

# Strengthening Legal Tools & Capacity for Climate Justice & Resilience

**An official side-event** during the COP27 of the United Nations Framework Convention on Climate Change, Sharm el Sheikh

**Akhenaten Side-Event Room / Zone B, Blue Zone**

17 November 2022, 11:30-13:00 EET (Egypt time)

**Serious increases in legal capacity, backed by awareness and engagement, are needed to deliver on the Paris Agreement and the Glasgow Climate Pact.**

**How to scale up climate law and governance solutions exponentially, for net zero and vulnerable countries' adaptation and resilience, advancing key SDGs?**

*Hosted by Climate Law and Governance Initiative CLGI with Centre for International Sustainable Development Law CISDL; Centre for Human Rights and Climate Change Research; Corporación Fiscalía del Medio Ambiente FIMA; Derecho Ambiente y Recursos Naturales DAR; FRIENDSHIP.*

## **Opening Address**

**Prof Marie-Claire Cordonier Segger, Chair**

### **Thank you, and good morning!**

It is a tremendous honour to be chairing this event together with our partners, FRIENDSHIP, Fiscalía Medio Ambiente (FIMA), Derecho Ambiente y Recursos naturales (DAR) and the Centre for Human Rights and Climate Change Research, together with all the collaborators of the Climate Law and Governance Initiative including Ain Shams University, the IUCN World Commission on Environmental Law, the IBA, the ILA and the African Union's International Law Commission. I owe special thanks to our expert speakers, also to the Leverhulme Trust without whose award these lectures would not be possible. *Further*, I would like to express my deep gratitude to our many collaborators from across the University of Cambridge, including the Bennett Institute for Public Policy and the Centre for Energy, Environment and Natural Resources Governance, as well as the Centre for International Sustainable Development Law. Especially, I wish to thank and welcome our extremely distinguished and knowledgeable law and governance specialists who have joined us for these roundtables, all of whom are renowned experts and leaders in this field.

*Most importantly*, I must warmly recognise our graduate student research teams in Cambridge and in Canada, whose insights and support have been invaluable. As we conclude an extremely intense series of UN Framework Convention on Climate Change COP27 engagements, your creativity, commitment and courage inspire us all.

**This special side event of the COP27 is an Invitation to the Law**, in two parts.

First, we will highlight the opportunity to **scale up our local and global responses to the devastating dangers and reality of climate change**, in light of the Paris Agreement under the UNFCCC regime, especially the numerous net zero pledges, precisions and promises from COP26,

illuminating how law and governance can contribute to climate action, achieving the world's Sustainable Development Goals.

Second, we will issue **a further invitation** specially directed to our world-class educational, research and practitioner community, including many who have joined us here, and to **our own students worldwide** – to contribute to creating *the future we want*.

As this COP and the related CLGI 2022 events draw to a close, and we walk forward into 2023 towards 2030, **our world is facing a convergence of crises**.

Recent findings by the Intergovernmental Panel on Climate Change (IPCC),<sup>1</sup> the UN Environment Programme, also the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES),<sup>2</sup> the World Health Organization (WHO), the World Bank and the UN Development Programme, among other authorities, highlight that humanity is reaching a critical crossroads.

As you can see, in many countries, especially in key regions and small island nations, we are still struggling to overcome harrowing human development challenges, with millions of people unable to meet even the most basic of needs such as water, shelter and food.

We are shattering perilous planetary thresholds, especially in terms of key life support systems such as a stable climate, biodiversity, and land systems.

Simultaneously, successive waves of the COVID-19 pandemic, reaching over 263 million cases and the loss of 5.2 million lives worldwide this month,<sup>3</sup> are disproportionately affecting many countries, further escalating poverty.<sup>4</sup>

Rapid and dangerous climate change is exacerbating global poverty rates, undermining access to essential crops and food sources, triggering extreme weather events, flooding and wildfires, modifying disease vectors, and threatening the livelihoods of thousands of people,<sup>5</sup> even as our planet's ecosystems, including the millions of species which depend on them, continue to degrade.<sup>6</sup>

**Climate change is not just a tragedy of the global commons – it is a combination PUBLIC POLICY FAILURES – of education and understanding, of law and governance, of human endeavour across all academic disciplines, economic sectors and societies.**

**These challenges are connected, complex and increasing in severity. However, they are not truly surprises.**

Global, inter-linked “wicked problems” of climate change, drought and hunger; terrestrial and marine ecosystem collapse and species extinction; and world health pandemics, among others, have been flagged by scientists and civil society, with increasing urgency, for decades.

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<sup>1</sup> V Masson-Delmotte, et. al. “Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty” (IPCC, 2018). [IPCC 1.5 Report]

<sup>2</sup> S Diaz, et.al., “Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services” (Bonn. Germany: IPBES, 2019) [IPBES 2019]; ; Secretariat of the Convention on Biological Diversity, “Global Biodiversity Outlook 5” (Montreal, Canada: CBD, 2020). [CBD 2020]

<sup>3</sup> WHO, “Coronavirus Disease (COVID-19) Dashboard” (29 October 2020), online: <<https://covid19.who.int/>>.

<sup>4</sup> World Bank, “Global Economic Prospects” (Washington, DC: World Bank, 2020), online: <[www.worldbank.org/en/publication/global-economic-prospects](http://www.worldbank.org/en/publication/global-economic-prospects)>; World Bank, “Poverty and Shared Prosperity 2020: Reversals of Fortune” (Washington, DC: World Bank, 2020), online: <<https://openknowledge.worldbank.org/bitstream/handle/10986/34496/9781464816024.pdf>>. And see UNDP, “Human Development Report 2019 - Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century” (New York: UN, 2019), online: <<http://hdr.undp.org/sites/default/files/hdr2019.pdf>>.

<sup>5</sup> *Ibid*, IPBES, 2019 at 12-15; *Ibid*, CBD 2020, 10, 16. H-O. Pörtner, etl. al. eds, “IPCC Special Report on the Ocean and Cryosphere in a Changing Climate” (IPCC, 2019), 12, 15-16.

<sup>6</sup> *Ibid*, IPBES 2019, at 12.

The international community has been examining scientific data, raising the alarm, and struggling to negotiate responses through the UN for over 75 years, **nearly a century**.

International conferences and debates have been leading slowly to clearer definitions of problems; to general commitments to cooperate; and to fragmented, incoherent, conflicting and sometimes even overlapping attempts to act.

Across 193 UN member States, pressure is rising on scarce human and financial resources; intensifying the need for prompt and effective public policy responses, backed by legal and institutional reforms, to foster rather than frustrate global sustainable development.

And we have, in our defense, been trying – through a series of international events and programmes of action, including the Millennium Development Goals (MDGs). And our stumbling, thorny path to collaboration has not been completely in vain.

Replacing the MDGs in 2015, as a global cooperation agenda toward 2030, countries have adopted 17 Sustainable Development Goals (SDGs) with 169 key targets, covering key areas of public policy from poverty, hunger, health, education and gender equality to water, energy, employment, infrastructure, equality, cities, production and consumption patterns, climate change, biodiversity, oceans and justice, and establishing global partnerships for action.

As an agenda for the global community, the SDGs apply to all countries – rich or poor – providing a common framework to facilitate cooperation and action. They offer a succinct set of public policy priorities and time-bound targets to unite international organizations, countries and stakeholders.

**Of course, as detractors underline, each SDG target is aspirational, strictly non-binding in nature.** However, like other important and universal aspirations such as world peace, or human rights, the Sustainable Development Goals are not legally irrelevant. Indeed, as I have noted before - the opposite is true.

### **Law and policy will help – or hinder – the implementation of every global Sustainable Development Goal.**

Efforts to achieve the 17 SDGs and their 169 targets are supported by the principles of international law itself,<sup>7</sup> and by many binding international, regional and bilateral treaties.<sup>8</sup>

In fact, an entire network of increasingly specific international accords prioritizing sustainable development has been adopted in recent decades, especially – in the frame of this lecture – for SDG13, the UN Framework Convention on Climate Change (UNFCCC) and its Paris Agreement,<sup>9</sup> but also the Kigali amendments to Montreal Protocol of the Vienna Convention on Ozone Depleting Substances, the UN International Covenant on Social, Economic and Cultural Rights, and a web of inter-regional, regional and bilateral public and private science and technology cooperation, also trade, investment and financial agreements, which commit to climate action for a net zero world and beyond.<sup>10</sup>

**These binding accords set specific and enforceable obligations, along with cooperative work programmes and institutions that can support achievement of each SDG.**

In each case, the inter-governmental regime engages a community of stakeholders, from local to global in scope, to implement key operational requirements, often with public participation, financing, monitoring, reporting and verification arrangements, as well as dispute settlement and other provisions.

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<sup>7</sup> ILA, ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development. (2002) International Environmental Agreements: Politics, Law and Economics 2, 211–216; United Nations. Rio Declaration on Environment and Development, 14 June 1992, UN Doc. A/CONF.151/26 (Vol. I), 31 ILM 874 (1992; MC Cordonier Segger & A Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford, Oxford University Press: 2004)

<sup>8</sup> Legal Briefs

<sup>9</sup> *United Nations Framework Convention on Climate Change*, 9 May 1992, 1771 UNTS 107, 31 ILM 849 (entered into force 21 March 1994) [UNFCCC]; *Adoption of the Paris Agreement*, 12 December 2015, Dec 1/CP.21, FCCC/CP/2015/L.9, UNTC No 54113, (entered into force 4 November 2016) [Paris Agreement].

<sup>10</sup> MC Cordonier Segger, *Crafting International Trade and Investment Agreements for Sustainable Development: Athena's Treaties* (Oxford, Oxford University Press: forthcoming 2021).

Efforts to achieve each SDG target and the related international obligations are also facilitated by hundreds of domestic public and private law obligations, regulations and institutions at the national and local levels in each country,<sup>11</sup> and also by important customary rules, economic incentives, and cultural values.<sup>12</sup>

Indeed, the UNFCCC establishes a common framework for climate action, as a carefully crafted compromise intended to generate global participation. Through an increasingly active network of national authorities, meeting in the COP and collaborating through the SBSTA and the SBI, backed by implementing entities such as the Green Climate Fund (GCF), as well as myriad national and local regulatory bodies and private law contracts, across all spheres of human activity – the world community has tried, step by stumbling step, to coordinate a global response to the terrible dangers of anthropogenic climate change.

The Paris Agreement is predominantly a procedural ‘pledge and review’ commitment, with a core triangle of obligations: (1) nationally determined contributions to the global response to climate change, backed by (2) significant new and additional climate finance, secured by (3) transparent monitoring and reporting, which permits collective stock-taking and public awareness leading to pressure for higher ambition.

Under the Paris Agreement, Parties are obliged to submit and maintain an up-to-date NDC in accordance with Articles 3 and 4; to provide reports related to emissions reductions and technology transfer as per Article 13 (7, 9) and on financial contributions as per Article 9 (5, 7); to participate in the facilitative dialogue which builds ambition for progressively more significant pledges, and other key obligations. Despite the carefully crafted agreement, however, implementation of the Paris Agreement across all Party countries remains a critical challenge, particularly since each facet of these requirements demand imbedded domestic capacity which remains limited in many jurisdictions.

**This event is focused on legal tools and capacity for climate justice and resilience.** Adaptation and resilience involve adjustments to reduce vulnerability and risk, respond to disasters and mitigate unavoidable impacts (PA Art 7-8, WIM; Global Dialogue on L&D). An enabling legal framework supported by the rule of law can strengthen capacity and financing to adapt and promote resilience to climate change, and legal empowerment can promote more equitable, accountable, rights-based adaptation and resilience. Many law and institutions are highly relevant to adaptation, including **legal and institutional frameworks for disaster risk reduction and management law**; land planning, zoning, floods and coastal planning; construction and infrastructure regulations (urban plans, housing, energy); laws on public health, disease prevention and control; natural resource management laws, forestry law (including wildfire response) and water resource management; rules and regulations for climate-smart agriculture and food safety; good governance and anti-corruption codes.

Further, as we are seeing in the negotiations of this COP, to reach climate justice and to address the current loss and damage due to climate change, **access to climate finance is particularly key.** And legal reform is also crucial for effective, accountable, sustainable climate finance. Rule of law, supported by enabling legal frameworks and safeguards, can ensure more effective access to and use of climate finance (SDM under PA Art 6.4, GCF, CoP26 GFANZ \$130 Trillion Pledge). Transparent and accountable legal reforms can help countries and projects attract and absorb climate finance, and communities can share benefits and burdens more equitably under clear regimes with recourse. Many laws and institutions are highly relevant to climate finance, including the laws and policies governing foreign ownership/investment, the rules governing access to climate finance for small and medium enterprises, rules governing renewable energy, fossil fuel and other relevant subsidies and taxes, laws and guidelines on financial services and

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<sup>11</sup> Toolkits

<sup>12</sup> Compendia

intellectual property rights; rules and registries governing monitoring, verification, scientific review; also access to courts and alternative dispute resolution in the event of disagreements.

During COP26 and beyond, over 200 committed law and governance partners came together through the CLGI to share lessons among a growing community of practice and chart the future for this critical field – actively engaging professors, practitioners, judges and other leaders from international organizations, judiciaries, institutes, leading law firms and universities. Together, they pledged to increase climate law and governance capacity worldwide tenfold from 600 to 6,000 legal specialists by 2024, engaging qualified leaders in every legal system and converting ambition to obligation worldwide.

I will conclude with our second invitation – the one that touches so many of you here tonight, personally. It is an invitation to make a commitment, as academic and educational institutions capable of great understanding, wisdom and long-term thinking, as international organizations committed to science-based decision-making, to sound policy advice, and to rule of law, and as brilliant students, interested in a career and **life path** that is **RELEVANT, that can MAKE A DIFFERENCE.**

To successfully bridge the capacity chasm in climate law and public policy, institutions of all kinds must urgently undertake increased efforts to open opportunities for brilliant, newly capable graduates and professionals to succeed in careers furthering the 17 SDGs, giving them agency to shape post-pandemic recoveries consistently with the principles of equity and climate justice. Institutions must also provide avenues for the scale up of relevant teaching and research, engaging a broad array of stakeholders and aligning research agendas and curricula with priorities of sustainability. Indeed, much more effort is needed, including by leading law, policy and business faculties, to foster innovative solutions worldwide at all levels across economies and societies.

The future landscape can therefore be viewed with concern, but also with respectful optimism. CoP26 must serve as an invitation for more sustainable domestic and international climate law and policymaking in the future, and for increased engagement in the design, and implementation of climate change responses across all sectors and at all levels. Research and educational institutions will play a critical role in scaling up contributions to build capacity for climate change action, and much work remains to harness the full potential of law and policy communities of practice to foster, rather than frustrate, sustainable development.

It has never been more important to have capacity, creativity and courage.

Not just, after the pandemic, to ‘build back better’ or indeed, to ‘build forward’ – but by delivering on all CoP26 pledges, promises and projects, and indeed, by scaling up far, far beyond.

We can and must accelerate ambition, capacity and action, on all levels, across all disciplines, all professions – public and private – for climate justice. In doing so, we contribute an important strand in the tapestry of solving these crucial global sustainability challenges.

**THANK YOU.**