



Using International Law to Regulate Global Climate Projects

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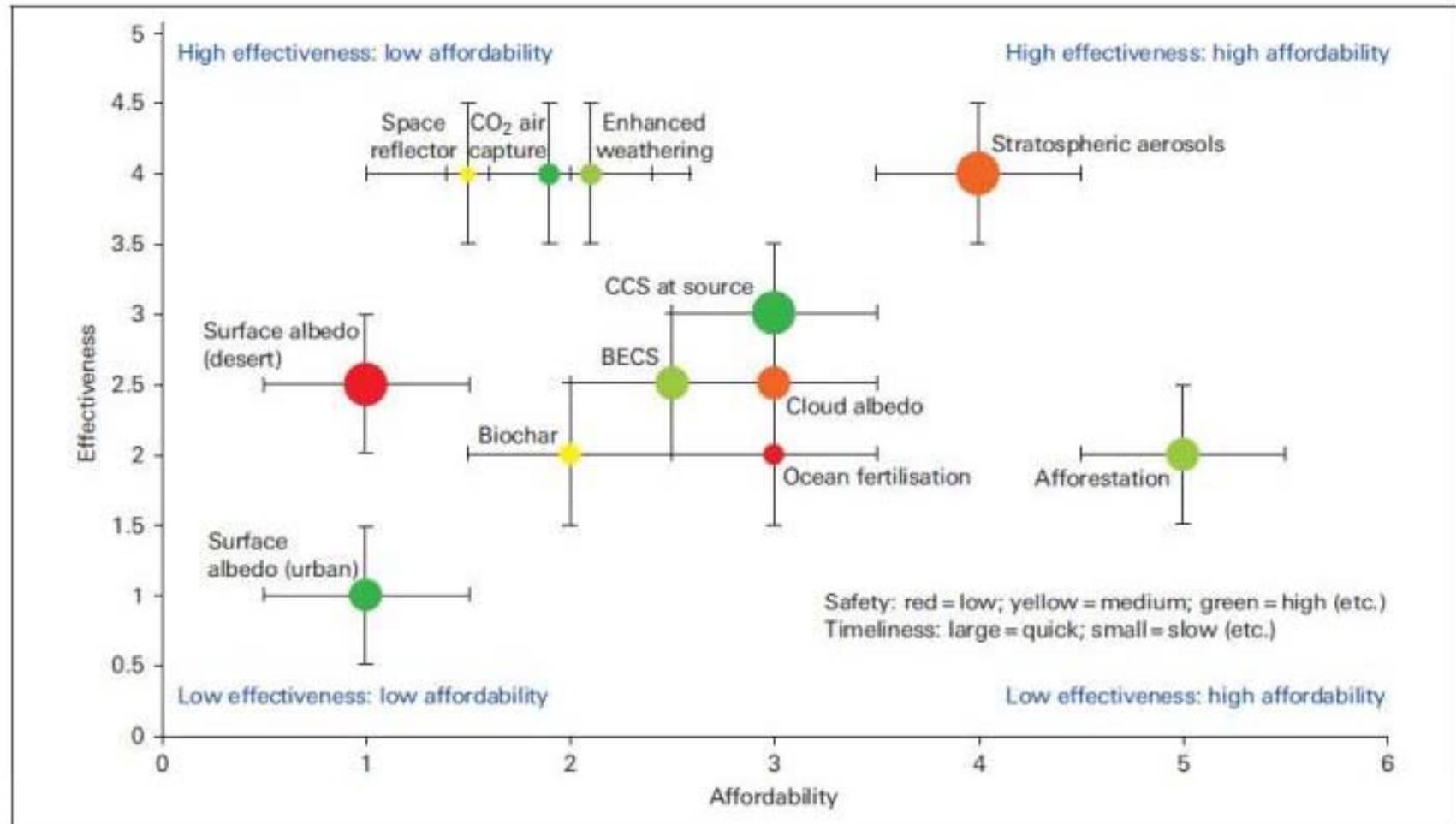
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Climate Engineering Legal Issues – A Quick Review



- Climate Change – a “Super Wicked” Problem
- Climate Engineering – “Plan B”
- Different types of Climate Engineering projects pose fundamentally different risks and advantages
 - Solar Radiation Management vs. Carbon Dioxide Management
- Applying U.S. environmental law –
 - Matching existing statutory requirements with new concepts
 - Climate change tort law

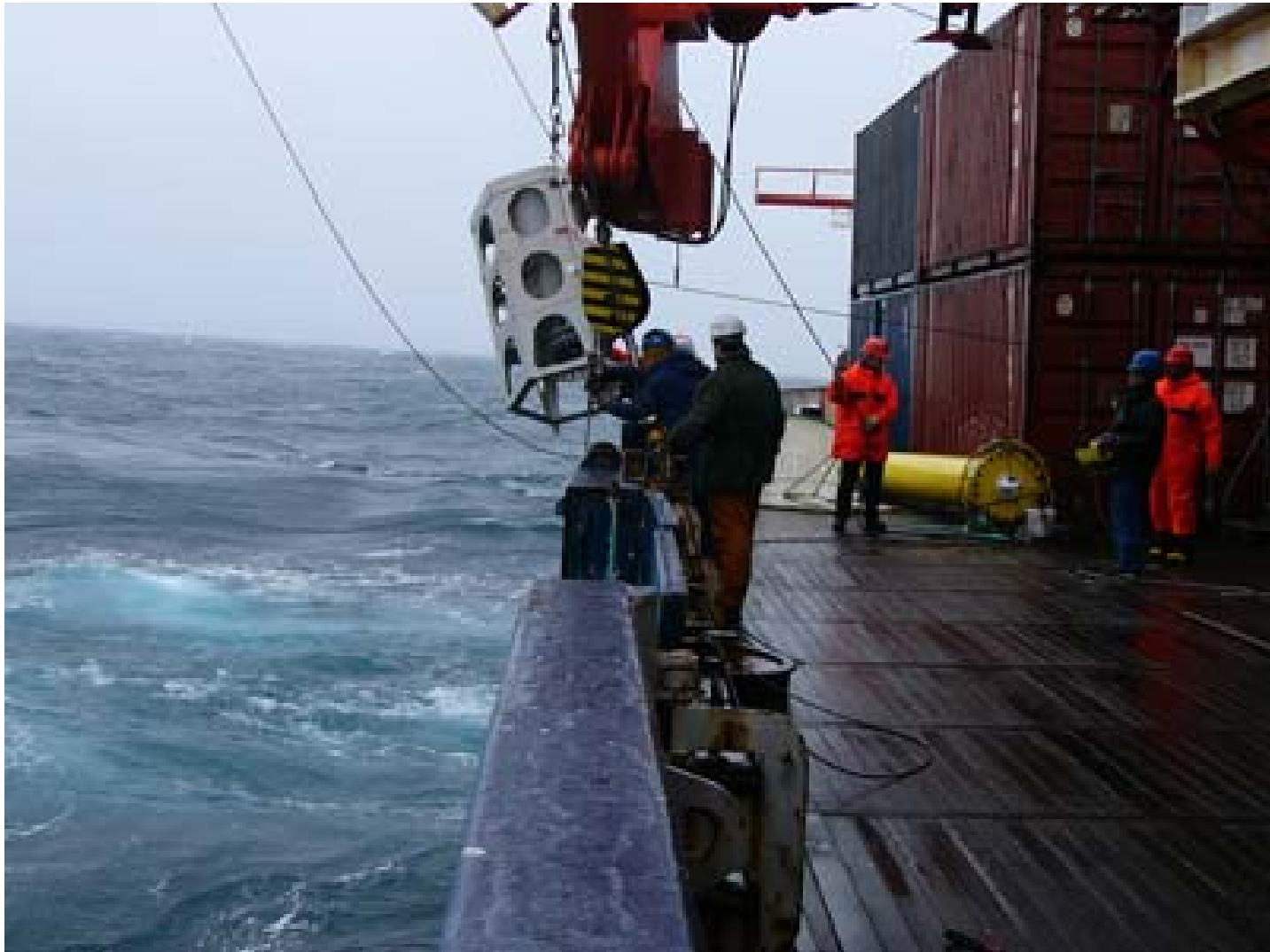
Comparison of Climate Engineering Options and Risks





Global challenge – global law?

- Primary focus of current management strategies – international law and governance
 - Cross-border by definition
 - Difficult for one nation to influence actions by another
 - Bilateral diplomacy has high “overhead”
- Many of the SRM and CDM technologies would work best in areas traditionally regulated under international law
 - Oceans
 - Space
 - Upper atmosphere





How does international law work?

- Two primary sources: customary international law and “hard” treaty law
- Customary international law –
 - Ingredients: consistent practice by community nations + *opinio juris*
 - Important limits – a nation can object to application
 - In U.S., treated as federal law for purposes of Supremacy Clause



How does international law work? (cont'd)

- Treaties
 - Trickier question – can arise under both Article I powers (Congressional treaty ratification and implementing legislation) and Article II powers (inherent authority of President; treaty power; executive orders)
 - Bottom line –
 - treaty given same preclusive effect as federal legislation (*Garamendi*)
 - Congress may have greater authority to regulate activities under treat that might lie outside its powers otherwise (*Missouri v. Holland*)
 - Self-executing treaties

Table 4: Examples of International Agreements Potentially Applicable to Geoengineering, as Identified by Legal Experts and Relevant Studies

International agreement	Number of parties	U.S. participation ^a
Applicable to a variety of approaches		
Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques	73	Party
Convention on Environmental Impact Assessment in a Transboundary Context	44	Signatory but not party
Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context ^b	18	Neither a signatory nor party
United Nations Framework Convention on Climate Change (UNFCCC)	195	Party
Kyoto Protocol to the UNFCCC	192	Signatory but not party
Convention on Biological Diversity ^c	193	Signatory but not party
Ocean-based approaches		
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) ^c	85	Party
1996 Protocol to the London Convention (London Protocol) ^c	38	Signatory but not party
United Nations Convention on the Law of the Sea	160	Neither a signatory nor party
Atmosphere-based approaches		
Vienna Convention for the Protection of the Ozone Layer	196	Party
1987 Montreal Protocol on Substances that Deplete the Ozone Layer	196	Party
Convention on Long-Range Transboundary Air Pollution	51	Party
Space-based approaches		
Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space	100	Party
Convention on International Liability for Damage Caused by Space Objects	88	Party
Approaches in Antarctic		
The Antarctic Treaty of 1959	28 ^d	Party
1991 Protocol on Environmental Protection to the Antarctic Treaty	28 ^d	Party
Convention for the Conservation of Antarctic Marine Living Resources	27 ^d	Party



How do existing international laws apply to climate change?

- Arguably directly on point:
 - U.N. Framework Convention on Climate Change
 - ENMOD Convention
 - Antarctica Treaty of 1959
 - U.N. Space Treaty
- Regulation through corollary effects
 - Biological Diversity Convention (Cartagena Protocol)
 - U.N. Law of the Sea Convention
 - London Protocol/London Convention (Ocean Dumping Act)
- Customary international law? (*Trail Smelter*, Alien Tort Claims Act, *Kiobel v. Royal Dutch Petroleum*, *Sosa-Machain*)

Next steps?



- International Panel on Climate Change –
 - Lima Conference, June 2011
 - Proposed convention for direct regulation?
- London Convention/London Protocol – Recommendations for regulation for scientific research on high seas (and what constitutes “dumping”)
- Bilateral treaty option - stop-gap?
- Asimolar conference – voluntary self-regulation?



Questions?

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