Tarragona International Environmental Law Colloquium

II Tarragona International Environmental Law Colloquium

Longing for Justice in a Climate-Changed World: From Theory to Practice

Abstract Proceedings

Rovira i Virgili University
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About The Colloquium

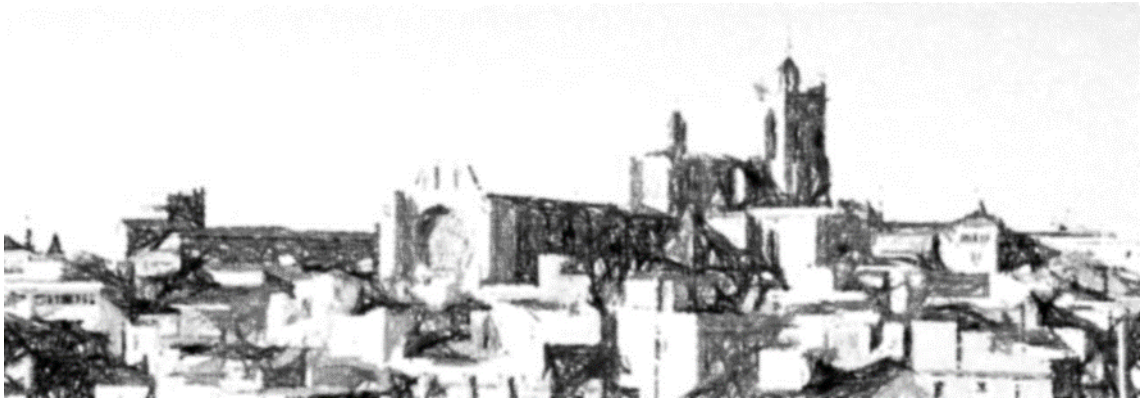
II TARRAGONA INTERNATIONAL ENVIRONMENTAL LAW COLLOQUIUM

Longing for Justice in a Climate-Changed World: From Theory to Practice

According to the Intergovernmental Panel on Climate Change (IPCC) the climate system is unequivocally changing. Since 1950, the atmosphere and oceans have warmed, the amounts of snow and ice have diminished and the sea level has risen. Droughts, floods and other extreme events are predicted to be more frequent and severe. As the UN Human Rights Council has recognized, climate change threatens lives and livelihoods across the globe, becoming a matter of human rights. Furthermore, climate change is also a matter of justice as it especially affects the already most vulnerable populations, having a disproportionate impact on their living conditions.

In order to tackle climate change, the international community has set out a global action plan in the 2015 Paris Agreement which is expected to limit global warming and keep the rise in temperature bellow 2ºC above pre-industrial levels. However, based on past and current experiences (e.g. Kyoto Protocol), it can be predicted that achieving actual and effective results towards that objective will be anything but easy. Therefore, it is time to engage in discussions on the identification of challenges and opportunities for effectively bringing theory into practice in a manner that delivers environmental sustainability and social justice in a climate-changed world.

This colloquium is intended to create a space for discussing current and emergent controversial issues on climate governance. It will focus on topics such as climate justice and democracy, climate impacts on human rights, vulnerable populations, climate migration and other policy challenges in a context marked by the Paris Agreement and the election of Trump.

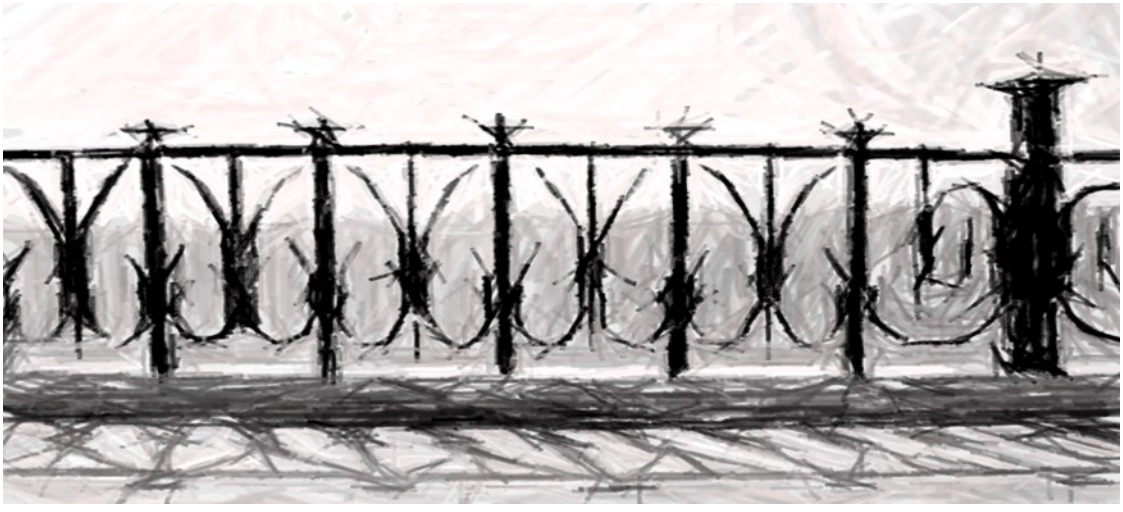


About The Organizers

The second TIEC is jointly organized by the Tarragona Centre for Environmental Law Studies (CEDAT-URV) and the Tarragona Environmental Law Students Association (AAEDAT).

The CEDAT has gradually become a reference point for environmental law in Spain and Europe. Its objectives are to generate and socialize knowledge in the field of environmental law. In 2014, it hosted the 12th edition of the Annual Colloquium of the IUCN Academy of Environmental Law, which gathered researchers and academics from 56 countries across all regions of the world. At present, the CEDAT is involved in several national and international research projects.

The AAEDAT is an association founded in 2009 by students and ex-students of the LL.M. in environmental law at Rovira i Virgili University. It promotes activities within the university community in order to further spread environmental and social values and create spaces for debate, reflection and exchange with other universities and research groups.



KEYNOTE SPEAKERS

PROF. CARMEN G. GONZÁLEZ, professor of Law at Seattle University School of Law, where she teaches torts, environmental law fundamentals, international environmental law, and international trade law.

Professor González has published widely in the areas of international environmental law, environmental justice, trade and the environment, and food security. She is the co-editor of the critically acclaimed book, Presumed Incompetent: The Intersections of Race and Class for Women in Academia (with Gabriella Gutierrez y Muhs, Yolanda Flores Niemann, and Angela P. Harris, eds., 2012). Her latest book, International Environmental Law and the Global South (with Shawkat Alam, Sumudu Atapattu, and Jona Razzaque, eds.) was published in 2015 by Cambridge University Press.

She holds a B.A. from Yale University and a JD from Harvard Law School. She was a Fulbright Scholar in Argentina, a Visiting Fellow at Cambridge University in the United Kingdom, and a Visiting Professor at the Hopkins-Nanjing Center in Nanjing, China.

She has also wide experience as a practitioner. After graduating from Yale University and Harvard Law School, she clerked for Judge Thelton E. Henderson of the U.S. District Court for the Northern District of California, and practiced law at Pillsbury, Madison and Sutro, where she specialized in environmental litigation. She later served as an attorney at Pacific Gas and Electric Company and as Assistant Regional Counsel in the San Francisco office of the U.S. Environmental Protection Agency (EPA).

Professor Gonzalez is active in a variety of professional organizations. During 2011-2012, she chaired the Environmental Law Section of the Association of American Law Schools. She is currently a member of the Board of Trustees of Earthjustice, a member of the Governing Board of the International Union for the Conservation of Nature Academy of Environmental Law (IUCNAEL), and a member scholar of the Center for Progressive Reform, a non-profit research and educational organization of university-affiliated academics that seeks to inform policy debates regarding environmental regulation. She has also served as member and vice-chair of the International Subcommittee of the National Environmental Justice Advisory Council (an advisory body to the U.S. Environmental Protection Agency on environmental justice issues), and has represented non-governmental organizations in multilateral environmental treaty negotiations.

ENERGY JUSTICE IN A CLIMATE-CONSTRAINED WORLD

Prof. Carmen G. González
Seattle University

Abstract

Nearly three billion people in Asia, Africa, and Latin America (the energy poor) face daily hardships due to lack of modern energy for cooking, heating, sanitation, lighting, transportation, and basic mechanical power. Despite their minimal greenhouse gas emissions, the energy poor will be disproportionately burdened by the floods, droughts, rising sea levels, and other disruptions caused by climate change. Although climate change has been framed as an issue of climate debt and climate justice, the plight of the energy poor has received short shrift in the climate change negotiations. Will efforts to reduce greenhouse gas emissions and promote renewable energy benefit the energy poor or consign them to perpetual deprivation?

PROF. DUNCAN FRENCH, Head of the Lincoln Law School, University of Lincoln, UK and Professor of International Law.

Duncan's principal research interests are public international law, international environmental law, the international legal implications of sustainable development, and legal aspects of international monetary, trade and investment regimes. He has secondary research interests in the law of the sea, Antarctica, the interaction between EU and international law, and international dispute settlement.

He has written extensively in these areas. Recent publications include peer-reviewed papers and/or book chapters on the regulation of the deep seabed, complaint and grievance mechanisms in international law, the concept of "autonomy" in international environmental governance, and Antarctic security. In addition to a monograph on international law and sustainable development published by Manchester University Press in 2005, he has edited a number of collections including Statehood and Self-Determination (Cambridge, 2013), Global Justice and Sustainable Development (ed.) (Martinus Nijhoff, 2010), which was nominated for the International Studies Association Environmental Book Prize, International Law and Dispute Settlement: New Problems and Techniques (with M. Saul and N. White (eds.)) (Hart, 2010 (paperback version: 2012)), and Criminological and Legal Consequences of Climate Change (with S. Farrall and T. Ahmed (eds.)) (Hart, 2012). He gave a public lecture on Magna Carta and the Environment at The Clark Art Institute, United States, during the Lincoln copy's "tour" of the US in Autumn 2014.

Professor French was also Professor of International Law and Deputy Head of the School of Law at the University of Sheffield. He has been co-rapporteur of the International Law Association Committee on the International Law on Sustainable Development for ten years and is currently chair of an ILA Study Group on Due Diligence in International Law. In his capacity as a senior research fellow of the Centre for International Sustainable Development Law, Professor French spoke to diplomats at the UN Headquarters (New York) in April 2012 on the role of international tribunals in resolving complex environmental and socio-economic disputes.

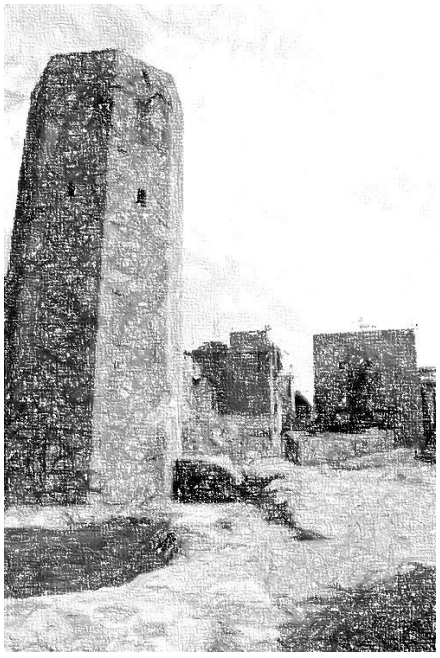
CLIMATE CHANGE & LEGAL RESEARCH: TEMPORAL ANOMALIES AND BLACK HOLES?

Prof. Duncan French
University of Lincoln

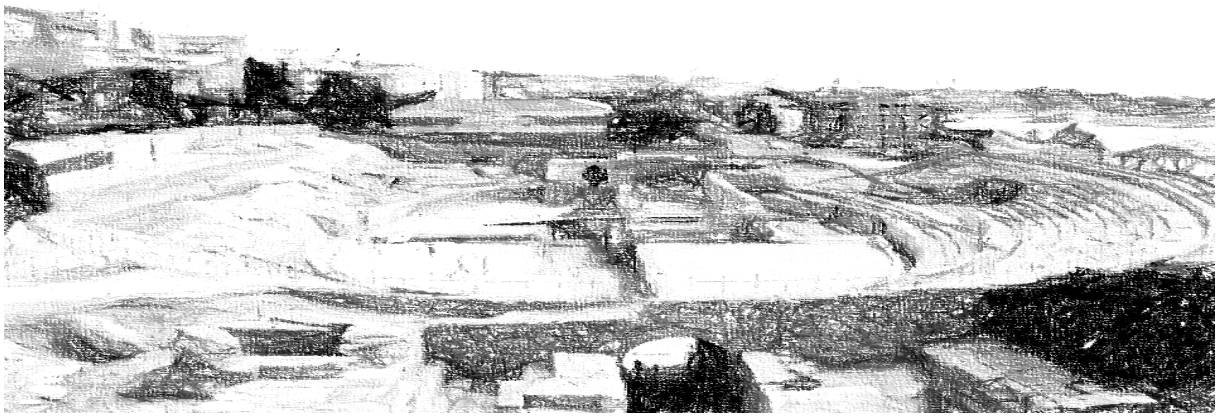
Abstract

In a paper on international legal history, Professor David Bederman – relying in part on Rosalyn Higgins' famous article on time and the law – asks "what kind of history do we narrate? Are there any systemic or disciplinary blinders that we must be aware of?...Does international law tend to ignore certain narratives… Or is it, instead, a reflection of an old era of nostalgia?" Rosalyn Higgins, beginning from a slightly more astronomical perspective, raises equally broad issues of time (past, cyclical and future) in international law. In this paper, I want to challenge those of us international lawyers currently writing about climate change to think about our writing in terms of time; past, present and future. Such questions include, but are not limited to, how far current scholarship is disconnected from past endeavours – perceived successes and generally accepted failures, notably the Kyoto Protocol? How far legal comment on, and often euphoria for, the Paris Agreement ignores concurrent and systemic challenges? And, in terms of the future, how far is present law and legal scholarship seemingly incapable of imagining the future? Leaving to one side such usual "time" issues as intertemporal law and retrospectivity, the paper will conclude that climate change scholarship is in danger of falling into the trap of constantly celebrating new variants of modernity. As Oscar Wilde once warned us: "It is only the modern that ever becomes old-fashioned"

Oral Presentations



1. Challenges and Multilevel Strategies to Tackle Climate Change



TRUMP'S DOCTRINE AND CLIMATE CHANGE: NEW CHALLENGES FOR GLOBAL GOVERNANCE

Ernani Contipelli
Universidade Comunitaria da Regia de Chapeco—UNOCHAPECO

Abstract

The climate change is one of the biggest challenges of the contemporary society, demanding a wide international cooperation in order to engage due global governance and to search for common solutions for this environmental problem that affects our postmodern way of life.

One of the better examples of the efforts of our society to overcome the problem of the climate change is the United Nations Climate Change Conferences (COP), especially, the COP21, occurred in Paris in 2015, that was able to establish an important agreement among the 195 countries in order to combat the effects of the global warm and to sustain the planet temperature above 2º C.

In the COP22, that took place in Marrakech in 2016, the necessity of global cooperation to fight against the climate change is reinforced with the proposal to accelerate the reduction of emissions until 2020.

Although the effectiveness of the actions carried out under the Paris Agreement is questioned, we have to highlight the incorporation of the United States to this initiative, considering its political and economical influence in the global context and its role as responsible for almost 20% of the total of carbon emissions in the world.

However, the election of the Donald Trump as president of the USA configures a great for the war against the climate change. In several occasions, the republican declared his skepticism about climate change and global warm, expressing his position against the Paris Agreement and public investments to control the problem.

Therefore, the presentation aims to discuss the Trump's policies related to climate change in order to investigate the risks for global governance and environmental international cooperation.

GIVING FORCE OF LAW TO NON-BINDING INSTRUMENTS: CODIFYING 'NATIONALLY DETERMINED CONTRIBUTIONS' AND 'AMBITON' WITHIN EUROPEAN UNION LAW

Roderic O'Gorman
Dublin City University

Abstract

The Paris Agreement was adopted on 12 December 2015 with a clear goal of holding increases in global temperature below 2 degrees Celsius. The agreement has been signed by 192 nations, along with the European Union as a separate entity. A crucial element of achieving the targets set out is through 'nationally determined contributions' (NDCs) which represent a voluntary commitment from each signatory state. This represents a change in approach from the mandatory targets established under the Kyoto Protocol. In order to compensate for this lack of binding targets, the Paris Agreement also contains elements that encourage greater 'ambition' within the context of encouraging signatory states to strengthen their contributions. The EU communicated an intended nationally determined contribution of at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990, in March 2015.

The paper seeks to examine how these non-binding NDC elements of the Paris Agreement will be converted into internally legally binding instruments within the European Union. It will considers what impact, if any, this non-binding approach to NDCs will have on how they are received and implemented, specifically among the states of the European Union. A comparison will be drawn between the EU's approach to meeting its existing 2020 climate targets under the Kyoto Protocol, as set out in Decision 529/2013/EU and draft proposals being advanced by the Union legislator regarding 2030 targets. Finally, it seeks to consider how the concept of 'ambition' will be internalised within the EU's climate governance system.

LAW OF THE SEA AND ENVIRONMENTAL LAW ACTING TOGETHER: EXPERIENCE OF LAYING SUBMARINE CABLE IN THE ARTIC

Daria Shvets
Pompeu Fabra University

Abstract

All states, whether coastal or land-locked, have right to lay submarine cables on the seabed according to the United Nations Convention on the Law of the Sea ("UNCLOS"). Unlike submarine pipelines, cables are generally considered as being environmentally friendly, having minimum impact on the marine environment.

Currently, there is an ongoing project of construction first international submarine cable, whose major part will be laid in the Arctic. Despite mostly local and moderate disturbance to the ecology in other regions, it causes danger to the Arctic due to its unique and sensible ecosystem. UNCLOS doesn't separate Arctic from other regions and states can lay cables there following the same conditions as in the other parts of the World Ocean. What is more, the regime of submarine cables is set out only in general terms. Though UNCLOS is considered as main source of the Law of the Sea nowadays, it contains only 8 articles devoted to submarine cables. Regarding the climate change, it doesn't mention anything. However, new submarine cable can deteriorate climate change in the Arctic by warming adjacent waters due to its unceasing operation and by producing noise in process of installation, which changes behavior and locality of Arctic inhabitants.

Law of the Sea in case of submarine cables doesn't provide any instruments of climate change prevention, so this question is left to the consideration of Arctic states. In their domestic legislations they follow some principles and recommendations of International Environmental Law regarding this issue. By containing requirements of environmental impact assessment and other instruments in their national legislations, they at least reduce risk of worsening climate change in the Arctic. This example demonstrates how Environmental Law can indirectly, through domestic laws, complement gaps in the Law of the Sea and how they act together in prevention of climate change.

2. Climate Justice, Democracy and Human Rights

ADVANCING CLIMATE JUSTICE IN INTERNATIONAL LAW: POTENTIALS AND LIMITATIONS OF THE UNITED NATIONS HUMAN RIGHTS BASED APPROACH

Damilola S. Olawuyi
Hamad Bin Khalifa University

Abstract

One of the contemporary issues in the climate justice debate is the need to anticipate, prevent, and address the potential infringement of fundamental human rights by projects undertaken to combat climate change. Climate change response measures and projects, particularly clean development mechanism (CDM) and REDD+ projects, have recently been linked with human rights violations, land grabs, forced displacements, marginalization, exclusions, and governmental repressions in developing countries. These concerns have resulted in calls for an international approach that ensures that countries mitigate sources of climate change and adapt to its effects in a manner that respects human rights.

Although increasingly considered as a potential normative framework for mainstreaming human rights norms into the design, approval, finance and implementation of climate change projects to avoid human rights impacts, the United Nations Human Rights Based Approach (UNHRBA) faces several practical constraints due to its history, content and structure. Many of the elements of the human rights based approach enjoy varying levels of recognition, protection, and implementation in countries where climate injustices are most severe. Furthermore, local challenges such as arbitrary land tenure systems, exclusionary customary practices and inadequate capacity, impact the capacity of groups, such as indigenous peoples, to obtain redress when climate change projects threaten their ways of life. This oral presentation will examine practical obstacles that stifle the promise and potential of the UNHRBA. It will also discuss how international accountability and enforcement mechanisms may be reinforced to provide more robust rights-based infrastructure to assist and advance climate justice for individuals and groups affected by climate projects.

DEVELOPING A HUMAN RIGHTS BASED APPROACH TO CLIMATE JUSTICE: REFLECTIONS FROM THE SOUTH PACIFIC

Alice Venn
University of Bristol

Abstract

The capacity of climate change to restrict the enjoyment of fundamental human rights is nowhere more pronounced than in the South Pacific, one of the world's most climate vulnerable regions where communities face the immediate and devastating impacts of sea-level rise, climate-induced displacement and ever more intense tropical cyclones. In 2015 and 2016 category five cyclones Pam and Winston carved a path of destruction across Vanuatu and Fiji estimated to have totalled in excess of $449 million and $470 million in respective damages. However a stark dichotomy has emerged between human rights policy proclamations in the climate change field and the legal ramifications of the failure by states to comply with their duties. The Paris Agreement, which came into force in November 2016, similarly fails to provide adequate legal protection to climate vulnerable states. The absence of enforcement or dispute settlement mechanisms leave these states without any recourse to justiciable rights or remedies. Moreover the reservations of number of Small Island Developing States upon ratification of the Agreement evidence an openness to exploring alternative international legal avenues in the pursuit of climate justice.

Adopting an interdisciplinary approach to the conceptualisation and operationalisation of climate justice, this paper draws upon key principles and mechanisms of international human rights law and state responsibility, examined through an environmental justice lens. It is informed by empirical data collected in the region exposing the challenges facing climate vulnerable states and communities in practice, including institutional capacity, funding and access to justice at the grassroots level. Together these elements shape the proposal for a grounded climate justice approach, capable of providing for more informed law- and policy-making, as well as recourse to justice for the world's most climate vulnerable states and communities.

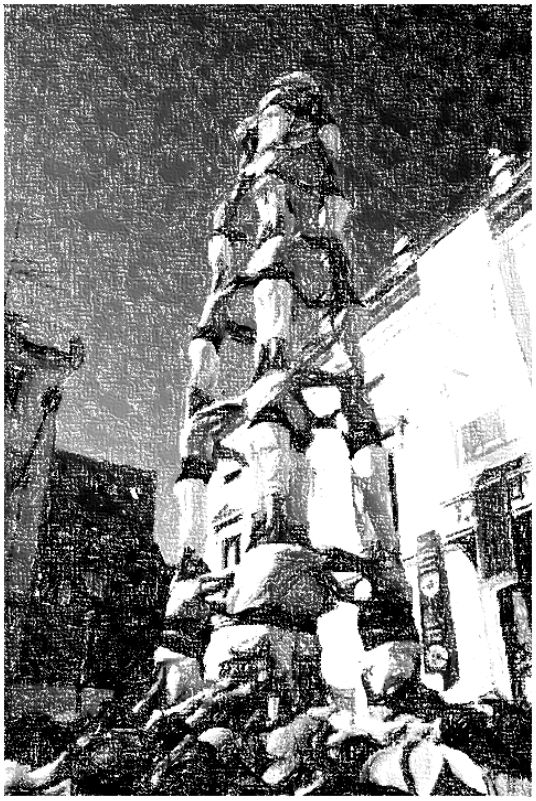
THE PARTICIPATION OF NON-STATE ACTORS IN INTERNATIONAL CLIMATE GOVERNANCE: THE CASE OF ARTIC INDIGENOUS PEOPLES

Marzia Scopelliti
Complutense University of Madrid

Abstract

Anthropogenic climate change has arisen in recent decades as a major challenge for contemporary societies, due to its global dimension and irreversible nature. In the Arctic, temperatures have been increasing at about twice the global rate over the past decade and the region, which is home to almost four million people, among them Indigenous Peoples (IPs), is experiencing rapid warming, ice retreat and thawing of permafrost. Hence, climate change is not only impacting negatively upon the natural environment, but is also affecting indigenous life, culture and economies, putting at risk most of their rights, although recognized in international law under specific instruments or the doctrine of Human Rights. Seeking an effective protection of their traditional way of life and to reverse the detrimental impact of climate change, Arctic Indigenous Peoples have long been engaging in international climate governance and climate negotiations, and more recently have claimed their rights before international bodies and courts. Against this background, global warming poses a challenge to international environmental law, since it is required to find effective mechanisms for the full and active participation of non-state actors in international climate governance. Drawing on the case of Arctic Indigenous Peoples, and exploring the perspectives of international environmental law and Human Rights' law, the research advocates a meaningful inclusion of non-state actors in international climate governance, answering the question of whether the promotion of their participation may be built on the emerging relationship between Human Rights and climate change.

3. Climate Change, Vulnerable Populations and Migration



FROM THEORY TO PRACTICE: A COMPREHENSIVE REGIME OF LEGAL PROTECTION FOR CLIMATE MIGRANTS

Beatriz Felipe Pérez
Rovira i Virgili University

Abstract

Climate change related effects (sea level rise, droughts, ice melting and floods, among others) are increasingly affecting global migration patterns. The relationship between human mobility, climate change and the environment has seen increasing relevance in the international policy sphere. However, climate migration is a highly complex and heterogeneous phenomenon which depends not only on the environmental push-factors but on the context and the socioeconomic characteristics of the affected population. Therefore, knowledge about climate migration is still limited and there are still ongoing discussions about the terminology, the figures, the climate change and mobility nexus, the characteristics of climate migrants and on how to overcome the 'legal gap' that most climate migrants are facing. In this regard, climate migration requires complementary and flexible legal strategies rather than isolated theoretical proposals that do not guarantee the effective legal protection of climate migrants. By differentiating among four broad categories of climate migration, the paper provides an overview of how the existing legal frameworks at the international level (human rights, labor migration, international refugee law, internal displacement and stateless law) could be adapted in order to protect the rights of climate migrants. With the objective of moving a step forward on the recognition and effective legal protection of climate migrants, the paper also highlights that the adaptation of the relevant branches of international law must be completed with the adoption of an ad hoc universal treaty within the long term and with the development of other complementary measures within shorter term. It concludes by arguing that international law could ensure effective protection for climate migrants in the shorter term but stronger political commitment is needed.

CLIMATE-INDUCED LAND USE CHANGES AND CONSERVATION LANDS

Jessica Owley
Comillas Pontifical University- University at Buffalo

Abstract

As climate change leads to both internal displacement and mass migrations, we must seek not only new places for people to live but also new locations for infrastructure projects and other public needs. Some of the most attractive areas for these new land uses are lands that are currently unoccupied. This includes most notably lands that have been set aside for conservation and habitat protection. Our project grapples with the tension of needing to create space for migrating humans, species, and other uses and saving space for conservation. We are particularly concerned the conflicts that may arise between protected conservation lands and these climate change related development pressures. Private protected areas are encumbered with a series of mechanisms that vary in the ease with which the restrictions can be modified. For example, privately protected areas in the United States are often encumbered with perpetual conservation easements. The rigid rules of such protected areas combined with the increased number of private interests involved make them legally unattractive for land use change even when they might be socially desirable locations for settlement. We examine public restrictions (both in terms of public land holdings and regulations governing habitat protections) and private restrictions (largely in the form of property and contract law mechanisms) encumbering conservation lands and explore how these areas will respond to needs that develop in the context of climate change migration.

INTERNATIONAL CLIMATE LAW, INDIGENOUS RIGHTS AND STATES' DUTIES

Alexandra Tomaselli
Institute for Minority Rights-Eurac Research

Abstract

Some sectors of the society are more exposed to climate change adverse effects than others. Among those, indigenous peoples tend to be more vulnerable because they (or the majority of them) have a profound and spiritual relationship with the land. Paradoxically, they are among those who have maintained and promoted a holistic and balanced management of the(ir) land and the environment.

As well known, on 12 December 2015, 195 parties agreed on the "Paris Agreement". More than 250 indigenous delegates actively participated in the negotiations. They requested that indigenous rights were inserted in the (main and binding) body text of the Paris Agreement. Their attempt eventually failed. However, the preamble of this Agreement contains a reference to indigenous rights, while article 7 recalls the importance of "[the] knowledge of indigenous peoples" as basis and guidance for adaptation action. The Fifth Assessment Report of 2014 of the Intergovernmental Panel on Climate Change-IPPC also recognized indigenous traditional knowledge as one of the 'adaptation prospects'.

Indeed, in various parts of the world, indigenous peoples have advanced innovative strategies of climate change adaptation. They have applied their traditional knowledge, for instance, to secure the fixing of soil surface nutrients against water runoffs in Africa.

Notwithstanding these general acknowledgements, their rights have been poorly considered in the design of international environmental and climate law regimes. Moreover, the current climate legal framework has not yet included any (binding) human (or indigenous) rights guarantees.

Against this background, this paper thus proposes a pragmatic approach that connects international climate law and indigenous rights. The ultimate goal is to assess whether indigenous land rights may provide a promising venue not for litigation purposes, but for a win-win solution: the prevention of climate injustices vis-à-vis indigenous peoples, and the effective execution of States' duties regarding their mitigation and adaptation obligations.

4. Climate Litigation: Current and Emerging Issues

EXTRATERRITORIALITY AND JUDICIAL REVIEW OF STATE'S POLICIES ON CLIMATE CHANGE LITIGATION

Pau Vílchez
University of the Balearic Islands

Abstract

On the Fall of 2016, the slowly but steadily growing list of climate lawsuits around the world welcomed two new legal disputes in Sweden and Norway. Previously, the lack of ambition in the struggle against climate change both at the national and international level since the fiasco in Copenhagen in 2009 had given way to a rise in environmental activism around the world, where disappointment regarding governments' inability to act evolved in some instances into a legal strategy to challenge before the courts what was perceived as a renunciation from the State of its primal obligation to protect its citizens.

Two initiatives stand as keystones of that strategy. In Europe, the Urgenda case, led by Dutch lawyer Roger Cox, who eventually obtained a positive judgement by the High District Court of The Hague in 2015, grounded on constitutional law, tort law and international law, which is currently under appeal. And, in the United States, the claims filed by the non-profit organization Our Children's Trust all over the country, starting in 2011, based on the public trust doctrine.

Since then, legal proceedings against States' climate policies have started in distant countries such as Pakistan, New Zealand or Belgium. The recently filed lawsuits in Sweden and Norway are, undeniably, a part of that trend, but they have some characteristic features that open up new possibilities for the legal analysis of the obligations of States concerning climate change.

In the first place, there is disparity in the scope of the demand, where claimants in Scandinavia, departing from the above-mentioned lawsuits, seem to challenge not the overall climate policy of the State, or even the lack of it, but only a very specific decision concerning one precise activity (the exploration of the Arctic in the case of Norway, and the exploitation of coal to produce electric power in the Swedish case).

The second dimension where those lawsuits differ from the previous ones is more challenging in relation to international law. Thus, while the cases in the Netherlands or the US refer primarily to climate change in relation to those countries, plaintiffs both in Sweden and Norway seem to introduce a particularly interesting extraterritorial dimension in their claims, that might affect the place where the activity under judicial review is undertaken, the place where the emissions are produced and the place where the harm actually takes place.

CLIMATE CHANGE LITIGATION: THE ROLE OF TORT LAW AND HUMAN RIGHTS

Ingrid Roll Schjoenning and Beatriz Martinez Romera
University of Copenhagen

Abstract

Climate change litigation has significantly increased in the last decades; Examples of landmark cases include Massachusetts v. Environmental Protection Agency, Gray v. the Minister for Planning and Ors, and Foster v. Washington Department of Ecology. In this connection, citizens have challenged their governments for inaction or insufficiently addressing climate change, and for not fulfilling their international commitments, where, inter alia, traditional principles of tort law and human rights protected in constitutions have been used in front of the domestic courts. Arguably, these two approaches have a role to play in future litigation and climate justice. This paper provides a legal analysis of recent domestic litigation, focusing on: 1. Tort law approaches, exemplified in the case of Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment) in 2015; and, 2. Rights-based approaches, embodied in Asghar Leghari v. Federation of Pakistan in 2015 and Kelsey Cascada Rose Juliana, et al. v. United States of America, court ruling expected in 2017. Three main aspects of climate change litigation are examined in the article, namely: 1) the challenges and opportunities for using tort law and human rights protected in constitutions as tools to bring governments to pursue meaningful reductions and limitations of greenhouse gas emissions, 2) causation, and 3) personal interest and defending the rights of future generations.

BEYOND THE URGENDA CASE: COULD THIS LITIGATION BE SUCCESSFUL IN OTHER INTERNATIONAL OR NATIONAL COURTS?

Angel M. Moreno
Carlos III University of Madrid

Abstract

The well-known and discussed Urgenda litigation (judgement of The Hague commercial chamber of 24 June of 2015, condemning the Dutch government to implement more effective measures to combat climate change) has unquestionably become a recent landmark in the domain of climate change-related public litigation. In an era of growing concern about the sufficiency of national measures to tackle adequately the overwhelming problem of climate change, the possibility for the public at large, and for e-NGOs, to sue the government in court to ask for the adoption of more comprehensive and effective measures and strategies, has become of paramount importance. In the light of this litigation story, the presentation addresses different questions:

First, it puts into context the most striking elements of that ruling.

Second, it tries to extrapolate this case to other litigation scenarios, wondering whether it could be successful in other courts. To this end, the paper will discuss the likelihood of a similar lawsuit in the EU courts and in the national courts of its Member States (MS). At the level of EU courts, the paper addresses the question whether it would be possible to trigger at present a similar lawsuit in the light of the procedural and remedial system of EU Law.

At the MS level, the paper will first identify the existence of similar, on-going litigation in national courts. Later, it will discuss whether the present judicial models present in most MS do either facilitate or prevent the admissibility, or even the success, of a similar lawsuit. The analysis then discusses this problem in the more precise context the Spanish judicial system.

Finally, the paper will identify the present opportunities and obstacles for the successful triggering of an Urgenda-type litigation in the national courts, that is, the structural hurdles and the desirable reforms.

POSTER PRESENTATIONS

HOW TO MAKETHE INVISIBILITY OF LAW METAPHORS IN MEDIA DISCOURSE ABOUT CLIMATE CHANGE. THE COP 21 AS CASE STUDY

Jordi Prades, Juan Luis Gonzalo and Carlota María Moragas Fernández
Rovira i Virgili University

Abstract

Communication processes are key in the construction of public discourse and relationships between conflictive issues and the actors involved in legal, policy, social and media logics. As for environmental disputes, language and metaphors are meaningful tools in order to identify and analyze the roles these actors are playing, according to Greimas' actantial model.

This research aims to identify which narratives are built from mainstream media and official bodies about the COP21. From a communicative approach, climate change conferences are important events to analyze how actors and their logics and practices are defined.

In this study we identify and analyze metaphors published during the organization of the COP21 in three Spanish newspapers (La Vanguardia, El País, El Mundo), in seven websites (from the EU, US, Russia, China, Brazil, the IPCC and Greenpeace), and in the Twitter account of the climate summit.

Our work shows that media mainly reproduces metaphors about war and conflict in order to frame climate change and NGO's demonstrations. The COP21 uses metaphors related to diplomacy, geostrategy, policy, power and agreement-building to legitimize itself. In contrast, metaphors related to legal logic and law, which are useful to solve conflicts, are missed in the media narratives about climate change: there is an unbalance in benefit of policy logic.

Taking into account that metaphors simplify and make understandable legal and political events it would be interesting to analyze if the inclusion of legal metaphors in the public discourse contributes to a better understanding of how to reach agreements against climate change.

URBAN AND HOUSING POLICIES, SOCIAL COHESION AND GLOBAL CLIMATE CHANGE: THE NEED TO PLAN CITIES MORE SUSTAINABLE AND RESILIENT

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Abstract

Climate change (CC) is an undeniable reality brought about by multiple interconnected variables, many of these anthropogenic. The Rio de Janeiro Earth Summit (1992) highlighted the direct relationship between CC and the urban phenomenon, representing a starting point for initiatives aimed at achieving a more sustainable urban environment [such as Agenda 21, Aalborg (1994), Red Española de Ciudades por el Clima (2005), Programa Cambio Global España 2020/2050, etc.]. In effect, urban dynamics and the network influence of cities in these territories explain why a fair percentage of greenhouse gas emissions originate in these contexts, integrated as they are in the so-called "diffuse sector".

The increase in urbanised space is a fact that cannot be overlooked in formulating a holistic strategy for combatting CC. The urban-planning model that has predominated for decades in Spain has brought with it high levels of energy consumption, fed by an emphatic anthropisation of the land. Although the introduction of the principle of "sustainable development" represented an important advance, the economic crisis has been especially significant in bringing about the transformation of this voracious urbanisation to a model that focusses itself on regenerating the city consolidated through patterns of environmental and social improvement. However, dysfunctions continue to be detected in the use of natural resources.

To mitigate the scope of CC and to palliate its adverse effects, it is essential to adopt measures on a range of distinct fronts: local public interventions with global effectiveness, in coordination with higher authorities; citizen-participation processes and trust in the community; the promotion of energy efficiency; the formulation of adaptive planning that can evaluate both risks and impact at the urban level and that establishes more sustainable regulations for land use—"naturalising" urban spaces that facilitate the permeation of the land—and that commit themselves to more efficient building design and typologies, among other issues.

WIND ENERGY IN CATALONIA: AN INSTRUMENT IN CLIMATE-CHANGE MITIGATION

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Abstract

In 1992, the United Nations Convention on Climate Change in New York deemed energy to be a pillar of economic and social development that, nothwithstanding, presents risks to the environment. Thus, while wind energy promotes the reduction of greenhouse-gas emissions into the atmosphere, reduces dependence on imported energy, lowers the cost of energy, and is a tool for mitigating climate change, it nevertheless has consequences on landscape, on noise levels and on fauna in the areas surrounding wind turbines. Climate change refers to variation in the climate resulting from human activity through the emission of greenhouse gases listed in Annex A of the Kyoto Protocol. The most recent report by the Intergovernmental Panel on Climate Change (IPCC) in 2014 indicated that the imminent danger posed by climate change is not primarily faced by the planet, but—instead—by human beings. The preamble to Directive 2009/28/EC (section 1) states that "the increased use of energy from renewable sources… constitute[s] [an] important [part] of the package of measures needed to reduce greenhouse gas emissions". In this regards, the Energy Plan and Climate Change in Catalonia 2012-2020 envisages installing 4,583.6 MW of wind energy. In 2014 gross production of wind power in Catalonia was 6.7%. Between 1990 and 2013, greenhouse emissions increased by 9.2%. According to the latest data for 2012, the overall energy cycle represents 76% of total greenhouse-gas emissions in Catalonia, and 93% of CO2 emissions. To understand the impact that wind energy might have in reducing air pollutants, the Associació Eòlica de Catalunya (the Catalan Wind-Energy Association) calculated what would be required to convert 1,470 GWh produced by wind power in Catalonia during the 2008-2010 period into the same amount (that is, 1,470 GWh) produced by fossil fuels respecting the distribution of the Catalan energy mix. The figure arrived at was a saving of 1.6 million tonnes of CO2. In Spain, renewable energies have avoided the emission of over 256,800,000 tons of CO2 in the 2005-2013 period. According to the Third Report on Climate Change in Catalonia, average annual temperature will rise by 1.4°C by 2050; there will be 10% less rainfall; 20% less water resources in coastal areas and an increase in torrential rains. There will also be an increase in the frequency of nocturnal temperatures over 20°C and 2,500 deaths will have been produced through heat waves. Coral mortality will rise; ski slopes will have been closed because of lack of snow cover; beach erosion will have increased and the sea level will be rising by 4 cm per decade. Currently, the marked presence of CO2 is the main catalyst of climate change and, as we have seen, the energy cycle represents 93% of CO2 emissions. In light of this, it is far better to promote renewable energy, and particularly wind energy, as an absorber of climate change.

HUMAN SECURITY IN MEXICAN RURAL COMMUNITIES IN THE CLIMATE CHANGE AGE

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Abstract

The so-called environmental catastrophes have always existed in the world, since it is natural that from time to time, nature experiences phenomena that lead to a sudden change in the system, caused by the alteration of one or few parameters of its factors, such as eruptions Volcanic, hurricanes, earthquakes. The threat of an environmental catastrophe, although it has not changed much in the geological time of the planet, has permeated in societies increasing their vulnerability, especially that of rural communities with a high degree of economic backwardness and social marginalization. Taking into account that Mexico is a country that because of its geographic, geophysical and biological characteristics is considered as a high environmental risk, the nearly thirty million people who inhabit their rural and natural landscapes are increasingly exposed to greater environmental hazards, including hydro meteorological. Torrential rains, as well as the floods that follow them, are the entry point for local socio-ecological problems such as loss of life, increased disease, deterioration of quality of life, loss of material goods and reduction of their capacity to generate richness and welfare (Agriculture, livestock, forestry, etc.). The same happens in the opposite case, the severe drought is also associated to great local socio-environmental problems that extend to urban centers. These problems, far from being homogeneous, denote clear differences in gender, age and caste. The lack of legal instruments to enforce the Mexican constitution and its secondary laws undermine the rights of individuals and increase insecurity. A security that every day is more precarious, because every day with greater force, an environmental catastrophe culminates in a socio-economic disaster. This paper reviews the Mexican perception of its environmental security in order to face the challenges posed by climate change to propose changes in environmental policy and reforms in Mexico's environmental legislation and its application.

THEORIZING JUSTICIABILITY OF CLIMATE CHANGE THROUGH A HUMAN RIGHTS-BASED APPROACH AND JUDICIAL CROSS-FERTILIZATION

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Abstract

Although the international community has acknowledged the interconnection between human rights and climate change in various documents since the 2000s, no binding instrument has translated this interrelationship into specific State obligations. The Paris Agreement has embodied the traditional conception of human rights and climate change as distinct normative frameworks and justiciability has encountered several obstacles before some human rights bodies.

By contrast, the European Court of Human Rights (ECtHR) recognized State liability for the failure to protect people from the foreseeable adverse effects of climate change in Budayeva and the European Court of Justice (ECJ) allowed restrictions to free movement of goods for promoting renewable energy in Åland.

Some solutions are suggested to improve the Courts' achievements: firstly, enhancement and generalization of the interpretive technique adopted in their jurisprudence, as the identification of an environmental interest prevailing over competing economic interests. Moreover, both Courts would benefit from cross-fertilization of their respective approaches: for the ECJ a normative justification can be found in Article 6(3) of the Treaty on European Union according to which the rights contemplated in the European Convention on Human Rights (ECHR) as interpreted by the ECtHR are general principles of European Union law, and in Article 52(3) of the Charter of Fundamental Rights of the European Union (CFR) that identifies the minimum scope of the entitlements enshrined therein by reference to the ECHR. The ECtHR may rely on its practice to recall other bodies' jurisprudence to refer to the environmental views of the ECJ and could rely on Article 31(3)(c) of the Vienna Convention 1969 for using Article 37 CFR to improve its approach, for example for advancing a right to an environment of quality and for tackling the burden of proof. Finally, assessment is made on whether the European approaches would benefit the Inter-American system.

TOWARDS GOLIATH'S DEFEAT. EXPLORING NEW PATHS ON STRATEGIC LITIGATION IN THE PURSUIT OF LIABILITY FOR CLIMATE CHANGE DAMAGES

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Abstract

The way climate change is affecting world population is a clear depiction of environmental injustice. Social groups that are currently suffering the harmful effects of climate change are the ones that have less participated in the historical processes that have caused it, and, consequently, those that less profit have obtained from these processes.

The UNFCCC and its annual conferences seem to be failing in reverting climate injustice, both in terms of forcing the main historic emitters of greenhouse gasses to commit on climate change mitigation and in terms of providing effective mechanisms to protect vulnerable people.

Aware that climate change issues are demanding urgent responses, in recent years, civil society groups have started different sorts of climate change legal actions before a variety of jurisdictions around the world. In this context, strategic litigation has been launched pursuing historical and powerful gas emitters (both states and private actors) liability for climate change damages and human right violations suffered by vulnerable population. The Inuit petition against the United States before the Inter-American Commission on Human Rights or the Kivalina suit against ExxonMobil are some of the most remarkable examples.

However, these actions were unsuccessful. Courts were quite conservative in addressing critical questions, such as: is it fair to establish liability of few actors for specific damages originated by a multi-causal phenomenon? Or, is it possible to establish transborder liability for damages caused by a global and diffused phenomenon?

In view of these failures, the purpose of this presentation is to gather all these cases, analyze and contrast the outcomes of the different courts, evaluate whether it still make sense to pursue climate justice though this path and whether there is any door open to new legal avenues and arguments, taking also into account progresses made in other litigation fields.

THE BILL ON CLIMATE CHANGE IN CATALONIA AFTER PARIS

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Abstract

The aim of this paper is to analyze the bill on Climate change in Catalonia approved by the Catalan parliament on 26th January 2016. On 12th December 2015 the UN Conference of Parties on Climate Change (COP21) and the Meeting of the Parties to the Kyoto Protocol (COP-MOP 11) adopted the so called Paris Agreement. This supposes the consolidation of the initial formal action of the UNFCCC, and it stablishes the road map to the mitigation and the adaptation of the climate change in the following years. It confirms the existence of the climate change.

This new scenario in the international level and in the EU level – the legislative proposal to reform the Emissions Trading Scheme; the Decision 2015/1814; the Decision 2015/144; the Decision 205/1339 – involves relevant legal decisions that affect the behavior and development of the states and also of the Catalan politics regarding climate change.

In this context, it is especially relevant to assess and reflect on the initially approved Catalan bill on climate change. Catalonia as a subnational entity with mature public politics on climate change has the opportunity to incorporate all this challenges in the bill that now is in the parliamentary negotiation stage, which will be the first law on climate change in the Spanish state.

Due to the relevance of this bill we will analyze the principal contributions of the text in a critical way and the aspects to be improved that could be added in the final version, taking into account the new challenges derived from the Paris Agreement.

Moreover, it is intended to monitor and analyze the parliamentary negotiation of the bill and the evolution of the content from the beginning to the end of the approval process. Then we will see the different positions of the parliamentary groups and the real compromise against climate change in Catalonia.

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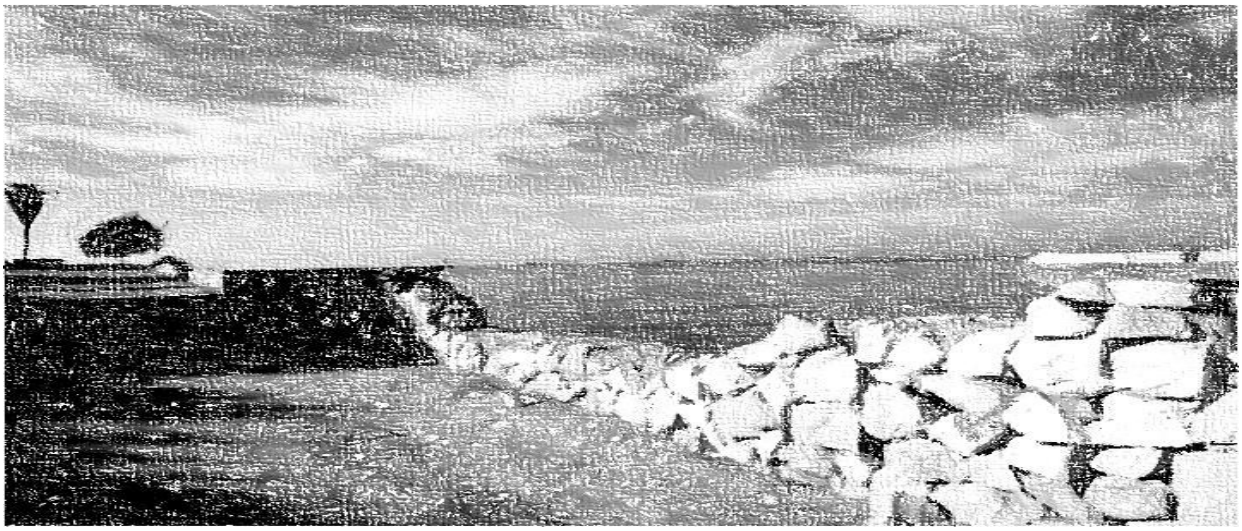

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