Climate Justice

LW5124 – 5 ECTS – Semester 2

Gerry Liston

**Course Outline 2023-2024**

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| **Objective** | The course engages postgraduate students with the topic of climate justice, exploring questions regarding the role of human rights in addressing climate change and environmental damage, and the relevant obligations of States and other actors (including business entities). It considers developments at the international and domestic level, including within the European and United Nations human rights system, international criminal justice, constitutional law and civil litigation. |
| **Lecturer(s)** | **Name** | **Office** | **Ext** | **E-mail** |
| Gerry Liston | Room 209**Office Hours:**TBC  | n/a | gliston@glanlaw.org  |
| **Times** | **Semester** | **Day** | **Time** | **Venue** |
| 2 | See Semester 2 timetable | Seminar Room, Irish Centre for Human Rights |
| **Overall Learning Outcomes** | On successful completion of this course, you will:* Demonstrate a thorough and nuanced understanding of climate justice, the human rights impacts of climate change and the debates concerning the role of human rights in this context
* Have developed an awareness of legal, political and sociological issues arising in relation to climate change, environmental harms and human rights
* Have a knowledge of the international and domestic efforts aimed at ensuring climate justice, including through judicial remedies
* Be able to conduct comprehensive research focused on this subject area and will be familiar with the major literature and policy documents and emerging legal instruments
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| **Format** | The course will be taught by weekly seminars, each three hours, over four weeks. Students are expected to have read all prescribed readings in advance of each seminar, thus requiring independent study of 8-10 hours each week, and will be expected to engage actively in discussion and to participate in various exercises and activities.  |
| **Programme(s)** | LL.M in International Human Rights Law, LL.M in International Criminal Law, LL.M in Peace Support, Humanitarian Law and Conflict, full-time and part-time.  |
| **Course Material** | Syllabus is available on the website of the Irish Centre for Human Rights (<http://www.nuigalway.ie/irish-centre-human-rights/academics/llmprogrammes/modules/businesshr/>) and can be downloaded from Blackboard at <http://blackboard.nuigalway.ie>.  |
| **Assessment** | Evaluation is undertaken through the submission of a written essay (2,500 words, including footnotes, excluding table of contents, bibliography etc.). Essays should demonstrate significant research, familiarity with the literature, independent thought and critical analysis. Essays are to be submitted in hardcopy and electronically via Blackboard. Submission date is set out in the general ‘Guidelines for LLM students’. |
| **Workload hours** | The course will be taught by weekly seminars, each three hours, over four weeks. Students are expected to have read all prescribed readings in advance of each seminar, thus requiring independent study of 8-10 hours each week, and will be expected to engage actively in discussion and to participate in various exercises and activities. The assignment requirement will also generate workload hours of approximately 75 hours.Credit weighting: 5 ECTSLecture hours: 12Independent study: 113Total Student Effort: 125 hours  |

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| Topics |
| **Week 1: Introduction: Climate Justice & the *Urgenda* case**The module begins with an exploration of the concept of climate justice and the role of human rights in addressing climate change. It does so by focusing in particular on the decision of the Dutch Supreme Court in the landmark *Urgenda* case.***Required Reading*:*** Jacqueline Peel et al., Principles of International Environmental Law, 4th ed. (Cambridge University Press, 2018), Chapter 8;
* [Decision of the Dutch Supreme Court in *Urgenda v Netherlands*](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf);
* Patrícia G Ferreira, ‘“Common But Differentiated Responsibilities” in the National Courts: Lessons from Urgenda v. The Netherlands’ (2016) 5(2) Transnational Environmental Law 329;
* Bård Lahn and Göran Sundqvist, ‘Science as a “Fixed Point”? Quantification and Boundary Objects in International Climate Politics’ (2017) 67 Environmental Science and Policy 8
* Climate Analytics expert report submitted on behalf of the applicants in *Duarte Agostinho*, Sections 2, 3.1 and 3.2 (pp. 5-43).

***Further Reading*:*** Mary Robinson, *Climate Justice*, Bloomsbury, 2018, Chapters 1 and 10.
* Lavanya Rajamani, ‘Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics’ (2016) 65 International and Comparative Law Quarterly 493
* Benoit Mayer, ‘*The State of the Netherlands* v. *Urgenda Foundation:* Ruling of the Court of Appeal of the Hague (9 October 2018)’ 8(1) *Transnational Environmental Law* (2019) 167.
* Tracey Skillington, *Climate Justice and Human Rights*, Palgrave MacMillan, 2017.
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| **Week 2: The “fair share”/equity issue and human rights law post-*Urgenda*** This session examines how the issue of equity is being addressed in climate change litigation pursued since the *Urgenda* case. It focuses in particular on the approach taken in the case of *Duarte Agostinho v 33 European States* which is currently pending before the Grand Chamber of the European Court of Human Rights.***Required Reading***:* Observations of the Applicants on “Duty and Breach” in *Duarte Agostinho v 33 European States* (excluding non-territorial emissions)(pp. 212-295) and on Ireland’s measures to reduce its territorial emissions (pp. 556-567);
* Second observations of Ireland in *Duarte Agostinho*, pp. 56-111
* Christina Voigt, ‘The climate change dimension of human rights: due diligence and states' positive obligations’ 13 Journal of Human Rights and the Environment (September 2022) 152
* Lavanya Rajamani et al. ‘National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law’ 21(8) Climate Policy (2021) 983

***Further Reading:**** Lucy Maxwell, Sarah Mead, Dennis van Berkel, ‘Standards for adjudicating the next generation of Urgenda-style climate cases’ 13(1) Journal of Human Rights and the Environment (2022) 35
* Gerry Liston, ‘Enhancing the efficacy of climate change litigation: how to resolve the ‘fair share question’ in the context of international human rights law’ 9(2) Cambridge International Law Journal (2020) 241
* Kate Dooley et al., "Ethical choices behind quantifications of fair contributions under the Paris Agreement." 11(4) Nature Climate Change (2021) 300.
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| **Week 3: Intergenerational equity, extraterritorial obligations and the admissibility hurdles in human rights litigation**In this session, we explore the issue of intergenerational equity as well as other issues of climate justice raised by the admissibility hurdles in human rights-based climate change litigation at the international/regional level: victim status (and the related issue of the applicability of the relevant human rights to harm from climate change), exhaustion of domestic remedies and extraterritorial jurisdiction. We also examine two domestic climate cases which raise important issues of intergenerational equity and extraterritorial obligations.***Required Reading***:* Decision of the German Federal Constitutional Court in [*Neubauer v Germany*](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210324_11817_order-1.pdf)
* Decision of the Swiss Supreme Court in [*Union of Swiss Senior Women (KlimaSeniorinnen) v Switzerland*](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200505_No.-A-29922017_judgment.pdf)
* Observations of the Applicants *in Duarte Agostinho* on admissibility (pp. 106-180), the applicability of Articles 2, 3 and 8 and Article 14 (see pp. 181-211 and pp. 318-320)
* Observations of Portugal and the United Kingdom in *Duarte Agostinho* on admissibility and the applicability of Article 2, 3 and 8 and Article 14

***Further Reading:**** Benoit Mayer, ‘Climate Change Mitigation as an Obligation Under Human Rights Treaties?’ (2021) 115(3) American Journal of International Law 409
* [Decision of the UN Committee on the Rights of the Child in *Saachi and others v Argentina and others*](http://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/) *[Note that the Committee issued separate decisions in respect of each Respondent. Regarding the decisions on jurisdiction and victim status, it is only necessary to read the decision in respect of any one Respondent. In relation to exhaustion of domestic remedies, it is appropriate to read the decisions in respect of all Respondents]*
* Helen Keller and Corina Heri, ‘The Future is Now: Climate Cases Before the ECtHR’ (2022) Nordic Journal of Human Rights 1
* Observations of the Applicants in *Union of Swiss Senior Women v Switzerland* (ECtHR) ([Summary](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20211013_Application-no.-5360020_reply-3.pdf), [observations on the facts](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20211013_Application-no.-5360020_reply-4.pdf), [observations on the law](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20211013_Application-no.-5360020_reply-5.pdf))
* Jasper Mührel, ‘[All that Glitters is not Gold: The German Constitutional Court’s Climate Ruling and the Protection of Persons Beyond German Territory Against Climate Change Impacts](https://voelkerrechtsblog.org/all-that-glitters-is-not-gold/)’ Voelkerrechtsblog, 21 March 2021.
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| **Week 4: ‘Non-territorial emissions’, corporate responsibility and individual (criminal/civil) liability** This final class examines issues of climate justice which arise in relation the contributions of a State, or non-State actors within that State, to emissions released beyond its borders. In doing so, it focuses on the three categories of non-territorial emissions addressed in Duarte Agostinho, namely: those associated with the combustion of exported of fossil fuels; emissions ‘embodied’ in imported goods and the emissions of companies domiciled within a State’s jurisdiction. It also examines emerging trends in individual criminal/civil liability for serious environmental harm.***Required Reading**** Section VI of the Statement of facts accompanying Ireland’s first observations in *Duarte Agostinho* (pp. 46-54).
* Observations of the Applicants in *Duarte Agostinho*: Duty and Breach regarding non-territorial emissions (pp. 295-317)
* Expert Report of Michael Mehling and Harro van Asselt submitted by the Applicants in *Duarte Agostinho*
* Section V(B)(6)(f) (pp. 90-93) of Ireland’s second observations in *Duarte Agostinho*
* Arvind P. Ravikumar, ‘[Carbon border taxes are unjust](https://www.technologyreview.com/2020/07/27/1005641/carbon-border-taxes-eu-climate-change-opinion/)’ (27 July 2020) MIT Technology Review
* Dan Calverley and Kevin Anderson, “[Phaseout Pathways for Fossil Fuel Production Within Paris-compliant Carbon Budgets](https://www.research.manchester.ac.uk/portal/files/213256008/Tyndall_Production_Phaseout_Report_final_text_3_.pdf)”, Sections 1 (pp. 8-14), 5, 6 and 7 (pp. 37-56)

***Further Reading**** Geetanjali Ganguly, Joana Setzer and Verl Heyvaert, ‘If at first you don’t succeed: Suing Corporations for Climate Change’ 38(4) *Oxford Journal of Legal Studies* (2018) 841-868.
* Decision of the Hague District Court in [*Milieudefensie v Shell*](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210526_8918_judgment-1.pdf)
* Decision of the Norwegian Supreme Court in [*Nature and Youth Norway et al. v Norway*](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20201222_HR-2020-846-J_judgment.pdf)
* ClientEarth, [ClientEarth shareholder litigation against Shell’s Board FAQ](https://www.clientearth.org/media/puojyzvy/clientearth-shareholder-litigation-against-shell-s-board-faqs.pdf) (March 2022)
* Ricardo Pereira, ‘After the ICC Office of the Prosecutor’s 2016 Policy Paper on case Selection and Prioritisation: Towards an International Crime of Ecocide?’, *Criminal Law Forum* 31(2020) 179.
* Michael Karnavas, ‘[Ecocide: Environmental Crime of Crimes or Ill-Conceived Concept](http://opiniojuris.org/2021/07/29/ecocide-environmental-crime-of-crimes-or-ill-conceived-concept/)?’ 29 July 2021, *Opinio Juris*
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