

Current Legal Developments

Climate Change



The Glasgow Climate Conference (COP26)

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Abstract

After over a decade of international efforts to include the ocean in the policy discussions at the United Nations Framework Convention on Climate Change (UNFCCC) annual Conference of the Parties (COP), the ocean has finally been included by, *inter alia*, a reference to ‘ocean-based action’ in a series of COP outcomes, notable among which is the cover decisions known as the ‘Glasgow Climate Pact’. This article provides the necessary background to the inclusion of the ocean in COP26 outcomes, including the Pact, and examines key issues, impacts and shortfalls of the Pact and other COP26 outcomes, including mitigation, adaptation, finance and human rights. It concludes with suggestions for priority research areas moving forward.

Keywords

climate change – ocean – mitigation – adaptation – climate finance – human rights

The Glasgow Climate Pact

After the United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP) 25 in Madrid 2019 was labelled by the Presidency as the ‘Blue COP’, there was optimism for COP26 held in Glasgow, Scotland from 31 October to 13 November 2021 to embed the ocean into climate-related action at all levels of the UNFCCC framework.¹ This enthusiasm comes off the back of over a decade’s worth of discussion on how to better integrate the ocean-climate nexus into the UNFCCC policy discussion.² Since 2009, several high-level political declarations on climate change,³ including the successive ‘Because the Ocean’ declarations launched by Chile in 2015,⁴ Ocean Action days at COPs,⁵ and the Ocean Pathway Initiative launched by

- 1 This article has been prepared under the UKRI GCRF One Ocean Hub. The One Ocean Hub is a collaborative research for sustainable development project funded by UK Research and Innovation (UKRI) through the Global Challenges Research Fund (GCRF) (Grant Ref: NE/S008950/1). GCRF is a key component in delivering the UK AID strategy and puts UK-led research at the heart of efforts to tackle the United Nations Sustainable Development Goals. This article makes use of original material and ideas from the authors found in two blog posts published immediately after COP26, E Morgera and M Lennan, ‘COP26: What news for the ocean?’ *One Ocean Hub*, November 2021, available at <https://oneoceanhub.org/cop26-what-news-for-the-ocean/>; E Morgera and M Lenna, ‘COP26: Reflections on human rights at the ocean-climate nexus’ *The Global Network for Human Rights and the Environment*, available at <https://gnhre.org/community/cop26-reflections-on-human-rights-at-the-ocean-climate-nexus/>. All websites were accessed on 19 December 2021.
- 2 See, for example, D Freestone, ‘Climate change and the oceans’ (2009) 4 *Carbon and Climate Law Review* 383–386; D Bodansky, ‘The ocean and climate change law: Exploring the relationships’ in R Barnes and R Long (eds), *Frontiers in International Environmental Law: Oceans and Climate Challenges. Essays in Honour of David Freestone* (Brill, Leiden, 2021) 316–336.
- 3 Manado Ocean Declaration (Manado, Indonesia, 14 May 2009), paras 19, 20, available at https://www.gc.noaa.gov/documents/051409-manado_ocean_declaration.pdf; Brussels Declaration on the Ocean and Climate Change (Brussels, 19 February 2019) available at https://climat.be/doc/CliChaOcePre_Declaration_19-02-2019.pdf.
- 4 The third Because the Ocean Declaration was launched on Day 1 of COP 26, see ‘High level call for an ambitious ocean outcome at COP26’ (Because the Ocean, November 2021) available at <https://www.becausetheocean.org/high-level-call-for-an-ambitious-ocean-outcome-at-cop26/>.
- 5 See International Institute for Sustainable Development (IISD), ‘Oceans Action Day at COP 25’ (Earth Negotiations Bulletin, 7 December 2019) available at <https://enb.iisd.org/climate/cop25/oceans-action-day/about.html>.

Fiji during its COP Presidency in 2017,⁶ have been undertaken alongside the negotiations. These initiatives are in addition to the sobering message from the Intergovernmental Panel on Climate Change of both the impacts of climate change on the marine environment (warming, acidification and deoxygenation) and the overall health of the ocean, and the importance of the ocean in climate mitigation and adaptation.⁷ In spite of this, and the recognition of the COP25 Presidency ‘to highlight the importance of the ocean, including as an integral part of the Earth’s climate system, and of ensuring the integrity of the ocean and coastal ecosystems in the context of climate change’,⁸ there had been no success in persuading UNFCCC parties to include or recognise the essential role of the ocean in climate change mitigation and adaptation in a COP decision up until COP26.

Despite the challenges posed by the pandemic, the momentum for integration of the ocean into the UNFCCC and Paris Agreement ambit was maintained after COP25 through the informal dialogue held in December 2020 by the UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA) at the request of the COP25 Presidency.⁹ The output from that dialogue came in the form of an informal summary report by the SBSTA to consider how to strengthen adaptation and mitigation action at the ocean and climate change interface.¹⁰ The report highlighted the absence of the ocean from the policy discussion on climate change, but noted ‘the interest of Governments in strengthening understanding of and action on ocean and climate change adaptation and mitigation’.¹¹ Following the release of the informal summary report, a joint COP26 Presidency Event held on 29 June 2021 indicated that several UNFCCC parties

6 See IISD, ‘Ocean Pathway launched at COP 23’ (21 November 2017) available at <https://sdg.iisd.org/news/ocean-pathway-launched-at-cop-23/>.

7 Intergovernmental Panel on Climate Change (IPCC), *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* (H-O Pörtner et al. (eds)) (IPCC, 2019) [IPCC SROCC]. See especially Chapter 5.

8 United Nations Framework Convention on Climate Change (UNFCCC), *Report of the Conference of the Parties on its twenty-fifth session, held in Madrid from 2 to 15 December 2019, Addendum: Decisions adopted by the Conference of the Parties, UN Doc FCCC/CP/2019/13/Add.1* (16 March 2020), Decision 1/CP.25, para 30.

9 *Ibid.*, para 31.

10 UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA), *Ocean and Climate Change Dialogue to Consider How to Strengthen Adaptation and Mitigation Action, Informal summary report by the Chair of the Subsidiary Body for Scientific and Technological Advice* (29 April 2021) available at https://unfccc.int/sites/default/files/resource/SBSTA_Ocean_Dialogue_SummaryReport.pdf.

11 *Ibid.*, paras 3–4.

called for a strong political signal from COP26 on the ocean, emphasising the impacts of climate change for ocean (sic), the need to raise climate ambition as a result, the importance of ocean action to address climate change, and the need to better integrate ocean-climate issues within the UNFCCC. Some parties specifically advocated for decision text on the ocean in 1/CP.26.¹²

Indeed, this momentum continued up to and during the negotiations in Glasgow in November. The motto 'ocean action is climate action' was often repeated on the side lines during the COP26 negotiations.¹³ The result at the conclusion of the intergovernmental negotiations at COP26 was the package of overarching decisions adopted by parties to the UNFCCC (1/CP.26),¹⁴ its Kyoto Protocol (1/CMP.16),¹⁵ and the Paris Agreement (1/CMA.3),¹⁶ known as the 'Glasgow Climate Pact'. The Pact is therefore formally not legally binding, and comprises a set of international negotiated and agreed policy commitments by the parties to the UNFCCC and the Paris Agreement to promote the achievement of their objectives.¹⁷ This article offers an analysis of the Pact and its significance for the ocean.

The Inclusion of the Ocean in the Glasgow Climate Pact

Decision 1/CP.26 makes direct reference to the need to ensure the integrity of ocean ecosystems.¹⁸ This is important because 2021–2030 is the UN Decade for

12 UNFCCC, *Joint COP26 Presidency Event – Informal Consultation on Oceans and Climate* (29 June 2021) available at <https://unfccc.int/sites/default/files/resource/Joint%20COP26%20Presidency%20Event%20Summary.pdf>.

13 See, 'COP26: Ocean action is climate action – Five key takeaways from the Glasgow climate talks' Economist Group's World Ocean Initiative, 17 November 2021, available at <https://ocean.economist.com/governance/articles/untitled-cop26-ocean-action-is-climate-action>.

14 UNFCCC, 'Glasgow Climate Pact, Decision -/CP.26, advance unedited version' available at <https://unfccc.int/documents/310475> [1/CP.26].

15 UNFCCC, 'Glasgow Climate Pact, Decision -/CMP.16, advance unedited version' available at <https://unfccc.int/documents/310489> [1/CMP.16].

16 UNFCCC, 'Decision -/CMA.3, advance unedited version' available at https://unfccc.int/sites/default/files/resource/cma3_auv_2_cover%20decision.pdf [1/CMA.3].

17 United Nations Framework Convention on Climate Change (New York, 9 May 1992, in force 21 March 1994) 1771 UNTS 107, Article 7(2)(g) [UNFCCC]; Paris Agreement (Paris, 12 December 2015, in force 4 November 2016), UN Doc FCCC/CP/2015/L.9/Rev/1 (12 December 2015), Article 16(4).

18 1/CP.26 (n 14), preambular para 7; 1/CMA.3 (n 16), preambular para 7.

Action on Ecosystem Restoration,¹⁹ and linking adaptation and mitigation to marine ecosystem restoration has the potential to facilitate effective climate action and the protection of several human rights.²⁰ The decision also makes direct reference to the

importance of protecting, conserving and restoring natures and ecosystems including ... marine ecosystems, to achieve the long-term global goal of the Convention by acting as sinks and reservoirs of greenhouse gases and protecting biodiversity, while ensuring social and environmental safeguards.²¹

The Pact also invites ‘the relevant work programmes and constituted bodies under the UNFCCC to consider how to integrate and strengthen ocean-based action in their existing mandates and workplans and to report on these activities within the existing reporting processes, as appropriate.’²² The Pact ‘[a]lso invites the Chair of the [SBSTA] to hold an annual dialogue, starting at the fifty-sixth session of the [SBSTA] (June 2022), to strengthen ocean-based action and to prepare an informal summary report thereon and make it available to the [COP] at its subsequent session.’²³

The Glasgow Climate Pact officially integrates the ocean for the first time across all areas of work under the UNFCCC. This is done in a rather generic way. For example, the Pact does not define ‘ocean-based action’, nor does it provide specific guidance on key issues or priorities, or highlight what those issues or priorities are at present. However, this does not need to be considered a significant gap. Legal tools for advancing ocean action under the UNFCCC are already available. For example, one may consider the range of guidelines on climate change and on biodiversity adopted by the same States that are party to the UNFCCC under the UN Convention on Biological Diversity, which provide intergovernmentally agreed language on approaches to identify and address potential and actual threats that climate change, as well as climate change response measures, pose to the conservation and sustainable use of biodiversity.²⁴ These guidelines already offer a mutually-supportive interpre-

19 United Nations General Assembly (UNGA) Res 73/284 (1 March 2019) United Nations Decade on Ecosystem Restoration (2021–2030), UN Doc A/RES/73/284.

20 Human rights are discussed below.

21 1/CP.26 (n 14), para 21.

22 *Ibid.*, para 60.

23 *Ibid.*, para 61.

24 For example, Secretariat of the Convention on Biological Diversity (CBD), *Voluntary Guidelines for the Design and Effective Implementation of Ecosystem-Based Approaches*

tation of international climate and biodiversity law, which can also provide generally agreed international rules and standards necessary for interpreting the environmental provisions of the UN Convention on the Law of the Sea.²⁵

Another ocean-related outcome of COP26 can maintain high-level interest in the ocean-climate nexus. This is the recurring annual ocean-climate dialogue held by the SBSTA from June 2022. However, it is imperative that the technical work of the UNFCCC bodies is undertaken with cooperation from States to identify priority areas for action, to allow for monitoring and support of ocean-based action for mitigation, and to coordinate adaptation measures. It is too early to say which UNFCCC bodies will identify priority areas (and where those priority areas may well be), and future action will depend on the content of the informal summary report prepared by the SBSTA ahead of COP27. The request to the various bodies and work programmes under the UNFCCC to report back at COP27 in November 2022 provides a timeframe and form of accountability, and could pave the way for an ocean-focused COP decision next year. While certainly slow to start, at least the ball is rolling for action on the ocean under the UNFCCC.

Mitigation

In terms of climate mitigation, the Glasgow Climate Pact made explicit reference to

limiting global warming to 1.5°C [, which] requires rapid, deep and sustained reductions in global greenhouse gas emissions, including global carbon dioxide by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases.²⁶

to *Climate Change adaptation and Disaster Risk Reduction*, CBD Technical Series No. 93 (2019) available at <https://www.cbd.int/doc/publications/cbd-ts-93-en.pdf>; M Lennan, *Integrated and Inclusive Ocean Governance is Essential to Tackling Climate Change* (One Ocean Hub Policy Brief) available at <https://oneoceanhub.org/publications/integrated-and-inclusive-ocean-governance-is-essential-to-tackling-climate-change>; see also E Morgera, 'No need to reinvent the wheel for a human rights-based approach to tackling climate change: The contribution of international biodiversity law' in EJ Hollo, K Kulovesi and M Mehling (eds), *Climate Change and the Law* (Springer, Dordrecht, 2013) 350–390.

25 United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 *UNTS* 396, Part XII; *South China Sea Arbitration (Philippines v. China)*, PCA Award of 12 July 2016, paras 945–946.

26 1/CP.26 (n 14), para 17.

Generally, it is important to limit all emissions since climate change already negatively affects marine ecosystems and their benefits to humanity through warming, acidification, and deoxygenation.²⁷ Failure to make serious progress on emissions reductions will see further negative impacts on the ocean, as outlined in the IPCC Special Report on Oceans and the Cryosphere. These include loss of coral reef ecosystems, fish stocks shifting out of the tropics and towards the poles, and loss of marine biodiversity, thereby hindering the ocean's ability to regulate the global climate.²⁸ These impacts are also important in terms of human rights, because as they increase, so does the risk to economic and food security, as well as the health and culture of local communities dependent on the ocean and the ecosystem services it provides. Indeed, these negative impacts harm the material conditions necessary for the enjoyment of, for example, the human rights to food, water and health.

The explicit reference to reductions of carbon dioxide (CO₂) in the Glasgow Pact is particularly important in the curtailment of ocean acidification, which arises from excess CO₂ emissions dissolving in seawater. In general terms, there are various estimates as to whether the new nationally determined contributions (NDC) and net zero pledges, in conjunction with previous NDCs and pledges submitted before COP26, will limit global warming to between 1.8°C or 2.4°C by 2100, if these are fully implemented. Even the most ambitious estimates, therefore, do not 'close the gap' to 1.5°C warming. In addition, it has yet to be clarified how pledges will have credibility and accountability, if they are not included in future NDCs.²⁹ At present, according to the full NDC synthesis report released by the UNFCCC secretariat ahead of COP26, only one-third of NDCs contained a reference to the ocean or fisheries.³⁰ So, although the UNFCCC bodies have now been mobilised into focusing on ocean-based action, much more work needs to be done by UNFCCC parties individually to mainstream marine issues into all aspects of the climate change policy discussion.

In Glasgow, States also agreed to submit stronger emission reduction targets by 2030 with the aim of closing the 'emissions gap' to limit global warming to 1.5°C;³¹ submit long-term strategies to 2050, aiming for a just transition to

27 IPCC SROCC (n 7).

28 *Ibid.*

29 See IISD, 'Glasgow Climate Change Conference (UNFCCC COP 26)' (Earth Negotiations Bulletin, November 2021) available at <https://sdg.iisd.org/events/2020-un-climate-change-conference-unfccc-cop-26/>.

30 UNFCCC, *Nationally Determined Contributions under the Paris Agreement. Synthesis Report by the Secretariat*, UN Doc FCCC/PA/CMA/2021/8 (17 September 2021) available at <https://unfccc.int/documents/306848>.

31 1/CP.26 (n 14), paras 15–17.

net-zero emissions around mid-century,³² use common timeframes for their national climate commitments under their NDCs, which should allow for more comparability; and submit standardised information about their emissions and financial, technological and capacity-building support.³³ Since NDCs and net-zero targets do not yet add up to what is needed to limit global warming to 1.5°C, it is imperative that States revisit and revise their 2030 targets and achieve much deeper emission reductions this decade.

The specific commitments on fossil fuels found in the Glasgow Pact are also relevant for ocean governance. For example, the production of fossil fuels is linked to the production of plastic, much of which ends up contributing to ocean plastic pollution, as highlighted recently by the UN Special Rapporteur on Toxics and Human Rights.³⁴ The fact that marine plastic pollution limits the ability of the ocean and carbon-sequestering marine systems (such as mangroves, seagrasses and salt marshes) to remove greenhouse gasses from the atmosphere,³⁵ is at odds with the UNFCCC and Paris Agreement obligations to conserve and enhance sinks and reservoirs of greenhouse gases.³⁶ While the Pact did not make a commitment on phasing out oil and gas production, it does include a reference to 'phasing-out inefficient fossil fuel subsidies',³⁷ which has the potential to discourage further oil and gas (and plastic) production. In addition, the Beyond Oil and Gas Alliance, led by Costa Rica and Denmark, pledged to end new licensing rounds for oil and gas exploration and production and set an end date that is aligned with the objectives of the Paris Agreement.³⁸ As emphasised by the Special Rapporteur on Toxics and Human Rights, efforts are needed to prioritise the limitation of plastic production, much of which is made from oil and gas, because other approaches to reduce plastic pollution are 'false solutions': only 10 per cent of plastic is recycled, and plastic landfilling and incineration contribute further to pollution and negative health impacts.³⁹

32 *Ibid.*, paras 17, 20.

33 1/CMA.3 (n 16), para 78.

34 UNGA, *Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, UN Doc A/76/207 (22 July 2021), see especially paras 4–5, 21, and 103.

35 *Ibid.*, para 10.

36 UNFCCC (n 17), Article 4(1)(d); Paris Agreement (n 17), Article 5(1).

37 1/CP.26 (n 14), para 20.

38 See Beyond Oil and Gas Alliance, 'Who we are' available at <https://beyondoilandgasalliance.com/who-we-are/>.

39 UNGA (n 34).

Adaptation

On climate adaptation, parties to the Paris Agreement adopted the Glasgow-Sharm el-Sheikh work programme on the Global Goal on Adaptation⁴⁰ to help improve, between 2022 and 2024, the assessment of progress in adaptation through the holding of regular workshops and work on methodologies. This decision, in conjunction with the request of the UNFCCC bodies and work programmes to explore how to better integrate ocean-based action in their work, could prove promising in the integration of climate adaptation rules, financing and technology transfer in subsequent COPs. Relevant UNFCCC bodies in this adaptation context include the Nairobi Work Programme,⁴¹ the Adaptation Fund and the Adaptation Committee.

In comparison with climate mitigation, the international law of climate adaptation is still under development,⁴² and these outcomes at COP26 may help shape this development to be more inclusive of marine adaptation priorities. This is important considering that less than one-third of the adaptation components of the NDCs submitted ahead of COP26 contained a reference to ecosystems as an adaptation priority. Of those that did, ocean acidification and loss of marine biodiversity were considered as key adaptation priorities,⁴³ as well as highlighting the importance of increased research on ocean and coastal areas.⁴⁴

It is also noteworthy that the Technology Executive Committee has been invited to continue making use of events such as Technology Day in 2020 and 2021 to promote innovative approaches on adaptation technologies related

40 UNFCCC, 'Decision -/CMA.3, Glasgow – Sharm el-Sheikh work programme on the global goal on adaptation' available at <https://unfccc.int/documents/311181>.

41 The SBSTA concluded in 2018 that future Nairobi Work Programme thematic areas should include oceans, coastal areas and ecosystems, see SBSTA, *Report of the SBSTA on the first part of its forty-eighth session, held in Bonn from 30 April to 10 May 2018*, UN Doc FCCC/SBSTA/2018/4* (3 July 2018), para 21; see also SBSTA, *Report of the SBSTA on its fifty-first session, held in Madrid from 2 to December 2019*, UN Doc FCCC/SBSTA/2019 (16 March 2020), para 17; the Nairobi Work Programme also held a Focal Point Forum on the ocean in Madrid in 2019, see United Nations Climate Change, '13th Focal Point Forum of the Nairobi Work Programme on the ocean' available at <https://unfccc.int/event/13th-focal-point-forum-of-the-nairobi-work-programme-on-the-ocean>.

42 See, for example, J McDonald and P McCormack, 'Rethinking the role of law in adapting to climate change' (2021) 12 *WIREs Climate Change* e726.

43 UNFCCC, *Nationally determined contributions under the Paris Agreement. Synthesis report by the secretariat* (UNFCCC, September 2021) available at: <https://unfccc.int/documents/306848>, para. 158.

44 *Ibid.*, para. 159.

to ocean and coastal adaptation.⁴⁵ Increased attention to ocean-based action in the work of UNFCCC bodies may bring about a broader understanding of related technology transfer under the international climate change regime, including for ocean-based adaptation purposes.

Finance

With regards to climate finance, States committed to doubling adaptation finance, keeping the US\$100 billion goal on the agenda until 2027 (bearing in mind this was supposed to be reached in 2020), and establishing a work programme to deliberate on the new finance goal.⁴⁶ No explicit reference was made to the ocean, and it remains unclear whether climate finance efforts will remain focused preponderantly on land. One could argue that the ocean-climate nexus can be addressed on the basis of the more generic reference to ensuring co-benefits for climate finance, but the COP26 decision on 'matters related to the Committee on Finance' noted that '[o]verall, the needs identified by developing countries touch on all SDGs, with 75 per cent of NDCs having linkages to SDGs 2, 6, 7, 8, 9, 11, 12, 13, 15, 17'.⁴⁷ It is notable that SDG 14 (Life Below Water) is not listed here. This is cause for concern, especially since at present only 2 per cent of Green Climate Fund investments are directed to ocean-related activities.⁴⁸ It can only be hoped that the request to UNFCCC bodies and work programmes to include ocean-based action in their work will help, over time, to centre the ocean in climate finance initiatives.

45 UNFCCC, 'Decision -/CMA.3, Enhancing climate technology development and transfer to support implementation of the Paris Agreement' available at https://unfccc.int/sites/default/files/resource/cma3_auv_9a_TechPA.pdf.

46 See IISD, 'Glasgow Climate Change Conference: 31 October–13 November 2021' (16 November 2021) 12(793) *Earth Negotiations Bulletin*, available at https://enb.iisd.org/sites/default/files/2021-11/enb12793e_1.pdf.

47 UNFCCC, 'Decision -/CP.26, Matters relating to the Standing Committee on Finance', para 69, available at https://unfccc.int/sites/default/files/resource/cop26_auv_8b_SCF_report.pdf.

48 Statement by the Commonwealth Secretariat, Baroness Scotland, 'COP26 Commonwealth Pavilion Friday 5th November 2021 afternoon session' (2021), at 2:54:15, available at <https://www.youtube.com/watch?v=yBVHHiQv4hM&t=9483s>.

Human Rights

A healthy ocean and the resources and services it provides help satisfy the material conditions for the enjoyment of everyone's human rights to life, health, food, water and culture.⁴⁹ The interdependency between human rights and biodiversity,⁵⁰ and the interdependencies of human rights and climate change,⁵¹ are relevant here insofar as the protection and multiple uses of the marine environment do (or do not) contribute to climate change mitigation and adaptation. These points considered, there are other decisions adopted at COP26 that are relevant from the perspective of ocean-dependent human rights, namely, those on carbon markets and on stakeholder empowerment. That is to say, they have implications for both the enjoyment of human rights, and the conditions of life upon which human rights depend.

Despite being widely seen as a major achievement,⁵² the new decisions completing the Paris rulebook on carbon markets⁵³ have not been without criticism because of their lack of reference to human rights and the lack of an independent grievance mechanism. David Boyd, the UN Special Rapporteur on Human Rights and the Environment, was critical of these decisions in a thread of tweets,⁵⁴ and highlighted the missed opportunity of including

[s]trong human rights safeguards, including an independent grievance mechanism, in the rules governing the Article 6 carbon market mechanism,

49 See Lennan (n 24).

50 UNGA, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Note by the Secretariat*, UN Doc A/HRC/34/49 (19 January 2017); UNGA, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Note by the Secretary-General*, UN Doc A/75/161 (15 July 2020).

51 UNGA, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Note by the Secretary-General*, UN Doc A/74/161 (15 July 2019); UNGA, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Note by the Secretariat*, UN Doc A/HRC/31/52 (1 February 2016).

52 See IISD (n 46).

53 UNFCCC, 'Decision -/CMA.3, Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement' available at <https://unfccc.int/documents/310510>; UNFCCC, 'Decision -/CMA.3, Rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement' available at <https://unfccc.int/documents/310511>.

54 See UN Special Rapporteur on Human Rights and the Environment (SREnvironment), *Twitter post*, 12 November 2021, 8:30 pm, available at <https://twitter.com/SREnvironment/status/1459317659535773699?s=20>.

consistent with [Global Environment Facility], [Green Climate Fund] etc established practices and ensuring no repeat of fraud and human rights under Kyoto Mechanisms.⁵⁵

Boyd was recalling, in this connection, the exclusionary practices which have led to well-documented human rights violations in the context of land-based carbon markets.⁵⁶ As research increases on blue carbon,⁵⁷ it is vital to take stock of the lessons learned in land-based carbon markets, and avoid repeating the same shortcomings from a human rights perspective.

With regard to the new 10-year Glasgow work programme on Action for Climate Empowerment,⁵⁸ there was overall disappointment that it did not include references to human rights standards of public participation. This was particularly notable in the context of poor access to negotiations by observers at COP due to several factors, including the pandemic.⁵⁹ In the new work programme, parties and non-party stakeholders are merely

encouraged to promote public participating in addressing climate change and its effects and in developing adequate responses by facilitating feedback, debate and partnership in relation to climate change activities and relevant governance, noting the important role that social media platforms and strategies can play in this context.⁶⁰

In an attempt to compensate for this limitation, the Glasgow Climate Pact does (i) recognise the important role of indigenous peoples, local communities, youth and children in addressing and responding to climate change,⁶¹ (ii) call for the promotion and consideration of respective obligations on human rights in implementing the work programme,⁶² and (iii) call for an annual youth-led

55 *Ibid.*

56 *Ibid.*, Twitter posts, 13 November 2021.

57 See UNGA Res 72/73 (5 December 2017) Oceans and the law of the sea, UN Doc A/RES/72/73, para 197; S Lutz, 'Why protect ocean biodiversity', Policy Lates 2021, Royal Society of Biology (2021) available at <https://www.youtube.com/watch?v=aZG5butO7CM&t=3s>.

58 UNFCCC, 'Decision -/CMA.3, Glasgow work programme on Action for Climate Empowerment' available at https://unfccc.int/sites/default/files/resource/cma3_auv_3b_Glasgow_WP.pdf [Glasgow work programme].

59 'Covid restrictions could hinder Cop16 delegates and observers' *The Guardian* (9 October 2021) available at <https://www.theguardian.com/environment/2021/oct/09/covid-restrictions-could-hinder-cop26-delegates-and-observers>.

60 Glasgow work programme (n 58), Annex, para 22.

61 1/CP.26 (n 14), para 55.

62 *Ibid.*, para 62.

climate forum with a view to contributing to the implementation of the work programme.⁶³ However, the last element fails to respond to specific calls made repeatedly by youth representatives to be included in the negotiations,⁶⁴ rather than in separate youth-focused events. Limitations on civil society and representatives of indigenous peoples' access to the negotiations were considered a significant barrier to realising climate justice and to the protection of human rights by the UN Special Rapporteur on Freedom of Association.⁶⁵

Moving Forward

After over a decade of work by UNFCCC parties, non-governmental organisations, and civil society, the ocean has finally been placed on the agenda of international climate change fora through a series of ocean-related decisions adopted at COP26, most notably the Glasgow Climate Pact. Key priorities for States in enhancing (and perhaps defining) 'ocean-based action' will emerge out of the SBTSA dialogue in June 2022. Moving forward, there is an opportunity to advance legal, inter- and transdisciplinary research on the ocean-climate nexus. Much research is still to be done to support the urgent consideration of the interdependencies of human rights, the climate and the ocean across scales in several international processes and fora. These include the International Seabed Authority, where regulations on deep seabed mining are under development. It is similarly the case for the proposed legally binding instrument on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ), currently under negotiation at the United Nations.⁶⁶ Scaling-up research to the ocean-basin and regional scale is also necessary to develop and design monitoring tools as well as appropriate

63 *Ibid.*, paras 64–65.

64 See Save the Children, 'COP26: Empty words and not enough action show children and youth are not being heard' (13 November 2021) available at <https://www.savethechildren.net/news/cop26-empty-words-and-not-enough-action-show-children-and-youth-are-not-being-heard>.

65 See tweets from UN Special Rapporteur on Freedom of Association, Clement Voule, on youth inclusion at COP26, available at <https://twitter.com/cvoule/status/1459181595697594371?s=20>.

66 E Morgera, 'The relevance of the human right to science for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction: A new legally binding instrument to support co-production of ocean knowledge across scales' in V De Lucia, A Oude Elferink and L Nguyen (eds), *International Law and Marine Areas Beyond National Jurisdiction: Reflections on Justice, Space, Knowledge and Power* (Brill, Leiden, 2022) available at <https://ssrn.com/abstract=3870399>.

mitigation and adaptation strategies.⁶⁷ Such research will also contribute to understanding the priorities that should be addressed in the context of the UN Decade for Ocean Science⁶⁸ and the UN Decade for Ecosystem Restoration.⁶⁹ All of these issues should also be considered from a human rights perspective.⁷⁰

The linkages between climate finance and the ocean need further support by States and explored by academics.⁷¹ Climate finance could also be directed to transdisciplinary ocean research, including fair research partnerships which respectfully and appropriately include indigenous and local knowledge holders, and other human rights holders in the co-production of knowledge and solutions to feed into policy- and decision-making spaces at all levels.⁷² Furthermore, more research should be carried out on the implications of the inclusion of the ocean into official UNFCCC policy to open up opportunities for marine-focused climate litigation, the inclusion and integration of indigenous knowledge, and the advancement of debates on nature's rights in supporting human rights holders in addressing issues at the ocean-climate nexus.⁷³

Finally, more research is required on understanding the relationship between children's human rights, and youth involvement in climate justice

67 Lennan (n 24).

68 See the United Nations Decade of Ocean Science for Sustainable Development website, <https://www.oceandecade.org/>.

69 See the United Nations Decade on Ecosystem Restoration website, <https://www.decadeonrestoration.org/>.

70 See One Ocean Hub, 'Integrating the ocean, climate change adaptation and mitigation, biodiversity (ecosystem restoration) and human rights in practice: Evidence of multiple benefits and replicable methods from Algoa Bay, South Africa' (2020) available at <https://oneoceanhub.org/publications/integrating-the-ocean-climate-change-adaptation-and-mitigation-biodiversity-ecosystem-restoration-and-human-rights-in-practice-evidence-of-multiple-benefits-and-replicable-methods-from-algoa-bay/>.

71 See, however, S Guggisberg, 'Funding coastal and marine fisheries projects under the climate change regime' (2019) 107 *Marine Policy* 103352.

72 Lennan (n 24).

73 These research areas have been explored by One Ocean Hub researchers together with rightholder representatives and the UN and others partners at COP26: see posts and videos at One Ocean Hub, 'Reflections on COP26' (26 August 2021) available at <https://oneoceanhub.org/one-ocean-hubs-cop26-side-events-registration-now-open/>; K McKenzie, 'Climate change litigation at COP26: Why it may matter also for the climate-ocean nexus?', One Ocean Hub Blog Post (2021) available at <https://oneoceanhub.org/climate-change-litigation-at-cop26-why-may-it-matter-also-for-the-climate-ocean-nexus/>; L Major and E Webster, 'Human persons and the marine environment: Reflections on the role of international human rights law', One Ocean Hub Blog Post (2021) available at <https://oneoceanhub.org/human-persons-and-the-marine-environment-reflections-on-the-role-of-international-human-rights-law/>.

movements, and a healthy ocean.⁷⁴ This research is urgently needed as the UN Committee on the Rights of the Child has launched a new process to develop a General Comment that will focus on children's rights to a healthy environment, with special attention being paid to the impacts of climate change.⁷⁵

74 M Sweeney and E Morgera, 'Don't forget a healthy ocean as part of children's right to a healthy environment', One Ocean Hub Blog Post (2021) available at <https://oneoceanhub.org/publications/policy-brief-dont-forget-a-healthy-ocean-as-part-of-childrens-right-to-a-healthy-environment/>; S Febrica, 'Advancing children and young peoples' rights to a healthy ocean in the context of climate change', One Ocean Hub Blog Post (2021) available at <https://oneoceanhub.org/advancing-children-and-young-people-rights-to-a-healthy-ocean-in-the-context-of-climate-change/>.

75 UN Human Rights Office of the High Commissioner, 'The UN Committee on the Rights of the Child commits to a new General Comment on Children's Rights and the Environment with a Special Focus on Climate Change' (2021) available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E>.