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High seas negotiations return to New York

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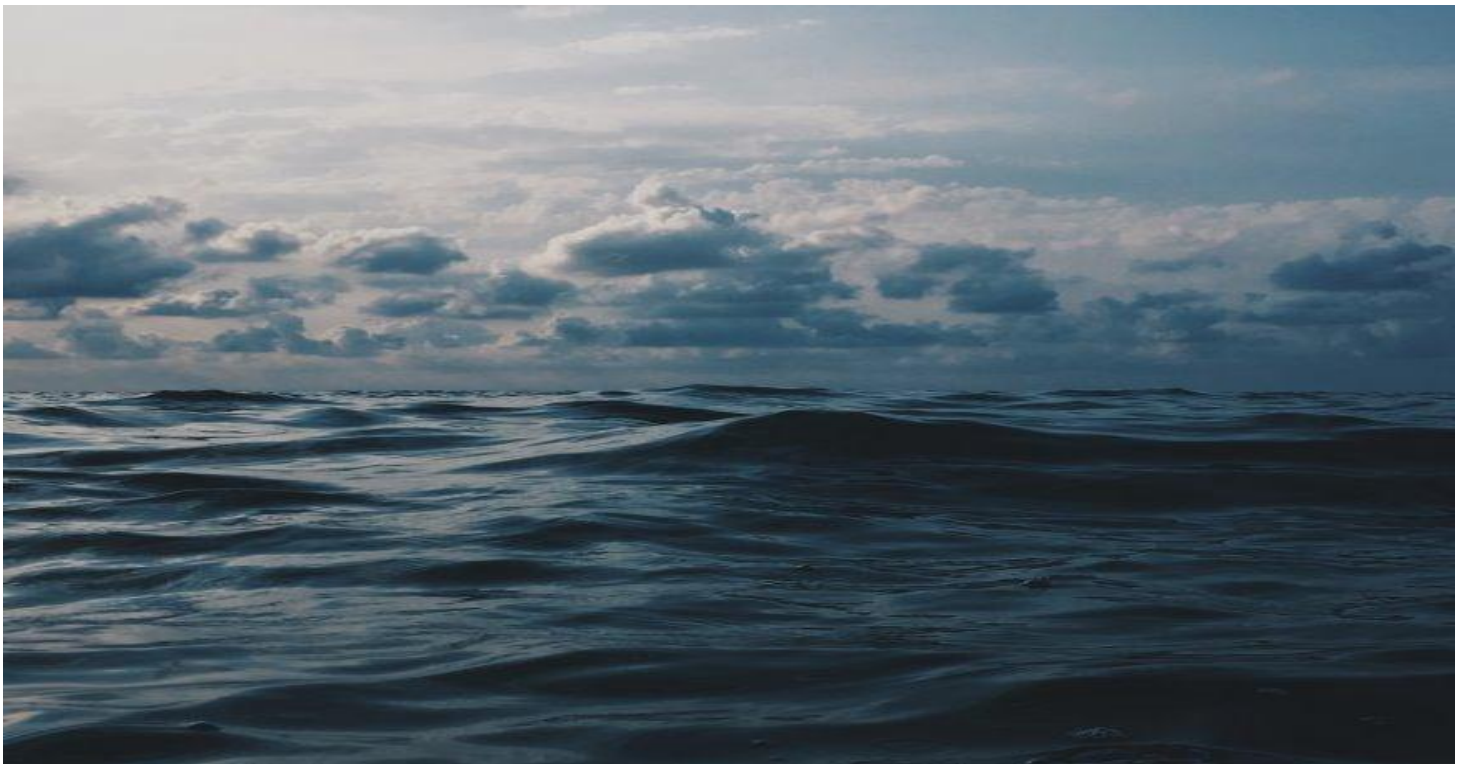
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Negotiations for a treaty on the conservation and sustainable use of high seas biodiversity will resume next Monday, having been on hold for over two years due to the COVID-19 pandemic.

Negotiators will once again convene at UN headquarters in New York. Or at least some of them will, given that limits have been placed on the size of delegations and the presence of civil society. But the negotiations are resuming, and that is already good news. Delegations have made use of the hiatus since the last intergovernmental conference

(August 2019), continuing informal discussions, but a return to the negotiating table is long overdue. Many areas of work remain unfinished and large parts of the current draft treaty of [May 2019](#) remain bracketed, denoting that States are yet to reach consensus.

This new round of negotiations will first and foremost focus on the four key components of the future treaty: (i) marine genetic resources (MGR), including issues related to the sharing of benefits from their exploitation; (ii) measures such as area-based management tools (ABMT), including marine protected areas (MPAs); (iii) environmental impact assessments (EIA); and (iv) capacity building and the transfer of marine technology.

Questions concerning benefit sharing of MGRs remain particularly sensitive. The draft text no longer makes reference to the common heritage of humanity, a principle long invoked by the G77 group, and it remains to be seen whether benefit sharing will be mandatory or voluntary, and whether it will include both financial and non-monetary benefits. The former would presumably require the establishment of a distribution mechanism, while the latter would require Parties to, for example, facilitate access to samples and share information.

Provisions for ABMTs and MPAs appear to be somewhat further along, covering key elements from the identification of sites to be protected to the establishment of management plans. Nevertheless, further improvements to the text could increase the likelihood that any future measures passed under the agreement are effective. In particular, the agreement could do more to [reinforce monitoring, control and surveillance](#).

The process for environmental impact assessments is yet to be finalized, with no consensus on the applicable thresholds and criteria, while negotiators from the global South seek firmer commitments on capacity building and technology transfer, arguing for a compulsory mechanism.

Beyond these four pillars, negotiators will also have to finalize the [institutional mechanisms of the future treaty](#), which will be critical determinants of the effectiveness of the future agreement. Issues include the mandate and rules of procedure of the Conference of the Parties (COP), the role of the scientific and technical body and clearing house mechanism, financing arrangements, and the modalities for coordination with existing instruments. While conservation has been the most visible facet of the discussions, the success of any future measures, and the treaty system more broadly, hinges on these technical but strategic provisions.

No further negotiation sessions are planned, thus delegates face a busy couple of weeks as they attempt to finalize the treaty text. But given the long list of outstanding issues, and the turnover within delegations since the previous session, it seems unrealistic to expect a swift conclusion to discussions that have already been going for over a decade. Newcomers to the process will need time to settle into the complexities and peculiarities of these negotiations, while public health limitations will surely affect how much progress can be made.

It has been a long and winding road but it is easy to find optimism in the resumption of negotiations. Many States have exchanged informally during the hiatus, refining their positions and building consensus, so progress may be quicker than expected in some areas. At the same time, many States have also expressed their desire to finalize the treaty in 2022, with a [High Ambition Coalition \(launched at the One Ocean Summit¹](#) in February) seeking to ensure the rapid finalization of a robust text.

¹ The Coalition – composed of the European Union, its Member States and other countries (Morocco, Australia, Canada, Chile...) – is calling for “the adoption, still this year, of an ambitious treaty for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction”.

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