



# “Taking a Stand: Achieving Climate Change Action through Climate Litigation”

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*Climate change knows no borders. It will not stop before the Pacific islands and the whole of the international community here has to shoulder a responsibility to bring about a sustainable development.*<sup>1</sup>

– Angela Merkel

## **I. EXECUTIVE SUMMARY**

Sustainable development is required in order to ensure the quality of life for the future of the planet. This paper focuses on Goal 13 of the Sustainable Development Goals, which emphasizes the need to take action against climate change. Due to a lack of state measures, non-state actors have stepped up to the mantle in recent years, spurring a new trend of climate litigation wherein private parties sue states or corporations that are deemed to have contributed to the pollution of the earth and its climate. This paper will analyse the hurdles that exist in domestic proceedings, before turning its attention to the future of climate litigation in the international law capacity and the creation of an international environmental court.

## **II. THE QUESTION PRESENTED**

The main question examined in this paper is:

*To what extent will the current trend of growing climate litigation aid in achieving goal 13 of the SDGs, and what needs to be done in the international arena in order to aid in its success?*

However, a number of supplementary questions must be answered in to aid the former:

1. Is it realistic to expect to be able to establish causation in cases of climate change?

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<sup>1</sup> Michael Safi, 'Angela Merkel Pressures Australia to Reveal its Greenhouse Gas Targets' *The Guardian* (17 November 2014) <<https://www.theguardian.com/world/2014/nov/17/angela-merkel-pressures-australia-to-reveal-its-greenhouse-gas-targets>> accessed 15 March 2019.

2. What are the existing problems in the international law system that might act as hurdles in climate litigation's success?
3. How can access to an international environmental court for non-state actors be established?

### III. THE STATEMENT OF FACTS

#### Sustainable Development Goals

Sustainable development is not a new concept, having found itself on the global agenda for over three decades.<sup>2</sup> First introduced by the Brundtland Commission in a 1987 report,<sup>3</sup> it was defined as development 'which implied meeting the needs of the present without compromising the ability of future generations to meet their own needs.'<sup>4</sup>

The concept of Sustainable Development Goals (SDGs), however, emerged only later during the Rio +20 United Nations Conference on Sustainable Development in 2012.<sup>5</sup> The outcome was a document titled "The Future We Want", in which an "inclusive and transparent intergovernmental process" was initiated, aimed at developing a larger post-2015 agenda.<sup>6</sup> The negotiations of the initiated process resulted in a set of 17 SDGs and 169 targets, embedded in the Agenda 2030 and adopted in 2015 during the United Nations Sustainable Development Summit.<sup>7</sup> The publication of a comprehensive and extensive roadmap of targets and indicators in the completion of the SDGs was considered a milestone, aligning both developing and developed countries on the path of sustainable development.<sup>8</sup>

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<sup>2</sup> Andreas Schweikert, 'Why Governance Matters: The Implementation of the 2030 Agenda for Sustainable Development' (Master thesis, University Konstanz 2017), 7.

<sup>3</sup> *ibid.*

<sup>4</sup> Pierre-Marie Dupuy, *International Environmental Law* (2nd edn, Cambridge University Press 2018).

<sup>5</sup> Schweikert (n2), 9.

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

Casey Stevens and Norichika Kanie, 'The Transformative Potential of the Sustainable Development Goals (SDGs)' (2016) 3(16) *International Environmental Agreements: Politics, Law and Economics*, 3(16) 393.

<sup>8</sup> Prajal Pradhan, Luis Costa, et al, 'A Systematic Study of Sustainable Development Goal (SDG) Interactions' (2017) *Earth's Future* 1169, 1169.

The SDGs intend to promote sustainable development in its three dimensions: economic, social, and environmental.<sup>9</sup> In short, the SDGs aimed to transform the world by ensuring human well-being, economic prosperity, and environmental protection.<sup>10</sup> The task of balancing the three dimensions is, however not an easy one, and requires that both states and relevant international organizations make decisions that keep take all three dimensions into account.<sup>11</sup>

### **SDG 13: Climate Action**

CO<sub>2</sub> levels and other GHG emissions have steadily increased in the Earth's atmosphere. The accumulation of such emissions, in combination with the loss of carbon sinks stemming from the practice of deforestation, was the basis for the creation of the Intergovernmental Panel on Climate Change (IPCC) in 1988.<sup>12</sup>

Climate change presents the single biggest threat to sustainable development, and this can be attributed at least in part to its global impact: it affects the entire world, and no escape can be made from its effects.<sup>13</sup> Therefore, it should come as no surprise that the need for climate action was encompassed under Sustainable Development Goal 13 (SDG 13).<sup>14</sup> The aim was to “take urgent action to combat climate change and its impact,” the associated targets of which focused on the integration of climate change measures into national policies, the improvement

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<sup>9</sup> Rakhyun E. Kim, 'The Nexus between International Law and the Sustainable Development Goals' (2016) 25(1) *Review of European, Comparative and International Environmental Law* 15, 19.

<sup>10</sup> Pradhan (n8).

<sup>11</sup> Kim (n9).

<sup>12</sup> Denis G. Arnold, 'Corporate Responsibility, Democracy, and Climate Change' (2016) 40(1) *Medwest Studies in Philosophy* 252, 253.

<sup>13</sup> 'Achieving the Sustainable Development Goals through Climate Action' (*United Nations Climate Change*) <<https://unfccc.int/achieving-the-sustainable-development-goals-through-climate-action>> accessed 6 March 2019.

<sup>14</sup> 'Climate Change' (*Sustainable Development Goals*) <<https://sustainabledevelopment.un.org/topics/climatechange>> accessed 7 March 2019.

of education, awareness-raising, and institutional capacity on climate change mitigation, adaptation, impact reduction, and early warnings.<sup>15</sup>

While SDG 13 may seem to encompass only the environmental dimension of sustainable development at a first glance, this could not be further from the truth: climate change places a disproportionately large burden on the poorest countries, making them the most vulnerable.<sup>16</sup> Hence, poorer countries are likely to experience a slowing of their economic growth as they find their agricultural sector affected, due to the fact that they possess a larger share of their GDP in the agricultural sector, alongside a lower capacity to adapt to rising temperatures or climate changes.<sup>17</sup> Additionally, the international community has widely acknowledged the potentially severe threats that the impacts of climate change pose on a number of human rights: including, but not limited to, the right to life, health, and an adequate standard of living.<sup>18</sup> A heat wave in Russia cost an estimated 55,000 lives in 2010,<sup>19</sup> and should climate change progress further, the end result will be all the more catastrophic.

The objectives of SDG 13 can be found in a number of binding treaties, including the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreements amongst various other multilateral agreements.<sup>20</sup> However, despite the existence of SDG 13 and the various treaties governing climate change, sovereign states frequently fail

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<sup>15</sup> *ibid.*

<sup>16</sup> 'Achieving the Sustainable Development Goals through Climate Action' (n13).

<sup>17</sup> Neil Vowles, 'Climate Change Will Only Affect the Economic Growth of the Poorest Nations' (PhysOrg, 24 July 2018) <<https://phys.org/news/2018-07-climate-affect-economic-growth-poorest.html>> accessed 9 March 2019.

<sup>18</sup> Alice Venn, 'Courts Can Play a Pivotal Role in Combating Climate Change' (*The Conversation*, 12 October 2018) <<https://theconversation.com/courts-can-play-a-pivotal-role-in-combating-climate-change-104727>> accessed 7 March 2019.

<sup>19</sup> Stephen Humphreys, 'International Law Stays Silent on the Responsibility for Climate Change' *The Guardian* (11 December 2014) <<https://www.theguardian.com/sustainable-business/2014/dec/11/international-law-silent-climate-change>> accessed 10 March 2019.

<sup>20</sup> Katherine Lofts, Sharawat Shamin, et al, 'Brief on Sustainable Development Goal 13 on Taking Action on Climate Change and Its Impacts: Contributions of International Law, Policy and Governance' (2016) 13(1) Centre for International Sustainable Development Law 183, 184.

to negotiate, implement, and guarantee effective environmental protection norms.<sup>21</sup> In fact, the world's growing consumption and production of goods for export has led to an increase in both waste and pollution, and has greatly exacerbated global climate impacts.<sup>22</sup>

Instead, the private sector and civil society has stepped up to promote and implement other norms that do not depend on traditional negotiation processes.<sup>23</sup> An increased sense of global urgency alongside growing public awareness regarding climate change-related consequences has been a driving force behind a new class of litigation:<sup>24</sup> courtrooms have become a key battleground in the fight regarding climate change: lawsuits over climate change have been brought in up to eighteen countries.<sup>25</sup>

#### **IV. THE ARGUMENT**

##### **Climate Litigation: The Effects**

In the global fight against climate change, climate litigation has become an increasingly popular weapon.<sup>26</sup> Climate litigation encompasses a range of different proceedings connected to climate change matters: it can be directed at companies, city administrations, or even national governments.<sup>27</sup> This type of litigation represents a new front against climate change, wherein citizens have taken a stance in an attempt to cut carbon emissions.<sup>28</sup>

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<sup>21</sup> Alessandra Lehmen, 'The Case for the Creation of an International Environmental Court: Non-State Actors and International Environmental Dispute Resolution' (2015) 26(2) *Colorado Natural Resources, Energy, & Environmental Law Review* 179, 182.

<sup>22</sup> Nigel Howard, 'Are the SDGs Unsustainable?' (*Eco-Business*, 23 May 2018) <<https://www.eco-business.com/opinion/are-the-sdgs-unsustainable/>> accessed 13 March 2019.

<sup>23</sup> Lehmen (n21).

<sup>24</sup> Mark Clarke, Tallat Hussain, et al, 'Climate Change Litigation: A New Class of Action' (*White & Case*, 13 November 2018) <<https://www.whitecase.com/publications/insight/climate-change-litigation-new-class-action>> accessed 7 March 2019.

<sup>25</sup> Jacqueline Peel and Hari M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015), 1.

<sup>26</sup> Jeremy Hodges, Lauren Leatherby and Kartikay Mehrotra, 'Climate Change Warriors' Latest Weapon of Choice Is Litigation' (*Bloomberg*, 24 May 2018) <<https://www.bloomberg.com/graphics/2018-climate-change-lawsuits/>> accessed 8 March 2019.

<sup>27</sup> Clarke (n24).

<sup>28</sup> Damian Carrington, 'Can Climate Litigation Save the World?' *The Guardian* (20 March 2018) <<https://www.theguardian.com/environment/2018/mar/20/can-climate-litigation-save-the-world>> accessed 8 March 2019.

The effects of climate litigation can be split into two categories: direct effects and indirect effects.<sup>29</sup> Direct effects are defined as instances when litigation results in a formal change in climate change law and policy:<sup>30</sup> for example, it may refer to a changed constitutional interpretation or statutory interpretation on environmental policies.<sup>31</sup> Additionally, the interpretation of common law obligations relating to nuisance, negligence, or public trust to encompass climate change may be affected.<sup>32</sup> A successful nuisance case could potentially lead to significant regulatory momentum not only domestically, but also internationally, by exposing large emitters to liability for climate damages that their emissions contributed to.<sup>33</sup>

Indirect effects, on the other hand, may refer to an increase in the costs and risks of emitting greenhouse gases for major corporate emitters.<sup>34</sup> Often in the form of courts imposing conditions for permits or licences, the increased cost may encourage corporations to go green.<sup>35</sup> Furthermore, indirect effects may show through in the influence that litigation has on the social norms and values surrounding climate change due in part to the decisions made during the case, but also owing to the publicity associated with it.<sup>36</sup> Changes in these norms and values may, in turn, boost the campaigning efforts of NGOs, increase the profile of the need for government actors to take action against climate change, and raise the reputational stakes for businesses that have chosen to disregard their environmental policies.<sup>37</sup>

In short, the experience gained in climate litigation can increase the accessibility of it as a means to achieve remedy for potential negative effects of climate change, and become a way in which to target the accountability of both corporations and states.<sup>38</sup>

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<sup>29</sup> Peel (n25), 36.

<sup>30</sup> Peel (n25), 37.

<sup>31</sup> Peel (n25), 36.

<sup>32</sup> Peel (n25), 45.

<sup>33</sup> *ibid.*

<sup>34</sup> Peel (n25), 48.

<sup>35</sup> *ibid.*

<sup>36</sup> Peel (n25), 49.

<sup>37</sup> *ibid.*

<sup>38</sup> Clarke (n24).

## Climate Litigation: The Problem

Successfully arguing a climate litigation case is no easy feat. There are many barriers that must be overcome, and arguably the largest is the ability of pinpointing one specific company – or even country – as the cause of climate change.<sup>39</sup> In fact, the difficulty of proving causation – the link between an actor’s behaviour and the subsequent harm that is brought upon another – has been an obstacle in successful domestic climate litigation.<sup>40</sup> Causation requires that the plaintiff is able to demonstrate a causal connection between an injury and the defendant’s actions.<sup>41</sup> Pinpointing the actor responsible for an injury can be almost impossible in cases where the damage is a result of climate change.<sup>42</sup> In the *Kivalani v ExxonMobil Corp* case, the district court held that the plaintiffs had failed to establish causation, as there was no ‘realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, or group at any particular point in time.’<sup>43</sup>

Nonetheless, one might argue that some countries and corporations can be seen as more substantial contributors to atmospheric GHG emissions.<sup>44</sup> Today, two-thirds of the human-made carbon emissions in the atmosphere can be attributed to the Carbon Majors:<sup>45</sup> companies that are the producers of oil, natural gas, coal and cement.<sup>46</sup> Would it be possible to hold such companies responsible for climate change, even if the effects are felt globally? In the context of a tortious climate change claim, the answer relies on the matter of proof of a causal link

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<sup>39</sup> Jacqueline Peel, 'Issues in Climate Change Litigation' (2011) 5(1) *Carbon and Climate Law Review* 15, 16.

<sup>40</sup> Geetanjali Ganguly, Joana Setzer and Veerle Heyvaert, 'If at First You Don't Succeed: Suing Corporations for Climate Change' (2018) 38(4) *Oxford Journal of Legal Studies* 841, 849.

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> Peel (n39).

<sup>45</sup> Ganguly (n40), 845.

Keely Boom, Julie-Anne Richards and Stephen Leonard, 'Climate Justice: The International Momentum towards Climate Litigation' (June 2016) <<https://www.boell.de/sites/default/files/report-climate-justice-2016.pdf>> accessed 11 March 2019, 2.

<sup>46</sup> Lisa Benjamin, 'The Responsibilities of Carbon Major Companies: Are They (and Is the Law) Doing Enough?' (2016) 5(2) *Transnational Environmental Law* 353.

between the defendant's actions and the alleged harm caused to the climate.<sup>47</sup> This is easier said than done, and a common defence that defendants put forward in climate litigation is that the GHG emissions from a particular activity is but a "drop in the ocean" in the global context, and hence cannot be said to cause climate change harm, or even have a significant environmental impact.<sup>48</sup>

That is not to say, however, that causation has never been successfully proven. In Australia, plaintiffs have brought a number of successful lawsuits in which courts have recognized a causal link between emitters and climate change.<sup>49</sup> In the Anvil Hill case, the Court took a broad approach to the question, noting that "the impact from burning the coal will be experienced globally as well as in New South Wales, but in a way that is currently not able to be accurately measured, does not suggest that the link to causation of an environmental impact is insufficient."<sup>50</sup>

Nonetheless, the difficulties experienced by plaintiffs to identify the exact cause of climate change-related harm are an extreme challenge to the more widespread success of climate litigation.<sup>51</sup> In fact, the failure of initial tort-based efforts to hold corporations liable for climate damages could largely be attributed to difficulties in proving causation.<sup>52</sup>, as it would require an overhaul of the domestic legal system. This is unlikely to occur in the near future, as if a lenient approach is to be taken regarding establishing the 'but-for' test, it may be deemed as opening the floodgates for all future cases. Unfortunately, establishing causation is – and will likely remain – a key challenge in climate litigation.<sup>53</sup>

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<sup>47</sup> Peel (n39).

<sup>48</sup> *ibid.*

<sup>49</sup> IBA Presidential Task Force on Climate Change Justice and Human Rights, *Achieving Justice and Human Rights in an Era of Climate Disruption* (2014), 80.

<sup>50</sup> *ibid.*

<sup>51</sup> Ganguly (n40).

<sup>52</sup> Lisa Benjamin, 'How to Eat an Elephant: a New 'Corporate' Climate Litigation Trend' (*Global Policy*, 5 July 2018) <<https://www.globalpolicyjournal.com/blog/05/07/2018/how-eat-elephant-new-corporate-climate-litigation-trend>> accessed 6 March 2019.

<sup>53</sup> Tobias Pfrommer, Timo Goeschl, et al, 'Establishing Causation in Climate Litigation: Admissibility and Reliability' (2019) 152(1) *Climatic Change* 67, 68.

Even if the issue of causation is to be resolved, however, a second potential hurdle is that it is often just as unclear as to what portion of any damage can be attributed to the conduct of the defendant, especially once the plurality of third parties that can contribute to emissions is taken into account.<sup>54</sup> To further complicate matters, “causation” can refer to a number of distinct concepts due to the different requirements in different doctrines.<sup>55</sup> The result, in turn, is that courts may often analyse causation in vastly different manners – even in instances where the injury and instigating act almost parallel one another.<sup>56</sup> The treatment of causation has been especially inconsistent in environmental cases, due perhaps in part to the difficulty in establishing causation in the first place.<sup>57</sup> These obstacles are all ones that will hinder the success of climate litigation in domestic courts.<sup>58</sup>

The courts are our last – and best – hope of irreversible harm to our planet and life on it.<sup>59</sup> However, domestic courts may not be the answer, owing largely in part to the difficulties of establishing causation.<sup>60</sup> In fact, an international panel of senior judges reached the conclusion that many companies around the world had likely remained in breach of existing laws guarding climate change, as if these enterprises had met their obligations, then the climate change issue would have been mostly solved by now.<sup>61</sup> Instead, efforts should be on developing international laws to address climate change in a top-down, coordinated fashion,<sup>62</sup> where the risk of being a piecemeal, uncoordinated, or even contradictory is diminished.<sup>63</sup>

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<sup>54</sup> Olivier van Geel, 'Urgenda and Beyond: The Past, Present and Future of Climate Change Public Interest Litigation' (2017) *Maastricht University Journal of Sustainability Studies* 56, 67.

<sup>55</sup> 'Causation in Environmental Law: Lessons From Toxic Torts' (2015) 128 *Harvard Law Review* 2256, 2256.

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

<sup>58</sup> Geel (n54).

<sup>59</sup> Hodges (n26).

<sup>60</sup> Jacqueline Peel and Hari M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015), 34.

<sup>61</sup> Damian Carrington, 'Can Climate Litigation Save the World?' *The Guardian* (20 March 2018) <<https://www.theguardian.com/environment/2018/mar/20/can-climate-litigation-save-the-world>> accessed 8 March 2019.

<sup>62</sup> Peel (n25), 34

<sup>63</sup> Peel (n25), 34-35.

## The International Court of Justice

Following the difficulty of establishing causation in the domestic context due to its uncoordinated nature, international dispute resolution becomes an alternative piece of the puzzle in taking climate action as per SDG 13. The most infamous international court would have to be the International Court of Justice (ICJ), which, in turn, happens to be the only international tribunal that has universal jurisdiction over environmental issues.<sup>64</sup> When it comes to sustainable development, ICJ first recognized the significance of it independently of its inclusion in a treaty in the *Gabcikova-Nagymaros* case.<sup>65</sup> The conclusion reached was that since the economic treaty between Hungary and Slovakia was still in force, its implementation had to occur.<sup>66</sup> However, the norms of international environmental law had to be taken into consideration by both parties when enforcing the treaty, in order to reconcile economic development with environmental protection.<sup>67</sup>

Due to its role as the ‘guardian of general international law’, the ICJ must be especially cautious when deciding cases with an environmental aspect.<sup>68</sup> Therefore, despite the establishment of a chamber dealing with environmental issues in 1993, only a dozen such environmentally focused cases have been submitted to the ICJ since the court’s creation in 1945.<sup>69</sup> One can conclude from this that the current system has not managed to balance on this precarious tightrope: instead, it is geared toward economic interests in a manner that almost definitely guarantees that we will continue the march toward climate change and resource scarcity, with all of the consequential economic and social impacts stemming from the above.<sup>70</sup>

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<sup>64</sup> Lehmen (n21), 188.

<sup>65</sup> Virginie Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23(2) *The European Journal of International Law* 377, 386-387

Philippe Sands, 'International Courts and the Application of the Concept of "Sustainable Development"' (1999) 3 *Max Planck Yearbook of United Nations Law* 389, 390-391.

<sup>66</sup> Barral (n65), 387.

<sup>67</sup> Barral (n65).

<sup>68</sup> Pierre-Marie Dupuy, *International Environmental Law* (2nd edn, Cambridge University Press 2018).

<sup>69</sup> Lehmen (n21), 188.

<sup>70</sup> Murray Carroll, 'It's High Time for an International Environmental Court' (*Policy Innovations*, 24 April 2013) <[policyinnovations.org/ideas/innovations/data/000240](http://policyinnovations.org/ideas/innovations/data/000240)> accessed 7 March 2019.

The concept of sustainable development suggests that a middle ground can be found between the three separate but interconnected pillars of economic, social, and environmental issues.<sup>71</sup>

### **An International Environmental Court**

Creating an international environmental court that ensures the access of private parties and has universal jurisdiction could be a huge step in achieving environmental justice for climate action. Born of a new era of international environmental laws, the specialized court would ideally be able to enforce mutually agreed obligations.<sup>72</sup> This would hopefully result in the creation of a legal and institutional framework to counterbalance the trade regime.<sup>73</sup> However, similarly to the domestic legal system, a number of factors must be ascertained in order to ensure the success of international climate litigation.

### **An International Environmental Court: The Jurisdiction Issue**

The first factor that would need to be addressed is how an international environmental court would justify universal and compulsory jurisdiction.<sup>74</sup> The former type of jurisdiction refers to the idea that a national or international court may prosecute serious crimes against international law based on the principle that these actions have harmed the international community itself,<sup>75</sup> while the compulsory aspect refers to a mandatory jurisdiction that a state has agreed to accept in specific matters, such as may be laid out in a treaty.<sup>76</sup>

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<sup>71</sup> *ibid.*

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

A stronger international environmental regime should ideally be accompanied by a reform of the trade regime, wherein trade restrictions could serve to dissuade the unsustainable use of resources in the future: *ibid.*

<sup>74</sup> Lehmen (n21), 203.

<sup>75</sup> 'Universal Jurisdiction' (*International Justice Resource Center*) <<https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/>> accessed 11 March 2019.

<sup>76</sup> 'Compulsory Jurisdiction' (*Merriam-Webster*) <<https://www.merriam-webster.com/dictionary/compulsory%20jurisdiction>> accessed 10 March 2019.

What justification could an international environmental court use to ensure universal and compulsory jurisdiction?<sup>77</sup> One potential option would be to classify environmental protection as a common concern of humanity,<sup>78</sup> meaning that it would encompass aspects of the global environment so significant that a need for collective action to protect it would have it be designated as a common concern of humanity in either treaties or decisions of the United Nations General Assembly.<sup>79</sup>

Successful characterization as a common concern of humanity would mean that environmental protection norms regarding the climate may be considered *jus cogens*,<sup>80</sup> which would open the possibility of exploring the link between common concern and *erga omnes* obligations.<sup>81</sup> The latter type of obligation refers to the obligation of states toward the international community as a whole, which, by their nature, are the concern of all States.<sup>82</sup> Therefore, all States can be held to have a legal interest in the protection the environment, and, as an extension, the climate.<sup>83</sup> As such, the protection of the climate could be universally pursued.<sup>84</sup>

### **An international environmental court: non-state actors**

In addressing climate action, however, an institution that can adjudicate not only between states but also been states and non-state actors is required – one which can apply both

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<sup>77</sup> Lehmen (n21), 203.

<sup>78</sup> *ibid.*

<sup>79</sup> Frederiech Soltau, 'Common Concern of Humankind' in Kevin R. Gray, Richard Tarasofsky, and Cinnamon Carlarne (eds), *The Oxford Handbook of International Climate Change Law* (Oxford Handbooks 2016).

<sup>80</sup> Lehmen (n21), 204.

<sup>81</sup> Dinah Shelton, 'Common Concern of Humanity' (2009) 39(2) *Environmental Policy and Law* 83, 86.

<sup>82</sup> Paolo Picone, 'The Distinction between Jus Cogens and Obligations Erga Omnes' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford Scholarship 2011).

<sup>83</sup> Paolo Picone, 'The Distinction between Jus Cogens and Obligations Erga Omnes' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford Scholarship 2011).

<sup>84</sup> Lehmen (n21), 204.

international environmental law and domestic environmental law.<sup>85</sup> Hence, this limitation should be addressed if an international environmental court is to be created.

Private party access is an old problem in international justice, yet the growing importance of non-state actors in the international arena has only served to reinforce this issue.<sup>86</sup> Therefore, it is no surprise that a recent phenomenon has sprung up in the form of recognition of the importance of non-state actors in international relations,<sup>87</sup> and potential international environmental court would require a clear mandate for incorporating non-state actors into the adjudication process.<sup>88</sup> This could be achieved on the basis of Principle 22 of the Stockholm Declaration.<sup>89</sup> Principle 22 provides that “states shall cooperate to develop further the international law regard law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.”<sup>90</sup>

Namely, Principle 22 calls for identifiable “victims” to be compensated as opposed to the environment itself.<sup>91</sup> In addition, Principle 22 further suggests the imposition of an obligation to develop laws that provide for the redress of international environmental injuries on the parts of signatory States by using the wording of “shall”.<sup>92</sup> By acknowledging the need to compensate the “victims” of pollution caused by states, Principle 22 represents a large step towards the creation of rights to non-state actors in their ability to participate in international

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<sup>85</sup> Stephen Hockman, 'Why Do We Need a New International Environmental Court?' (*The Honourable Society of Middle Temple*, 29 March 2017) <<https://www.middletemple.org.uk/why-do-we-need-new-international-environmental-court-stephen-hockman>> accessed 14 March 2019, 11.

<sup>86</sup> Lehmen (n21), 206.

<sup>87</sup> Lehmen (n21), 184.

<sup>88</sup> Lehmen (n21), 206.

<sup>89</sup> David Scott Rubinton, 'Toward a Recognition of the Rights of Non-States in International Environmental Law' (1992) 9(2) *Pace Environmental Law Review* 475, 486.

<sup>90</sup> *ibid.*

<sup>91</sup> *ibid.*

<sup>92</sup> *ibid.*

environmental adjudication,<sup>93</sup> as it is commonly private parties that are, unfortunately, the victims of climate change.

## **V. CONCLUSION**

In conclusion, achieving the targets set out in SDG 13 has not been a simple task. In recent years, civil society has stepped up to the task, and the new trend of climate litigation has begun. The effects of climate litigation can be split into two categories: those that directly affect the legal framework governing environmental norms, and those that instead alter the view that society has on climate action.

Due to the difficulty of establishing causation and the contradictory stance that is often taken by the numerous courts, an international environmental court that specializes in the matter could act as a tool in achieving SDG 13 and could, if given universal and mandatory jurisdiction, overcome the issue. By creating a court that specializes in environmental matters, non-state actors could take their climate issues before it, and while causation may still be difficult to prove, the court's stance would at least be certain, non-contradictory, and set a set precedent for future cases.

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<sup>93</sup> *ibid.*