IUS COMMUNE

Call for Papers
Workshop Environmental Law
Ius Commune Conference
Utrecht,
23-24 November 2017

www.iuscommune.eu

IUS COMMUNE CONGRESS 2017 UTRECHT
23 and 24 November 2017 * Aristo zalen Utrecht**

CALL FOR PAPERS OR PRESENTATIONS
Workshop Environmental Law

PATHWAYS TOWARDS SUSTAINABILITY: UNDERSTANDING AND COMPARING ALLOCATION MECHANISMS IN ENVIRONMENTAL AND NATURAL RESOURCES LAW

There is a growing concern about the state of the environment due to growing pressures on natural resources and biodiversity. Pollution negatively affects the quality of air, water, soil and habitats. To be able to reach the Sustainable Development Goals (nrs. 6, 7, 9, 10, 11, 12, 13, 14, 15 and 16) a transformation in the way society deals with pollution and resources is necessary. This requires a change in the use of resources and therefore also the way resources have been allocated thus far. To be able to make this necessary transition towards sustainable energy production and use, water use and the use of other resources to head towards a circular economy which respects biodiversity and human rights, a thorough understanding of the mechanisms that are used to allocate these resources is necessary in order to optimize the coordination between different legal regimes, being it international, European or national legal regimes.
It is clear that current global problems are subject to a plethora of international, transnational, regional and domestic regimes.[1] Legal scholars have to deal with regime interaction and fragmentation through legal techniques in order to make a shift from fragmentation as a problem towards regime interaction as an opportunity to make the necessary transformation towards a sustainable society. Recent legal literature on regime interaction adopts a rather broad conception of "regimes" to include in its scope all relevant actors besides States, a wider variety of normative production and decision-making processes, implementation and enforcement. The added value of this broad conception of regimes is that it serves as sufficient basis for understanding the multiple levels of governance in modern environmental and natural resources law.

Regime interaction can be described as the cross-fertilization of norms and the collaboration between institutions within different (and sometimes even competing) regimes. This interaction takes place in a situation of legal pluralism rather than coherence. It is

[1] Nikolas Giannopoulos, Multilevel Regime Interaction in International Law, see https://www.uu.nl/en/news/presentation-multilevel-regime-interaction-in-international-law .

noteworthy that interactions between regimes do not occur only in case of disputes, but also at other stages of law making and implementation. For instance, during the law-making process, the inclusion of perspectives from a range of relevant regimes is essential for the drafting of new comprehensive and lasting rules.
However, in case regime interaction is promoted without the (explicit/implicit) consent of all actors involved, it might give rise to issues of legitimacy and accountability. Therefore, regime interaction should take place within a normative framework that provides appropriate checks and balances. The enforcement of procedural safeguards is suggested to provide the necessary openness, transparency and wide participation of all the affected stakeholders. Given its impact on law making and implementation of environmental and natural resources law, it is urgent for lawyers to understand how regimes interact and how they should interact.

The environmental law workshop of the 2017 Ius Commune conference contributes to this understanding by focussing on the (re)allocation of environmental rights to use natural resources. Therefore the environmental workshop will focus on the question how the law can contribute to an equitable (re)allocation of the right to use natural resources[2] or to an equitable allocation of the room to pollute in order to make the transition to a sustainable society and circular economy. Despite narrowing down the topic to allocation and re-allocation, it remains broad and ranges from the use of energy resources, minerals, water, biodiversity and land as well as the pollution or harm human activities may cause. It enables us to look at fundamental values that guide allocation mechanisms, to look at substantive as well as procedural aspects as well as the role of different public and private actors.

This theme assumes that legal subjects (states, companies or citizens) can have legal rights to use or exploit resources or to pollute the environment to a certain level. These rights can have a civil law origin (ownership) and/or a public law origin (e.g. permits and licences) and can be allocated and regulated at different levels (international, European, national). As far

[2] H.F.M.W. van Rijswick, *Moving Water and the Law*, Groningen: Europa Law Publishing 2008; Dai, L.; Van Rijswick, H.F.M.W., Schmidt, B. , Towards a sustainable, balanced and equitable allocation of water use rights, In Erkki Hollo (ed) Management of water resources from a legal perspective; van Rijswick, M. 2015, Mechanisms for water allocation and water rights in Europe and the Netherlands: lessons from a general public law perspective, In : Journal of Water Law. 24, 3/4, p. 141-149.

as the public rights are concerned a certain authority or institution has to create these rights and allocate them to a legal subject. Because environmental rights are by definition scarce, the question is on what legal basis these authorities and institutions allocate these rights to legal subjects. Especially when the authority or institution takes these rights from legal subjects in order to reallocate them to other legal subjects or to reduce the total amount of rights.
Therefore reallocation of 'scarce environmental rights'[3] is only possible if the (existing) rights of others are restricted or taken away from them. How does reallocation of existing rights comply with treaties on the legal protection of ownership (for instance art. 1 FP ECHR)? And are there legal remedies or compensation schemes for those who are deprived of their rights? Another interesting question is which types of legal (re)allocation mechanisms of scarce (environmental) rights can be identified in the different legal orders and what legal principle is on the basis of these (re)allocation mechanisms? Which institutions are competent to allocate and reallocate scarce rights and which legal instruments do they have available. Which legal remedies are available to contest the (re)allocation of these scarce rights? How does the (re)allocation of resources and scarce environmental rights differ from the (re)allocation of other scarce rights, like the right to broadcast on a radio specific frequency or gambling licenses?[4] In international (public) law there is a problem with the allocation of the right to pollute (or the obligation to pay for the pollution) by a public authority or a state to non-state actors. [5]

All in all, the 2017 environmental law workshop offers us the opportunity to understand and compare different allocation mechanisms in the field of environmental and natural resources law and learn what elements may be useful when making a shift towards a sustainable future.

The idea is to publish papers following the 2017 workshop in a book or a journal's special issue. It is also possible to only give a presentation or just join the discussions during the workshop.
The workshop will take place on Friday 24 November and will consists of a morning and an afternoon session.

Abstracts for presentations and/or papers can be sent before 1 October 2017 to Marleen van Rijswick (H.vanRijswick@uu.nl) or Frank Groothuijse (F.A.G.Groothuijse@uu.nl).

[3] C.J. Wolswinkel, 'An Allocation Perspective to Public Law: Limited Public Rights and Beyond', *LaM* mei 2014, DOI: 10.5553/REM/.000004; P.C. Adriaanse, F.J. van Ommeren, W. den Ouden and C.J. Wolswinkel (eds.), *Scarcity and the State I. The Allocation of Limited Rights by the Administration*, Antwerp: Intersentia 2016; P.C. Adriaanse, F.J. van Ommeren, W. den Ouden and C.J. Wolswinkel (eds.), *Scarcity and the State II. Member State Reports on Gambling Licences, Radio Frequencies and CO2 Emission Permits*, Antwerp: Intersentia 2016. For Dutch literature on scarce rights: F.J. van Ommeren, W. den Ouden en C.J. Wolswinkel (red.), *Schaarse publieke rechten*, Den Haag: Boom Juridische uitgevers 2011; F.J. van Ommeren, Schaarse vergunningen, De verdeling van schaarse vergunningen als onderdeel van het algemene bestuursrecht (oratie VU), Deventer: Kluwer 2011; J.M.J. van Rijn van Alkemade, *Effectieve rechtsbescherming bij de verdeling van schaarse publieke rechten* (diss. Leiden), Den Haag: Boom Juridische uitgevers 2016 and H.C. Borgers en N.C.M. Fikke, 'Verdeling van gebruiksruimte met de Omgevingswet. Devide et empira – slim en samenhangend sturen op de benutting en bescherming van de leefomgeving', *Bouwrecht* 2016-9, nr. 66, p. 452-455
[4] P.C. Adriaanse et al 2016 (II). See also ABRvS 2 November 2016, ECLI:NL:RVS:2016:2927 and the conclusion of AG Widdershoven in this case: 25 May 2016, ECLI:NL:RVS:2016:1421.
[5] C.J. Wolswinkel 2014; P.C. Adriaanse et al. 2016 (I).