Examining States Judicial Response to Issues of Climate Change

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Abstract

Climate change has become a threat without borders with grave unprecedented consequences. The Supreme Court of Netherlands in the case of Urgenda construed the states positive human rights obligations as requiring a 25percent reduction of its greenhouse gas emissions by 2020 compared with 1990 levels. This article examines how judicial precedent can decide the level of state effort required to mitigate climate change. The paper finds that judges have predominantly approached this issue by seeking to identify an elusive benchmark, either by deduction from global objectives or induction from state conduct. This article establishes that the judicial assessment of a state's requisite efforts inevitably relies on equity infra legem. Acknowledging this, judges could learn from the international courts experience with establishing clarity in the midst of vague legal rules.

Key Words: Climate Change, Mitigation, Adaptation, Judges.

1. INTRODUCTION

States' have unanimously identified climate change as a common concern of mankind, and are committed to regulate their greenhouse gas (GHG) emissions to mitigate climate change.[1] In particular, the Parties to the Paris Agreement[2] have committed to pursue specific objectives on climate change mitigation in the 2020s

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1 Benoit Mayer, The Judicial assessment of States' action on climate change mitigation (Cambridge University Press, 2022) 8

2 United Nations Framework Convention on Climate Change 2015.

as showed in their nationally determined contribution (NDC), and some parties have also communicated their long-term low GHG emission development strategies. Yet, decades of international negotiations have not prevented GHG emissions from rising, and from doing so at an increasing rate, save only for brief respites due to a major pandemic and financial crisis. The success of agreements on climate change mitigation can be assessed against their own objectives of preventing dangerous interference with the climate system and holding global warming around 2.7 degrees Celsius by 2100.[3] Considering these analysis, the parties to the United Nation Framework Convention on Climate Change (UNFCCC)[4] emphasized with serious concern the urgent need to address the significant gap between their collective objective and the aggregate effect of their individual commitments.[5] States in their own admission, are failing to adopt and implement the necessary measures to prevent dangerous interference with the climate system.

In a global response to this shortfall in national ambition, plaintiffs have argued that states, while possibly fulfilling specific commitments under the UNFCCC regime, are failing to comply with their obligations.[6] Many recent cases before national courts invoke a general mitigation inferred from various sources of international or domestic law in this regard, referring for instance to human right treaties, constitutional law on the protection of fundamental rights and the environment, administrative law, or tort law.

The Supreme Court of Netherlands in the case of *Urgenda v the Netherlands*[7] upheld an interpretation of the European Convention on Human Rights (ECHR) as requiring the state to decrease its GHG emissions by at least 25 per cent by 2020 compared to 1990 to protect the rights to life and to family life within its territory. Similar claims were partly successful in *Klimaatzaak v Belgium*,[8] where a court of first instance held that

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3 Art 4 (1) (b) UNFCCC
4 2015
5 Art 4 (19) UNFCCC
6 [22 December 2020] Supreme Court of Norway decision in Ungdon v Norway 20-051052SIV-HRET
7 [24 June 2015] District Court of Hague ELI:NL:RBDH:2015:7145
8 [17 June 2021] TPI-F Bruxelles 2015/4585/A

Belgium's mitigation action fell short of its obligation under tort and human rights law, and in *Grande-Synthe v France*[9] the State Council ordered the French government to devise more ambitious measures on climate change mitigation within ten months to comply with the states own long-term objectives.

A state's general obligation is generally understood as an obligation of conduct, it requires the state to exercise due diligence and to take all appropriate measures to mitigate climate change. Yet, it is difficult to always determine precisely what this obligation entails. In some cases, courts are merely tasked with assessing whether the state has taken some of the necessary adaptation of a national mitigation strategy that is scientifically sound, sufficiently specific, and does not unreasonably burden future generations.[10] In the other more holistic cases that are the focus of this paper, courts are asked to determine the overall level of effort a state must make on climate change mitigation, typically in the form of an emission reduction percentage to be achieved by a given time. This article contributes to a reflection on the methodology that a judge could use in such holistic cases when she accepts to determine a state's required level of mitigation action. The methodological question addressed in this article arises in comparable ways before national or international courts. While the diversity of legal systems has obvious implications on many aspects of climate litigation.

2. CONCEPTUAL CLARIFICATION

a. ***Climate change:*** Climate change generally refers to the variability in our climate that has been identified since early 20th century.[11] Over a period of time, this has resulted in a change in the climate pattern with multi-dimensional worldwide impact. In order to enable the international community address the challenges posed by climate change, the United Nation established the Kyoto Protocol

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9 [Conseil d' Etat 1 July 2021] ECLI;FR:CECHR:2021:A27301.20210701

10 Duarte Agostinho v Portugal 39371/20 available at www.hudoc.echr.coe.int/eng?i=001- Accessed 10 August 2022

11 B. Mayer, 'Judicial Assessment of State Action on Climate Change' Leiden Journal of International Law [2022] 4-24

(KP)[12] as a complementary instrument to the United Nations Framework Convention on Climate Change (UNFCCC).[13] These two documents constitute the policy, legal and institutional framework for combating the impact of climate change. The two prolonged objectives of the UNFCCC are to stabilize the climate at a level that would prevent dangerous anthropogenic interference with the climate system and in a time frame sufficient to allow ecosystem to adapt naturally to climate change, thereby ensuring that food production is not threatened, and to enable economic development to proceed in a sustainable manner. To achieve this objectives, the KP introduced two mechanisms: "adaptation" and "mitigation".[14]

b. ***Mitigation:*** Mitigation on the other hand, refers to the anthropogenic intervention to reduce the sources or enhance the sinks of greenhouses gases.[15] Thus, Climate mitigation is any action taken to permanently eliminate or reduce the long-term risk and hazards of climate change to human life and property.[16] However, there are impacts of climate change that will neither be mitigated, nor adapted to. These are generally covered by the term 'loss and damage'.[17] While the term loss and damage are not defined under the UNFCCC or other legal instruments, a general recognized definition of 'loss'[18] are those 'irrecoverable negative impacts, such as loss of freshwater resources or culture or heritage, while 'damage' are those that can be recovered, such as impacts on infrastructure related to violent weather events or damage to mangroves from coastal surges.[19]

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12 Kyoto Protocol to the United Nations Framework Convention on Climate Change 1998
13 Ibid.
14 Art 2 (a) (i)-(viii) Kyoto Protocol
15 Art 5 (2) Kyoto Protocol 1998
16 Ibid.
17 Oxford Language Dictionary (10th edn 2022)
18 Ibid.
19 Ibid.

c. ***Adaptation:*** The word adaptation according to the UNFCCC refers to adjustments in ecological-social-economic systems in response to actual or expected climatic stimuli, their effects or impacts; the building of a climate-resilient society that is able to withstand or recover quickly from difficult conditions caused by the adverse effects of climate change.[20]

d. ***Judges:*** Judges are public officers appointed to decide cases in a law court. They adjudicate over issues brought before them.[21] They are vested with the authority to hear, determine, and preside over legal matters brought in a court of law. They have the authority and responsibility to preside in a court, try lawsuits and make legal rulings.[22] They decide how the law should be applied.[23]

3. STATE'S GENERAL MITIGATION OBLIGATION ON CLIMATE CHANGE

A distinction can be made between state's specific and general obligations on climate change mitigation. Specific obligations are those where content is defined in written documents such as treaties or statutes.[24] For instance, the Kyoto Protocol established quantified emission limitation and reduction commitments (QELRCs)[25] for developed country parties in a 'first' commitment period from 2008-2-12; Doha Amendment[26] required some of these parties to achieve another QELRC in a second commitment period from 2013- 2020. Likewise, every party to the Paris Agreement is bound by an obligation of conduct to take appropriate measures to achieve the

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20 Art 4 UNFCCC

21 https://www.law.cornell.edu.wex Accessed 10 August 2022

22 https://www.merriam-webster.com Accessed 10 August 2022

23 Ibid.

24 B Mayer, 'Obligations of conduct in the international law on climate change: Concluding Observations 5th -6th Report of Belgium CRC/C/BEL/CO/5-6 (2019) 35

25 Quantified Emission Limitation and Reduction Commitment (this is a legally binding targets and timetable defined under the Kyoto Protocol for the limitation or reduction of greenhouse gas emissions for developed countries.

26 At the 2012 UN Climate Change Conference in Doha, Qatar, governments consolidated the gains of the last three years of international climate change negotiations and opened a gateway to necessary greater ambition and action on all levels.

mitigation objectives of its successive NDCs, and some NDCs may also constitute unilateral declarations capable of creating legal obligations, including obligations of result.[27] These international commitments are increasingly reflected in statutory law.[28] While these obligations may come with clear and specific standards, they only reflect what states are willing to commit to; as such, they often lack ambition. By states own admission, these commitments fall short of what is needed to achieve the collective objectives agreed upon.[29]

Besides these specific obligations, states have also a general obligation to mitigate climate change implied from general legal principles in international and, often. Domestic law. On the international plane, this general mitigation obligation partially reflected in the UNFCCC is inferred from the general premises of the international legal order.[30] The principle of sovereign equality implies that every state has due diligence obligation to respect the rights of others, in particular to protect within its territory the rights of other states, and not to allow knowingly its territory to be used for acts contrary to the rights of other states'.[31] More or specifically, every state must ensure that activities within their jurisdiction or control do not cause damage to the other environment of other states or of areas beyond the limits of national jurisdiction[32]

This obligation may also apply to global environmental harm, such as climate change as a problem whose global nature calls for the widest possible cooperation by all countries. In practice, plaintiffs rely predominantly on domestic or international human rights instruments, as these instruments often allow standing before national courts and regional human rights courts, or access to treaty bodies, they submit that a states' general mitigation obligation is implied by its obligation to protect human rights from far-reaching

27 Art 3 UNFCCC 2015
28 Ibid.
29 Ibid.
30 Art 4 and 6 UNFCCC
31 Art 2 (1) of the United Nations Charter 1945
32 Art 55 (1) Kyoto Protocol to UNFCCC 1997

impacts of climate change.[33] The application of states general mitigation obligation is not necessarily displaced by the adoption of specified commitments especially when these commitments are determined nationally, as climate treaties create legal obligations, not rights, they do not prevent the application of other obligations of the same nature. Likewise, under domestic law, precise statutory rules do not necessarily displace mitigation obligations inferred from general legal principles. [34]

On the other hand, the general expectation is that states specified mitigation commitments would generally be consistent with norms defined by prevailing trends, such as customary international law as the latter presupposes a general state practice, human rights treaties interpreted in light of state practice, for instance following the common ground method, or the duty of care construed partially by reference to common practice. A judge could even be inclined to defer to a state's own position on the matter. Yet, to apply the law in an effective and impartial way, judges should also be prepared to find a states' specific commitment insufficient with its general obligation. States' admission of the existence of an ambition gap suggests that some states' commitments fall short of their general mitigation obligation requirements.

4. STATE'S POLICY FRAMEWORK ON MITIGATION

As mentioned earlier, Mitigation is an anthropogenic intervention to reduce the sources or enhance the sinks of greenhouse gases.[35] In India for instance, renewable energy policy is an example of good practice of mitigation for it has both short term energy access and long-term energy security sustainable development mitigation relevance. It is built on a country driven development

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33 Petition to the Human Rights Committee, 'Torres Strait Islanders/Australia (Filed 13 May 2019)

34 B Mayer, 'International Law Obligations Arising in Relation to National Determined Contributions' TEL [2018] (7) 251

35 Ibid.

process linked with five years plan cycles with commitment at the highest political level.[36]

India's growth in energy-related carbon dioxide emissions was reduced over the last decades through economic restructuring, enforcement of existing clean air laws by the nation's highest court, and renewable energy programs.[37] In 2000, energy policy initiatives reduced carbon emissions by 18 million tons, over 5 percent of India's gross carbon emissions. In addition, about 120 million tons of additional carbon mitigation could be achieved over the next decade at a cost ranging from $0-15 per ton. Major opportunities include improved efficiency in both energy supply and demand, fuel switching from coal to gas, power transmission improvements, and afforestation.[38] Many of these targets have been achieved with the help of organisations like the World Bank,[39] United Nations Development Programme (UNDP) and Global Environment Facility (GEF). In fact, since the GEF's Pilot Phase, the World Bank and the UNDP have been the primary implementers of projects addressing policy and regulatory frameworks, with important contributions by the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organisation (UNIDO), and other agencies for instance, in India, the Energy Efficiency project of the World Bank helped the government to decentralized procedures in the power sector and promote energy efficiency.[40]

Furthermore, India's National Climate Change Action Plan (NAPCC) unveiled on the 30th of June 2008 which focuses on gradually moving towards renewable sources of energy, high energy efficiency and less a carbon-intensive growth pattern.[41] The NAPCC

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36 India Developing renewable energy targets and supporting strategieshttps://mitigationpartnership.net/sites/default/files/india_gpa_short.pdf accessed 9 August 2022.

37 India Developing renewable energy targets and supporting strategies,https//mitigationparnership.net/sites/default/file/indiagpa_short.pdf> Accessed 10 August 2022

38 Ibid.

39 The World Bank's Role in the Electric Power Sector <http://elibrary.worldbank.org/doi/pdf/10.1596/0-8213-23180>n Accessed 10 August 2022

40 Ibid.

41 Ibid.

focuses on eight national missions integrated with the country's SD objectives as the national strategy to combat climate change. Through this mechanism, the Action Plan seeks to put into action long-term, multi-prolonged, and integrated strategies[42] for achieving key goals.

India's moderately advanced in identifying strategies to mitigate GHG emissions, improve the country's energy security, and adapt to the impacted of climate change. Other strategies adopted by the government include; provision of subsidies for CDM projects with evident benefits, making intensive efforts to acquire international recognition for its unilateral Clean Development Mechanism (CDM) projects, and the encouragement of small scale CDM projects spanning and targeted at the development of all sectors of its economy.[43] Apart from this, a dispute resolution mechanism was put in place to resolve conflicts that may lead to arbitration, especially on small scale CDM projects.[44] These areas of strength may not be unconnected with the fact that India has a National Environmental Policy and NAPCC, and also a sense of national commitment towards achieving its goals.[45] As a way of restricting the level of foreign investment in particular sectors, India does not allow foreign direct investment in plantations Institutional Framework for mitigation in India.

5. THE INDETERMINACY OF A STATE'S REQUISITE LEVEL OF MITIGATION ACTION ON CLIMATE CHANGE

State's general mitigation obligation is an obligation of conduct, like the international or domestic law obligation from which it is inferred, every state must exercise due diligence, using all the means at its disposal, and taking all appropriate measures, to reduce GHG emissions within its jurisdiction.[46] Surely, however, all means

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42 National Strategy Report CDM Implementation in India. 83-101,http://www.teriin.org/nss/fullreport.pdf.Accessed 9 August 2022.

43 Ibid.

44 Erima Gloria Orie, The Clean Development Mechanism as a tool for Sustainable Development: A case for regulatory action (2013 Unpublished Ph.D. Thesis Nigerian Institute of Advance Legal Studies University of Lagos)

45 Ibid.

46 Art 4 & 6 UNFCCC

at its disposal must not be understood literally: no state can be expected to invest all its resources in the pursuance of the sole goal of preventing transboundary environmental harm or to protect human rights if only because allocating all its resources to the pursuance of one goal would inevitably divert them from others.[47]

Rather than pursuing climate change mitigation at all costs, states are required to exercise reasonable care.[48] State practice unveils some principles that may help to interpret this standard. In particular, treaties resolutions, and declarations suggest that states must co-operate on the prevention of global environmental harm, including climate change, in light of their common but differentiated responsibilities and respective capabilities (CBDRRC).[49] Accordingly, developed states have accepted that they should bear additional obligations while also recognizing the need to promote equitable and appropriate contributions by developed country parties, taking into account their starting points and approaches to climate change mitigation, economic and technological capacities, and other individual circumstances.[50] NDCs have frequently emphasized the relevance of a state's capacity to reduce its GHG emissions without disproportionately affecting its economic development or its efforts to adapt to the impact of climate change.

The member states shared their efforts for the fulfilment of joint commitments based on the need for sustainable economic growth across the Community, taking into account the relative per capital GDP of member states.[51] These principles, however, are far from defining a clear and specific standard to assess a state's requisite level of mitigation action. The fundamental disagreement regarding the meaning of equity and CBDRRC- what ought to be common or differentiated, on what grounds, and to what extent have

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47 Ibid.

48 Tran Hong Ha, International Environmental Law Multilateral Environmental Agreements (International Publishing House 2017)

49 Common but differentiated responsibilities principle of international environmental law provides that all states are responsible for addressing global environmental destruction yet not equally responsible.

50 Art 3 (1) & 4 of UNFCCC

51 Ibid.

plagued international negotiations from the outset.[52] There is no easy way for a judge to determine a solution, which state representatives failed to achieve over three decades of intense negotiations.[53] According to Daniel Bodansky,[54] determining a state's requisite mitigation action involves tremendously complex trade-offs between different values, which is a formidable task for any court.

6. DUTY OF THE COURTS TO ADJUDICATE ON CLIMATE CHANGE MATTERS

Having established that a state has a general obligation to mitigate climate change, a judge will not find a readily available benchmark to assess the state compliance with this obligation or the appropriate remedy. The judge would then be placed in the uncomfortable position of having to apply a legal obligation with an undetermined content. Yet, the judge generally cannot escape deciding an admissible case.

National courts have different approaches to the justiciability of a state's mitigation action. It has been suggested that the controversial US doctrine could exclude the justiciability of disputes that cannot be decided on the basis of judicially discoverable and manageable standards. Alternatively, the court of Appeal in *Juliana v US*[55] held that the doctrine of separation of powers precluded the judiciary from passing judgement on the sufficiency of the state's mitigation action since it could not provide effective remedies. Yet, as judge Staton noted in his dissenting opinion, such finding of non-justifiability is particularly problematic in cases concerning human rights and other fundamental principles where judges have a constitutional mandate to intervene. Difficulty in determining the applicable standard does not justify a denial of justice. Most national courts have adopted a more nuanced approach, whereby they accept

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52 Ellen Hey, 'Lecture note on the principle of common but differentiated responsibilities' (Department of International Law, Erasmus School of Law Erasmus University)

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54 Bondasky is a Professor of law in the Sandra Day University O'Connor College of Law Arizona State University he is a preeminent authority in global climate change who's teaching and research focus on international environmental law.

55 [03/04/2022] *6:15-Cv-01517*

to review the legality of states mitigation action while allowing some discretion to the political branches of the government. Thus, the High Court in *Friends of the Irish Environment v Ireland*[56] noted that the state should enjoy considerable discretion, but not carte blanche, when adopting a national mitigation action plan; as the Supreme court noted, this discretion must be exercised in a constitutional manner.[57]

Similarly, the Administrative Court of Berlin found that the separation of powers was best protected by allowing a high level of judicial deference to the government's determination of the state's mitigation action.[58] Unlike the political question doctrine, judicial deference does not obviate the need for judges to assess the state's mitigation action. The Supreme Court in *Urgenda*[59] recognized a measure of discretion to the government but nevertheless found that its policy lacked ambition.

A judge might also consider avoiding an assessment of a state's mitigation action on the ground that the applicable law is unclear (non liquet).[60] Yet, most domestic legal systems prevent a judge from evading his basic duty, that of adjudicating. Codes, in jurisdictions of civil law tradition, expressly prohibit findings of non liquet or command judges to fall back on subsidiary sources. Judges in common law jurisdictions have had no difficulty in resolving cases of first impression through precedent-setting decisions. Yet, as modern domestic legal systems are generally characterized by rules accreted through decades or centuries of statutory developments and judicial practice which form relatively comprehensive systems of clear rules, the debate on the possibility of findings of non liquet has primarily occurred in relation to international law.[61]

The general view among scholars and judges is that there is no room for non liquet in international adjudication. Admittedly, there

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56 [2020 IESC] *Appeal NO:205/19*

57 *supra*

58 R.J. Cahill-O'Calaghan, 'The Influence of Personal Values on Legal Judgements' Journal of Law & Society [2013] (40) 596

59 *supra*

60 It refers to a situation in which a competent court or tribunal fails to decide the merits of an admissible case for whatever reason, be it that absence of suitable law, the vagueness or ambiguity of rules, inconsistencies in law or justice.

61 Ibid.

are circumstances where the content of international law is difficult to assess, whether in relation to vague norms of customary law or elusive treaty provisions. The question was revived in the Advisory opinion of the Threat on Use of Nuclear Weapons, where the ICJ decided, by its President's casting vote, that it could not conclude definitely whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstances of self-defense, in which the very survival of a state would be at stake.[62] Yet, what the Court found to be unclear was arguably not the law, but the circumstances to which it might apply the possibility of extraordinary circumstances that might justify the threat or use of nuclear weapons.

Nothing in the Advisory Opinion suggests that the Court would be unable to apply the law to a given set of facts in a contentious case.[63] In fact, no international court has refused to decide the merits of a contentious case on the ground that the law was unclear.

7. GLOBAL MITIGATION OBJECTIVE ON CLIMATE CHANGE

The top-down method start with the identification of a global objective on climate change mitigation, often in the form of a temperature target, such as the objective of holding global warming below 2 degrees Celsius or around 1.5 degrees Celsius, above pre-industrial temperatures.[64] Sometimes, wrongly attributed to science, these targets are the outcome of political decisions; scientific analysis is not equipped to make value-based judgements on what constitutes a dangerous level of anthropogenic interference with the climate system and how current needs for economic development are not to be balanced with the long-term preservation of planetary systems. The 2 degrees Celsius target emerged from EU proposals in international negotiations.[65] The Paris Agreement endorsed the

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62 [1996] ICJ Reports (226) https://www.refworld.org/casesICJ4b2913d62.html Accessed 10 August 2022

63 supra

64 UNFCCC http://unfccc.int/2860.php Accessed 10 August 2022

65 2030 Climate Target Plan- European Commission https://ec.europa.eu>euaction> Accessed 10 August 2022

objective of holding industrial levels while pursuing efforts to limit it.

An overlooked yet fundamental question relates to the legal force of these temperature targets. While the literature often refers to them as a collective obligation, the Paris Agreement does not require its Parties to communicate or implement NDCs that are consistent with these targets. For lack of consistent state practice, an obligation of communicating or implementing goals consistent with the1.5 or 2 degrees Celsius temperature targets cannot be identified as customary lay or subsequent treaty practice.[66] At most, the temperature targets indicate a standard of due diligence, it provides that states must seek to reflect when implementing their general mitigation obligation, for instance by considering whether they can adopt consistent NDCs rather than a firm yardstick against which a state's mitigation action could be assessed.[67]

At any rate, these temperature target do not point to a precise objective which could be expressed in terms of a total amount of cumulative carbon dioxide emissions. First the objective is ambivalent because it is unclear how much additional warming either of these targets permits because it is unclear how much warming has already occurred.[68] The best estimate is that global warming has reached about 1.1 degrees Celsius, but this estimate comes with a significant range of uncertainty. Third, the Paris Agreement does not define any technical modalities scientists would need for understanding these temperature targets apply, the permissibility of a temporary overshoot, the precise meaning of pre-industrial levels which were affected by natural climate variability, or the way global average temperature is defined and calculated. Fourth, no emission budget would guarantee the achievement of any temperature target because scientists cannot fully predict the reaction of planetary

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66 Ibid.

67 Ibid.

68 The Paris Agreement sets out a global framework to avoid dangerous climate change by limiting global warming to well below 2 degrees Celsius and pursuing efforts to limit it to 1.5 degrees Celsius. https://ec.europa>eu-action>parisagreement. Accessed 10 August 2022

systems to GHG emissions and the concurrent influence of extraneous factors such as solar and volcanic activities.[69]

The *Urgenda's*[70] case is the most prominent judicial assessment of a states mitigation action so far, and it illustrates the difficulties courts face when trying to identify a global mitigation objective. The Court of Appeal's judgement discarded the projections contained in the IPCC's Fifth Assessment Report ARS published in 2013-2014[71] on the ground that the report had not categorically excluded the possibility of relying on the future deployment of negative emission technologies.[72] The Court thus brushed away the careful assessment by one of the most authoritative scientific bodies of the likelihood of this development. Instead of AR5, the Appeal Court and Supreme Court relied on the obsolete scientific estimates of the IPCCs Fourth Assessment Report AR4 published I 2007. Accordingly, the courts considered that the GHG concentrations in the atmosphere should not exceed 450 parts per million ppm carbon scenario, in accordance with AR4s projection for a 50 per cent chance of holding temperature within degrees Celsius, even though AR5 suggested that a 500 ppm scenario would be consistent with the same likelihood of reaching that objective. With contemporary atmospheric concentrations estimated at 454 ppm Carbon dioxide, the difference between the two scenario can hardly be overstated.[73]

Submissions by plaintiffs in other cases illustrate the possibility of starkly difference interpretations of the temperature targets. The applicants in *Environment Jeunesses v Canada*[74] also picked a 450 ppm scenario, but for difference reason. Whereas, the *Urgenda's* case[75] relied on the AR4's projection for a 50 per cent chance of achieving the 2 degrees target, *Environment Jeunsses v*

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69 Ibid.

70 *[24 June 2015] District Court of Hague ECLI:N: RBDHA:2015:7145*

71 The IPCC-Reports are prepared comprehensive reports by professionals about their knowledge on climate change, it causes, potential, impacts and response options. https://www.ipcc.ch>reports Accessed 10 August 2022

72 Ibid.

73 Ibid.

74 [2018] *Appeal case 500-06-000955-183*

75 supra

Canada[76] relied on the AR5s projection for a 66 per cent chance of achieving the same target. An individual complaint to the Committee on the Rights of the Child suggested a more stringent car on budget, drawn from the IPCCs Special Report on Global Warming of 1.5 degrees Celsius.[77] Similarly, in *Affaire a tous v France*,[78] the applicant also built on projection for a 50 per cent of achieving a 1.5 degrees Celsius target to suggest that global GHG emissions should be reduced by 45 percent from 2010 to 2030. This would imply that global emissions should not exceed 33 Gt Carbon dioxide eq by the year 2030, but they then referred to a 2030 target of 40 Gt carbon dioxide eq, citing a UN *Environment Jeunesses's* case[79] on achieving a 2 degrees Celsius target.

Having adopted a global mitigation objective, a judge needs to define a state's requisite contribution to its achievement. Thirty years of international negotiations have failed to achieve a comprehensive agreement on burden-sharing on climate change mitigation. To elude this political stalemate, courts and litigants have generally attempted to fall back on scientific authority but determining how a state ought to contribute to global mitigation efforts is not a question scientific analysis can answer.

8. CONCLUSION

This Article explored global strategies for mitigation of the impacts of climate change. It was argued that mitigation is more credible low emission strategy to adopt in the fight against the impact of climate change. National and regional courts and human rights treaty bodies are increasingly tasked to assess states conduct in light of their general obligation to mitigate climate change. However, party submissions, judicial decisions, and quasi-judicial recommendations are built on shaky foundations, relying on scientific analysis or on a demand for consistency with the state's policies or with international trends in a vain quest for predetermined benchmarks. This article has further shown that the decisions of

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76 *supra*
77 Ibid.
78 *Administrative Court of Paris 406/2018/CE [2018]*
79 *Supra*

courts can be more convincing were judges engage in a careful weighing of all relevant circumstances in light of equity, building on the experience of international courts. The judicial assessment of state's requisite mitigation action may never be a wholly mechanical activity, but neither is it wholly discretionary. Like legal interpretation in general, this judicial assessment can only ever aspire to a relative or bounded objectivity. By demonstrating that a state's requisite mitigation action can be assessed by a judge in a relatively satisfactory way, it is not suggestive that litigation is a panacea or that a holistic assessment of a state requisite level of mitigation action is the most effective litigation strategy. But however, negotiations and consultations are more likely to succeed if the judge is ready as a last resort, to interpret and apply the states' mitigation obligation in admissibility of a disputes before her.