

ENVIRONMENTAL GOVERNANCE IN THE DEVELOPING WORLD

Vermont Law School

Summer 2019
8 Week Friday Term

Instructor:

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Course Information: This class meets every Friday from June 7 to August 2 (no class July 5), 9AM-12PM in the Map Room in Debevoise Hall. We will take an approximately 15 minute break in each class.

If you would like to schedule an appointment outside of class hours, please feel free to contact me via email or during class to do so.

Course Materials: All required course reading materials will be posted on TWEN in separate folders for each class. Additionally, some readings involve looking at laws, regulations and other documents, which are placed in a folder labeled "Primary Source Documents." I will also post other supplementary materials that are not required reading but that may help you in your understanding and appreciation of the topics discussed during class. All required reading assignments will be indicated in this syllabus. Some optional readings are also suggested.

INTRODUCTION

While this course focuses on the development of environmental law and operates on the assumption that that is a desirable outcome, this is not a traditional environmental law course. This course is designed to introduce students to the unique challenges regarding the development, implementation, and enforcement of good environmental governance systems in the developing world. To that end, this course will generally eschew discussions of international environmental law and multilateral environmental agreements, and will instead focus on the domestic environmental law of developing countries, with a focus on China and South East Asia. Due to our work at the US-Asia Partnerships for Environmental Law, this course will draw from a variety of case studies from China and the lower Mekong region to illustrate key points.

Countries in Asia and other parts of the developing world represent some of the fastest growing economies in the world today, and they are also home to the large majority of the world's human populations. They also represent a wide array of political, historical, social, ecological and cultural contexts. While some have managed to implement relatively successful environmental governance mechanisms, most still struggle to do so. The 'perfect storm' of incredibly rapid economic development in developing countries with generally weak environmental governance systems creates enormous risks for the future of the environment and natural resources upon which human populations depend. This course will seek to give students an appreciation for these risks and

challenges and will encourage them to think analytically and creatively to propose solutions going forward. To that end, we will begin the course by discussing the elements of strong environmental governance as proposed by scholars and practitioners in the field, which in turn will serve as an analytical framework as we explore the various domestic environmental governance systems later in the course.

Finally, conducting research on the laws, policies, and regulations of developing countries with different contexts can often be a challenge – therefore, this course will begin by giving students a framework for research methodologies that will enable them to conduct thorough research during the course and afterwards. Due to the nature of the final take-home exam, this section will encourage students to use both traditional and non-traditional resources to find information and data.

GRADING

- (1) Class participation (10%) – Students are expected to have read and familiarized themselves with the assigned reading materials and be prepared to engage in substantive discussions during class sessions.
- (2) Class presentation (30%) – Students will be required to prepare and conduct a 10-15 minute presentation to the class on their chosen research topics on the final day of class. Details regarding presentations and topics selection will be provided during the first class.
- (3) Take-home exam (60%) – Details of the take-home exam will be provided during the first class.
- (4) Extra credit – Details of an optional extra-credit assignment will be provided.

CLASS SCHEDULE AND READING ASSIGNMENTS

June 7 – Course Introduction; Principles of Environmental Governance; Research Sources and Methodologies

Reading Assignments:

- UN Environment, *Environmental Rule of Law: First Global Report* (2019)
 - Read Chapter 1: Introduction (pgs. 1-34)
- Ravnborg, Helle Munk, et al., *Environmental Governance and Development Cooperation: Achievements and Challenges*, Danish Institute for International Studies, Report 2013:15
 - Read entire report, but skip Chapter 2.
- Wendy Cutler and Kevin Doyle, “China’s Developing Country Status in the WTO: Time for an Upgrade?,” East Asia Forum (January 21, 2019).

Optional Additional Reading

- Gunilla Olund Wingqvist, et al. (Swedish Environmental Protection Agency), “[The Role of Governance for Improved Environmental Outcomes](#),” Report 6514 (September 2012).

Guest Presentation:

Chenfang Yang, VLS Library Reference Librarian – Introduction to Research Methods and Tools for Conducting Legal Research on Foreign Countries

June 14 – Environmental Laws and Regulations

Reading Assignments:

- Ruth Greenspan Bell, *Culture and History Count: Choosing Environmental Tools to Fit*

Available Institutions and Experience, 38 IND. L. REV. 637 (2005).

- Faure, Michael, et al., *Bucking the Kuznets Curve: Designing Effective Environmental Regulation in Developing Countries* 51 VIRGINIA JOURNAL OF INTERNATIONAL LAW 95 (Fall 2010).
- UN Environment, *Environmental Rule of Law: First Global Report* (2019)
 - Read Section 2.2 – Clear and Appropriate Mandates (pgs. 45-49)
- *Skim the following laws (NOTE: you DO NOT need to read these laws word for word. Rather, skim them over to get a sense of their structure, depth of detail, how they assign institutional responsibilities, etc.):*
 - Myanmar - Environmental Conservation Law (2012)
 - Vietnam - Law on Environmental Protection (2014)
 - Cambodia - Law on Environmental Protection and Natural Resource Management (1996)

June 21 – Environmental Laws and Regulations

Guest Lecture:

Professor Alexander Zahar
Luoja Distinguished Professor and Assistant Director
Research Institute of Environmental Law
Wuhan University
Wuhan, Hubei Province, PRC

Reading Assignments:

- Instructions for June 21 reading assignments will be provided during June 14th class.

June 28 – Environmental Impact Assessment

Reading Assignments:

- Jennifer C. Li, *Environmental Impact Assessment in Developing Countries: An Opportunity for Greater Environmental Security?*, Foundation for Environmental Security and Sustainability, Working Paper No. 4 (2008)
- Wells-Dang, et al., *A Political Economy of Environmental Impact Assessment in the Mekong Region*, *Water Alternatives* 9(1): 33-35 (2016)
- Paul Fisher, “Why Environmental Impact Assessments Fail to Protect Rivers,” *World Rivers Review*, Vol. 28:1 (March 2013), pgs. 8-9

July 5 – NO CLASS

July 12 – Environmental Impact Assessment, Public Participation, and Information Disclosure

Reading Assignments:

- UN Environment, *Environmental Rule of Law: First Global Report* (2019)
 - Read Sections 3.2 (Access to Information) and 3.3 (Public Participation), *but skip* Section 3.3.4 (Community Based Natural Resource Management) (pgs. 98-130)
- Mekong Partnership for the Environment, *Guidelines on Public Participation in Environmental Impact Assessment in the Mekong Region* (2017)
 - Read Chapters 1, 2 and 3 (pgs. 1-21)
- Myanmar Environmental Impact Assessment Procedure (2015)
 - Read Sections 13, 34, 36, 39, 41, 50, 60, 61, 67, 71, and 110.

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- Draft Guidelines on Public Participation in Myanmar's EIA Processes (May 2017)
 - *NOTE: Skim over the entire document, but pay close attention to Chapter 4 as that is where we will focus discussion.*

July 19 – Access to Justice: Domestic

Reading Assignments:

- UN Environment, *Environmental Rule of Law: First Global Report* (2019)
 - Read pgs. 183-197 and Section 5.3.3 (pgs. 203-210)
- Sun Qian and Jack Tuholske, *An Exploration of and Reflection on China's System of Environmental Public Interest Litigation*, 47 ENVTL. L. REP. NEWS & ANALYSIS 10497 (June 2017)
- 33 USC 1365 (Clean Water Act Citizen Suit)
- 42 USC 7604 (Clean Air Act Citizen Suit)
- 42 USC 6972 (RCRA Citizen Suit)
- China – Environmental Protection Law (2014)
 - Articles 53-58
- Vietnam – Law on Environmental Protection (2014)
 - Articles 145 and 162

Optional Additional Reading:

- China – The Supreme People's Court Interpretation on Several Issues Regarding the Application of Law in Environmental Civil Public Interest Litigation, Legal Interpretation (2015) No. 1 (January 6, 2015)

July 26 – Access to Justice: Looking Outside

Reading Assignments:

- Inclusive Development International, *Case Brief: Class Action Lawsuit by Cambodian Villagers Against Mitr-Phol Sugar Corporation* (April 2018)
- Budha Ismail Jam *et al.* v. IFC
 - Review EarthRights International website on the case (<https://earthrights.org/case/budha-ismail-jam-et-al-v-ifc/>)
 - Complaint
 - *Relevant sections will be assigned*
 - US Supreme Court Decision
 - *Relevant sections will be assigned*
- Shwe Taung Cement (Myanmar)
 - Open Letter to the IFC regarding its proposed financing of a crony-owned cement factory and coal mine in Myanmar (June 7, 2017)
 - Seamus Martov, "World Bank Arm Defends Mandalay Cement Factory Project Amid Civil Society Opposition," www.irrawaddy.com (June 26, 2017)

August 2 – Student Presentations and Wrap-up Discussions