



UNEP

UNITED NATIONS ENVIRONMENT PROGRAMME

联合国环境规划署

环境法教程

UNEP ENVIRONMENTAL LAW
TRAINING MANUAL

王曦 主编/译

法律出版社

Law Press China

联合国环境规划署 环境法教程

王 曦 主编/译

王 曦 李广兵 柯 坚 秦天宝 译

王 曦 秦天宝 周艳芳 校

法 律 出 版 社

2002 年·北京

图书在版编目(CIP)数据

联合国环境规划署环境法教程/王曦 主编/译. —北京:
法律出版社, 2002.5
ISBN 7-5036-3803-6

I. 联… II. 王… III. 国际法:环境保护法—教
材 IV. D996.9

中国版本图书馆 CIP 数据核字(2002)第 034398 号

出版/法律出版社
印刷/北京朝阳北苑印刷厂
责任印制/陶松

总发行/中国法律图书公司
经销/新华书店

开本/A5
版本/2002 年 5 月第 1 版

印张/15.5 字数/402 千
2002 年 5 月第 1 次印刷

法律出版社地址/北京市西三环北路甲 105 号科原大厦 A 座 4 层(100037)
电子信箱/pholaw@public.bta.net.cn
传真/(010)88414115
电话/(010)88414121(总编室) (010)68710329(责任编辑)

中国法律图书公司地址/北京市西三环北路甲 105 号科原大厦 A 座 4 层(100037)
传真/(010)88414897
电话/(010)88414899 88414900
(010)62534456(北京分公司) (010)65120887(西总布营业部)
(010)88414934(科原大厦营业部) (010)88960092(八大处营业部)
(021)62071679(上海公司)
商务网址/www.chinalaw-book.com

出版声明/版权所有,侵权必究。
书号:ISBN 7-5036-3803-6/D·3438
定价:29.50 元

(如有缺页或倒装,本社负责退换)

序一

联合国环境规划署非常重视环境法在促进环境管理和可持续发展中发挥的作用。联合国环境规划署理事会 2001 年 2 月第 21/23 号决议通过的《21 世纪第一个 10 年制订和定期审查环境法方案》即常说的《蒙得维的亚方案》的实施得到了高度重视。

成立于 1972 年的联合国环境规划署一直充当着国际环境法发展与实施的先锋,其成果有:一系列全球和区域国际协定和其他法律文件的实施;70 多个发展中国家和经济转型国家环境立法的加强;针对政府官员、法官、律师、私营部门、学术界、民间社会团体和媒体的广泛的能力建设活动;环境法信息的提供,其中包括联合国环境规划署环境法培训教程的出版。

《蒙得维的亚方案》要求联合国环境规划署出版并传播环境法著作,用作能力建设的工具,同时便利大学环境法教育计划的实施。联合国环境规划署在几个发展中国家和经济转型国家开展工作的过程中发现,语言屏障成为环境法与环境政策交流的主要障碍。我们逐渐认识到,除非此种局面得到补救,否则这些国家的环境利害关系人有效地加入到促进环境法与环境政策的发展与执行过程中的希望微乎其微。中层政府官员(检查员、海关官员、警察)、法官、非政府组织、特别是从事环境法与环境政策教学的老师和学生是其中受影响最深的人。

为解决这个问题,联合国环境规划署政策发展和法律部(DP-DL)应各国政府的要求以几国文字翻译和出版了联合国环境规划署环境法培训教程。此书被广泛认为是有关国际环境法与环境政策基

本原理,包含多边环境协定和国际公约的非常有用的著作。此教程由联合国环境规划署政策发展和法律部成员、各公约秘书处以及经验丰富的学者们撰写,目前已被几所大学作为环境法与环境政策的主要教材使用。

在全球的、区域的和国家的层面促进环境管理和可持续发展方面,联合国环境规划署同中华人民共和国一直保持着紧密的、卓有成效的伙伴关系。联合国环境规划署环境法培训教程的中文翻译和出版将为联合国环境规划署在中国的环境资源建设和环境法与环境政策国家能力建设作出及时和巨大的贡献。我们得知,此教程将作为大学及学院的环境法教材,同时也将成为政府官员、法官和律师、私营部门、民间社团以及其他对环境法和环境政策感兴趣人士的参考资料。

联合国环境规划署政策发展和法律部部长
巴克利·坎特(Bakary Kante)

Message

United Nations Environment Programme attaches great importance to the role of environmental law in promoting environmental management and sustainable development. High priority has been accorded to the implementation of UNEP's Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century, commonly referred to as the Montevideo Programme, adopted by the Governing Council of UNEP in its decision 21/23, in February 2001.

Since it was established in 1972, UNEP has continued to be at the vanguard of the development and implementation of international environmental law. Among its accomplishments are: the implementation of a number of global and regional international agreements and other legal instruments; the strengthening of environmental legislation in over seventy developing countries and countries with economies in transition; a wide range of capacity building activities targeting government officials, judges and lawyers, the private sector, academia, civil society groups and the media; and the provision of environmental law information, including the publication of the UNEP Training Manual on Environmental Law.

The Montevideo Programme requires UNEP to produce and disseminate environmental law publications to serve as a tool for capacity

building and to facilitate educational programmes on environmental law at universities. Through the course of UNEP's work in several developing countries and countries with economies in transition, it has become evident that language barriers constitute a major obstacle for achieving communication of environmental law and policy issues. There is a growing realization that there is little prospect of environmental stakeholders in these countries participating effectively in promoting the development of environmental policy and law as well as in its enforcement, unless this situation is remedied. Middle level government officials (inspectors, customs officers, police officers) judges, NGOs and particularly students and teachers of environmental law and policy appear to be among those most affected.

To address this problem, UNEP's Division of Policy Development and Law (DPDL) has responded to requests from governments by translating and publishing the UNEP Training Manual on Environmental Law into several national languages. The Manual is widely regarded as a useful publication on the fundamentals of international environmental law and policy, including multilateral environmental agreements and international conventions. The Manual has been written by the staff of DPDL, the convention secretariats and highly experienced academics and is currently used in several universities as an essential teaching resource on environmental law and policy.

UNEP and the People's Republic of China have enjoyed a very close and fruitful partnership in promoting environment management and sustainable development at global, regional and national levels. The translation and publication of the UNEP Environmental Law Manual into Chinese is expected to make a timely and significant contribution from UNEP to building environmental resources and national capacity in environmental law and policy in China. The Manual we are in-

formed, will be used for teaching environmental law at universities and colleges and also as a reference source for government officials, judges and lawyers, the private sector, civil society groups and others interested in environmental law and policy.

Bakary Kante
Director
Division of Policy Development and Law
UNEP

序二

近年来我工作案头要求对环境保护法律、法规和行政规章作出执法解释的请示和环境复议的申请书越来越多,这是一件好事,说明环保部门依法行政的自觉性和公民及法人依法维护自身环境权益的观念日益提高。那么到底环境法在环境保护事业中起什么样的作用呢?作为法律部门的一种,环境法具有一切法律的作用。首先,明确调节人们环境行为的规范;其次,规定了人们在环境方面的权利和义务;第三,有着很大的警诫、威慑和制裁作用。我认为环境法还有它突出的教育作用,对中国人环境意识的增强和环境道德的普及起到了巨大的促进作用。

如果从1973年国务院召开第一次全国环境保护工作会议并制定我国第一部关于环境保护的行政法规即《关于保护和改善环境的若干规定(试行草案)》算起,中国的环境法已经走过了20多年的历程,但真正得到比较快的发展是在1979年国家颁布《环境保护法(试行)》、即改革开放以来。20多年的历史证明,环境法在中国环境保护事业中起到了极其重要的、不可替代的作用。

环境法发挥其作用,需要一些基本条件配合。其中根本性一条,是人们具有环境意识和守法意识。守法意识靠整个社会法制观念的增强,而自觉遵守环境法,还要有很强环境意识和对环境法的了解。环保部门作为环境法的主要执法者更应该透彻地学习、了解环境法。从这两方面看,认真开展环境法学教育和编写出版好的环境法学教材就是非常需要的了。多年来,通过我国环境法学界几代人的努力,已经出版了不少好的环境法学教材。这些各具特色的环境法教材为培养环境法专门人才、提高环保系统依法行政的能力和人

们的环境法律意识作出了很大的贡献。

联合国环境规划署《UNEP 环境法教程》中文版的翻译和出版,又为中国的环境法学教材系列增添了一分色彩,很有意义。国外,特别是发达国家制定环境保护法的历史比中国早。我们在环境立法过程中非常注意吸取国外的经验,以提高立法的水平。这部教材是我国引进的第一部外国人撰写的综合性环境法教材。它是由联合国环境规划署和若干环境公约秘书处的法律专家以及环境法领域里的若干著名学者共同完成的高质量成果。这部教材既有国际环境公约的介绍,又有国内法律制度说明。特别值得一提的是,教材中系统讲解了几项主要的国际环境公约,在国内尚未看到这样的著作。教材中在国内环境法律制度中介绍的环境影响评价、危险化学品贸易、工业守法和执法等内容,也都是当前环境保护工作中迫切需要的。它的引进,有利于我国环境法学教材建设,有利于我们更好借鉴国外环境法制的经验,最终有利于中国的环境法更好地发挥其作用。

主编译王曦是我的法律老师,是有真才实学的中年环境法学者。他参与了我国一些环境法律的起草,对国外的环境法也很熟悉。他作的比较环境法研究是有很高水平的。我相信这部教材会受到广大读者的欢迎。

长期以来,联合国环境规划署一直大力支持中国的环境保护事业。这部中文版教材的出版,是联合国环境规划署在环境法领域同中国合作的又一个新的成就。值此教材问世之际,作此序,以表祝贺!

中华人民共和国国家环境保护总局副局长

王玉庆

2001年10月30日于北京

Preface

Over the past few years, the requests for enforcement interpretation of laws, regulations and administrative rules on environmental protection and applications for environmental reconsideration are piling up on my desk. And this is a good sign. It is a sign of the raised initiative of the environmental protection departments to administer by law, as well as a sign of the advanced consciousness of the citizens and corporations to protect their environment-related rights and interests in accordance with the law. Then what a role does environmental law play in the course of environmental protection? As a branch among many, environmental law has the same functions as any other branch of law. First, it regulates environment-related behaviors. Secondly, it provides for the environment-related rights and obligations for the subjects. Thirdly, it warns, deters and punishes. What's more, as I presume, it also plays a prominent role of education, promoting public environmental awareness and environmental ethics in China. Taking the first State Council Meeting on Environmental Protection and the first administrative statute on environmental protection, namely, Several Provisions on Protecting and Improving Environment (Draft for Trial Implementation) as the beginning of environmental law in china, Chinese environmental law has gone through more than 20 years. But it was not given full development until 1979 when Environmental Protection Law (For Trial Implementation) was promulgated, almost the same time as when the state adopted reform and opening policies. The history of more

than 20 years proves that environmental law has played an important and indispensable role in the course of environmental protection in China.

To give full play to environmental law, certain basic conditions have to be met. Among them, environmental awareness and law-abiding consciousness of the public is underlying. The law-abiding consciousness depends on the advanced sense of legality throughout the society, while the initiative of the public to comply with environmental law requires strong environmental awareness and a good understanding about environmental law. As the major executors of environmental law, environmental protection staff should learning and understanding environmental law thoroughly. Therefore, the necessity for sound environmental law education and good teaching materials is self-evident. Thanks to the efforts of several generations in the environmental law field, a number of good teaching materials have been published in China in the past. The teaching materials of all features have made great contribution in training specialized environmental law personnel, in building up the capacity of environmental protection department to administer by law, and in raising the public awareness of environmental law.

The translation and publication of UNEP Environmental Law Training Manual, which makes the series of environmental law teaching materials in China even more colorful, is of great significance. Environmental law came into being earlier overseas, especially in developed countries. We have paid due attention to their experience for the good of environmental legislation in our country. This comprehensive manual is the first of its kind to be introduced into China. It is a work of high quality produced by legal staff at UNEP's Division of Policy Development and Law and the Convention Secretariats as well as several highly acclaimed academics in the field of environmental law. It in-

roduces international environmental conventions and illustrates national legal systems as well. What is worth noting most is that this manual explains systematically some major international environmental conventions, which has never been done before in China. National environmental legal systems, such as EIA, Trade in Hazardous Chemicals, Industrial Compliance and Law Enforcement introduced in the manual also fill the need of Chinese environmental protection work at present. Its introduction is helpful to the development of environmental law teaching materials, to the learning of foreign legal systems, and eventually to the better effects of environmental law in China.

The translator/Editor-in-Chief Wang Xi, my teacher in environmental law, is a scholar well-learned in this field. He has participated in drafting some of the environmental laws and regulations in China, and is also familiar with environmental law overseas. His accomplishments in comparative environmental law reaches are also outstanding. Therefore, I trust that the manual is to be welcome.

Over years, UNEP has been coherent in supporting and assisting the development of environmental protection in China. The publication of this Chinese edition is another fresh achievement of the cooperation between UNEP and China in the field of environmental law. I would like to take this opportunity hereof to extend my congratulations as the end of this preface.

Wang Yuqing
Deputy Director General
State Environmental Protection Administration
The People's Republic of China
Beijing
Oct. 30, 2001

序三

这部教程中文版的出版,始于1999年11月19日至25日在武汉大学举行的国际自然保护同盟武汉大学促进中国环境法(PELC)项目第二次会议和中国欧盟高等教育合作项目武汉大学欧盟环境法讲习班。联合国环境规划署亚太环境法方案代表劳·克鲁克拉苏雷亚(Lal Kurukulasuriya)先生代表联合国环境规划署应邀参加了这两项活动。活动期间,克鲁克拉苏雷亚先生和我在翻译、出版这部教程的中文版一事上不谋而合,都认为将这部教程译介到中国是一件非常有意义的事情,并约定尽快签订协议,做成此事。双方经过两年的努力,今天我们终于看到了这部教程的中文版。

细心的读者会发现,这部教程有两个特点最为可贵。

其一体现在它独具匠心的结构上。全书分为三编。第一编是对环境法(包括国际环境法)的基本概念和原理的阐述。它帮助读者建立对环境法这个法学新领域的基本认识。第二编通过对主要环境公约和其他机制的阐述,使读者从国际法的角度进一步认识环境法。第三编则回过头来,阐述各国国内环境法共同的主要制度和措施,将读者的眼光引导到环境法的国内实施上。这种结构将国际法和国内法有机结合,既新颖又符合教学规律,在环境法教材类中独树一帜。

其二体现在它的比较环境法学特色上。比较环境法学的任务是对各国(包括一国内实行不同法制的地区和联邦制国家各组成部分)的环境法律、环境法律实践和环境法学理论进行比较研究,从它们的同和异之中认识并阐述环境法的一般规律。优秀的环境法教程必然大量地吸收和反映比较环境法学的研究成果。这部教程是联合国环

境规划署政策发展与法律部和若干环境公约秘书处的法律专家以及一批国际著名环境法学者集体劳动的成果。作者的高学术水平和国籍等背景的多样化(如既有发达国家的,也有发展中国家的作者),使得这部教程具备成为一部优秀的比较环境法著作的优越条件。在这部教程的第一编和第三编中,我们可以看到作者对具有不同的社会制度、经济发展水平、文化传统的国家的环境法的一般规律的种种抽象认识。这些认识对于环境法和环境法学学科的形成和发展,具有宝贵的价值。这部教程堪称一部比较环境法研究的佳作。

应联合国环境规划署的要求,我根据国际环境法的新近发展,补充了本书的部分章节,其中包括对《联合国气候框架公约》、《生物多样性公约》、《巴塞尔公约》和《关于持久性有机污染物的斯德哥尔摩公约》等部分的补充。因此,就内容的新颖程度而言,此中文版超过了原著。

本书是集体劳动的成果。我翻译了第一编即第1—3章,撰写了若干章节的更新部分,并审阅和校对了我其余各章和各篇序言的译文。李广兵和秦天宝翻译了第二编,其中李广兵翻译了第4、5章,秦天宝翻译了第6—10章。柯坚和秦天宝翻译了第三编即第11—16章。周艳芳翻译了各篇序言并协助校对全书。王晓丽、邵琛霞、毛润琳和付璐协助整理了文本。杨华国帮助查找了资料。作为主编译,我对各位合作者的精诚合作和耐心细致的工作表示衷心的感谢。

在本书的翻译和出版过程中,克鲁克拉苏雷亚先生自始至终给与密切合作和大力支持。没有他的勤勉而高效的配合,本书的翻译和出版是不可能的。我为有他这样的合作者和朋友感到由衷的高兴。在此,我对他表示衷心的感谢。

联合国环境规划署政策发展和法律部部长巴克利·坎特(Bakary Kante)先生和联合国环境规划署亚洲与太平洋区域办事处主任尼莫尔·安德鲁斯(Nirmal Andrews)先生一贯关注和支持本书的翻译和出版,并专门为此书题写序言。在此,我对他们表示衷心的感谢。

武汉大学校友、国家环境保护总局王玉庆副局长在百忙之中拨

冗为本书作序。在此,我对他的支持表示衷心的感谢。

对于译文的不妥之处,敬请读者不吝指教。

王 曦

于武昌珞珈山

2001年12月8日

Preface

The production of the Chinese edition was first started at the Second Meeting of Promoting Environmental Law in China Program under IUCN at Wuhan University (WHU) from November 19 to 25, 1999, and the WHU Training Course on Environmental Law of European Union under Sino-EU Higher Education Cooperation Program. Mr. Lal Kurukulasuriya, a representative from the Asia-Pacific Environmental Law Program of United Nations Environmental Program (UNEP), on behalf of the UNEP, participated in both the above activities. During the two events, Mr. Kurukulasuriya and I coincided in the idea of translating into Chinese and publishing this manual. We agreed that the translation and introduction in China of the manual would be of great significance, and that the contract should be signed as soon as possible. After two years' hard work on both sides, the Chinese edition is finally born today.

Attentive readers will find that there are two things most worth noting about the Manual.

First, it is originally structured. It consists of three parts. The first part illustrates fundamental conceptions and principles of environmental law (including international environmental law). It helps the reader build up basic knowledge about environmental law, which is a new branch of law science. The second part, through the illustration of