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**Period**

Period 3

**Code**

LGL3001

**ECTS-credits**

7.5

**Organisational unit**

Center for European Studies

**Coordinator**

TBA

**Description**

LGL3001 – International Environmental Law

The environment knows no boundaries, while national legal systems do. It is therefore of the utmost importance to develop international law approaches in order to deal with transboundary and global environmental problems. While environmental law originally focused on local problems like smoke and noise, today we are confronted with transboundary and global environmental problems such as the continuing loss of biodiversity, long-distance air-pollution, and the threat of climate change. The protection of important nature, a healthy condition of air, water and soil, and the environmental safety of products and economic activities are core concerns.

Law serves as an important instrument to improve and protect the environment. The course International Environmental Law (IEL) discusses the role of international law – and the emerging body of global environmental law – in order to protect the environment. It takes a fundamental approach, which means that we will examine environmental law from the perspective of principles, environmental rights, and the choice and design of regulatory instruments to steer economic behaviour in a sustainable direction. Both strengths and, unfortunately, weaknesses of international environmental law will be discussed. In this respect, also the importance of national approaches and private initiatives will be addressed. Some specific attention will go to the European Union as a regional international organisation addressing, inter alia, environmental problems. The world-wide problem of climate change serves as the leading case of this course.

The course will be structured around the following themes: ▪ international environmental rule-making, including compliance and enforcement ▪ the concept of sustainable development ▪ global environmental law ▪ environmental principles ▪ human rights and environmental protection ▪ environmental procedural rights ▪ international and EU climate law, including the choice and application of regulatory instruments to steer citizen & business behaviour.

This intensive 3 week, 36 hour course includes field trips matching the course content during week days.

Disclaimer trips: trips and visits related to the course are conditional. E.g. Dutch travel advice should be positive regarding the region that will be visited and institutions should be able to accept visitors. In case a proposed trip or visit cannot continue due to circumstances, alternatives may be organized.

Disclaimer ECTS: the number of ECTS credits earned after successfully concluding this course is the equivalent of 7.5 ECTS credits respectively according to Maastricht University CES guidelines. Please consult with your home university or UM faculty if these credits will be accepted as part of your programme and, if necessary, converted to the credit system acknowledged by your home university.

### **Goals**

The overall objective of this course is to provide basic knowledge of the main characteristics and developments of environmental law from an international perspective. A related goal is to provide an in-depth understanding of the interrelationship between international and European greenhouse gas emissions reduction regulations.

By the end of the course, students should have basic **knowledge** of:

- The (limited) role of the International Court of Justice with regard to environmental problems
- The (important) role of International rule-making through multilateral environmental agreements, including compliance and enforcement
- The legal conditions for adopting unilateral protective measures by states
- The opportunities of and complexities surrounding environmental legal principles and the concept of sustainable development
- The value and shortcomings of current human rights arrangements for environmental protection, with a focus on procedural rights with regard to governmental decision-making in environmental matters
- The regulation of greenhouse gas emission reduction on the international and EU level

### **Instruction language**

EN

### **Prerequisites**

Students should have a background in law. The program is designed for students with an interest in becoming future policy and decision makers in government and businesses, working in NGOs in the field of environmental law and sustainable development, consultants, researchers and academics, corporate lawyers, barristers and practitioners.

### **Recommend literature**

Students will study a collection of book chapters, articles, treaty texts, court decisions and relevant websites. These materials are comprehensively provided electronically (an electronic reference list),

### **Teaching methods**

Lectures ▪ Work in subgroups ▪ Simulation of international negotiations ▪ Student Presentations ▪ Working Visits

**Assessment methods**

Final paper ▪ Presentation ▪ Multiple choice exam

**Keywords**

International Environmental Law, Global Environmental Law, Sustainable Development, Environmental Principles, Multilateral Environmental Agreements, International Court of Justice, Environmental procedural rights & human rights, ENGO-action, EU environmental & climate law, climate change law, UNFCCC, Paris Agreement, carbon markets.

# **LGL3001 - International Environmental Law**

Course Manual



2019 – 2020  
January Term 2020  
Center for European Studies  
Maastricht University  
Maastricht, The Netherlands

**Center for European Studies**



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# Chapter 1 Introduction

## Course content

The environment knows no boundaries, national legal systems do. It is therefore of the utmost importance to develop international law approaches order to deal with transboundary and environmental problems. While environmental law originally focused local problems like local air and noise pollution, today we are confronted with transboundary and global environmental problems like the continuing loss of biodiversity, long-distance air-pollution, and the threat of climate change. The conservation of important nature, the sound condition of air, water and soil, and the environmental safety of products and economic activities are core concerns.



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Law - both private and public law - serves as an important instrument to improve and protect the environment. The course International Environmental Law (in short IEL) discusses the role of international law in order to protect the environment. It takes a fundamental approach which means that we will examine environmental law from the perspective of principles, environmental rights, and the choice and design of regulatory instruments. Both strengths and, unfortunately, weaknesses will be discussed. As far as international law is falling short, the importance of national approaches will be addressed. In this context, the emergence of Global Environmental Law will be introduced, which touches upon the fact that national environmental legal norms have increasingly become internationalized. Some specific attention will go to the European Union as a regional international organisation addressing environmental problems.

The world-wide problem of climate change serves as the leading case of this course.

## **Course structure**

The course will be structured around the following themes:

- State liability and the role of the International Court of Justice
- International environmental rulemaking, including compliance and enforcement
- International environmental principles and the concept of sustainable development
- Human rights and environmental protection
- International Trade Law and the environment
- International and EU climate law, focusing on regulatory instruments to reduce greenhouse gas emissions

## **Class hours and credits**

This course consists of 36 class hours divided over 3 weeks. In addition, students have pre-readings and an extensive written paper due after classes are finished. Students earn 7,5 ECTS credits when they obtain a passing grade.



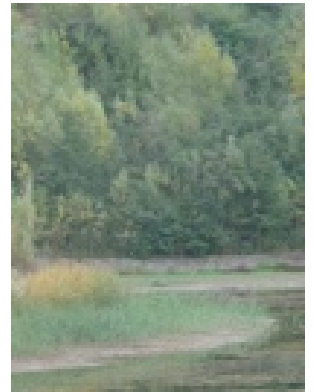
Jacques-Yves Cousteau (1910-1997)  
French naval officer, explorer, ecologist, filmmaker, photographer and researcher

## Chapter 2 Objectives

**The overall objective of this course is to provide basic knowledge of the main characteristics and developments of environmental law from an international perspective. A related goal is to provide an in-depth understanding of the interrelationship between international and European greenhouse gas emissions reduction regulations.**

By the end of the course, students should have basic **knowledge** of:

- The (limited) role of the International Court of Justice with regard to environmental problems
- The (important) role of international rulemaking through multilateral environmental agreements, including compliance and enforcement. In connection to this, students should have a basic understanding of the relevance of the WTO for national environmental rulemaking
- The complexities surrounding environmental legal principles and the concept of sustainable development
- The value and shortcomings of current human rights arrangements for environmental protection, with a focus on procedural rights with regard to governmental decision-making in environmental matters
- The regulation of greenhouse gas emission reduction at the international and EU level



With regard to **skills**, students will be trained by doing the following activities:

- preparing and conducting a focused presentation
- engaging in group discussions using the problem-based learning method
- developing positions from a legal perspective on a current environmental problem



## Chapter 3 Teachers information

### **Marjan Peeters** **Prof Dr. Marjan Peeters**

Prof. Dr. Marjan Peeters holds the chair of Environmental and Law at Maastricht University. She is widely trained in environmental law and teaches International and European environmental Law at Maastricht University since 2001. She worked in practice (governmental office) for nine years specializing in water and soil protection laws.

Professor Peeters publishes regularly on various topics of environmental law, with a special interest in legal aspects of climate change, regulatory instruments, and uncertain risks.

She has conducted several research projects, financed by the Dutch Scientific Research Organisation, Dutch governments, and private actors. Marjan Peeters serves as lecturer to the course.



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### **Mathias Müller**

Mathias Müller is a German PhD candidate at the Department of International and European Law under the supervision of Marjan Peeters and Michael Faure. He holds undergraduate degree in European Studies as well as a master's degree in European Law with a specialization in integration. His research is concerned with public access to environmental information under the Aarhus Convention Emission Trading. Mathias will be tutoring as well.



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### **Contact information**

- For substantive questions during the course: these should be submitted during the lectures and classes.
- For practical information and other practical issues about the course, you should approach CES education office (ces-educationoffice@maastrichtuniversity.nl)

## Chapter 4                      Assessment

The examination rules for this course are specified in the Academic Guide 2019-2020. It is the responsibility of the student to carefully read this document and comply with all and regulations.



CES  
rules

In order to pass this course, the student has to:

- Fulfill the minimum attendance requirements in plenary meetings and classes (see chapter 5);
- obtain a minimum final grade of 5.5 (see below).

### Course specific assessment overview

The assessment, and hence the final grade will be composed of:

- A. Paper of 3000 words (including footnotes, excluding literature list) (45%)
- B. Individual presentation (10% - with a pass/fail assessment)
- C. Multiple choice exam (a quiz) (45 %)

#### A.      Paper (45%)

The paper should be a focused, well written and well-reasoned analysis regarding one of the topics provided by the teachers. The paper should consist of a specific title, a concise introduction explaining the core focus and approach of the analysis, a well-structured body, and a conclusion, The student is required to use and refer to relevant legal and other sources which have to be listed in a bibliography at the end of the paper (the bibliography is excluded from the word count).

It is not possible to deliver a joint paper: each student has to deliver an individual paper.

## How to refer to the sources:

If you quote directly (from the text) or indirectly (referring to the contents of a text), you should indicate this clearly by means of a footnote which has to refer to the page number.

Short referencing is allowed and preferred, in the following way:

*The footnote makes a short reference, such as:*

Bogojević (2012), p. 346 [*in this example, the relevant text you want to refer to is on page 346. Be precise with mentioning the page you want to refer to*].

*While the literature provides the full reference:*

Bogojević, S., (2012) 'Legalizing Environmental Leadership: A Comment on the CJEU'S Ruling in C-366/10 on the Inclusion of Aviation in the EU Emissions Trading Scheme', *Journal of Environmental Law*, 24(2): 345–356".

All submitted papers will be checked with an anti-plagiarism programme. In cases where (parts of) the paper clearly come from someone else's work and/or the internet and are not quoted as such, sanctions will be applied. Depending on the severity of plagiarism, sanctions will go from taking a certain percentage off the final grade to full failure of the course (please also refer to the CES Student Handbook for more information).

## Please note: sanctions

- An additional 5% of the final grade will be taken off for every 24-hour delay.
- There is a 10% allowance on either side of the word count. Any more or less than 10% may result in further deductions to the final grade (corresponding to the non-allowed percentage).

## How to hand in papers

IMPORTANT: Please make sure that your paper adheres to all necessary requirements before handing it in to avoid sanctions. There is an CES paper template available via the Student Portal for your information: use that template.

The paper should be submitted at the latest on **Sunday 16 February 2020, 11.59pm** (GMT+1) via Safe Assign on blackboard (Student Portal).

The grade will be given within five weeks after the submission of the paper.

Please follow the following rules for your final paper:

- 1. Word count:** 3000 words (+/- 10%) (Including footnotes but excluding literature list).
- 2. Font and outlook of the paper:**
  - a. Times New Roman
  - b. Font size 12
  - c. 1.5 line spacing
  - d. Justified outlining

- e. Pages should be numbered
- f. Format: Word document
- g. Please do not forget to proofread your paper carefully for spelling and grammar.

### **3. Title page:**

- a. Name
- b. Student number
- c. Title
- d. Date of handing in the paper
- e. Number of words (contained in the **text** (title page and literature list are not included)

**For rule 2 and 3: if you do not comply with the rule, 5% of your final grade will be taken away.**

## **B. Presentation (10%)**

Each student is expected to give a presentation on an assigned task, after which a group discussion will follow. The sharp-focused presentation needs to conclude with a statement or question provoking such discussion.

The list of topics can be found in this course manual. Students need to register for the topic which they want to present (first come first serve). Please follow the announcements on the Student Portal (EleUM). The first tutorial meeting will be used to complete the distribution of topics.

Each presentation needs to be accompanied by a written document summarizing the presentation (maximum of 3 pages with 1.5 line spacing) or a PowerPoint presentation (maximum of 7 slides). Duration of the student presentation: 8 minutes (maximum).

After the presentation, and after correction in light of the comments given during the tutorial by the class and the tutor, the PowerPoint document or note needs to be submitted to the Student Portal (EleUM) within two working days after the class.

## **C. Multiple choice exam (a quiz) (45%)**

At the end of the third week, a multiple-choice exam will be held. The exam will take 60 minutes maximum. The results will be disclosed as soon as possible, within three working days.

## **D. Participation**

The participation requirements are mentioned in chapter 5.

If a class or lecture is missed, the final grade will be deducted with 0,1 for every missed class or lecture except for when a valid reason, such as illness, applies.

Please note that you may not enter the class or lecture room after the start of the meeting, in order to avoid disturbances. Only before the class starts, or during the break, a student may enter the room.

## **Resit options**

When the assessment is incomplete and no grade can be assigned (for example when students fail to hand in assignments), NG (no grade) will be awarded which automatically constitutes a fail.

Students who receive a failing final grade (5.4 or lower) can do a resit. It is not possible to do a resit to compensate for one of the (insufficient) subgrades. In this course the final grade consists for 45% of the paper grade, for 45% of the MCQ grade, and for 10% of the presentation grade). The resit consists of an oral exam that covers all topics of the course, and the maximum grade that can be awarded is a 6.5. The oral exam will take 45 minutes and will be conducted through Skype or FaceTime. If necessary, students can take the exam at their home university (proctored). In the end, the highest final grade counts and will be put on the transcript. For example, if a student obtained a 5.3 as original final grade and then received a 4.7 for the resit, the transcript will list 5.3 as final grade for the course. If a student obtained first an NG and then a numerical grade in the resit, the numerical grade will be listed on the transcript.

A request for a re-sit needs to be submitted to the CES-coordinator within 15 working days after the announcement of the grade for the course.

## Chapter 5 Attendance rules

The attendance rules for this course are specified in the CES Student Handbook 2019-2020. It is the responsibility of the student to carefully read this document and comply with all rules and regulations.

### Course specific attendance rules

100% Attendance is required: **students should be present 5 minutes before the class starts.** Students who leave before the end of the class are considered absent. Students who expect to be absent should inform their CES coordinator *before* the start of the class by email, specifying the reason for not attending.

CES courses may include excursions. Course-related excursions may contribute to the overall grade of a course and are also mandatory.

### *Absence*

The professor notes attendance at the start of each meeting. In order to be registered as 'present' students need to be on time and participate actively. Students who are not in time or who leave before the meeting has officially ended will be registered as absent. Students who do not participate actively or who are not prepared will be registered as absent.



In case of illness or absence for other reasons students are required to email the CES coordinator before the start of the meeting. The written notification should include the students name and a brief description of the reason or cause and the expected duration of the absence.

In case of longer absence, the CES coordinator may require additional proof of the cause of the absence, for example a doctor's note. When the student returns, he/she must report to the CES coordinator during the first day he/she has returned. CES cannot be held responsible if a student fails a course due to long term absence, even if this absence is due to illness or other unforeseen circumstances.

### *Electronic devices*

Laptops, iPads, cell phones and other electronic devices are only allowed in class after permission from the professor (in principle, permission will be given, unless otherwise decided). It is forbidden to use social media. This will be viewed as not actively participating.

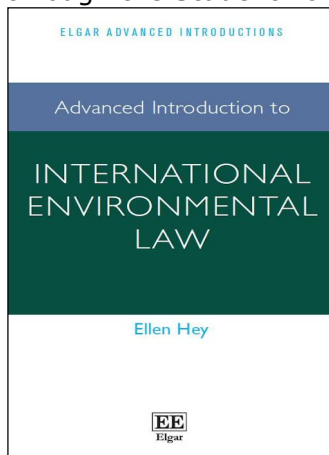
# Chapter 6 Literature

## Main literature

The course will make use of a library reference list. Most of the materials will be available on this list. If you are logged in at the University system, you can open the reference list with this link:

<http://referencelist.library.maastrichtuniversity.nl/E/852222ab85b84161baa16d660f80f421>

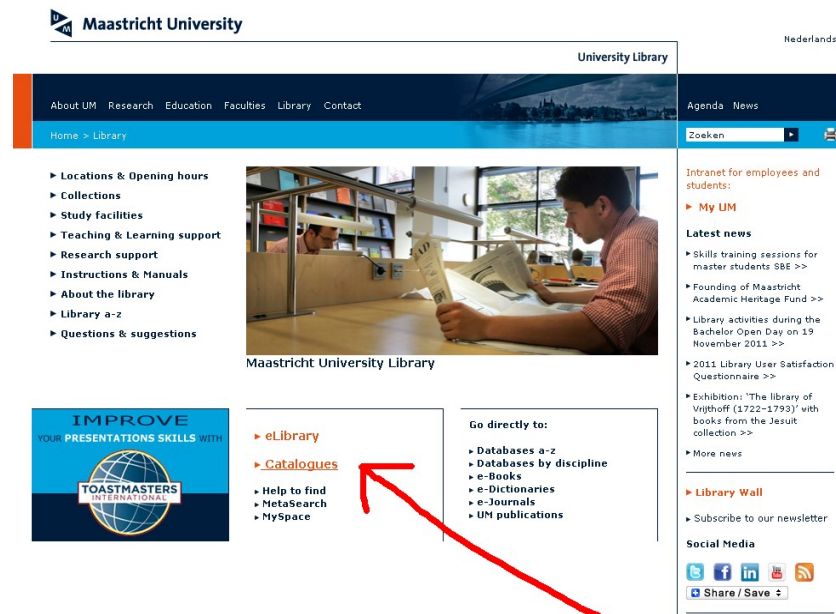
Please note that additional literature assignments can be requested by the teachers through the Student Portal.



Next to this, you will receive a book from CES at the start of the course.

This book is: "Advanced introduction to International Environmental law" from Ellen Hey published by Edward Elgar in 2016.

Furthermore, students can access the full UM library catalogues and eJournals on the library's website: <http://www.maastrichtuniversity.nl/web/Library/home.htm>



## Pre-readings

As an introduction to the course, students are required to read the materials below. On the basis of the materials, students are required to develop questions for the group discussion during the first class. Questions may include:

- questions for clarification (to get a better understanding of terminology and concepts)
- questions for discussion (like contra-arguments to the author's view)

## Readings:

- Robert Beckman and Dagmar Butte, Introduction to International Law, 12 pages:  
<https://www.ilsa.org/Jessup/Jessup%20Competitor%20Resources/intlawintro.pdf>
- Students also need to watch the interview with Edith Brown Weiss on International Environmental Law and make a summary  
<http://webtv.un.org/news-features/audiovisual-library-of-international-law-avl/watch/edith-brown-weiss-on-international-environmental-law/2586491793001>
- Tseming Yang, Robert Percival, The Emergence of Global Environmental Law, October 15, 2009, published in Ecology Law Quarterly [Vol. 36:615] (ssrn abstract\_id=1269157) (51 pages)  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1269157](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1269157)
- Marjan Peeters, Thomas Schomerus, Sustainable Development and Law, in Harald Heinrichs a.o. "Sustainability Science", Springer Science, 2016, p. 109-118 (10 pages)
- Study the UNFCCC website, particularly these web pages:
  - - <https://unfccc.int/topics/science/the-big-picture/introduction-to-science> (introduction to science)
  - - <https://unfccc.int/process/the-convention/history-of-the-convention#eq-1> (introduction to the convention)
  - - <https://unfccc.int/topics/mitigation/the-big-picture/introduction-to-mitigation> (introduction to mitigation)
- Marjan Peeters, Environmental principles in international climate change law, published in Ludwig Krämer, Emanuela Orlando, Principles of international environmental law, 2018 (library reference list) (p. 509-525) 16 pages
- Marjan Peeters, Twenty Years of EU environmental legislation after Maastricht: the increasing role of the EU as a global Green standard-setter, in: Maartje de Visser, Anne Pieter van der Mei (eds), The Treaty on European Union 1993-2013: Reflections from Maastricht, Intersentia 2013, p 535-556 (20 pages)



## Chapter 7 Overview of Lectures and Classes

The following pages of this course manual contain instructions for each meeting. Most descriptions contain questions that should be discussed by the students under guidance of the teacher. Please note that additional questions for group discussion and materials may be provided through the Student Portal.

It is expected that the materials mentioned under 'assignment' are studied **before** the actual meeting takes place.

Students are strongly encouraged to bring international environmental issues into discussion, for instance related to articles in newspapers about recent and new developments, etc. in the field of environmental protection.



## Overall Schedule

Date	Meeting	Lecture	Tutorial
<b>Week 1</b>			
Monday January	6	1. Introduction to environmental law and sustainable development	
	2		1. The scope of environmental law. The climate change problem
Wednesday January	8	3. International Court of Justice	
	4		2. Environmental principles
Thursday January	9	5. Human rights and the Environment	
	6		3. Aarhus Convention
<b>Week 2</b>			
Tuesday January	14	7. MEA's and compliance mechanisms	
	8		4. Exploring the Paris Agreement
Wednesday January	15	9. The Paris Agreement and national action	
	10		5. Simulation preparation
Thursday January	16	11. Carbon trading	
	12		6. Simulation
<b>Week 3</b>			
Monday January	20	13. Trade and environment	
	14		7. Climate change case law
Tuesday January	21	15. Compensation of environmental damage	
	16		8. Human rights and Climate change
Thursday January	23	17	Multiple Choice Exam (quiz)
Friday January	24	18	Preparation of paper, Final discussion, evaluation

## ***Overview of presentations***

<b>Meeting</b>	<b>Presentation topic (please read the information regarding the specific tutorial for understanding the expected content of the topic)</b>	<b>Student name</b>
<b>Week 1</b>		
<b>Tut 2</b>	1. The precautionary principle	
	2. The principle of common but differentiated responsibilities and respective capabilities	
	3. The per capita principle	
<b>Tut 3</b>	Aarhus Convention: explain the meaning of one of the following provisions (you need to use a hypothetical or real-life example):	
	4. access to information (the passive form, article 4)	
	5. access to information (the active form, article 5)	
	6. access to participation in public decision-making	
	7. access to justice	
<b>Week 2</b>		
<b>Tut 4</b>	8. Explain the institutional structure of the international climate change approach	
	9. Discuss the core tasks of the COP and the CMA, including the procedures along which they adopt decisions	
	10. Discuss the membership to the UNFCCC, the Kyoto Protocol, and the Paris Agreement. Include in your presentation the fact that the US has notified to leave the Paris Agreement (and what that possibly means)	
<b>Tut 5 and tut 6</b>	Tut 5: Present and critically discuss the content of the Intended National Determined Contributions (and include the national policy and legal context)	
	11. China	
	12. Ethiopia	
	13. USA	
	14. The EU	
	15. Australia	
	Tut 6: Present the climate change policy aims of:	
	16. The ENGO perspective (focusing on nature conservation)	
	17. The Fossil fuel business community	

## Meeting 1 / Lecture 1

### Introduction to Environmental Law and Sustainable Development

This lecture will provide an introduction to international environmental law in general, after which a discussion of the challenges of (national and other) environmental law will follow. Furthermore, the relevance of the concept of sustainable development will be discussed. Next to this, focus goes to the emergence of 'global environmental law'.

#### Prepare:

The following **pre-reading** materials

- Robert Beckman and Dagmar Butte, Introduction to International Law, <https://www.ilsa.org/jessup/intlawintro.pdf> (12 pages)
- The interview with Edith Brown Weiss on International Environmental Law  
<http://webtv.un.org/news-features/audiovisual-library-of-international-law-avl/watch/edith-brown-weiss-on-international-environmental-law/2586491793001>
- Tseming Yang, Robert Percival, The Emergence of Global Environmental Law, October 15, 2009, published in Ecology Law Quarterly [Vol. 36:615] (ssrn abstract\_id=1269157) (51 pages)  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1269157](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1269157)
- Marjan Peeters, Thomas Schomerus, Sustainable Development and Law, in Harald Heinrichs a.o. "Sustainability Science", Springer Science, 2016, p. 109-118 (10 pages)
- Handbook (Ellen Hey) pages 1 – 23.



#### Other material:

Declaration of the United Nations Conference on Environment and Development (Rio Declaration, 1992), at:

<http://www.unep.org/Documents/multilingual/Default.asp?DocumentID=78&ArticleID=1163>

## Meeting 2 / Tutorial 1

### Examining the nature and scope of environmental law

### Examining the problem of Climate Change



#### Prepare:

- Materials for lecture 1 (already read)
- Duncan French, Ben Pontin, The science of climate change: a legal perspective on the IPCC, in: Daniel A Farber, Marjan Peeters, Climate Change Law, 2016, p. 9-19 (library reference list)
- Read article 2(3) of the Aarhus Convention (see below) and prepare the first question below
- In order to prepare the second question below:

Read Olivia Woolley, Renewable Energy Consumption, in Edwin Woerdman, Martha Roggenkamp and Marijn Holwerda, Essential EU Climate Law, 2015, p. 142-145. (library reference list).

Explore the website "Biofuels for Europe", especially the section on "Topics of debate around biofuels": <http://www.biofuelsforeurope.eu/what-are-biofuels/>

#### Article 2(3) Aarhus Convention:

3. "Environmental information" means any information in written, visual, aural, electronic or any other material form on:

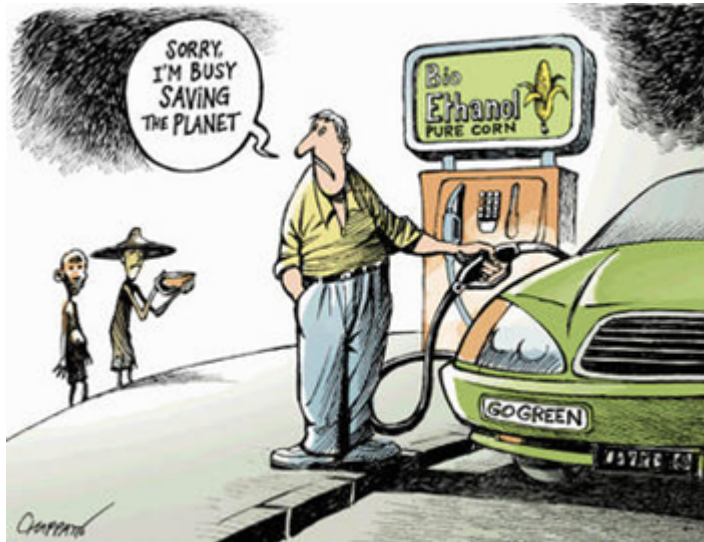
(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

### We will discuss the following questions:

- What does environmental law exactly aim to protect? You can find some help in art. 2(3) of the Aarhus Convention. Does the definition provided by that article cover everything?
- Explore the concept of sustainable development in view of the cartoon below.



Source: A blog called "From Poverty to Power" by Duncan Green, <http://www.oxfamblogs.org/fp2p/>.

### Working session (preparation during the class by reviewing the IPCC and UNFCCC website)

- What is, according to the UNFCCC website, the nature of the climate change problem? What is the role of the IPCC? What are the main observations of Duncan French and Benjamin Pontin on the IPCC?

### Simulation of the UNFCCC negotiations

- The groups for the simulation that will take place later in this course will be divided in this tutorial. Please note that students who have registered for a country presentation (presentation topics 11-15) should be participating in another country team.



## **Meeting 3 / Lecture 2**

### **International Court of Justice in Environmental Matters**

This lecture focuses on international responsibility and liability of states, and related international dispute settlement, with a focus on the International Court of Justice.

Later on, we will focus on compliance mechanisms as part of multilateral environmental agreements. Before doing so, it is important to understand the important but limited role of state liability and court dispute settlement.

#### **Prepare:**

- Handbook (Ellen Hey) p. 52-86 (also relevant for tutorial)
- Christina Voigt in Farber/Peeters, Climate change law: pages 152-156 (library reference list)
- Japan Removes Whaling from ICJ Jurisdiction  
<http://legal-planet.org/2015/10/27/japan-removes-whaling-from-icj-jurisdiction/>

## Meeting 4 / Tutorial 2

### Environmental Law Principles

A lot of discussion is dedicated to the usefulness and legal status of environmental law principles, and what specific principles are to be applied in the field of climate law. Is for instance the precautionary principle already part of customary law? How should the principle be applied? What barriers impede the application of the CBDR principle?

#### Prepare:

- Marjan Peeters, Environmental principles in international climate change law, published in Ludwig Krämer, Emanuela Orlando, Principles of international environmental law, 2018 (library reference list) (p. 509-525) 16 pages (Already prepared by means of pre-reading)
- Nicolas de Sadeleer, The precautionary principle and climate change, from Daniel A. Farber and Marjan Peeters, Climate change law, 2016, chapter I.1 (library reference list).

### A. Principles in the UNFCCC and the Paris Agreement

Student presentations

1. The precautionary principle
2. The principle of common but differentiated responsibilities and respective capabilities
3. The per capita principle

Discuss for each principle:

- where can it be found?
- what is its legal status?
- what is its potential meaning?

Group discussion:

*Do small reductions also matter?*

What should we think of the "principle" that also relatively small reductions are relevant? Should this be enforceable before the court? What situations could then be addressed? How would it contribute to an effective and efficient carbon policy?

*Power to the courts*

If you were a judge, would you feel comfortable with applying any of the principles discussed in this tutorial? In this vein, do you think that principles are useful for judges in order to adopt environmental-friendly decisions? Try to support your opinion with examples.



## Meeting 5 / Lecture 3

### Human Rights and The Environment: The ECHR and the Aarhus Convention

This lecture focuses on environmental human rights, with a special focus on procedural rights for environmental protection as introduced by the Aarhus Convention. This regional Treaty provides a remarkable set of procedural rights to citizens and aims at strengthening the position of ENGOs. Also, the relevance of ECHR (European Convention on Human Rights) case law for environmental protection will be discussed as a benchmark for the potential relevance of other regional human rights instruments in America, Africa and Asia.

#### Prepare:

- Handbook (Ellen Hey) p. 123-127
- Natalia Kobylarz, The European court of human rights: an underrated forum for environmental litigation, in: Helle Tegner Anker and Birgitte Egelund Olsen (eds), Sustainable Management of Natural Resources, Intersentia 2018. P. 99-104 (library reference list)
- Tatiana R. Zaharchenko, Gretta Goldenman, Accountability in Governance: The Challenge of Implementing the Aarhus Convention in Eastern Europe and Central Asia, International Environmental Agreements: Politics, Law and Economics, 2004(4) p. 229-251(read only until 242) (library reference list). Tip: you may have a look at the Aarhus Convention website.



*"It's Amnesty International. They want to see the people we're holding."*

## Meeting 6 / Tutorial 3

### Exploring the Aarhus Convention

#### Prepare:

- Elena Fasoli, The UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, published in: Malgosia Fitzmaurice and Attila Tanzi with Angeliki Papantoniou (eds) Multilateral Environmental Treaties, Edward Elgar Encyclopedia of Environmental law, p. 422-432 (library reference list).

#### Student Presentations:

Explain the meaning of (you need to use a hypothetical or real-life example) one of the following provisions of the Aarhus Convention:

4. access to information (the passive form, article 4)
5. access to information (the active form, article 5)
6. access to participation in public decision-making
7. access to justice



#### Group discussion:

- What kind of climate change related issues are covered by the definition of environmental information? Try to give two examples of information that is covered, and give one example of something for which doubt may exist
- To what extent do you think that the procedural rights can be used by people who want to protest against certain activities for reasons of individual concern (the Not In My Backyard behaviour, for instance taking place when citizens protest against the establishment of windmills?)
- What is the role of the courts in view of enforcing the procedural rights? Can courts always be accessed?



## Meeting 7 / Lecture 4

### Multilateral Environmental Agreements (with a focus on climate change) and Compliance mechanisms

The problem of climate change complicates the already sensitive relationship between rich and poor countries even further. During this lecture, we will review the current state of affairs under the UNFCCC and reflect on the outcome of Paris.

A specific feature of multilateral environmental agreements is the possibility to establish a compliance mechanism, with the aim of promoting an effective implementation of treaty obligations. The aim and main features of compliance mechanisms will be discussed.



#### Prepare:

- Handbook (Ellen Hey) 87-122
- Lavanya Rajamani, The United Nations Framework Convention on climate Change: a framework approach to climate change, in: Daniel A Farber, Marjan Peeters, Climate Change Law, 2016 p. 205-216 (library reference list)
- Sebastian Oberthür, Options for a Compliance Mechanism in a 2015 Climate Agreement, Climate Law 4 (2014) 30-49 – you only need to study page 30-37 (library reference list)

#### The following legal texts are available in the library reference list:

- United Nations Framework Convention on Climate change (UNFCCC, 1992)
- Kyoto Protocol to the UNFCCC (1998)
- Paris Decision and Paris Agreement (2015)



## Meeting 8 / Tutorial 4

### Exploring the Paris Agreement in view of the international climate change architecture

#### Prepare:

Daniel Bodansky, 'The Legal Character of the Paris Agreement' Review of European Community & International Environmental Law (2016) p. 142-150 (library reference list)

#### Leading questions

##### 1. Decision-making within a treaty framework

Both the UNFCCC, the Kyoto Protocol and the Paris Agreement facilitate *further* decision-making by the group of Parties to these Agreements (this can be seen as a *managerial* approach towards governing a specific problem: through the establishment of institutions and procedures by a treaty, further decision-making is facilitated). Article 3 of the UNFCCC provides conceptual guidance to this decision-making by means of principles. These principles also apply to the decision-making under the Paris Agreement.

Each treaty has its own decision-making body. The *Conference of the Parties* is the highest decision-making body under the UNFCCC, and the *Conference of the Parties serving as the meeting of the Parties to the Paris Agreement* is the decision-making body of the parties under the Paris Agreement (abbreviated as (CMA)).

Student presentation 8:

Explain the institutional structure of the international climate change approach

The student may use (and comment on) the chart on the right. Please make sure that you do not delve in depth in the topic of student presentation 10 (fine-tune).



Student presentation 9:

Discuss the core task of the COP and the CMA, including the procedures along which they adopt decisions.

Student presentation 10:

Discuss and compare the parties to the UNFCCC, the Kyoto Protocol, and the Paris Agreement. Focus on the fact that the US has notified to leave the Paris Agreement (and what that possibly means).

For the student discussion, it would be interesting to discuss the position of Australia as well vis-à-vis the climate agreements. Did the announcement of the US to leave the Paris Agreement invoke any discussion in Australia about following the same path?

## **2. Decision-making by the meeting of the parties, and by the parties individually**

Read article 13 of the Paris Agreement.

- Which decision-making is required by the CMA for making article 13 work?
- Which decision-making or action is required by the individual parties?

## **3. Legal character of the UNFCCC, the Paris Agreement and compliance provisions**

Discuss the observations from Daniel Bodansky regarding the legal character of the Paris Agreement. Include in your discussion articles 13, 14 and 15 of the Paris Agreement, and discuss whether these provisions are strong enough to promote compliance with the goals as codified in article 2 of the Paris Agreement, and discuss what kind of mechanism you would favour in order to check whether parties are in compliance with treaty obligations. Use for your discussion the observations from Sebastian Oberthür.

## Meeting 9 / Lecture 5

### The Paris Agreement with a view on national action needed

This lecture will focus on what kind of measures parties can in order to mitigate their greenhouse gas emissions. The EU complex package of European climate legislation will serve as example. We will pay attention to what Member States must or in view of EU climate law, such as the possibility to allow for Carbon Capture and Storage.



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### Prepare:

- Marjan Peeters, An EU Law Perspective on the Paris Agreement: Will the EU Consider Strengthening its Mitigation Effort?, Climate Law 6 (2016) 182-195 (library reference list)
- Marjan Peeters, Greenhouse Gas Emissions trading in the EU, book chapter to the Climate Law Encyclopedia, Edward Elgar (library reference list).



## Meeting 10 / Tutorial 5

### Simulation preparation

Students will engage in a simulation of the international climate change treaty discussions, with a particular focus on future developments and actions under the Paris Agreement. The goal is to "Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change" (article 2 Paris Agreement). But please also note the other goals as mentioned in article 2 of the Paris Agreement.



### Preparation by all students

Read and examine the Nationally Determined Contribution (NDC) of the country which you represent during the negotiations, and which can be found at:

- <http://www4.unfccc.int/ndcregistry/Pages/All.aspx>. (Please note that Parties are requested to submit new NDCs or updated NDCs by 2020, and every five years thereafter).
- Please find other relevant material for supporting your negotiation

For preparing the simulation, various student presentations will be made in order to understand the main climate change policy points of various countries. Students are expected to explain, and, as far as possible in the allocated time, to critically discuss the content of the Intended National Determined Contributions of the country they have registered for. Please cover the following points in your presentation:

- What greenhouse gas emission reduction ambition does the country have?
- Has it already adopted any binding law with regard to that?
- What adaptation needs does the country have and which policies and laws are relevant?

Countries:

11. China
12. Ethiopia
13. USA
14. The EU
15. Australia

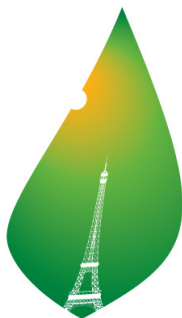


## Negotiation guidance

During the simulation in the next tutorial, each country will have to take negotiation positions regarding:

- Emissions reduction targets
  - What (if any) is the country's quantified emission reduction target?
  - Can the country's target for emissions reduction be considered fair and ambitious?
- Legal and regulatory frameworks for low-emission development
  - Did the country (intend to) introduce national policies and related instruments for low-emission development actions?
  - Was the INDC subject to public consultation and which stakeholders have most likely influenced the outcome?
  - Does the country plan to use market-based mechanisms from international, regional or domestic schemes? Are any other regulatory approaches considered?
- Adaptation
  - Which adaptation needs does the country have and which policies and laws are relevant?
  - For developing countries: does the country request help from developed countries?
  - For developed countries: does the country want to commit to help developing countries?

The tutorial will be dedicated to explaining the simulation and some limited time will be provided for students to prepare for the negotiations. Further preparations have to be done by students themselves. Please be aware that you have to search for relevant information related to the country that you represent.





## Meeting 11 / Lecture 6

Guest lecturer: Joanna Cabello Labarthe (World Rainforest Movement)

### Carbon trading

During this lecture we will delve deeper into a particular feature of climate law, which is the question of how to regulate the reduction of greenhouse gas emissions. It is very special to see that at the international level (with the former Kyoto Protocol), but also at national level (particularly the EU emissions trading system), the instrument of emissions trading has been chosen. In order to understand its potential value, economic considerations and literature should be taken into account. However, the social impacts of using a price-based mechanism need to be considered well. Meanwhile, from a traditional legal perspective, particularly the integrity of the system and the risk of undetected non-compliant behavior, are core concerns.

While the Paris Agreement does not even make an explicit reference to “emissions trading”, article 6 provides a basis for parties to use it, although the specific rules on this matter have yet to be adopted (planned for COP 25 in December 2019). In practice, voluntary offset mechanisms are used, which is a kind of emissions trading in order to offset emissions caused by for instance transport and industrial activities. Moreover, the International Civil Aviation Organisation has decided to proceed with compensating greenhouse gas emissions caused by aviation in order to ensure a neutral emissions growth from 2020 onwards.



### Literature:

- Javier de Cendra de Larragan, The Kyoto Protocol, with a special focus on the flexible mechanisms, book chapter to Daniel A. Farber, Marjan Peeters, Climate Change Law, 2016, p. 227-236 (library reference list)

### Background material:

- Carbon Trade Watch film: The Carbon Connection: <https://vimeo.com/100782021> (library reference list)

## Meeting 12 / Tutorial 6

### Simulation of the UNFCCC – Paris Agreement Negotiations

For the simulation of the UNFCCC negotiations, each group shall argue the position of one of the countries / community actors below.

You have to prepare with your team the position beforehand, and each team member needs to have a specific responsibility. For instance, if China has three team members, the following tasks can be distributed:

1. emission reduction
2. adaptation
3. energy policy

You have to allocate these responsibilities yourself within the team.

Countries / actors:

- China
- Ethiopia
- USA
- The EU
- Australia
- ENGOs
- Business community

Before we start, first two student presentations will be delivered:

- The ENGO perspective (focusing on nature conservation)
- The Fossil Fuel Business perspective

The simulation will start with short and sharp statements by each country (three minutes maximum). The statement shall incorporate the following focal points:

1. Emissions reduction targets (short-term and long-term, are they conditional or non-conditional?)
2. Adaptation policy aims (will you fund other countries / do you need to receive funding?)

After the five statements (only the countries will provide the statements, the ENGO and business community will get the opportunity to react), the negotiation will start.

Core task is to find bilateral, trilateral, or even multilateral agreements.

For instance:

-> Can Australia together with the European Union agree on adhering to binding emission reduction targets? Or, otherwise, with regard to the old plan of having a joint emissions trading system that covers industries from the EU and Australia? Would then the EU and Australia be prepared to let China participate as well?

-> Is any country still prepared to talk to the US, since the US has notified to leave the Paris Agreement? Is the US prepared to conclude bilateral agreements (outside the Paris Agreement)? Is the US prepared to provide some funding to developing countries such as Ethiopia? Or will the US enter into a joint action together with the fossil fuel business community? And if so, will Australia join this joint action?

-> Will China or any other country be willing to agree with Ethiopia to invest into renewable energy infrastructure (solar energy)?

-> Will the ENGOs threaten others to sue them before court? Which country will be targeted first? Or will ENGOs follow other strategies, such as shaming but also faming countries through social media?

-> et cetera et cetera -> what joint actions, or opposition, will emerge during the negotiation?



## **Meeting 13 / Lecture 7**

### **Trade and the environment**

International Trade Law aims at the regulation of free trade. States that are a party to the WTO agreements have to comply with this legal framework and are hence restricted in their freedom to adopt unilateral trade measures, but this does not mean that there are no possibilities to adopt such measures aiming at environmental protection or, in a broader sense, sustainable development.

Next to that, some Multilateral Environmental Agreements contain trade restricting measures: about 20 MEA's include provisions that can affect trade. Notable examples are the Montreal Protocol on Substances that Deplete the Ozone Layer and the 1973 Convention on International Trade in Endangered Species (CITES).

The lecture will be delivered by a guest lecturer: Professor Harro van Asselt, Professor of Climate Law and Policy with the University of Eastern Finland Law School. If needed, further information will be provided through ELEUM.

#### **Prepare:**

- Handbook (Ellen Hey), pages 133-138
- David M Ong, Chapter 24, International environmental law governing threats to biological diversity, chapter from the Oxford Handbook on International Environmental law p. 524-530 (CITES convention) (library reference list)

## Meeting 14 / Tutorial 7

### Climate change case law:

#### What is the chance of a successful climate litigation?

During the tutorial we will watch together the lecture titled "Climate Change & Rule of Law: Adjudicating the Future in International law" by Philippe Sands QC, after which a group discussion will follow. You are requested to get informed about successful litigation at the *national level* by studying the Urgenda case (also useful for the next tutorial):

#### Materials Urgenda case:

Jonathan Verschuuren, Spectacular judgment by Dutch Court in climate change case <https://blog.uvt.nl/environmentallaw/?p=109>, and Jonathan Verschuuren, Urgenda Climate Change Judgment Survives Appeal in the Netherlands, <https://blog.uvt.nl/environmentallaw/?p=354>

#### Lecture Philipp Sands:

<https://www.youtube.com/watch?v=eef1tK8mtEI>

**Philippe Sands** QC is a Franco-British lawyer, Professor of Laws and Director of the Centre on International Courts and Tribunals at University College London. He is the author of sixteen books on international law and his most recent publication, *East West Street*, has recently been awarded the 2016 Baille Gifford (Samuel Johnson) Prize.

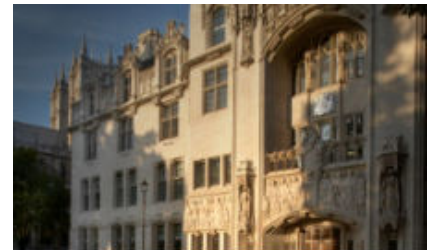
(information retrieved from:

<https://www.southampton.ac.uk/blog/sussed-news/2016/12/14/philippe-sands-qc-to-give-2017-human-rights-lecture/>)



#### Information on the lecture:

In the run up to the climate change negotiations in Paris [...], Professor Philippe Sands QC delivered a public lecture at the UK Supreme Court focusing on the role of international law and judges in addressing legal issues relating to climate change.



Professor Sands considered some of the key challenges, including (i) the limited number of actions taken by states as international legislature, (ii) the limits of the judicial function in interpreting and applying the law and not acting as a legislature, (iii) issues of scientific uncertainty, (iv) problems of evidence and expertise, and (v) the interrelationship of environmental, economic, social and other factors inherent in issues related to climate change.

(information retrieved from: <https://www.youtube.com/watch?v=eef1tK8mtEI>)



## Meeting 15 / Lecture 8

### Compensation of environmental damage

#### Guest lecture by Kévine Kindji

Kévine Kindji studied Law in Cotonou (Benin) from 2004 to 2008. She obtained a master's degree in corporate law and judicial careers. In June 2015, she graduated as judicial doctor from the Law Faculty of Maastricht University (the Netherlands). Her doctoral thesis addressed market access issues in international food trade, enabling a comparison of Benin, European Union and international trade laws and food safety frameworks. As from 2016, she carries out postdoctoral research at the METRO Institute of Maastricht University, focusing inter alia on regulatory cooperation and environmental transboundary harm. Currently, she is also part of a team conducting an in-depth analysis on cross-border nuclear safety and cooperation in the EU for the European Parliament.

During this guest lecture, Kévine will discuss how international law provides opportunities for compensation of environmental damage, a topic on which she has recently been focusing.

Further information will be provided through the student portal (if needed).

#### Prepare:

- Ellen Hey, p. 24-38
- Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), overview provided by the ICJ on <https://www.icj-cij.org/en/case/150>



## Meeting 16 / Tutorial 8

### Human rights and climate change litigation

This class will first discuss the potential role of human rights in relation to climate change as discussed by Foster and Galizzi. Then it will turn to climate litigation that includes human rights litigation (including the Urgenda case already prepared for the previous tutorial).

#### Prepare:

- Sheila R Foster, Paolo Galizzi, Human rights and climate change, in: Dan A Farber, Marjan Peeters, Climate Change Law, 2016, chapter I.4 (library reference list)
- Preston, B.J. (2018) The evolving role of environmental rights in climate change litigation. Chinese Journal of Environmental Law. 2:131-164 – only page 131-136 and 157-164 (library reference list)

#### Group discussion:

What are internationally recognized human rights *relevant for climate change*, (where can they be found, what is their legal status?)

Would you argue that the international recognition and regulation of human rights should be strengthened in view of addressing climate change?

What opportunities for climate change litigation based on human rights can you identify based on the literature? And which difficulties or legal arguments might impede successful action?

Explore and discuss whether human rights may also provide a barrier to establishing climate mitigation measures (such as for instance renewable energy measures).

## Meeting 17 / Quiz

During this session, the multiple-choice exam will be held. The exam takes one hour, and you will receive between 30 and 40 multiple-choice questions. An example of questions will be provided on the Student Portal, and will be discussed in previous lectures, so that you have an idea what to expect.



## Meeting 18 / Preparation of the paper - evaluation

During this class, the teachers will give a general introduction to the paper and the available topics listed below. The most important step is to narrow down your research and to develop a research focus that is suitable for the length of the paper.

We will engage in group sessions, during which you can discuss with class mates (and with the teachers) your ideas on how to narrow down your research for the paper. You do not have to decide yet, and can adapt even after the session.

The paper needs to be written on one of the following topics:

### **1. Nationally Determined Contribution under the Paris Agreement**

In this paper, you will select a minimum of two and a maximum of five NDC's and, consequently, you will carry out a comparative analysis.

You may take NDC's from developed countries, from developing countries, you are totally free, but the specific choice you made, and the motivation for this choice, will be part of the assessment. One limitation: you are not allowed to select one of the countries that was part of the simulation round.

It is recommended to apply a specific focus for your analysis, such as what ambition is being presented, and for what reason (and with what impact), what regulatory instruments are being used, or what public participation has been carried out for preparing the NDC. The specific focus often requires some extra research with regard to the selected countries. From a methodological perspective, it is important to note also the barriers you may encounter for finding information (what did you want to know, and was the information available? Is the NDC sufficiently clear and detailed?).

Next to presenting interesting findings that result from comparing the NDC's, you also have to reflect on the barriers or problems when comparing the NDC's, and the potential need to streamline the NDC's under the Paris Agreement.

### **2. ENGO ACTION**

For this paper, you need to take an example from practice (which can be a press release, a newspaper article, a social media announcement, or a court decision) that concerns an action by an ENGO.

In the paper you have to reflect from a legal perspective on how the ENGO employed its strategy for improving the environment, and why it was - or was not - successful. In an annex to the paper you have to include the article that you will reflect on (but of course this is excluded from the word count).

Next to starting a court procedure, the legal action from the ENGO may also be a request for environmental information, dissemination of accusations of environmental mal-behaviour, or participation to governmental decision-making.

As a limitation to the paper, you cannot select the Urgenda case or any other case *already explicitly discussed* during the lectures or tutorial meetings.