

Opinion – A Diplomatic Breakthrough on Seas

Written by Martin Duffy

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MARTIN DUFFY, APR 12 2023

For years UN member states have engaged in protracted negotiations to secure a UN Convention on the Law of the Sea. On 4 March 2023 these long-running discussions became a reality in the form of the Internationally Legally Binding Instrument under the UN Convention on the Law of the Sea. In a confident statement, attributable to Stéphane Dujarric (the spokesperson for the UN Secretary-General), the UN confirmed the conclusion and future ratification of this measure on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Quoting Dujarric directly:

The Secretary-General commends delegates for finalizing a text to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. This breakthrough – which covers nearly two-thirds of the ocean — marks the culmination of nearly two decades of work and builds on the legacy of the United Nations Convention on the Law of the Sea. This action is a victory for multilateralism and for global efforts to counter the destructive trends facing ocean health, now and for generations to come. It is crucial for addressing the triple planetary crisis of climate change, biodiversity loss and pollution. It is also vital for achieving ocean-related goals and targets of the 2030 Agenda for Sustainable Development, and the Kunming-Montreal Global Biodiversity Framework.

It was apparent that not only had several all-night discussions yielded a near-unanimous applause for a final text, but all parties had shown “ambition, flexibility and perseverance”. There was also praise for the “leadership and dedication” shown by Ambassador Rena Lee (Conference Chair) and for the constructive and enthusiastic work of non-governmental organizations, civil society, academic institutions and the scientific community.

This is the first international treaty after years of marathon negotiations to protect the high seas, a fragile and vital treasure constituting approximately the scale of half the planet. The submissions to conference had been prolonged – sometimes threatening to languish in disputed classification of the diverse minutiae of the biosphere. But on the late evening of 4 March Ambassador Lee was able to confirm “the ship has reached the shore” as the conference could then conclude at the UN headquarters. This was approximately 9.30pm New York time, and the Conference Chair’s final remarks were met by extended applause from delegates.

Activists have unanimously confirmed that the deal represents, “a breakthrough moment for the protection of biodiversity after more than 15 years of discussions” which also evidences the most important matter that the conference will have civic society endorsement. The treaty will be paramount to conserving 30% of the world’s land and ocean by 2030, as had earlier agreed by world governments in a historic accord signed in Montreal in December. “This is a historic day for conservation and a sign that in a divided world, protecting nature and people can triumph over geopolitics,” said Greenpeace’s Laura Meller. “There will be no reopening or discussions of substance” Ambassador Lee told negotiators. The agreement will be formally adopted once vetted by lawyers and translated into the United Nations’ six official languages, she announced. UN Secretary-General Antonio Guterres commended the delegates, in achieving, “victory for multilateralism and for global efforts to counter the destructive trends facing ocean health, now and for generations to come.”

The high seas, technically and legally, begin at the border of countries’ exclusive economic zones, which extend up

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to 200 nautical miles (370km) from coastlines. They thus fall under the jurisdiction of no country. While the high seas comprise more than 60% of the world's oceans and nearly half the planet, previous discussions on their safeguarding had probably attracted disproportionately less focus than (for example) coastal waters or rare and iconic species.

This is in juxtaposition to the enormous importance of the high seas for our habitat. Ocean ecosystems create half the oxygen we breathe and limit global warming by absorbing much of the carbon dioxide emitted by human activities. Perversely, like many other eco-systems that are equally threatened by climate change, pollution and overfishing (and prior to this landmark deal) only about 1% of the high seas were formally protected. When this treaty comes into force it will allow the creation of marine protected areas across all international waters. "High seas marine protected areas can play a critical role in building resilience to the impact of climate change," said Liz Karan of The Pew Charitable Trusts, which called the agreement a "momentous achievement".

The treaty will also oblige countries to conduct environmental impact assessments of proposed activities on the high seas. A highly sensitive chapter on the sharing of potential benefits of newly discovered marine resources was one of the focal points of tensions, causing the conference to over-run a full day, before it was finally overcome. Developing countries, without the means to afford costly research, had fought not to be excluded from the expected windfall from the commercialisation of potential substances discovered in international waters. Eventual profits are likely from the pharmaceutical, chemical or cosmetic use of newly discovered marine substances that belong to no one.

As in other international forums, notably climate negotiations, the debate crystalized around ensuring equity between the poorer Global South and richer North, observers noted. In a move seen as an attempt to build trust between rich and poor countries, the European Union pledged €40m in New York to facilitate the ratification of the treaty and its early implementation. The EU also announced €808m for research, monitoring and conservation of oceans in 2023 at the Our Ocean conference in Panama that ended Friday. Panama said a total of €17.8bn was pledged by countries.

It is worth looking back at how we had come to the events of 4 March 2023. In 2017, the UN General Assembly had adopted a resolution calling on nations to establish a high seas treaty. It originally planned four negotiating sessions but had to pass two resolutions to ensure two additional sessions. Irish President Michael D Higgins has welcomed the agreement:

[It is] a gain for the future of humanity...It will seek to safeguard 30% of the high seas by the end of the decade....it comes at a time when we are receiving the direst warnings as a result of the accelerated melting of the ice caps and so it is particularly timely...All those interested in the future of the planet will be grateful for those who have worked over many years to bring us to this point.

Higgins added it is essential that attention now "swiftly moves to formal adoption of the text, to ratification and to implementation." Ireland is currently a Security Council member and Irish environmental NGOs enthusiastically campaigned for this agreement. Meanwhile, Irish Tánaiste and Minister for Foreign Affairs Micheál Martin said the agreement provided mechanisms to significantly improve the protection of the marine environment. He said Ireland was committed to working with the international community to realise its full potential. Mr Martin added the agreement is "a major step forward for ocean conservation."

The European Commission also hailed the international treaty. "A historic moment for our ocean... We take a crucial step forward to preserve the marine life and biodiversity that are essential for us and the generations to come," said EU environment commissioner Virginijus Sinkevičius. He added "Today marks the culmination of more than a decade of preparatory work and international negotiations in which the EU played a key role," he added, saying he was "very proud of our outcome...The high seas are a fragile and vital treasure that covers nearly half the planet, and the treaty is seen as essential to conserving 30% of the world's land and ocean by 2030". Jessica Panegyres of Greenpeace welcomed the deal but called for urgent ratification of the treaty.

For the global community as much as for UN member states, this declaration must surely be greeted with optimism. Finally, the international community has what would appear to be a final resolution of the international status of our

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governance of this shared space. As with everything in international affairs, actions are indeed louder than words, so one must only hope that in the coming months, NGOs such as Greenpeace are not proven right in their circumspection on implementation. Member-states who have procrastinated over such a critical issue for decades have certainly taken a brave step in the dark. One hopes this truly constitutes a diplomatic leap to preserve the ocean. The consequences for international affairs are as crucial and multi-faceted as almost any previous agreed instrument since the very creation of the UN itself.

About the author:

Martin Duffy has participated in more than two hundred international election and human rights assignments since beginning his career in Africa and Asia in the 1980s. He has served with a wide range of international organizations and has frequently been decorated for field service, among them UN (United Nations) Peacekeeping Citations and the Badge of Honour of the International Red Cross Movement. He has also held several academic positions in Ireland, UK, USA and elsewhere. He is a proponent of experiential learning. He holds awards from Dublin, Oxford, Harvard, and several other institutions including the Diploma in International Relations at the University of Cambridge.