

Commentary

## **‘THE ENVIRONMENT AND INTERNATIONAL LAW’ - AN OVERVIEW OF THE 2017 ALF ANNUAL SEMINAR**

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### **Introduction**

What environmental challenges does the world face today? How can (international) law and policy react to these challenges? What types of environmental crimes are there, and how can these be countered? Should ecocide become an international crime, and what would ecocide then entail? Can law and policy counter climate change, and how can law regulate sustainability issues? During ALF's 2017 Annual Seminar, which took place on 8<sup>th</sup> June at Vrije Universiteit Amsterdam, these questions and more were discussed in two moderated panel discussions and one student panel. Through their varying specialisations, the panellists were able to explore these topics from multiple disciplines.

Professor Wim Huisman<sup>1</sup> from Vrije Universiteit Amsterdam opened the event with a key note speech on the various and complex challenges that lie at the intersection of environmental issues and international law. He started by discussing his own experience as a criminologist who conducts research in the field of white collar crime. He remarked that throughout the studies he conducted, organisational crime oftentimes presented itself under various forms: as accounting fraud, food fraud, tax fraud, human right abuses and many more. But while

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<sup>1</sup> Wim Huisman (1970) is professor of criminology. Huisman graduated at VU University in Criminology, in Criminal Law and in Administrative Law. In 2001, he received his PHD in Criminology. In 2003 Huisman became an associate professor of Criminology at Leiden University. In 2007, Huisman returned to VU University to join the board of the Law School, as Dean of Education. Today, Huisman is full professor and chair of VU School of Criminology. Huisman is also co-chair of the European Working Group on Organizational Crime of the European society of Criminology.

traditionally environmental crimes are considered to be pollution and waste oriented, the reality is far more diverse. Huisman explained that there are two basic forms of environmental crimes: those that are a result of adding to the environment (e.g. pollution) and those that amount to taking away from the environment (e.g. illegal trade of endangered wildlife species). In both cases, such acts change the ecosystem as a whole. At the same time, armed conflicts can also emerge due to conflicts over natural resources, especially when resources become scarce due to climate change. Conflicts can also destroy the environment as they unravel and due to the use of certain weapons.

Professor Huisman also discussed the link between environmental crimes and human rights abuses. He explained that environmental crimes could constitute human rights abuses because of the deprivation of livelihood and the right to life. But that at the same time, human rights abuses can also be the result of environmental crime. And finally, in many instances of environmental damage, corruption is involved. Environmental crime is therefore related to a variety of problems. Moreover, the international, or the global nature of these problems (in the way they are committed, how they are organised, and also their effects) creates a series of complex legal challenges. These challenges were addressed further during this seminar by the two expert panels and one student panel.

## **I. First Panel Presentation - Environmental Crimes and Ecocide**

During the first panel discussion of the seminar, four expert speakers discussed the issue of harm against nature as environmental crimes, and the potential domestic and international avenues for addressing them.

**Kirsten Meersschaert**<sup>2</sup> (CICC) discussed the possibility of prosecuting environmental crimes under the Rome Statute at the ICC and the challenges and solutions this may pose.

Meersschaert offered an overview of the Coalition for the International Criminal Court (CICC), an NGO representative body that monitors the work of the International Criminal Court (ICC).<sup>3</sup> She explained that the reason why the ICC has been referred to as a potential avenue for prosecuting international crimes is that the four crimes that are under the jurisdiction of the Court (genocide, crimes against humanity and the crime of aggression) could tangentially cover environmental acts that lead to environmental degradation or environmental crimes. Too frequently, environmental destruction is strongly connected to international crimes. However, only one sub article of the entire Rome Statute mentions environmental impact. Following as it does from the category of war

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<sup>2</sup> Kirsten Meersschaert is an experienced advocate on international justice issues, with a special focus on the workings of the International Criminal Court and the Rome Statute system. She is currently the Director of Programs of the Coalition for the International Criminal Court (CICC) where she provides strategic guidance for the Coalition's campaigns and activities.

<sup>3</sup> See CICC website <http://www.coalitionfortheicc.org/>.

crimes, these acts must take place during armed conflict. And in order for such acts to fall within the Court's jurisdiction, several strict criteria need to be met.<sup>4</sup>

Meersschaert then discussed the possibility of addressing environmental crimes under the Rome Statute and beyond the provision included under the category of war crimes. She presented the option of amending the Rome Statute,<sup>5</sup> which has its own set of drawbacks, such as increasing the risk of opening amendments on many more issues. Also, at this point in time, many state parties' representatives feel that it is more pressing to observe and evaluate what the Court can do in terms of investigation and prosecution for the crimes for which it has jurisdiction, and to work more towards obtaining universal ratification of the Rome Statute, before amending it. The speaker then presented the options offered by the ICC to victims of international crimes in general, and to victims of environmental crimes in particular.

Meersschaert ended her presentation by warning that the ICC might not be the best avenue for addressing environmental crimes and reminded the audience of the fact that according to the complementarity principle of the Rome Statute, it is the duty, the *obligation* of every state to investigate and prosecute international crimes at the national level first and foremost.

**Mindi Schneider**<sup>6</sup> (the Advisory Committee for the Monsanto Tribunal) discussed the environmental crimes and corporate impunity, with a special focus on Monsanto Tribunal and its legacy.

This presentation focused on three main areas of discussion. First, it introduced the Monsanto Tribunal:<sup>7</sup> what it is, who is involved, and how it is similar to and different from other civil society-initiated opinion tribunals. Second, it discussed corporate power in the global food system, focusing on seed and agrochemical industries. Schneider explained why Monsanto is the focus of the Tribunal, both as a perpetrator of environmental crimes in and of itself, and as a representative of a class of corporate agribusiness offenders. Finally, Schneider outlined the operation of the Tribunal, including the terms of reference that guided the judges' legal deliberations, the gathering of documents and witness testimonies, and the judges' conclusions, which have been shared in an advisory opinion.

At the start of her presentation, Schneider underlined the fact that the Monsanto Tribunal is not a court, but a civil society mobilisation that has the goals of bringing attention to the degree and impact of corporate impunity, especially concerning environmental law, and of showing some of the shortcomings of

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<sup>4</sup> See Article 8(b)4 of the Rome Statute.

<sup>5</sup> International lawyer Polly Higgins proposed an amendment to the Rome Statute which would include a law against ecocide. See more at <http://eradicatingecocide.com/the-law/what-is-ecocide/>.

<sup>6</sup> Mindi Schneider is an Assistant Professor of Agrarian, Food and Environmental Studies at the International Institute of Social Studies (ISS) in The Hague, Netherlands. Her research and teaching interests are in the fields of development sociology, political sociology, and agrarian political ecology.

<sup>7</sup> Mindi Schneider offered an overview of the Monsanto case, which took place in October 2016 in The Hague. For more information please see <http://monsanto-tribunal.org/>

international law regarding how to engage with transnational corporations. She emphasised the impacts of Monsanto's practices, its abuses and also how the tribunal sought to advocate for including ecocide as an international crime. The reason for setting up the tribunal was that Monsanto and other transnational agrobusiness firms<sup>8</sup> operate with near legal impunity, even though they are connected to a number of alleged crimes. In Ms. Schneider's view, what is perhaps most unique and most useful about the Monsanto tribunal is that the five judges who presided over the case wrote a legal advisory opinion,<sup>9</sup> in which they found that Monsanto engaged in practices that had an impact on several basic human rights. The judges also added a chapter to highlight what they see as an urgent problem: a gap between international human rights law and corporate accountability. Another issue raised in this presentation was the existing gap between the privileges enjoyed by corporations, and the responsibilities that they have – responsibilities which are not clearly elaborated on.

Mindi Schneider concluded her presentation by stressing that the advisory opinion can be used by those who try to sue Monsanto or enter similar such lawsuits, to have some legal tools they can use, to encourage governments to do more, to regulate the activities of firms like Monsanto, and to contribute to a development in the international law, especially concerning ecocide.

**Sandra Rousseau**<sup>10</sup> (University of Leuven) presented on the issue of sanctions for environmental crimes.

An economist by profession, Ms. Rousseau discussed how economic sanctions can be used when dealing with environmental crimes. As this specific type of crime poses numerous challenges, it is impossible to create a set of rules that can have universal application.

First of all, Rousseau underlined the term environmental crime can refer to a variety of crimes and offences. She mentioned that the type of victims of these crimes also plays an important role in determining what the appropriate sanctions for environmental offences are. In the case of damage to property or to the health of third parties, the victims are easily identified according to traditional law, thus

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<sup>8</sup> An issue raised by Mindi Schneider in her presentation was that at the moment there are three main companies: Monsanto, Syngenta and DuPont, all of whom have acquired many other small companies (between the years of 1996-2013). Therefore, already in 2013, these three companies controlled 53 percent of the global seed market. This includes both GMO seed and more than 70 percent of non-GMO seed. In respect to the agro-chemical market, already in 2013, there were six companies that controlled 76 percent of it. In the last year, a complete merger of several of these large companies took place. Dow and DuPont, ChemChina and Syngenta and Monsanto was currently bought out by Bayer. Massive and powerful companies currently control all agro-chemicals and all of the seeds, thereby enabling them to have almost complete decision power and regulation over the agricultural market.

<sup>9</sup> The judges were asked to weight on six questions, hear testimonies of more than 30 people, look at the case files that were put together from professors and students at universities and then write this legal opinion. All the information is available at <http://monsanto-tribunal.org/>

<sup>10</sup> Sandra Rousseau is an associate professor at the Research Center for Economics and Corporate Sustainability (CEDON) of the KULeuven. Her research is centered around three themes: Environmental Economics, Law and Economics and Research Evaluation.

national law can be applied. But when it comes to damage that is done to nature (fauna, flora), there is more uncertainty concerning who or what can be considered a victim and for what purposes. Besides the type of environmental damage and the types of victims involved, another aspect that plays a role in determining the sanctioning decisions is the ease with which one can prove that harm was caused. Also, the options available include both monetary and non-monetary sanctions. Finally, Rousseau stressed the fact that choosing the appropriate penalty is strongly linked with the goals that are to be achieved. Sanction decisions can thus be based on numerous factors according to what are the objectives to be achieved.

An article written by Sandra Rousseau on 'Judicial Discretion and Optimal Environmental Enforcement' has been included in this ALF issue and can be consulted for a thorough discussion of the topic.

**Pauline Verheij**<sup>11</sup> (Wildlife Justice Commission) presented on the work of the Wildlife Justice Commission as 'A new approach to disrupting transnational organised wildlife crime.'

The WJC representative opened her presentation with an overview on the growing issue of poaching and endangering wildlife. She underlined that illegal wildlife trade is not a new phenomenon, but that it has emerged as a real crisis in the last decade, in particular in Africa and Asia. Verheij stressed that the involvement of organised crime networks into the illegal wildlife trade has devastating consequences on the environment: if this phenomenon continues undisturbed, two-thirds of wildlife species will be lost by 2020. The illegal wildlife trade is now the fourth most lucrative transnational crime after drugs, arms and human trafficking. At the same time, there is a range of numerous other problems that are associated with wildlife trade, such as corruption, fraud and money laundering, and human suffering. The root cause for the current failure in effectively dealing with organised crime is that most of the advocacy work focuses on the poachers and smugglers, which represent individuals in low-level positions in this type of criminal organisation, rather than on the high-ranking individuals within these organised criminal groups. After offering this background information, the speaker discussed the establishment and work of the Wildlife Justice Commission (WJC).<sup>12</sup> Verheij exemplified this by discussing the public hearing held by WJC in November 2016 about the investigation concerning a criminal network involved in environmental crimes in Vietnam.<sup>13</sup>

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<sup>11</sup> Pauline Verheij is an environmental lawyer specialised in investigating and prosecuting wildlife crime. Since 2000 she has worked with the Dutch police, the Dutch public prosecutor's office and the NGO TRAFFIC as well as having been an independent consultant. She is currently employed by the Wildlife Justice Commission as their Senior Legal Investigator, where she is responsible for compiling evidential case files against individuals suspected to be involved in transnational organised wildlife crimes.

<sup>12</sup> The work of the organisation can be summarised as criminal network investigation, compiling evidence and providing this information to the governments. For more information see <https://wildlifejustice.org/>.

<sup>13</sup> For more information, see 'Public Hearing: Viet Nam investigation 14 & 15 November 2016,' available at <https://wildlifejustice.org/public-hearing-2016/>

Verheij ended her presentation by underlining that the goal of WJC is to disrupt these criminal activities top down, by focusing on the high-level perpetrators who conduct such operations, and make the most profit at the expense of the animals, but also on the families for whom poaching becomes a means of having a steady income.

## **II. Second Panel Presentation: Student Pitches Overview**

The Student Pitches section of the Annual Seminar was a concept introduced by the 2016-2017 ALF Board, in order to create an opportunity to bridge the expertise of professionals already working in the field and that of upcoming, promising academics and future professionals. The four students and recent graduates each gave a short pitch that offered an overview on their research (either a master's thesis or research paper) on the topic of the environment and international law.

**Audrey Crasson**<sup>14</sup> (MSc. International Crimes and Criminology, Vrije Universiteit Amsterdam) delivered the first student pitch, which discussed whether environmental damage can be prosecuted as genocide and crimes against humanity at the ICC.

Audrey Crasson's presentation complemented Kirsten Meersschaert's discussion on whether environmental crimes can be prosecuted under the Rome Statute of the International Criminal Court. Meersschaert had underlined that the four core crimes under the ICC jurisdiction can serve as an umbrella for tangentially prosecuting environmental crimes, but stressed that there are complex challenges that come with choosing this option. She had exemplified the issue by explaining how environmental crimes could be prosecuted as war crimes. Audrey Crasson continued this discussion by looking at the difficulties of addressing environmental harm as a form of genocide and of crimes against humanity. She further elaborated on the challenges of proving that certain environmental damage can be considered as crimes against humanity by discussing the case of Chevron. By analysing the environmental and health consequences of Chevron's oil activity in Ecuador and the subsequent legal battle, her presentation highlighted the imbalances that exist between multinational corporations, states, and individuals regarding access to justice and remedies, and showed how the international legal framework could be described as 'corporate-friendly' when it comes to serious environmental damages.

An article written by Audrey Crasson on 'The Case of Chevron in Ecuador: the need for an International Crime against the Environment?' has been included in this ALF issue and can be consulted for a thorough discussion of the topic.

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<sup>14</sup> Audrey Crasson is a former student from the VU Amsterdam. She recently graduated from the International Crimes and Criminology master. She wrote a thesis on the prospects for prosecuting environmental damage before the International Criminal Court under its current ambits. Before that she did an internship at the European Academy of Diplomacy in Warsaw and studied at the Catholic University of Leuven where she completed a laws master with a focus on civil and criminal law.

**Znar Agha**<sup>15</sup> (LLM. Law and Politics of International Security, Vrije Universiteit Amsterdam) delivered a pitch on the activities of Coca-Cola in India.

The research presented by Znar Agha argues that Coca-Cola's excessive exploitation of India's groundwater stands in sharp contrast with international human rights. For over more than a decade, India's state government has been facing a clash of interest between water privatisation and fundamental human rights to natural resources. The exploitation of groundwater by the Coca-Cola bottling plant operations has allegedly been a major contributor to water scarcity in many regions of India. Allegations against Coca-Cola began in 2003 in India. The NGO Center for Science and Environment (CSE) accused Coca-Cola of creating drinks that contained unacceptable levels of pesticide residues, and excessively depleting groundwater in the region, which resulted in severe water shortages. However, it is difficult to attribute environmental changes of water shortages to the water consumption of a specific enterprise. Nonetheless, in the case of Coca-Cola, it could demonstrate Coca-Cola's business complicity in human rights abuses. Due to their excessive extraction of water in a water-stress area, which has contributed to the current deprivation of water. This can be seen as a violation of human rights because it demonstrates a violation to right to life and access to water and food.

An article written by Znar Agha on 'Always Coca-Cola: Why Environmental Exploitation Should Be Included in the Legal Construction of Environmental Crimes' has been included in this ALF issue and can be consulted for a thorough discussion of the topic.

**Karin Brummelhuis**<sup>16</sup> (MSc. Global Criminology, Utrecht University) discussed her thesis on the international demand for the Peruvian maca 'superfood' and its local, social and environmental impacts.

Brummelhuis' presentation was based on an explorative study on the effects of the international maca 'superfood' demand on biopiracy, food crimes and environmental harms. In recent years, the Peruvian root has gained worldwide popularity with various target audiences. Due the high nutrition values it has become 'the new superfood' in Western countries, whereas in China the maca is primarily seen as a ginseng, providing a natural alternative for Viagra. This study sought to understand how the market of maca has changed during and after its 'maca-boom' in 2014. Approaches of green criminology, especially by the perspective of 'the treadmill of production and crime' served as background for the three main research elements of biopiracy, food crimes and environmental

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<sup>15</sup> Znar Agha is enrolled in the LLM programme Law and Politics of International Security at the VU University of Amsterdam. She obtained a bachelor degree in Psychology and Political Science from the VU University in 2014. Znar is interested in the relationship between international relations and environmental law. Moreover, she is keen in researching and developing a sound framework for cooperation between states/stakeholders regarding the use and allocation of fresh water resources.

<sup>16</sup> Karin Brummelhuis started the master in Global Criminology after graduating in Criminology at the VU in 2015. Besides, she is active as a volunteer at the secretariat of Friends of the Earth International and currently pursuing a career in criminology.

harms (both social and ecological). Since there is little known about the subject from a criminological and socioeconomic context, this study could contribute to future (food) studies in green and cultural criminology. The research presented the ongoing struggles and debates in intellectual property and worldwide patents of maca. In the final part of the study, an important addition has been made by considering social harms other than ecological harms, since that part is often omitted in green criminological studies.

**Elodie Theobald**<sup>17</sup> (LLM. Public International Law, Utrecht University/ Wildlife Justice Commission) presented her Master's thesis titled "Meating" the Sustainable Development Goals – Using Sustainable Development as a Roadmap for the Implementation of International Environmental Law: The Example of Animal Agriculture.'

Ms. Theobald's presentation focused on how the production of meat, dairy and eggs (animal agriculture) is linked a range of negative impacts on the environment, which states have been trying to counter through a plethora of treaties. Many of the Sustainable Development Goals could be partly achieved by reforming animal agriculture. In her presentation, Elodie explored the idea of reforming animal agriculture under international law to tackle all of these issues at once by using the achievement of sustainable development as a roadmap for the implementation of international environmental law. The Sustainable Development Goals should function as a *grundnorm* or an interstitial norm.

Elodie is also the author of the article 'Towards Bridging the Accountability Gap for International Wildlife Trafficking: The Efforts of the Wildlife Justice Commission' which has been included in this ALF issue and can be consulted for a thorough discussion of the topic.

### **III. Third Panel Presentation - Sustainability and Climate Change.**

The third panel discussed issues relating to sustainability and climate change and was comprised of three speakers from international organisations tackling these challenges.

**Kees Kodde**<sup>18</sup> (Greenpeace Nederland) gave a presentation on trade agreements and dispute settlements and the chilling effect of Investor State Dispute Settlements on environmental and public policies.

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<sup>17</sup> Elodie Theobald has a Bachelor degree obtained at the Catholic University of Lille in Paris where she studied French, Spanish, British, European and International Law. Last year, she studied in the Public International Law Master program of Utrecht University, and followed the Law of the Sea and International Environmental Law track. She wrote her thesis on the impact of animal agriculture on the achievement of sustainable development and how international law can better address these issues. After her Master thesis Elodie interned at the Wildlife Justice Commission for six months where she now serves as the Junior Strategic Partnership Officer.

<sup>18</sup> Kees Kodde graduated as a political scientist at the University of Nijmegen in 1991. Since then he has worked as campaigns director for Friends of the Earth, as programme officer for Oxfam Novib, and as development worker for a human rights NGO in the Dominican

Kees Kodde's presentation on trade agreements focused on one particular aspect: The Investor-State Dispute Settlement. He emphasised that in spite of the fact that most criticism surrounding trade agreements is directed at Investor-State Dispute Settlements (ISDS), their number is growing rapidly. Kodde underlined that the danger that lies in these trade agreements is that they confer a lot of power and rights to corporations, to the point where these large businesses can take governments to court.<sup>19</sup> The Greenpeace representative warned that signing numerous trade investing treaties with certain countries such as the US or Canada can open the door to bringing a 'claim culture' to the European legal system.

Kodde discussed the case of the Netherlands as the second home country with most numerous arbitration cases brought by foreign corporations against various governments of the world. The Netherlands has an extensive system of investment treaties with over 90 countries, and is thus being used by big corporations to attack the policies of developing countries.<sup>20</sup> At the European Union level, the response concerning the Investor State Dispute Settlements has been to work on improving the current system by introducing an Investment Court System (ICS) in the treaty with Canada. The EU also aims at installing a multilateral investment court to improve the system of ISDS. However, these alternatives bring other sets of problems and they could result in a big expansion of the Investor State Dispute Settlements.<sup>21</sup>

Kodde concluded his presentation by underlining that there a major imbalance in the international legal system where numerous trade agreements that give rights and protect interests of investors – which include sanctions for developing countries that can go into millions of dollars – while there are no international obligations for transnational corporations to respect human rights and the environment. He emphasised that trade rules could also be used in a positive way in order to increase climate protection, to include possible commitments to

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Republic/Haiti. Since 2010 he works for Greenpeace as campaigner in various teams on issues of deforestation, climate change, agriculture, biodiversity and food. He spent a year in China in 2012/2013 as campaign advisor for Greenpeace East Asia. Currently, he works as international project coordinator of the trade campaign of Greenpeace International.

<sup>19</sup> He gave the example of the Philipp Morris tobacco company, which litigated against the government of Uruguay because the latter requested health warnings on cigarettes packaging to be more prominent in size. Similar cases took place in Australia and New Zealand and were also initiated by tobacco companies.

<sup>20</sup> Kodde exemplified this by discussing, among others, the mining company Newmont, which took issue with the policies of Indonesia and used a mailbox company in the Netherlands to start litigation against Indonesia. A reaction to the Netherlands' indirect involvement in these cases is that developing countries such as Indonesia, India, Ecuador, Bolivia have started cancelling their investment treaties with the Netherlands.

<sup>21</sup> Canada for example has bilateral investment treaties with about eight EU countries. If the EU enters into a trade agreement with Canada (CITA), then this would leave the door open for ISDS to bring suits against European governments. At the moment, 35 EU parliaments have to ratify CITA before it enters into effect. Ratification would open up the EU to direct challenge by numerous US corporations that are subsidising in Canada, which could use CITA to litigate against European governments. Thus entering this agreement with Canada would bring into Europe a claim culture that Europe thought it wouldn't have to deal with.

implement international climate accords and to make climate protecting policy changes, from eliminating fossil fuel subsidies to financing renewable energy investments.

**Dennis van Berkel**<sup>22</sup> (Urgenda Foundation) offered a commentary on the outcome of the Urgenda case and the role of courts in preventing dangerous climate change at a global level.

Van Berkel started his presentation by discussing, as the previous speaker had introduced, the complete imbalance between making rules that protect public interest, and having hard binding laws that strongly protect corporate interest. The issue that still persists in many countries is the disconnect between the scientific research and its warnings about climate change, the acknowledgement of the problem, and the actions that need to be taken. At the same time, there is also a gap between what government representatives agree on while having debates in international fora and what messages they convey at home, to national politicians.

Another point of discussion was that treaties such as the Paris Agreement lack an enforcement system and binding rules on reducing emissions, but that one solution of addressing environmental problems is through other legal forums, such as domestic courts. The speaker exemplified this by discussing the Urgenda case. Dennis briefly discussed the ruling made in the Hague District Court on 24 of June 2015, under which it was decided that the Netherlands must reduce carbon emissions by a minimum of 25 percent by the end of 2020, thereby forcing the Dutch government to take action in actively combating climate change. The case brought forward by Urgenda was a first of its kind as it enabled citizens to hold their government accountable for perceived inaction on issues of preventing dangers stemming from climate change. It was also the first case worldwide that implored the government to protect citizens against climate change as a basic human right.<sup>23</sup>

Van Berkel ended his presentation by discussing the effect of the Urgenda case's success. Since the 2015 court ruling, a number of similar cases have been brought forward in Belgium, New Zealand, Norway and Pakistan. Dennis concluded his presentation by underlining that when politicians don't do what they need to do, it is the role of the lawyers to step in and fill the gap that is there.

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<sup>22</sup> Dennis van Berkel is legal counsel for the Urgenda Foundation and co-founder of the Climate Litigation Network. At Urgenda Foundation, Dennis works on the groundbreaking Climate Case in which the district court of The Hague found that the Dutch State was violating its duty of care by not taking sufficient measures against climate change and ordered the government to reduce its greenhouse gas emissions. Since the initial verdict in 2015, Dennis has been advising lawyers and campaigners from around the world on the possibilities of using legal measures to force government action against climate change. In 2016, he co-founded the Climate Litigation Network, which aims to catalyse and support strategic litigation that compels governments to take the action urgently required to mitigate climate change.

<sup>23</sup> For more information on the Urgenda case, see <http://www.urgenda.nl/en/climate-case/>

**Jan van de Venis**<sup>24</sup> (JustLaw) gave a presentation on the topic ‘How can we link human rights to Sustainability and Climate Change’ and what trends we see in litigation on this matter.

The right to a healthy environment was the first point of discussion in Jan van de Venis’ presentation. He underlined the fact that it is a right that is protected at the regional and national level, however not at the international level as well. On the other hand, the field of human rights in relation to sustainable development and the environment is a rapidly changing one. For example, the United Nations Human Rights Council on Climate Change conducts extensive work on sustainable development rules, on environmental issues, and on air pollution. De Venis also discussed the evolving matter concerning the interest of future generations. As we feel connected to our past, ancestors and the people of today, Jan pondered what heritage we are creating for these future generations. Why we don’t take it into consideration? Don’t they have human rights that we need to today respect, protect and fulfil? The speaker also briefly discussed the Urgenda case by underlining that it created a principle of reasonable and fairness towards future generations. He also discussed the case in the Philippines and Indonesia where a complaint was filed against a group of corporations which are the biggest emitters of CO<sub>2</sub>. The emissions are not only causing climate change but they also have an impact on the human rights of the people in the Philippines and Indonesia. In the same line of argument followed by the previous two speakers in the panel, Jan also underlined the fact that when a change is not taking place at the international level, it is at the domestic level where those responsible for committing environmental crimes can be brought to justice.

He ended his presentation by paraphrasing jazz player Nina Simone who said that the duty of an artist is to reflect the times by asking:

*‘How can you be a lawyer and not reflect the times?’*

## **Discussion and Conclusion**

The Annual Seminar was also an opportunity for the speakers and the audience to interact and to delve into the topics even further. Although the presentations centred around the fact that numerous corporations are involved in international crimes and continue to function with impunity, the Q&A section brought into focus the fact that there is a growing number of corporations that try to make a positive change and which dedicate their work to sustainability and environmental protection. One member of the audience discussed the work of a coalition of

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<sup>24</sup> Jan is an expert in the area of human rights-based approaches to sustainable development, climate change, water and environmental issues and is a visiting university, UN and Clingendael lecturer, author, advisor and expert lawyer through his law firm, JustLaw. He is a member of the Worldconnectors and acting Dutch Ombudsperson for Future Generations. Jan is board member of several NGOs and is co-founder and board chair of Stand Up for Your Rights and The Crowd Versus, both linking human rights and sustainable development. Last but not least, he is Vice Chair of the international Network of Institutions for Future Generations.

corporations called 'We Mean Business' that has put a lot of effort into getting the Paris Agreement through.

Another point of discussion was the 'carrot and stick' approach for steering organisations towards being environmentally responsible. The carrot would therefore represent the opportunities in the market and the stick would represent the limits. The challenge with using this approach is that the limits, or the stick, have not been established. As the global consumption market opened, businesses were eager to jump in and expand. While putting limits on that is necessary, presenting sustainability as a carrot – as being beneficial for the companies as well – is the key to success. Reputation is becoming an increasing concern of companies who see their profits decline when their image suffers.

Moreover, it needs to be underlined that investing in renewable energy is not only environmentally conscious, but it is also beneficial from an economic point of view. For example, there are more people working in renewable sectors in California, than non-renewable sections in the whole of USA. The audience and the panellists discussed the fact that there are numerous opportunities that lie in this sustainable business model.

In spite of numerous difficulties encountered in both protecting the environment, and in punishing those responsible for environmental crimes, increasingly individuals and organisations are taking responsibility for implementing the necessary changes at a national level. This emergence of a local response against corporate impunity and in providing protection to the environment demonstrates the growing importance we are placing on environmental concerns, and illustrates alternative avenues that can enforce some changes to addressing a global problem, one case at a time.