

IASS-Blogpost

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[Dachzeile]

Protecting the high seas – UN continues negotiations in difficult times

From 7 to 18 March 2022, governments will continue [negotiations on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction](#) under the auspices of the United Nations. After a break of nearly two years due to the coronavirus pandemic, a binding UN instrument should be ready this year.

This week in New York, negotiations are taking place at the 4th session of the Intergovernmental Conference (IGC-4) on an international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). The future BBNJ treaty will apply to nearly half of the Earth's surface and aims to close a critical gap in international marine and environmental governance. Yet even after four years of negotiations and almost ten years of previous discussions within the UN, a number of questions are still unresolved. Due to the coronavirus pandemic, countries are only permitted to send smaller delegations to this session. Observers from civil society and science are excluded from UN headquarters in New York and can only take part via videolink.

While these conditions seem less than ideal to make substantial progress, political pressure to do so is high. At the "One Ocean Summit", organised by the French president and the EU from 9 to 11 February 2022 in Brest, a [High Ambition Coalition](#) for the conservation of the high seas was formed by 27 EU member states and 16 like-minded marine partner states. At other high-profile conferences and processes as well, among them the German [G7 Presidency](#) and the 2022 [UN Ocean Conference](#) in Lisbon, marine conservation is high on the political agenda. At the UN Biodiversity Conference ([CBD COP 15](#)), which will be held later this year in Kunming, China, a new post-2020 global biodiversity framework is to be adopted. One of its aims is the "30x30 goal": an international effort to protect at least 30 per cent of the Earth's land and marine environments by 2030. Marine conservation has become a political priority in Germany as well. As part of a major marine conservation initiative ("[Meeresoffensive](#)"), the German government aims to create a binding marine strategy. By appointing a Special Envoy for the Ocean, the government aims to strengthen and better coordinate marine conservation activities across multiple agencies and ministries.

The fourth and – for the time being – last round of negotiations revisit all four areas of the future instrument: 1) marine genetic resources, including questions on the sharing of benefits; 2) measures such as area-based management tools, including marine protected areas; 3) environmental impact

! Zum Aktualisieren der Textelemente, Zitation markieren und dann F9 drücken !

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assessments; and 4) capacity-building and the transfer of marine technology, in particular for countries of the Global South.

In all four areas, there are number of open questions that were left [in brackets in the negotiating text](#). The use of marine genetic resources is a particularly controversial issue. Some states of the Global South argue that marine genetic resources are part of the “common heritage of mankind” and, as such, financial benefits from their use, for example in the development of new compounds and medicines, should be shared. The EU and states with interests in marine sciences warn that the instrument needed to implement this could hamper research, and instead suggest non-monetary means for benefit-sharing as an alternative, for example by providing for the transparent access to research results, data and other scientific information.

The provisions for marine protection areas, including criteria for how areas are selected, are much further developed and enjoy wider political consensus. But even here, there are still barriers to overcome. While it is agreed that the BBNJ instrument should not create ‘paper parks’, states have very different views on the pivotal question of how the new instrument and existing regulations for the management of individual sectors of marine use, for instance, fisheries and future deep seabed mining, can interact and complement one another. Particularly states significantly invested in fisheries want to maintain the status quo and limit the influence of the instrument on their management. Nature conservation organisations and scientists, referring to the 30x30 goal, stress that to protect biodiversity on the high seas, it is not enough to create individual protected areas: Instead, coherent global networks of well-connected and managed marine protected areas are needed. For this to happen, the new instrument must include a corresponding science-based implementation mechanism.

In addition, the procedure for environmental impact assessments to determine the potentially harmful effects of activities on the marine environment must still be finalised. It is particularly important that the scope of these assessments is broadened to encompass the overall impact of various activities, including from a more long-term perspective. Countries will approach the new agreement from very different starting points: Globally, only a handful are capable of researching the high seas and for many, implementing the instrument – i.e. monitoring and enforcing regulations – represents a huge challenge. For this reason, provisions for a needs-oriented development of capacities and technology transfer are essential.

The negotiations will also tackle a range of procedural matters. Issues like the role and functioning of the instrument’s Conference of the Parties (COP), the establishment of a scientific and technical committee and the decision-making procedure (consensus vs majority decisions) may seem technical, but effectively implementing the instrument will depend on fleshing out the details here. Also, the existing sectoral and regional organisations on the high seas will play an important role in future implementation.

The new instrument offers the historic chance to develop an integrated regulatory framework for the high seas that brings together both conservation and sustainable use. With it, the preservation of the marine environment could be effectively guaranteed for the first time ever.¹ This should also address possible future [deep seabed mining](#) in areas

¹ Concrete steps to develop similar collaborative marine governance for BBNJ in the Southeast Atlantic and Southeast Pacific regions are being taken together with regional stakeholders in the project

beyond national jurisdiction. A regulatory framework is being prepared under the auspices of the International Seabed Authority (ISA), established by the United Nations Convention on the Law of the Sea. This is taking place parallel to and – despite the expected harmful effects on BBNJ – is not taking into account the negotiations on the new High Seas Treaty. However, it will only be possible to preserve the biodiversity of the deep sea and combat the negative impacts of human activities on the high seas and other stressors like climate change effectively if the new instrument creates a comprehensive governance framework that includes all relevant uses of areas beyond national jurisdiction.

The IGC-4 is the last negotiation round under the current mandate of the UN General Assembly. And it is a challenge to reach the needed compromises due to pandemic-related restrictions in New York and the severe global tensions related to the Russian invasion of Ukraine. But given the poor condition of the marine environment, increasing pressure from human activities like fisheries and future deep seabed mining, and the accelerating impacts of climate change, we cannot wait any longer. The recent decision of the UN Environment Assembly to develop a [legally binding agreement to combat plastic pollution](#) is a sign of hope for the high seas. More than ever, in these difficult times it is important that rule-based international cooperation delivers the results needed.