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Coming soon: towards formal negotiations for a agreement on high seas governance

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Late in the evening of Friday, 21 July, States meeting at the UN headquarters in New York quietly took a significant step in a longrunning process aiming to close gaps in the international rules covering marine areas beyond national jurisdiction (ABNJ, commonly referred to as the “high seas” or “international waters”). At the conclusion of the fourth and final meeting of the [Preparatory Committee](#) (PrepCom) tasked with making recommendations for a possible new international legally binding instrument (ILBI), States [recommended](#) that the UN General Assembly (UNGA) take a decision, as soon as possible, on the convening of an intergovernmental conference (IGC) to elaborate the text of a new agreement.

International waters account for almost two-thirds of the global ocean and provide critical ecosystem services that are increasingly threatened by a range of human activities, including overfishing and destructive fishing practices, shipping, and seabed mining. Ocean acidification, caused by rising greenhouse gas emissions, is adding further pressure, as well as pollution from land-based sources.

Yet the high seas are governed by an ineffective patchwork of regional and sectoral agreements, resulting in a [fragmented governance framework](#) that provides no overarching control over this vast expanse. In particular, there is no mechanism for creating protected areas or properly assessing the impacts of human activities, and the extraction of marine genetic resources, increasingly used in pharmaceuticals and cosmetics, remains unregulated.

Civil society groups, marine scientists, and a number of conservation-minded States have long called for a strong new agreement, but these ambitions have often collided with the views of States reluctant to negotiate a new agreement or create any new international rules or institutions.

The UNGA must now consider these recommendations and decide whether to launch a formal negotiation process. The required resolution could feasibly be passed before the end of the current session of the UNGA (October 2017) and many are therefore hopeful that negotiations could begin as early as next year.

A package of issues would be on the table: area-based management tools (ABMTs), which includes marine protected areas (MPAs); environmental impact assessments (EIAs); marine genetic resources (MGRs), including sharing of benefits that arise from their exploitation; and capacity building and technology transfer.

The recommendations include a list of possible elements for an ILBI, divided into two sections: Section A contains “non-exclusive elements that generated convergence among most delegations”, while Section B highlights “some of the main issues on which there is divergence of views”. The latter contains thorny issues that have often proven intractable during discussions to date, including:

- The competing principles of common heritage of mankind and the freedom of the high seas, and the differing visions of how they should apply;
- The nature of MGRs, whether an ILBI should regulate access to these resources, and what benefits should be shared;
- The decision-making process and institutional arrangements for the implementation of ABMTs and the creation of MPAs;
- Whether impact assessment should be conducted by States or be “internationalized” and whether the ILBI should address strategic environmental impact assessments; and
- The terms and conditions for the transfer of marine technology.

States would also have to agree on a range of cross-cutting issues, such as possible institutional arrangements, establishment of clearinghouse and financial mechanisms, and dispute settlement. It is therefore likely that opening of formal negotiations would see the delicate manoeuvring that defined the PrepCom meetings give way to high-stakes political posturing and diplomatic negotiations over how a new agreement will work, how new rules can be enforced and, crucially, how much of the high seas will be protected. Recent efforts to protect ABNJ in Antarctica may provide a preview of the potentially fraught process that lies ahead. One of the world’s largest MPAs will come into force there in December, the result of a consensus between parties to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). In addition to lengthy negotiations, agreement ultimately came following high-level political interventions and the expenditure of considerable diplomatic effort. As consensus has always been at the heart of the development of the law of the sea, such discussions are often protracted and complex (negotiations for the UN Convention on the Law of the Sea itself first began in 1973, but the text was only

adopted in 1982 and entered into force in 1994). The PrepCom recommendations came only after negotiators had worked tirelessly in informal, closed-door sessions and regional coordination meetings, held bilateral meetings with the Chair, and had exhausted all efforts to attain consensus. While the challenges ahead are therefore many, it is also clear that there is unprecedented momentum towards the conservation and sustainable use of the marine environment. Indeed, the PrepCom recommendations come just weeks after the conclusion of the landmark [UN Ocean Conference](#) (5-9 June), where States adopted a [Call for Action](#) expressing their “strong conviction that our ocean is critical to our shared future” and their determination to “act decisively and urgently”. Improving the governance of the high seas will undoubtedly contribute to the achievement of Sustainable Development Goal 14 (the “Ocean SDG”), and there is now overwhelming support for the negotiation of a new agreement. In his closing remarks, the President of the UNGA, H.E. Mr Peter Thomson, called for this momentum to be maintained, expressing his hope that an IGC will be convened soon, and heralded the consensus as a “solid step” towards protecting “the oceans that unite us”.

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