

enlargement of different aims or goals in one area, or a displacement of contradictory values in another. The new approaches to climate law call for a close charting of these trends. For climate lawyers, the search for a polity and morality that can more systematically guide global relations is ongoing.

ARE WE ALL CLIMATE LAWYERS? SOME BRIEF NOTES

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*By Hermann Ott**

First of all, I would like to thank you and congratulate the organizers for this timely event!

Your proposition is correct: the climate crisis—or more correctly, the many global ecological crises—must be the starting point of analysis and strategy for all areas of the law—and particularly international law. Because the changes brought about and the measures required to fight this crisis will radically alter the geopolitical landscape and decisively affect every branch of international law and relations.

This is why every lawyer will in the future be automatically a “climate” lawyer, whether they want it or not, as the title of our panel indicates. But let us not be misled into some kind of complacency: in the years to come, tackling the climate crisis will require every one of us to work hard. This is a vast topic and I would like to concentrate on three points.

I. CLIMATE AND ENVIRONMENT LAWYERS HAVE TO BECOME MORE STRATEGIC

It is of course important to conceive, employ, and enforce legal norms—this is our core business. But we must go further. We must develop the legal strategies and institutions that will support societies and governments to effectively deal with these crises. It is an important lesson from constitution building, that institutions must be more intelligent than the people working in them. This holds true for nation states and their constitutions as well as for international organizations and treaty regimes. We must find the means that enable governments to deal more effectively with global problems, must develop procedures that foster decision making under uncertainty and competing interests.

There is one outstanding example: the Vienna Convention and Montreal Protocol on the protection of the ozone layer. This treaty regime combined the experience of diplomacy through many decades of international environmental law making—and thus enabled the international community to win the fight against a thinning ozone layer. The recipe for success was a combination of advanced law making, effective implementation through technological assessment panels, support for poorer countries by way of a novel multilateral fund, and a non-compliance procedure that actually had teeth because it contained trade sanction as ultimate means.

All elements were important, but I would like to highlight one: decision making by majority voting. As all our experience shows, complex problems cannot be solved if every state has to agree to everything. As soon as vital economic or strategic interests are at stake, the self-perceived “national interest” will most likely prevail. I know that this is a very delicate issue, especially for strong powers. But there is no way we, as humankind, can tackle our crises successfully without effective decision making.

* ClientEarth, Head Germany Office; University of Sustainable Development Eberswalde.

II. ARE OUR GLOBAL LEGAL INSTITUTIONS UP TO THE TASK?

Why has there never been a real climate or environmental case before an international court? International environmental law looks back to a history of more than a hundred years. There are established norms governing polluting activities originating in one country with impacts on another. Why then do we not see any litigation?

This is even more surprising when we consider that the climate crisis will have—and already has—profound impacts on the human rights of every person on this planet. And that the rising sea levels will lead to a “deterritorialization” of some states: since they are only a couple of meters above sea level, they will effectively vanish. This equals the destruction of states, of member states of the United Nations, without a war! And international law should have nothing to say to this threat to sovereignty? Do we need an International Court on the Environment? Or will it suffice to make access to the International Court of Justice easier? Can amending the Statute of the International Criminal Court help us out of this deadlock by introducing “ecocide” as a crime against the environment? Let us discuss—and act!

III. EVERY LAWYER CAN AND SHOULD BE A CLIMATE LAWYER!

The imminent danger to humankind and its civilization will require all hands on deck. We will not succeed if the awareness of the ecological crises remains in the bubble of “environment lawyers” or “environment diplomats.” As Mary Heglar put it: “We can’t tackle Climate Change without you.” This means that we have to support lawyers from all walks of the profession to contribute their part—be it from corporate, banking, or family law. At the international level, trade and international economic lawyers, human rights lawyers, and those working on “the law of war and peace” (Hugo Grotius) can make a contribution. Every lawyer can and should play a role. We must ask ourselves how to educate our colleagues and indicate how they can contribute to making the world a safer place.

ClientEarth, the organization I work with, successfully employs lawyers from all branches of our profession—and together they constitute a formidable knowledge pool to tackle environmental problems. We provide legal support to non-governmental organizations, environmental or not, and to governments in Europe, Africa, and Asia. We are very proud, for example, that we have been asked by the Supreme Court of China to advise on matters of environmental law and that we were involved in the training of environmental prosecutors and judges. We are also educating the private bar, explaining climate risks to them so they can warn their clients and ensure they disclose and manage their clients’ risks. There really is a huge role for the legal community in all its diversity to play in this fight.

I hope that these suggestions will help to foster a constructive and fruitful discussion. Thank you!