‘Over the Edge’: The Ocean as Commons and Usufruct

Anupama Mohan

Abstract: In this article, I examine the historical concept of the commons, seeking to see its value in the twenty-first century as an analytical category for understanding the ocean. The discourse surrounding the commons has generated many semantic and conceptual paradoxes leading to the need for new terms and new scales that are better suited to also addressing the ecological crisis of the oceans. The essay examines two crucial world agreements, the United Nations Convention on the Law of the Sea (UNCLOS, 1982) and the High Seas Treaty (2023), to understand what global cooperation at the highest levels entails and ramifies, especially for communities in the Global South. Finally, the essay explores how useful the commons is as an idea for oceanic cultures and examines the Marxian concept of the usufruct as providing the foundation for a transformed approach to the high and deep seas today.

Keywords: ocean, commons, usufruct, Marxism, ecology, environmentalism, high seas

நீரின்றி அமையாது உலகு

(Nīriṉṟi amaiyātu ulaku)

‘The world cannot exist without water.’
– Thiruvalluvar, *Tirukkuṟaḷ* (500 CE)[1]

‘The story of oceans is the story of life.’
– NASA, *Oceans Worlds*[2]

The poem ‘Dear Matafele Peinam’ was selected for the opening ceremony of the UN Climate Summit in New York in September 2014 and its poet, Kathy Jetñil-Kijiner, brought her husband and infant daughter to the stage as she performed it in front of the delegates. Written as an ode to her daughter, the poem describes the catastrophic fallout of global warming for the poet’s home, the low-lying Pacific islands, as sea levels rise with global temperature and threaten to destroy these vulnerable spaces. The poem pays homage to those ‘over the edge’, already dispossessed and unhomed – ‘the carteret islanders of papua new guinea / … the taro islanders of the solomon islands’ – but the poet promises her infant daughter,

1. Thiruvalluvar, *Tirukkural*, A. Chakravarti (trans.), Diocesan Press, 1953, p27.

2. ‘Ocean Worlds: Water in the Solar System’, NASA, https://www.nasa.gov/specials/ocean-worlds/

 DOI: 10.3898/NEWF:115.03.2025

… we are drawing the line here
because baby we are going to fight

your mommy daddy
bubu jimma your country and president too
we will all fight

and even though there are those
hidden behind platinum titles
who like to pretend
that we don't exist
that the marshall islands
tuvalu
kiribati
maldives
and typhoon haiyan in the philippines
and floods of pakistan, algeria, colombia
and all the hurricanes, earthquakes, and tidalwaves
didn't exist

still
there are those
who see us

hands reaching out
fists raising up
banners unfurling
megaphones booming
and we are
canoes blocking coal ships
we are
the radiance of solar villages
we are
the rich clean soil of the farmer's past
we are
petitions blooming from teenage fingertips
we are
families biking, recycling, reusing,
engineers dreaming, designing, building,
artists painting, dancing, writing
and we are spreading the word

and there are thousands out on the street
marching with signs
hand in hand
chanting for change NOW…[3]

3. Kathy Jetñil-Kijiner, 'United Nations Climate Summit Opening Ceremony – A Poem to My Daughter,' 24 September 2014, https://www.kathyjetnilkijiner.com/united-nations-climate-summit-opening-ceremony-my-poem-to-my-daughter/.

I teach 'Dear Matafele Peinam' at the end of my Literature and Environment course in IIT Jodhpur, far away from the islands of the Pacific, where my students, after having closely studied over a semester the chilling Intergovernmental Panel on Climate Change Assessment Report (IPCC AR) 2021 along with a range of other works, such as Rachel Carson's *Silent Spring* (1962) and Amitav Ghosh's *The Nutmeg's Curse* (2021), are reeling from climate anxiety and ecological grief. The poem is a salve; though we all burn in concern for our homes and communities and those far away too, for an all too preciously brief while, the poem lets us cling to the hope that our common grief gives us a common goal, or at the very least, a common resolve. It also reminds us terrestrial, land-tethered citizens of the world to think of our place on the planet – floating on enormous tectonic plates over fathoms of water, the one water that links all our lives on the planet, the one water that we call by many names as seas and oceans. But what does it mean to think of the ocean as commons?



Figure 1: Cartographer Perrin Remonté's stunning map of the planet's water adapts the Spilhaus Projection to see the seas and oceans as one continuous body of water marked by changes in water temperature and salinity. (See website below for full colour version.) ©Perrin Remonté, 'Many Seas, Only One Ocean', 2025, in 'Thematic Maps', https://www.perrinremonte.com/thema-eng.

In this article, I examine the historical concept of the commons, seeking to see its value in the twenty-first century as an analytical category for understanding the ocean. I consider how the term commons has shifted from a legal designation of shared resources to signifying a broader lens for interpreting

collective stewardship and spatial belonging. I explore how oceanic spaces, in particular, trouble conventional boundaries of property, sovereignty and use, inviting us to reimagine what we mean by shared responsibility. I also trace how contemporary pressures of climate change, deep-sea extraction, and maritime geopolitics reshape what 'common' access and care might entail. The essay examines two crucial world agreements, the United Nations Convention on the Law of the Sea (UNCLOS, 1982) and the Biodiversity Beyond National Jurisdiction (BBNJ), also known as the High Seas Treaty (2023), to understand what global cooperation at the highest levels entails and ramifies, especially for communities in the Global South. Finally, the essay considers how the idea of the commons must be redefined to frame conversations surrounding oceanic cultures and their modes of shared life by turning to the Marxian notion of usufruct that offers, I argue, a basis for reimagining our collective relationship to the high and deep seas today. This framework encourages forms of stewardship grounded in use, care and reciprocity rather than the ownership-based thinking that defines much of the global discourse of the commons. In doing so, it opens possibilities for more equitable and ecologically attuned ocean governance in an era of accelerating environmental change.

THE COMMONS: POSITIONS AND POLARITIES

The commons is a peculiarly terracentric concept, deriving from the traditional English legal term for common land, and now seen in light of Garrett Hardin's influential 1968 essay 'The Tragedy of the Commons'[4] as a term designating a shared resource. In time, Hardin's essay was criticised by a range of thinkers, including the Nobel Prize winning economist Elinor Ostrom for, in fact, creating significant subsequent confusion by calling open resources (owned by no one) commons. Ostrom further argued that Hardin's conclusion that, left to their own devices, human beings necessarily deplete and destroy common-pool resources, was also a sweeping generalisation that did not hold up to empirical scrutiny. Ostrom's own research into various collaborative resource management and use systems across the world showed that, with careful *boundary rules* specifying use and responsibility, small communities of people sharing a common resource could maintain it for long periods of time and avoid 'the tragic trap' of overuse and depletion that Hardin predicted as the fate of all commons-sharing.[5] Ostrom's work drew attention to the semantic and conceptual confusions in Hardin but remained, ironically, far less influential than Hardin's essay which became widely-cited, especially among thinkers championing privatisation. In his essay on water as commons, John Wagner agrees with Ostrom that '[c]ontemporary literature on the commons displays a bewildering level of inconsistency in terminology'.[6] In his overview, Wagner posits that central and basic to all definitions of the commons is the idea of ownership. He writes, and we may use Wagner's

4. Garrett Hardin, 'The Tragedy of the Commons,' *Science*, 162, 13 December 1968, pp1243-1248. (Hereafter *The Tragedy*.)

5. Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge University Press, 1990.

6. John R. Wagner, 'Water and the Commons Imaginary', *Current Anthropology*, 53:5, 2012, pp617-641. (Hereafter *Water and the Commons*.)

words for definitional clarity, 'common property is managed and perhaps jointly owned by a relatively autonomous local user group, public property is owned and managed by a state agency, private property is controlled by an individual or a corporation, and open access refers to a situation in which … the resource is available to all' (*Water and the Commons*, pp617-18).

Along with being terracentric, the commons is also a trenchantly colonial construct rooted in the concept of the enclosure. E.P. Thompson argued that 'the concept of exclusive property in land [was] carried across the Atlantic, to the Indian sub-continent, and into the South Pacific, by British colonists, administrators, and lawyers'.[7] The commons emerged as a managerial concept whose colonial underpinnings continue in the postcolonial present. Its historical use often legitimised control over land, labour and resources under the guise of shared access. Today, these inherited structures still inform how authority and entitlement are distributed, especially in global environmental governance. Re-examining the commons thus requires confronting and unpacking these embedded colonial assumptions. Carl J. Griffin writes:

> … [F]rom the latter decades of the eighteenth century, commons and wastes were explained as empty spaces, *terra nullius*, the claim made in the language – and often in relation to examples – of British overseas colonialism. This is not to say that the idea of wastes being empty spaces was altogether new, this being a discourse used to explain and justify the enclosure of large swathes of fen and forest from at least the turn of the seventeenth century, but rather the influences and modes of making claims had shifted. As part of this process the peoples that inhabited commons and wastes were inscribed as uncivilised and unable to manage the land, natives of the place but with no title. Enclosure was thus increasingly conceived of as a form of internal colonisation…[8]

When read in this way, the ocean, imagined as a commons through terracentric lenses, becomes empty space that separates landmasses and is incapable of being viewed/read as an alive and thriving realm in its own right. For terracentric approaches, the ocean is a surface to traverse, a resource to extract from, or a boundary to police, rather than an inhabited, relational environment that is home to millions of non-human species whose lives shape vast, interconnected ecosystems that include the terrestrial and go beyond it. From microbes to whales, these species inhabit complex worlds of migration, sensing and relation. Their presence reminds us that the water is *not* empty space but a densely populated and dynamic living environment, ignoring which impoverishes our understanding of the ocean's ecological complexity and the obligations that follow from sharing the planet with such abundant life.

Furthermore, European colonial powers often treated the ocean as a kind of 'waste land' or an extension of *terra nullius*. Marine waters were seen as

7. E.P. Thompson, *Customs in Common*, Penguin Books, 1991, pp164-5.

8. Carl J. Griffin, 'Enclosure as Internal Colonisation: The Subaltern Commoner, Terra Nullius and the Settling of England's Wastes', *Transactions of the Royal Historical Society*, 1, 2023, pp95-120, p96. (Hereafter *Enclosure as Internal Colonisation*.)

open, unclaimed spaces held in common – *mare nullius* – justifying unrestricted access and use. As Mulrennan and Scott note,

> [t]he *mare nullius* of seas, … declared vacant of indigenous tenure or authority by colonizers, became subject to European representations of seas as international commons … This framework poses major quandaries for marine hunters and fishers, as amply illustrated by the cases of northern Quebec Crees and Inuit, and the Torres Strait Islanders of northern Queensland. Because aboriginal sovereignty rights receive little or no state recognition, and since sea space cannot be property, these peoples face double jeopardy in their aspiration to control their marine territories and associated resources.[9]

9. Monica Mulrennan and Colin Scott, 'Mare Nullius: Indigenous Rights in Saltwater Environments', *Development and Change*, 31:3, 2000, pp681-708.

Terracentric perspectives that frame land and ocean use around ownership-based definitions of the commons have tended historically to ignore the maritime practices and territorial rights of Indigenous peoples, framing the sea as empty rather than inhabited or managed, while also overlooking maritime histories, oceanic cultures and the dynamics of marine life and currents. In addition, while viewing the ocean as a commons, we must also remember what Pomeroy, Hall-Arber and Conway have argued:

> …[the] ocean space is increasingly being cast as a commodity… The division of ocean space intentionally separates users and thus may appear to avert conflict. Consistent with the neoliberal paradigm, it also is assumed that those allocated exclusive use will protect 'their' space,' and thus the ecosystem, while increasing economic efficiency and output. However, … as Degnbol and Wilson [p33] have written, 'The dynamic and heterogeneous nature of fishing activities and the resulting varying spatial needs conflict with permanent or long-term distribution of marine space for different uses'.[10]

10. Caroline Pomeroy, Madeleine Hall-Arber and Flaxen Conway, 'Power and Perspective: Fisheries and the Ocean Commons Beset by Demands of Development', *Marine Policy*, 61, 2015, pp341-342.

Thus, to unpack the idea of the ocean as a commons (even a 'global commons' as it is frequently called in marine sciences and public policy literature), it is important 'to understand the deeper histories and genealogies of the ideas and dynamics that informed [the] discourses and practices of internal colonialism' (*Enclosure as Internal Colonisation*, p96), of which the commons is an integral part. The material and conceptual histories of the commons are central to a hermeneutics of the ocean as they oscillate paradoxically between two poles: on the one hand, the commons as a material good is marked by its use value for human consumption, the history of which staunchly rehearses illusions of terracentric and colonial control and domination, and on the other hand, the commons is also seen conceptually as a kind of idealised, ancient space of the people ('commoners') that betokens, what Wagner calls, 'a social imaginary' (*Water and the Commons*, p617). Outside the territorial and

economistic context, commons can, Wagner argues, be theorised afresh 'as a social imaginary rather than as a distinct set of institutional arrangements' (*Water and the Commons*, p617) emerging out of necessity from dominant structures such as feudalism and capitalism. A blend of nostalgia and optimism, such a view emphasises the commons as a shared form of collective, communitarian governance. This is also a tension that can be most clearly understood through the concept of usufruct, which the essay returns to in its final section.

The geographer David Harvey extends this second pole of critique further in his conception of 'commoning' as a process distinct from 'commons' as a static entity or object.[11] In a well-known passage, Harvey writes,

> The common is not to be construed, therefore, as a particular kind of thing, asset or even social process, but as an unstable and malleable social relation between a particular self-defined social group and those aspects of its actually existing or yet-to-be-created social and/or physical environment deemed crucial to its life and livelihood. There is, in effect, a social practice of commoning. This practice produces or establishes a social relation with a common whose uses are either exclusive to a social group or partially or fully open to all and sundry. At the heart of the practice of commoning lies the principle that the relation between the social group and that aspect of the environment being treated as a common shall be both collective and non-commodified – off-limits to the logic of market exchange and market valuations (*Rebel Cities*, p73).

For literary scholars, the commons as social imaginary (a noun, a space, a *telos*) as well as commoning as a process (a verb, a praxis, a methodology) are valuable ways for reading global literatures. Indeed, the turn in environmental studies towards the commons, especially as a point of critique of neoliberal globalisation that pivots around increased centralisation, and accelerated extractivism and commodification, may be fairly recent. However, works of literature present a long tradition of endorsement of the commons as idea and praxis: our earliest mythological tales are embedded in folk-centric communistic ways of living, and classical traditions in Greek, Sanskrit, Arabic, Hebrew and Chinese languages provide many representative instances of the commons as a social imaginary as well as a set of practices by which a community identifies and negotiates the use and abuse of shared resources.

But these are polar ideas: the economistic paradigm continues to think of the commons as a resource to be owned, used, monetised, lacking which such a resource would be deemed, following Hardin, 'a market failure: in the absence of clearly specified property rights, rational individual behavior leads to economic and environmental problems'.[12] Ostrom's and Harvey's writings, on the other hand, indicate that the economistic paradigm of tragic destruction of common resources is itself embedded in capitalistic

11. David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution*, Verso, 2012. (Hereafter *Rebel Cities*.)

12. Becky Mansfield, 'Neoliberalism in the Oceans: "Rationalization", Property Rights, and the Commons Question', in *Neoliberal Environments: False Promises and Unnatural Consequences*, Nik Heynen, James McCarthy, Scott Prudham and Paul Robbins (eds), Routledge, 2007, pp63-73, p65.

13. David Harvey, 'The Future of the Commons', *Radical History Review*, 109, 2011, p101. (Hereafter *The Future*.)

14. Elinor Ostrom, 'Tragedy of the Commons', in Steven N. Durlauf and Lawrence E. Blume (eds), *The New Palgrave Dictionary of*

ways of organising and dominating the world which seek to see 'the superior efficiency of private property rights with respect to land and resource uses and, therefore, as an irrefutable justification for privatization'.[13] Ostrom argued that, world-over, communities, big and small, have routinely worked out sharing modalities which show that '[i]n practice, especially where they can communicate, users often develop rules that limit resource use and conserve resources.'[14] Although his overall critique is in line with Ostrom's research, Harvey correctly identifies the question of scale:

> The possibilities for sensible management of common-property resources that exist on one scale, such as shared water rights between one hundred farmers in a small river basin, do not and cannot carry over to problems such as global warming or even to the regional diffusion of acid deposition from power stations. As we 'jump scales' (as geographers like to put it), the whole nature of the common-property problem and the prospects of finding a solution change dramatically. What looks like a good way to resolve problems at one scale does not hold at another scale. Even worse, good solutions at one scale (say, the local) do not necessarily aggregate up, or cascade down, to make for good solutions at another scale (say, the global). This is why Hardin's metaphor is so misleading: he uses a small-scale example to explicate a global problem. (*The Future*, p102).

Harvey's insights go to the heart of the problem of dealing with the world's oceans as commons: not only is this view deeply entrenched in terracentric and colonial apparatuses of power and domination that do not hold to scale when it comes to the enormous resource-capacity of the oceans (a capacity that humans cannot hope to *completely* own and dominate for perpetual good), but also commoning practices that create ocean communities all over the world subsist only at very small scales of self-preservation and often remain peripheralised and in states of economic and ecological precarity. These determinisms – different in tragic import, as noted by all the three thinkers, Ostrom, Wagner and Harvey – present the need to understand the commons not only as a thing in itself but also as a means to critique property relations and the interrelationship between capital and value-producing labour. For so long as we continue to speak of the oceans as a haecceity of the commons[15], we remain trapped in paradoxes of definition, scale and value, and all the while, the thing in front of us – the oceans themselves – remain *im*-material, *dis*-articulate and inert. What would happen if we allowed the oceans to help us rethink the very nature of property, ownership and *perpetual life*?

On this front, I have found the work of Argentine-Mexican Marxist philosopher Enrique Dussel helpful, for his insightful reading of Marx's understanding of 'living labour' as what produces value in society. Dussel presents with redoubled force Marx's denunciation of unchecked capitalist production that instrumentalises natural resources by miscasting them as

Economics, Second Edition, Palgrave Macmillan, 2008. (Hereafter *Tragedy of the Commons*.)

15. Haecceity, a term from thirteenth-century theologian Duns Scotus, denotes the 'thisness' of a thing – the unique qualities that make an entity singular rather than merely a category instance. Adapted by Deleuze in *A Thousand Plateaus* (1987), it has since been applied to the ocean to capture its distinctive material and experiential qualities, irreducible to property or resource. Such ascription does not, however, place the ocean outside human impact in some a priori state of metaphysical exceptionalism. Indeed, the twentieth century has shown oceanic waters to be thoroughly enmeshed in extractivism and exploitation, with consequences for planetary life as a whole. See Stacey Alaimo, 'Oceanic Origins, Plastic Activism, and New Materialism at Sea,' in *Exposed: Environmental Politics and Pleasures in Posthuman Times*, University of Minnesota Press, 2016, pp111-142, p111. (Hereafter *Oceanic Origins*.). 'Thisness' must therefore be understood *systemically*, as one part of a larger whole whose health depends on all its constituent parts.

infinite and by elevating human desires over and above the coeval needs and demands of nonhuman 'others'.[16] Dussel[17] combines ecological thinking with *transmodern* goals of anti-Eurocentric thought and decolonial praxis by tying together the agendas of affirming nature and the rights of the formerly colonised and silenced in one compact:

> … [T]here exists an affirmation of Nature that is completely distinct and much more ecologically balanced, which today is more necessary than ever, given that capitalist Modernity confronts Nature as something exploitable, marketable, and destructible. The death of Nature is the collective suicide of humanity, and yet this globalizing modern culture learns nothing about Nature from other cultures, which are apparently more primitive or backwards according to developmentalist parameters. This ecological principle can also integrate the best of Modernity (and it should not refuse all elements of Modernity from the perspective of a pure, substantialist cultural identity), in order to construct scientific and technological development that emerges from the very experience of Modernity (*Transmodernity and Interculturality*, p26).

As Mario Sáenz Rovner notes, for Marx, 'living labor is an affirmation of human life as negated and excluded by capital' – it is 'the living source of value' in society, especially the value of capital.[18] At the beginning of the twenty-first century, when we face globally the brunt of a rapidly-heating planet and of equally rapidly reconfiguring social systems under the onslaught of neoliberalism and hyperconsumptive globalisation, Marx's warning could not have been more resonant, calling to book a system that creates

> progress in the art, not only of robbing the worker, but of robbing the soil; all progress in increasing the fertility of the soil for a given time is a progress towards ruining the more long-lasting sources of that fertility. The more a country proceeds from large-scale industry as the background of its development, as in the case of the United States, the more rapid is this process of destruction. Capitalist production, therefore, only develops the techniques and the degree of combination of the social process of production by simultaneously undermining the original sources of all wealth – the soil and the worker.[19]

I have written elsewhere (in *Transmodernity and Literature*) of the salience of Dussel's critical scholarship on transmodernity, much of which is also of great value for literary scholars of ocean studies looking for 'new words, new cultural and historical codes'[20] for defining, sharpening and sharing multidimensional relationships with universal natural resources such as land, air and the oceans. Such work would also be trenchantly decolonial, as it foregrounds a richer, fuller understanding of modernities within regional

16. Anupama Mohan, 'Transmodernity and Literature: Drawing the Lineaments of a Field', *Asian Review of World Histories*, 13:2, 2025, pp165-185. (Hereafter *Transmodernity and Literature*.)

17. Enrique Dussel, 'Transmodernity and Interculturality: An Interpretation from the Perspective of Philosophy of Liberation', *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World*, 1:3, 2012, pp28-59. (Hereafter *Transmodernity and Interculturality*.)

18. Mario Sáenz Rovner, 'Ideality and Intersubjectivity: Dialectics and Analectics in a Philosophy of Liberation', in Amy Allen and Edouardo Mendieta (eds), *Decolonizing Ethics: The Critical Theory of Enrique Dussel*, Penn State University Press, 2021, p73. (Hereafter *Ideality and Intersubjectivity*).

19. Karl Marx, *Capital*, Volume One, Vintage, 1977 [1867], p169.

20. Enrique Dussel, *Philosophy of Liberation*, Aquilina Martinez and Christine Morkovsky (trans.), Orbis Books, 1980 [1985], p125.

21. Enrique Dussel, 'World System and Trans-modernity', in Saurabh Dube and Ishita-Banerjee Dube (eds), *Unbecoming Modern: Colonialism, Modernity, Colonial Modernities*,

universal cultures which have had, as Dussel put it, their own 'creative-scientific moments of "enlightenment"'.[21] In a great illustration of transmodern thinking that is also decolonial, Ramchandra Guha, in his discussion of Ostrom's Nobel Prize-winning research, recalls the pioneering work of sociologist Radhakamal Mukherjee in India who in the 1920s and 1930s was advocating transdisciplinary approaches that combined social ecology and regional sociology, two decades before Ostrom began her fieldwork.[22] A view to visibilising maritime transmodernities that are not eurocentric, terracentric and anthropocentric can help refine our understanding of the commons *and* catalyse our collective criticism of 'individualized capital accumulation [that] perpetually threatens to destroy the two basic common property resources that undergird all forms of production: the laborer and the land' (*The Future*, p106). It is time to acknowledge and discard what is colonial, extractivist and self-annihilating in our conceptions of the world we share; it is time to let the oceans guide us to new thalassologies.

NEW SCALES, NEW CULTURAL AND HISTORICAL CODES

On 20 September 2023, the High Seas Treaty, also known as the agreement on Biodiversity Beyond National Jurisdiction (or BBNJ) was signed in New York. It is 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'.[23] The signatories were 112 countries, including India, China, the European Union, the UK and the USA. A historic effort in global consensus-building, the High Seas Treaty is significant for two reasons: one, by drawing attention to the term 'high seas', it shifts the focus away from the widely-used (and abused) terminology of the ocean as commons that we have already seen is mired in semantic confusion as well as economic determinism; and two, it provides a useful model for addressing what Harvey identified as the problem of scale (*The Future*) when it comes to global, planetary action over shared ecological issues.

But first, a few scientific facts may well be in order. 71 per cent of the Earth's surface is oceans that hold about 97 per cent of the total water on the planet.[24] About 39-42 per cent of the world's oceans are under the jurisdiction of Exclusive Economic Zones (EEZs), which extend roughly 200 nautical miles from a country's coastline and grant coastal states rights to explore, manage and use marine resources.[25] Countries control less than 40 per cent of the world's ocean surface.[26] Thus, 'high seas' refers to the 60 per cent of the ocean's surface beyond the 200 nautical miles boundary, while 'deep seas' refers to the mass of water below 200 metres depth, comprising 90 per cent of the ocean's total living space. Of this 90 per cent, only 1 per cent is currently protected; thus, the High Seas Treaty addresses an egregious gap in ocean protection. It also provides 'a framework for a fair and equitable sharing of

Routledge, 2019, p167.

22. Ramachandra Guha, *Speaking with Nature: The Origins of Indian Environmentalism*, Yale University Press, 2024, p332.

23. Daniel Kachelriess, 'The High Seas Biodiversity Treaty: An Introduction to the 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', M. Epps and C. Chazot (eds), November 2023, piv, https://iucn.org/sites/default/files/2024-01/iucn-bbnj-treaty-policy-brief.pdf. (Hereafter *IUCN Report 2023*.)

24. Freitas Cátia, Alecia Bellgrove, Paul Venzo and Prue Francis, 'Towards a 2025 National Ocean Literacy Strategy: Current Status and Future Needs in Primary Education', *Frontiers in Marine Science*, 9, 30 June 2022, pp1-11.

25. The 1982 treaty UNCLOS (United Nations Convention of the Law of the Sea) granted every nation with a coastline the right to control marine resources up to 200 nautical miles from its shores.

26. Nicholas Chan, '"Large Ocean States": Sovereignty, Small Islands and Marine Protected Areas in Global Oceans Governance', *Global Governance*, 24:4, 2018, pp537-55.



Figure 2: On 19 June 2023, at the resumed fifth session of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction, convened under the auspices of the United Nations, the BBNJ or High Seas Treaty was adopted by consensus. United Nations, 'Agreement on Marine Biological Diversity of Areas Beyond National Jurisdiction, BBNJ Agreement, History', 2023. ©UN Photo 2023.

monetary and non-monetary benefits from marine genetic resources, and for capacity building and transfer of marine technologies to developing countries, as well as a voluntary fund to support developing countries to achieve UN Sustainable Development Goal 14 on "Life Below Water"'.[27]

Ironically, the phrase 'high seas' conjures up colonial tales of piracy and loot, but in fact, scientists have only now begun to understand the enormous significance of this vast, deep preponderance of the planet's water. The high and deep seas keep earth liveable, capturing carbon and storing it deep below, a process in whose absence there would be at least 30 per cent more carbon dioxide in the atmosphere than there is normally.[28] The habitats in the high seas are home to cold-water corals and sponge fields that have been around for centuries, if not millennia. According to the UK-based NGO Synchronicity Earth, '[t]he deep sea alone was recently assessed as being home to the largest source of species and ecosystem diversity on earth. It is believed to host as many as 10 million different species and some of the oldest marine life recorded, while the high seas serve as migration corridors where many marine mammals and pelagic species spend most of their lives'.[29] Impossible though it might seem to put a number on the economic value of the high and deep seas, we do have one: according to the United Nations Department of Economic and Social Affairs, '[t]he total value of ocean assets has been estimated at $24 trillion and the ocean economy is valued around $1.5 trillion a year, and this number is expected to double by 2030 to $3 trillion'.[30] Enormous as this number is, it is still merely a fraction of the innumerable *tangible and intangible* benefits we gain within the earth systems for allowing and ensuring the healthy functioning of the oceans. The High Seas Treaty signifies at the highest levels the kind of collaborative work that Ostrom identified in her Nobel Prize-winning research as pivotal to the protection and sustenance of a commons, lacking which Hardin's model of a commons going to waste or overexploited to destruction is likely its destiny.[31] In her 2008 essay, 'Tragedy of the Commons,' Ostrom writes, 'Hardin thought of

27. Directorate-General for Maritime Affairs and Fisheries, 'A win for the ocean: High Seas Treaty signed at United Nations', 20 September 2023, European Commission, https://oceans-and-fisheries.ec.europa.eu/news/win-ocean-high-seas-treaty-signed-united-nations-2023-09-20_en.

28. Nicolas Gruber et al. 'The Oceanic Sink for Anthropogenic CO2 from 1994 to 2007', *Science*, 363:6432, 2019, pp1193-1199.

users as being trapped in this situation – largely because he did not envision that users could self-organize and devise institutions to extract themselves from tragic overuse' (*Tragedy of the Commons*). In a criticism of Ostrom's foci, Harvey makes the point, '[m]ost of [Ostrom's] examples … involve as few as a hundred or so appropriators. Anything much larger (her largest case involved fifteen thousand users) required a "nested hierarchical" structure of decision making, rather than direct negotiations between individuals' (*The Future*, p102). This is the 'scale problem' that not only marks conversations about protection of the oceans as commons, given their ubiquity and enormity, but also presents challenges in organisation of effort at global levels. Indeed, among available legal concepts, it is not the commons but the concept of the usufruct that offers, I argue, a particularly revealing way to think about these arrangements; more on this in the concluding section.

Seen in this light, the High Seas Treaty offers a 'nested hierarchical structure' for the organisation of global effort, or what Ostrom calls 'a polycentric system … where citizens are able to organize not just one but multiple governing authorities at differing scales'.[32] The Agreement mandates the creation of ABMTs (Area Based Management Tools) 'allow[ing] for majority decision making by ABMTs' (*IUCN Report 2023*, p15). The ABMT is defined as 'a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement' (*IUCN Report 2023*, pp15-6). Furthermore, the provision of MPAs or Marine Protected Area buttresses the ABMTs by creating 'a geographically defined marine area that is designated and managed to achieve specific long-term biological diversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives' (*IUCN Report* 2023, p16). The institutional pathways that connect a local body at regional, subregional, or sectoral levels, with national and then international ones seek to preserve and strengthen the key role played by ABMTs on the ground in identifying areas and populations (human and nonhuman) that require protection, and in creating the groundwork for establishing the zone as MPA.

Of special importance is grassroots-level collaboration with local people who have lived in the area, sometimes for generations, and whose intimate knowledge and experience of the MPA is an ally in the commoning practices sought to be forged by the Treaty. The IUCN report that details the path ahead, made possible by the signing of the Treaty, has the great challenge now of coming good on the promise of operationalising and delivering on its ambitious and laudable goals. The efficacy of the treaty also relies on ensuring that the sovereign rights of smaller island states, particularly those facing acute conditions today such as Kiribati and the Maldives, where low elevation, climate exposure and limited adaptive capacity heighten vulnerability, are kept at the forefront of ocean governance. These are the

29. Synchronicity Earth, 'High and Deep Seas', 2018, https://www.synchronicityearth.org/wp-content/uploads/2018/02/Synchronicity-Earth-High-Deep-Seas-Insight.pdf.

30. 'Community of Ocean Action on Sustainable Blue Economy', webinar, 14 July 2021, United Nations: Department of Social and Economic Affairs, https://sdgs.un.org/events/webinar-community-ocean-action-sustainable-blue-economy-34058#

31. In Hardin's dramatic words: 'Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit – in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons' (*The Tragedy*, p1244).

32. Elinor Ostrom, 'Polycentricity, Complexity and the Commons', *The Good Society*, 9:2, 1999, pp37-41, p39. (Hereafter *Polycentricity*.)

microstates that Jetñil-Kijiner's poem cited at the beginning of this essay drew our attention to. By addressing the fraught material conditions of island states' survival and security, decision-making frameworks can better reflect both their disproportionate risks and their central role as stewards of vast ocean territories.[33] The BBNJ Agreement is, on the whole, a major step towards collective action on the vulnerable oceans; as the document itself attests, '[t]he Agreement on the text of the BBNJ Agreement on 4th March 2023 and its subsequent adoption by consensus on 19 June 2023 have been widely hailed as the most important progress in ocean conservation in decades and a victory for multilateralism' (*IUCN Report 2023*, p33).

Indeed, polycentric arrangements have many advantages over monocentric ones, especially for communities that are heterogeneous in nature. However, such arrangements rely on massive mobilisation and monitoring at all levels, requiring mechanisms that are, as Ostrom advises us,

> frequently rejected on the basis of their surface appearance. They look too messy and chaotic. In studies of local public economies, however, messy polycentric systems significantly outperformed metropolitan areas served by a limited number of large scale, unified governments (McGinnis, 1999b). Evidence that complex, multitiered systems for governing common-pool resources are successful is now accumulating as discussed above. The good society may not be achievable by systems that look neat but do not have the information and adaptive capabilities needed to achieve efficiency, sustainability, and equity. Those of us in academic life need to learn how better to analyze complex systems in order that we can distinguish between those complex systems that are truly counter productive, and those that are well matched to the ecological systems they are intended to govern (*Polycentricity*, p40).

Such arrangements, however, do already exist and show 'strong evidence of high performance' (*Polycentricity*, p39). Ostrom cites the example of the Maine lobster fishery (*Polycentricity*, pp39-40), while a 2019 study by Mahon and Fanning examined '165 regional arrangements related to ecosystem-based management of oceans and allocated them into 20 regional clusters covering most of the world's oceans. The study explores the characteristics of these regional clusters which exhibit characteristics of polycentric systems'.[34] Mahon and Fanning argue that

> [t]he global-regional picture … raises the question as to whether together these two levels provide an overall ocean governance architecture for the world that is worth recognizing explicitly and working with in a comprehensive holistic way … [T]here is a great deal of vertical and horizontal interaction required among the components of this structure for it to function as an integrated whole … This leads to a key question

33. Richard A. Vogt, 'Is the Exclusive Economic Zone (EEZ) Exclusively an Economic Regime?: State Practice, and Implications for Ocean Governance in the Pacific Region', *Sicherheit und Frieden (S+F)/ Security and Peace*, 37:3, 2019, p147.

34. Robin Mahon and Lucia Fanning, 'Regional Ocean Governance: Polycentric Arrangements and their Role in Global Ocean Governance,' *Marine Policy*, 17, 2019, p1. (Hereafter *Regional Ocean Governance*.)

35. Kristina M. Gjerde and Siddharth Sekhar Yadav, 'Polycentricity and Regional Ocean Governance: Implications for the Emerging UN Agreement on Marine Biodiversity Beyond National Jurisdiction', *Frontiers in Marine Science*, 8, 26 August 2021, pp1-15; Derek

> for future action, which is whether viewing global-regional ocean governance as a single interconnected system comprising global and regional building blocks could be useful. Can it help guide programmatic initiatives to address fragmentation at global and regional levels, and with strengthening the overall structure? If so, then whose responsibility is it to recognize this structure and to take on the task of nurturing and monitoring it and its component parts? Clearly, all stakeholders have a role in this task, but there needs to be *a globally acknowledged integrated mechanism* to lead it (*Regional Ocean Governance*, p11, my emphasis).

The literature surrounding polycentricity as a framework for effective and egalitarian regional ocean governance is increasing[35], but caution is well-advised. Despite its historic promise, the High Seas Treaty faces a real risk of failure. Key provisions remain ambivalent, particularly the tension between the principles of *common heritage of humankind* and the *freedom of the high seas*, which scholars argue may hinder cohesive implementation.[36] Moreover, enforcement remains a serious concern: without a central authority, compliance will depend on inconsistent flag state cooperation, leaving vast enforcement gaps in areas beyond national jurisdiction.[37] There are also capacity and equity challenges, as many developing states lack the resources and technology needed for meaningful participation in benefit-sharing, capacity-building, and monitoring.[38] Lastly, establishing Marine Protected Areas (MPAs) under the treaty may prove to be difficult as overlapping mandates with existing regional bodies could weaken coordinated conservation action (*Negotiations to Implement Area-Based Management Tools*). For all these reasons, a healthy dose of patient and restrained optimism as well as scrupulous follow-up on the tenets of the agreement are our best mainstay to ensure compliance and cooperation in the long term.

As a twenty-year long, contentious, strenuous effort of multiple stakeholders, the 2023 High Seas Treaty provides an encouraging instance of evolving a globally acknowledged integrated mechanism. But only time will tell whether this collectivist, integrated resolve to de-common the ocean can present a counterbalance to the trenchantly economistic and utilitarian models that nation-states across the world follow as they relentlessly sponge off 'the global commons' of the ocean. Only time will tell if we can protect and preserve the high and deep seas for future generations.

A CULTURAL COMMONS: THE OCEAN AS *ANIMA MUNDI*

This essay began by tracing the terracentric and colonial bases that underlie the commons as a concept and by seeing the limitations of such thinking vis-a-vis the oceans as commons, but in one crucial dimension – and that is not a concern in Ostrom – the ocean, as a social imaginary as per Wagner, has very much functioned as 'a cultural commons'. Hardin, Ostrom and policymakers provide

Kauneckis and Juhi Huda, 'Polycentricity as a Framework for Understanding India's Climate Policy', in Devendraraj Madhanagopal and Salim Momtaz (eds), *Climate and Risk in South and Southeast Asia*, Routledge, 2022.

36. Mariana Caldeira, Heliana Teixeira and Ana Hiláro, 'Negotiations to Implement Area-Based Management Tools Beyond National Jurisdiction: The Scientific Community's View', *Frontiers in Marine Science*, 10, 28 June 2023, pp1-16. (Hereafter *Negotiations to Implement Area-Based Management Tools*.)

37. 'Navigating Uncharted Waters: The Challenges of Implementing the Marine Biodiversity Treaty Beyond National Jurisdiction', Organization for the Study of Treaty Law, no date, https://treatylaw.org/navigating-uncharted-waters-the-challenges-of-implementing-the-marine-biodiversity-treaty-beyond-national-jurisdiction/.

38. Abhijit Singh. 'The High Seas Treaty: Prospects and Challenges for Developing Nations', 23 August 2024, Observer Research Foundation, https://www.orfonline.org/expert-speak/the-high-seas-treaty-prospects-and-challenges

important frameworks for analysing, governing and regulating commons through community management, institutional design and legal-institutional mechanisms, but crucially overlook the ethical, cultural and relational dimensions of the commons, which includes its intrinsic value, planetary agency and the systemic interconnectedness of its nonhuman and aquatic denizens. Hardin's analysis highlights the political economy of resources yet treats the sea primarily as a site of exploitation and uneven access. In turn, while Ostrom emphasises institutional design and collective management, her approach does not account for the ocean's planetary value or relational significance. Likewise, treaties and EEZ governance focus on legal rights and enforcement, often sidelining ecological and cultural interdependence. By contrast, viewing the ocean as a *cultural commons* frames the waters not merely as a resource to be managed or governed, but also as a shared, living space rich with ecological, cultural and relational significance. This is the view that one may call the *anima mundi* perspective which foregrounds the ocean's planetary force, its interdependence with human and nonhuman lives, and the moral obligations such relationality entails, encouraging stewardship motivated not only by efficiency or sovereignty but by a recognition of the ocean as a living, shared and culturally meaningful entity.

The ocean has historically provided a theatre for a range of cultural heritages to emerge, of both tangible and intangible varieties. Along with a shared natural heritage (marine biodiversity, carbon sink, ENSO, and so on) that impacts societies in big and small, direct and indirect ways all over the world, the ocean is a source of such tangible cultural artefacts as the remains and wrecks of ships and vessels, submerged human settlements, and other coastal structures which preserve evidence of human life and travels in the past. In addition, the intangible cultural heritage of the oceans includes folklore, maritime traditions of fishing, shipbuilding, trade and commerce, indeed, a whole *Lebenswelt* of oceanic songs, art and stories passed on from one generation to another, from one indigenous community to another. In this sense, the ocean functions as *anima mundi*, the soul of the world, by offering not an inert space where the drama of human ambition and achievement plays out but, in fact, a tremendous theatre of competing, intersecting interests that have birthed and shaped all life on the planet.

My own research centres on literatures and cultures of the Indian Ocean where territoriality and terracentric ways of thinking dominate approaches to what are, in fact, extremely mobile, heteromorphous and multilingual literary traditions. Terracentric thinking, I have argued elsewhere, renders the ocean as an-*other* space, to be conquered in much the same way as land is brought under control and made into one of the founding principles of civilisation.[39] Land-based nationalism, for instance, is vital to understanding the idea of 'empire' in the last two centuries in particular, even as we must face the contradictions inherent in the earth's planetary make-up. About 71 per cent of the earth's surface is made up of water and only 29 per cent by

39. Anupama Mohan, 'The Contours of a Field: Literatures of the Indian Ocean', *Postcolonial Text*, 12:3/4, 2019, pp1-24. (Hereafter *The Contours of a Field*.)

land, and the oceans hold about 97 per cent of all of earth's water.[40]

Terracentrism has been the basis for much conventional historiography, and even when water or waterbased social formations have featured in the historiographic imagination, they have done so in ways only ancillary to terracentric histories of colonial or imperial expansion. Maritime histories, for instance, have primarily tended to be histories of naval warfare or of metropolitan activities involving trade and commerce rather than, say, of coast-to-coast or littoral exchanges. To look at the high seas and its littoral and coastal cultures in this way is to also emphasise and re-imagine it as a non-static space, a space of deep and extensive mobilities. Michael Pearson, with regard to the Indian Ocean basin, suggests that we rethink the ways in which the rim of the Indian Ocean touches the lives and cultures of many nations, creating a rich history of cross-cultural exchange that predates European imperialism. Pearson writes in his influential book *The Indian Ocean* (2003):

> For most of us today the sea has little practical significance. This is very recent. … In the past, the sea was much more central in our minds, connecting people and goods all over the world, inspiring great literature. … Rather than look out at the oceans from the land, as so many earlier books have done, a history of an ocean has to reverse this angle and look from the sea to the land and most obviously to the coast … A history of an ocean needs to be amphibious, moving easily between land and sea.[41]

A *literary history* of the ocean, I have argued, needs to be amphibious, multilingual, polycentric and transmodern. Ocean historian Isabel Hofmeyr writes:

> [o]ne important theme in Indian Ocean scholarship has been a revision of older ways of thinking about diaspora that tend to single out only one group for analysis. Not only does such method reproduce older racial categories of empire as already formed stabilities (Indian, African, Chinese), it privileges movement outward – from India to Africa, Fiji, or the Caribbean. What the reverse flows might be, or what such outward flows mean for politics back on the mainland, are themes that have only recently started to attract attention.[42]

Following Hofmeyr's call, I have suggested in my work on maritime transmodernities and literature, that novels like those that comprise Amitav Ghosh's *Ibis* trilogy, indeed, follow the 'reverse flows' of trans-modernities, presenting us an example of what one might broadly call 'the transmodern novel' (rather than the postcolonial novel) and, in contradistinction to the terracentrism of postcolonialism, such novels offer us new ways of decentring the focus upon land by a refocusing upon the sea or on water-histories in remembering the narratives of our interconnected pasts. This presents, I

40. Water Science School, 'How Much Water is There on Earth?', 13 November 2019, USGS Science for a Changing World, https://www.usgs.gov/water-science-school/science/how-much-water-there-earth#

41. Michael Pearson, *The Indian Ocean*, Routledge, 2003, pp1-10.

42. Isabel Hofmeyr, 'The Complicating Sea: The Indian Ocean as Method', *Comparative Studies of South Asia, Middle East and Africa*, 32:3, 2012, pp584-590, p587. (Hereafter *The Complicating Sea*.)

have argued, a whole set of challenges for the novelist who doubles up, as Ghosh often does, as historian, archivist, translator, anthropologist, linguist, etymologist and scholar of cultural and materialist histories. For the reader too, it is 'a challenge of the critical imagination' (*The Contours of a Field,* p7).

The transmodern novel, I have argued, involves what anthropologist Clifford Geertz termed 'thick description,' which prioritises context over character; situated and often contradictory heteroglossia and polyglossia over omniscient or autonomous telling; a tendency towards representing 'transregional'[43] cultures, which are often portrayed as linguistically polymorphous or Creolephone[44], this latter aspect bringing numerous kinds of pressures upon the novel's anglophony; a focus on littoral and oceanic networks, in which the ocean features not merely as a vehicle for the transmission of cultures and ideas but as the very field anchoring a whole other sensibility or ethos; and the use of metafictional shifting and mobile idioms of languages- and cultures-*in-contact* to form a layered *récit* of telling.[45] Many of these features are borrowed from the intersecting literary registers of postmodernism and postcolonialism, but with significant departures and intensifications, and as Françoise Lionnet argues quite correctly, these novels transform into '*littérature mondialisante* rather than *littérature-monde* – that is, as *world-forming* literature rather than world literature' (*World Literature, Postcolonial Studies*, p288 emphasis in original).

Such novels, I have suggested, move beyond postcolonial frameworks by decentring Eurocentric modernity and incorporating multiple temporalities, epistemologies and cultural perspectives, and in the case of oceanic writings, the works emphasise the transoceanic links of trade and traffic in commodities, people and ideas as central to the world-formation of their stories. The transmodern novel emphasises interconnectedness across space and time, often foregrounding maritime or global networks rather than territorial or national narratives. Such novels often display heteroglossia and polyglossia, weaving together multiple languages and narrative registers to reflect cultural and epistemic multiplicity. They also highlight ancient globalisations that predate European domination, showing how long-distance trade, migration and cultural exchange shaped the worlds we inhabit today. Crucially, transmodern novels challenge the very definition of modernity as early, pre-, late, or post-, exposing the Eurocentric assumption that these temporal markers are universal. By doing so, the transmodern work highlights fluidity and relationality, engaging with histories, ecologies, and human and nonhuman actors in ways that challenge linear, land-centred, or nationalist-modernist frameworks. Transmodern texts, especially centred on the oceans, abound in many languages: in the dominant languages English and French, but also in the languages of other travelling oceanic communities. Examples include the already-mentioned works of Amitav Ghosh and Abdulrazak Gurnah (in English), of J.M.G. Le Clézio and Ananda Devi (in French and Mauritian Creole), Thakazhi, Benyameen

43. Engseng Ho, 'Afterword: Mobile Law and Thick Transregionalism', *Law and History Review*, 32:4, 2014, pp883-889, p887.

44. Françoise Lionnet, 'World Literature, Postcolonial Studies, and Coolie Odysseys: J.-M.G. Le Clezio and Amitav Ghosh's Indian Ocean Novels', *Comparative Literature*, 67:3, 2015, p300. (Hereafter *World Literature, Postcolonial Studies*).

45. Anupama Mohan, 'Maritime Transmodernities and the Ibis Trilogy', *Postcolonial Text*, 14:3/4, 2019, pp1-24.

and Meena Alexander (in Malayalam), Harilal Upadhyay (Gujarati), and works of the Swahili littoral that include written narratives such as those by Sheikh Abdalla Saleh Farsy (1912-1982) and the 'living archive' of 'oral performances and handwritten manuscripts to booklets, CD recordings, radio programs and social media platforms' that show Swahili language's trenchantly transmodern contours.[46]

Beyond the realm of print and fiction, the Indian Ocean's cultural archive is inscribed in a vast corpus of non-literary texts – *dhows* (boats), folktales, work songs, travel itineraries, recipes, navigational logs and marginalia – that record lived forms of oceanic knowledge. The dhow itself, as an artefact and text, embodies centuries of tacit expertise: its hulls and sails bear traces of Persian, Arab, African and Indian designs, mapping networks of exchange that long predate modern cartography. Maritime texts such as the precolonial Swahili poems of Fumo Liyongo or the Gujarati stories of sea-spirits (*samudra devata*) articulate a cosmology in which the ocean is both moral agent and a travelling trope. Likewise, *mappila pattu* – the Malayalam Muslim seafarers' songs of the Malabar coast – transform nautical experience into oral history, encoding weather patterns, devotional yearning and memories of voyages to Mecca. The recipes circulating across the littoral – from Zanzibar's coconut curries to Lamu's biryanis and Kerala's *meen curry* – trace the sedimentation of tastes carried by enslaved peoples, pilgrims and traders. Even the marginalia of sailors' notebooks – astrological charts, tide marks and sketches of coastal silhouettes – composes a palimpsest of vernacular oceanography. These fragmentary and performative forms complicate the distinction between literary and material texts, reminding us that the Indian Ocean's epistemologies are often embodied, sung, cooked, or sailed rather than written. Read alongside novels and poems, they reveal a hydrographic literacy that extends beyond the page, one that encodes the sea's rhythms in the textures of daily life and connects the human sensorium to the ocean's continuous motion.

A literary history of the ocean, thus, activates and actualises an examination of the range of communities that have historically intermingled and held trade and exchange on shared resources, bound by mutually agreed-upon understandings of sharing and collectivisation, generating histories of cross-cultural contact and exchange that have not always or only resulted in peaceful conduct. The *cultural commons of the ocean* provides sobering and countering views to terracentric and eurocentric global history and its shared, dialectical energies can be seen to shape our knowledge of the world by 'contrasting the ancient cosmopolitanism of the Indian Ocean world with the narrowness of the modern nation-state. This contrast also serves to underline the layered and contradictory forms of sovereignty and belonging that characterizes many Indian Ocean littoral zones, drawn outward by older networks of transnational trade and inward by the demands of the postcolonial nation-state' (*The Complicating Sea*, p585). Needless to say, a literary history of the

46. Kai Kresse and Clarissa Vierke, 'Swahili language and Literature As Resources for Indian Ocean Studies', *History Compass*, 20:7, 2022, pp1-14. See also the East African Asian archive in Tanzania and Zanzibar discussed in Iqbal S. Akhtar, 'The Gujarati Archive in Tanzania', *History Compass*, 20:7, 2022.

ocean must also be a plurality: it cannot be in one or two languages, or in the tongues of Europe alone, but must issue from multiple global centres in the many languages spoken across the coasts and littorals, mediating songs and stories that tell of the great mixing of civilizations that the ocean has historically catalysed.

For Hardt and Negri, the cultural common 'is dynamic, involving both the product of labour and the means of future production. This common is not only the earth we share but also the languages we create, the social practices we establish, the modes of sociality that define our relationships, and so forth'.[47] When seen in this light, the ocean provides us thousands of ways to reimbue it with universal value above and beyond the tawdry glitter of national security white papers on the most profitable geostrategy and the fossil fuel industry's meretricious metrics on how much oil and gas to extract. Indeed, to adapt Harvey, to see the ocean only as a repository of resources that we can extract relentlessly without major consequences for ourselves and other species of the planet is to 'seek to exit the impasse using the same tools of capital accumulation and speculative market exchange that got us into the difficulties in the first place' (*The Future*, p106). It is, then, as a theatre and an arena for imagining, experiencing and communicating its many *tangible and intangible heritages* that the ocean can still function as a cultural commons that enables the creative and political labour that we humans must do, if we are to preserve our oceans for the future. 'What is the value of the ocean?' is not merely a question for corporation economists and military leaders but also encompasses artists, local communities, fisherfolk, the global human cultures that were made possible by travel and contact over the high seas and the often unseen and unvalued, nonetheless vitalising and life-sustaining, marine denizens of the deep seas.

47. Michael Hardt and Antonio Negri, *Commonwealth*, Harvard University Press, 2009, p350.

THE OCEAN AS/IN USUFRUCT: TRANSFORMING PRIORITIES

The 1982 UNCLOS (United Nations Convention on the Law of the Sea) with now 169 countries and the European Union as signatories is the international treaty that establishes a legal framework for all marine and maritime activities on the seas and oceans.[48] The treaty, considered 'the constitution of the oceans,' and in force since 6 December 1994, replaced the Grotian *mare liberum* (freedom of the seas) policy that American President Woodrow Wilson had expounded as a principle in his famous Fourteen Points speech to the US Congress in 1918.

The philosophical principle of 'the freedom of the seas' is at the back of the spirit of techno-optimism and industrial developmentalism that was to dominate global trade and commerce in the twentieth century and intensify the control of EuroAmerica upon the high seas. By 1982, the perils of such unchecked freedom were evident for all to see: marine pollution, rapid acidification, overfishing, climate change, all brought 'the ecological crisis

48. See Andrew J. Norris, 'The "Other" Law of the Sea', *Naval War College Review*, 63:3, 2011, pp79-97, for the 'other' laws of the sea, multilateral maritime conventions that provide, according to Norris, the 'fabric' sustaining UNCLOS; he discusses five in detail (pp84-9).



Figure 3: 6 December 1994 – Forty-Ninth Session of the General Assembly, United Nations Headquarters, New York: Adoption of the Resolution on universal participation in the Law of the Sea Convention, Audiovisual Library of International Law. ©UN Photo.

[to] the ocean' even as the United Nations Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) concluded in its breakthrough report, *A Sea of Troubles*, that '[t]he state of the world's seas and oceans is deteriorating. Most of the problems identified decades ago have not been resolved, and many are worsening. New threats keep emerging. The traditional benefits of the seas and coasts – and the benefits that humanity gets from them – have been widely undermined.'[49] In this fraught light, the near-miraculous nature of UNCLOS, 'a living treaty', as an effective global implement has been noted by many.[50]

But the UNCLOS remains a site of conflict and compromises that undermine its comprehensive nature: for instance, from 1982 to 1990, the US refused Part XI of the convention pertaining to the regime governing minerals on the seabed outside a state's territorial waters or the EEZs. The US opposition to Part XI strengthened its deep sea mining interests, a goal that has only intensified in the years since, as the discovery of the range of uses of polymetallic nodules containing high concentrations of manganese, cobalt, zinc, iron and nickel, among other minerals, on the seabeds and ocean floor in different parts of the world, has led to a veritable scramble for their extreme exploitation even as the ISA (International Seabed Authority) faces the daunting task of sifting through applications made by many countries to mine their territorial and deep sea waters. Ironically, deep sea mining is propelled largely by the electric vehicles (EV) industry and the race to respond to global warming by tapping renewable sources of energy. According to Oliver Ashford et al., 'materials such as lithium, cobalt and graphite are essential components of EV batteries, wind turbines, solar panels and other low-carbon technologies increasingly powering the world's energy systems. Mining for these materials on land is already underway, but with demand

49. IMO/FAO/UNESCO-IOC/WMO/IAEA/UN/UNEP Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP), 'A Sea of Troubles', *UNEP Reports and Studies*, 70, 15 January 2001, p1.

50. See Sumit Majumdar, 'Institutions for International Co-operation: An Analysis of the United Nations Law of the Sea Conference and Convention', *Economic and Political Weekly*, 25:48/49, 1-8 December 1990, pp2681-85; Natalie Klein, 'The Effectiveness of the UNCLOS Dispute Settlement Regime: Reaching for the Stars?', *Proceedings*

surging, some are now looking to tap the seafloor for its millions of square kilometers of metal ores'.[51] However, the critical minerals found on the seabeds of the planet have formed over millions of years and grow at extremely slow rates; as a result, the nodules themselves constitute a non-renewable source of energy, and the relatively unknown nature of the many immediate and long-term impacts of mining so deep on the ocean floor with trucks and other heavy equipment have led environmentalists to stridently oppose the scaling up of oceanic mining. This shows, then, that treaties like UNCLOS and BBNJ are prone to undermining and breakage and require stringent oversight and mechanisms of monitoring with a checks and balances system to make them work as they were intended.

The BBNJ agreement explicitly identifies the close relationship 'between the new treaty and UNCLOS, and reiterates many relevant obligations under UNCLOS' (*IUCN Report 2023*, p6). But, in one respect, it is ground-breaking: while UNCLOS was generally and specifically committed to protection and conservation of the seas and marine resources, its overall approach was closer to commons-thinking, seeking to draw a difficult balance between emphasising the need to preserve the seas and oceans for now and the future and the demands of various member-states to follow economic prosperity for their citizens in the here and the now. Three decades later, and deeper than we have ever been into the ecological crises of the planet's waters, the signatories have agreed to a sea-change, as it were, in the very language of their consensus: in a notable first, the words 'steward' and 'stewardship' – missing in UNCLOS – make an appearance in the BBNJ agreement, albeit in the preamble:

> Parties also express their desire to act as 'stewards' of the ocean in ABNJ [areas beyond national jurisdiction], which had previously been proposed as a general principle and approach ('stewardship') but was instead included in the preambulatory paragraphs. Several preambulatory paragraphs emphasize considerations of equity, the common interests and needs of humanity and the special circumstances of developing countries. (*IUCN Report 2023*, p6)

The explicit reference to stewardship or custodianship marks a significant endorsement of *a changed view* regarding the role of humans on the planet and is testament to the evolution in global thinking regarding the folly of narrowly anthropocentric approaches that deny or marginalise the wellbeing of other species and of the ecosystem as a whole in favour of ephemeral human profit and selective development. Given the legal and binding nature of the BBNJ Agreement at the highest multilateral level, the visibilisation of the concept of stewardship matters. In his June 2023 address, the UN General Assembly President Csaba Kőrösi drove home the point further to the Intergovernmental Conference delegates: 'We have a new tool … This landmark achievement bears witness to your collective commitment to the

of the ASIL Annual meeting, 108, January 2014, pp359-364; Jill Barrett and Richard Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty*, British Institute of International and Comparative Law, 2016.

51. Oliver Ashford et al., 'What We Know About Deep-Sea Mining – and What We Don't,' *World Resources Institute*, 23 February 2024.

conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. Together, you laid the foundation for a better stewardship of our seas, ensuring their survival for generations to come.'[52]

Central to the long-term efficacy of the UNCLOS and High Seas Treaty, then, is a multidimensional approach that is environmentalist, scientific, equitable, consensus-based, horizontally and vertically integrated, and is informed by a sincere commitment to the planetary health and wellbeing of all. Moving between economic, empirical, legal and cultural registers, this article stages a struggle over who is authorised to speak for the oceans. Each model/discourse produces a different form of authority: economic models prescribe claims to urgency and moral necessity when it comes to the fiscal use of oceans; empirical analysis claims objectivity and evidentiary credibility; legal language claims institutional recognition and enforceability; and cultural registers enable reflexivity and synthesis of diverse ethical claims. At the same time, each discourse/model risks foreclosing other voices – the economic paradigm can obscure its normative assumptions, as empirical and legal modes privilege expert and state actors while marginalising experiential, Indigenous, or more-than-human perspectives, and cultural critiques often lack traction in policymaking and tend to be ignored (or paid lip service to) in *realpolitik*. Addressing these affordances and constraints sharpens the argument that ocean governance is not only a technical or legal problem, but is, in the final analysis, a contest over voice, legitimacy and representation.

In his incisive essay on the oceans, Alan B. Sielen had suggested that the creation of a Global Environmental Organization (GEO) under the United Nations that would aid in '[p]lacing all major international environmental protection and conservation issues – including climate, oceans, wildlife, forests, deserts, and biological diversity – under its organizational umbrella would make it much easier to address the complex relationships between different environmental media'.[53] Such an agency would also lessen the dependence on other agencies such as the World Trade Organization (WTO) and North American Free Trade Alliance (NAFTA) which have 'neither the expertise nor the inclination to address complex environmental issues effectively' (*An Oceans Manifesto*, p54). Sielen advocates the combination of such a top-level institutional body with a robust network of grassroots-level agencies that ensure citizen participation and mobilisation: 'the public will have to get angry before anything changes', he writes, arguing that sweeping political change at the national level happens 'only after activists, political leaders, and ordinary citizens reached some level of visceral repulsion at what they saw as an unconscionable blight on the moral and social fabric of the nation' (*An Oceans Manifesto*, p57).

Indeed, such a 'level of visceral repulsion' has been breached if the writings of climate activist and geographer Andreas Malm (*How to Blow Up a Pipeline*, 2021; *Fighting in a World on Fire*, 2023) and the sabotage-based protest acts of groups such as Extinction Rebellion (XR), Insulate Britain,

52. 'Beyond Borders: Why New "High Seas" Treaty Is Critical for the World', 19 June 2023, *U.N. News Global Perspective Human Stories*, https://news.un.org/en/story/2023/06/1137857.

53. Alan B. Sielen, 'An Oceans Manifesto: The Present Global Crisis', *The Fletcher Forum of World Affairs*, 32:1, 2011, pp39-61, p54. (Hereafter *An Oceans Manifesto*.)

Just Stop Oil (JSO), and Shut the System (STS) are anything to go by. Here too, the question of scale rears its head as teenagers, twenty- and thirty-year olds across the world become legatees of a planet in crisis handed to them by older generations that enjoyed relative economic stability in their youth. It was a stability that came at the great cost of the environmental degradation that the current youth face, as they are tasked with mop-up operations for the rapacity and vulgar excess of past times.

In what Dussel has termed 'Marx's second century,'[54] there has been a marked revival of interest in Marx's writings in the twenty-first century, driven by contemporary crises such as rising inequality, ecological breakdown and the instabilities of global capitalism. Thus, one (re)turns to Marx, whose views on nature and man's utilisation of natural resources ring out today like a clarion call. While a full reading of Marx's startlingly proleptic engagement with nature and ecology is outside the scope of this essay, it is appropriate to make some salient connections to the idea of the commons and the use and adaptation of that idea for an understanding of the ocean.[55] In *Capital*, Marx writes:

> From the standpoint of a higher economic form of society, private ownership of the globe by single individuals will appear quite as absurd as private ownership of one man by another. Even a whole society, a nation, or even all simultaneously existing societies taken together, are not the owners of the globe. They are only its possessors, its *usufructuaries*, and, like *boni patres familias*, *they must hand it down to succeeding generations in an improved condition*.[56]

Although the passage occurs with reference to Marx's view of a landed commons ('soil' and 'land' recur repeatedly in Marx), the concept of the *usufruct* is equally valid for the ocean, and perhaps more so, because unlike much of the land on the planet, the bulk of the ocean – the high and the deep seas – is, as the 2021 UNESCO Report puts it, 'little explored, yet heavily impacted'[57] and has not been brought under human technological domination, a fact that requires that we imagine a relationship with the great ocean not in terms of ownership and utility but *in usufruct*. A combination of *usus* and *fructus* in Latin, the term denoted in Roman law the right to use and enjoy the fruits of a property without ownership and in such a manner as to not diminish its use by others in the future.[58] Indeed, the withholding of 'the right [of] destroying or changing the character of a thing, and lasting only so long as the character remains unchanged …'[59] goes to the heart of understanding *the ocean as usufruct* and our role as stewards/custodians, not owners, of its resources.

In an essay that explores the legal dimensions of usufructuary rights in the contemporary times, especially with regard to the fruits of the deep sea bed, the late Professor of international laws of the sea L.F.E. Goldie cites the words spoken by Sri Lankan Ambassador Pinto at the Law of the Sea workshop held in the University of Hawaii in December 1978 (i.e., before

54. Enrique Dussel, 'The Second-Century Marx', *Graduate Faculty Philosophy Journal*, 41:1, 2020, pp235-277.

55. For greater detail on Marx's approach to nature under capitalism and communism, see the ground-breaking analytical work of Paul Burkett (*Marx and Nature: A Red and Green Perspective*, 1999) and John Bellamy Foster (*Marx's Ecology*, 2000) in polemical debate with the writings of Michael Löwy ('For a Critical Marxism', 1997) and Joel Kovel ('The Enemy of Nature', 1997).

56. Karl Marx, *Capital – Volume 3*, Vintage, 1981 [1894], p776, my emphasis. (Hereafter *Capital – Volume 3*.)

57. UNESCO, 'Decade Actions Explore the Deep', 14 December 2021, https://www.unesco.org/en/articles/decade-actions-explore-deep

58. W.W. Buckland, *A Text-Book of Roman Law: From Augustus to Justinian*, Cambridge University Press, 1963, p269.

59. Herbert Felix Jolowicz, *Historical Introduction to the Study of Roman Law*, second edition, Cambridge University Press, 1967, p282.

the UNCLOS was signed and came into effect):

> This [that is, the common heritage of mankind] means that those minerals cannot be freely mined. They are not there, so to speak, for the taking. The common heritage of mankind is the common property of mankind. The commonness of the 'common heritage' is a commonness of ownership and benefit. The minerals are owned in common by your country and mine, and by all the rest as well. In their original location these resources belong in undivided and indivisible share, to your country and to mine, and to all the rest – to all mankind, in fact, whether organized as States or not. If you touch the nodules at the bottom of the sea, you touch my property. If you take them away, you take away my property.[60]

60. Pinto quoted in L.F.E. Goldie, 'Title and Use (and Usufruct) – An Ancient Distinction Too Oft Forgot', *The American Journal of International Law*, 79:3, July 1985, pp697-8. (Hereafter *Title and Use*.)

Pinto's words on the 'common heritage of mankind' continue the semantic and praxial conflations that the commons as an idea have been prone to since at least Hardin's 1968 essay whose popularity led to the widespread view that privatisation is the inevitable destiny of common-pool resources. Indeed, the ocean as the common heritage of mankind is itself based on the doctrine of the freedom of the seas, as Goldie notes (*Title and Use*, p698), and, in Pinto's reading, is considered as *held in usufruct* rather than title by individual nations. Any attempt to seek to own the high or deep seas in part or full contravenes the principle of the common heritage of mankind, and as Goldie concludes,

> Stressing the relativistic and specific nature of a mining right as no more than a usufruct gives grounds for asserting the *coexistent*, indeed *transcendent*, rights of the world community … A claim to the use and the fruits only may not, per se, be tantamount to a vow of poverty; but since it does acknowledge other, parallel, claims and coexisting rights, it calls for *restraint and abstention* arising from a necessary acquiescence in other uses and in paramount titles (*Title and Use*, p714; my emphasis).

In such a light, we see that the ocean as a global commons remains an idea greatly susceptible to revisionism, as the bases for imagining commonness shifts depending on international consensus (or lack thereof), on the arm-twisting and expropriating logic of developed nations and multinational corporations playing the game of oneupmanship, and on the world-stages at which developing nations of the Global South and the indigenous communities of the world are able (or not) to put forth their position in the discussion of what is common and what is not. Marx's idea of usufruct – that humans are merely the beneficiaries of the Earth, not its owners, and must pass it on in an undiminished, if not improved, condition to future generations – grounds a powerful argument for seeing the ocean as a commons *held in trust and custodianship* rather than as private property that is owned and has only proprietary value. The acceptance of the principle of usufruct is, in fact,

the path that points to 'restraint and abstention'.[61] As Sielen puts it, '[i]f the wealthier countries of the world refuse to set an example by good stewardship of their own resources and honest international engagement on issues that affect the entire planet, what standing do they have in asking others to do their part?' (*An Oceans Manifesto*, p59).

The oceanic commons when re-imagined as a resource held in/as usufruct allows us to look above and beyond the anthropocentric and territorial registers of use and value, recontextualising the high and deep seas as a shared, intergenerational domain structured by care, restraint and succession rather than extraction or sovereignty. Such a framework foregrounds relational obligations among human and nonhuman actors alike, emphasising mobility, maintenance and continuity over enclosure and proprietary ownership. In doing so, usufruct offers a vocabulary for thinking of oceanic space not as an empty frontier or national asset, but as *a living commons* whose use by humans must remain accountable to past histories and future forms of life. For such a goal, literary and artistic representations have a vital role to play: as I have argued, transmodern approaches and works emphasise relationality, translation and ethical co-existence reminding us that histories of colonial violence remain with us still and require us to break the chains of historical bondage to conceptions of the world that have peripheralised the natural environment and human beings' ecological bonds with other species. Such re-imagining is closely aligned with the notion of usufruct as both frameworks repudiate the principle of absolute possession in favour of shared co-habitation and an ethics of *holding* that disavows mastery and occupation for stewardship and custodianship.

The High Seas Treaty and the benchmarks it has set for all stakeholders remind us that de-alienation begins here and now. At grassroots level, the stakeholders hold an inalienable, transcendent claim to the ocean that should be as sacrosanct as the claims of the duty-bearing nations and private corporations to exercise their freedom on the seas. Marx is instructive here once more, when he champions a communal system of user rights and responsibilities which treats 'the soil as eternal communal property, an inalienable condition for the existence and reproduction of a chain of successive generations of the human race' (*Capital – Volume 3*, p812).[62] One might extrapolate that this holds true for the high and deep seas as well. A rethinking of the ocean not as a form of economic commons upon which a brutal scramble for dominion can once again play out, but as a usufruct held in custodianship by today's generations for those coming in the future, creates room for strategic solidarities that are united in the goal of environmental good. This clears the ground also for the redressal of epistemic injustices and power asymmetries that mark our shared investment in the wellbeing and protection of the oceans.

In our commitment to challenge pernicious cultural and political norms and evolve new concepts and paradigms for addressing the most pressing ecological crises, Dussel's transmodernity, Michela Massimi's 'non-elitist environmental cosmopolitanism'[63], Nicholas Chan's 'large ocean states'[64] and Tapoja

61. Consider the fact that in 2021, Google, BMW, AB Volvo Group and Samsung SDI became 'the first global companies to sign up to a World Wildlife Fund call for a moratorium on deep-sea mining, likely shrinking the potential market for deep-sea minerals harvested for cars and smartphones'. See Reuters, 'Google, BMW, AB Volvo, Samsung back environmental call for pause on deep-sea mining', 31 March 2021, https://www.reuters.com/business/sustainable-business/google-bmw-volvo-samsung-sdi-sign-up-wwf-call-temporary-ban-deep-sea-mining-2021-03-31/

62. See Burkett's 2005 essay, 'Marx's Vision of Sustainable Human Development' for what John Bellamy Foster has called 'the most comprehensive view of Marx's larger ecological conception of socialism, conceived in terms of a world of substantive equality and ecological sustainability' (J.B. Foster, 'Paul Burkett's "Marx and Nature" Fifteen Years After', *Monthly Review*, 8 September 2025).

63. Michela Massimi, 'The Fraught Legacy of the Common Heritage of Humankind Principle for Equitable Ocean Policy', *Environmental Science and Policy*, 153, March 2024, pp1-11.

Chaudhuri's 'ecological cosmopolitanism'[65] come as ways to construct new platforms for envoicing the communities and citizens of the Global South, as key players on the world stage asserting their right to participate in determining the shared use and distribution of the fruits of the soil and the waters. Only time will tell if these efforts constitute 'a futile last gasp of a world fighting to gain control of its environmental destiny' (*An Oceans Manifesto*, p57) or if they will, in fact, be part of 'the struggle for the creation of an ecological commons … the struggle for the building of an ecological democracy –community by community, neighborhood by neighborhood, region by region … the struggle and work of fundamental social transformation *from below*'[66].

The epigraphs to this essay are separated by a vast expanse of time and space: the words of the great poet-philosopher Thiruvalluvar, author of the ancient Tamil work *Tirukkural*, and those from the website of the American agency National Aeronautics and Space Administration (NASA) meet us in the twenty-first century like uncanny sojourners pointing to deep, embedded truths surrounding all life on the planet, reminding us that contemporary scientific discourse often returns, in unexpected ways, to questions about care, restraint and shared responsibility articulated in our oldest songs. Over billions of years, the Earth has weathered mass extinctions, shifting continents and atmospheric upheavals – and endured. But human societies are a geological eyeblink, a few thousand years old at most. The question of survival and flourishing, then, is not one the planet needs answered on its own behalf – it has measured time in eons. The urgent question belongs to us: to human societies and to the many nonhuman and other-than-human collectives that share this world, all of whom operate on timescales far shorter, and far more fragile, than the land and waters below them.

64. Nicholas Chan, 'Larger Ocean States', *Global Governance*, 24:4, 2018, pp535-555.

65. Tapoja Chaudhuri, 'Environmental Cosmopolitanism in a South Indian Village', *Critical Anthropology*, 37, 2017, pp401-417.

66. Roy Morrison, *Ecological Democracy*, South End Press, 1995, p188, my emphasis.

Anupama Mohan is Associate Professor of English at the School of Liberal Arts in the Indian Institute of Technology Jodhpur. She is the author of *Utopia and the Village in South Asian Literatures* (2012) and editor of the collections *Maritime Transmodernities* (2019) and *Transmodernity and Literature: Of Worlds in Contact* (2025-26).

Acknowledgements: I am grateful to my editor Cord-Christian Casper, Suddhaseel Sen and the anonymous reviewers of *New Formations* for their probing comments. I also thank the Indian Institute of Technology Jodhpur and the Rachel Carson Centre for Environment and Society for institutional and library support. An earlier version of this article was presented as a conference paper at the Centre for Advanced Studies, Ludwig-Maximilian University of Munich in May 2024. Many thanks to Perrin Remonté for generously allowing me use of his map and to the website of the United Nations for their archive of photographs and documents from which the other two images in this essay have been sourced. Finally, I thank my assiduous research assistant, Isha Lahiri, for all her assistance with this article.