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The Global South as a Player in the Climate Space: Private Litigants in European Courts Are Stepping Unto the Breach

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I. INTRODUCTION

International climate diplomacy is replete with assurances to envelop the countries and peoples of the Global South in the making of law and policy through intergovernmental channels. Over the decades following the birth of international environmental law with the first Earth Summit at Stockholm, many words of solace were spoken and nifty terms were invented to keep the Global South at the table. Take for example the Cocoyoc Declaration of 1974.[1] While recognizing the "'outer limits' of the planet's physical integrity" and the "'inner limits' of satisfying fundamental human needs" against the backdrop of an unequal distribution of resources, the document merely pledges a "hands off" approach that ultimately leaves countries on their own.[2] Similarly, "sustainability," which was heralded with much fanfare as the next

1. The Cocoyoc Declaration, Oct. 23, 1974, UNGA A/C.2/292-E [hereinafter Cocoyoc Declaration]. For a contemporaneous collection of ten articles and seven official and nonofficial statements intended to give a voice to the developing countries for the purpose of being heard by developed countries and notably the United States when it comes to the political and economic relations between developed and developing countries and regions, *see* GUY F. ERB & VALERIANA KALLAB, BEYOND DEPENDENCY: THE DEVELOPING WORLD SPEAKS OUT (1975); *see also* Arturo C. Porcecanski, *Book Review: Beyond Dependency—The Developing World Speaks Out*, 71 AM. POL. SCI. REV. 1746 (1977) (offering a somewhat critical review of the collection, especially with regard to the proposition of a self-reliant type of development).

2. Cocoyoc Declaration, *supra* note 1, at 4.

panacea—not only when it was enunciated through the Brundtland Report,[3] but also in the more recent guise of the Sustainable Development Goals[4]—ultimately does not go beyond a mere planning tool for harmonizing growth and the environment. In international climate law, the principle of "common but differentiated responsibilities"[5] has become the core distributive paradigm for distinguishing between developed countries and developing countries with regard to their respective climate commitments.[6] Under the Paris Agreement, the principle was translated into its centerpiece—the bottom-up pledges by the individual parties, which are known as "nationally determined contributions."[7] These are less internationally contoured for developing countries when compared to those expected of developed countries.[8] In view of the great ambitions of international climate law, its legal regime to help finance mitigation and adaptation policies and measures taken by developing countries to achieve the goals of international climate law has remained vague at best.[9]

3. Gro Harlem Brundtland, Our Common Future, Rep. of the World Comm'n on Env. and Dev., U.N. Doc. A/42/427 (1987). For summary commentary, *see* NORIKO KONO, ENCYCLOPEDIA OF QUALITY OF LIFE AND WELL-BEING RESEARCH 450 (Alex C. Michalos ed., 2014); Ian Burton, *Our Common Future: The World Commission on Environment and Development*, 29 ENV'T 25, 25–29 (1987); *see also* Erik Gómez-Baggethun & José Manuel Naredo, *In Search of Lost Time: The Rise and Fall of Limits to Growth in International Sustainability Policy*, 10 SUSTAIN. SCI. 385 (2015) (offering that "by shifting the focus of the problem from growth to poverty and by presenting the former as the solution to the latter, [the Brundtland Report's] sustainable development liberates growth [in both industrial and developing countries] from the stigma that had plagued it over the 1970s to be reframed as a necessary step towards the solutions to environmental problems.").

4. *Sustainable Development Goals*, U.N., https://www.un.org/sustainabledevelopment/ (last visited Oct. 24, 2023) (offering 17 goals and 169 targets); for contemporary commentary, *see* Tomáš Hák et al., *Sustainable Development Goals: A Need for Relevant Indicators*, 60 ECOLOGICAL INDICATORS 565 (2015) (arguing for a conceptual framework in selecting appropriate indicators for targets from existing or new sets, with analysis and review by experts).

5. U.N. Conference on Environment and Development, *Framework Convention on Climate Change*, U.N. Doc. A/AC/23718 (Part II)/Add. 1, 31 J.L.M. 849 (May 9, 1992) [hereinafter UNFCCC]; U.N. Conference on Environment and Development, *Paris Agreement in United Nations Framework Convention on Climate Change,* Report of the Conference of the Parties on Its Twenty-First Session, Addendum, at 21, U.N. Doc. FCCC/CP/2015/1O/Add. I (Jan. 29, 2016) [hereinafter PA].

6. Markus G. Puder, *The Paris Climate Agreement and Bederman's Six Myths About International Law and International Legal Practice*, 52 INT'L L. 233, 248 (2019).

7. PA, *supra* note 5, art. 4.

8. PA, *supra* note 5, art. 4.4; *see also* Puder, *supra* note 6, at 243.

9. UNFCCC, *supra* note 5, art. 4.1; PA, *supra* note 5, arts. 4.3., 4.19. For the lofty financing language in the Paris package, but not in the treaty itself, *see* Adoption of the Paris Agreement, Decision I/CP.21, in COP Report No. 21, Addendum, at 2, U.N. Doc. FCCC/CP/2015/10/Add/1 (Jan. 29, 2016) [hereinafter PD], at paras. 52-64 (memorializing a

Moreover, the absence of "compensation," "liability," or "reparations" in international climate law has been a major stone of contention for the countries and peoples of the Global South. After all, the more resilient countries and peoples of the North have sizeable climate footprints, while the brunt of the consequences is being born by those with a particular exposure to harm coming their way now and in the long run. As a sort of compromise, the Paris Agreement has offered a lukewarm and fuzzy response in the form of "loss and damages"[10]—a phrase carefully and deliberately coined to keep the Global South in the climate narrative while avoiding a chiseled linkage to the law of state responsibility for international wrongs.[11] Still, it was not until recently that the parties to the international climate treaties agreed at their meeting in Sharm el-Sheikh to make "new funding arrangements for responding to loss and damages," including the establishment of a fund for the purpose of assisting developing countries that are particularly vulnerable to the adverse effects of climate change.[12] Notwithstanding, important questions remain as to how and when the envisaged arrangements will be resourced and operationalized. Only if everything goes according to plan, then delivery of funding could start in the near future.

Due to the slow movement associated with kicking the can down the road through shells and rulebooks, the countries and peoples of the Global South have increasingly become disenchanted with the traditional intergovernmental channels of climate law and diplomacy. There is, however, another arrow in the quiver of climate advocacy—litigation initiated by private stakeholders. This type of lawsuit has been on the rise—in a first guise to force governments into compliance with their international and domestic climate commitments and in a second guise to seek reparation from corporate actors for their past sins. This Article therefore shifts the visor to two high-impact lawsuits with great relevancy

conference of the parties to set from 2025 onwards a new annual collective mobilization goal of at least USD 100 billion).

10. PA, *supra* note 5, art. 8.

11. Puder, *supra* note 6, at 256.

12. UNFCCC, *Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage*, Decision -/CP.27 -/CMA.4 (Nov. 20, 2022).

for the countries and peoples of the Global South—the German Nuisance Case[13] and the Portuguese Youth Climate Case.[14]

II. GERMAN NUISANCE CASE

One powerful "test case" comes from Germany. The underlying dossier, which is still pending, is so unique because the lawsuit is not directed at action or inaction by the government. Rather, it advances the prospect that private corporate emitters could be exposed to liability for interference with the property of others anywhere in the "global neighborhood,"[15] even when they engage in lawful activities.

A. Background

In late 2015, Peruvian farmer and mountain guide Saúl Luciano Lliuya filed suit in Germany before the District Court Essen against *Rheinisch-Westfälische Elektrizitätswerke* (RWE) Group, headquartered in Essen (Germany), for contributions from their wholly owned subsidiary installations towards global warming based on total emissions between 1751 and 2010.[16] Mr. Lliuya alleged that global warming is increasing the threat of large chunks of ice breaking off from the *Palcaraju Glacier* (in the Cordillera Blanca Mountain Range in the Peruvian Andes) and crashing into *Lake Palcacocha*, which in turn raises the specter of glacier lake outburst floods that endanger his home in *Huaraz* in the foothills of the Andes.[17] In the late 1930s, the lagoon held a water volume of ten to twelve million cubic meters. By 2015, that volume had risen to more than seventeen million cubic meters. A major flooding event had occurred in 1941.[18] Mr. Lliuya asked the court to declare that RWE was bound to bear the costs for appropriate measures to protect the property he co-owns against glacial outburst floods in proportion to the defendant's contribution to the condition of the lagoon

13. Lliuya v. RWE AG, Landgericht Essen [Essen District Court], 2 O 285/15 (2016), on appeal, https://www.justiz.nrw.de/nrwe/lgs/essen/lg_essen/j2016/2_O_285_15_Urteil_201612 15.html.

14. Duarte Agostinho and Others v. Portugal and Others, communicated case, EUR. CT. H.R. 39371/20 (available only in French), https://hudoc.echr.coe.int/eng#{%22itemid%22 :[%22001-206535%22]}.

15. Press Release, Germanwatch, Climate Lawsuit against RWE in Decisive Phase: On-site Meeting with Experts in Peru Concluded (May 27, 2022), https://www.germanwatch.org/ en/85437.

16. *Lliuya*, 2 O 285/15 Essen District Court (2016), at paras. 10, 11.

17. *Id.* at paras. 2, 9.

18. *Id.* at paras. 3-8.

and concomitant with the defendant's share in global greenhouse gas emissions, which he said was 0.47 percent.[19] In the alternative, the plaintiff advanced three auxiliary requests.[20] Firstly, he asked for appropriate measures to reduce the water volume in the lagoon according to the contributive share of the defendant as determined by the court.[21] Secondly, Mr. Lliuya requested the sum of €17,000 to be paid to what he called a compact of municipalities for their share in protective measures on behalf of the plaintiff.[22] Finally, the plaintiff sought the amount of €6,384 from the defendant—the costs for building measures directly at the claimant's property in order to protect it against the risks of a catastrophic flood wave.[23] RWE countered by asserting that the claim could not be addressed through individual civil liability in the absence of a causal link between its emissions and purported flood risks from the glacial lake.[24] According to RWE, there was no legal basis in German law giving rise to liability of a single emitter for general, ubiquitous environmental pollution.[25]

B. First Instance Decision

The District Court Essen dismissed the lawsuit.[26] According to the court, the principal request as well as the first and second alternative requests for declaratory judgment were inadmissible because they were not sufficiently identified and concretized so as to enable enforcement.[27] In particular, while relevant for purposes of facilitating the proof of the extent of loss, the judicial assessments and valuations sought by the plaintiff pursuant to Germany's Code of Civil Procedure were not to enter the stage of establishing liability.[28] With regard to the second auxiliary request, the District Court Essen found that as there was no such formal compact with a name and legal personality, the recipient of the payment was not ascertainable.[29]

19. *Id.* at paras. 11, 13-14.
20. *Id.* at paras. 15-20.
21. *Id.* at paras. 15-16.
22. *Id.* at paras. 17-18.
23. *Id.* at paras. 19-20.
24. *Id.* at paras. 21-23.
25. *Id.* at para. 23.
26. *Id.* at para. 25.
27. *Id.* at paras. 27-34.
28. *Id.* at para. 29.
29. *Id.* at para. 34.

The District Court Essen expended most ink with regard to the plaintiff's third auxiliary request, rejecting it as being without merit.[30] According to the court, German law makes available a claim to the removal or injunction of interferences (*Beseitigungs-und Unterlassungsanspruch*) pursuant to Section 1004 of the German Civil Code.[31] The ingredients for such a claim that does not hinge on fault include: (1) the interference with ownership (*Eigentumsbeeinträchtigung*); (2) the presence of a disturber (*Störer*); and (3) the absence of a duty to tolerate (*Duldungspflicht*).[32]

The District Court Essen explained that under the consistent jurisprudence of Germany's Federal Supreme Court, the owner who undertakes the removal himself or herself may claim the costs for the removing the interference under the law of management of affairs without authority (*negotiorum gestio*), either in the form of expenses or unjustified enrichment.[33] Leaving open the question of whether there was an actual interference with the plaintiff's property in the guise of an acute danger of flooding,[34] the Essen District Court determined that the defendant could not be deemed a disturber based on activity (*Handlungsstörer*) for want of a discernable linear causal chain between the particular greenhouse gas emissions by the defendant and the endangerment of the plaintiff's home in Perú.[35] At the core of its decision, the court analyzed in depth two types of causation—a "but for test" (*conditio sine qua non*) and a "test of adequacy" (*Adäquanztheorie*).[36] Since there were millions or billions of emitters, said the court, it was impossible to say that without the particular defendant there was no purported flooding danger.[37] From a scientific viewpoint, added the court, every emission could very well be causal for a climate situation.[38] But this did not clearly establish the foundation for a legal attribution to singular emitters.[39] According to the court, however, a

30. *Id.* at paras. 35-46.

31. *Id.* at para. 37.

32. Bürgerliches Gesetzbuch [BGB] [Civil Code], §1004(1)-(2), https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html (Ger.) ("(1) If the ownership is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference; (2) If further interferences are to be feared, the owner may seek a prohibitory injunction.").

33. *Lliuya*, 2 O 285/15 District Court Essen (2016), at para. 37.

34. *Id.* at para. 38.

35. *Id.* at para. 39.

36. *Id.* at paras. 40-46.

37. *Id.* at para. 42.

38. *Id.* at para. 43.

39. *Id.* at para. 44.

claim under Section 1004 precisely required an individualized and particularized causal relationship.[40] Moreover, even if the net of factual causality were widely cast under *sine qua non*, it could not be said under the adequacy test screen that the activities of the defendant's activities had contributed more than insubstantially.[41] Under these considerations, said the court, the question of whether the measures advanced by the plaintiff were indeed suitable to avert glacial overflow could be left open.[42] In sum, the District Court Essen therefore agreed with RWE and dismissed Mr. Lliuya's claims for declaratory, injunctive, and monitory relief.

C. Appeal

The plaintiff appealed the decision to the Higher Regional Court Hamm,[43] urging in particular that a legally relevant causal relationship could be clearly established between the carbon emissions by the defendant's power plants and the alleged impairment of his property by the risk of being flooded.[44] This causal chain, said the plaintiff, could be traced and established in the image of the following four stages.[45] In the first stage, the carbon dioxide emissions (up to a certain percentage) released by the power plants of the defendant would reach the atmosphere, leading to an increased concentration of greenhouse gases in the Earth's atmosphere as a whole, regardless of the place where they were emitted.[46] Next, the increased density of the layer of greenhouse gases in the atmosphere would lead to increased heat trapping and higher temperatures around the globe, including the area of the Peruvian *Palcaraju Glacier*.[47] During the third stage, the rise of global temperatures would accelerate the meltdown of Palcaraju Glacier, thereby increasing the probability of glacial break-offs.[48] Finally, due to the accelerated glacial meltdown, the water volume in Lake Palcacocha would rise,

40. *Id.*
41. *Id.* at para. 46.
42. *Id.* at para. 47.
43. For the unauthorized English translation of Mr. Lliuya's appeal provided by Germanwatch e.V., which has been made available by the Columbia Law School Sabin Center for Climate Change Law, *see* Brief of Petitioner-Appellant at 1, Lliuya v. RWE AG, No. 2 O 285/15 (Oberlandesgericht [OLG] [Higher Regional Court of Hamm], 2017), https://climatecase chart.com/wp-content/uploads/non-us-case-documents/2017/20170223_Case-No.-2-O-28515-Essen-Regional-Court_appeal-1.pdf.
44. *Id.* at 12-28.
45. *Id.* at 14.
46. *Id.*
47. *Id.*
48. *Id.*

which in turn would increase the threat to the claimant's property in the form of a more likely and more disastrous flood wave due to a glacial break-off.[49]

In a first order to give instruction and take evidence,[50] the Higher Regional Court Hamm recognized the complaint as well-pled and admissible,[51] allowing the case to move into the evidentiary phase. According to the Higher Regional Court Hamm, a claim under Section 1004 for proportionate reimbursement of expenses incurred for protective measures and proportionate reimbursement of future expenses is, as a matter of principle, available even against a disturber who operates under a lawful permit pursuant to Germany's Federal Pollution Control Law—as long as the plaintiff discharges his onus with regard to the facts he alleges.[52]

The Higher Regional Court Hamm then split the evidentiary phase for the assertions advanced by the plaintiff into two prongs.[53] In a first step, said the court, evidence would need to be taken with regard to the threats by glacier lake flooding, mudslides, or both for Mr. Lliuya's home and the suitability of the protective measures taken and planned by the plaintiff.[54] Then, in a second step, evidence would need to be taken with regard to four questions raised by the plaintiff.[55] Do RWE's carbon dioxide emissions rise into the atmosphere and contribute to increased concentrations of greenhouse gases in the earth's atmosphere?[56] Does the concentration of greenhouse gas molecules lead to increased heat-trapping and rising global temperatures?[57] Does the increase in average temperatures accelerate the melting of the Palcaraju Glacier and prevent the moraine from holding the surging water volumes of the Palcacocha Lagoon?[58] Is RWE's share of contribution in the context of the preceding questions measurable and calculable, with the defendant's historical

49. *Id.*

50. For the order, which has been made available by a coalition of organizations from Germany and Perú that accompany and support the plaintiff and support those directly concerned by the climate crisis in Perú, *see* Indicative Court Order and Order for the Hearing of Evidence, at 1, Lliuya v. RWE AG, No. 2 O 285/15 (Oberlandesgericht [OLG] [Higher Regional Court of Hamm], 2017), https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2017/20171130_Case-No.-2-O-28515-Essen-Regional-Court_order.pdf.

51. *Id.* § I.1, at 2.

52. *Id.* § I.2., at 2.

53. *Id.* §§ III.1, III.2. at 3-4.

54. *Id.* § III.1, at 3.

55. *Id.* § III.4, at 4.

56. *Id.* § III.4.a, at 4.

57. *Id.* § III.4.b, at 4.

58. *Id.* § III.4.a, at 4.

greenhouse gas emissions amounting to roughly half a percent of global emissions since the beginning of the era of industrialization?[59]

D. Perspectives

Last year, two members of the court conducted an onsite reconnaissance visit alongside court-appointed experts.[60] The further course of the proceedings will hinge on the outcome of the expert opinion.[61] Only if there is a legally relevant risk to the plaintiff's home, then the second cluster of questions will be evaluated.[62] While the evidentiary phase must still be seen through to completion and independent of whether the case will be appealed to the Federal Supreme Court, the recognition by the Higher Regional Court Hamm that it is theoretically possible to trace liability for harms arising from climate change to a particular corporate defendant at the other end of the world writes legal history in the climate arena.[63] This diagnosis becomes even more dramatic when considering that a legal basis comparable to the one used by Mr. Lliuya in Germany may exist in many other jurisdictions worldwide.[64] Mr. Lliuya's case also offers a powerful illustration of how plaintiffs may shift their litigation focus from governments to individual corporate defendants. Mr. Lliuya notably did not go after the Government of Perú, although he could conceivably have filed a petition in the Inter-American System of Human Rights alleging breaches of his human rights in the wake of Peru's failure to take precautionary measures against the

59. *Id.* § III.4.a, at 4.

60. Press Release from the OLG Hamm, Bernhard Kuchler, Beweisaufnahme im Rechtsstreit Lliya ./. RWE, Pressemitteilung des OLG Hamm (June 17, 2022) (on file at https://www.olg-hamm.nrw.de/behoerde/presse/pressemitteilung_archiv/archiv/2022_Presse archiv/19_22_PE_Beweisaufnahme-in-Peru-im-Rechtsstreit-Lliuya-___-RWE/index.php).

61. *Id.*

62. *Id.*

63. Germanwatch, *supra* note 15; Marlene Becker & Noaj Walker-Crawford, *Court Taking Evidence in Peru for RWE Case*, GERMANWATCH (Mar. 14, 2022), https://www.germanwatch.org/en/85108.

64. Zach Burnhans, *Research Report Two:* Lliuya v. RWE AG, 27 RES PUBLICA—J. UNDERGRAD. RES. 97 (2022). For the proposition that even in England this type of lawsuit is plausible, *see* Vedantha Kumar & Will Frank, *Holding Private Emitters to Account for the Effects of Climate Change: Could a Case Like* Lliuya *Succeed under English Nuisance Law?*, 12 CARBON & CLIMATE L. REV. 110 (2018).

risk of flooding[65]—for example, by not deploying, at a minimum, what the Paris Agreement calls "effective early warning systems."[66]

III. PORTUGUESE YOUTH CLIMATE CASE

In *Duarte Agostinho v. Portugal and Others*, six Portuguese nationals who were (at time when the case was lodged) aged between ten and twenty-three are petitioning the European Court of Human Rights to take to task under the European Convention of Human Rights and Fundamental Freedoms[67] a group of thirty-three member countries of the Council of Europe, not just one individual national government for having failed to comply with their international climate commitments.[68] The "Portuguese Youth Climate Case," which is still pending, is the first climate case filed in Europe's human rights court in Strasbourg.[69]

A. The Pillars of the Petition

In their application, the youth petitioners set forth what they consider the contributions by the respondent countries to climate; the adverse effects of climate change they are and will be suffering; the convention rights they consider infringed; and the inadequacy of the mitigation measures taken by the respondent countries.[70]

1. The Contributions by Respondents to Climate Change

The petitioners allege that these thirty-three countries contribute to climate change in various ways.[71] According to the application, respondent countries are firstly consenting to the release of greenhouse gas emissions within their territories and offshore areas they control.[72]

65. For the normative potential of the Inter-American Human Rights System ('IAHRS') to respond to the threats posed to the enjoyment of human rights in the face of the climate crisis, *see* Juan Auz, *'So, This Is Permanence': The Inter-American Human Rights System as a Liminal Space for Climate Justice*, 22 MELB. J. INTL. L. 1 (2021).

66. PA, *supra* note 5, art. 8.4(a).

67. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 5; 213 U.N.T.S. 221.

68. European Court of Human Rights Press Unit, Factsheet—Climate Change 2 (Mar. 2023) [hereinafter Factsheet].

69. PA, *supra* note 5, art. 8.4(a). Helen Keller & Corina Heri, *The Future is Now: Climate Cases Before the ECtHR*, 40 NORDIC J. HUM. RTS. 153, 154 n.7 (2022)

70. For various documents, including the application form and its Annex filed by the youth petitioners on Sept. 3, 2020, see Global Legal Action Network (GLAN), Case Documents, https://youth4climatejustice.org/wp-content/uploads/2020/12/Application-form-annex.pdf.

71. *Id* at paras. 9-13, at 6.

72. *Id.* at paras. 9-10, at 6.

Moreover, respondent countries are allowing the export of fossil fuels extracted from within their territories.[73] Also, respondent countries are permitting the importation of goods that are not produced in a climate-neutral manner.[74] Finally, respondent countries are enabling entities within their territories to contribute to the release of greenhouse gas emissions overseas.[75] The fourth kind of contribution is particularly relevant for the Global South, for example when a multinational corporation with domestic headquarters extracts fossil fuels overseas or finances such exploration and production activities.[76]

2. Impacts on Applicants

The petitioners further aver that climate change has already led to considerable harm including more frequent and intense heat waves and droughts, catastrophic forest fires, and powerful winter storms.[77] These climate cataclysms, say the petitioners, affect their physical and mental health, their livelihood, and their property.[78] In terms of future harm, the petitioners add that they will have to spend the rest of their lives on an increasingly hotter planet.[79]

3. Convention Rights Alleged by Applicants

The petitioners advance three specific rights protected by the Convention.[80] Under Article 2 of the Convention, member countries are in certain circumstances subject to a positive duty to prevent foreseeable loss of life through appropriate legislative and administrative frameworks designed to avert against threats to right to life.[81] Moreover, say the applicants, Article 8 of the Convention requires states to have in place laws, policies, and measures that are reasonable and sufficient to protect the right to respect not only for the home and private and family life, but also for a healthy environment.[82] Finally, according to the applicants, the

73. *Id.* at paras. 9, 11, at 6.
74. *Id.* at paras. 9, 12, at 6.
75. *Id.* at paras. 9, 13, at 6.
76. *Id.* at para. 9, at 6.
77. *Id.* at paras. 16-23, at 6-7; Press Release from Grand Chamber hearing in the case of Duarte Agostinho and Others v. Portugal and 32 Others (Sept. 27, 2023), https://hudoc.echr.coe.int/eng-press?i=003-7756998-10741219.
78. GLAN, *supra* note 70, at paras. 20-22, at 7.
79. *Id.* at paras. 17-18, 21, at 7.
80. *Id.* at paras. 24-31, at 8-9.
81. *Id.* at para. 24, at 8.
82. *Id.* at para. 25, at 8.

prohibition of discrimination pursuant to Article 14 of the Convention envelops age as a protected "other status."[83]

The petitioners add that these Convention protections should be read in the light of children's rights and the principle of intergenerational equity[84] as well as international climate law,[85] which they say is all about holding "the increase in the global average temperature to well below 2°C above pre-industrial levels"[86] and pursue efforts "to limit the temperature increase to 1.5°C above pre-industrial levels."[87]

4. Presumption of Inadequacy with Regard to Mitigation Measures Taken by Respondents

According to the petitioners, the collective failure of the thirty-three countries to take adequate measures so as to limit global emissions in alignment with the international temperature goal means that the present mitigation measures taken by the thirty-three countries must be presumed to be inadequate and that the countries therefore share a presumed responsibility for breaching the Convention.[88] The question of what then constitutes a "fair share" (*partage équitable*) of the global burden with regard to mitigating climate change, say the petitioners, must be resolved by the countries as between themselves since any ambiguity in this regard stems from their own failure to agree to a clearly defined global approach.[89] For purposes of divvying up the various quantities, the petitioners refer to the Climate Action Tracker—with its ratings of insufficient, 2°C compatible, and 1.5°C compatible—as a handy resource for arriving at a fair balance.[90]

B. Legal Assessment

Signaling the importance of the case as a potential standard-setter, the chamber of the European Court of Justice, to which the case had originally been allocated, relinquished jurisdiction in favor of the

83. *Id.* at para. 31, at 9.
84. *Id.* at 8-9, para. 28.
85. *Id.* at 9, para. 29.
86. PA, *supra* note 5, art. 2.1(a).
87. *Id.*
88. Application of the Youth-Petitioners: Annex, Duarte Agostinho and Others v. Portugal and Others, communicated case, Eur. Ct. H.R. 39371/20, at 12-17, paras. 26-34 (Sept. 23, 2020), https://youth4climatejustice.org/wp-content/uploads/2020/12/Application-form-annex.pdf.Violations.
89. *Id.* at 14, para. 29.
90. *Id.* at 15, para. 31.

European Court of Justice's Grand Chamber.[91] While a regular chamber usually comprises seven judges, the Grand Chamber consists of seventeen judges, including the President and Vice Presidents, the Presidents of the sections, and a "national judge," with the remainder of the judges designated by lot.[92] A decision is expected in the near future.[93]

1. Admissibility

The petition will first have to clear the threshold stage called "admissibility"[94] before moving into the merits. Admissibility requirements typically include standing, exhaustion of domestic remedies and jurisdiction.

a. Victim Status

In European human rights jargon, "victim status" denotes the analogue to what we call "standing" in the United States.[95] The petitioners urge the court to construe the status broadly to encompass not only actual but also potential victimhood[96] as the future harm is already baked into the delay associated with the process of greenhouse gases rising up into the atmosphere, even if the world collectively stopped all emission of greenhouse gases right now. Victimhood, say the petitioners, must be construed in harmony with the principle of intergenerational equity and

91. European Court of Human Rights Press Release, Grand Chamber to Examine Case Concerning Global Warming, 2 ECHR (June 30, 2022).

92. *ECtHR: Composition & Election Process*, INT'L JUST. RES. CTR., https://ijrcenter.org/wp-content/uploads/2020/07/ECtHR-EC-mini-guidefinal-1.pdf (last updated 2020).

93. Factsheet, *supra* note 68, at 1 ("[T]arget [date] to hold the hearing soon after the 2023 summer judicial recess.").

94. *See generally* Practical Guide on Admissibility Criteria, EUR. CT. H.R. 6, https://www.echr.coe.int/documents/admissibility_guide_eng.pdf (last updated Aug. 31, 2022) ("This Guide is designed to present a clearer and more detailed picture of the conditions of admissibility with a view, firstly, to reducing as far as possible the number of applications which have no prospect of resulting in a ruling on the merits and, secondly, to ensuring that those applications which warrant examination on the merits pass the admissibility test."); For scholarly commentary regarding the strategic significance of the admissibility stage, *see* Lewis Graham, *Strategic Admissibility Decisions in the European Court of Human Rights,* 69 INT'L & COMP. L.Q. 79 (2020).

95. Vassilis P. Tzevelekos, *Standing Before the European Court of Human Rights*, MAX PLANCK ENCYCLOPEDIA OF INT'L PROCEDURAL L. 1, 5 (2019), https://ssrn.com/abstract=3968200 or http://dx.doi.org/10.2139/ssrn.3968200.

96. Application of the Youth-Petitioners: Annex, Duarte Agostinho and Others v. Portugal and Others, communicated case, Eur. Ct. H.R. 39371/20, at 3, para. 7 (Sept. 23, 2020), https://youth4climatejustice.org/wp-content/uploads/2020/12/Application-form-annex.pdf.Violations.

the precautionary principle, which have both been consecrated in international law.[97]

The elaborations of the applicants with regard to *locus standi* boil down to the proposition that their petition does not fall into the rubric of inadmissible public interest litigation (*actiones populares*) outside the realm of an individual petition.[98] This is important as standing has been a particularly stubborn gatekeeper controlling and locking the door of the courtroom in the other European organization—the regional integration system under the auspices of the European Union where legal interest to sue is referred to as "direct and individual concern."[99] In *Armando Carvalho v. European Parliament and Council of the European Union*, which is also known as the "People's Climate Case," the Court of Justice of the European Union upheld the General Court of the European Union's dismissal of a challenge against the European Union's 'legislative climate package' of 2018, which had been mounted by thirty-six individuals belonging to families from Germany, France, Italy, Portugal and Romania; families from Kenya and Fiji; and a Swedish association representing young indigenous Samis.[100] The petitioners had combined a request for annulment with a modified claim for damages.[101] They asked the General Court of the European Union to annul the European Union's legislative climate package inasmuch as it set targets for 2030 that consisted in reducing greenhouse gas emissions by forty percent compared to 1990 levels.[102] In addition, the claimants requested that, instead of awarding them pecuniary damages for their alleged individual losses, the General Court should order the European legislator—the Council of the European Union and the European Parliament—to adopt tighter measures and require a reduction in greenhouse gas emissions by at least fifty to sixty percent.[103]

97. *Id.* at para. 8

98. Keller & Heri, *supra* note 69, at 156 (noting that the European Court of Human Rights "walks an occasionally fine line between ensuring human rights protection and allowing *actiones populares*.").

99. *Consolidated Version of the Treaty of the Functioning of the European Union*, C 326 O.J. 49, 162. (2012).

100. Lena Hornkohl, *The CJEU Dismissed the People's Climate Case as Inadmissible: The Limit of Plaumann is Plaumann*, EUR. L. BLOG (Apr. 6, 2021), https://europeanlawblog.eu/2021/04/06/the-cjeu-dismissed-the-peoples-climate-case-as-inadmissible-the-limit-of-plaumann-is-plaumann/.

101. *Id.*

102. *Id.*

103. *Id.*

At first instance, the General Court of the European Union declared the action inadmissible[104] because the petitioners were not individually concerned by the legislative package.[105] The various components of the package, said the General Court of the European Union, were legislative acts of a normative nature based on the procedure of their enactment by the European legislature.[106] According to the General Court of the European Union, the fact that the effects of climate change may be different for one person than they are for another person did not mean there existed standing to bring an action against a normative measure of general application.[107] The petitioners, said the General Court of the European Union, were not affected in ways that were "peculiar to them or by reason of circumstances in which they [were] differentiated from all other persons"[108] and that distinguished them individually just as an addressee of a tailored and concrete administrative act would be.[109] Otherwise, said the General Court of the European Union, the standing requirements for non-privileged annulment actions would be rendered meaningless, and standing for all would be the consequence.[110] The General Court of the European Union thus held on to the *Plaumann* formula developed six decades ago to control and lock the courtroom door.[111] In addition, the General Court of the European Union further determined that the standing requirements governing the action for annulment could not be circumvented by allowing petitioners who fail these requirements to pursue their objective of having an act quashed and replaced with stricter legislative measures through an action for damages, which would typically be all about obtaining reparation for harm attributable to an unlawful act or an omission.[112] Therefore, concluded the

104. Case T-330/18, Carvalho and Others v. European Parliament and Council of the European Union, ECLI:EU:T:2019:324, at para. 33 (May 8, 2019), https://curia.europa.eu/juris/document/document.jsf?text=&docid=214164&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=660538.

105. *Id.* at para. 33.

106. *Id.* at paras. 39-41.

107. *Id.* at para. 50.

108. *Id.* at para. 45.

109. *Id.*

110. *Id.* at para. 48.

111. Felix Lange & Matthias Lippold, *Höchstrichterliche Klimaentscheidungen und Demokratieprinzip – Eine Rechtsvergleichende Betrachtung*, 77 JURISTENZEITUNG (JZ) 685, 686 (2022).

112. Case T-330/18, Carvalho and Others v. European Parliament and Council of the European Union, ECLI:EU:T:2019:324, at paras. 65-69 (May 8, 2019).

General Court of the European Union, the claim for damages was likewise inadmissible.[113]

On appeal, the Court of Justice of the European Union agreed.[114] According to the Court of Justice of the European Union, the claim that an act of the European Union infringed fundamental rights was not sufficient in itself to establish the admissibility of a non-privileged annulment action "without running the risk of rendering the [conditions of admissibility established by the integration treaties] meaningless."[115] The European judiciary, said the Court of Justice of the European Union, could not effectively set aside what was expressly laid down in treaty law with regards to its jurisdiction, even in the light of the fundamental right to effective judicial protection enshrined in the Charter of Fundamental Rights of the European Union.[116]

2. Domestic Remedies

Requesting that the requirement to exhaust domestic remedies before petitioning the human rights court should be waved, the petitioners aver that there simply is no adequate domestic remedy reasonably available to exhaust.[117] The window in time to meet the 1.5°C target so as to avoid tipping points of no return, say the petitioners, is rapidly closing with large-scale consequences for the entire planet.[118] Moreover, as children and young adults with only modest means, it will be unlikely they could see through protracted domestic proceedings to their final conclusion.[119]

3. Extraterritoriality

Finally, the petition will have to negotiate the question of extraterritorial jurisdiction. This will give the Grand Chamber the first opportunity to opine on transboundary environmental harms.[120] In their

113. *Id.* at para. 70.

114. Case C-565/19 P, Carvalho and Others v. European Parliament and Council of the European Union, ECLI:EU:C:2021:252, at para. 106 (Mar. 25, 2021).

115. *Id.*

116. *Id.* at para. 52.

117. Application of the Youth-Petitioners, Duarte Agostinho and Others v. Portugal and Others, communicated case, Eur. Ct. H.R. 39371/20, at 10, para. 32 (Sept. 23, 2020), https://youth4climatejustice.org/wp-content/uploads/2020/12/Application-form-annex.pdf.Violations.

118. *Id.* at para. 32(a).

119. *Id.* at para. 32(b).

120. Keller & Heri, *supra* note 69, at 160 ("The question of extraterritorial jurisdiction is complex, and it is one in which the Court's willingness to display flexibility and clarify convoluted existing standards will play a key role.").

petition, the applicants argue that while they are technically within the jurisdiction of Portugal, they are also covered by the extra-territorial jurisdiction of the other respondent countries.[121] The petitioners recall that under the jurisprudence of the European Court of Human Rights, convention states have been deemed to exercise extra-territorial jurisdiction in several case groups—when the effects are produced in the wake or consequence of a law they adopt; when it is foreseeable that an act or omission will produce external effects; when the effects are felt within and outside their territory; when a country controls the effect-producing resources; when it implements a particular international obligation; when the protection of convention rights requires a combination of convention countries; and when the effects felt within the convention space (*espace juridique*).[122] According to the petitioners, these factors are met in their case before the Grand Chamber.[123]

The way the Grand Chamber will treat the extraterritoriality question in this case will be revelatory of how it understands its judicial role. Will the Grand Chamber use as an expansive lever its protective guardianship of the Convention's legal space,[124] since the group of countries is located in this zone? Or might the court even take a page from the playbook of the Inter-American Court of Human Rights, which in a landmark advisory opinion, recognized a third jurisdictional link other than the effective control over territory and persons, namely "when the State of origin exercises effective control over the activities carried out that caused the harm and consequent violation of human rights" (*cuando el Estado de origen ejerce un control efectivo sobre las actividades llevadas a cabo que causaron el daño y consecuente violación de derechos humanos*).[125]

121. Application of the Youth-Petitioners: Annex, Duarte Agostinho and Others v. Portugal and Others, communicated case, Eur. Ct. H.R. 39371/20, at 6-7, paras. 15-16 (Sept. 23, 2020), https://youth4climatejustice.org/wp-content/uploads/2020/12/Application-form-annex.pdf.Violations.

122. *Id.* at 7-9, para. 18.

123. *Id.* at 9-11, paras. 19-20.

124. Keller & Heri, *supra* note 69, at 160.

125. The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., (ser. A) No. 23, at para. 104.h. (2017), http://https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf (English language version); https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf (Spanish language version). For commentary, *see*, *e.g.*, Maria L. Banda, *Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights*, 22 INSIGHTS (2018), https://www.asil.org/insights/volume/22/issue/6/inter-american-court-human-rights-advisory-opinion- environment-and-human.

4. Merits

Once the stage of substance and merit is reached, similarly complex themes come to mind. What standards of scrutiny will the Grand Chamber run for the suite of the affected Convention rights? What levels of proof of risk with regard to future harm will be required? What approach will be taken to assembling a record of evidence? Will the court buy into the solution urged by the petition with regard to attribution and shared responsibility? What role will precaution, due diligence, and the no-harm principle play?

a. Type of Scrutiny for Convention Rights

In their petition, the applicants assert weighty convention rights. In the absence of a scrutiny canon akin to the one developed by the U.S. Supreme Court, literature has offered that right-to-life cases deserve a "sharper lens" when compared to right-to-property cases.[126] This might not mean thrusting the onus onto the governments that their narrowly tailored legislation *vel non* in the climate arena is in the pursuit of compelling interests. In light of recent discussions about linking environmental protection to human rights and making nature itself a bearer of legal rights,[127] the Grand Chamber could at a minimum harness its supervisory role over forty-seven countries by weighing in also in the climate realm.

b. Levels of Proof for Future Harms

Literature has observed that climate cases will push the envelope of judicial capacities with regard to "scientific expertise, docket, and deference."[128] In the European space, courts have tended to be quite comfortable with the climate science record assembled and the forecasts for temperature rises and their ripples made by the United Nations Panel on Climate Change.[129] Questions regarding judicial deference are particularly sensitive when legislative inaction or insufficiency of legislation is asserted. Support for judicial intervention would accrue from the commitment to regional human rights voluntarily made by the convention countries.

126. Keller & Heri, *supra* note 69, at 170.

127. Tiffany Challe, *The Rights of Nature—Can an Ecosystem Bear Legal Rights*, COLUMBIA CLIMATE SCH. (Apr. 22, 2021), https://news.climate.columbia.edu/2021/04/22/rights-of-nature-lawsuits/ (offering a list of countries with rights of nature lawsuits).

128. Keller & Heri, *supra* note 69, at 172.

129. Puder, *supra* note 6, at 249-50.

c. Attribution to Individual States and Shared Responsibility Among Multiple States

This question of merits endeavors to resolve who should be liable for a certain conduct or omission.[130] A model in this regard exists with the Draft Articles on the Responsibility of States for Internationally Wrongful Acts.[131] In general, the absence of sole responsibility is not alien to liability regimes. Since holding each responsible country jointly and severally liable (*in solidum*) seems unrealistic and impracticable, the German Nuisance Case stands for the proposition that it may be possible to connect a singular climate polluter to their specific contribution even if the individual share happens to be minor when viewed in isolation. Literature has therefore said that courts should not buy into the argument of that share being a mere "drop in the ocean."[132]

d. Core Tenets of International Environmental Law

Precaution and no harm are staples in the corpus of international environmental law.[133] In European practice, these are considered true principles that have been consecrated in hard and soft law as well as by the courts. In the context of risk analysis, the precautionary principle (*Vorsorgeprinzip*) has served as decisionmaker tool that allows for a forward-leaning posture averting against risk in uncertainty milieus.[134] The no-harm principle expresses what in the law of legal servitudes governing the vicinity is known under the maxim that "you shall use your own property in such a manner that you do not injure other people's property" (*sic utere tuo ut alienum non laedas*).[135]

e. Absence of Evidentiary Record

If the Grand Chamber admits the petition despite the non-exhaustion of domestic remedies, it will not have in front of it a record compiled in

130. Keller & Heri, *supra* note 69, at 166.

131. Keller & Heri, *supra* note 69, at 166. For the document, *see* U.N. International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001), as endorsed by the U.N. General Assembly on Jan. 28, 2002, UNGA Res. 56/83 (2001).

132. Keller & Heri, *supra* note 69, at 167.

133. *Id.* at 167-68.

134. For a juxtaposition of international soft law (the Rio Declaration of 1992) and hard primary and soft secondary European Union Law (Article 191(2) of the Treaty on the Functioning of the European Union and the European Commission's Communication of 2000), *see* Markus G. Puder, *The Rise of Regional Integration Law (RIL): Good News for International Environmental Law (IL)?*, 23 GEO. INT'L ENV'T. L. REV. 165, 186-98 (2011).

135. Keller & Heri, *supra* note 69, at 167-68

earlier proceedings.[136] This means that the Grand Chamber has to develop its own approach to evidence—whether scientific or otherwise. European courts, including the European Court of Human Rights, have been quite experienced in drawing their own conclusions from a record that raises complex scientific questions.[137] The Grand Chamber may also look to what the courts have done in the convention space in this regard. Here again, if seen through in full, the yield of the evidentiary phase in the German Nuisance Case may offer a valuable model.

5. Remedies

If the applicants are successful with regard to the substance and merits of their claims, then the Grand Chamber will then face the question of what it can do in terms of remedies for applicants who allege that they have suffered and will suffer harms because of climate change.[138] After all, climate litigation is still quite novel.

Alongside its power to make monetary "just satisfaction" awards,[139] there is, however, another tool available to the court—the so-called "consequential order" of individual and general measures in the pursuit of ending Convention violations. The Grand Chamber could even adopt a "pilot judgment" procedure, enabling it to identify clearly in its judgment the existence of structural problems underlying the Convention violations and to indicate specific measures or actions to be taken by the thirty-three countries to remedy them.[140]

The next question then is whether these specific measures would mimic those taken by the Dutch or the German courts. In the Netherlands, the courts have simply invoked the emission reductions the developed countries had themselves previously agreed—at least twenty-five percent

136. *Id.* at 168.

137. *Id.*

138. *See generally* Helen Keller et al., *Something Ventured, Nothing Gained?—Remedies Before the ECtHR and Their Potential for Climate Change Cases*, 22 HUM. RTS. L. REV. 1 (2022) (discussing strategies that could potentially be deployed in climate cases, along with their pros and cons).

139. *See* Press Release, European Court of Human Rights, Q&A on the European Court of Human Rights Award of "Just Satisfaction" (Mar 26, 2019), https://www.echr.coe.int/Documents/Press_Q_A_Just_Satisfaction_ENG.pdf (discussing Article 41 of the European Convention of Human Rights).

140. For guidance from Strasbourg, *see Guide on Article 46 of the European Convention of Human Rights—Binding Force and Execution of Judgments*, EUR. CT. H.R. (Aug. 31, 2022), https://www.echr.coe.int/Documents/Guide_Art_46_ENG.pdf; *see also* Keller & Heri, *supra* note 69, at 171 (offering that this tool may yield real practical effect).

by the end of 2020, compared to 1990 levels.[141] Germany's Federal Constitutional Court has taken a more assertive approach when it nixed the Federal Climate Protection Law for violating human rights, because the law, said the court, irreversibly offloaded major emission reduction burdens into periods after 2030, thereby placing disproportionate burdens on future generations.[142]

The remedies the Grand Chamber may fashion do not, however, include overruling or annulling national laws.[143] Moreover, the Grand Chamber will not be responsible for the eventual execution of the judgment.[144] After a judgment is handed down, the responsibility will pass to the Committee of Ministers of the Council of Europe, which has the task of supervising the execution of judgments.[145] This body, which is composed of the foreign affairs ministers of the member countries or their representatives,[146] generally decides by unanimity.[147]

IV. FINAL WORDS

A third wave of climate litigation[148] with Global South relevance has been on the rise in Europe since the signing of the Paris Agreement. Statistically, most cases have been filed against the governments with the goal of compelling them to adopt tighter climate laws, policies, and measures.[149] However, as part of a recent trend, lawsuits increasingly target private actors. Individual parties and civil society advocacy groups, either acting alone or banding together, have been the most represented

141. HR 20 december 2019, ECLI:NL:HR:2019:2006, 19/00135, (De Staat der Nederlanden/Stichting Urgenda) (Neth.), https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2019:2006.

142. BVerfG, 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, Mar. 24, 2021, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/03/rs20210324_1bvr265618.html (German language version).

143. *Questions & Answers*, EUR. CT. H.R. 3, 11, https://www.echr.coe.int/documents/questions_answers_eng.pdf.

144. *See id.*

145. *See id.*

146. *See id.* at 11 n.3.

147. STATUTE OF THE COUNCIL OF EUROPE, E.T.S. No. 1, art. 20 (May 5, 1949).

148. *See* JOANA SETZER ET AL., CLIMATE LITIGATION IN EUROPE—A SUMMARY REPORT FOR THE EUROPEAN UNION FORUM FOR THE ENVIRONMENT 9 (2022), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/12/Climate-litigation-in-Europe_A-summary-report-for-the-EU-Forum-of-Judges-for-the-Environment.pdf (identifying three waves: first wave between mid 1980s and mid-2000s; second wave between mid 2000s and mid 2010s; and third wave since mid 2015).

149. *Id.* at 7.

plaintiffs.[150] This is important as lawsuits are costly for individual parties and may not be possible without monetary support and *pro bono* work chipped in by others.

The German Nuisance Case stands for the proposition that climate litigation may no longer be an "act of desperation" absent government action,[151] but a powerful tool to hold corporations accountable for their fractional climate contributions even independent of notions of fault. While the amount in play seems trivial, the quantity of possible claims may very well jeopardize the livelihood of a wide range of corporations—not only those that are connected to the carbon economy, but also those that are associated with the other six greenhouse gases. The Portuguese Youth Climate Case, which raises novel admissibility questions, embodies the surge in the popularity of the European Court of Human Rights as a forum for climate litigation that connects climate change to the protective ambit of human rights.[152]

Once the decisions arrive, we will be in a better position to assess where we are in that elusive equilibrium between economic growth and climate protection. Will one bulldoze the other?[153] The inherent tension between both interests also returns us full circle to the intergovernmental channels of international climate law, policy, and diplomacy. As actors in their own rights and as hosts of economic players, governments in the developed world may want to weigh whether spending on losses and damages might be worth their while to save resources and generate welfare gains. The sharpened sensitivity among governments may also explain the rise of three unprecedented requests for advisory opinions regarding the scope of state obligations with regard to responding to the climate emergence—one from the International Tribunal for the Law of

150. *Id.*

151. Aliyah Elfar, *Landmark Climate Change Lawsuit Moves Forward as German Judges Arrive in Peru*, COLUMBIA CLIMATE SCH.: GLACIERHUB BLOG (Aug. 4, 2022), https://news.climate.columbia.edu/2022/08/04/landmark-climate-change-lawsuit-moves-forward-as-german-judges-arrive-in-peru/ (attributing the quote to Noah Walker-Crawford).

152. For synopses of pending litigation, *see* Factsheet, *supra* note 68, at 1-4.

153. Keller & Heri, *supra* note 69, at 173.

the Sea,[154] another from the Inter-American Court of Human Rights,[155] and yet another one from the International Court of Justice.[156]

Due to the stakes involved, it does not surprise that at times, the economy-climate nexus often feels more and more like a battlefield. This image circles back to the title of this Article, allowing us to end with Act 3, Scene 1 in Shakespeare's history play Henry V (the Fifth). Exhorting his soldiers to lay siege to Harfleur in France, the King solemnly declares: "Once more unto the breach, dear friends, once more; Or close the wall up with our English dead."[157] *Sis felix!*

154. Letter from the Commission of Small Island States on Climate Change and International Law, Request for Advisory Opinion (Dec. 12, 2022) (asking about specific obligations of state parties under the United Nations Convention on the Law: (i) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?, and (ii) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?).

155. Letter from Antonia Urrejola Noguera (Ministra de Relaciones Exteriores República de Chile) & Álvaro Leyva Durán (Ministro de Relaciones Exteriores República de Colombia) to Pablo Saavedra Alessandri (Secretario Corte Interamericana de Derechos Humanos), Solicitud de Opinión Consultiva sobre Emergencia Climátoca y Derechos Humanos a la Corte Interamericana de Derechos Humanos de la República de Colombia y la República de Chile (Jan. 9, 2023) (posing advisory questions with regard to: (i) State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency; (ii) State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights; (iii) the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency; (iv) State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency; (v) the Convention-based obligations of prevention and the protection of territorial and environmental defenders, as well as women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency; and (vi) the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency).

156. United Nations, General Assembly, Request for an advisory opinion of the International Court of Justice on the obligations in respect of climate Change, H.A. Res. 77/L.58, U.N. Doc. A/77/L.58 (Mar. 1, 2023).

157. WILLIAM SHAKESPEARE, HENRY V act 3, sc. 1, l. 1-2.