

Opening Remarks
Climate Justice and the Role of International Law
22 February 2023 | 14:00-15:30 (GMT+0)

The role of international law in advancing climate justice

Thank you, Emily, and greetings everyone,

I am delighted to give opening remarks on the role of international law in advancing climate justice.

International law regulates action on climate change by setting its legal basis. Relevant international laws are, of course, the UN Framework Convention on Climate Change and the Paris Agreement, but also international human rights treaties and the UN Convention on the Law of the Sea, given the affects of climate change impacts on human rights and on the ocean. The international legal framework also provides relevant principles such as international cooperation and the principle of prevention of significant harm to the environment.

International law creates obligations for States. Our discussion today is ultimately about how to empower States to comply with these obligations. It is about how we can contribute to implementing international law relevant to climate change at the national, regional and international level, using the rule of law to advance climate justice.

One way of doing this is through turning to courts.

I'd like to share a slide with you showing an overview of procedures requesting advisory opinions before international courts and tribunals:

To date, two requests for an advisory opinion have been submitted: one to the International Tribunal for the Law of the Sea, and one to the Inter-American Court of Human Rights. At the same time, a multilateral process led by Vanuatu to request an advisory opinion of the International Court of Justice is ongoing among UN member States. The final draft resolution was uploaded to the UN e-deleGATE portal on the 20th of February and States are now able to co-sponsor the resolution. The vote at the UN General Assembly is expected to take place in late March or early April. If adopted, the resolution will engage the International Court of Justice to give an advisory opinion to **clarify** the obligations of States in respect of climate change and the legal consequences for States where, in the light of these obligations, they have caused significant harm to the climate system, and with respect to States, peoples and individuals.

In fact, what these three requests have in common is that they ask the respective international court to **clarify** State obligations. One of the roles of international law and the international legal system in advancing climate justice is, therefore, to make clear what action –climate action– States are legally bound to.

In addition, advisory opinions carry significant legal weight and moral authority, and can affect the judgments of regional and national courts. They can also guide public policy –as explicitly mentioned in the request by Chile and Colombia to the Inter-American Court. Importantly, the advisory opinions we are discussing today can also contribute to raising awareness about the international legal framework applicable to climate change and about the fact that climate change is a global challenge that falls within the international rule of law and not outside of it.

At the regional and national level, international human rights law is playing an important role in advancing climate justice. Currently, there are three climate cases pending before the Grand Chamber of the European Court of Human Rights. Hearings in two of these cases will be held in late March. In addition, the Court has decided to adjourn its examination of six other climate cases until the Grand Chamber has ruled in those three pending cases. The European Convention on Human Rights has also been invoked in national cases including the Urgenda and the Shell cases here in the Netherlands, the Klimaatzaak case in Belgium, and the Climate Litigation case in the Czech Republic. Human rights-based climate cases in Latin America have also referred to international human rights law in their legal argumentation including the Demanda Generaciones Futuras v. Minambiente in Colombia, and the Demanda de Amparo Ambiental Álvarez y otros v. Peru.

As a final remark, elements to take into account on the role of international law in national climate litigation include whether the national legal system incorporates international law directly (known as a monist system) or it requires an internal procedure in order to incorporate international law (known as a dualist system). In many instances, however, a mixture of both a monist and a dualist approach applies depending on the nature of the international laws being considered. Notably, research shows that **judicial attitudes** are also a factor when it comes to implementing international law by national courts, and that national courts could act as agents of international legal development, including in the field of climate change.

Thank you very much.