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Maritime Security

ISS: Africa must invest in the new 'high seas' treaty

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The world's largest crime scene is not in any specific country or region. It is the area known as the 'high seas' – those parts of the oceans that fall outside the national jurisdiction of coastal states. Governance and regulation are limited here, given the principle of the freedom of the seas.

As a result, fragile habitats have been damaged by deep-sea bottom trawling (fishing vessels that scrape the ocean floor) and unique marine biodiversity has been destroyed. Species such as tuna have also been severely overfished.

Many of these crimes and activities have been attributed to organised criminal groups operating at sea, but legal sea users that carry out illicit schemes are also responsible. In 2012, the UN General Assembly noted the existence of 'possible connections between transnational organised crime ... and fisheries in certain regions of the world'.

A UN Office on Drugs and Crime study on transnational organised crime in the fisheries sector identified illegal fishing and overfishing, the dumping of toxic waste and pollution from vessels as common criminal activities carried out by networks on the high seas. These are also called transnational fisheries crime, or transnational environmental crime.

The UN's 'Paris agreement for the ocean' is a welcome development, and not just for conservationists

In September 2018, the UN launched formal discussions for a treaty to conserve the marine biodiversity on the high seas. The talks are a welcome development, and not just for conservationists.

This historic and long overdue process, which follows over a decade of debate, is expected to take two years of negotiation before a treaty is adopted in 2020. Already dubbed the 'Paris Agreement for the ocean', it would be the first international legally binding instrument to protect marine life in international waters.

The treaty will cover two marine areas – the high seas and the Area – as defined by the UN Convention on the Law of the Sea (UNCLOS). The high seas represent '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'. The Area refers to 'the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction'.

Until now, under UNCLOS, 'all States, whether coastal or land-locked, [have] freedom of navigation, overflight, freedom to lay submarine cables and pipelines, to construct artificial islands and other installations permitted under international law, freedom of fishing, and freedom of scientific research'. The resources in the Area are viewed as the common heritage of mankind. The exploitation of these resources is based on a first-come, first-served principle.

The exploitation of resources on the ocean floor is based on a first-come, first-served principle

This has been a grey area in international law, leaving the high seas open to criminals. Particularly relevant to the new treaty are those forms of transnational organised crime committed at sea that have been identified by the UN Office on Drugs and Crime. These include vessel-source pollution, such as the illegal and deliberate discharge of oil into the ocean, and fisheries crimes.

The latter often overlap with other forms of organised crime, such as drug smuggling and human trafficking. Legal loopholes have until now prevented the prosecution of those who commit these offences. The new high seas treaty is an opportunity to remedy that.

The future treaty won't replace or supersede UNCLOS or other relevant legal instruments. It will be called the United Nations Convention on the Law of the Sea and will cover conservation and sustainable use of marine resources in areas beyond national jurisdiction.

Renowned marine biologist and professor at the University of British Columbia, Daniel Pauly, advocates for a total ban on fishing in the high seas, saying that 'all the species that are taken from the high seas – like tuna – could still be caught in nationally controlled coastal waters'.

African governments must clearly articulate their positions and priorities in the treaty negotiations

For the African Union's 55 member countries, which include 38 coastal states, better high seas regulations will enable better governance of the continent's marine resources. The treaty will ensure that all states, including those that are landlocked, participate more equally in the global maritime economy.

Africa could benefit significantly from the treaty, and African countries are jointly participating in negotiations under the banner of the G77 group, and China. How they negotiate the inclusion of the continent's priorities will be key.

Before the first conference in September 2018, where the group was represented by Egypt as rotating president, matters relevant to Africa were identified during the preparatory sessions. Most were retained as focus topics for the two-year cycle of conferences. They include genetic resources, environmental impact assessments, capacity building and the transfer of marine technology.

Better regulation of the high seas should help stem the uncontrolled exploitation of the oceans and the seabed. For African states, this means participating in and benefiting from

the international maritime economy. To achieve this, African governments will need to clearly articulate their positions and priorities, and play a proactive role in the treaty negotiations.

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