

LYSTER'S INTERNATIONAL WILDLIFE LAW

SECOND EDITION

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LYSTER'S INTERNATIONAL WILDLIFE LAW

The development of international wildlife law has been one of the most significant exercises in international law-making during the last fifty years. This second edition of *Lyster's International Wildlife Law* coincides with both the UN Year of Biological Diversity and the twenty-fifth anniversary of Simon Lyster's first edition. The risk of wildlife depletion and species extinction has become even greater since the 1980s. This new edition provides a clear and authoritative analysis of the key treaties which regulate the conservation of wildlife and habitat protection, and of the mechanisms available to make them work. The original text has also been significantly expanded to include analysis of the philosophical and welfare considerations underpinning wildlife protection, the cross-cutting themes of wildlife and trade, and the impact of climate change and other anthropogenic interferences with species and habitat. *Lyster's International Wildlife Law* is an indispensable reference work for scholars, practitioners and policy-makers alike.

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FOREWORD

I am thrilled and delighted that a second edition of *Lyster's International Wildlife Law* has been written and published, and I feel very privileged to have been asked to write this foreword.

When I first wrote *International Wildlife Law* in the early 1980s, it was the most comprehensive book on the subject available – indeed pretty much the only one available! It reflected the growing concern at the time for threatened species and their habitats, and the emerging body of regional and global agreements to protect them. However, so much has changed since the early 1980s. Then the word 'biodiversity', to describe the variety of species and genetic material within species, had scarcely been invented, and there was no Biodiversity Convention. That was only signed in 1992, at the Earth Summit in Rio de Janeiro. Climate change was a subject that a few visionaries were starting to express concern about, but was nothing like the headline issue it is today.

And it is only in the last twenty-five years that the concept of sustainable development has taken centre stage. In the early days, wildlife conservation was seen as a sensible and moral thing to do to prevent species extinction. But the deep and strong interdependence between people and wildlife – the idea that meeting human development aspirations and wildlife conservation are dependent on each other, that you cannot save wildlife without taking account of human needs – was nothing like as widely accepted as it is today.

However, even if new concepts have emerged, the threats to wildlife, the importance of conserving wildlife and the need for international co-operation to achieve effective conservation are greater than ever. Indeed, with exploding human population increases and emerging threats from climate change, there is an even higher risk of wildlife depletion and species extinction now than there was in the early 1980s. And the consequences of failing to tackle threats such as climate change, habitat loss and unsustainable use of natural resources are, frankly, terrifying as they threaten both wildlife and our own survival.

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So we desperately need a new edition of *International Wildlife Law*. We need a clear and widely understood explanation of the international agreements that exist and the mechanisms available to make them work. Just as the first edition was used by the students, practitioners and policy-makers of yesterday to guide them in their work, I really hope the second edition will be even more influential.

Congratulations to all three authors for having written it!

Simon Lyster

PREFACE

From amongst the vast array of specialist textbooks, casebooks and monographs which have been written within the general area of international law, certain examples stand out as having made a seminal contribution. In some cases, their excellence lies in the sheer clarity, precision and thoroughness of their exposition of relevant principles, whereas in others their distinction lies in the fact that they have explored previously uncharted waters, or offered a wholly new perspective on more familiar territory. Yet surely few have combined these attributes to such impressive effect as Simon Lyster's *International Wildlife Law*, published in 1985.

Although academic interest in international environmental law was beginning to burgeon at that time, the bulk of the attention which had been devoted to it focused upon pollution issues, with the importance of conservation of species and ecosystems scarcely recognised in the literature. As a result, there was very little prior scholarship to draw upon when preparing a monograph on international wildlife law. In these circumstances, to produce a text of such breadth, depth and lucidity that it would for so long serve the purposes of expert practitioners, students and lay readers alike represented an extraordinary achievement for which Simon Lyster has attracted well-earned acclaim.

The idea of preparing an updated edition of this valued work was hatched long ago, and it is only the patience and forbearance of our publishers, Cambridge University Press, that has allowed it ultimately to come to fruition. That said, it is something of a happy coincidence that the manuscript should finally have been submitted in 2010, the International Year of Biodiversity, not to mention the twenty-fifth anniversary of the publication of the original edition.

The authors have attempted to capture the spirit and style of the original as far as possible, though the vast accretion of practice arising out of implementation of the treaties covered, not to mention the adoption of several more recent instruments of fundamental significance, has inevitably added to the bulk of detail. Also, the ready contemporary

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availability of treaty texts via the Internet has enabled us to replace the documentary Appendix with additional substantive sections covering background and cross-cutting themes.

The three authors have all read and commented upon each other's contributions, though each chapter remains essentially the work of one of us, as follows:

Michael Bowman – Chapters 1, 2, 3, 7, 10, 13, 16, 20 and 22; Peter Davies – Chapters 5 (section 4), 6, 8, 9, 12, 15 and 21; Catherine Redgwell – Chapters 4, 5 (sections 1–3 and 5), 11, 14, 17, 18 and 19.

Many people have assisted in the preparation of this edition, and we would like in particular to thank the following: Finola O'Sullivan, Richard Woodham and the editorial team at Cambridge University Press; the following for responding to requests for information -Claudia de Windt (Senior Legal Specialist, OAS), Stella Duff (IWC), Richard Huber (Principal Environmental Specialist, OAS), Dwight Peck (Communications Officer, Ramsar Secretariat), Clark Peteru (Environmental Legal Adviser, SPREP), Marina Sansostri Ratchford (US Fish and Wildlife Service), and Willem Wijnstekers (Secretary-General, CITES); former colleague Karen Scott, now of the University of Canterbury, New Zealand; our many wildlife law students at undergraduate, LL M and PhD levels, especially Maeve Hall for her assistance in relation to the chapter on wildlife and pollution, and Al Gillespie for many stimulating conversations on the philosophical basis of the law; Gareth Bowman, Fiona Hayes and Helen Wade, for their invaluable technical expertise and practical assistance. Peter Davies would additionally like to give a personal vote of thanks to Jennie Hale for all her invaluable encouragement during the writing of this book.

We have endeavoured to state the law as at January 2010 (although on rare occasions it has been possible to refer to later developments in 2010).

Michael Bowman Peter Davies Catherine Redgwell

18 February 2010

ABBREVIATIONS

ACAP 2001 Agreement for the Conservation of Albatrosses

and Petrels (CMS agreement); or Arctic

Contaminants Action Program Working Group of

the Arctic Council

ACB ASEAN Centre for Biodiversity

ACCOBAMS 1996 Agreement on the Conservation of Cetaceans

of the Black Sea, Mediterranean Sea and Contiguous

Atlantic Area

ACPB 1973 Agreement on the Conservation of Polar Bears

AEPS Arctic Environmental Protection Strategy
AEWA 1995 Agreement on the Conservation of

African-Eurasian Migratory Waterbirds (CMS

agreement)

AFDI Annuaire français de droit international

AJIL American Journal of International Law

ALIDES Central American Alliance for Sustainable

Development

ALR Australian Law Reports

AMAP Arctic Monitoring and Assessment Programme

AMCEN African Ministerial Conference on the

Environment

Apia Convention 1976 Convention on Conservation of Nature in the

South Pacific

ASCOBANS 1992 Agreement on the Conservation of Small

Cetaceans of the Baltic, North East Atlantic, Irish

and North Seas

ASEAN Association of Southeast Asian Nations
ASMA Antarctic Specially Managed Area
ASPA Antarctic Specially Protected Area

AT 1959 Antarctic Treaty

ATCM Antarctic Treaty Consultative Meeting
ATCP Antarctic Treaty Consultative Party
AT-NCP Antarctic Treaty Non-consultative Party

ATS Antarctic Treaty System

AU African Union (formerly the OAU)

V 17	1	1	1
AV			

ABBREVIATIONS

Barcelona Convention 1995 Convention for the Protection of the

Marine Environment and the Coastal Region of the Mediterranean (replacing

1976 Convention)

Barcelona SPA Protocol 1995 Protocol concerning Specially Protected

Areas and Biological Diversity in the

Mediterranean

Basel Convention 1989 Basel Convention on the Control of

Transboundary Movements of Hazardous Wastes

and Their Disposal

BCIS Biodiversity Conservation Information System

BFSP Biodiversity Liaison Group

Brundtland Report World Commission on Environment and

Development, Our Common Future (1987)

BYIL British Yearbook of International Law

CAFF Conservation of Arctic Flora and Fauna Working

Group of the Arctic Council

Cartagena Convention 1983 Convention for the Protection and

Development of the Marine Environment of the

Wider Caribbean Region

CBD 1992 United Nations Convention on the

Conservation of Biological Diversity

CCAD Central American Commission of Environment and

Development

CCAMLR 1980 Convention on the Conservation of Antarctic

Marine Living Resources

CCAS 1972 Convention on the Conservation of Antarctic

Seals

CCD Convention to Combat Desertification (see also

UNCCD)

CCSBT Commission for the Conservation of Southern

Bluefin Tuna

CDM Clean Development Mechanism (under the Kyoto

Protocol)

CEC Commission for Environmental Co-operation

(NAFTA)

CEMP Comprehensive Ecosystem Monitoring Programme

(CCAMLR)

CEP Caribbean Environment Programme

CEP (EP) Committee on Environmental Protection

(Environmental Protocol to the Antarctic Treaty)

CEPA Communication, Education and Public Awareness

Programme (Ramsar)

CETS Council of Europe Treaty Series (see also ETS)

CHM Clearing House Mechanism

CIDA Canadian International Development Agency
CIPRA International Commission for the Protection of

Alpine Regions

CITES 1973 Convention on International Trade in

Endangered Species

Climate Change Convention 1992 United Nations Framework Convention on

Climate Change

CLP Current Legal Problems

Cm Command Paper (UK) 5th series
Cmd Command Paper (UK) 3rd series
Cmnd Command Paper (UK) 4th series

CMS 1979 Bonn Convention on the Conservation of

Migratory Species of Wild Animals (see also Bonn

Convention)

COFI Committee on Fisheries (FAO)

Colorado JIntLP Colorado Journal of International Law and Policy

COM Commission (of the European Union)
CONCAUSA 1994 Central American—US Joint Accord on

Biodiversity, Energy, Environmental Legislation and

Trade and Investment

CoP Conference of the Parties

CPAN Circumpolar Protected Areas Network
CPPS Permanent Commission for the South Pacific

CRAMRA Antarctic Minerals Convention

CRIC Committee for Review of Implementation of the

Convention (UNCCD)

CSD Commission on Sustainable Development
CST Committee on Science and Technology (of the

UNCCD)

CTE Committee on Trade and Environment (WTO)
CYBIL Canadian Yearbook of International Law
Denv. J. Int'L L. & Pol'y Denver Journal of International Law and Policy

DSB Dispute Settlement Body (WTO)

EC European Community
ECJ European Court of Justice
ECR European Court Reports
EEZ exclusive economic zone
EFZ exclusive fishery zone

EIA environmental impact assessment European Journal of International Law EIIL

Ecology Law Quarterly ELO

Co-operative Programme for the Monitoring and **EMEP**

Evaluation of the Long-Range Transmission of Air

Pollutants in Europe

Earth Negotiations Bulletin (of the IIED) **ENB** Environmental Law Reports (UK) Env LR

Environmental Protocol (to Antarctic Treaty) EP

EPL Environmental Policy and Law

EPPR Emergency Prevention, Preparedness and Response

Working Group of the Arctic Council

Elephant Trade Information System (under CITES) ETIS

Europe Treaty Series (later CETS) ETS

EU European Union

EUROBATS 1991 Agreement on the Conservation of Populations

of European Bats (CMS agreement)

United Nations Food and Agriculture Organisation FAO

Fauna and Flora International FFI

General Agreement on Tariffs and Trade (WTO) GATT GEF Global Environmental Facility (IBRD/UNEP/

UNDP)

Global Environmental Outlook (of UNEP) **GEO**

Georgetown International Environmental Law Review Georgetown IELR

Group of Experts (of the UNCCD) GoE Global Registry of Migratory Species **GROMS** Global Taxonomic Initiative (of the CBD) GTI Harvard International Law Journal Harv. ILI

IAEA International Atomic Energy Agency IABIN

Inter-American Biodiversity Information Network Summit of the Americas Inter-Agency Task Force IATF Inter-American Tropical Tuna Commission IATTC Island Biodiversity Programme of Work (of the **IBPOW**

CBD)

International Bank for Reconstruction and IBRD

Development (or World Bank)

International Committee for Bird Protection ICBP International Commission for the Conservation of ICCAT

Atlantic Tuna

International Court of Justice ICI

International Court of Justice Reports ICJ Rep

International and Comparative Law Quarterly ICLO

ICOMOS International Council on Monuments and Sites International Coral Reef Action Network (managed **ICRAN**

by ICRI)

International Coral Reef Initiative **ICRI**

ICRW International Convention for the Regulation of

Whaling

IELMTInternational Environmental Legal Material and

Treaties

IFAD International Fund for Agricultural Development

International Fund for Animal Welfare **IFAW** IFF Intergovernmental Forum on Forests HED

International Institute for Environment and

Development

HSD International Institute for Sustainable Devlopment **IIECL** International Journal of Estuarine and Coastal Law *IIMCL* International Journal of Marine and Coastal Law

ILC International Law Commission II.MInternational Legal Materials ILRInternational Law Reports

IMO International Maritime Organisation

International Office for the Protection of Nature IOPN

Indian Ocean Tuna Commission IOTC

IP Intellectual Property

IPCC Intergovernmental Panel on Climate Change International Plant Protection Convention IPPC B. Ruster, B. Simma and M. Bock (eds.), IPEInternational Protection of the Environment:

Treaties and Related Documents, 30 vols. + Index

(Oceana Publications, 1975-83)

International Plan of Action (FAO) **IPOA** ITLOS International Tribunal for the Law of the Sea

OTTI International Tropical Timber Organisation

International Union for the Conservation of Nature **IUCN**

illegal, unregulated and unreported fishing IUU **IWC** International Whaling Commission

International Wolf Foundation - Environment **IWFEA**

IWRB International Waterfowl Research Board (now

Wetlands International)

JAMBA 1974 Agreement for the Protection of Migratory

Birds and Birds in Danger of Extinction and Their

Environment

JARPA Japanese Whale Research Program under Special

Permit in the Antarctic

JARPN Japanese Whale Research Program under Special

Permit in the North Pacific

JEL Journal of Environmental Law

JERL Journal of Energy and Natural Resources Law
Ji Joint Implementation (under the Kyoto Protocol)

JIEL Journal of International Economic Law

JIWLP Journal of International Wildlife Law and Policy
Kingston SPAW 1990 Protocol Concerning Specially Protected Areas

Protocol and Wildlife in the Wider Caribbean Region

Kyoto Protocol * 1997 Kyoto Protocol to the Climate Change Convention

LADA Land Degradation Assessment in Drylands

Lima Convention 1981 Lima Convention for the Protection of the

Marine Environment and Coastal Areas of the

South-East Pacific

LMOs living modified organisms

LNTS League of Nations Treaty Series

LOSC 1982 United Nations Convention on the Law of the

Sea (see also UNCLOS)

LRTAP 1979 Convention on Long-Range Transboundary

Air Pollution

MAB Man and Biosphere Programme (UNESCO)

MAR Mesoamerican Reef Alliance (of ICRI)

MARPOL 73/78 International Convention for the Prevention of

Pollution from Ships, 1973, as amended by the

Protocol of 1978 relating thereto

MBTA 1918 Migratory Bird Treaty Act

MEA multilateral environmental agreement

MEDASSET Mediterranean Association to Save the Sea Turtle

Melb. IIL Melbourne Journal of International Law

MEY maximum economic yield

Mich. J Int'l L Michigan Journal of International Law

MIKE Monitoring of Illegal Killing of Elephants (under

CITES)

MoC memorandum of co-operation

MoP meeting of the parties

MoU memorandum of understanding
MSY maximum sustainable yield
MUP Manchester University Press

NABCI North American Bird Conservation Initiative NAFO Northwest Atlantic Fisheries Organisation NAFTA North American Free Trade Agreement

Nairobi Convention 1985 Convention for the Protection, Management

and Development of the Marine and Coastal Environment of the Eastern African Region

Nairobi SPAW Protocol 1985 Protocol Concerning Protected Areas and

Wild Fauna and Flora in the Eastern African Region

NAMMCO North Atlantic Marine Mammal Commission
NASCO North Atlantic Salmon Conservation Organization

Nat. Resources J Natural Resources Journal

NAWMP North American Waterfowl Management Plan
NEPAD New Partnership for Africa's Development

NGO non-governmental organisation

NMP New Management Procedure (of the IWC)

OAS Organization of American States

OAU Organisation of African Unity (now the AU)

Ocean & Coastal LJ Ocean and Coastal Law Journal

ODIL Ocean Development and International Law
OIE Office International des Epizooties/International

Office for Epizootics, now more commonly known as the World Organisation for Animal Health

1990 International Convention on Oil Pollution

Preparedness, Response and Cooperation

OPRC-HNS Protocol 2000 Protocol on Preparedness, Response and

Cooperation to Pollution Incidents by Hazardous

and Noxious Substances

OY optimum yield

OPRC

OSPAR Convention 1992 Convention for the Protection of the Marine

Environment of the North East Atlantic 1989 Protocol for the Conservation and

Paipa SPA Protocol 1989 Protocol for the Conservation and

Management of Protected Marine and Coastal Areas

of the South-East Pacific

PAME Protection of the Arctic Marine Environment

Working Group of the Arctic Council

PCBs polychlorinated biphenyls

PCIJ Permanent Court of International Justice

PERSGA Regional Organization for the Conservation of the

Environment of the Red Sea and Gulf of Aden

PIC prior informed consent
POPs persistent organic pollutants
PPM process and production method

RECIEL Review of European Community and International

Environmental Law

REDPARQUES Latin American Cooperation Network of National

Parks

Rep. Int. Whal. Commn Report of the International Whaling Commission

Res. resolution

RFMO Regional Fisheries Management Organization
RGDIP Revue générale de droit international public
RMP Revised Management Procedure (of the IWC)
RMS Revised Management Scheme (of the IWC)

ROKAMBA 2006 Agreement on the Conservation of Migratory

Birds

Rotterdam Convention 1998 Rotterdam Convention on the Prior Informed

Consent Procedure for Certain Hazardous

Chemicals and Pesticides in International Trade

RSPB Royal Society for the Protection of Birds
SBSTTA Subsidiary Body for Scientific, Technical and

Technological Advice (CBD)

SCAR Scientific Committee for Antarctic Research
SDWG Sustainable Development Working Group of the

Arctic Council

SEA Strategic Environmental Assessment
SEAFO South East Atlantic Fisheries Organisation
SIOFA Southern Indian Ocean Fisheries Agreement
SOCER State of the Cetacean Environment Report

SOLAS 1974 International Convention for the Safety of Life

at Sea (as amended)

SOWER Southern Ocean Whale and Ecosystem Research

programme

SPA specially protected area

SPAMI List of Specially Protected Areas of

Mediterranean Importance (under the

Barcelona SPA Protocol)

SPAW 1990 Kingston Protocol Concerning Specially

Protected Areas and Wildlife

SPREP South Pacific Regional Environment Programme
SPS Agreement on Sanitary and Phytosanitary Measures

(WTO)

SSA 1995 Agreement on Highly Migratory and

Straddling Fish Stocks

STAC Scientific and Technical Advisory Committee (of the

Kingston SPAW Protocol)

Stat. Statute

Stockholm Convention 2001 Stockholm Convention on Persistent Organic

Compounds

Scientific and Technical Review Panel (of Ramsar) STRP

TAC total allowable catch

TBT Agreement on Technical Barriers to Trade (WTO) TIAS

Treaties and Other International Acts Series

(of the US)

TRAFFIC NGO Monitoring Trade in Endangered Species **TREMs** trade-related environmental measures

TRIPS Agreement on Trade-Related Aspects of Intellectual

Property Rights (WTO)

UKTS United Kingdom Treaty Series

UNCC United Nations Compensation Commission UNCCD 2004 United Nations Convention to Combat

Desertification (see also CCD)

United Nations Conference on Environment and UNCED

Development, Rio de Janeiro, 1992

1972 UN Conference on the Human Environment UNCHE 1982 United Nations Convention on the Law of the UNCLOS

Sea (see also LOSC)

UNCTAD United Nations Conference on Trade and

Development

United Nations Development Programme UNDP

UNECE United Nations Economic Commission for Europe

UNEP United Nations Environment Programme

UNESCO United Nations Educational, Scientific and Cultural

Organisation

UN Foundation UNF

1992 United Nations Framework Convention on UNFCCC

Climate Change

United Nations General Assembly UNGA United Nations Juridical Year Book UNJYB

UNTS United Nations Treaty Series

US Agency for International Development USAID

USC United States Code USTS United States Treaty Series

UTLR University of Tasmania Law Review

VCLT 1969 Vienna Convention on the Law of Treaties

VMS vessel monitoring system

WCED World Commission on Environment and

Development

WCMC World Conservation Monitoring Centre (of UNEP)