

ABS国際制度の法的論点と課題

磯崎博司
上智大学地球環境学研究科教授

ジーンバンクにある資源

- 生物多様性条約 交渉段階
生息域外保管されている遺伝資源
適用対象に、遡及適用を主張
- 最終的に遡及せず(15条3項)
- ナイロビ会議最終文書の決議3の4項
生息域外保管の遺伝資源の
再取得または利用 残された課題
- ITRGR MLS 部分的対応 残りへの対応

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3

問題と解決手段

- 問題とされる事例、 大航海時代
19世紀、W W II 以後、バイオ時代
- 生物多様性条約 1993
問題事例？ その解決手段
- ボンガイドライン 2002
問題事例？ その解決手段
- 想定問題への解決手段？

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2

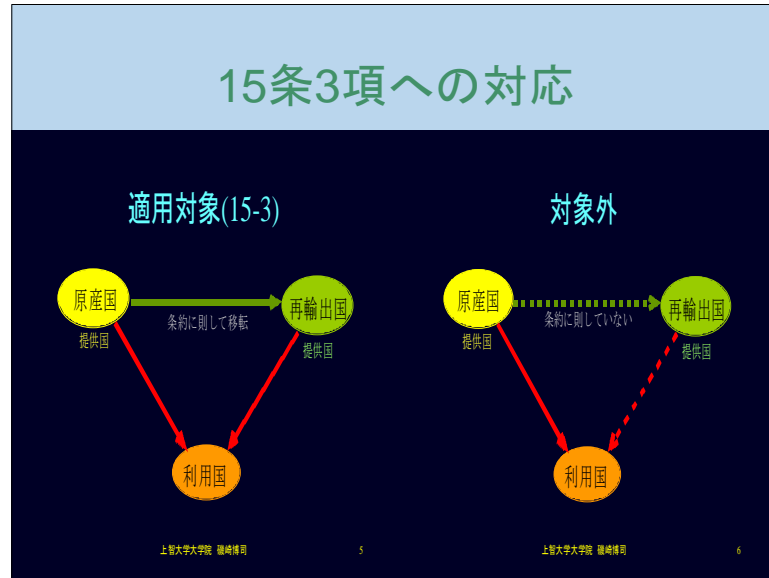
恒久主権の主張

- 1960-70年代
石油などの地下鉱物資源に対して
- 新国際経済秩序の提唱
- 資源ナショナリズム

- 遺伝資源に対して、恒久主権
- 派生物、次に続く利用行為にも、産物にも

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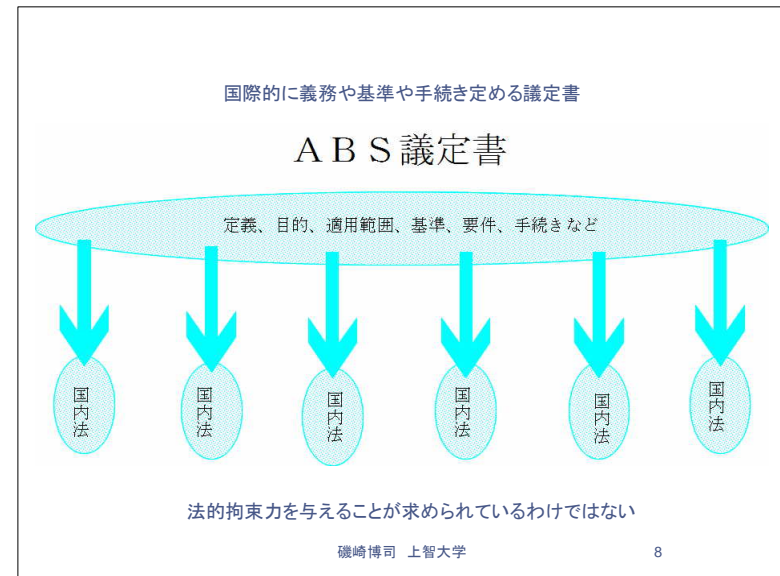
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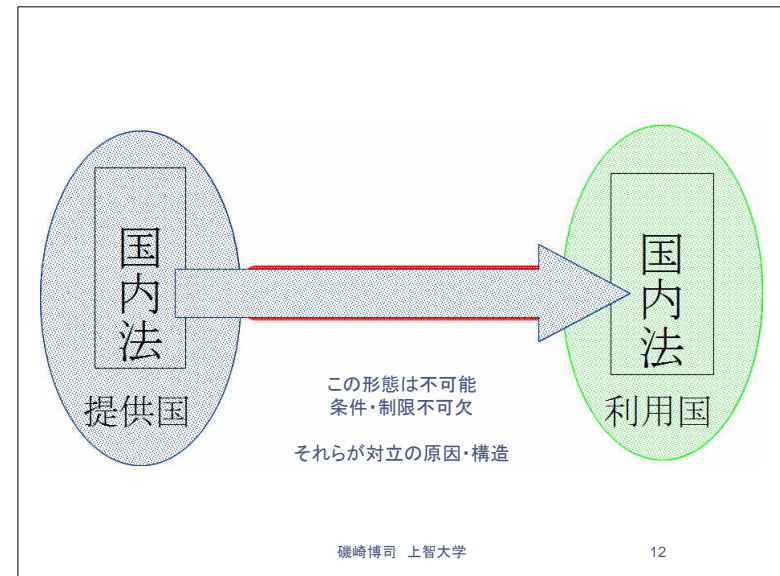
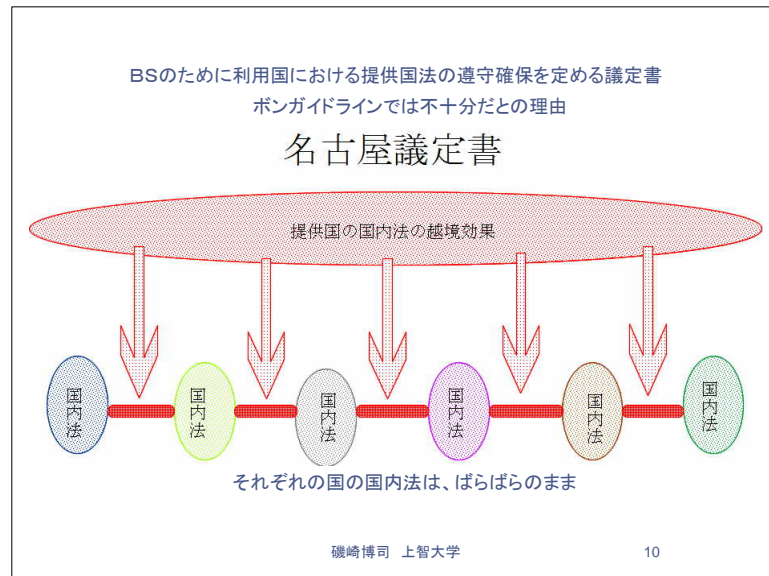
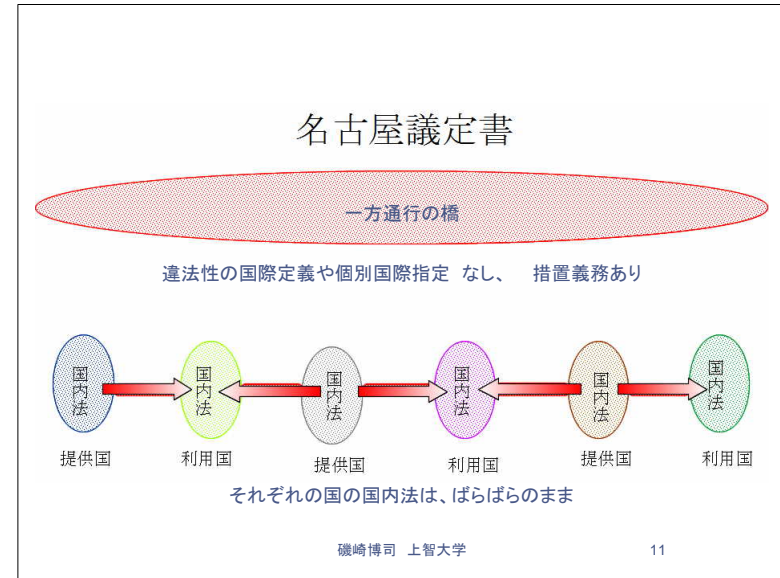
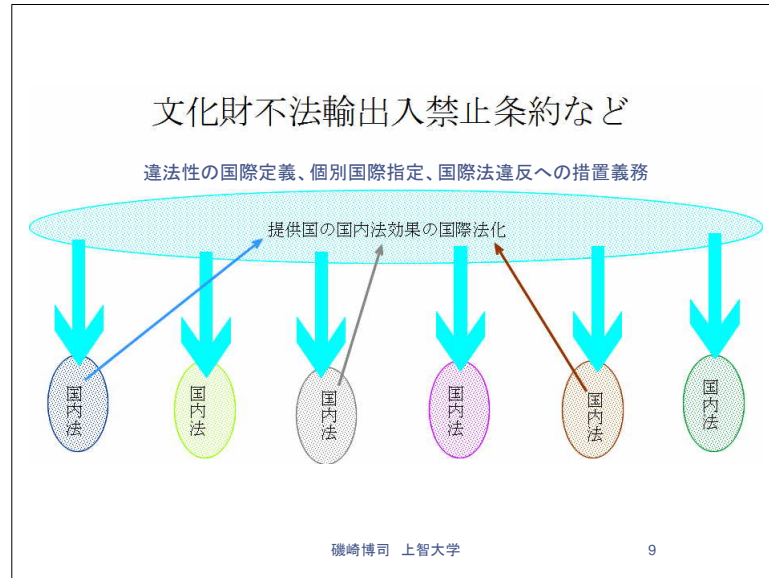


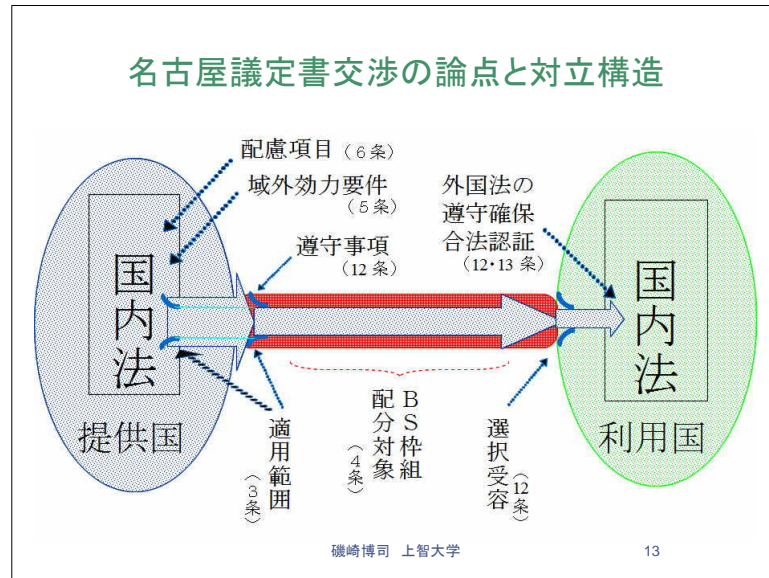
目的外使用

- バイオパイラシー事例の多くは
目的外使用
目的変更
- 意図的な場合 非意図的な場合
- そのための解決手段
主に契約レベル
団体訴訟
強行法規 ... 域外適用

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ARTICLE 12

COMPLIANCE WITH [INTERNATIONAL AND] NATIONAL LEGISLATION ON ACCESS AND BENEFIT-SHARING

1. Each Party shall take **appropriate, effective and proportionate** measures to provide that genetic resources[, [their derivatives] and associated traditional knowledge] utilized within its jurisdiction have been **accessed in accordance with prior informed consent** and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing **regulatory requirements** of the **[other Party][country of origin]**.
2. Parties shall take **appropriate, effective and proportionate** [administrative or legal][legislative, administrative or policy] measures to address situations of non-compliance with measures adopted in accordance with paragraph 1. [Parties may refrain from taking such measures if the domestic access and benefit-sharing framework of another Party providing the misappropriated genetic resources at the time of misappropriation was not in conformity with Article 5(2).]
3. Parties shall[, as appropriate,] cooperate in cases of **alleged violation** of the [national legislation] [, Convention and Protocol] on access and benefit-sharing [of the [[country][Party] providing genetic resources][country of origin]].

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ARTICLE 6

[CONSIDERATIONS RELEVANT TO [NON-COMMERCIAL] RESEARCH AND EMERGENCY SITUATIONS

In the development and implementation of their national legislation on access and benefit-sharing, Parties shall:

- (a) Create conditions[, including simplified measures on access for non-commercial research purpose,] to [facilitate,] promote and encourage [non-commercial] biodiversity-related research, considering its importance for the conservation of biological diversity and the sustainable use of its components, **taking into account Article 12(b)** of the CBD; and

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ARTICLE 13

MONITORING[, TRACKING] AND REPORTING THE UTILIZATION OF GENETIC RESOURCES [AND ASSOCIATED TRADITIONAL KNOWLEDGE]

1. Parties shall take measures, **as appropriate**, to monitor[, track and report] the utilization of genetic resources[, its derivatives and associated traditional knowledge] to support[, *inter alia*,] compliance [with prior informed consent **requirements** and mutually agreed **terms**] [to support implementation] [under Article 12(1)] [in order to enhance transparency [and build trust between providers and users]]. Such measures [could] include:
 - (a) The identification and[, where appropriate,] establishment of [appropriate] check points [and [mandatory] [disclosure][information] requirements [including] [any [permit] certificate [or equivalent] that was granted in accordance with Article 5, paragraph 2(d)] [at[, for example]:

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