

The right climate for the rule of law

Hans Corell

A rapidly growing world population and geopolitical shifts of seismic proportions are recent global developments that are trailing in their wake grave implications for the planet's natural environment and inhabitants. To guarantee any kind of sustainable future, worldwide adoption of the rule of law is imperative.

In June every year an international event takes place in my country, Sweden, in which climate change is a major topic – the Tallberg Forum. After participating in the 2007 Forum, I read Debbie Legall's article 'The right climate for change' (*International Bar News*, June 2007). It struck me that her article provides an excellent basis for highlighting the strong link between the need to address climate change and the need for the rule of law.

In 2004, on leaving the UN after ten years as its Legal Counsel, I devoted my farewell address to the prospects for the rule of law among nations.

The overall tone was positive. Over the years an enormous body of international law has been developed under the auspices of the UN and other bodies. There is hardly any activity in the daily life of people in the world today that is not in some way or other governed by rules agreed among states. In many areas this is so commonplace that people do not even reflect on the fact that the activity is regulated by international law: communications, agriculture, the law of the sea, environment, medicine, etc.

However, major problems still exist, in particular in the field of peace and security where existing rules are often violated. In any conflict the common denominator is the same: there is no rule of law and no democracy. The problems are exacerbated when powerful states choose to go it alone instead of relying on the UN system of collective security.

The point I made in my address was that states should first look to their own performance and do better. If this happened, the threats against peace and security would be drastically reduced. This would mean that more states could join hands in dealing with other problems, above all

environmental degradation and other threats against our very existence on the globe.

And this is where the need to address climate change is at the crossroads with the need to enhance the rule of law.

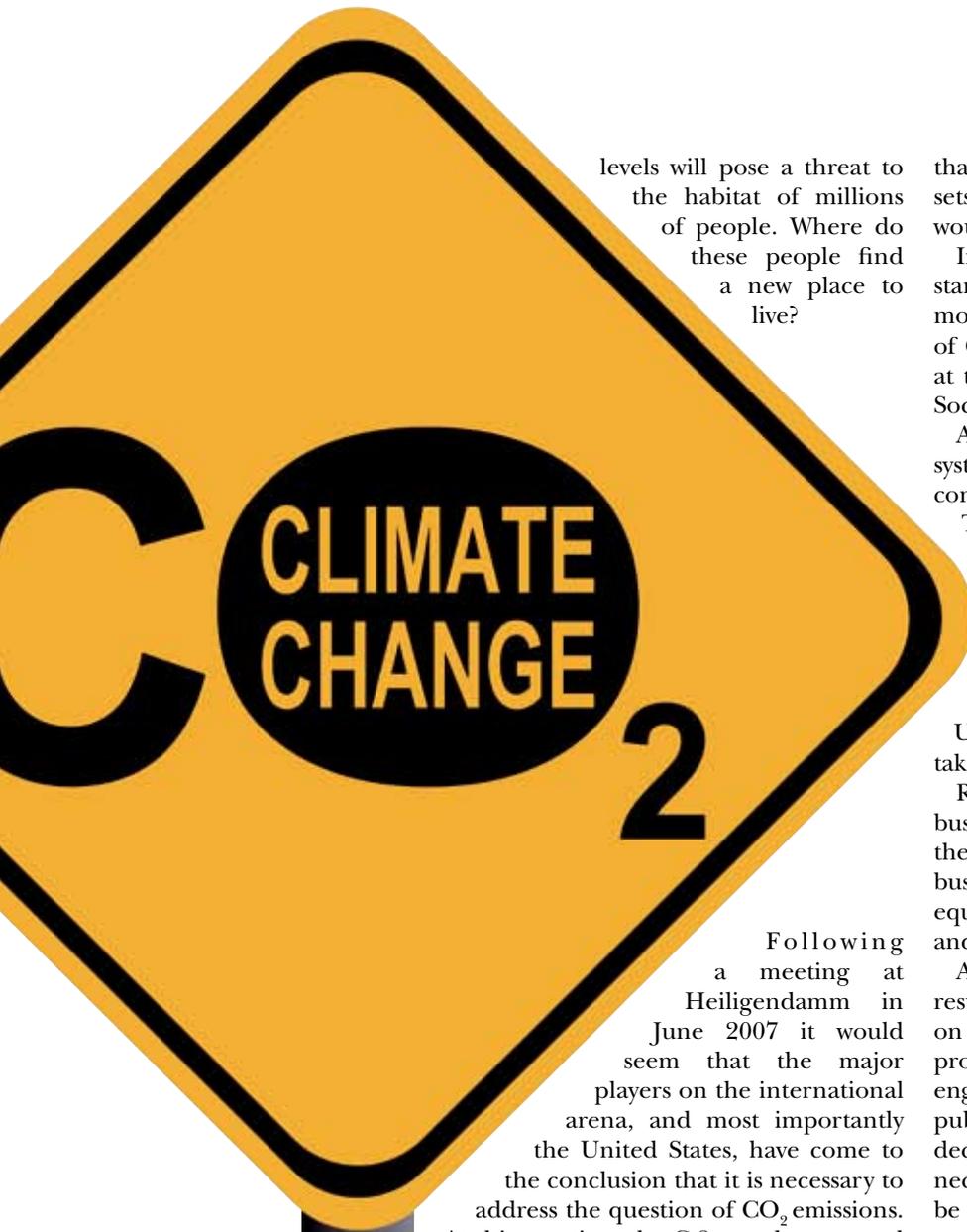
As it appears from articles in past issues of *International Bar News*, for example in April 2006 and February 2007, the IBA has been engaged in various efforts to establish and maintain the rule of law ever since its inception in 1947. However, the initiative taken by Francis Neate in 2005, now coordinated by the Presidential Task Force on the Rule of Law under the Public and Professional Interest Division, is of particular significance. And, indeed, so are the activities of the IBA Human Rights Institute.

At the IBA Annual Conference in Singapore a whole day was devoted to a symposium on the rule of law. A similar event will be organised in Buenos Aires in October 2008. Active participation in this event by those present in Buenos Aires is important and cannot be stressed enough.

Current developments make it clear that the need for the rule of law has taken on a new dimension. The challenges that face humanity in the years to come are daunting: a gigantic geopolitical shift is taking place. The auspices are that by mid-century, if not sooner, China and India will have bypassed the US and the European Union in terms of GDP. At the same time, at mid-century, it is estimated the world population which now stands at some 6.5 billion, will have risen to 9.1 billion – a 40 per cent increase.

In parallel with this development, global warming presents new challenges. The effects of this change must also be viewed in terms of peace and security. If present patterns continue, desertification, melting glaciers and rising sea

Hans Corell is a consultant at Mannheimer Swartling and an officer on the IBA Presidential Task Force on the Rule of Law. He served in the Judiciary and the Ministries of Justice and Foreign Affairs 1962-1994 and was the UN Legal Counsel 1994-2004.



levels will pose a threat to the habitat of millions of people. Where do these people find a new place to live?

that we need a global legal framework that sets common standards. Without that there would be no possibility for fair competition.

Interestingly, the need for common standards was also emphasised, although in a more general sense, by the Corporate Counsels of General Motors, Walmart and ExxonMobil at the 2007 Annual Meeting of the American Society of International Law.

Addressing the question of a CO₂ trading system the message from the business community at Tallberg was equally clear.

The system for carbon trading has to be ameliorated and a proper cap set. Once this is done, the market will quickly adjust. The point was also made that 75 per cent of the solution to the CO₂ problem is present in techniques that are already available and economically feasible. The United States and the European Union must take the lead.

Reference was also made to the fact that while business and industry are part of the problem, they are also part of the solution. Therefore, business has an important role to play. But equally important is that citizens are aware and prepared to adjust their habits.

Another issue discussed was how to achieve results. Obviously, any action has to be based on scientific input. But science alone cannot provide the solution. Therefore, we need the engagement of the media to alert the general public. In turn, this would translate into policy decisions for which political leadership is necessary. Only then can truly effective action be taken. At every stage, everyone has to work on the basis of his or her competence and potential.

And this is where lawyers have a special role to play. It is important that we inform ourselves in this field, whether we work as attorneys, corporate counsels, government advisers, or serve on the bench.

At the Forum we also talked about the fact that the whole issue of limiting CO₂ emissions must be seen in the context of development assistance. In short, developing countries must be allowed to establish their policies. There are moral issues involved, not only between North and South, but also between generations. Generous assistance may be needed, but the question of how the funds are to be used is of greatest importance and must be carefully considered.

This latter issue should be seen in connection with the indication from the G-8 that they also want to use new financial tools to support climate protection projects in developing countries. They mentioned the proceeds from the auctioning off of emissions rights as an example.

Following a meeting at Heiligendamm in June 2007 it would seem that the major players on the international arena, and most importantly the United States, have come to the conclusion that it is necessary to address the question of CO₂ emissions. At this meeting, the G-8 members agreed to aim to at least halve global CO₂ emissions by 2050.

A further step to fight climate change was taken at the United Nations Framework Convention on Climate Change (UNFCCC) Conference in Indonesia in December 2007. The adoption at that meeting of the Bali Action Plan was a significant breakthrough.

At the Tallberg Forum frequent references were made to the Stern report and the International Panel on Climate Change (IPCC). We discussed the problem that emissions are mainly generated by the industrialised world, even if other countries are rapidly becoming major contributors.

A striking feature in the discussion at Tallberg was that many referred to the need for common standards. In particular, representatives from the business community in no uncertain terms advocated a tough legal framework to deal with the CO₂ issue. The point was made

Most importantly in this context, in the Bali Action Plan the parties to the UNFCCC launched a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at their meeting in 2009.

The Action Plan requires that the parties take action on the mitigation of climate change, on adaptation, on technology development and transfer and – in order to support these activities – on the provision of financial resources and investment. The whole effort, which will be supported by the Global Environment Facility (GEF) and the Adaptation Fund, is very much based on the transfer of resources. See in particular paragraph 1 (e) of the Action Plan.

But the question now must be: will all these efforts work without a robust system of rule of law at both the national and international level? It goes without saying that agreed standards must be observed and that there must be effective means of supervising that these standards are respected.

Furthermore, any transfer of funds may risk becoming compromised unless resolute action is taken against the widespread corruption that constitutes one of the main obstacles to development and the efforts to assist in particular the poorest in the world.

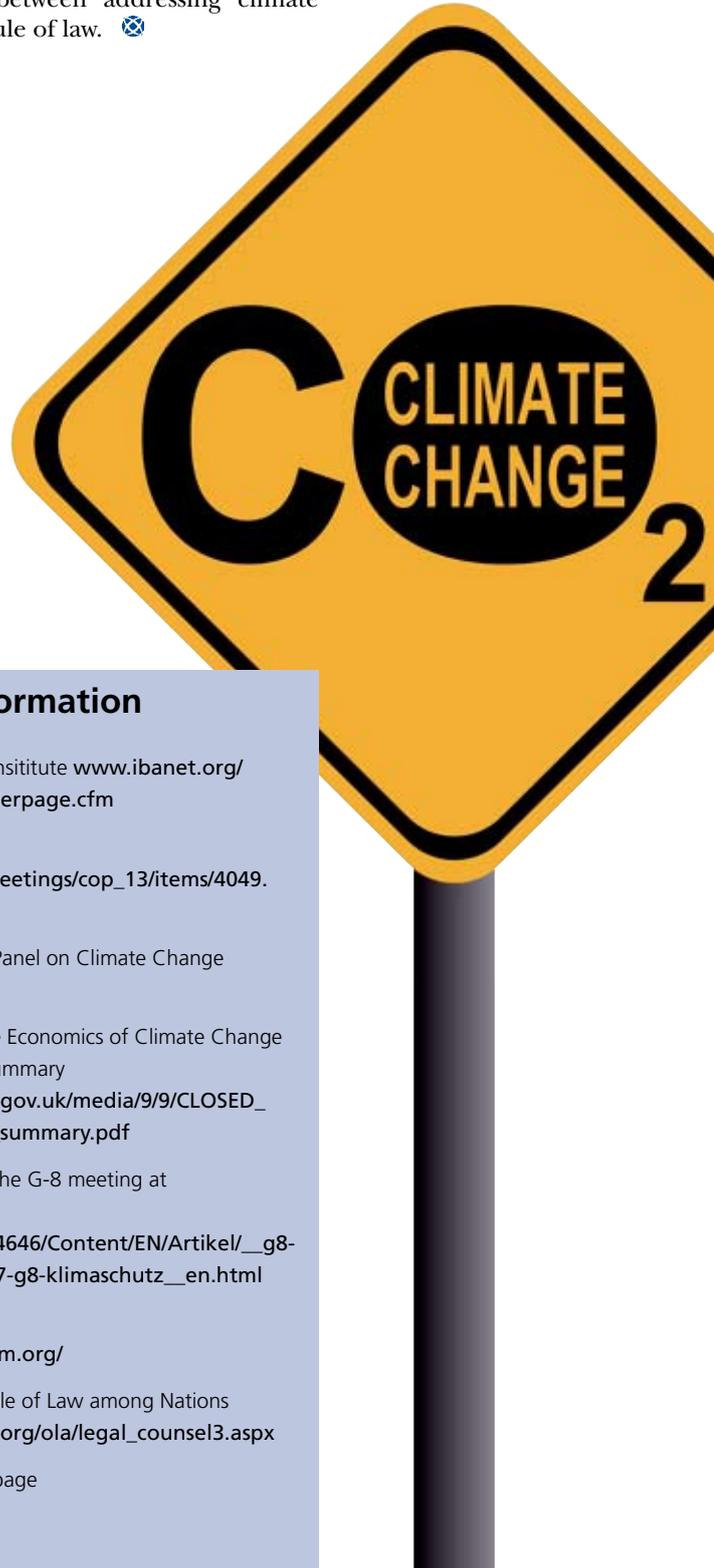
At Tallberg, participants from Asia in particular made the point that they do not appreciate 'Western bullying'. This point was also made at the IBA meeting in Singapore. This message must be taken seriously. Limiting CO₂ emissions has little meaning to people who struggle to survive or to people who feel that they are entitled to the same level of development as people in the West.

How this equation is to be solved will be one of the major challenges during the negotiations of a post-Kyoto regime. But it is our task as lawyers to explain that any agreements entered into must be effectively implemented and that this can be done only through the rule of law and true observance of those agreements.

Against this background there is reason for the IBA and its members to engage even more actively in the work to enhance the rule of law. National bar associations should be at the forefront in this work, and the work of the IBA Human Rights Institute should be supported. In particular, donor governments should be encouraged to direct more resources to legal technical assistance.

Finally, two suggestions for immediate action. The first, that the IBA Council considers sending a message to governments around the world drawing attention to the fact that

the issues that they must now address in the field of environment, put an even greater focus than before on the need for the rule of law both nationally and internationally. The other suggestion is that the IBA and its members establish direct links between the legal community and the organs charged with implementing the Bali Action Plan to explain the connection between addressing climate change and the rule of law. ☒



Further information

IBA Human Rights Institute www.ibanet.org/humanrights/headerpage.cfm

Bali Action Plan
http://unfccc.int/meetings/cop_13/items/4049.php

Intergovernmental Panel on Climate Change
www.ipcc.ch/

Stern Review on the Economics of Climate Change – Short Executive Summary
www.hm-treasury.gov.uk/media/9/9/CLOSED_SHORT_executive_summary.pdf

Press Release from the G-8 meeting at Heiligendamm
www.g-8.de/nn_94646/Content/EN/Artikel/_g8-summit/2007-06-07-g8-klimaschutz_en.html

Tallberg Forum
www.tallbergforum.org/

Prospects for the Rule of Law among Nations
http://untreaty.un.org/ola/legal_counsel3.aspx

Hans Corell's homepage
www.havc.se