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Finally, Protection for the High Seas

By Dipinder S. Randhawa

SYNOPSIS

The High Seas Treaty is the first global agreement to protect the open seas – ninety-five per cent of the oceans that lie beyond exclusive national economic zones. For this critically vital expanse of Planet Earth which has huge economic, ecological and strategic importance, and which is little understood by people around the world, the treaty offers considerable protection against over-exploitation and wanton abuse.

COMMENTARY

The Biodiversity Beyond National Jurisdiction (BBNJ) Agreement, commonly known as the [High Seas Treaty](#), was adopted by UN member states on 4 March 2023. The treaty opens a new frontier in marine conservation and protection, as until now, no legal mechanism exists for the establishment of Marine Protected Areas (MPA) on the high seas. At present only one per cent of the high seas are fully protected.

Covering nearly two thirds of the oceans that lie beyond the 200 nautical mile maritime national boundaries, the treaty will provide a legal framework for establishing vast MPAs to protect wildlife and to share the genetic resources of the high seas. It will establish a conference of the parties (COP) that will meet periodically, holding member states accountable on issues such as transparency in governance and sustenance of biodiversity.

The High Seas Treaty, signed by 193 nations nearly two decades after first being proposed, is profoundly significant as climate change and the destruction of marine habitats are inexorably driving the planet to a point of no return. When ratified, the treaty will culminate in a global, legally binding agreement that addresses gaps in international ocean governance.

The Treaty has four substantive elements for improved governance of the high seas: i) a path to designate area-based management tools, including MPAs, ii) Environment Impact Assessment protocols for new projects, iii) capacity building and the transfer of marine technology, and iv) access to Marine Genetic Resources. The simultaneous approval of all the elements is needed for passage of the treaty. Together, they provide the global community with the tools to protect marine ecosystems on a global scale.

Need for a High Seas Treaty

Comprising 95 per cent of the Earth's water surfaces, the high seas – much of which remain unexplored – offer invaluable ecological, economic, scientific, medical and food benefits to humanity. Ocean resources, currently valued at over US\$3 trillion, provide nearly [three billion people with livelihoods and food](#). Yet, we have little idea of the potential of the oceans. Of the two million species estimated to be in the oceans, we have identified about [230,000](#) – less than one eighth. The high seas have the largest undiscovered reserve of biodiversity left on Earth.

Marine resources have, for example, provided immeasurable benefits to the [pharmaceutical industry](#). Halaven, an anti-cancer drug, and Remdesivir, prescribed to mitigate the effects of COVID-19, are derived from sea sponges. Drugs for Alzheimer's, leukaemia, painkillers (and dozens of others under trial), have been derived from marine resources.

The oceans are a global common, marine resources belong to everyone. Universal access to them and the sharing of benefits arising from their use is needed for fairness. The most contentious and politically charged issues revolve around the issue of equitable sharing of marine genetic resources. And until the High Seas Treaty is ratified, there is no mechanism that allows for this.

Marine areas are increasingly vulnerable to threats from climate change and over-exploitation, including overfishing and deep-sea mining. They are also threatened by pollution from multiple sources, including the dumping of chemical and biomedical wastes, and, in the 1950s, even pollution from nuclear tests. About 80 per cent of global wastewater or sewage, often unfiltered, is allowed to flow into the oceans, resulting in pollution, contamination, and destruction of coastal regions and adjoining oceanic waters.

Overfishing is jeopardising entire species while deep-sea mining poses a threat to species that are particularly fragile and still unknown. The [International Union for Conservation of Nature \(IUCN\)](#) estimates that 41 per cent of the threatened species are also affected by [climate change](#), with nearly 10 per cent found to be at risk of [extinction](#).

Science, backed by experience, offers strong evidence that fully protected MPAs constitute the most effective tool to protect and restore the oceans. In Indonesia, Thailand and the Philippines – Southeast Asian states with large marine economies – the designation of key marine areas on the brink of devastation as MPAs, has yielded positive results, demonstrating the remarkable regenerative powers of environmental protection.

The High Seas Treaty will provide governance on the protocol and process of comprehensive environmental impact assessments which lay out the means for measuring and preventing harm to marine biodiversity from new projects.

Ocean's Role in Mitigating Effects of Climate Change and Its Limitations

Oceans perform a critical, albeit little understood role, in regulating climate across the globe. The high seas generate over half the oxygen in the atmosphere and absorb heat and carbon dioxide emitted by the burning of fossil fuels. They are estimated to store 50 times more carbon than what is present in the atmosphere, absorbing nearly a quarter of carbon emissions created by humans over the past decade.

However, the beneficence of the oceans is not without limits. As they get warmer, not only is their ability to store carbon dioxide reduced, but they are increasingly acidifying. This has devastating consequences for marine life, including the bleaching of corals, as has been the case with Australia's Great Barrier Reef.

Rising global temperatures jeopardise mangroves, shellfish, corals and many other marine species and plants along the food chain, ranging from phytoplankton to seagrasses to fishes like salmon and tuna, as well as larger species such as whale sharks. Over 40 percent of amphibians, nearly a third of reef-forming corals and more than a third of marine mammals are threatened with extinction.

Carbon sequestration, or the absorption of carbon by marine resources, which was once thought of as a possible solution to global warming, is now aggravating the problem of acidification, undermining the oceans' ability to mitigate the effects of climate change. Key elements of the High Seas Treaty will help in monitoring the health of the oceans and in protecting vast, hitherto over-exploited tracts.

Unresolved Issues

The High Seas Treaty leaves scope for improvement.

First, countries agreed that existing institutions already responsible for regulating activities such as fisheries, shipping, and deep-sea mining could continue to do so without having to carry out environmental impact assessments laid down by the treaty.

Second, existing governance of oceans is focused mostly on sector-based regulations, such as those for shipping, fishing and seabed mining, but they cover limited geographical areas.

Third, there is no treaty that protects marine biodiversity in the vast expanses of the high seas.

Fourth, questions about how to fund the operationalisation of the treaty have yet to be worked out, including the establishment of a secretariat, and development of capabilities in capacity building and technology transfer. While the European Union has offered some seed money, large gaps remain to be resolved, as are questions of designing sustainable funding sources.

Conclusion

Amidst rising global frictions, the High Seas Treaty is a remarkable achievement, the first agreement since the path-breaking UN Conference on Law of the Sea passed in 1992, and a recognition in the Anthropocene, of the perils that unregulated exploitation of the oceans is inflicting on the planet.

As Ambassador Rena Lee, Singapore's Ambassador for Oceans and Law of the Sea Issues and President of the Intergovernmental Conference on BBNJ, [stated](#), 'The draft agreement is not perfect but it is a solid foundation that gives us the tools we need to address the urgent threats that are facing our oceans, in order to achieve our objective of conservation and sustainable use of BBNJ for current and future generations.'

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