

**9<sup>th</sup> Annual Meeting 2015 of the International Association of Law  
Schools**

**Developing Approaches and Standards for a Global Legal Education**

IE University, Law School  
Segovia, Spain, 27<sup>th</sup>-29<sup>th</sup> October 2015

Environmental Law Study Group

**Dr. Francesca Romanin Jacur**

Adjunct Professor of International Environmental Law and Sustainable  
Development, Università degli Studi di Milano

**Introduction**

Following the Singapore Declaration paradigm, first, I reflect upon the essential knowledge that students should achieve to have a substantive understanding of the field and to be able to effectively contribute to the achievement of today's environmental challenges. Second, I consider the skills that students should develop during their education and finally, I refer to the values that I consider most important in this area of law. In these regards, I propose some teaching methods and ways in which these objectives can be achieved and raise some questions to be discussed during the meeting.<sup>1</sup>

**A. Knowledge**

**> Courses should teach the fundamental normative and institutional aspects of public international (environmental) law.**

Students should be acquainted with the sources of public international law (Custom, treaties, general principles, ...), not only with specific regard to environmental matters, but also in a more general perspective (State consent as the founding principle of international law, the principle of State sovereignty and its corollaries). Knowledge in this regard should cover how international norms and principles come to existence as well as their substantive content. A deep understanding of the polluter-pays or the precautionary principles, for example, is important in view of the translation of these principles in more specific rules, both at the international level but also within the European and domestic legal systems.

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<sup>1</sup> My contribution to the Report of the Environmental Law Study Group is based on my experience as an academic, on the one hand, and as a practitioner, as legal advisor on environmental matters to the Italian Ministry of Environment and non-profit research institutions, on the other hand. I will look at environmental legal issues mainly from an international perspective.

In view of the peculiar characters of the international legal order where there is no general pre-established enforcement or police authority, consideration should be devoted at examining the implementation and compliance challenges and the tools provided by international law to address them (dispute settlement procedures, preventive dispute avoidance and compliance mechanisms).

> Question to be discussed: Should also private international law (conflicts of laws) aspects be addressed, as part of a course of international environmental law?

**> Courses should examine the various interfaces of environmental legal issues with other legal and non-legal disciplines**

Horizontal interactions regarding different areas of international law should be analyzed. Hence, in a sustainable development perspective, for example, the protection of endangered species should be looked at by considering the relevant environmental principles and treaties and at the same time taking into account the trade and investment interfaces, as well as the criminal aspects of poaching endangered species. Similarly, biodiversity protection and biosafety entail analysis of legal instruments of different areas of international law, namely environment, trade, investment, intellectual property and human rights, this list not being exhaustive.

In a vertical perspective, international, regional and national legal systems are strictly interconnected, their boundaries increasingly blurred and hence their potential conflicts and overlaps should be examined in order to provide students with a comprehensive and pragmatic overview of all the potentially relevant norms applicable to a certain case.

Environmental legal issues address complex challenges under many perspectives. *Ratione materiae* environmental matters are increasingly interdependent with economic, social, political and scientific aspects. Although remaining focused on the legal dimensions of the issues addressed, students should achieve basic knowledge also of non-legal notions, when these are necessary to achieve a comprehensive and as objective as possible understanding of the issues at stake. Thus, for example, even though it is not necessary to know the scientific details about climate change, students should be aware of the underlying scientific debate on the matter, understand the basic technical aspects of the mitigation and adaptation challenges related to climate change, and the basic rules and economic dynamics of the energy markets.

> What are the best teaching approaches to strengthen their legal background and enable them to appropriately grasp the multidisciplinary nature of these themes?

Eminent textbooks and handbooks of international (environmental) law exist that serve as an important source of knowledge with regard to the normative and institutional matters.

With regard to the exam of the more rapidly evolving aspects and case studies, due to their evolving context in which environmental issues develop, it is preferable to share press articles and news with students and to discuss them in class, with the support of specific readings that students should prepare in advance.

The presentation (both by the teacher and by students) of case studies that raise issues under different (international-regional-domestic) legal orders may provide for a useful tool to address a wide range of issues starting from practical examples.

Furthermore, interventions in class by experts and practitioners in related fields could help provide a technical view on certain matters, which students could then develop in their legal implications.

## **B. Skills**

Beside the skills identified by the Singapore Declaration (critical analysis and reasoning, capacity to research, read and analyze legal materials), students should feel confident in moving across the abovementioned different legal orders and perspectives in order to comprehensively master the environmental-related legal challenges.

At the end of the course, students should be able to critically analyze environmental challenges in their various dimensions and without biases and preconceptions, with an open-minded approach that considers the different interests of the stakeholders (States and non-state actors) involved.

> For this purpose, case studies could be useful in showing the different interests of the stakeholders involved, with student arguing and defending the various positions.

Prerequisites:

> Good knowledge of English is a prerequisite for attendance to the course, considering that many reading materials are in English.

> In order to be able to adequately follow a course on international environmental law, students should have attended before a general course of public international law.

## **C. Values**

As already mentioned, an open-minded approach that considers the great variety of different interests involved in many environmental challenges is very important. Students could greatly benefit from exchange programs, lectures by visiting professors and joint workshops with peers students attending similar courses in other regions and countries: the sharing of views in addressing environmental

issues may highlight different mindsets and points of view and thereby favor a sound debate and a better understanding of the problems at stake.

In addition to an open-minded approach, equity is a core value that should inform legal education in this field and is critical for the analysis and problem solving of environmental matters. This broad concept has a multifaceted nature that encompasses North-South divides, as well as ecologic versus economic and social needs, to name a few, that need to be carefully examined and discussed.

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Contribution to the Environmental Law Study Group

Javier de Cendra, Dean, Professor of Laws, IE Law School, IE University

**Introduction**

This document briefly discusses the outcomes of a legal education as expressed in the Singapore declaration on Global Standards and Outcomes of a Legal Education in relation specifically to environmental law.

**1. Knowledge**

The Singapore declaration, in its section on outcomes of legal education, considers that graduate students should know and understand (i) core area of substantive and procedural law; (ii) how laws are created, implemented and changed, and: (iii) the contextual underpinnings of the operation of law (both domestically and globally).

To start with, I consider that, given the importance of the global environmental crisis, environmental law should constitute a core area of substantive and procedural law across all jurisdictions, which is currently not the case. In that regard, all schools should strive to introduce it in the LLB curriculum, preferably in the last years once subjects such as constitutional, administrative or international law have been studied.

(i) Core elements of environmental law include its history, its fundamental principles, including the sovereignty principle, the no harm principle, precaution, prevention, rectification at source, polluter pays, integration, etc, the main actors in global environmental governance (both public and private actors at international, regional and national level), the main regulatory techniques to address environmental problems (command and control, market based instruments), key sectoral legislation, implementation and compliance, and fundamental rights regarding the environment.

Given the breadth of the subject (there are more than 700 international treaties on environmental related issues, and each jurisdiction has its own environmental laws), it is important to adopt a transnational/comparative approach to the study of environmental law. To ensure that students know the core areas of substantive and procedural law it is convenient to focus on international environmental law first and then follow a comparative approach where a few jurisdictions are canvassed, and this from a problem based or case study perspective. How have

different jurisdictions addressed the challenge of reducing emissions of greenhouse gases? What are the specific challenges and considerations that they have taken into account? How do their legal frameworks compare and what are the reasons for similarities and differences?

(ii) to understand how laws are created, implemented and changed, it is advisable to combine both a good understanding of the phases in the evolution of environmental law and the role of scientific knowledge and experience in addressing environmental problems therein, as well as of the specific rules that apply at international, regional and national level. State participation and consent and lack of binding enforceability of international law are key issues behind the development of international environmental law which do not affect in the same way the processes of law making and law enforcing at national level. Moreover, it is importance to convey to students the importance of the dimension of the environmental problems being addressed by the law, as global problems require a different approach than very localized problems. Last but not least, it is also key to understand the political, social and economic background against which environmental laws are passed, implemented and amended. A case study on this might be very instructive, again looking at the evolution over time of an international regime addressing a specific issue, or how different countries/regional organizations have addressed an environmental issue over time; since environmental law is essentially teleological, it is necessary to provide importance to the analysis of the impacts on the ground of environmental law, by repeatedly asking the question: what works in each case and why?

(iii) the contextual underpinnings are absolutely critical in environmental law. Environmental law evolves fast, and cannot really be divorced from the political, social and economic background. A challenge for the teacher is to find the right balance between context and substance, so that students understand the background against which law is developed while also developing an understanding of the legal issues involved. Using good transnational/comparative materials can be very helpful in this regard, as well as a judicious amount of non-legal materials.

## **2. Skills**

According to the Singapore declaration, a law graduate should be proficient in: (i) general academic skills, (ii) researching, reading and analyzing legal materials; (iii) problem solving, planning and strategizing how to comply with legal requirements; (iv) constructing a legal position and effectively communicating (orally and in writing) within a legal context.

General academy skills are well transmitted through case studies combined with well chosen materials that help students focus on studying how legal actors have or can go about solving a specific environmental problem through law. These case studies should ideally convey in relatively simple ways all the necessary natural sciences, political and economic background on the problem. For this, digital cases seem very adequate, as they can structure in a visual and intuitive way all the relevant information, facilitating students understanding.

Environmental law clinics are very recommendable as they can help students “see and feel” the reality of environmental problems, to understand their different dimensions (political, social, economic) and thus to arrive at better legal solutions. Participation in moot courts on environmental law seems also advisable. Another good instrument would be to invite experts to class, or to take students to field visits, so that they “feel” the environment. Environmental law is eminently a contextual field of law that is understood best through a combination of experiences on the field and in the library.

### **3. Values**

According to the Singapore declaration, a law graduate should know and understand the need to act in accordance with: (i) the professional ethics of the jurisdiction; (ii) the fundamental principles of justice and the rule of law.

Beyond those obvious requirements, it is important to be aware of the fact that environmental law is not and cannot be a “neutral” science. Environmental law is teleological, it is there to “solve” a problem. While it is very important to imbue students with a scientific approach to environmental law, it is probably impossible to adopt a neutral stance towards environmental problems, since they easily stir feelings and emotions about the (in)justice of problems and of possible solutions. So it is essential that students learn to think about those feelings and emotions in an structured manner. Basic readings on environmental justice and environmental ethics are invaluable for students to be able to reflect and debate on their normative approaches—as well as other’s normative approaches towards environmental problems and their legal solutions. Also environmental law clinics can be extremely helpful in that regard, in that they provide the applied dimension of environmental ethics.

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**Ricardo Irarrázabal**  
**Vice Dean Faculty of Law, Professor of Environmental Law**  
**Pontificia Universidad Católica de Chile**

**I. Knowledge.**

Increasingly Environmental Law is having greater importance for law firms and practitioners. In effect, law firms have created special areas and departments regarding this field, and any transaction (M&A) includes the “environmental” analysis, especially regarding regulatory matters. Furthermore, different international rankings for lawyers include “Environment” as a different area to be assessed. Therefore, and from the perspective of practitioners, Environmental Law has an individuality that should be taken into account in the curriculum of a law student. In this regard, it is important that Environmental Law should be a mandatory course, not an optional one, and included in the last years of the curriculum, once the students have studied especially Constitutional, Administrative, Economic, International, Human Rights, and Law of Natural Resources (Mining and Water).

There are three main difficulties regarding the approach that could be chosen for the course. One is how to combine the theoretical aspects of the discipline with the practical matters that law firms are demanding. In this perspective, it is necessary to have a good balance and a connection of both aspects. For example, principles of environmental law are important, but the relevant matter is to explain how these principles are implemented at a national level using environmental tools. Other example is International Environmental Law. Is it necessary to learn all about the different environmental treaties? From my perspective, the key matter is to understand how the treaties work and how they are implemented at international and national level. Perhaps, there should be a different course of International Environmental Law separated from the “classic” Environmental Law. A good way on order to combine theory and practice is the permanent study of the case law regarding the different matters of the course.

The second difficulty is how to include the necessary inter-disciplinary approach, which is a difficult task, especially for law professors. In this regard, interdisciplinary readings and invitation to non-lawyers experts to the class contribute to have this approach. Other way is to give the possibility for law students in the curriculum to take environmental courses of other fields as optional courses (Economics, Engineering, Geography, etc). The main challenge in this regard is to have a common language among the different environmental practitioners (lawyers, engineers, sociologists, economists).



The third difficulty lies in the teaching of the theory and practice of Sustainable Development. In this regard, it is important to understand how the different regulatory techniques and environmental tools integrate the economic, environmental and social concerns with a perspective of inter-generational solidarity. This kind of teachings requires an interdisciplinary approach.

Taking into account the difficulties explained, the core elements of the course should include sources of environmental law (international and domestic), the main principles of environmental law and the way that they can be implemented, and environmental constitutional rights. Also, the study of environmental regulation and the different techniques (command and control, market based mechanisms and voluntary tools), the implementation of these techniques under comparative law and domestic legislation, and the different juridical ways that the Environment is protected from a compliance perspective, especially judicial and administrative remedies and enforcement.

Regarding the creation of law, its implementation and changes, and also, the contextual underpinnings of the operation of law (both domestically and globally), it is essential to understand the process of development of the different public policies regarding environment, the reasons why they are discussed and why environmental laws are implemented in different ways. In this sense, understand the context of public policies and operation of law is key. Issues like human rights, level of development of different countries and even of different regions, indigenous and community relations, etc. should be examined in order to have a correct approach to these matters.

## **II. Skills**

For a good combination of theoretical and practical matters, it is essential to include real study cases, with an interdisciplinary approach (for example inviting professors of other fields to present the cases) and dividing the class in different working teams representing the different stakeholders. A field visit is advisable. These kinds of exercises develop the different skills identified by the Singapore Declaration. Furthermore, a good comprehension of the cases should include the analysis of similar cases, especially those resolved by courts (case law).

## **III. Values**

Justice and ethics are relevant values from an environmental perspective, but it is important that the analysis of these values takes into account the different philosophical positions regarding the reasons why the environment should be protected and the positions of developing versus developed countries.