



**Towards a Regional Convention
on the Rights of the Pacific Ocean as a Legal Entity**
A Voluntary Commitment to the
UN Ocean Conference
#OceanAction19759

Victor DAVID PhD
IRD / UMR GRED
Centre IRD de Nouméa
New Caledonia

CENTRE
INTERNATIONAL de
DROIT
COMPARÉ de l'
ENVIRONNEMENT

CONSERVATION
INTERNATIONAL 


SPREP
PROE

 Institut de Recherche
pour le Développement
FRANCE
French National Research Institute for Sustainable Development

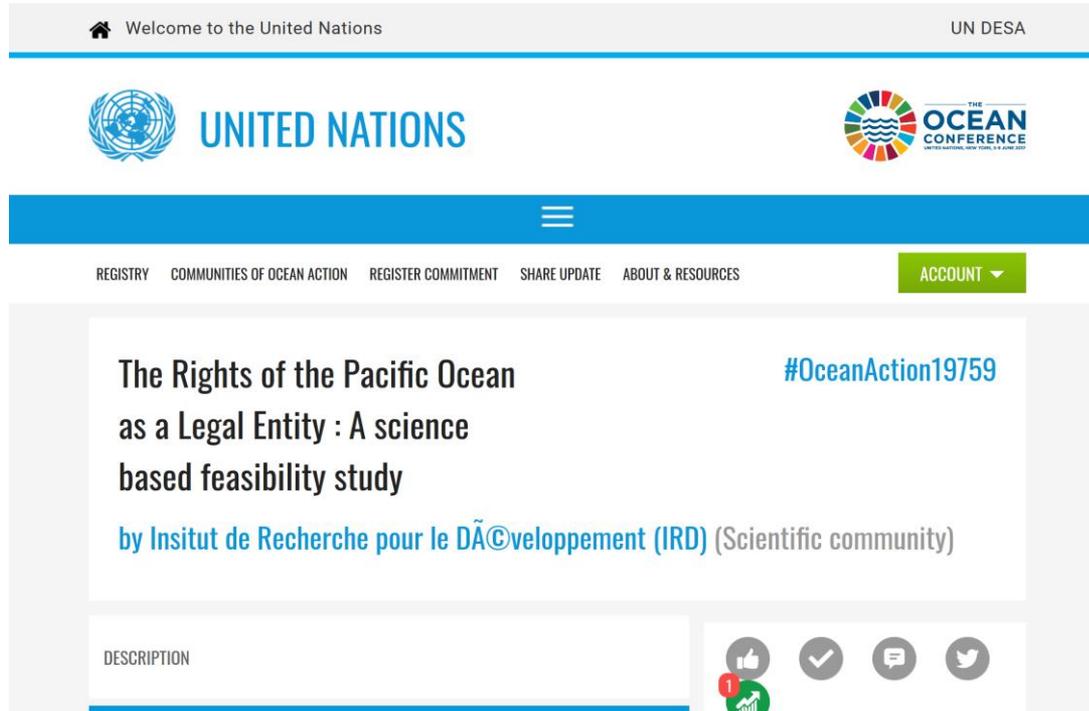
Towards a Regional Convention
on the Rights of the Pacific Ocean as a Legal Entity

Introduction

1/ The Pacific Ocean as a legal entity

2/ Towards A Regional Convention

Towards a Regional Convention on the Rights of the Pacific Ocean as a Legal Entity



The screenshot shows a web page from the United Nations. At the top, there is a navigation bar with "Welcome to the United Nations" on the left and "UN DESA" on the right. Below this is a blue header with the United Nations logo and the text "UNITED NATIONS" on the left, and the logo for "THE OCEAN CONFERENCE" on the right. A blue bar with a white hamburger menu icon is below the header. Underneath is a navigation menu with links: "REGISTRY", "COMMUNITIES OF OCEAN ACTION", "REGISTER COMMITMENT", "SHARE UPDATE", "ABOUT & RESOURCES", and a green "ACCOUNT" button with a dropdown arrow. The main content area features a post titled "The Rights of the Pacific Ocean as a Legal Entity : A science based feasibility study" by "Insitut de Recherche pour le DÃ©veloppement (IRD) (Scientific community)". The post includes the hashtag "#OceanAction19759". Below the title is a "DESCRIPTION" section. At the bottom of the post are social media icons for Facebook, a checkmark, a comment bubble, and a Twitter bird, along with a green icon of a person with a red notification bubble.

“At the beginning was the Ocean...”
The Pacific Ocean is more than water or food cellar for most Pacific Islanders. It is part of their lives, of their family, of their blood. Land, Sea and Men are a whole. The Ocean has its *mana* (spiritual authority) and *mauri* (life force).

Towards a Regional Convention
on the Rights of the Pacific Ocean as a Legal Entity

Methodology

- Desktop legal research
- Pacific leaders' discourse analysis
- Pacific Peoples' representations analysis
- Collective thinking with Pacific Scholars, Experts and NGO members

Theoretical concepts

- RoN, Commons, Sovereignty, collective action in international relations
- Ongoing...

International Legal Context

- UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS - 1982)
 - The result of long negotiations and compromises
- SUSTAINABLE DEVELOPMENT GOALS (SDG - 2015)
- CONVENTIONS ON REGIONAL SEAS

International Legal Context

SUSTAINABLE DEVELOPMENT GOAL 14

Conserve and sustainably use the oceans, seas and marine resources for sustainable development



The high-level United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development



THE
OCEAN
CONFERENCE
UNITED NATIONS, NEW YORK, 5-9 JUNE 2017

SDG 14



- **The SDG targets**
- **14.1 By 2025, prevent and significantly reduce marine pollution of all kinds,** particularly from land-based activities, including marine debris and nutrient pollution
- **14.2 By 2020, sustainably manage and protect marine and coastal ecosystems** to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration, to achieve healthy and productive oceans
- **14.3 Minimize and address the impacts of ocean acidification,** including through enhanced scientific cooperation at all levels
- **14.4 By 2020, effectively regulate harvesting, and end overfishing, illegal, unreported and unregulated (IUU) fishing and destructive fishing practices** and implement science-based management plans, **to restore fish stocks in the shortest time feasible at least to levels that can produce maximum sustainable yield as determined by their biological characteristics**
- **14.5 By 2020, conserve at least 10 per cent of coastal and marine areas,** consistent with national and international law and based on best available scientific information



The Pacific Ocean Today

- Threatened by
 - Pollutions of all kinds
 - Acidification
 - Over/Illegal fishing
 - Unregulated Deep-Sea Mining
 - Zoning (Marine Spatial Planning/Large scale MPAs)

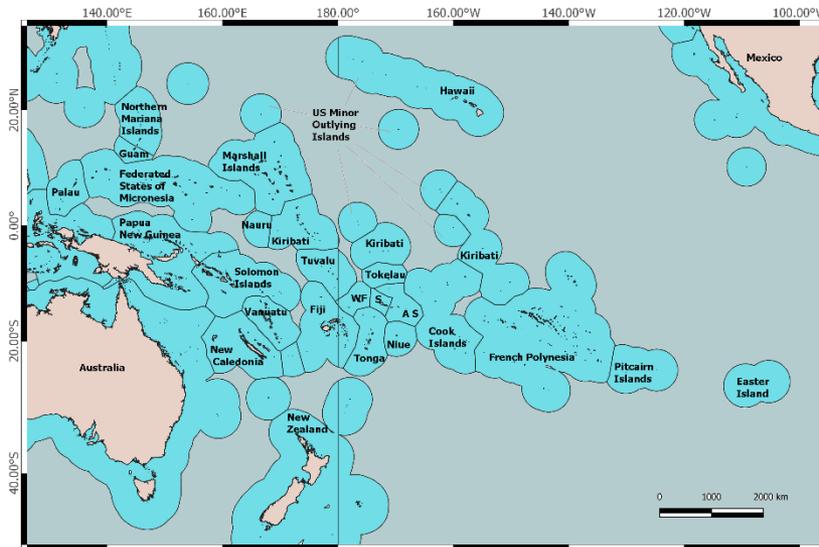
The Pacific Ocean Today

→ Current legal framework

- does not consider the Ocean as One but divides it in zones and layers of varying degree of protection
- does not consider Pacific Islanders' vision
- relies too much on/ is limited by States' sovereignty

➔ The necessity of a “Whole of Ocean” approach

- BBNJ and RoN nexus:
 - ABNJ and Areas under sovereignty : Does it make it any sense for biodiversity ?
 - “2. The Parties shall use their best endeavours to ensure that the implementation of this Convention shall not result in an increase in pollution in the marine environment outside the Convention Area.”
Nouméa Convention 1986



©Laure André/IRD

The Rights of Nature solution ?

→ UN : Harmony with Nature

→ RoN are no more “unthinkable”

→ Pacha Mama, Whanganui, Ganges, Himalayan
Glaciers, Río Atrato, Chucho Bear...

→ Why not the Pacific Ocean ?

The Pacific Ocean as a Legal Entity

- Legal person in Common Law
- « *A person, then, may be defined, for the purposes of the law, as any being to whom the law attributes a capability of interests and therefore of rights, of acts and therefore of duties. (...)*
A legal person is any subject-matter to which the law attributes a merely legal or fictitious personality. This extension, for good and sufficient reasons, of the conception of personality beyond the limits of fact this recognition of persons who are not men is one of the most noteworthy feats of the legal imagination. (...)
Legal persons, being the arbitrary creations of the law, may be of as many Kinds as the law pleases. »
 - John W. Salmond, *Jurisprudence or the Theory of the Law*, Stevens and Haines, London. 1902 : Chapitre XV. Persons, § 109 et s., p. 334 & s. online edition

The Pacific Ocean as a Legal Entity

- **« *The ocean is our provider, our sustainer, our life force. She provides for us and nourishes us. Yet we mistreat our ocean with pollution, overfishing and the impacts of climate change such as ocean acidification, coral bleaching and more severe and frequent cyclones. (...) And so, we must consider 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. And so now we find it necessary to fight for the rights of the ocean* ».**
 - HE Henry PUNA (Prime Minister Cook Islands UN Ocean Conference)
- “The Ocean is not property or a resource, nor solely here for human benefit. We do not own the Ocean. She is an entity, with rights including but not limited to: the right to exist, thrive and evolve, the right to integral health, the right to be free of pollution and a healthy, functioning climate system, the right to restoration and regeneration, and to continue her vital functions and cycles. (...)”
- **We acknowledge our KINSHIP with the Ocean. ”**
 - Statement from the Collective Thinking on the Rights of the Pacific Ocean at a gathering in Auckland, New Zealand on 19 and 20 November 2018
 - To recognize the Pacific Ocean as a legal person is in keeping with Pacific Islands cultures.

A regional Convention on the Rights of the Ocean

- **« *The ocean is our provider, our sustainer, our life force. She provides for us and nourishes us. Yet we mistreat our ocean with pollution, overfishing and the impacts of climate change such as ocean acidification, coral bleaching and more severe and frequent cyclones. (...) And so, we must consider 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. And so now we find it necessary to fight for the rights of the ocean* ».**
 - HE Henry PUNA (UN Ocean Conference)
- “The Ocean is not property or a resource, nor solely here for human benefit. We do not own the Ocean. She is an entity, with rights including but not limited to: the right to exist, thrive and evolve, the right to integral health, the right to be free of pollution and a healthy, functioning climate system, the right to restoration and regeneration, and to continue her vital functions and cycles. (...)”
- We acknowledge our KINSHIP with the Ocean. ”
 - **Statement from the Collective Thinking on the Rights of the Pacific Ocean at a gathering in Auckland, New Zealand on 19 and 20 November 2018**
 - **To recognize the Pacific Ocean as a legal person is in keeping with Pacific Islands cultures.**

- **Our proposal : a Regional Convention on the Rights of the Pacific Ocean**

– Is it possible ? Yes :

REGIONAL CONVENTIONS

- **CONVENTION FOR THE PROTECTION OF THE NATURAL RESOURCES AND ENVIRONMENT OF THE SOUTH PACIFIC REGION AND RELATED PROTOCOLS**

- Adopted at Noumea on 24 November 1986
- Entered into force 22 August 1990

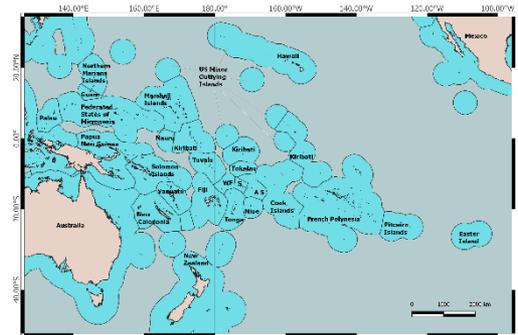
- (...) *Recognizing* the desirability for the wider acceptance and national implementation of international agreements already in existence concerning the marine and coastal environment;
- *Noting*, however, **that existing international agreements concerning the marine and coastal environment do not cover**, in spite of the progress achieved, **all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the South Pacific Region;** (...)"
- "Article 4 GENERAL PROVISIONS
- **1. The Parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development and management of the marine and coastal environment of the Convention Area.** Such agreements shall be consistent with this Convention and in accordance with international law."

- **Our proposal : a Regional Convention on the Rights of the Pacific Ocean**
 - Is it possible ? Yes :
 - Pacific Leaders regularly call for a regional approach on Pacific Ocean related affairs and refer to the « Blue Pacific »... in line with our whole of/One Ocean approach
 - Existing background : Pacific Oceanscape and Office of the Pacific Ocean Commissioner (PIF), regional organisations (SPC and SPREP)

A regional Convention on the Rights of the Ocean

Our proposal : a Regional Convention on the Rights of the Pacific Ocean

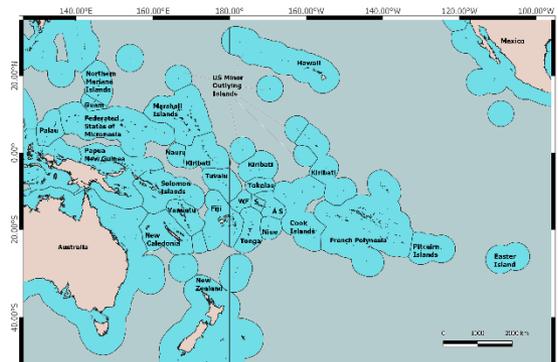
- The scope of the Convention :
 - In waters under jurisdiction of the Parties to the Nouméa Convention representing 24% of the Pacific Ocean
 - Can be left open for signature for all countries.
 - Will enter into force when ratified by 5 States and Territories representing 10% of the Ocean
 - the COP or the Secretariat of this Convention would be the *parens patriae* for the Pacific Ocean, its guardian and its voice in the legal and political arena.



A regional Convention on the Rights of the Ocean

Our proposal : a Regional Convention on the Rights of the Pacific Ocean

- The content of the Convention :
 - The recognition of the Pacific Ocean as a legal entity within in its Parties maritime boundaries
 - Ocean Rights :
 - to exist, maintain its vital cycles...
 - Not to be contaminated by human activities
 - To harmonized rules between Parties for the protection and management of resources
 - to a 10 year (renewable) moratorium on deep sea mining
 - Not responsible for natural disasters
 - etc... !



One Scenario among others

“We, Parties to the Wanganui Framework Convention on the Rights of the Pacific Ocean,

Acknowledging that for ages Pacific Islanders have considered the Ocean as a person, a God, a mother, in accordance with their beliefs, values, cultures,

(...)

Article 1

Agree that to protect and preserve its integrity, within our respective national jurisdictions, the Pacific Ocean will be considered as a legal person with rights of its own.

(...)

The Conference of the Parties to this Convention will be the human face of the Pacific Ocean.”

Conclusive remarks

- The recognition of the Pacific Ocean as a legal entity is feasible
- A regional convention in Oceania is possible
- There is a growing call for a « One Ocean » approach
- Sovereignty as responsibility (to protect) to counter « maritime chauvinism » by States and Territories
- Let's go over barriers and invent a concept similar to that of the « most favored nation » in the protection and management of Nature.

Merci !

Thanks for your kind attention

Victor DAVID

For IRD and its partners in the Voluntary
Commitment #OceanAction 19759

CENTRE
INTERNATIONAL de
DROIT
COMPARÉ de l'
ENVIRONNEMENT

CONSERVATION
INTERNATIONAL



IRD Institut de Recherche
pour le Développement
FRANCE
French National Research Institute for Sustainable Development