

## CONFERENCES AND REPORTS

### REPORT FROM A CONFERENCE SHAPING CLIMATE LAW: DYNAMIC ROLES OF STATE AND NON-STATE ACTORS Prague, 30 and 31 May 2024

On May 30<sup>th</sup> – 31<sup>st</sup> 2024, the Centre for Climate Law and Sustainability Studies (CLASS) established at the Institute of State and Law of the Czech Academy of Sciences hosted the international conference “Shaping Climate Law: Dynamic Roles of State and Non-State Actors”. The conference also symbolically concluded CLASS’ five-year research project, “Climate Law.” The two-day conference explored how different stakeholders – including governments, regions, cities, businesses, courts and civil society – contribute to climate-related regulations. The conference program was divided into ten sections, each focusing more narrowly on one of the above topics. Besides the three excellent keynote speakers, Laurence Boisson De Chazournes (University of Geneva), Annalisa Savaresi (University of Eastern Finland and University of Stirling), and Moritz Reese (Helmholtz Centre for Environmental Research), almost forty researchers in total contributed to the ambitious programme.

The first day of the conference was opened with the introductory words (a video speech) of **Petr Hladík**, Minister of the Environment of the Czech Republic. In his speech, he addressed the problem of climate change and the available tools to tackle it. After his speech, **Hana Müllerová**, the head of CLASS, introduced the main framework of the conference and its organization.

The second day was opened by **Bedřich Moldan**, the Czech environmentalist, politician and former Chairman of the UN Commission on Sustainable Development. Professor Moldan gave a guest lecture with the title “Governance of Global Common Goods in the Era of the Anthropocene”. He emphasized the fact that the overall impact of human activity on the Earth system is crucial. In that regard, we live in the Era of the Anthropocene, where globalization is overwhelming, and the global influence of human action exceeds natural processes. He pointed out the concept of global public goods and the global sustainable development goals (SDGs).

#### Conference’s topic: Climate litigation

Regarding the content of the contributions, a number of them were devoted to the influence of international and domestic courts. These institutions play an increasing role in climate law, which goes hand in hand with the interest of legal scholars in climate litigation. Consequently, two keynote speakers elaborated on the topic of climate litigation, particularly on international and regional climate litigation, which appears to be on the rise, and three sections were dedicated to this topic. The first keynote speaker, **Laurence Boisson De Chazournes**, addressed the request for an advisory opinion to the International Court of Justice concerning climate change. She explained that the advisory opinion may provide legal clarification in, the sense of endeavouring to enumerate the general principles of international law, supporting climate negotiations, and contributing to the dialogue between judges. Professor Boisson De Chazournes also discussed the participation in the consultative procedure and argued for a more significant role for some actors, including scientific organizations. The second keynote speaker, **Annalisa Savaresi**, then explored human rights-based climate litigation with a focus on the recent decision of the Grand Chamber of the European Court of Human Rights (ECtHR) – *Verein KlimaSeniorinnen and Others v. Switzerland*. Professor Savaresi also referred to the famous climate decision, *Urgenda*, from the Netherlands, highlighting its importance. This case was at the birth of the climate litigation phenomenon, and it contributed to the reliance on international and human rights law obligations in climate litigation and clarified some important issues, such as

the drop in the ocean argument. When discussing the *Verein KlimaSeniorinnen* case, Savaresi also explored some rather controversial findings of the ECtHR concerning the role of the courts.

There were then three sessions dedicated to climate litigation, which took place on the second day of the conference. Session five consisted of three contributions and was chaired by Matteo Ferme­glia, Assistant Professor in Climate Law and Governance at Amsterdam University. The first speaker of the session, **David Markworth** from the University of Cologne, examined the role of corporate climate litigation while stressing its weaknesses and warning against wasting resources or using the claimants as puppets. The second intervention, by **Nicholas Young** from the University of Oxford, presented his research on the impact of climate litigation. The last presentation, by **Sebastian Salzmänn** from the Humboldt University of Berlin, addressed how climate litigation could help in climate action. In particular, Sebastian examined ways that would allow repeated litigation. All three contributions discussed the phenomenon of climate litigation from the theoretical approach and there was an extensive debate after that. Professor Savaresi suggested that, regarding corporate climate litigation, there are some weaknesses but there is a need for legal obligations to be clarified and all possible instruments may be used to do so.

Session Seven consisted of five contributions and was chaired by Eva Balounová from CLASS. This session dealt with specific problems of climate litigation, mainly those of a procedural character. The first two interventions focused on the role of the Court of Justice of the European Union (CJEU) in climate protection. The first speaker, **Bettina Steible** from the Universitat Oberta de Catalunya, argued in favor of revisiting the “Plau­mann criteria” in the face of climate emergency. Bettina focused on the famous *Carvalho* case and the interpretation of the Aarhus convention by the CJEU. The second speaker, **Clara Labus** from the Libera Università Internazionale degli Studi Sociali Guido Carli, discussed the role of the CJEU in general, also looking at the infringement procedures. The third speaker, **Nilay Arat** from the Kadir Has University, outlined the challenges of climate litigation more broadly. In contrast, the next speaker, **Grazia Eleonora Vita** from the University of Bologna, looked at these challenges from the perspective of judges and judicial power, including the role of science, causation, standing, and the separation of powers. The last speaker, **Silvia Fregoni** from the University of California, Berkeley, explored the role of Supreme courts in climate litigation. She talked about the famous case *West Virginia v. EPA*, for example. The session was followed by a lively discussion, mainly about the differences between the CJEU and ECtHR.

Session Nine, chaired by Larissa Jane H. Houston from the Research Center for Climate Law – ClimLaw in Graz, examined the potential for and role of climate litigation in the international context, including perspectives from the Global South. The first speaker, **Cristian H. Ligorria** from the University of the West of England, looked into the specifics of climate litigation in Latin America and the Caribbean, including the problem of inequalities. Cristian highlighted the importance of rights-based climate litigation and the Inter-American Court on Human Rights and its forthcoming advisory opinion. The second speaker, **Margaret Wagana** from the Courts of Judicature, Kampala, Uganda, analyzed climate litigation in the Great Lakes Region, encompassing Kenya, Tanzania, and Uganda. The third speaker, **Hitoshi Ushijima** from the Chuo University in Tokyo, then characterized climate litigation in Japan. This session closed with the presentation of **Terhi Raikas** from the University of Vaasa in Finland, in which she explored climate litigation in Northern countries and the role of environmental NGOs in these cases. The discussion focused on the climate laws in Uganda and Japan and combating climate inequalities through climate litigation.

## Conference’s topic: Businesses and climate transition

Besides dealing with climate litigation, three different sessions devoted their attention to companies which are core stakeholders in the climate transition. Session three, chaired by Kateřina Mitkidis from Aarhus University, scrutinized possible legal innovation for nudging companies towards more

sustainable internal processes. The first speaker, **Lucie Josková** from Charles University in Prague, highlighted the limits and possibilities of Corporate Governance Rules as facilitators to achieve the Sustainability Development Goals. She argued that companies should be held responsible for the negative externalities of their businesses. **Temitope Onifade**, from the University of Bristol and the University of British Columbia, underlined the importance of hybrid regulation towards a low-carbon economy. As a good practice example, she presented the emission reduction system in Alberta in Canada. The third speaker, **Chiara Treglia** from the Libera Università Internazionale degli Studi Sociali Guido Carli, focused on green finance. After concluding that capital and labor are both missing from economic modeling, she spoke about institutionalizing green finance without sacrificing financial stability. According to her, central banks should play a key role in shaping the future green economy. Finally, **Veera Pekkarinen** from the University of Eastern Finland summarised the transnational methane initiatives that seek to shape international law on methane.

In Session Eight, chaired by Klára Poláčková van der Ploeg from the University of Nottingham, the first speaker, **Kateřina Mitkidiš** from the Aarhus University, explored the impact of the EU's latest corporate sustainability legislation – including both the corporate sustainability reporting directive (CSRD) and a proposal for a directive on corporate sustainability due diligence (CSDDD) – and leveraged the supply chain contracts, which plays the Achilles' heel of climate change mitigation. Later on, **Matteo Fermiglia** from the Amsterdam University brought critical insights on hosting mega-sporting events titled “The Show Must Be Green,” and described the lack of climate governance in the event sector. **Francesca Mussi** from the University of Trento brought the perspective of African countries in the debate, and interlinked the CSRD and CSDDD with the environmental protection in the least developed countries in Africa. Finally, **Suhendan Goksal** from the University of Strasbourg dealt with corporate vigilance obligation as a tool for advancing climate action.

In the final Tenth session, chaired by Monika Feigerlová from CLASS, net-zero pledges and other climate plans of companies were insightfully debated. The first speaker, **Esmeralda Colombo** from CMCC-EIEE, argued that net-zero plans backfire. She explained it in connection with climate-washing, and stressed a role for climate litigation. **Mei-Line Le Goueff** from the Université de Sorbonne Paris Nord touched upon the difficulties in the implementation of climate law and provided a French case study of how government and businesses enhance renewable energy development. Concerning the corporate duty to mitigate climate change, **Calum MacLaren** from University College Dublin presented a fragmented picture of national court decisions. As a landmark decision on corporate accountability, which should be considered by all European jurisdictions, he highlighted the Dutch Shell case. As the last speaker, **Shakya A. Wickramanayake**, from the Tilburg Institute of Law, Technology and Society, closed the conference. She presented solutions for facilitating the EU's clean energy transition. According to her, public value conflicts should be mitigated using energy justice principles.

### Conference's topic: Other actors in climate change law

Other conference sessions focused on different actors in climate law through the role of climate planning, SDGs, policy solutions, climate laws, economic impacts, and human rights. The third keynote speaker's contribution also focused on climate planning; **Moritz Reese** presented the topic “The EU's ‘Climate Policy Planning Law and its Implementation across Levels and Sectors.’” In his speech, he presented his concept of climate planning law, which stems from the requirements of EU law and the consequent role of states in climate planning and achieving climate targets.

Session One, chaired by Pavel Šturma from the Institute of State and Law, Czech Academy of Sciences, and Faculty of Law, Charles University, included five contributions. **Oliver Ruppel** from the Research Center for Climate Law – ClimLaw in Graz and Stellenbosch University, South Africa, discussed the future of the SDGs. **René Dióz Rodrigues** from the Geneva Graduate Institute evaluated

the status of small island states facing rising sea levels. **Heloisa Oliveira** from the University of Lisbon - School of Law presented a comparative analysis focused on climate laws (climate change acts) in European countries. The last contribution in this session was presented by **Markéta Gregorová** from the Charles University in Prague. Her topic was connected with sharing groundwater resources and the influence of climate change on states' practices.

Session Two was chaired by Hana Müllerová. Contributions in this session were mostly connected with the role of the public and society. The first speaker, **Larissa Jane H. Houston** from Research Center for Climate Law – ClimLaw in Graz, pointed out the role of citizen climate assemblies. The second speaker, **Xavier de Oliver Eneás** from the Université de Montréal, spoke about the critical role played by civil society in tackling climate change. **Nicola Sharman** from the University of Eastern Finland, the third speaker in this session, discussed Article 3.7 of the Aarhus Convention in more detail. Finally, **Elif Naz Němec** from the Institute of International Relations Prague and Charles University in Prague highlighted the topic of climate litigation (development permit litigation), specifically in relation to adaptation measures.

In session Four, chaired by Veronika Tomoszková from the Faculty of Law, Palacký University in Olomouc, human rights and particularly rights of future generations, children's rights and indigenous rights were discussed by **Enikő Krajnyák** from the University of Miskolc in Hungary, **Paulina Rundel** from the University Vienna and **Katharina Neumann** from the University of Oxford. Besides that, **Jeanne Magnetti** from the Dublin City University spoke about stakeholder influence in the design of national carbon taxes.

Session Six chaired by Elisa Baroncini from the University of Bologna focused on the position of the World Trade Organisation in climate litigation and international investment agreements. The speakers in this session were **Michelle Zang** from the Victoria University of Wellington and **Aditi Pandey** from the Università della Svizzera Italiana.

## Conclusion

The conference covered a range of topics and actors that shape climate change law. Moreover, the participation of scientists from all over the world made it an excellent opportunity to compare approaches in different regions. As a particularly important takeaway, it should be noted that global cooperation on climate protection will be a key element for future work in this field, similar to the enhancement of the credibility of international law. This conference presented an excellent opportunity to connect the global community of legal scholars more intensely and to promote appropriate policy and legal solutions. In conclusion, the conference not only broadened our understanding of current climate law issues but also will help us to navigate further research.

Moving forward, the CLASS plans to publish a collective monograph based on the conference topics, thus exporting the knowledge gained.

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