

Report on International Conference on Corporate Accountability, Human Rights, and Climate Change in Slovenia and Beyond

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On the 16th of September 2024, New University hosted a conference dedicated to corporate accountability, human rights, and climate change in Slovenia and beyond. The conference was part of the ARIS project on Corporate accountability, human rights, and climate change.

One of the main objectives of this conference was to theoretically analyze companies' responsibility for human rights related to climate change. The second objective was to develop theoretical and normative foundations for a coherent and fair Slovenian and international legal order. The conference undertook the formidable task of identifying the philosophical, legal, and normative underpinnings of corporate accountability for the negative impacts of climate change on human rights in Slovenia and beyond. This report shows that the conference was successful in this task it set forth as it critically investigated the shortcomings of the current domestic legal system and its framework in aspiration of developing a holistic theoretical and normative model for improving said corporate accountability, human rights and climate change regulation.

The conference began at 9 o'clock at the premises of New University's European Faculty of Law. The building that gives academic home to the mentioned institution of learning is a marvelous architectural gem, located in the heart of the old part of Ljubljana, a fine example of modern architecture built at the beginning of the 20th century. The structure offers a perfect place for studying, learning, academic endeavour and exchanging ideas.

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The conference was organized into two panels, each containing 3 speakers. This arrangement proved brilliant as it offered enough time for each participant's presentation and questions and discussion.

The first panel included three speakers: Laura Valle from the Free University of Bolzano, Carmen Márquez Carrasco from the University of Sevilla, and Janja Hojnik from the University of Maribor. Matej Avbelj from New University chaired this first panel.

The second panel also accommodated 3 speakers; Özlem Zingil from Center for Spatial Justice in Istanbul initialized the discussion, followed by Sandra Martinič from Office of the Government of the Republic of Slovenia for Post Flood and Landslide Reconstruction and topped off by Matej Avbelj from New University. The second panel was chaired by Gorazd Justinek from New University.

Before the first panel of the well-attended conference started, the leader of the aforementioned project, Jernej Letnar Čerňič, addressed the attendees with a few critical thoughts about state policy, explaining that in practise, there is no supervision of the implementation of relevant regulation but on paper everything looks good. He spoke about creating a holistic approach to obtaining a climate change normative theoretical model for businesses.

The first speaker of the first panel was Laura Valle from Bolzano. In her presentation she addressed contrasting greenwashing in the new EU Directive 2024/825 in the Directive Proposal of Green Claims. She explained that greenwashing poses a threat to human rights, the environment and also to social justice. She explained the term greenwashing as the practise of companies that began to use green advertising as a marketing tool. In terms, the European Union wants to contrast this practise as it is against the notion of sustainability. What struck the attendees as the most shocking information was the fact that in 2020, more than 50% were false green claims by companies.

Valle explained that greenwashing is an obstacle to sustainability goals and that it is misleading consumers as it is not measurable but generic which in the end means that consumers do not realize that it is not really good for the environment in the way that the companies want them to believe while advertising

their products. Valle emphasized that this is an unfair commercial practise due to the fact that it is not necessarily true when companies put a text on the packaging of their product saying that their product is eco-sustainable and carbon neutral.

Valle deduced that companies cannot prove this with numbers which also prevents the actual eco sustainable consumer choice because they cannot choose the genuine choice and this action alters and damages economic competition while also generating a loss of trust in environmental claims because consumers after a while of putting up with such practise from companies think that everything is a joke. She gave a clear demonstration of such a situation with the example of the Volkswagen DieselGate scandal. Volkswagen claimed that their models were obtaining the EU standards for pollution, yet this was only true for the moment of the test. The car was in line with the claimed standards at the time of testing, but not in the real-life use of the car. She added that there are still open cases in Italy, Germany and France in regard to this scandal. To the aforementioned Volkswagen example she added another example in the form of green fares where airflight companies urge consumers to pay more if they want to achieve sustainable goals.

On the legislative level, consumers have a central role in the EU Directive 2024/825 from March 2024. Valle explained with great care how greenwashing practises also concern market competition, especially competition that acts well and is true to sustainability goals.

After her presentation, a lively debate followed in which Valle elaborated on how important consumers are in the green transition so they need to be informed, because nowadays they are not very well informed, which is regrettable. Valle coincided that some greenwashing practises have already been blacklisted in the Annex I. of the Directive 2005/29. Continuing, Valle was very thorough on why sometimes sanctions against greenwashing are not very effective; 1) too low administrative sanctions, 2) weak collective redress, 3) class action of consumers, 4) individual actions. The green claim proposal constitutes of preventive control in ex-ante verification of claims. Valle also touched on the topic of exemptions for microenterprises.

As the discussion of the first speaker's presentation neared the end, Valle presented her views about the future of green-

washing. She opined that the market's behaviour will change because every company is doing this, and as sustainability is becoming mandatory, this practise will decrease. Valle closed that because greenwashing is our current reality, we need more collective redress and stronger administrative sanctions.

The second speaker of the first panel was Carmen Márquez Carrasco from Sevilla. Great acclaim from the attendees followed after her initial comparison of the beauty of the host city of Ljubljana to Sevilla before she started her presentation. Márquez Carrasco successfully tackled two topics for specialists in her presentation; 1) climate litigation and 2) due diligence in environmental law. She went into considerable detail in regard to the responsibilities of the companies to prevent and mitigate the consequences of their actions.

Márquez Carrasco explained how climate litigation has been addressing state obligations in recent years. She also pointed out the relevant cases brought before the European Court for Human Rights and other international tribunals.

In the visible interest of the attendees and the panel, she described how civil society has been pushing to address corporate accountability. Márquez Carrasco added that there is a movement to convert due diligence into an obligation, tallied with the fact that France adopted this and also Norway for supply chains. Márquez Carrasco further stated that the French law gives duty to the company to prevent effects on climate. This means an obligation to adopt a transition plan in accordance with the impact on the environment.

When giving an explanation of mandatory due diligence, Márquez Carrasco detailed how you can use laws to further develop legislative frameworks and highlighted The Netherlands, which does not have it but the Dutch courts interpret international law to be part of national law. In addition to that, the process of adopting the law about climate change and relevant due diligence can serve as a gap filler, according to her. The attendees were fascinated to hear the BNP Paribas bank case and the explanation of Márquez Carrasco on how cases against the bank were a development in the law as the law says that companies need to provide a plan. In her conclusion, Márquez Carrasco added that this can prove to be a complementary factor to government standards.

The final speaker of the first panel was Janja Hojnik from Maribor. The topic of her presentation was Borrow, Use, Return: Enhancing Sustainability through Libraries of Things. Hojnik described libraries of things as a new business model that is not per se sustainable because as the sharing economy developed, it was initially thought to be sustainable, but that was only in the beginning. Hojnik added that it is up to the regulators to incentivize only those models that are really sustainable.

To much delight of the attendees, Hojnik gave many clear examples; starting with libraries for jeans and expensive bags, emphasizing the example of a Dutch store called MUD jeans and an example of a system for luxury items named Rent the Runway. To this, Hojnik followed with an example of tool libraries, where you pay a membership to rent things, in this case, tools, that you do not need every day or have no place in your home for them. She explained that the rise of the internet provided new items to rent out but made it clear that this system is nothing new, as she provided an adamant example of the program called Power by the Hour which was made by Rolls Royce more than 60 years ago.

Later on, Hojnik elucidated access-based economy through car sharing, bike sharing and ride-sharing. Attendees were keen to hear about smart farms renting irrigation systems instead of buying them when needed. Hojnik foregrounded the fact that all of this is a product service business as you buy the service, not the product. She explained this through the example of students being able to either buy textbooks or buy access to a textbook platform or just borrow them in a library the old-fashioned way. The main point here, as she emphasized, was that one is not the owner, but is merely renting it. That is why these business models are a service.

Hojnik explained in detail that there is a blurred distinction between goods and services based on the fact that consumers want a service. She added that if someone wants to drill a hole, they do not need to buy the entire tool just to drill one hole. This straightforward explanation got the point across.

In addition to that, Hojnik stated that dematerialization is widely spread as millennials are more environmentally aware, yet Gen Z is the most materialistic generation. This data took many by surprise. She continued by describing how consum-

ers put their needs first, even in front of sustainability and that is why we have to be vigilant, as it can have a negative impact because even car sharing does not have to be sustainable.

Hojnik gave some finishing thoughts regarding the state which, according to her, needs to incentivize the company and the consumer. As she precisely put it, the system is still built for ownership, but we need to change, especially the relevant consumer laws, into buying a service instead. In the end, she explained that even sharing does not mean that it is *per se* more sustainable, although she pointed out that BMW which develops sharing systems for cars, also produces them for consumers who buy them. She added insight that products break sooner, so the regulators actually think about prolonging this, which would go something along the lines of washing machines needing to work for 15 years.

Chairing the first panel was Matej Avbelj. At the end of the panel, he perfectly summed up the content of the speakers: corporate accountability for negative impact on environmental sustainability from Laura Valle, different legal strategies from Carmen Márquez Carrasco and new models for sustainability from Janja Hojnik.

Questions from the attendees followed this. Márquez Carrasco explained that the momentum of the topic is slowing down due to new relations, but the common heritage of mankind still applies to non-state actors as well. In her opinion, public procurement can have an impact similar to education when it comes to the relevant dilemmas discussed. The startling question of how we offset if the forests burn down was an eye-opener to many. Carbon offsets cannot solve everything and this was made clear. Márquez Carrasco added that we need to diagnose social needs and warned that what is shown to the public may only be partial. She added that bilateral agreements between nations can be a way of solving environmental challenges. Hojnik chimed in to the aforementioned question with an example of Slovenia's solar panels showing that when regulation changes, the consumers are no longer interested. The main fact here was that when winter comes solar panels are not as effective. She enlightened the attendees that now even ELES, a Slovenian electric distribution system operator, is supporting solar panels, but way back they claimed solar panels are only burdening the sys-

tem, but nowadays in winter, they take more than they produce. Márquez Carrasco agreed and stated a fact that surprised many; in Spain they have so much energy from solar panels on some days that it changes the price of electricity. She also commented on the question of desalination, saying that it would prove to be too much hassle for Spain and half-jokingly said that Madrid does not have enough funds even with EU money. She believes we need to adopt a pragmatic solution, but she stated that pragmatism needs principles and values through the rule of law and democracy.

Hojnik touched upon what it was said and added how EU states are not united enough and do not stand together but only have common commercial policies, while leaving other fields to be national. She concluded that member states are now more diverse and cannot have common solutions.

Jernej Letnar Čerňič joined the discussion by emphasizing that the challenge here is to put all the points into one holistic system. In his opinion, it will be exigent to establish who are the duty holders, and litigation is one way to do it but it triggers individual cases and does not envisage the problem as a whole. He elaborated that there is a commitment on the declaratory level, but in practise it is not so, for example the capital city of Slovenia is one of the most polluted cities. Letnar Čerňič stated that there exists a coherence gap between declaratory norms and practise. He followed this with a stark question of how many people in Ljubljana died from air pollution and what is the accountability of energy companies for this.

Amongst the array of questions from the attendees were also two very specific questions about whether all of this is a failure of state institutions and whether litigation is a viable option. Laura Valle answered that states and regions are responsible. Her point of view is that greenwashing does not comply with the law as the Paris Agreement, is in fact, law. She expounded how businesses fear losing richness and disappearing and that companies always fear losing something. She softened the narrative by stating that when you are in the beginning you make mistakes, in view of the fact that legislative acts are connected and we just need to learn how to connect them. Her splendid idea was to first apply it to supply chains in our own countries; because we need to first implement human rights in our own countries

not only in faraway countries where they make fabrics. Valle also gives high importance to education, stating that the education of consumers is strategic due to the fact that consumers are important in a way not to buy these clothes that are produced in a certain scheme. Valle explained that even small companies should comply with standards. She concluded by stating how important it is to open such discussions in academics.

Márquez Carrasco continued the answer and built upon it by saying how litigation is good, especially reminding us of the Swiss women's climate case, because the state has an obligation to fill the gap. Hojnik also provided her view on how in the past we were worried about profit, but now it is about restrictions, illustrating this by the example of wealthy people having private jets and poor people fearing restrictions on buying beef. She gave a very sturdy argument in the form of the importance of comfort; in our private life we want to be comfortable and get the most things for our money. She further augmented this by saying there are few social media influencers who showcase how few things they have but there are a lot of social media influencers who show how many things they have.

With this, the first panel concluded, and a coffee break followed, which included an abundance of tea, coffee, biscuits, and pleasant chatting among conference participants.

Gorazd Justinek chaired the second panel. The panel also had 3 participants; Özlem Zingil, Sandra Martinič and Matej Avbelj.

The first one to open in the second panel was Özlem Zingil from Turkey. Her topic was Climate Change, Business and Human Rights in Turkey. As a human rights lawyer, she gave the attendees a valuable insight into the consequences of the failure of national implementation. She showcased this through *Genc and Demirgen v. Turkey* group of cases which is still pending implementation.

She explained the emergence of legal mobilization through the presentation of the Bergama gold mines case from 1979, which was dubbed the big bank. Zingil explained the case to the attendees who were desirous to hear how the case was about the fact that the investors wanted to eradicate legal obstacles so they could invest in gold mines. Later in the attendees were flabbergasted to hear about putting growth ahead of human rights and the environment which was the case here.

Zingil touched upon a selective approach in business and human rights, where business and work life are of interest at the state level. She assessed corporate practices and highlighted how they fail in meaningful stakeholder engagement and ignore public opposition to projects, how they lack transparency, how they fail to address adverse impacts on the environment and human rights and the lack of policies. Zingil also shared her thoughts on various strategy papers and action plans on climate change. Attendees listened with great interest as she spoke about a leaked, so-called confidential, Turkish Climate law. She explained how secrecy muddies the water and causes climate disinformation and creates barriers for communities to prevent public debate on key issues. It was worrisome to hear about the visible use of SLAPPs, taking the form of compensation lawsuits and complaints to prompt criminal proceedings. Zingil pointed out that in a covert SLAPP the result is guaranteed because companies are hidden behind law enforcement as they play an active role in making the law enforcement intervene so that law enforcement disperses protesters and detains them, which in the end means that the companies get the result because protesters are in prison.

Attendees were absorbed with curiosity upon hearing Zingil present the Case of Akbelen Forest, especially when she explained the Akbelen Forest Watch. The permit for mining activities was issued in 2021 and the company started deforestation but was met with public outcry. The company said they contribute to the economy and if the trees are not cut down the investment will stop. Zingil told the visibly distraught attendees that the company even put an advertisement in the newspaper saying that this is our bread and butter. She explained how this case contained judicial harassment and covert SLAPPs so that protesters must not enter the region. After all of this dismay that was caused, the company is silent and pretends nothing has happened.

Following Özlem Zingil in the second panel, was the next speaker, Sandra Martinič from the Office of the Government of the Republic of Slovenia for Post-Flood and Landslide Reconstruction. She explained that the biggest challenge is time as it is impossible to reconstruct in one year and added that two laws were implemented after the floods to speed up the pro-

cess. Another thing that she pointed out was the fact that 187 municipalities were affected, and they cannot compare region Koroška with region Savinjska, so this has to be taken into account regarding the lengthy process of reconstruction. Attendees were compelled to hear of the different phases; Martinič explained that the first phase was intervention, where the main goal was that there were no casualties. This intervention phase was extended. It is this phase in which the commander of civil protection organizes who needs to do something and divides the task amongst those who are on the field.

The next phase is reconstruction. Martinič said that in this phase, many actors have different approaches; for example, the prime minister wanted to have a coordinator first. The coordinator says what to do on an operational level, while the strategic level is about how to distribute financial aid. In this case, as Martinič accentuated, the first priority was a flooded kindergarten. She provided clear data, that the government gave 10 million euros to Karitas and the Red Cross to disperse among people quickly. One of the main objectives was also how to pay for people's accommodation. Martinič pointed out another positive take from the government; they give 20% of the estimate right now to the affected person so they can immediately start reconstructing their house. One of the obstacles the government faced was the need to research every area of expertise and develop a constructive solution. Attendees were taken aback by hearing how many buildings were identified as life threatening in case something like this happened again: 345 buildings were classified as such. The people living in these houses had to be moved and Martinič explained that some of them wanted to go immediately. There is a silver lining to all of this; 85 houses were declared to be structurally safe. Martinič also told the attendees another interesting fact, one of the people in a house that was found to be safe, wanted to go despite the house being ok.

Martinič finished her presentation by saying that most people want to be financially reimbursed so that they can build their new house themselves and not move straight into a new house that will be built for them.

The final speaker of the second panel was Matej Avbelj. His presentation revolved around the theoretical challenges of corporate accountability for climate change. He delineated that the

task is how to adapt our legal understanding to assure corporate accountability for climate change. Avbelj stated that the climate change question used to fall under public international law, but briefed everyone that corporations are still private actors and are not subjects of public law. This brought him to the exploration of how we need to think differently; there are more than 5000 different legislation around the world tackling climate change and this poses a problem as corporations are legal subjects in a nation and have their duties there.

Avbelj thought out an astutely ingenious differentiation between supervisory, fiscal, legal, market, peer and reputational accountability. He further elaborated that supervisory and fiscal accountability is on the state; legal accountability is the basis for the two aforementioned accountabilities above. Avbelj then defined that corporate accountability can be enforced through market pressure while other corporations provide peer pressure. He also explained that reputational accountability comes from the consumers.

In his opinion, this is a soft law direction with informal instruments. Avbelj later on provided a view on how the state is the one which eventually fixes the environment. Still, it does not occupy an exclusive position like it used to have as civil society organizations are equally as important now which in turn means that the state is not the exclusive container of law now. Still, at the same time international law cannot capture the complexity of it all. On this basis, Avbelj built a cleverly sorted legal theoretical response; he mentioned a strong push towards global constitutionalism but in his opinion this goes too far as it interprets the concepts too much and the stretching of the concepts is on the verge of breaking them. Avbelj suggested that transnational law preserves everything and it is not only positive law but also here soft law mechanisms have an important role.

Avbelj concluded his knowledgeable presentation by voicing out how we actually have to recognize that a whole new source of law has already developed and it is an agenda setter for the future as transnational law helps us to better understand accountability.

The chair of the second panel, Gorazd Justinek expressed his support of the notion that this topic needs to be addressed on a global scale and that the European Union needs to take on

a stronger role because it is natural to cooperate. He also gave some food for thought to everyone in attendance by saying that most of the startups recently come from the IT industry and they use a lot of electricity so Volkswagen is not the only one of concern here.

Another dynamic discourse ensued after chair Gorazd Justinek opened up the debate for questions. Through her answers, Özlem Zingil provided another valuable input; she noticed that when they are discussing with rights holders, they see that they need more tools to go forward as this is a serious problem. She mentioned how holders transfer all their shares to a letterbox company in the Netherlands overnight and right there is the gap, so there exists a need for collaboration in monitoring the real impacts of the legislation and for the legislation to work, transnational collaboration is crucially needed.

Martinič also answered a few questions and provided an interesting fact; many houses in Slovenia are not insured and this became a problem due to the floods, when asked why their house was not insured, the people responded by saying they were not flooded for 30 years and they did not insure the house because it was a long time ago since they were last flooded. Martinič added that the damage to houses was substantial and there is a special evaluation for this plus some extra money in addition to that because the government is sort of forcing them out of the house because the house is dangerous and not fit for habitancy. The government also decided that it would be forbidden to ever again build anything in such a dangerous place. She concluded her answer by saying they need to have an individual approach and because of this it will take a while to finish reconstruction.

Avbelj also responded by stating that there are many sources of political power needed to come together for this noble cause and pondered how there are two socially constructed challenges: 1) climate change that is man-made and 2) geopolitically things have drastically changed for the West as China and India are not taking part in any of this whatsoever. He concluded that we have not done much about the Paris Agreement because others are not playing sincerely and the real problem here is the challenge of political economy as everything has political consequences.

To wrap up this academically gainful and also intellectually fruitful conference, the lead of the mentioned project, Jernej Letnar Čerňič stepped up to the platform to speak a few words. He expressed his joy over the fact that the goal of this conference was met, which was aiming to trigger intellectual discussion about climate change and business. Letnar Čerňič once again underlined the importance of the need to engage different stakeholders on this topic.