

## International Environmental Law

*International Environmental Law* offers a concise, conceptually clear, and legally rigorous introduction to contemporary international environmental law and practice.

The book covers all major environmental agreements, paying particular attention to their underlying structure, main legal provisions and practical operation. It blends legal and policy analysis, making extensive reference to the jurisprudence and scholarship, and addressing the interconnections with other areas of international law, including human rights, humanitarian law, trade and foreign investment.

The material is structured into four parts – Foundations, Substantive Regulation, Implementation, and International Environmental Law as a Perspective – which help the reader to navigate the different areas of international environmental law. Each chapter includes charts summarising the main components of the relevant legal frameworks and provides a detailed bibliography.

Suitable for practising and academic international lawyers who want an accessible, up-to-date introduction to contemporary international environmental law, as well as non-lawyers seeking a concise and clear understanding of the subject.

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Cambridge University Press  
978-1-108-42360-1 — International Environmental Law  
Pierre-Marie Dupuy , Jorge E. Viñuales  
Frontmatter  
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# International Environmental Law

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*Second Edition*

PIERRE-MARIE DUPUY, GRADUATE INSTITUTE  
OF INTERNATIONAL STUDIES, GENEVA

JORGE E. VIÑUALES, UNIVERSITY OF CAMBRIDGE



Cambridge University Press  
978-1-108-42360-1 — International Environmental Law  
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Frontmatter  
[More Information](#)

## CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,  
New Delhi – 110025, India

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781108423601](http://www.cambridge.org/9781108423601)

DOI: 10.1017/9781108399821

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First published 2015

Second edition 2018

Printed in the United Kingdom by Clays, St Ives plc

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

Names: Dupuy, Pierre-Marie, author. | Viñuales, Jorge E., author.

Title: International environmental law / Pierre-Marie Dupuy, Jorge E. Viñuales.

Description: Second edition. | New York : Cambridge University Press, 2018. |

Includes bibliographical references and index.

Identifiers: LCCN 2017061569 | ISBN 9781108423601 (hardback)

Subjects: LCSH: Environmental law, International.

Classification: LCC K3583 .D87 2018 | DDC 344.04/6–dc23

LC record available at <https://lccn.loc.gov/2017061569>

ISBN 978-1-108-42360-1 Hardback

ISBN 978-1-108-43811-7 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

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Cambridge University Press  
978-1-108-42360-1 — International Environmental Law  
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## Preface to the Second Edition

La terre est bleue comme une orange  
*L'Amour la Poésie* (1929), Paul Eluard

Writing a book is a way of collating and collecting experiences and memories the authors wish to hold on to. As the review of the manuscript of the second edition of this book was close to completion, the road took the two authors to Tuscany, where the last details were fine-tuned. The Tuscan hills provided a pleasant setting to write this Preface.

For most purposes, we can restate what we wrote in the Preface to the First Edition. The effort to provide a concise, conceptually clear and technically rigorous account of international environmental law, as part and parcel of international law, remains at the heart of the second edition. The need for a new edition was prompted by a number of normative developments, some of which are prominent enough to draw a line between a 'before' and an 'after', such as the adoption of the Sustainable Development Goals (SDGs) and of the Paris Agreement on Climate Change. But regular updates, every three to five years, were envisioned since the beginning of this project as a way of keeping up with the remarkably hectic pace of international environmental law.

This edition reflects developments until May of 2017. All chapters have been updated and in some cases significantly rewritten. Important additions include, aside from the SDGs and the Paris Agreement, the substantial body of judicial decisions that in just a few years have consolidated the understanding of the principles of international environmental law and their operation in connection with some treaties such as the UNCLOS, the adoption of the Kigali Amendment to the Montreal Protocol, the on-going negotiations on biodiversity beyond national jurisdiction, an expanded treatment of the international law of freshwater, the work of the International Law Commission on the atmosphere and on the environment in relation to armed conflict, a more detailed discussion of human rights and the environment with abundant reference to the relevant case-law, as well as the current trends in the integration of environmental considerations into investment, trade and intellectual property law.

All in all, the developments surveyed in this second edition suggest a growing – and genuine – presence of international environmental law in international legal practice. Lack of familiarity with the subject is now perceived as a major lacuna in the knowledge and/or the training of international lawyers. It is perhaps – and finally – a mainstream subject. That is a reason to hope that the environment will rest in better hands in the future. And as hope can become a memory, this is one hope that the authors of this book, in their Tuscan wanderings, wish to hold on to.



## Preface to the First Edition

How to keep – is there any any, is there none such, nowhere known some, bow or brooch or braid or brace, lace, latch or catch or key to keep Back beauty, keep it, beauty, beauty, beauty, . . . from vanishing away? *The Leaden Echo and the Golden Echo*, Gerard Manley Hopkins

This book is an attempt to address two main difficulties we have encountered in our teaching and practice of international environmental law.

One is of a substantive nature and stems from the daunting reach and diversity of the subject matter. No other area of international law gives the newcomer such an impression of dispersion, lack of articulation, even exoticism. The topics gathered under the label international environmental law range from the protection of wetlands or whales or genetic resources to nuclear energy, ozone depletion or hazardous waste control. Each of these topics are worlds in and of themselves and yet, since the late 1970s, there have been attempts at bringing them together under a single discipline that still calls, after all these years, for robust systematisation. This book is our own humble contribution to such attempts. The conception of international environmental law that underpins the materials discussed here can be concisely stated. We see the international law of environmental protection as both a ‘branch’ and a ‘perspective’. As a branch, international environmental law is based on the ideas of ‘prevention’ (of environmental harm) and ‘balance’ (among different considerations and stakeholders), which are themselves expressed in legal form through a small number of principles and concepts discussed in Chapter 3 that, in turn, are spelled out in detail through treaty frameworks analysed in Part II and implemented through the means examined in Part III of this book. This pyramid going from ideas, to principles and concepts, to treaties and their administrative law, is offered as a conceptual narrative articulating the diverse contents encompassed by the expression ‘international environmental law’. But the international law of environmental protection cannot be confined within the bounds of a branch. Environmental protection can only be pursued if it is considered not as a separate sphere of activity but as an objective partaking in all other human activities. From this vantage point, the international law of environmental protection is nothing short of public international law in all its forms, as adjusted to take appropriate account of

environmental considerations. Part IV develops this perspective, with particular emphasis on the influence of environmental protection on human rights, *jus in bello*, *jus ad bellum*, disarmament law, foreign investment law, international trade law and intellectual property rights. In studying international environmental law as both a branch and a perspective, our purpose is to show that this field of inquiry has some identifying features but also that it cannot be reduced to a mere branch.

The other difficulty is of a pedagogical nature and is related to the one just mentioned. Faced with such a diverse and wide-ranging array of norms, treaties and legally linked treaties, the newcomer, whether a student, a practitioner or a researcher unfamiliar with the field, can be easily overwhelmed. The specificities of international environmental law create, indeed, significant barriers to entry. Such barriers are compounded by the constant evolution of the different topics covered in this field, which require textbooks and casebooks to be frequently updated, as well as by the amount of material to be covered. To rise to this challenge, the few existing books encompassing the entire field have grown in scope and volume to a point that they can be considered as true treatises. There is, however, room for a more concise treatment of the subject matter, intended to introduce readers to the different topics, clarifying the location of each topic within the overall pyramid, and highlighting the most important technical aspects of the relevant regulatory regimes. This is the approach followed in this book. It is an attempt to chart the route that goes from utter unfamiliarity with the field to the sophisticated knowledge expounded in existing treatises and other secondary sources, providing an elementary grammar that can hopefully be used as a compass to find one's way in subsequent deeper explorations.

In embarking on this project, we have been encouraged by our experience with several generations of students in Cambridge and Geneva, who have been introduced to international environmental law through this blend of conceptual and technical analysis. Many of them have subsequently become either researchers or practitioners, and they have been kind enough to share with us their own experience in using this training for their activities. Thus, the book condenses the experience of the instructors and, to some extent, that of their students. In addition, the long and patient writing process has greatly benefited from several generations of outstanding teaching and research assistants. Our sincere thanks go in particular to Stephanie Chuffart, Maria de la Colina, Martina Kunz, Magnus Jesko Langer, Jason Rudall and Pablo Sandonato de Leon, whose work between 2009 and 2014 significantly contributed to the preparation of this book. We remain, of course, solely responsible for any mistakes the book may contain.

As a final note, may we add that the book has been a pleasure to write. The two co-authors see eye-to-eye on the content, method and overall understanding of international environmental law as a province of public international law and a perspective increasingly influencing its evolution.

The numerous initiatives to protect the environment described in this book witness the efforts of the international community to ‘keep back beauty from vanishing away’. They are significant, yet insufficient. Moralising love of beauty may be converging with outright indifference in their end result, namely unrealistic expectations and strategies, a boon to hypocrisy. Lucid environmental regulation, based on the setting of clear priorities, may be the only realistic way to move from norms to practice and to genuine protection. Hopkins’ moving poem is a calm yet intense upheaval against ageing and decay, against the loss of beauty. We forfeit the beauty of youth freely, inevitably. No such inevitability applies to the beauty of our environment.

## Abbreviations

AB	Appellate Body of the WTO Dispute Settlement Body
African Commission	African Commission of Human and Peoples' Rights
African Court	African Court of Human and Peoples' Rights
APEC	Asia Pacific Economic Co-operation
ASMA	Antarctic Specially Managed Areas
ASPA	Antarctic Specially Protected Areas
ATCM	Antarctic Treaty Consultative Meeting
ATS	Antarctic Treaty System
BAT	best available technology
BCH	Biosafety Clearing House
BIT	Bilateral Investment Treaty
CBD	Convention on Biological Diversity
CBDR	common but differentiated responsibility
CDM	clean development mechanism
CESCR	UN Committee on Economic, Social and Cultural Rights
CFR	United States Code of Federal Regulations
CMP	Conference of the Parties acting as the Meeting of the Parties
COP (COPs)	Conference(s) of the Parties
CRF	common reporting format
CSD	Commission for Sustainable Development
ECOSOC	UN Economic and Social Council
ECtHR	European Court of Human Rights
EEZ	exclusive economic zone
EGS	environmental goods and services
EIA	environmental impact assessment
EMEP	European Monitoring and Evaluation Programme
EPA	United States Environmental Protection Agency
ETIS	elephant trade information system
FAO	UN Food and Agriculture Organization
FTA	free trade agreement
GA (or UNGA)	United Nations General Assembly

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GAOR	UN General Assembly Official Records
GAW	Global Atmosphere Watch
GDP	gross domestic product
GEF	Global Environmental Facility
GMA	Global Mercury Assessment
GMO	genetically modified organism
HRC	UN Human Rights Committee
IAEA	International Atomic Energy Agency
ICEF	International Court of the Environment Foundation
ICJ	International Court of Justice
ICommHR	Inter-American Commission on Human Rights
ICSID	International Centre for Settlement of Investment Disputes
ICtHR	Inter-American Court of Human Rights
IDI	Institut de Droit International
IIA(s)	International Investment Agreement(s)
IISD	International Institute for Sustainable Development
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
IMO	International Maritime Organization
INC	Intergovernmental Negotiation Committee
IOMC	Inter-organization Programme for the Sound Management of Chemicals
IPCC	International Panel on Climate Change
IPR	intellectual property rights
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for the Conservation of Nature
LMO	living modified organism
MDG	Millennium Development Goal
MEA(s)	Multilateral Environmental Agreement(s)
MIKE	Monitoring the Illegal Killing of Elephants
NAFO	Northwest Atlantic Fisheries Organization
NCP	non-compliance procedures
NGO	non-governmental organisation
NIR	national inventory report
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PCA	Permanent Court of Arbitration
PES	payment for ecosystem services
PIC	prior informed consent
POP	persistent organic pollutants

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PPP	public–private partnership
REDD	Reduced Emissions from Deforestation and Forest Degradation
RFMO	regional fisheries management organisation
RIAA	Reports of International Arbitral Awards
SAICM	Strategic Approach to International Chemicals Management
SC (or UNSC)	United Nations Security Council
SDG	Sustainable Development Goals
SFDI	Société française pour le droit international
SGRP	System-wide Genetic Resources Programme of the Treaty on Plant Genetic Resources
TFDD	<a href="http://www.transboundarywaters.orst.edu">www.transboundarywaters.orst.edu</a>
TOMAs	tropospheric ozone management areas
TWC	Reports of Trials of War Criminals
UN	United Nations
UNCC	United Nations Compensation Commission
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Commission on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNTS	United Nations Treaty Series
VOC	volatile organic compound
WMO	World Meteorological Organization
WTO	World Trade Organization
WWF	World Wildlife Fund

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13 June 1992	'Rio Declaration on Environment and Development', UN Doc. A/CONF.151/26. Rev.1.	Rio Declaration	13, 29, 59, 265, 364, 440, 474
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25 November 1992	Terms of Reference for the Multilateral Fund, UNEP/OzL.Pro.4/15.		167, 330, 333
27 November 1992	Protocol amending the International Convention on Civil Liability for Oil Pollution Damage, available at: <a href="http://www.ecolex.org">www.ecolex.org</a> (TRE-001 177).	CLC/92	318, 320
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6 July 1994	Human Rights and the Environment. Final report presented by Mrs Fatma Zohra Ksentini, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1994/9.	Ksentini Report	362
14 October 1994	Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, available at: <a href="http://www.ecolex.org">www.ecolex.org</a> (TRE-001206).		125

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