



INSTITUT DE HAUTES
ÉTUDES INTERNATIONALES
ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
DEVELOPMENT STUDIES

International Law

Academic year 2021-2022

Climate Change and International Law

DI085 - Autumn - 6 ECTS

Tuesday 10h15 - 12h00

Course Description

This course explores the role of international law in devising ways to mitigate further climate change, and to adapt to those impacts that are already inevitable. The course includes an examination of the current international legal framework on climate change, with particular emphasis on the Paris Agreement, the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. The course also addresses the impact of climate change on other areas of international law - including human rights law, trade law, and migration law - and explores the most recent developments in climate change litigation. The course will enable students to understand and critically assess the role of international law in addressing climate change.

> PROFESSOR

[Anne Saab](#)

[Office hours](#)

> ASSISTANT

[Karem Luisa Cárdenas Ynfanzón](#)

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Syllabus

COURSE SCHEDULE:

Classes for this course will take place on Tuesdays from 10:15 – 12:00 in room S5.

COURSE ASSESSMENT:

Students in the course will be assessed through class attendance and participation (10%), a written position paper and oral presentation on one of the in-class debate topics (30%), and a final essay (60%).

Detailed guidelines and evaluation criteria for the position paper/debate and the final essay can be found in Annex I, and will be made available on Moodle and clarified during the first class.

COURSE MATERIALS:

The course readings will be made available on Moodle as much as possible. Those readings not on Moodle will be available in the library and/or accessible via electronic books or journals.

Some basic readings include:

- Daniel Bodansky, Jutta Brunnée & Lavanya Rajamani, [*International Climate Change Law*](#). Oxford University Press, 2017.
- Kevin R. Gray, Richard Tarasofsky & Cinnamon Carlarne (eds) [*The Oxford Handbook of International Climate Change Law*](#). Oxford University Press, 2017.
- Rosemary Rayfuse & Shirley Scott (eds) [*International Law in the Era of Climate Change*](#). Edward Elgar, 2012.
- Jonathan Verschuuren (ed) [*Research Handbook on Climate Change Adaptation Law*](#). Edward Elgar, 2013.
- Geert Van Calster, Wim Vandenberghe & Leonie Reins (eds) [*Research Handbook on Climate Change Mitigation Law*](#). Edward Elgar, 2015.
- Stephen Humphreys (ed) [*Climate Change and Human Rights*](#). Cambridge University Press, 2009.
- Mike Hulme (ed) *Contemporary Climate Change Debates* (Routledge 2020)

COURSE OUTLINE:

Topic 1 – INTRODUCTION (21 September 2021)

This session will provide an introduction to the course and to the topics. The course assessments and expectations will be discussed.

Readings:

- Intergovernmental Panel on Climate Change, [*Climate Change 2021: The Physical Science Basis: Summary for Policymakers*](#).
- V. Masson-Delmotte, P. Zhai, H. O. Pörtner et al (eds) [*Global warming of 1.5°C.*](#), IPCC 2018. Summary for Policymakers.
- Mike Hulme, 'Introduction: Why and How to Debate Climate Change', in Mike Hulme (ed) *Contemporary Climate Change Debates* (Routledge 2020), pp.1-5.

Topic 2 – CLIMATE CHANGE AND INTERNATIONAL LAW (28 September 2021)

This class will provide an overview of the relationship between climate change and international law. We will consider how different areas of international law deal with the impacts of climate change.

- Rosemary Rayfuse and Shirley V. Scott, 'Mapping the Impact of Climate Change on International Law' in Rosemary Rayfuse & Shirley V. Scott (eds) *International Law in the Era of Climate Change*. Edward Elgar, 2012: 3-25.
- Daniel Bodansky, Jutta Brunnée & Lavanya Rajamani, 'Introduction' in Daniel Bodansky, Jutta Brunnée & Lavanya Rajamani (eds) *International Climate Change Law*. Oxford University Press, 2017.
- Kevin R. Gray, Richard Tarasofsky & Cinnamon Carlarne, 'International Climate Change Law: Mapping the Field', in Kevin R. Gray, Richard Tarasofsky & Cinnamon Carlarne (eds) *The Oxford Handbook of International Climate Change Law*. Oxford University Press, 2017.

Topic 3 – THE UNFCCC AND THE KYOTO PROTOCOL (5 October 2021)

This class will focus on the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, as the international legal framework on climate change.

Readings:

- 1992 [United Nations Framework Convention on Climate Change](#), 1771 U.N.T.S. 107 (1992).
- 1997 [Kyoto Protocol to the United Nations Framework Convention on Climate Change](#), 37 I.L.M. 22 (1998).
- David Freestone, 'The United Nations Framework Convention on Climate Change—The Basis for the Climate Change Regime' in Kevin R. Gray, Richard Tarasofsky & Cinnamon Carlarne (eds) *The Oxford Handbook of International Climate Change Law*. Oxford University Press, 2017: 98-117.
- Harro Van Asselt, Michael Mehling and Clarisse Kehler Siebert. 'The Changing Architecture of International Climate Change Law' in Geert Van Calster, Wim Vandenberghe & Leonie Reins (eds) *Research Handbook on Climate Change Mitigation Law*. Edward Elgar, 2015.

Topic 4: THE PARIS AGREEMENT (12 October 2021)

In this session we will look at the Paris Agreement, the outcome of the COP21 held in Paris in late 2015, and which entered into force in November 2016.

Readings:

- [Paris Agreement](#), FCCC/CP/2015/L.9/Rev.1, 12 December 2015:
- Daniel Bodansky, Jutta Brunnée & Lavanya Rajamani, *International Climate Change Law*. Oxford University Press, 2017. Chapter 7: 'Paris Agreement', pp.209-250.
- Raymond Cléménçon, '[The Two Sides of the Paris Climate Agreement Dismal Failure or Historic Breakthrough?](#)' *The Journal of Environment and Development* 25(1) (2016), 3-24.
- Ralph Bodle, Lena Donat and Matthias Duwe, 'The Paris Agreement: Analysis, Assessment and Outlook' *Carbon & Climate Law Review* 10(10) (2016), 5-22.

Topic 5 – CLIMATE JUSTICE (19 October 2021)

This class will focus on the obligations and responsibilities related to climate change impacts. Emphasis will be on the concept of 'common but differentiated responsibility' and the idea of 'climate justice'.

Readings:

- Simon Caney. '[Cosmopolitan Justice, Responsibility, and Global Climate Change](#)' *Leiden Journal of International Law* 18 (2005), 747-775.
- Edward A. Page. '[Distributing the Burdens of Climate Change](#)' *Environmental Politics* 17(4) (2008), 556-575.
- Rosemary Lyster. '[Climate Justice, Adaptation, and the Paris Agreement: A Recipe for Disasters?](#)' *Environmental Politics* 26(3) (2017).
- Chukwumerije Okereke & Philip Coventry, '[Climate Justice and the International Regime: Before, During, and After Paris](#)' *WIREs Climate Change* 7 (2016), 834–851.
- Paul G. Harris and Kenneth Shockley, 'Do Rich People Rather Than Rich Countries Bear the Greatest Responsibility for Climate Change?' in Mike Hulme (ed) *Contemporary Climate Change Debates* (Routledge 2020), pp. 146-159.

***Class debate 1: The beneficiary pays principle should be central in informing climate laws and policies.**

Topic 6 – CLIMATE CHANGE AND THE FRAGMENTATION OF INTERNATIONAL LAW (26 October 2021)

In the previous classes we looked at the UNFCCC, the Kyoto Protocol, and the Paris Agreement as the international legal framework regulating climate change action. There are, however, many other

areas of international law that are relevant in understanding and addressing climate change. This class will explore the complex of international law relevant to climate change.

Readings:

- Margaret Young. 'Introduction: The Productive Friction Between Regimes' in Margaret Young (ed) *Regime Interaction in International Law: Facing Fragmentation*. Cambridge University Press, 2012: 1-20.
- Robert O. Keohane and David G. Victor. '[The Regime Complex for Climate Change](#)' The Harvard Project on International Climate Agreements, Discussion Paper 10-33, January 2010.
- Harro van Asselt, Francesco Sindico, and Michael A. Mehling. '[Global Climate Change and the Fragmentation of International Law](#)' *Law & Policy* 30(4) (2008), 423-449.

***Class debate 2: A regime complex for climate change is preferable to a single coherent system of international climate change law.**

Topic 7 – IN-CLASS PREPARATION SESSION FOR FINAL ESSAY (2 November 2021)

This class session will be dedicated to working on students' final essays, which are due at the end of the course. For this, each student must prepare a detailed outline of their essay to be discussed in class. This session will allow students to share their essay ideas and receive input from their peers, as well as from the teaching faculty. Details for the session will be provided on Moodle and in class.

TOPIC 8 – CLIMATE CHANGE AND HUMAN RIGHTS (9 November 2021)

In this class, we will explore the linkages between climate change and human rights. The impacts of climate change have in recent years increasingly come to be seen as potential threats or even violations of human rights. At the same time, human rights are presented as part of the solution to climate change.

Readings:

- Stephen Humphreys. 'Introduction: Human Rights and Climate Change' in Stephen Humphreys (ed) *Human Rights and Climate Change*. Cambridge University Press, 2009: 1-34.
- Philippe Cullet, 'Human Rights and Climate Change: Broadening the Right to Environment' in Kevin R. Gray, Richard Tarasofsky & Cinnamon Carlarne (eds) *The Oxford Handbook of International Climate Change Law*. Oxford University Press, 2017: 496-514.
- Daniel Bodansky, Jutta Brunnée & Lavanya Rajamani, *International Climate Change Law*. Oxford University Press, 2017. Chapter 9: 'Intersections between International Climate Change Law and Other Areas of International Law', pp.296-313.
- Catriona McKinnon and Marie-Catherine Petersmann, 'Is Climate Change a Human Rights Violation?' in Mike Hulme (ed) *Contemporary Climate Change Debates* (Routledge 2020), pp.160-173.

UN Human Rights Council on human rights and climate change:

- [Human Rights Council Resolution 7/23 'Human rights and climate change.'](#)
- [Human Rights Council Resolution 10/4 'Human rights and climate change.'](#)
- UN Human Rights Council. '[Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights](#)' A/HRC/10/61, 15 January 2009.
- More documents and resources:
<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>

***Class debate 3: A human rights-based approach is necessary in dealing effectively with the impacts of climate change.**

Topic 9 – CLIMATE CHANGE AND THE RIGHTS TO HEALTH AND FOOD (16 November 2021)

Having explored the linkages between climate change and human rights last week, this week's class will focus on two specific rights, namely health and food, in relation to climate change.

Climate change and the right to health

Readings:

- Paul Hunt and Rajat Khosla. 'Climate Change and the Right to the Highest Attainable Standard of Health' in Stephen Humphreys (ed) *Human Rights and Climate Change*. Cambridge University Press, 2009: 238-256.
- Margaux J. Hall. '[Advancing Climate Justice and the Right to Health Through Procedural Rights](#)' *Health and Human Rights Journal* 16(1) (2014).

Climate change and the right to food

Readings:

- Elisabeth Caesens and Maritere Padilla Rodriguez. '[Climate Change and the Right to Food: A Comprehensive Study](#)' in Heinrich Boll Foundation (ed) *Heinrich Boll Stiftung Publication Series on Ecology*, Volume 8, Columbia Law School - Human Rights Institute, 2009. Executive Summary, pp.14-23.
- Olivier de Schutter. '[Climate Change and the Human Right to Adequate Food](#)' Contribution to the meeting convened by the Friedrich - Ebert - Stiftung with the Committee on Economic, Social and Cultural Rights. Geneva, 13 May 2010.

Topic 10 – CLIMATE CHANGE AND MIGRATION (23 November 2021)

Climate change is predicted to impact on the availability of natural resources, such as water, which in some cases necessitates people to migrate in order to survive. This class will look at climate change and migration, and the links with international law.

Readings:

- Jane McAdam, 'Climate Change-related Displacement of Persons' in Kevin R. Gray, Richard Tarasofsky & Cinnamon Carlarne (eds) *The Oxford Handbook of International Climate Change Law*. Oxford University Press, 2017: 520-536.
- Alice Edwards. 'Climate Change and International Refugee Law' in Rosemary Rayfuse & Shirley V. Scott (eds) *International Law in the Era of Climate Change*. Edward Elgar, 2012: 58-83.
- Mariya Gromilova and Nicola Jägers. 'Climate Change Induced Displacement and International Law' in Jonathan Verschuuren (ed) *Research Handbook on Climate Change Adaptation Law*. Edward Elgar, 2013: 70-109.
- David D. Zhang, Qing Pei, Christiane Fröhlich, and Tobias Ide, 'Does Climate Change Drive Violence, Conflict and Human Migration?' in Mike Hulme (ed) *Contemporary Climate Change Debates* (Routledge 2020), pp.51-64.

***Class debate 4: There should be a separate legal category for climate change migrants.**

Topic 11 – CLIMATE CHANGE AND STATEHOOD (30 November 2021)

Climate change is also having serious effects on state territories. This is particularly true for small-island developing states that are at risk of inundation. This class will look into climate change and statehood.

- Emily Crawford and Rosemary Rayfuse, 'Climate Change and Statehood' in Rosemary Rayfuse & Shirley V. Scott (eds) *International Law in the Era of Climate Change*. Edward Elgar, 2012: 243-253.
- Georgios Kostakos, Ting Zhang, and Wouter Veening, '[Climate Security and Justice for Small Island Developing States: An Agenda for Action](#)' The Hague Institute for Global Justice, Policy Brief 9, March 2014.
- Susannah Willcox. '[A Rising Tide: The Implications of Climate Change Inundation for Human Rights and State Sovereignty](#)' *Essex Human Rights Review* 9 (2012).

Topic 12 – CLIMATE CHANGE AND TRADE LAW (7 December 2021)

This class will focus on the links between climate change and trade law, highlighting the question of whether international trade law (particularly through the WTO) promotes or hinders climate change mitigation and adaptation.

- Daniel Bodansky, Jutta Brunnée & Lavanya Rajamani, *International Climate Change Law*. Oxford University Press, 2017. Chapter 9: 'Intersections between International Climate Change Law and Other Areas of International Law', pp.327-249.
- Markus W. Gehring, Marie-Claire Cordonier Segger, and Jarrod Hepburn. 'Climate Change and International Trade and Investment Law' in Rosemary Rayfuse & Shirley V. Scott (eds) *International Law in the Era of Climate Change*. Edward Elgar, 2012: 84-117.
- Patrick Low, Gabrielle Marceau, and Julia Reinaud. '[The Interface Between the Trade and Climate Change Regimes: Scoping the Issues](#)' World Trade Organization, Economic Research and Statistics Division, Staff Working Paper, 12 January 2011.
- Misato Sato, Timothy Laing and Mike Hulme, 'Are Carbon Markets the Best Way to Address Climate Change?' in Mike Hulme (ed) *Contemporary Climate Change Debates* (Routledge 2020), pp.83-95.

***Class debate 5: International trade law hinders climate change mitigation and adaptation.**

Topic 13 – CLIMATE CHANGE LITIGATION (14 December 2021)

In today's class we will look into climate change litigation. The examples of climate change-related cases brought before courts have mostly taken place within domestic jurisdictions. We will look at the possibilities of climate change litigation before international courts.

Readings:

- Andrew Strauss. '[Climate Change Litigation: Opening the Door to the International Court of Justice](#)' in William C. G. Burns, Hari M. Osofsky (eds) *Adjudicating Climate Change: State, National, and International Approaches*. Cambridge University Press, 2009: 334-356.
- Douglas A. Kysar. '[Climate Change and the International Court of Justice](#)', Yale Law School, Public Law Research Paper No. 315, 14 August 2013.
- Eloise Scotford, Marjan Peeters and Ellen Vos, 'Is Legal Adjudication Essential for Enforcing Ambitious Climate Change Policies?' in Mike Hulme (ed) *Contemporary Climate Change Debates* (Routledge 2020), pp.191-206.

Some examples of climate cases:

- [Inuit Petition to the Inter-American Court of Human Rights](#).
- [Milieudefensie et al. v. Royal Dutch Shell plc. \(2019\)](#).
 - Arthur Peterson, '[Shell ordered to cut its emissions – why this ruling could affect almost any major company in the world](#)', *The Conversation*, 1 June 2021.
 - '[Shell: Netherlands court orders oil giant to cut emissions](#)' BBC, 26 May 2021.
- Urgenda climate case against the Dutch government, see:
 - [Urgenda Foundation v. Kingdom of the Netherlands](#).
 - Urgenda, '[Dutch Government to Appeal in Groundbreaking Climate Case](#)', 1 September 2015.
 - Emma Howard, '[Hague Climate Change Judgment Could Inspire a Global Civil Movement](#)', *The Guardian*, 24 June 2015;
 - Mike Corder, '[Landmark Dutch Ruling: Government Must Back 25% Cut In Emissions To Protect Citizens](#)', *The Huffington Post*, 24 June 2015.
 - Marcos Orellano, '[Dutch Court Ruling on Human Rights Obligations to Halt Climate Case Ruling an Important Step toward Climate Justice](#)', Human Rights Watch, 10 October 2018.
- John Vidal, '[World's Largest Carbon Producers Face Landmark Human Rights Case](#)', *The Guardian*, 27 Jul 2016.
- [Juliana v. United States](#); see also: Robert Dugger, '[Juliana vs United States: An Inter-generational Fight for Climate Justice](#)', *Eco-Business*, 21 November 2018.

Topic 14 – DOCUMENTARY AND CLASS DISCUSSION (21 December 2021)

Annex I

Assessment guidelines and grading criteria

1. Class attendance and participation (10%)

Each student is expected to attend all classes, unless (s)he has a justified reason for absence. Active participation in classes is also expected; this includes active listening. Due consideration will be given to those students following (part of the) classes online.

2. Position paper and debates

30% of the mark for this course will be based on the submission of a position paper and on the oral presentation on one of the five class debates. You will find an overview of debate topics below. Students will be asked to give two preferences for debate topics by the start of week 3 of the semester (Monday 4 October 2021), and topics will be allocated by Tuesday 5 October 2021.

The objective of the position paper is to make a case for or against the statement that will be debated in class. While students will be able to indicate their preference for a topic, the side they will be arguing will be allocated.

Please find here the guidelines for the position papers.

- The word limit for the position paper is 1000 words (with 10% flexibility both ways), not inclusive of footnotes.
- The position paper must be submitted in the relevant folder on Moodle by midnight the day before the class.
- The position paper must include a clear indication of the position the student is arguing for.
- At least **three arguments** should be provided to support your position.
- The position paper should include references, including at least two references other than the assigned course readings.
- Any referencing style can be adopted, as long as it is used correctly and consistently.
- Position papers should demonstrate both an understanding of and a critical engagement with the course readings for the relevant topic.
- In class, each student who wrote a position paper on the class debate topic will receive maximum 5 minutes to present his or her arguments. After all the arguments are presented, the debate is opened up to the rest of the class.

Overview of class debate topics

	Class topic	Debate statement	Date
1	Climate justice	The beneficiary pays principle should be central in informing climate laws and policies.	19 October 2021
2	Fragmentation of international law	A regime complex for climate change is preferable to a single coherent system of international climate change law.	26 October 2021
3	Human rights	A human rights-based approach is necessary in dealing effectively with the impacts of climate change.	9 November 2021
4	Migration	There should be a separate legal category for climate change migrants.	23 November 2021
5	Trade law	International trade law hinders climate change mitigation and adaptation.	7 December 2021

3. Final essay

The final essay counts for 60% of the mark for this course. Each student is free to choose a topic that is related to the course, subject to approval. Essays topics must be submitted for approval by 26 October 2021, and final essays are due by **17 December 2021**, to be submitted via Moodle no later than **23:59h**.

Please find here the guidelines and the marking criteria for your essay:

Guidelines

- Your essay must be related to the topic of climate change and international law. You may choose one of the topics discussed in class, or a different topic (subject to approval).
- In your essay, you should identify clearly a problem, pose a research question, and present a well-substantiated answer to that question.
- Essays should be no more than 4000 words, including footnotes but excluding bibliography (with 10% flexibility both ways).
- Any citation style may be used, as long as it used consistently. (Frequently used citation styles include [OSCOLA](#), [Harvard style](#) [author and date, in-text citations], and [Chicago style](#).)
- Please submit your essay in pdf format.
- Please include a cover page with your name, the title of your essay, the name of the course, and the date.

Marking criteria (you can earn between 0-1 points for each of these criteria)

- **Topic and research question** – The topic of the essay must be relevant to the course. The essay must identify a clear problem, pose a well-defined research question, and provide a substantiated answer to the question.
- **Structure** – The essay should be well-structured, with an introduction, the main body divided into distinct but related arguments, and a coherent conclusion.
- **Clarity of analysis** – The arguments in the essay should reflect independent and critical analysis that engages directly with the research question posed, in an analytical rather than a descriptive manner.
- **Research/use of sources** – The essay should demonstrate both a breadth and a depth of reading. The research should go beyond the assigned readings for the course and cover materials relevant for the essay topic.
- **Citations/referencing** – References used must be cited correctly and consistently.
- **General presentation** – The essay should be well-presented, with a cover page, a title, sub-headings, and page numbers. It should be submitted on time and in the correct format.