

DAILY COMMENT

THE INSIDE STORY OF THE U.N. HIGH SEAS TREATY

A new global agreement protects marine life in parts of the ocean that laws have been unable to reach.

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The treaty is meant to serve as a scaffold for future initiatives, and has the power to protect much of the ocean. Photograph by Philip Thurston / Getty



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The open ocean, which is home to millions of species and generates much

L of the oxygen we breathe, is a mostly lawless place. Nations have jurisdiction over waters near their coasts, but the high seas, which begin two hundred and thirty miles from shore, are a first-come, first-served domain: there's little to stop someone from exploiting marine resources, whether plants and animals in the water or fossil fuels beneath the seafloor. Forty-three per cent of the planet's surface is vulnerable to unregulated deep-sea drilling, overfishing, and bioprospecting.

For the past five years, under the auspices of the U.N. Convention on the Law of the Sea, nearly two hundred nations have been haggling over the best way to change that. They agreed that the marine life of the high seas needed legal protection, in the form of a treaty—but how, exactly, might that protection be provided? Between 2018 and 2023, negotiators converged on U.N. Headquarters in New York for six meetings that each lasted two gruelling weeks, during which they worked their way through a litany of difficult questions. How should the high seas be studied, monitored, and protected? Who ought to profit from marine discoveries?

I joined the proceedings as a marine scientist working with the Deep Ocean Stewardship Initiative (DOSI), which advises policymakers on pressing scientific issues. We observers tried our best to decode complex legal principles, geopolitical subtexts, and an alphabet soup of acronyms; we held plastic speakers to our ears to hear translations of the talks. At times, we huddled with diplomats and explained our scientific methods; we spoke in favor of open data and advocated for scientists in developing countries, who deserve training and expertise as well as instruments and equipment. The negotiations reminded me of live footage from the deep-sea whale falls and methane seeps that I research: each moment could feel dull, but its contents were profound, and the entire landscape could change in the span of a brief daydream.

During the latest meeting, which began in late February, negotiators hoped to reach a framework agreement by Wednesday, March 1st. When March 2nd arrived without one, however, many participants grew worried. On Friday, Peng Li, the Singaporean diplomat who serves as president of the conference

Kena Lee, the Singaporean diplomat who serves as president of the conference, urged participants to carry on a little longer, even if that meant staying up all night. “We have a window of opportunity to seal the deal, and we mustn’t let this opportunity slip through our hands,” she said. If the week ended without a set text, some delegates might be unwilling or unable to come back for another try.

As Friday night turned to Saturday morning, dozens of delegates and observers camped out on the plush carpet of the East Lounge. Behind them, the lights of Long Island City twinkled through floor-to-ceiling windows. Delegates from the U.K. ate cold pizza. People huddled beneath their jackets, fast asleep. I joined members of several Pacific Island delegations for a few swigs of kava, a grassy brew ladled from a blue cooler into coconut-shell cups. The next morning, many U.N. meeting rooms filled with Italian teen-agers attending a Model U.N. event; treaty negotiators who wanted to discuss disputed parts of the high seas were displaced into the Vienna Café, a cluster of tables and chairs in the basement below the General Assembly hall.

Fundamental questions continued to flare up. If member states would share in profits derived from biological samples, for example, should they also benefit if the gene sequences of marine life inspired commercial products? Eventually, industrialized countries that supported only the former option—among them the U.K., the U.S., and E.U. states—accommodated developing countries that wanted the latter. (Even then, negotiators needed hours to insert twenty-seven references to digital genetic data in the draft text.) Later, behind closed doors, an alliance of a hundred and forty developing countries argued that the high seas were the “common heritage of mankind,” subject to common ownership for collective interests; industrialized countries, in contrast, favored the “freedom of the high seas” principle, which would allow each country to do largely as it pleased, bolstering the status quo. According to one high-level diplomat who was in the room, proposals and rebuttals flew back and forth for hours. Early Saturday evening, the lead negotiator for a consortium of developing countries finally proposed a compromise that would include both “common heritage” and “freedom of the high seas” principles. It was rejected.

The negotiator closed his laptop, stood up, and walked away.

The negotiations were on life support. Lee initiated discussions to suspend the conference. At the same time, she pleaded for just thirty more minutes to reach a deal. It was a little after 8 p.m.; many delegates had been awake for thirty-six hours straight, and others had already departed to catch flights home. The Turkish delegation stated that another long night was “neither physically nor psychologically possible,” and Russia warned that “delegations are losing their good-naturedness.” The thirty minutes were begrudgingly granted, and, at last, a compromise came into view. The final text recognized the “common heritage of humankind” and upheld “the freedom of marine scientific research, together with other freedoms of the high seas.” Soon, Lee returned to the podium. “The ship has reached the shore,” she said. The room erupted in applause and she buried her face in her hands, exhausted.

The U.N. High Seas Treaty, as the draft agreement is known, contains several headline provisions. It establishes a road map for designating Marine Protected Areas, which some call national parks of the sea. (Scientists are especially keen to protect the Lost City Hydrothermal Field, at the bottom of the Atlantic, as well as the Sargasso Sea and the Costa Rica Thermal Dome.) It guarantees that signatories will share profits from any commercialized products derived from the high seas. (To date, only one such product, a skin cream using microbial extracts, has been traced definitively to international waters.) It also mandates programs to strengthen marine research in developing countries so that studies of the sea reflect global priorities. (Currently, reliable access to the deep sea is unevenly distributed among the world’s nations.)

Debate on the future treaty’s content is now closed, but several steps remain before it enters into force. The text will be scrubbed for any grammatical errors and internal inconsistencies and then translated into each of the U.N.’s six official languages. A meeting will be convened to formally adopt the text, at which point individual countries will have to ratify it through their own

domestic legal processes. The sixtieth country to do so will start a hundred-

and-twenty-day countdown, after which the agreement will become international law.

Most of my fellow-attendees are celebrating a victory for conservation and a step toward a more even playing field for high-seas research. “Today the world came together to protect the ocean for the benefit of our children and grandchildren,” Monica Medina, the U.S. Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs and the highest-ranking American official at the negotiations, tweeted. Judith Gobin, a DOSI member and a professor of marine biology at the University of the West Indies in Trinidad and Tobago, called the agreement “comprehensive and historic” and said that scientists from developing island nations “will now have a fighting chance to be included in collaborative research projects and conduct research in our own extended ‘backyards.’ ”

Whether the treaty will live up to its potential remains uncertain. It doesn’t have many specific provisions—some diplomats might call its vagueness “constructive ambiguity”—and is instead meant to serve as a scaffold for future initiatives. “It will take a very long time to undo something that you have written on paper,” Janine Felson, Belize’s Deputy Permanent Representative to the United Nations, told me. “We will probably have to learn by doing, in some cases.” No one is entirely satisfied—perhaps the hallmark of a successful compromise—but the treaty has the power to protect much of the ocean, including the deep-sea habitats that I study. It also serves as a victory for multilateralism in an increasingly fractured world. “Society, basically, is just layers of consensus,” Glen Wright, a senior researcher at the Institute for Sustainable Development and International Relations, said during one sleepless night at the U.N. “Like the consensus that these agreements matter. They carry a moral and political weight that resonates far into the future.” ♦
