



States Successfully Conclude Negotiations of the High Seas Treaty

Stefania Kolarz, Zuzanna Nowak

After two decades of discussions, UN states have completed work on a treaty on the conservation of ocean biodiversity, allowing the creation and management of protected areas in international waters. The agreement can help counter climate change, biodiversity loss, and ocean pollution. However, its real impact on the environment will depend on swift ratification and subsequent effective implementation.

The agreement was sponsored by the so-called High Ambition Coalition, which included the EU, the U.S., the UK, and China. The Coalition was initiated by the EU at the One Ocean Summit in Brest in February last year. Altogether it gathered 51 members who focused on reaching an inclusive, fair, and balanced agreement as soon as possible. The performance of the Coalition confirmed the [EU's climate leadership](#) and became an area of cooperation with China, which for a long time—together with Russia—had blocked the efforts of the international community in the field of protecting the biodiversity of the oceans (due to its insistence on a consensual instead of a majority way of deciding matters covered by the treaty and pointing to potential conflicts with existing regulations, e.g., regarding the Arctic). The Coalition's greatest success was, however, the conclusion of an agreement by all 193 UN countries on 4 March this year after many years of unofficial discussions and six years of formal negotiations.

Importance of the Treaty. The aim of the treaty is to protect biodiversity in waters beyond national jurisdiction, to use it sustainably, and to regulate marine research for scientific and commercial purposes. The act complements the existing legal framework. The last international agreement dealing with the oceans, the UN Convention on the Law of the Sea, was signed in 1982, but it did not focus solely on the environment. The protection guaranteed by it and contained in sectoral acts remained insufficient and selective. It concerned, for example, ship traffic or whale hunting, but did not comprehensively regulate the issue of biodiversity as such.

The new treaty extends protection, which until now has covered only about 1% of the oceans (compared to about 15% of land protection, e.g., as national parks). It concerns international waters outside the jurisdiction of states, or about two-thirds of the surface of the oceans (one-third lies in exclusive economic zones), and thus almost half of the Earth's surface. This is important because the ecosystem of the oceans, especially phytoplankton, produces half of the oxygen and is the largest carbon sink in the world; at the same time, it constitutes 95% of the Earth's biosphere. However, it is exposed to overuse of its resources (e.g., through overfishing) and pollution (e.g., resulting from maritime transport). It is estimated that the area covered by the treaty is inhabited by more than 10 million species, although so far only a few to a dozen percent of them have been classified, of which nearly 10% are threatened with extinction. Therefore, in December last year at the UN Biodiversity Conference COP15 in Montreal, countries committed to protecting 30% of their land and marine areas by 2030 (the so-called 30x30 target), and the negotiated agreement will contribute to this goal. It is thus another means of combating climate change.

Contentious Issues. The reason for the protracted talks were conflicts of interest between developing and developed countries. African countries, including Sierra Leone, expressed concern about the fair distribution of financial and non-financial benefits resulting from the use of marine genetic resources (MGR) obtained from deep-sea sea sponges, krill, corals, bacteria etc. that have potential

pharmaceutical and cosmetic applications. Developing countries pointed to the privileged position of developed countries in the ability to explore and use MGR, and the dispute led to the failure of the penultimate round of treaty negotiations last August. Although the developed states agreed to share the benefits of these activities, they did not want to clarify the precise conditions. Discussion was also triggered by the very procedure for creating marine protected areas (MPA), and in particular the relationship between the provisions of the treaty and the existing framework for the functioning of regional organisations (e.g., fisheries managers). There even were proposals to remove the issue of fishing completely from the treaty, suggested by, among others, Iceland, for which fishing accounts for a large part of its GDP. Another point of contention were provisions concerning the need to conduct an environmental impact assessment (EIA) of all activities (e.g., geoengineering or deep sea mining) in the high seas and their consultation with other stakeholders.

Treaty Provisions. The treaty supplements the freedoms of the high seas (e.g., navigation, scientific research) and the prohibition of appropriation as enshrined in international law with a number of principles and approaches aimed at ensuring the sustainable use of marine biological resources and the protection of biodiversity. It introduces, among others, the principle that the polluter pays and the fair sharing of benefits from the exploration of the high seas. It also seeks to reduce the avoidance of liability by polluters by introducing the principle of non-transmission of damage or hazard from one area to another and of not transforming one type of pollution into another. Among the approaches it mentions, there are: care for the ecosystem; integrated ocean management; building resilience to climate change and ocean acidification using the best available scientific research or the knowledge and practice of indigenous peoples; and taking measures to prevent, reduce, and control pollution of the marine environment. In addition, the treaty insists on considering the specific situation of [small island and least developed States](#) (LDCs) and the needs of landlocked countries.

Despite enumerating these principles and approaches, the agreement still contains some gaps. For example, states have committed to carrying out an assessment of the effects of activities that may affect the environment and publishing

information on this subject, which is particularly important in the case of offshore mining or carbon capture and storage (CCS). However, this may be insufficient because only new activities will be subject to analysis while existing ones, for example, in the field of fisheries, maritime transport, or mining, will be carried out without the need to submit an EIA. Moreover, the agreement introduces some restrictions on fisheries, but does not prohibit any of them completely.

Organisational and financial issues may also be a challenge. The treaty proposes regular conferences (COP) in which the parties will, among other things, assess progress in implementation and develop policies to support it. It also establishes new bodies that will have to coexist with the regional fisheries organisations established so far or the International Seabed Authority (its mandate includes ensuring effective protection of the marine environment against the harmful effects of seabed operations). Although this is conducive to specialisation, it can lead to fragmentation of competences and an increase in operating costs, which will be borne primarily by individual countries.

Perspectives and Conclusions. The agreement, which is part of global efforts to protect biodiversity, significantly fills existing regulatory gaps (e.g., in ocean governance) and underlines the role of multilateralism. It also highlights the EU's role in global climate and environmental negotiations. On a regional scale, it may translate into the implementation of good practices in the protection of smaller water reservoirs, including the Baltic Sea, for example, in the field of eutrophication (increase in water fertility) or protection of biodiversity, which is important for Poland.

The treaty's objectives can be considered ambitious, but there is a real risk of slow implementation if states wait, for example, for adoption by the UN General Assembly and then obtaining the 60 ratifications required for the agreement to enter into force. The EU is trying to mitigate this approach and has already announced that it will allocate \$42 million to facilitate implementation so states can start applying the agreement as soon as possible. Members of the Coalition expect it to enter into force before the UN Ocean Conference planned for 2025. While this deadline is quick compared to the average time taken to ratify international agreements, it is still too long because it allows enough time for potential abuses, for example, exploiting treaty loopholes related to conducting EIAs.