

UCSB/Bren School

International Environmental Law & Policy

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ESM 294: Winter 2007

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**Course Description**

The course textbook is Hunter, Salzman & Zaelke, INT'L ENVIRONMENTAL LAW & POLICY (3<sup>rd</sup> edition 2006), and grades will be based on the following: 20% class participation; 40% short written assignment; and 40% short final exam.

The course title suggests the breadth of the subject. Our perspective will include a treatment of the principal laws and institutions at the international level for pursuing sustainable development, including the regimes (laws, norms, institutions, etc.) that govern the interaction between the human system and the natural system. This course will use the following cross-cutting themes to help analyze and critique our readings:

*Ecological Limitations v./and Economic Development.* Global environmental problems are the result of a clash between the goals of human economic development—frequently equated with economic growth—and the physical limits of the biosphere—the planet's natural and ecological resources—to support, and to assimilate, the impacts of human activity. Efforts to resolve this conflict have led to many new international environmental laws and policies, as well as to the widespread acceptance of "sustainable development" as the appropriate goal for modern economies.

*North-South Politics.* Issues now seen important to the United States (e.g., saving tropical forests or endangered species or even preventing global warming) are often perceived as less urgent by developing countries where there is an immediate need to alleviate poverty, provide sustenance levels of food and water, and ensure basic human rights. These North-South differences animate the debate over international environmental policy.

*International Cooperation v./and National Sovereignty.* International environmental law and policy reflects the tension between national sovereignty over resources and international need for greater international cooperation. When viewed through the North-South dynamic, however, calls for the protection of tropical forests to conserve biodiversity and maintain carbon sinks may sound like foreign attempts to dictate the use of national resources.

The need for international cooperation also is compelled by globalization of markets and investment, which are increasingly escaping the reach of national law and policy. The course considers what countervailing forces exist or might be created to govern global capitalism and limit its environmental impacts and other excesses, and what role might be played by the globalization of democracy, human rights, labor rights, and environmental rights, and the civil society institutions that promote such rights.

*Non-State Actors and Non-traditional Policy-making v./and State Monopoly over International Policy-making.* The traditional view of international environmental law and policy has described the field primarily as a system comprised of State-State relations. The course

broadens this view to reflect the more activist scholars and practitioners who view international environmental law-making as a complex interaction between States and non-State actors.

*Status Quo v./and Need for Reform and Search for Solutions.* Current international environmental law may not be robust enough to address the growing global threats to the biosphere. The course considers what *ought* to be the approach in the future, including how to develop robust regimes—including institutions, procedures and rules—for blending economic activity with protection of the biosphere. Is international law, as currently conceived, capable of meeting this challenge, and if not, how can we re-conceive it? Is it possible to identify universal principles to ensure the survival of the biosphere that supports all life on the planet?

*Science v./and Diplomacy.* Much international (and national) environmental law is science-driven. Framework conventions are created to help organize scientific research and information in a form and in a time-frame to drive diplomatic negotiations. The role of science and the “precautionary principle” is particularly clear in the evolution of the ozone and climate change treaties.

### **Reading assignments**

Reading assignments for this course will be drawn from the textbook, occasional class handouts, website materials, and textbook updates posted on the web at: [www.wcl.american.edu/pub/IEL](http://www.wcl.american.edu/pub/IEL) (suggestions for additional updates are welcome). In addition, students are encouraged to read the New York Times or other national or international newspapers, with a view to discussing relevant stories at the beginning of each class.

The introductory readings in Chapters 1-3 should be familiar to you from your other courses, and you should be able to read them easily and quickly. Same with Chapter 5, which describes international organizations and non-State actors. Chapter 6 (lawmaking) and 7 (implementation and compliance) will be more challenging and we will devote more time to discussing them. We'll then move on to two of our pressing atmospheric problems: ozone depletion and climate change. Additional chapters will be added in the updated syllabus, depending on our progress.

### **Papers**

The written assignment will be described in a subsequent handout

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## Course readings

### 16 January

Introduction to students and professors, as well as to the structure and goals of the course—the search for legal solutions to the challenges of sustainable development.

#### *Introduction: the Basic Environmental Facts*

Textbook: Chapter 1

Introduces the basic environmental problems at the global, transboundary, and local level. Describes the “non-linear” nature of many problems. Also presents the problem of “scale”—the size of the human economy *relative* to the limits of the Earth.

Further Readings:

Gallopín, Hammond, Raskin & Swart, “Branch Points: Global Scenarios and Human Choice” (Stockholm Environment Institute).

Reviews critical environmental trends, then describes three very different views of the world’s environmental future, depending on expected policy intervention: Conventional Worlds, Barbarization, and Great Transitions. *Also available at:* [http://194.22.240.110/sei/seipubs.nsf/Lookup/F11E6A267E0AFE994125657700782EB4/\\$file/Branch%20Points.pdf](http://194.22.240.110/sei/seipubs.nsf/Lookup/F11E6A267E0AFE994125657700782EB4/$file/Branch%20Points.pdf). (Abstract of paper can be found in the textbook, pp. 39- 40).

The two other publications from the Global Scenarios Group also are worth reading:

Raskin, Gallopín, Gutman, Hammond, Swart, “Bending the Curve: Toward Global Sustainability” (Stockholm Environment Institute), esp. pp. 23- 81. *Available at:* [http://194.22.240.110/sei/seipubs.nsf/Lookup/8A91E69EFE41B563412567E500576338/\\$file/Bending%20the%20Curve.pdf](http://194.22.240.110/sei/seipubs.nsf/Lookup/8A91E69EFE41B563412567E500576338/$file/Bending%20the%20Curve.pdf).

Building upon “Branch Points,” this GSG contribution analyzes the long-term risks and prospects for sustainability within conventional development futures.

Raskin, Banuri, Gallopín, Gutman, Hammond, Kates & Swart, “Great Transition: The Promise and Lure of the Times” (Stockholm Environment Institute), esp. pp. 31-70. *Available at:* [http://www.tellus.org/seib/publications/Great\\_Transitions.pdf](http://www.tellus.org/seib/publications/Great_Transitions.pdf).

Building upon “Branch Points” and “Bending the Curve,” this is the third in the trilogy and aims to advance the long-range global scenario of the “great transition” by identifying strategies, agents for change, and values for a new global agenda.

Allen Hammond, WHICH WORLD?: SCENARIOS FOR THE 21<sup>ST</sup> CENTURY (Island Press 1998), esp. Preface and Chapters 1-5.

Discusses global and regional trends likely to prevail over the next half-century, and presents series of scenarios to describe contrasting visions of human

destiny—Market World, Fortress World, and Transformed World, with the latter scenario characterized by global civil society, socially and environmentally responsible global corporations, and radical policy changes designed to narrow the gap between rich and poor.

### ***Root Causes***

Textbook: Chapter 2 Consumption, Technology, and Population, pp. 43-101.

Introduces sustainable development, and distinguishes it from growth. Describes the consumption that drives the industrial economy. Explores the relationship with advertising. Introduces IPAT formula. Describes the promise of technology within the IPAT formula.

Further Readings:

Fussler & James, *DRIVING ECO-INNOVATION: A BREAKTHROUGH DISCIPLINE FOR INNOVATION AND SUSTAINABILITY* (Financial Times Management 1997).

Discusses same trends, and notes that whether business accepts the trends or not, it is clear that governments will be responding with increasingly strict laws, and that business must innovate in the pursuit of sustainable development in order to prosper in the future.

Textbook: Chapter 2, cont.: Cultural Values and Social Norms, pp. 101-22.

Reminds students that law is not always the best way to redirect human behavior towards sustainable development. Discusses role of culture, education, religion, and ethics.

## **17 January**

### ***Economics and Sustainable Development***

Textbook: Chapter 3

Elaborates sustainable development, and introduces basics of environmental economics, including the tragedy of the commons, externalities, valuation, and legal strategies for internalizing externalities. Presents ecological economics, emphasizing “scale” of development and income distribution, as well as allocation efficiency. Defines “environmental sustainability.” Provides the basis for evaluating the Conventional Worlds Scenario, and critiquing the effectiveness of the so-called self-correcting logic of the market.

### ***International Institutions and Non-State Actors***

Textbook: Chapter 5

Further Readings:

Textbook: Chapter 4: Brief History

A. Dan Tarlock, "The Role of Environmental NGOs in the Development of International Environmental Law," 68 CHI.-KENT L. Rev 61 (1992).

Esty, "Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion," Journal of International Economic Law 1 (1998) at 123-47.

Argues that NGOs should be welcomed in the international policymaking process as "competitors" to governments.

Esty, "Pivotal States and the Environment," in THE PIVOTAL STATES: A NEW FRAMEWORK FOR U.S.POLICY IN THE DEVELOPING WORLD, Robert Chase, Emily Hill & Paul Kennedy (eds.). W.W. Norton: New York (1999) at. 290-314.

Discusses "pivotal states and the environment," which is partly an argument about the environment as a security issue and partly an argument about who should be included in international environmental negotiations.

## **18 January**

### ***International Environmental Lawmaking***

Textbook: Chapter 6

Picks up from the discussion of legal ethics (Stone and Rawls) in Ch. 2, and discusses the relationship to natural law and to general principles, which are one of the three sources of international law (along with customary law and treaties). Readings include H.L.A. Hart's "minimum content of natural law" and Phillip Allot's essay deconstructing the origins of international law and society to demonstrate that we have the ability to reconceive a more just and effective international society and legal system.

Further Readings:

Phillip Allott, "The True Function of Law in the International Community," Indiana Journal of Global Studies, IJGLS 5 (1998), 331:

"What law does is to allow a society to choose its future. Law is made in the past, to be applied in the present, in order to make society take a particular form in the future. Law carries a society's idea of its own future from the past into the future."

H.L.A. Hart, The Concept of Law, 2ed., Natural Law and Legal Positivism, pp 184-200  
Carothers, The Rule of Law Revival, 77 Foreign Affairs 95-106 (1998)

Philip Allott, EUNOMIA: NEW ORDER FOR A NEW WORLD (Oxford 1991).

## **19 January**

### ***International Environmental Lawmaking, cont.***

Textbook: Chapter 6

Describes what a treaty is and the process for building consent among States. Discusses classic State-centered international law system and problems it presents for developing legal tools to achieve sustainable development. Explores critical role of science, and expanding role of non-governmental organizations. Notes differences between anemic international law and robust national law systems. Problem exercise presents questions for reading a treaty.

Further Readings:

Esty, "Moving From National to International Environmental Policy" (with Rob Mendelsohn) *Policy Sciences* 31: 225-235, 1998

Discusses lessons for international environmental efforts that can be drawn from recent domestic environmental analyses).

### **23 January**

#### ***Making International Environmental Law Work***

Textbook: Chapter 7 and handouts from *Making Law Work: Environmental Compliance & Sustainable Development* (Zaelke, et al., eds. Cameron May London 2005).

Further readings:

Textbook: Chapter 8: Principles and Concepts in International Environmental Law

### **25 January**

#### ***Climate Change***

Textbook: Chapter 11: Climate Change

Further readings:

Arctic Climate Impact Assessment, *Impacts of a Warming Arctic: Arctic Climate Impact Assessment, 2004*, Executive Summary, <http://amap.no/acia/> or [www.acia.uaf.edu](http://www.acia.uaf.edu)

Arctic Climate Impact Assessment, Policy Document, [www.acia.uaf.edu](http://www.acia.uaf.edu) (see bottom of web page)

*Imagining the Unthinkable*, Pentagon Climate Report (2004), [www.ems.org/climate/pentagon\\_climate\\_changehtml#report](http://www.ems.org/climate/pentagon_climate_changehtml#report)

## **30 January**

### ***Biodiversity and Wildlife Conservation***

Textbook: Chapter 15: Biodiversity and Wildlife Conservation

Further readings:

Textbook: Chapter 16: Habitat

## **1 February**

### ***International Trade and Investment Law***

Textbook: Chapter 11: International Trade and Investment Law

Further readings:

Stilwell and Tarasofsky, *Towards Coherent Economic and Environmental Governance: Legal and Practical Approaches to MEA-WTO Linkages*

[http://www.ciel.org/Publications/Coherent\\_EnvirEco\\_Governance.pdf](http://www.ciel.org/Publications/Coherent_EnvirEco_Governance.pdf)