



BBNJ Agreement

Briefing note 3 (January 2026)

Implementing Relevant UNCLOS Provisions

This briefing note provides an overview of the important relationship between the Agreement on Biodiversity Beyond National Jurisdiction ('the BBNJ Agreement') and its parent treaty, the United Nations Convention on the Law of the Sea (UNCLOS, or 'the Convention'), and the critical role it will play in effectively implementing relevant provisions of the Convention when it comes to the protection and sustainable use of the world's ocean and its rich biodiversity.

Background to UNCLOS

Modern law of the sea is largely a product of the 20th century, and in particular the series of conferences and conventions held from the 1930s onwards. Most notable among these are the United Nation's three diplomatic conferences on the law of the sea.

UNCLOS I

The First United Nations Conference on the Law of the Sea, otherwise known as UNCLOS I, was held in Geneva from 24 February to 27 April 1958 and was attended by 86 States. UNCLOS I saw the adoption of four conventions:

1. The Convention on the Territorial Sea and Contiguous Zone;
2. The Convention on the High Seas;
3. The Convention on the Continental Shelf; and
4. The Convention on Fishing and Conservation of the Living Resources of the High Seas.

Collectively, these conventions are known as the Geneva Conventions of 1958.

UNCLOS I was seen as moderately successful, with all four conventions entering into force. However, as States could effectively cherry-pick the conventions they wanted to ratify and accept they could sign up only to the conventions they agreed with. This inevitably led to a fractured regime for the law of the sea.¹

UNCLOS II

UNCLOS II was held in Geneva from 17 March to 26 April 1960, with 88 States in attendance. The aim was to address outstanding issues from UNCLOS I, including the breadth of the territorial sea and fishery limits. States disagreed on the outer limit of the territorial sea, with proposals ranging from 3 to 200 nautical miles. In an effort to reach a compromise, the United States and

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Canada put forward the 'Six plus Six' proposal, which provided for a 6 nautical mile territorial sea plus a further 6 nautical mile fishing zone. This joint proposal failed by one vote to obtain the required two-thirds majority for adoption by the Conference. Consequently, UNCLOS II ended with no agreement on these issues.

UNCLOS III

The failure of UNCLOS II paved the way for UNCLOS III, which took place between 1973 and 1982. UNCLOS III remains one of the largest, longest and most complex multilateral negotiations in diplomatic history.² The goal of UNCLOS III was to produce a comprehensive convention, one that would represent a '*Constitution for the Oceans*' and settle all matters relating to the world's oceans and seas.

At UNCLOS III, participating States recognised that UNCLOS should not be treated like '*a basket of fruit from which one can pick only those one fancies*'.³ Instead, UNCLOS was to represent '*a complex and indivisible package of closely interrelated compromise solutions to all major problems of the law of the sea*'.⁴ Adopting a package deal approach was seen as a means to address a complex set of issues that would prove difficult to solve unless they were tied together. The same reasoning was applied in the biodiversity beyond national jurisdiction (BBNJ) context. Given the highly interconnected nature of the marine environment, BBNJ-related issues are mutually entangled and influence one another.⁵ Thus, it was necessary to address them as a package deal, mirroring the UNCLOS III negotiations.⁶

The **1982 United Nations Convention on the Law of the Sea** (UNCLOS, or 'the Convention') is the pre-eminent framework for the contemporary law of the sea. UNCLOS provides a framework of rules for determining the rights and duties of States in respect of their use of maritime space, including in marine areas beyond national jurisdiction (ABNJ). Under UNCLOS, ABNJ comprise two distinct maritime zones: the high seas and the international deep seabed area ('the Area'). For a long time, because of their remoteness, these vast zones were poorly understood and were thought to be comparatively pristine and protected from the impacts of human activities. However, human activities beyond national jurisdiction have

expanded exponentially since the adoption of UNCLOS in 1982, and marine biodiversity in ABNJ is under an ever-increasing list of threats.⁷

Since the beginning of the 21st century, the international community has become increasingly concerned about the threats posed to biodiversity in ABNJ, and the gaps and limitations in the existing rules, regulations and institutional structures, including in the overarching legal framework of UNCLOS.

UNCLOS marked a significant turning point in ocean governance, being the first international agreement to codify rules and principles for the protection of the entire marine environment.⁸ However, UNCLOS provisions relating to environmental protection are only of a framework nature. Take Article 192 of UNCLOS as an example. This creates a general obligation for States to protect and preserve the marine environment. However, this provision is one sentence in length and fails to provide any detail or guidance on how this obligation is to be achieved, particularly with respect to ABNJ.⁹

Implementing Agreements under UNCLOS

While UNCLOS undoubtedly remains the most important instrument in the modern law of the sea, the significant expansion of the anthropogenic footprint in ABNJ has exposed gaps and limitations in its framework. One of the most significant gaps is the Convention's lack of modern governance principles and tools. Key environmental principles (e.g. the ecosystem approach and the precautionary principle/approach) are not explicitly provided for in UNCLOS. Also missing are detailed provisions for the establishment of area-based management tools (e.g. marine protected areas) and the conduct of environmental impact assessments.

The drafters of UNCLOS did anticipate that States Parties would need to continue to regulate their relations through subsequent treaties to address new challenges in the law of the sea and to rectify problems or omissions in the Convention (see e.g. UNCLOS, Article 311).¹⁰ As UNCLOS was intentionally made very difficult to amend, in order to preserve its all-important package deal, its further development has been achieved through the creation of implementing agreements.¹¹

Two instruments have been designated as implementing agreements to UNCLOS:

- The 1994 **Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea** ('the Part XI agreement'); and
- The 1995 **Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks** (UNFSA).

The Part XI Agreement altered provisions in the seabed mining regime in Part XI of UNCLOS, whereas the UNFSA sought to elaborate on the Convention's very general fisheries provisions.¹² The intention of these two implementing agreements was not to amend or revise existing UNCLOS provisions, but instead to fill gaps in the Convention's framework.¹³

The BBNJ Agreement is the third implementing agreement under UNCLOS.

The BBNJ Agreement

An *ad hoc* open-ended informal working group was established in 2006 to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. At the fourth meeting of this working group in 2011, delegations agreed to structure all future discussions around a package deal of four thematic topics, taken together and as a whole. As during the early stages of BBNJ negotiations States had expressed substantially divergent views on multiple issues, it was agreed that a package deal approach could assist in finding trade-offs and reciprocal support among different areas of bargaining.¹⁴

On 19 June 2015, **the United Nations General Assembly decided to develop an international legally binding instrument under UNCLOS for the conservation and sustainable use of marine biodiversity of ABNJ**.¹⁵

After nine years of substantive negotiations, on 19 June 2023 the United Nations General Assembly adopted by consensus 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** ('the BBNJ Agreement'). On

19 September 2025, the conditions for entry into force were met. The Agreement will enter into force on 17 January 2026.

The BBNJ Agreement's purpose is not to deal with ocean governance matters afresh or to amend or revise the environmental protection provisions enshrined in its parent treaty. Instead, its general objective is to ensure the conservation and sustainable use of marine biodiversity of ABNJ through effective implementation of relevant provisions of the Convention and through further international co-operation and co-ordination (BBNJ Agreement, Article 2).

General provisions of the BBNJ Agreement

The general objective of the BBNJ Agreement is included in the general provisions in Part I of the instrument, with specific objectives included in each of its four substantive parts. The general provisions are important – not only because they apply to the entire Agreement but also because they define the relationship between the BBNJ Agreement and UNCLOS, and further elaborate on obligations under the Convention.

Two articles in the BBNJ Agreement in particular implement relevant provisions of UNCLOS:

Article 7 ('General Principles and Approaches')

This Article provides that the Parties shall be guided by 14 principles and approaches to achieve the general and specific objectives of the BBNJ Agreement:

Article 8 ('International Cooperation')

Article 8 elaborates on the Convention's duty to co-operate for the conservation and sustainable use of living resources (see e.g. UNCLOS, Articles 117 and 118). Article 8 expands on this duty by requiring Parties to strengthen and enhance co-operation with relevant instruments, frameworks and bodies (IFBs) in the achievement of the objectives of the Agreement, and to endeavour to promote those objectives when participating in decision-making under IFBs of which they are members. The BBNJ Agreement further builds on this duty by creating obligations and mechanisms for co-operation and consultation across all four substantive elements of the BBNJ Agreement's package deal.

General Principles and Approaches (Article 7 of the BBNJ Agreement)	
(a)	The polluter pays principle*
(b)	The principle of the common heritage of humankind which is set out in UNCLOS
(c)	The freedom of marine scientific research, together with other freedoms of the high seas
(d)	The principle of equity and the fair and equitable sharing of benefits
(e)	The precautionary principle or precautionary approach, as appropriate*
(f)	An ecosystem approach*
(g)	An integrated approach to ocean management*
(h)	An approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, including the carbon cycling services that underpin the role of the ocean in climate*
(i)	The use of the best available science and scientific information
(j)	The use of relevant traditional knowledge of Indigenous Peoples and local communities, where available
(k)	The respect, promotion and consideration of their respective obligations, as applicable, relating to the rights of Indigenous Peoples or of, as appropriate, local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
(l)	The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another in taking measures to prevent, reduce and control pollution of the marine environment*
(m)	Full recognition of the special circumstances of small island developing States and of least developed countries
(n)	Acknowledgement of the special interests and needs of landlocked developing countries

* Specific principles and approaches considered to be critical to the protection of marine biodiversity.¹⁶

The BBNJ package deal

Like its parent treaty, the BBNJ Agreement has been negotiated around a complex and indivisible package deal of issues specifically formulated to address shortcomings in the UNCLOS framework.

The following sections explore how the BBNJ Agreement fills in gaps left behind by its parent treaty through an examination of each of the four elements of its package deal.

The four substantive elements of the BBNJ package deal

- (1) Marine genetic resources (MGRs), including the fair and equitable sharing of benefits
- (2) Measures such as area-based management tools (ABMTs), including marine protected areas (MPAs)
- (3) Environmental impact assessments (EIAs)
- (4) Capacity-building and the transfer of marine technology (CBTMT)

Marine genetic resources, including the fair and equitable sharing of benefits

In recent decades, the genetic diversity of the marine realm has attracted increasing scientific and commercial attention. As the deep sea remains the least explored ecosystem on Earth, it represents an untapped reservoir of new species, materials, compounds and organisms.¹⁷

However, when UNCLOS was negotiated at the Third United Nations Conference on the Law of the Sea during the 1970s and early 1980s, the deep seabed was considered a barren desert and a featureless plane, and there was minimal evidence to suggest an abundance of life existed beneath the waves.¹⁸ Consequently, UNCLOS is completely silent when it comes to MGRs.

UNCLOS also does not provide guidance on access and benefit-sharing linked to MGRs from ABNJ. Consequently, access to MGRs from the high seas water column and international deep seabed area has been entirely open, with no formal benefit-sharing mechanism in place. The framework for an access and benefit-sharing regime was developed as part of the BBNJ Agreement, with the aim of fairly and equitably sharing this genetic diversity among the international community, particularly as only a limited number of States currently have the technologies and the human and financial capacity required to collect and utilise these oceanic resources.

Part II of the BBNJ Agreement now lays out an access and benefit-sharing regime. The access regime is based on notification. States will need to furnish to the BBNJ Clearing-House Mechanism notifications:

- Prior to the collection of MGRs from ABNJ (BBNJ Agreement, Article 12(2));
- Post-collection of MGRs from ABNJ (BBNJ Agreement, Article 12(5));
- Upon utilisation and commercialisation of those resources (BBNJ Agreement, Article 12(8)).

When it comes to the sharing of benefits, the BBNJ Agreement provides for the fair and equitable sharing of both monetary and non-monetary benefits derived from MGRs (BBNJ Agreement, Article 14).

Measures such as area-based management tools, including marine protected areas

As the negative effects of anthropogenic activities and stressors have become more widely understood, the use of ABMTs and MPAs to mitigate these effects and to preserve and maintain biodiversity and ecosystem services has become more widespread.¹⁹ Institutions within existing ocean governance that use measures such as ABMTs and/or MPAs in their conservation efforts include:

- The Convention on Biological Diversity (CBD) and its use of Ecologically and Biologically Significant Areas (EBSAs);
- The **International Maritime Organization (IMO)** and its use of **Particularly Sensitive Sea Areas (PSSAs)**;
- The **International Seabed Authority (ISA)** and its use of **Areas of Particular Environmental Interests (APEIs)**; and
- **Regional fisheries management organisations (RFMOs)** and their use of **Vulnerable Marine Ecosystems Fishing Enclosures (VMEs)**.

Although many IFBs see ABMTs as crucial mechanisms for protecting the marine environment and its associated biodiversity, UNCLOS contains no direct or concrete provisions on ABMTs or MPAs. In response, the BBNJ Agreement provides helpful definitions for both an 'area-based management tool' and a 'marine protected area' for use in Part III of the BBNJ Agreement on ABMTs, including MPAs.

Part III provides the detailed provisions for the establishment and management of ABMTs that UNCLOS lacks. Specifically, Part III provides for the proposal, publicity and review of proposals for areas requiring protection (BBNJ Agreement, Articles 19 and 20), and the basis upon which the Conference of the Parties (COP) established under the BBNJ Agreement makes its decisions regarding such proposals (BBNJ Agreement, Articles 22 and 23). Importantly, the processes detailed under this part of the Agreement include mechanisms for consultation and co-operation with other institutions (such as those mentioned above) that may have competence and/or existing measures that may be impacted by a proposal or a measure established under the Agreement (BBNJ Agreement, Article 21). Part III also provides details for the monitoring and review of the measures established under the Agreement (BBNJ Agreement, Article 26).

Environmental impact assessments

Since the late 1960s, EIAs have gained traction both domestically and internationally. The term 'environmental impact assessment' is referenced in the legislation of over 180 countries worldwide and is a process required in instruments at the global and regional level.²⁰ The EIA process is designed to predict impacts at an early stage to assist in finding ways to reduce adverse effects on the environment and present options to decision-makers.

Although Article 206 of UNCLOS imposes a general obligation on States to conduct EIAs, there has been no globally agreed procedure to enforce this. Consequently, Article 206 has rarely been used and is poorly implemented.

Part IV of the BBNJ Agreement builds upon the pre-existing obligation in Article 206 of UNCLOS and establishes detailed processes and thresholds for conducting EIAs in ABNJ (BBNJ Agreement, Articles 30 and 31) while also providing for the reporting of results (BBNJ Agreement, Article 33) and the consideration of cumulative impacts, including those relating to climate change.²¹ The BBNJ Agreement now provides an EIA process that is biodiversity-inclusive, transparent and subject to international scrutiny and oversight.

Capacity-building and the transfer of marine technology

In recent decades, there has been a marked increase in marine scientific research activities in ABNJ. This owes, in large part, to significant advancements in science and technology. Unmanned submarine robots and manned deep-sea submersibles have enabled scientists to explore some of the deepest and most remote parts of the ocean, thereby uncovering the largest source of species and ecosystem diversity on Earth. However, as only 0.001% of the deep ocean floor has been visually observed,²² ongoing scientific research will be critical to ensure the long-term conservation and sustainable use of marine biodiversity.

Currently, few States possess the scientific and technical resources required to undertake biodiversity research beyond their national jurisdiction, and it was realised very early on in the BBNJ negotiations that capacity limitations could constrain the ability of developing States to fully and effectively enjoy rights granted under the instrument.²³

Part XIV of UNCLOS contains a normative framework for CBTMT. However, Part XIV was watered down during UNCLOS negotiations, and it lacks strict legal obligations. Part V of the BBNJ Agreement strengthens the normative framework for CBTMT enshrined in Part XIV of UNCLOS and recognises that, for the Agreement to be effective, States will need to be able to participate in and assume their responsibilities and obligations under the instrument. This can be achieved only through the strengthening of capacity, especially for developing States, through the transfer of technology, the sharing of research, training programmes and financial support.

As Part XIV of UNCLOS also lacked detail on how CBTMT was to work in practice, the BBNJ Agreement fills this gap by setting out types of capacity-building initiatives and activities (BBNJ Agreement, Article 44 and Annex II) and modalities for how CBTMT is to take place and on what terms (BBNJ Agreement, Articles 42 and 43).

Endnotes

- 1 Nandan S.N., Dalaker, K.E. (2021) Reflections on the Making of the Modern Law of the Sea. *NUS Press* (72-73)
- 2 Nandan (n 1) 19.
- 3 Caminos, H. and Molitor, M.R. (1985) 'Progressive Development of International Law and the Package Deal'. *American Journal of International Law* 79(4): 871–890, quoting Deputy Foreign Minister Gouzenko of the Soviet Union, Verbatim Records of the 191st Plenary Meeting 1982, Volume 17, Third United Nations Conference on the Law of the Sea, Official Records 106–107 (877).
- 4 Ibid.
- 5 Lothian, S.L. (2023) 'The BBNJ Agreement: A Package Deal of Solutions for Biodiversity Beyond National Jurisdiction', 97(12) *Australian Law Journal* 876–881.
- 6 Ibid.
- 7 Lothian (2022) *Marine Conservation and International Law: Legal Instruments for biodiversity Beyond National Jurisdiction*. Abingdon: Routledge (30–31).
- 8 Proelss, A. and Houghton, K. (2015) 'Protecting Marine Species,' in R. Rayfuse (ed.) *Research Handbook on International Marine Environmental Law*. Cheltenham: Edward Elgar (229, 231).
- 9 Lothian (2022) *Marine Conservation and International Law* (37).
- 10 Harrison, J. (2011) *Making the Law of the Sea: A Study in the Development of International Law*. Cambridge: Cambridge University Press (85).
- 11 Dalaker, K.E. (2024) 'A Commentary on the BBNJ Agreement Using the History of the Making of UNCLOS and its Implementation Agreements'. *Ocean Yearbook* 38(1): 125–160 (127, 128).
- 12 Lothian (2022) *Marine Conservation and International Law* (180).
- 13 Ibid.
- 14 Lothian (2023) 'The BBNJ Agreement'.
- 15 United Nations General Assembly (2015) *Development of an International Legally Binding Instrument 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*. Resolution 69/292, UN Doc A/RES/69/292 (6 July 2015, adopted 19 June 2015).
- 16 Dalaker (2024) 'A Commentary on the BBNJ Agreement' (154–155).
- 17 Farrier, D. and Tucker, L. (2001) 'Access to Marine Bioresources: Hitching the Conservation Cart to the Bioprospecting Horse'. *Ocean Development & International Law* 32(3): 213–239 (213, 215).
- 18 Lothian, S. (2023) 'The BBNJ Agreement' (877).
- 19 De Santo, E.M. (2018) 'Implementation Challenges of Area-Based Management Tools (ABMTs) for Biodiversity Beyond National Jurisdiction (BBNJ)'. *Marine Policy* 97: 34–43 (34, 35).
- 20 Drayson, K., Wood, G. and Thompson, T. (2017) 'An Evaluation of Ecological Impact Assessment Procedural Effectiveness over Time'. *Environmental Science and Policy* 70(C): 54–66 (54).
- 21 Lothian (2023) 'The BBNJ Agreement' (879).
- 22 Bell, K., Johannes, K., Kennedy, B. and Poulton, S. (2025) 'How Little We've Seen: A Visual Coverage Estimate of the Deep Seafloor'. *Science Advances* 11(19): <https://doi.org/10.1126/sciadv.adp8602> (8602).
- 23 Lothian (2022) *Marine Conservation and International Law* (239).



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