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Legal Personhood:
Concept, history, and potential application to the global commons

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1. Problem Statement
A gap in global governance – national jurisdiction and the global commons

Global environmental problems are increasingly threatening human well-being on planet Earth, making it one of the most prominent issues for the 21st century. Scientific and global political concerns about the fate of Earth are growing rapidly because of the unprecedented anthropogenic actions that affect the Earths ecosystem. The degradation of interconnected natural systems has created a web of environmental issues that can no longer be seen separate from each other. Hence, the harm that has been conducted to natural areas has accumulated to a point where international institutions and national governments are prompted to take collaborative actions. Therefore, a significant task for our contemporary global governance system is to recognise Nature's dominant role in shaping the planetary biosphere and preserving the foundation for human existence.

The increasing interest in environmental protection has already led to the establishment of intergovernmental agreements that address the systemic harm caused to the environment. Agreements such as the United Nations Paris Climate Agreement have set the foundation of what the limits of the planetary systems are.[1] Therefore, the compound of global political intentions needs to favour regulations and policies that prevent further environmental degradation. Political and legal defiance have been the main reasons leading governments to cause environmental degradation.

However, in many national jurisdictions, innovative legal regimes have established considered actions to mitigate and eventually abolish environmental exploitation. One of the concepts that will be scrutinized is the concept of legal personhood. Legal personhood has been increasingly implemented in many national jurisdictions such as New Zealand, US, Ecuador and others. The purpose of legal personhood is to enlarge the common law definition of personhood to afford legal rights to natural entities. Many corporations, non-physical entities (such as the European Union) have been granted legal personhood, making them the holder of rights. However, with the emergence of Christopher Stone's seminal article of 1972, the notion of legal personhood for natural entities had challenged contemporary environmental protection legislations.[2]

The proposal, therefore, is to adopt the rights discourse and connect it with environmental protection processes as it proposes that the environment should be made subject in its own rights. As the impact caused by humans is constantly changing the ecological system, we should recognise, in the Anthropocene era, that States are obligated to manage their individual differences over Nature more effectively. Nature as a property has been a core element in many national jurisdictions but has also shifted beyond borders making it an international concern.

The misconduct of global sustainable governance has affected areas beyond national jurisdiction, posing a threat to the stability of the global commons. The concept of the global commons proposes a specific component of global environmental governance. The world is increasingly becoming more interdependent and creating a global coherence is necessary for preserving domains that go beyond national jurisdictions. For many years, the concept of sovereign statehood or 'state territory' has sought to delimit borders to penetrate resource domains that go beyond national jurisdiction. However, the continuous exploitation of global 'common pool' resources has pushed the legal status of the global commons to break-point, challenging the fundamental energy balance of Earth's surface.[3]Accepting the Grotian idea of *mare liberum,* which aims to preserve the freedom of access for the benefit of all, the notion of 'first come, first served', is no longer applicable in a globalized world. The property of no single *res nullius* has ensured that the Earth system does not acknowledge national boundaries[4].

In a contemporary context, global governance hypothesizes that individual states cooperate with each other to successfully govern the global commons. Scientific and political concern about the fate of the planet is increasing because of the deliberate anthropogenic actions that affect Earth ecosystems[5]. Therefore, global politics ought to pay more attention to the idea of granting personality to areas beyond national jurisdictions. Hence, the stewardship of the global commons needs a rather inclusive system that prevents the increase of activities that threaten the biosphere.

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[1] https://unfccc.int/sites/default/files/english_paris_agreement.pdf
[2] Christopher D. Stone, *Should Trees Have Standing--Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972)
[3] Surabhi Ranganathan. 2016. Global Commons. European Journal of International Law. At 701.
[4] Nico Schrijver. 2015. *Managing the global commons: common good or common sink? Human rights and development.* Taylor & Francis online, at 1253.
[5] Meghnad Desai & Paul Redfern. 1995. *Global governance: ethics and economics of the world order.* At 4.

2. Historical Review

(a) The concept of 'global commons'

Human well-being and existence are entirely dependent on the stability of the planetary system. Although the Earth has experienced several environmental changes, the shift from the Holocene to the Anthropocene has exposed the pressure of anthropogenic actions on Earth's energy balance.[6] As technology is constantly advancing, the metabolization of natural resources into waste and the transgression of planetary boundaries proposes the risk of irreversible damage to the global commons.[7]

The notion of the global commons is based on the inter-state governance of shared open access common pool resources that are lying beyond national jurisdictions.[8] The planet contains specific areas where no sovereign state has control over. Four global commons have been formally identified: Antarctica, the oceans and deep seabed, outer space, and the atmosphere.[9] The concept of global commons has been created to regulate geopolitical interests and resource access to prevent a utilitarian governance system that promotes the exploitation of common pool resources. However, the new reality of the Anthropocene has illustrated that a new global commons governance system needs to be implemented that focuses on securing Nature's ecological values and favours socio-ecological cohesion.

The international system of law divides the planet into two realms: first, where nations have the sovereignty to govern natural resources within their own borders; and secondly, areas that fall behind the national jurisdictions of any nation.[10] The commons can be perceived as the hidden economy that cannot be seen but is practised daily. They provide the social-environmental support system that enables all life on Earth to flourish.[11]

However, the current environmental crisis has made an enormous impact on the human-nature relationship. The Environment has become a central point of global political dispute as the global political system is dominated by sovereign states acting own interests.[12] Exploiting the global commons for national economic interests has been feasible because the ownership of the global commons has been identified as *res nullius*, the property of no one, meaning that every state with the technological ability can take advantage of the commons, leaving them with no legal protection.[13]

As global ecological concerns are increasing, there have been prominent concepts that have shaped the regulatory discourse on the governance of the global commons. One of the concepts is the 'tragedy of the commons', by Garett Hardin, which is the notion that common resources are overexploited without any legal regulations.[14] This sophisticated concept considers how localised shared resources, that are open access, can be governed. However, one reason why natural resources have been exploited is the expansion of unsustainable economic development that promotes the privatization of natural systems.[15] This is intimately connected with the corporatized economic world system, combined with the will of national governments to depreciate Nature, leaving minimal room for natural resilience to combat any future environmental crisis.[16] The concept draws on the judgement that the market must have limits so that Nature can flourish and continue its natural cycles.[17]

While the tragedy of the commons focuses on the general exploitation of natural resources, the second prominent concept, the Common Heritage of Mankind, favours the preservation of resource domains beyond national jurisdictions. Maltese Ambassador Arvid Pardo first proposed the principle to the deep-seabed and its resource units.[18] As it has mainly been

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[6] J. Rockström.2010. *Redefining the Global Commons in the Anthropocene: From Holocene global commons to Anthropocene planetary commons.* Stockholm Resilience Center, at 2.
[7] Global Commons Alliance. 2023. *What are the Global Commons?.* Global Commons Alliance, *A Plan for the Planet.*
[8] J. Rockström. Above n 6, at 1
[9] Püer Magnus Wijkman. 2009. *Managing the Global Commons.* Cambridge University, at 1
[10] Klaus Bosselmann. 2015. *Earth Governance: Trusteeship of the Global Commons*. New Zealand Center for Environmental Law, at 71
[11] Cameron La Follette and Chris Maser. 2017. *Sustainability and the Rights of Nature: An Introduction.* Chapter 5: *Precursors to rights of nature,* at 4
[12] Klaus Bosselmann. Above n 10, at 122
[13] Nico Schrijver. Above n 4, at. 1253
[14] Surabhi Ranganathan. Above n 3, at 694
[15] Klaus Bosselmann. Above n 10, at 125
[16] Cameron La Follette. Above n 11, at 6
[17] Cameron La Follette. Above n 11, at 7
[18] Nico Schrijver, Above n 12. At 1257.

enunciated to marine reserves, many hope that the Common Heritage principle can create a sustainable framework that promotes stable international environmental governance that favours cooperation. However, the issue that arises with the principle is that in legal theory it does not state whether it creates a communal ownership of the commons, or a global cooperative management of resource areas that extend beyond national jurisdictions.[19] On the other hand, the Common Heritage of Humankind is a legal principle that does not only rely on descriptive or heuristic phraseology.

In practice, the Common Heritage has been embedded in international law, enforcing that states cannot claim rights to territorial jurisdiction that are not within their own national borders. In addition, international law has changed the description of the global commons from *res nullius* (property of nobody) to *res communis* (shared property), a term that describes that the commons are owned by none but subject to use by all.[20] Since its entitlement as shared property, it is everyone's interest and responsibility to assure that the ecological integrity of the global commons can be sustained. Thus, states do not have the authority to claim the global commons, which means that each interest of the state must be managed through cooperation and perhaps can be determined what is best for the general global environment, in other words, best for Nature. This can be enforced by innovative and precautionary international legally binding instruments that promote state engagement in recognize Nature's values towards society.

(b) The concept of 'legal personality'

The notion of legal personality in Western legal systems has been an emerging concept in common law jurisdictions. Thus, its purpose is to enlarge the common law definition of persons in order to afford legal rights to non-human beings. However, the fundamental nature of personhood must be understood to comprehend how the concept operates on a legal basis.

Legal personality is an artificial creation of law that attributes personality to any non-human entity, meaning the holding of rights and duties.[21] Historically, the norms of Western legal systems have made a clear distinction between person and non-persons. But as noted, with his 1972 publication *'Should Trees Have Standing'*, Stone was one of the leading scholars to expand the discussion about legal subjectivity and promote conceptual space for modern law.[22]

Thus, this modern conception of law has identified the conferral of legal personality or rights, which includes the 'personification' of non-human entities.[23] Granting non-human entities with legal personality is intimately connected with the imposition of societal obligations and duties.[24] Thus, the questions arises whether non-human entities can fulfil any social obligations in order to receive the rights of a person.

In the common law discussion, non-human beings have been historically treated as a property that can be owned rather than an entity that has the legal capacity to hold rights and duties.[25] There are several examples of non-physical entities being granted legal personality across common law jurisdictions, such as the Crown, limited partnerships, and corporations.[26] For instance, legal personhood creates the capability of a company to become the subject of legal rights and duties.[27] In legal terminology this means that the company as a right-holder has a legally-enforceable claim against another party, that has the duty to not breach these rights.[28] Since legal personality implies the capability of legal standing, legal persons may enforce their rights in court.

However, one of the biggest challenges that arises when establishing a compelling legal case, is the verification of the entity's mind or body that is required for legal liability.[29] In general, legal personhood can be created by the judiciary, specific legislations, or by general legislation. For example, in New Zealand corporate entities have been given legal personality

[19] Cameron La Follette. Above n 11. At 20.
[20] Cameron La Follette. Above n 11. At 11.
[21] Megan Exton. October 2017. Personhood: A Legal Tool for Furthering Māori Aspiration for Land. At 7.
[22] Nicola Pain and Rachel Pepper. 2021. Fordham Int. Law J. Can Personhood Protect the Environment? Affording Legal Rights to Nature. At 315.
[23] Nicola Pain and Rachel Pepper, Above n 22. At 317.
[24] Visa A.J. Kurki. August 2019. 'Introduction', A Theory of Legal Personhood (Oxford, 2019). At 1.
[25] Visa A.J. Kurki. Above n 22. At 4.
[26] Megan Exton. Above n 21. At 8.
[27] Neil Campbell ,"Corporate Personality" in Peter Watts, Neil Campbell and Christopher Hare 'Company Law In New Zealand'. 2016. At 23.
[28] Megan Exton. Above n 21. At 11.
[29] Megan Exton Above n 21. At 53.

under general legislation.[30] This means that only the registration of these entities in regard to the general legislation grants the company legal personality. In addition, the general legislation does not apply legal personality to natural entities as these can only be implemented by specific legislations.[31] However, the concept of legal personhood does not necessarily need to be applied in the Anglo-American corporate law system, but can open doors for the development of legal personality of natural resources.[32]

(c) Application of 'legal personhood' to natural systems

In Western common law discussion, non-human entities have often been treated as property, and not as a legal person. Most realist thought contends that legal persons are only operating within a natural conception of a person.[33] This implies that natural persons are only considered to be human beings.

However, since Stone's essay, the concept of legal personhood for natural systems, often called environmental personhood, has emerged in Western jurisprudence.[34] Limiting legal personhood to the notion that only human beings can be endowed with legal personality diminishes the idea that there are other major non-physical entities that play a major part in Earth's system. Therefore, it has been identified that the conferral of legal personality and granting Nature with rights is one legal avenue to improve environmental outcomes on a global scale.[35]

With the emergence of Berry's theory of 'Earth jurisprudence', there has been a shift in global environmental law that resists the philosophical perception of human primacy over all other entities of the Earth system.[36] For instance, the protection of animals and recognising them as individual creatures has been well implemented in the Euro-American political framework.[37] In addition, attempts for legal protection for natural systems, such as granting Nature with rights, has also created a collective ecological-subjective move that Nature might be a new subject that is different in form, but not in kind.[38] The notion that Nature can be granted with legal personality involves the ways that Nature's personhood exists and moves across social domains that include legal, cultural, and political. In Western ontology, the discussion about personhood in connection to nature has only considered Nature as a singular object which humans disagree over.[39] The politics of granting natural systems with legal personality is often disturbed by the Westphalian conceptualisation of personhood that favours only human symbolic practices and does not consider the relationship between human and non-human actors.[40]

The shift from the Holocene to the Anthropocene has illustrated a clear signal that human impact on Earth's ecological system has become a force of nature, which has had a destructive influence.[41] The concept of legal personhood for natural systems has resonated along many continents and the implementation of rights for Nature has often been linked to socio-cultural and Indigenous circumstances and notions about recognising the integrity of Nature and its application to human survival. Despite the notion that states can exploit their own natural resources within their own national jurisdictions, the environment does not know national borders as it is considered as one global environment.[42] Therefore, personhood and the personification of natural systems poses a specific ontological approach, which promotes the assumption of multi-naturalism and that the human/non-human relationship is transboundary.[43]

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[30] Companies Act 1993, s 15.
[31] Megan Exton, Above n 21. At 9.
[32] Christopher Finlayson. November 2022. Legal Personhood of Natural Resources: The potential for ocean jurisdiction. Global Studies Research Center.
[33] Visa A.J Kurki, Above n 24. At 20.
[34] Nicola Pain and Rachel Pepper, Above n 23. At 6.
[35] Nicola Pain and Rachel pepper, Above n 23. at 4.
[36] Thomas Berry. 2011. Rights of the earth: We need a new legal framework which recognizes the rights of all living beings. Exploring Wild law: The Philosophy of Earth Jurisprudence. At 227.
[37] Rafi Youatt. March 2017. Personhood and the Rights of Nature:The New Subject of Contemporary Earth Politics. International Political Sociology, New School for Social Research. At 1.
[38] Rafi Youatt, Above n 37. at 3.
[39] Rafi Youatt, Above n 37. at 4.
[40] Rafi Youatt, Above n 37. at 8.
[41] Katja Gelensky. November/December 2021. Natur als Person? Die anthropozentische Sicht auf das Grundgesetz und der Schutz der natürlichen Lebendsgrundlagen. Konrad Adenauer Stiftung. At 2.
[42] Klaus Bosselmann. 2017. Global Commons, Earth Trusteeship, State Sovereignty: Relevance to Marine Conservation. Fit for Purpose? Political and Legal Aspects of Global-Regional Marine Conservation Framework with particular focus on the Convention for the Conservation of Antarctic Marine Living Resources. New Zealand Center for Global Studies. At 2.
[43] Rafi Youatt, Above n 37. at 4.

The rationale behind legal personality for natural systems is to enhance environmental protection on a global scale. The 21st century goal is to combat global environmental issues with the support of environmental protection laws that enforce the notion that Nature does not only exist as an object of possession.[44] By implementing legally-binding instruments that promote environmental personhood and include effective juridical framing to preserve natural systems, but it must also be accompanied by enforceable rules that that are laid down in international legislation.

(d) The role of treaties in international environmental law

While the concept of legal personhood for natural areas has gained international recognition and even success in many national jurisdictions, the feasibility to implement it on an international scale to preserve areas beyond national jurisdictions depends on international treaties that promote environmental protection. This section will present several existing treaties that have dealt with global environmental governance and the global commons over the last half-century. While none of these international treaties recognize legal personhood as a prominent concept to preserve natural systems, there are some that have highlighted general principles of environmental personhood.

One of the earliest international reports that focused on a set of common principles to guide people and states to preserve the human environment was the Stockholm Declaration on the Human Environment in 1972.[45] The UN General Assembly proposed the establishment of the resolution to enhance additional financing for environmental programmes. Principle 2 of the Declaration states: "*the natural resources of the earth, including air, water, land, flora and fauna and representatives' samples of natural ecosystems, must be safeguarded for the benefit of present and future generations",* proclaiming early initiatives to protect the general environment.[46] While the Declaration does consider the well-being of areas beyond national jurisdiction, Principle 21 also legitimizes the exploitation of resources that are within national jurisdictions.[47]

In 1982, the General Assembly accepted a draft report on the World Charter for Nature, where it expressed its conviction that sustaining Nature and all its different life-forms benefits human existence on Earth.[48] The World Charter for Nature can be seen as a visionary document for the concept of legal personality for natural systems as it acknowledges the notion that humans are part of Nature and to keep Earth's energy balance intact, all non-human livings need to be considered.[49]

Therefore, the World Charter for Nature recognizes the need for appropriate measures on a national and international scale, considering that the jeopardy of excessive exploitation and destruction of natural resources disrupts the stability and quality of a stable environment. While General Principle 3 states '*all areas of earth, both land and sea, shall be subject to the principles of conservation; special protection shall be granted to unique areas.*[50] Principle 3 does not identify what 'unique areas' means, it does mention that special protection can be granted to those areas. Furthermore, General Principle 4 does mention the urgency to maintain optimum sustainable productivity in areas such as land, marine and atmosphere, while avoiding the destruction of ecosystems.[51]

Although the Charter does not mention Antarctica and celestial bodies, it does identify early intentions to conserve areas that also fall beyond national jurisdictions. General Principle 21 (e) for instance points out that areas beyond national jurisdiction need to be safeguarded and conserved.[52] While Principle 4 shows early concerns about the integrity of Nature, Principle 21 (e) concentrates on the provision of environmental damage outside national jurisdictions. Looking back after four decades, the Charter, even with the uncertainty about the future ecological crisis, illustrates serious evidence that the concept of legal personhood and its application to protect the global commons is more closely connected that might be suspected.

The Brundtland Report of 1987 was the first major documents that introduced the concept of 'sustainable development', and is one of the most prominent concepts defining the need to protect the global environment. Sustainable development is defined in the Report as development that *'meets the needs of the present without compromising the ability to future generations to meet*

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[44] Nicola Pain and Rachel Pepper, Above n 22. at 9.
[45] Louis B.Sohn. 1973. The Stockholm Declaration on the Human Environment. Harvard International law journal. At. 423.
[46] Stockholm Declaration 1972. Report of the United Nations Conferences on the Human Environment. At 4.
[47] Louis B.Sohn. Above n 45. At 457.
[48] World Charter for Nature. 1982. At 17.
[49] Klaus Bosselmann. 2021. Where is 'Earth'50 Years after Stockholm? At 2.
[50] World Charter for Nature. Above n 48. At 17.
[51] World Charter for Nature. Above n 48. At 17.
[52] World Charter for Nature. Above n 48. At 18.

their own needs".[53] However, the Report also recognizes the international institutional gap, as the objective of sustainable development and the integrated Nature of global environmental challenges poses a major problem for national and international institutions.

In the 1980s, in similar manner to the 2020s, governments were reluctant to recognize the need to change the international system. However, the Brundtland Report further evaluated the need to manage the global commons, including Antarctica and outer space. Furthermore, the Report takes a greater look at oceans, especially the areas outside of the Law of the Sea designated exclusive economic zones (EEZs).[54] While the Report does not mention legal personhood as a concept, it does highlight the vulnerability of Earth's energy balance and the importance of international environmental law to recognize the global commons as a key factor for sustainable development.

In 1992, on the occasion of the 20th anniversary of the Stockholm Convention, the UN Conference on Environment (UNCED) was held in Rio de Janeiro. The 1992 Rio Summit adopted the first global environmental treaty promoting United Nation bodies, intergovernmental and non-governmental organization to further improve multilateral duties to protect the global commons.[55] However, although several objectives for each common have been presented, the Rio Summit also declares that States maintain the ability to exploit their own resources within their national jurisdiction. While Agenda 21 proposes an action plan concerning sustainable development; this is not a legally-binding framework, but rather an authoritative statement of principles that could potentially lead to a global consensus on the management of the global environment.

The Earth Charter is another international document that poses interesting details about the intention to create an interconnected world that balances humans and the environment. In its first principle 'Respect and care for the community of life', the Charter highlights the importance to recognize all life on Earth, as every form of life creates a specific segment to earth.[56] Furthermore, the second principle 'ecological integrity' proposes to protect and restore the integrity of Earth's ecological system, with special concern to natural processes that maintain life. Those two key principles of the Charter have gained significant recognition among several international agencies such as UNESCO and IUCN.[57]

Legal personhood has thus not yet been implemented in any international environmental declaration or treaty. However, the World Charter for Nature (1982) proposed specific segments of the concept. Looking back, the Stockholm Declaration on the Human Environment was the first documents to set principles guiding nations and their people to care for the environment. Over half a century later, it is clear that international environmental law has not yet reached the goal of protecting Nature, and more specifically, the global commons. While most documents act as a guideline for nations to rely on, more specific and limited treaties need to be implemented that prevent the continuing disruption of areas beyond national jurisdictions and all its implied risks towards Earth.

3. Legal Personhood in National and Regional Jurisdictions

The purpose of this paper is to explore legal personhood as a potential concept in international environmental law and sustainable governance for areas beyond national jurisdictions, i,e, the global commons. The concept of granting natural entities with legal personality has become a prominent legal tool to resolve environmental, socio-cultural, and economic issues. The Spanish Congress approving and ratifying a measure to grant personhood to the 'Mar Menor', or the current negotiations of the Dutch 'Waddenzee' becoming a legal entity under Dutch law, show the willingness of national governments to recognize Nature's values.[58] However, this section provides three examples including New Zealand, Colombia, and Ecuador as they represent States which have already implemented legal personhood within their national jurisdictions.

Additionally, governments all around the world have adopted legal provisions that encourage the subjectification of natural systems.[59] These provisions differ around the world as every nation has a different definition in terms of 'legal statuses' of

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[53] *Our Common Future,* Report of the World Commission on Environment and Development (United Nations, 1987) at 37
[54] Brundtland Report 1987. United Nations. Above n 53. At 179.
[55] United Nations Conference on Environment & Development 1992. Agenda 21. At 78.
[56] Earth Charter 2000. At 1.
[57] Klaus Bosselmann. Above n 49. At 3.
[58] Tineke Lambooy & Jan van de VEnis & Christiaan Stokkermans. 2019. A case for granting legal personality to the Dutch part of the Wadden Sea. Taylor & Francis Online.
[59] Craig M.Kauffman & Pamela L.Martin. 2018. Constructing rights if nature norms in the US, Ecuador, and New Zealand. Global Environmental Politics. At 43.

legal personhood. This means that some States have incorporated the concept of legal personhood within their constitution granting it the maximum legal standing, while other are subordinated into specific legislations and acts.

(a) New Zealand

New Zealand, with its progressive legislation, is considered as one of the role models for the recognition of natural entities as legal persons. The Te Urewera Act 2014, and the Te Awa Tupua Act 2017, are the only two nature-based legal persons in NZ-Aotearoa.[60] In this section, the paper will discuss the latter Act, Te Awa Tupua also called 'Whanganui River Claims Settlement Act'.

In March 2017, the Whanganui River was the first river to be granted legal personality under New Zealand law.[61] The transformation of the river from property to legal person can be perceived as a breakthrough of conventional Western assumptions of Nature. As mentioned above, The Whanganui River (Te Awa Tupua) was not the first ecosystem in New Zealand to attain legal personality. However, the Act not only serves the environment, but also implies the constitution of historical claims of the Whanganui Iwi (tribe) with regard to the River. In 2017, article 12 in the Te Awa Tupua (TAT) act *'recognizes the Whanganui River as a living whole that comprises the river from the mountains to the sea, incorporating all its physical and metaphysical elements'*.[62] Hence, article 12 puts an emphasis on the notion that all forms of elements and surrounding communities of the Whanganui Iwi shall work collaboratively for the common purpose of promoting environmental, socio-cultural, and economic health and wellbeing.[63]

To fully enact the declaration and its implications, the Act declares two Te Pou Tupua (guardians) that have responsibility to act on behalf of the River and for maintaining its ecological health.[64] One guardian is appointed by all iwi with interests in the Whanganui River, and the other appointed by the Crown.[65] Under Article 18 (2), the two guardians will act has the human face of the River and will be, under Article 27(1), supported by an established advisory group (Te Karewao).[66] Both selected authorities have equal legal standing within the Declaration. However, given its genealogical origin, Māori representatives exercise specific customary rights in relation with the river.

Assigning the river with legal personality was not just a legal device, but also accompanied by Māori ontology of Nature. Te Ao Māori (Māori worldview) has played an instrumental role in the legal recognition of the river. Through the ontological lens of Māori, Nature is perceived as an interdependent system that has intrinsic values for all living things.[67] Māori do not perceive Nature as property that can be owned and therefore move away from the anthropocentric paradigm where Nature is conceived as without rights. Māori shift away from the Cartesian dualism of subject and object, with humanity as outside of Nature rather than being constituted of Nature.[68] Therefore, the Wanganui River Act acknowledges Māori values by recognising the river as a legal person and establishing a system that promotes the co-governance and management for the river.[69] In contrast to many anthropocentric ideologies, the Whanganui iwi relates to the river as their ancestor, promoting ethical personalism. This means that in this context, personhood is not necessarily interpreted in terms of a sufficient condition for an entity, but in terms of Māori perspective on history which can also be called 'ethical ancestralism'.[70]

The quintessence of this physio-centric approach is that by protecting the river, it also protects the people that live along the river. The TAT Act therefore provides an implicit justification for the transition from Māori understanding of personhood to the concept of legal personhood as it illustrates the notion that river has a deeper meaning and therefore must be protected.[71]

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[60] Megan Exton. Above n 21. At 9.
[61] Matthias Kramm.2020. When a river becomes a Person. Ethics Institut, Utrecht University, Netherlands. Journal of Human Development and Capabilities. At. 307.
[62] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017. Article 12.
[63] Aikaterini Argyrou & Harry Hummels. 2019. Legal personality and economic livelihood of the Whanganui River: a call for community entrepreneurship. Water International. Routledge Taylor and Francis Group. At 761.
[64] Tom Barraclough. 2013. How far can the Te awa Tupua (Whanganui river) proposal be said to reflect the rights of nature in New Zelaand?. University of Otago, New Zealand. At. 23.
[65] Tom Barraclough. Above n 64. At. 24.
[66] Te Awa Tupua. Above n 62. Article 18 (1) & 27 (1).
[67] Tom Barraclough. Above n 64. At 28.
[68] Tom Barraclough. Above n 64. At 7.
[69] New Zealand Ministry of Justice. 2017. At 69.
[70] Matthias Kramm. Above n 61. At. 313.
[71] New Zealand Ministry of Justice. 2017, at 13 a

Legislative developments such as the Whanganui River Act are similar to Māori legislations concerning the existence of ecological systems and the relationship that humans have with it. In New Zealand, the act of granting legal personality to natural entities generally prompts the discussion of how Nature has been defined by environmental law. One of the key questions of environmental law is how humanity seeks to define its relationship with Nature and the extension of legal personhood beyond corporations and humans. In the case of the TAT, Nature is not conceived as property, but ceased from its role of only satisfying human wants.[72] Therefore the Whanganui River itself will be able to own property, but it cannot be owned by any external force. For example, In NZ company law, personhood implies the dual property arrangement as persons can own property, but also can be owned by shareholders.[73] Within the legal system, courts will be able to assess the environmental condition of the river and, in case of harm, can judge in the favour and interest of Nature rather than the individual of interest, recognising that the river possesses values and rights.

After 150 years of legal dispute, the transformation of the river to a legal entity has promoted the notion that legislation and various constitutional amendments can promote the legal notion that Nature is in an inalienable connection with humanity as it is one living entity. Therefore, the two acts are intimately connected with an eco-centric approach that is based on the belief that humans must be understood as ontologically part of Nature.[74]

(b) Ecuador

Legal personhood is a key concept that has influenced the alteration of Ecuador's Constitution. Ecuador is one of the most megadiverse countries in the world that contains large tracts of intact natural forests which play a major role in the sequestration of greenhouse gases as its biomass constitutes 80% of the nation's forest.[75] However, for many decades Ecuador has experienced major changes in its environment, which are mainly due to mining, agricultural expansion, and illegal land changes. Ecuador is an example of how legal personhood or Rights of Nature can be constitutionalised to protect domestic ecological systems. In the case of Ecuador, the RoN movement can more accurately be seen as a generic metaphor that favours human's responsibilities for the preservation of natural areas, just as with legal personhood.[76]

The first recognition of RoN emerged in 2006, when several governments around the world have prompted for immediate action as human use of environmental resources resulted in implications affecting the quantity and quality of Nature's resource units for human utilization.[77] In 2008, Ecuador became the first country to constitutionalise Rights of Nature by granting it the highest form of national legal standing. By implementing a Rights of Nature framework within their Constitution, Ecuador has taken a step forward to develop a new form of ecological governance that promotes a holistic approach. Ecuador's reformed Constitution recognizes the Rights of Nature to exist and to maintain its regenerable cycle and evolutionary process.[78]

Because of the constant loss of biodiversity in the country, the new constitution challenges the neo-liberal approach towards exploiting Nature. The Constitution (Article 71) states that Nature has the right to integral respect for its existence and for the maintenance and regeneration of its life cycle, structure, functions, and evolutionary processes.[79] In addition, Article 74 emphasises the State's role in applying all preventive and restrictive measures that support environmental protection.[80] This means that the government is taking a precautionary approach where they must take action to manage the environment to avoid certain risks that could lead to irreversible damage to the ecosystem. The implication of Rights of Nature, as with legal personhood, is centred on the recognition that human rights are interconnected with those of Nature.[81]

Similar to the New Zealand experience, indigenous peoples played a vital role in constitutionalizing Rights of Nature in Ecuador. They contribute a certain source of knowledge that puts emphasis on the institutionalisation of the human-Nature relationship. In New Zealand, different areas were granted legal personality in relation to the local tribe. However, in

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[72] Tom Barraclough. Above n 64, at 5
[73] Abigail Hutchison. 2014. *The Whanganui River is a legal person*. Alternative Law Journal, at 181
[74] Anna Gear. 2013. *Towards a new horizon: In search of a New Social and Juridical Imaginary*. Oñati socio-legal series. At. 17
[75] Forest Legality Initiative. 2014. Ecuador
[76] Tom Barraclough. Above n 64. At. 27
[77] Kenneth Arrow. 1996. *Rights to nature: ecological, economic, cultural, and political principles of institutions for the environment*., at. 34
[78] Katie Surma. 2021. *Ecuador's High Court Affirms Constitutional Protections for the Right of Nature in a Landmark Decision.* Politics & Policy. Inside Climate News
[79] Political Database of the Americas. 2011.República del Ecuador. Republic of Ecuador. Constitucion de 2008. Constitution of 2008. Chapter 7. Article 71
[80] Political Database of the Americas. N. 79. Article 74
[81] Agustín Grijalva Jiménez. 2021. El pleno de la corte constitucional del Ecuador, en ejercicio de sus atribuciones constitucionales y legales, expide la siguiente. Corte Constitucional del Ecuador

Ecuador the influential institution Confederación de Nacionalidades des Indígenas del Ecuador (CONAIE) are the legitimate representatives of Indigenous peoples.[82] Their ontology, similar to Māori, is based on the belief that economic stagnation, neglect of indigenous values, and exploitation of Nature is the reason for decrease in environmental stability. The direct involvement of the CONAIE as one political agent created a political movement that lead to change in the Constitution.

Because the constitutional provision for the Rights of Nature exists in the Ecuador's Constitutional Court, such rights can interpreted to safeguard the Los Cedros Forest ecosystem from mining concession.[83] Through recognition of RoN laws, Nature has been perceived as a subject rather than an object which enables the High Court to rule in favour of Nature in the case of activities that threaten its integrity and wellbeing. Within this legal framework, the Constitution of Ecuador prioritizes regional processes that protect human and environmental rights. In addition, the initiative is perceived as a progressive and innovative ruling that protects not only the environment and humans, but also all its non-human beings that play a vital role in the stability of Earth's energy balance. However, there are still barriers to the constitutional objective, as the rights are not fully realised and because of the lack of contribution from different stakeholders.[84]

Rights of Nature comprise a generic metaphor that favours human responsibility towards maintaining Natures health and wellbeing. Ecuador has set a great example of acknowledging these rights by constitutionalising them (Chapter 7 of the Constitution). This exemplary step has illustrated that there are legal tools that can be implemented to grant legal personhood to natural systems within national jurisdictions. It can be seen as a case of global significance, both for Ecuador and other nation-states, to establish an influential Earth jurisprudence system that favours the concept of legal personhood and can guide humanity to promote environmental protection. Furthermore, the case of Ecuador sets a great juridical example to continue with environmental protection that can go beyond national jurisdictions.

(c) Colombia

Colombia is the third example considered here. Legal personhood has had great influence in the case of the Colombian river 'Atrato'. While there has been an increase in recognizing legal personhood within national legal systems, each country has its own methodology, due to historical and practical circumstances, on how legal personhood is being implemented.

In 2016, the Colombian Constitutional Court heard an action by the Centre of Studies for Social Justice on behalf of local communities that live along the Atrato river. The Atrato river is one of the most biodiverse ecosystems in the world, mostly covered by tropical forests. Due to its remote location, the Colombian government has had limited power over the area, resulting in the expansion of numerous illegal mining activities because of its richness in resources.[85] After years or social and political mobilization, the Colombian Constitutional Court passed a judgement which proclaimed the river to be a subject of rights.[86]

Around the Atrato Rriver, there are many local communities that have been victims of environmental injustices caused by extreme environmental issue and the exclusion of political processes. However, one of the main reasons for the hearing were the increase of concerns about the river's health due to multiple illegal mining operations that have dumped large amounts of mercury into the river.[87] Local communities and various non-governmental organizations have issued that the state had a certain obligation towards its citizens to protect the environment, but all life within the ecological system. For many years the government had been resistant to offer any legal regulations to prevent illegal mining operations. However, the accumulation of environmental problems and humanitarian crisis created a legal case, where various non-governmental organisation such as Tierra Digna (Earth Dignity) have submitted multiple pieces of evidence that indicate how destructive industries have contributed to the decrease in environmental quality.[88]

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[82] Emma Bainbridge. 2020. Indigenous Mobilization in Ecuador. Brown University Library.
[83] Center for Biological Diversity. 2021. Ecuador's highest court enforces constitutional 'Rights of Nature' to safeguard Los Cedros protected forest.
[84] María Valeria Berros. 2015. The constitution of the republic of Ecuador. Pachamama has rights. Environment & Society Portal.
[85] Regine Roncucci. 2019.Rights of Nature and the pursuit of environmental justice in the Atrato case. Wageningen University & Research. Sociology of Development and Change. Environmental Policy, at 10.
[86] Judgement T-622/15: see Regine Roncucci above, n 85 at 4.
[87] Catherine J Irons Magallanes. 2021. From rights to responsibilities using legal personhood and guardianship for rivers. Victoria University of Wellington. Victoria University of Wellington legal research paper. At. 14.
[88] Catherine J Irons Magallanes. Above n 87, at 14

The 2016 judgment, judged by the Colombian Constitutional Court, recognized that state authorities have failed to comply with constitutional obligations to take active and effective measures to stop illegal resource extraction operations. The Court decided that the authorities are 'responsible for violating the fundamental rights to life, health, water, food security, and a healthy environment'.[89] The main drivers for granting the river legal personality, were the acknowledgement of individual, communal and biocultural rights.[90]

In the case of Colombia, biocultural rights play a vital role in the realisation that the river should be seen as a legal entity. The Colombian Court inferred the concept of biocultural rights into Colombian constitutional law, as it depicts the interdependency between Nature, its resources, and its living entities within the system. In this case, it means the surrounding communities along the river. Therefore, biocultural rights describe the dual rights of Nature and humans as they are intertwined in the preservation and protection of socio-ecological areas.[91] Hence, the Colombian Government granted the river legal personality as it facilitates the recognition of environmental rights that are able to protect these biocultural rights. Similar to Ecuador and New Zealand, it can be seen as a philosophy that favours the human responsibility to protect natural areas. In many cases around the world, many environmental issues are based on the ways humans place themselves within the ecosystem, generating satisfaction only in the costs of natural systems.[92]

The Atrato River illustrates a case where the concept of legal personhood has been implemented within a national legal system. However, in contrast to the Rights of Nature movement in Ecuador, the Colombian case does not recognize legal personhood within its national jurisdiction as it lacks laws that would comply with legal personhood. However, it is a case that shows that the concept has been a foundation to implement biocultural rights that grant the river legal personality making it subject to rights.[93] In all cases, affected environmental areas have been granted some sort of legal status within national jurisdictions, illustrating that the assignation of legal status for natural entities has set a progressive example of how legal personhood has influenced environmental-based policies.

(d) ***European Union***

The paper, so far, has discussed various examples of nation states that have implemented the concept of legal personhood within their national jurisdictions. In all cases, nations have used the concept to enhance the preservation of natural entities. The European Union will be used as an example of how international law recognises intergovernmental institutions as legal persons, making it the bearer of rights and duties, in respect to the initial notion that natural entities such as the global commons can potentially be granted with legal personality.

In 1992, the Treaty of Maastricht introduced the concept of European political unity which resulted in the Treaty of the European Union (TEU).[94] The purpose of the TEU is to create a single institutional framework which ensures the coherence and continuity of the measures to achieve the tasks and goals of the EU. At the same time, they are also endeavoured to maintain and develop the 'acquis Communautaire'.[95]In the past, it has been depicted that international organizations can be subjects of international public law if they have the capacity to hold rights and obligations in their relations of international public law. For instance, the International Court of Justice (ICJ) has declared that institutions such as the Union can be granted as a legal person, depending on its purpose and functions that are implied in its constituent documents and developed in practice.[96]

According to this principle, the EU becomes active only if it has been mandated in their respective treaties. Furthermore, since the 1920s it has been generally concluded that states are recognized as legal persons which ultimately led to the

[89] Catherine J Irons Magallanes. Above n 87, at 5
[90] In 2015, the Law Faculty of Victorian University of Wellington invited South American scholars to share their experience with the Te Uruwera Act, which had been implemented in 2014. One of the Colombian participants referred the NZ case back to Colombia, which then became involved in the Atrato River case.
of Wellington. 2015. Common Grounds – New Zealand & América Latin. Faculty of Law.
[91] Cather J Irons Magallanes. Above n 8, at 16
[92] Peter P.J Driessen & Pieter Glasbergen. 2013. *Greening Society. The Paradigm Shift in Dutch Environmental Politics.*
[93] Regine Roncucci. Above n 85, at 27
[94] Phillipe de Schoutheete & Sami Andoura. 2007. *The Legal Personality of the European Union.* Working Paper European Affairs Program. EGMONT Royal Institute for International Relations, at 1
[95] Octavian Gabriel Pascu & Caius Tudor Luminosau. Above n 96, at 57
[96] Phillipe de Schoutheete & Sami Andoura. Above n 94. At 4.

acceptance that international institutions enjoy the same status.[97] In the case of the European Union, legal personality has been acquired by the so-called 'implied power' effect, which illustrates that the existence of legal personality within the constitution of the EU does not require any specific provisions, but where each individual Member State has the implied power to attribute legal personality to the Union.[98] Article 47 of the TEU states that 'the treaty explicitly recognizes the legal personality of the European Union, making it an independent entity in its own right'.[99] Therefore, with the conferral of legal personality on the EU, the Union has the ability to conclude and negotiate international agreement in accordance with its external commitments, it can become a member of international organisations and join international conventions. However, the negotiations about international legal personality of international institutions have demonstrated that the provision has several sensible technical and political dimensions.

4. Legal Personhood and the Global Commons: Potential application

(a) The atmosphere

Over the period of time, scientists have acknowledged three significant changes in the development of Earth's atmosphere. The planet's original atmosphere probably only consisted of hydrogen and helium molecules, as they were the main gases in the dusty disk around the Sun from which the planets formed. Secondly, the Earth itself created a layer through the eruption of several volcanoes that released carbon dioxide and steam, which contained hydrogen and oxygen atoms. Nowadays, our atmosphere contains enough oxygen for all living things to exist and flourish. This is possible through the carbon dioxide oxygen cycle.[100] Clean air and healthy oxygen levels are essential ingredients that influence the quality and longevity of life on planet Earth.

However, the atmosphere is under constant environmental stress as air pollution is one of the main causes for millions of deaths annually as well as the destruction of Nature and wildlife. For instance, the exposure to air pollution has been widely acknowledged due to the increase of respiratory diseases as well as a range of neurological and vascular disorders.[101] Therefore, the preservation of atmospheric quality is vital as the atmospheric toxication is the result of poor legislation and international sustainable governance. While there have been numerous proposed provisions and regulations to monitor atmospheric toxication's, governments have been resistant to address the environmental instability.

However, what makes the atmosphere so complex to govern is the fact that it is an area beyond national jurisdictions. Because it lies beyond national jurisdictions, the atmosphere is considered as res *communes* making it accessible for everyone to use. [102] While the atmosphere is clearly not being governed as a ''common', the environmental importance of a healthy atmosphere affects everyone on Earth. The atmosphere is closely related to other ecosystems that deal as a carbon sink such as oceans and forests. The decline of carbon sinks will cause tremendous irreparable damages that can result in natural disasters such as the melting of the West Antarctic ice shield.[103] Because of its unspecified description, the atmosphere has been used as a common domain to deposit carbon in, without any specific regulations and punishments. While specific regulations such as the cap-and-trading system have shown willingness to decrease the carbonization of the atmosphere, there are still too many gaps for nation-states to circumvent them. For example, once it has committed to a global initiative to decrease atmospheric toxication, they can start to profit from the abatement of one party without contributing to the associated cost of abatement, while the state of abatement us bearing all the costs.[104]

Legal personhood and the atmosphere

[97] Niels Blokker. 2016. The MAcro Level. The Structural Impact of General International Law on EU Law. International Legal Personality of the European Communities and the European Union: Inspirations from the Public International law. Yearbook of European Law.
[98] Octavian Gabriel Pascu & Caius Tudor Luminosau. Above n 96. At. 60.
[99] European Union. Treaty on the European Union. Article 47.
[100] University Corporation for Atmospheric Research. Center for Science Education.
[101] Ghio A & Develin R. 2001. Inflammatory Lung injury after bronchial instillation of air polluting particles. American Journal of Respiratory and Critical care Medicine. At 164.
[102] Ottmar Edenhilfer et al. 2013. The Atmosphere as a Global Commons- Challenge for International Cooperation and Governance. The Harvard Project on Climate Agreements, Harvard Kennedy School. John F. Kennedy School of Government, At 12.
[103] Ottmar Edenhilfer et al. Above n 105. At 2.
[104] Ottmar Edenhilfer et al. Above n 105. At 14.

The establishment of environmental issues within the atmospheric realm has opened the discussion for new innovative tools to implement sustainable atmospheric governance. As mentioned, millions of deaths and an increase in respiratory diseases have been the cause of poor atmospheric governance. So far, the Atmosphere has been treated as a property of everyone, making it possible for governments and corporations to pollute the air without any serious consequences.

Intuitively, the atmosphere belongs to all living things on the planet as everyone has the right to benefit from it. However, the atmosphere depends on a stable climate and through anthropogenic actions that result in biodiversity loss and climate change, it is the responsibility of humans to implement a new way of thinking on how Nature can be protected. Legal personhood has been an innovative legal concept that promotes natural protection within national jurisdictions. However, the successful execution of granting natural entities with legal rights does not necessarily mean that it must end there. As mentioned earlier, the global commons play a vital ecological role within the planetary system. They provide the social-environmental support system that enables all life on Earth to flourish.

Restoring the broken human-Nature relationship plays a major role in protecting natural domains beyond national jurisdictions. The limitless options for nation states to freely emit greenhouse gases into the Atmosphere have further promoted the fact that the atmosphere is being treated as an open access resource without any legal status in existing multilateral treaties.[105] Because there are no boundaries on how to treat the atmosphere, governments will continue to follow in their own interest.

So far, the legal status quo implies that, since the atmosphere is everybody's property, it can be used limitlessly. However, legal personhood can be an instrumental tool, for example, if the law limits emissions standards by acknowledging the atmosphere as a legal person that has its own rights. In many national jurisdictions, granting natural entities legal personality has been intimately connected with the notion of enhancing the human-nature relationship. In other cases, the concept has been implemented to create a socio-ecological system where certain communities in affected areas are acting on behalf of the natural entity. This has been often resulted because of environmental injustices and eco-crimes. Environmental crime, however, does not only appear in certain communities but in many cases can be seen as a global threat to humanity. For instance, the constant harmful actions and crimes include the licensed acts of environmental threats towards the atmosphere committed by states and corporations. [106]

By imposing legal personhood on an international scale, the 'political interest' can act in favour of Nature, recognising its values and making an effort to reduce environmental threats towards the global society. Political interest can often be evaluated as short-sighted and selfish, but it can be changed by using legal tools that can alter the human-Nature relationship into a harmonious nexus. Furthermore, the recognition of Rights of Nature is intimately connected with human rights. By creating a legal framework on an international level, intergovernmental bodies such as the UN can act as guardians or trustees for the atmosphere.

One of the most dominant global acts on protecting atmospheric activities, has been the Vienna Convention 1963. By establishing a framework to protect human and environmental health, the Vienna Convention has sent an important message on how to create harmonising environmental policies.[107] Furthermore, the UN Framework Convention on Climate Change (UNFCCC) also has set an effort to stabilise greenhouse gas concentrations in the atmosphere.[108] However, in both cases the legal status of the atmosphere is not being discussed. This provides room for contemporary legal instruments to dive into existing intergovernmental frameworks to establish an innovative view on how the atmosphere can be governed sustainably. Legal personhood can create this new way of thinking as it has the power to create a harmonious relationship between Nature and humans. Intergovernmental organisations such as the United Nations can regulate nation states actions that could potentially harm the atmosphere, creating a thread to every human on Earth. Environmental issues cannot only be understood within national borders but are inherently a global scale problem that are interconnected.

(b) Outer space and celestial bodies

[105] Klaus Bosselmann. Above n 42. At 3.
[106] Reece Walters. 2010. Toxic Atmosphere ir Pollution, Trade, and the Politics of Regulation. Springer Science+Business Media B.V. At. 319.
[107] United States Environmental protection Agency. Vienna Convention for the protection of Ozine Layer (Vienna Convention). 2022.
[108] United Nations Framework Convention on Climate Change. 1992.

Outer space, the vast expanse that stretches beyond Earth's atmosphere, has captivated the human imagination for centuries. It has been a realm of exploration, innovation, inspiration, and scientific discovery. In recent years, the concept of outer space has evolved beyond a mere imaginational playground. It has developed into a recognised global common that is based on the idea that all humankind has the right to use and explore the domains of outer space. The notion of outer space as a global common draws from the idea that it transcends national boundaries and encompasses the regions beyond planet Earth.

Because of the vast increase of space activities and interests of various nations and private corporations in the space exploration and utilization, a critical discussion is emerging in the governance of space. The classification and use of space resources has not been fully determined in international law, despite several treaties concerned with outer space activities.[109] Therefore, the concept of outer space as a global common also raises important ethical, legal, and environmental considerations. The responsible and sustainable use of outer space has the potential to acquire legal prescriptions within a new legal regime that requires states to preserve and respect the outer space environment.

Legal personhood and outer space

Throughout history, humans have demonstrated that their influence in new domains can be destructive as well as improvident. Therefore, as much as anthropogenic actions have resulted in environmental issues on planet Earth, the same issues can occur in outer space environments. The issue of pollution in outer space is more complex than environmental pollutions on Earth and therefore deserves closer scrutiny.[110] The notion that nation-states share a common interest in the exploration and utilization of outer space has led to the declaration of outer space units as the 'province of all mankind'.

In most recent cases, the US has implemented a law that recognises all US citizens to have the right to all asteroid resources that they can obtain.[111] This is a clear indicator of a will to expand resource generation outside of their own planetary possibilities. Due to rapidly increasing technological advances, the new era of space activities is pushing the boundaries of space law. The extraction of space resources is becoming a global trend as there are numerous amounts of corporations that focus on mining and utilisation of space units. Such activities have resulted in a remerging discussion on how to regulate economic and environmental activities in outer space. Existing treaties such as the Outer Space Treaty 1967 (OST) have set basic norms of space law, which promote *'the exploration and use of outer space shall be carried out for the benefit and in interest of all countries, irrespective to their degree of economic and scientific development, and shall be the province of all mankind'*. [112]

However, so far legal personhood has not been granted to celestial bodies or other entities in outer space. The discussion of the concept of granting legal personhood to celestial bodies, such as recognizing them as subjects of rights, can promote the preservation of outer space environment. In addition, increased willingness to expand resource extraction in space in the foreseeable future raises the attention of creating a collaborative framework that considers proper governance, norms, and rules of space activities. Like in many other cases, legal personhood has established a collaborative paradigm that recognises Nature's values. In most cases, legal personhood has been implemented to natural entities that have been under environmental stress or suffered injustices. So far, the utilisation of space resources has not yet influenced life one Earth, but agreements such as the US Commercial Space Launch Competitiveness Act have increased the discussion of sustainable governance. Furthermore, the US legislation can be seen as a contrary to the OST as it encourages privatisation of celestial bodies.[113]

Legal personhood as a concept can promote a soft-law regime that considers alternative instruments that promote sustainable governance in domains outside national jurisdictions. To establish adequate collaborative governance, intergovernmental institutions such as the United Nations can act as the guardian for outer space and the voice for all nations. This could be highly important as there are tremendous disparities in terms of space technologies between nation-states. Therefore, the question arises whether space can be perceived as a 'commons' as most nations do not have the opportunity to participate in space exploration and utilisation. [114] Despite the centrality of the notions of commons, difficulties arise whether non-participating nations have the accountability to take part in the regulation of space activities.

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[109] Eytan Tepper. 2018. Structuring the Discourse on the Exploration of Space Resources: Between Economic and legal Commons. Space Policy. McGill University, Institute of Air & Space Law, at 2
[110] David Tan. 2000. *Toward a New Regime for the Protection of Outer Space as the 'Province of all Mankind'*. The Yale Journal of International Law, at 148
[111] Eytan Tepper. Above n 112, at 1
[112] United Nations Office for Outer Space Affairs. 1968. Treaty on Principles Governing the Activities of States in the Exploration and Use for Outer Space, including the Moon and other Celestial Bodies.
[113] Eytan Tepper. Above n 112, at 5
[114] Eytan Tepper. Above n 112. At. 6.

To close the gap between non-participating and active nations in space activities, legal personhood can support the regulation of discourse. By granting celestial bodies legal personality, active agents in space exploration cannot claim to own domains. Therefore, it is argued that legal personhood can protect celestial bodies from excessive exploitation and their resources can be managed in the interest of all nations.

(c) The high seas

The high seas and seabed represent vast and crucial components of the world's oceans. The perceived remoteness of the high seas has created a psychological barrier for people to engage with. Hence, the importance of intact marine systems has been disregarded which has led to major ecological problems. It is important to recognise that the high seas cover 40% of the planet's surface, comprising 65% of all ocean territory.[115]

However, the continued utilisation of resource units within the high seas and the seabed has led to immense decrease of ecological stability. For instance, seamount ecosystems are being destroyed due to intensive deep-water fishing.[116] These unique ecosystems have been formed from extinct volcanoes rising from the seafloor and are very rich in biodiversity, supporting the level of unique species that keep the energy system in balance. Because of the destructive impact of exploitive deep-sea activities such as fishing, mining, and fossil fuel burning, less oxygen is dissolved in the water leaving specific areas as dead zones. [117] The ocean has absorbed over 30% of all anthropogenic carbon emissions, increasing the water temperature. Therefore, the synergy of all environmental stresses results in the change of primary production patterns and will have a devastating effect on global food supply, economy, and life on Earth. [118]

The consideration of the high seas and seabed as a global common still relies on the outdated notion (of Grotius), *'mare librium'*, which postulates that international waters can be used and utilised as an infinite resource domain.[119] However, because of the accumulation of environmental threats towards the high seas and sea bed and the lack of international sustainable governance, new legally binding methods need to be considered to protect and preserve areas beyond national jurisdictions.

Legal personhood and the high seas

In the past 40 years since the signing of the UN Convention on the Law of the Sea (UNCLOS) the ocean has experienced tremendous changes. The multitude of interconnected threats requires innovative, precautionary, and comprehensive instruments to protect and preserve marine systems beyond national jurisdictions. Despite the implementation of UNCLOS, extractive and exploitive activities seem more feasible than ever.

The high seas have been considered as a global common, making it an open access resource in international law. As noted, the most important treaty that sets the principles of international governance for the high seas and its resource units is the 1982 UNCLOS.[120] For instance, Article 87 lays down the conditions that every country, landlocked or coastal, has the freedom to exercise several activities such as *'the freedom to lay submarine cables and pipelines, freedom to construct artificial islands, and the freedom of fishing'*.[121] Furthermore, it also states that the high seas are only reserved for peaceful purposes and that no State shall validly purport to subject any part of the high seas to its sovereignty.[122] As to the seabed area, Article 136 defines its resource units as the 'common heritage', making it a shared property with universal responsibility to assure that the ecological integrity can be sustained.

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[115] The Global Environmental Facility. 2023. Areas beyond National Jurisdictions (ABNJ)
[116] Kristina M Gerde. 2001. Current legal Development. High seas Marine Protected Areas. Participate Report of the Expert Workshop on Managing risk to Biodiversity and the Environment on the High Seas, Including Tools Such as Marine Protected Areas: Scientific Requirements and Legal Aspects. Marine & Coastal. At. 516.
[117] National Ocean Service. National Oceanic and Atmospheric Administration. 2023.
[118] Kristina M. Gjerde. 2012. Challenges to Protecting the Marine Environment beyond National Jurisdiction. The International Journal of Marine and Coastal Law. High Seas Policy Advisor, International Union for the Conservation of Nature. At. 841.
[119] Laura M. Pereira et al. 2023. The living infinite: Envisioning future for transformed human-nature relationship on the high seas. Marine Policy. At. 2.
[120] Keyuan Zou. Global Commons and the law of the Sea: An Introduction. 2018. Maritime Cooperation in East Asia. At. 2.
[121] United Nations Convention of the Law of the Sea. Article 87.
[122] United Nations Convention of the Law of the sea. Article 88-89.

While UNCLOS has identified environmental improvement methods to some extent, waters that lie in areas beyond national jurisdictions have yet to incorporate a more effective approach. For instance, The UN Conference on Environment and Development (UNCED) states in chapter 17 of Agenda 21, *that it is in search for new approaches that are precautionary and anticipatory in ambit*.[123] Legal personhood as a legally binding concept can create an international framework that recognises the values and global importance of the high seas. Therefore, it can be actioned to highly affected marine areas first to reduce the negative influences of anthropogenic actions and simultaneously enhance global cooperation. For instance, the existing treaty, the Convention on Biological Diversity (CBD) does not itself apply components of biological diversity beyond the limits of national jurisdictions, but it calls for parties to co-operate in conservation and sustainable use of biological diversity in such areas.[124] Governments, international agencies and non-governmental organisations need to identify the opportunity of granting the high seas and affected areas legal personality and to reach an agreement by consensus for the implementation in international environmental law.

Furthermore, existing international treaties already provide the opportunity to act as the main legally binding documents where international and regional organisations have the opportunity to use diplomatic conferences to adopt legal personhood as a prominent concept to preserve the high seas. So far, legal personhood has been a politically acceptable concept that applies with national regulations. Hence, it can also apply with rights and duties of existing treaties such as the UNCLOS. However, global consensus needs to be achieved rapidly as the traditional principle of Article 87 of UNCLOS should be transformed into appropriate and timely framing conditions. By making legal personhood an internationally legally binding instrument, waters beyond national jurisdictions can be protected from extractive and destructive influences since the disregard of the rights of the high seas can be legally pursued. Granting the high seas legal personality and making it subject of rights must be accompanied by enforceable rules, laid down in international legislation that act as a guardian to ensure rigorously health conditions.

However, the main intention of legal personhood and its application to the high seas is to find a sustainable governance system that promotes the integrity and values the oceans provide to humans. In addition, in 2023 the UN General Assembly has been calling for the implementation of an international legally-binding instrument that promotes the conservation and sustainable use of marine biological diversity of areas beyond national jurisdictions. The BBNJ Treaty is one of the most prominent documents to propose serious consideration for the implementation of legal personhood on the high seas. [125]

(d) ***Antarctica***

Antarctica, the southernmost continent, plays a critical role in balancing the Earth's energy system due to its unique characteristics and sensitivity to environmental issues such as climate change. As global temperature rises and climate patterns shift, Antarctica experiences a range of profound effects. As global warming will continue in the near term between 2023 and 2040, more environmental threats will occur over this period.[126]

The impact of humans on Antarctica has resulted in mass losses from West Antarctic outlet glaciers, contributing to global sea-level rise.[127] The Antarctic peninsula of the west and east have illustrated that they have been warming at a faster rate than the global average temperature. Cryosphere-related changes propose a global threat on entire coastal populations, infrastructure, and economies. [128] Antarctica as a global common plays a vital role in climate change governance as its degradation influences all life on Earth. The Southern Ocean surrounding Antarctica plays a significant role in sequestering large amounts of carbon that has been released by humans.[129] The changes of Antarctic patterns and the destabilisation of ice-sheets have made an enormous impact on Earth's ecological stability, making it a global geopolitical concern.

Legal personhood and Antarctica

[123] United Nations Conference on Environment and Development 1992
[124] Kristina M. Gerde. Above n 119, at 521
[125] United Nations 2023. Intergonvermental Conference on an internationally legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainabale use of marine biological diversity of areas beyond national jurisdiction. General Assembly Resolution 72/249.
[126] The Intergovermental Panel on Climate Change. 2021. Sixth Assessment, at B1.1
[127] The Intergovernmental Panel on Climate Change. 2022. Regional planning
[128] Intergovernmental Panel on Climate Change. Above n 129, at B2.1
[129] Michael P.Meredith. 2022. Carbon Storage shifts around Antarctica. Nature Communications, at 2

Since the 21st century, Antarctica has experienced several human-induced changes including the change of its biophysical existence. Climate change is one of the main drivers that proposes new political tension between States, including tensions about Antarctic resource generation. One of the main reasons for this political tension is the unequal power shifts, putting pressure on lower economic countries.[130] The politics of Antarctica remain rooted in the notion of discovery and sovereignty, where the intersection of land authority and resource generation leads to various challenges. These challenges include measuring international participation in a range of interests such as scientific research, tourism, and resource generation.

As with other global commons, international institutions and treaties in Antarctica have been implemented to regulate human activities. The Antarctic Treaty System (ATS) as the main global treaty system depends on the self-bonding commitment of participatory nations and member states.[131] As the main decision-making body, its institutional framework acts as a regulatory monitor on the legitimacy of state activity in the whole Antarctic region. While the ATS has been perceived as a powerful institution by providing several outputs such as freedom of access, and environmental protection, the question arises whether its global legitimacy can further respond to global environmental problems. In international law and international relations, if actors perceive global treaties as legitimate, they are more likely to comply with its regulations.[132]

The ATS can prove its legitimacy by implementing more important aspects of output-legitimation by implementing power-constraining and limiting functions. During the Cold War competition between the United States and the Soviet Union, the treaty has effectively managed international tensions by demilitarising the Antarctic continent.[133] As global environmental tension increases, such powerful institutions can set a paradigm on how international environmental governance in areas beyond national jurisdictions can use its core functions to promote innovative legally binding instruments.

As the ATS has been viewed as a successful example of international governance, the decision-making processes should recognize the potential of legal personhood as a tool that can protect the region from environmental degradation. For successful implementation, the democratisation of the Treaty plays a crucial role as it favours the consultation of the ATS as the main actor to prove the legitimacy of activities. The development of the ATS and the implementation of legal personhood as a concept that perceives Antarctica as an entity with its own rights, can enhance the capacity of the ATS to respond efficiently to new challenges that are likely to occur in the near future.

The effective status of Antarctica as a legal person can lead to successful cooperation and political stability as the Treaty can encourage active support, simple compliance, and lower levels of opposition.[134] Incorporating legal personhood into the ATS as a legally-binding instrument can be a determining factor on how to regulate the balancing interests of humans and Nature. As the Antarctic legal regime has illustrated that its power can be used effectively, granting Antarctica legal personality can regulate certain activities that have a harmful impact on the environment. Therefore, legal personhood is particularly important for the management of human activities as it reframes our responsibilities around key environmental health issues.[135]

Legal personhood can enact multilateral commitment to consensus, peace, and environmental protection as its stewardship function can be further developed by ATS authorities. Concepts like legal personhood draw attention to the long-term importance of preserving natural areas beyond national jurisdictions, demonstrating how legal pluralism can conserve Antarctica as an uncharted and ecologically important area.

5. Conclusions

[130] Patrick Flamm. 2022. *Legitimating the Antarctic Treaty System: from rich nations club to planetary ecological democracy*? Political Science and International Relations. Victoria University of Wellington. New Zealand, at 266
[131] Patrick Flamm. Above n 133, at 266
[132] Daniel Bodansky. 2013. *Legitimacy in international law and international relations. Interdisciplinary Perspectives on International Law and International Relations*, at 336
[133] Jeffrey McGee. 2019. *The Challenges for Antarctic governance in the early twenty-first century*. Australian Journal of Maritime & Ocean Affairs, at 74
[134] Patrick Flamm. Above n 133, at 268
[135] Priscilla M. Weh et al. 2021. *Antarctic management and policy with an indigenous Maori lens*. Nature Ecology & Evolution, at 1057

This paper has investigated the potential application of legal personhood as a legal tool to govern areas beyond national jurisdictions, or global commons. The Westphalian notion of states acting only in their interest has provided a dominant understanding of the anthropocentrically-created environmental harm, to the detriment of global environmental governance. In addition, the metabolization of natural areas and its resource units into waste and the transgression of planetary boundaries has put immense pressure on Earth's ecological stability. The synergistic environmental stress and the global political dispute over environmental domains has been operating at a space close to the tipping points of Earth's natural capacity.

In order to respect the planetary preconditions and to avoid the risks of global environmental destruction, global environmental politics need to consider new efficient legal structures within existing treaties that prioritise ecological integrity. Humans as geological agents have the potential to transform the current global environmental regime as humankind, in a contemporary context, is as powerful as natural drivers of environmental destruction such as volcanoes and meteors.[136] Governments need to collectively agree to systematically implement legal personhood as a concept that protects and recognises the significance of preserving the global commons.

In some national jurisdictions, legal personhood is a well-accepted legal concept that has been successfully implemented. The paper has discussed three examples including New Zealand, Ecuador, and Colombia. These nation-states have made a profound impact on the development of legal personhood and its core tenants. The Whanganui River case study has illustrated that one of the key questions for environmental protection is how society ought to define Nature's significance.[137] Subsequently, granting the Whanganui River with legal rights has depicted that with the implementation of a legal personhood framework, the main intention was to promote and protect the rivers ecological integrity.

The Colombian case has exhibited that by granting natural entities legal personality, environmental injustices have been abrogated, promoting dualistic solution making processes.

The recognition of legal personhood within national jurisdictions has provided natural environments with rights that can empower it to institute legal proceedings in its own rights often through a guardian entity. Thus, this would enable courts to take injury to the environment into account and can award relief that would directly benefit the environment.

In the international system of law, the planet is divided into two realms: areas within and outside national jurisdictions. The global commons such as the atmosphere, high seas and seabed, Antarctica, and outer space, are areas outside national jurisdictions and are therefore excluded domains where no state has sovereignty. The global commons include essential resources and concerns of natural systems that have increasingly gained international focus from a governance perspective. Concepts like the heritage of mankind have depicted that voluntary global treaties do not protect the global commons. The paper has investigated several treaties that have been published in order to create global participation. However, there has been resistance to take responsibilities to preserve the global commons.

The acquisition of legal rights for the global commons has been investigated by providing context about each common. While the global commons should be perceived as one interconnected web that build the foundation for Earth's ecological stability, in international relations they have been treated as separate entities. Therefore, the paper has sought to examine several existing treaties such as the ATS, for the governance of Antarctica. It has proposed that incorporating legal personhood into treaties such as the ATS as a legally binding tool could be a determining factor in regulating the balancing interests of humans and Nature.

Governments and intergovernmental organisations can use the opportunity of granting natural areas with legal personhood to reach an agreement by consensus. Other existing treaties such as UNCLOS already provide the foundation to act as the main legally-binding document where international organisations have the opportunity to use diplomatic conferences to adopt legal personhood. In areas with low human activity like outer space, legal personhood can act as a precautionary concept as the UN Conference on Environment and Development (UNCED) has stated that *'it in search for new approaches that are precautionary and anticipatory in ambit'*.[138]

Legal personhood as a concept for celestial body governance can embellish existing treaties like the OST, which has set basic norms of space law. However, to establish adequate collaborative governance intergovernmental institutions need to act as the guardian and the voice for all nations.

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[136] Louis Kotzè. 2018. *The Sustainable Development Goals: an existential critique alongside three new-millennial analytical paradigm*, at 51
[137] Tom Barraclough. Above n 64, at 7
[138] United Nations Conference on Environment and Development. Above n 123

This is highly important as there are tremendous disparities in terms of technological advancement and political interests. The limitless options for nations to freely access areas beyond national jurisdictions have further prompted the degradation of the commons as they are being treated as open access resources without legal standing in existing multilateral treaties.

Whether it is the atmosphere, the high seas, Antarctica or celestial bodies, international law must consider legal personhood as a tool for preserving and protecting the commons from extractive and destructive forces.