

29 April 2026

**The BBNJ Agreement in the Context of the
Historical Development of the Law of the Sea**

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References

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[This lecture is based upon:]

• **Atsuko Kanehara**, “Challenges of the BBNJ Agreement: from the Perspective of Japan’s Ratification,”

https://cigs.canon/en/article/20260206_9681.html

• **Atsuko Kanehara**, “Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea,”

https://cigs.canon/article/20240510_8073.html

• **Atsuko 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. 53-73.

• **Atsuko Kanehara**, “Interplay between the United Nations Convention on the Law of the Sea and Other International Law for Building a Comprehensive International Maritime Order,” *Japanese Yearbook of International Law* Vol. 63 (2020), pp. 52-92.

References

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[The BBNJ Agreement]

AGREEMENT UNDER THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA ON THE
CONSERVATION AND SUSTAINABLE USE OF MARINE
BIOLOGICAL DIVERSITY OF AREAS BEYOND
NATIONAL JURISDICTION

<https://www.un.org/bbnjagreement/sites/default/files/2024-08/Text%20of%20the%20Agreement%20in%20English.pdf>

Structure of the Lecture

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- 1. Introduction**
- 2. The Adoption of the BBNJ Agreement in 2023**
- 3. The Characteristics and the Arguments on the Contents of the BBNJ Agreement**
- 4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea**
- 5. Fundamental Change of the Idea of Oceans**
- 6. Conclusion: Moving Forward**

I. Introduction

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[Significance of the BBNJ Agreement from the perspective of the historical development of the law of the sea]

This lecture purports to examine the significance and the achievement of the BBNJ Agreement in the historical development of the law of the sea.

How has the international regulation on the use of high seas developed, and how can it proceed further by the BBNJ agreement?

2. Adoption of the BBNJ Agreement

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On **the 13th of June, 2023**, after very long discussion and many sessions of the international governmental conference, it was agreed by the conference, and adopted by the UN.

[Current Status of the BBNJ Agreement]

As of the 18th of April, 2026, 145 States signed it and 88 Parties
After 120 days from ratification by 60 States, it enters into force
according to Article 68, Paragraph 1 of the Agreement.

Entry into Force: 17 January, 2026

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en

2. Adoption of the BBNJ Agreement

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[What significance and achievement does the BBNJ Agreement demonstrate, from the perspective of the historical development of the law of the sea?]



Such consideration seems to be useful, as it may form some reason for a little slow progress in the Agreement's coming into force with enough support by international society's normative conscience.

How has the international regulation on the uses of high seas developed, and how can it further proceed by the BBNJ Agreement?

3. The Characteristics and the Arguments on the Contents of the BBNJ Agreement

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(1) The BBNJ Agreement as the Third Implementation Agreement for UNCLOS

UNCLOS is expected to work together with its implementation agreements.

Its Preamble admits an existence of matters that are not regulated by

UNCLOS.

Affirming that *matters not regulated by this Convention* continue to be governed by the rules and principles of general international law (emphasis added),

3. The Characteristics and the Arguments on the Contents of the BBNJ Agreement

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The BBNJ Agreement is the third implementation agreement for UNCLOS.

- ① The 1994 Agreement Relating to the Implementation of Part XI of the Convention, with respect to the exploration and exploitation of the natural resources on the deep sea-bed.
- ② The 1995 Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stock Agreement).

3. The Characteristics and the Arguments on the Contents of the BBNJ Agreement

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(2) Characteristics of the BBNJ Agreement

① Marine Genetic Resources

→ equitable distribution of the interests from the development of marine genetic resources

② Area Based Management Tools

= so-called “marine protected areas”

③ Human Resources Development and Capacity Building

④ Technology Transfer

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(1) Traditional Controversy in the History of the Law of the Sea

① “Mare Liberum”

The historical controversy:

“Mare Liberum” v. “Mare Clausum” in the 17th Century

The most famous conflicting arguments were conducted between Hugo Grotius of the Netherlands, the so-called founder of international law, and John Selden of the United Kingdom.

With the background of the mercantilism and necessity of marine transportation, “*mare liberum*” surpassed “*mare clausum*.”



4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(1) Traditional Controversy in the History of the Law of the Sea

① “Mare Liberum” (continued)

The oceans became to be understood as being **wide (and open) and free** for various uses of all humankind.

= A fundamental idea of oceans that still keeps some influence even in the current days.



Such an idea, as being explained later, will inevitably change for the purpose of realizing the common interest in the conservation and sustainable use of biodiversity.

This is: a remarkable result that the BBNJ Agreement has brought to the law the sea.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(1) Traditional Controversy in the History of the Law of the Sea (continued)

② Dual zone system: high seas and territorial seas

With the development of the understanding of territorial seas as “sea zones” over which coastal States have a comprehensive right (sovereignty), the dual zone system was established.

Initially coastal States did not have a concept of “sea zones”, and claimed different distances for their rights depending on matters, such as maritime security, fishing, immigration, marine pollution and etc.

At the latest, at the end of the 19th century, States became to grasp their sea areas near to their coasts as “sea zones” over which they have a comprehensive right in relation to the various matters.

= **Territorial seas**

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(1) Traditional Controversy in the History of the Law of the Sea (con

② Dual zone system: high seas and territorial seas (continued)



A main pillar of the 1958 four Geneva Conventions on the Law of the Sea

Among the four conventions, the two are related to high seas and territorial seas:

The Convention on the High Seas

The Convention on Territorial Sea and Contiguous Zone.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(1)② Dual zone system: high seas and territorial seas
(continued)

The 1982 UNCLOS established a multiple zone system.

In addition to high seas and territorial seas, contiguous zones, exclusive economic zones, continental shelf, archipelagic waters, deep sea-bed.

Under UNCLOS, too, the zones of high seas and territorial seas still stand out as the principal legal regimes of oceans.

* The legal regimes on contiguous zone and continental shelf were established by the 1958 Conventions on the law of the sea.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(2) Development of the International Regulations on the Uses of High Seas

① Reasonable (Due) regard principle

Article 2 of the Convention on High Seas reads:

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States *with reasonable regard to the interests of other States* in their exercise of the freedom of the high seas (emphasis added).

Article 87, Paragraph 2 of UNCLOS prescribes for the same idea as follows:

These freedoms shall be exercised by all States *with due regard for the interests of other States* in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area (emphasis added).

According to the reasonable (due) regard principle, **the logic of the international regulation is to seek “compromise on an *ad hoc* basis” when two (plural) uses of high seas conflict with each other.**

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(2) Development of the International Regulations on the Uses of High Seas

① Reasonable (Due) regard principle (continued)

e. g. States may conduct military drills, and for the safety of foreign vessels and for the protection of the military equipment, they may set a safety zone where the navigation of foreign vessels is restricted.

If the safety zone is unreasonably and unnecessarily wide, such a use of high seas would be criticized as lack of reasonable (due) regard for the interests of other States, mainly the freedom of navigation of other States.

The same holds true with offshore windfarms in exclusive economic zones and safety zones that are established surrounding the windfarms.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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Essence of the Reasonable (Due) Regard Regulation

Its concrete contents are decided on an *ad hoc* basis as compromise between two (plural) uses of high seas which conflict with each other.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(2) Development of the International Regulations on the Uses of High Seas (continued)

② International regulations on the uses of high seas depending on individual matters: “Sector-specific regulation”

Based upon the recognition of common interests (explained in the following slides) of international society, the relevant treaties were adopted to realize such common interests.

Such individual matters reflect the common interests of international society.

=Sector-specific regulation on the uses of high seas

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(2) Development of the International Regulations on the Uses of High Seas

② International regulations on the uses of high seas depending on individual matters: “Sector-specific regulation” (continued)

a. UNCLOS

Preamble may indicate the idea of “a cross-sectoral regulation on the uses of high seas” in the phrase, “the problems of ocean space are **closely interrelated and need to be considered as a whole.**”

However, UNCLOS individually regulates the uses of high seas, such as navigation (Article 94), fishing (Articles 116 to 119), harmful uses to the marine environment (Part XII), and marine scientific research (Part XIII)

=A sector-specific regulation on the uses of high seas

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(2) Development of the International Regulations on the Uses of High Seas

② International regulations on the uses of high seas depending on individual matters: “Sector-specific regulation” (continued)

b. Treaties other than UNCLOS

▪ Preservation and protection of the marine environment

e. g. MARPOL 73/78

e. g. The London Convention Regime on the Ocean Dumping

▪ Conservation and management of fishery resources

e. g. Regional treaties on the conservation and management of fishery resources

e. g. The 1995 Fish Stock Agreement

▪ Safety of navigation

e. g. SOLAS

e. g. SUA Convention with its Protocol

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(3) The Third Wave of the International Regulation on High Sea Uses That Has Been Introduced by the BBNJ Agreement

① Common Interest in the Conservation and Sustainable Use of BBNJ (= Common Interest in BBNJ)

Special nature of the common interest

It cannot be realized by *the simple aggregation of the common interests* to be realized on the individual matters, such as preservation and protection of the marine environment, conservation and management of fishery resources, safety of navigation, and etc.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(3) The Third Wave of the International Regulation on High Sea Uses That Has Been Introduced by the BBNJ Agreement (continued)

② Common interest in BBNJ to be realized by preventing the *integrative effects* on BBNJ by various harmful uses of high Seas

a. Biodiversity

Article 2 of the Convention on Biological Diversity gives a definition of biodiversity.

“Biological diversity” means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(3) The Third Wave of the International Regulation on High Sea Uses That Has Been Introduced by the BBNJ Agreement

② Common interest in BBNJ to be realized by preventing the *integrative effects* on BBNJ by various harmful uses of high seas (continued)

b. Various harmful uses to biodiversity

e. g. Destructive fishing practice, such as bottom trawling, and the so-called IUU fishing; vessel-source pollution; construction of artificial islands and pipelines; offshore oil and gas exploration, sea bed mining; exploration of thermal vents; bioprospecting; more intrusive marine scientific research and etc.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(3) The Third Wave of the International Regulation on High Sea Uses That Has Been Introduced by the BBNJ Agreement

② Common interest in BBNJ to be realized by preventing the *integrative effects* on BBNJ by various harmful uses of high seas (continued)

c. Integrative effects

= The various harmful uses of high seas cause damage to biodiversity, *not only individually, but also, as a synergy of the integration* of the harmful effects of all individual uses of high seas

× ⇔ (Simple) Total of the independent harmful effects caused by the individual harmful uses of high seas

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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To achieve the goal of the BBNJ agreement, it is indispensable to cope with such *integrative harmful effects* to biodiversity.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(3) The Third Wave of the International Regulation on High Sea Uses That Has Been Introduced by the BBNJ Agreement

② Common interest in BBNJ to be realized by preventing the *integrative effects* on BBNJ by various harmful uses of high seas (continued)

c. Integrative effects

Considering ecosystem(s),

Biodiversity under Article 2 of the Convention on Biological Diversity

“Biological diversity” means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.



Ecosystem Approach

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(4) Ecosystem Approach

As for promising method of such international regulation to prevent integrative effects of various harmful uses of seas to biodiversity, ecosystem approach has been proposed.

① Ecosystem

Article 2 of the Convention on Biological Diversity reads:

Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(4) Ecosystem Approach (continued)

② Ecosystem Approach

e. g. Article 5 (d) and (e) of the 1995 Fish Stock Agreement

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(5) Integrative regulation or cross-sectoral regulation (cross-cutting on matters)

* Different from **the sector-specific regulation**

Every activity that exerts harmful effect to BBNJ needs to be regulated by a cross-sectoral or an integrative approach on the international regulation on the uses of high seas.

For the effective regulation, calculation is required on the harmful impacts by every harmful act, not individually, but by an integrative manner to assess **the synergy effects** of all harmful activities.

4. The Significance of the BBNJ Agreement from the Perspective of the Historical Development of the Law of the Sea

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(5) Integrative regulation or cross-sectoral regulation (cross-cutting on matters) (continued)

For such calculation to assess **the synergy (integrative) effects** of all harmful activities, the traditional idea of “wide and open” ocean is not appropriate.



5. Fundamental Change of the Idea of Sea

5. Fundamental Change of the Idea of Sea

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The traditional idea of sea as “Wide and Open Ocean”

Oceans are enough wide to prevent serious collisions between vessels.

Oceans are enough wide to ensure the reproduction of fishery resource without extinction.

Oceans are enough wide so that they themselves clean up pollution.

Therefore, oceans could be “wide and open (free)” for uses of all humankind.

Individual effects by these conducts on ocean can be calculated independently and individually.

5. Fundamental Change of the Idea of Sea

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An idea of sea as “**Closed Water Tank(s)**”

In order to consider the synergy (integrative) effects of all harmful activities, an idea of “closed water tank(s)” is indispensable, that is different from an idea of “wide and open ocean.”

(Similar) Experience by the international practice on **marine protected areas**.

6. Conclusion: Moving Forward

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(1) International Efforts for Moving Forward in Entering into Force and Implementation of the BBNJ Agreement
Preparatory Commission Meetings

First session (14-25 April 2025)

<https://www.un.org/bbnjagreement/en/meetings/preparatory-commission/documents/first-session>

Second session (18-29 August 2025)

<https://www.un.org/bbnjagreement/en/second-session-18-29-august-2025>

Third session (23 March - 2 April 2026)

<https://www.un.org/bbnjagreement/en/third-session-23-march-2-april-2026>

6. Conclusion: Moving Forward

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(2) Matters to Be Further Developed

Connection Point between Party States and Individuals Subject to Their Regulation

“Over which scope of individuals (and their activities) must it ensure that activities are conducted in conformity with the BBNJ Agreement?”

Obligation to Conduct Environmental Impact Assessments

“When is the obligation triggered?”

Research and Development Activities on Marine Genetic Resources

“What are the regulation by the BBNJ Agreement on Such Activities?”

Mechanisms for Human Resources Development and Capacity Building Technology Transfer

End

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Thank you for your attention!