

## LAWS9119

# INTERNATIONAL ENVIRONMENTAL LAW

## COURSE OUTLINE AND READING GUIDE

Winter Session 2004

### I. COURSE DESCRIPTION AND OBJECTIVES

International law of the environment is a comparatively new field of international law. It has seen a rapid evolution over the past 30 years, as a result of the widespread recognition that many environmental problems must be addressed at the international level if satisfactory solutions are to be found. The large number of international legal instruments creates an increasing number of obligations for states and thus has significant influence on national legal systems.

The first part of this course will examine the fundamental concepts and principles of international environmental law, the main legal sources, institutions and actors as well as the key subject areas. This will give students a basic understanding of the issues and provide the basis for the second part, which will be devoted to case studies in two major sectoral issues, namely management of genetically modified organisms and climate change. In particular, students will gain an insight into the practicalities of international negotiation through a simulation exercise, and will explore some of the trade implications of the two major topics.

### II. COURSE OUTLINE

The topics covered in the course are as follows:

#### Part I: Overview of the topic

- History and sources of International Environmental Law
- Fundamental principles of International Environmental Law; the concept of sustainable development and its relation to International Environmental Law
- Key institutions; mechanisms of implementation and compliance
- Overview of sectoral topics of International Environmental Law: pollution control, management of potentially hazardous substances, protection of natural resources and ecosystems, protection of the ozone layer

#### Part II: Major sectoral issues

- International regulation of genetically modified organisms
- International regulation of climate change and prospects national-level implementation

#### Part III: Conclusion:

The future of law as a means to address global environmental issues?

A detailed Lecture Outline and Reading Guide is attached.

### III. REQUIRED TEXTS

Patricia Birnie and Alan Boyle, *International Law and the Environment* (2<sup>nd</sup> ed., Oxford University Press, 2002), available at the UNSW Bookstore, and

Supplementary Materials prepared by the lecturer (as indicated in the attached Reading Guide). These will be available to students from 15 June 2004.

Students may also find it useful to refer to the *Yearbook of International Cooperation on Environment and Development* 2003/2004, edited by the Fritjof Nansen Institute (Earthscan Publications, London 2003) and P. Sands, *Principles of International Environmental Law*, vol 1 (Manchester University Press 1995)

#### IV. TEACHING METHOD

The course will be taught intensively, using a combination of lectures, class discussions and student presentations and simulated negotiations. Strong emphasis will be placed on student preparation and active participation. All students are expected to undertake preparation of the subject material prior to commencement of classes and will be asked to contribute their own insights gained from reading, practice, discussion, media watching or the study of other disciplines.

A general knowledge of the main areas of international law will be assumed. Students who have not taken a general international law course during their legal or other previous studies will be expected to undertake background reading to bring themselves up to speed on the basic principles of international law. There are a number of very readable texts which can be consulted, for example, Shaw, *International Law* (5<sup>th</sup>, 2003), Brownlie, *Principles of Public International Law* (6<sup>th</sup>, 2004) and Evans, *International Law* (2003). The chapters on “sources” and “treaties” will be particularly useful. An understanding of national environmental law is not required, but would be an asset.

#### V. ASSESSMENT METHOD

Your grade will be based upon:

1. **Written assignment:** Because this course will be taught intensively it is essential that all students undertake basic preparation work in advance. Each student is therefore required to prepare a written assignment to consist of no more than 1500 words discussing *one* of the following principles:
  - (i) Principle 21 of the Stockholm Declaration
  - (ii) precautionary principle
  - (iii) polluter pays principle
  - (iv) principle of common but differentiated responsibilities
  - (v) sustainable development.

The assignment will be due at 9:00 am on Monday 5 July 2004. Students are asked to bring two copies of their assignment to class. The assignment will be worth 10% of the final mark.

2. **Class Participation:** All students will be assessed on their class participation. This includes demonstrated preparation for as well as contribution to class discussions and to the negotiation exercise which will be held on 7 July 2004. Class participation will be worth 20% of the final mark. You are reminded of the Faculty’s requirement that you attend at least 80% of classes.

3. **Research Essay:** All students will be required to complete an original research essay on a topic chosen from a list of suggested topics set by the lecturer and handed out on the first morning or on a self-chosen topic which has been approved by the lecturer. The research essay will be worth 70% of the final mark.

Research essays should be between 4000 and 5000 words in length – including footnotes. Portions of an essay exceeding 5000 words may not be read or marked. Essays will be due no later than 4:00 pm on **Monday 20 September 2004**. Any papers submitted after their due date

may incur a penalty of 10 marks for every 24 hour period or portion thereof that the essay is late.

Students are reminded to read the *Information For Students Booklet*, which is prepared by the Law School, in particular, the sections on assessment, attendance, plagiarism and academic misconduct.

## **VI. CLASS SCHEDULE**

Classes will be held in Room 1101, Level 11, Library Tower at Kensington Campus from 9:00am to 5:00pm on Monday 5 July to Friday 9 July inclusive.

## **VII. LECTURER**

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**LAWS9119**  
**International Environmental Law**  
**Lecture Outline**

**Day 1 Monday 5 July 2004**

**9.00** Welcome and introduction, course requirements, organizational matters

**History, sources and principles of International Environmental Law**

Perceptions of the environment and evolution of International Environmental Law  
Sources of International Environmental Law and their significance  
Fundamental principles of International Environmental Law: Principle 21 of the Stockholm Declaration, precautionary principle, polluter pays principle, common but differentiated responsibilities (discussion)

**11.00 Morning tea**

**11.30** Sustainable development and International Environmental Law (discussion)

**1.00 Lunch**

**2.00 International Environmental Governance**

International institutions and organizations  
The United Nations Environment Programme (UNEP)

**3.15 Afternoon tea**

**3.45** Mechanisms to promote implementation and compliance

**5.00 Close of Day 1**

**Day 2 Tuesday 6 July 2004**

**9.00 Overview of sectoral topics of International Environmental Law**

Pollution control  
Management of potentially hazardous substances  
Protection of species and ecosystems

**11.00 Morning tea**

**11.30** Protection of the atmosphere

**1.00 Lunch**

**2.00 Sectoral issue 1: International regulation of genetically modified organisms**

Overview of the Cartagena Protocol on Biosafety  
History of the negotiations: key issues

Applying the fundamental principles of International Environmental Law to the management of genetically modified organisms (discussion)

**3.15 Afternoon tea**

**3.45** Practical implications of the international negotiations on biosafety (invited speaker - industry)

**5.00 Close of Day 2**

**Day 3 Wednesday 7 July 2004**

**9.00** Negotiations on a future legal regime on international liability for damage caused by management of genetically modified organisms: background and status quo.  
Setting the stage for negotiation simulation: scenario, distribution of roles, expected result.  
Simulation of negotiations on an international regime on liability and compensation under the Cartagena Protocol

**11.00 Morning tea**

**11.30** Simulation of negotiations on an international regime on liability and compensation under the Cartagena Protocol (continued)

**1.00 Lunch**

**2.00** Simulation of negotiations on an international regime on liability and compensation under the Cartagena Protocol (continued)

**3.15 Afternoon tea**

**3.45** Simulation of negotiations on an international regime on liability and compensation under the Cartagena Protocol (conclusion)  
Evaluation and discussion of negotiation simulation

**5.00 Close of Day 3**

**Day 4 Thursday 8 July 2004**

**9.00 Sectoral Issue 2: International legal instruments on climate change**

Overview of the UN Framework Convention on Climate Change and the Kyoto Protocol  
History of the negotiations: key issues  
Applying the fundamental principles of International Environmental Law to climate change (discussion)

**11.00 Morning tea**

**11.30** The Flexible Mechanisms of the Kyoto Protocol

**1.00 Lunch**

**2.00** Trading emissions - Implementing the Kyoto Protocol at the national level (invited speaker)

**3.15 Afternoon tea**

**3.45** The Flexible Mechanisms in practice: discussion of a concrete project using Joint Implementation or the Clean Development Mechanism

**5.00 Close of Day 4**

**Day 5 Friday 9 July 2004**

**9.00 Multilateral Environmental Agreements and international trade**

Reconciling the demands of environment and economy through the concept of sustainable development (discussion)

Use of trade measure in Multilateral Environmental Agreements

Use of incentives for environmentally sound behaviour in Multilateral Environmental Agreements

**11.00 Morning tea**

**11.30** Significance of Article 20 GATT for Multilateral Agreements

**1.00 Lunch**

**2.00** *The future of international law as a means to address global environmental issues? (discussion)*

**3.15 Afternoon tea**

**3.45** *Summary and conclusion*

**5.00 Close of Day 5**

## LAWS9119

### International Environmental Law

#### Reading Guide

As part of the preparation of each section of the class, students are expected to read the following:

History, sources and principles of International Environmental Law (Monday, 5 July, Morning)

- A. D'Amato / K. Engel (Eds.), *Environmental Law Anthology* (Anderson, 1996): Chapter 1, The Evolution of International Environmental Law; Chapter 3A, Principle 21 of the Stockholm Declaration; Chapter 3B, The Precautionary Principle; Chapter 3C, Sustainable Development
- Birnie / Boyle Chapter 1: International Law and the Environment
- Birnie / Boyle Chapter 3: The Structure of International Environmental Law I (in particular Subchapters 2, 4 and 6)

#### International Environmental Governance (Monday, 5 July, Afternoon)

- P. Birnie, Environmental Protection and Development, in *Melbourne University Law Review* 20, pp.66-100
- UNEP: Issue paper concerning the question of universal membership of the Governing Council / Global Ministerial Environment Forum of the United Nations Environment Programme (Note by the Executive Director to the 8th Special Session of the Governing Council, February 2004), available at: <http://www.unep.org/GC/GCSS-VIII/K0470550.E%20INF11.doc>
- G. Handl, Compliance Control Mechanisms and International Environmental Obligations, in *Tulane Journal of International and Comparative Law*, Vol. 5/1997

#### Overview of Sectoral Topics of International Environmental Law (Tuesday, 6 July, Morning)

- Birnie / Boyle Chapter 7: The Law of the Sea and the Protection of the Marine Environment
- K. Kummer, The Basel Convention: Ten Years On, in *Review of European Community and International Law (RECIEL)* Vol. 7/3 (1998)
- K. Kummer, Prior Informed Consent for Chemicals in International Trade: The 1998 Rotterdam Convention, in *Review of European Community and International Law (RECIEL)*, Vol. 8/3(1999)
- Birnie / Boyle Chapter 11: Conservation of Nature, Ecosystems, and Biodiversity
- Birnie / Boyle Chapter 12: Conservation of Migratory and Land-Based Species and Biodiversity

#### Sectoral Issue 1: International regulation of genetically modified organisms (Tuesday, 6 July, Afternoon through Wednesday, 7 July, Afternoon)

- R. Mackenzie et al., An Explanatory Guide to the Cartagena Protocol on Biosafety, IUCN Environmental Policy and Law Paper No. 46 (2003): Introduction and Commentary on Article 27, available at: <http://iucn.org/themes/law/info04.html>
- UNEP / Secretariat of the Biodiversity Convention, Biosafety and the Environment. Available at: <http://www.biodiv.org/biosafety/default.aspx> (Tab "Latest Publications")

- L. Bergkamp: An International Liability Regime for Biotech Food, in World Food Regulation Review, 2004
- K. Kummer Peiry, International Civil Liability for Environmental Damage: Lessons Learned, in Compilation of Expert Papers concerning Liability and Redress and Living Modified Organisms, CropLife International, 2004

**Sectoral Issue 2: International Regulation of Climate Change (Thursday, 8 July, Morning and Afternoon)**

- Birnie / Boyle Chapter 10: Protecting the Atmosphere and Outer Space
- Secretariat of the UN Framework Convention on Climate Change, Caring for Climate – A Guide to the Climate Change Convention and the Kyoto Protocol (2003), available at: <http://unfccc.int/resource/convkp.html#bg>
- UNEP Finance Initiative, Innovative Financing for Sustainability – CEO Briefing (2004), available at: <http://www.unep.org/themes/climatechange/>

**Multilateral Environmental Agreements and International Trade (Friday, 9 July, Morning)**

- Birnie / Boyle Chapter 14: International Trade and Environmental Protection
- S. Charnovitz, The Role of Trade Measures in Treaties, in A. Fijalkowski / J. Cameron (Eds.), *Trade and the Environment: Bridging the Gap*, Cameron May 1998

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Students should also obtain the following treaty texts:

- Cartagena Protocol on Biosafety to the UN Convention on Biological Diversity (2000), available at: <http://www.biodiv.org/biosafety/protocol.asp>
- Kyoto Protocol to the UN Framework Convention on Climate Change (1997), available at: <http://unfccc.int/>