XV Interdisciplinary Seminar on Climate, Energy and Sustainability

7 November 2024

9.30 – 11.30 CET

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

PROGRAMME

Time	Programme
9.20 – 9.30	In person: welcoming of speakers and participants (breakfast is served) Online: ZOOM room opens
9.30 – 9.40	**Welcome and Introduction** **Associate Professor Beatriz Martinez Romera**, Centre for Climate Change Law and Governance (CLIMA), Faculty of Law; Co-Director of Copenhagen Center for Disaster Research (COPE), University of Copenhagen
9.40 – 10.30	**Session 1** **Chair: Viktor Weber**, Postdoc, Centre for Climate Change Law and Governance (CLIMA), Faculty of Law, University of Copenhagen 1. **Judith Kärn**, PhD Fellow, Speyer University *The concept of "energy justice" viewed from a European Human Rights Law perspective - an interdiscipplinary approach* 2. **Cláudio Antônio Klaus Júnior**, Incoming LL.M Student at University of Toronto School of Law *Bridging Jurisdictions, Cultures, and Waves: A Comparative Exploration of Sanitation, Law, and Sustainability* 3. **Louise Irvall Rasmussen,** University of Copenhagen *The Climates of Locus Standi: Past, Precedent, Protocol*

	4. **Fernando Díaz González** and **Esteban Múñoz Espinoza**, Law students, University of Valparaíso *Exploring potential Public International Law instruments for marine environment protection from hydrocarbon activities in South America*
10.30 – 11.20	**Session 2** **Chair: Meng Zhang**, Postdoc, Centre for Climate Change Law and Governance (CLIMA), Faculty of Law, University of Copenhagen 1. **Ying Jie Han**, Recent Graduate, National University of Singapore *Delineating the Nexus between Indigenous Contexts and Legalising the Rights of Nature* 2. **Katharina Heinrich,** PhD Fellow, University of Helsinki *The use of thresholds for a fit-for-purpose ocean governance approach in a changing environment* 3. **Marina-Elissavet Konstantinidi**, Independent Researcher *Navigating Climate Policy Challenges: The Role of Scientific knowledge in the interaction of Energy Transition and Investor-State Disputes* 4. **Kristine Mandrup & Signe Weibye Berg**, University of Copenhagen *Turbulent Times - an examination of management options for transboundary wake effects on offshore wind farms*
11.20 – 11.30	**Concluding Remarks** **Associate Professor Beatriz Martinez Romera**, Centre for Climate Change Law and Governance (CLIMA), Faculty of Law; Co-Director of Copenhagen Center for Disaster Research (COPE), University of Copenhagen

ABSTRACTS

Judith Kärn, PhD Fellow, Speyer University

The concept of "energy justice" viewed from a European Human Rights Law perspective - an interdiscipplinary approach

Just transition is a key concept within EU energy transition invisioned by the European Green Deal. While various proposals for the conceptualization of the term "energy justice" have already emerged in social science academia (e.g. Jenkins et al. 2016), there is still no consensus on how energy justice can be defined and be fruitfully used in energy justice legal governance, nor on how energy justice matters can be handeled with regards to law. Can social science concepts of "energy justice" be anchored in European and member states' national Human Rights Law? Can Human Rights Law shape the understanding of "energy justice" as a concept? In which way can European and member states' Human Rights Law serve as a starting point for future "energy justice regulation"? This paper addresses these questions from an interdisciplinary point of view as it combines social science concepts of "energy justice", legal philosophy and legal doctrine.

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Cláudio Antônio Klaus Júnior, Incoming LL.M Student at University of Toronto School of Law

Bridging Jurisdictions, Cultures, and Waves: A Comparative Exploration of Sanitation, Law, and Sustainability

This research examines the interplay between law, sanitation, and sustainability - focused on the municipalities of Caçador, Videira, and Concórdia in Santa Catarina, Brazil, and Sault Ste. Marie, Thunder Bay, North Bay, Chatham-Kent, Woodstock, and Kenora in Ontario, Canada, the study aligns with the seminar's water-centric theme. The pivotal role of sanitation and sustainability in promoting public health, enhancing quality of life, and securing basic human rights is underscored through a qualitative and descriptive methodology. This approach, grounded in literature review, analysis of scientific publications, legal documents, and quantitative data, hones in on household sanitation—specifically, the provision of potable water and sewage disposal. By focusing on these aspects, the research seeks to unravel disparities, challenges, and opportunities in these municipalities. Acknowledging the unique challenges faced by both Brazil and Canada, with a keen eye on rural and indigenous areas, our comparative analysis aims to extract lessons and best practices. The goal is to inform and shape effective public policies, thereby improving access to sanitation and aligning with Sustainable Development Goals (SDGs) 6 and 11. The research underscores the critical need for Brazil to invest in infrastructure, implement robust public policies, and foster international cooperation for sustainable development. Within the current regulatory context, the study explores the potential of perpetuating concessions in the sanitation sector as a strategic pathway to expedite expansion and modernization of networks—potable water supply, sewage treatment, urban cleaning, solid waste management, and drainage.

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Louise Irvall Rasmussen, University of Copenhagen

The Climates of Locus Standi: Past, Precedent, Protocol

In April 2024 the ECtHR ruled for the first time that the articles under ECHR entails a protection from the adverse effects of climate change in the case *KlimaSeniorinnen.* The Court ruled that only the applicant association had standing as a representative of its member (*locus standi*). The individual applicants did not have standing. The paper investigates how the Court's assessment of locus standi under article 34 ECHR in *Klimaseniorinnen* differs from the assessment of locus standi in previous environmental cases. The paper concludes that the Court in *Klimaseniorinnen* uses several of the same considerations i.e., the vulnerability of the represented and the purpose of the association. The papers also find considerable differences between the Courts assessments, most notably the Court for the first time formulates a formal test for assessing locus standi.

The analysis is followed by a discussion on the considerations of the assessment of locus standi in *KlimaSeniorinnen* aligns with the consideration of the draft to an additional protocol on the right to a safe, clean, healthy and sustainable environment. The paper concludes that although there are similarities between the considerations, the additional protocol goes further than the *KlimaSeniorinnen* as the Court explicitly notes that there is no article in the Convention designed to ensure the protection from climate change, why this speaks against any direct alignment between the two.

The paper ends on a reflection on the possible impact an adoption of the additional protocol would have on the standing of associations in future climate cases before the ECtHR. Some aspects included in the reflection are the democratic legitimacy of the Court and the security of legal certainty of the member states of the Council of Europe.

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Fernando Díaz González and **Esteban Múñoz Espinoza**, Law students, University of Valparaíso

Exploring potential Public International Law instruments for marine environment protection from hydrocarbon activities in South America

In the South American region, there is no comprehensive treaty between the states that make up the region that deals with the protection of the marine environment on its different coasts (i.e. South Pacific, South Atlantic and Caribbean Sea). In this respect, there is only the regional Convention for the Protection of the Marine and Coastal Environment of the South-East Pacific (Lima Convention), which only includes Colombia, Chile, Ecuador and Panama as States Parties. However, there is no equivalent in the countries of the Southwest Atlantic coastal zone, especially Argentina, Uruguay, Brazil, Venezuela and others, which are the largest oil and gas producers in the region, and together comprise one of the areas with the largest hydrocarbon deposits and reserves in the orbe. This lack of international regulation, whether by means of bilateral or

regional agreements, is particularly relevant in those marine areas that are located between the borders of states parties and non-parties to the Lima Convention, as in the case of Chile and Argentina in the area of the Magagalles Channel (in the extreme south of the South American continent). This situation is also present in other countries that are not party to this convention, which in turn lack bilateral or regional instruments for the protection of the marine environment and that regulate economic activity in border areas. In this way, our work aims to generate a proposal for the South Atlantic and Pacific coastal countries of the South American continent, paying special attention to those with significant oil production. To this end, we are inspired by international regulations on the subject, especially the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), focusing on the regulation of both in-service and out-of-service platforms, and in particular with regard to the spill of hazardous substances, which have adverse effects on the marine environment, its ecosystems and human health.

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Ying Jie Han, Recent Graduate, National University of Singapore

Delineating the Nexus between Indigenous Contexts and Legalising the Rights of Nature

This Paper seeks to delineate the nexus between Indigenous contexts and the legalisation of Rights of Nature ("RoN") and presents a twofold framework for understanding it – 1) while there appears to be a significant nexus between Indigenous philosophies and its influence on the pathways to legally recognising the RoN, it is arguable that existing RoN cases are completely reflective of Indigenous philosophies, evidenced by the theoretical gap between the resulting law and the Indigenous cosmovisions that it purported to derive from. Instead, Indigenous philosophies are relational, in that it provides not only intrinsic value, but also instrumental value to the legalisation of RoN. 2) Secondly, there exist three main parameters that Indigenous contexts interplay with, leading to the legal recognition of RoN. These three parameters are: a) the political opportunity structure for creating national environmental laws, b) the organisations that support RoN laws in achieving distinct motivations and goals, and lastly, c) the cultural values that influence the framing used to mobilise support. Applying this proposed analytical framework to the selected cases of New Zealand and Ecuador, this Paper will highlight the disparity between the resultant RoN laws and the distinct Indigenous philosophies of each particular case. The Paper will then systematically ascertain the degree of entanglement between Indigenous contexts with each of the three parameters, which also yield different outcomes for each respective case. In doing so, this Paper challenges the perceived homogeneity of RoN that risks simplification of Indigenous peoples' role in legalising RoN. Such an investigation is especially pertinent in light of various movements to legalising RoN in other jurisdictions and may inform potential strategies.

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Katharina Heinrich, PhD Fellow, University of Helsinki

The use of thresholds for a fit-for-purpose ocean governance approach in a changing environment

The continued loss of biodiversity, coupled with the increasing pressures asserted by climate change and pollution, is significantly impacting highly vulnerable ecosystems such as the Polar Regions. These rapid changes and dynamics require an adaptive and proactive governance and management system. However, current governance and management systems consider only in a few instances the inherent dynamism, non-linearity, and interconnectedness of marine ecosystems, further amplified by anthropogenic activities and climate change. As such, they are subject to several challenges, which are, among others, linked to the interests of the actors within the system.

Especially in areas beyond national jurisdiction (ABNJ), finding the balance between states' political and economic interests and conservation objectives to safeguard marine ecosystems remains a core challenge. Oftentimes, conservation objectives fall short in view of state interests, and the establishment of conservation measures is subject to a strenuous negotiation process, leaving vulnerable ecosystems unprotected. What is more, conservation measures remain largely static and are restricted by geographical boundaries, which are also rooted in the anthropocentric perspective of the ocean, separating the marine realm into zones tied to sovereign rights and the jurisdiction of coastal states manifested within UNCLOS. Only a few ocean management measures reflect the ecosystem's inherent dynamic, fluid, and non-linear nature.

With this in mind, the project aims to investigate the use of thresholds in ocean management as an initiator for environmental decision-making and the establishment of conservation measures, such as MPAs, to allow for a more proactive, flexible, and dynamic approach to ocean governance. The study will draw from a wide range of literature from different disciplines and existing examples within ocean management, where thresholds are developed, used, and implemented in different stages. Against this background, the aim is to conceptualize a threshold-based approach within a case study focusing on the Arctic Ice High Seas MPA and, thus, offer a new perspective on a more apt approach to ocean governance in times of change.

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Marina-Elissavet Konstantinidi, Independent Researcher

Navigating Climate Policy Challenges: The Role of Scientific knowledge in the interaction of Energy Transition and Investor-State Disputes

The fight against climate change, recognised as a critical threat to humanity and Earth's ecosystems, necessitates limiting global temperature rise to 1.5°C.[1] This imperative emphasises

[1] IPCC, 2018: Global Warming of 1.5°C, Cambridge University Press, Cambridge, UK and New York, USA; Article 2 of the Paris Agreement to the United Nations Framework Convention on Climate Change, T.I.A.S. No. 16-1104 (2015), IEA Net Zero by 2050: A Roadmap for the Global Energy Sector, OECD Publishing, Paris (2021).

the urgency for humanity to phase out fossil fuel usage.[2] However, a challenge arises as investors in the fossil energy sector have brought or threaten to bring investment arbitration claims against States which put an end to their activity for the purpose of reaching their climate change policies' objectives.[3] Regardless of the arbitration proceedings outcomes, the risk of substantial damages being ordered may exert a 'chilling effect' on States, meaning that they may hesitate to implement the energy transition measures needed to fight climate change and its consequences.[4] Despite the recent emergence of mitigation actions, knowledge about the negative impact of fossil fuels existed a long time ago.[5] This paper argues that systematic documentation of evidence of knowledge about climate change could influence the adjudication of investment treaty claims. This, in turn, may influence the formulation of energy transition regulations.[6] By reference to relevant case-law, this paper seeks to explore how pre-existing knowledge about climate change can be used in the adjudication of investor-State disputes resulting from green energy transition policies, and, ultimately, in facilitating the implementation of the UN Sustainable Development Goals.

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Kristine Mandrup & Signe Weibye Berg, University of Copenhagen

Turbulent Times - an examination of management options for transboundary wake effects on offshore wind farms

This thesis will address the consequences of transboundary wake effects, which occur when offshore wind farms are placed too close to each other. It will examine how this phenomenon can be regulated through international law. Transboundary wake effects between wind turbines are expected to occur on a large scale in the North Sea if the expansion of offshore wind continues. This thesis argues that it would be advantageous for states to address the issue of wake effects before further expansion of offshore wind farms takes place. By doing so, the most time-efficient solution can be reached. Based on this, the thesis examines whether existing regulations can be beneficial in finding solutions to the problem. The United Nations Convention on the Law of the Sea and the obligation to pay due regard to the rights and duties of other states are discussed, after which it is noted that the convention's obligations to give due regard to other states can be of importance to the issue of wake effects. The use of environmental impact assessments and various bilateral and multilateral agreements between states that promote cooperation are also examined. These are found to indicate a good foundation for cooperation.

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[2] IEA Net Zero by 2050: A Roadmap for the Global Energy Sector, OECD Publishing, Paris (2021).
[3] Examples of such claims are provided by the cases of *WMH v. Canada , Rockhopper v. Italy*.
[4] UNCTAD/ITE/IIA/2007/3, Investor-State Dispute Settlement and impact on investment rulemaking, United Nations, New York and Geneva (2007); Chester Brown & Kate Miles, *Evolution in Investment Treaty Law and Arbitration*, CUP, Cambridge, NY (2011), pp. 134-135, 139-140; Ben van der Merwe, Why Investor lawsuits could slow the energy transition, EnergyMonitor (2020).
[5] For instance, in 1968, a scientific report was presented to the American Petroleum Institute (API) warning that the release of carbon dioxide from fossil fuels could lead to 'worldwide environmental changes': Elmer Robinson & Robert C. Robbins, *Sources, abundance, and fate of gaseous atmospheric pollutants*, Final report and supplement, United States, Stanford Research Institute, Menlo Park, CA. (1968).
[6] *Westmoreland Mining Holdings LLC v. Government of Canada*, ICSID Case No. UNCT/20/3, Statement of Defence, 26 June 2020, 11.

The thesis further investigates how the cooperation promoted by these agreements manifests in practice and concludes that such cooperation does not take the form of systematic collaboration early in the project planning phase. Additionally, it is considered whether regulatory tools from similar jurisdictions could be used to address the issue. Principles from international watercourse law are deemed relevant to the issue of wake effects, as water and wind share many similarities. In particular, the principle of a community of interest in the resource is seen as useful. Two solution models, in the form of regional fisheries management organizations and joint development zones, are examined, as these are deemed to be used in managing similar resources as that of wind and are examples of models that involve a high degree of cooperation and can be implemented more quickly than aforementioned legal instruments. The models are compared, and it is assessed that while the models have their differences, both can only be used successfully if there is the sufficient political support from the cooperating states.