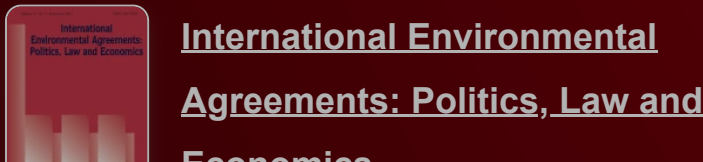


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An economic analysis of international environmental rights

| Original Paper | Published: 19 October 2019

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an initial entitlement consisting of both the prevention of transboundary harm and the equitable use of shared natural resources is supported by theory and practice. This entitlement appears relatively efficient, and the relevant legal instruments reveal an implicit underlying economic logic. These international environmental rights are generally protected by mechanisms that resemble liability.



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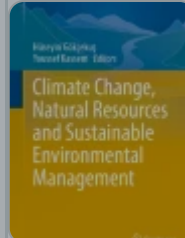


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least hypothetically) willing to compensate those who are made worse off. In this paper, claims of relative efficiency refer to Kaldor–Hicks improvements.

2. Here, “transaction costs” are used broadly to encompass all obstacles—including poorly defined property rights—to reaching an agreement regarding a transaction.
3. This analogy is at least as old as Holland ([1924](#): 393–394).
4. Trachtman ([2008](#): 8) calls it a market in jurisdiction.
5. This analogy can be traced to Lauterpacht ([1927](#)). For an economic analysis of

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Assembly Resolution A/Res/626(VII), of December 21, 1952, on the Right to Exploit Freely Natural Wealth and Resources. Available at <http://daccess-ods.un.org/access.nsf/Get?>

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[http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1803\(XVII\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1803(XVII)); UN General Assembly Resolution A/Res/S-6/3201, of May 1, 1974, on the Declaration on the Establishment of a New International Economic Order.

Available at http://legal.un.org/avl/pdf/ha/ga_3201/ga_3201_ph_e.pdf; UN General Assembly Resolution A/Res/3281(XXIX), of December 12, 1974, on the Charter of Economic Rights and Duties of States. Available at

[http://www.un.org/ga/search/view_doc.asp?symbol=a/res/3281\(XXIX\)](http://www.un.org/ga/search/view_doc.asp?symbol=a/res/3281(XXIX)).

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15. The Stockholm Convention on Persistent Organic Pollutants, a global agreement, reaffirmed the Rio Declaration's statement of the principle. Convention on Persistent Organic Pollutants, Stockholm, May 22, 2001, in force May 17, 2004, Available at <http://chm.pops.int/Portals/0/download.aspx?d=UNEP-POPS-COP-CONVTEXT-2009.En.pdf>. Preamble paragraph 17.
16. At states' request, the International Law Commission explicitly excluded consideration of the polluter pays principle in its development of Draft Guidelines on the Protection of the Atmosphere (International Law Commission [2018](#) Guideline 2.2; see Sand [2017](#): 206–207).
17. Environmental policies that are contrary to the polluter pays principle also

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21. Stockholm Declaration on the Human-Environment, UN Doc. A/CONF.14/48/Rev. 1, June 16, 1972. Available at <http://www.un-documents.net/unchedec.htm>, Principle 21; Rio Declaration on Environment and Development, in *Report of the UN Conference on Environment and Development, Rio de Janeiro, June 3-14, 1992*, UN Doc A/CONF.151/26 (Vol I), August 12, 1992, available at http://www.unesco.org/education/pdf/RIO_E.PDF, Principle 2.
22. *Nuclear Weapons*, Advisory Opinion, July 8, 1996, *ICJ Reports* (1996), paragraph 29. See also *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, April 20, 2010, *ICJ Reports* (2010), p. 14.
23. The additional term “reasonably” is often, but not always, used as well. For

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28. Convention on the Law of Non-Navigational Uses of International Watercourses, May 21, 1997, in force August 17, 2014. Available at http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf. Although the Convention provides that riparian parties shall “take all appropriate measures to prevent the causing of significant harm to other watercourse States” (Article 7), this passage was particularly controversial (McCaffrey [1998](#)).
29. The court did not consider this claim in any depth. *Nuclear Tests Cases (Australia v. France)*, Interim Measures, June 22, 1973, *ICJ Reports* (1973), paragraph 101.

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34. Moreover, the Antarctic moratorium agreement was a response to the failure of a previous proposal for an administrative body. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, December 19, 1966, in force October 10, 1967, Art. II. Available at <http://www.unoosa.org/pdf/publications/STSPACE11E.pdf>. Protocol on Environmental Protection to the Antarctic Treaty, October 4, 1991, in force January 14, 1998, Articles 7, 25. Available at https://www.ats.aq/documents/recatt/Att006_e.pdf.

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