The Climate Show – Episode 40

Transcript

00:00:04 Linnéa Nordlander

Hi, and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez Romera

Hi, we are Beatriz Martinez,

00:00:18 Linnéa Nordlander

And Linnéa Nordlander.

00:00:19 Beatriz Martinez Romera

And we are your host at the Climate Show.

00:00:24 Beatriz Martinez Romera

Welcome to another episode of the Climate Show. Today we are talking about transition risk in the shipping industry.

00:00:31 Linnéa Nordlander

Shipping underpins global trade, transporting around 80 to 90% of goods worldwide. At the same time, the sector accounts for nearly 3% of global greenhouse gas emissions. As shipping begins to decarbonize, a new set of challenges arises. Those challenges and the risks they create are the focus of today's episode.

00:00:49 Beatriz Martinez Romera

Transition risks are the risks that emerge as the shipping industry shifts away from fossil fuels towards a low to zero carbon future. In this episode, we unpack that and how those risks look like in practice.

00:01:02 Linnéa Nordlander

To discuss this topic, Stella Ebbersmeyer, a postdoctoral researcher here at CLIMA, speaks with Dr. Jolien Kruit, who is a maritime lawyer and professor at the Erasmus University Rotterdam School of Law. Dr. Kruit is also a partner in our project OceanKind, which is a collaboration between UCL, Erasmus University, Rotterdam, and us here at CLIMA at the University of Copenhagen. Enjoy the show.

00:01:31 Stella Ebbersmeyer

Hi everyone, my name is Stella Ebbersmeyer and I'm a postdoctoral research fellow at CLIMA and my research focus is on climate change, maritime law, and the Arctic.

00:01:43 Stella Ebbersmeyer

Today, I'm here with Dr. Jolien Kruit, who is both a lawyer at Van Traa Advocaten, where she deals with disputes and questions related to maritime transport, and she's also a professor of the future of maritime law at the Erasmus University of Rotterdam School of Law. She regularly publishes on various transport law-related topics, such as on liability-related issues and on the sustainability of maritime transport.

00:02:12 Stella Ebbersmeyer

Jolien is also one of our partners on the OceanKind-funded research project called Commercial Modernization of International Shipping. This project is a collaboration between the University College London, the Erasmus University of Rotterdam, and us here at CLIMA in Copenhagen.

00:02:31 Stella Ebbersmeyer

And the aim of this project is to analyse the commercial dynamics that shape decarbonization pathways in the shipping sector to address and advance its decarbonization. And that's also what we'll be talking about today. So today, we'll be speaking about all things shipping decarbonization, including our paper on climate risks, which we have co-authored together with Hannah Mosmans, who was first author on the paper, and also with Beatriz Martinez Romera, Nishatabbas Rehmatulla and Marie Fricaudet.

00:03:03 Stella Ebbersmeyer

So hi, Jolien. Welcome to the Climate Show and thank you very much for taking the time to be here today.

00:03:10 Jolien Kruit

Thank you, Stella. It's a pleasure and an honour to be in the Climate Show with you.

00:03:15 Stella Ebbersmeyer

Perfect. Very happy that you're here. And before we delve in, could you perhaps briefly introduce yourself a little bit and tell us how you became interested in maritime law and climate change?

00:03:28 Jolien Kruit

Sure. My interest in maritime law was raised during my master's studies. I was not a very enthusiastic law student, I have to admit, and I was even unsure whether I would like to work in the law at all. But when I came across maritime law, it basically was a bit melodramatic but love at first sight. I just very much enjoyed the international setting, the questions about jurisdiction, applicable law, but also the hands-on mentality of the industry, problem solving. And the maritime industry is just very dynamic.

00:04:01 Jolien Kruit

And in the meantime, I've been practicing as a maritime lawyer for over 20 years in Rotterdam. And I have to admit the interest has only deepened. It remains a fascinating industry to work in. But like any industry nowadays, we cannot close our eyes to the ongoing climate crisis. And if there is one industry that is very much involved in the climate change, it is shipping.

00:04:27 Jolien Kruit

On the one hand, of course, climate change is a serious threat to maritime operations. Ships experience very heavy weather first-hand. Port infrastructure is vulnerable to the consequences, including, of course, rising sea levels. But on the other hand, shipping is part of the problem by its emissions, and there really does not seem to be an easy way out. So, there's a clear need for the industry to deal with the consequences of climate change for various reasons. And I'm also a concerned citizen, and I think we all need to make a contribution how we can.

00:05:07 Stella Ebbersmeyer

Yeah, that makes a lot of sense. Thank you for that. And as you mentioned just now, you work both as a professor at the university, but also as a practicing lawyer. So how does working in practice, in law practice, influence your academic research on maritime and climate law?

00:05:25 Jolien Kruit

Interesting question and a good question because as a practicing lawyer you see the problems that clients are facing in practice. And it's actually an eye opener very often that you think that questions that are super important or relevant from a legal academic perspective may not actually be that problematic. And a practical input can prevent it. You come up with a with a brilliant legal idea that has no practical relevance at all. Vice versa, academia can point out gaps in the law where regulation is necessary, but which may enthusiastic technical developers and practitioners may overlook.

00:06:08 Jolien Kruit

For example, we in the shipping industry, we are looking at a transition to alternative fuels. And if you want to go there, you also need to have your regulation in place, for example, for liability and compensation as a result of an incident. And we do not have that yet in place. But with the Committee Maritime Internationale, CMI, we've pushed the IMO to take some action here. And there, academia can also steer the developments in a positive route, I think.

00:06:47 Stella Ebbersmeyer

Yeah, very good point. And I agree, especially for this identifying of gaps and finding this intersection between law and practice in the shipping sector is really interesting. And yeah, we're very happy to talk with you about that.

00:07:03 Stella Ebbersmeyer

So, to start off with, could you help us understand why the commercial side of the shipping industry is so central to solving its climate challenges?

00:07:14 Jolien Kruit

Yeah, a former professor of mine, when I was still studying, used to teach us to look for where does money turn because so far price is still at least one of the most important aspects that guides decisions. A shipping company wants to make a profit.

00:07:35 Jolien Kruit

Commerce decides what ships are built, how they are operated, and which decarbonization decisions are economically viable to take. And green choices, at the moment at least, are not yet the financially most attractive option.

00:07:51 Stella Ebbersmeyer

Yeah, yeah. Very, very good point and reasonable comment also made by your professor. As I mentioned just now before, we have co-authored a paper on climate risks in the context of shipping decarbonization. And in our paper, we talk about the concept of climate transition risks in the shipping sector.

00:08:14 Stella Ebbersmeyer

So just now for the listeners, with climate transition risks in shipping. In our paper, we are referring to the risks that arise from the process of decarbonizing the shipping industry. So, from moving away from fossil fuels towards a low or zero carbon industry. And we're studying these risks because as shipping is decarbonizing, this transition will affect how ships are operated, how companies plan their investments, and how the whole industry adapts.

00:08:45 Stella Ebbersmeyer

So, from regulations and contracts to broader stakeholders and societal responses. In our paper, we emphasize that this is not just a technical change that has physical risks, but it's a system-wide transformation with very wide-ranging impacts across the whole industry and also across laws and regulations and society at large.

00:09:08 Stella Ebbersmeyer

And what we've also found important to identify in the paper is that these risks are interconnected and dynamic so that they don't occur just one risk next to each other in isolation. But changes in one area can trigger knock-on effects across the entire system. And I'm sure Jolien will explain that to us in a little bit in more detail.

00:09:29 Stella Ebbersmeyer

But in essence, the concept of climate transition risks helps us to capture the kind of big picture, namely that decarbonizing shipping isn't just one single challenge, but it's a more complex web of all interconnected risks that need to be understood holistically, which we aim to do in our paper.

00:09:52 Stella Ebbersmeyer

So, to break that down in our paper, we have identified five different types of risks: litigation risks, policy, contractual, technological and also social risks. So, Jolien, could you perhaps elaborate a little bit on these risks and also explain to the listeners why it's important to look at these risks together rather than separately?

00:10:16 Jolien Kruit

Yes, thanks for that clear overview of what we've done. The main thing to take away thereof is that the risks influence each other. Shipping is not a vacuum and shipping is not shipping. It is part of a much wider world, including a supply chain, but also ports, crews, assets, different ships, different operations. And it all works together, really.

00:10:47 Jolien Kruit

And if you only look at one specific issue and solve that, well, that's great and you've solved that problem. But this may mean that you create problems elsewhere that are even bigger than the problems you just solved. So, awareness of the bigger picture may lead to better decisions.

00:11:06 Stella Ebbersmeyer

Exactly, for sure. And that also brings us to the concept of risk cascades, which is also something that we address in our paper. Could you perhaps talk a little bit about that, perhaps with an example or however you think fit? For example, how one type of risks, for example, policy or technological, can cause this kind of trickle-down effects and cascades of other risks?

00:11:30 Jolien Kruit

Yes, a good point, an example may be very clarifying. For example, the switch to alternative fuels. One of the ideas is, okay, we need to decarbonize, we need to move away from fossil fuels, so we need to use other fuels.

00:11:50 Jolien Kruit

On paper, it's very easy. And there are varied candidate fuels because the idea now, and this is all still being developed, but the general idea now is that we're moving to a mix of different fuels. And one of them is ammonia. And ammonia is a promising candidate fuel, but it's not a drop in fuel like oil.

00:12:14 Jolien Kruit

So, you cannot just replace oil by ammonia. It will require new technology at various levels. You will need to have different ships engine, you will need to have different charging infrastructure, bunkering infrastructure, and that may create technical risks as the final stages of development have not yet been reached.

00:12:38 Jolien Kruit

And this applies, of course, to the ships itself, but also to the actual bunkering operations. We know we can work with ammonia, but working with ammonia on board a ship, which is moving, which experiences different influences also from the weather, for example, is just different. So, we need to see how that will play out.

00:13:02 Jolien Kruit

It will also require new safety protocols because it's a whole new fuel with different risks. It's much more explosive. Ammonium has different risks. It's much more explosive, for example, than oil. So, it also has a different risk profile in case of accidents or incidents.

00:13:35 Jolien Kruit

Moreover, no international liability and compensation regime is in place yet in case of such an incident. And that may be a cause for concern for citizens living in port areas that are afraid that something will happen and that they cannot get compensation thereof.

00:13:54 Jolien Kruit

Now, I'm not saying that we should not transition to ammonia and that ammonia is a bad idea. What I am saying is that such transition is not easy and that it is important to look at the wider aspects and not just say, okay, you use ammonia, that solves everything, because it doesn't.

00:14:13 Stella Ebbersmeyer

Very good point and good choice of an example because ammonia or yeah, using ammonia as a fuel really illustrates quite well, not only the different types of risks that are at play, but also how they are interconnected and influencing each other. And of course, I also have to talk now a little bit about the IMO and the net zero framework. It's a hot topic at the moment, unfortunately, and to some extent.

00:14:48 Stella Ebbersmeyer

So, I guess in our context of risks and uncertainties, considering the negotiations at the IMO and this uncertainty, regulatory uncertainty, lack of clarity around the net zero framework. Could it be regulatory risk or policy risk or uncertainty necessarily translate into risks for the shipping industry or particular shipping actors in the shipping sector?

00:15:22 Jolien Kruit

Yeah, I expect that in the short term, this uncertainty may generally lead to inaction. So, the market for the moment seems to take a wait and see approach. And it is just difficult to prepare for an uncertain future. The NZF was expected to create some certainty in this respect and also to unlock investment, but that doesn't happen at the moment. The problem, of course, we all know is that climate change is not something we can put in the fridge and say, okay, let's just wait and see what regulation is doing. We need to take action now.

00:15:58 Jolien Kruit

And the expectation is that if we delay a regulation, the regulation that will be put in place will be even, or the regulation that will eventually be put in place needs to pick up considerably and will lead to, as long as we maintain the 2050 net zero target, if we want to get there, we need stronger regulation and we need less gradual regulation. That may then in turn lead to stranded assets, which can be a serious risk as well. It's not ideal that we have a further delay and that there is longer uncertainty.

00:16:47 Stella Ebbersmeyer

Yeah, very well said. And I guess at this point, it just remains to be seen from our point of view. And yeah, we hope for the best. But kind of zooming out from that, with your experience as a practicing lawyer and as well-being an academic, from the kind of litigation side, what kind of legal disputes or potential challenges do you see arising as the shipping industry transitions towards lower carbon technologies?

00:17:16 Jolien Kruit

I expect litigation as a result of incident as the technology has not yet developed as we just discovered. We see that generally in case of developments that the legal developments of technological impact, for example, when the sulfur cap was introduced, we saw incidents happening as a result of engine problems.

00:17:41 Jolien Kruit

In addition, I expect that there will be reimbursement disputes when allowances or taxes are not duly settled, and this will create friction within the supply chain. And I also foresee issues as a result of unavailability of alternative fuels in due course. And that's more your area, but greenwashing claims will likely pick up as well.

00:18:10 Stella Ebbersmeyer

Yeah, exactly. Thanks for providing these insights and like I mentioned in the beginning, we have a paper coming out on this where you also, everyone can find an overview of the different risks, including also the different litigation risks, which includes the more commercial ones that you mentioned right now.

00:18:27 Stella Ebbersmeyer

But of course, yeah, also green climate washing claims, defamation claims, potentially also claims under public international environmental law, also perhaps in regarding to law of the sea or human rights. So that remains to be seen. But there is a lot of room, at least, for potential litigation and we have mapped that in our paper.

00:18:54 Stella Ebbersmeyer

But perhaps there's a last question and kind of following up from the previous one. Based on these risks and challenges that you've just identified, what would you say is the most important step that shipping companies should take right now to manage future climate transition risks?

00:19:10 Jolien Kruit

I think that they should follow the developments at international level and see what regulation will be implemented. There is very much uncertainty at the moment. Of course, the NZF is up in the air. There are various regional and national initiatives and shipping companies will need to follow these developments and see where it's going. They also need to realize that decarbonization will not just be a pricing issue.

00:19:38 Jolien Kruit

Contracts will need to be amended and for longer term contracts, it's already important to build in a level of flexibility. So regulatory developments, including pricing mechanisms, will not come as a nasty surprise because we will see a changing regulatory landscape and that will need to be accounted for already today.

00:20:02 Stella Ebbersmeyer

Yeah, thank you so much. Thank you for this sharing of your expertise with us. It's been really insightful. Before we wrap up, I just wanted to ask you if there's something else that you would like to add or talk about or a last message.

00:20:17 Jolien Kruit

Yes, maybe just to wrap up, maritime decarbonization seems to have lost momentum after the delay of the NZF and given the current geopolitical situation. But it will not go away. And I think our paper shows that the due preparation is key.

00:20:36 Stella Ebbersmeyer

Very well said. And let's hope that we can kind of grab the momentum back and bring it back on the table to move forward. So yeah, thank you. Thank you again for today's conversation. It has really been a tremendous pleasure to have you on the Climate Show, on our podcast. And we're looking very much forward to continuing our conversation in regard to our paper and in our Oceankind project and everything else.

00:21:03 Stella Ebbersmeyer

So, for everyone who's interested in finding out more about this topic, make sure to specifically check out our climate risk paper, which will soon be published in the Journal of Shipping and Trade. So, with that, we say thank you and we hope you enjoyed this episode of The Climate Show and stay tuned for more.

00:21:27 Linnéa Nordlander

Thank you for listening to this episode of The Climate Show. If you would like to read more about Dr. Jolien Kruit’s work or about Oceankind, check out the links in the show notes. Stay tuned for our next episode.