ClimLaw: Graz
Research Center for Climate Law

We work for tomorrow

ClimLaw: Graz Annual PhD Workshop on Climate Law and Litigation in cooperation with the United Nations Environment Programme (UNEP), the German Umweltbundesamt (UBA) and the the Association of Environmental Law Lecturers from African Universities (ASSELLAU)

# CONFERENCE REPORT

MAY 2022

ClimLaw: Graz Annual PhD Workshop on Climate Law and Litigation in cooperation with the United Nations Environment Programme (UNEP), the German Umweltbundesamt (UBA) and the Association of Environmental Law Lecturers from African Universities (ASSELLAU).

Monday, 23 May - Friday, 27 May 2022

# Conference Report

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## 1. Acknowledgements

On behalf of the Research Center for Climate Law (ClimLaw: Graz), I would like to take this opportunity to acknowledge and thank the various organizations and individuals who made this conference possible.

This conference and its outcomes were supported by our partners the United Nations Environment Programme (UNEP), the German Umweltbundesamt (UBA) and the Association of Environmental Law Lecturers from African Universities (ASSELLAU). We thank our partner representatives who provided insightful presentations and expertise and who made themselves available to us to support the official opening of the conference. We look forward to future collaboration and continued engagement.

We would like to thank the University of Graz and the Faculty of Law for their administrative assistance in providing such a workshop in support of doctoral candidates across the globe.

We work for tomorrow

To all speakers and expert presenters, we would like to extend our deepest gratitude for your participation at this year's workshop. Each of you provided such insightful research and shared your opinions in in-depth discussion. Your willingness to share your research and opinions is truly inspiring and we wish you all the best as you continue to develop, extend and share your knowledge with those around you. We hope to see you at our future PhD workshops and to provide you with a platform to engage with young, future academics whom you lead and promote.

To all our doctoral candidate presenters, thank you for entrusting us with their research, for using this platform to receive advice from experts and for sharing ideas with fellow doctoral candidates. We hope that we can help you to pursue and achieve your research goals throughout the course of your academic journey. We look forward to seeing your research grow and to be a continuous part of your academic journey in the years to come. We wish you all the best and every success.

A big thank you to our attendees for your involvement and participation in the workshop. Thank you for taking the time to listen and engage with our speakers and doctoral candidates. Your attendance is greatly appreciated and we hope to see you participating and engaging in years to come.

Last but not least, I am truly grateful to all members of the ClimLaw: Graz team who have shown me continuous support throughout the organization and execution of such a workshop. I had never imagined that this workshop would reach such an extensive audience and provide support and assistance to so many. It is not every day that you get to provide such an amazing opportunity to so many amazing researchers, professionals and academics across the world. I am exceptionally proud to be a part of this amazing research community and cannot wait to see the field of climate law and litigation expand and grow. This workshop is proof of the vast and influential pool of knowledge that we share as climate law specialists. May we all continue to support one another as we strengthen legal perspectives on climate change.


Larissa Jane Houston

Coordinator and Moderator of the ClimLaw: Graz Annual PhD Workshop on Climate Law and Litigation

Research Center for Climate Law (ClimLaw: Graz) University of Graz

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## 2. Introduction to the Research Center for Climate Law (ClimLaw: Graz)

ClimLaw: Graz is a newly established research center for climate law at the Faculty of Law of the University of Graz, where we are still in the process of developing it further. We are a group of international lawyers as well as interdisciplinary; doctoral and post-doctoral researchers. ClimLaw is a multilingual and multicultural environment with staff from various continents. Our working languages include: German; English; French; Spanish; Arabic.

ClimLaw: Graz is part of the interdisciplinary Field of Excellence "Climate Change Graz" of the University of Graz, an association of researchers at Graz University who jointly research and share their knowledge on climate change and sustainability.

The research center's task is to critically observe and legally and politically analyse current developments in climate law, from international; regional and national perspectives, and to carry out research projects with a focus on climate and environmental law together with national and international partners from science, policy, diplomacy and practice. In the future, it will also serve as a networking platform. Due to its close links with climate science, climate economics, climate ethics, etc. and its intensive cooperation with stakeholders, ClimLaw: Graz is transdisciplinary and acts as a competent partner for scientific reports, expert information and legal advice

ClimLaw: Graz
Research Center for Climate Law

## 3. Introduction to the Workshop

It is within our goals at ClimLaw: Graz to provide a space to engage and develop research in the field of climate law and litigation. As such we have begun the ClimLaw: Graz 1st Annual PhD Workshop on Climate Law and Litigation in cooperation with UNEP, UBA and ASSELLAU.

Each year a number of academic institutions host PhD Workshops across various fields with the aim of assisting PhD students, as well as fellow researchers and academics, in presenting research and sharing ideas or engaging with fellow academics on topics of interest. It is in this context that the ClimLaw: Graz 1st Annual PhD Workshop on Climate Law and Climate Litigation (ClimLaw: Graz PhD Workshop) was envisioned. Often, there are a number of PhD Workshops hosted which specialize in Environmental Law, on a broad basis. These workshops have been extremely useful in addressing environmental issues however they fail to provide in-depth analysis and discussion on more particular aspects of environmental law, such as climate law.

Therefore, with this in mind, the ClimLaw: Graz PhD Workshop is introduced to address the gap in Climate Law research by providing a workshop directly tailored to Climate Law and its various nuances. With this annual workshop, ClimLaw: Graz seeks to provide academics and researchers alike a platform for engaged discussion and insight. As an international workshop, there are no limits to region or topic, as such each year the workshop will cover different or expanding elements of climate law while also seeking to (comparatively) address developments in climate litigation and rule of law. Additionally, the workshop functions within the structures of a newly established seminar at the University of Graz, which is the "Comparative Climate Law and Litigation" Seminar.

### a. Workshop Administration

The working language of the workshop was English and as such all content, comments and questions were addressed in English. Additionally, Given the nature of the workshop, the workshop was not recorded to ensure that the research and expertise provided by the presenters was not shared outside of the workshop. Additionally, the

doctoral candidate presentations were based on ongoing research by each of the candidates prior to their final thesis and as such we did not record their presentations to maintain full confidentiality of content shared.

### b. Workshop Structure

The structure of each day was split into a lecture session, break, doctoral candidate presentations and then the closing. During the lecture session, each speaker was given an opportunity to present their research and they were able to utilize their discretion as to how and in what capacity their presentation was provided. We will then have a brief break for everyone to grab a coffee and stretch their legs. Then we moved onto the doctoral candidate presentations which consisted of a presentation and question and answer session for each candidate.

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## 4. Workshop Proceedings

The workshop consisted of a five-day five session programme with each session held on its own day. The sessions were arranged in this way to provide each topic with the time and focus necessary to ensure sufficient overview and content for discussion. It was also necessary to ensure that the day's session was not too extensive and timed within a suitable time slot for participants and attendees across the globe.

### a. Opening Ceremony - 23 May 2022

Day one of the five-day workshop was opened with a few remarks from our director and partner representatives. Prof. Dr. Oliver Ruppel, Director of ClimLaw: Graz, provided a warm welcome to all presenters, doctoral candidates and attendees. He highlighted how this workshop was established as a means to meet the goals and visions of ClimLaw: Graz while simultaneously seeking to encourage an exchange of knowledge and research amongst climate law academics. He went further to conclude with a comment on the importance of such workshops to facilitate growth and development in the expanding arena that is climate law.

We then had remarks from our partner representatives: Prof. Dr. Patricia Kameri-Mbote, representing both the UNEP and ASSELLAU, and Dr. Harald Ginzky, representing UBA, Germany.

Prof. Kameri-Mbote echoed the importance of such workshops especially in such a time where we see the "coming of age of environmental rule of law". She went on to add that within this coming of age we should seek to better understand and apply the principles of access to justice and capacity building within environmental law. She spoke briefly on the UNEP "Global Climate Litigation Report: 2020 Status Review" which provides an overview of climate change litigation globally, as of July 2020, as well as an assessment of global climate change litigation trends.[1] She concluded her remarks by adding that such workshops promote the creation of "new knowledge" necessary for the progression of climate law and environmental law at large.

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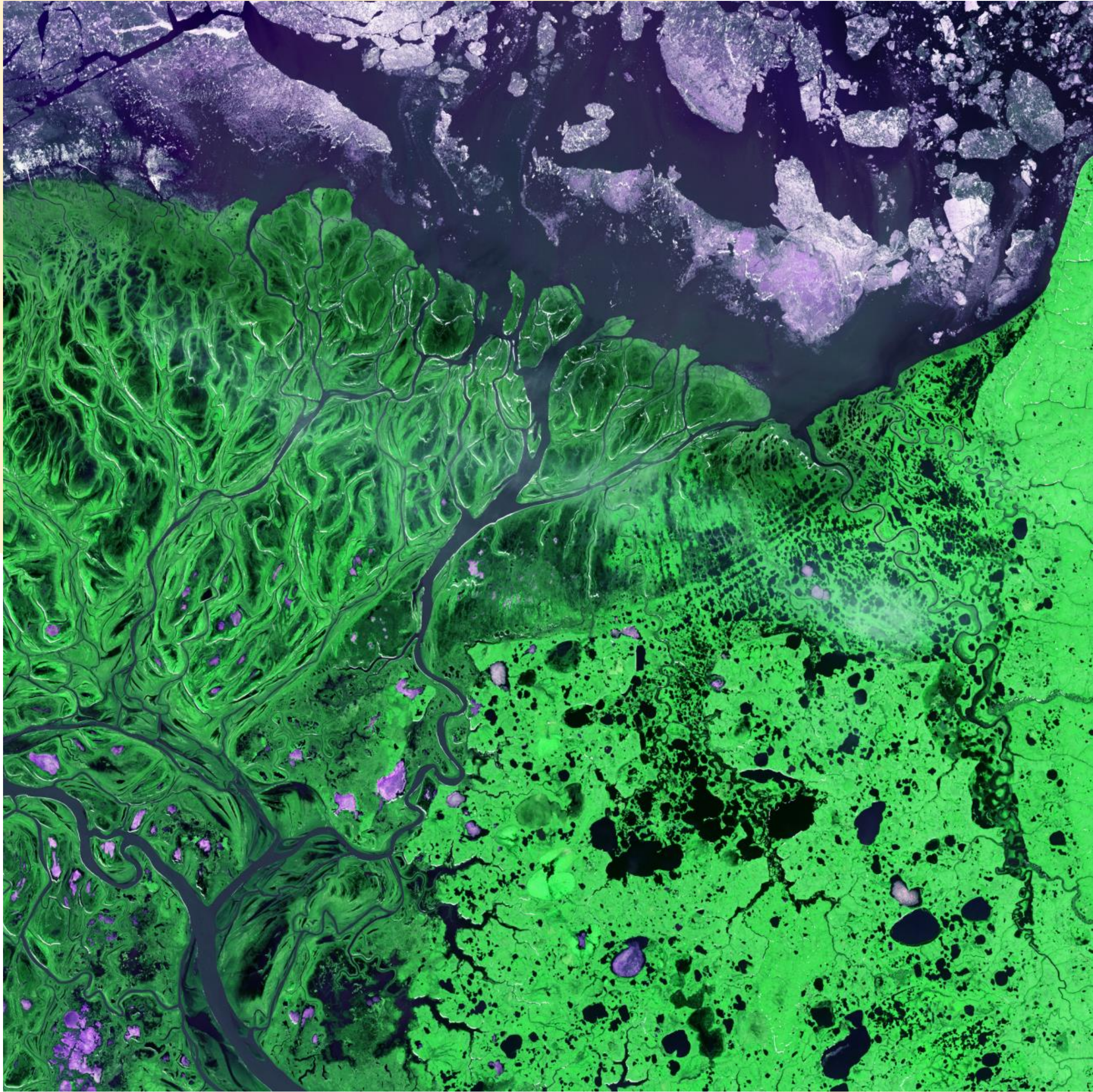
[1] United Nations Environment Programme, *Global Climate Litigation Report: 2020 Status Review* (Nairobi: United Nations Environment Programme, 2020), https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review.

To conclude our opening remarks, Dr. Ginzky discussed the need for good governance in climate mitigation and adaptation. More specifically, he outlined that climate law and science should work closely with one another to provide for better and greater support within climate governance. He mentioned that “science should be undertaken for the good of society” and that such workshops provided a platform for this to commence.



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### b. Session 1 - The Law and Politics of Climate - 23 May 2022

The first session, “The Law and Politics of Climate '' provided speakers and doctoral candidates an opportunity to discuss the political, legal, systematic and philosophical underpinnings of climate law. It sought to place climate law within the greater scheme of climate politics and to provide an overview of key findings and concepts relating to the formulation, interpretation and application of climate law within various contexts.

**Lecture Session**

**Prof. Dr. Benoît Mayer**
**“Debating Climate Law: The Relevance of General Legal Norms”**

Associate Professor at the Faculty of Law of the Chinese University of Hong Kong (CUHK LAW).

Prof Mayer’s topic was based on his recent publication titled: “Debating Climate Law”.[2] Prof Mayer described his topic as “controversial perspectives” and we would have to agree. He provided an overview and understanding of general and specific norms in relation to the climate debate and discussed contrasting perspectives to provide a holistic understanding and review of climate laws. He postulated that climate laws can be interpreted through either, his understanding of, descending reasoning on ascending reasoning. He went further to state that there may, perhaps, be an opportunity to synthesize the two forms of reasoning and develop one that lies in between to ensure legal interpretation that is comprehensive and inclusive. His discussion sparked rather forward-thinking perspectives on legal interpretation and fostered the ideas of legal thought and perspective within climate law.

**Dr. Harald Ginzky**
**“The Legal Nexus between Soil and Climate Change”**

Partner representatives from Umweltbundesamt, Germany.

[2] Benoit Mayer and Alexander Zahar, eds., *Debating Climate Law* (Cambridge: Cambridge University Press, 2021).

Dr. Ginzky provided an in-depth account on his research in soil and soil governance using Germany's soil Legislation, namely the Federal Soil Protection Act of 17 March 1998 and the Federal Soil Protection and Contaminated Sites Ordinance of 12 July 1999, as national examples. In his discussion on the interface between soils and the climate, Dr Ginzky answered the questions "What are soils?" and " How are soils affected and potentially degraded?". He went further to provide an overview of the effects of climate change to soils and the relationship between healthy soils and climate mitigation and adaptation. He gave an extensive analysis of the international soil governance structure before developing deeper into the national perspectives on Germany's soil legislation, which is under review. In concluding his presentation, he put forward potential ways that soil governance could be better, namely through controlling permissions for potentially detrimental activities by soil authorities and improving soil quality as a whole.

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**Doctoral Candidate Presentations**

**Ms. Raihanatul Jannat**

**“The role of transnational law in enhancing socio-economic resilience of women through gender-based adaptation”**

> Doctoral researcher at the School of Law, University of Eastern Finland and Member of the “Climate Change and International Environmental Law” research group from the Centre for Climate Change, Environmental, and Energy Law (CCEEL) at the University of Eastern Finland.

Ms. Jannat’s presentation provided an analysis of how gender-based adaptation frameworks are intertwined with the concept of socio-economic resilience under the transnational climate regime. This topic covers one area of her doctoral research which, on a whole, seeks to explore the role of transnational climate law in enhancing the socio-economic resilience of rural women through gender-based adaptation, using the Finnish Arctic and Bangladesh as case studies. Her research has identified a clear gap in integrating gender-responsive measures within climate adaptation instruments at all the levels, regimes and institutions within her study.

**Mr. Mohammed Al-Sulaiti**

**“Content Analysis: Interpretation of existing Environmental Legislation in Qatar from 1961 to 2021 and its exclusive legal semantics”**

> Doctoral candidate in Environmental Policy at Imperial College London, United Kingdom.

In his presentation, and corresponding proposed paper, Mr Al-Sulaiti sought to provide an inventory of environmental legislation in Qatar. In addition to this, he proposed the argument that the Environmental Protection Law No. 30 of 2002 has not been updated in the last two decades. Therefore, he inferred from this argument that there are many legislative tools that may have been enacted individually. The Qatari legislator has attached a clear importance to the formulation of legislation in general, and environmental legislation in particular. Therefore, his research is intended to develop a jurisprudential definition for the environmental legislation in Qatar.

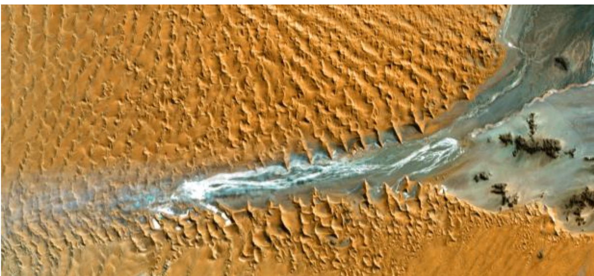
**Mr. Michael Kalis**

**“Climate Change Litigation, the (Global) Carbon Budget, and the Separation of Powers”**

Doctoral candidate at the University of Greifswald, Germany, a senior researcher at the Interdisciplinary Research Centre for the Baltic Sea Region at the University of Greifswald, Germany and a senior researcher at The Institute for Climate Protection, Energy and Mobility (IKEM) Research Academy.

Mr Kalis discussed the roles that climate change litigation and scientific findings have played in providing climate protection. He outlined how the adoption of the Paris Agreement and the established temperature limit of well below 2°C and preferably 1.5°C and the approach of a global CO2 residual budget developed by the Intergovernmental Panel on Climate Change (IPCC) have become the benchmark for climate complaints. He went further to add that if one wants to use the CO2 budget approach as a benchmark in climate lawsuits a downscaling to a national budget is required, and as such a normative evaluation is needed to determine the national CO2 residual budget. He argued that the derivation of a fair share of the global budget can neither be done by national expert committees nor by the courts. In his presentation, Mr Kalis sought to indicate ways in which the courts can reach comparable results by applying adequate rules of control in a way that preserves the separation of powers.

### c. Session 2 - Climate Litigation and Human Rights - 24 May 2022



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Session two sought to dive deeper into the main subject matter of the workshop, namely: Climate litigation. In this session there were outlines of climate litigation at global, regional and national levels as well as the links between climate change and human rights.

This session was designed to provide a holistic analysis of updates relating to climate case law and climate litigation as well as how human rights can be utilized as a vehicle to encourage and support climate protection, for example in climate lawsuits.

**Lecture Session**

**Dr. Dina Lupin,**
**“Climate Litigation and Silenced Voices: Who gets to have their say?”**

Lecturer at Southampton Law School and director of the Global Network of Human Rights and the Environment (GNHRE).

Dr Lupin began her presentation by outlining that litigation can be seen as a form of participation, and in viewing litigation as such, we can ensure that:

- Litigation is not used simply as a tick box process
- There is engagement and exchange
- Litigation is people centred by supporting a participatory conversation.

Dr Lupin stated that:

*“Litigation creates a platform even if litigation is not successful”*

A statement which many participants and presenters agreed with.

Dr. Lupin went further to state that litigation can be utilized as a platform to ensure that “silenced voices” do have a say. She provided that litigation is often complex, expensive and technical, meaning that it is often inaccessible to some. Additionally, litigation can be seen as a “retelling of personal and lived experiences” and as such inaccurate representations can limit the successful outcomes of such climate lawsuits. In this way, the concretization and precedent setting nature of judges' decisions can lead to a problematic interpretation of people’s personal and lived experiences as well as people’s speech. In this sense it is often the case that, in the case of indigenous people, they are “spoken for, spoken about and spoken over”. In conclusion, Dr. Lupin provided two key solutions to ensure that all voices are heard and have their say in climate litigation through integration and conjoined litigation and protest.

Source: https://gnhre.org/community/the-campaign-to-support-the-recognition-of-the-right-to-a-healthy-environment-by-the-united-nations-general-assembly/

**Dr. Maria Antonia Tigre**
**"Developments in Climate Litigation Worldwide"**

Global climate litigation fellow at the Sabin Center for Climate Change Law at Columbia University, United States of America and the deputy director of the Global Network for Human Rights and the Environment (GNHRE).

In her presentation, Dr Tigre started with an overview of current Nationally Determined Contributions (NDCs) and the production gap. She then went on to define what climate litigation entails, namely:

- A material issue of fact or law related to climate change
- Advocacy or regulatory strategy
- Systemic change

Dr Tigre outlined two categories of climate cases. Firstly, those cases involving the government and secondly, those cases involving corporations. Cases involving governments include specific claims relating to mitigation and adaptation; challenging carbon emitting projects and loss and damages. Whereas cases involving corporations include specific claims relating to corporations' contribution to climate change,

investment and financial support and information and reporting regarding climate commitments within the corporation.

Of these two broad categories, there are unique types of cases that are, as Dr Tigre identifies, prominent at present, particularly:

- Cases relating to the rights of the child
- United Nations (UN) Human Rights Council decisions
- UN special procedures
- Cases before the International Criminal Court
- Cases before the International Court of Justice
- Cases before the International Tribunal for the Law of the Sea
- Cases relating to the right to a healthy environment

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In addition to these types of cases, global climate litigation trends indicate that recent climate lawsuits have fallen into one or more of the following subject areas:

- Climate rights (at both domestic and international levels)

- Domestic enforcement
- Fossil fuel usage
- Corporate liability and responsibility
- Disclosure and greenwashing
- Adaptation

**Mr. Marc Limon**
**“Human Rights and Climate Change from an NGO perspective”**

> Executive Director of the Universal Rights Group; a former Diplomat at the United Nations Human Rights Council (2006 - 2012) and Co-founder of the Human Rights Council’s Trust Fund to support the participation of Least Developed Countries and Small Island Developing States.

Speaking from his personal experiences as an advisor to the Permanent Mission of the Republic of Maldives to the United Nations Office at Geneva, Mr Limon started his discussion by identifying that human rights and climate change, more specifically:

*“[T]he right to a clean, healthy, and sustainable environment”*

have recently been recognised within the UN Human Rights Council (UNHRC) after a long process. This process was pushed by the Maldives, while Mr Limon was an advisor within the Maldives, who supported and encouraged this recognition.

Mr Limon’s presentation consisted of two parts: a discussion into why the Maldives pushed for the recognition of such a right and how this was achieved.

Regarding why, linking human rights to climate change have always been extremely important to Small Island Developing States (SIDS), such as the Maldives. This is as a result of the impacts that climate change has on other rights e.g., housing; water; self-determination; life (to name a few). In supporting recognition of such a right, the Maldives was hoping to encourage urgency and provide a human element to the scientific and “natural world” understanding of climate change and to begin a journey of success in similar cases in the future.

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Regarding how this recognition was achieved, this consisted of a number of steps of the past 2 decades. In 2007, SIDS adopted the Malé Declaration on the Human Dimension of Global Climate Change (Malé Declaration),[3] which provided clear links between climate change and human rights. The Maldives hosted meetings in 2008 in order for SIDS to understand the human dimensions of climate change and to apply obligations and commitments that are attached to this. Also in 2008, the UNHRC adopted its first resolution on climate and human rights,[4] it stated:

*"[C]limate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights,"*

Then in March of 2009, the UNHRC adopted an additional resolution which noted that:[5]

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[3] Male' Declaration on the Human
Dimension of Global Climate Change, adopted 14 November 2007, Malé, available at: http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

[4] United Nations Human Rights Council, Human rights and Climate Change, Resolution 7/23, available at: https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf.

[5] United Nations Human Rights Council, Human Rights and Climate Change, Resolution 10/4, available at: https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf.

*“[C]limate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation, and recalling that in no case may a people be deprived of its own means of subsistence,”*

The adoption of the Malé Declaration and both UNHRC resolutions, put in place discussions and establishment towards an international human rights normative framework which would assist in finding answers to key questions regarding climate change and human rights. Then, in 2021, the UNHRC formally recognised the right to a clean, healthy, and sustainable environment,[6] recognizing that:

*“[E]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life”*

[6] United Nations Human Rights Council, Resolution adopted by the Human Rights Council on 8 October 2021 - The human right to a clean, healthy and sustainable environment, A/HRC/RES/48/13, available at: https://daccess-ods.un.org/tmp/7214768.52893829.html.

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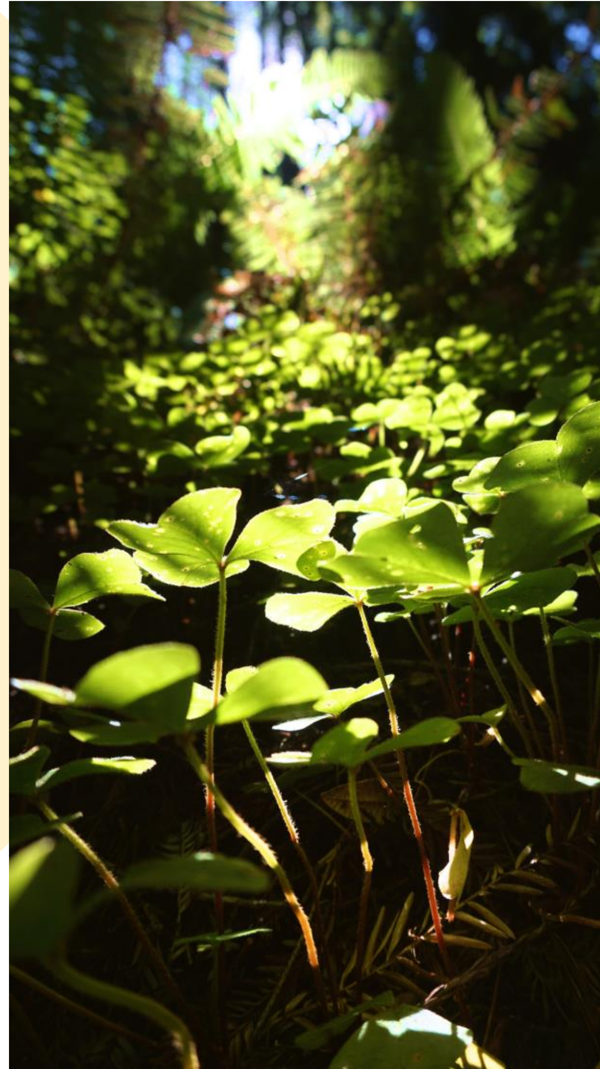
**Mr. Juan Auz**
**“The Political Ecology of Climate Remedies: An Inter-American Human Rights System Prognosis”**

Co-Founder of Terra Mater, Executive Director of Fundación Pachamama and a doctoral candidate at the Hertie School’s Centre for Fundamental Rights in Berlin,

Mr Auz’s presentation examined climate litigation from a Latin American perspective by looking at climate remedies and regional human rights systems.

Mr Auz began his presentation by reviewing the current updates in climate litigation across Latin American countries, particularly in: Chile,[7] Columbia,[8] and Mexico,[9] to name a few. Despite the increase in climate lawsuits within Latin America, it is too soon to tell the impact of climate litigation.



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[7] *Sindicato de Trabajadores de Empresa Sociedad Maritima y Comercial Somarco Limitada y Otros con Ministerio de Energia* (Company Workers Union of Maritima & Commercial Somarco Limited and Others v Ministry of Energy), Supreme Court of Chile (Case No. 25. 530-2021), 9 August 2021; *Corporación Privada para el Desarrollo de Aysén y otros con Servicio de Evaluación Ambiental* (Private Corporation for the Development of Aysen, et al. v. Environmental Evaluation Service of Chile), Environmental Court of Valdivia (R-42-2017), 2016.

[8] *Demanda Generaciones Futuras v. Minambiente* (Future Generations v. Ministry of the Environment and Others), Supreme Court of Columbia (STC4360-2018, Number: 11001-22-03-000-2018-00319-01), 4 April 2018.

[9] *Greenpeace v. Mexico*, Supreme Court of Mexico (AMPARO EN REVISIÓN 526/2020), 6 February 2021.

Within the broad context, Mr Auz stated that there are two types of climate remedies: affordable remedies and onerous remedies. Affordable remedies, he described, are rapid, low-cost and targeted fixes and as such compliance rate is high with faster execution. Whereas onerous remedies come at a substantial state cost and require increased resources and coordination and therefore the compliance rates are lower with slower execution.

Based on this, he discussed, it is clear that onerous remedies as such are the more difficult to apply. Furthermore, he described those onerous remedies further and provided that there is often a:
*“systemic non-compliance with onerous remedies as a symptom of extractivism”*.

To conclude, Mr Auz stated that although bold and onerous climate remedies are probably the best equipped to protect people and the climate, the cost is often too great.

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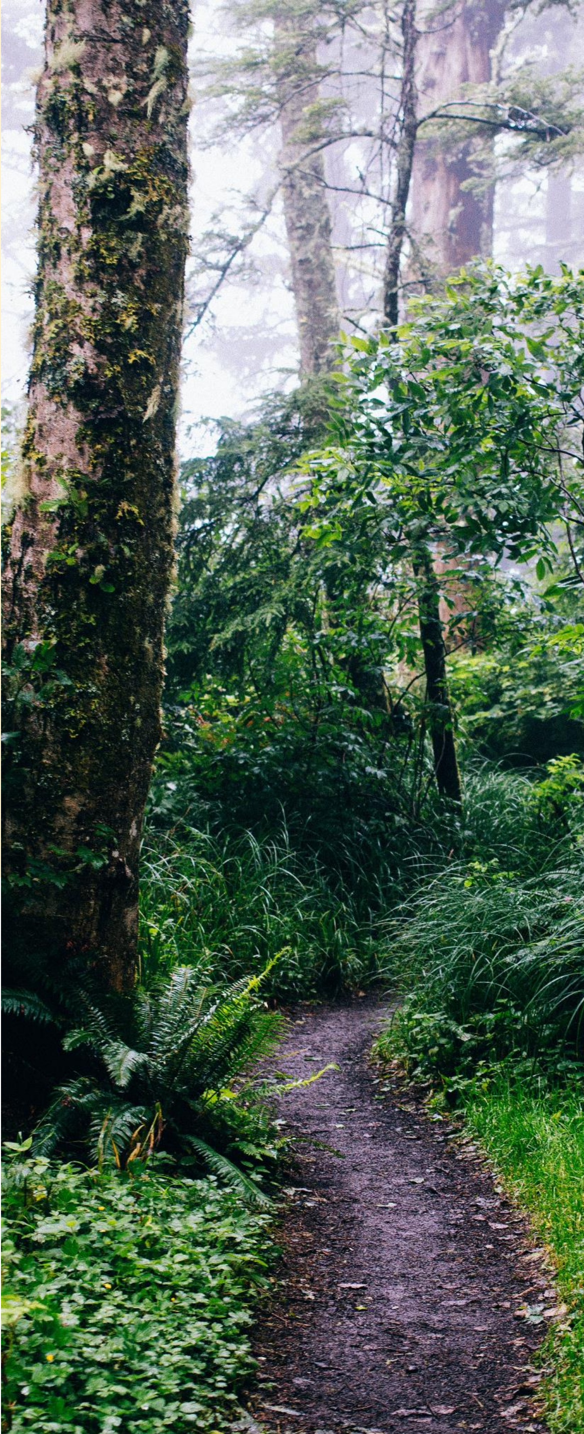
## Doctoral candidate presentations



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**Ms. Carlotta Garofalo**

**"From Rights-Based Litigation to Climate Justice: An Uneasy Path"**

Doctoral candidate in constitutional law at the University of Graz and a research assistant at the Climate Change Litigation Initiative (C2LI) and researcher at the ClimLaw: Graz Research Center for Climate Law, Austria.

Ms Garofalo's presentation was aimed at showing that, in the absence of clear legal obligations, rights-based litigation might turn into an ineffective tool to achieve climate justice. To show this point, she first considered the legal uncertainties involved with defining national mitigation obligations. Secondly, she discussed that human rights judicial review standards, coupled with a territorial and anthropocentric understanding of rights, still hinder the fulfilment of justice claims in court. And, finally, she considered how an eco-centric application of the proportionality principle might guide courts in limiting the state's discretion on mitigation policies.

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**Ms. Paola Apollaro**

**“Climate Justice and Litigations: The Enforcement of the Right to the Environment”**

Doctoral candidate in global studies at the University of Urbino "Carlo Bo", in Italy. She is also an honorary fellow (cultore della materia) in Global Environmental Law at the University of Macerata in Italy, a collaborator of the Global Pandemic Network and remote intern within the Policy, Legislation and Governance Section of UN-Habitat.

During her session, Ms. Apollaro discussed the rights-based approach formulated to address climate issues, which is the foundation of her research. Climate justice and litigation was explored as the main subjects of her debate and work, as they also are crucial and central in the academic field related to climate issues. Her presentation had a legal approach from both the perspective of human rights law and climate change law. It was conducted, firstly, based on the analysis of the reference normative texts and

through the jurisprudential contribution given by various international bodies, such as the UN and the EU, building a critical comment useful to push forward her research. Ms. Apollaro's research also monitored the times and changes in progress taking into particular consideration authorities' commitments regarding the creation of a body of norms of climate law.

**Ms. Rosanna Anderson**

**"Rights, Procedure and Science: Exploring the Capacity of the EU Legal System to Facilitate Climate Justice"**

Doctoral candidate and researcher at the PLG Department of Tilburg University Law School in Netherlands.

Ms Anderson's overarching research question was: "How does EU law facilitate distributive climate justice and how may the contribution of EU law to climate justice be strengthened?". From this, she presented sub-questions which focused on collective rights (including intra-generational rights), procedural rights and science in EU law. Her research aimed to identify where, in practice, EU law facilitates climate justice concerns and where there may be potential for further developments. This research builds on the fields of climate justice, environmental rights and climate change litigation.

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**Ms. Julia Wallner**

**"Climate Justice in the Austrian and EU Legal System"**

Doctoral candidate and research and teaching assistant at the Institute of Public Law and Political Science at the University of Graz and researcher at the ClimLaw: Graz Research Center for Climate Law.

Ms. Wallner's presentation focused on the philosophical foundations of climate justice and particularly the concept of intergenerational justice. Ms. Wallner went further to provide that the notion of justice between generations raises a number of fundamental questions that cannot always be answered by law alone. For example: Can future generations bear rights and do we, as currently living people, stand under respective duties? What could the concrete content of such obligations be – what do we owe to future people? Should historical injustices be considered at all, and if yes, how are they to be evaluated and accounted for?

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Her presentation, inter alia, addressed these questions and, based on analysis of the differences in intergenerational relations compared to those between contemporaries, highlighted the resulting doubts and discussions. She presented a line of arguments to show that, from a philosophical perspective, one might assume that future people do have rights and that currently living people are under respective obligations. Following the sufficiency approach to intergenerational justice, it was further suggested that what we owe future people is enabling them to live above a certain threshold. Ms- Wallner argued that human rights could constitute this threshold. The same arguments were then looked at from the legal perspective, elaborating how and to what extent they translate into law.

**d. Session 3 - Climate Change and Litigation - Global South - 25 May 2022**

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Session three provided a closer look at the global south perspective on climate change and litigation, this year there was a particular focus on India as one of the global south leaders in climate action.  In this session there were discussions on the role of India as a

comparative example for climate law development and an analysis of how indigenous communities, such as the Adivasi community in India, have understood and practiced the use of climate change as a legal issue way before it was globally applied.
From this, there were further presentations on specific case studies within global south countries or regarding phenomena that have impacted and continue to affect global south populations such as: water scarcity; climate displacement and human security.

**Lecture Session**

**Prof. Dr. Eeshan Chaturvedi**
**"Climate Change and the Global South: Perspectives from India". Prof Chaturvedi's discussion was based on his recent publication titled: "Climate Change Litigation: Indian Perspective".[10]**

Associate Professor and Assistant Dean at the Jindal School of Environment and Sustainability, India, the Joint Director of the Global Policy, Diplomacy, and Sustainability Fellowship (GPODS) and Founder-Director of Environmental and Public Policy Consultancy Firm 'EnviPol'.

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In starting his presentation Prof Chaturvedi acknowledged that climate lawyers and legal experts are "defining a new field of law altogether". He then asked, "What is climate change-based litigation?" to which he responded that climate change litigation was a precursor and a legal anchor. Based on this, Prof Chaturvedi presented his perspectives on how the concept of "knowledge brings happiness" as the starting point for any climate litigation strategy.

[10] Eeshan Chaturvedi, "Climate Change Litigation: Indian Perspective," *German Law Journal* 22, no. 2 (January 2022), https://doi.org/10.1017/glj.2021.85.

With the understanding that litigation creates a wave of climate friendly policy, legislation, and so forth, one is better able to utilize knowledge of climate litigation to ensure more preferential climate outcomes. As an example, he stated that the goal of climate litigation was to raise awareness of one's climate rights which would make a difference in climate action and lead to a creation of knowledge regarding climate rights.

Prof Chaturvedi then went on to explain the specific situation around India and how India is a good example to utilize as a result of its comparative nature. For example, India's environmental ministry also cares specifically for climate change concerns and is aptly named the Ministry of Environment, Forest and Climate Change. Additionally, India has utilized rather innovative means to address climate concerns, such as its world-renowned National Green Tribunals,[11] and through its clear separation of powers.

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Within India, as well as many other countries across the globe, there are particular factors which aid in the development of environmental and climate change legislation,

[11] Ministry of Law and Justice of the Government of the Republic of India, *National Green Tribunal Act* 19 of 2010.

namely: The judiciary; international trends; stable government institutions; public awareness, and multiplicity. It is only once these factors are balanced and efficiently applied that there can be effective development of environmental and climate change legislation. However, the one downside of India's legislative system is that it often consists of a "one step forward, two steps back" challenge. This is a result of a lack of climate change legislation, glacial recession and low public awareness. All of which can be resolved with the assistance of the legislature as well as through the knowledge creation offered by the law.

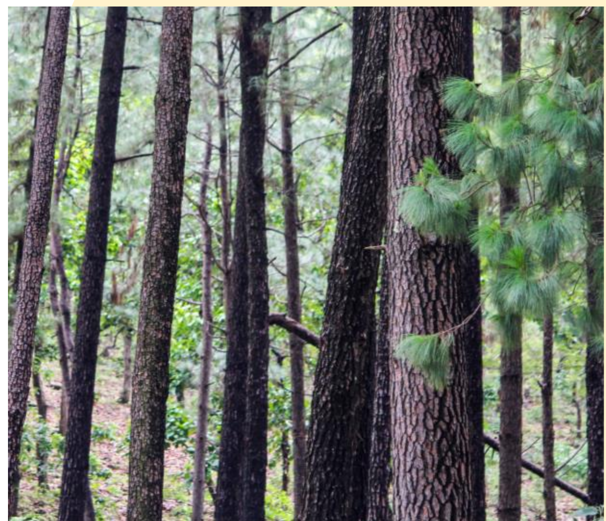
**Dr. Arpitha Kodiveri**

**"Soot, Dust and Paperwork: Legal Mobilization in India's Coal Rich Lands and the Future of Climate Litigation"**

Post-doctoral researcher and Climate Litigation Accelerator at the New York University School of Law, United States of America.

As a broad overview, Dr. Kodiveri's presentation focused on the interlinkages between the Forest Rights Act,[12] Adivasi community and climate change litigation.

Dr. Kodiveri made an important observation, mentioning that the awareness around climate change as a legal issue is something that is still enduring however forest communities, such as the Adivasi community, have already seen these possibilities. However, marginalization of these communities by environmental law and litigation has often meant that these communities are not able to efficiently execute these possibilities in protection of their rights.



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Specifically, within the Adivasis communities of India it is clear that there are distinct historical impacts on the community. Among these are examples of how climate

[12] Ministry of Tribal Affairs of the Government of the Republic of India, *Forest Rights Act* 2006.

litigation and climate change issues have been fought against coal mines from as early as the 1980s. These communities are examples of why it is necessary to implement legal mobilization strategies for the protection of climate and environmental rights as well as other human rights. They are examples of how legal mobilization can be achieved with the most basic resources and as such encourage those who can to do something more.

In conclusion, Dr. Kodiveri provided points to consider when discussing the future of climate litigation. She stated that, the future of climate litigation:

- May, realistically, be “unsexy” and consist of mundane procedural environmental law implementation;
- If we are not careful, can result in climate laws reinforcing exclusionary conservative paradigms;
- Requires the use of environmental litigation as a platform;
- Could include the concept of subterranean sovereignty; and
- Begs the question: “Can litigation be transformational?”

**Doctoral candidate presentations**

**Mr. Moritz Vinken**
**“The scarred landscape of international climate change law: examining the repercussions of international law’s central lines of conflict”**

> Doctoral candidate and research fellow at the Max Planck Institute for Comparative Public Law and International Law, an associated researcher in the Max Planck Research Group: “The Multiplication of Authorities in Global Governance Institutions (MAGGI)”, Heidelberg, Germany and the senior student editor of the Transnational Legal Theory Journal.

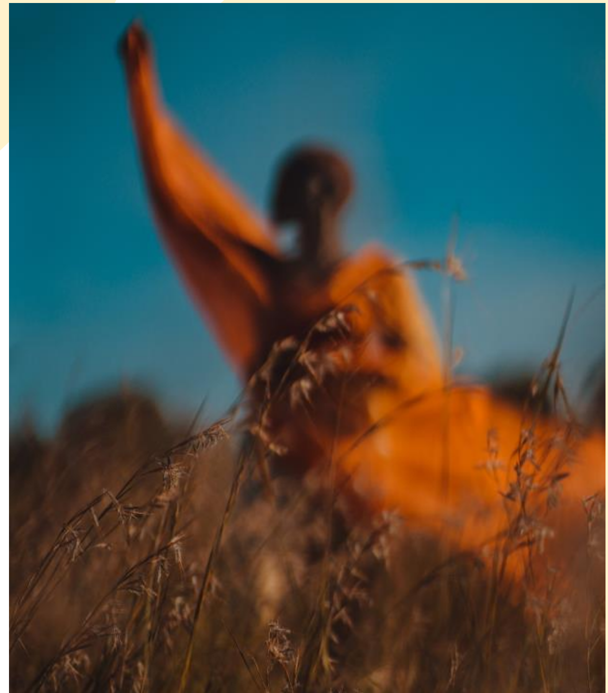
Within his PhD research, Mr. Vinken analysed the current landscape of international climate change law and governance through the lens of the international public authority approach developed by von Bogdandy and others. He provided the observation that international climate change law and governance are marked by several layers of complexity ranging from scientific to normative and institutional layers. In order to make sense of these layers of complexity there is to be an analysis of the various exercises of public authority. He argued that these complexities to a large extent

find their origins in four central lines of conflict which have marked and still mark international law most profoundly. This was the main premise of his suggested research presentation. According to Mr. Vinken, the four central lines of conflict underlying international law that have contributed to the current landscape of international climate change law and governance are the North-South Divide, the interplay between the national and the international fora, the distinction between public and private, and the relation between science and politics.

**Sr. Leonida Katunge**
**“The Impact of Climate Change to the Full Enjoyment of Political Rights of the Women in Kitui County, Kenya”**

Doctoral candidate at the University of Nairobi, an Advocate of the High Court of Kenya and a lecturer at Tangaza University College in Kenya.

In her research, Sr. Katunge focused specifically on the need to combat climate change for the promotion of Human Rights by studying two counties, Muranga and Nairobi, within Kenya. She discussed how climate change has affected the farmers of Muranga County to the extent that they cannot manage to produce sufficient farm produce to supply to those who live in Nairobi County and entirely rely on them for farm produce. From this it is clear that the insufficient supply has affected the full enjoyment of the social and economic rights of the citizens of Nairobi County.



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In addition to the above, Sr. Katunge discussed the laws and policies in place in relation to combating change and how effective and ineffective these laws and policies have proved to be and what amendments should be introduced to effect change in this regard.

**Adv. Aloyce Peter Ndege**

**“Assessing the Efficacy of Climate Change Adaptation Strategies for Enhancing Access to Freshwater in Kano Plains of the Lake Victoria Water Basin”**

Doctoral candidate of Environmental Law at the University of Nairobi, an Advocate of the High Court of Kenya and a member of the Kenya Institute of Management (MKIM).

Adv. Ndege began his presentation by discussing the contextual background and inextricable links between water and climate within Africa. His research specifically focused on the Kano Plains community of Lake Victoria, as Lake Victoria is the planet's second-largest freshwater lake and the largest in Africa, and is in serious danger of facing impacts of climate change.

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Adv. Ndege went further to look at how provisions found within the Sustainable Development Goals and the Constitution of Kenya assist in supporting the establishment and protection of a right to clean and safe water in adequate quantities.[13]

[13] Government of Kenya, Constitution of 2010, https://www.constituteproject.org/constitution/Kenya_2010.pdf.

In support of his research, Adv. Ndege argues that there is an urgent need to study the impacts of climate change on water access in the Lake Victoria Water Basin with a view to developing appropriate strategies, policies and plan for mitigations so as to avert the potential water crisis by the year 2030. Due to the localized impacts of climate change, it is believed that adaptation responses need to be locally appropriate and designed, led and implemented by local leaders and their communities. Climate change impacts are also experienced – and responded to – differently by various groups within local communities, for example, men, women, children, people with disabilities and minority and marginalized groups. The varied experiences of climate change are often due to socially ascribed roles and underlying inequalities that lead to differences in resource access and use, levels of wealth, knowledge and power.

Therefore, Adv. Ndege's research seeks to find the extent of the local community's knowledge and appreciation of the concept and impacts of climate change on water access. From thence, his research will review the policies, legal and institutional frameworks in place to mitigate the impacts of climate change on sustainable use and management of the freshwaters, the current trends in freshwater use and recommend ways to enhance the efficacy of the regulatory measures for mitigating climate change effects so as to promote sustainable use of the freshwaters.

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**Mr. Owona Mbarga Daniel Armel**

**“Evidence in Domestic Climate Change Litigation”**

Doctoral candidate in International Law at the Catholic University of Central Africa (UCAC) in Cameroon and a senior technical assistant at the Field Legality Advisory Group (FLAG).

In opening his presentation, Mr Armel stated:

*Climate change is one of the issues whose resolution is essential for the preservation of life on Earth*

He expanded on this by bring to attention that despite the urgency of the situation, actions by government and fossil fuel companies remains insufficient. He argued that in order to push for faster action on climate change, civil society organizations, decentralized local governments and private individuals are bringing climate lawsuits before the courts in their states. However, scientific conditions and requirements necessary to support such cases remain, to a large extent, uncertain. This then poses the question: How can we prove the responsibility of States and companies in the occurrence of climate change?

Mr. Armel argued that when observing climate litigation at the national level, one realizes that scientific evidence occupies an important place in the quest to establish the judge’s conviction. Additionally, activity reports of associations and civil society organizations demonstrate their active involvement in climate action campaigns in support of their standing within climate lawsuits. Moreover, evidentiary operations are used to justify the jurisdictional capacities of the court in such climate related matters. In essence, scientific evidence; classic evidence and evidentiary operations are the means through which it is possible to establish the conviction of the judge in climate matters according to the phases of the lawsuit, particularly the admissibility and the examination of responsibility within the lawsuit.

**Mr. Mohammed Ekbal Anak**

**“Displacement in Changing Climate: Escaping from Marginal Environments to the Margins”**

Doctoral candidate in Public Law at the Faculty of Law at Damascus University in Syria and he is a senior protection assistant (Legal) at the United Nations High Commissioner for Refugees (UNHCR), Syria.

As research shows, up to 250 million people may be displaced by the impacts of climate change by the year 2050. In 2021 alone, weather-related events triggered some 24.9 million displacements in 140 countries. Considering that displacement may occur across borders such as refugee influxes, or within a country because of disasters or armed conflict, Mr. Anak’s presentation only concentrated on internally displaced persons (IDPs) who have been forced or obliged to flee or leave their homes and do not, unlike refugees, cross the national borders.

The total number of people living in internal displacement reached more than 55 million by the end of 2021. Mr Anak’s presentation examined internal displacement in the context of climate change. It analysed the linkage between this type of displacement and human rights with a special focus on climate change displacement and the impacts of climate change on the enjoyment of human rights by IDPs. As such, he explored the legal frameworks for protection from climate-induced displacement and examined the roles and responsibilities to provide lessons to address and prevent climate displacement.

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In his presentation Mr. Anak aimed to enhance the awareness and understanding of climate-induced displacement from a legal protection perspective by:

- mapping the contextual background;
- providing the legal framework that applies to climate forced displacement; and
- reflecting on the possible guiding principles that would guide public policies in the protection of IDPs.

**Ms. Mwathi Kitonga**

**“Towards Sustainable Ocean Governance: Decarbonization of Kenya’s shipping Industry”**

Doctoral candidate in Environmental Law at Faculty of Law of University of Nairobi in Kenya and is also a Director of the Practice Standards Directorate at the Law Society of Kenya within the National Office.

Shipping is a significant source of greenhouse gas (GHG) emissions with the industry carrying out about 70 percent of all global trade by value and 80 percent by volume thus making a huge contribution to global trade and economic development. The industry accounts for 3 percent of global anthropogenic GHG emissions annually with a projection that the carbon emissions will continue to rise. The International Maritime Authority (IMO) is the organization responsible for climate change mitigation and air pollution prevention for this sector. The Paris Agreement on Climate Change (2015) failed to include the shipping industry, but set the standards required for all state parties, to move towards attaining the 1.5 degrees’ Celsius global temperature target.

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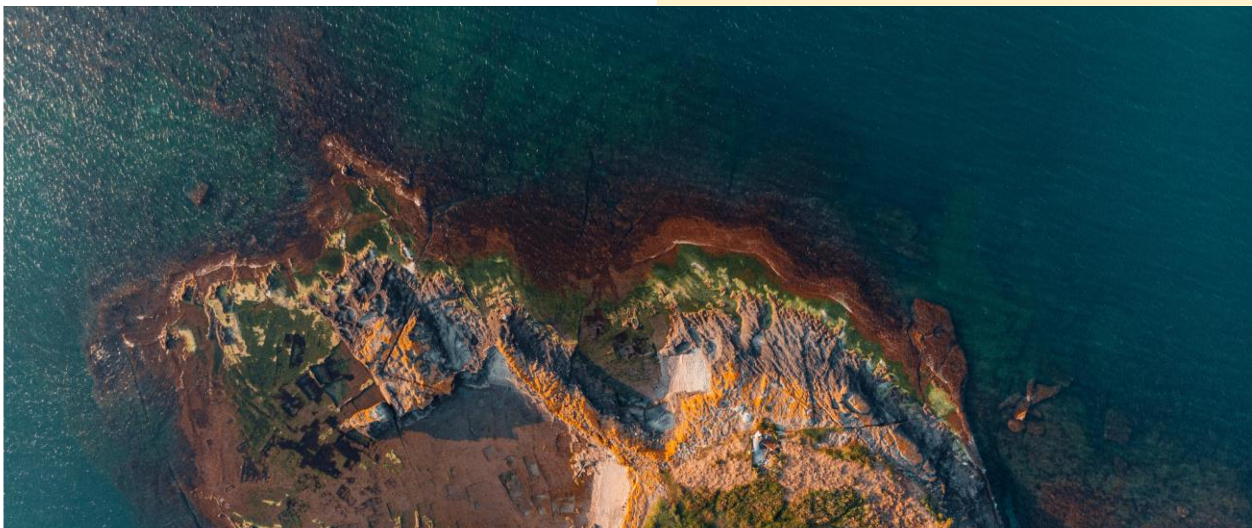
Indeed, for the Western Indian Ocean Region specifically the East African sea trade routes, the Kenyan coast plays a pivotal role as the home to the port of Mombasa which serves as a gateway and exit point for a vast hinterland comprising of Uganda, Rwanda, Burundi, Democratic Republic of Congo, Tanzania, South Sudan, Somalia and Ethiopia. The port is considered the busiest in East & Central Africa with an annual growth cargo movement of about 10 percent and is recognized as the top ten fastest-growing container ports in Africa.

Ms Kitonga's presentation discussed Kenya's shipping industry, which is advanced and growing progressively. Based on the above, she concluded by emphasizing the need to re-evaluate the current policy measures that are in place with regard to minimizing the impact of carbon emissions so as to meet national, regional and international requirements.

### e. Session 4 - Climate and Nature: Water, Land, Soil and Air - 26 May 2022

Session four analysed the specific natural elements and their relation to climate change. During this session there was a particular focus on the right to clean air and the aviation industry as well as the broader understanding of environmental constitutionalism as a whole. By providing specific contextual examples of how nature is addressed within each of the elements, one is better able to understand how nature is impacted by climate change and how we are responsible for addressing and rectifying these impacts.



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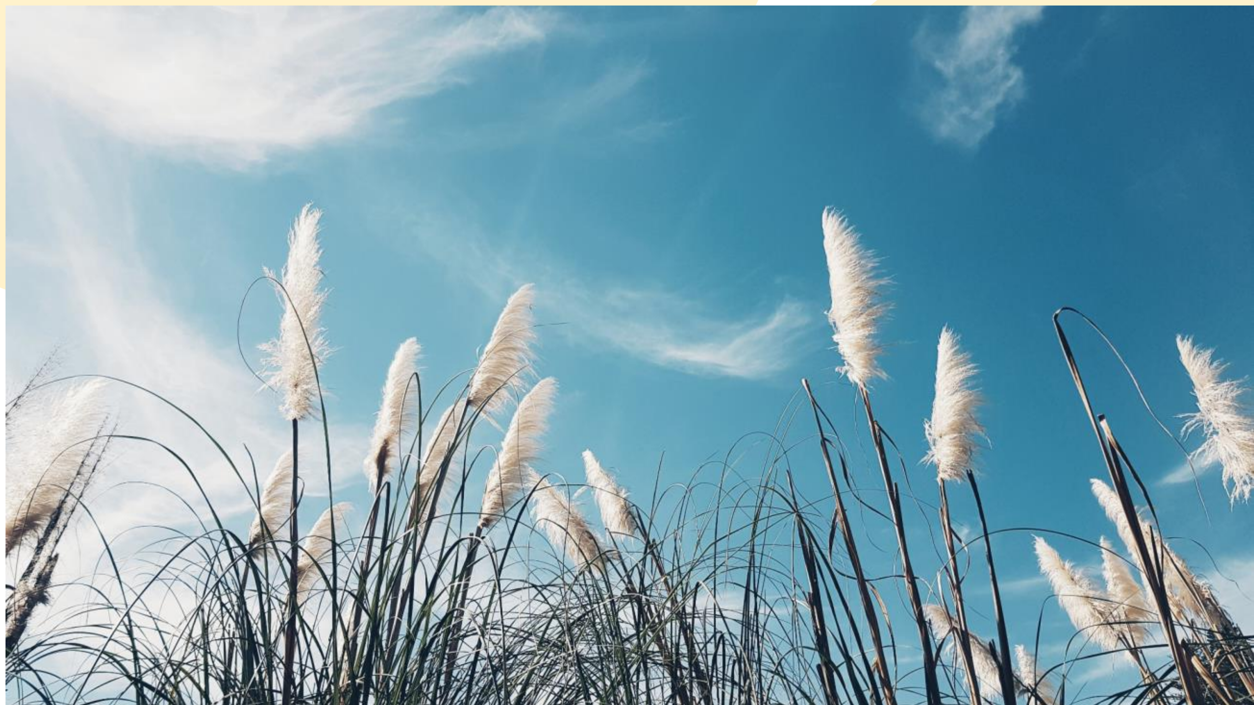
**Lecture Session**

**Prof. Dr. Matteo Fermeglia**
**"The Right to Clean Air and Member States' Action against Climate Change in the EU"**

Assistant Professor of International and European Environmental Law and post-doctoral assistant in Environmental and Administrative Law at the Faculty of Law at Hasselt University in Belgium.

Prof. Fermeglia sought to analyse the connection between the European Union (EU) air quality protection and accountability of EU member states to climate action. Ultimately, he sought to identify whether there was a point of convergence between these two regimes.



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In beginning his presentation, Prof. Fermeglia provided five reasons why these regimes have a lot in common. Both the EU air quality protection regime and regime which seeks accountability of EU member states to climate action have:

1. Major regulatory failures and health threats;
2. Long-standing scientific consensus;

3. Clear cut trajectories for EU member state action;
4. Consolidated fundamental rights frameworks (e.g., the European Convention of Human Rights and the European Charter of Fundamental Rights); and
5. Direct obligations on member states (e.g., Ambient Air Quality Directive and the National Emission reduction Directive; The EU Regulation on the Governance of the Energy Union and Climate Action and EU Climate Laws; and Implementation and Enforcement).

In Prof. Fermeglia's presentation he put forward the argument that these two regimes come together at the point when justiciability and accountability meet. In order to support this argument, he proceeded to provide an in-depth analysis of the *JP vs Ministre de la Transition écologique* case. This case seeks to answer the question of whether the violation of the Ambient Air Quality Directive, by a member state, allows citizens to seek compensation from the member state for health issues related to poor air quality. Furthermore, there is the discussion on whether there is a non-contractual obligation by states related to the establishment of a right to air quality. In closing his presentation, Prof. Fermeglia delved further into the opinion of Advocate General Kokott regarding the *JP vs Ministre de la Transition écologique* case. In his opinion, Kokott indicated that a limitation of values and obligations on the member state to improve air quality thus leads to a conferral of rights to the individual. Additionally, Kokott outlined, in answer to the first question, if compensation is to occur, there must be a direct causal link between the serious infringement of air quality rules and concrete damages to health.

**Dr Pasquale Viola**

**"A Comparative Study of Climate and Environmental Constitutionalism, also referring to extra-legal factors"**

Member of the EU Jean Monnet Chair SO_CITIES.

Dr Viola began his presentation by drawing attention to the necessity to understand environmental degradation and anthropogenic climate change. More specifically that within this understanding there is the need for resilience and adaptation and the application of these concepts within the legal system. Regarding adaptation, there are both structural and functional approaches to legal actions aiming at adaptation. Within all of this comes the need to implement principled flexibility which is a continuing,

unpredictable and non-linear change in ecosystems. As such, adaptation needs positive efforts to avoid a rigid legal response that may dilute itself in the formalistic approach.

In this regard, environmental law is already considered a "beaten path". Where the management of the behavioural aspect prevails and environmental law discloses its own private law feature. This then leads to an environmental proto-legislation. In order to be adaptive and continuously flexible there must be a combined top-down and bottom-up approach in environmental implementation. At the top of the structure is the international (and supranational) regime, then constitutional law, followed by domestic law and finally at the bottom of the structure is the judiciary and jurisprudence.

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When contemplating these approaches, one cannot help but think of how environmental law and climate law fits into this structure and at what point would this be considered. This then leads to two questions: whether environmental law suffices to deal with climate change issues and whether climate change law is a section of environmental law. In Lazarus' theory in the development of environmental law, there are three key steps: building, expanding and maintaining. It is through these steps that environmental law can be utilized to assist in the inclusion and expansion of climate laws within the broader scope of environmental law.

But what about the possibility of constitutionalizing climate? Climate constitutionalism is often mirrored in recent climate lawsuits. In this regard, Dr Viola presented his recent research on how climate litigation fits within the greater justice scheme. Ultimately within justice there is distributive justice, within distributive justice there is climate justice, within climate justice is climate litigation. To conclude, Dr Viola thus stated that

the critical approach leads to a debate on the flexibility of legal systems in adaptation to environmental degradation and anthropogenic climate change.

**Ms. Victoria Volossov**
**“Addressing International Aviation Emissions - A European and Global Perspective”**
Policy Officer (EU Commission, DG Clima)

Ms. Volossov began her presentation by providing some concerning figures which compared the scale of the climate challenge to the gap in ambition. She recognized that, despite efforts to enforce climate pals and ambitions, the path that we are currently on is alarming and insufficient. In order for there to be a substantial change in achieving climate ambitions it is necessary to harness market forces for climate neutrality. In doing so, there are three key distinct areas of attention, namely: the EU Emissions Trading System (ETS), reduction of carbon emissions and the generation of revenue. These areas have also been analysed within the EU Climate Action Progress Report.[14]

One specific sector that requires more effort to achieve climate ambitions is the aviation sector. Aviation is the most polluting mode of transport and there must be more consideration on how aviation is covered within the ETS. According to EU Climate Laws, there are economy-wide commitments to reduce emissions by 55% by 2030 and to be carbon neutral by 2050. Currently the transport sector has reduced emissions by 6% and is required to reduce their emissions by 24% by 2030. This means that in order for the EU to meet its climate commitments within the time frame provided, more must be done in each sector to make a change. This is why it is of particular importance for there to be more innovative and effective means to reduce carbon emissions in sectors, such as the aviation sector, which greatly impact overall emissions targets.

[14] https://ec.europa.eu/clima/document/download/cc21a745-d691-4028-bb0f-7527d115587c_en.

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But how? This is the question that Ms. Volossov put to the audience. She asked: How can the aviation sector do more? She then provided three distinct steps that the aviation sector could implement in order to achieve its climate commitments within the EU Climate Framework. Firstly, the aviation sector must acknowledge their impact on carbon emissions and should strive to make appropriate contributions to ETS or other emissions reduction schemes. Secondly, there should be an increase in the carbon price signal. At present there are still a number of financial mechanisms which support air travel making it easier for the aviation sector to continue emitting and paying off, rather low, carbon prices. With an increase in carbon pricing for the aviation sector there will be no other option but for aviation to transform their activities to lower emissions. And, lastly, there must be appropriate implementation of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) within the EU. Ultimately, Ms. Volossov put forward the approach that the aviation sector should seek to utilize both the ETS and CORSIA within the EU in order to effectively and expeditiously achieve climate commitments.

**Doctoral candidate presentations**

**Luciana Gomes de Freitas**

**“Analysis of Environmental Protection Law and Policies of the European Union and Brazil – with special regard to protected areas”**

Doctoral Candidate in Law and Political Sciences, University of Szeged, Hungary and Former Lay Judge at the Mato Grosso’s Court of Justice, Cuiaba, Brazil

The objective of Ms Gomes de Freitas’s presentation will be to provide an overview of her research into the environmental policies and laws related to protected areas within Brazil and the EU, focusing on the laws and policies that have a focus on protected areas on waterways.

From the presentation it is clear that Brazil and the EU have a number of similarities and differences regarding laws and policies in support of the protection of water specific protected areas. Water specific protected areas include: the sea, ocean and coastal zones; rivers; lakes, lagoons and ponds; mangroves and sandbanks; wetlands; Groundwater and influx of water; hills and slopes; forests; and species’ natural habitats. Based on these protected areas, it is clear that the EU, unlike Brazil, either fully or partially protects each of the above-mentioned water specific protected areas

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Ms Gomes de Freitas's presentation identified the questions her research sought to answer, namely:

- What is the relation between enforcement of law and policies and preservation?
- How the analysed laws and policies protect and collaborate in order to ensure preservation and restoration?
- What are the similarities and differences between the legal systems?
- How are these laws and policies applied? And, when applied, do they offer real gain to the environment?
- How many protected areas should be created to achieve balance within ecosystems and biomes?
- Do both Brazil and the EU have a balanced environment and biodiversity?
- What biomes are in danger and why are they endangered?
- What is the relation between the goal of policies and the application in the field?

**Zhuoqi Ding**

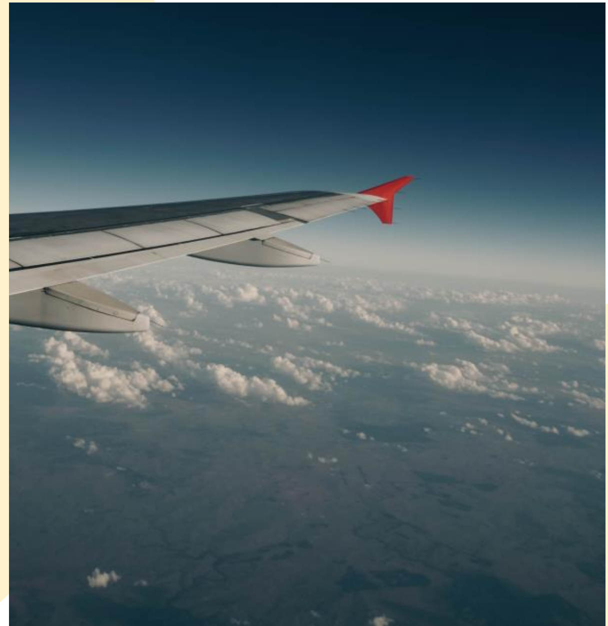
**"Differentiation in the Regulation of International Aviation Emissions: A Critical Review of Legality and Practice"**

> Doctoral Candidate in the Faculty of Law at The Chinese University of Hong Kong and a Doctoral Researcher at the Center for Comparative and Transnational Law (CCTL) – Environmental, Energy and Climate Law Cluster, the Chinese University of Hong Kong.

The research Ms. Ding presented on was about the differentiation in the regulation of international aviation emissions. The far-reaching consequences of climate change give alarm calls for taking concrete mitigation measures. Such initiatives are especially needed in the international aviation sector. However, climate treaties (except the Kyoto Protocol) do not explicitly touch on this issue. Beyond the UN climate regime, the International Civil Aviation Organization (ICAO) has developed various mitigation measures, including technology advancement, operation improvement, sustainable aviation fuel, and offsetting schemes. The EU also actively responds to the climate concerns caused by international air transport and incorporates this sector within its ETS. Along with the development of climate regimes, there are increasing equity concerns between states on regulating international aviation emissions. Against the general development of international air transport, its unbalanced distribution between states

suggests the differences in states' energy use, GHG emissions, and mitigation capacities. In this sense, it seems undesirable to impose the same mitigation obligations on states and requires the adoption of differentiation in this regard. Hence, I seek to investigate the role of differential treatment in the governance of international aviation emissions.

Specifically, this research aims to answer the following three questions: (1) What are the climate initiatives aimed at reducing international aviation emissions? (2) What are the doctrinal foundations of adopting differentiation in these climate initiatives? Is the CBDRRC principle compatible with the non-discrimination principle? (3) If there are justifications for adopting differentiation in the international aviation sector, have the climate initiatives targeting this sector put differentiation into practice?



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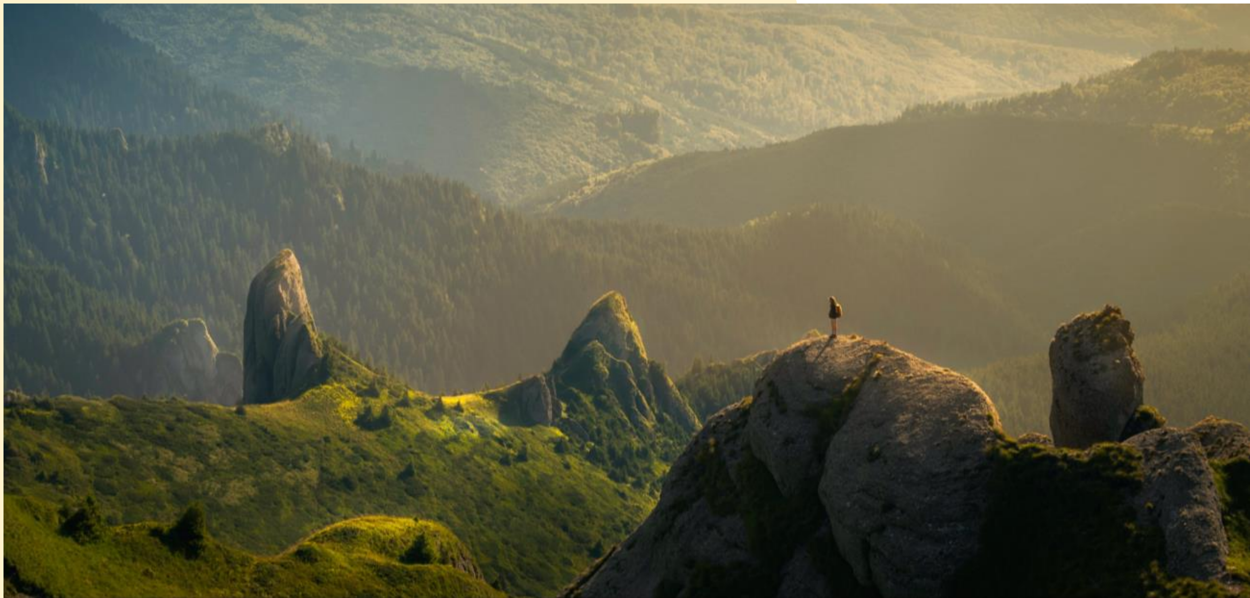
Ms. Ding's research pays attention to climate change governance beyond the UN climate regime, the development of differentiation with the evolution of the UN climate regime, as well as the interpretation of the Common But Differentiated Responsibilities and Respective Capabilities (CBDRRC) principle and differentiation in climate litigants. Additionally, her research also took into account the technical mitigation measures in the international aviation sector, including the deployment of sustainable aviation fuel.

**Nicola Sharman**

**"Disentangling the Objectives of Public Participation in International Climate Change Governance: The Role of Law"**

Doctoral Candidate in International Environmental Law at the University of Eastern Finland, a Doctoral Researcher at The Center for Climate Change, Energy and Environmental Law (CCEEL) in Finland and a qualified Solicitor in Scotland.

Ms. Sharman's presentation discussed her recent research on the importance of distinguishing and prioritizing the rationales for and objectives of public participation in international environmental governance forums; the role of law in articulating these rationales and objectives; and how these issues may apply to and manifest themselves within the international climate governance forums.



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By way of background, public participation is widely understood and recognised in international environmental law to improve environmental governance on the basis that it (a) enhances the quality of decision-making, (b) strengthens legitimacy, and (c) fulfils democratic principles. Calls to establish greater opportunities and legal guarantees for civil society participation within the international climate change regime are based on each of these rationales, yet scholarship within the realms of political science has come to distinguish them as separate goals which are, to a significant extent, irreconcilable and have quite different implications in terms of how participatory processes should be designed. Empirical studies have shown that stakeholders prioritize the goals of public participation differently, potentially leading to conflicting and unmet expectations which have become particularly pronounced within the international climate change regime.

Ms. Sharman's presentation discussed these tensions, asking: in so far as international environmental law supports the facilitation of public participation in international climate governance forums, does it ascribe to it a particular rationale or objective? This

discussion centres on Principle 10 of the Rio Declaration and other related soft law instruments, the climate treaties, the Aarhus Convention and the Escazú Agreement. Her research aims to deepen understanding of the role and impact of the law in promoting clarity and consensus on public participation's function and formulation in climate change governance, while recognising the unique challenges and role of public participation in supra-national contexts. The analysis reveals potential shifts occurring in the law from emphasizing substantive rationales for public participation to normative ones, as well as notable contrasts between the law and participants' understandings of public participation's role.

### f. Session 5 - The Business of Climate: Trade and Energy - 27 May 2022

The final session of our PhD Workshop took a closer look at the commercial side of climate law as well as the sectors which have had an impact on climate commerce. One particular sector being the energy sector. Our expert presenters provided in depth analysis and comment on three distinct areas, namely: investment, energy and consumption.

Source: https://unsplash.com/photos/joqWSI9u_XM?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink.

With each speaker we discussed the links to climate laws and how the commercial sector impacts and can be impacted by climate laws.

**Lecture Session**

**Dr. Alessandro Monti**
**"From Brown to Green Investments: Rethinking International Investment Law for Climate Action"**

Postdoctoral researcher in International Climate Change and Economic Law at the Centre for International Law and Governance (CILG), Faculty of Law, University of Copenhagen, Denmark

Dr. Monti's presentation was centred around one key question: What can international investment law do to advance climate goals? In answering this question, the structure of his presentation was split into three areas: an overview of international investment law and climate change; current challenges; and rethinking investment law for climate action. In discussing the overview of international investment law and climate change, Dr. Monti began by providing an outline of the objectives, historical evolution, institutional structures and dispute settlement methods of international investment law. He drew particular attention to the International Centre for the Settlement of Investment Disputes as well as the decentralized nature of investment law resulting from the use of bi-lateral treaties between states.

Within international investment law there are certain standards of protection that must be implemented to ensure that investment rights and obligations are protected and adhered to. These standards of protection include the application of certain principles, namely: the national treatment principle; most favoured nation treatment; fair and equitable treatment; and protection against direct and indirect expropriation. Additionally, international investment law has recently developed a relationship with sustainable development practices. Where previously economic prosperity was the exclusive purpose of investment treaties, there is now a move towards development and societal growth as well as economic prosperity.

Investment law has been utilized as a framework for climate action, seeing as investment law can:

- Be promoted in climate related goals;
- Ensure standards of protection;
- Provide a limiting policy space for climate action; and
- Utilize dispute settlement methods for climate related disputes.

Source: https://unsplash.com/photos/vrbZVyX2k4I?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink.

However, as Dr. Monti mentions, there are challenges to fully realizing the relationship between international investment law and climate change. Firstly, there is the problem of regulatory chill and the indirect effects of international investment agreements. Given that there are often investment agreements that already stipulate investment terms between states and parties there is often no need to develop investment laws to mirror additional considerations, such as climate action. Additionally, "due to risk of claims by investors, States might refrain from passing policy reforms" which could jeopardize partnerships with existing investors. Secondly, international investment law standards and enforcement often lead to challenges for climate action, namely in instances of: stranded asset protection, opaque dispute settlement mechanisms and the North-South Divide. These challenges have been identified in a number of key investment law disputes; particular focus is given to the following cases: Uniper v. The Netherlands; RWE v. The Netherlands; TransCanada v. USA; Rockhopper v. Italy; Eiser v. Spain; Eskosol v. Italy; and Greentech and Novenergia v. Italy.

Lastly, when rethinking investment law for climate action it is necessary to acknowledge the positive impact of investment law on climate action, namely: climate finance; technology transfer; and accountability. Ultimately, when rethinking investment law for climate action consideration must be made for the conservative versus the disruptive solutions within international investment agreements and dispute settlement.

**Dr. Renate Pirstner-Ebner**

**“Innovative Climate Energy Law with a focus on Renewable Energies”**

Senior scientist at the Institute of Public Law and Political Science and Member of ClimLaw: Graz Research Center for Climate Law, University of Graz, Austria

Dr. Pirstner-Ebner began her presentation by outlining the energy climate matrix and by discussing the energy system of the future. The energy system of the future contains: renewable energy; energy efficiency; decentralization; storage opportunities; and digitalization. In short, the energy system of the future is one that promotes a “green smart grid”. However, there are challenges to achieving this system, namely: climate protection; conflict, such as that in the Ukraine; and energy supply security. Additionally, the energy system of the future does contain some problems, more specifically: the volatility of renewable energy sources; the possibilities of only receiving periodic energy; lengthy approval procedures; and a lack of new technology.

Dr. Pirstner-Ebner suggested that the energy system of the future would require more innovative approaches for a green energy system. Firstly, there should be special procedures for renewable energies. These procedures should include principles that promote more climate friendly, inclusive and equitable use of energy resources, such as the application of the principle of ‘Energy Efficiency First’. The Energy Efficiency First Principle provides that states shall ensure: “efficiency solutions are taken into account in the planning, policy and major investment decision.” There must be a willingness to terminate existing procedures which do not support the goals and objectives of the future energy system. With this in mind more attention should be given to notification procedures and barrier identification thus making the utilization of renewable energy technology more accessible.

Source: https://unsplash.com/photos/Ng8Aq7lR0p4?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink.

Secondly, there must be a greater concentration on consultations, procedures, and approvals. Consultation concentration involves establishing contact points to assist with consulting and supporting renewable energy projects. On the other hand, procedural and approval consultation would mean establishing one authority which implements the same approval procedure and has the final say in decision-making. In ensuring this concentration there are better possibilities of maintaining legal certainty; uniformity and accountability.

Lastly, there must be a cross-sectoral approach in developing the energy system of the future. This can be achieved through the development and implementation of an integrated Network Plan that involves Ministries as well as National Regulatory Authorities.

Such a network plan would improve coordination of renewable sources as the cross-sectoral approach would consist of the planning, construction and operation of infrastructure.

**Dr. Monika Feigerlová**
**“Modernization of the Energy Charter Treaty”**

Post-Doctoral Researcher at the Centre for Climate Law and Sustainability Studies (CLASS) and Lecturer at the Faculty of Law, Charles University in Prague, Czech Republic

Dr. Monika Feigerlová’s presentation was broken down into four sections: the Energy Charter Treaty (ECT) and its investment chapter; modernization mandate and process; selected substantive standards of protection; and reflection of climate change. In her

first section, Dr Feigerlová outlined the purpose of the ECT, the links between the ECT and climate change goals, the use of international investment agreements (IIAs) and climate change, criticisms of the ECT and why the ECT should be modernized.

Source: https://unsplash.com/photos/q6n8nlrDQHE?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink

Modernization of the ECT plays a crucial role in transitioning the energy sector by providing means and incentives to discard fossil fuel assets; ensure that assets that are protected by foreign investors and to prevent regulatory chill. At the 2017 Energy Charter Treaty Conference there was a decision taken to modernize the ECT which contained a list of approved topics, namely: Definition of 'economic activity in the energy sector'; Right to regulate; Definition of Fair and Equitable Treatment; and Sustainable development and corporate social responsibility, to name a few. The negotiations regarding the modernization of the ECT have begun with the most recent round of discussion held in June of 2022.

Within the European Union (EU) there have been a number of proposals and concerns regarding the ECT. In 2019 the EU Council released a mandate for negotiating which

allowed the EU Council to: to clarify and update the ECT's outdated investment protection provisions; to reduce the risk of speculative claims and increase legal certainty; to take account of sustainable development, climate and clean energy transition goals; and to contribute to the achievement of the objectives of the Paris Agreement. Following this there were also concerns on whether the EU or member states would withdraw from the ECT if no meaningful changes were made. Since then, there have been a number of negotiations around ECT modernization indicating that a change is on the horizon. However, in order for this modernization to occur in a meaningful manner, there must be substantial changes made, urgency and unanimity and finally, there must be a movement towards eliminating regulatory chill which prevents progress in modernizing the ECT.

**Dr. Rita Simon**

**"Consumption, Sustainability and Climate Change"**

Post-Doctoral Researcher at the Centre for Climate Law and Sustainability Studies (CLASS) and Lecturer within Faculty of Law, Charles University in Prague and University of Economics Prague.

Opening with an analysis of sustainable development, Dr Simon's presentation provided a jarring evaluation of how current trends in consumption are impacting sustainability and climate change. Dr Simon took a closer look at how to structure the Sustainable Development Goals (SDGs), why final consumption matters, how European legislation tackles sustainable production, why sustainable consumption is under-regulated and finally provided some recommendations for sustainable consumption.

Dr Simon discussed Sustainable Development Goal (SDG) 12, 'Responsible consumption and production' and specifically the function of the "Wedding Cake of SDG Advancement:

Source: https://www.stockholmresilience.org/research/research-news/2016-06-14-the-sdgs-wedding-cake.html

According to Dr Simon, there are some issues which relativize consumers responsibility on climate change: consumers do not build a homogeny group; the current capitalist market economy; small Influence of consumers on production; and information asymmetry and lack of transparent indicators. Ultimately, consumption matters because without consumption, theoretical production does not exist. Based on how necessary consumption is, there is the need to identify how to promote sustainable production and consumption. There are a few ways to ensure this:

- Design with less environmental impact,
- Reduced material and energy usage,
- Produce responsibly,
- Digital product passports,
- More sustainable product pricing,
- Responsible supply chains,
- Transport cleaner,
- Sustainability education,
- Redrafting consumer rights, and
- Better waste management

One of the key tools for ensuring sustainable production and consumption is through clear environmental information, this can be achieved with the proposal for a directive on corporate sustainability due diligence and a digital product passport. Despite this, consumption remains unregulated and causes further side effects such as: growing traffic, failed deliveries, oversized packaging, growing waste, and replacements for a new product instead of repairs. The biggest climate relevant consumer issues are the lack of information; direct costs from returning goods and insufficient hierarchies in the case of defective performance. However, the main issue is delivery and withdrawal rights.

Source: https://unsplash.com/photos/kJZSIXoXrUE?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink

In concluding her presentation, Dr. Simon provides some recommendations. She states that: consumers cannot sufficiently influence production processes and the whole market system. Based on this, Dr Simon suggests that consumers should become more aware of their influence on sustainability and must reduce consumption by using rather than buying. Additionally, there must be more comprehensive, transparent and trustworthy information on product sustainability. As is the case with information provided on a product passport, climate relation should be visible also on product pricing. And lastly, there should be a redrafting of existing consumer law by providing for a withdrawal right without extra fees or a right to repair as a first remedy.

**Doctoral candidate presentations**

**Seher Çırak Ateş**

**"The Legal Assessment of Hydrogen Trade between the EU and Neighbouring Countries"**

Doctoral Candidate in Private Law at Hacettepe University, Turkey and an Expert at BOTAS (Petroleum Pipeline Corporation)

The EU has a clear target for its Hydrogen strategy, namely; EU Green Deal, European Hydrogen Strategy for a Climate-Neutral Europe, and Fit for 55 Package. In addition, the European Commission released its Hydrogen and Gas Market Decarbonisation package, along with legislation on methane emissions and the energy performance of buildings, as well as a Communication on Sustainable Carbon Cycles on 15 December 2021.

In its European Hydrogen Strategy, the EU targets 80 GW of electrolyser capacity of which 40 GW will be for imports from neighbouring regions, with Ukraine and North Africa being mentioned specifically. Moreover, given its geographic proximity and low-cost renewable power, Turkey may also seek to be a potential supplier of hydrogen imports to Europe. Therefore, international energy trade can also develop in this way. In contrast to this, there is hardly any hydrogen legislation in the EU's Neighbouring Countries. A separate "Hydrogen" legislation should be prepared and the primary and the secondary legislation related to hydrogen energy should be clearly established with future foresight in order to achieve a competitive market. In this context, the development of technical safety standards compatible with international standards regarding the production, distribution, transmission, storage and end-use processes of Hydrogen in the EU's Neighbouring Countries is of great importance in terms of developing an effective Hydrogen infrastructure. Thus, blending also changes the quality of the gas consumed in Europe and may affect the design of gas infrastructure, end-user applications, and cross-border system interoperability. Blending risks fragmenting the internal market if neighbouring Member States accept different levels of blending and cross-border flows are hindered. To mitigate such a situation, the technical feasibility of adjusting the quality and cost of handling the differences in gas quality need to be assessed.

Moreover, before making large-scale production decisions; legal regulations need to be clarified. In addition to the aforementioned regulations, national incentive mechanism regulations should also be prepared, since the implementation of the renewable hydrogen strategy is very costly. To support investments in clean hydrogen in the EU Neighbouring countries, both the EU and international financial institutions will mobilise the available financing instruments. In this context, some EU's Neighbouring Countries have some competitive advantage from geographic proximity to the markets, low-cost renewable energy production and their supportive government policy. In addition, natural gas export pipelines and interconnectors could potentially transport blended hydrogen initially and 100 per cent hydrogen in the longer term.

Source: https://unsplash.com/photos/OtqaCE_SEMI?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink

Hydrogen trade offers new opportunities for re-designing Europe's energy partnerships with both neighbouring countries and regions and its international, regional and bilateral partners, advancing supply diversification and helping design stable and secure supply chains. In the transition to the hydrogen economy, international cooperation will facilitate market entry by jointly undertaking costs and risks. Therefore, opportunities for international cooperation in this field should be pursued and evaluated. Since the EU should actively promote new opportunities for cooperation on clean hydrogen with

neighbouring countries and regions as a way to contribute to their clean energy transition and foster sustainable growth and development.

**Luma Santana de Souza Dórea**

**"The Inclusion of Women through Environmental, Social and Governance Practices and Sustainable Investments as an Effective Climate Response Strategy"**

Doctoral Candidate in Environmental Law at the University of Nairobi, Kenya and Volunteer Lawyer at the NGO Tamo Juntas, Brazil

The gender barriers faced by women in leading and participating in decision-making on environmental issues limit their ability to adapt to climate impacts. While women are more vulnerable to the impacts of climate change, men dominate environmental decision-making.

It is no exaggeration to say that there will be no climate justice until women have an equal voice in decision-making – whether in climate policy formulation or investment decision-making. In the global context, women are the biggest part of the burden caused by climate change. This vulnerability is the result of a series of social, economic, and cultural factors. Gender power relations effectively limit women's decision-making power, mobility, and access to resources, including water, which makes them more vulnerable to climate-related risks. Thus, as an example of inequality of gender on the Environmental scenario is that the average representation of women in national and global climate-negotiation bodies is below 30 percent.

Source: https://unsplash.com/photos/8oB43mw658c?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink

Despite these barriers, concrete case studies show that women are effective in designing and implementing solutions to increase sustainable livelihoods while reducing conflict. Studies show that women are more likely than men to use climate-smart agriculture techniques to adapt to climate change, and that when more women are involved in group decisions about land management, the group conserves more.

Part of the problem is that women do not have adequate access to founds or decision-making that can enable them cover climate losses or take on the opportunities presented by climate change, at the same hand we can affirm that there can be no climate actions without women. They are essential to limiting global warming 1.5°C trough their leadership and participation. Women and girls in every society need to be part of the solution by effectively responding in times of crisis ad actively working towards creating a more just and sustainable word.

For this to happen, investors and stakeholders need to create opportunities, such as ESG practices with women leadership, and support women entrepreneurs more effectively. On the ground private sector need to distribute access to financial and technical support to bring climate innovations to market.

Female entrepreneurs when are effective actors do think differently. They employ six times more women that companies led by men. Women are more likely than their male counterparts to innovate to address social needs and score better than men in key skills such as leadership, problem-solving and innovation.  Women when allowed to work invest 90 percent of their income families, compared to just 35 percent of men, and yet still face enormous barriers when it comes to setting up business of their own.

**Georgina Roskell**

**"International agricultural trade law and the global food security crisis: Implications of Climate Change and the Conflict in Ukraine?"**

LLD Candidate, Stellenbosch University, South Africa and Research Fellow at the Development and Rule of Law Programme (DROP), University of Stellenbosch, South Africa

Our final presenter for the PhD Workshop, Ms. Roskell provided a discussion on a very prevalent topic which touched on the issue that is food security. Ms Roskell begins by

questioning whether there is a strict law that caters to food security and why this is not a more prevalent legal issue. Her research methodology focuses on a legislative analysis and a comparative approach on the direct correlations between agricultural trade and food security. Ultimately, Ms Roskell provides an overview of how climate change impacts food.

As a result of climate change there are extreme weather phenomena that have impacted both soil and precipitation levels across many African countries. Many people across Africa rely on subsistence farming to not only cater to their household food needs but also to support their household livelihoods. As such, when these farmers are no longer able to farm, they are placed in a position of food and income insecurity. In order to successfully overcome these climate- induced conditions, farmers often need money to install better farming technology, which they do not have. Ms. Roskell suggests that farming subsidies can be provided to these farmers to support agricultural resilience.

Source: https://unsplash.com/photos/9TGSTsJL05c?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink

In addition to climate concerns, conflict also places restrictions on agricultural trade and livelihood. For example, with the conflict in the Ukraine, is there a chance of new trade agreements to support the agricultural loss that have been faced by farmers as a result of the war. These agreements should consider the losses to biodiversity; the need to relocate farms as a result of damages to farming land during the war; and trading partner impacts.

Finally, Ms Roskell puts forward the discussion on diversification of food supply. In ensuring that countries have possibilities to secure food from various sources, governments should ensure that there are various channels of food supply into the country. For example, with the introduction of the African Continental Free Trade Area there should be policy shifts to strengthen regional connectivity in the trade of food.

## 5. Conference Outcomes

This year's conference was truly a success and has resulted in a number of outcomes that we hope to continue and build upon each year. As we expand the ClimLaw: Graz PhD Workshop on Climate Law and Litigation, we will do our best to ensure that experts, professionals and doctoral candidates alike are provided with the support and platform to expand on their research and engage further both during the workshop and after. All the information below and further details and updates can be found at: https://climlaw.uni-graz.at/en/.

### a. PhD Follow Up

As discussed, and communicated with the doctoral candidates, we would like to ensure that Doctoral candidates who presented at the workshop are continually supported throughout their research.

As such, we are providing the opportunity for the doctoral candidate presenters to come together and discuss amongst each other any ideas, developments or even to ask questions from fellow doctoral candidates on tips or suggestions. This "follow-up" session will follow an informal structure and is open to any and all doctoral candidate presenters, from this year's workshop, who would like to attend.

The follow up session is merely an additional means of continued mentorship and support amongst doctoral candidates. We found it necessary to provide such support as it is often the case that once doctoral candidates present at a workshop, they no longer receive follow-up guidance and assistance. This is something that we at ClimLaw: Graz are hoping to rectify and as such we will continually check in on our doctoral candidate presenters as they progress with their research.

### b. Publication

With 2030 fast approaching, climate change has become a topic of concern for many countries, communities and commercial entities across the world, the law developed to assist in achieving climate protection and carbon neutrality by 2030.

Climate law and litigation play a key role in climate protection efforts, from a legal perspective. This field of law has emerged as an effective instrument to ensure the effective development, implementation and monitoring of various climate commitments and targets. Thereby enforcing a sense of accountability and transparency in maintaining climate change adaptation and mitigation measures. However, climate law and litigation does not operate solely within the confines of legislature and judiciary and as such must consider the realities of specific places/regions, people/society and the planet at large.

Source: https://unsplash.com/photos/8XddFc6NkBY?utm_source=unsplash&utm_medium=referral&utm_content=creditShareLink

Volume 1 of the "International Climate Law and Litigation: The influence on the Specific Places/Regions, People/Society and the Planet" book series seeks to provide the findings of some of the leading experts and researchers in the field of climate law and litigation. With contributions from academics, practitioners and researchers, each year this series will provide updates on key developments and research areas as well as insights from across the globe on progress in climate law and litigation.

The aim of this book is to stimulate research and thinking within climate law and litigation and to provide insights into how international bodies, nations, communities, legislatures, judiciaries and individuals balance the scales of climate protection and rule

of law. The book covers three broad areas of climate change, namely places/regions, people/society and planet. Each year, expert presenters and doctoral candidates will be provided the opportunity to present their research within this publication thus ensuring that their work is formally recorded and published.

c. **New partner for next year's workshop - Development and Rule of Law Programme (DROP)**

In addition to our current partners, the United Nations Environment Programme (UNEP), the German Umweltbundesamt (UBA) and the Association of Environmental Law Lecturers from African Universities (ASSELLAU), we will be introducing a new partner organization: The Development and Rule of Law Programme (DROP), Stellenbosch University, South Africa (https://drop.sun.ac.za/). We are delighted to commence our partnership with DROP and look forward to engaging with them for our next workshop and the many workshops to come.

d. **Next year's workshop - Monday, 22 May 2023 - Friday, 26 May 2023**

In 2023, we will host the Second ClimLaw: Graz Annual PhD Workshop on Climate Law and Litigation in cooperation with the United Nations Environment Programme (UNEP), the German Umweltbundesamt (UBA) and the Association of Environmental Law Lecturers from African Universities (ASSELLAU). The agreed dates have been finalized and the Workshop will be held from Monday, 22 May 2023 - Friday, 26 May 2023 from 12:00 - 17:00 CET, via Zoom.

Similarly, to this year's workshop, it is expected that all proceedings will be held online to allow an opportunity for all presenters, experts, doctoral candidates and attendees to participate and engage from all over the world without having to travel to Austria for an

in-person conference. In doing this we are encouraging inclusivity, commitment, access and climate friendly participation.

The themes and session for our second workshop have not, as yet, been finalized as we are still in the process of finalizing our speakers for next year. Once this has been agreed upon, we will be sure to release a provisional overview of the themes and sessions to be discussed.

**We hope to see you at next year's conference!**

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