



UKELA

e-law

Better law for the environment

May/June 2021 | Issue 124



Welcome to the May/June edition of e-law. The focus of this issue is environmental law for the future.

An important aspect of environmental law for the future concerns the teaching of environmental law to our future generations. Our first article on this theme: [Reflecting on future learning pathways for environmental law](#) by Priscila Carvalho and Catalina Spataru highlights the need for a more

interdisciplinary and multidisciplinary approach. In order for environmental law to overcome the unprecedented challenges from pollution and the climate emergency to water scarcity, the authors propose enhancing the trajectory of teaching it, by combining computer science, law, resource efficiency and trade-offs between sectors and resource use. Many thanks Priscila and Catalina for this fascinating piece!

Another aspect of environmental law for the future is how laws may develop and change in the coming months and years and we are lucky to be able to include an article from Emily Shirley in this edition: [Legal rights for rivers, restoring the natural order, COP26](#). The article argues that the UK has failed to meet its legal targets for conserving the natural order of rivers, explores the rights of rivers across international jurisdictions and suggests that COP26 should be used as an opportunity to declare that UK rivers are held on public trust.

Our third themed article, [The role of expertise in environmental law](#) by Nina Pindham, also looks to the future of environmental law, examining the need for specialist expertise, whether specialist tribunals are better for the environment and the role of science in specialist tribunals.

Also fitting neatly into the theme of environmental law for the future, we have three excellent student submissions this edition.

The first relates to another critical aspect of environmental law for the future: how our youth can and are influencing the future of our planet for the better. Our thanks go to Aoife Fleming and Jule Schnakenberg, coordinators for the Worlds' Youth for Justice, an international project to request an ICJ Advisory Opinion on climate justice, for their excellent article [The potential for the World Court to address climate justice: A Pacific initiative to request an Advisory Opinion from the International Court of Justice](#). The article includes detail on how to request an ICJ Advisory Opinion and discusses the status of climate science in the courtroom and how new pathways are opening for the development of international law through human rights law.

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The second is from Mateusz Slowik, who also joined us last edition as an editorial assistant. His piece: [The Human Rights Act as a source of an environmental human right](#) explores whether claimants that seek to rely on human rights arguments for environmental damage have an adequate remedy through the substantive rights and legal standing rules contained in the Human Rights Act 1998, development of the European Convention on Human Rights jurisprudence on rights to life and private life and provides a brief overview of a distinct right to a healthy environment. Welcome to the team Mateusz and thanks for this enlightening piece!

Thirdly, Maya Sainani has written: [What does the surge in ESG investing mean for the UK?](#), an excellent article about the growth of ESG investing, the shift from prioritisation of climate change threats to other environmental threats, including the loss of biodiversity and how, despite some challenges, ESG investing presents a big financial opportunity for the UK and has the capacity to help our planet.

We also include an additional [short piece from Alec Samuels](#) providing his thoughts on desalination as a potential part of the solution to the increasing demand for water. Again, this touches on environmental law for the future. Thank you, Alec.

While there is still lots of work to do, I for one am much reassured about the future of environmental law following digestion of these fantastic contributions. I hope you will all feel the same.

Best wishes

Sophie Wilkinson

Sophie Wilkinson

E-law editorial team

Sophie Wilkinson, Editor – Sophie is an environmental law specialist at LexisPSL with 13 years' experience, including 11 years' experience in private practice. She moved to LexisNexis from Shoosmiths LLP where she was a Senior Associate. Prior to this Sophie trained at Browne Jacobson LLP and spent 6 years at Eversheds LLP.

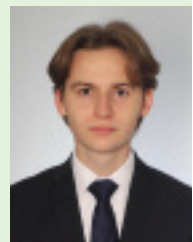
Laura Hildt is an Associate Policy Officer for Biodiversity and EU Affairs at the European Environmental Bureau in Brussels. She has a Law degree from the University of Cambridge and an LLM in Public International Law with a specialisation in environmental law from Utrecht University.



Violet O'Gorman previously worked as an editor at LexisNexis, and is currently undertaking the Post Graduate Diploma in Law (PGDL).



Mateusz Slowik is a final year law student, and a volunteer for UKELA's Nature Conservation Working Party. Mateusz will read Environmental Law and Policy at UCL in September.



Words from the Chair



Dear members of UKELA

Here we are at the last of the 'Chair's comments' that I will be contributing for this fantastic publication. After two years in the hot seat, at our Annual AGM next week I will be saying a fond farewell to you all and handing over to the brilliant Ned

Westaway. It is such a pleasure and privilege to be handing the baton on to someone who cares so deeply about UKELA, its membership and the work it does, and someone who these last few years as Vice Chair has really supported me in this role. I know you will be in safe hands with Ned leading Council and look forward to watching UKELA's developments from afar (not too far away, of course!)

In other exciting news, I am really pleased to let you know that Council has confirmed Alison Boyd's appointment as Executive Director of UKELA. I am sure you will all agree that Alison has shown great leadership in the way in which she has steered UKELA through the pandemic and such a challenging time for us all. You will be hearing some more details about UKELA's successes of the last year in the upcoming AGM, so I won't spill any spoilers here! But it was important to me to acknowledge that Alison has done tremendous work leading the team and Council to finalise the five year plan, deliver a comprehensive online events programme (including our first online annual conference), keep momentum and spirits high, and so much more. It really has been a pleasure working with Alison and I am happy that you have such a strong duo of Chair and Executive Director leading the charge as we step into the 'brave new world'.

Many of you will have voted by now in the Council elections and I am really delighted to see so many candidates standing for election. Thanks to all of you for standing and for showing such an interest in UKELA - and as I said to many of you when we spoke, being on Council isn't the only way to make a difference to the organisation: there are plenty of opportunities to get stuck in and I encourage you to get in touch with Elly-Mae or Alison if you would like to find out how you might be able to share your expertise. Wishing all of you the best of luck and I hope you tune in to the AGM to find out the results!

I have mentioned the Annual Conference a couple of times and do look forward to 'seeing' lots of you there. Please do book if you haven't done so yet! The Conference team has put on a superb and jam-packed schedule for you full of fascinating panel discussions and talks providing a diverse and international range

of perspectives and expertise. I am only sorry that we won't be somewhere in person, but that we will still be online participants. I do feel that I have missed getting to know more of you in person these last couple of years, but am so grateful to our technology and capabilities enabling us to connect remotely. We have found that this has really increased participation and inclusion for our events and bookings for Conference are yet again so much higher than they were normally in the days pre-pandemic. The team and those of you who have helped to arrange or 'host' an event have helped turn a crisis into an opportunity for the benefit of our membership, and it has really been a cornerstone of the success of UKELA this last year.

I am very pleased that we will hold, for the first time, an Annual Northern Ireland Conference, modelled on the Annual Scottish Conference, in Autumn this year. Huge thanks to the team leading the way on getting that up and running. We also have a fantastic (and I mean really fantastic) speaker confirmed for Garner this year - watch this space as it will be announced at Conference next week!

The theme of e-law this edition is one that is, and has been, close to my heart for many years. In fact, some of you know that just over a decade ago (I know! Where has the time gone?), my introduction to UKELA was through winning a Bursary to pursue my interest in 'Future Generations and the law' and going on to be nominated for Council. I was involved in something called 'The Alliance for Future Generations' and was working to set up the DECC Youth Advisory Panel and various other projects. We worked on, amongst other things, what a 'Future Generations Bill' could look like; the constitutional and legal rights of future generations, and how these could be institutionalised and implemented in practice. So, it is with a big smile on my face that I close this chapter of my involvement with UKELA reading the great articles that have been written looking at environmental law for the future. Feels rather poetic to be bookending my term in such a way. Long may the good work continue!

When I took up the post in 2019 nobody had any idea what was up ahead, that the world would be so immeasurably altered and that all our lives would have been impacted, some more devastatingly than others, by such a destructive pandemic. The strength and fortitude that was shown in those most challenging of days by the UKELA staff team and Trustees was truly remarkable. My sincerest thanks go to all of you who played such a crucial role in keeping the tiller true as we navigated through unprecedented, choppy waters. And all the hard work has paid off - UKELA is stronger than ever and a leading voice and influence on the environmental law stage in the UK. In many ways

despite being remote for such a long time, I feel that we have also grown closer. Perhaps this shared collective experience has forged a stronger bond between colleagues and friends, perhaps the inability to see each other at events has forced us to be more proactive in reaching out to one another, perhaps we have all taken the time to reflect on what is truly important to us all and UKELA has fit into that thinking. Whatever the motivation, I am pleased that the long history of the organisation and the multidisciplinary, inter generational membership has enabled it to evolve to fit rapidly changing external contexts, whilst staying true to its original mission.

A final thank you must go to those members of Council who are standing down this year because their term(s) of office have come to an end. In no particular order, thanks ever so much to Simon Tilling for his eight years in office and four as Vice Chair. Simon also acted as company secretary for us and we are extremely grateful to him and his firm for supporting us in that. Many of you know that Haydn Davies was a Vice Chair alongside me when he was in his bike accident and could not participate in Council. We decided then to keep Haydn's post open for him for the remainder of his term, but it has now officially come to an end after eight years. It has been such a beacon of light hearing from Hadyn and his wife to tell us news of his recovery and I very much hope that his strength and health continues to come back. Thanks to Haydn for all his input and hard work, bringing strong academic rigour to our approach. Karen Blair was also a Vice Chair with me and during her eight year term has been a leading voice in supporting Northern Ireland activities. Especial thanks also to Karen for the extra time she gave on the Covid-19 crisis committee last year, supporting our efforts and offering her wisdom along the way. Penny Latorre has done really super work as co-coordinator of the working parties and in her eight year term on Council has really supported the growth and development of the working parties to enable them to do their great work of responding to consultations and influencing policy and law developments. Veneta Cooney is standing down after a four year term. Veneta's work getting the public health and environmental law working party off the ground was nothing short of inspirational - tapping into the collective consciousness of concern about air pollution levels, Veneta has been a really effective advocate for using the law to promote health outcomes, and last year her insights were more helpful than ever.

To all of you - thank you for giving your time to UKELA, to ensuring the membership experience was as good as it could be and continuing to support its voice of influence. Thank you for your commitment, dedication, expertise, and friendship.

Finally, an extra big thank you to everyone who participated in our various fundraising drives. Thank you Lord Carnwath for sharing such a lively history of your career with us, and of course for being a wonderful Patron to UKELA all these years. Thank you Stephan Tromans QC for your exquisite artwork, and to all of you who pitched in.

I really do hope I have remembered everything in my final missive to you all. There are a few bits and pieces I am saving for the AGM and closing remarks at Conference, so do tune in for the final final words of yours truly!

And with that, I'll sign off for one last time.

With best wishes, as ever



Kirsty Schneeberger MBE
UKELA Chair

UKELA news

UKELA Annual Conference Week 2021 is almost here!

Have you booked your place at the Annual Conference yet? There is still time to do so but you must be quick! We have a whole week's worth of top-quality content for you this year, with panels on a wide range of topics and with a star cast of speakers. Our keynote address is from Tom Burke, UKELA Patron on Thursday afternoon. We also have a great range of social activities to complement the more serious stuff – join us for yoga or watch a film together. Then on Friday afternoon, our Platinum sponsors are delighted to bring you the opportunity to get together both in person and online. Find out more and book on our [website](#).

Annual General Meeting 2021

The AGM of the association takes place online on Thursday 17 June at 5.30pm. If you are booked onto the Annual Conference, you will automatically receive the log in details with your delegate pack. If you wish just to join the AGM, please [get in touch](#) and we will send you the details. Join us to hear about UKELA's financial results from 2020 – a very different year for us all and how we are looking forward to the rest of 2021. We will also be announcing the results of the election to Council and welcoming our new trustees.

UKELA working party news

The environmental litigation working party recently submitted a detailed consultation response to the judicial review reform consultation published by the Ministry of Justice noting the concerns of seeking to limit judicial review.

There has been early member interest in setting up the environmental assessment working party, and an informal group has been set up. Anyone with further interest in environmental assessment should contact: paul@ukela.org.

The governance and devolution group has finalised its response to Defra's consultation on environmental principles and the full response will be shared with members shortly.

The nature conservation working party held its second meeting of the year on Saturday 8 May, once again on Zoom. The main item concerned the Bern Convention on the Conservation of European Wildlife and Natural Habitats, and Wyn Jones gave a presentation explaining the background and structure of the Convention and his experience whilst at the Joint Nature Conservation Committee (JNCC) of its workings, followed by Jill Crawford, who built on this with some case studies. It was concluded that whilst the Bern Convention legislation is sound, developing into the EU's Birds and Habitats directives, its policing and remedies are ineffective. Following Brexit, the Birds and Habitats directive framework remains in place in the UK, but the policing regime has yet to be tested. The nature conservation working party is exploring putting the two presentations together into a short article.

There will be a nature conservation working party session at the UKELA Annual Conference on Wednesday 16 June at 15:30pm, when the topic will be biodiversity net gain. The next regular meeting will be on Monday 13 September, and will feature a presentation from the nature conservation working party's wildlife law bursary award winner, and one on nature conservation in Australia.

The Wales working party held a successful event in March with the Agricultural Law Association on the Agriculture White Paper for Wales. We had another event on Monday 24 May on *'Issues in Sustainable Land Management and Water Management'*, also in Association with the Agricultural Law Association. Speakers included Geraint Davies Fedwarian (farmer), David Ashford (Dwr Cymru) and John Walker (Wales Peatland Project).

We are also delighted to be welcoming Jane Davidson, former Senedd Member and architect of the Well-being of Future Generations (Wales) Act 2015, to discuss this important legislation in Wales at our session at the Annual Conference on Monday 14 June at 9am.

If you are interested in joining our [Working Party on Noise](#), we have a google group for members to share and update on this topic. If you would like to be added to the google group, please [email](#).

Students news

Update from UKELA student advisors

Since we (Charlotte and Tristan) started as student advisors in December, our priority has been to understand better the student membership framework, and to identify areas for improvement. Tristan is currently completing his LLB at the University of Sussex and Charlotte is completing her LPC at the University of Law – having previously completed a GDL and degree in Marine Biology with Biodiversity and Conservation. We have used our different backgrounds to try and ensure that we are catering for all student needs regardless of the stage of their studies. If you have any suggestions, we are always grateful for your feedback!

Our overall aim is to increase engagement and bridge the gap between the student and professional members of UKELA, and to ensure that students experience tangible benefit from being members. So far, we have been working on our social media usage to ensure students are aware of all relevant opportunities and events. We are also developing an Instagram page, to interact with students on a more collaborative and casual basis.

We are currently supporting the UKELA team to introduce new student initiatives like a photography competition and starting a student committee (where we can focus on ensuring that students have a meaningful position within UKELA, and can meet fellow student members). We are also currently involved in a desktop research collaboration with the Environmental Law Foundation (ELF). For this, we are looking into climate emergency declarations from local authorities in Northern Ireland and Scotland. If you are interested in joining in, please email charlotte.studentadvisor@gmail.com. Similarly, please get in touch if there is anything else we can do to enrich your experience as a member of UKELA or just to have a chat!

UKELA student members' Facebook group

Want to link up with fellow UKELA student members to share your views and have discussions during this time of social distancing? If so, please join our [UKELA Student members' Facebook group](#)!

Student publication opportunity

Interested in co-authoring a hot topic article with an environmental professional? UKELA provides an opportunity for students to publish their work in e-law, our members' journal which is circulated to over 1400 practitioners. Students are invited to email a short abstract of up to 500 words to our [student advisers](#). If selected, the Editorial Board will aim to pair students with a supervising practitioner in that field. Articles can be on the e-law issue theme or on any topic related to environmental law. All upcoming themes are available on the [website](#).

UKELA events

UKELA Annual Conference 2021: 14-18 June 2021

The Annual Conference is almost here! There is still time to book your place for the must-attend event of the year. We have a whole week of brilliant content to bring you and we are excited that it is almost here. Take a look at the programme and book your place on our website: [Annual Conference information \(ukela.org\)](#).

UKELA Scotland lunchtime legal update: 24 June 2021

The Environmental Rights Centre for Scotland (ERCS) will launch its legal advice service at the beginning of June. Join our Scotland team for a short, informative webinar designed to fit neatly into your lunch break. You will hear from In-house Solicitor Dr Ben Christman about ERCS's work and objectives for the coming year. All are welcome. Tickets are free for UKELA members, so do log in and [sign up](#) now.

UKELA North East: PFAS: The contaminant behind the hit film Dark Waters (incorporating UKELA NE AGM): 24 June 2021

Join our North East region for an online seminar where expert speaker, Dr Ian Ross, will provide an introduction to the PFAS group of chemicals followed by reflections on what is happening internationally and here in the UK. Ian will look at recent headlines from worldwide press and look to provide context drawing on his experience of legal cases, including his recent high profile expert witness experience in Australia. Following his talk, Ian will be available for a question and answer session. The UKELA NE AGM will follow. The event is free but requires registration via the [website](#).

Save the date

Annual Scottish Conference: 23 September 2021

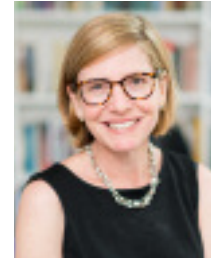
Join us for our Annual Scottish Conference 2021. Taking place online, we are looking forward to welcoming a wide range of expert speakers. We will be covering themes from COP26 through to Environmental Standards Scotland. It's not to be missed – all are welcome!

Full details including how to [book your place](#) coming soon, but, in the meantime, please save the date!

Not the wild law weekend seminar: 23 October 2021

Join us for a day of discussion and debate, following on from our April seminar. More details to come, so please keep an eye on mailings and the [website](#); bookings open later in the year.

The e-law 60 second interview



Professor Liz Fisher

I grew up in Australia and did my undergraduate Arts/Law Degree at the University of New South Wales before coming to Oxford to do my doctorate. I was a lecturer in Law at the University of Southampton 1998-2000 and took up a post at Oxford in 2000 and I set up the environmental law courses in the Law Faculty. I write widely on environmental law and administrative law and I am currently co-editing a book on the New South Wales Land and Environment Court with Justice Brian Preston. Other recent books include Elizabeth Fisher, *Environmental Law: A Very Short Introduction* (OUP 2017), Elizabeth Fisher, Bettina Lange and Eloise Scotford, *Environmental Law: Text, Cases and Materials* (2nd ed, OUP, 2019) and Elizabeth Fisher and Sidney Shapiro, *Administrative Competence: Reimagining Administrative Law* (CUP 2020). I am also General Editor of the *Journal of Environmental Law*.

What is your current role?

Professor of Environmental Law in the Faculty of Law and Corpus Christi College, University of Oxford

How did you get into environmental law?

Australia is a country that has amazing wilderness, some of the most progressive environmental laws and discourses in the world, but also a highly urbanised population and an economically significant primary resource sector. Growing up in that context and being a keen hiker gave me an appreciation of just how important environmental law is, and also how difficult environmental and planning decisions are. At university I kept gravitating to environmental law and environmental issues and was very lucky to have some wonderful mentors and role models who encouraged me to further study.

What are the main challenges in your work?

I am not a practitioner. My job is about building expert communities through teaching and scholarship. For environmental law that is challenging because environmental law is a difficult area of law to master. Fostering environmental law expertise requires a lot of thought, and hard work. To make matters more complicated those difficulties are often underestimated. There is an assumption that the subject is 'softer' than other areas of law (it's not) and that there are easy solutions to complex problems (there aren't). But while challenging, it is also incredibly satisfying work. I have fantastic academic colleagues both inside and outside Oxford, whom I have learnt a huge amount from

What environmental issue keeps you awake at night?

Occasional noise from our student neighbours!

What's the biggest single thing that would make a difference to environmental protection and well-being?

There are no magic wands when it comes to environmental protection. It requires robust institutional and legal architectures that draw on all of the resources of a constitutional democracy.

What's your UKELA working party of choice and why?

So technically not a working party, but UKELA's taskforce on Brexit did significant and thoughtful work. We are also in a time of environmental law reform and the work that working parties are doing in responding to proposals is really significant.

What's the biggest benefit to you of UKELA membership?

Being part of a community of decent and thoughtful professionals. I encourage my students to attend UKELA events and their feedback is nearly always about how amazing UKELA members are. I wholeheartedly agree!

Environmental law headlines

A selection of recent environmental law news and updates prepared by the teams at [Lexis®PSL Environment](#) and [Practical Law Environment](#).

Proposals to require mandatory climate-related disclosures by quoted companies, large private companies and LLPs

[Lexis®PSL Environment](#)

On 24 March 2021, the Department for Business, Energy and Industrial Strategy (BEIS) launched a [consultation](#) on its proposals to require mandatory climate-related financial disclosures by the following entities:

- UK companies currently required to produce a non-financial information statement.
- UK companies with securities admitted to the Alternative Investment Market, with more than 500 employees.
- UK companies not included in the categories above, with more than 500 employees and a turnover of more than £500 million and
- Limited liability partnerships with more than 500 employees and a turnover of more than £500 million.

These proposals were developed by the Task Force on Climate-related Financial Disclosures (TCFD) in line with the recommendations laid out in its [Interim Report](#) and [Roadmap towards mandatory climate related disclosures](#), published in November 2020. The proposed disclosures cover information aligned with the four pillars of the TCFD recommendations: (1) governance, (2) strategy, (3) risk management, and (4) metrics and targets.

Accepting the proposals would make the UK the first G20 country to mandate TCFD disclosures. If accepted, the proposals would be implemented through a new statutory instrument before the end of 2021 and would apply to accounting periods starting on or after 6 April 2022. This timeline would also satisfy the government's expectation for all listed companies and large asset owners to disclose non-financial information in line with TCFD recommendations by 2022, as set out in the [Green Finance Strategy](#).

The consultation closed on 5 May 2021.

For more information, see: [Government opens consultation on TCFD-aligned financial disclosures—LNB News 24/03/2021 36](#) and News Analysis: [Proposals to require mandatory climate-related disclosures by quoted companies, large private companies and LLPs](#).

European Commission reaches political agreement on draft text of Taxonomy Climate Delegated Act

[Practical Law Environment](#).

On 21 April 2021, the European Commission published a communication on EU taxonomy, corporate sustainability reporting, sustainability preferences and fiduciary duties, and directing finance towards the European Green Deal (COM(2021) 188 final).

The package of measures included an announcement that political agreement had been reached on the draft text of a Commission Delegated Regulation supplementing the Taxonomy Regulation ((EU) 2020/852) relating to climate change mitigation and adaptation (known as the Taxonomy Climate Delegated Act). The draft Taxonomy Climate Delegated Act contains a set of technical screening criteria that define which activities contribute to two of the environmental objectives contained in the Taxonomy Regulation (namely, climate change adaptation and climate change mitigation). It includes sectors such as energy, forestry, manufacturing, transport and buildings. Decisions on nuclear power and natural gas have been postponed. The Taxonomy Climate Delegated Act is also accompanied by an explanatory memorandum and a set of Q&As.

The Commission previously consulted on the draft Taxonomy Climate Delegated Act in November 2020, which received a high volume of feedback and has proven to be particularly controversial, with significant debate about what should be included on the 'green list'. The Communication clarifies the following issues:

- If an activity is not listed in the Taxonomy Climate Delegated Act, this does not mean it will automatically qualify as environmentally unsustainable. The Taxonomy Climate Delegated Act does not currently define how activities other than 'green' are to be treated.
- Activities that make a substantial, rather than a marginal, contribution to reaching EU environmental objectives are recognised as sustainable. Modifications have been made to the criteria to improve technical accuracy and usability.
- The current scope of the criteria will expand in the future to ensure that new sectors and activities, including transitional and enabling activities, may be added to the scope over time.

The Taxonomy Climate Delegated Act will apply from 1 January 2022.

For more information, see [Legal update, European Commission communication and legislation on sustainable finance and taxonomy](#).

European Commission adopts proposal for Corporate Sustainability Reporting Directive

[Practical Law Environment](#).

On 21 April 2021, the European Commission adopted a proposal for a Corporate Sustainability Reporting Directive.

The Commission's goal is to address deficiencies in the current regime under the Non-Financial Reporting Directive, and at the same time to expand its scope. It sees the proposed new Directive as the foundation of a consistent flow of sustainability information through the financial value chain and beyond. Under the proposed Directive, affected companies would have to report information on a full range of environmental, social and governance (ESG) issues relevant to their businesses.

The proposals would:

- Extend the scope of the current regime to all large companies, whether listed or not (and regardless of the number of employees), and to all companies listed on regulated markets (other than listed micro-enterprises). In recognition of the economic difficulties they face in light of the COVID-19 pandemic, requirements for SMEs would apply three years after they apply to other companies.
- Involve the development of one set of standards for large companies and a separate, proportionate set of standards for SMEs, which non-listed SMEs might choose to use voluntarily. The European Financial Reporting Advisory Group (EFRAG) would be responsible for developing these standards.
- Introduce more detailed reporting requirements, and a requirement to report according to mandatory EU sustainability reporting standards.
- Require information that is reported to be subject to a limited level of assurance (audit).
- Require companies to digitally tag information such that it is machine readable and feeds into the EU single access point.

The Commission will now engage in discussions with the European Parliament and Council. In parallel, EFRAG will start work on a first set of draft sustainability reporting standards, which it aims to have ready by mid-2022.

For more information, see [Legal update, EU narrative reporting: Commission adopts proposal for Corporate Sustainability Reporting Directive](#).

Government sets out new UK climate change commitments ahead of COP26

[Lexis®PSL Environment](#)

On 20 April 2021, the UK government [announced its intention](#) to enshrine into law a new climate change target, legally binding the UK to reduce its greenhouse gas emissions by 78% compared to 1990 levels by the year 2035. Achieving this target would put the UK more than three-quarters of the way to achieving its target of net zero emissions by 2050.

This target is in line with the [recommendations](#) of the independent Climate Change Committee (CCC) for the UK's sixth carbon budget, which will set a legal limit on the volume of greenhouse gases emitted by the UK between 2033 and 2037. Action to achieve this carbon budget will not however follow the 'four key actions' recommended by the CCC but will be reached through 'investing and capitalising on new green technologies and innovations'. The government also confirmed that this carbon budget would, for the first time, account for the UK's share of emissions from international aviation and shipping.

In his [speech at the Leaders' Summit on Climate](#) on 22 April 2021, Prime Minister Boris Johnson described this new emission reduction pledge as the UK rising to its obligation as a developed nation to 'do more' to support action on climate change, and called upon other countries to set similar ambitions to achieve the Paris Agreement's target of limiting global warming to 'well below' 2°C.

On 13 May 2021, BEIS published the [draft Carbon Budget Order 2021](#), proposing to set the sixth carbon budget in line with the government's announcement. The government intends to legislate for the new 2035 target before the end of June 2021.

For more information see: [Government sets out new UK climate change commitments ahead of COP26—LNB News 20/04/2021 92](#).

Decision on ending sale of petrol, diesel and hybrid vehicles by 2030

[Lexis®PSL Environment](#)

On 10 March 2021 the Department for Transport and the Office for Zero Emission Vehicles published a joint [response](#) to their consultation on bringing forward the date for phasing out the sale of new petrol, diesel and hybrid cars and vans.

The consultation was opened on 4 February 2020 and sought views on moving a ban on sales of new petrol and diesel cars from 2040 to 2035, or earlier if feasible. It also sought opinions on including hybrid vehicles in the phase out, the barriers to achieving the proposals, the expected impact of these proposals on industry and society, and what measures would be necessary to achieve an earlier phase out date.

The joint response confirms the phase out date will be brought forward to 2030, with all new cars and vans needing to be fully zero emission at the tailpipe by 2035. This new date for the phase out had previously been announced in the government's [Ten Point Plan for a Green Industrial Revolution](#) published on 18 November 2020. Between 2030 and 2035, new cars and vans can be sold if they have 'significant zero emissions capacity'. The definition of this term is set to be consulted on later this year but will likely include plug-in and full hybrid vehicles.

The consultation response also confirms over £2.8bn of investment to boost ownership of zero emission vehicles, accelerate the rollout of charging infrastructure and develop the UK's electric vehicle supply chain.

With cars and vans representing 19% of all domestic emissions, this phase out is set to play a key role in helping the UK reach its greenhouse gas emissions reductions targets and follows recommendations by the CCC in its June 2020 [Progress Report to Parliament](#). In this report the CCC actually recommended bringing forward a ban on new petrol, diesel and hybrid cars and vans to 2032, extending the ban to cover motorcycles and introducing a Zero Emission Vehicle Mandate to require companies to sell a minimum share of zero-carbon vehicles.

As the phase out only applies to new vehicles, owners of existing petrol, diesel and hybrid cars and vans will still be able to use, buy and sell their vehicles.

For more information, see: [Government issues decision on ending sale of petrol, diesel and hybrid vehicles](#).

Upper Tribunal decisions on fluff and EVP landfill tax liability reversed on appeal (Court of Appeal)

[Practical Law Environment](#).

In *Customs and Excise Commissioners v Devon Waste Management Ltd* and others [2021] EWCA Civ 584 (22 April 2021), the Court of Appeal reversed the decision of the Upper Tribunal (Tax and Chancery), which had allowed appeals by waste management companies against two April 2018 decisions by the First-tier Tribunal (Tax) (FTT) relating to the use of fluff (mainly black bag waste) and 'engineered into the void permanently' (EVP) material in the construction of landfill cells on which the landfill operators claimed that no landfill tax was due. The issue was whether this amounted to 'disposal of material as waste' for the purposes of section 40 of the Finance Act 1996 and was, therefore, subject to landfill tax. Section 64(1) of the Finance Act 1996 clarifies that a disposal of waste occurs 'if the person making the disposal does so with the intention of discarding the material'.

The Court of Appeal decided that in determining whether there was a disposal of waste, the question was not whether the landfill operator used the fluff. Instead, it was whether they disposed of it as waste because they disposed of it with the intention of discarding it. The court set out a non-exhaustive list of factors that might be relevant in addressing that question. The use the landfill operators made of fluff and EVP was insufficient to negate their otherwise obvious intention to discard the material.

The decision is important for similar historic landfill tax disputes. However, the amendments to the definition of 'taxable disposal' from 1 April 2018 mean that this issue is not relevant for disposals after that date.

For more information, see [Legal update, Upper Tribunal decisions on fluff and EVP landfill tax liability reversed on appeal \(Court of Appeal\)](#).

Environment Bill reforms on recycling

[Lexis®PSL Environment](#)

On 24 March 2021, the Department for Environment, Food and Rural Affairs (Defra) [confirmed](#) that the Environment Bill will introduce reforms to waste management in the UK.

The following three major reforms were proposed:

- 1 A deposit return scheme to incentivise consumers to return empty drink containers to retailers. This scheme will cover England, Wales and Northern Ireland, though a compatible scheme is being developed in Scotland.
- 2 Extended producer responsibility for packaging to place the cost of managing and recycling packaging waste with manufacturers. This scheme is set to be implemented across the UK and will introduce higher fees for packaging that is difficult to reuse or recycle.
- 3 Consistent recycling collections for all households and businesses in England.

The proposals are intended to stimulate the creation of alternatives to single-use plastics and make it easier for individuals to recycle.

Consultations on the operation, design, implementation and enforcement of both the [deposit return scheme](#) and the [extended producer responsibility](#) scheme were also launched. The deadline for responding to these consultations is 4 June 2021. A consultation on [making recycling more consistent](#) across England was later published on 7 May 2021, and closes to responses on 4 July 2021.

In the [Queen's Speech](#) on the 11 May 2021, it was confirmed that the Environment Bill, which had timed out in the last parliamentary session, will be brought back in this parliament and is expected to be in force by the Autumn.

For more information see: [Environment Bill to introduce major recycling reforms—LNB News 25/03/2021 38](#) and [Defra launches consultation on consistency in household and business recycling—LNB News 07/05/2021 67](#).

Correct approach when planning permission granted without Habitats Regulations appropriate assessment (Court of Appeal)

[Practical Law Environment](#).

In *R (Hudson) v Royal Borough of Windsor and Maidenhead* and others [2021] EWCA Civ 592 (26 April 2021), the Court of Appeal considered the correct approach to determining a challenge to a local planning authority (LPA)'s decision to grant planning permission without carrying out an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (SI 2017/1012) (also known in the UK as a Habitats Regulations assessment (HRA)). The LPA granted planning permission for Legoland's development of a holiday village on a site that includes veteran trees and is near to Windsor Great Park. The Park is designated as a special area of conservation (SAC), and so requires an HRA if the development is likely to have a significant impact on it.

The court concluded that the test for whether judicial review was barred under section 31(2A) of the Senior Courts Act 1981 was not different in practice from that formulated for appropriate assessments in *Gemeinde Altrip v Land Rheinland-Pfalz* (Case C-72/12) EU:C:2013:712. The former test is whether the outcome would have been substantially different if the HRA had been undertaken. The latter test is whether the planning decision would not have been different if the HRA had been undertaken. What mattered in each case was the seriousness of the breach and whether the failure deprived the public of a proper opportunity to comment upon, and object to, the proposals and thereby caused prejudice.

For more information, see [Legal update, Correct approach when planning permission granted without Habitats Regulations appropriate assessment \(Court of Appeal\)](#)

Environmental law for the future

Reflecting on future learning pathways for environmental law



Priscila Carvalho and Catalina Spataru

At a glance

- There are interconnected global challenges being aggravated by the climate emergency, which require an urgent shift away from institutional and disciplinary silos towards a new mindset.
- Complex problems such as the resource nexus are commonly assessed through quantitative scientific methods, but the analysis of the legal architecture in which resource trade-offs and conflicts happen is just as important. Thus, advancing discussions beyond the dominant technocratic approach into a legal sphere is key.
- By combining computer science (through the use of Artificial Intelligence and machine learning algorithms to identify patterns in big data analysis), law, resource efficiency and trade-offs between sectors and resource use (through metrics, indicators and models), advances can be promoted towards ecological intelligence.

Overcoming disciplinary silos

Worldwide, we are facing unprecedented challenges from pollution and the climate emergency, to water scarcity and pandemics. Between 1950 and 2015, global annual plastic production increased from 2 million tonnes to 381 million tonnes, but only 9% of the total amount discarded was recycled.¹ Most of that plastic currently sits in landfills, dumpsites and oceans or has been incinerated, emitting polluting gases. The increasing temperatures, rising sea levels and shifts in river flow and rainfall patterns due to climate change aggravate the problem and result in more frequent and severe natural disasters. The number of weather-related hazards has tripled since 1980, representing 74% of all reported losses (US\$2.6 trillion) and 61% of all lives lost (1.4 million) in disasters.² This trend is predicted to continue, so conflicts and risks are becoming further amplified, with higher losses and impacts that certainly undermine current and future development efforts that respect planetary boundaries and human rights. Worldwide, the IPCC estimated that 680 million people live in the low-lying coastal zones, a figure that is projected to increase to

more than one billion by 2050.³ Around 40% of the global population lives within 100 km of the coast and is at risk of sea level rise which could see places like Rio de Janeiro, New York and Shanghai underwater.⁴ Supply security issues are on the rise with regards to water, energy, food and land. Half a billion people are living in areas marked by erosion⁵ and more than 1.4 billion people are living in areas marked by extremely high water vulnerability (a combination of the highest levels of physical water scarcity and the lowest levels of drinking water services).⁶ As demand grows, competition for resources increases and more conflicts involving water, energy and food are expected, with impacts on livelihoods and the environment.

Significant progress in environmental law, policy and regulation has been made over the past century, especially in the development of more integrated pollution controls, but there is much more to be done. New trajectories are needed to address the environmental issues that humanity is currently facing. There is a need to move from development and planning to implementation and results. This could start with educational environmental programs that combine environmental law with other fields, such as computer science, by expanding the learning based on laws (such as those relating to clean water, clean air, endangered species and all other laws) with case studies and practice at local, national and international levels, to include a wise use of technology and interdisciplinary methods. This includes the use of technology and models to sustain the changes required in regulations and laws. Furthermore, it would broaden the capacity to equip individuals with the necessary skills to analyse problems holistically from a range of disciplinary perspectives.⁷ Even though universities have been successful in implementing sustainable development into management practices, the radical curricula reform that could fully equip students to put society on a more ecological and sustainable track is yet to happen.⁸ This is unsurprising because ecological intelligence, which rejects the division of analysis into disciplines and favours experiential learning,⁹ is the most difficult form of environmental education.¹⁰ However, it is exactly the fragmented disciplinary

approach that continuously makes it difficult for individuals to fully understand and address the challenges emerging from the dynamic context of the climate emergency where the speed and scale of social, economic and ecological changes are on the rise, while inequalities are being exacerbated in ways that are impossible to tackle within knowledge silos. For example, the resource nexus notion – critical interlinkages between two or more resources (water, energy, food, land and materials) used in a given context towards systems of provision¹¹ – requires a holistic approach to support sustainable development of natural resources through the understanding of trade-offs among sectors and interdependencies between systems.¹² Given that justice aspects are underexplored in this body of research,¹³ legal scholars can help develop new frames, plural pathways and fairer solutions to resource use and access, considering who is currently being excluded from preferred solutions to conflicts and decision-making processes.

The water-energy-food nexus is a typical example of a complex problem with challenges to find optimal solutions due to limitations of incomplete, but constantly evolving knowledge bases, shifts in conflicting interests, different temporal and spatial scales, and the impossibility of reaching universal agreement on how the problems should be framed.¹⁴ The law faces escalating challenges in tackling complex problems of this kind, which, by definition, do not accept definite answers and should constantly be revisited in light of its ever changing nature of conflicts and shifting interests. These challenges require an excellent understanding of the law and of policy issues, as well as skills oriented in the context of interdisciplinarity.¹⁵ Complex problems are assessed through inter-/transdisciplinary research, participatory processes, transparency, theoretical innovation, systems thinking, iterative participatory re-framing, pragmatic solutions, a possibility-driven approach and threshold delimitation.¹⁶ From a legal perspective, the conflicts emerging from complex problems such as the water-energy-food nexus require consideration of the substantive, institutional and procedural dimensions of decision-making processes to advance solutions in fair and equitable ways. The balancing of legal principles¹⁷ through inclusive, in-depth and transparent procedures under a dedicated second-degree institutional environment that transcends those of existing sectors has been developed as a novel contribution of interdisciplinary research in this field, combining law with social sciences and quantitative approach based on metrics to capture the critical interlinkages between water and electricity resource use.¹⁸

Expanding the interdisciplinary dimensions of environmental law and teaching

Even though complex problems such as the resource nexus are commonly assessed through quantitative scientific methods, the analysis of the legal architecture in which trade-offs happen is just as important, so advancing discussions beyond the dominant technocratic approach into a legal sphere is key to manage rising conflicts and potential governance shortcomings fairly and inclusively. However, in the context of disciplinary silos, the technical and normative institutional dimensions of complex problems are rarely taught together. Within the former, issues are usually assessed in physical terms through metrics, indicators, integrated modelling, life-cycle assessment, footprint analysis, material flow and accounting, with a focus on risks, security and economic rationales. Within the latter, laws, policies, regulation, planning and institutions are analysed considering aspects of co-governance of resources, environmental justice, regulatory capture, policy coherence, scale and politics. The move away from the institutional and disciplinary silo mentality is key to address the rising complexity of problems, as well as to enhance understanding from theory to practice.

We have seen advances and innovative teaching approaches, such as the teaching module Metrics, Modelling and Visualisation of the Resource Nexus module developed by Spataru.¹⁹ This module follows an interdisciplinary and multidisciplinary approach, combining indicators and metrics with modelling and scenarios of resource use, practical case studies to understand trade-offs considering different policies and regulatory conditions, while also being supported by interactive workshops seeking to raise awareness on environmental law. These are usually part of interdisciplinary programmes targeting students from different disciplines that are interested to pursue a truly interdisciplinary approach to the economics, policies and strategies of sustainable resources. On the other hand, at undergraduate level, we have also seen the move away from education for sustainable development towards ecological intelligence. For example, the global environmental justice strand of the Global Citizenship Programme offered by University College London presented different scientific, social, technological, anthropological, legal and political aspects of climate change to undergraduate students spanning diverse disciplines.²⁰ Both approaches are useful to demonstrate ways in which education is evolving across the three point-scale as developed by Holder:²¹ education for sustainable development (ESD), sustainability literacy and ecological intelligence.

In order for environmental law to overcome the unprecedented challenges from pollution and the

climate emergency to water scarcity, we propose enhancing the trajectory of teaching it, by combining computer science (through the use of Artificial Intelligence and machine learning algorithms to identify patterns in big data analysis) law, resource efficiency and trade-offs between sectors and resource use (through metrics, indicators and models). This can promote important shifts in the way that interdisciplinarity and multidisciplinary is conceptualised and implemented, with the potential to promote positive change in the operation of resource use, social behaviours, markets, governance practices and cultures. Such skills and knowledge will equip environmental lawyers to obtain and analyse big data, to understand resource trade-offs, critical interlinkages of systems of provision to detect policy failures, monitor progress and to take action. This can help transform the way in which disciplines and sectors are working, including how and by whom information and the understanding of complex problems is being developed and responded to. Law programmes are designed to comprise specific modules and therefore lack a more holistic approach due to disciplinary silos. The same is true for most programmes offered by universities, so learning and building on successful approaches will be key. We highlight the inclusion of the normative-institutional dimension of the water-electricity nexus in research and teaching as one of the successful approaches to bridge knowledge silos between law and other highly technocratic areas of knowledge, assessing the trade-offs and conflicts of the resource nexus.

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Prof Catalina Spataru's expertise is in the field of global energy and resources, from theoretical investigations to implementation research and practice to support policy makers and sustainability agenda.

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Legal rights for rivers, restoring the natural order, COP26

Emily Shirley



At a glance

- This article argues that the UK has failed to meet its legal targets for conserving the natural order of rivers. This is because the current laws aimed at protecting and improving the water environment are ineffective.
- The article also explores the rights of rivers across international jurisdictions, drawing from examples like the Whanganui River and the Turag River case.
- Finally, the article suggests that the COP26 should be used by the UK Government as an opportunity to declare that UK rivers are held on public trust.

Our human-centred legal order has provided occasional successes, but generally has been a dismal failure in conserving the natural order.¹ Take our rivers in the UK, for example. Despite international treaties and protocols,² European³ and domestic laws purportedly aimed at protecting and improving the water environment, our rivers are in fact not improving as they need to be, and in many cases, such as rare chalk streams,⁴ being irrevocably damaged with the high risk of being lost completely.

Data from the Environment Agency,⁵ Scottish Environment Protection Agency⁶ and the Northern Ireland Environment Agency⁷ illustrate how bad things have got for our rivers, even in less populated areas.

We have dramatically failed to meet our legal targets for conserving the natural order of rivers. The increasing onslaught of sewage pollution,⁸ over-development on or near the riverbanks, barriers to natural river flows, pollution from farming and adverse impacts from climate change are just some of the harms. It is clear that our current policies and laws that are supposed to stop pollution and protect rivers are not working.

It is not just in the UK that rivers are in bad shape. Rivers are suffering globally with pollution and decreased flows. The climate crisis is being manifested through water. Droughts and floods are increasing in frequency and severity from the Mekong River to the arid Rio Grande, from the plains of Africa to the world's largest tropical wetland, South America's Pantanal.

Rivers and their floodplains have an essential role to act as shock absorbers to climate change. Governments must prioritise strategic interventions that allow rivers to keep their natural features intact and allow natural processes to occur.⁹ Governments (and business leaders) must prioritise climate

adaptation actions that include rivers as being fundamental to the nature-based solutions for solving the climate crisis.¹⁰

A significant shift in thinking is therefore needed. We need to understand that our human existence is completely dependent on the natural order and its rules. Our secondary human rules must speak and comply with the primary natural order and play second fiddle to them in every aspect. This is if we intend to carry on living on the planet. How we legally treat and manage our rivers is key to adapting and mitigating the adverse impacts of climate change. This would be greatly assisted by giving our rivers their own legal rights.

A re-established natural order of rivers would arguably help to stop the harms mentioned above. Our law, therefore, needs to be re-framed so that our rivers become part of us like our parents and children are. This would give our rivers their 'own' legal rights so that the public concerned¹¹ is able to hold any Government body and/or agency (such as a water company or an environmental agency) to account for failing to look after or for causing or allowing harm to our rivers.

Back in 1299, King Edward I judged a dispute between Juliana the Washerwoman and the Mayor of Winchester.¹² He ruled that 'water has always been common' and he went further by creating regulations that stated that polluting substances such as blood and human excrement could not be put into the river. The common law ruling and the regulations that accompanied it are considered to be one of the earliest examples of environmental law in Europe.¹³ The law has not been overruled; it has simply been forgotten by successive UK rulers, governments and courts.

Rivers have recently been acquiring legal rights around the world and if done correctly, could help to re-establish the natural order. The most 'well received'¹⁴ examples appear to be where indigenous people have fought long and hard for the pre-existing river rights (as understood by the indigenous people), that are then recognised and accepted within the 'new' imposed legal order of the more recent European settlers.

The Whanganui River in New Zealand (NZ) is one such example. It received legal rights in 2017 under the

settlement of the Treaty of Waitangi, partly to sidestep the contentious issue of who 'owned' the River, the Maori or NZ. Legislation created a new body, Te Pou Tupua to act as a guardian for the Whanganui.¹⁵ Another example is the Rio Atrato. It was given legal rights by the Constitutional Court of Colombia to assist in protecting the livelihoods and cultures of people dependant on the river.

Bangladesh was the first country to grant all of its rivers legal rights in the landmark Supreme Court judgment in 2019 known as the Turag River case.¹⁶ Its reasoning was largely based on the public trust doctrine¹⁷ and in response to the dire state of the Turag and other rivers (the Turag river is 'dead' as many of the other rivers in Bangladesh are, or close to).¹⁸ The Order,¹⁹ however, as issued by the Court, is seen by some to collide with poorer peoples' interests on the ground.²⁰ The poor might be less likely to be able to comply with the financial penalties and also would suffer from the proposed evictions. It must, however, be borne in mind that the consequences of the ruling and the Order have not been fully played out.

The Ganga and Yamuna Rivers case²¹ was an effort to get both rivers designated as living entities but it was overruled in the Indian Supreme Court as being legally unsustainable. How for example, reasoned the Court, would one be able to enforce a ruling when the rivers cross into other countries? In the US, there are examples of rivers obtaining rights²² and interestingly the UK, although bereft of legal rights for rivers, has recently adopted a bylaw to protect the marine kelp forest in Sussex.²³

An important lesson from the early river rights cases must be that all those connected to the rivers must be included in the development of river rights, even if in places like the UK indigenous people might be considered extinct! This fits in nicely with the obligations under the Aarhus Convention regarding public participation as long as the rules of the natural order are not ignored nor waived to permit unacceptable activities by those with vested interests.

Logically, legal rights would make our rivers important in their own right and make protecting those rights fundamental in all decision-making. Once the rights of our rivers are deemed to be legally held on trust by the Government and/or its agencies, any breach of those rights allows anyone to represent the rivers and to seek a legal remedy. Because our legal system is unaffordable to most, an independent body, akin to the Te Pou Tupua in NZ, with adequate funding needs to be set up, to represent the 'new' legal rights of the rivers, at all times.²⁴

Now must be the time to ask that every country at the COP26²⁵ adopts a Declaration on Legal Rights for Rivers. Once the Declaration on Legal Rights for Rivers

is adopted, each country will need to ensure that all those living on and/or concerned with rivers are included fully in developing the legal rights that need to be tailored to individual circumstances. The Declaration of Legal Rights for Rivers would help to re-establish the natural order of rivers and at the same time help us to achieve our Nationally Determined Contributions under the Paris Agreement.

Where to start in the UK?

There is a new group of lawyers and environmental campaigners working on creating a Declaration for Legal Rights for the Thames and its tributaries as a first step.²⁶ Members of the group include those enthused about the Thames and other rivers, river community groups and those who want to see the law changed and developed to better protect the environment. It is hoped that work done towards the adoption of the Thames Declaration will help others in the UK and elsewhere to obtain legal rights for their rivers.

Importantly as part of the wider campaign, the group hopes to present a 'generic' Declaration for River Rights at COP26 for individual countries to adopt, and to implement, as part of their Nationally Determined Contributions towards reducing carbon under the Paris Agreement.

Emily Shirley is the UK advocate for Our Children's Trust. She is also a member of the Environmental Law Foundation, UKELA, JUSTICE, and ALBA.

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- 26 Contact Emily Shirley at climaterecovery1@gmail.com for more information

The role of expertise in environmental law

Nina Pindham



At a glance

- Specialist tribunals should feature more in environmental law.
- Such tribunals appear to lead to more environmentally 'protective' judgments.
- There are numerous questions on the availability and role of scientific expertise and the need to preserve judicial discretion in cases concerning apparently incontrovertible scientific evidence.

Due to a typically chaotic barrister's diary, this article has been mostly drafted during a lengthy train journey. Such circumstances are not conducive to deeply insightful thinking given the impossibility of carrying out meticulous research,¹ but do allow for a mode of thinking amenable to the forecasting-style article I have been asked to write. What has emerged is a fluid series of thoughts based on practical experience which, perhaps inevitably, mimics the fluidity of the circumstances in which this article was drafted.

The article starts with what has troubled me most in my experience at the bar, moves on to consider long-standing but unrealised proposals for solutions, and highlights what I foresee as a key issue for environmental law.

The need for specialist expertise

I formally commenced my practice as a barrister specialising in environmental law in October 2013. Therefore, I cannot lay claim to the benefit of hindsight from decades of experience. But even in my comparatively short time at the bar, I can immediately call to mind multiple instances where it was apparent that the rooms in which environmental legislation was being drafted did not contain scientists.² The common theme was not poor science so much as a simple failure to have regard to it. Faced with a total void (as opposed to an environmentally-protective interpretation) in each instance, the court had no choice but to apply the legislation as drafted. The result? Events of environmental harm going unpunished, unremedied and unabated. It follows there is a need for specialist expertise when legislation is being drafted. It equally follows that I cannot agree with the Environment Secretary's statement that Natural England's 'precious expertise' is being 'distracted by highly prescriptive legal processes'.³ If adequate resources were allocated to this precious

expertise utilised at the right stage – when these 'highly prescriptive' laws were being drafted – they would be effective rather than distracting. The second issue which perennially arises is the standard of review by the courts. Anyone who has ever practised public law will know the courts assiduously avoid straying into the forbidden territory of policy/merit-based disputes. That is correct, for it is not appropriate for a judge, who may have last seen a lab bench in the 1980s, to determine what the outcome of a discretionary decision based on reasonable scientific data should be. Wide deference to discretionary decisions of expert public bodies is warranted. But the result is a gulf between the consequential hands-off standard of review and what will be various seemingly reasonable expert views. Into that gulf may fall cases where the scientific evidence does not, in fact, substantiate the decision.

The tribunal system was meant to fill that gap, given the opportunity for qualified experts to sit on panels adjudicating disputes. A qualified expert has the legitimacy to interrogate the substance of a dispute which the courts otherwise lack. The initial iteration of the Environment Bill duly sent the new 'environmental review' procedure off to the tribunal with Defra trumpeting the merit of having experts hearing environmental disputes. But these experts were limited to the hands-off standard of review (being limited to applying judicial review principles only). I cannot see a world in which telling someone with a doctorate or decades of experience, or both, in the subject matter of the dispute they must set aside that expertise and apply the intensely legal *Wednesbury* standard of review would ever work. If the standard of review is *Wednesbury* (applying judicial review principles) then the appropriate forum for environmental review is the Administrative Court, which is what the Environment Bill now provides for.

However, the majority of commentators view it as inappropriate to apply judicial review principles to environmental disputes.⁴ These often involve satisfaction of a scientifically determined metric using complex models requiring multiple assumptions as input. An adverse outcome nearly always involves unexpected consequences and/or uncertain science. If the outcome had been anticipated or the science established, adverse environmental consequences would have been prevented or at least been preventable. Rigorous scrutiny by a panel including those with expert qualifications with the benefit of the

gold standard of dispute resolution – arguments on both sides – would go some way to developing the systems and knowledge needed to anticipate such consequences in the future and/or come up with novel solutions for uncertain situations. By limiting scrutiny of environmental decisions to judicial review principles, the Environment Bill deprives us of an opportunity to best figure out what went wrong and prevent that from happening again in the future.

There is, therefore, a case to be made that the Environment Bill has got it wrong and environmental review should be sent to the tribunals (ideally immediately to the Upper Tribunal) to be heard by a panel which includes appropriate experts empowered to actually utilise their expertise. This is not a novel approach: many other countries have specialist environmental courts with expert members. Nor is it a novel concept even in this jurisdiction. Initial calls for some form of specialist environmental court or tribunal came as long ago as 1989 by Sir Robert Carnwath,⁵ and academics, including Professor Macrory who has been preeminent in this field, have been writing about the need for a specialist environmental tribunal including experts for decades.⁶

Now, we do have a specialist environmental tribunal (since 2010). However, whilst I have appeared in environmental law claims before the County Court, Magistrates' Court, Crown Court, First Tier-Tribunal (Information Rights), Upper Tribunal (Lands Chamber), High Court, Court of Appeal, and the United Nations, I have never appeared before the First-tier (Environment) Tribunal.⁷ So whilst we do have a specialist environmental tribunal, its jurisdiction is extremely limited.

As it is, the House of Commons' Environmental Audit Select Committee's 2019 report 'Scrutiny of the Draft Environment (Principles and Governance) Bill' remains correct in its conclusions that 'the Office for Environmental Protection's enforcement procedure does not achieve equivalence with the European Commission's powers as it is limited to administrative compliance rather than achieving environmental standards and outcomes.'⁸ Their recommendations also remain valid:

148. We recommend that [...] the enforcement mechanism must go beyond that of traditional judicial review) [...]

152. We recommend the Government looks further into a bespoke enforcement procedure and an expansion of the role and remit of the General Regulatory Chamber in the First-tier Tribunal. For example [...] [t]he tribunal would undertake a substantive review of the authority's decision not to comply with the notice. Any failure to comply with a decision should amount to contempt...

Are specialist tribunals better for the environment?

The short answer based on admittedly cursory research is yes, it appears so. Two examples stand out: Finland and New Zealand.

In Finland the courts are limited to reviewing the legality of the decision, but in cases involving specified environmental legislation the court sits with qualified expert members. It is empowered to amend permits or conditions on consents (though if the matter requires a fundamental reconsideration, it is rightly restricted to remitting the decision back to the decision-maker). This court has carried out detailed examinations of modelling used to predict environmental effects, in one case labelling it as too optimistic and effectively imposing additional monitoring requirements (a solution to uncertainty in many cases). In another case it rejected a model entirely based on its poor quality.⁹ The result of this process was an enhanced requirement for rigour and accuracy in line with the precautionary principle.

Similarly, the New Zealand Environment Court also sits with qualified experts. The majority of cases are appeals but they are heard as a fresh hearing on the merits. The court is not constrained to re-hearing the evidence from first instance.¹⁰ This is likely to lead to more scientifically robust decisions given the iterative nature of scientific knowledge and the importance of up-to-date information.

The role of science in specialist tribunals

From the above, the reader is likely to assume that I am wholly in favour of the deployment of science and scientific principles in the judicial process. That is true to a point: scientific knowledge is essential when drafting environmental legislation and substantively determining environmental disputes. But I worry science could be used to circumscribe the rightfully independent jurisdiction of the courts, predetermining outcomes and limiting judicial discretion.

The fundamental challenge for environmental law has always been how to regulate for uncertainty. The result is an inherent legal discomfort, as the law needs to be certain. Severe sanctions (often criminal) demand it. Thus, when it is available, scientific knowledge is relied on as providing the necessary comfort and objective certainty that a fact is true. But 'science' does not constitute truth; it is only evidence. Established science is merely a hypothesis that has not yet been disproved. Sheila Jasanoff was right to point out that despite offering the superficial appeal of an 'objective' answer, science will never be able to fully

serve the needs of the law (and vice versa).¹¹ Further, scientific evidence generated for litigation may never be subjected to the normal scientific process of ongoing communal scrutiny and peer review.¹²

My fear is also based on experience. Mitt Romney, when governor of Massachusetts, sought to reintroduce the death penalty on the basis that science allowed for a 'no doubt' standard of proof. In an interview at the time, he said:

I'm hoping [the Massachusetts House of Representatives and Senate] take a look at this and say 'you know, this removes the major weakness in death penalty statutes...' The weakness in the death penalty statutes in other states, of course, is the fear that you may execute someone who is innocent. We remove that possibility.¹³

The belief that science offers a failsafe guarantee is, of course, totally misplaced. This confidence in the ability of science to deliver the right answer misunderstands the very nature of science. It is so effective precisely because it never assumes it offers a failsafe guarantee. Yet it remains the case that attention still focuses on outcome (the answer) rather than process (constant scepticism). The product of that failing is a wrongful reliance on science to give the 'right' answer, constraining decision-makers to determine disputes in line with this 'one and only' answer.

A further concern arises because environmental law practitioners are all too aware of the deeply politicised nature of their field. Environmental disputes are inevitably disputes about values as much as science.¹⁴ Reliance on an apparently value-free objective process and answer is therefore all too tempting. However, the apparent certainties of science are always subject to the values and biases of those (1) designing the experiment / model / techniques employed, (2) carrying out the research, (3) collating and assessing the data, and (4) interpreting it.

So, should a fully functioning specialist environmental tribunal come to pass, as it ought to, I hope it subjects scientific evidence to the same rigorous scrutiny as all other forms of evidence and gives it no higher status than that. Most of all, I hope that it does not defer to 'the science' in a way that it absolves itself of its responsibility to determine what justice actually requires.

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Endnotes

- 1 Though I would like to give special thanks to the team of No5 librarians for their typically astonishing diligence in providing remote assistance under any circumstances, trains now being added to boats, multiple airport runways, countless European roadsides, seaside cottages in Nova Scotia, a market in Iran, and a mountain in Nagaland.
- 2 The regulations being drafted to establish long-term targets under the Environment Bill do benefit from expert scientific input; at least in relation to defining the target.
- 3 Environment Secretary George Eustice speech to the Wildlife Trusts, 18 May 2021, available at <https://www.gov.uk/government/speeches/environment-secretary-speech-at-delamere-forest-on-restoring-nature-and-building-back-greener>.
- 4 Perfectly articulated by Professor Eloise Scotford in her written evidence to the Public Bill Committee: "judicial review principles are fundamentally inappropriate to resolve many breaches of environmental law, which do not necessarily involve unlawful action by a public body but simply a failure to get to grip with a policy issue. As a tool of accountability in public law, judicial review is not designed to enforce the meeting of environmental standards and targets or other environmental requirements, nor to oversee 'effective, proportionate and dissuasive' penalties for failure to comply with environmental law (as much EU environmental law requires)", paragraph 23, available at <https://committees.parliament.uk/writtenevidence/9727/pdf/>.
- 5 R. Carnwath, *Enforcing Planning Control* (HMSO 1989).
- 6 The lengthy history of the development of a specialist environmental tribunal has been summarised by Professor Macrory, see R. Macrory, 'Environmental Courts and Tribunals in England and Wales – a Tentative New Dawn', *Journal of Court Innovation* Volume 3:1, 62-78.
- 7 Demonstrating exactly Professor Macrory's point about the complexity of differing and overlapping jurisdictions engaged in environmental law: R. Macrory, 'Maturity and Methodology': A Personal Reflection', *Journal of Environmental Law* (2009) Volume 21:2, 253. It may also demonstrate that the civil sanctions regime is working well, given the lack of disputes.
- 8 Environmental Audit Select Committee, 'Scrutiny of the Draft Environment (Principles and Governance) Bill' (2019), paragraph 147, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1951/195102.htm>.

- 9 T. Paloniitty and N. Kotamaki 'Scientific and Legal Mechanisms for Addressing Model Uncertainties: Negotiating the Right Balance in Finnish Judicial Review?' *Journal of Environmental Law*, 19 March 2021, 1–26.
- 10 There have been criticisms that the New Zealand Environment Court has strayed too far into policy decisions, however. See C. Warnock, 'Reconceptualising the Role of the New Zealand Environment Court', *Journal of Environmental Law*, Volume 26:3 (November 2014), 507–518.
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Student submissions

The potential for the World Court to address climate justice: a Pacific initiative to request an Advisory Opinion from the International Court of Justice



Aoife Fleming and Jule Schnakenberg

At a glance

- Youth activists from the Pacific aim to request an ICJ Advisory Opinion on climate change.
- An ICJ Advisory Opinion on climate change can cement legal understanding of the climate science and provide guidance to domestic and regional courts dealing with climate cases.
- In particular, new pathways are opening for the development of international law through human rights law.

*"A human rights perspective on climate change not only provides a stark warning of what is at stake – it also gives us a beacon of hope that we can solve this problem together."*¹

John H. Knox, former UN Special Rapporteur on human rights and the environment

Introduction

The climate crisis is a threat to human life, and it is hitting certain regions and communities harder than others.² Despite low levels of economic development and historic greenhouse gas-emissions, the Pacific is one of the most adversely affected regions in the world.³ Natural disasters, rising sea levels, food insecurity and forced relocation are just a few of those hazardous impacts. Young generations around the world are advocating for more ambitious and urgent climate action,⁴ including young people from the Pacific who are acting not as victims, but rather as resilient and optimistic activists for a stable and inhabitable planet for future generations. The [Pacific Island Students Fighting Climate Change](#) (PISFCC) are a group of youth from several Pacific Island countries advocating for the use of the international legal system to achieve these ends. They are asking the UN General Assembly to request an Advisory Opinion on climate change and human rights from the International Court of Justice (ICJ). This would be an

opportunity for the ICJ to issue a progressive Advisory Opinion that would cement consensus on the scientific evidence of climate change, provide guidance for domestic and regional courts to adjudicate climate cases, and to integrate human rights and environmental law. This article will explore whether the ICJ is indeed likely to issue an Advisory Opinion with such outcomes by examining past cases and analysing the relevant literature. First, the background of the request for an ICJ Advisory Opinion will be examined. Then, each of the claims of the potential positive impact of an Advisory Opinion by the ICJ will be explored before the paper concludes with a brief reflection on the potential for an ICJ Advisory Opinion to achieve global progress on climate justice.

Background on the request for an ICJ Advisory Opinion on climate change

How to request an ICJ Advisory Opinion

The purpose of the ICJ advisory jurisdiction is 'not to settle – at least directly – disputes between States, but to offer legal advice to the organs and institutions requesting the opinion.'⁵ Advisory Opinions are not legally binding upon States, nor the community of States, and do not have a *res judicata* effect.⁶ Pursuant to Article 96 of the UN Charter, the General Assembly (UNGA) and the Security Council may request an ICJ Advisory Opinion by adopting a resolution to that effect. Other UN organs and specialized agencies which are authorized by the UNGA may also request an Advisory Opinion.⁷ In the UNGA, each UN Member State is represented, and each State has one vote. The resolution for an ICJ Advisory Opinion must be adopted with a simple majority of votes.⁸ Pursuant to Article 65 of the Statute of the International Court of Justice, the Court may give an Advisory Opinion on any legal question. If the question is not legal in nature, the Court may decline jurisdiction. This has happened only once before in 1996.⁹

The 2011 initiative for an ICJ Advisory Opinion on climate change

In 2011, global consensus on greenhouse gas reduction seemed a distant dream for many vulnerable nations, including for the Republic of Palau and the Republic of the Marshall Islands. Just two years before, the meeting of the United Nations Framework Convention on Climate Change (UNFCCC) in Copenhagen in 2009 had failed.¹⁰ Global progress towards an agreement on climate change mitigation seemed far away due to consistently being hindered by those states responsible for a large percentage of the current and historic emissions such as the United States of America. As a result, the climate-vulnerable Pacific Island States of Palau and the Marshall Islands were determined to use other international fora to further climate action. Mr. Johnson Toribiong, President of the Republic of Palau declared in his address to the UN General Assembly in September 2011:

Palau and the Republic of the Marshall Islands will call on the Assembly to seek, on an urgent basis and pursuant to Article 96 of the Charter of the United Nations, an advisory opinion from the International Court of Justice on the responsibilities of States under international law to ensure that activities emitting greenhouse gases that are carried out under their jurisdiction or control do not damage other States. [...] It is time we determined what the international rule of law means in the context of climate change. The International Court of Justice is mandated to do just that.¹¹

Palau's and the Marshall Islands' efforts did not reach the stage of formal negotiations at the UNGA, but in the following decade their initiative has inspired academics and youth activists to explore the potential for an ICJ Advisory Opinion on climate change.

The Paris Agreement has now established a framework for international mitigation and adaptation efforts. Therefore, the PISFCC are focusing their advocacy efforts on climate justice and in particular on the human rights-based framework for climate action. Despite hard work by some parties to the UNFCCC as well as by civil society, human rights are not anchored strongly in the operational text of the Paris Agreement. PISFCC seeks to bridge that gap. PISFCC has been working closely with the Vanuatu government and has continued to emphasise the importance of the inclusion of the principle of intergenerational equity in the draft version of the legal question.

Cementing consensus on the scientific evidence of climate change

Status of climate change science in the courtroom

The most authoritative and well-known reports on the science of climate change are published by the Intergovernmental Panel on Climate Change (IPCC). The IPCC was established in 1988 by the UN Environment Programme and the World Meteorological Organisation.¹² Its goal is to assess the scientific findings on the drivers of climate change. Since 1990, the IPCC has produced several assessment reports, but only in its 2007 report did the IPCC state definitively that the changes in the earth's atmosphere were caused by human activity.¹³ One of the most well-known IPCC reports is the Special Report on Global Warming of 1.5°C, which the Conference of the Parties (COP) invited the IPCC to produce at the adoption of the Paris Agreement.¹⁴ The Special Report outlines the impacts of global warming above 1.5°C above pre-industrial levels and identifies mitigation pathways consistent with 1.5°C global warming.¹⁵ Some have been questioning and criticising the extent to which the IPCC is policy-driven rather than science-driven.¹⁶ Nonetheless, the IPCC Special Report was widely accepted and has become the scientific backing for calls of more ambitious climate action.

Despite this acceptance, some local and national courts seem hesitant to get involved in climate change cases, and even though scientific certainty and consensus exist on climate change, courts might shy away from this contentious topic, deferring to their lack of expert knowledge on the topic and resulting lack of legitimacy to speak on the topic. The competence of judges and their legitimacy to rule on such cases is questioned frequently.¹⁷

How the ICJ has dealt with 'science' in the past

The ICJ judges in general have been conscious of their limitations on specific technical expertise.¹⁸ Nonetheless, the ICJ has indicated that it does not shy away from examining scientific claims.¹⁹ In the contentious case *Whaling in the Antarctic* between Australia and Japan, with New Zealand interfering, the ICJ went into the science of the activity of whaling.²⁰ Australia contended that, in violation of the Convention on the Regulation of Whaling (ICRW), Japan was engaging in commercial whaling activities. Japan contended that it engaged in whaling for scientific research, which constitutes an exemption from the general moratorium for whaling under the ICRW. In determining the legality of Japan's actions, the Court defined 'for the purposes of scientific research' and by doing so affixed a legal meaning to both 'science' and 'research'.²¹ This demonstrates that the Court is not afraid to examine the science if needed and to affix legal status to scientific concepts. In addition, the Court has allowed for extensive written and oral submissions in contentious cases in

the past concerning the delimitation of the continental shelf.²² Nonetheless, the Court stated clearly that they do not settle disagreements between ‘scientists of distinction as to the more plausibly correct interpretation of apparently incomplete scientific data.’²³

Climate science and an Advisory Opinion

As illustrated above, the IPCC reports are widely accepted as reflecting the ‘best available science’, which reflects indisputable scientific agreement on climate change as a human-made problem. US Supreme Court Justice Stephen Breyer explained in his opinion on the breadth of the US federal public trust doctrine (a key legal issue in a number of strategic climate cases including *Juliana v. U.S.*) that judges are ‘generalists’ and must therefore rely on legal scholars and practitioners to inform the Courts’ understanding of how to interpret and apply the law in relation to shifting global circumstances.²⁴ The phase during which the ICJ hears evidence submitted by states in the process of deliberating the legal question requested by the UN General Assembly offers an opportunity for the IPCC reports to be given a ‘non-political’ stage and to be admitted to the Court as the best available evidence on climate change. This can send a strong signal to national courts to accept the IPCC reports not as political arguments raised by civil society organisations, but rather as technical evidence clarifying the scientific developments at hand.

In an Advisory Opinion on human rights and climate change, the Court would not be asked to settle any competing scientific claims when it comes to the general understanding of climate change. The Court could, however, contribute to the legal understanding of the scientific findings, as it has done in the *Whaling in the Antarctic* case.²⁵ The Court’s role in examining the science establishing causality and responsibility for environmental damage is beyond the scope of this article. However, cases like the *Pulp Mills* case have demonstrated that the Court is willing to consider concepts drawn from environmental law.

Sub-conclusion

The PISFCC are hoping for the ICJ to use the opportunity it could be presented with through the Advisory Opinion to cement the consensus on climate science. The ICJ is becoming more engaged with the scientific aspects of environmental harm.²⁶ Further, the general science of climate change is well-established by now, meaning that the Court would not be tasked with settling any competing scientific claims. The Court could, however, provide guidance on how to interpret climate science to help establish legal responsibility, which in turn requires a detailed understanding of climate science.²⁷

Providing guidance for domestic and regional courts

Climate litigation is a growing area of legal, social and political interest. An increasing number of cases are based on human rights law.²⁸ Human rights and the law concerning climate change have historically been treated separately by academia and the courts. Increasingly, non-state actors are drawing the connection and hope to increase accountability of private actors and states with regards to mitigation efforts. The recent judgement of Germany’s constitutional court in *Neubauer, et al. v. Germany* is one of the current successful examples of where the plaintiffs succeeded with human rights arguments.²⁹ Human rights law has created a high threshold for the violation of human rights and poses a challenge to domestic and regional climate litigation initiatives. A recent example of these difficulties is the rejection by the Court of Justice of the European Union of the European People’s Climate Case at first instance due to the insufficient standing of the plaintiffs. In order to allow for more effective remedies for those who have been and will (continue to) be affected by the consequences of climate change, the nexus between climate change law and human rights law must be recognised. An ICJ Advisory Opinion could take a first step in this direction and invite national courts to follow suit when presented with such cases.

Decisions in the Dutch *Urgenda* case and the Advisory Opinion from the Inter-American Court of Human Rights from 2018 indicate that there are pathways opening in international law towards overcoming previous jurisprudential roadblocks.³⁰

An ICJ Advisory Opinion could clarify international legal obligations of states and hence assist them when confronted with national and regional climate change-related cases and challenges. National courts could further use the guidance provided by the principal judicial organ of the United Nations also with regards to their relationship with scientific evidence on climate change.

Conclusion

Achim Steiner, Executive Director of UN Development Program, remarks ‘While the United Nations and national governments acknowledge that climate change and the responses to it can impact on human rights,³¹ there is less agreement on the corresponding obligations of governments and private actors to address this problem.’³²

The ICJ, as a Court with general jurisdiction, contributes to the development of international law. As illustrated above, the ICJ has the ability to meaningfully contribute to the development of the status of climate science in

litigation and can provide guidance to domestic and regional courts. As QC Philippe Sands puts it, the ICJ may also be a 'purveyor of legitimacy'.³³ The influence of the Court reaches far beyond the letters of its judgement and an Advisory Opinion on climate justice may bring a rights-centred approach to climate action at the centre of attention whilst giving a voice to those facing the brunt of the climate crisis.

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Endnotes

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- 2 See, for example, OHCHR, 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights' 2009; John Knox, 'Climate Change and Human Rights Law' [2009] 50(1) *Virginia Journal of International Law* 164-218; The World Bank, 'Human Rights And Climate Change: A Review Of The International Legal Dimensions' (2011) <<https://openknowledge.worldbank.org/handle/10986/2291>> accessed 10 May 2021.
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- 14 *Decision 1/CP.21*, (29 January 2016), UN Doc FCCC/CP/2015/10/Add.1, Para. 21.
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- 27 Webinar hosted by the British Institute of International and Comparative Law (BIICL) on March 12 2021. Accessible at <https://www.youtube.com/playlist?list=PLRqwcJCbBFHDTkFIVgMr_wxyzY7PtLk>.

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The Human Rights Act as a source of an environmental human right

Mateusz Slowik



At a glance

- The article explores whether claimants that seek to rely on human rights arguments for environmental damage have an adequate remedy through the substantive rights and legal standing rules contained in the Human Rights Act 1998.
- The development of the European Convention on Human Rights jurisprudence on rights to life and private life is explored to discern whether the Convention rights could be interpreted to include the right to a healthy environment.
- Finally, a brief overview of a distinct right to a healthy environment is given.

Introduction

There is a consensus amongst the scientific community that the Earth is warming at an unprecedented rate because of anthropogenic emissions of greenhouse gases.¹ The Intergovernmental Panel on Climate Change's (IPCC) Fifth Assessment Report presents the adverse effects of climate change on the planet, which include multidecadal warming, unprecedented levels of extinction of animal and plant species, and great sea level rises unseen in the last two millennia.² For example, the Office of the United Nations High Commissioner for Human Rights has found that the human rights threatened by the climate emergency include fundamental rights, like the right to life, as well as other uncontroversial welfare rights, such as the rights to food and health.³ Thus, it is unsurprising that the UN Environment Programme describes climate change as 'the largest, most pervasive threat to the natural environment and human societies the world has ever experienced'.⁴ Therefore, there is international recognition that the climate emergency has profound consequences on the full enjoyment of human rights. This warrants a further discussion as to the legal mechanisms concerned with protecting human rights from the consequences of climate change.

Despite the scale of the emergency, 'legal responsibility for climate change is not covered by current international human rights law'.⁵ This includes the United Kingdom's domestic legal framework which is underpinned by the Human Rights Act 1998 (HRA).

Legal standing under the HRA

There is also a dissonance between the UK's legal standing rules in environmental law actions and human rights cases. This is because the UK's domestic human rights regime offers an individual remedy that directly conflicts with the collective nature of climate change.

The legislation underpinning the UK's legal standing requirements for judicial review is the Senior Courts Act 1981, which requires 'that the applicant has a sufficient interest in the matter which the application relates to'.⁶ The legal standing rules for applicants in environmental cases have been clarified by the Supreme Court in *Walton v Scottish Ministers*,⁷ which rejected the previous narrow standing rules laid down by the Court of Appeal in *Ashton*⁸ in favour of a wide approach to standing. Generally, to paraphrase, standing will be granted when a party has an arguable case.⁹ This is subject to the limitation that the potential claimant made 'objections or representations as part of the procedure that preceded the decision challenged, and that their complaint is that the decision was not properly made'.¹⁰

On the other hand, cases relying solely on human rights arguments must satisfy the rules under HRA, which takes a very restrictive approach to standing by requiring a potential claimant to satisfy a victim test.¹¹ Thus, the United Kingdom's domestic human rights framework offers an individual remedy, which directly conflicts with the collective nature of climate change. In the context of a human right to a healthy environment, the wide *Walton* legal standing rules are to be preferred. This is also consistent with other international standards that the UK has agreed to or is bound by, such as Principle 10 of the Rio Declaration and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

The developments in the European Court of Human Rights and domestic jurisprudence on article 2 and 8 of the European Convention on Human Rights

Schedule 1 of the HRA incorporates the rights contained within Protocol No 1 and Protocol No 6 to the European Convention on Human Rights (ECHR).

However, as a creature of its time, the ECHR only includes a limited range of first-generation political and civil rights,¹² such as the right to life and the right to private life.¹³ As such, environmental human rights are noticeably absent from the framework. For example, the European Court of Human Rights (ECtHR) has consistently maintained that '[n]either Art. 8 nor any of the other articles of the Convention are specifically designed to provide general protection of the environment as such'.¹⁴

Conversely, the 'greening'¹⁵ of the Strasbourg jurisprudence in recent years proves that the court has been willing to explore the relationship between human rights and the environment. For instance, in a case concerning the right to life,¹⁶ the ECtHR unanimously found Russia in breach of the right to life because the authorities failed to take adequate action to protect citizens in areas that were known to be prone to mudslides until the day of the disaster. This is an important decision by the Strasbourg court because it recognises that public bodies can be held liable for human rights infringements that relate to their environmental obligations. This supports the contention that human rights arguments can be successfully raised in cases involving environmental derogations. It is submitted that a right to a healthy environment would be a natural extension of the current human rights regime and would hold public bodies accountable for environmental derogations that violate human rights.

Another example of this greening is a case that concerned the right to respect for private and family life.¹⁷ The applicant lived near a waste treatment plant that caused severe environmental pollution but was permitted by the authorities. Lopez Ostra alleged that the authorities did not respond adequately to the health risks caused by the plant, which infringed her right to respect for her home under article 8 of the ECHR. The ECtHR found an infringement of article 8 and noted that 'severe natural environmental pollution may affect individuals' well-being and prevent them from enjoying their [...] private and family life adversely, without, however, seriously endangering their health'.¹⁸ This is an important recognition by the ECtHR because it recognised that environmental problems may infringe the right to private life even where they do not violate the right to health. This decision suggests that the ECtHR could be willing to read a right to a healthy environment as implicit within the Convention rights when Convention rights are infringed in relation to environmental harm.

Another promising development in climate change litigation is currently progressing through the Strasbourg Court.¹⁹ This is a claim initiated by six Portuguese children and young adults, arguing that governments in 33 European countries have failed to

prevent the impacts of climate change from violating their human rights.²⁰ On Monday 30 November 2020, the Strasbourg Court 'announced its decision to green-light'²¹ the case as well as to fast-track it because of the urgency of the issues raised. Earlier in 2021, the ECtHR rejected the argument of the 33 governments that the priority status of the case should be dropped and that the ECtHR should declare the case as inadmissible.²²

The claim is '[a] first at Strasbourg',²³ calling the ECtHR to consider the effects of the climate crisis on human rights. Notably, the ECtHR has extended the scope of the case by asking the applicants to consider whether the inaction of the states may be in violation of the right against inhuman or degrading treatment, contrary to article 3 of the ECHR. This indicates the gravity with which the ECtHR perceives the climate issue and its impacts on the full enjoyment of human rights. This is a surprising development, given the ECtHR's rejection of article 3 infringement in *Ostra Lopez*.²⁴ In *Ostra Lopez*, the applicant argued that she was a victim of degrading treatment, contrary to article 3 of the ECHR 'on account of the smell, noise and polluting fumes in her locality'.²⁵ The ECtHR did not find a violation because, although the conditions were difficult, they were not considered to be sufficiently serious.²⁶ Unlike the former case, however, climate change has been directly attributed to the 2017 wildfires in Portugal which saw 64 people dead and over 200 injured.²⁷ It remains to be seen how the case develops. On the other hand, it is clear that over the last years, there has been a clear steer away from the paradigm interpretation of human rights, which did not previously include environmental rights. The ECtHR's own jurisprudence has developed to find human rights infringements where environmental conditions impact upon life and home or lead to inhuman or degrading treatment.

In the domestic context, the absence of an explicit right to a healthy environment within the HRA makes it questionable whether the UK courts would be willing to read the current human rights as including the right to a healthy environment.²⁸ This can be illustrated by *Hunter v Canary Wharf*,²⁹ in which the House of Lords decided that claims for nuisance can only be brought by those claimants who have a proprietary interest because simply residing in the land affected was deemed to be insufficient. Therefore, the right to a healthy environment would conflict with the prevalence of judicial reasoning that rights are based on proprietary interests. Following this reasoning, expanding the established substantive rights to include environmental rights would be unachievable through common law interpretation and would require legislative change. On the other hand, in his dissenting speech, Lord Cooke made two points why this approach was unsatisfactory. First, drawing from international human rights standards,

proprietary interest is not a prerequisite to a claim in tort to protect the home against nuisance. Second, expanding legal standing to residents in nuisance claims is justified because the courts have a legitimate role in developing the common law. Therefore, if a specific right to a healthy environment was to be adopted, it would require the minority approach of Lord Cooke.³⁴

The right to a healthy environment

In 2008, the Joint Committee on Human Rights made a report on a Bill of Rights for the UK and recommended that the right to a healthy environment should be included in a future British Bill of Rights. According to the Committee, the right to a healthy environment 'has evolved into [a right] which is clearly capable of legal expression'.³⁰

The Committee proposed that the right be drafted as:

A healthy and sustainable environment

Everyone has the right to an environment that is not harmful to their health.

Everyone has the right to information enabling them to assess the risk to their health from their environment.

*Everyone has the right to a high level of environmental protection, for the benefit of present and future generations [...]*³¹

The proposed right to live in a healthy and sustainable environment would make a practical difference to the current human rights regime in the UK. This is because the absence of modern rights within the HRA mean that they cannot be enforced by potential claimants in domestic UK courts.³²

Atapattu argues that this formulation of the right as the right to a 'healthy' environment would allow potential claimants to adduce evidence in relation to health impacts of climate change if they have been left in a worse condition than others.³⁵ This sentiment has been echoed by Lord Kerr, former Justice of the United Kingdom's Supreme Court, who has suggested that he could envisage a potential claim raised by individuals who have been affected by polluted air in cities who could seek to rely on human rights arguments.³⁶ A possible claim arising under a right to a healthy environment could be that of the premature death of a nine-year old girl, Ella Kissi-Debrah, caused by 'excessive air pollution'³⁷ in London. The case is the first in the UK to have air pollution listed as a cause of death. It is submitted that the formulation of the right would confer a wider legal standing by allowing claimants to utilise more established rights, like the right to health.

Conclusion

In the current scheme of things, potential claimants that seek to rely on human rights arguments for environmental damage to their health have an inadequate remedy under the HRA because of the limited range of first-generation rights that the HRA incorporates; as well as the narrow legal standing rules, which are incompatible with the collective nature of climate change. A distinct right to a healthy environment could potentially resolve this problem.

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What does the surge in ESG investing mean for the UK?

Maya Sainani



At a glance

- Environmental, social and corporate governance (ESG) investing has grown rapidly over the past few years, driven both by investors' desire to do good and increasingly lucrative returns.
- The focus of ESG investing has been primarily on the 'E' (environment), particularly prioritising the threat of climate change. Recently, however, investors have begun shifting their attention towards other environmental threats, including the loss of biodiversity.
- ESG investing presents a big financial opportunity for the UK and has the capacity to help our planet. Nonetheless, certain challenges still restrict sustainable investing from fulfilling its true potential: namely, greenwashing and a lack of standardised ESG disclosure practices.

ESG: purpose or profit?

Forms of sustainable investing have grown rapidly in recent years driven both by the search for better long-term financial returns, and a pursuit of better alignment with investors' values. Through the combination of traditional investment approaches with ESG criteria, conscious investors screen potential sustainable investment opportunities.

Companies and institutional investors alike are under increasing scrutiny to deliver more than simply good returns. They must also demonstrate good engagement with ESG-related issues. While all three criteria (environmental, social, governance) of ESG investing have gained popularity over the past few years, investors' focus falls primarily on the 'E' of ESG (environmental).¹ This is arguably because of the increased global awareness around the threat posed by climate change. However, it is important to note that investors do not simply invest sustainably to 'do good'. There is a growing recognition that companies demonstrating strong ESG profiles are more likely to deliver long-term sustainable value to their stakeholders.²

This begs the question: is ESG investing actually helping our world, or is it just a good risk management strategy? The answer is both. A survey done by Aquila Capital showed that 73% out of 64 interviewed institutional investors in the UK consider economic viability to be a key driver of investment in renewable infrastructure, while only 40% cited the

desire for socially and environmentally responsible investment.³ Thus, the main motivation for renewable energy investment is returns. While this may not sound too positive for environmentalists, the renewable energy industry is arguably at a point where it no longer needs people to want to 'do good'. Instead, investors can do what makes sense financially, and do good anyway. As Oldrik Verloop (Co-head of Hydro Investments at Aquila Capital) puts it: '[t]his is not charitable work, this makes sense from an investment perspective.'⁴ Of course, it is not only about good returns. Some investors are looking to do good, especially those among younger generations. Others are thinking about the financial difficulties that climate change could cause if it is not dealt with, seeing as the state of the environment can directly affect a company's competitive positioning and have an impact on assets.⁵ Regardless of the reason, awareness and engagement with climate issues as well as renewable energy is increasing rapidly in the UK among both companies and investors. This trend is seen globally, too.

Jes Staley, CEO of Barclays, says that the international demand for financing sustainable projects presents a huge opportunity for the UK. According to him:

Climate today is like technology was in 1995. If you think about it...all the Amazons, the Googles, didn't really exist in 1995 and now it dominates 40% of the economy. I think it's a fair argument that dealing with climate and dealing with the environment is in the same position now.⁶

And to some extent, we can see the growth in demand around renewable energy happening already. Over the past decade, renewable energy consumption has grown at an average annual rate of 13.7%, making it the only category of energy that grew globally at double digits, and these numbers are rapidly increasing.⁷ Investors around the world are realising the rising demand for sustainable investments. According to S&P Global, global sales of green bonds, used to finance everything from sustainable agriculture to clean transportation projects, have more than quadrupled in five years.⁸ Furthermore, sales this year have already exceeded last year's record \$135 billion.⁹

Climate change does not care about the reasons that led to the surge in ESG investing. What matters is that

the growth in ESG investing can ultimately contribute towards a reduction in CO2 emissions with a more sustainable future. This is because ESG is changing business models, pressuring companies to act in order to slow down climate change, while encouraging investors to invest in the increasingly profitable renewable market. Both will ultimately contribute to the slowing down of climate change. There is a growing trend of investing in the 'E' in ESG globally. The United Nations recently introduced the Asset Owners Net Zero Alliance, a group of asset managers overseeing a collective \$2.4 trillion who have pledged to align their portfolios to meet net-zero greenhouse gas emissions by 2050.¹⁰ In the UK, a few institutions have led the way. For example, the Church of England's pension fund divested around £600m away from companies that were not making progress towards the Paris Climate Agreement goals. Meanwhile, Brunel Pension Partnership has threatened to sack fund managers who do not get in line with ESG issues.¹¹ According to Richard Mattison (member of the EU Sustainable Finance Group), '80% of the world's largest companies are reporting exposure to physical or market transition risks associated with climate change'.¹²

ESG investing and biodiversity

Based on the considerations above, it is clear that the 'E' in ESG has grown exponentially over the last years. It is also clear that investors have focused mainly on the renewable energy market. This makes sense, seeing as the renewable energy market is becoming increasingly profitable, and can contribute to the reversal of climate change, which has been one of the main reasons for the boost in ESG investing. While the climate crisis is one of the planet's gravest problems, it is not the only environmental threat that needs tackling. Ashim Pain, Co-head of ESG Research at HSBC says: '[b]iodiversity is this major risk that we face but which people have ignored... all the attention has been on climate change'.¹³ Awareness of our interconnectedness with other species grew in 2020 as it became clear that unsustainable development increases the risk of pandemics (such as COVID-19). As put by John Vidal (Environmental Editor of the Guardian), '[a]s habitat and biodiversity loss increase globally, the novel coronavirus outbreak may be just the beginning of mass pandemics'.¹⁴

Investors and regulators are increasingly turning their attention to biodiversity. Companies and investors are also becoming more and more concerned about the significant financial risks stemming from biodiversity loss, with more than half of the world's total gross domestic product dependent on natural resources, from food to medicine.¹⁵ Biodiversity loss and climate change both present critical financial and economic risks, said Jenn-Hui Tan, Global Head of Stewardship

and Sustainable investing at Fidelity International.¹⁶

One of the reasons for the lack of focus on biodiversity loss is a lack of data and measurement standards. While metrics such as 'CO2 equivalent' are a fairly reliable way to quantify greenhouse gas emissions, there is no similar measurement for biodiversity.¹⁷ Furthermore, according to a recent assessment by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, countries have been unable to identify the main drivers behind biodiversity loss, or to implement adequate legislation.¹⁸ While collecting data around biodiversity loss is still a challenge, regulators are stepping up pressure on companies to disclose their impact on biodiversity. Europe is leading the way on this by enacting new requirements for ESG disclosure through its sustainable finance disclosure regulation (SFDR), which is likely to lead to increased biodiversity reporting requirements on companies. The SFDR will determine what business activities integrate biodiversity.¹⁹ Of course, seeing as the UK has recently left the EU, the SFDR is not as relevant domestically. After Brexit, the UK has announced its intention of becoming a 'global green finance leader' by enacting its own legislation based on the Task Force on Climate-related Financial Disclosures (TCFD), which is going to be (supposedly) stricter than the EU's SFDR. Based on these considerations, we can assume that the UK intends to follow the advancements seen in the EU's SFDR and maybe even add more positive changes.

Recently, we have been seeing a growth in ESG investing relating to biodiversity. For example, last September, two dozen financial institutions signed the Finance for Biodiversity Pledge and committed to protect and restore ecosystem services through their finance activities and investments.²⁰ Furthermore, according to Bloomberg, investors at firms, including Fidelity International and AXA Investment, claim that in 2021 they will be focusing on the threat of biodiversity loss.²¹ Again, regardless of whether the rise in attention towards the issue of biodiversity loss is being led by a want to do good, fear of the future, or financial interests; the increased focus of ESG investing into biodiversity will ultimately create a more sustainable world, contributing to a greener future.

Challenges

The rise in ESG investing presents a huge investment opportunity that also helps the health of our planet. At the same time, it also presents a huge marketing opportunity. The rising popularity of ESG investing has been accompanied by a rebranding of funds, which in some cases represents only a small amount of 'dressing' around the edges.²² Larry Fink (CEO of Blackrock) says that it only takes the mere inclusion of the phrase 'ESG incorporation' for a company to attach

the ESG label to a fund.²³ This is also known as 'greenwashing' (i.e., when a company makes claims about the sustainability of their products or services that are misleading).

As assessed above, the 'E' in ESG currently revolves around the renewable energy market, which is something that contributes to slowing down climate change. Swasti Gupta (Professor of Finance at Loyola University), however, argues that climate change is too big of a problem, and the 'E' in ESG should be separated from the 'S' and 'G'. She argues:

Environmental, social and governance concerns were grouped together because social good connects all ESG issues. However, it is time to delineate how environmental concerns are defining fiduciary duties. Given the effects of climate change already in evidence, society and business can ill-afford confusion around defining and prioritizing climate risk.²⁴

Many agree with Gupta, with rising concerns that corporations may not be acting quickly enough to address the issue of climate risk. According to Richard Mattison (CEO of Trucost), many investors and regulators fear that the market does not grasp the full scope of the costs and consequences of climate risk.²⁵ Venture capitalist, Wal Lierop, further states that: '[w]hile this support for the environment is encouraging, it is delusional to believe that we can win the war on carbon without more fundamental ESG changes'.²⁶

Another challenge that may hinder ESG investors from making a positive impact on our environment is a lack of effective and standardised ESG disclosure practices. The lack of consensus also includes regulators and policymakers who lack a common framework to communicate the standards and practices of environmental protection. According to S&P Global, the continuing absence of a universally accepted global framework means that there is a lack of standardisation in the green bond market.²⁷ All of this poses a challenge to investors and companies attempting to get involved with ESG investing.

Conclusion

Whether or not ESG investing will have a good and lasting impact on the environment will become clearer in time. The considerations above seem to suggest that ESG will indeed have a positive impact on the environment. Nevertheless, a broadening-out from a climate change focus is needed if we want to truly see ESG helping to take our civilisation into a sustainable future.

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And finally...

Alec Samuels provides his thoughts on desalination as a potential part of the solution to the increasing demand for water

We all recognise the water problems. The population is increasing. The demand for water is increasing. Industry demands more water. New modern plant and machinery and appliances, both industrial and domestic, demand more water. There is a water shortage. The availability of groundwater is declining in some areas. Excessive abstraction from the rivers can damage their wellbeing, the environment, the flow, the natural growth, and marine life. Climate change is likely to lead to more extreme conditions, such as more intermittent drought and more intermittent excessive rainfall leading to flooding. Rainfall levels are falling in places. The water infrastructure dates from the Victorian era, and is showing its age. Leak loss remains prodigious. Pollution is a threat. Government, the regulator Ofwat, the industry and indeed the population generally are taking improving steps. New infrastructure is going in. Technology is enabling new aquifers to be found. The incidence of leaks is reducing. Industrial design is improving. Education in best practice in water usage is making some impact, e.g. showers require less water than baths, do not brush your teeth under running water. A few more reservoirs are being planned and built. More water will be pumped from Wales and the west to the east.

A possible partial solution to the problem is desalination. Water drawn from the sea can be 'cleansed' or 'purified' and fed into the public water supply. The salt and other impurities can be extracted. This material can be sold as a useful by-product, and the unusable waste can be taken to landfill or fed back into the sea. The desalination plant needs to be near the source of the sea water, on or near the coast, no problem for an island state, and it requires more modest size sites and is a largely non-intrusive activity for the surrounding area. The process is not noisy. Technology is advancing all the time. Desalination is not particularly labour intensive. Water is fairly easily moved from one place to another. A thermal unit may be employed, but more usual is reverse osmosis, forcing water through a permeable membrane and thus extracting the salt and other impurities.

There are disadvantages. The process requires sites, near the coast, and generates traffic, albeit relatively low levels. The infrastructure costs many millions of pounds. The process is not inexpensive, more expensive per litre than the 'ordinary' process, though is becoming more efficient and financially viable.

Construction and use of the plant, including pumping, requires quite considerable quantities of energy, some generated from fossil sources, though solar energy is now more commonly a source. The waste products have to be carefully disposed of. Concentrated brine can be toxic if returned to the sea in excessive quantities. Though safe to drink, and there is no such thing as wholly wholesome water anyway, the desalinated water can be slightly discoloured, give off a slight odour, and have a slightly unpleasant taste. If and when we were to develop a two channel supply system, i.e. one channel for drinking water and the other channel for non-drinking water, then desalinated water would readily be assigned to the non-drinking channel.

So far the only desalination plant in the UK is at Beckton in East London, used as a back-up. Beckton, which cost £250m to build, runs on renewable energy, uses the reverse osmosis process and is capable of supplying 150 million litres per day, is capable of supplying 400,000 households or 900,000 people.

There is a current proposal by Southern Water to build a desalination plant at Ashlett Creek near Fawley near the New Forest. The 25-kilometre pipeline to the treatment plant would cost £600m, and would have the capacity to supply 75 million litres per day. The company may seek planning permission or a development consent order. A new small town is proposed to be built in the vicinity.

Desalination and reservoirs are complementary, and in any given situation may both be required as a matter of policy, or one may be the preferable alternative to the other. Reservoir construction and management has reached very strict and very high standards. The reservoir can occupy a considerable amount of land and space, and suitable new sites are very difficult to find, and require very high safety standards e.g. strong dams. A reservoir uses a considerable degree of energy, and suffers substantial evaporation. In Hampshire, one of the issues is whether a reservoir should be built at Havant Thickett or a desalination plant at Fawley or both or neither.

Government, the industry, the experts and the researchers must gather and analyse the data, and produce a clear achievable 5-10-15-20 year policy for water. Water problems in the future are more serious than appears to be recognised.

Alec Samuels is a member of UKELA and former Reader in law at the University of Southampton. He contributes to legal periodicals on a variety of subjects and has long been active in local government as an elected member and keen on law reform.

References:

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Water Education Foundation

As water scarcity increases, desalination plants are on the rise, Jim Robbins, Yale Environment 360, 11 June 2019.

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Drink seawater to save chalk streams, Ben Webster, The Times, 1 May 2021.

Adverts, jobs and tender opportunities

Supporting peer review for the Chancery Lane Project – an opportunity for environmental lawyers

The rise of the Chancery Lane Project (TCLP) has been an incredibly exciting development for lawyers in recent years. The opportunity to (in some small way) help tackle the climate crisis by using our skills and commercial experience to contribute to the development of climate-friendly contract clauses has been a really positive one, and we urge everyone to get involved to the extent that they can.

Environmental lawyers in particular can make a valuable contribution to the model laws and clauses generated by the Project's drafting exercises through providing a peer review service. We have been closely involved with that process, and explore it in a bit more detail below.

What is TCLP?

TCLP is a non-profit initiative that mobilises a collaborative effort of legal professionals and industry stakeholders to draft innovative precedent contract clauses and laws that deliver solutions to climate change. The resources are published on TCLP's website and are freely available for use by practitioners.

Since 2019, TCLP has produced 71 model clauses, 10 model laws, and 47 climate-related glossary terms, which help to pave the way for businesses across all sectors to decarbonise and achieve net zero.

The peer review process

The drafting process is facilitated through drafting events (held virtually over the last year), where participants collaboratively identify climate-related issues across different sectors and then draft the practical legal solutions. Those involved are not

necessarily environmental lawyers – indeed, part of the value of TCLP's process is that it draws experience from a range of specialist practice areas. Almost all of the clauses / laws generated from these drafting sessions will touch upon (or run adjacent to) matters of environmental law.

This means that there is an important role for peer review from an environmental law perspective. This improves the likelihood that the published content is technically accurate, takes account of existing law and policy, and strikes an appropriate balance between commercial reality and sufficient climate ambition. The willingness, effort and expertise of peer reviewers is essential to the integrity of TCLP content.

In terms of process, once clauses have been drafted, TCLP circulates these to a panel of peer review contributors – which includes law firms, such as Burges Salmon, and occasionally individual experts – who coordinate the review internally. The content then undergoes a second review by the TCLP editorial team before publication.

The drafting is published anonymously (i.e. it is not directly attributed to any particular individual or firm) so as to encourage the collaborative nature of TCLP and to provide a safe space for parties to draft and review ambitious climate solutions. TCLP, however, does generally acknowledge firms and organisations involved with the project.

Environmental expertise

We have supported TCLP across a number of drafting events and have been really encouraged by the support for the project from a range of specialisms and firms across the legal sector.

We have also come to appreciate the part that environmental law peer review can play in strengthening precedents – ensuring consistency both with existing legal or regulatory regimes and with the market standard, from an environmental perspective. In many cases the review generates very few comments, in some constructive challenges might arise, in a few a small intervention can be the key in converting an aspirational but marginally misdirected piece of drafting into a valuable and viable part of TCLP's playbook.

Overall the experience is a fulfilling and satisfying one, and a way (sometimes rare given the realities of

commercial practice) for environmental law practitioners to apply their expertise directly to some of the biggest issues currently facing society.

How can you get involved?

TCLP is currently working to produce a 'Net Zero Toolkit', which aims to provide a practical roadmap to net zero for businesses across every sector. There is an ambitious range of events lined up to facilitate drafting, with the intention to publish the toolkit in advance of COP26 in November.

If you are interested in involvement in TCLP peer review, please contact TCLP's Head of Content Management, Jenni Ramos at jenni@chancerylaneproject.org.

You can find a list of upcoming drafting events on the TCLP website [here](#).

Stephen Lavington, Senior Associate at Burges Salmon LLP

Gabi Gershuny, Trainee Solicitor at Burges Salmon LLP

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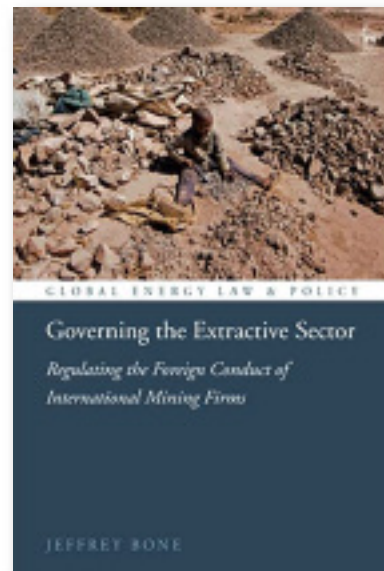
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Book reviews

The e-law editors are regularly sent book lists by various publishing houses which may appeal to UKELA members keen to write a review. If you are interested in contributing a book review to a future edition of e-law, but would first like some guidance or suggestions, please drop [us](#) a line.

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The editorial team is looking for quality articles, news and views for the next edition due out in August 2021. If you would like to make a contribution, please email elaw@ukela.org by 14 July 2021.

Letters to the editor will be published, space permitting.

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