

Prof Linnan

Syllabus

COVERAGE

Environmental concerns transcend national boundaries, but present distinctly different issues to differing groups of countries in an area where in public international law terminology “soft” law closest to politics still predominates, but “hard” law governing state behavior now must be made to address pressing climate change needs. There is some existing international environmental law, but if you notice the weather lately, existing law does not seem to be adequate to resolve our problems. We shall study specific legal materials like international agreements under negotiation, existing treaties, reports and customary law sources, but climate science and economics also play a role, and things are changing fast.

The not-so-hidden message is that international environmental law is about global and local issues at the same time. It intertwines with economic activity concerns. So you can run but you cannot hide longer term, since all states and their inhabitants are engaged in economic activity. This course looks generally at the nature of the international law process in this area (with its limited number of treaty and customary law principles), economic and other perspectives on natural resource usage, state sovereignty and abiding tensions between industrialized and developing countries concerning environmental issues (beyond prohibitions, to technology transfer and the “who pays” question). There is also a growing overlap between traditionally distinct legal areas like international trade and international environmental law to be aware of in a technical sense. Meanwhile, the current Trump Administration is seeking to remake both in important ways.

MEETING TIMES & PLACES

The course is scheduled to meet regularly 4:20-6:30 pm Columbia time Tuesdays in Law School Room 204. Class sessions should be recorded and available on panopto, but that is only for review purposes. I should normally be in my 320 office in the Law School Faculty Suite most afternoons Monday and Wednesday, meanwhile maintaining formal office hours Monday and Wednesday 10:45-13:00. On request, beyond those times we can schedule a meeting at any mutually available time (via WhatsApp, Zoom, or we just meet physically at the Law School; my e-mail for scheduling an appointment is davidkeithlinnan@yahoo.com). Just email me, or otherwise just catch me in class to schedule a meeting outside office hours.

ASSESSMENT, AI & ATTENDANCE

This is a 2/3 credit course. Grading in the two-credit version of the course will be based largely on your performance on the repeated written work in your groups (working over approximately half the term on the Charleston Problem, which most recently involves the August 5, 2025 dismissal of a state tort law case filed in 2020 against fossil fuel companies asking for damages to pay for remediation and protection from rising damages from plain day and chronic storm flooding and the like in conjunction with sea level rise on a variety of

grounds (amounting ultimately to the idea that the problem of climate change was simply unsuited to judicial resolution, particularly in what amounted to a state tort law claim). Class participation will be taken into account in letting you move individually up to ½ grade (e.g., from a B to a B+, etc.). The CALI will be awarded on a group basis to the team that does the best job on the Charleston Problem.

There is also an option to take the course for three credit hours, including writing a 30+-page paper structured to satisfy the Law School's graduation legal writing requirement, as set forth in the Law Student Handbook. In that case you participate in the Charleston Problem group work, plus complete your individual paper, but your grade will be determined primarily by your grade on your graduation writing requirement paper. Students wishing to write a research paper should talk early and often with the instructor. Satisfaction of the graduation writing requirement means that you will be required to choose a topic in consultation with the instructor, produce an outline, followed by a first draft and then a final version of the paper. Note that you must confer with the instructor at least three times in the process: to choose a topic cooperatively, to review your writing outline together, and then for comments between your first draft and the final paper version. I sincerely hope you are done in two drafts, but that largely is dependent upon you putting the necessary effort into your first draft. We could also organize a help session with reference law librarians to introduce you to international environmental law and climate change sources, as a way to help you get started.

You will also be required to prepare other problems and projects for class in groups, where we shall employ a self-grading process within groups (meaning your colleagues indicate whether you did your fair share of the work). The concept is that we rotate responsibility for preparing presentations of group problems so you presumably have one to prepare every 2-3 weeks in your group during the semester. Your grade will also reflect self-grading within your groups on the margin (basically, up or down a half letter grade in +/- terms, whether you take the course for two or for three credit hours).

USC is now partnering at the university level with OpenAI to provide every member of our campus community with access to ChatGPT as a leading generative AI tool. My view is that, generally speaking, better for you to learn about AI tools in law school now, rather than waiting until you land in your first full-time law job. The use of generative AI is encouraged with certain tasks, but only with attribution. And be forewarned, AI often produces bad summaries, so you need to read the original legal sources yourself. You can choose to use AI tools to help brainstorm assignments or projects or to revise existing classroom work you have written. The basic line is drawn between use of Generative AI as a research tool, versus the idea that writing is a necessary professional skill for all lawyers. So you need to do your own writing, rather than relying on generative AI to do it for you.

When you submit anything, I expect you clearly to explain whether and how you used AI tools in its creation and attribute whatever text or concepts were generated by the AI tool. You remain fully responsible for anything incorporating AI, including inclusion of any hallucinated material. Lawyers are already being disciplined by judges for filing documents containing hallucinated sources and citations, so you have to check anything and everything you submit that has been touched by AI in any fashion (disciplined means in this context it could affect your course grade, because failing to check equates to delivering pretty sloppy

professional work). If you have any doubts about AI use, please feel free to ask for further clarification at any time.

The Law School, and ABA under its rules, care about your diligent pursuit of legal education, regardless of competing concerns. The standard Law School rules apply, so we shall take attendance. Regarding attendance, if you miss more than 25% of the classes you will be graded down irregardless (and also would not be included in any group CALI award, should your group be the class winner). It is your responsibility to sign the attendance sheet, and if you come to class more than ten minutes late you are counted as absent and should not sign the attendance sheet. You may not sign the attendance sheet for anyone else.

TEXT & APPROACH

We shall save you the cost of a commercial law casebook in this course. The instructional materials will be free online via email or on Blackboard. Parts are now dated, but if you are interested you can also access a now four-year-old course website with materials generally at <https://uofsclawcourses.azurewebsites.net/courses/laws666-international-environmental-law/>

You would see certain links to materials there anyway via the assignments, and if you like might follow some of the changes already within the past 2-3 years in a rapidly moving field.

The order of coverage from our online materials follows:

- Unit 1 Introduction on Background
- Unit 2 Customary Law as Basis for International Environmental Law
- Unit 3 Human, Development & Other Rights-based Legal Approaches to International Environmental Law, Now Increasingly Domestic Public Law Litigation Too
- Unit 4 Human Rights Views Differing: ATCA Then, Now Business & Human Rights Approaches Internationally (Customary Law Versus General Principles)
- Unit 5 Private Sector Voluntary Codes & ESG (Market-Oriented & Litigation Safe Harbors?)
- Unit 6 Treaty Interpretation and Treaty Process Approaches (Framework Conventions Versus the Package Deal Approach, plus Formal Interpretation or Dispute Settlement, starting with the UNFCCC)
- Unit 7 Trade/Scientific Risk NTBs & Non-State Aspects (GMOs plus an excursion into the Convention on Biodiversity)
- Unit 8 Trade & Environment (WTO & GATT Article XX(b)&(g) Exceptions & Jurisprudence)
- Unit 9 Implementation & International Monitoring on the Example of Ozone (Methane Beyond the UNFCCC via the Montreal Protocol)

Unit 10	Climate Change as the Ultimate Test for the Framework Convention: Rio 1992, Kyoto 1998, Paris 2015, Now Paralleled on the Sustainable Development Side
Unit 11	Immovable Objects & Irresistible Forces in the UNFCCC Process (Follow the COPs)
Unit 12	Domestic Implications of International Treaty-Making: The Basel Convention & Hazardous Waste
Unit 13	1973 CITES Convention & Approaches to the Marine Environment: Science, Old Treaties & Regional Governance
Unit 14	1992 Biodiversity Convention, Sustainability & Indigenous Knowledge

This course is a specialized international law course. It is offered without prerequisites knowing that some students will have prior knowledge and training in public international law, while others may not. We shall try to address this via online resources and during office hours, but if all else fails, the public international law nutshell and similar black letter law summaries are helpful. Some of you may take the course for three credits to satisfy your graduation writing requirement. You could take as your paper subject any one of the six issues below under “Points to Keep in Mind While Reading,” or some other topic we mutually agree upon. There is so much material these days in international environmental law or climate change law, that you would not lack for interesting questions in any case.

KEEP YOUR EYE ON THE BALL WHEN READING, ALSO POTENTIAL GWR PAPER TOPICS

There is quite a lot going on in international environmental law, and it is not a limited domestic body of law like property or securities regulation. So candidly, its breadth may initially seem overwhelming. But there are certain repeat themes or questions to focus on as guidance in approaching any individual problem or reading. Meanwhile, all of them contain one or more paper topics for those choosing the three credit option:

1. To what extent is “international environmental law” about an existing body of law in the form of treaties and customary law, versus now being focused more on a law-making process addressed to problem-solving in the climate change context? And is that process already working (or not yet)? So what exactly is the difference between an international environmental law course and a course on climate change, and where do they overlap/interact? (Coincidentally, there is a parallel, often neglected biodiversity crisis which straddles climate change and international environmental law under the 1992 Convention on Biological Diversity.) Where does biodiversity fit as between climate change and international environmental law?
2. There is considerable on-going overlap and reordering of various sub-areas of international law tied to efforts to address climate change. Three leading examples are firstly that international trade law and international environmental law are somewhat

growing together, meanwhile secondly within international efforts to address climate change there are competing approaches in the form of traditional treaty law on a multilateral state-to-state basis, versus a human rights approach perhaps as a matter of group rights. One of the most basic divisions in international environmental law and politics is whether it is better approached as a human rights problem close to politics, versus via multilateral treaty law to be negotiated in detail between states. That constitutes the most basic difference between NGO environmental activists, versus government representatives. Then there are a limited but growing number of judicial opinions addressing climate change, either as a matter of domestic or international law, so how to understand the judicial approach, and from where does its version of applicable law come?

As example of the first, as part of the on-going EU Green Economy push, CBAMs or carbon border adjustment mechanisms as carbon levies addressing the amount of carbon generated in the creation of individual foreign products compared to an EU-origin product, were phased in by EU regulation October 1, 2023 for the import of iron and steel, cement, fertilizers, aluminum, electricity and hydrogen products-- the first EU CBAM report was due January 31, 2024, if you follow international affairs and business. The EU plans a further expansion of covered goods to include chemical and polymer products among others by 2026, and full coverage for the importation of all goods that would be covered by the EU's Emission Trading System or ETS by 2030 (so effectively, levies to incorporate them within coverage of the EU carbon-trading market). In response, some countries in the developing world aka Global South claim CBAMs represent illegal tariffs, foul protectionism and interference with their economic development envisioned under the WTO Agreement.

Such claims were raised by the BASIC negotiating group consisting of Brazil, South Africa, India and China, or largely under the banner of the BRICS, which traditionally would be considered newly industrialized economies or NIEs in World Bank terminology. Meanwhile, the BRICS now include not only the original five members Brazil, Russia, India, China and South Africa, but also six new states joined the BRICs group in 2023-24, including Iran, Indonesia, the United Arab Emirates, Saudi Arabia, Ethiopia and Egypt. So the BRICS group continues to grow (including three major fossil fuel producers and three states that might not qualify as NIEs as traditionally understood). Meanwhile, the BRICS cum BASIC group seems generally dissatisfied with the existing international system, separate and apart from the idea that all major fossil fuel producers have quite specific economic interests largely in opposition to any restraints on continued fossil fuel usage. So what gives?

Technically speaking, at the international law level the immediate problem involves what should be governed by the 1994 WTO Agreement versus what should be governed by the 1992 UN Framework Convention on Climate Change or UNFCCC, as it is being extended progressively in periodic COP or Conference of the Parties meetings, like the most recent November 11-22, 2024 COP29 meeting in Baku, Azerbaijan. Meanwhile, it is doubtful that NIEs or major petroleum-producing state interests are the same as those of least developed countries generally (LDCs) or small island developing states (SIDS), especially under the UNFCCC. There is a general question separately between international trade and environmental law of what now should count as a developing

country after 30+ years of economic development (reaching back to 1992 for the UNFCCC and 1994 for the WTO). Under the international law concept of sovereign equality, all countries should be treated alike as a legal matter. However, states are free as under treaties to make special arrangements for different groups of states. As a practical matter, the relatively wealthy US or Japan are not in the same position as a relatively poor Sudan or Ethiopia, so the real argument is about the true NIEs like a China or a Brazil, but also in the climate context major petroleum producers like Iran or the UAE present special considerations. Meanwhile COP30 is scheduled to take place in Belem, Brazil November 10-21, 2025, so you can follow the COP process during the semester.

As example of the second or competing legal approaches problem, there is a very basic question and parallel tracks dating back to the 1990s, but now converging in a practical sense, over whether the best way to address climate change and economic development, and to make necessary law, is to pursue the UNFCCC and COP process to make treaty law between states, versus pursuing the sustainable development agenda, or more human rights-oriented approaches within the UN System via such means as the 2015 UN Sustainable Development Goals or SDG, with implementation tracking added in 2017. Meanwhile, the UNFCCC treaty approach effectively represents traditional “hard law” controlled by states and the UN SDG or human rights-oriented approach represents something closer to politics or soft law, and is coincidentally accessible to other interested parties like NGOs and climate activists (think Greta Thunberg, who famously said the COP meetings were nothing but “talk-talk-talk”). So can you do international environmental law without substantial spillovers and overlaps in other areas of international law and politics? Meanwhile how best to get to a sustainable yes on new law as climate change pressures grow?

Then there is recently a growing “third way” legal approach discernable in the form of activists pursuing domestic or international judgments addressing climate change, where tribunals presumably apply some version of law to climate change issues. But where does the law applied come from? International and domestic courts rarely if ever can “make” public international law in the same fashion as Common Law courts make domestic law. Traditionally, making public international law is relegated solely to states and perhaps international treaty organizations under limited circumstances. (But if you took an introductory public international law course, you would learn that the UN General Assembly is not a parliament, or otherwise capable of making law.) Meanwhile, domestic law judgments addressing climate change ultimately call into question the legal duty of a state to act in protection of individual(s). So, how does it work when courts can only “find” as opposed to “make” law addressing climate change, and how might a party get before such a court as both a matter of standing and jurisdiction?

As example, are you familiar with the recent [International Court of Justice Advisory Opinion on Climate Change Obligations, dated 23 July 2025](#) (requested by the UN General Assembly in March 2023), containing multiple opinions from different judges addressing the dual issues of obligations to protect the climate system for present and future generations, as well as legal consequences for states that have caused significant damage to the climate? Now, could such an advisory opinion be enforced, and how?

3. How things look in the US versus in the rest of the world, both as a matter of their perceptions and the commercial reality that our private sector-business community (aka clients) do not do business only in the US? And it goes both ways, like does BMW Manufacturing in Greenville-Spartanburg care more about US regulation versus EU/German regulation, versus name your other jurisdiction, to which its conventional X and M vehicles are traditionally exported, and to which it will soon export X EVs on a worldwide basis? In 2022 BMW announced \$1.7 billion increased investment in SC facilities to produce batteries and EVs, meanwhile few locals understand that traditionally half or more of BMW Manufacturing Greenville-Spartanburg's production is exported? And Volkswagen Scout is supposed to build an EV manufacturing operation in Blythewood as the Columbia suburbs, which is scheduled to start production in 2026, without much of a position on which markets the SUVs TBA target. So South Carolina's private sector may have more skin in the game than you might think.
4. There recently has been considerable private sector movement initially towards ESG developments and the like that you presumably touched on in your business corporations courses. And climate finance is finally on the radar, despite certain actions late in the First Trump Administration (and more recently again in the Second Trump Administration) and some continuing political opposition in Congress and at the state level to ESG. Most globally active clients appear to embrace ESG and sustainability as a business matter, and bankers have been hard at work for some time now trying to make money off decarbonizing the economy, regardless what your state or federal government may say. Meanwhile, there has been a longstanding financial sector industry code called The Equator Principles targeting environmental and social impacts, including GHGs, in project finance, which some of you might hear about in the Charlotte financial sector practice. In practical terms, this dictates legal approaches in infrastructure approaches as a matter of creditworthiness, and thus should affect greatly the whole renewables transition (estimated to cost circa \$100 trillion worldwide through 2050). Because creditworthiness is the lodestar, the bankers maintain that this is about loans being repaid, not about politics. But the private sector initiatives are not going in only one direction. Concerning the Equator Principles, in Spring 2024, four major US banks (Wells Fargo, JP Morgan Chase, Citibank and Bank of America) withdrew from the Equator Principles, as a result of a combination of a perception that the Equator Principles as standards formulated beyond individual banks' control were becoming increasingly prescriptive, linked with state-level, domestic political pressure in opposition to ESG generally. But how does that play in Europe under the EU's stricter ESG approach now under its Green Economy approach? Those same banks all do substantial business in Europe.
5. The IPCC or Intergovernmental Panel on Climate Change (the international scientific body advising on climate change) Sixth Assessment Round Reports have now been published, meanwhile the climate change news is not particularly good in terms of what is happening on the mitigation and adaptation fronts. The stated 2015 Paris Agreement goal targets through 2030 a maximum temperature rise since industrialization commenced of a 2.0 degrees centigrade increase, with a goal of limiting temperature rise to as close as possible to maximum increase of 1.5 degrees centigrade. But the climate scientists are increasingly pessimistic that the 1.5 degree target will be achieved, not to mention whether the 2.0 degree ceiling still holds. Should IPCC opinion in climate science terms be enough to jump-start the process? Meanwhile, 2030 lies only five years in the future.

And remember, when you graduate from law school in the mid-2020s, you will go on to a legal career spanning perhaps 40 years. The traditional target date for judging climate change's serious effects in the longer term has been 2050. Meanwhile, most if not all class members will still be professionally active in law through the 2060s. Where does that put you?

I shall organize a zoom visit with an Indonesian colleague currently at the National University of Singapore (Dr. Lindayanti Sulisiowati, who is both a prominent contributor to IPCC Reports as an academic and participated as a member of the Indonesian government negotiating team at the Paris COP, which articulated the 2015 Paris Agreement, for some insight how this all hangs together in practice. How do you think this all looks to a major developing country (Muslim majority, an archipelagic state located in Southeast Asia, meaning straddling both the Middle East and Asia)? What is their skin in the game?

6. Now that people begin to recognize that climate change is already happening, not just in a distant future, what is the plan to get something done? How precisely given sharply divergent political and economic interests? The hidden question is whether this is really more of a legal, economic or political issue, or all
7. equally, since to fix a wide variety of problems we presumably will have to remake economies in a practical sense (like substitute renewables for fossil fuels, involving enormous investments, and not just in the US, aka the renewables transition, to accomplish which reasonable investment estimates through 2050 are in the \$100+ trillion range worldwide). The good news is that financial sector lawyers may make out like bandits in doing legal work in areas like project finance successfully to build out the infrastructure necessary to implement that renewables transition.

LEARNING OUTCOMES

In this course we seek:

1. To introduce you to the broader topic of international environmental law alongside climate change, as one of the leading concerns of our time (and part of your professional futures, since class members presumably will be professionally active in 2030, and still in 2050, as major projected target dates for climate change);
2. To provide a technical introduction to sources of public international law as such, as applied to the specific specialized area of international environmental law, including the process of making new law in the area to address increasingly pressing problems;
3. To familiarize you with the attendant problems of balancing a variety of economic, political, development and negotiating problems in making international law among a wide variety of states, as opposed to the predominantly doctrinal approach in application that typically controls in most domestic law courses;
4. To improve your legal writing, judgment, analytical and advocacy skills through ordinary course outputs from all students working in teams on problems, as well as

the experience of working in teams (as is often the case in law practice, so get used to it); and

5. To provide a more individualized experience in legal writing and legal analysis for students who choose to satisfy their graduation legal writing requirement under the three-credit option.