

# XI Interdisciplinary Seminar on Climate, Energy and Sustainability

26 May 2022

9.30 - 11.30 CEST

Room 7A.0.16 - Faculty of Law, University of Copenhagen

## PROGRAMME

<b>Time</b>	<b>Programme</b>
9.20 - 9.30	<b><u>In person:</u> welcoming of speakers and participants (breakfast is served)</b> <b><u>Online:</u> ZOOM room opens</b>
9.30 - 9.40	<b>Welcome and Introduction</b>  <b>Associate Professor Beatriz Martinez Romera</b> , Centre for International Law and Governance (CILG), Faculty of Law, and Co-Director of Copenhagen Center for Disaster Research (COPE), University of Copenhagen
9.40 - 10.30	<b>Session 1</b>  <b>Chair: Ana Stella Ebbesmeyer</b> , PhD Fellow, Centre for International Law and Governance (CILG), Faculty of Law, University of Copenhagen  <ol style="list-style-type: none"> <li><b>Kirstine Lund Christiansen</b>, PhD Fellow, Department of Food and Research Economics, University of Copenhagen <i>Negotiating quality and performing legitimacy in the voluntary carbon market</i></li> <li><b>Agata Karbowska &amp; Anna Møller Petersen</b>, LLM Graduates, Faculty of Law, University of Copenhagen <i>Climate change in a human rights perspective</i></li> <li><b>Benjamin Hall</b>, PhD Fellow, Durham Law School, Durham University <i>Participatory Action - a solution to energy 'greenwashing'?</i></li> </ol>

10.30 - 11.20	<p><b>Session 2</b></p> <p><b>Chair: Alessandro Monti</b>, Assistant Professor, Centre for International Law and Governance (CILG), Faculty of Law, University of Copenhagen</p> <ol style="list-style-type: none"> <li>1. <b>Yuxiao Wang</b>, PhD Fellow, Durham Law School, Durham University <i>Sustainable Hydropower Cooperation between China and the Lower Mekong Area: Can Reciprocity Play a Part?</i></li> <li>2. <b>Emmalucia Virardi</b>, PhD Fellow, Sant'Anna School of Advanced Studies - Pisa <i>Towards a shift in administrative procedures relating to renewable energy</i></li> <li>3. <b>Caroline Bertram</b>, PhD Fellow, Department of Political Science, University of Copenhagen <i>Inclusion of the Paris Agreement in EU trade agreement as an 'essential element clause' and a condition in so-called Trade and Sustainable Development Chapters</i></li> </ol>
11.20 - 11.30	<p><b>Concluding Remarks</b></p> <p><b>Associate Professor Emmanuel Raju</b>, Copenhagen Center for Disaster Research (COPE), Department of Public Health, University of Copenhagen</p>

## **ABSTRACTS**

**Kirstine Lund Christiansen**, PhD Fellow, Department of Food and Research Economics, University of Copenhagen

### *Negotiating quality and performing legitimacy in the voluntary carbon market*

The voluntary carbon market is facing diverse pressure from several sides in these years. On the one hand, demand is expected to surge as companies are increasingly setting voluntary targets to reach net zero in the future. On the other hand, increasing public awareness and criticisms of greenwashing means that companies fear reputational risks when engaging in the market. Simultaneously, the market, which has functioned through private sector-led self-regulation, is facing a potentially changing regulatory context as the Paris Agreement's Article 6 reshapes global carbon trading norms. Faced with these diverging pressures, private actors engaged in the voluntary carbon market are rethinking the market through negotiations over what a high-quality or high-integrity market looks like. Building on observations at industry events, where actors in the market discuss what quality means, this article outlines how the legitimacy of the voluntary carbon market is being performed and negotiated and how self-regulation through standard-setting persists as a governance mechanism that shoulders the market against criticism while preempting stronger regulation.

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**Agata Karbowska & Anna Møller Petersen**, LLM Graduates, Faculty of Law, University of Copenhagen

### *Climate change in a human rights perspective*

The topic of our presentation is the applicability of ECHR art. 2 on the right to life and art. 8 on the right to respect for private and family life to climate change cases before the ECtHR.

In the presentation we will briefly touch upon the requirements that climate change must fulfill in order to fall within the scope of art. 2 and 8 of ECHR.

The main focus of our presentation is the extent and content of the states' positive obligations in relation to climate change mitigation. International climate law that can be of relevance for the states' positive obligations will be included.

We will explain two types of climate change cases, "hit the target" and "systemic mitigation". The positive obligations developed in environmental case law of the ECtHR are found to be more relevant in "hit the target" than "systemic mitigation" cases. We will then look into how ECtHR can further develop its practice in the light of its dynamic approach of interpretation. Based on three national "systemic mitigation" cases and one "view" from the Human Rights Committee two positive obligations will be highlighted as relevant for the ECtHR's interpretation of future

"systemic mitigation" cases. Firstly, each state must do "its part" and secondly, each state must fulfill its minimum climate obligations. Whether the ECtHR can determine concrete reduction targets for the states will also be discussed.

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**Benjamin Hall, PhD Fellow, Durham Law School, Durham University**

*Participatory Action - a solution to energy 'greenwashing'?*

In 2020 I took Shell UK to the Small Claims Court on the grounds that they had mis-sold me petrol as 'carbon neutral'. I was a science teacher and did not consider myself a climate activist, merely a customer wanting my money back because I felt Shell were lying about the climate impact of their product. This litigation forced a large multinational into lengthy correspondence with a customer as they attempted to defend the legitimacy of their offsetting practices. I wrote about my experience in a research dissertation for the University of the West of England, winning the 2021 faculty Environmental Law prize.

I believe that the Participatory Action Research (PAR) method that I used has the potential to quietly challenge corporate behavior and advocate more meaningful climate governance. I am now working on a project that uses similar PAR methods, this time collaboratively with other consumers, to challenge the legal legitimacy of environmental claims made of Tradable Green Certificates (TGCs) by energy suppliers.

Regulatory authorities devised these certificates as instruments of decarbonisation, but like other markets-based fixes for the climate emergency, they have garnered significant criticism for their inherent flaws, which the 2022 energy crisis cast in even sharper relief.

My research interrogates the regulatory frameworks in which TGCs operate, challenges 'green' energy in court, and ethnographically analyses the litigation. In doing so it responds to the call for "*deeper understanding of the extent to which litigation is an effective tool to strengthen climate governance*" (Setzer and Vanhala, 2019), and resonates with Bouwer's recognition of the significance of "*numerous unacknowledged*" examples of climate litigation (Bouwer, 2018). The work is situated in a critique of markets-based instruments and exemplifies ethical and logistical problems of relying on market mechanisms to tackle climate change.

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**Yuxiao Wang, PhD Fellow, Durham Law School, Durham University**

*Sustainable Hydropower Cooperation between China and the Lower Mekong Area: Can Reciprocity Play a Part?*

This work examines China's new, cooperative approach in the past seven years for deepening joint water governance with its lower Mekong neighbours, characterised by a series of

“reciprocal” international hydropower projects including Nam Tha 1. Being a so-called “upstream hegemon” with a more ambiguous attitude towards the globalised legal framework of water utilisation, China seems to be more feared than trusted by the lower Mekong countries. It is intriguing, therefore, to see if China’s newest reciprocal efforts can “sustain” through time and the on-going environmental concern, given that there is a huge power asymmetry between China and a lower Mekong State. Supported by analogous case study between the other two State pairs - South Africa and Lesotho, and India and Bhutan - that are also experimenting reciprocal hydropower collaborations, this work argues that China’s newest approach is more likely to achieve short-term sustainability than the long-term sustainability or environmental sustainability. The work first recognises China’s recent effort as a demonstration of reciprocity, a concept vested in both international law and international relations. It then proceeds to the short-term effect of reciprocity-based collaboration, pointing out that the idea of being treated reciprocally can incentivise unequal powers to start cooperation and generate mutual understanding. Next, moving on to the long-term effect, the work argues that a repetitive play of “tit-for-tat” under the power asymmetry context can also lead to a deepened mistrust and thus risk turning down the existing agreement over the shared river. Finally, this work argues that a top-down reciprocal framework of joint hydropower management may lack a bottom-up, community-based perspective for what is best for preserving the river’s ecosystem, making the environmental sustainability less achievable.

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**Emmalucia Virardi, PhD Fellow, Sant’Anna School of Advanced Studies - Pisa**

*Towards a shift in administrative procedures relating to renewable energy*

The purpose of the presentation is to assess and evaluate how administrative procedures are being shaped in order to promote the implementation of renewable energy. First, it will be considered the role of renewable energy within the green transition and which obstacles to its use have been addressed in the European framework. The focus will be on administrative barriers and, in particular, on the length and complexity of permitting procedures as a possible hindrance to the construction and operation of renewable energy sources and power plants. Such analysis will also take into consideration the REPowerEU package and its use of the notion of overriding public interest. Subsequently, the modifications to administrative procedures provided therein will be evaluated in order to understand whether they have a procedural or substantial nature. Moreover, it will be considered the implications they have on the configuration of an interest to renewable energy and on the exercise of administrative discretion. In this regard, the intention is to reflect on the shift in administrative procedures as the natural context where different interests interact in the light of the operationalization of the principle of renewable energy.

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**Caroline Bertram**, PhD Fellow, Department of Political Science, University of Copenhagen

*Inclusion of the Paris Agreement in EU trade agreement as an ‘essential element clause’ and a condition in so-called Trade and Sustainable Development Chapters*

The European Union (EU) is one of the world’s largest trading blocs and has long aimed to be a global standard bearer on tackling climate change. Over the last decade, the EU has included Trade and Sustainable Development (TSD) chapters in its preferential trade agreements that seeks to ensure that increased levels of trade go together with high levels of environmental and social protection. Importantly, in 2019, an obligation to effectively implement the Paris Agreement was added to the Union’s TSD chapters, and while European policymakers at the time praised its inclusion, research into the possibilities and limitations of this institutional innovation remains limited. Relying on the concept of legal stringency, we argue that the legal nature of the obligations under the Paris Agreement, which are essentially procedural, are not currently strengthened in (or through) EU trade agreements. Nonetheless, the prescriptiveness and precision of these provisions seem to have substantially increased in recent years, going from statements of shared intent to legally binding obligations. Moreover, we suggest that the greatest added value of including the Paris Agreement in EU TSD chapters lie in their stronger implementation and enforcement systems, especially considering the EU’s recent introduction of sanctions as a measure of last resort. However, the EU’s enforcement mechanism currently only appear applicable to parties’ procedural obligation under the Paris Agreement and is thereby limited in ensuring that PTA parties meet their climate pledges and progressively increase their level of ambition.