

The High Seas Treaty

On 4 March 2023, the United Nations adopted the international treaty on “the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction”.

It took five years of discussions and six sessions of negotiations for UN members finally to reach agreement on a document, the purpose of which is to provide a framework for activities outside the Exclusive Economic Zones (EEZs) of the individual countries, whence its name of Biodiversity Beyond National Jurisdiction (BBNJ).

In Article 87 of the Montego Bay Convention, the high seas are defined as an area of freedom and the common heritage of mankind: “The high seas are open to all States, whether coastal or landlocked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law”

Since the Convention came into effect in 1994, however, these areas of freedom that account for 60% of the ocean’s surface and are not covered by legislation have been the subject of growing competition among states wishing to annex and exploit them.

The treaty provides a regulatory framework based on a number of principles:

- polluter-pays principle;
- principle whereby the high seas are mankind’s common heritage and areas of freedom, not least for conducting marine scientific research;
- principle of fair and equitable sharing of the benefits;
- precautionary principle and a systemic approach to protecting ecosystem resilience and making allowance for climate change and ocean acidification;
- use of the best available scientific information and of any relevant traditional knowledge of Indigenous Peoples;
- respect and consideration for the obligations of Indigenous Peoples when taking action to secure the preservation and sustainable use of marine biological diversity in areas close to their maritime territory;
- non-transfer of damage or hazards from one area to another;
- allowance for the circumstances of Small Island Developing States and for the interests of landlocked countries.

This High Seas treaty will make it possible:

- to create protected marine areas on the high seas in the interests of biodiversity;
- to oblige States to provide information on the location and nature of the biological research they intend to conduct, and perform environmental impact assessments on the activities they intend to carry out on the high seas;
- to facilitate the equitable sharing of the benefits derived from discoveries made in the oceans. A benefit-sharing committee composed of 15 members has been created to this end;
- to transfer the technologies used to developing countries located near research areas, or to any other countries so wishing, upon request.

This new treaty does not mention seabed mining, as this issue is the responsibility of another authority. The International Seabed Authority (ISA), for which provision was made in the Montego Bay Convention, is an autonomous intergovernmental body founded in 1994 under the auspices of the United Nations. The 168 ISA members are collectively responsible for drafting a mining code to govern the conditions for exploiting these resources while avoiding damage to ecosystems or their destruction. Delayed by the Covid-19 pandemic, heated discussions are still going on over the wisdom of authorising seabed mining.

The substance of the treaty can no longer be amended and it is scheduled for formal approval at a future UN delegation meeting. The treaty will come into force 120 days after it has been ratified by 60 States. On 4 March 2023, the European Union announced that it would be releasing 40 million euros to facilitate

ratification of the treaty and expedite its implementation. In 2025, France will host the next UN Ocean Conference in Nice, with Costa Rica as its co-chair.

Once the treaty is in force, it will be necessary to tighten the controls over compliance with its clauses. France will have to monitor not only its 10,911,921 km² of Exclusive Economic Zone¹, including extensions to the continental shelf, but also the protected marine areas in the vicinity of those for which it is accountable and which represent 30% of the surface area of the High Seas. As Admiral Prazuck, former Chief of Staff of the French Navy, was wont to say: “Unsupervised areas attract unwanted visitors, the areas visited are plundered and the spoils are always ultimately disputed”.

The French Ministerial Strategy for Seabed Warfare, published in February 2022, was prepared in anticipation of the signature of the treaty and revolves around four points that may be summarised as follows:

- ensuring the freedom of action of French forces in their EEZs and zones of operational interest;
- protecting submerged infrastructure, in particular French submarine communications cables (27 in metropolitan and 24 in overseas French waters);
- identifying, making sustainably use of and protecting French resources;
- being action-ready, and capable of posing a credible threat.

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¹ This monitoring will be done by the Naval Hydrographic and Oceanographic Service (SHOM).