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PRINCIPLE OF STATE SOVEREIGNTY AND ITS COMPATIBILITY WITH ENVIRONMENTAL OBLIGATION AND PRINCIPLES

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ABSTRACT

The analysis of the concept, content and features of the General Principles of Law and the International Law Principles is crucial for a normative system comprehension.

The understanding of the International Environmental Law Principles is also essential for the environmental legal system itself and for the recognition as a normative category.

Consequently, the knowledge of the central position of the Law Principles as a whole is mandatory to the coherence and unity of a legal network, especially in the environmental legal system of the new millennium.

Sure that the Principle of State Sovereignty has a significant importance in this framework. The sovereignty of the States is exercised on its territory, but environmental damages do not respect frontiers.

Thus, the compatibility of the Principle of State Sovereignty with environmental obligation and other Law Principles is mandatory to ensure mankind's sustainable development.
Therefore, this article seeks systemize this subject, pointing out what we considered the most important and trying to bring up a good solution in this complicated equation.


**INTRODUCTION**

Currently, the Law Principles with the complexity of the modern society are identified with the foundation of the legal system itself, reflecting the basic values of the society and playing a fundamental role to protect the rights of citizens.

The theoretical construction of the International Law Principles and International Environmental Law Principles based on the main treaties, international conventions and agreements on International Law reflect this feature.

The protection of the human life dignity on Planet Earth cannot be guaranteed without the application of the International Law Principles and especially International Environmental Law Principles.

Thus, the respect of the ecosystems balance and the environmental quality, necessary for human life preservation, must be guaranteed by the international community according to the International Environmental Law Principles.

However, the permanent Sovereignty over Natural Resources and the right to self-determination of the States is guaranteed by the main international instruments. The Principle of State Sovereignty, resulted from the Peace of Westphalia, ensure the right of non-intervention in a State domestic jurisdiction.

Nevertheless, the environment damages do not respect boundaries. Thus, the compatibility of the Principle of State Sovereignty with environmental guarantee is mandatory to ensure the environment balance.
States must cooperate to avoid transboundary or global environmental problems, seeking the nature preservation and the unquestionable right of an ecological balance essential to a healthy quality of the mankind.

Thus the States have the sovereign right to exploit it owns resources, but have also the responsibility to ensure that activities do not cause damage to the environment of other States.

The equilibrium of the Sovereignty of the States and the guarantee of environmental diversity of the entire globe is vital to the sustainable development of the environment supporting the sustenance of the mankind.

So, the State Sovereignty Principle must be limited by other International Law Principles and Environmental Law obligation, supporting a spirit of mutual understanding and cooperation, seeking at the environmental balance.

**DISCUSSION**

**Principles of Law**

The Law Principles had distinct stages or cycles. In each of these stages or cycles the comprehension of the Principles was analyzed from different points of view.

Thus, decanted of social experience of each civilization, the Principles regenerates from itself in a continuous progress.

In a first stage, Law Principles were identified with higher ideals of justice or moral exhortations. Therefore, Law Principles were derived from divine law of transcendent content without the production of any obligation to the States and society.

In a subsequent stage, Law Principles were identified as the foundation of the legal system. Thus, the Principles reflected basic values of society playing the role of creation, development, application, integration and interpretation of the law.
This idea remains. However, recently the social complexity and pluralism of ideas of the modern world expanded these parameters. The Law Principles ascend to a new status of highest importance, supplanting the belief that it had a purely axiological and ethical effect as a fundamental role to protect citizen’s rights and a standard to be ensured by the international, regional and local society.

This view is reflected on the article 38, n. 1, “c” of the Statute of the International Court of Justice that declares that\(^1\)

\[\textit{The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:}\]

\[\begin{align*}
\text{...}
\text{c. the general principles of law recognized by civilized nations.}
\end{align*}\]

Therefore, the International Court of Justice, established by the Charter of the United Nations as the principal judicial organ of the United Nations with global jurisdiction, recognize the importance of the General Principles of Law to settle legal disputes and advise legal questions.

Likewise, the same evolution is reproduced in the International Law Principles based on the main treaties, international conventions and agreements.

Similarly, this framework is important to the theoretical construction of the International Environmental Law Principles. Alike, the International Environmental Law Principles, structured on the unquestionable right of an ecological balance, is a standard to be followed by the international community.

Thus, the respect of the International Environmental Law Principles and the guarantee of environmental diversity avoiding the transboundary environmental damage is vital to the sustainable development environment, giving physical sustenance and the opportunity for intellectual, moral, social and spiritual growth of the mankind.

Principle of State Sovereignty

The currently concept of nation-state sovereignty and the Principle of State Sovereignty as well resulted from the Peace of Westphalia in 1648 (treaties of Osnabrück and Münster) after the end of the Thirty Year War.

Therefore, the Principle of State Sovereignty is a Principle of International Law, based on territorial integrity and states as the primary actors in international relations. The Peace of Westphalia has also some key points such as the Principle of the Sovereignty of States, equality between states, and non-intervention of one state in the internal affairs of another state.

Followed by the Treaties of Osnabrück and Münster, many others international instruments stressed the importance of the State Sovereignty Principle.

The Charter of the United Nations declares that²

Article 2
The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.
1. The Organization is based on the principle of the sovereign equality of all its Members.

…
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

…
Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Thus, the Charter of the United Nations reinforces the State Sovereignty Principle supporting the equality between states and non-intervention in a spirit of mutual understanding and cooperation.

As well as, the International Court of Justice in 1949 held that no state may utilize its territory contrary to the rights of other states in the Corfu Channel Case, affirming that Albania in the interest of navigation in general, had a duty to make known the existence of a mine field in its territorial waters and to alert warships of the British navy at the moment when they approached imminent danger from the mines.

The International Jurisprudence of the Permanent Court of Arbitration, the oldest institution regarded for international dispute resolution among states, state entities, intergovernmental organizations, and private parties, also conducted disputes over territorial boundaries, such as Timor Frontiers (1914); Sovereignty over the Island of Palmas (1928); Eritrea and Yemen on questions of territorial sovereignty and maritime delimitation (1998 and 1999); and Ireland and the United Kingdom under the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) cases.

The same point of view about the Sovereignty Principle has been reproduced over Natural Resources in some International Law instruments.

The General Assembly Resolution 1803 (XVII) from December 14th, 1962 of the United Nation, bearing in mind it the Resolution 1314 (XIII) and Resolution 1515 (XV) of the United Nation, recognized the inalienable right of all

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3 Corfu Channel Case (U.K v. Albania), Merits, International Court of Justice Reports, 1949, p. 4.
States dispose of their natural wealth and resources in accordance with their national interests. It’s important to stress that the Resolution 1314 (XIII) of the United Nation, established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination encouraging international co-operation. Then, on December 15th of 1960, the Resolution 1515 (XV) of the United Nation also recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected.

As a result, as mentioned, the General Assembly Resolution 1803 (XVII) of United Nation from December 14th, 1962, disposes that

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

Additionally, the Resolution 1803 declares that is desirable the promotion of international co-operation for the economic development of developing countries, as well as that economic and financial agreement between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination.

The Declaration of the United Nations Conference on the Human Environment (Stockholm 1972) follows the same idea, and proclaims that

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States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (Principle 21)

States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction. (Principle 22).

Alike, the United Nations Conference on Environment and Development (1992)- the Rio Declaration on Environment and Development- reaffirmed the Declaration of the United Nations Conference on the Human Environment, with the goal of a new and equitable global partnership among States, key sectors of societies and people, working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system\(^8\). Thus, Rio Declaration recognizes that

\begin{quote}
States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (Principles 2)

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Principles 14)
\end{quote}

The World Charter for Nature also recognizes that\(^9\)

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used. In particular: (a) Activities which are likely to cause irreversible damage to nature shall be avoided; (…) 12. Discharge of pollutants into natural systems shall be avoided and: (a) Where this is not feasible, such pollutants shall be treated at the source, using the best practicable means available;

Similarly, the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by decision 14/30 of 17 June 3 1987\(^10\), a non legally-binding agreement, structure the same proposal, supporting a spirit of mutual understanding and cooperation between States to conserve, protect and restore the environment.

An equivalent scheme was exposed by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes\(^11\), stressing the idea of cooperation among the States to discourage displacement and transfer to other States activities and substances that cause severe environmental degradation in order to eliminate, as far as practicable, the generation of hazardous wastes and other wastes, recognizing that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory.


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Environmental Matters\textsuperscript{13}, also sustaining a spirit of mutual understanding and cooperation between States to conserve, protect and restore the environment.

Alike, the 1979 Geneva Convention on Long-range Transboundary Air Pollution\textsuperscript{14}, have the same inspiration, affirming the willingness to reinforce international cooperation to develop appropriate national policies and by means of exchange of information, consultation, research and monitoring to coordinate national action for combating, as far as possible, the discharge of air pollutants which may have adverse effects.

Similarly, the United Nations Convention on the Law of the Sea defines concepts such as territorial sea, exclusive economic zone, continental shelf and others, and General Principles for the exploitation of natural resources of the sea as the living resources, the soil and subsoil of all States, and declares\textsuperscript{15}

\begin{quote}
\textbf{Article 193}
\textit{Sovereign right of States to exploit their natural resources States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.}
\end{quote}

Likewise, the Convention on Biological Diversity (1992) reaffirms that States have sovereign rights over their own resources and dispose that\textsuperscript{16}

\begin{quote}
\textbf{Article 3. Principle}
\textit{States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the}
\end{quote}

\begin{flushright}
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responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Article 15. Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

Therefore, all these international instruments recognize the State Sovereignty Principle in balance with Principles of Environmental Law and environmental obligation, supporting a spirit of mutual understanding and cooperation.

The same idea has been reproduced in different legal instruments in Federative Republic of Brazil.

The Constitution of the Federative Republic of Brazil declares the Sovereignty Principle as Fundamental Principle of the Federative Republic of Brazil (article 1º, I) stressing the duty of the state and the society with the environment preservation from the present and next generation (article 225). As well as, in its international relationship, the Constitution of the Federative Republic of Brazil reinforces the need of cooperation among the States to the humankind progress (article 4º, IX)\(^\text{17}\).


In some opportunities, Federative Republic of Brazil reproduce on local legal instruments, concepts established by the United Nations about Sovereignty Principle over Natural Resources, as noticed in the law n° 8617 (1993) that provides definition over territorial sea, contiguous zone, exclusive economic zone and

continental shelf of Brazil, like the United Nations Convention on the Law of the Sea\textsuperscript{18}.

The International Jurisprudence also examined issues regarding the State Sovereignty Principle in balance with the environment protection. The International Court of Justice, the main judicial organ of the United Nations, in 1996, in an advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, recognized the existence of a general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control\textsuperscript{19}.

Consequently, all these local and international instruments as well as internationals judicial decisions, recognize that environment damages no respect boundaries and demand States cooperation to avoid transboundary or global environmental problems.

**CONCLUSION**

As a result that environment injures affects the ecosystems around the globe, the State Sovereignty Principle must be limited by others International Law Principles and Environmental Law duties.

This requires several important acts, such as an immediate notification of any natural disasters occurring in a state that may produce a significant adverse transboundary environmental damage in other States.

Moreover, States must cooperate to discourage displacement and transfer to other States activities and substances that cause severe environmental degradation.

\textsuperscript{18} L8617, \url{http://www.planalto.gov.br/ccivil_03/Leis/L8617.htm}, (27 July 2010).
\textsuperscript{19} Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, para. 29.
Similarly, States should collaborate in developing the international law on liability for adverse effects of environmental damage and develop national law regarding liability and compensation for the victims of environmental damage.

Furthermore, States should cooperate with the spirit of global solidarity to preserve, protect and restore the health and integrity of the global ecosystem, providing protection from the global environment, which means the limitation of the Principle of State Sovereignty.

Aftermost, the State Sovereignty and the right to exploit their own resources must be limited by environmental obligation and Law Principles to guarantee that a local environmental damage does not become a global loss of all mankind with a spirit of international cooperation.
BIBLIOGRAPHY

Primary source

http://www.cbd.int

http://www.icj-cij.org

http://www2.ohchr.org

http://www.planalto.gov.br


http://www.unep.org

Secondary source


BONAVIDES, Paulo. Curso de direito constitucional. 8ª edição. São Paulo, Malheiros.


