

## IUCN WCEL Specialist Group Updates

# WCEL Climate Change Specialist Group Update: July 2018

### Contents

- An Introduction: IUCN WCEL Climate Change Specialist Group
- The Climate Change Specialist Group's Role within IUCN and Brief Preview of the Importance of the Specialist Group's Work
- Current Work and Events
- Membership Engagement

### An Introduction: IUCN WCEL Climate Change Specialist Group

The Climate Change Specialist Group (CCSG) of the IUCN World Commission on Environmental Law seeks to give policy and legal input to the IUCN and its members with respect to legal issues involving climate change and its adverse impacts.

Legal issues include: policy advice on the design of new legal tools (e.g., laws and regulations); the interpretation and application of existing laws; the relevance, understanding, and application of legal principles with regard to climate change; the relationship of laws across different sectors (horizontal) and across different hierarchical layers (vertical) with regard to addressing climate change; assessment and comparison of legal instruments (such as fit, scale, effectiveness); suggestions for improvement of judicial and quasi-judicial avenues (e.g., recourse to courts, compliance mechanisms, dispute settlement); and coverage of international negotiations relevant to climate change (e.g., UNFCCC, CBD, ICAO, IMO, UNCLOS).

The work of the WCEL CCSG is carried out against the background that the world is at cross-roads with the convergence of several crises: catastrophic climate change, the sixth mass biodiversity extinction event, land degradation on a massive scale, and increasing economic inequality in spite of a reduction in extreme poverty. Despite bold global commitments, and some successes, progress on all of these issues has been too little and too slow. Climate change, however, is an issue that hangs over and cuts across all others and has become the most pressing issue. If not addressed, the projected consequences are so severe that they will make efforts to solve the other crises redundant or even impossible.

If the Paris Agreement goal to keep global temperature rise this century well below 2°C above pre-



World Commission  
on Environmental Law

Commission Mondiale de  
Droit de l'Environnement | Comisión Mundial  
de Derecho Ambiental

industrial levels is to be met, anthropogenic greenhouse gases emissions into the atmosphere must be reduced by 50-70% by 2050 and balanced with removals before 2100. However, given the present trajectory of greenhouse gas emissions, the scientifically most probable future, even if current Paris Agreement mitigation commitments are implemented, means we are heading toward a “3°C” world by 2100, which will have devastating consequences for humans and nature - consequences that are antithetical to IUCN’s missions and the values for which it stands. At current levels, the impacts on people, the natural world, and the economy will be profound. Species would disappear at an accelerated rate; ecosystems would be unable to deliver the basic services required to support human life, such as clean air, clean water, and food for sustenance; poverty, inequality and human suffering would be increased; economies would collapse; and some low-lying countries will disappear. Following the processes set up under the Paris Agreement, countries must therefore rapidly and drastically increase the level of ambition in their Nationally Determined Contributions (NDCs) to the Paris Agreement.

At the same time, mitigating dangerous climate change cannot be done in a way that puts other objectives in jeopardy. Finding effective solutions to climate change that avoid negative side-effects and enhance synergies is imperative. Of particular concern to IUCN are the linkages between biodiversity and climate change, including the need to recognize both the existential threat human-forced climate change presents to biodiversity, and the role of nature-based solutions in mitigating greenhouse gas emissions. Given that many globally significant impacts are now unavoidable, adaptation to avoid or minimize the harm from a rapidly changing climate must also now be accepted as fundamental to conservation in the 21st century.

In carrying out its work, the CCSG will seek to interact, collaborate, and coordinate with other WCEL Specialist Groups with respect to legal issues relevant to climate change.

CCSG is the principal source of legal technical advice to the IUCN, its members, and the WCEL on legal aspects of addressing climate change and its adverse impacts internationally and nationally. It also provides a source of expertise on these issues for the Environmental Law Centre – and vice versa.

The current chair of the Climate Change Specialist Group is Professor Christina Voigt of the Department of Public and International Law and the Center for Excellence “Pluricourts,” University of Oslo, Norway. Christina is an expert in international environmental law and works in particular on legal issues of climate change, environmental multilateralism, and sustainability. In 2009, she was awarded the first IUCN Academy of Environmental Law Junior Scholarship Prize. She is the author of “Sustainable Development as a Principle of International Law” (Brill, 2009), numerous academic articles, and several edited volumes.

Since 2011, she has been legal advisor to the Norwegian Ministry of Climate and Environment and negotiator in the UN climate negotiations. For her profile, see:

<http://www.ius.uio.no/ior/english/people/aca/chrisvo/index.html>.

Currently, the positions of Deputy Chair and Junior Deputy Chair are being assigned.

### **The Climate Change Specialist Group's Role within IUCN and Brief Preview of the Importance of the Specialist Group's Work**

The CCSG is a global network of lawyers, practitioners, judges, scholars, and practitioners from other disciplines. Because climate change is a cross-cutting issue, some of the group's members work within different fields, both within and outside the IUCN and its commissions. The CCSG will draw on the expertise of its members in carrying out its work.

Currently four topics for engagement and one role "across the Union" are defined:

#### ***Topic One: "Getting to Zero": Climate Change Mitigation and Land Use – A Study of Policy Options for Balancing Emissions and Removals***

To achieve the long-term goal of holding global average temperature increase well below 2°C, Parties to the Paris Agreement are committed to achieving a balance between anthropogenic emissions and removals in the second half of this century. This goal is the most specific of all goals in the Agreement, as well as the most demanding.

To achieve zero net emissions of greenhouse gases (GHGs), drastic and rapid reductions of emissions are necessary. At the same, this goal requires the protection of sinks and the significant enhancement of removals. In this context, the land use sector plays a crucial role. The capacity of soils, organic masses and products, and of forests to sequester and store GHGs will determine the extent to which the goal of "Getting to Zero" will be achieved.

The land sector presents a number of challenges alongside with tremendous opportunities. Lands and forests can be both a source and a sink of GHGs, depending on the natural cycle as well as their management. Moreover, land uses carry many objectives, ranging from biodiversity conservation, protection of ecological services, and ecological integrity, to agricultural uses relevant for food security and economic development, as well as industrial (mining, damming, infrastructure, housing), and developmental uses.

This CSCG study seeks to compile best practices from a number of geographically and economically diverse countries. It charts possibilities in the design and implementation of policies and legal measures that seek to protect and enhance the climate mitigation potential of lands, while paying respect to their various uses and objectives. Conservation of biological diversity and protection of the interests of vulnerable groups, such as indigenous peoples, in the overall governance of land management, will be particularly important in the assessment.

The focus of this study goes to the very heart of the IUCN mission, which is to "enable human



World Commission  
on Environmental Law

Commission Mondiale de  
Droit de l'Environnement | Comisión Mundial  
de Derecho Ambiental

progress, economic development and nature conservation to take place together. . . . in a world that values and conserves nature.”

The study will comprise inputs from selected countries on how their land sector is managed, the kinds of challenges that exist, and the ways and means that could be applied or could be conceived to overcome obstacles. The study will result in an IUCN report (in 2020/2022) that will inform IUCN input and policies. During the course of this study, the authors should meet in one or two seminars to exchange their views, identify best practices and common challenges, and provide suggestions on effective means of implementation, policies, and legal measures. Moreover, this study will cut across various relevant IUCN Commissions and across various WCEL Specialist Groups. Duration: 2018-2022.

### **Topic Two: *Legal Issues in Implementation of the Paris Agreement***

The Paris Agreement’s operationalization, and effective and expeditious implementation, brings to the forefront a number of legal questions. These questions vary in their relevance and actuality, but include the following:

1. Identification of the legal nature of domestic mitigation measures (art. 4.2);
2. Guidance on the various aspects of the Paris Agreements “Rule book,” such as information to enhance clarity, transparency, and understanding of NDCs; or the modalities for the transparency framework or accounting;
3. Rules, modalities, and procedures for the market mechanism (art. 6.4);
4. Identification of the legal relevance of aspects of the agreement, such as “highest possible ambition,” “progression,” and outcome of the global stock-take in informing Parties’ NDCs;
5. The modalities and procedures for the effective functioning of the compliance mechanism; and
6. The link between international guidance and domestic implementation.

For the IUCN to provide relevant and timely input into the negotiations and deliberations of these important aspects, the CCSG seeks to stay informed, follow the negotiations, and provide advice and input.

The work for this topic will be carried out by observer participation at the UNFCCC negotiations by member(s) of the CCSG, drafting of guidance and input to the IUCN, and organization of meetings, side-events, and seminars in conjunction with relevant UN meetings. The products will be policy briefs, recommendations, scoping papers, and option assessments, where needed, to be distributed before and during UNFCCC negotiation meetings.

### **Topic Three: *Fighting Climate Change - A Best Practice Guide for Judges and Courts***

The fight against climate change will require the involvement of all three “pillars of power”: the legislative, in the designing adequate and effective laws; the executive, in implementing and administering climate-effective governance; and the judicative, for reviewing government policies as well as to solve disputes and give authoritative legal statements on the interpretation of laws and

clarification of rights and responsibilities. In the face of the (current) general reluctance of the first two to take leadership roles in some countries, courts and judges can play decisive roles in holding governments and actors accountable for effectively addressing climate change.

This work aims at analyzing and categorizing possibilities and challenges that courts face in various climate-change related judicial activities. It further aims at identifying best practices and guidance for judges and benches. It seeks to compare legal advances across different courts and different jurisdictions, while tracking recent developments and possible set-backs.

The CCSG will seek to collaborate with the Global Judicial Institute on the Environment (GJIE), PluriCourts – the Center of Excellence for the Study of the Legitimacy of the Global Judiciary, the relevant other SGs (especially on compliance and enforcement), and their members in this study. The CCSG will also seek expert advice and input from judges involved in climate-change related cases and disputes. Moreover, with the help of Early Career Group members, the CCSG hopes to establish an empirical basis for when, how, under which circumstances, and with which outcomes climate-change related cases are decided by courts.

The expected output is an IUCN study titled “Fighting Climate Change - A Best Practice Guide for Judges and Courts,” which aims to increase awareness and sensitivity among judges for climate change issues, which are often complex, and to increase judges’ legal climate change “literacy” as well as capability and expertise. Implicitly, this guide could also serve to inform interested claimants on suitable procedural and substantive means to bring a climate-change related case to a courts or tribunal.

The work will be conducted through thematic seminar, possibly in conjunction with GJIE or IUCN AEL meetings or other relevant fora with other partners, in addition to the identification of relevance and expertise among CCSG members.

#### **Topic Four: *Climate Change Across the Union***

The chair of the CCSG is a member of the IUCN Climate Change Task Force. The IUCN Council’s Climate Change Task Force is the IUCN governance mechanism for overseeing the development of IUCN's climate change policies and engagement in light of the implementation of the Paris Agreement, experiences gained from programmatic work, Intergovernmental Panel on Climate Change (IPCC) science updates, and the work of relevant agencies including the Green Climate Fund. The Task Force is therefore the principle governance mechanism providing advice to the IUCN Council on actions needed to implement IUCN’s general policy on climate change as articulated in, among other things, Congress resolutions.

The Task Force’s objective is to provide strategic oversight and advice to ensure that the IUCN climate change portfolio is coherent, comprehensive, and contributes positively towards the implementation of the Paris Agreement, the Convention on Biological Diversity, and the Sustainable Development

Goals, as well as other related international agreements and IUCN's overall mission and vision, as appropriate, drawing on its core areas of expertise.

Through the Task Force membership, the CCSG will be able to present its work and vision to the IUCN and its members.

## Current Work and Events

### A. High Level Messaging for IUCN – Climate Change Task Force

As a member of the IUCN Climate Change Task Force, the chair is currently involved in drafting High Level Climate Change Framing Messages for the IUCN. These messages are intended to be recommended to Council from the IUCN Council Climate Change Task Force.

The IUCN Climate Change Task Force recognizes that the world community faces a climate change emergency that brings existential threats to humans and nature alike. IUCN's mission and objectives demand that it seeks to maximize the Union's influence in helping the world community address this urgent problem. It is critical therefore that IUCN has a coherent framework to ensure its climate change activities, intervention, and communications are strong, coherent, coordinated, and effective. A High Level Message Statement (HLMS) is needed to clearly and powerfully communicate our intent and focus including that:

1. IUCN recognizes the urgency of the climate change problem, the impacts on biodiversity, ecosystem integrity and human-wellbeing from a 3°C-plus world that would result from the limited ambition in current Nationally Determined Contributions to the Paris Climate Agreement, and the need for urgent action;
2. IUCN understands the ways in which Nature-Based Solutions complement and do not replace the need for deep and rapid cuts in fossil fuel emissions;
3. IUCN can demonstrate how Nature-Based Solutions contribute to the implementation of the Paris Agreement and connect with the key agenda items of mitigation and adaptation; and
4. IUCN offers practical actions that draw upon Nature-based Solutions and which the IUCN community can promote to address climate change in their spheres of influence.

The purposes of these messages are the following:

To the IUCN, its leadership, Commissions, and members - the messages will serve as a mechanism for harmonizing efforts across what is now a vast array of climate-change related activities and assist in ensuring the IUCN is consistent in messaging.

To Paris Agreement negotiators and decision makers – the messages will help clarify to negotiators and decision-makers the connections between Nature-Based Solutions and the Paris Agreement agenda and the significance of its policy recommendations.



World Commission  
on Environmental Law

Commission Mondiale de  
Droit de l'Environnement | Comisión Mundial  
de Derecho Ambiental

To Non-state actors including sub-national authorities and local communities – given the snail-like pace of formal intergovernmental negotiations, there is a great energy for action to be initiated in other spheres. Here again, IUCN has a vital role to play in influencing, supporting, and otherwise encouraging these non-state actors in their efforts.

### **Current Examples of Messages for High Level Climate Message Statement**

1. It has been well publicized that the current Nationally Determined Contributions (NDCs) to the Paris Agreement are not ambitious enough to keep temperature increases well below 2°C above pre-industrial levels. Current commitments will likely result in temperature increases of 3-3.5°C. Parties therefore need to drastically and rapidly increase the ambition of their NDCs. This requires concerted action by all relevant stakeholders.
2. The ~1°C of global temperature change already experienced has impacted 82% of ecological processes, with impacts spanning genes, species and every ecosystem on earth.<sup>9</sup> An increase of 3-3.5°C will have such profound effects on the natural world that it will be very difficult, if not impossible, for the IUCN to deliver on its mandate to “Influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.”
3. All tools will be required to hold temperature increases well below 2°C, including:
  - i) a rapid reduction of greenhouse gas emissions, in particular through a shift away from the use of fossil fuels;
  - ii) maintaining existing ecosystems that serve as carbon stocks and sinks (i.e. forest, coastal wetlands, peatlands, grasslands, including soil carbon);
  - iii) removing carbon dioxide from the atmosphere through ecological restoration of ecosystems that have been degraded or converted to other uses.
4. IUCN has a global reputation for the integrity and quality of its work. IUCN is known for producing well-researched, credible, science-based reports with guidance, tools, and honest messages arising from its work. This is of particular importance in today’s world where messaging on climate change has been confusing, sometimes dishonest, and often not evidence-based.
5. IUCN can play an important role in global efforts to address climate change through providing solid science-based information on climate change mitigation and adaptation, and communicating that information in an easy-to-understand way, to many audiences, including not only policy-makers but all sectors including the general public.
6. For the IUCN to play this important role, it is necessary that its entire portfolio is coherent and comprehensive with regard to the need to address climate change. This requires that all of IUCN’s work show consistency with regard to the principled importance of and the means and ways of addressing and responding to climate change.

These messages are to be refined over the next couple of months and sent by the CC Task Force to the IUCN commissions and specialist groups for comments.



World Commission  
on Environmental Law

Commission Mondiale de  
Droit de l'Environnement | Comisión Mundial  
de Derecho Ambiental

## **B. Books, Seminars, Negotiations**

Two books are currently under publication: “Courts and the Environment” (by Edward Elgar Publishing) and “International Judicial Practice on the Environment” (by Cambridge University Press). Both books are set to be published in early 2019. The books are either edited or co-edited by the chair of the CCSG and capture current judicial practice, both in domestic and international courts, on climate change. The books are the output of the 2016 IUCN’s Academy of Environmental Law Annual Colloquium, hosted by Pluricourts at the University of Oslo. Several members of the IUCN WCEL SSCG contributed various chapters to both books.

Further, the CCSG plans to organize a seminar at the William S. Richardson School of Law, University of Hawai’i at Mānoa, with the Supreme Court of Hawai’i, in October 2018. The focus of the seminar will be on “Climate Change and the Law: Innovations in National and International Courts.”

Finally, the Chair of the CCSG is a member of the delegation of the Government of Norway to the UNFCCC climate negotiations. In that capacity, her work focuses on all legal and procedural issues, human rights, as well as developments on REDD+ (Reducing Emissions from Deforestation and Forest Degradation in developing Countries), and on the methodologies and procedures for the Paris Agreements Committee to Facilitate Implementation and Promote Compliance (art. 15).

## **Membership Engagement**

The IUCN WCEL Climate Change Specialist Group is a global network of legal practitioners and scholars, with connections to experts from various disciplines, and is seeking to engage its membership.

We are always looking for new ideas, new partnerships, and leadership and assistance as we unpack and execute our body of work. If you are interested in CCSG membership, or would like to propose a project or partnership, please contact: [Christina.voigt@jus.uio.no](mailto:Christina.voigt@jus.uio.no).