

IEL: Perspectives of Women Scholars

Women and the Marine Environment in International Law

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Abstract. International environmental law-making (IEL) now increasingly highlights the importance of ensuring that women are enabled to play a key role in environmental management and decision-making at all scales, including in relation to the marine environment. This article examines narratives of women in international environmental law, with a focus on the marine environment and human rights intersections. This study reveals that there is a tendency to treat women both as victims in need of saving from ecological devastation, and as saviours whose empowerment will save the world. Recent developments at the intersection of human rights and the environment point clearly to the necessity of embracing an intersectional approach. Beyond this, it is necessary to reflect on what is meant by ‘women’ in international law to answer the question of whether greater inclusion of women in legal processes will make a difference to solving global and local ecological challenges. Ultimately, the article argues that meaningful action will not happen until affluent and powerful men and women learn how to embody the idea of woman themselves, rather than placing the burden to save the world on those whose vulnerability is worsened if not created by affluent overconsumption.

Keywords: Marine environment, international environmental law, human rights and environment, women and environment, women’s human rights

1. Introduction

Despite decades of international law designed to address environmental challenges, the triple planetary crisis of climate change, biodiversity loss and pollution and waste has worsened with grave implications including for the marine environment. IEL-making now increasingly highlights the importance of ensuring that women are enabled to play a key role in environmental management and decision-making at all scales. As will be illustrated in this article, various justifications are put forward for this evolution in understanding, including the special vulnerability of women and girls to environmental harms, and the closer connection that women and girls have to the environment. These justifications often portray women as vulnerable victims, even as they at times acknowledge the role of social norms and equality rights violations as contributors to this vulnerability. Alternate justifications are also put forward either separately or at the same time which point to the importance of equality rights for the empowerment of women. Women’s empowerment justifications increasingly transform into claims that women are agents of change whose leadership is essential in solving the ecological challenges facing people and planet – a narrative that while important in drawing attention to the need to ensure decision-making processes are inclusive of women’s voices at the same time risks placing the burden of ecological crisis on the shoulders of women as saviours.

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In this article, I examine narratives of women¹ in international environmental law, with a focus on the marine environment and human rights intersections. I begin with an exploration of women in international environmental law, then turn to women in the protection of the marine environment. This is followed by an examination of recent developments at the intersection of human rights and the environment that point to the necessity of embracing an intersectional approach. In conclusion, I reflect on what is meant by ‘women’ in international law to answer the question of whether greater inclusion of women in international and domestic legal processes could make a difference to solving global and local ecological challenges. Ultimately, I consider what differences might emerge should international law be more receptive not just to women, but to the ‘idea’ of woman. I argue that meaningful action to address local and global environmental challenges will not happen until affluent and powerful men and women learn how to embody the idea of woman themselves, rather than placing the burden to save the world on those whose vulnerability is worsened if not created by affluent overconsumption.

2. Women in International Environmental Law

International environmental law has long taken the position that women have a special role to play in environmental protection, and that action is needed to enable women to take on this role. While the 1972 Stockholm Declaration on the Human Environment does not mention women, Principle 16’s concern with curbing population growth is in effect about regulating women’s reproductive health.² By contrast, there is nothing obvious in the Stockholm Declaration about regulating the behaviour of the affluent who overconsume resources to the detriment of people and planet. The link between women, environment and development was considered in 1985 in Nairobi at the United Nations’ Third World Conference on Women, and women’s participation in ecosystem management at national and international scales was noted in the Nairobi Forward-Looking Strategies for the Advancement of Women.³ An action plan developed at a parallel NGO forum focused on the need to strengthen the environmental management leadership of women and women’s education in relation to environmental issues.⁴ In 1986, the UN Environment Programme (UNEP) was appointed by the UN Secretariat for the Advancement of Women as the ‘leading agency on women and environment’.⁵

The 1987 Brundtland Commission Report further considered the role of women in relation to population growth and education while also drawing attention to intersections with health and food security.⁶ In the lead up to the

1 By narratives, I am referring to the stories that are evoked through the descriptions of women in international instruments. When using the word ‘women’, I am conscious of the diversity of gender expression evident in different cultures. See, for example, National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) (2019), *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Volumes 1a and 1b, and Supplementary Reports including Calls for Justice (2019), available at: <https://www.mmiwg-ffada.ca/final-report/> (documenting horrific experiences of violence against Indigenous women, girls, two-spirit, and gender diverse (2SLGBTQIA) persons in Canada).

2 UN (1972), ‘Declaration of the United Nations Conference on the Human Environment’, Stockholm, 16 June 1972, U.N. Doc. A/CONF 48/14/Rev.1 (Stockholm Declaration), Principle 16: ‘Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development’.

3 *The Nairobi Forward-Looking Strategies for the Advancement of Women*, New York, 1986, as cited in Mahon, Clair (2015), “Principle 20: *The Role of Women*” in Jorge E Viñuales, Ed., *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press: Oxford, 2015) pp509-517 at 510.

4 *Ibid.*

5 Maguire, Rowena (2021) “Feminist Approaches” in Lavanya Rajamani and Jacqueline Peel, Eds, *The Oxford Handbook of International Environmental Law* (Oxford University Press: Oxford, 2021) pp200-216 at 207.

6 World Commission on Environment and Development, *Our Common Future* (Oxford University Press: Oxford, 1987). See multiple references in Chapter 5 (women farmers) including the challenges facing women who do not have property rights. See further references in Chapter 4 (population and human resources), especially para 43: ‘Urgent steps are needed to limit extreme rates of population growth. Choices made now will influence the level at which the population stabilizes next century within a range of 6 billion people. But this is not just a demographic issue; providing people with facilities and education that allow them to choose the size of their families is a way of assuring – especially for women – the basic human rights of self-determination.’ Para 44 speaks directly to family planning and access to contraceptives. Overall, *Our Common Future* references ‘women’ 17 times.

Rio Conference, the importance of women's participation in environmental matters for sustainable development was the subject of two global meetings with outcome documents that provided the basis for integration of gender equality into the 1992 UN Conference on Environment and Development (UNCED).⁷ The 1991 WEDO congress in Miami has been described as providing a major breakthrough as women from diverse geographies, professions, races and classes 'developed the first participatory and democratic critique of development and collective position on the environmental crisis.'⁸ According to Maguire:

'Environmental problems were summarized as wasteful overconsumption in the North, inappropriate development leading to debt and structural adjustment in the South, environmental damage, pollution and toxic wastes, population growth, creation of ecological refugees, and excessive war and military spending associated with environmental damage.'⁹

UNCED's Agenda 21 includes Chapter 24: Global Action for Women Towards Sustainable and Equitable Development¹⁰ with other references to gender found in thematic chapters including Chapter 17 on the protection of the oceans.¹¹ Principle 20 of the 1992 Rio Declaration on Environment and Development provides: 'Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.'¹² Rio Principle 8 continues the call for states to 'promote appropriate demographic policies' yet also indicates that states 'should reduce and eliminate unsustainable patterns of production and consumption' in order to 'achieve sustainable development and a higher quality of life for all people.'

Gender was also integrated into two of the three multilateral environmental treaties negotiated at that time, with a preambular mention in the UN Convention on Biological Diversity (UNCBD), explicit incorporation into a selection of Articles of the UN Convention to Combat Desertification and Drought (UNCCD), yet no reference at all in the UN Framework Convention on Climate Change (UNFCCC).¹³ This may be explained by the importance of land-rights to the UNCCD, contrasted with the technical nature of the climate negotiations and characterisation of the issue as involving global and transboundary harms rather than local.¹⁴ The UNCBD, on the other hand, 'relied upon essentialist notions of women, framing women as more connected with nature due to their roles in human reproduction and socially constructed gender roles, which saw them as custodians of seed selection, improvement, and storage'.¹⁵ As a result, early decisions encouraged participation in conservation but not gender equality in access and benefit sharing.¹⁶ Treaty textual references alone have not been shown to increase participation of women, however, and over time the climate regime has gradually incorporated consideration of gender through the 2014 Lima Work Programme on Gender as well as the preamble to the 2015 Paris Agreement and two Articles that address gender responsive adaptation and capacity building.¹⁷ In 2007, a Gender Plan of Action was introduced for the UNCBD, while in 2017, Gender Action Plans were adopted under both the climate and desertification regimes with the aim of increasing participation and gender-responsive actions.¹⁸

7 Mahon (2015), n3, pp510-511 (referencing the work of UNEP's Senior Women's Advisory Group on Sustainable Development, established in 1984; and the work of WEDO – the Women's Environment and Development Organisation, established in 1992).

8 Maguire (2021), n5. p207 (n43) referencing Rosi Braidotti *et al*, *Women and Sustainable Development: Towards a Theoretical Synthesis* (Zed Books, 1994) 102-103.

9 Maguire, *ibid*, p207.

10 UN (1992), *Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I, Annex II) Agenda 21, Chapter 24: 'Global Action for Women Towards Sustainable and Equitable Development'.

11 *Ibid* at Chapter 17: 'Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of Their Living Resources' at paras 17.15 (human resource development through education and training), 17.81 (representation in small-scale artisanal fisheries), 19.93 (state human resource development) and 17.94 (coastal state capacity-building).

12 UN (1992), n.10, Vol. I, Annex I, Rio Declaration on Environment and Development.

13 Maguire (2021) n5, p.209.

14 *Ibid*, pp.209-211.

15 *Ibid*, p.212.

16 *Ibid*, p.212.

17 *Ibid*, pp.212, 214.

18 *Ibid*, pp.212-215.

In 2012 at the Rio+20 Conference, Principle 20 was re-affirmed by the international community even as it was recognized that its ambitions had not been achieved, with the outcome document *The Future We Want* promoting gender equality and women's empowerment throughout, including in relation to food security, health, education and decision-making.¹⁹ However, women's groups expressed concern over UNCED's approach to sustainable development and the 'damaging, unequal, and wasteful theory of economic growth as the key way to achieve gender equality and environmental sustainability'.²⁰ The integration of gender in UNCED instruments has been described as having required simplification that led to the propagation of an 'essentialist position' as a 'collective position'.²¹ Yet even this vision of women in Agenda 21 was not implemented due to delays in the incorporation of gender mechanisms within international environmental law, leading to a tendency to ignore gender in many national and sub-national environmental laws at least until recently.²² According to Maguire, the result was that ecofeminist solutions were not incorporated into national laws and policies, such as 'reducing consumption, equitable redistribution of resources, and transference of military expenditure to environmental initiatives'.²³ A different Agenda 21 initiative aimed at increasing women in decision-making, managerial roles, and science and technology, is associated with 'gender mainstreaming'.²⁴ It has been the subject of critique for failing to challenge power struggles and patriarchy even as it potentially offers a pragmatically useful approach.

This gender mainstreaming approach has also found its way into the language of the 2030 Agenda for Sustainable Development with its seventeen Sustainable Development Goals (SDGs) and 169 targets, dating from 2015.²⁵ The aim of SDG Goal 5 is explicitly to "achieve gender equality and empower all women and girls" and includes targets such as the elimination of discrimination against women and girls, and the full and effective participation of women at all decision-making levels including through equal opportunities for leadership.²⁶ Other targets address ensuring women's access to reproductive health and reproductive rights, arguably key to population control while also essential from a human rights lens.²⁷ Women's rights to access economic resources including control of land and natural resources is another target of the SDGs, with indicators focusing on rights over agricultural land and land more generally.²⁸ While the SDGs are to be read together as an interdependent whole, it is noticeable that SDGs explicitly focused on environmental matters often do not reference gender in either targets or indicators – this is so for SDG 15 on the protection of terrestrial ecosystems, and SDG 14 on the conservation and sustainable use of oceans and marine resources. On the other hand, SDG 13 on climate action explicitly includes in Target 13.b the importance of promoting mechanisms to raise climate-related planning and management capacity in small island developing States as well as least developed countries, with a focus on 'women, youth and local and marginalized communities'.²⁹ This target reflects the women as victims and saviours narrative as distinct from the mainstreaming of equality and empowerment, and its attention to climate impacts on small island developing States foregrounds climate oceans interconnections.

As evident in the summary of stakeholder contributions to the 2022 Stockholm+50 international meetings, the gender mainstreaming themes of women's empowerment and equality were represented through regional consultations and informal working groups led by the Women's Major Group and UN-Women, while side events drew attention to women's experiences on the frontlines of climate change, and the need to support civic space

19 Mahon (2015), n.3, p. 516

20 Maguire (2021) n. 5, p. 208, citing Women's Major Group, 'From the Future We Want to the Future We Need: Women's Major Group Final Statement on the Outcomes of Rio+20' (24 June 2021)

21 Maguire (2021) n. 5, p.208, citing Braidotti *et al* at

22 Maguire (2021) n. 5, p. 201.

23 *Ibid*, p. 210.

24 *Ibid*, pp. 210-211. According to Maguire, Harding's feminist standpoint theory 'contends that those embedded in, and benefitting from, positions of power cannot readily see the consequences of this power and lack the epistemic privilege required to understand and properly address this imbalance.' See further Harding, Sandra, *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies* (Routledge: New York; London, 2003).

25 UN (2015), *Transforming Our World: The 2030 Agenda for Sustainable Development*, General Assembly resolution, U.N. Doc. A/RES/70/1 (21 October 2015).

26 *Ibid* SDG 5.1, 5.5.

27 *Ibid* SDG 5.6.

28 *Ibid* SDG 5.a, indicators 5.a.1 and 5.a.2.

29 *Ibid*, SDG 13

for climate activism by women and girls.³⁰ These themes are also reflected at various moments within the final report, yet there is no strong statement or understanding that a gender perspective, or leadership by women, is absolutely essential beyond the type of reflections evident in earlier statements such as those from 1992.³¹

3. Women, International Law and the Protection of the Marine Environment

A different but related question is whether and if so, how, women have been viewed as actors of importance in relation to the protection of the marine environment. As explored by Papanicolopulu in the aptly titled *Gender and the Law of the Sea*, ‘gender inequality, vulnerability and marginalisation of women at sea’ is not addressed in the various branches of international law that guide ‘the treatment of people at sea’ including labour law, maritime law, and indeed the law of the sea.³² The treatment of people at sea must be distinguished from the treatment of the marine environment, nevertheless it is worth noting that the UN Convention on the Law of the Sea (UNCLOS) makes no reference to women, nor do most maritime treaties aside from provisions relating to gender equality in the Maritime Labour Convention.³³ The history of gender gaps in the law of the sea is explored in detail by Goettsche-Wanli’s contribution to the book, who concludes in part that openings to integrate gender exist through the adoption of marine spatial planning and ecosystem approaches that bring together diverse stakeholders.³⁴ More generally, increased attention to gender is evident in international oceans’ related conferences including UN initiatives linked to realizing SDG 14.³⁵ While the Goettsche-Wanli traces the presence – or absence – of women in numerous areas of the law of the sea, most of them are not environment-specific as such, although the dismal history of women on the International Tribunal for the Law of the Sea would indirectly be one such example given the cases that come before it.³⁶ Nevertheless, the view is shared that women ‘can be instrumental in instilling the desired values that support sustainable fishing practices and the protection of the marine environment’ as it is women who are the ‘primary caregivers of young children during the critical stages of their social and moral development’.³⁷

The text of the recently adopted Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (ABNJ)³⁸ explicitly requires gender balance to be taken into account (along with geographical distribution) in determining the composition of the 15 members of the access and benefit-sharing committee.³⁹ However, there is no reference to gender in Article 7’s general principles and approaches, unlike the explicit recognition given to the relevance of the knowledge held by local communities and Indigenous peoples, together with the relevance of state obligations to respect, promote and consider their rights.⁴⁰ Indeed Article 13 in its entirety is dedicated to recognition of the rights of Indigenous peoples and local communities to free, prior and informed consent in relation to their traditional knowledge of marine genetic resources.⁴¹ Processes for the determination

30 Stockholm+50 (2022), *Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity*: Stockholm, Sweden, 2-3 June 2022, ‘Summary of stakeholder contributions to Stockholm+50’, U.N. Doc. A/CONF.238/INF/3, paras 26-27.

31 Stockholm+50 (2022), *Stockholm+50: a healthy planet for prosperity of all – your responsibility, our opportunity*: Stockholm, Sweden, 2-3 June 2022, *Report*, U.N. Doc. A/CONF.238/9 (1 August 2022).

32 Papanicolopulu, Irini (2019), “Introduction: Gender and the Law of the Sea – Oceans Apart?” in Irini Papanicolopulu, Ed, *Gender and the Law of the Sea* (Brill/Nijhoff: Leiden; Boston, 2019) pp. 1-24 at p.7.

33 *Ibid* p.7; see United Nations Convention on the Law of the Sea (adopted 10 December 1992, entered into force 16 November 1994) 1833 UNTS 397; Maritime Labour Convention (adopted 23 February 2006, entered into force 20 August 2013) 2952 UNTS.

34 Goettsche-Wanli, Gabriele (2019), “Gender and the Law of the Sea: A Global Perspective” in Papanicolopulu (2019), n.32, pp. 25-82 at p.64.

35 *Ibid* pp. 76-80. Examples of women-led capacity-building initiatives perhaps provide support for this claim. *Ibid* pp.74-75.

36 *Ibid* at 39.

37 *Ibid* at 35.

38 UN (2023), *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction* (adopted on 19 June 2023) UNTS (ABNJ); CN.202.2023-Eng.pdf (un.org); XXI-10 CTC (un.org).

39 *Ibid* Article 15 (2).

40 *Ibid* Article 7.

41 *Ibid* Article 13.

of areas-based management are similarly inclusive of explicit consideration of local and Indigenous community knowledge, yet make no mention of gender.⁴² There is space given to stakeholders and civil society, however. Similarly, Part IV on environmental impact assessment is silent on gender and inclusive of Indigenous and local community knowledge.⁴³ While it is clearly extremely important to explicitly recognize the importance of Indigenous rights and jurisdiction, as will be explored below, the failure to include gender considerations in these provisions is arguably problematic.

On the other hand, a ‘gender-responsive’ approach was integrated into Part V in relation to transfer of technology and capacity building,⁴⁴ and gender balance is to be considered along with geographical distribution in the appointment of members to a ‘capacity-building and transfer of marine technology committee’.⁴⁵ Similarly, the Scientific and Technical body established in Article 49 as one of Part VI’s institutional mechanisms is also to take into account gender balance,⁴⁶ while the financial mechanism established under Part VII’s Article 52 is to do the same,⁴⁷ as is Part VIII’s Implementation and Compliance Committee established under Article 55.⁴⁸ The inclusion of gender considerations in some of these provisions is no accident, building on work undertaken at the World Maritime University, among others.⁴⁹

The approach to inclusion of gender in much of the ABNJ treaty reflects themes of equality and empowerment that are dominant in initiatives like the UN Decade of Ocean Science for Sustainable Development 2021-2030 (Ocean Decade).⁵⁰ Ocean Decade explicitly aims to contribute to the work of the 2030 Agenda for Sustainable Development, and its implementation plan is replete with references to the importance of redressing gender disparity in ocean science so as to contribute to SDG 5 including in developing countries.⁵¹ Capacity building and education are seen as of particular importance to those highly exposed and vulnerable to the deterioration of marine ecosystems, including women, as identified in other science-policy studies of importance to the oceans-climate-biodiversity nexus.⁵² Gender equality has also been a theme of importance to sustainable development in fisheries governance, with the UN Fish Stocks Agreement of 1995 including an early provision on the importance of women fish workers having access to fisheries, an idea picked up and elaborated in subsequent instruments.⁵³ More generally, comparing the evolution of ocean and climate regimes at the ocean-climate nexus reveals a gradual yet marked opening of the climate regime to gender concerns beyond equality to gender-responsive climate policy more broadly, in contrast to more limited integration in the oceans law context.⁵⁴

Beyond the question of whether women are included in international instruments designed to protect the marine environment is the question of whether there is something inherently anti-feminist about the rules and instruments of the international law of the sea not only in terms of their application to women, but in resting on ‘conceptual

42 *Ibid*, Part III.

43 See, generally, *ibid* Part IV, and especially Article 31.

44 *Ibid*, Part V, and especially Article 42 (c) ‘Capacity-building and the transfer of marine technology should be a country-driven, transparent, effective and iterative process that is participatory, cross-cutting and gender-responsive.’

45 *Ibid*, Article 46.

46 *Ibid*, Article 49.

47 *Ibid*, Article 52 (14).

48 *Ibid*, Article 55 (2).

49 Long, Ronán (2021), “Beholding the Emerging Biodiversity Agreement through a Looking Glass: What Capacity-Building and Gender Equality Norms Should Be Found There?” in Myron H Nordquist and Ronán Long, Eds, *Marine Biodiversity of Areas beyond National Jurisdiction* (Brill/Nijhoff: Leiden, Boston, 2021) pp.241-272.

50 UNESCO-IOC (2021), *The United Nations Decade of Ocean Science for Sustainable Development (2021-2030) Implementation Plan*, (UNESCO: Paris, 2021) (IOC Ocean Decade Series, 20).

51 *Ibid* at 12-14, 17. See also Udo, Unwana, Prior, Tahnee, and Seck, Sara L (2022), “Human Rights at the Ocean-Climate Nexus: Opening Doors for the Participation of Indigenous Peoples, Children and Youth, and Gender Diversity” in Aldo Chircop, Scott Coffen-Smout, Moira L McConnell, and Sara L Seck, Eds, Vol 36 *Ocean Yearbook* (Brill Nijhoff: Leiden; Boston, 2022) pp.93-138 at pp.109-114.

52 Long, n.49, p. 260, referring to the work of IPBES and the IPCC.

53 UN (1982), *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (adopted 4 December 1995, entered into force 11 December 2001) 2167 UNTS 3, Article 24(2)(b). See further Oanta, Gabriela A (2019), “Sustainable Development and Fisheries with Special Emphasis on Gender Equality” in Papanicolopulu, n.32, pp.180-203 at pp.192-195 (noting especially the work of the FAO).

54 Udo, Prior and Seck (2022), n.51; Oral, Nilufer (2019), “Climate Change, Oceans and Gender” in Papanicolopulu, n. 32, pp. 343-360.

models of dominance’ that arise through rules relating to natural resources and the environment.⁵⁵ This idea is explored in diverse ways by select contributors to the book *Gender and the Law of the Sea*.⁵⁶ A related but distinct theme emerges from consideration of the work of Elisabeth Mann Borgese, sometimes referred to as the Mother of the Oceans.⁵⁷ As will be explored below, a key question may be whether there is value in reflecting on how the idea of woman is associated with ecological relationality and sustainability, and whether this suggests that overcoming global ecological challenges of today, including in relation to the marine environment, necessitates a different understanding of ‘man’. Before turning to that inquiry, the next part will consider whether bringing a human rights lens to environmental challenges usefully contributes to our understanding of women, environment and law.

4. Women, Environment and International Human Rights Law

While Principle 20 of the Rio Declaration is not written as an obligation, its legal basis can be found in the International Convention on Civil and Political Rights (ICCPR)’s right to be free from discrimination, and in obligations under the Convention on the Elimination of Discrimination against Women (CEDAW) that embrace participatory rights.⁵⁸ The Committee on the Elimination of Discrimination Against Women has subsequently recognized that many rights protected under CEDAW are at risk from environmental harm, and that states should ensure the concerns of women and their participation are part of environmental decision-making including the making of climate policy.⁵⁹

The importance of women in environmental matters is firmly entrenched in the July 28, 2022 United Nations General Assembly (UNGA) resolution A/RES/76/300 recognizing the human right to a clean, healthy and sustainable environment.⁶⁰ According to the UN Secretary-General António Guterres, UNGA recognition of this right with no States voting against and only 8 abstentions, demonstrates the possibility of collective action by Member States to tackle the triple planetary crisis,⁶¹ and “will help reduce environmental injustices, close protection gaps and empower people, especially those that are in vulnerable situations, including environmental human rights defenders, children, youth, women and indigenous peoples.”⁶² UNGA resolution A/RES/76/300 explicitly contemplates the role of women in the following words:

Recognizing that, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women and girls and those

55 Papanicolopulu (2019), n.32, p. 3.

56 See for example chapters by Heathcote, Hodson, and Ollino. See also Maguire (2021), n.5, pp. 201-204, linking to eco-feminism.

57 Mallia, Patricia and Testra, David (2019), “Elisabeth Mann Borgese, Gender and the Law of the Sea” in Irini Papanicolopulu, Ed, *Gender and the Law of the Sea* (Brill/Nijhoff: 2019) pp. 106-121; Seck, Sara L. (2023), “Elisabeth Mann Borgese: Ecology, Relationality and Law of the Sea”, Chapter 31, in Immi Tallgren, Ed., *Portraits of Women in International Law: New Names and Forgotten Faces?* (Oxford University Press: Oxford, 2023), pp. 369-379.

58 Mahon (2015), n.3, pp.513-514, citing International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, art 26; Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 18 December 1979, 1249 UNTS 455 (entered into force 3 September 1981).

59 Seck, Sara L, and Simons, Penelope (2021), “Sustainable Mining, Environmental Justice, and the Human Rights of Women and girls: Canada as Home and Host State” in Sumudu A Atapattu, Carmen G Gonzalez, & Sara L Seck, Eds, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press: Cambridge, 2021) pp. 314-334 at p317 (citing UNHRC, *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, Report No. 4, Dec 30, 2013; Report of the Committee on the Elimination of Discrimination Against Women for the Forty-fourth & Forty-fifth sessions, Statement of the Committee on the Elimination of Discrimination against Women on gender and climate change, July 20-Aug 7, 2009, UN Doc A/65/38 (SUPP), Annex II*).

60 United Nations General Assembly (UNGA) (2022), Resolution A/RES/76/300, *The human right to a clean, healthy and sustainable environment*, U.N. Doc. A/RES/76/300 of July 28, 2022.

61 UN News (2022), “UN General Assembly declares access to clean and healthy environment a universal human right,” (July 28, 2022), available online: <<https://news.un.org/en/story/2022/07/1123482>>. The eight abstentions were China, the Russian Federation, Belarus, Cambodia, Syria, Iran, Kyrgyzstan and Ethiopia, while 161 States voted in favour of the resolution.

62 *Ibid.*

segments of the population that are already in vulnerable situations, including indigenous peoples, children, older persons and persons with disabilities,

Recognizing also the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment,

These words very clearly evoke both victim and saviour narratives – women (and others) are more vulnerable to environmental harms, but women are also agents of change whose leadership and defence of the natural environment can save the world.

In March 2023, the Special Rapporteur on Human Rights and the Environment presented a report focused on the right to a clean, healthy and sustainable environment and women and girls.⁶³ This report also invokes victim and saviour narratives, with paragraph 4 stating in part:

As demonstrated by their impressive but underappreciated contributions to protecting the environment, women and girls are powerful, transformative agents of change who should be primarily viewed not as victims, but as equal, indispensable partners and leaders in the transition to a just and sustainable future... The voices of women and girls must be heard, their ideas implemented and their stewardship work rewarded. To facilitate these advances, society must dismantle the beliefs, norms, institutions and systems that perpetuate gender discrimination.⁶⁴

The report considers systemic discrimination against women as a result of patriarchal practices, citing UN Women for the observation that the deep root of environmental crises is ‘an economic system that fails to value, protect, nourish and invest in what is essential.’⁶⁵ Part III delves into the disproportionate impacts on women and girls of global environmental crisis in multiple areas, pointing out problematic cultural norms and gendered practices, reproductive health impacts, and state failures to adopt gender transformative measures.⁶⁶ Part II also considers the challenges that face women in accessing information, participating in decision-making and accessing justice in environmental matters.⁶⁷ Among challenges are a lack of equal access to information due to unequal educational opportunities and disproportionate care responsibilities, while law and policy-making processes exclude women either explicitly or due to a comparative lack of time, money, education, security, mobility and knowledge of institutional procedures.⁶⁸ Lack of access to justice and effective remedies for women arises for similar reasons as the lack of access to participation in decision-making.⁶⁹ According to the Special Rapporteur, racially marginalized women and girls who challenge ‘patriarchy, corporate power and State complicity’ due to their disproportionate experiences of ‘environment-related human rights violations’ have ‘an inspiring history at the forefront of environmental defence’ as ‘women environmental human rights defenders’.⁷⁰ Part IV is entitled ‘Reasons for hope’ and again invokes the saviour narrative by describing women as ‘formidable agents of change’ whose ‘potential empowerment offers much-needed hope’ and noting evidence of correlation between women’s participation and leadership and greater environmental and climate responsibility and resilience.⁷¹ The rest of the report highlights gender-transformative and gender-responsive actions that States are obligated to implement, with attention to procedural and substantive dimensions, and heightened duties where risks of vulnerability are high.

63 UNGA (2023), “Women, girls and the right to a clean, healthy and sustainable environment: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R Boyd” U.N. Doc. A/HRC/52/33 (5 January 2023/3 March 2023). See also earlier reports that this report builds on and endorses, prepared by diverse human rights mechanisms and listed in para 91.

64 *Ibid* para 4.

65 *Ibid* para 5.

66 *Ibid* paras 12-39. While the marine environment is not specifically noted, reference is made to fisheries, for example.

67 *Ibid* paras 40-55.

68 *Ibid*, paras 40-42.

69 *Ibid* paras 47-48.

70 *Ibid* para 54; see further para 83.

71 *Ibid* paras 56-57.

The SR Environment report also draws attention to business responsibilities, a theme noted in UNGA resolution A/RES/76/300 which calls upon business enterprises as well as states and international organisations to take action to ‘scale-up efforts to ensure a clean, healthy and sustainable environment’, and specifically recalls ‘the responsibility of all business enterprises to respect human rights’ in accordance with the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs).⁷² The 2011 UNGPs clarify the duties of states and responsibilities of businesses under international human rights law in accordance with the ‘protect, respect, remedy’ framework. In 2019, the UN Working Group on Business and Human Rights provided additional clarification of the implications of the UNGPs for the rights of women.⁷³ The *Gender Dimensions* report builds on the references to gender and women in the UNGPs including: the cross-cutting principle of non-discrimination; the explicit need to integrate a gender perspective in particular contexts such as through the use of gender-disaggregated data; and the need for businesses in particular circumstances to refer to additional standards.⁷⁴ The Working Group proposed a gender framework comprised of a three step cycle: (1) gender-responsive assessment; (2) gender-transformative measures; and (3) gender-transformative remedies.⁷⁵

The process of identifying and assessing the gender dimensions of the adverse human rights impacts with which a business may be involved, either directly through operations or indirectly through business relationships, is one that requires particular attention. According to the Working Group:

*In identifying and assessing any actual or potential adverse human rights impacts, business enterprises should adopt a gender-responsive approach, draw upon gender experts, and conduct meaningful consultations with potentially affected women, women’s organizations (including grass-roots organizations) and women human rights defenders.*⁷⁶

The following illustrative action is then suggested:

(a) To overcome practical barriers, patriarchal norms or threats of violence that might discourage potentially affected women from participating in impact assessment processes, business enterprises should take a proactive approach and adopt innovative measures (for example, providing childcare during meetings or holding separate meetings for women);

Similar references to gender-transformative actions are found in the SR Environment’s 2023 report. Some are aimed at supporting women through empowerment as ‘climate and environmental leaders’ or as ‘economic actors’⁷⁷ while others focus on ‘[e]nhancing the role of women and girls in the stewardship, protection and restoration of nature’.⁷⁸ The report concludes with what might seem to be a transformative recommendation by drawing attention to the ‘privilege and power’ of men who should ‘become advocates for the empowerment of women and girls as agents of change and environmental leaders, and take tangible actions to support women and girls in realizing their right to a clean, healthy and sustainable environment’.⁷⁹ Yet at the end of the day, this report fails to place any responsibility for solving ecological crisis on men beyond a responsibility to support women. While it is true that far too many men do not support women, but rather undermine and burden them, one wonders whether something is missing. For example, should not all men and women in a position of power and privilege – and especially affluence – be understood as having an obligation to exercise their power and privilege by first reducing their own overconsumption patterns? This is especially so as arguably overconsumption is the root cause of global ecological degradation and the disproportionate impacts on those rendered vulnerable through historic and ongoing discrimination.

72 United Nations Human Rights Council, ‘Guiding Principles on Business and Human Rights’ (UNGPs), A/HRC/17/31 (21 March 2011).

73 UN Working Group (2019), Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, ‘Gender Dimensions of the Guiding Principles on Business and Human Rights’, U.N. Doc. A/HRC/41/43 (23 May, 2019).

74 *Ibid* paras 33-36.

75 *Ibid* para 39.

76 *Ibid*, *Gender guidance to principle 18*.

77 UNGA (2023) n.63, paras 93 and 94

78 *Ibid* para 92(g).

79 *Ibid*, para 97.

Beyond the UNGA resolution and this recent SR environment report is a question of how applicable these reflections on women and environment are for the protection of the marine environment. It is instructive to briefly consider the report from 14 July 2023 by the Special Rapporteur on toxic substances following a visit to the International Maritime Organization (IMO).⁸⁰ The SR Toxics report makes only a single reference to women, observing that an integral part of technical cooperation activities has been ‘the integration of women into the maritime sector’.⁸¹ More generally, the report observes that there is close connection between human beings, shipping and the environment, evidenced by the impact of toxic spills on coastal communities, air pollution and greenhouse gas emissions from vessels, and risks to seafarers and the environment from the transport of hazardous cargo.⁸² While the report draws attention to impacts on vulnerable groups, those considered here are workers and coastal communities, including Indigenous communities that are heavily reliant upon seafood that is exposed to marine pollution including toxic additives that leach from plastics.⁸³

The lack of reference by the SR Toxics in the IMO report to the disproportionate impact of marine plastic pollution on women in coastal communities is curious given that this is identified in an earlier report of his on plastics and human rights.⁸⁴ The IMO report does ultimately recommend that the IMO ‘[i]nclude human rights as an explicit, prominent item on its agenda’ and ‘[c]onsider human rights in all decision-making processes’, among a long list of human rights-related tasks.⁸⁵ Notably missing, however, is detailed reflection on the relationship between State obligations in relation to the IMO, and business responsibilities to respect human rights under the UNGPs, a conversation that appears to not yet have taken place in relation to shipping.

One might read the SR Toxics IMO report as devoid of consideration of gender, even as woefully out of touch with the work of the SR Environment and the UNGA RES/A/76/300. An alternate interpretation would be that the rights of women and girls are revealed if an intersectional approach is embraced. For example, as Sherry Pictou has argued in the Canadian context, patriarchal practices introduced by Canadian legislation have led to the disenfranchisement and gross underrepresentation of Indigenous women in governance including in decision-making over natural resource development, of particular concern as resource extraction is also associated with much higher rates of violence against Indigenous women and girls⁸⁶. To overcome this history requires foregrounding Indigenous women and two spirit persons as active knowledge holders of land and water-based practices, while also drawing attention to the need to consult the broader Indigenous population rather than just the ‘official’ leadership. According to Pictou, it is essential to adopt a human rights-based approach that recognizes that “without Indigenous gender justice, there is no Indigenous self-determination”.⁸⁷

One could similarly consider that integration of gender justice into an assessment of the vulnerability of coastal communities is essential, and a human rights-based approach can lead the way. The need to challenge ‘single axis’ approaches to vulnerability by embracing intersectional insights is also evident in various places in the SR Environment’s report on gender, such as where it is observed that Indigenous and rural women are excluded from decisions made by businesses and governments in relation to land and resource acquisition and use.⁸⁸ Furthermore, the report observes that women experiencing intersecting vulnerability whether due to poverty or Indigeneity, face particular difficulties in accessing justice after climate-related disasters.⁸⁹ The importance

80 UNGA (2023), Visit to the International Maritime Organization: Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, U.N. Doc. A/HRC/54/25/Add.2 (14 July 2023) (SR Toxics IMO).

81 *Ibid*, para 18.

82 *Ibid*, paras 41-67.

83 *Ibid*, paras 77, 90-91.

84 Office of the High Commissioner for Human Rights (OHCHR) (2021), Special Rapporteur on Toxic Substances and Human rights, *The Stages of the Plastics Cycle and Their Impacts on Human Rights*, 2021, UN Doc A/76/207.

85 UNGA (2023), n.80, para 102.

86 For a detailed study on this see, Desai, Bharat H. and Mandal, Moumita (2022), *Sexual and Gender-Based Violence in International Law* (Springer Nature: Singapore, 2022): Sexual and Gender-Based Violence in International Law | SpringerLink.

87 Pictou, Sherry (2020), “Decolonizing decolonization: an Indigenous feminist perspective on the recognition and rights framework”, *The South Atlantic Quarterly*, April 2020, p. 371.

88 UNGA (2023) n.63, para 46.

of intersectionality is also evident in the Gender guidance of the UN Working Group on Business and Human Rights, which states in part:

*(c) Business enterprises should use sex-disaggregated data and outcome indicators to assess the true impact of their activities on women and consider that different women may be affected differently because of the intersectional nature of discrimination*⁹⁰

Adopting an intersectional approach to human rights is not a simple task, however, and can easily break down without proper care.⁹¹

5. Conclusion

In this article, I first explored the evolution of women in international environmental law, then turned to women in the protection of the marine environment. This was followed by an examination of recent developments at the intersection of human rights and the environment, including the marine environment, that point to the necessity of embracing an intersectional approach. Each area of law has revealed narratives of women as vulnerable victims of environmental harms, who have a right to equality and empowerment, and the potential to act as agents of change in service of a bright future for people and planet – in other words, as both victims and saviours. The early history of international environmental law reveals that key demands from grass-roots women’s groups needed to be simplified to be included. As a result, even as increasing opportunities are presented to ensure women’s participation and empowerment in legal processes, minimal attention has been paid to critiques of overconsumption and economic growth in the agenda of international environmental law. International law in relation to the marine environment has been slower to embrace a role for women, but the ABNJ treaty takes steps in this direction. However, the role envisioned for women in instruments emerging at the intersection of international human rights and environmental law is far more expansive, although linkage with the marine environment is less developed.

Ultimately, would greater engagement of women in international legal processes make a difference? The answer may depend as much on men given that even when women are equally represented as delegates at international environmental conferences, men speak more than three quarters of the time!⁹² Beyond this, the answer must reflect intersectional insights – despite the language of ‘women and girls’ there is a need to grapple with the differences between women.⁹³ Some are at greater risk of environmental harm due to intersectional experiences of vulnerability and possess greater knowledge of local ecologies through closer connection with the earth. Other women, with privilege, power and affluence, may bring different insights to the table, but should also face an expectation – as must affluent men – to take seriously the urgent responsibility to reduce overconsumption patterns.

It may be that what is necessary for local and global ecological sustainability is for international law to be more receptive not just to women, but to the ‘idea’ of woman. As noted earlier, a key question may be whether there is value in reflecting on how the idea of woman is associated with ecological relationality and sustainability, and whether this suggests that overcoming ecological challenges of today, including in relation to the marine environment, necessitates a different understanding of ‘man’. In other work I have explored how more environmentally and socially responsive interpretations of domestic and international law would emerge if the human who is the holder of human rights were imagined to be an ecologically embedded relational individual,

89 *Ibid* para 48.

90 UN Working Group (2019), n.73, *Gender guidance to principle 18*.

91 See Handl, Melisa N, Simons, Penelope, and Seck, Sara L (2022), “Gender and Intersectionality in Business and Human Rights Scholarship”, *Business and Human Rights Journal*, vol. 7, no. 2, pp. 201-225.

92 UNGA (2023) n.63 para 44

93 And the diversity of gender expressions. See MMIWG Inquiry (2019), n.1.

as a counterpoint to the bounded autonomous individual of liberal thought.⁹⁴ Similar ideas emerge in relation to the protection of the marine environment from the study of both legal and non-legal contributions by Elisabeth Mann Borgese, often referred to as the ‘mother of the oceans’.⁹⁵

Ultimately, meaningful action to address local and global environmental challenges will not happen until affluent and powerful men and women learn how to embody the idea of woman (or the ecologically embedded relational individual) themselves, rather than placing the burden to save the world on others. My overarching claim is that two distinct yet related stories emerge about women in international environmental instruments, including those informed by human rights norms and relevant to the marine environment. On the other hand, women are presented as vulnerable victims who need saving from the scourges of planetary destruction. On the other hand, women are the bearers of solutions for family, community, and mother earth, and must be empowered so as to prevent and address the consequences of global overproduction and overconsumption. A more holistic approach to women and environment in the triple planetary crisis requires an acknowledgement that solutions will not emerge unless the narrative of women as victims and saviours is supported by transformative shifts in the expectations of affluent humans, including and perhaps especially, wealthy and powerful men.

94 Seck, Sara L (2019), “Relational Law: Re-imagining Tools for Environmental and Climate Justice” *Canadian Journal of Women and the Law*, vol. 31, no.1, pp. 151-177; Seck, Sara L (2021), “A relational analysis of enterprise obligations and carbon majors for climate justice” *Oñati Socio-Legal Series*, vol. 11, no. 1, pp. 254-284: Climate Justice in the Anthropocene, Doi Link: <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1139>

95 Seck (2023), n57.