

The Climate Show – Episode 15

[harro.mp3](#)

Transcript

00:00:04 Linnea Nordlander

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

00:00:09 Linnea Nordlander

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

00:00:16 Beatriz Martinez

We are Beatriz Martinez and Linnea Nordlander.

00:00:19 Alessandro Monti

And Alessandro Monti.

00:00:20 Beatriz Martinez

And we are your hosts at the climate show.

00:00:25 Beatriz Martinez

Fossil fuels, coal, oil and gas are the largest contributors to climate change. They account for over 3/4 of global greenhouse gas emissions and around 90% of CO2 emissions.

00:00:37 Alessandro Monti

The adverse effects of burning fossil fuels expands beyond climate change considerations to other environments. Problems such as air and water pollution, which calls for action to tackle their production and consumption.

00:00:49 Linnea Nordlander

And the link between human rights and climate change, which we have also dealt with in earlier episodes, is really relevant here because many litigants argue that state failure to limit the corporate production and use of fossil fuels constitute human rights violations.

00:01:03 Beatriz Martinez

Today we talked to Professor Harro van Asselt, who has been working extensively on the law and governance. Of how the world is going to face down and out fossil fuels. We are here today with Harro van Asselt, incoming professor of climate law at the Department of Land Economy at the University of Cambridge, who is currently Professor of climate law and policy at the University of Eastern Finland Law School. Welcome, Harro. It is a great honor to have you at the climate show. Thank you so much for joining us.

00:01:35 Harro van Asselt

Thanks for having me it's a pleasure to be here.

00:01:37 Beatriz Martinez

So Harro you were recently in Copenhagen for our EnAct conference on Human Rights and investment law for climate? And for this conference, you deliver a terrific note on the very interesting topic of what role these areas of law, human rights and investment law, could play in phasing out fossil fuels. And so we have decided to focus our episode today on this topic on how to govern fossil fuel production in the age of climate of the climate. My first question for you is why is it so relevant and urgent to tackle fossil fuel production, and how does it relate to tackling fossil fuel consumption?

00:02:13 Harro van Asselt

Alright, well, as you as most of the the listeners will know, fossil fuels are of course the single largest cause of greenhouse gas emissions in the world. At the same time, fossil fuel production plants by governments are very much not aligned with the with the temperature goals of the Paris Agreement. So governments are planning to produce more than twice as what is what is needed to stay below the 1 1/2 degrees goal of the Paris Agreement. Moreover, the International Energy Agency has very clearly indicated that if we are to achieve net 0 emissions by 2050, we need to have no further fossil fuel production. So it's very clear that we need to think about how to phase out fossil fuel production in a in a fair and equitable way to achieve these goals. At the same time, that doesn't mean that we have to forget about fossil fuel consumption altogether. We need to look at both and economists would very much say that we need to cut with both arms with the scissors, so we need to look at both the supply of fossil fuels as well as demands. So yes, we need to think about how to face that fossil fuel production, but at the same time, we also need to look at alternatives promoting renewable energy, promoting energy efficiency and at the same time cut fossil fuel demand.

00:03:34 Beatriz Martinez

In your research, you talk about fossil fuels being the negative space of climate change law. How do you assess or understand the regulation or lack of regulation of fossil fuels production in the climate change regime?

00:03:47 Harro van Asselt

So if we look at the climate change regime in the past few decades, we know that there has been limited attention for fossil fuels. As such, even though, as I already said, it's the major cause of greenhouse gas emissions. So you have this discrepancy, which again goes back to the very beginning, but also because some states in in the negotiations very much want to divert attention away from fossil fuels. So that's why, for example, in the Paris Agreement, we do not even see the worst fossil fuels mentioned. Now I do think that's the international climate change treaties say something about fossil fuels. Indirectly, you can look at the overall objective of the Paris Agreement to keep temperature increases below to well below 2 degrees and below 1 1/2 degrees, which already imply limits to future fossil fuel production.

00:04:40 Harro van Asselt

We can also look at the finance goals of the Paris Agreement, which also apply moving your financial flows away from fossil fuel production. So even though the Treaties do not necessarily say something directly about fossil fuels, indirectly we see some indication already. But it's perhaps also important to mention is what has happened in recent COP's, the recent conferences of the parties, first in Glasgow and then later also in Sharm El Sheikh, where there's been explicit calls to face down for call.

00:05:13 Harro van Asselt

Right.

00:05:13 Harro van Asselt

Power as well as phase out inefficient fossil fuel subsidies and in Sharm El Sheikh there were also efforts to actually try and face out all fossil fuels.

00:05:23 Harro van Asselt

So clearly we see an increasing interest in actually creating provisions and creating decisions that focus on facing our fossil fuels. Having said that, even though we see some movement, I think if we look at the past few decades, this is now 30 years overdue so we are a little bit late to the game.

00:05:44 Beatriz Martinez

And beyond the climate change regime, is there anything other, any tools in international law, any rules that can be of use to curb fossil fuel production?

00:05:55 Harro van Asselt

Yes, there are, I would say quite a few rules that we could draw upon the question is of course, how much of an effect they might have, but we can look at some of the, the most basic principles in international environmental law, looking at the principle of prevention of environmental harm, for example, which could be interpreted in such a way as suggesting that a phase out of fossil fuels is indeed necessary and maybe also thinking about a principle of transboundary environmental impact assessment, which could be interpreted in such a way that we also need to carry out climate impact assessments of new fossil fuel projects. So there's a number of basic principles that could be used and applied to fossil fuel production. And we could also look at human rights law and indeed, in the past, independent experts and special rapporteurs have pointed the finger at fossil fuel production as not being aligned with international human rights obligations, so we can draw on existing international. But the normative guidance is not always fully, fully unequivocal and also fully coherent.

00:07:06 Beatriz Martinez

In your keynote, you delve into the so-called, leave it in the ground movement, could you unpack this for us?

00:07:14 Harro van Asselt

So leaving in the in the ground or like leaving the coal in the hole, the oil in the soil or the gas in the grass like it has been a slogan among campaigners and social movements, and environmentally NGO's for at least a decade now after there was increasing evidence that's indeed. Leaving fossil fuels in the ground was necessary to achieve climate goals. I wouldn't say like so. The movement is a broad one and

it's not just characterized by one type of activity. There's a number of different types of activities we can think about, people chaining themselves to the gate of a of a coal mine. We can think about, uh, kayak, uh kayakers going. To an oil and gas platform and basically trying to stop it. We can think about also those focusing more on the financial aspects of people who are trying to make sure that institutional investors or universities divest their money away from fossil fuel. We can think about litigation, so we can think about those NGO's and individuals that are trying to challenge individual fossil fuel projects that are trying to challenge fossil fuel producing companies. So I would say that the leave it in the ground movement is a very broad movement. That tries to somehow undo the social license of fossil fuel companies and fossil fuel production in a very broad way.

00:08:44 Beatriz Martinez

And connected with the topic of climate change litigation in recent years, we've seen like an upsurge of of this type of litigation and litigation against fossil fuel development. So, my question is, what are the key legal challenges and opportunities or effects of this type of litigation?

00:09:04 Harro van Asselt

So I think one of the main challenges for this type of litigation. So that the litigation against a fossil fuel producer or a particular fossil fuel project will always be the challenge of causation. And it's a general challenge that doesn't only apply to fossil fuel production, but also other types of climate change litigation and particularly rights-based litigation. And here is about actually establishing that a particular fossil fuel project or a particular fossil fuel producer actually causes certain climate change impacts. So you first have to establish that that project or the producer also, then the products that that it sells for the oil or the gas or the coal that is taken out of the ground, that that leads to certain greenhouse gas emissions, but then also that those greenhouse gas emissions ultimately lead to certain climate impacts that may cause certain.

00:10:04 Harro van Asselt

And establishing this quality is very difficult as we know in, in existing litigation, although increasingly scientific evidence is giving us the tool to actually make these cases more strongly. And in terms of the opportunity or maybe rather the effects of this type of litigation? I would say well, on a very basic level, every case that is won, every fossil fuel project that is that is overturned or that is delayed in a way provides us some short term winds for the climate. But I think for me, the broader benefit of these types of cases. A case against Shell or against a case against an coal mine in Australia. Is that it actually makes us aware of the fact that fossil fuel production, as such cannot go on unabated if we are to achieve our climate goals. So for me it's about the broader effects I already referred to the undoing of the social license of fossil fuel production and fossil fuel companies, and it's these types of broader effects. In society, that's anti fossil fuel litigation can help with.

00:11:18 Beatriz Martinez

What are in your opinion the main challenges and maybe also the main strategies for meaningful action in phasing down or phasing out fossil fuel production.

00:11:27 Harro van Asselt

Good question. Now I think one of the questions that I get most asked most is well, it's very interesting that this, this focus on fossil fuel production, but we cannot change the behavior of Saudi Arabia.

00:11:41 Harro van Asselt

And there there's of course a good point in that, right. It's very difficult to try and change some of the countries that are most dependent on fossil fuel production for their entire economy. At the same time, you can also frame it differently, like if they don't, if they also these countries don't do anything and at some point the world is very serious about meeting its climate targets, then they will fall off an economic Cliff in due course. So also for these countries it is ultimately important to at least start planning. To start thinking about, well, what does that 1 1/2 degree world look like and what does that mean for our economies, our societies? How will we reframe that and how will we rework that to make sure that we still can prosper also in 50 years from now? And likewise one could say well, you cannot change the shells and the Exxon mobiles of this world. But also here these companies need to start thinking about their longevity. Maybe over time they need to change their business model so it will clearly be challenging. It will not be easy to change the minds of all of the people in these companies and in these countries, but by putting it on the agenda and making them think, well, what does this mean for you in the long term? I think that might be one of the ways in which change can be made over.

00:13:08 Beatriz Martinez

And finally, is there anything you would like to raise? Before we wrap up.

00:13:14 Harro van Asselt

Well, maybe one final challenge. And I was confronted by that challenge or reminded of that challenge by several of the presentations at the conference that that you talked about already and that's the time aspect. And yes, lots of things need to change. Lots of reform needs to be implemented and we have lots of ideas on how to make that happen. But at the same time, we have a very small timewindow to actually make that happen, maybe 10 years.

00:13:44 Harro van Asselt

Or so and I in my most pessimistic moments, I don't see that happening within those ten years. That doesn't mean we shouldn't try. That doesn't mean that these reform efforts are for nothing. But I'm a little bit worried that a lot of the reforms that we need might not be going fast enough. So there's maybe. One mildly pessimistic note to end on.

00:14:09 Beatriz Martinez

Harro, thank you ever so much for today's interview and and thank you so much also because it is a special interview for me because Harro was so instrumental in me achieving my PhD and I very much admire your work. So thank you and we look forward to further collaborating with you in the future.

00:14:28 Harro van Asselt

Thank you so much.

00:14:35 Beatriz Martinez

Thank you for listening to this episode. If you would like to read more about Professor Van Asselt's work, check out the information in the show notes. Stay tuned for our next episode.