

TABLE OF CONTENTS

PREFACE BY THE SERIES EDITOR vii

ACKNOWLEDGEMENTS..... xi

ABBREVIATIONSxix

INTRODUCTION xxi

*I. APPLYING CLASSICAL METHODS AND TECHNIQUES OF
INTERNATIONAL LAW TO INTERNATIONAL ENVIRONMENTAL
PROBLEMS: THE TRADITIONAL ERA*..... 1

Introduction 3

A. Judson Harmon – the Oracle of Absolute Sovereignty 9

1. The Background of the Controversy Between the United
States and Mexico 9

2. The Opinion of Attorney General Harmon and the
Construction of the Harmon Doctrine 11

3. The Application of the Harmon Doctrine..... 15

3.1 As Between the United States and Mexico 15

3.2 As Between the United States and Canada..... 17

4. The Indeterminacy of the Doctrine of Absolute
Sovereignty 21

B. Separating Jurisdiction from Substance: the North Atlantic Coast Fisheries Case 25

1. Background 25

2. The Arguments of the Parties 28

3. The Ruling by the Arbitral Tribunal..... 30

4. The Contribution of the Ruling 32

C. Separating Jurisdiction from Substance in Relation to Areas beyond National Jurisdiction: The Bering Sea Fur Seals Arbitrations 34

1. Background 34

2. The Fur Seals Arbitration Between the United States and Great Britain 36

2.1 The Background of the Dispute 36

2.2 The Arguments of the Parties..... 40

2.2.1 The United States’ Position on the Right to Exercise Protective Jurisdiction 41

2.2.2 The Arguments of Great Britain on the Right to Exercise Protective Jurisdiction..... 43

2.3 The Award..... 46

3. The Russo-American Fur Seals Arbitration 48

4. The Over- and Underfunctionality of the Awards 50

D. The Doctrine of Abuse of Rights 52

1. The Critique of the *Bering Sea* Arbitration: Lauterpacht’s Argument 52

2. The Inadequacy of the Criticism 54

3. Specifying the Doctrine of Abuse of Rights..... 55

4. The Function of the Doctrine of Abuse of Rights..... 60

E. Recourse to State Responsibility: the Corfu Channel Case 62

1. Judgement of 9 April 1949 62

2. The Relevance of the *Corfu Channel* Case in the Environmental Context 66

F. *Recognition of a State’s Right to Use Its Natural Resources: the Lake Lanoux Case* 68

1. Background to the Dispute 68

2. The Award 71

3. The Judicial Techniques Applied by the Tribunal 76

G. *Settling International Environmental Disputes through Arbitration: the Trail Smelter Case*..... 80

1. Introduction 80

2. Compensable Damage 82

3. Future Damage 86

4. The Establishment of a Preventive Regime and Future Compensation 88

5. The Importance of the *Trail Smelter Case* 89

Conclusion 93

II. *THE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW AND THE LAW OF NATURAL RESOURCES: THE MODERN ERA* 99

Introduction 101

A. *The Evolution of International Environmental Law: the Process of the Internationalization of Environmental Issues*.... 107

1. Recognition of the Need to Regulate Use: Object, Scope and Purpose of Regulations Concerning Boundary Waters 107

2. Recognition of the Need to Preserve and Conserve Useful Species: Areas Beyond National Jurisdiction 116

2.1 A Shift from Regulating the Use to Regulating in Order to Preserve Useful Species 116

2.2 Object, Scope and Purpose of the Regulations to Conserve Marine Living Resources 119

2.3 The Development of the Regulatory Process 122

3.	Recognition of the Need to Protect the Human Environment: Transboundary Relations	132
3.1	A Move from the Conservation of Useful Species to the Conservation of the Natural Environment ...	132
3.2	Object, Scope and Purpose of the Regulations	135
3.2.1	A Shift to Protect Environmental Elements	135
3.2.2	Water Protection.....	145
3.2.3	Air Protection.....	154
3.2.4	Terrestrial Protection.....	158
3.2.5	Regulating the Nuclear “Fire”	163
3.3	The Institutionalization of Environmental Law: Establishing International Policy-Making Organizations.....	165
<i>B.</i>	<i>The Nationalization of the Law of Natural Resources</i>	<i>171</i>
1.	The Traditional Law of Natural Resources: Protection of Foreign Property	171
1.1	Background.....	171
1.2	The Traditional Doctrine on the Expropriation of Foreign Property	176
1.2.1	Determining Justifications: Public Interest, Non-Discrimination and Compensation.....	176
1.2.2	Culmination of the Traditional Approach: the Hull Doctrine.....	180
1.3	The Critique of the Traditional Approach	187
2.	The Modern Law of Natural Resources: Permanent Sovereignty Over Natural Resources.....	194
2.1	Background.....	194
2.2	The Resolution on Permanent Sovereignty Over Natural Resources.....	196
2.3	Towards a New International Economic Order.....	200
3.	The International Practice of Nationalization.....	208
3.1	The Indeterminacy of Substantive Applicable Law ..	208
3.2	The Dilemma of Appropriate Remedy.....	212
3.3	The Confused Status of International Law.....	215

3.4	Developing a Legally Manageable Standard.....	217
<i>Conclusion</i>		225
 <i>III. INTERNATIONAL LAW OF ENVIRONMENTAL INTEGRATION AND SUSTAINABLE DEVELOPMENT: THE POSTMODERN ERA</i>		233
<i>Introduction</i>		235
 <i>A. Bridging the Gap between Man and Nature</i>		249
1.	The Shift from a Lay-Man Approach to Scientific Expertise	249
2.	Reconciling Technosphere and Biosphere	254
2.1	Getting at the Sources.....	254
2.2	A Shift to Environmental Management	261
2.2.1	Recourse to the Precautionary Principle	261
2.2.2	From Problem Solving to Risk Management	266
2.3	From the Protection of Elements to the Management of Ecological Processes.....	269
2.3.1	A Move to Dynamic Processes.....	269
2.3.2	The Function of Environmental Governance and Regimes	271
2.3.3	Establishing Global Regimes	275
3.	Extending Environmental Management to Extreme Events	279
 <i>B. Bridging the Gap between the Environment and the Economy</i>		287
1.	A Shift from the Environmental Sector to the Economic Sector	287
2.	Reconciling the Environment and the Economy	293
2.1	Working on Separate Tracks	293
2.2	A Shift to Environmental Integration	301

2.2.1	Establishing Environmental Considerations as Justification	301
2.2.2	Incentive for Harmonization	306
2.3	Discovering the Synergy between the Environment and Economic Sectors: Economizing the Environmental Sector	309
3.	Integrating Environmental Protection and Economic Development at the Global Level: Sustainable Development	314
3.1	A Shift to Rational Exploitation	314
3.2	Optimizing the Use and Conservation of Living Natural Resources: Sustainable Use	325
3.3	Bridging the Gap between Industrialized and Developing Countries: Emergence of the Principle of Sustainable Development.....	331
<i>Conclusion</i>		338
<i>CONCLUSIONS</i>		345
<i>BIBLIOGRAPHY</i>		359
<i>INDEX</i>		405