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International Environmental Law and World Order

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Book Reviews

International Environmental Law and World Order

REVIEWED BY GEORGE W. PRING* AND BRIAN S.W. TOBIAS**

GURUSWAMY, LAKSHMAN D., PALMER, SIR GEOFFREY W.R. & WESTON, BURNS H., INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER: A PROBLEM-ORIENTED COURSEBOOK; West Publishing Co., St. Paul, Minn. (1994); (\$52.00); ISBN 0-314-03689-X; 1199 pp. (hardcover).

SUPPLEMENT OF BASIC DOCUMENTS; West Publishing Co., St. Paul, Minn. (1994); (\$30.00); ISBN 0-314-04067-6; 1308 pp. (pbk).

TEACHER'S MANUAL; West Publishing Co., St. Paul, Minn. (1994); (no charge to faculty); ISBN 0-314-04736-0; 242 pp. (pbk).

And gladly wolde he lerne, and gladly teche.

Chaucer, General Prologue, The Canterbury Tales

International Environmental Law and World Order: A Problem-Oriented Coursebook is a unique approach to teaching this exciting subject. To review it, we utilized the unique approach of having a student and a professor write the review together, after using the text in class this spring at the University of Denver College of Law. To our amazement, given our very different perspectives, we agree. Like Chaucer's clerk, we found ourselves glad to learn and glad to teach with this stimulating book.

The field of International Environmental Law, as the book's authors indicate, "has come of age,"¹ and this is neither the first nor last such

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1. LAKSHMAN D. GURUSWAMY, GEOFFREY W. R. PALMER & BURNS H. WESTON, INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER: A PROBLEM-ORIENTED COURSEBOOK ix. (1994) [hereinafter INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER]. They are scarcely the first to make this observation, see e.g., George W. Pring & David Joeris, *Book Review: Various International Environmental Law Collections*, 4 COLO. J. OF INT'L ENVTL L. & POL'Y 422 (1993).

textbook we will see.² This book stands out, however, and will continue to do so, because it is one of the few law texts to use the "problem-method" of requiring students to learn the law by applying it to solve realistic fact situations, rather than the more traditional "casebook" approach.³ It is also noteworthy because it is accompanied by the *Basic Documents Supplement*, containing nearly 150 key international environmental treaties, declarations, resolutions, cases, etc., to be used in solving the problems, as well as an outstanding behind-the-scenes *Teacher's Manual*.

Each of the three authors brings his unique expertise, teaching approach, and personal views. Professor Guruswamy, a leading authority in environmental law, contributes his idea of an "integrated approach" to solving environmental problems, and his influence can be seen throughout, in his excerpted articles, the imaginative problems, and the extensive notes.⁴ Complementing and contrasting with this is Professor Palmer, a leading proponent of "soft law" (as opposed to "hard" command/control) solutions to current international problems, who ensures this important approach receives emphasis.⁵ Finally, Professor Weston brings his vast expertise on international law to the book; as the lead author of an earlier "problem-oriented coursebook" on international law,⁶ Professor Weston contributes not only the pedagogic approach but also his own ideas on interdisciplinary approaches to global problems.⁷

The book's Preface spells out the authors' fundamental philosophies. They view most of today's major environmental problems as outstripping

2. WILLIAM WEINER, DAVID FAVRE & SUHDIR CHOPRA, *INTERNATIONAL ENVIRONMENTAL LAW* (1994) is a more traditional textbook combining articles, notes, and international documents in one looseleaf volume. The 1994 edition replaces an earlier one, both published by Lupus Publications Ltd./Detroit College of Law Press.

Professor Edith Brown Weiss at Georgetown and colleagues Daniel B. Magraw and Paul C. Szasz are preparing another textbook for publication by Little Brown in 1996; Professor Pring acknowledges with gratitude the use of a draft of this text in prior International Environmental Law classes, with good results.

3. As the authors explain in the *Teacher's Manual* (at 1), they purposefully use the term "Coursebook" because they feel the "content and procedure of International Law in general, and International Environmental Law in particular, are not adequately mirrored in a 'Casebook.'"

4. See, e.g., Lakshman D. Guruswamy, *Integrated Environmental Control: The Expanding Matrix*, 22 ENVTL. L. 77 (1992); Lakshman D. Guruswamy, *Integrating Thoughtways: Re-Opening of the Environmental Mind?*, 1989 WIS. L. REV. 463.

5. See, e.g., Geoffrey Palmer, *New Ways to Make International Environmental Law*, 86 AM. J. INT'L L. 259 (1992).

6. BURNS H. WESTON, ET AL., *INTERNATIONAL LAW AND WORLD ORDER: A PROBLEM-ORIENTED COURSEBOOK* (2d ed. 1991). The authors acknowledge their debt to this "predecessor pioneering effort" in this book. *INTERNATIONAL LAW AND WORLD ORDER*, *supra* note 1, at x.

7. See, e.g., ALTERNATIVE SECURITY: *LIVING WITHOUT NUCLEAR DETERRENCE* (Burns H. Weston, ed. 1990); Burns H. Weston, *The Gulf Crisis in International and Foreign Relations Law, Continued: Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 AM. J. INT'L L. 516 (1991); Burns H. Weston, *The Charter of Economic Rights and Duties of States and the Deprivation of Foreign-Owned Wealth*, 75 AM. J. INT'L L. 437 (1981).

national boundaries, a "spurious anachronism,"⁸ and the capacity of the traditional international legal order, premised as it is on "sovereignty."⁹ They and their book are unashamedly environmentalist and internationalist. In addition, the authors view much of traditional law teaching as wrong-headed:

We unapologetically identify ourselves in general with those who rank issue-spotting, problem-solving, and synthesis as more important in the legal learning experience than the assimilation and comprehension of raw, disembodied knowledge.¹⁰

While this pedagogic approach may seem improper to some,¹¹ we found it refreshing and effective. For students, this may be the first time in law school that they have been asked actually to use the various laws, treaties, customs, general principles, authors, and processes they have studied. For teachers, this may be the closest they have come to simulating actual law practice in the classroom.

The authors envision *International Environmental Law and World Order* as useable in four different settings: first, in a class of students with no prior knowledge of international law; second, with students who have had a prior course in public international law; third, as a basic introductory course in international law; and fourth, as a specialized seminar for advanced international law students. We would not go so far, but three out of four is not bad. Clearly, in the second and fourth settings, where students have some prior knowledge of international law (true of the other half of our Spring 1995 law class), the book succeeds very well. Surprisingly, we can vouch that it also works in the first setting, for students who have not had basic international law (true of the other half of our law class and a graduate class of environmental engineers).¹² However, we feel the third setting, using it for an introductory course in "generic" international law, is overly optimistic; this specialized book would come up short in a number of key areas, specifically the use of force, citizenship, national jurisdiction, human rights, and the laws of war, to name a few, and there are better-focused competitors, not least co-author Weston's own pioneering international law text.¹³

8. INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER, *supra* note 1, at ix.

9. *Id.*

10. *Id.* at x.

11. William A. Mogel, *Book Review: International Environmental Law and World Order*, 16 ENERGY L. J. 197, 198 (1995). The reviewer is a Washington D.C. attorney specializing in Energy and International Law and admits to "the standards of one who attended law school thirty years ago." *Id.*

12. Amazingly, the book also proved highly successful in a non-law school setting: as an elective in the Environmental Science and Engineering Department at Colorado School of Mines taught by Professor Pring in Summer 1995. Both the law and engineering students had a prior course in U.S. environmental law; while the engineers clearly benefitted from some prior law course exposure, the law students who had not had an intro environmental law course did as well overall with this book as those who had.

13. See WESTON ET AL., *supra* note 6.

The coursebook is divided into three parts. Part I (320 pp.) combines a basic introduction to international law (three chapters) with an introduction to environmental issues (one chapter). Part II (670 pp.), which constitutes half of the book, sets out the 18 problems that are the heart of the course. And Part III (160 pp.) looks to future issues.

Rather than rely solely on theoretical analyses, this book begins with a gripping true story: the ill-fated saga of the *Rainbow Warrior*. In 1985, while Greenpeace and other environmental organizations were protesting France's nuclear testing in the South Pacific, French government agents bombed Greenpeace's boat, *Rainbow Warrior*, while it was moored in a New Zealand harbor, sinking it and killing one of its crew. The authors use this story of state-sponsored terrorism as a recurrent theme to give substance to the lessons of the early chapters, and events in 1995 give it all the more relevance.

Chapter 1, "The Concept of International Law," surveys the basics of the international law system, encouraging both new and experienced students to explore the jurisprudential justifications for treating it as "law." Here, *L'affaire Rainbow Warrior* proves its worth. For inexperienced students, it serves as an exciting skeleton on which to build an anatomy of international law and test its strengths and weaknesses. More experienced students, while finding the chapter materials quite familiar, will discover *Rainbow Warrior* gives them a fresh challenge and perspective.

Chapter 2, "The Sources of International Law," presents this essential topic in the typical fashion, which is surprising given the authors' liberal views on "hard" vs. "soft" law. It uses Article 38 of the Statute of the International Court of Justice as its framework, with the usual result that the article's internal sequence gives hard law (treaties, custom) top billing and most of the emphasis. A student could easily draw the impression that only hard law is "real," and that soft law (conference declarations, U.N. resolutions, codifications of international law bodies, etc.) has no legal effect, a conclusion completely at odds with the authors' emphasis throughout the later problems. A little more *Rainbow Warrior* might help here.

Chapter 3, "The Application of International Law," reviews the many ways in which international law is applied or enforced. *Rainbow Warrior* resurfaces, with actual documents from U.N. Secretary-General Perez de Cuellar's conciliation efforts between New Zealand and France. This stage of the case is not entirely successful here, focused as it is on the unusual and non-environmental issue of imprisonment of spies. Sophisticated students will crave "more environmental" examples of international law application, and those with little or no international law background may draw the misleading conclusion that international law is not all that different from domestic law, with fixed codes, procedures, and penalties, a misconception that will create problems when it comes time to analyze "soft law" like the Stockholm and Rio Declarations.

Chapter 4, "The Global Environmental Problématique [Predica-

ment],” tries to bring students up to speed on both the scientific reality and the economic, political, and philosophic aspects of environmentalism, a difficult amalgam that is not entirely successful here; the materials do not present themselves with cohesion and are difficult to use in class discussions; in all fairness, this is a problem in any environmental law coursebook. The science sections are shallow, the economics materials, better, and the philosophy selections, including “Ethics,” “Deep Ecology,” and “Ecofeminism,” make for great class bull-sessions. Oddly, “sustainable development” and the advances made at the 1992 Rio Earth Summit are jammed in almost as an afterthought. One way to overcome this and give cohesion to the class discussions is to assign the Rio Declaration¹⁴ first and discuss each reading in conjunction with the appropriate one (or more) of Rio’s 27 “Principles.”

Part II, the “problems” portion of the book, begins with Chapter 5, “International Environmental Wrongs,” a fine introduction to state responsibility and liability, material vital to the students’ success in debating the problems to come. For an advanced class of students with a background in both international and environmental law, Chapter 5 would be an excellent place to begin the course and plunge straightaway into the problems.

Chapters 6-11 present the rich collection of 18 different international environmental problems, not all, of course, meant to be covered in a single semester. Conveniently, the authors arrange them in taxonomic groups, allowing the professor or the students to select problems from each category, including Antarctica (problems on petroleum exploration, nuclear proliferation, or seal hunting), the atmosphere (acid rain, stratospheric ozone, nuclear accident), the hydrosphere (land-based ocean pollution, tanker spill, groundwater contamination), the lithosphere (hazwaste dumping, toxic disposal leakage, desertification), the biosphere (driftnet fishing, elephant poaching, rainforest destruction), and special issues (trade vs. environment, population control, environmental warfare). Not to be missed is Problem 11-1, the free-trade vs. environment problem, easily *the* international environmental law issue of the 1990s.¹⁵

For each problem, the coursebook supplies facts, copious articles and notes, detailed references to the applicable international law documents in the *Basic Documents Supplement*, and recommended written and oral assignments. Each problem is expected to take one week (approximately 3 hours of class time), which allows for both conventional lecture-discussion and student debate. It is easy to do at least five in a typical 14-week

14. The Rio Declaration on Environment and Development of the United Nations Conference on Environment and Development (UNCED) at Rio de Janeiro, June 14, 1992, reprinted in *INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER*, *supra* note 1, at 317; *BASIC DOCUMENTS SUPPLEMENT*, at 177.

15. See George W. Pring & Geoffrey Sweitzer, *Book Review: Freer Trade, Protected Environment: Balancing Trade Liberalization and Environmental Interests*, 23 *DEN. J. OF INT’L L. & POL’Y* 227 (1994).

semester. The authors' recommended approach is to have all students prepare "issue outlines" before class, then assign two students to argue each country's position, and two or more students to preside over the oral argument as the International Court of Justice or as the Director of UNEP, President of the U.S., etc. Students "carry" these classes and, after the initial trepidation, prepare in depth, engage with gusto, and rate it one of the best experiences in law school.

Part III we both found the most challenging, rewarding, and fun part of the course. In Chapter 12, students are asked to represent states and negotiate a protocol/amendment to the 1992 U.N. Framework Convention on Climate Change.¹⁶ The students' actual public conferences, secret side-meetings, and spirited negotiations tie all the preceding chapters together and demonstrate how difficult it is to negotiate an effective multilateral treaty on the environment. Students are faced with the problems and differing aspirations of developed vs. developing states, centrally planned vs. market economies, industrialized vs. agrarian infrastructures, states with abundant natural resources vs. those with none, countries able to afford environmental priorities vs. those whose priorities are poverty, famine, and overpopulation. Plan on two weeks to get the most out of this incredibly rich experience. We cannibalized a second week by skipping the last chapter, "The Future of International Environmental Law," which may come off a bit esoteric and melodramatic to students.

Is this "problem-oriented" approach an overwhelming amount of work for the professor? It could be, save for the first-rate *Teacher's Manual* the authors have prepared. This hefty, 242-page guide not only has a chapter-by-chapter explanation of the authors' recommended teaching goals and methodology but also provides detailed, annotated outlines for each of the 18 problems and "confidential negotiating instructions" for the climate change negotiations. The marvelous resources in this manual, in which the authors have done 90 percent of the work in advance, are alone a reason to select this coursebook.¹⁷

The *Basic Documents Supplement* is also worthy of note. This vol-

16. The authors give credit to Professor David A. Wirth of Washington and Lee University School of Law for creation of the climate change exercise. INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER, *supra* note 1, at 993, note a.

17. The manual is not without its flaws, forgivable in such an ambitious first effort. Professors will want to go over the problems/outlines carefully to check citations for inaccuracies (some wrong article numbers, misquotes, better cites, etc.), to restructure some of the outlines (considerable redundancy, some misordering of arguments, occasionally having the wrong party arguing first, etc.), and to assure that the problem in the coursebook is complete, accurate, and clear. (To pick one example, Problem 11-1 states that key animals are on the CITES annexes, when they are not, which causes considerable student confusion.)

To get students used to the issue-outline format, we provided in advance "skeletons" of the manual outlines, giving the issues (I, II, etc.), pro-con headings (A., B.), and some of the subarguments (1. "Violation of Article 38 of the Vienna Convention on Treaties (explain)," etc.). By the second or third outline, the "skeletons" can shrink to just the issues and pro-con headings.

ume, organized to track the coursebook, reproduces all or parts of nearly 150 international law documents (treaties, cases, declarations, resolutions, conference reports, international law codifications, etc.) essential to the 18 problems. While this is only a fraction of the near 1,000 international environmental law documents worth noting today, it is superior to all other compendiums because it is the only one published since 1992 and containing the crucial documents of the Rio Earth Summit.¹⁸ The coursebook directs the readers to the precise documents needed in each problem.

A problem with this supplement is that a number of the items are not in full text form. Obviously, the authors were grappling with length, but some of the omissions are unfortunate, such as leaving out the drafters' "explanatory notes" to the International Law Commission and other codifications as well as important "annexes" to some of the treaties, like Annexes I and II to the U.N. Convention on Climate Change. On the plus-side, it contains a copious appendix giving the status (as of December 31, 1992) of each document, i.e. countries signing, ratifying, making reservations, votes, dates, and entry into force.¹⁹ Although the supplement is a "must-buy" for students, it boosts the price of the textbooks to over \$80.

One cannot make a better choice than this trio, although they are not without some shortcomings. By design, these are "public law" materials and do not attempt to be a "private" international business law text.²⁰ The coursebook overemphasizes basic international law and policy in the beginning chapters, to the detriment of environmental law and policy; eliminating or condensing materials that merely repeat the general public international law course would help, as would a fuller environmental treatment than provided by Chapter 4.

Another problem, given the book's information cut-off date of early 1994, is that change happens. For example, in the real world of the 1992 Convention on Climate Change negotiations, the first Conference of the Parties (COP-1) was held in Berlin in April 1995, the new rounds of talks began in Geneva in August, leading up to COP-2 in 1996,²¹ and each of these meetings introduces changes which outdate the coursebook's briefing,²² and require additional documents and changes to the draft proto-

18. See Pring & Joeris, *supra* note 1, for a review of the pre-Rio international environmental law collections.

19. It would be helpful if the authors would send out regular updates, since some key treaties (like the Climate Change Convention) have added substantial numbers of new countries since 1992.

20. Which disappointed one business-law-oriented reviewer, see William A. Mogel, *supra* note 11.

21. See, e.g., Paul Lewis, *U.S. Industries Oppose Emission Proposals*, N. Y. TIMES, Aug. 22, 1995, at C2.

22. INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER, *supra* note 1, at 993, 997-98.

col²³. A happy solution would be for the authors to send out as-needed updates to the *Teacher's Manual* and/or create a World Wide Web page for on-line viewing and downloading of updates.

We disagreed on one issue. The problems do not utilize actual countries, but pseudonymous states modeled on one or more real states. While professors will appreciate the added flexibility and focus such "perfect" states offer, some of the best students will find this frustrating. For example, the pseudo-state of "Hanguo" is obviously modeled after the People's Republic of China; yet, in researching a problem in the coursebook and document supplement, the student discovers that China is a party to a relevant treaty or has adopted a particular position, but the status of "Hanguo" is unclear. This can lead to considerable frustration. One solution is to convert to "real" countries (which might work with the climate change negotiations, but would not work with some other good problems); another solution is to retain the pseudo countries, but for the authors to provide more rigorous detail of the pseudo state's party and position status on all relevant documents and issues.

Minor caveats aside, *International Environmental Law and World Order* and its *Basic Documents Supplement* more than live up to the goal of providing a challenging, comprehensive course on international environmental law with a unique "problem-oriented" approach. We highly recommend them as books which will definitely make students and professors glad to learn and glad to teach.

23. *Id.* at 994-95.