



# INTERNATIONAL ENVIRONMENTAL LAW – 608

<b>Spring 2007</b>	<b>Dr. Wil Burns</b>
<b>MW 1:10-2:25pm</b>	<b>Moot Court Room, Bergin</b>
<b>Office Hours: MW 11-12 or by appt. (Loyola 101)</b>	
<b>Phone: x6139 or 650.281.9126 (mobile)</b>	<b>wburns@scu.edu</b>

## Course Overview

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International environmental law has been perhaps the most dynamic sector of international law over the past 30 years, growing from a mere handful of agreements 30 years ago, focused primarily on pollution of the marine environment and the conservation of migratory birds and marine mammals, to over 500 agreements today. International environmental law regimes have been established to address a multitude of serious environmental issues, including depletion of the ozone layer, climate change, regulation of trade in endangered species and prevention of transboundary air pollution. Additionally, there has been steadily increasing impetus for expanding the purview of international environmental law, including causes of action for transboundary environmental harm and recognition of the rights of future generations to a healthy environment.

This course will seek to provide an overview of the status of international environmental law at the dawn of a new century. In so doing, we will explore all of the following questions:

- Why do States cooperate in developing international environmental norms and regimes, and to what extent?
- What are the sources of international law, and what legal mechanisms or approaches facilitate the development of international environmental agreements and norms?
- What mechanisms do we use to facilitate assessment of compliance and implementation of international environmental agreements and how do we assess treaty effectiveness?

- How effective are some of the primary international environmental agreements in effect today? How can we make these agreements more robust?

## Readings

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The readings for the course will be derived from the following sources, designated in the class schedule with the icons listed below:

- **T** INTERNATIONAL ENVIRONMENTAL LAW & POLICY (Hunter, Salzman & Zaelke, 3d ed. 2007)
- **E** Electronic documents on the ClaraNet course site
- **O** Online Hyperlinks (must be accessed via the online version of the Syllabus on ClaraNet)

## GRADING

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### **Final Examination or Term Paper Option [80% of grade]**

- Students in this class will have the option of either completing a term paper (the assignment is structured to facilitate meeting your writing requirement at SCU) or taking a final examination:
  - Guidelines for preparation of the term paper, including pertinent benchmarks, are included in the “Guidelines” document in the “Term Paper Materials” folder on the ClaraNet site. The “Term Paper Materials” folder also contains a document with a list of potential topics, which is not meant to be exhaustive. It is my goal to help everyone who is interested in developing a paper for publication in either an SCU or non-SCU law journal;
  - The final examination, which will take place on May 16, will consist of three essay questions and will cover theoretical and empirical materials discussed in class and in the readings
    - The examination will be “open book,” meaning that you can bring and utilize any materials you wish to answer the questions.

### **Moot [10% of grade]**

- Each student will participate in one moot round during the semester, as designated on the syllabus schedule;
- Guidelines for participating in the rounds can be found on the ClaraNet site, in the “Mooting Materials” folder. I will also make videotapes available of past international moot court rounds.

## Class Participation [10% of grade]

- I am a firm believer in the value of classroom discussion as a means of clarifying and expanding upon assigned readings and drawing upon the collective insights of class members. Thus, members of the class are expected to come to class prepared to discuss assigned reading materials and to be active participants in class discussions.

## Class Schedule

January 8

### Overview of Course

- Class introductions
- Review of Syllabus

## SECTION 1

January 10

### INTRODUCTION TO INTERNATIONAL LAW

#### Sources of International Law: Treaties

- Readings

- [O Article 38\(1\)\(a\), Statute of the International Court of Justice](#)
- [T Chapter 6, pp. 290-313](#)
- [O Text, Vienna Convention on the Law of Treaties](#)

January 15

January 17

### NO CLASS: MLK Day

#### Sources of International Law: Customary International Law and Other Sources

- Readings

- [O Article 38\(1\)\(b\), Statute of the International Court of Justice](#)
- [T Chapter 6, pp. 313-340](#)
- [E Roberts, \*Traditional and Modern Approaches to Customary International Law: A Reconciliation\*, 95 AMERICAN JOURNAL OF INTERNATIONAL LAW 757-791 \(2001\)](#)

## SECTION 2

### Rights and Obligations of States to Protect the Environment

January 22

#### Sustainable Development, Part 1: UNCED

- Readings

- [T Chapter 6, pp. 353-360](#)
- [T Chapter 4, pp. 173-197](#)
- [O United Nations Conference on Environment and](#)

Development, [Rio Declaration on Environment and Development](#) (1992)

January 24

## Sustainable Development, Part 2: WSSD and Beyond

- Readings
  - **T** Chapter 6, pp. 197-218
  - **O** [Johannesburg Declaration on Sustainable Development](#)

January 29

## Liability for Transboundary Pollution and Environmental Harm

- Readings
  - **E** Weiss, *Invoking State Responsibility in the Twenty-First Century*, 96(4) [American Journal of International Law](#) 798-816 (2002)
  - **E** Gehring & Jachtenfuchs, *Liability for Transboundary Environmental Damage: Towards a General Liability Regime*, 14(1) [European Journal of International Law](#) 92-106 (1993)
  - **O** International Law Commission, [Draft Articles on Prevention of Transboundary Harm from Hazardous Activities](#) (2001)

February 5

## Moot on Transboundary Liability

- Agents
  - Sonia Feldstein (Applicant)
  - Leslie Frost (Respondent)
  - Nathan Hall (Applicant)
  - Paul Camarillo (Respondent)
- Documents (available in "Mooting Materials" folder on Claranet site)
  - **E** Compromis: Asian Haze
  - **E** Rules for Addressing the Court and Serving as Members of the Court
  - Readings from 1/29 class
  - **E** Perrez, *The Relationship between 'Permanent Sovereignty' and the Obligation not to Cause Transboundary Environmental Damage*, 26 [ENVIRONMENTAL LAWYER](#) 1-29 (1996)
  - **E** State Responsibility Texts
  - **E** Trail Smelter Decisions (1938 and 1941)

February 7

## GUEST SPEAKER: Dr. Frank Maes, Department of Public International Law, University of Ghent

- Topic: TBA

- Readings: TBA

### SECTION 3 Implementation, Compliance, and Effectiveness Issues in International Agreements

February 12

The Role of Implementation, Compliance and Effectiveness Mechanisms and Governance in Multilateral Environmental Agreements and Domestic Law

- Readings
  - T Chapter 7, pp. 366-388
  - E Crossen, *Multilateral Environmental Agreements and the Compliance Continuum*, 16 GEORGETOWN INTERNATIONAL ENVIRONMENTAL LAW REVIEW 1-28 (2004)

### SECTION 4 Managing Risks to the Environment

February 20

The Role of the Precautionary and Polluter Pays Principles in Multilateral Environmental Agreements

- Readings
  - T Chapter 8, pp. 510-515
  - E Vanderzwaag, *The Precautionary Principle and Marine Environmental Protection: Slippery Shores, Rough Seas and Rising Normative Tides*, 33 *Ocean Development & International Law* 165-188 (2002)
  - E McGuire & Ellis, *Uncertainty, Precaution and Global Interdependence: Implications of the Precautionary Principle for State and Non-State Actors*, Proceedings of the 2001 Berlin Conference on the Human Dimensions of Global Environmental Change 256-265 (2002)
  - T Chapter 8, pp. 516-521

### SECTION 5 Special Topic Focus: Biodiversity/Species Conservation

February 26

The Convention on Biological Diversity

- Readings
  - O [Text of the Convention on Biological Diversity](#)
  - T Chapter 15, pp. 1021-1045

February 28

Paul Kibel, Policy West & Golden Gate University Law School

- **Topic: *Trade Regimes for Fishery Conservation: CITES, the WTO and the Law of the Sea***

- **Readings**

- **E** Swan, *Port State Measures to Combat IUU Fishing: International and Regional Developments*, SUSTAINABLE DEVELOPMENT LAW & POLICY 38-43 (Fall 2006)
- **E** Kibel, *Alone at Sea: Chile's Presencial Ocean Policy*, 12(1) JOURNAL OF ENVIRONMENTAL LAW 45-63 (2000)
- **E** Fordham & Dolan, *A Case Study in International Shark Conservation: the Convention on International Trade in Endangered Species and the Spiny Dogfish*, 34 GOLDEN GATE LAW REVIEW 531-571 (2004)

March 5

**NO CLASS: SPRING BREAK**

March 7

**NO CLASS: SPRING BREAK**

March 13 (Tuesday –  
Administrative Monday)

**The Convention on International Trade in Endangered Species**

- **Readings**

- **O** [Text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora](#)
- **T** Chapter 13, pp. 1095-1115
- **E** McOmber, *Problems in Enforcement of the Convention on International Trade in Endangered Species*, 27 BROOKLYN INTERNATIONAL LAW JOURNAL 1-15 (2002)

March 14

**The International Convention for the Regulation of Whaling**

- **Readings**

- **O** [Text of the International Convention for the Regulation of Whaling](#)
- **E** Burns & Wandesforde-Smith, *The International Whaling Commission and the Future of Cetaceans in a Changing World*, 11(2) REVIEW OF EUROPEAN COMMUNITY AND INTERNATIONAL ENVIRONMENTAL LAW 199-210 (2002)
- **E** Aron, Burke, & Freeman, *The Whaling Issue*, 24 MARINE POLICY 179-191 (2000)

**SECTION 6**

**Special Topic Focus: Protecting the Atmosphere**

March 19

**International Responses to Climate Change: The United Nations Framework Convention on Climate Change**

- **Readings**

- **T** Chapter 9, pp. 633-649 ; 667-679

- [O Text of the United Nations Framework Convention on Climate Change](#)

March 21

## International Responses to Climate Change: The Kyoto Protocol and Beyond

- Readings
  - [T Chapter 9, pp. 679-700](#)
  - [O Text of the Kyoto Protocol](#)

March 26

## International Responses to Depletion of the Ozone Layer

- Readings
  - [O Text of the Vienna Convention on the Protection of the Ozone Layer](#)
  - [O Text of the Montreal Protocol on Substances that Deplete the Ozone Layer](#)
  - [T Chapter 10, pp. 576-598](#)

## SECTION 7

### Special Topic Focus: Trade in Hazardous Waste

March 28

#### Transboundary Movement of Hazardous Wastes

- Readings
  - [T Ch. 14, pp. 946-972](#)
  - [O Text of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal](#)

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### Special Topic Focus: Protecting the Atmosphere

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  - [O Text of the United Nations Framework Convention on Climate Change](#)

March 21

#### International Responses to Climate Change: The Kyoto Protocol and Beyond

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  - [T Chapter 10, pp. 576-598](#)

## SECTION 8

## Special Topic Focus: The Nexus of International Environmental Law & Other Legal Regimes

April 2

### The Nexus of Human Rights and Protection of the Environment

- Readings
  - [T Chapter 18, pp. 1365-1389](#)
  - [O 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](#)

April 4

### The World Trade Organization and Multilateral Environmental Agreements

- Readings
  - [T Chapter 17, pp. 1255-1291](#)

April 9

### Moot on Nexus of Trade and Environment

- Agents
  - Deanne Cevalco (Applicant)
  - Maria Garzaro (Respondent)
  - Jason Dawson (Applicant)
  - Jennifer Klock (Respondent)
- Documents (electronic documents available in the "Mooting Materials" folder on the Claranet site)
  - [E Compromis: Trade and Environment - GMO Dispute](#)
  - [E Rules for Addressing the WTO Dispute Resolution Panel and Serving as Members of the Panel](#)
  - [O Agreement Establishing the World Trade Organization](#)
  - [O Agreement on the Application of Sanitary and Phytosanitary Measures](#)
  - [O Cartagena Protocol on Biosafety](#)
  - [E Zarilli, International Trade in GMOs: Legal Frameworks and Developing Country Concerns, UNCTAD 1-19 \(2004\)](#)
  - [E Vallely, Tension between the Cartagena Protocol and the WTO: The Significance of Recent WTO Developments](#)

April 11

## International Corporate Standards

- Readings
  - T Chapter 20, pp. 1482-1508

April 16

## Environmental Protection and International Finance

- Readings
  - T Chapter 17, 1550-1582

April 18

## Extraterritorial Application of Domestic Environmental Law

- Readings
  - T Chapter 21, pp. 1509-1535

## Moot on Extraterritorial Application of U.S. Environmental Law

- Agents
  - Kelly Monroe (Applicant)
  - Caleb Hayashi (Respondent)
- Documents: TBA

April 23

## Class Summary and Term Paper Presentations

May 16

**FINAL EXAMINATION: 8:30-10:30am**