

Global Environmental Governance: Approaches, Structures, and Diplomacy
Instructor Robert William Dry
Mondays (Except Class 5 - Oct 11, a Tuesday), 11:00 AM – 1:30 PM, Fall Term 2022

Dedication: George Perkins Marsh, author of Man and Nature

Course Description

Fifty years ago, nations ambitiously undertook to address global environmental challenges at the Stockholm Conference on the Human Environment. It set the stage for subsequent 'earth summits' (Rio, Johannesburg, etc.) and negotiations for multilateral environmental agreements (MEAs), now numbering in their hundreds, such as the UN Framework Convention on Climate Change and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. International institutions, including many within the UN system and non-state actors, formed to govern the earth summits and outcomes thereof. In the course, students analyze the nature and effectiveness of the summits, MEAs, architecture, and international environmental law cases in policy papers. The seminar also tracks developments in contemporary environmental diplomacy, including UNFCCC COP 27 in Sharm el-Sheikh, Convention on Biodiversity COP 15 in Montreal, and the first negotiating session of the proposed international binding instrument to end plastic pollution in Uruguay.

Learning Outcomes

To develop an understanding of 'the system' of global environmental governance (GEG) to the point where students will comfortably apply to an intergovernmental organization or NGO in this field for work or an internship; to understand the role of GEG in contemporary IR; to further develop student understanding of the increasingly important area of international environmental law; to hone professional skills for work in the international field, particularly in diplomacy, e.g., listening; analyzing and summarizing complex material, determining the effectiveness of international regimes, presenting complex subjects orally, and writing professionally, with an emphasis on structure and clarity.

Weekly Topics

For example, in a recent class, in a 'Warm Up' session we discussed news items: the Brazil elections and their implications for the Amazonian rainforest; issues that undergird COP 27 in Sharm el-Sheikh, e.g., Paris Agreement implementation and 'loss and damage' reparations to G77; COP 15 in Montreal biodiversity concerns regarding increasing numbers of threatened/endangered species such as right whales and emperor penguins. Following the Warm Up session we moved to concluding our discussion of multilateral environmental agreements (MEAs), e.g., Basel, Bamako, and Rotterdam Conventions. We also discussed reasons why MEAs fail to meet today's environmental challenges. That led to consideration of the draft Global Pact for the Environment. In that regard, we watched a video produced by an advocate NGO about the Global Pact. We began a discussion concerning 'The Architecture' of GEG starting with the UN's structure and drilling down on UNEP itself. We spoke about failed proposals to upgrade UNEP to a specialized UN organization, a la WTO or WHO. We introduced other entities of importance in GEG Architecture, such as the WB, WTO, and civil society. The instructor then provided the students with a new written and oral assignment on

GEG Architecture, due the following session. Instructor returned graded previous assignment and provided comments.

Re readings for the above-described session, they were from an assigned text, The Global Environment: Institutions, Law, and Policy and a mid-week Brightspace Announcement.

Brightspace Announcement supplemental readings

“In addition to the MEAs we’ve been studying, ‘charters’ or ‘pacts’ of a more aspirational/universal nature, if less binding than the MEAs, exist. You may want to check these out.

- World Charter for Nature: <http://www.un-documents.net/wcn.htm>
- Earth Charter: <https://www.environmentandsociety.org/mml/earth-charter>
- Indigenous Peoples Earth Charter: <https://trc.org.nz/content/indigenous-peoples-earth-charter>
- Global Pact for the Environment (DRAFT ONLY, Appears to be stuck, in limbo..., interesting, nonetheless): <https://globalpactenvironment.org/en/>

“In addition, as we get closer to COP 27 (UNFCCC) and COP 15 (CBD), international organizations and environmentalists are producing more reports and articles. Here are a few that caught my eye:

- Damian Carrington, ‘World close to ‘irreversible climate breakdown, warn major studies’, The Guardian, October 27, <https://www.theguardian.com/environment/2022/oct/27/world-close-to-irreversible-climate-breakdown-warn-major-studies>
- Max Bearak, ‘Climate pledges are falling short, and a chaotic future looks more like reality’, NYTimes, October 26, <https://www.nytimes.com/2022/10/26/climate/un-climate-pledges-warming.html?searchResultPosition=1>
- Lauren Leffer, ‘These numbers are all wrong’, GIZMODO’, October 26, <https://gizmodo.com/un-report-climate-change-2-degrees-warming-1849704926>
- Steven Mufson and Sarah Kaplan, ‘Climate-warming methane emissions rising faster than ever, study says’, The Washington Post, October 26, <https://www.washingtonpost.com/climate-environment/2022/10/26/united-nations-climate-pledges-report/>
- Damian Carrington, ‘Global deforestation pledge will be missed without urgent action, say researchers’, The Guardian, October 24, <https://www.theguardian.com/environment/2022/oct/24/global-deforestation-pledge-destruction-forests>”

Written Assignments (for grade)

Students prepare a briefing book for a government principal not very familiar with GEG. This term I'm using the current US Perm Rep, Ambassador Linda Thomas-Greenfield, a superb diplomat who is eager to learn and who fully supports global environmental initiatives. Three of the five policy papers analyze either an 'earth summit', an MEA, and an important piece of GEG architecture, with a focus on its role in the GEG system and its effectiveness. The fourth paper briefs (as in a law school brief) an international legal case, e.g., using by way of example the analysis of the environmental provisions of the 2016 *Philippines v. China (The South China Sea*

Case) in the Permanent Court of Arbitration. For their fifth written assignment, students present either an opening country statement at one of the COPs we've been studying or an opening statement at the 1st Session of the Intergovernmental Negotiating Committee to develop a legally binding mechanism to end plastic pollution. Students orally brief each paper in addition to submitting a polished final written piece for grade.

Grading

Students receive points for completing written assignments. Typically, I assign five assignments in a semester. All assignments are of equal weight; 20 points each. Each assignment receives two grades each out of 10: the first corresponds to how well the student addressed the issues presented by the assignment, i.e., the substance, including thoughtfulness, analysis, and depth of research. In short, did the student 'get it', i.e., understand what the assignment was about? The second numerical grade relates to how well the piece reads, i.e., structure (clearly stated theme or thesis, argument, etc.), flow, clarity, and style (no excess words, limited use of the passive tense, etc.). Get used to spell checking your work - employers will expect you to do so as I do.

Assignment grades are provided out of a total of ten points each, for example, a student might receive an 9.125/10 for 'substance' and an 8.750/10 for 'writing'. These numbers translate into letter grades as follow:

A: 9.25 – 10
A-: 9.0 – 9.249
B+: 8.6 – 89.99
B: 8.3 – 85.99
B-: 8.0 -82.99

The hypothetical, then, comes out to a B+ grade $\{(9.125 + 8.75)/2 = 8.94\}$.

At the end of the term, the grades of all the assignments will be averaged and translated into a final letter/course grade corresponding to that number.

Policy papers as a rule don't require footnoting, but all papers in my classes need to have a separate page of bibliographic sources. I expect students to engage in graduate-level research to address their tasks. Bobst has impressive resources, including scholarly journals appropriate to our interests. Make research a habit. I will often write on papers, 'Go deeper!', meaning I expected the student to drill down on the research needed to fully grasp the issue in the assignment. You do not have to come up with a large number of citations. Rather I am looking for five or six quality citations. Research before setting pen to paper. Be consistent and precise in the manner which you provide your bibliographic citations.

If a student notifies the instructor in advance that s/he/they will be unable to meet the submission deadline, no problem – for one week. Inform me early that there's an issue which makes completion of the assignment in a timely manner problematic. I want students to do their best. Of course, in 'the real world', you will need to complete assignments in a thoroughly timely manner. Be responsive in all things.

If, in addition to the mandatory assignments, a student wants to submit a term paper, that is possible. In that case, please see the instructor for advance approval of the topic and guidelines for the project.

Outline of Course

- I. Global environmental challenges. Governance. What is Global Environmental Governance (GEG)? Some antecedents, e.g., common law nuisance (e.g., Aldred's case) and Trail Smelter arbitration, migratory birds, sea pollution, and nuclear test ban.
- II. 'Earth Summits' system – Stockholm (1972), Rio, Johannesburg, etc., and back to future at Stockholm+50 (2022), to include declarations and commissions
- III. What is Sustainable Development? The 'formal definition' of sustainable development. System of multilateral environmental agreements (MEAs) & drill deep on several e.g., UNFCCC and Vienna Ozone Framework & Montreal. Unique challenges for U.S., esp. high-threshold ratification through Senate, see, e.g., UNCLOS, Kyoto, Paris. The 2030 Agenda and the Sustainable Development Goals (SDGs).
- IV. Global environmental governance institutions, e.g., the UN system, IUCN, WB, and bottom-up entities, e.g., civil society, sub national political bodies. Relative effectiveness.
- V. International law refresher – sovereignty; law of treaties; ICJ jurisdiction; customary international law; U.S. practice, particularly as to treaties
- VI. Principles of international environmental law
- VII. International environmental law cases, e.g., 2016 South China Sea case
- VIII. The lead up to COP 27 'Glasgow' and issues facing Paris full implementation
- IX. Whither the Global Pact for the Environment; Ecocide proposed amendment; Human Right to a Clean, Healthy Environment; Rights of Nature.
- X. [Time permitting environmental standards, including ESG.]
- XI. Conclusion: Where do we go from here?

Required texts:

- *Hey, International Environmental Law*, Edward Elgar, 20__
- *Axelrod & VanDeveer, eds., The Global Environment: Institutions, Law, and Policy*, 5th ed., SAGE, CQ Press, 2020

NB. Throughout the course I will assign readings, podcasts, and videos supplementing the texts.

Class One – Monday, September 12, 2022 – Intro & Overview of Course

Readings:

No assigned readings for first class

Key Topics: Course goals, e.g., understanding ‘GEG’ system with focus on effectiveness. The global-scale environmental challenges? What is global environmental governance? Why successful governance is critical to a healthy planet. Intro to international environmental law. How to form a practical grasp of the issues the way diplomats do. Enhancing trans-professional skills. How we run the class, warm-up, specific subject matter, student presentations, etc. Building a briefing book for a principal. Tracking real-time GEG developments, e.g., UNGA-related, UNFCCC COP 26 Glasgow follow-up and prep for COP 27 Sharm el-Sheik, as well as CBD COP 15. Introduce the critical role of International Institute for Sustainable Development (IISD) Earth Negotiations Bulletin reporting and UN, U.S. government international environmental announcements.

Class Two – Monday, September 19, 2022 – GEG Stage Setting, Current Events, System Antecedents

Readings:

Axelrod & VanDeveer, Chapters 1 & 9, respectively, ‘Governing the Global Environment’, pp. 1 -25 [All this is good intro material. We’ll return to these subjects throughout the semester. GEG is not rocket science, but there’s a lot of it.]; Najam, ‘The View from the South – Developing Countries in Global Environmental Politics, pp. 245-268

Key Topics: Origins of environmental law, e.g., common public & private nuisance law and the Trail Smelter case. Other antecedents, including migratory birds, seals, sea pollution, and nuclear test bans. Also, developed vs. developing and least developed nations/North-South phenomenon, a key factor in global environmental governance and origin of special but differential principle of international environmental law.

Class Three – Monday, September 26, 2022 – ‘Earth summits’ system

Readings:

Kate O’Neill, ‘Architects, Agitators, and Entrepreneurs: International and Nongovernmental Organizations in Global Environmental Politics’, Chapter 2, pp. 26-52, in Axelrod & VanDeveer. [NB. The subheading ‘Designing Global Environmental Governance: The Role of Global Summits’, pp. 29-32 and especially the Table 2-1, p. 31, ‘The “Earth Summits,” 1972-2012.]

Key Topics: From Stockholm to Johannesburg to Stockholm Again and lots in between, e.g., ‘Only One Earth’, Stockholm Declaration, esp. Art 21, definition of ‘sustainable development’,

Agenda 21, Rio Declaration, Art 2. The soft - yet relentless hardening - foundation for international environmental governance/law.

Class Four – Monday, October 3, 2022 – Student Presentations on Conferences, Declarations, Commissions, or Documents

Readings:

There are no assigned readings from required texts for this class.

Key Topics: Student presentations highlight the ‘Earth Summits’ system, huge conferences, massive negotiations, elaborate on declarations, and documents, as assigned. What are your thoughts? The ‘summits system’ - how effective a process?

Class Five – TUESDAY, October 11, 2022 - International Law Basis for Global Environmental Governance and the MEA system

Readings:

Axelrod & VanDeveer, eds., Chapter 3, Jacqueline Peel, ‘International Law and the Protection of the Global Environment’, pp. 53 – 82

Hey, Chapters 1, 2, & 3, ‘Setting the scene’, ‘Origins and development’, & ‘Evolving insights about what is at stake’, pp. 1-51, in TEXT, Advanced Introduction to International Environmental Law, Edward Elgar

Key Topics: International law foundational considerations, e.g., ICJ art. 38 and the Vienna Convention on the Law of Treaties; the Multilateral Environmental Agreements system; the science basis, the negotiations, the ratification process, implementation/compliance and dispute settlement. On COPs, MOPs, secretariats, and other things (combined secretariats, research bodies).

Class Six – Monday, October 17, 2022 – MEAs, w/emphasis on Atmospheric (Montreal/Kigali & UNFCCC) Regime

Readings:

Axelrod and VanDeveer, eds., Chapters 4, 5, 6, and 10, respectively, Downie, ‘International Environmental Regimes and the Success of Global Ozone Policy’, pp. 101-132;

Faure, 'Compliance with Global Environmental Policy-Climate Change and Ozone Layer Cases', pp. 133-160; DeSombre, 'Domestic Sources of U.S. Unilateralism', pp163-189; Betsill & Fiske, 'International Climate Change Policy-Complex Multilevel Governance' pp. 271-304

Key Topics: Ozone success and climate resistance. What accounts for the differences? How does Dr. DeSombre understand the 'Domestic Sources of U.S. Multilateralism'? What do you think of the MEA system? What are elements of an MEA that makes it successful or unsuccessful? Do MEAs treat the underlying ecosystem/science problem or just the symptoms?

Class Seven – Monday, October 24, 2022 - Students present on their analysis of assigned MEAs

Readings:

No assigned readings for this class.

Key Topics: Student critical evaluations/presentations on assigned MEAs, focused on utility and effectiveness. Do they succeed? Might they be made better and how?

Class Eight – Monday, October 31, 2022 – GEG Architecture, including international organizations and non-state actors

Readings:

Axelrod/Vandever, Re-read the first several pages of O'Neill, 'Architects, Agitators, & Entrepreneurs', pp. 35-38

Key Topics: Each of the organizations has a role to play in the GEG system. Many of these are barely known, especially in the United States. How effective are they? How might they be improved/rationalized? Consider the 'Top Down' nature of the UN system organizations vs. the 'Bottom Up' nature of the non-State actors.

Class Nine – Monday, November 7, 2022 - International environmental law principles and their application, e.g., the 2016 Philippines v. China 'South China Sea' Permanent Court of Arbitration decision)

Readings:

Hey, Chapter 4, 'Principles', pp. 52 – 86; Axelrod/Vandever, Chapter 3, Peel, 'International Law & Protection of the Global Environment', especially pp. 68-81 & 90-96; and, Hey, Chapter 6, 'Dispute Settlement & Accountability Mechanisms', pp. 108-122 and skim Hey Chapter 7, 'Relationship with other areas of international law', pp. 123-14_

Award in the Permanent Court of Arbitration Case No. 2013-19, 'In the matter of the South China Sea Arbitration', decided July 12, 2016, <https://pca-cpa.org/en/news/pca-press-release-the-south-china-sea-arbitration-the-republic-of-the-philippines-v-the-peoples-republic-of-china/> [The PCA case illustrates a number of principles of international environmental law in action. This award is loooong at 500 pages so just look at the summary. We'll discuss the case in class.]

CSIS's Asia Maritime website relating to China's island building in the. South China Sea, <https://amti.csis.org/>

Key Topics: This international environmental law case brings together all we've learned to date, i.e., the application of international environmental law principles in analyzing and applying provisions of a multilateral environmental agreement, in this case, the United Nations Convention on the Law of the Sea. This award is an important international law case, not only with regard to the facts of the matter, but also in reenforcing international environmental law principles. Is it effective? [What about Beanal v. Freeport-McMoran, Inc.]

Class Ten – Monday, November 14, 2022 – The Environment & Trade/Investment Agreements;

Readings:

Axelrod/Vandever, Chapter 14, Esty, 'Free Trade and Environmental Protection', pp. 389-411

Congressional Research Service explanation of US Free Trade Agreements and the Environment, <https://crsreports.congress.gov/product/pdf/IF/IF10166>, February 3, 2021

Transpacific Trade Agreement (See, chapter 20 of the agreement at <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>, and the WTO issues.

'Investment and Environment' chapter in the 2012 U.S. Model Bilateral Investment Agreement, https://www.google.com/search?q=us+model+bilateral+investment+treaty&rlz=1C1GCEJ_enUS865US865&oq=US+model+bilater&aqs=chrome.0.0j69i57j0l2.6174j0j7&sourceid=chrome&ie=UTF-8

OECD Guidelines for Multinational Enterprises, Chapter VI – 'The Environment', pp. 42-46, <http://www.oecd.org/daf/inv/mne/48004323.pdf>

'Investment and Environment' chapter in the 2012 U.S. Model Bilateral Investment Agreement, https://www.google.com/search?q=us+model+bilateral+investment+treaty&rlz=1C1GCEJ_enUS865US865&oq=US+model+bilater&aqs=chrome.0.0j69i57j0l2.6174j0j7&sourceid=chrome&ie=UTF-8

Key Topics: The trade/investment system and GEG. Let's look at provisions in some bilateral and multilateral trade and investment agreements.

Class Eleven – Monday, November 21, 2022 - Student Presentations (law 'briefs') on assigned international law cases

Readings:

None for this session.

Key Topics: What do the cases presented by students say about the GEG system? Are they evidence of effectiveness?

Classes Twelve – Thirteen Mondays, Nov 28 and Dec 13 - TBD/RESERVED. Further coverage of COP 27, Global Pact for the Environment, Ecocide, Human Right to Clean, Healthy Environment, Rights of Nature, ESG and other environmental standards, etc. Student presentations on their assigned issues.

Class Fourteen – Monday, Dec 12 – Conclusion and summing up.

Readings

Axelrod/Vandever, Stacy VanDeveer, Chapter 15, 'Consumption, Commodity Chains, and Global and Local Environments', pp. 412-433;

Hey, Chapter 8, 'Conclusion: continuity and change', pp. 146-152

Key Topics: What about the ‘diplomacy’ piece? Consider Speth and Haas question, “If you had been in charge of planetary stewardship over the past [five] decades, what would you have done differently?” Having taken this course, how would you respond to that question?