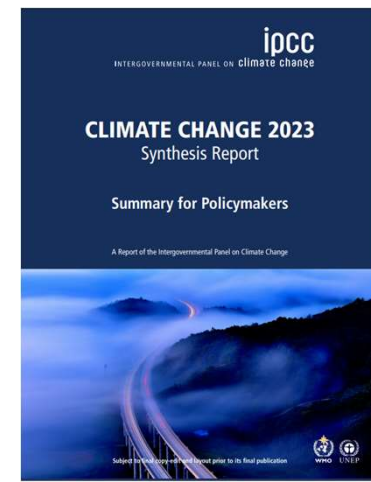


Belgian Climate Center – Workshop
« Climate litigation in Belgium and beyond »

***Climate science and soft law as a reference for
general standards of behavior: the real claws of the
Paris Agreement ?***

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Introduction

Climate Litigation and Scientific Evidence

- Increasing climate litigation at national and international levels
- Response to insufficient climate policies and denial of responsibility by carbon majors
- Role of proof and scientific expertise is critical in legal proceedings

Introduction

Climate Litigation – different objects, different evidenciary needs

Subjective Climate Litigation

Focus: Individual Rights

- Protect fundamental or civil rights impacted by climate change
- Goals:
 - Compel emission reductions
 - Seek compensation for damages
- Examples: *Urgenda*, *Affaire du Siecle*, *Neubauer vs Germany*

Objective Climate Litigation

Focus: Legality of Acts

- Review legality of actions with climate impact
- Goal: Prevent harmful future infrastructure ('climate bombs' e.g., large coal mines, petrol and gas extraction licenses)
- Examples: *Greenpeace Nordic vs Minister of Petroleum & Energy*, *Rocky Hill* case

I. Role of Climate Science in Court

How is Climate Science Used in Litigation?

- Proof of climate change and its human cause (undisputed)
- Evidence of climate impacts (disputed at the individual level)
- Attribution of responsibility for emissions (disputed)
- Determining fair share in GHG reductions (disputed)

I. Role of Climate Science in Court

Climate Science as Evidence in court

Sources of "Best Climate Science" in Court

- Peer-reviewed literature
- Expert testimonies/reports
- International body reports (IPCC, UNEP); national independent bodies reports

I. Role of Climate Science in Court

Two Ideals of Climate Expertise

Different Approaches by Region (Zhu & Fan, 2024)

- *"View of Everyone"*: EU preference for reports by recognized scientific bodies (e.g., IPCC)
- *"View from Nowhere"*: US preference for independent research free from policy influence

I. Role of Climate Science in Court

‘Best climate science’ – what do we talk about ?

Advantages of IPCC Reports in Litigation (Thiam et al., 2023)

- Minimizes denial of climate science
- Speeds up court proceedings
- Acknowledges uncertainty without diminishing the reports’ value

Challenges

- Scientific consensus focuses on global/regional trends, not specific attribution
- Attribution science and "fair share" determination methods remain contentious

II. Climate science and legal standards

Interpreting General Standards in Light of Climate Science

- ‘Standards’ as norms of variable content giving adaptability to basic rules of conduct
- Most successful cases in subjective litigation are based on the violation of 2 types of general standards of conduct
 - Human rights protection (*Urgenda*; *KZ*; *Shell*; *VKS*)
 - Duty of care to population or specific persons (*Urgenda* (1st instance) ; *KZ*; *Shell*)
 - Duty of care to the environment (*Affaire du Siècle*)
- Courts interpret human rights and duty of care obligations based on climate science

II. Climate science and legal standards

The Weight of Scientific and Political Consensus in Court Decisions

- IPCC recommendations shape rulings on EU and national policies
- Courts reference soft law (e.g., Glasgow Pact) to enforce climate obligations
 - *KZ* case: injunction to reduce GHG emissions based on IPCC recommendations rather than on EU law
- Stresses the weight of climate science when combined with general standards of conduct
- Allows for control not only the compliance to NDCs but also the validity of NDCs, voluntary by definition

III. Challenges

Scientific vs Legal Causality

- Difficulty in linking GHG emissions to specific weather events and incurred losses
- Attribution science aim to reduce uncertainty in linking GHG emitters to extreme weather or long-standing consequences of CC
- Attribution science helps the judge to assess to what extent GHG emissions alter events' probability and intensity (scientific causation), but not absolute causality (legal causation)
- Legal causality standards are framed by law and vary by litigation type (HR vs liability cases) – cannot be merged with scientific causality without a lawmaker choice

Attribution science “*set of methods which use counterfactual inquiry to quantify the change in probability or intensity of weather or climate-related events that is attributable to human influence* » (Stuart-Smith et al., 2021)

III. Challenges

The need for alternative causation standards and Proportional Responsibility

- The limitations of *sine qua non* causality ('but for' test) – the impossibility to find evidence of direct link btw GHG emitters and weather event / losses
- Need for alternative causation standards, without strict necessity test (ECHR, VKS, § 422 - 439)
 - 'Loss of opportunity' test (KZ)
 - 'normal course of events' causality
 - Proportional responsibility (C.civ. 6.28)
- Ex: *Lliuya vs RWE*: Damages based on proportional contribution to global emissions by RWE

III. Challenges

Setting Fair Carbon Budgets (equitable NDCs)

Determining National "Fair Share" of Emissions

- Science informs fair share, but equity is not purely scientific
- Difficulty in applying scientific methods to assess each State's contribution
- Emerging literature provides guidance for courts

III. Challenges

Uncertainty and the Precautionary Principle

Judicial Approaches to Uncertainty

- Attribution science uses probabilistic methods to address uncertainty
- Uncertainty may not bar standing (Urgenda), but can limit claims (VKS)

III. Challenges

Procedural Challenges in Using Climate Science

Accessing and Understanding Climate Science in Court

- Judges need clear access to climate data and methods
- Specialized training (e.g., Climate Judiciary Project) helps judges grasp the complexities
- The case for specialized environmental courts

Conclusion

Key Takeaways

- **Climate science has a critical role as evidence base in climate litigation**
- **Climate science has is not normative by essence – general standards of conduct are !**
- **Question rises whether courts can enforce general standards using climate science without overstepping their role**
- **HR and duty of care obligations, interpreted through science, give legal teeth to the Paris Agreement**

Conclusion

Challenges Ahead

- **Challenges remain in connecting scientific and legal causality, but case law and legal proof standards are evolving**
- **Need for developing robust methodologies for "fair share" determination**
- **Constant need for vigilance and adjustment as climate science advances while law needs legal certainty**