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**DEVELOPMENT OF AN ENVIRONMENTAL LAW
CURRICULUM FOR KOSOVO UNIVERSITIES**

By

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Professional Paper

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Abbreviations

ABA – American Bar Association
CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
EIA – Environmental Impact Assessment
EIS – Environmental Impact Statement
EPL – Environmental Protection Law
EU – European Union
FRY – Federal Republic of Yugoslavia
KEPA – Kosovo Environmental Protection Agency
KME – Kosovo Ministry of Education, Science, and Technology
MESP – Ministry of Environment and Spatial Planning
NATO – North Atlantic Treaty Organization
NEPA – National Environmental Policy Act
RS – Republic of Serbia
SEA – Strategic Environmental Assessment of Kosovo
SFRY – Socialist Federative Republic of Yugoslavia
SRSG – Special Representative of the (UN) Secretary General
UN – United Nations
UNHCR – United Nation High Committee for Refugees
UNMIK – United Nation Interim Administration Mission in Kosovo
KFOR – Kosovo Forces (NATO)
WHO – World Health Organization

Introduction

This paper aims to improve environmental problem solving in Kosovo by introducing an environmental law course to the Kosovo university system. No school in Kosovo currently teaches environmental law and lawyers practicing environmental litigation are nonexistent. Foreign investors and donor organizations are struggling to find environmental consultants. The government is facing the same problem. There are not many experts who can be consulted or who can help draft the environmental laws Kosovo must enact in order to harmonize its laws with those of the European Union (EU). Lawyers having proper and formal training for doing the Environmental Impact Assessment (EIA) are also extremely limited in number. Thus, there is a real need for training in environmental law for legal professionals.

This paper consists of three parts:

I. Why an Environmental Law Curriculum Should Be Introduced in Kosovo

This first part explains the rationale for proposing an environmental law course at law schools within Kosovo. The objective is to convince the Kosovo Ministry of Education, Science, and Technology (KME), the highest university authorities, and potential donors, that Kosovo requires the introduction of a new environmental law course. To help teachers and curriculum authorities see environmental law education as a part of the bigger picture, this part includes an overview of environmental legislation, current state of the environment, summary of the major environmental problems in Kosovo, and a characterization of the educational system in Kosovo. This section is particularly important for international

donors, which are among the paper's main target audience, because they may have limited familiarity with the current condition in the field.

II. How the Course Should Be Taught

The second part of the paper will be mostly university oriented. According to interviews conducted in 2004, a near absolute majority of the University of Pristina professors considered further changes in the curriculum urgently needed. There is no need to convince the faculty or students who are already suggesting that these curriculum reforms are necessary. However, they have to be informed about how the course is going to be taught, which new teaching methods will be introduced, and what is expected from teachers.

III. What Subject Matter Should Be Taught (the Syllabus)

The third section will outline what the course's subject matter will be and, more specifically, how students will benefit from the new course. This section resembles an extended and detailed environmental law Syllabus. To the extent the length of this paper allows, most of the teaching topics are described and a rationale for their introduction is provided.

I. WHY AN ENVIRONMENTAL LAW CURRICULUM SHOULD BE INTRODUCED IN KOSOVO

Kosovo - A State, Protectorate, or Something in Between

Defining Kosovo has always been a difficult task, and now after the proclamation of Kosovo's independence in February 2008, it is not any easier. Even the Encyclopedia Britannica's rather neutral and factually accurate definition, that Kosovo is a self-declared independent country in the Balkans regions of Europe (Britannica website), could be considered controversial. Albanians would easily agree that Kosovo is an independent country, while Serbs would emphasize the words self-declared. Although the United States and the majority of the EU member countries recognize Kosovo's independence, Serbia, Russia and a number of other countries do not.

For most of the 20th Century, Kosovo was part of Serbia, one of the constituent republics of the Socialist Federal Republic of Yugoslavia (SFRY). The continued persecution of Kosovo Albanians, and massive violations of their human rights during the regime of former Serbian president Slobodan Milosevic, led to the start of the North Atlantic Treaty Organization (NATO) air strikes against targets in Kosovo and Serbia in March 1999. After 11 weeks of NATO bombing, Milosevic was forced to withdraw his troops and police, some 750,000 Albanian refugees came home and about 100,000 Serbs - roughly half the province's Serb population - fled. The United Nation (UN) mission received ultimate authority over Kosovo, pending agreement on the future status of the Serbian province.

Although formally considered a part of Serbia, since 1999 Serbian governance in Kosovo has been virtually non-existent. Kosovo is governed by the United Nations Interim Administration Mission in Kosovo (UNMIK) and security is provided by the NATO-led Kosovo Forces (KFOR), consisting of 15,000 troops (NATO/KFOR website). In the aftermath of declaring independence, the UN personnel are being replaced with European Union personnel consisting of 2,000 people. The EU will take over responsibility for supervising police, judicial, and civil administration from the current UN mission after a 120-day transition period which expires in June 2008 (Council Joint Action 5928/08).

Needs for the New Environmental Law Curriculum

Many years of isolation have harmed Kosovo in multiple ways. Decades of communism after World War II and isolation during Yugoslavia's wars in the 1990s not only made it impossible for Kosovo to keep pace with new developments in environmental law, but also prevented Kosovo's educational system from absorbing major changes in terms of didactics, teaching practices, and pedagogy beneficial to some former European communist countries.

Although the Kosovo Universities, the University of Pristina most of all, are being developed based on the Bologna Declaration since the academic year 2001/2002 (MESP 1), this process is still at the very early stages of its development. Therefore, the universities in Kosovo are unable to compete with universities in developed countries. The University of Pristina produces diplomas but the knowledge and skills gained in the courses offered do not match the needs of the

economy, and are far from being competitive with other European countries (Tahirsylaj, 2004). As acknowledged by a large part of the population, reform of the programs and curricula and their harmonization with the higher education in the EU states is a necessary process. The future goal is to reconnect Kosovo society to international development and encourage its economic and social progress. The faculty members have the same opinion. The interviews conducted in 2004 showed that 84 percent of the University of Pristina lecturers perceived further changes in the curriculum as urgent (Mustafa, 2004).

Currently there is no school in Kosovo where environmental law is taught. Even the reform oriented University of Pristina Law School does not offer that course. In September 2007, the University of Pristina Senate, as the governing body of the institution, approved a revised curriculum for the law school that includes all of the courses which the American Bar Association (ABA) Rule of Law Initiative, together with its partners US AID and the U.S. Department of Justice, have developed for the school over the last two years (ABA Website). The curriculum was mainly revised to include the ABA Rule of Law Initiative's clinical legal education program. Although this was a response to the inadequacies of the legal education system to provide students with the skills they need to function as effective lawyers in Kosovo society, environmental law once again did not find its place in the new curriculum.

Aside from the University of Pristina, public schools in Northern Kosovo, including Mitrovica School of Law, engaged in a few efforts to reform its study programs. These efforts failed because of interference by Serbian Government politics in the governing structures of this university in 2004 (MESP 1, 2007).

The result is that lawyers practicing environmental litigation within Kosovo are nonexistent. Foreign investors are struggling to find environmental consultants and very often hire foreign consultants to do jobs which local experts could do if they existed. The government is facing the same problem. There are not many people who can be consulted or who can draft the environmental laws that Kosovo is required to adopt to harmonize its laws with those of the EU. Additionally, the number of experts able to perform an environmental assessment is extremely limited. As required by the Kosovo Environmental Protection Law of 2004 an Environmental Impact Assessment shall only be performed, and an EIA report may only be prepared and submitted, by a person or undertaking (i) having special expertise and training in the environmental sciences; and (ii) holding an EIA license from the ministry that authorizes such a person or undertaking to conduct EIAs and to prepare EIA reports (Article 20.6). The Strategic Environmental Assessment of Kosovo 2001 (SEA) has recognized this deficiency and recommended expert input in the field of EIA, as well as a solid training program for those implementing the EIA process in the future. It is clear that without introducing environmental law studies Kosovo will never have such an expert, or at least, never will have them in sufficient numbers.

The Mitrovica School of Mines and Geology is among the few postsecondary schools in Kosovo which incorporate environmental issues into its curriculum but, as a professional school, it does not teach environmental law.

The Geographical Context

Kosovo covers an area of 10,887 km² (4,203 sq mi)¹ and is surrounded by mountains that act as a natural border with the neighboring countries. Kosovo borders Montenegro to the northwest, the Republic of Macedonia to the south, and Albania to the southwest. The border with Serbia proper is on the north and east.²

Kosovo's population estimates range from 1.9 to 2.2 million, predominantly ethnic Albanians.³ According to the Figures 2005 Survey of the Statistical Office in Kosovo, around 88 percent of the population are ethnic Albanians; the Serbian population accounted for 7 percent; while other ethnic groups together were estimated to be 5 percent of the general population. Other groups include the Roma, Bosniaks and Turks. Kosovo's population is more than half rural, while the other part of the population lives in towns ranging in size from a few thousand to 600,000. The population density is close to 200 per square kilometer, one of the highest in Europe.

The population in Kosovo has been growing steadily ever since World War II with the largest increase in the Albanian community. The current population is one of the youngest in Europe with around 40 percent of the population below the age of 20 (Kosovo State of Environment Report). Kosovo suffers severe unemployment and has the highest European unemployment rate at 49 percent. Unemployment rate for women (63.6 percent) is much higher than for men (40.8 percent) (MESP 2003).

¹ Connecticut, one of the smallest American states, covers an area of 5,543 sq mi.

² In Serbia this border is officially considered to be the administrative border between Serbia proper and its province. For Albanians this border is not any different from any other international border Kosovo has.

³ It is difficult to establish the exact number of Kosovo's population for a number of reasons, including the fact that Albanians last took part in the 1981 census, boycotting the one carried out in 1991 because it was organized by the Serbian Government. Also, armed conflicts and the migration of a high number of refugees have largely altered Kosovo's population.

Despite all the current optimism of the Kosovo population, the territory still has Europe's highest birth and unemployment rate coupled with the smallest GDP (\$1,280) (MESP 2003).

A World Bank Survey, "The Living Standards Measurement" found that over half of the population was

"living below the poverty line of US\$1.65 per adult per day at the end of 2000. For many of the poor poverty was relatively shallow, and an annual amount of US\$190 per person would have been sufficient to bring a poor household out of poverty. Nevertheless, the report suggests that around 12 percent of the population live below the extreme (food) poverty line of US\$0.88 per adult per day. According to the assessment, the typical household in extreme poverty is of Albanian ethnicity, it has seven members and a high dependency ratio (due to a large number of children), and at least one elderly person. It lives in a rural area; the typical household head is around 50 years old, with a low level of education and works in agriculture." (World Bank, Kosovo, Federal Republic of Yugoslavia, Transitional Support Strategy, July 2002).

The Current Political and Legal Situation in Kosovo

The United Nations Mission in Kosovo was established by Security Council UN Resolution 1244 following the war in Kosovo, on June 10, 1999 (UN 1244/1999). The head of UNMIK is the Special Representative of the Secretary-General (SRSG) of the United Nations who appoints him. Pursuant to the Resolution, Kosovo was formally declared part of Serbia although Serbia was denied any rule in Kosovo's governance.

UN Resolution 1244 calls for a political process to determine the future status of Kosovo. The process started under the guidance of the Contact Group in late 2005 and was unable to come to an agreement. Opinions and political positions on a model for Kosovo governance were so divergent that, from the very beginning, it was highly

unlikely a compromise or solution would be reached by the parties. The Kosovo Albanian majority wanted independence for Kosovo, but its demand has been rejected by the Serbian Government and Kosovo Serbs, who see the region as a cradle of their nationhood and religion.

On February 17, 2008, Kosovo's Assembly in Pristina, which after the withdrawal of Serbian minority members consisted exclusively of Albanian members, unanimously endorsed a declaration of independence. The declaration proclaimed Kosovo a democratic country which respects the rights of all ethnic communities. The Serbian Government declared the proclamation illegal, null and void, and rejected it, based on Serbia's right of territorial integrity as an internationally recognized and sovereign state and member of the United Nations.

Although the United States and all major members of the European Union recognized Kosovo's independence, six of the EU members and a number of other countries will not do so. Two permanent members of the UN Security Council, Russia and China, strongly oppose Kosovo independence as unilateral, while supportive western countries consider Kosovo a unique case that should not set a precedent. The EU decided to send its mission to replace the UN mission with an initial mandate of two years. The mission is designed to help build a police, justice and customs system for Kosovo which will be free of political interference.

Introduction and Historical Background of the Educational System in Kosovo

Education has a direct link to cultural, social and economic growth. That is why each society has to reach a social agreement about the core goals and values to be embedded in and promoted by its educational system. Coming to such an agreement in Kosovo has never been an easy task, especially when it comes to higher education. The list of factors that impeded this agreement is long, but can be simplified to a lack of democracy and a struggle for domination, instead of cooperation, between the two main Kosovo ethnicities, Albanians and Serbs. Experience shows that it is rather difficult to get Serbs and Albanians to work together even if they share a common interest and the cooperation will be for their mutual benefit.

For various reasons, but mainly because of different languages, the Kosovo educational system has always been informally divided, but in the last two decades this division became formal. The abolition of Kosovo's political autonomy and the adoption of the 1990 Serbian Constitution led to the creation of a parallel system in education for Albanians, as a form of civil disobedience (The New Kosovo Curriculum Framework). The NATO intervention in Kosovo in Spring 1999 ended this situation, replacing Serbian authorities with the UN administration, but the UN presence in Kosovo has not managed to change the situation substantially. The educational system remained split in two with a single difference: instead of Albanians, Serbs now refuse to be a part of the Kosovo educational system and are trying to keep their schools part of the Serbian educational system. Serb students

attend a parallel school system under the authority of the Serbian Government's Ministry of Education and Science (Salihu 2008).

Two public universities are operational in Kosovo: the Albanian controlled University of Pristina and the Serbian controlled University in Mitrovica, both with their exclusive teaching languages. The American University in Kosovo has been operating since 2003 and a dozen private higher education institutions were registered or are in the process of getting licenses from the Ministry of Education, Science, and Technology of Kosovo.

According to the recent Ministry' Policy Paper (MESP 2, 2007), higher education in Kosovo consists of:

1. The University of Pristina with the Albanian language as the language of instruction and over 32,000 students in 2006/2007, or about 67 percent of the student population in higher education in Kosovo.
2. The University of Mitrovica with Serbian as the language of instruction. It is estimated that the number of students ranges between 4,000 and 6,000 in 2006/2007, or about 11 percent of all students in higher education.
3. Nineteen private higher education providers with 10,191 students in 2006/2007, or 22% of all students in higher education. All private institutions, with the exception of the American University of Kosovo, operate in accordance with the Bologna process.

Educational Reforms since 1999

Political turmoil in the 1990's indisputably reduced the quality of education in Kosovo (UNDP 2006). The educational system in Kosovo has gone through changes and development since 1999, when the war in Kosovo ended. This period saw the beginning of the first reforms to improve the educational situation at every level. The higher education reforms were essential, but many experts argue over whether the reforms were substantial or merely superficial changes to placate international interests. In either case, the reform process has started and it shows no sign of going back.

There is still no common education policy in the EU. In the last decade of the 20th Century, however, it was recognized that with respect to higher education, if the EU and Europe wanted to stay competitive in science and research, and respond adequately to increasing global challenges in these areas, the only way ahead would be comprehensive and harmonized structural and systemic reform. This is known as the Bologna Process (Duilovic, 2005).

The purpose of the Bologna Process is to create a common European higher education process by making academic degree standards and quality assurance standards more comparable and compatible throughout Europe. It is named after the location where it was proposed, the University of Bologna. The Bologna Declaration was signed in 1999 by the ministers of education from 29 European countries in the Italian city of Bologna. This was opened up to other countries, and further governmental meetings have been held in Prague (2001), Berlin (2003), Bergen (2005) and London (2007).

Although the cooperation with European partners is very much needed for further development of the higher education in Kosovo, under the present circumstances, Kosovo is not eligible for direct membership in the Bologna Process. The Convention can be only signed by the states that have ratified the European Cultural Convention of the Council of Europe, and Kosovo is not a member (Bologna Process 2005).

However, this fact did not prevent Kosovo from benefiting from the positive impacts of unified European education. With assistance from the Council of Europe, the European University Association, and other organizations, the higher education system in Kosovo has been reforming in accordance with the Bologna Process requirements since 2000. The University of Pristina has started to implement the reforms based on Bologna Principles. The Council of Europe, which also drafted the Law of Higher Education, wrote the actual Statute of the University based on the Bologna Declaration (Beqiri 2003).

There are two main goals to be achieved in the next ten years. One is the adoption of a system of easily readable and comparable degrees in order to promote employability of the European citizens, and another is adoption of a system essentially based on two main cycles, undergraduate and graduate. (The Bologna Declaration of June 1999: Joint Declaration of the European Ministers of Education)

The first of these goals, adoption of a system of recognizable undergraduate and graduate degrees, has already been achieved by changing the organizational structure of higher education in Kosovo. The new system provides three years of undergraduate studies, two years of master studies and three years of doctoral studies.

These changes made the educational system in Kosovo compatible with the countries party to the Bologna Declaration.

The second goal, adjustment of study programs and the development of new programs, is seen as a long term process. Environmental law has never been taught as a separate law school course in Kosovo, nor has it ever been a part of other related courses, and this legal gap can be filled only by its introduction. The KME and higher education institutions must give priority to new, attractive and competitive study programs while keeping the market and social needs in mind.

Environmental law is taught in the USA and around the world. For example, Dalhousie Law School in Canada offers an environmental law certificate program. In Europe an increasing number of schools have incorporated environmental law into their programs. The University College London, which is part of the University of London, also offers an environmental law course. Finally, Wroclaw University in Poland included environmental issues into its administrative course curriculum.

Introduction of the new environmental law course will be in full compliance with the KME's policy which, in order to provide measures for quality assurance and compatibility of programs, requires review and harmonization of existing curricula until 2009 (MESP 1, 2007). The same obligation applies to academic institutions. According to the KME Policy Statement, the academic units will engage regularly in improving and advancing their curricula with the purpose of ensuring quality and for keeping up to date with academic development in their respective scientific fields (MESP 1, 2007).

Environment and Legislation in Kosovo

The ecological situation in the former Yugoslavia, as in other Eastern European countries, is the result of a disastrous economic development doctrine implemented over the four decades after World War II. This doctrine was based on the principle of granting priority to the development of two key branches of industry: raw materials and heavy industry. The implementation of this principle led to the rise of industrial production with low efficiency in the use of natural resources, causing systematic deterioration of the environment. Environmental regulations were seen as discretionary if their implementation interfered with the government's economic goals.

As a result, Eastern Europe was the most polluted region on the continent in the era of state socialism. In the 1990's eight of the ten most polluted European cities were in this region, in spite of the fact that the countries of East Europe are industrially and economically less developed than those in Western Europe (Sandor, 1993). The former Yugoslavia was not any different. Although industrially and economically less developed than the rest of the country, Kosovo was among its most polluted regions. The level of water, air and soil pollution in Kosovo is considerable. The air quality is impaired mostly by sulfur dioxide, nitrogen oxide, carbon dioxide and particulate emissions (Strategic Environmental Assessment of Kosovo 2001). The main cause of these emissions is energy production based largely on the combustion of fossil fuel very high in sulfur. The water is polluted by the uncontrolled discharge of untreated municipal sewage and industrial wastewater from industrial facilities into the rivers, and also by an unregulated and uncontrolled

application of industrial fertilizers. The extent of soil erosion and its declining quality is also apparent. This is the result of waste mining operations, improper disposal of mining and smelter waste, deforestation and ill-judged building. Proper building codes and zoning regulations are still lacking.

From a legislative point of view the Ministry of Environment and Spatial Planning (MESP) argues that the environmental protection laws have been historically lacking in the region (MESP, 2003). As some authors have noted (Frese, 2004), this is not completely correct, because environmental laws in the Socialist Federal Republic of Yugoslavia (SFRY) did exist – at least on paper. The general policy, legal and institutional framework before the conflict in 1999 had considerable parallels with those found in other Central and Eastern European countries, with the same disregard for their existence and implementation.

The former Yugoslavia and Republic of Serbia (RS) have had environmental policy statements, framework environmental law (Law on Environment Protection), environmental impact legislation and a Ministry of Environment for some time. There also was specific legislation in each segment of environmental protection such as air, water, soil, spatial planning and chemical wastes. However, the laws were unsystematic and uncoordinated. These laws also left several sectors, such as environmental monitoring or the financial obligations of the party responsible for environmental damage, unregulated.

Pre-conflict Environmental Legislation in Kosovo

Yugoslav and Kosovo's Legislation

In the latter days of communism before 1989, Kosovo's governmental policy was to keep running all the socially owned companies and provide all the services. Environmental issues were virtually ignored and several areas of Kosovo were subject to severe pollution, causing widespread concern. The environmental provisions were mainly incorporated into different laws which, according to their subject, were not environmental laws. The number of SFRY environmental laws and regulations were limited because environmental protection largely was delegated to the republics. A general lack of competence in dealing with environmental issues, along with often competing federal and local authorities, made the situation even more complicated. Whenever the public demanded action on environmental problems, the agencies claimed that the issue was not their responsibility. There was no environmental policy and the environmental impact assessment law was almost nonexistent. One rare statute containing some EIA provisions was the Law on Construction of Facilities for Investment or Commercial Purposes (*Official Gazette of Kosovo* No. 5/86). Article 18(14) of this law states that the "investor is bound to undertake an analysis of impact on the environment," but nobody was charged with enforcing whether the analysis was properly done. Also, EIA was also briefly mentioned in the Law on Spatial and Urban Planning (*Official Gazette of Kosovo* No. 2/89). As we see, none of the aforementioned statutes are strictly environmental statutes.

The constitutional right to a healthy environment was mentioned for the first time in the 1992 Yugoslav Constitution. Article 52 of the Constitution states: “Citizens shall be entitled to a healthy environment and timely information about its condition. It is everyone’s duty to protect the human environment and make use of it in a rational manner. The state shall be charged with maintaining a healthy human environment and shall proscribe the conditions and manner of the performance of economic and other activities.” This article shared the fate of many other constitutional proclamations which have never been implemented and enforced.

Applicable Environmental Law in Kosovo from 1989 to 1999

In this period the *status quo* was essentially maintained. All the companies were still socially (government) owned because the privatization of the economy had not begun. Although some new environmental laws were introduced, the government did not have any real desire to consider environmental issues. The relation between federal and republic jurisdiction remained unclear. The Constitution did not achieve much. Article 77 of the Federal Republic of Yugoslavia⁴ (FRY) Constitution sets forth the areas of federal competence, which include “the principles of environmental protection; the regime of the atmosphere and watercourses of national interest and international waters; the regime of territorial waters, with relevance to the international relations of the FRY; navigation on waters under international or intergovernmental regime of navigation;... protection of plants against diseases and pests which threaten the country as a whole; sales of plant and animal protection chemicals;... genetic material in agriculture and forestry; protection against ionizing

⁴ New name for the country since 1992

radiation; [and] production, sales and transport of weapons and of toxic, inflammable, explosive, radioactive and other dangerous substances;...” This provision effectively authorizes the FRY to formulate general policy, enact and enforce federal legislation and ensure judicial protection in environmental matters, while leaving many specific environmental matters to be regulated independently by the Republic of Serbia whose legislation in the 1990s was substituted for the Kosovo statutes.

Significant legislative changes occurred in the Republic of Serbia from 1989 onwards, essentially reflecting the end of the socialist regime and the beginning of a more progressive approach towards law-making. For example, there was an acceptance of the need to adopt an integrated approach toward environmental management based on the principles of sustainable development.

Article 31 of the RS 1990 Constitution states: “Man shall have a healthy environment. Every person is bound, in accordance with law, to protect and enhance the human environment.” However, this provision is less progressive than Article 52 of the FRY Constitution. It does not clearly recognize the right to a healthy environment and it does not establish a right to environmental information.

Article 72 of the Constitution authorizes the RS to regulate and provide “the system of protection and advancement of human environment, protection and promotion of plants and animals;... protection of cultural monuments,... basic goals and directions of the economic, scientific, technological, demographic, regional and social development, the development of agriculture and rural areas; organization and the use of space; [and] policy and measures to guide and promote development, including the development of under-developed areas...”

There was an RS Law on Environmental Protection (Official Gazette of the Republic of Serbia 66/91, with amendments 83/92, 53/93, 67/93, 48/94 and 53/95). This framework law has helped to clarify and bring together previously fragmented environmental legislation. Like other framework laws, it sets forth basic provisions (i.e., general principles of environmental protection and an institutional structure); protection measures in planning and construction (i.e., environmental impact assessment); protection of air, water, land, forests, flora/fauna and natural resources; protection against noise, ionizing radiation, waste and hazardous materials; a scheme for the financing of environmental protection; and compliance and enforcement measures (e.g., inspection, complaints, sanctions).

Article 13 of the law defines “environment” broadly to include natural resources (soil, water, air, forests, flora and fauna); the built environment (including cultural sites); the entire space in which people live and create; and their protection from noise, radiation, waste and dangerous substances. Articles 9 and 112 of the law recognize the right to access environmental information and provide court protection for that right.

Articles 88-90 of the framework law prescribe the funds for financing environmental protection. They include damages for pollution; the republic budget; environmental impact assessment funds; interest on government loans; funds from collected penalties in accordance with the law; and other sources. Money was set aside for a special account of the Ministry of Environment and used for monitoring, equipment, training, information, projects, etc. In 1994 the RS government ordered

the establishment of municipal environment funds under the management of local authorities.

In the area of compliance and enforcement, the framework law provides for the supervision of inspectors, a complaints procedure and strengthened penalties for various environmental violations. The law also anticipates the development of implementing regulations, plans, programs, and institutional bodies (e.g., for carrying out environmental impact assessment).

There is an Environmental Impact Assessment Act (Official Gazette 61/1992) which requires an ecological permit for listed activities (e.g., construction). Such permits (as well as those needed for the use of water, soil and forests) are issued by local authorities or ministry organized organizations. Unfortunately, the law contains no provision on access to information, participation in decisionmaking or access to justice in environmental matters.

EIA provisions were also embodied in two other legal sources, including the aforementioned Law on Basic Environmental Protection and the Regulation on the Environmental Impact Assessment of the Proposed Facilities and Activities (*Official Gazette of the Republic of Serbia* No. 61/92). These statutes provided that in the case of construction of a new facility or undertaking a major modification of an existing facility, an EIS has to be filed. The law was randomly and poorly enforced because economic interests and new jobs have always been more important than environmental protection or public health. The government was not obliged to inform anyone about its actions. There was no independent agency where the EIS was required to be filed and citizens were not included in the process. Very often

citizens heard about a proposed action for the first time when construction had already started or even finished.

International Environmental Instruments Ratified by Yugoslavia before 1999

International environmental instruments ratified by Yugoslavia before 1999 are important because, pursuant to UNMIK Regulation No. 1999/24 Section 1, Article 1.2 they are the law applicable in Kosovo and presumably the Government considers itself bound by those conventions ratified by the SFRY. As set forth in Article 1.2 if a court of competent jurisdiction or a body or person required to implement a provision of the law determines that a subject matter or situation is not covered by the municipal and UNMIK laws but is covered by another law in force in Kosovo after 22 March 1989 when such a law is not discriminatory and complies with the internationally recognized human rights standards, the court, body or person shall, as an exception, apply that law.

International environmental conventions ratified by the SFRY include the Convention concerning the Protection of the World Cultural and Natural Heritage; the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat; the Convention for the Protection of the Mediterranean Sea Against Pollution and its Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea, its Protocol for the Prevention of Pollution of the Mediterranean by Dumping from Ships and Aircraft, its Protocol concerning Mediterranean Specially Protected Areas and its Protocol for the Protection of the Mediterranean Sea Against Pollution

from Land-based Sources; the Convention on Long-range Transboundary Air Pollution; the United Nations Convention on the Law of the Sea; and the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer.

In 1997 the FRY ratified the United Nations Framework Convention on Climate Change. With regard to conventions negotiated under the auspices of the UN/EU, it has ratified the Convention on Environmental Impact in a Transboundary Context, the Convention on Transboundary Effects of Industrial Accidents and the Convention on the Protection and Use of Transboundary Waters and International Lakes.

Article 16 of the FRY Constitution stated: “The Federal Republic of Yugoslavia shall fulfill in good faith the obligations contained in international treaties to which it is a contracting party. International treaties which have been ratified and promulgated in conformity with the present Constitution and generally accepted rules of international law shall be a constituent part of this international legal order.”

Although the negotiation, conclusion, ratification and implementation of international treaties is within the federal jurisdiction, the FRY undertakes those functions in collaboration with republic, provincial and other interested bodies and organizations.

Article 7 of the FRY Constitution further allowed republics to ratify international treaties if they do not harm the federation or other republics. Under Article 73 of the RS Constitution, the National Assembly ratifies international treaties.

Post-conflict Environmental Legislation in Kosovo

United Nations Interim Mission in Kosovo and Kosovo Legislation from 1999

The UN administration began in June 1999 after the NATO countries intervened in Kosovo and placed Kosovo under the UN mandate. Since 1999 the legislative basis for Kosovo has been the UNMIK Regulation 1999/24. According to Regulation 1999/24 the body of applicable law in Kosovo can be divided into three parts. First, there are the regulations and subsidiary instruments promulgated by the Special Representative of the Secretary-General, or the so called “UN Law.” The second part is the law in force in Kosovo on 22 March 1989, or the so called “Kosovo Law.” In case of a conflict, the regulations and subsidiary instruments issued by the SRSG shall take precedence.

The third part of the law governs when the law in place between 1989 and 1999, or the so called “Serbian laws,” can be applied today. If a court of competent jurisdiction or a body or person required to implement a provision of the law determines that a subject matter or situation is not covered either by the laws promulgated by the SRSG, or by the law in force in Kosovo during its autonomy prior to 1989, but is covered by the Serbian law in force in Kosovo after 22 March 1989 when such law is not discriminatory and complies with internationally recognized human rights standards, the court, body or person shall, as an exception, apply that law. This allows the Serbian legislation that was the applicable law in Kosovo between 1989 and 1999 to be used to fill the legal gap when no other law can be applied to a specific situation.

The UNMIK Regulation 1999/24 was promulgated in 1999, after the war in Kosovo, for the purpose of defining the law applicable in Kosovo and clarifying a very ambiguous situation affecting every part of life. A Constitutional Framework for Provisional Self-Government promulgated by the SRSG in May 2001 established the institutions of self-government and gave the Kosovo Assembly legislative power. Nevertheless, the SRSG, according to Sections 9.1.44 and 9.1.45 of the Constitutional Framework retained the right to promulgate the laws adopted by the Assembly. Unless otherwise specified, the laws become effective on the day of their promulgation by the SRSG. It means that the law adopted by the Kosovo Assembly is not an independent source of law, but is covered by the regulations and subsidiary instruments promulgated by the SRSG, or the UN law.

The Law on Air Protection of 2004

The principal statutory authorities for controlling air pollution are contained in the Law on Air Protection of 2004, which established a comprehensive set of measures to control outdoor air pollution.

Pollution sources are classified as static (stationary) and mobile pollution sources. Discharges into the air are to be limited by imposing obligatory discharge norms or standards. Standards are proposed by MESP based on the EU and the World Health Organization (WHO) standards, and approved by the government. These standards are applied differently to existing and new sources. Existing air pollution sources, operating after the Law went into effect, can be granted an exception. In cases where an available technological retrofit does not comply with

discharge standards set forth by the law, MESP shall authorize the establishment of temporary standards. It is obvious that the Law initially favors existing sources, but the preferential treatment cannot last forever. If after implementation of temporary standards the pollution source causes damage to human health and the environment, MESP shall order the closure of the responsible source.

The Law obligates the operators of pollution sources to operate the sources only as specified by technical conditions and as set forth in the environmental permit. For the first time, the operators are obliged to monitor discharges and systematically publish results and measures taken to limit pollution. However, monitoring is not entirely left up to the operators. Monitoring is the government's obligation and shall be conducted by the MESP, through the Kosovo Environmental Protection Agency (KEPA) and other competent authorities.

The Environmental Protection Law (EPL) of 2003, which is a framework environmental law in Kosovo, contains one article related to air protection. Article 28.1 provides that the government shall prescribe permissible maximum levels for the discharge and emission of pollutants into the air and ensure that the levels established are consistent with the ability of Kosovo to comply at a reasonable cost. By introducing the "reasonable cost" as a major criterion, the legislators sent a signal that the interests of the industry will prevail over the public interest to have a clean environment. A developing society will always opt for more jobs even if that means further environmental degradation. These laws, both the framework Environmental Protection Law and the Law on Air Protection, and as seen in the next chapter the Kosovo Water Law, have no teeth. They lack a virtual cost-blind determination to

control the pollution which can be found in, for example, the US Clean Air Act or Clean Water Act, and in many other pieces of U.S. environmental legislation.

Kosovo Water Law of 2004

The Kosovo Water Law of 2004 is an extensive law which regulates the issues related to the management, planning, protection, and institutional responsibilities in regard to water and water resources. As much as the Kosovo Law on Air Protection (in some of its provisions) resembles the EU or American models, the Water Law of 2004 does not. Unlike the U.S. Clean Water Act's ambitious national goals that the discharge of pollutants into the navigable waters be eliminated by a certain date, the Kosovo Water Law does not have such lofty aims. Water protection does not appear to be the legislature's first priority. Rather than aiming "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" the legislature prefers economic growth. The purpose of the Law, as stated in Article 2, is to:

- a. ensure the development and sustainable use of the water resources necessary for human health, the environment and the socio-economic development of Kosovo;
- b. establish procedures and guiding principles for the optimal allocation of water resources based upon use and purpose;
- c. ensure protection of water resources from pollution, over-exploitation and misuse.

The law prohibits the discharge of any pollutants except those made in compliance with the terms of the law, including the permit requirements of Article 56.

For unknown reasons the law failed to regulate and even mention nonpoint sources. There are no requirements for the government, municipalities or agencies to identify waters impaired by nonpoint source pollution and the sources of such pollution and to prepare managements plans for controlling it. Except for one provision, consisting of three lines in Article 47, which prohibits fertilization and use of chemical substances in a distance of fifteen meters from the boundary of the first class water bodies and five meters from the bank of those classified as second class, there is no other wording about nonpoint sources. Mining runoff, a serious problem in some regions, is also not mentioned.

The Kosovo Water Act is not the only statute regulating water issues. One important water protection provision can be found in the Environmental Protection Law adopted one year before the Water Act. It contains a so called anti-degradation provision and for the first time introduced a provision comparable with the US Clean Water Act Total Maximum Daily Load, namely the “prescribed permissible maximum levels for the discharge and emission of pollutants into the water.” The Statute does not define these levels but requires that the government, after receiving a proposal from the Minister, issue an additional regulation establishing the maximum levels. Once again however, the law seems to favor economic interests and Kosovo’s outdated industries. The law provides that the government shall only ensure that the

levels established are consistent with the ability of Kosovo to comply at a reasonable cost (Article 29.1).

State of the Environment in Kosovo

Air

Major sources of air pollution are the Kosovo A and B power plants in the immediate vicinity of the capitol and biggest city of Pristina, where dust (fly ash), CO₂, SO₂, and NO_x are emitted. Energy production facilities use fossil fuels such as low quality lignite coal, with emissions of 4.4 mg/m³ of SO₂ and 90 – 150 mg/m³ of ash. (SEAn, 2000).

The citizens of Kosovo's second largest city, Mitrovica, and its surroundings have experienced airborne lead concentrations at or near the EU standards of 0.5 mg/m³ coming primarily from the Trepca Mining Company. Although the plant is not operating currently, the industrial dust containing lead, zinc, cadmium, arsenic and dozens of other dangerous components persist in the open air due to improper industrial waste disposal. In addition, because of a lack of street cleaning equipment, dust that has already settled in the town, continues to circulate.

Emissions above the maximum allowable concentration values used to be common in the vicinity of the Trepca lead and zinc smelter. The levels of toxic metals in the air were much higher in Mitrovica than in any other town in Kosovo, including Pristina. The incidence of laryngeal and bronchial carcinomas had the highest morbidity in Mitrovica, which was correlated with the air pollution and occupations in the heavy metal industry. (Shllaku p. 88, 1992).

Citizens also contribute to air pollution by using coal, firewood or oil as the main energy sources for heating their homes. Illegal burning of household waste causes air pollution of undefined quality and composition. Some municipal landfills are burning and releasing smoke continuously. The agricultural sector contributes to air pollution by burning excess grasslands.

Air emissions from non-stationary sources have never been higher. The reason is not only the incredible increase in the number of private vehicles, which use mainly low quality fuel, but also a large number of humanitarian assistance and military vehicles using diesel and leaded fuel.

Water

In Kosovo there are both rivers whose waters cannot be used even for irrigation or industrial purposes, and rivers one can drink directly from. River water quality in the lowland rivers is very poor because of the lack of waste-water treatment and waste disposal, while the upstream rivers are mostly of very good quality (Kosovo State of Environment Report, 2003). Untreated water from cities and industry affects the groundwater quality. Statistics from 1991 indicate that only 5-8 percent of wastewater was treated (Provisional Assessment of Environmental Policy and Management in Kosovo, 1999).

Only 44 percent of total population has access to the water distribution system, while the rest depend upon wells and springs. Discharge of untreated industrial waste, as well as leakages and run-off from industrial waste, cause a steady threat to rivers. However, overall river pollution and the number of pollution

accidents dropped after 1993, when all big industries, including the Trepca Mining Company, ceased or reduced their activities. Total environmental pollution has decreased as the result of the UN economic embargo imposed against Yugoslavia and the political situation in Kosovo.

The Trepca mining and smelter facilities in Mitrovica were closed by UNMIK in August 2000 partly because of environmental concerns. Although there were some political reasons, UNMIK claimed that protection of the environment was the only reason for closing the factory. However, the wastewater from the power plant in Obilic continues to be discharged untreated to the nearby river Sitnica. Neither the government owned power plant nor the government itself has the financial resources to deal with the environmental pollution caused by outdated coal fired power plants built five decades ago the technology from the Soviet Union. Nobody even thinks about shutting down Kosovo's main electricity provider.

Soil

The total surface area of Kosovo is 10,877 km². Of the total area, 53 percent (585,000 ha) is agricultural land, 41 percent (455,000 ha) is forest and forestry land. Of the total agricultural land, 88 percent is privately owned, and the rest is government or socially owned (MESP 2003). Because of mainly small-scale family farming, land use practices have not caused much land degradation. There are no signs of overgrazing. Fertilizers, pesticides and heavy machinery are not used extensively. However, agricultural threats to the environment are expected to

increase as a result of future development in the sector, with pesticide and fertilizer use predicted to rise.

Over the years, especially during the period of industrialization after World War II, mining operations and urbanization caused land to be withdrawn from agricultural use and resulted in degradation of the ecosystem. The soil is extremely degraded in the bigger towns, especially in the municipalities of Pristina and Mitrovica. Open coal pits, disposal of ashes, slag, discharge of waste waters and mining waste containing heavy metals and hazardous substances are to blame. The total area covered by industrial waste dumps and/or transformed by open-cast mining extends to over 10,000 ha (Shllaku, p. 27, 1992). None of the dozens of industrial dumpsites is covered or designed to prevent leakages to the ground water and no rehabilitation or re-vegetation of the industrial sites or dumps has been carried out.⁵

Although Kosovo still does not have a law dealing exclusively with clean up of toxic sites or with “historic environmental liability”, provisions about the duty of the responsible party to restore the environment can be found in the Environmental Protection Law of 2003. Article 30.2 provides that the entity which explores or exploits natural resources, deposits waste, ash, slag or other materials, or which engages in other activities that degrade the soil, cause soil erosion or a change in the water regime, must restore the surface of the soil, the previous water regime and the geo-mechanical stability. The problem in Kosovo is that there is no entity to implement the law and order the restoration action because all the mining industry is

⁵ The rehabilitation of two tailings areas in Gracanica and Zvecan, sponsored by international donors, is in progress, but local people, knowing the quality of the previous projects and being aware of the widespread corruption, fear that the work will not be properly done.

socially owned. The entity which exploits natural resources, deposits waste, ashes, slag or other materials is the government itself.

Erosion increased as a result of illegal tree cutting and quarries for sand and gravel. Forestland covers about 455,000 ha (41 percent of the territory), of which more than 270,000 ha are state-owned. Because of inadequate guardianship and lack of resources state owned forests are more susceptible to illegal cutting.

Pollution Hotspots in Kosovo

As we have already seen, the historic lack of an environmental protection system in Kosovo, along with a complete disregard for environmental laws, has led to environmental degradation. The government's aim was economic development with little regard for the environmental cost associated with that development. The system was based on merciless exploitation of natural resources, which were perceived to be endless. That system had no place for environmental protection. There is no doubt that Kosovo's approach must be changed and, as the SEA of Kosovo 2001 concluded, Kosovo environmental issues deserve far more attention.

As a legacy of the past, Kosovo has to deal with some serious environmental problems. Two of the most important pollution sources in Kosovo are located within or close to the city of Mitrovica and in the region of Pristina. These are the two biggest Kosovo cities and also University centers.

The biggest environmental concerns are two coal fired power plants and an open pit coal mine near the city of Pristina – Kosovo's capital. Ash emission from power plants continues in an unplanned and uncontrolled manner, contributing to

unacceptably high levels of dust in the area, leading to a high incidence of respiratory diseases. KEK, the operator of the power station and ash dumps, currently lacks the technical and financial capacity to deal with the resulting environmental problems.

Mitrovica was the site of one of the largest lead mining, smelting, refining and battery plant complexes in Europe. The plant was closed in 2000 partly because of environmental concerns. It posed and still poses a serious health risk from the environmental pollution caused by lead, cadmium, zinc, copper, and ashes. Some units of the factory still work and emit toxic gases (sulfur dioxide, sulfur trioxide, carbon monoxide, nitrogen oxides, etc). The tailings disposal areas still contain harmful materials from previous ore processing operations. Trepca, the socially owned company which owns the tailings and the land where tailings are disposed, does not have the financial capacity to deal with the environmental legacy.

These problems present a real danger to health, welfare, and the environment. If Kosovo had a law like the US Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or if the sites were in the U.S., the sites would be declared superfund sites.

Conclusion and Recommendations

To provide Kosovo's young generations with a European future and to end the perpetual circle of isolation and self destruction, decision-makers within political and academic circles in Kosovo must now engage in making the higher education system compatible and competitive with the EU. This requires replacing the political,

ideological and ethnic focus of higher education with a modern, democratic, effective, sustainable, labor-market and Europe-oriented approach.

Pollution problems transcend territorial boundaries (acid rain and river pollution in Europe), and the EU is trying to establish a subcontinental response framework and a uniform system of EIA in all its member states. By its regulations the EU made EIA requirements flexible enough to adapt to the needs and institutional arrangements of the various member states, but uniform enough to prevent problems arising from widely varying interpretation of the procedures. The influence imposed by the EU through harmonization of legal systems is not the only one. The world's main lending institutions such as the World Bank and the European Bank for Reconstruction and Development, or bilateral donor agencies, are also in a position to exercise great influence in global environmental policy, and Kosovo still needs their assistance.

Other universities in Europe have incorporated environmental law into their programs. The University College London and Wroclaw University in Poland are just two examples. Environmental law course is also taught at the region's main universities, for example at the Law Schools in Belgrade, Zagreb, and Sarajevo. In the era when environmental problems are becoming increasingly global and international Kosovo universities should not be any different from the universities in its surroundings.

It is in Kosovo's best interest to be part of the modern world and EU membership is already recognized as a final aim for Kosovo citizens. The region faces many challenges in fulfilling the EU requirements and most of them will be in

the field of environmental law. It has been estimated that 35 percent of the Serbian legislation, which is comparable with Kosovo legislation, that must be harmonized with the European Union law is in the field of environmental protection

(Harmonization of Serbia's Environmental Legislation with EU Standards, 2003).

The Kosovo legislation is even more outdated. These requirements will obviously impose substantial burdens on the Kosovo Government and local experts. An overall reform of environmental education in Kosovo is needed, especially in the field of environmental law, to provide the experts who can satisfy both the international community requirements and Kosovo citizens' expectation for the economic development which will respect their rights to a clean and healthful environment.

II. HOW ENVIRONMENTAL LAW COURSES SHOULD BE TAUGHT

Sometimes it is difficult to change or even to imagine changing current teaching methodology, especially when this approach seems to have worked well in the past. The proposed Environmental Law course aims to prepare students for a legal culture that is increasingly global and international. With modern technology allowing virtually instant access to information, mere memorizing of facts is no longer as essential as it has been. Students should develop skills such as critical thinking, legal analysis, creative problem solving, effective oral communication, legal writing, and advocacy in order to be successful participants in this new legal environment.

The lecture format is the most popular method of teaching in Kosovo law schools. This method is teacher centered, while the students are just passive listeners most of the time. Very few teachers encourage students to ask questions during the lecture. Students are not aware that with active participation in the class they will acquire a better understanding of the course material and are more likely to retain the most important concepts.

Some teachers reserve time after the lecture for students to ask questions but many students forget their questions by the time the lecture is over. Very often the students do not want to ask after the lecture is over because some questions lose their meaning if not addressed within the context of the particular discussion.

With all these disadvantages, the lecture method still remains the primary method used in law schools around the world. It has some important advantages but

they are all highly dependant on an individual teacher's quality or personality. The lecture method is efficient, and much of knowledge can be communicated in a short period of time. It is highly efficient, especially if the teacher organizes the curriculum in systematic and logical manner; and it is convenient and easy because a teacher is free to develop a personal style of teaching (Zaidi, 2004). Being aware of the method's advantages and disadvantages, however, lecturing does have primary importance when teaching law and it is still irreplaceable.

In addition to lectures enhanced with class discussions, the proposed Environmental Law course will include different teaching and learning techniques, such as case studies, guest speakers, and student presentations.

Techniques for Teaching and Learning Law (the following section is based on the American Bar Association Rule of Law Initiative, Interactive Teaching Techniques: A Handbook for Law Professors at the University of Pristina Faculty of Law, May 2007)

Lecture

Lectures are particularly useful to disseminate facts, to provide structure to material, to display a method or example of how one thinks in a given field, or even to inspire and motivate students to explore further.

Inviting participation

- Student participation in lectures should be encouraged in the very first lecture when norms and expectations for class are being established.
- An atmosphere that encourages student participation should be created by using a conversational tone. Student questions or comments should not be criticized in front of the class.
- Invite challenges to the teacher's ideas; present different points of view on any given topic, and then state why you believe a certain view is the best insight based on the evidence.
- When a student asks a question, instead of answering, the teacher should ask for the answer from other members of the class; if necessary repeat or paraphrase a question so that all students can hear and understand.

Punctuating the lecture with questions

- Ask questions throughout the lecture so that the lecture becomes more of a conversation; when two or three possible answers or solutions are summarized, asking students to raise their hands is easier than asking them to speak.
- If readings have been assigned for a class, refer to them so their purpose is clear; ask questions about the readings from time to time.
- When using slides, charts or handouts, ask students what they see or think before telling them what you do.

Varying the format

- Change the traditional lecture format, ask students to make presentations, include role playing; divide the room into two or more groups, assign the role or position to each group.
- Use cases to highlight the issues, or conduct the class as a case discussion rather than as a lecture.

Concluding the lecture

- Allow time for questions at the end of the lecture; ask if there are any questions or if students would like to have a point clarified; end the lecture with a provocative question.

Case studies

The case study method is an inquiry-oriented technique designed to help students apply legal rules to real-life situations. A case study requires students to ask questions about a set of facts, define elements important to a situation, analyze and synthesize these elements, and make judgments in the case. As part of the case study process, students practice all levels of thinking from simple recall to evaluation.

Procedure

- Facts – What happened in the case, who are the parties, what facts are important? Are any significant facts missing?

- Issue(s) – What is (are) the legal question(s) on which the resolution of this case turns?
- Arguments – Students are asked to identify the legal and policy arguments available to both sides in the case; students are sometimes asked to rank these arguments for persuasiveness.
- Decision – Students are asked to identify and explain how the case was decided; it is essential to ask for the reasons for the decision; discuss a dissenting opinion.

Method to use

- Give students a complete case and ask them to identify the facts, issues, arguments, and decision.
- Give students the facts, issues, and arguments, and ask students what they think the decision should be. Later, when the actual decision is given to them, compare their reasoning and results against the court’s reasoning.
- Once students have mastered the legal concepts and law contained in a case, they can be asked to apply the decision to other factual situations raising the same legal and policy consideration.

Guest speakers

Community participants involved in areas of the law provide many educational benefits. Also, professors supplement their general knowledge with the

expertise of a guest speaker and can teach the topic with more depth and understanding.

Interaction between the students and professionals from the community, such as lawyers, law enforcement officers, judges, or civil society representatives, lead to deeper understanding of the subject matter. It also provides a more meaningful engagement with the materials, and a new understanding of how society functions.

Procedure

When selecting an appropriate person:

- The professor should identify the appropriate person for the lesson and match the lesson outcome with the contribution that the community resource person can make.
- A professor should always plan the guest speaker visit several days ahead of time to ensure that they understand their role and level of their involvement.
- Students should be aware of the guest speaker's visit in advance to prepare meaningful questions together with the professor.
- The guest speaker should be involved in an interactive lesson while the professor manages the class.
- After a lesson, professor should debrief the visit, discussing with students the value of the lesson and address any remaining issues and questions.

Student presentations

Student presentations allow students to do more in-depth research on a specific topic and to teach it to their colleagues. In order to make effective presentations, students should:

- Demonstrate evidence of in-depth research and good grasp of the subject matter.
- Present information in a logical, interesting sequence that the audience can follow.
- Respond to questions posed by the professor and by colleagues.
- Maintain eye contact and speak clearly and concisely.
- Use the allotted time well.

III. WHAT SUBJECT MATTER SHOULD BE TAUGHT: AN ENVIRONMENTAL LAW SYLLABUS

Curriculum Approval Process

According to section 7.1 of the Law on Higher Education in Kosovo, licensed providers of higher education shall enjoy freedom of teaching and, in the case of universities, in scientific and research work without interference from public authorities. In particular, providers of higher education shall have the rights to independently develop and implement curricula and research projects; and choose subjects to be taught. (Article 7.2(d)(e)). More over under Article 12.5 provider of higher education shall have the freedom to organize its curricula, assessment, and examination schemes in a way that is transparent, fair, and accessible to students. (Article 12.5).

While any individual faculty member may initiate a curriculum proposal, each proposal must first be approved by the respective department or program. After getting its approval, the proposal is submitted for review to the Department' Council, in this case the Law School Council. Department chairs bring departmental recommendations and/or concerns to their department dean. In the University of Kosovo in Pristina, the next instance is the University Committee for the Academic Policy (Beqiri, 2003). At each instance of review, critical feedback should be provided to the proposal initiator or their department. In the end, the proposal goes to the University of Pristina Academic Senate which has the final say. Upon approval of the proposed curriculum document by the Academic Senate, the academic department initiating the proposal is allowed to implement the curriculum.

Course Description

The Environmental Law course will provide an overview of the environmental laws and accompanying regulations applicable in Kosovo. The course is designed for the Mitrovica School of Law and, with some changes, for the Mitrovica School of Mines and Geology, but it can be used by the other law schools, such as the Law School of the University of Kosovo in Pristina.

The course focuses on how legal institutions have been used to respond to environmental problems. In the last 35 years environmental law all around the world has grown dramatically to become a vast and complex field of law. Given its vast scope and enormous complexity, environmental law cannot possibly be covered comprehensively in a one-semester course. Indeed, a comprehensive curriculum providing substantial expertise in environmental law will likely require a two semester sequence of courses, plus an additional clinic. Given the resources available for course development at this stage of curriculum reform in Kosovo, however, a single course would be a logical first step. Thus, this course is designed to provide a basic introduction to the most important concepts in environmental law through selective coverage of topics.

This course will teach students the major ways in which environmental legislation works, the various justifications for environmental legislation, and some of the possible changes that will come from the Kosovo legislature in the process of harmonization of Kosovo laws with those of the European Union. In Kosovo, just as with the rest of continental Europe, environmental law is not based on the common

law. For this reason understanding environmental law depends less on cases than on the statutes, regulations, and the policies behind those statutes and regulations.

Students will also examine the role of international law in addressing regional and global environmental problems. Special attention will be given to the US or the European Union environmental legislation and case law, which influenced environmental legislation and policy all around the world.

The curriculum is partly based on environmental law courses taught at universities in the United States - predominantly focused on the University of Montana. The curriculum is also partly based on courses taught at regional and mostly former Yugoslav universities. Similar courses are taught at numerous universities in EU countries, as mentioned earlier in Great Britain and Poland. The course content based on the US and the EU experiences will provide an overview of the history and current application of laws and rules used to protect the environment. The course syllabus combines international precedents which have strongly influenced legislation in many developing countries including Balkan regional legislation and practices. Naturally, the course focuses on Kosovo's environmental issues, legislation, and possible solutions, with the aim of enabling Kosovo students to identify and resolve problems in environmental law.

Purpose

The purpose of the environmental law course is to improve environmental problem solving in Kosovo by offering training for law students that deals with environmental issues.

Objectives

1. Students will understand the basic structure of environmental law.
2. Students will be able to identify and assist in resolving environmental law issues.
3. Students will develop and enhance statutory analysis and interpretation skills.
4. Students will understand the role of criminal, civil and administrative law in environmental regulatory enforcement.

Methodology

In order to achieve these objectives various teaching techniques such as lectures, class discussions, case studies, guest lectures, and student presentations will be used. (Detailed explanation in Part II)

Monitoring and Assessment

Environmental law teachers should be closely monitored throughout the first year that the course is offered. Curriculum monitoring is an evaluation process at the piloting and implementation stages that asks the question “Are teachers implementing the curriculum with reasonable fidelity?” (Glatthorn 1994, page 52). The school can monitor the curriculum by reviewing the teacher’s plans and reports, conferring with the teacher if necessary, classroom observation, and analysis of student performance. The information gathered by monitoring should be used to improve instructional methods and student feedback throughout the teaching and learning process.

In order to document overall student achievement in a systematic way an assessment will be performed at the end of every academic semester. The goal is to evaluate student performance by determining what students know and do not know. This assessment should answer the questions of whether the course objectives have been met, and if students have mastered specific skills and competencies.

Course Requirements and Grading

Classroom instruction will be based primarily on student discussion and is dependent on each student having completed the assigned reading/preparation for each class. Regular attendance and participation is expected. Students should be prepared to be called upon in class, particularly those students who do not volunteer regularly to participate in class discussion.

Student presentation 20 percent

Students are required to pick a US, the EU or International tribunals cases of their choice and present it to the entire class. The case should make a significant statement in the area of environmental law it addresses. Each student will have 15 minutes to present the case and 5 minutes to answer questions. The last two days of class are reserved for class presentations. 20 percent of the grade will be based on the class presentation.

Participation 30 percent

Participation is built into the course grade in two ways:

A) A weekly memo that explains the lesson learned in class that week, a concise critique of the reading assignment, the theoretical and practical relevance of the topic, and any outstanding questions students might have regarding the topic.

B) Participation in class discussions. These two elements combined will constitute 30 percent of the grade.

Final exam 50 percent

The other 50 percent of the grade will be based on the final examination. The final will be an in-class, essay-style examination. Students will have three hours to complete the exam. Each student will be permitted to bring to the exam any material that the student has produced (such as class notes), the printed course materials, the text books and the Statutory and Regulatory Supplement. No other material, including any other published material, will be permitted in the exam room.

Required Readings

Osnove prava okolisa, O. Loncaric - Horvat i ostali, (Zagreb, 2003).

Pravo zastite covekove okoline (zbirka tekstova), priredila V.R. Vodinelic, (Pravni fakultet Beograd, 1997).

Ekolosko pravo – Harmonizacija domaceg zakonodavstva sa pravom Evropske Unije, (Institut za uporedno pravo, Beograd, 2004).

Environmental Regulation: Law, Science & Policy, Percival, Schroeder, Miller & Leape, (Aspen, 5th ed. 2006).

Statutory and Regulatory Supplement

Class 1

Introduction to the Legal System in Kosovo and the Environmental Protection

Law

The Kosovo legal system is composed of different and often incompatible bodies of law adopted by different entities at different times. One of them, the Socialist Yugoslavia, does not exist any more; another, the Republic of Serbia, has not had any role in Kosovo jurisdiction since 1999; and the third, the UN Mission, is a temporary mission whose responsibilities will be gradually transferred to the local institutions and the EU mission.

Although UNMIK Regulation 1999/24 sought to define the applicable law in Kosovo and resolve ambiguities, some people believe that the situation is not any clearer than it was before its promulgation.

Environmental law in Kosovo, similar to any other legal system, has roots in many traditional fields of law, including obligation law (torts), property, and constitutional law. This session will try to identify the major sources of environmental law in Kosovo and the relationship between them.

Readings

- UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo
- UNMIK Regulation No. 2003/9 on the Environmental Protection Law

Class 2

Economics and the Environment

Citizens of Kosovo or other former socialist societies have no doubt that their environmental resources will be overused when they are available without cost to us. Resources like air, water or land, proclaimed to belong to everyone, historically were perceived and protected as if they belonged to no one. Because no one owns these resources, or at least no one visible, in the absence of government regulation and legal protection for pollution victims, businesses will use them freely, neglecting the external costs imposed on others (Percival 2006, p. 27).

The idea popularized by Garret Hardin, that weighing private benefits against private costs leads to overexploitation of common resources when given free access, will be discussed in order to find out whether the so called “tragedy of the commons” can be avoided. Students will examine strengths and weaknesses of the two alternatives: turning management of the commons over to the government with its “major coercive power,” or privatizing the commons (Leal, 1998).

Both alternatives are based on the argument that user cooperation is not possible as Hardin suggests. The class should examine the opposite examples - that for hundreds of years grazing land in Kosovo, Serbia, Montenegro, Romania or Bulgaria, was managed successfully by communities, and try to find the answer to how that was possible. Was the land preserved because of effective internal rules and control, or simply because the resource was not used so intensively and the carrying capacity of the land has never been exceeded? Are the traditional measures, such as

informal social pressure and tradition, rural communities relied on to preserve overexploitation, suitable to be used in modern society? What are the advantages of the modern world equivalent: suing an offending company or individual for damages?

Readings

- Garrett Hardin, The Tragedy of the Commons
- Eban S. Goodstein, Economics and the Environment
- Donald R. Leal, Cooperation on the Commons: Case Studies in Community Fisheries

Class 3

“Command and Control” Approach and its Alternatives

Despite all the positive changes, Kosovo environmental legislation, like early environmental laws in the U.S. and Europe, tends to follow the traditional “command and control” approach. Although the new Environmental Protection Law is fully harmonized with the EU Environmental Directives, current public opinion is very much in favor of state control and regulation of the environment. This form of regulation, “from the top down”, is based on a state-centered vision of environmental protection where there is no place for other players. A government establishes the acceptable limit levels for the discharge and emission of pollutants and requires polluters to comply. Polluters who fail to comply with the emission standards may be prosecuted or face civil actions.

Although the command and control approach has been the only one possible in Kosovo's former system and still is often necessary, its limitations are increasingly apparent. Command and control strategies are ill equipped to deal with highly complex issues and they do not respond well to public environmental concerns (Watson, 2003). Moreover, the command and control approach relies for its effectiveness on regulatory bodies which may be inefficient or underfinanced, which is the case in Kosovo. Relying on industry self-reporting of emissions, leaks, and accidents in Kosovo would be the most efficient approach from the practical point of view as well. Inspectors for key industry segments are scarce in Kosovo; ambient air sampling around facilities is limited; and monitoring of point sources, leaks, and accidents is minimal. Additionally, no epidemiological or toxicological data are available on exposed communities, such as those living near the Kosovo environmental hotspots.

Readings

- US Council on Environmental Quality: Environmental Quality, 25th Anniversary Report (1996)

Class 4

Polluter Pays and Beneficiary Pays Principles

Another important step is introducing the "polluter pays" and "beneficiary pays" principles as two of the guiding policy principles of environmental protection.

(Article 5(g)). These principles have always been a part of Kosovo environmental laws, but as part of socially owned economy, nobody considered them binding.

From an economist's point of view, market systems generate pollution because many natural inputs into the production of goods and services such as air and water are "underpriced." (Percival, 2006). This was even more the case in Kosovo's socially owned economy. There was no clear owner and the term "socially" always looked more like an ideological construction than like a real owner or guardian of common goods like air, soil, or water resources. Because no one owns these resources, in the absence of government regulation or legal protection for pollution victims, business will use them freely, neglecting the external costs imposed on others. In the new system of privately owned companies, the owners cannot claim "higher interests", such as securing the jobs, for the environmental degradation of commonly owned resources. According to Article 5(g), a person, undertaking or public authority that has caused environmental damage shall be responsible for paying the costs associated with reducing or abating such damage and shall also be liable to pay for any damages actually suffered by others. If the Statute were enforced properly it would mean that the polluter would have to compensate the people who suffered the damages. Instead of all the people paying for the damage, the Statute will internalize the costs and make the polluter pay for what the society as a whole has paid for so far. As a result commonly owned resources will no longer be "underpriced."

Class 5

The Precautionary Principle

One important step toward more effective approaches to environmental protection, namely towards laws and policy which encourage precaution and prevention, was taken by introducing the Environmental Protection Law. This Law introduced for the first time the common sense principle that an activity shall be planned and implemented in such a way as to prevent or limit adverse effect on the environment and the potential risks to human health.

The EIA as set forth in the EPL can also be understood as an instrument based on the precautionary principle. A project proponent voluntarily discovers and outlines the project's potential for causing environmental damage. The idea is that environmental consequences should be examined before the development is authorized. Under the new Law, the government now does not require that "dead fish float on the surface of our river" in order to take an action (*MEIC v. DEQ*, 296 Mont. 207, 229, 988 P. 2d 1236). Now, the Government is expected to prevent the harm.

Readings

- The US National Environmental Policy Act of 1969
- Wingspread Statement on the Precautionary Principle, 1998
- The Rio Declaration on Environment and Development, 1992
- Cartagena Protocol on Biosafety, January 29, 2000

- European Commission Communication on the Precautionary Principle, February 2, 2000
- What A Precautionary Principle Can Do For Us: Six Reasons Why We Need Precaution, Peter Montague, 2006

Class 6

Sources of International Environmental Law

This session will examine historical development, central principles, and current implementation of international environmental law.

In a relatively short time, since the United Nations Conference on Environment and Development (UNCED, also known as the Earth summit) held at Rio de Janeiro in 1992, a significant body of principles and rules of international law has been put in place for the protection of the environment and conservation of natural resources. Over the past decade, in particular, the rules of international environmental law have become increasingly complex and technical (Sands at al, 2005).

The International Court of Justice has confirmed “the obligations of States to respect and protect the natural environment.” (*Nuclear Tests II*). Moreover, it has declared that states’ “general obligation ... to ensure that activities within their jurisdiction or control respect the environment of other States ... is now part of the corpus of international law relating to the environment.” (*Legality of the Threat or Use of Nuclear Weapons*). In the Balkans’ notoriously fragmented countries, this

obligation to respect and avoid damaging the environment of other states will have special importance. In a region with so many borders, almost every river is an international river, and every factory emitting noxious gases in the air will have a transboundary environmental impact.

The class will examine climate change and the fact that all countries are affected by, but in same time they all contribute, to the build up of greenhouse gases and should be willing to join in the efforts to reduce it. Many developing countries are concerned about their right to develop and not to be penalized for climate change problems that are largely caused by the industrial countries.

Readings

- Philippe Sands and Jacqueline Peel, Environmental Protection in the Twenty-first Century: Sustainable Development and International Law, 2005.
- United Nations Framework Conventions on Climate Change
- Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Test (*New Zealand v. France*) Case, Order of September 22, 1995, *International Court of Justice Reports* (1995): 306, para. 64 (*hereafter Nuclear Tests II*).
- *Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion, July 8, 1996, *ICJ Reports* (1996): 226, para. 29.
- *Case Concerning Gabčíkovo-Nagymaros Project*, Hungary/Slovakia, Judgment of September 25, 1997, *The International Court of Justice Reports* 1997.

Class 7

The European Union Environmental Law

The *acquis communautaire* is the common name for the entire body of European laws. This includes all the treaties, regulations and directives passed by European institutions as well as judgments laid down by the Court of Justice. Its volume is estimated at 80,000 pages. Candidate countries must adopt, implement and enforce all the *acquis* to be allowed to join the EU.

The *acquis* forces the candidate countries to harmonize their domestic legal systems and practices with European regulations and standards and has to be fully implemented in each candidate country. There is no part of life outside the scope of *acquis*, including environmental legislation, and the full implementation of the *acquis* is mandatory.

The European community law takes precedence over all national law. The fundamental principle is “the Community constitutes a new legal order in international law, for whose benefit the States have limited their sovereign rights, albeit within limited fields” was first stated by the European Court of Justice in the case of *Van Gend en Loos* (26/62). In one more early decision *Simmenthal SpA* (106/77) the court was very precise: “any national court must ... apply Community law in its entirety ... and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community law.”

Many of the legal changes Kosovo is required to make in order to harmonize its laws with those of the EU will be in the field of environmental law. It has been

estimated that 35 percent of the Serbian legislation to be harmonized with the EU law is in the field of environmental protection (Harmonization of Serbia's Environmental Legislation with EU Standards, 2003). There are no exact data for Kosovo, but knowing that the Serbian and Kosovo legislation are very similar, we can conclude with high certainty that Kosovo's legislature will have a lot of work to do.

Readings

- The EU Court of Justice Case 26/62, *Van Gend en Loos*, February 5, 1963
- The EU Court of Justice Case 106/77, *Simmenthal SpA*, March 9, 1978

Class 8

Environmental Protection: State Objective or Human Rights?

This class will examine whether Kosovo legislation requires “that dead fish float on the surface of our state's rivers and streams before its farsighted environmental protection can be invoked” and whether the constitutional guarantees can protect the environment.

The Kosovo Constitutional Framework for Provisional Self-Government (KCF) was promulgated by the SRSG in May 2001, with the aim to establish provisional institutions of self-government in the legislative, executive and judicial fields. The KCF makes no reference to any particular human rights, but provides that internationally recognized human rights and fundamental freedoms, including those set forth in the international instruments such as The Universal Declaration on Human

Rights or The European Convention for the Protection of Human Rights and Fundamental Freedoms, will be observed. These instruments make no reference to a right to clean and healthy environment either.

After the emergence of the environmental movement in western countries in the 1970's and in Eastern Europe in 1990's, most of the national constitutions passed after that time contain so called environmental provisions. A third of the state constitutions in the USA contain such provisions. The Supreme Court of Montana, for example, decided in 1999 that the right to a clean and healthful environment guaranteed by the Declaration of Rights in Article II, Section 3 of the Montana Constitution is a fundamental right. This class will examine whether a similar provision in the future Constitution of Kosovo would make a difference.

Readings

- Kosovo Constitutional Framework for Provisional Self-Government
- *MEIC v. DEQ*, 296 Mont. 207, 988 P. 2d 1236

Class 9

Responsible Authorities for the Management of Environmental Protection

During this session the role of various public authorities engaged in environmental protection will be discussed with an aim to understand their particular responsibilities.

The Assembly and government issue strategic documents and programs for environmental protection. The Ministry of Environment and Spatial Planning, among its other tasks, develops policies, implements legislation and oversees activities for the protection of the environment. Its jurisdiction includes water resources, air, soil and biodiversity; monitoring and assessing the state of the environment, particularly the impact of industrial activity; and public utilities and economic activity as they relate to environmental protection. Local government is responsible for those environmental matters originating or likely to originate within the municipality, if these matters can be handled, controlled, prevented, financed, or managed by such a municipality itself.

Although the public authorities and administrative institutions bear the main responsibility in environmental protection, there are other irreplaceable players in democratic societies. Activities aimed at encouraging the rational use of natural resources, the adoption of environmentally sound practices or promotion of sustainable economic development may be carried out by nongovernmental organizations, professional organizations, and even by commercial enterprises.

The class will examine whether the legal framework for environmental management define strict and unambiguous rights and duties for all public authorities responsible for environmental protection and stern penalties for those who violate the law. The laws must be implemented by an institutional system in which every part has clearly defined responsibilities, sufficient power to enforce the environmental regulations, and the capability to monitor how the rules are obeyed.

Readings

- Kosovo Constitutional Framework for Provisional Self-Government
- UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo
- UNMIK Regulation No. 2003/9 on the Environmental Protection Law
- UNMIK Regulation No. 2003/9 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo

Class 10

Environmental Justice: Case Study - Poisoned Roma children, Part 1

After the war in Kosovo in 1999, a refugee camp was built in Zitkovac, on the edge of the Trepca mine and smelter waste, on land very well known to be highly contaminated. The camp was intended as a temporary shelter for Roma victims of the 1999 looting and burning of the Romani settlement in Mitrovica South. Despite documented extreme health hazards arising from lead contamination, the camp remains at this toxic site, although the UN High Committee for Refugees (UNHCR), which is responsible for the camp, has been trying to relocate the people to the military barracks in Mitrovica North.

The UN Mission in Kosovo had known about the scale of the health emergency as early as 2000, when the World Health Organization (WHO) issued its first report about the lead pollution in the region of Mitrovica. The WHO found that all children and most adults living around the industrial site had blood lead concentrations above the permitted limits.

During the summer of 2004 the WHO implemented a Health Risk Assessment in order to determine the extent and routes of exposure to children in Mitrovica to lead in the environment. Ten micrograms of lead per deciliter of blood is the level of concern. All 18 Roma children tested had lead in their blood high above that level. Twelve children were found to have exceptionally high levels. Six of them fall within the range described by the US Agency for Toxic Substances and Disease registry as constituting a medical emergency ($>70\mu\text{g}/\text{dl}$). The instruments the WHO used were not able to read above $65\mu\text{g}/\text{dl}$. These 12 children all lived in the Roma camp in Zitkovac in immediate vicinity of the Trepca tailings.

After the Study, in October 2004 the WHO declared the area in and around the refugee camp uninhabitable, issuing a report that revealed that the soil in Zitkovac camp was 100 times the recommended level determined to be safe for human health. The relocation started in 2006 after the French Battalion had vacated the barracks they used from 1999.

Questions for discussion

- Does the building of the refugee camp on land very well known to be highly contaminated raise environmental justice concerns? How did the UNHCR and WHO respond to them?
- What were the impediments for Roma refugees to have their voice heard? How did the Roma refugees' poverty, lack of education and lack of information about the contamination affect a timely solution?

- More than four years passed before the first health assessment was undertaken and the public was informed. What external factors impeded or delayed transformation from non-issue, or private phase, to public one?

Readings

- World Health Organization, Preliminary Report on Blood Levels in North Mitrovica and Zvecan, July 2004
- A Center for Progressive Regulation White Paper: Environmental Justice by Eileen Gauna, Catherine A. O'Neill, and Clifford Rechtschaffen available at http://www.progressiveregulation.org/articles/EJ_505.pdf
- *In the Matter of Louisiana Energy Services, L.P.*, Decision of the Nuclear Regulatory Commission Atomic Safety and Licencing Board, May 1, 1997

Class 11

Environmental Justice: Case Study - Poisoned Roma children, Part 2

Lecture by the Guest Speaker

The guest speaker should be an activist of a human rights nongovernmental organization which can be chosen from three types:

- Roma nongovernmental organizations (preferably),
- organizations fighting discrimination, or
- organizations protecting minorities and their rights.

The goal of this class is to examine the tools community can use to fight environmental injustice, toxic contamination and raise public awareness. It will also examine the effectiveness of different responses community can use.

Class 12

Air Protection

Air pollution has been a persistent problem in some areas in Kosovo, much of it attributable to the combustion of fossil fuels for energy in electrical generating units, in industry, and in automobiles. Residential heating also contributes to emissions.

Since the closure of the Trepca Mining Company in 2000, there are no smokestack emissions of smoke and dust containing heavy metals in the region of Mitrovica. Citizens of Mitrovica, historically affected by the large scale mining and smelting operation, now can breathe air clear of the pollutants formerly emitted from the factory's smokestacks. The lead emission from the Trepca smelter in 1980 – 1984 ran at 10.3 kg per ton of lead smelted, while a well-operated modern lead smelter emits in one year 0.2 kg or less of lead per ton of crude lead smelted (Palairt, 2000). The Trepca Company was shut down due to several reasons, most of them being a mixture of political reasons and environmental concerns, although the environmental reasons were the only reasons publicly admitted by the UNMIK.

The class should explore what tools, other than shutting the factory down, the 2004 Law on Air Protection provides to fulfill its aims: to harmonize environmental

standards in Kosovo with those of the European Union and to provide and guarantee the rights of citizens to live in a healthy and clean air environment. The introduction of such standards and the creation of such an environment must be accomplished in a manner that is consistent with sustainable economic development and the ability of Kosovo to bear the associated cost. Students will examine the achievability of the statute's aims in light of conditions set by the legislature created to protect the economy. How much does this condition weaken the obligatory implementation of discharge standards? Does this condition grandfather existing pollution sources? What would an impoverished, developing state or its citizens choose: jobs in dirty industry and economic security or clean(er) air and higher unemployment?

Readings

- Kosovo Law on Air Protection No.2004/30
- *Lead Industries Association v. EPA*, 647 F.2d 1130 (D.C. Cir. 1980)
- *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001)

Class 13

Water Protection

Water pollution today degrades the quality of Kosovo rivers and lakes, but also affects quality of life by reducing recreational opportunities, undermining local economic prosperity, and threatening drinking water supplies and public health.

The Kosovo Water Act is not the only statute that seeks to protect water quality. The others are the Environmental Protection Act as a framework law and the Law on Performing Hydro-meteorological Affairs of 1986. According to the Law on Environmental Protection, the Hydro-meteorological Institute of Kosovo, which is within Kosovo Environmental Protection Agency and under authority of the Ministry of Environment, shall monitor surface and underground waters, provide systematic research and immediately inform the authorities of the relevant ministries about any accidental pollution of waters (Article 29.3).

The improvement in water quality Kosovo recently observed cannot be attributed to the legislative efforts to protect water quality. In 1993 all big industries, including the Trepca Mining Company, ceased or severely reduced their activities because of the economic embargo against the FRY and the political situation in Kosovo. Recent chemical and bacteriological monitoring shows that the major rivers in Kosovo are polluted and may not even be used for industrial purposes before prior water treatment.

Similar to the class devoted to air protection, this class should explore what tools, other than shutting the factory down, the Water Law provides to fulfill its aims, whether those tools are adequate, and who the main subjects in charge in the statute enforcement are.

Readings

- Kosovo Water Law No.2004/24
- *United States v. Riverside Bayview Homes, Inc*, 474 U.S. 121 (1985)

- *NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977)
- *United States v. Plaza Health Laboratories, Inc.*, 3 F3d 643 (2d Cir. 1993)
- *Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir. 2002)

Class 14

Environmental Impact Assessment

NEPA, the EU, International Organizations and Agencies

Although specific laws, regulations, and practices differ among countries, the National Environmental Policy Act's (NEPA) unique procedural innovations have influenced the EIA procedures of many countries, including Kosovo. NEPA practices such as scoping, disclosure of environmental information, and public review and comment are included in Kosovo environmental regulations.

Similarly, regardless of where they are prepared, the content of EIA documents generally contain requirements that originated with NEPA, such as Statement of Purpose and Need, an account of the affected environment, and a discussion of the environmental consequences, alternatives, and mitigation measures.

Besides the states and states' organizations such as the EU and UN, several of the major international funding institutions and other international organizations have established EIA procedures also. Environmental analysis is a precondition for their funding of the proposed projects.

The class will discuss the EIA regulations in different legal systems and explore some of the crucial threshold questions, including whether the project will significantly affect the environment or how cumulative impact is defined.

Readings

- The U.S. National Environmental Policy Act of 1969
- The EU Directive 85/377/EEC (as amended by Directive 97/11/EC)
- 40 C.F.R. § 1508.27 - CEQ Regulation determining the “significance” of action
- 40 C.F.R. § 1508.7 - CEQ Regulation determining the “cumulative impact”
- *Hanly v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972)
- *Sierra Club v. United States Army Corps of Engineers*, 701 F.2d 1011 (2d Cir. 1983)

Class 15

Environmental Impact Assessment in Kosovo

Environmental impact assessment in Kosovo is currently regulated by Section 4, Articles 20 to 24 of the Law on Environmental Protection of 2003.

Who is Obligated to File an EIA?

A person, undertaking or public authority that is planning the construction of an industrial or processing facility or a major work or project shall, if such facility,

project or work has a significant potential for causing environmental damage, first be required to conduct an EIA and to file with the Ministry of Environment Protection and Spatial Planning a report summarizing the findings of that EIA (EIA report). The same obligation exists for a person, undertaking or public authority that is planning to significantly modify the operations of an existing industrial or processing facility or major work or project shall, if such modification has a significant potential to increase or substantially alter emissions and/or discharges. For construction or modification of residential and non-industrial commercial buildings within the areas prescribed for such construction by the applicable spatial plan an EIA shall not be required.

Screening

The MESP determines whether or not a proposed project requires an EIA. The Ministry, by subsidiary regulation, shall prescribe: which activities require an environmental permit; the application form for acquiring an environmental permit; the content of the permit; reasons (if applicable) for revocation of the permit; and, the registry of approved permits.

After receiving an EIA report, the Minister shall immediately seek the advice of the Kosovo Environmental Protection Agency with respect to the received EIA report and, within 60 days, either issue environmental consent, or deny environmental consent by providing the concerned applicant with a detailed written statement of the reasons for said denial. Before an environmental consent is issued, the minister, through KEPA, shall offer the public an opportunity to review the EIA report and the draft decision for no less than 15 days and no more than 30 days. During this review

period, the EIA report and the draft decision shall be available for inspection by the public, and a public hearing shall be held. The person intending to undertake a project shall be present at the public hearing and have an opportunity to explain the project to the public. KEPA must consider public concerns and suggestions, but is not obliged to act on them. The date, time and place of the review period and the hearing shall be published in the public media and announced in the usual local manner.

Readings

- Law on Environmental Protection of 2003
- Forty Most Asked Questions Concerning CEQ's NEPA Regulations [46 Fed. Reg. 18062, (March 23, 1981), as amended 51 Fed. Reg. 15618 (April 25, 1986)]

Class 16

Environmental Impact Assessment in Kosovo

A person, undertaking or public authority that is planning the construction or major modification of an industrial or processing facility, if such facility, project or work has a significant potential for causing environmental damage, is required to conduct an EIA and to file an EIA report with the Ministry. The government, after receiving a proposal from Minister, shall specify the types of the information that shall be contained in an EIA report.

Who can perform an EIA

An EIA shall only be performed, and an EIA report may only be prepared and submitted, by a person or undertaking having special expertise and training in the environmental sciences, the conduct of an EIA, and the preparation of an EIA report, and holding an EIA license from the ministry that authorizes such a person or undertaking to conduct EIAs and to prepare EIA reports.

Reviewing an EIA Report and the Right to Sue

After receiving an EIA report, the Ministry shall immediately seek the advice of KEPA with respect of such EIA report and, within 60 days of the date the report was submitted, either issue environmental consent, or deny consent by providing the applicant with a detailed written statement of the reasons for denial. The Ministry may, in denying environmental consent, propose certain modifications, if possible, to the proposed construction or other activity that will allow the Ministry to issue consent at a later date.

If an applicant for an environmental consent believes that a denial was arbitrary or capricious, made for an illicit purpose, or not based on sound science or applicable environmental standards, the applicant may challenge the denial in court.

Transboundary Impact – Notification to Neighboring Countries

When an intended project could directly influence the environment outside Kosovo, the Minister shall inform the government and those countries that are likely

to be affected by the intended project and provide them documentation of the intended project, including the project's EIA report.

Readings

- Law on Environmental Protection of 2003
- Forty Most Asked Questions Concerning CEQ's NEPA Regulations [46 Fed. Reg. 18062, (March 23, 1981), as amended 51 Fed. Reg. 15618 (April 25, 1986)]

Class 17

Writing an EIS, Part 1

The EIS discloses to the public and to decisionmakers the environmental effects of the proposed activity. Because the analysis is comprehensive and disclosure requirements are specifically prescribed, technical experts from multiple disciplines write the EIS. To assist these specialty authors in producing an effective and successful EIS, students should be familiar with content planning.

This class should enable students to prepare a content plan to specify the content and understand the significance of its elements. As a minimum an EIS Content Plan should include (taken from Theresa Daus-Weber, *What to Expect When Developing an EIS Content Plan*):

1. Introduction
2. Purpose and Need for Action
3. Proposed Action and Alternatives

4. Affected Environment
5. Environmental Impact
6. Cumulative Impact
7. Applicable Laws, Regulations, and Other Requirements
8. Consultation and Coordination
9. List of Preparers
10. References

Readings

- MESP: Content of an EIA Report in Kosovo

Class 18

Writing an EIS, Part 2

According to the EIA regulation, before an environmental consent is issued, the minister shall offer the public an opportunity to review the EIA report and the draft decision for no less than 15 days and no more than 30 days. During this review period, the EIA report and the draft decision shall be available for inspection by the public, and a public hearing shall be held.

An EIA report must concentrate on the issues that are truly significant rather than stockpile needless details. Preparing a cohesive content plan makes meeting this goal more realistic. Conceptually, two approaches in writing an EIA report, already perceived in the theory (Bass 2001), should be avoided:

- *Bare legal minimum.* The project proponent does only the minimum necessary to satisfy legal requirements (i.e. creates a document that meets the “letter of the law”).

- *Overkill*. The project proponent studies everything it can, in as much detail as possible, producing documents that are not usable by decision makers or the public, often under the belief that this will ward off legal challenges (i.e., attempts to create a “bullet proof,” encyclopedic document).

Readings

- MESP: Content of an EIA Report in Kosovo

Class 19

Environmental Enforcement: Environmental Monitoring and Information

Determining whether a discharger is in compliance with permit limits is not an easy task given the vast number, variety, and complexity of pollutants and dischargers subject to environmental regulations.

Faced with these difficulties, environmental enforcement authorities rely on self monitoring and self-reporting requirements to detect violations. Both the Kosovo Water Law and the Law on Air Protection require dischargers to monitor their discharges on a regular basis and to file reports that are available to the public. Unfortunately, these Laws, as same as other environmental regulation in Kosovo, do not have the provisions contained in most of the major U.S. environmental statutes, that protect employees who report violations by their employers. These provisions prohibit an employer from discharging or discriminating against any employee who reports environmental violations.

Readings

Pertinent sections of

- Kosovo Water Law
- Law on Air Protection
- Environmental Protection Law
- Access to Information Law

Class 20

Environmental Enforcement: Criminal Enforcement

Although criminal penalties for environmental violations can be found in the Criminal Code and in all environmental statutes applicable through the decades in Kosovo, criminal prosecutions have played minor role in environmental enforcement. All the companies were socially owned and their managers were appointed by the government to run the factories whatever was the environmental cost.

The Criminal Code provide criminal penalties for both “knowing” or “willful” and certain negligent acts that violate them environmental regulations. The Code generally makes both corporate officers and employees who make corporate decisions personally liable. Criminal penalties are particularly severe for knowing violations that endanger human life.

The class will consider the interface between environmental and criminal laws and discuss the ways to make criminal enforcement more effective.

Readings

- *Sierra Club v. Cedar Point Oil Co.*, 73 F.3d 546 (5th Cir. 1996)
- *United States v. Weitzenhoff*, 35 F.3d 1275 (9th Cir. 1994)

Class 21

Environmental Enforcement: Standing and Citizen Access to the Courts

The Environmental Protection Law allows citizens to commence legal action against those who violate the environmental laws. The citizen suit provision can be found in the Guiding Policy Principles of Environmental Protection in the Article 5(1) which reads that any person or group of persons if they are suffering material damage or are under a serious threat of suffering material damage attributable to a particular activity or source of pollution that is in violation of the law, shall have the right to file a claim or request the competent court or public authority requiring the appropriate enforcement of the law.

The Statute does not include judicial review provisions that authorize citizen suits to review the legality of agency action. The plaintiff must allege facts showing that he/she is suffering material damage or that such a damage is threatening them seriously. The mere term “material damage” is rather narrow and, under Kosovo law, does not cover recreational and other nonmaterial interests. For example, if somebody proposed an open pit coal mining in the environmentally very sensitive area (the equivalent of the North Fork Flathead River for example), the citizens claiming that proposed activities will degrade water quality, kill fish, jeopardize wild

life and endangered species, would not have a standing because they are not suffering any material damage. A developer whose project is going to kill all the non-game birds living in the area cannot be sued because nobody has suffered material damage. Citizens would also not be able to protect historical, cultural, or aesthetic values of the environment, because of the same reason.

The class will examine whether the lack of the substantive citizen suits provision in the applicable environmental law in Kosovo is in accordance with the EU and internationally recognized environmental protection standards and whether the Statute should be amended.

Readings

- Kosovo Environmental Protection Law of 2004

Class 22

Environmental Enforcement: Lecture by the Guest Speaker

The guest speaker should be a judge, prosecutor, or attorney having considerable experience in dealing with environmental issues.

Class 23

Discussion Class: Pollution Hotspots in Kosovo

Trepca Mines tailings disposal areas.

Open pit coal mining and coal fired power plants in Obilic.

Class 24

Students Case Presentation, day 1

Students are required to pick the US, the EU or International tribunals' case of their choice and present it to the entire class. The case should make a significant statement in the area of environmental law it addresses. Each student will have 15 minutes to present the case and 5 minutes to answer questions. The last two days of class are reserved for class presentations. 20% of the grade will be based on the class presentation.

Class 25

Students Case Presentation, day 2

Same as Class 24

Class 26

Exam

The final exam will be an in-class, essay-style examination. Students will have three hours to complete the exam. Each student will be permitted to bring to the exam any material that he or she has produced himself/herself (such as class notes), the printed course materials, the text books and the Statutory and Regulatory Supplement. No other material, including any other published material, will be permitted in the exam room.

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