

Global Climate Change Seminar

(Limited Enrollment)

Vermont Law School

Spring 2003

Mon & Wed. 2:10-3:25 pm

Oakes Hall 211

Professor Yang

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Phone (802) 763-8303 ext. 2344

Office Hours: After class or Tue 3:00-5:00 pm

I. Course Overview

This course has 2 primary goals. First, the course will explore the international environmental policy issues raised by the current concern about global climate change. Second, the course will also serve as a detailed and in-depth study of how international law and international relations influence the range of possible solutions to global environmental problems. As an important part of the course, we will do a negotiation exercise dealing with global climate change. In many respects, this course seeks to explore from a general policy perspective (less focused on international law than the international environmental law and policy course that I also teach) general issues of global environmental governance through an in-depth case study of the most significant global environmental problem of our time.

While the course will provide an overview of the present state of the science of climate change, since a rudimentary understanding of

these very basic issues is crucial, this course is not primarily about the science and facts of climate change, and we will not spend very much time on these issues beyond the basics. Thus, the course is less concerned about specific details of climate change themselves than the larger policy issues that they raise.

II. Course Readings

The required books for this class are (all should be available in the Barrister=s Bookstore):

1. John T. Houghton, *Global Warming: The Complete Briefing* (Cambridge U. Press 1997)
2. Richard Benedick, *Ozone Diplomacy: New Directions in Safeguarding the Planet* (Harvard U. Press 1998)
3. Urs Luterbacher & Detlef Sprintz, *International Relations and Climate Change* (MIT Press 2001)
4. Course Supplement

Moreover, it is also possible that I may substitute or add to the partial assigned reading list. I will let you know if that is the case.

I will also put a number of other background readings related to climate change on reserve.

III. Course Requirements

The final grade for this seminar is calculated as follows:

1/3 Class participation

1/3 Negotiation Exercise (including initial strategy paper and final negotiation exercise evaluation)

1/3 Final Paper

Because this class is a small seminar and will depend on the active participation of everybody for it to be successful, it is crucial for every student to be prepared for each class.

The purpose of including class participation in the final grade is to reward those who participate and move class discussions forward.

However, students are responsible for each week's reading regardless of whether they expect to be called upon or not. Repeated failures to participate or lack of preparation may result in a lowering of the grade. Participation in the Virtual Class room (see below) will also count toward class participation.

You are required to attend class. Failure to attend class regularly will result in a grade of F-Wd.

I encourage all of you to let me know about any ideas or suggestions for improving the class.

Please do not forget that you are responsible for observing all of the Vermont Law School Honor Code rules. Citations in papers should follow standard Harvard Blue Book rules (latest edition), though I will not grade blue book compliance. (If you are unfamiliar with blue book citation rules, check with me or ask an upperclass law student.)

IV. Class Prerequisite

International environmental law is not a prerequisite for this class. However, some background in either environmental law (such as the introductory environmental law course) or undergraduate environmental science or policy is necessary. I will review international environmental law principles as they arise in the course.

If you would like to get some additional helpful background on international environmental law, I recommend David Hunter, James Salzman, and Durwood Zaelke, *International Environmental Law and Policy* (2d ed.), in particular chapters 4-7. It is available in the library. For background reading on international law more generally, I recommend Mark Janis, *An Introduction to International Law* (3d ed.), as a helpful introduction.

V. Rules for Giving and Getting Feed-back in Class

There are some important (and obvious) ground rules for giving and receiving feed-back on views and statements made for this class. All of you, I am sure, on your own accord act in a civil and sensitive manner in your daily dealings and discussions with others. I would simply like to remind everyone explicitly of the imperative need for a class atmosphere in which nobody feels excluded and everyone has a sense that they can participate in the class discussion. Thus, it is highly important for everyone to dissociate positions or views that you disagree with from the people who put them forward. While it is appropriate to criticize positions, views or comments, regardless of how arguably "green" or "brown" they might be, it goes without saying that intimidation, ridiculing, name-calling or other personal attacks are unacceptable in this class. I expect all of you to give each of your class mates the respect they deserve.

I would encourage and urge anyone to speak with me directly if any issues arise with regard to this class room discussion policy.

The Class will have a class web-site, "Global Climate Change," on the Westlaw TWEN page. You can access this website by logging on to Westlaw (<http://www.westlaw.com>) and then going to the TWEN web page. (If you do not have a Westlaw password, please request one from the library.) I will post information related to our class to that web page . It will also serve as a message board for you to post messages for your torts class mates. You should check the message folder every day.

You can post comments or questions to the Discussion web page, and they will automatically come to me and to classmates on the list. The same rules for giving and receiving feedback apply to the shared folder as they do for classroom discussions. (I strongly urge you to follow a rule of thumb that I utilize when I send messages that I am not sure are appropriate in content or tone - I write the email, but don't send it for some time, usually a couple of hours; if upon a subsequent reading of the message I still feel that it is justified or necessary, I send it. Oftentimes, I change the message or decide not to send it.) You can also send a comment or question to me directly.

If it seems of interest to the group, I will delete your name and address (unless you indicate otherwise) and post the comment/question and any response. Finally, I will use the list to make announcements or elaborate on topics discussed in class. In the past, I have also posted final course grades to the shared folder. You are responsible for all announcements and material posted to the class website.

In addition, I am also maintaining a shadow course webpage on my on website (www.vermontlaw.edu/faculty/tyang), which will contain most of the course announcements and course materials (but does not have the listserv capabilities).

8. *Class Re-schedules*

We will need to reschedule some of our classes this semester.

Tentative Reading Schedule

(Recommended reading is on-line on TWEN website or on reserve)

1/8 Wd	The Science of Global Climate Change	Houghton, Global Warming 1-106 (1987) GUEST LECTURE, Professor Craig Pease Required Video Documentary Viewing: Frontline/Nova, "What's Up with the Weather" (2000) (approx. 2 hrs). 3 copies of the documentary will be on reserve. (I suggest getting a few of your classmates together to view the video and do it as an evening event (with popcorn?) – it is an excellent documentary and well worth the 2 hours.) If you cannot view the documentary on your own, you must attend an evening showing of the video at a time and place to be announced.
1/13 Mo	Administrative & Overview of Seminar	
1/15 Wd	Climate Change and Uncertainty	Houghton, Global Warming 107-235 GUEST LECTURE, Professor Craig Pease
1/20 Mo	Martin Luther King Jr. Holiday	NO CLASS
1/22 Wd	The Impacts of and Measures to Address Climate Change	Reading to be distributed
1/27 Mo	The Ozone Problem as a Precedent	1) Richard Benedick, Ozone Diplomacy (1998) 2) Recommended: David Caron, Protection Of The Stratospheric Ozone Layer And The Structure

		<p><i>Of International Environmental Lawmaking, 14 Hastings Int'l & Comp. L. Rev. 755 (1991)</i> <i>(available on-line on TWEN website)</i></p> <p><i>Discussion question to consider: Are the processes and lessons of the ozone treaty negotiations applicable to the problem of climate change? Why or why not?</i></p>
1/29 Wd	A Primer on International Environmental Law	<p>Chapter 5 of Hunter, Salzman & Durkee, <i>International Environmental Law and Policy</i> (1998);</p> <p>- for those without copies of the Hunter book, copies of this chapter will be available as a hand-out</p>
2/3 Mo	The Background and Text of the UN Framework Convention on Climate Change (first half)	<p>1) Urs Luterbacher, <i>International Relations and Global Climate Change</i>, chapter 2 & 10</p> <p>2) UNFCCC articles ___ - ___</p> <p>3) Recommended: Sections IV(A) – IV(D)(3)(c) of Bodanski, <i>The UNFCCC: A Commentary</i>, 18 <i>Yale J. Intl. L.</i> 451 (pp. 492-523)</p> <p>Hand-out with treaty analysis framework</p>
2/5 Wd	UN FCCC (2d half)	<p>1) UNFCCC articles ___ - ___</p> <p>1) Remaining sections of Bodanski, <i>The UNFCCC: A Commentary</i>, 18 <i>Yale J. Intl. L.</i> 451</p>
2/10 Mo	1997 Kyoto Protocol	<p>1) Breidenich et al., <i>Current Developments: The Kyoto Protocol to the UNFCCC</i>, 92 <i>Am. J. Intl L.</i> 315-331 (1998)</p> <p>2) <i>Kyoto Protocol to the UNFCCC</i>, FCCC/CP/1997/L.7/Add.1</p>
2/12 Wd	1997 Kyoto Protocol cont'd	No new reading

2/17 Mo	No-Class – Self-preparation for Negotiation Exercise/Meetings with Potential Negotiation Alliance Partners	<ol style="list-style-type: none"> 1) Cheng, Equity, Special Considerations, and the Third World, 1 Colo. J. Intl. Env'tl. L. & Pol. 57 (1990) 2) FCCC COP 8 Delhi Declaration 3) Senate (Byrd) Resolution 98
2/19 Wd	In-Class Mini-Negotiation on Climate Change – Opening Session	<p>Assignment due in class: The negotiation exercise will focus on next-steps for states to take in the wake of the Delhi Declaration's statements about the equity aspects of climate change. Prepare a 5-10 page analysis of your state's/group's position (interests, potential compromises, alliances, negotiation strategy, primary goals, fall-back positions, etc.). The participants are meeting to negotiate an agreement on market mechanisms that will implement the Kyoto Protocol. What do you hope to accomplish? Keep in mind that you will be asked to write an evaluation of your own and the other states/groups efforts with regard to this negotiation afterward.</p>
2/24 Mo	In-Class Mini-Negotiation Interim Session	Negotiators must meet or otherwise have a substantive discussion with every other negotiation participant (individually or jointly) at least once prior to final negotiation session.
2/19- 26	You must also have at least one outside-of-class Individual Meetings between Negotiation Participants	

	(equivalent of make-up class)	
2/26 Wd	In-Class Mini-Negotiation on Climate Change - Final Session	
3/3 Mo	Spring Break	
3/5 Wd	Spring Break	
3/10 Mo	De-Briefing of Negotiation Exercise & North-South Equity I	<i>Assignment due in-class: Prepare a 7-10 page evaluation of the Negotiation Exercise, including what you accomplished and what the overall accomplishment of the negotiation exercise was. Include in your evaluation an analysis of the other states'/parties' efforts and accomplishments/failures.</i>

3/12 Wd	North-South Equity II - The Legacy of Colonialism and Development	1) Luterbacher, <i>International Relations and Global Climate Change</i> , chapt. 6 & 7 2) Lamm, <i>The Heresy Trial of Reverend Richard Lamm</i> , 15 <i>Envtl. L.</i> 755 (1985) <i>Discussion question to consider: How do the Framework Convention and the Kyoto Protocol address North-South equity issues? Is it sufficient? If not, how else should equity issues be addressed?</i>
3/17 Mo	Future Generations and the Problem of Discounting the	1) Farber et al., <i>The Shadow of the Future</i> , 46 <i>Vand. L. Rev.</i> 267 (1993) <i>Discussion question to consider: What are the</i>

	<i>Costs of Climate Change</i>	<i>climate change policy implications of discounting? What are the effects of discounting? How should one respond to discounting?</i>
<i>3/19 Wd</i>	<i>Environmental Ethics and Caring for Future Generations</i>	<p>1) Ekins, <i>The Sustainable Consumer Society</i></p> <p>2) D'Amato, <i>Do We Owe a Duty to Future Generations to Preserve the Global Environment?</i>, 84 <i>Am. J. Int'l L.</i> 190 (1990)</p> <p>3) Weiss, <i>Our Rights and Obligations to Future Generations for the Environment</i>, 84 <i>Am. J. Int'l L.</i> 198 (1990)</p> <p><i>Discussion question to consider: Why is addressing intergenerational equity so difficult? Is it futile to address intergenerational equity issues? Do you agree with Edith Brown Weiss or Anthony D'Amato?</i></p>
<i>3/24 Mo</i>	<i>Designing Market-based Approaches to Climate Change</i>	<p>1) Stavins, <i>Policy Instruments for Climate Change</i>, 1997 <i>U. Chi. Legal F.</i> 293</p> <p>2) Recommended: Jonathan Baert Wiener, <i>Global Environmental Regulation: Instrument Choice in Legal Context</i>, 108 <i>Yale L. J.</i> 677 (1999)</p> <p><i>Discussion Questions to Consider: What types of market-based and non-market mechanisms exist? Why are market-based mechanisms attractive? Are the lessons of domestic market-based mechanisms applicable to the international use of market-based mechanisms? Are there special reasons for why market-based mechanisms are especially suitable for international emissions reduction efforts than non-market-based mechanisms? What crucial assumptions with</i></p>

		regard to the workability of tradable permit systems? What is your assessment of the applicability of these assumptions?
3/26 Wd	The Difficulties of Market Mechanisms	1) David Driesen, <i>Free Lunch or Cheap Fix</i> , 26 B.C. Env. Aff. L. Rev. 1 (1998) <i>Discussion Questions to Consider:</i> What are the advantages and disadvantages of market-based approaches for reducing GHG emissions? With regard to administrative costs? Effectiveness in achieving emissions reductions? Economic efficiency? Ease of compliance monitoring and enforcement? Implementation of international treaty obligations? Promotion of technological innovation? Are there other considerations? What about moral principles?
3/31 Mo	The Kyoto Protocol Market Mechanisms	1) Peterson, et al., <i>Market Mechanisms and Global Climate Change</i> (1998) <i>Discussion questions to consider:</i> What are the 4 market-based mechanisms? Which ones must be tied to particular projects? Who can participate in the market mechanisms? How can carbon credits be generated? Must they always be offset by corresponding reductions in carbon emissions? Might this lead to overall increases in carbon emission permissible under Annex B? How do the Kyoto mechanisms deal with the difficulties of market mechanisms?
4/2 Wd	Out-of-Town – No Class	
4/7	State Sovereignty	1) Koh, <i>Why do Nations Obey International Law?</i> ,

Mo	and the Problem of Treaty Compliance	<p>106 Yale L. J. 2599 (1997)</p> <p>2) Draft Manuscript excerpt, Yang, A Theory of International Treaty Enforcement as a Public Good (2002)</p> <p><i>Discussion Questions to Consider:</i> Is an international treaty on climate change of practical relevance to solving the problem? What of the contention that international law is essentially unenforceable because of state sovereignty? Are you persuaded by the readings' accounts of why international agreements do matter?</p>
4/9 Wd	Climate Change as an Exercise in International Relations vs. International Law: An Introduction to International Relations and Regime Theory	<p>1) Kenneth W. Abbott, Modern International Relations Theory: A Prospectus For International Lawyers, 14 Yale J. Int'l L. 335 (1989)</p>
4/14 Mo	Applying IR and Regime Theory to Global Climate Change	<p>Luterbacher, International Relations and Global Climate Change, chapters 3-5, 8</p> <p><i>Discussion questions to consider:</i> How would one apply IR and Regime theory to climate change? What are the incentives and disincentives to cooperation in solving the problem? What are structural barriers to cooperation? How might a simplified pay-off matrix for a 2 country game look like? What complications does the global nature of climate change introduce?</p>
4/16	Compliance	<p>1) Jutta Brunnee, A Fine Balance: Facilitation</p>

Wd	Management of the Kyoto Protocol Mechanisms	and Enforcement in the Design of a Compliance Regime for the Kyoto Protocol. 13 Tul. Env. L. J. 223 (2000) 2) COP 6 Bonn Agreement Discussion questions to consider: How do facilitation and enforcement differ? Which approach do you believe is most appropriate and why? Do we need "hard" sanctions in order to ensure compliance and to make the climate change treaties effective?
4/21 Mo	Optional Paper Presentations	

4/23 Wd	What is the Role of Treaty Enforcement?	Manuscript, A Theory of Treaty Enforcement as a Public Good
4/25 Fri	Papers Due at 4 pm in my box in Whitcomb House	Final Course Paper due 4 pm: Prepare a 10-20 page on either of the topics: 1) An analytical critique of the Kyoto Protocol describing the system's weakness or strengths, or 2) any other climate change related topic of choice and approved by instructor. The Kyoto Protocol Critique may be prepared in a format similar to a take-home exam, while the second paper topic should be treated like a regular seminar research paper. Both types of papers should be analytical in nature and prepared with supporting references and citations.