

PN-AAW-784

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**AN OUTLINE FOR TWO ENVIRONMENTAL
LAW CURRICULA FOR LAWYERS AND
LAW-RELATED OFFICIALS OF
LESS DEVELOPED COUNTRIES**

Howard Taubenfeld
September, 1983

This document was produced for the Environmental
Planning and Management Project of the
International Institute for Environment and
Development under the
Advisory Services Contract No. AS-14

The Environmental Planning and Management Project is a
cooperative agreement between the International Institute
for Environment and Development and the U.S. Agency for
International Development to respond to requests for
assistance from developing countries in a variety of
environmental and natural resource management problems.

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International Institute for Environment and Development
1717 Massachusetts Ave. N.W.
Washington, D.C. 20036
(202) 462-0900

D. International and cross-boundary rules for reference:

1. Regional: Mediterranean Protocol as an example, others;
2. International: conventions, resolutions, cases (Trail Smelter Arbitration, Corfu Channel case; Lake Lanoux arbitration, dumping; wastes in the seas; (the nature of international law rules in general).

E. Internal Issues in all countries:

1. Health: water, toxics, air (smog, other), solid waste, dust, radiation, noise.
2. Tourism: beaches, shores, water (health in general).

F. The "tension" between development and environmental concerns (includes the costs of lessening and of keeping pollution).

Exercises:

1. On the spot ("in class"):

- a. list your country's participation in regional and international environmental regimes;
- b. list your country's environmental concerns at each and every level;
- c. list all agencies of your government at any level of authority which deal in any way with any environmental concern;

2. To be distributed, discussed briefly, and worked by the participant in advance of Unit 2:

Problem: Allocation of environmental controls in the participant's country (public and/or private approaches through the legal mechanism).

Resources: Extracts or complete texts of treaties, cases, etc. used in "D" above.

Unit 2: Goal

Unit 3:

To achieve an understanding of how a government might function when a decision is authoritatively made to recognize and deal with a difficult technologically-oriented problem, here, protection of the environment.

Coverage:

Internal dynamics leading to legal rule-making; bureaucracy in government; organization of particular governments; bargaining within a government for rules and power.

- A. The State of Domestic law - for each country represented with respect to environmental controls;
- B. Models available:
 - 1. general rules, plus detailed regulations;
 - 2. detailed, comprehensive rules;
 - 3. central vs. decentralized controls;
 - 4. control through private enforcement
- C. The degree of need for rules - by country, by region; by present vs. future situation;
- D. Present and potential organization of government to meet the identified needs;
- E. A range of remedies in this arena: police, agency, private; the need to negotiate remedies;
- F. Organization of government to foresee, prevent, remedy environmental issues;
- G. Reorganization of governments to meet these needs.

Exercises:

1. On the Spot - Unit 2:

- a. list or relist your country's environmental (or related kind) of laws;
- b. list or relist in a priority order your countries immediate and long run environmental problems;
- c. list the problems with the present organization of your government to meet them; show who would "find" the problem, where would the issues be developed, who would draft, comment, redraft.

2. On the Spot - Unit 3:

- d. draft a reorganization of your government focused on environmental issues or show the present organization and why it is adequate; state your reasons for each step;

Indicate use of a national, "regional" or local authorities and why a centralized or decentralized approach is to be used for each potential environmental hazard.

A specific question arises: e.g., water flowing into a lake or the sea is found to be polluting that water or the shore (or a city is increasingly suffering from atmospheric pollution; or ---). How would "the government" discover the problem? Which government (or agency) needs to know? How would the type and source(s) of pollution be determined?

3. To be distributed, discussed briefly, and worked by the participant in advance of Units 4-7:

Given a country without a law directed expressly to environmental concerns, draft an overall enabling ("umbrella") law.

Models to be distributed: extracts from U.S. NEPA; Mexico; draft for Tunisia.

Unit 4:

Unit 5: Goals - Legal Modernization to Meet the Needs for

Unit 6: Environmental Controls:

Unit 7:

To achieve an understanding of how needs for governmental action are identified; how possibilities for legal approaches to resolution are assessed; how new laws to meet discovered needs are drafted; how the lawyer functions in drafting, intergovernmental negotiation.

Coverage:

Identification of needs (problems are usually brought to the lawyer; does he have a role in discovering them?); possibilities of solution (including economic, political and social costs of remedying, and of not remedying ("development vs. environment", engineering feasibility), alternative remedies (e.g., better management and engineering practices which may produce better environmental results without the need for machinery, etc.).

Exercises: On the Spot - Unit 4:

A need for revision (or initiation) of environmental legislation having been found by the "responsible officer", draft a memorandum of understanding between departments and agencies of a central government as to the functions of each with respect to all environmental issues raised in your draft enabling law. "Game": With agency roles assigned to participants, negotiate an agreed memorandum of understanding.

On the Spot - Unit 5:

With respect to the umbrella law already drafted, state in one paragraph its overall purpose. Describe in one paragraph an allocation of functions under such an act in your country. Describe in a brief memorandum the pros and cons of adoption for your country. Suggest areas to be covered at once; later; long run; if at all.

On the Spot - Unit 6:

Assume that your country is faced most particularly by one form of pollution, and has enabling legislation, draft a short form of law dealing with that problem, for example, industrial-water;

industrial-air; industrial; municipal-water; noise; toxics of all sorts; solid waste; radiation; beaches; air generally ("clean air act"); water generally ("clean water act"); a particular river, lake.

List all agencies and types of personnel you would consult to prepare for drafting.

What are the legal economic, social issues of enacting such legislation; of not enacting it?

Materials:

Extracts to be distributed; texts available: e.g., U.S. clean air and clean water acts; Canadian coastal waters control act.

On the Spot - Unit 7:

Assuming a general law on (for example), atmospheric pollution, draft a brief law (regulations, order, decree) dealing with, e.g., a) dust and other atmospheric contaminants generated by the country's major cement plant; b) dealing with spraying or dusting crops; c) dealing with emissions from power plants.

NB: It is assumed in this set of Units that questions of interaction with engineers, scientists, economists, regulators and others will arise, on setting standards, costs, etc. For some exercises, these "interactions" will have to be arranged or simulated.

To be distributed, etc.: Draft the basic law establishing an agency to make studies, enact regulations, and deal with all aspects of environmental control.

Model (for example): U.S. EPA

Unit 8: Goal:

To understand the utility/disutility of a centralized approach to environmental control and the intergovernmental problems in use of centralized controls.

Approach and On the Spot Exercise - Unit 8: After discussion of a centralized agency, the participants will role play attorneys for various divisions of a central government, local authorities, universities, etc., and argue the merits/demerits from their perspective of this agency.

Unit 9: Goal:

To identify and put into practice methods of persuasion and enforcement to achieve pollution control.

Approach: Discussion of how environmental rules are made effective: education, persuasion, methods of taxation, etc., penalties.

Exercise: On the Spot - Unit 9:

1. Assume that an air pollution law is being negotiated, draft the proposed enforcement provisions: include orders to desist, orders to close, fines, prison sentences, other techniques that you can imagine.
2. The largest cement plant in country X, the fifth largest industrial employer in the country, is operating with no pollution control equipment and is causing substantial pollution of a city in which it is sited. There is a control law absolutely barring this kind of emission. The plant is 40% owned by the government of X. The course participants will represent the management of the plant and of a government regulatory agency.

Unit 10: Goal:

Pollution control may be more easily accomplished with new entities, limits on pollution - prone equipment to be imported or the like. Lenders and funders (for example, the U.S. AID program) may insist on environment controls as pre-conditions to aid. The lawyers will learn to deal with these issues.

Approach:

Participants will be advised of these "external" problems, and opportunities, and then move to exercises.

Exercise: On the Spot - Unit 10:

1. Draft a statement to be included in every charter of, or agreement with, a foreign entity doing business in your country accepting full responsibility for compliance with environmental regulations and/or certifying that it meets a stated standard (for example, of the country of manufacture) for pollution limitation.
2. Prepare a memorandum for your government requesting a waiver of environmental standards for a new industry, factory, piece of machinery.

Unit 11: Goal:

To acquaint the participant with the problems of cross-border pollution problems.

Approach:

A brief introduction to international and regional (e.g., the Mediterranean) rules on environmental issues followed by drafting exercises.

Exercise: On the Spot - Unit 11:

1. Given a cross boundary pollution problem, draft a negotiating position (air, water, other), assuming an important national industry is the polluter. Draft a proposed bilateral agreement. Draft a letter objecting to a form of pollution affecting your country or a pollution incident (with or without a specific or general agreement in place).

To be distributed, etc.: Given an international pollution issue, for example, the Mediterranean Sea, draft domestic supportive legislation for such an international arrangement; draft a letter protesting the conduct of another Party to the arrangement; draft a memorandum of law supporting a complaint to an international arbitration, court.

Materials: Exerpts from cases, treaties, Mediterranean Protocol.

Unit 12: Goals:

1. To extend the participants knowledge further on the interaction of international and national pollution issues (continues Unit 11).
2. To sum up the experience in the law and Modernization area of the program.

Approach to Goal (1): general discussion of interaction; limited role-playing in a dispute.

Approach to Goal (2): Review by leader and participants of documents, instruments, texts, memos, etc., prepared for the program. How were approaches and decisions arrived at? Do they still seem appropriate? Were they appropriately and persuasively expressed?

What are the best approaches to environmental improvement? On foreseeing and meeting environmental concerns? Are development and environment authentic?

How should the lawyers role be enhanced in issues of development and change? How can lawyers be sensitized to the useful roles of other disciplines (and vice versa)?

NB: In each instance of drafting, etc., the lawyer/participant is to work out:

What does he need to know to proceed?
Where does he find it?
What examples, analogies would he like to have?
What technical experts would he like to consult?
What are the limiting factors to his approaches?
What other knowledge would he like to obtain (e.g., what is the political feasibility; who are the "actors" in and out of government in this area of concern; what pressures exist; what true alternatives and costs exist; other?)

Proposal: Five Day Specialized Seminar. Theme: Environment - Law and Development - Legal Modernization.

Target: Law and the Environment in LDCs.

Purpose: To bring together lawyers, normally, government and enterprise lawyers, and administrators, regulators, involved scientists and engineers, economists, industrial managers, in order to:

- A. Identify general and particular types of environmental problems;
- B. Discover commonalities in problems and approaches to their resolution;
- C. Explore alternative approaches to resolution of environmental problems: local, regional, national, cross-boundary.

Process: 1. Analysis of present types of environmental concerns:
a) Global: CO₂, Ozone layer
b) Oceans:
c) National: air, water, toxics, radiation, noise, solid wastes, coasts
d) Cross-boundary: air, water

Analysis from the perspectives of managers, scientists and engineers, economists; from the perspective of lawyers, administrators.

2. Identification of problems for lawyers and of various legal approaches.

- A. The present existence or non-existence of rules: national, cross-boundary. What are the rules? Where are they found?
- B. How are governments administratively and legally divided as to functions - within a central government; in a federal system; between central and local.

C. Is there a tension between "development" and "environmental concerns"? If so, how to alleviate, lessen, eliminate, live with?

3. Experience of Participants

Utility of cross-fertilization

What are "my" laws? How did we get there?

How might it be done?

4. Exercises: exercises are included with each segment of the program. They will inevitably vary with the country (countries) in which the course is offered and the level of participants and are therefore to be considered primarily as illustrative.

Overall Goals: To develop an understanding of the environment, environmental issues and the skills needed to develop new laws and regulations, including the skills needed to recognize a problem, negotiate rules within a government, work with other resource people (economists, scientists, engineers, administrators, etc.), and to make others aware of the available skills of lawyers;

To enhance knowledge and skills needed to foresee and deal with both local, national, regional and international environmental problem areas;

To enhance functioning as lawyers in technologically-oriented issue areas, such as the environment and pollution control.

Approach: In a five-day program, divided here roughly into ten segments the substance of issues in the environmental area is developed, and this is combined with a modest amount of skills training. The program requires substantial participation by each participant. There is in most sessions some drafting or other work by the participant.

In each session, there will be a factual and substantive introduction, which, with assigned and

completed tasks, is a complete unit, but all are planned as parts of an overall sequence.

SESSION 1

Goals (Objectives): To explain the nature of environmental problems for nations, their lawyers and other appropriate persons;

To develop each participant's awareness of what the general problems, and his country's more specific problems of environmental pollution are, and what a lawyer's role in dealing with them can be.

Coverage: The Nature of Environmental Issues of Concern to LDCs:

- A. Global: CO₂; the ozone layer; acid rain;
- B. The Oceans;
- C. The Coasts: oil, sewage, toxics, other;
- D. International and cross-boundary rules for reference:

- 1. Regional: Mediterranean Protocol as an example, other;
- 2. International: conventions, resolutions, cases (Trail Smelter Arbitration, Corfu Channel case; Lake Lanoux Arbitration, dumping; wastes in the seas; (the nature of international law rules in general).

E. International Issues in all countries:

- 1. Health: water, toxics, air (smog, other), solid waste, dust, radiation, noise;
- 2. Tourism: beaches, shores, water, (health in general);

B. Models available:

1. general rules, plus detailed regulations;
2. detailed, comprehensive rules;
3. central vs. decentralized controls;
4. control through private enforcement.

C. The degree of need for rules - by country, by region; by present vs. future situation;

D. Present and potential organization of government to meet the identified needs;

E. A range of remedies in this arena: police, agency, private; the need to negotiate remedies;

F. Organization of government to foresee, prevent, remedy environmental issues;

G. Reorganization of governments to meet these needs.

Possible Exercises:

A. List or relist your country's environmental (or related kind) of laws;

B. List or relist in a priority order your countries immediate and long run environmental problems;

C. List the problems with the present organization of your government to meet them; show who would "find" the problem, where would the issues be developed, who would draft, comment, redraft.

D. Draft a reorganization of your government focused on environmental issues or show the present organization and why it is adequate; state your reasons for each step;

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3. Aesthetics

- F. The "tension" between development and environmental concerns (includes the costs of lessening and keeping pollution).

Resources: extracts, complete texts of treaties, cases, etc.

Possible Exercises:

- A. List your country's participation in regional and international environmental regimes;
- B. List your country's environmental concerns at each and every level;
- C. List all agencies of your government at any level of authority which deal in any way with any environmental concern;

SESSIONS 2-3

Problem: Allocation of environmental controls in the participant's country (public and/or private approaches through the legal mechanism).

Goal: To achieve an understanding of how a government might function when a decision is authoritatively made to recognize and deal with the difficult technologically-oriented problem, protection of the environment.

Coverage: Internal dynamics leading to legal rule-making; hierarchy in government; organization of particular governments; bargaining within a government for roles and power.

- A. The state of domestic law - for each country represented with respect to environmental controls;

Indicate use of national, "regional" or local authorities and why centralized or decentralized approach is to be used for each potential environmental hazard.

A specific question arises: e.g., water flowing into a lake or the sea is found to be polluting that water or the shore (or a city is increasingly suffering from atmospheric pollution; or ...). How would "the government" discover the problem? Which government (or agency) needs to know? How would the type and source(s) of pollution be determined.

SESSIONS 4-6

Given a country without a law directed expressly to environmental concerns, draft an overall enabling ("umbrella") law. If your country has such a law, outline it. Does it cover all contingencies; what is its current status? Models to be distributed: extracts from U.S. NEPA; Mexico; draft for Tunisia.

Goals: Legal Modernization to Meet the Needs for Environmental Controls;

To achieve an understanding of how needs for governmental action are identified; how possibilities for legal approaches to resolution are assessed; how new law to meet discovered needs are drafted; how the lawyer functions in drafting, intergovernmental negotiations;

Coverage: Identification of needs (problems are usually brought to the lawyer; does he have a role in discovering them?); Possibilities of solution (including economic, political and social costs of remedying, and of not

remedying ("development vs. environment", engineering feasibility), alternative remedies (e.g., better management and engineering practices which may produce better environmental results without the need for machinery, etc.).

Possible Exercises:

- A. A need for revision (or initiation) of environmental legislation having been found by the "responsible officer", draft an outline of a memorandum of understanding between departments and agencies of a central government as to the functions of each with respect to all environmental issues raised in your draft enabling law (or in an actual umbrella law);
- B. "Game": With agency roles assigned to participants, negotiate an agreed memorandum of understanding.
- C. With respect to the umbrella law already drafted, state in one paragraph its overall purpose. Describe in one paragraph an allocation of functions under such an act in your country. Describe in a brief memorandum the pros and cons of adoption for your country. Suggest areas to be covered at once; later; long run, if at all.

Assume that your country is faced most particularly by one form of pollution, and has enabling legislation, draft a short form of law dealing with that problem, for example, industrial-water; industrial-air; industrial; municipal-water; noise; toxics of all sorts; solid waste; radiation; beaches; coastal waters; air generally ("clean air act"); water generally ("clean water act"); a particular river, lake.

List all agencies and types of personnel you would consult to prepare for drafting.

What are the legal, economic, social issues of enacting such legislation; of not enacting it.

Materials: Extracts to be distributed; texts available: e.g., U.S. Clean Air and Clean Water acts; Canadian coastal waters control act.

Assuming a general law on (for example) atmospheric pollution, draft a brief law (regulations, order, decree) dealing with, e.g.,

- A. dust and other atmospheric contaminants generated by the country's major cement plant;
- B. dealing with spraying or dusting crops;
- C. dealing with emissions from power plants.

NB: It is assumed in this set of Units that questions of interaction with engineers, scientists, economists, regulators, and others will arise, on setting standards, costs, etc. For some exercises, if used, these "interactions" will have to be arranged or simulated.

Problem: Draft an outline of a basic law establishing an agency to make studies, enact regulations, and deal with all aspects of environmental control. Model (for example): U.S. EPA

SESSION 7

Goal: To understand the utility (desirability) of a centralized approach to environmental control and the intergovernmental problems in use of centralized controls.

Approach: After discussion of a centralized agency, the participants will role play attorneys for various divisions of a central government, local authorities, universities etc. and argue the merits/demerits from their perspective of this agency.



SESSION 8

Goal: To identify and put into practice methods of persuasion and enforcement to achieve pollution control.

Approach: Discussion of how environmental rules are made effective: education, persuasion, methods of taxation, etc., penalties.

Possible Exercises:

- A. Assume that an air pollution law is being negotiated, draft the proposed enforcement provisions: include orders to desist, orders to close, fines, prison sentences, other techniques that you can imagine.
- B. The largest cement plant in country X, the fifth largest industrial employer in the country, is operating with no pollution control equipment and is causing substantial pollution of a city in which it is sited. There is a control law absolutely barring this kind of emission. The plant is 40% owned by the government of X. The course participants will represent the management of the plant and of a government regulatory agency.

SESSION 9

Goal: Pollution control may be more easily accomplished with new entities, limits on pollution-prone equipment to be imported or the like. Lenders and funders (for example, the U.S. AID program) may insist on environment controls as pre-conditions to aid. Lawyers should learn to deal with these issues.

Approach: Participants will be advised of these "external" problems and opportunities and then move to exercises.

Possible Exercises:

- A. Draft a statement to be included in every charter of, or agreement with, a foreign entity doing business in your country accepting full responsibility for compliance with environmental regulations and/or certifying that it meets a stated standard (for example, of the country of manufacture) for pollution limitation.
- B. Prepare a memorandum for your government requesting a waiver of environmental standards for a new industry, factory, piece of machinery.

SESSION 10

Goal: To acquaint the participant with the problems of cross-border pollution problems.

Approach: A brief introduction to international and regional (e.g., the Mediterranean) rules on environmental issues followed by drafting exercises.

Possible Exercises:

- A. Given a cross-boundary pollution problem, draft a negotiating position (air, water, other), assuming an important national industry is the polluter. Draft a proposed bilateral agreement. Draft a letter objecting to a form of pollution affecting your country or a pollution incident (with or without a specific or general agreement in place).

- B. Given an international pollution issue, for example, the Mediterranean Sea, draft in outline domestic supportive legislation for such an international arrangement; draft a letter protesting the conduct of another Party to the arrangement; draft a memorandum of law supporting a complaint to an international arbitration, court.

Materials: Exerpts from cases, treaties, Mediterranean Protocol

Further Goals: To extend the participants knowledge further on the interaction of international and national pollution issues.

Approach: General discussion of interaction; limited role-playing in a dispute.

SUMMATION: Review by leaders and participants of course coverage, materials prepared by participants.

REVIEW QUESTIONS:

1. What are the best approaches to environmental improvement?
2. To foreseeing and meeting environmental concerns?
3. Are development and environment antithetical?
4. How should the lawyers role be enhanced in issues of enviormental concerns?
5. How can lawyers be sensitized to the useful roles of other disciplines, and vice versa?

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