

SCELG DIALOGUE

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The Transformation of Environmental Law and Governance: Risk, Innovation and Resilience

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The integrated and inter-disciplinary research conducted by the **Strathclyde Centre for Environmental Law and Governance (SCELG)** seeks to address real-world knowledge gaps in partnership with government institutions, NGOs, private institutions and local communities. Our researchers hold considerable expertise in the fields of comparative, EU and international environmental law, with regard to, among others, biodiversity, land, food and agriculture, climate change and energy, water and oceans, as well as corporate accountability, environmental justice, human rights and sustainable development.

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The Transformation of Environmental Law and Governance: Innovation, Risk and Resilience

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This policy brief is based on insights captured by a task force (names at the end of the policy brief) at the 2018 IUCN Academy of Environmental Law Colloquium

The 2018 IUCN Academy of Environmental Law Colloquium #IUCNAEL2018

The Strathclyde Centre for Environmental Law and Governance (SCELG) organized the 2018 IUCN Academy of Environmental Law (IUCN AEL) Annual Colloquium from 4 to 6 July 2018. This was, by far, the largest IUCN AEL ever with over 400 participants and 66 parallel sessions over three days. However, it was not so much the quantity, but the quality of those attending the Colloquium that stands out, warranting an immediate reaction by the organisers in terms of some of the key points and issues discussed at the University of Strathclyde. In due course SCELG will prepare a more in depth report of the event as a further legacy.

In receiving an unprecedented number of abstracts, we decided to organize them in a number of sectorial and cross-cutting streams. The

latter are interesting in themselves as they reflect the direction of scholarship and practical work in the field of environmental law and governance in 2018.

Sectorial streams:

- Oceans
- Energy
- Climate Change
- Freshwater
- Land, Food and Agriculture
- Biodiversity

In addition to these six sectorial streams we identified two cross-cutting themes that were discussed in many of the sessions at the Colloquium:

- Litigation
- Human Rights

Finally, we had three streams that captured the core focus of the Colloquium, which will be the focus of this policy brief:

- Risk
- Innovation
- Resilience

The richness and abundance of papers presented at the Colloquium all centered around the following question: Is environmental law and governance transforming itself? If so, to what extent are issues of risk, innovation and resilience at the heart of such transformation? Are risk, innovation and resilience mutually supportive?

Risk and Innovation

Risk and innovation have a twofold relationship. When society has to deal with a risk, it often reacts by developing an innovation. At the same time, innovation and new technologies can create new risks that need to be properly addressed and regulated.

Against this background, the Colloquium presented innovation in terms of “hard” and “soft” innovation. The former being the deployment of technology such as GIS or blockchain and the role of law in governing such new (or not so new) technologies. The latter being new innovative ways of thinking about environmental law and governance. Decentralized governance, rights of nature or strengthening of procedural law were all discussed in the framework of what we have labelled as soft innovation.

Resilience and mutual supportiveness

Participants were challenged to come up with a working definition of what resilience means. After three days there was not a clear-cut definition of resilience, and probably there will never be and possibly there never should be one. However, key characteristics were fleshed out, such as the ability to cope, to adapt, to move on from failure and to anticipate change.

More importantly, the Colloquium highlighted the need for resilience thinking in environmental law and governance. Legal systems need to be resilient and adaptive governance needs to be at the heart of environmental law.

The question we asked ourselves at the outset of the Colloquium was, however, whether risk, innovation and resilience are mutually supportive. Put like that, one could think that the three are separate and need to work together. The reality is that risk, innovation and resilience are indivisible. A socio-ecological risk requires innovation (hard and/or soft) in order for the society that depends on that environment to become more resilient. If the international community progresses further towards awarding nature itself rights, the innovation needed to deal with the risk may make the environment per se more resilient. The challenge is to identify, develop and implement regulatory frameworks that encourage the mutual supportiveness, or indivisibility, of risk, innovation and resilience.

Insights from our Keynotes

The 2018 IUCN AEL Colloquium had the pleasure of hosting six keynote speakers:

- Tianbao Qin, Luoja Professor of Law, Wuhan University, China
- Maria Lee, Professor of Law at University College London, UK
- Joanne Scott, Professor of European Law at the European University Institute, Fiesole, Italy
- Geert van Calster, Professor at the University of Leuven, Belgium
- John Knox, UN Special Rapporteur on the environment and human rights
- Paul Hunt, Former UN Special Rapporteur on the right to the highest attainable standard of health

All gave rich and inspiring presentations. While it is impossible to capture all the points raised in their key notes, these are just some that relate to the overall topic of the Colloquium. For example, there is an inherent risk in considering BRICS as homogenous countries. Environmental law and governance and the way other countries deal with BRICS in their international relations need to understand their socio-geographical context. An element of soft innovation can be found in how scale plays a role in promoting renewables, in particular the wind industry. The role of local communities and the challenges they face when dealing with global environmental law issues should not be underestimated. The spillover of domestic policies when they impact on global production and consumption patterns can make areas of global environmental law less resilient. It is important to underline very strongly that not all innovation requires new regulation.

There is a growing appreciation that UN Special Rapporteurs are an innovation in international law and operate as “auditors”. Based on their experience on the ground they are in a unique position to push the boundaries of international law towards more resilient outcomes. Finally, it is increasingly evident that lawyers (and obviously environmental lawyers) need to engage in the complexity of multidisciplinary approaches. The benefits of such an approach outweigh the risks

of engaging with people outside of our comfort zone.

Entrepreneurial Innovation and Sustainability

The 2018 IUCN AEL Colloquium had the pleasure of hosting a plenary session focusing on innovation, risk and resilience from a non-academic perspective. The following organisations attended:

- SASOL
- Scottish Power
- Our Power
- Scottish Government
- Brewgooder

The presence of leading organisations within the energy, food and beverage, and water sector, comprising multinationals present in the stock exchange and smaller start-ups, was without a shadow of a doubt one of the highlights of the Colloquium. Again, it is impossible to capture all the comments and points raised in the session, but below are some of the points that relate to the overall focus of the event.

For an energy company operating in a tough political and legal environment, being resilient means anticipating the challenges ahead and having a pro-active attitude towards compliance. There is a combination of risk and innovation in fulfilling a niche market in the energy field with a strong social dimension and deploying renewables in a global market. Dealing with policy makers requires being innovative, but that innovation does not always have to be complex. The best way, in fact, to deal with policy makers is to keep it simple. Finally, innovation can also come from the way social media is used, but also from working in a business that makes you feel good.

The Transformation of Environmental Law

At SCELG we started this Colloquium asking ourselves whether environmental law and governance is transforming itself. What became clear throughout the three days is that risk, innovation and resilience were indeed present in the tapestry of the law in the field of energy, climate change, oceans, freshwater, land, food and agriculture and biodiversity. At the same time the tapestry has threads of litigation and human rights throughout. The tapestry of environmental law and governance is in constant evolution and transformation, there is no doubt about that. It is the role of environmental lawyers to be bold and understand the challenges in the transformation of environmental law and governance. However, and more importantly, it is also our role to embrace the opportunities that this complex tapestry gives us in order to push the boundaries of law and practice towards a less risky, more innovative and more resilient future.

This SCELG Policy Brief only scratches the surface of the richness of the debates and quality of the participant's contributions to the 2018 IUCN AEL Colloquium. Many of the presentations can be found on the event's web site <<http://1bayx6.m.attendify.com/app/schedule/9WtY-satS4kJzc76bD8>> and, in due course, a book will be published in Edward Elgar IUCN AEL book series with a selection of papers.

This SCELG Policy Brief does not reflect the view of any of the participants to the 2018 IUCN Academy of Environmental Law Colloquium.

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The key themes of the conference as illustrated by Dr Margherita Brunori (Università Statale di Milano)

Key resources:

Web page of the 2018 IUCN Academy of Environmental Law Colloquium hosted by SCELG - <https://www.strath.ac.uk/research/strathclydecentreenvironmentallawgovernance/events/conferences/2018thetransformationofenvironmentallawandgovernanceinnovationriskandresilience/>

Web page of the IUCN Academy of Environmental Law - <http://iucnael.org/en/>

Web page of the Strathclyde Centre for Environmental Law and Governance - <https://www.strath.ac.uk/research/strathclydecentreenvironmentallawgovernance/>

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Strathclyde Centre for Environmental Law & Governance

Latest outcomes from our work

We wish to share our research findings in a variety of ways to reach out to different audiences. We not only publish academic books and articles, but also distil our research in a shorter and more action-oriented way for stakeholders (e.g., policy-makers and advocates). Among the latest outcomes of our work are the following working papers, policy briefs and dialogues:

SCELG Working papers

C Wambua, Promoting Public Acceptance of Wind Energy Projects in Kenya: Towards a Wind-Wind Solution, SCELG Working Paper 10/2017

LS Lynes, Climate Change Law and Colonialism: Legal Standing of Three Rivers and a Hypothetical Case of Bison Personhood in Canada, SCELG Working Paper 9/2017

SCELG Policy Briefs

M Geelhoed, Response to the Public Consultation 'Environmental Principles and Governance in Scotland', SCELG Policy Brief 11/2019

M Geelhoed, Response to the Public Consultation 'Good Food Nation Proposals for Legislation', SCELG Policy Brief 10/2019

SCELG Dialogues

F Sindico and K McKenzie, Human Rights Thresholds in the Context of Climate Change: A Litigation Perspective in the Wake of the IPCC Special Report on 1.5°C or the Week in which Everything Changed..., SCELG Dialogue 7/2018

F Sindico and S Switzer, The Transformation of Environmental Law and Governance: Risk, Innovation and Resilience, SCELG Dialogue 6/2018

Find out more at:

<https://www.strath.ac.uk/research/strathclydecentreenvironmentallawgovernance/ourwork/latestoutcomesfromourwork/>



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