SYMPOSIUM:
THE THIRD ASSOCIATION OF AMERICAN LAW SCHOOLS WORKSHOP ON INTERNATIONAL LAW, CO-SPONSORED BY THE AMERICAN SOCIETY OF INTERNATIONAL LAW

INTEGRATING INTERNATIONAL AND U.S. LAW: ENVIRONMENTAL AND RELATED PROBLEMS
An Introduction

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We live in an era of rapid globalization and disquieting nationalism. Forces of both integration and fragmentation have gained momentum, as have the complexities of reconciling competing values. Lawyers face critical issues, for example, at the intersections of environmental management, economics, human rights, and sovereignty.

International law relies heavily on domestic legal implementation. In addressing the issues that confront us, therefore, our legal system and legal education need to do a better job of integrating international and domestic law. At a recent conference of the American Council of Learned Societies on Internationalization of Scholarship, a buzz word was "intermestic," to describe problems that require joint attention by "domestic" and "international" specialists in virtually every academic and professional discipline. We share a common destiny.

In 1990, at the end of the Cold War, an innovative workshop convened by the Association of American Law Schools (AALS) stimulated professional inquiry into new problems of sovereignty, international governance, and emerging structures of world order. Much had happened since the first AALS Workshop on International Law in 1984. The general themes of the 1990 workshop—organization, integration, and dispute resolution—reflected the post-Cold War agenda. Those themes also provided the backdrop for the third AALS Workshop on International Law, which took place on June 13-15, 1996, in Washington, D.C., and was co-sponsored by the American Society of International Law.

This symposium issue of the *Vermont Law Review* presents papers and commentary presented at the 1996 AALS-ASIL Workshop. The presenters explored four fundamental questions: What is the role of international law in the domestic system? How can we best reconcile national interests with our obligations to comply with international law, and resolve disputes accordingly? What are the relationships among U.S. interests, U.S. law

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and international standards? And how should we allocate federal and state responsibilities for international environmental management?

At the workshop, plenary and luncheon sessions explored these questions in the contexts of the environment and trade, pollution control, natural resources, and related issues such as human rights. Luncheon speakers highlighted perspectives of federal and local governments. Breakout groups, following formal presentations, provided participants with an opportunity to analyze information together, to discuss ideas and options, and to consider new approaches toward teaching and scholarship. The mix of domestic and international law interests among the participants will surely help broaden communication and collaboration for years to come.

The discussion and analysis of issues related to the environment and natural resources at the workshop was far-reaching. Compliance and implementation issues ran through the Workshop. In addressing such related issues as trade, human rights, sovereignty, and the role of soft law, we had to reopen a Pandora's box of problems inherent in legal classifications and divergent institutions. References to the General Agreement on Tariffs and Trade's (GATT's) celebrated resolution of the *Tuna-Dolphin Cases*,[1] in particular, reminded us of the segregation of topics on the human agenda. In the past, trade has been one thing, the environment another. Surely, many of us concluded, it is time for the more integrated approach that the Earth Summit in 1992 encouraged.[2] After all, the selection of appropriate regimes and institutions for managing our affairs is not written in stone; it is always a policy choice. There should be plenty of room for both specialized expertise *and* integrated responsibilities.

Perhaps, though, we should speak less of Pandora and more of Aphrodite as we admire the gradual emergence of a global regime, like Aphrodite, from a foamy (and troubled) sea. Let me suggest that further regime-building must apply four interrelated principles: commonality, vitality, sustainability, and reality.

By "commonality" I am referring, first, to customary expectations of good neighborliness, the common heritage and shared utilization of resources across boundaries. I also refer to the commonality of many, though not all, issues at different levels of domestic and international governance. And who knows? Maybe the powers that be are gradually

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1. General Agreement on Tariffs and Trade Dispute Settlement Panel, United States—Restrictions on Imports of Tuna, B.I.S.D. 39th Supp. 155 (1991), *reprinted in* 30 I.L.M.1594; *id.* 33 I.L.M. 839 (1994).

2. United Nations Conference on Environment and Development, 31 I.L.M. 814 (1992).

rediscovering that international law and domestic law have a lot in common.

"Vitality," the essence of our aspirations for the world around us, "shows in not only the ability to persist but the ability to start over."[3] In other words, taking a leaf from nature itself, we must have the ability, courage, and persistence to change our patterns, to redefine the parameters of legal theory and practice as we walk together through the global commons.

"Sustainability," that buzz word of the Nineties, will require not only our energies and expertise, but also a stronger public conscience. During a small forum at the St. Regis Hotel in New York on the future of the relationship between the United States and the United Nations,[4] our principal speakers, Vice President Gore and then U.N. Ambassador Madeleine Albright, noted what perilous times these are for everyone committed to a global order and more effective management of our natural heritage. It is discouraging that the 1996 federal budget slashes funding for the United Nations Environment Fund and International Conservation Programs in half and reduces overall support for global environmental protection by about a quarter from what it has been.[5]. We educators, practitioners and organizers need to carefully promote both the public support of sustainability and the sustainability of public support. Green diplomacy should not be left to green politicians alone.

A fourth principle of regime-building, directly related to sustainability and public support, is "reality," which even the best of theories cannot ignore. Obviously, the global commons means different things to different people. For some it offers an opportunity for rapid development; for others, basic survival; for still others, a pristine wilderness. The Rio Declaration and Agenda 21 of the Earth Summit[6] remind us that we must take account of developmental needs. And we have to take seriously the "wise use" movement and other apparent threats to environmentalism. There are many other issues of this sort. Some would interpret "sustainability" to protect human welfare as much as to preserve natural capital. We must also recognize that intergenerational equities, in some cultures at least, take account not only of future interests but of ancestral interests as well. Takings of private property may require just compensation. The "polluter-pays" principle cannot operate effectively

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3. F. SCOTT FITZGERALD, THE CRACKUP (Edmund Wilson ed., 1945).

4. 22 WASH. WKLY. REP., June 14, 1996, at 3.

5. 22 WASH. WKLY. REP., May 24, 1996, at 4.

6. *See supra* note 2.

without financial resources. And so on, as such well-known debates echo around the world.

Finally, to return to the subject of policy choices, we might recall Christopher Stone's good advice. In his study of the global environment and the human agenda entitled *The Gnat is Older than Man*, Stone concluded that fundamental policy and legal issues are resolved "less by formal choice, in which the mind is governed by appeals to consistency, than by life-style choice, in which we open ourselves to provocations of irony and humor, the experience of wilderness, and the echoes of the best traces of our indwelling terrestrial histories."[7]

This symposium issue will, I am sure, help us to understand some of the issues of theory and reality that tax our fledgling regime of environmental and resource management. We hold these issues in common, and they are vital, sustained, and real. At the end of the academic debate, life-style choices and actions must, indeed, speak louder than words.

7. Christopher D. Stone, THE GNAT IS OLDER THAN MAN 280 (1993).