



KyotoPlus-Dinner

„Climate protection via legal action“

Minutes of the Dinner with Roda Verheyen

24 February 2005

„Climate protection via legal action“ was the title of the „KyotoPlus-Dinner“ organised by the Heinrich Boell-Foundation and the Wuppertal Institute on 24 February 2005 at a restaurant in the centre of Berlin. Dr. Roda Verheyen, a lawyer and close observer of the UN-Framework Convention on Climate Change, presented the international „Climate Justice Programme“. It aims to promote legal initiatives that promote climate protection since 2003. What are the legal foundations on which the previous cases have been based on so far? What are the chances to advance climate protection via legal action? The attendees, 18 representatives from business, civil society, science and politics, discussed under the Chatham house rule that permits to quote everything that has been said without, however, disclosing the speaker or his/her institution.

Dr. Roda Verheyen opened the evening with an introduction to the “Climate Justice Programme”.



It was the increasing scientific agreement regarding the causes of climate change that prompted the initiation of this programme more than two years ago. The improved scientific evidence also enhanced the chance to assign responsibility for individual damages to potential polluters. With science increasingly providing such clues, the question arose to what extent it might not be the duty of the (environmental) lawyer to use the law as an instrument for climate protection. For example, can the construction of coal-fired power plants still be legal in view of the scientific evidence? Are not states, irrespective of the Kyoto Protocol, obliged to regulate greenhouse gas emissions? Should not the victims of weather related disasters have a chance to get their damages compensated?

While in the Anglo-American sphere the instrument of “legal campaigning” already is a widely known concept, it remains fairly new in Germany. Roda Verheyen emphasised “legal campaign-

ing” as a very promising opportunity to add a new dimension to the debate on climate protection. The “Climate Justice Programme” not only supports legal action in various countries around the world, but it also operates as a clearinghouse, as an information platform and as a network for legal action (<http://www.climatelaw.org>).

So far, a number of cases have been initiated, for example in Germany (access to climate-relevant information), Argentina (Has the government complied with its commitments to adapt to climate change?) and the USA (Can a court force US electricity companies to stop or to reduce their greenhouse gas emissions?). The CJP has supported petitions to the UNESCO that point to the relevance of climate change for certain goals of the international community (the conservation of the World Heritage). Furthermore, CJP supported a petition of the Inuit to the Inter American Human Rights Commission (Does the USA sufficiently protect the region of the native people of Alaska?). Although a liability case in the literal sense of the word has not yet been initiated, it has, however, been discussed in different constellations.

In his “first reaction” to Dr. Verheyen’s presentation, Peter Fischer (Ministry for Foreign Affairs)



appreciated “legal campaigning” as a potentially very effective means for climate protection. At the same time, he said, there can be no such thing as a “silver bullet” to solve the climate problem. The complexity of the climate problem was so immense that many different approaches needed to be taken. Besides of “legal campaigning”, the “monetization of climate damages” could be a strong instrument, as well as a dynamic development of technologies, leadership and “best practice”. Mr. Fischer named the “Climate Group” as a good example of an effective initiative

to spread climate-relevant knowledge. Litigation was one important means amongst various others.

The discussion turned out to be very lively and at times controversial. Due to the many lawyers amongst the participants the debate reached relatively high levels of abstraction, without, however, being incomprehensible for laymen. The following issues were explored in various interventions:

- Might not education be the most useful benefit of “legal campaigning”? Even if each individual case cannot be successful, each case can still have an awareness raising effect.
- The problem of causality: How can a concrete damage be assigned to potential polluters? Which opportunities does the lawyer have in the face of the internationally varying demands on causality?

- The danger posed by a large number of lawsuits: Might not, after some unsuccessful cases, the awareness decrease rather than increase?
- The question of insurability: Are the principles underlying insurances at all compatible with climate protection, especially the main principle that the insured risk must be controllable by the potential polluter?
- The enforcement of climate protection measures in the field of human rights. How can human rights law provide a legal base for climate protection?
- The opportunities arising in the quasi-judicial field, such as the various Commissions of the United Nations.
- To what extent can the UNESCO protection of cultural assets provide a base for climate protection?
- The opportunities and risks of different legal systems with varying demands regarding causality.
- The special situation of developing countries. In which ways are their development needs compatible with climate protection? How does the “Climate Justice Programme” cooperate with lawyers on the spot?
- The increasing awareness of business as regards climate protection. Do lawsuits lead to a general insecurity on the management side or can they also motivate companies to switch to environment-friendly production and products? What is the self-conception of liability law?
- The involvement of US American actors.
- The consideration of climate protection in environmental impact assessment and transport planning.
- The necessity to complement the law with extra-judicial remedies: lobbying, technical innovations, the shaping of consumer awareness, the promotion of the Kyoto-process, etc.

Jörg Haas, Heinrich Böll Foundation, Department Head Ecology and Sustainable Development
 Dr. Hermann E. Ott, Wuppertal Institute, Head Berlin Office