

CLIMATE CHANGE SOLIDARITY AND RESOLVE

POST-PARIS STRATEGY, POLICY AND LAW TO TRANSLATE AMBITION INTO ACTION

Oonagh Fitzgerald

With the recent federal election, Canada is poised to make a fresh start in addressing climate change. Research and experimentation has already occurred at the subnational (provincial and municipal) level and within civil society, which will support the new federal government in making ambitious commitments on behalf of Canada — commitments that Canadians are resolved to meet or exceed. CIGI's International Law Research Program (ILRP)¹ has identified key international, transnational and domestic legal approaches that will help to implement successfully an ambitious new climate change agenda.

The twenty-first session of the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC), being held in Paris from November 30 to December 11, is expected to articulate guiding principles and set the level of global ambition around climate change. The real work, however, will come afterward, in translating general ideas into strategies, policies and laws that actually change behaviour. This will have to be done at international, transnational, national and subnational levels, with appropriate coordination across jurisdictions as necessary.

The global crisis of climate change cannot be solved without taking a holistic approach that integrates and supports the global Sustainable Development Goals² (SDGs) adopted by the United Nations General Assembly in September of this year. Consistent with the SDGs, the ILRP's research on climate change strategies, policies and laws can be grouped under three themes:

- addressing equality and climate justice;
- facilitating global sharing of innovation and prosperity; and
- promoting global cooperation and solidarity.

This commentary summarizes how senior fellows and researchers within CIGI's ILRP will contribute to creating effective climate change strategies, policies and laws consistent with and supportive of global SDGs.

EQUALITY AND CLIMATE JUSTICE

The problem: *Indigenous people everywhere are seeing their right to food security and traditional culture increasingly adversely affected by climate change. Future generations will bear a heavier, potentially intolerable, burden if the present generation does not take adequate steps to address climate change. While climate change is making the general population vulnerable, it is important to consider the particular impacts felt by those who already are most vulnerable: women and girls, the elderly, disabled and impoverished persons. Small island nations will disappear entirely if climate change is not checked. SDGs 1–5 focus on basic human rights issues long enshrined in the UN Declaration on Human Rights, and subsequent conventions. Goal 16 acknowledges that rights are empty unless citizens can participate in decisions affecting them and can enforce their rights through an accessible system of justice.*

Thus, indigenous rights, intergenerational fairness, protection of vulnerable populations and global equity issues need to be taken into account in designing international, national and subnational strategies to address climate change (Bianca Jagger, Basil Ugochukwu). At the international level, this means humanitarian solutions must be mobilized for populations displaced from their homes by climate change-related disasters.



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Inertia or lag in the climate, ecological, and socio-economic systems means that adverse effects of climate change are likely to continue even if governments take decisive action.³ Interest in using geoengineering techniques to counter these effects is likely to intensify. Regulatory frameworks should be established to ensure that use of geoengineering to address climate change does not adversely impact human rights of affected populations (Wil Burns, Neil Craik).

Funding and recourse mechanisms have to be established to support urgent mitigation and adaptation measures, and to compensate for loss and damage caused by the extreme effects of anthropogenic climate change (David Estrin). International and regional development banks can play an important role in organizing funding for essential infrastructure projects.

A national strategy to address climate change needs to fully integrate human rights considerations into every stage of design, implementation and accountability. Goal 16 envisions an inclusive and accountable approach to sustainable development. This would mean fully engaging with indigenous peoples to understand better the effects of climate change they observe, and to ensure that proposed climate change actions address their concerns and do not have adverse impacts either on the environment or on their human development.

A deeper appreciation of human rights and indigenous rights demands a stronger commitment by governments to conform to relevant international or domestic human rights principles. Goal 16 calls for access to justice for all in order to hold institutions to account for their actions. We are seeing a developing trend to use domestic court systems to bring climate justice claims. Some of these (for example, *Urgenda Foundation v The State of the Netherlands*) aim to enforce domestic commitments made at the international level. Others attempt to hold corporations to account for their contributions to global greenhouse gas emissions (such as the Philippines case before its Human Rights Commission). It is important that governments around the world study this trend to understand how they can take proactive measures to address the underlying issues and thereby obviate the need for recourse to court action (Roger Cox, David Estrin).

GLOBAL SHARING OF INNOVATION AND PROSPERITY

The problem: *One of the most significant challenges in getting global agreement on reversing climate change is ensuring that the people of the developing world have access to clean energy in order to share in the prosperity generated by clean innovation and clean technology. SDGs 4–10 speak to the need both to help and empower all people to share in the opportunities of sustainable development, innovation and prosperity.*

There need to be incentives to encourage developed countries, international and regional funding agencies and clean technology innovators to share knowledge, know-how and equipment, and provide financing to support applications of this technology in developing countries. The global community should foster mechanisms such as international green patent pledges to facilitate the sharing and transfer to developing countries of clean technological advances (Bassem Awad).

A few months ago, Governor of the Bank of England Mark Carney⁴ warned that inadequate corporate disclosure of physical risks (from property destruction caused by climate change events), liability risks (from compensation claims for climate change harms) and transition risks (from holding devalued stranded carbon assets) have the potential to destabilize the financial system. This suggests that financial regulators should insist on climate change-related corporate disclosure. Such disclosure will increase understanding of climate change related risks, lead to more realistic pricing of carbon intensive corporate assets, and encourage investment in clean energy and a new green economy. State regulation that aims to encourage and facilitate this transition has to be carefully designed to avoid claims under international investment agreements about purported discrimination or indirect expropriation (Peter Burn).

There is increasing interest at the subnational, national and regional levels in putting a price on carbon through carbon taxes or cap-and-trade schemes, which create disincentives for the status quo and incentives to modernize production inputs and methods for a lighter carbon footprint. Until there is a global regime for pricing carbon, these experiments with carbon market mechanisms raise questions about how individual states or groups of states can prevent carbon leakage and a race to the bottom in the course of global trade. Carefully designed carbon tariff border adjustments offer a mechanism to reward clean production and tax dirty production, without breaching World Trade Organization rules (Maria Panezi).

GLOBAL COOPERATION AND SOLIDARITY

The problem: *Addressing the problem of inequity is central to achieving global cooperation in solving climate change. Climate change necessitates solidarity of the developed and developing world, and the language of the last six SDGs (11–17) perfectly encapsulates this new global partnership to address the shared challenge of protecting our environment.*

As Thomas Piketty (*Capital in the Twenty-First Century*) demonstrated, inequities are founded on extremely unequal distribution of capital. Some of the private and public wealth of developed countries must be distributed to the developing world through international and regional banks, and through public and private investment, to support the climate mitigation and adaptation efforts of developing countries.

International and regional development funds and the national commitments of developed countries should address this seriously. The support of the developing world in the global effort can be earned by providing access to funds, technology and know-how to develop clean energy sources, protect endangered forests and wetlands, and support other features of the new green economy (Patricia Galvao Ferreira).

Climate change presents an unparalleled global governance challenge. Despite years of effort through the UNFCCC process, the establishment of an adequate global legal framework has been elusive. It seems the more that is learned about the extreme risk of climate change and the more scientifically real the problem of anthropogenic climate change becomes, the harder it is for states to commit to firm and ambitious targets. At the same time, there has been growing engagement in climate mitigation and adaptation at the subnational, corporate and civil society level. There is an increasing understanding that the problem cannot be addressed only “top down” but must also be solved “bottom up.” Public participation is essential in developing national climate change strategies and developing nationally determined climate change commitments. This requires public engagement and access to climate information using new open access technologies (Ana Cristina Carvalho).

Canada is poised to demonstrate unprecedented leadership and commitment in addressing climate change. In developing its national strategy, policies and laws for appropriate incentives for ambitious climate change action, Canada will be well served by recognizing and respecting the equality of all peoples and their right to climate justice, sharing opportunities for innovation and prosperity with developing countries, and engaging all its citizens and stakeholders with unity of purpose, solidarity and resolve.

ENDNOTES

1 For more information on the ILRP, please visit: <http://www.cigionline.org/programs/international-law>.

2 The SDGs are as follows:

Goal 1: End poverty in all its forms everywhere.

Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture.

Goal 3: Ensure healthy lives and promote well-being for all at all ages.

Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

Goal 5: Achieve gender equality and empower all women and girls.

Goal 6: Ensure availability and sustainable management of water and sanitation for all.

Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all.

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.

Goal 10: Reduce inequality within and among countries between developed and developing countries.

Goal 11: Make cities inclusive, safe, resilient and sustainable.

Goal 12: Ensure sustainable consumption and production patterns.

Goal 13: Take urgent action to combat climate change and its impacts.

- Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development.
- Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.
- Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
- Goal 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development.

3 <http://www.ipcc.ch/ipccreports/tar/vol4/011.htm>.

4 <http://www.bankofengland.co.uk/publications/Pages/speeches/2015/844.aspx>.

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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.

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