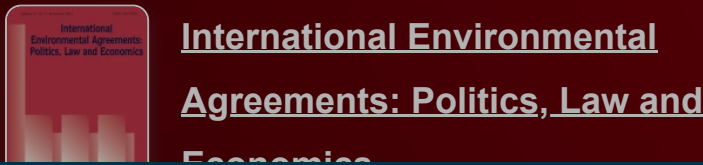


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An economic analysis of international environmental rights

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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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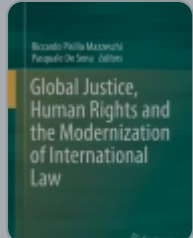
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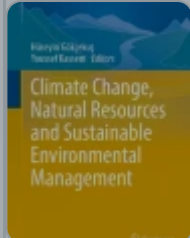
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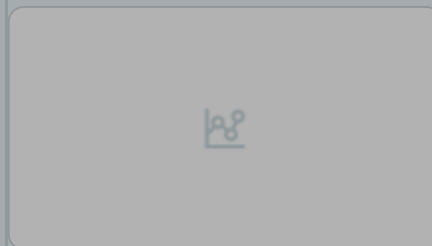
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4. Trachtman ([2008](#): 8) calls it a market in jurisdiction.
5. This analogy can be traced to Lauterpacht ([1927](#)). For an economic analysis of customary international law, see De Mot et al. ([2017](#)).
6. When cash is used, it is often disguised, such as “development aid.”
7. Treaty between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon, January 28, 1985, in force March 18, 1985. Available at <http://www.psc.org/download/45/miscellaneous/2337/treaty.pdf>.

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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)).

10. Charter of Economic Rights and Duties of States, *ibid*, Article 2.1.

11. International Covenant on Civil and Political Rights, December 16, 1966, in force March 23, 1976, available at <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>, Article 1.2; International Covenant on Economic, Social and Cultural Rights, December 16, 1966, in force January 3, 1976, available at <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, Article 1.2.

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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 continue to occur domestically. For example, subsidies for zero carbon and renewable energy, insulation, or more environmentally friendly equipment are payments to polluters.
18. United Nations Framework Convention on Climate Change, May 9, 1992, in force March 21, 1994, Article 4.2(a). Available at https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf; Kyoto Protocol to the United Nations

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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 brevity, this article uses “equitably” to include “reasonably,” as appropriate. See Castillo-Laborde ([2010](#)).
24. *Territorial Jurisdiction of the International Commission of the River Oder Case*, Judgment, September 10, 1929, *PCIJ Ser. A*, No. 23 (1929), p. 28.
25. International Law Commission ([1994](#)); *Gabčíkovo-Nagymaros Project* (*Hungary v. Slovakia*), Judgment, September 25, 1997, *ICJ Reports* (1997),

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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.
30. Because perfect interpersonal—in this case, interstate—welfare comparisons are impossible, this can be stated more precisely in Kaldor-Hicks terms: efficient duties of care are those in which the source state's marginal cost of precaution equals the recipient state's marginal willingness to pay for the source state to take precaution.
31. But see *Certain Activities (Costa Rica vs. Nicaragua)*, Compensation, February 2, 2018. Available at <http://www.icj-cij.org/files/case->

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