e-law

UKELA Making the law work for a better environment

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Editorial

As we near the end of Strategy planning for UKELA's next three years some strong themes are emerging. We need to keep working to influence the law and to rise to the challenge of an increasingly divergent UK system of environmental law and governance. This will mean changes for UKELA and its members in the months ahead and we need to work hard to address them. Whilst at one level our work will be focusing more on the different jurisdictions in the UK, we will also need to strengthen our international links. With environmental problems on a global scale – and the means to address them also involving work at an international level – we should build relations with our partners and colleagues in Europe and other relevant jurisdictions. UKELA's Council has been considering these challenges and opportunities and will seek to continue to deliver its core work, whilst developing new areas where resources allow. This month we have articles from contributors in the USA and Sri Lanka.

Of course funding is the main challenge. You will hear elsewhere in e-law from Stephen Tromans QC, Chair of the Environmental Law Foundation, that after twenty years, ELF can no longer afford staff or an office. Their valuable work in providing advice to the public is now severely curtailed. We also heard recently about the fate of Environmental Protection UK, which is now run by volunteers. The voluntary sector as a whole has lost 70,000 staff in the last year due to cuts and low interest rates on investments. Whilst UKELA's trustees are a cautious bunch – "plan for the worst but hope for the best" is the mantra – UKELA needs to move with the times to survive.

Please continue to support UKELA and come along to our events (it was fantastic to see so many members at the recent Climate Change and Energy seminar organised by the working party – barely a seat left).

Finally, congratulations to the student competition winners for 2012. You can read the winning Andrew Lees prize article, by Eleanor Coombs, in this edition.

Catherine Davey, editor e-law

In this issue

UKELA Conference and AGM

Book now for the UKELA conference, "Planning for the Energy Challenge," which is being held in Southampton on July 6-8. We have a great programme of speakers, outings and social networking opportunities. The conference offers 6 CPD points and a gala dinner in the stunning setting of the Grand Café, where first class passengers stayed before they set off on the ill-fated Titanic voyage of 1912.
UKELA's AGM will be held at the conference on Sunday 8th July at 11.20am. Full details about this are below and details on how to stand for election to Council are included in the cover note to e-law.
You can book here for the conference.

The United Kingdom Environmental Law Association

Notice of Annual General Meeting

The Annual General Meeting of the Association will be held at the UKELA Annual Conference, University of East Anglia

11.20am Sunday 8 July 2012

AGM AGENDA

1. Apologies for Absence
2. Minutes of AGM 2011 and matters arising
3. Chair's Report
4. Adoption of the Annual Report and Financial Statements for the year ended 31st December 2011
5. Re-Appointment of the Auditors
6. Declaration of Council of Management Election Results 2012 or if no election held, announcement of new Council members appointed
7. Any Other Business

A quorum of 25 UKELA members is needed for this meeting
It should be noted that the maximum number of Council members for the period is 22, as agreed at the Council meeting of 25 April 2012.

Alison Boyd
Member Support Officer
May 2012

Membership Administration arrangements

Just a reminder that all membership admin is now handled by Alison Boyd who has taken over this role from CIWM. If you have any membership queries, get in touch with Alison at alisonboyd.ukela@ntlbusiness.com

Fundraising

Conference 2012 — Oxford to Southampton: The Big One

By Stephen Sykes

2011 cyclists celebrate their arrival in Norwich (2012 cyclists can look forward to a similar champagne reception!)

After last year's inaugural fundraising ride from Colchester to Norwich, UKELA's cycle club – The Recyclists – will hit the roads, lanes and byways again this summer, if indeed it is a summer…. We raised over £1,500 last year for the Lord Nathan Memorial Fund and we hope to raise even more this time around.

Leaving from Oxford on Thursday, July 5th The Recyclists will ride down to Southampton in time for the opening of Conference at around 4pm on July 6th with a bed and breakfast stay near Winchester. Honorary President of the Club, Stephen Tromans QC, is thought to be in serious training and will be joining the ride on day two, perhaps commencing from the outer suburbs of Southampton.

The Recyclists have around a dozen members: solicitors, barristers, consultants including representatives from Clifford Chance, 39 Essex St and ESI International. We cater for all ages and abilities. We are open to anyone with a bike and the necessary willpower. Some Recyclists sport titanium cycles weighing around 100 grams and worth more than most houses. Others – self included – will attempt the journey on a ramshackle bike salvaged from the scrapheap and worth around £10.

The only way to join our ranks is to ride to Conference so here is your chance. Why not join us – it is great fun and as well as the achievement of arriving at Conference under your own steam, you'll also be raising some much needed funding for a most deserving cause: Lord Nathan's Memorial Fund. Please contact Stephen Sykes – Stephen@sykesenvironmental.com - or Zack Simons – zack.simons@39essex.com - for more information.

If you don't think cycling is for you, then why not sponsor the team? You can do so here.

Other News

UKELA Wild Law Weekend in the Cairngorms, 4 May – 7 May 2012

By Colin Robertson

It is one thing to talk about wilderness and the rights of nature and another thing to experience them directly. Yet that is the strength of the Wild Law weekend which for the third year running has taken place in early May in Scotland, this time at the Cairngorms Lodge Youth Hostel.[1]

Led by Crispin Agnew and with logistics by Vicki Elcoate and Alison Boyd for UKELA, this year's weekend has once again matched the high standards previously set. Being based in the warm and well-located youth hostel conveniently situated beside Loch Morlich in the Cairngorm National Park [2] on the way to the Cairngorm mountain and the skiing centre[3] in the heart of the Highlands and surrounded by the remnants of the ancient Caledonian pine forest, the weekend provided a first class experience in the day-to-day realities of the problems of applying and enforcing the rights of Mother Earth[4]. To that end, we were treated to a visit to the RSPB Osprey Centre

1 http://www.cairngormshostels.co.uk/view-hostel?id=56
2 http://www.cairngorms.co.uk/
3 http://www.snow-forecast.com/resorts/Cairngorm
4 http://motherearthrights.org/

at Loch Garten[5] where since the arrival of a single pair of birds in the early 1950's, the Ospreys have been protected, studied and visited so that now there are estimated to be some 250 pairs in Britain nesting quite widely. Our group of 14 Wild lawyers was met and given a guided tour by Richard Thaxton, in charge of the Centre. And, my goodness, were we lucky! Both adults, a nest full of eggs, a headless fish brought by Dad osprey to Mum for breakfast and a male capercailzie in full courtship display to be seen. As well as woodpecker (spotted), assorted tits, a hyperactive vole…

After the visit to the Osprey Centre, our practical education continued with a lecture by Jeremy Roberts in the RSPB Centre at Forest Lodge located in the middle of Abernethy forest. We learned about the forest, its maintenance and management, the animals, birds, insects and plants living in it, but also about problems, methods and future hopes. For example, we learned about the decline in the British capercailzie population and that 75 % of the birds now live in the Cairngorm National Park, and of those 65% are in Strathspey. The Saturday afternoon was then agreeably spent walking through the forest, with a picnic on the way provided by the RSPB (matched by our donation of £155 to them and membership subscriptions) some ten miles back to base at Cairngorm Youth Hostel, through Ryvoan Pass and by *An Lochan Uaine* (the Green Lochan) whose green colour is linked to the faeries [6], and a welcome evening meal together. The day had been cold but dry, apart from a snow shower timed for when we reached Ryvoan Bothy so we could take shelter and have a *'wee dram'* to warm *'oorsels'*.

Sunday saw our minivan driven by Crispin heading to the ski slopes of Cairngorm. Clear weather offered a chance to explore the northern corries. We split into groups, with different aims. One group stayed lower down by the snow line and worked its way to the Ptarmigan restaurant up on the hill for skiers. From there, some stayed and others walked to the summit of Cairngorm (1245 m.).

A second group headed up the snowy slopes of Cairn Lochan (1215 m.) and on to the plateau, returning via the summit of Cairngorm to meet up with members of the first group. Views were stupendous and the continuously expected low cloud stayed high and delightfully broken with sunshine. Ptarmigan were spotted at close quarter, as were reindeer and snow buntings. The funicular for skiers was inspected, discussed, and used by some.

Throughout the whole weekend we had continuous discussions of Wild Law themes, both bilaterally and in group sessions in the evenings. Many topics were raised. What is the future of Wild Law? How does it relate to other areas such as Nature Conservation, or the work of the RSPB? What differences have the Cairngorm National Park brought about? What about planning procedures and methods? Protective costs orders? Legal aid rules for wildlife protection? The attitudes of the courts to environmental issues? Wind farms and hydro and the needs for energy? What will be the effects of the new power lines being built through Central Scotland? Is Wild Law compatible with environmental Justice? Should there be an environmental court, and if so could the centenary Scottish Land Court[7] have an environmental jurisdiction and expertise attached to its functions? What progress on a Wilderness directive? Rio + 20? How is Wild Law UK[8] progressing, and here Vicki spoke about work on the draft Rights of Nature Bill and issued an invitation to attend their AGM on 14 May 2012 in London. And there was much more.

As always, the experience was warm, intense and enriching. Friends unable to come were missed and greetings to them extended. Confidence in the future of Wild law was renewed, expressed and repeated. Lastly to all those who organised, aided and participated, though not named here, a big thank you for having made such a lovely and fruitful weekend possible.

5 http://www.rspb.org.uk/reserves/guide/l/lochgarten/
6 http://faeriemagick.com/green-faeries/
7 http://www.scottish-land-court.org.uk/
8 http://www.wildlawuk.org/

Ecocide article

Wild Lawyer Elizabeth Rivers has written an article on the relationship between restorative justice and the proposed crime of Ecocide, which gained a lot of prominence recently with the Ecocide mock trial at the Supreme Court. You can read it here.

The Environmental Law Foundation - Message from Stephen Tromans QC, Chair of ELF

Sadly, I have to inform you that ELF finds itself in a difficult financial position. You will be aware that Government support of charities has significantly declined and that a number of environmental and other charities, some much larger than ELF, have had to cease operating. ELF's funding from DCLG has ended and has not been replaced, and the income from members' subscriptions and other funders is not sufficient to support ELF's work as it has been undertaken. In view of this the Trustees have been taking steps to reduce costs, including staff redundancies and cutting all non-essential activity and expenditure, whilst maintaining our core A&R service. We have also been trying vigorously to find other sources of income, with the help of professional funding advisers acting pro bono. To date, those attempts have been unsuccessful, unfortunately. In the meantime, ELF has remained solvent partially through direct contributions from Trustees.

It is therefore with great regret that the Trustees have had to take the decision to vacate ELF's offices at City University.

The Future

The Trustees are however determined that the work of ELF in providing access to justice and advice to disadvantaged communities should continue. To that end, we are in discussions with a number of law schools with a view to establishing a network of regional ELF Advice & Referral centres, under central co-ordination by ELF, with referral to our network of advisers continuing. The nature of the enquiries and work sought by the law schools appears to be distinct and complementary to that most welcomed by our members. As such, our hope is that such a relationship might be one of great synergy, to the benefit of all.

Talks are most advanced with the University of the West of England, the pro bono department of which has offered to take on the A&R role on a transitional basis, pending the creation of a wider regional network. That transitional role will therefore commence on Tuesday 1st May. The contact details are enquiries@CLARS.org.uk or phone 0117 3282681.

Practical assistance

There are two matters in which your practical help would be useful. ELF now has no paid staff, but we are hoping to find the money to keep Tom Brenan, our excellent Legal & Policy Officer employed on a temporary basis to assist with the transitional initiatives and drive through the creation of the regional network mentioned above. I am not asking specifically for money for this, but if any members have a spare desk in their offices in London from which Tom could temporarily operate, I would be very grateful to hear from you. Further, if you have views on how you would like to see an ELF A&R network develop and might be willing to work with the Board and our partners towards finding a solution, I would again be very grateful to hear from you.

To seek to improve ELF's financial position, I have arranged that 50% of sponsorship of the 39 Essex Street Team in this year's London Legal Walk (in which I will be participating) on 21st May will go to ELF. If you would like to support ELF in this way please go to
http://uk.virginmoneygiving.com/team/39EssexStreetchambers
and give as generously as you can! You can find there details of the other legal pro bono charities which will be supported by your sponsorship.

For the moment, please address any correspondence to me in Chambers at 39 Essex Street: stephen.tromans@39essex.com.

Is Sustainable Development a key feature of UK Environmental Law?

Eleanor Coombs

Left to right: Sue Fernandes (No 5); Hayley Tam (Lexis Nexis); Eleanor Coombs; Prof Mark Poustie

'Sustainable development' is not a new idea. Brundtland's 1987 definition described sustainability as the achievement of economic and social goals within environmental limits. Current needs must be balanced against future needs, in order to ensure the heritage of the natural world can be passed on to future generations.[1] The UK government interprets 'sustainable development' as the recognition of three competing 'pillars' –economy, society and the environment, which must be balanced. [2] Brundtland dreamed of a future where sustainability would be embedded as a core principle of law through the 'merging of environment and economics in decision making.'[3] In 2012, despite grand ambitions[4] and individual successes[5], lawmakers have failed to deliver an over-arching sustainability framework that covers all UK environmental law. [6]

In the absence of such a framework one way that 'sustainable development' is put into practice is through policy and guidance[7]. Planning guidance plays a key role in environmental protection in the UK. Proposed changes reveal a worrying shift in our lawmakers' thinking about what 'sustainable development' means. The National Planning Policy Framework (NPPF) includes a presumption in favour of development - 'decision-takers… should assume that the default answer to development proposals is "yes."'[8] This contradicts the concept of balancing interests which is intrinsic to 'sustainable development'. [9] The Communities and Local Government Committee has recommended that the government revisit the definition of 'sustainable development' in the NPPF, updating the Brundtland definition and recognising the importance of 'living within environmental limits'[10]. The committee also advocates a more ambitious approach, encompassing active environmental improvements as well as preservation. Lawmakers' current confusion as to what 'sustainable development' is hinders the prospects of the concept forming a key part of new UK environmental laws.

The NPPF in current form will make it harder to balance environmental concerns with competing economic interests. Sites of Special Scientific Interest ('SSSIs') are protected under the Wildlife and Countryside Act 1981, but in effect the impact of development on SSSIs is dealt with by planning policy, principally through Planning Policy Statement 9 Biodiversity and Geological Conservation ('PPS9').[11] To overcome the presumption of development in the NPPF the test is whether the 'adverse impacts' would 'significantly and demonstrably outweigh the benefits'. This is a much greater burden of proof than in PPS9 where only 'likely adverse impact' need be shown. [12]Thus the NPPF reverses 'sustainable development' features within UK environmental law.

It is no surprise in the current economic climate that lawmakers are focused on short-termism, but in the recent past 'sustainable development' has been a key feature of climate change legislation. The homegrown Climate Change Act ('CCA') of 2008 set an ambitious target of 80% cuts in emissions of greenhouse gases from 1990 levels by 2050. Through 'carbon budgets' the CCA

1 *Our Common Future: Report of the World Commission on Environment and Development* 1987

2 See the Defra website at: http://www.defra.gov.uk/environment/economy/sustainable/

3 *Our Common Future* Part III, 7

4 See *Securing the future- delivering UK sustainable development strategy, Executive Summary,* 2005 and *Mainstreaming sustainable development. The Government's vision and what this means in practice.* Defra, February 2011

5 See examples below

6 A commitment was made in *Mainstreaming sustainable development* to embed 'sustainable development' into all policies, but as discussed below, current government thinking undermines this

7 Which for the purposes of this essay are interpreted as serving the purpose of 'law'

8 *Draft National Planning Policy Framework*, 25 July 2011, Section 19

9 The Communities and Local Government Committee has suggested the NPPF could lead to 'unsustainable development' and ad vised that the 'default yes' be removed. See the *Communities and Local Government Committee -Eighth Report The National Planning Policy Framework*, December 15 2011, Chapter 4

10 One of the five guiding principles of the 2005 Sustainable Development Strategy-see *Communities and Local Government Commit tee -Eighth Report,* Chapter 4

11 *In the matter of the draft national planning policy framework and in the matter of sites of special scientific interest*, Opinion, 20 September 2011, Natalie Lieven QC, Landmark Chambers

12 Ibid

introduced an agenda that must shape all other policy areas if targets are to be met-the kind of big picture thinking that is needed if 'sustainable development' is to become a key part of UK environmental law. David Kennedy, Chief Executive of the Committee on Climate Change ('CCC')[13], suggests that the power of the legislation to bind the government is evidenced by their acceptance of the 4th carbon budget-legally it was very difficult to ignore the CCC recommendations. [14] In *R (on the application of London Borough of Hillingdon and others) v Secretary of State for Transport,* it was held that the decision to support Heathrow expansion should be revisited in response to the Climate Change Act. LJ Carnwarth concluded, 'common sense demanded that a policy established in 2003, before the important developments in climate change policy, symbolized by the Climate Change Act 2008, should be subject to review in the light of those developments'[15]. The CCA shows that UK lawmakers have previously succeeded in producing legislation with a clear sustainability message, capable of enforcement in the courts.

Some 'European' laws have helped to embed 'sustainable development' concepts into UK environmental law. Article 6(4) of the Habitats Directive provides a powerful mechanism for balancing economic development, public interest and the environment. The requirement to develop must be for 'imperative reasons of overriding public interest', and even then appropriate compensatory measures, such as creation of alternative habitat, must be taken. David Hart QC argues that when applied to proposed developments, such as the Severn barrage, this could force decision-makers to abandon projects if the environmental impacts are too great[16]. This is the kind of difficult decision-making that Brundtland originally envisaged.

'Sustainable development' is not currently a key feature of UK environmental law, but should it be? Some lawyers prefer the concept of 'Earth Jurisprudence'. This 'philosophy of laws and regulations gives formal recognition to the reciprocal relationship between humans and the rest of nature.' [17] 'Wild laws' are the rules that give effect to Earth Jurisprudence. [18] 'Wild lawyers' reject the three-pillar approach of 'sustainable development'. They believe that all laws, not just environmental laws, must be 'derived from the laws of nature'[19] as these are the laws upon which human life ultimately depends. Filgueria and Mason argue that Article 2 of the Habitats Directive takes into account social and economic factors but, 'does not give them priority over the dominant rationale of conservation of nature… [a] species should be protected at least until it attains "favourable status" which means that it is "maintaining itself on a long-term basis as a viable component of its natural habitats."'[20] This suggests potential for 'Wild law' principles to develop, although they do not currently feature prominently in UK environmental law. [21]

Disturbing climatic trends and current social protest, such as the Occupy London movement, signal that now is a time for change. We must manage economic development within environmental and social limits. Whether this will be through the integration of 'sustainable development' principles, or more radical 'Wild laws', is yet to be seen. However, it is certain that to have a truly 'sustainable' future, UK law, not just environmental law, will need to play a key part.

13 An advisory body established by the CCA

14 Ukela annual Garner Lecture, December 2011, Clifford Chance, London

15 *R (on the application of London Borough of Hillingdon and others) v Secretary of State for Transport* [52]

16 Presentation at Moorgate College of Law, January 2011, London

17 *Wild Law: Is there any evidence of earth jurisprudence in existing law and practice? An international research project,* March 2009, Begonia Filgueira, Ian Mason and Professor Lynda Warren, p.3

18 Ibid p.4

19 Ibid p.3

20 Ibid p.8

21 Ibid p.11

Contributions: Aldson - NPPF

The National Planning Policy Framework

Frances Aldson frances.aldson@gmail.com

For those of us who believe that sustainable development is far more than a member of the 'Pantheon of concepts that are not to be questioned in polite company', the opening of the NPPF held out an initial ray of promise. Rather than the usual talk of 'promoting' or 'contributing to' sustainable development, the new planning policy framework is presented as a recipe for 'achieving sustainable development'. Bold language indeed. The problem lies not in the intention – the Government is clear in restating the central purpose of sustainable development in the planning system. Instead, the issue is precisely what that intention is.

Having been hauled over the coals for their distinctly indeterminate and growth-friendly approach to sustainable development in the draft NPPF, the final document aims to flesh out what achieving a sustainable future means. In the language of the end of term

reports at my former secondary school, they gain points for effort, but score lowly on attainment.

The box at the top of page 2 of the NPPF recites the standard text about sustainable development from the UN General Assembly and the Brundtland Report. This is followed by a restatement of the five guiding principles of the 2005 UK Sustainable Development Strategy – a seemingly redundant document but revived to add green legitimacy and palatability to the planning framework. The first guiding principle is 'living within the planet's environmental limits'. Either the present Government does not understand what this actually means, or they have chosen to accord it only the smallest of walk-on parts. Nowhere else in the 58-page document is there any mention of 'limits' or 'ecological capacity'. Nor are any of the policies explicitly or implicitly geared to take account of any constraints the natural world may place on the pursuit of exponential economic growth. The cumulative impacts of human activity on biodiversity, ecosystem services and natural resources simply do not feature. The indispensability of sustaining the health of ecological systems to future generations, and to future economic activity, are similarly overlooked. The NPPF is a policy framework for short-term 'having your cake and eating it'. 'We can grow our economy indefinitely and retain green spaces and important designations and all will be well!' is the blindly cheerful message trumpeted out of its pages, against an established weight of scientific evidence to the contrary.

Worse still, the NPPF fails even to reflect the 'three equal pillars' conception of sustainable development that emerged from the 2002 World Summit on Sustainable Development. The NPPF states at page 3 that the environmental, economic and social components are 'mutually dependent' and that they should be 'sought jointly and simultaneously through the planning system'. To a legal brain, there is a world of difference between 'sought jointly' and 'accorded equal importance'. In the event of an inevitable clash where there is no obvious 'win-win' solution, the courts will, in the absence of other determining factors, be left without clear guidance as to which objective they should prioritise. This ambiguity is made even more concerning by the subtle implication of the NPPF's tone and structure. At first blush, the numbering sequence for the 13 core planning policy principles may seem inconsequential. Yet the placing of 'building a strong, sustainable economy' in pole position, with 'protection of the natural environment' considerably down the pecking order at number 11 creates a strong impression that the overriding priority is indeed economic growth – an observation that is indeed apparent from any following of current domestic political affairs. Courts, will not, of course, be bound to take account of the subtleties of a numbering sequence, but the impression it creates, combined with the overall language of the NPPF, could easily tilt a 'finely balanced' decision against the ecologically favourable.

In his 2009 'Prosperity Without Growth' report, Professor Tim Jackson wrote the following: 'Every society clings to a myth by which it lives. Ours is the myth of economic growth. The myth of growth has failed us. It has failed the two billion people who still live on less than $2 a day. It has failed the fragile ecological systems on which we depend for survival. It has failed, spectacularly, in its own terms, to provide economic stability and secure people's livelihoods…Prosperity consists in our ability to flourish as human beings – within the ecological limits of a finite planet. The challenge for our society is to create the conditions under which this is possible.' The NPPF represented a chance for the Government of this country to be brave – to define an ambitious new planning policy framework that would work for long-term social, environmental and economic well-being, and uphold the interests of generations to come. Instead, it holds out the promise of 'more of the same' – more policies for short-term growth that will inevitably go bust when the economic cycle enters its downward phase, more market-led development in the areas with the least capacity, while those areas in greatest need continue to wither away.

The BBC News (16 April 2012) contained a feature on the misfortunes of Tyneside. 'One of the areas of the country with the highest unemployment' it said, an area struggling to recover from its historical legacy of heavy industry. The feature told a story that is virtually unchanged from when I worked in that region from 2003-5, in spite of the then Regional Development Agency's enthusiasm for rampant 'economic regeneration'. A sustainable country is a country in balance, without such vast disparities in economic, social and environmental fortunes. Will the NPPF deliver a vision of a more spatially balanced, sustainable country? No, it will not. Will the BBC still be reporting on economic, social and environmental problems in the North East in a decade's time, and of water shortages and air pollution problems in the over-developed South East? Undoubtedly so. Who are the winners from the NPPF? The cynic says it will be the housebuilders and property developers who will be able to tout the 'presumption in favour of sustainable development' as a licence to expand housing provision in the South East while parts of the North continue to be bulldozed. And this cynic, whilst open to being proved wrong, has a strong suspicion that she will be right.

EU Round Up

Thanks as ever to the EEL News Service

EU Court rules on confidentiality in waste shipment obligation

Case C-1/11, *Interseroh Scrap and Metals Trading GmbH v Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH (SAM)*, **29 March 2012**
On 29 March 2012, the Court of Justice of the EU issued a preliminary ruling in case C-1/11 regarding requirements for shipment of waste set forth in Regulation (EC) No 1013/2006 of 14 June 2006 as amended by Commission Regulation (EC) No 308/2009 of 15 April 2009. The case was brought to a German court by a steel and metal scrap dealer claiming that an obligation to reveal the names of its waste suppliers to the consignee of the waste infringed its right to the protection of business secrets, impeded its economic activity and in effect caused a loss of clients.

The ECJ was asked to interpret article 18 of the Regulation to answer whether such obligation is not qualified by confidentiality requirements under EU and national law, as well as EU primary law in order to protect business secrets. While the Court recognized the protection of trade secrets under Germany's basic law and general principles of EU law, it emphasized the non-derogatory character of Regulation No 1013/2006. As a consequence of the tracking procedure provided for in article 18, even when non-disclosure might be necessary to protect the business interest of the intermediary dealer, shipment documents including the waste producer's name must be available to both the authorities of the countries of dispatch and destination, and all the natural or legal persons involved in the shipment of waste.

Dutch Supreme Court: President-director Trafigura can be prosecuted

Supreme Court (Hoge Raad) 30 January 2012, case nr. R.1115-10, LJN BV2230

The Supreme Court of the Netherlands decided that the president-director of Trafigura can be prosecuted for his share in the ordering for or directing of the illegal export of hazardous waste from The Netherlands to Ivory Coast in August 2006. His lawyers had pleaded that criminal prosecution should be dismissed, notably because a case against him in Ivory Coast had already been dropped. The defender pleaded that instigating his prosecution in the Netherlands would constitute a violation of the *ne bis in idem* principle. It was also brought forward that the Dutch judiciary has no jurisdiction in the matter. Finally, it was pleaded that it would be very unlikely that a judge would find him guilty since evidence for his involvement is lacking.

The *ne bis in idem* claim was rejected by the Supreme Court, notably because the decision in Ivory Coast where the cargo of the Probo Koala was dumped, did not touch upon the same facts as the ones for which the Dutch public prosecutor seeks a conviction. Since the illegal export (violating Dutch rules based on the applicable EU Regulation on export of waste) took place from the Netherlands to a state from the African, Caribbean and Pacific (ACP) Group, the Dutch courts have jurisdiction to deal with the case. Finally, the Supreme Court took note of the conviction of the company Trafigura of 23 December 2011 by the District Court of Amsterdam (Hof Amsterdam, case nr. 23-003334-10, LJN BU9237, MenR 2012/42 with annotation by Douma en Van Ham) in which a fine of 1.000.000 Euro was imposed and found that it was not very unlikely that the evidence would lead to the conclusion that the suspect, although he had the authority and was obliged to do so, refrained from taking measures that would prevent the illegal export and thus consciously accepted the significant chance that the illegal activities would take place and/or ordered them to take place.

Council and Parliament Reach agreement on Seveso III

On 27 March 2012, the European Parliament and Council have reached agreement on successor legislation to the Directive 2003/105/EC (Seveso II Directive) on major accidents and hazards, which applies to around 10,000 designated sites across the EU. The revision based on the Commission's proposal (18257/10), aims to replace the Seveso II Directive by 1 June 2015, tightens the requirements of the directive aimed at preventing and mitigates the consequences of accidents with hazardous chemicals such as oil and petrol, toxic chemicals, or fireworks. On 11 June 2012 the EU Parliament is scheduled to vote on the revised directive. Environment ministers will most likely finalize the procedure in the second half on 2012.
Among the main stumbling blocks during negotiations were the scope of the directive and rules on public access to information and justice. Adjustments to the scope were necessary in order to align the substances falling in scope of the directive with new rules on

the classification, labelling and packaging (CLP) of chemical substances.
Under revised requirements on public access to safety information, disclosure rules will cover also lower tier sites. Member states authorities are required to make available online information about recent inspections and following major accidents, location of Seveso sites in their territory as well as emergency procedures for citizens.
Access to justice provisions implementing elements of Aarhus convention have raised concerns among the Member States. The new rules will enable EU citizens to go to court when they think they have not been consulted on the establishment of a new designated establishment in their neighbourhood.
With the aim of improving the level of safety of Seveso sites, each of them will have to prepare an accident prevention policy, including stricter standards for inspections of installations. Here, the divisive determinations included the extent to which operators should take into account non-Seveso sites in the vicinity that potentially pose further risks in event of an incident. The fact that necessary information on such sites is not always available has been accounted for in the final text.

Independent Expert on human rights and the environment established by UN Human Rights Council

On 20 March 2012, at its 19th session the UN Human Rights Council adopted a resolution (A/HRC/19/L.8/Rev.1) to appoint an independent expert on human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment. Under the document, co-sponsored by over 80 states and adopted by consensus, the expert will be appointed for a period of 3 years. Among his tasks, the study of obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment; identifying and promoting best practices relating to the use of human rights obligations to support environmental policymaking and, in particular, environmental protection; and submitting annual reports to the Council starting at its 22nd session. The resolution draws on the work of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. The UN system took account of the link between human rights and the environment during the Earth Summit in Rio de Janeiro in 1992. The resolution calls on the Independent Expert and the Higher Commissioner for Human Rights to contribute to the human rights insights at the upcoming United Nations Conference on Sustainable Development to be held in Rio de Janeiro, Brazil in June 2012 (Rio+20) and the follow-up processes.

Planet under Pressure conference formulates challenges for Rio+20

On 26-29 March 2012 in London, the Planet under Pressure conference brought together a range of stakeholders from international and national senior policymakers, through industry leaders and NGOs, to representatives from development and business sectors do discuss solutions to move societies on to a sustainable pathway. The main objective was to provide scientific guidance towards the 2012 UN Rio+20 conference in June 2012 through a comprehensive update on global sustainability research of the Earth system. Among the themes considered in the conference were climate change, ecological degradation, planetary thresholds, food security, energy, and poverty alleviation. The International Council for Science has identified five challenges that guided the conference's agenda: observations, forecasting, thresholds, governance and economic requirements, and innovation (technological, political and societal).
The outcome of the conference was the adoption of a declaration by its co-chairs, setting forth a number of initiatives as recommendations for the Rio+20 Summit. These include (1) a replacement of GDP with an alternative measure of progress that incorporates environment and social equity; (2) development of a framework for global sustainability, taking account of synergies and trade-offs in and between areas such as food, water and energy security, maintenance of biodiversity, sustainable urbanisation, social inclusion and livelihoods; (3) creation of a UN Sustainable Development Council to integrate social, economic and environmental policy at the global level; (4) launch of an international research initiative, Future Earth, to address global environmental change in an integrative, solutions-oriented way; (5) development of a a framework for regular global sustainability analyses that link existing assessments. The declaration is accompanied by a supporting statement from the UN Secretary General Ban Ki-moon who expressed his readiness to work with the scientific community on the launch of a large-scale scientific initiative towards sustainability.

US airlines drop lawsuit against EU ETS among growing global opposition

The Air Transport Association of America, under the new name Airlines for America (A4A), dropped the case at the High Court of Justice of England and Wales against their inclusion in the EU emissions trading scheme. Directive 2008/101 took effect on 1 January 2012 and requires all air companies flying to and from EU airports to purchase GHG emissions permits (EU allowances). The A4A's unexpected announcement came shortly after it had filed a request at the high court to add new claims.

Contributions - EEL Round Up

In December 2009, the association had brought a case against the UK Minister for Energy and Climate Change to challenge measures taken by the UK to implement the directive. The UK high court referred the matter to the European Court for a preliminary ruling to examine the validity of the Directive against several international agreements and customary international law. In its ruling of 21 December 2011, the Court allowed the applicant to rely on certain principles of customary international law as benchmarks for an act of the EU, finding, however, that neither relevant customary principles nor treaty provisions had been violated by the measure in question. The ECJ observed that the EU ETS is only applicable to the foreign and domestic airline operators when their aircraft is physically in the territory of one of the Member States of the EU and thus subject to the unlimited jurisdiction of the EU.
The association is planning to instead pursue its claim through the political route, calling on the US government to take over the case. Other non-EU states such as China, India, Canada and Russia, have expressed their opposition to the inclusion of aviation in the EU ETS.. These states and the non-EU airline operators, concerned about additional costs, argue that reducing emissions is a global responsibility and should be tackled globally through the International Civil Aviation Organization (ICAO). Although the EU directive allows for exemption from ETS requirements of countries which have enacted "equivalent measures," the latter has not yet been defined by the Commission. The ICAO, having considered various options for emissions reduction for over a decade, is still to create its own framework.
In reaction to the European Court's decision, the subsequent entry into force of the ETS requirements and in the absence of an agreed position of the ICAO, representatives of 26 non-EU states met in Moscow on 21-26 February 2012 to discuss countermeasures to the ETS. The meeting was concluded with a Joint Declaration stating that EU ETS obstructs the progress of ICAO's work which should constitute the primary route to address emissions reduction. In addition, it accused the EU ETS of causing market distortions and unfair competition. The agreed countermeasures include the use of retaliatory measures against EU, such as suspending the enhancement of operating rights of EU companies or charging them additional fees, and the use of domestic measures to prohibit domestic airline companies from participating in the EU ETS. On 6 February 2012, the Civil Aviation Administration of China gave effect to the latter option, prohibiting Chinese airlines from participating in the scheme and raising fares or passenger charges to recover the cost of taking part in ETS. Recently, India has followed suit, giving a directive for its airlines to not participate. Indian operators have consequently not submitted emissions details of their aircrafts by the deadline of 31 March 2012.

Contributions: US lawyers Caplan and Rubin - CCS

EPA proposes greenhouse gas emissions limits for new power plants

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On March 27, 2012, EPA issued its long-awaited "Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units" (EGUs). The proposal is the clearest statement yet by EPA that new coal-fired power will be strongly disfavored unless built with carbon capture and sequestration (CCS) technology.

The Proposed Standard

EPA's proposed standard -- 1,000 pounds of CO_2 per megawatt-hour (lb/MWhr) -- is based on the demonstrated performance of natural gas combined cycle (NGCC) plants, which EPA finds to be the best system of emission reduction for greenhouse gases (GHG). EPA posits that coal and pet coke plants can also meet this standard with CCS.

The standard was issued under the authority of the New Source Performance Standards (NSPS) section of the Clean Air Act, in contrast to current regulations requiring pre-construction permits for new and modified major sources of GHGs, which were issued under New Source Review Prevention of Significant Deterioration (PSD) program. The NSPS GHG standard is based on EPA's past findings that EGUs cause or contribute significantly to air pollution that may reasonable be expected to endanger public health or welfare, or, in the alternative, is based on similar findings EPA made with respect to GHG emissions from automobiles.

Scope of Coverage

The standards only apply to *new* EGUs over 25 MWe, including coal, oil and combined cycle gas plants. It does not apply to simple cycle gas plants (typically peakers) or, for now, plants that primarily burn biomass (including those that co-fire with less than 250 MMBtu/h of fossil fuel). It also does not currently apply to existing units or modifications of existing units, although EPA suggests,

such plants may be covered by future NSPS regulations under section 111(d). Further, the standard does not apply to modifications that plants are undertaking to construct pollution controls to meet other EPA requirements for conventional and toxic pollutants.

EPA is further exempting from the standard "transitional" plants that have pre-construction permits and will commence construction within 12 months of the *proposal*, including those being constructed through federal funding (*i.e.* government demonstration plants).

Coal Plants Can Be Built with CCS

EPA asserts that there is still a future for new coal plants to ensure energy diversity. Hence, its proposal would allow coal and pet coke plants to meet the standard by using CCS (capturing approximately 50% of the CO_2 in exhaust gas at startup) and averaging emissions over a 30 year period. Thus, a plant could install CCS at the outset or after ten years, as long as its 30 year average met the same overall standard. Plants seeking this option would need to meet a 1,800 lb CO_2/MWh standard on an annual basis, which can be achieved by installing super-critical boiler technology. By the 11th year of operation, the plant would need to meet a 600 lb CO_2/MWh annual standard for the remaining 20 years of its 30-year period.

While many argue that CCS is not commercially viable, EPA appears to view CCS as a more near term option if industry is given the necessary certainty, and by this rule, EPA is seeking to provide that signal.

Standard Based on Industry Practice

EPA claims that the proposed standard is consistent with industry practice and will not impose notable costs upon sources. EPA states that its modeling and industry projections show that NGCC will be the predominant choice for fossil-fuel generation, even absent the rule, until at least 2020, and that few if any new coal plants will be built during that period. It further posits that there will be no coal plants built without CCS by 2030. Even using assumptions of increased gas prices and increased electric demand, EPA did not see significant coal construction in 2030.

EPA reasons that NGCC plants are cheaper to build than coal plants with CCS and take advantage of cheap and widely plentiful gas. It concludes that CCS costs will decline as the technology matures and is utilized more widely. EPA is also clearly sending a signal to the industry as to what plants may be constructed in the future and hopes that this standard will provide the clarity and certainty to the power sector and make CCS more quickly commercially viable.

Likely Next Steps

The proposal will be open for public comment for 60 days following its publication in the Federal Register, which hasn't yet occurred. EPA may then finalize the rule within the next year. It is possible that EPA may significantly modify its proposal before it is final**.**

We expect that the proposal now, and any final rule that largely keeps the proposal intact, will be vehemently opposed by many in industry and Congress as too costly and impractical, and allegedly based on unsupported projections of gas prices and CCS availability. It will be particularly opposed by the coal industry and those who have called into question the science behind climate change and strongly oppose any regulation of GHGs.

While it will likely be challenged in court, upon finalization, the proposal itself will impact new plants that are not yet permitted and commence construction a year from publication of the proposed rule. That is because "new sources" are defined as those that commence construction after the date of the proposal, but EPA has given a twelve month reprieve to "transitional" plants.

Moreover, any court challenge will be impacted by a ruling on EPA's initial endangerment finding and automobile tailpipe and PSD GHG regulations, challenges to which were heard by the D.C. Circuit in February 2012.

In addition, the standard, when final, would serve as the "floor" for a "Best Available Control Technology" (BACT) analysis for PSD permitting for new GHG sources. Such new sources would need to consider the standard as BACT when applying for pre-construction permits under the Tailoring Rule. However, it is not clear how this might affect existing sources making major modifications which would require pre-construction permits under Tailoring Rule since arguably there is no GHG NSPS for existing plants. Ironically, the proposed standard may have the affect of encouraging companies to modify and/or continue running older plants since construction of new plants would be costly and difficult.

Human Rights and the Environment - A view from the European Court of Human Rights

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Abstract

The paper is set within the context of the emerging discourse on environmental security and sustainable development. It seeks to inject a new paradigm into the discourse by demonstrating how a human rights based approach could aid the advancement of the agenda of environmental security and protectionism, while at the same time generating the impetus for international human rights law to widen its purview of focus. It establishes how a platform that views human rights and environmental protection as inextricably linked can be mutually reinforcing, through a comprehensive examination of the jurisprudence of the European Court of Human Rights (ECTHR). The purpose of such an endeavour is two-fold. Firstly, to establish the positioning of the European Court of Human Rights in relation to the issue of human rights and environment. Secondly, it assesses the contribution that the ECTHR has made to the subject.

The paper begins by describing the relationship between human rights and international environmental law through the consideration of various sources of international law in general and environmental law in particular. The paper moves on to discuss if there does in fact exist a human right to an environment, and if so, what it should entail. It then analyzes the raison d'être for the formal establishment of such a human right in international law, and the challenges of such a project, if undertaken.

1. Introduction

There is little disagreement that human rights and environmental protection share a filial relationship. In the words of the scholar, Dinah Shelton,'The interrelationship between human rights and environmental protection is undeniable.'[1] Similarly, equally little disagreement exists on the distinct and separateness of the two areas as argued by commentators such as John G. Merrills who declare that 'International environmental law and the law of human rights embody distinct but related concerns for the modern world.'[2]
This interrelationship was explored as early as 1972 at the Stockholm Conference on the Human Environment. Resource depletion fit within this agenda and stimulated interest among developing states which culminated in a Declaration recognizing environmental protection as a precondition for the enjoyment of several human rights. Subsequently, at the United Nations Conference on the Human Environment, Principle 1 of the Final Declaration states the 'Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.' Thereafter, the 1968 United Nations Tehran Conference on Human Rights declared that all human rights are 'interdependent and indivisible', hence opening the door for consideration of complex issues like environmental rights. Twenty years after the Stockholm Conference, it is remarkable that the United Nations General Assembly recalled the language of the Stockholm Declaration in its Resolution 45/94. [3]

However, whether these are anything more than policy aspirations or symbolic gestures is questionable. It has been opined by commentators, that while they may guide decision-makers in a general sense, courts are reluctant to require potentially vast sums of money to be spent on environmental improvement works to uphold such rights not least because this might involve protecting the 'first right to get to court' at the expense of others, perhaps more worthy of improvement schemes.

2. Human rights and Environmental Security - The essential relationship

The question that immediately arises then is how would emphasizing international human rights law contribute to environmental security and protection. The substantial practical reason would be that it currently provides the only set of international legal procedures that can be invoked by those whose well-being suffers due to environmental degradation, to seek redress for harm that is the consequence of an act or omission attributable to a State.[4]

1 Dinah Shelton, Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?, Denver Journal of International Law and Policy, 2007

2 John G. Merrills, Environmental Rights in The Oxford Handbook of International Environmental Law edited by Daniel Bo dansky, Jutta Brunnee and Ellen Hey, Oxford University Press, 2008

3 A/RES/45/94, paras 1-2, December 14, 1990 available at http://www.un.org/Depts/dhl/resguide/r45.htm

4 Dinah Shelton, Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?, Denver

Further, the inclusion of inaction is significant because most environmental harm is due to non-state activity. Thus, while no international human rights procedure allows a direct action against private enterprises or individuals who cause environmental harm, a State allowing such harm may be held accountable.

There has been identified four principal and complementary approaches to characterize the relationship between human rights and the environment.[5] Firstly, incorporating and utilizing those human rights guarantees deemed necessary or important to ensuring effective environmental protection – this approach emphasizes procedural rights such as freedom of association which permits the existence and activities of Non-Governmental Organizations, and their right of access to information concerning potential threats to the environment. While such an approach is commendable, writers like Johanna Rinceanu argue that though the potential for improving environmental protection through effective guarantees of procedural rights is solid, the absence of complaint mechanisms or other recourse in international agreements is a limiting aspect.[6]

Secondly, human rights law re-casts or interprets internationally-guaranteed human rights to include an environmental dimension when environmental degradation prevents full enjoyment of the guaranteed rights as seen in Judge Weeramantry's opinion in 1997 of the Gabcikovo-Nagymaros Project, Hung v Slovk.[7] The primary advantage of the second approach over the first is that existing human rights compliant procedures may be employed against those states whose level of environmental protection falls below that necessary to maintain any of the guaranteed human rights. Using existing human right law has its limits, however, because it cannot easily resolve threats to other species or to ecological processes if these are not linked to human well-being.

The third approach to define the relationship between human rights and the environment would be the formulation of a new human right to an environment that is not defined in purely anthropocentric terms namely, an environment that is not only safe for humans but one that is ecologically- balanced and sustainable in the long term.

Finally, the fourth approach would be one that prefers to address environmental protection as a matter of human responsibilities rather than rights, for instance, as seen in the recent United Nations Earth Charter of March 2000.[8] Those arguing for this approach contend that ecological rights can balance human rights by introducing ecological limitation on human rights.

As writer Prudence Taylor observes, 'The objective of these limitations is to implement an eco-centric ethic in a manner which imposes responsibilities and duties upon human kind to take intrinsic values and the interests of the natural community into account when exercising its human rights.'[9] This sentiment is reinforced by writers such as Catherine Redgwell who observe that 'there has been an increasing recognition in international environmental law of the intrinsic value of animals and nature which goes beyond merely an incidental spill-over effect.'[10]

3. Human Rights and the Environment - A view from the European Court of Human Rights

Interestingly, from Stockholm to the present, most advances in developing environmental rights have occurred first and almost exclusively at the regional level. The European Union, through its jurisprudence developed by the European Court of Human Rights (ECTHR), has been at the forefront of regional contributions to environmental security and protection via a human rights based approach. The following discussion examines the work of the ECTHR, and the tools and frameworks used to advance the protection of the environment through human rights. The examination considers the wide and varied human rights through which the ECTHR seeks to achieve environmental security and protection.

Regionally, the European Community generally guarantees the right of the individual to be informed about the environmental compatibility of products, manufacturing processes and their effects on the environment and industrial installations[11] and two general directives address rights of information.[12]In the case of Leander v Sweden, the applicant alleged violation of Article 10 of

Journal of International Law and Policy, 2007

5 Dinah Shelton, Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?, Denver Journal of International Law and Policy, 2007

6 Johanna Rinceanu, Enforcement Mechanisms in International Environmental Law, 15 Journal of Environmental Law and Litigation 147,149,2000

7 Judge Weeramantry's opinion in 1997 of the Gabcikovo-Nagymaros Project, Hung v Slovk available at http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=hs&case=92&k=8d

8 UN Earth Charter available at http://www.earthcharterinaction.org/content/

9 Prudence Taylor, From Environmental to Ecological Human Rights: A New Dynamic in International Law?, 10 George-town International Environmental Law Review 309, 310, 1998

10 Catherine Redgwell, Life, the Universe and Everything: A Critique of Anthropocentric Rights in Human Rights Approaches to Environmental Protection edited by Alan E. Boyle and M. Anderson, 1996

11 EC Council Directive 76/160 – article 13 1976

12 EC Council Directive 85/337 and Council Directive 90/313, 1990 replaced in January 2003 by 2003/4 as a consequence of the adoption of the 1998 Aarhus Convention.

ECHR after he was refused access to a file that was used to deny him employment. The court unanimously dismissed the claim stating that 'The right of freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not…confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual.' Thus it appears that this restrictive approach by the ECTHR construes 'right' narrowly by finding the Government liable only if it obstructs or hinders a person from receiving information. It does not require a proactively responsible role for the Government in providing information to its citizens.

The ECTHR has applied its restrictive approach to environmental cases. The approach of the ECTHR can be contrasted with the views of the former Commission which adopted a broader approach including the right of the individual to receive information not generally accessible and that is of particular importance to him/her. In Guerra v Italy, the European Commission on Human Rights (ECOMHR) admitted the complaint insofar as there was a violation of a right to information but did not accept the claim of pollution damage. The ECOMHR concluded that Article 10 imposes on States an obligation not only to disclose to the public available information on the environment but also the positive duty to collect, collate and disseminate information which would not otherwise be directly accessible to the public or brought to the public's attention. It acknowledged a fundamental right to information, at least in Europe, concerning activities that are dangerous for the environment or human well-being.

However, in 1998, the ECTHR reversed the expanded reading of Article 10 by ECOMHR and reaffirmed its earlier position, but unanimously found a violation of Article 8. It is noteworthy that the ECTHR adopted a more liberal approach to cases concerning freedom of press where the court held that the State may not extend defamation laws to restrict dissemination of environmental information of public interest. In Bladet Troms V Norway, the court justified its position stating that a decision otherwise would undermine the press' public watchdog role. The court went further in the case of Thoma v Luxembourg saying that when criticizing public officials, as opposed to private individuals a degree of exaggeration or even provocation is allowed when it is proportionate to the legitimate aim pursued, and with sufficient reason provided for its necessity to the functioning of a democratic society, and is in the general interest.

It might be argued, however, that this recourse to provocation and exaggeration given to journalists can be dangerous as the press is known for its tendencies of sensationalism. Thus, this approach is likely to create a 'slippery slope' when it comes to violating the protection of rights and reputation of public officials. It might be argued that the approach of 'naming and shaming' should be allowed by the press only insofar as it reveals its sources of information and is based on pure facts alone. There should be no leeway for exaggeration. Despite its contribution to environmental protection, it is arguable that such a 'lax' approach– which should be distinguished from a 'relaxed' approach – is not likely to achieve any more than adopting an approach sans exaggeration and sensationalism. On the contrary, it is in all likelihood that such a situation would turn out to be counter-productive where the public perception of the media will be one that is lacking is credibility as it is not operating based on pure facts.

Article 6 of the ECHR guarantees a fair and public hearing before a tribunal for the determination of rights and duties. In Oerlemans v Netherlands, Article 6 was deemed to apply to a case where a Dutch citizen could not challenge a ministerial order designating his land as a protected site. Similarly, the applicability of Article 6 was upheld in Zander v Sweden. Further, the right to remedy was held to extend to compensation for pollution under Article 6 in Zimmermann v Switzerland where the ECTHR found Article 6 applicable to a complaint about the length of the proceedings for compensation for injury caused by noise and air pollution from a nearby airport.

In the case of Pialopoulos v Greece, ECTHR accepted the impugned measures aimed at environmental protection and thus served a legitimate state interest. However, it went on to hold that the applicants were entitled to compensation and that without it their property rights had been violated. Arguably, such an approach by the ECTHR may be termed a 'halfway' or 'compromised' approach since it does not entirely dismiss the individual's right but duly compensates him, without which it would be considered a violation. On the other hand, it might be argued with equal vigour that it is not a true compromise since preference has been accorded to state interest and compensation to the individual is merely a 'consolation prize.'

The European Commission on Human Rights and the ECTHR have held that environmental harm attributable to state action or inaction which has significant injurious effect on a person's home or private and family life is a breach of Article 8(1). However, Article 8(2) provides an exclusion clause for situations where harm may be excused, if it results from an authourized activity of economic benefit to the community in general, as long as there is no disproportionate burden on any particular individual. States enjoy a margin of appreciation in determining the legitimacy of the aim pursued.

Recent decisions of the court have shown to balance the competing interests of the individual and the community with deference to the state's decision. In Arrondelle v UK and Baggs v UK, the cases were admissible but resolved by friendly settlement which left unresolved numerous issues which were addressed in Powell v UK. In this case the ECTHR found that aircraft noise from

Heathrow airport constituted a violation of Article 8 but was justified under Article 8(2). Noise was deemed acceptable under the principle of proportionality, a test that could be met if the individual had, as the ECTHR stated, 'the possibility of moving elsewhere without substantial difficulties and losses.'

It is arguable that in this case environmental protection was not high on the agenda of priorities for the court. The harm to the individual is weighted against the benefits to the community and it might be argued that since noise is not 'harmful' or 'dangerous' to the individual's life this decision by the ECTHR is justified. However, as far as environmental protection is concerned the same cannot be said.

In Hatton v UK, though the initial chamber found that the noise from increased flights between 4am and 6am violated the applicant's rights for their home and family life, it was overturned by a Grand Chamber decision. The Grand Chamber held that the state cannot simply refer to the economic well-being of the country 'in the particularly sensitive field of environmental protection' and required states to find alternative solutions. The Grand Chamber held this to be a new and inappropriate test that failed to respect the subsidiary role of the court and the wide margin of appreciation afforded to the state. It went on to say that for a case to be successful, the individual must seriously and directly be affected by noise or other pollution. The court decided that the states should take into consideration environmental protection in acting within their margin of appreciation and said that the ECTHR should review this, but that in doing so should not accord a 'special status of environmental human rights.' Thus it was held that there was no violation of Article 8.

This decision reflects the ECTHR hesitation in adopting an activist approach in general, and with regards to environmental protection in particular. It makes an outright rejection of a according special status for environmental human rights while not dismissing it as a criteria for judging state action. Thus it may be concluded that the ECTHR is far from granting environmental rights a 'special place' as a 'new' human right but seems to prefer embracing it only as a factor in a larger decision-making process. Hence, it is arguable that such cases reveal that ECTHR is not a guardian for environmental rights protection but reflects a lesser degree of interest in environmental protection. An accurate description of the ECTHR position is perhaps one that is *sensitive* or *sensitized* to the issue but not one that is *pro-actively supportive* of according environmental rights a status of a human right.

In the aftermath of the Hatton judgment, other cases on noise pollution have had mixed success. In Ashworth v UK – the court held the application to be admissible. In contrast, Gomez v Spain succeeded in its claim as the court held that noise levels were such that failure of the city council to enforce its own noise abatement measures was seen as flouting local laws.

Lopez Ostra v Spain was a major decision of the court where pollution was held to be a breach of Article 8. First, the court did not require the applicant to exhaust administrative remedies to make this challenge but only to complete remedies applicable to enforcement of basic rights. The ECTHR went so far to hold that severe environmental pollution may affect individual's well-being and prevent them from enjoying their homes in to such an extent that their private and family life are affected but with no endangering to health. In this case, it found that the court had exceeded its margin of appreciation. In Guerra v Italy, the court reaffirmed that Article 8 imposed positive obligations on states to ensure respect for private or family life. However, the decision is strained due to reluctance in extending Article 10 on freedom of information to impose positive obligations on the state.

In Fadeyeva v Russia, the state was found to be in breach of Article 8 as there was no evidence that the state drafted or applied effective measures which took into account the interests of the local population and which would have been capable of reducing the pollution to acceptable levels which in turn would have prevented the deterioration of the applicant's health.

In the case of Giacomelli v Italy (2006) the ECTHR upheld a violation of Article 8 on the grounds that the state did not strike a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste, and the applicant's effective enjoyment of her rights under Article 8 – persistent noise and harmful emissions from the plant which was only 30 meters away from her house. The plant was built on agricultural land which eroded the soil and posed risk of contamination of ground water.

In the more recent case of Lars and Astrid Fagerskiold v Sweden (2008), the applicants complained violation of Article 8 and Article 1 of Protocol No 1 of the Convention on the basis of disturbing noise from wind turbines and light reflection from its rotor blades. They had bought their property for recreational purposes which had been hindered decreasing the value of their property. Additionally, no noise investigation had been carried out despite repeated requests. The court observed that the level of severity required to form an Article 8 violation in relation to environmental issues had not been attained. The court recalled that there exists no explicit right in the ECHR to a clean and quiet environment.

It is illustrative from the case law of the ECTHR that an expansive interpretation of the notions of 'private life' and of 'home' has

been adopted in its judgments – Niemietz v Germany and Demades v Turkey. The court found that noise level recommended by the World Health Organization was only slightly exceeding the recommended maximum level in Sweden. Thus the ECTHR found that the noise levels and light reflection in the present case were not so serious as to reach the threshold established in cases dealing with environmental issues.

In relation to complaint under Article 1 of Protocol No 1, operating the wind turbine is in the general interest as it is an environmentally-friendly source of energy which contributes to the sustainable development of natural resources. Alleged interference was proportionate to aims proved, and thus there was found to be no breach in the instant case. Additionally, the applicants had not submitted evidence to show reduction in property value and had not exhausted domestic remedies.

This case is particularly interesting as it demonstrates a conflict between two competing environmental interests – the environmental interest of the community on the one hand and the environmental interest of the individual on the other. This case, not unlike the others discussed above, is arguably reflective of a trend where the ECTHR, while being cognizant of the individual's rights to an environment, seems to tilt in favour of the states' and community interest in the matter.

Further, the ECTHR has made it explicitly clear that it does not advocate a separate human right to the environment while at the same time does not dismiss it as un-important in the assessment and balancing of competing interests when deliberating on the facts of a case before it. Some might argue that this trend is reflective of according *indirect* protection to a right to the environment similar to the approach the ECTHR adopts when dealing with economic, social and cultural rights, where it is seen to make consideration for these rights under the guise of enforcing civil and political rights.[13]

That said, it is safe to say that the ECTHR is sensitized to environmental concerns in making decisions and even though it has not reached the place of accepting it as a substantive and separate human rights, it is undoubtedly moving in a direction, where if it continues along the similar trajectory, the jurisprudence is likely to eventually crystallize into a situation where a human rights to an environment becomes a norm. For the time being, however, the ECTHR can be seen to be contributing to environmental protection of individuals, albeit in an indirect manner, with no special status being accorded, but rather as a 'factor' or 'criterion' in the judges' decision-making 'tool box.'

This paper began by describing the relationship between human rights and international environmental law as related but distinct. As the preceding discussion illustrates, it is arguable that another way of describing the relationship is as one of mutually reinforcing.

4. A Human Right to an Environment - Myth or Fact?

Scholars such as Merrills argue that increasingly a broad 'right to environment' has been added to the list of traditional human rights. Despite the lack of state support for establishing such a right at the Stockholm Conference and an avoidance of 'rights language' in the Rio Declaration which instead calls for the participation of the public in environmental matters on the grounds of 'efficiency' (Principle 10), a landmark development has been seen in the 1998 Convention on the Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus Convention) which is the first environmental treaty to incorporate and strengthen the language of Principle 1 of the Stockholm Declaration which focused on an instrumental manner of giving content to environmental rights by identifying those rights that could be considered a prerequisite to effective environmental protection, namely, the right to information, participation and remedies.

4.1 Regional Systems

Moreover, there have been several developments which illustrate that a right to environment might be said to have been established particularly in the regional context, namely through the 1988 Protocol of San Salvador – Article 11 (1) which states 'a right to live in a healthy environment and to have access to public services; 1981 African Charter on Human and People's Rights – Article 24 which states a 'right to a generally satisfactory environment'; the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950, European Treaty Series No 5; the African Charter – Communication No 155/96 (Ogoni Case) The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria; the African Commission on Human and People's Rights, 30th Ordinary Session, October 2001. These then can be described as examples of 'use(ing) the language of human rights to promote or consolidate certain social values.'[14]

13 For a discussion in the 'indirect' protection of economic, social and cultural rights by the ECTHR see for example E. Brems, Indirect Protection of Social Rights by the European Court of Human Rights in Exploring Social Rights by Barak-Erez and Gross Aeyal, 2007

14 John G. Merrills, Environmental Rights in The Oxford Handbook of International Environmental Law edited by Daniel Bo dansky, Jutta Brunnee and Ellen Hey, Oxford University Press, 2008

4.2 International Conventions

Further, an examination of recent international conventions in the field of environmental law signals the crystallizing of such a human rights to an environment. The Preamble of the Aarhus Convention expressly states that 'every person has the right to live in an environment adequate to his health and well-being...' The following paragraph adds that to be able to assert this right and observe the duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters. Informational rights are widely found in environmental treaties, in both weak and strong versions. Some examples are The Framework Convention on Climate Change (article 6); The Convention on Biological Diversity similarly does not oblige state parties to provide information, but article 14 provides that each contracting party 'as far as possible and as appropriate' shall introduce 'appropriate' Environmental Impact Assessment procedures and 'where appropriate allow for public participation in such procedures.' Broader guarantees of public information are found in international instruments including the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes (article 16); the 1992 Espoo Convention on Environmental Impact Assessment in a Transboundary Context (Article 3 (8)) and the 1992 Paris Convention on the North-East Atlantic (article 9).Other treaties require state parties to inform the public of specific environmental hazards.

4.3 International Organizations

International organizations have begun to play a critical role in recognizing the relationship between human rights and the environment as is reflected by non-binding declarations of a right to environmental information such as the World Health Organization's European Charter on Environment and Health, The Bangkok Declaration (1990) and the Arab Declaration on Environment and Development and Future Perspectives of September 1991. Further, United Nations human rights texts generally contain a right to freedom of information or a corresponding state duty to inform – Universal Declaration of Human Rights (article 19); the International Convention on Civil and Political Rrights (article 19 (2). Additionally, the United Nations has on several occasions recommended measures in human rights protection which have had implications for environmental protection. Some noteworthy examples: The UN Human Rights Committee has indicated that state obligation to protect the right to life can require positive measures designed to reduce infant mortality and protect against malnutrition and epidemics implicating environmental protection. (UN ECOSOC General Comment 14, 2000). On November 8, 2000, the Committee on ESCR issued General Comment No 14 on 'Substantive Issues Arising in the Implementation of the ICESCR Article 12 – the Committee states in para 4 that 'the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as ...a healthy environment.'

4.4 The public

The major role played by the public in environmental protection is participation in decision-making, especially in environmental impact or other permitting procedures. Public participation is based on the right of those who may be affected to have a say in the determination of their environmental future. It is noteworthy that this is not restricted to residents but includes foreign citizens as well. Most recent multilateral and many bilateral agreements contain this – for example, the The Framework Convention on Climate Change (Article 4 (1)(i); The Convention on Biological Diversity (Article 14 (1) (a); regionally the Espoo Convention on Environmental Impact Assessment in a Transboundary Context. The right to public participation is widely expressed in human rights instruments as part of democratic governance and the rule of law. Article 21 of the UDHR, American Declaration on the Rights and Duties of Man (Article 20) and the African Charter (Article 13) and the ICCPR (Article 25).

5. A Human Right to an Environment - Problem or Solution?

The concept of a right to a healthy and safe environment has generated debate and contradicting developments. Not every social problem must result in a human right. Writers such as Shelton argue that the recognition that human survival depends upon a safe and healthy environment places the claim of a right to environment fully on the human rights agenda. Moreover, this could embrace elements of nature protection and ecological balance, areas not covered in human rights law because of its anthropocentric focus. As a result it is argued that this could prove to be problematic in that it would begin to refashion the entire human rights framework. On this argument then it is argued that the right to an environment should not be included as a human right.

There have been several arguments advanced for the establishment of a substantive right to the environment. Successfully placing personal entitlements within the category of individual human rights preserves them from the ordinary political process and limits the political will of a democratic majority and a dictatorial minority. This is useful particularly given the high short-term costs of environmental protection measures unfavourable to politicians.[15]

However, writers such as Merrills argue that incorporation of environmental rights into national constitutions and international treaties does not guarantee that the holder of that right will always be successful when in conflict with other rights. Nevertheless, he asserts that this will ensure that environmental rights will always be taken into account and also that good reasons will be needed

15 Dinah Shelton, Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?, Denver Journal of International Law and Policy, 2007

for denying them. Encapsulating values as rights are instrumental in ensuring that they are to be taken seriously. Designating an entitlement as a 'human' right is even better given the status of this class of rights in legal and moral discourse.

Furthermore, given the close relationship between law and morals in the area of environmental protection, it is difficult to argue for the legal status of environmental rights given its consistency with the rationale for human rights. The rights of an individual is in issue when what is at stake is bound up with life, property and control of one's affairs. Therefore, there is nothing in the concept of environmental rights that appears to be incompatible with this thinking. [16] Formulating the right as collective rather than individual as in the African Charter more accurately captures its essence as it is vital to the existence or survival of the beneficiaries where the right could be an economic, social or cultural right involving claims on resources of a wider community rather than simply a protection from interference. [17]

6. Carving out a Human Right to the Environment

The definition of a right to environment would have to include substantive environmental standards to restrict harmful air pollution and other types of emissions. Establishing the content of a right through reference to independent and variable standards is often used in environmental rights particularly with regard to economic entitlements and needs not be a barrier to a specific environmental quality. An approach similar to the ones adopted in other human rights treaties can be utilized to give meaning to the right to environment. Flexible obligations cognizant of the dynamic character of the right that is subject to variability in implementation in response to different threats over time need not undermine the concept of a right.

At the global level, several non-binding instruments include references to 'environmental rights' or 'right to an environment of a special quality.' The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities[18]; the Special Rapporteur annexed a set of Draft Principles on Human Rights and the Environment to her final report in 1994 of the study of the environment and its relationship with human rights. More recently, in 2001, the UN Human Rights Commission affirmed that 'a democratic and equitable international order requires...the realization of ...(t)he right of every person and all peoples to a healthy environment.'

7. Challenges

However, writers such as Merrills points out the attendant dangers in recognizing a human right to the environment. He contends that it can threaten social harmony and in some cases social welfare as it will create conflict when right holders come into confrontation with other right-holders and will also generate a tension between rights as a basis for action and other moral consideration. Writers like Alston discuss the need for 'quality control' when establishing 'new' human rights. He argues that this is not to suggest that environmental rights are unworthy of protection but rather that they are adequately protected already and will serve relatively little use in the decision. Another question that has been raised – is it useful or indeed sensible to create yet another conceptual boundary? Would it not be more meaningful to place these issues in their appropriate context rather than to invent a new and somewhat amorphous right altogether?

Defining right-holders and duty-bearers are also controversial issues that they need to be resolved as they are crucial to the right concerned. Writers like Crawford discusses how group rights are controversial as they have to be construed conceptually for particular purposes as they lack an intrinsic identity. Another controversial right-holder is 'future generations.' This issue has been raised but not resolved in EHP v Canada. Merrills suggests that this may be thought of as a special type of collective right than as an indefinite number of individual rights thereby distinguishing it from the right of unborn foetuses.

Yet another issue to be considered is whether animals should be another class of right-holders on the grounds of being affected by our treatment of the environment and unlike future generations are part of the here and now. One of the continuing difficulties conceptually is that 'environmental' rights does not include the 'natural' or wildlife elements of the environment except perhaps through an NGO who has been granted locus standi to act on behalf of such an interest. As these are limited to situations where harm to the environment does not directly have immediate consequences for human welfare there is still no actual human right to ensure protection of the natural environment per se.[19]

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16 Christopher D. Stone, Ethics and International Environmental Law, in The Oxford Handbook of International Environmental Law, edited by Bodansky, Brunee and Hey, Oxford University Press, 2008

17 John G. Merrills, Environmental Rights in The Oxford Handbook of International Environmental Law edited by Daniel Bodansky, Jutta Brunnee and Ellen Hey, Oxford University Press, 2008

18 Available at U.N. DOC. E/CN.4/1070 at 50-51, 1971

19 David Ong, International Environmental Law's Dilemma: Betwixt General Principles and Treaty Rules in The Irish Year-book of International Law Volume 1 edited by Jean Allain and Siobhan Mullally, 2006

Environmental protection cannot perhaps be wholly incorporated into the human rights agenda without deforming the concept of human rights and distorting its programme. Further, certain human rights are not directly affected by environmental considerations, for instance, the right to a name. The debate, therefore, is likely to continue over whether recognition of flora and fauna nor ecological balance furthers environmental protection or will serve to further the anthropocentric, utilitarian view that the world's resources exist solely to further human well-being. If the right to the environment becomes a part of the human rights catalogue, the challenge of balancing it with other human rights remain.

8. Conclusion

A potential factor that could bridge human rights and environmental protection, is human health, being a primary objective of both areas of regulation. [20]Thus, the goal of human health provides the basis for reinforcing both areas of law. Scholars such as Christopher D. Stone go one step further in identifying the ethical quandaries implicating the efforts to mend the global environment: first, issues of human obligation to the non-human environment; second, issues of ethics among states with respect to the environment; and third, issues of ethics among generations with respect to the environment.[21]

Though it has been consistently contended that there is a human rights to a healthy and decent environment and there are many international instruments stating it, 'environmental' rights per se have not yet been expressly included in an binding global, as opposed to regional/bilateral, environmental or human rights treaty.[22] Further, the growing body of cases asserting 'environmental' rights within various global and regional human rights treaty mechanisms, have been claimed in the absence of, rather than due to, relevant treaty provisions for these rights.[23] Moreover, even when such a right is expressly incorporated the issue of litigation and enforcement remain.[24]

As illustrated by the ECTHR the trend in this field has been the recognition of procedural rights like protecting the exercise of a relevant human right from environmental interference or other type of polluting activity rather than a recognition of a substantive right to a clean or healthy environment per se. While the ECTHR's activist approach is not to be dismissed but rather saluted, the 'two-step jurisprudential process' of the court has allowed the respondent state a wide margin of appreciation when balancing rights of the individual and the wider community interests. [25]This deference can perhaps be attributed to 'a general reluctance to substitute its own view for that of democratically elected, or at least representative government.'[26] This makes it difficult for the applicant who has to satisfy a high standard of proof. Now governments have to show that they have factored competing interests when they pass regulation affecting the environment.[27] Hence, this 'due diligence' – type obligation 'appears to go further than the requirement laid down in the Hatton case'.[28]

Ultimately, the critical issue is that if the right to the environment becomes a part of the human rights catalogue, the challenge of balancing it with other human rights remain. On the one hand, since the future of humanity depends on maintaining a habitable planet effective measures to protect the environment are crucial to any project for advancing human rights. On the other hand, human rights law already protects interests such as life and home, allowing claims at the regional and international levels, thereby enabling environmental matters to be petitioned at both regional and international levels, by those affected. Hence, it has become evident that enforcing established human rights is already contributing something to environmental protection.[29]

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20 Christopher D. Stone, Ethics and International Environmental Law in the Oxford Handbook of International Environmental Law edited by Daniel Bodansky, Jutta Brunnee and Ellen Hey, Oxford University Press, 2008

21 Christopher D. Stone, Ethics and International Environmental Law in the Oxford Handbook of International Environmental Law edited by Daniel Bodansky, Jutta Brunnee and Ellen Hey, Oxford University Press, 2008

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25 David Ong, International Environmental Law's Dilemma: Betwixt General Principles and Treaty Rules in The Irish Yearbook of International Law Volume 1 edited by Jean Allain and Siobhan Mullally, 2006

26 David Ong, International Environmental Law's Dilemma: Betwixt General Principles and Treaty Rules in The Irish Yearbook of International Law Volume 1 edited by Jean Allain and Siobhan Mullally, 2006

27 Philip Leach, Stay inside when the wind blows your way – engaging environmental rights with human rights, Fadeyeva v Russia, Judgment of the European Court of Human Rights, 9 June 2005, 4 Environmental Liability, 2005

28 Philip Leach, Stay inside when the wind blows your way – engaging environmental rights with human rights, Fadeyeva v Russia, Judgment of the European Court of Human Rights, 9 June 2005, 4 Environmental Liability, 2005

29 John G. Merrills, Environmental Rights in The Oxford Handbook of International Environmental Law edited by Daniel Bodansky, Jutta Brunnee and Ellen Hey, Oxford University Press, 2008

May/June Star Members

The working party Star Member scheme was launched in March to reward hard work and recognise members who make a significant contribution to activities. We're delighted to announce the winners of the latest nominations round: Tom Huggon for his help to the Nature Conservation Working Party and Jenny Scott, an Environment Agency lawyer specialising in waste law, for her help to the Waste Working Party.

Peter Harvey, one of the Waste Working Party convenors, praised Jenny Scott for her commitment to the working party: in giving a seminar to provide her professional insight on the complex waste law 'waste as a resource'; in giving the time to prepare and deliver the talk; and in travelling up from Devon to meetings when she can and being on the conference call when she cannot. Jenny is one of the Environment Agency's team of five waste lawyers within National Legal Services, where she has worked for almost eleven years, after starting in the Thames Region. At the moment her time is spent advising on all aspects of definition of waste (discard, end of waste, by-products, end of waste criteria etc), in particular advising the End of Waste panel and advising the EQual project, in particular in relation to the end of waste e-tool.

Wyn Jones, Nature Conservation Working Party convenor, nominated Tom Huggon as a star for his work in producing the first draft of the UKELA evidence to the Environmental Audit Committee inquiry on wildlife crime, and also his previous work coordinating the group's input to the UKELA response to the National Planning Policy Framework. Tom is a consultant and former partner at Browne Jacobson. He's a founder member of UKELA and long-term member of the Nature Conservation Working Party. A passionate nature conservationist, he formerly chaired the Nottinghamshire Wildlife Trust.

Working Party activities

The working parties have held some lively and topical speaker meetings in the period since March.

Becky Clissman, one of the Climate Change and Energy Working Party convenors, writes:

Climate Change and Energy Working Party seminar a success

On Tuesday 24 April the Climate Change and energy Working Party (CCEWP) held a seminar at Nabarro LLP's offices on "Climate Change and Energy - Science, Law and Politics". The event was attended by over 60 delegates from law firms, government departments, environmental consultancies and universities.

The first session considered the scientific and legal constraints of climate change and two excellent talks were given by Lord Giddens (author of "The Politics of Climate Change" and Fellow of King's College Cambridge and Emeritus Professor at the London School of Economics) and Adrian Roberts (Deputy Director/ Head of Climate Change and International Law Team at the Department of Energy and Climate Change).

The second session covered the tension between security of supply and improving the UK's carbon footprint and four very diverse perspectives on this topic were provided by Chris Dodwell (Head of the international climate change and energy team at AEAT and previously Head of International Climate Policy at the DECC and leading the UK delegation to the UNFCCC COPs in Nairobi and Bali), Alan Lovell (Executive Chairman of Tamar Energy who has a portfolio of clean energy interests that include anaerobic digestion, a carbon Capture and Storage project, a tidal business and a solar business), Ravi Bagga (Head of Upstream Policy & Regulation, EDF Energy) and Sir Robert Watson (Chief Scientific Adviser to Defra and Fellow of the Royal Society).

The presentations and speaker biographies are available on UKELA's website here.

The feedback UKELA received for the event confirms that it was a great success. Comments included:

"Great debate and insight. The mix of the speakers was really good. Clearly experts in their fields and it added a lot to the sessions seeing where they agreed and disagreed."

"I thought the quality of the speakers was exceptional. I was very impressed that you were able to book people of such knowledge and experience and it was a privilege to hear their thoughts. It was worthy of a major conference."

Stephen Hockman QC, co-Convenor of the CCEWP and organiser of this seminar commented "CCEWP is constantly organising talks by speakers on various aspects of climate change law and policy. The calibre of speakers that we are lucky enough to hear from is always very high so do come along to future CCEWP events." (For more information about the work of the CCEWP and future events click here or ask to be put on the CCEWP's mailing list.)

Other Working party events

Jenny Scott (see star member article) gave an excellent seminar on "Waste as a resource" to the Waste Working Party on 25 April. Jenny specialises in waste law for the EA and so was the perfect person to guide members through the intricacies of the Waste Framework Directive 2008 and how the revised waste hierarchy is affecting the way we deal with waste. There were plenty of questions from the audience, particularly on how the end of waste is determined and dealing with practical problems in applying the Directive.

Other highlights include the Water Working Party's 22 March meeting on the water white paper with speakers from Defra, Ofwat and Thames Water; and the Planning and Sustainable Development Working Party's seminar on the presumption in favour of sustainable development, featuring Eloise Scotford (Kings College).

Work contributing to and influencing environmental laws and policies continues apace. Notable interventions include the Nature Conservation Working Party's response to the Environmental Audit Committee inquiry into wildlife crime, its involvement in the Defra Habitats Implementation Review High Level Advisory Group, and in the Law Commission's review of wildlife legislation; the Water Working Party's response to the Defra consultation on Sustainable Urban Drainage; and the Waste Working Party's response to a Defra consultation on the separate collection of recycling.

UKELA Student Competitions

The UKELA Simon Ball Academic Prize for Outstanding Student Achievement sponsored by OUP open until May 31st!
The UKELA Simon Ball Prize is awarded annually to recognise and celebrate student achievement in the field of environmental law. The award is open to undergraduate and postgraduate students at a UK higher education institution from any academic discipline so long as the basis of the contribution has relevance to the advancement of environmental law or otherwise to the charitable objects of UKELA. The basis of the award is not limited to academic achievement and may extend to any achievement attained by, or contribution made by, the student. The deadline for the 2012 competition is May 31st 2012.
UKELA is grateful to Oxford University Press for providing the prize of book vouchers and a subscription to the Journal of Environmental Law for the 2012 winner. The Prize is awarded at the prestigious Garner Lecture.
More details here.

Competitions day
This year's competitions had some fantastic prizes and the finals' day was very warmly received by participants. Our thanks to Lord Carnwath for judging the moot finals; Prof Mark Poustie, Hayley Tam and Suella Fernandes for judging during the day. Thanks also to the sponsors: No 5 Chambers; Lexis SL Environment at LexisNexis and Lawtext Publishing. Reports from Mark and Hayley are below.

The Andrew Lees Prize - Hayley Tam, Head of LexisPSL Environment at LexisNexis
We were pleased to see entries for the Andrew Lees' Prize from throughout the country and were impressed with the quality of this year's finalists. The essays made for an interesting debate, as they covered a broad range of cutting edge issues from the presumption in favour of sustainable development, to incorporating principles of wild law and ecocide.

UKELA's student competitions are a fantastic opportunity for students and young lawyers to hone their public speaking and advocacy skills and to obtain recognition in the field of environmental law. LexisPSL Environment is proud to sponsor UKELA's student events as they assist and promote the development of young environmental lawyers in this important and challenging legal area.

Congratulations to:

- Eleanor Coombs, Clifford Chance, Winner of the 2012 Andrew Lees Prize (you can read her winning essay on page 6)
- Ben Du Feu, UCL, 2012 Runner up
- Hayley Wright, UWE, 2012 Finalist
- Courtney Holdron, Nottingham Trent, 2012 Finalist

Moots - Prof Mark Poustie, Strathclyde University

Left to right:
Prof Mark Poustie; Mark Brumwell; Ben du Feu; Nicola Peart; Lord Carnwath; James Corbet-Burcher; George Mackenzie; Rachel Caldin (Lawtext); Suella Fernandes (No 5)

This is the third year in which I have judged the UKELA moot semi-finals and it is an honour to have been invited to undertake this role – not least as I am a Scots academic lawyer dealing with substantive and procedural English environmental law!
The standard in this year's Student and Lord Slynn moots was very high. The judges are looking for a good understanding of the applicable law, skills in advocacy, teamwork and the ability to answer questions. Given the challenging time constraints in the semi-finals the ability to answer questions is vital. The judges have read the skeletons and want to test the arguments contained in them. So it is very important to be adaptable and be able to respond convincingly and also not to get annoyed with persistent questions from the bench! Sometimes the most effective advocacy is an almost conversational style, engaging with and responding to the judges.

I would like to congratulate this year's winners of the 2012 Student moot, Ben du Feu of UCL and Nicola Peart of the College of Law, and the winners of the 2012 Lord Slynn moot, James Corbet-Burcher and George Mackenzie, both pupil barristers.

Thanks to Suella Fernandes of No 5 Chambers for assisting in judging the semi-finals and to Lord Carnwath for judging the final. Thanks also to No 5 Chambers for fantastic prizes - £150 per winning team, a one month internship at No 5 Chambers for each of the Senior winners and a one week mini-pupillage for the Student winners. Thanks also to Lawtext Publishing for subscriptions to Environmental Law and Management.

Student careers' support

UKELA aims to hold at least one annual student careers evening where students can meet Environmental Law professionals from a range of backgrounds. Plans for this year's in London are progressing and details will be circulated in due course. We'd also like to encourage similar events in other parts of the country following the example set by Andy Stone in Bristol last autumn. His report below lets you know how to go about doing it, why it's a good thing and hopefully will encourage others to think about running events in their region. The staff are ever ready to help if you would like to organise/host/support a regional careers' evening event.

Andy Stone

Having attended excellent UKELA careers evenings in London previously, I thought it might be useful to run a regional event along similar lines. As a group with at least a passing interest in the environment it struck me as incongruous how we traipse up to London from every corner of the country to do these things. Not only that: environmental issues and the career climate vary so much from region to region I thought a local event might resonate more with its audience. With that in mind I approached Peter Blair QC, Head of Guildhall Chambers and convenor of UKELA's South West working group.

Peter immediately saw the benefit of such an event, and at the subsequent AGM we put together a team and found premises: Matthew Germain of Osborne Clarke Solicitors very kindly arranged for us to use their Bristol offices, which turned out to be plush indeed: modern, well equipped, spacious, and with a commanding view across the Bristol waterfront. Obsorne Clarke did a very fine job of accommodating us for the evening and I can't thank Matthew enough.

With the help of Katie de Kauwe studying at University of Bristol, and Stephen Migdal running the Bar course at University of the West of England, we put the word about and in the end around 40 delegates attended on 15th November. That's a pretty good turn-out, representing I believe around a third of the number who attended the central event that month.

Peter Blair QC had the job of co-opting speakers, and did sterling work. We wanted to represent a broad spectrum across Environmental Law appealing to not only lawyers but also ecologists, political lobbyists and academics. We were very lucky indeed to be treated to some first-class talks running from 6:15 pm to 7:30pm by a good range of speakers, all of whom I am grateful to for their generosity. Helena Gauterin came down from the Environment Agency's head office, and was able to give us valuable insight into the regulatory challenges she confronts in her work as an in-house solicitor.

The mercurial Alan John, Senior Partner at Osborne Clarke, talked engagingly about the sense of pleasure and achievement

Student Update

to be had working in such an intellectually stimulating area of Law, which complimented a very informative presentation by AECOM's Tom Vincent. Working as a Principal Environmental Consultant he was able to inject a little jet-set glamour into what may sometimes be thought of as a rather unglamorous profession, and I was particularly interested to hear of his treatment of environmental issues from a corporate perspective. The Bar was represented by Peter Blair QC, and I'm sure many in the room would have left with thoughts of a career that can be as unpredictable as it is challenging, a fast-developing field that whilst not fully there yet in the regions is certainly heading that way. Exciting times!

Some excellent wine and nibbles helped to facilitate a lively networking session before and after the talks, where students had the opportunity to meet fellow aspirants as well as put their questions to the professionals. I would encourage other regions to consider holding a similar event, and I for one would love to do it again towards the end of this year.

UKELA bursary report

In 2011 UKELA awarded two bursaries to support work placements by two of its student members. Charles George reports on his time with Friends of the Earth.

My experience of working at Friends of the Earth's legal department was an unparalleled one. The internship was spent in assisting with a high profile litigation concerning Feed in Tariffs in the Court of Appeal - which we won, researching points of law surrounding the Rio+20 Conference – United Nations Conference on Sustainable Development, and amongst other things, answering legal queries concerning environmental law. The lawyers in the legal department of Friends of the Earth did not hesitate in giving me significant responsibilities from my first day so I had the opportunity to develop my problem solving skills and the ability to think on my feet. This internship has been an excellent opportunity to meet with, socialise and share experiences with likeminded people. It has also provided me with invaluable contacts, crucial experience and an increased interest in environmental law.

Jobs Wanted

I am seeking some part-time employment to gain further experience and to support me through the second half of the Bar course. If anyone has any part-time paralegal/legal research/general legal support work available either short or longer term (up to a year) in their organisation, or knows of any such work elsewhere, please contact me by e-mail at frances.aldson@gmail.com.

UKELA Events

Special notice:

The Garner Lecture 2012 is being given by Karl Falkenberg, Director General of DG Environment in the EU, on November 29th. UKELA is grateful once again to Clifford Chance in London for hosting this major event.

Mr Falkenberg will be speaking on: "Better EU regulation for a greener environment and sustainable economic activity in Europe". As a former trade commissioner with a background in negotiations he will throw a spotlight onto the inter-relationship between business and the environment, and how it is regulated at the EU level. We hope to involve our regional groups and sister organisations in Europe, and possibly further afield, by videolink.

Please note the date in your diary. Bookings will open in September.

London meeting on Contaminated Land: Tuesday 15 May

UKELA members are cordially invited to this early evening session where the focus will be on the new statutory guidance on Contaminated Land. This is an essential update for those with an interest in land contamination. Defra says "The new statutory guidance is intended to be more usable for those that deal with land contamination and remediation. In particular, a new four category test is intended to clarify when land does and does not need to be remediated. By reducing regulatory uncertainty, this policy aims to make the regime target higher risk land more efficiently. The changes will be supported by technical tools, which will be developed by the land contamination sector to increase consistency over time". Bookings are now open – details here.

UKELA Events

The State of Environmental Law in the UK 2011-2012: Wednesday 23 May

Join us for the launch of the joint report by UKELA, King's College London and BRASS (Cardiff University), on the state of Environmental Law in the UK 2011-2012 - is there a case for legislative reform? This early evening seminar will present the findings of this major research project, including the consultation with UKELA members and a BRASS project to research the views of industry. There will be a special focus on devolution issues arising from the research. Bookings are now open – details here.

Scottish Regional group meeting, Edinburgh: Thursday 7 June

5.45pm registration for 6pm start.Concludes at 7pm to be followed by drinks and canapés.

All are invited to join us for this early evening meeting of the regional group kindly hosted by Turcan Connell in Edinburgh on the subject of: "**Greenest Government ever?"** Governments of all political persuasions like to proclaim their environmental credentials these days which could be acknowledged as post-Rio progress. The current UK Government promised to be "the greenest ever" but what would a truly green Government look like and how far away is our current one from achieving this?

Speaker:

Tricia Henton - Tricia is the recently retired Director of Environment and Business at the Environment Agency and a former chief executive of SEPA. She is a geologist/geographer with over 35 years experience in environmental management and sustainable development. She is currently a non- executive director of the Coal Authority and a Trustee of the British Trust for Ornithology and Royal Botanic Gardens Edinburgh amongst others. Tricia has chaired or participated in numerous Government, Ministerial and other advisory groups and was recently appointed chair of the HSE Independent Regulatory Challenge Panel.

Chaired by Adam Gillingham of Turcan Connell

The meeting is free to attend but all places must be booked by contacting Jennifer.cross@turcanconnell.com

Venue: Turcan Connell, Princes Exchange, 1 Earl Grey Street, EDINBURGH, EH3 9EE

UKELA Annual Conference 2012, Southampton - Planning for the Energy Challenge: 6-8 July

Bookings are now open for this year's annual conference – more information including how to book here.

Thanks to our main sponsors, 39 Essex St, Landmark Chambers and WSP Environment & Energy

Scottish Annual Conference: 4 October

This year's Scottish annual conference will look at the theme of "Environmental Issues in the Planning Regime." The conference will be held at the George Hotel in Edinburgh. Further details will be circulated when available but please note your diaries in the meantime.

London meeting on Hydrocarbon Fracking: 25 October

Diary date - discussion on the big regulatory issue in the US - speakers include Karl Bourdeau of Beveridge and Diamond and Louise Moore of Herbert Smith.

To be held at Herbert Smith in London. Full details to follow.

Non-UKELA Events

Wild Law, what it is and why we need it – talk at the University of Brighton, May 16th 4-6pm.

UKELA members welcome to attend this event organised by Simon Boyle of Argyll Environmental, featuring Johnny Dawes, climber, environmentalist and author. The event is in Lecture Theatre 1, Cockcroft Building, University of Brighton. Free to attend and no need to book.

Offers

Lexology

We are delighted to invite UKELA members to trial The UK Environmental Law Association Newsstand, a collaborative initiative that delivers a free tailored weekly newsfeed to UK Environmental Law Association members. The UK Environmental Law Association Newsstand is powered by innovative newsfeed service Lexology, which utilises its global legal knowledge base

Offers

to deliver essential know-how and market intelligence in concise digestible form to keep you informed across legal issues in your area.

You can receive The UK Environmental Law Association Newsstand as a benefit of being a valued Environmental Law Associationmember. Please activate your free account to select the work areas and/or jurisdictions you would like to be kept up to date on.

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E – LAW

The editorial team wants articles, news and views from you for the next edition due to go out in July 2012. All contributions should be dispatched to Catherine Davey as soon as possible by email at:
catherine.davey@stevens-bolton.com by 6 July 2012

Please use Arial font 11pt. Single space. Ensure headings are in bold capitals.
Letters to the editor will be published, space permitting