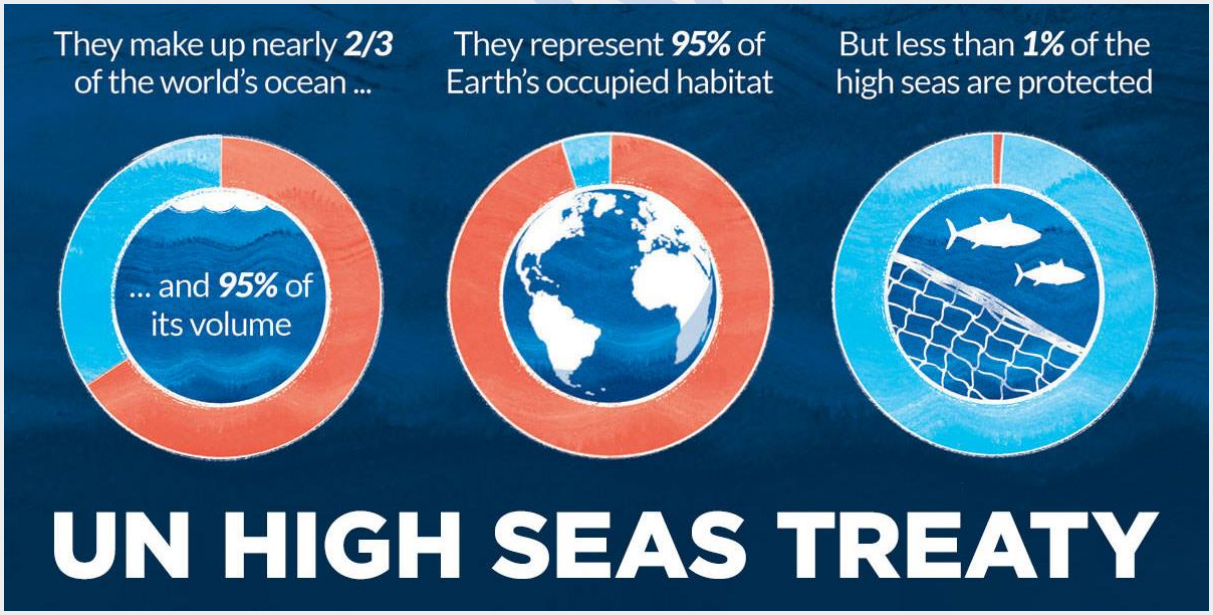
1. India to ratify High Seas Treaty: What is the agreement — and its significance?

Why in News?

The Indian government recently said it would soon sign and ratify the High Seas Treaty, a new international legal architecture for maintaining the ecological health of the oceans. The treaty, negotiated last year, is meant for reducing pollution, and for conservation and sustainable use of biodiversity and other marine resources in ocean waters.

High seas are areas outside the national jurisdiction of any country because of which the treaty is also known as the agreement on Biodiversity Beyond National Jurisdictions (BBNJ). It is formally called the Agreement on Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction.



India, like most other nations, was a party to the nearly 20 years of negotiation that resulted in the finalisation of the treaty last year. Ninety-one countries have already signed the treaty, while eight of them have also ratified it.

Landmark Agreement

The High Seas Treaty has often been compared with the 2015 Paris Agreement on climate change in its significance and potential impact.

The treaty deals only with oceans that are outside the national jurisdiction of any country. Typically, national jurisdictions extend up to 200 nautical miles (370 km) from the coastline, an area that is called exclusive economic zones or EEZs. Areas outside of EEZs of every country are known as high seas or international waters. They constitute about 64%, roughly two-thirds, of the total ocean area and are considered global commons. They belong to no one and everyone enjoys equal rights for navigation, overflight, economic activities, scientific research, or laying of infrastructure like undersea cables.

High Seas – No one's responsibility

But because these belong to no one, high seas are also no one's responsibility. As a result, many of these areas suffer from overexploitation of resources, biodiversity loss, pollution, including dumping of plastics, ocean acidification, and many other problems. According to UN estimates, about 17 million tonnes of plastics were dumped in the oceans in 2021, and this was only expected to increase in the coming years.

Governance mechanism

It is not that there is no international governance mechanism for the oceans. The 1982 UN Convention on Laws of the Seas, or UNCLOS, is a comprehensive international law that lays down the broad frameworks for legitimate behaviour on, and use of, seas and oceans everywhere. It defines the rights and duties of nations regarding activities in the oceans, and also addresses issues such as sovereignty, passage rights, and rights of exclusive economic usages. Demarcations of territorial waters, and EEZs are a result of UNCLOS.

UNCLOS also sets the general principles for equitable access and usage of ocean resources, and protection and conservation of biodiversity and marine ecology. But it doesn't specify how these objectives have to be achieved. This is where the High Seas Treaty comes in. Once it comes into force, this treaty would serve as one of the implementing agreements under the UNCLOS.

Protection and Access

The High Seas Treaty seeks to achieve three substantive objectives: conservation and protection of marine ecology; fair and equitable sharing of benefits from marine genetic resources; and establishment of the practice of mandatory environmental impact assessments for any activity that is potentially polluting or damaging to the marine ecosystem.

There is a fourth objective as well, that of capacity building and transfer of marine technologies to developing countries. This will help them make full use of the benefits of the oceans while also contributing towards their conservation.

Oceans are home to a very large number of diverse life forms, many of which may be of immense value to human beings. These ocean organisms can offer insights into evolution, and some of them might even be useful in drug discovery, making them commercially lucrative.

The High Seas Treaty seeks to ensure that the benefits from these ocean living resources, either through scientific research or commercial exploitation, is equally shared amongst all. The treaty does recognise that there might be costs involved in accessing these resources or their benefits but makes it clear that there cannot be proprietary rights of any country over these.

The treaty also makes it mandatory to carry out a prior environmental impact assessment (EIA) for any activity that is potentially polluting or damaging to the marine ecosystems, or to conservation efforts. The EIAs need to be made public. An EIA is to be carried out for activities within national jurisdictions as well if the impacts are expected in the high seas.

Marine Protected Areas

Protection and conservation of marine ecology is supposed to be achieved through demarcation of Marine Protected Areas (MPAs), much like the national parks or wildlife reserves. Activities in MPAs would be regulated, and conservation efforts also taken up. A few potential areas that may get recognised as MPAs have already been identified, and many more are expected to be added in due course.

Ratification

Like any other international law, the High Seas Treaty would come into force only when a certain minimum number of countries ratify, or accede to, it. In the case of this treaty, this number is 60. The treaty would become international law 120 days after the 60th ratification is submitted.

Ratification is the process by which a country agrees to be legally bound to the provisions of an international law. This is separate from a mere signing on to an international law. Signing indicates that a country agrees with the provisions of the international law concerned, and is willing to abide by it. But till it ratifies it, the process for which varies from country to country, it is not legally bound to follow that law.

In countries that have legislative bodies like a parliament, ratification typically requires the consent of the legislature. In other countries, it might just need an executive approval or accession. It is possible for a country to sign on to but not ratify a treaty. In that case, it is not considered a party to the treaty. The United States, for example, signed the Kyoto Protocol, the predecessor to the Paris Agreement, but it did not ratify it because its Senate, the upper house of the legislature, did not give its approval.

Relevance: GS Prelims & Mains Paper III; Environment
Source: Indian Express

2. Putin accepts PM's request to release recruits

Why in News?

In what will be a relief for the families of men recruited into the Russian military to serve at the war front with Ukraine, Russian President Vladimir Putin has accepted Prime Minister Narendra Modi's request, to discharge those wishing to return to India.

According to sources, Mr. Putin has given instructions to this effect upon Mr. Modi's "direct intervention". Asked specifically if Indians who chose to remain would be allowed to do so, he said that Mr. Modi made it clear that he wanted "all" Indian military recruits to return.
Pressure on Government

The demand for the discharge of the soldiers who claim they were recruited after being lured by agents on false promises has been increasing pressure on the government for several months.

According to those aware of the recruitment process and the routes taken by Indian men and agents who bring them, many Indian military recruits have not registered with the Embassy, as they are lured by salaries of approximately ₹2 lakh a month, the promise of Russian residency papers, as well as the possibility of using illegal migrant routes to go further West to Schengen countries in Europe.

View point of Russia

Russian government sources explained that the recruitment of foreign soldiers is permitted under law and conducted after "thorough mental and physical" checks. Recruits from Nepal, Sri Lanka, China, and African countries are all believed to have been trained for a few weeks and deployed similarly to the Indian recruits. The Nepali government has also made similar requests to the Kremlin and taken up the issue in Kathmandu and Moscow.

The decision by Mr. Putin is seen as a special gesture made for India given traditional ties, as well as his personal rapport with the Prime Minister.

Relevance: GS Prelims & Mains Paper II; Bilateral Relations
Source: The Hindu

3. What is the draft Digital Competition Bill?

Why in News?

In February 2023, the Ministry of Corporate Affairs (MCA) constituted a Committee on Digital Competition Law (CDCL) to examine the need for a separate law on competition in digital markets. The CDCL deliberated on the issue for a year and came to the conclusion that there was a need to supplement the current ex-post framework under the Competition Act, 2002 with an ex-ante framework. It laid out this ex-ante framework in the draft Digital Competition Bill.

What is an ex-ante framework?

The Competition Act, 2002 is the primary legislation concerned for preventing practices that have an adverse effect on competition. It establishes the Competition Commission of India (CCI) as the national competition regulator. As with competition law in all other jurisdictions, the Competition Act, 2002 is based on an ex-post framework. This means that the CCI can use its powers of enforcement only after the anti-competitive conduct has occurred.

In the case of digital markets, the CDCL has advocated for an ex-ante competition regulation. This means that they want the CCI's enforcement powers to be supplemented such that it

allows it to pre-empt and prevent digital enterprises from indulging in anti-competitive conduct in the first place.

Unusual practice

Ex-ante competition regulation is unusual. The European Union is the only jurisdiction where a comprehensive ex-ante competition framework, under the Digital Markets Act, is currently in force. The CDCL agrees with this approach because of the unique characteristics of digital markets. First, digital enterprises enjoy economies of scale and economies of scope, that is, reduction in cost of production per unit as the number of units increase and reduction in total costs of production with increase in number of services respectively. This propels them to grow rather quickly as compared to players in the traditional market. Second, this growth is aided by network effects — utility of the digital services increases with the increase in the number of users.

In this context, given that markets can tip relatively quickly and irreversibly in favour of the incumbents, it was found that the extant framework provided for a time consuming process, allowing offending actors to escape timely scrutiny. Therefore, the CDCL has advocated for preventative obligations to supplement the ex-post facto enforcement framework.

What is the draft's basic framework?

The draft Bill follows the template of the EU's Digital Markets Act. It does not intend to regulate all digital enterprises, and places obligations only on those that are "dominant" in digital market segments. At present, the draft Bill identifies ten 'core digital services' such as online search engines, social networking services, video sharing platform services etc. The draft Bill prescribes certain quantitative standards for the CCI to identify dominance of digital enterprises. These are based on the 'significant financial strength' test which looks at financial parameters and 'significant spread' test based on the number of users in India. Even if the digital enterprise does not meet quantitative standards, the CCI may designate an entity as a "systemically significant digital enterprise (SSDE)" based on qualitative standards.

The primary obligation of SSDEs is to not indulge in anti-competitive practices. These require the SSDE to operate in a fair, non-discriminatory and transparent manner with its users. The draft Bill prohibits SSDEs from favouring its own products on its platform over those of third parties (self-preferencing); restricting availability of third party applications and not allowing users to change default settings; restricting businesses users of the service from directly communicating with their end users (anti-steering) and tying or bundling of non-essential services to the service being demanded by the user. SSDEs also cannot cross utilise user data collected from the core digital service for another service and non-public data of users cannot be used to give unfair advantage to the SSDE's own service.

What has been the response?

The overriding sentiment towards the draft Bill has been one of opposition. First, there is considerable scepticism on how well an ex-ante model of regulation will work. This stems in part from the fact that it seems to be transposed from the EU to India without taking into account differentiating factors between the two jurisdictions and the lack of evidence of it actually working well there. This is compounded by concerns of its potential negative effects on investments for start-ups in India and that they might be deterred to scale up to prevent meeting quantitative thresholds. Studies have also shown that restrictions on tying and bundling and data usage would negatively impact MSMEs that have come to rely significantly on big tech to reduce operational costs and enhance customer outreach.

Interestingly, a group of Indian start-ups have supported the draft Bill arguing that it would address concerns against monopolistic practices by big tech. However, they have argued for a revision of financial and user based thresholds citing concerns that it may lead to domestic start-ups being brought within the regulatory net.

Relevance: GS Prelims & Mains Paper II; Bilateral Relations
Source: Indian Express