion focuses particularly on the obligations imposed on individuals.

3. Legal Effects of the BBNJ Agreement on Individuals[31]

(1) The Two Balances Sought by the BBNJ Agreement

The BBNJ Agreement seeks to strike two balances. Firstly, it seeks a balance between the

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[27] Statements to this effect include those by Mr Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs Committee, House of Representatives, the 217th Session, No. 9 (23 April 2025), p. 9; Remarks by Mr Takuma Miyaji, Senior Vice- Minister for Foreign Affairs, *ibid.*, p. 17.

[28] For a statement to this effect, see the remarks by Mr Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry, Minutes of the Foreign Affairs and Defence Committee, House of Councillors, the 217th Session, No. 15 (22 May 2025), p. 9.

[29] In the analysis below in this paper, the term "individual" is used rather than "national," with the reasons explained at *supra n.* 8.

[30] The meanings of "direct" and "indirect" are as explained in the Introduction.

[31] As stated above, current international law regulates not only the rights, interests, and obligations of States, but also the rights, interests, and obligations of individuals, whether directly or indirectly. The concept of "legal effect" is used to express this.

conservation and sustainable use of biodiversity[32]. This is clearly indicated by the Agreement's very name: The Agreement on *the Conservation and Sustainable Use* of Marine Biological Diversity (emphasis added). Furthermore, the general objective stipulated under Article 2, the securing of this balance:

> The objective of this Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,…

During the drafting process of the BBNJ Agreement, the balance between the principle of freedom of the high seas and regulations for the conservation and sustainable use of biodiversity on the high seas, and the deep seabed was also debated[33]. In this regard, Japan has long opposed, for example, extending the width of territorial seas, which would reduce the scope of the high seas, and in that sense, has emphasised the freedom of the high seas[34]. From this perspective, there is no particular explanation in the Diet as to why Japan ultimately ratified the BBNJ Agreement[35]. Regarding fisheries, Japan has traditionally been a long-distant fishing nation and has enjoyed the freedom of the high seas[36]. The relationship

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[32] Remarks by Mr Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs and Defence Committee, House of Councillors, the 217th Session, No. 15 (22 May 2025), p. 9.

[33] Remarks by Mr Yukiya Hamamoto, *ibid.*.

[34] In this regard, see A. Kanehara, "Lectur of Public International Law: Realization of National Interests of Sovereign States by International Law," Foreign Service Training Institute, Ministry of Foreign Affairs, https://cigs.canon/article/20250522_8904.html; the Documents, https://cigs.canon/uploads/2025/05/75cd14e68a1a7f247b5b9e5dcf8e6fb30bd20c57.pdf, Slide No. 44 and 45.

[35] For an examination of the significance of the BBNJ Agreement in light of the history of international law and the law of the sea, *op. cit., supra* n. 13.

[36] Non-parties to the BBNJ Agreement will continue to enjoy the freedom of the high seas and may conduct activities related to marine genetic resources, as acknowledged by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs Committee, House of Representatives, the 217th Session, No. 9 (23 April 2025), p. 17. This point concerns the fact that research and development activities related to marine genetic resources have been conducted as part of the freedom of the high seas. By becoming a party to the BBNJ Agreement, research and development activities conducted by natural and juridical persons subject to the jurisdiction of a party under Article 11 will be placed under the Agreement's

between international regulations and international organisations concerning the conservation and management of fishery resources and the BBNJ Agreement is stipulated in numerous articles[37]. While not delving into the details here, this was also debated in the Diet[38].

What, then, is the meaning of sustainable use? Article 1(13)[39] of the BBNJ Agreement defines sustainable use, but it remains a negative definition, stating "that does not lead to a long-term decline of biological diversity." Its meaning is not necessarily clear.

Secondly, the balance is sought by the BBNJ Agreement between developing and developed countries[40]. While it contains numerous provisions concerning developing countries, its preamble, for example, stipulates as follows:

> Recognizing the importance of contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole and, in particular, *the special interests and needs of developing States*, whether coastal or landlocked,
>
> Recognizing also that *support for developing States Parties* through capacity building and the development and transfer of marine technology are essential

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regulation. This issue is closely related to whether Japan's ratification of the BBNJ Agreement will bring any benefit or disadvantage to individuals. This will be addressed later in the Conclusion.

[37] For example, the following provisions not necessarily limiting to fishery organizations, stipulate relationships and cooperation with global and regional organizations: Articles 5, 8, 19, 21, 22, 24, 25, 29, 45, 49, 60. As to non-application of the provisions of Part II, relating to marine genetic resources, to fishing and fishing-related activities, Article 10 (2) provides for it, as explained later.

[38] For example, Remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs Committee, House of Representatives, the 217th Session, No. 9 (23 April 2025), p. 2; also remarks by Mr. Yukiya Hamamoto, *ibid.*, p. 5.

[39] The provision reads:

> "Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to a long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

[40] This issue keenly relates to the issue of marine genetic resources and the fair and equitable sharing of benefits.

elements for the attainment of the objectives of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (emphasis added),

Both the rights, interests, and obligations of States under the BBNJ Agreement, and those of individuals are to be interpreted and applied in light of this fundamental stance of balancing these two aspects.

(2) Individuals under the BBNJ Agreement

The BBNJ Agreement contains provisions concerning entities other than States. This may include individuals. The entities other than States referred to in the BBNJ Agreement are primarily other treaty bodies and stakeholders[41]. Other treaty bodies are addressed, for example, in Article 5 (2).

> This Agreement shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies.

This aims to foster cooperation with treaty bodies and other entities having competence over matters common or related to the subject matter of the BBNJ Agreement.

Provisions concerning stakeholders are set out in Article 19(2), Article 21(1), Article 21(2)(c), Article 32(1), and Article 32(3). Article 19(2) in Part III, a provision relating to area-based management, for example, provides for that when proposing the establishment of marine protected areas, Parties are obliged to engage in collaborations and consultations with stakeholders.

> Parties shall collaborate and consult, as appropriate, with *relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, the private sector, Indigenous Peoples and local communities*, for the development of proposals, as set out in this Part (emphasis added).

These stakeholders explicitly include individuals. This provision stipulates that individuals

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[41] Relatedly, in Part III, relating to area-based management, Article 21(2)(a) prescribes notification to and consultation with "adjacent coastal States." Similarly, in Part IV, relating to environmental impact assessments, Article 32(1) contains analogous provisions. Article 32 (2) defines "the most affected States." Which States fall under these categories will likely be determined in the future specific application of the BBNJ Agreement.

are entitled to be involved and consulted by the State establishing the marine protected area. In other words, this provision directly confers upon individuals the benefit of being involved and participating in consultations. Article 21(1) and Article 21(2)(c) serve a similar purpose. Article 32(1) and Article 32(3) in Part IV are provisions concerning environmental impact assessments, and they oblige Parties to disclose information on planned activities to stakeholders[42]. Here too, individuals as stakeholders enjoy the benefit of receiving information concerning planned activities.

The above provisions demonstrate that the BBNJ Agreement establishes benefits for individuals as stakeholders, including participation, notification, and consultation. This can be understood as the BBNJ Agreement directly conferring benefits upon individuals.

Then, what benefits or obligations do individuals have indirectly, through the Parties to the BBNJ Agreement, namely through Japan[43]? Regarding this, particular attention is paid to the obligations that individuals bear indirectly.

First, I shall ascertain the scope of individuals subject to the regulation by the State in order to fulfil its international legal obligations under the BBNJ Agreement – that is, the "connection point" between the State and individuals in this context[44].

(3) The Connection Point between Japan and Individuals Subject to Japanese Regulation

① The connection point between a Party to the BBNJ Agreement and an individual[45] when regulating that individual, is an important issue for both the State and the regulated individual.

On the one hand, for the State, the question is: over which scope of individuals (and their activities) must it ensure that activities are conducted in conformity with the BBNJ Agreement? Failure to ensure this would constitute a breach of the State's obligations under the BBNJ Agreement. This occurs when international law, such as the BBNJ Agreement, imposes obligations indirectly on individuals through States, rather than directly[46].

Conversely, on the other hand, for individuals, the question is which State's regulations they must comply with when conducting activities. Without being able to predict and understand

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[42] Article 32(3) defines stakeholders in the context of receiving notification of planned activities for the purposes of impact assessment.

[43] For the meaning of an individual having, directly or indirectly, interests, rights or obligations in this paper, see the Introduction.

[44] Hereafter in this paper, the term "connection point" is used in this sense.

[45] As to the fact that "individuals" here are not limited to nationals, see *supra n.* 8.

[46] Some explanation will be given later with footnote (52).

the content of a State's regulations, it is impossible to plan cost-effective activities, particularly for costly operations.

Considering such importance of the connection points, the following provides careful and detailed confirmation of the relevant provisions.

② The BBNJ Agreement establishes “jurisdiction or control” as the connection point between Partys and the individuals. In contrast, some provisions address “jurisdiction” alone. As indicated by the Agreement's title, “beyond national jurisdiction” may refer to areas beyond jurisdictional reach (including the seabed)[47].

A clear contrast between provisions stipulating both “jurisdiction or control” versus those stipulating “jurisdiction” alone is evident in Article 28(1) in Part IV, concerning environmental impact assessments[48].

> Parties shall ensure that the potential impacts on the marine environment of planned activities under their *jurisdiction or control* that take place in *areas beyond national jurisdiction* are assessed as set out in this Part before they are authorized. (emphasis added):

Examples where” jurisdiction” alone is stipulated in contexts referring to jurisdictional waters (including the seabed) include Article 14(5) (areas beyond national jurisdiction) in Part II, relating to marine genetic resources, Article 22(5) (areas within national jurisdiction) and Article 22(6) (within the national jurisdiction) in Part III, relating to area-based management, and Article 29(4) (areas beyond national jurisdiction) in Part IV, relating to environmental impact assessment.

In contrast, provisions providing for “jurisdiction or control” include, for example, the Preamble (activities under a State’s jurisdiction or control), Article 25(1) (activities under their jurisdiction or control) and Article 25(2) (its nationals and vessels or with regard to

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[47] Within territorial sea of 12 nautical miles from the coast, the “sovereignty” of the coastal State extends. Within the exclusive economic zone, the coastal state's “sovereign rights” or “jurisdiction” extend, depending on the matter. These terms designate different rights. Consequently, the meaning is not clear in stating “maritime areas beyond a State's “jurisdiction.” This is likely why Article 1(2), the definitional provision, stipulates as follows:

> Areas beyond national jurisdiction” means the high seas and the Area.

“Areas,” as defined by UNCLOS, means the deep seabed. That is, unless specifically provided otherwise, the BBNJ Agreement applies to the high seas and the deep seabed. Exceptions, such as exclusions from application, will be discussed later insofar as they relate to the subject of this paper.

[48] Article 29(4) contains a similar provision.

activities under its jurisdiction or control) in Part III, relating to area-based management. In Part IV, relation to environmental impact assessments, there are Article 28(1) (planned activities under their jurisdiction or control), Article 29(4) (jurisdiction or control over the planned activities), Article 30(1) (with jurisdiction or control of the activity) and Article 30(2) (planned activities under their jurisdiction or control), Article 31(1)(d)(i) (planned activities under their jurisdiction or control) and Article 31(3) (a planned activity under their jurisdiction or control), Article 34(1) (under whose jurisdiction or control a planned activity falls) and Article 34(2) (the planned activity under the jurisdiction or control), Article 37(2) (with jurisdiction or control over the activity), and Article 39(1) (activities under their jurisdiction or control).

Thus, "jurisdiction or control" are stipulated in these abundant provisions as pertaining to activities or planned activities[49].

③ However, there are also instances that do not conform to this regulatory approach to make distinction between "jurisdiction or control" and "jurisdiction.".

For example, in Part II, concerning marine genetic resources, Article 11(1) stipulates as follows[50]:

> Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction may be carried out by all Parties, irrespective of their geographical location, and by *natural or juridical persons under the jurisdiction* of the Parties. Such activities shall be carried out in accordance with this Agreement. (emphasis added).

Whilst stipulating that natural or juridical persons are "under the jurisdiction of," firstly, why is this not phrased as "under the jurisdiction or control of"? Are activities by natural or juridical persons under control not covered by this provision? Why is that? Secondly, does "jurisdiction" refer to the jurisdiction under general international law, or to the jurisdiction of coastal States, etc., under the law of the sea?

Furthermore, in Part III, relating to area-based management, Article 25(2) presents a different formulation[51].

> Nothing in this Agreement shall prevent a Party from adopting more stringent measures with respect to *its nationals and vessels or with regard to activities under*

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[49] Generally, "act" and "activity" are distinguished. "Act" is typically used when referring to conduct in a legal context. For example, the "international wrongful act" under the law of State responsibility is a typical case.

[50] Article 12(8), Article 14 (3) and (11) contain similar provisions.

[51] Article 25(5) also contains similar provisions.

> *its jurisdiction or control* in addition to those adopted under this Part, in accordance with international law and in support of the objectives of the Agreement (emphasis added).

The provision "under its jurisdiction or control" is identical to other articles stipulating "jurisdiction or control". Moreover, the meaning of "activities under its jurisdiction or control" is likely the same as in other articles. However, with what intent is the phrase "nationals and vessels" added?

A typical provision where international law obliges States to ensure that specific activities conducted by individuals or entities are in conformity to international legal obligations[52] is Article 25(1)[53]. Article 25 in Part III, relating to area-based management, is a provision concerning implementation. Article 25(1) reads:

> Parties shall ensure that *activities under their jurisdiction or control* that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part (emphasis added).

The BBNJ Agreement, with exceptions such as Article 11(1) and Article 25(2), seeks to ensure compliance with its obligations by identifying activities. The State exercising jurisdiction or control over those activities shall ensure that they are taken in conformity with the obligations under the BBNJ Agreement[54].

Here, I will not delve into a detailed examination of the exceptional provisions. The important point is that: Japan must clearly explain regarding these exceptional provisions, to

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[52] On this issue, see A. Kanehara, "An 'Obligation to Ensure': Implementation of International Obligations (in Japanese)," *St. Paul's Review of Law and Politics [Rikkyo Hogaku]* No. 70 (2006), pp. 235-294

[53] As noted above, this concerns cases where individuals bear obligations indirectly, rather than directly, under international law. It is States that bear obligations directly. States bear the obligation to ensure, through legislative, administrative, or policy measures, that individuals and entities conduct activities consistent with the obligations under the BBNJ Agreement. The discretion in selecting such measures is addressed, for example, Article 53 in Part VIII, relating to implementation and compliance, provides as follows:

> Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement.

[54] One method for a State to regulate the actions of individuals and others is to make such actions subject to authorisation. The BBNJ Agreement frequently stipulates "authorize," indicating that authorisation schemes are one means by which States regulate the actions of individuals and others.

the relevant natural or juridical persons, and the nationals and vessels that are subject to Japanese regulation within the context of these provisions.
Next, I explain the meaning of "jurisdiction or control" in the BBNJ Agreement, which defines the activities that are subject to Japan's regulation.

(4) Meaning of "Jurisdiction or Control"

① The provision on "jurisdiction or control" is typically adopted in Principle 21 of the 1972 Stockholm Declaration on the Human Environment[55].

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that *activities within their jurisdiction or control* do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (emphasis added).

Article 194(2) of UNCLOS on the protection and preservation of the marine environment follows this principle[56].

> States shall take all measures necessary to ensure that *activities under their jurisdiction or control* are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention (emphasis added).

② Outside the law of the sea and the law of the international environmental protection, a comparable provision preceding the 1972 Stockholm Declaration on the Human Environment in time is Article 2(1) of the 1966 International Covenant on Civil and Political Rights (the Covenant on Civil and Political Rights).

> Each State Party to the present Covenant undertakes to respect and to ensure to *all individuals within its territory and subject to its Jurisdiction* the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (emphasis added).

The Covenant stipulates "within its territory 'and' subject to its jurisdiction." That is, the

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[55] Principle 2 of the 1992 Rio Declaration on Environment and Development follows this approach.

[56] Many treaties on the international environmental protection also follow this approach.

Contracting Party to the Covenant bears the obligation to ensure human rights for the individuals and others specified by this condition. To expand the scope of human rights protection, arguments have been made to interpret the "and" in "within its territory 'and' subject to its jurisdiction" as "'or"[57].

③ The Stockholm Declaration on the Human Environment adopted the provision "jurisdiction 'or' control," and it prompted debate on the distinct meaning of "control" as opposed to "jurisdiction." Under this principle, due to the phrase "jurisdiction 'or' control," States need to ensure that both activities under their jurisdiction and those under their control, as well, do not cause damage to the environment. In international law, territorial jurisdiction (jurisdiction *ratione loci*) is the most fundamental form of jurisdiction. Unlike territorial or personal jurisdiction, the question arose as to what constitutes "control." This discussion is not pursued here. The crucial point is that for States, this concerns the issue as to which activities by individuals they must ensure no occurrence of damage to the environment in accordance with Principle 21of the Stockholm Declaration. For individuals and entities, it concerns the issue as to which State's regulations they are subject to in conducting the activities concerned.

④ "Control" is a concept debated in different fields of international law, with its meaning specified within each field and context[58]. Activities subject to "jurisdiction or control" as defined by the BBNJ Agreement are largely anticipated to be conducted on the high seas or the deep seabed. Thus, the question of what constitutes "control" – distinct from the "territorial jurisdiction" envisaged in the documents on the international environmental protection, treaties, and human rights conventions – involves not only potentially different content (or types) of jurisdiction but also necessitates defining of the meaning of "control" within the unique context of regulating activities on the high seas and the deep seabed.

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[57] For an examination of this issue from the perspective of the law of State responsibility, see A. Kanehara, 'The Reassessment of Acts of the State in the Law of State Responsibility - A Proposal of an Integrative Theoretical Framework of the Law of State Responsibility to Effectively Cope with Internationally Harmful Acts of Non-State Actors,' *Recueil des cours*, Vol. 399, (2019), Chapter IV, IV.

[58] On "effective control" as a requirement for attributing individual acts to the State under the law of State responsibility, see A. Kanehara, "The Law of State Responsibility's Response to Internationally Harmful Acts by Non-State Entities (in Japanese)," in Yūji Iwasawa, Kōichi Morikawa, Hajime Mori and Yumi Nishimura (eds.), *The Dynamism of International Law [In Memory of Professor Akira Kodera]* (Yūhikaku, 2019), pp. 265–292; Kanehara, *op. cit., supra* n.57, Chapter II and Chapter III.

Without resolving these questions, Japan, as a Party could not precisely fulfil its obligations under the BBNJ Agreement by imposing regulations required on activities. Moreover, for individuals, it would remain unclear which country's regulations individuals, as the entities undertaking the activities, would be subject to[59]. Clarifying the meaning of "jurisdiction or

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[59] There are instances where obligations under the BBNJ Agreement are not imposed. Article 4 excludes warships, military aircraft, and auxiliary vessels, and it is interpreted that, except for Part II, government vessels engaged in non-commercial services are also excluded. Article 4 reads:

> *This Agreement* does not apply to any warship, military aircraft or naval auxiliary. Except for Part II, *this Agreement* does not apply to other vessels or aircraft owned or operated by a Party and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement (emphasis added).

Article 10(2) and Article 10 (3) provide for as follows:

> 2. The *provisions* of this Part shall not apply to:
> (a) activities; or
> (b) Fishing regulated under relevant international law and fishing-related Fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under this Part (emphasis added).
> 3. The *obligations* in this Part shall not apply to a Party's military activities, including military activities by government vessels and aircraft engaged in non-commercial service. The obligations in this Part with respect to the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall apply to a Party's non-military activities (emphasis added).

Under these articles, what do not apply are, the Agreement, the provisions, the obligations. How these articles should be interpreted consistently is not straightforward. Regarding this, Mr Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs stated in the Diet as follows:

> "Article 12 of the Agreement stipulates that when collecting marine genetic

control" stipulated by the BBNJ Agreement, particularly the meaning of "control", constitutes Japan's duty to explain to the individuals and others whose activities it regulates.

4. Environmental Impact Assessments[60]

(1) The BBNJ Agreement as an UNCLOS Implementation Agreement

The BBNJ Agreement is an implementation agreement of UNCLOS[61]. This is explicitly stated in Article 27(a) of Part IV, the objective clause concerning environmental impact assessments.

> The objectives of this Part are to: (a) *Operationalize the provisions of the Convention on environmental impact assessment* for areas beyond national jurisdiction *by establishing processes, thresholds and other requirements* for conducting and reporting assessments by Parties (emphasis added);

The most crucial significance of the Implementation Agreement is that it does not create

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> resources, information must be notified to the information exchange mechanism (the Clearing-House Mechanism, added by the author) established by the BBNJ Agreement. This includes details of the collection plan, the geographical areas in which samples and data of collected marine genetic resources are stored, and the status of use of the stored data. Furthermore, *this notification is required when collecting marine genetic resources, except for fishing and fishing-related activities or military activities* (emphasis added)."

Minutes of the Foreign Affairs Committee, House of Representatives, the 217th Session, No. 9 (23 April 2025), p. 3. While this reference relates to Article 12 and does not mention Article 10, the content is understood to be based on Article 10. Even so, in the remarks, there is no distinction based on the differing expressions between "provisions" and "obligations," under Article 10(2) and (3), nor is there any explanation regarding this point.

[60] The BBNJ Agreement defines environmental impact assessments in its Article 1(7) definition clause as follows:

> "Environmental impact assessment" means a process to identify and evaluate the potential impacts of an activity to inform decision-making.

Article 27(d) of the BBNJ Agreement stipulates the purpose of strategic environmental assessments, while Article 39 obliges Contracting Parties to consider implementing strategic environmental assessments. The following examines environmental impact assessment.

[61] The BBNJ Agreement is the third implementing agreement under UNCLOS. The first is the 1994 Agreement Relating to the Implementation of Part XI of the Convention, and the second is the 1995 Fish Stock Agreement.

obligations that “go beyond” those agreed upon in the UNCLOS itself; that is, it does not impose obligations stricter than those stipulated by UNCLOS. Needless to say, if a treaty separate from UNCLOS stipulates obligations stricter than those prescribed for by UNCLOS, there is no issue whatsoever provided that the Parties to that treaty have agreed to it. However, the BBNJ Agreement, adopted as an implementing agreement to UNCLOS, should not stipulate obligations that “go beyond” those agreed upon in UNCLOS.
In this regard, Article 311 of UNCLOS deserves attention. It governs the relationship between UNCLOS and other treaties[62]. In a word, it is interpreted to maintain as much as

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[62] Article 311 of UNCLOS governs the relationship between UNCLOS and other treaties and agreements. In summary, it stipulates that when UNCLOS Contracting Parties agree on rights and obligations in other treaties, the impact on UNCLOS rights and obligations is limited.

> 1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.
> 2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
> 3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
> 4. States Parties intending to conclude an agreement referred to in paragraph 3 shall notify the other States Parties through the depositary of this Convention of their intention to conclude the agreement and of the modification or suspension for which it provides.
> 5. This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.
> 6. States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

possible the integrity of the rights and obligations under UNCLOS. Considering this UNCLOS's policy, too, an implementing agreement to UNCLOS should certainly not stipulate obligations that "go beyond" those of UNCLOS.

Article 206 of UNCLOS provides for environmental impact assessments as follows:

> When States have *reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment,* they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205 (emphasis added).

The italicized parts constitute the requirement triggering the obligation to conduct an environmental impact assessment[63].

(2) Triggering of the Obligation to Conduct an Environmental Impact Assessment under the BBNJ Agreement

Article 28(2) of the BBNJ Agreement stipulates the conditions for the triggering of the obligation of environmental impact assessment for activities conducted in marine areas within national jurisdiction.

> When a Party with jurisdiction or control over a planned activity that is to be conducted in marine areas within national jurisdiction determines that *the activity may cause substantial pollution of or significant and harmful changes to the marine environment* in areas beyond national jurisdiction, that Party shall ensure that an environmental impact assessment of such activity is conducted in accordance with

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[63] "Pollution" is included in the requirements for environment impact assessments. Pollution is defined in Article 1(4) of UNCLOS as follows:

> "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

There is debate regarding this provision, suggesting some broadening of the concept of pollution; global warming is cited as an example to be included in "pollution." Considering such arguments, the BBNJ Agreement which also defines pollution necessitates clarification of its meaning.

this Part or that an environmental impact assessment is conducted under the Party's national process. A Party conducting such an assessment under its national process shall (emphasis added):

The italicized parts constitute the triggering conditions for the obligation of environmental impact assessment, which reflect Article 206 of UNCLOS[64].

Furthermore, the BBNJ Agreement divides the environmental impact assessment process into several steps, with the following provisions containing differing requirements at each step. In a wider sense, all the steps are included in an environment impact assessment.

For example, Article 30(1), which establishes the threshold criteria for conducting a "screening" as a prerequisite for an environmental impact assessment, in a narrow sense, reads:

> *When a planned activity may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood*, the Party with jurisdiction or control of the activity shall conduct a screening of the activity under article 31, using the factors set out in paragraph 2 below, and (emphasis added)[65]:

Screening is conducted under Article 30 (1) (a) and (b) of the same article to determine whether there are reasonable grounds to believe that the activity may cause "substantial pollution of or significant and harmful changes to the marine environment." If the results of screening indicate there are reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful change to the marine environment, an environmental impact assessment must be carried out.

Therefore, the existence of reasonable grounds to believe that "substantial pollution of or significant and harmful change to the marine environment" may occur constitutes the threshold triggering the obligation to conduct an environmental impact assessment, in a narrow sense.

Following screening and "scoping (Article 31(1)(b))," the Contracting Party shall carry out an environmental impact assessment, in narrow sense (Article 31(1)(c)), and further identify and analyse measures to prevent, mitigate and manage potential adverse effects to avoid significant adverse effects, Article 31(1)(d)(i).

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[64] The same provision is found in articles addressing the same context. For example, Article 30(1)(a) and (b).

[65] The threshold in Article 30(1) is thought to reflect the BBNJ Agreement's principle to apply the precautionary principle and precautionary approach where appropriate (Article 7(1)(c)).

Article 34(2), which governs the decision-making process for authorising activities reads as follows:

> A decision to authorize the planned activity under the jurisdiction or control of a Party shall only be made when, taking into account mitigation or management measures, the Party has determined that it has made all reasonable efforts to ensure that the activity can be conducted in a manner consistent with the *prevention of significant adverse impacts on the marine environment* (emphasis added).

Article 35, governing post-commencement monitoring, requires Contracting Parties to monitor whether activities "are likely to pollute or have adverse impact on the marine environment." Article 37 (2), dealing with the review of aurthorised activities, reads:

> Should the Party with jurisdiction or control over the activity identify *significant adverse impacts* that either were not foreseen in the environmental impact assessment, in nature or severity, or that arise from a breach of any of the conditions set out in the approval of the activity, the Party shall review its decision authorizing the activity …(emphasis added).

These provisions, tailored to each step of the environmental impact assessment process, differ in their stipulations regarding thresholds and other aspects at each step. Understanding the meaning of these provisions is not straightforward. However, the following points need to be seriously considered.

The concepts employed for thresholds – such as pollution, significant, substantial, and adverse impact – are concepts that have been carefully and seriously debated in the related areas of international law, such as the law of State responsibility, the international environmental law, focusing upon the duty to prevent (environmental) damage and the entailing of State responsibility[66]. This is because, these concepts have function of compromising conflicting fundamental rights, such as compromising between sovereignties, that between the right of development and the protection of environment. Considering this important function and historical background of these concepts, the provisions that include them must be interpreted precisely in light of such function and background.

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[66] The terms "substantial" and "significant" are the concepts indicating the degree of (environmental) damage, and there is debate concerning the triggering of the duty to prevent damage and the occurrence of State responsibility. Including an examination of the Trail Smelter case, A. Kanahara, "The Meaning of the Relativity of Territorial Sovereignty in the Principle of *sic utere tuo ut alienum non laedas* (in Japanese)," in Sh. Murase and N. Okuwaki, eds., *Jurisdiction of the State: The Relationship between International Law and Domestic Law* (Keiso Shobo, 1998), pp. 179-207.

In this regard, the most frequently cited case in the international environmental law is the Trail Smelter case of the first half of the 20th century[67]. This was a dispute between Canada and the United States, whose territories border each other.

Fumes from the Trail Smelter, operated with Canadian permission within Canadian territory, caused damage in the territory of the United States. Canada asserted its right to use its territory, while the United States asserted its right to territorial integrity, demanding that damage not occur within its own territory. Both claims are based upon (territorial) sovereignty, the most fundamental right of sovereign States in international law.

To reconcile the equal rights of both nations based on their equal territorial sovereignty, a decision was made that:

> "…under the principles of international law, as well as of the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of *serious consequence* and the injury is established by clear and convincing evidence (emphasis added).[68]"

The threshold for damage to prevent was thus carefully established, bringing the reconciliation of conflicting rights based on equal territorial sovereignty.

Since then, this threshold has been discussed regarding the extent of the duty to prevent environmental damage and State responsibility. This discussion has been incorporated into the international environmental law, too.

In the environmental impact assessment for the BBNJ Agreement, thresholds regulating activities of individuals have been devised in accordance with several steps of the environmental impact assessment process such as, screening, scoping, environmental impact assessments- in a narrow sense, prevention, mitigation and management of potential adverse impacts.

With that historical background of international law the crucial points are, firstly, that the BBNJ Agreement is an implementing agreement for UNCLOS, specifically implementing Article 206 of UNCLOS; and secondly, that Japan, as a Party, must clarify the meaning of concepts such as pollution, substantial, significant, and harmful damage to the marine environment, with the knowledge of the historical background and based on the international practice and judicial precedents, and explain to individuals the requirements

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[67] Trail Smelter case, https://legal.un.org/riaa/volumes/riaa_III.pdf, Decision of 16 April 1938, pp. 1911-1937; Decision of 16 April 1938-1982.

[68] *Ibid.*, p. 1965. This is the part frequently referred to in the fields of the law of State responsibility and the international environmental law.

under which their activities may be regulated and restricted. This constitutes a state's, Japan's, accountability.
Otherwise, activities could be unnecessarily restricted, and individuals would be unable to predict regulations and restrictions on their activities, and safely plan them. Without recognising and understanding the precise meaning of these thresholds, Japan could not make decisions to authorise planned activities while considering environmental impact assessments.
From this perspective, I next examine Japan's position with respect to this point.

(3) Guidelines Issued by the Ministry of the Environment[69]

① On 10 June 2025, the Ministry of the Environment issued the "Guidelines on the Implementation of Environmental Impact Assessments on the High Seas and Other Areas"[70].
The Guidelines are not legally binding. Chapter 1, Article 1 on the objectives lists both "the conservation and sustainable use of biodiversity." It also provides that the Guidelines are set for ensuring that the authorities and others conduct the environmental impact assessment under Part IV of the BBNJ Agreement. Chapter 2, Article 2 is understood to reflect the BBNJ Agreement by stipulating the intent to implement Articles 30, 31(1)(a), and 38, and the conduct of environmental impact assessments when there are reasonable grounds to believe that the activities may cause "substantial pollution of or significant and harmful change to the marine environment." Chapter 6, Article 1 reads "ensuring that the activities are conducted so as not to cause significant adverse impacts on the marine environment."
② The issuance of such guidelines is appropriate in that it allows individuals to anticipate national regulations and restrictions when devising and planning activities. Furthermore, as noted above, given the prevalence of technical terms and concepts that have been subject to repeated debate in international law, under the relevant provisions of the BBNJ Agreement on environmental impact assessments, Japan bears a duty to clearly explain the meaning of these concepts to the entities undertaking activities.
③ Japan is conducting environmental impact assessments in relation to the resource

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[69] https://www.env.go.jp/content/000320443.pdf (in Japanese).

[70] Article 28(2) of the BBNJ Agreement also stipulates that Party shall ensure that an environmental impact assessment of such activity is conducted in accordance with this Part or that an environmental impact assessment is conducted under the Party's national process.

development in seabed[71]and offshore wind power generation[72]. These, including the environmental impact assessments under the BBNJ Agreement, constitute Japan's policy on environmental impact assessments for the oceans. Whilst differences may exist in individual contexts, it is desirable that these form a consistent and effective national ocean policy of Japan.

(4) Explanations by the Ministry of Foreign Affairs in the Diet

In the Diet, there are remarks stating that "when undertaking activities that may cause significant and harmful changes to the marine environment of the high seas and the deep seabed, a prior environmental impact assessment is required[73]." Similar responses reiterate that "an environmental impact assessment is conducted when activities on the high seas or deep seabed may cause significant and harmful changes to the marine environment[74]."

As explained above, the BBNJ Agreement establishes several steps as part of the environmental impact assessment process, setting specific thresholds for each. These thresholds are crucial to avoid unnecessarily restricting activities and to achieve the fundamental balance between the conservation and sustainable use of biodiversity that underpins the BBNJ Agreement.

The remarks by the Ministry of Foreign Affairs in the Diet cited here do not explain this

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[71] Cross-Ministerial Strategic Innovation Promotion Programme (in Japanese), https://www8.cao.go.jp/cstp/gaiyo/sip/sipgaiyou.pdf.

[72] Amended Act on Promoting the Utilisation of Sea Areas for the Development of Marine Renewable Energy Power Generation. Regarding this amended Act from a perspective of international law, see A. Kanehara, "Offshore Wind Power Generation in the Exclusive Economic Zone," https://cigs.canon/article/20250616_8977.html; A. Kanehara Lecture Report "Study Group on International Law Concerning the Implementation of Offshore Wind Power Generation in the Exclusive Economic Zone – Focusing on the United Nations Convention on the Law of the Sea and the Amended Act on Promoting the Utilisation of Sea Areas for the Development of Marine Renewable Energy Power Generation (in Japanese)," https://cigs.canon/article/20251223_9487.html.

[73] Remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs and Defence Committee, House of Councillors, the 217th Session, No. 15 (22 May 2025), p. 2.

[74] Remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, *ibid.*, p. 16.

process of environmental impact assessments. However, these two remarks can be understood as considering the threshold for environmental impact assessments. Namely, "when conducting an environmental impact assessment" is to be "where activities may cause significant and harmful changes to the marine environment." When viewed in light of the BBNJ Agreement, this threshold in the two remarks does not precisely reflect the threshold for environment impact assessments established under the Agreement. Article 30 (1)(b) reads:

> If it is determined on the basis of the screening that *the Party has reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful changes to the marine environment*, an environmental impact assessment shall be conducted in accordance with the provisions of this Part (emphasis added).

In the threshold in the remarks by the Ministry of Foreign Affairs the phrase "substantial pollution of" which Article 30 (1) (b) of the BBNJ Agreement prescribes for, is missing. For this fact of missing, the two remarks do not explain any reasons. There is no mention about the various steps in the environmental impact assessment process adopted under the BBNJ Agreement.

In contrast, the Explanatory Notes issued by the Ministry of Foreign Affairs, in referring to these related provisions, state as follows:

> …when *the Party has reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful changes to the marine environment*, an environmental impact assessment shall be conducted (emphasis added)[75].

From the perspective of the positioning of the threshold in the environmental impact assessment process, the Explanatory Notes accurately explain the BBNJ Agreement.

As explained in detail above, such thresholds are those debated since the first half of the 20th century within the international environmental law, and the law of State responsibility, for instance. They are thresholds carefully considered to balance the rights of sovereign States and to avoid unnecessarily restricting activities. The remarks by the Ministry of Foreign Affairs mention ensuring "that the activities of Japanese researchers or companies are not unduly restricted[76]." Furthermore, as confirmed in the remarks by Mr. Yukiya Hamamoto,

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[75] Explanatory Notes, pp. 15-18.

[76] Remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs and Defence Committee, the 217th Session, No. 15 (22 May 2025), p. 16.

Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs in the Diet[77], these thresholds within the BBNJ Agreement are fundamental to realising the Agreement's core purpose: balancing the conservation and sustainable use of biodiversity.
Given the gravity of these issues, the remarks, regarding the thresholds of environmental impact assessments by the Ministry of Foreign Affairs in the Diet cited here are incomprehensible.

Thus far, this paper has examined several issues concerning the BBNJ Agreement from the perspective of how its ratification by Japan is explained to individuals. In conclusion, while they may not directly concern regulations on individuals, several other points regarding the BBNJ Agreement should be noted.

5. Conclusion

(1) Nature of Implementation and Compliance Mechanism of the BBNJ Agreement

In the Diet, questions were raised concerning penalties for violations. In response, the government stated:

> "As the honourable member pointed out, Article 11(4) of this Agreement stipulates that no State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction. However, it does not provide for penalties or other measures in the event of violations[78]."
> "On the other hand, concerning the implementation and compliance of this Agreement, it is prescribed that each Party shall report to the Conference of the Parties on the status of implementation of its obligations, and further, that a subsidiary body of this Conference of the Parties shall make necessary recommendations to the Conference of the Parties. The Agreement provides that various matters shall be ensured through these procedures[79]."

This explanation is likely to be understood as a description of compliance based on Article

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[77] *Supra n.* 32.

[78] Remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs and Defence Committee, the 217th Diet Session, House of Councillors, No. 15 (22 May 2025), pp. 9-10.

[79] Remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, *ibid.*

54 and Article 55 of the BBNJ Agreement.

Article 54 reads:

> Each Party shall monitor the implementation of its obligations under this Agreement and shall, in a format and at intervals to be determined by the Conference of the Parties, report to the Conference on measures that it has taken to implement this Agreement.

Regarding the compliance policy of the BBNJ Agreement, the following point is important as it relates to the very essence of the Agreement. Article 55 of the BBNJ Agreement stipulates the following concerning the Implementation and Compliance Committee:

> An Implementation and Compliance Committee to facilitate and consider the implementation of and promote compliance with the provisions of this Agreement is hereby established. The Implementation and Compliance Committee shall be *facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive* (emphasis added).

The BBNJ Agreement adopts a policy of promoting compliance, even in the event of violations, rather than resorting to adversarial or sanctioning measures.

While many treaties possess implementation mechanisms, the policy of promoting compliance and avoiding adversarial or sanctioning responses is one particularly adopted by the treaty regimes on the global environmental protection[80]. Typical examples adopting this approach include Annex IV to the Montreal Protocol, which establishes non-compliance procedures under Article 8 of the Montreal Protocol within the treaty regime on the ozone layer protection, and the Paris Agreement (Article 15) within the treaty regime on the climate change.

The BBNJ Agreement, like these treaty regimes on the global environmental protection, adopts this approach in its systems designed to ensure the widest possible participation of States in the international society as parties, and to secure compliance by parties with

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[80] On the treaty regime for the global environmental protection, see A. Kanehara, "Methods of International Regulation for Global Environmental Protection: Re-examining the Formation of International Law," in M. K. Young and Y. Iwasawa eds., *Trilateral Perspective on International Legal Issues: Relevance of Domestic Law and Policy* (Brill, 1996), pp. 47-60; A. Kanehara, "The Significance of 'Pledge and Review' Process in Growing International Environmental Law," *The Japanese Annual of International Law*, No. 35 (1992), pp. 1-32; A. Kanehara, "'Precautionary Remedies' in the Conventions on Global Environmental Protection (in Japanese)," *The Journal of International Law and Diplomacy*, Vol. 93, Nos. 3・4 (1994), pp. 160-203

varying capacities for implementation.

(2) Research and Development Activities on marine Genetic Resources

In the Diet Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs stated:

> "In Japan, we understand that researchers from the National Research and Development Agency or universities have collected microorganisms from the high seas and deep seabed for academic research and similar purposes. On the other hand, from interviews with relevant industries and others, we understand that at this stage, there are no known cases of product development or similar activities utilising marine genetic resources collected from the high seas or deep seabed[81]."

Regarding the collection of marine genetic resources, concerning the notification obligation under Article 12 of the BBNJ Agreement, Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, explained in the Diet:

> "Article 12 of the Agreement stipulates that when collecting marine genetic resources, information must be notified to the information exchange mechanism established by the Agreement. This includes details of the collection plan, the location where samples and data of the collected marine genetic resources are stored, and the status of use of the stored data. This notification is required when collecting marine genetic resources, excluding fishing and fishing-related activities or military activities[82]."

Article 12 sets out this notification obligation in a considerably detailed manner[83]. For Japan

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[81] Minutes of the Foreign Affairs and Defence Committee, the 217th Diet Session, House of Councillors, No. 15 (22 May 2025), p. 8.

[82] Minutes of the Foreign Affairs Committee, the 217th Diet Session, House of Representatives, No. 9 (23 April 2025), p. 3.

[83] While Article 12 is so detailed a provision, to indicate how the entities of the activities as well as Contracting Parties have a tremendously heavy burden to comply with the obligation under this Article, it is useful to reproduce the entire provision here. It reads:

> 1. Parties shall take the necessary legislative, administrative or policy measures to ensure that information is notified to the Clearing-House Mechanism in accordance with this Part.
>
> 2. The following information shall be notified to the Clearing-House Mechanism six months or as early as possible prior to the collection in situ of marine genetic

resources of areas beyond national jurisdiction: (a) The nature and objectives under which the collection is carried out, including, as appropriate, any programme(s) of which it forms part; (b) The subject matter of the research or, if known, the marine genetic resources to be targeted or collected, and the purposes for which such resources will be collected; (d) The geographical areas in which the collection is to be undertaken; (d)A summary of the method and means to be used for collection, including the name, tonnage, type and class of vessels, scientific equipment and/or study methods employed; (e) Information concerning any other contributions to proposed major programmes; (f) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate; (g) The name(s) of the sponsoring institution(s) and the person in charge of the project; (h) Opportunities for scientists of all States, in particular scientists from developing States, to be involved in or associated with the project; (i) The extent to which it is considered that States that may need and request technical assistance, in particular developing States, should be able to participate or to be represented in the project; (j) A data management plan prepared according to open and responsible data governance, taking into account current international practice.

3. Upon notification referred to in paragraph 2 above, the Clearing-House Mechanism shall automatically generate a "BBNJ" standardized batch identifier.

4. Where there is a material change to the information provided to the Clearing-House Mechanism prior to the planned collection, updated information shall be notified to the Clearing-House Mechanism within a reasonable period of time and no later than the start of collection in situ, when practicable.

5. Parties shall ensure that the following information, along with the "BBNJ" standardized batch identifier, is notified to the Clearing-House Mechanism as soon as it becomes available, but no later than one year from the collection in situ of marine genetic resources of areas beyond national jurisdiction: (a) The repository or database where digital sequence information on marine genetic resources is or will be deposited; (b) Where all marine genetic resources collected in situ are or will be deposited or held; (c) A report detailing the geographical area from which marine genetic resources were collected, including information on the latitude, longitude and depth of collection, and, to the extent available, the findings from the activity undertaken; (d) Any necessary updates to the data management plan provided under paragraph (2) (j) above.

to fulfil this notification obligation under paragraph 1 of the same article, it must obtain this detailed information from the entities undertaking research and development activities. In other words, these entities must submit this detailed information to the authorities.
In relation to this, Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs said:

> "As for Japan, we wish to conclude this Agreement at an early date and actively engage in the rule-making process at the Conference of the Parties, so that the procedures concerning this notification do not impose an excessive burden on Japan's activities, including academic research.[84]"

> 6. Parties shall ensure that samples of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction that are in repositories or databases under their jurisdiction can be identified as originating from areas beyond national jurisdiction, in accordance with current international practice and to the extent practicable.
> 7. Parties shall ensure that repositories, to the extent practicable, and databases under their jurisdiction prepare, on a biennial basis, an aggregate report on access to marine genetic resources and digital sequence information linked to their "BBNJ" standardized batch identifier, and make the report available to the access and benefit-sharing committee established under article 15.
> 8. Where marine genetic resources of areas beyond national jurisdiction, and where practicable, the digital sequence information on such resources are subject to utilization, including commercialization, by natural or juridical persons under their jurisdiction, Parties shall ensure that the following information, including the "BBNJ" standardized batch identifier, if available, be notified to the Clearing-House Mechanism as soon as such information becomes available: (a) Where the results of the utilization, such as publications, patents granted, if available and to the extent possible, and products developed, can be found; (b) Where available, details of the post-collection notification to the Clearing-House Mechanism related to the marine genetic resources that were the subject of utilization; (c) Where the original sample that is the subject of utilization is held; (d) The modalities envisaged for access to marine genetic resources and digital sequence information on marine genetic resources being utilized, and a data management plan for the same; (e) Once marketed, information, if available, on sales of relevant products and any further development.

[84] Remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal

The Explanatory Notes state that legislative measures are unnecessary[85]. Further consideration is warranted regarding whether individuals acting as entities of research and development activities will be subject to prior approval or licensing procedures, the means and procedures for receiving information to be submitted from individuals, and, above all, whether the burden on entities of research and development activities will not be excessive. Moreover, for individuals undertaking research and development activities to contribute to the implementation of the BBNJ Agreement while bearing such burdens, the effectiveness of the BBNJ Agreement ratified by Japan should, above all, provide a compelling justification. Will the Agreement be effective for achieving its goals of the conservation and sustainable utilization of marine biodiversity of areas beyond national jurisdiction? This point shall be addressed finally.

(3) Effectiveness of the BBNJ Agreement

① The BBNJ Agreement aims to ensure the conservation and sustainable utilization of marine biological diversity of areas beyond national jurisdiction[86]. This sets forth a new general interest of the international society[87]. When this general interest is approved by not only Japan but also by individuals, the remaining issue is whether the BBNJ Agreement is effective, for the individuals to accept the regulation and restrictions on their activities based upon the Agreement for realizing the general interest[88]. Such regulation and restrictions will

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Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs Committee, the 217th Diet Session, House of Representatives, No. 9 (23 April 2025), p. 3. As to similar remarks by Mr. Yukiya Hamamoto, Minutes of the Foreign Affairs and Defence Committee, the 217th Diet Session, House of Councillors, No. 15 (22 May 2025), p. 16.

85 Explanatory Notes, p. 28.

86 Article 2 provides for this.

87 As to a critical analysis of this general interest, see A. Kanehara, "What Does a New International Legally Binding Instrument on Marine Biological Diversity of Areas beyond National Jurisdiction 'under the UNCLOS' Mean?", *Sophia Law Review*, Vol. 59, No. 4, (2016), pp. 65-73.

88 As discussed in the Introduction, sovereign States should try to realize general interests of the international society, and their national interests, at the same time. Kanehara, *op. cit., supra n.* 7, https://cigs.canon/uploads/2024/08/240807_kanehara.pdf, pp. 42 *et seq.* National interests encompass not only interests of States but also those of individuals. Therefore, individuals have concern both with general interests of the international society and national interests. In ratifying the BBNJ Agreement, in the remarks by the government

be imposed by Japan, as it has ratified the Agreement to be its party.

② The BBNJ Agreement is to set new international rules for biodiversity of *areas beyond national jurisdiction*, namely, in the high seas and the deep seabed[89]. For *areas within national jurisdiction*, the Convention on Biological Diversity (CBD) applies[90]. This is a distribution of applicable law that would not necessarily guarantee the effective conservation and sustainable use of biodiversity. Such distribution of applicable law is based upon the sea zone system that the law of the sea has adopted[91].

For instance, habitat does not exist in accordance with the delimitation of sea zones under the law of the sea, and it may straddle sea areas within and beyond national jurisdiction. By applying different legal regimes, between areas within national jurisdiction and those beyond national jurisdiction, the effective conservation and sustainable use of biodiversity could not be necessarily guaranteed. This issue has been pointed out since the negotiating process of the BBNJ Agreement.[92]

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in the Diet, repeatedly Japan's national interest was mentioned, but no detailed explanation was given on it. It is uncertain whether individuals could acquire from the discussion in the Diet the information on the substance of Japan's national interests and its inclusion of interests of individuals. Nonetheless, it could be expected that when individuals approve the general interest to be realized by the BBNJ Agreement, its effectiveness would provide them with convincingness, at least, somehow, for the regulation and restrictions on their activities due to the Agreement.

[89] Confirmed by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs and Defence Committee, the 217th Diet Session, House of Councillors, No. 15 (22 May 2025), p. 2.

[90] The Ministry of Foreign Affairs explains the two treaties, namely the CBD and the BBNJ Agreement in this sense, https://www.mofa.go.jp/mofaj/gaiko/kaiyo/law.html (in Japanese).

[91] Kanehara, *op. cit., supra n.* 13, 3. Historical Development of the International Regulation on the Ocean Uses of High Seas.

[92] As to this point, see Kanehara, *op. cit., supra n.* 87, p. 73; Y. Tanaka, A Dual Approach to Ocean Governance: The Cases of Zonal and Integrated Management in International Law of the Sea, (Ashgate, 2008), Chapter 2; K. M. Gierde, "Challenges to Protecting the Marine Environment beyond National Jurisdiction," in D. Freestone ed. *1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas*, (Martinus Nijhoff Publishers, 2013), p. 170; R. A. Barnes, "Consolidating Governance Principles for Areas beyond National Jurisdiction," *The International Journal of Marine and Coastal Law,* Vol. 27 (2012),

The BBNJ Agreement adopted new regulative approaches for the conservation and sustainable use of biodiversity, such as an ecosystem approach[93] and an integrated approach[94]. They are required particularly for the tools of area-based management including marine protected areas.[95] These regulative approaches are different from those that UNCLOS and other international treaties on the law of the sea have adopted[96].

Article 22 (5) of the BBNJ Agreement considers the effectiveness of measures adopted in respect of areas within national jurisdiction. The cooperation with stakeholders, adjacent coastal States, the most affected States[97], global and regional bodies[98], coastal States whose exclusive economic zones entirely surround the proposed area-based tools[99], might function, at least, somehow, to contribute to the realization of effective legal regulation for sea areas both within and beyond national jurisdiction. We need to wait for the actual application of the BBNJ Agreement in this regard.

③ Furthermore, non-Parties to the BBNJ Agreement will enjoy the freedom of high seas after its entering force[100]. The BBNJ Agreement itself seeks a very subtle balance between the freedom of high seas[101] and its regulation on research and development activities of marine genetic resources[102].

Article 7 (c) deserves attention in this regard.

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p. 256.

93 Article 7 (f).

94 Article 7 (g).

95 Kanehara, *op. cit., supra n.* 13, 4 . The New Wave of the International Regulation on the Uses of High Seas That Is Been Introduced by the BBNJ Agreement; A. Kanehara, "Challenges to the Traditional Law of the Sea in the Conservation and Sustainable Utilisation of Marine Biodiversity of Areas beyond National Jurisdiction (in Japanese)" in Yakushiji *et. als* eds., *New Development of the Law of the Sea with Respect to Areas beyond National Jurisdiction*, (Yushindo, 2021), pp. 16-18.

96 *Ibid.*, pp. 11-18.

97 Article 32 (2).

98 As to the provisions of the BBNJ Agreement dealing with stakeholders, and global and regional bodies and others, see Section 3. (2) and *supra n.* 37.

99 Article 21 (4).

100 Confirmed by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, Minutes of the Foreign Affairs Committee, the 217th Diet Session, House of Representatives, No. 9 (23 April 2025), p. 17.

101 Article 7 (c).

102 Article 11, particularly Article 11 (1).

> The freedom of marine scientific research, together with other freedoms of the high seas;

Under Article 11 (1), "Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction" shall be carried out in accordance with the BBNJ Agreement. Article 1 of the Agreement defines "collection in situ," "marine genetic resources," "marine technology," and "utilization of marine genetic resource."

Then, what is "marine scientific research" enjoying the freedom of high seas? To make precise distinction between activities endorsed by the freedom, and those subject to regulation is crucially important for individuals. It is indispensable for them to predict regulations and restrictions on their activities to safely plan costly research and development activities. To give enough and correct knowledge based upon appropriate interpretation of the BBNJ Agreement is a duty for Japan. It is among the duty for "not imposing an excessive burden on Japan's activities, including academic research[103]."

③ Japan has traditionally taken the position to support the freedom of high seas. For instance, it long opposed widening of territorial seas to reduce the scope of the high sea areas[104]. It has been a long-distance fishing nation[105]. Therefore, Japan's ratification of the BBNJ Agreement is a significant change of its position to the law of the sea as far as the Agreement is departing from the freedom of high seas[106].

④ Thus, Japan's ratification of the BBNJ Agreement, so far as it brings departing from the freedom of high seas, will impose heavy burden on the individuals as entities of the relevant activities that are subject to the regulation by the BBNJ Agreement. The regulation and

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[103] See the remarks by Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, *supra n.* 84.

[104] Already in the 1960's, widening the width of territorial sea from 3 to 6, and even more, nautical miles was discussed. Japan in 1977 finally enacted the Act on the Territorial Sea and the Contiguous Zone which adopts 12 nautical miles for the width of Japan's territorial sea.

[105] See, Section 3. (1).

[106] Relatedly, in the Diet, Mr. Yukiya Hamamoto, Deputy Director-General for the International Legal Affairs Bureau of the Ministry of Foreign Affairs, stated:

> For the purpose of the conservation of marine biodiversity, it is necessary to seek for compatibility between fishing and deep sea-bed mining of mineral resources, on the one hand, and the conservation of biodiversity, on the other hand.

Minutes of the Foreign Affairs Committee, the 217th Diet Session, House of Representatives, No. 9 (23 May 2025), p. 3

restrictions relate not only to research and development activities concerning marine genetic resources but also to activities for which environment impact assessments are required based upon the BBNJ Agreement.

To convince individuals to accept the regulation and restrictions thereof, it is important for Japan to ensure the effectiveness of the BBNJ Agreement for achieving the goal of the conservation and sustainable utilisation of marine biodiversity of areas beyond national jurisdiction, namely a new general interest of the international society[107]. Otherwise, individuals, even they recognize such a general interest, would not find any reasons to comply with the regulation and restrictions on their activities due to the Agreement.

Not to mention, Japan must explain the reason to its nationals and stakeholders for its change from the traditional policy supporting the freedom of high seas, so far as the BBNJ Agreement departs from it.

⑤ Current days, international law regulates not only foreign relations of sovereign States, but also individuals. Both sovereign States' rights, interests and obligations, and those of individuals are provided by international law. Therefore, ratification by Japan of treaties is keen concern of individuals.

Respecting such concern of individuals, in ratifying treaties, Japan has a duty to enough explain the reasons for it. This is the *raison d'être* of the Diet approval procedure of treaties in the democratic nations.

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[107] As to the relationship between the general interest of the international society under the BBNJ Agreement and Japan's national interest, and individuals' understanding on them, See *supra n.* 88.