CALL FOR PAPERS

"Climate Law and the Problem of Leakage"

EDITED BY

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The quintessence of a collective-action problem such as climate change is the problem of free riding. It is a form of leakage (non-effort leaks out to the free rider). The stage is set for leakage in greenhouse gas emissions when two or more jurisdictions have unequal levels of mitigation ambition. Mitigation law should equalize ambition across jurisdictions, aiming to eliminate leakage. This is easier said than done. First, there is the problem of defining equal ambition and knowing when it is achieved. Second, if some countries are more ambitious than others by some measure, they should be encouraged to keep going, not be held back. "Leadership" might be an obligation they have anyway under treaty law. Given that it is too difficult to fix inequality in ambition, leakage is inevitable. The law resigns itself to fighting it by preventing instances of it, rather than having the ambition (as ideally it should) to suppress the conditions that give rise to it. In fact, there is regulation at various levels (e.g. CDM, EU ETS, US renewable energy markets) specifically designed to prevent leakage. Occasionally, also, the law, faced with risks of leakage, dismisses them as irrelevant (as happened in the *Urgenda* case). A contradiction? Not necessarily. Perhaps it makes sense, from a mitigation perspective, for the law to take leakage seriously in some contexts while dismissing it in others, e.g. because a country wishes to set itself up as a mitigation model, controlling leakage domestically while downplaying transboundary leakage.

For this special issue of the journal, we are inviting papers that clarify the ways in which climate law has dealt with leakage, or should deal with it. We are especially interested in papers on the following topics, but we are open to other proposals as well:

- NDCs allow some countries to have an ambition in line with a "below 2°C" target, others with a 1.5°C target, and others with a yet different target. Has the Paris Agreement institutionalized leakage?
- Treatments of leakage as a topic, and the influence it has had, in the COP negotiations, e.g. concerning the operationalization of Article 6 of the Paris Agreement.
- The *Urgenda* approach was to downplay the significance of the risk of leakage (in ambition) from the Netherlands to other countries. Was it legally justifiable?
- Is CBDR an inadvertently pro-leakage principle, or is it really about equalizing ambition fairly?
- What is the current potential for border-adjustment measures to fix leakage?
- Those who argue for accounting for embedded emissions in trade (or consumption-based accounting) are trying to account for leakage. But why should the relevant emissions be attributed to the importing country when, in essence, it has paid for them to be emitted elsewhere?
- The "market substitution" argument: Courts sometimes go along with it and sometimes reject it. Why?
- What has been the law's response to leakage issues in REDD and other forestry credits?
- Is the belief that future generations will be better equipped to deal with climate change and that it will cost them less to do so (a belief that supports intergenerational leakage) legally defensible?
- What would be the qualities of a treaty that seeks to equalize mitigation ambition among states and how would it be different from the Paris Agreement—if it would?

Please email your abstract to Professor Zahar (zahar.edu@gmail.com) by **30 October 2020**. The issue is scheduled for November 2021. Manuscripts submissions through *Climate Law*'s portal by **30 July 2021**.