IUCN WCEL Specialist Group Updates

WCEL Climate Change Specialist Group
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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) and development of the law; 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, rapid ecosystem and biodiversity decline, 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 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 well below 2°C above pre-industrial levels is to be met, anthropogenic greenhouse gases emissions must be balanced with removals before 2075; or by 2050 to halt temperature increases close to 1.5°C. 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).

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 minimize the harm from a rapidly changing climate must also be accepted as fundamental to conservation in the 21st century.

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

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 the past decade. For her profile, see: http://www.jus.uio.no/ior/english/people/aca/chrisvo/index.html.

The position of Junior Deputy Chair has been assigned to Marina Venancio.
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 legal practitioners as well as with scholars 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 five topics for engagement, including 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 (“net zero emissions”). This goal is the most specific of all goals in the Agreement, as well as the most demanding.

To achieve net zero emissions of greenhouse gases (GHGs), drastic and rapid reductions of emissions are necessary. While not all emissions can be avoided, residue emissions need to be balanced by increased uptakes. The goal of “net zero” requires the protection of sinks and the significant enhancement of removals. In this context, the land 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 the important concern for 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 to get to “net zero” or “carbon neutrality”. In this context, it will in particular analyse 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 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 in the context of “carbon neutrality”, the 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 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: 2019-2022.

**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. Rules, modalities, and procedures for the market mechanism (art. 6.4) and other cooperative approaches (art. 6.2);
3. 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;
4. The rule of procedure for the effective functioning of the compliance mechanism; and
5. The link between international guidance and domestic implementation, as well as
6. Interlinkages and integration of climate and biodiversity law and regulations.

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. Duration: continuously 2018-2022

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

The fight against climate change will require a transformation of all levels and sectors of society. This necessarily involves all three “pillars of governmental 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. In this situation, it is no surprise that we are currently a turn to litigation worldwide.

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 base 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 court or tribunal.

The work will be conducted through thematic seminars, 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.

Duration: 2019-2022

**Topic Four: Transition of Energy Systems**

The urgency of addressing climate change is demonstrated dramatically by the 2018 Special Report of the Intergovernmental Panel on Climate Change on Global Warming of 1.5 degrees Centigrade; and the International Energy Agency World Energy Outlook 2018 among many national studies, in the U.S the 2018 National Energy Assessment by the Environmental Protection Agency. Most alarming is the April 2019 Science article stating that in at least eight of the next-generation models, produced by leading centers in the United States, the United Kingdom, Canada and France, that current trends in
greenhouse gasses could lead to as much as a catastrophic 5 degree global warming.¹

According to the International Energy Agency, “the estimated value of fossil fuel, consumption subsidies across the globe increased by 12% in 2017 to more than $300 billion.”² And if production subsidies and the externality costs of the climate warming-caused pollution deaths, illnesses, property losses and the cost of other climate change consequences are included, fossil fuel subsidies have been estimated at a staggering $5 trillion, and found that “Eliminating subsidies would have reduced global carbon emissions in 2013 by 21% and fossil fuel air pollution deaths 55%, while raising revenue of 4%, and social welfare by 2.2%, of global GDP.”³

Since 62.9 percent of U.S. greenhouse gas emissions are caused by combustion of fossil fuels according to the 2017 EPA Inventory of Greenhouse Gas Emissions⁴, and similar results are true for most other countries, the Climate Specialist Group (SG) will work with its Members and other IUCN Commissions and organizations to facilitate greater effectiveness of energy use, greater conservation of energy and the transition to alternative clean energy fuel sources.

Mission

• To prepare, sponsor, and undertake studies, publications, and workshops to share knowledge on transitioning to sustainable energy and reclaiming carbon through nature-based solutions with IUCN members, IUCN Academy members and other IUCN Commissions, as appropriate;
• To organize an action program, as described below, to assist in the phasing out of all subsidies to promote the use of fossil fuel and to reduce reliance on fossil fuels;
• To provide legal expertise to IRENA and its Navigator Project for assisting institution and promotion of renewable energy projects;

Actions:

• The SG initiate a study with interested IUCN and Academy members and UN agencies on the advantages and means of reducing reliance on fossil and phasing out fossil fuel subsidies and the transformation to a sustainable energy system;
• Publish a guide to successful transition programs and methods, with case studies, similar to the UNEP Guide to Energy Efficiency and Renewable Energy Laws.⁵
• Establish an internet billboard on which interested countries and municipalities can record references to their energy transition programs and scholars can post articles on transition programs.

⁵ https://wedocs.unep.org/bitstream/handle/20.500.11822/9932/UN-Environment-Guide.pdf?sequence=1&isAllowed=y
**Topic five: 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.

The Task Force works for the establishment of a **Climate Change Commission** at the IUCN to reflect the importance and overarching nature of the climate challenge. Through the Task Force membership, the CCSG will be able to present its work and vision to the IUCN and its members.

**Updates: Books, seminars**

Two books have recently been published: “Courts and the Environment” (by Edward Elgar Publishing, 2018) and “International Judicial Practice on the Environment” (by Cambridge University Press, 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 organized a symposium at the William S. Richardson School of Law, University of Hawai‘i at Mānoa, with the Supreme Court of Hawai‘i, in November 2019. The focus of the seminar was on “The Role of International Courts in Protecting Environmental Commons”. Climate change was a central topic at the symposium. Several contributions at the symposium are being published in a special edition of the University of Hawaii Law Review (2019).

Finally, the Chair of the CCSG was a member of the delegation of the Government of Norway to the UNFCCC climate negotiations in Katowice, December 2018. In that capacity, her work focused on the methodologies and procedures for the Paris Agreements Committee to Facilitate Implementation and Promote Compliance (art. 15), adopted in Decision 20/CMA.1
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.