

Opening Symposium on Future Generations
National judicial solutions to global challenges: some inspiration from Grotius

Introduction

Good morning ladies and gentlemen. It is an honour and a pleasure that I may now speak for the second time on the occasion of the Grotius year, here at Loevestein Castle. I have earlier spoken in March of this year, to mark as an ambassador of the Grotius year the start of this Grotius year.

I am the president of the Dutch Supreme Court, or in Dutch, “de Hoge Raad der Nederlanden”. The Hoge Raad is the highest Dutch court for civil, criminal and tax cases, and resides in The Hague. In front of the Hoge Raad building, since 1939, there is a statue of Grotius as a legal scholar. In the glass hallway of the Hoge Raad building, there is a large Latin quote from Grotius’ *On the Law of War and Peace* that might be translated as “where judicial settlement fails, war begins.”¹ When the Hoge Raad moves to another building, the Grotius statue is also moved and the quote is added to the new building. These works of art symbolise the profound influence of Grotius on Dutch and international law, in the past 400 years.

The topic of today relates to the human rights of future generations. An important and pressing topic, on which Maastricht University will draft a legal expert opinion. I will start my opening speech with some remarks on the significance of Grotius in his time. I will then jump to the current, and share some present legal challenges. The way the international community will decide to deal with these challenges, will have a profound effect on the living situation and basic rights of future generations.

Grotius in his time

In his time, Grotius was a bright and leading intellectual. His *On the Law of War and Peace* is considered to be one of the greatest contributions to the development of international law. Even though the title might suggest that this work mainly addresses the law of armed conflict, it is more extensive and concerns matters like binding obligations between sovereign states, such as international treaties.

The developments in the Netherlands in the early 17th century were a major influence on Grotius’ work. Apart from a scholar, Grotius was also a politician and a diplomat. He was building a legal system with an eye for the needs of the people and the spirit of the so-called Dutch Golden Age. Grotius for instance designed a system of maritime law in his book titled *Mare Liberum*, The Freedom of the Seas, when the Dutch East India Company started sailing to the former Dutch colonies, and new conflicts with other nations arose on the waters.² A lot of these ideas are still relevant, as they relate to questions on jurisdiction over the seas and piracy issues.

¹ [Hugo Grotius \(Stanford Encyclopedia of Philosophy\)](#)

² J. Klabbers, *International Law*, Cambridge: Cambridge University Press 2021, p. 4-8; [Hugo Grotius - Later life | Britannica](#)

Also in other legal areas, Grotius used the organising function of the law to prevent and resolve disputes. He drafted rules in a particular area of law to provide legal certainty, to provide some predictability to people, on what they should expect when they are not able to resolve a conflict themselves and decide to submit their case to a judge.

Grotius was taken captive in 1618 because of religious controversies. In the procedure that followed, he did not benefit from legal certainty and a fair trial. Grotius lost his freedom, his possessions and was put in prison for the rest of his life. After he managed to escape, he was forced to live in exile. It is quite sad that such a great legal scholar experienced a profound lack of justice. He was however granted legal protection by the king of France. Also today, the support of the international community is essential when the legal protection in one's own country is inadequate. Grotius' legal scholarship and the remarkable story of his escape, can be considered an inspiration to encourage tolerance and justice in people's lives.

Present legal challenges

This brings me to our present legal challenges. In today's Dutch society, we live in a democratic state, under the rule of law. People that decide to take their case to a judge, can be heard by an independent court. As I just mentioned, Grotius did not obtain a fair trial. In our time, there are more checks and balances in place to be judged on "*a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*" as article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms prescribes.

Nevertheless, many challenges remain or arise on the basis of new developments. I am first thinking about climate change and related issues, such as overpopulation and decreased biodiversity. A second global challenge lies in the power and scale of multinational companies. National laws are generally likely to have territorial shortcomings when they attempt to deal with issues like the protection of personal data, fake news, and global tax evasion. These issues also touch on the debate about humanity versus technology. Another challenge relates to the international movement of people. Here, I am thinking about international mobility and migration. A fourth challenge that comes to mind relates to the movements of commodities and data across national borders. This also encompasses illegal trade and cybercrime. Last but not least I mention the challenges related to the current covid-19 pandemic, that also has an important global dimension, as it provided sudden worldwide restrictions on both international and national mobility.

Exclusive national legislation is likely to be insufficient to cope with these global challenges. Addressing the challenges is however essential for the living situation and basic rights of future generations. However, there is no coordinating global legislator, prosecutor and judge. It is a challenge as such to provide and enforce binding rules and judgments to states and multinational companies. The Netherlands is – like most other states – however linked to other nations through a wide variety of treaties, on bilateral, regional and international level. These treaties belong to the sources that a judge in the Netherlands may consult to solve a particular case. From this angle, the judiciary in the Netherlands is to some extent able to deal with these global issues.

Climate cases

An example may be found in recent judgments in climate cases. In the Netherlands, the field of environmental law has existed since the late sixties and used to be mostly a domestic affair. It fell within the scope of administrative and criminal law, and regulation was based on authorisations and mandatory notifications. Monitoring and enforcement were insufficient. This way, legal recourse against environmental problems was very limited.³ However, since about 2000, interest groups started to take legal actions against citizens and companies that did not respect environmental law, in administrative courts. At the same time, European and international environmental law developed and influenced national law. Treaties and agreements on climate hence became an essential part of environmental law in the Netherlands.

In 2007, the Environmental Law Association celebrated its 25th anniversary with a conference on climate change and the role of environmental law. On this occasion, it was stated that there was a lack of sufficient national legal measures against climate change, although the global situation was worrying. A central discussion theme was the possibility to hold governments or companies liable for climate change under the Dutch Civil Code.⁴ The arguments that were exchanged in this discussion are clearly visible in the case of the Urgenda Foundation against the Dutch State, that was initiated some years later. The first instance court, the court of appeal and the Dutch Supreme Court all ruled in favor of the Urgenda Foundation when it asked, among other things, for reduction of Dutch greenhouse gas emission.⁵ To be more precise, in December 2020, the civil chamber of the Hoge Raad confirmed the decision of the court of appeal that Dutch government should reduce greenhouse gas emission in the Netherlands by at least 25% by the end of 2020 compared to the level in 1990, to meet its legal obligations under the United Nations Framework Convention on Climate Change, the Paris Agreement and the European Convention on the Protection of Human Rights and Fundamental Freedoms.

Similar court cases against either nations or corporations are pending or decided in countries all over the world. For instance, in February of this year the Administrative Court of Paris recognised the legal responsibility of the French State for its contribution to the climate crisis.⁶ In France, this case is referred to as *L’Affaire du Siècle*. In March, the German Bundesverfassungsgericht decided a climate case.⁷ It expressively mentioned future generations in relation to the protection of life and health against the risks posed by climate change. In June, a court of first instance in Brussels established the negligence of the Belgian

³ Lex Michiels, Veertig jaar milieurecht: enkele algemene thema’s, *Milieu en Recht* 2013/65; Michael Faure, Milieurecht, in: Catrien Bijleveld e.a., *Nederlandse Encyclopedie Empirical Legal Studies*, Den Haag: Boom Juridische uitgevers 2020, p. 611-642.

⁴ J. Spier, Civielrechtelijke aansprakelijkheid voor klimaatverandering, doemscenario’s voor onverantwoordelijke bedrijven en overheden, in: J.H.G. van den Broek e.a., *Klimaatverandering en de rol van het milieurecht*, Den Haag: Boom Juridische uitgevers 2007, p. 39-45

⁵ Rechtbank Den Haag 24 juni 2015, [ECLI:NL:RBDHA:2015:7145](#); Gerechtshof Den Haag 9 oktober 2018, [ECLI:NL:GHDHA:2018:2591](#); Hoge Raad 20 december 2019, [ECLI:NL:HR:2019:2006](#).

⁶ Tribunal administratif de Paris 3 February 2021, [1904967](#), [1904968](#), [1904972](#), [1904976/4-1](#).

⁷ Bundesverfassungsgericht 24 March 2021, BvR 2656/18, [ECLI:DE:BVerfG:2021:rs20210324.1bvr265618](#).

government in combating climate change. In this procedure, the court was joined by more than 58.000 co-plaintiffs, which caused it to be the 'largest' climate case.⁸

The increase in climate cases demonstrates that a national judge may address global climate problems. Whether the ruling of the national judge is effective, however depends on the full national and international legal order that surrounds it. This order lies in national legislation, international treaties and the responsiveness of government and citizens to such a ruling (such as whether it will be enforced). The case of *the Urgenda Foundation against the Dutch State* for instance generated a debate on whether a national reduction would make sense in light of (more liberal) European rules on the reduction of greenhouse gas emissions and whether the judiciary did not enter the political domain with this judgment.

Closing

Climate cases demonstrate that through interaction between international treaties and regulations, campaign groups and national judges, a certain space is created in which global problems can be addressed. In this space, the national judge may contribute with legal instruments to environmental problems. Whether this will be an effective contribution, depends partly on the legal order in which the judge operates.

In his time, Grotius was one of the first to provide an overview of what we now regard to be international law. He was prompted to do so because of the problems that the people of his time were faced with. In the Grotius year, the Loevestein castle emphasises Grotius' revolutionary ideas on peace, freedom and justice. These values, as well as Grotius' imaginative mind in the 17th century, might be able to provide us with some inspiration on how we deal with current global challenges. Worldwide issues like climate change, the power of multinational companies and technology, the movement of people, cybercrime and the current covid-19 pandemic can only be effectively addressed if individual states work together. Solving these issues will also require courageous and unconventional ideas, to safeguard the living situation and basic rights for the generations that will live 400 years from now.

These remarks bring me to the end of this opening speech. I wish you an inspiring conference, with interesting lectures and workshops. Thank you for your attention.

⁸ Tribunal de première instance francophone de Bruxelles 17 June 2021, 2015/4585/A.