

University of Baltimore School of Law
Fall 2013

Course: International Environmental Law Seminar

Instructor: Professor Nienke Grossman
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Location: Angelos Law Center 607

Welcome to International Environmental Law! Please familiarize yourself with this syllabus, as it contains important information essential to your success in this course. Your assignment for Week One is located at the top of page 8.

Course Objectives:

The challenges facing our environment are daunting, and they are not limited by national boundaries. In the last forty years, international environmental law has blossomed in response to the challenges of international environmental problems, going from just a handful of treaties to hundreds on issues as varied as ozone depletion, climate change, trans-boundary air and water pollution, and whaling. This course is aimed at developing your knowledge of international environmental law's history, actors, law-making processes, and contemporary debates. After covering the basics, we will discuss several illustrative case studies of environmental problems. The key questions we will explore include:

- What are the challenges and limitations of using law as a tool to solve international environmental problems?
- How effective is international environmental law at solving international environmental problems?

Just as important as acquiring knowledge about a fascinating and increasingly important area of international concern, this course aims to sharpen your skills, including critical reading, negotiation, analytical thinking, scholarly writing, and oral presentation. It is intended to provide you with opportunities to engage in self-directed learning – that is, to determine what *you* want to learn about and how to deepen your knowledge. You will choose a paper topic to explore in-depth, conduct research, and write a substantial research paper. You will also participate in class discussions and a negotiation exercise with a group of students at the University of Idaho, and you will lead a discussion about your paper in class. Successful completion of this course fulfills one of the upper level writing requirements for graduation from UB.

Course Materials:

HUNTER, SALZMAN & ZAEKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, 4th edition (Foundation Press, 2011). Additional readings will be available on the course's website, drawn from on-line sources, or handed out in class.

Course Website:

This course has a TWEN website that includes the syllabus, announcements, assignments, and other class materials. You are required to register for the website. The week's assignments will be routinely posted on the website under "Assignments."

Attendance:

Please be aware that UB's attendance policy states that a student who misses more than two class sessions in a three-credit seminar that meets once per week may be compelled to withdraw from the course. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of WA (withdrawal due to excessive absences) or a grade of WF. The attendance policy is available for your reference at <http://law.ubalt.edu/template.cfm?page=267> .

You are expected to be on time and prepared for class. If you are late to class or unprepared, your participation grade will suffer.

Computers:

You may use a laptop in class for the purposes of note-taking or to participate in course activities only.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web page or call the University's Snow Closing Line at (410) 837-4201. If the University is not closed, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. For your reference, the honor code is available at <http://law.ubalt.edu/template.cfm?page=477>.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Interim Director of Disability Support Services at 410-837-4141 or via email at kschulz@ubalt.edu.

Assessment Tools:

Course grades will be determined on the basis of class participation and written assignments.

Participation:

The level of participation required in this course is different from a “lecture” course. Not only are you expected to do the work assigned and reflect on it, but also you will be required to present your paper in class and participate in class discussions and simulations. Because participation is such an integral part of this course, it may raise or lower your grade by up to one full letter (e.g., B to C, or C to B). Your attendance and timeliness will be factored into your participation grade.

Participation will be graded by the quality of your contributions to class discussion and simulations, including the negotiation with the University of Idaho, and your paper presentation. High quality participation shows that you have done the work assigned and reflected on the issues therein. Low quality participation shows that you have either not done the assignment or spent insufficient time reflecting on it before coming to class.

For your paper presentation, you will be required to discuss your paper for 15 minutes, and your presentation must include some multimedia component (e.g., pictures, short video clip, etc.).

Written Assignments and Deadlines:

This course requires the satisfactory completion and timely submission of the assignments described below. Assignments turned in late will not be accepted and no credit will be given. Assignments must be submitted via the TWEN Drop Box.

Assignment 1: What Question Does Your Paper Seek to Answer?

Due Date: Monday, September 9, 2013, at noon. TWEN Drop Box.

Description: First, state the question your paper seeks to answer. In formulating your question, remember that your paper can only be 25 to 30 pages long. Think about whether your question is too broad or too narrow. Next, explain in a paragraph why this question is relevant, timely and important, making sure to bring up both the factual background and basic legal framework. Then, explain in a sentence or two what your paper’s goal is. Finally, list 5 sources that will assist you in formulating an answer to your question. The sources must include at least one international environmental law treatise or book, one treaty, a law review article, and a Non-Governmental Organization or International Organization website. Below each source, provide a one to two-sentence description of the source and how you think it will be helpful to you. For books or treatises, include the page numbers where you found useful information. Your topic must

be approved by Professor Grossman. You will receive feedback on this assignment by Monday, September 16. [10 points]

Topic selection: We will spend time in class talking about topic selection. I am also happy to discuss topics with you in person. Some possibilities for you to consider include:

- Why isn't a particular treaty regime (e.g., CITES, Hazardous Waste, Climate Change, Biodiversity) working and what can we do to fix it? How can we enhance compliance with a particular treaty regime?
- What should we do about climate change refugees?
- Exploration of pending ICJ cases involving environmental issues – Whaling in the Arctic, Aerial Fumigation Case → What should the Court hold and why?
- The International Centre for the Settlement of Investment Disputes and the environment. What kind of record does it have?
- How well does the World Trade Organization Dispute Settlement body handle cases involving the environment? What should be changed?
- What should we do about the overfishing of Tuna? Whaling?
- A topic involving human rights and the environment → the right to water? The right to food?
- A topic involving trade and the environment
- Responses to loss of biodiversity, habitat, or endangered species

Assignment 2: Preliminary Thesis and Outline

Due Date: Monday, September 30, 2013, at noon. TWEN Drop Box.

Description: State the question your paper seeks to answer and explain whether, how, and why you revised your initial question if you did so. Provide your thesis statement and a paragraph explaining why you believe your thesis is correct. Next, provide an annotated outline of your paper. For each section of your paper, indicate what you intend to do (argue/describe/explain/clarify) in that section of the paper and include sub-points that show how you will go about it. Include some sources you are likely to use. Think of this as half-way between an outline and a rough draft. You will receive feedback on this assignment by October 9, 2012. [15 points]

Assignment 3: First “Final Draft” of Paper

Due Date: Friday, November 1, 2012, at noon. TWEN Drop Box and Hard Copy to Ms. Gloria Joy.

Description: Your paper must be a minimum of 25 and a maximum of 30 pages (double-spaced, 12 point, Times New Roman font) research paper, in law review format, with footnotes (single-spaced), one inch margins. The paper will be graded on the basis of how well you argue your thesis (analysis, type and number of sources in support of your thesis, how well you address counterarguments), originality, organization, and writing (grammar, spelling, bluebooking). You will also be graded on how well you incorporated comments on your previous assignments into this draft. You must include and sign “First Final Draft Coversheet,” located on TWEN. You will receive feedback by Monday, November 11. [30 points]

Assignment 4: Final Draft with Revisions

Due Date: November 26, 2012 at 1 pm. TWEN Drop Box and Hard Copy to Ms. Gloria Joy.

Description: Your paper must be a minimum of 25 and a maximum of 30 pages (double-spaced, 12 point, Times New Roman font) research paper, in law review format, with footnotes (single-spaced). The paper will be graded on the basis of how well you argue your thesis (analysis, type and number of sources in support of your thesis, how well you address counterarguments), originality, organization, and writing (grammar, spelling, bluebooking). You will also be graded on how well you incorporated comments on your first “final draft” into this final paper. [45 points]

INTERNATIONAL ENVIRONMENTAL LAW- LIST OF COURSE TOPICS

The list of topics and assignments below are subject to change to maximize student learning.

Unit One: The Creation and Development of International Environmental Law

Week 1(August 21): Introductions. Course Information. What is International Environmental Law? What is unique about international environmental problems?

Week 2 (August 28): A Brief History of IEL; Release of Problem on Arctic Council and Black Carbon

Week 3 (September 4): IEL Treaties; Enhancing Effectiveness and Compliance

Monday, September 9: Assignment #1 – Topic Due at noon in TWEN Dropbox.

Week 4 (September 11): Customary International Environmental Law; General Principles; Judicial Decisions; Soft Law; Research; Preparing for the Negotiation

Monday, September 16: Turn in Negotiation Position Paper

Unit Two: International Environmental Protection

Subtopic: Protecting the Atmosphere

Week 5 (September 18): Transboundary Air Pollution and Principles Shaping IEL

Week 6 (September 25): Ozone Depletion

From September 25 to October 22, your negotiating team must communicate with at least two other teams in an attempt to reach consensus on some issue in the negotiation.

Assignment #2: Due by September 30 at noon in TWEN Drop Box

Week 7 (October 2): Climate Change Part I: Causes and Impacts

Week 8 (October 9): Climate Change II: Possible Policy Responses and The International Response to Climate Change

Subtopic: Human Rights and the Environment

Week 9 (October 16): Guest Speaker on Human Rights and the Environment; Preparing the Rough Draft

Week 10 (October 23): Arctic Council and Black Carbon Negotiation

Subtopic: Wildlife Conservation

Week 11 (October 30): Negotiation Redux; Whaling

Assignment #3: Due by Monday, November 1 at noon in TWEN Dropbox and Hard Copy to Ms. Gloria Joy in Room 400.

Week 12 (November 6): No Class.

Subtopic: Freshwater Resources

Week 13 (November 13): 3 presentations; Freshwater Resources

Week 14 (November 20): 3 presentations and Wrap-Up: Effectiveness of IEL

Assignment #4: Due by November 26 at 1 pm in TWEN Dropbox and Hard Copy to Ms. Gloria Joy in Room 400.

INTERNATIONAL ENVIRONMENTAL LAW- ASSIGNMENTS

The casebook is referred to as “CB” on this syllabus. Assignments and the order of topics may be changed to enhance student learning.

Unit One: The Creation and Development of International Environmental Law

Week 1(August 21): Introductions. Course Information. What is International Environmental Law? What is unique about international environmental problems?

- CB, 1-33
- On Course Website: Eugene Volokh, “Writing a Student Article,” 48 J. Legal Educ. 247 (1998). Read up to “II. Organizing the Article” (middle of page 253).
- On Course Website: Fill out document titled “Information and Goals Form” and bring to class the first day.
- Find a news article an international environmental law problem. Prepare to describe it in class. What is the problem? What did you find interesting about it?

Week 2 (August 28): A Brief History of IEL; Release of Problem on Arctic Council and Black Carbon

- CB, 135-142
- Stockholm Declaration of the United Nations Conference on the Human Environment, at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503>
- CB, 154-68 (up to line)
- Johannesburg Declaration on Sustainable Development, at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm
- In June 2012, the Rio+20 conference took place. The document that came out of the conference is at <http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf>. Skim this document. What stands out to you about it? How is it different from the previous declarations?

Week 3 (September 4): IEL Treaties; Enhancing Effectiveness and Compliance

- CB, 285-292 (up to “Negotiation”), 299-307
- CB, 361-65
- Each of you will prepare one of the readings below to summarize in class:
 - Strategies for effectiveness – Treaty Design and Legitimacy (386-93)
 - Compliance monitoring and reporting (393-99) -
 - Responding to Noncompliance (deterrence, liability and extraterritorial application) (399-406)
 - Compliance Facilitation (407-412)
 - Dispute Resolution (412-416)
 - Role of Non-state actors (422-29)
- Review the International Convention for the Prevention of Pollution From Ships, 1973, p. 1-16, *available at* <http://library.arcticportal.org/1699/1/marpol.pdf>
 - What’s the treaty’s purpose? What problem is it intended to address?
 - What kind of mechanisms or institutions does it establish to achieve its purpose?
 - What kinds of issues do you think may have come up during the negotiation of the treaty?
 - How is the treaty enforced?
 - What mechanisms does your treaty have built in to keep it up to date?

Monday, September 9: Assignment #1 – Topic Due at noon in TWEN Dropbox.

Week 4 (September 11): Customary International Environmental Law; General Principles; Judicial Decisions; Soft Law; Research; Preparing for the Negotiation

- CB, 307-314 (up to first line); 342-45 (up to Dupuy excerpt); 351 (starting at Bodansky excerpt) – 355 (up to line)
- TWEN: Materials on Preparing for a Negotiation

Monday, September 16: Turn in Negotiation Position Paper

Unit Two: International Environmental Protection

Subtopic: Protecting the Atmosphere

Week 5 (September 18): Transboundary Air Pollution and Principles Shaping IEL

- CB, 434-42 (up to line). Chapter 8 discusses a number of principles shaping international environmental law and policy, including those relating to transboundary disputes such as *Trail Smelter*. You will each choose one of the following principles during Week 4. Be prepared to explain the principle to the group.
 - State Sovereignty
 - Good Neighborliness and the Duty to Cooperate
 - Duties to Provide Prior Notification and to Consult in Good Faith
 - The Principle of Prior Informed Consent
 - Duty to Assess Environmental Impacts
 - Precautionary Principle
 - The Polluter and User Pays Principle
- CB, 504-521 (up to line); 525-28 (up to line)

Week 6 (September 25): Ozone Depletion

- CB, 532-55
- Vienna Convention on the Protection of the Ozone Layer, at http://ozone.unep.org/new_site/en/Treaties/treaty_text.php?treatyID=1
- Montreal Protocol on Substances that Deplete the Ozone Layer, at http://ozone.unep.org/new_site/en/Treaties/treaty_text.php?treatyID=2
- You will each present on one of the following:
 - 566-70 (implementation challenges).
 - 573-77 (non-compliance procedures).
 - 578-82 (Montreal Protocol Multilateral Fund).
 - 582-86 (Montreal Protocol and International Trade)
 - 586-589 (Role of Industry and ICOLP)
 - 589-95 (Montreal Protocol and Climate Protection)
- Getting to Yes, at <http://www.nine-iq.net/library/files/materials/EN%20-%20GETTING%20TO%20YES.pdf>, pages 42-49—Start at “Insist on Using Objective Criteria”
- **Starting this week, your team will communicate with two other Black Carbon negotiating teams in an attempt to reach consensus on some issue in the negotiation. Make sure to turn in via email notes on conversations or email exchanges. You must communicate with two groups by October 22nd.**

Assignment #2: Due by September 30 at noon in TWEN Drop Box

Week 7 (October 2): Climate Change Part I: Causes and Impacts

- CB, 611-32
- On TWEN: Wall Street Journal, “No Need to Panic About Global Warming” (January 26, 2012)
- On TWEN: Wall Street Journal, “Check with Climate Scientists for Views on Climate” (February 1, 2012)
- Be prepared to present for about five minutes to the class on one of the following:
 - What are the impacts of climate change on your home state, county or city? What can be done in response?
 - What is your carbon footprint and what can you do about it? You can use an on-line carbon footprint calculator. What can you do in response?
 - What is the relationship between climate change and the problem your paper addresses? What can be done in response?
 - Do some research into the relationship between climate change and national security. What are we doing about it?

Week 8 (October 9): Climate Change II: Possible Policy Responses and The International Response to Climate Change

- You will each instruct the class about one of the following possible responses to climate change:
 - CB, 640-46: Stabilizing GHG Emissions (economy wide approaches)
 - CB, 646-53: Stabilizing GHG Emissions (sectoral approaches)
 - CB, 653-60: Fast Action on Non-CO2 Climate Forcing Agents and Going Carbon Negative
 - CB, 660-66: Technology Pathways for a Low Carbon Future and Assessing the Costs and Benefits of Inaction
 - CB, 667-72: Adaptation
 - CB, 728-31: Private Initiatives
- CB, 673-99 (legal framework)
- On TWEN: UN Framework Convention on Climate Change
- On TWEN: Kyoto Protocol
- CB, 732-37: Climate Litigation

Subtopic: Human Rights and the Environment

Week 9 (October 16): Guest speaker, Marcos Orellana, Director, Human Rights and Environment Program, Center for International Environmental Law; Preparing the Rough Draft

- On TWEN: Report from UN High Commissioner on Human Rights on Human Rights and the Environment
- On TWEN: UN General Assembly Resolution on Human Rights and the Environment
- On TWEN: John Knox Report on Human Rights and the Environment
- Please bring your bluebook to class

Week 10 (October 23): Arctic Council and Black Carbon Negotiation

- Prepare for negotiation
- Work on your Rough Draft (assignment #3)

Subtopic: Wildlife Conservation

Week 11 (October 30): Negotiation Redux; Whaling

- CB, 1047-61
- Read Application of Australia in Whaling case (Australia v. Japan, NZ intervening), at <http://www.icj-cij.org/docket/files/148/15951.pdf>. Complaints are called “Applications” at the international level. This was a case filed by Australia against Japan in the International Court of Justice. Ignore the pages in French! ☺

Assignment #3: Due by Monday, November 1 at noon in TWEN Dropbox and Hard Copy to Ms. Gloria Joy in Room 400.

Week 12 (November 6): No Class.

Subtopic: Freshwater Resources

Week 13 (November 13):3 presentations; Freshwater Resources

- CB, 873-85; 858-73

Week 14 (November 20):3 presentations and Wrap-Up: Effectiveness of IEL

- CB, 86-101

Assignment #4: Due by November 26 at 1 pm in TWEN Dropbox and Hard Copy to Ms. Gloria Joy in Room 400.