

June 19, 2025

INTERNATIONAL CLIMATE LITIGATION  
CLM.5902

Professor David A. Wirth

July 2025

COURSE INFORMATION AND SYLLABUS

Instructor: David A. Wirth  
Telephone: TBA

E-mail: [wirthd@bc.edu](mailto:wirthd@bc.edu) (only, see below)

Class sessions:

Monday-Thursday, July 14-17  
9:00 –noon

Office: TBA

Classroom: TBA, check class schedule

I. OBJECTIVES

This course examines the rapidly evolving field of international climate litigation. Students will explore legal actions addressing climate change across various jurisdictions and tribunals, including the Inter-American Court of Human Rights and the International Tribunal for the Law of the Sea (ITLOS). A focal point of the course will be an in-depth examination of the International Court of Justice's advisory opinion on the obligations of states in respect of climate change, currently under advisement with a judgment expected in 2025. The course also addresses structural attributes and examples of climate litigation in foreign jurisdictions such as the Netherlands, Colombia, South Africa, Germany, and Switzerland.

Much of the course addresses basic analytical skills associated with the study of the law governing the relations between states, and to that extent provides an introduction to public international law, as framed through the lens of international climate litigation. The course also provides an introduction to the substantive international law of climate disruption, including its particular challenges. It is also designed to familiarize students with working with the texts of primary international legal materials, such as treaties, nonbinding instruments, and judicial opinions.

The course emphasizes skill development, enabling students to effectively address emerging issues in this dynamic field. A centerpiece of the course is preparation for, and conduct of, a simulated argument before an international tribunal, providing practical experience in international legal proceedings. The course has been expressly structured to meet the needs not only of law students, but also of non-specialist generalists with no prior legal training. *No prior exposure to international law, climate law and policy, comparative law, or international tribunals is expected or required.*

This course complements, and does not duplicate, Professor Beatrice Hamilton's course related to the climate Conference of the Parties (COP).

## II. OFFICE HOURS AND E-MAIL

I generally plan to be available for the hour immediately after class, noon to 1 PM, Monday through Thursday. *If you would like to meet with me then, please be sure to let me know immediately before or after class or during a break.* Students who wish to agree a different, mutually convenient time with me should talk to me before or after class or during a break.

I do not monitor my VLS email address. I believe there is an auto-reply there directing you to the email above, [wirthd@bc.edu](mailto:wirthd@bc.edu), which is the only account I monitor, during the summer and otherwise.

## III. COURSE WEBSITE

A Canvas website will be established for this course, which can be accessed through VLGS system. The website will contain this syllabus; an initial course announcement in advance of the first meeting; a cumulative list of assignments to date; supplemental handouts; and web links to the texts of relevant international instruments discussed in the course. If you are uncertain of the current assignment, consult the documentation on the website.

## IV. SIMULATED ORAL ARGUMENT

A centerpiece of the course will be a simulated oral argument in a hypothetical climate case in the the International Court of Justice in the Hague. The class sessions will include introduction of the facts, and review of memorials (briefs) prepared by award-winning groups of students in prior iterations of this fully road-tested exercise. Students will be assigned roles as representing either the applicant (plaintiff) or respondent (defendant), and argue the case as a team. The purposes of the negotiation include the assimilation of the course material through active learning techniques and exposure to the real-world dynamics of international diplomacy.

Detailed instructions will be distributed in writing and explained in advance. The simulation will not itself will not be graded, but all course participants are expected actively to contribute to the exercise.

## V. GENERATIVE AI POLICY

There is no course policy with respect to generative AI, either discouraging (including to the point of prohibition) or encouraging it. Indeed, in work on the simulation, generative AI can be expected to be quite useful in providing at least a first cut at analyzing the relevant legal authorities (as it was in preparing some of the course materials in a format suitable for delivery in this course). The final examination is an in-person exercise delivered in Examsoft format, during which access to the internet will not be possible. There should be no other junctures in the course at which the use of generative AI is restricted.

## VI. EXAMINATION AND GRADING

The principal component of the grade in this course will be a 2-hour, in-class, limited open-notes written final examination. The examination will be held at 9 AM on Friday, July 18.

The examination and your preparation for it should be learning experiences. Accordingly, the examination will emphasize broad-gauge synthesis of the subject matter from the beginning to the end of the course in a problem solving context.

The examination will consist of a brief excerpt from a pleading (memorial, brief, etc.) in an international climate litigation, either a contentious case or advisory opinion. The exercise will consist of your analyzing the excerpt by responding to a series of guided prompts designed to traverse most if not all the major themes of the course.

The final will be a limited open notes examination, held in ExamSoft format. Students may access their own notes, and any outlines prepared by them or by themselves in collaboration with other students (i.e., group outlines). Students may also access any of the materials published or linked on the course website. Students may not access commercially prepared outlines, treatises, hornbooks, or study aids, or any published material other than that assigned and required for the course. Paper copies of documents identified under “Web Links” and other course materials from the course website are allowed. No internet access is permitted. “E-readers” *are not* permitted in the examination room.

The examination will be graded anonymously. It is expected that you will routinely attend, be prepared for, and participate in all class sessions. In borderline cases, adjustments to final grades will be made to reflect the quality of individual class participation.

## VI. READING ASSIGNMENTS

There is no published text on this subject matter suitable for teaching purposes, and consequently none for purchase.

The bulk of the readings will be excerpts from the professional legal literature, all available to the public without copyright restriction. The readings can be found (1) in web links on this syllabus; or (2) in the relevant module on the Canvas course website, and in some cases both. Materials in the modules have been arranged roughly to track the ordering in this syllabus.

The number and variety of the readings have been chosen with an emphasis on primary documents, so as to expose students to the diversity of sources in this rapidly evolving field. In cases where that is possible, they have been edited to focus on the relevant portions. Otherwise, the assignment clearly directs you to the relevant passages – many of which are quite brief.

***Note that there is a reading assignment is to be prepared in advance of the first day of class, Monday, July 14.***

The following are the TENTATIVE daily assignments for the course.

We will move through the assignments and the syllabus in sequential order, covering all of the material in class by the end of the course. Material that may not be completed in class one day will be held over until the next. In other words, we will complete discussion of all the material, even if the class discussions do not correlate precisely with the assignments. *When the reading assignment includes discussion questions, you should come to class prepared to answer those questions.*

Day 1, Monday, July 14

CONTENTIOUS CASES IN INTERNATIONAL TRIBUNALS

Before the first class on Monday, July 14, please read the document “The Trail Smelter Arbitration” on the Canvas website, paying particular attention to the “Commentary and Questions” after the award (opinion).

Also read (background, Canvas website):

Wirth, *The Multilateral Climate Regime*, in *Global Climate Change and U.S. Law* 33-71 (Michael B Gerrard, Jody Freeman & Michael Burger eds., American Bar Association: 3d ed. 2023). *Focus on pp. 52-61*(content of Paris Agreement, through COP 26), remainder set out in full for reference.

Third, the simulation around which much of this course is structured can be found on the Canvas website. Please take a look at it before the first class, it’s short (7 pages). As you read, identify as many legal issues as you can. Also feel free to scan the memorials (briefs) for the two parties to the dispute, the applicant (plaintiff) Aringuv, and the respondent (defendant) Replomuté.

\* \* \*

The Trail Smelter arbitration is the bedrock legal authority in the study of international environmental law generally, including the international of climate disruption. As we will see in class, the legal processes set out there have direct application to climate. However, the authority itself applies to a local pollutant (sulfur dioxide) with health and welfare effects, in many ways quite different from the climate issue, which is a truly global issue of collective commons management.

As you read the materials on the Trail Smelter arbitration, think in addition about how its principles might (or might not) be generalized to the climate challenge. In particular,

- What particular challenges are posed in actions by private parties against sovereign entities or sub-national governmental units?
- What particular challenges are posed by actions to apply international law in domestic courts with respect to the identification of sources of law (monist vs. dualist legal systems, “self-executing” law)
- What particular challenges are posed in seeking review of governmental inaction, as opposed to concrete, identifiable actions and policies?
- What particular challenges are posed in challenges by private parties that involve the distribution of governmental authority at the national or municipal level (justiciability or “political question” defenses)?
- What particular challenges are posed by applying broad-gauge human rights standards such as the “right to life” to situations such as climate?
- What particular challenges are posed in identifying appropriate parties to initiate legal actions

challenging governmental action or inaction (locus standi)?

- What particular challenges are encountered in applying international standards such as precaution phrased in hortatory, aspirational terms?
- What particular challenges are encountered in applying binding international requirements such as precaution phrased in descriptive, adjective form?
- The core of the Trail Smelter award is its analytical framework, relying on interlocked rights and duties under customary international law that the United States and Canada both owe each other, and of which they are simultaneously the beneficiaries. How does this approach translate to the global climate context, involving a shared natural resource of the global commons, if at all?

(Not to worry if you don't have answers to these questions right away, that's what we're here to study, and we will discuss them in detail).

### Day 2, Tuesday, July 15, 2025

#### ADVISORY OPINIONS IN INTERNATIONAL TRIBUNALS

For this class, please read:

(1) Maria Antonia Tigre and Armando Rocha, The Role of Advisory Opinions in International Law in the Context of the Climate Crisis: An Introduction, pp. 1-15 (only) (forthcoming July 2025), posted on Canvas website

(2) Of the four advisory opinions discussed in this piece, only one has currently proceeded to final judgment, in the International Tribunal for the Law of the Sea (ITLOS). **Please read the redacted copy posted on the Canvas website.** Although much of the text has been redacted, you should be able to use the table of contents, retained in full from the original, at the beginning to understand the shape of the Tribunal's analysis.

(3) UN General Assembly Resolution 77/276 (Mar. 29, 2023), Canvas website (referral to International Court of Justice). Review the questions referred in their entirety. How, if at all, would you expect the Court's analysis to differ from that in the ITLOS advisory opinion?

We will also refer to:

The full text of the 1982 Convention on the Law of the Sea,  
<[https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)>.

The text of part XII, the principal workhorse of the ITLOS advisory opinion, has been excerpted here in a somewhat more manageable form:

<[https://www.un.org/depts/los/convention\\_agreements/texts/unclos/part12.htm](https://www.un.org/depts/los/convention_agreements/texts/unclos/part12.htm)>

UN Organogram, <<https://www.un.org/en/delegate/page/un-system-chart>>

UN Charter article 96, <<https://www.un.org/en/about-us/un-charter/full-text>>

Statute of the International court of Justice, arts. 36, 38, 65-68 <<https://www.icj-cij.org/statute>>

ICJ website for advisory opinion, <<https://www.icj-cij.org/case/187>>

You might take a look in advance at the powerpoint for today's class, posted on the Canvas course website, which summarizes all four.

Enrichment (i.e., **optional**):

(4) Urzola, Robinson, et al., State Responsibility for Disrupting Earth's Climate System: Anticipating the ICJ Advisory Opinion, 55 Env'tl. L. Rep. 1 (Jan.-Feb. 2025), posted to Canvas course website.

### **Day 3, Wednesday, July 16, 2025**

(1) Continuation of analysis of advisory opinions (Day 2).

(2) Preparation for Thursday's simulation in *Aringuv v. Replomuté*.

(Re-)read the problem and the memorials for two parties, Aringuv (applicant/plaintiff) and Replomuté (respondent/defendant) before coming to class. Be prepared to discuss how your legal team plans to structure its argument, to be held on Day 4.

Further details to be supplied.

### **Day 4, Thursday, July 17, 2025**

(1) Oral argument in *Aringuv v. Replomuté*.

(2) After that, time permitting:

### **INTERNATIONAL CLIMATE LITIGATION IN FOREIGN JURISDICTIONS**

This material is **enrichment** (meaning **optional**, and not formally part of the course material covered on the final examination. We will address as much as time permits on the last day of class. This is an enormous topic, with much variation.

We will examine the following cases, which focus on mitigation (emissions reduction). Before coming to class, make sure you understand

(1) the identity of the parties (litigants);

(2) the holding (outcome) in each;

(3) the analytical process that the court in question followed in reaching the result;

- (4) the role, if any, of public international law (UNFCCC, Paris Agreement, etc.); and
- (5) the implications for international climate policy.

Also, give some thought as to how each of these cases is unusual by reference to judicial practice here in the United States. As a point of comparison, consider the summary of *Massachusetts v. EPA* (2007), a comparable case in the U.S. Supreme Court, posted to the Canvas course website.

In each of these cases, it is sufficient to read the Sabin Center summary linked:

1. *Urgenda Foundation v. Kingdom of the Netherlands*, (2015, Supreme Court 2019) – Netherlands, <<https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>>. At first blush, this case appears to be somewhat analogous to *Mass v. EPA*, involving judicial review of governmental climate policy. After that, how does it differ in its approach – dramatically?
2. *Milieudefensie et al. v. Royal Dutch Shell* (2021) – Netherlands, <<https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>>. How does this case differ in legal theory from *Urgenda*? (Hint: Look at the caption/parties). And how is different in result – again, dramatically?
3. *Luciano Lliuya v. RWE AG* (ongoing, 2015–present) – Germany, <<https://climatecasechart.com/non-us-case/liiuya-v-rwe-ag/>>. Analytically, how does this case add even more dramatically to the array of legal theories that (foreign) courts have accepted in response to climate change litigation?
4. *Earthlife Africa Johannesburg v. Minister of Environmental Affairs* (2017) – South Africa, <<https://climatecasechart.com/non-us-case/4463/>>. In structure, this could almost be a U.S. case under the National Environmental Policy Act (NEPA). The South African Supreme Court is famous for its expansive approach to rights-based cases, such as this one. With respect to international legal authority, how is its approach dramatically different from what one could expect here in the U.S.
5. *Future Generations v. Ministry of the Environment and Others* (Amazon Case, 2018) – Colombia, <<https://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>>. How is the legal theory of this case different from all the preceding ones – again, dramatically?
6. *Verein KlimaSeniorinnen Schweiz v. Switzerland* (2024) – European Court of Human Rights, <<https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>>. This is a reference from domestic litigation to a regional human rights tribunal, structurally the analogue of the Inter-America Court of Human Rights.