

***STRENGTHENING CAPACITY FOR ENVIRONMENTAL
LAW IN THE ASIA-PACIFIC : DEVELOPING
ENVIRONMENTAL LAW CHAMPIONS***

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CLIMATE CHANGE & CLEAN ENERGY LAW

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Learning outcomes

Session Topic

- Situate climate law within an understanding of the science & politics of climate change
- Understand the international regime on climate change (including REDD+)
- Understand the scope and content of domestic climate law
- Understand the transnational elements of climate law including key role of non-state actors

Learning outcomes

Teaching Methodology

- Understand the value of a brainstorming exercise to generate ideas
- Ability to give constructive feedback to peers
- Understand the range of subjects and methods for teaching climate change and clean energy law in an environmental law course
- IUCN Academy Climate Law Teaching Resources (including simulations & negotiations)

<http://www.iucnael.org/en/online-resources/climate-law-teaching-resources>

Introduction to Climate Law

- Climate change is a global environmental issue that has been identified by scientists over the last 30 years as a significant threat to both humans and biological diversity ;
- It is the law relating to both **mitigation** of, and **adaptation** to, climate change
- What counts as ‘climate law’ (vs. climate policy)
- Vast potential scope:

Carbon trading, carbons markets, building codes, certification standards, trade law, urban planning, corporate securities disclosure rules, voluntary commitments, contractual clauses, tort litigation, ocean law, migration law, public health legislation.

What makes climate law unique?

- economic, social and environmental interconnectedness
- Irreversibility
- the knowledge that present actors may knowingly leave future generations in an unsustainable position
- Interactions between tort perpetrators and victims who will never meet
- very long, almost unimaginable, timeframes
- Uncertainties
- complicated and often unknowable patterns of cause and effect
- Past responsibilities
- diversity of actors who engage with and shape climate law – ranging from banks to NGOs to mayors to industry associations to pension funds to citizen coalitions to international financial institutions



The Science of Climate Change

- There is still not yet **full scientific certainty** about all aspects of climate change, in particular its impacts at the regional rather than global level
- Lack of full scientific certainty has prompted opposition in many countries to new climate laws;
- Causes: CO₂ emissions from fossil fuel & cement now account for about 90% of total CO₂ emissions
- Economic and population growth further drive CO₂ emission increases from fossil fuel combustion (coal)
- Scientific studies of climate change have been reviewed every five years since 1987 in the reports of the Intergovernmental Panel on Climate Change (IPCC) <http://www.ipcc.ch/>.

Climate Change Law – International measures

- **UN Framework Convention on Climate Change (UNFCCC)** [in force as of 1994]
 - **Annex 1 (developed)** countries are required to “adopt national policies and take measures to mitigate climate change by limiting its emissions of greenhouse gases and protecting its greenhouse gas sinks” (Art. 4.2)
 - “Commitments by **developing countries** under the Convention will depend on the provision of financial resources and transfer of technology by developed countries”;

Climate Change Law – International measures

- **Kyoto Protocol (1997)**
 - Signed in Kyoto, Japan in 1997
 - Entered into force 16/2/2005 (182 parties)
 - Annex 1 countries agreed to reduce their overall emissions by 5.2% below 1990 levels between 2008-2012 (1st commitment period)
 - Specific, but varying targets set for each UNFCCC Annex 1 country (Article 3)
 - No new commitments for Parties not included in Annex I

Climate Change Law – International measures

Kyoto Protocol cont.

- Ability to meet mitigation commitments through:
 - Clean Development Mechanism (Art.12)
 - Joint Implementation (Art.6)
 - International Emissions Trading (Art.17)
- Implementation issues
 - Scope and role of flexibility
 - Extent of land-use and forest changes allowed in the calculations
 - The parameters of a compliance monitoring and enforcement mechanism.

PARIS AGREEMENT 2015 PROVISIONS:

Article 2

1. This Agreement... aims to strengthen the global response to the threat of Climate change, in the context of sustainable development and efforts to eradicate poverty, including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels ...
 - (b) Increasing the ability to adapt ... in a manner that does not threaten food production; and
 - (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.



Paris Agreement – the Approach

- Increase ambition with periodic reviews of NDC's (the 'ratcheting mechanism')
- Significance of a pledge and review mechanism
- Finance US\$100b/yr and voluntary Sustainable Development Mechanism (SDM) including Developed and developing countries - elements of CDM and JI
- Focus on supporting renewable energy
- New financial instruments to better deal with risk for renewable energy investment
- Efforts to influence behaviour of non-state actors and non-signatories (changing perceptions of what treaties can do)
- 'New governance' approach



NDC's - National measures

- INDCs have become NDCs after the Paris Agreement
- There is a rapidly emerging body of legislation, particularly in developed countries, directed to mitigation of climate change,
- more recently to adaptation measures – planning laws
- Government buy backs of coastal properties?
- Compensation?
- Insurance issues
- National legislation is required for a cohesive and comprehensive approach to climate change, covering both mitigation and adaptation

Climate Change Law Reform



Grantham
Research Institute
on Climate Change
and the Environment

Climate Change Laws of the World

A 2017 Climate Legislation Study calculated that more than 1,200 laws to curb climate change have now been passed, an increase from about 60 laws in place two decades ago.



National measures - legislation

- **Examples of national climate-related legislation**
 - Prescribing **targets** for the reduction of GHG emissions
 - Requiring the **reporting** of GHG emissions for a national inventory
 - Imposing **economic measures** to reduce emissions:
 - trading (“cap and trade”) systems;
 - Carbon tax on emissions
 - **Energy-related measures** e.g., targets for renewable energy; feed in tariffs; rebates
 - **Carbon sequestration measures**

Climate Change Litigation



- The value of teaching fast-moving developments in law
- climate litigation as a way to teach comparative environmental law
- The regulatory role of climate lawsuits

National measures - litigation

- Litigation FORCING authorities to act to regulate greenhouse gas (GHG) emissions:
- Netherlands – Urgenda Foundation v The State of the Netherlands <http://edigest.elaw.org/nl.urgenda.15> Hague District Court
 - “The Dutch government must reduce CO2 emissions by a minimum of 25% (compared to 1990) by 2020 to fulfil its obligation to protect and improve the living environment against the imminent danger caused by climate change.”
- Pakistan – Ashgar Leghari v Federation of Pakistan 2015 High Court of Lahore http://edigest.elaw.org/pk_Leghari
 - ordered the government of Pakistan to implement the National Climate Change Policy and convened a Climate Change Commission to oversee and report to the Court on progress.
- Philippines – Human rights petition against top 47 polluters

REDD+ Reducing Emissions from Deforestation and Forest Degradation and the Conservation of Forest Carbon Stocks, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks

The Initial Idea: Slow climate change by saving trees and reducing emissions from deforestation and forest degradation

The Legal Basis:

The 2015 Paris Climate Accord included an explicit provision on REDD (Article 5) which draws on dozens of prior policy decisions. There is a growing push through REDD+ to integrate avoided deforestation into future global emissions reductions schemes.



Expanding Efforts to Create a financial value for the carbon stored in forests:

- **REDD+** includes REDD Forest conservation + Sustainable management of forests + Enhancement of forest carbon stocks
- **REDD++** is for REDD + Land use for agricultural activity
- **REDD “readiness”** efforts by a country with the support of multilateral or bilateral initiatives to build its capacity to be ready for a REDD + mechanism (Copenhagen 2009)



Key issues in the creation of harmonised and strengthened standards:

- the effective protection of knowledge, rights and benefits for Indigenous peoples and local communities, and the implementation of the FPIC principle and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- the effective protection of natural forests and biodiversity
- measurable progress towards transparent and effective governance
- compliance with relevant international conventions and agreements



Cancun Safeguards (2011):

- (a) Follow national forest programs, int'l conventions & agreements;
- (b) Transparent and effective national forest governance structures;
- (c) Respect knowledge and rights of indigenous and local people, noting UN Declaration on the Rights of Indigenous Peoples (UNDRIP);
- (d) Full and effective participation of relevant stakeholders;
- (e) Consistent with conserving natural forests & biodiversity
- (f) Actions to address the risks of reversals;
- (g) Actions to reduce displacement of emissions.

Durban (2012):

Parties undertaking REDD+ activities “should provide a summary of information on how the [Cancun] safeguards are being addressed and respected.”



