

# X Interdisciplinary Seminar on Climate, Energy and Sustainability

*Thursday, 9<sup>th</sup> February 2023, 09:30 – 11:30 CEST*

## PROGRAMME

Time	Programme
From 09:20	<p><b><u>In-person:</u></b> Welcoming of speakers and participants (coffee &amp; tea will be served)</p> <p><b><u>Online:</u></b> Zoom room opens</p>
09:30 – 09:40	<p><b>Welcome and Introduction</b></p> <p><i>Associate Professor Beatriz Martinez Romera</i>, Centre for International Law and Governance (CILG), Faculty of Law, and Co-Director of Copenhagen Centre for Disaster Research (COPE), University of Copenhagen</p>
09:40 – 10:30	<p><b><u>Session 1</u></b></p> <p><b><u>Chair:</u></b> <i>Federica Catonini</i>, PhD Fellow, Centre for International Law and Governance (CILG), Faculty of Law</p> <ol style="list-style-type: none"> <li>1. <b><i>Peer Michaelis</i></b>, Legal Researcher, German Competence Centre for Nature Conservation and Energy Transition (KNE) <i>Assessment of Nature Protection Laws in Spatial Planning for Renewable Energies</i></li> <li>2. <b><i>Olesea Gadirca</i></b>, Master Student, Faculty of Law, University of Copenhagen <i>Renewable Energy Communities under the Clean Energy Package</i></li> <li>3. <b><i>Alessio Devis</i></b>, Master Student, Sustainable Development and Earth System Governance, Utrecht University <i>The Different Discourses on The Protection of The Ecosystem in International Law</i></li> </ol>

<p><b>10:30 – 11:20</b></p>	<p><b><u>Session 2</u></b></p> <p><b><u>Chair:</u> Assistant Professor <i>Linnéa Nordlander</i>, Centre for International Law and Governance (CILG), Faculty of Law</b></p> <ol style="list-style-type: none"> <li><b>1. <i>Matthias Nouvet</i></b>, PhD Fellow, Faculty of Law, Durham University <i>Acting now for the future - a loss and damage fund to address climate change impacts</i></li> <li><b>2. <i>Elena Sandulli</i></b>, Master Student, Faculty of Law, University of Innsbruck <i>Intergenerational Equity and the Environment: National Constitutions as “Missing Link”</i></li> <li><b>3. <i>Naphtali Ukamwa</i></b>, Master Student, Faculty of Law, University of Lund <i>Human Rights and Supply Chains: The Role of Sustainability Litigations in the Global South in Shaping European Union Accountability Frameworks for Corporations</i></li> </ol>
<p><b>11:20 – 11:30</b></p>	<p><b><u>Concluding Remarks</u></b></p> <p><b><i>Associate Prof. Emmanuel Raju</i></b>, Copenhagen Center for Disaster Research (COPE), Department of Public Health, University of Copenhagen</p>

## ABSTRACTS

**Peer Michaelis**, Legal Researcher, German Competence Centre for Nature Conservation and Energy Transition (KNE)

*Assessment of Nature Protection Laws in Spatial Planning for Renewable Energies*

Current legal developments at German and European level are shifting the legal assessment standards for nature conservation laws upwards. Nature conservation laws are directed either at plant and animal species or at landscapes and ecosystems. Conventionally, these provisions were assessed in the frame of an environmental impact assessment for specific projects, as required by European law. The urgent need for renewable energy led to numerous legislative changes in German energy law, most notably the declaration that renewable energy projects are of overriding public interest. A very similar formulation can be found in European energy law, namely in an emergency regulation recently adopted by the European Council. In a parallel - still ongoing - legislative process, the so-called "go-to areas" for renewable energies as an instrument of spatial planning are expected to be finalized soon. These "go-to areas" are intended to accelerate the expansion of renewable energies, which has slowed down considerably in most member states. The specific procedure, scope and requirements to be applied at the level of spatial planning - instead for individual projects "on the ground" - are a key concern for all stakeholders involved and a hot topic among researchers. The risk lies in the neglect of nature conservation laws that would lead to irreversible damage to nature. The Presenter's work sheds light on these structures and issues, which is also part of a broader project to generate and publish knowledge on this topic.

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**Olesea Gadirca**, Master Student, Faculty of Law, University of Copenhagen

*Renewable Energy Communities under the Clean Energy Package*

Citizens have organized through community energy initiatives since the 1970s to take control of the production of renewable energy. These initiatives are now explicitly recognized as "renewable energy communities" under the European Union's (EU) Clean Energy for All Europeans Legislative Package (CEP). This thesis examines whether the CEP, namely the updated Renewable Energy Directive, ensures the participation of energy communities in Europe's energy transformation. The REDII specifies "Renewable Energy Communities" (RECs), introduces a governance mechanism for them, and allows for the possibility of energy sharing inside the RECs. The 28 Member States had until June 2021 to transpose the RED II into national law. Writing these new EU regulations into national legislation was not an easy process, though, given that the notion of energy communities is new to both EU law and the majority of Member States. How to define RECs at national level, what activities they should be allowed to engage in, how they should be governed, and how their development should be fostered presented challenges to national legal makers. Despite the fact that the deadline has been met, the transposition process is far from being finished. This is why this thesis seeks to provide the

answers to these problems based on the national reports of some countries and other research publications in order to support the successful transposition of CEP regulations on RECs.

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*Alessio Devis*, Master Student, Sustainable Development and Earth System Governance, Utrecht University

*The Different Discourses on The Protection of The Ecosystem in International Law*

Last year, while India was experiencing heat records, eagles were falling dead from the sky. How much longer will we have to wait before people are falling dead in the streets or before some elementary components of our global-life support system will fail us? What is the role of international law regarding climate change and the biodiversity crisis? Through this master thesis, I argue that international law is currently embedded in an anthropocentric-ecocentric ideological dialectic illustrating its myopia to the complexity of our social-ecological system. In that sense, it does not offer an adequate answer to these two wicked problems.

Conducting a discourse analysis of three fields of international law (international law of the sea, international human rights law, and international criminal law), I examined how each of them is protecting ecosystems globally and whether this protection can be considered serious and non-deceptive. For this purpose, I applied two analytical lenses – descriptive and critical – which were built based on a literature review in (critical) legal philosophy and social-ecology. From a descriptive perspective, the discourse analysis allowed me to observe an increasing discursive ‘ecocentrization’ – that is the rise of ecosystem discourses – in the three analysed fields. From a critical perspective, the analysis shows that the centric discourses is ideologically deceptive by first acknowledging the reality of the continuous misprotection of ecosystems, but simultaneously misdiagnosing the structural drivers of this issue and thus limiting more efficient actions by masking and reproducing these drivers.

Ultimately, rather than challenging our current socio-economical systems, the observed international discursive ecocentrization only focuses on ecosystems and the integrated, but myopic, protection of a global social-ecological structure in its original or renewed stable state. More precisely, these discourses can be qualified as ideological as they mask underlying mind-maps and oversimplified the complexity of our evolving social-ecological systems, thus precluding the possibility of structurally solving the misprotection of ecosystems.

I conclude that future engagement with international law must escape the anthropocentric-ecocentric ideological dialectic and explicitly engage with the complexity of the structural socio-economical drivers of our current ecological crisis.

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*Matthias Nouvet*, PhD Fellow, Faculty of Law, Durham University

*Acting now for the future - a loss and damage fund to address climate change impacts*

The International Panel on Climate Change (IPCC) has acknowledged that the Earth's atmosphere is warming at unprecedented rates. Populations will be exposed to long-lasting consequences to which they can neither mitigate nor adapt to. Climate change causes unavoidable economic, social, cultural losses and damages to nature and people. It creates new legal challenges for which law has been ill-equipped. However, COP27 brought people affected by climate change to the centre of climate change negotiations, adopting a 'Loss and Damage Fund'. This fund has the potential to address the effects on local populations whose lives and livelihoods have been -or will be- destroyed by climate change's severe effects. But will it?

The creation of a specific fund to address loss and damage is the result of a 30-year negotiation process. This presentation will first lay down the history of climate change negotiations around the concept of 'loss and damage', to further determine if the adoption of a fund during COP27 can be considered as a milestone in negotiations. It will conclude by envisaging the operationalisation of this fund, to help local communities and future generations when facing the long-lasting gradual consequences of climate change.

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*Elena Sandulli*, Master Student, Faculty of Law, University of Innsbruck  
*Intergenerational Equity and the Environment: National Constitutions as "Missing Link"*

The protection of the environment poses significant intergenerational challenges. This is evident with regards to climate change whose distinctive temporal dimension urges to act today to leave a habitable planet for tomorrow. The concept of intergenerational equity describes the relationship between past, present, and future generations. As part of the human community, members of each generation have the right to use natural resources received from the past, whilst bearing responsibilities to pass them on to the future generations. This implies a difficult balancing act between present and future needs, which challenges legal systems.

Intergenerational equity is an affirmed principle of international environmental law. However, it struggles to impose itself in domestic legal frameworks since the legislative democratic process tends to be biased in favour of the present whilst neglecting long-term environmental risks. To overcome this, national constitutions play a pivotal role as fundamental link between the international and domestic levels. Constitutional law has the difficult task to prearrange an effective structure on which to build a long-term national action of environmental protection. To investigate national constitutions' role, the research adopts a comparative approach, focusing on the Italian and German constitutional framework.

To align itself with the global growing environmental constitutionalism, the Italian Constitution was amended in January 2022, and now includes an intergenerational duty to protect the environment among the fundamental constitutional principles. To analyse the innovative capacity of this reform a comparison with the German constitutional law is useful since art. 20a Basic Law served as a model for the Italian amendment. Special attention deserves the German federal constitutional court's decision on climate change of 2021. Especially, the judicial elaboration of an intertemporal dimension of freedom represents an interesting legal response to the intergenerational questions raised by climate change.

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*Naphtali Ukamwa*, Master Student, Faculty of Law, University of Lund

*Human Rights and Supply Chains: The Role of Sustainability Litigations in the Global South in Shaping European Union Accountability Frameworks for Corporations*

The geopolitics of business and human rights has generated a universal prisoner's dilemma. While studies after the Second World War focus on 'saviour' narratives of how developed countries instal trade policies and institutions to promote rule of law and democratic influence in developing and emerging states whose human rights history is generally denounced as appalling, there is less focus on how influences from the Global-South countries have helped shaped the human rights architecture of Global-North countries. The most critical threats to social sustainability today are corporations from the Global-North countries with the capacity to deploy economic power at an international scale through advanced technology and globalisation, and they have havens in developing and emerging (De-Em) states through their legally crafty creation of subsidiaries and manipulation of outsourcing dynamics. De-Em states are depicted as relatively weak, failed, or failing nations, having no political will to mount business and human rights policies and institutions compared to Global-North countries. However, this weightless messianic rendition of developed states is often not considered as the inability/unwillingness of Northern states to regulate their corporations. Corporations from Global North leverage the regulatory and institutional loopholes in their home states by deploying supply-chain mechanics for corporate advantage in the Global South until the paradigms shifted by the rise of sustainability protests against (states of and) foreign corporations in the Global South after the Second World War. Using an empirical process-tracing method and Third World Approaches to International Law, this paper examines the archives of (inter)national court decisions to present a novel narrative of the conditions under which human rights-based sustainability litigations against (states of) and foreign corporations in the Global South have influenced the incorporation of sustainability treaties (on environment and labour rights) into bilateral and regional trade agreements and institutions in the European Union. And these paradigms create possibilities of imposing accountability and sustainability due diligence obligations on corporations in EU and their supply chains abroad. This paper is a part of the writer's current thesis project (Sustainable Corporations, Human Rights and The Penumbra of Uncertainty in High-Risk Supply Chains) for the award of LLM in June 2023 at the Faculty of Law, Lund University, Sweden.