



UNIVERSITAS INDONESIA



UNIVERSITY OF
SOUTH CAROLINA

INT'L ENVIRONMENTAL & MARINE RESOURCE LAW CLASS ONE INTRODUCTION AND INTERNATIONAL LAW BASICS

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BASIC INT'L LAW CONCEPTS



INT'L VERSUS NAT'L LAW, CONCEPT INT'L ENVIRONMENTAL LAW, NOT TRADITIONAL COMMAND & CONTROL ENVIRONMENTAL LAW

SINCE THERE IS NO CENTRAL INTERNATIONAL LAW SOVEREIGN "VOLUNTARY"

PROBLEM IS TRADITIONALLY LAW CREATION SINCE INTERNATIONAL LAW ALLOWS FOR NO RULES ABSENT PERMITTED FORMATION (SO RECENT CONCERNS MOSTLY ABOUT HOW TO CREATE THE LAW RATHER THAN EXACT SUBSTANCE-- WITNESS GLOBAL WARMING CONTROVERSY)

IS INT'L LAW "LAW" OR "POLICY" AND DOES IT MATTER

NATURE OF INT'L LEGAL SYSTEM

- 1. WHO ARE PLAYERS (SUBJECTS OF INT'L LAW/STATES TRAD./NGOs IMPORTANTLY FOR INT'L ENVIRONMENTAL LAW)**
- 2. SOVEREIGNTY & LACK OF ENFORCEMENT MECHANISM**
- 3. DECENTRALIZED, MEANING ALSO TRAD. NO COURTS/SHERIFF**

CLASSIC INT'L LAW SOURCES

- 1. TREATIES (AGREEMENTS WITH VS. WITHOUT LEGAL FORCE)**
- 2. CUSTOMARY LAW (BEHAVIOR UNDER LEGAL COMPULSION & OPINIO JURIS)**
- 3. GENERAL PRINCIPLES OF LAW**
- 4. BEST (ACADEMIC) WRITINGS**

Treaty, express agreement written or oral

[int'l law treaty different from full US constitutional treaty with Senate supermajority vote]

Bilateral versus multilateral, now organic constitutional making own rules (problem negotiating up front versus longer term governance in technical areas)

Issues now of treaties leading to legal effects on non-members

Customary Law (opinion juris & state practice)

How long to form, how specific in its dictates?





SOURCES OF LAW



General Principles of Law

Substantive vs. procedure problems

Problem of hidden preference over customary law, but problem rather with customary law

Two sometimes alternate categories attempted, wistful thinking unless you are a multilateral

Soft law & general principles claims (eg, what amounts to best practice), eg

http://www4.worldbank.org/legal/legen/legen_iel.html

International environmental law on model of human rights law (probably general principles), eg
<http://www.ciel.org/Publications/olpaper3.html>

What are the PROs & CONs of law formation for int'l environmental law under

- 1) Treaty
- 2) Customary Law
- 3) General Principles
- 4) Other

Eg, what are the nature of underlying problems and how do they interact with options?

BASIC CONCEPTS LAW CREATION

WHAT IS THE BEST WAY TO MAKE LAW IN A DETAILED TECHNICAL AREA WITH UNCERTAINTY ON SCIENCE & ECONOMICS MOVING MORE TO MARINE RESOURCE LAW?

Probably treaty, note that older sea law is customary but more recent practically all treaty whether LOS or tanker pollution

WHO OWNS WHAT & HOW?

WHO ALLOCATES OWNERSHIP?

**WHO EXERCISES CONTROL OVER
RESOURCES/REGULATION & HOW?**

**WHAT IS THE DIFFERENCE BETWEEN
POLICY & LAW FOR THESE
PURPOSES?**

WHY MARINE RESOURCE LAW?

Particular Indonesian interest with new ministry

Dictates problem orientation, but best for learning anyway



BASIC CONCEPTS



FOR NEXT WEEK CUSTOMARY LAW

Trail Smelter (arbitration)

Lake Lanoux (arbitration)

Nuclear Test Case (ICJ, Austr. v. France)

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General course organization



Student Question/Discussion



What is the significance of ethical versus legal obligations under international law?

