

Siva Thambisetty: “The Oceans Treaty covers issues that connect us more than divide us”

*The Biodiversity Beyond National Jurisdiction (BBNJ) Treaty was agreed last year to cover marine biodiversity in the so-called “high seas”. **Siva Thambisetty**, associate professor at LSE’s Law School, acted as advisor to the chair of the G77 and China Group in 2022 and 2023, and to the Pacific Small Island Developing States in 2019. Siva currently leads a Knowledge Exchange and Impact (KEI) funded project called the Ocean Biodiversity Collective. In this Q&A, she spoke with **Helena Vieira** (LSE Business Review) about next steps and the business implications of the treaty.*

The Oceans Treaty - LSE Event ([find out more](#))

Siva Thambisetty will be speaking at the event "The Oceans Treaty as a win for multilateralism: what lies ahead" (hosted by LSE Law School).
Tuesday 06 February 2024 6.30pm to 8.15pm.

What actions do you expect will come out of the Oceans Treaty? What will countries start doing differently now?

It’s not a simple question, because for the treaty to come into force, many events still need to fall into place. We need 60 countries to ratify it. You may have seen that many countries have signed it after the adoption conference in June 2023. What that means is that there is an understanding that they’re moving towards ratification. Ratification itself is a more complicated process, because countries have to be sure that they can implement it domestically. And they will want to have an idea of the kind of legislation they will be putting into place. So, ratification is likely to take a little bit longer. We have had two countries ratify already. Chile and Palau. We expect to get to 60 in two years since the text was agreed. I think 2025 is the hope.

In some cases, with international treaties, it’s very hard for us to get to the critical number needed for entry into force. But with the Oceans Treaty, the reason there is likely

to be a 'race towards ratification', as it is being called by some, is that once the treaty is entered into force, there will be a first conference of the parties. If you are one of those 60 initial countries, you will be part of the conference. So, there is an incentive for developing countries, including small island developing states, to ratify to be around the table when the decisions on further implementation are being made. Now we're in this sort of liminal phase where the treaty exists but many countries are taking stock. It's a bit of a lull, but it's a phase. There has been a huge amount of activity and it will pick up again.

This treaty is happening when multilateralism is under threat, with wars are being waged on the sea and many global regions are fighting with each other. Will that affect the implementation of the treaty?

That's a question that is on everybody's mind. It has to be on everybody's mind. I think two things here. One is, we should celebrate the wins that we do have. Getting to the text of the treaty is a win, a coming together of collective consciousness about what we want to do. A lot of people put in a lot of years, decades even, into coming up with that treaty. So, it's worth celebrating the fact that when we come together, when the process works, we can find solutions collectively in a way that makes sense. I think it's precisely because multilateralism now seems balanced on a knife's edge that it makes sense to take a few moments to acknowledge what we can do when we come together.

There's an adage that says, the future of international law is domestic. A lot of the implementation of the treaty will happen through concerted exertion of political will domestically. Of course, there is an international element to it, but there are obligations and behaviour changes that state parties must be ready and willing to make. This includes reasoned additional regulatory burdens on entities such as, for instance, their scientific communities or private parties that engage in activities on the high seas. This will come down to the political will of state parties because these entities, in the treaty structure, are still going to be governed by state party administrative and legislative measures. Yet implementation also requires coordinated international action among entities that come under state parties.

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That process is in place, and I don't think the world being in a difficult place should impact that. If anything, I think it should give even greater impetus to sorting out the solutions that we have now. The treaty ultimately has a lot to say about issues that connect us more than divide us, and that includes things like freedom of scientific research and conservation of ecosystems. How do we conduct science in a more inclusive way? How do we make sure that scientific advances are distributed evenly? How do we ensure compliance with environmental impact assessments? There can be great comfort in knowing that those sorts of things are much more connected than disconnected, if you like.

Enforceability is very hard with anything that is global. But if you're talking about each country doing its part nationally, it makes more sense to me.

The mechanism itself will be quite international. New treaty bodies will have to be set up and composed inclusively to function efficiently. One challenge here is that a relatively small number of countries are familiar with scientific research on the high seas. It's not just that the cruises are expensive and require concerted scientific preparation. Much of the infrastructure that is intimately connected with the conduct of such science (for example entities involved in how marine genetic resources are collected, converted into data and stored) are based in the global north. Together they form strong voices lobbying for special interests, or, in the treaty context, for conducive interpretation in domestic legislation.

Another challenge is that in the years ahead, when we are making decisions to enable coordinated implementation, we must make that process inclusive. Where there are key non-traditional decision-making roles for scientists or policymakers, I think it's incredibly important that these include individuals and entities from the global south.

So, there's still a lot at play. A lot could go wrong but there's also a lot that could go right. I think we need to stick to the purpose and the intentions behind getting that treaty done.

An enormous amount of goodwill was generated. There's value in remembering what was achieved so that we can continue, with that sense of legitimacy and purpose in now implementing what that goodwill achieved.

Are you going to need international institutions to handle the treaty, or is the UN the one to do it?

There will be a secretariat under the treaty. Chile has already put in its bid to host the secretariat. There are some critical treaty bodies that will have to be set up once the first conference of parties takes place, including an access and benefit-sharing committee, and a scientific and technical body. I imagine that choosing the membership of these committees will be a state-driven process. But you also want to get good people on there who can run with this idea that the treaty involves creative, legally imaginative solutions to biodiversity governance. So yeah, the composition of those bodies will have quite a lot of impact on what happens next.

I imagine businesses have an interest in the oceans. Pharmaceuticals, because of the biodiversity, but also mining, fishing and transportation. Are companies, industries or trade groups involved in these negotiations?

Not directly, but through their state parties. For sure, when a state party is taking a particular position, it is also thinking about the private entities, including the companies and businesses that you mentioned, over which it has control or governance. I would say private parties did have quite a presence, even if it wasn't a highly visible one. Their presence was felt in the kind of positions the like-minded group of developed countries were taking, for instance.

Pharmaceutical interests and the interests of science were a big part of the discussions. I'll mention a couple of things here, since you mentioned pharmaceuticals, which might be of interest to your readership. We have struggled with this problem for decades. We can use biodiversity to discover and potentially come up with products that are very valuable. Throughout the negotiations there was a lot of hesitation to agree on the commercial value of those potential discoveries or put a number on how much value this biodiversity might bring in terms of actual products because that raises the stakes in a very tangible way.

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A lot of the time it felt like developing countries were constantly having to make the case on first principles like, “look, this is something where the benefits ought to be shared”. A few things got in the way. One is intellectual property rights. The treaty does not have text on intellectual property rights. I think it’s a challenge to the perception of legitimacy of the treaty that we do not have intellectual property references, whereas several prior iterations of the draft did. We lost that text quite late in the process. I think that will have an impact domestically for some developing countries, I’m not sure which direction it’ll take yet.

Second is the question of [digital sequence information](#). We’re now in a brave new world where we’re not just talking about the physical, genetic material, but about data and sequence information. It’s even possible that we can collect data without going to areas beyond national jurisdiction. You can potentially position a remote gadget that will sequence genetic material that’s flowing through and send that data back. There are all sorts of new ways emerging whereby this information can be collected. As your readers will know, digital sequence information is being discussed in other international forums. It is a challenge that some entities in these other forums, such as the [Convention on Biological Diversity](#), might attempt to re-litigate some of the issues that were agreed in the treaty.

The Oceans Treaty has a very particular kind of context, you know? There are no sovereign rights in that territory; it is like a tabula rasa when it comes to decisions on how to govern these genetic resources compared to the Convention on Biological Diversity. What we achieved with respect to marine genetic resources, therefore on a smaller scale, is well formed as a mechanism. I would like to see this treaty lead the way for other, allied forums. It’s important, through events like [the one on 6 February](#), that we begin to characterise the gains, the successes, so that we can build on progress made and prevent the erosion of any goodwill.

The treaty takes a particular view of digital sequence information (DSI), though it does

not define it. DSI is everywhere in the text, and associated benefit-sharing obligations are firmly entrenched. The inclusion of DSI was a big, contentious issue. But we do have a way of tagging genetic resources from areas beyond national jurisdiction, through something called a 'standardised batch identifier' which attaches to genetic resources taken from these areas. This means that obligations to share benefits cascade through the entire use pipeline, starting from the genetic material through to the data and products, which is new. It also potentially gives us a way to visualise through data analytics if the treaty objectives are being met. It's an incredible achievement, given how stuck we've been with this problem in biodiversity governance for the last few decades. When effectively implemented, it should provide certainty for businesses and commercial interests and give them a stake in the success of the framework. So, for instance, I would like that sort of arrangement to lead the way in the Convention on Biological Diversity. Some actors in the other forums might try to modify the impetus around what we now have in the treaty. There's a lot at play. So, watch this space.

I wonder if, to make the high seas more manageable, since it's such a vast area, it would be possible that you'll end up having to create international marine parks like national parks.

One thing I would say upfront is that it's controversial to call it the High Seas Treaty because it implies the freedom of the high seas, its frontier language that recalls the prospecting of the wild west. In the way international law conceives of the notion now, the 'high seas' militates against the common heritage of humankind, which is now part of this treaty. To call it that way is to signal a different sort of normative basis. I would suggest we call it the Oceans Treaty, because there is only one that is so significant for the oceans. Or we call it the Biodiversity Beyond National Jurisdiction (BBNJ) Treaty.

There are four pillars to this treaty of which marine genetic resources is one. Another pillar is the creation of marine protected areas (MPAs), under a broad rubric of area-based management tools. Even though you don't have sovereign powers in these areas, you would have large areas that would be run like managed protected parks. There was initially a target of 30 per cent of these areas beyond national jurisdiction to be managed in that way by 2030. But that target was dropped. We have all the tools for this to happen, but again, it can only happen once the treaty enters into force and is implemented.

Have you thought about how renewable energy, fisheries or transport would be addressed? Or is this too detailed for now?

No, it's not too detailed at all. The short answer is, the treaty will not be allowed to undermine any existing ways of acting under international laws. A lot of the fisheries agreements, for instance, are not touched. Parts where there is an overlap may still have to be ironed out. Genetic or biological material collected by fisheries will not constitute genetic resources under the genetic resource provisions of the treaty. This clause of not undermining existing international agreements was always at the forefront during the negotiations. But if there are activities on the high seas related to biodiversity, then environmental impact assessments (EIAs) may have to be carried out. That's another pillar of the treaty: what kind of information on impact will have to be provided, how early it will have to be provided, what kind of liability or compliance might be elicited.

This will have an impact on high seas activities, but again, once the conference of parties is in place, there will be more attention to specific standards of scientific review and mechanisms on how these EIAs will run, which will be quite important. One thing that might be interesting for your readers is that this is a slightly unusual treaty, in that the compliance is not rigidly set by targets. The compliance is done mostly through generating information which will allow for coordinated action on implementation. Countries will be asked for information about the environmental impact of their activities or the activities of entities that come under their jurisdiction, or, as in the case of part II of the treaty, information about the genetic resources that they're collecting from areas beyond national jurisdiction. The idea is that the process of behaving in a transparent manner will provide the impetus for everyone to behave well and curtail bad actors. But you know you're always going to have bad or less than good actors, so we'll have to see how that plays out.

Find out more on this topic in [Research for the World](#) magazine and in this YouTube video:

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