

A Critical Analysis on the High Seas Treaty, 2023 and its Comparison over UNCLOS

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Abstract

The earth is covered by a vast ocean and it almost covers two third of the world and the seas make up 95% of the total habitat of the world. The land contains only 5% of the habitat. But only 1% of the high seas are protected under any protection protocol and only 39% of ocean befalls national jurisdiction of individual countries. High seas means the water column of the ocean that lies beyond the areas under the jurisdiction of any country. It lies beyond Exclusive Economic Zone. Article 86 of the UNCLOS indirectly says that high seas are seas that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. There was only the United Nations Convention on Law of the Seas which provided how to economically use the high seas and conserve its living resources, but it had more regulatory gap relating to conservation and sustainable use of marine, ocean and seas. To regulate the conducts of maritime trade, commerce, its protection, promotion of peaceful co-operation among the states at the High Seas, the Intergovernmental Conference (IGC) i.e., **IGC-5** of Biodiversity Beyond National Jurisdiction (BBNJ) concluded the landmark treaty for the protection of High Seas namely the Draft 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, 2023 or shortly, the High Seas Treaty, 2023 or BBNJ Treaty, 2023. It has proposed various key features of protecting the marine environment and promoting the trade among the member nations. This research paper focuses on those key aspects and compare this treaty with UNCLOS on how it will promote international trade among nations over UNCLOS.

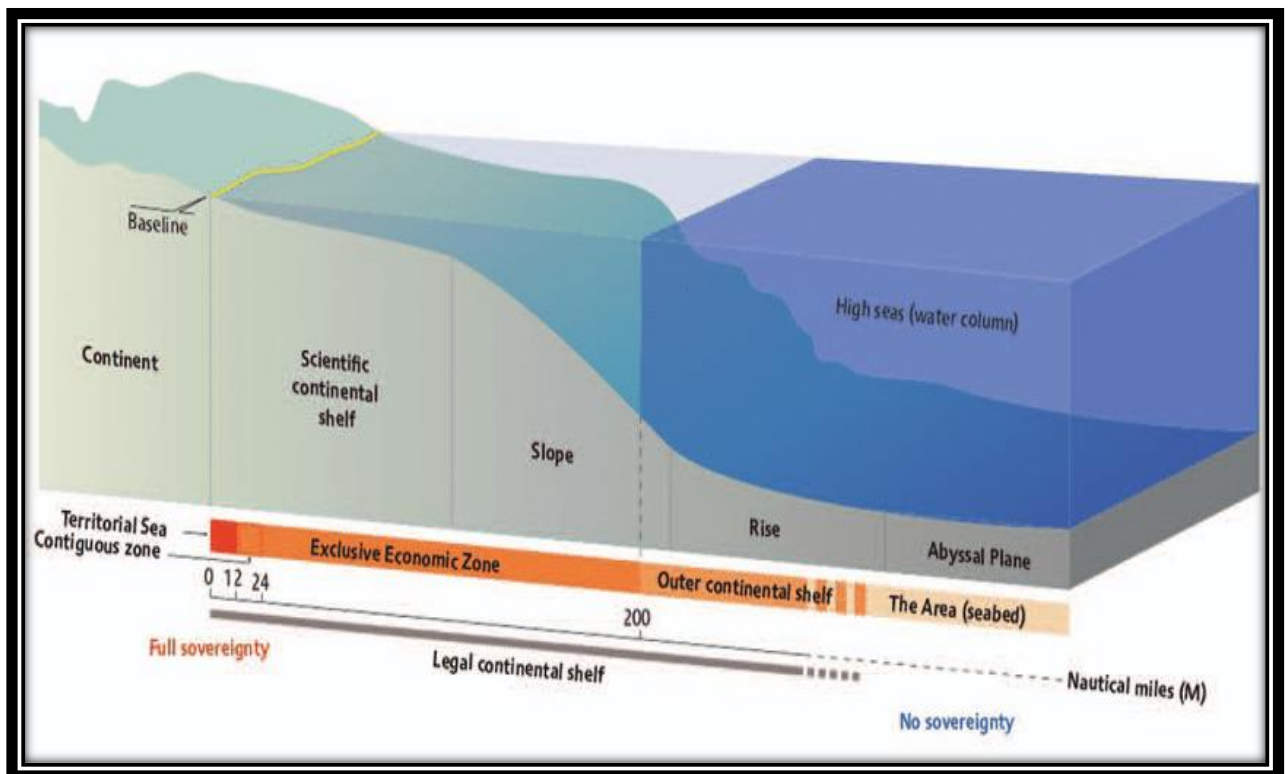
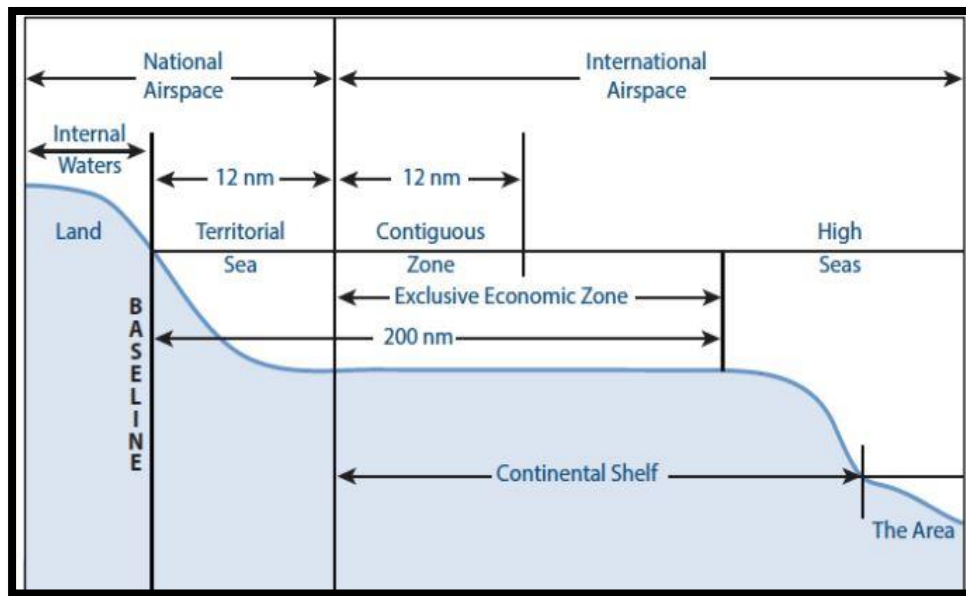
Keywords: UNCLOS, BBNJ, High Seas Treaty, Marine environment, International trade.

Introduction

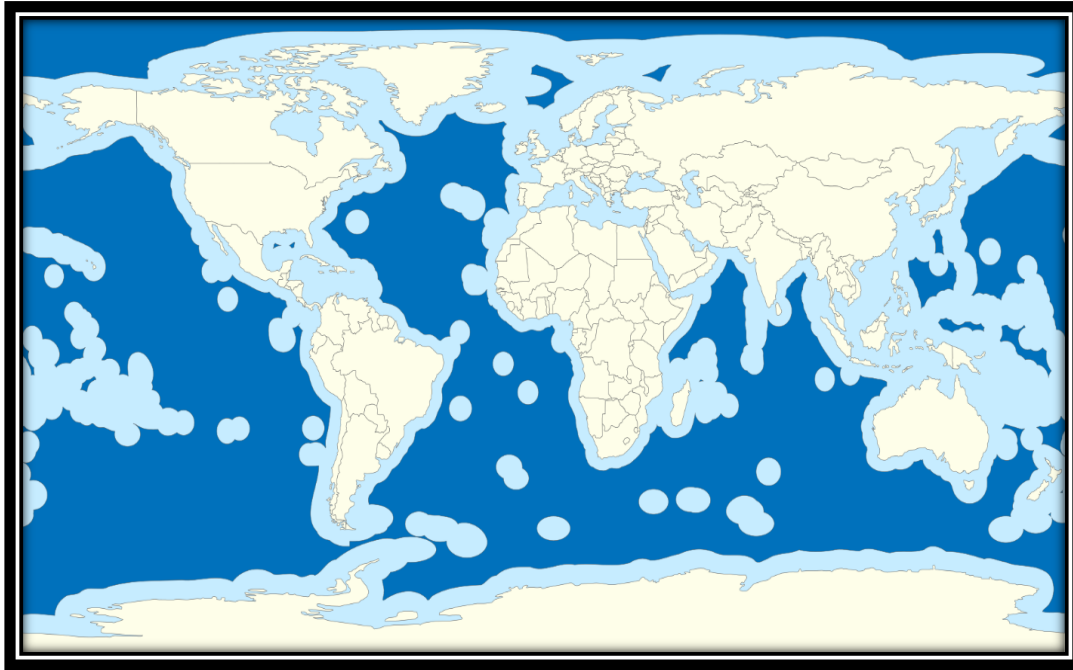
The United Nations Convention on Law of the Sea, 1982, also known as the “Constitution of the seas” is a historic landmark convention that governs the law and order in the world’s ocean and seas, by establishing rules and thus, governs all the uses of oceans and its vast resources. In the 17th Century, Hugo Grotius propounded in his book “Mare Liberum” that the ocean belonged to everyone but no one can claim it. The concept of free seas was propounded by Imperial countries so that they can attain naval power and enclose more colonies. The concept of closed seas was put forth by the colonized countries, which means that foreign vessels cannot enter the land, without their permission. In the 19th Century, British attained naval supremacy and it followed the concept of “freedom of the seas”. The concept of “canon shot” rule effectuated the coastal states the right of sovereignty over the territorial sea adjacent to their land. Usually, it would be equivalent to 3 nautical miles. All waters beyond these 3 nautical miles was considered to be International waters and all states could use it. In the 20th century, many countries started framing the territorial sea limit on their own and extended their jurisdiction over it. Some countries like United States of America, Chile, Peru and Ecuador extended their limit of territorial seas up to 200 nautical miles and other countries extended it to 12 nautical milesⁱ.

Around 1950s, the need for an international framework to regulate maritime law was recognized and negotiations were started to be made at the United Nations and hence, UNCLOS was formed. Since it lacked specific aspects of protection of the High Seas, the need for a separate agreement was sought by nations and environmentalists since 2005. It was addressed in the UN in 2018 and then after five years of negotiation, the High Seas Treaty, 2023ⁱⁱ was finally drafted and it was placed before the member nations for ratification. Therefore, the creation of a High Seas Treaty was a cry which was made by nearly two decades of discussions. The treaty greatly increases the protection of high seas and regulates the extraction of natural resources from it in a more efficient way. Since this agreement is not enforced still now, it can only be compared analytically on a presumption basis that it would develop like how UNCLOS did.

The following diagrams represent the zones of the sea:



The following map shows the area of high seas (area marked in dark blue):



Objectives

- 1) To analyze the aspects of the High Seas Treaty, 2023.
- 2) To explain the impacts of the High Seas Treaty, 2023 that would imply upon the nation states.
- 3) To understand the effects of the High Seas Treaty, 2023 that would bring upon global trade and commerce.
- 4) To justify that High Seas Treaty, 2023 will play an indispensable role in the conservation of marine environment in line with UNCLOS.

Significance

- 1) This paper examines the current situation of the High Seas Treaty, 2023 which will constitute a huge impact upon the marine environment and its resources.
- 2) This paper signifies the current aspects of the High Seas Treaty, 2023.
- 3) This paper analyses the impacts that the High Seas Treaty, 2023 will effectuate in the schemes of Marine Protected Areas, Equitable benefit sharing, Environment Impact Assessment.
- 4) This paper compares the High Seas Treaty, 2023 with UNCLOS on how it will promote the global trade and commerce.

- 5) This paper provides the ground reality and the hardships it may face during implementation.

Research Problem

The research problem is that whether the High Seas Treaty, 2023 can possibly achieve its aims and goals that solely depends upon the compliance of the treaty by member nations in spite of the challenge of its implementation and also whether it will be effective as much as the UNCLOS.

Research Question

- 1) Would High Seas Treaty, 2023 be effective in achieving its goals and objectives?
- 2) Does High Seas Treaty, 2023 that allow deep sea mining and other activities, not affect the environment and would it be assessed through proper Environment Impact Assessments?
- 3) Does High Seas Treaty, 2023 promote global trade and commerce, just like UNCLOS did back during its implementation?
- 4) Does High Seas Treaty, 2023 have some drawbacks ought to which it may face some hindrances?

Hypothesis

- 1) High Seas Treaty, 2023 is an effective treat and will achieve its goals and objects
- 2) High Seas Treaty, 2023 will safeguard the environment
- 3) High Seas Treaty, 2023 will promote international trade and commerce
- 4) High Seas Treaty, 2023 will face challenges in its implementation.

Literature review

- 1) The agreement announced on 4th March, 2023 at United Nations to protect biodiversity in international waters, set up a legal process for the creation of Marine Protected Areas or simply MPAs – a principal tool for protecting at least 30% of the ocean, which was the target set by Intergovernmental Convention by 2030. By this treaty, the poorer

countries are also given a chance of conservation of the high seas by strengthening their research capacity and by establishing a framework for sharing financial rewards from the DNA of marine organisms. The existing United Nations Convention on the Law of the Sea (UNCLOS) did not protect the biodiversity of the High Seas except for the Ross Sea in Southern Ocean, which was declared a protected area by Antarctic treaty, which contributes only 1% of the High Seas. The formal talks to bring a new treaty began in 2018, but ended only in 2023. The treaty requires only three – quarters vote of member countries to establish a MPA. A new forum for international deliberations, known as the Conference of Parties (COP) will work with the already existing ocean authorities whom represent commercial interests, including fishing and sea floor mining. It could limit the chance of declaring a heavy fish area as MPA, but could also encourage efforts to limit harming the marine lives in the commercial activities. The treaty will demand new uses of the high seas, such as offshore aquaculture, or geoengineering to capture carbon dioxide or to undergo environmental impact assessments (EIAs). But a demerit is that new COP will not have power to approve EIAs or say no to development. Another contentious issue has been how to distribute the benefits of novel pharmaceuticals or industrial compounds made from the DNA of marine species. The Convention on Biological Diversity calls for building a single database in which businesses or institutions must register patents, articles, or products based on high seas samples or data, in accordance with plans that nations adopted in December 2022 for national genetic resources. Depending on their usage, nations using genetic resources or DNA sequences would then contribute to a fund used for marine conservation and strengthening capacity in other nations. Soon, the greatest challenge will be implementation of the treatyⁱⁱⁱ.

- 2) The UNCLOS and the Convention on Biological Diversity (CBD), two existing legal frameworks, did not provide effective remedies, and the area-based management tools of international organizations lacked coordination. As a result, the BBNJ Agreement was created. In light of this, European nations supported the creation of a third legally binding agreement inside the UNCLOS framework to secure the conservation and sustainable use of marine biodiversity in areas outside of national jurisdiction. This effort was made in collaboration with several non-governmental organizations. After

the Preparatory Committee (2016–2017) and Ad Hoc Open-Ended Informal Working Group (2004–2015), the General Assembly passed Resolution 72/249 and resolved to hold intergovernmental conferences on December 24, 2017, to negotiate major points of BBNJ instruments. Five negotiating sessions have been conducted since the BBNJ legislation began the intergovernmental discussion stage in 2018. The Agreement was approved at the fifth session of the intergovernmental conference on June 19, 2023. In addition, the conferences were open to interested global and regional intergovernmental organizations, relevant United Nations system organizations, significant non-governmental organizations, and associate members of regional commissions. The Agreement has already been approved and will be available for signing on September 20, 2023. The BBNJ Agreement, which establishes universal criteria for procedural concerns and provides a legal foundation for the implementation of MPAs, is another significant development in the governance of high-seas biodiversity. The BBNJ Agreement strives to develop a worldwide legal instrument that reflects the opinions of all pertinent parties, achieves universal involvement, and responds to the legal characteristics of the high seas, as can be observed from the law-making process^{iv}.

- 3) The new High Seas Treaty, 2023 is an indispensable moment for the global ocean management and marine conservation which focuses on attempting to set right critical inequalities which were not addressed before. It is estimated that 91% of ocean species are unclassified till today and nearly 80% of ocean floor is still unmapped. Scientists are eager to find the possibilities of new genetic materials which can be extracted with the help of this treaty, as it speaks about the extraction of resources – genetic materials in particular. Jeffrey Marlow, Assistant Professor at Boston University says that there is a great interest to advance planetary health using the resources available in High Seas. He further adds that the bigger picture in the high seas is the microbial communities that regulate the ecosystems in many ways which we still don't understand and it would be beneficial if we know how to research it better through bioengineering. Until now, the high seas were virtually lawless and the nations were following “first comes, first serves” situation, that is, whomever has the sources to research the high seas can extract all the profit arising from that research. But now, this

treaty changes that situation as it perpetuates that any kind of profit extracted from the biodiversity of high seas would be subject to profit sharing regime and would go even to the least developed countries. It provides for establishing MPAs outside of national jurisdiction. But, the fishing issue was a non-starter from the very beginning, as the treaty was silent about prohibiting the commercial fishing in the future MPAs in the high seas^v.

- 4) The implementation of BBNJ Treaty, 2023 has already begun, as the new phase of interpretation, preparation and mobilization begins. The agenda for the proponents of the treaty includes ratification, institutionalization and capacity building, which covers both public and private aspects. The location of the Secretariat, the modifications to be made in the first Conference of Parties, the rules of procedure and financial rules along with many more specifications, decision as to how to mobilize finance for the implementation of the treaty at its early stage are yet to be made. Only by finding solution for these, the institutions as mentioned in the treaty along with state parties, can come into force. The treaty would greatly depend upon who ratifies it and will participate in its first meeting. Some states like People's Republic of China argued to raise the threshold of entry of the treaty by ratification of 60 countries to 90 countries, but it was rejected and the negotiations settled for 60 countries, which is the same for UNCLOS. Back in 1982, it was all developed countries who first ratified UNCLOS and as a result, developed countries influenced UNCLOS. There might be a chance that occurs this time again. This treaty adopted the feature of decision - making by consensus, which is a key feature of International law. But it was opposed by Russian federation and Venezuela, which questioned the consensus of the agreement. Several states said that they would be the first to ratify this treaty and urged other states to lay down the groundwork for this treaty to enter into force. Several states also reminded that this is only the beginning and developing countries highlighted the need for financing, including to support ratification and entry into force. Clearly, many things are to be decided and much remains to be done and this treaty is only in the early stages of coming into being^{vi}.

Methodology

This research, which is a traditional doctrinal method of research, is the study of a present scenario by the application of logic to the analysis of already existing statutory provisions, articles, journals and case laws by applying the reasoning power. It entails the systematic investigation of statutory provisions as well as the logical and legal justification of moral and legal assertions. It necessitates the extensive use of references from textbooks, articles, journals, dictionaries, encyclopedias etc., to explain the role of High Seas Treaty that would elevate trade, commerce and protect the marine environment.

Theoretical Framework

A) Development of High Seas Treaty, 2023:

In 1956, the first United Nations Conference on Law of the Sea commenced at Geneva, Switzerland and it concluded in 1958 with four treaties namely:

- (a) Convention on the Territorial Sea and Contiguous Zone (entry into force: 10 September 1964)
- (b) Convention on the Continental Shelf (entry into force: 10 June 1964)
- (c) Convention on the High Seas (entry into force: 30 September 1962)
- (d) Convention on Fishing and Conservation of Living Resources of the High Seas (entry into force: 20 March 1966).

These 4 conventions were combined in the third conference and it lead to the formation of UNCLOS in 1982. The convention of the high seas, 1964 was the base of the current High Seas treaty, 2023. In 2018, negotiations commenced for a third implementing agreement on Marine biodiversity in areas beyond national jurisdiction. The negotiations were completed in 2023 and the draft agreement for conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction was made. This draft agreement is also known as Biodiversity beyond National Jurisdiction (BBNJ) Treaty, 2023 or the High Seas Treaty, 2023 and it was completed in March 2023 and it was open for signature from 20th September 2023.

B) Main Principles:

The treaty is based upon the following principles as mentioned under Article 5 of the Treaty:

- 1) Freedom of Seas – Article 87 of UNCLOS states that high seas are open to all states and any country, regardless of their flag, has the freedom of navigation, overflight, to lay submarine cables and pipelines, to construct artificial islands, fishing, scientific research which are subject to some conditions.
- 2) Common Heritage of Humankind – States have legal responsibility to protect and preserve the biodiversity outside their national waters to act in the common interest of all mankind, not out of individual interest.
- 3) Polluter Pays – The onus is on polluters who pollute the marine environment to manage and bear the costs of pollution.
- 4) Fair and equitable benefit sharing – The benefits arising out of Marine Genetic Resources (MGRs) and Digital Sequence Information (DSI) are to be shared equal among the member states.
- 5) Precautionary Principle – States should not let a lack of scientific certainty prevent them from taking actions in response to serious, irreversible damage to the high seas.
- 6) Ecosystem and Integrated Approach – An integrated approach should be followed in ocean management, along with resilience, maintenance and restoration of the ecosystem.
- 7) Use of knowledge – The treaty wishes to utilize the traditional knowledge of the indigenous people and local communities that should only be accessed with free, prior and informed consent of them by clear housing mechanism and their rights should be protected, as explicated by Article 10 bis of the treaty^{vii}.

C) Main Provisions and Themes:

The High Seas Treaty, 2023 addresses many of the governance gaps that have not been mentioned in UNCLOS. Following are the main provisions and themes that make this treaty an instrument of conservation of marine biodiversity and ecosystem:

i. Marine protected areas:

Article 1(3) states about area – based management tool. It is a tool, which includes marine protection areas, for a geographically defined area through which activities in the high seas are monitored with the aim of achieving conservation and sustainable use. Therefore MPA is an

area based – management tool by which marine environment is to be explored, conserved and protected.

Article 1(12) states about marine protected area. It means a geographically defined marine area that is managed to achieve long term biodiversity conservation and whenever it is appropriate, sustainable usage of that area is allowed for conservation objectives. A MPA can provide protection to that marine area from different types of human activities like fishing, deep sea mining and can be used to maintain the health and endurance of the ocean.

The agreement provides the global power to states where they can submit a proposal for a marine area to be declared MPA, which was not the case before under Article 17(1). The proposal should contain certain key elements such as geographical description of the area, indicative criteria like uniqueness, rarity as mentioned in the Annex – I, human activities and their impacts including the usage of that area by indigenous people, biodiversity of that area, information on area – based management tools implemented under other relevant legal instruments, a draft management plan featuring the activities to be carried forward over there and the possible threats it may face. It can also be consulted and assessed under Article 18. The agreement provides for the establishment of area – based management tools including marine protected areas (MPA) by the Conference of Parties under Article 19. Article 20 provides the Conference of Parties to adapt indispensable measures in high seas during times of emergency such as natural phenomenon or human-caused disasters.

ii. Achieving 30x30 for the ocean

Although the agreement itself does not set conservation goals, it finally provides a legal path to establish Marine Protected Areas (MPA) on the High Seas, where most areas have not previously existed. This will ensure that by 2030, at least 30% of the oceans are effectively protected through ecologically representative, well connected and equitably managed protected area systems and other effective area – based conservation measures. This is one way to achieve the 30x30 target agreed at last year’s Convention on Biological Diversity (CBD) Conference, which is the Kunming – Montreal Global biodiversity framework^{viii}. The treaty provides for

the identification of new MPAs and thus, there are proposals already made for establishment of MPAs to be made before the first Conference of Parties (COP).

The High Seas Alliance has already identified eight areas that could make up the first generation of high seas MPAs:

- Salas y Gomez and Nazca Ridges in the waters of the southeast Pacific
- The Thermal Dome in the Eastern Pacific
- Emperor Seamounts in the North Pacific
- Walvis Ridge that runs from the coast of Namibia to the mid-Atlantic Ridge
- Sargasso Sea in the Atlantic Ocean
- South Tasman Sea/Lord Howe Rise between Australia and New Zealand
- The Lost City in the mid-Atlantic ridge
- Saya de Malha Bank in the Indian Ocean

iii. Equitable sharing of marine genetic resources

Part II of the agreement speaks about the Marine Genetic Resources (MGR). Article 1 (11) of the agreement says that MGR are marine resources that includes any material of marine plant, animal, microbial or other origin that possess functional units of heredity value, be it may actual heredity value or a potential heredity value. This part also includes the fair and equitable share of benefits arising from MGR. Thus, the principles of equity and fairness comes into play.

It allows the parties to undergo activities related to MGR and digital sequence information on those MGR in areas beyond natural jurisdiction (i.e.) high seas and imposes obligation on its signatories to share both the monetary and non-monetary benefits arising out of it, to all of humanity for advancing the scientific knowledge and promote conservation and sustainable use of biological diversity. Article 11(2) provides about the transfer of non-monetary benefits like access to samples and sample collections, access to digital sequence information, transfer of marine technology, increased technical and scientific co-operation. Article 11(5) provides about the sharing of monetary benefits which constitutes a financial mechanism under Article 52 to manoeuvre potential future financial resources. And it imposes its signatories to provide

assessed contributions (the mandatory contributions paid by the states in virtue of their membership) for the institutions established by this agreement.

iv. Environmental Impact Assessments:

According to the Sustainable Development Goals Report, more than 17 million metric tons of plastic waste is there in ocean, which contributes 85% of marine litter and is expected to be doubled or tripled each year by 2040. This treaty provides for strengthening resilience and contains polluter pays principle related provisions, contains mechanisms for disputes and environmental impact assessments (EIA)^{ix}

Article 1(10) defines what an environmental impact assessment is. It is a process for the identification and evaluation of potential impacts of an activity and inform it to the decision-making body. Simply put, EIA enables the review of environmentally harmful and polluting projects where those projects might cause substantial pollution or significant/ harmful changes to the marine environment in areas beyond national jurisdiction which might affect some nations' already existing national processes in marine projects. Therefore a review of the environmental harmful and polluting activities is made, enabling a check on those activities to not overdo it.

Part IV of this agreement deliberates about the environmental impact assessments. Article 22 imposes obligation on the parties to perform EIA for planned activities that may have potential impacts on the marine environment that includes both territorial waters which are under the parties' jurisdiction or control (exclusive economic zone) and high seas (areas beyond natural jurisdiction).

Article 17 provides a proposal for scientific and technical body adopted by the Conference of Parties which is a body of experts from different nations whom expertise in various fields which assists and provides advice to Conference of Parties. Article 30 of the agreement provides the process for EIA such as screening, scoping, impact assessment and evaluation. This means that every activity will be subject to monitoring by the Conference of Parties. The cumulative impacts which includes consequences of climate change, ocean acidification, and related impacts must be taken into consideration while conducting EIA must be taken into account in

environmental impact assessments .When a project has already been properly evaluated in line with criteria comparable to the BBNJ, such impact evaluations may be omitted.

Article 41 bis provides that the scientific and technical body shall provide new EIA guidelines or standards like determination of thresholds for conducting screening, whether planned activities reached or exceeded EIA, assessment of cumulative impacts in high seas and in areas of national jurisdiction.

v. Regulating existing organisations:

The parties to this treaty will have to implement the new EIA frameworks to their existing organisations which regulates the activities of fishing, deep sea mining and shipping. This onus to collaborate with these existing bodies is also applicable to other parts of the agreement. This is made to ensure good co-operation and co-ordination.

vi. Resource mobilisation target:

In accordance with the agreement, a resource mobilisation target for 2030 or a fund to support the resource must be created. The agreement's financial mechanism consists of three parts: a voluntary trust fund to assist the representatives of developing countries to take part in the agreement meetings, a special fund to receive funds from the agreement's marine genetic resources, under Article 52 and a global environment facility trust fund.

vii. Conference of Parties:

The Conference of Parties, as given by Article 48, is the apex decision making body of this treaty that will review, evaluate and regulate the implementation of this treaty agreement and also works as a platform with existing authorities to regulate fishing, shipping and deep sea mining.

viii. Decision-making:

Article 19 bis provides that if no consensus is reached by the parties, then it can be made by majority decision – making and it shall be binding on all parties. It greatly helps to block certain actions initiated by a single country that is not accepted by majority nations.

ix. Swift action in emergency situations

Article 20 ante allows the COP to implement measures applied on an emergency basis, in case of natural phenomenon or human – caused disasters which causes or is likely to cause serious or irreversible damage to the marine ecosystem.

D) Current situation of the treaty:

The High Seas Treaty was completed in March 2023 and it was open for signature from 20th September 2023. Within 2 days of opening for signature, 75 countries signed it. Till now, 82 countries signed it, including Australia, Bangladesh, Brazil, China, Costa Rica, Croatia, Denmark, European Union, Indonesia, Marshall Islands, Mauritius, Mexico, Nepal, New Zealand, Singapore, United Kingdom, United States of America and Vietnam^x.

This treaty will enter into force after it is signed and ratified by 60 countries. The signature of 82 countries means that they are ready to ratify it. After ratification is made by the 60th country, it will become a binding treaty. Even a non-party to UNCLOS can ratify it. India is yet to sign it, though India accepted it. This agreement is to be deliberated hereinafter.

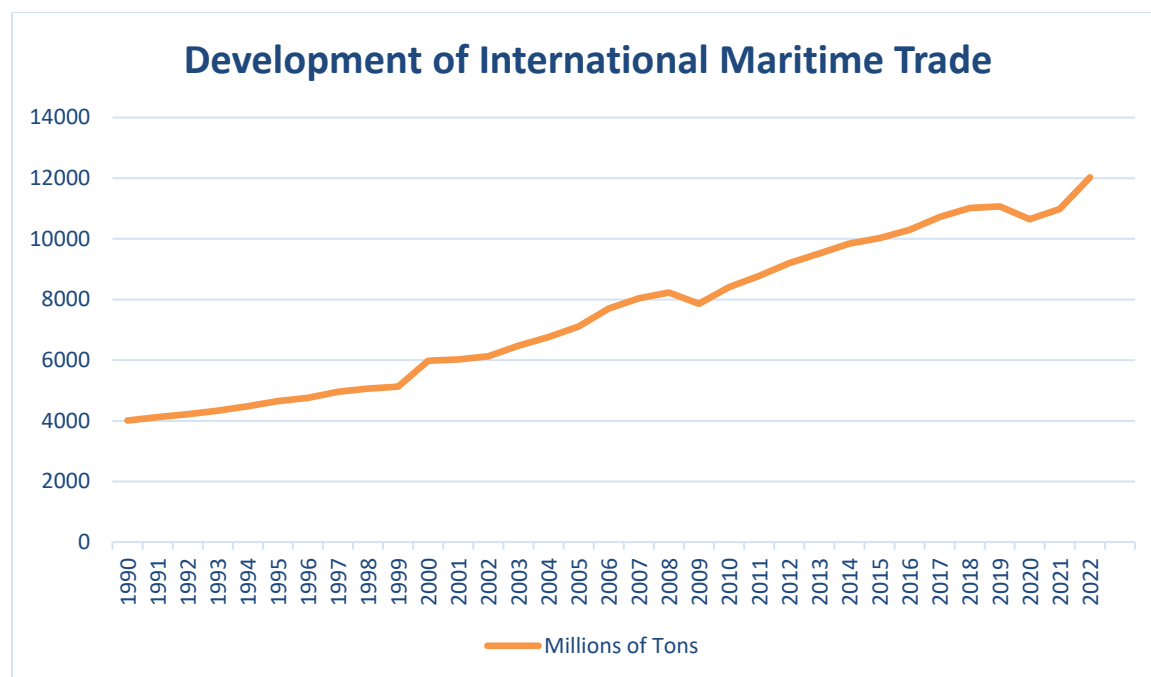
It is hoped that the treaty may be ratified by 60 countries within the next United Nations Ocean Conference that is scheduled to be conducted at Nice, France in 2025.

E) Trade comparison with UNCLOS:

Over 90% of the world trade is made by the nations of the world through international shipping on the high seas, which involves crossing of enormous vessels on the high seas. Therefore it is important to know that how this treaty would impose an impact in the international maritime trade. United Nations Conference on Trade and Development (UNCTAD) also declared that it would support the member nations in implementing the new treaty by providing them with data on ocean based goods and services trade, Blue Bio trade, maritime trade and expertise help.

David Vivas Eugui, the chief of the Oceans and Circular economy section at UNCTAD said that the trade in ocean based goods and services can be done in a more sustainable and cooperative fashion, especially in the marine technologies and sectors, by the help of this new treaty^{xi}.

The following line graph shows the development of international maritime trade estimated by goods loaded in million tons as published by UNCTAD reports:



Source: computed

The international maritime trade was very less before the implementation of UNCLOS. It was 4008 million tons of goods shipped globally during 1990^{xii} – a period where UNCLOS was still not effectuated. After UNCLOS, the trade growth gradually expanded and reached 5984 million tons in the year 2000 (i.e.) nearly 1900 million tons of goods were transported by sea in just a decade, which is greater than previous 20 years. In 2005, it was 7109 million tons of goods transported and 5 years later in 2010, it was 8408 million tons of goods transported. There was a lag in the growth of trade due to several factors like 2002 twin tower attack, early 2000 recession, In 2015, it was 10023 million tons of goods transported by the Sea and by 2019, it was 11071 million tons. Due to the Covid – 19 pandemic, the trade of goods was reduced to 10684 million tons, but again saw a rise in 2021 and 2022 with 10985 and 12027 million tons of goods transported respectively^{xiii}. Thus, we can predict that the High Seas Treaty, 2023 would also produce a similar effect of improvement as the UNCLOS.

F) Challenges of the treaty:

- The immediate challenge of this treaty is its implementation. The treaty provides that it shall enter into force 120 days after the ratification of the 60th country. It is to be noted that this treaty was a result of 20 years of prolonged negotiations and the Constitution of Seas, the UNCLOS itself took 12 years to become an international law and the Kyoto Protocol also took 8 years to come into effect.
- China and Russia are not in favor of this treaty stating that it lacks conservation and sustainability balance^{xiv}.
- For a global treaty of significant importance, the threshold for entry into force is ratification by only 60 countries.
- Article 23 (4) can be interpreted in a way that deep sea mining would be exempted from EIAs, if they were already assessed in accordance with other legal instruments or frameworks by relevant global, regional, sub regional or sectoral bodies.
- It fails to address various key issues like shipping, overfishing, resolution of disputes, implementation of mechanisms for policing protected areas and the fate of already existing projects that are assessed to be heavily polluting are unknown.
- Under this treaty, if a member state wants to declare an area as MPA, then it should convince the regional fisheries management organizations that fishing would devastate that area and the area is best protected when there is no fishing. It is practically impossible because no nation would accept to lose its control of fisheries in their area^{xv}.
- It provides vague definitions that has some loopholes. For an example, it defines MPAs as geographically defined marine area that is designated and managed to achieve specific long term biodiversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives. There is no exact geographically defined area or conservation objectives as given by the treaty.
- The details of all the major contentious provisions needs to be worked out.
- It fails to designate a proper international enforcement agency for enforcing the provisions of the treaty.
- Consensus is not reached in important subjects like funding, intellectual property rights and institutional mechanisms.

Limitations

This paper has the following limitations:

- 1) This paper is based upon the contemporary event of the introduction of the High Seas Treaty – 2023, which is yet to be ratified by member nations and the actual result is yet to known.
- 2) This paper is completely based upon doctrinal research which necessitates the extensive use of references from textbooks, articles, journals, dictionaries, encyclopedias etc. It does not include any opinion of an expert in form of an interview and does not include any non – doctrinal methodology.

Conclusion

After 36 hours of non – stop negotiations at the last Intergovernmental Conference, the President of the Intergovernmental Conference – Rena Lee of Singapore remarked that “the ship has reached the shore^{xvi}”. Delegate of Senegal also reflected that the agreement will strengthen the international legal framework and will serve to reduce the disparities between nations of Global North and Global South, through win – win cooperation^{xvii}. These statements unveil the industrious efforts made by many delegates in constructing this new treaty. The treaty envisages the importance of conservation of marine biodiversity and ocean ecosystem. It also has provisions to cope up with the UN Sustainable Development Goal 14 on conserving and sustainably using the ocean, seas and marine resources. The treaty will also boost up the efforts to make a sustainable maritime trade in the international waters. Regina Asariotis, the Chief of UNCTAD’s policy and legislation section, said that the effective implementation and enforcement of the existing provisions and international legal frameworks is critical for barring pollution from shipping and it will become more important^{xviii}. The entire planet is about to get huge benefits from this important treaty. Therefore, it is of grave importance that member nations ratify this treaty and bring it into force as soon as possible.

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