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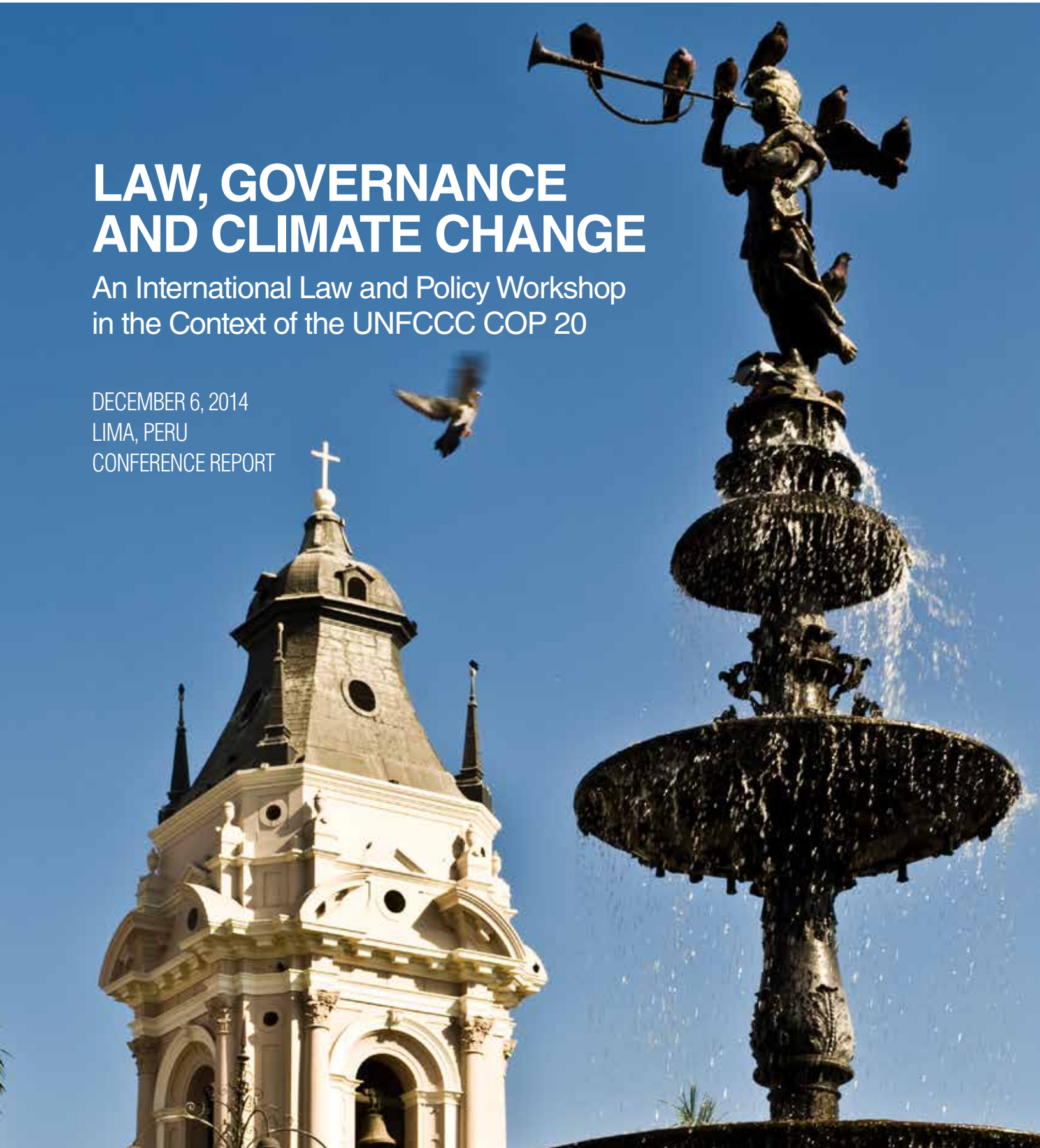
LAW, GOVERNANCE AND CLIMATE CHANGE

An International Law and Policy Workshop in the Context of the UNFCCC COP 20

DECEMBER 6, 2014
LIMA, PERU
CONFERENCE REPORT



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An International Law and Policy Workshop in the Context of the UNFCCC COP 20

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Lima, Peru

Conference Report

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CONVENERS

The Centre for International Sustainable Development Law, the Pontificia Universidad Católica del Perú, and the Centre for International Governance Innovation, in cooperation with the Lauterpacht Centre for International Law at the University of Cambridge, the Centre for Advanced Studies in Environmental Law and Policy of the University of Nairobi, the Centre for Climate Resilience Research of the University of Chile, the Centre for Climate Justice at Chittagong University of Bangladesh, Fundación Ecos and St. Clare's College of Uruguay, the Centre for International Environmental Law, Human Rights Watch, Earthjustice, the Sociedad Peruana de Derecho Ambiental, the Asociación Interamericana para la Defensa del Ambiente, the Centro Mexicano de Derecho Ambiental, Think Transversal and other partners.

COLLABORATORS

The International Bar Association, the Centre for International Forestry Research, the United Nations Environment Programme World Conservation Monitoring Centre, the Climate Change and the Law Community of Practice of the World Bank's Global Forum on Law, Justice and Development, and the Gouvernement du Québec.

ABOUT THE AUTHOR

Katherine Lofts is a legal research fellow with CISDL and coordinator of its climate change program. She is also an LL.M. student at McGill University.

ACRONYMS

AIDA	Asociación Interamericana para la Defensa del Ambiente
CDM	Clean Development Mechanism
CIDEPP	Think Transversal
CIEL	Centre for International Environmental Law
CIGI	Centre for International Governance Innovation
CISDL	Centre for International Sustainable Development Law
COP	Conference of the Parties
CR2	Centro de Ciencia del Clima y la Resiliencia
GHG	greenhouse gas
HRW	Human Rights Watch
IBA	International Bar Association
IDLO	International Development Law Organization
ILRP	International Law Research Program
INDC	Intended Nationally Determined Contribution
LCIL	Lauterpacht Centre for International Law
NAPA	National Adaptation Programs of Action
OECD	Organisation for Economic Co-operation and Development
PUCP	Pontificia Universidad Católica del Perú
REDD+	Reducing Emissions from Deforestation and Forest Degradation
SDG	sustainable development goal
SPDA	Sociedad Peruana de Derecho Ambiental
STP	sustainable transport project
UNCCD	United Nations Convention to Combat Desertification
UNEP-WCMC	United Nations Environment Programme World Conservation Monitoring Centre
UNFCCC	United Nations Framework Convention on Climate Change

CONFERENCE REPORT

By Katherine Lofts

EXECUTIVE SUMMARY

The International Workshop on Law, Governance and Climate Change was held in Lima, Peru, on December 6, 2014, as a parallel event during the 20th Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC).

The Centre for International Sustainable Development Law (CISDL) hosted the workshop, in collaboration with the Pontificia Universidad Católica del Perú (PUCP) and the Centre for International Governance Innovation (CIGI), along with numerous other partners. In the workshop, more than 50 scholars, policy makers, experts, practitioners and stakeholders were convened from more than 40 countries and numerous fields and disciplines to explore emerging human rights, economic and environmental laws, policies and practices linking climate change with sustainable development, and to chart a new international research and education agenda.

The key questions addressed included:

- How can international law and governance better respond to climate change?
- What can universal human rights contribute to legal responses to climate change, and how could climate laws promote respect for human rights?
- How can innovative legal instruments deliver more sustainable landscapes and energy, harnessing trade, investment and technology for the global green economy?

In an active and interactive format, the experts, academics and practitioners initiated a preliminary exploration of these challenging questions, seeking to elucidate the current international research and education agenda on climate law and governance, and to lay the foundations for broader collaborative ventures leading up to 2015's COP 21 in Paris, France, and the agreement of a new climate instrument that can be implemented through innovative laws and policies on the ground in more than 190 countries.

INTRODUCTION

Climate change results in many environmental impacts beyond temperature increases, including sea level rise, melting glaciers and reduced snow cover, extreme weather events, erratic precipitation, droughts and flooding. These effects, however, are not limited to environmental impacts; they also affect human development. Indeed, a large section of the global population already suffers or is in some way affected by the adverse effects of climate change, including its impacts on agriculture, aquaculture, livelihoods, biological diversity, health and a broad range of other human rights. And though the impacts of climate change are felt globally, developing countries will bear the brunt of their social, economic and environmental effects. Developing countries are especially vulnerable to the impacts of climate change because they have fewer of the financial, social and technological resources needed to adapt.

Law and governance improvements can be part of the solution — or can be obstacles to progress — in addressing climate change, keeping global temperature increases below dangerous levels and promoting resilience.

In light of the critical importance of law to effective and equitable climate change governance, the CISDL, in collaboration with PUCP, CIGI and numerous other partners, convened a day-long workshop on the margins of COP 20 of the UNFCCC.

The international workshop aimed:

- to foster substantive discussions on key international human rights, economic and environmental law, and policy trends and practices on climate change for sustainable development;
- to facilitate international knowledge sharing and exchange on the contributions of law and governance to the post-2015 climate change regime; and
- to develop the design of new collaborative research and education agendas on law, governance and climate change.

An opening plenary session set the stage for the day's discussions, raising key thematic questions. Between opening and closing plenaries, two sets of parallel breakout sessions allowed speakers, including researchers, policy makers, negotiators and practitioners, to engage more deeply on issues specific to their interests and expertise. Each breakout session began with three to five speakers who provided a short briefing on the current state of knowledge, along with questions, followed by an interactive discussion among all the session participants.

A DIFFICULT STATUS QUO: SCOPING CURRENT PROGRESS AND CONTINUING CLIMATE LAW AND GOVERNANCE CHALLENGES

The day began with a welcome by Markus W. Gehring, fellow of the Lauterpacht Centre for International Law (LCIL) at the University of Cambridge, lead counsel of the CISDL and Jean Monnet Research Chair at the University of Ottawa, and José Daniel Amado of the PUCP. Following their welcome, Marie-Claire Cordonier Segger, senior legal expert in sustainable development for the International Development Law Organization (IDLO) and chair of the opening plenary, introduced the speakers and set out some of the broader themes for discussion. She explained that law and governance improvements will be crucial for the success of the international climate change regime. She also asked participants and speakers to reflect on the emerging research, policy and practices related to climate change and sustainable development; the key international human rights, economic and environmental law and policy trends and practices; and the implications of these key trends and practices for change on the ground and in the post-2015 climate regime.

The first opening keynote speaker, Tony La Viña, former dean of the Ateneo School of Government, highlighted that during this year's COP there was yet another major climate-related event occurring in the Philippines, as there has been for the last four years of the climate talks. These events underline the urgent need to act. Addressing the development of the international climate change regime under the UNFCCC, La Viña reflected on its origins as a mitigation regime, through the growing recognition of the need to address adaptation, and finally to the current moment where loss and damage have arisen as a pressing concern. A potential regime for loss and damage-related compensation is likely at least 20 years away; the history of the negotiations shows that these developments take time. The integration of human rights considerations in the international climate regime has also been a gradual process, and can be made more appealing to those countries that initially resisted human rights language when framed in terms of increasing the effectiveness of mitigation efforts. He concluded that we must think carefully about the potential form of a 2015 agreement, and what is possible, politically speaking. La Viña suggested that there may not be much difference between a COP decision and a protocol in terms of impact, while the former might be easier to achieve.

The second opening speaker, Kishan Khoday, Climate Change team leader at the United Nations Development Programme (UNDP), presented UNDP's recent report, *Environmental Justice: Comparative Experiences in Legal Empowerment*. He noted that environmental justice has arisen as a mechanism for accountability and legal transformation to fight abuses of power that result in the poor and vulnerable suffering disproportionate impacts of environmental change and lacking equal opportunity to benefit from natural assets. To this end, the report outlines key trends and innovations for environmental justice across the South, including normative frameworks to combat environmental change and inequity through constitutions, laws and judicial processes; the transformational power of social accountability movements; and efforts to engage the role of informal legal systems in tribal and indigenous communities.

The third opening speaker, Christina Voigt, professor of international law at the University of Oslo and former chair of UNFCCC negotiations on the Reducing Emissions from Deforestation and Forest Degradation (REDD+) mechanism, speaking in her personal capacity, noted that a lot is at stake in Lima. In particular, it is expected that decision will be made on countries' Intended Nationally Determined Contributions (INDCs), including what form they will take and what kind of information will be required. It is also expected that a kind of road map toward the Paris agreement will be agreed upon. With this in mind, it is disheartening to see how strongly countries are positioning themselves, and moving further apart in the negotiations. The key legal issues emerging from these talks involve the interpretation of the principles of the convention, and the form that the new agreement will take. Voigt concluded with the need to create an enabling environment for the private sector to move toward a low-carbon economy. A key part of the solution is to ensure integration between more sustainable patterns of production and consumption, in a way that addresses the drivers of environmental destruction.

Finally, in a special keynote address, Honourable Judge Antonio Benjamin, chair of the International Environmental Law Commission of the International Union on the Conservation of Nature and justice of the National High Court of Brazil, emphasized the importance of domestic legislation in effective climate change responses. He noted that there has been a disconnect between international and domestic law. Indeed, it is mainly in the area of climate change adaptation that judges at the national and sub-national level have a role to play. There has been a "climatization" of environmental law, and as a result it is crucial to educate judges about the effects and implications of climate change, across multiple areas of law. This task is not unprecedented. As Judge Benjamin pointed out, until recently, some supreme courts were using pirated software, but this behaviour was gradually changed with education. In a similar way, therefore, it should be possible to change our thinking and practices in ways that protect public property and safeguard intergenerational equity. For these reasons, his focus is on the domestic regime. At the end of the day, judges will be working mostly with domestic legislation.

PUBLIC PARTICIPATION AND ACCESS TO JUSTICE IN CLIMATE GOVERNANCE

In the first interactive parallel session, chaired by Sébastien Duyck, researcher at the University of Lapland, participants directed their reflections to the following questions:

- What are the key challenges for public participation and access to justice in climate governance, both within the UNFCCC,and at the national and sub-national levels?
- What are best practices in the promotion and implementation of transparent and equitable mechanisms for public participation and access to justice in climate governance?
- How might these best practices be incorporated into the post-2015 climate regime?

First, Kajkoj Maximo Ba Tiul, consejo de pueblos de Tezulutlán, spoke about public participation and the Santa Rita Hydroelectric Project in Guatemala. This project is registered under the Clean Development Mechanism (CDM), as defined in the Kyoto Protocol. Since the project began development, it has brought many human rights violations in the area, including violations of the right to public participation. Ba Tiul questioned how we should understand public participation, including differences in understanding between indigenous peoples and the Western world. Ongoing violations, such as those connected to the Santa Rita project, perpetuate the injustices of colonialism in Latin America, which began in 1492, and the Western world largely fails to understand the views of indigenous peoples. While there are some more progressive governments, the rights of indigenous peoples nonetheless continue to be violated.

Hafijul Khan, executive director of the Centre for Climate Justice in Bangladesh, raised the issue of public participation and public input into states' negotiating positions within the UNFCCC. He stated that it is important to interrogate stakeholders' relationship to delegations, which, for the most part, do not consult with stakeholders before coming to the negotiations. Given this reality, Khan questioned how we might be able to better involve the public. With respect to public participation in climate change response measures on the ground, he noted that community-based approaches to adaptation can allow for the active participation of stakeholders in decision making, leading to community empowerment. To this end, Khan pointed to the need to educate and empower the community, so that they can participate effectively in response measures such as adaptation.

Abby Rubinson, associate attorney of Earthjustice, noted that public participation leads to better outcomes, and yet incorporating meaningful public participation into climate change response measures and planning is still a challenge. With respect to the CDM, public participation is mentioned a few times in the modalities and procedures, but not in a very specific or detailed way, and this has led to problems. For example, with the Barro Blanco CDM project in Panama, which is being built just outside indigenous territory, an initial environmental impact assessment was conducted, but it failed to include an assessment of the impacts on indigenous peoples, and it has been a serious struggle to obtain any kind of redress for this exclusion. In reality, the process did not ensure that the most directly affected people were engaged, although, technically speaking, the requirements were met. In cases where public comment is invited, it is important to consider, who is the public? Stakeholders may not necessarily be representative of the public. For example, they may simply be those who are closest to government, or people with easy access, and not necessarily a wide enough group. As a result, it is important to determine who is affected or likely to be affected by climate change actions.

Finally, to launch the discussions, Sébastien Duyck returned to the general theme, noting that while the CDM provides a bad example of public participation, the case of REDD+ is more positive. Nevertheless, the same discussions relating to public participation are arising again with respect to the Green Climate Fund, so there is a danger of having to reinvent the wheel over and over again if the lessons are not learned and progress is not necessarily being carried over from one process to another. Another issue is how to leverage public participation independently of specific mechanisms under the UNFCCC. Article 6 provides one way. For example, countries have committed to promoting all five elements under Article 6; however, most activities have been focused on education, as this is the aspect of Article 6 that governments are most comfortable with. Reflecting on the new direction of the climate negotiations, Duyck noted that while the Kyoto Protocol took a very top-down approach, this has changed since Cancun, and might be an opportunity to strengthen public participation. In this new approach, transparency, rather than sanctions, will be key.

In the ensuing discussion, participants questioned the role of public participation in setting states' INDCs. Participants stressed that this was a key question in relation to how the public in each country could involve themselves in the INDC process. Indeed, the INDC process will require guidance at the national level, which currently does not exist. In some processes, such as the UNFCCC's National Adaptation Programs of Action for least-developed countries, governments were invited to consult the public, and 94 percent of the programs submitted explain how the public was involved. However, these figures might look better on paper than on the ground. Participants also stressed that countries must be reminded that public participation is a human right. To this end, states and stakeholders should look at other existing human rights obligations under the international human rights legal regime and under national constitutions. Finally, the private sector and the business community should not be excluded from the discussion.

RESOURCES GOVERNANCE FOR SUSTAINABLE LANDSCAPES IN THE POST-2015 CLIMATE CHANGE REGIME

In the second parallel interactive discussion session, chaired by Alberto Sandoval Uribe, executive director of Think Transversal (CIDEPP), and Marie-Claire Cordonier Segger, international experts identified and analyzed examples of innovative laws and governance that work to secure more sustainable landscapes and resources governance, and considered the most important challenges to overcome. The experts focused on questions such as:

- How can countries design and refine the international climate regime in a coherent framework with international regimes on biodiversity and soil degradation?
- What new national and international instruments can foster coherent implementation of the Rio Conventions on the ground in key regions and countries of the world?
- Based on a review of new practices for integrated implementation of international treaties on sustainable development, can we identify innovative laws and governance that can secure more sustainable landscapes and resources governance, and what are the most important challenges to overcome?

First, Alberto Sandoval Uribe introduced David Gomez Alvarez, vice minister of planning in Jalisco State of Mexico. Minister Alvarez highlighted the new landscapes approach in his state and explained how it is much better able to address climate challenges such as climate resilience. The integrated fashion in which his ministry now approaches these challenges, in his view, would be greatly aided by a more focused landscapes approach. There are necessary advances required from all sectors in order to ensure that climate change mitigation and adaptation requirements can be achieved in a way that promotes participation in the new green economy. The challenge of advancing in a sectoral manner, without taking account of the shared jurisdiction over development that is held by environment and health, but also agriculture, energy, forests and other departments, is that lack of coherence and coordination results in conflicts among legislation, regulations, guidelines and practices on the ground.

Second, Pedro Solano, executive director of the Sociedad Peruana de Derecho Ambiental (SPDA), explained the importance of sustainable landscapes. In particular, he drew linkages between international efforts to conserve and sustainably use biological resources, as mandated by the Aichi Targets on Biodiversity, and the UN Convention on Biological Diversity with its Nagoya Protocol on Access and Benefit Sharing, and the efforts to develop REDD+ and other land-use collaboration mechanisms in the UNFCCC that deliver co-benefits. He noted that the landscapes approach, applied in Peru and across Latin America, provides a common platform for integrated land-use decision making, which permits public participation and cross-sectoral consultation and engagement. This can, if applied correctly, open spaces for indigenous and local communities to gain greater voice in decision making about their lands, and to inform and educate others about climate change mitigation and adaptation, traditional knowledge of the ecosystems themselves (such as forestry techniques, changes in water availability and soil quality, and other evidence of land-use change). It also has the possibility, if decision-making processes and authorities are appropriately designed, to create spaces for better implementation of laws and policies on the ground.

Valerie Kapos, head of Climate Change and Biodiversity at the United Nations Environment Programme's World Conservation Monitoring Centre (UNEP-WCMC), emphasized the importance of linking science and the law. She noted that there are many instances where lack of scientific knowledge about biodiversity or climate change circumstances has led to imperfect or even inappropriate law and policy decisions being made. She called for greater cooperation between scientific and monitoring communities, and legal communities, and considered how sustainable landscapes approaches, including integrated land-use planning processes, can encourage this cooperation on multiple levels. In the discussion, it was clear that biodiversity surveys and scientific research can greatly inform and improve land-use planning and related law making, and that, similarly, scientific information that supports accurate monitoring, reporting and verification of reductions in emissions as compared to baseline scenarios, and even in the establishment of these baselines, can contribute to better law making and regulations to support REDD+ benefits.

John Dernbach, distinguished professor of law at Widener University and co-director of its Environmental Law Center, joined the discussion, observing that current extractive industry policies, in the mining and energy sectors in particular, had found landscapes approaches useful for facilitating debates on the possible benefits and risks of large-scale development projects, particularly in developing countries but also in the United States. In the discussion it was noted that by participating in such processes, rather than leading perhaps-less-than-effective consultations about natural resources use, firms and those who represent them can obtain clearer guidelines for their operations, and discern the possible benefits or impacts of their plans on local and regional communities. Where consensus on the value of a development project could not be obtained, an open and transparent land-use decision-making process, such as integrated land-use planning that is promoted in a sustainable landscapes framework, might allow a firm to cut their losses prior to making a larger investment, and to understand the views of local government decision

makers and local people, reducing financial and reputational risks.

In continuing discussions, it became clear that many experts felt that sustainable landscapes approaches, particularly on local and regional levels of governance that are embedded in larger international frameworks, deserve a great deal of further attention in international and national climate law and governance research and policy making. Representatives of the legal and scientific research institutes present discussed several potential axes of collaboration that could be explored in the future, positing options for investigation into how landscapes approaches, from a law and governance perspective, might be encouraged but also monitored for their ability to deliver development, forestry, water management, agricultural, climate change and biodiversity benefits.

HUMAN RIGHTS IN THE POST-2015 CLIMATE CHANGE REGIME

Chaired by Alyssa Johl, senior attorney of the Centre for International Environmental Law (CIEL), this session focused on the following guiding questions:

- What should be the role of human rights in the post-2015 climate change regime?
- What are some of the most promising openings for the inclusion of human rights in the post-2015 regime, and where might the greatest challenges lie?
- What are the potential synergies between existing international human rights instruments and a new climate agreement?

First, David Estrin, the climate change justice and human rights co-chair of the International Bar Association (IBA), spoke about the IBA's report *Achieving Justice and Human Rights in an Era of Climate Disruption*, noting that the IBA's broad membership, which includes many corporate lawyers, demonstrates that it is not just environmental lawyers or human rights lawyers who are concerned about these issues. The report provides a critical comprehensive survey of climate frameworks, using a justice-centred framework, and highlighting opportunities for reforms. Estrin noted that there are two significant aspects in the relationship between human rights and climate change. Not only is climate change violating human rights, but UN actions to address climate change are also violating human rights. In a post-2015 regime, we need to achieve climate justice, including urgent action on mitigation and real safeguards to prevent serious violations of human rights.

Second, Katharina Rall, research fellow at New York University and an attorney with Human Rights Watch (HRW), noted that HRW has worked increasingly on environment and human rights-related issues, and has now starting moving in the direction of climate change because it is a key crosscutting issue. To this end, Rall introduced some of the ongoing research being conducted by her colleagues in the Turkana region of Kenya. In this very arid region, only the pastoralists and fishermen can survive, and it has become increasingly challenging for them to maintain their livelihoods as drought increases. She shared the stories and photographs of individuals who are currently experiencing these challenges. Rall spoke to the importance of conveying the testimony of those experiencing climate impacts through various media, as a way to highlight the human rights implications.

María José Veramendi Villa, senior attorney in the Human Rights and Environment Program of the Asociación Interamericana para la Defensa del Ambiente (AIDA), spoke about human rights and environmental litigation. While there have been many advancements in recent years in litigation, the current climate change negotiations do not reflect this reality. For example, the more significant challenge currently being faced involves how to ensure that human rights are recognized at all in the new climate agreement's operational language. Many of the response mechanisms are actually violating human rights in their implementation, making effective access to justice a crucial issue. There are potential synergies between existing human rights obligations and the new climate agreement. A key issue, therefore, is how we bring the language of human rights and the language of climate change together, without causing an "allergic reaction" on the part of negotiators.

Finally, Edward Cameron, director of partnership development and research at Business for Social Responsibility (BSR), asserted that the best example of human rights in the UNFCCC is the commitment to hold the global temperature rise below two degrees Celsius. To this end, the Maldives' decision to bring human rights into the process was about power, ambition and resilience; it was about trying to change the power dynamic so that the movement was back in the hands of vulnerable countries. Indeed, we still see the United States with a delegation of 90, while Burkina Faso has a delegation of seven and is trying to follow 55 streams of negotiations. The narrative of human rights and climate justice is powerful, and there is a real opportunity to use this narrative to engage people. For example, in Cameron's experience, corporations do not care about climate change, but they are concerned about human rights issues. Cameron concluded by stating that we should not think of the UNFCCC process as one that will solve every problem under the sun, or spend all of our time focusing on human rights language; rather, we have to get the negotiations back to the original mandate and focus on emissions reductions.

In the discussions, participants stressed that the "equity review" component of states' INDCs must remain, so that countries will have to explain how their INDC contributes to the two degree target. A related question is where are human rights and justice/equity concerns most effectively addressed in responses to climate change? Is it in COP decisions or in national mobilization? Don Brown of Widener University noted that reliance on economic self-interest violates almost

every normative principle; when countries actually began formulating their climate change policies, almost all of them were based on economics, rather than on issues of justice or equity. And yet, every emissions reduction commitment is already a position on atmospheric content, and therefore an ethical position. Participants suggested that while we now have many examples of good practice integrating human rights into different types of climate response action on the ground, a key area for further action is determining how best to use these examples to persuade governments.

INNOVATIVE LAWS FOR RENEWABLE ENERGY IN THE GREEN ECONOMY

This session, chaired by Markus Gehring, focused on how countries can move from current resource-depleting and wasteful forms of economic growth to a low-carbon, sustainable green economy. Experts discussed the following questions:

- What is the potential of international economic instruments to foster rather than frustrate this shift, facilitating access to emerging markets and industries for clean renewable energy, environmental goods and services, local organic agriculture, sustainable transportation and construction, and ecosystem services?
- Based on a review of more than 250 national, regional and international legal instruments, how can we identify innovative legal practices among rules that facilitate the transition to a global green economy, and what are the most important challenges to overcome?

Markus Gehring explained the importance of the transition to the global green economy as envisioned in the Rio+20 document, *The Future We Want*, and within it the role of renewable energy sources. He highlighted the findings of a recent CISDL/UNEP study on legal instruments for the transition to a greener, low-carbon economy, which referred to several innovations, especially economic incentives and instruments to support renewables.

John Dernbach explained in greater detail the current challenges concerning the surge of fracking and its impact on the green economy. While the technology as such might not be harmful, the current planning and regulatory regimes — not only in several US states, but also around the world — seem inadequate. He explained that in several instances local planning laws had not been followed, and that fracked natural gas may be labelled a more sustainable energy source when in reality it undermines climate change targets.

Noémie Kugler, a researcher at Centro de Ciencia del Clima y la Resiliencia (CR2) at the Universidad de Chile, highlighted the current discussions about renewable energy in Chile. She explained how, with the rejection of nuclear and growing climate concern, promotion of renewables has become the prime focus of energy policy in the country. She also highlighted that renewables can be controversial, for example, when they clash with natural habitat and biodiversity protection objectives.

Rodrigo Mella, legal research officer for Latin America of the CISDL, spoke about a recent CISDL research project on biofuels, perhaps one of the most controversial sources of renewable energy in the green economy. He explained how the Organization of American States' Statement on the Development of Biofuels has become the international yardstick that countries, particularly in Central America, use to assess their own biofuels production, many preferring third-generation biofuels. The "green" economy, rightly understood, should not lead to new poverty, and thus any competition with food crops should be strictly avoided.

During the discussions, several excellent contributions were made. Among the speakers was Moritz von Unger of ATLAS Environmental Law Advisory, who highlighted the international trade dimensions of renewable energy laws, which may present particular challenges in relation to legislation aimed at climate change mitigation. Participants agreed that in a globalized economy, the international dimension of renewables and renewable energy trade has to shift into focus. While certain limitations in the use of trade and investment standards, or guidelines that are based on the production and processing methods in like-circumstances or among like-products remain, experts suggested that some of these issues could be overcome with modern information technology.

THE ROAD TO PARIS: FUTURE DIRECTIONS FOR RESEARCH AND PROGRAMS ON CLIMATE LAW AND GOVERNANCE

Chaired by Markus Gehring, the closing session invited participants to reflect on the following questions:

- What are the key strategies and legal research, policy and practice priorities in the design of an effective, equitable and sustainable post-2015 climate regime?
- How can international law and governance innovation contribute to the proposed sustainable development goals (SDGs) on climate change?
- How can we collaborate, as law and governance scholars and practitioners, in advancing the agenda toward COP 21 in Paris?

First, Oonagh E. Fitzgerald, director of CIGI's International Law Research Program (ILRP), gave a brief closing keynote

address. She introduced CIGI and its work as an active and engaged partner and collaborator in the global climate policy, economics and governance community, noting that the international law program has only been in existence for a year. The ILRP focuses particularly on international economic law, international intellectual property law and innovation, and international environmental law. Fitzgerald noted that human rights and indigenous rights are relevant to each of these areas of focus, and are being integrated into the ILRP's research agenda. The ILRP's climate change-related research will include incentives for green technology innovation and transfer; best practices and model laws for climate change remedies and dispute resolution; and the role of regional groupings, sub-nationals, business, industry and civil society in shaping international, transnational and domestic climate change rule of law and practice.

Second, Marie-Claire Cordonier Segger, in summing up the day's lively discussions, noted that there are many issues on which the rule of law and legal education communities can and should be intervening. She pointed to the international research and legal action agenda that we are all challenged to take forward, not just from the day's workshop, but from the COP itself. For legal experts, practitioners, scholars and policy makers, the sustainable development approach offers the opportunity to move beyond "silo"-type thinking and find ways to ensure our work in the justice sector is better coordinated and more effective.

ACKNOWLEDGEMENTS

The generous and timely financial support of CIGI, CISDL and the Gouvernement du Québec, as well as the intellectual and logistical support of PUCP, are gratefully acknowledged by all participants in the workshop, whose work benefited from the space for dialogue and collaboration.

The partners also acknowledge the excellent contributions of expert speakers and institutions, whose collaboration was crucial for successful discussions of the key emerging trends and issues, including through their educational work, international law and governance research, and leading efforts in programming on the ground that informed the debates. These included partners such as LCIL at the University of Cambridge, the Centre for Advanced Studies in Environmental Law and Policy at the University of Nairobi, CR2 at the Universidad de Chile, the Centre for Climate Justice (Bangladesh), Fundación Ecos and St. Clare's College of Uruguay, CIEL, HRW, Earthjustice, SPDA, AIDA, Centro Mexicano de Derecho Ambiental, CIDEPP and others. It also included the IBA, the Centre for International Forestry Research, UNEP-WCMC, the Climate Change and the Law Community of Practice of the World Bank's Global Forum on Law, Justice and Development, and the Gouvernement du Québec.

The organizers would also like to acknowledge the excellent research assistance of CISDL Legal Research Group member Esubalew Dadi, as well as the assistance of CISDL Latin American research officer Rodrigo Mella, and LCIL visiting fellow Jackson Kern, whose efforts were invaluable in shaping the agenda and hosting the workshop. Finally, the assistance of Nathalie Málaga, Alyssa Meier, Sandra Lock, Alberto Ventura, Adriana Bendezú and Leslie Ortega of the PUCP's Centre for the Analysis and Resolution of Disputes is gratefully acknowledged.

Appendix I: Conference Agenda

December 6, 2014, 9:30 a.m.–3:00 p.m.

9:30–9:45 a.m. — Welcome and Opening

- **Markus W. Gehring**, fellow, LCIL, University of Cambridge; Jean Monnet Chair in Sustainable Development Law, University of Ottawa; lead counsel, CISDL
- **José Daniel Amado**, PUCP

9:45–10:30 a.m. — Plenary Round Table

Chair:

- **Marie-Claire Cordonier Segger**, senior legal expert in sustainable development, IDLO

Speakers:

- **Tony La Viña**, former dean, Ateneo School of Government
- **Kishan Khoday**, Climate Change team leader, UNDP
- **Christina Voigt**, professor of international law, University of Oslo
- Honourable Judge **Antonio Benjamin**

10:30 a.m.–12:00 p.m. — Parallel Workshops (I)

Session 1: Public Participation and Access to Justice in Climate Governance

Chair:

- **Sébastien Duyck**, researcher, University of Lapland

Speakers:

- **Kajkoj Maximo Ba Tiul**, consejo de pueblos de Tezulutlán
- **Hafijul Khan**, executive director, Center for Climate Justice (Bangladesh)
- **Abby Rubinson**, associate attorney, Earthjustice

Session 2: Resources Governance for Sustainable Landscapes in the Post-2015 Climate Change Regime

Chairs:

- **Alberto Sandoval Uribe**, CIDEPP, and **Marie-Claire Cordonier Segger**, senior legal expert in sustainable development, IDLO

Speakers:

- **David Gomez Alvarez**, vice minister of planning, Jalisco State, Mexico
- **Pedro Solano**, executive director, SPDA
- **Valerie Kapos**, head of Climate Change and Biodiversity, UNEP-WCMC

12:00–1:00 p.m. — Luncheon, Awards and Launching Ceremony

- Celebration of Universidad de Chile/CISDL MoU and CIDEPP/CISDL MoU signatures; toast by **David Gomez Alvarez**, vice minister of planning, Jalisco, Mexico
- Awards for International Legal Essay Competition on "Climate Change, Sustainable Development and the Law: Global Governance Challenges and Innovation," presented by **Markus W. Gehring** and toast by **Tony La Viña**
- Toast to launch Legal Working Paper Series on Public Participation and Climate Governance, announced by **Sébastien Duyck**, University of Lapland, and **Katherine Lofts**, CISDL

1:00–2:30 p.m. — Parallel Workshops (II)

Session 3: Human Rights in the Post-2015 Climate Change Regime

Chair:

- **Alyssa Johl**, senior attorney, CIEL

Speakers:

- **David Estrin**, climate change justice and human rights co-chair, IBA
- **Katharina Rall**, research fellow, NYU, and attorney, HRW
- **María José Veramendi Villa**, senior attorney, Human Rights and Environment Program, AIDA
- **Edward Cameron**, director of partnership development and research, BSR

Session 4: Innovative Laws for Renewable Energy in the Green Economy

Chair:

- **Markus W. Gehring**, fellow, LCIL, University of Cambridge; Jean Monnet Chair in Sustainable Development Law, University of Ottawa; lead counsel, CISDL

Speakers:

- **John Dernbach**, distinguised professor of law, Widener Law School
- **Noémie Kugler**, CR2, Universidad de Chile
- **Rodrigo Mella**, legal research officer for Latin America, CISDL

2:30–3:00 p.m. — Closing Plenary: The Road to Paris — Future Directions for Research and Programs on Climate Law and Governance

Chair:

- **Markus W. Gehring**, fellow, LCIL, University of Cambridge; Jean Monnet Chair in Sustainable Development Law, University of Ottawa; lead counsel, CISDL

Speakers:

- **Oonagh E. Fitzgerald**, director, CIGI ILRP
- **Marie-Claire Cordonier Segger**, senior legal expert in sustainable development, IDLO

Appendix II: International Legal Essay Competition

The CISDL, in cooperation with the LCIL at the University of Cambridge, the Centre for Research on Climate Resilience at the Universidad de Chile, and the Centre for Advanced Studies in Environmental Law and Policy at the University of Nairobi, held an International Legal Essay Competition for students and recent graduates on the topic of "Climate Change, Sustainable Development and the Law: Governance Challenges and Innovations." The winners were announced during the luncheon by Markus Gehring and a toast was given by Tony La Viña.

The papers will be published in a special working paper series by CISDL in 2015. Abstracts of the winning entries are provided below.

Gold Medal Winners

The Transport Sector and the CDM: Long-term Sustainable Development?

Guillermo Umana Restrepo

Master of international environmental law, Macquarie University, Sydney, Australia

The transport sector is the second largest source of greenhouse gas (GHG) emissions globally, after heat and energy. While transport emissions from countries in the Organisation for Economic Co-operation and Development (OECD) continue to grow, emissions from non-OECD countries are increasing at a faster rate. Indeed, the transportation sector is the sector with the fastest growth rate of GHG emissions in the developing world. This puts the transport sector at the heart of the UNFCCC's initiative to incentivize the reduction of emissions from urban motorization in developing countries. In fact, the increasing expansion of urban motorization is also generating multiple negative socio-economic and environmental outcomes, such as traffic congestion, road fatalities, health problems due to pollution and loss of public space.

The CDM is the only instrument under the UNFCCC system with the objective of assisting developing countries to achieve their long-term sustainable development objectives and contribute to the mission of the convention while assisting Annex I parties of the convention to comply with their quantified emissions reduction obligations under the convention.

Despite the potential of the transport sector for global emissions reductions and its eligibility for CDM project registration, the CDM has not incentivized investment in sustainable transport projects (STPs), as demonstrated by the small number of STPs that have been registered under the CDM (32 out of 7,572 projects). This is due in part to the inherent trade-offs between the two primary objectives of the CDM — namely, sustainable development of developing countries, and the emissions reductions obligations of developed countries. Furthermore, the additionality and fixed-term crediting period requirements of the CDM operational rules are not encouraging CDM transport projects to achieve long-term sustainable development outcomes.

Thus, while in theory the CDM is the ideal instrument under the international climate change legal regime to facilitate the growth of STPs in developing countries, in reality the mechanism serves more as a disincentive. This paper concludes by exploring the option of removing transport projects from the CDM and ultimately the Kyoto Protocol, and creating a dedicated "Sustainable Development Package for Transport" directly under the UNFCCC.

Distributing the Benefits from REDD+ in Vietnam

Katherine Lofts

LL.M. student, McGill University; legal research fellow, CISDL (Canada)

Vietnam has significant experience with benefit distribution systems for decentralized forest management. As a result, the country has a rich history from which to draw clear policy options for the establishment of a benefit distribution system that is compliant with the REDD+ Programme.

Currently, Vietnam is participating in several initiatives to prepare for a REDD+ financial mechanism. In July 2008, the country was one of the first to receive approval for its Readiness Project Identification Note under the Forest Carbon Partnership Facility, and in March 2009 it was one of nine pilot countries selected for the Quick Start Initiative under the UN-REDD Programme. Vietnam is now drafting its national REDD+ strategy and has established a National Readiness Management Arrangement, including a Vietnam REDD+ steering committee, network and dedicated office. It is estimated that REDD+ could generate benefits of US$80–100 million per year in the country — roughly three to four times the amount of aid money currently supporting the Vietnamese forestry sector. However, the country's ability to attract this financing will depend on its development of a REDD+ compliant benefit distribution system.

Those who undertake forest management — including indigenous and forest-dependent communities — need clear incentives for adopting REDD+ activities. Equitable and transparent benefit distribution systems are key to providing such incentives. Investors also find security in transparent and accountable systems that are monitored, reported and verified. In addition, performance-based or other conditional payments can motivate communities to achieve and sustain results, leading to further carbon reductions. For these reasons, Vietnam considers the design of a compliant benefit distribution system to be a priority in its preparations for REDD+.

This paper explores key lessons from the Vietnamese experience, outlines the process of designing a benefit distribution system in the country, and identifies remaining challenges.

Silver Medal Winners

Climate Change, Sustainable Development and the Law: Integrating Sustainable Development and Climate Change

Brenda Ambani

Lawyer; associate member of the Insurance Institute of Kenya and the Institute of Legal Executives (London); master's student in public international law, University of London International Programmes (Kenya)

In the wake of industrialization, science has now irrevocably proved that climate change is occurring due to increased human activities that emit GHGs. The changing climate is affecting employment, agriculture, water and energy among other key economic sectors, in both cities and rural areas. If left unchecked, climate change will increase the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. In addition to multilateral negotiations on climate change, the international community is also involved in discussions on sustainable development, treating the two issues as interdependent. Indeed, among the current proposals for the new SDGs are draft goals on sustainable cities and human settlements, sustainable transport, sustainable consumption and production (including chemicals and waste), and climate change and disaster risk reduction. Because the SDGs touch on sectors that are climate sensitive, greater integration with climate change discussions can enable a more effective integration of climate issues into the SDGs. As the Intergovernmental Panel on Climate Change's fifth assessment report notes, limiting the effects of climate change raises key issues of equity, justice and fairness, which are all factors necessary to achieving sustainable development and eradicating poverty.

This paper explores ways to balance climate change and sustainable development in order to achieve a brighter future. It examines how climate change and sustainable development may be integrated through national, regional and international law and governance frameworks and mechanisms, and which innovative legal instruments and practices hold the most potential to help address this integration. Finally, it addresses ways to implement innovations across diverse sectors. The paper concludes that climate change must be addressed hand in hand with sustainable development, and this shift must begin at the national level. As various countries begin to make this shift, national laws and policies may require amendment or review so as to properly incorporate the integration of sustainable development and climate change considerations.

The United Nations Convention to Combat Desertification

Daniel Schueppert

J.D. candidate, University of Minnesota Law School

The United Nations Convention to Combat Desertification (UNCCD) is a legally binding international agreement intended to bridge the gap between the environment, economic development and sustainable land management. The convention conceives of desertification as locally contingent and arising from a complex of social, biophysical and economic factors.

The purpose of this paper is twofold: to present a programmatic and operationally centric snapshot of UNCCD and, on a deeper level, to delve into a critical analysis of why the convention has struggled to achieve its goals despite many indicators of success. The convention's heavy reliance on a bottom-up participatory model has been a common thread between these problems.

In some respects, this bottom-up approach is well suited to the UNCCD's objectives, as it essentially creates a multi-layer system of governance and implementation that makes it difficult for a single member to veto the implementation of National Action Plans and Sub Regional Action Plans. The approach brings in people and organizations that are more likely to be affected by desertification, as well as those with on-the-ground experience of how resources are being used. However, despite the participatory intent of the bottom-up approach, COP 6 demonstrated that sovereign member states still have the capacity to stall UNCCD's agenda because of the lack of top-down non-compliance sanctions. At this meeting, member states rejected the agenda of UNCCD, demonstrating that actual enforcement of the operational and structural preferences of the convention is difficult.

Part I of this paper provides a brief background to the UNCCD. Part II presents information about the nature of desertification and provides specific examples of areas that face greater desertification risk. It also describes some of the causes, effects and attempts to combat desertification within those regions. Part III introduces the bottom-up operational structure of the convention and compares the UNCCD's participatory model to the alternative top-down operational structure of some other conventions. Part IV turns to criticisms of the convention arising out of limitations of the bottom-up model. These criticisms look to structural conflicts between the UNCCD's bottom-up policies and the ambitions of its secretariat, as well as the related impact upon a historically important member party.

Bronze Medal Winner

Director Duty of Care in China and the United States: What Credibility for Climate Change?

Carissa Wong

Master's degree in environmental management, Duke University; LL.B., University of Ottawa

This paper argues that despite divergent history and culture, which have created contrasting approaches to individualism and collectivism, legal personality and pollution litigation, corporate law in China and the United States pose insignificant functional differences in terms of director liability for climate change under the duty of care. To those leading social change, this functional similarity suggests that the potential for legal action on climate change liability is not affected by historical and cultural differences between the United States and China, but creates more consistent and homogeneous opportunities and challenges across national borders. In particular, it looks at increasing the equity and effectiveness of public participation in climate governance through the unexploited solidarity and commonalities that individuals in the globalized, modern, industrialized economies face in making personal decisions that affect carbon emissions in their daily lives.

Corporate law in both the United States and China creates functionally similar barriers and opportunities for public participation in climate governance in both countries. Greater solidarity may be possible through other forums of public participation. With the corporation and its concept of agency as the dominant model for organizing resources, the differences between nation-states are radically less apparent in determining the production of goods, services and resulting waste. In fact, the most powerful venue for public participation may be through value-based organizations, such as eco-teams, in which people facing similar challenges on opposite sides of the globe can reduce their carbon emissions, adapt to climate change and share their experiences, resources and ideas in a trusting, friendly environment. This value-based, team-oriented process of creative proble solving to meet the personal challenges in making a shift toward a more carbon-neutral lifestyle is a model of participation in climate governance that needs more attention.

ABOUT CIGI

The Centre for International Governance Innovation is an independent, non-partisan think tank on international governance. Led by experienced practitioners and distinguished academics, CIGI supports research, forms networks, advances policy debate and generates ideas for multilateral governance improvements. Conducting an active agenda of research, events and publications, CIGI's interdisciplinary work includes collaboration with policy, business and academic communities around the world.

CIGI's current research programs focus on three themes: the global economy; global security & politics; and international law.

CIGI was founded in 2001 by Jim Balsillie, then co-CEO of Research In Motion (BlackBerry), and collaborates with and gratefully acknowledges support from a number of strategic partners, in particular the Government of Canada and the Government of Ontario.

Le CIGI a été fondé en 2001 par Jim Balsillie, qui était alors co-chef de la direction de Research In Motion (BlackBerry). Il collabore avec de nombreux partenaires stratégiques et exprime sa reconnaissance du soutien reçu de ceux-ci, notamment de l'appui reçu du gouvernement du Canada et de celui du gouvernement de l'Ontario.

For more information, please visit www.cigionline.org.

CIGI MASTHEAD

ABOUT CISDL

The Centre for International Sustainable Development Law aims to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law. The CISDL is an independent legal research centre that has a collaborative relationship with the McGill University Faculty of Law in engaging students and interested faculty members in sustainable development law research and scholarly initiatives. The CISDL has six legal research programmes led by jurists from developing and developed countries, and publishes books, articles, working papers and legal briefs in English, Spanish and French.

Centre for International Sustainable Development Law

Chancellor Day Hall

3644 Peel Street, Montreal (Quebec), H3A 1W9 Canada

www.cisdl.org

67 Erb Street West
Waterloo, Ontario N2L 6C2, Canada
tel +1 519 885 2444 fax +1 519 885 5450
www.cigionline.org

Chancellor Day Hall, 3644 Peel Street
Montreal, Quebec H3A 1W9, Canada
tel +1 818-685-9931 fax +1 514-398-4659
www.cisdl.org