LSE Grantham Research Institute on Climate Change and the Environment

Climate Change Laws of the world

Law and the environment: a judge looks back

Lord Carnwath

A Climate Change Laws of the World insight

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About the author

Robert Carnwath (CVO), Lord Carnwath of Notting Hill and former Justice of the Supreme Court, is a Visiting Professor in Practice at the Grantham Research Institute. He is also an Associate Member of Landmark Chambers, an honorary professor of law at University College London, a Visiting Professor of Oxford University, and an Honorary Fellow of Trinity College, Cambridge.

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Introduction

On 27 March 2025, the LSE's Global School of Sustainability, the Grantham Research Institute on Climate Change and the Environment, and the LSE Law School hosted an event to celebrate the 80th birthday and distinguished legal career of Lord Robert Carnwath of Notting Hill, CVO, retired Justice of the UK Supreme Court.

During his tenure at the Supreme Court, Lord Carnwath gave many leading judgments, particularly on issues relating to planning and the environment, property, rating, local government and administrative law. Lord Carnwath has been a Visiting Professor in Practice at the Grantham Research Institute since 2021.

This note contains the lecture text delivered by Lord Carnwath, 'Law and the Environment: A judge looks back', where he reflected on the role of the courts, at home and abroad, in the development of environmental and climate change law over the last two decades. He drew on both his experience as a judge, and as a participant in international judicial exchanges.

Lord Carnwath's lecture is preceded by forewords from Mr Justice Syed Mansoor Ali Shah, of the Supreme Court of Pakistan, and Honorable Chief Justice Antonio Herman Benjamin, of the National High Court of Brazil.

This note is accompanied by a response from Justice Brian Preston AO FRSN SC, Chief Judge of the Land and Environment Court of New South Wales, who spoke about Lord Carnwath's contributions to environmental, planning and property law, through both judgments and extra-judicial writings.

Foreword by Justice Syed Mansoor Ali Shah

It is a profound privilege to honor Lord Robert Carnwath of Notting Hill on his 80th Birthday — a milestone that celebrates his extraordinary legacy as an eminent figure whose visionary contributions to environmental and climate jurisprudence have made him one of the most respected and influential voices in global judicial discourse.

Lord Carnwath's distinguished legal career spans more than five decades. Throughout this time, he has remained deeply committed to the advancement of environmental law. His pioneering contributions have not only shaped the development of environmental law in the United Kingdom but have reverberated across borders, inspiring judiciaries worldwide.

I have had the distinct honour and pleasure of knowing Lord Carnwath for over a decade. Our friendship really began when he invited me to a dialogue on climate change at King's College London shortly after I started hearing *Asghar Leghari*[1] in 2015 and had issued notice to the Government, the first climate justice case from South Asia. Since then, we have remained close friends, united by our shared passion and commitment to environmental and climate justice, as well as our proud association with the Global Judicial Institute on the Environment (GJIE).

In 2018, I had the honour of hosting Lord Carnwath in Lahore (Pakistan) at the *Judicial Colloquium on Climate Change and the Law*[2]. There, he eloquently addressed the judiciary's evolving role in environmental governance, tracing the arc of international environmental jurisprudence from the 1972 Stockholm Declaration to the proposed Global Pact for the Environment. Drawing upon his extensive work with UNEP's judicial training programs, he emphasized the judiciary's responsibility to translate environmental norms into enforceable rights. He referenced not only the Paris Agreement but also highlighted how courts, including those in Pakistan and the UK, have creatively drawn upon international principles to safeguard environmental rights.

Lord Carnwath cited with appreciation the Lahore High Court's decision in *Asghar Leghari*, which invoked the constitutional right to life to mandate climate adaptation measures, reinforcing judicial oversight over governmental climate policies. He commended Pakistan's progressive environmental jurisprudence, particularly the application of the precautionary principle in *Shehla Zia*[3] and the rigorous environmental scrutiny in *Maple Leaf Cement*[4].

At the UK Supreme Court, Lord Carnwath sat on the bench in *Trump International Golf Club*[5], a landmark case involving the approval of an offshore wind farm challenged by commercial interests. The Court unanimously upheld the Scottish Government's decision, with Lord Carnwath reinforcing the primacy of public interest and renewable energy development over private gain. The ruling strengthened legal precedent in favour of environmental sustainability.

His scholarly depth is equally evident in his written reflections. In his note on *ClientEarth*[6], he critiqued the dismissal of derivative claims against Shell's board for failing to align company policy with its climate targets. Lord Carnwath challenged the judicial reluctance to explore directors' fiduciary duties in the context of climate accountability and warned against costs orders that deter legitimate climate litigation. Citing Justice Lord Sales, he underscored the evolving expectation that directors must integrate climate risk into corporate governance.

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[1] Asghar Leghari v. Federation of Pakistan PLD 2018 Lah 364.

[2] Carnwath, Robert (2018) 'Climate Justice and the Global Pact' at the Judicial Colloquium on Climate Change and the Law in Lahore, Pakistan. https://supremecourt.uk/uploads/speech_180226_5b7bdfae1c.pdf

[3] Shehla Zia v. WAPDA, PLD 1994 SC 693.

[4] Maple Leaf Cement v. EPA 2017 LHC 4343.

[5] Trump International Golf Club v. Scottish Ministers [2015] UKSC 74.

[6] Carnwath, Robert (2024) 'ClientEarth v. Shell: What future for derivative claims?' A Climate Change Laws of the World Insight https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/02/ClientEarth-v-Shell-what-future-for-derivative-claims.pdf

Lord Carnwath's speech at Bucerius Law School in 2021, *Climate Change and the Rule of Law*[7], is a masterful exposition on how courts can bridge the gap between science and law. He examined landmark decisions from *Massachusetts*[8] to *Urgenda*[9] and *Asghar Leghari*, demonstrating how the judiciary can uphold climate obligations through the lens of constitutional and human rights. He called upon courts to be bold—to play a proactive role in climate governance, to scrutinize corporate conduct, and to enforce national climate targets.

His vision is clear: that law must remain a living instrument, responsive to the existential challenge of climate change. He cautions against judicial inertia and urges the legal community to ensure that environmental law is not only aspirational but transformative.

My association with Lord Carnwath has profoundly deepened my understanding of climate issues. It was through his wisdom and our meaningful exchanges that I was inspired and empowered to author several interesting and landmark judgments on climate justice in Pakistan. On this auspicious occasion I find it timely to share these jurisprudential advances. Since *Asghar Leghari* in 2015, Pakistani courts have increasingly embraced climate justice principles, holding the government accountable for poor environmental protection and slow climate action. In *D. G. Cement*[10] where permission was declined to expand an existing cement plant in a water scarce area in Pakistan. The Court held that new or expanded cement plants could cause further depletion of groundwater resulting in greater problems for the local people and especially for agriculture. While relying on the precautionary principle, reflected in Principle 10 of the Rio Declaration, 1992, the Court also introduced on an emerging environmental principle of *in dubio pro natura* – i.e., in cases of doubt, all matters before courts, administrative agencies, and other decision-makers shall be resolved in a way most likely to favour the protection and conservation of the environment. This was declared as Principle 5 of the IUCN World Declaration on the Environmental Rule of Law (2016). D. G. Cement viewed the protection of environment in its own right, holding that: "[t]here is more to protecting nature than a human centered rights regime…[m]an and his environment each need to compromise for the better of both and this peaceful co-existence requires that the law treats environmental objects as holders of legal rights." The Court referred to *intergenerational justice* and the need for *climate democracy,* holding that this Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country. The Court underlined that it is important to question ourselves; how will the future generations look back on us and what legacy we leave for them? And held that "[t]his Court and the Courts around the globe have a role to play in reducing the effects of climate change for our generation and for the generations to come. Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times." In conclusion, it held, "[w]e must restore and repair and care for the planetary home that will take care of our offspring. For our children, and our children's children, and all those yet to come, we must love our rivers and mountains and reconnect with the long and life-giving cycles of nature."

In *Amer Ishaq*[11] —a number of petitions were filed under the original jurisdiction of the Supreme Court seeking directions from the Court to shut down stone crushing plants in a Province of Pakistan for failing to meet the National Environmental Quality Standards ("NEQS") and contributing to air pollution. In shutting down the stone crushing plants, the Court noted, —[a]ir pollution causes an estimated one in every nine deaths worldwide, making it the greatest environmental threat to human health. The Court did not stop there but went ahead and introduced the concept of *environmental constitutionalism* and *Islamic environmentalism*. The Court noted that, the *triple-planetary crisis*, which comprises of interrelated urgent crisis of climate change, biodiversity loss, and widespread pollution must entrench environmental concerns as supreme constitutional norms. This strand of demand often coined as environmental constitutionalism is at the confluence of constitutional law, international law, human rights and environmental law and embodies the recognition that the environment is a proper subject for protection in constitutional texts and for vindication by

[7] Carnwath, Robert (2021) 'Climate Change and the Rule of Law' Luther Lecture, Hamburg. https://www.ucl.ac.uk/laws/sites/laws/files/climate_change_and_the_rule_of_law_-_lord_carnwath_cvo_22.3.21.pdf
[8] Massachusetts v. EPA 549 U.S. 497 (2007).
[9] Urgenda v. State of the Netherlands [2015] HAZA C/09/00456689.
[10] D.G. Khan Cement v. Government of Punjab, 2021 SCMR 834.
[11] Amer Ishaq v. Province of KPK, PLD 2024 SC 1134.

constitutional courts worldwide. Environmental constitutionalism entails a transformative approach that relies on constitutions to provide for the architecture of environmental governance, whereupon it then acts to improve environmental protection. The Court found that environmental constitutionalism as a concept has its ideological roots within Islamic environmentalism as environment and climate change have a strong linkage with our religion. Approaching environmental constitutionalism through the lens of religion and spirituality, the Court held can indeed be a powerful tool.

Recently in *Syed Ali Hussain*[12] ––a case regarding delay of three decades in setting up a water treatment plant to treat the contaminated wastewater flowing into River Ravi (a historically prominent river in Pakistan). The Court noted that it was shortage of funds that caused the delay thereby underlining the importance of climate finance and home-grown solutions to adaption efforts. The Court held climate finance to be a fundamental right flowing from right to life and right to dignity under Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan, 1973. The Court also encouraged raising domestic climate finance using Islamic modes of finance like the Green Sukuks rather than being dependent on global funds.

In the end I would like to say that Lord Carnwath's legacy is not just that of a brilliant jurist or a scholar. It is the legacy of a conscience—one that listens to the silent cry of the planet, that bridges legal formalism with moral purpose, and that holds fast to the idea that justice must serve the generations yet to come.

Knowing Lord Carnwath has truly been a privilege and an honour, and our friendship is something I deeply cherish. It is rare to find someone with such unwavering conviction, honesty, and dedication to the cause of environmental protection and climate justice. On his 80th birthday, I celebrate not only his extraordinary achievements but also the remarkable person he is. I will forever treasure our friendship and the invaluable lessons learned through our association. It is an honour to celebrate his immense contributions, and may his work continue to illuminate our collective path forward.

Thank you.

Justice Syed Mansoor Ali Shah
Supreme Court of Pakistan

[12] Syed Ali Hussain v. Senior Member, BOR, C.P.L.A No. 2918-L/2015.

Foreword by Justice Antonio Herman Benjamin

I had the privilege of meeting Robert Carnwath in Johannesburg in 2002, on the occasion of the Global Judges Symposium, held to commemorate the tenth anniversary of the 1992 Rio de Janeiro Earth Summit. At that time, I was participating as a professor of environmental law, as my appointment to the National High Court of Brazil (STJ) would only take place in 2006. Recently appointed to the Court of Appeal, Robert was already recognized as a distinguished jurist, whose reputation extended well beyond the borders of the United Kingdom.

From the very outset of our acquaintance, I was profoundly impressed by his genuine interest in, and clear grasp of, the most complex issues surrounding the protection of the environmental elements: water, biodiversity, pollution, scenic beauty, and climate change. Whenever he spoke, his thoughtful reflections and charismatic presence left a lasting impact on his peers. It was evident that he was not merely an environmentalist who had become a judge, but rather a judge who, through the exercise of his office, had come to understand the existential significance of the environmental crisis for humanity.

That first meeting marked the beginning of a long and fruitful collaboration, which over the years would take us to diverse corners of the world, participating in environmental law congresses, judicial symposia, and capacity-building programs. As time passed, this professional partnership blossomed into a valued and enduring friendship with both Robert and his spirited and inseparable wife, Bambina.

When I conceived the idea of establishing the Global Judicial Institute on the Environment (GJIE), Robert was among the very first colleagues I approached. His contribution proved instrumental, both in the design of the Institute and in its subsequent consolidation as an international reference for judicial dialogue on environmental matters.

Robert's generosity in offering his time, despite his many commitments, is truly exceptional. Neither distance, nor difficult flight connections, nor the remoteness of the venues to which I invited him ever deterred his willingness to contribute. His response was invariably the same: "let me check my calendar".

His contribution to the advancement of what I have termed "global environmental law" transcends his rulings and the confines of the United Kingdom's legal system. In the course of our legal dialogues, his observations consistently demonstrated the rare ability to distill, from the fragmented arguments presented in the heat of debate, conclusions of coherence, clarity, and sound judgment.

At his core, Robert has always been — and remains — a comparativist, a jurist whose intellectual gaze is permanently fixed on the horizon. Without ever losing touch with practical realities, he fully grasped the importance of fostering dialogue among legal systems — a necessity for addressing the common and planetary challenges posed by the environmental crisis.

Upon his retirement from the United Kingdom Supreme Court, Robert carries with him an extraordinary reservoir of professional knowledge and experience, which will no doubt enrich his continued work as a leading global authority on the legal dimensions of climate change. In this field — one characterized by complexity and the need for innovative approaches — his wisdom will prove invaluable to future generations.

Now, more than ever, as he dedicates himself to advancing the great causes of the biosphere, Robert Carnwath rightfully earns the title of "Judge of Future Generations".

Justice Antonio Herman Benjamin
Chief Justice, National High Court of Brazil (STJ)
President, Global Judicial Institute on the Environment
Chair Emeritus, IUCN World Commission on Environmental Law

Law and the environment: a judge looks back

The idea for this lecture came in Beijing last December. With Joana Setzer, I was part of a group of international environmental judges and academics, invited to speak at a training conference for Chinese Environmental Judges. It was hosted by the Supreme People's Court, in conjunction with ClientEarth. Among other matters, we were discussing the courts' recent guidance to the lower courts on climate change, and the "strategic goal" of "achieving carbon peaking and carbon neutrality".

It was during one of those sessions that we heard the result of the US elections. One could sense a buzz round the hall, as attention switched from the stage to mobile phones. It was a somewhat surreal experience. The contrast was so striking – speaking about climate adjudication to a group of 300 senior Chinese environmental judges, while the world's other major emitter of greenhouse gases was busy re-electing an outspoken climate denier. In the question session we were asked what it meant for climate change policies and the Paris agreement. None of us had a ready answer.

When I was discussing this afterwards with Joana, we started looking for grounds for optimism. It struck us that whatever might be happening in USA over the next four years, in other parts of the world, particularly China, there was a good story to tell. Joana was aware of my forthcoming 80th birthday in March, and she thought that it might be a good time for a lecture looking back over my own experiences of law and the environment during my time as a judge, but with strict instructions to introduce a note of optimism. I am grateful for her confidence and will do my best.

At that time, I was reasonably hopeful that the new President might pull back from his promise to take USA out of the Paris Agreement once again. Even the Chief Executive of ExxonMobil, Darren Woods, had been reported at the Baku COP 29 conference in November as advising against withdrawal, partly because of the uncertainty and inefficiency caused by having "the pendulum swing back and forth as administrations change." He thought it important for America to be playing an active role in the COP process, if only to protect its own interests. The company's 2024 report "Advancing Climate Solutions" had gone further, citing "addressing climate change" as one of "the biggest challenges facing humankind right now", and one requiring "unprecedented innovation and collaboration at immense scale."

Sadly, that was not a view shared by the new President. Hopes that sanity, or even business common sense, might prevail were rudely dashed. One of the new President's first acts was to start the process of removing US from the Paris Agreement. This was under an Executive Order bizarrely entitled "Putting America First in International Environmental Agreements".

Back in 2017, when the same had happened under the first Trump Presidency, I had thought it might be interesting to consult the website of the US Environmental Regulation Authority, to see how they would explain this sudden reversal of policy from the Obama years. In January 2017 they had deleted the Climate Change section and all references to climate change. Instead there was a note under the heading "This page is being updated". I continued to consult the site from time to time. But as far as I could discover, nothing of significance was done to update the website during the four years of the Trump presidency – not even in November 2018, when the government itself published its Fourth National Climate Assessment, which left no apparent doubt as to the devastating social and economic effects of climate change on the USA and elsewhere, and the need for urgent global action to address them. The President's reported response was that he had read parts of the report but "didn't believe it".[13]

This time round there were no such inhibitions. On 4 February 2025 the ERA website greeted us with extracts from a Breitbart News interview with the new Administrator, Lee Zeldin. He proudly announced that under the new President:

[13] Holden, Emily (2018). "Trump on own administration's climate report: 'I don't believe it'". *The Guardian. Washington, DC*. Retrieved November 26, 2018

> "The EPA is going to aggressively pursue an agenda powering the Great American Comeback... to return to its core mission of conservation... and ditch the leftist environmentalist radicalism that has dominated in the past..."

There has been talk through the years about how the world was imminently about to end because of climate change, and in the name of that threat there was a push to do some crazy things. The timelines of those predictions of "climate change" ending the world have "come and gone," and "the world is still here".

Zeldin echoed the President's talk of "a climate change hoax", and his concern that "in the name of climate change, politicians in Washington, DC, were willing to bankrupt our economy..."

More recently,[14] Zeldin has announced what he called a "dagger straight into the heart of the climate change religion", with a list of 31 regulations to be "scaled back or eliminated". One of the most consequential actions, it was said, would

> "...see the EPA reconsider a landmark 2009 finding that greenhouse gases harm human health, which has been used to underpin laws aimed at addressing the climate crisis."

That, I understand, is a reference to the EPA's "endangerment finding" under the Obama administration, following the great case of *Massachusetts v EPA* in 2007. The Supreme Court, noting the then undisputed evidence of the threat of climate change, held by a majority that the EPA's duties under the Clean Air Act included a duty to regulate greenhouse emissions from cars, and that its failure to do so was "arbitrary and capricious" and so unlawful. As it turned out, that decision was crucial, not only for President Obama's efforts to reform US law internally, but also for his championing of the international efforts leading to what became the Paris Agreement in 2015.

Of course it would be wonderful if the EPA team, in their review, were able to discover that greenhouse gases are indeed harmless, and that our worries are groundless. Unfortunately, whatever Mr Zeldin may say or hope, the scientific basis of that endangerment finding has never been disputed in the courts, even in cases to which the last Trump administration was a party.

Thus in the *Juliana* case from Oregon, which reached the Court of Appeals for the 9th Circuit in 2019,[15] a group of young people were challenging the government's failure to take action to protect them against the effects of climate change. Although the majority decided that they had no constitutional power to make the order sought against the government, there had been no attempt to question the factual basis of the case. For the majority Judge Hurwitz said:

> "A substantial evidentiary record documents that the federal government has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change, and that failure to change existing policy may hasten an environmental apocalypse..."

The dissenting judgment of Judge Staton was even more vivid:

> "In these proceedings, the government accepts as fact that the United States has reached a tipping point crying out for a concerted response—yet presses ahead toward calamity. It is as if an asteroid were barrelling toward Earth and the government decided to shut down our only defenses. Seeking to quash this suit, the government bluntly insists that it has the absolute and unreviewable power to destroy the Nation..."

So, we will watch with interest Mr Zeldin's attempts to turn back the clock. It remains to be seen how the courts will respond to the challenges which there will undoubtedly be. I may be naïve, but – optimistic as ever - I am hopeful that the US courts will find it hard to accept that the EPA, as a statutory body, can lawfully adopt an approach which flies in the face of scientific reality.

[14] https://www.theguardian.com/us-news/2025/mar/19/trump-epa-pollution-regulation-cuts

[15] Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020)

At this point I should perhaps confess that I have form with Breitbart News. Indeed, they probably have me down as one of the "leftist environmentalist radicals" they are so concerned to bring down. I first became aware of Breitbart News (led by one Steve Bannon) back in 2015. I had helped to organise an international conference on Climate Change and the Courts (to which I shall return). It included a public lecture at the Supreme Court by Professor Philippe Sands QC viewable on line through our website. He looked at the possible role of international law and the idea that a small island state, directly affected by rising sea-levels, might persuade the UN General Assembly to make a reference to the ICJ for an advisory opinion on the legal obligations of nation states in respect of climate change. (That has now happened in a case which was heard last December,[16] and we await the result.) Shortly afterwards I learnt from our press office that the lecture had been picked up by an American news organisation called Breitbart News.[17]

The burden of the article was that I and my fellow judges were scheming to "close the argument for ever, using the sledgehammer instrument of the International Court of Justice", thus leading to "an effective global ban on so-called 'climate change'". The Breitbart article concluded with the comment "Sands is a dangerous man; even more so the man who instigated the conference, a hitherto obscure activist judge called Lord Carnwath".

Fortunately, my colleagues did not take that too seriously. (It did something for my street cred with environmentalists, and got me an interview with Joshua Rozenberg on Law in Action.) But I little thought that 10 years later Breitbart News would represent the prevailing orthodoxy in US government circles.

Looking back, 2015 was a year of great optimism for environmental lawyers. For me personally our 2015 conference was a very important stage in the development of my involvement with environmental law and environmental judges internationally. In the background was the Global Judges' Symposium in Johannesburg in 2002, which first gave global recognition to the central role of the courts in protecting the environment. The "Johannesburg principles" adopted by the conference affirmed the vital role of an independent judiciary and judicial process, and called for a UNEP-led programme of judicial training and exchange of information on environmental law. At that time I was in the Court of Appeal. I was asked by the then Lord Chief Justice, Lord Woolf, to represent the UK judiciary on the judicial taskforce set up by UNEP based in Nairobi which oversaw the development of the judicial programme. It was there that I met a number of the judges from different parts of the world with whom I have worked ever since.

An important part of the UNEP programme was to develop judicial co-operation on a regional basis. In 2004 I was one of a group of European judges (including Luc Lavrysen, here today) who established the EU Forum of Judges for the Environment ("EUFJE"), to exchange knowledge and ideas on the practical application of the environmental law within the European Community. Its annual meetings have been a valuable opportunity for exchange of experience on environmental law between judges from across Europe, and with representatives of the European Commission. Happily our membership has survived Brexit. Lord Justice Keith Lindblom (also here today) remains an active member of the Committee, and a few years ago hosted a conference in Oxford. In September last year we celebrated its 20th anniversary with a conference in Budapest, still under the inspiring leadership of Luc Lavrysen.

In 2012 I joined the Supreme Court. But I was still allowed some latitude in speaking at conferences around the world, mainly on environmental law issues. In October 2014 I was fortunate to be invited by the Sultan of Perak[18] to speak in Kuala Lumpur on the topic "Environmental law in a global society".[19] This was part of the series of annual lectures by senior common law judges arranged by the Sultan in memory of his father, Sultan Azlan Shah, former

[16] https://news.un.org/en/story/2024/12/1157671

[17] The substance was later picked up here by the Spectator under the headline "A Supreme Court justice and the scary plan to outlaw climate change": Spectator 10th October 2015. An article in similar terms by Christopher Booker in the Sunday Telegraph (11.10.15) was partly corrected in the online version, in response to a complaint from the court.

[18] As well as being a very generous host, the Sultan was a lover of karaoke. Thus it was that, at a restaurant dinner after the lecture, I found myself having to sing with my wife a duet version of Besame Mucho.

[19] Later published as "Environmental Law in a Global Society" [2015] Journal of Planning & Environmental Law 269

Chief Justice of Malaysia. I took my theme from a lecture given by the Sultan himself in 1997, speaking of the role of the law in tackling environmental degradation:

> "Legal principles and rules help convert our knowledge of what needs to be done into binding rules that govern human behaviour. Law is the bridge between scientific knowledge and political action."[20]

The lecture gave me a chance to review the development of environmental law over more than a century, going back to the struggles of the courts and Parliament in the UK in the 19th century to deal with the unprecedented challenges of the industrial revolution, leading to the great Public Health Act 1875. Coming to more recent times, I spoke of the major initiatives at United Nations level, beginning with Stockholm Conference on the Human Environment in 1972, and later the Rio conference of 1992, which established the principles of "sustainable development", and "inter-generational equity"; and notably principle 7: the duty of states to "cooperate in a spirit of global partnership to conserve and restore the Earth's ecosystem", subject to "common but differentiated responsibilities".

We had seen those principles in action in the 1980s in the global efforts to deal with the threat of chlorofluorocarbons (CFCs) to the stratospheric ozone layer that protects the earth from harmful ultraviolet radiation, leading to the 1985 Vienna Convention on the Protection of the Ozone Layer, and 1987 Montreal Protocol on Ozone Depleting Substances (ODS).

I ended the lecture by referring to the global challenge of climate change, and hoped that here too the law might provide a bridge between the science and effective political action.

It was to give substance to that idea that we promoted the judicial conference on climate change in 2015, to which I have already referred.[21] It was organised by the Supreme Court, in conjunction with the Foreign Office and Kings College, London, with support from UNEP and the Asian Development Bank.[22] The object, ahead of the Paris conference later that year, was to assemble a group of specialist judges from a number of different countries round the world, together with practitioners and academics, to look at the legal issues arising from climate change, and the role of the courts, both national and international.

As it turned out, 2015 was something of an annus mirabilis for climate change case-law. In the months before our conference, there were two important judicial developments from very different legal systems – the *Urgenda* case in the Hague District Court in the Netherlands and the *Leghari* case from the Lahore High Court in Pakistan. Judges involved in both cases spoke of their experiences at our conference. In both cases, the national courts upheld challenges to their governments' failures to implement effective policies to counter climate change. The Hague judgment was of great symbolic importance as the first successful case of its kind. Although at that stage it turned on what seemed a rather esoteric point of Dutch tort law, it was later affirmed in the Court of Appeal and Supreme Court by reference to articles 2 and 8 of the European Convention on Human Rights. As such it paved the way to last year's decision by the European Court of Human Rights in Strasbourg in the Swiss *Climate Seniors*[23] case, to which I will come.

The *Leghari* case concerned an action by a farmer whose land had been damaged by flooding, due, as he argued, to the government's failure to implement effective climate change policies. In upholding the claim the court relied on the constitutional protection of the right to life, which had been held to include the right to a healthy environment. At our conference the Judge, Mansoor Ali Shah (now in the Pakistan Supreme Court) told us how he had devised a new form of order to

[20] HRH Sultan Azlan Shah *The New Millennium: Challenges and Responsibilities* Lecture to Universiti Kebangsaan Malaysia, Bangi, Selangor 23 August 1997

[21] "Adjudicating the future: climate change and the rule of law": https://www.kcl.ac.uk/archive/news/law/climate-courts/symposium-puts-focus-on-courts

[22] The organisation was expertly managed by Eloise Scotford, then at Kings, now Dean of UCL Law Faculty. Other key participants were Judges Luc Lavrysen from Belgium; Brian Preston from Australia; Antonio Benjamin from Brazil; Mansoor Ali Shah from Pakistan; Swatanter Kumar from India; and Scott Fulton from the USA.

[23] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, ECHR 2024

deal with the problem that the government simply was not implementing its own climate change policies. He ordered the setting up of an independent Climate Change Commission, chaired by a senior lawyer, bringing together all the interests involved including NGOs, government officials, and independent experts, reporting regularly to the court. As he told us, the key to its success was that the court was not imposing solutions on the executive, but helping the executive to give practical effect to its own policies.

The Paris Agreement of December 2015 was a truly monumental achievement. I visited Paris briefly during the conference period for a side-event on the role of the courts. I was struck first by the sheer scale of the operation. It is easy to forget now that it came only two weeks after the unprecedented terrorist atrocities at the Bataclan theatre in Paris, leading to 130 deaths. That had raised doubts as to whether the conference could go ahead at all. In spite of it over 150 heads of state (more than at any climate COP before) gathered on the very first day of the COP. It may have been the fresh memory of those terrible events that helped to concentrate the minds of the participants and made failure unthinkable.

The momentum was carried into 2016. Almost as remarkable as the agreement itself was the speed with which it was brought into force. That required ratification by at least 55 parties representing at least 55% of global greenhouse gas emissions. The threshold was reached at the beginning of October, and the agreement came into effect a month later on 4 November – four days before the USA Presidential elections.

I have already spoken of the reversal of US policy during the first Trump administration. Happily order was restored four years later under the Biden administration. Meanwhile interchanges between environmental judges across the world continued with the active support of UNEP and other agencies. I particularly enjoyed meeting other common law judges at conferences of the CMJA and the CLA, and discovering common ground in our approaches to the protection of the environment. In 2018, at a conference in Brasilia, hosted by Judge Antonio Benjamin, we established the Global Judges' Institute on the Environment. He has been and remains one of the most active champions of environmental law and judicial co-operation round the world.

I would not like to leave the impression that I spent all my time at the Supreme Court travelling the world to conferences in exotic places. Brian Preston has very kindly reviewed some of my judgments on environmental themes in the UK courts. I will mention one, again from 2015, which has had particular significance. In April that year I gave the lead judgment in a case, in which ClientEarth was seeking to force the government to comply with the legal limits set by European directives for NO2 concentrations in the air. Since the deadline for compliance had passed in 2010, the evidence showed illegal concentrations in 40 out of 43 reporting zones. The issue was not so much about compliance, but what the court (as opposed to the European Commission) could or should do about it. It seemed to me important that we should make an order with real teeth. To do that, we not only made a mandatory order requiring the government to prepare revised plans by the end of the year, but gave ClientEarth liberty to apply to the administrative court for any supplementary orders required. That led to two subsequent applications to the administrative court, resulting in further orders for improved plans.

It was through that case that I came to know about ClientEarth, and their extraordinary campaigning work round the world. I later met its founder James Thornton, who has since become a good friend. Since I left the Supreme Court in 2020, I have been able to follow the progress of that case by direct contact with ClientEarth, and particularly Katie Nield, who between 2018 and 2024 was responsible for monitoring the government's compliance. She has since joined the OEP, but has written an article soon to be published in the JPEL describing progress under our order. Her conclusion is that the judgment and its follow-up have resulted in major improvements to pollution levels round the country, and has been followed in other European countries.

Since I left the Supreme Court, I have also been lucky to develop strong links with the academic environmental community, not only with the Grantham Research Institute at LSE, but also with the environmental law departments at UCL and Oxford. Through them I have been kept up to

date with developing case-law in this country and round the world. I have also much enjoyed seminars discussing recent cases with a new generation of young environmental law students.

This is not the place to attempt any general review of the cases. But I will touch on what for me has been one of the most important and encouraging developments over my time in the law. That is the growing, and now almost universal, recognition of the environment as requiring constitutional protection, whether or not explicitly covered. Constitutions or human rights conventions (such as the ECHR) dating from earlier periods make no explicit reference to the environment. However, in the 1990s some courts, led by the India Supreme Court, began to interpret general guarantees of the right to life as including the right to a healthy environment in which to live.[24] Thus the Supreme Court of Pakistan in 1994 held that "life" did not mean just "vegetative or animal life" or "mere existence from conception to death", but:

> "... includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally...."[25]

I particularly liked the approach of the Philippines Supreme Court in 1993, in the famous *Oposa* case.[26] They described rights to a balanced and healthful ecology as "basic rights" which "predate all governments and constitutions" and "need not be written in the Constitution for they are assumed to exist from the inception of humankind". The court memorably upheld a challenge to the state's policies for granting consents to fell in the countries' virgin forests, brought by some 43 children from all over the Philippines, on behalf of themselves and "generations yet unborn".

By contrast nearly all the constitutions adopted since the early 1990s have explicitly recognised in some form the right to a clean and healthy environment.[27] A 2018 judgment of the Colombia Supreme Court in the *Future Generations* case,[28] shows what a powerful legal tool can be found in constitutional protections of the environment. 25 young claimants complained that the Colombian State had failed to guarantee their constitutional rights to life and protection of the environment, in particular through deforestation in the Amazon. The Supreme Court agreed, relying in particular on the right to a healthy environment, enshrined in the Colombian Constitution. The Court issued an order to the President and the relevant ministries to create an "intergenerational pact for the life of the Colombian Amazon," with the participation of the plaintiffs, affected communities, and scientific organizations.

More recently, (in the *Climate Seniors* case - ECHR 9/4/24) an association known in English as "Senior Women for Climate Protection Switzerland" filed a suit in the European Court of Human Rights against multiple bodies of the Swiss Government, alleging that they had failed to uphold obligations under the Swiss Constitution and the European Convention by not adopting effective policies to achieve an emissions reduction trajectory consistent with the Paris goal of keeping global temperatures well below 2°C above pre-industrial levels. In April 2024, the ECtHR Grand Chamber upheld the applicants' case. They found that article 8 of the ECHR (right to respect to the home and family life) encompasses a right to effective protection for individuals by State authorities from the serious adverse effects of climate change on their lives, wellbeing and quality of life. The State had a duty under that article to adopt, and apply, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change, in line with the Paris Agreement and the scientific advice of the Intergovernmental Panel on Climate Change.

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[24] In *Vellore Citizens' Welfare Forum v Union of India* AIR [1996] SC 2715 the Supreme Court went still further holding that principles of "sustainable development", including the "precautionary principle" and the "polluter pays" principle, were part of Indian law.

[25] *Zia v WAPDA pld* 1994 SC 693 . In Malaysia, the Federal Court (after some differences of judicial view) has held recently that "life" in article 5(1) of the Constitution, includes the right to live in a "reasonably healthy and pollution-free environment": *Bato Bagi v Kerajaan Negeri Sarawak* [2011] 6 MLJ 297

[26] *Oposa v Factoran* GR No 101083 (SC 30 July 1993)

[27] A 2005 study reported that, of the 250 countries which had written constitutions, about 130 countries had constitutional provisions that expressly addressed environmental norms: James May *Constituting Fundamental Environmental Rights Worldwide* 23 Pace Env LR 113 (2005-6).

[28] *Demanda Generaciones Futuras v. Minambiente* STC 4360-2018. See: https://www.dejusticia.org/en/climate-change-and-future-generations-lawsuit-in-colombia-key-excerpts-from-the-supreme-courts-decision/

Some have criticised this decision as an inappropriate extension of the Convention to subjects which were never in the contemplation of the original parties. That may be right, but I do not share their concerns. I see no practical harm and much good in the judicial extension of the Convention to encompass rights which have long been accepted by judges round the world as fundamental to human existence.

Even in America there are signs of hope in a very recent case from Montana (*Held v State of Montana* Montana Supreme Court 12/24). Montana is of particular interest in the US context. It was in 2023 the fifth largest coal-producing U.S. state and the twelfth largest oil-producing state. Fossil fuels were a central part of its economy, and this had strongly influenced the development of state laws. On the other hand, it is one of only very few US states with express constitutional protection for environmental rights. The focus of this case, brought by a group of young residents, was a provision in the Montana Environmental Policy Act that prohibited the state from considering greenhouse gas emissions as a factor when deciding whether to issue permits for energy-related projects. They argued that the state's support of the fossil fuel industry had worsened the effects of climate change on their lives, and that this particular clause was depriving them of their constitutional rights. In December 2024, the Supreme Court of Montana agreed. As the opening paragraphs of the judgment made clear, even in a state as supportive of fossil fuel extraction as Montana, there had been no attempt by the State to call evidence to challenge the "overwhelming scientific evidence and consensus" as to the scale of the challenge. Nor was the court impressed by arguments that Montana's permitted GHG emissions were relatively insignificant when evaluated against the total amount of global GHG emissions. It held that the public's right to a clean and healthful environment under Montana's constitution was violated when the state legislature passed a law removing the impacts of greenhouse gas emissions from environmental reviews under MEPA.

Finally, I return to China. As it happened, my first visit to the Supreme People's Court was in 2014, at a time when the development of the environmental courts was just getting under way. It was a happy coincidence. My choir, the Bach Choir, was touring China and Hong Kong in the two weeks before Easter that year. I was keen to join them but I needed a credible excuse for a short absence from the Supreme Court. Luckily my good friend Professor Hazel Genn from UCL was looking for an opportunity to organise a lecture by a senior UK judge in their associated university in Beijing,[29] and the Foreign Office were also interested at the time in fostering links with the courts there. Thus, I found myself on a somewhat schizophrenic trip, singing the Brahms Requiem in Shanghai and Hangzhou, and in Beijing discussing with the Supreme People's Court their plans for the new environmental jurisdiction.

My recent visit showed how much progress has been made since then. ClientEarth, led by Dmitri de Boer in China, have played an important part in that process. I asked him to give me a short account of some of the main achievements. There is not time to do more than quote a few paragraphs:[30]

> "A little over 10 years ago, in 2014, China's Supreme People's Court established an environmental tribunal, and instructed lower level courts to do the same. Within a year, there were over 700 environmental tribunals in China, and thousands of judges started to specialize in environmental adjudication.

The context to this was a public outcry around 2013, soon after China started to disclose real-time air quality information, which was suddenly available in convenient mobile applications for all citizens. The pollution was so severe it shocked society, triggering a wave of environmental consciousness...

[29] Financial support was kindly given by Winston Chu, a prominent UCL alumnus, and Hong Kong environmentalist, whose book on his long-running campaign to save Hong Kong Harbour is to be published shortly.

[30] I hope that the rest will form the basis of an article in the JPEL.

In 2014, China's legislature adopted a revised Environmental Protection Law, which mandated further information disclosure and public participation, and which opened the door to environmental public interest litigation by NGOs. Environmental NGO ClientEarth was invited to cooperate with China's Ministry of Environment and the Supreme People's Court to support the implementation of these new measures. Also, a large-scale pilot program was launched, in which prosecutors could also bring environmental public interest cases...

Over the past 10 years, the Supreme People's Court supported the establishment of environmental tribunals at all levels, and rolled out a series of judicial interpretations for all types of environmental cases. Over 30 environmental laws and regulations have been revised or newly issued. By now, China has easily the largest specialized environmental court system in the world. There are now almost 10.000 environmental judges in China, and nearly 3000 environmental courts and tribunals....

All of these efforts appear to be paying off. The ramping up of environmental governance and law enforcement in China has been transformational. Results are visible, with air, water and soil pollution much reduced, ecosystems enjoying much better protection, and a cultural shift towards government and business compliance with environmental laws...

Of course, much more needs to be done, especially on controlling greenhouse gas emissions. But it is very hopeful to see the world's largest developing economy prioritizing environmental governance. This matters not just for China, but also for the development pathway and green transition of other countries around the world, considering China's massive overseas trade and investments."

So, in that part of the world, at least, there is a positive story to tell.

I will end by reminding us of the words of Sir David Attenborough in his address to the UN Security Council on 23 February 2021:[31]

> "Perhaps the most significant lesson brought by these last 12 months has been that we are no longer separate nations, each best served by looking after its own needs and security. We are a single truly global species whose greatest threats are shared and whose security must ultimately come from acting together in the interests of us all. Climate change is a threat to global security that can only be dealt with by unparalleled levels of global co-operation. It will compel us to: question our economic models and where we place value; invent entirely new industries; recognise the moral responsibility that wealthy nations have to the rest of the world; and put a value on nature that goes far beyond money."

As I was cutting my 80th birthday cake, I was told that I had to make a wish. That was easy, my birthday wish was that the whole world, including the USA, will come back to recognise the truth of Sir David's statement and the desperate need to act on it urgently. In spite of everything, I remain optimistic that my birthday wish will come true.

[31] Quoted by Judge Eicke in his partially dissenting judgment in the Climate Seniors case (para 8).