

# On building legal narratives of climate change: the Belgian climate case

Carole M. Billiet

Brussels, ULB, Institute for European Studies  
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# Introduction

Climate change litigation is building a transnational legal narrative of climate change

- Judge B. Preston, NSW Land and Environment Court: 'ripple effect'
- Amitav Ghosh: *The Great derangement. Climate Change and the Unthinkable.*

*"Stories are the fundamental building blocks of our universe: they are as old as time. Stories defy death."*

Colum McCann, 2021

Visiting the Belgian climate case as a building block in the co-creation of this narrative:

- where it rests on *acquis*
- where it strengthens strands of the narrative
- where it enriches it, adding novel elements

1. The case: essential facts
2. The wider case flow
3. The Belgian climate case in the wider legal narrative

“Klimaatzaak vzw & al. v. the Belgian Federal State, the Brussels Region, the Flemish Region, and the Walloon Region”

# 1. The case: essential facts

## 1.1. The parties to the case

### **June 1st 2015**

- vzw Klimaatzaak
- 8.429 citizens

### **3 May 2019**

+ 82 protected trees

### **3 July 2019**

+ 50.164 citizens

### **June 1st 2015**

- Belgian Federal State
- Brussels Region
- Flemish Region
- Walloon Region

## 1.2. The course of the procedure

June 2015 - August 2018:  
interlocutory dispute on the  
language of the proceedings

September 2018 - June  
2021: first instance hearing  
(three judges' bench)

- Three rounds of conclusions, until March 2020\*
- 10 hearings: 16-26 March 2021
- Judgment at first instance: 17 June 2021

November 2021 - November  
2023: appeal hearing (three  
judges' bench)

- Three rounds of conclusions, until the end of June 2023\*
- 13 oral hearings 14 September to 19 October 2023
- Appeal verdict: 30 November 2023 .

\* Conclusions shared online:  
<https://affaire-climat.be/>

# Two court rulings: one more to come?

Tribunal de première instance francophone de Bruxelles, Section civile, 4ème chambre affaires civiles, A.R. 2015/4585/A, 17 juin 2021, 84 p.

Cour d'appel de Bruxelles, 2ème chambre F affaires civiles, 2021/AR/1589-2022/AR/737-2022/AR/891, 30 novembre 2023, 160 p.

## 1.3. The cornerstone of the case: the gap between knowing and acting

- 1988-1992 & 2007-2010
- Violation of the right to life and the right to family life (Articles 2 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 1950) ('ECHR')
  - Each contracting party must ensure these rights for anyone under its jurisdiction (Article 1 ECHR)
- Breach of the social duty of care (Articles 1382 and 1383 of the Old Civil Code) ('CC')
  - Government must also comply - Court of Cassation, Flandria judgment 1920



# The Articles 2 and 8 ECHR

## *Right to life*

*"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."*

## *Right to respect for private and family life*

*"Everyone has the right to respect for his private and family life, his home and his correspondence."*

## The Articles 1382 and 1383 Old Civil Code

*"Every act of man,  
by which damage  
is caused to  
another, obliges  
the person  
through whose  
fault the damage  
was caused to  
compensate him."*

*"Each one is  
liable not only  
for the damage  
caused by his  
act, but also for  
that caused by  
his negligence or  
carelessness."*

## 1.4. What the plaintiffs demanded

Find that the Federal State and Regions' lack of adequate climate policy **violates their right to life and their right to a family life**

Find that the lack of adequate climate policy of the Federal State and the regions **constitutes a fault that violates the social duty of care**

**Impose** on the Federal State and the Regions **an order to reduce greenhouse gas emissions** from the Belgian territory to put an end to these violations of their rights

## 1.5. The First Instance judgment

The climate policy of the Federal State and the regions

**(1) violates** the plaintiffs' right to life and family life

and

**(2) constitutes a fault that violates** the social standard of care

# No emission reduction order

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Motive: the separation of powers does not allow for such an order

## 1.6. The verdict of the Court of Appeal

The climate policies to date of the  
Federal State, the Brussels Capital  
Region and the Flemish Region

**(1) violate** the plaintiffs' right to  
life and family life

and

(2) constitute a fault that **violates**  
the social standard of care

An emission  
reduction order  
to the Federal  
State, the  
Brussels-  
Capital Region  
and the  
Flemish Region  
of at least -  
55% in 2030  
compared to  
1990

The separation of powers does  
not oppose such an order

# In the words of the Court

*"By way of compensation for the harmful consequences of the shortcomings identified, in order to prevent future and certain damage, some of which has already occurred, and to ensure the effectiveness of the protection afforded by Articles 2 and 8 of the ECHR, hereby enjoins the Belgian State, the Flemish Region and the Brussels-Capital Region to take, after consultation with the Walloon Region, appropriate measures to do their part in reducing the overall volume of annual GHG emissions from the Belgian territory by at least at least -55% by 2030 compared to 1990;*

*Holds that it is for the parties condemned by the present judgment to determine, in consultation with the Walloon Region, the share to be borne by each of them;"*



# No breach of the principle of the separation of powers

- Only the goal to reach
  - Not the means to get there
  - Case law (incl. Cassation) and doctrine
- An emission reduction is the single most effective goal: *“to limit the risk of dangerous global warming and prevent excessive depletion of the residual carbon budget, there is no more appropriate measure than reducing GHG emissions from Belgian territory”* (§283)
- A strict minimum: *“a 55% reduction in greenhouse gas emissions by 2030 compared with 1990 should be considered as the minimum threshold, below which Belgium cannot go without violating articles 2 and 8 of the ECHR and the general duty of care”* (§284)

## 2. The wider case flow

# On numbers

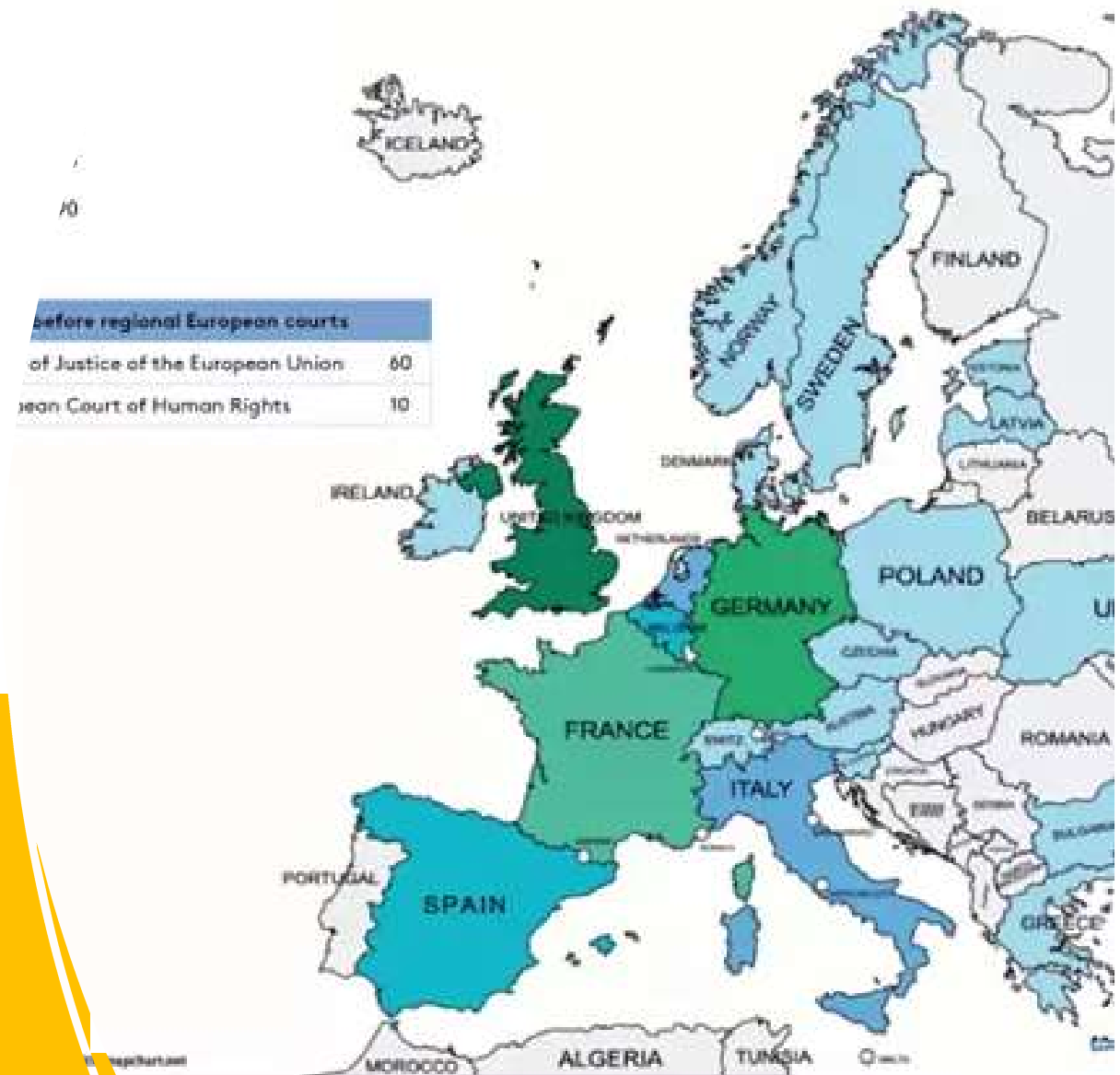
- Since 1980s
- In 2023: 2,341 cases globally
- Of which 1,557 since 2015

## 2015

> Paris Agreement

> Lahore High Court (Pakistan): Ashgar Leghari

> The Netherlands: Urgenda



# On variety

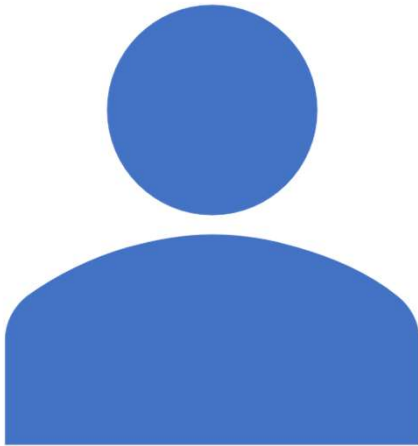
- Civil disobedience cases
- Environmental permitting cases
- Climate washing cases
- ...
- Corporate responsibility cases

Belgian climate case?

→ Some 40 similar cases pending globally

### 3. The Belgian climate case in the wider legal narrative

## 3.1. The parties



58.500+ citizens

## 3.2. Standing

*"The extent of the consequences of global warming and the scale of the risks it entails make it possible, however, to consider, with sufficient judicial certainty, that each of the natural persons who are party to the proceedings has an interest in obtaining the orders which are sought to be imposed on the defendants. the public authorities."*

(§133)



### 3.3. The grievs

#### First instance

Articles 1382-1383  
Civil Code

&

Articles 2 and 8  
ECHR

- Both violated
- 58.500 citizens

#### Appeal

Articles 2 and 8  
ECHR

&

Articles 1382-1383  
Civil Code

- Both violated
- 58.500 citizens

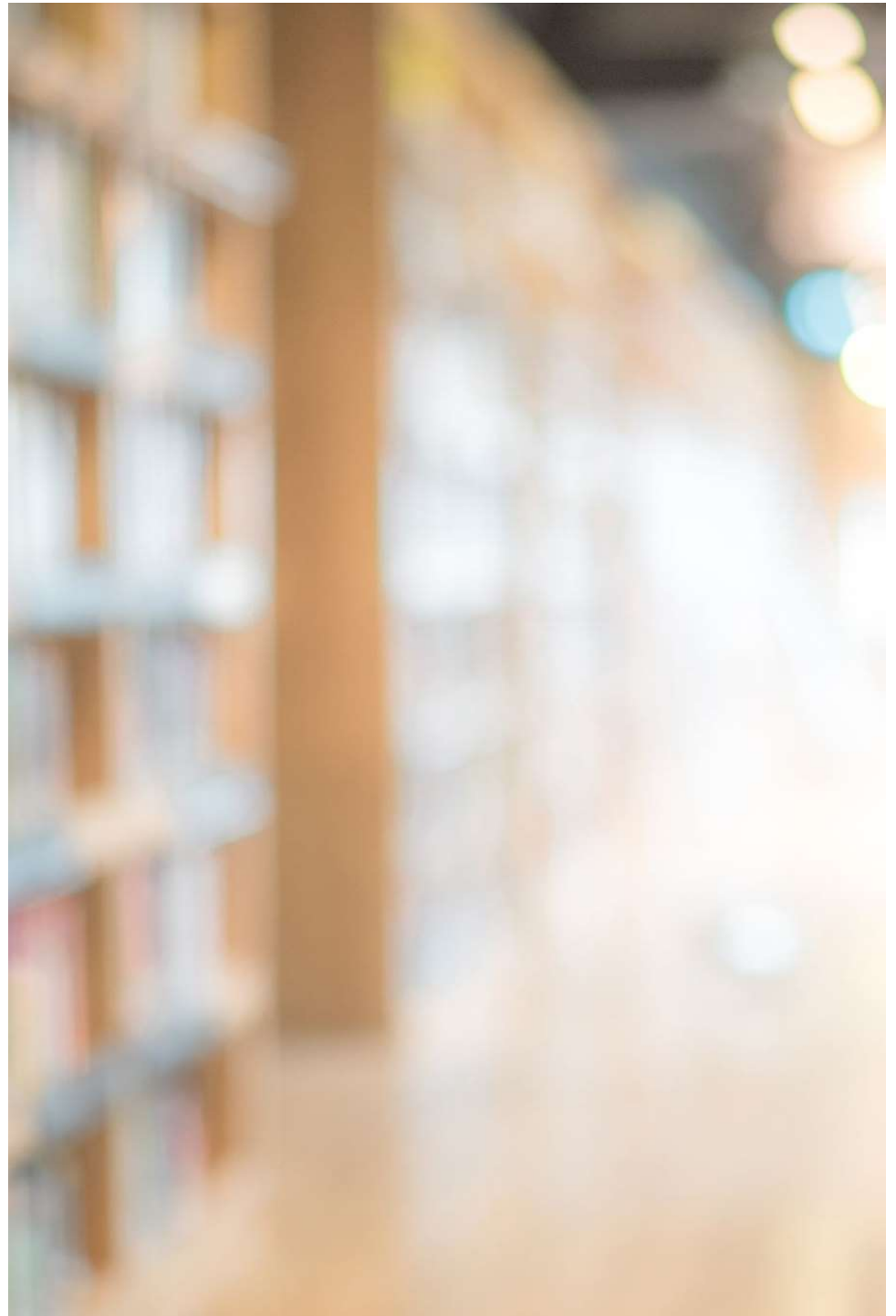


### 3.4. Building on other judgments: the acquis of individual responsibility

*"In the same vein, the German Constitutional Court rightly held that a State "cannot in this respect absolve itself of its responsibility by referring to the GHG emissions produced by other States" but that, on the contrary, it follows "from this particular dependence on the international community that there is a constitutional imperative to actually take measures of one's own, and if possible internationally agreed, to protect the climate" (Neubauer judgment cited above, §203, according to the uncontested translation of the appellants in the main proceedings). The Supreme Court of the Netherlands has also concluded that States have individual responsibility in climate matters despite the global dimension of the phenomenon (Hoge Raad, Urgenda, 20 December 2019, ECLI : NL :HR :2019 :2006, §§5.7.1-5.8)." (§160)*

### 3.5. An injunction

*"donne injonction"*  
(Appeal verdict, p. 158)



## 3.6. Baseline: a carbon budget reasoning



1.5°C as limit for a dangerous global warming



A global residual carbon budget with a 50% probability to respect the 1.5°C limit (IPCC)



A Belgian residual budget obtained by using the Grandfathering approach

## 3.7. The 1.5°C limit

### **A question of timing**

- Appeal after the Glasgow (2021) and Sharm-el-Sheikh (2022) COPs:

*“There is currently a scientific and political consensus (at least at international level), notably following the 2018 IPCC Special Report and the Glasgow and Sharm El-Sheikh COPs, that the threshold for dangerous warming should be set at 1.5°C rather than 2°C, albeit with some tolerance (‘with no or limited overshoot’, according to AR6)” (§191)*

## 3.8. The future generations are part of today

*« La cour conclut qu'il existe un lien causal entre les fautes qu'elle a identifiées et le dommage des parties appelantes au principal, qui consiste : (...) dans un préjudice moral résultant de la conscience de l'insuffisance des moyens mis en œuvre par les autorités beiges pour protéger les intérêts des générations futures; » (§268)*

*« (...) la cour pointe le risque d'une atteinte aux droits humains des générations futures, qui risquent également d'être confrontées à la nécessité de réduire plus rapidement et sans transition adéquate leurs émissions de GES. La conscience du risque, sans gouvernance climatique adéquate, de laisser à ses descendants un environnement irrémédiablement détruit ou des conditions de vie nettement moins favorables constitue un dommage moral réparable subi personnellement par les parties appelantes au principal en personne physique. » (§267)*

# The future generations are part of today

*"On Wednesday 7th of February, 2024, an international high-level event on "Justice, Future Generations and the Environment" will be held in Paris, organized by the French Constitutional Council in partnership with the French Institute for Studies and Research on Law and Justice (IERDJ). Around a hundred Presidents and Judges from national supreme Courts, regional Courts, and international Tribunals will take part. They will be able to share their experiences and deepen their understanding of the concept of "future generations", which is increasingly invoked in environmental litigation."*

[Réunion internationale « Justice, Générations futures et Environnement », mercredi 7 février 2024 au Conseil constitutionnel | Conseil constitutionnel \(conseil-constitutionnel.fr\)](#)

[Constitutional Council | Conseil constitutionnel \(conseil-constitutionnel](#)

# IPCC, AR.6 SYR, SPM – the intergenerational dimension limited to this century (2100)

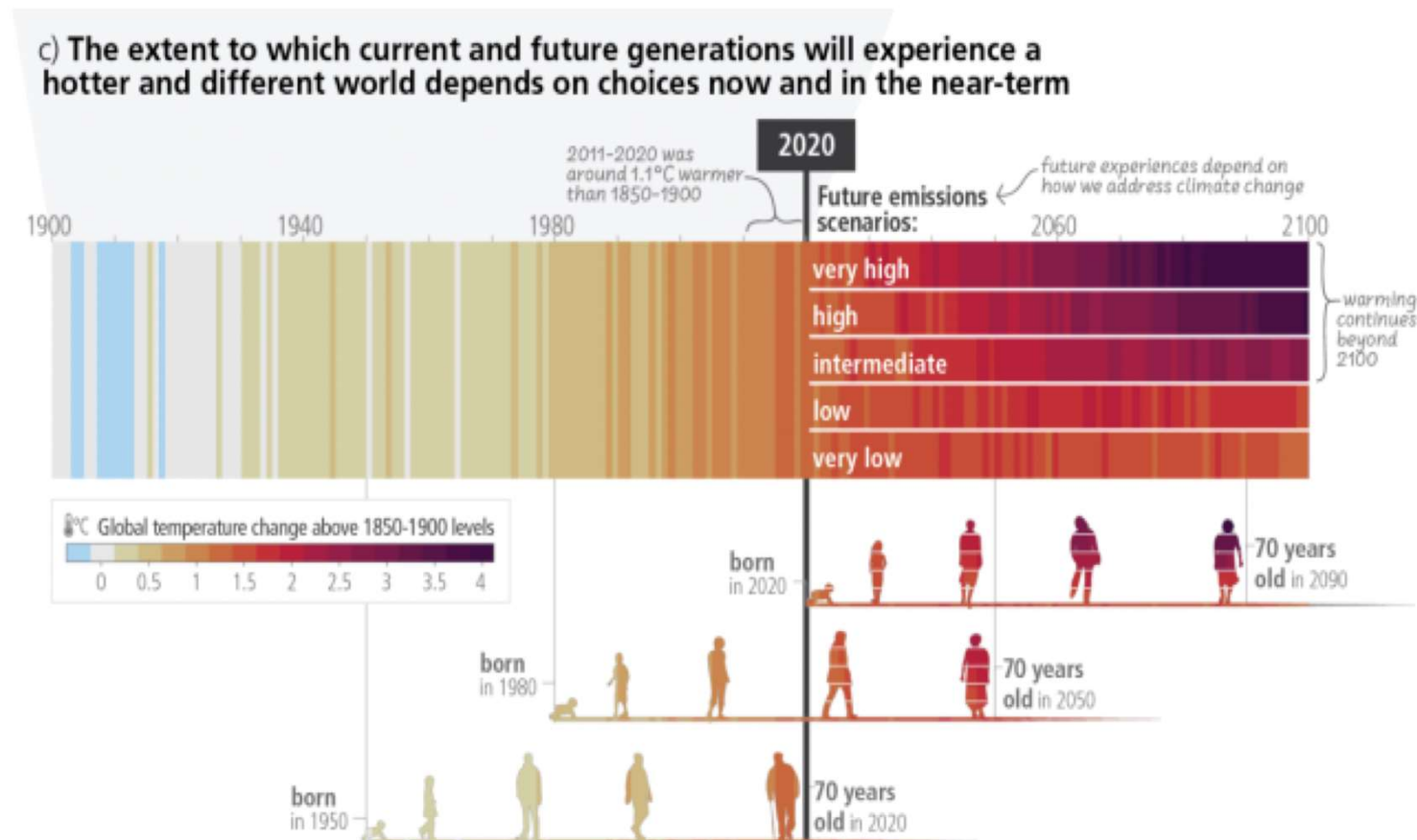


Figure 7.c. Impact sur la santé des générations futures

# Conclusion

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In climate change litigation, the development of a transnational legal narrative is a work in progress.

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It has to handle an extreme set of facts, within the boundaries of the law.

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The understanding of facts (scientific and other) and the capacity to give them meaning through the lens of law are key.

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Giving meaning is at the heart of story-building. The law participates in creating a narrative that allows us to better understand climate change.

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The Belgian climate case is part of this process. It builds on existing sections of the narrative, strengthens others and adds new strands of meaning.



**Thank you for your attention!**



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