

Glossary of core concepts

Burden sharing: The concept of burden sharing is particularly relevant in the climate context and requires a solution to determine who does what, not only in terms of mitigation, but also in terms of climate finance and loss & damages.

Bottom-up v top down: These concepts are widely used in the context of climate change, especially to define the structure of climate conventions. However, they can also be used in other contexts. While the Kyoto Protocol (KP) took a top-down approach by prescribing precise reductions to specific states, the Paris Agreement (PA) does not define the required conduct precisely. Instead, it recognises specific principles while leaving a margin of appreciation to states. Therefore, it is a bottom-up agreement.

Climate action: It includes all types of “climate measures”, such as mitigation (GHG reduction), adaptation (to climate-related impacts), finance for mitigation and adaptation, loss and damage compensation, etc.

Climate adaptation: Measures to adapt to climate-related impacts, including slow-onset events such as sea-level rise.

Climate change: Changes in the global climate system caused by greenhouse gases (GHG) and their global warming effect.

Climate-related adverse effects or impacts: This term refers to changes and adverse impacts in the physical environment resulting from climate change, which have significant deleterious effects on natural and managed ecosystems and on human societies, health and welfare.

Climate cases or lawsuits: Legal proceedings requesting climate action, particularly mitigation. However, climate legal actions can also request further adaptation, finance, and loss and damage.

Climate due diligence (CDD): The CDD duty aims to (i) *identify* the extent to which one can mitigate and (ii) *prevent, mitigate or cease* climate-related impacts. The first duty to identify (i) climate-related impacts and the mitigation measures is rather of a *procedural* nature (i.e., procedural CDD), while the second dimension to prevent, mitigate or cease (ii) is of a *substantive* nature (substantive CDD). Additionally, CDD can be enshrined in *legi generali* (tort law, human rights law, constitutional provisions – i.e., “general CDD”) and specific implementing statutes or regulations of general CDD. Moreover, it can concern public or private actors (State CDD, corporate CDD).

Climate finance: Financial measures generally provided by developed states to developing states to mitigate or adapt to global warming.

Climate loss and damages: The global warming-related effects harming ecological and human interests, potentially requiring compensation in some cases, such as for particularly vulnerable developing countries.

Climate mitigation: Measures and behaviour that aim to reduce greenhouse gases (GHG).

Corporate CDD refers to the climate due diligence obligation of corporate and business actors (see above, definition of CDD).

Direct emissions refer to direct GHG emissions of States or business actors (also known as scope 1 emissions).

Due diligence: One must exercise due diligence (i.e., carefully identify the risks and implement all substantive measures to prevent and mitigate the risks) to avoid causing harm to others or the environment; this basic principle seems to be at the core of any legal system.

Fair share: The extent to which one specific actor needs to mitigate global warming, or to contribute to climate action more generally, according to global equity and fairness considerations.

Free riding: The incentive to refrain from taking climate action due to the perceived minor contribution that can be made to climate mitigation, and the perceived or real disproportionate disadvantage that it causes, mostly economic. The assumption that others are free-riding can lead to further climate inaction. This phenomenon exists in both interstate and private relationships.

General CDD (climate due diligence) is the duty to (i) *identify* the extent to which one can mitigate and (ii) *prevent, mitigate or cease* climate-related impacts as flowing from *legi generalis* (tort law, human rights law, constitutional provisions, customary international law – i.e., “*general CDD*”). This type of duty differs from “*specific CDD*”, i.e., *specific* legislation aimed at implementing *general CDD*. For more information on CDD, see its definition just above.

Greenhouse gases (GHG): Emissions released in the atmosphere which have a warming effect, such as carbon dioxide (CO₂), methane (CH₄), chlorofluorocarbons (CFCs), nitrous oxide, and others.

Indirect emissions: This notion can encompass State territorial emissions if they are released by private actors. Otherwise, States are also linked to extraterritorial emissions, stemming from imports, multinational corporations, etc. Corporate actors’ indirect emissions are scope 2 and 3 emissions (see below).

Lex specialis: Special laws may prevail over general laws in particular circumstances, especially if the former is inconsistent with the latter.

Leakage (carbon leakage, emission leakage) and substitution effects: The displacement or replacement of greenhouse gas emissions to another location through the climate mitigation measures of a particular State or company, leading to “substitution effects”. According to the IPCC, “Industry has so far largely been sheltered from the impacts of climate policy and carbon pricing due to concerns about carbon leakage and reducing competitiveness (high confidence)”. (See IPCC, AR6 (2021-23), WG III, TS, p. 107).

Specific implementation of general CDD (climate due diligence): Specific obligations to (i) *identify* and (ii) *prevent, mitigate or cease* climate-related impacts enshrined in *special laws* (or “*specific CDD*”). These specific legislations or regulations should, in principle, comply with *general CDD* in international, human rights, or constitutional law. For more information on CDD, see its definition just above.

LTTG: It generally refers to the Long Term Temperature Goal of the Paris Agreement (PA), which sets out an objective to pursue best efforts to limit warming to 1.5°C.

Pathways or scenarios are climate models containing scientific projections of the future showing what measures are needed to keep global warming under a certain threshold, or the manner in which the future can evolve if a certain *status quo* is upheld (also known as descriptive, exploratory, or business-as-usual scenarios).

Procedural CDD (climate due diligence) is the duty to (i) *identify* climate-related impacts and the extent to which one can mitigate those, which is of a *procedural* nature (i.e., procedural CDD). For more information on CDD, see the definition just above.

Regulation of polycentric issues: The usual definition of polycentric is “having more than one centre”²⁰⁵². A polycentric issue or situation may also be defined as follows: one specific “central” problem requires its addressment by a multitude of actors (public and private) and levels of governance. For example, it requires the collaboration between public and private actors, international and domestic organisations, States and municipalities, etc²⁰⁵³. Since there is no world government and a corresponding “monocentric” governance body, but a plethora of sovereign governments, the governance issues related to globalisation can be seen as polycentric. Climate change falls in this category, as do numerous other issues related to globalisation, including the regulation of multinational or transnational business enterprises.

Scope 1 GHG emissions: Direct emissions physically stemming from the activities of one company; for more information, see the GHG Protocol.

Scope 2 GHG emissions: Indirect emissions related to the use of energy produced elsewhere; for more information, see the GHG Protocol.

Scope 3 GHG emissions: All other indirect emissions, including those related to the use of products and services (category 11 – such as the use of fossil fuels), or financial services (category 15); for more information, see the GHG Protocol.

State CDD: The climate due diligence obligation of States and other public actors (see above, definition of CDD).

Substantive CDD (climate due diligence): The duty to *prevent, mitigate* or *cease* climate-related impacts flowing from *legi generali* (tort law, human rights law, constitutional provisions – i.e., “general CDD”) or *special laws* (or “specific CDD”). For more information on CDD, see the above definition.

Substitution effect: See the definition of carbon leakage above.

Systemic and/or framework mitigation cases: Lawsuits aimed at contributing to the reduction of GHGs by taking “a whole-of-system approach” and by challenging the adequacy of mitigation measures from public or private actors (see definition provided by Setzer et al).

2052 <https://dictionary.cambridge.org/dictionary/english/polycentric>

2053 Ostrom E, “A Polycentric Approach for Coping with Climate Change”, Background Paper to the 2010 *World Development Report*, Policy Research Working Paper 5095, 2009.

- Systemic integration and harmonious interpretation and fragmentation of the law: When interpreting treaties, Article 31 (3) (c) of the Vienna Convention on the Law of Treaties requires the consideration of the “context” and “[a]ny relevant rules of international law applicable in the relations between the parties.” Beyond international law, regional and domestic courts also apply the doctrines of “harmonious interpretation” and “living instrument” or simply consider other legal instruments not directly applicable to their cases if the context so requires; thereby avoiding the fragmentation of the law and enabling the shaping of consistent law beyond borders (see in the glossary, the terms “transnational law” and “global law”).
- Transnational business enterprises: Large businesses are often organised in a corporate group, comprising many different entities, including parent and subsidiary companies. Those companies may also have value chains, involving the ordering and purchasing of products and services from third-party businesses (subcontractors, suppliers, etc).
- Transnational law (global law): The legal principles, statutes, or customs (and even so-called “soft law” principles) which are recognised beyond borders. Transnational law differs from international law (including customary law), as the latter concerns, in principle, interstate relationships, while the former also encompasses the relationships between private actors and private law.

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