

ASEAN CONFERENCE ON CLIMATE CHANGE

**“SHAPING THE CLIMATE REGIME IN SOUTHEAST
ASIA THROUGH INTERNATIONAL LAW”**

HỒ SƠ GIỚI THIỆU HỘI THẢO VÀ DIỄN GIẢ

30 OCTOBER 2026- Ho Chi Minh City



Organization and Partnership

Co-organizers

- Ho Chi Minh City University of Law
- The Centre for International Law, National University of Singapore

 Ho Chi Minh City University of Law	 The Centre for International Law, National University of Singapore	 Carbon & Climate Law Review
 Indonesian Journal of International Law	 Vietnamese Journal of Legal Sciences	 Vietnam Young Entrepreneurs' Association
 HCMC Green Business Association	 PHUC KHANG CORPORATION	 Saigon Industry Corporation
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Program Overview

- **Date:** 30 October 2026
- **Place:** Hall A1002, 10th Floor, Building A, Ho Chi Minh City University of Law, 02 Nguyen Tat Thanh Street, Xom Chieu Ward, Ho Chi Minh City

TIME	ACTIVITY
07:00–08:00	Registration and welcome
08:00–08:30	Opening ceremony
08:30–09:40	Panel 1: International climate adjudication, advisory opinions, and state obligations
09:40–09:55	Tea break
09:55–11:05	Panel 2: Oceans, environmental rights, and future generations
11:05–12:05	Lunch
12:05–13:15	Panel 3: Climate justice and accountability
13:20–14:35	Panel 4: Carbon markets, climate trade, and corporate practice
14:35–14:45	Tea break
14:45–15:55	Panel 5: Just transition and strategic resources
16:00–17:10	Panel 6: Regional and sectoral climate governance
17:15–18:25	Panel 7: Climate litigation, judicial governance, and disput resolution
18:25–18:45	Closing Plenary and Conference Outcomes
19:00	Dinner

TABLE OF CONTENTS

No.	Presentation	Page
	PANEL 1: INTERNATIONAL CLIMATE ADJUDICATION, ADVISORY OPINIONS, AND STATE OBLIGATIONS	1
01	MITIGATION OF CLIMATE CHANGE FOR RECONCILIATION AND PEACE IN THE INTERNATIONAL COMMUNITY	2
02	THE INTERNATIONAL COURT OF JUSTICE’S OPINION ON THE OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE – IMPLICATIONS FOR ASEAN’S CLIMATE GOVERNANCE	3-4
03	ASEAN STATES BEFORE THE INTERNATIONAL COURT OF JUSTICE: SYSTEMIC INTEGRATION AND REGIONAL APPROACHES TO CLIMATE LAW	5-6
04	WHO SPECIFIES CLIMATE DUE DILIGENCE? SOUTHEAST ASIAN STATE ARGUMENTS BEFORE ITLOS AND THE ICJ	7-8
	PANEL 2: OCEANS, ENVIRONMENTAL RIGHTS, AND FUTURE GENERATIONS	9
05	HOW FAR DOES ‘FIXED’ TRAVEL? THE LIMITS OF BASELINE PRESERVATION AND MARITIME ENTITLEMENT IN SOUTHEAST ASIA	10-11
06	CLIMATE CHANGE AND THE LAW OF THE SEA AFTER THE ITLOS ADVISORY OPINION: EMERGING OBLIGATIONS AND IMPLICATIONS FOR SOUTHEAST ASIAN COASTAL STATES	12-13
07	PROTECTING FUTURE GENERATIONS IN CLIMATE DECISION-MAKING: A RIGHTS-BASED APPROACH FOR SOUTHEAST ASIA	14-16
08	THE RIGHT TO A SAFE, STABLE, AND HEALTHY CLIMATE IN ASEAN	17
09	THE RIGHT TO A CLIMATE-STABLE ENVIRONMENT IN INDONESIA: BRIDGING ENVIRONMENTAL PROTECTION, HUMAN RIGHTS, AND SUSTAINABILITY	18-19

	PANEL 3: CLIMATE JUSTICE AND ACCOUNTABILITY	20
10	CLIMATE JUSTICE BEYOND LITIGATION: RETHINKING LEGAL EFFECTIVENESS IN VIETNAM'S CLIMATE ADAPTATION GOVERNANCE	21-22
11	ECOCIDE, CLIMATE ACCOUNTABILITY, AND SUSTAINABLE DEVELOPMENT IN SOUTHEAST ASIA: THE EMERGING INFLUENCE OF THE INTERNATIONAL COURT OF JUSTICE AND INTERNATIONAL CRIMINAL COURT ON STATE RESPONSIBILITY, TRANSBOUNDARY HARM, AND ASEAN COOPERATION	23-25
12	ADAPTIVE REGIONAL CLIMATE JUSTICE GOVERNANCE IN THE GLOBAL SOUTH: A HARMONISED LEGAL FRAMEWORK FOR CROSS-BORDER CLIMATE GOVERNANCE, ENFORCEMENT, AND ACCOUNTABILITY	26
13	THE HIDDEN COST OF AIR POLLUTION: RETHINKING CLIMATE GOVERNANCE THROUGH THE CARE ECONOMY IN ULAANBAATAR	27-28
	PANEL 4: CARBON MARKETS, CLIMATE TRADE, AND CORPORATE PRACTICE	29
14	REGULATING CARBON CREDIT MARKETS IN EMERGING ASEAN ECONOMIES: LEGAL DESIGN, INSTITUTIONAL FRAGMENTATION AND MARKET INTEGRITY IN INDONESIA, THAILAND AND VIETNAM	30
15	GREEN TRADE MEASURES AND THE DUTY TO COOPERATE: EQUITABLE ACCESS TO TRANSITION TECHNOLOGIES IN ASEAN	31-32
16	FROM CARBON PRICING TO CLIMATE COMPETITIVENESS: POWER, TRADE AND THE NET-ZERO TRANSITION	33-35
17	LEGAL FRAMEWORKS FOR COMPLIANCE CARBON MARKETS IN SOUTHEAST ASIA: A COMPARATIVE STUDY OF INDONESIA AND VIETNAM	36-37

18	MUTUAL RECOGNITION OF CARBON EMISSIONS VERIFICATION IN ASEAN: ADAPTING TO THE EUROPEAN UNION’S CARBON BORDER ADJUSTMENT MECHANISM (CBAM)	38-39
	PANEL 5: JUST TRANSITION AND STRATEGIC RESOURCES	40
19	THE ASEAN COOPERATION IN THE GOVERNANCE OF RARE EARTHS FROM THE PERSPECTIVES OF INDONESIA AND VIETNAM	41-42
20	GREEN CHAINS, UNEQUAL STRAINS - RETHINKING DISTRIBUTIVE CLIMATE JUSTICE FOR VIETNAMESE CRAFT VILLAGES	43-35
21	TOWARDS A NET ZERO AND JUST TRANSITION IN VIET NAM’S GREEN ROAD TRANSPORT: LEGAL FRAMEWORKS, GAPS, AND REFORM DIRECTIONS	46-47
22	ACCOUNTABILITY IN JUST TRANSITION: A REVIEW OF SOUTHEAST ASIA	48
23	SHAPING CLIMATE GOVERNANCE THROUGH TRADE LAW: A PROCEDURAL CLIMATE JUSTICE ANALYSIS OF THE EVFTA AND CPTPP	49-50
	PANEL 6: REGIONAL AND SECTORAL CLIMATE GOVERNANCE	51
23	ALIGNING ASEAN TREATIES WITH CLIMATE CHANGE IMPERATIVES: A “POSITIVE” AND “NEGATIVE” AGENDA	52
24	AIRSPACE GOVERNANCE AS A MISSING DIMENSION OF CLIMATE GOVERNANCE IN SOUTHEAST ASIA	53-54
25	LAWS AND REGULATION ON AGRICULTURAL BURNINGS IN THAILAND IN CONNECTION TO THE GREATER MEKONG REGION	55-56
26	VIRTUAL POWER PURCHASE AGREEMENTS FOR GREENER INFRASTRUCTURE IN ASEAN COUNTRIES	57

27	BRIDGING THE STRUCTURAL DEFICIT IN THE CONTEXT OF GLOBAL PLASTIC GOVERNANCE: A COMPARATIVE STUDY OF NATIONAL INSTITUTIONAL RESPONSES TO THE INC GLOBAL PLASTICS TREATY DEVELOPMENT	58-59
	PANEL 7: CLIMATE LITIGATION, JUDICIAL GOVERNANCE, AND DISPUTE RESOLUTION	60
28	COURTS AND CLIMATE GOVERNANCE: JUDICIAL ACTIVISM, DECENTRALIZATION, AND INTER-BRANCH DIALOGUE	61
29	FROM RECOGNITION TO PROTECTION: SHAPING SOUTHEAST ASIA'S CLIMATE REGIME THROUGH REALISATION OF THE RIGHT TO A HEALTHY ENVIRONMENT	62-63
30	THE OBLIGATION TO TRANSITION AWAY FROM FOSSIL FUEL DEPENDENCE	64
31	CLIMATE ORDRE PUBLIC AND THE ENFORCEMENT OF NON-ICSID ARBITRAL AWARDS IN ASEAN: RECONSIDERING ARTICLE V(2)(B) OF THE NEW YORK CONVENTION	65-66

PANEL 1: INTERNATIONAL CLIMATE ADJUDICATION, ADVISORY OPINIONS, AND STATE OBLIGATIONS

COORDINATOR:



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She previously served as Deputy Director-General in the International Affairs Division of the Attorney-General's Chambers of Singapore and Deputy Chief Executive/Deputy Director-General of the Intellectual Property Office of Singapore.

Ms Yeow has participated in various bilateral, regional and multilateral negotiations and meetings across a range of public international law disciplines, including within ASEAN, the UN General Assembly and the UNFCCC. She was also lead counsel for Singapore in a number of free trade agreement negotiations, including the TPP and CPTPP. She previously served on the Paris Agreement's Implementation and Compliance Committee.

MITIGATION OF CLIMATE CHANGE FOR RECONCILIATION AND PEACE IN THE INTERNATIONAL COMMUNITY

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Professor Park is an international law scholar with extensive experience in research, teaching, and engagement with international legal institutions. His areas of interest include public international law, state responsibility, and the role of law in maintaining peace. At the conference, he examines the obligation to mitigate climate change as a foundation for reconciliation, cooperation, and peace within the international community.

THE INTERNATIONAL COURT OF JUSTICE'S OPINION ON THE OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE – IMPLICATIONS FOR ASEAN'S CLIMATE GOVERNANCE

Abstract:

On 23 July 2025, via their Advisory Opinion on the Obligations of States in Respect of Climate Change, the International Court of Justice unanimously found that general international law imposes binding obligations on states to prevent significant harm to the climate system. While the Opinion itself is non-binding in nature, it still carries significant legal weight for international entities. Essentially, the Court's Opinion turns a body of climate governance built mainly on political negotiation into a legal framework of state accountability. This paper examines the Opinion and asks what it means for ASEAN, a region that has neither a binding regional human rights court nor a strong tradition of climate litigation. It traces the Opinion's central holdings and the doctrine behind the Opinion before turning to the Opinion's implications for ASEAN. Drawing on ASEAN's own recent institutional response, the paper examines how ASEAN, a bloc built on consensus and non-interference, can gain legal traction from the Opinion. It argues that the Opinion's primary value for the region lies in its capacity to anchor domestic litigation, guide treaty interpretation, and lend legal weight to ASEAN's own emergent environmental rights architecture.

Research Subject: The ICJ AO, and specifically its diffusion into a region that possesses neither a binding regional human rights court nor a developed tradition of climate litigation, is the paper's research subject. The inquiry centres on a structural tension: Southeast Asia is acutely vulnerable to climate change, yet ASEAN, its principal regional body, is institutionally resistant to binding legal mandates, governed instead by a consensus-based, non-interference norm often referred to as the "ASEAN Way." The paper's central claim is that despite this long-held reluctance, the Opinion is nonetheless permeating the region, not through formal legal incorporation, but through transnational legal ordering and norm cascades operating across political and judicial vectors.

Methodology: The paper adopts a doctrinal legal methodology as its foundation, involving close textual analysis of the Advisory Opinion and of the customary international law doctrines it relies upon and reshapes. These doctrines are principally the no-harm rule, the due diligence standard, and the duty to cooperate. This doctrinal analysis is deliberately combined with an interdisciplinary theoretical framework drawn from international relations and transnational law scholarship: theory of transnational legal ordering, and the norm cascade model, are used as analytical lenses to explain how a formally non-binding judicial pronouncement can nonetheless generate concrete legal effects within an institutional environment like ASEAN. Building on this theoretical foundation, the paper employs a structured, multi-vector case-study method, examining the Opinion's diffusion likelihood to occur across three distinct channels: political (ASEAN's environmental-rights declaration and AICHR's work plan), judicial (significant domestic administrative and constitutional litigation progresses in some member states, including the Philippines, Indonesia, and Thailand in order to trace empirically how transnational legal norms settle, or fail to settle, at the regional and domestic levels.

Objectives: The paper pursues five objectives: (1) to synthesise the Advisory Opinion's key findings, including the Court's rejection of the *lex specialis* argument, its operationalisation of the 1.5°C threshold as a legal, not merely scientific, benchmark, and its linkage of climate degradation

to human rights impairment; (2) to unpack the doctrinal engines underlying these findings, tracing the evolution of the no-harm rule since the 1941 Trail Smelter arbitration and the Court's reconceptualisation of due diligence as an objective standard requiring states to actively regulate private emitters; (3) to apply transnational legal ordering and norm cascade theory to explain the mechanisms by which the Opinion can gain legal traction globally in general and in ASEAN specifically despite the bloc's non-interference norm and the persistent pushback enabled by the common-but-differentiated-responsibilities principle; (4) to analyse how this diffusion takes place across political and judicial vectors using current regional and some member states' domestic examples.

Expected Contributions: This paper is expected to make a distinct theoretical contribution by applying transnational legal ordering and norm cascade theory to explain the regional diffusion of an international climate ruling. This is an application that remains largely unexplored in the existing literature on the 2025 Advisory Opinion, which has concentrated overwhelmingly on the Opinion's implications for major emitting states and multilateral negotiations rather than on regional uptake mechanisms. Empirically, the paper contributes a systematic, multi-vector account of regional norm diffusion, from political instrument-building, domestic administrative and constitutional litigation to securities-market regulation. By bridging international law doctrine with international relations theory, the paper aims to offer both a analytical framework for scholars studying how non-binding international pronouncements acquire legal weight in regions. The paper seeks to offer practical, evidence-based recommendations for ASEAN institutions, national judiciaries, and financial regulators seeking to operationalise the no-harm and due diligence principles the Opinion has now clarified.

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Prof. Dr. Nguyen Hong Thao was born in 1957. He currently researches and teaches International Law at Ho Chi Minh City University of Law (ULAW). From 1975, he studied at the Military Technical Academy, before graduating from the Baku Higher Naval School (former Soviet Union) in 1982. He earned his Master's degree at Université Paris I, Panthéon-Sorbonne (France) and subsequently completed his PhD there in 1996. Ambassador Nguyen Hong Thao is fluent in English, French, and Russian. He was conferred the title of Associate Professor in 2009 and Professor in 2022.

WHO SPECIFIES CLIMATE DUE DILIGENCE? SOUTHEAST ASIAN STATE ARGUMENTS BEFORE ITLOS AND THE ICJ

Abstract:

International courts are giving climate due diligence increasingly determinate content. ITLOS and the ICJ have identified considerations including the gravity of climate risk, best available science, precaution, environmental assessment, regulation of private actors, cooperation and State capability as relevant to determining what diligent conduct requires. The ICJ has further rejected the proposition that the climate treaties operate as *lex specialis* so as generally to displace other applicable rules of international law, while treating different capabilities as relevant to the application of due diligence. These developments strengthen the legal architecture through which climate-related State conduct may be assessed. Yet they leave a prior question insufficiently examined: through which sources, regimes and interpretive techniques may an international court legitimately specify the content of an open-textured climate obligation?

This paper approaches that question from Southeast Asia. Rather than reconstructing climate law exclusively from the final advisory opinions, it examines seventeen written submissions made by seven Southeast Asian States, namely Indonesia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam, across the ITLOS and ICJ climate advisory proceedings. The States are selected not as representatives of a common ASEAN position, but as a bounded corpus exhibiting substantial legal and developmental variation. The submissions are analysed at proposition level and in procedural sequence: pre- ITLOS pleadings; ICJ written comments submitted after ITLOS delivered its May 2024 Advisory Opinion; and replies to questions posed by ICJ judges in December 2024. This temporal design makes it possible to observe not merely differences between States, but how legal arguments were maintained, reformulated or sharpened as the advisory process itself generated new authoritative propositions. This treatment of pleadings is particularly timely given the ILC Special Rapporteur's 2026 methodological decision to include pleadings before international courts and tribunals among the materials through which convergence, divergence and ambiguity concerning due diligence may be mapped.

The analysis produces three principal findings. First, Southeast Asian arguments resist a simple opposition between States favouring stringent climate obligations and those defending national discretion. Several submissions simultaneously accepted objective criteria capable of disciplining State conduct while insisting that capability, contribution, development circumstances and access to support remain legally consequential. Singapore, for example, sought to connect UNCLOS due diligence with the UNFCCC and Paris Agreement, while preserving differentiated national circumstances; Thailand presented due diligence as evolving with risk, technology and scientific knowledge. Differentiation therefore does not necessarily operate as an exception to specification: it can operate through the criteria by which diligent conduct is specified.

Secondly, the submissions reveal a deeper disagreement over legal authority. States contested whether climate treaties should inform obligations arising under UNCLOS or customary international law through systemic interpretation; whether the climate regime should instead constrain recourse to general international law as *lex specialis*; and what legal role should be assigned to CBDR-RC, negotiated Paris architecture and other principles. Timor-Leste's post-ITLOS comments make this disagreement unusually visible: they defend the climate regime as *lex specialis* and expressly criticise ITLOS's treatment of CBDR-RC and Article 193 UNCLOS. The

controversy is thus not merely over how demanding climate due diligence should be, but who – or, more precisely, which body of law and interpretive technique – gets to make it demanding.

Thirdly, the corpus exposes a distributive dimension that is easily obscured when procedural obligations are described simply as mechanisms of accountability. Environmental assessment, monitoring, reporting, regulation and enforcement depend upon information, technology, institutional resources and finance that are unequally distributed. For developing States, the specification of procedural diligence therefore also allocates practical burdens of compliance. Capability and international support are consequently relevant not only after an obligation has been identified, but potentially to the determination of what diligent implementation requires.

The paper ultimately argues that the emerging climate jurisprudence should be understood as both convergent and contested. Judicial convergence can clarify international climate obligations without demonstrating that the legal routes producing that clarification were themselves consensual. Southeast Asian submissions make that distinction visible. They show regional States not as passive recipients of an externally developed climate jurisprudence, but as participants advancing competing accounts of how general international law, UNCLOS and the negotiated climate regime should interact. For Southeast Asia, where climate vulnerability, development priorities and uneven implementation capacity coexist, that contest over specification is consequential: the future authority of international climate law will depend not only on increasingly exacting standards, but also on whether the legal pathways through which those standards are constructed preserve differentiation and confront the unequal capacities required for compliance.

Keywords: *climate due diligence; Southeast Asia; climate advisory opinions; State submissions; differentiation; systemic integration.*

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PANEL 2: OCEANS, ENVIRONMENTAL RIGHTS, AND FUTURE GENERATIONS

COORDINATOR:



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HOW FAR DOES 'FIXED' TRAVEL? THE LIMITS OF BASELINE PRESERVATION AND MARITIME ENTITLEMENT IN SOUTHEAST ASIA

Abstract:

The law of the sea assumes a degree of permanence in geography that climate change can no longer guarantee. As coastlines retreat owing to the rise in sea levels, this permanence in geography is questioned. Particularly, what happens to maritime entitlements when the geography on which they depend begins to change? Under UNCLOS, maritime zones are measured from baselines typically dependent on low-water lines along the coast. This raises a long-running question: if the coastline retreats, must the baseline retreat as well? The International Law Commission's (ILC) work on sea-level rise has brought considerable clarity to this question. Its 2025 final report reflects broad support for preserving lawfully established baselines and maritime zones despite subsequent physical changes to the coast. For climate-vulnerable coastal and island States, the consequences are substantial: an ambulatory approach could make rising seas a source of shrinking maritime space.

Settling the position of baselines, however, does not settle every question that follows from a changing coastline. Baselines ultimately depend on physical geography, but how far the emerging logic of preservation can extend when the physical features underlying maritime entitlements themselves change or disappear. Southeast Asia provides an especially useful setting in which to examine that question. The position of archipelagic States, particularly Indonesia and the Philippines, illustrates the first dimension of the problem. Under Article 47 of UNCLOS, archipelagic baselines may be drawn by joining the outermost points of the outermost islands and drying reefs of an archipelago. For States made up of thousands of islands, some of them low-lying and exposed to rising seas, the stability of these baselines has obvious practical importance. Indonesia has itself supported the preservation of established baselines in the face of sea-level rise. But agreement on preserving the line leaves a more basic question unanswered: what happens when an island or drying reef used to anchor that line disappears? Preserving the baseline does not necessarily tell us whether the vanished basepoint must also be treated as legally preserved.

The South China Sea presents a more difficult extension of the same problem through the classification of maritime features under Article 121 of UNCLOS. This question has particular significance in Southeast Asia, where the legal status of maritime features has long shaped competing claims to maritime entitlements. For instance, in the 2016 South China Sea Arbitration, several features were classified according to their natural characteristics and their ability to create maritime zones. But those characteristics are not necessarily permanent. A feature that presently remains above water at high tide may become increasingly submerged as sea levels rise. Should its legal classification remain tied to the conditions under which it was originally assessed, or should its status change with its physical condition?

The emerging preservation of baselines does not automatically answer this question. There is an important distinction between protecting an established maritime entitlement from climate-induced geographical change and preserving the legal status of every physical feature associated with that entitlement. This distinction becomes even more important in contested waters. A

principle developed to prevent climate change from eroding established maritime rights should not, simply by being extended through analogy, validate claims whose legal basis was already disputed.

The paper examines these questions through a doctrinal analysis of UNCLOS, the ILC's work on sea-level rise, recent international jurisprudence and relevant State practice from Southeast Asia. It has two objectives: first, to examine whether the emerging logic of preserving established maritime entitlements can extend to the physical features and basepoints on which those entitlements depend; and second, to identify where such an extension must stop, particularly where the legal status of a maritime feature remains contested. By bringing the archipelagic baseline question and the classification of maritime features under Article 121 into the same analysis, the paper seeks to contribute in the identification of the limits of preservation as an emerging response to sea-level rise. In this sense, Southeast Asia offers a useful setting for examining not only the emerging preference for stability, but also the limits of extending that stability by analogy. The challenge is no longer simply whether international law should protect maritime entitlements from rising seas. It is in determining what exactly should remain fixed when the geography beneath the law no longer does.

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CLIMATE CHANGE AND THE LAW OF THE SEA AFTER THE ITLOS ADVISORY OPINION: EMERGING OBLIGATIONS AND IMPLICATIONS FOR SOUTHEAST ASIAN COASTAL STATES

Abstract:

Climate change is increasingly reshaping the relationship between international climate law and the law of the sea. Although the international response to anthropogenic greenhouse gas emissions has developed principally through the United Nations Framework Convention on Climate Change and the Paris Agreement, the effects of climate change are profoundly oceanic. Ocean warming, acidification, sea-level rise and ecosystem degradation also engage the protective framework of the United Nations Convention on the Law of the Sea (UNCLOS). The Advisory Opinion delivered by the International Tribunal for the Law of the Sea (ITLOS) on 21 May 2024 represents a major development in clarifying this relationship. By holding that anthropogenic greenhouse gas emissions may constitute pollution of the marine environment under UNCLOS and by elaborating States' obligations to prevent, reduce and control such pollution, the Tribunal gave the law of the sea a more direct role in international climate governance. The objective of this article is to examine the climate-related obligations clarified by the Advisory Opinion and assess their implications for Southeast Asian coastal States. It addresses three questions: how the Opinion reshapes the application of UNCLOS Part XII to anthropogenic greenhouse gas emissions and climate-related marine harm; how these obligations relate to the Paris Agreement; and what legal and governance implications follow for Southeast Asian coastal States. The article employs a doctrinal legal methodology, analysing the ITLOS Advisory Opinion, relevant provisions of UNCLOS and the Paris Agreement, earlier international jurisprudence on due diligence, prevention and environmental impact assessment, and leading scholarly commentary. This is complemented by selected ASEAN, regional and national legal and policy materials. The regional analysis is thematic rather than a comprehensive country-by-country survey. The article argues that the Opinion's principal significance lies not merely in classifying anthropogenic greenhouse gas emissions as marine pollution, but in giving more concrete content to States' obligations under UNCLOS. ITLOS interpreted the Convention as requiring States to take all necessary measures to prevent, reduce and control such pollution and to exercise stringent due diligence. That standard is informed by the best available science, precaution, environmental assessment, monitoring and international and regional cooperation. Together, these elements intensify and operationalise the application of existing UNCLOS obligations in the climate context. The article further argues that the Opinion does not create a wholly new body of climate law under UNCLOS. Its significance is better understood as interpretatively transformative: it applies and develops existing marine environmental obligations in response to a global threat not expressly contemplated when UNCLOS was adopted. At the same time, the Opinion rejects the idea that the Paris Agreement displaces UNCLOS as the specialised legal regime governing greenhouse gas emissions. The two regimes remain legally distinct but complementary. The Paris Agreement provides the central global framework for collective climate action and nationally determined mitigation commitments, while UNCLOS independently regulates the consequences of anthropogenic emissions for the marine environment. Compliance with Paris Agreement obligations therefore does not automatically establish compliance with UNCLOS. The article characterises this relationship as one of differentiated complementarity: climate-law rules and scientific benchmarks may inform

the content of UNCLOS obligations, but they do not exhaust or replace them. These developments are particularly significant for Southeast Asia. The region includes highly climate-vulnerable coastal and archipelagic States that depend extensively on marine resources, fisheries, coastal ecosystems and maritime trade, while many also face rising energy demand and continued dependence on fossil fuels. The Advisory Opinion therefore has implications beyond conventional marine pollution control. It requires closer attention to the relationship between climate mitigation and marine environmental protection, climate-related effects in environmental assessment, the protection of vulnerable marine ecosystems, and the adequacy of regional cooperation under UNCLOS. The article's expected contribution is twofold. First, it offers a doctrinal account of the Advisory Opinion as establishing an integrated and increasingly demanding framework of climate-related obligations under UNCLOS while preserving the distinct role of the Paris Agreement. Second, it develops the concept of climate–ocean legal integration to explain the principal implication of the Opinion for Southeast Asian coastal States. Climate policy, marine environmental protection, environmental assessment, ecosystem conservation and regional cooperation can no longer be treated as wholly separate areas of governance. For Southeast Asia, the central challenge is to develop more coherent domestic and regional arrangements capable of giving practical effect to this emerging integration of climate and ocean obligations under international law.

Keywords: *Climate change; UNCLOS; ITLOS Advisory Opinion; marine environmental protection; due diligence; Southeast Asia*

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PROTECTING FUTURE GENERATIONS IN CLIMATE DECISION-MAKING: A RIGHTS-BASED APPROACH FOR SOUTHEAST ASIA

Abstract:

Climate change is inherently an intergenerational challenge. Decisions made today regarding climate adaptation, urban planning, water resources, infrastructure development, and ecosystem protection will irrevocably shape the environmental and socio-economic realities for decades to come. Yet, those who will bear the most enduring consequences of these choices are not yet born and, consequently, have no direct role or representation in present-day decision-making processes. This temporal imbalance raises a profound question of intergenerational climate justice: how can the interests of future generations, and the environmental conditions necessary for their future enjoyment of human rights, be meaningfully and systematically integrated into climate decisions made today? This inquiry is particularly urgent in Southeast Asia, a region characterized by severe climate vulnerability, rapid urbanization, and a pressing need to balance long-term climate risks with immediate imperatives for economic development and infrastructure expansion.

International environmental and climate law has increasingly recognized the imperative of safeguarding future generations. The principle of intergenerational equity is structurally embedded in the UN Framework Convention on Climate Change, the Paris Agreement, and the broader architecture of sustainable development. Foundational legal and political theories, notably the contributions of John Rawls and Edith Brown Weiss, provide a robust conceptual basis for understanding cross-generational fairness and planetary trusteeship. Recent developments in international climate jurisprudence further amplify the long-term consequences of state conduct. However, the recognition of future generations largely persists at the level of abstract normative principles. The central contemporary challenge is no longer merely whether international law acknowledges future generations, but how this theoretical recognition can transcend rhetoric to actively constrain and shape concrete climate decisions taken in the present.

This article investigates how a practical, rights-based approach can bridge this implementation gap in Southeast Asia. Rather than attempting to resolve the highly contested ontological debate over whether persons not yet born should be legally treated as fully independent rights-holders, the article pivots to a more pragmatic concern. It focuses on how procedural obligations in decisions taken today can protect the fundamental environmental and social conditions necessary for the future enjoyment of established human rights. Employing doctrinal legal analysis, normative evaluation, and a targeted comparative approach, the study examines relevant principles of international environmental, climate, and human rights law. It extracts pivotal lessons from landmark climate litigations and legislative frameworks, specifically *Oposa v. Factoran* in the Philippines, *Neubauer v. Germany*, and the Well-being of Future Generations framework in Wales, to assess their legal and procedural translatability to the ASEAN context.

The comparative analysis exposes several recurring limitations in conventional climate decision-making models. First, time horizons embedded in policy cycles are systematically too short to capture long-term environmental degradation. Second, there is a profound assessment gap concerning cumulative and potentially irreversible long-term impacts. Third, a critical integration gap exists between the mere identification of future impacts and the legal requirement to allow those impacts to substantively influence final policy choices. Finally, there is a review gap,

characterized by limited opportunities to revisit and adapt long-term decisions as scientific data and circumstances evolve.

Building on these legal and comparative foundations, the article proposes a minimum rights-based procedural framework tailored for Southeast Asia: FAIR, comprising Foresight, Assessment, Integration, and Review. The FAIR framework operates as a localized administrative mechanism. Foresight mandates the proactive identification of significant, long-lasting consequences of proposed actions. Assessment evaluates these consequences explicitly through the lens of their implications for the future enjoyment of human rights. Integration requires that these long-term rights-based findings directly inform the choice among alternatives and rigorously dictate the justification of final policy options. Finally, Review establishes adaptive governance mechanisms, allowing long-term decisions to be systematically reconsidered as scientific knowledge and technological capabilities evolve.

The article first clarifies the conceptual boundaries of future generations, intergenerational equity, and a rights-based approach. It then extensively examines existing decision-making gaps and comparative experiences before developing the FAIR framework and illustrating how it might be incorporated flexibly into existing climate governance processes across Southeast Asian nations. The central argument asserts that protecting future generations does not fundamentally require the immediate creation of new substantive rights or supranational regional institutions. Instead, it can begin practically by ensuring that the fundamental interests of those yet to be born are systematically and procedurally considered in the climate decisions made today.

Keywords: Future generations, intergenerational climate justice, climate decision-making, human rights, intergenerational equity, Southeast Asia.

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THE RIGHT TO A SAFE, STABLE, AND HEALTHY CLIMATE IN ASEAN

Abstract:

The paper examines the emerging right to a safe, stable, and healthy climate as a core component of the human right to a clean, healthy, and sustainable environment. The ASEAN Human Rights Declaration (2012) recognises the right to a safe, clean, and sustainable environment as part of the right to an adequate standard of living, while the ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (2025) further emphasizes its interrelation with the right to peace and the right to development. Against this background, the paper analyses how ASEAN conceptualizes and protects climate-related rights and compares this approach with developments in other regional human rights systems. It assesses ASEAN's contribution to clarifying the nature, status, content, scope, right-holders, and duty-bearers of the right to a safe, stable, and healthy climate.

The paper explores the climate crisis as a manifestation of colonialism, analyses ways to combat it, and examines the role of the right to a healthy climate in the process of decolonization. Special attention is given to the epistemic, relational, distributive, corrective, intergenerational, and interspecies dimensions of climate justice, as well as to the protection of the most vulnerable individuals, groups, and societies disproportionately affected by climate change. It also scrutinises the rights of nature and non-human species to a safe climate and discusses what substantial changes their legal recognition and realisation would require in environmental law, human rights law, and the Sustainable Development Agenda. The paper analyzes ways to shift from human-centrism, which demands securing an environment adequate for humans' health, well-being, and development, to eco-centrism, which refers to guarantees necessary for a harmonious co-existence of humanity and nature. It concludes by examining whether the recognition of the right to a safe, stable, and healthy climate could strengthen regional and global climate action and support more effective legal implementation and enforcement.

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THE RIGHT TO A CLIMATE-STABLE ENVIRONMENT IN INDONESIA: BRIDGING ENVIRONMENTAL PROTECTION, HUMAN RIGHTS, AND SUSTAINABILITY

Abstract:

Climate change has emerged as a critical environmental and human rights challenge for Indonesia. As an archipelagic state highly vulnerable to sea-level rise, extreme weather events, ecosystem degradation, waste crisis and climate-related disasters, Indonesia requires a legal framework capable of integrating environmental protection, human rights, and sustainable development. The constitutional recognition of the right to environment provides an important foundation for environmental protection. However, the increasing severity and complexity of climate change raise the question of whether the existing concept of the right to a healthy environment is sufficient to address climate-related risks and ensure the long-term protection of humans. This article examines the right to a climate-stable environment in Indonesia as an emerging legal concept that seeks to bridge environmental protection, human rights, and sustainability. The study employs a normative legal research method using statutory, conceptual, and comparative approaches. It examines the 1945 Constitution of the Republic of Indonesia, relevant legislation and international instrument on environmental protection, human rights, climate governance, and sustainable development in statutory approach. The conceptual approach considers the relationship between environmental rights, climate stability, the precautionary principle, intergenerational equity, and sustainability, while the comparative approach considers developments in international environmental and human rights law. At the international level, the right to a clean, healthy, and sustainable environment has evolved through the principles of the Stockholm Declaration, further developed under the Rio Declaration, and most recently recognized by the United Nations General Assembly Resolution 76/300 of 2022.

This article argues that the right to a climate-stable environment can be progressively developed from Indonesia's existing recognition of the right to environment. Climate stability should not be viewed merely as an environmental policy objective but as an essential condition for the effective enjoyment of fundamental human rights, including the rights to life, health, livelihood, adequate living conditions, and human dignity. From this perspective, climate change is not exclusively an environmental issue but also a human rights concern requiring stronger legal protection and state responsibility. Conceptualizing climate stability as a dimension of environmental human rights can strengthen the legal obligations of the Indonesian government to prevent environmental degradation, reduce greenhouse gas emissions, enhance climate adaptation, protect vulnerable communities, ensure public participation, and provide access to environmental information and effective remedies. It also reinforces the precautionary principle by supporting preventive measures against serious or irreversible climate-related harm and strengthens intergenerational equity by ensuring that present development does not compromise the environmental conditions of future generations. The study concludes that although Indonesia has not expressly recognized the right to a climate-stable environment as an autonomous constitutional right, its normative foundation can be derived from existing constitutional environmental rights, environmental legislation, human rights principles, and international legal developments. Recognizing climate stability as an evolving dimension of the right to a good and healthy environment can provide a stronger legal basis for integrating climate considerations into environmental governance and development policies. Such an approach can bridge environmental law and human rights law while reinforcing the principle of sustainability, particularly by ensuring that economic development remains compatible with ecological integrity and the protection of present and future generations.

The progressive development of this right would therefore contribute to strengthening state accountability, protecting climate-vulnerable communities, advancing climate justice, and establishing a more coherent legal framework for Indonesia's long-term environmental sustainability and also can contribute to achieving the Sustainable Development Goals (SDGs), which are targeted to be achieved by 2030.

Keywords: climate-stable environment; environmental human rights; climate change; Indonesian climate governance; sustainability.

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PANEL 3:

CLIMATE JUSTICE AND ACCOUNTABILITY

COORDINATOR:



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After defending her doctoral dissertation at Aix-Marseille III University (French Republic), Assoc. Prof. Dr. Tran Thi Thuy Duong joined the Ho Chi Minh City University of Law as a lecturer and researcher. Her passion for public international law and international trade law—particularly WTO law, regional trade agreements, ASEAN law, and sustainable development—is reflected in her research and lectures over the years. Since 2008, she has been actively involved in developing the Vietnamese Journal of Legal Sciences as Deputy Editor-in-Chief. Since 2024, she has contributed to the development of the Faculty of International Law at Ho Chi Minh City University of Law as its Dean. Her current research focuses on issues of trade and sustainable development, as well as "ASEAN's own path" toward regionalization in the context of new globalization.

CLIMATE JUSTICE BEYOND LITIGATION: RETHINKING LEGAL EFFECTIVENESS IN VIETNAM'S CLIMATE ADAPTATION GOVERNANCE

Abstract:

Climate litigation has become a prominent measure of whether climate law is effective. Courts can clarify obligations, expose governmental inaction and provide remedies. Yet treating the volume or success of cases as a proxy for climate justice can distort how legal implementation is understood, especially in jurisdictions where climate claims rarely reach courts. This article uses Vietnam as a critical case through which to ask: how should the effectiveness of climate law be evaluated where climate claims are infrequently litigated, and under what safeguards can participatory, administrative and other non-judicial mechanisms advance climate justice rather than merely defer or suppress conflict?

The article begins from a deliberately cautious premise: sparse litigation is neither evidence of justice nor evidence of its absence. It may reflect effective prevention, negotiated resolution or institutional responsiveness; equally, it may result from informational asymmetries, evidentiary burdens, financial costs, limited legal mobilization, unequal bargaining power or ineffective remedies. Vietnam is therefore examined neither as a successful model of consensual justice nor through an essentialized claim that Vietnamese culture is inherently averse to litigation. Rather, its combination of nascent climate litigation and established administrative, consultative and community-based pathways reveals the limits of litigation-centered accounts. “Beyond litigation” must not mean “instead of litigation.” Courts remain essential as a backstop for independent review when less adversarial mechanisms fail.

Drawing on Fisher’s “carrier-bag” account of climate change and public law, the article shifts attention from episodic courtroom victories to the full public-law cycle through which adaptation decisions are made: vulnerability assessment, planning, resource allocation, implementation, monitoring, complaint handling and policy revision. Methodologically, it combines contextual doctrinal analysis with policy-indicator gap analysis, informed by published empirical research on environmental grievances in Vietnam. It reads Articles 7(5), 7(9)(d) and 12 of the Paris Agreement on participatory, transparent and gender-responsive adaptation, monitoring and learning, public participation and access to information, alongside Vietnam’s Law on Environmental Protection 2020. The domestic analysis centers on Article 90’s adaptation and monitoring architecture; project-level community oversight under Article 159; fragmented compensation, dispute-resolution and complaint pathways under Articles 133, 162, 163 and general administrative law; the 72-indicator national monitoring and evaluation system established by Decision No. 148/QĐ-TTg; and the updated National Adaptation Plan issued under Decision No. 1422/QĐ-TTg.

These materials are assessed through four justice-sensitive dimensions. Recognition asks whether institutions identify differentiated vulnerabilities, affected livelihoods, local knowledge and groups at risk of being overlooked. Procedural agency examines timely access to intelligible information, early participation, the ability to influence decisions and reasoned responses to community input. Distributive and preventive responsiveness considers who bears adaptation costs, receives benefits and protection, and whether foreseeable harm is prevented, mitigated or repaired. Remedial and adaptive accountability evaluates whether complaint, dialogue and mediation processes are accessible, impartial and capable of producing correction; whether monitoring leads to policy revision; and whether unresolved grievances can escalate to independent

review or adjudication. These pathways may be low-conflict, but their safeguards cannot be weak. Vietnam's 2025 mid-term evaluation of its National Adaptation Plan makes this inquiry concrete. It identifies deficiencies in reporting and data collection, ineffective coordination, only three gender-related indicators, and a gap between gender equality and social inclusion commitments and standardized implementation mechanisms. The article therefore proposes additional indicators capable of showing whose vulnerability is recognized, whose knowledge shapes decisions, how authorities respond to objections, how adaptation resources and residual risks are distributed, what complaints achieve, and whether monitoring generates institutional correction. The aim is not to claim that existing non-judicial mechanisms already deliver climate justice, but to specify the conditions under which their effectiveness could be demonstrated.

The article contributes to climate justice scholarship in three ways. It reconceptualizes legal effectiveness as the accountable production and revision of just decisions rather than the incidence of lawsuits; translates climate justice into criteria usable in implementation and evaluation; and offers a Southeast Asian, Global South account that takes non-judicial institutions seriously without romanticizing consensus or weakening the right to an effective remedy. Its central claim is that justice without litigation may be possible, but justice without accountability is not.

Keywords: *climate justice, climate adaptation, legal effectiveness, non-judicial mechanisms, accountability, Vietnam.*

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ECOCIDE, CLIMATE ACCOUNTABILITY, AND SUSTAINABLE DEVELOPMENT IN SOUTHEAST ASIA: THE EMERGING INFLUENCE OF THE INTERNATIONAL COURT OF JUSTICE AND INTERNATIONAL CRIMINAL COURT ON STATE RESPONSIBILITY, TRANSBOUNDARY HARM, AND ASEAN COOPERATION

Abstract:

In today's contemporary world, the accelerating destruction of ecosystems, climate change, biodiversity loss, transboundary pollution, and environmentally harmful economic activities have generated an emerging question in international law: whether the most serious forms of environmental destruction should be recognized as ecocide and subjected to stronger mechanisms of State and individual accountability. This paper examines the emerging legal concept of ecocide and the evolving influence of the International Court of Justice (ICJ) and the International Criminal Court (ICC) on climate accountability and sustainable climate development in Southeast Asia. It investigates whether existing international environmental law, international human rights law, international criminal law, and ASEAN regional instruments are sufficient to prevent, attribute, and remedy severe environmental destruction and transboundary climate harm, and whether the progressive development of international jurisprudence can contribute to a stronger regional framework for environmental protection and climate justice.

The subject matter of this paper lies at the intersection of international environmental law, international criminal law, climate law, human rights law, State responsibility, transboundary harm, sustainable development, and ASEAN regional governance. It focuses particularly on the legal relationship between ecocide and existing international crimes; the obligations of States to prevent significant environmental harm; the duty of due diligence; environmental impact assessment; the precautionary principle; intergenerational equity; the polluter-pays principle; and the duty to cooperate. The paper examines whether ecocide should remain primarily a concept of normative development or evolve into an autonomous international crime capable of generating individual criminal responsibility. It also considers the extent to which severe environmental destruction may already fall within existing categories of international crimes under the Rome Statute.

The ICJ is examined as a principal institution in the progressive development and clarification of State obligations concerning climate change and environmental harm. Its jurisprudence on transboundary environmental damage has recognized important principles, including due diligence, prevention, environmental impact assessment, and compensation for environmental damage. In *Certain Activities Carried Out by Nicaragua in the Border Area Case* and the related proceedings concerning the San Juan River, the Court addressed the obligation to conduct an environmental impact assessment where there is a risk of significant transboundary harm and recognized that environmental damage, including impairment of ecosystem services and restoration. Ecocide, Climate Accountability, and Sustainable Development in Southeast Asia Atty. Ariel Dasas Valones costs, may be compensable under international law. These principles are particularly significant for Southeast Asia, where shared ecosystems, rivers, forests, marine areas, atmospheric pollution, haze, and climate impacts transcend national boundaries. The paper evaluates the ICC's potential contribution to environmental and climate accountability. Ecocide is not presently an autonomous crime under the Rome Statute. Nevertheless, serious environmental destruction may intersect with existing Rome Statute crimes where the applicable legal elements are satisfied. The ICC Office of the Prosecutor's 2024 Policy on Environmental Crimes under the Rome Statute expressly recognizes environmental crimes as conduct committed by means of, or

resulting in, environmental damage and emphasizes the relevance of human rights, including rights to life, health, food, water, housing, and a healthy environment. The paper distinguishes State responsibility before international courts from individual criminal responsibility before the ICC, while examining whether the growing international recognition of environmental destruction can contribute to the eventual codification of ecocide as an international crime. The ASEAN dimension is central to the research. Environmental destruction in one ASEAN State can produce consequences in neighboring States. Hence, ASEAN has developed a substantial body of regional environmental cooperation, including the ASEAN Agreement on Transboundary Haze Pollution, which requires Member States to cooperate in preventing and monitoring transboundary haze pollution, exchange information and technology, provide mutual assistance, and respond to requests for information and consultations when pollution originates within their territories. While ASEAN already has a substantial framework for environmental cooperation, it does not yet have a regional legal regime recognizing ecocide as an autonomous international or ASEAN crime. This paper employs a qualitative doctrinal and interdisciplinary legal methodology. It analyzes international treaties, customary international law, ICJ jurisprudence, ICC instruments and prosecutorial policy, ASEAN agreements and declarations, Philippine constitutional and statutory provisions, and relevant national jurisprudence. Comparative analysis will examine selected ASEAN jurisdictions to identify variations in environmental liability, climate governance, transboundary pollution regulation, corporate accountability, and judicial remedies. The research will also employ normative legal analysis to determine whether the progressive development of international law supports recognition of ecocide and stronger regional mechanisms for climate accountability. The paper aims to define the emerging legal parameters of ecocide and distinguish it from existing international environmental and criminal-law concepts; examine the potential and limitations of the ICC in addressing serious environmental destruction through existing Rome Statute crimes and the emerging discourse on ecocide; evaluate ASEAN's legal and institutional framework for transboundary environmental harm and the duty to cooperate; and formulate a Philippine-ASEAN legal framework that integrates environmental protection, climate accountability, sustainable development, human rights, and regional cooperation. The expected contribution of Ecocide, Climate Accountability, and Sustainable Development in Southeast Asia Atty. Ariel Dasas Valones the study to the Philippines is to reinforce climate litigation and Philippine legislation concerning ecocide, climate-related damage, and environmental crimes. ASEAN's existing environmental cooperation provides a foundation upon which such mechanisms could be developed. The paper ultimately theorizes that the emerging concept of ecocide should not be viewed solely as a proposal to create a new international crime. Rather, it represents a broader transformation in the architecture of environmental accountability from a regulatory model toward a rights-based, prevention-oriented, and accountability- centered model capable of addressing catastrophic environmental destruction. The ICJ can help clarify and progressively develop State obligations, while the ICC may contribute to individual accountability where environmental destruction falls within existing international crimes and, potentially, through the future development of the law on ecocide. For Southeast Asia, international institutions alone cannot provide an adequate solution. ASEAN must strengthen its existing duty to cooperate and develop mechanisms to prevent transboundary environmental harm, protect vulnerable communities, and reconcile climate change mitigation and adaptation with ecological integrity. The Philippines, as a climate-vulnerable State and an active participant in international climate and environmental law, can play a leading role in developing a Philippine-ASEAN framework to prevent ecocide, ensure climate accountability, and advance sustainable development.

Keywords: *ecocide, transboundary harm, climate accountability, International Court of Justice, International Criminal Court, Sustainable Development*

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ADAPTIVE REGIONAL CLIMATE JUSTICE GOVERNANCE IN THE GLOBAL SOUTH: A HARMONISED LEGAL FRAMEWORK FOR CROSS-BORDER CLIMATE GOVERNANCE, ENFORCEMENT, AND ACCOUNTABILITY

Abstract:

Climate change has intensified transboundary environmental risks across the Global South, yet existing governance arrangements remain incoherent, state-centric, and inadequately equipped to address cross-border climate harms, regulatory coordination, and climate justice. This study examines the legal and institutional deficiencies that impede effective regional climate governance and develops a harmonised framework for strengthening cross-border implementation, enforcement, and accountability. Adopting a qualitative doctrinal and comparative legal research methodology, the study analyses the legal and policy frameworks of Indonesia and Malaysia within the Association of Southeast Asian Nations (ASEAN) framework, with particular emphasis on the ASEAN Agreement on Transboundary Haze Pollution, national environmental legislation, institutional enforcement mechanisms, and judicial accountability. The findings reveal that although both jurisdictions have made significant progress through regional cooperation, community-based environmental stewardship, customary legal integration (Hukum Adat), statutory regulation, and judicial oversight, persistent challenges relating to enforcement, state sovereignty, institutional incoherence, and regulatory compliance continue to undermine effective climate governance. Drawing comparative lessons from the ASEAN experience, the study demonstrates their relevance to Nigeria and the Economic Community of West African States (ECOWAS), where transboundary climate threats including desertification, ecosystem degradation, climate-induced displacement, and resource conflicts similarly demand coordinated legal responses. The study contributes to knowledge by developing an original Adaptive Regional Climate Justice Governance Framework (ARCJGF), which integrates regional legal harmonisation, enforceable compliance obligations, climate accountability mechanisms, judicial cooperation, public participation, and institutional coordination. The proposed framework advances a practical legal pathway for strengthening cross-border climate governance, promoting environmental justice, enhancing regional resilience, and accelerating sustainable development across the Global South.

Keywords: *Regional Climate Governance, Climate Justice, Global South, Cross-Border Accountability, ASEAN, ECOWAS.*

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THE HIDDEN COST OF AIR POLLUTION: RETHINKING CLIMATE GOVERNANCE THROUGH THE CARE ECONOMY IN ULAANBAATAR

Abstract:

Climate governance has traditionally prioritized cutting greenhouse gases, enhancing adaptation, and safeguarding public health. However, an important aspect of environmental damage remains largely unnoticed in both international climate legislation and national policies: the redistribution of unpaid care work within households. Although climate justice increasingly recognizes that environmental harm disproportionately affects vulnerable groups, much less focus

has been given to the unequal care duties placed on women, especially mothers. This paper contends that severe winter air pollution in Ulaanbaatar creates a substantial yet overlooked care burden, which should be incorporated into discussions of climate governance and justice. While air pollution and climate change are distinct legal issues, they share underlying causes such as reliance on fossil fuels and coal-based heating. In winter, Ulaanbaatar faces some of the world's highest levels of PM_{2.5}. UNICEF highlighted that “Children are the most vulnerable to adverse health effects of air pollution from the day they are conceived. Pneumonia is now the second leading cause for under-five child mortality in the country. Children living in a highly polluted district of central Ulaanbaatar were found to have 40% lower lung function than children living in a rural area. Air pollution is also linked with diseases that can be highly damaging for children, such as bronchitis and asthma, causing children to miss school and other important learning and development opportunities.”¹ However, at the same time severe air pollution in Ulaanbaatar also leads to economic and emotional burdens that often fall on families, with mothers frequently bearing the brunt through unpaid caregiving.

This paper uses the care economy as a lens to explore these hidden costs. Instead of seeing air pollution only as an environmental or health issue, it suggests that environmental damage also creates substantial care responsibilities. When children fall ill with respiratory problems during high pollution episodes, mothers typically become the main caregivers. They take children to hospitals, stay with them during treatment, miss work to care for them, and handle the emotional effort. Thus, the environmental impacts of air pollution go beyond medical costs and productivity losses, encompassing a significant amount of unpaid care work that remains unrecognized.

This research conducted in-depth and in-person interviews with ten mothers in Ulaanbaatar between July and August, 2026. While the study is small-scale, the interviews show remarkably consistent patterns. Interviewees described winter as a time of ongoing anxiety, with children's frequent respiratory illnesses significantly disrupting family routines and careers. Several mothers noted that during hospital stays, they—rather than fathers or other family members—were expected to stay with their child throughout treatment. Others often took leave from work since children couldn't attend school or kindergarten because of illness. Many worried that this ongoing caregiving negatively impacted their career growth, limited promotion opportunities, and led to feelings of guilt towards their employers and families. Importantly, these women saw these challenges not as individual family issues but as the result of living with severe seasonal air pollution. These empirical findings show that air pollution shifts environmental costs onto unpaid care work, a factor often ignored by current climate policies. Most adaptation strategies tend to focus on technological fixes, emission cuts, healthcare, and environmental surveillance, neglecting the gendered division of caregiving roles. Consequently, climate governance tends to tackle the

¹ UNICEF, “Climate change: Climate change and environmental degradation undermine the rights of every child”, nd., (last accessed August 5, 2026) <https://www.unicef.org/mongolia/environment-air-pollution>

visible effects of environmental harm without fully acknowledging the social inequalities it generates.

This paper, building on feminist legal theory and climate justice scholarship, advocates for recognizing unpaid care work as vital to climate resilience. It highlights that international climate law is developing a normative base for this perspective. The Paris Agreement emphasizes adaptation, resilience, and protecting vulnerable groups, while the Sustainable Development Goals explicitly recognize the importance of unpaid care work, especially in Goal 5 on gender equality. However, these international commitments are still inadequately incorporated into domestic climate adaptation strategies, especially concerning urban air pollution. To fill this gap, the paper recommends several policy changes. First, climate adaptation plans should include Care Impact Assessments to measure how environmental and climate policies affect unpaid household caregiving responsibilities. Second, national and local climate strategies should implement gender-responsive budgeting to fund childcare, caregiver support, and flexible work options during severe air pollution events. Third, Mongolia needs to incorporate care economy factors into its future climate adaptation policies and Nationally Determined Contributions (NDCs), acknowledging unpaid care work as a vital part of climate resilience rather than just a private family matter.

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PANEL 4: CARBON MARKETS, CLIMATE TRADE, AND CORPORATE PRACTICE

COORDINATOR:



Carbon & Climate Law Review

REGULATING CARBON CREDIT MARKETS IN EMERGING ASEAN ECONOMIES: LEGAL DESIGN, INSTITUTIONAL FRAGMENTATION AND MARKET INTEGRITY IN INDONESIA, THAILAND AND VIET NAM

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GREEN TRADE MEASURES AND THE DUTY TO COOPERATE: EQUITABLE ACCESS TO TRANSITION TECHNOLOGIES IN ASEAN

Abstract:

The rapid proliferation of climate-related trade measures raises a precise question of international law: can such measures be regarded as fair, and ultimately as lawful, when the exporting States affected lack effective access to the transition technologies necessary to comply with them? The underlying issue is one of regime interaction: whether the adoption of green trade measures can be assessed in isolation, within the confines of trade law, or whether their evaluation must incorporate the obligations of cooperation and technology transfer established by the UNFCCC and the Paris Agreement.

The current debate does not answer this question. Scholarly and institutional attention has concentrated on the compatibility of carbon border adjustment mechanisms and related sustainability requirements with the law of the World Trade Organization. The non-discrimination disciplines and the chapeau of Article XX GATT address the relational dimension of fairness between trading partners; the cooperative architecture of the climate regime, which links mitigation ambition to technology development and transfer under Article 4(5) UNFCCC and Articles 10 and 11 of the Paris Agreement, in accordance with the principle of common but differentiated responsibilities and respective capabilities, remains outside their analytical reach. Within this framework, unequal access to transition technologies is treated as an economic circumstance devoid of legal significance.

The paper argues that this assumption is no longer tenable. Obligations concerning the development and transfer of technology, together with the duty to cooperate, operate as legally relevant elements in the assessment of climate-related trade measures. Recent advisory jurisprudence has strengthened this position considerably: the ITLOS Advisory Opinion of 2024 qualified anthropogenic greenhouse gas emissions as pollution of the marine environment triggering due diligence obligations, and the ICJ Advisory Opinion of 2025 placed the duty to cooperate at the centre of the international response to climate change, with implications extending beyond the climate regime itself. Read together, these developments displace the assumption that access to technology is a matter external to the legality of green trade measures; equitable access is reframed as an internal parameter of their legality and legitimacy.

Methodologically, the paper relies on systemic interpretation under Article 31(3)(c) of the Vienna Convention on the Law of Treaties as the instrument for constructing coherence between the trade and climate regimes. Its central interpretive move is the transposition of climate cooperation obligations into the fairness assessment of trade measures: where an importing State conditions market access on environmental performance while contributing little to the technological capacity of the exporters affected, that conduct becomes legally relevant to the test of 'arbitrary or unjustifiable discrimination' under the chapeau of Article XX GATT and to the good faith standard governing the exercise of treaty rights.

ASEAN offers a privileged terrain for testing this framework. Its economies are deeply integrated into value chains directly exposed to the EU Carbon Border Adjustment Mechanism (steel, aluminium and fertilisers from Vietnam, Indonesia and Thailand) and to deforestation-free requirements affecting palm oil and rubber; the regional solar photovoltaic and battery industries face sustainability standards whose satisfaction depends on low-carbon process technologies still

mediated by intellectual property regimes and by concentrated control of critical minerals processing. Technological capacity within the region is markedly heterogeneous. The paper examines how these asymmetries condition the ability of ASEAN economies to comply with environmental standards imposed by major trading partners, and whether existing regional instruments (the ASEAN Strategy for Carbon Neutrality; the ASEAN Power Grid) can be mobilised as vehicles of technology cooperation relevant to the fairness assessment.

The contribution is twofold. On the analytical plane, the paper demonstrates that existing international law, systemically interpreted, already provides normative support for linking green trade measures to obligations of technological cooperation. On the prescriptive plane, it proposes, *de lege ferenda*, a set of procedural benchmarks for climate-conditioned market access, built on transparency of equivalence assessments, consistency of application across trading partners, congruence between the stringency of the measure and the cooperation offered, and justificatory rigour in the treatment of documented technology partnerships. The result is a standard of cooperative fairness that moves the debate beyond the terrain of trade discrimination, articulated from the perspective of the ASEAN region and the Global South, in line with the aims of the Conference.

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FROM CARBON PRICING TO CLIMATE COMPETITIVENESS: POWER, TRADE AND THE NET-ZERO TRANSITION

Abstract:

Over the past two decades, climate governance has undergone a number of changes. Early policy responses were grounded in economic theories of market failure and focused on internalising the external costs of greenhouse gas emissions through carbon pricing¹. Carbon taxes and emissions trading schemes were promoted as economically rational responses to the climate crisis, based on the assumption that market actors respond efficiently to price signals and that environmental harms can be addressed through the creation of markets for emissions and offsets².

However, the practical operation of these mechanisms has exposed significant limitations in both theory and practice³. As feminist economics and political economy critiques demonstrate, climate policies do not emerge within neutral markets⁴. Rather, they operate within systems characterised by unequal power relations, entrenched economic interests and competing social priorities. Climate governance has therefore been shaped as much by political economy as by economic rationality⁵.

The Australian experience illustrates these tensions particularly well. Despite being one of the world's most carbon-intensive economies and a major exporter of fossil fuels, Australia's climate response has frequently been characterised by policy instability, political contestation and regulatory compromise. Measures ostensibly designed to address climate change have often prioritised economic growth, industry competitiveness and the interests of incumbent industries. While economic theory supports the internalisation of externalities through meaningful carbon pricing, political responses have frequently diluted these principles through exemptions, offsets and compensation mechanisms⁶. The result has been a climate policy framework that often appears to reconcile climate action with continued fossil fuel dependence rather than fundamentally transforming the economy.

¹ Gregory Mankiw, 'Smart Taxes: An Open Invitation to Join the Pigou Club' (2009) 35 *Eastern Economic Journal* 14; Robert Cooter, 'The Cost of Coase' in *Economic Analysis of the Law* (John Wiley & Sons, Ltd, 2004) 14 <<https://onlinelibrary.wiley.com/doi/abs/10.1002/9780470752135.ch2>>.

² Thomas Helbling, 'Externalities: Prices do not capture all costs', *International Monetary Fund* (Web Article, N/A) <<https://www.imf.org/external/pubs/ft/fandd/basics/pdf/helbling-externalities.pdf>>.

³ Niklas Döbbeling-Hildebrandt et al, 'Systematic Review and Meta-Analysis of Ex-Post Evaluations on the Effectiveness of Carbon Pricing' (2024) 15(1) *Nature Communications* 4147.

⁴ Hans A Baer, 'Climate Change and Capitalism, Climate Dystopia, and Radical Climate Futures' [2023] (91) *Journal of Australian Political Economy* 107; Veronica Schulz, Ambrose P Kranitis and Michael GH Bell, 'A Review of Australia's Safeguard Mechanism: Lessons from the EU ETS and Pathways for Reform' (2026) 212 *Energy Policy* 115190 ('A Review of Australia's Safeguard Mechanism').

⁵ Adam Lucas, 'Investigating Networks of Corporate Influence on Government Decision-Making: The Case of Australia's Climate Change and Energy Policies' (2021) 81 *Energy Research & Social Science* 102271 ('Investigating Networks of Corporate Influence on Government Decision-Making').

⁶ Joseph E Aldy and Zachery M Halem, 'The Evolving Role of Greenhouse Gas Emission Offsets in Combating Climate Change' (2024) 18(2) *Review of Environmental Economics and Policy* 212; Schulz, Kranitis and Bell (n 4).

These tensions gave rise to a second phase of climate governance centred on carbon leakage. Traditionally, carbon leakage has been understood as the risk that emissions-intensive industries relocate to jurisdictions with less stringent climate regulation, thereby undermining environmental objectives while reducing domestic competitiveness⁷. Concerns regarding leakage have been used to justify various forms of assistance for trade-exposed industries, including free allocation of emissions permits, industry assistance packages and more recently Trade Exposed Baseline Adjustments under Australia's Safeguard Mechanism⁸. Although such policies may preserve existing production in the short term, they frequently weaken carbon pricing signals and delay structural adjustment. In this respect, carbon leakage policies illustrate an enduring tension within climate governance between environmental effectiveness and economic competitiveness.

Yet contemporary climate governance is increasingly moving beyond traditional concerns of carbon leakage. Recent developments suggest there might be a broader shift to occur. Rather than only protecting incumbent industries, policy-makers are increasingly considering the importance of securing competitive advantage in a decarbonising global economy. The Australian Carbon Leakage Review exemplifies this transition by reframing leakage not merely as a problem of trade exposure but as a question of climate friendly investment⁹. Under this approach, addressing carbon leakage means creating the conditions necessary for investment in new low-emissions industries rather than (only) protecting existing high-emissions production. The policy focus therefore, quite rightly shifts from preserving economic activity to attracting capital, technology and industrial capacity. The central question is no longer simply how emissions should be priced, but where the industries of the future will be located and under what regulatory conditions they will emerge¹⁰.

At the international level, this shift is reflected in the rise of carbon border adjustment mechanisms (CBAMs). These measures seek to equalise carbon costs between domestic and imported products while reducing incentives for production to relocate to jurisdictions with weaker climate policies. This was traditionally seen as a way of ensuring emissions did not rise where there were less stringent rules in place, now it is being framed as a way to encourage more broadscale emissions reductions. Indeed, CBAMs extend climate policy beyond territorial borders and have the potential to increasingly shape access to international markets¹¹. However, their legality under World Trade Organization rules remains dependent upon careful design (which Russia appears keen to challenge), while their implications for developing countries raise significant concerns regarding fairness, equity and climate justice¹².

⁷ Helene Naegele and Aleksandar Zaklan, 'Does the EU ETS Cause Carbon Leakage in European Manufacturing?' (2019) 93 *Journal of Environmental Economics and Management* 125.

⁸ *Carbon Leakage Review Final Report* (Consultation Paper No 2, Department of Climate Change, Energy, the Environment and Water, February 2025) <https://storage.googleapis.com/files-au-climate/climate-au/prj2f030fe5577e16a3ffb9/page/Carbon_Leakage_Review_Consultation_Paper_2_November_2024.pdf>.

⁹ id.

¹⁰ Felicity Deane, 'Australia at the Carbon Border: Rethinking Carbon Leakage Policy' (2026) 40(3 & 4) *Australian Environment Review* 39.

¹¹ Michael Mehling and Michael Jakob, 'Article: Subsidy-Related Aspects of the EU Carbon Border Adjustment Mechanism (CBAM)' (2024) 58(3) *Journal of World Trade* <<https://testcdn.kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\TRAD\TRAD2024023.pdf>> ('Article').

¹² Felicity Deane and Callum Brockett, 'Carbon Border Adjustments: A Legal Tool for Mitigation or a Barrier to Justice?' (2023) 13(1) *Climate Law* 36.

Drawing together insights from carbon pricing theory, carbon leakage policy and climate justice scholarship, this article argues that climate governance has evolved through three interconnected phases. They include, carbon pricing, carbon leakage protection and climate competitiveness. While each phase has been presented as a rational response to environmental challenges, all reflect underlying struggles over power, distribution and economic organisation. This transformation is particularly significant for Southeast Asia, where development objectives, climate vulnerability, export dependence and industrial transformation increasingly intersect. The article concludes that the next generation of climate policy needs to move beyond a narrow focus on pricing emissions and instead address how the costs, opportunities and benefits of the net-zero transition are distributed. Ultimately, the defining challenge of contemporary climate governance is not whether carbon should be priced, but whether the transition to a low-carbon economy can be governed in a manner that is both environmentally effective and socially just.

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LEGAL FRAMEWORKS FOR COMPLIANCE CARBON MARKETS IN SOUTHEAST ASIA: A COMPARATIVE STUDY OF INDONESIA AND VIETNAM

Abstract:

The consensus reached at COP 29 in Baku on the operational modalities of Article 6 of the Paris Agreement has given Southeast Asian countries both a clearer normative framework and a stronger incentive to build domestic compliance carbon markets. Emissions trading systems (ETS) remain among the few legal instruments that can translate NDC commitments into enforceable obligations on regulated entities. Yet, their effectiveness depends on how well the underlying legal framework resolves a set of foundational questions: the legal classification of emission allowances and carbon credits, the design of quota allocation and pricing, the reliability of MRV systems, and the credibility of enforcement sanctions. The 2024 ASEAN Common Carbon Framework (ACCF) and the ASEAN Alliance on Carbon Market (AACM) have set regional ambitions for market interoperability, but domestic legislation across member states remains fragmented.

This paper offers a comparative legal analysis of Indonesia and Vietnam, the two ASEAN countries with the most advanced compliance market frameworks. Indonesia launched the region's first operational ETS in 2023, covering 99 coal-fired power plants, classified carbon credits as securities under Law No. 4 of 2023, established quota allocation rules through MEMR Regulation 16/2022, and linked a national registry (SRN PPI) to the Indonesia Carbon Exchange (IDX Carbon). Vietnam is at an earlier stage. Its framework, built on the Law on Environmental Protection 2020 and Decree 06/2022/ND-CP (amended in 2025 by Decree 119/2025/ND-CP), mandates a pilot ETS for power, steel, and cement through 2028 before transitioning to a mandatory market by 2029. Both systems are assessed against the EU ETS Directive and, regionally, against Thailand's Draft Climate Change Act.

The comparison covers six regulatory dimensions. Indonesia's classification of carbon credits as securities gives them clear bankability and access to existing exchange infrastructure. In contrast, Vietnam's Civil Code 2015 and Law on Securities 2018 leave unresolved whether a credit is an asset, a license, or a commodity. On quota allocation, Indonesia uses a phased free-allocation model with a trigger that reduces free allowances when trading volume drops below 85%; Vietnam's allocation rules remain undefined. Indonesia has set a statutory floor price of IDR 30,000/tCO₂ (roughly USD 1.86), which is operative but far too low to drive investment in abatement; Vietnam has no floor price at all. Both jurisdictions have MRV systems aligned with ISO 14064/14065, a prerequisite for any future cross-border linkage. Offset provisions also differ: Indonesia allows flexible use of internationally verified credits without a fixed cap, while Vietnam caps offsets at 30% of allocated quotas. The most consequential divergence lies in enforcement. Indonesia has layered a carbon tax mechanism (Law No. 7 of 2021, postponed but still on the books) on top of administrative penalties, creating what amounts to a "cap-tax-and-trade" model. Vietnam relies on allowance deductions and fines under Decree 45/2022, but the fine schedule does not specifically address carbon-related violations.

The paper proposes four recommendations for Vietnam. Carbon credits should be classified as securities under the Law on Securities 2018 and recognised as property rights under Article 115

of the Civil Code 2015, giving them a workable legal basis for collateralization and exchange trading. Vietnam should adopt a phased allocation system with a minimum carbon price of approximately VND 150,000/tCO₂ (around USD 6), close to the price at which it sold forest carbon credits to the World Bank in 2023. A complementary carbon tax should serve as both an enforcement backstop and a de facto price floor. Recognition protocols for credits under Article 6.2 and Article 6.4 should be formalised, building on Singapore's recent Implementation Agreements with Thailand and Vietnam as templates for bilateral transfers. The paper concludes by examining the conditions for harmonising ETS rules across ASEAN, including unified MRV accreditation, common offset methodologies, and compatible allocation frameworks, as preconditions for a regional compliance market capable of interoperating with the EU ETS under its Article 25 linking provisions.

Keywords: *compliance carbon market, emissions trading system, Article 6 Paris Agreement, ASEAN, Indonesia, Vietnam, carbon credit, regulatory harmonisation*

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MUTUAL RECOGNITION OF CARBON EMISSIONS VERIFICATION IN ASEAN: ADAPTING TO THE EUROPEAN UNION'S CARBON BORDER ADJUSTMENT MECHANISM (CBAM)

Abstract:

The European Union's Carbon Border Adjustment Mechanism (CBAM) marks a significant development in the interaction between climate policy and international trade, with growing implications for countries exporting carbon-intensive goods to the European Union, including ASEAN Member States. As CBAM progressively takes effect, exporters are required to provide reliable information on the greenhouse gas emissions embedded in covered products, making emissions measurement, reporting, and verification (MRV) increasingly important for market access and regulatory compliance. However, ASEAN Member States are developing their own emissions verification systems with differences in regulatory frameworks, technical standards, institutional arrangements, and implementation capacities. The absence of effective mechanisms for recognizing verification results across jurisdictions may require businesses to undergo separate verification procedures when operating in different markets, increasing compliance costs and creating additional barriers to trade. This situation raises an important question for ASEAN regional climate governance: can ASEAN develop a mutual recognition mechanism for carbon emissions verification based on the experience of existing mutual recognition arrangements within the region?

Against this background, this paper examines the feasibility of establishing a mutual recognition mechanism for carbon emissions verification in ASEAN as a regional response to the requirements of the EU CBAM. The study pursues three main objectives. First, it clarifies the operation of CBAM and examines its requirements concerning emissions measurement, reporting, and verification, with particular attention to the challenges faced by ASEAN exporters, including verification costs and differences among national verification systems. Second, it examines existing mutual recognition arrangements (MRAs) within ASEAN, including those developed in areas such as technical standards, pharmaceutical products, and conformity assessment. The analysis focuses on the principles underlying these arrangements, their institutional structures, scope of application, implementation mechanisms, factors contributing to their effectiveness, and limitations. Third, drawing on these regional experiences, the paper assesses the feasibility of applying a mutual recognition model to carbon emissions verification in ASEAN and identifies the conditions necessary for its implementation, as well as the principal challenges that may arise.

The study adopts a qualitative legal research methodology combining legal analysis, documentary analysis, and comparative analysis. First, relevant legal and regulatory provisions concerning CBAM and its emissions reporting and verification requirements are examined to establish the regulatory context in which ASEAN exporters operate. Second, selected ASEAN MRAs are analysed and compared in terms of their legal and institutional design, participating authorities, recognition procedures, and mechanisms for ensuring reliability among Member States. Third, the findings from these existing arrangements are used to assess their applicability to carbon

emissions verification. The analysis considers both the potential benefits of mutual recognition, including reduced verification costs, improved access to the EU market, and strengthened regional cooperation, and the practical challenges arising from differences in technical capacity, the absence of common verification standards, and the need to establish sufficient trust among verification bodies.

Based on these findings, the paper proposes several directions for developing a mutual recognition mechanism for carbon emissions verification within ASEAN. These include the development of common technical standards for verification, the establishment of an appropriate regional coordination mechanism, and the adoption of a phased implementation roadmap that takes into account differences in the capacities of ASEAN Member States. The paper also considers the potential role of ASEAN in facilitating negotiations among Member States, coordinating implementation, and monitoring the operation of the mechanism, together with recommendations for national-level actions. The study is expected to contribute to the discussion on ASEAN's regional response to CBAM by shifting attention from the predominantly national impacts of the mechanism toward regional regulatory cooperation. It further seeks to demonstrate how mutual recognition of carbon emissions verification could reduce compliance burdens for businesses while improving the consistency of verification systems and strengthening ASEAN's capacity for coordinated climate action.

Keywords: *Carbon Border Adjustment Mechanism (CBAM); Carbon Emissions Verification; Mutual Recognition; ASEAN; Regional Climate Governance.*

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PANEL 5: JUST TRANSITION AND STRATEGIC RESOURCES

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THE ASEAN COOPERATION IN THE GOVERNANCE OF RARE EARTHS FROM THE PERSPECTIVES OF INDONESIA AND VIETNAM

Abstract:

Achieving the Paris Agreement targets in limiting global warming to 1.5°C, reducing global greenhouse gas emissions by 45% by 2030, and reaching net-zero emissions by 2050 requires a large-scale transition from fossil fuels to renewable energy and widespread electrification. This transition significantly increases demand for rare earth elements (REEs) and other critical minerals. As Southeast Asia possesses substantial reserves of these resources, ASEAN is strategically positioned at the intersection of rising global demand for critical minerals, evolving geopolitical dynamics, and the transition toward a more sustainable and technology-driven global economy.

Considering ASEAN Member States, each country has its advantages by owning significant reserves of critical minerals. Particularly, in the context of rising demands on rare earths and rare earth-related products globally and domestically, Vietnam can be beneficial to substantial reserves, which have been consistently estimated in annual summaries of the United States Geological Survey (USGS). Despite the infant industry with low volume of REE production annually, the Vietnamese high-level leaderships are ambitious for pursuing the pathway to develop rare-earth sector sustainably and fostering the industrialisation but also reinforcing its stance in the international relations. The strong message of vision and political determination of fortressing the national “strategic autonomy” in a new phase of development has been given recently. Regarding its neighboring country, Indonesia has played a central role in this effort as one of the world’s leading mining countries of several critical minerals, notably nickel, bauxite, copper, and tin. Indonesia also discovered that it has eight significant deposits of REEs, and the Indonesian government is eager to seek the wealth from these sources by reactivating the research programmes on REE extraction and production. However, both countries face the same dilemma of balancing rapid economic growth with environmental and social values. Therefore, the key question is what the prospects for regional cooperation in the governance of critical minerals to facilitate ASEAN Member States, especially Indonesia and Vietnam, to build a responsible and sustainable rare earth mining industry.

Grounded in an analysis of ASEAN policy documents and legal instruments, alongside a comparative assessment of the Indonesian and Vietnamese legal frameworks, this paper evaluates ASEAN’s role in rare earth governance from three perspectives. First, regional cooperation strengthens the integration of upstream extraction and downstream processing. Second, ASEAN facilitates knowledge sharing and the exchange of best practices to enhance regional resilience and sustainable development. Third, regional initiatives, including a common ASEAN database, can improve transparency and governance in the rare earth sector. Overall, ASEAN cooperation enables member states to advance national interests while contributing to regional sustainability and the development of resilient critical mineral supply chains.

Key words: *Critical Minerals, Rare Earths, ASEAN, Cooperation, Sustainable Development*

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GREEN CHAINS, UNEQUAL STRAINS - RETHINKING DISTRIBUTIVE CLIMATE JUSTICE FOR VIETNAMESE CRAFT VILLAGES

Abstract:

The rise of developed nations' stringent environmental regulations is reshaping the structure of global trade. A prime example is the European Union's adoption of policies under the European Green Deal, which include rigorous technical standards for emission reductions and sustainable supply chain due diligence. Through the lens of Stephen Bunker's Ecologically Unequal Exchange (EUE) theory, this trend exerts top-down regulatory pressure that directly impacts developing nations in the Global South.

Within this asymmetrical structure of global trade, Vietnam's traditional craft villages represent particularly vulnerable nodes. They are simultaneously exposed to increasingly stringent environmental requirements in export markets and constrained by persistent limitations in technology, access to capital, and regulatory compliance capacity. Vietnam's craft villages make significant contributions to export earnings and rural employment. Nevertheless, some are hotspots for severe environmental pollution due to their rudimentary production technologies and their location amid residential areas.

Indeed, Vietnamese law has attempted to establish a range of mechanisms to protect the environment in craft villages, including obligations for waste collection, treatment, infrastructure development, and environmental protection planning. However, top-down interventions relying on rigid administrative penalties often prove ineffective and costly, as they encounter resistance from rural residents whose livelihoods are at stake. Nowadays, Vietnam will undoubtedly continue to raise environmental standards to maintain access to international markets. In this context, these craft villages are confronting the risk of being excluded from export supply chains, resulting in the loss of livelihoods, and facing severe administrative penalties. This situation raises fundamental issues regarding distributive justice in the era of climate change. The objective of environmental protection measures for village craft should not only be to reduce environmental responsibility but also to ensure that the burden of the green transition is allocated in proportion to economic capacity, pollution levels, and the benefits derived from trade integration.

Against this backdrop, we will answer the following questions: Does the exclusive reliance on the "polluter-pays" principle violate equity principles for the Global South? What legal mechanisms could compel global supply chain actors to co-finance green transition costs at the village level? To what extent can traditional village conventions be legally recognised as legitimate

community governance mechanisms for enforcing international and national environmental standards?

In this research, we will employ a distributive climate justice approach to challenge the conventional perspective. Instead of focusing on how much polluters should pay, we will examine how the benefits and burdens of the green transition are distributed among various stakeholders. A critical doctrinal analysis of international trade and environmental law will be applied. With this analysis, we will evaluate the shortcomings of top-down interventions through the lens of distributive climate justice.

The contribution of this study lies in developing a two-tiered distributive climate justice framework for Vietnamese craft villages. In this framework, village conventions are repositioned as a community-level implementation mechanism, while green transition costs that extend beyond the village level are addressed at the transnational supply chain level.

Keywords: *village custom, environmental protection, craft villages, distributive climate justice, Vietnam.*

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TOWARDS A NET ZERO AND JUST TRANSITION IN VIET NAM'S GREEN ROAD TRANSPORT: LEGAL FRAMEWORKS, GAPS, AND REFORM DIRECTIONS

Abstract:

Vietnam has committed to achieving net-zero emissions by 2050. In this effort, road transport is one of the largest sources of greenhouse gas emissions and a major cause of air pollution in big cities. Therefore, promoting green road transport has become an important way to address climate change and improve the quality of life. In recent years, Vietnam has introduced several laws and policies to support green road transport. These focus on (i) limiting fuel consumption for motor vehicles (ii) encouraging electric and clean-energy vehicles (iii) increasing the use of public transport (iv) shifting passenger transport from roads to railways and inland waterways. The biggest limitation of the current legal framework is the lack of a coherent and comprehensive legal mechanism for the development of green road transport. For example, there is insufficient integration between urban planning and green transport, and there is no unified legal framework governing electric vehicles, as well as the development of railways and inland waterways. In addition, the existing technical standards and regulations remain incomplete. Fuel consumption standards, for instance, are not legally binding, and their application is largely limited to passenger cars and motorcycles. Meanwhile, other types of vehicles, such as light trucks, heavy trucks, coaches, and buses, also account for a significant share of fuel consumption but are not subject to similarly detailed fuel consumption limits or implementation roadmaps. Furthermore, the economic and financial measures supporting the green transition in the road transport sector, including incentives for the use of electric vehicles and the promotion of public transport, have not yet been sufficiently effective or able to ensure social equity.

The main objective of this paper is to clarify the legal issues relating to the development of green road transport in Vietnam. It then identifies the shortcomings of the current legal framework and proposes recommendations for improving Vietnam's legal framework on green road transport. To achieve these objectives, the paper examines the current system of laws and policies that are directly related to green road transport, including legislation on road transport, environmental protection, and urban planning, as well as national strategies, programmes, and action plans of both the Government and the transport sector aimed at reducing emissions from road transport. The paper also draws on the experience of several countries in promoting green road transport. In terms of methodology, the paper mainly applies legal analysis and synthesis to examine Vietnam's laws

and policies, clarify the key legal issues, and identify the existing legal gaps in the development of green road transport. In addition, it uses the comparative law method to state lessons for Vietnam. Through this approach, the paper aims to provide policy recommendations for the development and improvement of Vietnam's legal framework on green road transport. These recommendations are intended not only to support the country's climate change goals but also to ensure social equity, particularly for low-income groups and other vulnerable groups during the green transition.

Key words: *Green road transport; public transport; electric and clean-energy vehicles*

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ACCOUNTABILITY IN JUST TRANSITION: A REVIEW OF SOUTHEAST ASIA

Abstract:

Southeast Asia is increasingly embracing the idea of a just transition as it navigates the difficult shift toward low-carbon development. Across the region, governments have adopted a growing range of policies, from national climate strategies to regional frameworks and international commitments. Yet, these efforts have not fully translated into meaningful change on the ground. This article argues that the key challenge is not the absence of policy, but the absence of accountability. Using the JUST framework, the analysis shows how justice principles—such as participation, equity, and recognition—are often acknowledged but rarely made enforceable through legal and institutional mechanisms. As a result, affected communities continue to face limited influence, inadequate protection, and restricted access to remedies. The article therefore calls for an accountability-centred approach to just transition, grounded in enforceable rights, transparent decision-making, and accessible remedies, to ensure that just transition in Southeast Asia is genuinely just.

Key words: *Just Transition, Accountability, Perspectives of Southeast Asia, Just Framework*

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SHAPING CLIMATE GOVERNANCE THROUGH TRADE LAW: A PROCEDURAL CLIMATE JUSTICE ANALYSIS OF THE EVFTA AND CPTPP

Abstract:

Climate governance is increasingly shaped across multiple branches of international law. The 2024 Advisory Opinion of the International Tribunal for the Law of the Sea and the 2025 Advisory Opinion of the International Court of Justice illustrate this development by clarifying the relevance of climate change to States' obligations beyond the traditional climate treaty framework. At the same time, climate-related measures increasingly intersect with international trade law. Existing scholarship has largely examined whether trade rules constrain or accommodate climate action. Less attention has been given to how the procedural architecture of trade agreements shapes participation, expertise and accountability in climate-related governance.

This article examines how international trade law can contribute to shaping climate governance through its procedural architecture, and considers this question through the lens of procedural climate justice. It focuses on the European Union-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), with Vietnam providing a Southeast Asian perspective situated within both regimes.

Drawing on the emerging literature on procedural climate justice, the article develops a framework centred on four interconnected dimensions: voice, concerning meaningful participation and representation; knowledge, concerning the role of scientific and technical expertise; contestability, concerning transparency and opportunities to respond to relevant information and positions; and capacity, concerning the ability of differently situated actors to participate effectively.

The article combines doctrinal analysis of the relevant treaty provisions and institutional mechanisms with a structured comparison of the two agreements. The EVFTA and CPTPP offer contrasting approaches to participation, expert engagement, and the relationship between environmental commitments and dispute settlement. The comparison provides a basis for examining how different procedural arrangements shape the involvement of States, civil society and experts in climate-related trade governance.

The article argues that procedural climate justice depends on the interaction between participation, expertise, transparency and institutional capacity. Formal opportunities for participation may have limited significance when their procedural effects are weak, while stronger adjudicative mechanisms do not necessarily ensure broad participation or meaningful engagement with scientific and technical knowledge. The analysis therefore highlights the importance of institutional design in determining how climate-related interests and knowledge enter international trade processes.

The article concludes by considering the implications for Vietnam and other developing Southeast Asian States operating within overlapping trade and climate governance regimes. It argues that effective engagement with the emerging climate regime requires attention not only to substantive commitments, but also to the legal, scientific and institutional capacities through which those commitments are interpreted and implemented.

Keywords: *Climate governance; International trade law; Procedural climate justice; EVFTA; CPTPP; Southeast Asia, ITLOS and ICJ advisory opinions; Institutional capacity*

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PANEL 6: REGIONAL AND SECTORAL CLIMATE GOVERNANCE

COORDINATOR:



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ALIGNING ASEAN TREATIES WITH CLIMATE CHANGE IMPERATIVES: A “POSITIVE” AND “NEGATIVE” AGENDA

Abstract:

Most of the analysis regarding the interaction of international economic law and the ability of states to address climate change has focused on issues arising from the international protection of foreign investment and the use of investor-state arbitration in the event of disputes. The principal focus in this regard has been to consider whether and how “investment treaties” should be reformed, or can be (re)interpreted, to ensure that the grant of protection to foreign investors does not create undue obstacles to reasonable, bona fide measures designed to address climate change. This can be considered as the “defensive” or “negative” aspect of reform: making sure that treaties providing for the protection of foreign investment do not get in the way of addressing climate change.

A less addressed issue is whether investment treaties, broadly understood, can make positive contributions to achieving climate and environmental goals by enabling states to increase flows of the inward FDI necessary for climate change mitigation and adaptation. Addressing this kind of “positive agenda” means moving beyond the idea that investment treaties are primarily or exclusively about investment protection or, indeed, must necessarily be crafted as “treaties.” Instead, a positive agenda requires that international agreements on investment, of whatever character, focus on how to help states address the need to align state-side investment and climate policies with foreign investment decision-making drivers in a way that assists states in attracting and retaining investment for the achievement of climate and environmental goals.

The current landscape of investment treaties is not especially encouraging. While an increasing number of investment treaties contain commitments aimed at increasing flows of investment into host states through the liberalisation of markets for investment and the facilitation and promotion of investment, only a handful of treaties specifically link these activities to the generation of investment to address climate change or even the related goal of sustainable development. Moreover, even in those treaties that do recognise a linkage between investment flows, climate change, and sustainable development, the language used is most often hortatory and weak.

This article lays out this current landscape of treaties, examining the different ways in which states have or have not sought to link general provisions on investment liberalisation, facilitation and promotion to the specific policy goal of addressing climate change. While the analysis recognises the small number of treaties in which states have attempted to provide this linkage, this paper concludes that overwhelmingly current treaty practice continues to focus on the liberalisation, facilitation, and promotion of any kind of investment, regardless of whether that investment is green or not. Accordingly, given the urgent need for investment to support economic decarbonisation, this paper concludes with the observation that future investment treaties or other kinds of international instruments need to go further, not only in linking liberalisation, facilitation, and promotion with a climate change agenda, but also in addressing issues that are currently not addressed in investment treaties at all. That is, international investment instruments that support state efforts to combat climate change by (a) reflecting the

complex set of factors that feed into the commercial decision to make a foreign investment, such as the cost of capital, investment incentives, and de-risking instruments (i.e., the bankability of investment projects), and (b) addressing the challenges that states, particularly developing and least-developed, face in formulating and operationalising policies to attract and realise sustainable investment through their domestic institutions.

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Over the course of his career, Professor Calamita has worked as a consultant with more than two dozen countries across Africa, Asia, Europe and the Middle East, on matters relating to foreign investment, investor-state disputes, treaty negotiations, and commercial arbitration. He has also published widely on topics related to foreign investment and public international law, including *Investment Treaties and the Rule of Law Promise* (Cambridge University Press 2022) and *ASEAN and the Reform of Investor-State Dispute Settlement* (Elgar 2022). He is the author of the *APEC Handbook on Obligations in International Investment Treaties* (2020) and the Asian Development Bank *Toolkit on Green Economic Transition* (forthcoming 2026) (with C. Giannakopoulos). His latest articles are “The Internationalisation of Investment Facilitation at the WTO and in ASEAN: The Impact on Sustainable Investment and Development,” *University of Pennsylvania Journal of Asia Law* (forthcoming 2026); “Using Investment Treaties to Generate Investment to Address Climate Change: Moving Away from Investment Protection,” *Climate Law* (forthcoming 2026); and “Systemic and Episodic Regulatory Chill: Managing the State’s Investment Treaty Commitments” (in progress).

AIRSPACE GOVERNANCE AS A MISSING DIMENSION OF CLIMATE GOVERNANCE IN SOUTHEAST ASIA

Abstract:

Climate governance in the aviation sector has largely focused on technological and market-based measures, including aircraft efficiency, sustainable aviation fuels, emissions standards, and the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). While these mechanisms are important, they do not fully address the regulatory dimension of how aircraft use and move through airspace. This paper argues that airspace governance should be considered an additional dimension of climate governance in Southeast Asia. The way airspace is structured, allocated, and managed can influence flight efficiency, routing, congestion, and consequently the environmental impacts of aviation. Yet, this dimension remains relatively underdeveloped in international climate law and international air law. The paper examines the relationship between international air law and international climate law in regulating the environmental consequences of airspace use. It asks two principal questions. First, to what extent do existing rules of international air law permit States and regional institutions to incorporate climate considerations into the management of airspace? Second, can the emerging obligations of States under international climate law provide a basis for developing a more climate-responsive approach to airspace governance in Southeast Asia? The analysis focuses on the interaction between the Convention on International Civil Aviation 1944 (Chicago Convention), the international standards and recommended practices developed within the International Civil Aviation Organization (ICAO), and the Paris Agreement. Particular attention is given to the relationship between the principle of State sovereignty over airspace and the increasingly transboundary character of climate impacts. The paper argues that sovereignty over airspace should not be understood solely as a basis for controlling aviation activities, but also as a regulatory responsibility to manage airspace in a manner consistent with broader international environmental objectives. This issue has particular significance in Southeast Asia. The region is characterised by rapidly expanding aviation markets, dense and interconnected air traffic, archipelagic geography, and complex arrangements for air navigation services and flight information regions. These characteristics create both legal and institutional challenges for incorporating climate considerations into airspace management. Measures such as more efficient routing, flexible use of airspace, cross-border air traffic management, and regional coordination of air navigation services may contribute to reducing unnecessary fuel consumption and aviation-related emissions. However, their implementation raises questions concerning jurisdiction, sovereignty, institutional competence, and the relationship between national airspace management and regional cooperation. The paper further considers whether ASEAN could provide a regional framework for connecting aviation governance with climate objectives. Rather than proposing a new regional aviation regime, it explores whether existing ASEAN cooperation and international legal frameworks can support a more integrated approach in which airspace management is considered alongside conventional aviation climate measures. Such an approach could complement, rather than replace, ICAO mechanisms such as CORSIA. The paper concludes that international air law and climate law should not be treated as separate regulatory fields when addressing the environmental consequences of aviation. The existing legal framework already provides points of interaction between airspace sovereignty, international cooperation, and environmental responsibility, but these connections have not been sufficiently developed into a coherent framework for climate-responsive airspace governance. Southeast Asia provides an important setting for developing such an approach because of its geographical characteristics, expanding aviation sector, and need for regional cooperation. The

paper therefore proposes a concept of climate-responsive airspace governance, under which the exercise of airspace jurisdiction and the management of international aviation infrastructure are informed not only by safety, security, and efficiency considerations, but also by the international community's evolving climate objectives. This approach may contribute to a broader reconceptualisation of international air law: from a regime primarily concerned with the safe and orderly operation of civil aviation toward a more integrated framework of airspace governance capable of responding to contemporary environmental challenges.

Keywords: *international air law; airspace governance; climate change; aviation emissions; ICAO; ASEAN; Paris Agreement; Southeast Asia.*

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LAWS AND REGULATION ON AGRICULTURAL BURNINGS IN THAILAND IN CONNECTION TO THE GREATER MEKONG REGION

Abstract:

Agricultural residue burning has historically been treated as a seasonal environmental crisis in Thailand's northern provinces, primarily managed through top-down enforcement and rigid statutory prohibitions. However, transboundary haze and persistent air pollution across the Greater Mekong Subregion (GMS) signal that existing legal frameworks are increasingly disconnected from agrarian realities. This paper examines the systemic gaps in Thailand's regulatory approach to agricultural burning, drawing on insights from recent empirical field research and stakeholder interviews across multiple Thai provinces. The findings reveal a critical misalignment between punitive legal mandates and the socioeconomic bottlenecks faced by smallholder farmers, for whom burning remains the most economically viable method of residue management. In particular, statutory compliance is severely hindered by technical constraints, including the prohibitive cost and limited accessibility of mechanical alternatives like balers and shredders, which are further rendered impractical by wet or muddy terrains. To bridge this implementation gap, this paper argues that the regulatory paradigm must shift from rigid, one-size-fits-all burning bans toward flexible, locally-attuned legal frameworks. By evaluating comparative regional planting schedules and meteorological cycles, the study demonstrates that dynamically adjusted prohibition windows drastically reduce unintended fire risks while significantly increasing community compliance. Furthermore, the paper situates Thailand's domestic regulatory challenges within the broader context of the GMS. The paper highlighted that local law and regulation in Thailand may not be able to mitigate an issue of agricultural burning in the GMS. The issue requires alignment of regional environmental cooperation and regional agreement dealing with agricultural burnings across GMS region.

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VIRTUAL POWER PURCHASE AGREEMENTS FOR GREENER INFRASTRUCTURE IN ASEAN COUNTRIES

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BRIDGING THE STRUCTURAL DEFICIT IN THE CONTEXT OF GLOBAL PLASTIC GOVERNANCE: A COMPARATIVE STUDY OF NATIONAL INSTITUTIONAL RESPONSES TO THE INC GLOBAL PLASTICS TREATY DEVELOPMENT

Abstract:

Growing concerns highlight the severe effects of marine debris pollution on both marine biodiversity and human health. However, global plastics governance faces major structural hurdles. Current international agreements—such as UNCLOS, the Basel Convention, and specific chemical treaties—are mostly fragmented. They tend to focus on issues like downstream pollution, cross-border movements, or hazardous additives, rather than managing the entire plastic lifecycle. The UNEA Resolution 5/14 and negotiations led by the Intergovernmental Negotiating Committee (INC) represent a shift towards a comprehensive approach, aiming to establish a binding international treaty that addresses primary polymer production, chemical transparency, product design, extended producer responsibility (EPR), and waste management.

This paper explores the evolution of global treaty negotiations and examines how INC negotiations shape domestic legal frameworks and regional governance before any formal treaty is adopted. This article explores how the Intergovernmental Negotiating Committee (INC) may influence domestic and regional regulation before legal adoption. It first evaluates the fragmented international regime governing marine pollution, transboundary waste, and hazardous chemicals. It then distinguishes three forms of pre-adoption change: policy continuity, normative acceleration, and a direct response supported by official documentary evidence. A structured comparison of the European Union, Japan, and Taiwan examines rulemaking authority, extended producer responsibility, chemical information and product design, environmental-industrial coordination, and participation in international rule formation.

The comparison indicates that the European Union projects binding product rules through its internal market, Japan integrates resource circulation with coordinated industrial and technological policy, and Taiwan adapts through domestic administration and supply-chain incentives while remaining outside the formal INC process.

The article argues that downstream controls remain essential but cannot address lifecycle gaps in production, material composition, and product design. Effective upstream obligations must therefore be paired with predictable financing, technical assistance, differentiated timelines, and institutions capable of adapting requirements to varying administrative and technological conditions. It highlights that an effective global climate and environmental system needs reviewable controls on upstream production, standardized chemical transparency, adaptable EPR frameworks tailored to regional administrative capacities and informal waste sectors.

The analysis addresses the conference theme, 'Shaping the Climate Regime in Southeast Asia through International Law,' by examining how international rulemaking interacts with regional industrial development, trade supply chains, and the fairness of law implementation in the Global South.

Keywords: *global plastics treaty, Intergovernmental Negotiating Committee, lifecycle governance, extended producer responsibility, comparative environmental law, international negotiation committee*

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PANEL 7: CLIMATE LITIGATION, JUDICIAL GOVERNANCE, AND DISPUTE RESOLUTION

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COURTS AND CLIMATE GOVERNANCE: JUDICIAL ACTIVISM, DECENTRALIZATION, AND INTER-BRANCH DIALOGUE

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FROM RECOGNITION TO PROTECTION: SHAPING SOUTHEAST ASIA'S CLIMATE REGIME THROUGH REALISATION OF THE RIGHT TO A HEALTHY ENVIRONMENT

Abstract:

This paper examines how international law can give practical effect to the right to a clean, healthy and sustainable environment in Southeast Asia, noting that the protection of environmental defenders and the environmental rule of law as essential conditions for realising that right. The region's environmental-rights architecture has expanded rapidly, culminating in the adoption of the 2025 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment. The practical significance of the Declaration now depends on its implementation through its 'ASEAN-owned and ASEAN-led' Regional Plan of Action. This involves translating recognition of both substantive and procedural rights into, effective safeguards for environmental human rights defenders, and the enactment of laws capable of addressing the harms communities face across the region including arising from anthropogenic climate change. The central question is how Southeast Asia moves from recognition of the right to its protection in practice.

What is at stake here gives that question a sense of urgency. Southeast Asia's communities, livelihoods and economies are increasingly exposed to climate harms: sea-level rise, extreme heat, floods, droughts, storms and displacement, pollution and biodiversity loss and other pressures on terrestrial, coastal and marine ecosystems. These impacts have implications for environmental human rights. They affect lives, health, cultures, livelihoods, food, water and access to land, especially for Indigenous peoples, and rural and displaced populations, women and children, and communities dependent on forests, rivers and coasts. When affected communities and those acting with them seek to promote, protect or strive for the protection and realisation of environmental rights, including information, participation, monitoring, claims or demands for accountability, they are now regarded as environmental human rights defenders. However, their actions can and often do expose them to physical violence, intimidation, surveillance, arbitrary arrest, detention and displacement, as well as judicial harassment, including by the use of SLAPPs. Their ability to act safely, without discrimination, intimidation or reprisals, is therefore central to realising the right to a healthy environment in Southeast Asia's climate regime.

The paper proceeds in four steps. First, it articulates the legal foundations of the right to a clean, healthy and sustainable environment, recognised in UNGA Resolution 76/300 and the 2025 ASEAN Declaration, and explains its substantive and procedural character. These include the environmental conditions necessary for life, health, culture, livelihood, food, water and access to traditional lands, and the procedural rights to information, participation, justice and effective remedies. Secondly, it links the substantive and procedural character of the relevant rights. The work of environmental human rights defenders involves seeking information, participating, monitoring harm and demanding accountability to make the right to a healthy environment effective in practice. Thirdly, it examines how climate change and transition-related harms, including from renewable-energy development, extractive industries, logging, agribusiness, infrastructure corridors, transition minerals, waste disposal and coastal degradation, can violate the right to a healthy environment and threaten defenders. Fourth, it shows how the environmental rule of law provides the enforcement conditions of legality, transparency, accountability, independent adjudication and effective remedies. The paper concludes that the protection of environmental

human rights defenders is a necessary legal and institutional condition for the effective realisation of the right to a healthy environment, and should be recognised as an integral component of Southeast Asia's regional climate and environmental-rights framework.

Methodologically, the paper uses legal analysis and comparative reasoning to place Southeast Asia's climate regime within the realms of international environmental law, human rights law, climate law, and the environmental rule of law in general. It draws on UNGA Resolution 76/300, the 2025 ASEAN Environmental Rights Declaration, the 2012 ASEAN Human Rights Declaration, the 2018 UN Framework Principles on Human Rights and the Environment, the 1998 UN Declaration on Human Rights Defenders, Principle 10 of the Rio Declaration, the Aarhus Convention and the Escazú Agreement, together with recent international climate advisory opinion jurisprudence. The analysis is further informed by the authors' research, UNEP-related publications and judicial training work on environmental rule of law, environmental rights, defenders, SLAPPs, FPIC and environmental justice.

The paper's key contribution is to define what realisation of the right requires in the context of Southeast Asia's climate regime. It shows that recognition matters only if it is matched by participation, accountability, remedies, defender protection and the environmental rule of law. In short, the right becomes meaningful when it protects the people and communities who rely on it.

Keywords: *ASEAN Environmental Rights Declaration – Access to Justice – Climate Change – Defender Protection – Environmental Human Rights Defenders – Environmental Rule of Law – Procedural Environmental Rights – Right to a Healthy Environment.*

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THE OBLIGATION TO TRANSITION AWAY FROM FOSSIL FUEL DEPENDENCE

Abstract:

Despite its silence on international investment law, the ICJ Climate Change Advisory Opinion will inevitably impact investor-state arbitration in the energy industry. This paper offers a detailed analysis of the implications of the ICJ Climate Change advisory opinion, especially the obligation to transition away from fossil fuel dependence, for investor-state dispute settlement in the energy sector in ASEAN. It closely analyses the ICJ's reasoning, comprehensively examine the participants' arguments, and situate the ICJ's pronouncements in the debate about the relevance of international environmental law for energy disputes. The central argument is that, as required by the well-established principle of systemic integration as codified in Article 31(3)(c) of the Vienna Convention on the Law of Treaties, the transitioning-away obligation must be taken into account when investment treaties are interpreted and applied to investors in the energy sector with the view to, as far as possible, establish a single set of compatible obligations for states. In particular, the paper will flesh out how far the systemic integration between the transitioning-away obligation and investment treaty obligations goes as regards expropriation and fair and equitable treatment (FET) under ASEAN Comprehensive Investment Agreement, intra-ASEAN bilateral investment treaties, and investment agreements between ASEAN and non-member states.

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CLIMATE ORDRE PUBLIC AND THE ENFORCEMENT OF NON-ICSID ARBITRAL AWARDS IN ASEAN: RECONSIDERING ARTICLE V(2)(B) OF THE NEW YORK CONVENTION

Abstract:

The accelerating implementation of climate commitments is generating a new category of disputes at the intersection of investment protection, commercial arbitration and environmental regulation. Measures restricting fossil-fuel exploration, withdrawing mining or energy permits, phasing out coal-fired power, regulating greenhouse-gas emission allowances, or controlling the authorization and international transfer of carbon credits may affect both foreign investments and long-term commercial arrangements. Although awards rendered under the ICSID Convention are governed by the autonomous recognition and enforcement regime established in Articles 53-55 of that Convention, non-ICSID investment awards-particularly those rendered under the UNCITRAL Arbitration Rules-and foreign commercial arbitral awards may be subject to the 1958 New York Convention. Their enforcement therefore raises an increasingly important question for ASEAN courts: whether an award whose execution would seriously undermine a binding climate measure or the environmental integrity of a national carbon market may be refused under the public-policy exception in Article V(2)(b).

The legal significance of this question has increased following two landmark advisory opinions. On 21 May 2024, the International Tribunal for the Law of the Sea concluded that anthropogenic greenhouse-gas emissions constitute pollution of the marine environment and that States parties to UNCLOS owe stringent due-diligence obligations to prevent, reduce and control such pollution¹. On 23 July 2025, the International Court of Justice confirmed that States bear legally binding climate obligations under treaty and customary international law and that a breach of those obligations may engage international responsibility. Neither opinion directly establishes a hierarchy between climate obligations and investment or contractual rights. They nevertheless strengthen the normative basis for examining whether certain fundamental requirements of climate protection may form part of the international public policy of the enforcing State².

This paper investigates whether, and under what conditions, ASEAN jurisdictions can incorporate climate-integrity considerations into Article V(2)(b) without turning the public-policy exception into an appeal on the merits. It focuses exclusively on awards falling outside the enforcement regime of the ICSID Convention. These include non-ICSID investor-State awards arising from climate-related regulatory measures and foreign commercial awards concerning fossil-fuel projects, mining concessions, renewable-energy investments, emission allowances, carbon-credit transactions, emission-reduction purchase agreements and internationally transferred mitigation outcomes under Article 6 of the Paris Agreement. Vietnam constitutes the principal case study, while Singapore and Indonesia serve as functional comparators. Methodologically, the paper combines doctrinal, comparative and interdisciplinary approaches. First, it examines Article

¹ International Tribunal for the Law of the Sea, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, ITLOS Case No. 31 (21 May 2024).

² International Court of Justice, *Obligations of States in Respect of Climate Change*, Advisory Opinion (23 July 2025) 2025 I.C.J. Rep., paras 445-455.

V(2)(b), relevant national legislation and judicial interpretations of international public policy in the selected ASEAN jurisdictions. Secondly, it analyzes the evolving body of international climate obligations after the ITLOS and ICJ advisory opinions. Thirdly, it integrates insights from carbon-market governance and carbon accounting to assess the legal significance of host-State authorization, corresponding adjustments and the prevention of double counting under Article 6 of the Paris Agreement. The Vietnamese analysis centres on Article 459(2)(b) of the Civil Procedure Code 2015 and the concept of the “fundamental principles of Vietnamese law”, read in conjunction with Vietnam’s Nationally Determined Contribution, Decree No. 06/2022/ND-CP as amended by Decree No. 119/2025/ND-CP, Decree No. 29/2026/ND-CP on the domestic carbon exchange, and Decree No. 112/2026/ND-CP on international transfers of mitigation outcomes and carbon credits³.

The paper is expected to demonstrate that climate regulation should not automatically be elevated to public-policy status and that the mere non-application or misapplication of a climate rule by an arbitral tribunal cannot justify refusal of enforcement. Instead, it proposes a narrowly constructed “climate integrity test”. Under this test, refusal should be available only where: (i) the relevant climate norm is legally binding and fundamental to the forum’s legal order; (ii) enforcement would produce a direct and manifest conflict with that norm, rather than merely reveal an error of law; (iii) the conflict would cause a sufficiently serious impairment of an identified climate obligation or carbon-accounting safeguard; and (iv) refusal is necessary and proportionate, with no less restrictive means capable of protecting the relevant public interest. The proposed framework seeks to reconcile ASEAN States’ climate obligations with the New York Convention’s pro-enforcement orientation, thereby preventing both the under-protection of climate integrity and the opportunistic use of public policy to evade legitimate arbitral awards.

Keywords: *climate order public; public-policy exception; New York Convention; non-ICSID investment arbitration; climate regulation; carbon markets; ASEAN; Vietnam*

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³ Civil Procedure Code of the Socialist Republic of Vietnam (Law No. 92/2015/QH13, as amended), Art. 459.2(b).

