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# Colorado Journal of International Environmental Law and Policy

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## Dedication: Professor Albert E. Utton (1931–1998)

In late 1998, the field of international environmental law lost one of its pioneers. Professor Albert E. Utton was among the first scholars even to recognize that a distinct area of the law was emerging and to dub it “international environmental law.” At the pathmarking 1972 Stockholm Conference on the Environment, the nations of the world adopted a declaration of principles linking international law with environmental protection.<sup>1</sup> Shortly after that, Professor Utton and Professor Ludwik Teclaff collected and published scholarship on previously unrelated fragments of international law in a book entitled *International Environmental Law* that helped give the field identity and coherence.<sup>2</sup>

Professor Utton made many valuable contributions to the University of Colorado School of Law, too. One need only look as far as the article he and his son John authored in this issue of the *Colorado Journal on International Environmental Law and Policy* for evidence of Professor Utton’s substantive contribution.<sup>3</sup> Not only have the *Journal’s* pages carried his articles before but other authors writing in the *Journal* frequently have relied on Professor Utton’s work, and his name is found in citations in dozens of articles. He was a member of the Advisory Board of this *Journal* from its founding until his death. I remember gratefully Al’s gracious participation in several Natural Resources Law Center conferences held at the University of Colorado School of Law

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1. *Stockholm Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14 (1972), reprinted in 11 I.L.M. 1416. It is generally acknowledged that modern international environmental law essentially began in 1972. See Edith Brown Weiss, *International Environmental Law: Contemporary Issues and the Emergence of a New World Order*, 82 GEO. L.J. 675, 678 (1993).

2. INTERNATIONAL ENVIRONMENTAL LAW (Ludwik A. Teclaff & Albert E. Utton eds., 1974).

3. Albert E. Utton & John Utton, *The International Law of Minimum Stream Flows*, 10 COLO. J. INT’L ENVTL. L. & POL’Y 7 (1999).

beginning with the early conference on water law to which I invited him to speak in 1982.

Al Utton started a distinguished life in the tiny, Four Corners town of Aztec, New Mexico. He attended the University of New Mexico (UNM) and, after being elected student body president and graduating with honors in geology in 1953, Al went to Oxford as a Rhodes Scholar. He received a degree in jurisprudence from Oxford and pursued graduate studies in international law at the University of London. Later he was a Fellow in Administrative and International Law at Yale Law School. Al also served in the Judge Advocate General's office of the US Air Force. After joining the faculty at the UNM Law School, he taught water law, international law, environmental law, and administrative law. He also served as interim dean and was heavily involved in campus affairs and interdisciplinary work with colleagues across the campus.

Shortly after joining the UNM faculty in 1962, Professor Utton was appointed Editor-in-Chief of the newly established *Natural Resources Journal*. Although journals concentrating on environmental and natural resources law have since proliferated, the *Natural Resources Journal* was then one of a kind. The journal remained unique in its operational and editorial policy, however. Most US law journals are student operated and edited. The *Natural Resources Journal* is more like the kind of peer-reviewed journal found in other fields of academe. It has faculty-level editorial control and a National Advisory Council. It also is distinguished by its interdisciplinary exchanges, drawing not just on legal experts but on nonlegal authors, such as economists, political scientists, and even physical scientists. It has had tremendous influence in a variety of fields where Professor Utton and the editorial boards over the years have chosen to focus, including Colorado river salinity, tribal water rights, public lands, and transboundary water issues. The *Natural Resources Journal* also has published occasional articles in Spanish that were of special interest to Latin-American scholars and practitioners. Al guided the work of the *Natural Resources Journal* as Natural Resources Editor and Advisor until Professor Suedeem Kelly became Editor in 1985 and Al was named Editor Emeritus.

In 1986, Al Utton founded the International Transboundary Resources Center at UNM and became its director. The Center hosts conferences, coordinates exchange programs, publishes *The Transboundary Resources Report*, and generally carries on the kind of work that Professor Utton had engaged in for forty years by seeking solutions to natural resources problems—water, oil and gas, wildlife, and air—that cross political boundaries. The Center has developed unofficial treaties on a variety of topics like the oil and gas resources in the Gulf of Mexico

modeled after the approach Professor Utton pursued with an International Draft Treaty on Transboundary Groundwater.

Al's contributions over forty years were momentous, never perfunctory. For him elegance came naturally, without pretension. What he did best was perceive the importance of an issue and of the cutting-edge work being done on that issue anywhere in the world. He celebrated and advanced discourse, providing fora to ventilate and promote the best thinking on the most challenging international resources. He brought synthesis to the ideas of others, while adding his own perspectives to the debate.

Consider Al Utton's multi-faceted contribution to transboundary water law. Many of his writings focused on the waterways the United States shares with Mexico and Canada.<sup>4</sup> Other works discussed international water disputes in different contexts;<sup>5</sup> domestic interstate water law;<sup>6</sup> other transboundary international environmental questions;<sup>7</sup> plus a

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4. See, e.g., Albert E. Utton, *International Groundwater Management: The Case of the U.S.-Mexican Frontier*, 57 NEB. L. REV. 633, 638 (1978); Albert E. Utton, *An Assessment of the Management of U.S.-Mexican Water Resources: Anticipating the Year 2000*, 22 NAT. RESOURCES J. 1093, 1098 (1982); Leonard B. Dworsky, Albert E. Utton & David J. Allee, *The Great Lakes: Transboundary Issues for the Mid-90s*, 26 U. TOL. L. REV. 347 (1995); Leonard B. Dworsky & Albert E. Utton, *Assessing North America's Management of its Transboundary Waters*, 33 NAT. RESOURCES J. 413 (1993); W.R. Derrick Sewell & Albert E. Utton, "Getting to Yes" in *United States-Canadian Water Disputes*, 26 NAT. RESOURCES J. 201 (1986); Albert E. Utton, *The Columbia River Treaty and Protocol*, 1 LAND & WATER L. REV. 181 (1966); Albert Utton, *Canadian International Waters*, in 5 WATERS AND WATER RIGHTS ch. 50 (Robert Beck ed., 1991); Albert Utton, *Mexican International Waters*, in 5 WATERS AND WATER RIGHTS ch. 51 (Robert Beck ed., 1991).

5. See, e.g., Albert E. Utton, *The Development of International Groundwater Law*, 22 NAT. RESOURCES J. 95 (1982); Albert E. Utton, *International Water Quality Law*, in INTERNATIONAL ENVIRONMENTAL LAW, *supra* note 2, at 155; Albert E. Utton, *International Streams and Lakes*, in 5 WATERS AND WATER RIGHTS, *supra* note 4, ch. 49.

6. See, e.g., Albert E. Utton, *In Search of an Integrating Principle for Interstate Water Law: Regulation Versus the Market Place*, 25 NAT. RESOURCES J. 985 (1985); Albert E. Utton, *The El Paso Case: Reconciling Sporhase and Vermejo*, 23 NAT. RESOURCES J. ix (1983).

7. See, e.g., TRANSBOUNDARY RESOURCES LAW (Albert E. Utton & Ludwik A. Teclaff eds., 1987); Albert E. Utton, *International Environmental Law and Consultation Mechanisms*, 12 COLUM. J. TRANSNAT'L L. 56 (1973); Albert E. Utton, *Protecting the Environment in the Mexico-U.S. Border Region*, 1 U.S.-MEX. L.J. 211, 213 (1993); Albert E. Utton, *Institutional Arrangements for Developing North Sea Oil and Gas*, 9 VA. J. INT'L L. 66 (1968).

variety of issues in natural resources<sup>8</sup> and other fields of law.<sup>9</sup> But his impact was far broader than the topics he explored in his own research. Besides his own writing, he published major works of others. Furthermore, he organized numerous conferences on international groundwater issues. The meetings he convened were more than presentations by experts to audiences; they were working sessions with real products that often resulted in improved international understanding and cooperation.

For instance, Professor Utton, along with Ambassador Cesar Sepulveda, organized a United States-Mexico Transboundary Resources Study Group in 1977. A series of subsequent meetings of the group held over several years resulted in an unofficial draft agreement on groundwater between the two countries known as the Ixtapa Draft Agreement.<sup>10</sup>

So well received was the Ixtapa Draft that Al and Professor Robert D. Hayton of City University of New York were motivated to invite experts from other parts of the world where serious transfrontier groundwater problems exist to the Rockefeller Foundation's Study and Conference Center in Bellagio, Italy in 1987. This led to later rounds of revision of the United States-Mexico draft agreement, and ultimately to producing the "Bellagio Draft Treaty on Transboundary Waters" prepared by Professors Utton and Hayton during a month-long residence at Bellagio in 1989.<sup>11</sup> The draft stands a model not just for the United States and Mexico, but for any countries that want to resolve their differences over transboundary groundwater by mutual agreement. It has been the focal point of much discussion on internationally shared waters and it continues to evolve as a vehicle for resolving and forestalling differences among nations over rivers and lakes claimed by multiple sovereigns.

Al also worked throughout the world at a practical level on transboundary water issues. One of the first issues he tackled while still a young law professor was the US-Mexico dispute over salinity levels in the Colorado river. At that time, the salinity levels had become so great that waters entering Mexico were too salty for irrigation. He convened

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8. See, e.g., Melvin M. Eisenstadt & Albert E. Utton, *Solar Rights and Their Effect on Solar Heating and Cooling*, 16 NAT. RESOURCES J. 363 (1976); Melvin M. Eisenstadt, Stephen C.M. Long & Albert E. Utton, *A Proposed Solar Zoning Ordinance*, 15 URB. L. ANN. 211 (1978); R.G. Cummings & Albert E. Utton, *Managing Nuclear Wastes: An Overview of the Issues*, 21 NAT. RESOURCES J. 693 (1981).

9. See, e.g., Albert E. Utton, *The Use of the Substantial Evidence Rule to Review Administrative Proceedings*, 10 N.M. L. REV. 103 (1979).

10. See Ann Berkley Rogers & Albert E. Utton, *The Ixtapa Draft Agreement Relating to the Use of Transboundary Groundwaters*, 25 NAT. RESOURCES J. 715 (1985).

11. See Robert D. Hayton & Albert E. Utton, *Transboundary Groundwater: The Bellagio Draft Treaty*, 29 NAT. RESOURCES J. 663 (1989).

lawyers, water experts, government officials and hydrologists from both countries at a symposium that is acknowledged to have contributed to the resolution of the issue.<sup>12</sup> Later, Professor Utton consulted on international resources issues in countries in North and South America, Africa, Asia, and the Middle East. He also dedicated hundreds of hours to serving the state as Chair of the New Mexico Interstate Stream Commission for some 20 years.

One of Al Utton's less known but most significant impacts was on the emerging water law of Peru. In the spring of 1996, President Fujimori was about to accept a cabinet recommendation to declare a new water law. It was nearly a *fait accompli*. Several cabinet ministers and key national leaders on water-related matters were assembled in Lima to discuss the proposed law and a few outsiders were asked to comment on it. The commentators included Professor Al Utton, Miguel Solanes of the United Nations, and me. In his British-lilted Spanish, Al warmed the high-level audience with his characteristic humor and self-effacing modesty. Then he delivered an unalloyed critique of the proposed law's deficiencies that he and his New Mexico colleague and fellow water law expert, Professor Charles DuMars, had prepared. The audience responded with concerned questioning. By the end of the day-long meeting the impact of the critique was clear; the legislation should not be pressed forward as proposed. Instead of pushing through the legislation as some ministers had urged, the President put aside the proposal and new alternatives were developed.

As memorable for me as Al Utton's role in altering the course of Peru's water law, was the cherished time I spent with him when our work was done. The evening after the meeting on water law, he introduced me to pisco sour, Peru's national drink; it seemed a mixed blessing as the next day dawned. Over the next day and a half, we discussed follow-up on the Peruvian water law, but did so on the move. We started Sunday morning amidst the worshipers in the *catedral*, then wandered the streets of Lima in conscious disregard of our hosts' cautions about the dangers of the city center. Near the *Plaza de Armas*, Al struck up a conversation with a young student who ended up showing us some of the historical spots and sharing his life story, prodded by Al's questions. Al would not let Lima be anything but a vibrant, friendly place. Our lingering lunch in a restaurant overlooking the Pacific, punctuated with local folk music, was full of animated conversation about everything from

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12. See Minute No. 241, Agreement on Colorado River Salinity, July 14, 1972, U.S.-Mex., 23 U.S.T. 1286, T.I.A.S. No. 7404; Agreement on Colorado River Salinity Confirming Minute No. 242, Aug. 30, 1973, U.S.-Mex., 24 U.S.T. 1968, T.I.A.S. No. 7708.

family, to Latin-American culture, to the perils of academic politics. We later walked and talked for miles around greater Lima, looking at art shows in parks and snooping around back streets. Getting lost became an excuse to talk with the locals. Al's struggle with cancer was hard upon him then, though any concern for his own mortality or sign of the disease's burden was well-masked by his vigor, talk of upcoming travel, and concern for politics in that election year.

He fought his final battle with strength and courage before ending 67 years of vitality on September 29, 1998. Al is missed by the friends he had around the world. But he left us with fond memories of times he spent with us, living to the fullest. His legacy is teaching us how to reach across political boundaries, to convene people around ideas, and to use the synergy of their intellect and values to improve the way law and policy operates.

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