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Urgenda to Be Followed

Will the Courts Be the Last Resort to Prevent Dangerous Climate Change?

András Huszár[*]

Abstract

The fight against climate change has reached new battlegrounds. National courts have become the stage where individuals and communities are trying to force Governments or other public and private legal entities to do more. After more than four years of legal battle, the Dutch Supreme Court has settled perhaps one of the most well-known climate cases in literature so far: Urgenda Foundation v. the State of the Netherlands. The essence of the judgment is that the Dutch Government was ordered to comply with the greenhouse gas emission reduction target deemed necessary by the international community. The way in which the Court has arrived at this conclusion in terms of the concrete obligation is questionable. While the ruling is based on various legal bases, the present article examines solely the arguments derived from international climate law and science. To that end it elaborates on the challenges of establishing the substance of a legally binding obligation for individual states concerning mitigation, it analyzes the nature of joint mitigation efforts, it looks at reports of the Intergovernmental Panel on Climate Change used as evidence in court procedures, and finally, it explores the possible future of climate litigation in light of the legally binding 'ultimate' goal of climate policy introduced by the Paris Agreement.

Keywords: climate change, Urgenda, Paris Agreement, effort sharing, IPCC.

1. Introduction

Without a doubt the fight against the massively complex phenomenon of climate change has reached new battlegrounds. National courts have become the stage where desperate individuals and communities are trying to force Governments or other public and private legal entities to either do more in terms of mitigation or to provide some kind of compensation for the loss and damages allegedly caused by contributing to changing the climate.[1] The number of these cases is difficult to count and many are still pending before the courts.[2] But this is nothing out of the

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1 *See e.g.* at www.nature.com/articles/d41586-020-00175-5.

2 *See e.g.* a comprehensive and searchable database at http://climatecasechart.com/.

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ordinary, just the opposite. If we truly think that climate change is one of the most important challenges of the 21st century and indeed international, regional and national laws are being adopted to tackle it, one should not be surprised that there are people who feel that the obligations enshrined in those legal instruments are not being met, or are in fact inept to bring about change. Hence, they are seeking remedy. As Roger Cox, author of the book Revolution Justified[3] controversially puts it "only the law can save us now".[4] Recently, more than four years after the first instance verdict was rendered by The Hague District Court, the Dutch Supreme Court settled perhaps one of the most well-known cases in the scholarly literature: *Urgenda Foundation v. the State of the Netherlands*.[5] The judgment already serves as a precedent for subsequent proceedings,[6] therefore, it is worth examining some of the less well covered aspects of the case, and comparing the interpretation leeway of the international climate law regime before and after the adoption of the Paris Agreement.[7] It is fully recognized that there are many aspects of climate litigation in general, and the *Urgenda* judgment in particular that may be considered (*e.g.* effective global *versus* local climate action, human rights obligations of the State, separation of powers, duty of care, effective sanctions, ethics, responsibility, judicial activism *versus* enhanced interpretation of the law, *etc.*) and that the decisions of the Dutch courts were established on various legal bases. Nevertheless, in the present article I would like to focus exclusively on those aspects that flow from the particular nature of climate change, international climate politics and law that inevitably influence national legal procedures. It is argued, that the *Urgenda* case should also be assessed in light of the then effective international law, the UN Framework Convention of Climate Change[8] (UNFCCC) and its Kyoto Protocol.[9] However, the historic Paris Agreement was adopted during the trial on 12 December 2015.[10] It laid down the foundations of international climate law for the coming decades, including concrete goals that put the individual responsibility of the Parties to

3 Roger H. J. Cox, *Revolution Justified,* Planet Prosperity Foundation, 2012. This book provided the inspirational impetus for the Dutch climate case.

4 *See* at www.revolutionjustified.org/roger-cox-author-of-revolution-justified.

5 *Stichting Urgenda v. the State of the Netherlands* (Ministry of Economic Affairs and Climate Policy), ECLI:NL:HR:2019:2007, Hoge Raad, 19/00135 *(Urgenda judgment)*, English translation available at www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf.

6 *E.g.* there is another case already in front of the Court in the Netherlands that refers primarily to the *Urgenda* judgment. *See* at http://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/.

7 *See* at https://treaties.un.org/doc/Treaties/2016/02/20160215%2006-03%20PM/Ch_XXVII-7-d.pdf.

8 *See* at https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf.

9 *See* at https://treaties.un.org/doc/Treaties/1998/09/19980921%2004-41%20PM/Ch_XXVII_07_ap.pdf.

10 Entered into force on 4 November 2016.

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the Agreement[11] into a different perspective in the context of domestic litigation. Based on the above, the first part of this paper elaborates on the challenges of establishing the substance of the individual states' binding obligation concerning mitigation. In the second part, the nature of effort sharing will be analyzed, in particular on the basis of the pre- and post-Paris legal regime. The third part deals with the use of the reports of the Intergovernmental Panel on Climate Change (IPCC) as evidence in court procedures. Finally, the fourth part discusses the possible future of climate litigation in light of the legally binding 'ultimate' goal of climate policy introduced by the Paris Agreement.

2. The Problem With Determining the Exact Substance of the Obligation of an Individual Country in Terms of Mitigation

The very essence of the *Urgenda* case is that the Court ordered the Dutch Government "to comply with the [GHG emission reduction] target, considered necessary by the international community, of a reduction by at least 25% in 2020."[12] This figure was derived from two particular sources by the Court. The first source is the contribution of Working Group III to the Fourth Assessment Report of the IPCC, Climate Change 2007: Mitigation of Climate Change. I will deal with the issues of using IPCC reports as evidence in more detail in part three, but it is worth noting at this point that in this report a box[13] contains the figure in question. The IPCC report explicitly refers to Annex I[14] countries as a group. The IPCC report also notes that "the ranges presented [...] do not imply political feasibility, nor do the results reflect cost variances." The second, perhaps even more important source of the at least 25% reduction obligation cited by the Court was the decisions of the various bodies under the Conference of the Parties[15] (COP) to the UNFCCC.[16] These UNFCCC decisions are always very cautiously worded when regulating legal nature and intended impact, which clearly illustrates the fragile nature of international climate talks. The figure in question

11 Almost every subsequent national legal procedure must take into account the provisions of the Paris Agreement since nearly all the countries on Earth are already party to it. *See* at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en.

12 *Urgenda judgment,* para. 5.

13 Box 13.7 entitled 'The range of the difference between emissions in 1990 and emission allowances in 2020/2050 for various GHG concentration levels for Annex I and non-Annex I countries as a group', at www.ipcc.ch/site/assets/uploads/2018/03/ar4_wg3_full_report-1.pdf.

14 'Annex I countries' refers to countries listed in the Annex I of the United Nations Framework Convention on Climate Change. The list of Annex I countries is available at https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states?field_national_communications_target_id%5B515%5D=515.

15 *See* at https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop.

16 Decision 1/CMP.6 (Cancún Agreements), at https://unfccc.int/sites/default/files/resource/docs/2010/cmp6/eng/12a01.pdf; Decision 1/CMP.7, at https://unfccc.int/sites/default/files/resource/docs/2011/cmp7/eng/10a01.pdf; Decision 1/CP.18, at https://unfccc.int/sites/default/files/resource/docs/2012/cop18/eng/08a01.pdf.

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appeared for the first time in the preamble of Decision 1/CMP.6 in 2010 as follows:

> "Also *recognizing* that the contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Climate Change 2007: Mitigation of Climate Change, indicates that achieving the lowest levels assessed by the Intergovernmental Panel on Climate Change to date and its corresponding potential damage limitation would require Annex I Parties *as a group* to reduce emissions in a range of 25-40 per cent below 1990 levels by 2020, through means that may be available to these Parties to reach their emission reduction targets." (emphasis added)

It is important to note three things with regard to the text above. Firstly, the quote is evidently in the preamble and not in the operative part. Second, the text merely recognized the IPCC's assumptions, without calling for any concrete action. Thirdly, and maybe most importantly, if we were to cite the IPCC report correctly, it would be clear that this text also mentions Annex I countries as a group without referring to the states individually. Before quoting the above preamble paragraph, the Dutch Supreme Court concludes that "the Annex I countries as a group should reduce their greenhouse gas emissions by 25% to 40% by 2020 compared to 1990".[17] However the meaning of that paragraph is different. Therefore, unfortunately, the interpretation of the Dutch Supreme Court in that regard is inaccurate. An indication on an individually allocated mitigation reduction goal associated with any particular country cannot be found anywhere – neither in the report of the IPCC, nor in the cited decisions. They consistently refer to Annex I (or developed countries) as a group, expressing that a single emission reduction of an Annex I party would not necessarily fall into that margin. And this is no coincidence. Here, I will not elaborate in detail on the reasoning behind the concept of 'effort-sharing', I will come back to it in part two. However, as Suryapratim Roy *et al.* put it:

> "It appears from the IPCC Report – the Court refers to – that the target for the year 2020 applies to Annex-1 countries as a group. If that is the case, then it refers neither to individual Annex-1 States nor only the EU as a collective. Thus, the question as to whether it is the Netherlands or the EU that is an appropriate unit for meeting this target is a matter of interpretation."[18]

It is argued, that this 'interpretation' applied by the Dutch Court in the *Urgenda* case is against the common practice and logic of international climate change negotiations. More importantly, the language of the decisions adopted by the Parties to the UNFCCC and cited by the Court can therefore not imply such an

17 *Urgenda judgment,* para. 7.2.3.

18 Suryapratim Roy & Edwin Woerdman, 'Situating Urgenda v. the Netherlands within Comparative Climate Change Litigation', *Journal of Energy & Natural Resources Law*, Vol. 34, Issue 2, 2016, pp. 165-189.

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interpretation. Moreover, even if we were to accept that some sort of a legal obligation could be 'inferred from the UNFCCC decisions amounting to at least 25% for Annex I countries as a group (an interpretation which would be have been much more in harmony with the language of the documents, but not at all unproblematic), then if the Annex I countries as a group fulfil the at least 25% emission reduction by 2020, the Netherlands or any other Annex I country would be perfectly in their rights not achieve that target individually. The above of course should not be interpreted as an argument against the necessity of meaningful climate action by the Netherlands or any other country. This is only to indicate that the legal obligation of at least 25% emission reduction, especially when it comes to one particular country, cannot be derived from the documents cited by the Court. Article 4 of the Paris Agreement takes the approach of avoiding setting forth a concrete emission reduction obligation. It merely states, without any further expectations as to the substance that:

> "Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions."[19]

The so-called Nationally Determined Contributions (NDC) – meaning more or less the mitigation commitments of the parties – themselves are not even legally binding under international law, since they do not form part of the Paris Agreement. The NDCs are solely 'registered' on a dedicated website of the UN,[20] meaning that their substance may be freely changed anytime by the respective party. (Obviously if the content of a particular NDC is based on a target prescribed under national or supranational law, then it is legally binding under that particular legal regime). Thus, if we were to look solely at Article 4 of the Paris Agreement, national courts could not really be the forums for discussing and subsequently deciding in each country whether the contribution foreseen by the Government is adequate or not. However, this approach is no longer inconceivable based on the precedent of *Urgenda*. Nevertheless, as will be discussed under part four, in light of the 'ultimate objective' of the Paris Agreement which is "to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century"[21] (also referred to as net zero emission or climate neutrality) and the IPCC Special Report on Global Warming of 1.5 °C[22] the adequacy of the NDCs and long term strategies may be examined from a brand new perspective, which was not the case in *Urgenda*.

19 Article 4(2) Paris Agreement.

20 *See* at https://www4.unfccc.int/sites/ndcstaging/Pages/Home.aspx.

21 Article 4(1) Paris Agreement.

22 *See* at www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf.

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3. Effort Sharing

The concept of effort sharing, or joint acting is far from new. It is based on the scientific fact that we have a single atmosphere within which it does not matter where the greenhouse gas (GHG) is emitted, it will contribute to the global warming effect identically. Meanwhile it is also the case *vice versa* that the reduction of the GHG emissions anywhere in the world will result in the same outcome. Thus, international climate law provides the possibility to a group of countries to share efforts and make common commitments allowing the participating members to reduce their emissions differently, reflecting for instance their different national circumstances, respective capabilities or cost-effectiveness, *etc*. This opportunity for Annex I countries has already been included in the UNFCCC:

> "Parties may implement such policies and measures *jointly with other Parties* and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph."[23] (emphasis added)

The Kyoto Protocol of the UNFCCC adopted in 1997 reaffirmed and further detailed this possibility:

> "The Parties included in Annex I shall, *individually or jointly*, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts […]."[24] (emphasis added)

Additionally, the Kyoto Protocol also made it clear what procedure was to be followed in the event of failure to achieve a joint emission reduction commitment:

> "In the event of failure by the Parties to such an agreement to achieve their total *combined* level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement."[25] (emphasis added)

From this paragraph, it follows that as long as the joint commitment is fulfilled, an individual member of the joint commitment cannot be held accountable for its own level of emission reduction. Under the second quantified emission limitation and reduction commitment period (lasting from 2013 up to 2020 and introduced

23 Article 4(2) UNFCCC.
24 Article 3(1) Kyoto Protocol.
25 Article 4(5) Kyoto Protocol.

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by the Doha Amendment[26] to the Kyoto Protocol in 2012, but which is still not in effect due the lack of the necessary number of ratifications) the EU and its Member States are jointly fulfilling their commitments based on the EU's 2020 climate & energy package.[27] The common goal of that legislation is to achieve a 20% cut in GHG emissions from 1990 levels. For scientific and technological reasons, the final figures of national GHG emission reductions are only available two years after a given year (x-2),[28] therefore the final figure will only be available in 2022. Nevertheless, the Dutch Supreme Court itself acknowledged that

> "the EU as a whole is expected to achieve a *26-27% reduction*[29] *by 2020 compared to 1990, which is above the minimum target of 25% of the AR4 scenario* and significantly more than the 20% reduction." (emphasis added)

In light of the above statement, it seems even more controversial to impose an obligation of enhanced emission reduction in the Netherlands. While the Court argues that "the said agreements at EU level are not intended to replace the obligations of the individual EU Member States under the UNFCCC",[30] it is hard to conceive of the rationale behind effort sharing if the common target cannot 'replace' individual efforts decided and implemented collectively. Again, *nota bene* it is not argued here that increased emission reduction is not advisable or in fact necessary in any country, taking into account the severity of the climate change problem. It is merely highlighted that under the Kyoto Protocol and effective EU legislation, in case of one particular Member State it cannot be directly justified even under the standards introduced by the Netherlands court. Furthermore, the judgment of the Netherlands Supreme Court seems to extrapolate the freely decided emission allocation rules of effort sharing within the EU[31] (allowed under the UNFCCC and the Kyoto Protocol) to the Netherlands as one member of the Annex I countries, the latter countries did not undertake an effort sharing commitment:

> "The Court of Appeal rightly held in para. 60 that it would not be obvious for a lower reduction rate to apply to the Netherlands as an Annex I country than to the Annex I countries as a whole. As the Court of Appeal considered in

26 *See* at https://treaties.un.org/doc/Treaties/2012/12/20121217%2011-40%20AM/CN.718.2012.pdf.

27 *See* at https://ec.europa.eu/clima/policies/strategies/2020_en#tab-0-0.

28 *See e.g.* at https://ec.europa.eu/clima/policies/strategies/progress/monitoring_en.

29 According to the latest figures the 2018 levels correspond to a 23 % reduction from 1990 levels. *See* at www.eea.europa.eu/data-and-maps/indicators/greenhouse-gas-emission-trends-6/assessment-3.

30 *Urgenda judgment*, para. 7.3.3.

31 "Member States' reduction efforts should be based on the principle of solidarity between Member States and the need for sustainable economic growth across the Community, taking into account the relative *per capita* GDP of Member States." Preamble (8) Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community greenhouse gas emission reduction commitments up to 2020 (effort sharing decision).

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> para. 66, the Netherlands is one of the countries with very high per capita emissions of greenhouse gases. In the above agreements at EU level, the reduction percentage agreed upon for the Netherlands is, accordingly, one of the highest reduction percentages applicable to the EU Member States (Annex II to the Effort Sharing Decision). It can be assumed that this high percentage corresponds to the possibilities and responsibilities of the Netherlands. As the Court of Appeal established in para. 60, the State has not substantiated why a lower percentage should apply."[32]

This approach resulted in a situation where the Dutch Government had to justify why it undertook a lower target when participating in a legitimate EU effort sharing scheme, which– as a whole – actually overachieved by 2020 the internationally 'accepted', required emission reduction target set for the Annex I countries as a group. Presumably, other courts will be hard put to apply this precedent in this form. At the same time, in post 2020 era, with its bottom-up nature the Paris Agreement takes a slightly different approach, because the relevant provisions[33] "might apply to [...] [those kind of cooperation], which might not be implementing a system based on the Kyoto Protocol".[34] This means that the Paris Agreement leaves room for various types of cooperation that may not be as 'clear' as was the case with the Kyoto Protocol's quantified emission limitation and reduction commitments, and the backing mature accounting system which ensured the necessary comparability across the member countries participating in the joint effort. In the Paris Agreement "the relationship between individual and collective NDCs is not prescribed",[35] however, it makes it clear "that each party is responsible for its emission levels."[36] Currently, only the EU and its Member States have submitted a common (Intended)[37] Nationally Determined Contribution,[38] however the terms and conditions of the joint implementation agreement to be submitted under Article 4(16) of the Paris Agreement remain to be seen.

32 *Urgenda judgment,* para. 7.3.4.
33 Article 4(16)-(17) Paris Agreement.
34 Daniel Klein *et al.* (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary,* Oxford University Press, Oxford, 2017, p. 161.
35 Id.
36 Id.
37 The document was submitted on 6 March 2015 *i.e.* before the adoption of the Paris Agreement, answering the 'invitation' of Decision 1/CP.20 (Lima Call for Climate Action) para. 9. Then under Decision 1/CP.21 (Adoption of the Paris Agreement) para. 22 it was 'automatically' considered as the EU' first NDC.
38 *See* at www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/LV-03-06-EU%20INDC.pdf.

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4. The Reports of the IPCC as a Reference to Determine Individual National Mitigation Obligations

The very purpose of the IPCC and its reports is "to provide governments at all levels with scientific information that they can use to develop climate policies."[39] The reports produced by the IPCC on a regular basis "are also a key *input* into international climate change negotiations"[40] (emphasis added). Nevertheless, one of the most well-known and basic principles guiding the work of the IPCC is that the "IPCC reports are neutral, policy-relevant *but not policy-prescriptive*"[41] (emphasis added). Therefore, it is accurate to state that the content of the reports can be considered as 'internationally agreed'[42] material. Yet to declare that "the State *must comply* with the target, considered necessary by the international community"[43] (emphasis added) would fly in the face of the above principle. Instead, the principle implies that any legislator or other policymaker is advised to use the information provided by the IPCC, but this does not and should not constitute a legal obligation in itself. Moreover, the figures provided by the IPCC do not refer to country-level targets, but targets for a group of countries in a given scenario, as it was discussed in part one. Additionally, the deduction of individual, country-level, legally binding targets from the reports of the IPCC as was done in the case of *Urgenda* would not be unambiguous from a scientific point of view either. The reports generally make observations on a global, or sometimes even on a regional scale, but not on a country-level scale. There is no mention of particular countries in the reports, only groups of countries (such as Annex I countries as a group). If I were to follow the logic of the *Urgenda* decision, all Annex I Parties would be bound to reduce their GHG emissions by at least 25% by 2020. This again would deny them the possibility of a 'freely decided' effort sharing, as described in the previous part. One commentator expressed his surprise by posing the question of "why the international (the IPCC) was identified as a preferred benchmark for allocation of climate targets over the supranational (the EU)."[44] Finally it worth mentioning that recognizing the above difficulties, the differences in individual national circumstances and respective capabilities in terms of climate change mitigation or adaptation on a country level basis, has led an increasing number of countries to create national IPCC type processes and institutions.[45] Ideally, in the future such national initiatives

39 *See* at www.ipcc.ch/about/.

40 Id.

41 *See* at www.ipcc.ch/.

42 It is evidenced for instance by the fact that the 'Summary for Policymakers' of the IPCC reports are adopted line by line by the representatives of the Member Governments of the IPCC. *See* Appendix A to the Principles Governing IPCC Work 'Procedures for the Preparation, Review, Acceptance, Adoption, Approval and Publication of IPCC Reports', at www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf.

43 *Urgenda judgment*, para. 5.

44 Roy & Woerdman 2016, p. 31.

45 *See e.g.* https://iiasa.ac.at/web/home/research/researchPrograms/Energy/Research/APCC-Report.en.html; http://pbmc.coppe.ufrj.br/index.php/en/news/159-brazilian-panel-on-climate-change-launched; www1.nyc.gov/site/orr/challenges/nyc-panel-on-climate-change.page.

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(underpinned by appropriate legislation) may serve as better sources of country level information for decision-makers (and eventually national courts) to decide how to fulfil their respective obligations in light of the legally accepted ultimate goal of climate policy, which will be discussed under the next part.

5. The Possible Future of National Climate Change Litigation in Light of the Goals of the Paris Agreement and the IPCC Special Report on the Impacts of Global Warming of 1.5 °C

Following the analysis of the mainly *pre*-Paris legal environment in which the *Urgenda* case had to be decided, I now turn my attention to climate litigation in the post-Paris era. It is without a doubt that the adoption of the Paris Agreement provides the general legal framework for the coming decades. Probably the two most well-known global goals that were declared in the document (legally binding under international law) which lay the foundations of that framework are the temperature goal *i.e.* to hold "the increase in the global average temperature to well below 2 °C above pre-industrial levels and (to) pursu(e) efforts to limit the temperature increase to 1.5 °C above pre-industrial levels"[46] and the long-term or 'ultimate' goal *i.e.* "to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century."[47] All efforts of the Parties to the Agreement should be directed towards, and subsequently measured with reference to these benchmarks. It is important to note again that in spite of the earlier reports of the IPCC or the decision adopted by the various bodies under the UNFCCC, the above goals could not be referred to as having legally binding force under international law, this, however, is now definitely the case. Two further factors should be cited in this respect. Firstly, in response to the invitation by the UNFCCC[48] on 6 October 2018 the IPCC adopted the Special Report on the Impacts of Global Warming of 1.5 °C.[49] *Inter alia* this report concluded that

> "in model pathways with no or limited overshoot of 1.5 °C, global net anthropogenic CO2 emissions decline by about 45% from 2010 levels by 2030 [...], reaching net zero around 2050 [...]. For limiting global warming to below 2 °C CO2 emissions are projected to decline by about 25% by 2030 in most pathways [...] and reach net zero around 2070 [...]."

It follows from the above that since the adoption of the Paris Agreement there is not only a legally binding obligation for the Parties to reach net zero emissions "in the second half of this century", but since the publication of the IPCC report cited there is a clear path that should be followed concerning the timeframe for reaching the net zero emission. And due to the fact that significant negative

46 Article 2(1) Paris Agreement.
47 Article 4(1) Paris Agreement.
48 Decision 1/CP.21, para. 21.
49 *See* at www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf.

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emissions[50] are currently technologically inconceivable, in order to reach global net zero emissions and thus avoid the occurrence of dangerous climate change, *ceteris paribus* every single country[51] must reach net zero emissions internally. This means that the concept of effort sharing at least on the long term would become inapplicable, and every country will have to figure out its own path towards climate neutrality. These, in turn, will be open for review by national courts based on solid legal bases under international law. A fundamental issue that will be open to interpretation is whether to assess the adequacy of national policies and goals in light of the 1.5 °C or the 2 °C threshold. Taking into account the well-established general principles of environmental law, it will be difficult to argue for the latter value.

6. Conclusion

The struggle to prevent dangerous climate change will continue in the following decades. Thus, it is no question that globally we are looking towards a rise in successful or failed climate litigations. It is also probable that the somewhat premature ruling of *Urgenda* will be cited by many future applicants before various courts. However, from among the different types of climate cases for those where the adequate mitigation action of a particular state is in question, with the Paris Agreement international law provided clear goals to be followed by the Parties and to be reviewed by courts. So unlike the pre-Paris era which required 'judicial activism'[52] to prescribe the increase of national GHG emission reduction, now courts have internationally accepted and legally binding benchmarks allowing them to be in some instances the last resort to prevent dangerous climate change, more in line with the traditional idea of the separation of powers.

50 *See e.g.* https://theconversation.com/why-we-cant-reverse-climate-change-with-negative-emissions-technologies-103504.

51 Recognizing that Bhutan is already a carbon negative country. *See* at www.ecowatch.com/this-country-isnt-just-carbon-neutral-its-carbon-negative-1882195367.html.

52 *See* at www.huntonak.com/images/content/3/6/v3/3608/The-Urgenda-judgment-a-victory-for-the-climate-that-is-likely-to.pdf.

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