



Lawsuits against climate change

New green advocates

The battle against global warming is increasingly being waged in courtrooms

IN FEBRUARY a tribunal in Kirkenes, in Norway's far north, ruled that oil extraction in the Barents Sea was illegal. The courtroom—an auditorium sculpted from 190 tonnes of ice, pictured above—and the verdict were fictitious, staged as part of a festival. But the legal question is real.

On November 14th a district court in Oslo, Norway's capital, will begin hearing the case that inspired the theatrics. Greenpeace and another pressure group, Nature and Youth, allege that by issuing licences to explore for oil in the Arctic, Norway's government has breached its constitutional obligation to preserve an environment that is “conducive to health” and to maintain environmental “productivity and diversity”. Their case rests not on local harms, for example to wildlife or water quality, but on the contribution any oil extracted will make to global warming which, under the Paris accord of 2015, Norway and 195 other countries have pledged to keep to “well below” 2°C compared with pre-industrial times.

As policymakers prepare for the annual UN climate pow-wow in Germany, starting on November 6th, activists who think too little is being done to meet that goal are turning to the courts. Cases where the negative effects of carbon emissions are central, not tagged on to more direct environmental damage, such as oil spills or the release of noxious chemicals, are on the

rise. Joana Setzer of the Grantham Institute, a think-tank in London, has found 64 such cases in countries other than America in the past 15 years. Twenty-one were lodged since 2015 (see chart 1 on next page). In litigious America around 20 are now filed each year, up from a couple in 2002.

The targets are governments, which campaigners argue are doing too little to avert climate change, and big energy firms, which they hold responsible for most greenhouse-gas emissions. A day before the Oslo hearings, for instance, a German tribunal will consider an appeal by Saúl Luciano Lliuya, a Peruvian who sued rwe, a big German electricity producer. He argues that it is partly liable for melting Andean glaciers that have raised the level of water in a lake that threatens to flood Huaraz, his home town.

Making it stick

The legal obstacles are formidable. Like the lower court in *Lliuya v RWE*, many courts have preemptorily dismissed climate lawsuits as groundless. Climatologists deal in probabilities, so it is hard to establish a causal link between a country's or company's emissions and the damage wrought by greenhouse gases. Singling out one among countless emitters is a stretch.

Even so, the occasional case succeeds. Two years ago a court in the Netherlands agreed with Urgenda, an environmental

group, that the Dutch government's target of a 17% cut in carbon emissions by 2020, compared with the level in 1990, fell short of its constitutional “duty of care” towards Dutch society. It ordered a cut of at least 25%. The same year a high court in Pakistan upheld an earlier decision in a case brought by Ashgar Leghari, a farmer, that “the delay and lethargy of the State in implementing [its climate policies] offend the fundamental rights of the citizens”. It directed the government to make a list of priorities and create an independent commission to monitor progress.

The prospect for climate-friendly verdicts is improving, says Sophie Marjanac of ClientEarth, an advocacy group, for two reasons. The first is the growing volume of climate-related commitments for which governments can be held to account. The second is advances in climate science.

Globally, the number of national climate-change laws and policies has swelled from around 60 in 1997 to nearly 1,400 (see chart 2 on next page). A survey in 2012 found that 177 countries had laws, regulations or court rulings guaranteeing the right to a clean or healthy environment. In at least 92 that right was constitutional. *Greenpeace v Norway* was made possible by a change to the country's basic charter in 2014, which in effect converted preserving a healthy, productive and diverse environment from a suggestion into an obligation. It would have been harder for Mr Leghari to win had the Pakistani government not spelled out 734 “action points”, 232 of which deserved priority.

The Paris accord is playing a role. Like many environmental treaties, it does not bind signatories to fulfil their obligations, merely enjoins them to do so. But plaintiffs can assess governments' and firms' actions against the 2°C goal. ▶▶