

INTERNATIONAL ENVIRONMENTAL LAW

A PROBLEM-ORIENTED COURSEBOOK

FOURTH EDITION

August 2020 Supplement

JONATHAN C. CARLSON

Professor of Law

Victor and Carol Alvarez Fellow in Law

The University of Iowa

SIR GEOFFREY W.R. PALMER, P.C.,
K.C.M.G., A.C., Q.C.

Barrister

Distinguished Fellow Victoria University of Wellington

Faculty of Law and Centre for Public Law

Global Affiliated Professor, The University of Iowa College of Law

West Academic Publishing

Copyright © 2020 LEG, Inc. d/b/a/ West Academic
444 Cedar Street, Suite 700
St. Paul, MN 55101
1-877-888-1330

CHAPTER 1

ADJUDICATING SOUTHERN OCEAN WHALING

On page 47, in the second sentence of the first full paragraph:

Replace the word *cases* with *case*.

On page 107, in the last sentence of the second paragraph:

Replace the word *Community* with the word *Committee*.

On page 108, after the first full paragraph, insert the following new paragraph:

At the 67th Meeting of the IWC in Florianopolis, Brazil, in September 2018, the delegates again rejected Japan's effort to revise the moratorium on commercial whaling. Instead, they passed, in a sharply divided vote, the Florianopolis Declaration on the Role of the IWC in the Conservation and Management of Whales in the 21st Century. That Declaration stated, among other things, that the IWC's role is "to ensure the recovery of cetacean populations to their pre-industrial levels, and in this context reaffirms the importance in maintaining the moratorium on commercial whaling." The Declaration clearly signaled to Japan that its efforts to obtain IWC endorsement of sustainable whaling were fruitless

On page 108, at the beginning of the second full paragraph:

Replace the word *Worse* with the word *Subsequently*.

CHAPTER 2

THE RAINBOW WARRIOR INCIDENT

On page 156, in the second full paragraph:

Insert the word *be* between *will* and *a* in the last sentence of the paragraph, so that the sentence reads: *In most cases, especially where multilateral treaties are concerned, the United States will be a party to a treaty only if it has ratified the treaty; its signature alone is not enough.*

CHAPTER 5

PROTECTING THE ATMOSPHERE

Problem 5-2 (“Nueva Granada Versus the Ozone Layer”)

On page 397, in the fifth full paragraph:

Replace the year 2006 with the year 2020.

On page 398, in the fourth full paragraph:

Replace the year 2018 with the year 2019.

On page 399, in the second full paragraph:

Replace the year 2018 with the year 2019.

CHAPTER 6

PROTECTING THE OCEANS

Problem 6-2 (“Land-based Pollution in the Caribbean Sea”)

There is increasing international attention to the problem of marine litter (especially plastics). The United Nations Conference on Sustainable Development (Rio +20) launched a Global Partnership on Marine Litter in June 2012. UN Environment began a “Clean Seas” campaign in February 2017 with the goal of engaging governments, the public, civil society, and the private sector in a coordinated effort to combat plastic litter.

The Caribbean Islands are the worst plastic polluters in the world, on a per capita basis. See Daphne Ewing-Chow, *Caribbean Islands are the Biggest Plastic Polluters per Capita in the World*, Forbes Online (September 20, 2019), <https://www.forbes.com/sites/daphneewingchow/2019/09/20/caribbean-islands-are-the-biggest-plastic-polluters-per-capita-in-the-world/#45612f8a774b> (accessed 4 August 2020). This has prompted several recent efforts to reduce marine litter that are targeted specifically at the Caribbean region.

In 2017, UN Environment’s Caribbean Environment Programme, in partnership with the US EPA and Peace Corps, launched the Trash Free Waters Initiative, aimed at preventing land-based trash from finding its way into the Caribbean. In January 2020, the islands of Antigua, Saint Lucia, and Grenada launched the Plastic Waste-Free Islands project aimed at reducing the generation of plastic waste and its movement from the islands into the surrounding seas.

Problem 6-3 (“An Oil Tanker Spill in the South China Sea”)

The international effort to reduce damage to the environment from oil tanker spills has been a success story for international law. Despite continued growth in the volume of oil transported in ocean-going tankers, the number of oil spills has decreased substantially over the last 50 years (since the adoption of MARPOL 73/78), as has the total volume of oil lost in the accidents that have occurred. The decline is directly attributable to the adoption of international standards that have increased the safety of all aspects of oil tanker design, construction, and operation.

In 2019, 1000 tonnes of oil were spilled in ocean waters, which tied with 2012 as the lowest total amount of oil spilled in any year over the past five decades. See ITOPF, Oil Tanker Spill Statistics 2019, <https://www.itopf.org/knowledge-resources/data-statistics/statistics/#:~:text=The%20total%20volume%20of%20oil,in%20the%20last%20five%20decades>. This data, however, does not include a substantial oil spill of unknown origin that occurred off the coast of Brazil in the fall of 2019. See Zoe Sullivan, *Nearly three months after Brazil oil spill, origins remain uncertain*, MONGABAY online, <https://news.mongabay.com/2019/11/nearly-three-months-after-brazil-oil-spill-origins-remain-uncertain/> (accessed 4 August 2020).

CHAPTER 7 PROTECTING NATURAL RESOURCES

Problem 7-1 (“Water Resource Conflicts in the Fertile Crescent”)

The most significant international water dispute at the present time (August 2020) concerns the Grand Ethiopian Renaissance Dam, being built on the Nile River in Ethiopia. For nine years, Egypt has worried that the project will vastly reduce the flow of the Nile, on which Egypt depends for virtually all its water needs. Ethiopia, for its part, insists on its right to build the dam and use a portion of the huge quantity of water that currently flows out of Ethiopia to Sudan and Egypt. Sudan will benefit in many ways from the project but has some worries of its own. The three countries have negotiated throughout the construction of the dam, but to no avail. Now the dam is nearly complete, and Ethiopia is expected to begin actively filling it within a couple of years. For details on the dispute and its legal background, see this CNN news report: <https://www.cnn.com/2020/07/21/africa/ethiopia-nile-river-dam-afr-intl/index.html>

Problem 7-2 (“Poaching Elephants in Usambara”)

A study published in 2019 estimated that elephant poaching rates in Africa had started to decline after peaking in 2011. But the news was still grim. An estimated 350,000 elephants were left alive on the continent, and poaching was continuing at the rate of 10-15,000 animals a year. The decline was not uniform, and poaching rates are increasing in some countries. Severin Hauenstein, et al., *African elephant poaching rates correlate with local poverty, national corruption and global ivory price*, 10 Nature Communications, Article number: 2242 (2019).

Adding to concerns of conservationists were reports out of Botswana of mysterious deaths of several hundred elephants. Poaching did not appear to be the cause of the deaths, as the elephants' tusks were intact. The behaviors and symptoms attributed to the animals before their deaths were not associated with any known disease. See *What's killing Botswana's elephants? Here are the top theories.*, National Geographic Online (14 July 2020), <https://www.nationalgeographic.com/animals/2020/07/botswana-elephant-death-mystery/> (last visited 4 August 2020).

Problem 7-3 (“Saving the Seminole Swamp”)

South Africa was among the earliest States to ratify the Nagoya Protocol and, consistent with its obligations under that agreement, South Africa requires industries using indigenous knowledge and resources to share benefits with the traditional knowledge holders in a fair and equitable manner. In 2019, South African producers of Rooibos tea signed an access and benefit-sharing agreement with the indigenous Khoi-Khoi and San communities of South Africa that was hailed as the “first agreement of its kind in the world” because of its industry-wide application. The agreement provides that the Khoi-Khoi and San will receive 1.5% of the farm-gate price of Rooibos on a yearly basis beginning in 2019. See Songezo Ndlelile, *Landmark deal to give Khoi*

and San benefit-sharing levy in Rooibos, iol.co.za (1 Nov 2019), <https://www.iol.co.za/business-report/economy/landmark-deal-to-give-khoi-and-san-benefit-sharing-levy-in-rooibos-36444014> (last accessed on 5 August 2020).

Problem 7-4: Expanding Drylands in Mitumba

On page 634, there is an error in the third full paragraph:

In the third sentence of that paragraph, the phrase “*Turkana* land” should read “*Mitumban* land,” so that the sentence reads: “But the Turkana have no legal right to any Mitumban land or to its water resources, according to the government.”

CHAPTER 8

PREVENTING CHEMICAL POLLUTION

Problem 8-1 (“E-Re Sends Used Electronics to Luzonan”)

In another example of the growing international concern over plastic waste, the Basel Convention COP adopted decision BC-14/12 in May 2019. This decision amends the annexes to the Convention to add new entries concerning plastic wastes to Annexes II, VIII, and IX. The amendments will become effective on 1 January 2021 for all Basel Parties that do not expressly opt out. The amendments require the application of the prior-informed-consent procedure to all plastic waste with exceptions for certain wastes destined for recycling.

CHAPTER 9

CONFRONTING CLIMATE CHANGE

On page 780, in the carryover paragraph that begins on page 779, replace the sentence fragment “The ‘non-Annex I Parties.’” with the following:

The Annex II Parties are the OECD Members included in Annex I (excluding Turkey and OECD Members that joined the group after 1992). Annex II Parties are expected to provide financial support to assist developing countries in complying with the UNFCCC. Finally, the non-Annex I Parties are all other Parties to the Convention, primarily developing countries.

CHAPTER 10 NUCLEAR THREATS TO THE ENVIRONMENT

Problem 10-1 (“The Asia-Pacific and Nuclear Weapons”)

Recent events do not bode well for the effort to stop the proliferation of nuclear weapons and the growth in nuclear arsenals.

US withdrawal from the 1987 Intermediate-Range Nuclear Forces Treaty was completed on August 2, 2019. The only other treaty limiting U.S. and Russian nuclear weapons deployment, the New START (Strategic Arms Reduction Treaty) of 2019, expires in February 2021.

On August 5, 2020, the New York Times reported as follows:

“Spy agencies in recent weeks circulated a classified analysis about the efforts underway inside Saudi Arabia, working with China, to build industrial capacity to produce nuclear fuel. The analysis has raised alarms that there might be secret Saudi-Chinese efforts to process raw uranium into a form that could later be enriched into weapons fuel, according to American officials.”

Mark Mazzetti, David E. Sanger and William J. Broad, *U.S. Examines Whether Saudi Nuclear Program Could Lead to Bomb Effort*, <https://www.nytimes.com/2020/08/05/us/politics/us-examines-saudi-nuclear-program.html> (accessed August 6, 2020). Saudi Arabia has said that it would try to obtain nuclear weapons if Iran continued to work toward a bomb.

CHAPTER 12

PROTECTING AGAINST PARTICULAR HUMAN ENDEAVORS

Problem 12-2 (“Population Control Meets Human Rights in Songhay”)

Target 3.7 of the Sustainable Development Goals aims at universal access to “sexual and reproductive health-care services,” including family-planning services, by 2030. In order to measure attainment of this goal, the United Nations monitors the “unmet need” for family planning support. In 2019, the UN reported that 190 million women of reproductive age who wanted to avoid pregnancy nonetheless did not use any contraceptive method, meaning that 10% of women worldwide have an unmet need for family planning. Of the women who do engage in contraception, three quarters use modern methods.