
**Climate Law and Governance Day 2017
Advancing Law & Governance
Contributions to Climate Action under
the Paris Agreement**



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About the Climate Law and Governance Initiative (CLGI)

The CLGI supports and generates knowledge sharing activities, an active community of practice, and specialised climate law and governance capacity-building events and courses alongside the annual Conferences of the Parties to the United Nations Framework Convention on Climate Change. It coordinates the work of a broad climate action coalition of international organizations, academic institutions, leading law associations and law firms, courts, and tribunals.

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FOREWORD

It was an honour and a pleasure to co-chair the third annual Climate Law and Governance Day 2017, in what has become a fascinating and engaging international forum since its formal launch at the Sorbonne Law School alongside UNFCCC COP21 in Paris in 2015. This event builds on a series of partnership symposia and roundtables that began at COP11 in Montreal in 2005. It is marvelous to be part of this initiative, and to witness its growth, as we continue to advance awareness, open debate, research, capacity development and sharing of law and governance solutions to the challenges and opportunities of climate change at all levels. It has been a special pleasure to support the next vibrant generation of climate change scholars, law and governance leaders and professionals through our student engagement.

We celebrated the launch of several outstanding new international publications, projects and processes at Climate Law and Governance Day (CLGD) 2017 and we look forward to seeing these endeavors advance, making their own unique contributions. With over 270 jurists, professors, legal researchers, international officers, parliamentarians, delegates, professionals, and students joining us for the 2017 event, we especially look forward to seeing the results of new research dialogues, debates and partnerships formed during the day.

Climate Law and Governance Day is organized by the partners of the Climate Law and Governance Initiative (CLGI), including co-hosts such as Centre for International Governance Innovation (CIGI) and GODAN from our community of thought leaders, and the European Bank for Reconstruction and Development (EBRD) from the international financial community. As Co-Chairs of the Day, from the University of Cambridge and the Centre for International Sustainable Development Law (CISDL), the University of Bonn, and the University of the South Pacific, we are immensely grateful to the wonderful and generous partners, the wise and helpful advisors and members of Programme Committee, the hard-working coordinators and student volunteers who make this event possible, among other leading partners. We would also like to specifically acknowledge the excellent advice and efforts of CISDL Climate Change Lead Counsel Ayman Cherkaoui, CIGI's ILRP Director, Oonagh Fitzgerald, the GODAN Executive

Director, André Laperrière, and EBRD General Counsel Marie-Anne Birkett and their Principal Counsel, Vesselina Haralampieva.

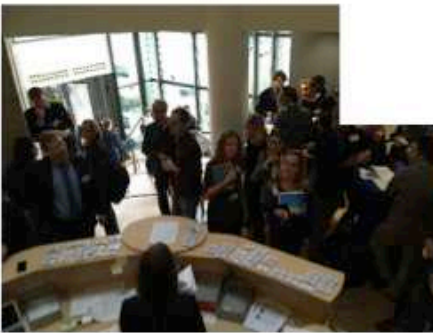
We must also specially thank our founding Secretariat Coordinators, Alex Scott and Mirjam Reiner, for all of their outstanding efforts to make this event, and the Climate Law and Governance Initiative itself, a success as they move on to new opportunities in 2018.

2018 will be another important year for Climate Change Law and Governance as we move towards the finalization of the Paris Agreement “Rule-Book”. Non-Party Stakeholders remain committed to Climate Change Action both in the formal process and in parallel to it, supporting collective and individual progress through mobilization, research and concrete action. The interconnections and interlinkages between the climate change agenda and the broader sustainable development agenda have never been as important as they are today. As key instruments, National Adaptation Plans, the Nationally Determined Contributions, and Long Term Emission Strategies can be catalysts to positive developments in law and governance for the climate as well as strategic levers for sustainable development globally.

Our Legal and Governance Community is instrumental in the pursuit of the Paris Agreement objectives. We look forward to engaging with you in the build up to and during our events alongside the UNFCCC processes throughout this year. We invite all partners and participants to join us for Climate Law and Governance Day 2018 alongside COP24 in Katowice, Poland this December.



Professor Marie-Claire Cordonier Segger, Executive Secretary, Climate Law & Governance Initiative & Senior Director, Centre for International Sustainable Development Law (CISDL), for the Co-Chairs of CLGD 2017, including Professor Wolfgang Durner of the University of Bonn and Professor Wesley Morgan of the University of the South Pacific.



CLGD 2017





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Centre for International
Governance Innovation



The CLGI 2017 Core Partners deeply appreciate for the endorsement of the UNFCCC COP22 and COP23 Presidencies



With special thanks to our CLGI international organisation partners:



As well as thanks to our session hosts and co-hosts:



And with grateful recognition of our law association and law firm partners



CLIMATE LAW AND GOVERNANCE DAY 2017

ADVANCING LAW & GOVERNANCE CONTRIBUTIONS TO CLIMATE ACTION UNDER THE PARIS AGREEMENT

Legal and institutional transformations are needed to support global and local efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, to adapt to the adverse impacts of climate change and to foster climate resilience and low greenhouse gas emissions development, and to make finance flows consistent with a pathway towards such development.

Indeed, over 160 countries have stressed the importance of legal and institutional reforms in their nationally determined contributions (NDCs) submitted to deliver on the Paris Agreement, with more than 50 of these countries specifically stressing the need for climate legal and institutional capacity-building to be able to achieve their objectives. COP23 engaged many leading climate law and governance experts of the world, presenting a unique opportunity to share ideas, debate trends and advances, and build legal momentum for climate action.

In response to this opportunity, the Climate Law and Governance Initiative, a coalition of world-leading think tanks, universities, international organisations, civil society institutions and law firms and associations, hosted the third annual Climate Law and Governance Day (CLGD). CLGD 2017 welcomed over 270 jurists, legal researchers, IGO officers, parliamentarians, delegates, legal professionals, students, and professors to the University of Bonn's University Forum in Bonn opposite the World Conference Centre COP23 venue. Throughout the Day, discussions addressed research and capacity building obstacles and opportunities, and ways to address the legal and institutional challenges of climate change.

The Day featured the knowledge of more than 100 expert speakers, catalysing discussions over fourteen plenary, roundtable and workshop sessions. The event built on key preparatory events during the year, especially *Islands Rising to the Climate Challenge: The 2017 Pacific Climate Law and Governance Symposium* on the 20th of October 2017 at the University of the South Pacific in Suva, Fiji, following Fiji's Pre-COP23 Events.

The Day was co-chaired by Prof. Dr. Marie-Claire Cordonier Segger of CISDL, the University of Cambridge CEERG and the University of Waterloo, Prof. Dr. Wolfgang Durner of University of Bonn, and Prof. Dr. Wesley Morgan of the University of the South Pacific.

Discussions opened with special welcomes from Dr. Oonagh Fitzgerald, ILRP Director of CIGI, on behalf of the co-hosting partners, Dr Anne-Marie Birkett, General Counsel of the EBRD, on behalf of international financial institutions, and Ms Hafida Lahiouel, Director, Legal Affairs Programme from the UNFCCC Secretariat as partners in the Day, among others. All participants benefited from an outstanding and courageous keynote address from The Hon Aiyaz Sayed-Khaiyum, Attorney-General & Minister Responsible for Climate Change of Fiji, as well as brilliant plenary speeches from leading climate law practitioners Dr. Martijn Wilder (Senior Partner, Baker & McKenzie LLP) and Dr. Dörte Fouquet (Senior Counsel, BBH).

Senior legal perspectives helped to open the day with excellent plenary speeches from Ms. Marie-Anne Birken (General Counsel, EBRD), Dr. Amal Lee Amin (Climate Change Division Chief, IDB) and Mr. Raul Herrera (General Counsel, Green Climate Fund), who explained the scope and scale of the challenge, and offered ideas for legal solutions to set the tone for the Day.

The sessions during the Day were guided by four main themes agreed in the 2017 Climate Law and Governance Roundtable in May during the 2017 Bonn Climate Conference of the UNFCCC. The key findings of these

discussions are summarised over the remainder of this report. In accordance with the guiding themes, participants explored pressing questions including:

1. **Innovating to achieve NDCs under the Paris Agreement:** What are the principal legal challenges and innovations for climate mitigation and adaptation on national and other levels?
2. **Operationalizing the Paris Agreement:** How are Paris Agreement Implementation Guidelines discussions advancing, how does the treaty and other key accords deliver on the world’s climate ambition?
3. **Advancing Climate Resilience and Climate Justice:** How can law and governance contribute to climate resilience, integrating human rights and addressing loss and damage, migration and other challenges?
4. **Enabling Climate Finance and Engaging the Private Sector:** How can law and governance enable a greener economy, scale up climate finance and investment, and promote low-carbon trade and investment?

CLGD 2017 brought together academic, legal practitioner, policy making, government, and judicial audiences into a unique forum for dialogue and knowledge exchange to advance debates and the sharing of solutions for the most pressing climate law and governance issues we face globally. The Day launched many new partnerships for research and technical assistance, co-creating new content and online legal materials for the Climate Law and Governance Initiative knowledge hub. Students of law and governance from a diversity of regions were engaged to foster the next generation of climate lawyers and policymakers.

This outcome report is shared with the Parties to the UNFCCC to inform the 2018 Facilitative Dialogue and with the uniquely diverse audience that CLGD brings together in order to support the advancement of law and governance reforms to implements the Paris Agreement and NDCs.

INNOVATING TO ACHIEVE NDCS UNDER THE PARIS AGREEMENT

Four sessions co-hosted by nine leading organisations presented debate and discussion on the question “what are the principal legal challenges and innovations for climate mitigation and adaptation on national and other levels?”

Implementing the Paris Agreement Sub-Nationally - Legal Barriers & Instruments for Improving Multi-Level Climate Governance

Hosted by: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH & World Resources Institute (WRI)

Chairs: Dr. Mike Falke (Head Governance and Human Rights Section, GIZ) & Dr. Wee Kean Fong (Senior Associate, Climate Program, WRI China)

Speakers: Mr. Franz-B. Marré (Head of Division for Water, Urban Development and Mobility at German Federal Ministry for Economic Cooperation and Development); Ms. Emily Castro (Senior Professional for Mexico - Vertically Integrated Climate Protection Project, GIZ) & Mr. Marco Kusumawijaya (RCUS, Jakarta)

Intervenors: Mr. Felix Döhler (Policy Advisor, Urban Development at GIZ); Ms. Johanna Strohecker (Advisor, Sector Project Governance at GIZ) & Mr. Marcus Zamaitat (Advisor, Sector Project Anti-Corruption and Integrity at GIZ)

This session discussed subnational efforts to implement the Paris Agreement. At the outset of the discussions, the speakers noted that most action on climate change will take place at the subnational level. With cities making up around 70% of anthropological greenhouse gas emissions it is increasingly clear that action requires localization. The New Urban Agenda for 2030 was identified as a potential subnational framework for action. One of its important features is its reframing of the approach to climate action by promoting the role of cities in sustainable development. This reframing is crucial: new perspectives on climate change are required and partnerships between subnational actors are needed. Successful strategies will require a multilevel approach, from the national level down

to the local level – by including citizens and local stakeholders. This raises the question what frameworks and support subnational entities need to implement the Paris Agreement.

This session separated into three discussion groups to explore this, focused on (1) allocation of competencies, (2) access to climate finance and (3) climate change and the "leave no one behind" concept. The rapporteur attended the first group, discussing allocation of competencies.

Discussion in group number 1 began with recognition of the increasing momentum on subnational action. One of the guiding questions was how can cities – who are often more ambitious than their national governments – influence the policies and ambitions of higher levels of government? This session was guided by the question: are local climate policy mandates sufficient and appropriate to respond to the need for low-carbon, resilient infrastructure and services? Offering a US perspective, participants noted the need for land-use jurisdiction as well as scientific expertise from state and national government to cities and regions that often don't have those resources.

Participants pointed to the need for cities to have access to independent decision-making on funding and accord more authority to community level. Local leaders from several participants' regions lacked understanding of the air pollution and health problems inherent in the climate change challenge – major local issues. As such, the search for international finance is difficult to communicate: the local manifestation of an international issue highlights the disconnect between those who are most vulnerable and those who contribute the most to climate change. Key challenges that localities face when trying to access financing for addressing climate change include the lack of financial knowledge capacity, the fact that some local governments cannot borrow money without permission from higher levels of government, the conditions set on local governments to attract private investment into public private partnerships and the pervasiveness of fraud and corruption at all levels of government. Solutions put forth include the standardization of project development standards and preparing local readiness and the enactment of legal mandates for subnational actors and municipalities.

Decentralization of functions was identified as a major issue across jurisdictions limiting the capacity of cities to implement the Paris Agreement at a subnational level. Groups discussed possible solutions to accelerate subnational action on climate change mitigation and adaptation. These included building transnational and transregional coalitions, reinforcing institutional capacity to ensure cities can pursue regulations and build awareness among the population, as well as providing crucial public services. It is often only with public pressure that municipal and regional officeholders start acting on climate change. In order to create a source of scientific knowledge for cities, attendees promoted the connection of universities and research communities. Further, discussion highlighted the potential that legal advice could have by connecting bar associations and legal organizations within countries as well as digital tools (e.g. for municipalities to know their climate-related policy mandate) and protocols to access legal advice for vulnerable communities.

The second discussion group addressed the group's topic by identifying the main challenges for access to finance for subnational climate action. Following a presentation of the legislative and regulatory competences in place in Mexico, Emily Castro and Marcus Zamaitat surveyed participants' experiences from their own national contexts.

Firstly, in several individual examples participants highlighted the difficulties for cities and local governments in developing projects suitable for climate finance, especially with regard to multilateral funding. To sustainably plan, manage and finance climate resilient urban development and mitigation actions, there remains a need to strengthen the institutions underpinning its municipal system. Secondly, although local governments are asked whether to implement the climate change actions directly or to take decision-making in line with the statutory requirements, climate finance and implementation are hampered by the requirement of state and federal approval. Finally, participants highlighted a crucial cross-cutting issue: the prevalence, dynamics and impacts of corruption in different contexts of multi-level-governance (political corruption and new untested/uncoordinated channels) and the effects on decentralization.

The group recommended instruments or levels of support fit to address the identified challenges, in particular: (1) to build capacities to develop financial modelling and to address the lack of expert knowledge to develop technical projects; (2) training on how to best adhere with the requirements and standards set by financial funding institutions; (3) the creation of law at national level that prioritizes climate-related projects and provisions that either give more authority to local government or fast track procedures; and (4) to promote government

accountability and transparency, e.g. by creating independent bodies monitoring the implementation of measures and the way public administration uses public resources.

The lively discussion, though none of the topics was explored in greater depth, revealed that climate law solutions need to be accompanied with effective solutions for good governance, e.g. support for accountability mechanisms, taking into account the particular challenges of multi-level-governance.

Discussion in the third group (“leave no one behind”) evolved around the fact that different development needs are often pitted against each other, in public (and political) discourse. The “unfinished business” of yet having to provide the poorest and most marginalised with proper social security, health services, housing, schools etc. can be a pretext to not prioritise mitigation or adaptation to climate change politically. Poverty alleviation and fulfilment of basic human rights are perceived as being in conflict with climate adaptation. However, at the same time, it is usually the most disadvantaged groups in a population who will suffer the effects of climate change most. Hence, there is an urgent need to reconcile basic development needs of people with climate change adaptation measures. A decisive challenge to confront will be to think of climate change adaptation as an opportunity for human development. In this context, the importance of the rule of law was highlighted (courts and complaints mechanisms must be accessible also for marginalized people to avoid unlawful eviction, etc.).

Other challenges raised in group discussion included the vulnerability of existing mechanisms, such as REDD, to corruption. Money that should be allocated to the poor or those most affected by climate change stays in the hands of the political elite in many political systems. Solutions offered included strengthening accountability mechanisms by including a more diverse range of stakeholders and establishing mechanisms in which marginalized groups can make their voices heard more effectively.

Legal Innovations in Highly Climate Vulnerable Countries for Climate Resilience & Food Security

Hosted by: GoDAN & CISDL

Chairs: Dr. André LaPerrière (GODAN) & Prof. Dr. Margaretha Wewerinke-Singh (Professor, Univ South Pacific)

Speakers: Dr. Dr. Markus Gebring (BIICL / LCIL, Cambridge); Maître Eric Kassongo (Director, Congolese Centre for Sustainable Development / Legal Fellow, CISDL); Maître Hafijul Islam Khan (Executive Director, Centre for Climate Justice - Bangladesh CJC-B); Ms. Kate Donnelly (Legal Researcher, University of the Pacific) & Maître Ayman Cherkaoui (Lead Counsel, CISDL / Special Advisor, CoP22 Presidency)

Intervenors: Prof. Benoit Mayer (Professor, Chinese University of Hong Kong); Prof. Tony La Vina (f/Dean, Ateneo School of Governance); Dr. Michael Brobbey (Senior Officer, GODAN) & Dr. Cosmin Corendea (Senior Research Fellow, EHS-United Nations University)

This plenary session was co-hosted by CISDL and GoDAN. The panelists explored how law and policy reforms can contribute to achieving the objectives of the Paris Agreement and SDG2. In this context, they analysed the link between current climate law and policy trends observed and how these link to food security in highly vulnerable countries. For example, in Bangladesh, the issue of food security has come to the forefront due to sudden onset events and slow onset processes of climate change. The Government of Bangladesh has taken some policy efforts centrally and through sectoral approaches. In particular new policies, legislation and institutional structures were recently adopted in the agriculture sector to promote food security in Bangladesh.

Adopting a forward-looking approach, the diverse set of experts considered legal and governance innovations in areas such as climate-smart agriculture, open data and improved data that can strengthen climate resilience and food security. Case studies of approaches in Bangladesh explored how the Ministry of Agriculture (MoA) has developed a number of policies, plans and legislation including Climate Resilient Crop Variety and Technology Development Policy, a Plan of Action on Disaster and Climate Risk Management in Agriculture, the Medium Term Strategy and Business Plan, 2012-13 to 16-17, the Institute of Research and Training on Applied Nutrition (BIRTAN) Act, 2012. Discussants explored how these instruments have been providing required guidance for developing adaptation technologies and measures. Several adaptation technologies and measures such as floating gardens and stress-tolerant crop varieties have been developed in Bangladesh, and these are now recognized both nationally internationally. They play a vital role in Bangladesh in producing crops in vulnerable situations. However,

discussants suggested that the MoA needs to play a more coordinated and integrated role to reduce the implications of risks associated with climate change and to facilitate crop producers taking into account the climate change impacts and vulnerabilities in the agriculture sector. This role could be supported through collaboration with other relevant public institutions, research organizations, NGOs, CBOs and development partners.

Researchers suggested that relevant policies, plans, legislation and institutions acting in response to climate change and food security issues in Bangladesh were not adequate to deal with climate impacts on Agriculture and food security. One particular project discussed identified gaps and scopes and suggested further comprehensive study to explore the scope for promoting coordinated and integrated policy and institutional approaches to address the issues related to climate change and food security in Bangladesh.

Experts Roundtable: Supporting Paris Agreement Implementation through a Law & Climate Change Toolkit

Hosted by: UNFCCC Secretariat, UN-Environment & Commonwealth Secretariat

Chairs: Mr. Steven Malby (Advisor/Head, Office of Civil & Criminal Justice Reform, Commonwealth Secretariat) & Ms. Maria Socorro Manguiat (Head, National Environmental Law Unit, UN-Environment)

Speakers: Ms. Marianna Bolshakova (Legal officer, Legal Affairs Program of the UN Convention for Climate Change) & Mr. Christoph Schwarte (Executive Director, Legal Response Initiative)

Intervenors: Dr. Fabiano de Andrade Correa (Intl Policy & Investment Advisor, UN FAO) & Ms. Alina Averchenkova (Principal Research Fellow & Lead for Governance & Legislation, Grantham Research Institute on Climate Change & Environment, LSE)

The session “Supporting Paris Agreement Implementation through a Law & Climate Change Toolkit” focused on identifying lessons from the law reform processes countries are presently undertaking or planning for the implementation of the Paris Agreement. It was chaired by Steven Malby from the Commonwealth Secretariat and Maria Socorro Manguiat from UN-Environment. Speakers included Marianna Bolshakova from the Legal Affairs Program of the UN Framework Convention on Climate Change, Pascale Bird from the Legal Response Initiative and Fabiano de Andrade Corroea from the UN Food and Agriculture Organization.

The session hosts presented a Law and Climate Change Toolkit recently co-developed with the LSE Grantham Research Institute for Climate and Environment. The toolkit aims to provide countries with a comprehensive source of methodologies, good practice, and knowledge sharing on climate legislation. Discussion focused on the *areas of action* that are particular priorities for countries and *challenges* as well as *opportunities*. There was consensus amongst the wide audience that such a toolkit could be extremely helpful with further work to fit countries and support them in their law reform processes to implement the Paris Agreement and the NDCs.

Strengthening the Paris Agreement through Innovation in Open Government

Hosted by: World Resources Institute, Transparency International & CIEL

Chair: Ms. Eliza Northrop (Associate, International Climate Initiative, WRI)

Speakers: Ms. Soledad Aguilar (National Director of Climate Change at the Ministry of Environment and Sustainable Development); Mr. Psamson Nzioki (Lead, Climate Governance Integrity Programme, Transparency International); Ms. Magaly Avila (Program Manager, Climate Governance Program, Peru Transparency International); Mr. Andrés Araya Montezuma (Vice President, Costa Rica Integra) & Mr. Sébastien Duyck (Senior Attorney, CIEL)

Intervenors: Mr. Enrique Maurtua Konstantinidis (FARN); Ms. Astrid Aguilar (Proética); Mr. Thomas Vink (Transparency International) & Mr. Brice Boehmer (Transparency International)

This session took the form of an experts’ roundtable. Participants discussed components of the Paris Agreement relating to open government and transparency, focusing on the contributions made by Open Government. They explained the principles and practical applications of Open Government to provide the foundation for greater

adherence to the Paris Agreement. The discussions were based on experiences and case studies from different countries.

Argentina

In Argentina, the new president increased the country's commitments toward reducing emission in its nationally determined contribution (NDC), but was faced with the challenge to establish buy-in from the population and the national bureaucracy. To support the political momentum needed, a new national climate change cabinet was created and involves 14 ministries. This allowed the alignment of objectives of the different ministries with the climate change agenda. The premise behind this cabinet is that the implementation of the NDC requires a clear roadmap. Relevant ministries are responsible for implementing the aspect of the NDC that falls under their purview, while coordinating through the cabinet with partner agencies. Engagement by civil society has been carried out through extended sectoral round tables, with unions, academia, and civil society organizations. Ministries had to work on a specific roadmap to implement their respective objectives, which are publicly available and highly technical. This has resulted in a plan to implement a national law to combat climate change, set to be released and adopted in 2019.

The Open Government initiative approached Argentina, which was receptive to implementing its principles to increase the legitimacy of its national climate plan. It is an excellent method to increase public participation both in terms of sheer numbers, but also durability over time. This is crucial to maintain stability and long-term goals by making it more difficult for a subsequent administration to undo everything that is already in place. The Open Government initiative includes an online platform with national inventory, a risk and vulnerability map and capacity building workshops in the provinces of Argentina. Thus far, three sectoral plans have been completed, representing 93% of Argentina's NDC.

In Peru, a before and after study was undertaken with regards to open government at COP20, which was held in Lima in 2014. The country saw a radical shift in its legislative approach to climate change mitigation and adaptation. Along with the GLOBE international parliamentary group, eight law proposals were submitted for a Peruvian climate change strategy. The legislative proposals were debated and approved by the People's Commission and Decentralization Commission of the Peruvian Parliament. However, the amalgamated legislation was not prioritized and was not debated in the parliament, thereby increasing the vulnerability of Peruvian communities to climate change. Another approval attempt for climate change legislation occurred in 2016-2017, where it was once again approved by the People's Commission and Decentralization Commission of the Peruvian Parliament. This overarching framework law on climate change established the principles, approaches and general regulation to manage public policies on adaptation and mitigation. As of November 2017, it is currently being debated by national legislators. Although Peru has made commitments as part of its NDC, it has not yet adopted a national strategy, calling into question its capacity to meet its objectives. The main demands from civil society include that the national commission on climate change should be considered the main space of climate governance, given its procedural inclusion of public participation. Proetica is one of the organizations involved in the advancement of climate change policy at the national level through its participation in the commission.

A presentation on Costa Rica's advancements in open government and its relation to the country's implementation of its climate change mitigation and adaptation strategy centred on the question of the role of the law to ensure joint creation of climate policy between civil society and government. Costa Rica is a member of the international commission on open government and the country plans to design a national plan for climate change by April 2018. The country has a citizen advisory council of climate change within the framework of open government. This framework includes the opening of public data in the field of climate change. The open government framework is based on three principles: adopting measures to increase transparency, accountability, and participation and collaboration. In advancing transparency, the government will adopt measures with regards to the openness of public data. To ensure accountability, the government seeks to establish mechanisms to hold public institutions and public officials liable for the success of the implementation and relevance of NDCs. With regards to participation and collaboration, the government plans to involve civil society organizations in the design and implementation of NDCs and standards. The session also delved into the challenges encountered when creating a more open framework. Challenges discussed included instances of regime change leading to a deprioritisation of open government approaches, or changes to national development plans that alter procedural advancements in open government. Likewise, there is a risk that executive decrees adopted thus far by previous administrations will be

reversed. In this context, civil society organisations such as Costa Rica Integra can act as a new hinge for the new government to aid continuity of NDC policies, and international organizations.

The panel also discussed a case study from Kenya, where a recent climate change bill was vetoed by the president due to a lack of public participation. Transparency International and the government of Kenya have since worked collaboratively and developed an entirely new bill with more participation of civil society from across the country. The development process of the bill was carried out by a climate change council and included representation from academia, marginalized communities and the private sector. The climate change council is a diverse decision-making body, but it is the top decision-making body in the country on climate change matters. The new act provides that any law that the government engages in with regards to climate change policy must have a component of public consultation. In light of Kenya's open government initiative, information by climate change bodies and councils must be reported publicly. However, the Kenyan case goes beyond tokenized participation. Indeed, participation is not just about having people present: the act provides that all public participation must be meaningful. The climate change council has to submit how they are going to engage stakeholders to achieve a policy's objective when developing NDCs and climate policy. There are limits to the law, however, as effective redress mechanisms are not present for a lack of meaningful participation. Further, the way the council was constituted was not transparent, access to information is restricted to affordability as it must be paid, and the right to information is limited by confidentiality.

Overall, the panel ended on an open question as to whether countries should welcome reports on their approach to stakeholder participation or national governments should develop their own roadmaps on how they engage in public participation and access to information. This fundamentally questions the roles of civil society organizations and the information to be taken into account by the international community regarding NDCs and procedural justice. Transparency International and the Open Government Initiative continue to undertake initiatives in this vein.

ENABLING CLIMATE FINANCE & ENGAGING THE PRIVATE SECTOR

Three sessions hosted by six Climate Law and Governance Initiative partner explored this theme, focussed on the question “how can law and governance enable a greener economy, scale up climate finance and investment, and promote low-carbon trade and investment?”

Transforming Economies for Sustainability - Incentivizing Low-Carbon Investment

Chairs: Dr. Dr. Markus Gebring (Sir Arthur Watts Fellow, BIICL / LCIL Fellow & Law Lecturer, Univ Cambridge) & Prof. Dr. Wolfgang Durner (Univ Bonn)

Keynote Speakers: Ms. Marie-Anne Birken (General Counsel, EBRD); Dr. Amal Lee Amin (Climate Change Division Chief, IDB) & Mr Raul Herrera (General Counsel, Green Climate Fund)

The opening session of CLGD 2017 discussed the role of intergovernmental organisations in mobilising financial resources for mitigation and adaptation projects. It brought together and profiled the work of three flagship global institutions, the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IDB) and the Green Climate Fund (GCF). In conversation, the speakers discussed their experiences on the importance and type of legal and institutional innovations that can enable scaling of investment at regional and global levels, and facilitate bankable projects. They also reflected on the role of regional and international financial institutions in contributing to the transformation of economies to deliver low-carbon investment and achieving the global Sustainable Development Goals. Many of the EBRD's activities are underpinned by the conviction that clear legal institutions are key to ensuring sustainable development. Its services include supporting policy dialogues and providing legal assistance and institutional support with a view to attracting and strengthening financial flows for green investment. The Bank has undertaken analyses of institutional shortcomings and developed insights on legal and institutional reforms that can assist national authorities in implementing the Paris Agreement. Recent work is focused on developing principles and practices for business resilience to climate change in line with SDG 7 and investing in climate mitigation and adaptation action. The IDB is increasingly focusing on sustainable infrastructure

investment. It hopes to increase climate finance investment by 30% or more by 2020. To achieve this goal and support countries in implementing their climate commitments, it has created the NDC Invest platform for countries to access resources to support them in transforming their national commitments into achievable investments plans.

The GCF was established in 2010 within the framework of the UNFCCC to assist developing countries in adaptation and mitigation practices to counter climate change. The fund is working to address the barriers to connecting projects with funds and aiming to build strength in the project pipeline. Addressing the high cost of capital and investment risks are key focuses, along with work with states and other actors to support enabling legislative frameworks.

Fostering Climate Adaptation Investments through Enabling Legal and Governance Mechanisms

Hosted by: European Bank for Reconstruction and Development (EBRD) & CISDL;

Chairs: Ms. Marie-Anne Birken (General Counsel, EBRD) & Dr. Dr. h.c. Christoph Engel (Executive Director, Max Planck Institute for Research on Collective Goods & Chair, Rotterdam) Speakers: Ms. Vesselina Haralampieva (Principal Counsel, EBRD); Dr. Dr. Markus Gebring (BIICL / LCIL, Univ Cambridge); Maître Ayman Cberkaoui (Lead Counsel, CISDL / Special Advisor, CoP22 Presidency)

This session co-hosted by the European Bank for Reconstruction and Development and CISDL explored the potential for the Paris Agreement to support directing global financial flows towards climate resilience. Innovative mechanisms, supported by carefully crafted national laws and institutions, can create a favorable investment environment to support climate adaptation. The session profiled legal reforms and governance initiatives in countries such as Morocco, Kazakhstan and Jordan that promote climate action on adaptation. Morocco, for example, has made ambitious commitments under the Paris Agreement including reforming its constitution to promote sustainable development and climate change mitigation and adaptation. Jordan has made considerable efforts to reduce CO2 emissions and create an investor-friendly climate to attract green investment. The EBRD profiled work that provides legal advice to accelerate investment into climate change mitigation and adaptation policies and makes recommendations on legal reform in conjunction with credit provided for renewable energy financing. Key findings and recommendations of recent studies include the need for high-level government support and the establishment of specialized institutions with a specific mandate. This includes especially effective implementation and coordination powers. Comprehensive reviews and upgrades of existing financial, commercial and sector laws have proven to be a viable *opportunity* to ensure effective implementation, as notable recent renewable energy legislation in Morocco and Jordan suggests. However, there are several *challenges* to these institutional reforms, principally with regards to the lack of inclusion in centralizing functions. To mitigate this challenge, countries could link reforms to NDC priorities, which are developed using an inclusive process.

Global progress in preparing policy for NDC implementation has been slow to date, reinforcing calls for further research analysing NDCs through legal and institutional lenses at the global level. The Paris Agreement seeks to scale up cooperation to identify current adaptation needs, challenges and gaps of developing country parties, based on the Cancun Adaptation Framework. Transparency and MRV of investment in adaptation is a key component of the Agreement. A framework for transparency support requires the inclusion of stakeholder and non-state actor engagement in the Agreement as part of adaptation strategies and thus is an important *area of action*. The Agreement encourages close work with non-party stakeholders to catalyze efforts to strengthen mitigation and adaptation action, including, for instance stocktaking and facilitative dialogue on adaptation climate finance. The session closed by recognizing the need for a review of the scope, adequacy and effectiveness of support provided for adaptation to maximize the precision of the global stocktake.

Governing Disruptive Technologies

Hosted by: CIGI & Greentrack Strategies

Chairs: Dr. Oonagh Fitzgerald (CIGI) & Dr. Dr. hc Christoph Engel (Executive Director, Max Planck Institute for Research on Collective Goods & Chair, Erasmus University of Rotterdam)

Speakers: Dr. Karl Schultz (Higher Ground Foundation); Dr. Julie Maupin (Senior Researcher, CIGI & Max Planck Institute); Mr. Alistair Marke (Editor, Transforming Climate Finance & Green Investment with Blockchains); Dr. Timiebi Aganaba-Jeanty (Researcher, CIGI); Mr. Sven Braden (Deputy Director, LIFE Climate Foundation Liechtenstein) & Mr. Fabian Pause (University of Bonn)

This session discussed disruptive technologies, innovation and their impact on climate change governance. The first technology discussed was blockchain (or distributed ledger technologies), with panelists identifying potentially major implications for transparency, contracts and asset transfers. Leasing or sharing via distributed ledgers decentralises risk. A notable example is the IOTA blockchain whose main features are cryptographic data security and the enabling of machine to machine payments. There are no intermediary deductions through the banking system, which bypasses regulatory authorities, but also allows for further innovative capacity. Offline transactions (partitioning) are also possible.

In the realm of climate change, there are several promising use cases, including Bosch – a washing machine that connects to the micro-grid of a home to maximize energy efficiency. Another example is Volkswagen’s collaboration with blockchain developers to obtain sensors from the vehicles that they built so that emissions data may not be tampered with. Yet another demonstration of the potential of distributed ledger technologies is the Pan-European charging network – Oslo2Rome. It is a network of private charging stations for electric cars, where automatic payments are made using IOTA. This approach requires less extensive public charging, but increases capacity for electric vehicle charging. Yet another, MAM, uses a Bluetooth LE beacon to collect temperature, air humidity and a range of variables to obtain precise and untampered data. This points to the potential of blockchain for data collection for climate conditions to measure vulnerability in real-time and ensure accountability. Blockchain also allows micro-investments (peer to peer) which could contribute, for example, to increasing the share of solar energy in the energy mix of remote communities.

This session aimed to explore the governance support that may be needed to realise the potential of technologies such as block chain. Karl Schultz of the newly created initiative, Adaptation Ledger, described the tripartite dialogue he and two colleagues, Ira Feldman and Tom Baumann launched to bring together specialists in voluntary standards, climate adaptation and regulatory innovation as well as distributed ledger (in the context of climate change adaptation). The dialogue coalesces a complementary set of skills, insights and experiences for a technology-driven governance. On the topic of climate adaptation, panelists noted a great gap between investment needs and finance. The tripartite dialogue explored in this session aims to contribute to standardizing approaches to safeguard transparency, and employ the Higher Ground Foundation’s climate “Vulnerability Reduction Credit” (VRC™) as a metric and unit of value for measuring adaptation results. It has a monitoring and evaluation tool, which is a transparent standard to evaluate a project’s contribution to climate vulnerability. It is archived for future improvements in adaptations, and, of critical importance, is a mechanism to provide support to adaptation projects and leverage private finance.

This collaboration spurred calls for the distributed ledger community and the UNFCCC community to come together to accelerate Paris Agreement implementation, given the numerous possibilities for the application of blockchain technologies, including collection of emissions data, carbon markets and trading, climate finance flows, innovation track, REDD chain (satellite data of forestry for direct payments to forestry projects), transportation track, innovation call-out and many others. Sven Braden described the initiative many members of the panel helped launch and highlighted the COP23 hackathon initiative bridging the blockchain community together with the climate community.

Certain blockchain systems have an additional disruptive feature, such as smart contracts. They automate compliance, which could render them particularly useful for linking renewable energy and carbon accounting among several actors. Panelists discussed the questions such technology may pose for the role of legislation and regulation. Do we still need a central authority if emissions can be tracked? Cryptosecurities remove the need for financial institutions and clearing houses to verify climate finance information through automation. Similarly, climate financing from governments and multilateral institutions could be tracked real-time, ensuring accountability

and compliance. Funds from carbon markets could be tracked to the private sector, providing potentially greater clarity.

The next technological field discussed related to space exploration and satellite reporting. Issues under the Paris Agreement such as inventory and progress reporting, technical expert review and multilateral consideration of progress require reliable data transmission. For instance, there are implementation issues (regarding inventory stock-taking and reporting) in establishing and publishing emissions data. A guiding question in this context is whether there is a built-in bias in national verification procedures. Discussion suggested that with the Paris Agreement softened in article 13 to be respectful of national sovereignty, even on climate matters, government officials and experts have begun to question whether third party analysis of satellite data would increase accuracy.

In 2019, there will be a refinement of inventory stock-taking guidelines. There are several important interactions with international space law relating to the publication and collection of data. For example, space law allows remote sensing without sensed state permission because the concept of state sovereignty does not apply in space. The data owners can share the information derived with whoever they want. Nonetheless, remote sensing principles call for sharing data and information at least with sensed states. However, this only applies to data for improving natural resource management. While CO2 monitoring of plants could be considered good for the environment, data information could serve purposes that would fall under the purview of national security concerns and thus customs for information sharing and publication do not apply. The case is similar with Arctic waters, claimed by numerous countries: monitoring would be good for the environment but could lead to national security issues.

Concluding remarks noted that the legal frameworks require fundamental change to reach climate targets, considering the disruptive technologies discussed during the session. In the legal sphere, a key challenge is how we can, when talking about smart decentralization, give actors rights to produce, consume, store, and sell energy. There are several uncertainties and challenges, including the implementation and enforcement of rights. Resulting systems will also require new frameworks for taxation, grid tariffs, levies, etc.

ADVANCING CLIMATE RESILIENCE AND CLIMATE JUSTICE

Four sessions hosted by ten different organisations discussed this theme and the question “how can law and governance contribute to climate resilience, integrating human rights and addressing loss and damage, migration and other challenges?”

Operationalizing Linkages between Human Rights and Climate Change

Hosted by: Center for International Environmental Law (CIEL) & Office of the High Commissioner for Human Rights, National Institute for Human Rights (Germany)

Chair: Mr. Sébastien Duyck (Senior Attorney, CIEL)

Speakers: Ms. Young Hee Lee (Adaptation Fund); Ms. Verona Collantes (UN Women); Mr. Christopher Schuller (German Institute for Human Rights); Mr. Othman Boucetta (National Human Rights Council, Morocco); Mr. Ashwin Raj (Human Rights Commission, Fiji); Mr. Michael Windfuhr (Committee on Economic, Social and Cultural Rights) & Mr. Benjamin Schachter (Office of the High Commissioner for Human Rights) & Civil Society**

This session aimed to explore opportunities to promote policy coherence for rights-based climate action. Discussants raised case studies and led debate exploring ways to review and enforce the respect by States of their human rights obligations, both at the national and international level. A key challenge raised by panelists was the need to understand the strengths and limits of the role that institutions can play. A key opportunity raised as a priority area for further research was ways to build and strengthen synergies to ensure and grow the diversity of institutions involved. Panelists suggested that the production of guidelines may be a useful way forward and discussion centred on how to advance this work.

Experts Roundtable: Exploring Climate Change, Human Rights & Forced Displacement

Hosted by: Law Dept, Aalborg University (AAU) & Global Refugee Studies, Dep. of Culture and Global Studies, AAU

Chair: Ass. Prof. Sandra Cassotta (Associate Professor, IEEL, Aalborg Univ / Adj Prof., Western Sydney Univ, Lead Author at the IPCC – International Panel of Climate Change), Co-chair: Ass. Prof. Jesper Lindholm (Associate Professor, Public International Law, Human Rights & Asylum, Aalborg Univ)

Speakers: Lecturer Annalisa Savaresi (Lecturer in Environmental Law, Co-Director, LLM/MSc Environmental Policy & Governance, Stirling University); Assist.Prof Martin Lemberg-Pedersen (Assist. Professor, Global Refugee Studies, AAU) & Ms. Melina Riemer (Researcher, University of Münster)

This session hosted by the Law Department and the Institute for Culture & Global Studies of Aalborg University (AAU) discussed the legal and governance linkages between climate change and forced displacement within the lens of international law, international environmental law, and international human rights law. The session hosts focused on the need for a framework to address induced displacement resulting from climate change. They led discussion of the need to gain a better understanding of the current regime and consideration of what is needed to move forward.

Human rights are a major part of the frame through which we discuss climate justice. The Paris Agreement references climate justice, although the discussion suggested that it is arguably a “half-hearted” reference that is included in the preamble rather than operational provisions. However, the Paris Agreement does enshrine loss and damage and calls for cooperation and facilitation of remediation and restitution. In addition, panelists noted a trend in international fora, including UNFCCC COPS, to increasingly highlight and discuss the role of human rights and the impacts of climate change. Instruments like the Cancun Agreements and the Doha Amendment Agreement adopted under the UNFCCC framework as well as initiatives such as the Nasen Initiative and the Platform for Disaster Displacement have the potential to have wide-ranging impacts on human rights.

One of the central challenges discussed was the difficulties in establishing causation between displacement and climate change. Likewise, identifying responsibility is a key challenge as climate change does not have borders. A holistic framework and hybrid legal tools will be needed to effectively address climate displacement. Framing the debate on climate change and forced displacement in the climate regime requires a consideration of both distributive justice and corrective justice as suffering of individuals or communities cannot be understood in isolation from the larger issues of climate change.

Successful strategies will require a focus on multi-regulatory and interdisciplinary approaches, perhaps in the form of protocols, or even capitalizing on existing frameworks. Soft law approaches can be effective if promoted by key stakeholders – as illustrated by the 2016 New York Summit and the New York Declaration. However, certain minimum content must be included, notably protection, prevention, return or relocation, elements of adaptation and a recognition of the reality of human mobility. Today, a legal framework seems to be emerging but it may not be in the shape and format of a legally binding treaty or protocol.

The panel also explored linkages between induced displacement and adaptation and the mechanism of loss and damage under the UNFCCC and the Paris Agreement. They suggested that in crafting a mechanism for loss and damage, drawing on the UNFCCC, Paris Agreement (Art 8), liability rules, insurance and international compensation funds for communities and individuals can provide useful insights and inspiration. Finding a common definition of loss and damages remains a major challenge. They also discussed the multiple instruments and fora in which this discussion could be further advanced including the Warsaw Mechanism, the Cancun Adaptation Framework, and the potential for a protocol to the UNFCCC based on adaptation as a further possible avenue. The case of Small Islands and Developing States (SIDS) was taken as an empirical example of where to operationalize a possible new compensatory regulatory patchwork containing liability rules (limited) insurance and other sources of law and policy derived from the international, regional and domestic regulatory level with the purpose to design a new mechanism of compensation linked to induced displacement. Discussions concluded with

an emphasis on the importance of finding a suitable framework with hybrid instruments and legal avenues to protect and compensate those forcibly displaced.

Promoting Climate Justice through Legal Reform & Litigation

Hosted by: MIT, CCLR & Schulich School of Law, Dalhousie University)

Co-Chairs: Prof. Michael Mehling (MIT / Editor, CCLR) & Prof. Pia Carazo (University for Peace)

Speakers: Prof. Meinhard Doelle (Dalhousie Univ, Schulich School of Law); Prof. LeRoy Paddock (Associate Dean for Environmental Law Studies, George Washington University) & Ms. Jennifer Huang (International Fellow, Center for Climate and Energy Solutions)

Intervenors: Ms. Nelly Stratieva (Executive Editor, Lexxxion); Mr. Jacob McKerman (Executive editor, Lexxxion)

This session explored the ways in which climate justice can be pursued through legal reform and litigation. Legal reform can be slow, posing a *challenge* to climate action. Compounding this, the US has issued a further challenge to global climate cooperation in withdrawing from the Paris Agreement by doubting mainstream science on climate change. However, this has been met with a vigorous response from states and municipalities across the country. Actors at national and sub-national levels can use legal reform and litigation as an *opportunity* to proceed together to overcome obstacles in climate action at other levels of government.

This panel converged experience on energy and environmental policy within government agencies, private companies and civil society organizations, as well as comparative legal studies, environmental assessment processes, public participation in environmental decision-making, environmental legal studies and international climate policy. It concluded that although law reform and litigation can be powerful tools to promote climate justice, further study is needed to identify, monitor, and assess trends in legal reform and litigation before courts, as a key *area of action*.

Profiling the Pivotal Players - Pacific Islands in Global & Regional Climate Regimes

Hosted by: University of South Pacific, UNU-EHS & PIFS, Vanuatu

Chairs: Dr. Cosmin Coredea (Legal Expert, UN Univ) & Prof. Elisabeth Holland (Director, Pacific Center Enviro & Sustainable Development, Univ South Pacific)

Speakers: Prof. Wesley Morgan (Professor, Univ South Pacific); Mr. Francois Martel (Secretary General, Pacific Islands Development Forum); Dr. Chitralekha Massey (UN Office of the High Commissioner for Human Rights, Fiji); Dr. Atle Solberg (Head of Coordination Unit, Platform on Disaster Displacement); Dr. Marine Frank (Migration Specialist, United Nations High Commissioner for Refugees) & Dr. Dina Ionesco (Head of Migration, Environment and Climate Change, International Organization for Migration)

Intervenors: Mr. Chris Tavoia (Senior Advisor, Vanuatu Government Delegation); Ms. Jenny Jiva (Researcher, Univ South Pacific); Ms. Makareta Waqavonovono (Independent Legal Adviser, Fiji); Prof. Margaretha Wewerinke (Professor, Univ South Pacific); Dr Simon Bradshaw (Senior Advisor, Oxfam); Mr Krishneil Narayan (Coordinator, Pacific Islands Climate Action Network)

This panel addressed themes of regional responses; pacific island states, normative law, climate justice, and climate migration. It began with an overview of the emerging evidence supporting the need to approach climate change adaptation, mitigation and migration at the regional level, as an approach more efficient than individual state management. Discussants explored the temporary protection and relocation provided by the UNHCR, particularly the issue of planned relocation, which is taken as a measure of last resort. The UNHCR has developed guidance on this. Since 2014 it has published and deployed a toolbox on climate relocation. Panellists suggested this is a risky process, so should remain a measure of last resort; but an option to be considered and planned for. This concept relies on the status of statelessness, which the UNHCR considers is expressed in two forms: "legal statelessness" and "de facto statelessness".

Questions such as what is equity and how it is expressed in the global stocktake process are of crucial importance for climate justice. There are still no legally binding obligations, although much can be achieved in the current framework using climate finance.

The panellists noted that the Pacific has a crucial role to play in climate justice, a concept which is explicitly mentioned in Paris Agreement Preamble. Discussion suggested that the global stocktake process should consist of more regional and bottom-up initiatives in the Pacific to promote climate justice. This includes, for example, the Pacific Islands Climate Action Network, a new regional treaty proposed that would fill some of the gaps in the Paris Agreement (such as lack of reference to fossil fuels), would ban fossil fuel use in certain regions, guard the sovereignty of Pacific Islands nations and would help with litigation against fossil fuel companies.

Another important trend in climate migration governance discussed during this panel is the Platform for Disaster Displacement (PDD), a continuation of the Nansen Initiative, an agenda for people displaced in the context of climate change. While there is still no global or regional framework that addresses current issues, a regional framework for migration and displacement has emerged in the Pacific and there are lessons to be drawn from similar policies in Central and South America.

In the Americas, people are also migrating due to climate change in addition to economic opportunities. Key findings from the Americas suggest that these are nationally developed strategies and policies. One of the key tools is migration legislation. States are using basic migration categories for admission into nations, including adopting extraordinary migration steps, and the application of refugee laws under the Cartagena Declaration. Many states have used bilateral and regional agreements.

Regional interests to address migration are carried out by a ‘Regional Consultative Processes’. The Americas have a ‘temporary’ status, which allows people to stay longer in a nation than standard migration statuses. States are amenable to such regional agreements, as they do not bind them to international treaties and agreements. However, there is a downside: these agreements are discretionary and are thus applied in an ad hoc basis and they tend to be more short-term.

The road to establishing both international and regional agreements to deal with climate migration has been a major struggle, although foundational principles have been established and questions now arise regarding implementation. Looking at different elements of migration requires capacity building as well as a new perspective on migration which intertwines labor, climate change, and displacement.

Issues of climate change migration have been brought to the COP conferences for concrete negotiations. However, the adaptation and migration side has been lost – as the focus has turned to loss and damage. Still only 20% of NDCs speak of migration. The regional dimension of addressing migration is key: there are 25 regional agreements, 18 of which are ‘regional consultative processes’. Still, much work remains to be done; we have the principles – but how will we implement them? Human rights must be the key response to migration issues.

Concluding remarks noted that the Pacific Islands Climate Action Network may be of guidance: their listed goals include supporting social movements working for the benefit of indigenous groups and other mechanisms and instruments to address relocation, displacement and migration.

One of the issues with addressing climate change relocation, displacement and migration is the multiplicity of dynamics at play – such as conflict and civil unrest. We need to look outside the framework convention and go into “toolbox” thinking to address these challenges. Trade agreements, for example, as positive measures may be an alternative way to address relocation, displacement, migration.

ADVANCING CLIMATE RESILIENCE AND CLIMATE JUSTICE

Two sessions co-hosted by four leading CLGI partner organisations explored this theme with discussion on the question “How are Paris Agreement Implementation Guidelines discussions advancing, how does the treaty and other key accords deliver on the world’s climate ambition?”

Advancing Transparency & Accountability under the Paris Agreement – A Research Agenda

Hosted by: Centre for International Governance Innovation (CIGI)

Chair: Dr. Oonagh Fitzgerald (Director, ILRP, CIGI) & Dr. Jan-Willem van de Ven (Head, Carbon Markets Development, EBRD)

Speakers: Ms. Silvia Maciunas (Deputy Director, CIGI); Dr. Patricia Galvao Ferreira (Fellow, CIGI / Windsor Law); Dr. Maria Banda (Researcher, University of Toronto) & Mr. Freedom-Kai Phillips (Research Associate, CIGI)

This session hosted by the Centre for International Governance Innovation (CIGI) explored different aspects related to the transparency and accountability mechanisms under the Paris Agreement.

Panelists contextualized accountability by considering its rationale and examining how other legal regimes, including multilateral environmental agreements, ensure implementation and compliance of obligations under their framework. Turning their attention to accountability and transparency under the Paris Agreement, they highlighted that one of the central challenges is that the content of the Nationally Determined Contributions (NDCs) that are foundational to achieving the climate mitigation and adaptation actions, are not part of the legally binding obligations under the agreement.

The main legally binding obligations are procedural and include a requirement for Parties to communicate their NDCs and update them (Article 4) as well reporting requirements (Article 13) that are yet to be fleshed out. In this context, they also explored linkages between Articles 13, 14 and 15 on transparency, the global stocktake, and the implementation mechanism as well as key issues on climate finance transparency.

The panelists acknowledged that the approach of achieving accountability through enhanced transparency supported by a facilitative implementation and compliance mechanism and a global assessment of progress may seem to lack ambition. However, they also highlighted that the regime is a reflection of the nature of the obligations and that enforcement is a challenge under international law at any time. In addition, the universal participation of the agreement required finding mechanisms that were broadly acceptable.

Looking ahead, the panel discussion suggested that the global assessment may provide further incentive for compliance and increased efforts by states. Overall, the success of the agreement will hinge on the ability of states to persuade, negotiate and manage climate issues in a cooperative manner. The framework provided under Articles 13, 14 and 15 may be an imperfect approach, but increasing engagement of stakeholders within and outside of the framework put in place by the Paris Agreement is an important opportunity to bridge some of these gaps. It will be essential that non-party stakeholders and in particular civil society are involved in providing information and strengthening the momentum to enhance the effectiveness of the agreement. Further to this, emerging new technologies might provide further avenues to strengthen accountability and transparency.

Strengthening Global Climate Law Capacity & Compliance

Hosted by: CISDL, International Law Association & LCIL, Univ Cambridge

Chairs: Prof. Dr. Marilyn Averill (Steering Committee, UNFCCC RINGOs) & Ms. Vesselina Haralampieva (Principal Counsel, EBRD)

Speakers: Maître Christopher Campell-Durufflé (Fellow, CISDL / Trudeau Scholar, University of Toronto); Dr. Dane Ratliffe (Legal Fellow, CISDL); Prof. Will David (Director, Indigenous Rights Centre); & Dr. Alina Averchenkova (Principal Research Fellow, Grantham Research Institute, LSE)*

Intervenors: Prof. Dr. Benoit Mayer (Chinese University of Hong Kong / Fellow, CISDL); Mr. Dirk Zielasko (Researcher, University of Bonn) & Maître Eric Kassongo (Director, Congolese Centre for Sustainable Development / Legal Fellow, CISDL)

This session took the form of an experts' roundtable. It asked how international capacity-building and compliance mechanisms can support efforts to develop legal and governance instruments that deliver higher ambition as regions and countries face legal and institutional capacity challenges in implementing the Paris Agreement. Discussion explored the most important priorities for international legal research, collaboration and educational efforts. This session addressed this issue and sought to identify *opportunities* and *challenges* of international capacity-building and compliance mechanisms. The key aim should be to support states' efforts to develop legal and governance instruments that deliver higher ambition. The approaches to the structure and implementation of such mechanisms vary and so does the degree of commitment by various states. Although pressing in the face of risks that states may not meet their NDCs, the discussion and development stands still. Central questions remain as to who would be able to trigger a compliance mechanism and what the legal effects of such a mechanism would be. These are the needed *areas for action* and the most important priorities for international legal research, collaboration and education among stakeholders.

STUDENT ENGAGEMENT

The **2017 Global Climate Change Law Essay and Mooting Competitions** stimulated students to participate in scholarly discussions, in line with the themes of the Initiative's flagship knowledge sharing event, specifically in the following topics:

- The use of multi-level and multi-sectoral legal tools in the implementation of the Paris Agreement and Nationally Determined Contributions (NDCs)
- Challenges and opportunities offered by operationalising the Paris Agreement
- The role of law and governance in fostering climate resilience and justice
- Legal frameworks necessary to facilitate climate finance, encourage private sector engagement in sustainable practices and trade practices favourable to climate mitigation

A large number of enthusiastic students across all continents around the world submitted their valuable ideas, making the selection process arduous. The best essays were selected based on their level of focus, understanding of the topic, critical thinking, originality, and potential to contribute to the academic debate.

The following winners were announced and awarded at a special ceremony at the *United Nations Framework Convention on Climate Change (UNFCCC), COP 23:*

GOLD AWARDS

Amiel Ian Valdez (The Republic of the Philippines), Master student of Environmental Law at the University of Melbourne, Australia, for the submission entitled: *"Examining the extent and limits of the Philippine writ as tool to compel the government to fulfil its NDCs under the Paris Agreement."*

Tara Atleo (Canada), Master student of Environmental Economics at the University of London, SOAS, for the submission entitled: *"The importance of locally developed indigenous planning tools and policy for climate change action in Abousabt traditional territories."*

Mariam Rita Fawole Masini (São Tomé and Príncipe), Master student of Energy and Environmental Law at the University of Aberdeen, for the submission entitled: *"African SIDS under the international climate change regime: opportunities and challenges for regional cooperation in operationalising the Paris Agreement."*

SILVER AWARDS

Olga Lucia Carreno-Quintero (Colombia), Master student of Environmental Law at Sussex University, for the submission entitled: *"Sustainable development and climate change mitigation in the clean development mechanism: the Colombian experience."*

Kate Donelly (The Republic of Vanuatu), Graduated Bachelor student from Queensland University of Technology in Brisbane, Australia, for the submission entitled: *"Climate law and governance innovations for food security in Vanuatu."*

Louise Fournier (Canada), Master student of Global Environment and Climate Change Law at the University of Edinburgh, for the submission entitled: *"The cost of inaction: The role of courts in climate change litigation."*

BRONZE AWARDS

Priyashna Man (The Republic of Vanuatu), Bachelor student of Law at University of the South Pacific (USP), for the submission entitled: *"Loss and damage and the relationship to human rights law and policy in the context of South Pacific."*

Robera Haile Hamda (The Republic of Ethiopia), Bachelor student, for the submission entitled: *"An essay on the role of law and governance in climate resilience and climate justice."*

Kirsten Davies (Australia), PhD student of at Law Macquarie University, for the submission entitled: *"The Namele Mechanism."*

Christopher D'Souza (Canada), Bachelor student at McGill University in Montreal, for the submission entitled: *"Who Speaks for the Rivers, and Who Speaks for the Trees?"*

Grace Inostroza (The Republic of Chile), Master student of Risk Prevention Engineering at the Technical University of Federico Santa Maria, for the submission entitled: *"¿Cuál es el papel de la ley y la gobernanza en el avance de la resiliencia climática y la justicia climática?"*

Marellia Auger (France), Master student of International and European Environmental Law, for the submission entitled: *"Quel est le rôle du droit et de la gouvernance dans la promotion de la résilience et de la justice climatique?"*

The winners also had the opportunity to participate in a Moot Court competition during the Climate Law and Governance Day 2017 and received coaching from McGill Journal of Sustainable Development Law's editors to prepare on the following case before the international court of justice: "Association of Pacific Island States (APIS) versus Organization of Pacific Oil Producers (OPOP) on climate change, marine pollution and rising sea levels.

The participants excelled and presented strong argument supported by facts considering public interest and environmental policy goals. The event was full of passionate and rhetorical argumentation providing the audience with interesting perspectives and closing the Day with the wonderful insights from the future generation of Climate Law and Governance leaders.

This competition was organised by the Centre for International Sustainable Development Law, the McGill Journal of Sustainable Development Law, the University of Cambridge's Lauterpacht Centre for International Law, the University of Chile Centre of Climate Science and Resilience (CR)², the University of Nairobi Faculty of Law, and the School of Governance of the Ateneo de Manila University. Additionally, the competition is also supported by partners of Climate Law and Governance Day (CLGD).

The CLGI is looking forward again receiving submissions from motivated students from all over the globe for the 2018 Global Climate Law Essay and Mooting Competition contributing to the enrichment of the debate on the mechanisms for implementation of the Paris Agreement. The guidelines will be announced on the Climate Law and Governance Initiative website later in 2018.

CONCLUSIONS AND THANKS

The discussion and research developments presented and debated at CLGD 2017 highlighted the fascinating opportunities for law to contribute to implementing the Paris Agreement. The partners of the Climate Law and

Governance Initiative look forward to continuing to play a part in facilitating partnerships and knowledge exchange to realise these opportunities.

While the Paris Agreement marks a milestone in the international community's response to climate change, many issues remain to be negotiated. In addition to operationalising the various provisions of the Agreement, the implementation of the nationally determined contributions (NDCs), will require considerable further effort. With the Fijian Presidency of the 23rd UNFCCC Conference of the Parties shedding more light on the plight of highly vulnerable countries, it is also crucial to share experiences and to consider issues specific to the small island nations, including recent regional initiatives such as the Pacific Climate treaty.

Solving these challenges and ensuring compliance with the Paris Agreement will require input from a diverse set of stakeholders, including the legal community which can play a crucial role in enhancing national and international responses. This is the source of the grand vision of Climate Law and Governance Day: to bring together diverse audiences of experts and policy makers to advance debate and share experiences that can improve legal and institutional approaches to addressing climate change. It is one of the four pillars of the Climate Law and Governance Initiative, the coalition of different members of the climate law community including think tanks, universities, international organisations, NGOs and law firms behind CLGD. The initiative seeks to complement and coordinate ongoing efforts in this field offering knowledge sharing events alongside the UNFCCC processes and beyond, support and outreach for the capacity building and climate action efforts of its partners, student engagement, and an online knowledge centre, which profiles useful knowledge resources and tools and serves as a research repository for the knowledge co-generation aspect of its work including a blog, research reports and a legal working paper series.

The Climate Law and Governance Initiative Secretariat thanks and acknowledges the partners who made CLGD 2017 possible. Thanks are also due to the Programme Committee and advisors who help to guide the development of priority discussion themes. Finally, the Secretariat owes great thanks to the team of pro bono coordinators and volunteers who made CLGD 2017 the success that it was. Special thanks to the founding secretariat, Mirjam Reiner and Alex Scott for their contribution since 2015 as they hand over the coordination of CLGD and associated Climate Law and Governance Initiative activities to a new secretariat from 2018.

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