



#OceanAction 19759

A Voluntary Commitment to the UN Ocean Conference

The Rights of the Pacific Ocean as a Legal Entity
A science based feasibility study
by Institut de Recherche pour le Développement (IRD)

January 2021 Update

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Work in progress

Since the last update in early 2019, the Voluntary Commitment (VC) on the feasibility study has been carried out in two directions:

- is it possible to recognize legal rights to mega-ecosystems as the ocean? why? how?
- how can we build regional cooperation in the Pacific islands to recognize the ocean because of the kinship between the Ocean and the Pacific Islanders?

On the first direction I have been able to progressively work on the feasibility aspect and build legal arguments. Key findings are that nothing in the UNCLOS or in treaties on Regional Seas is an obstacle to recognize a sea as a legal entity. It is possible to confer legal personality to an element of Nature if bordering States decide to do so: a single State can do it in maritime waters under its jurisdiction or a better solution is that two or more States and decide together, through an agreement, to join their waters to restore, again in marine spaces they govern, the unity of the Ocean.

I have presented these results on many occasions in the scientific arena and quite recently at the *10th Pacific Islands Conference on Nature Conservation*. Other instances were the *One Ocean Symposium* in August 2019 in New York, a parallel event to the then ongoing BBNJ Treaty Negotiations and at the *Australian Earth Laws Alliance Online Conference* in October 2020. In June 2019, an international workshop on “*Biodiversity in Oceania*” was organised in Nouméa with participants from across the world with the support of IRD and the Secretariat of the Pacific Community (SPC). One of the key messages of the workshop explicitly mentioned the rights of

the Pacific Ocean. The Workshop's key messages were endorsed at the 29th SPREP meeting of Officials and Environment Ministers - High-Level Talanoa in Apia in September 2019.

A list of all oral presentation and written papers is provided below.

On the second direction: An analysis of the situation has made it clear that a solution covering the entirety of the Pacific Ocean including international waters is not feasible as it implies an international consensus which is way too far to be achieved; in particular in the light of ongoing difficult discussions on the BBNJ Treaty. It appears that a surface covered by water under sovereignty of Small Islands Developing States (SIDS) and Territories is a more reasonable target. The kinship with the Ocean that underlies Pacific islanders' culture in Melanesia, Polynesia and Micronesia encourages us to be optimistic on this approach.

However, it has been a bit more difficult to progress as it is necessary to have grassroots support in various Pacific SIDS to convince political leaders – former Cook Islands Prime Minister Henry Puna is already a fervent defender of Ocean Rights – to come to think of Ocean Rights as the much-needed solution to protect the Pacific Ocean. It has been difficult to find reliable relays in different Pacific SIDS willing to go out of the way to get the job done. Another reason is that in 2020 I professionally moved temporarily from the Pacific to The Caribbean which does not make it easy to dialogue with Pacific Islanders. However, the project has received support from colleagues in New Zealand (CI), New Caledonia, from Michelle Maloney, Convenor of the Australian Earth Laws Alliance and from IUCN (CEESP) colleagues in the Pacific with whom I continue to liaise.

The challenges I have had to face are:

- Lack of time and opportunities to mobilize experts in Law of the Sea *and* willing to work on Ocean Rights
- Lack of dedicated funding to the VC to hire interns and temporary post-docs
- Little legal input from Partners. The informal contact group that was put in place in Auckland in 2018 and met virtually on a few occasions online with participants for NZ and few other countries in the Pacific allowed for interesting insights was not able to deliver on *legal* matters.
- Political Environment
- Social/Cultural Environment
- Regulatory/Legal Environment
- Covid 19 pandemic.

The work I have done so far through this VC on the Pacific Ocean will hopefully be presented at the next IUCN World Congress in Marseilles in September 2021 and at a side event at the Ocean Conference in Lisbon (if they are maintained despite Covid19) in 2021.

My Research Institute (IRD) supports the project as I'm allowed to work on it as much as I want as long as my other professional commitments are met with.

To summarize the work that has been done so far I will quote here an extract from the conclusion of the paper to be published (in French) in April 2021 by the '*Observatoire International des Droits de la Nature* (observatoirenature.org).

“Is there any reason to recognize the Ocean as a subject of law? The "why" was the main question of this work. The answer was positive, and we gave many reasons. Ways were sketched out for the "how, with whom, what rights, what effectiveness...". Answers could be brought by all those who share this first analysis on first the interest of considering the Ocean in its unity and not as part of national territories and secondly the absence of major legal obstacles to an Ocean as a subject of law. Among the modalities for the implementation of the legal personality of the Ocean that remain to be imagined and co-constructed are, for example, the question of the irresponsibility of the Ocean for damages caused to humans and their belongings and the strengthening of penal sanctions for offences committed against non-human legal persons. The consequences on UNCLOS and on international fisheries law, the trust, a mechanism to be explored to manage the resources of the Ocean subject of law, as a tool for regional cooperation, are among the areas on which we invite the experts who are willing to contribute to do so. Different answers will be given in complementary ways, differentiated according to local contexts. If there are many fundamental rights of Nature that can apply as much to the Ocean as to rivers, forests, living species, there are in our opinion no "one size fits all" solutions for the implementation of the rights of the Ocean.”

The work that is being carried out has also helped to develop the concept of "Biodiversity without Borders" for Ocean biodiversity which I am currently trying to apply to Amazonia as well as to the Mediterranean Sea which face many similar challenges.

Next Steps

Recent presentations at regional online conferences have brought some attention to the project (for instance I have been contacted by Researchers from the UK and France who study Rights of Nature and I hope the trend will increase in the coming months with other presentations in September 2021 in Marseilles (IUCN Congress) and hopefully in 2022 in Lisbon (2nd UN Ocean Conference). I have been invited to present Ocean Rights at a session of the European Tribunal of Rights of Nature.

Our commitment is above all a science-based enterprise. Science needs time (and money). We intend to attract more legal and social sciences researchers and experts to collaborate in the work on Ocean Rights including on other sites such as the Caribbean Sea or the Mediterranean. A call for papers to be compiled in a book on #OceanAction 19759 is also on the agenda of the coming months. Funding for the book will be sought after with IRD and partners. Publication in the 2nd half of 2022. The call will also be published on the VC update page.

#OceanAction 19759 related work

Oral Presentations

2020

Victor DAVID. **Raising the Ocean's level. A plea for a holistic regional governance of a legal entity.** In Environmental governance in the Pacific: towards an informed and engaged citizenry, and rights for nature. 10th Pacific islands Conference for Nature Conservation and Protected Areas. Virtual Event 24-27 November. <https://www.pacificnatureconference.com/>

Victor DAVID. **From Living Ocean to Legal Personality. Recognizing the Pacific Ocean as a Legal Entity.** A Voluntary Commitment to the UN Ocean Conference #OceanAction19759. Earth Laws Asia Pacific. Earth, Sea, Fire, Spirit. 3 day Online International Conference. October 2020. <https://www.earthlaws.org.au/events/earth-sea-fire-spirit/>

Victor DAVID. **Océan sans Frontières. D'une "réalité holistique" à l'entité juridique".** Webinaire de l'Observatoire international des Droits de la Nature (OIDN). A Legal Personality and Rights for Rivers. Should we make the Saint Lawrence River a Legal Person? - Une personnalité juridique et des droits pour les fleuves. Devrait-on faire du Fleuve Saint-Laurent une entité juridique avec des droits ? June 22 2020. <https://www.observatoirenature.org/webinaire>

Victor DAVID. **Biodiversité Sans Frontières.** Réflexions autour de l'Océan Pacifique comme sujet de droit. Séminaire du Jeudi 23 janvier 2020 « Changements environnementaux et société » Equipe « Biodiversité, environnements, sociétés, territoires » du Laboratoire Caraïbéen de Sciences Sociales (LC2S). Université des Antilles, Martinique.

2019

Victor DAVID **Towards a Regional Convention on the Rights of the Pacific Ocean as a Legal Entity.** A Voluntary Commitment to the UN Ocean Conference. #OceanAction19759. In 'One Ocean' Symposium for United Nations Treaty Negotiations, 24 August 2019, New York, NY USA. https://www.griffith.edu.au/data/assets/pdf_file/0031/848722/Victor-David-Regional-Convention-on-Rights-of-the-Pacific-Ocean-as-a-legal-entity-24Aug19.pdf

Victor DAVID, Clark PETERU (coord.) & al. **Key message 9: Recognizing the Pacific Ocean as a legal entity would meet the requirements and efforts of Oceanians to protect their vital, nurturing, and spiritual element:** Implementing a new paradigm in Oceania: consider Man as part of Nature and reconcile them. In C. E. Payri et E. Vidal (Eds), 2019, Biodiversity, a pressing need for action in Oceania. Noumea 2019. Presses Universitaires de la Nouvelle-Calédonie (PUNC), Noumea, New Caledonia, 64 p. 2018

Victor DAVID. **The Rights of the Pacific Ocean as a Legal Entity** . A science based feasibility study. A Voluntary Commitment to the UN Ocean Conference. #OceanAction19759. University of Auckland NZ November 20, 2018

Book chapters

2021

Victor DAVID. **La reconnaissance de l'Océan Pacifique comme sujet de droit. Contribution pour une Biodiversité sans Frontières.** Publication de l'Observatoire International des Droits de la Nature. Montréal. A paraître le 22 Avril 2021.

2020

Victor DAVID. **L'Océan Pacifique, sujet de droit et souveraineté des Etats. Quelques réflexions.** In : C. DAVID (ed.). L'Océanie dans tous ses États. Editions RJPENC. Nouméa. Jan. 2020. <https://rjpec.nc/index.php/fr/telecharger?download=28:l-oceanie-dans-tous-ses-etats-hommage-a-guy-agniel>

Centre international de Droit Comparé de l'environnement (CIDCE), SPREP and Conservation International (Pacific) are IRD 's Partners in the Voluntary Commitment.

The next update on #OceanAction 19759 is due in January 2022.

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