

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

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**Ed. 5**

**SS 2023**



# **THE GREEN SHEET**

ELC Semester Update

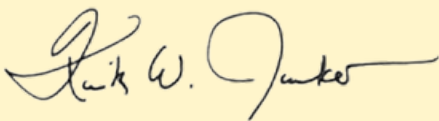
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# OPENING STATEMENT

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Dear friends and members of the Environmental Law Center,

It is spring, the daylight is longer, the days are warmer and we somehow again become more aware of the world outside of our buildings. But we also just recently received the Sixth Assessment Report (AP6) of the Intergovernmental Panel on Climate Change (IPCC). As you might expect, even if you have not read the AP6, there is little, if any, positive news in the Report. And therein lies a large problem of our time: cognitive dissonance. More than sufficient facts needed for rational decisions are known, supported and agreed-upon, but we do too little to put those facts into the action that is necessary to slow the crisis. We are walking when we need to be running. So the challenge is two-fold. First, how does one keep a positive attitude and believe that improvement for this generation and the future is possible in the face of such fact-denying behavior? Second, what is the role of legal study and practice in this fact-denying atmosphere? Our Environmental Law Center addresses the two questions together: If factual information alone is insufficient to change behavior for our own benefit and that of future generations, then legal practice can bring about those necessary changes in behavior. The recent trend in Germany and in many countries around the world is litigation, especially to effect change in carbon practices. We can now better prove, through natural sciences, the cause and effect of carbon emissions and we can better identify who is responsible. With each successful case in litigation, other people see that law can do something to slow or stop the problem. And now, through publicly-accessible information, we also know that large generators of climate disruption, like Exxon, have known and even internally predicted the crisis for decades, but not only did they do nothing to stop it, they hid those facts from the public. That is fraud and now there is litigation not only to address the underlying issues of carbon pollution, but the fraud that has been perpetrated on the public by carbon emitters. This same pattern may well develop with other environmental matters, such as plastic pollution. For these legal actions to have traction, there must also be study and support from civil society. Both in study and in practice, we can do something. Join us.



Prof. Dr. Kirk W. Junker, Director, Environmental Law Center  
Cologne, April 6, 2023

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# UPCOMING EVENTS IN SUMMER SEMESTER 2023

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## LECTURE ON GERMAN ENVIRONMENTAL LAW

**Weekly online lecture in German beginning on April 5, from 5:00 – 6:30 pm**

In the upcoming semester, German environmental law will be taught again as a lecture series at the University of Cologne. Practicing environmental lawyers will be teaching German environmental law at the University of Cologne. The lecture series will include different topics like the interconnection between European and German environmental law as well as special areas of environmental law such as climate protection law.

Lectures will be held virtually on Wednesdays, starting on April 5, from 5:00 - 6:30 pm. If possible, there will also be excursions in the area of Cologne.

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

Places are limited! **Please register through KLIPS or by stating your name, semester and matriculation number** via e-mail to [environmental-law-center@uni-koeln.de](mailto:environmental-law-center@uni-koeln.de).

## LECTURE ON INTERNATIONAL ENVIRONMENTAL LAW

**Weekly lecture in English beginning on April 6, from 12:00 – 01:30 pm**

Ms. Mrinalini Shinde B.A., LL.B. (Hons.), M.Sc., LL.M. will teach the course “International Environmental Law” to students of the Environmental Law Certificate, International Master of Environmental Sciences, students of the Technische Hochschule Köln and of the Faculty of Law at the University of Cologne. The course delves into the fundamentals of international law, the history of international environmental law, and international lawmaking, adjudication and implementation. The course further focuses on specific sectors within international environmental law such as the Hydrosphere (Transboundary Rivers, Oceans and Fisheries), Atmosphere (UN Framework Convention on Climate Change), Wildlife (Convention on Migratory Species & Convention on International Trade in Endangered Species), Lithosphere (UN Convention to Combat Desertification), Biosphere (Convention on Biological Diversity (CBD) and Cartagena Biosafety Protocol) and Human Rights, and the Right to Public Participation in International Environmental Law.

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

Places are limited! **Please register through Klips or by stating your name, semester and matriculation number** via e-mail to [environmental-law-center@uni-koeln.de](mailto:environmental-law-center@uni-koeln.de).

## EXCURSION TO LAW FIRM LENZ UND JOHLEN COLOGNE

Friday 28 April, 2023 from 10:00 am – 01:00 pm

The ELC is inviting all ELC students, members and friends to join us on an excursion to the Cologne law firm Lenz und Johlen on Friday, 28 April 2023 at 10:00 am.

Lenz und Johlen maintain that environmental law is part of the basic and crucial components to successful and sustainable development of any location. They are guiding their clients through the complex regulations of the European Union every day to ensure compliance with the law on every local and national level.

Lenz und Johlen will be presenting in German.

For more information please contact the ELC and **please register until 20 April, 2023** via e-mail to [environmental-law-center@uni-koeln.de](mailto:environmental-law-center@uni-koeln.de)



## HOW TO BECOME AN ENVIRONMENTAL LAWYER

(Online) event in German, June 2023 – time and date tba

"How to become an Environmental Lawyer" is an event series by the ELC, giving students the opportunity to interact with different environmental legal professionals and to get informed about their personal and professional development in environmental law. For many students this is the first step towards new specific directions on their own paths: getting inspired by other people who share their personal stories.

The ELC wants to show its students and young professionals as many different perspectives to working in and with environmental law as possible. Besides working in law firms there are a lot of other – often also international – institutions, which offer meaningful and diverse work, connecting law, politics and the environment.

We are excited to announce this upcoming next "How to become an environmental lawyer" event with **Franziska Johanna Albrecht**, Referentin für Umweltrecht at **Green Legal Impact**. She will also give us insight into the reform on the „Umweltrechtsbehelfsgesetz“ (Environmental Appeals Act) regarding the implementation of the Aarhus Convention.

More information and event details will be published soon via the ELC website, social media and the ELC Green Sheet mailing list.



# PAST EVENTS IN WINTER SEMESTER 2022/2023

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## LECTURE SERIES IN GERMAN ENVIRONMENTAL LAW

### Getting to know German environmental law: A brief summary of the lectures

The field of environmental law is becoming increasingly important in international cooperation between states. But also in the national sphere, environmental law is a fundamental area of law with great influence on both the economy and private life.

This semester, a lecture was held at the University of Cologne under the direction of Prof. Dr. Junker and moderated by Marvin Jürgens, which provided insights into German national environmental law. The weekly lecture was held as a lecture series, so that each week a new area of environmental law was presented by professionals. Since environmental law is still divided into a large number of sub-areas of law, there was a completely new area of law to discover every week.

Without exception, the speakers were renowned persons from science and practice who all had vast experience in their respective fields of law. This offered a unique opportunity to gain deeper knowledge about in a specific subject and to exchange ideas with professionals in this specific sector. There was always room for questions of understanding or for feedback, so that even deeper insights were made possible.

Thus, students could familiarize themselves with the main features of environmental law and gain an overview of the different areas of environmental law. The lecture is part of the ELC's Environmental Law Certificate. Students can therefore take an exam in this course and receive credit for the certificate.

The first lecture dealt with the currently most popular topic of environmental protection: climate protection. This was followed by lectures on plant protection and nature conservation. Business-related topics such as industrial plant law, energy law and environmental criminal law were also covered.

The lectures were designed in such a way that students could actively participate in the introduction to the field of law. Other areas of law covered in the lecture included packaging law, recycling law and soil protection law. Furthermore, there was also an outlook on the national implementation of international agreements, whereby the influence of the Aarhus Convention was dealt with in particular.

This multi-faceted lecture offers a wide-ranging insight into multi-layered environmental law and is a great opportunity for students to get familiar with German national environmental law.

By environmental law student Ricardo Cortes



## **BIODIVERSITY LAW SEMINAR**

During the months of November, December and January, the Chair for US law and the ELC welcomed Prof. Dr. Shamita Kumar from India. Prof. Dr. Shamita Kumar, an international expert in the law of conservation, is a Professor at the Institute of Environment Education and Research at the Bharati Vidyapeeth University in Pune, India. In collaboration with Prof. Dr. Kirk W. Junker and Mrinalini Shinde, Prof. Dr. Shamita Kumar gave lectures on the topic of preservation and conservation, focusing on international conventions and other legal tools for biodiversity conservation from a problem-solving perspective.

The lecture was addressed to an interdisciplinary group of students from the fields of environmental sciences and law and included a variation of topics such as the law of protected areas, urban biodiversity conservation, rights for nature and international conventions. On the 18th of January the students had the opportunity to listen to Andrea Pauly, Associate Program Officer talk about aquatic species and the Convention on Migratory Species.

Furthermore, students had the chance to take part in optional joint field work with Indian students for example to the Wadden Sea National Park in Germany or to Kanha Tiger Reserve in India from 25th of February to 7th of March. The field work in India included pre and post field work group discussions, wildlife safaris and rapid rural appraisals. The excursion aimed at helping the students understand conflict issues with tigers, and tourism and landscape management issues and also held birding opportunities. 8 students from the IMES program and the faculty of law were able to take part in the field work to Kanha Tiger Reserve. It was a scientifically as well as culturally most enriching experience for all participants.

## **HOW TO BECOME AN ENVIRONMENTAL LAWYER**

On November 7, 2022, Frankfurt-based environmental lawyer Stefanie Günther kindly offered insight into her work at the international law firm Allen & Overy LLP. This event formed part of the series "How to Become an Environmental Lawyer" and has once again been an excellent opportunity for us law students to get a feel for what awaits us upon graduating. This time, we had the chance to discover what practicing environmental law entails in an international firm with more than 5,820 employees and over 40 offices.



First, it is important to remember that you most certainly won't specialise in environmental law exclusively because it is part of the broader field of public law. With this in mind, Günther stressed the importance of being open-minded. It is not only necessary to flexibly solve legal problems in different areas of public law, but lawyers also need to acquire a sense of curiosity towards environmental law itself.

This is because advising multinational clients on a wide range of environmental topics calls for "pioneer work." Regulations, directives, and agreements on carbon trading, renewables, and product regulation are, for the most part, relatively recent developments.

Consequently, the lack of precedent in arguing arising claims requires lawyers to adopt a creative and ground-breaking approach. According to Günther, the ever-changing nature of her tasks keeps her on her feet. This is one of the reasons why she loves her job.

In terms of preparation, Günther advises prospective practitioners to take all the legal experience they can get on board. This is by far the best way to find out what areas of law you want to specialize in. Günther herself fell in love with environmental law through a chain of public law courses and internships she attended.

Finally, Günther explained why working at Allen & Overy is unique. For her, the firm's international nature and the opportunity to meet up with colleagues from other offices worldwide to exchange expertise and collaborate, renders her work so enjoyable. What's more, Allen & Overy has provided her with a work environment where she can find a work-life balance. Gone are the days when you had to choose between a career at an international law firm and raising a family. This is encouraging to see. Although the number of female partners is still incredibly low, we are hopeful that this will also change soon, at least at Allen & Overy.

The ELC would like to thank Stefanie Günther for her insightful presentation.

## **EXCURSION TO THE WASTE DISPOSAL AND RECYCLING COMPANY COLOGNE (AVG KÖLN)**

On November 15, 2022, a group consisting of law and IMES students, ELC members and Prof. Dr. Wolfgang Klett and two of his colleagues, visited the waste disposal and recycling company in Cologne. After a warm welcome from press spokesman and public relations officer Tilo Dumuscheit, we began with a short round of introductions, followed by an oral presentation by Mr. Dumuscheit. We learned a lot about the tasks of the facility, as well as the individual components of the system. The company's future plans in order to meet the requirements of national and European legislation were also discussed, as well as the resulting difficulties. We were also informed about the benefits of the facility in relation to the local environment, for example the transfer of energy generated through waste incineration to surrounding corporations.

After all further questions were answered, we began to tour the company's premises. We started with an outside tour of the composting facility where organic waste is processed into fertilizer that can be sourced by local farmers. We were then taken on to the actual beginning of the garbage recycling and disposal process - the dumping site, where the garbage is delivered not only by truck every day, but also by train and we were able to observe the process of unloading.

In the next step, the waste from private households is loosened up and sorted by size. The loosened up and sorted waste is then separated by various processes. In particular, precious metals and other valuable materials are filtered out, which are then brought back into the recycling process.



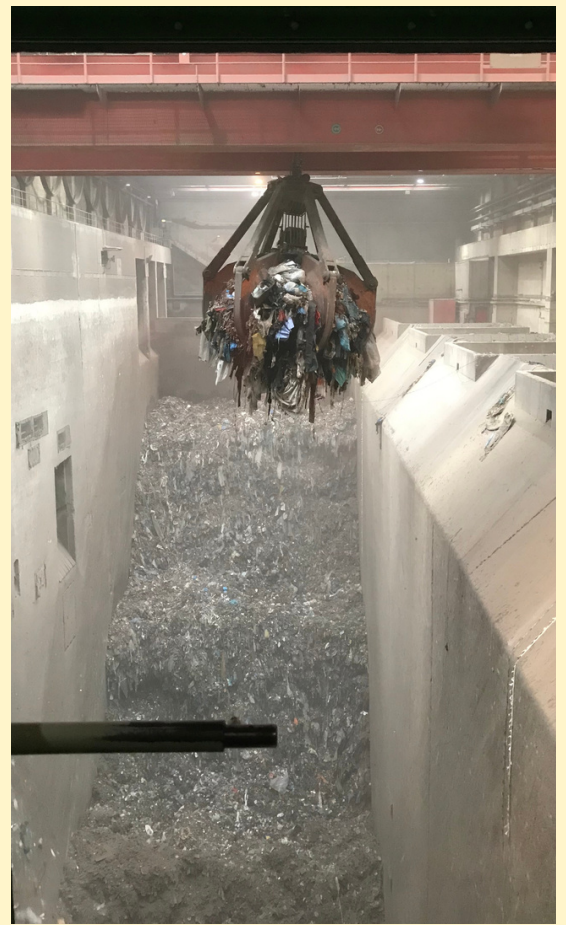
The AVG is always working on improving the processes and increasing the proportion of recyclable materials. After sorting, the so-called homogenization takes place to produce a uniform fuel. In the process, commercial waste residues are mixed with residual household waste and bulky waste residues. This mixture is then placed in a huge basin, the dimensions of which impressed all participants. The waste is then loaded into four combustion boilers by two huge cranes, through which the waste seeps down and is slowly guided through the combustion chambers on six rollers at 1,000 to 1,200 degrees Celsius. This destroys chemical compounds and minimizes the concentration of dust and pollutants.

These processes are monitored and recorded in the control room, which we were also allowed to visit. Information from all areas converges there and the current status of individual processes can be optimally monitored by the electronic control system.

Legislators have set particularly strict emission values for waste incineration plants. The exhaust gas cleaning system is divided into five cleaning stages. In the last step, residual particles are caught in the hearth furnace coke filter before the exhaust gas leaves the system via the chimney. Mr. Dumuscheit claimed that this cleaning technology is so good that it produces air which is cleaner than the air in the city. The concentration of heavy metals in the ambient air is higher than at the chimney outlet itself.

After completing this very informative and detailed tour, the last questions were answered and a nice conclusion was found. We were able to gain unique insights and a better understanding of what happens to the garbage we produce on a daily basis and the important role of the waste disposal and recycling company in terms of our daily life, as well as environmental issues.

By environmental law student Marlene Herzig



## **BOOK LAUNCH: GLOBALIZATION, ENVIRONMENTAL LAW, AND SUSTAINABLE DEVELOPMENT IN THE GLOBAL SOUTH: CHALLENGES AND IMPLEMENTATION**

The Global South Studies Center and Environmental Law Center jointly organized the book launch of “Globalization, Environmental Law, and Sustainable Development in the Global South: Challenges and Implementation“, edited by Professor Dr. Kirk W. Junker and Pablo Davide Farah, which took place on 7 November, 2022. Alongside Professor Junker, the co-authors Professor Dr. Richard Byron-Cox, and Mrinalini Shinde presented the message and intention of the book and the chapters they each contributed.

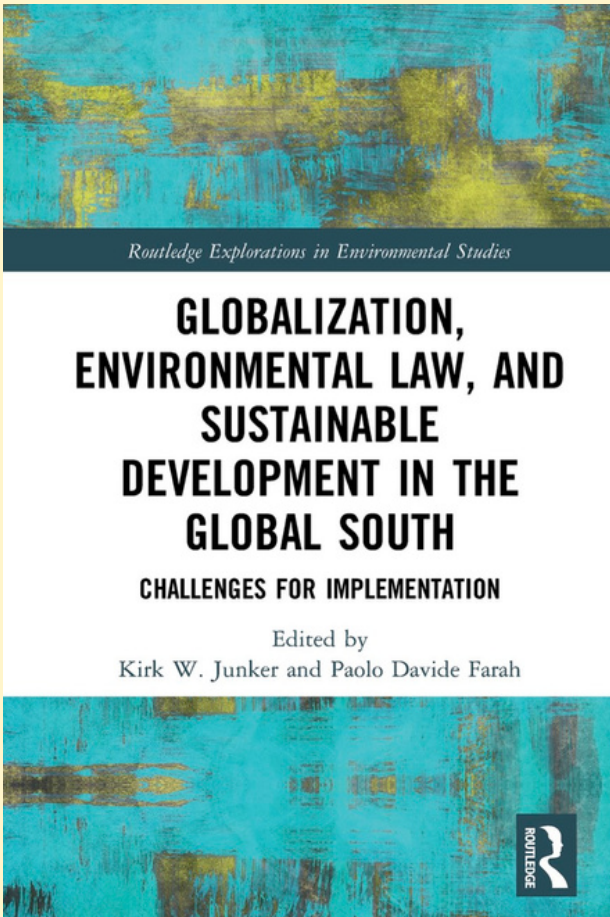
After a small reception the evening began with an opening statement and general remarks from Professor Junker. Since most of the attending guests did not read the book yet, they were provided with a QR-code leading to a free version and the introduction on what the book is about, which comprises contributions from lawyers originating from the Global South or lawyers who have experience in the Global South, with a thematic inquiry woven through every chapter to ask how law can enable economies that can be sustained, given the limited carrying capacity of the earth. The book gives new perspectives to familiar approaches through concrete examples by professional practitioners and theoretical discourse by academic researchers, and can thereby form the basis for changes in practices, as well as further discussions and comparisons.

Ms. Shinde’s remarks on her chapter about “The Implementation of the Paris Agreement Through Tax Law: Examples from South Africa, India, China, and Brazil” provided the guests with a first impression of how this book seeks to fulfill its purpose: a rather detailed presentation of each approach on taxation of carbon usage showed that each state approaches a similar goal, but through different means and focuses; while in all states environmental and tax law intertwine, each state's implementation is dependent on their legal system, culture, environmental issues, and goals they are pursuing with the taxation, e.g. to financially support renewable energies.

Professor Byron-Cox’s contribution on “Global Environmental Governance: a Necessary Pathway for Sustainable Development of Caribbean Small Island Developing States“ is an excellent example on the importance of small states. He mentions that this generation and the ones to come must not underestimate the effects of global warming and environmental destruction on even the smallest states, since we do not know what those consequences would mean for the rest of the planet. Professor Byron-Cox also highlights that this book with its mixture of legal, historical, and philosophical content is inspiring the readers to rethink their understanding of justice and reminds them to keep their eyes open for injustice towards smaller countries and groups and not to forget that the world is not divided in the so-called Global North and Global South but that we all share this planet and all have the right and duty to fight for it, its inhabitants, and the beauty it has gifted us.

The evening of the book launch ended with a discussion and drinks with the guests.





Please find more information about the book "Globalization, Environmental Law, and Development in the Global South: Challenges for Implementation" by using this QR-Code:



# ELC ANNOUNCEMENTS

## DR. SHAMITA KUMAR – AMONG 75 INDIAN WOMEN IN S.T.E.A.M.

Dr. Shamita Kumar, member and friend of the ELC was among the 75 Indian women in S.T.E.A.M. selected as women role models for youth by the Indian government. The ELC would like to congratulate Dr. Kumar for being highly honored by several high institutions of India.

"The first edition of 'She Is - Stories of Women Advancing the Sustainable Development Goals in India' was launched on November 25, 2021 by the British High Commissioner Alex Ellis. The second edition was announced on March 3. The aim of the book series is to showcase more women role models for youth" (<https://www.indiatoday.in/education-today/news/story/75-indian-women-in-steam-selected-as-women-role-models-for-youth-by-govt-full-list-1921781-2022-03-07>)



## IMES PROGRAM CELEBRATING ITS 20TH ANNIVERSARY

This year, the International Master of Environmental Sciences (IMES) program celebrates its 20th anniversary! This will be marked by a Research Colloquium in June 2023.

IMES is a 2-year program leading to a Master of Science in Environmental Sciences. The program is directed by Prof. Kirk W. Junker and managed by Mrinalini Shinde, LL.B., M.Sc. Students with different academic backgrounds (e.g. law, natural science, mathematics) study approaches to environmental sciences from the perspective of a wide variety of disciplines.

The degree's unique feature is its courses, which are designed specifically for this program and classes are taught in English only. This is especially attractive for international students. Throughout the entire study program, a high standard of education is ensured by small course sizes and continuous interaction with the lecturers. The program consists of lectures, seminars, workshops, laboratory sessions, field trips and group projects. The assessment methods differ between written and oral examinations, papers, and field and laboratory exercises.



The program is modularized and is assessed according to the ECTS standard. Since the past 20 years IMES has been teaching integrative environmental sciences to already more than 350 master students. The program being designed "international" naturally attracts many international students, which is why on average two thirds international and one third German students are enrolled in each class. Today's issues of environment are of a global nature, therefore, an international perspective is indispensable for successful solutions.

# ACADEMIC RESEARCH PROJECTS

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## **MAKING A CASE FOR HUMAN RIGHTS GROUNDS IN CLIMATE CHANGE LITIGATION?**

Do we have a right to a healthy environment, including protection against the negative effects of climate change? Does the state owe us, as individuals, such a duty?

In my bachelor thesis, I am analyzing climate change cases in England and Germany. Specifically, I am exploring the use of human rights arguments in such cases. So far, it has been striking to see how differently cases with similar factual backgrounds are reasoned in these two systems. The overall issue in many of these cases boils down to whether the state is taking sufficient measures against climate change. For the German Federal Constitutional Court, the sufficiency of state measures and the Climate Protection Act was a question of potential interference with the claimants' human rights, specifically the protection of life and physical integrity and the fundamental right to property. This procedure is essentially hard-wired into the German constitution. In contrast, such grounds have so far been dismissed in their entirety in English courts. Instead, such questions are a matter for judicial review, a procedure used to assess the lawfulness of a public authority's decision. The question for the court is whether the proper procedures have been followed correctly, not whether there has been a human rights violation. The difference can further be explained by the fact that the constitutional protection of fundamental rights is deeply embedded in the German legal system, whereas even the existence of constitutional statutes is fiercely debated in England.

While the existence of such rights and duties undoubtedly depends on the peculiarities of the legal system in question, the normative question can be examined more broadly. Arguments in favor of a rights-based approach often turn on the anticipated increased enforceability of legal protection. Individuals themselves can initiate enforcement by complaining to the court about potential interferences with their rights. This may lead to more accountability because individuals are likely to have a genuine interest in the exercise of their own rights. However, this view is not held universally. In fact, some argue that precisely the anthropocentric enforceability mechanism results in a weakened protection of the environment because the focus is not on nature itself but on the wellbeing of humans. In addition, the rights-based approach faces criticism on a more general level. Some commentators are concerned about the judiciary's power in adjudicating such claims as they are not elected and often come from a similar socioeconomic background. Thus, their decisions are likely biased. Lastly, it is questionable whether environmental human rights can function in light of the intergenerational nature of climate change. The adverse effects of climate change predominantly concern the rights of future generations. Yet, judges are often cautious in finding a positive duty owed by the government to individuals who are not yet born. Furthermore, they tend to stress their own duty of deference concerning the discretionary powers of the executive.



All in all, arguing climate change cases on human rights grounds has successfully advanced the protection against the adverse effects of climate change in some cases by holding the government accountable regarding their international (more political) obligations. However, environmental human rights are exceedingly challenging to adjudicate in legal systems that are not perceptive to the idea of protecting human rights as a matter of constitutional law. Moreover, it needs to be seen whether the rights-based approach can live up to expectations given, amongst other flaws, its inherent shift of focus away from the environment.

By ELC member Cecile M. Schuster, student of English and German law (University of Cologne / University College London)

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## **ENVIRONMENTAL LAW ALL OVER THE WORLD**

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### **A NEW HOPE ON BIODIVERSITY PROTECTION? THE KUNMING-MONTREAL BIODIVERSITY AGREEMENT**

Since its adoption at the Earth Summit in Rio de Janeiro, the Convention on Biological Diversity (CBD) is the central legal instrument to protect biodiversity on the international level. With 196 parties, the CBD has near universal participation among countries. The Convention aims to address the threats to biodiversity and ecosystem services like threats from climate change through scientific assessments, the development of tools, incentives and processes as well as the transfer of technologies and good practices and the participation of relevant stakeholders.

Its goals and implementation are enhanced by additional legal instruments like legally binding protocols and non-binding decadal goals. Decadal goals for biodiversity have been previously set at COP10 in 2010. Almost every country agreed to 20 Aichi biodiversity targets aiming to achieve a goal of “living in harmony with nature” by 2050. However, in September 2020, a CBD report found that the parties to the CBD had collectively failed to meet any of the Aichi targets.

At COP15 in December 2022, the parties to the CBD have agreed on the Kunming-Montreal biodiversity agreement and to therefore adopt an equitable and comprehensive framework as well as clear targets to address overexploitation, pollution, fragmentation and unsustainable agricultural practices and a plan that safeguards the rights of indigenous peoples and recognizes their contributions as stewards of nature. These goals shall be pursued with financial support and the alignment of financial flows with nature.



In detail, the Parties to the CBD have adopted a framework consisting of four long-term goals and 23 targets that shall be pursued until 2030 and 2050. In addition to the framework the parties agreed on monitoring, reporting and reviewing its implementation as well as capacity building, technical and scientific cooperation and resource mobilization. Among these four goals are the goal to maintain, enhance or restore the integrity, connectivity and resilience of all ecosystems to substantially increase the area of natural ecosystems by 2050; to halt human induced extinction of known threatened species and to reduce extinction rate and risk of all species tenfold by 2050 as well as the goal to close the biodiversity finance gap of \$700 billion per year, and to align financial flows with the Kunming-Montreal Global Biodiversity Framework and the 2050 Vision for Biodiversity. Key global targets are, among others, to restore 30 % of degraded ecosystems globally (on land and sea) by 2030, to conserve and manage 30 % of areas (terrestrial, inland water, and coastal and marine) by 2030 as well as to reduce nutrients lost to the environment by at least 50% by 2030.

As a next step, the parties to the CBD will have to prepare updated national biodiversity strategies and action plans as well as national biodiversity finance strategies by COP16 in 2024. The next COPs shall then determine if the cumulative impact of the national actions is sufficient to reach the global goals and targets for 2030 and 2050.

Whether this agreement is actually a “landmark deal to protect nature, restore ecosystems and keep our planet livable” as Frans Timmermans, Executive Vice-President for the European Green Deal stated after the adoption, is yet uncertain. In the last decades, biodiversity protection has not received the same attention or priority as climate change. Although a more ambitious and stronger framework on biodiversity protection is welcomed, previous approaches fell through due to non-implementation.

By ELC member Marvin Jürgens

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## **ENVIRONMENTAL LAW IN GERMANY**

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### **“MIT DEM BGB DAS KLIMA RETTEN?“ – SAVING THE CLIMATE WITH THE GERMAN CIVIL CODE?**

Climate litigation is a field of growing importance and it had some recent successes. On December 8, 2022, the environmental organizations Green Legal Impact (GLI) and Deutsche Umwelthilfe (DUH) held a webinar with 45 participants about a lawsuit against Mercedes Benz and BMW with the title “Mit dem BGB das Klima retten?”. Representing the DUH, the law firm Geulen und Klinger sued the automobile manufacturers on the grounds of a "vorbeugende Unterlassungsklage" (preventive action for an injunction), in analogous application of § 1004 I 2 in conjunction with § 823 I BGB (German civil code), in order to oblige them to stop building any more vehicles with combustion engines.

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After a brief introduction, a lawyer recalled the "Klimaschutzgesetz" with its authorized amount of emissions per year and the decision of the "Bundesverfassungsgericht" (Federal Constitutional Court) of March 24, 2021 which states that Article 20a GG (German constitution) contains the order to protect the environment and an intertemporal function to secure the liberty. Both are actionable rights. That is why the lawyers chose to base their lawsuit on the violation of a right comparable to § 823 I BGB ("Rahmenrecht") and argue that the manufacturers did not respect their legal duty to implement safety precautions. Moreover, they created a legally relevant hazardous situation by bringing the combustion engines on the market. Answering a question from the audience, one of the lawyers explained that despite the public law authorization to sell combustion engines, an illegality under civil law is possible. He compared this constellation to the authorization of a medical product of which the adverse health effects are known later. The producer could also be held responsible for this action. So, maybe this case will show how German civil law can be used to protect the climate.

By ELC member Moritz Röhrs

## **THE CRITICAL EVOLUTION OF CLIMATE ACTIVISM**

Is throwing soup at famous paintings and gluing oneself to walls on roads the solution for our environmental concerns? Will any of these actions enable a CO<sup>2</sup> neutral future?

These two are the main elements of the protests led by the climate activist group "The Last Generation," which has circled every news and social media platform for the past few months. When one thinks of activism, one imagines a group of people standing up for their beliefs. This also what the the Last Generation is doing. Objectively, this seems like a good idea. Still, the methods of the climate activist group have been widely criticized instead of praised, by politicians, the general public, and even the media. What is the reason for the negative reactions, and why are people concerned about the evolution of climate activism? The Last Generation demands strict and efficient environmental regulations regarding the global climate crisis. They describe the lack of legal action as a "crime against humanity" and emphasize that they are the last generation that can still prevent society from collapsing.

The members of the Last Generation are angry about the little effect of climate protection laws and have decided to take this matter into their own hands. Asking politely did not work, so they moved on to civil resistance. Since 2021 the activists have come up with different approaches to more persistent and provocative activism: hunger strikes, street blockades, turning off oil pipelines, throwing soup at art masterpieces, and gluing their hands to the walls or streets. All these measures aim to attract attention to climate change and to force the government to listen and to take action. Particularly in recent months, the Last Generation has received much attention from the press and social media. Especially people on social media have been critical of the movement. Some people don't understand what a Van Gogh painting has to do with climate change; others are annoyed that driving to work takes longer than usual because protesters are blocking the streets. It seems like people are predominantly bothered by these "die-hard, economically woke green voters" instead of listening to their desperate appeal. Some have even gone as far as calling them left-winged extremists.

But is this right? Does Germany have a conflict with climate extremists?

Since the start of their civil resistance in 2021, there have been consequences for the activists' actions, which have become more severe with time. Blocking and gluing one's hands to Germany's main roads and highways is penalized with fines for coercion. Not every activist can pay their penalty, so instead of paying, they have been negotiating the possibility of temporary imprisonment. Furthermore, there are ongoing criminal investigations for memberships in a criminal association, especially for the activists trying to sabotage oil pipelines and refineries. The Bavarian police, for instance, has started taking climate activists into preventive custody and has raided their homes.

Since we are talking about extremism, let us take a closer look at the meaning of this word. Extremism means holding extreme political or religious views that most people find unreasonable and unacceptable. If we look at the climate activists, they do have strong opinions and they are tenacious; however, they are not necessarily behaving like extremists. How do we distinguish between activism and extremism, and where do we draw the line?

There is something called political extremism. Political extremism wants to reject or delimit the democratic, constitutional state. Hereby we need to differentiate between left-wing and right-wing extremism. Left-wing extremism sees all evil in the capitalist class society (Communism) or completely rejects the idea of having a state (Anarchism). In contrast to left-wing extremism, right-wing extremism is understood as racism connected with nationalism.

The Last Generation has made clear statements regarding their environmental appeals, but has never mentioned anything about rejecting our democratic, constitutional state. They have criticized politicians and questioned their points of view, but have never voiced anything against democracy in Germany. If we narrow down the meaning of left-wing extremism to the definition stated above, the members of the Last Generation cannot be called left-wing extremists.

But it is still questionable whether civil disobedience is a form of extremism.

Civil disobedience points out injustices or oppression through symbolic actions, such as demonstrations or sit-down strikes. Civil disobedience aims to start a debate and change social patterns. It is easy to twist actions of civil disobedience into being crimes or at least a burden to the public. Still, one should not forget that most western democracies have grown on movements that used direct action to strengthen democracy and challenge it. Therefore, one cannot see civil disobedience and extremism as the same thing.

Nevertheless, this does not mean that there are no concerns regarding the evolution of climate activism. Left-wing extremists are trying to influence nonviolent climate activists and push them to be more radical. This behavior has led politicians to be more careful and vigilant. Furthermore, young people are increasingly losing hope in our politicians and believe that with our current politics, the deceleration of global warming will not be possible. This lack of hope and perspective can lead to escalating protests, which had been nonviolent so far. Any sign of extremism must be eliminated to enable and secure a peaceful but persistent movement. It is important to separate left-wing extremists from harmless protesters who are trying to make a positive influence. This does not mean that the methods applied by the Last Generation aren't questionable, but they indeed create a lot of media presence, attracting politicians' attention. Only the future can tell if glue and soup are the right ingredients to secure an environmentally friendly world.

By ELC member Alejandra Kessler

## GOOD TO KNOW

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- **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](mailto:roots.umweltrechtsklinik@hotmail.com)

- **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=](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=)
- **Public Climate School**, November 2023 <https://publicclimateschool.de/>
- **Law Students for Climate Accountability (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.
- **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/>

## HOW TO REACH US

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