



Children's Human Right to Be Heard at the Ocean-Climate Nexus

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Abstract

This article aims to clarify the obligations of States under the law of the sea to put children's human rights at the heart of decision-making on the protection of the marine environment, particularly at the ocean-climate nexus. The relevance of the provisions of the United Nations Convention on the Rights of the Child and in particular, children's human right to be heard in the context of existing provisions on deep-sea mining activities under the International Seabed Authority and the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction are discussed. Reflections on more ambitious approaches to integrating intergenerational dialogue within international ocean fora, as ways to implement intergenerational equity and protect humankind at the ocean-climate nexus, on the basis of good practices in the area of children's human rights are offered.

Keywords

children's human rights – law of the sea – climate change – intergenerational dialogue – right to be heard – seabed – marine biodiversity

Introduction¹

Children currently face a landscape of compounding global crises. Multiple environmental crises (climate, biodiversity and toxics), and economic and social fragility in the aftermath of the COVID-19 pandemic, pose a real and direct threat to achieving children's human rights and the 2030 Agenda for Sustainable Development, whilst also risking real regression on progress made thus far on global development, health and human rights.² Children are amongst the population groups most at risk from environmental harm and climate change, whilst contributing the least to environmental degradation.³ On the other hand, the United Nations High Commissioner for Human Rights and the UN Human Rights Council (HRC) have asserted that children are key to the effective realisation of a sustainable future and the realisation of human rights for all.⁴ While most attention has focused on the impacts of land-based pollution and climate change on children,⁵ the link between climate change, ocean degradation and children's human rights to a healthy environment, life,

1 This article draws from research undertaken by the authors under the One Ocean Hub, which is a collaborative research programme for sustainable development funded by UK Research and Innovation (UKRI) through the Global Challenges Research Fund (GCRF) (Grant Ref: NE/S008950/1). The authors would like to thank Professor Ann Skelton, Professor David Freestone, Dr Dina Lupin and Dr Alana Malinde SN Lancaster for their useful feedback on earlier versions of this article. Any errors are the authors' own.

2 Human Rights Council, Climate Change and Poverty, Report of the Special Rapporteur on Extreme Poverty and Human Rights, UN Doc A/HRC/41/39 (17 July 2019), para 13.

3 Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure in Respect of Communication No. 104/2019, UN Doc CRC/C/88/D/104/2019 (8 October 2021), para 19.

4 Human Rights Council, Protection of the Rights of the Child in the Implementation of the 2030 Agenda for Sustainable Development, UN Doc A/HRC/34/27 (15 December 2016), para 6; Human Rights Council, Rights of the Child: Realizing the Rights of the Child Through a Healthy Environment, UN Doc A/HRC/RES/45/30 (13 October 2020), para 9.

5 For example, UN Doc A/HRC/34/27 (n 4).

homes and culture was also raised in the *Torres Straits Island* case addressed by the Human Rights Committee (HRC) in July 2022.⁶

With growing data and advocacy⁷ about the impacts of climate change on children,⁸ and children's and young people's demands⁹ to address these impacts also in international processes to protect the marine environment,¹⁰ the international law of the sea and its multilateral fora currently offer little to no space for children's human rights and voices.

Nonetheless, the references to intergenerational equity and the benefit of 'humankind' under international law of the sea instruments could be interpreted in the light of children's human rights.¹¹ It thus is to be clarified whether and how consideration of children's human rights and opportunities for intergenerational knowledge-sharing, dialogue and partnerships can be

6 The applicants' claims were based on Articles 6, 17, 24(1) and 27 of the International Covenant on Civil and Political Rights (New York, 16 December 1966, in force 23 May 1976, 999 *UNTS* 171) [ICCPR]. For the sake of completeness, it is worth adding that the Human Rights Committee considered the breach of Article 24(1) of the ICCPR to be absorbed by the violations of the other ICCPR articles invoked by the applicants and, therefore, did not address specifically the human rights implications of the effects of climate change and ocean degradation on children.

7 See 'Young climate activists demand action and inspire hope' (UNICEF) available at <https://www.unicef.org/stories/young-climate-activists-demand-action-inspire-hope>. All websites accessed on 23 May 2023, unless otherwise mentioned.

8 See K Arts, 'Children's rights and climate change' in C Fenton-Glynn (ed), *Children's Rights and Sustainable Development: Interpreting the UNCRC for Future Generations* (Cambridge University Press, Cambridge, 2019) 216–235; A Daly, 'Intergenerational rights are children's rights: Upholding the right to a healthy environment through the UN Convention on the Rights of the Child' (20 June 2022) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4141475.

9 Youth representatives at the 2021 Glasgow Climate COP and at the 2022 UN Ocean Conference were very vocal about the ocean-climate nexus, expressing deep concerns about the potential impacts of deep-seabed mining. In this regard, see One Ocean Hub Roundtable, 'Children and young peoples' human rights to a healthy ocean: Their importance for climate change adaptation and mitigation' (Virtual Ocean Pavilion for the Climate Glasgow COP, 12 November 2021) available at <https://www.youtube.com/watch?v=TVoF8hmSpEE&t=414s>; see also S Alvarez *et al.*, 'Youths Call for a Deep-Sea Mining Moratorium' (Youth Policy Advisory Council of the Sustainable Ocean Alliance, 22 September 2022).

10 E Morgera, M Sweeney and S Shields, 'SDG14 and children's human rights' (One Ocean Hub, August 2022) available at https://pure.strath.ac.uk/ws/portalfiles/portal/142898190/Morgera_etal_OOH_2022_SDG14_and_childrens_human_rights.pdf.

11 E Morgera and M Lennan, 'Strengthening intergenerational equity at the ocean-climate nexus: Reflections on the UNCRC General Comment No. 26' (2022) 52(5/6) *Environmental Policy and Law* 445–459; and E Morgera and H Lily, 'Public participation at the International Seabed Authority: An international human rights analysis' (2022) 31(3) *Review of European, Comparative & International Environmental Law* 374–388.

included in international ocean fora. We take the opportunity of the adoption of the UN General Comment 26 on children's human rights and a healthy environment, with a special focus on climate change,¹² on 26 May 2023 to clarify the obligations of States under the law of the sea to put children's human rights at the heart of decision-making on the protection of the marine environment. This is especially in relation to children facing the greatest adversity, and with particular attention to the ocean-climate nexus.

This article therefore discusses the relevance of the provisions of the UN Convention on the Rights of the Child (UNCRC) in the context of the law of the sea,¹³ and in particular children's right to be heard. It draws on earlier interpretative guidance offered by the former UN Special Rapporteur on Human Rights and the Environment John Knox,¹⁴ and knowledge gained by some of the authors in the process of developing the UN General Comment 26.¹⁵ These clarifications are placed in the context of the implementation of two international law of the sea regimes adopted 40 years apart: the regulation of deep-sea mining activities in the Area under the International Seabed Authority (ISA) under Part XI of the United Nations Convention on the Law of the Sea (LOSC)¹⁶ and the Agreement on the Conservation and Sustainable

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- 12 Office of the High Commissioner for Human Rights (OHCHR), 'Committee on the Rights of the Child closes ninety-third session ...' (OHCHR Press Release, 26 May 2023) available at <https://www.ohchr.org/en/news/2023/05/committee-rights-child-closes-ninety-third-session-after-adopting-concluding>. The text of the General Comment is not yet publicly available.
- 13 United Nations Convention on the Rights of the Child (New York, 20 November 1989, in force 2 September 1990) 1577 UNTS 3 [UNCRC].
- 14 Human Rights Council, 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 (24 January 2018) [Knox Report 2018].
- 15 Morgera, Shields and Strand have contributed to various stages of development of the General Comment since 2021; namely, written submissions, participation in thematic dialogues, and most notably co-leading a thematic dialogue on biodiversity in August 2022. In this regard, see, *inter alia*, E Morgera *et al.*, 'The One Ocean Hub contributes to the UN General Comment on Children's Rights and a Healthy Environment' (One Ocean Hub, 28 February 2023) available at <https://oneoceanhub.org/the-one-ocean-hub-contributes-to-the-un-general-comment-on-childrens-rights-and-a-healthy-environment/>; E Morgera, 'Shedding light on children's right to environmental education and to healthy biodiversity' (One Ocean Hub, 30 August 2022) available at <https://oneoceanhub.org/shedding-light-on-childrens-rights-to-environmental-education-and-to-healthy-biodiversity/>.
- 16 United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 UNTS 396 [LOSC]. Part XI of the LOSC is further regulated by the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York, 28 July 1994, in force 28 July 1996) 1836 UNTS 3.

Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement).¹⁷ These case studies aim to identify available entry points for the protection of children's rights, notably children's right to be heard as part of a mutually supportive interpretation¹⁸ and implementation of specific regimes under the law of the sea, which also play a role in addressing climate change.¹⁹

In assessing how existing international provisions can support intergenerational dialogue, mutual learning and partnership between international ocean decision-makers and children, we reflect on two challenges to ensure children's views and voices are listened to, rather than creating platforms where children speak but are not heard. The first is overcoming 'prejudicial stereotypes' about children's authority and credibility to contribute to international ocean decision-making, thereby challenging 'misconceptions' about their ability to make meaningful contributions.²⁰ The second is preventing any 'unfair distribution of conceptual resources needed for speakers to have a say,' where children require age-appropriate and accessible resources to ensure they can meaningfully contribute, and taking into account that adult audiences may be unaware of children's communicative practices and 'fail to give appropriate uptake to their attempts to communicate'.²¹ To that end, we conclude with a series of reflections and good practices that can inspire institutional developments under the law of the sea, building upon the experiences of other international actors and communities of practice. It is essential that any efforts to integrate children in ocean decision-making are not taken in isolation from the body of knowledge in engaging with children in other areas. To that end, a framework for facilitating children's participation in ocean decision-making, as a necessary complement to other international efforts to enhance the protection of children's human rights in relation to the environment and climate change is presented.

17 Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (New York, 19 June 2023, A/CONF.232/2023/4, not yet in force) [BBNJ Agreement].

18 Vienna Convention on the Law of Treaties (Vienna, 23 May 1969, in force 27 January 1980) 1155 UNTS 331, Article 31(3)(c) [VCLT]; R Pavoni, 'Mutual supportiveness as a principle of interpretation and law-making: A watershed for the "WTO-and-competing-regimes" debate?' (2010) 21(3) *European Journal of International Law* 649–679.

19 As discussed in more depth in E Morgera *et al.*, 'Ocean-based climate action and human rights implications under the international climate change regime' (2023) 38(3) *International Journal of Marine and Coastal Law (IJMCL)*, this issue.

20 D Lupin and L Townsend, 'The right to consultation is a right to be heard' in D Lupin (ed), *A Research Agenda for Human Rights and the Environment* (Edward Elgar, Cheltenham, 2023) 103–121, albeit referring to adult human rights-holders.

21 *Ibid.*, at p. 107.

The underlying assumption here is that although children do indeed face ‘long-term environmental challenges ... that will shape the world in which they will spend their lives’²² – not limited to climate change and at the ocean-climate nexus – implementing the principle of intergenerational equity could be transformative²³ for all in our efforts to protect the ocean and mitigate the effects of climate change. Children offer unique and valuable insights which can support mutual learning between and within generations,²⁴ especially considering children’s successful advocacy movement to highlight their rights in the context of environmental crises.²⁵

22 Knox Report 2018 (n 14), para 48.

23 The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem (IPBES) has referred to transformation as ‘a fundamental, system-wide change that includes consideration of technological, economic and social factors, including in terms of paradigms, goals or values’ (at p. 14) It then called attention to ‘[o]bstacles to achieving transformative change, including unequal power relations, lack of transparency, vested interests, unequal distribution of the costs and benefits of actions, tendencies for short-term decision-making, the psychology of losses and gains, the logic of market-driven processes, the lack of policy coherence and inertia’. For further information, see the report summary for policy-makers: IPBES, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, S Diaz *et al.* (eds), (IPBES Secretariat, Bonn, 2019) available at https://www.ipbes.net/sites/default/files/inline/files/ipbes_global_assessment_report_summary_for_policymakers.pdf. The key to transformative change is addressing inequalities, including regarding income and gender, which undermine the capacity for sustainability; inclusive decision-making, as well as the fair and equitable sharing of benefits arising from the use of biodiversity and its conservation; and the recognition and respectful inclusion of the knowledge and innovations of Indigenous peoples and local communities in environmental governance. Some of the authors have argued elsewhere that mutual supportiveness with international human rights law is a key to transformative change. See B Erinosho *et al.*, ‘Transformative governance for ocean biodiversity’ in IJ Visseren-Hamakers and M Kok (eds), *Transforming Biodiversity Governance* (Cambridge University Press, Cambridge, 2022) 313–338.

24 Daly (n 8), at p. 16.

25 This is best illustrated by the *Sacchi v. Argentina* communication before the UN Committee on the Rights of the Child. See Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure in Respect of Communication No. 108/2019 (*Sacchi et al. v. Argentina et al.*), UN Doc CRC/C/88/D/108/2019 (22 September 2021).

Children's Human Rights and a Healthy Environment, Including a Healthy Ocean: Substantive, Procedural and Critical Considerations

The UNCRC has been in force since 1989 and is the most widely and rapidly ratified human rights treaty in history: to date 196 countries are parties to it.²⁶ Children enjoy the protection of the entirety of human rights law, with the UNCRC offering insight into the distinct nature of the realisation of these rights through the lens of the child. Children's human rights are distinct given their heavy reliance on adults in their lives – not limited to adult decision-makers, caregivers and families – to support the realisation of their rights. Still, children's rights include those substantive rights applicable to us all – including health, education, food and hygiene – as well as procedural rights like information, freedom of expression and access to justice. It is important to distinguish between different ages, age groups and the evolving capacity and development of children here. Substantive and procedural dimensions of the right to be heard thus vary according to children's needs, as discussed in 'Critical Considerations' below.

The UNCRC is guided by four central articles, widely considered as General Principles, which highlight how the Convention should be interpreted in practice. The principle of non-discrimination outlines that children are ensured all rights under the Convention without discrimination 'irrespective of the child's parents or legal guardian, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, poverty, disability, birth or other status'.²⁷ Another principle of the UNCRC is that 'the best interests of the child shall be a primary consideration', pointing to the need for support for children to enjoy equal protection of their human rights.²⁸ The right to survival and development states that 'States parties shall ensure to the maximum extent possible the survival and development of the child';²⁹ and serves to outline the economic and social rights dimensions of the General Principles of children's human rights. The fourth General Principle is of paramount consideration and addresses the views of the child, where 'States

26 As of May 2023, the United States of America is the only State Party that has not ratified the United Nations Convention on the Rights of the Child. See further at United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&clang=_en.

27 UNCRC (n 13), Article 2. Consideration of intersectional vulnerabilities is warranted.

28 *Ibid.*, Article 3(1).

29 *Ibid.*, Article 6(2).

parties shall assure to the child who is capable of forming his or her own views the rights to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.³⁰ Some contentions arise around conceptualising the UNCRC using the General Principles, where they may be seen to constitute a hierarchy of children's human rights, alongside ongoing discourse on giving 'due weight' to the wishes of the child in decisions which may be in conflict with their best interests.³¹ Nonetheless, in audiences less familiar with the entirety of children's human rights under the UNCRC, and supplementary guidance and discourse, the four General Principles offer a useful starting place to begin grappling with protecting, respecting and fulfilling children's human rights.

Together, the UNCRC and General Comment 12³² offer specific legal standards for participatory decision-making processes to ensure that children's substantive human rights are duly taken into account, with a view to preventing foreseeable and unjustifiable negative impacts.³³ Notably, States are under an obligation to avoid direct or indirect discrimination against children, so they must ensure that children are not disproportionately affected by environmental harm, including by considering 'possible future risk and harm', taking precautionary measures and adopting, implementing and effectively enforcing non-retrogressive standards.³⁴ The following subsections reflect on how both substantive and procedural provisions of the UNCRC are relevant for the protection of the marine environment.

Substantive Considerations

The substantive links between children's human rights, as outlined in the UNCRC, and the marine environment include, but are not limited to, children's human rights to life, survival and development, and their right to health. These rights are also closely linked to children's right to food and to culture.

30 *Ibid.*, Article 12(1).

31 See A Dieci, 'Balancing the principle of the best interest of the child with the right to be heard: An ongoing challenge from an international perspective' (2017) *Jura Gentium, Journal of Philosophy of International Law and Global Policy*, available at <https://www.juragentium.org/forum/infanzia/it/dieci.pdf>.

32 Committee on the Rights of the Child, General Comment No. 12 (2009): The Right of the Child to be Heard, UN Doc CRC/C/GC/12 (1 July 2009) [GC12].

33 UNCRC (n 13), Article 12.

34 Human Rights Council, Realizing the Rights of the Child through a Healthy Environment: Report of the United Nations High Commissioner for Human Rights, UN Doc A/HRC/43/30 (3 January 2020), paras 52–55.

With regard to the human right to life, survival and development, the UNCRRC provides that '[e]very child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential'.³⁵ As more than half of the oxygen on Earth is produced in the ocean, by marine plankton and photosynthetic organisms, a healthy ocean is essential for children's life and survival. In addition, ocean flora, such as seagrass and mangroves, are an essential form of ocean-based solutions to climate change, providing an estimated 50 per cent of carbon dioxide stored in the ocean environment.³⁶ The increase in extreme weather events related to environmental degradation, such as droughts and floods, weakens food and water security, and children's access to essential services, including health services and schooling,³⁷ impacts children's rights to health and education, and inhibits their rights to the highest attainable development. Methyl mercury, found in high concentrations of infected fish and shellfish, has also been linked to delayed and impaired neurodevelopment of children, as well as death.³⁸ Furthermore, 90 per cent of the global burden of disease associated with environmental crises is carried by children under the age of 5,³⁹ disproportionately impacting children's rights to health, life, survival and development, and posing direct risks to future generations.

With regard to children's right to health, the UNCRRC provides that '[e]very child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food, and a clean environment and education on health and well-being so that children can stay healthy'.⁴⁰ In that connection, inadequate access to healthy food and clean water further compound children's disproportionate risk of malnutrition and diseases linked to contaminated water, like cholera,⁴¹ threatening children's right to health. Fish and seafood contribute to the third greatest protein source for humans and play an essential role in human nutrition, particularly in low- and middle-income countries in Asia and Africa where they are the main source of

35 UNCRRC (n 13), Article 6.

36 Morgera, Sweeney and Shields (n 10), at pp. 4–5.

37 *Ibid.*

38 *Ibid.*, at p. 1.

39 *Ibid.*, at p. 5.

40 UNCRRC (n 13), Article 24.

41 Morgera, Sweeney and Shields (n 10), at p. 4. For more information, see World Health Organization, *Health, the Global Ocean and Marine Resources* (Policy Brief, Regional Office for Europe, Copenhagen, 2019) available at <https://apps.who.int/iris/handle/10665/346832>.

dietary animal protein.⁴² Fish and seafood contain important nutrients, such as omega-3, and are a critical food source among many Indigenous peoples and coastal communities. Ocean degeneration and acidification, however, disrupt fisheries and food supplies, increasing the prevalence of food insecurity, malnutrition, and disease⁴³ and impact children's right to an adequate standard of food, water and sanitation, and health. Microplastics, found in fish and seafood, have been found in sections of human placenta, generating concerns relating to foetal, neonatal and maternal health and children's rights to the highest attainable health and development.⁴⁴ While the precise health risks of ingesting microplastics and nanoplastics are unknown, there is evidence to suggest that, due to their size, they may translocate to other areas of the body and both attract and leach harmful chemicals and contaminants.⁴⁵ In addition, degradation of the ocean's biodiversity and the negative impacts of climate change on the ocean's health contribute to negatively impacting children's mental health, as eco-anxiety and eco-grief are on the rise and expected to increase with further environmental harm.⁴⁶

In particular, children's rights to life, survival and health call attention to immediate concerns, whereas their right to development emphasises the long-term effects of environmental degradation on children. In this latter regard, the Zero Draft of General Comment No. 26 (GC26) is particularly illuminating as it refers to

[s]ecuring the realisation of the right of each child to development to the maximum extent in the optimal environment necessarily requires States to implement their obligations under the Convention, taking into

42 AGJ Tacon and M Metian, 'Food matters: Fish, income, and food supply – A comparative analysis' (2018) 26 *Reviews in Fisheries Science and Aquaculture* 15–28, doi: 10.1080/23308249.2017.1328659.

43 Morgera, Sweeney and Shields (n 10), at pp. 6–7.

44 *Ibid.*, at p. 1; see also A Ragusa *et al.*, 'Plasticenta: First evidence of microplastics in human placenta' (2021) 146 *Environment International* 106274.

45 D Azoulay *et al.*, *Plastics & Health: The Hidden Costs of a Plastic Planet* (CIEL, Washington, DC, 2019) 10, available at <https://www.ciel.org/wp-content/uploads/2019/02/Plastic-and-Health-The-Hidden-Costs-of-a-Plastic-Planet-February-2019.pdf>; discussion in S Switzer and G Hamley, 'Plastics and (the right to) health' in E Kirk (ed), *Edward Elgar Research Handbook on Plastics* (Edward Elgar, forthcoming, 2023) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4455472.

46 Morgera, Sweeney and Shields (n 10), at p. 2.

consideration short-, medium- and long-term effects of actions related to the development of the child over time.⁴⁷

In addition, the draft GC26 refers to the need to recognise 'each period of childhood, its unfolding importance for subsequent stages and children's varying needs at different stages of their maturation and development', emphasising the 'wide range of determinants' for children of different ages to develop to the fullest potential as part of this 'life-course perspective'.⁴⁸ Consideration of these substantive provisions under the UNCRC in international ocean fora would then require that States collectively consider⁴⁹ the best interests of the child as a matter of primary consideration when designing, implementing and monitoring substantive non-regressive and precautionary standards for the protection of the marine environment, including at the ocean-climate nexus. Such consideration should be geared towards preventing and minimising negative impacts of environmental degradation and climate change on children's life, development, survival and health to the greatest extent possible,⁵⁰ taking into account the ideas of children as expressed by children themselves.⁵¹

Procedural Considerations

Children's right to participate in decisions affecting their lives is largely outlined in the UNCRC as 'every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously'.⁵² However, children's participation is uniquely procedural and substantive in nature⁵³ and applies to all elements of children voicing their views, influencing decisions, and accessing justice and mechanisms for remedy and redress.⁵⁴ Children's right to be heard includes the right to participate in law-making and policy-making processes and to be listened to with due consideration.⁵⁵ And so, respecting and fulfilling children's right to be heard

47 Committee on the Rights of the Child, 'Draft General Comment No. 26 (202X), Children's Rights and the Environment with a Special Focus on Climate Change', para 11.B.13, unpublished draft available at https://childrightsenvironment.org/wp-content/uploads/2022/11/First-Draft_General-Comment-No.-26_November-2022.pdf.

48 *Ibid.*, para 11.B.20.

49 This is inspired by the Knox Report 2018 (n 14).

50 HRC (n 34), paras 52–55, 58–61.

51 Knox Report 2018 (n 14), para 76.

52 UNCRC (n 13), Article 12.

53 Engaging at least six UNCRC (n 13) Articles: 12, 13, 14, 15, 17, and 29(1)(e).

54 HRC (n 34), paras 58–61.

55 GC12 (n 32), paras 50–67.

requires special consideration of children's reliance on adults to facilitate their participation in spaces where decision-making is historically adult-driven.⁵⁶ As mentioned above, this requires overcoming prejudices and misconceptions about children's contributions and providing the appropriate resources for children to have a say in these processes.⁵⁷ The Committee on the Rights of the Child has highlighted nine basic requirements of participation processes with children, ensuring they are (i) transparent and informative; (ii) voluntary; (iii) respectful; (iv) relevant; (v) child-friendly; (vi) inclusive; (vii) supported by training; (viii) safe and sensitive to risk; and (ix) accountable.⁵⁸ In this connection, the UNCRC specifically clarifies that, as part of the right to freedom of expression, children have a right to 'seek, receive and impart information and ideas of all kinds through any media of their choice, including art forms'.⁵⁹

It is important to distinguish between children of different ages here, as briefly mentioned above. Further research should explore how we can best adapt these requirements for differing needs and evolving capacities of children. Similarly to the differing needs of children in different geographical locations and varying socioeconomic contexts, procedures should be adapted to the child or children in question. To advance the protection of children's right to be heard in ocean decision-making, provisions for children's participation should prioritise iterative and adaptive opportunities to participate, particularly for marginalised children.

Knox's interpretative clarifications of the UNCRC and the human right to a healthy environment also shed light on facilitating children's right to be heard⁶⁰ at the ocean-climate nexus. He identified States' obligations to collect and make publicly accessible information about the environment and how it may harm children; ensure the effects of proposed measures on the environment on children's human rights, specifically those children most at risk, are assessed before the measures are taken or approved; and take steps to enable children to share their voices and to have their views given due weight in discussions concerning the environment.⁶¹ In addition, Knox clarified that States have an obligation to integrate the human rights of children in

56 S Shields, J Davidson and E Webster, 'United Nations Convention on the Rights of the Child incorporation in Scotland: Participation and Beyond', *Inspiring Children Futures Learning Report* (University of Strathclyde, Glasgow, unpublished manuscript. Copy on file with authors).

57 See generally Lupin and Townsend (n 20).

58 For further information on the 9 General Principles of child participation, see GC12 (n 32), para 134.

59 UNCRC (n 13), Article 13.

60 Knox Report 2018 (n 14), paras 47–50.

61 *Ibid.*, para 71.

international discussions on future generations on the environment.⁶² This has recently found some form of inter-governmental support in the 2022 Global Biodiversity Framework, which includes a target on

[e]nsur[ing] the full, equitable, inclusive, effective and gender-responsive representation and participation in decision-making, and access to justice and information related to biodiversity by ... children and youth and ensure the full protection of environmental human rights defenders.⁶³

The forthcoming General Comment 26 can also be expected to clarify that the right to be heard entails an obligation that children participate in instruments of international environment law.⁶⁴

Further clarity is likely to be offered by the forthcoming General Comment 26 on facilitating the participation of children in a manner which is 'voluntary, respectful and transparent,' where children are provided with adequate education to meaningfully engage and feedback loops to receive information about the outcomes of consultations, including mechanisms for complaints and remedies.⁶⁵ Equally, the GC26 is likely to highlight how the exercise of those procedural rights can serve to bring a human rights-based approach to environmental and ocean policies⁶⁶ by clarifying the States' duty to foster, recognise and support the positive contribution of children towards environmental sustainability and climate justice as an important means of civil and political engagement.⁶⁷ The General Comment is also expected to consider children's views in the design and implementation of measures aimed at addressing the significant and long-term environmental challenges that are fundamentally shaping their lives.⁶⁸

Critical Considerations

Whereas the right to be heard is based on facilitating opportunities for children to share their views on decisions which affect their lives, the best interests principle places a substantive and procedural obligation on adult duty-bearers

62 *Ibid.*, para 68.

63 Conference of Parties to the Convention on Biological Diversity, Decision 15/4, Kunming-Montreal Global Biodiversity Framework, UN Doc CBD/COP/DEC/15/4 (19 December 2022), Target 22.

64 GC12 (n 32), para 58.

65 *Ibid.*, para 57.

66 *Ibid.*

67 *Ibid.*, para 61.

68 *Ibid.*, para 56.

to make decisions based on what is best for a child, which may lead to decisions which contradict a child's wishes.⁶⁹

While the best interests principle includes consideration of a child's wishes, where possible given age and capacity, it also outlines that a 'primary consideration' in decisions made on behalf of children – including by parents, guardians, courts and social welfare institutions – is to balance what is best for them, including in circumstances where a child does not have the capacity to express their wishes, where the best interests of two children are in conflict, or where fulfilling a child's wishes would be detrimental to their safety, well-being or any other human right.⁷⁰

An interesting consideration in this connection is that the climate petition presented by children to the UN Committee on the Rights of the Child in *Sacchi et al.* heavily relied upon the principle of best interests of the child in their argument that States had breached the UNCRIC by failing to appropriately tackle environmental degradation.⁷¹ The applicants included a recommendation to the Committee that States prioritise the best interests of the child, especially in budget allocations and mitigation and adaptation.⁷² The Committee decided that the petition was inadmissible on procedural grounds, which prevented a deeper examination of the best interests principle in the context of complaints about environmental crises or the right to a healthy environment. Nevertheless, the Committee took the opportunity to indicate that a State could be responsible for the impact of environmental harm on the human rights of children, including extraterritorially.⁷³

In addition, the successful inclusion of children in the movement for environmental justice and intergenerational equity has been somewhat limited by the 'perceived victim status of children'.⁷⁴ Evidence suggests that children are often portrayed as victims in media and research portrayals on environmental harm, extreme weather events and adults' perceptions on the

69 Dieci (n 30), at p. 4; R Hubbard and J Greenblum, 'Parental decision making: The best interest principle, child autonomy, and reasonableness' (2019) 31(3) *HEC Forum* 233–240.

70 J Zermatten, 'The best interests of the child principle: Literal analysis and function' (2010) 18(4) *International Journal of Children's Rights* 483–499, at pp. 485–486.

71 *Sacchi et al. v. Argentina et al.* (n 25), at pp. 89–91.

72 *Ibid.*, at pp. 7–8; K Arts, 'A child rights perspective on climate change' in M Salih (ed), *Climate Change and Sustainable Development: New Challenges for Poverty Reduction* (Edward Elgar Publishing, Cheltenham, 2009).

73 *Sacchi et al. v. Argentina et al.* (n 25), para 177.

74 A Daly, 'Climate competence: Youth climate activism and its impact on international human rights law' (2022) 22(2) *Human Rights Law Review* 1–27, at p. 8, available at <https://ssrn.com/abstract=4018470>.

impending 'suffering'⁷⁵ of children as the environment continues to degrade.⁷⁶ Instead, a recognition that adults have as much to learn from children and young people as they do from adults provides a more helpful and potentially transformative basis for intergenerational dialogue and partnerships. Such recognition can be supported on at least three grounds. First, children's imagination is very different from adult cognition, as their experiences of time and place are distinctive, and can thus provide innovative thinking for improved environmental decision-making.⁷⁷ This is particularly important to consider when it comes to marine areas beyond national jurisdiction, as they are in many ways largely unknown.⁷⁸ Second, embracing fun in participatory processes, including in the use of play- and art-based approaches, is central to building relationships and partnerships with children.⁷⁹ Utilising fun in participatory approaches can 'disrupt normative ways of understanding research as objective [and] neutral';⁸⁰ shifting towards methods that encourage both adults and children alike to embrace subjectivity and creativity, and build trust and relationships for more meaningful outcomes.⁸¹ This is particularly needed to better understand and critically engage with how the ocean has been portrayed, studied and known according to resource-wealthy States and former colonial powers,⁸² which can be challenged through children's participation. Third, movements to promote and fulfil children's human right to be heard

75 *Ibid.*

76 *Ibid.*, at p. 9.

77 D McGarry, 'Empathy in the Time of Ecological Apartheid: A Social Sculpture Practiced Inquiry into Developing Pedagogies for Ecological Citizenship' (PhD Thesis, Rhodes University, South Africa, 2014).

78 See E Morgera *et al.*, 'Addressing the ocean-climate nexus in the BBNJ Agreement: Strategic environmental assessments, human rights and equity in ocean science' (2023) 38(3) *IJMCL*, this issue.

79 LM Lee, LHV Wright *et al.*, 'Online intergenerational participatory research: Ingredients for meaningful relationships and participation' (2022) 3(3) *Journal of Participatory Research Methods* 1–17.

80 LHV Wright, K Tisdall and N Moore, 'Taking emotions seriously: Fun and pride in participatory research' (2021) 41 *Emotion, Space and Society* 100836.

81 *Ibid.*; also see M Strand *et al.*, 'Developing arts-based participatory research for more inclusive knowledge co-production in Algoa Bay' (2022) 4 *Current Research in Environmental Sustainability* 100178, 1–13.

82 See D Belhabib, 'Ocean Science and advocacy work better when decolonized' (2021) 5(6) *Nature Ecology & Evolution* 709–710; B Maas *et al.*, 'Women and global south strikingly underrepresented among top-publishing ecologists' (2021) 14 (4) *Conservation Letters* 1–9; A Adler, *Neptune's Laboratory: Fantasy, Fear, and Science at Sea* (Harvard University Press, Cambridge, 2019); MS Reidy and HM Rozwadowski, 'The spaces in between: Science, ocean, empire' (2014) 105 (2) *Isis* 338–351; HM Rozwadowski, 'The promise of ocean history for environmental history' (2013) 100 (1) *Journal of American History* 136–139.

have been increasingly characterised as recognising and supporting child environmental rights defenders.⁸³ Environmental human rights defenders are defined as ‘the individuals and communities that raise awareness about the negative impacts on human rights of unsustainable decisions on the environment’.⁸⁴ Increasingly, they are recognised and studied as agents of change,⁸⁵ including for their role in preventing unsustainable and unjust uses of the environment that may lead to conflict.⁸⁶ Environmental human rights defenders are entitled to specific protections under international human rights law, internationally⁸⁷ and regionally,⁸⁸ to ensure a safe and enabling environment for them to operate free from threats, harassment, intimidation and violence and rather be publicly recognized for their contributions.⁸⁹ Heightened levels of protection are actually needed for child environmental human rights defenders.⁹⁰

Daly has underscored the existence of struggles to balance the right to be heard and the principle of the best interests of the child at the level of national implementation of the UNCRD.⁹¹ Daly argues that following children’s wishes in a balancing act with best interests is often only ‘seen as a possibility where

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- 83 See A Daly, ‘No weight for ‘due weight’?: A children’s autonomy principle in best interest proceedings’ (24 January 2018) available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3254112.
- 84 United Nations General Assembly (UNGA), Report of the Special Rapporteur on the Situation of Human Rights Defenders, UN Doc A/71/281 (3 August 2016).
- 85 A Nah *et al.*, ‘A research agenda for the protection of human rights defenders’ (2013) 5(3) *Journal of Human Rights Practice* 522.
- 86 A Scheidel *et al.*, ‘Environmental conflicts and defenders: A global overview’ (2020) 63 *Global Environmental Change* 102104.
- 87 UNGA Res 53/144 (9 December 1998), UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Doc A/RES/53/144); Human Rights Council, 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/37/59 (24 January 2018), para 31.
- 88 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú, 4 March 2018, in force 22 April 2021, 3397 UNTS), Article 9; UN Economic Commission for Europe, Draft Decision VII/9 on a Rapid Response Mechanism to Deal with Cases Related to Article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, UN Doc ECE/MP.PP/2021/CRP.8 (18–20 October 2021).
- 89 UNGA, Report on the Situation of Human Rights Defenders, UN Doc A/66/203 (28 July 2011); UN Doc A/71/281 (n 84), para 60.
- 90 L Lundy, *The Rights of Child Human Rights Defenders: Implementation Guide* (Child Rights Connect, Geneva, 2020) available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/34574/RCHR.D.pdf?sequence=1&isAllowed=y>.
- 91 Daly (n 74).

convenient' for decision-makers, particularly in court settings.⁹² She notes that the failure to date to offer an effective definition of this concept has led to adult decision-makers overriding the right to be heard too easily, and where it may not be justified.⁹³ Instead, she argues that 'autonomy' is a better placed notion to uphold that children are free to make choices and decisions in their own lives. As a recognised international principle and a 'cornerstone of liberal society',⁹⁴ Daly argues that the principle of autonomy can improve the equitable status of children as rights-holders. She presents suggestions of a new 'children's autonomy principle' as a tool for balancing when and how decisions should uphold children's views and wishes, and when to defer to what is in their best interests due to the risk of significant harm.⁹⁵ The children's autonomy principle considers the following process where Daly proposes that an outcome of 'yes' for the following five questions suggests an outcome is taken in favour of the wishes of the child:

1. Is the outcome being determined by what is in the child's best interests?
2. Does the child have a wish as to the outcome?
3. Does the child want this wish to prevail?
4. Is the best interest question free of legitimate obstacles to children's wishes?
5. Is significant harm unlikely to result from following the wishes of the child?⁹⁶

In addition, academic research, discourse and interpretations provide avenues for further contextualisation on meaningfully upholding children's right to be heard in the context of international ocean governance. The Lundy Model for Child Participation⁹⁷ provides guidance on the implementation of rights-based participation across four key areas: space, voice, audience and influence.⁹⁸ Lundy considers that children's participation must be more than the right to express a view; children also have the right to have their views considered and incorporated. The Lundy Model offers a framework for 'informing understanding, developing policy and auditing existing practice'⁹⁹ which considers a chronology of participation as follows:

92 *Ibid.*, at p. 19.

93 *Ibid.*

94 *Ibid.*, at p. 17.

95 *Ibid.*

96 *Ibid.*

97 L Lundy, 'Voice is not enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927–942.

98 *Ibid.*, at p. 931.

99 *Ibid.*, at p. 933.

Space: Children must be given the opportunity to express a view

Voice: Children must be facilitated to express their views

Audience: The view must be listened to

Influence: The view must be acted on, as appropriate¹⁰⁰

The Lundy Model offers a systematic approach to engage meaningfully with children's right to be heard, where adults and children must come together in iterative processes to effectively address the fact that children and young people consistently report that their views are not taken seriously.¹⁰¹ This model has been the most transformative to date in its promotion, adoption and implementation across a number of international organisations and domestic processes.¹⁰² It allows for systematic planning, monitoring and evaluation of children's participation, a rational and chronological approach to provide both adults and children with the tools they need to effectively contribute to create opportunities for organisations and agencies to hear children's contributions, and to incorporate those views to the greatest extent possible.¹⁰³

Therefore, when children's rights are integrated in discussions on ocean, environmental and climate change,¹⁰⁴ the participation of children should build upon both Lundy's and Daly's proposed models, as discussed below (Conclusion).

Intergenerational Equity in International Law on the Protection of the Marine Environment and Children's Human Rights

The principle of intergenerational equity is best understood as justice for past, present and future generations.¹⁰⁵ The principle is considered in several international environmental treaties that are relevant to the protection of the

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, at p. 931.

¹⁰² For example, at the level of international organisations, see the United Nations, European Commission, Council of Europe; at the level of international non-governmental organisations, see Child Rights Connect, UNICEF, World Vision, Save the Children, Terre des hommes; and at the level of national governments and agencies, see Ireland, Taiwan, Belgium, Scotland, Iceland and New Zealand.

¹⁰³ Lundy (n 90), at p. 931.

¹⁰⁴ M Strand *et al.*, *Advancing Participation in the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ)* (One Ocean Hub Policy Brief, 2022) available at <https://strathprints.strath.ac.uk/82565/>.

¹⁰⁵ E Brown-Weiss 'Our rights and obligations to future generations for the environment' (1990) 84(1) *American Journal of International Law* 198–207, at pp. 198–199.

ocean,¹⁰⁶ all of which stress the importance of cooperation in safeguarding future generations. The 1992 United Nations Framework Convention on Climate Change (UNFCCC)¹⁰⁷ links the principle to the rights of children and unborn generations.¹⁰⁸ In addition, intergenerational equity and principles of human rights are increasingly raised in national climate change litigation, including cases regarding deforestation and emissions reduction,¹⁰⁹ and child rights strategic litigation on the impact of environmental harm on current and future generations.¹¹⁰

The LOSC mainly consists of the codification of centuries-old customary rules of international law governing the relations among States, so it was conceived with little to no space for individuals.¹¹¹ Accordingly, the LOSC preamble references to the 'equitable and efficient utilization' of marine resources¹¹² and the ultimate realisation of 'a just and equitable international economic order which takes into account the interests and needs of [hu]mankind as a whole'¹¹³ are commonly understood as referring to the geographical distribution of benefits among States.¹¹⁴ Only in the last decade has the literature on the interplay between human rights law and the law of the sea grown considerably, with Oxman underscoring that, despite being primarily concerned with natural resources and marine environment, 'the

106 These include the 1992 Convention on Biological Diversity (Rio De Janeiro, 5 June 1992, in force 29 December 1993, 1760 *UNTS* 79) [CBD], as well as in the preambles of the 1946 International Convention on the Regulation of Whaling (Washington, 2 December 1946, in force 10 November 1948, 161 *UNTS* 72), the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973, in force 1 July 1975, 993 *UNTS* 243) and the 1976 Convention on Migratory Species (Bonn, 23 June 1979, in force 1 November 1983, 1651 *UNTS* 333).

107 United Nations Framework Convention on Climate Change (New York, 9 May 1992, in force 21 March 1994), 1771 *UNTS* 107 [UNFCCC], Article 3(1); Paris Agreement to the UNFCCC (Paris, 12 December 2015, in force 4 November 2016) 55 *ILM* 740, Preamble.

108 See, for example, D Spentzou 'Climate change litigation as a means to address intergenerational equity and climate change' (2021) 2 *Queen Mary Law Journal* 153–183; L Slobodian 'Defending the future: Intergenerational equity in climate litigation' (2020) 32(3) *Georgetown Environmental Law Review* 569–589.

109 See, for example, Corte Suprema de Justicia, Sala Civ. Abril 5. 2018, M.P: Luis Armando Tolosa Villabona, STC4360-2018, Radiación no. 11001-22-03-000-2018-00319-01, pp. 18–19 [Colombia].

110 *Sacchi et al. v. Argentina et al.* (n 25).

111 I Papanicolopulu, 'The Law of the Sea Convention: No place for persons?' (2012) 27(4) *IJMCL* 867–874.

112 LOSC (n 16), preambular para 4.

113 *Ibid.*, preambular para 5.

114 See, *inter alia, ibid.*, Articles 69–70.

Convention also addresses traditional human rights preoccupations with the rule of law, individual liberties and procedural due process'.¹¹⁵

Although not explicitly referred to in the treaty text, LOSC provisions – including environmental ones – promote intergenerational equity through references to generally agreed or accepted rules and standards, and other rules of international law.¹¹⁶ This effectively calls for a systemic interpretation of other relevant international treaties and soft law instruments on climate, biodiversity and human rights, which include – explicitly or implicitly – the principle of intergenerational equity.¹¹⁷ The principle is also alluded to in the 1995 UN Fish Stocks Agreement concerning long-term conservation and sustainable use of fish stocks through effective implementation of the relevant provisions of the LOSC,¹¹⁸ in order to safeguard them for use by future generations.¹¹⁹ The strongest example of the principle concerns the use of the seabed, where the LOSC entrusts the ISA to fairly and equitably distribute the benefits of seabed minerals beyond areas of national jurisdiction. Notably,

115 See, *inter alia*, B Oxman, 'Human rights and the United Nations Convention on the Law of the Sea' (1997) 36(1/2) *Columbia Journal of Transnational Law* 399–429, at pp. 401–402; see also T Treves, 'Human rights and the law of the sea' (2010) 28(1) *Berkeley Journal of International Law* 1–14; I Papanicopolulu, *International Law and the Protection of People at Sea* (Oxford University Press, Oxford, 2018); T Ndiaye, 'Human rights at sea and the law of the sea' (2019) 10(2) *Beijing Law Review* 261–277.

116 For example, LOSC (n 16), Articles 61(3), 119(1)(a), 207, 211, 212.

117 See, *inter alia*, Principle 3 of the 1992 Rio Declaration, which provides that '[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations' Rio Declaration on Environment and Development, 14 June 1992, UN Doc A/CONF.151/26 (vol 1) (12 August 1992). See also the preamble and Article 2 CBD (n 106), which both refer explicitly to the 'needs and aspirations of the present and future generations'. Finally, see also the similar wording laid down in Goal B of the Kunming-Montreal Global Biodiversity Framework (n 63). On systemic interpretation of treaties, see VCLT (n 17), Article 31(3)(c); C McLachlan 'The principle of systemic integration and Article 31(3)(c) of the Vienna Convention' (2005) 54(2) *International and Comparative Law Quarterly* 279–320; R Barnes 'Alternative histories and futures in international fisheries law' in R Caddell and EJ Molenaar (eds), *Strengthening International Fisheries Law in an Era of Changing Oceans* (Hart Publishing, Oxford, 2019) 25–50.

118 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, August 4, 1995, in force 11 December 2001) 2167 *UNTS* 3, Article 2; see also A Boyle and C Redgwell, *Birnie, Boyle, and Redgwell's International Law and the Environment* (4th ed., Oxford University Press, Oxford, 2022) 121–123.

119 See I Nomura, *Background, Negotiation History and Article-by-Article Analysis of the United Nations Agreement on Fish Stocks and the FAO Compliance Agreement* (NextPublishing Authors Press, 2020) 25.

the LOSC clearly affirms that '[t]he Area and its resources are the common heritage of mankind',¹²⁰ that 'all rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act',¹²¹ and that '[a]ctivities in the Area shall ... be carried out for the benefit of mankind as a whole'.¹²²

The key point of reflection here is that intergenerational equity is often left undefined in treaties relevant to the protection of the environment and the ocean. As a reaction, in his 2020 *Report on Realizing Children's Rights through a Healthy Environment*, Knox clarified States' obligations *vis-à-vis* children's human rights in terms of intergenerational equity. Specifically, Knox notes that 'discussions of future generations [must] take into account the rights of the children who are constantly arriving, or have already arrived, on this planet'.¹²³ Given the potential 'capture' by adults of children's best interests discussed above, the realisation of children's right to be heard in international ocean fora provides the basis for co-developing the content of intergenerational equity through intergenerational dialogue and mutual learning. In addition, such a dialogue can also provide insights for States to ensure that they avoid taking decisions that discriminate against children, the most deeply and longest affected by environmental degradation.

How to put children's rights to be heard in practice will depend on the specific mandate and institutional structures put in place under specific international regimes on the protection of the ocean. The following section will explore this line of argumentation in the context of two case studies, namely the ISA regime and the newly agreed BBNJ Agreement.

Examples of International Decision-making Processes on the Ocean that Should Include Children's Rights and Voices

References to public participation under the LOSC may be traced only in Part XI regulating deep-seabed mining activities in the Area, where Part XI provides for the consultation of intergovernmental and non-governmental organisations.¹²⁴ Yet, a number of procedural barriers render it more

120 LOSC (n 16), Article 136.

121 *Ibid.*, Article 137(2).

122 *Ibid.*, Article 140(1). Further Part XI provisions explicitly referring to the principle of the 'benefit of (hu)mankind' include LOSC Articles 143(1), 149, 150(i), 153(1), 155(1)(a), and 155(2), all referring to the conduct of activities in the Area regulated by the ISA.

123 Knox 2018 report (n 13), para 68.

124 LOSC (n 16), Article 169, discussed below.

challenging, as discussed below. In addition, substantive notions such as the common heritage of (hu)mankind¹²⁵ that applies to the Area suggest that a broader understanding of equity in the context of Part XI can be put forward so as to embrace also its intergenerational dimension¹²⁶ and consideration of children's human rights.¹²⁷ On the other hand, the recently adopted BBNJ Agreement does foresee a number of provisions on transparency and public participation,¹²⁸ which can support children's right to be heard. In addition, the BBNJ Agreement provisions on the integration of 'traditional knowledge of Indigenous Peoples and local communities'¹²⁹ could foster Indigenous and local community children's participation, in particular. The BBNJ Agreement recalls the 'importance of contributing to the realisation of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole', and defines 'sustainable use' in terms of 'the needs and aspirations of present and future generations'.¹³⁰ Furthermore, the implementation of the Agreement must be guided by two principles relevant for present purposes: the principle of equity and the integrated approach to ocean management.¹³¹ The Agreement also contains references to 'benefit of all humanity'¹³² and to 'support[ing] food security and other socioeconomic objectives, including the protection of cultural values' as two of its far-reaching goals.¹³³ Furthermore it includes specific reference to the ocean-climate nexus by referring to '[a]n approach that builds ecosystems resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, including the carbon cycling services that underpin the ocean's role in climate'.¹³⁴ This can support children's and youth's views on environmental protection and responses to climate change.

Against this background, the following subsections explore the extent to which children's right to be heard can be realised in the context of the existing law of the sea instruments. The analysis aims to shed some light on existing

125 *Ibid.*, Article 140.

126 In this regard, see AL Jaeckel, *The International Seabed Authority and the Precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection* (Brill Nijhoff, Leiden, 2017); M Nyka, 'International Seabed Authority and environmental deep-sea stewardship: Principles governing the protection and use of seabed resources' (2020) 39 *Maritime Law* 9–19.

127 Morgera and Lily (n 11), at p. 381.

128 See, *inter alia*, BBNJ Agreement (n 17), Article 48. Such provisions are discussed below.

129 See, *inter alia*, *ibid.*, Article 7(j), Article 13. These provisions are discussed below.

130 *Ibid.*, Article 1(16).

131 *Ibid.*, Article 5(a) and (f).

132 *Ibid.*, Article 9(5).

133 Respectively *ibid.*, Articles 14(a), Article 14(d).

134 *Ibid.*, Article 5(g).

relevant legal bases and practices as entry points for such a right that may be more familiar to international ocean decision-makers. Interestingly, the forty-year gap between the two regimes provides the opportunity to assess the progressive development of the law of the sea as crystallised in the instruments following the adoption of the LOSC. Indeed, the Convention is generally recognised as a living instrument, capable of adapting to the changing environment.¹³⁵ The BBNJ Agreement constitutes a so-called 'implementation agreement', that is, a treaty adopted under the umbrella of the Convention for it to evolve and stay up-to-date with emerging challenges in the law of the sea and in the broader international law system. In light of the evident link between these two legal regimes – the BBNJ Agreement covering both the activities in the Area and the high seas – it is suggested that, thanks to the more progressive provisions on participation under the BBNJ Agreement, combined with those supporting coordination and mutual learning across different international regimes,¹³⁶ it would be worth prioritising the realisation of children's rights to be heard under the new Agreement, with potential benefits for children's views to influence also other international ocean-related fora.

International Seabed Authority

The International Seabed Authority is tasked with the exploration for, and exploitation of, the mineral resources of the Area – the seabed and subsoil of the ocean beyond national jurisdiction.¹³⁷ It is a unique international organisation with regulatory, contracting and monitoring powers, including to protect the marine environment.¹³⁸ It has been constituted as a self-standing organisation that is accountable to '(hu)mankind',¹³⁹ but it is not part of the accountability system within the UN.¹⁴⁰ Concerns about the harmful consequences of such activities have grown sharply in the past decades, in connection with both the efforts to adapt to and mitigate climate change impacts and the broader human rights implications of the potential ocean biodiversity loss that may result from the exploitation of the Area. In 2017,

135 See, *inter alia*, J Barret and R Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty* (British Institute of International and Comparative Law, London, 2016).

136 BBNJ Agreement (n 17), Articles 12(8), 15(5) on access and benefit-sharing and digital sequence information; see also *ibid.*, Articles 17(b), 21(2)(b), 24(2), 29(2), 42(4) on cooperation and coordination with relevant legal frameworks and global, regional, subregional and sectoral bodies, as well as on capacity-building and the transfer of marine-technology; *ibid.*, Articles 8(2), 41(1) on parties' obligation to cooperate across different fora.

137 LOSC (n 16), Articles 1(3), Article 133 et seq.

138 *Ibid.*, Article 145.

139 A Jaeckel, 'Benefitting from the common heritage of humankind: From expectation to reality' (2020) 35(4) *IJMCL* 660–681.

140 Morgera and Lily (n 11), at p. 376.

an independent review of the ISA concluded that ‘the current governance processes of the Authority are not sufficiently transparent’¹⁴¹ and a growing literature has raised various concerns about transparency, participation and accountability of the ISA.¹⁴² In addition, civil society’s attempts to voice concerns, as well as to challenge the assumptions about the potential of deep-seabed mining in climate change mitigation efforts, have been met with a degree of hostility by the ISA Secretariat.¹⁴³

Against this backdrop, it is submitted that there exist several grounds – of both substantive and procedural nature – for the consideration of children’s human rights in the regime under the ISA’s regulatory powers. First and foremost, Part XI of the LOSC on the Area is the only part in the Convention that contains an explicit provision establishing a general duty to protect human life,¹⁴⁴ with a mandate to adopt ‘necessary measures ... to ensure effective protection of human life ... to supplement existing international law as embodied in relevant treaties’.¹⁴⁵ Whilst the provision is commonly interpreted as being limited to people involved in deep-seabed mining activities,¹⁴⁶ it is submitted that a broader interpretation might well be put forward too, thereby extending the obligation to protect human life to anyone affected by said activities, including children’s rights to life, survival and development, which are seen as interconnected under the UNCRC.

Such a conclusion is further supported by the obligation of States to carry out environmental impact assessment (EIAs) prior to conducting activities in

141 D Johnson *et al.*, *Periodic Review of the International Seabed Authority Pursuant to LOSC Article 154: Final Report* (Seascope Consultants, Romsey, 2016) 22.

142 For example, J Ardron, H Ruhl and D Jones, ‘Incorporating transparency into the governance of deep-seabed mining in the area beyond national jurisdiction’ (2018) 89 *Marine Policy* 58–66; M Guilhon, F Montserrat and A Turra, ‘Recognition of ecosystem-based management principles in key documents of the seabed mining regime: Implications and further recommendations’ (2020) 78(3) *International Council for the Exploration of the Sea Journal of Marine Science* 884–899.

143 E Lipton, ‘Secret data, tiny islands and a quest for treasure on the ocean floor’ (*New York Times*, 29 August 2022) available at <https://www.nytimes.com/2022/08/29/world/deep-sea-mining.html>.

144 Papanicolopulu (n 115), at pp. 190–192, referring to the broad scope of the obligation under Article 146 of the LOSC, though geographically limited.

145 LOSC (n 16), Article 146.

146 In this regard, see *Responsibilities and Obligations of States with Respect to Activities in the Area*, Advisory Opinion, 1 February 2011, *ITLOS Reports 2011*, p. 10, para 96; see also S Vöney and CH Beck, ‘Article 146: Protection of Human Life’ in A Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart, Nomos, 2017) 1032, para 10.

the Area,¹⁴⁷ to protect and preserve the marine environment and biodiversity from harmful effects that may arise from activities therein.¹⁴⁸ This obligation too should be interpreted so as to extend to the evaluation of the effects of said activities on children's human rights to life, survival and development that may be dependent on healthy marine ecosystems.¹⁴⁹ As the EIAs are prepared by a subsidiary organ of the ISA, the Legal and Technical Commission (LTC), it is also noteworthy that the rules on the composition of this organ could be interpreted to include expertise on children's rights as 'due account shall be taken of the need for equitable geographical distribution and the representation of special interests'¹⁵⁰ and LTC members need to have 'appropriate qualifications, such as those relevant to ... protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise'.¹⁵¹ In addition, the LTC, 'where appropriate', can consult 'another commission, any competent organ of the UN or its specialised agencies or any international organisations with competence in the subject-matter of such consultations',¹⁵² which could allow for exchanges with the United Nations Children's Fund (UNICEF) on children's human rights. All these suggestions are particularly important because the LTC proceedings currently lack transparency (even *vis-à-vis* other ISA organs) even though the LTC plays a very significant role in decision-making at the ISA.¹⁵³

As far as it concerns the procedural dimension of the right to be heard, the ISA Secretary-General has the duty to 'make suitable arrangements ... for consultation and cooperation with international and non-governmental organisations recognised by the Economic and Social Council of the United Nations [ECOSOC]';¹⁵⁴ whereby they may nominate representatives to take

147 LOSC (n 16), Article 165.

148 *Ibid.*, Article 145(1).

149 Human Rights Council, 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/34/49 (19 January 2017); Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Human Rights Depend on a Healthy Biosphere, UN Doc A/75/161 (15 July 2021).

150 ISA, Rules of Procedure of the Council, Doc ISBA/C/12 (3 December 1996), Rule 78 transposes the content of Article 163(4) of the LOSC (n 16).

151 Rule 83 of the Rules of Procedure of the Council (n 150) draws from Article 165(1) of the LOSC (n 16).

152 ISA, Rules of Procedures for the Legal and Technical Commission, Doc ISBA/6/C/9 (13 July 2000), Rule 15.

153 Morgera and Lily (n 11), at p. 382.

154 LOSC (n 16), Article 169(1).

part as observers in the meetings of the different ISA organs.¹⁵⁵ These are UN specialised agencies and civil society organisations, provided that they are respectively invited by the Assembly itself or recognised by the UN ECOSOC. Arguably, this would leave some room for UNICEF and civil society organisations working on children's human rights to participate in the Assembly sessions, and even include children in their delegations to engage with the discussions and decision-making processes therein carried out.¹⁵⁶

The Regime on the Conservation and Sustainable Use of Marine Biodiversity of Areas beyond National Jurisdiction

The BBNJ Agreement text was finalised in March 2023 and adopted in June of the same year, but at the time of writing it has not yet entered into force. The Agreement establishes a number of interesting procedural tools that could arguably contribute to supporting the consideration of children's human rights in such a key forum for ocean governance. First and foremost, the Conference of the Parties (COP) – the first thereof will be convened within one year of the entry into force of the Agreement¹⁵⁷ – is bound to '*promote transparency* in decision-making processes and other activities carried out under this Agreement'.¹⁵⁸ This entails that meetings of the COP as well as of its subsidiaries bodies '*shall be open to observers* participating in accordance with the rules of procedure'.¹⁵⁹ The COP is thus bound to

promote transparency in the implementation of this Agreement, including through ... *the facilitation of participation of, and consultations with, relevant global, regional, subregional and sectoral bodies, Indigenous Peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders as appropriate.*¹⁶⁰

¹⁵⁵ *Ibid.*, Article 169(2).

¹⁵⁶ It is worth clarifying, however, that the Assembly has little power over the effective content of the regulatory regime for deep-seabed mining, for its power is limited to 'consider and approve' the rules, regulations and procedures on exploration and exploitation activities in the Area, upon recommendation of the Council, whereby the LTC plays a key strategic role in drafting the content of such a regulatory regime. Thus, the effectiveness of the public participation mechanism under Article 164 of the LOSC should be assessed against the real scope of the institutional powers of the Assembly, which currently lacks substantive decision-making and oversight competencies.

¹⁵⁷ BBNJ Agreement (n 17), Article 47(2).

¹⁵⁸ *Ibid.*, Article 48 (emphasis added).

¹⁵⁹ *Ibid.*, Article 48(2) (emphasis added).

¹⁶⁰ *Ibid.*, Article 48(3) (emphasis added).

Accordingly, UNICEF, non-governmental organisations working on children's rights and researchers working in solidarity with children may participate in the meetings of the COP, as well as of its subsidiaries bodies,¹⁶¹ also including children in their delegations.¹⁶²

Children's rights experts should also be included in the composition of the BBNJ Scientific and Technical Body (STB), established with a view to providing scientific and technical advice to the COP, to inspire the implementation of the Agreement.¹⁶³ In particular, with regard to its composition, STB members must have 'suitable qualifications, taking into account the need for multidisciplinary expertise, including relevant scientific and technical expertise'.¹⁶⁴ Consequently, the STB work must also reflect such multidisciplinary expertise and be in the 'best interests of the Agreement'.¹⁶⁵ By way of example, the STB's potential contribution to the protection of children's rights can be related to its role in the context of the EIA provisions. As part of the EIA screening phase, the STB is under the obligation 'to consider' the potential impacts of the planned activity 'on the basis of the best available science and scientific information',¹⁶⁶ where the phrase 'best available science' may well include information about children's life, development, survival and health and other human rights potentially affected by activities in areas beyond national jurisdiction.

Lastly, a further institutional arrangement for enhancing children's rights in the context of the implementation of the BBNJ Agreement is that of the clearing-house mechanism which, among other things, will '(c) [p]rovide links to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases ... and promote, where possible, links with publicly available private and non-governmental platforms for the exchange of information';¹⁶⁷ '(e) foster enhanced transparency, including the sharing of environmental baseline data and information relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction between Parties and other relevant stakeholders';¹⁶⁸ and

161 *Ibid.*, Article 48(4).

162 The promotion of the principle of transparency is of fundamental importance in the context of the implementation of the BBNJ Agreement, *ibid.*, also at the national and regional level, as evidenced by, e.g., Articles 19 and 21 with regard to the State's duty to collaborate and consult transparently with all appropriate stakeholders in respect of the proposals regarding the establishment of area-based management tools.

163 *Ibid.*, Article 49.

164 *Ibid.*, Article 49(2).

165 *Ibid.*, Article 49(4).

166 *Ibid.*, Article 31(1)(a)(iv).

167 *Ibid.*, Article 51(3)(c).

168 *Ibid.*, Article 51(3)(e).

‘(f) facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration’.¹⁶⁹ All these duties underscore the clearing-house mechanism’s function of connecting the COP with the external world, including relevant stakeholders working on the protection of children’s rights and the scientific community, thereby providing yet another gate for the incorporation of children’s interests in the daily functioning of BBNJ bodies.

Innovation in Academic and Practise Models for Child-led and Child-inclusive Participation

In exploring the existing opportunities for integrating the consideration of children’s human rights and realising their right to be heard in international ocean fora, it is essential that any efforts are not taken in isolation from the body of knowledge on engaging with children in other areas. Instead, it is necessary to draw on the lessons learnt and good practices of other international actors and communities of practice that can inspire institutional developments under the law of the sea.

Academic research, policy and practice experience have further informed meaningful participation in decision-making affecting children’s lives. Some of the models of good practice that foster meaningful intergenerational partnerships with children to be applied in the context of ocean governance processes, or wider international and national consideration of the ocean and biodiversity are outlined below. First, an arts-based research project in Algoa Bay, South Africa, that focuses on intergenerational dialogue in the marine context is discussed. This is followed by the example of the COVID 4P Log Project to reflect on scaling up children’s inclusion in scientific research, which can contribute to governance processes. Third, the example of the children’s consultation process on General Comment No. 26 provides an example of an international process of interpretation of international law. All these examples offer reflections on best practices, valuable lessons, and future considerations for enhancing children’s agency and adults’ capacity to listen.

In 2021 and 2022 an arts-based participatory research project in Algoa Bay found a process to meaningfully engage youth in dialogue with ocean decision-makers. The research project, which forms part of the Algoa Bay Project,¹⁷⁰ involved four learners age 15 through 17 in a year-long engagement with a

¹⁶⁹ *Ibid.*, Article 51(3)(f).

¹⁷⁰ See the Algoa Bay Project website available at <https://www.algoabayproject.com/>.

variety of Indigenous and local community members feeling excluded from ocean governance processes.¹⁷¹ The arts-based research process found that the experience of co-learning how to share stories and connections through photographs and storytelling, and then directly sharing this through a multimedia exhibition with attending coastal managers and decision-makers, opened up the space for youth to reflect on and communicate their priorities, interests and wishes for the future through multiple shapes and forms. Involving youth in the participatory research process as equal co-researchers offered opportunities for them to take ownership of the process and communicate their concerns and ideas directly with people in power. As expressed by Yaseen Albany, 'through participating in this research, I was able to share with others my personal views on the value of the ocean, to the local people and the relevance of the ocean from an Islamic perspective'.¹⁷² Although this was a slow and lengthy process that formed part of a PhD project, there are emerging lessons from this research that can inform considerations for child-led and child-inclusive participation, such as the power of participatory research models and involving children and youth as co-researchers alongside adults, the opportunities for expressing knowledge, interests and priorities through arts-based methods and modalities, and the importance of facilitating direct engagement between youth and decision-makers.

In 2020, the COVID 4P Log Project for children's well-being¹⁷³ launched a human rights-led, multinational smartphone app-based on the 4P model for children's well-being (provision, protection, participation, prevention).¹⁷⁴ The app gathered daily insights from adults working with and for children during the COVID-19 pandemic in 22 countries on 5 continents.¹⁷⁵ The COVID 4P Log Project systematically partnered with children and young people through

171 M Strand, N Rivers and B Snow, 'Reimagining ocean stewardship: Arts-based methods to "hear" and "see" Indigenous and local knowledge in ocean management' (2022) 9 *Frontiers in Marine Science* 886632, doi: 10.3389/fmars.2022.886632; Strand *et al.* (n 81).

172 M Strand *et al.*, 'Reflecting on arts-based transdisciplinary research: Considerations for more equitable collaboration' (2023, under review).

173 J Davidson *et al.*, 'Supporting Children's Wellbeing During COVID-19: Providers' and Policymakers' Successes, Challenges, Lessons Learned and Recommended Actions. Findings from the International COVID 4P Log Project' (2021) 1 *Inspiring Children's Futures Learning Report Series*.

174 Lee, Wright *et al.* (n 79).

175 J Davidson, D Karadzhev and G Wilson, 'Practitioners' and Policymakers' Successes, Challenges, Innovations, and Learning in Promoting Children's Well-being During COVID-19: Protocol for a Multinational Smartphone App Survey' (2021) 10(7) *JMIR Research Protocols* e31013.

a Terre des hommes initiative,¹⁷⁶ #CovidUnder19. The Child and Youth Advisors helped develop questions and reflections for adults working with responsibilities for children, creating a feedback loop to investigate what policy-makers and practitioners working with children were seeing on the ground during COVID-19, as well as children's views on decisions affecting their lives during the pandemic.¹⁷⁷ The data collected from the COVID 4P Log app was then analysed with children and young people to generate and share useful resources. These offered insights, solutions and innovations for policies and practices which were more responsive to children's views, wishes and rights during a period of unprecedented challenges in service provision. The app project included a participatory methodology founded on principles of fun and trust, and utilised play- and strength-based approaches.¹⁷⁸ Children and young people also co-authored a Learning Report,¹⁷⁹ which shared app findings and children's responses to adult practitioners and policy-makers, and an academic article¹⁸⁰ that outlined the process and methodology of online-based intergenerational participatory research for further potential replications.

During the children's consultation process on GC26, a group of GC26 child advisors were selected to work in partnership with supporting adults and the Committee on the Rights of the Child. The child advisors meet on a monthly basis online, and are supported by adult facilitators. Due to significant time zone differences, meetings are held twice in one day. The group also created video summaries at the end of each meeting for the other half of the group to support inclusion and relationship-building. To accommodate the variety of languages spoken across the child advisors and ensure vernacular access, the online meetings had live interpretation. The child advisory group key tasks include planning and designing tools, social media posts, blogs, and activities. There was also space for child advisors to share news, try out ideas, collaborate on activities outside of the GC process and support one another with challenges related to being child rights and climate activists. The child advisors have played a key role in shaping the consultations with other children globally by co-designing the questions, methodology, a toolkit and

176 See Terre des hommes website available at <https://www.tdh.org/en>.

177 Lee, Wright *et al.* (n 79), at p. 4.

178 *Ibid.*

179 LM Lee *et al.*, 'Children's Participation (in partnership with #COVIDUnder19): Adults' Perceptions of Child Participation and Young People's Views on Responses during COVID-19. Findings from the International COVID 4P Log Project and the #CovidUnder19 Initiative' (2022) 8 *Inspiring Children's Futures Learning Report Series* (University of Strathclyde, Glasgow).

180 Lee, Wright *et al.* (n 79).

supporting analysis. The children also set up their own social media channels for peer-to-peer engagement to share news about the development of GC26 with a wider audience. This has contributed to the overwhelming number of children who have participated in the two phases of consultations: over 15,000 children and young people have participated directly in the process. In their own communities, countries and regions, the child advisors have each been involved in regional workshops consultations for GC26, sometimes as participants, sometimes as facilitators. The GC26 child advisory group helps bridge the gap between the Committee at the UN level and children and young people around the world, creating a feedback loop and accountability mechanisms for the development of a General Comment which is responsive to children's rights and voices around the world. Further opportunities for improvement include strengthening opportunities for inclusion and participation in a variety of forms and platforms. Although efforts were in place to incorporate the contribution to the General Comment questionnaire into school curricula, the reach was limited, and led on an *ad hoc* basis by child rights and voluntary organisations. Finally, further attention is necessary to ensure widespread translations of consultations with children, including and beyond GC26, are child-friendly, age-appropriate and available to all, with a view to strengthening opportunities for children with limited previous knowledge of the issues at hand.

Reflecting on the three cases of child-led and child-inclusive engagements above, there are some common threads that should be considered for future children's participation in ocean fora, and speak to children's right to be heard in ocean decision-making. Specifically, decision-making bodies and processes should ensure children's participation does not remain tokenistic and rather builds on children-led initiatives for environmental justice and participation. This means emphasising access to information in different languages and modalities, roundtable discussion formats instead of information sessions, involving adults skilled in multimodal and creative engagements with children, and ensuring that the process is built on two-way communication where the aim is to learn from each other and develop best practices according to different contexts and lived experiences.

These provisions specifically speak to Lundy's concepts of space, voice, audience and influence and to States obligations under the UNCRC to uphold children's right to be heard, the right to freedom of expression, and their right to education in relation to the development of respect for the natural environment.¹⁸¹ In addition, the good practice outlined above illustrates how participatory processes are scalable up to global participatory movements,

¹⁸¹ UNCRC (n 13), Article 29(1)(e).

such as in the children's consultation process for GC26, and down to local communities, such as those in the Algoa Bay project. Alongside these considerations, attention should be paid to ensuring children are not made solely accountable for the future of the ocean and decision-making fora and processes. Instead, States should carefully consider the magnitude of obligations that are seen to be placed on children, ensuring that children have equitable opportunities to engage, rather than placing the burden of the future on their shoulders. In addition, States should learn from existing projects and programmes that have proven successful, and apply principles of fun and trust, and use play-, arts-, strength-based participatory approaches. These provisions relate to Lundy's concepts of space and voice. Finally, States should genuinely ensure the consideration and protection of children's human rights in international ocean fora, which speak to Lundy's considerations of voice and influence. Accordingly, States should measure the impact and outcomes of the above provisions by collecting disaggregated data on the impacts on children's rights of ocean-related decisions, integrating children's human rights standards in impact assessments and review processes, as well as in budget allocation and in the provisions of training and capacity-building to develop adult allies to children environmental human rights defenders. All these actions should not come at the expense of children-led participation and programmes, but rather be conceived as opportunities for mutual learning and intergenerational dialogue. This is particularly crucial in ocean governance processes, as we have a unique opportunity to learn from what has previously worked, and what has not, in land-based environmental and climate change research and decision-making.

Conclusion: A Framework for Facilitating Children's Participation in Ocean Decision-making

States that are members of international ocean fora and parties to the UNCRC hold responsibilities for facilitating the participation of children in the context of international ocean governance processes, particularly at the ocean-climate nexus. They must use existing (or create new) institutional frameworks to support the realisation of children's right to be heard and their human rights that are dependent on a healthy ocean, healthy marine ecosystems and a safe climate.

To fulfil the international obligations under the UNCRC in the context of the law of the sea, States must first be aware that, based on the Lundy Model, meaningful and effective participation of children is a process, not an

individual, one-off or transactional event.¹⁸² And so, there must be a shift in the paradigm from children's invisibility in processes, to children's participation in adult-driven decision-making, and to building meaningful partnerships with children in ocean governance processes.¹⁸³ Properly addressing both the complexity of ocean governance processes and the breadth of harm facing the marine environment require engaging with the children's autonomy principle to ensure adult-driven action appropriately balances children's right to be heard and States' obligations to do what is in the best interests of children and those to come in future generations. A careful approach needs to be put in place to prioritise children's *opportunities* to participate, in contrast to children's *responsibility* to participate. This is necessary to avoid placing the burden of the current climate crisis facing our ocean and our planet on the shoulders of children, thus increasing eco-anxiety and eco-grief, which is a global threat in itself to children's health.¹⁸⁴

A framework for consideration to implement these priorities is presented below. It offers a contextualisation of the Lundy Model which considers children's participation in ocean decision-making based on obligations from the UNCRC, draft General Comment 26 and the interpretative work of Knox and others.

A Framework for Facilitating Children's Participation in International Ocean Decision-making

Space: Children Must Be Given Safe, Inclusive Opportunities to Form and Express Views about the Ocean

- Children's views about the ocean must be actively sought out and shared in a safe place where children feel free to express their views.
- Consideration must be given to ensure all children's voices are heard in ocean decision-making, particularly those facing adversity, in a manner which considers cultural sensitivity, and the contribution of culture to sustainable development.

¹⁸² R Sinclair, 'Participation in practice: Making it meaningful, effective and sustainable' (2004) 18(2) *Children & Society* 106–118.

¹⁸³ J Davidson, K Hope, and S Shields, 'Justice for Children Policy Brief: Intergenerational Partnership through an Intersectional Lens', *Justice for Children Policy Brief Series* (University of Strathclyde, Glasgow, unpublished manuscript).

¹⁸⁴ UNICEF, *The Climate Crisis is a Child's Rights Crisis: Introducing the Children's Climate Risk Index* (UNICEF, New York, 2021) 36, available at <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>.

- Children must be provided access to information and inclusive opportunities to share views in their own languages and dialects, and through a variety of modes (e.g., writing, storytelling, drawing, conversation).
- Participation should be iterative and cyclical, founded on principles which may include fun, trust and relationship-building, and eradication of inter-generational power dynamics.

Voice: Careful Consideration Must Be Given to Facilitation in Order for Children to Express Their Views about the Ocean

- Children must be given information about the ocean in a holistic manner that is everyone-friendly and age-appropriate, so that they are able to share informed views, highlighting the importance of vernacular access and equity of participation.
- Children must be aware that they are expressing their views in a voluntary capacity and can stop sharing at any time.
- Children must also be presented with a range of options to choose from about how to express their views about the ocean, including opportunities to engage through a variety of means, including art- and play-based methodologies and strength-based approaches.
- To avoid paternalistic approaches, children should also be offered opportunities to engage in children-led initiatives and on children-led platforms.

Audience: Adult Facilitators Must Listen and Give Due Weight to the Views of Children on the Ocean

- Processes for communicating children's views must be transparent, inclusive and informed by training on children's rights.
- Children must be aware of whom their views are/will be communicated to, and if/what power that person or entity has to effect change in ocean governance processes.
- Where possible, children should be provided the opportunity to voice their concerns through appointed representatives that will promote their interests during international and national fora.

Influence: Children's Views on Ocean Governance Processes Must Be Acted Upon, as Appropriate

- Children's views on the ocean must be considered by change-makers, including policy-makers and researchers, through peer-to-peer engagement with child environmental and human rights defenders. Change-makers must work together with child defenders across different languages and

- regions to influence decisions at different levels (from local advocacy to global movements).
- Processes must be in place to ensure that children's views have been taken seriously by decision-makers.
 - Finally, children must be involved in feedback processes to explain which decisions are made on the ocean, including the reasons for those decisions and how and where their views were considered in emerging policies, practices and programmes.

In implementing this framework in international ocean fora, States could draw on the commitment already made by heads of UN entities in 2021 to promote children's rights, alongside the rights of young people and future generations, to climate justice and a healthy environment.¹⁸⁵ Those commitments include increasing support to Member States, support for scaling up of children's meaningful participation in all stages of UN policies and decision-making (including in the implementation of the Paris Agreement and the 2030 Agenda and the Sustainable Development Goals), and increasing opportunities for engagement through targeted, flexible and agile funding for children's capacity development and leadership.¹⁸⁶ In addition, UN officers are to support directly children representation in international ocean fora through their commitment to meaningfully partner with a range of children with diverse lived experience at local, national and global levels; protect and promote children's civic space, expanding avenues for children's meaningful participation in decision-making on climate change; enable and foster consistency and longevity for youth-led efforts on human rights and environmental processes; and uphold all children's human rights with respect to the environment and climate justice.¹⁸⁷ UN entities should therefore prioritise resources and skills to ensure collaboration with children among UN staff supporting international ocean fora.

Heralding a more inclusive and arguably human rights-based era in the law of the sea, the BBNJ Agreement can provide an unprecedented opportunity for children-led groups and children's rights advocacy organisations to participate in international ocean decision-making processes. The Framework for Children's Participation in Ocean Decision-Making presented above could

185 United Nations, 'Step up!: A joint commitment by Heads of United Nations Entities' (United Nations, 2021) available at <https://www.sparkblue.org/system/files/2021-06/210615%20STEP%20UP%20-%20Joint%20Commitment%20oby%20Heads%20of%20UN%20Entities.pdf>.

186 *Ibid.*, at p. 4.

187 *Ibid.*

thus inspire the creation of the BBNJ clearing-house mechanism to facilitate access for BBNJ decision-makers to information on potential and actual impacts on children's human rights. In addition, the various processes for consultation foreseen under the BBNJ Agreement could draw on the model or lessons developed in the implementation of the GC26.¹⁸⁸ In addition, the BBNJ COP and its Scientific and Technical Body could establish a group of child advisors to ensure that their interests and views contribute to the shaping of more transformative approaches to the protection of the marine environment, particularly at the ocean-climate nexus.

The incorporation of wider children's participatory research processes that uphold art- and play-based methodologies and principles of fun and relationship-building could improve the accessibility of ocean science and challenge vested interests, power asymmetries and tendencies for short-term decision-making that prevents transformative change.¹⁸⁹ The protection of children's right to be heard can contribute to 'empower[ing] those whose interests are currently not being met and represent transformative sustainability values', recognize different knowledge systems and include under-represented knowledge in decision-making, which are all considered elements of transformative governance.¹⁹⁰ Ultimately, the protection of children's right to be heard can encourage imagination, which is increasingly considered necessary to develop a deeper comprehension of the decisions we need to make towards a better future for the planet and for people.¹⁹¹

188 See BBNJ Agreement (n 17), Articles 48, 51.

189 IPBES (n 23), at p. 17.

190 IJ Visseren-Hamakers and MTJ Kok, 'The urgency of transforming biodiversity governance' in Visseren-Hamakers and Kok (eds) (n 23), 3–21, at p. 12.

191 C Wyborn *et al.*, 'Imagining transformative biodiversity futures' (2020) 3 *Nature Sustainability* 670–672.