



As the climate changes, is international law changing too ?

Patrick Baeten

Energy Community Dispute Resolution Forum – Vienna, 19 September 2019

Selected topics



Multilateral environmental agreements

Global Pact for the Environment



Investment protection treaties

The 2019 Netherlands Model BIT

The Energy Charter Treaty renegotiated



Disputes

Litigating for change






Stakeholders initiatives

IBA report on « *Achieving Justice and Human Rights in an Era of Climate Disruption* »

ICC (draft) report on « *Resolving Climate Change Related Disputes through Arbitration and ADR* »

Multilateral environmental agreements

Global Pact for the Environment

United Nations	A/RES/72/277
 General Assembly	Distr.: General 14 May 2018
United Nations	A/73/419*
 General Assembly	Distr.: General 30 November 2018
United Nations	
 General Assembly	Distr.: Gene 13 June 2019 Original: En
Seventy-second Agenda item 1	
Seventy-third Agenda item 1 Integrated an United Nation	
72/277.	
Ad hoc open-ended working group established pursuant to General Assembly resolution 72/277 Third substantive session Nairobi, 20–22 May 2019 Item 5 of the provisional agenda Consideration of the draft report of the ad hoc open-ended working group	

**Report of the ad hoc open-ended working group established
pursuant to General Assembly resolution 72/277**

Article 3 Integration and sustainable development

Parties shall integrate the requirements of environmental protection into the planning and implementation of their policies and national and international activities, especially in order to promote the fight against climate change, the protection of oceans and the maintenance of biodiversity.

They shall pursue sustainable development. To this end, they shall ensure the promotion of public support policies, patterns of production and consumption both sustainable and respectful of the environment.

Further reading

- <https://globalpactenvironment.org/uploads/EN.pdf>
- https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/277
- <https://globalpact.informea.org/sites/default/files/documents/Gap-Report-Final.pdf>
- http://wedocs.unep.org/bitstream/handle/20.500.11822/28213/Report_GlobalPact_Advance.pdf?sequence=13&isAllowed=y

Investment protection treaties

Netherlands Model Investment agreement

“Modernisation” of the Energy Charter Treaty

6. Within the scope and application of this Agreement, the Contracting Parties reaffirm their obligations under the multilateral agreements in the field of environmental protection, labor standards and the protection of human rights to which they are party, such as the Paris Agreement, the fundamental ILO Conventions and the Universal Declaration of Human Rights. Furthermore, each Contracting Party shall continue to make sustained efforts towards ratifying the fundamental ILO Conventions that it has not yet ratified.

8. Except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Contracting Party that are designed and applied in good faith to protect legitimate public interests, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity, do not constitute indirect expropriations.

The Modernised ECT should reflect climate change and clean energy transition goals and contribute to the achievement of the objectives of the Paris Agreement.



Brussels, 2 July 2019
(OR. en)

10745/19
ADD 1

LIMITE

ENER 397
WTO 190
FDI 20

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	9305/19 + ADD 1
Subject:	Negotiating Directives for the Modernisation of the Energy Charter Treaty - Adoption

Further reading

<file:///C:/Users/fhe222/Downloads/nieuwe+modeltekst+investeringsakkoorden.pdf>

<https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-231-F1-EN-MAIN-PART-1.PDF>

<https://data.consilium.europa.eu/doc/document/ST-10745-2019-ADD-1/en/pdf>

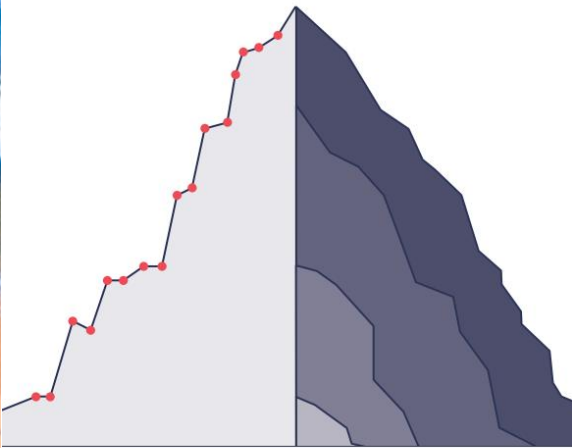
Litigating for change

Global trends in climate change litigation: 2019 snapshot

Joana Setzer and Rebecca Byrnes

Policy report

July 2019



- Climate change litigation is increasingly viewed as a tool to influence policy outcomes and corporate behaviour
- Human rights and science are both playing an increasing role in climate change litigation
- Climate change litigation continues to see a geographic expansion
- Litigation could encourage private companies and investors to give greater consideration to climate risk
- As yet there is insufficient evidence of the impacts of climate change litigation



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Ways you can help



Further reading

http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/07/GRI_Global-trends-in-climate-change-litigation-2019-snapshot-2.pdf

<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=eeba0764-2243-49e3-a6ef-96ebf1e5fba3>

<https://www.clientearth.org/>

Stakeholders initiatives

Achieving Justice and Human Rights in an Era of Climate Disruption

International Bar Association
Climate Change Justice and Human Rights
July 2014



Recommendation highlights

The Task Force recommendations include:

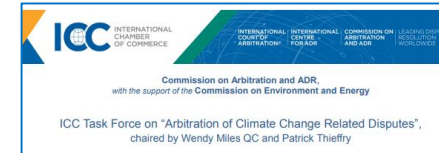
- clarifying and vindicating rights connected with climate change justice under international and regional human rights law by leveraging and, where necessary, 'greening' existing rights, outlining a minimum core of rights and duties relevant to climate justice, and recognising free-standing environmental rights;
- creating an IBA working group to develop a Model Statute on Legal Remedies for Climate Change, drawing on the success of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration;
- increasing international recognition of corporate responsibility for human rights harms stemming from climate change;
- seizing opportunities to accommodate states' 'pro-climate' policies within WTO law, and actively recognising and promoting climate change and environmental objectives within the WTO;
- enhancing the UNFCCC process to develop dispute resolution mechanisms for human rights protections;
- using the UN Universal Periodic Review (UPR) process to highlight climate justice concerns for developing countries before a broad audience; and
- creating an IBA Working Group on the Legal Aspects of Adaptation to develop effective and practical solutions for global climate change adaptation problems, including migration, food security and technology transfer.

Chapter 3 sets out recommendations across the following areas:

- **Legal measures** (climate change justice measures for individuals and communities; states; and corporations);
- **Capacity building and transparency;** and
- **Institutional measures** (the WTO; bilateral and regional trade agreements; the UNFCCC negotiations; and multilateral adaptation measures).

Further reading

<https://www.ibanet.org/PresidentialTaskForceClimateChangeJustice2014Report.aspx>



The purpose of this Report is to examine the role for ICC arbitration and ADR services in the resolution of international disputes related to climate change. The Report first defines climate change related disputes, providing case studies as appropriate, and then explores current and potential use of ICC arbitration and ADR to resolve such disputes and goes on to identify six broad features that potentially enhance the existing procedures to further improve their effectiveness for resolving climate change related disputes. These features, which parties to a climate change related dispute may wish to take into account (together with arbitral tribunals the case being) include, where appropriate and on a case-by-case basis: (i) securing relevant expertise, scientific, technical or otherwise, to ensure that decisions reflect sound and up-to-date knowledge in a new and fast-moving area; (ii) highlighting opportunities to use faster and more effective procedures commensurate with the complexity, urgency and special sensitivities of a collaborative climate change response; (iii) exploring the opportunity for integration of climate change policy, commitments or law into the dispute resolution procedure; (iv) weighing the possible benefits of some increased measure of transparency; (v) considering options for third party involvement in the dispute resolution procedure; and (vi) addressing the role of costs in ensuring that appropriate stakeholders are able to participate in the dispute resolution process.

Further reading

When approved, the report will be posted on

<https://iccwbo.org/dispute-resolution-services/commission-on-arbitration-and-adr/>



“Almost as a prophylactic against climate guilt, as the news from science has grown bleaker, western liberals have comforted themselves by contorting their own consumption patterns into performances of moral or environmental purity – less beef, more Teslas, fewer transatlantic flights. But the climate calculus is such that individual lifestyle choices do not add up to much, unless they are scaled by politics. That should not be impossible, once we understand the stakes.”

David Wallace-Wells, *The Uninhabitable Earth*