the practice of capitalism. Capital seeks perfect liberty — for itself. Upon capital’s powerful acquisitive impulse the law imposes wise restraint so that there is liberty for all.

A lawyer who practices in the relentless pursuit of the last billable hour demeans the spirit which defines a learned calling, and traduces the values which gave life to the ideal of the lawyer-statesman.

WHERE DO WE GO from here? Can we build a new profession for a new century on the foundation of old values, values that will permit us to recall the statesman-lawyer from ignoble exile?

If our profession’s plight mattered only to its members, I would be tempted to join the pessimists who say that reform is doomed. But it is not our profession alone that is at risk; it is our system of justice, the very idea of the rule of law. In singular ways lawyers are guarantors of the success of the American experiment. The fate of our nation’s freedom is linked to the legal education of statesman-lawyers. Since then the body of international environmental law began at the 1972 United Nations Conference on the Human Environment in Stockholm, which resulted in a declaration of environmental principles and the establishment of the U.N. Environmental Programme.

There is not sufficiently described the relentless pursuit of the last billable hour demeans the spirit which defines a learned calling, and traduces the values which gave life to the ideal of the lawyer-statesman.

For a footnoted version of these remarks, watch for the Winter 1998 issue of the University of Richmond Law Review, Vol. 32, No. 2.

International Environmental Law: From Stockholm to Richmond

By Joel B. Eisen

POLLUTION does not respect international boundaries, and scarcity of natural resources is a worldwide concern. Therefore, protecting the environment is a global responsibility.

Multilateral efforts to address issues such as ozone depletion, biodiversity, and climate change have attracted considerable worldwide attention. This winter, representatives from over 150 nations negotiated the Kyoto Protocol, which binds its signatories to curb greenhouse gases thought to contribute to global warming. Front-page news stories around the world followed every twist and turn of the negotiators’ deliberations.

How have nations responded to global environmental problems? What are the emerging trends in international environmental law and regulation? The Spring 1998 Visiting Scholars series of the George E. Allen Chair in Law, titled “Resolving International Environmental Disputes in the 1990s and Beyond,” offers the law school community a unique opportunity to examine these and other important questions related to efforts to protect the global environment. This article provides a brief introduction to modern international environmental law and the Allen Chair Professors.

Environmental law takes prominence on the world stage

Twenty-five years ago an observer of international environmental law would probably have concluded, to paraphrase Gertrude Stein, that there was no there there. The modern era in international environmental law began at the 1972 United Nations Conference on the Human Environment in Stockholm, which resulted in a declaration of environmental principles and the establishment of the U.N. Environment Programme.

Since then the body of international environmental law has proliferated. Hundreds of documents — by one estimate as many as 900 — contain provisions aimed at safeguarding natural resources or curbing pollution. Among the best-known agreements are the “Montreal Protocol” agreement phasing
Environmental dispute resolution mechanisms in trade treaties: The example of NAFTA

The North American Free Trade Agreement is a prominent example of a trade treaty that incorporates mechanisms for resolving environmental disputes. The "Environmental Side Agreement" to NAFTA established the North American Commission for Environmental Cooperation (CEC) and two separate dispute resolution systems. Article 14 of the CEC allows any citizen to submit a claim that a party to NAFTA is "failing to effectively enforce its environmental law." This process culminates in the development of a "factual record" in appropriate cases.

The CEC issued its first factual record on Oct. 24, 1997, in a case involving a complaint lodged by three Mexican environmental groups about the construction and operation of a new harbor terminal in Cozumel, Mexico. The factual record makes no enforcement recommendations, leaving no additional recourse under the ESA for the environmentalists.

A party to NAFTA may also claim that another party is displaying a "persistent pattern of failure to effectively enforce its environmental law," and request consultations with that party. This option is available only to parties, not to citizens. If consultations fail, the next step is a special session of the CEC, followed by arbitration and implementation of the arbitration panel's report. The process has a built-in enforcement mechanism: the adversely affected party may suspend trade benefits if the offending country does not implement the action plan resulting from the dispute resolution process.

(Note: Professor Beatriz Bugeda, a 1998 Allen Chair Professor, served as the head of the Mexico liaison office and as legal adviser to the CEC in the Cozumel Pier dispute mentioned above.)

Out ozone-depleting chemicals such as chlorofluorocarbons (CFCs) and the conventions on global climate change and biodiversity opened for signature at the 1992 U.N. Conference on Environment and Development (the "Rio Conference"). International environmental agreements include both binding and nonbinding instruments; the latter are popularly known as "soft law."

Many questions remain

In this promising new era of international environmental law, nations are entering into bold and increasingly more sophisticated initiatives to reduce environmental risks and safeguard natural resources. As this body of law expands and matures, the time has come to evaluate its achievements and potential. A long list of questions remains about international agreements designed to safeguard the environment.

How do we implement these agreements and ensure compliance with them?

It is one thing to marshal the political will to negotiate an international agreement, but another altogether to make the agreement effective at the national level.

This step often requires nations to adopt implementing legislation or regulations. The Kyoto Protocol, for example, would force the United States to develop energy conservation strategies and other emissions-reducing measures. Beyond implementing an agreement, nations must comply with it. As 1998 Allen Chair Professor Edith Brown Weiss observes, compliance is difficult to assess because we simply do not know whether "nations observe... almost all of their obligations almost all of the time."

Many factors make the issue of compliance difficult, and identifying means of ensuring compliance with multilateral environmental agreements is a considerable challenge for the future.

Should aggrieved parties have recourse to litigation or some other form of dispute resolution?

Nations rarely use official dispute resolution mechanisms to address environmental conflicts. In the 1990s, however, the international community is adopting more formal approaches and procedures for dispute resolution. In one prominent trend, concerns over environmental impacts of free trade have prompted the incorporation of dispute resolution systems in the North American Free Trade Agreement (see sidebar) and the General Agreement on Tariffs and Trade. We are likely to see the increasing use of consultations, litigation and arbitration in international environmental disputes.

Should citizens and nongovernmental organizations have access to the decision-making process?

Until recently, citizens and nongovernmental organizations (NGOs) such as Greenpeace had few legal rights to participate in international environmental decision-making. As the example of the NAFTA citizen submission process illustrates (see sidebar), public participation will play an increasingly important role in the future of international environmental law. All stages of the process...
are likely to become more inclusive. Citizens and NGOs already are taking a more active role in the negotiation of agreements and the compliance process. The appropriate role of public participation will continue to be refined over time.

**What is the appropriate relationship between environmental protection and economic development? How should we account for national sovereignty and respect differences among nations?**

There are pronounced rifts between nations over schemes for protecting the global environment. Developing nations often believe that developed countries are impeding their development in the name of environmental protection. At the Kyoto conference, developing nations objected to proposals to curb their greenhouse gas emissions. This lack of consensus on equity and fairness issues is a troublesome problem in international environmental law.

Another set of controversial issues involves the relationship between nations and international environmental bodies. At present, for example, there is no central regulatory body for international environmental law that is the equivalent of the U.S. Environmental Protection Agency. While some argue in favor of creating such an organization, many nations would oppose any centralization of regulatory authority. Equity and national sovereignty issues could cloud the future of international environmental law.

While these complex questions must be addressed, international environmental law continues to develop and expand as nations strive to protect the integrity of the planet. The law school is pleased to welcome four distinguished scholars, hailing from Australia, Great Britain, Mexico and the United States, to examine the future of international environmental law. All members of the law school community are encouraged and welcomed to attend their public lectures and share their unique perspectives on protecting the global environment.

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**Endnotes**


2. A Faculty of Law and the director of the law school's Moot Court Room at 5:30 p.m. on the date noted, with a reception to follow in the law school's Moot Court Room.


8. See BROWN WEISS supra note 2, at 666-67 (quoting Prof. Louis Henkin).

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**Notes**


See generally John H. Jackson, World Trade Rules and Environmental Policy, Congress or Conflict? 40 Wm. & M. L. Rev. 1277 (1993).

International courts play an important role in environmental disputes. Several environmental disputes have been litigated in the World Court (International Court of Justice). A recent case between Slovakia and Hungary concerned the construction of the Gabon-ko-Sagunyos project on the Dunbe River. 1998 Allen Chair Professor Philippe Sands served as a counsel for Hungary. See Justice For All From A Global Courtroom, Fox L., May 19, 1996, at 9 (describing the World Court's recent activities and Mr. Sands's involvement).

See Brown Weiss, supra note 2, at 703-08; see generally Susan Casey-Lee & K. A. Culler, A Comparative Look at the Role of Citizens in Environmental Enforcement, 12 Nat'l Environ. L. 1, 1997, at 29.