

Schulich School of Law, Dalhousie University

Schulich Law Scholars

Articles, Book Chapters, & Popular Press

Faculty Scholarship

2022

Human Rights at the Ocean-Climate Nexus: Opening Doors for the Participation of Indigenous Peoples, Children and Youth, and Gender Diversity

Unwana Udo

Tahnee Prior

Sara L. Seck

Follow this and additional works at: https://digitalcommons.schulichlaw.dal.ca/scholarly_works



Part of the [Administrative Law Commons](#), [Environmental Law Commons](#), [Human Rights Law Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [International Law Commons](#), [Law and Gender Commons](#), [Law and Race Commons](#), and the [Water Law Commons](#)

PART 2

Climate Change



Human Rights at the Ocean-Climate Nexus: Opening Doors for the Participation of Indigenous Peoples, Children and Youth, and Gender Diversity

Unwana Udo, Tahnee Prior and Sara L. Seck

Schulich School of Law and Marine & Environmental Law Institute,
Dalhousie University, Halifax, Nova Scotia, Canada

Introduction*

The ocean is important to the climate, and the survival of the former depends on the latter.¹ The ocean has been identified by the Intergovernmental Panel on Climate Change (IPCC)² and the Subsidiary Body for Scientific and Technological Advice (SBSTA)³ as a global climate regulator. The connection between climate and ocean law is underlined by the fact that the Earth is heavily dependent on the ocean and the cryosphere because of the ocean's role in sustaining the environment and its interconnectedness "with other components of the climate system through global exchange of water, energy and carbon."⁴

* We are grateful for research funding from the Ocean Frontier Institute as part of the large-scale Northwest Atlantic Biological Carbon Pump project, and the seed fund Women of the Arctic Ocean: Exploring the Intersection of Gender, Indigeneity and Law of the Sea in the Canadian Arctic.

- 1 United Nations General Assembly (UNGA) Resolution 71/312, *Our ocean, our future: Call for action*, A/RES/71/312 (July 6, 2017), para. 4, available online: <<https://undocs.org/A/RES/71/312>>; G.R. Bigg, *The Oceans and Climate* (Cambridge: Cambridge University Press, 2003); E. Johansen, "The role of the oceans in regulating the Earth's climate: Legal perspective," in *The Law of the Sea and Climate Change: Solutions and Constraints*, eds., E. Johansen, S. Busch and I. Jakobsen (Cambridge: Cambridge University Press, 2020): 1–21, doi:10.1017/9781108907118.002; M. de Serpa Soares, "Achieving SDG 14: The Role of the United Nations Convention on the Law of the Sea," *UN Chronicle* 54, no. 2 (2017), available online: <<https://www.un.org/en/chronicle/article/achieving-sdg-14-role-united-nations-convention-law-sea>>.
- 2 United Nations, SBSTA/IPCC, *Summary report on the SBSTA–IPCC special event: Unpacking the new scientific knowledge and key findings in the IPCC Special Report on the Ocean and Cryosphere*, Special Event.2019.1. (December 5, 2019), available online: <https://unfccc.int/sites/default/files/resource/SRCCCL%20Summary%20Report_Apr2020.pdf>.
- 3 SBSTA, "Ocean and Climate Change Dialogue to consider how to strengthen adaptation and mitigation action: Information note by the Chair," (November 9, 2020), available online: <https://unfccc.int/sites/default/files/resource/OD_InformationNote.pdf>.
- 4 H.-O. Pörtner et al., eds., "IPCC, 2019: Summary for Policymakers" in *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate*, available online: <<https://www.ipcc.ch/srocc/chapter/summary-for-policymakers/>>.

The IPCC notes that the ocean has immense benefits to the people on Earth in several areas including food and water supply, renewable energy, health and well-being, cultural values, tourism, trade, livelihoods, and transport.⁵ States and communities in close proximity to coastal environments and polar areas are more vulnerable to ocean and cryosphere change, such as rising sea levels and extreme sea level events.⁶ Non-coastal communities (e.g., areas in proximity to high mountains) could also be impacted by ocean change, such as through extreme weather events.⁷ The ocean therefore plays an important role in the achievement of the ambitions of the 2015 Paris Agreement⁸ and the 2015 United Nations Sustainable Development Goals (SDGs).⁹

Despite this nexus between the ocean and climate, both regimes operate in silos and the potential of a union is understood to be difficult largely due to the complexity of both.¹⁰ This dichotomy may, in part, be attributable to the fact that the United Nations Convention on the Law of the Sea (UNCLOS)¹¹ is about a decade older than the United Nations Framework Convention on Climate Change (UNFCCC).¹² However, recent developments within the UNFCCC and UNCLOS regimes suggest that there are opportunities to integrate a focus on the ocean into climate governance and vice versa.¹³

One benefit of a synergistic relationship between the ocean and climate regimes is the potential to strengthen the human rights and equity aspects of

5 Id.

6 Id.

7 Id.

8 The Paris Agreement seeks to limit global warming by “[h]olding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.” See Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, Treaty Reg. No. 54113 (entered into force 4 November 2016), art. 2.1(a).

9 UNGA Resolution 70/1, *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (October 21, 2015), p. 14, available online: <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf>; SBSTA Report, n. 3 above.

10 B.G. Guilloux, “Ocean and Climate Regime Interactions,” *Ocean Yearbook* 34 (2020): 43–88, pp. 50–51.

11 United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, 1833 *United Nations Treaty Series* 3 [UNCLOS], available online: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>.

12 N. Oral, “Ocean acidification: Falling between the legal cracks of UNCLOS and the UNFCCC,” *Ecology Law Quarterly* 45, no. 1 (2018): 9–30, p. 24.

13 UNGA Resolution 72/73, *Oceans and the law of the sea*, A/RES/72/73 (December 5, 2017), para. 292, available online: <<https://undocs.org/A/RES/72/73>>; SBSTA Report, n. 3 above.

both regimes. This article focuses on elements of participation and inclusion¹⁴ in the human rights-based approach, particularly as they relate to Indigenous peoples, children and youth, and gender. An emphasis on participation and inclusion stems from their centrality in the implementation of a human rights-based approach.¹⁵ Participation, for one, has been identified as not only a human right in and of itself, but as “a precondition or catalyst for the realization and enjoyment of other human rights.”¹⁶ A focus on participation is therefore beneficial to a human rights-based approach to the ocean-climate nexus in terms of enhancing other rights.

The decision to focus our analysis on the participation and inclusion of Indigenous peoples and local communities, children and youth, and women and gender diverse persons is informed by several factors. First, these groups are singled out in Principles 20–22 of the 1992 Rio Declaration on Environment and Development as having a vital role to play in sustainable development.¹⁷ Sustainable development has been influential in the recent evolution of ocean policy. Due to the centrality of the ocean to the Earth, the sustainable management of the ocean can significantly contribute to achieving many of the SDGs outlined in the 2030 Agenda for Sustainable Development (Agenda 2030).¹⁸ Particularly, SDG 14 seeks to “conserve and sustainably use the oceans, seas and marine resources for sustainable development.”¹⁹ Sustainable development, and so the SDGs, is also important to the ocean-climate nexus. The IPCC

14 The terms “participation” and “inclusion” are used interchangeably in this article to refer to “active, free and meaningful participation in, [and] contribution to ... civil, political, economic, social and cultural development, through which human rights and fundamental freedoms can be realized,” as used by UNICEF while laying down principles for a human rights-based approach. See UNICEF, *Introduction to the Human Rights Based Approach: A Guide for Finnish NGOs and their Partners* (Finland, Finnish Committee for UNICEF, 2015), p. 15, available online: <http://hrbaportal.org/wp-content/files/HRBA_manuaali_FINAL_pdf_small2.pdf>.

15 M. Broberg and H.-O. Sano, “Strengths and weaknesses in a human rights-based approach to international development: An analysis of a rights-based approach to development assistance based on practical experiences,” *The International Journal of Human Rights* 22 no. 5 (December 2017): 664–680, p. 668, 10.1080/13642987.2017.1408591.

16 UNGA, A/HRC/23/36: Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona (New York: United Nations, 2013), Summary.

17 UNGA, A/CONF.151/26 (Vol. I): Report of the United Nations Conference on Environment and Development, 12 August 1992, Annex I, Rio Declaration on Environment and Development.

18 D. Le Blanc, C. Freire and M. Vierros, “Mapping the linkages between oceans and other Sustainable Development Goals: A preliminary exploration,” DESA Working Paper No. 149, ST/ESA/2017/DWP/149 (February 2017).

19 2030 Agenda, n. 9 above, p. 26.

notes that the state of the ocean and cryosphere interacts with each aspect of sustainability reflected in the SDGs.²⁰ Meanwhile, the UN Decade of Ocean Science for Sustainable Development 2021–2030 (the Decade)²¹ is aimed at providing a common framework to ensure that ocean science can fully support countries' actions to sustainably manage the ocean and develop solutions that contribute to Agenda 2030.²² The Decade and the High Level Panel for a Sustainable Ocean Economy (the Ocean Panel)²³ both acknowledge that SDG 14 can advance the realization of other SDGs. For instance, SDG 14 can help achieve SDG 13 by sustainably growing ocean industries and thus contributing up to one-fifth of greenhouse gas savings towards achieving a 1.5 °C future.²⁴

20 Pörtner et al., n. 4 above.

21 Established by the UN General Assembly. See n. 13 above, *Oceans and Law of the Sea*, para. 292.

22 Intergovernmental Oceanographic Commission (IOC)/UNESCO, *United Nations Decade of Ocean Science for Sustainable Development 2021–2030 Implementation Plan, Version 2.0* (July 2020), para. 5, available online: <https://www.oceandecade.org/assets/uploads/documents/Ocean-Decade-Implementation-Plan-Version-2-0-min_1596634145.pdf>.

23 A knowledge and research initiative under the auspices of UNCLOS set up for the purpose of liaising with States, corporations, scientists, and civil society organizations to develop an action agenda for transitioning to a sustainable ocean economy. "About the Ocean Panel" High Level Panel for a Sustainable Ocean Economy, available online: <<https://www.oceanpanel.org/about>>.

24 A publication under the framework of the Ocean Panel highlights that SDG 14 can help achieve each of the other SDGs (see SDG 13 above) in the following ways: *SDG 1. Poverty*: Sustainable ocean growth means sustained growth, which is able to lift and keep people out of poverty; *SDG 2. Zero Hunger*: Farming and fishing sustainably has the potential to produce far more protein than a 2050 population requires; *SDG 3. Good Health and Well-Being*: Apart from being able to provide more nutritious food, a healthy ocean is the recharging point for billions of people; *SDG 4. Quality Education*: Lifting marginalized coastal communities out of poverty increases their children's chances for a good education; *SDG 5. Gender Equality*: Increasing gender equality in the ocean economy would empower millions of women; *SDG 6. Clean Water and Sanitation*: Desalination of ocean water provides drinking water to millions of people. Additionally, improving sanitation can increase coastal water quality; *SDG 7. Affordable and Clean Energy*: Expanding the ocean's almost unlimited renewable energy potential is predicted to contribute 10 percent of the global electricity production increase by 2050; *SDG 8. Decent Work and Economic Growth*: Growing the ocean economy sustainably is projected to more than double the current ocean economy; *SDG 9. Industry, Innovation and Infrastructure*: Constructing low carbon ports and renewable ocean energy will stimulate innovation and create vital infrastructure; *SDG 10. Reduced Inequalities*: Granting well-defined ocean access rights and sustainable resource use ensures long-term prosperity of marginalized groups; *SDG 11. Sustainable Cities and Communities*: Constructing blue-green storm protection infrastructure will make cities more sustainable; *SDG 12. Responsible Consumption and Production*: Solving ocean plastic pollution drives us to build a more circular economy on land; *SDG 15. Life on Land*: Reducing ocean dead zones catalyzes

Second, these groups have attained increased access to as well as participation in UNFCCC decision-making processes and play a lead role in many of the human rights-based climate litigation and petitions.²⁵ With respect to

land-based reforms toward regenerative precision agriculture; *SDG 16. Peace, Justice and Strong Institutions*: In a sustainable ocean economy, a nation's sovereignty over its exclusive economic zone and resources is achieved; *SDG 17. Partnerships for the Goals*: The ocean is a platform for collaboration and strengthens the global partnership for sustainable development. See M.R. Stuchtey et al., *Ocean Solutions That Benefit People, Nature and the Economy* (Washington, DC: World Resources Institute, 2020), available online: <<https://www.oceanpanel.org/ocean-action/files/full-report-ocean-solutions-eng.pdf>>; see also J.C. Ferreira et al., "Ocean literacy to promote Sustainable Development Goals and Agenda 2030 in coastal communities," *Education Sciences* 11, no. 2 (2021): 62–82, available online: <<https://doi.org/10.3390/educsci11020062>>.

- 25 A sample of cases are noted here (NB: references to the ocean are pinpointed). **For Youth and Children:** *Urgenda Foundation v. State of the Netherlands*, [2015] The Hague District Court, Netherlands, HAZA C/09/00456689, pp. 2 and 9–10, available online: <<http://climatecasechart.com/climate-change-litigation/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>>; *Ali v. Federation of Pakistan*, [2016] Supreme Court of Pakistan, p. 8, available online: <climatecasechart.com/climate-change-litigation/non-us-case/ali-v-federation-of-pakistan-2/>; *Future Generations v. Ministry of the Environment*, [2018] Supreme Court of Colombia, no. 11001 22 03 000 2018 00319 00, available online: <<http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>>; *Sacchi v. Argentina*, [2019] petition dated 23 September 2019 pending before the United Nations Committee on the Rights of the Child, pp. 34–36, available online: <<http://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/>>; *La Rose v. Her Majesty the Queen* [2019], Federal Court of Canada (Vancouver) FC No. T-1750-19, statement of claim, paras. 4, 42–43, 243–244, available online: <<http://climatecasechart.com/non-us-case/la-rose-v-her-majesty-the-queen/>>; *Mathur v. Her Majesty the Queen in Right of Ontario*, [2019] Toronto, ONSC, CV-19-00631627-0000, Notice of Application, paras. 25 and 45, available online: <climatecasechart.com/non-us-case/mathur-et-al-v-her-majesty-the-queen-in-right-of-ontario>. **For women:** *Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council* [2016] European Court of Human Rights, No. A-2992/2017, available online: <<http://climatecasechart.com/climate-change-litigation/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/>>; *Maria Khan v. Federation of Pakistan* (pending) petition No. 8960 of 2019 (Lahore High Court), available online: <<http://climatecasechart.com/non-us-case/maria-khan-et-al-v-federation-of-pakistan-et-al/>>. **For Indigenous peoples:** Re: *Petition by Sheila Watt-Cloutier et al. to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (7 Dec 2005), Petition No P-1413-05, pp. 23–36, available online: <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2005/20051208_na_petition.pdf>; *Lho'imggin v. Her Majesty the Queen in the Right of Canada*, [2020] Federal Court of Canada Complaint, para. 77, available online: <<http://climatecasechart.com/non-us-case/gagnon-et-al-v-her-majesty-the-queen/>>.

participation, this article focuses on the deliberative involvement²⁶ of these groups (through political participation), as opposed to agonistic involvement²⁷ (through social movements, demonstrations, and lawsuits), without prejudice to the importance of the latter, or the impossibility of drawing a bright line between the two. In fact, agonistic movements are an integral part of a human rights-based approach to climate change. As noted, the human rights turn in the climate discourse has been characterized by the recent wave of climate lawsuits and petitions filed by Indigenous peoples, children and youth, and women.²⁸ The plaintiffs in many of these lawsuits and petitions focus in part on adverse changes to the ocean caused by climate change, among other things, to argue that the human rights of the plaintiffs have been violated.²⁹ A human rights-based approach has also been embraced by several climate activist organizations representing Indigenous peoples, children and youth, and women.³⁰ These organizations have been immensely important to the development of the human rights-based approach to climate change and the ocean. Still, the deliberative involvement of these groups is underdeveloped within the climate change and ocean regimes, although there are signs of change.

The purpose of this article is to explore the potential for synergy between both regimes, as well as the potential of this synergy to support a human

-
- 26 Deliberative participation involves participation by citizens at every stage of decision-making and policy formation, including research and discovery stages. See S. Chambers, "Deliberative democratic theory," *Annual Review of Political Science* 6 (June 2003): 307–326, p. 317. See also G. Blue, "Participatory and deliberative approaches to climate change," *Oxford Research Encyclopedia of Climate Science* (29 March 2017), available online: <<https://oxfordre.com/climatescience/view/10.1093/acrefore/9780190228620.001.0001/acrefore-9780190228620-e-397>>.
- 27 Agonistic approaches to climate change are characterized by climate change activism, for example, through protests. Agonism considers conflict and dissent by the populace to be central to the conflictual relations of power that constitute the political and make any politics of climate change possible. See W. Kakenmaster, "Articulating resistance: Agonism, radical democracy and climate change activism," *Millennium: Journal of International Studies* 47, no. 3 (22 April 2019): 373–397, p. 379 and 381. For fuller discussion on the agonistic involvement, see C. Mouffe, "Democratic politics and conflict: An agonistic approach," *Psychoanalysis and the Political* 9 (2016), available online: <<https://doi.org/10.3998/pc.12322227.0009.011>>.
- 28 J. Peel and H.M. Osofsky, "A rights turn in climate change litigation?," *Transnational Environmental Law* 7, no. 1 (March 2018): 37–67, 10.1017/S2047102517000292.
- 29 See all the cases mentioned in n. 25 above.
- 30 Examples of such organizations include Fridays for Future <<https://fridaysforfuture.org>>; Gender CC <<https://www.gendercc.net/home.html>>; Indigenous Environmental Network <<https://www.ienearth.org>>; Oceanic Global <<https://oceanic.global>>; Center for International Environmental Law <<https://www.ciel.org>>; and Earthjustice <<https://earthjustice.org>>.

rights-based approach, particularly as this approach relates to Indigenous peoples, children and youth, and persons of different genders.³¹ We will first consider the intersections between the ocean and climate regimes. We will then introduce the UN Decade of Ocean Science for Sustainable Development 2021–2030,³² followed by the work of the High Level Panel for a Sustainable Ocean Economy on transformations³³ to illustrate why a human rights-based approach within the ocean context is important. We will then turn to the climate regime and consider the extent to which it embodies a participatory approach with a focus on the rights of Indigenous peoples, children, and women. Finally, we will assess the extent to which the ocean and climate regimes integrate a human rights-based approach, and the potential for mutually reinforcing actions within both regimes.

The Intersection between the Ocean and Climate Regimes

In this section, we explore the relationship between the ocean and climate regimes. To determine the nature of this relationship, we examine cross-references between the UNFCCC and UNCLOS regimes.

The References to the Climate in UNCLOS

While there is no express reference to climate change in UNCLOS, recent developments within the ocean framework with respect to sustainable development indicate that there may be an increasing recognition of the intersection between the ocean and climate, as evidenced by the advent of the UN Decade of Ocean Science for Sustainable Development (2021–2030). The omission of climate in UNCLOS is perhaps attributable to the point in time at which

31 While we acknowledge that critiques exist of a human rights-based approach, we adopt a human rights-based approach in this article as it represents a legal tool that is often adopted by those experiencing environmental injustice as a way to seek recognition of the legitimacy of their claims. See S. Atapattu, C.G. Gonzalez and S.L. Seck, “Intersections of environmental justice and sustainable development,” in *Cambridge Handbook of Environmental Justice and Sustainable Development*, eds., S. Atapattu, C.G. Gonzalez and S.L. Seck (Cambridge: Cambridge University Press, 2021), 1–19.

32 Established by the UN General Assembly. See *Oceans and Law of the Sea*, n. 13 above, para. 292.

33 The Ocean Panel, “Transformations for a Sustainable Ocean Economy: A Vision for Protection, Production and Prosperity,” *High Level Panel for a Sustainable Ocean Economy* (2020), p. 3, available online: <<https://www.oceanpanel.org/ocean-action/files/transformations-sustainable-ocean-economy-eng.pdf>>.

UNCLOS was negotiated—climate change was not a burning issue within the international environmental sphere at the time.³⁴

However, there are provisions within UNCLOS that could be construed as supporting climate law. First, UNCLOS provisions on protection of the marine environment against pollution³⁵ can be interpreted to include the reduction of greenhouse gas (GHG) emissions and other measures that prevent the impacts of climate change on the ocean.³⁶ Another set of provisions in UNCLOS supporting climate law is the obligation on States and international organizations to facilitate participation of coastal States in scientific research, knowledge exchange with respect to conservation of ocean life, and protection of the marine environment.³⁷ A recent example of this type of knowledge and research initiative is the Ocean Panel, which liaises with States, corporations, scientists, and civil society organizations to develop an action agenda for transitioning to a sustainable ocean economy.³⁸ Another example is the UN Decade of Ocean Science initiated by the Intergovernmental Oceanographic Commission (IOC) of UNESCO to persuade States, natural and social science (including humanities) experts, and society at large of the need for a transformational, extensive, and innovative campaign to bring ocean science into the mainstream.³⁹

However, it is important to note that references to the aforementioned provisions of UNCLOS do not suggest the adequacy of UNCLOS as it relates to climate change and the SDGs. These provisions are scant and indirect, and therefore raise the need for direct and adequate references to the climate. It has been suggested that there is a need for the amendment of UNCLOS to reflect the present realities of climate change.⁴⁰ Notably, the International Maritime

34 Oral, n. 12 above; Guilloux, n. 10 above, p. 54.

35 UNCLOS, n. 11 above, arts. 145, 192.

36 Oral, n. 12 above, p. 26; Guilloux, n. 10 above, p. 54.

37 UNCLOS, n. 11 above, arts. 61(5), 119(5), 144, 200, 202(a)(ii), 239, 242, 243, 249(1)(a).

38 "About the Ocean Panel," n. 23 above.

39 The Decade Implementation Plan, n. 22 above, paras. 4–5.

40 Amending UNCLOS is extremely difficult because all it takes for an amendment to be refused is an objection from one State Party. See Article 313 of UNCLOS, n. 11 above. It has therefore been suggested that customary law principles may be a more practical way to change maritime law. See Centre for International Law, "Climate Change and the Law of the Sea: Adapting the Law of the Sea to Address the Challenges of Climate Change," report of conference held at the National University of Singapore (March 13–14, 2018), available online: <<http://cil.nus.edu.sg/wp-content/uploads/2018/04/Climate-Change-Law-of-the-Sea-Final-report.pdf>>.

Organization (IMO) adopted a strategy for reduction of GHG emissions from ships in line with the Paris Agreement's temperature goals.⁴¹

It is equally important to note that although UNCLOS does not make direct reference to the climate, recent developments suggest that State Parties recognize the ocean-climate nexus. While State parties to UNCLOS have held meetings at least once every year since it came into force in 1994,⁴² there have been few references to the climate until recently. Recent meeting reports show that there is an increasing acknowledgement by the Meetings of State Parties to UNCLOS of the ocean-climate nexus, especially since 2015 (during the buildup to the signing of the Paris Agreement and thereafter). At the twenty-fifth Meeting of State Parties, the delegates emphasized the need to address the impacts of climate change on the ocean, and also expressed a desire for the ocean to be a part of the discussions within the UNFCCC in advance of the twenty-first Conference of Parties (COP 21), where the Paris Agreement was signed.⁴³

Similarly, some delegations at the twenty-sixth Meeting of State Parties acknowledged the role of the ocean as a regulator and the adverse effects of climate change on the ocean, and made additional reference to the importance of the Paris Agreement and the UNFCCC in achieving SDG 14.⁴⁴ Again, delegations at the twenty-eighth Meeting of State Parties acknowledged the importance of climate change on the ocean and noted the particular vulnerability of developing States.⁴⁵ At the thirtieth Meeting of State Parties, the

41 International Maritime Organization (IMO), *Adoption of the Initial IMO Strategy on reduction of GHG Emissions from Ships and Existing IMO Activity related to reducing GHG Emissions in the Shipping Sector*, Marine Environment Protection Committee (MEPC), 72nd session, 9–13 April 2018, available online: <https://unfccc.int/sites/default/files/resource/250_IMO%20submission_Talanoa%20Dialogue_April%202018.pdf>; However, the GHG reduction commitments with respect to global shipping have so far been a far cry from the Paris Agreement targets. See N. Degnarain, "Global Shipping's UN Climate Talks Fail Amid Threats of a Walkout," *Forbes* (October 24, 2020), available online: <<https://www.forbes.com/sites/nishandegnarain/2020/10/24/global-shippings-un-climate-talks-fail-amid-threats-of-a-walkout/?sh=201754703897>>.

42 *Documents of the Meeting of States Parties to the United Nations Convention on the Law of the Sea (SPLoS)*, UN Oceans and Law of the Sea, available online: <https://www.un.org/depts/los/meeting_states_parties/SPLoS_documents.htm#Reports%20of%20the%20Meetings>.

43 UNCLOS, Meeting of State Parties, *Report of the Twenty-fifth Meeting of States Parties*, New York, 8–12 June 2015, SPLoS/287, paras. 89, 91, available online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/217/42/PDF/N1521742.pdf?OpenElement>>.

44 UNCLOS, Meeting of State Parties, *Report of the Twenty-seventh Meeting of States Parties*, New York, 12–16 June 2017, SPLoS/316, paras. 91, 96, available online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/209/81/PDF/N1720981.pdf?OpenElement>>.

45 UNCLOS, Meeting of State Parties, *Report of the Twenty-eighth Meeting of States Parties*, New York, 11–14 June 2018, SPLoS/324, paras. 47, 90, available online: <<https://>

Parties explicitly acknowledged the ocean-climate nexus and the need to integrate ocean issues into the UNFCCC.⁴⁶ These references indicate that the ocean-climate nexus is increasingly finding support within UNCLOS and that there may be avenues for greater integration. However, these references to climate in the UNCLOS meetings are quite peripheral and, in our view, do not constitute an adequate framework for the integration of the climate regime. At best, they merely indicate that UNCLOS is not averse to developments within the climate regime.

Recognition of the Ocean within the UNFCCC Regime

There is little to no reference to the ocean within UNFCCC instruments—the UNFCCC (1992) and the Paris Agreement (2015) make little reference to the ocean, while the Kyoto Protocol (1997) makes no reference at all. However, recent developments within the UNFCCC suggest that there is also room for the integration of the ocean into the climate regime.

In its preambular provisions, the UNFCCC refers to the adverse effects of sea level rise on low-lying islands and coastal areas and the particular vulnerability of these areas to the impacts of climate change.⁴⁷ The UNFCCC also mandates the following ocean-related steps to be taken in furtherance of common but differentiated responsibilities: (1) the promotion of sustainable management and conservation of ocean, coastal, and marine ecosystems and (2) the development and elaboration of proper and integrated plans for coastal zone management.⁴⁸

Reference to the ocean is also present in the Paris Agreement, as follows: “[n]oting the importance of ensuring the integrity⁴⁹ of all ecosystems, includ-

documents-dds-ny.un.org/doc/UNDOC/GEN/N18/217/00/PDF/N1821700.pdf?OpenElement>.

46 UNCLOS, Meeting of State Parties, *Report of the Thirtieth Meeting of States Parties*, New York, 9 December 2020, SPLOS/30/14/Add.1, paras. 84, 85, 89, 91, available online: <<https://undocs.org/en/splos/30/14/Add.1>>.

47 United Nations Framework Convention on Climate Change, New York, 9 May 1992, 1771 *United Nations Treaty Series* 107, preamble (recital 13) and art. 4.8.

48 *Id.*, art. 4.1(d)–(e).

49 There is no definition of “integrity” within the Paris Agreement. This necessitates reference to a definition proffered by the Wildlife Conservation Society within the Convention on Biodiversity Framework as follows: “ecosystem integrity (or intactness) refer[s] to the completeness and functionality of an ecosystem and its ecological processes, particularly in relation to its natural state.” See Wildlife Conservation Society, “Ecosystem Integrity in the Post-2020 Global Biodiversity Framework,” available online: <<https://www.cbd.int/api/v2013/documents/EF052A4A-8751-AB04-8208-F2CBDA387E24/attachments/WCS-2.pdf>>.

ing oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of ‘climate justice’, when taking action to address climate change.”⁵⁰ The concept of “integrity” within this preamble highlights the need to ensure the intactness or completeness of all ecosystems. This will involve treating the ecosystems as one whole. The inclusion of the ocean in the Paris Agreement acknowledges its status as an integral part of the climate regime.⁵¹ That is to say, neglect of the ocean or fragmentation of the ocean from the rest of the ecosystem will be inimical to the integrity of the ecosystem.

These references to the ocean in the UNFCCC and the Paris Agreement are clearly insufficient given the magnitude of the link between the ocean and climate change. However, it is a positive sign that there is an increasing recognition of the role that the ocean plays as an integral part of the climate, including in climate negotiations.

Reference to the Ocean within Climate Negotiations

Prior to 2015, there seemed to be no strong and direct effort to raise ocean-related issues in climate negotiations. At COP 21 in 2015, Small Island Developing States (SIDS) and the Alliance of Small Island States (AOSIS), a coalition of developed and developing States alongside non-State actors, began to raise awareness of the heightened climate risks in ocean and coastal areas, with the aim of impacting the outcomes of the COP and fostering synergy between the ocean and climate regimes.⁵² The mainstreaming of the ocean within the climate regime resulted in concerted discussions on the ocean at various UNFCCC forums. One such forum was the “The Ocean Pathway: Towards an Ocean Inclusive UNFCCC process,” a side event at COP 23 (2017) focused on integrating the ocean perspective into the UNFCCC process.⁵³ Perhaps this awareness and reference to the ocean in the Paris Agreement influenced the decision by States to request the IPCC to prepare a special report on the interactions between climate change and the ocean and the cryosphere.⁵⁴

50 Paris Agreement, n. 8 above, preamble.

51 “COP21: The ocean has joined the great climate negotiation entente,” *Ocean and Climate Platform*, available online: <<https://ocean-climate.org/en/cop21-the-ocean-has-joined-the-great-climate-negotiation-entente/>>.

52 Guilloux, n. 10 above, p. 68.

53 Ocean Pathway, “The Ocean Pathway: Towards an Ocean Inclusive UNFCCC Process,” COP 23, Bonn 2017–18, available online: <<https://cop23.com.fj/the-ocean-pathway/>>.

54 IPCC, *Draft Report of the Forty-Third Session of The IPCC* (Nairobi, Kenya, April 11–13, 2016), available online: <https://www.ipcc.ch/site/assets/uploads/2018/04/200920160707-Draft-3-Draft_Report_IPCC-43.pdf>.

COP 25—the Blue COP

Upon conclusion of the IPCC Special Report on the interactions between climate change on the one hand, and the ocean and the cryosphere on the other hand, it was presented at a joint SBSTA-IPCC special event on the Special Report on the Ocean and Cryosphere in a Changing Climate during the COP 25.⁵⁵ In fact, the COP 25 was termed the “Blue COP” because of its focus on the relationship between the ocean and climate.⁵⁶ There were several events at COP 25 discussing ocean-climate issues, including “maritime shipping, ocean science, ocean acidification and deoxygenation, and nature-based solutions.”⁵⁷ Under the directive of the COP, the SBSTA prepared a summary report on “a dialogue on the ocean and climate to consider how to strengthen mitigation and adaptation action” in which the Parties and non-Party stakeholders submitted inputs on the ocean and climate discussion.⁵⁸ Although the SBSTA mostly summarized input by several stakeholders, the report is important because it collates all views on the need for synergy between the ocean and climate and formally puts the issues relating to the relationship between the ocean and climate before the COP.

The report identifies the importance of the ocean-climate nexus and how both regimes can mutually benefit from the other.⁵⁹ The report recognizes the importance of the ocean as a regulator of global climate as well as the role of ocean-related action in meeting the SDGs and the Paris Agreement goals. The report further notes that “[a]ddressing the combined crises requires integrated ocean and climate approaches, finance and solutions, which consider gender, Indigenous peoples, and the most vulnerable coastal communities.”⁶⁰

The SBSTA states in its report that Indigenous peoples should be recognized in two capacities, first, as rights-holders, and second, as knowledge-holders in

55 “Summary report on the SBSTA-IPCC special event: Unpacking the new scientific knowledge and key findings in the IPCC Special Report on the Ocean and Cryosphere,” SBSTA/IPCC, Madrid, Spain (5 December 2019), available online: <<https://unfccc.int/event/srocc-special-event>>.

56 “Chile Launches Platform for Science-based Ocean Solutions at COP 25,” *International Institute for Sustainable Development (IISD)* (December 5, 2019), available online: <<https://sdg.iisd.org/news/chile-launches-platform-for-science-based-ocean-solutions-at-cop-25/>>.

57 “The Blue COP U.N. Climate Conference Takes a Close Look at the Ocean,” *Environmental and Energy Study Institute* (December 12, 2019), available online: <<https://www.eesi.org/articles/view/the-blue-cop>>.

58 “Ocean and Climate Change Dialogue to consider how to strengthen adaptation and mitigation action: Information note by the Chair,” SBSTA (November 9, 2020), available online: <http://unfccc.int/sites/default/files/resource/OD_InformationNote.pdf>.

59 Id., paras. 61, 62.

60 Id.

the co-production of knowledge.⁶¹ Additionally, the report highlights the plight of vulnerable groups and the need to consider human rights implications⁶² and engage these groups, including Indigenous peoples, children and youth, women and coastal communities.⁶³ The UN Decade and the 2030 Agenda for Sustainable Development are also referenced in the report.⁶⁴ COP 25 may therefore be an indication that there are conversations about convergence of both regimes towards a synergistic response to climate and ocean issues. It remains to be seen how this “blue” momentum will be sustained. COP 26 may very well be the first barometer for determining its strength.

The UN Decade of Ocean Science for Sustainable Development and the Ocean Panel

Even though gender equality and youth were recently addressed in the outcome document of the 2017 United Nations Oceans Conference ‘Our Ocean, Our Future: Call to Action’, which highlighted “the importance of gender equality and the crucial role of women and youth in the conservation and sustainable use of oceans, seas and marine resources for sustainable development,”⁶⁵ UNCLOS has done little to address Indigenous peoples, youth, or persons of different genders.⁶⁶ For instance, UNCLOS does not make a single reference to women. It also does not include any mechanisms to ensure the participation of women who maintain close ties with the ocean. The same holds true for youth and Indigenous peoples.

The lack of references to human rights elements in UNCLOS (the Convention and the meetings) indicate that UNCLOS cannot provide a basis for participation by Indigenous peoples, children and youth, and persons of different genders in decision-making. However, this does not necessarily

61 Id., paras. 65, 57.

62 Id., paras. 73, 99.

63 Id., para. 90.

64 Id., paras. 19, 42, 51, 93, 117, 142.

65 UNGA Resolution 71/312, n. 1 above.

66 See V. Becker-Weinberg, “Human trafficking and IUUF: Legal and gender implications,” in *Gender and the Law of the Sea*, ed., I. Papanicolopulu (Leiden: Brill Nijhoff, 2019): 229–259, p. 233; N. Oral, “Climate change, oceans and gender,” in *Gender and the Law of the Sea*, ed., I. Papanicolopulu (Leiden: Brill Nijhoff, 2019): 343–360, p. 344; A. Chircop, T. Koivurova and K. Singh, “Is there a relationship between UNDRIP and UNCLOS?,” *Ocean Yearbook* 33 (2019): 90–130. See also for example, “Inuit must consent to UN Law of the Sea treaty: ICC,” *Nunatsiaq News* (June 3, 2013), available online: <https://nunatsiaq.com/stories/article/65674inuit_must_consent_to_un_law_of_the_sea_treaty_icc/>.

mean that these groups remain wayside in the ocean regime as a whole. As will be seen, the UN Decade of Ocean Science for Sustainable Development aims for the equal participation of women and men. The IMO has also committed to promoting gender equality and the empowerment of women in accordance with the 2030 Agenda.⁶⁷ Additionally, it has supported several regional Women in Maritime Associations,⁶⁸ and both the 2019 World Oceans Day and the 2019 World Maritime Day had themes of “Gender and the Oceans” and “Empowering Women in the Maritime Community,” respectively. Meanwhile, Indigenous peoples have previously attended meetings and addressed the IMO as members of country delegations and/or observer organizations, such as Friends of the Earth. Notably, in March 2021, the Inuit Circumpolar Council, a multi-national non-governmental organization representing all Inuit from Alaska, Canada, Greenland, and Chukotka internationally, presented a case for consultative status to the IMO.⁶⁹ Similarly, the IMO seems to be opening to participation by children and youth. An example of this is the provision of an opportunity for a youth representative⁷⁰ to address delegates during the negotiations leading up to the 74th session of the IMO’s Marine Environment Protection Committee (MEPC) in May 2019 in the United Kingdom.⁷¹ While addressing the IMO delegates, the representative pointed out the vital role of the shipping industry in climate action and called for a drastic reduction in shipping emissions.⁷² In addition to this, we examine two emerging ocean-focused (and UNCLOS-affiliated) initiatives with the potential to catalyze the participation of Indigenous peoples, children and youth, and persons of different genders within the ocean regime—the UN Decade of Ocean Science and the Ocean Panel.

67 See IMO, “Strategic Plan for the Organization for the six-year period 2018–2023,” Res A.110(30) (December 6, 2017), IMO Doc A 30/Res 110.

68 IMO, “Capacity building: Strengthening the impact of women in the maritime sector. Note by the Secretariat,” IMO Doc TC 67/8 (2017).

69 “ICC Presents Case for Consultative Status to IMO Council,” *Inuit Circumpolar Council* (March 1, 2021), available online: <<https://www.inuitcircumpolar.com/news/icc-presents-case-for-consultative-status-to-imo-council/>>.

70 The rapporteur was Noga Levy-Rapoport (17 years old at the time), who addressed delegates on behalf of the UK Student Climate Network. See S. Chambers, “Shipping gets the Greta Thunberg treatment as crunch IMO talks get underway in London,” *Asia Shipping Media* (7 May 2019), available online: <<https://splash247.com/shipping-gets-the-greta-thunberg-treatment-as-crunch-imo-talks-get-underway-in-london/>>.

71 Id.

72 Claire, “Youth urge IMO to act now to cut shipping emissions,” *Campaign against Climate Change* (7 May 2019), available online: <https://www.campaigncc.org/imo_climate_emergency#speech>.

The Decade's Mandate

In 2016, the IOC of UNESCO⁷³ initiated a campaign “to convince governments, decision makers, funders, scientists from natural and social science disciplines including humanities, and the society at large that the world requires a transformational, large-scale, adequately resourced, innovative campaign to mainstream ocean science.”⁷⁴ In furtherance of this campaign, the IOC, in consultation with IOC Member States and other interested parties, came up with preparatory work that culminated in a proclamation of the UN Decade of Ocean Science for Sustainable Development 2021–2030 by the UN in 2017.⁷⁵ The Decade is to be guided by UNCLOS in implementing solutions,⁷⁶ with this implementation occurring on a voluntary basis.⁷⁷

The Decade identifies the rationale for its existence to include, among others, solving the ocean's challenges in a way that is transformative and capable of adapting to a changing climate, including “knowledge to inform policy and decision-making, management and governance frameworks, and technological innovation.”⁷⁸ Thus, the UN Decade is clearly interested in matters of policy, decision-making and governance, which means that the engagement of Indigenous peoples, children and youth, and persons of different genders in the ocean and climate regimes is not beyond the mandate of the Decade. Another rationale of the Decade is to bring to the limelight “the invisible role of sustained ocean data, observations and knowledge for future sustainable development solutions and climate action”⁷⁹ and contribute data, knowledge, and capacity to achieve the aspirations in various international frameworks, including the UNFCCC.⁸⁰ This foundational information means that the UN Decade is interested in the intersection between the ocean and climate and sustainable development.

The Decade's recognition of inequalities in ocean knowledge capacity between States and stakeholders, as well as the need to bridge such inequalities indicates that the Decade's mandate covers the protection of vulnerable

73 “The IOC is the UN agency responsible for supporting global ocean science and services. The IOC enables its 150 Member States to coordinate marine scientific research programmes, ocean services and related activities such as capacity development.” See UNESCO, “Intergovernmental Oceanographic Commission of UNESCO (IOC-UNESCO),” available online: <<https://ioc.unesco.org/>>.

74 The Decade Implementation Plan, n. 22 above, para. 4.

75 Oceans and Law of the Sea, n. 12 above, para. 292.

76 The Decade Implementation Plan, n. 22 above, p. i.

77 Id., para. 6.

78 Id., para. 3.

79 Id., para. 12.

80 Id., para. 7.

groups (at least in the ocean context).⁸¹ The Decade also highlights the importance of ocean literacy to capacity development. Ocean literacy is defined as the understanding of human influence on the ocean and the ocean's influence on people. Ocean literacy initiatives aim to increase awareness of the state of the ocean, to provide tools for the exchange of knowledge and perspectives on the values of the ocean, and to provide approaches that can transform ocean knowledge into actions that promote ocean sustainability.⁸²

The Decade outlines seven elements in describing its goal for what the ocean should be by the end of 2030.⁸³ These elements include notable climate themes; for instance, in explaining its goal of “a healthy and resilient ocean,” the Decade states that filling knowledge gaps about marine ecosystems and their reactions to multiple stressors, like understanding the multiple human stressors that interact with climate change, is vital.⁸⁴

In identifying the challenges to be addressed, the Decade makes several references to the climate, as well as foundational themes relevant to it. For example, the Decade identifies a knowledge challenge: to “enhance understanding of the ocean-climate nexus and generate knowledge and solutions to mitigate, adapt and build resilience to the effects of climate change across the globe.”⁸⁵ This acknowledgement of the discord between the ocean and climate as a challenge reiterates the Decade's mandate in seeking to find synergy between them. For instance, a foundational theme challenge that is relevant to climate change relates to ensuring “comprehensive capacity development and equitable access to data, information, knowledge and technology across all aspects of ocean science and for all stakeholders.”⁸⁶ This challenge identifies an equity issue that is relevant to the engagement of Indigenous peoples, children and youth, and persons of different genders within ocean and climate law. This issue of equity is once again referenced when the Decade points to the unequal distribution of human capacity in carrying out ocean science globally, across generations and genders, thereby highlighting the importance of achieving an evenly distributed capacity.⁸⁷

81 Id., para. 12.

82 Id.

83 Summarized as follows: (1) a clean ocean; (2) a healthy and resilient ocean; (3) a productive ocean; (4) a predictable ocean; (5) a safe ocean; (6) an accessible ocean; and (7) an inspiring and engaging ocean. See Id., para. 22.

84 Id.

85 Id., challenge 5.

86 Id., challenge 9.

87 Id., paras. 56, 57.

The Decade's Engagement with Indigenous Peoples, Children and Youth, and Gender Diversity

The Decade identifies four priority areas that will be the focus of ocean literacy initiatives: mainstreaming ocean literacy in policy formulation; formal education; corporate action; and community engagement.⁸⁸ Of all four, community engagement is most relevant to the engagement of Indigenous peoples, children and youth, and persons of different genders. The Decade established three mechanisms for engaging various rights- and stakeholders: The Decade Coordination Unit,⁸⁹ the Global Stakeholder Forum,⁹⁰ and Generation Ocean.⁹¹

The Decade recognizes local and Indigenous knowledge holders as key rights and stakeholders in contributing to the “co-development, co-design and co-delivery” of Decade Actions in their capacity as equal partners.⁹² The Decade also recognizes local coastal communities as essential stakeholders of the Decade, considering their ocean knowledge and vulnerability to changing conditions.⁹³

The Decade targets children and youth, school students, and educators with a view to igniting their interests in ocean careers. According to the Decade, the importance of its interest in this group is underlined by the group's role as the next generation of ocean scientists and decision-makers.⁹⁴ One therefore wonders whether the Decade sees youth and children as a group entitled to participation while they are still young, rather than only when they become older. A question therefore arises as to whether and how ocean literacy aligns with a participatory human rights-based approach or one that frames children, youth and Indigenous voices as important for “climate action.” It has been noted that knowledge and awareness alone cannot be the sole basis for ocean

88 Id., para. 68.

89 Id., para. 71. The Decade Coordination Unit is responsible for developing targeted engagement strategies for key stakeholder groups with the aim of guiding specific initiatives throughout the Decade.

90 Id., para. 80. “A Global Stakeholder Forum will provide a convening and exchange mechanism for all stakeholder engagement networks. This Forum will have both virtual and physical elements. The Forum will include an online interactive platform for all Decade Implementing Partners, Stakeholder Platforms, National Decade Committees, Alliance members and proponents of Decade Actions.” Id., para. 76.

91 Id., para. 82. “The Generation Ocean brand will be a central pillar of Decade communications and will provide a clear call to action for everyone who wants to become part of efforts during the Decade to understand the ocean and to take the actions needed to protect it for present and future generations.”

92 Id., para. 70.

93 Id.

94 Id.

literacy because it is inadequate for “engendering the type of engagement needed to produce and sustain broad ocean-positive behaviours, attitudes and actions.”⁹⁵ This inadequacy necessitates the need for engagement and inclusion of rights- and stakeholders, including Indigenous peoples, children and youth, and persons of all genders, in decision-making. The end-result of ocean literacy ought to build capacity as well as empower more informed participation and effective decision-making.⁹⁶ Ocean literacy also ought to meet these criteria to reflect a participatory human rights-based approach.

The Decade further highlights the need to recognize and redress gender disparities (in line with SDG 5) in ocean science. It builds this objective on the understanding that “female scientists comprise on average 38% of the researchers in ocean science, with significant variations across disciplines, levels of seniority, and between countries.”⁹⁷ As with Indigenous peoples, children and youth, the Decade seeks to include stakeholders of diverse genders; this includes gender balance on the Decade advisory board.⁹⁸ Beyond ocean science, though, the Ocean Decade Implementation Plan gives no attention to increasing the ocean literacy of persons of different genders within the general public more broadly.⁹⁹ It also does not mention how to draw on the gender-specific observations and knowledge that these persons may hold and how to integrate it into the broader ocean literacy endeavor.

It is worth mentioning that States appear to be taking steps toward the Decade’s goals and objectives. The U.S. National Committee for the Ocean Decade launched its activities with a national workshop (February 3–4, 2021) on the research efforts needed to address the ten Ocean Decade Challenges.¹⁰⁰ Similarly, there was a North Atlantic Regional Workshop (held in Halifax,

95 S. Scully, “Ocean Literacy in Canada: Literature Review” (Canada: Scully Research Consulting, 2018), p. 7, available online: <https://colcoalition.ca/wp-content/uploads/2021/03/Ocean_Literacy_in_Canada_-_A_Literature_Review.pdf>.

96 S. Fielding, J.T. Copley and R.A. Mills, “Exploring our oceans: Using the global classroom to develop ocean literacy,” *Frontiers in Marine Science* 6, no. 340 (25 June 2019), 10.3389/fmars.2019.00340.

97 The Decade Implementation Plan, n. 22 above, para. 56.

98 *Id.*, paras. 69, 91.

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

100 U.S. National Committee for the Ocean Decade, “United States holds first meeting of its National Committee for the Ocean Decade,” *United Nations Decade of Ocean Science for Sustainable Development* (26 February 2021), available online: <<https://www.oceandecade.org/news/104/United-States-holds-first-meeting-of-its-National-Committee-for-the-Ocean-Decad>>.

Canada January 6–10, 2020) in support of the Decade,¹⁰¹ with over 150 participants drawn from 14 different countries to discuss priorities and actions for the North Atlantic Ocean to support the Implementation Plan for the Decade.¹⁰² Participation in the workshop was balanced across genders, and Indigenous participants were also engaged in all aspects of the workshop. Furthermore, All-Atlantic Ocean Youth Ambassadors were featured in a panel session where they presented several projects that they are leading around the North Atlantic Ocean.¹⁰³ One of the five themes identified in the workshop is “Awareness Raising and Inclusivity” (including consideration of Indigenous peoples, children and youth, gender, and ocean literacy among others).¹⁰⁴ While addressing the issue of awareness, it was noted at the workshop that Indigenous knowledge must be integrated in search of solutions for the ocean “by using the ‘two-eyed seeing’ approach whereby one is from the ‘Western science perspective’ and the other is the ‘Traditional, local and Indigenous perspective.’¹⁰⁵ The two-eyed seeing approach is one that ought to be adopted and implemented within both the ocean and climate regimes in search of solutions. Beyond this, it is laudable that the report from the workshop is replete with Indigenous and youth engagement and the importance thereof.¹⁰⁶

Furthermore, as a part of the Decade, Fisheries and Oceans Canada, the Canadian Commission for UNESCO, L’Oréal Canada, and the IOC of UNESCO hosted a virtual dialogue, entitled “Making Waves for Ocean Science: Empowering Women Leaders in the Ocean Decade.” This dialogue highlighted the

101 “Regional Workshop—North Atlantic Ocean—UN Decade of Ocean Science for Sustainable Development (2021–2030),” UNESCO-IOC, available online: <<https://oceandecade.org/events/80/Regional-Workshop---North-Atlantic-Ocean---UN-Decade-of-Ocean-Science-for-Sustainable-Development-2021-2030>>.

102 UN Decade on Ocean Science for Sustainable Development, *Summary Report North: North Atlantic Regional Workshop in support of UN Decade on Ocean Science for Sustainable Development*, Halifax, Canada, January 6–10, 2020, p. 3, available online: <<https://oceanfrontierinstitute.com/uploads/general/North-Atlantic-Regional-WorkshopSummary-Report-ENGDraft7-April2.pdf>>.

103 *Id.*

104 *Id.*, pp. 12–13. The others are capacity-building and technology transfer; partnerships and financing; access to information, data and knowledge; and transdisciplinarity. See *id.*, pp. 7–15.

105 *Id.*, p. 13.

106 For example: one of the key steps to building trust with Indigenous peoples is long-term consultation and partnerships (p. 14); there were also discussions on the need for integrating Indigenous knowledge into science, policy- and decision-making (pp. 7, 46); All-Atlantic Ocean Youth Ambassadors were granted an audience in a panel session where they presented several of the projects that they are leading around the North Atlantic Ocean (p. 3).

importance of gender-sensitive actions in ocean science, such as the inclusion of women and non-binary persons in the co-creation of ocean science and management plans, as well as empowering them to become leaders in their respective fields.¹⁰⁷ In addition to the aforementioned development, the First International Conference of the United Nations Decade of Ocean Science for Sustainable Development is scheduled to be held June 1, 2021–July 2022 with a series of events slated for that period.¹⁰⁸ There have been many other events and initiatives under the auspices of the Decade, as well.¹⁰⁹

It is important to also mention that UNCLOS is taking steps to support the Decade. At the thirtieth meeting of State Parties to UNCLOS, the Parties acknowledged the work of the Decade and made reference to an action plan in place as part of the International Seabed Authority's contribution toward the implementation of the Decade.¹¹⁰ State Parties also made various references to the importance of sustainable use of the ocean and a sustainable ocean economy.¹¹¹ The Action Plan referenced in this thirtieth meeting was launched on December 17, 2020.¹¹² Notably, the Action Plan is largely focused on research and knowledge, with no reference to participation in decision-making or governance. Within this research and knowledge context, the Action Plan only acknowledges the need to strengthen the role of women in ocean research,¹¹³ but fails to mention persons of other genders, Indigenous peoples, children and youth.

107 See "Ocean Decade: celebrating women empowerment on the occasion of International Women's Day 2021," *The Ocean Decade* (March 17, 2021), available online: <<https://www.oceandecade.org/news/111/Ocean-Decade-celebrating-women-empowerment-on-the-occasion-of-International-Womens-Day-2021>>.

108 "First International Conference of the United Nations Decade of Ocean Science for Sustainable Development," *The Ocean Decade*, available online: <<https://www.oceandecade-conference.com/en/>>.

109 "Past Events," *The Ocean Decade*, available online: <https://www.oceandecade.org/event_archive>.

110 UNCLOS, Report of Thirtieth Meeting, n. 46 above, para. 21.

111 *Id.*, paras. 79–80, 82.

112 "ISA launches its Action Plan for Marine Scientific Research in support of the UN Decade of Ocean Science for Sustainable Development," *International Seabed Authority Press Release* (December 17, 2020), available online: <<https://www.isa.org.jm/news/isa-launches-its-action-plan-marine-scientific-research-support-un-decade-ocean-science>>.

113 International Seabed Authority Assembly, *Action plan of the International Seabed Authority in support of the United Nations Decade of Ocean Science for Sustainable Development*, ISBA/26/A/4, Kingston (July 27–31, 2020), pp. 7, 20.

The High Level Ocean Panel's Transformative Solutions

There are significant intersections between the Decade and the Ocean Panel. The work of the Ocean Panel forms part of the basis for the Decade's implementation plan.¹¹⁴ For its part, the Ocean Panel expresses its commitment toward leveraging “the UN Decade of Ocean Science for Sustainable Development and the body of knowledge commissioned by the Ocean Panel.”¹¹⁵ The Decade and the Ocean Panel both acknowledge the need for transformative solutions to the climate problem.¹¹⁶ It is therefore imperative to look into the notion of transformative solutions as expounded by the Ocean Panel and, perhaps by doing so, gain further insight into the Decade's goals and objectives.¹¹⁷

The 14 members of the Ocean Panel “commit to sustainably manage 100% of the ocean area under national jurisdiction, guided by Sustainable Ocean Plans, by 2025” and urge “all coastal and ocean states to join ... in this commitment so that by 2030 all ocean areas under national jurisdiction are sustainably managed.”¹¹⁸ The Ocean Panel expresses its commitment “to bold transformations towards a sustainable ocean economy where environmental protection and conservation, and economic production and prosperity, go hand in hand.”¹¹⁹

114 *Decade Implementation Plan*, n. 22 above, para. 1.

115 *Ocean Panel Transformation Paper*, n. 33 above.

116 *Decade Implementation Plan*, n. 22 above, para. 3.

117 The Ocean Panel is a unique initiative by 14 world leaders (“whose countries account for 40% of the Earth's coastlines”) who are building momentum for a sustainable ocean economy in which effective protection, sustainable production, and equitable prosperity work together. Established in September 2018, the Ocean Panel has been working with government, business, and financial institutions, the science community, and civil society to catalyze and scale bold, pragmatic solutions across policy, governance, technology and finance to ultimately develop an action agenda for transitioning to a sustainable ocean economy. The Ocean Panel is the only ocean policy body made up of serving world leaders with the authority needed to trigger, amplify, and accelerate action worldwide for ocean priorities. See H. Payne, “14 Heads of State call for transformation in global ocean management,” *Stanford University Center for Ocean Solutions* (December 3, 2020), available online: <<https://oceansolutions.stanford.edu/stories-events/14-heads-state-call-transformation-global-ocean-management>>; “About the Ocean Panel,” High Level Panel, available online: <<https://www.oceanpanel.org/about#panel>>.

118 *Id.*, p. 4. It is important to note that the 2030 target set by the Ocean Panel for achieving sustainable management of the ocean aligns with the 2030 target set by the UN Decade and the 2030 Agenda for implementation of the Sustainable Development Goals. Equally important is the fact that the UNFCCC has emphasized the importance of 2030 action [by States regarding the NDCs] in meeting the Paris goals. See “The Importance of 2030 Action for Reaching the Paris Climate Goals,” *UNFCCC*, available online: <https://unfccc.int/sites/default/files/resource/2.24%20Kriegler_ADVANCE_poster_SBSTA_03_05_2018_final.pdf>.

119 *Ocean Panel Transformation Paper*, n. 33 above, p. 2.

According to the Ocean Panel, these transformations are to be guided by the following principles: alignment,¹²⁰ inclusiveness,¹²¹ knowledge,¹²² legality,¹²³ precaution,¹²⁴ protection,¹²⁵ resilience,¹²⁶ solidarity,¹²⁷ and sustainability.¹²⁸ The Ocean Panel classifies its 2030 outcomes and priority actions into five categories: ocean wealth, ocean health, ocean equity, ocean knowledge, and ocean finance. These five categories each identify actions to be taken in consideration of the interests of Indigenous peoples.

The priority action in ocean wealth is to “invest in sustainable tourism that regenerates the ecosystems on which it depends, [build] the resilience of coastal communities and Indigenous peoples, [reduce] inequality through promoting equal opportunity and equitable distribution of benefits and [address] climate change and pollution.”¹²⁹ For ocean health, the priority is to “collaborate with all relevant partners, including local community, Indigenous peoples, and stakeholders through relevant global and regional organizations to promote sustainable management of all marine and coastal ecosystems.”¹³⁰ The priority for ocean equity is to “recognise and respect the interests of coastal communities and rights of Indigenous Peoples, and implement policies that require consideration of the particular importance of marine resources for these groups ... [and] create inclusive governance by incorporating

120 “[O]cean protection and production must align with the UNFCCC, the Paris Agreement, the Convention on Biological Diversity, and the Polluter Pays Principle.” See *id.*

121 “Human rights, gender equality, community and Indigenous Peoples’ participation, through their free, prior and informed consent, must be respected and protected.” See *id.*

122 “Ocean management must be informed by the best available science and knowledge, including indigenous and local knowledge, and aided by innovation and technology.” See *id.*

123 “The UN Convention on the Law of the Sea is the legal basis for all ocean activities, and existing international ocean commitments must be implemented as a foundation for achieving a sustainable ocean economy.” See *id.*

124 “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” See *id.*

125 “A healthy ocean underpins a sustainable ocean economy. A net gain approach must be applied to ocean uses in order to help sustain or restore the health of the ocean.” See *id.*

126 “The resilience of the ocean and ocean economy must be enhanced.” See *id.*

127 “The need for access to finance, technology and capacity-building for developing countries, especially Small Island Developing States and Least Developed Countries, must be recognised, taking into account their particular circumstances and vulnerabilities.” See *id.*

128 “The production and harvesting of ocean resources must be sustainable and support resilient ecosystems and future productivity.” See *id.*

129 *Id.*, p. 8.

130 *Id.*, p. 12.

indigenous and local community knowledge and interests, particularly those of women and youth, in planning and decision-making processes.”¹³¹ With respect to ocean knowledge, the priority is to “scale up integrated local-to-global observation, including indigenous and local community knowledge, and research to better inform decision-making.”¹³²

The Ocean Panel has commissioned research by experts in a series of papers, entitled the “Blue Papers,” on what a transformative solution for the ocean crisis should be.¹³³ The Blue Papers herald specific recognition of the relational and subjective elements of peoples’ ocean relationships (i.e., the nexus between human relationships and the ocean), partly catalyzed by what has been termed the “blue turn” in human and cultural geography as it relates to conversations about the blue economy.¹³⁴ The Panel notes that the ocean can play a catalytic role in the next phase of human development, enhancing human capabilities and freedoms, and thereby contributing to achieving the UN SDGs.¹³⁵

The Blue Papers are infused with human rights themes that resonate with the human rights dimensions of climate change. One of the papers, for example, acknowledges that ocean-related climate change impacts are likely to exacerbate existing inequalities within coastal communities, especially within vulnerable populations, including those living in low-lying areas of the tropics, on small oceanic islands, and in the Arctic, as well as those whose livelihoods are tied to fisheries affected by global environmental change.¹³⁶ Some of the Blue Papers examine the concept of a sustainable ocean economy and the blue economy¹³⁷ vis-à-vis the implications for human rights. One of the issues related to the blue economy is its consideration of social equity, which

131 Id.

132 Id., p. 17.

133 As stated by the Panel in all Blue Papers publications, these papers are an independent input to the Panel process and do not necessarily represent the thinking of the Panel.

134 E.H. Allison et al., *The Human Relationship with Our Ocean Planet* (Washington, DC: World Resources Institute, 2020), p. 5, available online: <<https://oceanpanel.org/sites/default/files/2020-10/Human%20Relationship%20with%20the%20Ocean%20Full%20Paper.pdf>>.

135 Id., p. 4.

136 Id.

137 “Blue economy ... is a term that attempts to embrace the opportunities associated with the ocean, whilst recognizing, accounting for and addressing the threats posed by such an economy. It is essentially the ocean equivalent of the ‘green economy’—a vision for a decarbonized, regenerative and more equitable economic system.” Id., p. 5.

seems to have been eclipsed by environmental sustainability,¹³⁸ thereby necessitating a focus on addressing inequities within the blue economy. A sustainable ocean economy should therefore respect human rights and equity as well as provide fair support and the fair distribution of benefits and insulation for those who are most vulnerable from risks of harm and, where harm is done, assign liability and responsibility for remedy.¹³⁹

The human rights, equity, and sustainability themes of the Decade and Ocean Panel initiatives provide a foundational basis for the participation of Indigenous peoples, children and youth, and persons of different genders in decision-making within the ocean regime. Although these initiatives are not all-encompassing in terms of establishing a rights-based framework for participation, the knowledge and research-based nature of the initiatives foster further development of a framework in the fullness of time. The references to the initiatives and support by the UN decision-making bodies are an indication of this potential.

The Climate Regime and the Inclusion of Indigenous Peoples, Children and Youth, and Gender Diversity

There are numerous programs and bodies seeking to enhance the participation of Indigenous peoples, children and youth, as well as persons of different genders, most prominently women, in decision-making within the climate regime. This section will examine these efforts with the goal of determining the extent to which they also support and provide opportunities for the engagement of these three groups in the ocean regime.

Indigenous Peoples' Participation Mechanisms

The International Indigenous Peoples Forum on Climate Change Since the inception of the UNFCCC and the first session of the COP in 1995, Indigenous peoples have continuously advocated for participation in the UNFCCC negotiations process.¹⁴⁰ Ultimately, this insistence on participation

138 H. Österblom et al., *Towards Ocean Equity* (Washington, DC: World Resources Institute, 2020), p. 4, available online: <<https://www.oceanpanel.org/sites/default/files/2020-04/towards-ocean-equity.pdf>>.

139 Id., p. 3.

140 P.D. Sherpa, "The Historical Journey of Indigenous Peoples in Climate Change Negotiation," *International Union for Conservation of Nature's Commission on Environmental*,

led to the establishment of the International Indigenous Peoples Forum on Climate Change (IIPFCC) in 2008, the formal space as constituents for the negotiating body of Indigenous peoples in the UNFCCC.¹⁴¹ Since 2008, the IIPFCC, as the caucus for Indigenous peoples, coordinates Indigenous peoples attending the UNFCCC to discuss priorities, negotiate items, and hold side events in the UNFCCC processes.¹⁴² The IIPFCC represents the Indigenous peoples caucus members from seven regions of the world, namely, Asia, Pacific, Africa, Arctic, Latin America, North America, and Russia and Eastern Europe present and attending the official UNFCCC COPs and intersessional sessions of the SBSTA and Subsidiary Body on Implementation (SBI) bodies in between COPs.¹⁴³ The mandate of the IIPFCC is to agree specifically on what Indigenous peoples will be negotiating for in specific UNFCCC decision-making forums. Indigenous peoples' representatives attending the meetings have their own organizations at subnational, national, and global levels which have their own agenda, priorities, and proposals which they canvass during the Indigenous peoples caucus meetings.¹⁴⁴ It is worth noting that the IIPFCC was very instrumental in the formation of the Local Communities and Indigenous Peoples Platform (as discussed below).¹⁴⁵

Subsidiary Body for Scientific and Technological Advice

It is important to mention the SBSTA because of its status as a key stakeholder within the Local Communities and Indigenous Peoples Platform (LCIPP). The SBSTA is one of two permanent subsidiary bodies¹⁴⁶ established by the

Economic and Social Policy News (December 30, 2019), available online: <<https://www.iucn.org/news/commission-environmental-economic-and-social-policy/201912/historical-journey-indigenous-peoples-climate-change-negotiation>>.

141 Id.

142 G. Reed, "Connecting the Local Communities and Indigenous Peoples Platform to Domestic Climate Challenges in Canada," *Centre for International Governance Innovation* (July 4, 2019), available online: <<https://www.cigionline.org/articles/connecting-local-communities-and-indigenous-peoples-platform-domestic-climate-challenges>>; "About the International Indigenous Peoples' Forum on Climate Change," *IIPFCC*, available online: <<http://www.iipfcc.org/who-are-we>>.

143 IIPFCC, id., available online: <<http://www.iipfcc.org/regions>>.

144 Id.

145 Id.

146 The other is the Subsidiary Body for Implementation (SBI).

UNFCCC.¹⁴⁷ It provides information and advice to the COP¹⁴⁸ on scientific, technological, and methodological matters relating to climate change.¹⁴⁹

At COP 22, the SBSTA was tasked with taking steps toward developing the LCIPP, including convening an open multi-stakeholder dialogue and making recommendations for operationalizing the LCIPP to COP 23.¹⁵⁰ Following a mandate from COP 23, the Chair of the SBSTA co-moderated (alongside a representative of local communities and Indigenous peoples' organizations) the 2018 multi-stakeholder workshop on implementing the functions of the LCIPP.¹⁵¹ In furtherance of a directive by COP 23, the SBSTA also established the LCIPP Facilitative Working Group (FWG) and the procedure for development of a work plan.¹⁵² The draft work plan was accepted by the SBSTA¹⁵³ at its fifty-first meeting held December 2–7, 2019 in conjunction with the second meeting of the FWG held November 28–30, 2019.¹⁵⁴ The SBSTA can be very instrumental to the integration of the ocean and climate regimes. This is not

147 UNFCCC, n. 47 above, art. 9.1.

148 The SBSTA also provides information to other relevant entities within the UNFCCC such as the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA).

149 UNFCCC, n. 47 above, art. 9.2; "Subsidiary Body for Scientific and Technological Advice (SBSTA)," UNFCCC, available online: <<https://unfccc.int/process/bodies/subsidiary-bodies/sbsta>>.

150 UNFCCC, *Report of the Conference of the Parties on its twenty-second session, held in Marrakech from 7 to 18 November 2016*, Decision 1/CP.22, FCCC/CP/2016/10/Add.1 (January 31, 2017), available online: <<https://unfccc.int/resource/docs/2016/cop22/eng/10a01.pdf>>.

151 UNFCCC, *Report of the Conference of the Parties on its twenty-third session, held in Bonn from 6 to 18 November 2017*, Decision 2/CP.23, FCCC/CP/2017/11/Add.1 (February 8, 2018), para. 9 [COP 2017 Report], available online: <<https://unfccc.int/resource/docs/2017/cop23/eng/11a01.pdf>>.

152 Id., para. 10; UNFCCC, *Report of the multi-stakeholder workshop: Implementing the functions of the Local Communities and Indigenous Peoples Platform* (April 26, 2019) [*Report of the multi-stakeholder workshop*], available online: <https://unfccc.int/sites/default/files/resource/20190426_LCIPP%20Workshop%20Report_final%20version.pdf>.

153 FWG-LCIPP, "Local Communities and Indigenous Peoples Platform (LCIPP): The fourth meeting of the Facilitative Working Group (FWG)," FWG/2020/4/1 (December 14–17, 2020), available online: <https://unfccc.int/sites/default/files/resource/FWG%204-%20Agenda%20and%20annotations_14%20Dec.pdf>.

154 "Second meeting of the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform," UNFCCC, available online: <<https://unfccc.int/topics/local-communities-and-indigenous-peoples-platform/events-meetings-and-workshops/second-meeting-of-the-facilitative-working-group-of-the-local-communities-and-indigenous-peoples>>.

only due to the influence of the SBSTA in the UNFCCC, but also because of its recognition of the intersection between the ocean and climate change.

The Local Communities and Indigenous Peoples Platform

The role of Indigenous peoples and local communities in climate change resilience has gained recognition within the UNFCCC framework through the establishment of the LCIPP “for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner” at COP 21 in 2015.¹⁵⁵ Then, at COP 23, the COP initiated the operationalization of the LCIPP, and decided that the overall purposes of the platform are as follows:

- Knowledge: To strengthen Indigenous peoples and local communities’ knowledge, technologies, practices, and efforts on climate change, by promoting the exchange of experience and best practices aiming at applying, strengthening, protecting and preserving traditional knowledge, knowledge of Indigenous peoples, and local knowledge systems;
- Facilitation of climate change policies and action: To facilitate the exchange of experience and the sharing of best practices and lessons learned on mitigation and adaptation in a holistic and integrated manner; and
- Capacity for engagement: To enhance the engagement of local communities and Indigenous peoples in the UNFCCC process.¹⁵⁶

The principles proposed for the operationalization of the LCIPP include the full and effective participation of Indigenous peoples; equal status of Indigenous peoples and Parties, including in leadership roles; self-selection of Indigenous peoples’ representatives; and adequate funding from the Secretariat and voluntary contributions to enable the implementation of the functions of the platform.¹⁵⁷

In 2018, the LCIPP held a multi-stakeholder workshop (on implementing its three functions), which had in attendance more than 100 participants, including representatives from Indigenous organizations.¹⁵⁸ Notably, there was no

155 UNFCCC, *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015—Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session*, Decision 1/CP.21, FCCC/CP/2015/10/Add.1 (January 29, 2016), para. 135, available online: <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/FCCC_CP_2015_10_Add.1.pdf>.

156 COP 2017 Report, n. 151 above.

157 *Id.*, para. 8.

158 Other attendees were representatives from the UNFCCC, SBSTA, States, non-State stakeholders (from local community, climate, environmental, and civil society organizations across the globe). See *Report of the multi-stakeholder workshop*, n. 152 above.

organization explicitly representing ocean interests. Subsequently, at COP 24 in 2018, Parties established the LCIPP FWG (which is not a negotiating body under the UNFCCC).¹⁵⁹ The FWG was established with the objective of further operationalizing the LCIPP. The FWG largely comprises representatives from Indigenous peoples' organizations. The FWG has undertaken and proposed several activities with a view to implementing the functions of the LCIPP. Also, the FWG has so far held four meetings.¹⁶⁰

However, there is little to no mention of the ocean within the FWG and, more broadly, the LCIPP. Only the first meeting made indirect reference to the ocean, albeit peripherally. Among the proposed activities outlined at this meeting for implementing the "capacity for engagement" function of the LCIPP, the FWG suggested that the Secretariat of UNCLOS is a potential partner for developing recommendations on the engagement of Indigenous peoples and local communities.¹⁶¹ The absence of conversations on the ocean within the FWG and LCIPP is a gap that needs filling.

Participation Mechanisms for Children and Youth

United Nations Joint Framework Initiative on Children, Youth and Climate Change

In response to the growing number of engaged youth organizations in the intergovernmental climate change process, the UNFCCC extended a constituency status to admit youth NGOs in 2009, allowing them to receive official information, participate in meetings, request speaking slots, and receive logistical support at UNFCCC conferences.¹⁶² The participation of children- and youth-led and youth-focused organizations around the world in UN processes is coordinated by the United Nations Joint Framework Initiative on Children,

159 UNFCCC, *Report of the Conference of the Parties on its twenty-fourth session, held in Katowice from 2 to 15 December 2018 Addendum Part two: Action taken by the Conference of the Parties at its twenty-fourth session, Decision 2/CP.24*, FCCC/CP/2018/10/Add.1 (March 19, 2019), available online: <https://unfccc.int/sites/default/files/resource/cp2018_10_add2_advance.pdf>.

160 "Events, Meetings and Workshops," UNFCCC, available online: <<https://unfccc.int/topics/local-communities-and-indigenous-peoples-platform/the-big-picture/lcipp/events-meetings-and-workshops-lcipp>>.

161 UNFCCC, "The 1st meeting of the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform," FCCC/SBSTA/2019/4, SBSTA (2–7 December 2019) 51 Sess., p. 16, available online: <http://unfccc.int/sites/default/files/resource/SBSTA2019_04E.pdf>.

162 "Youth and Climate Change," *United Nations Joint Framework Initiative on Children, Youth and Climate Change*, Fact Sheet, available online: <<https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-climatechange.pdf>>.

Youth and Climate Change (Joint Framework Initiative). Since 2008 the Joint Framework Initiative has been coordinating efforts by 16 intergovernmental entities and many youth organizations to empower youth to take adaptation and mitigation actions and enhance effective participation of youth in climate change policy decision-making processes.¹⁶³ The UNFCCC has outlined short-, medium-, and long-term plans for promoting and facilitating youth participation in decision-making processes within the UNFCCC.¹⁶⁴ It is worth mentioning that there is no reference to the ocean or ocean-related themes within the youth participation framework.

UNFCCC Constituency of Youth Non-governmental Organizations

In 2005, at COP 11/CMP 1 in Montreal, the Government of Canada sponsored an ambitious “International Youth Summit” organized by Canadian environmental youth groups.¹⁶⁵ These youth delegations advocated for the interests of young people. Since COP 11, youth have organized pre-conferences, called “Conferences of Youth,” prior to each meeting of the COP/CMP.

Shortly before COP 14 in 2009, the UNFCCC Constituency of Youth Non-Governmental Organizations (YOUNGO) was provisionally designated as the UNFCCC constituency representing youth on September 28, 2009, giving youth official recognition and voice for the first time within negotiations.¹⁶⁶ This status was provisionally effective from November 2009 to 2011, with a final decision to be made in time for COP 17. In 2011, YOUNGO was awarded full constituency status at the UNFCCC as one of the nine non-State party constituencies within the UNFCCC. The Indigenous Peoples Organizations (IPO) and the Women and Gender Constituency (WGC) are also non-State party constituencies.¹⁶⁷

163 The sixteen intergovernmental entities are the Convention on Biological Diversity, Food and Agricultural Organization of the UN, UN Convention to Combat Desertification, UN Children’s Fund, UN Department of Economic and Social Affairs—Division for Sustainable Development, UN Development Programme, UN Environment Programme, UNFCCC, UN Human Settlements Programme, UN Institute for Training and Research, UNESCO, UN Population Fund, UN Programme on Youth, UN Volunteers, and the World Bank. See *id.*

164 “Youth Participation in the UNFCCC Negotiation Process,” *United Nations Joint Framework Initiative on Children, Youth and Climate Change*, p. 6 [JFI, Youth Participation], available online: <http://unfccc.int/files/cooperation_and_support/education_and_outreach/youth/application/pdf/youth_participation_in_the_unfccc_negotiations.pdf>.

165 *Id.*

166 *Id.*

167 The other non-State party constituencies are Business and Industry NGOs (BINGO), Environmental NGOs (ENGO), Farmers and Agricultural NGOs (Farmers), Local

The new status of YOUNGO as a constituency has several significant implications for youth participation in the UNFCCC process. First, YOUNGO serves as a conduit for the exchange of official information between young people and the UNFCCC Secretariat. Second, the establishment of YOUNGO assists the Secretariat in ensuring an effective and representative participation by youth at intergovernmental meetings, workshops and other limited-access meetings. Third, YOUNGO oversees young people's interactions at UNFCCC sessions and provides logistical support to youth during sessions.¹⁶⁸

The conferment of constituency status on YOUNGO guarantees formal speaking slots during plenary sessions, facilitates access to secretariat staff, and provides access to office space during the meetings of the UNFCCC. YOUNGO is also invited to workshops and other events organized by the Secretariat, to share views and experiences on specific thematic areas, and to meet with officials of the UNFCCC, including chairs of the subsidiary bodies and the COP presidency. They also participate in the Young and Future Generations' Day during the COP/CMP by organizing a series of side events, exhibits, interviews, media stunts, and other related events.¹⁶⁹

The official gathering of YOUNGO members occurs annually at the Conference of the Youth (COY), which takes place for three days prior to the COP. COY serves as a preparation session of youth organizations to develop position papers, network and meet new members, and hold strategic discussions on climate change solutions.¹⁷⁰ COY primarily serves as a space for capacity-building and policy training to prepare young people for their participation at COP. The participants are introduced to the various working groups of YOUNGO, where they develop common policy positions (lobby points) and develop strategies to best advocate for the interests of youth in those policy areas.¹⁷¹

There are over 2,000 individual and youth climate organization members around the world.¹⁷² These groups work with youth to generate a wide array of adaptation and mitigation programs. Some of these groups undertake work that is relevant to the ocean as well. As an example, *Sandwatch* is a network of

Government and Municipal Authorities (LGMA), Research and Independent NGOs (RINGO), and Trade UNION NGOs (TUNGO). See "Non-Governmental Organization Constituencies," UNFCCC, available online: <http://unfccc.int/files/parties_and_observers/ngo/application/pdf/constituencies_and_you.pdf>.

168 JFI, Youth Participation, n. 164 above.

169 Id.

170 "What is COY?" COY 15, available online: <<https://www.coy15.org/coy15>>.

171 Id.

172 UNICEF Office of Research, *The Challenges of Climate Change: Children on the Front Line* (Florence: UNICEF Office of Research/*Innocenti Insight*, 2014), p. 90.

children, youth, and adults in 50 countries who work together, under the auspices of UNESCO, to monitor changes in their beach environment.¹⁷³

The Office of the Secretary-General's Envoy on Youth

The Office of the UN Secretary General's envoy on youth is another medium through which youth participate in the UNFCCC process. The Office organized the UN Youth Climate Summit held in 2019, which served as a platform for young climate action leaders to showcase their solutions at the UN and to meaningfully engage with decision-makers on the issue of climate change.¹⁷⁴ The summit took place on September 21, 2019, at the UN Headquarters in New York and was hosted by UN Secretary-General António Guterres, prior to the UN Secretary-General's Climate Action Summit on September 23, 2019. This is the first time the UN convened a summit for young people entirely devoted to addressing climate action. It aimed to give voice to the demands of young people that far swifter actions be taken to reduce emissions that, without action, are on track to reverse the development-related gains of recent decades that have improved the lives of millions of people.¹⁷⁵ The Summit brought together youth climate leaders (more than 500 young activists, innovators, entrepreneurs, and change-makers) from more than 140 countries and territories to share their solutions on the global stage and deliver a clear message to world leaders: we need to act now to address climate change.¹⁷⁶ The program culminated in the unveiling of the State of Youth Platform which aims to empower youth (13–24 years) by building a non-political, non-religious digital “state” that transcends borders so as to increase awareness, advocacy and action.¹⁷⁷

173 Id.; “SANDWATCH: A Science Education Scheme through Sustainable Coastal Monitoring,” *UNESCO Sandwatch*, available online: <<http://www.unesco.org/new/en/natural-sciences/priority-areas/sids/sandwatch>> and <<https://www.sandwatchfoundation.org/>>.

174 IISD, “First Youth Climate Summit Elevates Youth Demands for Action,” *IISD News* (September 26, 2019), available online: <<https://sdg.iisd.org/news/first-youth-climate-summit-elevates-youth-demands-for-action/>>; “UN Youth Climate Summit, 21 September 2019,” *UN Department of Economic and Social Affairs* (September 20, 2019), available online: <<https://www.un.org/development/desa/youth/news/2019/09/youth-climate-summit/>>.

175 F. Syed, “Canadian youth hungry for action at first UN Youth Climate Summit,” *National Observer* (September 23, 2019), available online: <<https://www.nationalobserver.com/2019/09/23/news/canadian-youth-hungry-action-first-un-youth-climate-summit>>.

176 Id.

177 “For Youth by Youth,” *State of Youth*, available online: <<https://www.stateofyouth.org/about>>.

Gender at the UNFCCC

From the initial adoption of the UNFCCC in 1992, there has been incremental progress on the inclusion of gender therein. The UNFCCC first addressed gender in 2001 at COP 7 in Marrakech, where Parties mandated that national adaptation programs of action (NAPAs) must be guided by a principle of gender equality.¹⁷⁸ Nearly a decade later, in 2010, the COP 16 in Cancun adopted Decision 6/CP.16, which included a mandate for the Least Developed Countries Expert Group (LEG) to provide technical advice on “gender-related considerations and considerations regarding *vulnerable communities* within least developed country Parties.”¹⁷⁹ Subsequently, in 2011 in Durban, the COP 17 requested that workshops on gender-sensitive tools and approaches to climate change and water be organized.¹⁸⁰ In 2012, the COP 18 in Doha adopted a decision to include gender and climate change as standing items on the agenda of future COPs, as well as to promote gender balance in UNFCCC delegations. It also drafted Technical Guidelines for the National Adaptation Plan Process, which included the goal to strengthen gender considerations. Decision 2/CP.17 expressly urged Parties to consider both the positive and negative impacts of climate mitigation measures on women and children in particular. In 2014, COP 20 in Lima established the first Lima Work Program on Gender (LWPG) as a means of advancing gender-responsive climate policy and enhancing the participation of women in national delegations. In addition to this, it adopted a decision for the Secretariat to organize a workshop on gender-responsive climate policy with a focus on adaptation and capacity-building, as well as training for delegates on issues relating to gender.¹⁸¹

The 2015 Paris Agreement subsequently acknowledged the link between climate change and gender with its Preamble calling on Parties to “respect, promote and consider their respective obligations,” *inter alia*, “gender equality and empowerment of women” when addressing climate change. In addition to this, progress has been made in terms of the inclusion of gender

178 UNFCCC, *Decision 28/CP.7: Guidelines for the preparation of national adaptation programmes of action* (November 10, 2001).

179 *Report of the Conference of the Parties to its Sixteenth Session, Held in Cancun from 29 November to 10 December 2010* FCCC/CP/2010/7/Add.2 (UNFCCC, 2011), Decision 6/CP.16, emphasis added. See also UNFCCC Least Developed Countries Expert Group, *Considerations regarding vulnerable groups, communities and ecosystems in the context of the national adaptation plans* (UNFCCC: Bonn, Germany), available online: <<https://unfccc.int/sites/default/files/resource/Considerations%20regarding%20vulnerable.pdf>>.

180 UNFCCC, *Decision 6/CP.17: Nairobi work programmes on impacts, vulnerability and adaptation to climate change* (December 9, 2011).

181 UNFCCC, *Decision 18/CP.20: Lima work programme on gender* (December 12, 2014).

in relation to adaptation, capacity-building, and financial mechanisms.¹⁸² Article 7 of the Agreement establishes a global goal of, *inter alia*, enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change. Particularly under Paragraph 5, Parties acknowledge that climate change adaptation action should follow a country-driven, gender-responsive, participatory, and fully transparent approach. Article 11, paragraph 2, reiterates that capacity-building should be an iterative, participatory, cross-cutting, and gender-responsive process.¹⁸³

Then, in 2016, the COP adopted Decision 21/CP.22 on climate change and gender which sought for the UNFCCC SBI to develop a gender action plan to enable the implementation of gender-related decisions and mandates under the UNFCCC process. This included priority areas such as key activities and indicators, timelines for implementation, the responsible and key actors and indicative resource requirements for each activity, together with a process of review and monitoring.¹⁸⁴

Then, in 2017, the first Gender Action Plan (GAP) of the UNFCCC was adopted at the COP 23 with the aim of advancing women's full, equal, and meaningful participation; promoting gender-responsive climate policy; and mainstreaming a gender perspective into the work of the UNFCCC and the Paris Agreement. The plan was organized around five areas: capacity-building; knowledge sharing and communication; gender balance, participation, and women's leadership; coherence; and gender-responsive implementation and means of implementation as well as monitoring and reporting. While the adoption of the first GAP developed a framework for the implementation of work under the UNFCCC, the Plan was voluntary, with Parties and stakeholders invited to implement the project "as appropriate." Following this, in 2019 at COP 25 in Madrid, Parties agreed to the five-year enhanced Lima Program on Gender and its Gender Action Plan.¹⁸⁵ These set out objectives and activities in five areas (noted above), with the goal to advance knowledge and understanding of gender-responsive climate action and its coherent mainstreaming into the implementation of the UNFCCC and the work of the Parties, the Secretariat, United Nations entities, and stakeholders at all levels, as well as women's full,

182 M. Hemmati and U. Röhr, "Engendering the climate-change negotiations: Experiences, challenges, and steps forward," *Gender and Development* 17, no. 1 (2009): 19–32.

183 Paris Agreement, n. 8 above, art. 11.

184 UNFCCC, *Decision 1/CP.22: Preparation for entry into force of the Paris Agreement and first session of the Conference of Parties serving as the meeting of the Parties to the Paris Agreement* (November 18, 2016), para. 21.

185 UNFCCC, *Decision 3/CP.25/: Enhanced Lima work programme on gender and its gender action plan* (December 15, 2019) FCCC/CP/2019/13/Add.1 (March 16, 2020).

equal, and meaningful participation in the UNFCCC process.¹⁸⁶ The UNFCCC has also broadened its gender focus to include technology transfer and development, finance and capacity-building.¹⁸⁷

Meanwhile, in 2018, the IPCC decided to establish a Task Group on Gender with the aim of developing a framework of goals and actions to improve gender balance and to address gender-related issues within the Panel. More recently, in 2020, based on the work of the Task Group, the IPCC adopted a Gender Policy and Implementation Plan. The Plan is overseen by a Gender Action Team, which aims to enhance gender equality in IPCC processes through monitoring and greater gender diversity in nominations and appointments relating to decision-making.

A Climate Justice and Rights-based Analysis of the Ocean and Climate Regimes

Having examined the state of participation by the three groups within the climate and ocean regimes, we will now explore its importance from a climate justice and rights-based approach. One of the key elements of the human rights-based approach to climate change is its focus on protecting the human rights of marginalized groups whose vulnerability to harm is not innate.¹⁸⁸ Rather, the impact of climate change is disproportionately felt among these groups as a consequence of, at times, overlapping, social, economic, cultural, political, and geographic circumstances.¹⁸⁹ These circumstances, in turn, render certain populations more vulnerable to climate change than others.¹⁹⁰ Such vulnerable groups include Indigenous peoples, children and youth, women, populations of low-lying island States, coastal communities, and communities in developing countries, among others.¹⁹¹ Furthermore, the discourse

186 Gender Action Plan, id., Annex.

187 Oral, n. 66 above.

188 J. Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/37/58 (January 24, 2018), para. 67.

189 OHCHR, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Safe Climate Report*, UN Doc A/74/161 (July 15, 2019), para. 26 [OHCHR Report 2019].

190 OHCHR, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment—Annex 1: Framework Principles on Human Rights and the Environment*, UN Doc A/HRC/37/59 (January 24, 2018), principle 14, paras. 40–46 [OHCHR Framework].

191 Id.

on the vulnerability of these groups often exposes the injustices of the impacts of climate change, which necessarily raise the need for climate justice.¹⁹²

Climate justice is a human rights-based approach, adopted to protect the rights of the most vulnerable and to share the burdens and benefits of climate change equitably and fairly.¹⁹³ According to UNICEF, a human rights-based approach must embody the following principles: “universality & inalienability, indivisibility, interdependence & inter-relatedness, equality & non-discrimination, participation & inclusion, and accountability and rule of law.”¹⁹⁴ As noted, this article examines two human rights principles: participation and inclusion, that is, everyone is entitled to active participation and to be included in decision-making processes that affect the enjoyment of their human rights.¹⁹⁵ It is thus important to consider community engagement, broad community representation, stakeholder participation, and the building of social capital in climate action.¹⁹⁶ This is particularly the case in light of a human rights-turn in the climate discourse, which highlights that the perspectives of Indigenous peoples, children and youth, and persons of different genders on climate change are germane to achieving climate justice.¹⁹⁷

The importance of engaging Indigenous peoples to achieve climate justice is bifurcated. First, where Indigenous peoples are involved in the formulation and implementation of ocean- and climate-related actions, this is understood as being in alignment with a participatory human rights-based approach.¹⁹⁸ Second, Indigenous peoples possess knowledge and solutions that are critical to addressing climate and ocean-related problems.¹⁹⁹ The inclusion of

192 Id.

193 “Principles of Climate Justice,” *Mary Robinson Foundation*, available online: <<https://www.mrfcj.org/wp-content/uploads/2015/09/Principles-of-Climate-Justice.pdf>>.

194 UNICEF, n. 14 above, p. 15; “Applying a Human Rights-Based Approach to Climate Change Negotiations, Policies and Measures,” *OHCHR*, available online: <<https://www.ohchr.org/Documents/Issues/ClimateChange/InfoNoteHRBA.pdf>>.

195 “Human Right-Based Approach,” *European Network of National Human Rights Institutions*, available online: <<http://ennhri.org/about-nhris/human-rights-based-approach/>>.

196 D. Chen et al., “Encouraging youth engagement in marine protected areas: A survey of best practices in Canada,” *Aquatic Conservation* 29, no. 2 (2019): 223–232.

197 OHCHR, *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the UNFCCC* (2015), available online: <<https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>>.

198 E. Belfer et al., “Pursuing an Indigenous Platform: Exploring Opportunities and Constraints for Indigenous Participation in the UNFCCC,” *Global Environmental Politics* 19, no. 1 (2019): 12–33, p. 13.

199 S.M. Alexander et al., “Bridging Indigenous and science-based knowledge in coastal and marine research, monitoring, and management in Canada,” *Environmental Evidence* 8, no. 36 (2019), available online: <<https://doi.org/10.1186/s13750-019-0181-3>>.

Indigenous knowledge and solutions in policy advice, decision-making, and environmental management in both the climate and ocean regimes thus accords with the tenets of climate justice.

The engagement of children and youth is important for achieving climate justice because they encompass the generation whose lives will be most affected by climate change, more than any previous generation.²⁰⁰ In this regard, the absence or exclusion of children's and youth voices within traditional decision-making processes in both climate and ocean regimes is antithetical to climate justice. Climate justice would necessarily demand that children and youth, who happen to be the next generation of decision-makers,²⁰¹ are empowered with knowledge about the ocean and the climate.²⁰² Given the status of children and youth as the bridge between present generations and future generations,²⁰³ they must be empowered and given a distinct voice within both the climate and ocean regimes.

Meanwhile, it is increasingly understood that gender and gender equality matter because the relationship between communities and the environment is not gender neutral.²⁰⁴ Persons of different genders, including women, men, and non-binary persons, experience the impacts of climate change differently. The goal of gender equality as it is also outlined in SDG 5 is thus not only critical in its own right, but is also integral to achieving sustainable development across the board, including in addressing climate change and the ocean.²⁰⁵ At the same time, it must also be noted there is a significant difference in how the climate and ocean regimes address the role of gender in relation to climate change and the ocean respectively.²⁰⁶ In the climate regime, on the one hand, gender equality is increasingly recognized as being critical to mitigating and

pp. 2–3; K. Whyte, "Indigenous climate change studies: Indigenizing futures, decolonizing the Anthropocene," *English Language Notes* 55, no. 1–2 (2017): 153–162, p. 157.

200 Chen, n. 196 above, p. 224; A. Kuthe et al., "Strengthening their climate change literacy: A case study addressing the weaknesses in young people's climate change awareness," *Applied Environmental Education & Communication* 19, no. 4 (2020): 375–388, 10.1080/1533015X.2019.1597661.

201 Chen, n. 196 above, p. 223.

202 H. Guest, H.K. Lotze and D. Wallace, "Youth and the sea: Ocean literacy in Nova Scotia, Canada," *Marine Policy* 58 (2015): 98–107; Kuthe et al., n. 200 above, p. 375.

203 Knox, n. 188 above, para. 68.

204 I. Dankelman, "Climate change: Learning from gender analysis and women's experiences of organising for sustainable development," *Gender & Development* 10, no. 2 (2002): 21–29, 10.1080/13552070215899.

205 E. Dugarova, *Gender Equality as an Accelerator for Achieving the Sustainable Development Goals* (New York: UN Women, 2018).

206 Oral, n. 66 above.

adapting to the impacts of climate change;²⁰⁷ this relates to both participation in decision-making, as well as the integration of various forms of knowledge. Still, much progress remains to be done; for instance, data gathered by the UNFCCC on the gender composition of its decision-making and technical bodies, as well as national delegations at COPs show an inconsistent gender balance over the past years.²⁰⁸ What is more, when it comes to the integration of knowledge, the wealth of invaluable knowledge of Indigenous women often remains missing from policymaking because the intersection of various groups is not necessarily accounted for.²⁰⁹ In a similar vein, gender can influence the ways in which individuals engage with the ocean, ranging from fishing and aquaculture to pollutants. Yet there has been little recognition of gender issues, aside from fisheries, in relation to the ocean. There has been particularly scant recognition of gender at the ocean-climate nexus. Moreover, embracing a human rights-based approach to the interpretation of the SDGs as applied to ocean governance aligns with an interpretation that acknowledges the concerns of rights-holders as expressed in environmental and climate justice.²¹⁰

With respect to Indigenous peoples and youth participation within the SDGs, there is no dedicated goal for either as there is for gender (SDG 5). Meanwhile, SDG 5 seeks to achieve gender equality and empower all women and girls through a series of nine targets and 14 gender-specific indicators. More precisely, while SDG 5 stands alone, it is also intertwined and interconnected with all other goals, even when it is not explicitly acknowledged within the targets and indicators of other SDGs.²¹¹ As such, it presents an opportunity to achieve sustainable development through a human-rights based and

207 UN Women, *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development*, (New York: UN Women, 2018), available online: <<https://www.unwomen.org/en/digital-library/publications/2018/2/gender-equality-in-the-2030-agenda-for-sustainable-development-2018#view>>.

208 See UNFCCC, *Report on Gender Composition*, FCCC/CP/2020/3 (October 7, 2020) available online: <https://unfccc.int/sites/default/files/resource/cp2020_03_adv.pdf>. See for comparison: UNFCCC, *Report on Gender Composition*, FCCC/CP/2019/9 (September 19, 2019) available online: <https://unfccc.int/sites/default/files/resource/CP2019_09E.pdf>; and UNFCCC, *Report on Gender Composition*, FCCC/CP/2018/3 (September 21, 2018) available online: <<https://unfccc.int/sites/default/files/resource/03e.pdf>>.

209 F. Denton, "Climate change vulnerability, impacts, and adaptation: Why does gender matter?" *Gender and Development* 10, no. 2 (2002): 10–20, 10.1080/13552070215903.

210 Atapattu, Gonzalez and Seck, eds., n. 31 above, p. 10.

211 K. Morrow, "Gender and Sustainable Development Goals," in *Sustainable Development Goals: Law, Theory and Implementation*, eds., D. French and L.J. Kotzé (Cheltenham: Edward Elgar Publishing, 2018), pp. 149–172.

gender-sensitive approach.²¹² Furthermore, even though youth and indigeneity may not be explicitly accounted for in the SDGs, one might argue that the intersectionality between gender and youth is implicitly acknowledged in the inclusion of 'girls' in SDG 5, while the realities of Indigenous women and girls at the intersection of gender and indigeneity are not made explicit.

While Agenda 2030 has been critiqued for failing to make direct connections with human rights,²¹³ including in relation to the ocean, it does affirm the importance of human rights, equity, and partnerships. In other words, there are provisions in Agenda 2030 that could be interpreted as lending support to the employment of a human-rights based approach in achieving the SDGs. For example, Agenda 2030 broadly identifies the protection of human rights as one of the objectives of the SDGs²¹⁴ and recognizes the need for the Agenda to be guided by international instruments relevant to human rights and the broader spectrum of international law.²¹⁵ Within the scope of human rights, Agenda 2030 identifies the importance of gender equality to human rights.²¹⁶ Agenda 2030 also recognizes the vulnerability of youth and Indigenous peoples and the need for empowerment thereof.²¹⁷ Specifically, Agenda 2030 pledges the involvement of Indigenous peoples²¹⁸ and other stakeholders.²¹⁹ By reaffirming all principles of the Rio Declaration on Environment and Development,²²⁰ Agenda 2030²²¹ again acknowledges the vital role of Indigenous peoples,²²²

212 "2017 High-Level Political Forum Thematic review of SDG 5: Achieve gender equality and empower all women and girls," available online: <<https://sustainabledevelopment.un.org/content/documents/14383SDG5format-revOD.pdf>>, as cited in G. Goettsche-Wanli, "Gender and the law of the sea: A global perspective," in *Gender and the Law of the Sea*, ed., I. Papanicolopulu (Leiden: Brill Nijhoff: 2019), pp. 25–82.

213 K. Arts, "Inclusive sustainable development: A human rights perspective," *Current Opinion in Environmental Sustainability* no. 24 (2017): 58–62, p. 60.

214 Agenda 2030, n. 9 above, preamble, paras. 3, 7, 8.

215 *Id.*, paras. 10, 19.

216 *Id.*, preamble, paras. 3, 20.

217 *Id.*, para. 23.

218 *Id.*, para. 52.

219 *Id.*, para. 79 on progress review.

220 UNGA Resolution 151/26, *Report of the United Nations Conference on Environment and Development: Rio Declaration*, UNGAOR, A/CONF151/26 (Vol I), (1992) [Rio Declaration], available online: <https://www.un.org/en/development/desa/population/migration/globalcompact/A_CONF151_26_Vol.I_Declaration.pdf>.

221 Agenda 2030, n. 9 above, paras. 11, 12.

222 Rio Declaration, n. 220 above, para. 22.

youth,²²³ and women²²⁴ (thereby emphasizing the importance of gender considerations).

Notably, a report by the Special Rapporteur (on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment) outlines the obligation on States to “respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development” as one of the Framework Principles.²²⁵ Framework Principle 14 clarifies that additional measures should be taken to “protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks, and capacities.”²²⁶ These include women, Indigenous peoples, and children, as well as the elderly, the disabled, displaced persons, and racialized minorities.²²⁷ Importantly, “persons may be vulnerable to environmental harm because they are unusually susceptible to certain types of environmental harm, or because they are denied their human rights, or both.”²²⁸

The framework for participation by Indigenous peoples, children and youth, as well as persons of different genders is supported within various international human rights law frameworks relevant to the climate and ocean regimes. With respect to Indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) emphasizes the need for participation by Indigenous peoples and the importance of Indigenous knowledge, cultures, and traditional practices to sustainable and equitable development, as well as the proper management of the environment.²²⁹ One of the key distinguishing factors between children’s and women’s rights and Indigenous rights is the recognition of Indigenous self-determination within UNDRIP, including the right to free, prior, and informed consent, as well as the importance of respect for Indigenous laws specific to each nation.²³⁰ One of the ways in which the UNDRIP can support the ocean regime is by providing some binding force for the rights of Indigenous peoples. While the UNDRIP is a UN General

223 Id., para. 21.

224 Id., para. 20.

225 OHCHR Framework, n. 190 above, principle 16.

226 Id., principle 14.

227 Id., para. 41.

228 Id., para. 40.

229 UNGA, *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), UN Doc A/RES/61/295 (October 2, 2007), preamble, 25, 29, 32.

230 D. McGregor, “Indigenous environmental justice and sustainability,” in Atapattu, Gonzalez and Seck, eds., n. 31 above, pp. 58–71.

Assembly Resolution,²³¹ its environmental provisions, characterized as customary international law, may be applied to the rights of Indigenous peoples as UNCLOS does not cover all matters affecting Indigenous peoples.²³²

With regard to children, the Convention on the Rights of the Child identifies four general principles of a child rights-based approach: non-discrimination;²³³ the best interests of the child;²³⁴ the child's right to life,²³⁵ survival and development; and the child's right to express his or her views.²³⁶ The Office of the United Nations High Commissioner for Human Rights translates these four principles within the climate context to mean that climate policies should take into account the unique needs and best interests of the child; that participation by children must be ensured; the obligations of the duty bearers (i.e., the State and private actors); and that principles of international human rights should guide all policies and programing. Again, the importance of participation by children is highlighted.

Regarding gender, the Convention on the Elimination of All Forms of Discrimination of Women (CEDAW), adopted by the UN General Assembly in 1979, seeks to advance rights and non-discrimination through the obligations of State Parties to promote, protect, and fulfil the equal rights of women and men.²³⁷ The CEDAW includes various provisions relating to gender and the environment, including among others the right to participation in public life (Article 7), education and training (Article 10), social and economic development (Article 13), and the rights of rural women (Article 14). Additionally, the Committee on the Elimination of Discrimination Against Women has also issued recommendations related to the environment. In 2009, the Committee adopted climate change as an urgent issue, calling on parties to include gender equality as a guiding principle in future international climate change agreements, and to "ensur[e] that climate change and disaster risk reduction

231 D. Cambou, "The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: A human rights approach with a multidimensional perspective," *The International Journal of Human Rights* 23, no. 1–2 (2019): 34–50, 10.1080/13642987.2019.1585345. But see S.L. Seck, "Relational law: Re-imagining tools for environmental and climate justice," *Canadian Journal of Women and the Law* 31, no. 1 (2019): 151–177, p. 169–170 (arguing that the normative significance of UNDRIP should be informed by the perspective of Indigenous peoples rather than just the views of States).

232 Chircop, Koivurova and Singh, n. 66 above, p. 108.

233 Convention on the Rights of the Child November 20, 1989, in force September 2, 1990), 1577 *United Nations Treaty Series* 3, art. 2.

234 *Id.*, art. 3.

235 *Id.*, art. 6.

236 *Id.*, art. 12.

237 Convention on the Elimination of All Forms of Discrimination Against Women (18 December 1979) 1249 *United Nations Treaty Series* 13.

measures are gender responsive, sensitive to indigenous knowledge systems and respect human rights. Women's right to participate at all levels of decision-making must be guaranteed in climate change policies and programmes."²³⁸ In 2018, the Committee published its General Recommendation Number 37 on the gender-related dimensions of disaster risk reduction in the context of climate change.²³⁹ However, at the Climate Change Conference in May 2021, the Chair of the LDC Group at the Subsidiary Board Opening Plenary highlighted their concern with the absence of gender in the pre-COP 26 talks, noting that it does "not bode well for keeping up the momentum on ensuring the gendered impacts of climate change are fully addressed under the UNFCCC" and that "[t]here is value in keeping the issue alive at each meeting."²⁴⁰

Moreover, specific to the UNFCCC, Sumudu Atapattu has noted that the Committee's initial observation of the failure to include a gender perspective into the climate regime highlighted "the multiple types of discrimination facing women" which can occur at the intersection of various socio-cultural categories, including age, class, ability, ethnicity, gender, nationality, sexuality, and race.²⁴¹ For instance, the vulnerabilities of Indigenous peoples and women can, at times, intersect to produce distinct experiences for Indigenous women in the context of climate change and in relation to the ocean, experiences which may not always be included. As Parisi and Corntassel observe, "[d]ue to colonization and on-going imperial influences, both women's rights and indigenous rights movements have been problematic spaces for indigenous women's participation."²⁴² With the adoption of the UNDRIP, concerns relating to Indigenous women have become more prominent.

238 CEDAW Committee, "Statement of the CEDAW Committee on Gender and Climate Change," 44th session, New York, 20 July–7 August 2009, available online: <<http://unfccc.int/resource/docs/2009/smsn/igo/064.pdf>>. See also, T.L. Prior and L. Heinämäki, "The rights and role of Indigenous women in the climate change regime," *Arctic Review on Law and Politics* 8 (2017): 193–221.

239 CEDAW/C/GC/37 (February 7, 2018).

240 See "Statement by H.E. Mr. Sonam P. Wangdi, Chair of LDC Group at the SB Opening Plenary May–June Climate Change Conference—Sessions of the Subsidiary Bodies," May 31, 2021, available online: <https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202105311509---Bhutan_LDCs.pdf>.

241 S. Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge, 2016) 198–217, as cited in S.L. Seck, "Revisiting transnational corporations and extractive industries: Climate justice, feminism, and state sovereignty," *Transnational Law & Contemporary Problems* 26, no. 2 (2017), p. 383. For an overview of intersectionality theory see K. Crenshaw, "Mapping the margins: Identity politics, intersectionality, and violence against women," *Stanford Law Review* 43 no. 6 (1991): 1241–1299.

242 L. Parisi and J. Corntassel, "In pursuit of self-determination: Indigenous women's challenges to traditional diplomatic spaces," *Canadian Foreign Policy Journal* 13, no. 3 (2007): 81–98.

At the same time, and despite long-standing efforts, the Committee on the Elimination of Discrimination Against Women has yet to make a general recommendation on the individual and collective rights of Indigenous women. Nor has it implemented special measures to ensure that the life, rights, and dignity of Indigenous women in different parts of the world are not violated, damaged, or jeopardized.²⁴³

Since 2008, the UN Human Rights Council has adopted a series of resolutions recognizing that climate change poses an urgent and widespread threat to people and communities around the world and has implications for the full enjoyment of human rights,²⁴⁴ and that the effects will be felt most acutely by those who already live in vulnerable situations.²⁴⁵ Several UN special rapporteurs have acknowledged the impact of human rights on vulnerable groups, including Indigenous peoples, children, and persons of different genders. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment acknowledges that despite contributing little to the problem, roughly 400 million Indigenous peoples around the world are especially vulnerable to climate change because of their close connection to nature and dependence on wildlife, plants, and healthy ecosystems for food, medicine, and cultural needs.²⁴⁶ Meanwhile, in 2019, the Human Rights Council published its “Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women” which, among other things, examined the impacts of climate change on women and identified the human rights obligations and

243 See for example, “Recommendations to the CEDAW Committee to guarantee to respect, enjoyment and implementation of the individual and collective rights of indigenous women” (2014), para. 3, available online: <<http://learnwhr.org/wp-content/uploads/CEDAW-Suggested-GenRec-IndigWomen-Draft.pdf>>. See also “Brief history of the movement for a CEDAW General Recommendation on Indigenous Women” *Women’s Human Rights Institute* (2020), <<http://learnwhr.org/history-general-recommendation-on-indigenous-women/>>.

244 UN Human Rights Council, Human rights and climate change, Res 7/23, 41st Sess. (March 28, 2008); Res 10/4, 41st Sess. (March 25, 2009); A/HRC/RES/18/22, 18th Sess. (October 17, 2011); A/HRC/RES/7/23, 26th Sess. (July 15, 2014); Res 29/15, 29th Sess. (July 22, 2015); A/HRC/RES/32/33, 32nd Sess. (July 18, 2016); A/HRC/RES/35/20, 35th Sess. (July 7, 2017); A/HRC/RES/38/4, 38th Sess. (July 16, 2018).

245 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*, UN Doc A/74/161 (July 15, 2019), para. 57.

246 Id., para. 48; See generally “OHCHR and climate change,” *OHCHR*, available online: <<https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx>>.

responsibilities of States, as well as other actors, in implementing gender-responsive approaches.²⁴⁷

Conclusion

This article began with a brief overview of the intersections between the ocean and climate regimes, highlighting the momentum created by the Blue COP. We then introduced recent developments that promote sustainable ocean development with attention to human rights and, in particular, the rights of Indigenous peoples and local communities, children and youth, and persons of different genders, notably women. We then consider the extent to which the climate regime is open to the participation of these groups of rights holders who are particularly vulnerable to climate harms before examining human rights from a climate justice perspective. In this conclusion, we offer some preliminary reflections on the extent to which the ocean and climate regimes integrate a human rights-based approach, and the potential for mutual reinforcing action within both regimes.

First, both the Blue COP and the UN Decade for Ocean Science signal the challenges of bridging the ocean-climate nexus, and the necessity of doing so. While the Decade notes the importance of ocean literacy, it is not clearly focused on both building capacity and enabling informed participation as a rights-based approach would require. However, the Ocean Panel and Blue Papers do draw attention to inequality, vulnerabilities, and human rights, which accords with the importance of interpreting sustainable development through a human rights lens, an approach that also aligns with the concept of climate justice. Upon taking a closer look at the climate regime, we observe that the framework for participation of Indigenous peoples and local communities, children and youth, and persons of different genders appears to be more developed than what is available through the ocean regime to date, although increasing recognition of human rights and equity in the ocean regime emerging from the Decade and Ocean Panel could be beneficial to the climate regime. For instance, while the link between gender and the climate regime is progressing in line with the aim of SDG 13, gender is still largely missing from the work of UNCLOS as described above. As a result, UNCLOS struggles to fulfill its intended role as one of the implementing instruments of SDG 14 (see targets

247 UNGA, Human Rights Council, *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women*, UN Doc A/HRC/41/26 (May 1, 2019).

14C and 14.1). There is therefore a need for synergy between both regimes, but increasingly also the potential to do so.

Nevertheless, while there are at least nascent signs of a commitment to gender equality in elements of both regimes, there is an absence of explicit reference to or reliance on a human rights approach that would align with the importance of deliberative participation to enable climate justice. An important point is that participation must be meaningful. For example, within the youth context, the requirement is “that young people and young people-led organizations have opportunities, capacities, and benefit from an enabling environment and relevant evidence-based programmes and policies at all levels.”²⁴⁸ Thus, mere inclusion of youth within the process, without meaningful participation is futile. The meaningful participation of Indigenous peoples in keeping with a rights-based framework is also an area of great importance. Meanwhile, intersectional dimensions of participation from a rights-based perspective do not appear to receive attention in the developments we examine in this article, yet identity and so vulnerability to climate harm is not unidimensional. How to better enable meaningful and rights-respecting participation in both regimes requires further study, although ideas on what this might require are evident in the guidance developed by human rights mechanisms, such as the 2018 Framework Principles on Human Rights and the Environment, noted above. Finally, while deliberative participation is an important tool, the aim at a minimum must be to prevent harms arising at the ocean-climate nexus. To do so, the voices of those most at risk must be heard.

Facilitating remedy for climate harms as a true commitment to climate justice and a human rights approach appears very far removed from the current workings of either regime. In the meantime, both regimes should channel their resources and work together towards achieving their respective and collective goals with attention to the ocean-climate nexus and justice.

²⁴⁸ UNDESA, “Youth, Political Participation and Decision-Making,” *United Nations Youth* (2012), available online: <<https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-political-participation.pdf>>.