

INPUTS CONCERNING THE CALL “OCEANS AND HUMAN RIGHTS” BY THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

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1. Human rights approach has been integrated in several aspects regarding measures, policies and laws for the protection of the environment and, therefore, the protection, conservation and restoration of the oceans. Although marine life protection is not necessarily mentioned in some constitutions, it is worth noting that when countries recognize the protection of a safe and healthy environment (or ecologically balanced, as it is stated in the Brazilian constitution) as a human right, the marine life is also included, since it is vital to human life.

Brazil and six other South American countries are reviewing their national action plans for the prevention and reduction of marine pollution. The South American Marine Conservation Initiative is a partnership project promoted by the Food and Agriculture Organization of the UN (FAO) and the International Maritime Organization (IMO). Promoting collaboration between South American countries, facilitating the exchange of knowledge, experiences and best practices in marine conservation is vital in a region with shared ocean boundaries.

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In addition, of the Latin American countries it is worth mentioning that Chile has a robust marine protection system, including the General Fisheries and Aquaculture Law⁵ and the creation of marine protected areas. It is also worth noting, certainly, the rude impact produced by the approval of the legislation banning and reducing single-use plastics in Chile.

One important measure is the environmental impact assessment, mandatory in many countries before carrying out any project that presents environmental risks, whether in construction or in the development of activities. According to the ICJ, in the case of *Costa Rica v. Nicaragua*, regarding activities in the San Juan River, the EIA is an obligation under general international law, and in the case of transboundary activities, States have the duty to notify and consult neighboring countries, since in the event of environmental damage, there is a latent violation of human rights.

Finally, it is worth mentioning the global effort to approve the Plastics Treaty, in order to end plastic pollution, which severely affects marine and human lives. The efforts towards an international legally binding instrument is an example of measures to promote national action plans to work towards the prevention, reduction and elimination of plastic pollution.⁶

2. As part of the consultation, we recorded some examples of best practices and suggested solutions for approaches: (1) In many Latin American countries, such as Brazil⁷, fishing communities are involved in making decisions about the management of marine areas, ensuring that their rights and traditional knowledge are respected. In making this point, we refer to the importance of community participation. (2) In several initiatives in Latin America, including in Brazil⁸, the promotion of gender equality in fisheries management has led to better representation of women, who play crucial roles in coastal communities. So we certainly underline the importance of gender equality policies.

In addition, (3) we should also highlight the importance of partnership agreements between governments, organizations, non-governmental organizations and local communities. This is in line with the positive and negative obligations laid down in the environmental protection regimes for seas, ecosystems and biodiversity (cf. the United Nations Convention on the Law of the Sea; the Convention on Biological Diversity; and other international environmental

⁵ Available at: <https://www.subpesca.cl/portal/615/w3-article-88020.html>

⁶ More at: <https://www.unep.org/inc-plastic-pollution>

⁷ The *GEF Mar Project* (Projeto GEF Mar, in Portuguese) has an action line dedicated to participatory management. In response to the demands of the representatives of the traditional communities that are part of the Project Council, a public call mechanism was implemented to support sub-projects that promote integration with these communities. These sub-projects aim to encourage the development of community autonomy and protagonism, while at the same time strengthening and integrating the Conservation Units (CUs). They also seek to foster greater social participation and effective dialog for territorial management and conflict resolution.

⁸ The *Jutai-Cleto Fishing Agreement* (Acordo de Pesca do Jutai-Cleto, in portuguese) developed by a collective made up of fishermen and fisherwomen living in four communities located in the Mamirauá Sustainable Development Reserve (RDSM) in the state of Amazonas (Brazil). The participation of women in all these activities is guaranteed in the Internal Regulations. However, the organization of work to carry out these activities reveals gender markers that affect both the form of participation and their frequency.

treaties).⁹ A significant example is the Caribbean Marine Protected Areas Network (CaMPAM), which seeks to strengthen the management of protected areas in the Caribbean through collaboration between governments, NGOs and local communities.

A final example would be the use of technologies and other tracking systems. In Brazil, the use of drones to map artisanal fishing represents a promising alternative for monitoring territorial conflicts in areas of activity. This conclusion is presented in an article by researchers from the Federal Rural University of Rio de Janeiro (Universidade Federal Rural do Rio de Janeiro, in Portuguese), published in the Brazilian journal “Ciência Rural”.¹⁰ A similar perspective can be adopted for other situations within the context we are addressing here.

3. Human rights related to the oceans have been gaining increasing attention in the context of climate change, environmental degradation, and the need to protect marginalized communities that rely on marine resources for their survival, especially following the issuance of Advisory Opinion (case no. 31) on Climate Change by the International Tribunal for the Law of the Sea.¹¹ The intersection between environmental protection and human rights is notable to ensure that the voices of these communities are heard and respected. Below are concrete examples of how these rights are being upheld, including community management initiatives for marine and coastal areas, ecosystem and fishery restoration efforts, and the inclusion of Indigenous peoples, women, children, and youth.

A significant example was the creation of Marine Protected Areas (MPAs), which have proven effective in conserving marine ecosystems and protecting local communities. In Chile, the recent establishment of the multi-use coastal marine protected area of the Humboldt Archipelago is an important milestone.¹² This MPA covers over 2,200 square miles and protects critical ecosystems, such as feeding areas for blue whales and Humboldt penguins. This protection supports artisanal fishing and ecotourism, directly benefiting local communities that rely on these resources for their livelihoods. In Brazil, similar initiatives have been successfully implemented. The state of Pará¹³, located in the northern region of the country, saw the creation of new MPAs that protect nearly all the mangroves in the region, vital ecosystems for marine

⁹ The BBNJ Agreement, or High Seas Treaty, for example, will provide that some regional issues will be governed by bilateral treaties, especially with regard to fishing.

¹⁰ More information can be found at: observatoriocientifico.ufc.br/pt/drones-mapeiam-conflitos-territoriais-e-podem-ser-eficientes-para-gestao-da-pesca-artesanal/; and also at: www.wwf.org.br/natureza_brasileira/areas_prioritarias/amazonia/emergencia_amazonica/uso_de_drones_auxilia_no_monitoramento_de_areas_remotas_da_amazonia/.

¹¹ INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law. Available at: <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>. Accessed on: October 29, 2024.

¹² OCEANA. Protecting the oceans: a race to 30% by 2030, 2023. Available at: <https://brasil.oceana.org/blog/protegendo-os-oceanos-uma-corrída-para-30-ate-2030/>. Accessed on: October 29, 2024.

¹³ OCEANA. Protecting the oceans: a race to 30% by 2030, 2023. Available at: <https://brasil.oceana.org/blog/protegendo-os-oceanos-uma-corrída-para-30-ate-2030/>. Accessed on: October 29, 2024.

life and climate change adaptation. These areas not only ensure the conservation of mangroves but also allow local communities to continue their traditional hunting and fishing practices. The balanced approach between conservation and sustainable resource use is a clear example of how human rights can be respected while promoting ocean health.¹⁴

Regarding the community management of marine and coastal areas, it is observed that some communities around the world have mobilized to manage their own marine resources, drawing on traditional knowledge passed down from generation to generation.¹⁵ For instance, in various regions of the Philippines and also in Brazil, coastal communities are being supported in implementing sustainable management practices that recognize their voices in public policy discussions.

This inclusion not only strengthens local governance but also contributes to the resilience of communities in the face of environmental threats. Ecosystem restoration efforts, such as mangrove restoration projects in Indonesia, are clear examples of this approach, with local communities mobilizing to replant mangroves destroyed by human activities, thereby contributing to ecosystem recovery and ensuring their own food security.

Moreover, indigenous people hold ancestral knowledge about the sustainable use of natural resources and have a profound spiritual connection to the oceans.¹⁶ In Canada, for example, indigenous nations have partnered with the government to co-manage marine protected areas. This collaboration not only respects the rights of indigenous people but also leads to more effective management practices that benefit both the environment and local communities.^{17 18}

The role of women in fishing communities also deserves attention. In many contexts, women are essential in artisanal fishing and in the processing of seafood products. In Senegal, women involved in the fishing industry have organized into cooperatives to improve their working conditions and secure better prices for their products.¹⁹ These initiatives promote gender equality and also strengthen the economic resilience of fishing communities. The active participation of children and young people in ocean-related issues is equally important. Environmental awareness programs have been implemented in various coastal communities. In Brazil, schools are teaching children about the importance of marine conservation and encouraging their participation in community activities such as beach cleanups and habitat

¹⁴ DE MÃOS DADAS. Coastal Zone. 2023. Available at: <https://demaosdadas.org.br/zona-costeira/>. Accessed on: October 29, 2024.

¹⁵ OCEANA. Protecting the oceans: a race to 30% by 2030, 2023. Available at: <https://brasil.oceana.org/blog/protegendo-os-oceanos-uma-corrida-para-30-ate-2030/>. Accessed on: October 29, 2024.

¹⁶ BRAZIL. Traditional Peoples and Communities. 2023. Available at: <https://www.gov.br/mma/pt-br/assuntos/povos-e-comunidades-tradicionais>. Accessed on: October 29, 2024.

¹⁷ E MÃOS DADAS. Coastal Zone. 2023. Available at: <https://demaosdadas.org.br/zona-costeira/>. Accessed on: October 29, 2024.

¹⁸ BRAZIL. Traditional Peoples and Communities. 2023. Available at: <https://www.gov.br/mma/pt-br/assuntos/povos-e-comunidades-tradicionais>. Accessed on: October 29, 2024.

¹⁹ E MÃOS DADAS. Coastal Zone. 2023. Available at: <https://demaosdadas.org.br/zona-costeira/>. Accessed on: October 29, 2024.

restoration. This education not only empowers new generations but also ensures that efforts to protect the oceans are sustainable in the long term.²⁰

Finally, it is worth noting that environmental injustices disproportionately affect marginalized communities.²¹ Plastic pollution in the oceans is a clear example of this reality; it is often the most vulnerable communities that bear the greatest impacts of this pollution. Reports indicate that these communities should be included in decision-making on plastic production and disposal, ensuring access to environmental justice. This underscores the urgent need for public policies that not only recognize human rights related to the oceans but also promote inclusive governance.²²

These examples illustrate how ocean-related human rights can be promoted through the protection of marginalized communities and the implementation of sustainable practices. Effective community management, ecological restoration, and the active inclusion of diverse social groups are essential to ensuring that the oceans continue to sustain human life and healthy ecosystems. As we face global challenges such as climate change and environmental degradation, it is imperative to continue promoting these essential human rights in the context of the oceans.

4. Considering the right to an ecologically balanced environment as a human right has significant consequences for states' obligations to act with due diligence to protect the environment in all its forms. The human right to an ecologically balanced environment cannot be realized without the perspective of the oceans, an important ecosystem endowed with infinite biodiversity and extremely important for tackling climate change.²³

To this end, there is the body of legislation that promotes the protection of the oceans, in particular the 1992 United Nations Convention on the Law of the Sea, the Montego Bay

²⁰ UNESCO. Marine Environmental Education Program ‘Albatroz na Escola’ (Albatross at School). Available at: <https://oceanliteracy.unesco.org/marine-environmental-education-program-albatroz-na-escola-albatross-at-school/>. Accessed: 29 Oct. 2024.

²¹ FUNDO BRASIL. O que é racismo ambiental e como afeta as comunidades marginalizadas? 2023. Disponível em: <https://www.fundobrasil.org.br/blog/o-que-e-racismo-ambiental-e-como-afeta-as-comunidades-marginalizadas/>. Acesso em: 29 out. 2024.

²² FUNDO BRASIL. O que é racismo ambiental e como afeta as comunidades marginalizadas? 2023. Disponível em: <https://www.fundobrasil.org.br/blog/o-que-e-racismo-ambiental-e-como-afeta-as-comunidades-marginalizadas/>. Acesso em: 29 out. 2024.

²³ UNITED NATIONS. GENERAL ASSEMBLY. Resolution 76/300. The human right to a clean, healthy and sustainable environment, 28 July, 2022. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/442/77/PDF/N2244277.pdf?OpenElement>. Access: 14 ago. 2024. UNITED NATIONS. Human Rights Council. Resolution 48/13. The human right to a clean, healthy and sustainable environment, 8. Octubre 2021. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>. Access: 14 ago. 2024.

Convention, as well as the entire legal framework set up to protect the environment, made up of the UNFCCC and the IPCC. ²⁴

In this context, the new Agreement on Marine Biodiversity in Areas Beyond National Jurisdiction, the BBNJ, which is in the process of being signed and ratified by states, stands out. ²⁵

It cannot be denied that the jurisprudential construction promoted by national and international courts plays an important role in the context of environmental protection, and so it is important to note the contribution of the International Tribunal for the Law of the Sea, with the issuance of Advisory Opinion No. 31 of 2024. ^{26[4]}

Based on these initial and normative considerations regarding the protection of the relationship between oceans and human rights, it is important to highlight that the protection of the marine environment and its biodiversity is a prerequisite for the realization of human rights, such as the right to health, to an ecologically balanced environment, to life and other related rights.

In this context, it is important to highlight the challenges of protecting and preventing damage to the oceans and marine biodiversity, in terms of implementing the right to a sustainable, healthy and clean environment:

a. There are challenges in the context of the implementation and enforcement of rules designed to protect the environment and the marine environment, especially due to the soft law nature of the former, as well as the difficulty of imposing due diligence measures on states with regard to their obligations to protect and preserve the environment.

b. Another challenge worth highlighting is the difficulty of promoting national and international cooperation, which is necessary given that the vast majority of damage to the marine environment goes beyond the borders of states. Therefore, there is a relevant aspect that deserves special consideration by States and International Organizations, namely the transboundary effects of damage to the marine environment.

c. With regard to the legal nature of the right to an ecologically balanced environment as a human right, there is a great challenge in linking the existing rules for protecting the environment with the rules of international human rights law. In this sense, it is understood that the existing body of norms must be given efficacy and effectiveness, with interpretation for the

²⁴ UNITED NATIONS. UNCLOS. Available at: <https://www2.camara.leg.br/legin/fed/decret/1990/decreto-99165-12-marco-1990-328535-publicacaooriginal-1-pe.html>. Access: 14 ago. 2024.

²⁵ ORGANIZAÇÃO DAS NAÇÕES UNIDAS. New Oceans Treaty. <https://brasil.un.org/pt-br/246546-tratado-do-alto-mar-é-aberto-para-assinatura-dos-estados-membros-da-onu#:~:text=O%20Tratado%20entrará%20em%20vigor,não%20está%20sob%20jurisdição%20nacional>.

<https://www.un.org/bbnjagreement/en>. UNITED NATIONS. Treaty on Marine Biodiversity in Areas Beyond National Jurisdiction – BBNJ. Available at: https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch_XXI_10.pdf. Access: 14 ago. 2024.

²⁶ INTERNATIONAL TRIBUNAL OF THE LAW OF THE SEA. Advisory Opinion n. 31. Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf. Access: 14 ago. 2024.

correct application of the norms, consolidating the appropriate hermeneutics for the realization of this human right, highlighting the need to create a new human right to encompass the human right to a healthy and healthy environment.

d. The protection of the environment and the marine environment also needs to be considered from the point of view of the interests of humanity and, in this way, the incidence of norms of a jus cogens nature can contribute to giving broad protection and preservation to the environment.

e. Considering the BBNJ Agreement, with its initiative to promote the extension of protection of the area located beyond the jurisdiction of States, we can see the bias of the interests of humanity and the consideration of this space as a common heritage of humanity. In this context, the interests of humanity^{27 [5]} can be seen, which justifies the consideration of the jus cogens nature of this norm, with the aim of protecting and preserving the environment in question.

f. The incidence of universal jurisdiction for the protection of the interests of humanity is also extremely important for the realization of the human right to a healthy marine environment, given the difficulties of implementing this legal institute in the legal systems of states.

g. Containing global warming to prevent sea levels from rising is also a challenge to be considered, since this externality has already caused the forced displacement of people from island countries, as well as irreparable damage to the memory, origin and history of island peoples, with the imminent disappearance of some countries, such as Kiribati.

h. Furthermore, the greatest challenge to be faced by the international community is the consideration of ecocide as an international crime, given the difficulty of promoting an amendment to the 1998 Rome Statute to include ecocide as the fifth crime against peace.²⁸

5. Regarding frameworks, measures and safeguards of protection of the right to a healthy environment applicable to projects, plans or initiatives are the Environmental Protected Areas (EPAs). In Brazil, for example, there is a Decree²⁹ that declares the Federal Territory of Fernando de Noronha, the Rocas Atoll and the Penedos de São Pedro and São Paulo as an EPA, and provides other measures of conservation and protection of the environment, including marine areas surrounding.

²⁷ LOUREIRO, Claudia. Jurisdição universal: caixa de pandora ou um caminho para a realização dos interesses da humanidade? Revista de Direito Internacional, vol. 19, n. 2, p. 213-243, 2022. Available at: <https://www.publicacoesacademicas.uniceub.br/rdi/article/view/8400>. Access: 30 out. 2024.

²⁸ LOUREIRO, Claudia. Ecocídio perante o Estatuto de Roma. Revista de Direito Internacional, vol. 20, n. 2, p. 344-374, 2023. Available at: <https://www.publicacoes.uniceub.br/rdi/article/view/9184>. Access: 30 out. 2024.

²⁹ Decree 92.755/1986, available here: https://www.planalto.gov.br/ccivil_03/decreto/1980-1989/1985-1987/d92755.htm#:~:text=Declara%C3%A7%C3%A3o%20Ambiental,que%20lhe%20confere%20%20art.

Another example of marine protection is the prohibition of fishing for certain species, such as cetaceans, regulated by the International Convention for the Regulation of Whaling (1946) and monitored by the International Whaling Commission. In this sense, it is important to highlight the role of international courts in terms of protection, since in the case *Australia v. Japan*, the ICJ declared the Japanese JARPA II program to be unscientific, therefore prohibiting whale fishing in the region.

In Brazil, fishing for fish is prohibited during the *piracema* period (fishes' reproduction period), so that the country's environmental protection agencies (e.g. IBAMA and ICBio) can apply fines, seize the material, and even impose sentences of 1 to 3 years in prison.

The Marine Biodiversity Assessment, Monitoring and Conservation Action (REVIMAR) was created by the Navy Commander in 2005, and coordinated by the Ministry of the Environment (MMA), with the objective of assessing, monitoring and promoting the conservation of Brazilian marine biodiversity. It is another important example of an initiative to protect marine life, by establishing scientific bases and integrated actions capable of assisting marine conservation policies and actions, as well as strategies for the sustainable use of its living resources³⁰. Another example are the Marine Protected Areas (MPAs), monitored by the Marine Conservation Institute³¹, which catalogues marine protection areas around the world, from those in which no extraction or destruction activities are permitted, to those that provide incipient protection.

³⁰ Marinha. REVIMAR. Available at: <https://www.marinha.mil.br/secirm/pt-br/psrm/revimar#:~:text=A%20A%C3%A7%C3%A3o%20REVIMAR%20contribui%20para,da%20Biodiversidade%20e%20dos%20Recursos>. Accessed on: 23 Oct. 2024.

³¹ Marine Conservation Institute. MPA Guide - Marine Protection. Available at: <https://mpatlas.org/mpaguide/#0,0@1.76>. Accessed on: 23 Oct. 2024.