

CLIMATE CHANGE LAW AND POLICY

THE ECONOMICS, ETHICS AND POLITICS OF CLIMATE CHANGE

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National Law University, Delhi
Fall 2014

Why climate change?

Climate change has emerged as a serious problem that challenges both our informal systems for regulating behavior (e.g., ethics) and our formal systems of governance (e.g., law).

The aim of this seminar course will be to provide students a comprehensive introduction to climate change law and policy. We will begin by using economics as the primary analytical framework, but ground it in a strong connection to ethical and current political reality. For our legal analysis we will work our way from the global to the local, starting by tracing developments in international climate change law and policy, moving to exploring the key Indian governance approaches to climate change, especially the difficult legal and policy decisions that India will face with respect to climate change.

Why not only the Law? Why Economics? Ethics? Politics?

Climate change, like a lot of other problems in the modern world, is shaped by challenges that are increasingly non-linear, unpredictable, messy and context-dependent. The effects of climate change are decidedly non-linear and difficult to forecast. While, there are no guaranteed responses and those proposed so far are complex, context-dependent, and in most cases very disputed.

The law of climate change involves a wide gamut of issues that go well beyond the confines a legal framework. In order to be prepared for and resilient to the changes in the legal issues surrounding climate change, a lawyer needs to be well versed in the complex and multi-level governance system applying to climate change.

Through this seminar we will work on framing the problem of climate change, explore how various disciplines, including natural science, economics, law and political science contribute to and assess the effectiveness of responses to these problems. We will also focus on the problem in the international arena, considering the politics of global climate change negotiations; international trade and investment; the history of efforts to achieve an effective global climate treaty, and future prospects. Finally, we turn to critically evaluating India's position for responding to climate change at the national and international level.

The main purpose of this seminar is to prepare future Indian lawyers to advise clients on all aspects of climate change law, an emerging regulatory system that is currently very much a work in progress.

Learning Objectives

- To introduce students to the developing field of climate change law at the international, national and local levels.

- To provide students with sufficient grounding in the economics, ethics and politics of climate change to facilitate their understanding of the goals and constraints involved in the development of climate change law and policy.
- To encourage students to critically consider the legal implications of the many climate laws and initiatives.
- To provide students an opportunity to explore areas of special interest through problem-based learning and group activities.
- To provide students the opportunity to develop their research and writing skills via the seminar paper.
- To engage students in a mock climate summit, which tests their knowledge and understanding of important legal issues that emerge during international climate negotiations.

Participation

This seminar course is intended for 4th and 5th year students who have a basic foundation in environmental law and/or international law. A 3-hour class will be held each week. There will be a total of 13 classes, including the mock negotiations. In case of rescheduling of class, students will be notified well in advance. Class attendance and participation is an integral element of this seminar course.

Course Grade

<i>Class Participation</i>	Students should go through the suggested readings and be well prepared before each class in order to contribute to and learn from each session.	10%
<i>Reaction Papers</i>	For many classes, students will be required to submit a short reaction paper (250-500 words) based on the readings. The reaction papers must be shared on the seminar course's e-mail group on the day the class meets. The aim of these reaction papers is to make the students identify core issues for discussion in each class.	20%
<i>Seminar Paper Outline</i>	The topic would be chosen by the student after discussions with and approval by the instructor. The paper outline should reflect substantial research on the student's topic, highlight the major topics and subtopics they plan to address and include a list of references they intend to rely on.	10%
<i>Seminar Paper</i>	The student is expected to write a research paper, 15-18 pages in length. The research question must explore a legal or policy dimension of climate change studied through the duration of the course.	40%
<i>Seminar Paper Presentation</i>	Each student will present their final paper for 15 minutes, followed by 5 to 10 minutes of questions.	10%
<i>Mock Negotiations</i>	Towards the end of the semester, students will take part on a mock climate change summit. Students will receive briefing materials a week prior to the class and will be expected to prepare opening statements, as well as negotiating strategies for their constituency. The purpose of the negotiations will be to talk about the way forward for international action on climate change, in an attempt to break the current deadlock in talks.	10%

Class Schedule + Readings

1. **The nature of the problem: The scientific consensus on global warming, defining the problem and why we have failed to respond**
 - i. Climate Change 2007: Synthesis Report, Summary for Policy Makers, An Assessment of the Intergovernmental Panel on Climate Change
 - ii. IPCC Assessment Report 5, Summary for Policymakers by the Working Group I, Working Group II and Working Group III
 - iii. Stephen M. Gardiner, *A Perfect Moral Storm: Climate change, intergenerational ethics and the Problem of Moral Corruption*, Chapter 4 in Climate Ethics: Essential Readings (Gardiner et al. eds., Oxford University Press: New York, 2010) [Climate Ethics]
2. **Economics of climate change**
 - i. Nicholas Stern, *The Economics of Climate Change*, Chapter 2 in Climate Ethics
 - ii. William Nordhaus, *Critical Assumptions in the Stern Review on Climate Change*, Science Vol.317 (July 13, 2007)
3. **Climate ethics and climate justice**
 - i. Stephen M. Gardiner, *Ethics and Global Climate Change*, Chapter 1 in Climate Ethics
 - i. Eric A. Posner and Cass R. Sunstein, *Climate Change Justice*, U of Chicago Law & Economics, Olin Working Paper No. 354; U of Chicago, Public Law Working Paper No. 177 (2007)
 - ii. Anil Agarwal and Sunita Narain, Global warming in an unequal world: a case of environmental colonialism (selected excerpts), Chapter 5 in Handbook of Climate Change and India: Development, Politics and Governance (Navroz Dubash ed., Oxford University Press, 2011) [Handbook of Climate Change and India]
4. **The international climate change law – The UNFCCC, Kyoto Protocol and beyond**
 - i. Legal texts
 - a. United Nations Framework Convention on Climate Change
 - b. Kyoto Protocol
 - ii. Official website of UNFCCC: <http://unfccc.int/2860.php>
5. **International climate change negotiations – From “top-down” to “bottom-up” to “hybrid” approach**
 - i. Legal texts
 - a. Bali Action Plan
 - b. Copenhagen Accord
 - c. Cancun Agreements
 - d. Durban Platform
 - e. Warsaw Outcomes

- ii. William Hare et al., *The architecture of the global climate regime: a top-down perspective*, 10 Climate Policy 600-614 (2010)
- iii. Steve Rayner, *How to eat an elephant: a bottom-up approach to climate policy*, 10 Climate Policy 615-621 (2010)
- iv. Jacob Werksman, Legal symmetry and legal differentiation under a future deal on climate, 10 Climate Policy 672-677 (2010)
- v. Lavanya Rajamani, *The changing fortunes of differential treatment in the evolution of international environmental law*, 88: 3 International Affairs 605-623 (2012)

6. Climate change regime complex

- i. Robert O. Keohane and David G. Victor, *The Regime Complex for Climate Change*, 9:1 Perspectives on Politics 7-23 (2011)
- ii. Richard B. Stewart et al., *A new strategy for global climate protection*, 120:1 Climatic Change 1-12 (2013)
- iii. Abbott, *Strengthening the transnational regime complex for climate change*, Transnational Environmental Law (2014)

7. India's position on climate change and domestic actions

- i. Sandeep Sengupta, *International climate negotiations and India's role*, Chapter 7 in Handbook of Climate Change and India
- ii. Navroz K. Dubash, *Climate Politics in India: Three narratives*, Chapter 14 in Handbook of Climate Change and India
- iii. Navroz K. Dubash et al., *Indian Climate Change Policy: Exploring a Co-Benefits Based Approach*, 48:22 Economic and Political Weekly 47-61 (2013)

8. Linkages between climate change and international trade and investment laws

- i. WTO-UNEP Report, *Trade and Climate Change* (2009)
- ii. Daniel M. Firger and Michael Gerrard, *Harmonizing Climate Change Policy and International Investment Law: Threats, Challenges and Opportunities*, in 43 Y.B. ON INT'L INVESTMENT L. & POL'Y (2010-11) (Karl P. Sauvant ed., 2011)
- iii. Fiona Marshall, *Climate Change and International Investment Agreements: Obstacles or Opportunities?* International Institute for Sustainable Development (2010)
- iv. Lise Johnson, *International Investment Agreements and Climate Change: The Potential for Investor-State Conflicts and Possible Strategies for Minimizing It*, 39 Environmental Law Reporter 11147 (2009)

9. Case study one: Feed-in tariffs, renewable energy and the WTO

- i. Marie Wilke, *Feed-in Tariffs for Renewable Energy and WTO Subsidy Rules: An Initial Legal Review*, ICTSD Programme on Trade and Environment; Trade and Sustainable Energy Series, Issue Paper No. 4 (2011)
- ii. Daniel M. Firger and Michael B. Gerrard, *Climate Change and the WTO: Expected Battlegrounds, Surprising Battles*, Vol. 2011, No. 133 Daily Environment Report (July 12, 2011)

- iii. WTO, *Canada — Certain Measures Affecting the Renewable Energy Generation Sector*, Panel and Appellate Body Report.
- iv. WTO, *India — Certain Measures Relating to Solar Cells and Solar Modules*, Request for consultation by the United States.

10. Case study two: Aviation and the EU Emissions Trading System

- i. Lavanya Rajamani, *European Union, climate action hero?*, The Indian Express (August 3, 2011)
- ii. Joanne Scott and Lavanya Rajamani, *EU Climate Change Unilateralism*, 23:2 EJIL 469–494 (2012)
- iii. Kati Kulovesi, “Make your own special song, even if nobody else sings along”: International aviation emissions and the EU Emissions Trading Scheme, 2 CLIMATE LAW 535–558 (2011)
- iv. Joshua Meltzer, *Climate Change and Trade – The EU Aviation Directive and the WTO*, 15(1) JIEL 111–156 (2012)
- v. Lorand Bartels, *The Inclusion of Aviation in the EU ETS: WTO Law Considerations*; Trade and Sustainable Energy Series; Issue Paper No. 6; International Centre for Trade and Sustainable Development (2012)

11. Climate change litigation: International developments and prospects domestically

- i. Jacqueline Peel, *Issues in Climate Change Litigation*, Carbon and Climate Law Review, Volume 5, Issue 1 (2011)
- ii. *Climate Change and The International Court of Justice*, Yale Centre for Environmental Law and Policy (2013)
- iii. Lavanya Rajamani & Shibani Ghosh, *India*, in CLIMATE CHANGE LIABILITY, 139-77 (Richard Lord et al. eds., Cambridge University Press 2011)

12. Geoengineering: Issues for law and governance

- i. *Geoengineering the climate: Science, governance and uncertainty*, The Royal Society – A Report (2009)
- ii. Alan Robuck, *20 reasons why geoengineering may be a bad idea* (2008)
- iii. Stephen M. Gardiner, *Is “Arming the Future” with Geoengineering Really the Lesser Evil?: Some Doubts about the Ethics of Intentionally Manipulating the Climate System*, Chapter 16 in *Climate Ethics*.
- iv. Ian D. Llyod and Michael Oppenheimer, *On the Design of an International Governance Framework for Geoengineering* (2011)

About the instructor

Vyoma Jha holds an LL.M. Environmental Law, New York University School of Law, New York, NY, USA; B.A., LL.B. (*Trade and Investment Laws Hons.*) National Law University, Jodhpur, India. Currently, she is a Research Associate with the Climate Initiative at the Centre for Policy Research (CPR), New Delhi. She has been a Visiting Professor at National Law University, Delhi and St. Stephen's College, Delhi.

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