VII Interdisciplinary Seminar on Climate, Energy and Sustainability

Friday, 25th February 2022 09:30 – 13:30

PROGRAMME

Time	Programme
From 09:20	**In-person: Welcoming of speakers and participants** **Online: Zoom room opens**
09:30 – 09:40	**Welcome and Introduction to the VII Interdisciplinary Seminar on Climate, Energy and Sustainability** ***Associate Prof. Beatriz Martinez Romera,*** Centre for International Law, Conflict and Governance (CILG), Faculty of Law, University of Copenhagen (UCPH)
09:40 – 10:55	**Session 1** **Chair: *Dr. Alessandro Monti,*** Postdoc, Faculty of Law, UCPH, Vice President Energy Crossroads Denmark **1. *Johanna Sophie Bürkert,*** PhD Fellow, Faculty of Law, UCPH**,** *The EU-Environmental Liability Directive – A Solution to Microplastic Pollution?* **2. *Emilie Jane Coutin,*** LLM Student UCPH**,** *Conditional Nationally Determined Contributions as Indicative of a Flawed International Climate Finance System* **3. *Larissa Jane Houston,*** PhD Fellow, University of Graz, *A Right to Light: Is there a Universal Right to Energy Access within the Context of Climate Change*

	4. Solveig Løseth Lingaas, LLM Student, University of Oslo, *Dynamic Interpretation of the Energy Charter Treaty in Light of Rules of International Environmental Law*
10:55 – 11:05	***Coffee Break***
11:05 – 12:25	**<u>Session 2</u>** **<u>Chair</u>: *Dr. Viktor Weber,*** Postdoc, Faculty of Law, UCPH **1. Katinka Fals,** MSc in Social Science and Psychology, Roskilde University, *Out of Thin Air? Abstaining from Flying as an Emerging Climate-Friendly Practice* **2. Sophia De Vries,** PhD in Philosophy of Law, Radboud University Nijmegen, *The Legal Protection of Nature* **3. *Cecilia La Macchia,*** LLM Student, University of Bologna, *Can New Generation Free Trade Agreements Be Used by the European Union to Enhance Environmental Standards in Third Countries?* **4. *Eleonora Ciscato,*** PhD in International Law, Ethics and Economics for Sustainable Development, University of Milan, *Restoration Activities in Europe: Limits and Opportunities in Law and Governance*
12:25 – 12:30	**<u>Concluding Remarks</u>** ***Associate Prof. Emmanuel Raju,*** Copenhagen Center for Disaster Research (COPE), Department of Public Health, University of Copenhagen ***Associate Prof. Beatriz Martinez Romera,*** Centre for International Law, Conflict and Governance (CILG), Faculty of Law, University of Copenhagen
12:30 – 13:30	***<u>Lunch and Networking (hybrid)</u> led by:*** ***Dr. Alessandro Monti,*** Postdoc, Faculty of Law, UCPH, Vice President Energy Crossroads Denmark ***Danny Mariana Ortiz***, Casus Clima, UCPH

ABSTRACTS:

Johanna Sophie Bürkert, PhD Fellow, Faculty of Law, UCPH

The EU-Environmental Liability Directive – A solution to microplastic pollution?

Although the exact effects of microplastics on the marine environment are still unknown, concerns about microplastic pollution have been rising in the past years. Using the MSC Zoe shipping accident in the Wadden Sea as an example, this research investigates the suitability of the EU Environmental Liability Directive as a tool to address the concequences of marine microplastic pollution from shipping accidents. The analysis is twofold. On the EU level, the aptness of the Directive to capture the properties of microplastic-specific damages (e.g. long lifetime of pollutants, uncertain but cumulative effects) is analyzed. Additionally, on a member state level, the analysis centers on the ways in which the directive is implemented and influences the management of the Wadden Sea as a transboundary ecosystem. The affirmation of the inherent value of nature, and the emphasis on cooperation under the directive are a good first step into a liability scheme for environmental pollution independent of harm to human beings. However, in practice, the individual threshold standards are still too low to address microplastic pollution caused by shipping accidents, and fragmentation hinders transboundary management. Hence, several improvements need to be made, in order to use the ELD to address accident-based microplastic pollution in the future.

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Emilie Jane Coutin, LLM Student UCPH

Conditional Nationally Determined Contributions as Indicative of a Flawed International Climate Finance System

In 1972, parties to the UN Framework Convention on Climate Change recognised that developing states contribute less to and suffer more from climate change than do developed states, and the principle of "common but differentiated responsibilities and respective capabilities" (CBDR-RC) was introduced. One mechanism devised to implement CBDR-RC was climate finance, whereby developed states financially support developing states' mitigation and adaptation efforts. But climate finance exists somewhat separately to mitigation and adaptation targets. The majority of climate finance is channeled bilaterally through state aid or private funds rather than through centralised funds such as the Green Climate Fund, and as of 2020, no developed country had mentioned climate finance in its Nationally Determined Contribution (NDC). However, since the restructuring of climate governance which followed the adoption of the Paris Agreement in 2015, conditionality has – somewhat problematically – appeared as an element in NDCs, thereby tethering mitigation and adaptation commitments to finance. Conditionality refers to the tendency of developing states to make their mitigation commitments conditional upon receiving financial support from developed countries. What are the consequences of this? Simply put, it forces us to face the truth about our poorly functioning climate finance system. Rather than being inherently problematic, conditionality is a natural consequence of a bottom-up system, which additionally serves to reveal structural flaws in the climate finance system – flaws which hinder the implementation of CBDR-RC. My research seeks to explain and defend the use of conditionality in NDCs, and, when that is done, to present several functions of conditionality which could improve the climate finance system. The analysis of conditionality leads to the conclusion that the climate finance system is incompatible with the bottom-up structure and that this has consequences for CBDR-RC. The solution is not a top-down climate finance system, but to improve transparency and harmonise accounting methods.

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Larissa Jane Houston, PhD Fellow, University of Graz

A Right to Light: Is there a Universal Right to Energy Access within the context of Climate Change

In 2021, the United Nations launched the High-Level Dialogue on Energy announcing 2021 as the 'Year for Energy Action', prompting states to addressing energy concerns. An energy concern that is yet to be discussed in great detail is the human rights aspects of energy, more specifically, the right to energy access. Although not commonly referenced, this right is practiced and protected in a number of countries around the world and is often argued that this right should be considered a universal human right. Implementation of this right is achieved through direct recognition of a right to energy access or as a derived right through the implementation of other existing rights. Understanding how and when such a right is protected will assist in determining the place of such an energy right in the context of climate change and sustainable green growth, especially whether such a right relates to the use of clean energy. This paper seeks to comparatively analyse the right to energy access in its various forms as both a direct and derived right while considering climate goals.

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Solveig Løseth Lingaas, LLM Student, University of Oslo

Dynamic Interpretation of the Energy Charter Treaty in light of rules of international Environmental Law

Under the Paris Agreement, States must formulate and enforce environmental policies and regulations. In regard to investments, there is already evidence of environmental regulations causing frictions with investors' property rights under Investment Treaties. The research question of the thesis is: Does the general rule of Treaty Interpretation in the VCLT Art. 31 allow for a dynamic/evolutionary interpretation of state's right to regulate under the Energy Charter Treaty. The thesis focus on Article 10 of the Convention, which will be interpreted in accordance with Art. 31 of the VCLT; wording, intention and teleological interpretation of the Article. Continuously, asking whether the Article can be interpreted in a dynamic manner, the thesis place focus on VCLT Art. 31(3)(c) which states that "any relevant rules of international law applicable in the relations between the parties" "shall be taken into account". Considering questions of systemic integration and intertemporality, the thesis aim to answer the following questions. Mainly, can the ECT be interpreted in a dynamic manner? In particular, the thesis considers whether the general rule of treaty interpretation allow for a dynamic/evolutionary interpretation of the ECT in light of the Paris Agreement? Hence the "relevant" parts of the Paris Agreement to the ECT is sought established. While the thesis considers Article 10, this is done in order to evaluate how a dynamic interpretation might influence States' right to regulate under the ECT.

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Katinka Fals, MSc in Social Science and Psychology, Roskilde University

Out of thin air? Abstaining from flying as an emerging climate-friendly practice

How can we achieve the social transformations that climate change calls for in a way that is meaningful in people's everyday lives? This is the burning question underlying my Master's thesis in sociology "Out of thin air? Abstaining from flying as an emerging climate-friendly practice". The thesis addresses the question by describing a real-life, occurring transformation, which is the practice of quitting flying out of climate concern. Employing an explorative, practice-theory approach and a mobility and everyday life framework, it revolves around the research question: What makes abstaining from flying a meaningful climate-friendly practice in mobile everyday lives? It answers the research question through qualitative interviews with eight people who

have quit flying altogether. The interviewees represent different demographics regarding age, gender, profession, civil status and rural/urban communities. Based on these interviews, the thesis describes the practice's main activities, configuration and way of recruiting new practitioners and discusses the implications of mobility for the meaningfulness of the practice. The thesis finds that abstaining from flying is meaningful despite inadequate transport alternatives because it affords practicing hope and acting on one's feelings of obligation regarding climate change. This brings a strong sense of value, as practitioners experience being relieved from the dissonance described as "the flyer's dilemma". The practice can also be naturalized into a routine relatively easily, which further supports the practice's meaningfulness. Routinization helps mitigate the practice's counter-position to socially central practices which imply high mobility. It also alleviates the fact that most practitioners do not share the practice with anyone in their surrounding communities. These factors help configure the practice of abstaining from flying as a meaningful alternative to high-carbon mobility practices. This indicates an alternate norm of mobility and potential for further climate-friendly transformation.

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Sophia De Vries, PhD in Philosophy of Law, Radboud University Nijmegen

The Legal Protection of Nature

The treatment of and care for nature is gaining increasing attention in the political and legal domain. Various developments can be discerned that share the aim of legally protecting nature. Currently, the three most important are (1) the criminalisation of ecocide, (2) the attributing of rights to nature and (3) the emerging human right to a safe, clean, healthy and sustainable environment. Because a comprehensive study of the content and coherence of the three developments is lacking in legal and philosophical research, it remains unclear if the three developments strengthen or hinder each other in achieving the goal of a better legal protection of nature. I wish to investigate (a) what is to be protected, (b) why nature should be protected, and (c) how nature should best be legally protected. In order to answer the question what the developments (1) ecocide, (2) rights of nature and (3) the human right to a safe, clean, healthy and sustainable environment entail, and what their aim is, it is essential to understand which concept of 'nature' is being used. Investigating why the developments occur requires a normative approach. Motives comprise choices as to why one thing is more worthy of legal protection than another, prioritizing those of higher (moral) value. A dogmatic approach is most suitable to answer the question how the three developments aim to legally protect nature. What are the available legal instruments, and how do they serve the purpose of protecting nature for each of the three developments? By investigating the conceptions of nature, the normative considerations and the particular legal form of each development, this research seeks to: (i) provide a systematic understanding and evaluation of the three developments, (ii) understand the interrelations between the developments and (iii) formulate practical recommendations that flow from the research results.

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Cecilia La Macchia, LLM Student University of Bologna

Can New Generation Free Trade Agreements Be Used by the European Union to Enhance Environmental Standards in Third Countries?

Climate change is a collective problem. However, in several countries, environmental standards are still very low and non-enforced. The European Union has a significant market and normative power which can be used to enhance environmental law within its commercial partners. This presentation analyses Trade and Sustainable

Development (TSD) Chapters of New Generation Free Trade Agreements (FTAs). New Generations FTAs are ambitious and wide-ranging treaties concluded by Europe with third countries since 2015, in which TSD Chapters are a fundamental part. A text analysis will be carried out to determine the main features of TSD clauses and their effectiveness in enforcing sustainable standards. This thesis does not aim to assess the impact that these provisions have had on third countries but to examine the limits and strengths of their legal text. From a methodological perspective, first, a meta-analysis of TSD Chapters has been conducted to identify their structure, scope, and legal characteristics. Subsequently, an in-depth analysis of the provisions in some New Generation FTAs is undertaken and two more specific questions will be addressed: are TSD provisions differentiated to tackle sustainable development issues in each partner country? Are these provisions enforceable under the FTA? After analysing the legal text, it appeared clear that TSD provisions have a very low level of enforcement with only one or two enforceable provisions per FTA. In addition, elements of differentiation based on the country partner characteristics are only mentioned, instead of being extended to promote an actual increase in sustainable development therein. TSD Chapters lack sanctions and remedies in case of breach since they are based on a consultation-based dispute settlement mechanism. Despite these weaknesses, TSD Chapters establish institutional bodies that can favor the exchange of information, solutions and increase dialogue between NGOs, private stakeholders, and governments. These are important elements to enhance cooperation between parties. Moreover, institutional bodies promote the role of non-state actors, which have always had a major function in the development and enhancement of norms in international environmental law.

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Eleonora Ciscato, PhD in International Law, Ethics and Economics for Sustainable Development, University of Milan

Restoration Activities in Europe: Limits and Opportunities in Law and Governance

The loss of biodiversity, environmental degradation, and climate crisis are seriously impacting ecosystems' integrity worldwide. According to scientists, by 2050, the combination of these three factors may reduce agricultural intake by 10% globally, hitting the life of over 3,2 billion people. In this worrying scenario, ecological restoration is considered a promising means to address the climate and biodiversity crises jointly. In fact, it aims to address widespread degradation and increase ecosystems' resilience and CO2 absorption capacity. Both in international law provisions and in regional environmental law it is possible to find recommendations and requirements for States to conserve and restore degraded ecosystems, and instruments such as the Aichi Biodiversity Targets or the Birds and Habitats Directives obligations give testimony of the growing global aspiration to make amend for past environmental wrongs. Moreover, high-sounding political pledges such as the UN Decade on Ecosystem Restoration 2021-2030 are more frequently being announced in the last few years. However, legal and policy edicts have so far proved insufficiently reflected in actual practices, and efforts in implementing restoration activities are still minimal. Such failures have been attributed mainly to inadequate funding, conflicting interests, the inherent complexity in coordinating human-nature relationships, and low political priority. Recognising all this, the current paper aims at giving insights and advancing proposals to better restoration governance in Europe by (i) reconstructing the existing restoration legal provisions at the international and EU level, (ii) analyzing the most compelling governance barriers to eco-restoration in Europe, (iii) suggesting the combined implementation of both economic and legal instruments to facilitate restoration governance.