

**ENVIRONMENTAL
LAW CENTER
AT THE UNIVERSITY OF COLOGNE**

Ed. 6

WS 23/24



THE GREEN SHEET

ELC Semester Update

OPENING STATEMENT

Dear friends and members of the Environmental Law Center,

The news can be overwhelming.

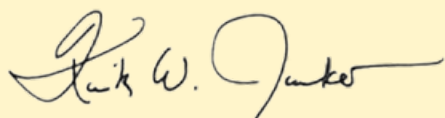
In September, 2023, twenty-seven scientists working in earth system science from many parts of the world jointly published a report in *Science Advances* concluding that from among nine planetary systems boundaries for measuring the regulation and resilience of the earth's systems, all but ozone depletion is getting worse, and six boundaries--climate change, biosphere integrity, land system change, freshwater change, biogeochemical flows and novel geologic entities--have crossed out of the boundaries within which humanity must remain in order to continue to develop and thrive for generations to come. This has happened fast--in 2009, the first report indicated that humans had crossed three boundaries and the second report in 2015 indicated we had crossed four boundaries. For those persons who follow the science, this sort of news comes all too frequently and gets worse and worse. For those who follow the science, we have now identified mental health fatigue issues that arise from the bad environmental news, introducing the term "ecodepression," to describe a feeling of being overwhelmed by the potential ecological and environmental disaster that climate change is creating. The depressive episode can be experienced as periods of hopelessness and helplessness. In addition, mental health professionals now must cope with patients suffering from "ecoanxiety," a chronic fear of ecological and environmental disaster.

Also in September, 2023, the United Nations Sustainable Development Goals (SDGs) 2023 Summit took place, from which we received more bad news. Each of the 17 SDGs contains targets, with 169 overall, but UN Secretary-General António Guterres warned that currently only 15 per cent are on track to be met, while many are going in reverse. Most chilling was the General Secretary's statement that "It is an indictment of every one of us that millions of people are starving in this day and age."

But the UN General Assembly did not quit in defeat and instead adopted a political declaration to accelerate SDG progress, including a commitment to financing for developing countries and clear support for an SDG Stimulus of at least \$500 billion annually, as well as an effective debt-relief mechanism. The General Assembly also called for changing the business model of multilateral development banks and endorsed reform of the international finance architecture, which was the General Secretary has labelled "outdated, dysfunctional and unfair."

And for those who follow the science, there is hope. English primatologist and anthropologist Jane Goodall says there are four reasons for hope. The first reason is the incredible human intellect. But she also reminds us that "intellectual does not mean intelligent. An intelligent animal would not destroy its only home, which is what we have been doing for a long time."

Second is nature's resilience. It remains to be seen whether we are part of that resilience. Third, is the power of youth, which Goodall describes as "the energy, commitment and hard work of young people when they understand the problems and are empowered to discuss solutions and implement them." Fourth is the indomitable human spirit, "that which enables us to face the seemingly impossible and not give up. It is this spirit, mysterious by nature, that pushes us on when we feel that the situation could not be worse." Goodall's hope speaks to the work of our Environmental Law Center--the hard work of young people who understand the problems through science, and then are empowered by law to discuss and implement solutions. As we, a university-based institution, begin a new academic year, there is hope.

A handwritten signature in black ink, reading "Kirk W. Junker". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Prof. Dr. Kirk W. Junker, Director, Environmental Law Center
Cologne, October 4, 2023

TABLE OF CONTENTS

UPCOMING EVENTS IN WINTER SEMESTER 2023/24	5
PAST EVENTS IN SUMMER SEMESTER 2023	6
ELC ANNOUNCEMENTS	12
CURRENT PROJECTS AND INITIATIVES	14
ACADEMIC RESEARCH PROJECTS	15
ENVIRONMENTAL LAW ALL OVER THE WORLD	16
ENVIRONMENTAL LAW IN GERMANY	25
RECOMMENDATIONS	27
GOOD TO KNOW	28
HOW TO REACH US	29

UPCOMING EVENTS IN WINTER SEMESTER 2023/2024

LECTURE IN ENVIRONMENTAL LAW: ENVIRONMENTAL LAW IN THE PLANNING AND PERMITTING PROCEDURE

We are happy and proud to announce that we will again offer German environmental law in the upcoming winter semester. Practicing lawyer Dr. Andreas Hamacher, who already teaches German environmental law, will return and teach the topic in an innovative way. Although German environmental law will continue to be the focus, it will be taught in the context of a planning and permitting procedure. For this purpose, the permitting procedure of a fictional plant will be discussed.

The lectures will be virtual and, if possible, include an excursion in Cologne as well as a discussion with an engineer. Lectures will be held on Wednesdays, starting on October 18, from 5:00 - 6:30 pm.

Successful participation in this lecture series may be credited toward the Environmental Law Certificate or the Schwerpunkt.

HOW TO BECOME AN ENVIRONMENTAL LAWYER WITH FRANZISKA ALBRECHT

Franziska Albrecht from Green Legal Impact (GLI) will cover the next “How to become” event organized by the Environmental Law Center. The event will take place on November 29, 2023. This will be a special event since Ms. Albrecht will first give a lecture on the implementation of the Aarhus-Convention as part of the German environmental law lecture and then talk about her career as an environmental lawyer at GLI.

If you want to find out more about Franziska Albrecht, you can find her interview with LTO here: <https://www.lto.de/karriere/im-job/smalltalk/detail/small-talk-interview-franziska-johanna-albrecht-juristin-green-legal-impact-ngo-klimaschutz>.

EXCURSION

Live excursion in German on January 10, 2024

The Environmental Law Center is inviting its students to take part in an excursion to a plant in Cologne. Please be sure to wear solid footwear.

If you are not taking part in the German environmental law lecture, we kindly ask you to register by stating your name and matriculation number via environmental-law-center@uni-koeln.de.

PAST EVENTS IN SUMMER SEMESTER 2023

LECTURE SERIES IN GERMAN ENVIRONMENTAL LAW

German environmental law: A brief illustration of the lectures in the past semester

While the importance of environmental law in the international sphere grew throughout the last few decades, this area of law also gained massive importance in national law.

Based on that, the lectures gave the students a brief, but comprehensive overview about important matters of this growing area of law.

The lectures were mainly given by practicing lawyer Dr. Hamacher (PAULY Rechtsanwälte), who was supported by his colleague Dr. Pauly, who covered the lectures on German packaging law. Additionally, Mr. Jürgens from the Chair for US-American law provided insights into international and national climate law.

The lectures were characterised by legal and practical insights into science and experiences in the context of legal profession.

One of the main problems was the specification and massive volume of regulations. In order to meet this challenge, the lecturers had the task of describing the special subject matter as clearly and structured as possible and to provide an insight and overview as comprehensive as possible.

The lectures focussed on specific rules of environmental law, but equally oriented towards the historic genesis in general and on the specific laws in particular. This was necessary in order to understand the current regulations and the evolution of the law during the past decades.

The lectures talked about changes of the law in light of the changing nature of the state of the art.

Thanks to the focus on scientific sources, combined with basic knowledge of European law and structures of German public law, a broader understanding of the structure and content of the law developed over the course of the lectures.

The semester started with two lectures about the system of German environmental law and the multi-level system of national and international environmental law in general. The further focus of the lectures was set on the national law of circular economy in different areas of environmental law.

First, this area was combined with the law of facilities with emissions.

Furthermore, the lectures focused on the general law of circular economy in Germany. We dealt with the national regulations on waste and the legal regulations on the reduction and better reusability and more effective recycling of waste.

Moreover, the lectures went into specific areas of producer liability at the level of packaging and electrical appliances.

Besides, another strong focus was placed on climate law. In this particular part of environmental law, the international dimension is very strong. We discussed the international agreements and developments, up to the “Paris Agreement” and the EU’s legislative acts.

Additionally, the influence of international law into national climate law grew and is still growing. Due to that, a main part of the climate law lectures contained the discussion and evaluation of the decision from the German constitutional law on the German climate protection act. The last major part of the lecture lied on environmental criminal law.

The lectures provided students with an overview of the structures, contents, historical and international development of various sub-areas of environmental law.

Due to the enormous density of regulations in the special areas, it was not possible for us to gain insight into every single matter. But through the structural approach, the students were generally given the tools to find their way through the specific issues of environmental law on a national and international level.

By environmental law student Johannes Noppene

EXCURSION TO LENZ AND JOHLEN LAW FIRM

On April 28th, 2023 a diverse group of ELC members, consisting of students, law clerks, doctoral students and law professors was warmly welcomed at the law firm Lenz und Johlen, situated beautifully at the river Rhein in the south of Cologne. Dr. Felix Pauli, partner at Lenz und Johlen and Mats Hagemann, lawyer in his team, offered their time to talk about their practice in environmental law and answered lots of specific questions by the audience.

At first, Dr. Pauli explained the development of the legal framework for the German *Länder* regarding the duty of enabling the construction of more windparks to produce wind energy in Germany. The law used to be too broad and not fit for the reality that cities and communities faced when trying to bring the interests of the local citizens, contractors and environmental protection together – or keep them from fighting each other. Naturally, most citizens are sceptical about windparks being built close to their homes because they fear noise pollution by the wind wheels. Contractors who want to build more windparks are urging municipalities to dedicate more space to such projects. In fact, the former legal foundations for the division of public spaces in municipalities, which were based on the old laws, were attacked in court regularly, until the process of increasing the production of windenergy was slowed down and delayed throughout the entire country of Germany. This is why there has been a national reform of the legal framework, asking the *Länder* to establish new land-use plans until the end of 2027 and requiring to dedicate about 2 % to windenergy, according to the size of the Land and its population. Northrhine-Westphalia for example, is required to dedicate 1,8 % of its territory to windenergy, which is higher than expected, due to the dense population in NRW.

The lawyers at Lenz und Johlen are consulting various different stakeholders during the process. Among their clients they have cities and municipalities as well as contractors and project developers. Mats Hagemann continued leading the dialogue with general information about his job as an environmental lawyer. He and his colleagues do go to trial in some cases but mostly advise their clients from the very beginning of a project in order to avoid legal disputes before the court. When asked if and how they had to deal with personal moral conflicts when clients ask how to circumvent environmental protection laws Hagemann explained, as lawyers they will always be service providers and need to work in the best interest of their clients to satisfy them. However, advising clients in the windenergy business they usually do not get into conflicts with

environmental protection issues, since windenergy is already a source of alternative energy, aiming at replacing pollutant energy production and therefore working within the goals of climate protection.

In conclusion both lawyers agreed that one does not need any previous knowledge to work in environmental law, but being interested in public law and natural sciences definitely helps. Lenz und Johlen is always looking for talented law students or lawyers to join their practice and will be pleased to have guests from the Environmental Law Center again in the future.



By Marie Pflüger

IMES ANNIVERSARY CELEBRATION: 20 YEARS!

Happy 20th Birthday IMES!

A successful research colloquium in celebration of the International Master of Environmental Sciences' jubilee



The International Master of Environmental Sciences (IMES) began as a small project developed by professors and academics with a passion for effective environmental and climate protection and concerns. As the years flew by, more joined – professors, scientists, lawyers, academics, practitioners, and most importantly students with different cultural and academic backgrounds. The diversity of the people behind and within IMES made the masters degree program what it is today: an interdisciplinary education program which is carried out by five different faculties of the University of Cologne (UoC) and welcomes every interested student from all over the world and academic background to learn together about how current environmental and climate related challenges can be approached not only by natural science, but also from, for example, a medical, legal, or ethical point of view.

Lead by Professor Dr. Kirk W. Junker for about 13 years, IMES became a flagship program at the UoC and has produced many successful graduates who are now making significant contributions to the field in research, professional practice, and political life.

On June 23rd, 2023, lecturers and professors, current students, alumni and alumnae of IMES came together not only to network and reminisce on their time in the program, but to also present and discuss about their past and current scientific work, which they carried out thanks to their education. Among many other presentations, the following topics from the field of Society and Natural Science were covered: Trans-disciplinary approaches for systemic economic, ecological and climate change transitions (TRANSECT), Migration of the LGBTI community and climate change, Insects Fixing the World, Microplastics in the Rhine floodplains. A special highlight were guests from the project “Environment and Believes in Law and Religion” (ENBELREL), carried out by European University of Well Being (EUniWell), who added to the unique interdisciplinary factor by contributing their focus of research, e.g. how “students articulate and engage environmental concerns as members of their universities”.

This research colloquium aimed to showcase how the IMES program at the UoC has produced alumni and alumnae who have gone on to solve environmental problems across discipline and will do so in the future.

As this fruitful and educational day approached its end, the participants continued with conversations and networking with drinks and vegetarian/vegan dinner.

For the day after the IMES research colloquium, the leaders of ENBELREL invited interested participants to join them for a workshop within the project itself, which not only included discussions, but also a visit to the Cologne Cathedral.

The two-day workshop was also supported by the Cologne Environmental Society (CES e.V.), which promotes research and teaching in the field of environmental sciences and law.

To find out more about IMES visit the homepage!

<https://imes.uni-koeln.de/>

To find out more about the project “ENBELREL” and/or EUniWell feel free to click through the respective site.

<https://www.euniwell.eu/what-we-offer/seed-funding-programme/projects-of-the-third-seed-funding-call-2022/enbelrel-environment-and-beliefs-in-law-and-religion>



By Emma Shensher, student assistant for IMES

PERUVIAN STUDENTS VISIT THE ENVIRONMENTAL LAW CENTER

Last April, a group of law students attending the Pontificia Universidad Católica del Perú came all the way to Europe to visit several universities and sites which are particularly linked to energy law. Professor Zegarra Valdivia accompanied the students. During their travels through Europe, the group of students also stopped by at the Environmental Law Center of the University of Cologne. These two days were filled with a series of lectures and events prepared by the Environmental Law Center as well as the students from Peru themselves.

The stay at the Environmental Law Center included a seminar on comparative environmental law by Professor Junker and a seminar titled European and German energy law by Marvin Jürgens. The Peruvian students gave two further lectures, one about emissions trading and European energy law and another on environmental energy studies from a comparative perspective on Germany and Peru. Further, the students also had the chance to participate in a talk about jurisprudential development on renewable energies in Latin America and take part in a lecture on international climate change law as part of the lecture series international environmental law taught at the University of Cologne by Mrinalini Shinde.

The Environmental Law Center was also able to succeed in getting Minka Aduse-Poku to give a lecture on façade greening, which would have been complemented by a walk on the university grounds to highlight façade greening projects. However, due to bad weather the walk had to be canceled. Instead, on the last day of their visit, Professor Junker guided the group of students and Professor Zegarra Valdivia through the green belt of Cologne and they had the opportunity to get a look at the Billy Green Project that tackles the task of greening the façade of the canteen at Zülpicher Straße.

Students from the Environmental Law Certificate program and many more were invited to take part and participate in all lectures, seminars and events during the visit of the Peruvian students at the Environmental Law Center. Overall, the Environmental Law Center can look back on two days filled with many events and lectures and a wonderful opportunity for law students from the University of Cologne and the Pontificia Universidad Católica del Perú to get together and connect.

By ELC member Naomi Doffing

ELC ANNOUNCEMENTS

BIG WIN AT THE FIRST EUNIWELL MOOT COURT!

In March 2023, a team of the University of Cologne took part in the first European University for Well-Being (EUniWell) Moot Court (EUMC) in Murcia. The EUMC is aimed at students from partner universities who want to improve their knowledge of European and international law in relation to topics from the “EUniWell's key arenas”, in particular in relation to Arena 2 (Individual and Social Well-Being) and SDG 16 (Peace, Justice and strong institutions). In addition to the competition, the program aims to promote the creation of networks between students and academics with common interests and ideas. It enables a variety of creative encounters and discussions that can lead to further collaboration and research.

Led by coach Marvin Jürgens, research assistant at the Chair for US-american law and member of the Environmental Law Center, Massimiliano Bocchio, Ben Schippers, Maurizio Häfele, and Alessandro Rigacci competed against the team from Leiden University (Netherlands) in the semi-finale and against the team from Nantes Université (France) in the finale - and won!

We congratulate our team and are proud to have been a part of the first EUMC!

SECOND EUNIWELL MOOT COURT

In March 2024, the second EUniWell Moot Court will take place in Birmingham! The EUMC offers a unique, high-level competition at a European level, valuable educational and personal experiences, training in legal thinking and working. There is also the opportunity to get to know an exciting area of law that deals with the issues of human rights protection, peacekeeping, citizenship and security and to deepen this knowledge. On top of that collaborations and discussions with students from all over Europe, as well as a free and exciting trip to Birmingham in March 2024!

Apart from the study-related advantages and the opportunity to focus your professional career on tackling important social challenges, you can also expand your personal horizons, make new friends and have a lot of fun.

It is also possible to have participation in the EUniWell Moot Court credited as a key qualification, or as an event as part of the Environmental Law Certificate.

Please apply by sending a letter of motivation, your CV (both in English), and your current standing to us-recht@uni-koeln.de by October 31, 2023, 11:59pm.

INVITATION TO THE NKU.HACKATHON - NOVEMBER 20 - 22

The "Netzwerk Klimaanpassung & Unternehmen.NRW (NKU)" invites interested students to participate in the second hackathon for climate adaptation: NKU.Hackathon! which will take place November 20th to 22nd, 2022.

In the course of three days, students will have the chance to "hack" real business challenges in the climate adaption sector and present possible solutions.

Each team has tow days to develop the solutions; this work phase will take place virtually. The solutions developed for the business challenges will be submitted at the end of the second day in an audiovisual format that can be presented in five minutes. On the third day all participants have the chance to meet in Bottrop in the ELORIA Erlebnisfabrik and present their solutions to a jury who choose the winners and award monetary prizes.

More information can be found on the homepage: <https://klimaanpassung-unternehmen.nrw/event/nku-hackathon-2>

Interested? Apply until October 31st and be part of the NKU.Hackathon!

CURRENT PROJECTS AND INITIATIVES

COLOGNE ENVIRONMENTAL SOCIETY E.V. (CES E.V.)

What is the Cologne Environmental Society e.V. (CES e.V.)? An introduction:

The CES e.V. was initiated by Prof. Dr. Kirk W. Junker and founded in 2012 with the purpose to promote science, research and doctrine in the area of environmental sciences with a funding priority in the research field of national and international environmental law, the combining of research and practice, as well as the support of students and doctoral candidates of these areas.

The charitable society achieves its purpose especially by establishing and providing financial and organizational preconditions for research projects, the execution of national and international conferences, the promotion of publications in the fields of environmental sciences as well as national and international environmental law, the education of young scientists of environmental sciences and national and international environmental law, professional collaboration with domestic and foreign institutions that are economically and scientifically specialized in the area of environmental sciences and national and international environmental law, the granting of teaching assignments and the maintenance of international relation.

CES e.V. contributes to various events, especially for the Environmental Law Center and the International Master of Environmental Sciences. Members of the CES e.V. have access to a unique network of professors, scientist, practitioners, lawyers, students, and institutions from environmental and climate sciences and law.

The latest event CES e.V. supported was the Research Colloquium for the 20 Years of IMES Jubilee!

Want to find out more? Click here to find out about the membership!

<https://imes.uni-koeln.de/cooperation-partners/ces-ev/membership>



ACADEMIC RESEARCH PROJECTS

DISINFORMATION ON CLIMATE CHANGE AND HOW IT THREATENS EFFECTIVE CLIMATE CHANGE POLICIES

Disinformation typically revolves around either purposely spreading false information or the decontextualization of existing proven information for your own benefits.

In the age of social media, disinformation can now like never before spread across the globe within seconds. While climate change is one of the most pressing global threats we are facing today and tomorrow, the spread of disinformation around it is arguably more than problematic.

The debates on climate change are enhanced by intense political and social discussions, which make it a lot easier for disinformation to spread and flourish. It thus comes as no surprise that social media and online platforms facilitate the spread of disinformation, making it hard for legitimate sources to clear up that false narrative.

However, it is important to note that disinformation on climate change can vary and appear in different forms.

A very typical form would be "climate denialism", where voices deny that climate change is man-made. Here it is often portrayed, that the greenhouse effect is simply a natural phenomenon that has existed for a long time and thus poses no reason for concern.

In contrast to that "climate delayism" does not question the existence of man-made climate change, however that the effects are not as severe as portrayed by for instance scientists. This is specifically problematic since the actual magnitude is completely being ignored and effectively makes implementing policies much harder.

Furthermore, in context with climate change conspiracy theories are on the rise.

However, one must note that disinformation and conspiracy theories are two distinct issues, with the latter spreading clearly false information. Additionally, with conspiracy theories there are more characteristics such as the belief that powerful governments or groups of people control its citizen.

It also comes as no surprise that most disinformation roots in fossil fuels lobbyist and government critical figures.

Now, the ultimate question that naturally arises is what we can do to dismantle disinformation on climate change. The EU has already started several projects like RADAR (Raising Awareness on Disinformation: Achieving Resilience) where they continuously analyze where disinformation has its origin but also work together with experts on strategies to combat disinformation. They also encourage young adults to take part in these discussions, so that they can propose ideas for policies. In Germany specifically there are also networks like "Y-Kollektiv". One of their major working areas is spotting and analyzing disinformation on social media platforms such as Instagram.

They post short fact checking videos as well, where they clear up false spread of information. Nevertheless, currently it has never been more crucial to be conscious when consuming media and to reflect upon the information you are receiving – especially when it concerns one of the greatest threats to humankind.

By ELC member Milena Ortac

ENVIRONMENTAL LAW ALL OVER THE WORLD

THE SITUATION OF RENEWABLE ENERGIES IN PERU: CHALLENGES AND POTENTIAL SOLUTIONS

On the west coast of Latin America lies Peru, a country well known for its gastronomy and ancient cultures. However, one aspect often overlooked is the potential for the research and development of renewable energies and sustainable development in general due to the privileged climate conditions it offers. We will present the discussion on the state of renewable energies and how Peru can be a breeding ground for innovation. All this is in line with the conclusions and objectives of the April 2023 study visit to the Environmental Law Center.

ENERGY MARKET OVERVIEW IN PERU

The Peruvian energy sector is divided into generation, transmission and distribution. Electricity generation, while regulated, operates in a free market, while transmission and distribution do not. It is also important to mention that there is a national interconnected grid and various isolated systems.

There are several government agencies responsible for different activities. As a result, the legal structure is not coherent and difficult to understand. This applies to the Electric Concessions Law (ECL) and the associated Statute of Regulations. These establish the free market nature of the energy sector, the concessions and permits required for its operation, the pricing system for energy, the rules for the public service of distribution to general consumers, and the measures to promote investment.

There is also the Law on Ensuring the Efficient Development of Electricity Generation (LEEDEG). This law introduced complementary provisions to the ECL, concerning regulations on power purchase agreements, special tendering procedures for the regulated market, the establishment of a short-term energy market, the creation of a guaranteed transmission system, regulations on tariffs for consumers of the regulated market, and special balancing mechanisms and tenders for isolated systems.

It is also important to present the market share of Peruvian power generation by type. The interconnected grid has a total capacity of 13607 MW. Of this, 7182 MW is thermal energy. There are no official figures on how this thermal energy is generated. However, from a review of the available information on thermal power plants, it can be deduced that it is mainly generated with natural gas from the Camisea gas fields. Diesel is used only in the cold reserve and emergency service power plants. This is followed by 5202 MW of hydro power, 826 MW of wind power and 397 MW of solar power.

THE SITUATION OF RENEWABLES

Peruvian legislation to promote renewable energy is sparse. The Law for the Promotion of Investments in the Use of Renewable Energies and the related set of regulations from 2008 are the only two bodies of legislature that specifically address this issue. If one asks about the content of the two laws, they are empty of content. They are both short documents, together twenty-three pages. Of these, more than half are policy statements about the meaning of renewable energy and word definitions. There are only two actual provisions: the mandate for priority feed-in of electricity from renewable power plants into the grid and a special tendering procedure for renewable energy.

The first remains in place, but it cannot be fully utilized because only 9% of all electricity comes from renewable energy sources. Even with this policy, the amount of renewable electricity needed to meet all demand is not available. This, in turn, means that the policy actually misses its target, as it does not mitigate the environmental impact of using conventional energy, since conventional energy is used to meet most of the electricity demand anyway.

The second scheme also proved ineffective. Only four competitive bidding processes took place between 2008 and 2015. According to a review of data provided by OSINERGMIN, these tenders included thermal plants in the form of biogas and hydropower plants. This, in turn, crowded out the supply of solar and wind energy and defeated the purpose of the special tender. The pricing scheme of the tender is also questionable.

The tenders were not aimed at replacing existing polluting technologies, but at covering small parts of the unmet demand. This in turn does not create incentives for the construction of renewable energies. They are not built to replace aging power plants, but are seen as complementary to the existing grid. Once the demand for these complementary functions is met, no more renewables would be encouraged. This has already happened, as no new tenders have taken place since 2015 and there are no plans for future tenders.

In summary, renewable energy is unfortunately suffering the same fate as the entire energy sector in Peru. The lack of sufficient regulation, the absence of concrete policies, and the inconsistent general electricity laws make it difficult for consumers to become aware of their rights and show that these policies do not address environmental problems. Instead, the public is led to believe that measures are being taken to mitigate climate change and investments are being made to stop it and improve their quality of life. These are certainly formidable challenges that need to be addressed.

SOLUTIONS FOR RENEWABLES

We have identified the current legislation and challenges for renewable energy in Peru. In this section, we aim to provide some reflections and identify what goals can realistically be achieved in the future.

All of these solutions are the result of discussions held during the Environmental Law Center visit in April 2023 and reflect a comparative legal discussion between Germany and Peru.

As we have noted, Peruvian legislation on electricity is very inconsistent. Different laws and regulations deal with the same issues. Therefore, there is a need to integrate all these laws into one framework. A revision of the laws must accompany the reorganization process. The electricity sector is directly affected by available technologies, and in this sense the regulations must allow the spread of these new technologies. The regulations for such a fast-moving environment cannot be treated like code of laws, but must be constantly kept up to date with regulatory techniques and the promotion of new technologies.

While this is a lengthy endeavor that must continue over time, its outcome has a direct impact on the renewable energy situation. If the general framework that the electricity sector must follow is clearly understood and easily accessible, specific legislation, such as that for renewables, will be more effective because it will focus on the specifics it seeks to promote, rather than correcting mistakes and updating previous legislation, as this is not the role of a law, but rather of a revision commission within the regulatory body.

As far as renewable energies are concerned, we have found that the regulations in force do not correspond to reality. The share of renewable energy in Peru is 9% of total electricity generation. The German experience with the Renewable Energy Sources Act (EEG) has shown that feed-in tariffs and net metering, together with distributed generation, are effective in the initial phase of promoting renewable energy.

Feed-in tariffs are a price-based mechanism that usually takes the form of a fixed price or a constant premium, which in turn makes investors independent of low market prices. The scheme adopted by the Peruvian regulator has several fatal flaws that make it inapplicable. The first is that it runs counter to the very nature of feed-in tariffs, whose effectiveness is based on offering long-term contracts to all renewable electricity producers without introducing a discriminatory procedure. However, the Peruvian regulator has chosen to specify exactly when and where these contract opportunities will be awarded through the aforementioned tendering process. This process is a form of discrimination by the government in which it favors certain generators over all those interested in renewable energy production. Even though the economic resources in Peru are lower than in Germany, this does not mean that there are no resources that can be used for these contracts, especially since private utilities also finance some of the tariffs through the spot market.

Instead, science-based rules and specifications should be established that potential generators must adhere to when they apply to join the system. Since the promised tariff is higher than what could be obtained through normal means, and entry is also inexpensive, this creates an incentive for new generators of all sizes to venture into renewable energy.

Additional considerations, such as phasing out thermal power plants, must accompany the proposed tariffs to better support renewable energy.

Peru's policymakers and regulators need to keep in mind not only traditional utilities, but also citizens. Concise, easy-to-understand, and efficient regulation of distributed generation will make this possible. Distributed generation is a form of energy production and injection into the distribution grid, promoted primarily through the use of renewable energy. The goal is to decentralize energy production, making it safer, cleaner and cheaper. Currently, several countries in Latin America are already using this system for their power supply.

Ley 28832 stipulated that the government must accelerate regulations for distributed generation. However, this has not yet been done. We believe that a net metering billing system should be introduced to promote distributed generation. With net metering, distributed generators can feed energy into the grid through their utility. If the amount fed into the grid by the distributed generators exceeds the amount they have taken from the grid, the utility will credit them for the difference. This is an incentive for people to invest in solar panels or other readily available and easy-to-install renewable technologies because they benefit from clean energy and receive payment for their energy. However, we believe this is not complete without additional regulation.

Future regulations on decentralized power generation must include a requirement that utilities (most of which are state-owned) purchase a certain percentage of their electricity from new, renewable energy sources. This percentage should increase over a specified period of time to meet decarbonization goals and phase out aging power plants. The proposed mechanism, in conjunction with net metering, is an effective tool to promote renewable energy. Potential distributed generators would have both environmental and economic incentives to invest in the process, and people who still rely on the grid would find a cleaner, cheaper energy supply available in close proximity, which is important in a country where a large portion of the population lives in areas far from major metropolitan areas.

It is time to put these considerations into action as the population becomes more aware of the underlying issues. While the introduction of renewable energy at this late stage will not fully repair the damage done, it can improve the lives of many citizens by bringing energy to remote parts of the country, and in turn, provide other necessary services such as education, health, and employment opportunities. Renewable energy is a means to achieve many goals and improve the quality of life for all, it just needs the right commitment from the authorities to promote it.

If you want to know more about Perus' renewable energies, click [here](#).

By Vincenzo Pareja Grippa

CO2 EMISSIONS: WHO ARE THE VILLAINS AND DOES IT EVEN MATTER?

Of the biggest GHG emitters, China has by far been top emitter in recent years, responsible for 12,705.1 MtCO₂. This is roughly double the amount that the US, second highest in the rankings, is currently emitting. It therefore might come as a bit of a shock that due to its UN classification as a developing country China is not under the same financial obligations as other big emitters. However, just focussing on recent emissions paints an incomplete picture. From a historic perspective, cumulative emissions from 1850 until 2021 reverse the order of ranks with the US having emitted approximately 500 GtCO₂ and China 283 GtCO₂ in this period. The table of top emitters becomes even more unrecognisable when you focus on cumulative per-capita emissions. While viewing CO₂ emissions in relation to population does not directly affect climate change, these figures are nevertheless relevant to the goal of achieving climate justice in transitioning to carbon neutrality. It is also important to note that even considering cumulative and cumulative per-capita emissions only gives us a rough, rather simplistic indication as to which countries are responsible for climate change because they cannot fully reflect the influence of colonisation, exploitation and trade in carbon-intensive goods.

In mid-August, John Kerry, the U.S. special envoy on climate change met with his counterparts in China to discuss the revival of climate cooperation following the complete breakdown of talks after Nancy Pelosi's controversial Taiwan visit. Although the rekindling of relations between the two largest emitters is cause for celebration and hope for more cooperation on this important issue, several factors are of concern with regard to future international cooperation.

Firstly, there is a lot of talk in the US that China is to blame and must do more to stop climate change, while at the same time downplaying the US's own role in exacerbating the issue. Senator Kevin Cramer (R-N.D.) commented for example "that if John F. Kerry had any patriotism whatsoever while negotiating this nonsense, he would insist that China pay in." He went further stating that "[t]he idea that [the US] owe[s] developing countries some sort of climate reparations is absurd." While his views are certainly on the more extreme end, even Kerry himself said that "[t]here's no room anymore for this argument that historic emissions have to balance out." In light of the natural disasters that are already happening right now, it seems true that it is simply not possible to let countries catch up with the record cumulative emissions of the US. Yet ignoring these disproportions would be irreconcilable with the goal of climate justice, even if China is now the top emitter.

The second problem with regards to meaningful cooperation is that China sees herself as fundamentally different from other actors stating repeatedly that helping developing countries through funding and other means is not China's responsibility. Part of the issue is certainly that China refuses to accept that its rapid economic growth can render the country a developed one. Moreover, at the recent August meeting, Xi might not have spoken to Kerry directly. However, he stated at a national conference on environmental protection taking place at the same time that "the path, method, pace and intensity to achieve this [carbon neutrality] should and must be determined by [China itself], and will never be influenced by others." Given this statement, it is questionable how willing China is to cooperate with other nations on a large scale to address climate change and mitigation.

Lastly, one of the main issues is that countries in the global north have so far only made empty promises when it comes to climate reparations, the term ‘loss and damage’ remaining a heavily debated course of action. The goal to mobilise money for climate mitigation and adaptation in the Global South was first set in 2009, but since then, despite reaffirmations and extensions in 2015 to jointly mobilise US\$100 billion a year by 2020, it has not been met. In fact, this kind of continued inaction might have prompted Malik Amin Aslam, former Pakistani minister of climate change to say in the aftermath of the catastrophic 2022 flooding that to him it is more important for China to support countries like Pakistan in claiming assistance from richer countries than paying in itself.

It is to be hoped, as is unfortunately the case in many areas of international cooperation, that those involved will point the finger less at other countries and become more aware of their own responsibilities. After all, no one is ultimately served by delaying the climate problem any longer. But it is especially an intolerable injustice if the countries that are most vulnerable and have contributed least to climate change are hit first and hardest.

By ELC graduate Cecile Schuster

WELL MEANT OR WELL DONE? ABOUT THE UK ENVIRONMENT ACT 2021

Although it is almost three years since the UK has withdrawn from the EU (Brexit), Brexit still impacts the British legal system and has led to many fundamental changes and reforms, especially in the field of environmental law. Among these changes and reforms, the introduction of the Environment Act 2021 might be the most significant and notable one for two reasons.

First, it was introduced to address the risk that derived rules on nature protection, water quality, clean air, and other environmental protections that once transposed EU law would no longer have effect in the UK. The aim of the Environment Act 2021 is therefore to legally enshrine better environmental protection by providing the Government with powers to set new binding targets, including for air quality, water, biodiversity, and waste reduction. These should be ambitious, meaningful and informed by experts. In a press release, the British Government promised that it would, among other things, halt the decline in species by 2030 and help to transition to a more circular economy. In concrete, the Secretary of State must set various long-term environmental targets together with a long-term environment improvement plan.

Although it is too early to evaluate whether the design of the Environment Act 2021 will be sufficient to achieve these ambitious promises, there is a second notable feature of this framework. The Act also established the Office for Environmental Protection (OEP), with jurisdiction over England, Northern Ireland and the other environmental matters reserved to the United Kingdom, to hold government and other public bodies to account and to ensure that environmental laws are complied with. Due to this, it has been called a “new environmental watchdog”.

One could argue that the idea for the new body was already born in 2017 when a House of Lords Committee heard evidence that there was the risk of losing important elements of EU governance. Since the European Commission would no longer exercise any supervisory powers over the UK in respect of compliance with EU legal obligations, the Committee concluded that “[the] evidence we have heard strongly suggests that an effective and independent domestic enforcement mechanism will be necessary, in order to fill the vacuum left by the European Commission in ensuring the compliance of the Government and public authorities with environmental obligations.”

Today, this new public body shall fulfill various functions like advising the Government on proposed new environmental law, reporting to Parliament on progress in meeting statutory targets and reviewing the implementation of environmental law. Furthermore, it has an enforcement role that relates to the environmental duties of government and public bodies. In this regard, its procedures have been described as a specialized form of judicial review while being designed to secure a constructive settlement before reaching court. However, one should not be mistaken about what the law can do. Its principle objective is “in exercising its functions” to contribute to environmental protection and the improvement of the natural environment, but not to protect the environment.

UK legal scholars have described that this approach to monitoring the implementation of environmental law is new to the UK, but has real potential to improve the overall effectiveness of environmental law. Although its reports on this subject are not legally binding, they might have impact since, unlike its advisory powers on changes to environmental law, they must be laid before Parliament and the Secretary of State must respond within three months, also laying the response before Parliament. For example, while the Secretary of State must set various long-term environmental targets together with a long-term environment improvement plan, one function of OEP is to publish an annual report on Government progress in meeting these targets, and in improving the natural environment in accordance with the environmental improvement plan, that is to be laid before Parliament.

One of its elements, therefore, is to implement and strengthen political accountability, which is a very strong element of compliance in the UK legal system. However, one might not forget, as one scholar put it, that “OEP may advise government to be ambitious in its proposed statutory environmental targets, but its duty to provide Parliament with annual progress reports relates to the statutory targets that exist, not those it might have wished for.”

By ELC member Marvin Jürgens

THE CLIMATE MOVEMENT AND THE CONSEQUENCES

Climate activism has been growing as steadily as our problem with climate change. Everywhere worldwide, people with the same goal of protecting our planet have unified and are determined to fight the battle regardless of the consequences.

We have seen street blockades, activists gluing themselves to roads, and several attacks on our cultural heritage. But it does not stop there. Climate activists have interrupted various sports events and even cut down a tree in front of the German *Kanzleramt*. What has a living tree exactly done to infuriate the activists? The answer to this question is still unknown.

Groups like the „Last Generation“ or „Just Stop Oil“ have been fighting desperately for our planet, using the abovementioned methods. But why are they so unpopular? You would think that someone who is advocating for our planet and our survival would be welcomed with open arms. But this is not the case. The methods applied by the activists are provoking and infuriating citizens of the world rather than inspiring them to join their movement. This raises the question of whether climate activism is a movement.

Political movements are characterized by a group of people collectively attempting to change government policy and social values. The climate activists' goal is to force governments to take environmental action, protect our planet by law, and punish those that do not. A movement exists when a group aims to win the support of bystanders to grow and make a more significant impact on society.

However, the public reacted negatively to the climate activists' approach. Some citizens have taken the matter into their own hands and started removing activists from the streets instead of waiting for the police to arrive. The public is losing their patience, and the authorities are noticing it. They urgently have to act before the people take the law into their own hands.

Countries all around the world have reacted differently to climate activism. In Germany, the situation has been handled relatively peacefully. When activists start blocking the streets and gluing themselves to the ground, the police intervene by asking them nicely to leave. If this does not work, which often happens, the police move the activists out of the way. The ones glued to the ground are then removed by gently dissolving the glue. Afterward, the activists are taken into custody and have to pay a fine. Some have even started a „Go fund me“ campaign because the unpaid penalties add up, and they cannot pay.

Citizens who have been directly affected by these „attacks“ and keep getting late to work because of a road blockage are reacting. Sometimes, furious drivers get out of their cars and violently pull the activists off the streets or use physical violence. We have also seen similar reactions in countries like England and Italy.

Italy has taken more radical approaches to fighting against the activists' measures. Prime Minister Giorgia Meloni has announced that there will be hefty fines against anyone who damages monuments or cultural sites. This plan is aimed at activists who have vandalized cultural heritage in the last few months. In April, Members of the Last Generation turned the water black in Rome's La Barcaccia fountain. This stunt was supposed to emphasize the country's water crisis. Actions like these would be penalized with fines between 10.000€ and 60.000€. Moreover, the already existing penalties and a prison sentence for criminal damage will be imposed. For instance, two activists from the Last Generation have already been fined 30,000€ and given a suspended prison sentence for damages induced during their stunt.

As for the UK, the country has ramped up fines and prison sentences in the last year for defacing public monuments. Previously, damages against monuments of less than £5,000 were subjected to a maximum of three months in prison. Now, the prison sentence has been raised to 10 years.

The consequences of climate activism are becoming more severe. Is this the right way to handle stubborn activists to silence their voices?

On the one hand, one can argue that activists are not obliged to choose radical methods to receive attention and can protest more peacefully. This way, they would probably gain more public support. But let us be honest: the activists have been protesting peacefully for years, and nothing has happened. No improvements have occurred, and we cannot forget time is running out.

The longer we wait to protect our planet consistently and the longer we wait for radical decisions that aim to reach climate neutrality, the protests will not stop, and the methods will become more radical. Increasing fines will not decrease climate change.

By ELC member Alejandra Kessler

ENVIRONMENTAL LAW IN GERMANY

NEW TROUBLE ABOUT THE GERMAN CLIMATE CHANGE ACT

The current government coalition, formed by the parliamentary groups of the Social Democratic Party (SPD), Alliance 90/The Greens and the Liberal Democratic Party (FDP), promised in its coalition treaty to amend the German Federal Climate Change Act (CCA). They agreed that they would amend the CCA so that compliance with climate protection targets would be monitored based on sectoral and multi-year overall calculation and on annual monitoring. They envisioned that climate protection should become a genuine cross-cutting task of the Federal Government with all sectors contributing to climate neutrality.

In March 2023, the Coalition concretized these plans as part of a political agreement and published its Modernization package for climate protection and planning acceleration that describes how the coalition partners envision these amendments. In the package, the coalition introduced four amendments. First, the Federal Government would adopt a comprehensive cross-sector climate protection program in the first year of a legislative period to ensure that climate targets are achieved. The focus of this program would be on a transformation that is effective in the long term, economically reasonable and socially just. Second, the Federal Government would continue to submit the annual monitoring of emissions development. In the future, the emissions data from the previous year would be used to present the forecast emissions development for the years up to 2030 and with a view to 2035, 2040 and 2045. The previous year's result would be assessed to determine whether the reduction quantity required to achieve the target will be achieved for each sector. Third, all sectors would be considered in aggregated form. If the projection data show in two consecutive years that the aggregated annual emissions would not achieve the overall reduction target by 2030, the Federal Government would, on the basis of the proposals made by the decisive for the reduction quantities of the sectors responsible federal ministries, decide on measures to ensure that the reduction target is nevertheless achieved by 2030. All federal ministries responsible for the sectors, especially those under whose jurisdiction the sectors that caused the target shortfall lie, shall contribute to mitigation measures contribute. Fourth, natural sinks and technical sinks, shall play a more vital role. In June, the government cabinet has now also officially approved the amendment to the law.

Although these announcements, envisaged in the package and by the government cabinet, have not yet been formally introduced into the legislative process of the *Bundestag*, they are already concrete enough to be evaluated and have recently met with fierce opposition from legal scholars. End auf August, more than 60 public law scholars have issued an online statement:

“[...] we, as scholars of constitutional and international law, call upon the legislative bodies of the federal government not to weaken the Climate Protection Act. We call on the federal government to adopt an effective climate protection program with sufficient measures to meet the climate protection targets and thus the obligations under international and constitutional law.”

The reason for their evaluation that the CCA would be weakened is the third element of the package that would reform one of the most important elements of the CCA: the yearly sector-specific emission budgets. Currently, if a ministry does not achieve its yearly sector-specific emission budget in one year, they must propose measures for an immediate climate action programme that is to be adopted by the Federal Government and that shall ensure achieving the not met emission budget from the last year as well as future emission budgets.

In the last years, especially the Federal Ministry for Digital and Transport has not met its emissions budget. As a result, the FDP, the coalition partner that provides the minister for the Federal Ministry for Digital and Transport, demanded changes to this mechanism. They argued that what matters is not whether a ministry meets its targets, but how much greenhouse gas emissions Germany emits overall. Even though this argument seems logical at first glance, the Council of Experts on Climate Change also criticized this change since it would impose a risk of weakening an important governance and accountability mechanism. Policymakers have been failing for years to reduce emissions in the transport sector. Now there would be a risk that there would be even fewer political and legal incentives and opportunities to achieve these necessary reductions. However, since these ideas are not yet adopted by the *Bundestag*, there is still a possibility that the coalition partners will refrain from making this change, or at least revise it to address the concerns.

Please find more information on the statement on this website: <https://verfassungsblog.de/fur-eine-volker-und-verfassungsrechtskonforme-klimaschutzpolitik/>.

By ELC member Marvin Jürgens

RECOMMENDATIONS

The World's Most Dangerous Show (TV Show)

“The World's Most Dangerous Show” is a German documentary series about climate change. German host Joko Winterscheidt travels the world to show the consequences and possible solutions to climate change. The six-episode series can be streamed on Amazon Prime Video since June 2023.

1,5 Grad (Podcast)

“1,5 Grad – der Klima-Podcast mit Luisa Neubauer“ issued its third season in April 2023. Podcast host Luisa Neubauer, one of the German faces of Fridays For Future, once again welcomes various guests known from politics, the media, as well as film, television and music. Together with them, she discusses the climate crisis and all the issues around it. It is often funny and cheerful, but also very serious and thought-provoking.

Law Students for Climate Accountability (LSCA)

The LSCA released a new report documenting the role of the elite "T20" law schools in the fossil fuel lawyering recruitment pipeline. The report team created a database of more than 3300 fossil fuel lawyers, including where they went to law school. The results revealed a startling pattern: the elite schools are sending lawyers into careers like oil and gas law at a rate that is over three times the average.

LTO Minipodcast “Klimaparagrafen”

https://www.lto.de/recht/hintergruende/h/lto-podcast-klimaparagrafen-klima-recht-gesetze-wie-man-ein-1-komma-5-grad-gesetz-macht/?utm_source=Eloqua&utm_content=WKDE_LEG_NSL_LTO_Daily_EM&utm_campaign=wkde_leg_mp_lto_daily_ab13.05.2019&utm_econtactid=CWOLT000017870229&utm_medium=email_newsletter&utm_crmid=

GOOD TO KNOW

- **Roots - Umweltrechtsklinik gUG** (haftungsbeschränkt): Roots was recently launched with the objective of being Germany's first environmental law clinic that provides legal advice and conducts strategic litigation across Europe. It provides an opportunity for law students in the EU and the UK to represent individuals, national and international NGOs on environmental and climate law cases under the supervision of qualified lawyers. Roots has partnered up with Green Legal Impact e.V., Dachverband Studentischer Rechtsberatung e.V., Systemic Justice, and Schmitz Rechtsanwälte Metropolregion Frankfurt Rhein-Main und Köln. Roots provides an online two-month crash course in environmental law in collaboration with Schmitz Rechtsanwälte to help students build a foundation in the relevant law. As part of their hands-on experience in real cases, students will help research factual and legal issues, draft comment letters, assist filing petitions, pleadings and briefs, thereby improving their professional skills.
- ➔ Interested in getting involved and/or supporting us? Contact Batuhan Topuz and Emma Stremplat for further information on roots.umweltrechtsklinik@hotmail.com
- **Public Climate School**, November 2023 <https://publicclimateschool.de/>
- **Call for Pilot Learners: Center for International Sustainable Development Law** <https://www.cisd.org/call-for-pilot-learners-new-sustainable-development-law-and-policy-online-mini-courses-offered-by-university-of-cambridge-experts-democratising-education/>
- If you are a doctoral student in the field of environmental law or are interested in becoming one, you should check out the **Junges Forum Umweltrecht** (<http://jungesforumumweltrecht.de/>) since they organize conferences, lunch breaks, networking events, and have their own newsletter!

HOW TO REACH US

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