



CLIMATE CHANGE

The impact of climate change on lawyers' practices



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Zoom Webinar

27 February 2023, 09:00-11:00 CET



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The impact of climate change on lawyers' practices

Introduction to the impact of climate change on lawyers

Jean-Marc Gollier, Chair of CCBE Environment and Climate Change

Committee

eubelius

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Plan



Chronicle of the Earth



Four *Hockey Stick* Graphs: GDP – CO2 –
Demography – Climate change / The SDGs



Two SHELL Cases – common law « *duty of care* » and « *ongeschreven zorgvuldigheidsnorm* »

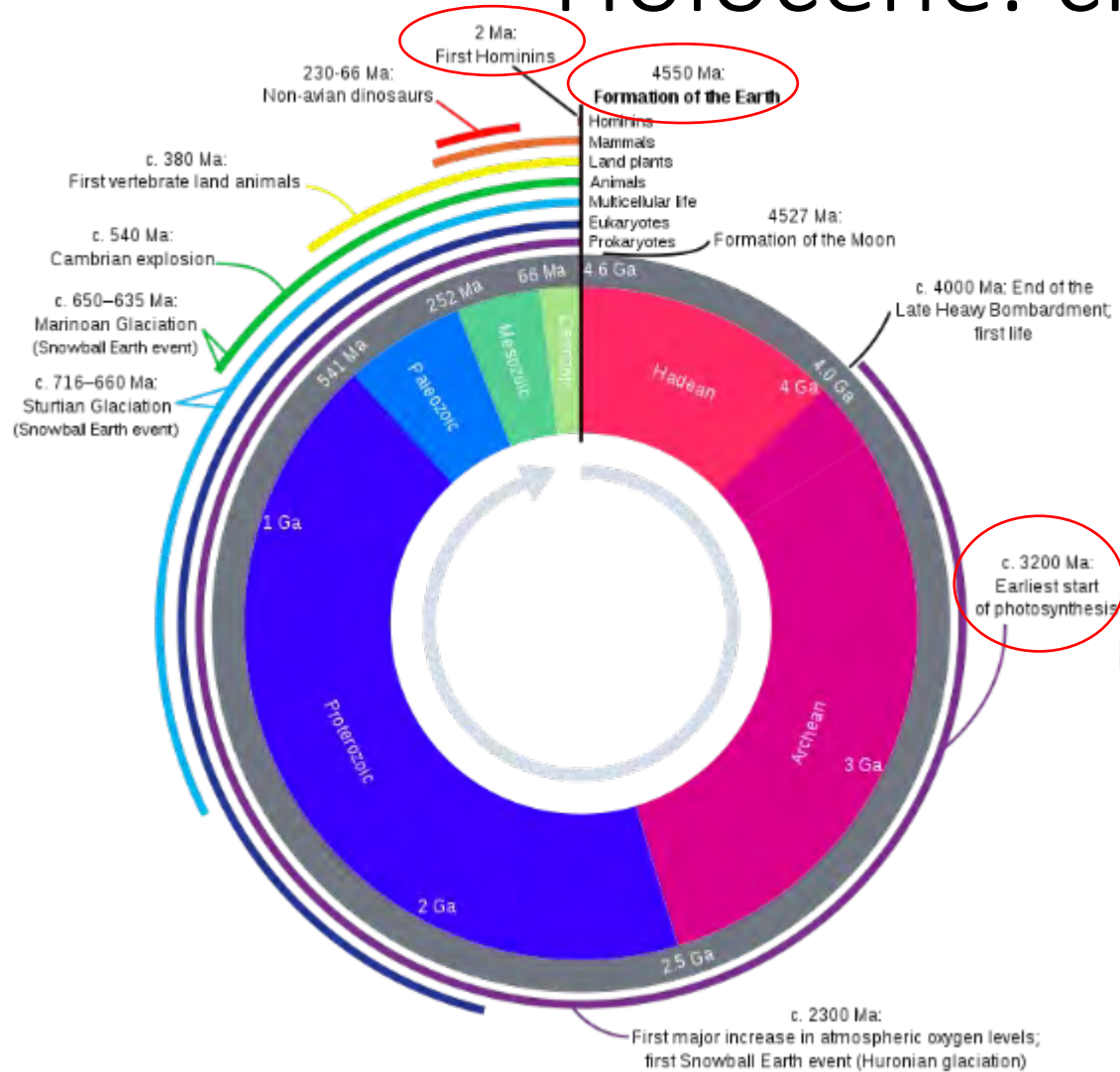


The CCBE initial statement on Climate Change



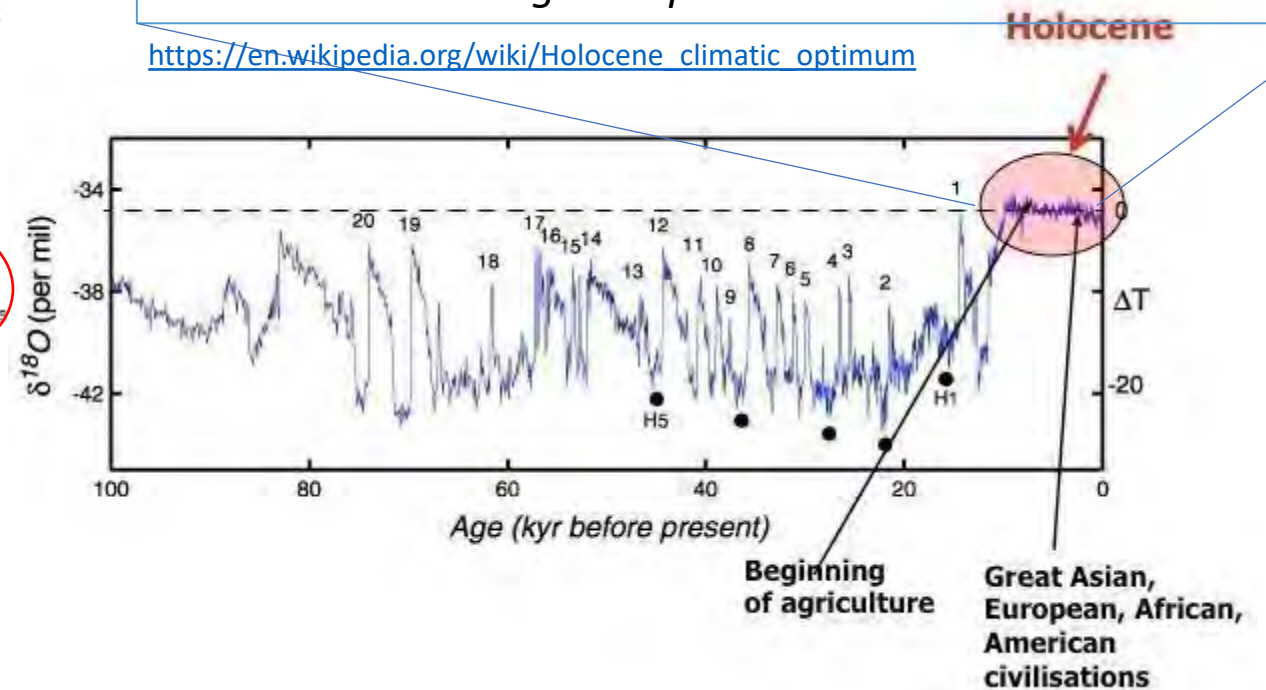
Chronicle of the Earth

Holocene: climatic optimum



Holocene is the current geological epoch. It began approximately **11 500 years ago**. It is considered by some to be an interglacial period

https://en.wikipedia.org/wiki/Holocene_climatic_optimum



Four Hockey Stick Graphs: GDP –
Demography – CO2 – Climate
change / The SDGs

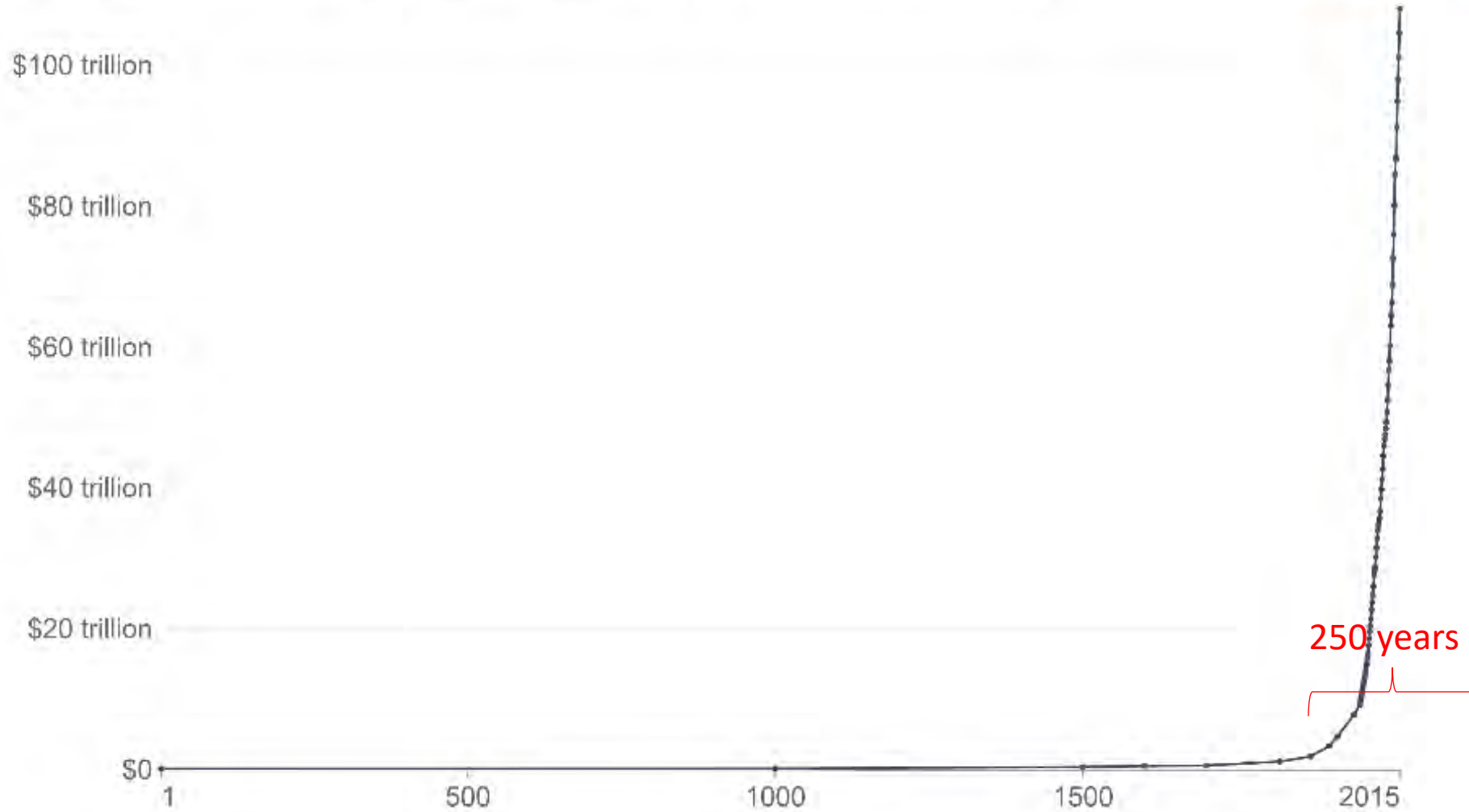
World GDP over the last two millennia

Total output of the world economy; adjusted for inflation and expressed in international-\$ in 2011 prices.

Our World
in Data

The impact of climate
change on lawyers'
practices

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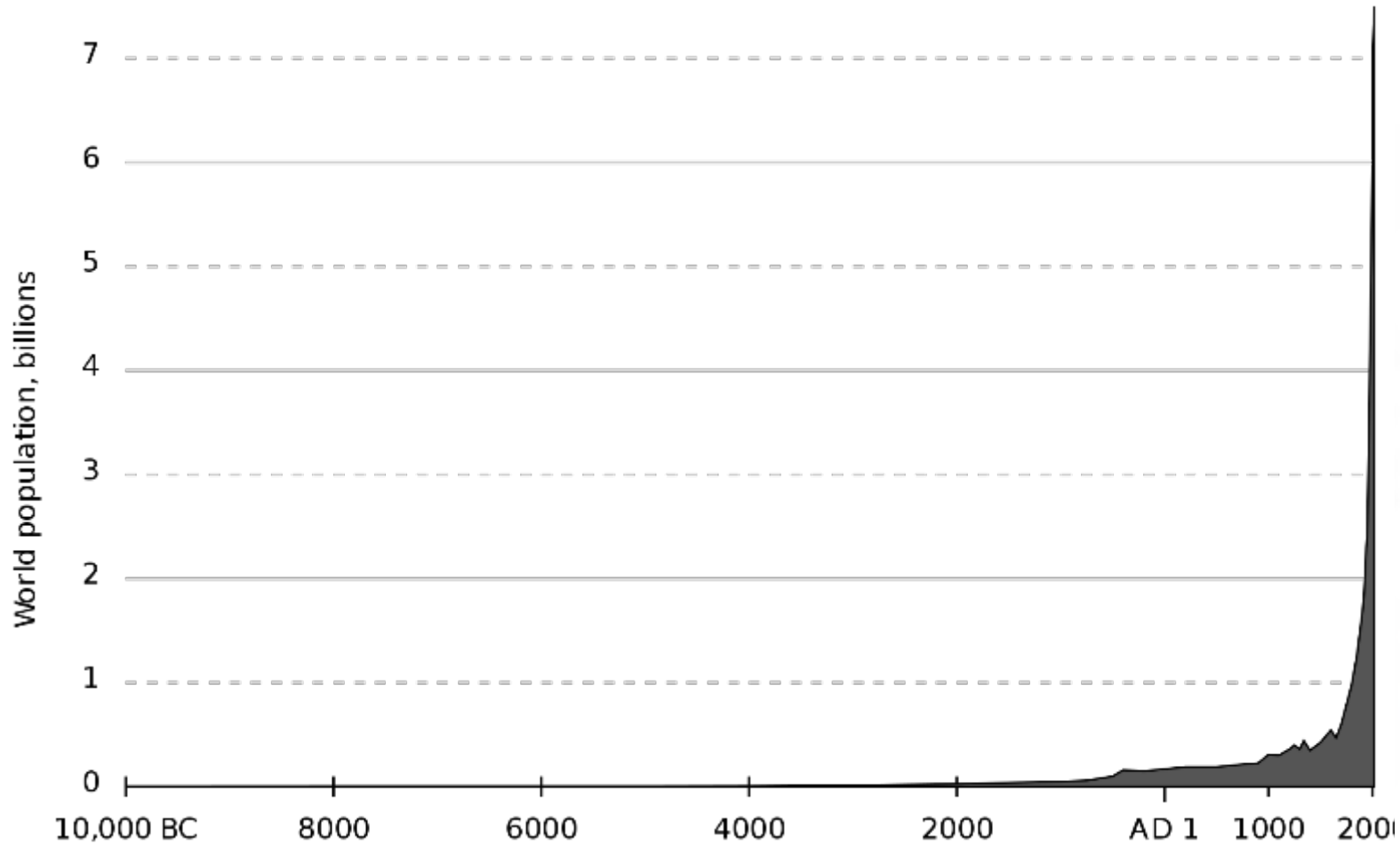


Source: World GDP - Our World In Data based on World Bank & Maddison (2017)

OurWorldInData.org/economic-growth • CC BY

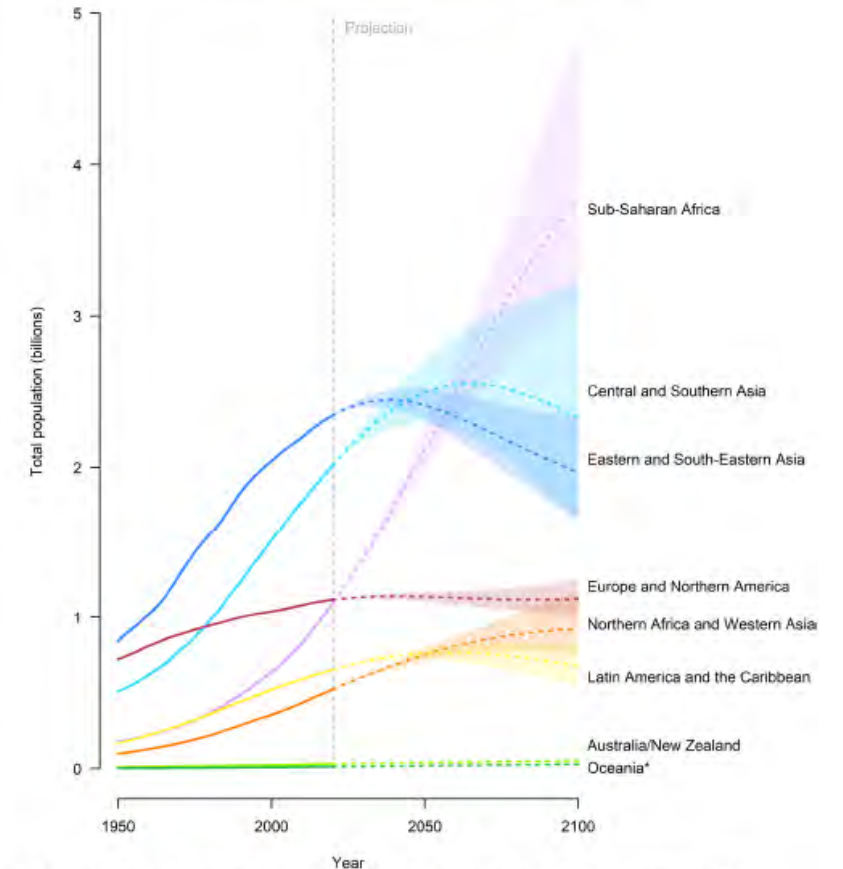
World population growth

World Population Prospects 2019: Highlights



Source: census.org (USA)

Figure 2. Population by SDG region: estimates, 1950-2020, and medium-variant projection with 95 per cent prediction intervals, 2020-2100
Of the eight SDG regions, only sub-Saharan Africa is projected to sustain rapid population growth through the end of the century, according to the medium-variant projection



Data source: United Nations, Department of Economic and Social Affairs, Population Division (2019). *World Population Prospects 2019*.
* excluding Australia and New Zealand

CO2 concentration in atmosphere over last 800,000 years

CO2 concentration in parts per million

400
350
300
250
200

First signs of Neanderthals

First signs of modern humans

Start of Ice Age

End of Ice Age

First civilization (Sumer)

Roman Empire

Ancient Egypt

First use of gunpowder in war

Invention of dynamite

Industrial Revolution

World War I

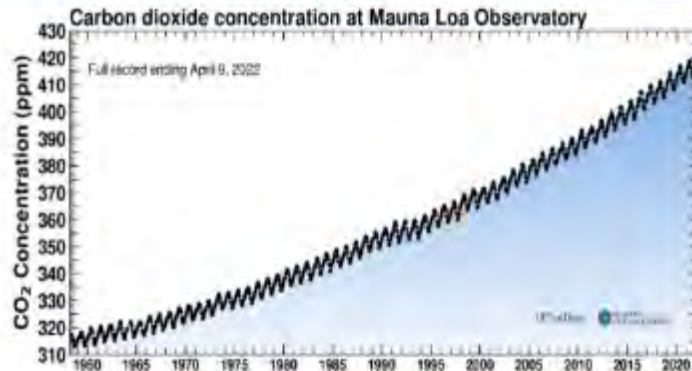
World War II

World Wide Web

Bitcoin

Latest CO₂ reading: 420.40 ppm

ONE WEEK ONE MONTH SIX MONTHS ONE YEAR FIVE YEARS TEN YEARS TWENTY YEARS FIFTY YEARS ONE HUNDRED YEARS



Source: <https://i.redd.it/f0pwsd5hcph31.png>

Earth System moves to a new state? Severe challenge to contemporary civilisation. Possible collapse?

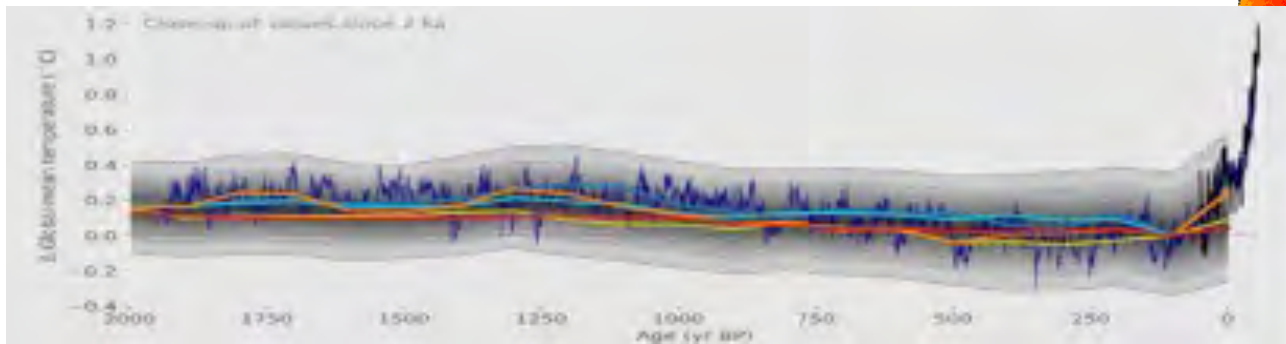
Current trajectory

Tipping Points?

Paris targets

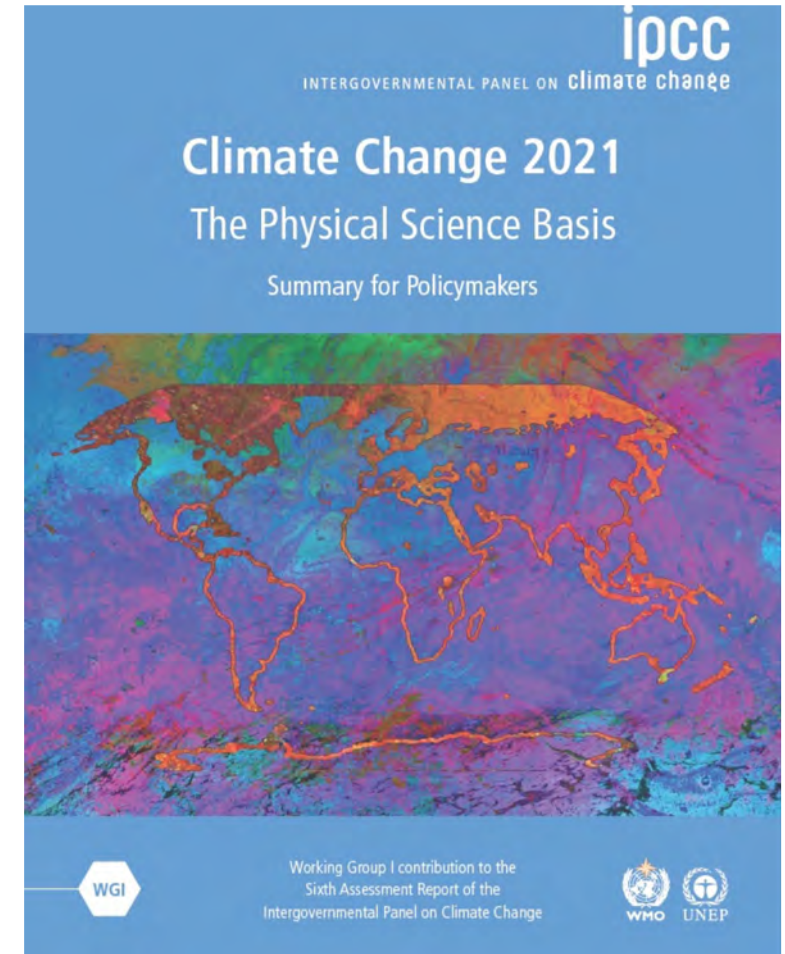
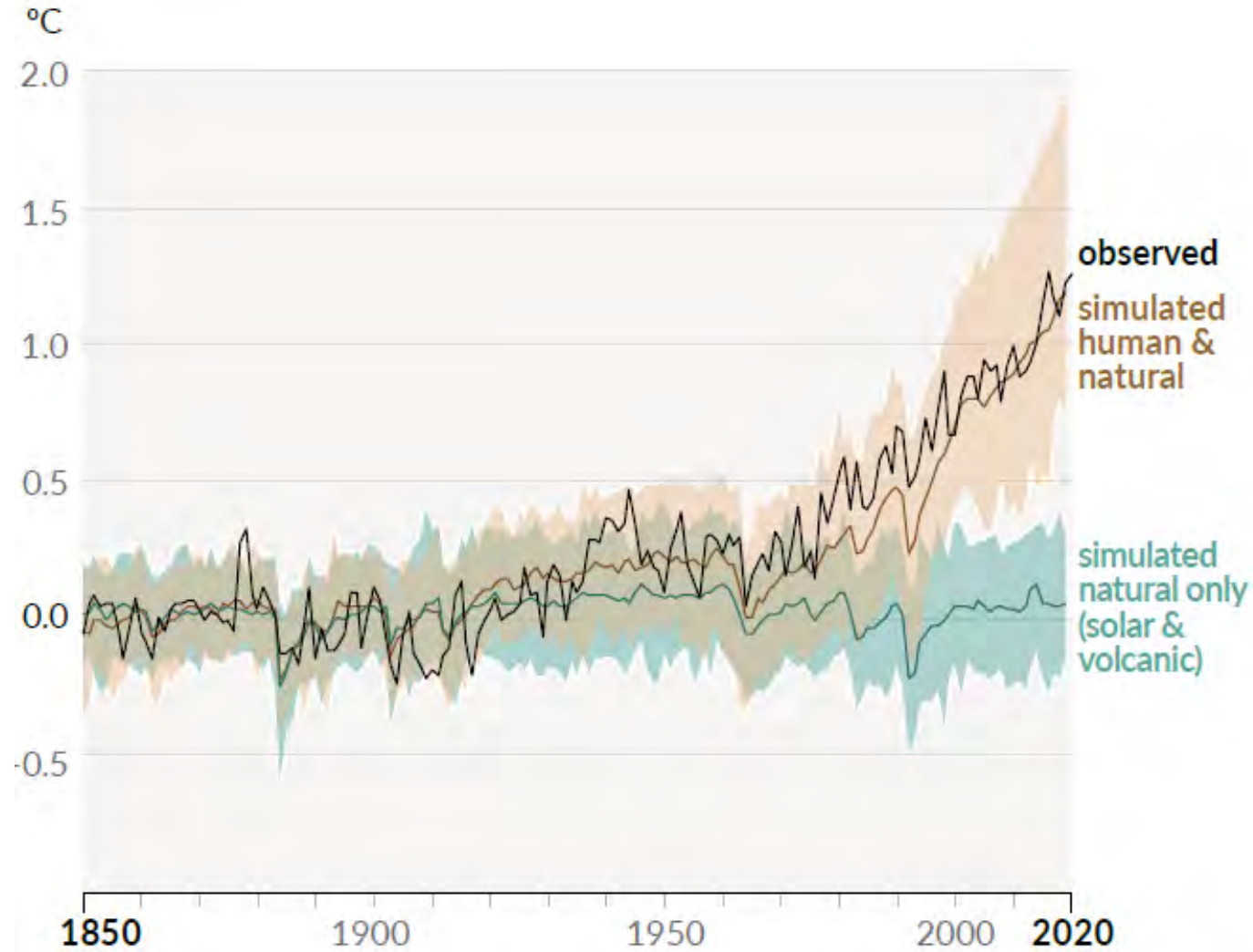
IPCC Projections
2100 AD

Global Temperature (°C)



Source: [Brussels, 5 October 2021] Will Steffen, Emeritus Professor, Australian National University, The Earth System, the Anthropocene, and Planetary Boundaries

IPCC AR6 – VGW – 8 August 2021: human origin of climate change



Sustainable development goals – SDGs (UN 27 September 2015)



<https://sdgs.un.org/>

Fig. 4. The 17 Sustainable Development Goals positioned in relation to the biosphere foundation and the safe operating space for humans on Earth. Redrawn from Rockström and Sukhdev (2014) as presented at the 2016 EAT Forum (<http://eatforum.org/event/eat-stockholm-food-forum-2016/#program>). The global goals logo and icons are from the Global Goals (<http://www.globalgoals.org/#the-goals>), see also the Sustainable Development Knowledge Platform of United Nations (<https://sustainabledevelopment.un.org/sdgs>).

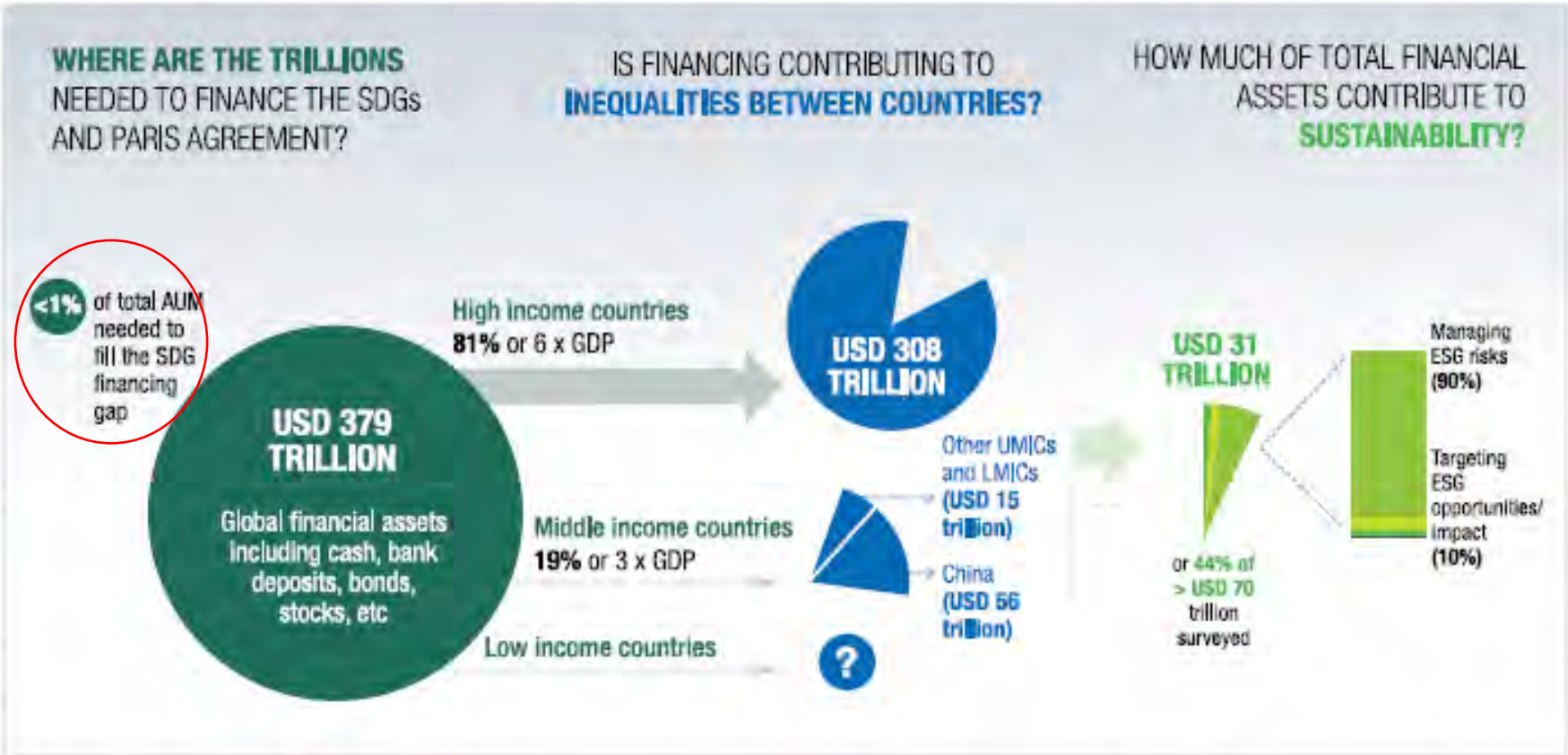


J. ROCKSTROM & alii, “Social-ecological resilience and biosphere-based sustainability science”, September 2016, *ECOLOGY AND SOCIETY*, [Stockholm Resilience Centre](http://www.stockholmresilience.org/)

Framework for SDG Aligned Finance (2020)



Figure 3. How much of the trillions in the system are contributing to equity and sustainability?



Source: OECD, *Global Outlook on Financing for Sustainable development 2021 – based on Financial Stability Board (2020[27]), Global Monitoring Report on Non-Bank Financial Intermediation 2019*, <https://www.fsb.org/2020/01/global-monitoring-report-on-non-bank-financial-intermediation-2019/> and *Global Sustainable Investment Alliance (2018), Global Sustainable Investment Review 2018*, http://www.gsi-alliance.org/wp-content/uploads/2019/03/GSIR_Review2018.3.28.pdf

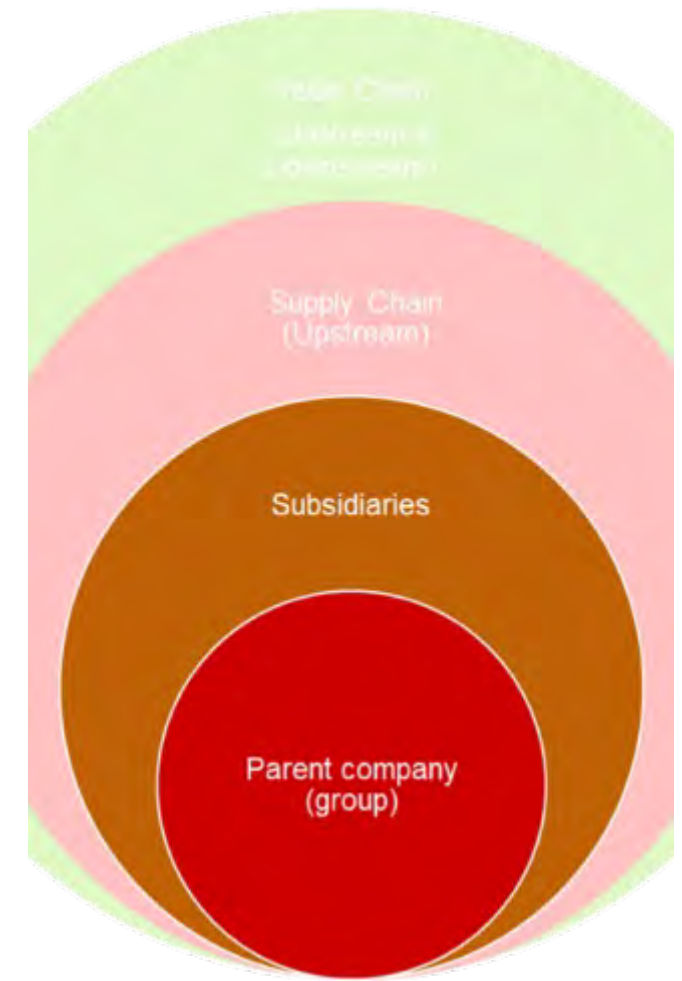
Some “environmental” cases

SHELL in Nigeria

- responsibility in a group

- **Shell in Nigeria:**

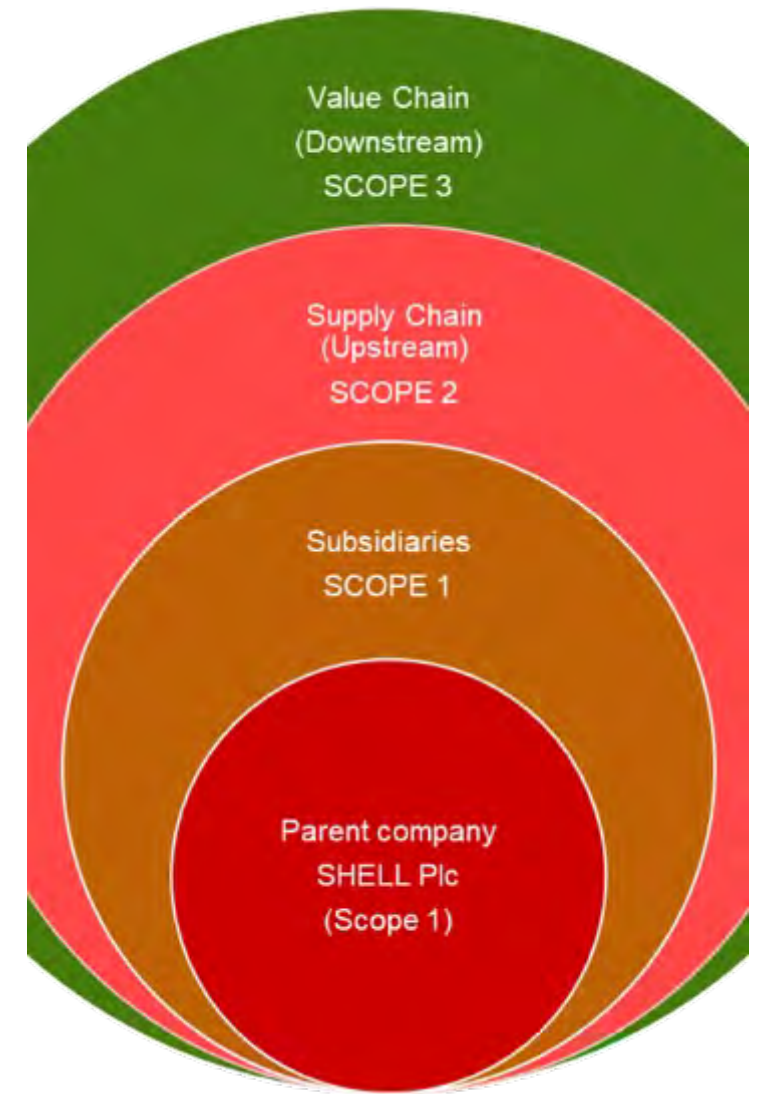
- The Hague, 29 January 2021 (13 years of proceedings), 'Oguru' judgement:
 - AUTHORS: **Shell Plc** (head company) and **SPDC: Shell's Nigerian subsidiary**
 - VICTIMS: Niger Delta communities
 - FAULT: Proven failure of leak prevention system and late remediation
 - DAMAGE: health, environmental and economic
 - JUDGMENT (under Nigerian common law)
 - For the past **SPDC** to compensate the damage suffered and
 - For the future **SPDC** and **Shell Plc** (**Vedanta** case law) to install effective prevention systems
- Supreme Court UK on 12 February 2021 ('Okpabi') - application of precedent '**Vedanta v. Lungowe**', same opening as The Hague



SHELL v. Milieudefensie

- responsibility in a group; responsibility for **the value chain**

- **Shell v/ Milieudefensie**, 26 May 2021 (appeal struck)
- The Hague Tribunal
 - considers that **damage of extreme gravity** will occur in the near future if prompt action is not taken to **prevent** its occurrence. **The evidence of this damage is based on**
 - IPCC SR15-report (1,5 °),
 - IEA 2020 "World Energy Outlook".
 - The court relies mainly on the **United Nations Guiding Principles on Businesses and Human Rights (UNGP 2011)** and, to a lesser extent, on the **Sustainable Development Goals**, which complete an "unwritten standard of care".
 - The court orders Shell "*to reduce the volume of annual CO2 emissions into the atmosphere resulting from all company activities and energy products sold by the Shell group in such a way as to limit this volume to 45% by the end of the year 2030, compared to the level in the year 2019*"
 - scope 1, scope 2 (group+upstream emissions): performance obligation;
 - scope 3 (downstream emissions=clients): obligation of means.



CCBE initial statement on Climate Change

CCBE Environment and Climate Change Committee

- Environment and Climate Change Committee set up in March 2022
- Drafting of an ambitious CCBE statement
- Work in progress (indicative list):
 - Preparation for setting up an extensive analysis on the environmental impact of the CCBE activities conducted by external experts.
 - Responding, where relevant for the legal profession, to policy and legislative developments at the level of the EU, the Council of Europe and the UN.
 - The impact of climate change on the lawyers' activities and duties, including addressing the issue of identification of lawyers with their clients or the client's cause.

CCBE initial statement on Climate Change

- Precedents: Canadian Bar Association (Aug.2011), ABA (Aug. 2019), IBA (May 2020), the Law Society of England and Wales (Oct. 2021), Australia (Nov. 2021), ...
- CCBE statement (Feb. 2023 – to be published soon):
 1. Recognition of scientific evidence of climate change and need for urgent action ([Sixth Assessment Report — IPCC](#)), role of Bars, Law societies and lawyers.
 2. CCBE commitment to assess its own carbon footprint based on scientifically collected information and take action to adapt its activities in a manner that is consistent with the Paris Agreement.
 3. CCBE commitment to exchange best practices, provide guidance and educational tools to Bars and Law societies and engage in climate-related policy reforms as far as it impact the practice of law, access to justice and the rule of law.
 4. CCBE encourages its members to encourage lawyers to engage in “climate conscious legal practice.



The impact of climate change on lawyers' practices

Climate conscious lawyering

Vesselina Haralampieva

Senior Counsel – Climate Change and Sustainability
European Bank for Reconstruction and Development

Zoom Webinar, 27 February 2023



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Outline

1. Climate change data
2. Global action and national ambitions
3. Transformational societal shift & move of capital
4. The role of lawyers
5. Climate conscious lawyering

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practices

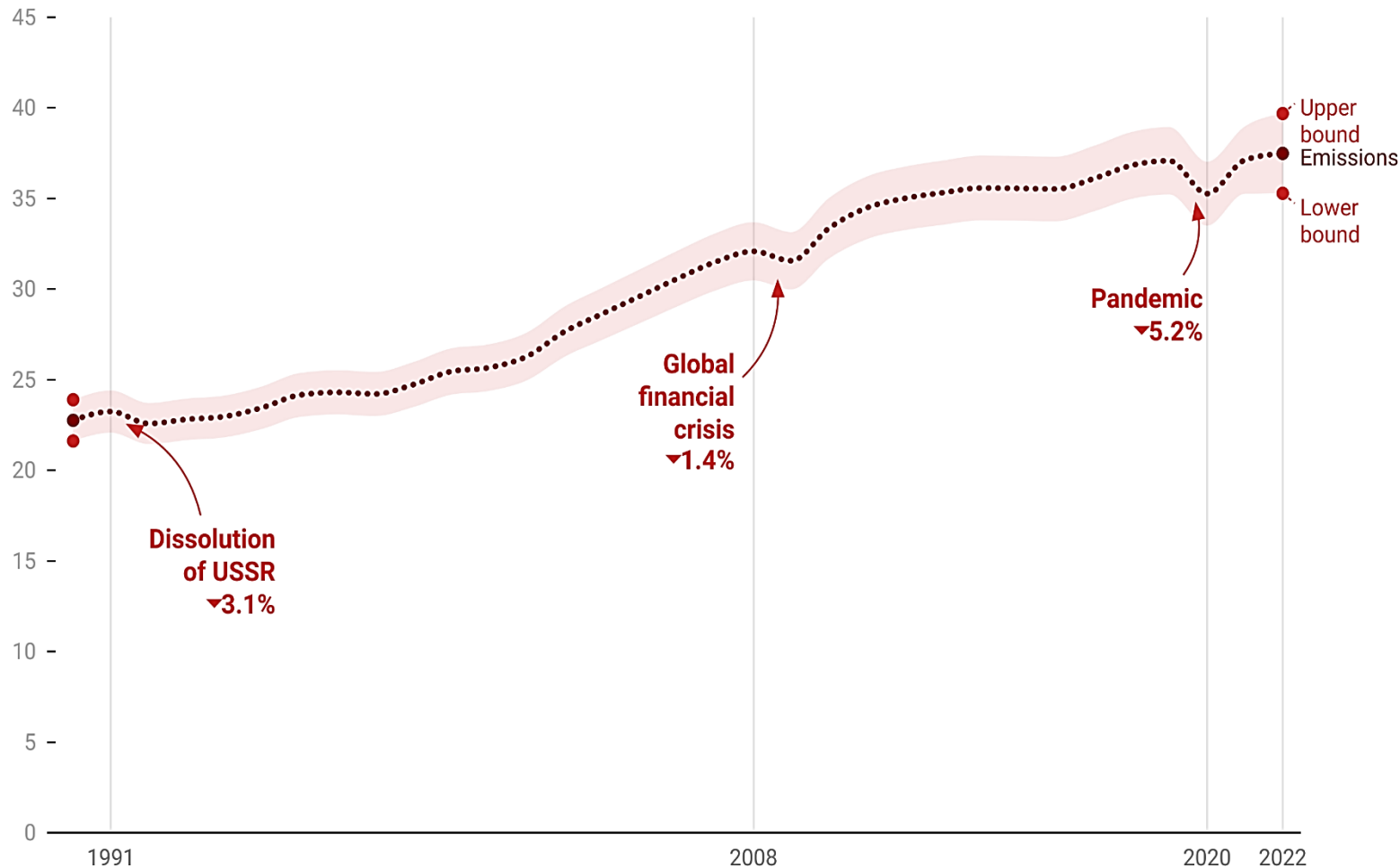
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Whatever we're doing, it isn't working

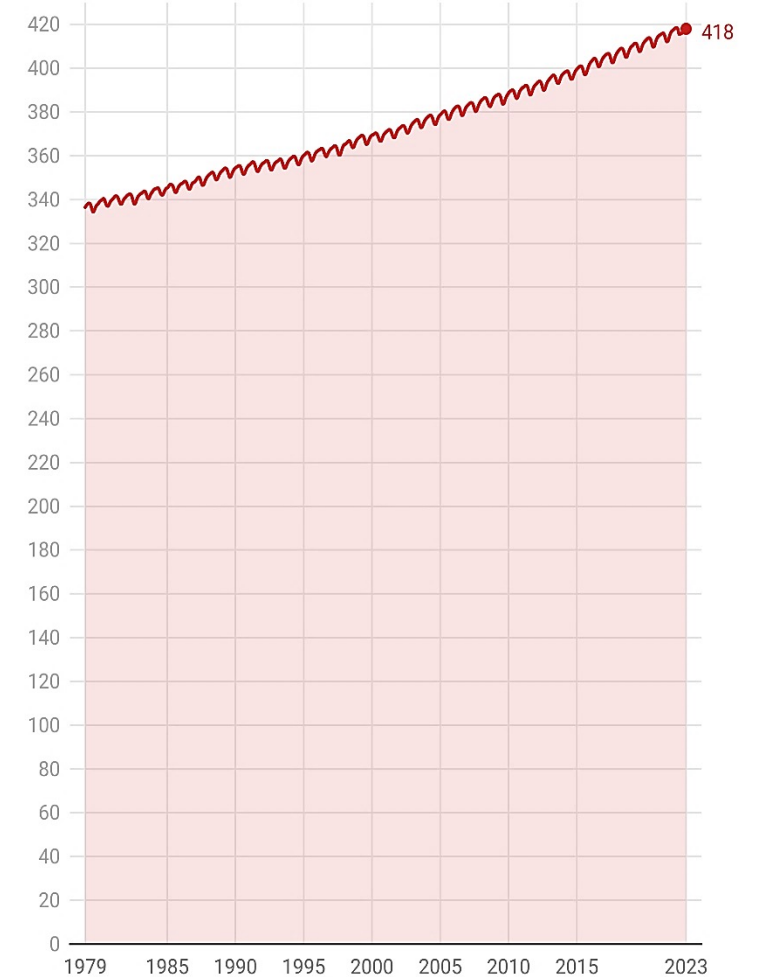
Global CO2 emissions from fossil fuel combustion, 1990-2022

Unit: Gt CO2 | Data: Global Carbon Project | Uncertainty range included



Atmospheric CO2 concentration

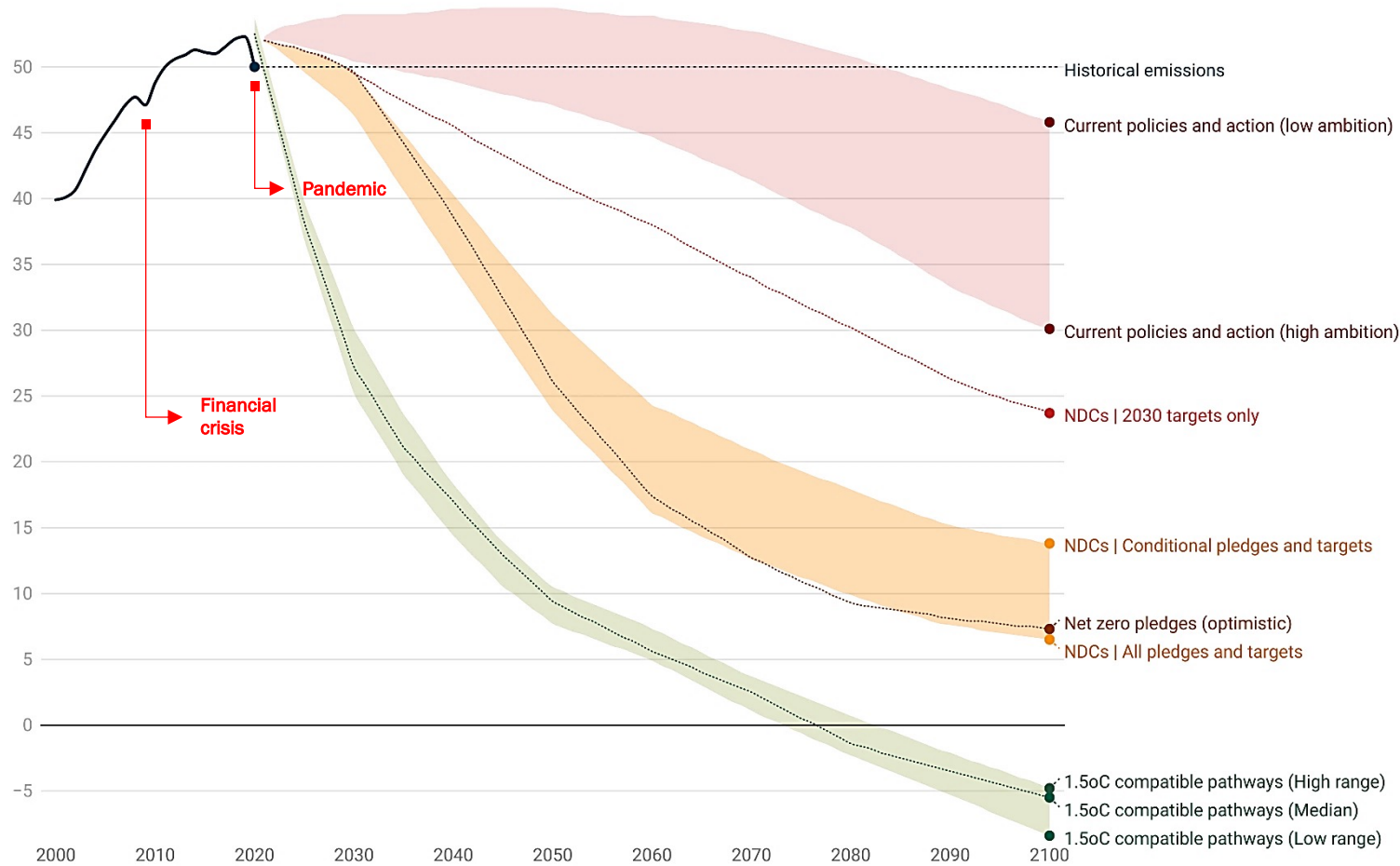
Monthly mean | Unit: ppm = particle per million | Data: NASA NOAA



And there are consequences...

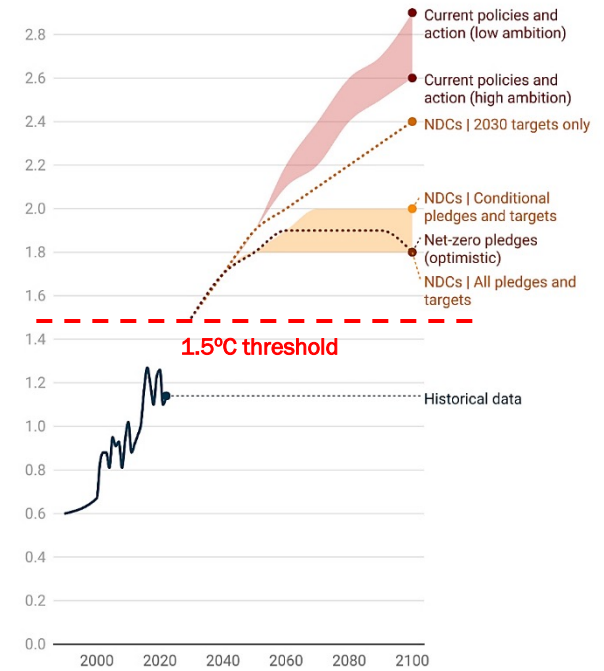
Global GHG emissions gap

Unit: Gt CO2eq | Data: Climate Action Tracker | Last update: Nov 2022



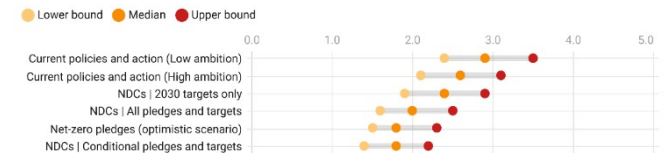
Global temperature increase by 2100

Unit: Celsius | Data: UK Met Office, HadCrut5, and Climate Action Tracker | Last update: Nov 2022



Temperature increase by 2100 - upper and lower bounds

Unit: Celsius | Data: Climate Action Tracker | Last update: Nov 2022



Climate Change at the Heart of the Public Debate



THE WALL STREET JOURNAL.
English Edition | November 12, 2019 | Print Edition | Video

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US

Exxon's Climate-Change Accounting Goes on Trial

New York's attorney general says the oil giant misled investors about its calculations of future climate-change regulation



Climate Liability News

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Research: Oil Companies Must Slash Production to Curtail Global Warming

CLIMATE The New York Times



THE GUARDIAN
Global climate crisis: inevitable, unprecedented and irreversible

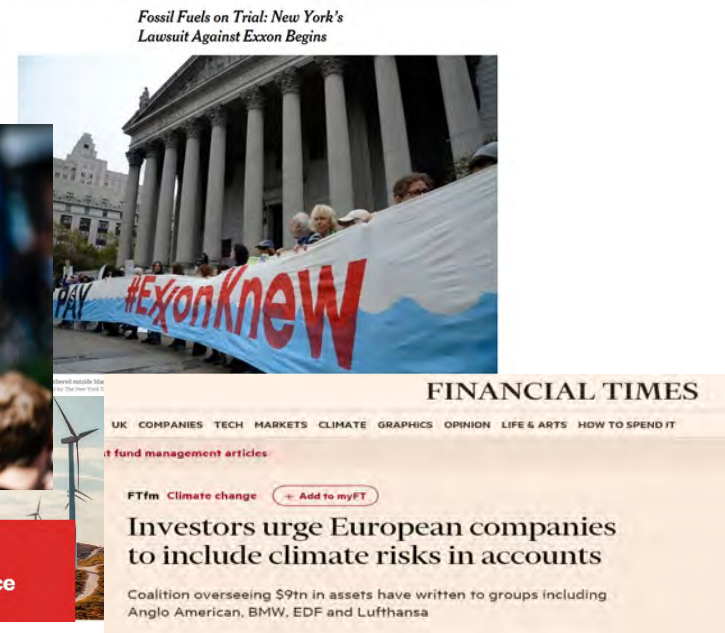
DAILY EXPRESS
PM: WAKE UP TO RED ALERT ON CLIMATE CRISIS

FINANCIAL TIMES
World likely to be 1.5C warmer by 2040, UN's science panel warns

FINANCIAL TIMES
CODE RED FOR HUMANITY

FINANCIAL TIMES
CODE RED FOR HUMANITY

FINANCIAL TIMES
Moral Money: California wildfires show immediacy of climate crisis



FINANCIAL TIMES
UK COMPANIES TECH MARKETS CLIMATE GRAPHICS OPINION LIFE & ARTS HOW TO SPEND IT

Investors urge European companies to include climate risks in accounts

Coalition overseeing \$9tn in assets have written to groups including Anglo American, BMW, EDF and Lufthansa

FTm Climate change + Add to myFT

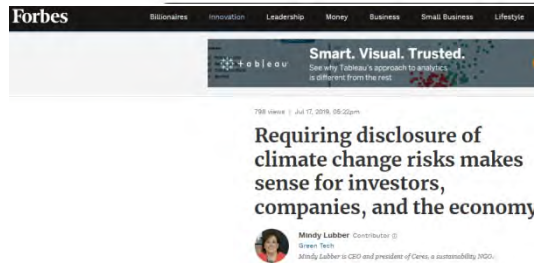


Evening Standard
BUSINESS ES MONEY CULTURE INSIDER THE ESCAPIST THE REVIEWS

Shell sets out new direction as it steps up shift to net-zero emissions by 2050



REPORT
Blueprints to advance climate change mitigation and resilience
Samantha Gross and Adia Torner March 1, 2021



Forbes
Billionaires Innovation Leadership Money Business Small Business Lifestyle

Smart. Visual. Trusted.
See why Tableau's approach to analytics is different from the rest.

788 views | Jul 17, 2019, 10:20am

Requiring disclosure of climate change risks makes sense for investors, companies, and the economy

Mindy Lubber Contributor @GreenTech
Mindy Lubber is CEO and president of Ceres, a sustainability NGO.



THE TIMES
ANALYSIS
NOVEMBER 12 2019, 12:00PM, THE TIMES

Climate change to 'double risk of flooding by 2050'

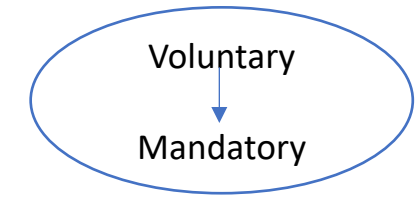
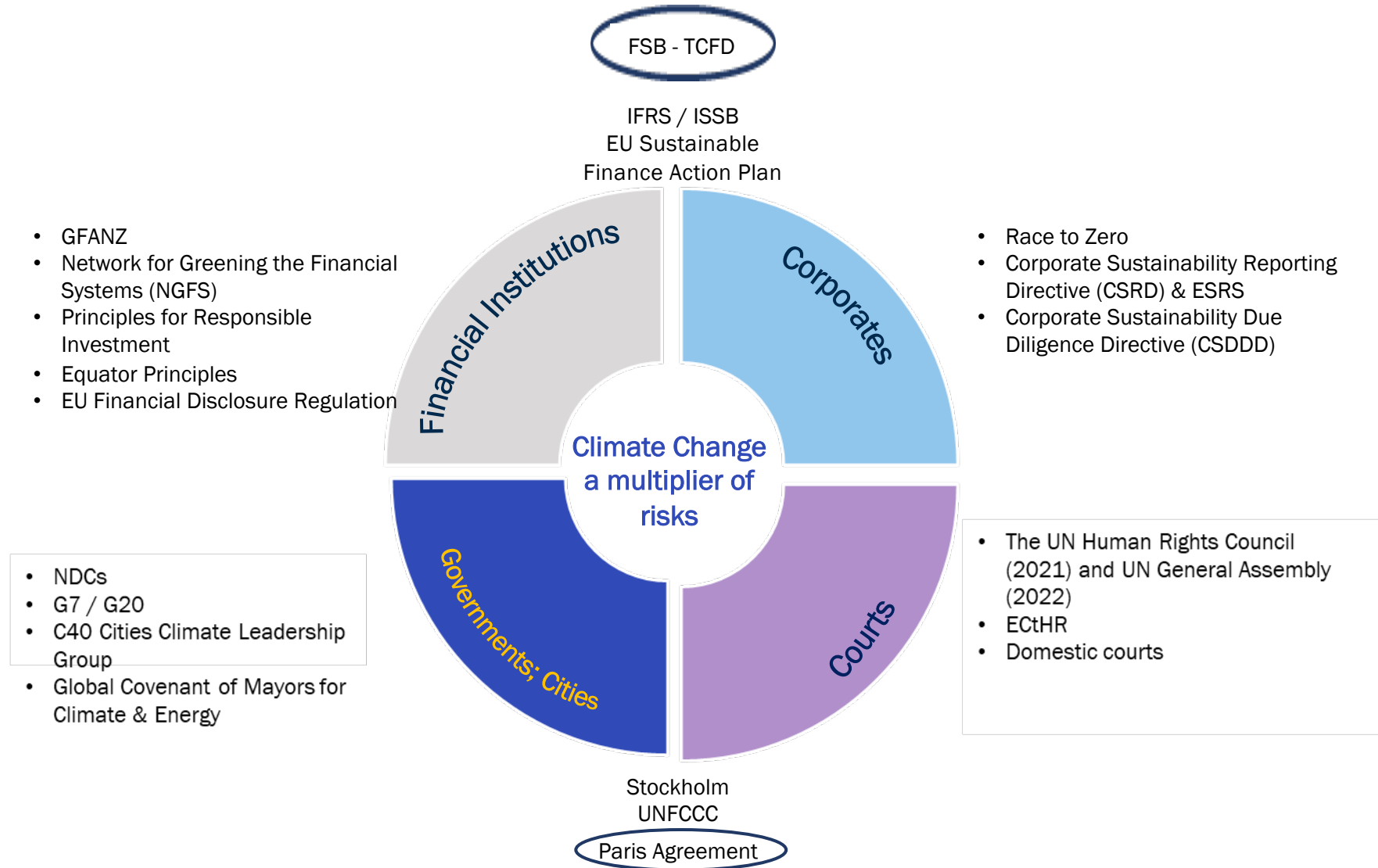
BEN WEBSTER, ENVIRONMENT EDITOR



Dutch government ordered to cut carbon emissions in landmark ruling

Dutch court orders state to reduce emissions by 25% within five years to protect its citizens from climate change in world's first climate liability suit

Transformational shift: capital, business, society



Legal Professional Organisations

The Law Society of England & Wales

Climate Change Resolution (Oct. 2021) urges solicitors and law firms to:



- ✓ **Reduce** GHGs of your business
- ✓ **Future-proof** the profession and your practice
- ✓ **Identify** climate change risks, liabilities and potential greener courses of action
- ✓ **Advocate** to realise the full potential of the law to tackle climate change

1.5°C goal



International Bar Association (IBA)



Climate Crisis Statement (2020)

- Urges lawyers to take a climate conscious approach to problems encountered in daily legal practice
- Advises clients of the potential risks, liability and reputational damage
- Encourages engagement with current and future policymaking efforts to address the climate crisis
- Recommends bar associations, law societies and similar bodies to engage with law students and schools

- The Council of Bars and Law Societies of Europe (CCBE)
- American Bar Association (ABA): “Urges lawyers to engage in pro bono activities” to address the climate crisis and to advise their clients of the climate risks and opportunities
- Brazilian Bar Association
- European Law Societies

Climate conscious lawyering

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- Lawyer – client relationship
 - Materiality, proportionality, competency
 - Mitigate risks and identify opportunities
 - In-house lawyers
- Your firm / business
 - Greenhouse Gas emissions– Measure & Reduce
 - Scope 1, 2, 3, 4?
 - Avoid greenwashing
 - Future-proofing
- Continuous education. *Advocate.*





The impact of climate change on lawyers' practices

Recent climate change litigation in Europe

*Tiffany Chan, Research Assistant
Grantham Research Institute on Climate Change and the
Environment, London School of Economics & Political Science*

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Outline

1. Introduction to LSE Grantham Research Institute and Climate Change Laws of the World 
2. Trends in European climate change litigation
3. Strategies used in European climate change litigation and interesting cases
4. Future trends and impact on lawyers

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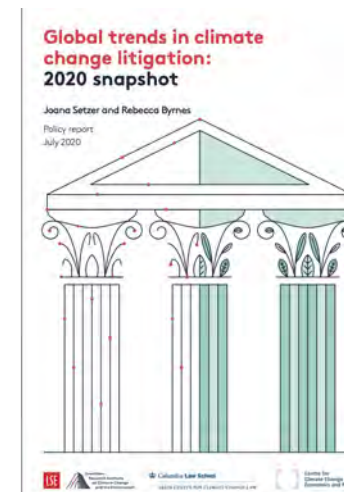
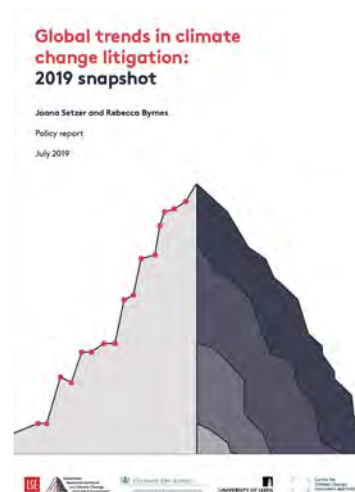
About the Grantham Research Institute and Climate Change Laws of the World

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The screenshot shows the homepage of the Climate Change Laws of the World database. At the top, there is a navigation menu with links for 'About', 'Methodology - Legislation', 'Methodology - Litigation', and 'Collaborations and Acknowledgements'. The main heading is 'Climate Change Laws of the World' in red. Below it, a sub-heading reads 'Use our database to search and browse climate laws, policies and litigation cases globally.' A search bar is present with the placeholder text 'Search for countries, legislation and policies and litigation cases'. At the bottom, there are three categories: 'Climate laws and policies' with a red circle containing the number '3062', 'Climate litigation cases' with a red circle containing '2180', and 'Featured country profiles' listing India, Indonesia, European Union, and China.

This screenshot shows the same homepage but with a search bar filled with a magnifying glass icon. Below the search bar, there are three main sections: 'Laws and policies' with a red button that says 'Browse 3500+ laws and policies >', 'Litigation' with text 'Climate litigation is coming soon' and a 'Read more >' link, and a section stating 'We are now powered by data science and AI in partnership with Climate Policy Radar' with a red button that says 'Learn more about our technology >'. The top right corner features the 'Powered by Climate Policy Radar' logo.



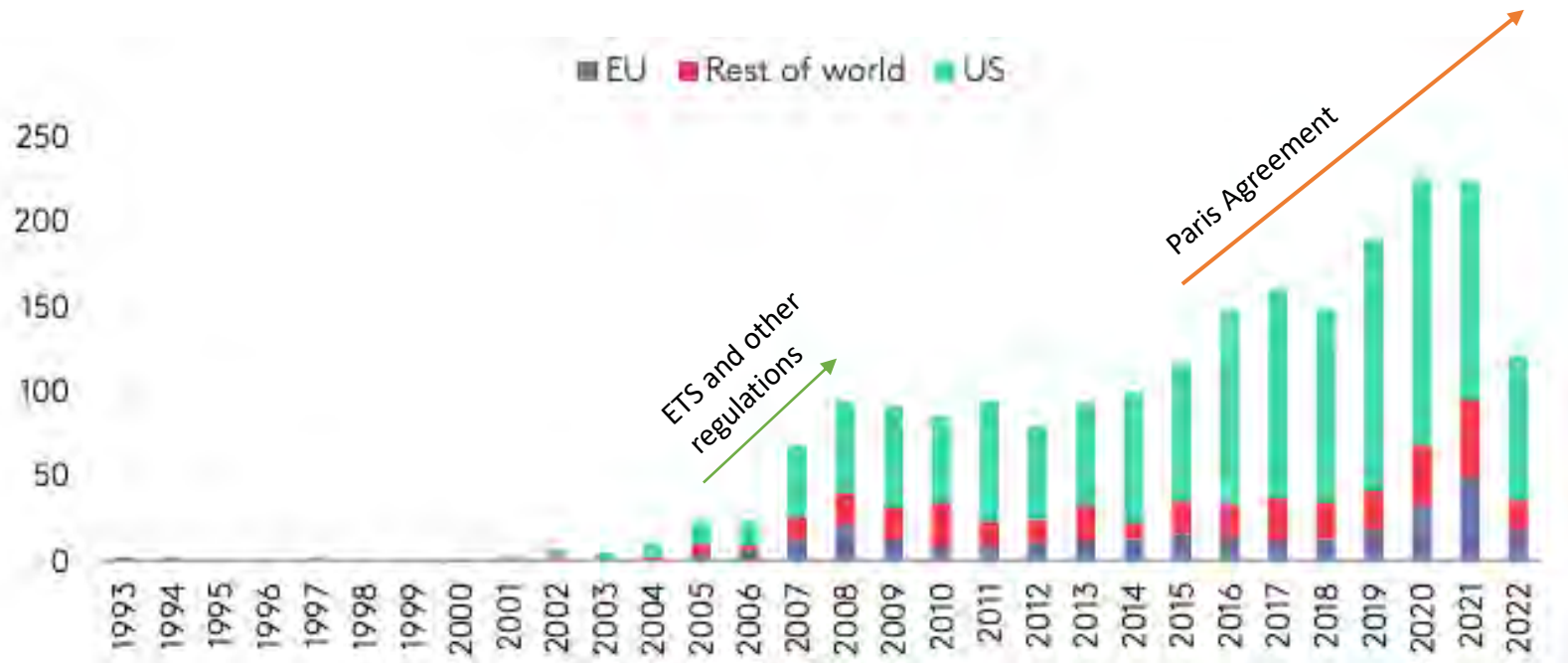
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Trends in European climate litigation

Situating European climate litigation in the global context

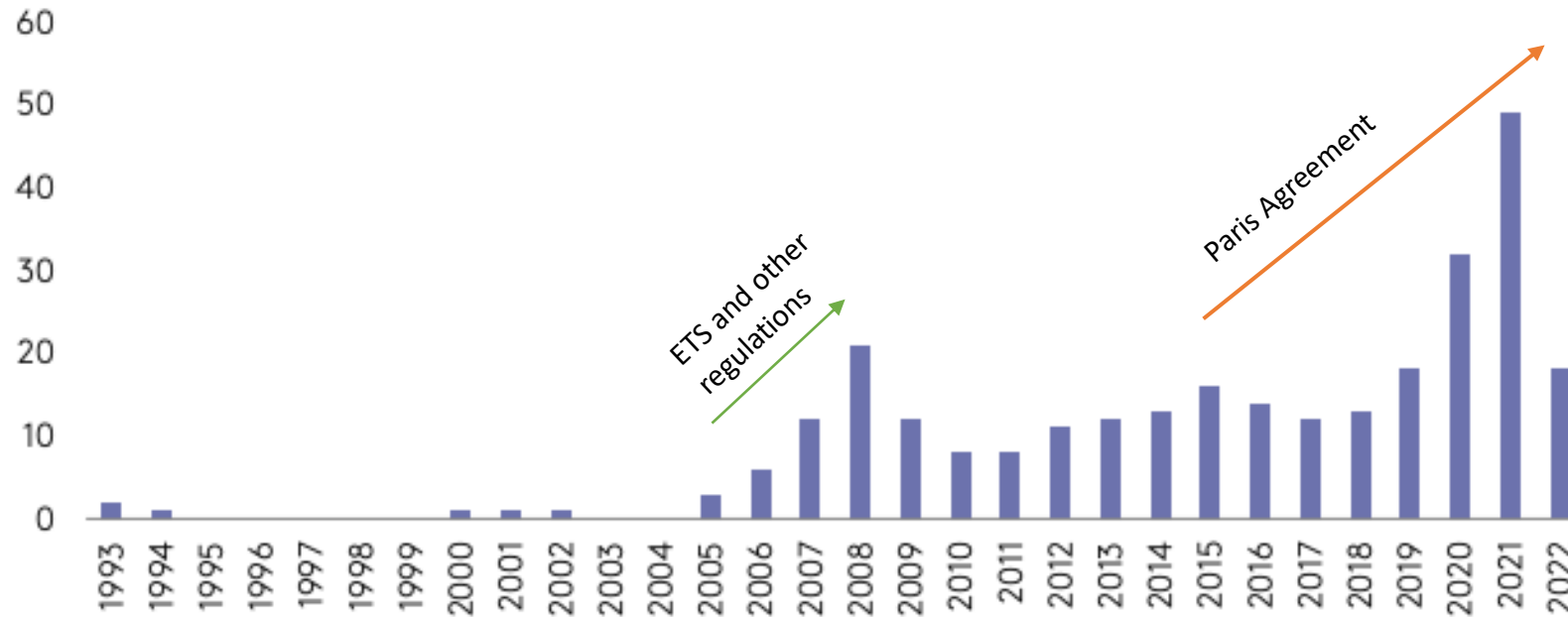


Source: Climate Change Litigation Databases, Sabin Center for Climate Change Law and other institutional partners

Note: Numbers run to 30 September 2022

- Climate change law, policy, or science must be a **material issue** of law or fact in the case
- Judicial and quasi-judicial cases
- 2021 saw the highest annual number of cases outside the US
- IPCC: role of litigation in affecting “the outcome and ambition of climate governance”

Cases filed in Europe – risen rapidly



Source: Climate Change Litigation Databases, Sabin Center for Climate Change Law and other institutional partners

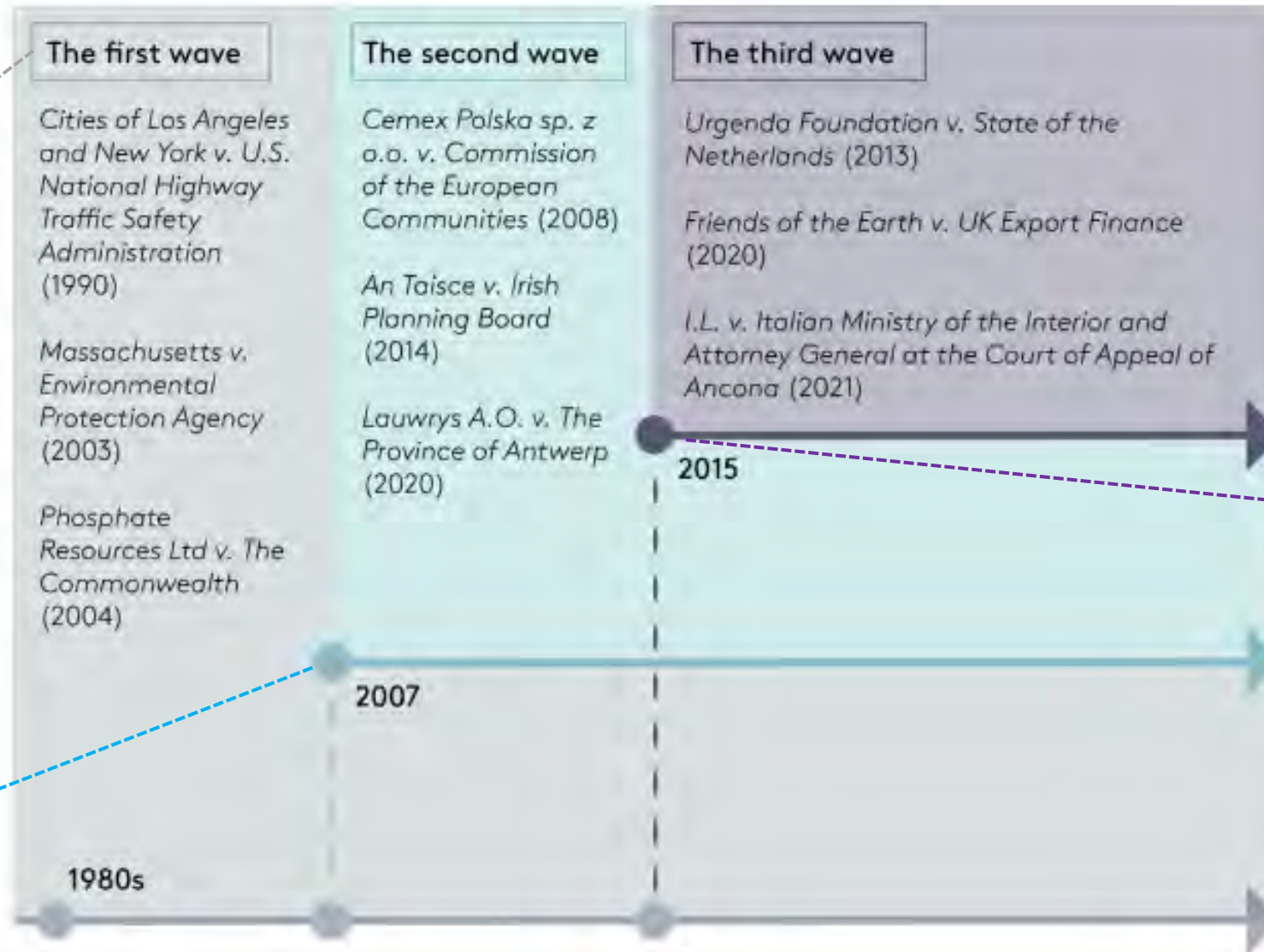
Note: Numbers run to 30 September 2022

- ❖ Filed in around half of all European countries
- ❖ Includes cases filed before the Courts of the European Union and the European Court of Human Rights
- ❖ Increasing number and increasing diversity

Evolution of climate change litigation

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Administrative challenges to process

Public awareness grew, new regulations – litigation raising issues about implementation



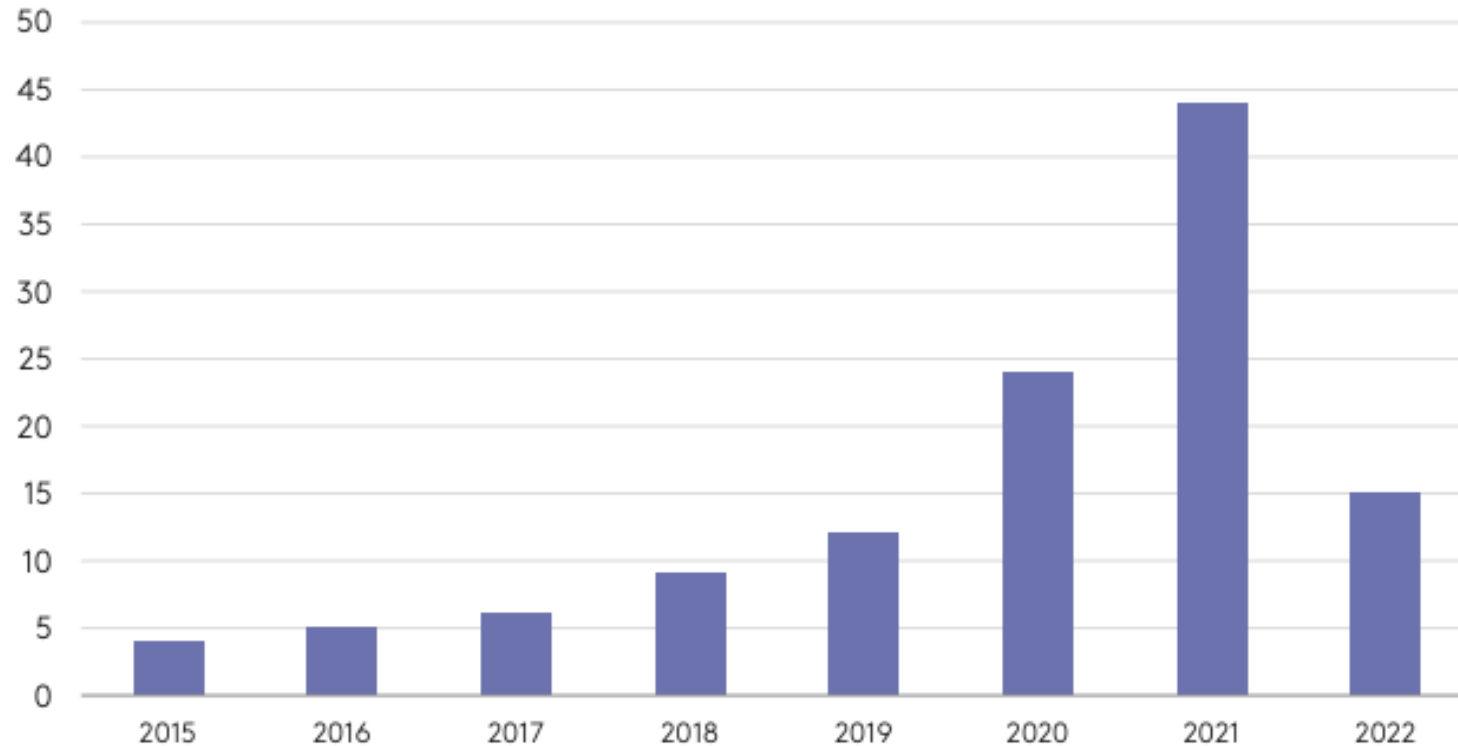
Strategic climate change litigation – inaction by governments and companies, 'rights' turn

Source: Setzer J, Narulla H, Higham C and Bradeen E (2022) *Climate Litigation in Europe: A summary report for the European Union Forum of Judges for the Environment*. London and Brussels: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science and the European Union Forum of Judges for the Environment.

Strategic European climate litigation – going beyond the concerns of an individual litigant

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Source: Climate Change Litigation Databases, Sabin Center for Climate Change Law and other institutional partners

Note: Numbers run to 30 September 2022



Not all strategic litigation is aligned with climate goals.

Many cases are yet to be decided and many decisions are not final

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Strategies used in European climate change litigation

Strategies used in European climate litigation

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Strategy Type	No. cases using strategy
Enforcing climate standards	49
Government framework (<i>Urgenda v Netherlands</i>)	39
Corporate framework (<i>Milieudefensie et al. v. Shell</i>)	10
Climate-washing (<i>FossielVrij NL v. KLM</i>)	9
Public finance (<i>FOE v. UK Export Finance</i>)	4
Failure to adapt (<i>ClientEarth v. Enea</i>)	3
Personal responsibility (<i>ClientEarth v. Directors of Shell</i>)	3
Compensation (<i>Luciano Lliuya v. RWE</i>)	2

Spreading rapidly!

- ❖ Finland (Nov 2022) – Greenpeace Norden and Finnish Association for Nature Conservation
- ❖ Germany (Nov 2022) – DUH
- ❖ Sweden (Nov 2022) – Aurora
- ❖ Austria (Feb 2023) – 12 children
- ❖ BNP Paribas (Feb 2023)
- ❖ Volkswagen (Oct 2022) – investors allege lobbying runs counter to public messaging on the green transition

Source: Climate Change Litigation Databases, Sabin Center for Climate Change Law and other institutional partners

Note: Numbers run to 30 September 2022

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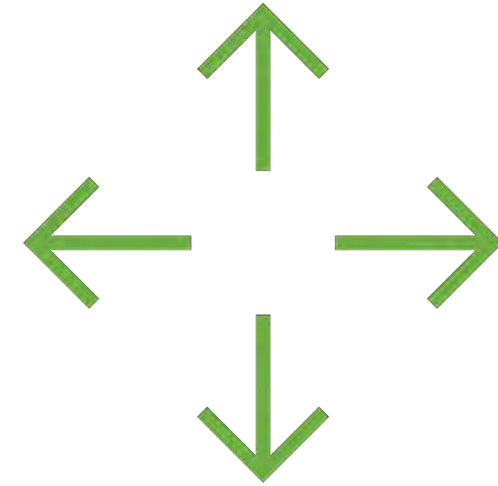
Future trends and impact on lawyers

Future trends in European climate litigation

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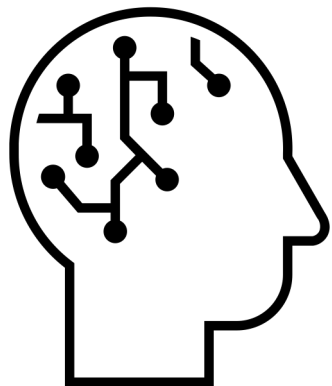
- ❖ Litigation involving **government** actors following introduction of the Fit-for-55 package and other EU decarbonisation measures
- ❖ Litigation against **companies and financial institutions** following reforms to corporate obligations
- ❖ **Enforcement** actions and corruption risks



Impact for lawyers

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- ❖ Duty to advise clients on litigation risk
 - Exposed sectors
 - Advertisements
 - Financial decision-making

- ❖ Monitor developments in climate litigation

- ❖ Fast-evolving regulation on aligning companies to national net zero targets – potential for litigation



Keep an eye out! 29 March 2023 – hearings before the Grand Chamber, ECtHR on two climate change cases

Thank you!

Access the database: <https://climate-laws.org>

Access the EUFJE report: [here](#)

Access the 2022 Global Trends in Climate Change Litigation report: [here](#)



The impact of climate change on lawyers' practices

Does climate change give rise to ethical challenges for lawyers?

**Jonathan Goldsmith
European Lawyers Foundation**

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A modern problem

- Decision-makers have taken to accusing lawyers of enabling their clients to do undesirable things – so-called ‘professional enablement’
- Recent examples at EU level: tax avoidance, SLAPPs
- Tax avoidance – Commission consultation on ‘Tax evasion & aggressive tax planning in the EU – tackling the role of enablers’
- SLAPPs - Commission Recommendation (EU) 2022/758 of 27 April 2022
- These are examples where decision-makers feel that clients’ interests conflict with the public interest: what are lawyers to do?

Climate change enters the picture (1)

CLIMATE SCORES FOR VAULT 100 LAW FIRMS (2022)

CLIMATE SCORE	FIRMS
A	Cooley Schulte Roth & Zabel
B	Boies Schiller Flexner Farwick & West Fish & Richardson Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP Irell & Manella Mintz, Levin, Cohn, Ferris, Glovsky, & Popeo Seyfarth Shaw
C	Ballard Spahr Bryan Cave Leighton Paisner Davis Wright Tremaine Debevoise & Plimpton Foley Hoag Fox Rothschild Fried, Frank, Harris, Shriver & Jacobson Katten Muchin Rosenman Kilpatrick Townsend & Stockton Kramer Levin Naftalis & Frankel McDermott Will & Emery Proskauer Rose Reed Smith Sheppard, Mullin, Richter & Hampton Williams & Connolly Willkie Farr & Gallagher Wilson Sonsini Goodrich & Rosati
D	Alston & Bird Arent Fox Baker McKenzie Blank Rome Cadwalader, Wickersham & Taft Cahill Gordon & Rendell Cleary Gottlieb Steen & Hamilton Covington & Burling Cozen O'Connor Cravath, Swaine & Moore Davis Polk & Wardwell Dechert Dentons DLA Piper Duane Morris Faegre Drinker Foley & Lardner Goodwin Procter Greenberg Traurig Haynes and Boone Hughes Hubbard & Reed Jenner & Block Locke Lord Morrison & Foerster Nixon Peabody O'Melveny & Myers Paul Hastings Perkins Coie Pillsbury Winthrop Shaw Pittman Quinn Emanuel Urquhart & Sullivan Ropes & Gray Troutman Pepper Hamilton Sanders LLP Venable Weil, Gotshal & Manges WilmerHale Winston & Strawn
F	Akin Gump Strauss Hauer & Feld Allen & Overy Arnold & Porter Kaye Scholer Baker & Hostetler Baker Botts Clifford Chance Crowell & Moring Freshfields Bruckhaus Deringer Gibson, Dunn, & Crutcher Hogan Lovells Holland & Knight Hunton Andrews Kurth LLP Mayer Brown McGuire Woods Milbank Morgan, Lewis & Bockius Munger, Tolles & Olson Norton Rose Fulbright Orrick Herrington & Sutcliffe Paul, Weiss, Rifkind, Wharton & Garrison Shearman & Sterling Sidley Austin Simpson Thacher & Bartlett Skadden, Arps, Slate, Meagher, & Flom

Law firm climate change scorecard - <https://www.ls4ca.org/>

Climate change enters the picture (2)



Environmental protest outside Slaughter & May because of work with oil companies

Climate change enters the picture (3)



Environmental protest outside the Law Society to demand action

Do lawyers owe a duty to the public interest?

- In general, no – not to the whole of the public interest
- But there are parts of lawyers' professional obligations which overlap with parts of the public interest – for instance, a commitment to the rule of law and the fair administration of justice
- What if a client's interest conflicts with a lawyer's professional obligations to the rule of law and the fair administration of justice?
- Does this conflict play out in the field of climate change?

What do professional codes say (1)?

- **CCBE Charter of Core Principles of the European Legal Profession**

Principle (i) – respect for the rule of law and the fair administration of justice:

We have characterised part of the role of the lawyer as acting as a participant in the fair administration of justice. The same idea is sometimes expressed by describing the lawyer as an “officer of the court” or as a “minister of justice”. A lawyer must never knowingly give false or misleading information to the court, nor should a lawyer ever lie to third parties in the course of his or her professional activities. These prohibitions frequently run counter to the immediate interests of the lawyer’s client, and the handling of this apparent conflict between the interests of the client and the interests of justice presents delicate problems that the lawyer is professionally trained to solve. The lawyer is entitled to look to his or her bar association for assistance with such problems. But in the last analysis the lawyer can only successfully represent his or her client if the lawyer can be relied on by the courts and by third parties as a trusted intermediary and as a participant in the fair administration of justice.

What do professional codes say (2)?

- **IBA International Principles on the Conduct of the Legal Profession**

5.1 Clients' interests - general principle

A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

Some myths about the conflict between the client's interests and the public interest

- It does not apply in criminal defence
- It deals with future civil actions being contemplated by the client
- It does not apply across the whole public interest
- There is no single and simple answer – each lawyer must weigh up the circumstances of each case
- Does it apply in the field of climate change?

The market is beginning to move

- Clifford Chance has decided to move away from matters that present climate risks, to the point of deciding whether to take on such clients at all
- Some young lawyers are saying that they do not want to work on files in which client actions will damage the climate
- Lawyers' professional associations are beginning to alert their members to climate change issues

Links to texts quoted

- CCBE Charter of Core Principles - https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_DEON_CoC.pdf
- IBA International Principles - <https://www.ibanet.org/resources>

Thank you!