

BIODIVERSITY BEYOND NATIONAL JURISDICTION TREATY (BBNJ): BINDING THE GLOBAL COMMONS

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Biodiversity Beyond National Jurisdiction Treaty (BBNJ): Binding the Global Commons



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Abstract

The agreement on the conservation and sustainable use of biodiversity beyond national jurisdiction (BBNJ), also termed the '*High Seas Treaty*', is the most consequential development in the law of the sea since UNCLOS (1982). After nearly two decades of negotiations, it entered into force on 17 January 2026 following over sixty ratifications. BBNJ establishes procedures to regulate environmental impact assessments, area-based management tools including marine protected areas, and access and benefit-sharing for marine genetic resources. This article analyses the agreement and assesses its implications for India's maritime security, economic interests, and naval operations in the Indian Ocean Region (IOR). It concludes with a way ahead for implementation that safeguards our strategic and operational interests.

Key Words: ABNJ, BBNJ, UNCLOS, RFMO, UNGA, EEZ, IOR

Introduction

Before delving into the topic, it would be prudent to understand the exact meaning of some of the terms. Areas Beyond National Jurisdiction (ABNJ) are defined as those areas beyond the national jurisdiction of any state. These areas constitute

approximately 64 per cent of the global ocean surface and over 95 per cent of its volume. Despite their scale and ecological importance, these areas have limited governance and often go unmonitored.¹ The Biodiversity Beyond National Jurisdiction (BBNJ) Treaty is to ensure the conservation and sustainable use of marine biological diversity of ABNJ through effective implementation of the relevant provisions of UNCLOS and further international cooperation and coordination.²

The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982, established the foundational legal order for the oceans, including maritime zones, navigational freedoms, and general environmental obligations. However, UNCLOS did not create a comprehensive regime for the conservation and sustainable use of marine biological diversity in ABNJ.³

This omission was not accidental. During UNCLOS negotiations, political priority was accorded to navigational freedoms, coastal state jurisdiction, and the governance of seabed minerals under the “*common heritage of mankind*” principle. Living marine resources beyond national jurisdiction were assumed to be resilient and of limited economic significance.⁴ Scientific uncertainty and technological limitations reinforced the perception that regulation was unnecessary.

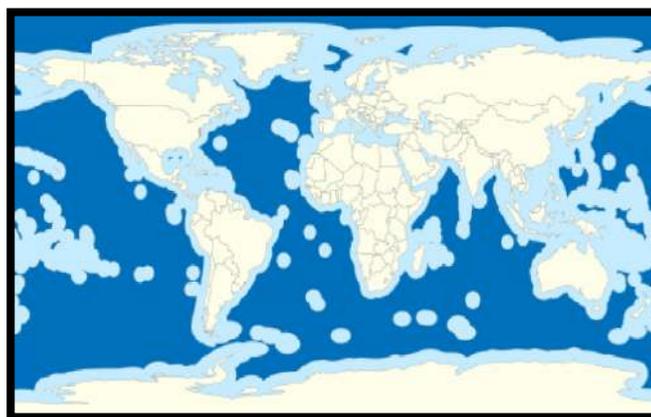


Figure 1: Areas Beyond National Jurisdiction of States (indicated in dark blue)⁵

By the late 1990s and early 2000s, advances in deep-sea research, genetic sequencing, and satellite surveillance enabled sustained human activity in ABNJ. Simultaneously, UN assessments highlighted declining fish stocks, damage to

vulnerable marine ecosystems and unregulated bioprospecting.⁶ Fragmented sectoral governance through Regional Fisheries Management Organisations (RFMOs) and environmental conventions proved inadequate to address cumulative and transboundary impacts.⁷

In response, the UN General Assembly (UNGA) established the Ad Hoc Open-ended Informal Working Group on BBNJ in 2004.⁸ This process evolved into a Preparatory Committee (2016–2017) and subsequently the Intergovernmental Conference (IGC) on BBNJ, which met formally between 2018 and 2023.⁹ Negotiations were protracted and politically contentious. Key fault lines emerged over marine genetic resources (MGRs), benefit sharing, the scope of environmental impact assessments (EIAs), and the authority to designate marine protected areas (MPAs).

Developed maritime powers, including the United States and Japan, sought to preserve freedom of navigation and scientific research. Developing countries, led by the G-7, pushed for equity, benefit sharing, and capacity building. China supported regulation in principle but resisted intrusive international oversight.¹⁰ After five formal IGC sessions and multiple suspensions, a consensus was reached in March 2023.¹¹ The BBNJ Agreement is the third implementation agreement under UNCLOS, alongside its sister implementation agreements: the 1994 Part XI Implementation Agreement (which addresses the exploration and extraction of mineral resources in the international seabed area) and the 1995 UN Fish Stocks Agreement (which addresses the conservation and management of straddling and highly migratory fish stocks). It would also contribute to achieving several SDGs, particularly SDG14 (Life Below Water).¹² The Agreement achieved sixty ratifications in 2025 and entered into force in January 2026, in accordance with Article 68.¹³

From Aspiration to Regime

With entry into force, the BBNJ Agreement has become binding international law for States Parties. This transition has three immediate implications as follows:¹⁴

First, treaty obligations are now enforceable under international law. States Parties are required to align domestic laws, administrative procedures and operational practices with BBNJ provisions. The principle of *pacta sunt servanda* (agreements must be kept) applies fully.¹⁵

Second, institutions move from design to execution. The Conference of Parties (COP), the Scientific and Technical Body and the Clearing-House Mechanism are now operational. These bodies are empowered to adopt decisions, develop guidelines and review implementation. Early institutional practice will shape precedent and influence future interpretation.

Third, behaviour in ABNJ begins to harden into customary expectation. Once the law is operationalised, repeated practice creates normative gravity. What begins as procedural compliance risks becoming a de-facto obligation over time.¹⁶ In effect, BBNJ shifts ABNJ from a largely permissive operating space to a procedurally regulated maritime domain, where scientific scrutiny and institutional oversight increasingly shape state behaviour.

Shaping Global Commons

Environmental Impact Assessments. Under Articles 22–26, environmental impact assessments (EIAs) are now mandatory for activities in ABNJ that may cause significant adverse impacts.¹⁷ During negotiations, the scope of EIAs was heavily contested. The United States, Japan, and Russia sought higher thresholds and state discretion, while the European Union and Small Island Developing States advocated stringent, internationally supervised assessments.¹⁸ The compromise retained state-led EIAs but mandated transparency, scientific review, and public notification. EIAs may affect marine scientific research, seabed surveys, and other dual-use activities. In the long run, EIA standards are likely to shape expectations of conduct in ABNJ.

Area-Based Management Tools and MPAs. BBNJ establishes a legal pathway for area-based management tools (ABMTs), including high seas marine protected areas (MPAs). This was one of the most contentious issues whilst negotiating the treaty.

Fishing states feared spatial restrictions, while conservation-oriented states and Pacific Island countries sought robust protection measures.¹⁹ With entry into force, MPAs can now be proposed, debated, adopted, reviewed, and modified through the COP. While UNCLOS freedoms are preserved in principle, management measures may indirectly influence shipping routes, fishing practices, and scientific activity.²⁰

Marine Genetic Resources (MGR) and Benefit Sharing. MGR was the most contentious of issues during negotiations. Whilst developing states argued that ‘unrestricted bioprospecting replicated historical inequities’, developed states resisted applying the “common heritage of mankind” principle.²¹ The final treaty establishes a binding benefit-sharing regime without formally invoking common heritage. This hybrid outcome reflects political compromise but introduces long-term governance complexity.

What BBNJ Means for India

Official Position. India’s engagement with provisions of the BBNJ has been active and consistent. The Ministry of External Affairs briefed Parliament on the scope and objectives of the Agreement through Lok Sabha questions, confirming India’s participation in negotiations and outlining treaty pillars.²² The Union Cabinet approved India’s signing of the Agreement in July 2024, with official press releases highlighting equity, sustainability, and capacity building.²³ Ministerial statements have linked BBNJ to India’s broader ocean governance initiatives, including the Deep Ocean Mission and national ocean data frameworks.²⁴ These records demonstrate that BBNJ is not peripheral to Indian policy discourse.

Marine Science and Capability Gaps. The treaty encourages cooperation in advancing marine science, which will assist India in obtaining critical samples and data that will improve the country’s understanding of marine ecosystems. This would also pave the way for the development of marine science and technology, which is essential for overcoming environmental sustainability challenges at a national and global scale. Dr M Ravichandran, Secretary, MoES, elaborating on the benefits for India, said, “The BBNJ Agreement allows us to enhance our strategic presence in

areas beyond our EEZ (Exclusive Economic Zone), which is very promising. In addition to shared monetary benefits, it will further strengthen our marine conservation efforts and collaborations, open newer avenues for scientific research and development, access to samples, sequences and information, capacity building and technology transfer, etc., not just for us but for the benefit of all humankind”.²⁵

Blue Economy Imperatives. The Indian blue economy contributes to almost 4 % of GDP. It supports millions of livelihoods across fisheries, aquaculture, coastal tourism, offshore energy and marine services. Whilst Indian fishing has largely operated within our own EEZ, overfishing in the ABNJ directly threatens coastal stocks and therefore our economic security. The BBNJ framework offers India an institutional mechanism to protect our interest towards fisheries resilience. The *Pradhan Mantri Matsya Sampada Yojana* seeks to modernise and expand the fisheries sector and therefore needs to factor in the BBNJ. This would include stabilised fish stocks, enhanced market credibility and potential access to emerging marine biotechnology.²⁶

Maritime Governance Imperatives. Over 95 % of India’s trade by volume and approximately 70 % by value is carried by sea. This underscores the imperative for maritime governance.²⁷ India’s long-term maritime manifestation articulated through the Maritime India Vision 2030 (MIV 2030) and the Maritime Amrit Kaal Vision 2047 (MAKV 2047) are aimed at projecting India as a leading maritime power. In this context, BBNJ compliance and proactive norm-shaping at COP will reinforce India’s short and long-term maritime transformation.

Indian Naval Operations. Flowing from these developments, the *IN* operational posture acquires renewed salience. The Indian Navy (*IN*) remains the principal instrument for the manifestation of safeguarding India’s interests²⁸ ensuring freedom of navigation, protecting critical undersea infrastructure, and preserving strategic manoeuvre space. Through sustained Mission-Based Deployments (MBD), the *IN* maintains presence across critical sea lanes, choke points, and extended operational spaces in the IOR, many of which fall within ABNJ. As BBNJ matures, the *IN* will need to factor in BBNJ-related legal obligations, environmental thresholds and procedural norms, ensuring that its missions remain credible and calibrated.

Challenges

Enforcement. Monitoring and enforcing regulations on the high seas is not an easy task. The vastness of the ABNJ, coupled with the limited surveillance capabilities, affects this capability. India will need to enhance its MDA and upgrade its enforcement capacities in order to have a clear picture of the areas of responsibility. Collaboration with regional/ global partners would be essential to ensure law enforcement on the high seas.²⁹

Capacity Building. Significant investments would need to be factored towards research, monitoring, and capacity building. At present, India's investments in deep-sea biology and genetic research remain modest relative to its maritime ambitions.³⁰ Dr M. Ravichandran, Secretary, MoES, elaborating on the benefits for India, said, "The BBNJ Agreement allows us to enhance our strategic presence in areas beyond our EEZ (Exclusive Economic Zone), which is very promising. In addition to shared monetary benefits, it will further strengthen our marine conservation efforts and collaborations, open newer avenues for scientific research and development, access samples, sequences, and information, build capacity and transfer technology, etc., not just for us but for the benefit of all humankind".³¹

Institutional Coordination. The Ministry of Earth Sciences (MoES) has been designated as the lead agency in India for handling all matters with respect to BBNJ.³² The MoES would need to spearhead all efforts towards the implementation of the treaty by India. Operational implications of decisions of the COP would extend beyond scientific agencies to the Navy, Coast Guard, and Maritime Administration. There exists a requirement of an integrated framework. The lack of a coherent implementation policy and a whole-of-nation approach may lead to long-term dilution of India's interests.³³

Way Ahead

Actions in the ABNJ will hereon be increasingly shaped by the COP and its subsidiary bodies. Early and proactive institutional engagement is therefore an imperative.

Representation in COP and in the working groups dealing with EIAs, ABMTs, and scientific review processes will lead to protection of our long-term interests. The following need to be considered when looking at the way ahead for India and BBNJ:

Marine Science as an Operational Enabler. Under the BBNJ, scientific inputs will increasingly shape regulatory outcomes, which will in turn affect maritime activity. For the *IN*, marine science must be used as an operational enabler legitimising its presence in contested areas. Investments in deep-sea research, oceanographic data collection and biodiversity assessment should be aligned with naval requirements for sustained operations in the Indian Ocean Region (IOR) and beyond. Integration of *IN* with national oceanic observation programmes will ensure compliance with BBNJ while enhancing maritime domain awareness, environmental intelligence, and operational planning.

Integrated Inter-Agency Coordination. The BBNJ implementation responsibility is distributed across multiple ministries and agencies. To ensure operational coherence, India should establish a permanent Inter-Agency Ocean Governance Coordination Cell (IOGCC) with representation from MEA, MoES, DBT, and NHQ. This body should function as a single-point contact to assess proposed MPAs, EIAs and scientific initiatives in ABNJ. Such a mechanism would enable early coordinated responses and timely guidance to operational commanders at sea.

Embedding Legal and Environmental Awareness. The literacy and awareness levels of professionals who are involved with the legal and operational implementation of the BBNJ would need to be augmented. Enhancing legal and environmental literacy among planners and commanders will enable the *IN* to operate with confidence and credibility within an increasingly contested landscape.

Conclusion

The High Seas Treaty is one of the most significant treaties to be signed after the 1982 UNCLOS. This landmark is a significant step towards the conservation and sustainable utilisation of marine biological diversity in areas beyond national

jurisdiction. It sets precise mechanisms for the sustainable use of marine biological diversity through international cooperation and coordination. India remains committed and proactive to the global cause of environmental conservation and sustainable development. India will need to adopt a whole-of-nation approach to reinforce this commitment towards its quest to become *Viksit Bharat* by 2047.

DISCLAIMER

The paper is the author's individual scholastic articulation and does not necessarily reflect

the views of CENJOWS, the Defence forces, or the Government of India. The author certifies that the article is original in content, unpublished, and it has not been submitted for publication/ web upload elsewhere and that the facts and figures quoted are duly referenced, as needed and are believed to be correct.

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