



Agreement on the conservation and sustainable use of biodiversity in waters beyond national jurisdiction (BBNJ) and opportunities for Vietnam

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Vietnam's signing of The 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 (BBNJ) marks a strategic commitment to protecting the marine environment and natural resources. This analysis aims to evaluate the significance of Vietnam's participation in the BBNJ Agreement, particularly for a developing country, including access to advanced technology and knowledge, fair and equitable sharing of benefits (both monetary and non-monetary) from marine genetic resources in ABNJ, and enhanced cooperation in marine biodiversity protection. Additionally, this signing reaffirms Vietnam's active contribution to global sustainable development goals, ensuring long-term benefits for both the nation and the world.

1. INTRODUCTION

Nearly two-thirds of the world's oceans lie in areas beyond national jurisdiction (ABNJ). This is where 95% of earth's species are concentrated. 2/3 of fish stocks in waters beyond national jurisdiction are overexploited. Many marine gene resources, which have high economic value in providing food sources, and raw materials for the production of pharmaceuticals and cosmetics, are being freely exploited. Marine biodiversity in areas beyond national jurisdiction now faces many risks leading to decline, even to the disappearance of many marine species due to climate change, sea level rise, ocean acidity, deep-sea exploitation, environmental pollution, plastic waste, and other human activities to degrade marine resources and environment¹.

This article will begin by highlighting the historic achievement of the adoption of The 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 (BBNJ). This milestone marks a significant step in global marine biodiversity protection and sustainable resource management. Following this, the paper will analyze and present perspectives on the BBNJ Agreement, focusing on its implications and the opportunities it offers for Vietnam. This includes examining how Vietnam, as a developing country, can leverage the agreement to enhance its access to advanced technology and knowledge, achieve fair and equitable sharing of benefits from marine genetic resources, and strengthen international cooperation in marine biodiversity protection.

2. ADOPTION OF THE BBNJ TREATY – AN HISTORIC ACHIEVEMENT

The BBNJ Agreement would be the third implementing agreement of the United Nations Convention on the Law of the Sea (UNCLOS). The current implementing agreements, the 1994 Agreement relating to the implementation of Part XI² and the 1995 Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks³.

The global community agreed that there needed to be a more coherent approach to the conservation and sustainable use of marine biodiversity beyond national jurisdiction (BBNJ) and launched negotiations for a treaty that aims to meet that objective⁴.

UNCLOS has clearly defined the maritime zones under the sovereignty, sovereign rights and jurisdiction of coastal states as internal waters, territorial waters of 12 nautical miles, exclusive economic zones of 200 nautical miles and continental shelves. However, UNCLOS contains no provision specifically addressing the access, use, ownership and benefit sharing of marine biodiversity resources in ABNJ.

The 1992 Convention on Biological Diversity (CBD) and the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their utilization, also known as the Nagoya Protocol on Access and Benefit Sharing (ABS) introduce a number of concepts of "Biodiversity", "Biological Resources", "Gene Resources" and "Genetic Materials". However, these provisions mainly regulate the management and conservation of biodiversity in areas under national jurisdiction. The 2018 Vietnam Biodiversity Law does not adequately cover forms of marine gene resources and is limited to waters under



national jurisdiction. The 2013 Vietnam Law on Science and Technology does not define marine technology and marine technology transfer.

The BBNJ Agreement has been adopted and opened for ratification on June 19th, 2023. The agreement will enter into force 120 days after having at least 60 ratifications of UN member states. The BBNJ Agreement is a supplement to UNCLOS, within the framework of UNCLOS and does not replace the basic principles of UNCLOS. BBNJ is built on the principles of the common heritage of humankind and freedoms of the seas.

The BBNJ Agreement aims (article 2) to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination. The Agreement emphasizes the principle of taking into account the needs and priorities of developing countries, creating great advantages for Vietnam and developing countries in building and enforcing a fair and equitable maritime legal order.

3. BBNJ TREATY AND OPPORTUNITIES FOR VIETNAM

The implementation of The 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 (BBNJ) will offer several significant advantages to Vietnam, a developing country⁵.

Firstly, it will provide a clear legal framework to support Vietnam's efforts in the conservation and sustainable use of marine biodiversity, ensuring fair and equitable sharing of benefits - both monetary and non-monetary - from marine genetic resources in areas beyond national jurisdiction (ABNJ). This framework will also aid in the effective utilization of regional management tools, including Marine Protected Areas, while respecting the sovereignty and interests of states. For instance, the initiative for a Marine Protection Zone or Peace Park could potentially be applied in the Spratly Islands area, subject to agreements with relevant states and regional organizations.

Secondly, Vietnam will benefit from assistance in capacity building and technology transfer from developed countries. This will facilitate access to advanced marine technologies crucial for managing marine genetic resources and bolster Vietnam's capabilities in marine science and conservation.

Thirdly, the agreement ensures that Vietnam's interests are safeguarded not just within the East Sea but also across international waters and the seabed beyond national jurisdiction. It will also provide opportunities to uphold the effectiveness of the United Nations Convention on the Law of the Sea (UNCLOS) and ensure consistency with other related documents.

Additionally, it will contribute to the development of legal and scientific expertise in Vietnam, aligning with global advancements and renovation requirements. Finally, the agreement will promote extensive international cooperation to address maritime issues, enhancing Vietnam's role in global marine governance and sustainability efforts. Moreover, it will help Vietnam engage in crucial dialogues and partnerships for global marine conservation initiatives, further integrating the country into the international community's efforts to protect and sustainably manage ocean resources.

4. CONCLUSION

This article provides a comprehensive analysis of Vietnam's signing of The 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 (BBNJ). It highlights the historic achievement of the treaty's adoption and examines the benefits Vietnam stands to gain, such as access to advanced technology and support from developed countries. The article details how the agreement will safeguard Vietnam's interests not only in the East Sea but also across international waters, while enhancing legal and scientific capacity. It also underscores the opportunity to uphold the effectiveness of the United Nations Convention on the Law of the Sea (UNCLOS) and strengthen international cooperation. By doing so, it affirms Vietnam's proactive role in global marine conservation efforts and sustainable development ■

REFERENCES

1. <https://en.baoquocte.vn/the-significance-of-vietnams-signing-of-the-agreement-on-the-conservation-and-sustainable-use-of-biodiversity-in-waters-beyond-national-jurisdiction-249726.html> access on 25 August 2024.
2. Opened for signature 28 July 1994, 1836 entered into Force 28 July 1996.
3. Opened for signature 8 September 1995, entered into force 11 December 2001.
4. Nichola A. Clark, *Institutional arrangements for the new BBNJ agreement: Moving beyond global, regional, and hybrid*, Marine Policy Volume 122, December 2020, 104143.
5. <https://en.baoquocte.vn/the-significance-of-vietnams-signing-of-the-agreement-on-the-conservation-and-sustainable-use-of-biodiversity-in-waters-beyond-national-jurisdiction-249726.html> access on 25 August 2024.