

PROTECTING THE PUBLIC INTEREST
IN TIMES OF CLIMATE CHANGE:
FROM ABANDONING FOSSIL FUEL
TO SHARING OUR EARTH

JOYEETA GUPTA

Tenth Annual
T. M. C. Asser Lecture



ASSER PRESS

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FOREWORD

While annual lectures have been a good tradition for the T.M.C. Asser Instituut, the 2025 Asser Annual Lecture carried special significance. It marked the 10th annual lecture; and it took place during the year in which the Institute—founded in 1965—celebrated its 60th anniversary. For six decades, our Institute has disseminated, from The Hague in the Netherlands, the importance of international and European law, including private international law. As the rule of law at the national and international levels has been ever more openly contested, the urgency of the Institute’s mission cannot be underestimated. Annual lectures are integral parts of our Institute’s commitment to engaging with stakeholders and raising awareness about the role of international and European law in addressing global and local challenges.

One of the most pressing global challenges taken up by the 2025 Asser Annual Lecture was climate injustice. In its advisory opinion in July 2025 on the *Obligations of States in Relation to Climate Change*, the International Court of Justice (ICJ) characterised climate change as an ‘existential problem of planetary proportions that imperils all forms of life and the very health of our planet’.¹ In clarifying States’ international obligations under the Paris Agreement, the law of the sea, and human rights law, and reminding States of the consequences of non-compliance with these obligations, what the ICJ notably reaffirmed was States’ ‘duty to cooperate for the protection of the environment’ under customary international law.² The Court viewed cooperation between States as ‘the very foundation of meaningful international efforts’ on climate change.³ In the era of geopolitical rivalries and divisions, the Court’s pronouncement inevitably carried

¹ ICJ, Advisory Opinion on the obligations of states in relation to climate change, 23 July 2025, para. 456.

² Ibid., para. 301.

³ Ibid., para. 302.

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a deep sense of appeal for solidarity in addressing climate change. At the same time, what the ICJ did not address in its advisory opinion was the deeper structural issues of climate injustice that must inform States' climate change measures. How exactly should States collaborate, whose interests should be given priority, and what normative frameworks should guide States' cooperation?

For the 2025 Asser Annual Lecture, we were privileged to have Prof. Joyeeta Gupta as a speaker. Globally speaking, she has been one of the most prominent voices on climate injustices and climate system justice. Through her scholarship, Prof. Gupta has played a pivotal role in challenging the concept of 'growth' embedded in development discourse, and her scholarship reconceptualised the epistemology of climate justice. Among many research grants, she received an ERC Advanced Grant for her work on climate and fossil fuels. She is also a role model in translating her scholarly work into national and international initiatives. Among many roles, Prof. Gupta was a lead author in the Intergovernmental Panel on Climate Change. She co-chaired, among others, the Earth Commission, which is an international team of scientists to identify science-based actions. She has also been appointed as a co-chair of the UN Group of Ten High-level Representatives of Civil Society, Private Sector and Scientific Community to Promote Science, Technology and Innovation for the Sustainable Development Goals (10-Member Group). Given her remarkable track record, it came as no surprise that Prof. Gupta received in 2023 the Spinoza Prize, which is the highest recognition in the Dutch scientific communities.

In the 2025 Asser Annual Lecture, Prof. Gupta addressed the question of how we should protect the public interest in times of climate change. As she reiterated, the primary cause of climate change is the use of fossil fuel. Yet the term fossil fuel was not even mentioned in the final statement of the 30th Conference of the Parties (COP) to the UN Framework Convention on Climate Change (2025). This absence paradoxically shows how deeply fossil fuels remain embedded in many States' economic and political systems. Prof. Gupta makes it clear that reliance upon market-based solutions would be a

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mistake in reducing the use of fossil fuels which are generally more profitable than renewables. International law can also create hurdles for regulating fossil fuels. For example, Investor-State Dispute Settlement (ISDS) mechanisms can deter States from imposing stringent environmental policies on fossil fuel investment.

Prof. Gupta presented a powerful case for putting the questions of justice to the centre in addressing climate change. She argued that climate justice is ‘not just a normative goal’ but instead an ‘imperative’ for stabilising the climate and protecting the public interest. She persuasively supports the need for ‘a different kind of economy’ based on what she and her co-authors have termed as a set of ‘just boundaries’ for the earth system. Prof. Gupta’s words create a much-needed occasion for us to reimagine economic and political systems based on basic needs, human rights, and justice mechanisms. As an institute based in The Hague, the International City of Peace and Justice, we were inspired by Prof. Gupta’s findings and work. We are committed to continuing to engage with our national and international stakeholders in addressing the question of climate justice, and I hope that the listeners and readers of Prof. Gupta’s lecture will join us for future events, conversations, and initiatives on climate justice to build a better future.

Machiko Kanetake
*Chair of the Executive Board and
Academic Director of the T.M.C. Asser Instituut*

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I. INTRODUCTION

It is a privilege to deliver the 10th Annual T.M.C. Asser Lecture. I will address the need to protect a stable climate in order to protect the public interest.

Climate change is the most serious threat to humans now and in the future. This is because humans have never lived outside the 2°C ‘niche’¹, and the impacts of climate change have repercussions on the freshwater system, the oceans, biodiversity and thereby on the systems that support our life, culture and economy.² To illustrate, most of the impacts of climate change operate through water: sea level rise, extreme weather events like cyclones, droughts and floods, saltwater intrusion into groundwater systems, and even water-related health issues. Every 1°C rise in temperature means a 7% increase in water vapour in the clouds, which entails that rain can fall down as a ‘rain bomb’.³ If the climate system becomes unstable it will affect everyone and all sectors of society – including agriculture, economy, and culture.⁴ Climate change causes significant harm to humans,

¹ Chi Xu et al., ‘Future of the Human Climate Niche’, *Proceedings of the National Academy of Sciences* 117, no. 21 (2020): 11350–55, <https://doi.org/10.1073/pnas.1910114117>.

² UN Environment, ed., *Global Environment Outlook – GEO-6: Healthy Planet, Healthy People*, 1st edn (Cambridge University Press, 2019), <https://doi.org/10.1017/9781108627146>.

³ Peter Mwai, *Durban Floods: Is It a Consequence of Climate Change?*, 14 April 2022, <https://www.bbc.com/news/61107685>.

⁴ IPCC, *Global Warming of 1.5°C: IPCC Special Report on Impacts of Global Warming of 1.5°C above Pre-Industrial Levels in Context of Strengthening Response to Climate*

their infrastructure and the more-than-human world.⁵ Scholars have known about climate change for 250 years, with scientific evidence exponentially rising in the last century. And yet the global community has been collectively quite slow to address this problem.

Against this background, I ask: How can we protect the public interest in times of climate change? There is growing evidence that if we cross ‘safe’ climate boundaries, irreversible tipping elements can be triggered leading to an extremely hot Earth on average and changes in the hydrological patterns. These can make life as we know it very difficult, affecting human health, agriculture, water supplies, infrastructure and so on.⁶ Long before the safe boundaries are crossed, at 1°C there is already significant harm to people, communities (deaths, chronic illness, displacement) and countries (loss of wellbeing, welfare and GDP) worldwide thereby affecting the public interest.⁷ I see the word ‘public’ as reflecting the global community; and a stable climate to be in the shared ‘public interest’ of the global community. As Boot says: “something is in the public interest if it increases the opportunities of the members of the public to pursue and realize the (permissible) ends they all share *qua* members of the public”.⁸ Boot argues in favour of three conditions for a public interest: ‘normativity’, ‘aggregation’ and ‘unity’. I believe that a stable climate is important for *all living creatures* and thus meets the normativity condition: it is a substantive goal and not determined by process; it exists independent of process. It also meets the aggregation condition – i.e. it is important for all humans (and other species), and is not just resulting from the aggregation of private interests. Moreover, it meets the unity condition in that it benefits the human community as a whole and individuals

Change, Sustainable Development, and Efforts to Eradicate Poverty, 1st edn (Cambridge University Press, 2022), <https://doi.org/10.1017/9781009157940>.

⁵ Joyeeta Gupta et al., ‘Applying Earth System Justice to Phase out Fossil Fuels: Learning from the Injustice of Adopting 1.5 °C over 1 °C’, *International Environmental Agreements: Politics, Law and Economics* 24, no. 1 (2024): 233–55, <https://doi.org/10.1007/s10784-024-09628-y>.

⁶ Johan Rockström et al., ‘Safe and Just Earth System Boundaries’, *Nature* 619, no. 7968 (2023): 102–11, <https://doi.org/10.1038/s41586-023-06083-8>.

⁷ Rockström et al., ‘Safe and Just Earth System Boundaries’.

⁸ Eric R. Boot, ‘The Public Interest: Clarifying a Legal Concept’, *Ratio Juris* 37, no. 2 (2024): 110–29, <https://doi.org/10.1111/raju.12401>.

now and in the future. A public interest is not the same as a common interest which everyone agrees to. For the purpose of this paper, I see a stable climate as being in the public interest⁹ because it meets the above three conditions and thereby it allows humans (and other species) to take the stable climate for granted and to pursue their own goals, wellbeing, and enjoy their human rights; it allows states to promote the wellbeing of their citizens; and it enables the natural systems to function as they have in the Holocene, in this way also contributing to human wellbeing. In achieving a stable climate, it is furthermore important to ensure that the basic needs of people to enjoy their human rights are respected as well.

Of course international law is still based on state sovereignty; I believe that in areas like climate change which I see as in the public interest, it is critical to view international law as the law of the international community, and that protecting the climate system should be an obligation *erga omnes*, and that the ‘public interest argument’ justifies climate action within the climate change treaty. To the extent that action is needed across the treaty system it requires global constitutional reform.¹⁰ Educated in economics and then law, and having worked in the Faculties of Earth and Life Sciences and subsequently in the Faculty of Social and Behavioural Sciences, I take an interdisciplinary perspective in this paper as climate change is an interdisciplinary problem.

⁹ While the public interest is referred to in law and policy studies, other scholars refer to a stable climate as a public good as no one can be excluded from enjoying it (non-exclusive) and enjoyment by one person does not reduce its enjoyment by others (non-rival). The state needs to protect such public goods. Still others focus on the commons – they argue that a stable climate is a global commons which requires collaborative state action. See Johan Rockström et al., ‘The Planetary Commons: A New Paradigm for Safeguarding Earth-Regulating Systems in the Anthropocene’, *Proceedings of the National Academy of Sciences* 121, no. 5 (2024): e2301531121, <https://doi.org/10.1073/pnas.2301531121>.

¹⁰ Bardo Fassbender, ‘The United Nations Charter as Constitution of the International Community’, *Columbia Journal of Transnational Law* 36, no. 3 (1998): 529–619; Christian Tomuschat, ‘International Law: Ensuring the Survival of Mankind on the Eve of a New Century General Course on Public International Law (Volume 281)’, in *The Hague Academy Collected Courses Online / Recueil Des Cours de l’Académie de La Haye En Ligne* (Brill), https://doi.org/10.1163/1875-8096_ppIrdc_A9789041114884_01.

Nevertheless, I would like to make a few caveats before I start. I focus on climate injustices as violating the public interest. As Boot¹¹ states: “A public interest is at stake only where there is an interest at play that is shared by all, in the role they all share, namely, that of members of the public.” Since climate injustice violates the public interest, a public interest approach would require, in my view, a ‘climate system justice’ approach (see Subsection 2.6). I argue that where the wording of a climate treaty does not explicitly address climate system justice as a public interest, courts can advance a careful expansive interpretation of the existing legal text in light of public interest considerations to promote such justice. This, of course, raises the question of whether justice and law are inter-linked questions. In my view the *raison d’être* of law is to promote justice: As Otto et al. state:¹² “The role of courts in any society is to preserve the rule of law and, in so doing, ensure that decisions are fair and just. We explain that what constitutes justice or injustice pertains to societies’ and courts’ perceptions, and this inevitably influences the interpretation of the law.” My justice narrative is anchored in the *No Significant Harm* (NSH) principle¹³ and I link it to how it affects the ability of people to enjoy their human rights. Second, I focus on fossil fuel within climate change. Fossil fuel is enmeshed in local to global politics and while business law protects the fossil fuel industry, international law’s instruments and judicial bodies can also constrain this industry directly or indirectly, again based on the NSH principle (see Subsections 2.2 and 2.3). Third, I believe that this principle must be interpreted not just in procedural terms but also in substantive terms. In my view the NSH principle has a pivotal role in protecting the public interest, and the fundamental rights of humans and the more-than-human world.

¹¹ Fassbender, ‘The United Nations Charter as Constitution of the International Community’; Tomuschat, ‘International Law’.

¹² Friederike E. L. Otto et al., ‘Law, Justice and the Role of Courts in Changing the Social Superstructure Narrative in Climate Litigation’, *Global Policy* 14, no. 2 (2023): 416–19, <https://doi.org/10.1111/1758-5899.13174>.

¹³ Owen McIntyre, ‘The Current State of Development of the No Significant Harm Principle: How Far Have We Come?’, *International Environmental Agreements: Politics, Law and Economics* 20, no. 4 (2020): 601–18, <https://doi.org/10.1007/s10784-020-09501-8>; Joyeeta Gupta and Susanne Schmeier, ‘Future Proofing the Principle of No Significant Harm’, *International Environmental Agreements: Politics, Law and Economics* 20, no. 4 (2020): 731–47, <https://doi.org/10.1007/s10784-020-09515-2>.

I will begin by discussing climate change and fossil fuel (Section 2) and then discuss some of the key challenges in terms of driving factors, financial incoherence, and the rise of disinformation (Section 3), before presenting an operationalized climate system justice approach (Section 4) aiming to leave fossil fuel underground and maintaining a stable climate system. Finally, I argue that many of the opportunities call for thinking systemically about global constitutionalism.

2. CLIMATE CHANGE: FOSSIL FUEL, CLIMATE INJUSTICES AND CLIMATE SYSTEM JUSTICE

2.1 Introduction

In this section, I will first explain my focus on fossil fuel (Subsection 2.2), why market mechanisms will not leave fossil fuel underground (Subsection 2.3), the cumulative climate injustices that have resulted from a weak regulatory and primarily market-based approach (Subsection 2.4), why a just approach is not only normatively required but is necessary for effective climate policy (Subsection 2.5) and the need for climate system justice if we wish to protect the public interest by maintaining a relatively stable climate (Subsection 2.6). Finally, I will draw a few inferences (Subsection 2.7).

2.2 Why focus on fossil fuel?

Climate change is caused primarily by the use of fossil fuel in our energy systems, the emissions of methane in agricultural and industrial processes and by deforestation. In this paper I focus only on fossil fuel for seven reasons. First, governments are wary of including the term fossil fuel in the climate change negotiations. Although it made an appearance in Glasgow in the 26th Conference of the Parties (COP) to the Climate Change Convention, and parties agreed to move away from fossil fuel in the 28th COP, at the 30th COP in Belem in 2025, the term fossil fuels disappeared from the final statement.¹⁴ The fossil

¹⁴ IISD, COP 30 Outcome: What It Means and What's next, 22 November 2025, <https://www.iisd.org/taxonomy/term/252#:~:text=It%20also%20set%20a%20>

fuel companies were present through 1600 lobbyists to ensure that the Conference did not include a statement referring to them.¹⁵ This reflects the huge power of the fossil fuel sector (worth between \$16-295 trillion;¹⁶ note that global GDP is around \$110 trillion)! The fossil fuel sector is the ‘dinosaur’ in the room that will do anything to survive what is essentially an existential crisis for them; but they are very powerful: the large fossil fuel companies made \$4 trillion in profits in 2022¹⁷ and the sector received \$7 trillion in subsidies.¹⁸

Second, the fact that fossil fuel is not discussed explicitly in negotiations is paradoxical given that it is the biggest cause of climate change (it causes 75% of the problem; and emits 90% of annual CO₂ emissions).¹⁹ Third, there are massive reserves of fossil fuel left²⁰ with more than 78% in the global South;²¹ but ironically, despite promises to lead in addressing climate change, 70% of the new fossil fuel is being developed by four industrialized countries – USA, Canada, Australia and Norway.²² With the USA going openly for Venezuelan oil in 2026, fossil fuel companies are getting support from the richest

goal%20of%20mobilizing,to%20scale%20up%20finance%20for%20climate%20action.

¹⁵ KBPO, Fossil Fuel Lobbyists Flood COP30 Climate Talks in Brazil, with Largest Ever Attendance Share (Kick Big Polluters Out, 2025), <https://kickbigpollutersout.org/Release-Kick-Out-The-Suits-COP30>.

¹⁶ Peter Linquiti and Nathan Cogswell, ‘The Carbon Ask: Effects of Climate Policy on the Value of Fossil Fuel Resources and the Implications for Technological Innovation’, *Journal of Environmental Studies and Sciences* 6, no. 4 (2016): 662–76, <https://doi.org/10.107/s13412-016-0397-2>.

¹⁷ IEA, World Energy Investment 2023 (IEA, 2023), <https://www.iea.org/reports/world-energy-investment-2023>.

¹⁸ Simon Black, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’, *IMF Working Papers* 2023, no. 169 (2023): 1, <https://doi.org/10.5089/9798400249006.001>.

¹⁹ Corinne Le Quéré et al., ‘Global Carbon Budget 2018’, *Earth System Science Data* 10, no. 4 (2018): 2141–94, <https://doi.org/10.5194/essd-10-2141-2018>.

²⁰ Hannah Ritchie and Pablo Rosado, ‘Fossil fuels,’ *Our World in Data*, October 2022 (last modified January 2024), <https://ourworldindata.org/fossil-fuels>

²¹ Joyeeta Gupta et al., ‘Transport within Earth System Boundaries’, *Nature PJ Sustainable Mobility and Transport* 1, no. 1 (2024): 5, <https://doi.org/10.1038/s44333-024-00005-5>.

²² Nicole Rodel, *New Data Exposes Global North Countries Responsible for Nearly 70% of Projected Oil and Gas Expansion through 2035*, 16 June 2025, <https://oilchange.org/news/new-data-exposes-global-north-countries-responsible-for-nearly-70-of-projected-oil-and-gas-expansion-through-2035/>.

countries. Fourth, markets will not solve the fossil fuel problem (see Subsection 2.3) and hence it is essential to regulate the problem. Fifth, energy justice²³ and social human rights²⁴ (e.g. access to water, food, energy) require meeting basic needs for all; meeting such minimum needs has a CO₂ footprint (see Section 4). This implies that we need to reconsider whether such minimum needs should be met by using fossil fuel. Sixth, military expansion under the new NATO norm of 5% of GDP for weapons and infrastructure,²⁵ and the growing AI investments are increasing energy demand globally and will create a growing demand for 'cheap' fossil fuel. Seventh, the cost of action to close down fossil fuel is high which is why action is avoided, but this cost is tiny in comparison with the cost of inaction. The Climate Policy Initiative argues that mitigating climate to 1.5°C requires about \$5-12 trillion annually for the next 20 years. But business-as-usual could lead to damages of \$1200 trillion or worse before the end of the century.²⁶ All this justifies a focus on fossil fuel as key to protecting the public interest.²⁷

This raises the question: How much fossil fuel should be left underground? This is determined by the carbon budget or the amount of CO₂ emissions humans can emit since 1850-1900. This budget is determined by the level at which average global temperatures should be stabilized. This level can be 2°C, 1.5°C, or 1°C, or another number (see Section 4). Let us for now assume that 1.5°C is the temperature

²³ Kirsten Jenkins et al., 'Energy Justice: A Conceptual Review', *Energy Research & Social Science* 11 (January 2016): 174–82, <https://doi.org/10.1016/j.erss.2015.10.004>; Chian-Woei Shyu, 'A Framework of Basic Human Energy Needs for Decent Quality of Life at Household Level: Policy Implications for Enhancing Energy Justice and Meeting SDG7', *Journal of Asian Public Policy*, 26 December 2024, world, <https://www.tandfonline.com/doi/abs/10.1080/17516234.2024.2446020>.

²⁴ 'Economic, Social and Cultural Rights', OHCHR, <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights>.

²⁵ NATO, 'The Hague Summit Declaration', 25 June 2025, <https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2025/06/25/the-hague-summit-declaration>.

²⁶ Barbara Buchner et al., *Global Landscape of Climate Finance 2023* (Climate Policy Initiative, 2023), <https://www.climatepolicyinitiative.org/wp-content/uploads/2023/11/Global-Landscape-of-Climate-Finance-2023.pdf>.

²⁷ IEA, *World Energy Outlook 2025* (IEA, 2025), <https://www.iea.org/reports/world-energy-outlook-2025>.

target: what does this mean for the carbon budget? In 2025, that budget was 130 gigaton; we use 40 gigaton annually, this means that in three years the budget is zero on a 50% probability of staying below 1.5°C.²⁸ In simple words, achieving this budget requires stopping with fossil fuels overnight and we are nowhere near this in rich or poor countries.

If the global community wanted to ensure that CO₂ emissions reached zero, this would imply that every year the budget would shrink. As we move towards 2030, we will argue with each other as to who is entitled to this budget, who has the right to use fossil fuels, who has the right to buy a ship. It was thus easier to talk about equitable sharing in 1992 than in 2015! And as we move towards 2030, 2040 and 2050 the discussions will get even more difficult.

Moreover, two new narratives have emerged that undermine zero emissions: Overshoot and net zero politics. Overshoot politics is about delaying the arrival at zero emissions²⁹ and hoping that we can somehow suck out the CO₂ from the air with negative emission technologies, by capturing CO₂ from the air and putting it underground or planting new forests. The hope is that before the end of the century we can return to 1.5°C.³⁰ But the 1.5°C world we may be able to return to later will be a very different world; glaciers that have melted will not suddenly return! The other narrative – net zero politics³¹ – allows companies and countries to offset their emissions

²⁸ Climate Change Tracker, 'Current Remaining Carbon Budget: Insights, Data, Charts', 2025, <https://climatechangetracker.org/climate-change-progress/current-remaining-carbon-budget-and-trajectory-till-exhaustion>.

²⁹ Jörg Schwinger et al., 'Emit Now, Mitigate Later? Earth System Reversibility under Overshoots of Different Magnitudes and Durations', *Earth System Dynamics* 13, no. 4 (2022): 1641–65, <https://doi.org/10.5194/esd-13-1641-2022>. Andy Reisinger et al., 'Overshoot: A Conceptual Review of Exceeding and Returning to Global Warming of 1.5°C', *Annual Review of Environment and Resources* 50, no. 1 (2025): 185–217, <https://doi.org/10.1146/annurev-environ-111523-102029>.

³⁰ Neil Grant et al., *Rescuing 1.5°C New Evidence on the Highest Possible Ambition to Deliver the Paris Agreement*, CC BY-NC-ND 4.0 (Climate Analytics and PIK, 2025), <https://ca1-clm.edcdn.com/publications/Rescuing1.5%C2%BAC.pdf?v=1762362849>.

³¹ Myles R. Allen et al., 'Net Zero: Science, Origins, and Implications', *Annual Review of Environment and Resources* 47, no. 1 (2022): 849–87, <https://doi.org/10.1146/>

by, for example, planting trees. But this can amount to continuing with business-as-usual.³² Both these narratives have been so powerful that people and countries seem to have forgotten the urgency of not crossing 1.5°C in the first place. The IEA now calculates that maybe we can limit overshoot to 1.65°C and then return.³³ But remember the carbon budget is still shrinking rapidly, which will lead to arguing about who is entitled to what share of the budget. Moreover, the fossil fuel companies face an existential crisis as well, and so they will also continue to resist climate action.

How did we reach such a situation? In 1992, when the United Nations Framework Convention on Climate Change (UNFCCC) was adopted, if countries had made a road map to leave fossil fuel underground, we would have had a relatively smooth exit from fossil fuel. But instead, politicians who are usually in power for some four to five years, kept postponing the decision; and we have now reached a situation where we need to cut down drastically. Similarly, the Chief Executive Officers, who also tend to head the very largest companies for a short period of time, have no real motivation to protect the long-term interest. Likewise, voters too often have a short time horizon.³⁴ And now, when I present my story in different scholarly, political, diplomatic and business settings, I hear from the audience of policymakers and business in especially the global North that one needs to be ‘practical’ and ‘reasonable’, that phasing fossil fuel out is not ‘feasible’; this extremely short-term practical narrative now dominates at the risk of current impacts for some (e.g. one third of

annurev-environ-112320-105050.

³² Jesse Bragg et al., *The Big Con: How Big Polluters Are Advancing a “Net Zero” Climate Agenda to Delay, Deceive, and Deny* (Corporate Accountability, Global Forest Coalition, Friends of the Earth International, 2021), https://corporateaccountability.org/wp-content/uploads/2021/06/The-Big-Con_EN.pdf. Nils Markusson et al., ‘Carbon Removal and the Empirics of Climate Delay’, *Environmental Science & Policy* 161 (November 2024): 103884, <https://doi.org/10.1016/j.envsci.2024.103884>.

³³ IEA, *World Energy Outlook 2025*.

³⁴ Andrew Healy and Neil Malhotra, ‘Myopic Voters and Natural Disaster Policy’, *American Political Science Review* 103, no. 3 (2009): 387–406, <https://doi.org/10.1017/S0003055409990104>.

Pakistan came under water floods;³⁵ Jamaica has faced unprecedented storms;³⁶ Los Angeles has faced extreme heat and fire;³⁷ Southern Europe has faced very high temperatures³⁸) and long-term instability for everyone (and all other species). However, even in 1990, I recall that experts did not think 2°C would be ‘feasible’ – and hence this lack of ‘feasibility’ and ‘reasonability’ has led us to the current situation; it makes me wonder if thirty years down the road we will argue that it is not ‘feasible’ to do carbon capture and storage as it is too expensive...

2.3 *Markets will not solve the fossil fuel problem*

Our politicians globally have not regulated fossil fuel. Many experts argue that markets will solve the problem. Bill McKibben in his book *Here comes the Sun*³⁹ argues that markets will ensure that renewables will take over. However, I have identified eleven clusters of reasons why even though the unit price of energy from renewables is falling,⁴⁰ fossil fuel will not easily be displaced.

³⁵ Arfan Arshad et al., ‘Anthropogenic and Climatic Drivers of the 2022 Mega-Flood in Pakistan’, *Npj Natural Hazards* 2, no. 1 (2025): 57, <https://doi.org/10.1038/s44304-025-00109-z>.

³⁶ Charlotte Frantz, ‘Hurricane Melissa: Devastation in Jamaica at Levels “Never Been Seen Before”’, *UN News*, 29 October 2025, <https://news.un.org/en/story/2025/10/1166217>.

³⁷ Doug Specht, ‘LA Fires Show the Human Cost of Climate-Driven “Whiplash” between Wet and Dry Extremes’, *The Conversation*, 10 January 2025, <https://theconversation.com/la-fires-show-the-human-cost-of-climate-driven-whiplash-between-wet-and-dry-extremes-247133>.

³⁸ Matthieu Goar et al., ‘Climate Change: Southern Europe Scorched by Flames and Extreme Heat’, *Le Monde*, 16 August 2025, https://www.lemonde.fr/en/environnement/article/2025/08/16/climate-change-southern-europe-scorched-by-flames-and-extreme-heat_6744435_114.html.

³⁹ Bill McKibben, *Here Comes the Sun: A Last Chance for the Climate and a Fresh Chance for Civilization* (W W NORTON, 2026).

⁴⁰ International Renewable Energy Agency, *Renewable Power Generation Costs in 2024* (International Renewable Energy Agency IRENA, 2025); Max Roser, ‘Why Did Renewables Become so Cheap so Fast?’, *Our World in Data*, 1 December 2020, <https://ourworldindata.org/cheap-renewables-growth>.

First, fossil fuels are twice as profitable than renewables⁴¹ and so investors continue to invest in fossil fuel. The Net Zero Banking Alliance, which was intending to move away from fossil fuels, has dissolved in 2025 under pressure in the USA.⁴² Profitability is high because of the (a) monopolistic nature of the industry when compared to the prosumer approach of solar energy; (b) overshoot and net zero narratives; (c) omission of fossil fuel in COP (e.g. COP 30) decisions; (d) energy supply, which is less than demand in the developing world, as well as because of rising military investment in NATO countries and the growing AI industry. Furthermore, (e) renewable energy is mostly additive in the global South,⁴³ but also in the global North, not really replacing fossil fuel substantially. Additionally (f), the high subsidies for this sector (\$7 trillion globally, €37.5 billion in the Netherlands⁴⁴) ensures that people remain addicted to the sector (see e.g. the yellow vest movement in France protesting the rise in fossil fuel costs) and provides high profits to the fossil fuel companies and their investors. In addition (g), renewable energy subsidies go mostly to the rich (as they are the ones with the capital to buy solar panels, heat pumps and e-vehicles), leaving the vast majority outside the energy transition and maintaining demand for cheap and affordable fossil fuels. Finally (h), such cheap and affordable fossil fuel results from direct and indirect subsidies to the sector; externalizations of the damage caused by fossil fuel at local (air pollution) and global level (e.g. what is referred to as the social costs of carbon);⁴⁵ and exclusion of the cost

⁴¹ Joyeeta Gupta et al., *New Narratives for Leaving Fossil Fuels Underground: CLIFF Conference Report. Internal Report*, Internal report (2026). Tyler A. Hansen, 'Stranded Assets and Reduced Profits: Analyzing the Economic Underpinnings of the Fossil Fuel Industry's Resistance to Climate Stabilization', *Renewable and Sustainable Energy Reviews* 158 (April 2022): 112144, <https://doi.org/10.1016/j.rser.2022.112144>.

⁴² Simon Jessop et al., 'Net-Zero Banking Alliance Folds after Mass Exodus by Members', sect. COP30, *Reuters*, 3 October 2025, <https://www.reuters.com/sustainability/cop/net-zero-banking-alliance-stop-operations-after-member-vote-2025-10-03/>.

⁴³ Augusto Heras and Joyeeta Gupta, 'Fossil Fuels, Stranded Assets, and the Energy Transition in the Global South: A Systematic Literature Review', *WIREs Climate Change* 15, no. 1 (2024): e866, <https://doi.org/10.1002/wcc.866>.

⁴⁴ Rodrigo Fernandez et al., 'New Study Estimates the Netherlands' Fossil Fuel Subsidies at €37.5 Billion per Year', *SOMO*, 4 September 2023, <https://www.somo.nl/new-study-estimates-the-netherlands-fossil-fuel-subsidies-at-e37-5-billion-per-year/>.

⁴⁵ Union of Concerned Scientists, *The Hidden Costs of Fossil Fuels*, 15 July 2008, <https://www.ucs.org/resources/hidden-costs-fossil-fuels>.

of possible future carbon capture and storage technologies. In this way, private market interests are prioritized over the public interest. Second, most countries use arguments of resource sovereignty, energy security and competitiveness to continue to develop fossil fuel, arguing that shifting to other fuels is not possible as renewable energy sources are intermittent⁴⁶ and nuclear energy takes time. Developing countries use the right to development⁴⁷ but investors in the global North also cite this as a reason for continuing to invest in fossil fuel in the global South.⁴⁸

Third, legally fossil fuel transactions across the value chain are embedded in millions of long-term contracts, protected by contract law, bilateral and multilateral investment agreements like the Energy Charter Treaty (ECT).⁴⁹ In *Chevron v. Ecuador*,⁵⁰ Chevron sued Ecuador under the Ecuador-US Bilateral Investment Treaty, after domestic courts had ordered it to pay damages for environmental harm caused by oil extraction, arguing that the judgment violated investor protections. This illustrates how investors can use Investor State Dispute Settlement (ISDS) mechanisms to challenge environmental regulation or judicial decisions, claiming compensation for regulatory or legal measures that affect profits. In doing so, ISDS can deter states (particularly in the global South) from strengthening environmental or climate policies, thereby making continued fossil fuel investment more attractive to investors. Infrastructures that serve society are also often locked into fossil fuel contracts. For

⁴⁶ Canan Ozkan et al., 'Transitioning Away from Fossil Fuels to Renewables: A Multifaceted Approach and Related Challenges', *Energies* 18, no. 19 (2025): 5068, <https://doi.org/10.3390/en18195068>.

⁴⁷ Augusto Heras et al., 'Reconciling the Right to Develop with Leaving Fossil Fuels Underground in the Global South', *Environmental Science & Policy* 172 (October 2025): 104207, <https://doi.org/10.1016/j.envsci.2025.104207>.

⁴⁸ Joyeeta Gupta et al., 'Access and Allocation: The Role of Large Shareholders and Investors in Leaving Fossil Fuels Underground', *International Environmental Agreements: Politics, Law and Economics* 20, no. 2 (2020): 303–22, <https://doi.org/10.1007/s10784-020-09478-4>.

⁴⁹ Energy Charter Treaty, 2080 UNTS 95 (1994).

⁵⁰ *Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador* (I), PCA Case No. 2007-02/AA277 (Permanent Court of Arbitration (UNCITRAL) 31 August 2011), <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/242/chevron-and-texpet-v-ecuador-i->.

example, the Port of Amsterdam, Europe's largest petroleum port, argues that the hundreds of contracts with suppliers and clients keeps them locked in.⁵¹

Fourth, since CO₂ is not treated universally as a 'pollutant' yet, use of fossil energy often does not require Environment Impact Assessments (EIAs) and is not subject to control before the issue of a permit or license as would be required if it were a 'pollutant'.

Fifth, the state owns the fossil fuel (except in the US) and is therefore often not really in a position to regulate itself. In particular national fossil fuel companies face a self-governance challenge.⁵²

Sixth, many countries have economies that are fiscally dependent on fossil fuel revenues⁵³ and cultural programmes and sports are financed by fossil fuel revenues making them financially dependent. Until all of this is disentangled, states and sponsored events cannot see a way out.

Seventh, developing countries in debt use fossil fuel export revenues to finance their debt servicing. And this leads them into a debt-fossil fuel lock in.⁵⁴

Eighth, fossil fuel infrastructure is everywhere, including in our homes and offices. Dismantling, repurposing, and redesigning this is expensive. Hence, the market itself cannot solve the problem. We

⁵¹ Gupta et al., *New Narratives for Leaving Fossil Fuels Underground: CLIFF Conference Report. Internal Report.*

⁵² Victor Chukwuka Azubike, *National Oil Companies and Resource Nationalism: A Challenge for a Petroleum Resource-Rich State.*, 31 December 2020, <https://rgu-repository.worktribe.com/output/1357841>. Azubike, *National Oil Companies and Resource Nationalism*. Janina Herzog-Hawelka and Joyeeta Gupta, 'The Role of (Multi) National Oil and Gas Companies in Leaving Fossil Fuels Underground: A Systematic Literature Review', *Energy Research & Social Science* 103 (September 2023): 103194, <https://doi.org/10.1016/j.erss.2023.103194>.

⁵³ For example, Norway and India.

⁵⁴ Paula Haerle, 'Locked-in Fossil Fuels: The Relationship between Sovereign External Debt and Fossil Fuel Production Dependencies in Low and Middle-Income Countries' (Master's thesis, University of Amsterdam, 2025).

have to radically investigate how fossil fuel functions in each society and unlock each lock-in.

Ninth, fossil fuel labour apparently has no alternative employment.⁵⁵ Tenth, professionals are limited by their ‘mandate’ and climate policy often requires thinking beyond one’s ‘mandate’.

And finally, people are psychologically dependent on fossil-fuel.⁵⁶

2.4 *Climate injustice violates the public interest*

I will now argue that ongoing climate injustice violates the shared public interest of current and future generations as well as the rights of other species by damaging the climate system on which we all depend.

Six cumulative climate injustices have hurt the public interest now and in the future. I will be summarizing arguments I have made elsewhere.⁵⁷

First, despite knowledge about climate harm, the quantified climate temperature objective was postponed by 23 years to 2015. It was set at 2°C. Under pressure from small island states and others, the objective also referred to 1.5°C. Then the Intergovernmental Panel on Climate Change (IPCC) was asked to write a report on 1.5°C. And finally in 2021, the COP referred to 1.5°C. This delay has allowed rich countries to continue to use fossil fuel and invest in fossil fuel in the global South. In one of the maps of our Interactive Atlas⁵⁸ one

⁵⁵ Shannon Elizabeth Bell and Richard York, ‘Community Economic Identity: The Coal Industry and Ideology Construction in West Virginia: Community Economic Identity’, *Rural Sociology* 75, no. 1 (2010): 111–43, <https://doi.org/10.1111/j.1549-0831.2009.00004.x>.

⁵⁶ Lucas Pohl and Erik Swyngedouw, ‘Enjoying Climate Change: Jouissance as a Political Factor’, *Political Geography* 101 (March 2023): 102820, <https://doi.org/10.1016/j.polgeo.2022.102820>.

⁵⁷ Joyeeta Gupta et al., ‘Climate Injustices Have Multiplied over Time: The Need for Climate System Justice’, *Progress in Development Studies*, 7 August 2025, 14649934251360854, <https://doi.org/10.1177/14649934251360854>.

⁵⁸ Yang Chen and Joyeeta Gupta, *CLIFF-IA Interactive Atlas (IA) for Climate Change and Fossil Fuels (CLIFF) v1.0*, 2024, <https://doi.org/10.13140/RG.2.2.20105.04969>.

can see the lifetime of a coal plant. It shows that most coal plants in the global North are near the end of their lifetime, while most coal plants in the global South have a long lifetime ahead; implying heavy economic costs if the plants have to be prematurely closed down. The strategic delay of the target till 2015 helped rich countries to optimize their use of coal, but burdens developing countries who were just starting to use coal. This deters action by developing countries and thereby hurts the public interest.

Second, the delay has meant that the carbon budget was so small in 2015 that it was impossible to share it equitably, denying content to the Common but Differentiated Responsibilities Principle.⁵⁹

Third, the carbon budget does not account for the location of the fossil fuel – 78% of the remaining fossil fuel is in the developing countries; thus, even if the budget is technically more or less finished, developing countries may want to use their ‘fair’ share, a share the global North did not leave for them. This makes them argue that asking them not to use the fossil fuels is neo-colonial; but the fact that industrialized states did not account for this is also unjust to their own populations who depend on the state to protect the global commons and the public good. If the developing world uses its ‘fair share’, we may go way beyond the 2°C target, risking irreversible catastrophic and long-term impacts.

Fourth, the climate regime focused more on market mechanisms than on educating the public as required by the UNFCCC or on regulatory mechanisms such as making CO₂ a pollutant subject to stringent EIAs and permits.⁶⁰ The former has meant that rich countries and companies could write cheques to buy emission reduction

⁵⁹ The common but differentiated responsibilities and respective capabilities principle, adopted in the UNFCCC generally implies that all countries have the common responsibility to take care of the climate, but this responsibility is differentiated based on the extent to which countries have been responsible in causing the problem and degree to which they have the capability to address the problem.

⁶⁰ Arthur Rempel and Joyeeta Gupta, ‘Equitable, Effective, and Feasible Approaches for a Prospective Fossil Fuel Transition’, *WIREs Climate Change* 13, no. 2 (2022): e756, <https://doi.org/10.1002/wcc.756>.

elsewhere but did not have to change the structure of their economies or companies, which was politically and economically feasible and attractive; the latter reduced the legal hurdles one needs to jump over to set up new fossil fuel plants.

Fifth, the costs of adaptation and loss and damage are rising fast – at least \$16 million per hour according to the World Economic Forum.⁶¹ This cost is being primarily paid by the person who loses in the climate lottery – if your house is swept away or burnt down, you pay.

Sixth, the symptomatic, externalized and market-based approach of the climate change treaty regime is not addressing the driving causes of the climate problem (see Section 3).⁶² These cumulative injustices have brought us to the point that 1.5°C will in all likelihood be crossed in two to three years, damaging the public interest. Unless we can mobilize fast.

So how does one address these injustices? Justice scholarship ranges from the local to the global (visualize this as the y axis of Figure 1), from conservative to transformative (visualize this as the x axis).⁶³ We argue that conservative local to global justice ('thin market justice'⁶⁴ in a neo-liberal world) is unlikely to address the drivers of climate change and fossil fuel use. It thrives on externalization of impacts on

⁶¹ Paige Bennet, 'Climate Change Is Costing the World \$16 Million per Hour: Study', *World Economic Forum*, 12 October 2023, [https://www.weforum.org/stories/2023/10/climate-loss-and-damage-cost-16-million-per-hour/#:-:text=The%20study%20authors%20estimate%20the%20cost%20of,down%20to%20around%20\\$16.3%20million%20per%20hour](https://www.weforum.org/stories/2023/10/climate-loss-and-damage-cost-16-million-per-hour/#:-:text=The%20study%20authors%20estimate%20the%20cost%20of,down%20to%20around%20$16.3%20million%20per%20hour).

⁶² Joyeeta Gupta, 'Mitigation, Adaptation and Geo-Engineering', in *The History of Global Climate Governance*, 1st edn (Cambridge University Press, 2014), <https://doi.org/10.1017/CBO9781139629072>.

⁶³ Joyeeta Gupta et al., 'Reconciling Safe Planetary Targets and Planetary Justice: Why Should Social Scientists Engage with Planetary Targets?', *Earth System Governance* 10 (December 2021): 100122, <https://doi.org/10.1016/j.esg.2021.100122>.

⁶⁴ Timothy G. Ehresman and Chukwumerije Okereke, 'Environmental Justice and Conceptions of the Green Economy', *International Environmental Agreements: Politics, Law and Economics* 15, no. 1 (2015): 13–27, <https://doi.org/10.1007/s10784-014-9265-2>. Chukwumerije Okereke, 'Degrowth, Green Growth, and Climate Justice for Africa', *Review of International Studies* 50, no. 5 (2024): 910–20, <https://doi.org/10.1017/S026021052400024X>.

others and the rights of future generations and other species. Only transformative local to global justice can address the drivers and internalize the impacts putting human rights and the NSH principle at the centre of discussions.⁶⁵ But conservative justice is ‘reasonable’ and ‘politically feasible’ and ‘affordable’. However, it is not ‘desirable’, not ‘equitable’ and it is not ‘effective’ (see Subsection 2.5) and prioritizes private interest over public interest, reproducing injustices. Transformative justice is not always politically feasible or cheap in the short-term and this requires strong statesmanship, but it is essential for protecting the public interest.

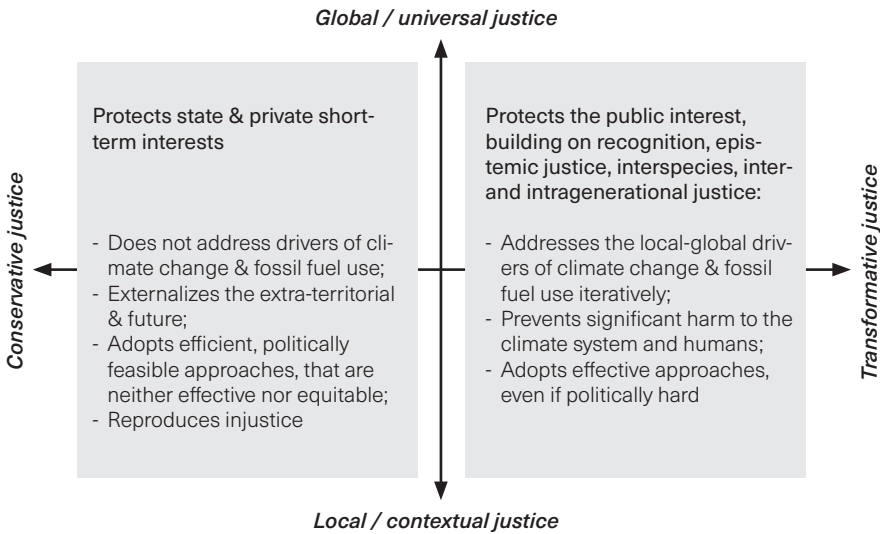


Figure 1. Justice approaches and the public interest

⁶⁵ Joyeeta Gupta et al., ‘Earth System Justice Needed to Identify and Live within Earth System Boundaries’, *Nature Sustainability* 6, no. 6 (2023): 630–38, <https://doi.org/10.1038/s41893-023-01064-1>.

2.5 *Climate justice necessary for climate stabilization*

Climate justice is not just a normative goal, it is an imperative to stabilize the climate as a matter of protecting the public interest. I will give four reasons why we need a just approach.

First, at the North–South level, given past behaviour, if a just approach is not adopted, control over the climate change problem may be lost, because, as already explained, 78% of the remaining fossil fuels are located in the global South and countries in the global South may choose to follow in the footsteps of the North.

Second, within countries, if we do not use a just approach, the population will not support climate action. For example, subsidies for renewable energy go to rich people – who already have the money to buy solar panels, heat pumps and electric cars. But who is going to help those who are less rich to participate in the structural investments needed for the energy transition?

Third, the damage people are experiencing worldwide is leading to demands for loss and damage and for justice within the COPs but also through social movements.⁶⁶ The 3000 or more court cases are just some of the ways in which these justice demands are being expressed.⁶⁷ Fourth, protecting the public interest of stabilizing the climate through, inter alia, the protection of human rights⁶⁸ both in terms of meeting basic needs and in terms of ensuring that people's enjoyment of their human rights is not affected by significant harm, requires public international environmental law to adopt a just approach (see Subsection 4.3).

⁶⁶ May Aye Thiri et al., 'How Social Movements Contribute to Staying within the Global Carbon Budget: Evidence from a Qualitative Meta-Analysis of Case Studies', *Ecological Economics* 195 (May 2022): 107356, <https://doi.org/10.1016/j.ecolecon.2022.107356>.

⁶⁷ Sabin Center for Climate Change Law, 'The Climate Litigation Database', 2025, <https://www.climatecasechart.com/>.

⁶⁸ Elisa Morgera, *"The Imperative of Defossilizing Our Economies": Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change*, A/HRC/59/42 (United Nations Human Rights Council, 2025), <https://docs.un.org/en/A/HRC/59/42>.

2.6 *Climate system justice*

Thus, since a stable climate is in the public interest, and is being threatened by cumulative climate injustices, as co-chair of the Earth Commission⁶⁹ team in its first phase, I led the conceptualization and operationalization of Earth System Justice,⁷⁰ and later we translated that into Climate System Justice⁷¹ and Water System Justice.⁷² Such justice has four building blocks. First, we argue that ideal/transformational (see again Figure 1 in Subsection 2.4) and local-global iterative justice is needed, not conservative justice. Justice must build on recognition justice⁷³ (i.e. recognizing the other, for example, through recognizing their human rights) and epistemic justice⁷⁴ (i.e. learning from different ways of knowing and knowledge systems). Second, this feeds into the 3I's (Interspecies justice and Earth System Stability, Intergenerational justice, and Intragenerational justice) of justice, which need to be balanced to determine how to reduce significant harm to the environment and via the environment to others here and elsewhere, now and into the future, and what kinds of action need to be taken. Third, procedural justice implies access to information (not misinformation or disinformation, see Subsection 3.4), access to decision-making, civic space and judicial remedy. The fourth block refers to substantive justice. Substantive justice includes addressing the *drivers* of climate change and inequality; and adopting *ends* and *means*. Although our ends are defined differently there are parallels with Boot's definition. We define ends in terms of safe and just Earth System Boundaries (a global target that reduces significant harm to the environment, humans and other species *and thereby protects the public*

⁶⁹ See <https://earthcommission.org/>

⁷⁰ Gupta et al., 'Earth System Justice Needed to Identify and Live within Earth System Boundaries'.

⁷¹ Gupta et al., 'Climate Injustices Have Multiplied over Time'.

⁷² Joyeeta Gupta et al., 'Conceptualizing Water System Justice in the Anthropocene', *WIREs Water* 13, no. 1 (2026): e70047, <https://doi.org/10.1002/wat2.70047>.

⁷³ E.g. Nynke van Uffelen, 'Revisiting Recognition in Energy Justice', *Energy Research & Social Science* 92 (October 2022): 102764, <https://doi.org/10.1016/j.erss.2022.102764>.

⁷⁴ E.g. Morten Fibieger Byskov and Keith Hyams, 'Epistemic Injustice in Climate Adaptation', *Ethical Theory and Moral Practice* 25, no. 4 (2022): 613–34, <https://doi.org/10.1007/s10677-022-10301-z>.

interest) and Foundations (reserving part of the ecospace to meet the basic needs of people to enable them to enjoy their human rights *and thereby protect the public interest*).⁷⁵ Means refers to (a) addressing the driving forces of climate change and inequality; (b) reallocating the remaining ecospace (within the boundaries and after deducting the foundation), the risks/harm, and responsibilities between countries and people. Such climate system justice minimizes significant harm to others and thereby serves to protect the public interest.

2.7 Inferences

I have thus far argued that fossil fuel – the dinosaur in the room – needs to be focused on, that markets will not phase out fossil fuel, that fossil fuel needs to be regulated, that the global climate negotiation process thus far has lead to six cumulative injustices, that without justice it is impossible to stabilize the climate system, and hence that we need climate system justice to protect the public interest.

3. CHALLENGES: DRIVING FACTORS INCLUDING FINANCIAL INCOHERENCE AND DISINFORMATION

3.1 Introduction

Climate system justice calls for addressing the driving factors of fossil fuel use and inequality. Here I focus on the economic, legal and political systems that drive the system (Subsection 3.2); then I zero into the story of financial incoherence (Subsection 3.3) and disinformation (Subsection 3.4) as two sub-drivers that need further elaboration. Also this section will be concluded with a few inferences (Subsection 3.5).

⁷⁵ Joyeeta Gupta et al., 'Earth System Boundaries and Earth System Justice: Sharing the Ecospace', *Environmental Politics* 33, no. 7 (2024): 1286–305, <https://doi.org/10.1080/09644016.2023.2234794>. Gupta et al., 'Earth System Justice Needed to Identify and Live within Earth System Boundaries'.

3.2 *Economic, legal and political drivers*

The drivers or the root causes of climate change and inequality include the economic, legal and political system. First, the economic system is rooted in neo-liberal capitalism and its fixation on GDP increase, profits, and accumulation;⁷⁶ this locks the system into the fossil fuel world. This exacerbates the climate problem and inequality. This system focuses on maximizing individual freedom and markets, deregulation, small governments and weak multilateralism. On the other hand, the climate change problem requires collective action that may limit individual freedom to protect long-term shared interests; it requires a policy mix, not just freedom of the markets; and it requires regulation and deepened multilateralism. Small governments do not have the power or the resources to protect the local to global commons in an accountable manner.

Second, legally, the fact that the UNFCCC avoided using the NSH and human rights principles in its operative text is a challenge, as well as the tendency to interpret the NSH principle in terms of process. Moreover, and as explained, fossil fuel contracts and investment agreements are locking countries into a fossil-fuel world.⁷⁷ Among the many North-South challenges is the challenge posed by the ECT. This treaty protects the fossil producers under certain circumstances and requires compensation from state actors when these producers are involuntarily or compulsorily closed down. The EU left the ECT in 2024, but the sunset clause still operates for 20 years, which implies that the treaty's provisions remain valid for 20 years after the withdrawal by a country.⁷⁸ And now the developing countries are being

⁷⁶ UN Environment, *Global Environment Outlook – GEO-6*.

⁷⁷ Kyla Tienhaara et al., 'Investor-State Dispute Settlement: Obstructing a Just Energy Transition', *Climate Policy*, 21 October 2023, world, <https://www.tandfonline.com/doi/abs/10.1080/14693062.2022.2153102>.

⁷⁸ Monika Dulian, *EU Withdrawal from the Energy Charter Treaty*, PE 754.632 (European Parliamentary Research Service, 2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754632/EPRS_BRI\(2023\)754632_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754632/EPRS_BRI(2023)754632_EN.pdf). Eoin Jackson, 'The Energy Charter Treaty: Letting the Sun Set on Sunset Clauses', *Review of European, Comparative & International Environmental Law* 33, no. 3 (2024): 619–32, <https://doi.org/10.1111/reel.12583>.

encouraged to join the ECT,⁷⁹ probably to protect the interests of Northern investors. History repeats itself with a vengeance.

Politically, across the world, societies are locked-into a petroculture⁸⁰ and petro- and resource nationalism,⁸¹ as well as short-term thinking which is carefully nurtured by the fossil fuel companies.

3.3 *Incoherence in finance*

The Paris Agreement calls for ensuring financial coherence. Climate finance needs are calculated at \$6-12 trillion.⁸² Climate ‘provisioning’ finance was meant to be ‘new and additional’ to Official Development Assistance (ODA) in 1992; later the focus was finance through mainstreaming climate change funding in ODA.⁸³ But today, climate grants are limited, while ODA is declining rapidly. In 2024, ODA declined by 9%; in 2025 it is expected to decline by 9-17%.⁸⁴ Large donors such as Germany, UK and the Netherlands have reduced ODA with the USA cancelling its ODA in 2024.⁸⁵ To the extent ODA includes climate finance, this means that climate finance is also declining. To the extent that climate finance is separate from ODA, it

⁷⁹ Ingeborg Eliassen, ‘Disputed Energy Pact Recruits Developing Countries’, *Investigating Europe*, 26 February 2021, <https://www.investigate-europe.eu/posts/disputed-energy-pact-recruits-developing-countries>.

⁸⁰ Imre Szeman, ‘Conjectures on World Energy Literature: Or, What Is Petroculture?’, *Journal of Postcolonial Writing*, 4 May 2017, world, <https://www.tandfonline.com/doi/abs/10.1080/17449855.2017.1337672>.

⁸¹ James M. Griffin, ‘Petro-Nationalism: The Futile Search for Oil Security’, *The Energy Journal* 36 (2015): 25–42.

⁸² UNFCCC, *Report of the Standing Committee on Finance: Addendum — Second Report on the Determination of the Needs of Developing Country Parties Related to Implementing the Convention and the Paris Agreement (Executive Summary)*, SCF/2024/35/4, Annex I (unedited) (United Nations Framework Convention on Climate Change, 2024), https://unfccc.int/sites/default/files/resource/2ndNDR_ES_SCF35_unedited%20version_0.pdf.

⁸³ Nicolien Van Der Grijp, *Mainstreaming Climate Change in Development Cooperation: Theory, Practice and Implications for the European Union*, 1st edn, ed. Joyeeta Gupta (Cambridge University Press, 2010), <https://doi.org/10.1017/CBO9780511712067>.

⁸⁴ OECD, *Cuts in Official Development Assistance: OECD Projections for 2025 and the near Term*, OECD Policy Briefs, 26th edn, OECD Policy Briefs (2025), <https://doi.org/10.1787/8c530629-en>.

⁸⁵ OECD, *Global Debt Report 2025: Financing Growth in a Challenging Debt Market Environment* (OECD Publishing, 2025), <https://doi.org/10.1787/8ee42b13-en>.

is merely substituting for ODA. Moreover, export credit still supports fossil fuel in the post-1992 UNFCCC and even in the post-2015 Paris Agreement era. Although there have been policy decisions to phase out export credit for fossil fuel, there still remain exceptions.⁸⁶

But in the background, the global North is selling neo-liberal capitalism to the global South. Moreover, the global South has huge debt servicing burdens (\$921 billion in 2024) that takes money away from education and health but also energy and climate policy.⁸⁷ Some scholars argue that developing countries spend five times more in debt servicing than on climate change.⁸⁸ In the meanwhile investors from the global North are also investing in fossil fuel in the developing countries,⁸⁹ sometimes supported by export credit.⁹⁰ If these investments are halted half way through, the developing countries will be left with breach of contract and massive debt. Fossil fuel shares are being divested in the global North (although news items reveal a recent reversal by many actors). Ethical first movers are divesting their shares selling them to less ethical purchasers.⁹¹ And as these shares shift they will come into the hands of the least ethical purchasers – who have powerful vested interests in keeping the status quo.

⁸⁶ Natalie Jones, 'An OECD Deal on Ending Oil and Gas Export Credits Is Urgently Needed. Here's What It Could Look Like.', *IISD*, 3 December 2024, [https://www.iisd.org/articles/explainer/oecd-deal-ending-oil-gas-export-credits-what-it-could-mean#:~:text=Several%20of%20the%20OECD%20Arrangement,Energy%20Transition%20Partnership%20\(CETP\).](https://www.iisd.org/articles/explainer/oecd-deal-ending-oil-gas-export-credits-what-it-could-mean#:~:text=Several%20of%20the%20OECD%20Arrangement,Energy%20Transition%20Partnership%20(CETP).)

⁸⁷ UNCTAD, 'Developing Countries Face Record-High Public Debt Burdens. Now Is the Time for Reform', *UN Trade and Development*, 26 June 2025, <https://unctad.org/news/developing-countries-face-record-high-public-debt-burdens-now-time-reform#:~:text=This%20negative%20trend%20is%20worsening,global%20financial%20systems%20are%20run.>

⁸⁸ United Nations Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/58/51 (UN Doc. A/HRC/58/51) (2025), <https://docs.un.org/en/A/HRC/58/51>.

⁸⁹ Arthur Martorelli Rempel, 'Leaving Fossil Fuels Underground in South Africa: From a Climate Debt to an Unsettled Stranded Asset Debt' (PhD Thesis, fully internal, University of Amsterdam, 2023), <https://dare.uva.nl/search?identifier=626e6e22-cebe-4f3f-a8ae-ea13e753b9f0>.

⁹⁰ Pieter Pauw, 'The Three Missed Opportunities of the UNFCCC's New Collective Quantified Goal on Climate Finance', *Earth System Governance* 24 (April 2025): 100255, <https://doi.org/10.1016/j.esg.2025.100255>.

⁹¹ Gupta et al., *New Narratives for Leaving Fossil Fuels Underground: CLIFF Conference Report. Internal Report*.

More generally, the global ultra-high net worth population (individuals with a net worth of at least \$30 million) has \$59.8 trillion in wealth and is motivated in maintaining the status quo.⁹² This is helped by tax evasion and avoidance which enables, for example, multinationals to shift 37% of their profits to tax havens in 2019.⁹³ This reduces resources for governments to maintain the global commons, provide public and merit goods and thereby protect the public interest, while exacerbating inequality which harms democracy.

Let us return to the climate finance story. At the Paris COP, \$300 billion was offered in mobilization finance to developing countries annually from 2020 onwards.⁹⁴ Since then there is a vague promise to provide \$300 billion-1.3 trillion by 2035 annually.⁹⁵ But such money will scarcely be grants given the falling ODA. It will include all kinds of loans and investments at a high cost of capital which will imply that developing countries will go deeper and deeper in debt. Moreover, since state-to-state provisioning resources is declining, while market based mobilized investments are being encouraged, will this encourage incoherence in funding? The fact that the Net Zero Banking Alliance has been dismantled in 2025 also shows that banks are likely to continue with business-as-usual.

3.4 *Disinformation*

And now a word on information and disinformation. Despite the work of the IPCC, there is overwhelming disinformation being circulated, ranging from subtle misleading interpretations of information

⁹² ALTRATA, *World Ultra Wealth Report 2025* (2025), <https://altrata.com/reports/world-ultra-wealth-report-2025>.

⁹³ Ludvig Wier and Gabriel Zucman, *Global Profit Shifting, 1975-2019*, no. w30673 (National Bureau of Economic Research, 2022), w30673, <https://doi.org/10.3386/w30673>.

⁹⁴ UNFCCC, 'COP29 UN Climate Conference Agrees to Triple Finance to Developing Countries, Protecting Lives and Livelihoods', *United Nations Climate Change*, 24 November 2024, <https://unfccc.int/news/cop29-un-climate-conference-agrees-to-triple-finance-to-developing-countries-protecting-lives-and>.

⁹⁵ IISD, *COP 30 Outcome: What It Means and What's next*.

to strategic manipulation of the audience.⁹⁶ Fossil fuel companies have denied climate change, arguing that climate change is barely noticeable and questioning the science. They have delayed action through necessitarianism – that using fossil fuel is inevitable and will continue; through greenwashing, using half-truths and omissions; through techno-optimism – that the problem can be solved through future technologies; and through strategic blame displacement – blaming the consumer.⁹⁷ They lobby heavily, use the revolving door strategy, and Strategic Litigation Against Public Participation (SLAPP) to silence the opposition. A judgement on a SLAPP case against Greenpeace has led to a fine of \$660 million.⁹⁸ This in effect tries to silence NGOs. Since 2018, the Climate Science Legal Defense Fund and the Sabin Center for Climate Change Law have a Silencing Science Tracker which reports on US government measures to constrain science, including but not limited to, climate change.⁹⁹ These measures by hegemonic forces that wish to maintain the status quo at the cost of the public interest end up paralyzing action by climate scientists and activists in diverse ways.

3.5 Inferences

Any effort to address climate change effectively has to address the underlying drivers of the climate change problem – the economic, legal and political barriers. And it requires examining the current flows in fossil fuel finance to ensure that these flows are not contradicting

⁹⁶ Although there are no definitive definitions of these terms, disinformation generally refers to content that is intentionally false and designed to cause harm, misinformation refers to false content but the person sharing doesn't realize that it is false or misleading and malinformation is generally genuine information that is shared out of context with an intent to cause harm. These definitions draw from <https://subjectguides.lib.neu.edu/fakenews>.

⁹⁷ Giuliana Gentile and Joyeeta Gupta, 'Orchestrating the Narrative: The Role of Fossil Fuel Companies in Delaying the Energy Transition', *Renewable and Sustainable Energy Reviews* 212 (April 2025): 115359, <https://doi.org/10.1016/j.rser.2025.115359>.

⁹⁸ Laura Polderman, 'Jury delivers verdict finding Greenpeace entities liable for more than US\$660 million in Energy Transfer SLAPP trial', *Greenpeace Nederland*, 19 March 2025, <https://www.greenpeace.org/nl/over-greenpeace/68375/jury-delivers-verdict-finding-greenpeace-entities-liable-for-more-than-us660-million-in-energy-transfer-slapp-trial/>.

⁹⁹ See <https://silencingscience.org/>.

the goal of the climate regime to stabilize the climate. Moreover, effective climate action also requires addressing the disinformation challenge which leads to action paralysis.

4. TOWARDS SOLUTIONS: ADDRESSING DRIVERS, ENDS AND MEANS

4.1 Introduction

I now propose a way forward which operationalizes Climate System Justice, focusing on drivers (Subsection 4.2), ends (Subsection 4.3) and means (Subsection 4.4).

4.2 Addressing drivers of climate change and inequality

Before I continue, let me pause a little to discuss governance responses to a shrinking carbon budget or a shrinking resource or ecospace (environmental utilization space).¹⁰⁰ The neo-liberal response (left side of Figure 1 in Subsection 2.4) to shrinking ecospace is to price the resource (or CO₂) and let markets allocate. This has been the dominant response over the last 30 years. I do not think this will solve the climate change problem as markets will not lead to a phase out of fossil fuel (see Subsection 2.3). The hegemonic response (see again the left side of Figure 1 in Subsection 2.4) is to retreat behind sovereignty arguments and will not be willing to share the carbon budget. “Drill, baby, drill” is emblematic of such a response.¹⁰¹ The neo-liberal response in combination with the hegemonic response implies and needs weakened multilateralism (e.g. US withdrawal from the Paris Agreement as well as from 62 UN agencies) and will aggravate competition, decreasing multilateral cooperation and reducing the chances of stabilizing the climate at a safe and/or just level.

¹⁰⁰ Joyeeta Gupta, ‘Toward Sharing Our Ecospace’, in *New Earth Politics: Essays from the Anthropocene*, ed. Simon Nicholson and Sikina Jinnah (The MIT Press, 2016), <https://doi.org/10.7551/mitpress/9780262034364.003.0011>.

¹⁰¹ Navin Singh Khadka, ‘How Trump’s “Drill, Baby, Drill” Pledge Is Affecting Other Countries’, *BBC World Service*, 17 February 2025, <https://www.bbc.com/news/articles/ce85709xdk4o>.

Polycentric responses as initially suggested by Elinor Ostrom¹⁰² are fragmented approaches and also unlikely to address the problem of sharing the carbon budget, risks and responsibilities. I think we have to move towards a world of deepened multilateralism, where the principle of not causing significant harm is respected, and where freedom, markets and investors are regulated in the public interest; where the state has sufficient capacity and resources to protect the local to global commons; where the climate is stabilized to prevent harm to the environment and humans; where we inevitably move towards global Constitutionalism, namely the application of domestic constitutional principles such as respect for human rights and rule of law as well as new relevant principles needed in the Anthropocene within a new global governance architecture and process.

We need a different kind of economy. One which guarantees basic needs and human rights within just Earth System Boundaries and Standards (see Subsection 4.3) and one which ensures that the economy functions within these Boundaries and Standards in order to protect the public interest and reduces inequality to acceptable limits; enhances local democracy and the economy; where the financial system serves the public interest; where there are incentives for sustainability; where technologies are screened to ensure that they do not externalize risks/harm on others; where natural systems are restored; where there are true prices of products; where there is democratic protection against harms; and where international relations are just.¹⁰³ This clearly requires a state that has checks and balances and is able to protect the local to global commons and fund merit goods. This requires long-term inter-state cooperation based on mutual respect and the rule of law.

¹⁰² Elinor Ostrom, 'Polycentric Systems for Coping with Collective Action and Global Environmental Change', *Global Environmental Change*, 20th Anniversary Special Issue, vol. 20, no. 4 (2010): 550–57, <https://doi.org/10.1016/j.gloenvcha.2010.07.004>.

¹⁰³ Babette Porcelijn et al., *Manifest Eerlijke Economie* (2025).

4.3 Ends: Boundaries and foundations

Such an economy needs to be able to function within safe and just *boundaries* and standards *and* ensure that enough resources/sinks are made available to meet the basic needs of people to enjoy their human rights (*foundations*). So, what is a safe and just boundary? A boundary is generally a quantitative limit to the emission of a pollutant or the use of a resource (e.g. temperature limit/ CO_2 /water) or relevant indicator (e.g. biosphere intactness), while a standard often refers to the ambient quality of a system (e.g. water quality). A *safe* boundary avoids tipping points to the system; a *just* boundary balances between harm to other species (interspecies justice), other generations (inter-generational justice) and other groups (intragenerational justice). In terms of boundaries, as part of the Earth Commission, we propose that 1°C is the *just* boundary, which could reduce significant harm to less than 1% of the global population. At 1°C , just taking one indicator, about 70 million people are exposed to irreversible significant harm from very high temperatures combined with very high humidity (wet bulb temperatures).¹⁰⁴ At 1.5°C , 14% of the global population is exposed to extreme heat; and at 2°C – 38% of the population.¹⁰⁵ We propose 1.5°C as the *safe* boundary. Beyond 1.5°C , all kinds of tipping elements can be triggered leading to irreversible changes to the system.¹⁰⁶ This means that overshooting 1.5°C is both unsafe and unjust. We have published this in *Nature*¹⁰⁷ and the *Lancet Planetary Health*¹⁰⁸ as well as presented this at the plenary session of the World Economic Forum in 2023.¹⁰⁹

¹⁰⁴ Rockström et al., ‘Safe and Just Earth System Boundaries’.

¹⁰⁵ IPCC, *Global Warming of 1.5°C* .

¹⁰⁶ Tim M. Lenton et al., *The Global Tipping Points Report 2025* (University of Exeter, 2025).

¹⁰⁷ Rockström et al., ‘Safe and Just Earth System Boundaries’.

¹⁰⁸ Joyeeta Gupta et al., ‘A Just World on a Safe Planet: A *Lancet Planetary Health*–Earth Commission Report on Earth-System Boundaries, Translations, and Transformations’, *The Lancet Planetary Health* 8, no. 10 (2024): e813–73, [https://doi.org/10.1016/S2542-5196\(24\)00042-1](https://doi.org/10.1016/S2542-5196(24)00042-1).

¹⁰⁹ Crellis F. Rammelt et al., ‘Impacts of Meeting Minimum Access on Critical Earth Systems amidst the Great Inequality’, *Nature Sustainability* 6, no. 2 (2023): 212–21, <https://doi.org/10.1038/s41893-022-00995-5>.

The International Court of Justice (ICJ) has adopted the 1.5°C temperature target as the science based legally binding target of the climate regime.¹¹⁰ However, it does not discuss whether this minimizes significant harm to the system and humans. It does mention, however, the NSH principle stating: “[w]hat constitutes a wrongful act is not the emissions in and of themselves but actions or omissions causing significant harm to the climate system in breach of a State’s international obligations”.¹¹¹ It goes on to argue that:

The scientific evidence adduced in these proceedings establishes that significant harm to the climate system and other parts of the environment has been caused as a result of anthropogenic GHG [greenhouse gas] emissions [...]. In light of the foregoing, the Court concludes that while the causal link between the wrongful actions or omissions of a State and the harm arising from climate change is more tenuous than in the case of local sources of pollution, this does not mean that the identification of a causal link is impossible in the climate change context; it merely means that the causal link must be established in each case through an *in concreto* assessment [...].¹¹²

and that “[c]onsequently, States’ obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations *erga omnes*”.¹¹³

Such harm affects the enjoyment of the human rights of people as both the ICJ and the Inter-American Court of Human Rights¹¹⁴ state

¹¹⁰ *Advisory Opinion — Obligations of States in respect of Climate Change* (No. 187), International Court of Justice (2025), <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.

¹¹¹ *Advisory Opinion — Obligations of States in Respect of Climate Change* (No. 187), para. 429.

¹¹² *Advisory Opinion — Obligations of States in Respect of Climate Change* (No. 187), paras. 437-438.

¹¹³ *Advisory Opinion — Obligations of States in Respect of Climate Change* (No. 187), para. 440.

¹¹⁴ *Advisory Opinion — Climate emergency and human rights*; ‘Inter-American Court of Human Rights - Advisory Opinion OC-32-2025’, <https://corteidh.or.cr/tablas/OC-32-2025/index-eng.html>.

in their advisory opinions on climate change. However, neither go so far as to argue what level of breach of human rights is acceptable, nor do they relate this to the public interest.

While boundaries and standards set the upper limit to a use of a resource/system, the foundation refers to the amount of the resource that needs to be reserved to meet the basic human needs necessary to fulfil the human rights of all. In terms of such foundations, the Earth Commission proposed that a percentage of the carbon budget should be reserved to meet the minimum basic needs of all people worldwide as everything has an energy footprint. We did this by (a) identifying key human rights (e.g. right to water, food, energy), (b) proposing two levels (dignity and escape from poverty) based on the scholarship, (c) examining them in relation to how much is needed for meeting the basic need to food, water, etc., and (d) calculating the pressure on the environment and translating that into a climate temperature objective. Our initial results show that meeting such basic needs of the very poorest can lead to a 26% increase in GHG emissions in 2018.¹¹⁵

The Earth Commission calculated that we have crossed most of the boundaries but have not yet met the minimum needs of people worldwide. This implies that some people have to reduce their emissions to return to within the boundaries but also, at least, to make space for meeting the minimum needs of all people. This led to a calculation where everyone was allocated a certain minimum CO₂ emission to meet their human rights and the remaining carbon budget then has to be shared by all. Our results show that there is a tiny budget left and that in 2050 just meeting minimum needs takes us outside the boundary – i.e. we need negative emissions to bring us into the boundary or a complete shift to non-fossil energy.¹¹⁶ None of the courts took this into account in their advisory opinions, but this is a logical extension of the human rights to water, food, energy, etc.

¹¹⁵ Rammelt et al., 'Impacts of Meeting Minimum Access on Critical Earth Systems amidst the Great Inequality'.

¹¹⁶ Gupta et al., 'A Just World on a Safe Planet'.

4.4 *Just means to ensure the public interest*

In terms of just means, I will briefly discuss the allocation of harm/risk; the allocation of the remaining carbon budget; and the allocation of responsibility.

Two kinds of harm/risk can be highlighted. The harm caused by breaching the NSH principle and thereby causing a breach of human rights, community rights, the rights of nature and perhaps the rights of sovereign states (e.g. small island states) and the harm caused to workers along the fossil fuel chain. The first harm is being addressed by NGOs and social movements who are using science-based arguments to protest on the streets, and use in advocacy, lobbying and litigation. Globally the number of court cases has crossed 3000 according to the Sabin Climate Litigation Database.¹¹⁷

There are also increasing numbers of court cases against fossil fuel companies, amounting to some 161 cases. The arguments used in different jurisdictions vary. For example, corporate misconduct and misinformation is used often in the US, breach of procedural rules in Africa, while human rights violations appear quite often in Latin America. We have not yet reached the stage that actual compensation is being paid to victims by fossil fuel companies.¹¹⁸

The International Tribunal for the Law of the Sea in its advisory opinion sees GHGs like CO₂ as a pollutant that needs to be controlled.¹¹⁹ The ICJ argues that continuing to use fossil fuel could be seen as an internationally wrongful act which is in line with the urgent need to phase out

¹¹⁷ Sabin Center for Climate Change Law. 'The Climate Litigation Database'. 2025. <https://www.climatecasechart.com/>.

¹¹⁸ Tim van der Vooren, 'Contextual Trends in Private Climate Change Litigation against the Fossil Fuel Industry: A Global Analysis' (Master's thesis, University of Amsterdam, 2025).

¹¹⁹ *Advisory Opinion — Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Case No. 31)*, International Tribunal for the Law of the Sea (2024), https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

fossil fuel.¹²⁰ In mitigating harm and risk, it is critical that businesses account for externalised impacts and stakeholders along the value chain and that discussion on compensation for fossil fuel companies is addressed as openly as compensation for violating human rights. Justice requires that those who caused the harm pay for the harm. The ICJ calls for

“full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and injury.”¹²¹

The second harm is to the workers along the fossil fuel value chain. The International Labour Organization is arguing strongly for a just transition¹²² that enables these workers and other stakeholders to be able to continue to work and prosper despite the potential closure of the fossil fuel sector. Justice requires that those workers who will suffer from the closure are helped to adapt and find alternative work. Within a Global Futures Council on Equitable Transition of the World Economic Forum which I co-chair, we make the case that businesses need to actively take stakeholder positions and not just shareholder positions into account.¹²³

Coming to the just sharing of the carbon budget, there is very little budget left. This means that the rich countries’ allowance should be zero and if they continue to emit, that should be seen as an overdraft or even a ‘wrongful act’. The overshoot budget should be limited to minimize harm. This limited overshoot budget should be given to developing countries to enable efficient use of existing fossil fuel facilities and to meet minimum needs. The principle of NSH should act

¹²⁰ *Advisory Opinion — Obligations of States in Respect of Climate Change (No. 187)*, para. 427.

¹²¹ *Advisory Opinion — Obligations of States in Respect of Climate Change (No. 187)*, para. 457.

¹²² Lene Olsen and Claire La Hovary, *User’s Manual to the ILO’s Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All* (International Labour Organization, 2021).

¹²³ World Economic Forum, *Making the Green Transition Work for People and the Economy* (WEF, 2025), https://reports.weforum.org/docs/WEF_Making_the_Green_Transition_Work_for_People_and_the_Economy_2025.pdf.

retrospectively on rich countries and prospectively on poor countries. Only a just application of the NSH principle in relation to stabilizing the climate has any chance of bringing the world together.

Coming to the issue of just responsibility, I focus here on two issues: Just finance and just information.

Just finance implies that to achieve 1.5°C the global North countries need to help developing countries to not use their fossil fuels. Just finance internally implies that within countries policies must ensure that the poorest people in a society can transition to fossil free energy sources. It is critical to remember that financing the energy transition is cheaper than financing adaptation and loss and damage for centuries to come and is a bill that our generation is pushing on to our children and grandchildren. Just finance requires grants and not loans that further exacerbate the debt problem. Beyond that, the potential for debt for climate swaps¹²⁴ needs to be studied. Investments in developing countries require revised rules to reduce the cost of capital.¹²⁵ There needs to be tax justice¹²⁶ to ensure that the state has the resources to protect the global commons.

Such just finance and investment requires systemic engagement with the economy, companies and asset managers. It requires the no new fossil norm.¹²⁷ It requires companies to reserve a fund for financing potential compensation requirements from future lawsuits. It also requires regulations to phase out fossil fuel, clarify fiduciary responsibilities, and develop transition plans.

¹²⁴ Marcos Chamon et al., 'Debt-for-Climate Swaps: Analysis, Design, and Implementation', *IMF Working Papers* 2022, no. 162 (2022): 1, <https://doi.org/10.5089/9798400215872.001>.

¹²⁵ Matteo Calcaterra et al., 'Reducing the Cost of Capital to Finance the Energy Transition in Developing Countries', *Nature Energy* 9, no. 10 (2024): 1241–51, <https://doi.org/10.1038/s41560-024-01606-7>.

¹²⁶ IISD, *Inside the UN Tax Convention Negotiations*, 2025, <https://www.iisd.org/inside-un-tax-convention-negotiations>; Afton Titus, 'The Role of the United Nations in Ensuring Equitable Tax Policies for Developing Countries', *Journal of International Economic Law* 27, no. 4 (2025): 624–31, <https://doi.org/10.1093/jiel/jgae051>.

¹²⁷ Fergus Green et al., 'No New Fossil Fuel Projects: The Norm We Need', *Science* 384, no. 6699 (2024): 954–57, <https://doi.org/10.1126/science.adn6533>.

Just information requires content control. In my view most states have failed to educate the public adequately about the impacts of climate change and the need for climate action. This has left a vacuum where fossil fuel companies can monopolize the space and spread misinformation, mal-information and disinformation. Procedural justice requires the state to take its responsibility to educate the public (Art. 5, UNFCCC) based on science; politicians should be made accountable for spreading false information; and malinformation and disinformation should become punishable.¹²⁸ But this still leaves us with the problem of subtle misinformation.

We need to regulate CO₂ as a pollutant; we need to find ways to decommission fossil fuel plants and infrastructure; we may have to use the stick of liability and pierce the corporate veil to hold the rich and powerful companies accountable. We have to make SLAPP illegal as the European Union did in 2024¹²⁹ and counter the shrinking civic space worldwide.

Country targets need to be tested against state responsibility for not causing significant harm to others. This goes beyond a procedural approach of due diligence and requires thinking about the substantive content of the NSH principle. This can only work with prospective effect for the developing world, if the rich countries acknowledge this with retrospective effect. If states are responsible for the acts of private actors, they have to take action. They need to regulate fiduciary responsibility, counter the sunset clause in the ECT, and judicial bodies must evoke public interest arguments to enable breach of contract. Tax justice will empower the state to protect the global commons and meet human rights in an accountable manner. Much of these measures are beyond the scope of the current climate change

¹²⁸ ICNL, 'Legal Responses to Disinformation - a Policy Prospectus', International Center for Not-For-Profit Law, 2021, <https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/disinformation/2-Civil-society-organisations/International-Center-for-Non-Profit-Law2.pdf>.

¹²⁹ Directorate-General for Justice and Consumers, 'New EU Rules to Protect against Strategic Lawsuits against Public Participation Enter into Force', EC, 3 May 2024, https://commission.europa.eu/news-and-media/news/new-eu-rules-protect-against-strategic-lawsuits-against-public-participation-enter-force-2024-05-03_en.

regime and this requires us to think about a broader framework – a global Constitution.

5. CONCLUSION

I have argued that stabilizing the climate at safe if not just levels is in the public interest. Stabilizing the climate at safe levels requires phasing out fossil fuels. Although there are seven reasons for focusing on fossil fuel to address climate change and promote the public interest, short-term politics and fossil fuel interests have ensured that the global community is unwilling to make decisions on fossil fuel. Continuing to use fossil fuels causes irreversible local to global harm violating the NSH principle, affecting the ability of people to enjoy their human rights and thereby violating the public interest of all.

Moreover, I have argued that the way in which states have negotiated the climate change regime since 1992 has led to six cumulative injustices which together undermine the effectiveness of the regime. Despite 33 years of negotiations, humans have crossed 1°C in 2017 and stand at the brink of crossing 1.5°C in two to three years. I have argued that without a just approach, the climate problem cannot be addressed and the public interest now and in the future will be sacrificed. I have explained the concept of climate system justice, a systemic approach to ensuring climate justice. This transformative approach requires long-term leadership as opposed to short-term political feasibility and cost-effectiveness, which have led to the prioritization of market based approaches to address climate change. It requires not just addressing the proximate causes of climate change but the underlying drivers within the economic, legal and political system. It requires the global community to adopt safe and just Earth System Boundaries (and ambient standards) for climate but also for water, biodiversity, nutrients, and oceans as all these systems are interlinked. It requires reserving some amount of the 'ecospace' (the resource or sink within the boundary) for meeting the basic needs of people to fulfil their human right to life and dignity. It requires then a reallocation of the remaining 'corridor' (after deducting what is needed for

meeting basic needs from the ecospace), the risks/harm and related responsibilities. The judicial system at national and international level plays a key role here showing how and why the climate needs to be stabilized and fossil fuels need to be reduced. Most likely courts will refer to each other to enhance and strengthen judicial reasoning.

Since many of the drivers of climate change fall outside the mandate of the UN climate change regime, I conclude by arguing that we need a global Constitution. We need such a Constitution to enable all of us to live within just Boundaries for Earth System processes and ambient quality standards from local to global level. We need a Constitution that promotes egalitarian values that can protect the public interest over liberal and utilitarian ones which are inconsistent with maintaining our biogeochemical systems that enable life on Earth and that can protect the public interest. We need to find a way to navigate the different and often incoherent provisions of trade, contract, investment, human rights and environmental law to ensure that human rights, security and wellbeing are prioritized, that other species can flourish and that the biogeochemical systems that sustain life on Earth are not damaged or irreversibly changed. We need to address the injustices of the economic and financial system. We need to be able to regulate technologies and allow only safe technologies that meet certain standards. I am currently working on an academic project to develop a science based global Constitution with ideas emerging from our bottom-up Open System Justice Lab (globalconstitution.org) and our three PhDs. I invite you all to write an essay of between 500-1000 words about what you would like to see in a global constitution and become a contributing author of this draft Constitution. Precisely in precarious times like this, when we wake up every morning to the news of yet another breach of public international law, it is necessary for a counter-narrative to emerge, a narrative that tames neo-liberal capitalism and that limits hegemonic power in the public interest.

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BIBLIOGRAPHY

- Advisory Opinion — Obligations of States in respect of Climate Change (No. 187)*, International Court of Justice (2025). <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.
- Advisory Opinion — Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Case No. 31)*, International Tribunal for the Law of the Sea (2024). https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.
- Allen, Myles R., Pierre Friedlingstein, Cécile A. J. Girardin, et al. 'Net Zero: Science, Origins, and Implications'. *Annual Review of Environment and Resources* 47, no. 1 (2022): 849–87. <https://doi.org/10.1146/annurev-environ-112320-105050>.
- ALTRATA. *World Ultra Wealth Report 2025*. 2025. <https://altrata.com/reports/world-ultra-wealth-report-2025>.
- Arshad, Arfan, Ali Mirchi, Cenlin He, Azeem Ali Shah, and Amir AghaKouchak. 'Anthropogenic and Climatic Drivers of the 2022 Mega-Flood in Pakistan'. *Npj Natural Hazards* 2, no. 1 (2025): 57. <https://doi.org/10.1038/s44304-025-00109-z>.
- Azubike, Victor Chukwuka. *National Oil Companies and Resource Nationalism: A Challenge for a Petroleum Resource-Rich State*. 31 December 2020. <https://rgu-repository.worktribe.com/output/1357841>.
- Bell, Shannon Elizabeth, and Richard York. 'Community Economic Identity: The Coal Industry and Ideology Construction in West Virginia: Community Economic Identity'. *Rural Sociology* 75, no. 1 (2010): 111–43. <https://doi.org/10.1111/j.1549-0831.2009.00004.x>.
- Bennet, Paige. 'Climate Change Is Costing the World \$16 Million per Hour: Study'. *World Economic Forum*, 12 October 2023. [https://www.weforum.org/stories/2023/10/climate-loss-and-damage-cost-16-million-per-hour/#:~:text=The%20study%20authors%20estimate%20the%20cost%20of,down%20to%20around%20\\$16.3%20million%20per%20hour](https://www.weforum.org/stories/2023/10/climate-loss-and-damage-cost-16-million-per-hour/#:~:text=The%20study%20authors%20estimate%20the%20cost%20of,down%20to%20around%20$16.3%20million%20per%20hour).
- Black, Simon. 'IMF Fossil Fuel Subsidies Data: 2023 Update'. *IMF Working Papers* 2023, no. 169 (2023): 1. <https://doi.org/10.5089/9798400249006.001>.
- Boot, Eric R. 'The Public Interest: Clarifying a Legal Concept'. *Ratio Juris* 37, no. 2 (2024): 110–29. <https://doi.org/10.1111/raju.12401>.
- Bragg, Jesse, Rachel Rose Jackson, and Souparna Lahiri. *The Big Con: How Big Polluters Are Advancing a "Net Zero" Climate Agenda to Delay, Deceive, and Deny*. Corporate Accountability, Global Forest Coalition, Friends of the Earth International, 2021. https://corporateaccountability.org/wp-content/uploads/2021/06/The-Big-Con_EN.pdf.
- Buchner, Barbara, Baysa Naran, Rajashree Padmanabhi, et al. *Global Landscape of Climate Finance 2023*. Climate Policy Initiative, 2023. <https://www.climate-policyinitiative.org/wp-content/uploads/2023/11/Global-Landscape-of-Climate-Finance-2023.pdf>.
- Byskov, Morten Fibieger, and Keith Hyams. 'Epistemic Injustice in Climate Adaptation'. *Ethical Theory and Moral Practice* 25, no. 4 (2022): 613–34. <https://doi.org/10.1007/s10677-022-10301-z>.
- Calcaterra, Matteo, Aleluia Reis Aleluia Reis Lara, Panagiotis Fragkos, et al. 'Reducing the Cost of Capital to Finance the Energy Transition in Developing

- Countries'. *Nature Energy* 9, no. 10 (2024): 1241–51. <https://doi.org/10.1038/s41560-024-01606-7>.
- Chamon, Marcos, Vimal Thakoor, Erik Klok, and Jeromin Zettelmeyer. 'Debt-for-Climate Swaps: Analysis, Design, and Implementation'. *IMF Working Papers* 2022, no. 162 (2022): 1. <https://doi.org/10.5089/9798400215872.001>.
- Chen, Yang and Joyeeta Gupta. *CLIFF-IA Interactive Atlas (IA) for Climate Change and Fossil Fuels (CLIFF) v1.0*. 2024. <https://doi.org/10.13140/RG.2.2.20105.04969>.
- Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador (I), PCA Case No. 2007-02/AA277 (Permanent Court of Arbitration (UNCITRAL) 31 August 2011). <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/242/chevron-and-texpet-v-ecuador-i->.
- Climate Change Tracker. 'Current Remaining Carbon Budget: Insights, Data, Charts'. 2025. <https://climatechangetracker.org/climate-change-progress/current-remaining-carbon-budget-and-trajectory-till-exhaustion>.
- Directorate-General for Justice and Consumers. 'New EU Rules to Protect against Strategic Lawsuits against Public Participation Enter into Force'. *EC*, 3 May 2024. https://commission.europa.eu/news-and-media/news/new-eu-rules-protect-against-strategic-lawsuits-against-public-participation-enter-force-2024-05-03_en.
- Dulian, Monika. *EU Withdrawal from the Energy Charter Treaty*. PE 754.632. European Parliamentary Research Service, 2023. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754632/EPRS_BRI\(2023\)754632_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754632/EPRS_BRI(2023)754632_EN.pdf).
- Ehresman, Timothy G., and Chukwumerije Okereke. 'Environmental Justice and Conceptions of the Green Economy'. *International Environmental Agreements: Politics, Law and Economics* 15, no. 1 (2015): 13–27. <https://doi.org/10.1007/s10784-014-9265-2>.
- Eliassen, Ingeborg. 'Disputed Energy Pact Recruits Developing Countries'. *Investigating Europe*, 26 February 2021. <https://www.investigate-europe.eu/posts/disputed-energy-pact-recruits-developing-countries>.
- Energy Charter Treaty, 2080 UNTS 95 (1994).
- Fassbender, Bardo. 'The United Nations Charter as Constitution of the International Community'. *Columbia Journal of Transnational Law* 36, no. 3 (1998): 529–619.
- Fernandez, Rodrigo, Boris Schellekens, and Albert ten Kate. 'New Study Estimates the Netherlands' Fossil Fuel Subsidies at €37.5 Billion per Year'. *SOMO*, 4 September 2023. <https://www.somo.nl/new-study-estimates-the-netherlands-fossil-fuel-subsidies-at-e37-5-billion-per-year/>.
- Frantz, Charlotte. 'Hurricane Melissa: Devastation in Jamaica at Levels "Never Been Seen Before"'. *UN News*, 29 October 2025. <https://news.un.org/en/story/2025/10/1166217>.
- Gentile, Giuliana, and Joyeeta Gupta. 'Orchestrating the Narrative: The Role of Fossil Fuel Companies in Delaying the Energy Transition'. *Renewable and Sustainable Energy Reviews* 212 (April 2025): 115359. <https://doi.org/10.1016/j.rser.2025.115359>.
- Goar, Matthieu, Sandrine Morel, Céline Pierre-Magnani, and Marina Rafenberg. 'Climate Change: Southern Europe Scorched by Flames and Extreme Heat'. *Le Monde*, 16 August 2025. https://www.lemonde.fr/en/environment/article/2025/08/16/climate-change-southern-europe-scorched-by-flames-and-extreme-heat_6744435_114.html.
- Grant, Neil, Claudio Forner, Marie-Charlotte Geffray, et al. *Rescuing 1.5°C New*

- Evidence on the Highest Possible Ambition to Deliver the Paris Agreement*. CC BY-NC-ND 4.0. Climate Analytics and PIK, 2025. <https://ca1-clm.edcdn.com/publications/Rescuing1.5%C2%BAC.pdf?v=1762362849>.
- Green, Fergus, Olivier Bois Von Kursk, Greg Muttitt, and Steve Pye. 'No New Fossil Fuel Projects: The Norm We Need'. *Science* 384, no. 6699 (2024): 954–57. <https://doi.org/10.1126/science.adn6533>.
- Griffin, James M. 'Petro-Nationalism: The Futile Search for Oil Security'. *The Energy Journal* 36 (2015): 25–42.
- Gupta, Joyeeta. 'Mitigation, Adaptation and Geo-Engineering'. In *The History of Global Climate Governance*, 1st edn. Cambridge University Press, 2014. <https://doi.org/10.1017/CBO9781139629072>.
- Gupta, Joyeeta. 'Toward Sharing Our Ecospace'. In *New Earth Politics: Essays from the Anthropocene*, edited by Simon Nicholson and Sikina Jinnah. The MIT Press, 2016. <https://doi.org/10.7551/mitpress/9780262034364.003.0011>.
- Gupta, Joyeeta, Xuemei Bai, Diana M. Liverman, et al. 'A Just World on a Safe Planet: A Lancet Planetary Health–Earth Commission Report on Earth-System Boundaries, Translations, and Transformations'. *The Lancet Planetary Health* 8, no. 10 (2024): e813–73. [https://doi.org/10.1016/S2542-5196\(24\)00042-1](https://doi.org/10.1016/S2542-5196(24)00042-1).
- Gupta, Joyeeta, Hilmer J. Bosch, Andrea B. Müller, and Luc Van Vliet. 'Conceptualizing Water System Justice in the Anthropocene'. *WIREs Water* 13, no. 1 (2026): e70047. <https://doi.org/10.1002/wat2.70047>.
- Gupta, Joyeeta, Yang Chen, Clara McDonnell, et al. 'Climate Injustices Have Multiplied over Time: The Need for Climate System Justice'. *Progress in Development Studies*, 7 August 2025, 14649934251360854. <https://doi.org/10.1177/14649934251360854>.
- Gupta, Joyeeta, Yang Chen, David I. Armstrong McKay, et al. 'Applying Earth System Justice to Phase out Fossil Fuels: Learning from the Injustice of Adopting 1.5 °C over 1 °C'. *International Environmental Agreements: Politics, Law and Economics* 24, no. 1 (2024): 233–55. <https://doi.org/10.1007/s10784-024-09628-y>.
- Gupta, Joyeeta, Yang Chen, and Crelis Rammelt. 'Transport within Earth System Boundaries'. *Npj Sustainable Mobility and Transport* 1, no. 1 (2024): 5. <https://doi.org/10.1038/s44333-024-00005-5>.
- Gupta, Joyeeta, Augusto Heras, Clara McDonnell, Yang Chen, and Luc van Vliet. *New Narratives for Leaving Fossil Fuels Underground: CLIFF Conference Report. Internal Report*. Internal report. 2026.
- Gupta, Joyeeta, Diana Liverman, Xuemei Bai, et al. 'Reconciling Safe Planetary Targets and Planetary Justice: Why Should Social Scientists Engage with Planetary Targets?' *Earth System Governance* 10 (December 2021): 100122. <https://doi.org/10.1016/j.esg.2021.100122>.
- Gupta, Joyeeta, Diana Liverman, Klaudia Prodani, et al. 'Earth System Justice Needed to Identify and Live within Earth System Boundaries'. *Nature Sustainability* 6, no. 6 (2023): 630–38. <https://doi.org/10.1038/s41893-023-01064-1>.
- Gupta, Joyeeta, Klaudia Prodani, Xuemei Bai, et al. 'Earth System Boundaries and Earth System Justice: Sharing the Ecospace'. *Environmental Politics* 33, no. 7 (2024): 1286–305. <https://doi.org/10.1080/09644016.2023.2234794>.
- Gupta, Joyeeta, Arthur Rempel, and Hebe Verrest. 'Access and Allocation: The Role of Large Shareholders and Investors in Leaving Fossil Fuels Underground'. *International Environmental Agreements: Politics, Law and Economics* 20, no. 2 (2020): 303–22. <https://doi.org/10.1007/s10784-020-09478-4>.

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FROM ABANDONING FOSSIL FUEL TO SHARING OUR EARTH

- Gupta, Joyeeta, and Susanne Schmeier. 'Future Proofing the Principle of No Significant Harm'. *International Environmental Agreements: Politics, Law and Economics* 20, no. 4 (2020): 731–47. <https://doi.org/10.1007/s10784-020-09515-2>.
- Haerle, Paula. 'Locked-in Fossil Fuels: The Relationship between Sovereign External Debt and Fossil Fuel Production Dependencies in Low and Middle-Income Countries'. Master's thesis, University of Amsterdam, 2025.
- Hansen, Tyler A. 'Stranded Assets and Reduced Profits: Analyzing the Economic Underpinnings of the Fossil Fuel Industry's Resistance to Climate Stabilization'. *Renewable and Sustainable Energy Reviews* 158 (April 2022): 112144. <https://doi.org/10.1016/j.rser.2022.112144>.
- Healy, Andrew, and Neil Malhotra. 'Myopic Voters and Natural Disaster Policy'. *American Political Science Review* 103, no. 3 (2009): 387–406. <https://doi.org/10.1017/S0003055409990104>.
- Heras, Augusto, and Joyeeta Gupta. 'Fossil Fuels, Stranded Assets, and the Energy Transition in the Global South: A Systematic Literature Review'. *WIREs Climate Change* 15, no. 1 (2024): e866. <https://doi.org/10.1002/wcc.866>.
- Heras, Augusto, Crelis F. Rammelt, and Joyeeta Gupta. 'Reconciling the Right to Develop with Leaving Fossil Fuels Underground in the Global South'. *Environmental Science & Policy* 172 (October 2025): 104207. <https://doi.org/10.1016/j.envsci.2025.104207>.
- Herzog-Hawelka, Janina, and Joyeeta Gupta. 'The Role of (Multi)National Oil and Gas Companies in Leaving Fossil Fuels Underground: A Systematic Literature Review'. *Energy Research & Social Science* 103 (September 2023): 103194. <https://doi.org/10.1016/j.erss.2023.103194>.
- ICNL. 'Legal Responses to Disinformation - a Policy Prospectus'. International Center for Not-For-Profit Law, 2021. <https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/disinformation/2-Civil-society-organisations/International-Center-for-Non-Profit-Law2.pdf>.
- IEA. *World Energy Investment 2023*. IEA, 2023. <https://www.iea.org/reports/world-energy-investment-2023>.
- IEA. *World Energy Outlook 2025*. IEA, 2025. <https://www.iea.org/reports/world-energy-outlook-2025>.
- IISD. *COP 30 Outcome: What It Means and What's next*. 22 November 2025. <https://www.iisd.org/taxonomy/term/252#:~:text=It%20also%20set%20a%20goal%20of%20mobilizing,to%20scale%20up%20finance%20for%20climate%20action>.
- IISD. *Inside the UN Tax Convention Negotiations*. 2025. <https://www.iisd.org/inside-un-tax-convention-negotiations>.
- 'Inter-American Court of Human Rights - Advisory Opinion OC-32-2025'. <https://corteidh.or.cr/tablas/OC-32-2025/index-eng.html>.
- International Renewable Energy Agency. *Renewable Power Generation Costs in 2024*. International Renewable Energy Agency IRENA, 2025.
- IPCC. *Global Warming of 1.5°C: IPCC Special Report on Impacts of Global Warming of 1.5°C above Pre-Industrial Levels in Context of Strengthening Response to Climate Change, Sustainable Development, and Efforts to Eradicate Poverty*. 1st edn. Cambridge University Press, 2022. <https://doi.org/10.1017/9781009157940>.
- Jackson, Eoin. 'The Energy Charter Treaty: Letting the Sun Set on Sunset Clauses'. *Review of European, Comparative & International Environmental Law* 33, no. 3 (2024): 619–32. <https://doi.org/10.1111/reel.12583>.
- Jenkins, Kirsten, Darren McCauley, Raphael Heffron, Hannes Stephan, and Robert

- Rehner. 'Energy Justice: A Conceptual Review'. *Energy Research & Social Science* 11 (January 2016): 174–82. <https://doi.org/10.1016/j.erss.2015.10.004>.
- Jessop, Simon, Virginia Furness, Simon Jessop, and Virginia Furness. 'Net-Zero Banking Alliance Folds after Mass Exodus by Members'. Sect. COP30. *Reuters*, 3 October 2025. <https://www.reuters.com/sustainability/cop/net-zero-banking-alliance-stop-operations-after-member-vote-2025-10-03/>.
- Jones, Natalie. 'An OECD Deal on Ending Oil and Gas Export Credits Is Urgently Needed. Here's What It Could Look Like.' *IISD*, 3 December 2024. [https://www.iisd.org/articles/explainer/oecd-deal-ending-oil-gas-export-credits-what-it-could-mean#:~:text=Several%20of%20the%20OECD%20Arrangement,Energy%20Transition%20Partnership%20\(CETP\).](https://www.iisd.org/articles/explainer/oecd-deal-ending-oil-gas-export-credits-what-it-could-mean#:~:text=Several%20of%20the%20OECD%20Arrangement,Energy%20Transition%20Partnership%20(CETP).)
- KBPO. *Fossil Fuel Lobbyists Flood COP30 Climate Talks in Brazil, with Largest Ever Attendance Share*. Kick Big Polluters Out, 2025. <https://kickbigpollutersout.org/Release-Kick-Out-The-Suits-COP30>.
- Khadka, Navin Singh. 'How Trump's "Drill, Baby, Drill" Pledge Is Affecting Other Countries'. *BBC World Service*, 17 February 2025. <https://www.bbc.com/news/articles/ce85709xdk40>.
- Le Quéré, Corinne, Robbie M. Andrew, Pierre Friedlingstein, et al. 'Global Carbon Budget 2018'. *Earth System Science Data* 10, no. 4 (2018): 2141–94. <https://doi.org/10.5194/essd-10-2141-2018>.
- Lenton, Tim M., Manjana Milkoreit, Simon Willcock, Jesse F. Abrams, and David I. Armstrong McKay. *The Global Tipping Points Report 2025*. University of Exeter, 2025.
- Linquiti, Peter, and Nathan Cogswell. 'The Carbon Ask: Effects of Climate Policy on the Value of Fossil Fuel Resources and the Implications for Technological Innovation'. *Journal of Environmental Studies and Sciences* 6, no. 4 (2016): 662–76. <https://doi.org/10.1007/s13412-016-0397-2>.
- Markusson, Nils, Holly Jean Buck, Wim Carton, Inge-Merete Hougaard, Kate Dooley, and Jens Friis Lund. 'Carbon Removal and the Empirics of Climate Delay'. *Environmental Science & Policy* 161 (November 2024): 103884. <https://doi.org/10.1016/j.envsci.2024.103884>.
- McIntyre, Owen. 'The Current State of Development of the No Significant Harm Principle: How Far Have We Come?' *International Environmental Agreements: Politics, Law and Economics* 20, no. 4 (2020): 601–18. <https://doi.org/10.1007/s10784-020-09501-8>.
- McKibben, Bill. *Here Comes the Sun: A Last Chance for the Climate and a Fresh Chance for Civilization*. W W NORTON, 2026.
- Morgera, Elisa. "The Imperative of Defossilizing Our Economies": Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change. A/HRC/59/42. United Nations Human Rights Council, 2025. <https://docs.un.org/en/A/HRC/59/42>.
- Mwai, Peter. *Durban Floods: Is It a Consequence of Climate Change?* 14 April 2022. <https://www.bbc.com/news/61107685>.
- NATO. 'The Hague Summit Declaration'. 25 June 2025. <https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2025/06/25/the-hague-summit-declaration>.
- OECD. *Cuts in Official Development Assistance: OECD Projections for 2025 and the near Term*. OECD Policy Briefs. 26th edn. OECD Policy Briefs. 2025. <https://doi.org/10.1787/8c530629-en>.

- OECD. *Global Debt Report 2025: Financing Growth in a Challenging Debt Market Environment*. OECD Publishing, 2025. <https://doi.org/10.1787/8ee42b13-en>.
- OHCHR. 'Economic, Social and Cultural Rights'. <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights>.
- Okereke, Chukwumerije. 'Degrowth, Green Growth, and Climate Justice for Africa'. *Review of International Studies* 50, no. 5 (2024): 910–20. <https://doi.org/10.1017/S026021052400024X>.
- Olsen, Lene, and Claire La Hovary. *User's Manual to the ILO's Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All*. International Labour Organization, 2021.
- Ostrom, Elinor. 'Polycentric Systems for Coping with Collective Action and Global Environmental Change'. *Global Environmental Change*, 20th Anniversary Special Issue, vol. 20, no. 4 (2010): 550–57. <https://doi.org/10.1016/j.gloenvcha.2010.07.004>.
- Otto, Friederike E. L., Petra Minnerop, Emmanuel Raju, et al. 'Law, Justice and the Role of Courts in Changing the Social Superstructure Narrative in Climate Litigation'. *Global Policy* 14, no. 2 (2023): 416–19. <https://doi.org/10.1111/1758-5899.13174>.
- Ozkan, Canan, Zehra Bilgen Susanlı, and Nesrin Okay. 'Transitioning Away from Fossil Fuels to Renewables: A Multifaceted Approach and Related Challenges'. *Energies* 18, no. 19 (2025): 5068. <https://doi.org/10.3390/en18195068>.
- Pauw, Pieter. 'The Three Missed Opportunities of the UNFCCC's New Collective Quantified Goal on Climate Finance'. *Earth System Governance* 24 (April 2025): 100255. <https://doi.org/10.1016/j.esg.2025.100255>.
- Pohl, Lucas, and Erik Swyngedouw. 'Enjoying Climate Change: Jouissance as a Political Factor'. *Political Geography* 101 (March 2023): 102820. <https://doi.org/10.1016/j.polgeo.2022.102820>.
- Polderman, Laura. 'Jury delivers verdict finding Greenpeace entities liable for more than US\$660 million in Energy Transfer SLAPP trial'. *Greenpeace Nederland*, 19 March 2025. <https://www.greenpeace.org/nl/over-greenpeace/68375/jury-delivers-verdict-finding-greenpeace-entities-liable-for-more-than-us660-million-in-energy-transfer-slapp-trial/>.
- Porcelijn, Babette, Derk Loorbach, Joyeeta Gupta, et al. *Manifest Eerlijke Economie*. 2025.
- Rammelt, Crelis F., Joyeeta Gupta, Diana Liverman, et al. 'Impacts of Meeting Minimum Access on Critical Earth Systems amidst the Great Inequality'. *Nature Sustainability* 6, no. 2 (2023): 212–21. <https://doi.org/10.1038/s41893-022-00995-5>.
- Reisinger, Andy, Jan S. Fuglestedt, Anna Pirani, et al. 'Overshoot: A Conceptual Review of Exceeding and Returning to Global Warming of 1.5°C'. *Annual Review of Environment and Resources* 50, no. 1 (2025): 185–217. <https://doi.org/10.1146/annurev-environ-111523-102029>.
- Rempel, Arthur, and Joyeeta Gupta. 'Equitable, Effective, and Feasible Approaches for a Prospective Fossil Fuel Transition'. *WIREs Climate Change* 13, no. 2 (2022): e756. <https://doi.org/10.1002/wcc.756>.
- Rempel, Arthur Martorelli. 'Leaving Fossil Fuels Underground in South Africa: From a Climate Debt to an Unsettled Stranded Asset Debt'. PhD Thesis, fully internal, University of Amsterdam, 2023. <https://dare.uva.nl/search?identifier=626e6e22-cebc-4f3f-a8ae-ea13e753b9f0>.
- Rockström, Johan, Joyeeta Gupta, Dahe Qin, et al. 'Safe and Just Earth System

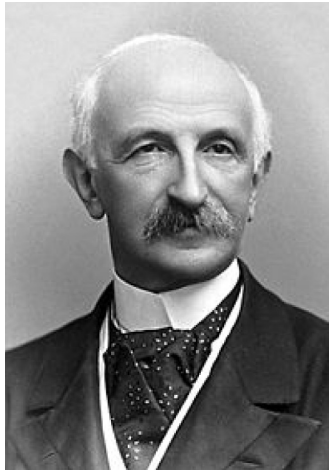
- Boundaries'. *Nature* 619, no. 7968 (2023): 102–11. <https://doi.org/10.1038/s41586-023-06083-8>.
- Rockström, Johan, Louis Kotzé, Svetlana Milutinović, et al. 'The Planetary Commons: A New Paradigm for Safeguarding Earth-Regulating Systems in the Anthropocene'. *Proceedings of the National Academy of Sciences* 121, no. 5 (2024): e2301531121. <https://doi.org/10.1073/pnas.2301531121>.
- Rodel, Nicole. *New Data Exposes Global North Countries Responsible for Nearly 70% of Projected Oil and Gas Expansion through 2035*. 16 June 2025. <https://oilchange.org/news/new-data-exposes-global-north-countries-responsible-for-nearly-70-of-projected-oil-and-gas-expansion-through-2035/>.
- Roser, Max. 'Why Did Renewables Become so Cheap so Fast?' *Our World in Data*, 1 December 2020. <https://ourworldindata.org/cheap-renewables-growth>.
- Sabin Center for Climate Change Law. 'The Climate Litigation Database'. 2025. <https://www.climatecasechart.com/>.
- Schwinger, Jörg, Ali Asaadi, Norman Julius Steinert, and Hanna Lee. 'Emit Now, Mitigate Later? Earth System Reversibility under Overshoots of Different Magnitudes and Durations'. *Earth System Dynamics* 13, no. 4 (2022): 1641–65. <https://doi.org/10.5194/esd-13-1641-2022>.
- Shyu, Chian-Woei. 'A Framework of Basic Human Energy Needs for Decent Quality of Life at Household Level: Policy Implications for Enhancing Energy Justice and Meeting SDG7'. *Journal of Asian Public Policy*, 26 December 2024. World. <https://www.tandfonline.com/doi/abs/10.1080/17516234.2024.2446020>.
- Specht, Doug. 'LA Fires Show the Human Cost of Climate-Driven "Whiplash" between Wet and Dry Extremes'. *The Conversation*, 10 January 2025. <https://theconversation.com/la-fires-show-the-human-cost-of-climate-driven-whiplash-between-wet-and-dry-extremes-247133>.
- Szeman, Imre. 'Conjectures on World Energy Literature: Or, What Is Petroculture?' *Journal of Postcolonial Writing*, 4 May 2017. World. <https://www.tandfonline.com/doi/abs/10.1080/17449855.2017.1337672>.
- Thiri, May Aye, Sergio Villamayor-Tomás, Arnim Scheidel, and Federico Demaria. 'How Social Movements Contribute to Staying within the Global Carbon Budget: Evidence from a Qualitative Meta-Analysis of Case Studies'. *Ecological Economics* 195 (May 2022): 107356. <https://doi.org/10.1016/j.ecolecon.2022.107356>.
- Tienhaara, Kyla, Rachel Thrasher, B. Alexander Simmons, and Kevin P. Gallagher. 'Investor-State Dispute Settlement: Obstructing a Just Energy Transition'. *Climate Policy*, 21 October 2023. World. <https://www.tandfonline.com/doi/abs/10.1080/014693062.2022.2153102>.
- Titus, Afton. 'The Role of the United Nations in Ensuring Equitable Tax Policies for Developing Countries'. *Journal of International Economic Law* 27, no. 4 (2025): 624–31. <https://doi.org/10.1093/jiel/jgae051>.
- Tomuschat, Christian. 'International Law: Ensuring the Survival of Mankind on the Eve of a New Century General Course on Public International Law (Volume 281)'. In *The Hague Academy Collected Courses Online / Recueil Des Cours de l'Académie de La Haye En Ligne*. Brill. https://doi.org/10.1163/1875-8096_pplrhc_A9789041114884_01.
- Uffelen, Nynke van. 'Revisiting Recognition in Energy Justice'. *Energy Research & Social Science* 92 (October 2022): 102764. <https://doi.org/10.1016/j.erss.2022.102764>.
- UN Environment, ed. *Global Environment Outlook – GEO-6: Healthy Planet*,

PROTECTING THE PUBLIC INTEREST IN TIMES OF CLIMATE CHANGE:
FROM ABANDONING FOSSIL FUEL TO SHARING OUR EARTH

- Healthy People*: 1st edn. Cambridge University Press, 2019. <https://doi.org/10.1017/9781108627146>.
- UNCTAD. 'Developing Countries Face Record-High Public Debt Burdens. Now Is the Time for Reform'. *UN Trade and Development*, 26 June 2025. <https://unctad.org/news/developing-countries-face-record-high-public-debt-burdens-now-time-reform#:~:text=This%20negative%20trend%20is%20worsening,global%20financial%20systems%20are%20run>.
- UNFCCC. 'COP29 UN Climate Conference Agrees to Triple Finance to Developing Countries, Protecting Lives and Livelihoods'. *United Nations Climate Change*, 24 November 2024. <https://unfccc.int/news/cop29-un-climate-conference-agrees-to-triple-finance-to-developing-countries-protecting-lives-and>.
- UNFCCC. *Report of the Standing Committee on Finance: Addendum — Second Report on the Determination of the Needs of Developing Country Parties Related to Implementing the Convention and the Paris Agreement (Executive Summary)*. SCF/2024/35/4, Annex I (unedited). United Nations Framework Convention on Climate Change, 2024. https://unfccc.int/sites/default/files/resource/2ndNDR_ES_SCF35_unedited%20version_0.pdf.
- Union of Concerned Scientists. *The Hidden Costs of Fossil Fuels*. 15 July 2008. <https://www.ucs.org/resources/hidden-costs-fossil-fuels>.
- United Nations Human Rights Council. *Report of the Office of the United Nations High Commissioner for Human Rights*. A/HRC/58/51 (UN Doc. A/HRC/58/51). 2025. <https://docs.un.org/en/A/HRC/58/51>.
- Van Der Grijp, Nicolien. *Mainstreaming Climate Change in Development Cooperation: Theory, Practice and Implications for the European Union*. 1st edn. Edited by Joyeeta Gupta. Cambridge University Press, 2010. <https://doi.org/10.1017/CBO9780511712067>.
- Vooren, Tim van der. 'Contextual Trends in Private Climate Change Litigation against the Fossil Fuel Industry: A Global Analysis'. Master's thesis, University of Amsterdam, 2025.
- Wier, Ludvig, and Gabriel Zucman. *Global Profit Shifting, 1975-2019*. No. W30673. National Bureau of Economic Research, 2022. <https://doi.org/10.3386/w30673>.
- World Economic Forum. *Making the Green Transition Work for People and the Economy*. WEF, 2025. https://reports.weforum.org/docs/WEF_Making_the_Green_Transition_Work_for_People_and_the_Economy_2025.pdf.
- Xu, Chi, Timothy A. Kohler, Timothy M. Lenton, Jens-Christian Svenning, and Marten Scheffer. 'Future of the Human Climate Niche'. *Proceedings of the National Academy of Sciences* 117, no. 21 (2020): 11350–55. <https://doi.org/10.1073/pnas.1910114117>.

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A Mission for Our Time



INTRODUCTION

The Annual T.M.C. Asser lecture has been established in honour of the Dutch jurist and Nobel Peace Prize Laureate, Tobias Michael Carel Asser (Amsterdam, 28 April 1838 – The Hague, 29 July 1913), and his significant contributions to the development of public and private international law. It is the T.M.C. Asser Instituut's flagship lecture and its date commemorates the foundation of the Institute in December 1965.

MISSION

Tobias Asser was a man with a vision. A man who kept his finger on the pulse of his time, and who managed to shape the legal develop-

ments during his days.¹ In his Inaugural Address upon the acceptance of his professorship at the University of Amsterdam in 1862, Asser explained that it was his ‘vocation’ to reflect on commercial law and its ‘import’, while ‘taking into consideration the condition of society in [his] century’.² What we learn from his lecture extends beyond the field of commercial law; it shows Asser’s view of the law more generally: ‘law serves primarily to cultivate trust’.³

For its mission statement, the Annual T.M.C. Asser Lecture builds on the vision and mission of the man who has lent it his name. It invites distinguished international lawyers to take inspiration from Asser’s idea of cultivating trust and respect through law and legal institutions, and to examine what it could mean in their area of expertise today.

Current legal scholarship has uncovered the complications of Asser’s mission, and of his internationalist friends and colleagues.⁴ It has pointed to the downside of how the international legal order took shape in spite of the good intentions of these late 19th and early 20th century liberal-humanitarian internationalists. Asser himself was well aware of the dangers of utopian idealism⁵ on the one hand, and the dangers of a nationalistic conservative attitude towards international law on the other. Every age has different needs and pitfalls and hence, sailing between commitment and cynicism,⁶ every age requires a different course.

¹ A. Eyffinger, *T.M.C. Asser [1838–1913] Founder of The Hague Tradition* (The Hague: Asser Press, 2011), p. 11.

² The Inaugural Address is included in E.M.H. Hirsch Ballin (ed. and intro.), *A Mission for his Time. Tobias Asser’s Inaugural Address on Commercial Law and Commerce, Amsterdam 1862* (The Hague: Asser Press, 2012), p. 18.

³ Ibid., p. 22.

⁴ See below “Tobias Asser in context: One of the ‘Men of 1873’”.

⁵ At the Second Hague Peace Conference, Asser himself said ‘you know I am not a Utopian’, Eyffinger, p. 5, n. 45.

⁶ M. Koskenniemi, ‘Between Commitment and Cynicism: Outline for a Theory of International Law as Practice’, in *Collection of Essays by Legal Advisors of States, Legal Adviser of International Organizations and Practitioners in the field of International Law* (United Nations, NY, 1999), pp. 495–523; also available online.

Our time, too, is in dire need of reflection. It is marked by the politics of fear, domestically as well as globally. In different ways ‘fear operates directly as a constitutive element of international law and the international ordering and decision-making processes.’⁷ Taking note of Tobias Asser’s legacy in this context, a reorientation of the international order towards an order based on respect and trust urges itself upon us.⁸

Today, with international lawyers perhaps sadder and wiser, it seems more than ever to be an international lawyer’s task to examine – as Asser did in his day – how to respond to ‘the condition of society’. Mutual trust and respect are crucial to the health of any heterogeneous society, whether it is the international society or one of the rapidly growing cities across the globe. A (research) question which Tobias Asser bequeathed to us is ‘how can law serve this aim?’

In spite of well-known complications and dark sides,⁹ in this context the Rule of Law and the principles of human rights are paramount. These may provide direction in our considerations about trust and respect in relation to challenges brought by, for example, globalisation, urbanisation, (global) migration, the atomisation of society, climate change, environmental degradation, the complexity of the traditional North-South divide, the dangers of a renewed international arms race, and the dilemmas of new global actors such as the EU.

Against this backdrop, the Annual T.M.C. Asser Lecture aspires to be a platform for a constructive, critical reflection on the role of law in dealing with the challenges and (potentially radical) changes of the global society of the 21st century.

⁷ D. Joyce & A. Mills, ‘Fear and International Law’, *Cambridge Review of International Affairs*, 19:2 (2006), pp. 309–310.

⁸ A. Carty, ‘New Philosophical Foundations for International Law: From an Order of Fear to One of Respect’, *Cambridge Review of International Affairs*, 19:2 (2006), pp. 311–330; also J.E. Nijman, ‘Paul Ricoeur and International Law: Beyond ‘The End of the Subject’. Towards a Reconceptualization of International Legal Personality’, *Leiden Journal of International Law*, 20 (2007), pp. 25–64.

⁹ D. Kennedy, *The Dark Sides of Virtue* (Princeton: PUP 2004); also M. Koskeniemi, *The Gentle Civilizer*, *infra* note 21, and *The Politics of International Law* (Oxford: Hart 2011).

BACKGROUND

In Asser's time, the cultivation of trust and respect in international relations was indeed an urgent matter. Asser's professional life spans from the second half of 'the long 19th century'¹⁰ up to the eve of the First World War. It was a time of rising nationalism and mounting 'distrust and despair'¹¹ in Europe. The 19th century Eurocentric world order was to collapse only a few years after Asser's death.

In Asser's lifetime America had experienced the Civil War (1861–65) and slavery was abolished after a slow struggle. In Europe, the Crimean War (1853–56) and the Franco-Prussian War (1870–71) brought decades of peace in Europe to an end. With these wars the horrors of industrial warfare began and forever changed the destructive scale and intensity of armed conflict. In Asia, Britain and France forced China, by military means, to open up its markets for opium, on the basis of what they argued to be their sovereign right to free trade, even against the imperial government's desperate attempt to protect its dwindling population from opium addiction. A socialisation into international society and law that was to leave its mark on China's approach to international law well into our time.¹² In the latter days of his career, Asser actively supported the International Opium Conference (1912) to end the opium enslavement of the Chinese people.¹³

With the economic policies of the late 19th century the European empires spurred on the process of modern globalisation in the industrial era. Asser had a keen interest in economics and as the head of a (commercial) law practice for most of his life,¹⁴ he is likely to have been especially sensitive to the process. In his view, transnational trade and commerce were crucial for societies to thrive and develop peace-

¹⁰ Eric Hobsbawm's term for the period 1789–1917.

¹¹ Eyffinger, p. 67.

¹² S. Suzuki, 'China's Perceptions of International Society in the Nineteenth Century: Learning more about Power Politics?', 28 *Asian Perspective* (2004), pp. 115–144.

¹³ Eyffinger, p. 79.

¹⁴ Among his clients, though, were the heirs of King Leopold in the Congo heritance.

fully. In that sense, his perspective on free trade and commerce was utilitarian – in the service of ‘public welfare’.¹⁵ Hence, his stance was not uncritical; transnational trade and commerce facilitated by law and legal institutions were to serve peace and justice, but not to exploit or violate ‘the inalienable rights of a free people’.¹⁶

The urbanisation of 19th century Europe prefigures that of today; it basically put much of the current global city system in place. Asser was outspoken about his love for the ‘distinguished mercantile city’ of Amsterdam: ‘[u]nder any circumstances, wherever my place of domicile, I will forever remain an Amsterdammer!’¹⁷ His love of Amsterdam, however, not only sprung from the city’s tradition of international trade and commerce, but also and even more so from its tradition of openness to strangers and providing a refuge for the expelled. Being a Dutch citizen of Jewish descent, the exclusion and violence brought about by anti-Semitism in European (urban) societies must have been a matter of personal concern for someone so eager to participate in the public sphere. Nationalism, a growing sentiment in Europe, was completely alien to Asser. With his urban cosmopolitan mind-set, his thinking was transnational by nature. His vision of international and personal relations did not hinge upon fear and othering, but rather upon respect and trust.

For Asser, the role of law was vital to the emancipation of the Jewish minorities in Europe, as was the case for any minority. He worked with an integral view of the Rule of Law, to be strengthened as much in the domestic as in the international society. Asser’s dedication to citizens’ rights and the principle of legal equality is visible, for example, in his advocacy of equal voting rights for women.¹⁸

While Asser’s vision of law and legal institutions was all about the ideals of peace, prosperity and justice, he was concrete and prag-

¹⁵ Hirsch Ballin, p. 19.

¹⁶ Ibid., p. 33.

¹⁷ Eyffinger, p. 13.

¹⁸ Hirsch Ballin, p. 13.

matic when aiming to shape developments in private and public international law.

Asser's commitment to international trade and commerce as a means to achieve peace and international solidarity inspired his efforts to deal with 'conflict of laws' and to promote a unification and codification of the rules of private international law. In his view, the demands of international life went beyond economic relations only, and so, being the pragmatic lawyer that he was, Asser presided over the Four Hague Conferences on Private International Law (1893–1904) which managed to produce six conventions ranging from procedural law to family law issues.

While international tensions intensified and an arms race was looming, Asser moved into the realm of public international law – albeit with a good share of realism about state conduct and the pursuit of self-interest. Together with Feodor Martens, Asser stood at the helm of the Hague Peace Conferences (1899 and 1907), which focused on international humanitarian law and the peaceful settlement of disputes. The First Conference resulted in the constitution of a Permanent Court of Arbitration (PCA). Being a prominent arbiter himself, Asser participated in the first case before the PCA. Thanks to Andrew Carnegie, who wanted to ensure a 'wise distribution' of his wealth, the Peace Palace was built and The Hague was thus granted its role of *City of Peace and Justice*.

T.M.C. Asser's mission of peace, liberty and justice defined both his academic and diplomatic work. He intended to listen to 'the voice of the conscience of [his] century' and tirelessly applied his legal genius to develop public and private international law. After decades of neutrality, he would moreover steer the Netherlands back into the diplomatic arena and towards a more prominent international position.

Tobias Asser's legacy is almost too vast for one man. No wonder his role was recognized by the Nobel Prize Committee in 1911. The

Committee portrayed Asser as ‘the Hugo Grotius of his day’.¹⁹ Certainly they both aimed to strengthen the Rule of Law in a global society.²⁰

In contemporary international legal scholarship, Professor T.M.C. Asser was one of the international lawyers Martti Koskenniemi has famously called the ‘Men of 1873’: twenty to thirty European men who were actively engaged in the development of international law and who, thanks to among others Asser and his dear friend Rolin, established the *Institut de Droit International* in 1873.²¹ They were interested in ‘extending the mores of an *esprit d’internationalité* within and beyond Europe. ... [they were the] “founders” of the modern international law profession.’²²

For the men of 1873, international law was to be social and cultural in a deep sense: not as a mere succession of treaties or wars but as part of the political progress of European societies. They each read individual freedoms and the distinction between the private and the public into constructive parts of their law. If they welcomed the increasing interdependence of civilized nations, this was not only to make a point about the basis of the law’s binding force but to see international law as part of the progress of modernity that was leading societies into increasingly rational and humanitarian avenues.²³

Their liberal project was a project of reform, human rights, freedom of trade, and ‘civilization’. In their view, ‘jurists should not remain in the scholar’s chamber but were to contribute to social progress.’²⁴ Koskenniemi further cites Asser to explain the *esprit d’internationalité*:

For Asser, for instance, the tasks of the *jurisconsulte* in the codification of private international law followed “from the necessity to subordinate

¹⁹ See for the Nobel Peace Prize 1911 speech: <http://www.nobelprize.org/nobel_prizes/peace/laureates/1911/press.html>.

²⁰ See Asser’s Address at the Delft Grotius Memorial Ceremony, 4 July 1899, p. 41.

²¹ Eyffinger; M. Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge: CUP 2002).

²² *Ibid.*, p. 92.

²³ Koskenniemi, pp. 93–94.

²⁴ *Ibid.*, p. 57.

interest to justice – in preparation of general rules for the acceptance of governments to be used in their external relations”²⁵

BUILDING ON TOBIAS ASSER’S VISION AND MISSION

The institution of this Annual Lecture is inspired by these ‘Men of 1873’ in general and by Asser’s social progressive, ‘principled’ pragmatism, liberalism, and ‘emancipation from legal traditionalism’ in particular.²⁶

Drawing inspiration from the ‘Men of 1873’ is however not without complications. Part of their project was the ‘civilizing mission’, with all its consequences. On the one hand, in the early decades of the 20th century these scholars may have been hopeful about decolonisation and lifting developing countries out of poverty. Asser’s own involvement in attempts to end a most ‘embarrassing chapter of Western history’, the Opium Wars, may also be mentioned. On the other hand, international law as an instrument of civilisation has surely shown its dark sides. Today, more than ever before, we are aware of how internationalism and the Rule of Law have been the handmaidens of (economic, legal) imperialism.²⁷ Scholars have pointed to the ‘double standards’ as ‘an integral part of the ideology of democracy and the rule of law’ so visible in the application of international law even today.²⁸

The rich and somewhat complex heritage of internationalism does not leave room for naïve ideas about international law as an instrument only for the good of liberal-humanitarian reform; if ‘[l]egal internationalism always hovered insecurely between cosmopolitan humanism and imperial apology... [and i]f there is no perspective-

²⁵ Ibid., pp. 57–58.

²⁶ Hirsch Ballin, pp. 12 and 2.

²⁷ E.g. A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: CUP, 2005).

²⁸ A. Carty, ‘The terrors of freedom: the sovereignty of states and the freedom to fear’, in J. Strawson (Ed.) *Law after Ground Zero* (London: Glasshouse Press, 2002), pp. 44–56.

independent meaning to public law institutions and norms, what then becomes of international law's universal, liberating promise?'²⁹

While for some this rhetorical question marks the end-point of possible legal endeavours, the Annual T.M.C. Asser Lecture hopes to be a place for reflecting critically on what lies *beyond* this question. As Koskenniemi points out, '[i]n the absence of an overarching standpoint, legal technique will reveal itself as more evidently political than ever before.'³⁰ And so, since '[i]nternational law's energy and hope lies in its ability to articulate existing transformative commitment in the language of rights and duties and thereby to give voice to those who are otherwise routinely excluded', we ask: What does the *esprit d'internationalité* mean today and what could it mean in and for the future?

PROF DR JANNE E. NIJMAN

*Professor of International Law at the Geneva
Graduate Institute and Professor of History and
Theory of International Law of the University of
Amsterdam.*

²⁹ Koskenniemi, p. 513.

³⁰ Ibid., p. 516.

RETHINKING PUBLIC INTEREST IN INTERNATIONAL AND EUROPEAN LAW

*Pairing critical reflection with perspectives for action – Contours of
the strategic research agenda of the Asser Institute 2022-2026*

The notion of ‘public interest’ plays a central yet contested role in international and European law. The Asser Institute’s research agenda ‘Rethinking public interests in International and European law’, argues for a critical re-examination of how public interest is understood and applied. By doing so, the Institute aims to reclaim its emancipatory potential.

A cascade of global crises – climate change, ecocide, transnational terrorism, unsustainable capitalism, widening social inequality, the digital divide, mass migration, and the looming threat of breaching planetary boundaries – has thrust a critical question to the forefront: How can law be harnessed to safeguard our social and natural world?

Although frequently invoked in legal and political discourse, the concept of ‘public interest’ remains surprisingly understudied in legal scholarship. This ambiguity is particularly troubling given its growing importance in navigating these complex challenges. The term’s lack of clear definition allows international and European actors to manipulate its meaning for their own benefit, sometimes disguising private agendas as concerns for the public good. Moreover, this lack of clarity can lead to policy formulations that disproportionately favour powerful factions, perpetuating a cycle of inequality and eroding public trust in international and European institutions.

By critically examining the notion ‘public interest’, the Asser Institute aims to reclaim its emancipatory potential. Critical scrutiny may open up a space for alternative conceptions of the public interest to guide law- and policymaking. The goal is to help develop public interest

arguments that offer pathways towards restoring trust and ensuring that international and European law functions in the best interests of society.

Our research agenda emphasises the need to understand how ‘public interest’ is constructed through legal arguments and public discourse. Who participates in these discussions? Whose voices are heard, and whose are excluded? Most importantly, what are the societal consequences of different interpretations of public interest? Do they promote fairness and justice, or do they exacerbate existing inequalities? The research questions that we will address in the coming years are:

- How do legal processes and institutions create and reproduce ‘public interest’?
- How do international and European law and policy shape the publics involved in defining public interest?
- Who benefits from particular understandings of public interest?
- How can competing public interest claims be reconciled?
- How are public interests addressed in international courts and institutions?

Research strand ‘In the public interest: accountability of the state and the prosecution of crimes’

This research strand examines the accountability of states, both individually and collectively (e.g., the United Nations or the European Union), in light of public interest standards in the context of counterterrorism. Moreover, this strand looks into the prosecution of individuals for international and transnational crimes in the public interest. Finally, to ensure both the accountability of states and the prosecution of individuals for international and transnational crimes in the public interest, this research strand also investigates the role of journalists, digital media, human rights NGOs, and academics in protecting and promoting public interest standards.

Research strand 'Regulation in the public interest: Disruptive technologies in peace and security'

The proliferation of disruptive technologies in warfare raises critical questions about international regulation. This strand examines how to develop an international regulatory framework to address the military applications of disruptive technologies, such as autonomous weapons and biological threats, and the resulting arms race in both conventional and non-conventional weapons. Ultimately, this research aims to safeguard public interests and promote peace and security in the face of these emerging challenges.

Research strand 'Transnational public interests: constituting public interest beyond and below the state'

In the past century, national governments embodied the pursuit of the public interest on issues like environmental protection or human rights. Yet, since the turn of the century, the influence of non-state actors, such as corporations, NGOs or international organisations like the European Union on global issues such as environmental protection, human rights or digital safety has grown rapidly. Researchers in this strand examine how non-state actors are increasingly shaping and defending the transnational/European public interest on critical issues and, conversely, how this public turn affects their operations. They raise fundamental questions, such as: how do we ensure that the interests pursued are actually those of the public? And, more fundamentally, who is the public in this context?

THE ANNUAL T.M.C. ASSER LECTURE SERIES

The Annual T.M.C. Asser Lecture is a platform for a critical, multi-disciplinary and constructive reflection on the role of law in the (potentially radically) changing global society of the 21st century, and a high-level event within the context of our research programme.

In 2015, Professor Joseph Weiler (President of the European University Institute in Florence, and University Professor at NYU School of Law) delivered the Inaugural Annual T.M.C. Asser Lecture on *'Peace in the Middle East: has International Law failed?'* in which he identified an indeterminacy issue in the legal framework of belligerent occupation that allows for different interpretations. This, according to Weiler, has turned into a political dispute about the facts, for which international law can provide no more than a roadmap.

In 2016, Onora O'Neill, Professor Emeritus of Philosophy at the University of Cambridge and crossbench member of the British House of Lords, spoke about *'Accountable Institutions, Trustworthy Cultures'* and how rules are not enough. The ethics and culture of institutions, international or otherwise, are important for the trustworthiness of these institutions. This is an important argument that still resonates in these days of institutional distrust.¹

In 2017, Saskia Sassen, Robert S. Lynd Professor of Sociology at Colombia University (NY), discussed the relations between globalisation, economic development and global migration in the lecture entitled *'A Third Emergent Migrant Subject Unrecognized in Law: Refugees from "Development"'*. She asked: 'Is there any role for inter-

¹ O. O'Neill, *Accountable Institutions, Trustworthy Cultures* (The Hague, T.M.C. Asser Press 2017).

national law in the prevention of, and protection against, expulsions caused by the accelerating destruction of land and water bodies?²

In 2018, Martti Koskenniemi, Professor of International Law at the University of Helsinki and Director of the Erik Castrén Institute of International Law and Human Rights, gave the lecture '*International Law and the Far Right: Reflections on Law and Cynicism*' in which he critically reflected on the general state of international law, as well as on its role in the rise of the far right.³

The Fifth Annual T.M.C. Asser Lecture, held in 2019, was delivered by Anne Orford, Professor of International Law at Melbourne Law School and was entitled '*International Law and the Social Question*'. It placed the social question, the value of solidarity and social justice back on the table of international lawyers.⁴

The Sixth Annual T.M.C. Asser Lecture '*Almost Human: Law and Human Agency in the Time of Artificial Intelligence*' was delivered by Prof Andrew Murray from the London School of Economics via the internet, due to COVID-restrictions. The lecture challenges the process of datafication in society: the reduction of the complexity of the world to data values, which threatens the fabric of human agency and the rule of law.⁵

In 2022, Brigid Laffan, Emeritus Professor at the European University Institute, addressed in the Seventh Annual T.M.C. Asser Lecture '*Can Collective Power Europe Emerge from Putin's War?*' the implications of the Russian invasion of Ukraine in 2022 for the security and po-

² S. Sassen, *A Third Emergent Migrant Subject Unrecognized in Law: Refugees from 'Development'* (The Hague, T.M.C. Asser Press, 2018).

³ M. Koskenniemi, *International Law and the Far Right: Reflections on Law and Cynicism* (The Hague, T.M.C. Asser Press, 2019).

⁴ A. Orford, *International Law and the Social Question* (The Hague, T.M.C. Asser Press, 2019).

⁵ A. Murray, *Almost Human: Law and Human Agency in the Time of Artificial Intelligence* (The Hague, T.M.C. Asser Press, 2021).

litical economy architecture of Europe and the wider world for decades to come.⁶

Michael Fakhri, the UN Special Rapporteur on the Right to Food since 2020 and a Professor at the University of Oregon School of Law, explains in the Eighth Annual T.M.C. Asser Lecture *'The Right to Food, Violence, and Food Systems'* (2023) how systems not only produce food but also amplify and produce forms of violence that make people more poor, vulnerable, and marginalized.⁷

Fleur Johns, Professor in the Faculty of Law & Justice at the University of New South Wales (Sydney, Australia), delivered in 2024 the Ninth Annual T.M.C. Asser Lecture. In *'Connection in a Divided World'* she explores the concept of 'community' in today's international law, especially in the context of humanitarianism.⁸

For more information on the Annual Lecture Series, registration and programme, please go to: <https://www.asser.nl/annual-lecture>, or contact TMCAsserLecture@asser.nl

⁶ B. Laffan, *Can Collective Power Europe Emerge from Putin's War?* (The Hague, T.M.C. Asser Press, 2022).

⁷ M. Fakhri, *The Right to Food, Violence, and Food Systems* (The Hague, T.M.C. Asser Press, 2024).

⁸ F. Johns, *Connection in a Divided World: Rethinking 'Community' in International Law* (The Hague, T.M.C. Asser Press, 2024).

ABOUT THE AUTHOR



Joyeeta Gupta is the 2023 winner of the Spinoza Prize, the highest academic award in the Netherlands. She is full Professor of Environment and Development in the Global South at the University of Amsterdam and Professor at IHE Delft Institute for Water Education.

A leading global voice on climate and environmental governance, she co-chaired UNEP's Global Environment Outlook-6, presented at the UN Environment Assembly and was awarded the PROSE Award for environmental science. She was co-chair of the Earth Commission and a member of the Global Commission on the Economics of Water, contributing to the UN 2023 Water Conference.

In 2022, Joyeeta Gupta received the Piers Sellers Prize for solution-focused climate research. She was a lead author in the IPCC panel that won the Nobel Peace Prize with Al Gore in 2007, and of the Millennium Ecosystem Assessment (Zaved Second Prize). Gupta has published over 120 journal articles, with 17,000+ citations and an h-index of 64, and has supervised nearly fifty PhD students. In the Netherlands, she has served on high-level advisory bodies including the Commission on Development Cooperation and the Advisory Council on International Affairs (2011–2019). In 2019, Joyeeta Gupta received an ERC Advanced Grant for her work on climate and fossil fuels.

Joyeeta Gupta on her lecture *'Protecting the Public Interest in Times of Climate Change: From Abandoning Fossil Fuel to Sharing Our Earth'*:

"Fossil fuels are the biggest contributor to climate change, which, in turn, is the key driver of all other environmental problems, such as changing hydrological patterns, biodiversity loss, as well as air, water and soil pollution. All of this is detrimental to human health and wellbeing. Scholars argue that a global temperature increase of 1°C is the just objective and that the global system must accelerate the phase-out of fossil fuels to prevent significant harm to people and irreversible harm to Earth's life-supporting systems.

This lecture will discuss the need for abandoning fossil fuel, why it's not happening, and how this can be countered by social movements and independent courts providing access to climate justice. It then discusses the bigger picture of crossed planetary boundaries. Research into 'just boundaries' shows we must accelerate multilateralism, not retreat into nationalist rights to pollute. When resources are scarce, three rational actor responses often emerge: neo-liberal capitalist, hegemonic state-centered, and polycentric approaches. However, only a social practice model building on multilateral goals and principles, institutionalised in a possible global Constitution, could help us address our dire situation. Though seemingly impossible today, in five years, the world may call for such a dream."

