

Earth Law Center Written Submissions for BBNJ IGC5
Informal Informals cross cutting issues (general provisions)
August 14th, 2022

Earth Law Center (ELC) is a member of the United Nations' Economic and Social Council (ECOSOC) and the IUCN's World Commission on Environmental Law, an expert and partner of the UN Harmony with Nature Initiative, member of the High Seas Alliance, a Mission Blue partner and a founding member of the Global Alliance for the Rights of Nature.

ELC commends the efforts of delegates, organizations, governments, institutions and other collaborative spirits in their commitment and ambition in the development of a new global treaty under UNCLOS.

We support and urge the inclusion of the IUCN's recommendation for Preambular paragraph 2 present in the textual proposal submitted by delegations for consideration in ICG5:

P2: Stressing the need to respect the balance of rights, obligations and interests set out in the Convention, [as well as the rights and interests of future generations and marine life to a healthy, productive and resilient ocean](#);

Additionally, we commend and support the inclusion of the stewardship principles and urge its maintenance in Article 5. as "(k) The stewardship of the areas beyond national jurisdiction on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and preserving the inherent value of biodiversity of areas beyond national jurisdiction."

The inclusion of this recommendation would provide for and ensure, amongst others:

- a comprehensive framework to guide the implementation of State's obligation to protect and conserve the marine environment under UNCLOS;
- effective and long-term "conservation and sustainable use of marine biological diversity" of areas beyond national jurisdiction;
- reducing fragmentation by aligning with other international and national frameworks utilizing a rights-based approach, including the Convention on Biological Diversity post-2020 global biodiversity framework;
- protecting and conserving biodiversity in any case of doubt, giving preference to less harmful alternatives (in other words, when in doubt err on the side of the Ocean);
- humankind acts as stewards of the ocean on behalf of present and future generations of all life; and
- the inclusion and respect for traditional and Indigenous knowledge.

Marine conservation is often seen at odds with human use and economic growth, leading to a non harmonious relationship with the Ocean. One element of this problem is the law itself, which largely views the Ocean as property and a resource, rather than our source of life and a finite entity with ecological limits to be respected. As a result, many experts, institutions and organizations are calling for reimagining governance and legal frameworks through a new ocean

ethic. The High Seas constitute two-thirds of the world's ocean, and it has been widely recognized for decades that there is an urgent need for higher standards and governance of human activity with areas beyond national jurisdiction.

Acknowledging the Ocean has a rightsholder and interest under the Convention builds off of a burgeoning movement internationally. Over twenty countries have embraced Rights of Nature, whether in the form of constitutional amendments, national law, judicial decisions, treaty agreements, local law, or resolutions: in fact, 200 laws and policies exist now in Ecuador, Uganda, Mexico, Spain, India, Colombia, Panama, New Zealand and the United States, amongst others. International law, thus far, only recognizes states and intergovernmental organizations as having legal personality. This is changing, for example, with the Convention on Biological Diversity's post 2020 framework including the Rights of Nature/ Mother Earth within the draft targets as a rights-based approach.

As an interest, States will need to ensure implementation structures under the BBNJ agreement respect the Ocean as a whole interconnected ecosystem, take into account the plurality of values and relationships influencing Ocean health, and therefore, adopt holistic and ecologically-based standards to protect and conserve the Ocean. Further, the inclusion of the Ocean's inherent value in the stewardship principle can help ensure State's adhere to the best available scientific evidence and a strict application of the precautionary principle in order to maintain healthy and thriving Ocean ecosystems. In fact, in 2022, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) produced a summary for policymakers on the methodological assessment regarding the conceptualization of the value of Nature and highlights that, 'a broader diversity of nature's values' should be incorporated into decision making.

Additionally, we highlight that Indigenous and local communities have been widely excluded and underrepresented from the BBNJ process. Just as many Indigenous and coastal peoples have been teaching for millennia, we are in a deeply connected relationship with the Ocean. The Ocean is our source of life and a living sacred entity. For centuries this kinship understanding has guided activities, balancing between the needs of people and the capacity of Ocean. It is paramount that beyond their inclusion and representation, that Indigenous and local communities are equitably heard, consulted, respected, and participate in decision-making that occurs under the BBNJ agreement. Recognizing the Ocean as a rightsholder would promote and align with many Indigenous peoples worldviews, and provide an avenue for increased participation of Indigenous peoples as those who may represent the Ocean's interests and needs in decision making under the new Agreement. Instilling diverse understandings and the plurality of ways of knowing and relating to the Ocean can not only help replace our focus on exploitation, but enable a more complete understanding of the use and value of the Area, leading to a more harmonious relationship with the Ocean, and the ecosystems and species within.

In 2017 at the United Nations Ocean Conference (UNOC), Prime Minister Henry Puna called upon the U.N. General Assembly to consider and fight for the rights of the ocean, "for just as those who have been treated unfairly have found it necessary to fight for and claim their rights, so too has the Ocean been treated with injustice and disrespect."

We believe the recommendation above is critical for an effective regulatory framework to protect biodiversity on the High Seas. The BBNJ must recognize the Ocean as our source of life, our relationship with the ecosystems we are a part of, and our responsibilities and obligations to protect the natural world. We must challenge existing and outdated norms that favor a human-centered approach. The BBNJ has the historical opportunity to create a just and visionary treaty for the future well-being of all- humankind, the Ocean and the planet.

Thank you for your consideration of these comments and please do not hesitate to contact us with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'MBender', is centered on a light gray rectangular background.

Michelle Bender
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