

State obligations on climate change mitigation

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Treaty objectives

- **UN Framework Convention on Climate Change (1992)**: preventing 'dangerous anthropogenic interference with the climate system'
- **Paris Agreement (2015)**:
 - Global temperature goals (2 / 1.5 °C)
 - 'Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development'

Treaty principles

- **UNFCCC:**

- Principle of **common but differentiated** responsibilities and respective capabilities
- Bifurcation between 'developed country parties' and others

- **Paris Agreement:**

- '**National circumstances**'
- Case-by-case approach to differentiation

Treaty commitments

- **UNFCCC**: 'implement ... national ... programmes containing **measures** to mitigate climate change'
- **Kyoto Protocol (1997)**: **quantified** emission reduction and limitation commitments for developed country parties, between 2008 and 2020
- **Paris Agreement**:
 - Communication '**nationally determined** contributions' (NDCs) reflecting parties 'highest possible ambition'
 - Implementation of NDCs

Other sources of obligations

- **Customary international law:** principle of **prevention** / due diligence
- **'Incidental' treaty obligations:**
 - Multilateral environmental agreements, e.g. **UNCLOS** part XII
 - **Human rights** treaties

Content of these obligations?

- Due diligence obligation - but what concretely?
- Relevance of global temperature goals / 'fair shares'?

Domestic litigation

- ***Urgenda v the Netherlands*** (SC, 2019): ECHR requires the state to reduce national GHG emissions by 25% by 2020, compared with 1990
 - *Milieudefensie v Shell* (DC, 2021)
 - *Neubauer v Germany* (BVerfG, 2021)
 - *Klimaatzaak v Belgium* (CA, 2023)
- ***Gloucester Resources Ltd v Ministry of Planning*** (NSWLEC 2019): rejection of a coal mining project due (in part) to its climate impact
 - *Waratah Coal Pty Ltd v Youth Verdict Ltd* (QLC 2022)
 - *Held v Montana* (DC 2023)
 - *R (Finch) v Surrey County Council* (UKSC 2024)

International advisory opinions

- **ITLOS**, Commission of Small Island States on Climate Change and International Law (21 May 2024): a '**stringent**' standard of due diligence
- **Inter-American Court of Human Rights**, request by Colombia and Chile – pending
- **International Court of Justice**, UN General Assembly request – pending

International human rights litigation

- ***Verein KlimaSeniorinnen v Schweiz*** (ECtHR) :
overall assessment as to whether the state has taken appropriate steps to mitigate climate change (e.g. a carbon budget)

Remedies

- Injunction

Issues:

- Implementation
Urgenda
KlimaSeniorinnen
- Timeliness

- Reparations?

- ***Lliuya v RWE*** (pending):
Peruvian farmer seeking compensation for the consequence of the greenhouse gas emissions of a German public utility
- **Inter-state?**

Issues:

- Remote causality
- Policy decision

Thank you for your attention!