



ANALYSIS OF HIGH SEAS TREATY (ABNJ/BBNJ) AND ITS IMPLICATIONS FOR PAKISTAN

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CHAPTER 1

HISTORICAL EVOLUTION AND BACKGROUND

“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” OR “THE HIGH SEAS TREATY”

1.1 Background

- a. Stretching out over more than two thirds of the Earth, the high seas remain a relatively vast, complex and partially uncharted marine environment⁵⁴. It is usually described in terms of a vast, barren space in the geography of the world, but in fact it is much more interesting. We are dealing with high seas, the vast and rich ecosystem that is home to a tremendous variety of sea life, which is so important for the existence of our planet⁵⁵.
- b. It is important to note that these complex systems play a vital role in the climate control on Earth; through photosynthesis, phytoplankton contributes to the generation of half the oxygen we breathe. Also, the ocean has a large area of coverage and takes a large amount of CO₂, an important greenhouse gas, resulting in mitigation of climate change⁵⁶.
- c. Apart from their conservation importance the high seas are also an important source of resources. Fisheries feed millions, fish as a source of protein is consumed globally by approximately 3 billion people. The seabed may contain affluent mineral resources including nodules that are valuable for their metal content such as cobalt and manganese which are useful in the current industries and technology⁵⁷.
- d. High sea is also the lifeline of international trade, and several vessels sail in these areas daily transporting all forms of products including food products, manufactured goods and energy products. For this reason, the daily traffic of maritime vessels highlights the need for free navigation in the seas.
- e. Last but not the least; the high seas have a major role in scientific research. Ships that conduct research go deep into the seas bringing out the

⁵⁴ United Nations Office of Ocean Affairs and the Law of the Sea (DOALOS). (2021). **The Oceans and the Law of the Sea** <https://www.un.org/oceancapacity/>

⁵⁵ Ardon, D., Alegría, A., & Jeanneau, L. (Eds.). (2014). **Nomination of the Mid-Atlantic Ridge for the UNESCO World Heritage List**. International Union for Conservation of Nature (IUCN) <https://iucn.org/our-work/topic/world-heritage/our-work/advisor-world-heritage/nominations>

⁵⁶ Field, C. B., Behrenfeld, M. J., Jokinen, J. T., Falkowski, P. G., Sarmiento, J. L., & Siegel, D. A. (1998). **Primary production of the biosphere: Integrating terrestrial and oceanic components** Science, 281(5374), 237-240. (<https://pubmed.ncbi.nlm.nih.gov/9657713/>)

⁵⁷ Field, C. B., Behrenfeld, M. J., Jokinen, J. T., Falkowski, P. G., Sarmiento, J. L., & Siegel, D. A. (1998). **Primary production of the biosphere: Integrating terrestrial and oceanic components**. Science, 281(5374), 237-240. (<https://pubmed.ncbi.nlm.nih.gov/9657713/>)

details of life forms and environments in seas. This research not only promotes deeper understanding of the Earth but may contribute to the developments in medicine and biotechnology as well as climate change mitigation strategies⁵⁸.

1.2 The Law of the Sea: Charting a Course for Responsible Use

a. The vastness and freedom of the high seas presented a historical challenge – how to ensure their responsible use and prevent exploitation? This is where the concept of the Law of the Sea comes in. It is a system of public international law which covers all seas and all areas of ocean jurisdiction.

b. The background of the Law of the Sea dates to several centuries and can be viewed as the mirror of the analysed relations between countries through the centuries. The Strawman ideas at the beginning of the formation included what was known as “mare liberum” or freedom of the seas. This principle espoused by nations such as Britain in the 17th century, postulated that all nations had an intrinsic right in using the high seas. But as new technologies and resources emerged new problems with the “mare liberum” concept arose as well. This led to the realization of the need for developing a broader legal framework that would dictate proper conduct to avoid conflict. Important conventions were then formed early in the 20th century which helped in the formulation of the Law of the Sea. There are legal statutes governing the high seas such as the Territorial Sea which refers to the legal limit of a coastal country’s jurisdiction over waters adjacent to its coast (12 nautical miles). They also defined the exclusive economic zone (EEZ), 200-mile zone off a nation’s coasts in which the coastal state has sovereign rights to resources such as fish and minerals.

c. These early agreements were a breakthrough in the process, but they did not fully address all the issues leaving some of them such as the regulation of activities in the high seas rather general. This created the basis for United Nations Convention on the Law of the Sea (UNCLOS).

1.3 The United Nations Convention on the Law of the Sea (UNCLOS)

a. UNCLOS was formulated in the post-World War II period, to lay down a legal regime of utilizing the oceans that included concerns such as depletion of resources and pollution. It committed to ensure that international coastal vessels passed through its waters unhindered, that natural resources were used sustainably, and the marine ecosystem was conserved. However, a problem that emerged out of this legislation was the inability of UNCLOS to conserve biodiversity of the High Seas comprehensively. **In general, UNCLOS Articles 61-73 address living resources, including highly migratory species, marine mammals, and sedentary species, among others. Other relevant provisions include those that address living resources in the high seas (Articles 116-120) and protection of the marine environment**

⁵⁸ Katsumoto, S., & Nakamura, K. (2012). Distribution and abundance of polymetallic nodules on the abyssal seafloor of the world. Energy Procedia, 17, 1828-1836.

(Articles 192-196). But it does not contain a mechanism and regulatory framework on how to conserve biodiversity in a comprehensive manner.

(1) **Climate Change and IUU.** The large high seas ecosystem is under pressure from the unscrupulous nature of its users and a changing environment. Due to the freedom for fishing in the UNCLOS, and lack of proper management, fisheries were over utilised which set the marine food chains out of order due to overfishing. Ineffective fisheries management and illegal, unreported and unregulated (IUU) fishing have resulted in overfishing and the collapse of many fish stocks. Climate change is causing global warming, sea level rise and ocean acidification, all of which exacerbate the strain on many valuable marine species, habitats and ecosystems. As a result, the past decades have seen the ocean become warmer, stormier, more acidic, elevated and oxygen-depleted, as well as less predictable and resilient⁵⁹. Although UNCLOS is inclusive of pollution control facets, it does not contain details for new pollution forms, such as micro plastics and emerging threats of climate change. These limitations called for a new mutually beneficial agreement to be reached. Yet, despite being a fundamental component of ocean law, UNCLOS fails to satisfactorily address modern challenges. Finally, climate change affects the high seas and as has been highlighted it is not provided for in UNCLOS.

(2) **High Seas Management and Marine Protected Areas.** Another relevant consideration is that UNCLOS has specific deficiencies in its provisions that relate to effective high seas management. It promotes Marine Protected Areas (MPAs) within nations' national Exclusive Economic Zones (EEZs) but provides no provisions of MPAs in the high seas which are very influential in conservation. UNCLOS also directs states to prevent pollution of the High Seas, but it lacks provisions concerning EIAs that evaluate the impact of many activities on the High Seas. Also, many developing countries have no financial or human resources to effectively administer their huge maritime areas and engage effectively in high seas regulation. UNCLOS also does not contain provisions for specific CBMs in relation to this deficit.

1.4 Evolution of The High Seas Treaty from UNCLOS

a. The importance of a separate instrument tasked with high seas management was being felt in the last quarter of the twentieth century. In 2004, the United Nations General Assembly, through Resolution 59/24, appointed the Preparation Committee (PrepCom) to consider questions associated with BBNJ. The PrepCom has allowed the states, NGOs and scientific organizations to consider the necessity of the new legal instrument and to establish some prospects for cooperation. In several PrepCom meetings, some of the emerging issues in development of the new instrument were areas such as marine protected areas, environmental impact assessment and capacity.

⁵⁹ UNCTAD, ed., *Building a Sustainable and Resilient Ocean Economy beyond 2030*, Trade and Environment Review 2023 (New York, NY: United Nations, 2023).

b. Based on these intense deliberations in PrepCom, the UN General Assembly initiated the official process for the drafting of a new instrument under UNCLOS in 2015. The negotiations are a process of four years of international conferences to which more than 150 states together with NGOs and Intergovernmental organizations [2]. This was pronounced to be an intricate process that was characterized by varying national interests at the international level.

c. It was a bumpy journey to the formulation of the prospect of a new treaty governing the high seas. Developed and developing nations disagreed about restrictions imposed on such things as fishing that take place in areas in the high seas that have been safeguarded. One of the contentious issues sought to do with the benefit of marine genetic resources⁶⁰. Thus, developing nations developed the demand for equitable shares of these resources and a slice of the pie in case the resources were to be commercial. Technology transfer and capacity building were also very important for the developing nation to enhance their ability to fully participate in the conservation and sustainable use of the high seas' resources.

d. The process of demonstration isn't without its problems, so too is the case with the negotiation process. Those nations which looked forward to having a share of the deep-sea mining opposed the rules that could prevent them from conducting their business as planned. The last challenge was the enforcement of the treaty – this precluded the practical difficulties of watching and policing the long oceans of the world. Last but not the least, the question of an active participation of NGOs and other scientific organizations both in the treaty-making process and in the subsequent actions based on the treaty's provisions remained an open issue.

e. Due to the complex cooperation, the High Seas Treaty was ratified by the United Nations in June 2023. After nearly two decades of discussions and a 36-hour marathon of negotiations, Ambassador Rena Lee, President of the United Nations (UN) Intergovernmental Conference, announced on 4 March 2023 that

f. "The ship has reached the shore" for a new, legally binding international treaty to protect marine life in international waters (High Seas Treaty)"

g. This is the first time in over 40 years that world governments have gathered to finalize a treaty related to the ocean, and the first ever to address biodiversity in the high seas - finally putting this shared resource under global protection.

⁶⁰ Ifesinachi Okafor-Yarwood, "New Treaty to Protect the World's Oceans May Hurt Vulnerable African Fisheries," The Conversation, October 11, 2023, <http://theconversation.com/new-treaty-to-protect-the-worlds-oceans-may-hurt-vulnerable-african-fisheries-214422>.

CHAPTER 2

TECHNICAL ASPECTS OF THE HIGH SEAS TREATY

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” or “The United Nations Biodiversity of Areas Beyond National Jurisdiction Treaty”, also known as the “High Seas Treaty” or the “BBNJ Treaty”, was adopted on 19 June 2023. It is a legally binding instrument for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. As complex as the matter is due to the involvement of all nations of the world, the treaty is equally complex in its technical and legal aspects, calling for more talks and international engagements on the implementation. The treaty addresses four themes:

- a. Marine Genetic Resources (MGRs), including the fair and equitable sharing of benefits.
- b. Area-Based Management Tools (ABMTs), including marine protected areas (MPAs)
- c. Environmental Impact Assessments (EIAs); and
- d. Capacity building and transfer of marine technology.

(1) **Marine Genetic Resources (MGR)**. MGRs are defined in the BBNJ Agreement as “any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value” (BBNJ Art. 1(8)).

(2) **Digital Sequence Information (DSI)**. DSI is not defined in the BBNJ Agreement, yet it refers to the digitalized information on an MGR. Currently, capacities to access and use marine genetic resources are unequally distributed between countries because very few possess the necessary technology and research facilities. That is why benefit sharing is an integral part of the BBNJ Agreement.

(3) **Environmental Impact Assessment (EIA)**. EIAs are defined in article 1 of the BBNJ Agreement as a process to identify and evaluate the potential impacts of an activity to inform decision-making, and in essence are systematic evaluations of the potential environmental and associated impacts of a planned activity. Such assessments play a crucial role in modern environmental management by assisting decision-makers and stakeholders in fully understanding the potential impacts of a planned project.

2.1 Objective of the Treaty

- a. Under Article 2 of the High Seas Treaty, the objective of this Agreement is:

“To ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.”

2.2 Scope of Application

a. “This Agreement applies to areas beyond national jurisdiction” but with an exception:

“This Agreement does not apply to any warship, military aircraft or naval auxiliary. Except for Part II (MARINE GENETIC RESOURCES, INCLUDING THE FAIR AND EQUITABLE SHARING OF BENEFITS), this Agreement does not apply to other vessels or aircraft owned or operated by a Party and used, for the time being, only on government non-commercial service.”

“However, each Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.”

2.3 Measures Suggested to Protect Biodiversity at High Seas

Marine Genetic Resources (MGRs) are the genetic material of any plant, animal or microbe. MGRs, as well as their digital version (Digital Sequence Information - DSIs) and derivatives have attracted substantial interest from science and industry, for example to develop new drugs or cosmetics⁶¹. The High Seas Treaty suggests some key measures to protect biodiversity and MGR at High Seas which are discussed in this section.

a. Area-Based Management Tools (ABMTS), Including MPAs.

(1) ABMTs are tools or measures that are used to manage human activities in a particular area and can range from single-sector tools to comprehensive marine protected areas⁶². The new Treaty should include a mechanism to establish a network of marine protected areas (MPAs) within the high seas, including fully and highly protected areas where no harmful industrial activities are allowed. The Treaty's Conference of Parties (CoP) is empowered to establish MPAs in the High Seas and associated management measures with the goal of establishing a connected network of High Seas MPAs. This includes the

⁶¹ <https://highseasalliance.org/wp-content/uploads/2023/07/HIGH-SEAS-TREATY-QA.pdf>

⁶² https://www.highseasalliance.org/wp-content/uploads/2021/04/ABMTs-BRIEFING-2_-How-do-MPAs-and-other-ABMTs-differ_.pdf

development of a new body to consider a MPA management plan. Significantly, MPAs can be adopted by a vote when consensus cannot be reached. This prevents a single nation preventing the establishment of these important conservation areas⁶³.

Article 19: “Proposals regarding the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by Parties, individually or collectively, to the secretariat. Parties shall collaborate and consult, as appropriate, with relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, the private sector, Indigenous Peoples and local communities, for the development of proposals.”

(2) By providing the tools to establish and manage marine protected areas, the new treaty is a massive contribution to putting into practice the UN’s Global Biodiversity Framework agreed in December 2022 in Montreal at the Convention on Biological Diversity, where countries pledged to protect 30% of ocean, land and coastal areas by 2030 (known as ‘30x30’ principle)⁶⁴.

b. Environmental Impact Assessments (EIAs)

(1) New activities on the High Seas, such as large-scale exploration or geoengineering proposals, High Seas aquaculture and other new activities, will be subject to detailed EIA including public notice, consultation and comment provisions to avoid significant adverse effects to High Seas marine life.

(2) There will also be a greater level of transparency required. For example, EIAs for ISA should be published on the High Seas Treaty clearing-house mechanism and monitoring results should be reported. Regarding the establishment of High Seas MPAs that cover the seabed, Parties will need to promote the adoption of relevant measures within the ISA and ensure that ISA activities that take place on the High Seas are conducted consistently with the decisions adopted under the High Seas Treaty.

c. Non-Inclusion of Fishing Activities

(1) Article 10 states that:

“The provisions of this Part shall not apply to:

⁶³ Lee Hannah et al., “To Save the High Seas, Plan for Climate Change,” *Nature* 630 (June 12, 2024): 301, <https://doi.org/10.1038/d41586-024-01720-2>.

⁶⁴ https://climatechampions.unfccc.int/ar/why-the-high-seas-treaty-is-a-breakthrough-for-the-ocean-and-the-planet/?gad_source=1&gclid=Cj0KCQjw-uK0BhC0ARIsANQtgGPMegh0mppTMPkDbanLPCO4OCuQCSg0a25z3gwL9XZUKUsNnnlqzhAaAgkeEALw_wcB

(a) Fishing regulated under relevant international law and fishing-related activities; or

(b) Fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under this Part.”

(2) While this Treaty does not address fishing issues, it establishes a protocol for sharing economic benefits tied to the discovery of marine genetic resources⁶⁵. In a broader perspective, Marine Protected Areas would help preserve fish populations too, however over-fishing or IUU fishing as a distinct subject is not addressed in the treaty.

d. Support to Developing Countries and Equitable Sharing of Resources

(1) The Treaty supports developing countries through capacity building and the transfer of marine technology so that they are better empowered to develop, implement, monitor and manage future High Seas MPAs. Article 11 of The Treaty states that:

“No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction. No such claim or exercise of sovereignty or sovereign rights shall be recognized.”

“Activities with respect to marine genetic resources of areas beyond national jurisdiction are in the interests of all States and for the benefit of all humanity, particularly for the benefit of advancing the scientific knowledge of humanity and promoting the conservation and sustainable use of marine biological diversity, taking into particular consideration the interests and needs of developing States.”

(2) Article 14 of the Treaty deals with the “Fair and Equitable Sharing of Resources”. It supports the sharing of non-monetary benefits in form of

“Capacity-building, including by financing research programmes, and partnership opportunities, particularly directly relevant and substantial ones, for scientists and researchers in research projects, as well as dedicated initiatives, in particular for developing States, taking into

⁶⁵ Kristin Deasy, “What We Know about the New High Seas Treaty,” *Npj Ocean Sustainability* 2, no. 1 (June 30, 2023): 1–3, <https://doi.org/10.1038/s44183-023-00013-x>.

account the special circumstances of small island developing States and of least developed countries” and

“Increased technical and scientific cooperation, in particular with scientists from and scientific institutions in developing States”.

“Monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, including commercialization, shall be shared fairly and equitably, through the financial mechanism established under article 52, for the conservation and sustainable use of the marine biological diversity of areas beyond national jurisdiction”

CHAPTER 3

IMPLEMENTATION AND GOVERNANCE STRUCTURE OF THE HIGH SEAS TREATY

The Treaty has proposed an implementation and governance structure which can be amended and improved after it comes into force. The Article 48 of the treaty deals with the instruments of governance, which include the Secretariat, the Scientific and Technical Body, the CoP, the Implementation and Compliance Committee, Access and Benefit Sharing Committee, Capacity-Building and Transfer of Marine Technology Committee and funding mechanism for finance.

3.1 Instruments of Governance

- a. **Conference of the Parties.** A Conference of the Parties is established under the Article 48 of the Treaty. The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the United Nations no later than one year after the entry into force of this Agreement. The Conference of the Parties, at its first meeting, shall make arrangements for the functioning of the secretariat, including deciding on its seat.
- b. “The Conference of the Parties may decide to request the International Tribunal for the Law of the Sea to give an advisory opinion on a legal question on the conformity with this Agreement of a proposal before the Conference of the Parties on any matter within its competence.”
- c. **Scientific and Technical Body.** A Scientific and Technical Body is established Article 49 of the Treaty.
- d. **Secretariat.** A secretariat is established Article 49 of the Treaty.

Article 19: “Proposals regarding the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by Parties, individually or collectively, to the secretariat. Parties shall collaborate and consult, as appropriate, with relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, the private sector, Indigenous Peoples and local communities, for the development of proposals.”

- e. Access and Benefit-Sharing Committee. Access and benefit sharing committee is formed under Article 15 to ensure the equitable sharing of benefits arising from activities at High Seas.

“The access and benefit-sharing committee shall be composed of fifteen members possessing appropriate qualifications in related fields so as to ensure the effective exercise of the functions of the committee. The members shall be nominated by Parties and elected by the Conference of the Parties, taking into account gender

balance and equitable geographic distribution, and providing for representation on the committee from developing States, including from the least developed countries, from small island developing States and from landlocked developing countries. The terms of reference and modalities for the operation of the committee shall be determined by the Conference of the Parties.”

- f. Capacity-Building and Transfer of Marine Technology Committee. Capacity-building and transfer of marine technology committee is established under article 47 bis.
- g. Implementation and Compliance Committee. A committee to facilitate and consider the implementation of and promote compliance with the provisions of this Agreement is established under Article 53 ter.

3.2 Implementation Mechanisms

- a. **Clearing-House Mechanism for Monitoring and Transparency.** Article 16 of the Treaty deals with Monitoring and Transparency.

“Monitoring and transparency of activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall be achieved through notification to the clearing-house mechanism, use of BBNJ standardized batch identifiers in accordance with this Part, and according to procedures adopted by the Conference of the Parties as recommended by the access and benefit-sharing committee.”

A clearing house Mechanism has been set up under Article 51 of the treaty.

“The clearing-house mechanism shall consist primarily of an open-access platform. The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.”

“The clearing-house mechanism shall... Serve as a centralized platform to enable Parties to access, provide and disseminate information with respect to activities taking place pursuant to the provisions of this Agreement.”

- b. **Public Notification and Consultation.** Article 32 further creates an open and transparent environment by stating principles of public notifications and open communication.

“Parties shall ensure timely public notification of a planned activity, including by publication through the clearing-house mechanism

and through the secretariat, and planned and effective, time-bound opportunities, as far as practicable, for participation by all States, in particular adjacent coastal States and any other States adjacent to the activity when they are potentially most affected States, and stakeholders in the environmental impact assessment process.”

c. **Modalities for Capacity-Building and Transfer of Marine Technology.** Modalities for capacity-building and the transfer of marine technology are explained under Article 41.

“Parties, within their capabilities, shall ensure capacity-building for developing States Parties and shall cooperate to achieve the transfer of marine technology, in particular to developing States Parties that need and request it, taking into account the special circumstances of small island developing States and of least developed countries, in accordance with the provisions of this Agreement.

Such needs and priorities may be self-assessed or facilitated through the capacity-building and transfer of marine technology committee and the clearing-house mechanism.”

d. **Financial Resources and Mechanism.** Funding is addressed under Article 52.

“Each Party shall provide, within its capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement, taking into account its national policies, priorities, plans and programmes.”

“The institutions established under this Agreement shall be funded through assessed contributions of the Parties. The Conference of the Parties may consider the possibility to establish additional funds, as part of the financial mechanism, to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, to finance rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction.”

e. **Settlement of disputes.**

(1) **Obligation to settle disputes by peaceful means**

Under Article 57, Parties have the obligation to settle their disputes concerning the interpretation or application of this Agreement by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

“Where a dispute concerns a matter of a technical nature, the Parties concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes under article 55 of this Agreement.”

(2) Procedures for the settlement of disputes

Under Article 60, disputes concerning the interpretation or application of this Agreement shall be settled in accordance with the provisions for the settlement of disputes provided for in Part XV of the Convention i.e., United Nations Convention on the Law of the Sea of 10 December 1982.

f. Amendment to the Treaty. Article 72, amendments are possible in the treaty clauses.

“A Party may, by written communication addressed to the secretariat, propose amendments to this Agreement. The secretariat shall circulate such a communication to all Parties. If, within six months from the date of the circulation of the communication, not less than one half of the Parties reply favourably to the request, the proposed amendment shall be considered at the following meeting of the Conference of the Parties.”

3.3 Level of Influence on Decision Making by Existing Regional and Multilateral Bodies in Authority for Regulating Fisheries, Mining, and Shipping on The High Seas

a. Many of the bodies for fisheries management, science and governance are central partners to the treaty and are already trying to incorporate climate change into their plans⁶⁶. Coordination of existing data and trends and effective communication of this information will allow for efficient management responses, which can then be integrated into more-comprehensive regional plans as the treaty comes into force. The High Seas Treaty does not set rules and regulations for mining at sea, and it will not stop deep-sea mining from beginning in the ocean on its own. However, there are certain obligations and procedures which countries that are Parties to both the High Seas Treaty and the International Seabed Authority (ISA) (that regulates deep-sea mining) must follow once the Treaty comes into force. Parties to the ISA and the Treaty are specifically required to promote the objectives of the Treaty when participating in ISA decision-making and are required to cooperate with the High Seas

⁶⁶ Hannah, Lee, Amy Irvine, Isaac Brito-Morales, Susanna Fuller, Tammy Davies, Derek Tittensor, Grace Reville, Nancy Shackell, Janos Hennicke, and Ryan Stanley. "To save the high seas, plan for climate change." *Nature* 630, no. 8016 (2024): 298-301.

Treaty. With respect to deep-sea mining, just like other activities that fall under an existing body, Parties would need to ensure that the ISA follows the EIA procedures laid out in the Treaty. The ISA does not yet have binding regulations or standards regarding EIAs for deep-sea mining activities. Therefore, Parties will be required to cooperate and coordinate within the ISA to ensure that EIAs are carried out consistently with the High Seas Treaty.

b. **The BBNJ Agreement introduces a much higher standard for EIAs than the current 2019 ISA draft regulations for exploitation of mineral resources in the Area.** The article 5 of the High Seas Treaty creates some confusions on the application of the treaty on approved deep sea mining projects under EIA, which need to be discussed and clarified in upcoming sessions of discussions on the High Sea Treaty. The Article 5 states that

“This Agreement shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies.”

c. Putting a high seas treaty in place would not undermine or replace Regional Fisheries Management Organisations (RFMOs). To the contrary, as long as it considers Fish as “Biodiversity”, it would rely on those organizations to effectively manage the target fish species under their purview and would support their work by protecting the ecosystems upon which those fisheries rely. The treaty could help fill current governance and management gaps⁶⁷.

d. The High Seas Treaty also aims to take onto board different Regional Seas Organizations (RSOs) to continue working on their charters but to comply to basic clauses of the High Seas Treaty as well, as mentioned in many clauses, one of which is Article 22 of the treaty:

“The Conference of the Parties shall develop mechanisms for the Scientific and Technical Body under this Part to collaborate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies that regulate activities in areas beyond national jurisdiction or protect the marine environment.”

⁶⁷ “High Seas Treaty Must Reflect Critical Role of Fish in Marine Ecosystems,” March 14, 2022, <https://pew.org/3J6I7uY>.

CHAPTER 4

IMPLICATIONS OF TREATY ON INTERNATIONAL, REGIONAL AND NATIONAL LEVELS IN CONTEXT OF PAKISTAN

4.1 Current Global Status

To date, 90 nations have signed the treaty, signaling intention to ratify, but only seven – Palau, Chile, Belize, Seychelles, Monaco, Mauritius, and the Federated States of Micronesia – have formally ratified the agreement. Despite the passing of a landmark deal on the high seas signed by all member states of the U.N., it will only come into effect when at least 60 countries have passed the legislation in their own countries⁶⁸.

4.2 Ambiguities and Critique of the Treaty

- a. **The name “High Seas Treaty” seems misleading since the treaty only focuses on Biodiversity and that too, excluding fish.** The “Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction” (BBNJ) is commonly known as the High Seas Treaty, which is deemed misleading by some groups. The name misrepresents the scope of the BBNJ agreement, ignoring the international seabed, and it excludes the focus of the agreement which is biodiversity⁶⁹.
- b. **Exclusion of fishing activities in high seas in one of the concerns of the developing nations.** The Treaty is silent about prohibiting the commercial fishing in the future MPAs in the high seas. Allowing fishing in High Seas might further reduce the fish population of migratory fish and impact the biodiversity of fish catch of small island states⁷⁰. 97% of high seas fishing is done by ships of high-income countries; 86% is done by China, Chinese Taipei, Japan, South Korea and Spain⁷¹). Lower-income countries neither participate in nor benefit from high seas fishing as much as wealthy nations do, but they still are susceptible to its negative impact. The ocean is a highly connected space; high seas and coastal ecosystems are intertwined⁸. Ineffective management of biodiversity in the high seas, therefore, can have negative effects on the biodiversity of coastal communities, including the availability of important fish species. In this situation, it seems that the High Seas would only benefit the rich nations.

⁶⁸ “The High Seas Treaty Heralds a New Era of Global Ocean Governance,” Frontiers Policy Labs, accessed July 19, 2024, <https://policylabs.frontiersin.org/content/policy-outlook-peggy-kalas-the-high-seas-treaty-heralds-a-new-era-of-global-ocean-governance>.

⁶⁹ <https://news.mongabay.com/2024/02/high-seas-treaty-name-is-inaccurate-and-should-center-biodiversity-commentary/>

⁷⁰ “High Seas Treaty Must Reflect Critical Role of Fish in Marine Ecosystems,” March 14, 2022, <https://pew.org/3J6l7uY>.

⁷¹ Douglas J. McCauley *et al.*, Wealthy countries dominate industrial fishing. *Sci. Adv.* **4**, eaau2161(2018). DOI:10.1126/sciadv.aau216

c. **Mechanism to establish comprehensive global MPAs needed.**

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.

d. While there are many types of ABMTs that can be used in ABNJ, for most areas of the High Seas, there is no mechanism by which comprehensive MPAs can be established at a global level.⁷²

e. The developing nations believe that technical and financial aid promised in the Treaty might not be fulfilled.

f. In its present form the Treaty would only benefit the large economies who have resources and technical capacity for High Seas Exploration and meeting EIA obligations. Developing countries find the obligation of EIA an added burden for their High Seas Exploration Endeavors, further favoring the bigger economies to reach new unexplored areas.

4.3 **Merits of the Treaty**

a. **Governance of High Seas in view of Biodiversity Preservation.**

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 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.

b. **Fishing Control and MPAs.** Though it doesn't explicitly prohibit commercial fishing in the high seas, it includes language that may allow for their “sustainable use”. So, the establishment of a protected area in the high seas is expected to address unsustainable fishing activities in the high seas, but only if fully implemented.

c. **Climate Threats and Exploration in High Seas.** Although the High Seas Treaty does not directly address International Seabed Authority or exploration in the high seas, it does set obligations of EIA and sharing of information and benefits for exploration projects. Protection of High Seas from Climate Change and related threats, if attained, would be a huge success of this treaty.

d. The High Seas Treaty leaves a lot open to question but does establish several historic benchmarks for protecting the high seas, setting the stage for further scientific exploration and paving the way for more effective marine conservation.

⁷² https://www.highseasalliance.org/wp-content/uploads/2021/04/ABMTs-BRIEFING-2_-How-do-MPAs-and-other-ABMTs-differ_.pdf

4.4 Implications for Pakistan's

- a. Pakistan's ocean scape is a critical geostrategic asset for the nation. With its singular coastline along the south, Pakistan's Exclusive Economic Zone (EEZ) borders the EEZs of India, Oman, and Iran. The high seas are situated beyond the EEZ, extending into the Indian Ocean. The proximity to the high seas is a geostrategic advantage for Pakistan to invest in capacity for high seas exploration, including uncovering important marine genetic resources. It also positions Pakistan well to establish Area-Based Management Tools (ABMTs), such as Marine Protected Areas (MPAs), to become a key stakeholder in conservation efforts in the Indian Ocean. Overall, Pakistan's geostrategic location makes it an important stakeholder in the governance of the high seas and can make it an important state for ensuring the principles of the High Seas Treaty are respected in the high seas closest to its waters⁷³.
- b. Currently, Pakistan does not have a high seas exploration programme. As one of many developing countries involved in the BBNJ negotiations, Pakistan may derive important economic benefits to its blue economy from capitalising on high seas exploration. One of the most important benefits would be access to high seas fisheries, which could combat Pakistan's rising food insecurity. This would, in turn, create opportunities for employment and foreign direct investment, particularly under the capacity-building obligations under the Treaty. However, the EIA requirements and financial constraints may put Pakistan at a halt in these areas. The scientific and technical support might come in handy if Pakistan signs and ratifies the Treaty, however, the mechanism of financial aid is not clear in the treaty as yet.
- c. In his closing statement on behalf of the group of 77 and China, Mr. Qasim Aziz, mission of Pakistan to the UN, at the fourth session of the intergovernmental conference on an international legally binding instrument under the UNCLOS and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (New York, 18 March 2022) said:

"This principle provides a legal foundation for a fair and equitable regime that would allow all countries to benefit from the potential that marine biodiversity represents in terms of global food security and economic prosperity, and to address the challenges of conservation and sustainable use of MGRs of areas beyond national jurisdictions.

The Group of 77 & China remains fully committed to this principle and to its effective implementation.

But. And there is a but. Distrust and hesitation - a hesitation that at times may lead to the repetition of stale points and the seeming

⁷³ Raas Nabeel, "High Seas Governance: Implications and Opportunities for Pakistan," Research Society of International Law | RSIL (blog), June 19, 2023, <https://rsilpak.org/2023/high-seas-governance-implications-opportunities-for-pakistan/>.

rigidity on core elements – this distrust is borne of history, and of reality.

Conducting marine scientific research is quite a distinct task from Northern Europe to the north Caribbean. The resources for EIA implementation in West Africa may not match those of North America at this time.”

3.5 Key Findings and Future Roadmap for Pakistan

The High Seas Treaty is in its initial phase and many countries of the world have reservations about different clauses, however over 90 countries have signed the treaty till July 2024 including United States, China, Australia, United Kingdom. It might become important for Pakistan to sign and ratify the treaty in the future as many states might start reaping benefits of the treaty and Pakistan must not miss the opportunity. However, Pakistan cannot sign the Treaty in the absence of a strong regional cooperation. India, Iran and Middle Eastern countries have not yet signed the treaty. Pakistan may take following steps to derive important economic benefits to its blue economy from capitalising on high seas exploration.

- a. Building awareness and political will across multiple levels (e.g. national, regional, and global) is imperative for Pakistan as the Indian Ocean is rich in natural resources and regional cooperation would catapult the countries to derive sustainable benefits from the ocean.
- b. National level talks and debates must be held to build consensus based on technical and scientific grounds.
- c. Ambiguous clauses of the treaty can be taken up for discussion at UN with the support of like-minded countries.
- d. If Pakistan signs the High Seas Treaty, it can make use of the provisions of scientific and technical help from developed countries for its High Seas exploration program.
- e. The provision of the right to suggest amendments in the Treaty can be availed once the treaty is ratified.
- f. The scientific and technological advancements that MGRs may provide could be economically promising for Pakistan
- g. Readiness (technological, financial and legislative) to join the Treaty seems the biggest hurdle for Pakistan.
- h. Nevertheless, the High Seas Treaty provides promising avenues for international collaborations, economic benefits and ecological preservation, and Pakistan must make sure that it meets its international obligations, which would ultimately benefit all parties.