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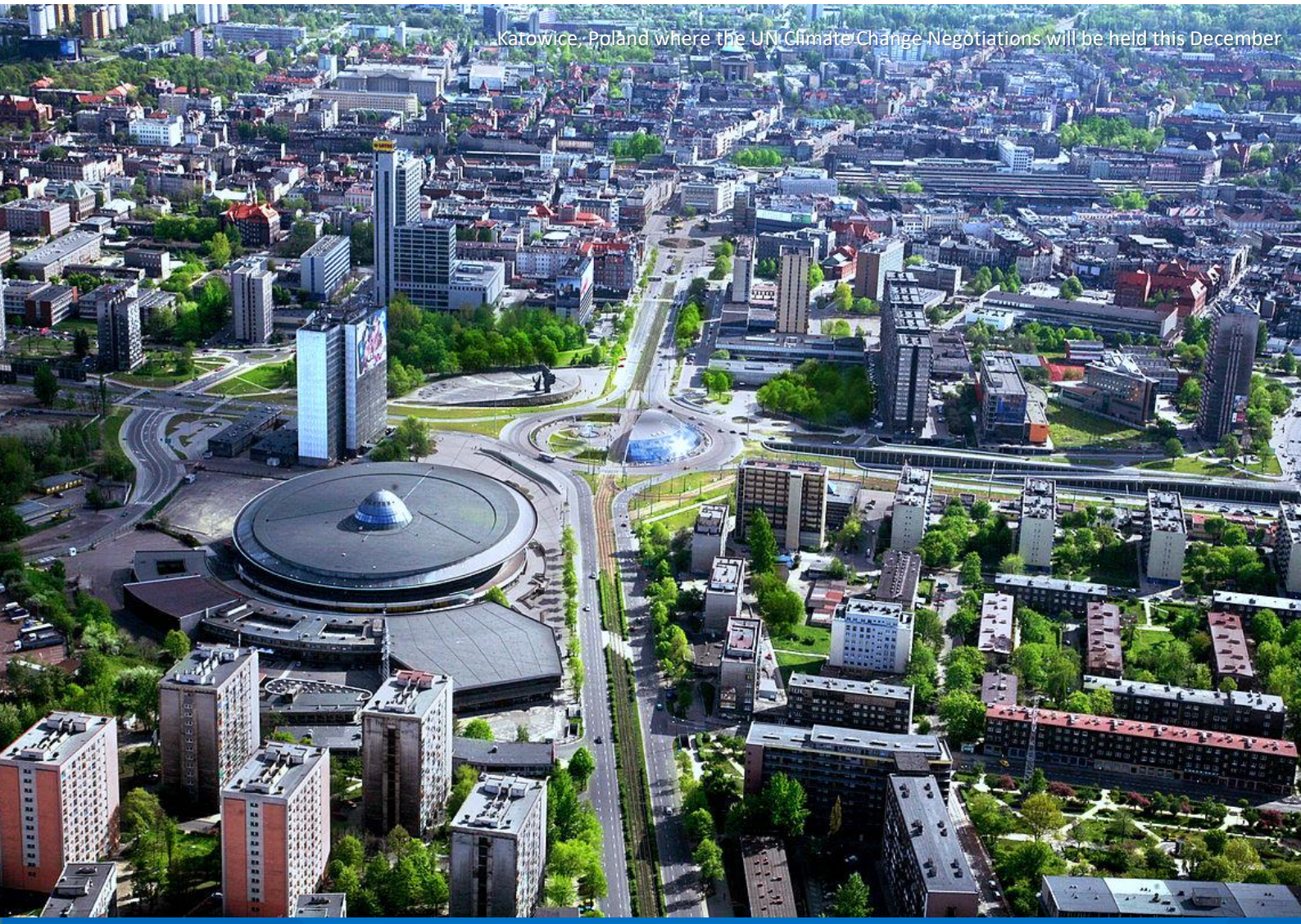


Katowice, Poland where the UN Climate Change Negotiations will be held this December

The Future of the Paris Agreement

Talk by Prof Daniel Bodansky from Arizona State University

14 May 2018

Event Summary Report

Published May 2018

Prepared by J Robert Gibson and Michele Weldon

EVENT PROGRAM

9:00 AM	Welcome Remarks	Ms Michele Weldon	Video
9:05 AM	Presentation	Prof Dan Bodansky	Video
9:45 AM	Question and Answer Session	Moderator: Prof J Robert Gibson	Video
10:25 AM	Closing Remarks	Prof Alexis Lau	Video

This report, plus other event materials can be viewed and downloaded here.

SPEAKER

Prof. Daniel Bodansky is Regents' Professor at the Sandra Day O'Connor College of Law at Arizona State University. He formerly served as Climate Change Coordinator at the US Department of State and facilitates thought leadership among senior climate change negotiators convened by the Center for Climate and Energy Solutions, an independent, non-partisan, Washington-based, NGO.

Prof. Bodansky's book, International Climate Change Law, (co-authored with Jutta Brunnée and Layanya Rajamani) (Oxford University Press, 2017) has been awarded the American Society of International Law's 2018 Certificate of Merit for the best book published in 2017 in a specialized area of international law.

For the full context of the Climate Change Negotiations: Prof Dan Bodansky's book 'International Climate Change Law' http://opil.ouplaw.com/view/10.1093/law/9780199664290.001.0001/law-9780199664290

A report from C2ES on the May 2018 Bonn UNFCCC meeting: www.c2es.org/2018/05/bonn-esprit-elaborating-the-paris-rulebook/

EVENT SUMMARY

1 Introduction by Michele Weldon, Programme Director, Civic Exchange

Michele welcomed Prof Bodansky who had come to Hong Kong following the UNFCCC intersessional meeting in Bonn. She noted that we understood the overall challenge the UNFCCC faces in closing three gaps:

- The key issue is the Emissions Gap: The emission reduction pledges made in Paris fall well short of putting the world on a pathway to keeping global warming to well below 2°C.
- Subsidiary gaps which make solving the Emissions Gap difficult:
    - The Finance gap: How will the pledges made in Copenhagen and Paris to mobilize $100b/year by 2020 be fulfilled? Is this amount sufficient?
    - A Governance gap: With the USA stepping back which countries will lead?

2 Prof Dan Bodansky's Seminar

The following notes paraphrase and summarize the lecture (video also available).

2.1 Three perspectives on Climate Change

- Environmental perspective – The goal of limiting temperature increase to less than 2°/1.5°C by peaking emissions ASAP, rapid reductions and carbon neutrality in 2nd half of this century
- Economic perspective – The goal of maximise the benefits relative to costs. This means cost-effectiveness policies including market mechanisms and a comprehensive approach looking at all greenhouse gases and all sources and sinks of these gases.
- Ethical perspective – The goal of equitable distribution of effort and costs. This means: differentiated obligations and arrangements for Loss & Damage caused by climate change.

2.2 Beyond the UNFCCC, tackling climate change is evolving into a complex web of actions including:

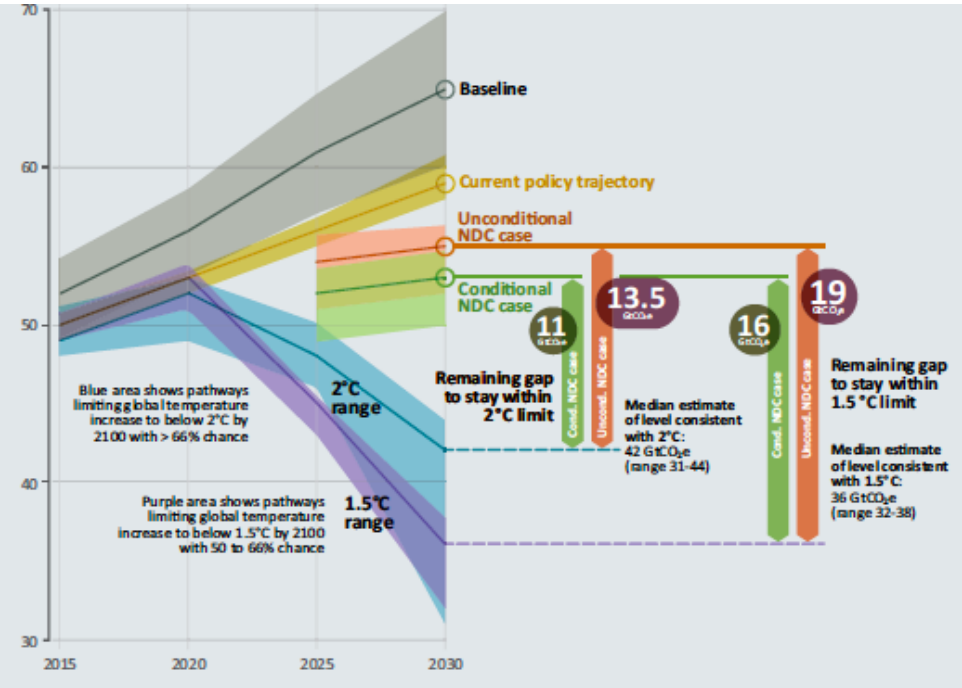
- Action on aviation emissions in ICAO and shipping emissions in IMO.
- Action on specific parts of the global warming problem such as including HFCs in the Montreal Protocol, LRTAP covering black carbon.
- Action at sub-national level (e.g. California) as well as national level.
- Action by businesses as well as governments.
- Responses to problems caused by climate change including Security, migration/refugee law, human rights law and trade law.

2.3 Key attributes of the Paris agreement:

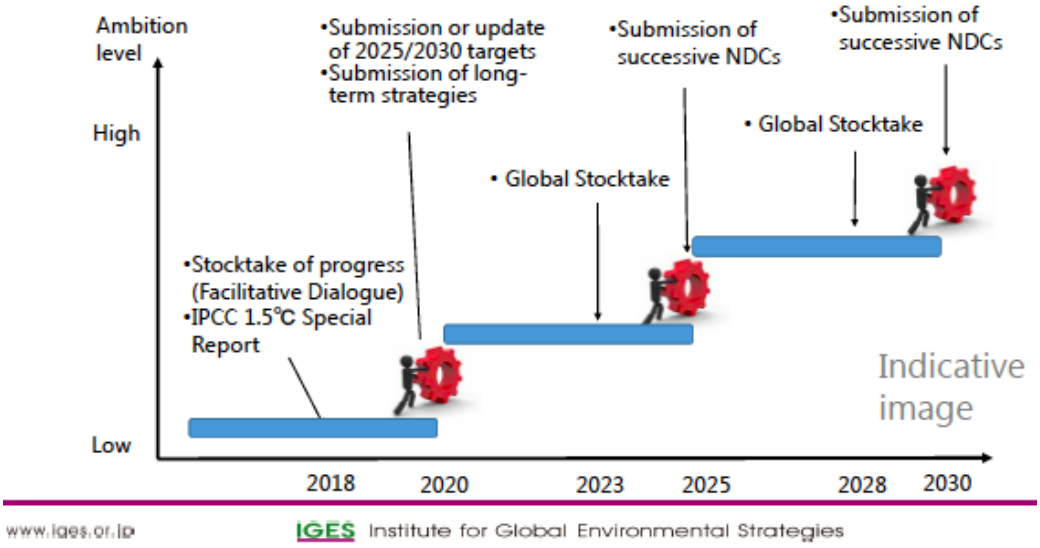
- A hybrid of top down and bottom-up architecture:
    - 'Bottom-up' NDCs (Nationally Determined Contributions) so each country decides what contribution it will make.
    - Multilaterally negotiated procedural rules to promote transparency and accountability thus encourage ambition and limit free-riding when countries set NDCs. Also to raise ambition over time. Countries have to:
        - Provide 'ex ante' information necessary to understand their NDC.
        - Report every two years on their progress in achieving their NDC.
        - Participate in technical expert reviews and peer review leading to a five-yearly global stocktake (also called facilitated dialogue and currently the Talanoa dialogue is a). This global stocktake compares the projected outcome of all country NDCs with what scientists say is needed to achieve less than 2˚/1.5˚C. (The cycle of contributions to ratchet-up ambition.)
        - Update their NDC every five years in the light of the global stocktake.
- Legal bindingness: The Paris Agreement is a treaty but not all its provisions are binding.
- Differentiation: The Paris Agreement has bifurcation of financial but not mitigation commitments.

2.4 Challenges which successful implementation of the Paris Agreement faces:

- The NDC's are insufficiently ambitious so projected greenhouse gas emissions are greater than the pathway needed for less than 2˚/1.5˚C. As the UNEP Gap report shows the gap is very large:



- Whether the cycle of contributions procedure (see diagram below) will lead to sufficient increases in ambition to reduce GHG emissions.



Part of the answer will come from the IPCC 8th October 2018 report on the changes required to keep temperature increase to 1.5°C. It is expected that this report will advise there will be an 'overshoot' of CO_2 levels in the atmosphere and large scale removal of CO_2 from the atmosphere will be necessary in the second half of this century.

- Challenges to the stability of the Paris Agreement include:
  - Less developed countries are arguing for a similar cycle of commitment on finance as there is on reduction in greenhouse gas emissions?
  - The areas of 'constructive ambiguity' in the Paris Agreement, where a form of words was agreed which allowed different parties to keep their own different views on how it will be implemented. These now need to be resolved. Developing countries are trying to increase the extent to which they get preferred treatment and to have more focus on finance and adaptation.

2.5 Paris Rulebook:

- The UNFCCC meeting which has just happened in Bonn was working on turning the general rules in the Paris Agreement into a 'Rulebook' which allows the agreement to operationalised. Some of the issues:

NDCs	• Up-front information (art. 4.8) • Features (1/CP.21, para. 26) • Accounting: guidance by CMA(-1) (art. 4.13, 1/CP.21, para. 31)
Market mechanisms	• Avoidance of double-counting (art. 6.2) • Ensure share of proceeds for adaptation (art. 6.6) • SDM: rules, procedures and modalities (art. 6.7)
Adaptation	• Modalities to recognize efforts of DCs (art. 7.3)
Financial support	• Accounting: modalities, procedures and guidelines (art. 9.7)
Capacity building	• Institutional arrangements (art. 11.5)
Transparency	• Emissions inventories methodologies (art. 13.7(a)) • Modalities, procedures and guidelines (art. 13.13)
Global stocktake	• Sources of input and modalities (1/CP.21, paras. 100, 102)
Compliance	• Modalities and procedures (art. 15.3)

- Persistent issues in the rulebook negotiations:
    - Should the Paris rulebook be legally binding? That is, will requirements be on a 'May', 'Should' or 'Shall' basis?
    - To what extent will countries be able to decide how they implement the rulebook?
    - Will the rules apply to a different extent to different countries?
- Other problems on the rulebook negotiation:
    - Issue linkage: Countries holding up agreement on one issue pending getting agreement on other issues.
    - Technical complexity on accounting and reporting rules.
    - Shortage of time to complete the negotiation as scheduled at COP24 in December.

2.6 USA's engagement in the UNFCCC process

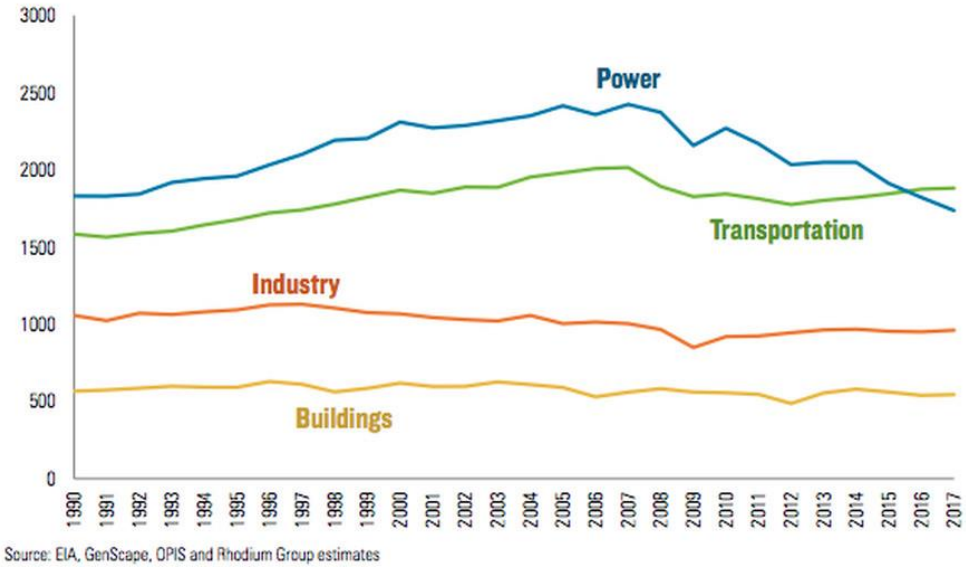
- The Trump Administration has said it will not pay the remaining US$2 billion the US had committed to the Green Climate Fund.
- The Trump Administration has said it will give notice of withdrawal in October 2019 effective 2020. It may change its mind on this.
- The US still sends a delegation to the UNFCCC meetings and it focus remains the same as under Obama, namely pushing for transparency and market-based approaches.
- Impacts of the change in the US on the international process:
    - The US is less of a counterweight to developing countries.
    - No US leadership on ratcheting up ambition. While US city/state action is helpful this weakens efforts to get other countries to do this.

2.7 The US's domestic action

- Trump has initiated action to roll back of the Clean Power Plan, automobile emission standards. This requires new regulatory rulemaking: laborious process, subject to court challenge. Transport is now the US's largest source of emissions:

Figure 4: Energy-related CO_2 emissions by sector

Million metric tons



Source: EIA, GenScape, OPIS and Rhodium Group estimates

3 Question and Answer Session

3.1 Finance: **As Christiana Figueres has said: *Governments set direction but Business drives the car down the road*. But Business will only do this if there is money. So what is the current position on the developed countries' pledge to mobilise US$100b per year by 2020?**

Response:

- The key issue is governments ramping up their ambition to cut greenhouse gas emissions. Strong policy on this creates incentives for business to invest in the transition to the low carbon economy.
- Yes, developing countries complain developed countries are not meeting the pledge to mobilise US$100bn per year. It is, however, difficult to determine what is 'climate finance' and what 'mobilising' means. The Climate Policy Initiatives publication on the 'Landscape of Climate Finance' identifies multiples of US$100bn investment in climate finance[1].

3.2 **Further questions on finance:**

- **Do you agree the priority is not climate finance for the least developed countries but ensuring major economies such as China, India and Brazil move towards low carbon economies?**
- **Isn't it true that there is plenty of money going into new infrastructure? The main issue is not to get more money but to put the money already flowing into 'green' infrastructure**.

Response:

- Yes. We need to shift from the focus on public finance to a focus on the investments being made in the low carbon economy. Most of this is about decisions within countries. This should be part of each country developing its NDC.
- Agreed that the private flows are much more substantial than public ones.

[1] Post presentation note: Climate Policy Initiatives – Landscape of Climate Finance defines 'Climate Finance' as '*capital flows directed towards low-carbon and climate-resilient development interventions with direct or indirect greenhouse gas mitigation or adaptation benefits*'. It excludes all fossil fuel consumption investments. It estimates The average per annum for 2015 and 2016 was US$410bn expenditure of which US$56bn flowed from OECD countries to non-OECD countries.
https://climatepolicyinitiative.org/publication/global-landscape-of-climate-finance-2017/

3.3 Loss and damage: The Paris Agreement seems ambiguous as it sets up a mechanism for studying Loss & Damage but also no compensation will be paid. What progress might the next COP make?

Response:

- I do not expect much progress in the next COP.
- The Paris agreement is very clear that its inclusion of an article on 'Loss & Damage' was not a basis for claims for liability and hence compensation. Developed countries see claims as difficulty to determine but potentially vast so they will not accept liability.
- The Paris Agreement's action on Loss & Damage is to help with knowledge, reducing vulnerability and increasing preparedness.

3.4 How to set the right, evidence based targets for closing the emissions gap?

Response:

- The 2020 targets were set in Copenhagen. The next round of targets in 2020 for 2025 or 2030.
- Having a scientifically based domestic planning process is key to setting ambitious, achievable targets.
- Pressure to raise ambition is expected to come from international transparency.
- Regarding differentiation. Part of the process is peer review and comparison with other countries. Differentiation will come from which country each country compares itself with.

3.5 Is there any good-side to Trump's intention to withdraw the USA from the Paris Agreement?

Response:

- No. Paris Agreement is far from perfect but is the best thing we have got going. The USA pulling would be a big blow to Paris Agreements achievement of covering virtually all countries.

3.6 Achieving the Paris goal requires negative emissions. Oceans are the biggest sink. The World Ocean Council is considering this. What political discussion is there of negative emissions technology?

Response:

- This is an important emerging issue. Oceans are getting more attention in the UNFCCC process. Dan is part of a group looking at more specific inclusion of action on Oceans in the Paris Agreement. How might countries claim credit for sinks in Oceans? Perhaps per their exclusive economic zone but what about the high-seas? What would increasing sinks in Oceans look like? Many people label this as geoengineering and are worried about the impacts so more scientific research is required.

3.7 How might the international framework energize city-based action?

Response:

- Cities are taking a lot of action. They are integrated into the UNFCCC process to the extent they have events on the sidelines of COPS. For example, a big

mayors meeting alongside the Paris COP adopted a mayors' pledge. There is also the C40 organisation.

- There is, however, a question as to how much cities can do given their limited regulatory powers. For example, they probably can't set auto-emissions targets and are dependent on imported electricity.
- A Yale University Group looked at getting non state actors to participate in international agreements. That is, however, way beyond what states are willing to agree to.
- Cities can now register what they are doing on the NAZCA Portal for tracking climate action. http://climateaction.unfccc.int/

3.8 How might carbon offsets and market mechanism work under the Paris Agreement?

Response:

- We still have no idea what the Paris Rulebook will say. Possibilities:
  - Under 6.2 The Paris Agreement does allow countries to transfer mitigation obligations per a bilateral agreement.
  - Under 6.4 the UNFCCC might decide to adopt use the Kyoto/CDM rules

3.9 Why not account for emissions on a consumption rather than a production basis?

Response:

- The whole climate regime is based on where goods are produced rather than where they are consumed. The difference is important. For example numbers for the UK show a reduction on the production basis emissions but an increase on a consumption basis.
- It is unlikely the UNFCCC will switch from a consumption to a production basis.
- One possibility is a move towards a consumption basis through applying border tax adjustments for the carbon content of traded goods. This is likely to face difficulties with WTO rules.

3.10 What would be the consequence if no one observed the Paris Agreement and if there was a failure to mitigate carbon emissions?

- *Response from Prof Bodansky:* What did Paris do? Besides its direct process it caused countries prepare 'Nationally Determined Contribution' plans and thus think hard about reducing their carbon emissions.
- *Response from Prof Alexis Lau while thanking Prof Bodansky:* If we do not mitigate greenhouse gas emissions we are heading for an increase of four to six degrees by the end of the century. This is about the difference between the peak of the last ice age and our pre-industrial climate. At that time most of Europe and North America was covered with ice. It is such a large difference it is difficult to imagine.

4 Remarks made by Prof Alexis Lau while thanking Dan Bodansky

- When you look at the international scene there is not a lot of happy news. When you look at the sub-national level there is a lot of innovation and progress.
- HKUST will hold a Climate Change Conference in November 2018. This may include the results of work the Hong Kong Government is currently doing on climate change policy.

The views expressed in this summary report are those of the speakers and moderator, and do not necessarily represent the opinions of the event organizer.