

Corporate Use of Climate Clubs

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More and more institutions in Canada have realized the urgency of changing their everyday activities substantially and explored innovative approaches to lowering energy use and carbon footprint in response to the climate crisis. Climate clubs have attracted significant industry and scholarly attention as a promising pathway forward to larger-scale shifts in economic and energy systems. These clubs unify like-minded partners in smaller-scale groups than international treaties to deliver collaborative climate action. Most importantly, they operate by deriving excludable benefits from sharing the cost of producing social externalities and emphasize club goods as incentives for participation and compliance.¹ The surge in attention to clubs has featured state-led initiatives and great power cooperation.² Little is known about how non-state actors, especially corporations, interact with and influence climate clubs. To fill this gap, I create a four-layered analytical framework to make a compelling case for corporate engagement in climate governance.

First, I explain the rationales for involving corporations in club-based climate cooperation. Climate change has manifested as reputational, financial, and legal issues for corporations, trustees, and directors. But these actors are also in special positions to gain recognition as authoritative by managing financial and regulatory risks and taking on climate-related responsibilities. They can improve the overall problem-solving capacity with their contributions to climate mitigation and adaptation in specific jurisdictions and sectors. With the rapid increase of corporate net-zero pledges, it is crucial to ensure the credibility of those diverse plans by having umbrella institutions where corporations can align immediate and long-term milestones to track progress and provide policy- and lawmaking support.

Second, I propose a typology of governance functions performed by clubs on which corporations can exert positive influence. Not only can they conduct on-the-ground emissions-reducing activities and develop low- or negative-emissions technologies, but they can also make institutional and normative contributions, such as sharing information, facilitating dialogue, building capacities for policy and program implementation, and developing (legal) norms. As club members, corporations can receive economic and reputational benefits as well as other club benefits that come with dialogue, knowledge exchange, and policy support.

Third, I study the legal foundations underpinning clubs. In other words, what legal tools are effective in holding corporations and other non-state actors together and keeping them engaged in the conduct of climate governance? In many cases, they conduct transnational relations through instruments that are not binding or enforceable under international law. These instruments are often referred to as memorandums of understanding. They also take the form of communiqués, declaration, and letters recording a shared understanding, among others. That said, the name or form of

¹ James M Buchanan, 'An Economic Theory of Clubs' (1965) 32 *Economica* 1; William Nordhaus, 'Climate Clubs: Overcoming Free-Riding in International Climate Policy' (2015) 105 *American Economic Review* 1339.

² Jon Hovi and others, 'Climate Change Mitigation: A Role for Climate Clubs?' (2016) 2 *Palgrave Communications* 1, 7.

instruments does not necessarily decide their legal status. What is decisive is whether negotiating parties intend for an instrument to be legally binding. Only by carefully studying the text of the instrument can its legal status be determined.

Fourth, I develop some entry points for analyzing the legal issues and rules concerning the operation of clubs in multi-jurisdictional legal frameworks. The ability of corporations to make tailored organizational changes and to conform with the law surrounding them matters for their sustained viability and political acceptance and for reducing their risk of being judicially annulled. The domestic law of a jurisdiction where clubs are registered or incorporated is relevant. The daily operation of clubs, including their administrative and business matters, is subject to the legal and regulatory architecture set out by national and subnational laws. Meanwhile, clubs can only operate on the conferred powers from the agreement of their members, whose legal authority and competency depend on whether and on what basis international law recognizes their legal powers as well as domestic law that regulates non-state, cross-border activities.

Throughout my analysis, I apply an eclectic approach bringing together theories from law, international relations, economics, and management, to illuminate the role of corporations in constructing and implementing club-based norms as well as (re)frame the engagement and contribution of corporate actors in the processes and practices of climate governance and lawmaking. Club-based norms are standards of behavior generated through a shared understanding of club members. As clubs operate in the domestic, international, or transnational context, what law means for clubs is less straightforward and whether club-based norms are transformed into legal ones depends on how one approaches law. The eclectic approach accommodates the explanation of clubs' expanding demands for norm developments, which may be ignored by a positivist approach that fosters a state-centric understanding of international and national law, while limiting non-state participation and downplaying non-hierarchical, softer-law solutions.

I apply my analytical framework to three generalized types of clubs for case studies: (1) clubs for emissions measurement and disclosure (e.g., Greenhouse Gas Protocol, Carbon Disclosure Project); (2) dialogue and networking clubs (e.g., C40 Cities Climate Leadership Group); and (3) clubs for technology research, development, and deployment (e.g., International Solar Alliance, Canada's Oil Sands Innovation Alliance). These clubs have varied constituencies, sizes, structures, and climate records. This variety can offer fertile ground for testing the different functions of clubs.

My project will yield new insights on the potential and limitations of non-state clubs for addressing climate change and advance the debates on how to mobilize and optimize private climate governance. It can help corporations, boards, and CEOs in Canada and beyond identify the norms and practices that have the greatest potential to withstand political changes, stabilize legal disputes, and receive legitimacy and goodwill for environmental stewardship from their stakeholders. It can also equip them with overarching theoretical and methodological tools, supported by empirical evidence, to conduct governance activities besides climate-related financial disclosure and understand whether and to what extent engaging in climate governance shapes their rights and obligations.