



**SOUTH ASIAN UNIVERSITY**

**Faculty of Legal Studies**

**LLM**

**2024**

**Winter Semester (Second Semester)**

**Course Information**

**Part I**

Course Title:	<b>International Environmental Law</b>
Course Code:	LW037
Course instructor:	Dr. Stellina Jolly
Course Duration:	One Semester
Credit Units:	4
Medium of Instruction:	English
Prerequisites:	Nil
Precursors:	Nil
Equivalent Courses:	N/A

**Part 11 Course objectives:**

The overall objective of this course is to provide a basic understanding of the key features and developments of environmental law from an international and South Asian perspective.

By the end of the course, students should have knowledge of:

- International rule-making through multilateral environmental agreements, including compliance and enforcement
- The complexities surrounding environmental principles
- Core environmental issues and legal and institutional responses

- Analyze the South Asian Perspective.

**Part III -Course Evaluation Pattern** The evaluation is based on mid-term and end-term examinations (40 marks each). The evaluation also includes a research paper writing effort examined for 20 marks.

**Part IV – Structured course programme with units:** 12 units, arranged into 12 weeks of teaching and three weeks of assessment

### **Week 1 Introduction to International Environmental Law**

The module cover topics like origin, history, and development of International Environmental Law. Stockholm Declaration of the United Nations Conference on the Human Environment, 1972, World Charter for Nature, 1982, and Rio Declaration on Environment and Development, Johannesburg Declaration on Sustainable Development, Rio 2012, and Sustainable Development Goals will form the basis for discussion.

#### **Core Reading**

1. Daniel Bodansky, *The Art and Craft of International Environmental Law*, (Harvard University Press 2010) Chapter 2.
2. Adil Najam “Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement,” (2005) 5 *International Environmental Agreements* 303–321.
3. Usha Natarajan, ‘Third world Approaches to International Law (TWAAIL) and the Environment’ in *Research Methods in Environmental Law*, Andreas Philippopoulos-Mihalopoulos and Victoria Brooks (eds) Edward Elgar 2017, 207-236.
4. Parvez Hassan, ‘Role of the South in the Development of International Environmental Law’ *Chinese Journal of Environmental Law* 1 (2017) 133–157.

#### **Optional Reading**

1. Carman Gonzalez, “Bridging the North-South Divide: International Environmental Law in the Anthropocene,” (2015) 32(2) *Pace Environmental Law Review*, 407-433

#### **Conventions and Declarations**

Stockholm Declaration of the United Nations Conference on the Human Environment 1972, <http://www.unep.org/Documents/Default.asp? DocumentID=97>)

The Rio Declaration on Environment and Development, 1992, <http://www.unep.org/documents/default.asp?documentid=78>)

Johannesburg Declaration on Sustainable Development, 2002, <http://www.un-documents.net/jburgdec.htm>

Sustainable Development Goals <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html>

### **Week 2 and 3 International Environmental Law-Making and Principles**

The module deals with the law-making process and the role of international institutions and actors involved in International Environment Law. Some basic environmental principles and concepts developed by the international legal system like Prevention, Sustainable development, Polluters liability, Precautionary principles, Inter-generational equity will be discussed. In the late part of the syllabus, an analysis will take place regarding how ICJ has used these principles.

#### **Core Reading**

1. Daniel Bodansky, *The Art and Craft of International Environmental Law*, (Harvard University Press 2010), Chapter 5 &9.
2. Pierre-Marie Dupuy, Ginevra Le Moli and Jorge E. Viñuales, (2021) ‘Customary International Law and the Environment in *The Oxford Handbook of International Environmental Law* (2 ed.) Lavanya Rajamani and Jacqueline Peel (eds) (Oxford University Press 2021) 385-401.
3. Robert Esposito, “The ICJ and the Future of Transboundary Harm Disputes: A Preliminary Analysis of the Case Concerning Aerial Herbicide Spraying (Ecuador v. Colombia),” (2010) *Pace International Law Review Online Companion*, 1-22.
4. Daniel Bodansky, ‘The Role and Limits of the International Court of Justice in International Environmental Law’ in *The Cambridge Companion to the International Court of Justice*, Carlos Esposito and Kate Partlett, (eds) (Cambridge University Press, 2020)

#### **Optional Reading**

1. Lorraine Elliot, “Expanding the Mandate of the UN Security Council to Account for Environmental Issues” (2002) <http://archive.unu.edu/inter-linkages/docs/IEG/Elliot.pdf>
2. Bharat H. Desai, *UNEP: A Global Environmental Authority?* (2006) 36 (3-4) *Environmental Policy and Law* 136- 157.
3. Afshin A-Khavari, Donald Rothwe, "The ICJ and the Danube Dam case: A Missed Opportunity for International Environmental Law," (1998) 22(3) *Melbourne University Law Review*, 507-536.
4. Sara L. Seck, "Transnational Business and Environmental Harm: A TWAIL Analysis of Home State Obligations," (2011) 3(1) *Trade Law & Development* 164-202.

#### **Cases**

Pulp Mills on the River Uruguay (Arg. v. Uru.), 2010 ICJ (April 20).  
Gabčikovo-Nagymaros Project, Hungary v Slovakia, Judgment, Merits, [1997] ICJ Rep 7,  
Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)

#### **Text Book**

1. Elli Louka, (2006) *International Environmental Law, Fairness Effectiveness and world order*, (Cambridge University Press) Chapter 1P, 49-57.
2. Bharat H. Desai, (2011) *Multilateral Environmental Agreements: Legal Status of the Secretariats*. (New York, Cambridge University Press).

### **Video**

[http://legal.un.org/avl/ls/Weiss\\_EL\\_video\\_1.html](http://legal.un.org/avl/ls/Weiss_EL_video_1.html)

### **Week 4 Compliance and Governance Techniques and Procedures in International Environmental Law**

The module deals with techniques of implementation in environmental law. The module will focus on environmental impact assessment, regulatory measures, and public participation.

### **Core Reading**

1. John H Knox, "The myth and Reality of Trans Boundary Environmental Impact Assessment," (2002) 96 *American Journal of International Law*, 291-319.
2. Yoshifumi Tanaka, *Costa Rica v. Nicaragua and Nicaragua v. Costa Rica: Some Reflections on the Obligation to Conduct an Environmental Impact Assessment* 2017 26(1) *Review of European Comparative and International Environmental Law*, 91-97.
3. Leslie-Anne Duvic-Paoli, "The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence," (2012) 23 (1) *Yearbook of International Environmental Law*, 80–105.

### **Optional Reading**

1. Daniel Bodansky, (2010) *The Art and Craft of International Environmental Law*, (Harvard University Press) Chapter 10 &11.

### **Video**

[http://legal.un.org/avl/ls/Bekhechi\\_EL.html](http://legal.un.org/avl/ls/Bekhechi_EL.html)

### **Week 5 State Liability in Environmental Matters**

The module discusses state liability for environmental harm and the viability of a liability regime.

### **Core Reading**

1. Christina Voigt, *International Environmental Responsibility and Liability* (February 23, 2021). Available at <https://ssrn.com/abstract=3791419> or <http://dx.doi.org/10.2139/ssrn.3791419>.
2. Philippe Sands. Jaqueline Peel et al. 'Liability for Environmental Damage' in *Principles of International Environmental Law* (Cambridge University Press 2012) 700-772.
3. PS Rao, "International Liability for Transboundary Harm," (2004) 34 *Environmental Policy and Law* 224-231.

### **Optional Reading**

1. Giinther Handl, "International Accountability for Transboundary Environmental Harm Revisited: What Role for "State Liability"?" (2007) 37 *Environmental Policy and Law* 117-125

### **Books**

1. Barboza, Julio, (2011) *The Environment, Risk and Liability in International Law* (Leiden, Martinus Nijhoff).
2. Philippe Sands (2003) *Principles of International Environmental Law*, (2nd Edn., Cambridge University Press) Chapter 18.

### **Conventions and Declarations**

1. Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, 2001
2. Draft Principles on the Allocation of Loss in the case of Transboundary Harm Arising out of Hazardous Activities, 2006

### **Video**

[http://legal.un.org/avl/ls/Rao\\_EL.html](http://legal.un.org/avl/ls/Rao_EL.html)

### **Week 6 and 7 Law of Climate Change**

The module will cover an overview of international responses to Climate Change consisting of the United Nations Framework Convention on Climate Change, The Kyoto Protocol, Paris Agreement. The discussion will also focus on the proceedings and decisions of various COPs and challenges. The role of SAARC in climate change negotiations will be undertaken.

### **Core Reading**

1. Daniel Bodansky, Jutta Brunnée, and Lavanya Rajamani,(2017) *International Climate Change Law*,( Oxford Univeristy Press)
2. Maika Meguro, Litigating Climate Change through International Law: Obligations Strategy and Rights Strategy, Leiden 2020 33(4) *Journal of International Law* 933-951.
3. Lavanya Rajamani Daniel Bodansky. 'The Paris Rulebook: Balancing International Prescriptiveness With National Discretion' (2019) 68(4) *International and Comparative Law Quarterly* 1023-1040.
4. Lavanya Rajmani,'Reflections on a Decade of Change in international Environmental Law' (2021) 10 (1) *Cambridge International Law Journal* , 6-31.
5. Florentina Simlinger, Benoit Mayer (2019) 'Legal Responses to Climate Change Induced Loss and Damage' in *Loss and Damage from Climate Change. Climate Risk Management, Policy and Governance* Mechler R., Bouwer L., Shinko T., Surminski S., Linnerooth-Bayer J. (eds) Springer 2019).

### **Optional Reading**

1. Friedrich Solatu, (2009) *Fairness in International Climate Change Law and Policy* (Cambridge, University Press) 50-122.

### **Conventions**

1. United Nations Framework Convention on Climate Change. Bonn: UNFCCC Secretariat, available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>

2. Kyoto Protocol to the UN Framework Convention on Climate Change, available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf>
3. Paris Agreement 2015.

### **Video**

[http://legal.un.org/avl/ls/Murase\\_EL.html](http://legal.un.org/avl/ls/Murase_EL.html)

Week 8 Mid-term examination

### **Week 9&10 Law of Biodiversity Protection**

The module will cover an overview of the main provisions, and loopholes under the Convention on Biological Diversity, Access to Genetic Resources and Benefit-Sharing under Nagoya Protocol, South Asian Initiative including Biodiversity Clearing Mechanism and legal initiative, Major, North-South Disagreements on biodiversity protection.

### **Core Reading**

1. Elisa Morgera Elsa Tsioumani, (2010) Yesterday, Today, and Tomorrow: Looking Afresh at the Convention on Biological Diversity, 21(1) *Yearbook of International Environmental Law* 3-40.
2. Charles R.McManis, Burton Ong, *Routledge Handbook of Biodiversity and the Law* (Routledge 2017).
3. Elisa Morgera, Matthias Buck, Elsa Tsioumani, *The 2010 Nagoya Protocol on Access and Benefit-sharing in Perspective: Implications for International Law and Implementation Challenges*, (Martinus Nijhoff Publishers 2012).

### **Convention**

Convention on Biological Diversity <http://www.biodiv.org/convention/articles.asp>,  
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to The Convention on Biological Diversity.  
<https://www.cbd.int/abs/text/default.shtml>

### **Week 11 Law of Fresh Water Resources**

The module will deal with the development of international watercourses and their key provisions. Particular emphasis will be given to the various water-sharing arrangements in South Asia, focusing on Kishanganga arbitration.

### **Core Reading**

1. Stephen C. McCaffrey (2007) *The Law of International Watercourse*, (Second ed Oxford University Press).

### **Optional Reading**

1. Jasmine Moussa, "Implications of the Indus Water Kishenganga Arbitration for the international Law of Watercourses and the Environment" 2015) 64(3) *The International and Comparative Law Quarterly*, 697-715.

2. Balraj Sidhu, "The Kishenganga Arbitration, Transboundary Water Resources Governance, (2013) 43(3) *Environmental Policy and Law*, 147-161.

### **Website**

<http://www.unwatercoursesconvention.org/the-convention/>

### **Video**

[http://legal.un.org/avl/ls/McCaffrey\\_IW.html](http://legal.un.org/avl/ls/McCaffrey_IW.html)

### **Week 12 Efficiency Issues and Dispute Settlement under Environmental Law**

The module considers the dispute settlement and effectiveness of international environmental law in detail.

### **Core Reading**

1. Louis J. Kotzé , Reimagining The Human Environment Relationship (UNEP 2022). Bharat Desai, *International Environmental Governance, towards UNEPO*, (Brill 2014).
2. Bharat Desai, "Mapping the Future of International Environmental Governance" (2003) Ulfstein / Yearbook of International Environmental Law, 13, 43.
3. Daniel Bodansky, *The Art and Craft of International Environmental Law*, (Harvard University Press 2010) Chapter 11&12

### **Optional Reading**

1. Adil Najam, "The Case Against a new International Environmental Organization," (2003) 9(3) *Global Governance*, 367-384
2. Alexander Zahar (2014), 'International Environmental Institutions', in *Oxford Bibliographies in International Law*, T. Carty, ed., (New York: Oxford University Press 2014)

Besides this, students are instructed to go through various conventions and protocols mentioned in the syllabus. This is because international environmental law is overwhelmingly a treaty law and is readily available on the internet.