UNIVERSITY of STRATHCLYDE
CENTRE FOR ENVIRONMENTAL LAW AND GOVERNANCE

University of Strathclyde
Humanities & Social Sciences

SCELG V Postgraduate Colloquium

Environmental Law and Governance

4th of May 2017

Technology and Innovation Centre (TIC Building), Level 9
99 George St, Glasgow G1 1RD

Level 3, Lord Hope Building
141 St James Road
Glasgow G4 oLT

phone: 0141 552 4400
email: info@strath.ac.uk
www.strath.ac.uk/scelg/

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Programme

8:45	Registration and coffee	
9:15	Introduction: Dr. Francesco Sindico, Reader in International Environmental Law at Strathclyde Law School and Co-Director of SCELG	
9:30	**Environmental Governance**	**Discussant: Prof. Alistair Rieu-Clarke, Chair of Law, Northumbria University, UK** ▪ **Decentralised International Cooperation: Enhancing Conservation and Management of Transboundary Natural Resources** Emma Mitrotta, Ph.D Candidate, University of Trento, Italy ▪ **Offshore transboundary aquifers: Which law applies?** Renee Martin-Nagle, Ph.D Candidate, University of Strathclyde, Glasgow, UK ▪ **The Relationship Between Environmental Law and Green Criminology: A Case Study of the Onshore Hydraulic Fracturing Method** Jack Lampkin, Ph.D Candidate, University of Lincoln, UK Chair: Dr. Francesco Sindico, Reader in International Environmental Law at Strathclyde Law School and Co-Director of SCELG
11:00	Coffee Break and Poster Session	
11:30	**Cost, Benefit and Risks**	**Discussant: Dr. Apolline Roger, Lecturer at the School of Law, University of Sheffield, UK** ▪ **The Achievement of Environmental Protection in the EU Agricultural Sector** Luchino Ferraris, Ph.D Candidate, Sant'Anna School of Advanced Studies, Pisa, Italy ▪ **The Judicial Enforcement of International Law in Industrial Pollution Cases** Esmeralda Colombo, Ph.D Candidate, University of Bergen, Norway ▪ **Economist Proposes, Judge Disposes: Contingent Valuation of Natural Resources in the US Courtroom** Sroyon Mukherjee, Ph.D Candidate, London School of Economics (LSE), UK Chair: Dr. Stephanie Switzer, Lecture in Law at Strathclyde Law

		School
13:00	Lunch and Poster Session	
14:00	**<u>Panel 1:</u>** **International Law of the Marine Environment**	**Discussant: Dr. Daniela Diz, Research Fellow at Strathclyde Law School, UK** ▪ **Shaping the law of the sea: The functioning of scientific advisory bodies in marine environmental law-making** Pradeep Singh, Ph.D Candidate, University of Bremen, Germany ▪ **Protecting and Preserving the Marine Environment in Disputed Areas: Seismic Surveys and Provisional Measures of Protection** Constantinos Yiallourides, Postdoctoral Researcher, University of Aberdeen, UK ▪ **International Regulations of Noise Pollution in the Oceans: Offshore Energy Activities and Underwater Noise** Dawoon Jung, Ph.D Candidate, University of Edinburgh, UK Chair: Prof. Elisa Morgera, Professor of Global Environmental Law at Strathclyde Law School and Co-Director of SCLEG
14:00	**<u>Panel 2:</u>** **Energy and Climate Law**	**Discussant: Dr. Olivia Woolley, Lecturer at the School of Law, University of Aberdeen, UK** ▪ **Sharing Energy: Dealing with Regulatory Disconnect in Dutch Energy Law** Anna Butenko, Ph.D Candidate, University of Amsterdam, Netherlands ▪ **Sweden's energy tax legislation and tranport emissions** Sara Kymenvaara, Ph.D Candidate, University of Eastern Finland ▪ **Ensuring sustainable energy for all: Where do we stand?** Lannette Chiti, Ph.D Candidate, University of Strathclyde, Glasgow, UK Chair: Dr. Kim Bouwer, Lecturer in Climate Change and Global Environmental Law at Strathclyde Law School
15:30	Coffee and Poster Session	
16:00	**Environment and Human Rights**	**Discussant: Prof. Jérémie Gilbert, Professor of International and Comparative Law and Deputy Research Director at the University of East London School of Business and Law, UK**

		▪ **Protecting Indigenous People and Local Communities Rights' through Legal Mobilization: An Account of the "Quassia Amara" Case** Pag-yendu Yentcharé, Ph.D Candidate, Université Laval, Canada ▪ **Integrating Human Rights in the International Regime on Access and Benefit-sharing with regard to the Protection of Indigenous Peoples' Rights** Xiaoou Zeng, Ph.D Candidate, University of Edinburgh, UK ▪ **Narcissus Reflected in the Lake – A Genealogy of Anthropocentric Environmentalism** Marie-Catherine Petersmann, Ph.D Candidate, European University Institute (EUI), Florence, Italy Chair: Dr. Saskia Vermeylen, Senior Lecturer in Law at Strathclyde Law School
17:30	Conclusion of the day	
18:00	Colloquium Drinks and Dinner at Drygate (at own expenses of participants)	

Abstracts

Panel 1 – Environmental Governance

Emma Mitrotta, Ph.D Candidate, University of Trento, Italy
'Decentralised International Cooperation: Enhancing Conservation and Management of Transboundary Natural Resources'

Although divided by international borders, transboundary natural resources represent a source of interdependence among the States sharing them. The joint protection and management of these resources have been traditionally seen in terms of international cooperation, thus focusing on intergovernmental agreements. Nevertheless, there is an emerging practice of decentralised international cooperation involving sub-state entities and local communities: decentralised cooperative schemes do not belong to a unique model and are rarely acknowledged by central governments. My research investigates cooperation over transboundary natural resources and how it is operationalised in practice. It looks at existing legal instruments regulating cross-border cooperation between sub-national actors (intermediate jurisdictions and local communities) in different regions. In particular, it focuses on the European Grouping of Territorial Cooperation in Europe, emerging decentralised schemes in transfrontier conservation areas in the Southern African Development Community, and cross-border agreements on migratory species between indigenous communities in North America. It proposes to integrate two cooperative frameworks: at the macro level, regional organizations and transboundary conservation areas which provide a mechanism for intergovernmental cooperation, and, at the micro level, decentralised cooperative schemes which favor the participation of sub-national actors. Such a combination reconciles the multiple levels of governance involved across borders and enhances the joint conservation and management of shared resources. This project aims to overstep the idea that transboudary natural resource governance operates exclusively under traditional intergovernmental cooperation, clarify the interaction among the various actors involved, and highlight the benefits in terms of biodiversity conservation and management. By comparing experiences of decentralised cooperation, the study aims to identify common features and enabling factors in order to propose a blueprint for initiating effective decentralised international cooperation where is needed.

Renee Martin-Nagle, Ph.D Candidate, University of Strathclyde, Glasgow, UK
'Offshore transboundary aquifers: Which law applies?'

Recent scientific evidence has confirmed the presence of fresh to brackish water under continental shelves around the world, and the volume of water is expected to be much greater than that in land-based aquifers. All offshore aquifers that have been discovered thus far lie within the jurisdiction of one nation, so the domestic laws of that nation will apply. However, it is likely that offshore freshwater aquifers will be discovered that straddle one or more political boundaries. States will then have to determine which laws should govern ownership and development of the resource. Certain aspects of the UN Convention of the Law of the Sea (UNCLOS) will apply to those nations who are parties to that treaty. Since the freshwater is located under continental shelves where states have sovereign rights, none of it will be viewed as the common heritage of mankind. However, UNCLOS does not address how sovereign rights apply to seabed transboundary natural resources. Customary international law for land-based freshwater resources has developed several principles, including requirements for reasonable and equitable use, for avoidance of significant harm to a neighbor's resources, for prior notice of planned activities that could affect a neighbor and for sharing of information regarding transboundary resources. Theoretically, all of these principles could apply to offshore freshwater resources. In addition, customary

practices have arisen for development of offshore hydrocarbon development, so that unitization and joint development agreements are viewed by some scholars as being so uniformly adopted that they are now required under customary international law. Finally, newer theories regarding shared natural resources may also apply, such as the common heritage of mankind, common pool resources and benefit sharing. The final choice of applicable legal theories will doubtless depend on political and economic forces at work at the time of development.

Jack Lampkin, Ph.D Candidate, University of Lincoln, UK
'The Relationship Between Environmental Law and Green Criminology: A Case Study of the Onshore Hydraulic Fracturing Method'

Environmental law is concerned with controlling polluting emissions to the three environmental media: air, land and water (Wolf and Stanley, 2014: 2). The word 'pollution' is an extremely important term because it implies some element of risk. A person's perception of pollution, or acceptable levels of pollution, may vary from place to place and between different groups and societies. Environmental law implements the boundaries for acceptable levels of pollution after scrutiny of the level of perceived threat or damage to humans or some part of the wider environment by governments. Traditional criminologists contribute to discussions in environmental law by analysing crimes that are violations of criminal laws. However, an emerging sub-discipline of criminology dubbed 'green criminology' goes further than orthodox explanations of criminal behaviour to assess actions that facilitate environmental harm, regardless of whether that harm stems from legal or illegal activity. For green criminologists, the notion of harm (why it occurs and what can be done to prevent it) is more important than the narrow definition of 'crime' that is restricted to analysing only behaviours that result in the violation of particular laws. The process of onshore hydraulic fracturing is used as a contemporary example of a legal hydrocarbon extraction method that has the potential to cause harm to both humans and parts of the wider environment based on existing academic research. This potential for harm could prove to be an interesting avenue for future research by green criminologists who are concerned with addressing environmental harms of both a criminal and legal nature.

Panel 2 – Cost, Benefit and Risks

Luchino Ferraris, Ph.D Candidate, Sant'Anna School of Advanced Studies, Pisa, Italy
'The Achievement of Environmental Protection in the Agricultural Sector'

In the last three decades, the European Union has been trying to integrate environmental protection in the design of the Common Agricultural Policy (CAP). As a result, the 2013 CAP reform for the first time gave substance to this target, by providing for both a set of "*greening measures*" in Pillar I and for additional funding for more targeted, project-based agri-environmental measures to be adopted within Pillar II. However, the final environmental delivery of the 2013 CAP reform appears to be very weak. More generally, European agriculture seems far from having achieved remarkable sustainability targets, particularly with regard to the fight against climate change. My presentation will try to investigate – from a legal perspective – the matter of whether and to what extent the EU constitutional framework fosters (or hampers) the adoption of environmentally sound measures in the field of agriculture. Indeed, there is no mention of environmental protection amongst the objectives that ought to be pursued in the EU agricultural policy (Art. 39 TFEU). Such an assessment implies touching upon two main problems: on the one hand, the legal and/or political impact on secondary legislation of such a shortcoming in the wording of the treaties; on the other hand, the potential that the integration principle has to bridge this gap, if at all. A closer examination shows that environmental concerns are still overall

marginal in the shaping of EU agricultural policy, mainly remaining ancillary to production. Only strategic reasons – particularly those to make the CAP-compliant with the WTO - induced the EU to undertake a "greening" of its agricultural policy, while effective "greening" still has to begin.

Esmeralda Colombo, Ph.D Candidate, University of Bergen, Norway
'The Judicial Enforcement of International Law in Industrial Pollution Cases'

Effective enforcement in environmental matters stands out prominently at the domestic, international, and regional levels. Notwithstanding the increasing amount of legislation geared up to protect the human and natural environment, black-letter law finds fairly low levels of enforcement whereas international environmental principles are increasingly applied. Taking international norms as a given, the looking glass of the present research is their implementation in national courts on the part of individuals and NGOs as one of the possible strategies for shielding the environment from industrial pollution. In particular, I intend to evaluate whether individuals and NGOs can successfully invoke international environmental instruments at the procedural stage of litigation in order to allow for the substantive adjudication of environmental issues in national courts. Access to justice would therefore be a hinge not only for securing environmental rights and interests, but also for the effective enforcement of the whole of international law, as well as for its increased legitimacy. Notwithstanding some landmark decisions proving this point, a dogmatic account is presently needed in view of analyzing whether national judges are under any obligation to implement international law in courts for the sake of environmental protection from industrial sources. Indeed, the present state of casuistry in the judicial application of international law appears to warrant unpredictability of and lack of fairness before the law. The theoretical standpoint is a doctrinal perspective concerning interpretation, application, justification, and validity. The doctrinal perspective will be combined with an instrumental perspective, whose research questions investigate whether international law might be used to achieve such desired ends as the promotion of environmental protection through participatory rights, and specifically access to justice.

Sroyon Mukherjee, Ph.D Candidate, London School of Economics (LSE), UK
'Economist Proposes, Judge Disposes: Contingent Valuation of Natural Resources in the US Courtroom'

Contingent valuation ('CV') is a widely-used but controversial method of estimating the value of natural resources. It relies on asking individuals how much they are willing to pay to ensure a hypothetical improvement (or avoid a hypothetical deterioration) in environmental quality. CV has been used to estimate the value of environmental goods ranging from porpoises to desert lands, and perhaps most famously in the wake of the Exxon Valdez oil spill in 1989. That same year in the United States, a landmark decision by the District of Columbia Circuit Court of Appeals upheld CV as a theoretically valid method for calculating natural resource damages. However, the first part of this article argues that some of the underlying assumptions and limitations of CV make it legally problematic. The second part presents a comprehensive survey of (reported) cases in US district and circuit courts where parties sought to rely on, or challenged, CV studies in the environmental context. This survey reveals that while US courts have been reluctant to accept specific CV studies, the reasons for their reluctance are not clearly articulated. The story that emerges from the case law is of CV being accepted in theory but often rejected in practice—a testament to the tension between legal reasoning and economic logic. I argue that the rejection of specific applications of CV has been a way for courts to assuage their unease with its conceptual and methodological underpinnings, while paying lip service to Ohio. However, it means that plaintiffs and defendants continue to seek to rely on (often very expensive) CV surveys with little or no judicial guidelines on what kinds of studies, if any, would be deemed legally acceptable.

Panel 3 (1) – International Law of the Marine Environment

Pradeep Singh, Ph.D Candidate, University of Bremen, Germany
'Shaping the law of the sea: The functioning of scientific advisory bodies in marine environmental law-making'

The law of the sea frequently encounters technical uncertainties and ecological concerns in a continuing effort to regulate the conduct of various maritime activities. Traditionally, disciplines such as oceanography and bathymetry which studies seafloor geology and ocean depth were essential in the designating of sea lanes to facilitate navigation and the laying of submarine cables. The past decades, however, have steered the law of the sea towards addressing threats to the marine environmental caused by human activities (for example, by overfishing, offshore oil and gas exploitation, pollution from land-based sources and shipping) and climate change (particularly ocean acidification). Today, new potentials to utilise the oceans as part of a solution to global environmental concerns are being explored. This include (i) generating, storing and transporting large-scale offshore renewable energy, (ii) enhancing the ability of the oceans to function as a carbon sink, and (iii) accessing alternative sources of precious elements essential for sustainable development from hitherto untapped deep sea resources (specifically marine genetic resources and deep seabed minerals). Consequently, the modern law of the sea faces an escalating challenge of a technical and environmental dimension, particularly in areas beyond national jurisdiction, which necessitates regional and global responses in the form of collective governance. Addressing these barriers necessitates scientific proficiency at the various institutions that function in marine environmental law. At the same time, scientific wisdom is not something that can be magically transmitted from laboratories and applied into regulatory decisions. Specific mechanisms would have to be installed in order to facilitate and incorporate scientific information into the law-making (where applicable) and decision-making process. This paper will study existing institutional regimes within the law of the sea structure and examine how the science and law/policy interface is accommodated in the law-making and decision-making process. The institutionalisation of scientific bodies in specific marine environmental treaty regimes, as well as the advent of intergovernmental panels and independent group of experts, and the trend of enabling the participation of non-governmental organisations and other actors in these processes will be explored. The bodies that will be examined include the Legal and Technical Commission of the International Seabed Authority (LTC-ISA), the Marine Environment Protection Committee of the International Maritime Organization (MEPC-IMO), the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), and the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP). It is envisioned that this study will identify the opportunities and obstacles for science in marine environmental law and decision- making, which in turn could serve as a useful yardstick to measure the effectiveness existing regimes, as well as function as a benchmark for emerging and ensuing ocean governance regimes.

Constantinos Yiallourides, Postdoctoral Researcher, University of Aberdeen, UK
'Protecting and Preserving the Marine Environment in Disputed Areas: Seismic Surveys and Provisional Measures of Protection'

The prevailing view in judicial practice and scholarly literature is that in the absence of agreed maritime boundaries, states are under a procedural obligation to refrain from undertaking any acts related to the drilling of wells, the establishment of installations and appropriation of petroleum from yet-to-be delimited marine areas. On the other hand, seismic exploration surveys have been traditionally considered as being 'legally permissible', even when carried out unilaterally by one party to the dispute. One of the main arguments advanced in support to this proposition is the fact that seismic surveys, unlike drilling or appropriation of petroleum, are 'transitory' in nature, thus, cannot cause a permanent

physical damage to the marine environment in the disputed area or to the alleged sovereign rights at large. However, one may question how this rule has come to be and whether it is consistent with the present international law framework applicable to the protection and preservation of the marine environment, specifically concerning the obligation of states to refrain from using or their territory in such a manner as to cause injury to the territory of another state. This presentation will consider the law of the sea framework governing the protection and preservation of the marine environment, with a particular focus on the rules applicable to seismic exploration activities in disputed maritime areas and their potentially 'transboundary' effects. Having regard to the latest marine scientific understanding, the presentation will, first, demonstrate that the high volumes of acoustic energy, commonly released during seismic operations, may potentially have an adverse environmental impact on the marine life and commercial fishing operations in or near the disputed marine areas, thus causing, potentially, harm to the rights of another state. The presentation will draw a number of conclusions with practical implications for the future conduct of seismic exploration surveys and for the associated protection of the marine environment in disputed maritime areas. Finally, the presentation will consider the legal prerequisites for the successful protection in respect to the conduct of such operations through the prescription of interim protective measures under Article 290 of UNCLOS. This enables an international court or tribunal to order the cessation of such activities if it considers appropriate under the circumstances to prevent serious harm to the marine environment, pending the final delimitation decision.

Dawoon Jung, Ph.D Candidate, University of Edinburgh, UK
'International Regulations of Noise Pollution in the Oceans: Offshore Energy Activities and Underwater Noise'

There is a growing concern with marine noise pollution generated by offshore energy activities and its potentially harmful effects on marine species, marine biodiversity and the marine environment. Offshore energy activities may accompany various kinds of marine noise pollution produced by construction, operations, decommissioning and dredging the seabed. There is no global or regional instrument to specifically deal with marine noise pollution. Nevertheless, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as the primary source for the law of the sea, provides the legal framework regarding marine noise pollution. UNCLOS categorises noise as a form of pollution by defining 'pollution of the marine environment' as 'energy into the marine environment which results or is likely to result in such deleterious effects as harm to living resources and marine life.' Indeed, UNCLOS specifies not only general obligations to protect and preserve the marine environment, but also provides a mechanism to integrate other relevant instruments on the marine environment. In this regard, global and regional agreements should be considered together in order to strengthen the substantive provisions of UNCLOS in the light of marine noise pollution. Through my analysis, I illustrate how existing global and regional treaties contribute to the development of the regulations regarding marine noise pollution and, further, crystallise the obligations to reduce noise pollution within the UNCLOS framework. Indeed, the precautionary principle should be taken into account in order to prevent damages which have not been discovered in the current state of scientific knowledge. Thus, the presentation provides a detailed international regulations to prevent, reduce and control of marine noise pollution created by offshore energy activities.

Panel 3 (2) – Energy and Climate Law

Anna Butenko, Ph.D Candidate, University of Amsterdam, Netherlands
'Sharing Energy: Dealing with Regulatory Disconnect in Dutch Energy Law'

While sharing economy services enabled by digital platforms such as Uber and Airbnb are on the top of the current academic discourse, similar developments in energy go largely unnoticed despite their potentially significant effect on the current energy market design. The decreases in price and increases in efficiency of energy supply and small-scale storage equipment lead to energy consumers increasingly becoming prosumers of sustainable energy. The increased tempo and availability of digital solutions, such as online platforms, also impacted the prosumers: It became technically possible to trade energy on the local and national energy market- for example, by the means of supplying one's neighbours or relatives in another city. Thus, the role of the prosumers effectively expanded to include besides the previous parallel roles of energy consumers and producers also the roles of suppliers and traders. The activity of prosumers on the local energy market, which presumes that energy is both produced and consumed within the same geographical region and preferably at the same time (simultaneously), is endorsed as the preferred scenario at both European and Dutch national levels. Against this background a question arises, and namely: To what extent is it possible to 'share energy' under the current Dutch regulatory framework? In order to answer this question, the 'match' between the current developments on the Dutch energy market (prosumers assuming an expanded role) and the respective regulation is assessed from the perspective of regulatory disconnection. The latter could arise when innovation in the market develops in a faster tempo or differently than envisaged compared to respective regulation. The regulatory disconnection is not automatically problematic, but in certain cases it could lead to regulatory failure and should be eliminated. The regulatory approaches to bridging the gap between innovation on the one hand and regulation on the other hand could be roughly divided into three distinct categories: those addressing the horizontal dimension of disconnect by the means of adjusting the timing of regulatory intervention, those addressing the vertical dimension by changing the level of regulatory generality, and those pertaining to the institutional dimension by introducing regulatory agencies and by performing regulatory updates and reforms. In this vain, and in order to be able to answer the main research question posed earlier, the current paper also aims to assess whether there is indeed problematic regulatory disconnect between innovation and regulation, and which regulatory approaches are chosen by the Dutch government to address this disconnection.

Sara Kymenvaara, Ph.D Candidate, University of Eastern Finland
'Sweden's energy tax legislation and transport emissions'

The key role of road transport in mitigating climate change cannot be sufficiently emphasized; in contrast to other major economic sectors in the EU, transport is the only sector where emissions have grown from its 1990-levels, and are forecasted to grow even further - despite the impact of current policy instrument to curb emissions. Promotion of low-emission transport fuels is a cornerstone in the transition towards a low-emission road transport system. Since the mid-1990s, Sweden has applied mainly economic instruments to increase the share of low-emission fuel alternatives through allowing exemptions from energy and CO2 tax for sustainable biofuels. In the field of energy taxes, the Treaty on the Functioning of the European Union requires an unanimous legislative procedure for establishing measures primarily of a fiscal nature, and because of the inability of Member States to reach a unified position on the 2003 Energy Tax Directive in the Council, the largely outdated Directive currently limits national action in the field of low-emissions fuels. To exemplify these limitations in a multi-level regulatory context, the presentation will examine Sweden's hurdles with adjusting its energy tax legislation to the requirements if the 2003 Energy Tax Directive and the provisions on

overcompensation of energy products (biofuels) under EU state aid law. Thus, in reducing transport emissions through promotion of low-emission transport fuels, Member States encounter multiple legal requirements; not only a binding EU biofuels target (under the Renewable Energy Directive) to meet climate objectives, but also legal requirements as to the character of national measures to promote biofuels as well as their suitability from an EU law perspective. Through this elaboration, the presentation also aims to cast light on the interactions between national and EU legislation in a multi-level governance context.

Lannette Chiti, Ph.D Candidate, University of Strathclyde, Glasgow, UK
'Ensuring sustainable energy for all: Where do we stand?'

We live in a world where energy is at the core of our lives. It powers industry, health, education, provides for our cooking and heating needs and contributes to poverty eradication. However, about 1 billion people have no access to electricity, while another 3 billion or so have no access to clean energy for cooking and heating and have to rely on traditional biomass such as charcoal, wood, animal and agricultural waste, etc. Exposure to emissions of carbon monoxide and other gases emitted by these energy sources leads to about 4 million premature deaths annually-Women and children are particularly vulnerable. Lack of energy also denies people of an essential means of improving their lives and condemns them to perpetual poverty. On the other end of the spectrum, where access to modern energy services is almost universal, as in the case of most developed countries, the problems related to energy production and use brings about other challenges: environmental problems such air pollution, acid rain, and climate change largely due to emissions of carbon dioxide associated with energy production. This situation is unsustainable and calls for transformation of the global energy systems to one which provides energy to all but in a way that also protects the environment and the climate system. Responding to these global challenges, the UN General Assembly declared the year 2012 as the International Year of Sustainable Energy for All. Subsequently, the UN Secretary-General launched the Sustainable Energy for All Initiative. This presentation will provide an overview of the Sustainable Energy for All Initiative- It will look at the objectives of the Initiative and how much progress has been made so far towards achieving them- where we are, why we are there, and what the way forward is. This presentation is done by way of sharing part of the work in my PhD research, which focusses on the role of sustainable energy in climate change mitigation and sustainable development.

Panel 4 – Environment and Human Rights

Pag-yendu Yentcharé, Ph.D Candidate, Université Laval, Canada
'Protecting Indigenous People and Local Communities Rights' through Legal Mobilization: An Account of the "*Quassia Amara*" Case'

The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* is an international agreement which aims at sharing the benefits arising from the utilization of genetic resources in a fair and equitable way. It entered into force on 12 October 2014. Since then, this international convention has been invoked in at least two campaigns aiming at denouncing suspected cases of biopiracy, often referred to as "theft" of genetic resources and/or traditional knowledge (TK): the *Stevia* case brought to the attention of the public on 16 November 2016; and the *Quassia Amara* case, brought to the attention of the public on the 25th January 2016. Relying specifically on this second case as an example, my proposal intends to offer an assessment of biopiracy claims : in the post-Nagoya era, it is a strategic action taken by some actors to influence behavior

of bio-based companies as well as to foster law or policy implementation regarding the protection of the rights of indigenous people and local communities on their traditional knowledge over natural resources.

Xiaoou Zeng, Ph.D Candidate, University of Edinburgh, UK
'Integrating Human Rights in the International Regime on Access and Benefit-sharing with regard to the Protection of Indigenous Peoples' Rights'

Access and Benefit-sharing (ABS) regime that regulates genetic resources and associated traditional knowledge has been established by the Nagoya Protocol under the Convention on Biological Diversity in 2014. It envisaged a legal platform that is at the cutting edge of the modern international standards regarding the protection of indigenous peoples' rights, aiming primarily at the fair and equitable sharing of the benefits arising from the utilization of genetic resources and its associated traditional knowledge. States Party is obliged to obtain prior informed consent or approval and involvement of indigenous and local communities for accessing to their genetic resources, as well as to take legislative measures to implement benefit-sharing provisions. Hence, to interpret and implement such ABS law and regulations encounters a remarkable lack of legal certainty and clarity at both inter-national and intra-national levels. Major knowledge gaps and a lack of international consensus still remain as to what substantive and procedural protection the ABS regime have created for indigenous peoples, how ABS provisions apply and whether and/or how they can be implemented in areas where different international regimes overlap and conflict. Acknowledging the notable overlap of norms and principles persists in the ABS regime and the international human rights regime, this paper explores the factual and legal interrelations of these two regimes with a sharpened focus on indigenous peoples' rights. Moreover, by integrating human rights into the international ABS regime, this paper constructs a doctrinal framework for systemically understanding, interpreting and questioning the conceptual and implemental dimensions of the ABS regime, in light of the principle of mutual supportiveness for treaty interpretation, as entailed by the Vienna Convention of Law of Treaties Article 31(3)(c).

Marie-Catherine Petersmann, Ph.D Candidate, European University Institute (EUI), Florence, Italy
'Narcissus Reflected in the Lake – A Genealogy of Anthropocentric Environmentalism'

The 'environment' is a substantively indeterminate concept that, throughout time, has carried different meanings and translated different visions of the (legal) relationship between Man and Nature. Over the past centuries, the normative concern for environmental protection has emanated from distinct legal, cultural or socio-economic narratives. In providing a genealogy of these multiple (and overlapping) frames, the paper not only sharpens our historical understanding of the (legal) nexus between two proliferating regimes in international law (international environmental law and international human rights law), but also critically engages with how the 'environment' was progressively translated as an anthropocentric concern. The first environmental laws, I argue, were nurtured by a sentiment of antagonism between Man and Nature and legally established a strict separation between them. Progressively, however, environmental protections legislations reflected concerns for adequate living conditions and economic progress, which re-defined their priorities and conditioned their normative and substantive orientation. At the dawn of the 1970s, an anthropocentric definition of environmental protection and its intrinsic intertwinement with human rights became the hegemonic conceptual and operational legal framework. Under this prism, environmental protection automatically reinforced human rights. This synergistic frame applied to the relationship between environmental and human rights protection has allowed environmental protection to gain momentum by associating it with a greater moral scheme. It has, however, simultaneously shadowed the existence of tensions inherent to this relationship. To re-adjust the frame, the paper offers a more critical picture of the relationship between environmental protection and human rights.

Discussants and Chairs

Panel 1 – Environmental Governance

- Discussant: Prof. Alistair Rieu-Clarke, Chair of Law, Northumbria University, UK
- Chair: Dr. Francesco Sindico, Reader in International Environmental Law at Strathclyde Law School and Co-Director of SCELG

Panel 2 – Cost, Benefit and Risks

- Dr. Apolline Roger, Lecturer at the School of Law, University of Sheffield, UK
- Chair: Dr. Stephanie Switzer, Lecture in Law at Strathclyde Law School

Panel 3 (1) – International Law of the Marine Environment

- Discussant: Dr. Daniela Diz, Research Fellow at Strathclyde Law School, UK
- Chair: Prof. Elisa Morgera, Professor of Global Environmental Law at Strathclyde Law School and Co-Director of SCLEG

Panel 3 (2) – Energy and Climate Law

- Discussant: Dr. Olivia Woolley, Lecturer at the School of Law, University of Aberdeen, UK
- Chair: Dr. Kim Bouwer, Lecturer in Climate Change and Global Environmental Law at Strathclyde Law School

Panel 4 – Environment and Human Rights

- Discussant: Prof. Jérémie Gilbert, Professor of International and Comparative Law and Deputy Research Director at the University of East London School of Business and Law, UK
- Chair: Dr. Saskia Vermeylen, Senior Lecturer in Law at Strathclyde Law School

Strathclyde Centre for Environmental Law and Governance

The Law School's Strathclyde Centre for Environmental Law and Governance operates as a centre of academic excellence in environmental law and governance. The goal of the Centre is to foster multidisciplinary and policy relevant research in international, European and national (both Scottish and English) environmental law and governance. The Centre is also a hub for excellence in PhD and postgraduate teaching programmes in environmental law and governance within the Law School. It hosts a Visiting Researcher Programme and welcomes consultancy collaborations with public and private policy makers and stakeholders.