Centre for Law and the Environment, UCC

13th Postgraduate Research Symposium on Environmental Law

Wednesday, 19th April 2023

Moot Court Room, School of Law, UCC

Generously sponsored by FP Logue Solicitors

13th Postgraduate Research Symposium on Environmental Law

Wednesday, 19th April 2023

Moot Court Room, Áras na Laoi (Law School Building)

University College Cork

Programme

9:00 am: Welcome

The Governance of Nature

9:15 am: Ms Niamh Guiry, Ph.D. Candidate, School of Law, University College Cork:
The Sacred Nature of Trees: A Comparative Exploration of Trees in Brehon Law and the Modern Rights of Nature Movement.

9:45 am: Mr Matthew Doncel LL.M., Project Manager, Nature Risk Liability, Nature Finance:
Bunreacht na hÉireann (Constitution of Ireland) and Biodiversity.

10:15 am: Ms Matilde Meertens, Ph.D. Candidate, Ghent University Law School:
The New EU Nature Restoration Law and Public Participation.

10:45 am: **Tea / Coffee Break**

The Nature of Governance I

11:00 am: Amy O'Halloran, Irish Research Council / Environmental Protection Agency Government of Ireland Postgraduate Scholar, Ph.D. Candidate, School of Law, University College Cork:
Private Transnational Environmental Regulation and Systemic Interactions in Global Environmental Governance.

11:30 am: Ms Laurence Teillet, Ph.D. Candidate, Nottingham Law School, Nottingham Trent University:
Non-State Actors' Implementation of International Environmental Law.

12:00 pm: Ms Rhoda Jennings, Irish Research Council / Environmental Protection Agency Government of Ireland Postgraduate Scholar, Ph.D. Candidate, School of Law, University College Cork:
Science Advisory Bodies of the EU and Their Role in Environmental Decision-Making.

12:30 pm: Ms Alison Hough, Ph.D. Candidate, School of Law, University College Cork:
The Place of Public Participation Rights in EU Legislation.

1:00 pm: **Lunch Break**

The Nature of Governance II

1:30 pm: Jan-Alexander Jeske, Legal Trainee, DG Environment - Environmental Rule of Law & Governance:
The Environmental Rule of Law: Improving the Status Quo of Sustainable Governance.

2:00 pm: Ms Sonya Cotton, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:
Jamming Shut the Floodgates to Public Interest Litigation: Locus Standi in Ireland and Namibia

Legal Challenges in Climate & Energy I

2:30 pm: Ms Juliana Vélez-Echeverri, Ph.D. Candidate, School of Law, University of Reading:
A Risk-based Approach to Climate Litigation. A Case Study of Communities Experiencing Climate-related (im)Mobilities in the Informal Settlements of Medellín, Colombia.

3:00 pm: Ms Alessandra Accogli, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:
Taking Inaction on Carbon Sinks to Court: A New Legal Avenue for Peatland Degradation in Ireland?

3:30 pm: **Tea / Coffee Break**

Legal Challenges in Climate & Energy II

3:45 pm: Ms Sinéad Mercier, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:
Tracing Balor's Eyeline: Energy Law in the Anthropocene.

4:15 pm: Mr Ahmad Ali Shariati, Ph.D. Candidate, Sussex Law School, University of Sussex:
Clarifying and Re-assessing States' Accountability for Greenhouse Gas Emissions to Enhance Climate Justice

4:45 pm: Irene Sacchetti, Ph.D. Candidate, Nottingham Law School, Nottingham Trent University:
Thinking Beyond Borders in the Kinocene: Reconceptualising the Climate 'Refugee' using a Decolonial Approach.

5:15 pm: Calum MacLaren, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:
The Horizontal Application of Irish Constitutional Rights against Climate Damaging Non-State Actors.

5:45 pm: **Closing Remarks**

7:30 pm **Conference Dinner**

Generously sponsored by FP Logue Solicitors

FPLOGUE SOLICITORS

Book of Abstracts

Niamh Guiry, Ph.D. Candidate, School of Law, University College Cork:

The Sacred Nature of Trees: Exploring Parallels Between Brehon Law & Rights of Nature

An interesting characteristic of Ireland's ancient legal system, Brehon law, is the special protections bestowed upon trees. Within the legal text *Bretha Comaithchesa* (Judgements of Neighbourhood), there exists a tree-list that establishes a hierarchy of value pertaining to trees, alongside a range of stratified penalties associated with damage caused. Economic value is often cited as the basis of the Old Irish tree-list. However, one cannot separate law from the social context of the time. It should be noted that it would not be realistic to attempt to transplant a historic legal framework into modern law landscapes, nor should one sentimentalise ancient Irish society. Rather, this paper seeks to use Brehon law as a tool to draw parallels between the legal and societal value bestowed upon trees in ancient Ireland and the modern-day Rights of Nature (RoN) movement. This paper will briefly introduce the Brehon law system before exploring the hierarchical legal protections and penalties associated with the Old Irish tree-list. The social and cultural significance of trees will also be drawn upon, highlighting the normative alignments of Brehon law with ancient mythological stories and the spiritual practices of the time. This paper will move on to explore the concept of RoN before discussing recent RoN developments in Ireland, including City and County Council RoN motions and the recommendations from the Citizens Assembly on Biodiversity Loss.

In ancient Ireland, trees were revered not just for their practical value, but for their social, cultural, and spiritual associations. While Brehon law is a product of its time, these early environmental considerations offer an opportunity to take important lessons from our heritage and explore the idea of framing modern legislative provisions in a manner that allocates heightened protections to important ecological species. Furthermore, this also allows us to examine the potential of using environmental values to shape local and national environmental law and sustainable development policy. It could be said that RoN can be used to bridge the gap between the man-made dogma of a dominating anthropocentric society and the reality of an entangled network of life within which all living beings are interdependent for survival. By re-evaluating the societal values that are embedded in law, we, like our ancestors before us, could view nature through a multi-dimensional lens, one not limited to solely legal or economic interpretations. This in turn may allow for an overarching ethos of environmental protection to be encapsulated by legal frameworks and prompt a cultural re-awakening to rekindle our relationship with the natural world.

Mr Matthew Doncel LL.M., Project Manager, Nature Risk Liability, Nature Finance:

Bunreacht na hÉireann (Constitution of Ireland) and Biodiversity

Ireland is currently facing a biodiversity crisis, with increasing loss of species and habitats. In response to this crisis, a declaration of a Biodiversity Emergency was made by the Dáil in 2019 and the Citizens Assembly on Biodiversity Loss was established to make recommendations for addressing the issue. In its current form the Irish constitution does not provide a strong legal

foundation for protecting the environment which citizens living through the climate and biodiversity require. While it does contain some references to the environment, such as the state's duty to protect public health and the state's duty to protect the natural resources of the country, these provisions are not as strong or comprehensive as they could be.

This paper will address the biodiversity crisis in Ireland, along with the recommendations of the Citizens Assembly on Biodiversity Loss, and their relation to Bunreacht na hÉireann.
The Citizens Assembly on Biodiversity Loss, made up of citizens from diverse backgrounds, spent several months considering the issue of biodiversity loss and its causes. They heard from experts in the field and ultimately made a number of recommendations for addressing the crisis. These recommendations include increasing protected areas, improving the management of existing protected areas, and increasing funding for conservation efforts as well as calling for referendums to be held on inserting new rights into the Constitution.

One of the key recommendations of the Citizens Assembly on Biodiversity Loss is to include a right to a healthy environment in the Irish Constitution. This would provide a strong legal foundation for protecting the environment, and would ensure that the state has a duty to protect the environment for current and future generations. The Citizens Assembly also recommended that the constitution should recognize the rights of nature, which would ensure that the environment is protected for its own sake, rather than just for the benefit of human beings. Such rights have already been successfully adopted in constitutions globally and examples can be drawn from to examine their potential if adopted in Ireland in this paper.

The adoption of either or both of these into Bunreacht na hÉireann would be paradigm shifting and require careful analysis. In conclusion, Ireland is facing a serious crisis of biodiversity loss, and the current legal framework provided by Bunreacht na hÉireann does not provide adequate protection for the environment. The Citizens Assembly on Biodiversity Loss has made a number of recommendations for addressing this crisis, including the inclusion of a right to a healthy environment and the recognition of the rights of nature in the Irish Constitution. These recommendations would provide a strong legal foundation for protecting the environment and would ensure that the state has a duty to protect the environment for current and future generations.

Matilde Meertens, Ph.D. Candidate, Ghent University Law School:

The New EU Nature Restoration Law and Public Participation

In June 2022, the European Commission presented its proposal for a new Regulation on nature restoration (‘NRL’). The NRL builds on the European Green Deal and the EU Biodiversity Strategy for 2030 and will contribute to achieving their objectives. The NRL is timely as the United Nations General Assembly has proclaimed 2021-2030 the UN Decade on Ecosystem Restoration. Furthermore, the NRL will also help the EU achieve its international commitments, e.g. under the Kunming-Montreal Global Biodiversity Framework. The NRL is promising, and is the first international legal instrument with binding and concrete restoration targets. Once adopted, the NRL could be a much-needed catalyst for ecological restoration within the European Union.

However, '*degraded ecosystems will not be helped with yet another legal instrument that is not properly implemented'* (Cliquet 2019). Therefore, this presentation will focus on how the implementation of the NRL could be realised. National Restoration Plans ('NRP') will play a pivotal role in this process. Indeed, each State is required to adopt an NRP in which it sets out how it will reach the targets of the NRL. Participation constitutes an important part of implementation. Indeed, it has been demonstrated that public participation is vital for the success of restoration projects (e.g. Chan *et al.* 2016; Richardson 2016).[1]

In my presentation, I will look at how participation is safeguarded and encouraged in the NRL and where potential shortcomings may arise. Furthermore, I will look in particular for synergies with the Aarhus Convention. Finally, a case study of the Belgian situation will give an idea of how implementation might look on the ground. Special attention will be given to the way Belgium's NRP will blend into and impact on the existing administrative governance framework.

Amy O'Halloran, IRC/EPA Government of Ireland Postgraduate Scholar, Ph.D. Candidate, School of Law, University College Cork:

Private Transnational Environmental Regulation and Systemic Interactions in Global Environmental Governance

The American jurist Karl Llewellyn remarked that law is "mixed into any coordinated action" such that law "infests" human culture.[2] When we look at the law today, we can see that law is no longer *just* a local, national or international form of social organisation. In recent decades, processes of globalisation have extended the breath of our legal relations as the production of goods and services have become more interdependent across the world.[3] The uncoupling of

[1] Bibliography:

- European Commission, Proposal for a Regulation of the European Parliament and of the Council on Nature Restoration, 22 June 2022, retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:304:FIN
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447
- Cliquet A, 'Ecological Restoration as a Legal Duty in the Anthropocene' in Lim Michelle, *Charting Environmental Law Futures in the Anthropocene* (Springer 2019)
- Chan K M A, Balvaner P, Benessaia K, Chapman M, Díaz S, Gómez-Baggethun E, Gould R, Hannahs N, Jax K, Klain S, Luck G W, Martín-López B, Muraca B, Norton B, Ott K, Pascual U, Satterfield T, Tadaki M, Taggart J and Turner N, 'Why protect nature? Rethinking values and the environment' (2016) 113 PNAS 1462
- Richardson B J, 'The Emerging Age of Ecological Restoration Law' (2016) 25 Rev Eur Comp & Int'l Envtl L 277

[2] Llewellyn K., "The Normative, the Legal, and the Law-Jobs: The Problem of the Juristic Method" (1940) 49(8) The Yale Law Journal 1355 at p 1377.

[3] The term globalisation usually describes the processes that tend to make human relations more interdependent around the world. The phenomenon is generally understood to have impacted significantly on economic, political, cultural, and technological fields of social relations. – See Twining W., *Globalisation and Legal Scholarship: Montesquieu Lecture 2009* (Tilburg University, Wolf Legal Publishers, 2011) at p 22; Giddens A. *The Consequences of Modernity* (Sandford University Press, 1990) at p 64. Boaventura de Sousa Santos sees globalisation as "the process by which a given local condition or entity succeeds in extending its reach over the globe and, by doing so, develops the capacity to designate a rival social condition or entity as local."

legal relations from the spatial limitations of States presents a methodological challenge for jurists who may be unaccustomed to analysing law beyond the conventional Westphalian paradigm of State and international law. In today's more interdependent world, simplistic doctrinal methods of legal inquiry that are grounded in the Westphalian paradigm may fail to discern the *multiplicity* and *variety* of regulatory orders that often occupy contemporary polycentric governance contexts.[4] The governance of many sectors (e.g. fisheries, forestry, tourism, etc.) now include an element of transnational regulation which operates to govern various activities across supply and value chains. To analyse the *legal significance* of such regulatory phenomena, I apply a transnational legal pluralist method which is capable of capturing a range of regulatory orders from transnational certification and labelling bodies in particular sectors, to industrial alliances for a European circular economy. For instance, in the fisheries and forestry sectors, the Marine Stewardship Council (MSC) and the Forest Stewardship Council (FSC) have established certification and labelling schemes that govern the production, distribution, and retail of marine and forestry products. An analysis of these regulators reveals that while they usually govern private actors, the mission statements of such regulators are expressly orientated towards public interest objectives such as sustainable production. To take another example, while subscription to the International Organization for Standardization (ISO) standards are usually voluntary, in practice, the ability of the ISO in solving coordination problems has enabled the ISO to acquire a dominance in the governance of many cross-border activities. This means that many firms may have little choice but to comply with ISO standards if they wish to operate transnationally and thereby access lucrative markets around the world. Consequently, a firm that chooses to outcast itself from transnational regulation such as the ISO, may have its legal position altered through a loss of commercial opportunities, or contractual entitlements that are contingent on ISO compliance. Accordingly, the ability of some transnational regulators to govern with legal consequences provokes the question of whether such regulators provide a new type of *legal* ordering that is capable of regulating some of the cross-border activities which are a characteristic feature of the current age. Such questions are important as their answers may contribute to better understandings of *particular* transnational regulators and the crucial role that some of them play (or may come to play) in addressing the environmental crises we face today.[5]

Laurence Teillet, Ph.D. Candidate, Nottingham Law School, Nottingham Trent University:

Non-State actors' implementation of International Environmental Law

Over the years, international law has gradually given a more critical place to non-State actors in a realm that used to be exclusively reserved for States. Recent events can lead us to wonder

---

Accordingly, the globalisation of one thing may entail the localisation other rival things. For example, the globalisation of the English language will tend to lead to some native languages becoming more localised. – de Sousa Santos B., *Towards a New Legal Common Sense* 2nd ed. (Butterworths, 2002) at p 178; de Sousa Santos B., "Globalizations" (2016) 23(2-3) Theory, Culture & Society 393 at p 393.

[4] Ostrom E., Beyond Markets and States: Polycentric Governance of Complex Economic Systems (2010) 100(3) The American Economic Review 641 at 641.

[5] Heyvaert V., *Transnational Environmental Regulation and Governance. Purpose, Strategies and Principles* (Cambridge University Press, 2019) p 3. United Nations Environment Assembly, Proceedings of the United Nations Environment Assembly at its fifth session 24 February 2021 UNEP/EA.5/25 at [7] https://wedocs.unep.org/bitstream/handle/20.500.11822/39828/PROCEEDINGS%20OF%20THE%20UNITED%20NATIONS%20ENVIRONMENT%20ASSEMBLY%20AT%20ITS%20RESUMED%20FIFTH%20SESSION.%20English.pdf?sequence=1&isAllowed=y. Accessed 24th March 2023.

to what extent non-State actors can implement international law – particularly international environmental law. The best example of this debate are probably Sea Shepherd Conservation Society's anti-whaling activities in the Antarctic Ocean. Throughout *Operation Nemesis*, the association sank ten whaling ships and claims that over 5,000 whales have been "saved" since Sea Shepherd embarked on its first anti-whaling campaign in 2002.
Sea Shepherd activists threw flour bombs and non-toxic butyric acid bottles on the deck of whalers' vessels and dropped prop foulers in the sea to shut down whaling ships' propellers. Despite the aggressivity of their action, until 2013, Sea Shepherd managed to escape any significant punishment.

Paul Watson argues that this absence of prosecution is justified by the fact that non-State actors are allowed, under international law, to enforce international environmental law:

> "*We intervene against illegal activities, and we are simply upholding international conservation law, and the United Nations World Charter for Nature allows for us to do that. […] That's why I sunk ten whaling ships and destroyed tens of millions of dollars' worth of illegal fishing gear, and I'm not in jail*."

The World Charter on Nature, which Paul Watson refers to, is a code of conduct for the treatment of Nature and was adopted by the United Nations General Assembly in 1982. What is interesting about this convention is that it states, in paragraph 21, that

> "*individuals, groups and corporations shall implement the applicable international legal provisions for the conservation of nature and the protection of the environment*" and, in paragraph 24, that "*each person shall strive to ensure that the objectives and requirements of the present Charter are met*".

However, the World Charter on Nature is not binding. In addition, in 2013, Sea Shepherd activists were sentenced for piracy by the United States Ninth Circuit for their acts of violence on the high seas against Japanese whalers. The Court refused the associations' potential right to enforce international conservation law. This push, from environmental associations, in favour of non-State actors' implementation of international environmental law and countries' opposition to the latter demonstrate the need for an in-depth analysis of the World Charter on Nature regime.

Rhoda Jennings, EPA / IRC Postgraduate Scholar, School of Law, University College Cork:

Science advisory bodies of the EU and their role in environmental decision-making.

Scientific evidence is an intrinsic element of environmental law. At an EU level, there is a wealth of scientific advice and science advisory bodies feeding into law and policy formation. This paper will examine the science advisory bodies of the EU and their influence on legislative and policy decisions in environmental law. The earliest form of advisory bodies developed in line with agricultural policy, and the demand for detailed technical input. Risk assessment agencies were created in response to growing concerns over product safety, while scientific agencies were often established in response to a particular crisis. Designated knowledge services such as the Joint Research Centre and the recent, Science Advice Mechanism, provide science advice directly to the Commission.

There is an abundance of high quality science advice at an EU level. How these bodies input into the regulatory process varies greatly. Further, there is no uniform protocol setting out how

scientific evidence is used in the decision-making process. The responsibilities of science advisory bodies are constrained within strict legal boundaries, and when the bodies demonstrate increasing powers, they are criticised in terms of accountability and legitimacy. The input of these bodies, however, is essential in order to ensure more efficient policies and to support the democratic process by providing the facts to support democratic debate. A framework is required in order to consolidate the work of the various scientific bodies of the EU. A defined methodology for the use of scientific data in the regulatory process is also needed, which would lead to greater transparency and trust in regulatory decision-making, enhancing the legitimacy of EU environmental law.

Alison Hough, Ph.D. Candidate, School of Law, University College Cork:

The Place of Public Participation Rights in EU Legislation.

In this paper I attempt to dissect the complexities of the Aarhus Convention regime for public participation in environmental decision-making under Art 6, and the ways in which this is provided for under EU law at both EU and Member State level. The ways in which this finds expression in Irish law are interrogated.

The paper will consider the EU Climate Governance system in particular and provision for participation in EU Climate decisions, as well as the provision for public participation in development consent and permitting procedures under the EIA Directive. It will question whether the EU legislative process is adequately safeguarding public participation rights and the reasons for this.

Jan-Alexander Jeske, Legal Trainee, DG Environment - Environmental Rule of Law & Governance:

The Environmental Rule of Law: Improving the Status Quo of Sustainable Governance

The Environmental Rule of Law is one of the key principles to save planet earth for future generations. Every regulation for environmental protection can only have an impact to the extent that it is accessible, applied and enforced. Therefore, a closer look at the development, scope and current international challenges of the Environmental Rule of Law is necessary to gain a better understanding of this central pillar of International Environmental Law: What is the current state of the Environmental Rule of Law in academia and international legal practice? Which global and domestic achievements and problems stand out? And how could sustainable governance be improved across Europe, America and Asia? Those are the central questions this research paper will try to contour.

The essay shows the historic development of the Environmental Rule of Law principle by providing a brief timeline of selected frameworks, including the Magna Carta, the Rio Declaration and the Paris Agreement. It defines the scope of the Environmental Rule of Law, addressing the core elements by the United Nations Environment Program as assessed in the First Global Report of 2019 and discusses the legal arguments concerning an inclusion of human rights into the definition of the Environmental Rule of Law. Furthermore, the research paper outlines the implications of global reporting standards for trends in the future. While

those challenges need to be addressed on a global level, it is important to understand the regional differences and particularities. Therefore, the study is focussing on the question, how to enhance the status quo within the European Union, the United States of America, India, China and the Association of Southeast Asian Nations. The research paper concludes that the Environmental Rule of Law faces a variety of challenges due to differing local conditions. In the EU, an intensified judicial dialogue within academic environmental law practices could strengthen national court opinions, while private compliance traditions increasingly protect the environment in the US. It recognises the strengthening of several core elements of the Environmental Rule of Law in India and suggests a deeper conversation between law practitioners to enhance coherence and reduce legal fragmentation. The sustainable development of regulatory compliance in China is slightly different than policies and legal frameworks across many Western countries. Improving access to environmental information and effective prosecution rights could increase nature protection in China and built trust. The enquiry welcomes ASEANs initiatives for a rights-based environmental impact assessment, the regional approaches and the cooperation with the United Nations Environment Program through consultations and conferences. The articles closes with a call for a deeper engagement of all relevant stakeholders and an intensified dialogue and exchange of knowledge across all regions to extract the best practices and optimize local strategies.

Sonya Cotton, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:

Jamming shut the floodgates to public interest litigation: locus standi in Ireland and Namibia

Ireland's proposed General Scheme of the Housing and Planning and Development Bill 2019 streamlines requirements for legal standing, shrinking the scope for members of the public and NGOs to challenge socially and ecologically harmful developments (Law and Society Institute 2022). At the same time, on the other side of the world, an ancestral land claim by Namibia's Hai//om community was dismissed on the basis that neither the community nor their legal representatives possessed the requisite locus standi to approach the courts. This paper argues that despite dissimilar geographies and socio-political contexts, Ireland and Namibia speak to similar postcolonial phenomena regarding tensions between local landscapes and neoliberal land management. Specifically, this paper explores how the streamlining of locus standi serves as a mechanism for obstructing local communities from availing of international and regional rights and mechanisms against harmful developments and land use. At the national level, constraining legal standing is portrayed as the reasonable defense against "opening the floodgates" to citizen litigation, thereby ensuring that the courts are not overburdened with frivolous and spurious cases. With reference to *Friends of the Irish Environment* v *Ireland,* and Namibian cases such as *Tsumib v Namibia*, this paper unpacks the metaphor of the floodgates in light of literal floods (and other climate catastrophes) that cases such as these seek to prevent. It also unpacks neocolonial ontologies of personhood that underlie locus standi in both countries. In bringing Irish planning law in conversation with indigenous rights in Namibia, this paper argues for radical new avenues for transnational allyship.

Ms Juliana Vélez-Echeverri, Ph.D. Candidate, School of Law, University of Reading:

A risk-based approach to climate litigation. A case study of communities experiencing climate-related (im)mobilities in the informal settlements of Medellín, Colombia.

This paper discusses the contradictions relating to the use of the law by communities experiencing (im)mobility linked to climate change in Medellín, Colombia. This discussion builds on the idea that climate change is one of several risks that communities face in informal settlements. In this sense, climate litigation is shaped by an assessment of personal safety and social risks which define frames and claims. In other words, climate and rights frames are used strategically in order to avoid the materialisation of risks. The paper argues that in violent contexts, the use of legal mechanisms may take place in two opposing ways. Advancing a legal claim may imply assessing risks associated with non-state armed actors' interests —mainly related to their control of land boundaries and human mobilities in the context of a climate-related disaster. On the contrary, armed actors could be more tolerant towards legal mobilisation when it does not involve claims that could hinder their land control, hence legal mobilisation is unlikely to be viewed as a threat. The paper concludes that violence in the form of physical attacks does not necessarily deter the use of legal mobilisation mechanisms, but instead might shape claims-making processes. Violence is an under-explored variable that might explain the use of the law in the so-called Global South (this could apply to the Global North but may be less visible and therefore less explored). Additionally, there is a need for climate change litigation theory to account for the particularities of the context in which it takes place. In Latin American cities, many areas with high levels of violence overlap with zones most vulnerable to the effects of climate change. In sum, this paper seeks to bring attention to post climate-related disaster litigation that addresses people's needs, concerns and rights at risk in places where the rule of law is partially absent.

Ms Alessandra Accogli, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:

Taking inaction on carbon sinks to court[6]*: a new legal avenue for peatland degradation in Ireland?*

Albeit acknowledged by climate change policies and legal instruments, the carbon sink capacity of ecosystems, i.e. their ability to absorb and store carbon from the atmosphere, has been significantly neglected, leading to ecosystem degradation and the release of stored carbon. The first lawsuits contesting inaction on carbon sinks have recently started appearing before national courts in Europe. In November 2022, two NGOs in Finland filed a lawsuit in which they argue that the Government has breached its obligations under the 2022 Climate Change Act by failing to take sufficient measures to address the significant decline in the Finnish forest carbon sink due to increasing logging. Similarly, another NGO in Germany has launched a legal challenge against the German Federal Government over its ineffective climate protection

[6] The title and topic of the proposed contribution take inspiration from a webinar organised by CCEEL, the GreenDealNet project and Greenpeace on 17 February 2023 <https://www.greenpeace.org/finland/blogit/ilmastonmuutos/webinar-taking-inaction-on-carbon-sinks-to-court/#:~:text=Frustrated%20by%20their%20government's%20inaction,Administrative%20Court%20in%20November%202022>.

measures in the land use and forestry sectors and is calling for a reduction in emissions in these sectors, such as those from drained peat soils.

This contribution intends to draw on the Finnish and German cases to shed light on how to address the challenges experienced around the management of peatlands in Ireland. Although peatlands are the most space-effective carbon sinks of all terrestrial ecosystems, they have been highly degraded in Ireland as they have developed in close association with land use systems, such as peat extraction. The drainage of peatland areas that these activities entailed has severely diminished their long-term carbon sink function, turning them into carbon sources. This paper intends to examine whether and how the legal arguments developed in the Finnish and German cases can also be applied to peatland degradation in Ireland.

To this end, an analysis of the two European cases will first be conducted to assess how they built their legal arguments on existing national legislation, such as national climate change acts. The paper will then move on to look at analogous legislation in Ireland, how it incorporates peatland protection considerations and its implementation in the face of progress that runs counter the achievement of climate targets. The analysis may also require briefly outlining the main EU requirements in the land use sector by looking at the LULUCF regulation 2018/841. Through this analysis, the paper seeks to answer the following question: is Ireland complying with its national and EU obligations requiring emission reductions in the land use sector or continued degradation of Irish peatlands suggests that there are lessons to be learned from the currently pending cases before the Finnish and German courts?

Ms Sinéad Mercier, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:

Tracing Balor's Eyeline: Energy Law in the Anthropocene*

Much like the hum of a fridge, energy law has remained in the background of political discourse, only appearing and proliferating in certain key geopolitical moments. We are in the midst of one such moment. As Europe undergoes a polycrisis of skyrocketing energy prices, biodiversity collapse and climate change, fossil fuel companies have hit record emissions (and profits) with no signs of abating. Fossil-fuel based energy production and consumption accounts for 70 per cent of emissions, and is a primary cause of environmental and social harm. Yet, despite proliferating legislative interventions to enclose and govern the problem, emissions and sea levels keep rising. Where is the law in all this?

There is a tendency to view energy and climate as abstract, but they are thoroughly material and spatial problems. Today the concept of 'energy' is analogous to money, a commercial product in a free market that can be bounced around from space to space, subject to 'light-touch' regulation. However, this concept is historically and temporally distinct. In her book *The Birth of Energy,* Cara New Daggett traces how thermodynamic energy became foundational to production and consumption today. Aligned with the technological and capital achievements of the Victorian era, such concepts of 'energy' legitimated a political rationality that justified unequal labour relations, colonial extractivism and imperialism.

Contest and struggle have continued to shape the concept of energy, its way of seeing and attendant infrastructures of consumption and production. Like many areas of environmental governance, energy law and policy can be seen as a closed and expert policy community, highly

technocratic and complex, dealing with fast-paced technological developments and innovative legal financial products. This paper seeks to explore the parallel problems of proliferating fossil fuel energy use and climate legislation by conducting a genealogy of energy in the Irish context.

This research incorporates a law and geography approach through the prism of Nicole Graham's 'Lawscape', which highlights how law follows the Cartesian eye to rewrite the land in the language of a private property regime. By writing the biography of particular places and localities we can examine the spatial impacts of Ireland's natural resource regimes. In examining these conflicts over land values, use and appropriation, "energy" can be placed in historical and political context. From these contextual, emplaced narratives, we can build an energy epistemology that is 'landscaped', not 'Lawscaped' and so gives due credence to 'othered' ways of seeing the world as an enmeshed *comhshaol.*

*Believed by Celtic scholars to represent the malevolent forces of nature, the Formorians are led to battle by their warrior champion Balar (or Balor) of the Evil Eye. Once opened by four men pulling on a "polished ring in its lid", Balor's eye would destroy everything before it. Gray, E. A (1982) Cath Maige Tuired: The Second Battle of Mag Tuired, London: Irish Texts Society, 62).

Mr Ahmad Ali Shariati, Ph.D. Candidate, Sussex Law School, University of Sussex:

Clarifying and re-assessing States' accountability for greenhouse gas emissions to enhance climate justice.

To comprehend the source of greenhouse gas emissions, distribute responsibility fairly and equitably, and organize mitigation efforts, States must account for emissions in national inventories. However, does the current territorial-based methodology have the potential to hold states accountable for their emissions and contribution to global climate change fairly and equitably?

The United Nations Framework Convention on Climate Change (UNFCCC) provisions on the subject are surprisingly brief and superficial, while, without responsibility attribution, no GHG emissions reduction objectives are possible. Articles 4 and 12 on reporting refer to the International Panel on Climate Change's guidelines, which are highly technical and unintelligible. Nevertheless, there is a growing public interest in opening the debate about accountability systems, popularising the notion of "ecological footprint". Some States have also started questioning the current model in place, known as "production-based accountability" (PBA). Under the PBA, the producer State is responsible for the emissions linked to the initial production of a product and its transportation. The consumer State is, on its part, responsible for the emissions embedded in the final consumption of the commodity. Some States and authors have started arguing in favour of consumption-based accountability (CBA), where the consumer State would be held accountable for all the emissions linked to a commodity to enhance climate justice. The extended-producer responsibility (EPR) is also gaining momentum and makes the producer country exclusively accountable for emissions.

Opening the debate about various accountability systems is necessary to create a renewed investment from States in climate negotiations, to uphold our international obligations concerning access to environmental information for the public, and to future-proof

environmental law. Assignment of GHG emission responsibilities, deciding who should be responsible for what is a political decision. Accountability methods are not and should never be immutable and deserve open discussion. This unintelligibility violates citizens' right to access environmental information and should be solved. This presentation will show that environmental law cannot develop or progress without understanding and resolving the dilemmas around GHG emissions accountability's transparency and intelligibility and will discuss which system is more in line with climate justice objectives.

Irene Sacchetti, Ph.D. Candidate, Nottingham Law School, Nottingham Trent University:

Thinking Beyond Borders in the Kinocene: Reconceptualising the Climate 'Refugee' using a Decolonial Approach

While human society, the Earth and the climate system have always been mobile and migrant, as the concept of Kinocene suggests (Nail, 2019), the dominant Eurocentric approach has always conceived the Earth and humans as static. However, the profound interrelation between humans and Earth mobility is even more visible now, with an average of 22.5 million people cross-border forcibly displaced due to changes in the climatic system (GRID 2018; UNHCR 2020), the so-called climate 'refugees' or forgotten victims of climate change (WEF, 2021).

Despite this catastrophic scenario, States continue to miss international climate targets, as reiterated by COP27. While extensive literature acknowledges the urgency of finding legal responses (Atapattu, 2015; McAdam, 2012; Gemenne 2018), the current international legal framework remains ill-equipped to provide protection for climate 'refugees', and flaws from the lack of a standardized and internationally accepted definition of those involved. International legal institutions have failed to provide a satisfactory response to date (UNHRC, *Teitiota v. New Zealand*, 2020) and national migration policies continue to overlook climate change as a migration driver (McLeman, 2020).

Therefore, the focus of my research revolves around the obstacles in international law leaving climate 'refugees' in a legal impasse. In order to overcome such obstacles, I aim at reconceptualizing the climate-mobility nexus following a decolonial approach and framing the epistemological foundation of climate and refugee law.

As the discourse remains split into disciplinary silos and the climate-mobility nexus is understood, conceptualised and addressed following a Eurocentric positivist approach, at the basis of current international law, existing legal scholarship has been unable to generate a holistic response to the multidimensionality of climate displacement. A more critical and interdisciplinary investigation, sensitive to the colonial origin of climate change and the Western hegemony on the epistemic foundations of international law (Sunter, 2007; Mignolo 2019), is required to reconceptualize the climate change-human mobility nexus and formulate novel and timely responses. It means to think beyond physical and mental borders, to allow for a counter-hegemonic discussion based on pluralization of knowledge production at the basis of international law.

Throughout the presentation, I sincerely hope to stimulate a critical reflection on how we study, research and perceive climate change and migration. I also aim at enhancing sharing and

confrontation of knowledge between researchers to confront present legal and regulatory challenges and alternative solutions.

Calum MacLaren, Ph.D. Candidate, UCD Sutherland School of Law, University College Dublin:

The Horizontal Application of Irish Constitutional Rights against Climate Damaging Non-State Actors.

The horizontal application of constitutional rights in Ireland has occupied a curiously neglected jurisprudential space since its inception in the 1960s. This research seeks to elucidate how this seemingly anodyne doctrine, virtually unaltered in the past four decades, may represent a unique and powerful legal mechanism to adjudicate climate change.

Over 70% of global GHG emissions since 1988 can be attributed to a mere 100 companies. While the majority of current climate litigation remains focused on public bodies, recent years have seen the proliferation of litigation against companies involved in fossil-fuel extraction and expansion. In 2021, 38 of the 198 climate-related cases filed were taken against private-sector actors. This discussion seeks to contribute to this flourishing area of litigation by proposing the application of the Irish 'constitutional tort' against environmentally damaging companies for their violation of rights protected by the Irish constitution. The appeal of this form of action is its ability to directly target those most responsible for climate damage whilst accounting for the shortcomings of traditional tort actions in regards to climate damage.

This presentation will include a discussion of potential litigants and defendants, the origin and development of the 'constitutional tort' doctrine, an evaluation of the threat posed to the rights to life and bodily integrity enshrined in the Irish constitution, and the potential judicial hurdles faced in the application of a case of this kind.