Preface to the Paperback Edition

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Preface to the Paperback Edition

Is international environmental law the carrier of a new normativity? This existential question emerges from the interstices of environmental law-making where new principles based on a new axiology for the national and international order emerge. These have matured entirely according to their own logic. Indeed, from their origins as vague political slogans, the principles have been incorporated in enforceable laws and instruments. Nicolas de Sadeleer's work, Environmental Principles—From Political Slogans to Legal Rules, reveals this phenomenological and consubstantial aspect of the evolution of environmental principles and unveils the intrinsic and extrinsic implications of such an evolution on the law.

Far from being similar to classical principles of law in general, they contribute to ensure the regulation, the assessment and the management of risk, a crucial function in modern society. Nicolas de Sadeleer underscores the autonomy of these new principles as well as, simultaneously, the central place occupied by environmental law in the international legal system, and at the domestic level, as a major influence on other areas of regulation, such as economic law.

Through the analytical description of three essential principles of international environmental law—the polluter-pays principle, the prevention principle and the precautionary principle—it is demonstrated how this new body of law varies both as to its functions and as to its material content. It varies in respect of its function in the sense that the functions of environmental principles shift between curative, preventive and anticipatory logic. The work excels in demonstrating that beyond their difference in nature, these principles lead to different degrees of protection whether for the environment or for human health. It varies in respect of its material aspect because of the interchangeability of these principles' status. Indeed, they appear in different legal guises, wearing alternatively or simultaneously, the form of rules, directing principles, standards or approaches.

Following this epistemic approach, the study concentrates on two essential points: on the one hand, the function of such principles in the assessment and the management of risk; on the other hand, the legal status of these principles, that is their proper place in the legal systems at different levels: in the spheres of international law, the European Union, and domestic legal orders. This original approach sets the work apart from more traditional analyses by inverting the usual tendency to start by evaluating the legal status of a rule and to scrutinise only then (and therefrom) the function such rules might play in practice. The author advances the idea of the emergence of an atypical process of norm formation, whereby the function of that rule will exert a significant influence over the legal status of that rule. In so doing, the book effectively reveals new grounds of legal force.
A strong emphasis is placed on various aspects of 'post-modern law'. This brings a fresh and original perspective to the study of international law, where influential doctrinal writings have remained relatively silent on the subject, while authors have been equally reluctant to bringing it to bear in the spheres of Community and domestic law. This makes this book one of the most comprehensive works written so far, when it comes to the usefulness of post-modern legal analysis and of its content, scope and limits, as illustrated here through the prism of the newly devised principles of environmental law. Through its rigorous description of what contemporary law is, Nicolas de Sadeleer demonstrates that a genuine transformation of the normative process has taken place and the changes of the international and domestic legal orders that have resulted from this transformation. The book is useful in helping legal scholars come to grips with this fact and stimulates the debate on new modes of legal regulation. The author’s method effectively incorporates aspects and issues emanating from all spheres pertaining to the principles of environmental law, be they legal, political, scientific, technical, historical, economic or philosophical.

Another point to be highlighted is the legal treatment of scientific expertise. The book explores the stakes, the obstacles and the potential solutions that could reduce the tension in the often uneasy rapport between law and science. It thus breaks a path towards creative thinking in terms of setting up institutions and formulating national and international public policy, with appropriate pragmatism in putting forward new integrative elements of the decision-making process.

The book also stimulates its readers to think ahead about new issues and emerging challenges, notably in the relation between international environmental law and international economic law. Some fundamental questions are asked, with a view to providing appropriate solutions to crucial problems (regarding for instance biotechnology regulation, or the controversy surrounding the interpretation of the Agreement on the application of sanitary and phytosanitary measures (SPS agreement) or the Agreement on technical barriers to trade (TBT agreement)).

Lastly, this book constitutes a veritable fount of knowledge and facilitates access to both continental and Anglo-Saxon doctrine spanning the last 20 years. Its effort at achieving a synthesis of the various theories and opinions prevailing in the field of environmental law must be duly commended. Thus Nicolas de Sadeleer, who presently holds a prestigious European Union Marie Curie chair at the University of Oslo has written a very insightful and analytically powerful book that will have an abiding influence on the fields of theory of law, environmental law, as well of European and international law.

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