



Climate Action 2016: Catalyzing a Sustainable Future

**Side Event: Companies and Climate Change: Legal Liability and Human Rights
Challenges After COP21**

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Introductory Address by

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Ladies and Gentlemen:

1. As President of the International Bar Association, I am delighted to welcome you to this event, "*Companies and Climate Change: Legal Liability and Human Rights Challenges after Paris*".
2. The International Bar Association is the world's leading organization of international legal practitioners, bar associations and law societies, with a membership of over 80,000 lawyers and 200 bar associations.
3. I also want to recognize the five co-organizers of this Side Event, all of whom played a central role in bringing this event to fruition. In no particular order, they are: (1) Sidley Austin, (2) the Business & Human Rights Resource Centre, (3) the Center for Human Rights & Humanitarian Law at American University Washington College of Law, (4) the Institute for Human Rights & Business, and finally (5) the Center for International Environmental Law.

4. Over the course of the afternoon, we will discuss both the impact that the global community's unprecedented resolve to combat climate change will have on businesses *and* the huge contribution that the business community has to make in this field. Of course, these two aspects are intimately linked: we are increasingly seeing that putting environmental and climate change considerations at the heart of corporate decision making and reporting is not only good for the planet, but it is good for business too.
5. We are very fortunate to have such learned panels, representing a diversity of perspectives and experiences, with us today. The panels will address both (1) companies' legal liability to address climate change (although we are of course increasingly seeing that companies view it as important to comply with soft law such as the Ruggie Principles as much as hard law); and (2) the relationship between climate change impacts and human rights.
6. Indeed, our focus on the human rights aspects and impact of climate change is no accident. The concept of '*climate change justice*', which acknowledges that the impacts of climate change are disproportionately suffered by those communities that have the *least* ability to prevent or respond to the changing environment, is firmly at the heart of the International Bar Association's climate change policy.
7. As some of you may know, in 2012, the IBA established a Task Force on Climate Change Justice in response to the challenge presented by Mary Robinson to the legal community to provide leadership in shaping the global response in this field.
8. The introduction of the concept of "climate change justice" was, at that time, novel. The human rights dimension of climate change had rarely been explored.
9. Today, however, as we turn our attention towards the realization of the commitments made in the landmark Paris Agreement, we see that the concept of "climate change justice" is becoming an integral part of our common vocabulary, and increasingly is enshrined in the lexicon.
10. The Task Force's mission was to review existing international and domestic legal frameworks relating to climate change, to identify weaknesses and obstacles and to make recommendations to improve them in order to promote climate justice.

11. The result of the Task Force’s work – a comprehensive and landmark Report entitled ‘*Achieving Justice and Human Rights in an Era of Climate Disruption*’ - was published in 2014 to wide acclaim. The Report has quickly become one of the reference texts in the field and is recognized as a catalyst in the broader climate movement.
12. It contains over 50 specific, concrete and *pragmatic* recommendations to achieve greater justice and human rights in the global response to climate change. The recommendations include legal and institutional reforms to enhance mitigation and adaptation to climate change from a human rights and justice-focused perspective.
13. Critically, there is something in the Report for everybody: the recommendations are targeted at a variety of stakeholders, from international organizations, such as the UN Office of the High Commissioner for Human Rights, the WTO, the IMO and the UNFCCC, to sovereign States, companies and individuals.
14. The content of the recommendations include substantive and procedural legislative reform; capacity building; knowledge and skills transfer; increased transparency in government decision making and dispute resolution; multilateral adaptation measures; and international trade and investment agreements.
15. Of interest to this audience, the Report directed particular recommendations at both corporations and at States’ regulation of business operations, conduct and reporting. In particular, it recommended that States promote corporate responsibility for greenhouse gas emissions and environmental harm through the adoption of clear regulatory standards that make compliance possible for corporations, including the adoption of national reporting standards which would require corporations specifically to disclose and ultimately verify their own greenhouse gas emissions.
16. The Task Force’s recommendations have proven prescient. The UN Global Compact very recently published “*The CEO Study – A Call to Climate Action*”, based on hundreds of one-to-one interviews with CEOs from the world’s largest companies. One of the most compelling results of this research is that an overwhelming 91% of global CEOs view climate change as an urgent priority for business. These business leaders are calling for certainty, for legislative and fiscal action to increase investment, for global, robust and predictable carbon pricing mechanisms, for performance standards to enhance resilience and reduce emissions and for the removal or phasing out of fossil fuel subsidies.

17. After the publication of the Report, we did not rest and leave the hard work to others. We immediately took steps to implement the Report's recommendations, and indeed climate change justice has remained one of the key priorities of my presidency of the IBA over the past two years.
18. Implementation has extended right across the IBA's diverse network of lawyers, with many of the IBA sections and committees taking responsibility for the promotion of certain of the recommendations. Among many other examples, I note that:
 - a. The IBA's Section on Energy, Environment and Natural Resources is creating a network of climate change counsel to share knowledge and experience and is working with academic partners to organize conferences and seminars on key issues. It has published a special issue of its journal devoted to climate change issues.
 - b. Our Arbitration Committee has been working closely with our partners in the Permanent Court of Arbitration, the Stockholm Chamber of Commerce Arbitration Institute and other arbitral fora to promote the enforcement of climate change obligations through arbitration, including the UNFCCC's dispute resolution clause.
 - c. Our Corporate Social Responsibility Committee is driving the implementation of recommendations directed at businesses and corporations, while encouraging States to adopt clear regulations clarifying businesses obligations and reporting requirements in this field.
19. We have also established Working Groups, comprised of world leading judges, practitioners, academics and scholars, in response to specific recommendations, including:
 - a. A Working Group to explore the Legal Aspects of Adaptation, to propose and develop effective and practical adaptation solutions. The work of that Group, chaired by Conor Linehan and Professor Katrina Fischer Kuh, is now well under way, focusing their attention specifically on the challenges presented by (1) climate change migration; (2) food security; (3) technology transfer.

- b. A Working Group to develop a Model Statute (or model law) on Legal Remedies for Climate Change. The Model Statute is intended to be used by States to reform domestic rules of court and procedural rules to allow plaintiffs to overcome some of the many obstacles and barriers faced by would-be climate change litigants seeking to enforce statutory obligations or to exercise their environmental rights before domestic courts. The Working Group is chaired by Justice Brian Preston, head of the Environment and Land Court of New South Wales, and David Estrin.
 - c. Both Working Groups are aiming to present reports and consultation drafts at the IBA's annual conference in Washington in September 2016.
20. The Task Force Report – and the ongoing implementation of its recommendations – demonstrates the legal community's robust commitment to achieving climate change justice.
21. Lawyers have a critical role in what has repeatedly and rightly been described as the greatest challenge of our time. From the adoption of domestic and international laws necessary to mitigate and adapt to climate change, to their interpretation, implementation and enforcement, lawyers have a central part to play at each juncture. One of the greatest strengths of the IBA's response is the diversity that we represent: from lawmakers, judges, private practitioners to public defenders, the IBA can harness and reflect the myriad viewpoints and skills necessary to fight climate change.
22. As the present audience will know, in-house lawyers and private practitioners also have an important contribution to make as advisors to businesses and corporations as to their climate change obligations.
23. From my own personal experience working with both the world's leading businesses and climate change policy makers, my message to the lawyers working in this area is to encourage you to be not only shrewd technical advisors, but also "to aspire to be 'lawyer-statespersons' who ask first 'is it legal' but ask last 'is it right,' and to work to resolve the central tension of being both a partner to the business leader and the ultimate guardian of the corporation's integrity."¹

¹ Ben W. Heineman, Jr., William F. Lee, David B. Wilkins, "Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century," Harvard Law School: Center on the Legal Profession at 6.

24. Before handing this session over to our eminent panelists today, I would like to take this opportunity to thank Michael Maya, head of the IBA North American office in DC, and Roger Martella, a Vice Chair of our Task Force, for their hard work in organizing these sessions. I look forward to our discussions and to identifying new ways in which we can work together towards realizing the commitments made in Paris and achieving climate change justice.