



British Institute of
International and
Comparative Law

HAUSFELD

OUR FUTURE IN THE BALANCE

The Role of Courts and Tribunals

International Virtual Summit

Event Report

7 and 8 July 2021



Table of Contents

Summary	1
1. Opening Remarks	3
2. Keynote #1 "We are Facing a Planetary Emergency"	4
3. Panel #1 "Climate Ethics, Health and the Law: Connecting the Dots"	6
4. Keynote #2 "Climate Litigation: The Second-Best Option for Governing Climate Change"	8
5. Roundtable 1 "Climate Litigation and the Separation of Powers: Global Perspectives"	10
6. Keynote 3 "We Need to Change the Rules"	13
7. Keynote 4 "A Critical Moment Requires Critical Momentum"	14
8. Roundtable 2 "Insights and Proposals on Climate Litigation and the Separation of Powers"	15
9. Panel 2 "The Climate Crisis is a Human Rights Crisis"	19
10. Keynote 5 "Our Future in the Balance: Lessons from the Past for Better Action"	22
11. Summit Programme	24
12. Workshop Participants	32

Summary

The **British Institute for International and Comparative Law (BIICL)** and global law firm **Hausfeld** partnered to host '[Our Future in the Balance: The Role of Courts and Tribunals in Meeting the Climate Crisis](#)', a landmark two-day international virtual summit exploring the role of courts and tribunals in global climate governance with a focus on *the separation of powers in climate litigation*.

This event was held virtually on **7 and 8 July 2021**, at a critical moment in the lead-up to COP26 and at a time when the law is playing an increasingly important and visible role in responding to the climate crisis. The event combined keynotes, roundtables, and plenary sessions on two half days open to the public, as well as a series of parallel closed expert workshops that addressed different angles of the topic. Participants in the workshop included: judges; policymakers; academics; legal practitioners; natural, political, and social scientists; economists; public health experts; civil society representatives; leading youth activists; and other stakeholders. The ideas, insights and proposals emerging from the summit discussions will be elaborated upon to form the basis of a **Declaration** accessible to a global audience and will be part of a briefing package presented to the participants of the COP26 in Glasgow.

The keynotes, roundtables, plenary sessions, and workshops examined the following topics:

- Keynote 1: "We are Facing a Planetary Emergency" by Johan Rockström
- Keynote 2: "Climate Litigation: The Second-Best Option for Governing Climate Change" by Lavanya Rajamani
- Keynote 3: "We Need to Change the Rules" by Luisa-Marie Neubauer
- Keynote 4: "A Critical Moment Requires Critical Momentum" by Joseph Stiglitz
- Keynote 5: "Our Future in the Balance: Lessons from the Past for Better Action" by Naomi Oreskes
- Roundtable 1: "Climate Litigation and the Separation of Powers: Global Perspectives"
- Roundtable 2: "Insights and Proposals on Climate Litigation and the Separation of Powers"
- Panel 1: "Climate Ethics, Health, and the Law: Connecting the Dots"
- Panel 2: "The Climate Crisis is a Human Rights Crisis"
- Workshop 1 (A and B): The Role of Judges
- Workshop 2: Climate Litigation and Science
- Workshop 3: Climate Litigation and the Economy
- Workshop 4: Climate Litigation and Politics
- Workshop 5: Climate Litigation and Environmental Defenders

The summit was convened by **Ivano Alogna**, *Arthur Watts Research Fellow in Environmental and Climate Change Law*; **Jean-Pierre Gauci**, *Arthur Watts Senior Research Fellow in Public*

International Law; and **Alina Holzhausen**, *Researcher in Environmental and Climate Change Law*.

In partnership with Hausfeld: **Michael Hausfeld**, *Chair of Hausfeld*; **Ingrid Gubbay**, *Head of the HR & Environmental Team*; **William Vazquez**, *Staff Attorney*; and in collaboration with **Iain MacNeil**, *Professor of Commercial Law, University of Glasgow*; and **Callum Grieve**, *Campaign Collective*.

The present report provides a summary of the keynotes, roundtables, and plenary sessions, including links to the respective recordings.¹ The main findings of the workshops will be distilled into the Declaration, mentioned above, and will, therefore, be made available at a later point.

This report is issued on the understanding that if any extract is used, BIICL should be credited, preferably with the date of the event.

Suggested Citation:

British Institute of International and Comparative Law, *'Our Future in the Balance. The Role of Courts and Tribunals in Meeting the Climate Crisis'* (August 2021)

¹ Recordings are accessible here:
https://www.youtube.com/playlist?list=PLrRqwcJcPBFHM35riocp_5OuZ60gbtjDx.

1. Opening Remarks

The [opening remarks were made by the host moderator of the two-day summit, James Cameron](#), Senior Adviser to the Foundation for International Law for the Environment (FILE) and Pollination Group, as well as Executive Fellow at the Yale Center for Environmental Law & Policy. He highlighted the need 'to make connections between law and science, politics, policy, commerce, enterprise and finance if we really want to understand how to make a transformation in our society'. With recent developments in the field of attribution science, courts and tribunals are now being provided with the kind of evidence that has allowed them to move from general responsibility to assigning specific liability either for harms caused or the failure to act.

Many climate change cases are becoming increasingly specific about timing. More precisely, they hone in on the timeframe in which a State needs to act in order to protect the rights of its citizens. The question that arises is how to match the urgency of the existing need with governments failing to act sufficiently and in a timely manner. Moreover, questions of intergenerational fairness, equity and justice arise.

The summit, Cameron noted, will take a closer look at the separation of powers as a potential stumbling block for further judicial action in the field of climate change. Where does the power to make the transformation needed to respond to this existential crisis for humanity properly reside? When we think about the role of law in this situation, we need to think about it as a tool for change, not merely as an instrument for protecting the status quo, though it can be both.

2. Keynote #1 “We are Facing a Planetary Emergency”

Johan Rockström, Director of the Potsdam Institute for Climate Impact Research and Professor in Earth System Science at the University of Potsdam, opened the summit with a scientific update entitled [“We are Facing a Planetary Emergency”](#). He presented empirical evidence that a new geological epoch, the Anthropocene, has been entered. The scale, speed, and interconnectivity of human pressures on the Earth system have led to the scientific conclusion that humans are the dominating force of change on planet Earth. According to Professor Rockström, ‘we are starting to hit the ceiling of hardwired biophysical processes that regulate the stability of the Earth’s system’.

Focusing on climate, observations show that jointly with 2016, 2020 was the warmest year on record. In fact, the last 10 years represent the warmest observed decade. Moreover, unequivocal scientific evidence shows that the warmest mean temperature on Earth since the last Ice Age has been surpassed: 1.25°C of warming, which is outside of the range of variability over the past 12000 years. The question that arises is: what happens at 1.25°C of warming? Circumstances are changing more abruptly than science had anticipated, evidenced by the heatwave and forest fires in British Columbia and parts of West US, with temperatures soaring to 49.6°C. While this is an amplification from 1.25°C, it is very likely a combination of accelerated ice melt in the Arctic, changing the jet stream, which regulates weather systems in the northern hemisphere.

A scientific lesson of precaution is, therefore, that interconnectivity of the Earth system may give rise to abrupt and unexpected outcomes, such that the law, but also ethics, has to start looking into what happened. An example is the recent Miami condo collapse disaster. While a connection between the structural undermining of steel construction and saltwater intrusion in low lying States cannot be addressed so soon after the disaster, it is a concern that needs to be addressed in both scientific analysis and legal practice.

Though there is plenty of scientific evidence, the legal challenge is that climate change is a slow phenomenon. Science shows that fossil fuel burning leads to temperature rise, which consequently leads to sea-level rise. However, sea-level rise is a slow variable, only showing an increase of 20 centimetres so far. But scientific data shows that last time the Earth saw between 1°C and 2°C of warming was 125000 years ago, and the sea level back then was six to nine metres higher than it is today. As Professor Rockström set out, this means that ‘we are committing ourselves to much larger outcomes than the impacts we feel [in] the short term, and our legal and economic systems are not well suited to address this’. At the same time, however, fast changes may be observed as well. All ice sheets on Earth, namely in the Arctic, Antarctica, and inland glaciers, are losing mass. In areas such as the third pole (the Himalayas in Pakistan, India, Southeast Asia and China), there are increasing signs of a faster loss of mass,

as well as social impacts, such that a quick connection may be drawn between climate change and the legal stability in societies.

In terms of the stability of the entire Earth system, there has never been a time where the Earth has passed 2°C. Now, the Earth is heading towards 3+°C in a blink of geological time, crashing right through the Holocene corridor. The resilience of the Earth system has played an important role in keeping the global temperature below 2°C. Oceans, as well as natural ecosystems on land, take in large amounts of carbon dioxide, which shows that a healthy planet will try to apply biogeochemical processes to remain stable. Unfortunately, signs indicate that natural carbon sinks have been lost, as demonstrated by the Brazilian part of the Amazon rainforest, which has flipped over from carbon sink to carbon source in the past 10 years.

Losing the resilience of the Earth system is worrying. Tipping points, which exist in systems that regulate the stability of the climate, cannot be crossed. According to Professor Rockström, the current population is at a critical juncture, which requires not only an emission cut, but also sustainability and transformation in food systems, negative emissions to draw carbon dioxide from the atmosphere, and intact ecosystems. 'If we do all this, we have a 66% chance of staying within the life corridor over the past 3 million years'.

3. Panel #1 “Climate Ethics, Health and the Law: Connecting the Dots”

The first panel of the summit on [“Climate Ethics, Health, and the Law: Connecting the Dots”](#) consisted of **Stephen Gardiner**, Professor of Philosophy and Ben Rabinowitz Endowed Professor of Human Dimensions of the Environment at the University of Washington in Seattle; **Laurence Boisson de Chazournes**, Professor of International Law at the University of Geneva School of Law, Director of the LL.M. in International Dispute Settlement, and Co-Director of the Geneva Center for International Dispute Settlement; and **Maria Neira**, Director of the Public Health, Environment and Social Determinants of Health Department at the World Health Organisation.

Starting with climate ethics, Professor Gardiner underlined the importance of the intergenerational dimension to understand the climate problem. A moral and institutional failure, which has played out over a number of decades and seems to be getting worse, can be seen when looking at the intergenerational dimension of the climate problem. According to Professor Gardiner, ‘there are significant time lags between what we do to cause nasty effects and those effects arising (...) And the current generation of decision makers, those who tend to be older members of society, have a mismatch of incentives going on with respect to this problem’. Climate change sits at the intersection of major challenges to ethical action, in a setting where human beings would not be well equipped to deal with any one of those challenges on their own. When dealt with together, a profound challenge, arises. Overall, the problem is genuinely global, intergenerational, it crosses the boundaries of species, and the ways in which our institutions are set up encourage both bad kinds of action as well as inaction. Furthermore, the way in which people think and talk about the problem can become influenced by the many temptations for unethical action, a problem that Professor Gardiner terms *moral corruption*. One might say, for example, that the current generation of decision makers are primed to select ways of looking at the problem that obfuscate the issue and what its most effective solution might be. ‘Those who are most vulnerable to the impacts, at least in the short to medium term, are disproportionately those who have not contributed much to the causation of the problem’. While this is widely recognised, Professor Gardiner pointed out that ‘we are in a kind of denial. We are in the grip of a kind of institutional and theoretical denial. We have not fully taken on board the fact that our institutions and our theoretical approaches are not well adapted to this kind of situation’.

Professor Boisson de Chazournes then addressed the role that the law could play in developing institutions and policies to confront the issue of climate change. According to Professor Boisson de Chazournes, there is a huge paradox: scientists have been aware of the climate crisis for a long time, but lawyers only started to deal with it at an international level in the early 90s and even later at the domestic level. Even the content of legislation at the domestic and European level nowadays is still very sectoral or issue oriented. The issue of climate change

has traditionally been addressed using conventional legal language, but there is a need to develop a new legal language. Moreover, even though nowadays there is a better knowledge about climate change than in the 90s, not everything is known. Thus, the component of uncertainty has to be considered when dealing with climate change. Indeed, while the precautionary principle has been strengthened and has been acknowledged in, for example, constitutions, the law is not yet well equipped to deal with this issue. Therefore, the question that arises is the necessity of strengthening certain concepts. For example, what does justice mean in terms of climate change? Looking to intergenerational equity, institutions are not yet equipped to support this idea. While an ombudsman for human rights exists, there exists no voice in the legal system for those who wish to speak on behalf of future generations. As Professor Boisson de Chazournes concluded, all of this shows that the law in this field is still in its infancy and is yet to be developed.

The role of public health and climate change was analysed by Dr Maria Neira. According to Dr Neira, the nature of the dialogue could change now that people are very much concerned about health vulnerability. 'We can talk in positive and say we know how to reduce health vulnerability and that the most important way to do it will be by tackling the causes of climate change, resulting in a reduction of air pollution, and protecting much more our health.' One clear intervention would be to cut the use of fossil fuels that hasten the deaths of many. In this way, perhaps a similar legal tool to the WHO Framework Convention on Tobacco Control is needed to ensure that countries will, at the very least, endorse WHO standards in relation to air quality. The cooperation of the law, namely enforcing existing legislation and creating new legislation, is a fantastic tool for public health and needs to be explored.

Throughout the remainder of the discussion, James Cameron and the three panellists continued to connect the dots between climate ethics, health, and the law. Dr Neira compared the issues of air quality and SARS-CoV-2 by setting out the differing impacts for people due to pre-existing medical conditions, injustice, and inequality, which is also applicable to climate change. Professor Boisson de Chazournes went on to argue that the WHO has a major role to play in complementing the understanding of certain provisions of the Paris Agreement. What is more, national courts have begun to take the Paris Agreement on board, demonstrating to governments their commitment to its provisions. Due to 'treaty fatigue' in international law, it is important to strengthen these commitments, which are brought before courts in increasingly creative ways. Professor Gardiner made further comments on the intergenerational problem, setting out that there is a governance gap when it comes to dealing with future generations. Contrary to Professor Boisson de Chazournes, Professor Gardiner argued that the Paris Agreement is lacking in this regard, and that a global convention for future generations is needed.

4. Keynote #2 “Climate Litigation: The Second-Best Option for Governing Climate Change”

Lavanya Rajamani, Professor of International Environmental Law at the University of Oxford and Yamani Fellow in Public International Law at the St Peter’s College Oxford, made remarks on [“Climate Litigation: The Second-Best Option for Governing Climate Change”](#). According to Professor Rajamani, ‘the first best option for dealing with the global collective action problem such as climate change, at least most lawyers would agree, is a comprehensive, multilateral, negotiated, binding agreement with shared goals, concrete, precise and tailored obligations on mitigation, adaptation and support, and mechanisms to ensure transparency, accountability and compliance’. This first best option has proven impossible to secure, and even though the Paris Agreement is a tremendous diplomatic achievement, it has three consciously negotiated governance gaps because of the political dysfunction at the heart of the international climate change regime. These governance gaps are of ambition, accountability and fairness and equity.

Regarding the ambition gap, States are given a great deal of autonomy in setting their nationally determined contributions, with no mechanisms in place to review the adequacy of national contributions. Additionally, there is no obligation of result attached to the content of the national contributions that States undertake. This has resulted in contributions that do not add up to what is necessary to achieve the overarching goals of the Paris Agreement.

In terms of the accountability gap, there is no mechanism to generate individual accountability for compliance with the targets undertaken by States. All States are required to provide information on their national contributions, but they can choose the information requirements that apply to their type of targets. Moreover, the enhanced transparency framework that exists under the Paris Agreement excludes a robust review function.

Regarding the fairness and equity gap, this has been a central issue for climate negotiations from the start. It is an issue that has been deeply contentious over the years and is an issue that the Paris Agreement deftly sidestepped in many ways with a move towards self-differentiation and national determination.

These three gaps have been picked up by climate litigation in the last few years. Some examples of cases that are trying to address the ambition gap are the [Urgenda case](#) in the Netherlands or the [Neubauer case](#) in Germany. The accountability gap has been addressed in the [Friends of the Irish Environment case](#) in Ireland and the fairness and equity gap will be addressed in the [Portuguese children’s case](#), pending before the European Court of Human Rights. Overall, climate litigation is seeking to address the fundamental governance gaps in the Paris Agreement. However, such litigation does have serious limitations, such as procedural

and standing hurdles. One pressing challenge is proving causality, which raises the question of the role of science in climate litigation. Moreover, most judiciaries are reluctant to rule on climate change matters.

Professor Rajamani highlighted the need to engage on multiple fronts. On the first best option, as the need to strengthen the international regime in at least two ways: find and craft rules going forward that discipline national autonomy and discretion and design the mechanics of the stocktake (to happen in 2023, as a significant moment of reckoning for the international community). On the second-best option, as the need to continue to litigate in creative ways coordinated across jurisdictions. Finally, there is also the possibility of an advisory opinion issued by the International Court of Justice (ICJ), which could potentially clarify and refine aspects of the Paris Agreement.

5. Roundtable 1 “Climate Litigation and the Separation of Powers: Global Perspectives”

The Roundtable on [“Climate Litigation and the Separation of Powers: Global Perspectives”](#) consisted of several speakers presenting views from various jurisdictions.

Michael B. Gerrard, Andrew Sabin Professor of Professional Practice and Director of the Sabin Center for Climate Change Law at Columbia Law School, spoke about climate litigation and the separation of powers in the United States (US). According to Professor Gerrard, the separation of powers is a major problem in US climate change litigation. Mentioning three cases, namely [American Electric Power v Connecticut](#), [Utility Air Regulatory Group v EPA](#), and [Juliana v United States](#), Professor Gerrard explained that courts feel as though it is not their job to make major decisions on climate change, but rather the job of Congress or the Executive. Moreover, the conservative members of the Supreme Court appear to be embracing a doctrine called the non-delegation doctrine, which means that Congress cannot delegate too much of its discretion to agencies and that Congress needs to be extremely specific in what it does delegate. If firmly adopted by US courts, the doctrine could become a real problem for the powers of EPA under current statutory authority, as courts have been very active in striking down administrative actions related to the environment that exceed statutory authority. Overall, Professor Gerrard said that decisions from other countries, such as the [Urgenda](#) case, do not resonate with US judges, and that there is no sign of more judicial activism in US courtrooms.

Corinne Lepage, Senior Lawyer and Co-founder of Huglo Lepage Advocats and Former French Minister of the Environment, gave an overview of climate litigation and the separation of powers in France. Having been involved in the [Grande-Synthe](#) case, Dr Lepage said that it is both a legal and political obligation for the State to act, meaning that the government will have to undertake new measures to fight climate change before March 2022. Moreover, the obligation is economic, as the entry into force of the European taxonomy and the implementation of sustainable investment rules implies that investment choices are changing. Regarding the separation of powers, Dr Lepage pointed out that not only is it an essential element in France, but also in other democratic countries. In France, the *Conseil d’État* refuses to exercise any control that is related to the legislator.

Elizabeth Wathuti, Founder and President of the Green Generation Initiative, provided insights into climate litigation from the perspective of a climate activist, saying that there are so many instances where climate litigation has worked, but also where it has faced various obstacles. One recent example of successful activism was the decision of the Kenyan National Environmental Tribunal, which found that East Africa’s first coal plant could not be built in Lamu. However, other obstacles exist. For example, leaders tend to negatively influence legal decisions, stymieing the work of the court system. According to Ms Wathuti, activism and

climate litigation relies on the independence of the judiciary. 'What we need to see is courts standing up (...) for what is right, despite the fact that some of the projects that we are trying to take a stand on are actually being done by the governments and (...) big corporations'. Moreover, 'it is possible for courts to help us make corporations and governments move faster (...) in lowering their carbon emissions'. Lastly, Ms Wathuti mentioned the difficulties that young activists face, such as confiscation of placards or interrogation by the police, even though protests are peaceful.

Amy Rose, Senior Lawyer and Director of Litigation in Compliance & MEL at ClientEarth, presented the challenges posed by the separation of powers in climate cases at ClientEarth. According to Ms Rose, 'we actually encounter separation of powers issues in almost all of our cases in some form; also because of additional separation of powers between the European Union (EU) and member States, or between the federal and State governments in the US'. Ms Rose specifically referred to separation of powers issues regarding the EU in relation to the UK and its clean air litigation and to Germany and its urban air pollution. Those examples show that there are many different issues coming up in climate litigation in Central and Eastern Europe due to additional separation of powers in the EU.

Viviana Krsticevic, Executive Director of the Center for Justice and International Law, presented the perspective from Latin America. According to Ms Krsticevic, the doctrine of the separation of powers has played a role in some aspects of the litigation, but it is neither the primary nor main obstacle in adjudicating climate justice cases in the region. Rather, 'in many contexts there is (...) lax oversight of the regulatory and enforcement duties of States and the courts have not been forceful enough in that area'.

Irum Ahsan, Advisor in the Office of the Compliance Review Panel at the Asian Development Bank, spoke about the Asia and Pacific perspective. In this region, courts are seen as a first resort for ensuring the implementation of constitutional rights, whereas regulatory bodies have no powers. However, the problem is that judges do not study environmental law, yet are handling huge environmental cases. According to Ms Ahsan, there have been excellent interpretations of the Paris Agreement in cases from Nepal and Sri Lanka to India. Moreover, in a Pakistani case, the judge created a judicial water and environmental commission to serve as a technical support for the judge. This judge has decided other cases, with outcomes such as the opening up of water channels, the construction of recycling plants and the closure of bridges, to be replaced by new technology. This judge has never studied environmental law, but he is acting because of executive inaction.

Veerabhadran Ramanathan, Edward A. Frieman Endowed Presidential Chair in Climate Sustainability of the Scripps Institution of Oceanography at the University of California in San Diego, talked about the impacts of climate change that are scientifically proven. According to Dr Ramanathan, 'when we cross that 1.5°C warming in nine years from now, climate change will move into all of our living rooms'. Therefore, the issue is not overcoming the separation of powers. The issue will be the need to overwhelm the social systems in society, governments, legal institutions, the legislature, etc. 'Legal experts have to be prepared to be overwhelmed.

Please sharpen your skills. We need you'. What is more, enormous funds are needed to build resilience in society, with a special focus on public health and climate refugees, who are going to be in the millions.

As the panel discussion progressed, James Cameron and the speakers continued to talk about the opportunity for the law to play a creative and constructive role. According to Professor Gerrard, laws vary quite considerably from one country to another, and the different legal systems have profoundly different views, but if the democratic majority was given in the US, Congress could pass a very powerful law that could have an enormous impact. According to Ms Rose, it is important to connect litigation with a strong advocacy campaign and to make use of all available opportunities. According to Ms Krsticevic, because of the differences between jurisdictions, it is important to be mindful of those distinctions and to understand what would be a thoughtful, fair, and effective strategy for moving past issues like the separation of powers. Closing the roundtable with the last remark, Ms Ahsan underlined the importance of judges in the climate fight, arguing that 'as judges, you might as well have the last word on the climate crisis. Please make it count for generations to come because we are counting on you'.

6. Keynote 3 “We Need to Change the Rules”

Luisa-Marie Neubauer, Youth Climate Activist, talked about the idea that [“We Need to Change the Rules”](#), and reported about her experience of being involved in the court [case filed against the German government](#) before the German Federal Constitutional Court. According to Ms Neubauer, ‘it is not something that I took any kind of joy from. I am a young democratic person. I want to be able to trust my government and it is not something I would ever aspire to do to sue my own government. It should be a last resort. Yet, after one and a half years of continuing climate activism, of seeing how our government resists taking science seriously and listening to scientists and economists worldwide and sticking to the Paris Agreement, we felt like this was some kind of last resort’.

Even though Ms Neubauer and the other climate activists won their case, a concern that remains is that children and young people who do not know their rights will not fight for them. Nor will people stand up for rights under attack unless they are aware of such. According to Ms Neubauer, it is the responsibility of people involved in the legal and court systems to inform people about their rights and the exercise thereof.

Regarding the role of courts in general, Ms Neubauer argued that the courts will not solve the climate crisis alone. However, there will not be climate justice without justice. In order to defend what the planet has to offer, ‘we need court systems, people involved in anything around legal fights to step up the game, to interfere in all of those injustices happening, in all of that attacking our fundamental rights, of children’s rights, of human rights, of women rights’.

7. Keynote 4 “A Critical Moment Requires Critical Momentum”

Joseph Stiglitz, Nobel Laureate in Economics, Professor at Columbia University and Chief Economist at the Roosevelt Institute, opened the second day of the summit with the speech: [“A Critical Moment Requires Critical Momentum”](#). Having served as a lead author of the IPCC report more than twenty-five years ago, Professor Stiglitz set out how the evidence was overwhelming even back then, that urgent action was needed. The analysis from twenty-five years ago was basically right but flawed in several directions. This means that action is even more urgent now.

The international community has resolved that the risks of exceeding 1.5°C to 2°C cannot be justified by the likely cost of containment. Thus, two questions arise. What are the policies that will achieve these goals? How do we get governments to adopt those policies? Regarding the first question, there is now a widespread understanding that a package of policies entailing pricing, public investment, and regulation is required. Examples of regulations include those that are designed both to directly curtail emissions and to encourage green investments. Professor Stiglitz was confident that it is possible to devise policies that will add relatively little or no cost to the standard of living, and argued that these investments, as well as the innovation that will be spurred, will offer significant increases in standards of living.

Regarding the second question, Professor Stiglitz argued that a rights-based legal approach is important, as doing too little imposes enormous risks on future generations. One manifestation of the disregard for future generations is the discount rate that is used in evaluating future benefits, that is, the benefits of preventing climate change versus the cost of actions today. Under President Trump, the discount rate was 7%, which means that one would not sacrifice more than 3 cents today to give a benefit of a dollar to one's grandchildren in 50 years. The Obama administration, and now temporarily renewed under the Biden administration, used a 3% discount rate, which is better but still not enough. According to Professor Stiglitz, ‘that kind of a discount rate cannot be ethically justified, cannot be economically justified; the consequences of caring too little about the future and ignoring risk is that we do too little’. Thus, there must be some way that legal systems can protect the rights of future generations.

Referring to the public trust doctrine, Professor Stiglitz explained that it requires certain natural and cultural resources to be preserved for future generations, as well as maintained for public use today. The court can, therefore, oversee that the executive branch respects the rights of future generations through its obligations under the public trust doctrine. According to Professor Stiglitz, it is necessary to explore and develop new ways of using legal processes to ‘protect the rights and well-being of those in the future generations’.

8. Roundtable 2 “Insights and Proposals on Climate Litigation and the Separation of Powers”

The Roundtable on [“Insights and Proposals on Climate Litigation and the Separation of Powers”](#) consisted of the six Rapporteurs, who had each participated in a series of closed expert workshops addressing different angles of this topic. They reported the main findings of their respective workshops during this session.

Christina Voigt, Professor at the Department of Public and International Law of University of Oslo, Co-Chair of the Paris Agreement’s Compliance and Implementation Committee, and Chair of WCEL’s Specialist Group on Climate Change at IUCN, participated in the workshop on “The Role of Judges”. Three main issues were discussed in depth by the justices in that the workshop. The first was the role of judges in climate litigation. Not only was there profound understanding that judges can or should participate in climate related cases because of their flexibility or independence, but that judges are obliged to so within the limits of their authority. There is a definite role for judges to play where the legislature is inactive, especially in situations of social challenge. Judges can also clarify the meaning of existing laws and move the law forward — the law is a social construct that is not set in stone. For example, judges can develop a common framework or a common frame of reference for climate litigation, in particular when applying certain principles or standards. The second issue was the parameters within which judges operate when they have climate related cases before them. Agreement existed on the fact that judges have to act within the existing law, whether it is constitutional provisions, sectoral legal provisions, a general duty of cooperation or of care, or human rights law. The temporal and spatial dimension of rights plays a role, and this poses some challenges to the legal system, as the questions arise how to protect future generations but also how to address extraterritorial implications of climate change. Another parameter to consider is the reliability of scientific data, which is dealt with differently across jurisdictions. The third issue is the desirable outcome of cases. Discussed were structural injunctions and concrete requests, and the difficulty of balancing the competences of the judiciary with those of the legislature. In most cases, governments and companies are asked to ‘simply do better’. In a few cases, the courts tell the governments exactly what to do, but these cases seem to be the exception to the general rule of structural injunctions.

Michael B. Gerrard, Andrew Sabin Professor of Professional Practice and Director of the Sabin Center for Climate Change Law at Columbia Law School, participated in the second workshop on “The Role of Judges”. Judges in this workshop, coming from South Asia, the Pacific, South America, and the US, said that they felt they were not violating the separation of powers or deciding a political question because their decisions were rooted in their national constitution, statutes that had been enacted or treaties that had been ratified by their parliaments. Thus,

they were carrying out the constitutional duty of judges to interpret and enforce the applicable law, even if politicians of the moment do not wish (them) to do so. However, the loss of public confidence in the judiciary is concerning judges. On the one hand, if courts issue decisions that seem to be too aggressive or too outside the bounds of the normal, they will face pushback. On the other hand, if judges abdicate their responsibility to act in the face of the crisis, the judiciary could be seen as neglecting their legal duties. As the legislative and executive branches continue to fail to address the climate problem adequately, some of the participant judges argued that they have an obligation to step in and prevent global disaster. Lastly, remedies and compliance mechanisms were discussed, with the judges agreeing that a dialogue amongst them would be helpful to propagate ideas, theories, and methods.

Michael Burger, Senior Research Scholar, Lecturer in Law and Executive Director at the Sabin Center for Climate Change Law at Columbia Law School, participated in the workshop on “Climate Litigation and Science”. The discussion launched with the recognition that there are several distinctions between different legal systems, meaning that the role of science, if there is a role at all, can differ. Moreover, there are different kinds of climate science – attribution science, impact attribution, extreme event attribution, and source attribution. Peer-reviewed scientific studies, IPCC reports and national assessments dominate legal discourse and may provide judges assistance in making their judgments. However, a battle of experts can emerge, and the contentiousness surrounding what is known or unknown may negatively impact judicial confidence to take bold action. In addition, there is a risk that traditional environmental knowledge may be excluded from the courtroom because of bias. Nevertheless, there is no question that climate science matters for courts’ separation of powers analysis. Although discussions tend to focus on mitigation, the dynamic between the separation of powers and climate science is also directly relevant to cases involving adaptation issues. Science will also be necessary to answer questions of foreseeability, causation, and apportionment. During the workshop, several potentially salient areas of science for climate litigation were identified: effort sharing, the science of climate inaction, intergenerational impact attribution, intragenerational impact and source attribution, and negative emissions technology. Lastly, there was wide agreement that the language of scientific communication matters; according to Dr Burger, ‘it will be up to litigators to communicate the best science to the courtroom, and it will be up to judges in courtrooms around the world to apply that science to decide the cases before them’.

David M. Driesen, University Professor at Syracuse University College of Law, participated in the workshop on “Climate Litigation and the Economy”. The workshop focused particularly on climate litigation regarding private markets and private actor responses. The consensus was that litigation from the perspective of fossil fuel companies is a dark cloud that is now beginning to influence their actions using multiple routes. This is illustrated by the ruling against [Royal Dutch Shell in the Netherlands](#), as well as shareholders demanding changes in Exxon's board. Moreover, litigation has led insurance companies to strengthen their efforts to take common disruption into account in their actuarial calculations and to decide what risk to

insure. In fact, investors with fiduciary duties now commonly take climate risks into account. Regarding liability, there is little private law that would create liability for emissions in spite of the many disclosure obligations that exist in some countries. It was also pointed out that litigation may be suboptimal, as it does not provide the stable investment climate associated with a carbon price. Public law cases, such as those featured in the workshop, can influence the liability of corporations and private law. An example is, again, the Dutch Shell case, which relied heavily on the *Urgenda* decision. Regarding the separation of powers, there are some countries where concerns about this doctrine make it very hard to use private law unless there are clear standards that demand very little in the way of policy judgment from the court. In the global South, judges are much less concerned about separation of powers and are more concerned actually about standing up to large corporations. Overall, much of the discussion focused on the multiple pathways with which litigation and climate risks can influence private markets. The general lesson is that litigation is having an impact and it can be expected to have even more of an impact in the future.

Joana Setzer, Assistant Professorial Research Fellow at Grantham Research Institute on Climate Change and the Environment of London School of Economics and Political Science (LSE), participated in the workshop on “Climate Litigation and Politics”. There was general agreement amongst the participants that litigation is a last resort and that courts are no more than second best to resolve the issue. The question that arises, therefore, was whether the rapid increase in litigation undermines the separation of powers? The short answer is that it does not, but three main issues were discussed. The first issue was the role of the judiciary. Undoubtedly, courts have a role in ensuring that any limitations on human rights are justified. By bringing climate cases before courts, civil society is attempting to correct the functioning of the rule of law in a period of emergency. The second issue was that climate cases are not placing extraordinary tasks, but rather that the judiciary is performing an ordinary and appropriate function when determining whether the other branches of government are operating within the limits of the law. The third issue was that, perhaps, the separation of powers is not such a problem after all, as the judiciary is effectively occupying the void left by the other branches. Beyond the matter of the separation of powers, climate litigation is motivating a shift in power to civil society and science. Overall, the participants agreed on three recommendations: (1) rather than justifying judicial law-making as a necessary intrusion in climate policy, a reconceptualization of the separation of powers principle is needed, particularly given that it was originally conceived as a protection against autocracy; (2) it is important that countries adopt national frameworks with remedies that feel safe for judges in their respective jurisdiction; (3) it is important that courts continue the cross-pollination between courts which emerged during the judges panels.

Makane Moïse Mbengue, Professor of International Law and Director at Department of International Law and International Organization of University of Geneva, participated in the workshop on “Climate Litigation and Environmental Defenders”. Three points of consensus were reached by the participants. The first strong consensus was that it is necessary to grant

special protection to environmental human rights defenders, as well as those who are involved in climate change litigation. They are often victims of harassment, defamation, and in some cases, they are murdered. The second consensus was that environmental human rights defenders are core actors in the fight against global warming and that there cannot be effective action on mitigation and adaptation without their full involvement. The third consensus was that it is fundamental to promote and recognise certain environmental rights, such as the right to a healthy environment or other interrelated rights, like the right to water or the rights of indigenous communities. Moreover, the participants agreed on concrete recommendations on how best to enable the protection of environmental human rights defenders, as well as how to address the obstacles that they face. A first set of recommendations covers the promotion of the role of environmental human rights defenders: strengthening capacity building and climate education for both environmental and human rights defenders; strengthening the participation of environmental human rights defenders in climate decision-making processes; ensuring effective access to climate information for environmental human rights defenders. A second set of recommendations relates to facilitating the role of environmental human rights defenders: building networks; developing (financial) resources; reinforcing climate change mitigation strategies; strengthening the accountability of environmental human rights defenders. The last set of recommendations covers the protection of environmental human rights defenders: formulating both a duty to protect environmental human rights defenders and a duty to prosecute or punish violations of their rights in international legal instruments and in domestic law; establishing a rapid response mechanism to protect the violation of the rights of environmental human rights defenders; strengthening the independence of the judiciary.

9. Panel 2 “The Climate Crisis is a Human Rights Crisis”

The Panel on [“The Climate Crisis is a Human Rights Crisis”](#) consisted of **David Boyd**, UN Special Rapporteur on Human Rights and the Environment and Associate Professor of Law, Policy, and Sustainability at University of British Columbia; **Vanessa Nakate**, Climate Activist and Founder of Youth for Future Africa and the Rise Up Movement; **Manuel Pulgar-Vidal**, Global Leader of Climate & Energy at WWF, Former Minister of the Environment of Peru and President of UNFCCC COP20; and **Mary Robinson**, Former President of Ireland, Chair of The Elders, and Former UN Special Envoy on Climate Change and High Commissioner for Human Rights.

Talking about a visit to a village in Fiji, which was one of the first communities in the world to be relocated due to climate change, and the hot temperatures recently experienced on the West Coast of Canada and North America, Professor Boyd started the discussion by underlining that ‘this is an absolute global emergency, and we have to start treating it as such’. Looking at the role of courts in this crisis, they are absolutely justified in providing citizens with effective remedies if legislative and executive branches of government violate their rights. Too many governments today treat human rights as if they are a policy option, but respecting, protecting, and fulfilling human rights is not a policy option for elected governments, it is one of their most fundamental obligations. Thus, according to Professor Boyd, ‘rights-based litigation has a deep legitimacy that empowers or should empower courts to feel quite comfortable in holding governments accountable to their human rights obligations in the context of climate change’. Arguments levied against rights-based climate litigation, claiming that it is a serious threat to democracy, are just another form of duplicitous and dangerous climate denialism and delay. The threat to democracy is the powerful vested interests that have sabotaged climate science and blocked effective climate action for decades. The judiciary should ‘treat these cases as extraordinary, reduce barriers to justice, relax standing rules and fast track cases’. Lastly, Professor Boyd pointed out that research by Professor Annalisa Savaresi already indicates that the existence of a right to a healthy environment increases the likelihood of success in climate litigation. The right to a healthy environment is a critical part of the solution to the global environmental crisis, which includes not only the climate emergency, but also the collapse of biological diversity, pervasive pollution, and the surge in emerging infectious diseases of zoonotic origin. In short: ‘we need to recognise that everyone, everywhere has the right to live in a healthy environment’.

Ms Nakate addressed the human rights crisis with an insight into the conditions in Uganda. Having one of the fastest changing climates in the world, livelihoods in Uganda are affected because of extreme weather events such as floods, landslides, and droughts. According to Ms Nakate, human rights are being violated because of the inaction of leaders and because of the continuous burning of fossil fuels. If the present is catastrophic, then the question that arises is what kind of future can be expected? At the same time, demanding justice, help, and action

from leaders is becoming increasingly difficult, with great obstacles facing activists who protest and demand climate justice. In Uganda, peaceful protesters have been arrested for striking to protect the climate. But because of the impacts on the right to health, the right to life, the right to education, amongst others, activists are turning to courts so that judges can help defend those rights, as well as the right to protest peacefully. 'We need the law to demonstrate that climate action is not a choice. It is an obligation. My future and the future of millions of young people all around the world is in the balance. We need the law to help protect us. We need the law to help protect our presence. We need the law to help protect our future. We need the law to help protect our planet. We need the law to help protect our human rights'.

Mr Pulgar-Vidal highlighted that there is cause to celebrate, given that some of the recent climate decisions were based not only on legally binding instruments, but also on legal instruments that are non-binding. According to Mr Pulgar-Vidal, it is not always about binding instruments, but about how well developed and well-structured these agreements are. 'The Paris Agreement, despite that it was adopted as a non-binding instrument, is probably one of the smartest instruments that we have ever developed in relation to the environment'. Nowadays, the focus lies not only on ambition, but also on the means of implementation. Thus, nationally determined contributions may be instrumental in domestic climate litigation because they reflect how ambitious the country is and the actions that the country is willing to undertake to achieve those objectives. Moreover, there exists a connection between human rights and climate change, and this connection necessitates solutions that find a way for a healthy future and the next generation. The ethical side of solutions is key. 'The balance between human rights and the climate is about the vision, it is about law and policies, the role of courts, and the importance of time'.

Robinson reinforced and built on the points that had already been made during the panel. According to Ms Robinson, 'Vanessa eloquently made the case that the climate crisis is a human rights crisis. I would just add a simple fact. If we do not do the right things and lead to our own extinction, and the extinction of the species who are dependent on our bad deeds, the earth will recover. Mother Nature will come back smiling because there will be no fossil fuel. We are the ones who will suffer'. The world is running out of time, but this year is a key window of opportunity for raising ambition because ahead of COP26, governments are updating their national climate plans. Moreover, companies in all sectors are setting voluntary targets. But because governments and industry are way behind where they need to be, citizens and investors are increasingly turning towards the courts and judges are increasingly stepping up and coming off the side-lines to hold governments and businesses accountable for inadequate targets and implementation. Innovative climate litigation is helping keep up the momentum towards COP26, as countries must submit updated national plans that collectively keep 1.5°C within reach and deliver on climate finance. Taking the recent [German case](#) as an example, it took the government less than a week to come up with a new draft of its climate goals to cut carbon emissions by 65% by 2030 and to push forward its net zero target from 2050 to 2045 after the final decision. This shows how effective litigation can be when a

government rightly complies with the court's ruling. Even though courts are now stepping up, they need to do more. According to Ms Robinson, 'it is time that the International Court of Justice steps in because it is a crisis', and only recently has the World's Youth for Climate Justice asked the United Nations to request an Advisory Opinion from the International Court of Justice on the effects of climate change, human rights, the obligations of States and the interpretation of intergenerational justice.

As the panel progressed, James Cameron and the panellists elaborated on some of these points. Ms Robinson pointed out that there has been an essential shift in focus, as communication has changed. Earlier communication was about science, technology, melting glaciers, and polar bears. While this is important, communication did not centre on people; it was not about human rights. Ms Nakate underlined the importance of courts to help protect the right to peaceful protests, as climate activists all around the world face risks, and it is important for them to speak up. Mr Pulgar-Vidal emphasised that it would be important to bring forward claims that are well supported by science. Lastly, Professor Boyd made further remarks on the right to a healthy environment, arguing that in today's context of the environmental crisis, more courts are starting to interpret the human right to a healthy environment as meaning not only healthy for humans, but also healthy for ecosystems and biodiversity. This is an important development as it is time now to focus on action — action regarding mitigation, adaptation, and loss and damage.

10. Keynote 5 “Our Future in the Balance: Lessons from the Past for Better Action”

Naomi Oreskes, Henry Charles Lea Professor of the History of Science and Affiliated Professor of Earth and Planetary Sciences at Harvard University, spoke about [“Our Future in the Balance: Lessons from the Past for Better Action”](#). According to Professor Oreskes, ‘climate litigation is a last resort. In a perfect world, we would not have to turn to the courts and tribunals to solve the climate problem’. Moreover, ‘what we face now is, frankly, to a large extent, the result of malfeasance. The world has failed to act on climate change in accordance with the scale of the problem, in part because of the deliberate action of bad actors operating in bad faith to stop that action and the inability or incapacity of political leaders to stand up to the pressure imposed by those bad actors’.

Legal redress is, therefore, important because it is the principal means of standing up to wilful and knowing malfeasance. As seen in the past, litigation can be an effective tool. The history of litigation against tobacco, asbestos, and now the manufacturers and marketers of opioids, is extremely encouraging. These cases show that it is possible to take action against large corporations that are very powerful and have armies of well-paid lawyers. Thus, history shows that litigation can be a powerful ‘David versus Goliath strategy’.

However, litigation does not stand alone. Taking tobacco litigation as an example, legal strategies were part of a much broader effort in civil society, carried out by numerous actors over several decades. Legal action was also supported and complemented by action to limit smoking in other ways, through bans on smoking in public places such as airplanes and airports, bars, and restaurants, and through educational efforts, including public service advertising. Like the tobacco litigation, climate litigation can draw the attention of the public to the evidence of what companies have done, as well as how many people have been hurt or will soon be hurt.

The fact that litigation does not stand alone is important to remember. For example, truth and reconciliation commissions have been created around the globe to redress various wrongs, such as apartheid, genocide of indigenous people, murder and disappearances by dictatorial governments and atrocities committed during civil wars. Many of these commissions have been positive forces, enabling citizens to move forward together to rebuild their countries. However, those involved are the first to tell that these successes do not operate independently of other factors. They have occurred because they were connected to other forms of civil action, such as the implementation of political reforms or the creation of mechanisms of compensation and restitution.

Litigation has the benefit that it can be pursued on many levels in many jurisdictions and in various ways, and that positive results in one area can spread to others. As Professor Oreskes concluded, ‘the path we are on here, pursuing climate change litigation in many jurisdictions

and in many different ways is crucially important. But we should also recognise that litigation by itself, no matter how smartly argued, will likely not be enough. We need to find ways to connect the work that we do here to other forms of action on climate change from the most exalted levels of international governance to work on the grassiest of grassroots’.

11. Summit Programme

HAUSFELD



**British Institute of
International and
Comparative Law**

OUR FUTURE IN THE BALANCE

The Role of Courts and Tribunals in Meeting the Climate Crisis

7-8 July 2021

all times Washington DC [ET]

DAY 1:

Plenary session

9:00 am - 9:05 am

Opening remarks



James Cameron (Summit moderator)

*Senior Adviser, Foundation for International Law for the Environment (FILE) and
Pollination Group, and Executive Fellow, Yale Center for Environmental Law &
Policy*

9:05 am - 9:15 am

Keynote #1

“We Are Facing A Planetary Emergency”



Johan Rockström

*Director, Potsdam Institute for Climate Impact Research, and Professor in Earth
System Science, University of Potsdam*

9:15 am - 10:00 am

Panel #1

“Climate Ethics, Health and the Law : Connecting the Dots”



Laurence Boisson de Chazournes

*Professor of International Law, University of Geneva School of Law, Director of
the LL.M. in International Dispute Settlement, and Co-director of the Geneva
Center for International Dispute Settlement*



Stephen Gardiner

Professor of Philosophy and Ben Rabinowitz Endowed Professor of Human Dimensions of the Environment, University of Washington, Seattle



Maria Neira

Director, Public Health, Environment and Social Determinants of Health Department, World Health Organisation

10:05 am - 10:15 am

Keynote #2

“Climate Litigation: The Second-Best Option for Governing Climate Change”



Lavanya Rajamani

Professor of International Environmental Law, Faculty of Law, University of Oxford, and Yamani Fellow in Public International Law, St Peter's College, Oxford

10:15 am - 11:15 am

Roundtable #1

“Climate Litigation and the Separation of Powers: Global Perspectives”



Irum Ahsan

Advisor, Office of the Compliance Review Panel, Asian Development Bank



Michael B. Gerrard

Andrew Sabin Professor of Professional Practice and Director, Sabin Center for Climate Change Law, Columbia Law School



Viviana Krsticevic

Executive Director, Center for Justice and International Law



Corinne Lepage

Senior Lawyer and Co-founder, Huglo Lepage Avocats, and Former French Minister of the Environment



Veerabhadran Ramanathan

Edward A. Frieman Endowed Presidential Chair in Climate Sustainability, Scripps Institution of Oceanography, University of California, San Diego



Amy Rose

Senior Lawyer, Director of Litigation, Compliance & MEL, ClientEarth



Elizabeth Wathuti

Climate Activist, Founder and President, Green Generation Initiative

11:15 am - 11:25 am

Keynote #3

“We Need To Change The Rules”



Luisa-Marie Neubauer

Youth Climate Activist

11:25 am - 11:30 am

Closing remarks for Day 1

11:45 am - 1:45 pm (A) / 6:00 pm - 8:00 pm (B)

Simultaneous expert workshops (private Zoom link) and their Facilitators:

1. The Role of Judges (time-zone A)



Dinah Shelton

Manatt/Ahn Professor of International Law Emeritus, George Washington University, and Former President, Inter-American Commission on Human Rights



Emmanuel Ugirashebuja

Former President of the East African Court of Justice, and Dean Emeritus of the National University of Rwanda, Faculty of Law

2. The Role of Judges (time-zone B)



Brian J. Preston

Chief Judge of the Land and Environment Court of New South Wales, and Governing Committee of the Global Judicial Institute on the Environment



Pilar Moraga Sariego

Associate Professor, Centre for Environmental Law, Faculty of Law, University of Chile

3. Climate Litigation and Science (time-zone A)



Veerabhadran Ramanathan

Edward A. Frieman Endowed Presidential Chair in Climate Sustainability, Scripps Institution of Oceanography, University of California, San Diego



Annalisa Savaresi

Associate Professor of International Environmental Law, University of Eastern Finland, and Senior Lecturer in Environmental Law, University of Stirling

4. Climate Litigation and the Economy (time-zone A)



Graciela Chichilnisky

CEO and Co-Founder of Global Thermostat, and Professor of Economics and Mathematical Statistics, Columbia University



Daniel C. Esty

Hillhouse Professor of Environmental Law and Policy, School of the Environment and Clinical Professor of Environmental Law & Policy, Yale Law School

5. Climate Litigation and Politics (time-zone A)



Sam Adelman

Reader at the Law School, University of Warwick, and Research Professor, Nelson Mandela University and North-West University, South Africa



James R. May

Visiting Distinguished Professor of Law, S.J. Quinney College of Law, University of Utah, President, Dignity Rights International, and Special Representative, International Council of Environmental Law

6. Climate Litigation and Environmental Defenders (time-zone A)



Erin Daly

Professor of Law, Delaware Law School, Executive Director of Dignity Rights International and Director of the Global Network for Human Rights and the Environment



Viviana Krsticevic

Executive Director, Center for Justice and International Law

DAY 2:

Plenary session

9:00 am - 9:05 am

Opening remarks



James Cameron (Summit moderator)

*Senior Adviser, Foundation for International Law for the Environment (FILE) and
Pollination Group, and Executive Fellow, Yale Center for Environmental Law & Policy*

9:05 am - 9:15 am

Keynote #4

“A Critical Moment Requires Critical Momentum”



Joseph Stiglitz

*Nobel Laureate in Economics, University Professor at Columbia University, and
Chief Economist, Roosevelt Institute*

9:15 am - 10:15 am

Roundtable #2

“Insights and Proposals on Climate Litigation and the Separation of Powers”

Rapporteurs of the 6 Workshops:



Christina Voigt

*Professor, Department of Public and International Law, University of Oslo, Co-Chair
of the Paris Agreement’s Compliance and Implementation Committee, and Chair,
WCEL’s Specialist Group on Climate Change, IUCN*



Michael B. Gerrard

*Andrew Sabin Professor of Professional Practice and Director, Sabin Center for
Climate Change Law, Columbia Law School*



Michael Burger

*Senior Research Scholar, Lecturer in Law and Executive Director, Sabin Center for
Climate Change Law, Columbia Law School*



David M. Driesen

University Professor, Syracuse University College of Law



Joana Setzer

Assistant Professorial Research Fellow, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science (LSE)



Makane Moïse Mbengue

Professor of International Law and Director, Department of International Law and International Organization, Faculty of Law, University of Geneva

10:15 am - 11:15 am

Panel #2

“The Climate Crisis is a Human Rights Crisis”



David Boyd

UN Special Rapporteur on Human Rights and the Environment, and Associate Professor of Law, Policy, and Sustainability, University of British Columbia



Vanessa Nakate

Climate Activist and Founder, Youth for Future Africa and the Rise Up Movement



Manuel Pulgar-Vidal

Global Leader of Climate & Energy, WWF, Former Minister of the Environment of Peru and President of UNFCCC COP20



Mary Robinson

Former President of Ireland, Chair of The Elders, Former UN Special Envoy on Climate Change and High Commissioner for Human Rights

11:15 am - 11:30 am

Keynote #5

“Our Future in the Balance: Lessons from the Past for Better Action”



Naomi Oreskes

Henry Charles Lea Professor of the History of Science and Affiliated Professor of Earth and Planetary Sciences, Harvard University

11:30 am - 11:40 am

Summit closing remarks

Supported by



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12. Workshop Participants



British Institute of
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HAUSFELD

OUR FUTURE IN THE BALANCE

The Role of Courts and Tribunals in Meeting the Climate Crisis
7 July 2021

Workshop Participants

1. A. The Role of Judges: 11:45 am – 1:45 pm ET

Co-Facilitators:

Dinah Shelton, *Manatt/Ahn Professor of International Law Emeritus, George Washington University and Former President of the Inter-American Commission on Human Rights*
Emmanuel Ugirashebuja, *Dean Emeritus, National University of Rwanda and Past President of the East African Court of Justice*

Rapporteur:

Christina Voigt, *Professor for Public and International Law, University of Oslo, Co-Chair of the Paris Agreement's Compliance and Implementation Committee and Chair of the WCEL's Specialist Group on Climate Change, International Union for Conservation of Nature*

Participants: Former and Current Judges

1. B. The Role of Judges: 6:00 pm – 8:00 pm ET

Co-Facilitators:

Brian J Preston, *Chief Judge of the Land and Environment Court of New South Wales and Governing Committee of the Global Judicial Institute on the Environment (GJIE)*
Pilar Moraga Sariego, *Associate Professor at the Centre for Environmental Law of the Law Faculty, University of Chile*

Rapporteur:

Michael B Gerrard, *Andrew Sabin Professor of Professional Practice and Director at the Sabin Center for Climate Change Law, Columbia Law School*

Participants: Former and Current Judges

2. Climate Litigation and Science: 11:45 am – 1:45 pm ET

Co-Facilitators:

Veerabhadran Ramanathan, *Edward A Frieman Endowed Presidential Chair in Climate Sustainability at Scripps Institution of Oceanography, University of California, San Diego*
Annalisa Savaresi, *Associate Professor of International Environmental Law, University of Eastern Finland and Senior Lecturer in Environmental Law, University of Stirling*

Rapporteur:

Michael Burger, *Senior Research Scholar, Lecturer in Law and Executive Director at the Sabin Center for Climate Change Law, Columbia Law School*

Participants:

1. Christine Bakker, *Visiting Lecturer, Sant'Anna School of Advanced Studies in Pisa, and Visiting Research Fellow, British Institute of International and Comparative Law*
2. Serena Baldin, *Associate Professor of Comparative Public Law, University of Trieste*
3. Dennis van Berkel, *Legal Counsel, Urgenda Foundation*
4. Roberto Buizza, *Full Professor in Physics, Scuola Superiore Sant'Anna*
5. Christian Calliess, *Professor for Public Law and European Law, Freie Universität Berlin*
6. Robin Kundis Craig, *Robert C. Parkard Trustee Chair in Law, USC Gould School of Law*
7. Matteo Fermeglia, *Assistant Professor for International and European Law, Hasselt University*
8. Peter C Frumhoff, *Director of Science & Policy and Chief Climate Scientist, Union of Concerned Scientists*
9. Michael Hausfeld, *Chair of Hausfeld, Hausfeld*
10. Richard (Rick) Heede, *Director, Climate Accountability Institute*
11. Diana Kearney, *Legal and Shareholder Advocacy Advisor, Oxfam America*
12. Sarah Mead, *Legal Associate, Urgenda – Climate Litigation Network*
13. Michael Mehling, *Deputy Director at MIT Center for Energy and Environmental Policy Research and Professor at University of Strathclyde*
14. Nikki Reisch, *Director, Climate & Energy Program, CIEL*
15. Cesare P Romano, *Professor of Law, Loyola Law School, Los Angeles*
16. Joeri Rogelj, *Director of Research, Grantham Institute for Climate Change and the Environment, Imperial College London*
17. Eric Steinberger, *CEO and Co-Founder, ClimateScience*
18. Anne Stevignon, *Postdoctoral Researcher, University of Paris 1 (ISJPS)*
19. Katalin Sulyok, *Assistant Professor in International Law, ELTE University, Budapest*
20. Geoffrey Supran, *Research Fellow, Harvard University*
21. Kelo Uchendu, *Clinton Global Initiative Fellow, Founder of Gray2Green Movement and Co-founder of Zentrum*
22. Sejong Youn, *Director Climate Finance Program, Solutions for Our Climate*

3. Climate Litigation and the Economy: 11:45 am – 1:45 pm ET

Co-Facilitators:

Graciela Chichilnisky, *Chief Executive Officer and Co-Founder, Global Thermostat and Professor of Economics and Mathematical Statistics, Columbia University*

Daniel C Esty, *Hillhouse Professor of Environmental Law and Policy, School of the Environment and Clinical Professor of Environmental Law & Policy, Yale Law School*

Rapporteur:

David M Driesen, *University Professor, Syracuse University College of Law*

Participants:

1. Jelena Aparac, *Chair Rapporteur, UN Working Group on Mercenaries*
2. Jeanette Bayoumi, *Associate, Hausfeld*
3. Sir William Blair, *Professor of Financial Law and Ethics, Queen Mary University of London*
4. Lormeteau Blanche, *Researcher, Université de Nantes, Laboratoire Droit et Changement Social*
5. Pierre Calame, *Chair Emeritus of the Fondation Charles Léopold Mayer pour le progrès de l'homme and Chair Citego and Fabrique des Transitions*
6. Chibeze Ezekiel, *Environmental Activist and 2020 Goldman Prize Recipient for Africa*
7. Michael Faure, *Professor of Comparative Private Law and Economics, Maastricht University and Erasmus School of Law, Rotterdam*
8. Tracy-Lynn Field, *Professor Law, University of the Witwatersrand*
9. Markus W Gehring, *Director of Studies, University of Cambridge, Hughes Hall*
10. Gustavo Grebler, *Partner, Grebler Advogados*
11. Vanessa Havard-Williams, *Partner, Linklaters*
12. Ruth Keating, *Barrister, 39 Essex Chambers*
13. Sean Kidney, *Chief Executive Officer, Climate Bonds Initiative*
14. Vedantha Kumar, *Manager of Strategic Climate Litigation and Carbon Markets, Children's Investment Fund Foundation (CIFF)*
15. Guilherme Leal, *Partner, Graça Couto Advogados*
16. Ida Levine, *Director, Impact Investing Institute*
17. Iain MacNeil, *Professor of Commercial Law, University of Glasgow*
18. Nema Milaninia, *Board of Advisors, Center for Climate Crime Analysis*
19. Jason Reeves, *Lawyer, Zelle LLP*
20. Deepa Sutherland, *Solicitor, Zelle LLP*
21. Deborah Schwartz, *Publicist, Hausfeld*
22. Patrick Thieffry, *Avocat (Paris) and Attorney at law (N.Y.), Independent International Arbitrator*
23. Bridget Uebel, *Hausfeld*
24. Sergio Weguelin, *Partner, Maker Sustentabilidade*
25. Jonathan Wiener, *Perkins Professor of Law and Professor of Environmental Policy, Duke University*

4. Climate Litigation and Politics: 11:45 am – 1:45 pm ET

Co-Facilitators:

Sam Adelman, Reader at the Law School, University of Warwick, and Research Professor, Nelson Mandela University and North-West University, South Africa

James R May, Visiting Distinguished Professor of Law, S.J. Quinney College of Law, University of Utah, President, Dignity Rights International, and Special Representative, International Council of Environmental Law

Rapporteur:

Joana Setzer, Assistant Professorial Research Fellow at the Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science

Participants:

1. Ivano Alogna, Arthur Watts Research Fellow in Environmental and Climate Change Law, BIICL and Sorbonne Law School (Paris 1)
2. Frank Biermann, Professor of Global Sustainability Governance, Copernicus Institute of Sustainable Development
3. Laura Burgers, Assistant Professor, Amsterdam Centre for Transformative Private Law
4. Cordelia Bähr, Environmental Lawyer, bähr ettwein Attorneys at Law
5. John Cerone, Professor, The Fletcher School (Tufts University)
6. Esmeralda Colombo, Research Fellow, Centre for Climate and Energy Transformation, University of Bergen
7. Christina Eckes, Professor of European Law, University of Amsterdam
8. Filippo Paolo Fantozzi, Associate, Urgenda – Climate Litigation Network
9. Louise Fournier, Legal Counsel, Climate Justice & Liability, Greenpeace International
10. Scott Gilmore, Of Counsel at Hausfeld, Hausfeld
11. Andrew Jackson, Assistant Professor of Law, University College Dublin
12. Louis J Kotzé, Research Professor of Law, North-West University, South Africa
13. Lucy Maxwell, Senior Legal Associate, Urgenda – Climate Litigation Network
14. Ana Lucía Maya-Aguirre, Director, Observatory for Marine and Coastal Governance
15. Alice de Moraes Amorim Vogas, Humboldt Chancellor Fellow, Alexander von Humboldt Foundation
16. Lavanya Rajamani, Professor of International Environmental Law, University of Oxford
17. Laura Schuijers, Fellow, The University of Melbourne
18. Lucy Stone, Director, Foundation for International Law for the Environment (FILE)
19. Jasper Teulings, Director Strategic Litigation (Climate), Children’s Investment Fund Foundation
20. Marta Torre-Schaub, Senior Research Professor, Université Paris 1 Sorbonne
21. William Vazquez, Staff Attorney, Hausfeld
22. Margaretha Wewerinke-Singh, Attorney, Blue Ocean Law
23. Marc Willers, Barrister, Garden Court Chambers

5. Climate Litigation and Environmental Defenders: 11:45 am – 1:45 pm ET

Co-Facilitators:

Erin Daly, *Professor of Law, Delaware Law School, Executive Director of Dignity Rights International and Director of the Global Network for Human Rights and the Environment*
Viviana Krsticevic, *Executive Director, Center for Justice and International Law*

Rapporteur:

Makane Moïse Mbengue, *Professor of International Law and Director, Department of International Law and International Organization, Faculty of Law, University of Geneva*

Participants:

1. Sumudu Atapattu, *Director of Research Centers and Senior Lecturer, University of Wisconsin Law School*
2. Summer Blaze Aubrey, *Law Fellow, Indigenous Human Rights Defenders and Corporate Accountability Program*
3. Caio Borges, *Portfolio Manager – Law and Climate, Institute for Climate and Society*
4. Maria Valeria Berros, *Researcher and Professor, Universidad Nacional del Litoral*
5. Larissa Boratti, *Researcher, Research Group GPDA and Brazilian Lawyer, UFSC*
6. David Boyd, *Special Rapporteur on Human Rights and the Environment, UN*
7. Billiet Carole, *Head Environmental Law Unit, UHasselt and Partner Equal Partner Avocats*
8. Kristin Casper, *Interim General Counsel, Greenpeace International*
9. Daniel Cerqueira, *Program Director, Due Process of Law Foundation*
10. Michelle Cook, *Founder of Divest Invest Protect, Indigenous Peoples Law and Policy Fellow, Director Indigenous Human Rights Defenders Programme, University of Arizona*
11. Sébastien Duyck, *Senior Attorney, Center for International Environmental Law*
12. Emilie Gaillard, *General Coordinator of the Normandy Chair for Peace, Normandy Chair for Peace, SciencesPo Rennes*
13. Ingrid Gubbay, *Head of the Human Rights and Environmental Law Team, Hausfeld*
14. Kristen Hite, *International Environmental Law & Global Climate Policy Professor, University of Maryland, and Associate Director for Climate, Oxfam America*
15. Alina Holzhausen, *PhD Student, University of Aberdeen and Research Assistant in Environmental and Climate Change Law, BIICL*
16. José Rubens Morato Leite, *Professor of Environmental Law of Federal University of Santa Catarina, Brazil, IUCN Academy of Environmental Law*
17. Vanessa Nakate, *Climate Activist and Founder, Youth for Future Africa and the Rise Up Movement*
18. Ottavio Quirico, *Associate Professor, The Australian National University, University of New England and European University Institute*
19. Maria Antonia Tigre, *Director for Latin America, The Global Network for Human Rights and the Environment (GNHRE)*
20. Marina Demaria Venância, *Junior Deputy Chair, IUCN World Commission on Environmental Law, Climate Change Specialist Group*
21. Elizabeth Wathuti, *Founder, Green Generation Initiative*
22. Gerd Winter, *Professor of Law, University of Bremen*

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