

# International Climate Governance

<b>Semester:</b>	Spring Semester- FS 2024
<b>Root Number:</b>	481926
<b>ECTS:</b>	3
<b>Lecturer:</b>	Dr. Elena Cima, Prof. Dominic Coppens, Nicolas Lockhart, and Prof. Dimitri Zenghelis
<b>Dates:</b>	<b>1 July to 5 July 2024</b>
<b>Room:</b>	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

Tackling the climate crisis requires rapid and unprecedented regulatory change at domestic and international levels. This course will use a multidisciplinary approach, covering law and economics, to explore how to bring about this change in an effective and inclusive way.

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

We will present the **international law framework** governing climate change, covering the climate treaties (UNFCCC, Paris) as well as custom, human rights, trade, and the law of the sea. The focus then shifts to the **economics of climate (in)action**, exploring the different policy options, from a macroeconomic and environmental perspective.

We will then **assess these policy options against the international law framework**, including carbon pricing, subsidies, product standards and corporate-wide regulation. Finally, we will review trends in **adjudication** relating to climate change, including the advisory proceedings on climate change before the ICJ and ITLOS, and domestic litigation.

We are also pleased to host **a panel discussion with prominent stakeholders** from government, civil society, and business.

## 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 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. Elena supports the Sidley team representing Antigua & Barbuda in advisory proceedings before the International Court of Justice on climate change and international law.

### 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). Dominic is part of the Sidley team representing Antigua & Barbuda and the African Union in international advisory proceedings on international law implications of climate change (before the International Court of Justice and the International Tribunal on the Law of the Sea, respectively). Dominic is a Member of the

International Advisory Network of the Forum on Trade, Environment & the SDGs (TESS),; and participates in the TESS Expert Group on Trade, Circular Economy and Sustainable Development. He was part of the TESS expert group that developed legal principles for trade-related climate measures.

### **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 was a member of an international expert group, convened by the TESS Forum, which developed 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. Nic leads the Sidley team representing Antigua & Barbuda in advisory proceedings before the International Court of Justice on climate change and international law; and the African Union in advisory proceedings before the International Tribunal on the Law of the Sea on climate change and international law of the sea.

### **Dimitri Zenghelis**

Dimitri Zenghelis is Special Advisor to the Bennett Institute, University of Cambridge, where he previously co-founded and led the Wealth Economy Project, and is a Senior Visiting Fellow at the London School of Economics. He is also a Partner at consultancy Independent Economics. He is a Senior Associate at the Cambridge Institute for Sustainability Leadership and is Chair of the Responsible Wealth Committee at Capital Generation Partners. He was until recently Head of Policy at the Grantham Research Institute at the LSE and Acting Chief Economist for the Global Commission on the Economy and Climate. Previously, he headed the Stern Review Team at the Office of Climate Change, London, and was a lead author on the Stern Review on the Economics of Climate Change, commissioned by the then Chancellor Gordon Brown. He was an Associate Fellow at the Royal Institute of International Affairs, Chatham House. Before working on climate change, Dimitri was Head of Economic Forecasting at HM Treasury, providing regular briefings to the Chancellor Gordon Brown and Prime Minister Tony Blair.

### **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)
  - o The speed of the low carbon transition and the risks and opportunities involved
  - o The compatibility of these climate mitigation policies with international law, including international trade law.
  - o 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 5 July (to [masters@wti.org](mailto:masters@wti.org)); and submit the final paper by 20h00 on 12 July 2024 (to [masters@wti.org](mailto:masters@wti.org)).

### Course Overview

Date	Day	Time	Topic
1 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 mitigation
2 July	Tuesday	10:00 12:00	Risks and opportunities: the scope and speed of the low carbon transition – theory and evidence
		13:00 16:00	Managing change and hedging risk, assessing how policies, markets and institutions are likely to evolve
3 July	Wednesday	10:00 12:00	Roundtable with experts

		13:00 16:00	Carbon pricing, subsidies, standards for products, processes, and reporting
<b>4 July</b>	Thursday	10:00 12:00	Domestic climate litigation
		13:00 16:00	International climate litigation

**MONDAY, JULY 1 2024**

**Lecturers:** Elena Cima, Dominic Coppens 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.
- *Principles for Consideration in the Design and Implementation of Trade-Related Climate Measures and Policies*, TESS (2023). (available [here](#)).
- '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).

### 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 2 2024**

**Lecturers:** Dimitri Zenghelis

**Subject**

- Risks and opportunities: the scope and speed of the economic transition

**Topics**

- Reaching net-zero: the size of the challenge
- The global carbon budget
- The cost of reaching net zero (resource costs vs. investment costs)
- Structural change, path-dependencies and multiple equilibria
- Tipping points, scale economies and reinforcing feedbacks
- Technology and stranded asset risk
- Creating new markets and the reinforcing role of expectations
- Agglomeration clusters in systems, networks and cities
- Resource use, land and natural capital
- Innovation, consumption and degrowth
- Co-benefits, long and short run 'multipliers'
- The business of climate change – hedging and risk management strategies
- Scale of investment, capital costs and the neutral real rate of interest
- Climate litigation risk

**Compulsory reading material**

- The New Economics of Innovation and Transition: Evaluating Opportunities and Risks, 2022 EEIST (available [here](#)).
- Acemoglu D, Aghion P, Bursztyn L, Hemous D (2012) The environment and directed technical change. *American Economic Review* 102(1): 131-166, (available [here](#)).
- Aghion P, Hemous D, Veugelers R (2009) Kick-Starting the Green Innovation Machine. Bruegel (available [here](#)).
- Aghion, P., Dechezleprêtre, A., Hémous, D., Martin, R. and J. Van Reenen (2012), Carbon Taxes, Path Dependency and Directed Technical Change: Evidence from the Auto Industry, *Journal of Political Economy*, 124(1), 1–51. (available [here](#)).
- Ekins, P. and Zenghelis, D. 2022, 'The costs and benefits of environmental sustainability' (available [here](#)).
- Geels et al. 2021. 'Productivity opportunities and risks in a transformative, low-carbon and digital age'. The productivity Institute. (available [here](#)).
- Zenghelis D (2019) *Mind over matter – how expectations generate wealth*. The Bennett Institute for Public Policy, Cambridge, (available [here](#)).



- Zenghelis D., Serin, E, Stern, N., Valero, A. VanReenen, J and Ward, R. E. January 2024 'Boosting growth and productivity in the United Kingdom through investments in the sustainable economy' (available [here](#)).
- Zenghelis, D. 'Sustainability is not only compatible with growth, it requires it – but only with targeted innovation', March 2021 Forbes (available [here](#)).
- Zenghelis, D. Review of Simon Sharpe's book [Five Times Faster](#): The Economy Is a Flexible Ecosystem, Not A Rigid Machine. We Must Shape It. (forbes.com) 2023 (available [here](#)).

### Optional reading material

- Aghion, P., Hepburn, C., Teytelboym, A., & Zenghelis, D. (2014). "Path dependence, innovation and the economics of climate change". Grantham Research Institute on Climate Change (available [here](#)).
- Aldersgate report 2020 Rydge, J and Zenghelis, D. 'Rebuilding to last: UK must not go back to the old normal'. July, (available [here](#)).
- Dechezleprêtre, A. and Martin, R. (2017) 'Knowledge spillovers from clean and dirty technologies' Grantham Research Institute, (available [here](#)).
- Grubb M, et al (2021) Induced innovation in energy technologies and systems: a review of evidence and potential implications for CO<sub>2</sub> mitigation. *Environmental Research Letters*, 16(4), 043007. (available [here](#)).
- Hidalgo, C. A., Klinger, B., Barabasi, A. L., and Hausmann, R. 2007. 'The product space conditions the development of nations.' *Science* 317 (5837), 482. (available [here](#)).
- Krugman, P., 1991 'History Versus Expectations' *The Quarterly Journal of Economics*, Vol. 106, No. 2. May, pp. 651-667 (available [here](#)).
- Mealy, P. and Cameron J. Hepburn, C. J., 2017. 'Transformational Change: Parallels for addressing climate and development goals' INET. Oxford. October (available [here](#)).
- Porter M E (1990) *The Competitive Advantage of Nations*. Harvard Business Review. (available [here](#)).
- Van der Meijden, G. and S. Smulders (2017). "Carbon Lock-In: The Role of Expectations." *International Economic Review* 58(4): 1371-1415 (available [here](#)).
- Zenghelis, D., M. Agarwala, D. Coyle, M. Felici, S. Lu, and J. Wdowin (2020), "Valuing Wealth, Building Prosperity," Wealth Economy Project. Bennett Institute for Public Policy, Cambridge, (available [here](#)).

**WEDNESDAY, JULY 3 2024**

**Morning – Roundtable with prominent stakeholders from government, civil society, and business:**

- **Damaris Carnal**, a Swiss Federal government official, with experience in trade, environment, human rights, and health.
- **Carolyn Deere**, Executive Director of the Forum on Trade, Environment and the SDGs, which convenes the Coalition of Trade Ministers on Climate (and many activities).
- **Yvonne Lenoir**, Head of the Office of the General Counsel, Banque Pictet et Cie.
- **Esteban Mezzano**, General Counsel Operations and Sustainability, Société des Produits Nestlé.

**Afternoon**

**Lecturers:** Elena Cima, Dominic Coppens and Nicolas Lockhart

**Subject**

- Carbon pricing
- Subsidies
- Standards for products, processes, and reporting

**Topics**

- 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 applicable legal framework
  - 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

### Carbon pricing

- 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](#)).
- Case study 'Policy options for rapid, smooth decarbonisation and sustainable growth' and 'What is the Most Cost-Effective form of Carbon Pricing? Modelling emissions trading and a carbon tax in general and in China' in New economic models of energy innovation and transition' *EEIST* (2023) available [here](#)
- 'A Guide for the Concerned: Guidance on the elaboration and implementation of border carbon adjustment', IISD (2015) (available [here](#)).

### Subsidies

- 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).
- 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](#)).

### Standards for products, processes, and companies

- 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](#)).
- '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](#)).

**THURSDAY, JULY 4 2024**

**Lecturers:** Elena Cima, Dominic Coppens 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
  - Climate change and human rights at the ECHR

### **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](#)).
- Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (ECHR) (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](#)).