

Journal of Conflict Management & Sustainable Development



Tracing the Role of Biodiversity Conservation in Achieving Sustainable Development Goals

Kariuki Muigua

The Complex Interplay of State and Religion: Exploring The Dynamics and Implications for Modern Society

Kenneth Wyne Mutuma

A Critical Analysis of Kenya's Anti-Money Laundering and Counter-Financing of Terrorism Regime

Michael Sang

Recognising the rights of nature for Environmental Justice in Kenya

Waruiru Cecilia &
Kirui Diana

High Seas Treaty: Enhancing Environmental Responsibility for Marine Protection

Kariuki Muigua

Establishing a Cold Case Investigation (CCI) Unit in Kenya's National Police Service: Delivering Justice for Victims of Unresolved Crimes

Michael Sang

Book review: Realizing True Sustainable Development

James Njuguna

Against the Obnoxious Repugnancy Clause as a limitation to Application of Traditional Dispute Resolution Mechanisms in Kenya

Pamela Nyawira Muriuki

Addressing Noise Pollution for a Clean and Healthy Environment in Kenya

Kariuki Muigua

A proposal for legislative reform of Kenya's Prevention of organised Crimes Act – A comparative analysis

Michael Sang

Decentralization of Clean Energy in Kenya: The Legal and Institutional Opportunities and Challenges

Gathii Irungu

Volume 10

Issue 3

2023

ISBN 978-9966-046-15-4

High Seas Treaty: Enhancing Environmental Responsibility for Marine Protection

By: ***Kariuki Muigua****

Abstract

This paper is a commentary and highlights the contents of the proposed United Nations High Seas Treaty and discusses how the Treaty, when adopted can enhance environmental protection of the marine life in the open areas of international waters. The author also discusses the current international regulatory framework on management of marine resources and highlights the gaps especially in environmental conservation. The author argues that this Treaty is a step towards achieving Sustainable Development Goal 14 on conservation of marine resources that lie beyond national jurisdictions.

1. Introduction

For a long time, there has been no universal legal instrument specifically aimed at protecting the high seas beyond the national jurisdictions as defined by the United Nations Convention on the Law (UNCLOS). As a result, there has been a painful time of excessive exploitation, which has been carried out with utter impunity and with little regard for the health of the natural resources it harbours. It has been a case of humanity metaphorically shooting itself in the foot or seemingly not caring about future generations who will depend on a healthy ocean for their survival.¹ Worldwide oceans make up about

**PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. In Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/Implementer; Advocate of the High Court of Kenya; Senior Lecturer at the University of Nairobi, Faculty of Law [March 2023].*

two-thirds of international waters. This implies that all nations have the freedom to fish, ship, and conduct research there. As a result, problems including climate change, overfishing, and shipping traffic pose a threat to the marine species that inhabits the vast bulk of the high seas.²

States have since moved to correct this situation by coming up with a High Seas Treaty, aimed at conserving resources lying within these international waters. This paper highlights some of the positive aspects of this Treaty and how the same can enhance environmental responsibilities of those seeking to explore these resources.

2. Marine Protection and Conservation: The Current Regulatory Framework

The Convention on the Law of the Sea (UNCLOS), which was developed under the supervision of the United Nations and ratified in 1982 by 117 States, is the international instrument most frequently linked to the law of the sea. UNCLOS came into force in 1994.³ UNCLOS is a framework Convention that addresses a wide range of ocean-related issues. The treaty, which is divided into seventeen parts and nine appendices, outlines states' rights and responsibilities with

¹ Owen-Burge C, 'Why the High Seas Treaty Is a Breakthrough for the Ocean and the Planet' (*Climate Champions*, 10 March 2023) <<https://climatechampions.unfccc.int/why-the-high-seas-treaty-is-a-breakthrough-for-the-ocean-and-the-planet/>> accessed 20 March 2023.

² 'What Is the UN High Seas Treaty and Why Is It Needed?' *BBC News* (5 March 2023) <<https://www.bbc.com/news/science-environment-64839763>> accessed 20 March 2023.

³ Hoagland Porter and others, 'Law of the Sea ☆' in J Kirk Cochran, Henry J Bokuniewicz and Patricia L Yager (eds), *Encyclopedia of Ocean Sciences (Third Edition)* (Academic Press 2019) <<https://www.sciencedirect.com/science/article/pii/B9780124095489113442>> accessed 20 March 2023.

regard to: (1) the territorial sea and contiguous zone; (2) straits used for international navigation; (3) archipelagic states; (4) the exclusive economic zone; (5) the continental shelf; (6) the high seas; (7) the regime of islands; (8) enclosed or semi- enclosed seas; (9) the right of access of landlocked states to and from the sea and freedom of transit.⁴

It establishes guidelines for all uses of the oceans' resources and establishes a comprehensive regime of law and order throughout the world's oceans and seas. It encapsulates long-standing guidelines for using the oceans in one document while also introducing new legal frameworks and addressing fresh issues. The Convention also lays forth the groundwork for future advancements in particular spheres of maritime law.⁵

The United Nations Convention on the Law of the Sea (UNCLOS) establishes guidelines for using the ocean and its resources, but it is silent on how governments should specifically, save for broad provisions, protect and sustainably utilise biodiversity found in the high seas. States are able to identify their jurisdictional waters and maritime zones by establishing a coastal baseline; 200 nautical miles from the baseline are included in their Exclusive Economic Zone (EEZ). The resources present in the zone may only be utilised or conserved by States. The term "Areas Outside National Jurisdiction" refers to the portions of the ocean outside the Exclusive Economic

⁴ 'The Legal and Institutional Framework Governing Ocean-Based Economic Sectors in Barbados' (2019) <https://unctad.org/system/files/official-document/ditctedinf2019d14_en.pdf> accessed 20 March 2023.

⁵ 'United Nations Convention on the Law of the Sea' <<https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx>> accessed 19 March 2023.

Zone. The water column, also known as the High Seas, and the seabed, sometimes known as the Area, are further divisions of these regions according to the Law of the Sea.⁶ Thus, currently there is no comprehensive set of rules to ensure their conservation and sustainable use.⁷

Notably, UNCLOS provides that 'all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas'.⁸ UNCLOS uses the term 'high seas' to mean 'all parts of the sea 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'.⁹ It also states that 'the high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law.

It comprises, *inter alia*, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; and (f) freedom of scientific research, subject to Parts VI and XIII.¹⁰ These freedoms are to be

⁶ 'Biodiversity: UN Agreement for the Protection of the Ocean | Research Institute for Sustainability' <<https://www.rifs-potsdam.de/en/output/dossiers/ocean-treaty>> accessed 20 March 2023.

⁷ Ibid.

⁸ UNCLOS, Article 117.

⁹ UNCLOS, Article 86.

¹⁰ UNCLOS, Article 87(1).

exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.¹¹

UNCLOS also states that ‘States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, are obligated to enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They are to, as appropriate, cooperate to establish sub-regional or regional fisheries organizations to this end.’¹²

Regarding conservation of the living resources of the high seas, UNCLOS provides that ‘in determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall: (a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether sub-regional, regional or global; and (b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or

¹¹ UNCLOS, Article 87(2).

¹² UNCLOS, Article 118.

dependent species above levels at which their reproduction may become seriously threatened.¹³

As far as the principles governing the area are concerned, UNCLOS provides that 'necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the International Seabed Authority shall adopt appropriate rules, regulations and procedures for inter alia: (a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities; and (b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.¹⁴

UNCLOS outlines States' general obligation to protect and preserve the marine environment.¹⁵ In order to move away from these generalized duties under UNCLOS and which mainly focuses on the jurisdictions of States, the High Seas Treaty is meant to come into force to define specific environmental duties relating to the high seas. The background to this new development is that UNCLOS is best understood as a framework providing a basic foundation for the international law of the oceans intended to be extended and

¹³ UNCLOS, Article 119(1).

¹⁴ UNCLOS, Article 145.

¹⁵ UNCLOS, Article 192.

elaborated upon through more specific international agreements and the evolving customs of States.¹⁶

3. 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 (High Seas Treaty)

It has been noted that nearly two-thirds of the planet's surface is covered by water, and the oceans account for 95% of the planet's total habitat by volume. Only 39% of the ocean is subject to national jurisdiction, and only 1% of the high seas have ever been subject to any kind of protection protocol.¹⁷ The High Seas Treaty, which ensures the protection and sustainable use of marine biodiversity in areas beyond of national authority, was approved by Member States of the United Nations after years of talks.¹⁸

The UN General Assembly unanimously approved Resolution 72/249 on December 24, 2017 to call a conference of governments and launch formal negotiations for a new international legally binding instrument (ILBI) under the UN Convention on the Law of the Sea (UNCLOS) for the conservation and sustainable exploitation of marine biological diversity in areas outside of national jurisdiction.¹⁹

¹⁶ Hoagland P, Jacoby J and Schumacher ME, 'Law Of The Sea' in John H Steele (ed), *Encyclopedia of Ocean Sciences* (Academic Press 2001) <<https://www.sciencedirect.com/science/article/pii/B012227430X004153>> accessed 20 March 2023.

¹⁷ Owen-Burge C, 'Why the High Seas Treaty Is a Breakthrough for the Ocean and the Planet' (*Climate Champions*, 10 March 2023) <<https://climatechampions.unfccc.int/why-the-high-seas-treaty-is-a-breakthrough-for-the-ocean-and-the-planet/>> accessed 20 March 2023.

¹⁸ Ibid.

¹⁹ 'Treaty Negotiations' (*High Seas Alliance*)

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 Jurisdiction²⁰ was informed by, *inter alia*: the relevant provisions of the United Nations Convention on the Law of the Sea, including the obligation to protect and preserve the marine environment; the need to respect the balance of rights, obligations and interests set out in the Convention; the need to address, in a coherent and cooperative manner, biodiversity loss and degradation of ecosystems of the ocean, due to, in particular, climate change impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use; the need for the comprehensive global regime under the Convention to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; the importance of contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole and, in particular, the special interests and needs of developing States, whether coastal or landlocked; and recognizing also that support for developing States Parties through capacity-building and the

<<https://www.highseasalliance.org/treaty-negotiations/>> accessed 20 March 2023.

²⁰ United Nations, *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*, Intergovernmental conference on an international legally binding instrument 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 Resumed fifth session, New York, 20 February–3 March 2023

<https://www.un.org/bbnj/sites/www.un.org.bbnj/files/draft_agreement_advanced_unedited_for_posting_v1.pdf> accessed 20 March 2023.

development and transfer of marine technology which are essential elements for the attainment of the objectives of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.²¹

The objective of the Draft 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.²²

The proposed Agreement, shall be interpreted and applied in the context of and in a manner consistent with the Convention. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention, including in respect of the exclusive economic zone and the continental shelf within and beyond 200 nautical miles. In addition, it 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.²³

In order to achieve the objectives of this Agreement, Parties shall be guided by the following principles and approaches: (a) The polluter-pays principle; (b) the principle of the common heritage of

²¹ Preamble, *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*.

²² Article 2, *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*.

²³ Article 4.

humankind which is set out in the Convention; (b) the freedom of marine scientific research, together with other freedoms of the high seas; (c) the principle of equity, and the fair and equitable sharing of benefits; (d) Precautionary principle or precautionary approach, as appropriate; (e) an ecosystem approach; (f) an integrated approach to ocean management; (g) an approach that builds ecosystems resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, including the carbon cycling services that underpin the ocean's role in climate; (h) the use of the best available science and scientific information; (i) the use of relevant traditional knowledge of Indigenous Peoples and local communities, where available; (j) the respect, promotion and consideration of their respective obligations, as applicable, relating to the rights of Indigenous Peoples or of, as appropriate, local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; (k) the non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another, in taking measures to prevent reduce, and control pollution of the marine environment; (l) full recognition of the special circumstances of small island developing States and of least developed countries; and (m) acknowledgement of the special interests and needs of landlocked developing countries.²⁴

Parties shall be required to cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among

²⁴ Article 5.

relevant legal instruments and frameworks and relevant global, regional, sub-regional and sectoral bodies in the achievement of the objective of this Agreement.²⁵

Notably, the proposed Agreement also seeks to ensure the fair and equitable sharing of benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.²⁶ It also calls for the building and development of the capacity of Parties, particularly developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, to carry out activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction.²⁷ It also seeks to promote the generation of knowledge, scientific understanding and technological innovation, including through the development and conduct of marine scientific research as fundamental contributions to the implementation of this Agreement.²⁸ In addition to the foregoing, the proposed Agreement seeks to promote the development and transfer of marine technology in accordance with this Agreement.²⁹

²⁵ Article 6(1).

²⁶ Article 7(a).

²⁷ Article 7(b).

²⁸ Article 7 (c).

²⁹ Article 7(d).

The provisions of this Agreement shall apply to activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected and generated after the entry into force of this Agreement for the respective Party. The application of the provisions of this Agreement shall extend to the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected or generated before entry into force, unless a Party makes an exception in writing under article 63 when signing, ratifying, approving, accepting or acceding to this Agreement.³⁰

Regarding environmental management, the Agreement seeks to ensure that States:(a) conserve and sustainably use areas requiring protection, including through the establishment of a comprehensive system of area-based management tools, with ecologically representative and well-connected networks of marine protected areas; (b) strengthen cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies; (c) protect, preserve, restore and maintain biodiversity and ecosystems, including with a view to enhancing their productivity and health, and strengthen resilience to stressors, including those related to climate change, ocean acidification and marine pollution; (d) support food security and other socioeconomic objectives, including the protection of cultural values; and (e) support developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island

³⁰ Article 8.

developing States, coastal African States, archipelagic States and developing middle-income countries, taking into account the special circumstances of small island developing States, through capacity-building and the development and transfer of marine technology in developing, implementing, monitoring, managing and enforcing area-based management tools, including marine protected areas.³¹

The Agreement also seeks to: (a) operationalize the provisions of the Convention on environmental impact assessment for areas beyond national jurisdiction by establishing processes, thresholds and other requirements for conducting and reporting assessments by Parties; (b) ensure that activities covered by this Part are assessed and conducted to prevent, mitigate and manage significant adverse impacts for the purpose of protecting and preserving the marine environment; (c) support the consideration of cumulative impacts and impacts in areas within national jurisdiction; (d) provide for strategic environmental assessments; (e) achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction; and (f) build and strengthen the capacity of Parties, particularly developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle income countries, to prepare, conduct and evaluate environmental impact assessments and strategic environmental assessments in support of the objectives of this Agreement.³²

³¹ Article 14.

³² Article 21.

The Agreement also requires Parties to ensure that the potential impacts on the marine environment of planned activities under their jurisdiction or control, which take place in areas beyond national jurisdiction, are assessed as set out in this Part before they are authorized.³³ In addition, when a Party with jurisdiction or control over a planned activity that is to be conducted in marine areas within national jurisdiction determines that the activity may cause substantial pollution of or significant and harmful changes to the marine environment in areas beyond national jurisdiction, that Party shall ensure that an environmental impact assessment of such activity is conducted in accordance with this Part or an environmental impact assessment is conducted under the Party's national process. A Party conducting such an assessment under its national process shall: (a) make relevant information available through the clearing-house mechanism, in a timely manner during the national process; (b) ensure that the activity is monitored in a manner consistent with the requirements of its national process; and (c) ensure that environmental impact assessment reports and any relevant monitoring reports are made available through the clearing-house mechanism as set out in this Agreement.³⁴

Beyond the provisions on environmental assessment under the Agreement, Parties are required to promote the use of environmental impact assessments and the adoption and implementation of the standards and/or guidelines developed under article 41 bis in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members.³⁵

³³ Article 22 (1).

³⁴ Article 22(2).

³⁵ Article 23.

In addition to environmental assessments, Parties are also required to, by using the best available science and scientific information and, where available, the relevant traditional knowledge of Indigenous Peoples and local communities, keep under surveillance the impacts of any activities in areas beyond national jurisdiction which they permit or in which they engage in order to determine whether these activities are likely to pollute or have adverse impacts on the marine environment. In particular, each Party shall monitor the environmental and any associated impacts, such as economic, social, cultural and human health impacts, of an authorized activity under their jurisdiction or control in accordance with the conditions set out in the approval of the activity.³⁶

Parties are also required to produce and make monitoring reports public, including through the clearing-house mechanism and the Scientific and Technical Body may consider and evaluate the monitoring reports.³⁷ Parties are also to ensure that the impacts of the authorized activity monitored pursuant to article 39 are reviewed.³⁸

Parties shall also be required under this agreement, individually or in cooperation with other Parties, to consider conducting strategic environmental assessments for plans and programmes relating to activities under their jurisdiction or control, to be conducted in areas beyond national jurisdiction, to assess the potential effects of that plan or programme, as well as alternatives, on the marine environment.³⁹

³⁶ Article 39.

³⁷ Article 40.

³⁸ Article 41.

³⁹ Article 41 ter.

The Agreement also seeks to: (a) assist Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives; (b) enable inclusive, equitable and effective cooperation and participation in the activities undertaken under this Agreement; (c) develop the marine scientific and technological capacity, including with respect to research, of Parties, in particular developing States Parties, with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through access to marine technology by, and the transfer of marine technology to, developing States Parties; (d) increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; (e) more specifically, support developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, through capacity-building and the development and transfer of marine technology under this Agreement in achieving the objectives in relation to: (i) marine genetic resources, including the sharing of benefits, as reflected in article 7; (ii) measures such as area-based management tools, including marine protected areas, as reflected in article 14; (iii) environmental impact assessments, as reflected in article 21 bis.⁴⁰

This Agreement, as highlighted has key provisions and tools that are meant to ensure conservation and sustainable use of marine resources in areas beyond national jurisdictions. It is also worth noting that it

⁴⁰ Article 42.

seeks to empower developing countries in not only conserving these resources but also exploiting them through capacity building.

4. High Seas Treaty: Enhancing Environmental Responsibility for Marine Protection

After more than a decade of discussions at the UN, formal negotiations to create a new treaty under the UN Convention on the Law of the Sea (UNCLOS) for the preservation and sustainable use of marine biodiversity in areas beyond the national jurisdiction (ABNJ) began at the UN in September 2018. This is the first ocean-related global treaty process in more than 20 years, and the only one that is exclusively focused on safeguarding marine biodiversity in ABNJ.⁴¹

Recognized as the governing document for the world's oceans, UNCLOS does not, however, contain the precise standards necessary to guarantee the successful execution of its broad commitments to safeguard the marine environment and its living resources.⁴² Hopefully, the High Seas Treaty will seal this gap as it spells out specific obligations for States and those interacting with the high seas. Although the oceans and seas are sometimes disregarded in climate negotiations, research demonstrates that they are a crucial component of any solution since they store the carbon that is responsible for climate change and offer significant advantages for climate adaptation. Action on land and at sea is required to preserve the ocean. This entails lessening the direct effects of humans on the

⁴¹ 'Protecting Half the Planet: A New High Seas Biodiversity Treaty' (*High Seas Alliance*) <<https://www.highseasalliance.org/resources/protecting-half-the-planet-a-new-high-seas-biodiversity-treaty-in-2020/>> accessed 20 March 2023.

⁴² 'Protecting Half the Planet: A New High Seas Biodiversity Treaty' (*High Seas Alliance*) <<https://www.highseasalliance.org/resources/protecting-half-the-planet-a-new-high-seas-biodiversity-treaty-in-2020/>> accessed 20 March 2023.

ocean, cleaning up polluted rivers, restoring wetlands, and creating a circular economy where potential pollutants are used for as long as feasible before being appropriately disposed of at the end of their useful lives.⁴³

As seen in the previous section, the High Seas Treaty comes with key tools and provisions geared towards promoting conservation and sustainable utilisation of marine resources and environment in ABNJ. It also seeks to empower developing countries through capacity building to bolster their capacity in exploiting these resources, especially in this period when sustainable utilisation of the blue economy resources to promote national development has gained international momentum.⁴⁴

5. Conclusion

This paper has critically discussed the current framework on marine resources governance and management and also compared it to the proposed High Seas Treaty which seeks to implement the UNCLOS provisions on protection and conservation of marine resources. Notably, the treaty goes beyond this by seeking to empower developing countries in their capacity to exploit the marine resources that lie within and beyond their territorial borders and high seas. It is hoped that the international community will fast track the formal adoption of this Treaty by fine tuning the few details remaining as it will go a long way in conservation of marine resources and

⁴³ 'Why Protecting the Ocean and Wetlands Can Help Fight the Climate Crisis' (UNEP, 11 November 2022) <<http://www.unep.org/news-and-stories/story/why-protecting-ocean-and-wetlands-can-help-fight-climate-crisis>> accessed 20 March 2023.

⁴⁴ https://www.un.org/bbnj/sites/www.un.org/bbnj/files/draft_agreement_advanced_unedited_for_posting_v1.pdf> accessed 20 March 2023.

*High Seas Treaty: Enhancing
Environmental Responsibility
for Marine Protection:*
Kariuki Muigua

(2023) Journal of cmsd Volume 10(3)

environment as well as enhancing the capacity of developing countries in Africa to exploit their own marine resources for national development and socio-economic empowerment of their people.

References

'Biodiversity: UN Agreement for the Protection of the Ocean | Research Institute for Sustainability' <<https://www.rifs-potsdam.de/en/output/dossiers/ocean-treaty>> accessed 20 March 2023.

'Protecting Half the Planet: A New High Seas Biodiversity Treaty' (*High Seas Alliance*) <<https://www.highseasalliance.org/resources/protecting-half-the-planet-a-new-high-seas-biodiversity-treaty-in-2020/>> accessed 20 March 2023.

'The Legal and Institutional Framework Governing Ocean-Based Economic Sectors in Barbados' (2019) <https://unctad.org/system/files/official-document/ditctedin2019d14_en.pdf> accessed 20 March 2023.

'Treaty Negotiations' (*High Seas Alliance*) <<https://www.highseasalliance.org/treaty-negotiations/>> accessed 20 March 2023.

'United Nations Convention on the Law of the Sea' <<https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx>> accessed 19 March 2023.

'What Is the UN High Seas Treaty and Why Is It Needed?' *BBC News* (5 March 2023) <<https://www.bbc.com/news/science-environment-64839763>> accessed 20 March 2023.

'Why Protecting the Ocean and Wetlands Can Help Fight the Climate Crisis' (*UNEP*, 11 November 2022) <<http://www.unep.org/news-and>

High Seas Treaty: Enhancing Environmental Responsibility for Marine Protection:
Kariuki Muigua

(2023) Journal of cmsd Volume 10(3)

stories/story/why-protecting-ocean-and-wetlands-can-help-fight-climate-crisis> accessed 20 March 2023.

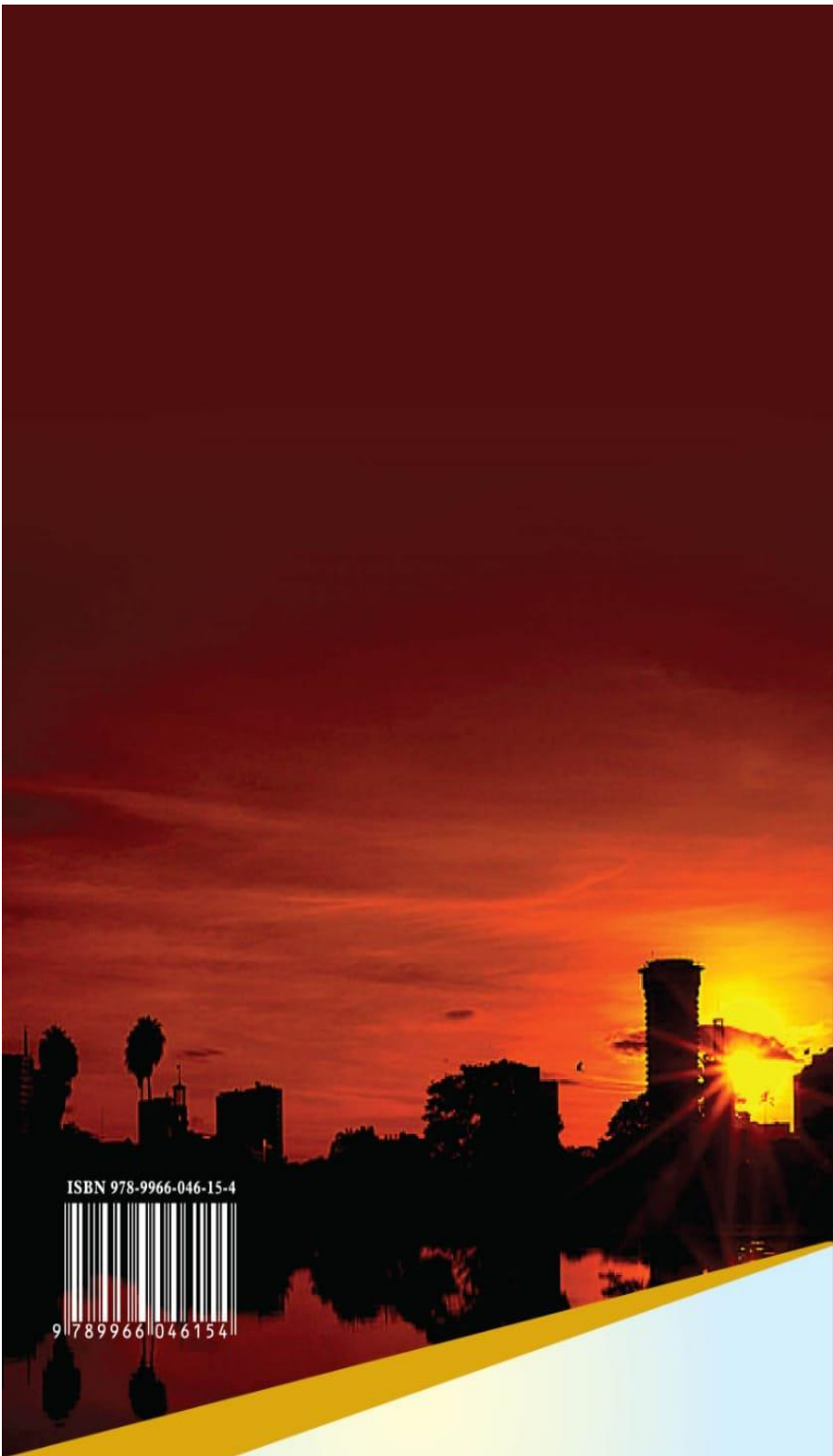
Hoagland P, Jacoby J and Schumacher ME, 'Law Of The Sea' in John H Steele (ed), *Encyclopedia of Ocean Sciences* (Academic Press 2001) <<https://www.sciencedirect.com/science/article/pii/B012227430X004153>> accessed 20 March 2023.

Hoagland Porter and others, 'Law of the Sea' in J Kirk Cochran, Henry J Bokuniewicz and Patricia L Yager (eds), *Encyclopedia of Ocean Sciences (Third Edition)* (Academic Press 2019) <<https://www.sciencedirect.com/science/article/pii/B9780124095489113442>> accessed 20 March 2023.

Owen-Burge C, 'Why the High Seas Treaty Is a Breakthrough for the Ocean and the Planet' (*Climate Champions*, 10 March 2023) <<https://climatechampions.unfccc.int/why-the-high-seas-treaty-is-a-breakthrough-for-the-ocean-and-the-planet/>> accessed 20 March 2023.

UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982.

United Nations, *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*, Intergovernmental conference on an international legally binding instrument 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 Resumed fifth session, New York, 20 February–3 March 2023.



ISBN 978-9966-046-15-4



9 789966 046154