

## Climate Reparations on the International Stage: Negotiation, Litigation, or Structural Reforms?

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### The Context

As the climate crisis intensifies, extreme weather events' human and economic costs are mounting. Floods, droughts, heatwaves, and tornadoes are occurring with greater frequency and intensity, disproportionately affecting individuals and communities in the Global South. In response, climate finance sits at the top of the global agenda. At COP29, held last November in Baku, Azerbaijan, a new goal was set to invest \$300 billion annually in developing countries - well below the \$1 trillion initially demanded and far from meeting the growing needs. Additionally, crucial disagreements persist regarding the structure of these funds, including whether they should come from public or private sources, and in the form of loans or grants.

These discussions do not take place on a neutral playing field. They unfold within a global arena characterized by significant power asymmetries, where countries advocating for climate funding are often politically marginalized and their voices largely ignored. In other words, climate injustice extends beyond material disparities to encompass procedural inequities. Actors from the Global North dominate decision-making processes at the international level, frequently sidelining the perspectives of small island states, Global South nations, and socially, economically, or legally vulnerable groups.

### The Topic

This class will explore the legal and political strategies employed by countries and affected communities, seeking compensation for the climate harm they have endured and funding to prevent future disasters. Three distinct strategies will be analyzed, both in their theoretical foundations and practical applications. For each distinct strategy, we will show how international law plays a crucial role in shaping those struggles.

We will begin by reviewing the climate finance's discussions occurring in international climate negotiations held annually at the "Conference of the Parties" (COP) under the United Nations Framework Convention on Climate Change (UNFCCC). By examining the positions of key coalitions - such as the Western bloc, Small Island Developing States, oil-producing countries, and emerging economies like those in the BRICS group (e.g., China and India) - we will uncover the political dynamics shaping these negotiations. Next, we will trace the evolution of climate finance agreements, from the initial pledge of \$100 billion annually made in 2009 at the COP15 to the most recent accord in Baku in November 2024.

While the climate negotiations have historically been the primary forum for the discussions around climate funding - and have accordingly received most scholarly attention-, two alternative strategies have recently emerged.

First, over the past two decades, climate litigation has expanded, serving as a complementary mechanism to advance claims on the global stage. Litigation is increasingly being used by marginalized actors to reclaim the international public sphere, targeting powerful public and private entities, and using the law as a leverage in their political campaigns. We will examine the judicialization of climate politics, highlighting the (geo)political stakes of those lawsuits, the distributive implications of such strategy as well as the obstacles to their success. In particular, by reviewing past and present strategic cases, we will assess whether litigation helps overcome the power asymmetries of international climate politics or whether these dynamics persist in judicial settings.

Second, there is a growing movement to reform the global financial system to better address the social and climate needs of the Global South. Climate risks, reflected in higher interest rates on capital markets, limit the ability of Southern nations to finance climate-resilient infrastructure, creating a vicious cycle: escalating climate vulnerabilities, lower credit ratings, leading to higher borrowing costs and deeper debt burdens. The traditional focus on cash transfers as the primary form of climate reparations leaves the structural roots of the South's financial subordination untouched. In response, countries in the South are organizing to reshape the legal foundations of the global financial order. We will review two distinct approaches: one seeks to negotiate within the existing financial system, aiming to secure better borrowing terms (e.g., the Bridgetown Initiative led by Barbados); the other calls for a more radical break from the current system, advocating for South-South cooperation and "structural delinking" from Northern financial flows to achieve economic and monetary sovereignty (e.g., the Dakar Initiative).

## Objectives

This class serves two distinct purposes: one substantial and the other methodological.

First, students will gain a critical perspective, historically grounded and legally informed, on the contemporary debates of global climate change politics.

Topics include:

- The climate justice framework and its contested meanings
- The history of climate multilateralism
- Various forms of climate reparations and the obstacles each strategy faces
- International climate litigation
- Key legal principles of international climate change law, with a focus on their strategic uses on the global stage and their (geo)political stakes
- Climate finance mechanisms and their distributive implications

Second, students will get familiar with a theoretical framework that will enable them to approach climate reparations/climate finance debates on the international stage beyond the law/politics dichotomy. The course will examine the strategic use of legal norms in political discourses and, conversely, analyze the political ramifications of various judicial procedures. Those insights should enable students to draw insights about the politics of international law more generally.

### Audience

This class is designed for both students and professionals with strong interest in international climate change law, climate justice & governance, climate finance and more generally sustainable development issues. The course is particularly relevant for the following practitioners:

- Government officials: Particularly those currently working or aspiring to work in diplomatic services (including climate diplomacy, economic and financial diplomacy) or external relations focused on development and environmental issues.
- Development agencies' officials
- Non-governmental organizations (NGOs) employees: Particularly those already engaged in or aiming to develop advocacy efforts in climate change mitigation, adaptation, climate justice, green development, or climate reparations.

### Structure

#### 1st session. Framing the Climate Crisis as a Global Injustice with (Neo)Colonial Roots

This session will provide the broader historical and political context that has shaped – and still shapes - the debates around climate reparations. Since the start of climate negotiations, lines of division have emerged along the lines of former empires and colonized nations. This is no coincidence: the dynamics of climate change are deeply rooted in a centuries-old geopolitical order shaped by Western imperialism. It is therefore crucial to trace the colonial roots of the climate crisis as well as their continued relevance in contemporary climate politics.

Suggested readings (excerpts):

- Amitav Ghosh, *The Nutmeg's Curse*, University of Chicago Press, 2021.
- Richard Grove, *Green imperialism: colonial expansion, tropical island Edens and the origins of environmentalism, 1600-1860*, Cambridge University Press, 1996.
- Malcom Ferdinand, *Decolonial ecology: Thinking from the Caribbean world*, John Wiley & Sons, 2021.

## 2nd Session. UN Climate Negotiations (I): Introduction to the Global Climate Governance

This session will examine the emergence and evolution of global climate governance, tracing its development from the adoption of the United Nations Framework Convention on Climate Change (UNFCCC) at the 1992 Earth Summit in Rio de Janeiro to the 2015 Paris Agreement. We will first review the key principles of international climate law that have crystallized over the decades. Next, we will analyze the lines of division of the international community beyond the official developed/developing worlds dichotomy. Finally, we will bridge those legal and political stories by showing how legal language (“sovereignty”, “human rights”, “principle of shared but differentiated responsibilities”) is deployed in climate negotiations to advance conflicting claims – thereby revealing the role of law as a malleable tool for those seeking to strengthen their authority and legitimacy in climate struggles.

Suggested readings (excerpts):

- Joyeeta Gupta, *The History of Global Climate Governance*, Cambridge University Press, 2014.
- Robert Falkner, “The Paris Agreement and the new logic of international climate politics”, *International Affairs*, 92 (5), 2016, 1107-1125.
- Benoit Mayer, *The international law on climate change*, Cambridge University Press, 2018.

## 3rd Session. UN Climate Negotiations (II): The Battle Over Climate Finance

Over the past two decades, climate negotiations have frequently focused on “climate finance”, aiming to organize monetary transfers from industrialized nations to those with fewer resources and greater vulnerability. The climate justice movement often frames these financial transfers as “climate reparations” thereby emphasizing that they are not merely acts of humanitarian aid but obligations owed by wealthier countries, as the primary contributors to climate change. This framing has been consistently rejected by Western nations, refusing to acknowledge any type of legal responsibility.

We will review the various financial pledges made by Western countries and reveal some underlying tensions regarding the composition of those cash transfers: public or private money, grants or loans, etc. A special focus will be placed on the most recent financial agreement made at COP29 in Baku, which targets \$300 billion per year—significantly below the needs and demands of Global South.

Suggested readings (excerpts):

- Rikard Warlenius, “Decolonizing the Atmosphere: The Climate Justice Movement on Climate Debt”, *The Journal of Environment & Development*, 27 (2), 2018, 131-155.

- Luis Gomez-Echeverri, “The changing geopolitics of climate change finance” in Maximilian Terhalle & Charlotte Streck (eds), *The New Power Politics of Global Climate Governance*, Routledge, 2018.
- World Resources Institute, *Key Outcomes from COP29: Unpacking the New Global Climate Finance Goal and Beyond*, November 27, 2024.

#### **4th Session. Climate Litigation (I): The Sociolegal Impact of Climate Litigation Beyond the Courtroom**

This session adopts a sociolegal perspective, drawing on scholarship that highlights how the success or failure of a litigation case extends far beyond the formal outcome determined by the tribunal. Litigation is often tied to a broader political strategy and can serve a range of extralegal functions, such as shaping collective identities, shifting media narratives, bolstering political mobilization, and highlighting injustices. In other words, both the direct and indirect effects of litigation must be considered to fully understand its role in driving social change. We will apply this lens to climate litigation using as a case study lawsuit filed in December 2005 by Sheila Watt-Cloutier, President of the Inuit Circumpolar Conference, on behalf of the Inuit communities of the Arctic regions of the United States and Canada. The case was brought before the Inter-American Commission on Human Rights against the United States. While the case was unsuccessful in court, the petition is viewed as a critical milestone in the rights-based approach to climate change.

Suggested readings (excerpts):

- Michael McCann, “Legal Mobilization and Social Reform Movements: Notes on Theory and Its Application”, in M. McCann (dir.), *Law and Social Movements*, Routledge, 3-32.
- Ben Batros & Tessa Khan, “Thinking Strategically About Climate Litigation”, *Open Global Rights*, 28 juin 2020.
- Sebastien Jodoin et al, “Realizing the Right to Be Cold? Framing Processes and Outcomes Associated with the Inuit Petition on Human Rights and Global Warming”, *Law and Society Review*, 54 (1), 2020, 168-200.

#### **5th Session. Climate Litigation (II): The Politics of the International Court of Justice’ Advisory Opinion on Climate Change**

This session will focus on the advisory opinion of the International Court of Justice (ICJ) on climate change obligations of States with respect to climate change. Beyond the legal technicalities, we will examine how this initiative came about, spearheaded by the state of Vanuatu and supported by young activists from various Pacific Islands. We will then assess the legal arguments put forward by various States (Saudi Arabia, Russia, USA, Brazil, etc.) exposing the distributive and/or epistemic conflicts over mitigation and adaptation issues underneath the veil of legal discourses.

This case study will also serve as a platform to discuss international law as a distinct language, one that enables various actors to advance their struggles, with the technicalities of legal arguments often masking the underlying conflicts. Eventually, we will discuss the implications of the ICJ opinion for climate politics in an attempt to anticipate its indirect effects in future negotiations around climate finance.

Suggested readings (excerpts):

- Advisory opinion of the International Court of Justice (ICJ) on climate change obligations of States with respect to climate change.
- Margaretha Wewerinke-Singh & Dianna Salili, “Between negotiations and litigation: Vanuatu’s perspective on loss and damage from climate change”, *Climate Policy*, 20(6), 2020, 681-692.
- David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy*, Princeton University Press, 2018 [2016]).

### **6th Session. Climate Litigation (III): Building a Case Against the Fossil Fuel Industry**

This session will explore strategic lawsuits targeting fossil fuel transnational corporations to establish their climate responsibility and obtain reparations. We will begin by discussing key cases, such as those against Shell in the Netherlands and Exxon Mobil in Puerto Rico, to understand the legal and political obstacles involved in these efforts as well as the complex expertise involved (causality and attribution science, market substitution defense, etc.). The teacher will then draw from his personal experience working on a case against the oil and gas company TotalEnergies, in collaboration with affected farming communities, to initiate a critical discussion on the complex challenges of building a litigation case (funding, legal retaliation, political backlash, media narratives, and more). All students with strategic litigation experience will be invited to provide concrete insights.

Suggested readings (excerpts):

- Ganguly, Geetanjali, Joana Setzer, and Veerle Heyvaert. “If at first you don’t succeed: Suing corporations for climate change”, *Oxford Journal of Legal Studies*, 38 (4), 2018, 841-868.
- Ryan Gunderson & Claiton Fyock, “The political economy of climate change litigation: is there a point to suing fossil fuel companies?” *New Political Economy*, 27(3), 2022, 441-454.
- Material from the “Farmer Case” campaign : <https://www.thefarmercase.be/en/>
- Material from the “See You in Court” campaign led by the International Federation for Human Rights : <https://seeyouincourt.fidh.org/?lang=en#section-1>

### **8th Session. Reforming the Global Financial Architecture for Climate Action (I): The Approach of the IMF and the World Bank: Mobilizing Private Capital for Public Needs**

There is a consensus among development policymakers on the global stage on how to bridge the “finance gap” to meet climate goals in the Global South: assuming the scarcity of public resources, the focus is to mobilize private capital and channel into climate infrastructure. Development needs should become assets for global finance to attract institutional investors (pensions funds, private equity, etc.) and channel financial flows toward climate infrastructures. The goal is to make the Global South “investible” and “creditworthy” through derisking practices that ensure high and stable returns for investors, often via financial incentives (such as tax relief, subsidies, or loan guarantees) or regulatory interventions. A key component of this strategy is “blended finance”, which uses public funds to mitigate risks or subsidize private investment, thereby ‘crowding in’ private capital to achieve public policy priorities. We will critically examine the distributive implications of this new paradigm.

Suggested readings (excerpts):

- Daniela Gabor, “The Wall Street Consensus”, *Development and Change*, 52 (3), 2021.
- Patrick Bigger & Sophie Webber, “Green Structural Adjustment in the World Bank’s Resilient City”, *Annals of the American Association of Geographers*, 111 (1), 2020, 36–51.
- Advait Arun, “Securitizing the Transition”, *Phenomenal World*, February 15, 2023.

### **9th Session. Reforming the Global Financial Architecture for Climate Action (II): From the Bridgetown Initiative to the Dakar Declaration: Bargaining or Breaking the Chains of Dependency?**

For the final session, we will review efforts to reform the structural inequities of the global financial system in order to promote climate investments in the Global South. First, ahead of COP27, Barbados’ Prime Minister Mia Mottley introduced the “Bridgetown Initiative” that demands the creation of a “Global Climate Mitigation Trust” by the IMF to secure low-interest loans for climate projects. The initiative also suggests systematically adding “disaster clauses” in sovereign bonds contracts to suspend debt payments after catastrophic events.

Second, the “Dakar Declaration” led by scholars, calls for debt write-downs to support economic transformation and address inequalities rooted in global capitalism. It emphasizes monetary sovereignty as key to self-determination. The initiative draws from the “dependency theory”, adapted to cover ecological crises, to challenge the persistent core/periphery dynamics within green capitalism.

Suggested readings (excerpts):

- Avinash Persaud, “Breaking the Deadlock on Climate: The Bridgetown” Initiative”, Géopolitique, Réseau, Énergie, Environnement, Nature, November 2022
- The Dakar Declaration 2022, Museum of Black Civilizations, Dakar, Senegal, October 2022, available at: <https://mes-africa.org/dakar-declaration-2022/>.
- Olúfẹ́ mí O. Táíwò, Reconsidering Reparations, Oxford University Press, 2022.
- Claudio Katz, Dependency Theory After Fifty Years: The Continuing Relevance of Latin American Critical Thought, Haymarket Books, 2023.

### 10th Session. Wrapping Up Session

In the final session, the group will be divided into nine teams, each of which will be assigned a specific session to review and analyze. The composition of the team and their respective assignments will be given in advance, ensuring that every student knows from the outset which class they will be responsible for. The teams will be tasked with summarizing the key points of their assigned session, highlighting the outcomes of our discussions, and synthesizing the main takeaways. This retrospective exercise will provide a valuable opportunity for students to consolidate the knowledge they have gained throughout the course.

### Pedagogical Approach

The majority of the classes will follow a two-part structure. First, a lecture will provide a structured overview of the key elements covered in the session, with opportunities for questions, comments, and remarks to encourage dynamic interaction. Second, a group discussion will take place, divided into two distinct stages: (1) small-group discussions (4–5 participants) focusing on a critical question and (2) a teacher-facilitated plenary discussion to compare and confront the ideas developed in the smaller groups. The methodology can be adapted depending on the number of students registered for the course.

The lecture may either precede or follow the discussion, depending on the session. For highly technical topics, the discussion will require prior conceptual grounding provided by the lecture to ensure students have the necessary tools to engage critically. Conversely, for sessions emphasizing student-driven exploration, the discussion may leverage the participants' existing knowledge, with the lecture building on their insights to offer a more analytical and critical perspective.



Some sessions will be uniquely structured to foster active engagement and enhance argumentative skills :

1. Session 3: The group will simulate international climate finance negotiations. Participants will be divided into four groups representing different stakeholders (Small Island Developing States, Western bloc, emerging powers, and oil-producing countries). Each group will first convene to define its negotiation agenda, including key demands, coalition-building strategies, non-negotiable red lines, and potential compromises. Their preparation will be guided by discussion points outlined by the teacher at the start of the session. Afterward, the groups will present their agendas, followed by a mock negotiation moderated by the teacher. The session will conclude with a comparison of the class's negotiation outcome to the real-world results of COP29 on climate finance.
2. Session 5: The group will role-play a debate before the International Court of Justice (ICJ). Divided into three teams, one group will argue position X, another position Z, and the third will present the ICJ's actual opinion. For example, students might debate the principle of "shared but differentiated responsibility" in the context of climate reparations. One team will argue that differentiation should be based on financial and technical capacities (Western perspective), while the other will argue it should be grounded in historical contributions (Global South perspective). Questions for debate will be introduced in Session 4 to ensure students can prepare and engage with the readings based on their assigned roles.

## Evaluation

- Final paper (60%):  
Each student should choose a recent event to reflect on and write a short paper (4 double-spaced pages). These reflections should critically analyze the selected event by drawing on the class readings, connecting it to themes discussed throughout the course, and applying theoretical insights gained in class. Potential events for analysis include (but are not limited to):

The event could be (not exhaustive):

- ✓ A climate disaster and its recovery financing
- ✓ A specific climate litigation case
- ✓ Negotiations or meetings at the UN level on climate mitigation/adaptation, sovereign debt, etc.
- ✓ Initiative launched by a government/NGO related to debt, climate finance or any type of financial reform

- ✓ A development project led by the World Bank or other stakeholders
- ✓ A loan provided by the IMF with green conditionality
- ✓ A South-South cooperation agreement to foster green development
- ✓ A recent social movement tying up debt and climate change issues
- ✓ Geopolitical tensions over climate finance

Students should begin considering their topic in advance, as the requirement will be presented in the first class. If any student has difficulty finding a suitable event or requires guidance, they are encouraged to meet with the professor for assistance.

- Oral presentation (40%):

The group presentation during the final session will evaluate the capacity of students to synthesize rich materials, connect various readings and will need to demonstrate an active engagement with the discussions that occurred during the classes.

Note on participation: Although participation will be strongly encouraged, it will not be included as part of the evaluation process. This decision is based on the understanding that students possess varying levels of proficiency in the English language, self-confidence in public speaking, and the ability to assert their voice. These differences are not necessarily reflective of students' engagement or knowledge but may also stem from cultural, social, and gender factors. Evaluating unplanned and spontaneous participation can reinforce inequalities. Additionally, these participation grades rest on subjective criteria and the professor's memory and as such are prone to many biases. Instead, participation should be nurtured through an inclusive atmosphere, where students feel comfortable and supported, rather than being required for evaluation purposes. Consistent with this approach, evaluation will exclusively rely on written and oral exercises, where students will have sufficient time to plan and prepare their contributions.