

### **INTERVIEW WITH PROFESSOR ATSUKO KANEHARA**

Professor Atsuko Kanehara (Professor at Sophia University, Japan/ Councilor of Advisory Council for the National Headquarters for Ocean Policy of Japan), visited the IMO International Maritime Law Institute on 21 February 2018 and delivered a lecture on **“A New Idea of the Law of the Sea that is required for the Purpose of the Conservation and Sustainable Use of Marine Biological Diversity beyond National Jurisdiction”** to the IMLI Class of 2017-2018.



*Professor David Attard (Director, IMLI), Professor Atsuko Kanehara (Professor at Sophia University, Japan/ Councilor of Advisory Council for the National Headquarters for Ocean*

*Policy of Japan) and Mr. Nobukatsu Kanehara (Assistant Chief Cabinet Secretary and Deputy Secretary-General of the National Security Secretariat, Government of Japan), in front of the monument dedicated to Dr. Arvid Pardo at IMLI*

The following is the transcript of the interview with Professor Atsuko Kanehara, after her lecture.

*Professor Kanehara, the Institute is very grateful to you for the lecture delivered to the IMLI Class of 2017-2018 on “A New Idea of the Law of the Sea that is required for the Purpose of the Conservation and Sustainable Use of Marine Biological Diversity beyond National Jurisdiction”. We believe that the groundbreaking ideas are thought-provoking and we wish to share your views about the lecture with our readers. For this purpose, we have prepared the following questions which you have graciously agreed to address:*

1. *In your opinion, is there a need for an international legally binding instrument for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ), and if so, what would be its relationship to UNCLOS and other relevant legal instruments on the subject?*

**Prof. Atsuko Kanehara:** Under the UNGA Resolution 69/292, the international legally binding instrument (new instrument) should be “under UNCLOS.” In my opinion, to precisely understand the phrase “under UNCLOS”, we need to know “what UNCLOS was,” “what UNCLOS is”, and “what UNCLOS will be.”

*Whilst traditionally the international community has supported the freedom of the High Seas as a recognized principle as reflected in UNCLOS, you are proposing two changes for a future law of the sea, that is, two changes in the regulation of the high seas for the purpose of the conservation and sustainable use of BBNJ.*

**Prof. Atsuko Kanehara:** I explained two changes in the high seas regulation.

First, the shift from the traditional combination of the laissez-faire principle and the due regard principle onto the high seas regulation in order to realize the common interests of the international society, such as the safety of navigation, fishery resources conservation, and marine environmental protection. This is “sector-specific” high seas regulation.

Second, for the purpose of protection of BBNJ, the ecosystem approach is required, and it will be effectively realized by a cross-sectoral/integrated regulation of the high seas.

2. *Regarding the first proposed change, do you consider it necessary to move away from the notions of “Laissez-Faire” and “Due Regard” in the regulation of the high seas?*

**Prof. Atsuko Kanehara:** Yes. We have seen already the first change. There are international regulations on the uses of the high seas for the purpose of realization of common interests of

the international society. The voluminous international conventions and international or regional organizations that have mandate on a sector-specific basis prove this first change.

3. *How do you foresee the change in the regulation of the high seas?*

**Prof. Atsuko Kanehara:** The second change will take place if the international society recognizes that this change is indispensable for the purpose of the conservation and sustainable use of BBNJ.

4. *Regarding the second change, for the purpose of the conservation and sustainable use of BBNJ are you proposing a shift from a sector-specific approach to an ecosystem approach with cross-sectoral/or an integrated regulation?*

**Prof. Atsuko Kanehara:** Yes. In order to protect a marine habitat or a marine ecosystem, the ecosystem approach that has already been adopted, for instance, in the 1995 Fish Stocks Agreement, needs to be introduced in the high seas regulation. In order to effectively implement the ecosystem approach, the cross-sectoral/integrated regulation on the uses of the high seas is a promising tool.

5. *Do you believe that there should be a special status of the new common interest in the conservation and sustainable use of BBNJ that may be supreme over other common interests?*

**Prof. Atsuko Kanehara:** Yes. There will be a case in which certain uses of the high seas will require further regulation for the purpose of the protection of BBNJ, even when such use has been regulated already by international standards for the purpose of the realization of other common interests in the safety of navigation, fishery resources conservation, and marine environmental protection.

For instance, the navigation of a vessel that is already regulated by international law standards regarding the safety of navigation would need to be regulated further for the purpose of conservation and sustainable use of BBNJ, when such vessel is passing through an important habitat.

6. *In your opinion, what are the limitations of the current law of the sea for the adequate conservation and sustainable use of BBNJ?*

**Prof. Atsuko Kanehara:** It is the zone approach under UNCLOS. A marine habitat and a marine ecosystem easily ignore the artificial division of sea areas into the sea areas under national jurisdiction and the sea areas beyond national jurisdiction. In order to effectively protect the marine habitat or marine ecosystem, international regulation is indispensable in the sea areas both under and beyond national jurisdiction. However, it will be difficult for coastal

States to accept international regulation for the purpose of the protection of BBNJ in the sea areas within their national jurisdiction.

7. *Based on your discussions, what do you think are the next steps that the international community could take for the proper conservation and sustainable use of BBNJ?*

**Prof. Atsuko Kanehara:** Above all, the international society needs to recognize the new common interest in BBNJ with its special status, and agree to the new type of the high seas regulation, namely, cross-sectoral/integrated regulation that can effectively realize the ecosystem approach. In addition, even in regard to the marine protected areas, the international society needs to agree to the newly devised enforcement measures.

8. *You have been lecturing at IMLI for a number of years. What are your views on the Institute and its role in capacity-building, especially its contribution to the realization of the changes you have proposed?*

**Prof. Atsuko Kanehara:** The new common interest will face difficulties for it to be agreed upon by the international society. A rapid change in that direction cannot be expected. In such a case, the capacity-building role of IMLI, from the long-term perspective, would be so much contributive to the building of a “maritime law community” that will respond to the necessity of the change in the law of the sea for the purpose of the protection of BBNJ.

*Professor Kanehara, we are most grateful to you for taking time to answer these questions and for agreeing to share your views with our readers.*

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