

# The Climate Show

This podcast features leading experts' insights on current climate change research.

## Episode 8. Daniel Bodansky: Climate action beyond the state

### Content of the podcast

00:00:03 Linnea Nordlander

Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change.

This podcast is brought to you by the University of Copenhagen.

00:00:15 Beatriz Martinez Romera

Hi, we are Beatriz Martinez and Linnea Nordlander, Alessandro Monti and we are your hosts at the Climate show.

00:00:23 Alessandro Monti

In our last episodes We've covered many aspects of climate change litigation, which highlights.

The important role. The course can play in advancing climate action. But they're not alone in this.

00:00:34 Linnea Nordlander

No, they're not. So today we're exploring how non state actors can drive action and so for example, how can businesses of national governments? Think tanks and NGO's contribute to advancing climate ambition?

00:00:47 Beatriz Martinez Romera

In order to impact that, we have one of the leading authorities in international climate change law with us, none other than Professor Dan Bodansky. He came to Copenhagen for our 4th Trameren conference on enhancing climate action beyond the state, where he gave a keynote speech on exactly that topic, and we were lucky enough to get the chance. To record this episode with him. We hope you enjoy the show as much as we enjoyed recording it.

00:01:21 Linnea Nordlander

We're here today with Professor Dan Bodansky, who is a leading authority on international environmental law and in particular on international climate change law. Law Professor Bodansky is a Regents professor of law at the Sandra Day O'Connor College of Law at Arizona State University. He's the author of numerous articles and books on international environmental and climate change law, including the art and craft of international environmental law and international climate change law. Professor Bodansky has also served as the climate change coordinator at the US Department of State and was an attorney advisor at the US Department of State.

00:02:04 Alessandro Monti

So Dan you were recently in Copenhagen for our 4th Trameren conference on enhancing climate action beyond the state and give it tremendous keynote speech on non state actors and climate change. And so from the very many aspects that are relevant for climate change law, we're focusing today on this one non state actors and climate change. My first question for you is who are these actors and what is the role in the climate change regime and in bridging the emissions mitigation and adaptation gap between state pledges and what is actually needed?

00:02:33 Dan Bodansky

Well, thanks and it's a pleasure to be here. So I think it has to start by recognizing there's just a tremendous range of non-state actors, Tesla, Amazon, Google, they're non state actors and so are small think tanks that have different kinds of analytic papers on climate change? So I think instead of thinking of non state actors as a single group, it makes sense to disaggregate them along a whole number of different dimensions. They differ in size from being very small to being large. Membership organizations like World Wildlife Fund that has over a million members, they vary in terms of their geographic. Range summer global with offices all around the world. Others are based in one country, they're ones based in the global South, and others have majority based in the global north. And they also differ quite a lot in terms of their basis of influence on the climate change regime and in terms of what kind of role they play. So some are producers of ideas, innovators producing information. Others are making policy proposals. And some of them play multiple roles, of course others have More of a watchdog function, monitoring what states are doing, how strong they are. Pledges are under the Paris Agreement. Some play a role in implementing in implementation, so there's a tremendous heterogeneity of non state actors and they play a lot of different roles with different bases of influence.

00:04:00 Alessandro Monti

Thank you. And looking a bit at the recent years, what happens in negotiations? How would you assess the evolution of non state actors in the climate change regime over the years? And also in your keynote you talked about 2 dynamics that are present in non state action today, which is the inside out and the outside in. How would you characterize these two?

00:04:22 Dan Bodansky

So I've been involved with the climate negotiations for a little more than 30 years now. So there has been quite a lot of evolution in terms of the regime generally and then the role of non state actors within it. So early on I would say much smaller range of non state actors involved directly on the climate change issue and most of them. Were focused primarily on the official process, the negotiations, the intergovernmental negotiations, so they were following what was going on in the negotiations and

trying to influence them. And in my talk, I contrast the two different ways that NGO's have traditionally tried to influence government action. One is an inside out strategy and the other is an outside in strategy. So some try to work through governments. They're trying to influence governments correctly. Some actually are on government delegations. They're making proposals and suggestions to governments, but they're very much sort of inside the process. Others try to influence the process. Or from the outside, by bringing a lawsuit, for example, trying to compel a government to do something. Or by issuing independent reports critiquing what governments are doing. So an NGO like climate like Climate action tracker. It doesn't try to review the reports through the official processes for review reports. They produce outside assessments as to how strong different countries and seat indices are. So I called out an outside in strategy and there are pros and cons of both if you're able to influence the process directly. Influence for example. The global stocktake that's coming up next year is going to produce. That can have a big effect because the global stocktake has an official status, it has certain legitimacy under the process. But you could also say, well, the global stocktake may not actually be that effective the official one. So let's do a outside global stocktake, outside the official process and then you have much more flexibility. You can really say what you want, and that can also have an influence. So those are two different strategies I think another evolution, though, that's taken place is that a lot of the Non state actors now are not really focused primarily on the regime, either working through it or critiquing it from the outside. They're just taking action, parallel supplemental action on their own. So there are now I think, something like 28,000 different actors, non state actors, that have made pledges to reduce their emissions or take action to address adaptation. And so these are not directly through the regime, these are sort of parallel or supplemental to the regime and I think they're key and they're playing an increasingly. They grow because there's a gap between what countries have pledged to do under the Paris Agreement and what we need to do to keep within the 1.5 degree temperature goal.

00:07:06 Alessandro Monti

Thank you. And as a final question on this topic, I would like to focus on two specific types of non state actors which are on one side corporations and the pledges they advance and on the other side subnational actors we have talked extensively about both of them during the conference. And how do you think that both corporations and subnational actors can influence the negotiations in a meaningful way? What are the key elements that must be there for them to provide the positive influence on climate negotiate.

00:07:44 Dan Bodansky

Well, I think it's not so much they directly influence the negotiations, although they do that as well. I think their bigger role is in helping closing the gap that I just mentioned between the emission trajectory we're currently on and the emission trajectory we need to be on to keep within 1.5 degrees. So there are now huge. Numbers of pledges by corporations to reduce their own emissions. They also buy a whole range of cities and coalitions of cities working together in networks. So I think because I have two points on that one is increasingly, these are not completely outside the process. The process itself is subsuming them because now the climate conferences are not just meetings of the parties, they're huge mega events that involve corporations and subnational governments and a lot of the different cooperative initiatives. Are now being sort of orchestrated or coordinated through the climate regime process and the announcements are made at the actual climate meetings, so in the Glasgow Conference, in addition to the sort of official agenda items. There were a whole series of

announcements of side deals dealing with methane, forests, finance and so forth and involved combinations of state and non state actors that if they actually are implemented will go a long way to keeping us within a safe climate trajectory. But the other point I wanted to make is. And this is, I think, particularly true of a lot of the corporate pledges is there needs to be stronger mechanisms of accountability to actually see whether what corporations have pledged to do is actually being achieved a lot of their plan in the official. Intergovernmental process there's now a quite robust transparency framework that assures both that you when countries make their pledge of their NDC's, it's clear what they pledged to. So there's requirements that the NDC's have to be clear, transparent and understandable, and then there's a process for reporting on progress. In achieving NDC's there's no parallel processes, there's no parallel transparency framework that applies to non state actors. So a lot of the corporate pledges that. Are then unclear exactly what is the range of emissions they're covering. Are they covering just the direct emissions by the corporation, or they also covering what are called scope 3 emissions, which include the upstream and downstream indirect effects on emissions that corporations have? So there's issues about transparency of the pledges and then there's not really a process to track whether companies are. Actually achieving their pledges, so I think we need to work a lot more. On trying to develop stronger accountability mechanisms to see whether all this non state action which could potentially play a huge role, is actually delivering what it claims to be delivering.

00:10:28 Alessandro Monti

Thank you so much. And on this note, I will give the word to my co-host Linnea Nordlander for some further questions on climate litigation and also on loss and damage.

00:10:36 Linnea Nordlander

So thanks so much, Alessandro. And of course, a crucial and to some extent also quite a thorny issue is judicial action. And we've seen an increasing role of courts in climate change matters in recent years with non state actors pursuing strategic climate change litigation. So what's your take on those types of approaches?

00:10:56 Dan Bodansky

With court actions, with adjudication as well as with non state actors, I think we also have to disaggregate the different types of judicial action because I think they're quite different in the kinds of issues they raise. So there's a whole series now of cases that have been brought at the national level within particular countries trying to influence that country's climate policy. So the most prominent of those is the agenda decision in the Netherlands. And so that I think and then is also at the national level. Cases brought against corporations trying to influence corporate action. So those I think potentially have a very positive role to play in producing stronger climate action. I I tend to think they're only going to influence some countries and some kind of corporations and a lot of the global emissions are in countries where I think judicial actions are unlikely to be able to be effective, but in those countries where. It is possible to bring cases, I think that can play a very positive role. Then there's the question as to whether or not one should bring cases internationally to address climate change. And here I think, I guess there are two questions I would raise. So one is whether the action is complementary to the international negotiations or a substitute for the international negotiations. If they are complementary to the international negotiations that they sort of feed into the negotiations, then I think they can also play a positive role in perhaps clarifying. Some countries obligations. But to the extent they're seen as a

substitute, then I think you really have to ask the second question, which is do we want to give up on the international negotiating process, say that it's unsuccessful and really then you need to think about substitutes like judicial action or do we think we want to give the international negotiations a chance? And then I think there is. I think something that needs to be considered, which is the potential for litigation to actually disrupt the negotiations and make it more difficult to reach agreement. I'm still. I guess I'm still unsure whether the negotiations are going to produce enough results, they clearly haven't so far. I think the Paris Agreement does represent a big step forward, so I guess I'm not prepared to give up on them yet. So I would be concerned in thinking about judicial action internationally, about the potential effects that might have on the negotiating process.

00:13:24 Linnea Nordlander

Thanks so much for that. I think that also links nicely to one of our final questions which is what are or what do you see as the main challenges, but also some of maybe the main strategies for meaningful non state climate action.

00:13:39 Dan Bodansky

I think the main challenge going forward is trying to develop stronger accountability mechanisms so that we both understand what non state actors are pledging. To do and then also have the ability to see whether they're achieving what they say they want to achieve. We have quite a strong framework now in place under the Paris Agreement that applies to actions by states. So when states make submit their nationally determined contributions, they have to submit information that makes the contributions, that's clear, transparent and understandable what they pledged to do. So you know what they pledged to do, and then there's reporting obligations on their progress in achieving those pledges. There's no comparable requirements with respect to non state actors, so a lot of the pledges made by non state. Factors, I think it's not always clear exactly what they pledged to with respect to corporations, for example, are due the pledges just apply to their direct emissions or do they apply to their so-called scope 3 emissions, which are their downstream and upstream emissions. So we need to have stronger requirements about making sure that the pledges are clear and understandable. And then we also need better mechanisms for reporting on countries. I'm sorry companies progress in achieving their pledges.

00:14:57 Linnea Nordlander

And finally, is there anything else you would like to raise that we haven't touched on before we wrap up?

00:15:02 Dan Bodansky

No, I think that's that's good.

00:15:05 Alessandro Monti

Thank you so much, Dan, for today's interview and we look forward to further collaboration with you in the future. And we hope you enjoyed the episode of the Climate Show and see you soon in the next episode. Thank you for listening to this episode. You can find more information about Professor Bodansky research in the show notes you can also find. The link to our Conference page there. Stay tuned for the next episode.

