RESEARCH PAPER

Analysing Spectrum of Intellectual Property Rights and its implication on Biodiversity Beyond National Jurisdiction

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ABSTRACT

The base of international law lies between two spectrums, the first one is about facilitating the even the least developed countries in every avenue of research, exploration and expansion however, the other spectrum is about protecting the rights of those countries who have invested in the exploration and expansion. The tussle between the two can easily be understood when it comes to safeguarding the development of exploration done in the sphere of common good, and the best example is about the areas beyond national jurisdiction. So far as the Law of the Sea is in question the treaty of United Nations Convention on Law of the Sea is very clear as it is accurately synonymous to Constitution of the Sea but the same legal instrument couldn't provide robust mechanism over the issue of most crucial aspect of the sea and that is called as High Sea, area of sea lying beyond national jurisdiction. With changing times emergence of global governance became necessary and new treaty was formulated namely, Biodiversity Beyond National Jurisdiction, however the same is not free of challenges as the same is required to be aligned with national legislation. The main objective of the study is about aligning the international sphere with national legislation. The research will be mainly based upon various treaties, national and international policies and reports of different ministries.

Keywords: Intellectual Property Rights, Biodiversity Beyond National Jurisdiction, UNCLOS, High Seas, Global Governance, Marine Biodiversity

How to cite this article: Bhatt D, Patil S. Analysing Spectrum of Intellectual Property Rights and its implication on Biodiversity Beyond National Jurisdiction. Int J Drug Deliv Technol. 2026;16(50s): 369-371. DOI: 10.25258/ijddt.16.50s.42

Source of support: Nil.

Conflict of interest: None

Introduction

The significant feature of newly drafted treaty, titled as Biodiversity beyond national jurisdiction having distinct feature of global governance having main focus upon the Areas Beyond National Jurisdiction and the same makes it little difficult to implement specifically in the sphere of Intellectual Property Rights. As the treaty talks about mainly of Access to benefit Sharing but the same may come across as bit contradictory to the basic tenets of the same as ultimately the research and researcher should be acknowledged and appreciated.

Before going ahead with detailed analysis of intertwining global common to rights belonging to ne only it is pertinent to analyse the basic idea of high sea treaty.

What makes the High Seas Treaty (and UNCLOS) special is that it is one of the few UN agreements governing what is known as the "global commons", which refer to shared natural resources and spaces over which no single nation or entity has jurisdiction. Effective collaboration balancing the interests of all Member States often proves challenging, and some actors look for loopholes that exploit weak governance. The High Seas Treaty closes a major gap, particularly given the size and value of the high seas and deep sea beds. These areas cover over half of Earth's surface, representing the largest and least explored habitats on the planet, while also being among the least protected. The new agreement mandates a shift away from unregulated, inequitable exploitation, instead allowing for the establishment of large-scale, legally binding Marine Protected Areas (MPAs) in international waters and requiring states to conduct, report and act upon environmental impact assessments for any planned activities. It also establishes frameworks for equitable sharing of monetary benefits, scientific knowledge and technologies to build the capacities of developing states. This could signal a welcome shift in the international perception. Not just of oceans in general, but of global commons from largely unregulated "common property" toward a goal of cooperative, equitable governance where the precautionary principle is mainstreamed and sustainable management for all humanity is prioritized over the interests of single nations or companies.[1]

Analysing the axis of Intellectual Property Rights and Marine Genetic Resources

The basic nature of marine Genetic resources makes it even more technical as the marine genetic resources are considered as living organisms and the genetic material have utility for research. Now the

[1] O'Connor, J. (2026, January 20). *Protecting our global commons – The High Seas Treaty is a potential gamechanger*. UNU-EHS.

same has become challenging as having reason very simple that the marine genetic resources are easy to get exploited so they do require Digital Sequencing Information. As the same has been evaluated in terms of areas beyond national jurisdiction makes it more complicated as the same has formed a part of global common it becomes difficult to have an exclusive ownership upon which Intellectual Property Rights lies heavily.

Patents are for inventions basically covers enzymes which covers broad spectrum of marine genetic resources. Apart from that the Trade Secret also contains some or other Genetic resources. Also, the same is closely connected to the Plant Varity Protection wherein specially TRIPS article 27.3 (b) is connected. The main issue lies upon the language used that the high sea is considered as areas related to common heritage of humankind or the area belongs to exclusionary logics of intellectual Property Rights.

Against this backdrop, possible approaches to IP across in the BBNJ process ranged from there being no engagement with it at all, to considering that IP did not belong in the BBNJ rather at WIPO and the WTO, to requiring consistency with other international agreements, to having restrictions on when patents could be granted, and to addressing disclosure of origin of inventions in connection with delivery of benefit sharing in respect of MGR. One commentary noted, in respect of the final text that "one notable change was to completely eliminate the Article on Intellectual Property Rights, because of continued intransigent disagreement on how to address the relationship with other relevant agreements, especially as relates to developments at the World Intellectual Property Organization" (Mendenhall et al., 2023, p. 5). More detail of IP's journey in—and out of— the negotiations is now explored in some more depth, and there is also consideration in this book in Humphries et al. (2025a, b).[2]

Ultimately here one thing has become crystal clear that there is no specific exclusive framework related to Intellectual Property in this highly ambitious treaty and the same makes it difficult for bridging the gap between common heritage of human kind and connecting the same with idea of equity.

Mainly the entire discussion lies upon three major issues. The first issue is about the having robust mechanism related to disclosure of origin and the high sea treaty, how other legal framework interacts with disclosure of origin and lastly wider interaction amongst legal fields.

Apart from WIPO and TRIPS there are other legislation also covering and governing the same issue for example the Convention on Bio diversity and Nagoya protocol which also deals with the rules related to access of benefit sharing.

Rooted in the theory of common property, the principle of freedom of the high seas was historically premised on the belief that marine resources were inexhaustible and would never be depleted. However, this premise seems difficult to sustain in modern society. With the advancement of human technology, the utilization of ocean resources has become increasingly aggressive, and unrestrained use of "common property" can easily lead to the "tragedy of the commons." The excessive exploitation of marine resources by various countries has led to a growing number of marine environmental issues, triggering ecological crises and posing the risk of depleting these resources. Limited by its historical context, the principle of freedom of the high seas, struggles to provide significant guidance on modern high seas issues. Therefore, the current concept of "freedom of the high seas" under the guidance of the UNCOLS has become a relative freedom. Its exercise is subject to the conditions stipulated by this convention and other international law rules, and it must consider the interests of other countries exercising their freedom of the high seas (UNCLOS**,** 1982, Art 87). Additionally, Article 86 of the UNCOLS limits the scope of "freedom of the high seas" to "all parts of the sea 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," emphasizing "areas of the sea." However, there is debate over whether areas such as the "deep seabed," where MGRs are typically located, fall within this scope. Consequently, many developing countries advocate that the seabed, subsoil, and their resources in the high seas be regarded as the common heritage of all humankind, with no nation or individual having the right to claim them as their own. Instead, countries should collaboratively develop and utilize these resources based on the principle of equality. These propositions gradually evolved into the principle of the common heritage of mankind.[3]

It is pertinent to note that the common heritage is a principle that was explained from the view point of global public interest. At the same time the scientific and medical significance as well as public utility of it belongs to public good or global attribute. The responsibility to protect the global resources is shared responsibility of all and obligation owed to

[2] Brown, A. E. L. (2025). The place of intellectual property under the BBNJ Agreement. In F. Humphries (Ed.), *Decoding marine genetic resource governance under the BBNJ Agreement* (pp. 213–224). Springer Nature.

[3] Xu, Q., & Jin, Y. (2025). Benefit sharing of marine genetic resources and intellectual property protection under the BBNJ agreement. *Frontiers in Marine Science*, *12*, Article 1631043.

future generations. While considering the scenario of exploration chances of intergenerational externalities can never be overlooked. The basic idea behind leads to foundation of sustainability and equality in access to have resources. Upon these fundamentals only treaty of biodiversity beyond national jurisdiction emerges wherein echoing the principle of sustainability idea of access to Benefit Sharing and freedom of global common emerges. Instilling the principal of global common and technology transfer the consensus was drawn amongst the countries which were about the freedom of exploration and usage adding new jurisprudential edge.

Tussle between common heritage and restriction related to exclusivity.

Despite of having such a pious objective as focal point the same is not free from challenges and the main challenge is not about fishing activity rather it is more about marine genetic resources wherein not only utility of the resources but also know how of the resource is also included. All these processes which enhances the utility of Marine Genetic Resources can not be utilise to its optimal level without incorporating professional technical methods. To unearth the maximum benefit of marine genetic resources and to have optimal use of it is not free from investment, environmental and also work condition risk and the same will render futile if not complied with protection of intellectual property backed with robust legal mechanism well equipped intertwining national and international legislation.

in the era of development, the difference between invention and discovery are not been maintained and also, they are used as synonymous, when it comes to protecting the rights related to marine genetic resources article 44 of TRIPS is required to be analysed as the protection related to patent will get change especially when it comes to marine genetic resources and Diamond v. Chakrabarty made it crystal clear that in order to obtain patent on genetic resources human intervention and technological intervention is required to prove that intervention lead to change in utility which was not present in unaltered state.

Way Forward

As per current legal mechanism the benefit sharing is been divided in to two different parts as per Convention on Biodiversity 1992. One part is related to monetary and another one is related to non monetary benefit sharing; during negotiations of high sea treaty, it was emphasised that the monetary benefit sharing should be included and the same was included as general obligation. However, the same is not backed by specific sharing model yet. Not having specific model of monetary sharing may discourage the developers and investors to explore deep sea exploration. In order to balance the two while respecting the painstaking effort of explorer and investor sharing the information which are for public interest and are for larger goods while revealing the genetic resources will keep the balance and exploration will be continued while not exploiting the common mankind.