

International Law and Policy Options for Climate Mitigation

Semester:	Spring Semester- FS 2023
Root Number:	481926
ECTS:	3
Lecturer:	Dr. Elena Cima, Prof. Dominic Coppens, and Nicolas Lockhart
Dates:	17 July to 20 July 2023
Room:	This a hybrid course. The course will be held on-site at the World Trade Institute and online on Zoom.

Audience

- Government officials, Embassy staff, people working for international organizations, NGOs, industry and in legal practice
- Master of Advanced Studies of International Law and Economics (MILE) Students
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe
- Students from different universities across Switzerland

Course Description

There is broad consensus on the urgent need to pursue climate mitigation but not on the ways to do so. This course will guide participants through the international law framework governing climate mitigation, and then explore the climate mitigation policies that public and private actors can pursue consistently with the framework.

This course is for anyone interested in the law and policy of climate change – policymakers, academics, NGOs, and lawyers working on sustainability issues.

In **Part I**, we will present the international law framework governing climate mitigation. Against the background of the principles of international environmental law, we will discuss the main international treaties addressing climate change (UNFCCC, Paris Agreement), as well as other relevant parts of international law (e.g., general public international law, trade law, human rights, and the law of the sea).

In **Part II**, the focus will shift to policy options for climate mitigation, covering both regulatory and litigation angles. We will explore the merits of the different policy options and assess them against the international law framework developed in Part I, including international trade law.

We will discuss the following policy options: (i) *carbon pricing* (e.g., ETS, carbon taxes, and carbon offsets), with case studies on carbon border adjustments (CBAM) and the sector-specific international aviation agreement on carbon offsetting and reduction (CORSA); (ii) *subsidies*, with case studies on the US Inflation Reduction Act (IRA), EU Green Deal Industrial Plan, and proposals to regulate fossil fuel subsidies; and (iii) *standards for products, processes, and companies*, with case studies on the EU's proposed regulations on batteries, deforestation, and corporate sustainability reporting and due diligence.

Finally, we will examine emerging trends in the creative use of national and international adjudication to push climate mitigation. We will address ongoing initiatives in international law to seek advisory opinions from the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS), as well as domestic 'greenwashing' litigation and domestic litigation leveraging international law.

Lecturers

Elena Cima

Elena Cima is a Lecturer in International Law at the University of Geneva, where she teaches courses on international environmental law, energy law, and investment law. She is also the co-director of the University of Geneva's Summer School in International Law and International Humanitarian Law. Elena holds a PhD in International Law from the Geneva Graduate Institute, a Bachelor of Laws from the University of Milan and an LL.M degree from Yale Law School. She has published in several peer-reviewed journals on international environmental law, climate law, investment law, and trade law. Elena often participates in investment arbitrations as well as in international water and climate negotiations.

Dominic Coppens

Dominic Coppens is Professor of International Economic Law at Maastricht University (the Netherlands), and a Senior Managing Associate at Sidley Austin LLP. Dominic's academic work and practice focus on the intersection between trade and sustainability. He collaborates with, among others, governments, international organizations, and civil society on new rulemaking in this area (e.g., sustainable trade,

plastic pollution, carbon pricing, circular economy, international waste regulation, and the EU's Green Deal).

Nicolas Lockhart

Nicolas Lockhart is a partner at Sidley Austin LLP, and a Fellow of the World Trade Institute of the University of Bern. Nic is a member of an international expert group, convened by the TESS Forum, which is developing principles for trade-related climate measures. Nic's academic work and his practice focus on international and EU law, in particular trade and environmental law. His recent work advising governments, corporations and civil society has covered a wide range of sustainability issues, including the policy options addressed in this course.

Learning Objectives

- To provide participants with an in-depth and critical understanding of:
 - The international law framework governing climate mitigation (e.g., UNFCCC, Paris Agreement, general public international law, trade law, human rights, and law of the sea)
 - Climate mitigation policies pursued by governments related to:
 - a. Carbon pricing (EU ETS, EU CBAM, carbon taxes, carbon offsets, CORSIA)
 - b. Subsidies (US IRA, EU Green Deal Industrial Plan)
 - c. Standards for products, processes, and companies: EU's proposed regulations on batteries, deforestation, corporate sustainability reporting (CSRD) and due diligence (CS3D)
 - The compatibility of these climate mitigation policies with international law, including international trade law.
 - International and domestic litigation related to climate mitigation
 - a. Domestic: climate-related litigation
 - b. International: Advisory Proceedings before the International Tribunal for the Law of the Sea (ITLOS) and the International Court of Justice (ICJ).
- To enable participants to apply the international law framework to other climate mitigation policies, and to assess climate mitigation litigation options and risks.

Assessment WTI

- Class participation (20%); paper (80%).

- Participants' knowledge will be assessed on the basis of a short paper (1500-2000 words) related to international law and policy options for climate mitigation.
- Participants can choose the specific topic of their paper, with input, if they wish, from the lecturers.
- Participants must submit the topic of their paper by 21 July (to masters@wti.org); and submit the final paper by 20h00 on 28 July 2023 (to masters@wti.org).

Course Overview

Date	Day	Time	Topic (each lecture by Coppens, Lockhart & Cima)
17 July	Monday	10:00 12:00	International law framework on climate mitigation
		13:00 16:00	International law framework on climate mitigation (<i>cont'd</i>) & overview of policy options for climate change mitigation
18 July	Tuesday	10:00 12:00	Carbon pricing
		13:00 16:00	Carbon pricing (<i>cont'd</i>) & subsidies
19 July	Wednesday	10:00 12:00	Subsidies (<i>cont'd</i>)
		13:00 16:00	Standards for products, processes, and companies
20 July	Thursday	10:00 12:00	Domestic climate litigation
		13:00 16:00	International climate litigation

MONDAY, JULY 17 2023

Lecturers: Elena Cima and Nicolas Lockhart

Subject

- International law framework on climate mitigation

Topics

- Presentation of the course and its objectives
- Key principles of international law relating to the environment
- The international climate change regime
- Global environmental and climate governance
- Law of the Sea: relevant rules for climate mitigation measures
- Climate change as a human rights issue
- International trade law: relevant rules for climate mitigation measures
- International investment law: relevant rules for climate mitigation measures

Compulsory reading material

- Rio Declaration on Environment and Development (1992).
- United Nations Framework Convention on Climate Change (UNFCCC) (1992).
- Paris Agreement on Climate Change (2015).
- UNFCCC, COP Decision 4/CMA.1 (available [here](#)).
- United Nations Convention on the Law of the Sea (UNCLOS) (1982), Part XII
- P. Sands et al., *Principles of International Environmental Law* (CUP, 4th edition, 2018), Chapter 6: General Principles and Rules, pp. 197-249.
- S. Atapattu, 'Climate Change, International Environmental Principles, and the North South Divide' (2017) 26(2) *Transnat'l & Contemp. Probs.* pp. 247-261.
- P-M. Dupuy and J. Viñuales, *International Environmental Law* (CUP, 2018), pp. 171-197.
- 'The human right to a clean, healthy and sustainable environment', UNGA Resolution (2022) (available [here](#)).

- 'At the Nexus of Human Rights and Climate Change: A Rights-Based Approach to Environmental Impacts and Policy Responses', UNDP (2023) (available [here](#)).
- K. Connolly and N.J. Lockhart, 'An introduction to the core principles of international trade law', in *The Oxford Handbook of International Trade Law* (OUP, 2nd edition, 2022).
- E. Cima, 'Retooling the Energy Charter for Climate Change Mitigation: Lessons from Investment Law and Arbitration' 14(2) *J. World Energy L. & Bus.* (2021).

Optional reading material

- S. Jolly & A. Trivedi, 'Principle of CBDR-RC: Its Interpretation and Implementation Through NDCS in the Context of Sustainable Development', 11 *Wash. J. Envtl. L. & Pol'y* 310 (2021) (available [here](#)).
- 'Climate Change and Human Rights', UNEP (2015) (available [here](#)).
- GATT International Trade Report 1990-1991, Chapter III: Trade and the Environment, pp. 19-39 (available [here](#)).
- 'Industrial Pollution control and International Trade', Note by GATT Secretariat (available [here](#)).

TUESDAY, JULY 18 2023

Lecturers: Elena Cima and Nicolas Lockhart

Subject

- Carbon pricing
- Subsidies

Topics

- Carbon pricing
 - The economics of carbon pricing
 - Main forms of carbon pricing (cap-and-trade scheme, carbon taxes, carbon offsets, and carbon border adjustment mechanisms)
 - Case study: EU Carbon Border Adjustment Mechanism (CBAM)
- Subsidies
 - The economics of climate-related subsidies
 - The applicable legal framework: the WTO Agreement on Subsidies and Countervailing Measures (definition of a “subsidy”; specificity; prohibited subsidies; adverse effects; countervailing duties)

Compulsory reading material

- Economists' Statement on Carbon Dividends (available [here](#)).
- 'State and Trends of Carbon Pricing 2023', World Bank (2023), Introduction and Annex A (available [here](#)).
- 'Proposal for an International Carbon Price Floor Among Large Emitters', IMF (2021) (available [here](#)).
- 'Carbon pricing and international trade', World Trade Report (2022) (available [here](#)).
- 'WTO boss wades into global carbon pricing morass', *Politico* (2023) (available [here](#)).
- 'A Guide for the Concerned: Guidance on the elaboration and implementation of border carbon adjustment', IISD (2015) (available [here](#)).

- 'A Tale of Two Carbon Pricing Schemes for Aviation: The Interplay Between the EU/UK ETS And CORSIA', *The Oxford Institute for Energy Studies* (2022) (available [here](#)).
- WTO Agreement on Subsidies and Countervailing Measures, Articles 1, 2, 3, 5, 6, 8.2(c), and 19.1.
- WTO Appellate Body Report, *Canada – Aircraft*, paras. 149-162.
- D. Coppens, *WTO Disciplines on Subsidies and Countervailing Measures: Balancing Policy Space and Legal Constraints* (CUP, 2014), pp. 39-58 (financial contribution), 59-97 (benefit to the recipient), 100-114 (specificity), 116-142 (prohibited subsidies), 143-186 (actionable subsidies).

Optional reading material

- 'Article 6 Explainer: Questions and Answers about the COP27 Decisions on Carbon Markets and What They Mean for NDCs, Nature, And The Voluntary Carbon Markets', *The Nature Conservancy* (available [here](#)).
- CORSIA: Annex 16 to the Convention on International Civil Aviation (Volume IV) (available [here](#)).
- 'Carbon pricing schemes for Aviation', *The Oxford Institute for Energy Studies Podcast* (2022) (available [here](#)).

WEDNESDAY, JULY 19 2023

Lecturers: Elena Cima and Nicolas Lockhart

Subject

- Subsidies (cont'd)
- Standards for products, processes, and companies

Topics

- Subsidies (cont'd)
 - Subsidies for renewable energy: the *Canada – FIT* dispute at the WTO
 - Case study: the US Inflation Reduction Act (IRA)
 - Countervailing duties
 - Fossil fuel subsidies
- Standards for products, processes, and companies
 - Climate-related technical regulations and standards
 - The WTO Agreement on Technical Barriers to Trade (TBT)
 - Due diligence (EU CS3D) and reporting (EU CSRD) obligations
 - EU's proposed regulations on batteries and deforestation

Compulsory reading material

- S. Charnovitz and C. Fischer, 'Canada-Renewable Energy: Implications for WTO Law on Green and Not-So Green Subsidies' (2015) 14(2) *World Trade Rev.* pp. 177-210 (available [here](#)).
- WTO Appellate Body Report, *EC – Asbestos*, paras. 84-103 (available [here](#)).
- Making Trade Work for Climate Change Mitigation: The Case of Technical Regulations, UNCTAD (2022), pp. 20-27 (available [here](#)).
- J. Potts, 'The Legality of PPMs under the GATT: Challenges and Opportunities for Sustainable Trade Policy' IISD (2008), pp. 3-8 (available [here](#)).
- 'Q&A: What does the EU's new deforestation law mean for climate and biodiversity?', Carbon Brief (2023) (available [here](#)).
- 'Batteries: deal on new EU rules for design, production and waste treatment', European Parliament press release (2022) (available [here](#)).

- 'Corporate sustainability due diligence', European Commission press release (available [here](#)).
- 'Sustainable economy: Parliament adopts new reporting rules for multinationals', European Parliament press release (2022) (available [here](#)).

Optional reading material

- H. van Asselt and P. Newell, 'Pathways to an International Agreement to Leave Fossil Fuels in the Ground' (2022) 22(4) *Global Env. Politics* pp. 28-47 (available [here](#)).
- EU Paves Way for Landmark Deforestation-free Products Regulation, IISD (2022) (available [here](#)).
- Sidley update, 'European Union a Step Closer to Adopting Expansive New Rules Covering Lifecycle of Electric Vehicle Batteries' (available [here](#)).
- Sidley update, 'EU a Step Closer to Adopt Expansive New Rules Covering Batteries for Medical Devices' (available [here](#)).

THURSDAY, JULY 20 2023

Lecturers: Elena Cima and Nicolas Lockhart

Subject

- Domestic and international climate litigation

Topics

- Domestic climate litigation
 - Global trends in ESG litigation
 - Examples of domestic climate litigation
 1. NDC ambition level: *Urgenda Foundation v. State of the Netherlands*
 2. Paris-alignment of business model: *Milieudefensie et al. v. Royal Dutch Shell plc*
 3. Paris-alignment of business model: *BankTrack, et al. v. ING Bank*
 4. Climate neutrality statements: *The Lifescape Project, et al. v. Drax Group PLC*
 5. Contribution to climate change: *Four Islanders of Pari v. Holcim*
- International climate litigation
 - Request of Advisory Opinion to the ITLOS
 - Request of Advisory Opinion to the ICJ

Compulsory reading material

- J. Setzer and C. Higham, 'Global trends in climate change litigation: 2022 snapshot', Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, LSE (2022) (available [here](#)).
- *Urgenda Foundation v. State of the Netherlands*, [Decision of the Dutch Supreme Court](#).
- *Milieudefensie et al. v. Royal Dutch Shell plc*, [Judgement of the Hague District Court](#).
- *BankTrack, et al. v. ING Bank*, [Dutch OECD NCP Final Statement](#).

- *The Lifescape Project, et al. v. Drax Group PLC*, OECD [case documents](#) (focus on the complaint).
- *Four Islanders of Pari v. Holcim*, [NGO press release](#).
- COSIS Request of Advisory 'Opinion to the ITLOS (available [here](#))
- Columbia Law School Climate Law blog, "Navigating the Intersection of Climate Change and the Law of the Sea: Exploring the ITLOS Advisory Opinion's Substantive Content" (available [here](#)).
- UNGA Resolution on the Request of Advisory Opinion to the ICJ (available [here](#))
- Columbia Law School Climate Law blog, "The ICJ's Advisory Opinion on Climate Change: What Happens Now?" (available [here](#)).

Optional reading material

- J. Spier, 'The "Strongest" Climate Ruling Yet': The Dutch Supreme Court's Urgenda Judgment. *Neth. Int'l L. Rev.* 67, 319–391 ([here](#)).
- B. Mayer, 'Milieudefensie v Shell: Do oil corporations hold a duty to mitigate climate change?', *EJIL:Talk!* ([here](#)).
- 'Climate Change Could Destroy His Home in Peru. So He Sued an Energy Company in Germany.' *NY Times* (2019) (available [here](#)).
- 'Who pays for climate change? The Peruvian suing a German utility' *Financial Times* (2022) (available [here](#)).