



Editorial



Introduction to the Special Issue on Climate Litigation

1 Introduction

The urgency of the climate crisis is casting an increasingly ominous shadow over many aspects of society and life. This makes climate litigation more urgent than ever. In the relentless march towards a warming world, where the global thermometer has already ascended to 1.1°C above pre-industrial levels, the repercussions of climate change reverberate across the globe. Parching droughts, searing heatwaves, record-breaking floods and tempests, food insecurity, unyielding wildfires, ecological upheaval, and the proliferation of vector-borne diseases have woven a tapestry of disruption that touches every corner of our interconnected planet.¹ To confront this existential challenge, nations are enjoined by the imperative of Article 2 of the Paris Agreement to curtail global temperature rise within the 1.5°C boundary, necessitating the drastic reduction of emissions by the close of the current decade.² However, the disquieting prospect painted by the secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) reveals that, based on prevailing Nationally Determined Contributions (NDCs), a staggering 89 per cent of the remaining carbon budget could be depleted between 2020 and

1 Intergovernmental Panel on Climate Change, *Summary for policymakers, In Climate Change 2022: Mitigation of Climate Change. Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, 2022 <<https://www.ipcc.ch/report/ar6/wg3/chapter/summary-for-policymakers/>>.

2 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015.

2030.³ This alarming trajectory is mirrored in the 2022 Emissions Gap Report of the United Nations Environment Programme (UNEP), which warns us that recent commitments barely dent projected 2030 emissions, thereby steering our path towards an ominous warming of 2.8°C by the close of the century.⁴

In this rapidly escalating crisis, the arena of climate litigation emerges as a potent conduit for action and redress. Echoing the imperatives of the moment, this field has burgeoned over decades, now encompassing an extensive array of over 2,400 cases meticulously catalogued within the repository of the Sabin Center for Climate Change Law at Columbia Law School.⁵ The database was launched in 2011, and is updated weekly. In fact, keeping up with developments worldwide is becoming quite a challenge, as new cases spring up like mushrooms. The database has grown significantly over the past two years, and currently relies on more than 120 volunteers across the world who support the research gathering, ensuring that the data collection is comprehensive and regularly updated.⁶ It is within this surge of legal fervour that the urgency of the climate crisis finds a resounding echo. UNEP and the Sabin Center, in a joint report, find that the growing number of cases and legal precedents are forming ‘an increasingly well-defined field of law.’⁷

In this context, climate litigation emerges as an influential platform, amplifying voices and redressing imbalances, empowering entities of diverse kinds to challenge governmental and corporate inertia. Civil society, individuals, and an array of stakeholders find recourse in this realm to confront the inadequacy of responses from both public and private sectors. Within the ambit of climate litigation, plaintiffs employ multifaceted legal strategies across a mosaic of national, regional and global contexts, united by the shared objective of robust mitigation and adaptation strategies.

3 United Nations, Framework Convention on Climate Change. *Nationally Determined Contributions Under the Paris Agreement: Synthesis Report by the Secretariat*. 26 October 2022. <https://unfccc.int/sites/default/files/resource/cma2022_04.pdf>.

4 United Nations Environment Programme. *Emissions Gap Report 2022: The Closing Window – Climate Crisis Calls for Rapid Transformation of Societies*. United Nations Environment Programme, 2022 <<https://www.unep.org/resources/emissions-gap-report-2022>>.

5 Sabin Center for Climate Change Law. *Climate Change Litigation Databases*. <<http://climatecasechart.com>>.

6 Sabin Center for Climate Change Law. *Global network of peer reviewers on global climate litigation*. <<https://climate.law.columbia.edu/content/globalnetwork-peer-reviewers-climate-litigation>>.

7 Michael BURGER & Maria Antonia TIGRE, *Global Climate Litigation Report: 2023 Status Review* (Sabin Center for Climate Change Law, Columbia Law School and United Nations Environment Programme, 2023). https://scholarship.law.columbia.edu/sabin_climate_change/202.

2 The Special Issue

While media headlines and academic discourse have increasingly recognized climate litigation's influence, imbalances and disparities persist. It is against this backdrop that this special issue sets forth its mission: to transcend these disparities, broaden the narrative, and illuminate uncharted contours within climate litigation. The contributors of this special issue are all part of the Sabin Center's Network of Peer Reviewers on Global Climate Change Litigation, at the forefront of this data collection process, and experts in climate law in their own jurisdictions.

As the field flourishes, cases are burgeoning in diverse jurisdictions, with over 50 percent culminating in judicial outcomes that align favourably with climate action, as the Grantham Institute's observations underscore.⁸ This special issue, in its array of incisive analyses, traverses a range of themes, jurisdictions, and innovative dimensions within climate litigation, ultimately contributing to a richer understanding of its pivotal role in addressing the paramount challenge of our epoch.

Our special issue embarks on a multifaceted exploration in alignment with this overarching intent. It delves into illuminating cases from Belgium and Italy, interrogating the lack of audacity of governmental ambitions considering the climate crisis. The intricate tapestries of climate litigation in Argentina and South Africa are unfurled, shedding light on unique contexts, challenges, and achievements. The special issue also delves into Germany's pioneering exploration of the extraterritorial application of human rights principles to climate change, providing insights into an emergent legal paradigm that seeks to address transboundary environmental impacts. Furthermore, it traverses the distinct trajectories of climate litigation in China and Japan, offering comparative analyses of their approaches, strategies, and challenges within their respective legal systems.

Prospects for climate litigation in the aviation sector, a pivotal but less-explored arena, is systematically examined, offering insights into the burgeoning nexus of air travel and climate responsibility. And we have a contribution contemplating the nascent recognition of the right to a stable climate through litigation, exploring its implications for legal theory and practice.

8 Joana SETZER and Catherine HIGHAM, *Global Trends in Climate Change Litigation: 2023 Snapshot*. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

In aggregate, this special issue serves as a panoramic exploration of diverse geographies – both in the Global North and the Global South – legal subtleties, and innovative contours within climate litigation. Through these analyses, it aims to contribute to a deeper, more nuanced understanding of climate litigation's pivotal role in addressing one of the most compelling global challenges today.

3 An Overview of the Papers

Gaston MEDICI COLOMBO and Valeria BERROS prepared an article on 'Climate Litigation in Argentina: A Critical and Prospective Analysis.' Building on their reporting of Argentinian cases in the Global Climate Change Litigation database of the Sabin Center for Climate Change Law of Columbia University Law School, the authors conducted an in-depth study of all legal documents relating to climate litigation cases in Argentina. The authors highlight that a significant number of climate cases exist in Argentina, especially when compared with other jurisdictions in the region and the Global South more generally. Most of these cases are initiated by civil society actors, bringing public and corporate actors to court as they consistently and persistently fail to protect and preserve climate-relevant ecosystems. The authors show how plaintiffs use a variety of judicial avenues and grounds from different regulatory levels. Despite many recent positive developments, the authors acknowledge that climate litigation is only beginning to develop in Argentina, as most cases are still pending. They anticipate that climate litigation will continue to grow, especially given the weak political opportunities for climate action as compared with the much stronger legal opportunities provided by broad judicial avenues.

Mingzhe ZHU's article is entitled 'Climate Litigation in a 'Developmental State': the Case of China.' Despite the absence of a national framework climate law, China's judiciary has demonstrated its determination to take climate change litigation seriously. The author argues that the Chinese approach to climate change litigation is best understood as an element of China's overall climate governance paradigm. The Chinese government believes that climate change mitigation and adaptation can best be achieved through a smarter development strategy. The State entrusts the power of making and implementing climate policy to the developmental and industrial departments of the executive branch, allowing them to use macroeconomic measures to transform the structure of the energy sector and industry. Chinese judges operate within that same frame. The author submits that they are thus unlikely to bluntly condemn carbon majors for environmental or human rights law

breaches. Instead, the judiciary will interpret statutory or contract law in line with the State's climate goals, hoping to incentivize industrial sustainable advancement. This research affirms some general trends that can be noticed in China. China is slowly but certainly becoming accustomed to the phenomenon of climate change litigation. Due to the lack of a comprehensive climate law and a specialized litigation mechanism to respond to the climate change crisis, the court sometimes treats climate change litigation as a subcategory of air pollution lawsuits. The national ambition is that China will realize the transformation from a greenhouse gas emission peak to carbon neutrality within three decades. Given that the resource-intensive industries are still the primary source of wealth in Chinese society, this commitment is undoubtedly a significant challenge to the Chinese people and their government. Perhaps the urgency and importance of this challenge will motivate the government and the people's procuratorate to support environmental NGOs in filing climate change lawsuits.

Yumeno Grace NISHIKAWA provided an analysis of 'Japanese Climate Litigation and the Development of Personal Rights.' In Japan, the first climate case was filed in 2017. Since then, only a handful of cases have followed. These few cases, labelled as 'climate litigation' in Japan, do not primarily address greenhouse gas emissions or challenge national climate change policy for lack of ambition. Instead, they often relate to air pollution – as is the case in China – making it difficult to draw a clear line between litigation relating to climate and air pollution. Moreover, the author shows that the legal arguments brought forward in Japanese climate litigation closely resemble those used in litigation on pollution. This is because essentially all the climate cases in Japan attempt to stop the construction and operation of coal-fired power plants, based on alleged breaches of personal or human rights to life, bodily integrity, health, and the right to a peaceful life – the latter being interpreted as encompassing the right to a stable climate. The article provides us with an overview of Japanese climate litigation, thereby contributing to the discussion on the global trend of greening human rights.

Zunaida Moosa WADIWALA shares with us some 'Rights-Based Climate Litigation in South Africa and The Netherlands'. Her article examines how courts in South Africa have drawn on fundamental constitutional rights in climate litigation, going beyond an exclusive reliance on the right to a healthy environment. The author analyses the available legal mechanisms in South Africa and attempts to unveil what legal strategies have been used in climate litigation. This allows her to compare the way in which South African climate litigation has shaped national climate governance with the way in which climate litigation in the Netherlands has done. Her analysis focuses

first, on what the litigation is seeking to achieve; second, which legal mechanisms and avenues were relied upon; and third, how this resonates between different jurisdictions. The key findings add to an understanding of the contribution that South African and Dutch climate litigation have made to global climate governance.

This comparison between South Africa and the Netherlands brings us into Europe. Riccardo LUPORINI and Matteo FERMEGLIA submitted an article entitled ‘Urgenda-Style’ Strategic Climate Change Litigation in Italy: A Tale of Human Rights and Torts?’ The reference in the title to *Urgenda* is, of course, a reference to the case before the Netherlands’ courts. Briefly put, in the now world-famous *Urgenda* case, the Supreme Court of the Netherlands held that the Netherlands Government must ensure that, by the end of the year 2020, greenhouse gas emission levels from the Netherlands are at least a quarter below 1990 levels. Otherwise, the duty of care, inter alia informed by the human rights to life and wellbeing, as guaranteed in Articles 2 and 8 of the European Convention on Human Rights (ECHR), respectively, of the people in the Netherlands, are breached.⁹ The authors aim to shed some light on Italian-style climate litigation. They believe that the *Giudizio Universale* case, being the first and most important strategic climate litigation case in Italy, is ground-breaking insofar as its legal argumentation counters long-established paths of judicial interpretation in the Italian legal system.¹⁰ The authors do more than just analyse this one case. They seek to provide a systematic theoretical framework to chart the legal background for past, present, and future climate litigation in the Italian jurisdiction (to be brought against both public authorities and private entities), also in comparison with other European legal systems, including the Dutch and Belgian systems.

That brings us to Belgium. Antoine DE SPIEGELEIR devoted his research to ‘The Belgian Climate Case: From Federalism Idiosyncrasies to Arboreal Novelties.’ Like the Italian contribution, this one takes a particular case as its starting point. The case concerned is the *Klimaatzaak* (Climate Case), which is a climate lawsuit brought in Belgium in 2015. It was – again – modelled on the

9 Netherlands Supreme Court, *State of the Netherlands (Ministry of Infrastructure and the Environment) v Urgenda Foundation*, Judgment of 20 December 2019, available at <http://deeplink.rechtspraak.nl/uitspraak?id=ecli:nl:hr:2019:2007>. For an overview of the first reactions to the Urgenda Supreme Court decision in the media and in scholarship, see Otto SPIJKERS, ‘The Case between Urgenda and the State of The Netherlands’ (2020) 8(1) Hungarian Yearbook of International Law and European Law 192–206.

10 Civil Court of Rome, *A Sud et al v Italy*, writ of summons, filed on 5 June 2021, <http://climatecasechart.com/non-us-case/a-sud-et-al-v-italy/> (an automated English translation is available).

Urgenda case in the Netherlands. In fact, the leading lawyer in the *Urgenda* case is also involved in this current Belgian litigation. A group of concerned individuals felt that Belgium was not meeting its international climate promises. They thus founded the non-governmental organization *Klimaatzaak* to change that through the courts. To promote a more ambitious climate policy, around 60,000 citizens took legal action against the four competent Belgian national, regional and municipal authorities. After a procedural battle of almost six years, the oral hearings of the *Klimaatzaak* finally took place in March 2021. In June 2021, the judges ruled in favour of the complainants: they held that the Belgian climate policy was so low in ambition that it breached internationally recognized human rights standards.¹¹ But because the judges did not impose specific and binding greenhouse gas emissions reductions on the authorities, the complainants appealed. At the time of writing, the oral pleadings at the appellate level have just been concluded, and the court is now preparing a judgment. The author begins his article with a succinct summary of the complaint introduced by the non-governmental organization *Klimaatzaak*, and the main findings of the court. He concludes with some suggestions for improvement. These suggestions may inspire the appeals court.

The article by Lea MAIN-KLINGST and Hermann OTT, 'Climate Litigation, Extraterritoriality of Human Rights and the German Constitution', addresses a particular and very important legal issue in climate litigation, i.e., the extraterritorial application of human rights law in the context of climate change. As a preliminary step, the authors demonstrate that, in recent years, the obligation of the German government to protect its citizens from the impacts of the climate crisis by reducing the greenhouse gas emissions from German territory has been the object of many court cases. These claims also formed the basis of the so-called 'Climate Decision' issued by the German Constitutional Court in 2021.¹² The authors then examine the extraterritorial aspects of the Climate Decision. The Federal Constitutional Court not only had to deal with three complaints by claimants from Germany, but was also faced with a complaint from individuals living in Bangladesh and Nepal. All submissions challenged the German government's lack of ambition under the Federal Climate Change Act (*Klimaschutzgesetz*). The article discusses the history of the international human rights framework in relation to extraterritoriality, and the connected

11 Tribunal of First Instance of Brussels, Judgment of June 17, 2021, *vzw Klimaatzaak and Others v. Kingdom of Belgium and Others*, available in French and in English (unofficial translation) in the database of the Sabin Center: <<http://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/>>.

12 German Federal Constitutional Court (Bundesverfassungsgericht), Order of the First Senate of 24 March 2021, BvR 2656/18.

fundamental rights protection under the German Basic Law. It then analyses the Constitutional Court's findings on the submissions of the claimants from Bangladesh and Nepal. The authors seek to demonstrate how the progressive interpretation and extraterritorial application of international human rights law could and should influence German judicial findings in the future, and expand the constitutional duties to protect fundamental rights to foreign nationals adversely affected by Germany's contributions to global climate change.

The abovementioned articles all focus on domestic jurisdictions. The last two articles take a different approach. They focus on a particular theme that resurfaces in various domestic jurisdictions. Eva BALOUNOVA writes about 'Climate Litigation: Targeting the Aviation Sector.' The important contribution to climate change of the aviation sector, now and in the future, is clear to all. The author reminds us that aviation is nowadays one of the most energy-intensive forms of 'consumption'. There is also something highly unequal about the usage of airlines globally. A small group of air travellers is responsible for a large share of aviation's greenhouse gas emissions. Emissions from aviation thus contribute enormously to global emissions' *inequality*. Generally, policies to address greenhouse gas emissions from international air transport have been found especially lacking in ambition and effective implementation. The airline industry still benefits from several tax exemptions. These tax exemptions have a long history, as the article reminds us. This article thus examines climate litigation involving the aviation sector from various jurisdictions, and situates this examination within a broader debate on the (in)adequacy of this sector's regulation.

Finally, Marcin STOCZKIEWICZ's article 'The Right to a Life-Sustaining Climate System: Selected Case Law' looks at various cases in which arguments were raised about the need to protect a stable climate for the sake of protecting fundamental constitutional rights. These cases come from a variety of jurisdictions, including the United States of America, Germany, and the Netherlands – the *Urgenda* case makes yet another appearance in this article. The analysis seeks to demonstrate that the right to a life-sustaining climate system can either be seen as a constitutional right derived from the right to life, liberty, and property; or as a constitutional right linked to the right to a clean and healthy environment; or even as a constitutional right that is a predicate of all constitutional rights.

The editors of this journal usually invite one or more experts to provide an update on recent developments relating to environmental law and governance, in China and elsewhere in the world. This time, we asked André Rodrigues DE AQUINO to provide a personal perspective on the 2023 Amazon Summit, which he himself attended. The Brazilian President, Luiz Inácio LULA DA

SILVA, called for the Amazon Summit to bring together representatives of the eight member States of the Amazon Cooperation Treaty Organization (ACTO), namely Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela. Leaders of the States Parties to the Amazon Cooperation Treaty came together in the city of Belém do Pará, Brazil, on 9 August 2023, for the first time in 14 years. The Summit was to foster agreement on a broad array of issues related to the sustainable development of the Amazon, from fighting deforestation and protecting Indigenous People's rights, to promoting cross-border security and fighting crime. At the end of the summit, the 'Belém Declaration' was agreed upon. As usual, some commentators and scholars saw the summit as a useful step forward, others were heavily disappointed in the outcome of this undoubtedly historic summit.

We hope you will enjoy this Special Issue.

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Editors of this Special Issue on Climate Litigation¹³

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