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The Implications Of COP26 For Legal Practitioners

By **Caroline May and Charles Winch** (November 30, 2021, 4:28 PM EST)

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The 2021 United Nations Climate Change Conference, also known as COP26, recently concluded in Glasgow, Scotland. While mainstream media reporting may have been dominated by Greta Thunberg leading street protests, behind the scenes, negotiators from the world's governments debated and, in places, agreed on a path to limiting the progression of climate change.

Some post-COP26 commentary has focused on where the conference fell short, but it is important to appreciate the scale of what was achieved. COP26 provided a great impetus to the climate and energy transitions, and resulted in many important agreements and pledges, most of which would have been inconceivable just a few years ago.

Alongside the formal U.N. event, a bustling program of fringe events brought together all aspects of civil society and the business world to share experiences and advocate for solutions. Among them were seasoned climate activists, nongovernmental organizations, think tanks, industry bodies, energy companies, project developers, lenders and, yes, lawyers.

U.N. climate conferences generate a vast number of new commitments to legal change, regulatory reform, policy objectives and investment opportunities. And we as lawyers are uniquely well-placed to help our clients navigate what may, from the outside, seem like an imposing wall of bold rhetoric mixed with complex regulatory jargon.

The COP in COP26 stands for Conference of the Parties, the most recent being the 26th to be held. COPs are attended by countries that are signatories to the U.N. Framework Convention on Climate Change, which came into force in 1994.

The conference travels the world each year — except in 2020, when the conference was postponed due to the COVID-19 pandemic — and are hosted under a "presidency," a host nation that organizes the planning, logistics and program for the conference. COP26 was hosted under the presidency of the U.K., in conjunction with Italy.

COP26 was formally attended by more than 30,000 delegates, but many more were present in Glasgow in an unofficial capacity, either attending the vast array of fringe events or taking part in the mass public street protests, which Police Scotland estimate at having been attended by more than 100,000 at one point.

It is clear to those who attended that the climate transition is no longer spearheaded by academics, activists and early adopters. COP26 participants included the CEOs of the largest mining, oil, energy and transport companies, along with some of the biggest asset managers, insurers, pension funds, banks, private equity and hedge funds in the world. Funds are now flowing to support the climate transition — and this movement of capital is unstoppable.

We have attended numerous COPs before, so it was impressive to see firsthand this year's big uptick in attendance and commitment from some of the largest global corporations, sending their CEOs to engage in this debate and work collaboratively with others. It was an important event that, while tiring, provided great networking and collaboration opportunities across many industry sectors to drive this agenda forward.

Indeed, it seems that climate mitigation and emission reduction targets are no longer only just the responsibility of politicians alone. The real leadership now is coming from industry and commerce and the private sector as a whole, including banks and insurers and their professional advisors. That leadership is only going to gather pace.

COP26 Highlights for the Legal Profession

Some headline announcements from COP26 that are of particular relevance to the legal profession include the following.

Glasgow Climate Pact

The Glasgow Climate Pact, the centerpiece agreement, is undoubtedly the most significant global climate agreement to date, reaffirming and surpassing the Paris Agreement. There is, for the first time, an explicit reference to the end of fossil fuel usage, although the reference to coal was downgraded from a "phase-out" to a "phase-down" at the request of India and China.

There is also an agreement to end "inefficient fossil fuel subsidies," albeit with a timeline for such. The much publicized $100 billion a year in climate finance was formally missed, however, which the agreement noted with "deep regret," but the goal was reaffirmed to reach and match that amount each year annually through 2025.

The Glasgow Climate Pact will now stand alongside the Kyoto Protocol and the Paris Climate Agreement as the principal global agreements to tackle climate change, and will be used as the justification for many future regulatory and legal changes to meet its objectives.

Carbon Trading

The implementation of certain elements of the Paris Agreement was finally concluded, with agreement reached on mechanisms regarding international carbon trading.

The new rule book provides clear accounting guidance for emissions trades between nations, as well as proving a new crediting mechanism to broaden access to those wanting to attract further clean investment. The voluntary carbon trading market is already growing quickly due to corporate demand, as businesses seek to use carbon credits as part of their strategy to reach net-zero emissions.

The agreement on Article 6 of the Paris Agreement can be expected to further boost that growth, and allow private sector investment to mobilize to scale up the undertaking of nature-based solutions, with the associated co-benefits that these types of projects can generate — including addressing biodiversity loss, indigenous engagement and regional employment.

Glasgow Financial Alliance for Net Zero

The Glasgow Financial Alliance for Net Zero, an alliance of financial institutions committed to meeting the targets of the Paris Agreement, was launched with the support of the former governor of the Bank of England, Mark Carney.

Its 450 members represent an astonishing 40% of the world's financial assets under management. They will all now work toward meeting global net-zero by 2050.

International Sustainability Standards Board

The International Sustainability Standards Board was launched to establish a comprehensive baseline sustainability reporting and disclosure standard to assist in the delivery of "high quality, transparent, reliable and comparable reporting by companies on climate and other environmental, social and governance (ESG) matters."

This should be seen as part of a trend toward more open and quantifiable measures of environmental impact — and an indication of what soon may be implemented at a national level in law, where ESG reporting will be considered as fundamental and important and financial reporting.

Climate Disclosure Standard

Alongside the International Sustainability Standards Board, a prototype standard covering climate-related disclosures was also launched.

This prototype, while not legally binding, will create a set of standards that all businesses will need to start to understand and consider. In particular, there is a set of very granular expectations that companies will need to take into account.

Greenwashing

There was an announcement of a new high-level expert group to police net-zero commitments, and call out "greenwashing."

Methane Emissions Reduction Action Plan

A Methane Emissions Reduction Action Plan was launched, which signed up 150 countries to reduce their methane gas emissions by 30% by 2030.

Oil and gas facility operators should take note. They will be well within scope of the crackdown, as leakages make a significant contribution.

Resilience Initiatives

A U.N. Race to Resilience program was launched, to develop a new framework to get cities, regions, businesses and investors to advance approaches to resiliency.

A Global Resilience Index was also introduced, to improve how investors measure the resiliency of nations, corporations and their respective supply chains.

Where Lawyers Fit In

The climate transition is about more than clean energy. It is about the decarbonization of all businesses and indeed the public sector too, across all industry sectors and every corner of the globe.

So where do lawyers fit in? On the legal "supply side," the sheer volume of new regulations, laws, government policies and industry best practice presents both a massive opportunity and a risk for lawyers.

The evolution of the legal landscape will present a plentiful flow of advisory and compliance work. But so, too, will the accelerating pace of this change risk catching us out.

Meanwhile, on the "demand side," the growing pipeline of new renewable energy and green infrastructure projects coming will keep construction, engineering, finance, environmental, real estate, planning and corporate lawyers busy.

Our key takeaway from COP26 was this: There are now sufficient funding options available for clean energy and carbon reduction projects, but just not enough projects coming to market at the right speed. Clear national policy and regulatory frameworks will therefore be required to de-risk projects, in order to provide investor certainty.

The head of the Confederation of British Industry aptly said that there has now been a boardroom tipping point, but we now need a supply chain tipping point and a consumer tipping point to enable a whole-system transition. A similar situation will surely be unfolding in the U.S.

How does this agenda affect lawyers and legal practice more generally? Increasingly, law firms are coming under pressure from stakeholders and clients who question and challenge their advisers' sustainability credentials, as they review their own supply chains. For bids, pitches and panel appointments, law firms are being interviewed regarding their sustainability management practices, in isolation from their legal advisory skills.

Banks and lenders already need to be able to report on their lending criteria. While law firms are not carbon-intensive operations, carbon footprint reporting will become a yardstick by which to measure law firm performance as well.

For larger law firms in jurisdictions like the U.K., there will soon be statutory requirements to directly report net-zero strategies. It will likely only be a matter of time until more jurisdictions follow.

Collating data and reporting carbon footprints for larger organizations with multiple global offices will present quite a challenge. It will require assistance from technical consultants to evaluate the data and report on changes needed to achieve net-zero within the chosen target timeframe.

Employees are also demanding action from their employers, as Generation Z want to work for environmentally savvy organizations, and want their employers to explain and implement their carbon journeys. This movement is more prevalent in the U.K. and Europe at the moment, but the U.S. can expect more of this soon. With hot competition for the best legal talent, an environmentally conscious law firm is the one that is likely to attract and retain the best young lawyers.

This drive to change presents many opportunities, and risks, for lawyers. There is also an increasing debate about ethical issues. Should lawyers become climate change evangelists or lobbyists, or should they advocate best practice and retain a purely advisory role? Should lawyers refuse to advise fossil fuel companies, or should they work with them on the net-zero journey while others accuse them of greenwashing?

These ethical issues are being debated by professional bodies, including the International Bar Association, the American Bar Association and the Law Society of England and Wales. It is likely that professional conduct rules may need to be adapted to reflect the changes being brought about by this whole agenda.

COP26 provided an international showcase for innovation and collaboration as well as negotiation. All lawyers and law firms need to engage with climate change — it affects us all. We must rise to the occasion. We are uniquely placed to do so, and this is both an opportunity and a challenge that we cannot, as a profession, afford to miss.

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