THE ROLE OF LAWYERS IN SPEEDING UP CLIMATE CHANGE ACTION PRE-2020

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University of Oslo
4 Suggestions

Celebrate Paris Agreement – miracle of multilateralism

Educate in-house counsel: climate risks are their problem

Use courts & tribunals: litigation works!

Forge new alliances: SDGs apply to all & create opportunities & challenges & for all
Paris Agreement

Nations Unies
Conférence sur les Changements Climatiques 2015
COP21/CMP11
Paris, France
Paris Summit: Why was it significant?

- 150 leaders - the biggest gathering of leaders in history on any subject: each gave personal commitment to climate action
- 30,000 + attendees at COP 21 itself
- Many initiatives driven by business, cities, NGOs generating action:
  • 114 companies committed to set emissions-reduction targets in line with what the science says is necessary to limit warming to 2 degrees C;
  • 53 companies pledged to transition to 100 percent renewable power;
  • America’s six largest banks issued a statement in support of a global climate agreement;
  • 365 companies applauded EPA’s emissions standards for U.S. power plants;
  • More than 1,000 companies are already pricing carbon internally or plan to in the next couple years.
What was at Stake?

If we warm the planet by 2 more degrees Celcius, the Marshall Islands will no longer exist.
Small nations had to play a big role...

Tony de Brum: The emerging climate champion at COP21

Marshall Islands minister credited with bringing US and EU together with vulnerable states in new ‘coalition of ambition’ at Paris talks

Source: Climatehome: 16/12/15
High Ambition Coalition

Who was in it?

- A ministerial coalition between rich & poor, to support the Presidency in delivering the highest ambition deal in Paris
- Based on many alliances/networks but pulled together by RMI in run up to and at Paris

Why was it needed?

- Support for the French Presidency
- Party led negotiations – political deals needed to be made by Parties
- Unity & end game process/rules of procedure

What difference did it make? Key to getting a deal that is:

- science-based & has 1.5/LTG of net zero by mid-century at its heart (direction of travel)
- Entrenches domestic & international 5 year political cycle to ratchet up commitments (pace of travel & joined up national processes)
- Keep political balance & pursue not just cuts but also on adaptation/loss & damage and financing
Summary of Paris Agreement

- Adaptation, Finance & Global Temperature Goal: (Article 2)
- Global decarbonisation goal, progression & pace provisions: NDCs and upwards progression/5 year ratchet mechanism (Article 4)
- Forest/land use (Article 5) & International offsets/trading (Article 6)
- Adaptation (Article 7)
- Loss & Damage (Article 8) – with exclusion of Liability & Compensation
- Finance (Article 9) & Technology (Article 10), Capacity Building (Article 11) & Education (Article 12)
- Transparency requirement re GHG emissions & financial support (Article 13)
- 5 year global stocktakes (Article 14) - starting 2018 then in 2023
- Compliance ((Article 15) & Entry into Force (Article 21)
- Non state actors – enhanced role of business, cities, civil society (Decision 1/CP.1, paras 117 – 133)
Global Goal of 2/1.5°C Temperature Limit

Article 2:

1. This Agreement...aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) **Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels**, recognizing that this would significantly reduce the risks and impacts of climate change;

2 major wins in Paris:
- Securing support for 1.5°C temperature limit from all Parties; this secures survival pathway for SIDS & require rapid decarbonisation in line with the science
- Securing a special report from the IPCC on the impacts of and emissions pathways for 1.5°C by 2018
Decarbonisation or Net Zero Emissions Goal

- The temperature limit of 2/1.5°C frames the pathway as one that requires global decarbonisation or net zero emissions early in the second half of the century

Article 4 sets out this long-term decarbonization goal:

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible… and to undertake rapid reductions thereafter… so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century.”

- Staying below 1.5°C requires global emissions to be net zero by around 2040-2060 – or by mid-century

- Paris Agreement sends strong signal that we are working towards the end of the fossil fuel era, and that developed countries must rapidly decarbonise. It also means developing countries avoid locking in high fossil fuel based future and meeting growing energy needs with renewable forms of energy.
Nationally Determined Contributions (NDCs) – Mandatory every 5 years

Article 4

(2) “Each Party shall prepare, communicate and maintain successive **nationally determined contributions** that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions”

(3) Each Party’s **successive** nationally determined contribution **will represent a progression** beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

Adaptation (Article 7)

- The Paris Agreement establishes a global goal of “enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change”, linking reduced impacts to early decarbonisation.
- And a national obligation to engage in “adaptation planning processes”.
- Inclusion of a global goal on adaptation in Paris shows recognition that adaptation to climate impacts is seen as a big priority.
- The UNFCCC “institutional arrangements” for adaptation action will be reviewed in 2017, and likely be strengthened.
Loss and Damage (Article 8)

Contentious issue at Paris but included thanks to SIDS/LDCS! The Paris Agreement anchors and extends the Warsaw International Mechanism, paving the way to address (“through cooperation & support”) impacts from extreme and slow-onset climate events that cannot be adapted to (e.g. loss of ecosystems, fish stocks and even territory). Recognition of L & D very important.

Paris Decision para 48:
“Decides on the continuation of the Warsaw International Mechanism for Loss and Damage associated with climate change impacts…”

Paris Decision para 49:
“Requests the executive Committee of the Warsaw International Mechanism to establish a clearinghouse for risk transfer that serves as a repository for information and insurance and risk transfer, in order to facilitate the efforts of Parties to develop and implement comprehensive risk management strategies.”

Paris Decision para 52
Agrees that Article 8…does not involve or provide a basis for any liability or compensation
The Paris Agreement extended to 2025 the current goal of mobilizing $100 billion a year in climate finance for developing countries by 2020.

A higher goal will be set for the period after 2025 as “Such mobilization of climate finance should represent a progression beyond previous efforts.” (Art 9(3))

The UN Green Climate Fund (GCF) will be a main channel for delivery of this support.
UNFCCC Negotiations: Forward Look

Political moments for raising ambition

- Facilitative Dialogue (pre-2020 finance & mitigation ambition)
- Facilitative Dialogue (Progress towards mitigation LTG)
- Countries submit new or updated NDC with 2030 horizon
- Global Stocktake (Progress on mitigation, adaptation & support)
- Countries submit new NDC with 2035 horizon

Decision points on key technical & institutional foundations

COP 22 2016
- Review of adaptation institutions
- Review of Warsaw International Mechanism (WIM)

COP 23 2017
- Adopt accounting modalities for public finance

COP 24 2018
- Review of capacity building committee

COP 25 2019
- Adoption of the rules & modalities for - the global stocktake; scope of future NDCs; the compliance committee; market mechanisms; transparency of action & support (MRV); and recommendations on mobilisation of support - will occur at the first session of the meeting of the Parties to the Paris Agreement, which could be held at any time, but will likely be in 2020.

COP 26 2020
- COP 27 2021
- COP 28 2022
- COP 29 2023
- COP 30 2024
- COP 31 2025
Assessing The Paris Agreement

**Strengths**

- **Universal**: All Parties to take action
- **Strong signals to markets**: global goal of 2/1.5; decarbonisation & goals of adaptation & finance
- **Upward ambition**: progression of NDCs & finance over time
- **Transparency**: 2 year reports/5 year stocktake, SIDS/LDCs leeway, these moments will drive action
- **Mobilization & engagement of new actors**: new role & mechanism for non-state actors & education/public participation/CB to underpin implementation

**Weaknesses**

- **NDCs**: commitments based on national circumstances may never add up to 2/1.5 pathways
- **Weak goals & commitments**: many rules are mainly procedural or else not defined precisely enough for enforcement
- **Tough negotiations ahead**: e.g. transparency rules key but remain to be developed. May prove contentious/not complied with
- **Weak compliance**: mainly facilitative approach likely to be agreed as mechanisms develop
- **Uncertainty**: when will entry into force happen; US elections & litigation re Clean Air Act
Educate In-House Counsel:
Climate Risks for Every Business,
Supply Chain and Investment
## ET Carbon Rankings

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Companies carbon footprints & exposure of portfolios to carbon/stranded assets
Courts & Tribunals: Cases Happening Worldwide
Urgenda Foundation v The Netherlands

Plaintiff: Urgenda Foundation (a non-profit organisation) and 900 Dutch citizens

Defendant: Dutch government

Order given: 24 June 2015 (decision appealed by Dutch government)
Future Generations: Juliana v US

21 young people invoking constitutional rights to life, liberty & property rights & public trust doctrine

Demand for declaration & emissions reductions based on science based timeframes
(Ecology, the Department). The Youth petitioned the Department to adopt a proposed rule that, among other things, would recommend to the legislature limitation of greenhouse gas emissions consistent with current scientific assessments of requirements to stem the tide of global warming. Petitioners assert, consistent with a December 2014 report by the Department to the Legislature, that prompt decisive action by Ecology is necessary to protect the state’s natural resources and the children who depend on them from climate change and ocean acidification.

Plaintiff: Zoe and Stella Foster
Defendant: Washington State Department of Ecology
Order given: 23 June 2015
Anpier, in collaboration with Greenpeace

Inspired by Urgenda, The Spanish National Association of Photovoltaic Energy Producers (Anpier), with the help of lawyer Juan Castro Gil, are fighting to ensure that the government reimburse promised rates to photovoltaic producers.
Welsh village, Fairbourne: Potential Case?

Property Blight – Possible case

Welsh village to sue UK government over 'alarmist' rising sea level claim

Residents of Fairbourne, in Gwynedd, say predictions that the sea level will rise by a metre a year have hit house prices and investment, Reported in The Telegraph, 11 Feb 2016
CLIMATE CHANGE ORDER.

The petitioner has approached this Court as a citizen of Pakistan for the enforcement of his fundamental rights. He submits that overwhelming majority of scientists, experts, and professional scientific organizations related to earth sciences agree that evidences are sufficient that climate change is real. He submits that no one can deny the devastating impact of increase in frequency and intensity of climate extremes. Further, most of the experts agree that the major cause is human activities, which include a complex interaction with the natural environment coupled with social and economic changes that are increasing the heat trapping CO₂ and other greenhouse gases (GHG) in the atmosphere, which are increasing global temperature and in turn causing climate change.
Saul Luciano Lliuya v RWE

Plaintiff: Saul Luciano Lliuya

Defendant: RWE (a German utility company and Carbon Major)

Ongoing
International Courts & Tribunals
ICJ Advisory Opinion?
Forging New Alliances:
Sustainable Development Goals
April 2016 -
UN High Level Event on SDGs and Paris Agreement
Signature Ceremony

Most developing countries now deciding how to integrate implement Paris, SDGs and Sendai Framework on DRR together. Most developed countries not joining up policy-making and working in silos re climate change, security, migration and disasters

Mashall Islands’ President Hilda Heine signing Paris and speaking on SDGs, April 2016
Marshall Islands commits to a quantified economy-wide target to reduce its emissions of greenhouse gases (GHG) to 32% below 2010 levels by 2025.

RMI communicates, as an indicative target, its intention to reduce its emissions of GHGs to 45% below 2010 levels by 2030.

- Targets are absolute and economy-wide, based on data in RMI’s forthcoming Second National Communication.
Key issues for Marshall Islands: how SDGs, climate action and survival will be integrated & balanced?

- Droughts
- King tides
- Health issues
- Social security
- Banking
- Fisheries
- Shipping
- Sea level rise & migration & existential issues
- And limited capacity & access to finance
Thank You
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Track 0 is an independent not-for-profit, which serves as a hub to support all those working to get green house gas emissions on track to zero.