THE LEGAL BASIS FOR OCEAN PROTECTION IN THE UDOR CONTEXT

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ABSTRACT

The ocean faces escalating threats, yet existing legal frameworks, primarily the UNCLOS, inadequately address comprehensive marine ecosystem protection. Recent developments in Ecuador and Colombia have introduced innovative legal frameworks recognizing either inherent rights of nature (RoN) or biocultural rights, significantly influencing international environmental jurisprudence. However, scholarly discussions have not thoroughly clarified the legal distinctions between RoN and biocultural rights within marine protection contexts. This study addresses the critical gap by analyzing landmark judicial interpretations—the Ecuadorian Constitution emphasizing RoN and the Colombian Constitutional Court's Atrato River ruling centered on biocultural rights. Through comparative analysis, this article reveals fundamental distinctions: RoN embodies an ecocentric perspective emphasizing nature's intrinsic value, while biocultural rights prioritize human-environment interconnectedness. The research concludes that the proposed Universal Declaration on the Rights of the Ocean (UDOR) tends to adopt an ecocentric RoN Approach, independent of cultural or anthropocentric considerations. This framework underscores ocean rights to existence and restoration, aiming for global consensus and coherent international ocean governance, thereby bridging the existing gap in marine ecosystem protection under current international law.

Keywords: ocean rights; rights of nature; biocultural rights; ecocentrism; universal declaration on the rights of the ocean.

A BASE JURÍDICA PARA A PROTEÇÃO DOS OCEANOS NO CONTEXTO DA UDOR

RESUMO

O oceano enfrenta ameaças crescentes, mas os arcabouços jurídicos existentes, principalmente a CNUDM, abordam inadequadamente a proteção abrangente dos ecossistemas marinhos. Acontecimentos recentes no Equador e na Colômbia introduziram arcabouços jurídicos inovadores que reconhecem direitos inerentes à natureza (DNR) ou direitos bioculturais, influenciando, significativamente, a jurisprudência ambiental internacional. No entanto, as discussões acadêmicas não esclareceram completamente as distinções jurídicas entre DNR e direitos bioculturais em contextos de proteção marinha. Este estudo aborda a lacuna crítica analisando interpretações judiciais históricas — a Constituição equatoriana, que enfatiza os DNR, e a decisão do Tribunal Constitucional colombiano sobre o caso do Rio Atrato, centrada nos direitos bioculturais. Por meio de análise comparativa, este artigo revela distinções fundamentais: os DNR incorporam uma perspectiva ecocêntrica que enfatiza o valor intrínseco da natureza, enquanto os direitos bioculturais priorizam a interconexão homem-ambiente. A pesquisa conclui que a proposta da Declaração Universal dos Direitos do Oceano (DUO) tende a adotar uma abordagem ecocêntrica para os DNR, independentemente de considerações culturais ou antropocêntricas. Esta estrutura destaca os direitos dos oceanos à existência e restauração, visando ao consenso global e a governança oceânica internacional coerente preenchendo, assim, a lacuna existente na proteção dos ecossistemas marinhos sob a legislação internacional atual.

Palavras-chave: direitos do oceano; direitos da natureza; direitos bioculturais; ecocentrismo; declaração universal dos direitos do oceano.

1 INTRODUCTION

Long ribbons of rubbish float on the surface of the sea, and illegal fishing fleets with dwindling catches are becoming an alarming norm. At the Round the World Yacht Race, humanity witnessed the deteriorating health of the oceans, then, the Ocean Race launched the One Blue Voice campaign to rally support for the Universal Declaration of Ocean Rights (Economist Impact, n.d.).

The ocean is the earth's life support system and human well-being is linked to the health, integrity and functioning of the ocean (Bender; Mehta; Vermilye; von Rebay, n.d.). Yet, within the anthropocentric narratives that dominate our world, these rights are often overlooked and neglected. The degradation of natural ecosystems continues despite the fact that multiple nature conservation mechanisms have been developed at the national, regional and international levels (Hoek *et al*, 2023, p. 73). In light of mounting pressures on natural ecosystems, the growing prominence of the Rights of Nature movement has led to the proposal of the Universal Declaration on the Rights of the Ocean (UDOR) as a response to the

escalating environmental crisis (The Ocean Race, 2023-a).

1.1 The limits of existing ocean law

Although UNCLOS remains the central framework governing the use and delimitation of the ocean, it was designed primarily to resolve interstate disputes over maritime zones and access to marine resources (United Nations, 1982). It lacks a robust normative foundation for the ecological protection of the ocean as an entity with its own value and integrity. Moreover, its structure reinforces the traditional view of the ocean as a resource to be allocated, rather than a living system with legal standing. While newer instruments, such as the BBNJ Agreement (United Nations, 2023) and decisions under the CBD (United Nations, 1992), attempt to address biodiversity and sustainability, they too operate within a paradigm that positions nature in service of human needs.

The emerging concept of the Rights of Nature (RoN)—inspired by indigenous worldviews and ecological jurisprudence—offers a fundamental shift: nature is not merely an object of regulation but a subject of rights. Applied to the ocean, this framework implies that the ocean should have its inherent right to exist, regenerate, and be restored, independently of its utility to human society. Meanwhile, Biocultural Rights (BCR)—developed by the Colombian Constitutional Court—acknowledge the profound interdependence between cultural identity and ecological systems, generating both convergence and tension with the Rights of Nature (RoN) framework. Therefore, it is necessary to examine existing legal experiences, such as Ecuador's recognition of RoN and Colombia's jurisprudence on BCR, in order to clarify the legal foundations upon which UDOR can be built.

1.2 The UDOR and its Legal Significance

The Universal Declaration of Ocean Rights (UDOR) is an emerging international initiative that seeks to recognize the ocean as a legal subject with inherent rights—including the rights to exist, thrive, regenerate, and be represented in governance processes (Economist Impact, n.d.). The idea was formally presented at the Ocean Race Summit: Presenting Ocean Rights, held during the 78th Session of the United Nations General Assembly (UNGA 78) in New York in September 2023 (The Ocean Race, 2023-a). According to its proposers, the Declaration is intended to be presented before the United Nations General Assembly in September 2023, with the ultimate aim of initiating an inclusive, state-led drafting process

(The Ocean Race, 2023-b). Rather than replacing the UNCLOS, UDOR seeks to supplement and reorient it by introducing a paradigm shift: the recognition of the ocean as a rights-bearing legal subject.

The UDOR, similar to the concepts of human rights and natural rights, gives the ocean a legal personality and inherent rights that must be protected (Tanti, n.d.). We would do well to begin our discussion of marine protection with rights, because that is how the Western system is constructed (Tanti, n.d.). It is a rights-based system; if something does not have rights, it is an object, a resource, a property or a utility (Tanti, n.d.). By recognizing the ocean's inherent rights, UDOR aims to redefine humanity's relationship with marine ecosystems. Yet, the notion of "inherent rights"— central to the RoN system — remains underdeveloped and lacks a universally accepted legal definition within international law. More challenging still is the fact that institutional expressions of RoN are typically filtered through Western legal traditions, resulting in interpretations that may diverge from their original cultural contexts.

To clarify the legal foundations upon which UDOR might be constructed, this essay undertakes a comparative analysis of key legal developments that have advanced the recognition of nature's rights. It first examines the Ecuadorian Constitution—the first in the world to enshrine the RoN—and the landmark *Los Cedros* case, in which the Ecuadorian Constitutional Court affirmed nature's standing in judicial proceedings. It then analyzes the jurisprudence of the Colombian Constitutional Court in the *Atrato River* case, a landmark case on the BCR of Afro-descendants, to reveal the logic behind the Court's reasoning. Through this analysis, this thesis seeks to address the following research questions: (1) What exactly are RoN in existing legal instruments and jurisprudence? (2) What are RoN? (3) What is the difference between BCR and RoN? (4) Is nature conservation based on RoN or biocultural rights? By exploring these issues, this thesis seeks to provide a concrete and operational legal framework for ocean rights and answer the core question of this essay: What is the legal basis for ocean protection in the context of the Universal Declaration on the Rights of the Ocean (UDOR)?

2 RECOGNITION AND ENFORCEMENT OF THE INHERENT RIGHTS OF NATURE BY THE ECUADORIAN CONSTITUTION AND THE COLOMBIAN CONSTITUTIONAL COURT

This chapter examines how the inherent rights of nature have been formally

recognized and enforced in two leading Latin American jurisdictions: Ecuador, through its 2008 constitutional amendment, and Colombia, through the Constitutional Court's landmark Atrato River ruling (T-622/16). These two cases provide complementary perspectives on the development of the Rights of Nature (RoN) framework in national law. By analyzing these legal models, this chapter clarifies how RoN can be translated from abstract principle into concrete legal standards—such as the right to existence, the right to restoration, and the right to legal representation—and how these rights are enforced within national systems.

2.1 Nature's Inherent Rights Written into Ecuador's Constitution

In 2008, Ecuador became the first country in the world to recognize the RoN through a constitutional amendment (Tănăsescu *et al*., 2025). First and foremost, Article 71 states that "Nature, or Pacha Mama… has the right to integral respect for its existence," thereby affirming that nature, as a collective ecological entity, possesses an independent legal interest in continuing to exist (Constitución de la República del Ecuador (CRE), 2008, art. 71). This right is not conditioned on its usefulness to human beings; rather, it is grounded in the intrinsic value of nature itself. The term "integral respect" signals a holistic understanding of existence—encompassing not only physical survival but also the preservation of nature's "life cycles, structure, functions, and evolutionary processes." In this sense, Article 71 articulates a substantive right to ontological integrity (Von Negenborn, 2022, p. 67–68), one that requires legal and institutional recognition of nature as a subject whose continued existence is a legitimate aim of law.

Then, Article 72 affirms that when nature is harmed, it has the right not merely to be protected prospectively but to be restored retrospectively (CRE, 2008, art.72). This right to restoration is independent of the obligation of the state and natural persons or legal persons to compensate individuals and communities that depend on the affected natural systems. This legal separation signals that restoration is not merely a derivative of human loss, but a direct entitlement of nature itself.

The Ecuadorian Constitution does not list rights of nature in an explicit declarative form but rather articulates them through the imposition of affirmative duties on the State (CRE, 2008, art. 73). The inherent rights of nature and the obligations of government are interdependent. These duties correspond to implicit rights held by nature, including: (1) the right to exist without extinction or ecosystem collapse, (2) the right to preserve its natural cycles and systemic functions, and (3) the right to maintain the integrity of its genetic

composition, free from artificial or invasive disruptions. In addition, the Constitution grants all individuals, communities, peoples, and nations the right to demand that public authorities enforce the rights of nature (CRE, 2008, art.74). This means that the rights of nature are not just theoretical rights; they must be enforced and protected in practice. Any natural person may institute legal proceedings to defend the rights of nature.

2.2 Colombian Constitutional Court ruling T-622/16: Determination of the inherent rights of the Atrato River

The Atrato River is one of the most important rivers in the northwestern part of the country and is home to a large number of Afro-descendant (Constitutional Court of Colombia, 2016). As the river and the surrounding area have been severely damaged by large-scale illegal mining, illegal logging and mercury pollution, several non-governmental organizations, representatives of the indigenous peoples and others have filed a lawsuit in the Constitutional Court claiming that these damages violate the fundamental rights of the communities in the river basin. In the ruling T-622/16 of the Colombian Constitutional Court, the Court recognized the inherent rights of nature, specifically the Atrato River.

The ruling clarifies several specific aspects of the Rights of Nature (RoN). The Court affirmed the Right of Existence, declaring that “the Atrato River is subject to rights that imply its protection, conservation, maintenance and, in the specific case, restoration” (Constitutional Court of Colombia, 2016, para. 9.32). In this pivotal paragraph, the Court states that it will arrange for the Colombian government, together with the ethnic communities inhabiting the Atrato River Basin in Chocó, to exercise legal guardianship and representation of the rights of the river. In other words, nature possesses the Right to Restoration, meaning that even when ecosystems have already been damaged, nature retains the legal entitlement to demand corrective action.

2.3 Indigenous Influence on the Right of Nature Legislation

RoN are based on a non-anthropocentric view of the environment. The desire to respect and live equally with nature is deeply connected to indigenous communities, who have been advancing the concept of RoN for centuries (Franks, 2021, p. 648). In developed countries, many important advances on the RoN have been driven by indigenous tribes.

Ecuador is a pioneer in the recognition of the RoN. Art. 71, which is not the only

article, reflects indigenous influence. Art. 71 states that Nature or Pachamama, in which life is reproduced and carried out, has the right to full respect for its existence, as well as for the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes (Frank, 2021). The word "Pachamama", which is the Kichwa word for "Mother Earth", is a direct reflection of the cosmovision and respect that the indigenous people of the Andes have for nature. In the indigenous cosmovision, humans and nature are interconnected and interdependent. Indigenous legal and cultural traditions emphasize the wholeness and interdependence of ecosystems, and the rights of nature provisions of the Ecuadorian Constitution are based on this concept.

Bolivia's *Law of the Rights of Mother Earth*, passed in 2010, and the *Framework Law of Mother Earth and Integral Development for Living Well*, passed in 2012, are heavily influenced by indigenous cultures and perceptions (Frank, 2021). The *Te Awa Tupua* (*Whanganui* River Claims Settlement) Act 2017, passed by New Zealand in 2017, recognizes the *Whanganui* River as an "indivisible and living whole" and gives it legal rights. This recognition of the river as an indivisible and living whole is a direct reflection of the *Maori* worldview.

Indigenous perspectives and values have had a significant influence on the legal development of the rights of nature, an influence that has led to a broader recognition of the value of nature itself, rather than considering the protection of nature solely in terms of human interests. This recognition of the rights of nature further raises the question: is the legal basis behind this legislation and jurisprudence based on the RoN or on the BCR?

3 DISTINCTION BETWEEN LEGAL FOUNDATIONS: RIGHT OF NATURE OR BIOCULTURAL RIGHTS?

This chapter seeks to show that the differences between Ecuador's and Colombia's legal paths to nature protection are rooted not in institutional design, but in different philosophical understandings of the relationship between nature and people. Ecuador's constitutional rights to nature embody biocentrism, while Colombia's biocultural rights continue to take anthropocentrism as their starting point, emphasizing the functional connection between nature and human communities. This philosophical distinction constitutes the essential difference between the two paths.

3.1 The Philosophy of Law: From Anthropocentricity to Ecocentrism

Traditionally, inherent values have often been regarded as unique to humans, since humans are seen as rational beings. Anthropocentrism views individual humans and the human species as more valuable than all other living things (Washington *et al.*, 2017). Anthropocentric methodologies are often adopted by law-making, especially reflected by the languages of laws. UNCLOS, for example, does not confer "intrinsic value" or "legal personality" on oceans or ecosystems. Rather, it views the oceans as a space for resource use and development, and one of its legislative purposes is to promote the efficient utilization of marine resources (United Nations, 1982, Preamble, para. 4). Moreover, environmental protection clauses are usually based on the interests of mankind, e.g., environmental damage is defined as "effects on mankind or other States" (United Nations, 1982, art.198). In an Anthropocentric perspective, nature is simply something that belongs to human beings (or to a collective of human beings, e.g., a community, a State).

Ecocentrism believes that all things in nature have inherent value. It does not adhere to the individualistic values of Anthropocentrism, but rather takes a holistic approach, believing that ecosystems and biomes as a whole have intrinsic value (Von Negenborn, 2022). Ecocentrism not only considers all living things to have inherent value but also includes the value of the environmental system as a whole (Washington *et al.*, 2017, p.36). In addition to Ecuador's constitutional amendments, the 1982 World Charter for Nature and the 2000 Earth Charter express a clear ecocentrism, yet the path has not yet been widely adopted in the United Nations-led development agenda (Washington *et al.*, 2017). For example, the CBD recognizes the intrinsic value of biological diversity, but then goes on to list a long list of values that biodiversity brings: ecological, genetic, social, economic…all of which emphasize the various types of contributions that biodiversity makes to human life (United Nations, 1992, Preamble, para.1). It can be said that CBD tries to find a value pluralism between biocentrism and anthropocentrism.

Ecocentric principles are increasingly visible in global legal discourse, yet they remain embedded within anthropocentric legal frameworks. Nevertheless, ecocentrism and anthropocentrism need not be mutually exclusive. As the CBD demonstrates, value pluralism—a framework that embraces both the inherent worth of nature and its relational or instrumental value to humans—may offer a pragmatic and politically feasible pathway for integrating environmental ethics into legal regimes. The challenge, then, is not to abandon anthropocentrism altogether, but to decenter it by recognizing non-human interests as legally

and morally significant.

3.2 Right of Nature as the Basis of Legal Construction of the Constitution of Ecuador

While Indigenous cosmovisions have clearly informed the conceptual emergence of the RoN, their influence does not necessarily translate into the formal recognition of Indigenous legal or cultural identity in judicial practice. In Ecuador, for instance, Indigenous terms such as *Pachamama* are invoked in constitutional language, but the enforcement of RoN relies on universalized principles rather than group-differentiated rights. This stands in contrast to the Colombian model of BCR, where the protection of nature is explicitly grounded in the cultural and territorial rights of specific ethnic communities.

Despite the fact that these indigenous concepts are explicitly included in the Constitution, the courts have simply referred to these terms, keeping these indigenous ideas vague. For example, in the *Los Cedros* case, the Court referred to *Pachamama*; however, the Court did not delve into the exact connotations of Pachamama and its specific application in the judgment. In the cases involving the RoN before the Constitutional Court of Ecuador, the importance of the indigenous peoples is reflected mainly in their status as Ecuadorian citizens participating in the defense of the rights of nature, rather than in their status as indigenous peoples. This means that their rights and entitlements are the same as those of any other citizen and are not differentiated on the basis of their indigenous identity. Thus, although the case involved indigenous elements, the court virtually ignored the traditional culture of the indigenous population.

3.3 Biocultural Rights as a Legal Basis in the Atrato River Case

The innovative decision of the Colombian Constitutional Court in the *Atrato River* case created BCR, introducing this new type of right into the legal framework to combat illegal mining and logging activities in the *Atrato River* area and to protect the natural environment and indigenous cultures, i.e. the deep cultural and spiritual ties between local indigenous and Afro-descendant communities and the river (Macpherson *et al.*, 2020, p. 532).

The core of biocultural rights is the integration of natural resource rights and cultural rights as a whole, emphasizing their interdependence and indivisibility (Constitutional Court of Colombia, 2016). The Court cited relevant articles of the Colombian Constitution, including Articles 7, 8, 79, 80, 330, and 55, as well as international law, such as the

Convention on Indigenous and Tribal Peoples (1989), the Convention on Biological Diversity (1992), and others, as the legal basis for the protection of biocultural rights (Constitutional Court of Colombia, 2016, para. 5.19). The constitutional provisions protect cultural diversity and natural resources, emphasizing environmental protection and the right of indigenous communities to govern themselves. These conventions also explicitly recognize and advocate for the strong linkages between cultural and biological diversity.

The court has held that the lifestyles and cultural traditions of indigenous communities are inextricably linked to their natural environment. The cultural practices of these communities, including traditional agriculture, hunting, fishing and crafts, are directly dependent on healthy ecosystems (Constitutional Court of Colombia, 2016, p.7). For example, the plants and animals used by indigenous communities are not only a source of food, but also play an important role in medicine, rituals and cultural expression.

Indigenous communities possess a wealth of ecological knowledge that is essential for the conservation of biodiversity. Through traditional knowledge passed down from generation to generation, indigenous communities are able to effectively manage and protect their natural environment (Haq *et al*., 2023). For example, sustainable harvesting techniques for certain plants, regulations for certain hunting seasons, etc. are traditional practices that help maintain the balance and health of ecosystems. The court noted that if the cultures of these communities are not preserved, cultural genocide will inevitably lead to the loss of ecological management knowledge, posing a serious threat to biodiversity (Constitutional Court of Colombia, 2016, p. 9).

Within the *Atrato River* Basin, the livelihoods of indigenous and Afro-descendant communities depend directly on the river and its surrounding ecosystem (Constitutional Court of Colombia, 2016, para.2.10). Illegal mining and logging activities not only damage the ecosystem, but also directly threaten the survival and cultural practices of these communities. Protecting the ecosystem of the Atrato River actually protects the culture and way of life of these communities. The health of the river greatly affects the health of the communities, the safety of their drinking water, the stability of their food sources, and the sustainability of their cultural activities.

Biocultural rights are essentially a special human right that emphasizes respect for and protection of the traditional cultures, knowledge and practices of indigenous and local communities. This right is not only about protecting the environment, but also about protecting the cultural identity and way of life of these communities.

3.4 Legal Divergence: Between Nature's Inherent Value and Culturally Embedded Rights

The decision of the Constitutional Court of Colombia, T-622/16, is a milestone for indigenous and environmental rights in Latin America. The Court adopted an ecocentric approach, emphasizing the interconnectedness of nature and human beings. However, the judgment and the legal reasoning show a tendency towards "anthropocentrism", as many of the rights in the case, such as the right to existence and the right to health, are largely intended to protect the rights of indigenous peoples and other communities closely linked to the natural environment (Macpherson *et al*., 2020).

However, the core idea of RoN is that nature itself, such as oceans, rivers, forests and ecosystems, has intrinsic value and should be protected by law. What exactly is "nature"? Nature is a system of various "vital cycles and flows" (Tănăsescu, 2025, p. 9). The term "natural cycles" implies that the system is indivisible and that any change in one part affects the whole. This term also appears in the RoN clause of the Ecuadorian Constitution (art. 73). This view echoes the "functionalist" view of ecology. Functionalism sees natural processes as having some kind of "retro causality", i.e. natural systems exist to sustain themselves.

The emphasis on the inherent value of nature, and not just its utility to humans, is a feature of the Los Cedros case. In this case, the Constitutional Court of Ecuador reaffirmed the constitutional recognition of the right to water as part of the right to a good life (buen vivir) and to live with dignity (Constitutional Court of Ecuador, 2021, para. 170). The right to water, as a link between human rights and the rights of nature, has a dual nature. That is, the right to water is both a fundamental human right and an essential component of the right to nature. The Court was careful to explain that the adoption of a biocentric view - an ecological philosophical view that all living things have inherent value, not just because they are useful to humans - does not disqualify humans from exercising the right to a healthy and ecologically balanced environment (Constitutional Court of Ecuador, 2021, para. 243). It is just that the Constitution requires us to rethink environmental health, balance, and sustainability (Constitutional Court of Ecuador, 2021, para. 243). This rethinking means that we must recognize the inherent value of nature. The Court's interpretation suggests that the rights of nature must take precedence over the rights of humans. This is because human rights are embedded in the rights of nature; in other words, human beings can only truly enjoy a healthy and ecologically balanced environment if the natural environment is healthy and sustainable (Tănăsescu, 2025, p. 9).

In general, the *Atrato River* case in Colombia is based primarily on BCR, emphasizing the protection of the rights of indigenous peoples and other communities, which is different from the legal basis in Ecuador. The Ecuadorian Constitution and the *Los Cedros* case, on the other hand, are based on the RoN, emphasizing the inherent value and independent legal status of nature itself. This difference in legal basis leads to different strategies and outcomes in the practice of environmental protection.

4 THE LEGAL BASIS AND OPERATIONAL CONTENT OF THE UDOR

It is undeniable that indigenous communities play an important role in marine conservation and that they have strong ties to the natural environment (The Ocean Race, 2023-c). However, the main purpose of the UDOR is not to protect indigenous cultures. UDOR is intended to fill the gap left by UNCLOS, which deals primarily with the allocation of rights among states and the use of marine resources. UDOR aims to establish the inherent rights of the ocean (Ocean Rights, 2023-b).

To migrate the concepts of Rights of Nature (RoN) and inherent rights to ocean rights, we can draw from the existing legal framework and adapt it to the marine environment. Recognize the ocean as a legal entity with inherent value independent of human use. This is consistent with the recognition in the legal systems of Ecuador and Bolivia that natural rights are based on their intrinsic value. They provide strong legislation and jurisprudence support for the development of UDOR.

4.1 The Legal Basis of UDOR: Right of Nature or Biocultural Rights?

UDOR, as proposed by civil society organizations and supported by several states such as Cabo Verde, draws upon the philosophical and legal foundations laid by earlier RoN frameworks (Ocean Race, 2023-a). At its core, UDOR envisions the ocean not as a resource to be allocated or managed solely for human benefit but as a legal subject possessing inherent rights—including the right to exist, regenerate, and be restored (Ocean Race, 2023-a, para. 4). These ideas resonate strongly with the ecocentric philosophy embedded in Ecuador's constitutional amendments, where nature is recognized as a rights-holder independent of its utility to humans.

Unlike the biocultural rights (BCR) model developed in Colombian jurisprudence, which explicitly links environmental protection to the preservation of Indigenous and Afro-

descendant cultural practices, UDOR does not ground its legal rationale in specific communities or territories. Rather, it advances a universalist and non-ethnic articulation of ocean rights, applicable at the global level and addressed to the international community as a whole (Ocean Race, 2023-a, article 6). In this sense, UDOR departs from the anthropocentric and culturally particularistic logic that underpins BCR and instead aligns more closely with RoN's ecocentric outlook.

4.2 What Rights Does UDOR Propose?

Having identified the legal and philosophical underpinnings of UDOR, we are left to query what exactly is UDOR trying to protect on a legal level? Who is responsible for the realization of such rights? UDOR, as a normative proposal, must specify: "What exactly are the rights of the oceans and seas that can be recognized and fulfilled?" This thesis will use the Ecuadorian Charter as a reference to make UDOR legalizable through three types of rights: existence, restoration and representation.

4.3 The Right to Existence

One of the inherent rights of UDOR is the Right to Existence/ Right to Life of the ocean. This right recognizes the ocean as a living entity with its own life cycle, structure, functions and evolutionary processes that must be respected and protected. This principle is similar to the right to existence granted to nature in Article 71 of the Ecuadorian Constitution, which ensures that nature as a whole has the rights and protection to which it is entitled.

4.2 The Right to Restoration

UDOR emphasizes the Right to Restoration of the Ocean, which requires that any damage to marine ecosystems be repaired. This right is independent of human interests and focuses on the health and integrity of the ocean. Similar to Article 72 of the Ecuadorian Constitution, this right requires states and other actors to take positive measures to restore and regenerate damaged marine environments, including mitigating the effects of climate change, cleaning up polluted areas, and ensuring the recovery of biodiversity.

However, the application of the Right to Restoration varies in different contexts. In analyzing this right, the experience of the *Vilcabamba River* case and the *Monjas* case could

be borrowed to specify ocean restoration objectives and measures. In the *Vilcabamba River* case, the Court ordered that the Vilcabamba River be restored to its previous or natural state, i.e., to wilderness (Tănăsescu, 2025, p. 20-21). In the *Monjas* case, on the other hand, the realization of the Right to Restoration focuses more on functional restoration. Since the Monjas River is an urban river, it is impossible to fully restore it to its original state. The restoration goal was adjusted to ensure clean water and proper flow, rather than a complete return to a natural state (Tănăsescu, 2025, p. 20-21).

Similarly, the right to ocean restoration requires different strategies and targets for different types of ocean areas. (1) For wild ocean areas far from human activities, such as marine protected areas, more stringent restoration goals may be set to return to a pristine natural state. The *Great Barrier Reef* is a typical example, where the restoration goal is to restore as much coral cover and biodiversity as possible to its pre-damage healthy state (Kostel, 2023). (2) In marine areas that are more affected by human activities, such as those near coastal cities and industrial zones, restoration goals need to take into account existing human activities and economic needs. This is illustrated by the case of restoration in the *Baltic Sea*, where the goal is to reduce eutrophication and restore fishery resources, improving water quality and ecosystem functioning through a combination of measures, rather than a complete return to a pristine state free of human impact (Varjopuro *et al*., 2014).

4.3 The Right to Representation

Beyond the substantive rights to existence and restoration, the UDOR envisions the ocean as a legal subject entitled to representation in decisions and disputes that affect its health and integrity. As articulated in the UDOR principles, “all peoples have the right and responsibility to ensure the Ocean’s interests and needs are represented,” and this includes the development of marine protected areas that are “ecologically representative” and embedded within a broader regime of sustainable ocean governance (Ocean Race, 2023-a, art. 6 (iii)). This principle directly acknowledges the ocean’s right “to have a voice within a multinational governance system,” thereby affirming that legal personality must be accompanied by institutional mechanisms for voice and agency.

Moving beyond the model of Article 71 of the Ecuadorian Constitution, UDOR calls for the creation of formal guardianship institutions at the international level. This proposal draws inspiration from existing national precedents. In New Zealand, the *Te Awa Tupua Act* (2017) grants legal personality to the *Whanganui* River and establishes a dual guardianship

system—one representative from the *Māori iwi* and another from the Crown—to act in the river's interest (Tănăsescu, 2020, p. 442-443). Similarly, the Colombian Constitutional Court in the *Atrato River* case (T-622/16) appointed joint guardians from the state and affected ethnic communities, recognizing the river's biocultural value and ensuring its rights would be upheld in practice.

By contrast, UDOR proposes a model of representation that is not culturally bound but instead universal in scope. It envisions that ocean guardians—comprising representatives from states, Indigenous Peoples, civil society organizations, and scientific institutions—could collectively safeguard the ocean's rights at the global level. These guardians would be empowered to participate in treaty negotiations, intervene in international dispute resolution, and contribute to environmental decision-making processes such as the designation of marine protected areas (MPAs) or the governance of areas beyond national jurisdiction (ABNJ).

4.4 From Philosophy to Practice: The Challenge of Operationalizing UDOR

While the UDOR advances a bold normative vision rooted in ecocentrism and rights-based environmental governance, a central challenge remains: how can these principles be translated into operational legal mechanisms within the existing framework of international law (Gilbert *et al.*, 2023, p 64)? UDOR, like earlier soft law instruments such as the World Charter for Nature (1982) or the Earth Charter (2000), does not constitute a binding treaty. As such, its legal influence depends on its ability to shape norms, guide treaty interpretation, and inspire national and institutional practices.

One key difficulty lies in defining and institutionalizing the right to representation. UDOR proposes that the ocean should have a voice in decisions and disputes, yet it does not prescribe the exact structure of this representation. Nevertheless, existing models such as New Zealand's *Te Awa Tupua Act* and Colombia's *Atrato River* decision demonstrate that guardianship frameworks are both legally viable and context sensitive. UDOR's vision for ocean guardians—potentially comprising representatives from states, Indigenous Peoples, civil society, and scientific communities—offers a pluralistic approach, but would require formal recognition in international legal bodies, such as treaty secretariats, dispute resolution mechanisms, and environmental monitoring institutions.

Finally, UDOR must navigate the anthropocentric structure of current ocean law, which centers on sovereign rights and resource efficiency (Gilbert *et al.*, 2023, p. 52-54). While UNCLOS acknowledges environmental protection, it does so primarily through the

lens of state interests. Embedding the rights of the ocean into such a system will require not only legal creativity but also normative shifts within multilateral diplomacy. Instruments like the BBNJ Agreement, with its emphasis on ecosystem-based approaches and benefit-sharing, may provide an entry point for integrating UDOR's principles into international marine governance (Harden-Davies *et al.*, 2020, p.1-2).

5 CONCLUSION

This study has critically examined the legal foundation upon which the proposed Universal Declaration on the Rights of the Ocean (UDOR) could be constructed, offering a comparative analysis of two influential frameworks: Ecudor's Right of Nature (RoN) and Colombia's Biocultural Rights (BCR). Through an ecocentric lens, the article argues that UDOR draws legal inspiration primarily from the RoN model, which treats the ocean not as a resource to be allocated but as a living entity endowed with inherent rights to existence, restoration, and representation. Unlike the BCR framework, which anchors environmental protection in culturally specific human identities, UDOR seeks to establish a culturally neutral declaration of ocean rights applicable to all of humanity.

UDOR can be seen as establishing a legal framework for the rights of nature without specific indigenous or religious content, focusing on the intrinsic value and rights of the ocean itself. Yet, important questions remain unresolved. UDOR's ecocentric ambition challenges deeply entrenched anthropocentric legal paradigms and raises practical concerns regarding enforceability, legal standing, and institutional design—especially in a field dominated by state sovereignty and economic utility. Furthermore, while UDOR proposes the ocean's right to representation, it leaves open how such guardianship would function at the global level and whether it can operate independently of state-centric governance structures such as UNCLOS or the BBNJ Agreement.

Ultimately, the UDOR initiative offers more than symbolic value, which provides a legally and philosophically coherent alternative to the resource-centric logic of current marine governance. In this sense, UDOR is not a rejection of existing ocean regimes but a necessary supplement that seeks to restore moral and legal coherence to global ocean stewardship.

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