

THE PREVENTION PRINCIPLE IN INTERNATIONAL ENVIRONMENTAL LAW

Prevention is recognized as a cornerstone of international environmental law, but this principle remains abstract and elusive in terms of exactly what is required of states to prevent environmental harm. In this illuminating work, Leslie-Anne Duvic-Paoli addresses this issue by offering a systematic, comprehensive assessment in which she clarifies the rationale, content and scope of the prevention principle while also placing it in a wider legal context. The book offers a detailed analysis of treaty law, custom codification works and case law before culminating in a conceptualization of prevention based on three definitional traits: (1) its anticipatory rationale, (2) its due-diligence content and (3) its wide spatial scope to protect the environment as a whole. This book should be read by anyone seeking to understand the evolving principle of prevention in international environmental law and how it increasingly shares common ground with reparation in the arena of compliance control.

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The general editor of the series is Professor Jorge E. Viñuales, the Harold Samuel Chair of Law and Environmental Policy at the University of Cambridge and the Founder and First Director of the Cambridge Centre for Environment, Energy and Natural Resource Governance (C-EENRG).

The Prevention Principle in International Environmental Law

LESLIE-ANNE DUVIC-PAOLI

King's College London



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Abbreviations

AB	Appellate Body
ARSIWA	International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts
ASEAN	Association of Southeast Asian Nations
BAT	Best available techniques/technologies
CBD	Convention on Biological Diversity
CBDR(-RC)	Common but differentiated responsibilities (and respective capabilities)
CITES	Convention on International Trade of Endangered Species of Wild Fauna and Flora
CJEU	Court of Justice of the European Union
COP	Conference of the Parties
CSD	Commission on Sustainable Development
CTS	Consolidated Treaty Series
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOSOC	UN Economic and Social Council
EIA	Environmental impact assessment
ECtHR	European Court of Human Rights
EPL	Environmental policy and law
EU	European Union
FAO	Food and Agriculture Organization
FET	Fair and equitable treatment
G22	Group of 22
G77	Group of 77
GATT	General Agreement on Tariffs and Trade
HCB	Hexachlorobenzene
HRC	Human Rights Council

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IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
IAmCommHR	Inter-American Commission on Human Rights
IAmCtHR	Inter-American Court on Human Rights
IDI	Institut de droit international
IELMT	International Environmental Legal Materials and Treaties
IELR	International Environmental Law Reports
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
IMCO	International Maritime Consultative Organization
IMO	International Maritime Organization
IPCC	Intergovernmental Panel on Climate Change
IPE	International Protection of the Environment: Treaties and Related Documents
ISBA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
IWG	Intergovernmental Working Group
LNTS	League of Nations Treaty Series
LRTAP	Convention on Long-Range Transboundary Air Pollution
MEA	Multilateral environmental agreement
MPA	Marine protected area
NAFTA	North American Free Trade Agreement
NCP	Non-compliance procedure
NGO	Non-governmental organization
OECD	Organization for Economic Co-operation and Development
OJ	<i>Official Journal of the European Union</i>
ORIL	<i>Oxford Reports on International Law</i>
PC	Preparatory Committee
PCA	Permanent Court of Arbitration
PIC	Prior informed consent
POPs	Persistent organic pollutants
RIAA	Reports of International Arbitral Awards
SCS	South China Sea
SPS	Sanitary and phyto-sanitary measures
SRFC	Sub-Regional Fisheries Commission
TFEU	Treaty on the Functioning of the EU

UN	United Nations
UNCC	UN Compensation Commission
UNCCUR	United Nations Conference on the Conservation and Utilization of Resources
UNCED	UN Conference on Environment and Development
UNCLOS	UN Convention on the Law of the Sea
UNECE	UN Economic Commission for Europe
UNEP	UN Environment Programme
UNESCO	UN Educational, Scientific and Cultural Organization
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNTS	UN Treaty Series
UNSC	UN Security Council
WCED	World Commission on Environment and Development
WTO	World Trade Organization

Table of Treaties

1856

Treaty between France and Spain Delimiting the Frontier from the Mouth of the Bidassoa to the Point where the Department of Basses-Pyrenees Adjoins Aragon and Navarra, Bayonne, 2 December 1856, in force 12 August 1857, 1142 UNTS 317 25

1885

Treaty concerning the Regulation of Salmon Fishery in the Rhine River Basin, Berlin, 30 June 1885, in force 7 June 1886, available at: http://iea.uoregon.edu/pages/view_treaty.php?t=1885-RhineSalmon.FR.txt&par=view_treaty_html 22

1902

Treaty between Ethiopia and the United Kingdom Relative to the Frontiers between the Anglo-Egyptian Sudan, Ethiopia and Eritrea, Addis Abeba, 15 May 1902, in force 28 October 1902, British and Foreign State Papers, 1901–2 18

1904

Convention between France and Switzerland for the Regulation of Fishing in Frontier Waters, Paris, 9 March 1904, in force 4 February 1905, (1904) 195 CTS 108 19

1909

Treaty relating to the Boundary Waters and Questions Arising along the Boundary between the United States and Canada, Washington, DC, 11 January 1909, in force 5 May 1910, 10 IPE 5158 18

1926

Agreement between the Government of the Union of South Africa and the Government of the Republic of Portugal Regulating the Use of the Waters of

the Kunene River for the Purposes of Generating Hydraulic Power and of Inundation and Irrigation in the Mandated Territory of South West Africa, Cape Town, 1 July 1926, in force 1 July 1926, 70 LNTS 316 18

1927

Convention and Protocol between the USSR and Turkey Regarding the Use of Frontier Waters, Kars, 8 January 1927, in force 26 June 1928, British and Foreign State Papers, 1927, vol 127 (London 1932), 926 18

1929

Convention between Norway and Sweden on Certain Questions Relating to the Law on Watercourses, Stockholm, 11 May 1929, in force 2 August 1930, 120 LNTS 277 18

1933

Convention on the Preservation and Conservation of Flora and Fauna in their Natural State, London, 8 November 1933, in force 14 January 1936, 172 LNTS 241 23

1935

Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail, B.C., Ottawa, 15 April 1935, in force 3 August 1935, (1941) 3 RIAA 1905 146

1940

Convention on Nature Protection and Wild-Life Preservation in the Western Hemisphere, Washington DC, 12 October 1940, in force 1 May 1942, 161 UNTS 193 25

1944

Treaty Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman (Texas) to the Gulf of Mexico, Washington, DC, 3 February 1944, in force 8 November 1945, 3 UNTS 314 18

1945

Charter of the United Nations, San Francisco, 26 June 1945, in force 24 October 1945, 1 UNTS 980 51

1945

Statute of the International Court of Justice, San Francisco, 26 June 1945, in force 24 October 1945, (1945) 39 AJIL Supp. 215 175

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1949

FAO Agreement for the Establishment of a General Fisheries Council for the Mediterranean, Rome, 24 September 1949, in force 3 December 1963, 126 UNTS 237 24

1950

Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, in force 3 September 1953, 213 UNTS 221 80

1950

Statute of the International Court of Justice, San Francisco, 26 June 1945, in force 24 October 1945, (1945) 39 AJIL Supp. 215 305

1951

FAO International Plant Protection Convention, Rome, 6 December 1951, in force 3 April 1952, 150 UNTS 67 24

1954

International Convention for the Prevention of Pollution of the Sea by Oil, London, 12 May 1954, in force 26 July 1958, 327 UNTS 3 29

1956

FAO Plant Protection Agreement for South-East Asia and the Pacific Region, Rome, 27 February 1956, in force 2 July 1956, 247 UNTS 400 24

1958

Convention on the High Seas, Geneva, 29 April 1958, in force 30 September 1962, 450 UNTS 82 29

1960

Agreement between the Government of the Republic of Finland and the Government of the USSR concerning the Régime of the Finnish-Soviet State Frontier, Helsinki, 23 June 1960, in force 5 October 1960, 379 UNTS 330, 20

1960

Indus Waters Treaty concluded between India and Pakistan, Karachi, 19 September 1960, in force 1 April 1960, 419 UNTS 125 149

1960

OECD Convention on Third Party Liability in the Field of Nuclear Energy, Paris, 29 July 1960, in force 1 April 1968, 956 UNTS 251 59

1962

Convention on the Liability of Operators of Nuclear Ships, Brussels, 25 May 1962, not in force, (1963) 57 AJIL 268 59

1963

Convention on Civil Liability for Nuclear Damage, Vienna, 29 May 1963, in force 12 November 1977, 1063 UNTS 265 59

1963

Treaty Banning Nuclear Weapon Testing in the Atmosphere, in Outer Space and Under Water, Moscow, 5 August 1963, in force 10 October 1963, 480 UNTS 43 29, 240

1964

Additional Protocol to Paris Convention on Third Party Liability in the Field of Nuclear Energy, 28 January 1964, in force 1 April 1968, 956 UNTS 335 59

1966

International Covenant on Civil and Political Rights, New York, 19 December 1966, in force 3 January 1976, 999 UNTS 171 52, 80, 133, 159, 249

1966

International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, in force 3 January 1976, 993 UNTS 3 133

1969

American Convention on Human Rights, San José, 22 November 1969, in force 18 July 1978, 1144 UNTS 123 80, 249, 250

1969

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969, in force 19 June 1975, 973 UNTS 3 326, 330

1969

Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, in force 27 January 1980, 1155 UNTS 331 3

1971

Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 2 February 1971, in force 21 December 1975, 996 UNTS 245 69, 143, 183

1971

Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 17 December 1971, in force 15 July 1975, 944 UNTS 255 59

1971

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971, in force 16 October 1978, (1972) 11 ILM 284 59

1972

Convention for the Conservation of Antarctic Seals, London, 1 June 1972, in force 11 March 1978, (1972) 11 ILM 251 46

1972

Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, Oslo, 15 February 1972, in force 7 April 1974, (1972) 11 ILM 262 46

1972

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, 29 December 1972, in force 30 August 1975, (1972) 11 ILM 1294 46

1972

UNESCO Convention for the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, in force 17 December 1975, (1972) 11 ILM 1358 46, 245, 352

1973

Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington DC, 3 March 1973, in force 1 July 1975, 993 UNTS 243 46, 245, 353

1973

International Convention for the Prevention of Pollution from Ships, London, 2 November 1973, in force 2 October 1983, (1973) 12 ILM 1319 46

1974

Convention on the Prevention of Marine Pollution from Land-based Sources, Paris, 4 June 1974, in force 6 May 1978, (1974) 13 ILM 352 71

1974

Convention on the Protection of the Marine Environment of the Baltic Sea Area, Helsinki, 22 March 1974, in force 3 May 1980, (1974) 13 ILM 546 71

1974

Nordic Convention on the Protection of the Environment, Stockholm, 19 February 1974, in force 5 October 1976, (1974) 13 ILM 511 188

1975

Statute on the Navigation and the Exploitation of Natural Resources of the Uruguay River, Salto, 26 February 1975, in force 18 September 1976, 1295 UNTS 340 227

1976

Convention for the Protection of the Mediterranean Sea against Pollution, Barcelona, 16 February 1976, in force 12 February 1978, (1976) 15 ILM 290 71

1976

Convention on the Prohibition of Military or other Hostile Use of Environmental Modification Techniques, Geneva, 10 December 1976, in force 18 May 1977, 1108 UNTS 151 81

1976

Convention on the Protection of the Rhine against Chemical Pollution, Bonn, 3 December 1976, in force 1 February 1979, 1124 UNTS 375 209

1977

Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploration of Seabed Mineral Resources, London, 1 May 1977, not in force, (1977) 16 ILM 1450 59

1977

Protocol I (Additional to the 1949 Geneva Conventions) Relating to the Protection of Victims of International Armed Conflicts, Geneva, 8 June 1977, in force 7 December 1978, (1977) 16 ILM 1391 81

1978

Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, Kuwait, 24 April 1978, in force 1 July 1979, (1978) 17 ILM 511 71

1979

Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, New York, 5 December 1979, in force 11 July 1984, (1979) 18 ILM 1434 240

1979

Convention on Long-Range Transboundary Air Pollution, Geneva, 13 November 1979, in force 16 March 1983, (1979) 18 ILM 1442 46

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1979

Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 23 June 1979, in force 1 November 1983, (1980) 19 ILM 15 245

1980

Convention on the Conservation of Antarctic Marine Living Resources, Canberra, 20 May 1980, in force 7 April 1982, (1980) 19 ILM 841 46

1980

Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources and Activities, Athens, 17 May 1980, in force 17 June 1983, (1980) 19 ILM 869 71

1981

African Charter on Human and Peoples' Rights, Banjul, 27 June 1981, in force 21 October 1986, (1982) 21 ILM 58 52, 80, 216, 250

1982

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, in force 16 November 1994, 1833 UNTS 3 51, 53, 70, 72, 75, 149, 151, 154, 156, 185, 192, 202, 240, 246, 255, 290, 316, 342

1983

Protocol for the Protection of the South-East Pacific Against Pollution from Land-Based Sources, Quito, 22 July 1983, in force 23 September 1986, 983 IELMT 54 71

1985

Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, in force 22 September 1988, (1985) 26 ILM 1529 70, 73, 184, 220

1986

Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, Noumea, 25 November 1986, in force 22 August 1990, (1987) 26 ILM 38 71

1986

Convention on Early Notification of a Nuclear Accident, Vienna, 26 September 1986, in force 27 October 1986, (1986) 25 ILM 1370 57, 191

1986

Single European Act, Luxembourg/The Hague, 17 February 1986 and 28 February 1986, in force 1 July 1987, (1987) Official Journal of the European Communities L 169 185

1987

Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, in force 1 January 1989, (1987) 26 ILM 154 287, 349

1988

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, San Salvador, 16 November 1988, in force 16 November 1999, OAS Treaty Series No. 69 74, 80, 250

1988

Convention on the Regulation of Antarctic Mineral Resource Activities, Wellington, 2 June 1988, not in force, (1988) 27 ILM 868 184, 330

1988

Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, Vienna, 21 September 1988, in force 27 April 1992, (1988) 42 Nuclear Law Bulletin 56 326

1991

Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, 25 February 1991, in force 10 September 1997, (1991) 30 ILM 802 181, 184, 187, 192, 212, 226, 347, 351

1991

Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, Bamako, 29 January 1991, in force 22 April 1998, (1991) 30 ILM 775 69, 197

1991

Protocol on Environmental Protection to the Antarctic Treaty, Madrid, 4 October 1991, in force 14 January 1998, (1991) 30 ILM 1461 212, 240

1992

Convention for the Protection of the Marine Environment of the North-East Atlantic, Paris, 22 September 1992, in force 25 March 1998, (1992) 32 ILM 1068 209

1992

Convention on Biological Diversity, Nairobi, 22 May 1992, in force 29 December 1993, (1992) 31 ILM 822 49, 69, 74, 75, 113, 143, 184, 192, 215, 242, 245

1992

Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki, 17 March 1992, in force 6 October 1996, (1992) 31 ILM 1312 67, 68, 70, 74, 75, 76, 88, 184, 209, 220

1992

Convention on the Protection of the Black Sea against Pollution, Bucharest, 21 April 1992, in force 15 January 1994, (1992) 32 ILM 1110 209

1992

Convention on the Transboundary Effects of Industrial Accidents, Helsinki, 17 March 1992, in force 19 April 2000, (1992) 31 ILM 1330 191, 192

1992

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 27 November 1992, in force 30 May 1996, IMO Doc. LEG/CONF.9.15 326

1992

North American Free Trade Agreement, Ottawa, Mexico City, Washington DC, 17 December 1992, in force 1 January 1994, (1993) 32 ILM 296 162

1992

Protocol to Amend the 1971 Oil Pollution Fund Convention, London, 27 November 1992, in force 30 May 1996, 21 BNA 1751 326

1992

Treaty on European Union, Maastricht, 7 February 1992, in force 1 November 1993, (1992) OJ C 191 185

1992

United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force 24 March 1994, 1771 UNTS 107 49, 75, 126, 171, 184, 195, 215, 220

1993

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing on the High Seas, Rome, 29 November 1993, in force 24 April 2003, FAO Res. 15/93 220

1993

Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano, 21 June 1993, not in force, (1993) 32 ILM 1228 327

1994

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