

RESEARCH ARTICLE

A constitution for the ocean? An agora on ocean governance

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Abstract

This introduction briefly discusses the global constitutional issues raised by ocean governance and introduces the three pieces from our Agora contributors.

Keywords: interdisciplinarity; ocean; marine law; National Oceanography Centre; United Nations Convention on the Law of the Sea (UNCLOS); UN Decade of Ocean Science for Sustainable Development; UN Sustainable Development Goal 14

I. Introduction

The 2020s is the United Nations Decade of Ocean Science for Sustainable Development. The ocean is the largest part of the Earth's ecosystem: it stabilizes the climate and makes life on Earth possible. The ocean has also been central to questions of international law since at least Hugo Grotius's (2012) publication of *The Free Sea*. In this text, Grotius developed the doctrine that the ocean was international territory and all nations on Earth had equal access to it. While Grotius's primary concern in developing a principle of the free seas was the promotion of international trade and the codification of the laws of war, over the last 50 years marine law has increasingly become concerned with the implications of the law of the ocean for the environment and global climate change. Because international law designates the ocean as a global commons, it has always been susceptible to 'the tragedy of the commons' (Hardin 1968) – i.e. because no state bears responsibility for protecting this vital shared resource it suffers from environment degradation.

The National Oceanography Centre hosted this interdisciplinary symposium to consider the ocean from a global constitutional perspective, inviting representatives from environmental charities, industry and students, scholars and scientists from universities in the Solent region. Speakers included scholars from political philosophy (Chris Armstrong) and marine social sciences (Emma McKinley), as well as a marine scientist (Katy Hill). As an interdisciplinary journal with a long-standing interest in international legal questions about the environment, the editors of *Global Constitutionalism* felt we were the perfect forum to host such a dialogue (Jones 2022; Kang et al. 2023; Perera 2022). The interdisciplinary symposium reflected on what kinds of global governance instruments are required for the world to meet UN Sustainable Development Goal 14: Ocean and Life

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Below Water. The participants also considered the challenges set by the United Nations Decade of Ocean Science, considering existing and emerging international norms, laws and institutions. We invited speakers to reflect on five interrelated questions, arrived at via dialogue ahead of the event itself:

1. *Is UNCLOS fit for purpose?* UNCLOS is often described as the constitution of the ocean – implying that it is the basic law for governing all human interactions with the sea. Yet since it has come into force, we have seen a rise in the number of challenges facing the ocean. These range from a collapse in global fisheries, to pollution, to the impact of global climate change on the ocean. They all challenge the effectiveness of this treaty in protecting the ocean. Therefore, we need to begin with a key question: is UNCLOS fit for purpose in governing human interactions with the ocean? And if it is not, what needs to change from an international legal perspective so it can help confront current challenges?
2. *How best can we balance tensions between growth, equity and sustainability?* UN Sustainable Development Goal 14 calls on all nations to ‘conserve and sustainably use the oceans, seas and marine resources for sustainable development’. This creates a tension between economic development (which usually requires more resources to be extracted from the ocean) and sustainability (which requires resource extraction to be lowered). How can we take the opportunities offered by the ocean economy to promote economic equality on a global scale while keeping ocean life viable?
3. *How do we get the physical, natural and social sciences talking to each other? And what about the humanities?* Questions around ocean governance touch on many different academic disciplines, ranging from climate science and oceanography to law and political science. Often these disciplines operate in silos, unaware of even the basic principles of the other disciplines. What are the challenges you face in getting your scholarship read by colleagues in other disciplines? How can we foster greater interdisciplinary dialogue so we can confront the challenges posed by ocean governance?
4. *What would a joined-up approach to ocean governance for sustainability look like?* One current problem facing ocean governance is fragmentation of regulations and administration along numerous lines, such as tension between laws governing the environment of the land vs the environment of the sea, fragmentation between national (and even sub-national laws) and the international law around the ocean, and even fragmentation between the different Sustainable Development Goals. What can be done to address this fragmentation? Are solutions only possible at the global level, or can more local and regional approaches also overcome this fragmentation?
5. *If there were one thing you could change about the international law (s) governing the oceans, what would it be?* Following their remarks, panelists engaged with audience members around a number of topics, including the importance of funding interdisciplinary research that recognizes the time required to build productive relationships across the natural and social sciences as well as the critical role played by community and industry stakeholders in relation to issues of ocean governance.

All present agreed that the UN Decade of Ocean Science for Sustainable Development provides an opportunity for new, more focused conversations around ocean governance,

and that the global ocean community needs to consider whose voices, values and knowledge are included as we continue to work towards achieving the science we need for the ocean we want.

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