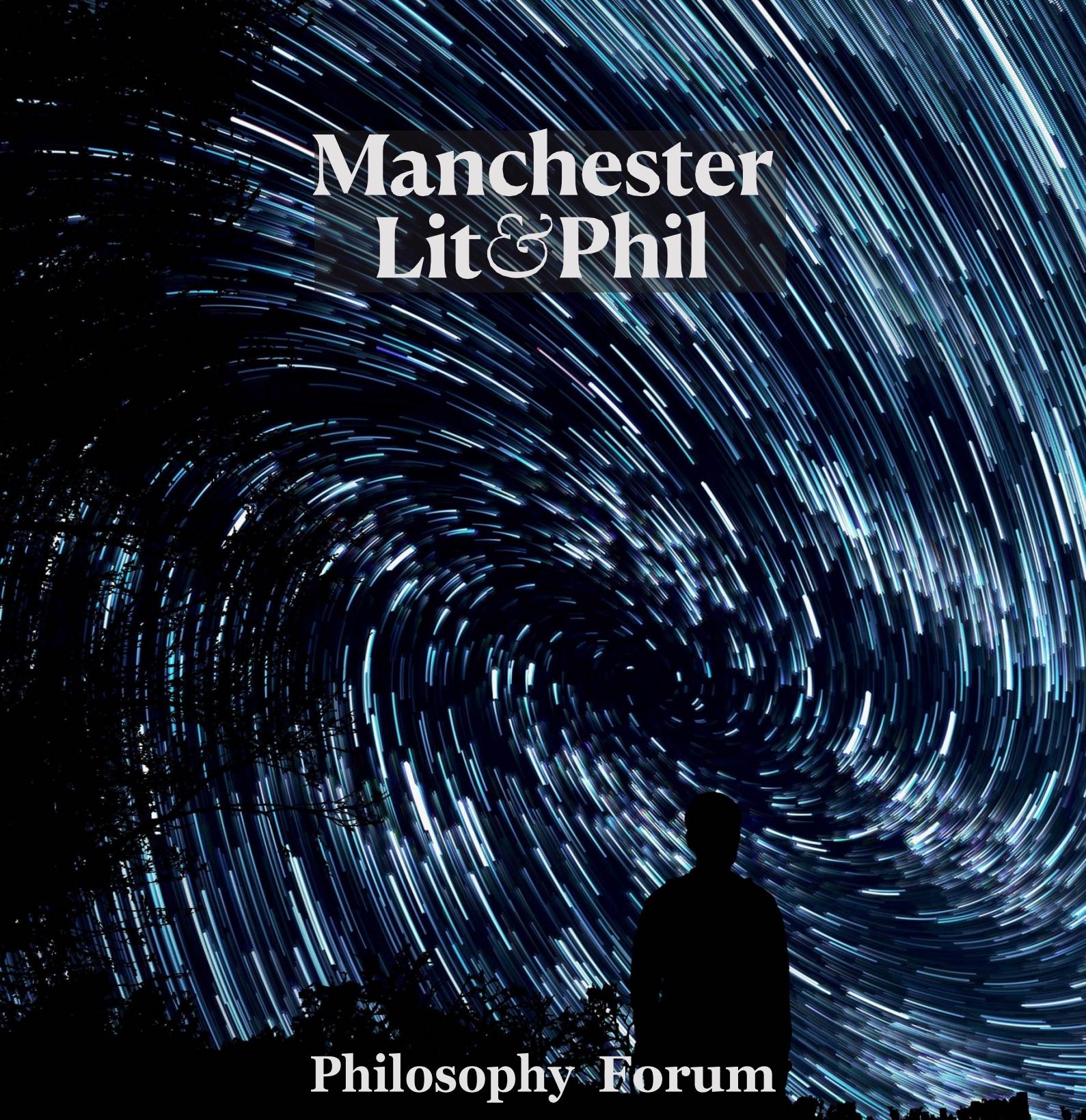


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Can the Law Save the Planet?

The Ethics of Climate Law

Dr Louise Small



Synopsis

Climate change law has emerged as a critical legal discipline in response to the global climate crisis. Unlike traditional laws that impose penalties for wrongdoing, these laws set obligations for governments and organisations to reduce carbon emissions and limit global warming to well below 2°C. Over 3,000 laws and regulations now exist worldwide, forming a framework for climate governance.

Rooted in international environmental law, climate change law began with the UN Framework Convention on Climate Change (1992), followed by the Kyoto Protocol (1997) and the landmark Paris Agreement (2015). The Paris Agreement introduced flexible, legally binding elements, requiring nations to submit and update Nationally Determined Contributions (NDCs) every five years, report progress transparently, and mobilise \$100 billion annually for climate finance. It also mandates global stocktakes and adaptation planning, aiming to align financial flows with low-carbon development.

National legislation complements these efforts. For example, the UK's Climate Change Act 2008 set binding emission targets and established oversight mechanisms. Courts have increasingly enforced climate obligations, as seen in *Urgenda v Netherlands*, where the government was ordered to cut emissions by 25% to protect human rights. Similarly, the Swiss Senior Women case (2024) marked the first international ruling that state inaction violates human rights. Other notable cases include *Ogale and Bille v Shell*, highlighting corporate accountability, and the West Cumbria Mining judgment, which reinforced stricter environmental assessments.

Despite progress, challenges persist enforcement gaps, political resistance, and unequal capacities among nations. Critics argue climate laws can impose economic burdens, threaten sovereignty, and face practical limitations. Supporters emphasise accountability, global cooperation, and moral responsibility to future generations, asserting that legal frameworks drive innovation, protect ecosystems, and prevent irreversible harm.

The debate centres on whether climate law should reflect ethical duties to future generations and if legal systems can capture these dimensions. While laws provide stability and enforceability, they must balance economic realities with intergenerational justice. Ultimately, climate change law is a cornerstone of global sustainability, translating scientific urgency into actionable policy and fostering international solidarity in the fight against climate change.



Question posed

"To what extent should climate change law reflect moral obligations to future generations, and can legal frameworks adequately capture the ethical dimensions of environmental stewardship?"

- This question invites discussion on:
- Intergenerational justice
- The limits of legal systems in addressing moral duties
- Whether laws can or should be shaped by ethical principles rather than economic or political interests



Speaker Biography

Dr Louise Smail has extensive experience in the field of environmental law and climate change law and risk management. She has recently completed a book for Bloomsbury on the effectiveness of climate change law and its impact on both governments and organisations which can affect the climate through their actions, and its impact should not be undervalued. Last year saw the UNCLOS (United Nations Convention of the Sea) declare that GHG (Greenhouse Gas) emissions amounted to marine pollution under article 1(1)(4) of UNCLOS. In December 2024, there were landmark proceedings before the ICJ (International Court of Justice) to see if the ICJ could clarify what legal responsibilities States have to fight climate change, the judgement came in July 2025. Climate change law is making a real difference and maybe having a greater impact than the legislators (or governments) first thought.



Introduction to Climate Change Law

We are used to laws indicating what the penalties will be when things go wrong. Fines, community service maybe even imprisonment. In recent years over 3,000 pieces of law and regulations have been created and are now known as climate change law. This type of law says what Governments and organisations will do to reduce carbon footprints, keep global warming to under 2.5 degrees etc.

Climate change law has appeared as a distinct and increasingly vital area of legal practice and policy in response to the growing recognition of climate change as a global crisis. Its development is rooted in both scientific consensus and international cooperation, evolving over decades to address the complex challenges posed by rising greenhouse gas emissions, global warming, and environmental degradation.

As the title climate change law suggests, this is indeed law that can be enforced in the court system. Now, enforcing law requires organisations to have deep pockets especially when it invites taking governments or large organisations to court. Organisations such as Friends of the Earth, Client Earth and the Good Law Practice have such deep pockets and have been using climate change law through the courts system to bring legal action against governments and corporations.

The foundation of climate change law lies in international environmental law, particularly the United Nations Framework Convention on Climate Change (UNFCCC), which was adopted in 1992. This treaty established a global framework for addressing climate change and led to subsequent agreements such as the Kyoto Protocol (1997), which set binding emission reduction targets for developed countries, and the Paris Agreement (2015), which marked a shift toward voluntary, nationally determined contributions aimed at limiting global temperature rise to well below 2°C.

Unlike earlier agreements (e.g. the Kyoto Protocol), the Paris Agreement is legally binding in parts but allows countries to set their own climate targets—known as Nationally Determined Contributions (NDCs), making it more flexible and inclusive.

Climate change law encompasses a wide range of legal instruments, including statutes, regulations, treaties, and case law, at both domestic and international levels. It intersects with areas such as energy law, environmental law, human rights law, and trade law, reflecting the multifaceted nature of climate governance.



National governments have implemented climate legislation to regulate emissions, promote renewable energy, and adapt to climate impacts. For example, the UK's Climate Change Act 2008 was the first legally binding national framework for reducing carbon emissions, setting long-term targets and establishing the Committee on Climate Change to monitor progress.

Legal responses to climate change are also shaped by judicial activism, with courts increasingly being asked to hold governments and corporations accountable for failing to act. Landmark cases such as *Urgenda Foundation v. State of the Netherlands* have shown the potential of climate litigation to enforce climate obligations based on human rights and constitutional principles.

Paris agreement

The Paris Agreement was adopted on 12 December 2015 at the COP21 climate conference in Paris, under the framework of the United Nations Framework Convention on Climate Change (UNFCCC). It marked a historic turning point in global climate governance, as nearly every country in the world agreed to take action to limit global warming.

Unlike earlier agreements (e.g. the Kyoto Protocol), the Paris Agreement is legally binding in parts but allows countries to set their own climate targets—known as Nationally Determined Contributions (NDCs), making it more flexible and inclusive.

The Paris Agreement aims to:

- Limit global temperature rise to well below 2°C above pre-industrial levels, and pursue efforts to limit it to 1.5°C.
- Strengthen resilience and reduce vulnerability to climate impacts.
- Align financial flows with low-carbon and climate-resilient development.

Submit and Update NDCs

- Each country must submit a plan outlining how it will reduce greenhouse gas emissions.
- These plans must be updated every five years, with each update expected to be more ambitious than the last.



Report Progress Transparency

- Countries must regularly report on their emissions and progress toward their NDCs.
- A transparent framework ensures accountability and builds trust among nations.

Adaptation Planning

- Countries are encouraged to develop strategies to adapt to climate change impacts, especially those most vulnerable.

Climate Finance

- Developed countries are expected to provide financial support to developing nations to help them mitigate and adapt to climate change.
- The goal is to mobilise \$100 billion per year in climate finance.

Global Stocktake

- Every five years, there is a global review of collective progress toward the agreement's goals, known as the Global Stocktake

The Paris Agreement is a landmark in international climate law, promoting collaborative, flexible, and forward-looking action. While it relies on voluntary national targets, its structure encourages continuous improvement, transparency, and global solidarity in the fight against climate change.

Example One: Urgenda foundation v State of the Netherlands.

The Urgenda Foundation case is a landmark legal battle in the Netherlands that has significant implications for climate change litigation worldwide. The case was started by the Urgenda Foundation, a Dutch environmental group, along with 900 Dutch citizens, against the Dutch government. They argued that the government was not doing enough to prevent dangerous climate change, thereby endangering the human rights of Dutch citizens as set by national and European Union laws.

In 2015, the Hague District Court ruled in favour of Urgenda, ordering the Dutch government to reduce greenhouse gas emissions by at least 25% below 1990 levels by 2020. The court found that the government's existing pledge to reduce emissions by 17% was insufficient to meet the



state's fair contribution toward the UN goal of keeping global temperature increases within two degrees Celsius of pre-industrial conditions.

The Dutch government appealed the decision, but in 2018, the Hague Court of Appeal upheld the District Court's ruling. The court concluded that by not reducing greenhouse gas emissions by at least 25% by the end of 2020, the Dutch government was acting unlawfully in contravention of its duty of care under Articles 2 and 8 of the European Convention on Human Rights (ECHR). These articles protect the right to life and the right to private life, family life, home, and correspondence.

The case set a precedent as the first decision by any court in the world ordering states to limit greenhouse gas emissions for reasons other than statutory mandates. It highlighted the legal obligation of governments to act against climate change to protect their citizens' human rights.

Government's response after the ruling:

After the final ruling by the Dutch Supreme Court on December 20, 2019, the Dutch government acknowledged its obligation to urgently and significantly reduce greenhouse gas emissions in line with its human rights obligations. The Supreme Court upheld the earlier decisions, emphasizing that the government must take immediate and effective action to meet the required reduction targets.

In response, the Dutch government committed to implementing measures to comply with the court's mandate. This included accelerating the closure of coal-fired power plants, increasing investments in renewable energy, and enhancing energy efficiency programs. The ruling also had a broader impact, inspiring similar climate litigation cases in other countries and reinforcing the legal duty of governments to address climate change to protect their citizens' human rights.

Example two: Verein KlimaSeniorinnen Schweiz (Swiss Senior Women for Climate Protection)

The Verein KlimaSeniorinnen Schweiz case is a landmark legal battle involving a group of older Swiss women who claimed that Switzerland's failure to adequately address climate change violated their rights under the European Convention on Human Rights (ECHR). The case was brought before the European Court of Human Rights (ECtHR) by the Swiss Association KlimaSeniorinnen Schweiz (Senior Women for Climate Switzerland) and four individual women, each over 70 years old.



The applicants argued that Switzerland's inadequate climate policies violated their rights to life and health under Articles 2 and 8 of the ECHR. They also claimed that the Swiss Federal Supreme Court's rejection of their case on arbitrary grounds violated their right to a fair trial under Article 6.

On April 9, 2024, the ECtHR issued a landmark judgment in favour of the applicants, marking its first major decision on climate change issues. The Court found that by failing to fulfil its positive obligation to take all necessary measures to mitigate climate change, Switzerland had violated the right to respect for private and family life (Article 8 of the Convention). Additionally, the Court found that by inadequately addressing the applicants' case, Switzerland had breached the right to access to court (Article 6 of the Convention).

This case set a precedent as the first climate change litigation in which an international court ruled that state inaction violates human rights.

Despite its progress, climate change law faces challenges, including enforcement gaps, political resistance, and unequal capacities among nations. Nevertheless, it is still a crucial tool for translating scientific urgency into actionable policy, ensuring accountability, and guiding the transition to a low-carbon future.

As climate impacts intensify, the role of law in shaping behaviour, protecting vulnerable populations, and fostering international solidarity will continue to grow, making climate change law a cornerstone of global sustainability efforts.

Example Three: Ogale and Bille v Shell

In the Ogale and Bille v. Shell case is a significant legal battle involving two Nigerian communities, Ogale and Bille, against the oil giant Shell. The case was filed in the English courts in October and December 2015 by the Ogale and Bille communities in the Niger Delta. They sought to hold Shell accountable for extensive oil pollution caused by its operations, which had devastating effects on their environment and livelihoods.

The Ogale community, a fishing and farming community, suffered from at least 40 oil spills from Shell's infrastructure since 1989. These spills caused severe contamination of the community's land and waterways. The United Nations Environment Programme (UNEP) conducted tests in 2010, revealing that the oil contamination in the community's groundwater was 1,000 times higher than the levels allowed by Nigerian law. The water was deemed dangerous and unfit for human consumption, and the pollution ruined the community's farmland.



Similarly, the Bille community, consisting of around 45 islands, experienced massive oil spills from Shell's apparatus between 2011 and 2013. These spills damaged an estimated 13,200 hectares of mangrove swamp, killing most of the fish in the rivers and leaving the fishing population without a source of food.

The communities argued that Shell's parent company, Royal Dutch Shell (RDS), based in the UK, was responsible for the oil pollution due to its control and oversight over operations in Nigeria. They also held Shell Petroleum Company of Nigeria, a subsidiary of RDS, accountable. Shell, however, disputed its legal responsibility, claiming it was merely a parent company with no legal duty to the people in Nigeria.

The case is notable for its implications on corporate accountability, as it challenges the responsibility of parent companies for the actions of their foreign subsidiaries. The litigation is ongoing, with the communities seeking compensation for their losses and a clean-up of the oil pollution.

Shell have now divested itself of the onshore drilling operations in Nigeria paid the community £55million in compensation.

Example Four: West Cumbria Mining

A recent judgement looked at the decision by Cumbria County Council and the Secretary of State to grant planning permission to West Cumbria Mining Limited, (WCML), for the opening of a new underground coal mine at Whitehaven, Cumbria.

This judgment is the first to apply the Supreme Court ruling in Finch, which mandates that "downstream" greenhouse gas emissions must be considered in an Environmental Impact Assessment (EIA), not just those produced by the development itself. The purpose of an EIA is to ensure that decision-making processes are conducted with full knowledge of the environmental cost where projects are likely to have significant effects on the environment.

The argument was that the proposed mine would allow other coal to stay in the ground and that the global supply of coal would remain unchanged. This was rejected. The EIA accepted by the Secretary of State did not consider the greenhouse gas emissions that would be emitted if the coal were mined.



The Secretary of State must be satisfied when considering a planning application and completing an EIA, that the substitution (in this case, UK coal) would be a perfect substitution in terms of greenhouse gas emissions. The Secretary of State concluded that the climate impacts of the mine were "neutral or at worst slightly beneficial" due to the degree of substitution.

However, the Secretary of State repeatedly found that substitution would not be perfect. Evidence showed that even if 1.1% of the coal was not subject to substitution, it would lead to a net increase in greenhouse gas emissions. The Court found that the Secretary of State had failed to reach any consistent view or provide an adequate explanation for the view taken.

WCML proposed a number of ways to mitigate the emissions resulting from the mining, mainly through purchasing carbon credits. They argued that this would not impact the UK's statutory Carbon Budgets. However, the carbon credits would have been from outside the UK and would not lead to reductions within the UK. It was held that the Secretary of State had erred in law by failing to address FoE's submissions that offsetting should be within the UK, rather than internationally.

WCML was given a deadline by the Ministry of Housing, Communities and Local Government (MHCLG) to decide whether it wanted to continue its planning permission application. WCML has now dropped these plans.

This means that developers with significant development projects must now look closely at stricter environmental regulations, to ensure comprehensive EIAs that include downstream emissions and align with sustainable planning and land use practices. Authorities will now closely examine downstream emissions and how developers aim to achieve perfect substitution or be 'Net Zero'.

Why doesn't climate change, make mainstream news?

Complexity and Technical Nature:

- Climate litigation often involves dense legal arguments, scientific data, and policy frameworks that are difficult to explain in simple terms.
- Journalists may struggle to translate these cases into accessible stories for general audiences.



Slow Legal Processes

- Legal cases, especially those involving climate law, can take years to resolve.
- Without dramatic developments or immediate outcomes, they lack the urgency that typically drives news coverage.

Limited Public Awareness

- Many people are unfamiliar with climate law as a field, so stories may not attract enough interest to justify coverage.
- The connection between legal rulings and everyday climate impacts isn't always clear to the public.

Media Priorities

- News outlets often prioritise political drama, natural disasters, or economic stories over legal proceedings.
- Climate law cases may be seen as niche or less engaging compared to more visual or emotionally charged events.

Jurisdictional and Local Focus

- Many climate cases are filed in national or regional courts, making them relevant primarily to local audiences.
- Unless a case sets a major precedent or involves a high-profile entity, it may not reach international headlines.

Underreporting of Environmental Justice

- Cases involving indigenous rights, community displacement, or environmental harm often receive less attention, especially if they challenge powerful interests.
- Media bias or lack of resources can contribute to underreporting.

Fragmented Coverage

- Climate litigation is often covered in specialist outlets (e.g. legal journals, environmental news platforms) rather than mainstream media.
- This limits visibility unless the case is picked up by larger networks.



Climate law cases are highly significant, shaping policy, corporate behaviour, and environmental protection. However, their complexity, slow pace, and limited public engagement often keep them out of the spotlight. Increasing awareness and better storytelling could help bring these cases to broader attention.

Arguments FOR climate change law

International decisions:

In March 2023, the United Nations General Assembly adopted a resolution requesting the ICJ to issue an advisory opinion on the obligations of states under international law to address climate change. This initiative was led by Vanuatu and supported by over 130 countries.

The ICJ was asked to clarify the legal responsibilities of states to protect the climate system for present and future generations and the consequences of failing to act on climate change, especially in relation to human rights, international environmental law, and intergenerational equity.

Why This Matters

Although advisory opinions are not legally binding, they carry significant moral and legal weight. A strong opinion from the ICJ could:

- Influence national courts and climate litigation
- Guide international negotiations and treaty development.
- Strengthen the legal basis for holding states accountable for climate inaction.

Expected Impact

If the ICJ affirms that states have a duty to prevent climate harm, it could:

- Reinforce the Paris Agreement and other climate treaties.
- Support claims by vulnerable nations and communities.
- Encourage stronger domestic climate laws and policy reforms.



Accountability and Enforcement

- Legal obligations ensure that governments, corporations, and individuals are held accountable for their environmental impact.
- Laws provide mechanisms for enforcement, penalties for non-compliance, and clear standards for behaviour.

Long-Term Stability and Predictability

- Climate laws create a stable policy environment, allowing businesses and investors to plan for the future.
- They reduce uncertainty by setting clear targets (e.g. net-zero by 2050) and timelines for action.

International Cooperation

- Legal frameworks enable countries to coordinate efforts globally, such as through the Paris Agreement.
- They help ensure that all parties contribute fairly to climate mitigation and adaptation.

Protection of Public Health and Ecosystems

- Climate laws help reduce pollution, protect biodiversity, and safeguard natural resources.
- They contribute to healthier communities by addressing air quality, water safety, and climate-related risks.

Driving Innovation and Green Transitions

- Legal mandates can stimulate innovation by requiring cleaner technologies and sustainable practices.
- They encourage the development of renewable energy, green infrastructure, and low-carbon solutions.

Social and Environmental Justice

- Climate laws can be designed to protect vulnerable populations from the disproportionate impacts of climate change.



- They promote equity by ensuring that climate action includes support for low-income communities and developing nations.

Moral and Ethical Responsibility

- Many argue that there is a moral duty to protect the planet for future generations.
- Climate laws reflect societal values and a commitment to intergenerational justice.

Preventing Irreversible Damage

- Legal action is often seen as necessary to urgently reduce emissions and prevent tipping points in the climate system.
- Without binding laws, voluntary measures may fall short of what is needed to avoid catastrophic outcomes.

Conclusion

Climate change law is a powerful tool for ensuring coordinated, enforceable, and equitable action. While it should be part of a broader strategy including education, innovation, and market incentives, legal frameworks provide the foundation for serious and sustained climate action.

Arguments AGAINST Climate change law

Economic Concerns

- **Cost to Businesses:** Regulations can impose high compliance costs, especially on industries like manufacturing, energy, and transport.
- **Competitiveness:** Stricter laws may disadvantage domestic companies compared to those in countries with looser regulations.
- **Job Losses:** Transitioning away from fossil fuels may lead to job losses in traditional energy sectors without guaranteed replacement in green industries.



Political and Sovereignty Issues

- **National Sovereignty:** International climate laws or agreements may be seen as infringing on a country's right to self-govern.
- **Uneven Burden:** Developing nations argue that they are unfairly expected to curb emissions despite contributing less historically to climate change.
- **Policy Volatility:** Climate laws can be subject to political shifts, making long-term planning difficult for businesses and investors.

Practical Limitations

- **Enforcement Challenges:** Monitoring and enforcing compliance across borders and sectors is complex and costly.
- **Loopholes and Greenwashing:** Organisations may comply in form but not in spirit, using legal loopholes or superficial measures.
- **Slow Legislative Processes:** Laws can take years to pass and implement, while climate change requires urgent action.

Philosophical and Ideological Opposition

- **Market-Based Preference:** Some argue that free markets and innovation—not regulation—should drive climate solutions.
- **Scepticism About Climate Science:** A minority still question the severity or causes of climate change, opposing laws based on what they see as uncertain science.
- **Libertarian Views:** Climate laws may be seen as government overreach, infringing on personal or corporate freedoms.

Risk of Unintended Consequences

- **Displacement Effects:** Strict laws in one region may push polluting industries to relocate to less regulated areas.
- **Social Inequity:** Poorer communities may bear the brunt of climate laws through higher energy costs or limited access to green technologies.



Conclusion

While climate change law is a powerful tool, critics argue that it must be carefully designed to avoid economic harm, political backlash, and practical inefficiencies. Many advocate for a balanced approach, combining legal frameworks with incentives, education, and innovation.

The question is:

“To what extent should climate change law reflect moral obligations to future generations, and can legal frameworks adequately capture the ethical dimensions of environmental stewardship?”

- What are the limits of legal systems in addressing moral duties?
- Whether laws can or should be shaped by ethical principles rather than economic or political interests?
- Can we, or should we, force individuals, nations and governments to adopt more climate-friendly laws?
- Could there be more enforcement of the educational system, from a very early age?





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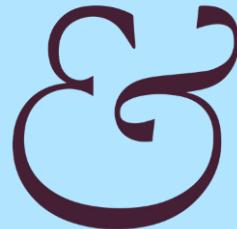
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