

The Great Blue Hope: How the High Seas Treaty Is Shaping Global Ocean Governance?

After two decades of intense negotiations, On 17 January 2026, the High Seas Treaty, formally known as the Agreement on Biodiversity Beyond National Jurisdiction (BBNJ) entered into force following Morocco's ratification as the 60th State Party. Widely hailed as the 'Charter of the Ocean World', the treaty constitutes the first legally binding international agreement dedicated to the conservation and sustainable use of marine genetic resources beyond national jurisdiction. Crucially, the High Seas Treaty stands out as a rare inflection point amid the many lows of a global order marked by fractured multilateralism and a weakened global consensus building. The agreement provides for an international collective framework to conserve maritime biodiversity, restore ocean health and resilience, while seeking to ensure the fair and equitable sharing of benefits among all party states.



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'High Seas' and Tragedy of the Global Commons

The Geneva Convention legally defines the high seas as parts of the ocean not included in a country's territorial or internal waters. National jurisdiction typically extends upto 200

nautical miles from the coastline, known as the Exclusive Economic Zone (EEZ).¹ Nearly 64 per cent of the total ocean covering half of the globe constitute the high seas or ABNJ (Area Beyond National Jurisdiction) are featured by migratory corridors and biological hubs.

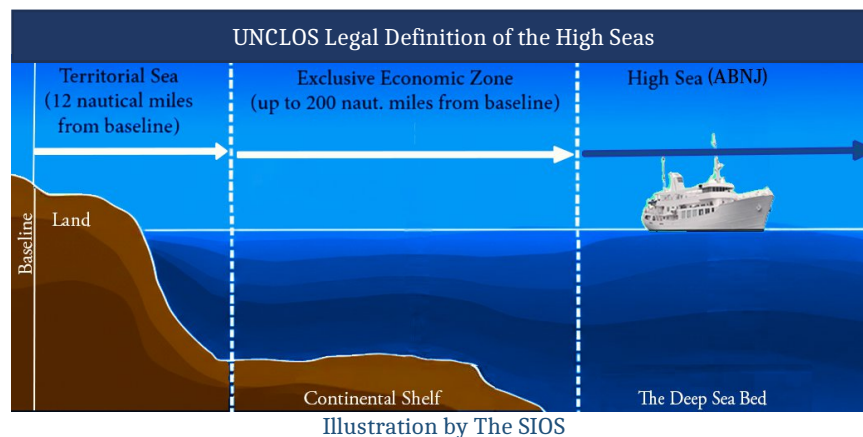


Illustration by The SIOS

The High seas possess immense scientific, economic, and cultural value as critical blue carbon ecosystems and source of major seafoods, genetic and medicinal resources including potential of a billion dollars drug market such as Remdesivir which was first treatment of COVID and Azidothymidine for HIV.² International Framework guarantee freedoms of navigation, overflight, submarine cable and pipeline laying, and scientific research to all states.³ Yet, prior to BBNJ agreement, barely 1% of the high seas was legally protected, making them a classic case of the tragedy of the global commons 'belonging to none but used by everyone'. Today, these waters face growing stress from Illegal, Unreported and Unregulated fishing, rising sea temperatures, pollution, oil spills, seabed mining, untreated waste, ocean acidification, invasive species and coral bleaching.

The Silo Effect in Ocean Governance

Notably, the international framework treats the water column and the seabed under different regimes within the existing ocean governance structure. The earlier international framework under UNCLOS consisted of a patchwork of provisions and institutions such as the International Maritime Organization (IMO), the International Seabed Authority (ISA), Regional Fisheries Management Organizations, and Regional seas Agreements like the Sargasso Sea Alliance and the Barcelona Convention. These together form a fragmented and highly sectoral regulatory framework, operating independently of one another, resulting in governance gaps and regulatory overlaps. However, the BBNJ Agreement addresses both the water column and the seabed from a legal standpoint and provides an overarching framework for coordinated ocean governance.

A New Charter for the Oceans

The treaty formally titled 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), is often described as a *Paris Agreement for the oceans*. It is the third implementing agreement under UNCLOS, besides the 1994 Agreement relating to Deep Seabed Mining, which led to the establishment of the International Seabed Authority, and the 1995 UN Fish Stocks Agreement.

The innovative instruments of the treaty include Area-Based Management Tools, including Marine Protected Areas (MPAs) designated geographical regions for the conservation of biodiversity. It also addresses Marine Genetic Resources, providing for the sharing of financial and non-financial benefits arising from their commercial application, along with capacity building and transfer of marine technology. The agreement mandates Environmental Impact Assessments and deals with cross-cutting issues such as the establishment of a funding mechanism and institutional arrangements, including a Conference of Parties (COP), a Clearing-House Mechanism, and a Secretariat.⁴

A salient feature of the treaty is that adopts the principle of the common heritage(CHP) of humankind as a guiding framework, ensuring that benefits are shared with all humanity, and delineates an ambitious defined goal of protecting 30 per cent of marine areas by 2030.

Geopolitics of Marine Genetic Resource and International Response

The geopolitics of Marine Genetic Resources (MGRs) is defined by a deep-seated divide between the "Global North," which possesses the technological capital to exploit deep-sea biodiversity, and the "Global South," which advocates for equitable benefit-sharing. Small Island Developing States (SIDS), such as Palau, Seychelles, and Mauritius, have emerged as early adopters of the BBNJ Treaty to safeguard their maritime boundaries against climate change, IUU fishing, and regional pressures from bigger maritime powers. This urgency is underscored by a 2018 Stockholm Resilience Centre study revealing that a staggering 98% of MGR patents are held by entities in just ten countries with the German corporation BASF alone holding nearly half.⁵

While major powers like China and Japan have ratified the agreement, U.S. has signed but not yet ratified, largely due to domestic friction over the "Common Heritage of Humankind" principle. This principle, supported by the G77, mandates that high-seas resources benefit all humanity, whereas developed nations often argue for "freedom of the high seas" to protect their private intellectual property.⁶

Furthermore, the ambitious "30x30" goal of establishing Marine Protected Areas has faced resistance during negotiations from nations like Russia and China, who remain wary of international restrictions on commercial fishing and resource extraction.

‘A Net with Gaps’- The Treaty Provisions

A key limitation of the High Seas Treaty lies in the principle of non-derogation under Article 5(2), which requires implementation without undermining the mandates of existing international institutions. While intended to prevent jurisdictional conflict, this effectively creates a hierarchy that restrains the treaty's ability to impose stringent environmental standards on industries already regulated.

It also draws a contested legal distinction between Marine Genetic Resources (MGRs) and fish and fish-related activities under Article 10(2). By excluding fishing activities from benefit-sharing obligations, it creates a grey zone that could enable regime shopping, where activities are strategically classified to evade profit-sharing frameworks meant for deep-sea bioprospecting.

Although the agreement mandates environmental impact assessments (EIAs) for activities in areas beyond national jurisdiction, decision-making authority remains firmly state-led rather than vested in an independent supranational body. This places the "sponsoring State" in the dual role of project proponent and environmental regulator

raising concerns of regulatory capture. Reliance on voluntary reporting, particularly under Article 34(1), may further dilute accountability especially of corporate entities.

The treaty does provide pathways for the creation of marine protected areas (MPAs), but Article 23(5) allows for a consensus-based objection and opt-out mechanism, potentially weakening the effectiveness and enforceability. Finally, the agreement lacks a clearly articulated roadmap for the development and transfer of marine technology, the sharing of digital sequence information, and the operationalisation of fair and equitable benefit-sharing between the Global North and South which risk remaining aspirational rather than transformative.

India's Stance

India signed the treaty on 25 September 2024, extending support for strengthening ocean governance but has not yet ratified it. As a signatory, India is bound by the treaty's spirit but is not legally obligated to implement its provisions until ratification. Addressing the issue, Dr. Jitendra Singh, Union Minister for Earth Sciences, during a cabinet meeting held stated that *"India remains committed and proactive to the global cause of environmental conservation and sustainable development. We will be signing the BBNJ Agreement and are propitious of subsequently ratifying it through the necessary legislative processes."* It was highlighted that India is aligned to scientific progress, strengthening international collaboration and the rule of law.⁷

The delay, therefore, is procedural and institutional rather than political.⁸ Ratification will require parliamentary approval and alignment of domestic law with the treaty, particularly through possible amendments to the Biological Diversity Act, 2002, the Environment (Protection) Act, 1986, and the Wildlife (Protection) Act, 1972. Equally critical is the establishment of frameworks for environmental impact assessments, marine protected areas and development of a national strategy for marine genetic resource access and benefit sharing.

A key observation would be how India works out a balance between its global environmental commitments with its strategic blue economy interests - Deep Ocean Mission and initiatives like Samudrayaan Project.⁹ India's early domestic alignment signals its strategic desire to set the rules of the game instead of just following them.

While the Treaty marks a significant new chapter in global ocean governance, this "great blue hope" will only translate into meaningful results through sustained cooperation, transparency, and a steadfast commitment from member states.

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