

LAW 871D**Climate Change & International Law****Summer 2008****MW - 4.30-6.10pm****Office hours: by appointment****Professor Wil Burns****536 Mission St., Room 3216****650.281.9126 (Cell)****wburns@scu.edu**

Overview



Climate change is the keystone environmental issue of this generation, and most likely, for many generations to come. It now appears inevitable that temperatures will increase this century by 2-3°C, though even this projection may prove too optimistic if burgeoning levels of greenhouse gas emissions continue apace, and temperatures could continue to increase in the 22nd Century absent stringent mitigation measures by the global community. This course examines the potential role of the international legal and policy communities in confronting climate change from an institutional perspective, examining the role of treaties, regional agreements, and litigation in judicial and quasi-judicial fora. The course also seeks to assess the role of students not only as attorneys in addressing climate change, but also as responsible citizens.

Learning Outcomes

1. An understanding of the science associated with climate change and potential impacts, including equity considerations that such impacts may give rise to;
2. An understanding of the primary international legal instruments to address climate change at the international and regional level;
3. An understanding of the theories that might give rise to a cause of action for climate change in international fora, potential fora in which such actions might be brought;
4. An understanding of the potential options for formulating long-term legal responses to climate change at the international level.

Readings

There is no textbook for this course. The readings will be derived from the following sources, designated in the class schedule with the icons listed below:


-  Electronic Documents on the course's LEXIS Blackboard site
-  Online Hyperlinks (in Word, while passing your mouse over the hyperlink, press "Ctrl + Left Mouse Click" to launch)

GRADING/ASSIGNMENTS

Final Examination [90% of grade]

- The final examination will either be administered in class, or as a take-home examination (to be determined by class consensus). The examination will consist of three questions and will cover theoretical and empirical materials discussed in class and in the readings.

Class Participation [10% of grade]

Class Schedule May 28	Overview of Course
	<ul style="list-style-type: none">➤ Introductions➤ Review of Syllabus
SECTION 1 June 2	Climate Change Science
	Scientific Overview and Potential Impacts of Climate Change
	<ul style="list-style-type: none">• Readings<ul style="list-style-type: none">➤  Intergovernmental Panel on Climate Change: <i>Climate Change 2007: Synthesis Report</i>, Summary for Policymakers (2007)

- **E** Alley, et al., *Abrupt Climate Change*, 299 SCIENCE 2005-2010 (2003)
- **E** Rosenzweig, et al., *Attributing Physical and Biological Impacts to Anthropogenic Climate Change*, 453 NATURE 353-358 (2008)

SECTION 2 The International Institutional Response to Climate Change

June 4

The United Nations Framework Convention on Climate Change

- Readings

- **O** [United Nations Framework Convention on Climate Change](#) (1992)
- **O** UNFCCC Secretariat, [Uniting on Climate](#) 15-24 (2007)
- **E** Barnett & Dessai, *Articles 4.8 and 4.9 of the UNFCCC: Adverse Effects and the Impacts of Response Measures*, 2 CLIMATE POLICY 231-239 (2002)

June 11

The Kyoto Protocol, Part 1

- Readings

- **O** [Text of the Kyoto Protocol](#) (1995)
- **O** UNFCCC Secretariat, [Uniting on Climate](#) 27-35 (2007)
- **E** Desai & Schipper, *The Marrakech Accords to the Kyoto Protocol: Analysis and Future Prospects*, 13 GLOBAL ENVIRONMENTAL CHANGE 149-153 (2003)

June 16

The Kyoto Protocol, Part 2

- Readings

- **E** Driesen, *Sustainable Development and Market Liberalism's Shotgun Wedding: Emissions Trading Under the Kyoto Protocol* 1-68 (2007)
- **E** Halvorssen & Hovi, *The Nature, Origin and Impact of Legally Binding Consequences: The Case of the Climate Regime*, 6 INTERNATIONAL ENVIRONMENTAL AGREEMENTS 157-171 (2006)

June 18

The Post-Kyoto 2012 Regime: Toward the Copenhagen Agreement

- Readings

- **O** 13th Meeting of the Parties to the United Nations Framework Convention on Climate Change, [Bali Action Plan](#) (2007)
- **O** Müller, [Bali 2007: On the Road Again](#) 1-7 (2008)

June 23

Adaptation: The Exigency and International Institutional Responses

- Readings

- **E** Baethgen, A Plan of Action to Support Climate Change Adaptation Through Scientific Capacity, Knowledge and Resources 1-8 (2004)
- **E** Joint Liaison Groups of the Rio Convention, *Adaptation under the Frameworks of the CBD, the UNCCD, and the UNFCCC* 1-12 (2007)
- **E** Adger & Razzaque, *Justice and Equity in Adaptation*, 52 *TIEMPO* 19-22 (2004)

June 25

The European Union Trading System

- Readings

- **E** Robinson, et al., *Key Elements and Evolution of the EU Emissions Trading Scheme*, *CLIMATE CHANGE LAW: EMISSIONS TRADING IN THE EU AND UK* 1-11 (2007)
- **E** Ellerman & Joskow, *The European Union's Emissions Trading System in Perspective*, *Pew Center on Global Climate Change*, 1-46 (2008)

SECTION 3

The Potential Role of International Climate Change Litigation

June 30

The Inuit Petition to the Inter-American Commission for Human Rights

- Readings

- **O** Cloutier, et al., [Petition to the Inter-American Commission on Human Rights Seeking Relief from Global Warming Caused by Acts and Omissions of the United States](#) (2005) (you can skim this document)
- **E** Hsu, *A Realistic Evaluation of Climate Change Litigation Through the Lens of a Hypothetical Lawsuit*, 79 *U. COLORADO LAW REVIEW* 101-165 (2008)

July 2

The World Heritage Convention Petitions

- Readings

- **O** Text, [World Heritage Convention](#) (1972)
- **E** Thorson, *The World Heritage Convention & Climate Change: The Case for a Climate-Change Mitigation Strategy beyond the Kyoto Protocol in ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES* (William C.G. Burns & Hari Osofsky, eds. 2008, Cambridge University Press, in press)

July 7

The Straddling Stocks Convention and the Law of the Sea Convention

- Readings

- **O** Text, **United Nations Convention on the Law of the Sea (1982)** (especially Part XII & Part XV)
- **O** Text, **UN Fish Stocks Agreement (1995)**
- **E** Burns, *A Voice for the Fish?: Climate Change Litigation and Potential Causes of Action for Impacts under the United Nations Fish Stocks Agreement*, 48 SANTA CLARA LAW REVIEW 605-647 (2008)

July 9

Potential Actions Before the ICJ and the UN Security Council

- Readings

- **E** Statute of the International Court of Justice, especially Articles 34-38
- **E** Strauss, *The Legal Option: Suing the United States in International Forums for Global Warming Emissions*, 33 ENVIRONMENTAL LAW REVIEW 10185-10191 (2003)
- **E** Penny, *Greening the Security Council: Climate Change as an Emerging "Threat to International Peace and Security,"* 7 INTERNATIONAL ENVIRONMENTAL AGREEMENTS 35-71 (2007)

SECTION 4

The Future of International Climate Change Law

July 14

Long-Term Climate Change Regimes

- Readings

- **E** Berk & van Elzen, *Options for Differentiation of Future Commitments in Climate Policy: How to Realise Timely Participation to Meet Stringent Climate Goals?*, 1 CLIMATE POLICY 465-480 (2001)
- **E** Torvanger, et al., *Climate Policy Beyond 2012*, Cicero Report 2004-02, Sec. 3 ONLY (2004)

July 23

Final Examination: 24-Hour