



The KlimaSeniorinnen Case: Connecting Human Rights with Climate Change

- Vishwajeet Deshmukh (V B.A.LL.B.)

“Climate change threatens our ability to achieve sustainable development, and in some cases, our very survival.” - Ban Ki-moon, Ex-Secretary General of the United Nations.

Climate change impacts an array of internationally guaranteed human rights, directly and indirectly. Klimaseniorinnen Schweiz v. Switzerland is a landmark judgment delivered on 9 April 2024 by the European Court of Human Rights (ECtHR) as, for the first time, an international court connected human rights with climate change.

KlimaSeniorinnen Schweiz, a group of elderly women concerned about the consequences of climate change on their lives and health, filed a suit against the government of Switzerland in the Federal Supreme Court of Switzerland for the failure of the Swiss government to achieve a targeted reduction in greenhouse gas (GHG) emissions. The suit was dismissed on the ground that the individual applicant did not meet the high threshold required to prove that they were

personally and directly affected by climate change. Four individuals along with the association appealed at ECtHR. An appeal to ECtHR and its decision highlighted the substantive relation between human rights and climate change and ruled that the Swiss government failed to comply with the obligations under the European Convention on Human Rights (ECHR) with respect to climate change.

Article 34 stipulates that any person, organization, or group of individuals claiming to be a victim of this convention by a contracting party can approach the ECtHR. The Convention does not admit (para. 483) general public interest complaints (actio popularis), and the threshold for fulfilling the victim criteria for individuals is high. While dismissing the application of four individuals under Article 34, the court provided criteria for individual victim status (para 487):

1. The applicant suffered from the high-intensity effects of climate change, which are consequences of government action or inaction.
2. Urgency to protect individuals in the absence of any reasonable measure to reduce harm.

News at a Glance

An attack in Rafah killed a United Nations staff member working there, as announced by UN Secretary-General António Guterres. The individual killed was an international staff member, which the UN says is the first death of its kind since the conflict began. The Secretary-General made a call for the protection of humanitarian workers and stated that he condemned “all attacks on UN personnel” and reiterated his “urgent appeal for an immediate humanitarian ceasefire & the release of all hostages.” For more information, see here.

Georgia's parliament passed the third and final reading of a "foreign agents" bill, clearing a major hurdle on its way to becoming law. The bill has mounted the biggest protests in Georgia since it regained independence from Moscow in 1991. The US, Britain, Germany, Italy and France have all urged Georgia to withdraw the bill. The EU is against it. For more information, see here.



While recognizing the locus standi of the association in bringing climate actions, the court cautioned that this does not mean that actio popularis is allowed. The following conditions must be fulfilled by the association: lawfully established in the relevant jurisdiction, being dedicated to defending human rights, and representing members who are directly affected by the issue.

In the submission of the applicant, the Court took notice of the work done by the Intergovernmental Panel on Climate Change (IPCC). The report has found that there is a near-linear relationship between anthropogenic GHG emissions and global warming, resulting in increased heat waves (para. 64). Women aged above 75 are at a greater risk of premature death than the general public. During the 2003 heatwave, 80% of the additional deaths had occurred in persons over 75 (para 74). The Applicant argued a violation of Article 2 (Right to Life) and Article 8 of ECHR. Article 8 of the convention gives individuals the right to respect for private and family life, home, correspondence, and health. Its broad interpretation provides protection from the adverse effects of climate

change. While prescribing the contents of States' positive obligations, the court ruled that the Swiss Confederation failed to set up effective domestic regulations to regulate greenhouse gas (GHG) emissions and failed to quantify the carbon budget as well. Article 8 is capable of being involved where there is not only actual adverse effect but also sufficient risk of such effect. The court underscores that states cannot evade their responsibilities by shifting blame to other states. Conclusively, the court affirmed that anthropogenic climate change exists and has created a current or future threat to the enjoyment of human rights guaranteed under the convention. Another important subtle observation made by the court is that 'no single article of the convention dealt with environmental problems directly'. However, when environmental concerns adversely affect the rights of the individuals safeguarded by convention, the Court is bound to take cognizance and action.

The case marks a significant legal precedent and clarifies victim status. Two other judgments that concern victim status are: In

News at a Glance

Egypt announces intention to intervene in South Africa ICJ case against Israel. In their statement, the ministry said the intervention comes in light of Israel's increasing aggression against Palestinian civilians in the Gaza Strip, as well as the systematic practices perpetrated against the Palestinian people, such as the targeting of civilians and the destruction of infrastructure. It further stated that Israel's attacks, which violate international law, international humanitarian law, and the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War, forced the civilian population to flee, displacing more than 1.7 million people, thereby creating an unprecedented humanitarian crisis which has consequently resulted in deplorable and unliveable conditions in Gaza, and Palestine as a whole. For more information, see [here](#).



Carême v. France (April 9, 2024), as the applicant no longer lives in France, the court decided that he did not have victim status. In Duarte Agostinho and Others v. Portugal and 32 Others (April 9, 2024), the Court found the application inadmissible as the applicant failed to establish territorial jurisdiction with all respondents. The rejection in the case of Carême proved a difficult road for future environmental protection cases. Similarly, in the Duarte case, the court did not take cognizance of the transboundary effect of climate change and missed the opportunity for a broader interpretation of the instrument. Nonetheless, the KlimaSeniorinnen will leave its mark on the future of climate litigation and affirm the right to have a clean environment as a separate human right, thus marking the ECHR as an evolving instrument.

Jurisdictional Challenges in Digital Copyright Enforcement: Navigating a Perplexing Cobweb

- Harshita Tandon (I B.A.LL.B.)

In the digital world, online platforms make it easy for copyright infringement to occur on a large scale, making it even harder to identify and prosecute offenders.

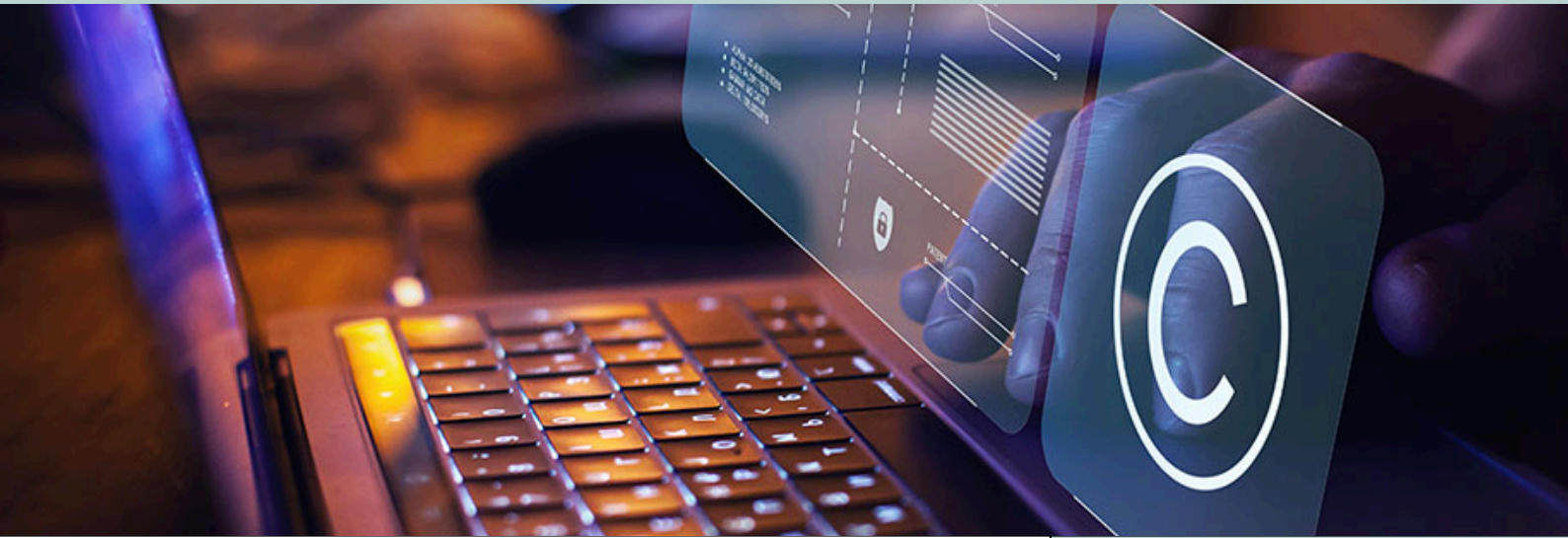
For example, an artist in India may discover that their work has been illegally and anonymously distributed in China with little recourse available to them. Despite efforts by international agreements such as the Paris Convention, 1883, the Berne Convention, 1886, and the (TRIPS) Agreement, 1995, to set guidelines for safeguarding copyright, their implementation remains a significant obstacle. Furthermore, emerging technologies such as deepfakes and decentralized networks continue to push the boundaries of international copyright protection, necessitating ongoing collaboration and adaptation of legal frameworks.

Enforcing copyright protection requires establishing which court has jurisdiction over the dispute; the next step is determining the law, or rather laws, applicable to a particular online copyright infringement. There is also the matter of remedies, namely what remedies may be granted to the copyright holder (an issue directly connected with the choice of law) and the territorial scope of those remedies.

To illustrate the nuances of issues over the court's jurisdiction and

News at a Glance

At least 97 journalists and media workers have been killed in the ongoing Israel-Hamas war, the Committee to Protect Journalists (CPJ) said in a preliminary count of media workers released Saturday. This conflict has proven to be the deadliest for media workers since CPJ began systematically documenting such tragedies in 1992. According to CPJ, working in Gaza has posed significant dangers for journalists covering the Israeli ground offensive. They encounter risks such as devastating airstrikes, disruptions of communication channels, shortages of supplies, and frequent power outages. These incidents include arrests, assaults, threats, cyberattacks, and instances of censorship. For more information, see [here](#).



determination of applicable laws better, let us refer to the US case: [iCrave TV \(2000\)](#). iCrave TV allowed users to stream US network television directly through their personal computers via the internet. Broadcasts of 17 networks from the US and Canada were picked up via a rooftop antenna in Toronto, turned into a retransmission signal, digitized, and then streamed online on their website. iCrave TV claimed that the acquisition, conversion, and redistribution of the US programming was lawful under Canadian law. In theory, iCrave TV restricted access to its website to Canadian users only; however, these restrictions were easily circumvented and it was estimated that more than half the subscribers of the website were US citizens.

The US producers sued iCrave in Pennsylvania, where the president and international sales manager of iCrave TV resided. Here, the court found general personal jurisdiction over the Canadian business entity on the basis of its continuous and systematic contacts with Pennsylvania. To determine the choice of law, the court found sufficient points of attachment with the US to allow the

application of the US Copyright Act to the defendants' activities. This was because the infringement occurred within the US when US citizens received and viewed the unauthorized streaming of the copyrighted materials, irrespective of the fact that the streaming transmission began in Canada.

However, if the iCrave TV website was also accessed by a substantial number of people from other countries, would the outcome be different?

In this case, the infringement claim could easily have been brought in a US court and would likely have been accepted for the same reasons as mentioned above. However, the choice of law applied might be different. According to *lex loci protectionis*, the US court should apply the domestic laws of every country where the streamed broadcast was received to determine if the broadcast qualified as a "secondary transmission of a broadcast" or as an infringement. This process would not only be expensive and difficult (in terms of translations and proof of foreign laws) but also controversial since the US decision might not be enforced by other States. Alternatively, the producers

News at a Glance

Libya files intervention in South Africa's ICJ genocide case against Israel concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) now underway in the UN's principal court. Libya stated that it filed the declaration because it believes Israel has been engaging in genocide against Palestinians in Gaza since October 7, 2023, and failing to prevent and prosecute the direct and public incitement to genocide. Libya emphasized the Genocide Convention's significance, noting the ICJ has recognized the prohibition of genocide as a *jus cogens* norm in international law. For more information, see [here](#).

Fires used as a weapon devastated 72 villages and towns in western Sudan in April, the highest number seen in any month since the internal armed conflict between the RAF and the SAF began over a year ago. For more information, see [here](#) and [here](#).



might bring suit in each country of reception, under each domestic copyright law, which too would be equally tiresome.

This leads us to the myriad of complexities often faced by copyright holders when seeking redress for transnational infringements. For them, navigating the legal procedures and requirements for enforcing copyright can be daunting due to the choice of multiple jurisdictions and applicable laws. Moreover, the cost and time associated with litigation can be prohibitive for individual copyright holders. This leads to delays and uncertainties in obtaining redress, necessitating alternative dispute resolution mechanisms or collective enforcement actions.

Therefore, the current online environment cries out for a legal analysis of the contemporary technological tools employed to combat digital infringements. These include Blockchain applications, (to create immutable records of copyright ownership) to enhance traceability, authenticity, and verification; follow-the-money tools, by advertising companies to penalise and prevent “commercial scale” infringements.; domain

name tools, which associate numerical Internet addresses with alphabetical names that are readily recognizable; search engine de-indexing, which removes infringing materials from search engines in a timely manner; and active defense tools through which authorized publisher can embed the copyright information into the published digital image art without damaging its visual effect in advance.

Jurisdiction and choice of law issues are, thus, inherently related and require homogeneous solutions. There is no one perfect solution to solve these issues regarding copyright infringement on the Internet. While international laws provide some protection, they struggle to address the nuances of digital infringement. Moving forward, a concerted effort to leverage technological solutions offers promise in enhancing enforcement effectiveness. By embracing these innovations and exploring alternative dispute resolution methods, we can strive towards a more streamlined and equitable approach to digital copyright enforcement in the global arena.

Upcoming Activities

Call for Papers: Oxford Workshop in Honour of Judge Theodor Meron:

The Oxford University Faculty of Law, All Souls College, and Trinity College will host a workshop on 21 June 2024 in honor of Judge Theodor Meron, Visiting Professor of International Law at the University of Oxford and Honorary Fellow of Trinity College, Oxford. The workshop is for early career researchers, including doctoral students and independent researchers, working on topics and themes addressed by Judge Meron in his career as a lawyer, academic, and judge. These topics and themes may include, amongst others, issues relating to sources of international law, notably treaties and custom, international humanitarian law and international criminal law, human rights law, international institutional law, and literature and law, as well as questions relating to the international judicial function. For more information, see [here](#).



The Multilateral Security Support Mission For Haiti: Is The UN's Response To The Crisis Enough?

- Mimansa Mishra (II B.A.LL.B.)

The Haitian territory has been long entrenched in a continuous series of violence related to gang wars, resulting in conditions of grave human rights violations. These include multiple horrifying instances of gender-based violence, displacement of citizens, and continuous food shortage. This situation of extreme instability, which escalated particularly after the assassination of Haitian President Jovenel Moïse, has reached an extent where the Haitian public now urges the international community to take action regarding the crisis, questioning the world's responsibility to take action in instances where a state is unable to protect its own population. A brief analysis of the history of international intervention in the Haitian crisis makes it evident that any United Nations (UN) Peacekeeping measures aimed at tackling the gang war situation in Haiti have been largely ineffective. In fact, many have resulted in bringing a worse end for the Haitian population, with UN

Peacekeeping officials being accused of sexual offences and the cholera epidemic, which had thousands of victims. For these reasons, the United Nations resolution for the formation and deployment of the Multinational Security Support (MSS) Mission of October 2023, poses as many questions as it brings forth solutions for the Haitian crisis.

Established under Chapter VII of the United Nations Charter, the resolution does not refer to a particular article being invoked to authorise the mission. A distinct feature of the mission that sets it apart from other UN Interventions is its aim to support the Haitian National Police in their efforts to combat instability and crime. This essentially means that the MSS Mission would not be a UN intervention force, but would rather act as a complement and even under the leadership of the Haitian National Police. Such a provision is unlike other missions (such as MINUSTAH and MINUJUSTH) which aimed to intervene to pacify threats to Haiti's peace and security. The failure of missions such as MINUSTAH, and the apprehension of further violations of International Humanitarian Law by UN

Upcoming Activities

Call for Papers: Western Sahara Research Group – Third Annual Conference:

The Third Annual Conference of the Western Sahara Research Group is sponsored by the Centre for European and International Legal Affairs and will be held on 11 September 2024 at Queen Mary, University of London. This event will be organized via several thematic panels to interrogate Western Sahara's international status and its significance from the vantage points of public international law and the law and policy of the European Union. For more information, see here.



Peacekeepers in such missions, can be said to have given rise to such a system.

Another interesting feature of the resolution is that it asks those in charge of the mission (including States such as Kenya, as well as all the other stakeholders and leaders) to communicate with the Security Council “the goals of the mission and the end result sought, the rules of engagement”, essentially meaning that it will be the Haitian Government, in coordination with the participating States who shall define the aims and objectives of the mission. This again would be an unprecedented step in the history of the UN’s operations as never before has any mission had to define its own goals and objectives. However, it also mandates participating states to function within the strict principles of International Humanitarian Law. The mission therefore, with its unprecedented nature, has legal as well as political ambiguities. The consequence of the lack of a defined mandate for the mission poses questions about the mission’s effectiveness and gives scope for the participating states to interpret the resolution to their own benefit and potentially justify a lack of results due to an alleged

lack of cooperation by Haitian authorities as was the case for Somalia. A clarification in defining the exact mandate is, therefore, necessary to avoid the mission’s misuse.

Additionally, according to the UN, the responsibility of operations authorised by the Security Council under Chapter VII conducted under national or regional command is with the State and the States conducting the operation, there are therefore, chances that in case any international obligations and lawsuits are brought against the concerned states, they may try to evade the responsibility by putting force on the Security Council’s responsibility. Something like this was seen when appeals were brought against the Kosovo Force (KFOR) for violations of human rights and illegal detention of the applicant. Here, as well, the question of who takes the liability for the force’s actions was brought up, wherein one side claimed that the force’s actions were attributable to the UN while the other side denied this argument. This evasion of responsibility by concerned states, therefore, ends up creating a gap between state responsibility for acts they commit under authorised operations and

Upcoming Activities

ASIL Global Health Law Interest Group Student Writing Competition:

This competition aims to foster insightful and impactful discussions among students globally on crucial health law topics that have international significance. Starting in 2024, the GHLIG will award annually a Prize to the author(s) of an unpublished paper that a Selection Committee considers to be outstanding in the field of global health law. The competition is open to any individual enrolled in an undergraduate or graduate program in any country. For more information see [here](#).



accountability for such acts. The UN and the Haitian Government, therefore, ought to still take into consideration the gaps in the mission's effective implementation.

Aligning Indigenous Peoples Interests in Climate Change Policies

- Kaveri Nanduri (I B.A.LL.B.)

Climate change has a significant impact on social, economic, and political spheres of life. It impairs the complete enjoyment of human rights, which can more predominantly be seen in the case of vulnerable communities like Indigenous Peoples. According to the UN Department of Economic and Social Affairs, "Indigenous communities face major threats due to climate change, despite being the least contributors to greenhouse gas emissions." Climate change impairs indigenous peoples' right to life, adequate food, shelter, water, and most importantly their self-determination, as highlighted by the Intergovernmental Panel on Climate Change (IPCC) and the Human Rights Council (HRC) Resolution 41/21. For indigenous communities like those in the Amazon, climate change-induced excessive rainfall and forest

fragmentation disrupts their traditional livelihood, income sources, and food security, forcing migration from ancestral lands. Such forced migration has made them vulnerable to discrimination and the loss of century-old cultural identity.

Climate Change Mitigation involves formulating policies and programs like Africa's Solar Minigrid Program, Western Balkan's ClimaProof project, and Indonesia's National Action Plan on Sustainable Palm Oil to reduce greenhouse gas emission levels. These policies may have both positive and adverse consequences on Indigenous peoples as pointed out by the UNFCCC Katowice Committee of Experts. For instance, the Fosen Wind Farm Project in Norway adversely impacted the traditional livelihood of the Sami indigenous community, as it disrupted their reindeer herding pastures in the Fosen region. In October 2021, the Norwegian Supreme Court delivered a landmark ruling, stating that the two wind farms in Fosen had the potential to significantly infringe upon the cultural rights of the Sámi people, as enshrined in Article 27 of the UN Covenant on Civil and Political

Upcoming Activities

Calls for Papers: Yearbook of International Humanitarian Law, Volume 27 (2024):

Ongoing armed conflicts in Gaza and Ukraine have raised unprecedented controversies relating to the application and interpretation of international humanitarian law (IHL). These controversies not only provoke fundamental legal questions, but are central in public discourse surrounding the conflicts. The combination of objective circumstances, the conduct of belligerents, the involvement of third parties and institutions, and intensive public debate all place significant pressure on key notions of IHL. Interested authors should send an abstract of a maximum of 500 words to the Managing Editor of the Yearbook, James Patrick Sexton (J.Sexton@asser.nl), by 19 June 2024. For more information see [here](#).



Rights of 1966 ([ICCPR](#)). Consequently, the court revoked the relevant licenses for these wind farms. The court's decision emphasized that climate interests should not take precedence over the interests of the Sami community, as protecting their indigenous cultural rights under Norwegian and international law was absolute, setting an important precedent. Furthermore, in March 2024, the Norwegian government reached an [agreement](#) with the indigenous Sami population, incorporating provisions to safeguard their cultural heritage while allowing the wind farm to remain operational.

The Fosen Wind Farms project serves as an instance where mitigation policies were implemented without sufficient collaboration and coordination, underscoring the significance of striking a balance between such policies and the interests of Indigenous communities. To achieve this balance, there needs to be increased involvement of Indigenous Peoples in terms of including traditional knowledge into policies and extending benefits of policies to them to reduce the negative impacts of mitigation policies. One example of

this is the First Nations-Canada Joint Committee on Climate Action ([JCCA](#)) formed in 2016. It serves as a forum for Indigenous First Nations representatives and Canadian government officials to collaborate on climate policies, ensuring First Nations are equal partners. In June 2023, the JCCA released its [fifth annual report](#) highlighting progress in areas like the inclusion of First Nations traditional knowledge and advancing their climate leadership. Native practices and insights by local communities viz controlled burning, weather and climate pattern prediction, and forest management practices help Indigenous peoples adapt and maintain ecosystem resilience and sustainability. Various International agreements like the [UNDRIP](#), the [Paris Agreement](#), and the [LCIPP](#) recognize the importance of traditional indigenous practices for proper management of the environment including the rights and free consent of indigenous people while formulating policies.

Some methods to overcome the obstacles include conducting awareness campaigns to highlight the significance of native practices, employing local representatives from the Indigenous Peoples who

Upcoming Activities

Global Conference on AI and Human Rights:

The event aims to place the debate on artificial intelligence and its interrelation with different questions of international human rights law into context, especially given the recent developments at the European and global level in the light of the discussions and adoption of draft legal acts on artificial intelligence within the European Union and the Council of Europe. The event is organized under the patronage of UNESCO. You are cordially invited to attend the conference, which will take place at the Faculty of Law, University of Ljubljana, Slovenia, between the 13th and 14th of June 2024. The official program is accessible via this [here](#).



can translate their language and communicate their interests, and establishing clear guidelines for fair and mutually- beneficial sharing of native knowledge. Presently, some of the Indigenous Peoples' efforts like native tree plantation in Nepal for carbon storage, community-managed forests in Bangladesh for conservation, and active revival of traditional technologies related to agriculture and marine resource management in the Pacific region have proven helpful in climate change mitigation. However, challenges still prevail in balancing mitigation policies and integrating native practices into climate change programs due to lack of recognition, language and cultural barriers, fear of exploitation, limited participation, and difficulties in documenting native knowledge. Overcoming these obstacles requires a multifaceted approach that acknowledges the rights and practices of indigenous peoples and provides adequate resources for collaborative research and capacity building by involving indigenous peoples as equal partners in developing climate change programs.

Editor:

Shreya Basu (III B.A.LL.B.)

Assistant Editors:

Sana Kulkarni (III B.A.LL.B.)

Anuradha Lawankar (II B.A.LL.B.)

Upcoming Activities

The Israel-Palestine Conflict: Recent developments at the ICJ On 15 May 2024:

The University of Nottingham's Human Rights Law Centre will be hosting an event exploring recent developments at the International Court of Justice (ICJ) about the Israel-Palestine conflict. During this event, convened over two panels, international legal scholars and human rights lawyers will address: (1) the ICJ's Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem; (2) the *South Africa v. Israel* case before the ICJ; and (3) *Nicaragua v. Germany*. They will discuss what we might expect from the ICJ, and other international and domestic courts, going forward. The event will be held in person and streamed online. For more information see [here](#).