



Introduction: Applying a Human Rights Lens to the Ocean-Climate Nexus

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Introduction¹

We have known that climate change negatively impacts on the marine environment since the 1990s.² And we are increasingly aware of the role the ocean

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- ² Intergovernmental Panel on Climate Change (IPCC), 'Potential Impact of Climate Change' Policymaker Summary of Working Group II (IPCC, 1990) 8, available at https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_g0_g2_assessments_far_wg_II_spm.pdf; IPCC, *Special*

plays in climate regulation, although we are still unveiling the full extent, and the fragility, of the contributions of deep-sea ecosystems to climate change mitigation.³ Meanwhile, the effects of climate change on individuals and communities are increasingly understood as human rights threats⁴ and violations,⁵ and some climate change responses have been identified as threats to the conservation and sustainable use of biodiversity, including marine biodiversity.⁶

On the one hand, the ocean has finally been officially placed on the international climate change agenda through a series of ocean-related decisions adopted at the United Nations Climate Conferences in 2021 and 2022,⁷ although it remains to be seen whether sufficiently ambitious and precautionary ocean-based climate action will be included in the commitments by Parties to the Paris Agreement. On the other hand, the International Tribunal for the Law of the Sea (ITLOS) has been requested to clarify States' obligations to protect the marine environment from climate change,⁸ including as part of the general obligations to prevent, reduce and control marine pollution.⁹ The International Court of Justice has been asked to both clarify States' obligations regarding

Report on the Ocean and Cryosphere in a Changing Climate (IPCC, 2019) available at <https://www.ipcc.ch/srocc/>. All websites accessed on 29 June 2023.

- 3 AR Thurber *et al.*, 'Ecosystem function and services provided by the deep sea' (2014) 11(14) *Biogeosciences* 3941–3963; and N Hilmi *et al.*, 'The role of blue carbon in climate change mitigation and carbon stock conservation' (2021) 3 *Frontiers in Climate* 710546.
- 4 For example, S Duyck, S Jodoin and A Johl (eds), *Routledge Handbook of Human Rights and Climate Governance* (Routledge, Abingdon, 2018); see also Mandate of the International Law Association (ILA) Committee on International Law and Sea Level Rise in ILA, *Minutes of the Meeting of the Executive Council* (London, 10 November 2012) 5.
- 5 Human Rights Committee (HRC), *Daniel Billy and others v. Australia*, UN Doc CCPR/C/135/D/3624/2019 (22 September 2022).
- 6 Conference of Parties to the Convention on Biological Diversity, Decision IX/16, Biodiversity and Climate Change, UN Doc UNEP/CBD/COP/DEC/IX/16 (9 October 2008), para 1; see generally, J McDonald, J McGee and R Barnes, *Research Handbook on Climate Change, Oceans and Coasts* (Edward Elgar, Cheltenham, 2020).
- 7 M Lennan and E Morgera, 'The Glasgow Climate Conference (COP26)' (2022) 37(1) *International Journal of Marine and Coastal Law (IJMCL)* 137–151; M Lennan and E Morgera, 'UN Climate COP 27: What news for the ocean?' (*One Ocean Hub Blog*, 6 December 2022) available at <https://oneoceanhub.org/un-climate-cop-27-what-news-for-the-ocean/>.
- 8 For the full request, see Commission of Small Island States on Climate Change and International Law, 'Request for an Advisory Opinion of 12 December 2022' (12 December 2022) available at https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf; see also D Freestone, R Barnes and P Akhavan, 'Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law (COSIS)' (2022) 37(1) *IJMCL* 166–178; A Miron, 'COSIS request for an advisory opinion: A poisoned apple for the ITLOS?' (2023) 38(2) *IJMCL* 249–269.
- 9 See for example, A Boyle, 'Law of the sea perspectives on climate change' (2012) 27(4) *IJMCL* 831–838; C Redgwel, 'Treaty evolution, adaptation and change: Is the LOSC "enough" to

climate change, and their legal consequences vis-à-vis other States and peoples and individuals of present and future generations.¹⁰ And the Inter-American Court on Human Rights has been required to clarify States' obligations to protect human rights from the negative impacts of climate change.¹¹

The Articles in the Special Issue

There is therefore an urgent need to advance international legal research on the ocean-climate nexus at the intersection of the law of the sea, international climate change law, other areas of international environmental law and international human rights law. To complement the previous special issue of the *International Journal of Marine and Coastal Law* that focused on the capacity of the law of the sea to address climate change,¹² this special issue addresses additional priority research questions identified on the basis of the interdependencies of human rights, the climate and the ocean in several international processes and fora.¹³

The first article by Elisa Morgera et al., 'Ocean-based Climate Action and Human Rights Implications under the International Climate Change Regime',¹⁴ sets the scene for the whole special issue, by summarising and expanding

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- address climate change impacts on the marine environment' (2019) 34(3) *IJMCL* 440–457; A Boyle, 'Litigating climate change under Part XII of the LOSC' (2019) 34(3) *IJMCL* 458–481.
- 10 United Nations General Assembly Res 77/276 (29 March 2023), Request for an Advisory Opinion from the International Court of Justice on the Obligations of State in Respect of Climate Change (UN Doc A/RES/77/276). See Request from the UN Secretary General of 12 April 2023 and other documents at, International Court of Justice 'Obligations of States in respect of climate change' available at <https://www.icj-cij.org/case/187>.
- 11 See 'Request for an advisory opinion on the climate emergency and human rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile' (January 2023) available at https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf; see also Inter-American Court of Human Rights, *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017).
- 12 See M McCreath and AR Maggio (eds), 'Special Issue: Climate Change and the LOSC' (2019) 34(3) *IJMCL* 385–536.
- 13 See Lennan and Morgera (n 7).
- 14 E Morgera, M Lennan, G La Bianca, HJ Niner, E Harrould-Kolieb, E Recio Pica, J Hills, M Ntona, A Malinde SN Lancaster, M Strand, B Snow, K Erwin, L Shannon, S Rees, K Hyder, G Engelhard, K Howell and K Kulovesi, 'Ocean-based Climate Action and Human Rights Implications under the International Climate Change Regime' (2023) 38(3) *IJMCL*, this issue.

scientific understanding of the ocean-climate nexus, drawing attention to the crucial role of marine biodiversity – deep-sea ecosystems in addition to coastal ones. It then focuses on the opportunities and challenges to contribute to the protection of the marine environment under the international climate change regime from an interdisciplinary perspective (integrating international law scholarship with marine natural and social sciences). Based on the evolution of ocean-climate science since the 1990s, the authors underscore the limited extent to which the international climate change regime has so far addressed the ocean. They also express caution about the opportunities that more ambitious, ecologically meaningful and human rights-based ocean-based climate action can be supported in that framework; notwithstanding the widely shared hopes across the international communities that climate finance can plug the gaping hole of resources devoted to Sustainable Development Goal 14 (Life below water). Rather than discussing in detail climate finance, however, the article focuses on institutional preconditions at the multilateral level for a comprehensive, sustainable and inclusive approach to ocean-based climate action that would set the necessary framework for channelling climate finance to the ocean. It thus draws an original comparison with the approach used for reducing emissions from deforestation and forest degradation (REDD+) and the Climate and Clean Air Coalition, taking into account relevant guidance under the Convention on Biological Diversity and international human rights law. It concludes with a novel proposition to develop a multi-actor coalition across different international treaties and United Nations bodies to ‘protect and restore the ocean’s contributions to climate regulation, human well-being and planetary health’.

The second article by Elisa Morgera and colleagues, ‘Addressing the Ocean-Climate Nexus in the BBNJ Agreement: Strategic Environmental Assessments, Human Rights and Equity in Ocean Science’,¹⁵ assesses to what extent the 2023 Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ Agreement) opens a new path in international law towards addressing issues at the ocean-climate nexus.¹⁶ In doing so, it stresses the need to consider implications for the protection of human rights

15 E Morgera, K McQuaid, G La Bianca, H Niner, L Shannon, M Strand, S Rees, K Howell, B Snow, Alana Malinde SN Lancaster, and W Sauer, ‘Addressing the Ocean-climate Nexus in the BBNJ Agreement: Strategic Environmental Assessments, Human Rights and Equity in Ocean Science’ (2023) 38(3) *IJML*, this issue.

16 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 (New York, 19 June 2023, A/CONF.232/2023/4, not yet in force) [BBNJ Agreement].

and achieving equity among States in the context of ocean knowledge production and environmental management. Based on an interdisciplinary reflection integrating international law with marine natural and social sciences, the article focuses on the new international obligations on strategic environmental assessments (SEAS) as crucial avenues to address climate change mitigation, and ensure fair research partnerships, mutual capacity-building and technology co-development between the Global North and Global South. The article also reflects on the extent to which SEAS can support an integrated implementation of other parts of the BBNJ Agreement and contribute to the broader effectiveness of the general provisions of the United Nations Convention on the Law of the Sea (LOSC)¹⁷ on the protection of the marine environment, within and beyond national jurisdiction, in the light of ecological connectivity. The article, therefore, proposes an interpretation of various institutional provisions of the BBNJ Agreement that can support a proactive approach to the ocean-climate nexus, considering potential impacts on human rights and diverse capacities of States to advance ocean-climate science and action.

The third article by Noreen O'Meara, 'Human Rights and the Global Plastics Treaty to Protect Health, Ocean Ecosystems and Our Climate', shines a light on the ongoing negotiations of a new plastics treaty and their relevance for the ocean-climate nexus.¹⁸ The author argues that drafting a new internationally-binding legal instrument that integrates the established human right to health, in conjunction with the recognised human right to a healthy environment, would maximise the impact of a global regulatory framework for plastics in a way that accelerates climate action by protecting the ocean, marine life and human rights. The article reflects on the nature of the challenge of plastics governance, questioning the framing of plastics pollution and the extent to which existing governance methods effectively tackle it. The author then explores the scope for a proposed UN Global Plastics Treaty and identifies the defining feature that such a treaty must integrate to be ambitious and credible in mitigating climate change, minimising ocean pollution and protecting human rights throughout the plastics lifecycle.

The following two articles focus on two constituencies of human rights holders that are particularly concerned with the ocean-climate nexus. The article by Julia Nakamura, Julia Cirne Lima Weston, and Mitchell Lennan, 'International Legal Responses for Protecting Fishers' Fundamental Rights Impacted

17 United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 *UNTS* 396 [LOSC].

18 N O'Meara, 'Human Rights and the Global Plastics Treaty to protect Health, Ocean Ecosystems and our Climate' (2023) 38(3) *IJMCL*, this issue.

by a Changing Ocean' provides a thorough discussion of the direct impacts of climate change on marine fisheries resources, their habitats, ecosystems, and biodiversity and the resulting effects on fishers involved in large- and small-scale fisheries and their human rights (livelihoods, food, health, culture, life, a healthy environment).¹⁹ The authors then question whether international law provides a supporting framework for the protection of the fundamental rights of fishers in a changing ocean context, differentiating fishers' vulnerability and capacity to adapt to climate change effects on the ocean. The authors examine the linkages between the obligations of States Parties to the LOSC and the United Nations Framework Convention on Climate Change vis-à-vis States' obligations under human rights treaties and international guidance that more specifically address the protection of fishers' fundamental rights.²⁰

The article by Sophie Shields and colleagues, entitled 'Children's Human Right to be Heard at the Ocean-Climate Nexus' aims to clarify the obligations of States under the law of the sea to put children's human rights at the heart of decision-making on the protection of the marine environment, particularly at the ocean-climate nexus.²¹ On the occasion of the adoption of a new UN General Comment on Children's Right and a Healthy Environment, with a focus on Climate Change, by the UN Committee on Children's Rights in June 2023,²² the article discusses the relevance of the provisions of the UN Convention on the Rights of the Child and, in particular, children's human right to be heard in the context of international processes relevant to the ocean-climate nexus. The article sets out two case studies to that end: the existing provisions on deep-sea mining activities under the International Seabed Authority and the BBNJ Agreement. The authors also reflect on more ambitious approaches to integrating intergenerational dialogue within international ocean fora, on the basis of good practices in the area of children's human rights, making a novel proposition of a framework for facilitating children's participation in ocean

19 J Nakamura, JC Lima Weston and M Lennan, 'International Legal Responses for Protecting Fishers' Fundamental Rights Impacted by a Changing Ocean' (2023) 38(3) *IJMCL*, this issue.

20 United Nations Framework Convention on Climate Change (New York, 9 May 1992, in force 21 March 1994), 1771 *UNTS* 107.

21 S Shields, A Longo, M Strand and E Morgera, 'Children's Human Right to be Heard at the Ocean-Climate Nexus' (2023) 38(3) *IJMCL*, this issue.

22 Office of the High Commissioner for Human Rights (OHCHR), 'Committee on the Rights of the Child Closes Ninety-Third Session ...' (OHCHR Press Release, 26 May 2023), <https://www.ohchr.org/en/news/2023/05/committee-rights-child-closes-ninety-third-session-after-adopting-concluding>; accessed 26 May 2023. The text of the General Comment is not yet publicly available.

decision-making to support mutual learning between and within generations and transformative thinking at the ocean-climate nexus.

The final article in the special issue by Lianne Baars, 'The Saliency of Salt Water: An ITLOS Advisory Opinion at the Ocean-Climate Nexus',²³ reflects on the opportunities for the ITLOS to interpret the law of the sea in an evolutionary and mutually supportive way with international climate change law, international human rights law and international biodiversity law. The author reflects on the extent to which ITLOS could support international efforts to combat climate change and ocean acidification, assessing the significant, albeit non-binding, effects of its advisory opinion.

Besides the specific recommendations that each article offers, the special issue as a whole offers mutually supportive interpretations across different areas of the international law to protect the marine environment and international human rights law that can support more integrated, precautionary and inclusive action at the ocean-climate nexus. Many of the arguments explored will be relevant for the more systematic approach to regime interaction under the BBNJ Agreement²⁴ as well as the engagement with human rights under the law of the sea more generally.

23 L Baars, 'The Saliency of Salt Water: An ITLOS Advisory Opinion at the Ocean-Climate Nexus' (2023) 38(3) *IJMCL*, this issue.

24 BBNJ Agreement (n 14), Articles 15(5), 22(3), 24(2), 26(2), 29(2)-(3), 47(6)(c), 50(4)(d), 51(4), 55(4).