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Sovereignty over Natural Resources and Prohibition of Transboundary Harm

International Environmental Law

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Permanent Sovereignty over Natural Resources

• Each state has exclusive jurisdiction within its territory and people to
  - adopt laws (legislative sovereignty)
  - enforce them
  - administer the territory
  - judge disputes that arise therein
  - exclude other states from exercising
  - sovereign rights (unless agreed on by contract)
Figure 1 Maritime Zones
(Schofield, 2003: 18)
Limits of national jurisdiction and sovereignty

Outer space (including Earth orbits, the Moon and other celestial bodies, and their orbits)

- National airspace
- Territorial waters
- Contiguous zone airspace
- International airspace
- Land territory surface
- Internal waters surface
- Territorial waters surface
- Contiguous zone surface
- Exclusive Economic Zone surface
- International waters surface
- International waters
- Continental Shelf surface
- Continental Shelf underground
- Extended continental shelf surface
- Extended continental shelf underground
- International seabed surface
- International seabed underground

- Full national jurisdiction and sovereignty
- Restrictions on national jurisdiction and sovereignty
- International jurisdiction per common heritage of mankind
Permanent Sovereignty over Natural Resources

- Natural Resources/economic principle
- Conflict of interest between capital exporting and capital importing nations
- Focus on natural resource management, UN Resolution 1803 (1962): “the right of peoples and nations to permanent sovereignty must be exercised in the interest of their national development and of the well-being of the people of the State concerned”, “The exploration, development and disposition of such resources as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable”; “inherent and overriding right of a state to control the exploitation and the use of its natural resources”
Rights under the Principle

– to dispose freely of the natural resource
– to freely explore and exploit natural resources
– to regain effective control and to compensation for damage
– to use natural resources for national development
– to manage natural resources pursuant to national environmental policy
– to an equitable share in benefits of transboundary natural resources
– to regulate foreign investment
– to expropriate or nationalize foreign investment (right to determine the conditions of nationalization and the amount of compensation)
Duties under the Principle:

• Exercise permanent sovereignty over natural resources for national development and the well-being of the people (UN Res. 1803/XVII, 1962)
• Respect the rights and interests of indigenous people
• Co-operate for international development?
• Equitable sharing of transboundary natural resources
• Fair treatment of foreign investors
• Conservation and Sustainable Use of natural resources?
Prohibition of Transboundary Harm

Give Examples of Transboundary Harm
Processes involved in acid deposition (note that only $\text{SO}_2$ and $\text{NO}_x$ play a significant role in acid rain).
The Great Pacific garbage patch, also described as the Pacific trash vortex, is a gyre of marine debris particles in the central North Pacific Ocean located roughly between 135°W to 155°W and 35°N and 42°N. The patch extends over an indeterminate area, with estimates ranging very widely depending on the degree of plastic concentration used to define the affected area.

The patch is characterized by exceptionally high concentrations of pelagic plastics, chemical sludge and other debris that have been trapped by the currents of the North Pacific Gyre. Despite its size and density (4 particles per cubic meter), the patch is not visible from satellite photography, nor even necessarily to a casual boater or diver in the area, since it consists primarily of a small increase in suspended, often-microscopic particles in the upper water column.
Stockholm Convention on Persistent Organic Pollutants
Prohibition of Transboundary Harm

“[u]nder the principles of international law as well as of the law of the United States, no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another state or the persons or properties therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”

Trail Smelter Arbitration (US v. Canada) (1939) 33 AJIL 182 and (1941) 684
“29. The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the 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 is now part of the corpus of international law relating to the environment.”

ICJ: 8 July 1996, LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS, Advisory Opinion
Principle 21 Stockholm Declaration:

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 2 Rio Declaration:

“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.”
3 conditions:

- The harm must result from human activity
- Must cross national boundaries
- Must be **significant or substantial**
Due diligence obligation of states

- Much environmental degradation is caused by non-state actors
- State have to act with due diligence in implementing measures of prevention of harm
- “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” (Corfu Channel)
- the concept of due diligence is evoked as a test to evaluate the conduct required by states, and the no-harm rule is thus breached if the required standard of care is not complied with
- Flexible, dynamic, context specific: a state needs to exert its best possible efforts to minimize the risk
Due diligence obligation of states

• A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation ‘is now part of the corpus of international law relating to the environment’. (Pulp Mills)
Relationship between the two principles?

• Can pull in different directives
• No absolute sovereignty (Sovereignty pervaded with environmental concerns)
• No absolute prohibition of transboundary harm (threshold: serious harm)
• Balance between rights and responsibilities of states
• Evolution into a commitment to co-operate for the good of the international community
• Protection of the State’s own environment?