

Law 271.71
International Environmental Law
(Spring 2008)

Units: 2
CCN (2Ls/3Ls): 49796

Instructor: Cymie R. Payne
Email: cpayne@law.berkeley.edu
Meeting Time: Tu 9:00-10:50
Meeting Location: Room 123

Required Course Book: Brown Weiss, McCaffrey, Magraw, Tarlock, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, 2D EDITION (2007).

Overview: This course is a seminar on the role of law in the management of international environmental problems. The course will begin with a brief introduction to public international law as it relates to the environment and a discussion of what “international environmental law” means. Participants in the course will study a range of environmental issues, legal sources, and institutions. The course will include consideration of international environmental treaties, the role of the International Court of Justice in identifying and establishing international environmental law, international regulation of private conduct that affects the environment, trade and the environment, human rights and the environment, and the relationship between domestic and international law.

Requirements: Grades will be based on three short papers (75%), and a related class presentation (15%). Grades may be revised upward for exceptional class participation and downward for failure to attend class on a regular basis.

Prerequisites: There are no prerequisites. Prior or concurrent enrollment in International Law and/or Environmental Law & Policy is recommended. For those who have not studied international law previously, the following reading is recommended in the first three weeks of the class:

Peter Malanzuk, Akehurst's Modern Introduction to International Law (1997),
chs. 1, 3;
Mark Janis, An Introduction to International Law (2003), ch. 1-3 (pp. 1-83)

Syllabus

TOPIC 1: BACKGROUND, PRINCIPLES AND HISTORY OF IEL

Class 1 - January 15: The Scope of International Environmental Law

Class 2 - January 22: Dispute Settlement, Compliance and International Institutions

Readings for class:

Brown Weiss, McCaffrey, Magraw, Tarlock, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, 2D EDITION (2007). Chapter 1 – skim; consider (no need to hand in) the notes and questions on pp. 36-7; Chapter 4 – skim pp. 160-191.

January 25 – recommended: "What's the Beef? The Contested Governance of European Food Safety" by David Vogel and Chris Ansell at 4:30pm in the Harris Seminar Room, 119 Moses Hall

TOPIC 2: EVOLVING LEGAL INSTITUTIONS AND PRINCIPLES

Class 3 - January 29: Bilateral Disputes

Guest: Teresa Stanton: Researching IEL

Readings for class:

Please read pp. 257-81 in Brown Weiss, et al.

Also, please start to look for a treaty that you would like to look at in depth, and if you have questions from your search, bring them to class next week when Teresa Stanton is our guest. She is one of the Law Library's international law experts, and she will share her knowledge of how to research in this specialized area. We will talk more about the treaty exercise before you make a final selection, but you will find it useful to have started your investigation before we talk about IEL research. In "Resources" you will find a website that lists treaties to get you started.

January 31 – Focus the Nation: Global Warming Solutions for America, all day at International House

Class 4 - February 5: Transboundary Watercourses and Groundwater

Directions for the first paper, a treaty analysis, will be handed out.

Readings for class:

This reading assignment is in Brown Weiss, et al.
pp. 757-59
pp. 332-44
pp. 344-47 Notes and Questions 1-6
pp. 761-67
pp. 767-76 Notes and Questions 1-6 [skip 7]
pp. 793-92 Note on the World Commission on Dams
pp. 795-803

Class 5 - February 12: Montreal Protocol

Readings for class:

Please read the following, in Brown Weiss, et al.:
Chapter 3: skim pp. 83-104 – focus on G. Hardin, p. 84; note 2, p. 89; p. 95; pp. 102-03.

Chapter 10: pp. 557-63 (skip Notes and Questions on p. 564); pp. 573-89 (look at Notes and Questions; #4 will be relevant when we address trade, for now don't worry about it)

First Writing Assignment By February 11, 9:00 am, please submit the name of the treaty you plan to work with via bspace, providing a full citation. Your treaty analysis is due February 19.

Class 6 - February 19: Climate Change 1

Treaty analysis due.

Readings for class:

In Brown Weiss, et al: pp. 608-09; 613-622

All of the IPCC report

IPCC, 2007: Summary for Policymakers. In: Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [B. Metz, O.R. Davidson, P.R. Bosch, R. Dave, L.A. Meyer (eds)], Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

Class 7 - February 26: Climate Change 2

Directions for the second paper, a reaction paper, will be handed out.

Readings for class:

Please read (attached below):

Bali Action Plan, UNFCCC, Decision 1/CP.13 (2007)

Daniel Bodansky, International Sectoral Agreements in a Post-2012 Climate Framework: A Working Paper (May 2007)

This is the statement from the UNFCCC regarding the Bali Action Plan:

"The Conference, hosted by the Government of Indonesia, took place at the Bali International Convention Centre and brought together more than 10,000 participants, including representatives of over 180 countries together with observers from intergovernmental and nongovernmental organizations and the media. The two week period included the sessions of the Conference of the Parties to the UNFCCC, its subsidiary bodies as well as the Meeting of the Parties to the Kyoto Protocol. A ministerial segment in the second week concluded the Conference.

The conference culminated in the adoption of the Bali roadmap, which charts the course for a new negotiating process to be concluded by 2009 that will ultimately lead to a post-2012 international agreement on climate change. The Bali roadmap constitutes the Bali action plan along with the entire package of decisions taken at the meeting (see below). They include the launch of the Adaptation Fund as well as decisions on technology transfer and on reducing emissions from deforestation. These decisions represent various tracks that are essential to achieving a secure climate future. "

Considering what is called for in the Bali Action Plan, think about the features that will be needed in a new international agreement, and be prepared to discuss your ideas in class. (There is no written component of this assignment)

You may find that there are features that can be adopted from the treaty that you analyzed in the last written assignment. Consider what key features are needed; your ideas of new mechanisms; the balance between economic- and rights-based; the need for an expression of new norms (such as a human right to energy) or rejection/redefinition of existing norms; whether the agreement should involve a wide or selective membership – e.g., “E8” discussed in the reading for Feb 19 in Brown Weiss.

Reflect on these questions:

What incentives are needed to provide for participation and compliance?

What approach will be robust to various economic, political, and environmental shocks as well as the resolution of uncertainty over time?

Is it politically feasible to transition from the Kyoto Protocol to the approach that you have in mind? How does the proposed approach address major issues raised in the Bali Action Plan, including mitigation, adaptation, technology, and financial mechanisms?

What are the equity implications of the proposal?

How would you pursue cost-effective mitigation of climate change risks?

How does the proposed framework provide the basis for satisfying the ultimate objective of the Framework Convention on Climate Change (Article 2)?
What are the costs and benefits of the proposed policy architecture, to the extent these can be identified?

February 28 – recommended: Climate Change Panel

March 3 – recommended: “One ecological ambition under 25 flags: the European Union's Water Framework Directive” Gabrielle Bouleau at 12:30-1:45 p.m., location TBA

TOPIC 3: SOVEREIGN RESOURCES – GLOBAL INTERESTS

Class 8 - March 4: Biodiversity

Readings for class:

Brown Weiss, et al., pp. 858-860 (just the introduction “Just what is Biodiversity?”)

Robert Costanza, et al., “The value of the world's ecosystem services and natural capital,” 387 Nature, 253 - 260 (15 May 1997) (available at url below - let me know if you have any difficulty locating the paper)

Sand, P. H. (1999). International Regulation of Trade in Endangered Species. Transnational Environmental Law : Lessons In Global Change. P. H. Sand. The Hague ; Boston, Kluwer Law International.

Optional:

Brown Weiss, et al., pp. 854-68, discussing biodiversity

Brown Weiss, et al., pp. 819-41, discussing various perspectives and issues on CITES

Brown Weiss, et al., pp. 1117-1127, discussing the World Heritage Convention

Brown Weiss, et al., pp. 1127-29, discussing the Ramsar Convention on Wetlands

Brown Weiss, et al., pp. 844-54, discussing whale conservation

Class 9 - March 11: Human Rights and Environment

Reaction paper due.

We have a guest lecturer on Tuesday, Neil A. F. Popovic, an expert on human rights and the environment. He received his J.D. from the University of California, Berkeley (Boalt Hall) in 1987, after which he clerked for Judge Alicemarie H. Stotler of the U.S. District Court for the Central District of California. He also earned an M.A. from the Fletcher School of Law and Diplomacy, where he was a Ford Foundation Fellow in public international law. Popovic practices law with Heller Ehrman White & McAuliffe LLP in

San Francisco. He specializes in complex litigation (with a focus on international dispute resolution) and international environmental law. He also serves as consultant for the International Program of Earthjustice Legal Defense Fund (where he previously worked) and is a member of the board of directors of EarthRights International. Popovic writes and speaks frequently about international environmental law and served as one of the principal drafters of the 1994 Draft Declaration of Principles on Human Rights and the Environment.

Readings for class:

Adriana F. Aguilar and Neil A.F. Popovic, "Lawmaking in the United Nations: The UN Study on Human Rights and the Environment," 3 RECIEL 197-205 (1994).

Brown Weiss, et al., Chapter VIII pp. 429-57.

1994 Draft Declaration on Principles on Human Rights and the Environment.

Please also select at least two of the following readings for your reaction paper; be prepared to draw on this for class discussion on March 11:

1. Neil A.F. Popovic, "In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment," 27 Columbia Human Rights Law Review 487 (1996).
2. *Doe I v. Unocal Corp.*, 395 F.3d 932 (2002); Vacated by, Rehearing, en banc, granted by *Doe v. Unocal Corp.*, 395 F.3d 978, 2003 U.S. App. LEXIS 2716 (9th Cir., 2003).
3. Summary of Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States.
4. Brown Weiss, et al., Chapter VIII, pp. 457-500.
5. Posner, E. A. and C. R. Sunstein (2007). "Climate Change Justice."

Class 10 - March 18: Role of National Courts and Laws

Readings for class:

National Courts play different roles in relation to IEL. These readings explore that relationship.

In Brown Weiss, et al., pp 157-59 and pp 244-51.

Solicitor General's Brief, *Teck Cominco* - What are the SG's arguments in sections C.1 and 2?

Bodansky & Brunnee, "The Role of National Courts in the Field of International Environmental Law." *RECIEL* 7(1): 11-20.

Reaction Paper: The reaction paper will be due on March 18, midnight. Please submit it to this assignment as an attachment.

Please choose two of the readings from the second list in the assignment for March 11. Read them, and in combination with the other assigned readings for March 11, write a short reaction paper.

The reaction paper should include your thesis, support your position and reference the readings. Your reaction can take different forms: a critique of theories presented, recommendations of how to apply the other authors' work, relating to other topics that we've covered in the class, etc.

The paper should be between 1500 and 3000 words. References can be cited in any standard format. Page numbers and your name should appear on the paper.

Points will be allocated for analysis, reasoning, and use of the readings (20 points), and form (following directions, giving citations, checking spelling)(5 points).

March 25 – SPRING RECESS

TOPIC 4: GLOBALIZATION, ECONOMIC INTERESTS

Class 11 - April 1: Hazardous Materials

Directions for the third paper handed out.

Readings for class:

Please read Brown Weiss, et al., chapter XIII.

Are these problems best handled at the national, regional or international level? Why?

What norms of international law apply? What strategies of international governance have been deployed to deal with hazardous substances?

Lagniappe – Medellin v. Texas, 552 U.S. ____ (2008). This isn't an assignment, but it is a very interesting development of an issue we discussed in the last class: the application of judgments of international courts in the USA, particularly in states. The Supreme Court just issued a decision in *Medellin v. Texas* on March 25, 2008. This is an appeal by a group of Mexican citizens who are currently on death row in Texas, based on a decision by the International Court of Justice. The

majority, concurring and dissenting opinions discuss the determination of self-executing treaties, the scope of the Executive foreign affairs power, and preemption of state law, all of interest to our study of IEL.

Class 12 - April 8: Trade and Environment

Guest: Professor Andrew Guzman

Readings for class:

Please read, in Brown Weiss, et al., pp. 933-942, 959-83.

FYI - The complete texts of the relevant agreements and the Shrimp-Turtle Dispute are available on the WTO website.

April 10-11 – recommended: CCELP conference “California and the Future of Environmental Law”

Class 13 - April 15: State Responsibility – War and Environment

First, a reminder: The question here is dealing with the consequences of war, not with preventing war. In examining these particular examples of the consequences of war, it can be difficult to untwine the moral, ethical and legal problems and discuss them on their own merits. The example of Iraq presents this in a particularly challenging way. The tension between Iraq's identity as an aggressor in 1990 and its current status is heightened by the role of the United States in these events. So one of the tasks in approaching the reading is to consider the legal framework independently of the particular circumstances - in other words, would these institutions and rules work with other conflicts? Another task is to consider whether some of the institutions and rules have broader meaning for environmental law.

Readings for class:

Brown Weiss, et al., Chapter 14

Report and Recommendations Made by the Panel of Commissioners Concerning the Third Installment of “F4” Claims (S/AC.26/2003/31) - Please read the following sections:

Section I – Overview;

Section II.D. - Monitoring and Assessment Data;

Section III - Legal Framework;

Section V – Claims of the State of Kuwait, A. Overview and B. Claim No. 5000256 – Damage to groundwater resources;

Section VI – Claims of the Kingdom of Saudi Arabia, A. Claim No.

5000451 – Damage to coastal resources, and the annexes related to these claims.

Governing Council Decision 212, Decision concerning the third instalment of “F4” claims ... (S/AC.26/Dec.212 (2003))

Class 14 - April 22: Making International Environmental Law Work – Compliance, Enforcement, Effectiveness

Third paper due.

Access to information is so fundamental that it is embodied in Principle 2 of the 1972 Stockholm Declaration, the 1982 World Charter for Nature, the 1992 Rio Declaration and Agenda 21. In emergency situations, like the Seveso incident, swift notice is critically important. We have observed that the principle of notice is reflected in diverse contexts such as the Basel Convention and the *Lac Lanoux* Arbitration. UNFCCC (Art 4(1)(h)) and CITES are examples of MEAs that include significant reporting requirements.

Please go back to your treaty analysis and note whether the treaty you studied has a reporting requirement. Be prepared to briefly describe what kind of reporting is required in class.

Readings for class:

Zaelke, et al., Chapter 7 introduction

Brown Weiss, et al. - pp. 386-389, *Seveso*

Aarhus Convention, Preamble, Articles 1, 4-9 - What kinds of information do these articles address? Who can benefit? When? For what purpose?

ENMOD, Article III(2)

UNFCCC, Article 4(1)(h)

UNCC, Governing Council Decision 258, Appendix, paragraphs 1, 2, 12-13, 22-24, 43-44 What kinds of information must be reported? By whom, to whom? For what purpose?

Optional

Sand, Peter, H., *The Right to Know: Environmental Information Disclosure by Government and Industry*. Institute of International Law, University of Munich (2002).

Third Writing Assignment

Resources

Timothy Searchinger, Ralph Heimlich, Use of U.S. Croplands for Biofuels

Increases Greenhouse Gases Through Emissions from Land-Use Change, Science 29 February 2008:Vol. 319. no. 5867, pp. 1238 – 1240.
<http://www.sciencemag.org/cgi/content/full/319/5867/1238>

Sabrina Valle, Losing Forests to Fuel Cars: Ethanol Sugarcane Threatens Brazil's Wooded Savanna, Washington Post, Tuesday, July 31, 2007; D01

Emma Marris, Drink the best and drive the rest Brazil's sugar-cane ethanol industry is the world's best and able to get better, Nature, Vol 444:7 December 2006.

ADDITIONAL RESOURCES

Topic 2: Evolving Legal Institutions and Principles

Montreal Protocol

 http://www.unep.org/law/Law_instruments/index.asp (1 KB)

Climate Change

 [ar4-wg3-spm.pdf](#) (631 KB)

 http://earthobservatory.nasa.gov/Library/GlobalWarmingUpdate/global_warming_update2.html
(1 KB)

 [cp_bali_action.pdf](#) (101 KB)

 http://unfccc.int/meetings/cop_13/items/4049.php (1 KB)

Topic 3: Sovereign Resources – Global Interests

Biodiversity

 <http://www.nature.com/nature/journal/v387/n6630/abs/387253a0.html> (1 KB)

Human Rights and Environment

 [1994-decl.html](#) (12 KB)

 [Unocal opinion.pdf](#) (355 KB)

 [Inuit Petition Summary.pdf](#) (60 KB)

Role of National Courts and Laws

 [2006-1188.pet.ami.inv.pdf](#) (108 KB)

Topic 4: Globalization, Economic Interests

Hazardous Materials

 [Basel Convention text.doc](#) (324 KB)

The link below will take you to the SCOTUS slip opinion. The briefs are also on the SCOTUS web site, as is the transcript of the oral argument (which starts off very badly for Medellin).

 <http://www.supremecourtus.gov/opinions/07slipopinion.html> (1 KB)

Trade and Environment

 <http://www.wto.org/> (1 KB)

 http://www.wto.org/english/docs_e/legal_e/legal_e.htm (1 KB)

 http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm (1 KB)

State Responsibility - War and Environment

 [UNCC - F4\(3\) Report.pdf](#) (148 KB)

 [UNCC - Gov Council dec_212.pdf](#) (17 KB)

Making International Environmental Law Work – Compliance, Enforcement, Effectiveness

 [Aarhus Convention on Access to Information.pdf](#) (52 KB)

 [ENMOD.doc](#) (35 KB)

 [UNFCCC.pdf](#) (81 KB)

 [UNCC Gov Council dec_258.pdf](#) (148 KB)

 <http://www.sciencemag.org/cgi/content/full/319/5867/1238> (1 KB)