LAW 397 – INTERNATIONAL CLIMATE LAW

Winter 2021
Tuesday from 2:30 to 5:30pm (February 2 to March 16)

COURSE INSTRUCTOR

Joanna Dafoe, JD, MBA, MESc
Sessional Instructor
Faculty of Law, Queen’s University

Email: joanna.dafoe@queensu.ca
Description

Multilateral efforts to reduce greenhouse gas emissions are expected to result in a world of 3.2°C warming. Yet climate scientists and politicians alike declare this outcome to be a reckless gamble, creating the risk of tipping points in the earth’s climate system and cascading failures which will imperil ecosystems and society. What is the role of innovative climate lawyers to steer global efforts towards success? To answer this question, this course will dedicate itself to examining the international legal and policy features which govern efforts to manage global climate change. It asks how the dominant legal response has performed, and what reforms are vital for the climate regime’s future.

The course will be structured in two parts. The first describes the broad features of international climate law, including the key treaties, principles, multilateral fora and case law. The second half of the course will focus on the law and policy which underpins the United Nations Framework Convention on Climate Change (UNFCCC)—the primary multilateral forum for reducing greenhouse gas emissions. We trace the UNFCCC’s legal evolution from the 1997 Kyoto Protocol to the 2015 Paris Agreement, and identify key factors which enable or constrain its success. The desired outcome from this course is to have a foundational understanding of international climate law, as well as an understanding of opportunities to adopt decades-old approaches in ways that are relevant for 21st century environmental problems.

A distinct feature of this course will be the opportunity to engage with practitioners working at the frontier of international climate law. These guest discussants will join for the final portion of each class, after the primary instruction and class discussion. Guest speakers include Todd Stern, who was the previous U.S. Envoy for Climate Change and lead U.S. negotiator of the Paris Agreement, and Rueanna Haynes, who is the Senior Legal Advisor and AOSIS Support Team Lead at Climate Analytics. We will also hear from one of the most widely cited and acclaimed scholars in climate law, Daniel Bodansky, as well as from Sarah Mead, who is a litigator working on the pioneering, human-rights based approach to climate litigation through the Urgenda campaign. The goal with this approach is to hear the direct insights from leading practitioners, to explore the nuance of the law’s application, and to understand the dynamic opportunities for change.

Objectives

The course is intended to:

1. Introduce you to the key treaties, principles, and multilateral institutions that govern climate change law;
2. Enable you to critically appraise the evolving field of international climate law; and
3. Facilitate an interdisciplinary understanding of international climate law, accounting for relevant political, historical, and economic drivers.

Grading Structure

Policy memorandum (20%) 1-2 page memorandum due any time before March 10
Paris Agreement Simulation (20%) Exercise held on March 9
Final paper (40%) 10-12 page final paper, due April 11
Participation (20%) Ongoing

Lecture Topics, Reading Assignments, and Discussion Questions

Part I – General Features of International Climate Law

Class 1, February 2 – Climate Change Overview and Sources of International Environmental Law

This introductory class will provide an overview of climate science as a foundation upon which we will build our study of climate law. It reviews the key findings of recent scientific reports and the projected climate impacts for temperature rise, drought, flood, and sea-level rise. We then turn to a high-level overview of the concepts and sources of international environmental law, which includes the rights and obligations of sovereign states, treaty agreements, and multilateral environmental principles. Unlike most fields of law, climate law is distinctly informed and confounded by insights generated from scientific disciplines. To understand this perspective better, we will hear from Rueanna Haynes, who has been a lead negotiator for the Caribbean Community, Alliance of Small Island States, and G77 and China to climate and sustainable development negotiations.

Guest Speaker: Rueanna Haynes, Senior Legal Advisor and AOSIS Support Team Lead at Climate Analytics

Readings
Class 2, February 9 – Multilateral Efforts Outside the UNFCCC

This class will evaluate multilateral efforts to address emissions outside of the UNFCCC through the aviation, maritime, and trade sectors. We first compare and contrast key developments under the International Civil Aviation Organization and International Maritime Organization, and investigate the comparative success of these sectors when contrasted with the Paris Agreement. We then review the key features of the “single most successful international agreement to date” - the Montreal Protocol -- to explore what insights can be gleaned from this approach and its trade-related measures. Last, we discuss the recent trend from countries around the world to consider trade measures through border-carbon adjustments, and the compatibility of this approach with international trade law. Given the significance of the aviation sector for addressing the climate problem, with aviation driving 4.9% of the warming impact on Earth, we will be joined by the internationally recognized expert in aviation and climate policy, Annie Petsonk, to discuss the legal features of the ICAO regime.

Guest Speaker: Annie Petsonk, International Counsel at Environmental Defense Fund

Readings
- Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), 1522 UNTS 3; 26 ILM 1550 (1987) (skim)

February 16 – Reading Week (no class)

Class 3, February 23 – Climate Litigation: Public and Private Actors

This class is focused on the new and emerging field of climate litigation towards public and private actors. We investigate the legal strategies used for cases brought against governments, and reflect on their relative success, before addressing the emerging strategies used for cases brought against private actors. We discuss the implications of this trend in climate litigation for companies and actors who are at the very source of the climate problem, and we consider the dynamic opportunities for further action. Key cases include Urgenda Foundation v. State of the Netherlands, Juliana et al. v. United States of America, et al., and McVeigh v. REST, as well as
the National Inquiry on the Impact of Climate Change on the Human Rights of the Filipino People.

**Guest Speakers:** Sarah Mead, Urgenda Foundation

**Readings**
- *McVeigh v. REST Settlement Agreement*. Read Media Release on Settlement Agreement on course site (two pages).

**Part II – International Climate Law under the UNFCCC**

*For each of these classes, please bring a copy of the UNFCCC agreement text and the Paris Agreement.*

**Class 4, March 2 – Origins of the Climate Regime: from the Framework Convention to Copenhagen Accord**

This is the first of three classes dedicated to international climate law under the UNFCCC. This class reviews the legal and substantive features of the 1992 UNFCCC agreement (“the Convention”) and the 1997 *Kyoto Protocol*, and the obligations created by both of these agreements. It then identifies the key issues that are bitterly contested in the years leading up to the 2009 *Copenhagen Accord*, as countries endeavor to develop a new global climate agreement. How do countries overcome competing and seemingly irreconcilable positions about the role of the future climate regime? To answer this question, we are joined by one of the world’s foremost climate diplomats and global climate leaders, Todd Stern, who will share his account firsthand.

**Guest Speaker:** Todd Stern, Senior Fellow at Brookings Institute and Former US Special Envoy for Climate Change

**Readings**

Class 5, March 9 – Paris Agreement and New Legal Regime

For this class, we will break out into four groups for an exercise on the Paris Agreement. You will be responsible for presenting the strongest possible defense or critique of a given article in the Paris Agreement, reflecting your awareness of the historical, political, and economic forces which underpin this text in the Agreement. A recorded lecture will be made available on the course website in advance. Many legal questions pertaining to the Paris Agreement remain ambiguous. For the second part of the class, we will learn about the key legal issues under the Paris Agreement from one of the most widely published and cited authorities in international climate law, Professor Daniel Bodansky.

Guest Speaker: Daniel Bodansky, Foundation Professor of Law, Sandra Day O'Connor College of Law

Readings:

Class 6, March 16 – Multilateral Climate Law and Its Future

This final lecture will review the negotiating issues at stake for COP 26. It describes the broadened role of private sector actors in COP 26 and the attention now being directed to “the forgotten promise of the Paris Agreement” under Article 2, on climate-aligned finance flows. It also contemplates the emerging efforts from countries around the world to advance trade-related measures to address climate change. Based on our understanding of the UNFCCC history, this lecture will reflect on the emerging and complementary models to enhance the effectiveness of the Paris Agreement structure, and the myriad ways that legal practitioners can use their skills to be of service to the planet.

Readings:
Additional

**Office Hours:** Office hours are held every Thursday from 4:00pm to 6:00pm EST. I am available to speak with students about any questions they have related to the lecture content and assignments. Given the compressed instruction format, I will not likely have the opportunity to answer most questions during class time, so this is one opportunity for us to engage in particular issues in greater detail. I am also available to speak with students who are interested in careers in environment or climate law and policy. Appointment times can be scheduled here: [https://calendly.com/internationalclimatelaw](https://calendly.com/internationalclimatelaw). Our “virtual office” will be on Zoom using this link: [https://queensu.zoom.us/j/92970883040?pwd=V3IrQzNTMXMwSFFlWTRjWmhDdTB6UT09](https://queensu.zoom.us/j/92970883040?pwd=V3IrQzNTMXMwSFFlWTRjWmhDdTB6UT09).

**Preferred Name and Pronouns:** I will gladly honor your request to address you with a preferred name or pronoun. Please advise me of this preference as early as possible.

**Late Assignment Policy:** Requests for extensions for late assignments are to be handled directly through the Education and Equity Services Office.

**Academic Integrity:** Students are responsible for familiarizing themselves with and adhering to the regulations concerning academic integrity. General information on academic integrity is available at [Academic Integrity @ Queen’s University](https://queensu.ca/education-and-equity/services/academic-integrity), along with Faculty or School specific information. Departures from academic integrity include, but are not limited to, plagiarism, use of unauthorized materials, facilitation, forgery, and falsification. Actions which contravene the regulation on academic integrity carry sanctions that can range from a warning, to loss of grades on an assignment, to failure of a course, to requirement to withdraw from the University.

**Accessibility and Accommodations:** Queen’s University is committed to achieving full accessibility for persons with disabilities. Part of this commitment includes arranging academic accommodations for students with disabilities to ensure they have an equitable opportunity to participate in all of their academic activities. If you are a student with a disability and think you may require accommodations, please make the necessary arrangements with the Faculty’s Education and Equity Services office. You will also need to contact Queen’s Student Accessibility Services (QSAS) as early as possible. For more information, including important deadlines, please visit the QSAS website. If you find any element of this course difficult to access on onQ, please discuss with your instructor how you can obtain an accommodation.