

EDITED BY YANN KERBRAT AND SANDRINE MALJEAN-DUBOIS

The Transformation



of International Environmental Law

A. PEDONE & HART

TABLE OF CONTENTS

<i>Contributors</i>	7
<i>Introduction</i>	
<i>Features and Trends in International Environmental Law</i>	9

PART 1. THE SOURCES AND NORMS OF INTERNATIONAL ENVIRONMENTAL LAW

Chapter 1 -

The Sources of International Environmental Law

The Making of International Law Challenging Environmental Protection.....	25
Normative Uncertainties.....	55
Comments on the Normative Challenge of Environmental "Soft Law".....	61
The Precautionary Principle in International Law	73
The Role of Environmental Agreements' Conferences of the Parties.....	89
The Intergovernmental Panel on Climate Change (IPCC): A Singular Model of Expertise at the International Level.....	97

Chapter 2 -

Universalism and Differentiation in International Environmental Law

Regionalism and Universalism in the Production of Environmental Law.....	117
The Status of Developing Countries in the Climate Regime: The Principle of the Duality of Norms Revisited?	131

TABLE OF CONTENTS

**Chapter 3 -
Environment in Other Fields of International Law**

The Adaptation of International Economic Law to Environmental Issues: Regional Trade Agreements and Environmental Protection	151
Managing Conflicts between Environmental and Investment Norms in International Law	171
The Legal Regime of Natural Resources in Times of Armed Conflict and its Weaknesses	193

PART 2.

THE IMPLEMENTATION AND ENFORCEMENT OF INTERNATIONAL ENVIRONMENTAL LAW

**Chapter 1-
Responsibilities and liabilities**

International Law Facing the Challenge of Compensation for Environmental Damages	213
The Work of the International Law Commission: from Liability to Damage Prevention	233
The United Nations Compensation Commission Practice with Regards to Environmental Claims	251
International Law and Environmental Stakes. The Influence of International Law on the Development of Personal Liability of Private Individuals in the Case of Environmental Damage	269

**Chapter 2 -
Controls and sanctions**

Disputes in International Environmental Law: Judicial Settlement and Alternative Methods	285
New Perspectives from the Climate Regime for Compliance Control in Environmental Matters	305
Scientific Expertise in International Disputes. The Case of the WTO	321

FOREWORD

Faced with environmental challenges which, as scientific advances show, are getting more and more serious, urgent, and global, international law has emerged as an essential instrument for state cooperation, as well as a factor of harmonization and revitalization of domestic laws. In response to these challenges, international law had to adapt. Innovative ways to make law emerged. Original implementation means were created. Thus, over the last thirty years, international environmental law has been experiencing very significant both normative and institutional developments.

The authors of the present book set out to emphasize these developments. Their analyses show how environmental challenges shake or transform the core categories and concepts of international law. Thus, more than a book on environmental law, the present publication gives keys to a better understanding of changes the international protection of the environment entails as regards general international law. It also shows the long way still to go so that international law could really play the role it should play.

This book is the fruit of a longstanding collective thinking carried out at the Centre for International and European Studies and Research (CERIC). The publication in May 2010 of the French version of the proceedings of an international symposium held under the aegis of the French Society for International Law in Aix-en-Provence in June 2009 drew the first conclusions (*Le droit face aux enjeux environnementaux*, Paris: Pedone, 2010, 490 p.). The present book takes them up partly and extends the lessons learned, this time in English.

Yann KERBRAT and Sandrine MALJEAN-DUBOIS

Faced with environmental challenges which are international law has emerged as an essential instrument for state cooperation and an influential element in the harmonization and revitalization of domestic laws. At the same time international law has had to adapt; law-making has become more innovative and fresh mechanisms for implementation have been created. Over the last thirty years international environmental law has therefore experienced significant normative and institutional change. The authors of the present book set out to emphasize these changes, showing how environmental challenges have shaken and sometimes transformed the core categories and concepts of international law. Thus, in addition to being a book about environmental law, this is a work which also charts the way in which international protection of the environment has disrupted general international law.

This book is the fruit of a longstanding collaborative project carried out at the Centre for International and European Studies and Research (CERIC). The publication in May 2010 of the French version of the proceedings of an international symposium held under the aegis of the French Society for International Law in Aix-en-Provence in June 2009 drew the first conclusions: *Le droit face aux enjeux environnementaux*, (Paris, Pedone, 2010). The present book takes them up partly and extends the lessons learned, this time in English.

***Yann KERBRAT** is Professor at the Paul Cézanne University (Aix-Marseille III) and Vice-Director of the Center of International and European Studies (CERIC).*

***Sandrine MALJEAN-DUBOIS** is a CNRS Senior Researcher and Director of the Center of International and European Studies (CERIC).*

ISBN 9781849462594



ISBN 978-2-233-00618-9