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Global responsibility for marine biodiversity: going beyond national jurisdiction

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Abstract

International law does not fully explain the global community, which has valid interests apart from sovereign nations. Many different things come to mind when one thinks of this global community: a collection of independent states, a universal idea of humanity, an international organization, or even a non-governmental group charged with on behalf of Earth or its inhabitants. While realists in international relations may find these ideas more fantastical the farther they stray from traditional state sovereignty, the fact that individuals, communities, and corporations all have a say in treaty-making, international litigation, and other areas of international law shows that it is not always a "States only" affair. A sense of interests, rights, and responsibilities is given to the international community. State or non-state entities representing the international community are required to carry out the rights and responsibilities of the international community. This article takes a step away from theoretical speculation and towards practical scenario analysis by looking at the potential roles the international community's avatar may play in a treaty regime to preserve and responsibly use marine biological diversity in BBNJ. According to the underlying assumption, all worldwide community members, or erga omnes, shall be held responsible for BBNJ's actions. They will not focus on just one country or two sides and will not be bilateral.

Keywords: Marine Biodiversity, Law of the sea, Common heritage, High Seas, biodiversity beyond national jurisdiction

Introduction

The concept of a "global community" with interests that may be legally recognized and distinguished from those of sovereign states remains a mystery to international law (Domingo, 2011). Some people picture this global community as the union of independent nations; others see it as a more general idea of all people or an even more nebulous "humanity" (which would likely include future generations); yet others see it as an international organization or non-governmental group charged with speaking for all people; and yet others still see it as representing Earth rather than just its human inhabitants (Pain, Pepper, 2021). The general public holds the view that nations have common interests, rights, and duties as a global community. Rather than focusing on individual responsibilities, specific issues necessitate concerted effort from a transnational (humanity) and trans-temporal (present and future generations) global society. A collective actor or agent, whether a state or non-state entity, is necessary for the international community to exercise its rights and fulfill its obligations (we'll call them an "avatar").

A new ocean treaty emphasizes the importance of collaborative action to protect the interests of the global community (Daran et al., et al., 2023). To facilitate the involvement of nations that are not party to the United Nations Convention on the Law of the Sea (UNCLOS), the Convention was crafted to serve as a legally enforceable tool for the preservation and responsible utilization of marine biodiversity in BNNJ (Ardito et al., 2023). Take note that the only place UNCLOS brings up the 'international community' is in Article 59, which states that when states have limited jurisdictional and access rights in the exclusive economic zone (EEZ), disputes over rights or jurisdiction in the EEZ should consider the significance of the interests involved for both the states involved and the international community at large. Notably, the "*International Tribunal for the Law of the Sea (ITLOS)"* and the *"International Seabed Authority (ISA)"* are the only permanent entities recognized by UNCLOS as providing avenues for collective action to resolve transboundary issues. Both lack the power or responsibility to gather States Parties to work on transboundary policies affecting biodiversity and other challenges for future generations. By identifying the potential international parties with duties under the BBNJ agreement, we can go beyond theoretical conjecture and into analysis grounded on the linguistic proposals by States and non-state players.

The BBNJ agreement is suitable for examining accountability to the global community. Under BBNJ responsibilities, states are not obligated to each other in a bilateral sense; instead, they must

collaborate, and these commitments do not limit themselves to narrow national interests (Payne, 2022). The agreement's goals and objectives necessitate acknowledging that BBNJ's responsibilities extend to the global community. The marine areas beyond national jurisdiction (ABNJ) are the jurisdictional scope of the BBNJ accord. The ocean commons will be preserved and used sustainably as a result. During agreement negotiations, there were divergences of opinion regarding the balanced management of high seas resources for the long-term welfare of ecosystems and human beings, as opposed to the traditional principle of unrestricted access to such resources. The United Nations Convention on the Law of the Sea designates non-navigable seabeds as the "common heritage of humanity" and institutes an administrative framework to distribute mining profits. By beginning these negotiations, the states have pledged to find a solution to the problem of how to preserve this freely available resource.

A common concern of humans is another way of describing biodiversity, which calls on the world to care. To solve global problems, the international community must work together, according to the principle of mutual concern. If "the very structure of the international legal order is found to be wanting and consequently alternatives, however inchoate, must be considered," as Duncan French put it, "the very structure of the international legal order is lacking." Thus, the notion of common concern is necessary (French, 2016). It justifies legal action by referencing a consensus that States share a joint responsibility to act globally. When asked about alternatives to global government, he cites treaty groups like COPs and their work as institutions (Hannum, et al., 2023). Interestingly, states will follow their calculations regardless of how much weight formal legal obligations and regulations have over logical, consensual, and necessary standards. As a philosophy to promote collaboration, common concern may be more convincing than as a regulatory norm limiting activity. The International Court of Justice (ICJ) has explained what is at risk for treaty parties not personally hurt, allowing them to sue before the court using the related notion of common interest (Llamzon, 2007).

Human rights, peace and security, and sustainable development are just a few areas of international law that have used the idea. Because of this variety of applications, the attractive but malleable concept of shared interest has little clout. It was long believed and mistakenly that independent states could adequately represent the interests of humankind in international law. It is observed that states do not fulfill their responsibility as reliable protectors of the environment when they are granted unrestricted access, when their interests are not directly impacted, or when influential

constituents benefit (Flower, 2015). Even with principles as universally recognized as the duty to avoid injury that crosses international borders, states often behave independently, refusing to invest resources or political capital into complying or forcing compliance with treaty commitments and customary international law. As an illustration of how states have worked in their national interest during the BBNJ negotiations, some have opposed the inclusion of fisheries management in the agreement to safeguard a local fishing industry. In contrast, others have vigorously supported the negotiation process.

However, states have also taken selfless actions, such as implementing stringent regulations for environmental impact assessments. When all members of a group of school administrators are dependent on one another and may be tempted to take advantage of the situation, how can they best arrange themselves so that everyone benefits? Elinor Ostrom stated the challenge of using this language broadly (Ostrom, 1990). Collective action may stabilize commons management without external influences, as Ostrom's enduring legacy recognized. However, thus far, successful "commoning" and participatory governance have mostly occurred on a communal or local level. By "fair access, equitably shared benefit, responsibility for preserving the resource for future generations and democratic, participatory and transparent decision-making," Klaus Bosselmann means what Commoning aspires to achieve (Payne, 2022). The wording of the BBNJ agreement reflects these ideas, though to different degrees.

As a result of "their relative freedom to champion certain developments, which States may lack the freedom to do," as well as the information and viewpoint they provide, non-state entities (i.e., groups representing different interests and bodies of knowledge) are increasingly seen as significant players in international governance (Kirk, 2016), section 2 provides a historical context for the study by outlining the organizations, procedures, and treaty duties surrounding the Marine Biodiversity Treaty talks. The second part of my paper is Section 3, where I suggest several ways the world community could be involved with the accord. Section 4 delves into the evolution of the "international community," which I will touch on briefly in my third point (Barirani, 2022). In Section 5, the study will analyze the pros and cons of using state and non-state entities to represent global interests in the BBNJ agreement. Ultimately, marine biodiversity outside of national jurisdiction stands to gain from a more rapid transition in the treaty provisions toward opening international law to more actors who can effectively represent the world community (Section 6). The setting of a negotiation can serve as a breeding ground for both new ideas and long-standing

customs. That being said, I shall address both the "lex lata" (the current law) and the "lex ferenda" (the ideal law) in my discourse.

Material and methods

The rationale behind a globally enforceable agreement

The ocean supports a wide variety of species and vital Earth systems which make up more than 70% of the planet's surface and are thought to support 95% of the biosphere (El-Regal, M, & Satheesh, 2023). Additionally, two-thirds of the world's oceans are located in regions that are outside of national borders. It is a continuous body of water that slopes to shallower areas close to the continents, featuring intricate gorges, abysses, and plains. The air above, the twilight zone of the water column, and the subseafloor sediments are all connected vertically to the open ocean. The stone is made up of creatures that inhabit areas where air and water meet. Twenty rivers transport fisheries (salmon and eels) and fisheries (beaches) to the high seas. Oceans are home to many species, including great white sharks, Pacific Bluefin tuna, leatherback turtles, and innumerable birds that either spend most of their lives at sea or migrate across them. Some aquatic organisms have been estimated to live hundreds of years, whereas blue whales have a life expectancy of up to 90 (Pershing et al., et al., 2010). Many deep-sea species grow slowly and have long lives. These characteristics are linked to deep time. It is in everyone's best interest to preserve ocean biodiversity and use it sustainably, which calls for collaboration amongst ocean users.

The Second Global Ocean Assessment found that fishing is devastatingly affecting marine ecosystems. In unexplored habitats, seabed mining may start in 2023. Human activities directly and indirectly affect water, leading to higher temperatures, acidity, and deoxygenation. The occurrence of El Niño and La Niña changes in biomass levels and an increase in the frequency of maritime heat waves. There will be changes in species composition, extinctions of slow-growing species, reduced biomass of marine animal communities and fishing potential, different types of pollution, and the possible collapse of aquatic ecosystems (even before they are recognized) as a result of these activities (Muruganandam et al., 2023).

In contrast to the evidence surrounding climate change, this science is both highly contentious and disputed. However, the general public and even most policymakers must be more familiar with it. Some industries are safeguarded by treaties that control activities to prevent, lessen, or repair environmental harm in regions outside their control. At the same time, some species are protected in regions where protection is not yet complete (Eid et al., 2022). After a "long and winding road"

of meetings in the Ad Hoc Working Group, the Preparatory Committee, and the Intergovernmental Conference, states and civil society agreed on a new treaty. The alarming decline in ocean health, the exponential rise in human activities on the high seas, and the resulting governance gaps are the primary motivating factors behind this action (Borja et al., 2022). The United Nations General Assembly recognized that it was

> *"[c]onscious that the problems of ocean space are closely interrelated and need to be considered as a whole through an integrated, interdisciplinary, and intersectoral approach, reaffirming the need to improve cooperation and coordination at the national, regional, and global levels by the Convention, to support and supplement the efforts of each State in promoting the implementation and observance of the Convention, and the integrated management and sustainable development of the oceans and seas … ." (*UNGA, 2019).

A "comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction" was the General Assembly's aim regarding the BBNJ agreement (UNGA, 2019). They desired to fulfill the role of stewards of the ocean in regions outside the nation's authority, on behalf of both the current generation and the generations to come. Rare natural resources, like the genetic code of the ocean, require careful management to ensure equitable access and use. This requirement was acknowledged in the resolution that authorized discussions. The new agreement must cover cost and benefit sharing, activity coordination, and regulation.

The extent of the BBNJ Agreement

The maritime regions covered by the pact do not fall under any one country's authority; UNCLOS defines the areas that fall under national jurisdiction (Druel, Gjerde, 2014). The vertical component comprises the ocean bottom, the water column, and the airspace above, encompassing approximately 64% of the ocean's surface. Based on the ongoing discussions, there is a consensus that the treaty should encompass areas outside the exclusive economic zone, which is 200 nautical miles from the baseline of any coastal state, including the bottom of the same sea. The scope of the Treaty includes areas outside the extended continental shelf of a State and the airspace

necessary for the Treaty to become effective. This includes situations when migrating birds fly over the ocean (Zia-ud-Din et al., 2023)—assuming that humans will be intimately associated with a vessel. In contrast, at sea, the flag states the state that the vessel is registered with and often exercises state jurisdiction in these zones. The 'high seas biodiversity pact' is another informal (sometimes misleading) name for the BBNJ accord.

UNGA's stance on sustainable development and environmental protection

With so many threats to the world's most extensive and least-studied open-access commons, the four solutions proposed in the negotiating mandate to safeguard marine biodiversity and accomplish conservation and sustainable use goals seem small. Ocean life is in grave danger from human activities like fishing and climate change, which two BBNJ components will work to alleviate. The BBNJ agreement aims to mitigate these negative impacts by enhancing ocean health and bolstering biological resilience by establishing marine protected areas and other area-based management mechanisms (Laffoley et al., 2019). Environmental impact assessments (EIAs) are a requirement of the BBNJ agreement. These studies will determine if projects have the potential to do significant harm to the environment, such as accelerating global warming. Whether the COP should be able to veto actions determined to have a substantial negative impact is contentious among state negotiators. In contrast, national legislation or international agreements like the UNFCCC, MARS, CITES, or CBD could be invoked to address regulatory measures, and the EIA process could be confined to information production only (Mayer, 2019). The third aspect of BBNJ's 'Package Agreement' involves utilizing and distributing the advantages derived from the vast genetic variety in marine environments, showcasing a commitment to leveraging marine biodiversity (Banshchikova, 2021).

The primary emphasis of BBNJ Ecology has focused on the economic significance of marine genetic resources (MGR). However, researchers are equally intrigued by the intellectual worth of marine ecosystems (Collins, 2020). To survive in harsh environments with little sunlight and high pressure, marine organisms have developed specialized chemicals and structures that allow them to absorb heavy metals from thermal vents in the dark zone, keep them from becoming frozen to death in the Antarctic, and adapt to a wide range of other challenges. Once their genetic code is understood, these adaptations may be utilized to synthesize medications and other things humans can benefit from. One research indicated that 12,998 genetic sequences had been copyrighted by

2017, representing 862 marine species. A single German business had registered over half of these patents (Blasiak, et al., 2018). This suggests that transnational biotechnology corporations have already started collecting, analyzing, and patenting MGR. Since they were not acknowledged as vital resources during the negotiations, UNCLOS does not include MGR. Currently, MGRs are seen by industry as governed by the law of capture. This means that when MGRs are removed from the wild, they can be appropriated as private property through intellectual property rights; according to UNCLOS, they are governed by the 'freedom of the seas.' A shift in emphasis from viewing MGR as an element of humanity's shared history to a concentration on benefit sharing occurred during the 'package deal' discussion. Some states backed an open-access concept during treaty negotiations; others saw marine genetic resources and biodiversity as a common heritage; and still, others surrounded the problem of the freedom to undertake maritime scientific research guaranteed by UNCLOS (Thambisetty, 2023).

The global community's overarching objective in MGR appears to be maximizing knowledge while protecting collecting sites and guaranteeing fairness. Disputes over national interests, the role of privatization in fostering innovation and the distribution of financial gains, and the nature of knowledge production have contributed to the wide opinion gap that has slowed the negotiation process. Based on her research into the BBNJ negotiation, Alice Vadrot characterizes the situation as a clash between Northern and Southern powers, emphasizing the common heritage of humanity premise (Payne, 2022). The seabed and the ocean floor are a common heritage of mankind and should be used and exploited for peaceful purposes and the exclusive benefit of mankind as a whole, Maltese Ambassador Arvid Pardo said in a 1967 address to the United Nations General Assembly, introducing the concept of common heritage (Noyes, 2011). According to Borgese, common heritage has three features: the ability to use but not own, the control of all uses, and distribution advantages (Pardo, 1975). Upon its conclusion in 1982, the Third Conference on the Law of the Sea had transformed into a narrower tool aimed at promoting economic equality between developed and developing nations regarding the shared natural resources of the ocean.

According to Dire Tladi, we must maintain sight of the shared heritage concept's more significant connotations, such as a robust notion of intergenerational equality that mandates preservation and sustainable development (Olson, 2013). For some developing states, the common heritage principle served as a "tool and negotiation technique to challenge deeply rooted inequality in the current world order." As Vadrot elucidated, the paradigm shift towards seeing common heritage

as a concept that involves both the equitable sharing of benefits and the preservation of those advantages for future generations was once again exemplified during the BBNJ meeting. The fourth element of the BBNJ package focuses on capacity-building and marine technology transfer (CB/TT) to aid poor nations in implementing the BBNJ Agreement and facilitating their involvement in marine scientific and technology endeavors.

Representative duty to the international community and duty to the BBNJ agreement: what they owe each other

As of the writing of this article, negotiations on the BBNJ draft were ongoing. The Preparatory Committee (2016-2017) and the Intergovernmental Committee (2018-2019, which was halted from March 2020 to March 2022 owing to the worldwide COVID-19 epidemic) engaged in formal deliberations that led to the creation of draft and amended texts that accurately represent significant areas of agreement. The book raises various important matters that require additional examination and has brackets around much of the content, indicating differing perspectives or restricted discourse. State representatives and non-state observers can engage in informal discussions on specific matters while adhering to the Chatham House principles. These rules let participants utilize the information they receive, but they must not disclose the name or affiliation of the speaker or any other participant. The Track 1.5 negotiations persisted in a virtual format from 2020 to 2021, facilitated by the High Seas Dialogue and sessions organized by the Chairman of the Intergovernmental Committee and the United Nations Division for Ocean Affairs and the Law of the Sea. The Fourth Intergovernmental Conference (IGC4) was held from March 7–18, 2022; the subsequent session, which is expected to be the final one, is slated to take place in August of the same year (Mendenhall et al., 2022). The following comments are derived from the President's 2019 updated draft language, with assessments of the level of agreement based on the author's involvement in the Track 1.5 discussion and IGC4, as well as the President's synopsis of the talks that took place during the sessions.

Thriving marine ecosystems sustain a wide range of resilient biological populations, enhance knowledge of marine biodiversity and larger marine genetic resources, and offer access to additional resources and advantages without jeopardizing their integrity. The international community can effectively assert its wide-ranging interests in the BBNJ. Facilitating fair and inclusive availability and distribution of MGR benefits the whole global society. This is especially

important when a discovery has significance in global medical treatment. The countries drafting the treaty considered themselves caretakers and recognized the beneficiaries as current and future generations, which is highly significant. The BBNJ Convention has legal responsibilities that are directly enforceable on States Parties and indirect requirements that require them to implement measures in their domestic legal systems. Additionally, States Parties have obligations through the Conference of the Parties, as outlined in the amended draft language. We will investigate the treaty bodies' accessibility and transparency, as well as their decision-making and policy-shaping authority distribution if we have doubts that States will frequently put the international community's existential, long-term interests ahead of their own short-term or national interests. First, we need to determine whose international duties under the BBNJ agreement could lead to claims of global responsibility by states so that we can better understand who can assert these claims on our behalf. If states have complete control over information access, policy-setting, and decision-making, then other international representatives can be removed from direct involvement whenever the states want.

Decisions, policies, and information about treaty bodies

The draft language of the BBNJ agreement is structured similarly to other global environmental accords. One can become a party as a state or an international organization "constituted by States," like the EU (Yamali, 2009). The Secretariat supports States Parties in their capacity as decision-makers and policymakers for the BBNJ Convention. In contrast, the data in the Clearing-House system is created and managed by the States Parties themselves. Private individuals and institutions not controlled by the government are restricted in offering specialized knowledge, information, or chances to transfer technology. The phrase "observer" is missing from the draft language, meaning it does not allow observer participation in BBNJ treaty bodies. The treaty body's involvement with international organizations is limited to the still-uncertain prospect of "consultant/or coordinating with relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment," as the phrase is used (Leary, 2019). Four treaty bodies are named in the draft, and more committees might be added later. A Conference of the Parties (COP) is the decision-making and policy-setting body tasked with carrying out the agreement's provisions, encouraging collaboration and coordination with other applicable legal instruments and entities (Payne, 2022). The European Union (as the

negotiating body for its Member States) and other international organizations are welcome to become parties. In addition to handling administrative duties, the COP's secretariat may "facilitate coordination with the secretariats of other relevant international bodies" (UNGA, 2019). There is no established process for selecting STB members, and opinions vary regarding whether they should be independent specialists or representatives of the States Parties. Here are the two perspectives that were voiced during the break between sessions:

> *"A group of States emphasized that decisions of the scientific and technical body must be based on scientific information and relevant traditional knowledge of indigenous peoples and local communities. A delegation took the view that decision-making in the scientific and technical body should be reserved for state parties"* (UNGA, 2022).

The enormous scientific ambiguity regarding the actuality, origin, and magnitude of the problem distinguishes international environmental lawmaking from other forms of international lawmaking. Effectively managing marine ecosystems necessitates robust information tools and broad expertise to accommodate the dynamic conditions resulting from climate change, human interference, and other occurrences. The BBNJ negotiators have the difficult task of creating a scientific advisory board to guarantee the availability and utilization of top-notch scientific information. Political decision-making, according to this line of thinking, is more democratic, takes into account national and social interests, and is thus better able to reflect global priorities. However, this paper's concept of international community interests is founded on the existential, long-term problems of ecological health, and in that sense, decisions should be based on research. A clearinghouse mechanism will offer a web-based platform: "States Parties can access, collect, evaluate, make public, and disseminate information" (UNGA, 2019). All four parts of the agreement will rely on the mechanism as their primary means of communicating with the public and gathering feedback. The wording references an "open-access" platform, but it does not say anything about the public being able to contribute or view the content.

Central to state accountability is the possibility of formal dispute settlement to enforce compliance, which can also be facilitated. A potential execution and compliance committee could be established through a COP decision; if it were structured like the committee in the Paris Agreement Article 15, it would be "expert-based and facilitative in nature and function in a manner that is

transparent, non-adversarial and non-punitive," according to the updated draft text (Falkner, 2016). It might incorporate fact-finding committees, with experts participating in their capacities (rather than as state officials). Concerning resolving disputes, the current version of Article 54 adheres to the conventional wisdom regarding "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice" at the state level. This could be supported by Article 55, which establishes a mandatory procedure for resolving disputes, culminating in a legally binding decision, similar to what is provided for in UNCLOS; however, these provisions are still in brackets.

Judge Liesbeth Lijnzaad of the International Tribunal for the Law of the Sea (ITLOS) has expressed a great deal of worry over the viability of putting these rules into effect, given the nature of the commitments and standards that pertain to the conservation of the global commons (Lijnzaad, 2020). She argues that both methods of compliance are necessary but that their connection must be clarified, particularly when compliance procedures are implemented before enforcement through conflict resolution. For instance, the compliance body might bring a State Party before it to clarify its duties or offer assistance if it authorizes activities that substantially negatively impact the environment without conducting environmental impact assessments. Mandatory binding dispute settlement may be helpful if the issue persists, but it begs the question of which state can file the complaint. Compliance measures and formal dispute settlement are commonly used to handle various problems. The compliance body is responsible for capacity-building, while courts make factual findings and authoritatively interpret international law, UNCLOS, and the BBNJ agreement. It also deals with potential problems when the law of the sea, international environmental law, and intellectual property law overlap.

Administrative bodies are highly unlikely to form a part of the BBNJ agreement. Throughout the Preparatory Committee, the States were quite explicit that they wanted the treaty institutions to be kept to a minimum, and nothing of the kind was even considered. Good idea: domestic and international environmental legislation tend to be administrative, making drawing parallels between the two systems easy. Overfishing, polluting the water with more contaminants than it can absorb, and other harmful human activities are regulated by environmental laws. Since most damages are irreparable, good governance necessitates measures to avoid future harm; this emphasis on prevention characterizes ecological law. Another feature of environmental law that explains the need for administrative organizations is that understanding the issues and the

management instruments usually calls for specific expertise; as a result, trained professionals are best suited to govern. Unfortunately, new treaties, such as the BBNJ agreement, are not being drafted with administrative principles considered due to the sluggish evolution of worldwide administrative law. Among the most important principles is that administrative officials entrusted with implementing governance measures should be open, participatory, reviewed, and held accountable. To prevent agency capture by industry, a myopic focus on agency mandate at the expense of other values, and misunderstandings of authority, all of which can arise when states delegate authority to organizations and their employees, these entities must be subject to accountability and oversight mechanisms. It is helpful to compare it to the ISA, which has advantages and disadvantages.

Requirements for conducting Environmental Impact Assessments (EIA)

The negotiators have reached an agreement on the essential criteria for EIA. This Part of the BBNJ agreement lays out the procedures, criteria, and other rules for carrying out the duty, mainly through national laws, as required by Articles 204 to 206 of UNCLOS, which need EIA (Song, 2022). The importance lies in the sensitivity of the damage levels that need an Environmental Impact Assessment (EIA) and the authority of either the hosting State or the Conference of Parties (COP) in making final decisions about projects that the EIA identifies as causing substantial environmental harm. Additionally, the inclusion of activities within national jurisdiction remains a crucial aspect. How this need will interact with other legal instruments' EIA obligations still needs to be determined, which poses a logistical difficulty.

An EIA is required whenever a planned project could affect the environment more significantly than the threshold, defined as more than "minor and transitory" or more than "significant" harm. In addition to outlining the project's activities, location, scope, and schedule, the EIA will analyze the most accurate data regarding environmental impacts (UNGA, 2019, art 30-32). This has to account for the impact of several activities on the same ecosystem, any changes to the underlying circumstances that could have an effect (such as climate change), and the cumulative effects of all of this. If the activities go forward, the state will have to monitor how they affect the environment; it could also have to report and evaluate things according to UNCLOS (UNGA, 2019, art 40-41).

The public notification and consultation procedure is crucial for the international community's rights, and states generally agree it is necessary. Information about possible dangers reaches its representatives and defenders in this way, and it may be a powerful tool for shaping the course of

events. This data will be available to "stakeholders" via the BBNJ electronic clearinghouse. In addition to publishing the EIA's findings, "early notification" of upcoming activities and a chance to respond before a decision about the activity's continuation is necessary. The following list of parties should be included: "potentially affected States, where those can be identified, [in particular adjacent coastal States] [, Indigenous peoples and local communities with relevant traditional knowledge in adjacent coastal States,] relevant global, regional, subregional and sectoral bodies, NGOs, the general public, academia, scientific experts, affected parties, [adjacent communities and organizations that have special expertise or jurisdiction] [, interested and relevant stakeholders] [, and those with existing interests in an area]" The EIA must detail how the stakeholders' feedback informed the development of the planned activity to comply with the consultation process (UNGA, 2019, art-37).

At IGC4, there was a disagreement about whether the STB of the BBNJ agreement should examine the EIA reports. The suggested compliance methods are particularly relevant because they include foreign states, scientists, and "global, regional, subregional, and sectoral bodies". The STB would be informed of the outcomes of any monitoring conducted after an activity has received approval. Experts from outside the STB may be asked to review the findings, and those from other relevant bodies could also give their thoughts. Compliance would be incentivized just by bringing attention to the issues. Additional steps are also being considered, such as establishing a "non-adversarial consultation process" to address conflicts and a mandate that the State or the STB cease the activity if it is shown to have unanticipated negative consequences (UNGA, 2019, art-41).

Under these laws, a state can fulfill its international responsibilities to the community without facing severe legal consequences. A State violates BBNJ's duty to enforce EIA if it fails to implement national enforcement measures, such as EIA enforcement and the monitoring and reporting procedures specified in the Convention. Analyzing the judgments rendered by the International Court of Justice in specific cases related to road construction and activities can be advantageous. The court consistently underscores the principle that every state must prevent the deliberate utilization of its territory for actions that infringe upon the rights of other states. In addition, the ruling said that it is necessary to complete an environmental impact assessment (EIA) to demonstrate a high level of diligence before engaging in an activity that can potentially negatively influence the environment of another state.

Furthermore, the EIA confirms the existence of a significant risk of damage that extends across national boundaries. Under those circumstances, informing and engaging in sincere consultation with the possibly impacted State is imperative to ascertain the suitable actions to avert or alleviate that risk (*Costa Rica v Nicaragua, 2015*). The court determined that Costa Rica breached its duty to do an EIA in that instance. However, no compensation was necessary because the road construction project did not cause substantial harm. Therefore, the burden of evidence for the Claimant State or other body to demonstrate that significant injury has happened is on them to obtain a punishment that might encourage future compliance. This situation is challenging, especially with terrestrial catastrophes that cause environmental harm. Although we can see where the court is coming from, a "no harm, no foul" Rule promotes disobedience and implies that the obligation of the state is inadequate in protecting the right of the international community to make informed decisions in favor of the preservation and sustainable utilization of marine biological diversity.

Requirements for area-based management systems

Some of the most specific substantive duties should be located in Part III, as ABMTs are the agreement's primary mechanism for safeguarding marine biodiversity. Some of the goals are more descriptive (such as "create a network of interconnected marine protected areas that reflect the diversity of marine ecosystems"), while others reflect the existential issues that were previously mentioned as driving forces for the treaty negotiations:

> *"[(e) Rehabilitate and restore biodiversity and ecosystems, including to enhance their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification, and marine pollution;]*
> *[(f) Support food security and other socioeconomic objectives, including the protection of cultural values;]*
> *[(g) Create scientific reference areas for baseline research;]*
> *[(h) Safeguard aesthetic, natural or wilderness values;]" (UNGA, 2019, art 14).*

Once it is determined that these goals align with global interests, the following inquiry will focus on whether or not any legal responsibilities accompany them. It is optional to form any ABMTs or for them to accomplish their goals; nonetheless, the rest of the Part lays out the processes for designation and implementation, including consultation duties, should States choose to do so. The

states are the only entities eligible to propose an ABMT, and if the COP decides to accept or reject it, the states must report on the ABMT's implementation to the COP and ensure those within their authority respect it. Following the STB's first assessment, "all relevant stakeholders" must be contacted by the methods specified in Article 18. After receiving input from "[i] Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society, and other relevant stakeholders," the proponent must either make revisions to the proposal or engage in further consultations (UNGA, 2019, art-18). One option is for the COP to consider the consultation's findings and scientific recommendations when deciding. In conclusion, similar to the EIA section, this Part of the draft language lays out the necessary steps to set up ABMTs, but it does not provide any binding legal requirements. Like previous international accords, this one specifies ABMTs but has seen little to no implementation.

Obligations for accessing and sharing benefits from marine genetic resources

There were no legally binding agreements about MGR in the negotiating text before the fourth IGC in March 2022. The casual intercessional chats encompassed a comprehensive range of linguistic expressions, encapsulating the many approaches to addressing this matter. Although there was some success at IGC4, the Fifth Intergovernmental Conference will need to address the crucial points. Whenever the term "generation of knowledge" is used, it is linked to technical advancement, and the proposed updated language expresses the interests of the global community by highlighting the use of MGR (UNGA, 2019, art-9(4)). Based on the history of the negotiations, the updated draft text prioritizes developing states, including the least developed, landlocked, geographically disadvantaged, coastal African, and developing middle-income nations, as well as developing nations on small islands. Neither the issue of safeguarding sites where genetic material is obtained nor the scientific community's interest in the unfettered quest for knowledge are specified here.88 Therefore, the IGC does not represent the global community's interests. This is particularly true if the IGC is meant to encompass future generations, who may discover that the BBNJ-sanctioned MGR collecting has damaged fragile ecosystems. As a kind of non-monetary benefit-sharing, Track 1.5 talks revolved around scientific and technical coordination and cooperation, capacity-building, and the transfer of maritime technology. The amended draft negotiating text outlines a set of obligations that nations must undertake, through their national legal, administrative, or regulatory measures, to guarantee equitable sharing of the advantages derived from the utilization of plant genetic resources. In accordance with COP directives, this

may involve making available details on and access to collecting expeditions, genetic material that has been gathered, and digital sequence information89 derived from ABNJ material (Payne, 2022). The text outlines the fundamental requirement to distribute both financial and non-financial advantages among other Contracting States. It also provides the precise method for determining the time and utilization of the clearing house system and the allocation of financial benefits. Based on the conclusive wording, governments might potentially breach their responsibilities if they fail to adhere to the subsequent procedures: The lack of consultation with coastal governments, absence of standardized intellectual property systems to facilitate benefit-sharing and traceability of plant genetic resources, inability to provide regular reports, and non-compliance with payment obligations. Or permit anyone under its authority and supervision to gather and utilize MGR from areas outside national jurisdiction (ABNJ) without furnishing the necessary access to samples and information.

The draft amended language states that the MGR duties are meant to directly benefit the states involved by ensuring that MGR is monitored from when they are collected in ABNJ to when they are sold as goods. The EIA (Environmental Impact Assessment) and ABMT (Area-Based Management Tools) have a responsibility to mitigate and avoid detrimental or hazardous activities that jeopardize the ecological foundation of life in every nation and the whole human population (Payne, 2019). These remedies fail to address the underlying issues, such as the lack of sufficient incentives for countries to execute them or the absence of significant enough harm for countries to seek recourse in international tribunals. However, the alternate readings touch on this topic by posing the question of who or what exactly constitutes the global community.

Other obligations

States Parties are obligated to "take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement," as stated in Article 53 of the proposed revised text, which outlines their due diligence requirements. In its advisory opinion on seabed mining, the Seabed Disputes Chamber (SDC) of ITLOS explains that the State must establish rules and regulations and implement administrative procedures to ensure their fulfillment (Freestone, 2011). The severity of the situation can be influenced by the current level of scientific and technical understanding and the level of danger associated with the activities it governs. Article 52, which is still under revision, deals with the financial mechanisms. Depending on the situation, financial contributions to promote agreement implementation, capacity-building, and technology

transfer might be optional or necessary. According to Article 52(3), States Parties should ensure that developing states have priority when receiving financial and technical aid from international organizations. States may be obligated to pay various forms of mandatory contributions. These include fees, penalties, cost recovery, assessments of environmental impacts, payments related to marine genetic resources (whether used or not), and any other forms of mandatory fees.

The development of a global network

Despite its complexity, we understand the community's layman's definition well. According to Crawford, international law's procedures, regulations, and institutions provide little room for fulfilling universal duties to the global community. The necessary components include universal duties, the worldwide community due them, and an avatar that can stand in for that community. Although the global community has been mentioned a lot recently, courts and other institutions of international law still primarily focus on the legal identity of sovereign states and are organized according to the relationships between states (Kumm, 2004). The inflexibility of the system is partly to blame. Case in point: the 1945 Statute states that "Only States may be parties in cases before the Court," even though the ICJ has used the term "international community" in more than 40 rulings and opinions (Statute of the International Court of Justice, adopted 26 June 1945). A law gap prevents the international community from representing itself in court if non-state entities cannot utilize the ICJ. A state might serve as the embodiment of the worldwide community.

Historically, international courts have consistently dismissed the notion that any individual within a society might initiate legal proceedings to defend a public interest since it was required for a state's legal interest to have been harmed (Ahmadov, F. (2018). Bruno Simma said that it could be defined as "a consensus according to which respect for certain fundamental values is not to be left to the free disposition of States individually or inter se but is recognized and sanctioned by international law as a matter of concern to all States" when he was investigating the community interest (Lewis, 2020). The International Court of Justice has shifted its focus from bilateral, reciprocal duties to multilateral commitments like these. In its order for interim measures in The Gambia's case against Myanmar, the ICJ made it clear that any State Party, regardless of whether it has a particular injury, can bring a dispute about the interpretation, application, or fulfillment of the Genocide Convention to the ICJ under Article IX (Shah, 2013). In its 1951 advisory opinion on the Genocide Convention, which is particularly relevant to the BBNJ agreement's conditions,

the court explains the underlying significance of this shift from conventional rules by the parties' common will (Payne, 2022).

According to the ICJ's Whaling in the Antarctic case, environmental protection at sea may not be an issue. In that case, the party's acknowledgment of the court's mandatory jurisdiction provided the basis for jurisdiction, and the court did not inquire whether the intervener countries, Australia and New Zealand, had any particular interest in the outcome or shared the goal of fulfilling the Whale Convention (Rolland, 2014). Customary norms of state accountability also consider the common interest. In cases when an action "is attributable to the State under international law and constitutes a breach of an international obligation of the State," the State is held internationally responsible (Weatherall, 2022). According to Article 33 of the Articles on State Responsibility, "the obligations of the responsible State... may be owed to another State, to several States, or the international community as a whole, depending in particular on the character and content of the international obligation and the circumstances of the breach." This means that the financial and moral compensation a state must pay can vary depending on the nature and severity of the international responsibility.

However, according to the International Law Commission's comments, "the possibility of invading responsibility by persons or entities other than States" is not addressed in the Articles on State Responsibility (International Law Commission, 2001). Although both environmental duties and jus cogens duties, such as the prohibition of genocide, may today be seen as owing Erga omnes, they are separate. Human values and behavior are the foundation of obligatory standards, and the repercussions of disobedience are experientially grounded. Diverse responsibilities exist to protect critical Earth systems, such as biodiversity. Forces beyond human control govern the consequences of disregarding environmental protection measures. The subsequent ecological damage can potentially wipe out our species and all others.

Quantum leaps in human population, technological capability, and consumer spending have brought to this reality. A feeling of an international community has emerged among today's highly networked people, who exchange information, commodities, and services; they can work together, yet their interests might also differ (Rheingold, 1993). The growing participation of organizations and enterprises in treaty formation, international legal disputes, and other aspects of international law is evidence of this emerging narrative. International law is a phenomenon that involves more than just states. This tendency is demonstrated by non-state entities present throughout the BBNJ

international meeting. Intergovernmental organizations and non-governmental organizations (NGOs) from the public and private sectors have testified as witnesses representing civil society, offered policy suggestions, provided scientific and legal information, and attended intergovernmental conference sessions. Investment treaties that let private companies settle disputes with host states through arbitration are another example of a law that deviates from the norm. According to the regulations of UNCLOS, the SDC of ITLOS can be accessed by both mining contractors and the ISA Administrative Agency. In its advisory opinion on seabed mining, the Swiss Agency for Development and Cooperation proposed that the World Seabed Authority (ISA) has the authority to represent mankind and that governments should be held responsible to the world community and allowed to interfere (Freestone, 2011).

Some might say that the term "international law" is too prescriptive and antiquated to describe the "global community" and that we ought to seek instead what is referred to as "transnational law," which is the bottom-up, parallel process by which pertinent groups make laws (Berman, 2006). According to this point of view, the actions of several non-state players in their respective domains reflect the universal interest of humankind. Companies have pledged not to buy seabed minerals, while public interest groups keep tabs on high-seas fishing and teach customers about the sustainability of seafood. Epistemic communities of various types should make deliberate efforts to oversee and control human activity on the open ocean through consumer and business campaigns, domestic laws, and other methods of creating rules. It is undeniable that global legislation exists. However, as the too-little-too-late climate change legislation demonstrates, it cannot stand in for top-down, interstate legislation. States have a more prominent role in areas that are not under national jurisdiction due to various factors, such as a significantly lower density of stakeholders, absence of monitors to report on pollution and damage, weak connections between consumers of products and the origins of those products in the ocean, and uncertainty regarding deep-ocean biodiversity. The International Marine Biodiversity Community (ICMB) requires a spokesman or advocate to represent its interests legally.

Who can represent the international community in promoting and realizing community rights under a BBNJ agreement?

As we have seen, a long-standing convention acknowledges a global community with interests and, one could argue, rights and responsibilities that go beyond those of independent states. To

further community interests and achieve community rights in situations when public opinion and diplomacy are inadequate, legal personality, i.e., the capacity to bear rights and responsibilities, is essential. For example, in the context of BBNJ, the international community avatar could (i) propose ABMTs at the COP or STB; (ii) go to an international court or tribunal to have a treaty provision interpreted or enforced, like the need to conduct an EIA; (iii) oversee the secretariat; or (iv) enforce responsibilities outlined in the agreement within the compliance and implementation committee. Upon reviewing the draft language, it was discovered that only some suggested legally binding responsibilities are on the Part of the states. Litigation is thus less likely to serve as an effective accountability mechanism for community interest representation. In such a setting, the abilities of state and non-state actors to promote community interests and realize community rights are distinct.

The prerequisites for having legal representations

More formally, these defenders must possess the legal capacity to represent the international community and function as representatives and officials. The champion must acknowledge that it possesses (or is structured in such a way that it possesses) a fiduciary obligation, similar to the duty that a trustee owes to a trust beneficiary. State sovereignty is characterized by pursuing its interests, using force to safeguard and advance the interests of its people externally, and establishing internal order through force. Despite the potential for limited and transient benefits, these entities reflect the populace they advocate for. These characteristics give states the ability to function on an international level and, more importantly, the ability to assert their legitimacy. When representing the global community's shared goals for the future, sovereign states might not be the best choice because national power and representation are the bedrock reasons independent nations play such a pivotal role in constructing the framework of international law. Now we will look at how well the hero's role fits. This includes both sovereign governments that have ratified the BBNJ Convention and those that have not, as well as various non-governmental organizations (NGOs) and international organizations.

Participating States to the BBNJ Agreement

According to the principle of state responsibility, a State Party to the BBNJ agreement is best suited to represent the world community in matters about the commitments that other States Parties owe it. Interested parties can submit disputes regarding the interpretation and implementation of

the Convention to the International Court of Justice. This is possible if the BBNJ Convention requires a third party to resolve disputes for all BBNJ Contracting States or if the relevant provisions of UNCLOS apply to the BBNJ and the State is also a party to the United Nations Convention on the Law of the Sea (Ma, Zhou, 2021). The following wording, similar to the Genocide Convention, should be included in the BBNJ agreement to ensure that any State Party can apply to an international court without needing specific damage to the complaining State. The parties to the dispute may, at any time, submit it to the International Court of Justice for resolution if they cannot agree on how to interpret, apply, or carry out the present Convention. This includes cases where a state is held responsible for genocide or any of the other crimes listed in Article III. Additionally, treaty obligations, such as adherence to designated Marine Protected Areas (MPAs), ought to be articulated as legally binding rights rather than mere procedural requirements.

The COP itself may serve as an effective avatar, and the treaty also provides state parties with the means to act through it (Lijnzaad, 2020). By taking part in other pertinent treaty organizations, a BBNJ State Party might promote and support the creation of MPAs, thereby protecting communal interests. It might follow its lead or urge other States Parties to do the same by ensuring its stances in other applicable agreements, frameworks, and bodies align with its BBNJ obligations. International standards for environmental impact assessments (EIAs) may support this. A red flag can go up with the regulatory agency. Typically, the COP comes up with the idea and submits the request to international tribunals like the ICJ or ITLOS for an advisory opinion if that is a provision in the agreement. The most influential state parties to the treaty are the actors protecting community interests. However, there is still a crucial issue: the interests of a state party do not necessarily coincide with the international community's.

Countries not parties to the BBNJ

The societal incarnation of sovereign states concerned with marine biodiversity that have not yet ratified the BBNJ Convention will be weaker than that of State Parties. Only the parties to the contract would have the authority to enforce it in an international court. It can send representatives to treaty bodies' meetings as observers, allowing it to lobby state parties to prioritize community interests in treaty implementation decisions. State Parties will likely avoid letting non-signatory states' opinions influence their treaty-making decisions. The ISA provides a case study of the constraints placed on non-State-Party observers.

There are some restrictions on the number of non-parties that may attend Assembly and Council meetings as observers per the procedures established by the Authority (Brunnée, Hey, 2013). Regarding the Council, non-Party states can participate as observers "upon the invitation of" the Council. Still, they can only do so on matters affecting them or within the scope of their activities. This means that they cannot vote or otherwise participate in the operations of the Assembly or any of its subsidiary organs (Wood, 1999). The decision to consider the opinions of states, not parties to the agreement, is left to the State's Parties.

International Organizations

International organizations are appealing as possible global representatives because of the platform they offer for collective action; however, these organizations also reflect the views of their members, have institutional agendas, and represent a wider community of stakeholders. They are recognized as having legal standing due to the authority bestowed upon them by the state in its guiding documents, as well as via laws and legislative decisions. Founded by treaty, they can consist of states or other types of international organizations. Organizations such as the International Union for the Conservation of Nature (IUCN), Regional Fisheries Management Organizations (RFMOs), and the International Oceanographic Commission (ISA) are a few examples. As a regional IO, the European Union (EU) has the power to join treaties like UNCLOS and an extensive range of other authorities to act on behalf of its Member States.

As an IO in and of itself, the BBNJ COP has several avenues for advocating local concerns. It will unite "relevant global, regional, and sectoral bodies" and "existing relevant legal instruments and frameworks" to foster collaboration total (UNGA, 2019, para-3). If the BBNJ Convention grants the COP the authority to seek advisory views, it might enhance the COP's capacity to safeguard the interests of the global community. The International Seabed Authority (ISA) and the Subregional Fisheries Commission (SRFC) Ministerial Conference are the international bodies authorized by the Treaty to solicit guidance from the International Tribunal for the Law of the Sea (ITLOS) (Lando, 2016).

For the International Olympic Committee (IOC) to participate in activities related to BBNJ (Biodiversity Beyond National Jurisdiction) that are currently limited to States Parties, such as proposing Area-Based Management Tools (ABMTs), providing input on environmental impact assessments, or implementing compliance mechanisms, it must receive authorization as stated in

the treaty. The BBNJ agreement has the potential to facilitate the expansion of access. Additionally, this type of organization might be granted the authority to file amicus briefs, engage in disputed cases, and offer advisory views. The European Union is the principal example of an IO that has become a complete treaty party, which is quite unusual. We may seek out or establish a hybrid organization whose mission is congruent with the global community's. Its founding document would formally establish a fiduciary obligation to the worldwide community. With this dedication, it would strive to be both open and representative. That would allow the IO to reflect community interests more effectively despite the institutional constraints. Otherwise, the global community's goals could clash with those of an international organization's mandate. Its only fiduciary responsibility is to its Member States; beyond that, it owes no one in the global world anything beyond what is required by law and its constitution. Although the regulations governing the international duty of such an organization are less extensive than those governing the liability of states, such an organization can incur international responsibility for actions that violate its duties.

A non-state entity

A wide variety of non-governmental organizations (NGOs) fall under the umbrella of "non-state actors," which raises the possibility that they represent the global community as a whole while also increasing the likelihood that their disparities are too significant to be considered common interests. As an example, consider the nine NGO "constituencies" within the UNFCCC regime: BINGO for business and industry, EGO for the environment, LGMA for local government and municipal authorities, IPO for Indigenous peoples' organizations, RINGO for research and independence, TUNGO for trade unions, Farmers for farmers, WGC for women and gender, and YOUNGO for youth.

Compared to States or IOs, NGOs' international legal identity is more limited. They may be able to survive independently of states. Their capacity to advocate for interests and engage in BBNJ treaty bodies, similar to that of IOs, must be granted by the text or by COP decisions. Upon admission as observers, individuals have the potential to exert influence through the knowledge and clout they possess. More people will let them participate in other treaty-body activities since they represent the state parties' voters, residents, and industrial sectors. As mentioned earlier, NGOs are provided with chances to consult on activities related to the BBNJ agreement. Nevertheless, there is no assurance that they will be granted a seat or a part in making decisions.

The BBNJ Convention adheres to the instructions provided by UNCLOS regarding the utilization of SDCs by the Homeland Security Agency (Jiang, Zhang, 2023). It allows for the potential inclusion of non-state actors in some international courts and tribunals, but only in particular instances. Keep in mind, too, that non-governmental organizations (NGOs) may face the same issues as states: a mandate that does not always mesh with the interests of the worldwide community. As a result, NGOs might only sometimes reflect the general public's views.

Conclusion

The BBNJ agreement's worldwide community is characterized by the universally applicable and non-negotiable duties it attempts to impose: preserving and responsibly utilizing marine biological diversity. Under international law, the Contracting States serve as the group's uncontested representatives, even though total dependability is impossible. As a result, expanding the participation of organizations whose missions align with the BBNJ interests of the international community in treaty processes and bodies, particularly judicial bodies, is in the fundamental interest of the international community. The analysis of the draft text of the BBNJ Convention led to the conclusion that cooperation and trust are essential for carrying out the worldwide obligation to safeguard biodiversity and ensure the responsible utilization of marine resources. At this time, it is challenging to suggest those two qualities as essential to interstate relations.

As UN negotiators were gathered, one member of the Security Council brutally demonstrated its military might by invading a neighboring state. Even in periods of relative calm, the influence of economic, military, and political power cannot be ignored. Suppose both parties appreciate a shared goal and recognize the other's importance in reaching it. In that case, trust and collaboration may perform vital functions in international relations, regardless of the stakes level. Specific measures can be taken to enhance the capacity of state parties and non-state actors to uphold international responsibility. The proposed changes consist of the following:

(1) expanding access to the Treaty's institutions and mechanisms, including the judiciary, for BBNJ organizations whose missions align with the interests of the international community;

(2) specifying that any party to the BBNJ Agreement may challenge the interpretation, application, or enforcement of agreement disputes; and

(3) empowering the BBNJ Treaty bodies to convene and strengthen collaboration among pertinent global, regional, and sectarian entities.

The involvement of non-state actors is left to the discretion of the States. Still, the paradigm of state-centered representation of common interests and enforcement of international community responsibilities will likely persist. The proposed BBNJ language must ensure that non-state organizations can access information, institutions, or procedures. As a whole, the States Parties make all the decisions at the COP. When consultation and transparency policies are rigorously implemented, the international community can benefit from non-state actors' perspectives, information, knowledge, and testimonies. States may justify their inaction by claiming that the issue is not visible or prominent enough to warrant attention, or that they have more urgent concerns to address, or that they need to secure their interests before others do. Another option would be to work together to benefit the youth of today and tomorrow. All industries, including fishing, mining, and shipping, should coordinate their operations not to harm the delicate ecosystem. We should limit pollution and exploitation until we learn more about the situation. Then, we can create technology for valuable uses while protecting marine life.

Despite the BBNJ negotiation's remarkable openness to non-state entities as listeners, their position was clearly defined as observers whose privileges were decided by the State at essential stages. Everyone was invited to participate, including observers, in all negotiating sessions, even the informal ones (usually reserved for states only in other diplomatic meetings). They could also speak during plenary and working group sessions, use QR codes to access documents in the conference room, participate in intersessional meetings, and watch the fourth IGC (IGC4) discussions online. The Fourth Congress restricted access to the conference room, prohibiting most spectators from entering. Additionally, observers could not participate in the conference by video connection, preventing them from speaking. Boundaries were established without comprehensive consultation, with observers excluded from the process or chosen to serve as facilitators inside the working group. Thorough intercountry consultations always precede observers' intervention. These serve as gentle reminders that States retain influence over the specifics of international law. For environmental issues like these to be resolved, the community must work together, and the regime must include the existing and future key players responsible for the problem. The US, China, South Korea, the EU, and Japan are among the many significant maritime states taking Part in the BBNJ talks. Even though fishing is a very destructive activity in the ocean, not all major fishing nations are present. For instance, Taiwan is second only to China regarding high-seas

fishing catches, accounting for 12% of the global total. However, Taiwan lacks representation in the United Nations and cannot engage in discussions, even if it wants to do so.

Whether or not states perceive collaboration on these problems as adequately favorable to their national interests will determine the final capacity to reach an agreement with enough parties to make it function. During this time, several American states have begun to act more unilaterally or even isolationistly, shifting away from multilateralism. Some states entirely disregard the Rule of law. On a global scale, however, nations have collaborated through the Montreal Protocol to end industrial chemicals depleting the stratospheric ozone layer, protecting us from harmful, cancer-causing UV radiation. Adopted by the United Nations General Assembly, resolutions about bottom trawling, drift-net fishing, and the Central Arctic Ocean accord are marine environmental measures. This has been done previously. We can understand and embrace our shared responsibilities as an international community.

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