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Alexi Nathan

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# THE LAW OF THE SEAS: A BARRIER TO IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOAL 14

Alexi Nathan

The inclusion of a stand-alone ocean goal in the United Nation's Sustainable Development Goals (SDGs) showcases the growing recognition of the importance of the sustainable use of our global oceans. Oceans cover nearly one-third of the Earth, affecting almost all aspects of life.<sup>1</sup> They are responsible for holding 97% of the planet's water and "they produce more than half of the oxygen in the atmosphere and absorb the most carbon from it."<sup>2</sup> In addition, "about half of the world's population lives within [a] coastal zone, and ocean based-business contribute[s] to more than \$500 billion to the world's economy."<sup>3</sup> Oceans have far-reaching effects on human well-being, as well as the environment and the economy. Sustainable use of oceans can contribute to reducing global warming, increasing global employment, and providing sustenance to over three billion people worldwide.<sup>4</sup> However, global oceans remain undervalued, mismanaged, and inadequately governed.<sup>5</sup>

Despite their recognizable importance, oceans were disappointingly ignored in the SDG's predecessor, the UN Millennium Development Goals.<sup>6</sup> However, in 2012, at the UN Conference for Sustainable Development, oceans gained prominence and visibility in the global sustainable development discussion.<sup>7</sup> The final declaration of the Conference, titled "The Future We Want" contained twenty paragraphs dedicated to the 'Ocean and Seas,' constituting the largest section in the declaration.<sup>8</sup> These paragraphs eventually contributed to the creation of SDG 14, to "Conserve and sustainably use the oceans, seas and marine resources for sustainable development."<sup>9</sup> The goal is designed to address a variety of issues including marine pollution, fisheries conservation, and ocean acidification.<sup>10</sup>

While the inclusion of a stand-alone ocean goal in the SDG's marks an important development in ocean advocacy, implementation of the goal will prove difficult. Implementation of SDG 14 will be governed by international law as reflected within the United Nations Convention on the Law of the Seas (UNCLOS).<sup>11</sup> UNCLOS provides the legal framework for the conservation and sustainable use of oceans and their resources.<sup>12</sup> UNCLOS, known as the Law of the Seas Treaty (LOST), was ratified and adopted by 167 parties in 1982.<sup>13</sup> The treaty requires parties to adopt regulations and laws to control pollution of the marine environment.<sup>14</sup> The treaty also establishes specific jurisdictional limits on the ocean area that countries may claim.<sup>15</sup>

Despite its global acceptance, UNCLOS has received continued criticism since its adoption. One of the major problems

with the Convention is the lack of legal rules regarding the high seas.<sup>16</sup> The "high seas" make up the sixty-four percent of the ocean that is beyond the jurisdiction of any State as defined by the Convention.<sup>17</sup> When UNCLOS was first negotiated, the high seas were largely ignored due to inaccessibility.<sup>18</sup> However, after almost forty years of technological innovation, there is virtually nowhere that industrial fishing vessels cannot reach, consequently opening the high seas to exploration and exploitation.<sup>19</sup> This has led to increased mismanagement, despite the fact that the high seas play a major role in the overall health of our global oceans.<sup>20</sup>

In many ways, the high seas act as the heart of the entire marine ecosystem and the health of the high seas, in large part, reflects the health of the global ocean as a whole.<sup>21</sup> However, the sheer size of the high seas makes them extremely difficult to monitor and control, leading to little protection for the most vulnerable portions of global oceans. This lack of governance has led to overfishing, resulting in the exploitation of over two thirds of the high seas fish stocks.<sup>22</sup> The United Nation's attempt at governance can be found in Article 87 of UNCLOS, which allows States the freedom to fish and conduct scientific research, while requiring the States to protect and conserve the high seas and the resources within.<sup>23</sup> However, these freedoms are often exploited by States with the money and ability to do so, leaving the poorer and under-developed States at a significant disadvantage.<sup>24</sup>

Further problems arise from the fact that UNCLOS only applies to States, leaving the activities of non-state actors wholly unregulated by international law.<sup>25</sup> This affords private actors, such as shipping companies, a large amount of flexibility in their operations. These companies are often motivated by the desire to reap never-ending profits, which leads to their general disregard for the health and maintenance of the high seas.<sup>26</sup> For example, in 1984 Japan licensed the Institute of Cetacean Research (ICR) to conduct research projects, which involved the killing of whales on the high seas.<sup>27</sup> The Sea Shepard Conservation Society (SSCS), an American NGO, initiated proceedings against ICR for the violation of environmental laws.<sup>28</sup> However, because both entities are considered private actors, they are not subject to the same legal obligations as States under Article 87 of UNCLOS.<sup>29</sup> Without the same legal implications as States,

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non-state actors, such as the ICR, will continue to be held unaccountable for their actions.

For the SDG 14 to be successful, the governing law—UNCLOS—must be reevaluated. Several of the SDG 14 targets will be difficult to achieve without increased focus on the health and security of the high seas. For example, SDG 14.4 establishes the SDG parties' agreement to "... end overfishing, illegal, unreported and unregulated fishing, and destructive fishing practices ..."<sup>30</sup> The majority of illegal overfishing occurs on the high seas,<sup>31</sup> and therefore, absent new UNCLOS provisions strengthening high seas protection, this target cannot be met. Further, SDG 14.7, the agreement to "increase the economic benefits to Small Island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism," is unlikely to be achieved without

improved regulations regarding the freedom of the high seas.<sup>32</sup> Without stronger enforcement, the wealthier, developed States and non-state actors will be allowed to continue to profit from the unsustainable use of the high seas at the expense of underdeveloped States.

Increased recognition of the importance of the oceans marks a noteworthy milestone for the sustainable development movement as a whole. However, progress cannot be made without a greater emphasis placed on the governance of the high seas in the UNCLOS. The inclusion of the stand-alone ocean goal in the SDG's has provided the international legal community with the opportunity and the pressure to address the problems regarding the high seas in UNCLOS. Addressing this absence is vital to the sustainable use of our oceans, which is in turn, vital to enabling, supporting and improving each and every life on Earth.



## ENDNOTES: THE LAW OF THE SEAS: A BARRIER TO IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOAL 14

<sup>1</sup> Oceans provide living resources, such as fish and other seafood, non-living resources, such as oil, gas and minerals, as well as renewable energy through tides and waves, trade and migration routes, in addition to tourism, leisure and recreation activities. See *From Decline to Discovery – A Rescue Package for the Global Ocean*, GLOBAL OCEAN COMM'N, 2014, [http://www.globaloceancommission.org/wp-content/uploads/GOC\\_Report\\_20\\_6.FINAL\\_spreads.pdf](http://www.globaloceancommission.org/wp-content/uploads/GOC_Report_20_6.FINAL_spreads.pdf) (last visited Mar. 24, 2016) [hereinafter *From Decline to Discovery*].

<sup>2</sup> *Why are oceans important?* PROTECT PLANET OCEAN, <http://www.protectplanetocean.org/collections/introduction/introbox/oceans/introduction-item.html> (last visited Mar. 24, 2016) (finding that the ocean's inability to absorb carbon leads to ocean acidification, which may have dramatic effects on ocean life).

<sup>3</sup> *Id.* (illustrating the importance of oceans on the global population and economy).

<sup>4</sup> See *Goal 14: Conserve and sustainably use the oceans, seas and marine resources*, UNITED NATIONS, <http://www.un.org/sustainabledevelopment/oceans/> (last visited Mar. 24, 2016) [hereinafter *Goal 14*].

<sup>5</sup> See Remi Parmentier, *SDG at Sea*, SUSTAINABLE DEV. POLICY AND PRACTICE (Sept. 17, 2017), <http://sd.iisd.org/guest-articles/sdg-at-sea/> [hereinafter *SDG at Sea*]; see also *Goal 14*, *supra* note 4 (explaining that pollution, fisheries depletion and coastal habitats loss occurs in approximately 40% of global oceans).

<sup>6</sup> See *SDG at sea*, *supra* note 5 (acknowledging that the presence of oceans in the Millennium Development Goals was limited to a minor reference to sustainable fishing and marine protected areas).

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> *Goal 14*, *supra* note 4; see also *Future We Want – Outcome document*, SUSTAINABLE DEV. KNOWLEDGE PLATFORM <https://sustainabledevelopment.un.org/futurewewant.html> (last visited Mar. 24, 2016) (Paragraphs 158 through 180 of the "Future We Want" address oceans and seas, and paragraph 158 explicitly contains the language of SDG 14, specifically "We stress the importance of the conservation and sustainable use of the oceans and seas and of their resources for sustainable development").

<sup>10</sup> See *id.*; see also *Ocean Acidification*, PAC. MARINE ENVTL. LAB. CARBON PROGRAM <http://www.pmel.noaa.gov/co2/story/Ocean+Acidification> (last visited Mar. 24, 2016) (defining ocean acidification as the ongoing decrease in pH levels in global oceans, caused by the increase of carbon dioxide in the atmosphere, contributing to global warming).

<sup>11</sup> See *Goal 14*, *supra* note 4.

<sup>12</sup> See *id.*

<sup>13</sup> See *Oceans & Law of the Sea*, UNITED NATIONS, [http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm) (last visited Mar. 24, 2016).

<sup>14</sup> See *The Law of the Seas Treaty (LOST) – Background*, THE UNITED NATIONS LAW OF THE SEA TREATY INFO. CTR, <http://www.unlawoftheseatreaty.org> (last visited Mar. 24, 2016).

<sup>15</sup> See *id.* (explaining that countries have territorial jurisdiction spanning up to twelve miles from the coastline out to sea, and exclusive economic jurisdiction up to 200 miles out to sea).

<sup>16</sup> See *From Decline to Discovery*, *supra* note 1.

<sup>17</sup> See *id.* (defining the high seas as the area beyond a State's exclusive economic jurisdiction).

<sup>18</sup> See *id.*

<sup>19</sup> See *id.* (The introduction of factory fishing vessels in the 1950's opened the high seas to increasing consumer demands for fish, oil minerals, and other natural resources).

<sup>20</sup> See *id.*

<sup>21</sup> See *id.* (noting the high seas are responsible for vital aspects of marine life, such as "air purification, waste treatment and lifecycle maintenance," among a long list of duties).

<sup>22</sup> See *The tragedy of the high seas*, THE ECONOMIST (Feb. 22, 2014), <http://www.economist.com/news/leaders/21596942-new-management-needed-planets-most-important-common-resource-tragedy-high> (noting that nearly ten million tons of fish are caught on the high seas annually).

<sup>23</sup> See *From Decline to Discovery*, *supra* note 1; *Preamble to the United Nations Convention on the Law of the Seas*, UNITED NATIONS, [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part7.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm) (last visited Mar. 24, 2016).

<sup>24</sup> See *From Decline to Discovery*, *supra* note 1 (describing how wealthier nations have targeted the waters of poorer coastal states and the high seas, leaving issues of food security in the poorer nations who do not have the wealth or technology to compete).

<sup>25</sup> See Tina Shaughnessy, *Flags of Inconvenience: Freedom and Insecurity on the High Seas*, [https://www.law.upenn.edu/journals/jil/articles/1-1\\_Shaughnessy\\_Tina.pdf](https://www.law.upenn.edu/journals/jil/articles/1-1_Shaughnessy_Tina.pdf) (last visited Mar. 24, 2016) (noting that shipping companies often have differing interests than the interests of coastal states) [hereinafter *Flags of Inconvenience*].

<sup>26</sup> See *id.*

<sup>27</sup> See Irini Papanicolopulu, *Law of the Sea Symposium: Whaling wars, non-state actors and the international responsibility*, OPINIO JURIS (May 27, 2013),

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- <sup>155</sup> Vincent, *supra* note 24, at 180 (quoting Timothy E. Deal, *WTO Rules and Procedures and Their Implications for the Kyoto Protocol* 8, U.S. COUNCIL FOR INT'L BUS. (2008), [http://www.uscib.org/docs/wto\\_and\\_kyoto\\_2008.pdf](http://www.uscib.org/docs/wto_and_kyoto_2008.pdf)).
- <sup>156</sup> See *id.* at 185 (citing GATT art. XX).
- <sup>157</sup> See generally Laura Yavitz, *The World Trade Organization Appellate Body Report, European Communities – Measuring Affecting Asbestos and Asbestos Containing Products*, Mar. 12, 2001 WT/DS135/AB/R, 11 MINN. J. GLOBAL TRADE 43, 66 (2002) (stating that “Article XX’s exceptions can be accepted if they can explain trade measures in terms of protecting people, animals, plants or exhaustible natural resources within their own jurisdictional limits and without requiring others to change any policies or production methods.”).
- <sup>158</sup> TRADE AND ENVIRONMENT AT THE WTO, WORLD TRADE ORG. 21, 52 (2004), [https://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_wto2004\\_e.pdf](https://www.wto.org/english/tratop_e/envir_e/envir_wto2004_e.pdf).
- <sup>159</sup> See Vincent, *supra* note 24, at 187.
- <sup>160</sup> See Patterson, *supra* note 139, at 127. See generally ALEXANDRE KISS & DINAH SHELTON, *INTERNATIONAL ENVTL. LAW* 215 (Transnational Publishers, Inc. 2d ed. 2007).
- <sup>161</sup> See Kate Gordon, *Why Renewable Energy Still Needs Subsidies*, WALL ST. J. (Sep. 14, 2015, 8:20 AM), <http://blogs.wsj.com/experts/2015/09/14/why-renewable-energy-still-needs-subsidies/>.
- <sup>162</sup> See UNEP, *supra* note 128.
- <sup>163</sup> See *New Research Analyzes Countries at Greatest Risk from Climate Change Impacts*, EARTH INST. AT COLUMBIA U. (March 29, 2007), <http://www.earth.columbia.edu/news/2007/story03-29-07.php>. See generally PERCENTAGE OF TOTAL POPULATION LIVING IN COASTAL AREAS, UNITED NATIONS, [http://www.un.org/esa/sustdev/natlinfo/indicators/methodology\\_sheets/oceans\\_seas\\_coasts/pop\\_coastal\\_areas.pdf](http://www.un.org/esa/sustdev/natlinfo/indicators/methodology_sheets/oceans_seas_coasts/pop_coastal_areas.pdf) (detailing the global population living in coastal areas) (last visited April 26, 2015).
- <sup>164</sup> See Jochen Hinkel et al., *Coastal Flood Damage and Adaptation Costs Under 21st Century Sea-Level Rise*, 111 PROCEEDINGS OF THE NATIONAL ACAD. OF SCI. OF THE U.S. 3292, 3293 (Jan. 31, 2013), [http://www.eenews.net/assets/2014/02/04/document\\_ew\\_01.pdf](http://www.eenews.net/assets/2014/02/04/document_ew_01.pdf) (“Without adaptation, 0.2–4.6% of global population is expected to be flooded annually in 2100 under 25–123 cm of global mean sea-level rise, with expected annual losses of 0.3–9.3% of global gross domestic product. Damages of this magnitude are very unlikely to be tolerated by society and adaptation will be widespread. The global costs of protecting the coast with dikes are significant with annual investment and maintenance costs of US \$12–71 billion in 2100, but much smaller than the global cost of avoided damages even without accounting for indirect costs of damage to regional production supply.”).
- <sup>165</sup> See Cooper, *supra* note 4, at 74.
- <sup>166</sup> See *2015 Ranking of the Global Top 10 Oil and Gas Companies Based on Net Income (in Billion U.S. Dollars)*, STATISTICS PORTAL (2015), <http://www.statista.com/statistics/272711/top-global-oil-and-gas-companies-based-on-net-income/> (indicating that it is unclear at the time of this writing precisely how to deal with subsidies of gas and oil companies by Western governments or how to properly levy a tax on the state-owned enterprise (SOEs) that exist in Russia and China); see also Daniel J. Weiss & Miranda Peterson, *With Only \$93 Billion in Profits, the Big Five Oil Companies Demand to Keep Tax Breaks*, CTR. FOR AM. PROGRESS (Feb. 10, 2014), <https://www.americanprogress.org/issues/green/news/2014/02/10/83879/with-only-93-billion-in-profits-the-big-five-oil-companies-demand-to-keep-tax-breaks/>.
- <sup>167</sup> See Eric Gargan, *Reflections on the Implementation of the Carbon Tax in Ireland*, ENERGY AND ENVTL. TAXATION, FISCAL POL’Y DIV. (May 16, 2012), [http://www.nesc.ie/assets/files/downloads/project\\_climate%20change/ucd\\_workshop/ericgargan.pdf](http://www.nesc.ie/assets/files/downloads/project_climate%20change/ucd_workshop/ericgargan.pdf).
- <sup>168</sup> See *Ireland GDP 1960-2016*, TRADING ECONOMICS, <http://www.tradingeconomics.com/ireland/gdp> (last visited Apr. 26, 2016).
- <sup>169</sup> See *Gross Domestic Products of Nations*, WORLD BANK, <http://databank.worldbank.org/data/download/GDP.pdf> (last visited Apr. 26, 2016).
- <sup>170</sup> See *Guyana*, CLIMATE HOT MAP, <http://www.climatehotmap.org/global-warming-locations/guyana.html> (providing Guyana as an example of a vulnerable nation) (last visited Apr. 26, 2016); *Guyana GDP 1960-2016*, TRADING ECON., <http://www.tradingeconomics.com/guyana/gdp> (highlighting a fund would help protect the economies of developing nations which in turn means increased purchasing power to participate in international markets. For example, 80 percent of the Guyanese population lives in a low-lying coastal region along with most of the national industry and agriculture. The cost of dealing with a predicted global sea level rise of two meters comes to a little more than \$1 billion which is far less than the economic damage caused by flooding or the long term cost of regional instability caused by a weakened Guyanese economy. However, the \$1 billion price tag is roughly 33 percent of Guyanese GDP as of 2014, an insurmountable cost for mere domestic measures) (last visited Apr. 26, 2016).
- <sup>171</sup> See Holzinger, *supra* note 50, at 186.
- <sup>172</sup> See JEAN-PHILIPPE BARDE, *ENVIRONMENTAL TAXATION: EXPERIENCE IN OECD COUNTRIES* 230 (1997).
- <sup>173</sup> See KISS & SHELTON, *supra* note 160, at 215.
- <sup>174</sup> See Holzinger, *supra* note 50, at 190.
- <sup>175</sup> Andrew C. Revkin, *A Closer Look at China’s ‘You First’ Stance in Climate Treaty Talks*, N.Y. TIMES (Nov. 22, 2013, 2:43 PM), [http://dotearth.blogs.nytimes.com/2013/11/22/a-closer-look-at-chinas-you-first-stance-in-climate-treaty-talks/?\\_r=0](http://dotearth.blogs.nytimes.com/2013/11/22/a-closer-look-at-chinas-you-first-stance-in-climate-treaty-talks/?_r=0).
- <sup>176</sup> See Vincent, *supra* note 24, at 165–66.
- <sup>177</sup> See *id.* at 175.
- <sup>178</sup> See *Member States, IGOs, and NGOs*, INT’L MAR. ORG., <http://www.imo.org/en/About/Membership/Pages/Default.aspx> (last visited Apr. 26, 2016).
- <sup>179</sup> See *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage*, INT’L MAR. ORG., <http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-%28FUND%29.aspx> (last visited Apr. 26, 2016) [hereinafter “FUND”].
- <sup>180</sup> See *Parties to the International Liability and Compensation Conventions*, INT’L OIL POLLUTION CLEANUP, <http://www.iopcfunds.org/about-us/membership/map/#> (explaining notable absences include the oil producing countries of the United States, Libya, and Iraq. As the fund is for those receiving oil rather than exporting it, this is reasonable.) (last visited Apr. 26, 2016).
- <sup>181</sup> See FUND, *supra* note 180.
- <sup>182</sup> See *SDR Valuation*, INT’L MONETARY FUND, [https://www.imf.org/external/np/fin/data/rms\\_sdrv.aspx](https://www.imf.org/external/np/fin/data/rms_sdrv.aspx) (last visited Apr. 26, 2016).
- <sup>183</sup> See FUND, *supra* note 180.
- <sup>184</sup> See *id.*; *Home*, INT’L OIL POLLUTION COMPENSATION FUND, <http://www.iopcfunds.org/> (last visited Apr. 26, 2016).
- <sup>185</sup> See *Erika*, INT’L OIL POLLUTION CLEANUP FUND, <http://www.iopcfunds.org/incidents/incident-map/#111-1999-235-December> (last visited Apr. 26, 2016).
- <sup>186</sup> See *id.*
- <sup>187</sup> See *id.*
- <sup>188</sup> Vincent, *supra* note 24, at 180, 184.

## ENDNOTES: THE LAW OF THE SEAS: A BARRIER TO IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOAL 14

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<http://opiniojuris.org/2013/05/27/law-of-the-sea-symposium-whaling-wars-non-state-actors-and-international-responsibility/>.

<sup>28</sup> See *Sea Shepherd Seeks Dutch Prosecution of Japanese Whalers*, ENV’T NEWS SERV. (Mar. 24, 2013) <http://ens-newswire.com/2013/03/21/sea-shepherd-seeks-dutch-prosecution-of-japanese-whalers/> (detailing SSCS’s claim that IRS’s “commercial whaling in the waters south of 60 degrees violated the Antarctic Treaty that prohibits commercial activity in the waters around the continent of Antarctica”).

<sup>29</sup> See *Flags of Inconvenience*, *supra* note 25 (explaining that cargo owners and shipping companies are excluded from the authority of UNCLOS).

<sup>30</sup> See *Goal 14*, *supra* note 4.

<sup>31</sup> See *In deep water*, THE ECONOMIST (Feb. 22, 2014), <http://www.economist.com/news/international/21596990-humans-are-damaging-high-seas-now-oceans-are-doing-harm-back-deep-water> (“Two-thirds of fish stocks on the high seas are over-exploited—twice as much as in parts of oceans under national jurisdiction”).

<sup>32</sup> See *Goal 14*, *supra* note 4.