

Climate Change Litigation: Global Perspectives

Edited by

Ivano Alogna, Christine Bakker and Jean-Pierre Gauci



BRILL
NIJHOFF

LEIDEN | BOSTON



**British Institute of
International and
Comparative Law**

Cover illustration: Painting Marianne Benkő "Butterfly Blues" 2020. © Marianne Benkő Artist / www.mariannebenko.com

The Library of Congress Cataloging-in-Publication Data is available online at <http://catalog.loc.gov>
L.C. record available at <http://lcn.loc.gov/2021008253>

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISBN 978-90-04-44760-8 (hardback)

ISBN 978-90-04-44761-5 (e-book)

Copyright 2021 by Koninklijke Brill nv, Leiden, The Netherlands.

Koninklijke Brill nv incorporates the imprints Brill, Brill Hes & De Graaf, Brill Nijhoff, Brill Rodopi, Brill Sense, Hoteli Publishing, mentis Verlag, Verlag Ferdinand Schöningh and Wilhelm Fink Verlag. All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher. Requests for re-use and/or translations must be addressed to Koninklijke Brill nv via brill.com or copyright.com.

This book is printed on acid-free paper and produced in a sustainable manner.

Contents

Foreword ix

Lord Carnwath

Notes on Contributors xi

List of Abbreviations xx

Climate Change Litigation: Global Perspectives An Introduction 1

Ivano Alogna, Christine Bakker and Jean-Pierre Gauci

PART I

Climate Change Litigation: Comparative Perspectives

2 Climate Change Litigation in the United States: High Volume of Cases,
Mostly About Statutes 33

Michael B Gerrard

3 Climate Change Litigation in Australia: Law and Practice in the
Sunburnt Country 47

Laura Schuijers and Margaret A Young

4 Climate Change Litigation in the United Kingdom: Planning, Energy and
Protest 79

Nigel Fleming and Ruth Keating

5 Climate Change Litigation in India and Pakistan: Analyzing
Opportunities and Challenges 103

Birsha Ohdedar

6 Climate Change Litigation in France: New Perspectives and Trends 124

Marta Torre-Schaub

7 Climate Change Litigation in Brazil: Will Green Courts Become
Greener? 143

Joana Setzer, Guilherme JS Leal and Caio Borges

8 Climate Change Litigation in South Africa: Firmly Out of the Starting
Blocks 173

Tracy-Lynn Field

- 9 Climate Change Litigation in the Netherlands: The *Urgenda* Case and Beyond 199
Christine Bakker
- 10 Prospects for Climate Change Litigation in Russia 225
Anatoly Yakovlevich Kapustin
- 11 Prospects for Climate Change Litigation in China 244
Chen Zhou and Tianbao Qin

PART 2

Climate Change Litigation: Regional and International Perspectives

- 12 Climate Change Litigation in Africa: A Multi-Level Perspective 271
Sam Adelman
- 13 Climate Change Litigation in European Regional Courts: Jumping Procedural Hurdles to Hold States to Account? 294
Marc Willers
- 14 Climate Change as a Human Rights Issue: Litigating Climate Change in the Inter-American System of Human Rights and the United Nations Human Rights Committee 310
Monica Feria-Tinta
- 15 Intergenerational Climate Change Litigation: The First Climate Communication to the UN Committee on the Rights of the Child 343
Ingrid Gubbay and Claus Wenzler
- 16 Inter-State Climate Change Litigation: 'Neither a Chimera nor a Panacea' 366
Annalisa Savaresi
- 17 Bringing Climate Change before the International Court of Justice: Prospects for Contentious Cases and Advisory Opinions 393
Margaretha Wewerinke-Singh, Julian Aguon and Julie Hunter

- 18 Litigation under the United Nations Convention on the Law of the Sea: Opportunities to Support and Supplement the Climate Change Regime 415
James Harrison
- 19 Trade and Climate Disputes before the WTO: Blocking or Driving Climate Action? 433
Harro van Asselt
- 20 International Arbitration of Climate-Related Disputes: Prospects for Alternative Dispute Resolution 462
Patrick Thieffry
- 21 Climate Change Litigation before the International Criminal Court: Prospects in Theory and Practice 481
Nema Milaninia and Jelena Aparac
- Appendix 1: Table of Cases 507
- Appendix 2: Table of International Instruments and National Legislation 523
- Index 537