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<http://www.trouw.nl/tr/nl/13110/Klimaatverandering/article/detail/3946337/2015/04/08/Inzet-rechter-om-klimaatpolitiek-af-te-dwingen.dhtml>

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Judges to force adoption of climate policy

Next week already: case against the Netherlands filed by environmental organisation Urgenda

Judges can force countries to adopt an effective/effectual climate policy. Lawsuits might even be the only way to break through the political indifference regarding climate change, says JaapSpier, Advocate General of the Supreme Court of the Netherlands.

A group of thirteen legal experts and scientists from nine countries have now become involved in the climate debate. This group, which includes judges from the Supreme Court of Brazil and the European Court of Human Rights, put together a manual for legal experts who want to obligate governments to adopt effectual/effective climate policy through a court mandate.

JaapSpier, the Dutch Advocate General and a professor of liability law, along with the German philosopher Thomas Pogge from Yale, were the initiators of the 'Oslo Principles' document. The piece was named after the Norwegian capital where the group came up with the framework. Earlier meetings were held in The Hague, New York and London.

Spier (64): "The climate crisis is too important; we can't just let it run its course. A lot is being said, but not enough is being done. Because who is responsible for what? The West is thinking: if China and India aren't doing anything, we can also afford to take it easy."

In the coming week, a case against the Dutch state regarding the climate issue is appearing in front of a court in The Hague.

The Oslo Principles are explicitly focused on politics, says Spier: "The document is meant as a support to politicians that want to push for climate policy, and need to explain this policy to voters."

In the Oslo Principles, the working group points out the existing laws which are applicable to climate policy. According to Spier there are sufficient legal possibilities to force a country to limit its CO2 emissions. On the grounds of international law, human rights law and liability law, judges can make rulings about what a state needs to do to prevent the harmful consequences of climate change,

according to the group. What's at stake is the right to live, health, international peace and security, food stocks and economic progress.

Next week in The Hague, the Dutch State and environmental organization Urgenda will face each other in court regarding the Dutch climate policy. Urgenda feels that the government isn't doing enough. The State is appealing to EU policy and international agreements. Roger Cox, Urgenda's lawyer, is content about the support provided by the Oslo Principles. "It is striking that the legal foundations of the document are almost the same as our own."

Climate change on trial

Another climate conference will be held this year, but Jaap Spier, Advocate General at the Supreme Court of the Netherlands, isn't expecting much. Spier thinks effective climate policy can be enforced through judges, which is the idea behind his Oslo Principles.

Plenty of good intentions, says Jaap Spier, Advocate-General of the Supreme Court of the Netherlands. Nobody is in favor of heating up the earth. But turning intentions into action is proving to be difficult. Because why would the Netherlands act while the rest of the world waits?

Spier: "It is, to put it mildly, irresponsible to expose millions of future world citizens to the disasters that climate change will cause." After all, the risks are sufficiently well-known, also to politicians.

A group of prominent lawyers, brought together by Spier and Thomas Pogge, professor of philosophy and international relations at Yale, wanted to break through this impasse. "We hope that politics will get over its current lethargy." They wanted to build a bridge between science – the knowledge that the warming of the planet is a danger to people and the environment – and political effectiveness.

For them, this bridge is the law. The 'Oslo Principles' document, the result of Spier and Pogge's efforts, highlights the 'moral and legal duty' that countries have to avert the harmful effects of climate change, on a series of legal grounds. Spier and Pogge contacted legal experts from different parts of the world and from different disciplines: international law, human rights law, environmental law. Research and discussion with the group of experts led to a blueprint for, among other things, legal action against countries that are too lax in their climate policy.

No politics

It isn't a political pamphlet put together by scientists, says Spier. "The Oslo Principles are certainly dictated by concern, but are legally solid as a rock." The group is trying to bring the document to the attention of international media and hopes that the Oslo Principles will be a big support to poor countries.

Besides mapping out why countries can be forced to adopt climate policies, the legal experts also indicate who is responsible for what. Their initial starting point was that poor countries shouldn't need to take costly measures. Spier: "That was something we could all agree on. After that it became more difficult."

"We are using the two degrees threshold from the international climate treaty. Science is in agreement that the earth should under no circumstances heat up more than two degrees. Researchers have calculated the maximum greenhouse gas emissions which will keep us under that two degree threshold. That amount was then divided by the number of world citizens and multiplied according to the number of citizens in each country. So we now have it in black and white how much can be emitted by whom."

Many countries, especially in the Western part of the world, exceed the permitted emissions ceiling. In this approach, the poor countries are kept out of the line of fire. The governments that now need to buckle down, says Spier, are those which are in a position to bear the financial load.

Tuesday, arguments will be presented in a case that environmental organisation Urgenda is bringing against the Dutch State. Urgenda wants to force the Netherlands to adopt effective climate policies through a court mandate.

The Dutch suit hasn't played a role in the discussion about the Oslo Principles, says Spier. "Our initiative is completely separate."

He doesn't want to comment on the Urgenda-case, because the matter is at trial and there is a chance that the Supreme Court will need to judge the case in a later stage.

Urgenda's lawyer, Roger Cox, is pleased about the Oslo principles. Cox: "The more the legal community discusses how to tackle this problem, the faster people will be inclined to put it to the test".

In Belgium, following the Dutch example, the Flemish, Walloon, Brussels and Federal government are being summoned in a climate case. More than 12.000 citizens and organizations have signed up as co-plaintiffs there.

In the Netherlands, approximately 900 co-plaintiffs have joined the climate case. According to Cox, there are climate cases against all fifty states in the US.

Free to decide how

The Oslo Principles only dictate to which degree the CO2 emissions need to be reduced. How to do this is up to the countries themselves. According to Spier, a lot can be done with energy savings measures, but countries will also need to invest in clean energy. Spier: "Those investments aren't cheap, but will pay themselves back in the long run."

The document offers a helping hand to judges that want to speak up to a government or company about their responsibility. Spier thinks that in a country like India, the principles will bear fruit. "India has a number of activist judges in the Supreme Court. I think that they would be prepared to speak up about the climate issue."

Does a judge need to be an activist in order to make a statement about climate change? "No", says Spier, "it is just a matter of applying existing law, although undoubtedly not all judges will be open to this. Judges with the courage to give a ruling on this will one day be applauded, whereas those who don't will eventually be tarred and feathered."

In exceptional situations, a judge needs to be creative, says Spier. During the Nuremberg Trials, in which the leaders of the Nazi Regime were prosecuted, there weren't any international legal precedents. Still, the judges made rulings on the Nazi crimes. Were they activists?

Spier: "Not in my opinion. They did what they had to do. Of course, you cannot really compare the climate issue to the Nazi crimes. Still, I still see parallels: just like then, the future of the world is at stake, although this is of course in no way similar to the crimes of which the Nazis were guilty."