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## How to Effectively Deal with Climate Change Disputes? Proposals from the First Annual Conference of the Roma Tre-UNIDROIT Centre

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On 8 November 2024, the Roma Tre-UNIDROIT Centre for Transnational Commercial Law and International Arbitration held its first [Annual Conference](#), titled "The Many Shades of Climate Change: Through the Lenses of Dispute Settlement", at the Bank of Italy's 'Carlo Azeglio Ciampi' Convention Centre, Rome. The conference was co-organised by the Roma Tre-UNIDROIT Centre and the Bank of Italy, with the institutional support of Simest S.p.A., and under the auspices of ICCA and ICSID, with Wolters Kluwer as its media partner.

With climate change disputes on the rise in cross-border litigation, international arbitration, and proceedings before international courts and tribunals, adjudicators face the difficult task of systematising the obligations of States and private actors, identifying the legal remedies available, and founding the legal standing for the protection of general interests and third parties' rights. The purpose of the conference was twofold: (i) to create a taxonomy of the most relevant legal issues that have arisen in the context of climate change, and (ii) through an in-depth analysis of these issues, to unravel the complexity of the topic and provide policy indications to consistently address current and future challenges.

In their welcoming remarks, [Maria Chiara Malaguti](#) (UNIDROIT, Roma Tre-UNIDROIT Centre), [Antonio Carratta](#) (Roma Tre University School of Law), [Pasquale Salzano](#) (Simest S.p.A.), and [Gabriella Palmieri](#) (Italian Attorney General) highlighted the complex interaction between international, transnational and national law, and they agreed on the need to find a balance between environmental protection and economic competitiveness.

The delicate balance between ambition and feasibility was at the crux of the keynote speech by [Paolo Angelini](#) (Bank of Italy) as well. He warned of the potential backlash against measures aimed at tackling climate change, noting that climate change litigation has not been used only to foster environmental protection, but also (and increasingly) to challenge environmental policies that have failed to adequately safeguard other interests at stake.

### Tackling Climate Change in Today's Legal Environment

The first session was moderated by Piera Coppotelli (Bank of Italy) and aimed to set the scene for the conference, by providing a definition of climate change claims and analysing the main legal issues they raise. [Gabrielle Kaufmann-Kohler](#) (University of Geneva) defined climate change disputes as disputes adjudicated by judicial, quasi-judicial, or administrative bodies, whose object is an issue of law or fact related to climate change. She offered a taxonomy of these disputes, based on the nature of the parties involved, their forum, and their legal basis, and she stressed that they have the potential to influence the conduct of both States and private actors.

[Christina Voigt](#) (University of Oslo) built on this taxonomy, with a focus on international climate law as a possible legal basis for climate change litigation. After providing an in-depth analysis of States' obligations and compliance mechanisms set up under the [Paris Agreement](#), she emphasised that courts have used this instrument to interpret the environmental obligations set out by other treaties, thus enhancing harmonisation among different sources of international law.

The role of courts in promoting a coherent and uniform approach to climate change litigation, by fostering the interaction between different sources of law, was also highlighted by [Jessica Simor](#) (Matrix Chambers), who used two contrasting cases in which she had been involved (*Friends of the Earth v UK Export Finance* and *KlimaSeniorinnen Schweiz v Switzerland*) to illustrate the opportunities and pitfalls of litigating climate change disputes.

## **The Complex Interplay Between Climate Law and International Investment Law**

The second panel, moderated by [Stefano Cappiello](#) (Italian Ministry of Economy and Finance), focussed on how climate change and environmental protection considerations are shaping international investment arbitration. [Meg Kinnear](#) (LKDR LLC) provided the framework for this discussion, by offering a definition of climate-related investment treaty claims, and a classification of climate-related investment cases based on the typical factual situations underlying them. For each of the identified categories, she illustrated the most invoked protection standards, the legal arguments generally used, and those that could be further explored.

The interplay between climate law and international investment law was further analysed, by focusing on two topics currently on the front burner of international investment law: counterclaims in investment treaty arbitration and international investment contracts. From a historical perspective, [Makane Moïse Mbengue](#) (University of Geneva) illustrated the contrast between international investment and climate change law, which has led up to the adoption of climate-friendly provisions in international investment agreements, enabling counterclaims in investment treaty arbitration. However, he argued that the adoption of such provisions as a tool to ease the tensions between the two regimes risks being ineffective, due to the vagueness of the obligations set out in climate treaties.

[Jonathan Lim](#) (WilmerHale) addressed the issue of climate change claims in contract-based arbitration proceedings, which might arise out of international investment contracts. He highlighted the existing tension between ESG policies and contractual commitments, as illustrated by the co-existence of stabilisation and ESG clauses in investment contracts. He concluded on a positive note, arguing that international investment contracts might be more effective than treaties in striking a fair balance between environmental and other interests, and calling for further research on this point. In this regard, he drew attention to the ongoing joint project between UNIDROIT and

the ICC Institute of World Business Law on [International Investment Contracts](#) and the [UNIDROIT Principles of International Commercial Contracts](#).

### **Climate Change: Liability and Damages**

Giacomo Rojas Elgueta (Roma Tre University School of Law, Roma Tre-UNIDROIT Centre) moderated the third panel, which revolved around questions of liability and damages. [William Burke-White](#) (University of Pennsylvania Carey Law School) addressed the issue from the perspective of international law. Based on an analysis of the case law, he argued that international climate litigation does not seem like an appropriate forum to ascertain liability and obtain an order for the payment of damages related to climate change. He welcomed the (then upcoming) [COP 29's focus on climate finance](#), as a more promising area for international law to effectively tackle climate change through non-judicial mechanisms (such as the UNFCCC loss and damage fund).

Moving to claims in tort, [Stijn Franken](#) (NautaDutilh) illustrated the well-known *Milieudefensie v Shell* case, where he is currently involved as counsel. He underlined the peculiarities of strategic climate litigation with respect to general tort law cases, stressing that it might be necessary to apply a different interpretation of the duty of care and of causation in the former. Shortly after the event, the Hague Court of Appeal rendered its judgment on the case, [denying Milieudefensie's claims](#).

Finally, [Andrés Jana](#) (Jana & Gil) dealt with the problem of causation. He shed light on the “attribution gap” in climate change claims, arguing that it can only be bridged either through the use of attribution science (i.e., the field of climate science that aims to measure the contribution of an entity's greenhouse gas emissions to specific climate change events), or by changing the standard applicable to the legal causation test. He concluded by recalling the economic analysis of law reading of tort law as a threshold to identify acceptable risks, which seems to make it a particularly suitable tool in the fight against climate change.

### **Beyond Disputes: Transnational Law to Address Drivers of Climate Change**

[Maria Chiara Malaguti](#) moderated the last panel, which explored the possible synergies between law, economics, and finance in tackling climate change. After illustrating the role of carbon markets in achieving the energy transition objectives established by the Paris Agreement, [Belinda Ellington](#) (IETA) stressed the urgency to address the legal issues that hinder the efficiency of these markets, praising the work of the [UNIDROIT Working Group on the Legal Nature of Verified Carbon Credits](#) in this direction. Her remarks proved all the more relevant, in light of the [historical decision recently adopted at the COP29](#) on standards for the creation of carbon credits under Article 6.4 of the Paris Agreement.

[Luca Enriques](#) (University of Oxford) provided an in-depth analysis of the [EU Corporate Sustainability Due Diligence Directive](#), with a focus on its extraterritorial effects and its potential impact on US companies. Finally, [Andrea Fabiani](#) (Bank of Italy) offered an economic perspective on climate change policies, by analysing the effects of sustainable finance regulation. The findings of a study he had recently conducted with other colleagues from the Bank of Italy show that the [EU Sustainable Finance Disclosures Regulation](#), while steering investors' portfolios towards sustainable stocks, seems to discourage “brown” (i.e., environmentally harmful) firms from

making sustainable investments.

To conclude, the Directors of the Roma Tre-UNIDROIT Centre, Maria Chiara Malaguti and Giacomo Rojas Elgueta, called for a continued dialogue between theory and practice on this complex topic.

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