

Index

Aarhus Convention, 116, 123, 142, 179 attribution, human influence on, 27-32 ACHPR. See African Commission on observed climate change, 27-29 Human and Peoples' Rights (ACHPR) weather/climate extreme events, 29-32 and impacts, 32 ACHR. See American Convention on Human Rights (ACHR) on ecosystems and societies, 32-37 actio popularis, 136, 483, 487 on humanity, 35-37 adaptation, 15, 65-67 widespread and unprecedented, 32 cases, 173, 181-182 Argentina admissibility, 5, 131–144, 178, 192, 283, 383 climate remedies of, 469 intergenerational equity in, 363 in Belgium, 138 in Colombia, 137-138, 139-140 rights of Nature in, 285, 291 CRC, 135-136 rights-based climate litigation, 190, 214, 215, 361, definition, 131 366, 383-384 atmosphere, definition, 18 ECtHR, 134, 141 atmospheric trust, 250–274. See also public trust emerging best practice, 138-141 IACHR, 134, 140 Inuit Peoples petition against United States constitutional recognition framework, 259-266 over climate change, 134-135 emerging best practice, 267-272 Germany, 268-270 IACtHR, 134 in Nepal, 138 Hawai'i, 266 in Netherlands, 138–139, 143 India, 261-262 litigation, 6-7, 109 in New Zealand, 139 replicability, 141-143 Netherlands, 268 state of affairs, 133-138 Pakistan, 262-263 Philippines, 261 and victim status, 136-137 aerosols, 23, 27 rise of, 256 African Commission on Human and Peoples' United States Rights (ACHPR), 140-141, 212 Arizona, 257 air, public rights/sovereign's duty in, 259-261 California, 267 Alaska Constitution, 258 Montana, 265 New Mexico, 260 American Convention on Human Rights (ACHR), 134, 208, 209, 467 Oregon, 257, 270-272 Article 1, 221 Pennsylvania, 250-260 Article 1(1), 134 Texas, 264-265 Washington, 263, 264, 273 Article 33(a), 134 amici curiae, 142 attribution science, 4, 10, 79, 393, 399, 422. anthropogenic climate change, 24, 110, 122, 155, See also specific attributions 269, 297, 410, 420, 423, 486 in Africa, 93-94



attribution science (cont.)	biosphere, 18
in the Americas, 96–97	black carbon, 235
in Asia, 97–99	Brazil
in Europe, 99–100	climate stability in, recognition of right to, 293
event, 80, 81, 86–92	deforestation in, 285
human influence, 27	international environmental law of, 311
source, 80–81, 84–86	intrinsic value of Nature in, 284–285
in South Pacific/Oceania, 94–95	Brazilian Constitution, 284, 293
trend, 80, 83–84	Article 225, 284
uncertainty, 101	
weather/climate extreme events, 29–32	Canada
attribution studies, 418–421	causation in, 407–408
European heatwave (2003), human	climate causality of, 436, 440–441
contribution to, 423	Greenhouse Gas Pollution Pricing Act
Australia	(GGPPA), 317, 318
adaptation case, 182	intergenerational equality claim in, 357
carbon budget, 464	international law for statutory discretion
	· · · · · · · · · · · · · · · · · · ·
causation in, 400–403	interpretation in, 317 judicial review, 161
climate remedies of, 454–456, 464	,
ecological harm/damage in, 282	justiciability in, 151
floodgates defence in, 246	Trail Smelter principle, 200–201
Indigenous Peoples equality claim in,	carbon budget, 55–62, 352, 431, 463–464, 491, 492
357–358, 384, 390	carbon dioxide removal (CDR), 55
intergenerational equity in, 354–356	Carbon Majors Inquiry CHRP, 178, 191–192, 197,
international law in, 307, 309	217–218, 313, 387, 410–411, 426–427, 502
justiciability in, 150–151	leadership role in report of, 333
project-based cases, 180	causation, 9–10, 107, 108, 129, 211, 360, 391–414
causation in, 400–401	and attribution, 399. See also climate causality
rights-based climate cases, 190–191	in Australia, 400–403
human rights obligations, 194, 197	in Canada, 407–408
standing in, 119–122, 126, 127	in climate context, 392–393
- 1.	defence in common responsibility, 329
Belgium	and duty of care, 402–403
admissibility in, 138	emerging best practice, 409-412
carbon budget of, 464	ITLOS Advisory
climate remedies of, 461–462, 464	Opinion/KlimaSeniorinnen's decision
duty of care, 231	implications on, 494
breach of, 154	in France, 408
minimum, 461–462	general, 392, 415, 424
minimum standard, 229	and human rights, 398-399, 400, 410-411, 413
intergenerational equity in, 360, 362	in Kenya, 401
international law utilization in, 306	in Netherlands, 406–407, 411–412
rights-based climate cases, 189	in New Zealand, 404–405
standing in, 115–116, 124	in Norway, 405
best available science, 146, 184, 474, 478, 485–486,	policy and regulation, challenges to, 405-408
488, 489, 495	in prevention-focused cases, 409, 410
duty of care, 224, 228–229	in project-based cases, 400–405
with international law for minimum standard	replicability, 412–413
of care determination, 314-316	specific, 392, 415, 424
separation of powers, 164-166	standing and, connection between, 394
biodiversity, 58, 67, 157, 280, 282, 285, 291, 294,	defendant, nature of, 397
295, 297	plaintiff, nature of, 395-397
climate change and, relation between, 11, 503-504	in US federal courts, 395
loss, 294	theory of adequate, 425



in tort law, 394	IPCC Working Groups, 16, 81
in United States, 401, 405–406	irreversibility, 43–44
CBDR-RC. See common but differentiated	land/ocean removing atmospheric carbon
responsibilities and respective capabilities	dioxide, 52–53
(CBDR-RC)	link between human rights and, 172
CDR. See carbon dioxide removal (CDR)	maladaptive responses to, 67
children's rights, 112, 180, 188, 333, 355, 361, 455.	mitigation action, 53–65
See also intergenerational equity	nature impacts, 14–15
in Argentina, 190, 214, 215, 361, 366, 383–384	regional changes and risks, 48–50
CRC. See UN Committee on the Rights of the	risks and limits, 44–47
Child (CRC)	scenarios and global temperatures, 37–39
CHRP. See Commission on Human Rights of the	species extinctions, 34
Philippines (CHRP)	Climate Change Response Act (New Zealand),
climate ambition, 133	308, 315
climate attribution science, 79–81. See also	climate feedback, 22, 45, 52
attribution science	climate harms. See harm(s)
climate causality, 415–444	climate justice, 127, 160, 193, 321, 468, 473, 499,
of Canada, 436, 440–441	501, 502, 504, 505, 506
of China, 441	climate model, 20, 37
of Columbia, 439	climate remedies. See remedies
of Czech Republic, 435	climate science, 418–421
emerging best practice, 430	climate system, components, 17, 18
emissions-intensive projects/activities,	atmosphere, 18
permissibility of, 437–439	biosphere, 18
national climate targets and measures,	cryosphere, 18–19
reviewing, 433–437	greenhouse effect, 23–24
normative lens, expanding, 439–442	hydrosphere, 18
scope of relevant emissions, determination	lithosphere, 19
of, 431–433	natural variability, 20–23
of England, 434–435	scientific evidence types, 19–20
of France, 435–436	CO ₂ -equivalents (CO ₂ -eq), 24
of Indonesia, 439	Colombia
of Kenya, 438	adaptation case, 182
for legal attribution, 421–429	admissibility in, 137–138, 139–140
normative correctives, 425-427	Advisory Opinion of the IACtHR (2017)
normative correctives vs. logical	requested by, 207
fundamentals, 427–429	climate remedies of, 454
of Netherlands, 431, 432–433	holistic approach, 460-461
of New South Wales, 438-439	duty of care and breach, 154-155
of Norway, 431	intergenerational equity in, 350
replicability, 442-443	remedies, 362
of Scotland, 431	international law in, 307
of South Africa, 438	international law obligations with domestic
of United Kingdom, 441–442	climate case law, 387
of United States, 439	public trust doctrine, 258
climate change, 4. See also anthropogenic	rights of Nature in, 279–280
climate change	fundamental rights to recognition of, 287–288
abrupt changes, 43–44	rights-based climate cases, 187–188, 195
anthropogenic, 24	standing in, 124–125
attributing human-induced, to societal	Commission on Human Rights of the
impacts, 36–37	Philippines (CHRP), 178, 191, 218, 313,
human-induced, 14, 29–32	333, 387, 411, 426, 502
impacts, fast and slow onset, 39–43	Committee on Economic, Social and
impacts on human rights 188–102	Cultural Rights (CESCR) 212



510 Index

common but differentiated responsibilities and air, 259-261 healthy environment, 261-263 respective capabilities (CBDR-RC), 8, and intergenerational equity, 267-270 320-343, 384 in Advisory Opinion by IACtHR, 341 natural resources, 263-266 common responsibility, 322-323, 328 constitutional rights, 117, 118, 138, 150, 153, 155, causation defence, 329 167, 172, 179, 182, 186, 188, 195, 234-237, 258, 262, 263, 265, 267, 278, 289, 290, 291, of Germany, 334-335 international cooperation, 323, 328-329, 335 295, 310, 311, 387, 398, 454, 460 for interpretation of scope of legal consumption-based emissions, 14, 25 obligations, 330 corporations redressability defence, 329 duty of care, 226-227, 229-230, 231-232, CRC's fair share obligations, 333 239-241, 246 differentiation responsibilities and capabilities litigation against. See private polluters, of State's 'fair share', 323, 331-332 litigation against CRC. See UN Committee on the Rights of the of Germany, 332, 335-336 leadership role, 324-325, 332-333, 336-338, 339 Child (CRC) cryosphere, 18-19 of Netherlands, 332 culture, right to. See right to culture of New South Wales, 332-333 normative expectations, 323-326, 331 customary international law, 210 obligations, 375 in Paris Agreement, 324, 325-326 of Philippines, 333 breach of, 375-376 self-differentiation, 324, 331 Czech Republic emerging best practice, 334 climate causality of, 435 Germany's international engagement of duty of care and breach, 155, 246 constitutional obligation, 334-336, 338-339 ITLOS Advisory damage cases, climate change-induced, Opinion/KlimaSeniorinnen's decision 173, 182-184 implications on, 490-492 declaratory relief, 461 Netherlands' leadership role and per capita Draft Articles on Responsibility of States for emissions, 336-338, 339 Internationally Wrongful Acts, 448-449 in Global South, 340-341 Article 33, 449 "drop in the ocean" defence, 230-231, 245-246, 329, in international climate law, 322-326 in international human rights cases, 341 389, 406, 409, 410, 412, 431, 478, 493, 494 dualist legal system, 304, 307, 318 in Italy, 340 due diligence, 194, 210, 225, 233, 242, 293, 320, in Poland, 340 replicability, 340-342 375, 376, 377, 380, 381, 475, 485, 488, in South Korea, 340 490, 495, 502 common law, 120 due process, 236-237 Dutch Constitution, 268, 388, 452, 457 common responsibility, 322-323 causation defence, 329 duty of care, 6, 151, 153, 161, 223-249, 356, 403 of Germany, 334-335 and atmospheric trust, 268-270 international cooperation, 323, 328-329, 335 Australia, floodgates defence in, 246 for interpretation of scope of legal Belgium, 154, 229, 231 for biodiversity protection with rights of obligations, 330 redressability defence, 329 Nature, 285 compensation, 11, 183, 191, 193, 211, 283, 296, 363, breach of, 154, 234, 236, 237, 239, 258, 268-270, 389, 439, 446, 449, 470, 501 313, 391 compliance-oriented remedies, 464-465 causation and, 402-403 compound extreme events, 41 for CBDR-RC, 328, 331, 337 Conference of the Parties to the UNFCCC Colombia, 154-155 (COP), 153, 374, 500 corporation, 226-227, 229-230, 231-232, Constitution of the Kingdom of Netherlands, 268 239-241, 246 constitutional grounding, 271-272 Czech Republic, 155, 246 constitutional recognition, 251, 259-266, 272, 273 defence of respondents/defendants, 230-232



"drop in the ocean" defence, 230–231, 245–246 emerging best practice	ECtHR. See European Court of Human Rights (ECtHR)
from constitutional rights, 234–237 for corporations, 239–241	Ecuador, 289, 454 'Accion de Proteccion', 278
drop in the ocean defence, 245–246	violation of rights of Nature, 288–291
environmental impact assessment, 241–245	Ecuadorian Constitution, 277, 278, 290
floodgates defence, 246	EIA. See environmental impact assessment (EIA)
future emissions targets and future	embedded emissions, 488
	emerging best practice (EBP), 2, 4
generations, 237–239 hybrid duty of care arguments, 232–234	admissibility, 138–141
ITLOS Advisory	best available science, reliance on, 485–486
Opinion/KlimaSeniorinnen's decision	
implications on, 489	causation, 409–412, 494 CBDR-RC, 334–339, 490–492
floodgates defence, 231–232, 246	climate causality, 430–442
France, 228, 237–238 Germany, 155, 228, 229, 231, 234–235, 238–239,	duty of care, 232–246, 489
245, 247–248, 268–270	extraterritorial(ity), 211–219, 488–489
	intergenerational equity, 363–367, 493
human rights, 187, 192, 195, 196	international law, 309–317, 490
India, 235–236 and international law for national law standards	public trust doctrine, 267–272, 489 remedies, 456–465, 495
interpretation, 309–310	
Nepal, 155	rights of Nature, 281–294, 489–490 rights-based climate litigation, 184–196,
Netherlands, 154, 226–227, 229–230, 232–234,	
239–241, 245, 246, 247, 248–249, 268	487–488
New Zealand, 230, 231–232	separation of powers, 159–166, 487 standing, 122–127, 486–487
Pakistan, 155–156	State responsibility, 389–390, 493–494
public trust doctrine, 292–294	
replicability, 247–249	urgency, recognition of, 484–485 emissions-intensive projects/activities, 437–439
standard of, 224	energy systems, 63
Climate Change Reduction Act 2002	enforceable obligation, 156–157
(New Zealand), 225–226	procedural, 157–158
international law, 224–229	substantive, 158–159
IPCC and best available science, 228–229	Environment Protection Act of 1970 (EP Act)
minimum, 229, 314–316, 461–462	(Australia), 120
Paris Agreement, 224–229	environmental directive principle, 367
soft law, 229–230	environmental impact assessment (EIA), 157,
United States, 230, 236–237, 245	241–245, 258, 354, 400, 401
2 27 17	Directive 85/337, 286
EBP. See emerging best practice (EBP)	of Kenya, 242–243
ECHR. See European Convention on Human	of Norway, 244–245
Rights (ECHR)	of South Africa, 243–244
ecocentric law, 275-276, 277, 279, 281, 282, 283,	Environmental Planning and Assessment
287, 288, 292, 294–296, 297, 298	Act (EPA Act) (New South Wales,
ecojustice/ecological justice, 282, 287	Australia), 120
Ecological Constitution, 280	Environmental Protection Act of 1997 (Nepal), 459
ecological harm/damage, 282	Environmental Protection Agency (EPA)
in Australia, 282	(United States), 108
definition, 283	Environmental Protection Authority (EPA)
in France, 283	(Australia), 120
in Nepal, 282–283	EP Act. See Environment Protection Act of 1970
pure ('préjudice écologique'), 283, 296	(EP Act) (Australia)
ecological integrity, preservation of, 286-287, 291	EPA. See Environmental Protection Agency
ecologically sustainable development, 355	(EPA) (United States); Environmental
ecosystem risk and impacts on 22-25 52 66	Protection Authority (EPA) (Australia)



512 Index

EPA Act. See Environmental Planning and emerging best practice, 211-212 Assessment Act (EPA Act) (New South GHG emissions production, accountability Wales, Australia) for, 218-210 equality claims, 356-358 ITLOS Advisory equitable climate mitigation policy, 349-353 Opinion/KlimaSeniorinnen's decision erga omnes obligations, 373, 380 implications on, 488-489 Escazú Agreement, 179 obligations, growing recognition of, 212-214 European Committee of Social Rights (ECSR), 385 private actors, 215-218 European Convention on Human Rights standing, 214-215 (ECHR), 305, 306, 310, 346, 353, 405, 407, human rights obligations, scope of, 201-202 462, 478, 487, 488, 491, 495 IACtHR Advisory Opinion (2017), 207–210 Article 1, 209, 219 ICJ, transnational environmental cases and, Article 2, 116, 125, 145, 153, 154, 156, 158, 161, 179, 210-211 194, 224, 226, 231, 233, 234, 239, 305, 306, regional human rights institutions, 207-210 replicability, 219-220 313, 353, 398, 407, 452, 462, 477 Article 6(1), 478 Trail Smelter principle, 200-201 Switzerland's violation of, 478, 481-482 extreme event attribution, 82, 86. See also event Article 8, 116, 145, 153, 154, 156, 158, 161, 179, 194, attribution science 224, 226, 231, 233, 234, 305, 306, 313, 353, fair share. See common but differentiated 398, 407, 452, 462, 477, 478, 479, 480, 493 Switzerland's violation of, 478, 480, 481, responsibilities and respective capabilities 483, 493 (CBDR-RC) Article 13, 467, 478 Federal Climate Protection Act (Germany), 160 fiduciary duty, 254 Articles 34-35, 134 extraterritorial obligations, 209-210 food and water security, 35 in KlimaSeniorinnen. See KlimaSeniorinnen case food systems, 63 European Court of Human Rights (ECtHR), 2, fossil fuel, phasing out, 63 11, 134, 141, 174, 186, 208, 209, 210, 219, 221, France 226, 310, 398, 457, 472, 480, 486, 487, 488, adaptation case, 182, 183 489, 495, 496, 498, 499, 503 causation in, 408 Article 41, 467 climate causality of, 435-436 intergenerational equity in, 346 climate remedies of, 453, 457-458, 465 in KlimaSeniorinnen. See KlimaSeniorinnen case duty of care, 228 future emissions targets, 237-238 European Court of Justice (ECJ), 111, 112, 113, ecological harm/damage in, 283 117, 123, 128 European Union, standing in, 111-117, 123, 129 international law in, 306-307 event attribution science, 80, 81, 415, 419, 422 international law obligations with domestic definition and scope, 86-87 climate case law, 387 international norms, reliance on, 162 probabilistic, 423-424 studies, methodologies and models in, 87-88 standing in, 116-117, 126 drought, 90-91 freedom rights, 234, 235, 248 heat, 89 fundamental rights, 113, 115, 124, 125, 126, 137, 140, heavy rainfall and flooding, 90 156, 160, 186, 187, 189, 196, 234, 239, 258, 261, 262, 263, 265, 268, 271, 272, 277, 285, wildfire, 91-92 exhaustion of domestic remedies, 132, 133, 134, 135, 293, 294, 296, 297, 310, 352, 361, 395, 433, 440, 447, 461, 463, 466, 505 136, 139, 140, 141, 144, 214, 312, 361, 384, 477 to recognition of rights of Nature, 287-292 external natural variability, 21, 22 extraterritorial(ity), 6, 200-222 future generations, 106, 114, 116, 118, 124, 126, 138, definition, 203 139, 140, 160, 187, 189, 195, 205, 234, 247, 282, 284, 287, 288, 293, 295, 344, 345, 346, domestic courts, 203 foreign plaintiffs (Germany), 203-204 347, 348, 349, 350, 358, 359, 361, 383, 384, GHG emissions (Norway), 205-207 396, 397, 440, 455, 458, 463, 489, 493 judicial orders, domestic and international climate change effects on children, 345 (Netherlands), 204-205 duty of care for, 237-239



public trust doctrine and, 258, 259, 260, 268,	regional differentiations, 26
269, 270	regional distribution, 69
rights/interests of. See intergenerational equity	Scope 1, 2 and 3 emissions, 227, 239
	sources and trends, 24-26
general causation, 392, 415, 424	Trail Smelter principle, 200-201
general environmental law, 430	greenhouse gas metrics, 54
generational damage, 278	Greenhouse Gas Pollution Pricing Act (GGPPA)
German Constitution, 153, 155, 157, 160, 268, 314	(Canada), 317, 318
Germany	
Basic Law, 115, 126, 234, 238	hard adaptation limits, 66-67
carbon budget, 463	harm(s), 391-392, 393, 409, 410. See also causation
CBDR-RC, 332, 334-336, 338-339	collective, 394
climate remedies of, 458-459, 463, 469	commingling product theory, 394
duty of care, 228, 231, 245, 247–248	future, 409
breach of, 155, 239	human rights, 410
from constitutional rights, 234–235	market share liability theory, 394
for future generations, 238–239	reasonable foreseeability of, 399, 403, 409
minimum standard, 229, 314–315	reasonably foreseeable risk of, 400
extraterritoriality, 203-204	harm prevention principle, 303
fair share of, 332	Hawaiʻi Constitution, 260
Federal Climate Protection Act	healthy environment, right to. See right to healthy
(Klimaschutzgesetz – KSG), 234	environment
injunctive relief, 463	historical emissions, 56, 78
intergenerational equity in, 351–353, 361, 362	human rights, 5–6, 171–199, 239, 284, 285, 292.
distributional assessment, 364	See also rights-based climate litigation
international law obligations with domestic	ACHR. See American Convention on Human
climate case law, 387	Rights (ACHR)
judicial review, 160–161	adjudication, 163–164
procedural obligation, 157–158	arguments in duty of care, 232–234, 239–240
public trust doctrine, 268–270	causation and, 398–399, 400, 410–411, 413
rights-based climate cases, 189–190, 195, 196	CBDR-RC in human rights cases, 341
standing in, 114–115, 124, 125–126	complaints in international human rights
GHG. See greenhouse gas (GHG) emissions	bodies, 380–384
Glasgow Climate Pact, 315, 327, 482	complaints in regional human rights bodies,
global carbon budget, 326–327, 463–464, 481, 491	385–386
global climate jurisprudence, 444, 472	duty of care, 187, 192, 195, 196, 232–234
global emission pathways, 59–61, 62, 78	ECHR. See European Convention on Human
global warming	Rights (ECHR)
carbon dioxide emissions cause, 54-55	ECtHR. See European Court of Human Rights
human-induced, 35	(ECtHR)
overshooting 1.5°C, risk with, 50–52	greening of, 292, 294, 310–312
GMST (global mean surface temperature), 85	IACHR. See Inter-American Commission on
governments, litigation against, 502-503	Human Rights (IACHR)
Greece	IACtHR. See Inter-American Court of Human
human rights violation, 385–386	Rights (IACtHR)
project-based cases in, 180–181	law. See international human rights law
Green Constitution, 280	obligations, 6, 193–196, 201–202, 208, 212,
greenhouse effect, 23–24	214, 215, 216–217, 240, 310, 313, 333, 374,
greenhouse gas (GHG) emissions, 13, 14	377–378, 379, 380, 390, 407, 465, 478
accountability for production, 218–219	territorial, 212–214
domestic, 218–219	rights of Nature and, 275, 276, 277, 281, 294,
extraterritoriality, 205–207	295, 296
global net anthropogenic, 25, 69	UN. See UN Human Rights Committee
regional contributions of, 14	violation of, 288–291, 363, 377–378, 379



514

human rights (cont.) Inter-American Commission on Human Rights CRC on mitigation and, 333 (IACHR), 134, 140, 141, 467 Greece, 385-386 Advisory Opinion, 382 Netherlands, 312-313, 398 Article 26, 135 New Zealand, 383 Article 31.1, 135 Philippines. See Carbon Majors Article 51, 467 Inquiry CHRP Inuit Peoples petition against United States Queensland, 399 over climate change with, 134-135 human-induced climate change, 14, 29-32, 93. Inter-American Court of Human Rights See also anthropogenic climate change (IACtHR), 134, 190, 285, 289, 312, 319, 350, drought, 90-91 364, 379, 450, 468 Advisory Opinion (2017), 190, 202, 207–210, ecosystems/societies, impacts on, 32-34 212, 215, 220, 221, 280, 285, 312, 321, heat, 80 379, 387 heatwave, 95 heavy rainfall and flooding, 90 CBDR-RC in, 341 humanity, impacts on Article 63(1), 467 disease, illness, and death, 35-36 state's actions, 209 food and water security, 35 Inter-American Human Rights System (IAHRS), migration, 36 141, 467 vulnerability, 36 intergenerational equity, 8-9, 251, 252, 259, IPCC, 81, 82 267-270, 303, 344-369, 401, 441, 489 to societal impacts, attributing, 36-37 children, climate change effects on present and wildfire, 91-92 future generation, 345-346 CRC definition, 348-349 in domestic courts, 349–363 IACHR. See Inter-American Commission on Human Rights (IACHR) emerging best practice, 363-364 IACtHR. See Inter-American Court of Human anti-discrimination and equal protection Rights (IACtHR) law, 365 considerations in permitting and planning IAM. See Integrated Assessment Models (IAMs) ICCPR. See International Covenant on Civil and decisions, 364-365 Political Rights (ICCPR) fair distribution of obligations, 364 ICESCR. See International Covenant on flexible approach to standing and class Economic, Social and Cultural Rights certification, 365-366 (ICESCR) fostering children and young people's in ICJ. See International Court of Justice (ICJ) courtrooms participation, 366 ILC. See International Law Commission (ILC) ITLOS Advisory impact models, 38 Opinion/KlimaSeniorinnen's decision implications on, 493 in dubio pro natura principle, 291, 295 India judicial remedies for long-term and Constitution, 261, 262 participatory implementation, 366-367 duty of care from constitutional rights, 235-236 by ICJ, 349 intergenerational equity in, 350, 354 in international and regional litigation, 346 National Green Tribunal (NGT), 235, 261 in international law, 348-349 public trust doctrine, 255, 261–262 replicability, 367 rights of Nature in, 278-279 standing and class certification, 358-361 standing in, 119, 126 State obligations Indigenous Peoples Argentina, 363 climate impacts on, 190-191, 194, 197 Australia, 354-356 equality claim in Australia, 357-358, 384, 390 Australia, Indigenous Peoples equality claim injunctive relief, 445, 454, 463, 470 in, 357-358, 384, 390 'injury to all is injury to none' principle, 107, 124 Belgium, 360, 362 integral reparation, 448, 449-450, 470, 471 Canada, equality claim in, 357 Integrated Assessment Models (IAMs), Colombia, 350, 362 37-38, 57, 58 in courtroom procedure, 358-361



decision-making, permitting and consent,	International Covenant on Economic, Social and Cultural Rights (ICESCR), 201, 213, 216,
353–356	
equitable climate mitigation policy, 349–353	468, 469
Germany, 351–353, 361, 362, 364	international environmental law, 303
India, 350, 354	of Brazil, 311
Manila Bay, 351	CRC on, 312
Nepal, 362	IACtHR on, 311–312
Netherlands, 353, 362	and international human rights law, 310–312
non-discrimination challenges against	of Nepal, 311
government, children and young people,	obligations, breach of, 376-377
356–358	of Pakistan, 310–311
Pakistan, 358	Stockholm Declaration, 200, 344, 348
Philippines, 350–351, 358–359	transboundary harm, 188, 202, 208, 211, 214, 241,
remedies, 362–363	375, 376, 379, 380, 384, 504
South Africa, 350	international human rights law, 133, 188, 201–202,
Sri Lanka, 354	212, 213, 215, 216, 233, 240, 301, 302, 304,
United States, 350, 353, 360-361	310–312, 446. See also human rights; rights-
United States, equality claim in, 356-357	based climate litigation
intergenerational justice, 344, 350, 358-359, 367	integral reparation in, 449-450
Intergovernmental Panel on Climate Change	obligations, breach of, 377-378
(IPCC), 2, 224, 345, 393, 418, 419	violation of
assessment attributes, 27	Netherlands, 312–313
Assessment Report 5 (AR5), 323	Philippines. See Carbon Majors
attribution science in, 79, 81–83	Inquiry CHRP
in crafting remedial design, 469–470	international law, 301–319, 443. See also harm
fair shares, 15–16	prevention principle; intergenerational
Fifth Assessment Report (AR5), 82, 85	equity; Kyoto Protocol; Paris Agreement;
Fourth Assessment Report (AR4), 423	precautionary principle; United Nations
Reasons for Concern (RFC), 45–47	Framework Convention on Climate
scenarios, definition, 37	Change (UNFCCC)
Sixth Assessment (AR6), 13–14, 16, 17, 28, 326,	in Australia, 307, 309
327, 338, 342, 419	in Belgium, 306
extreme weather event, 419	CBDR-RC principle, 322–326
Mitigation report (Working Group III), 39–43	in Colombia, 307
Physical Science report (Working Group I), 38	
	for duty of care, 224–229
Synthesis Report, 82	emerging best practice
temperature goal and carbon budgets in, 326–327	for determining minimum standard of care,
Working Groups, climate change, 16, 81	314–316
international atmospheric trust. See	and greening of human rights, 310–312
atmospheric trust	ITLOS Advisory
international climate law, 7–8	Opinion/KlimaSeniorinnen's decision
International Court of Justice (ICJ), 202, 371	implications on, 490
advisory opinions, 380–381	for national law standards interpretation,
intergenerational equity by, 349	309–310
transnational environmental cases and,	range of norms, 312–313
210-211	for statutory discretion interpretation, 316–317
International Covenant on Civil and Political	environment. See international
Rights (ICCPR), 201, 357	environmental law
Article 2, 213	in France, 306–307
Article 2(3)(a), 191	intergenerational equity in, 348–349
Article 6, 179, 190, 191, 239	Kyoto Protocol, 304
Article 17, 179, 182, 191, 239, 358	modern, 304
Article 24(1), 455	in Netherlands, 305–306, 309–310
Article 27, 182, 190, 358	in New Zealand, 308, 315–316



Index 516 international law (cont.) with constitutional grounding, 271-272 Paris Agreement, 302-303 inter-state climate litigation, 504-505 remedies in, 446, 447-449 intragenerational equity, 288 reparation in, 448-449 intrinsic value of Nature, 281, 282, 283-284, 291, replicability, 317-318 292, 295 Rio Declaration on Environment and in Brazil, 284-285 Development, 348 IPCC. See Intergovernmental Panel on Climate South Africa, 316-317 Change (IPCC) state of affairs, 305-309 treatment of, by national courts, 303-304 climate remedies of, 464-465 in UK, 307-308 substantive obligation in, 158 United Nations Framework Convention on irreversibility, 43-44 Climate Change (UNFCCC), 185, 302 ITLOS. See International Tribunal for the Law of International Law Commission (ILC), 446 the Sea (ITLOS) Draft Articles on Responsibility of States for IUCN. See International Union for the Internationally Wrongful Acts, 448-449 Conservation of Nature (IUCN) international law obligations, 371-372 attributing, 379 judicial review, 159-161 breach of, 372-373, 375-378 judicialization, 149 concerning climate change, 373-375 just transition cases, 173, 184 customary international law, 375-376 justiciability, 148-150 and domestic climate law, 386-389 Australia, 150-151 Colombia, 387 Canada, 151 France, 387 New Zealand, 151–152 Germany, 387 United States, non-justiciability in, 150 Netherlands, 388-389 Pakistan, 386-387 Philippines, 387-388 causation in, 401 environmental obligations, 376-377 climate causality of, 438 erga omnes obligations, 373, 380 environmental impact assessment, 242-243 human rights obligations, 374, 377-378, 380 KlimaSeniorinnen case, 477 in international climate treaties, 373-374 Article 6(1) ECHR violation, 478, 481-482 in international law-making bodies, 374 Article 8 ECHR violation, 478, 480, transboundary harm, 188, 202, 208, 211, 214, 241, 481, 483 375, 376, 379, 380, 384, 504 background, 477-478 international norms, effect, 162-163 and emerging best practice, 484-495 International Tribunal for the Law of the Sea implications in climate litigation, 496 (ITLOS), 2, 499, 503 judicial scrutiny, level of, 480–481 Advisory Opinion, 381-382, 473-474, 485, margins of appreciation, 480-481 503, 504 Paris Agreement, role of, 478 anthropogenic GHG emissions as marine positive obligations, 479-480 pollution, 475, 485 standing, 483-484 COSIS Agreement, 474-475 State responsibility, 482-483 and emerging best practice, 484-495 Kyoto Protocol, 226, 247, 302, 304, 374 implications in climate litigation, 495-496 jurisdiction, 474-475 Least Developed Countries (LDCs), 25 Paris Agreement, role of, 476-477, 485 legal attribution, 421-429, 444 specific obligations of States, 476, 485 normative correctives, 425-427 Article 21, 474 vs. logical fundamentals, 427-429 Article 138, 474-475 legal personhood protection, 128 legal remedies, 447-451 International Union for the Conservation of Nature (IUCN), xiv life, right to. See right to life inter-resource affectation, 251, 266-267, 273, 274 locus standi, 112. See also standing

to atmosphere, 270-271

loss and damage, 173, 182-184, 500-501



Maastricht ETO Principles, 216	Dutch Civil Code, 106, 154, 226, 233, 239
mandamus (writ of), 118, 119, 445-446, 460	duty of care, 153, 226–227, 230, 239–241,
marine pollution, 475	245, 247
minimum standard of care, 229, 314-316	and atmospheric trust, 268
for climate remedies, 461-462	corporation, 154, 229–230, 232, 248–249
mitigation, climate change, 53	floodgates defence, 232, 246
mitigation actions, 62-65	human rights arguments, 232-234
Paris Agreement, 53	minimum standard, 229
policies, legislation and enabling conditions, 65	soft law, 229–230
stabilise global temperature	extraterritoriality, 203, 204-205
carbon budget, 55–62	fair share of, 332
CDR, 55	emissions per capita rights (EPC) for
net zero, 54–55	determining, 336–337
monist legal system, 303, 318	human rights law violation, 312–313
Montana Constitution, 265, 267	causation and, 398
Multilateral Environmental Agreements	human rights obligations, 216–217
(MEAs), 374	intergenerational equity in, 353, 362
mutandis mutandi, 142	international law in, 309-310
, I	international law obligations with domestic
national climate targets and measures, 433-437	climate case law, 388–389
National Environmental Management Authority	international law utilization in, 305-306
(NEMA) (Kenya), 157	judicial review, 161
nationally determined contributions (NDCs), 15,	rights-based climate cases, 178–179
53, 221, 225, 237, 244, 247, 285, 303, 311, 316,	climate impacts on human rights, 189-190
324, 335, 376–377, 379, 435	human rights obligations, 194–195, 196
natural climate solutions, 275	interpretative method in, 185–187
natural resources trust, 254	rights-based reasoning, 197
natural variability, 20–23	standing in, 106, 114, 125, 128
external, 22	substantive obligation, 158–159
internal, 22	net-zero carbon dioxide emissions, 54-55
Nature, rights of. See rights of Nature	New Mexico Constitution, 260
NDCs. See nationally determined	New Zealand
contributions (NDCs)	admissibility in, 139
NEMA. See National Environmental	causation in, 404–405
Management Authority (NEMA) (Kenya)	duty of care, 230
Nepal	Climate Change Reduction Act 2002
adaptation case, 182	(New Zealand), 225–226
admissibility in, 138	floodgates defence, 231–232
climate remedies of, holistic approach, 459-460	human rights violation, 383
duty of care and breach, 155	international law in, 308, 315-316
ecological harm/damage in, 282–283	justiciability in, 151–152
intergenerational equity in, 362	rights of Nature in, 279
international environmental law, 311	rights-based climate cases, 183–184
loss and damage cases, climate change-	human rights obligations, 196
induced, 182–183	rights-based reasoning, 197
Netherlands	standing in, 110–111, 127
admissibility in, 138–139, 143	'no harm' principle, 194, 375, 388, 475
causation in, 406–407, 411–412	non-governmental organisations (NGOs),
CBDR-RC, 332	114, 116, 117
leadership role and per capita emissions,	non-traditional public trust resources, 252,
336–338, 339	256, 266
climate causality of, 431, 432–433	Norway
climate remedies of, 452–453, 457	causation in, 405
domestic GHG emissions 210	climate causality of 421



Index 518 preamble, 315, 374 Norway (cont.) domestic GHG emissions, 218-219 UK breach of, 307-308 environmental impact assessment, 244-245 pecuniary compensation, 470 extraterritoriality, 203, 205-207 Pennsylvania Constitution, 259, 260 Norwegian Constitution, 431 Philippine Constitution, 117, 218, 351 Article 112, 205-207 Philippines Carbon Majors Inquiry, 178, 191-192, 197, Optional Protocol to the Convention on the 217-218, 313, 387, 410-411, 426-427 Rights of the Child, 126 fair share of, 333 Article 5(4), 174 GHG emissions, 219 Article 7 (e), 135, 136 intergenerational equity in, 350-351 on Communications Procedure, 174 intergenerational justice in, 358-359 Rules of Procedure, 139 international law obligations with domestic climate case law, 387-388 public trust doctrine, 261 adaptation case, 181-182 standing in, 117-119, 126 climate remedies of, holistic approach, 460 Plaumann test, 112, 113, 123, 129, 137 Constitution, 182, 262 political question doctrine, 109, 361 duty of care and breach, 155-156 Portugal human rights adjudication, 164 domestic GHG emissions, 219 intergenerational justice in, 358 intergenerational equity in, 346 international environmental law, 310-311 precautionary principle, 163, 187, 188, 189, 266, international environmental obligations with 278, 284, 286, 289, 291, 292, 295, 303, 355, domestic climate case law, 386-387 398, 495 judicial review, 160 present generations, 138, 139, 258, 259, 260, 269, 270, 287, 293, 295, 344, 348, 350, public trust doctrine, 262-263 rights of Nature in, 291-292 354, 358, 359, 363, 383, 463. See also rights-based climate cases, 186 intergenerational equity climate change effects on children, 345-346 climate impacts on human rights, 189 human rights obligations, 195 private and family life, right to. See right to rights-based reasoning, 197 private and family life Paris Agreement, 1, 17, 18, 26, 115, 154, 162, 164, 171, private polluters, litigation against, 173, 178-179, 172, 183, 185, 186, 188, 194, 206, 221, 224-229, 216–217, 219, 220, 410, 501–502 Carbon Majors Inquiry. See Carbon Majors 237, 238, 239, 240, 244, 246, 247, 302–303, Inquiry CHRP 304, 308, 309, 311, 313, 315, 316, 317, 374, 387, 407, 409, 430, 434, 443, 453, 478 duty of care. See corporations, duty of care adaptation, 66 in Netherlands, 138-139, 154, 165, 178-179, Article 2(1)(a), 315, 330 186–187, 203, 204–205, 229–230, 232, 248-249, 432-433 Article 2(2), 324 probabilistic event attribution, 423-424 Article 4, 325, 376 Article 4(1), 315 procedural obligations, 146, 156, 157-158, 164, 233, Article 8, 500 353, 354, 375 breach of State obligations under, 376-377 project-based cases, 173, 179-181 carbon budgets, 326-327 causation in, 400-405 fair share in, 321, 324 public natural resources, 259 in ITLOS Advisory Opinion, role of, 476-477, public rights, 232, 251, 255, 256, 259-261, 263, 265, 485 271, 273, 274 in KlimaSeniorinnen case, role of, 478 public trust, 253, 292 long-term temperature goal, 14, 26, 53, 186, 225, atmospheric commons protection through, 309, 313, 321, 326–327, 330, 339, 340, 341, 355, 292-294 litigation model, 254 377, 405, 434, 464, 485, 486, 491, 492, 502 mitigation, 53 purpose, 254, 266 nationally determined contributions (NDCs), res, 254, 256, 261, 263, 265, 266, 267, 271, 274 53, 221, 225, 237, 244, 285, 303, 311, 316, 324, resources, 251, 252, 259, 266

rights, 272

376-377, 379, 435



public trust doctrine, 250-252, 353	regional human rights institution, 207-210
of Colombia, 258	climate change complaints, 385–386
constitutional recognition framework, 259, 274	remedies, 10, 108, 109, 119, 135, 136, 140, 151, 152,
air, 259–261	157, 163, 175, 196, 198, 216, 278, 293, 296,
healthy environment, 261–263	329, 347, 348, 368, 373, 377, 378, 391,
and intergenerational equity, 267–270	393, 394, 395, 397, 398, 411, 445–471
natural resources, 263–266	in administrative law, 447
duty of care for rights of Nature, 292–294	of Argentina, 469
emerging best practice, 267–272	of Australia, 454–456, 464
ITLOS Advisory	of Belgium, 461–462, 464
Opinion/KlimaSeniorinnen's decision	of Colombia, 454, 460–461
implications on, 489	constitutional, 447
Germany, 268–270	definition, 451
historical scope of, 255–256	domestic, exhaustion of. See exhaustion of
India, 255, 261–262	domestic remedies
inter-resource affectation, 266–267, 274	emerging best practice, 456
to atmosphere, 270–271	compliance-oriented remedies, 464–465
with constitutional grounding, 271–272	effective redress and, 457–459
judicial interpretation of, 257–259	global carbon budget, 463–464
nature of, 253	holistic approach to, 459–461
Netherlands, 268	ITLOS Advisory
Pakistan, 262–263	Opinion/KlimaSeniorinnen's decision
Philippines, 261	implications on, 495
replicability, 273–274	minimum standard of care, 461–462
sovereign trustees, 250, 253, 254, 258, 259, 260,	of France, 453, 457–458, 465
262, 267, 270, 272, 292, 293	of Germany, 458–459, 463, 469
sovereign's authority, restrictions on, 254–255	injunctive relief, 445
trust property, 254, 257, 259, 261	intergenerational equity role in, 362–363,
of Uganda, 258–259	366–367
United States, 255–256	international cooperation for, 468–469
Alaska, 257–258	IPCC in crafting remedial design, 469–470
Arizona, 257	of Ireland, 464–465
California, 267	legal, 447–451
Hawaiʻi, 260–261, 266	of Montana, 459
Montana, 265	of Nepal, 459–460
New Mexico, 260	of Netherlands, 452–453, 457
Oregon, 257, 270–272	of Pakistan, 460
Pennsylvania, 259–260	in public international law, 447–449
Texas, 264–265	reparation. See reparations
Washington, 263, 264, 273	replicability, 465–470
violation of, 264, 271	in tort law, 447
punitive ecology, 283, 296	reparations, 159, 193, 211, 363, 367, 373, 389, 445,
quasi territorial approach 206	450, 470, 501
quasi-territorial approach, 206	compensation, 11, 183, 191, 193, 211, 283, 296,
nutions losi es	363, 389, 439, 446, 449, 470, 501
ratione loci, 134	of ecological harm, 282–283, 435
ratione materiae, 134	forms of, 446
ratione personae, 134, 136	injunctive relief, 454, 463, 470
ratione temporis, 134	integral, 448, 470, 471
reasonable foreseeability of harm, 399, 403, 409 reasonably foreseeable risk of harm, 400	in international human rights law,
	449–450 obligation of 448, 440
Reasons for Concern (RFC), 45–47 redressability, 105, 107, 108, 109, 127, 129, 136, 150,	obligation of, 448–449 in public international law, 448–449
	restitution, 445
209, 215, 329, 330, 335, 360, 372, 381, 393,	satisfaction, 449
395, 396, 445, 447, 457–459, 501	3011310CHOH, 449



520 Index

replicable jurisprudence. See also emerging ecocentric interpretation of law, 275-276, 277, best practice (EBP) 279, 281, 282, 283, 287, 288, 292, 294-296, admissibility, 141-143 297, 298 causation, 412-413 Ecuador CBDR-RC, 340-342 'Accion de Proteccion', 278 violation of, 288-291 climate causality, 442-443 duty of care, 247-249 emerging best practice, 281 extraterritoriality, 219-220 atmospheric commons protection through human rights, 197-198 public trust, 292-294 intergenerational equity, 367 ecological harm, reparation of, 282-283 international law, 317-318 ecological integrity, preservation of, 286-287 public trust doctrine, 273-274 fundamental rights to recognition of, 287-292 intrinsic value of Nature, 283-285 remedies, 465-470 rights of Nature, 294-296 ITLOS Advisory separation of powers, 166-167 Opinion/KlimaSeniorinnen's decision standing, 127-129 implications on, 489-490 State responsibility, 389-390 human rights and, 275, 276, 277, 281, 294, 295, 296 res, public trust, 254, 256, 261, 263, 265, 266, 267, in India, 278–279 inherent rights, 279, 294 271, 274 intrinsic value of Nature, 281, 282, 283-285, 291, resilience, 65-67 restitution, 445, 449 292, 295 restorative ecology, 296 in New Zealand, 279 RFC. See Reasons for Concern (RFC) in Pakistan, 291–292 right to culture, 136, 180, 182, 190, 358, 365, 383, public trust doctrine, 292-294 replicability, 294-296 384, 390 right to effective remedies, 113, 179, 191, 407, state of affairs, 276-280 violation of, 288, 289 462, 478 right to health, 118, 136, 137, 140, 153, 155, 179, 190, rights-based climate litigation, 171-199 195, 288, 289, 383, 385 adaptation/loss/damage cases, 173, 181-184 right to healthy environment, 119, 140, 155, 167, in Argentina, 190, 214, 215, 361, 366, 383-384 179, 186, 206, 235, 248, 258, 261–263, 280, in Australia, 180, 182, 190-191, 194, 197 284, 285, 288, 289, 292, 295, 296, 310, 311, in Belgium, 189 in Colombia, 182, 187-188, 195 350, 358, 364, 367, 378, 387, 413, 431 right to human dignity, 140, 182, 186, 262, 288, against corporations, 178-179 310, 460 developed countries obligations to human right to information, 263 rights protection, 183-184 right to life, 125, 136, 137, 139, 140, 145, 153, 155, emerging best practice, 184 156, 167, 179, 180, 182, 184, 187, 189, 190, climate change impacts on human rights, 191, 194, 195, 196, 206, 212, 213, 216, 224, 188-193 233, 234, 235, 262, 272, 288, 292, 295, 310, interpretive techniques, 184-188 311, 353, 357, 383, 384, 385, 405, 407, 455, ITLOS Advisory Opinion/KlimaSeniorinnen's decision 460, 462, 477 right to private and family life, 112, 145, 153, 187, implications on, 487-488 States' human rights obligation, 193-196 189, 194, 206, 224, 233, 353, 357, 358, 384, 385, 390, 405, 407, 462, 478 in France, 182, 183 in Germany, 189-190, 195, 196 right to property, 112, 180, 263, 272 right to remedy. See remedies in Greece, 180-181 rights of Nature, 7, 128, 275-298 Indigenous Peoples, climate impacts on, in Argentina, 285, 291 190–191, 194, 197 biodiversity and climate change, relation jurisprudence in, 179 iust transition cases, 173, 184 between, 504 in Colombia, 279-280, 287-288 in Nepal, 182-183 duty of care for protecting biodiversity with, 285 in Netherlands, 178-179, 185-187, 189-190, Earth Jurisprudence, 277 194-195, 196, 197



in New Zealand, 183–184, 196, 197	soft law, 229–230, 233, 309, 312–313
in Pakistan, 181–182, 186, 189, 195, 197	Solar Radiation Modification measure, 55
project-based cases, 173, 179–181	solidarity, principle of, 188, 288
replicability, 197–198	source attribution science, 80-81, 424
rights-based reasoning, 197–198	definition and scope, 84–85
in South Africa, 179–180	methodologies and models in, 85
systemic mitigation cases, 173, 176–179	studies, 85–86
Rio Declaration on Environment and	South Africa
Development, 348, 456	climate causality of, 438
Principle 10, 457	environmental impact assessment, 243-244
risks	intergenerational equity in, 350
definition, 44	international law for statutory discretion
with increased global warming, 50–52	interpretation, 316–317
Road Sharing Principle, 118	project-based cases in, 179-180
	special damage rule, 110–111, 127
satisfaction, 449	Special Rapporteur on Human Rights and
scientific evidence, 19–20	Climate Change, 172
separation of powers, 5, 145–168	Special Rapporteur on the Right to Health, 212
adjudication, stages of, 148-159	specific causation, 392, 415, 424
concept of, 147	SPEI. See Standardized Precipitation
definition and methods, 147–148	Evapotranspiration Index (SPEI)
duty of care and breach, 154	SSP. See Shared Socioeconomic Pathways (SSPs)
Belgium, 154	standard of care, 224, 312
Colombia, 154–155	international law
Czech Republic, 155	Climate Change Reduction Act 2002 (New
Germany, 155	Zealand), 225–226
Nepal, 155	Paris Agreement, 224–229
Pakistan, 155–156	IPCC and best available science, 228-229
emerging best practice, 159	minimum, 229
human rights adjudication, 163–164	for climate remedies, 461–462
international norms, giving effect to, 162-163	international law for determining, 314–316
ITLOS Advisory	soft law, 229–230
Opinion/KlimaSeniorinnen's decision	Standardized Precipitation Evapotranspiration
implications on, 487	Index (SPEI), 94
judiciary role in applying law, 159–161	standing, 105–130, 149, 236
legally enforceable norms, developing,	Australia, 119–122, 126, 127
164–166	causation and, connection between, 394–397
functional conception, 147, 148, 149, 150	Colombia, 124–125
justiciability, 148–150	core principles, 130
Australia, 150–151	emerging best practice, 122-127
Canada, 151	ITLOS Advisory
New Zealand, 151–152	Opinion/KlimaSeniorinnen's decision
United States, non-justiciability case, 150	implications on, 486–487
legal right/duty, recognising, 152–154	European Union, 111–112, 129
political significance and issues, 146	Belgium, 115–116, 124
relational conception, 147–148, 149	France, 116–117
replicability, 166–167	Germany, 114–115, 124, 125–126
state of affairs, 148–159	Netherlands, 106, 114, 125, 128
Uganda, 166	The People's Climate Case, 113
Shared Socioeconomic Pathways (SSPs), 38	Plaumann test, 112, 113, 123
Sharm el-Sheikh Implementation Plan, 327, 482	Sabo v European Parliament, 112–113
SIDS. See Small Island Developing States (SIDS)	extraterritorial(ity), 214–215 India, 119, 126
Small Island Developing States (SIDS), 25 soft adaptation limits, 66	of intergenerational equity, 358–361
our anaptation mills, or	or intergenerational equity, 350-301



522

Index

standing (cont.) Texas Constitution, 265 KlimaSeniorinnen, 483-484 TFEU. See Treaty on the Functioning of the legal personhood protection, 128 European Union (TFEU) tipping points, 43-44 New Zealand, 110-111, 127 Philippines, 117-119, 126 traditional public trust resources, 251, 252 plaintiffs, obstacles for, 106-107 Trail Smelter principle, 200-201 transboundary harm, 188, 202, 208, 211, 214, 241, principle, 5 replicability, 127-129 375, 376, 379, 380, 384, 504 requirements, 150 transnational environmental cases, 210-211 in Australia, 120 Treaty on the Functioning of the European in New Zealand, 110 Union (TFEU), 112 in United States, 105 Article 191, 112 Article 263, 447 rights of Nature protections, 128 state of affairs, 107-122 Article 263(4), 112, 113 United States, 108-109, 127, 129 trend attribution, 80 State obligations, intergenerational equity in, definition and scope, 83 methodologies and models in, 83-84 349-363 state of affairs studies, 84 admissibility, 133-138 trias politica, 147 causation, 400-408 trust CBDR-RC, 327-333 definition, 253 international law, 305-309 principles, 253-255 remedies, 451-456 tutela, 125, 127, 138, 139-140, 360, 454 rights of Nature, 276-280 rights-based climate litigation, 176-184 Ugandan Constitution, 258 separation of powers, 148-159 UN Committee on the Rights of the Child standing, 107-122 (CRC), 126, 135-136, 177, 188, 209, 214, State responsibility, 380-389 216, 312 State responsibility, 9, 371-390 in Argentina children's rights claim, 190, 215, advisory opinions, 380 366, 383-384 IACHR, 382 climate change effects on present and future ICJ, 380-381 generation children, 345-346 ITLOS, 381-382 fair share obligations, 333 emerging best practice, 389-390 General Comment 26, 338, 348-349, 366, 455 ITLOS Advisory on mitigation and human rights violation, 333 Opinion/KlimaSeniorinnen's decision UN Convention on the Law of the Sea implications on, 493-494 (UNCLOS), 377, 473 human rights complaints Article 1(1)(4), 475 in international human rights bodies, 380-384 ITLOS Advisory Opinion under. See in international quasi-judicial/non-judicial International Tribunal for the Law of the human rights bodies, 382-384 Sea (ITLOS), Advisory Opinion in regional human rights bodies, 385-386 UN Guiding Principles on Business and Human in KlimaSeniorinnen case, 482-483 Rights (UNGPs), 215, 313, 399 law of. See international law obligations Principle 13, 411 replicability, 389-390 Principle 22, 411 UN Human Rights Committee, 139, 177, 182, 183, statutory discretion, 316-317 Stockholm Declaration, 348 190, 194, 196, 197, 198, 357, 365, 367, 455 Principle 1, 344 General Comment 36, 216 Principle 21, 200 New Zealand human rights violation, 383 UN Human Rights Council, 374 substantive due process, 271-272, 273 substantive obligation, 156, 157, 158-159, 233, 350 UNCLOS. See UN Convention on the Law of sustainable development, 303, 348, 350, 355 the Sea (UNCLOS) systemic integration, principle of, 142 UNEP. See United Nations Environment systemic mitigation cases, 173, 176-179 Programme (UNEP)



Index 523

UNFCCC. See United Nations Framework Convention on Climate Change (UNFCCC) UNGPs. See UN Guiding Principles on Business and Human Rights (UNGPs) United Nations Environment Programme (UNEP), 15, 81 Emissions Gap Report, 53 United Nations Framework Convention on Climate Change (UNFCCC), 17, 153, 162, 183, 185, 188, 194, 195, 226, 227, 301, 302, 315, 322, 323, 374 Article 3, 344 Article 4(4), 204 United States causation in, 401, 405-406 and standing in US federal courts, connection between, 395 climate causality of, 439 Constitution, 105, 109 Due Process Clause, 236, 271, 272 duty of care, 230, 245 from constitutional rights, 236-237 intergenerational equity in, 350, 353 equality claim, 356-357 restrictive standing requirements, 360-361 non-justiciability in, 150 public trust doctrine, 255-256 Alaska, 257-258 Arizona, 257 California, 267 Hawai'i, 260-261, 266 Montana, 265

New Mexico, 260

Oregon, 257, 270-272 Pennsylvania, 259-260 Texas, 264-265 Washington, 263, 264, 273 standing in, 105, 108-109, 127, 129 Trail Smelter principle, 200-201 VCAT Act. See Victorian Courts and Tribunals Act (VCAT Act) VCLT. See Vienna Convention on the Law of Treaties (VCLT) Victorian Courts and Tribunals Act (VCAT Act), 120 121 Vienna Convention on the Law of Treaties (VCLT), 142 Article 31, 138 Article 31(1), 185 Article 31(3), 310 Article 31(3)(c), 226 vocational nexus theory, 122 WCEL. See World Commission on Environmental Law (WCEL) WMO. See World Meteorological Organization (WMO) Working Groups, IPCC, 16, 81 Working Group I (WG1), 81, 419 Working Group II (WG2), 81, 275

Organization (WMO)

Working Groups, IPCC, 16, 81

Working Group I (WG1), 81, 419

Working Group II (WG2), 81, 275

Working Group III (WG3), 81

World Commission on Environmental Law

(WCEL), xiv–xv, 2–3

World Meteorological Organization (WMO), 81

writ of kalikasan, 118–119, 359

writ of mandamus. See mandamus (writ of)