AN ANALYSIS OF SALIENT PROVISIONS OF INTERNATINAL LAW INSTRUMENTS FOR HOLDING PERPETRATORS LIABILE FOR BREACH OF THE DUTY OF CARE TO THE ENVIRONMENT

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Abstract
The growing global concern in the perpetration of environmental crimes such as pollution and degradation at an international level by States have triggered massive promulgation of international law instruments to make ample provisions for the protection of the environment and at the same time to impose stringent sanctions to those who harm the environment. The obligation to protect or not to harm the environment has been conceptualized; "the duty to care for the environment" and the International environmental law have made States to also be the bearers of this obligation hence they ought to exercise careness in their daily activities in order to avoid causing harm to the environments in the territory of another State. An act of State done in breach of this obligation is faced with penal consequences which may take civil or criminal form. This paper therefore looks at the salient international instruments or laws that impose liability to States or international organizations who cause environmental harm.

Keywords: *prohibition of pollution, environmental harm, environmental care, perpetrators, sanctions.*

JEL Classification: K30, K33, K38

1. Introduction

Environmental liability does not only exist in the national law but also finds recognition in the international law.[3] International law is defined to mean the body of rules established or created by treaties and customs which have been recognised and accepted by States as binding in their relations with one another.[4] International law is not only binding in the relations between States but extends to the relations between States and international organisation as well as relations between international organisations themselves.[5]

The recognition of environmental law in the international arena has given birth to the recognition of the principle of environmental liability in the international law level.[6] The States are obliged in terms of the international environmental law to act in an environmentally friendly manner so as to protect the environment hence the environmental liability exists in the international law to punish States or international entities that are responsible for environmental crimes.[7] It is against this backdrop that "when breaching its international obligations, a State risks to be held liable for it. It must respond to the grievances of the subject to whom it caused prejudice when violating the latter's rights."[8]

The sources of environmental liability in the international law include; treaties or conventions, customary international law, case law and resolutions by international organisations such as the

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[3] See Orlando, E. 2014. *Public and Private in the International Law of Environmental* Liability. Available at https://www.researchgate.net/profile/Emanuela_Orlando/publication/281108368_Public_and_Private_in_the_International_Law_of_Environmental_Liability/links/55db198a08aed6a199ab6104/Public-and-Private-in-the-International-Law-of-Environmental-Liability.pdf, accessed on 12 January 2022.
[4] See Aust A. 2010. *Handbook of international law*. Cambridge University Press, UK.
[5] See Orakhelashvili A. 2018. *Akehurst's Modern Introduction to International Law*. Routledge.
[6] See De Sadeleer, N. 2020. *Environmental principles: from political slogans to legal rules*. Oxford University Press, UK.
[7] See Cho, B.S. 2020. *Emergence of an international environmental criminal law*, https://heinonline.org/HOL/LandingPage?handle=hein.journals/uclalp19&div=7&id=&page, accessed on 22 February 2022.
[8] See Maljean-Dubois, S. 2017. *International Litigation and State Liability for Environmental Damages: Recent Evolutions and Perspectives*, https://halshs.archives-ouvertes.fr/halshs-01675506/document, accessed on 19 February 2022.

United Nations.[9] There are also various international environmental law principles that are aimed at holding liable the perpetrators of environmental harms in the international level and these principles are discussed hereunder.

2. International law principles on environmental liability

2.1. States' duty not to cause environmental harm

In every States there are daily activities conducted by either the State or its subjects which are likely to cause harm to the environment or the territories of other States. For example; the chemical emissions from the mining activities conducted in the territory of one State may run into the river which flows through the territory of another State thereby causing harm in the latter State.[10] The question then is whether the State has the obligation to ensure that the activities conducted within its boundaries do not result in causing environmental damage in the territory of another State? and if so, what liability arises in the event of the failure to carry out or comply with such duty?

States have an obligation to ensure that ensure that the activities conducted within their boundaries do not result in causing harm or environmental damage to their neighbouring States.[11] In the "1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons" the International Court of Justice (ICJ) acknowledged the existence of the State's obligation not cause environmental harm to the territory of another State when it stated that "the existence of the general obligations 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."[12]

The State's obligation not to cause environmental harm to the territories of the neighbouring States manifests in two ways. The fist form of this obligation is called the *obligatio erga omnes* which means that it is an obligation owed to the international community as whole or rather to all States in general.[13] In terms of this obligation the State is obliged to ensure that its activities do not cause environmental harm to the territory of any State in the world.

The second form of the State's obligation not to cause environmental harm to the neighbouring States arises by way of an agreement between States and therefore, unlike the *obligatio erga omnes* which is owed to all States in the world, this obligation is owed to Specific States which are parties to an agreement creating the obligation in question.[14] This means that under this obligation the State is obliged to ensure that activities conducted within its territory do not result in causing environmental harm but only to the territories of those specific States which are parties to an agreement giving rise to the obligation.

In the former obligation (*obligatio erga omnes*) environmental liability arises regardless of which States has suffered environmental harm since this obligation is owed to all States in in the world however, in the latter obligation the environmental liability will be imposed only if the State which has suffered environmental harm is a party to agreement creating the obligation in question. The imposition of liability upon a State in breach of international law obligation such as the state's

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[9] See Baker, R.R.B. 2010. *Customary international law in the 21st century: old challenges and new debates*. „European Journal of International Law", 21(1):173-204.

[10] See Voigt, C. 2008. *State responsibility for climate change damages.* Available at https://brill.com/view/journals/nord/77/1-2/article-p1_1.xml, accessed on 29 December 2021.

[11] Tignino, M. and Bréthaut, C. 2020. *The role of international case law in implementing the obligation not to cause significant harm.* Available at https://link.springer.com/article/10.1007/s10784-020-09503-6, accessed on 26 December 2021.

[12] Smis, S. and Van der Borght, K. 1999. *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.* https://digital commons.law.uga.edu/cgi/viewcontent.cgi?article=1330&=&context=gjicl&=&sei-redir=1&referer, accessed on 26 December 2021.

[13] See Mejía-Lemos, D.G. and Aequi, A.B. 2014. *On' obligations erga omnes partes'in public international law:'erga omnes'or'erga partes'? a commentary on the judgment*. Available at https://www.proquest.com/openview/5d9c154458b652e62c29a817dfd38d1c/1?pq-origsite=gscholar&cbl=196179, accessed on 6 September 2021.

[14] See Tanaka, Y. 2018. *Reflections on locus standi in response to a breach of obligations erga omnes partes: a comparative analysis of the Whaling in the Antarctic and South China Sea.* Available at https://brill.com/view/journals/lape/17/3/article-p527_4.xml accessed on 16 September 2021.

duty not cause harm was acknowledged in case of *Factory at Chorzów, Germany v Poland* (928) PCIJ A No 17 page 29, by the Permanent Court of International Justice when it stated that "it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."

The two forms or manifestations of the State's obligation not to cause harm to the territories of another States were confirmed in *Barcelona Traction case (Belgium v Spain)* 1970 ICJ Reports para 33, where the Court stated that: an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.

The State's obligation not to cause environmental harm to the territory of the neighbouring States is associated with or rather linked to the principle of "good neighbourliness" which also entails that, there must be some good neighbouring relationship between States in a sense that, each State should see to it that its activities do not cause environmental harm to the territories of the neighbouring States. The principle of "good neighbourliness" is discussed hereunder.

2.2. The principle of good neighbourliness

The principle of good neighbourliness enails that obligates states to try to reconcile their interests with the interests of neighboring states. [15] The understanding of the principle of good neighborliness lies in the disposition of the limitation of what is known as the State's Sovereignty. State's sovereignty is an inherent power of the State to do anything necessary to govern itself without accounting to anyone.[16]

Previously, sovereignty entitled the States to "freely use resources within their territories regardless of the impact this might have on neighbouring States.[17] However this is no longer the case since the state's sovereignty is now limited to the extent to which its use violates the territorial integrity or sovereignty of other States.[18] Oppenheim concurs to the limitation of State's sovereignty by stating that "a State, in spite of its territorial supremacy, is not allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighbouring State."[19] Max Valverde Soto also concurs to the above statement when he states that "the concept of sovereignty is not absolute, and is subject to a general duty not to cause environmental damage to the environment of other states, or to areas beyond a state's national jurisdiction."[20]

This means that although the State enjoys sovereignty, it is prohibited from exercising it powers in a manner that causes environmental harm or violates the territorial integrity or sovereignty of another State. The principle of "good neighbourliness" therefore, obliges the State to ensure that all activities conducted within its territory do not cause environmental harm in the territory of another State.[21]

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[15] Kalicka-Mikołajczyk, P. and Prawniczy, A. 2019. *The Good Neighbourliness Principle in Relations Between the European Union and its Eastern European Neighbours*. Available at https://www.ceeol.com/search/article-detail?id=899698, accessed on 28 September 2021.

[16] See Agnew, J. 2005. *Sovereignty regimes: Territoriality and state authority in contemporary world politics*. Annals of the association of American geographers, 95(2): 437-461.

[17] See Armstrong, C. 2015. *Against 'permanent sovereignty'over natural resources.* Available at https://journals.sagepub.com/doi/abs/10.1177/1470594X14523080, accessed on 28 July 2021.

[18] See Jayanti S.E.P. 2009. *Recognizing Global Environmental Interests: A Draft Universal Standing Treaty for Environmental Degradation*. Available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/gintenlr22&div=4&id=&page, accessed on 02 July 2021.

[19] See Oppenheim, L. 1912. Archival and Manuscript Collections Available at https://findingaids.library.northwestern.edu/repositories/6/archival_objects/138882, accessed on 23 November 2021.

[20] See Valverde, M., 1996. *General Principles of International Environmental Law*. Available at: https://nsuworks.nova.edu/ilsajournal/vol3/iss1/10, accessed on 12 July 2021.

[21] See Gadkowski, T. 2021. *The Principle of Good-Neighbourliness in International Nuclear Law*. Available at https://pressto.amu.edu.pl/index.php/ppuam/article/view/32047, accessed on 12 January 2022.

The State's obligation to ensure good neighbourliness or rather the obligation not cause environmental harm to the neighbouring States does not only apply to activities conducted by the State but also extend to activities conducted by private individuals within that State and this was confirmed in the *Trial Smelter case* (*United States v. Canada)* (1949) 2 RIAA 829, where the Court held that, the State must not allow the use of its territory in a manner that causes harm to the territory of another State. This means that a State has an obligation to put in place measures such as laws in order to ensure that, the activities conducted by private individuals within its territory do not result in causing environmental harm to the territories of the neighbouring States.

The State's obligation to ensure good neighbourliness by not causing environmental harm to the territory of another state or rather the limitation of State's sovereignty has been acknowledged in *Island of Palmas Case* (*United States v. The Netherlands*) (1928) 2 RIAA 829, where Arbitrator Huber stated that "territorial sovereignty involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States."

As an environmental liability principle, the principle of "good neighbourliness" entails that a State has the responsibility to put measures in place in order to ensure that its environmental activities that are likely to cause environmental harm to the territory of another State do not result in causing such harm.[22] This obligation resembles the duty of care for environment and therefore, can be construed to be the international environmental law duty of care for the environment. Any State which is therefore in breach of this duty incurs liability for the environmental harm inflicted upon the territory of another State and this was the case in *Trail Smelter Case* (*United States v. Canada*), (1949) 2 RIAA 829. In the *Trail Smelter Case* a mining company in Canada operated a smelter which emitted lead and zinc. The smoke from the smelter resulted in the destruction of crops and forest of the United States. Canada was found to have failed to carry out its duty to ensure that the activities conducted within the territory of Canada do not cause harm to the neighbouring territories in this case, the United States. Canada was held liable for harm incurred by United States and the Arbitral Tribunal decided the following;

a) Canada was ordered to take measures to reduce the air pollution caused by the emissions from the processing of zinc and lead at the smelter.

b) Canada was held liable in damages for the destruction crops and forestry of the US.

The Arbitral Tribunal in *Trail Smelter Case* also further emphasised the seriousness of the State's responsibility to ensure good neighbourliness by not to causing environmental harm to the territory of another State when it stated that "under the principles of international law, 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 or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."

Although the decision in the *Trial Smelter case* was reached on air pollution, it is submitted that it also extends to water pollution[23] for example; where chemicals from the mining activities in one State runs into the river which follows into the territory of another State thereby destroying human lives or the species or livestock of the people in that area of the latter. This was the case in *Corfu Channel Case* (*United Kingdom v. Albania*) (1949) ICJ Reports. The *Corfu Channel Case* arose from the events that took place on the 22nd of October 1949 when two British cruises and two warships entered the North Corfu Strait through the channel that was in the waters of Albania. This channel was declared a safe channel free from mines which are small explosives devices concealed underneath the water. The two warships came into contact with the mines which exploded destroying the two warships and claiming forty-five lives. The International Court of Justice (ICJ) held that there is no way the mines could have been placed without the knowledge of Albania and therefore, Albania had

[22] See Nurhidayah, L. a Alam, S. and Lipman, Z. 2015. The influence of international law upon ASEAN approaches in addressing transboundary haze pollution in Southeast Asia. Available at https://www.jstor.org/stable/24916579. accessed on 12 October 2021.

[23] See Mendis, C. 2006. *International Environmental International Environmental Responsibility: a case for Responsibility: a case for Sri Lanka and India.* Available at https://www.un.org/depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/mendis_0607_srilanka_PPT.pdf, accessed on 22 October 2021.

an obligation to notify "for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and to warn the approaching British warships of the imminent dangers to which the minefield exposed them."

Albania was therefore found to have failed in its responsibility not to cause harm to another State in this case, the UK hence. The ICJ consequently held that, Albania was liable for the loss of the British warships and the lives of the British sailors.[24] The ICJ further ordered Albania to compensate the UK for the loss suffered.

2.3. The principle of international cooperation by States

Unlike the principle of good neighbourliness which places an obligation on State not to cause an environmental harm to territory of another State, the principle of international cooperation as Max Valverde Soto puts it "places an obligation on states to prohibit activities within the state's territory that are contrary to the rights of other states and which could harm other states or their inhabitants."[25]

The principle of international cooperation also requires States to cooperate with one another in "investigating, identifying, and avoiding environmental harm".[26] This means that, a State that refuses or fails to cooperate with other States in "investigating, identifying, and avoiding environmental harm" is liable in terms of the principle of international cooperation for any environmental harm suffered by another State as a result of such failure or refusal to cooperate.

Many international environmental treaties make provisions that demand the cooperation by States in exchanging and generating for example; "commercial, technical, scientific, and socioeconomic information.[27] The exchange of information between States as cooperative measure to prevent or avoid environmental harm is very crucial especially in the monitoring of the domestic implementation of international obligations. Max Valverde Soto gives an example of the importance of the exchanging of information between States by stating that "a cooperative exchange of information regarding the trade of endangered wildlife is critical in tracing the population flow of animals. The same occurs with greenhouse effect emissions."[28]

It has been submitted that the State's obligation to cooperate with other States in "investigating, identifying, and avoiding environmental harm" is not an absolute one since it is limited by for example; "municipal conditions such as the protection of patents."[29]

2.4. The principles of prior notification and good faith consultation

The principle of prior notification entails that, where the activities that are likely to cause environmental harm to another State are to be conducted by or within the territory of a State, the acting State is obliged to notify the State which is likely to be affected by such activities, of the intention by the acting State to carry out such activities and this is to ensure that, the other State becomes aware of the potential harm and have an opportunity to avoid such imminent harm.[30] According to the International Law Committee[31] the principle of prior notification requires: States planning potentially damaging activities to provide prior and timely notification to all potentially affected States.[32]

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[24] Ibid.
[25] See Valverde, M., 1996. *General Principles of International Environmental Law*. Available at: https://nsuworks. nova.edu/ilsa journal/vol3/iss1/10, accessed on 12 July 2021.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.
[30] See Jervan, M. 2014. *The prohibition of transboundary environmental harm. An analysis of the contribution of the International Court of Justice to the development of the no-harm rule.* Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2486421, accessed on 22 October 2021.
[31] See International law Committee Practitioner's Guide to International Law. Available at https://cld.bz/bookdata/Cu8T8Gt/basic-html/page-4.html, accessed on 22 February 2022.
[32] Ibid.

Max Valverde Soto concurs with the above International Law Committee's definition of the principle of prior notification. He defines the principle of prior notification to mean a principle that obliges "acting states to provide prior, timely notification and relevant information to every state that may be adversely affected by its environmental activities."[33]

This means that in terms of the principle of prior notification, an acting State which fails to give notification prior to conducting environmental activities that adversely affect another State is liable for any environmental harm the other State may suffer in consequence of such failure. It has also been submitted that in the case of natural disasters or other instances of emergencies, the States are obliged to notify other States which are likely to be harmed or affected by such disasters.[34] This is also provided for by the Principle 18 of the Rio Declaration which stipulates that "States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted."

Apart from giving prior notification, an acting State is also obliged upon request and within a reasonable period, to enter into a "good faith consultation" with States which are likely to suffer environmental harm in consequence of the activities to be conducted by the acting State.[35] It has also been submitted that the principle of good faith consultation requires "States to give potentially affected States an opportunity to review and discuss proposed harmful activities, and to take affected States' interests into account."[36]

The principles of prior notification and good faith consultation are properly embodied in principle 19 of the Rio Declaration which stipulates that "States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith." Although the States are obliged to give prior notification and to enter into good faith consultations with the potentially affected States, they are not obliged to obtain consent from the potentially affected States in order to carry out their activities nor are they obliged to act in accordance with the wishes of the affected States. However, the acting States must act reasonably especially where their environmental activities are being objected by the potentially affected States. An acting State that acts unreasonably thereby causing environmental harm to the territory of another State is liable for such environmental harm.

2.5. The State's duty to compensate for environmental harm

Generally, in terms of the international environmental law, all States have the obligation to ensure that the environmental activities conducted within their territories do not result in causing environmental harm to the territories of other States, and this is anchored in the principles of the State's duty not cause environmental harm and the principle of good neighbourliness. The duty to compensate for environmental harm therefore, serves as the international environmental law liability principle that imposes direct liability upon defaulting States who have caused environmental harm to the territory of another State.[37]

A State whose environmental activities cause environmental harm to the territory of another State is required to "stop the wrongful conduct and re-establish the condition that existed prior to the wrongful conduct".[38] If the re-establishment of the pre-existing condition is not feasible, the State in fault is obliged to compensate the State which suffered environmental harm as a result of the activities

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[33] See Valverde, M., *op. cit.* (1996).
[34] Ibid.
[35] Ibid.
[36] See International Law Committee *Practitioner's Guide to International Law.* Available at https://cld.bz/bookdata/Cu8T8Gt/basic-html/page-4.html, accessed on 22 February 2022.
[37] See Shelton, D. 2002. Righting wrongs: Reparations in the articles on state responsibility. Available at https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/righting-wrongs-reparations-in-the-articles-on-state-responsibility/F3C874704AFEAA13B06FECCB94564CDB, accessed on 22 February 2022.
[38] See Valverde, M., op. cit. (1996).

of the acting State.[39]

What the above principles mean is that the State will be obliged to make compensation to the Victim-State if the wrongful conduct of the former State has caused environmental harm to the territory of another State and the re-establishment of the pre-existing condition of the latter State's environment is not practically possible. In the context of international environmental law the wrongful conduct arises where the: a) conduct consists of an action or omission imputed to a state under international law; and b) such conduct constitutes a breach of an international obligation of the state.[40]

However, the above definition of wrongful conduct has been critisised for causing a lot of confusion or rather problems in the international environmental law. These problems relate to the following questions "first, what are the criteria for imputing liability to a state? Second, what is the definition of environmental damage? Third, what is the appropriate form of reparation?"[41]

In the first question which relates to the criteria used to impute liability upon a State whose wrongful conduct has caused environmental damage to another State, there are three solutions or rather options for imposing liability.[42] The first option is the use of fault (negligence) as a criteria to impose liability hence, in terms of this criteria a State whose wrongful conduct has been committed negligently thereby causing environmental damage to territory of another State is liable in damages for such environmental damage.[43] The second option is the use of strict liability whereby "there is a presumption of responsibility but defenses are available".[44] The third option is the use of absolute liability where "no cause of justification is possible, and a state would be liable even for an act of God".[45]

In the second question which relates to what environmental damage mean, the concept of environmental damage should be defined or expounded within the pillars of breach or violation of international environmental law. This means that for a harm to be construed as or qualify to be an environmental damage it must has been perpetrated in violation of the international environmental law.[46] In addition the concept of environmental damage has also been defined to mean "any injury to natural resources as well as degradation of natural resources, property, landscape, and environmental amenities."[47]

The answer to the third question which relates to what form of reparation is appropriate in the event of wrongful conduct or rather the perpetration of environment harm has been provided by the Permanent Court of Justice. According to the Permanent Court of Justice, an appropriate form of reparation is one that "wipe out all the consequences of the illegal act [or wrongful conduct] and reestablish the situation [or pre-existing condition] which would, in all probability, have existed if that act had not been committed."[48]

According to the Permanent Court of Justice an example of appropriate form of reparation is restitution in kind. If it is not possible or feasible to effect restitution, there must be payment of a sum which is equivalent to "the values which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law."[49]

It has been submitted that restitution or restoration is not without challenges and problems. These problems are have been clearly expounded by Max Valverde Soto when he stated that: the problem is that at the environmental level, an identical reconstruction may not be possible. An extinct

[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.

species cannot be replaced. However, at the very least, the goal should be to clean-up the environment and restore it so that it may serve its primary functions. But, even if restoration is physically possible, it may not be economically feasible. Moreover, restoring an environment to the state it was in before the damage could involve costs disproportionate to the desired results. Such elements, combined with the lack of legal precedent and the insufficiency of the traditional state's inability to assess environmental damage, makes the panorama difficult.[50]

The practical application of the State's duty to compensate for environmental harm is evident in the in the *Trail Smelter Case* (*United States v. Canada)* where Canada through its mining activities destroyed the US environment (crops and forests) and was therefore ordered by the Arbitral Tribunal to compensate the US for the environmental harm suffered by the latter. This is a clear indication that the State's duty to compensate for environmental harm serves a direct environmental liability principle under the international environmental law.

2.5.1. The Rio declaration on environmental liability

The Rio declaration makes provisions for the imposition of environmental liability in the international level where environmental harm has been perpetrated. Principle 2 of the Rio declaration reaffirms the disposition that, although the States are entitled in terms of the international law, in particular the principle of sovereignty, to do as they wish within their territories without accounting to anyone, they have the responsibility to "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 imposes liability upon any State whose activities have caused environmental harm to the territory of another State as a result of the failure by the former State to put in place measures in order ensure that environmental activities conducted within its territory do not result in causing damage to the environment of other States. Such acting State will therefore bear the costs for rectifying the environmental damage done in territory of the Victim-State.

States do not only have the responsibility to guard against the adverse effects of their activities on the environments of the neighbouring States, they also have a duty in terms of principle 13 to develop their national environmental liability laws so as to hold accountable the perpetrators of pollution and degradation within their own territories. Principle 13 further obliges the State to also develop their national law pertaining to compensation for the States who are victims of pollution and other environmental damage caused by the former.

It can be submitted that the States in terms of principle 13 ought to have strict environmental liability laws in order to curb any possible perpetration of environmental harm within their territories. The provisions of principle 13 of the Rio Declaration read as follows "States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction."

The Rio Declaration also requires States to apply caution on the activities that may cause severe degradation or the transportation of harmful substances that may cause harm to the human health not only of its subjects but also of those of other States. In terms of principle 14 the States must cooperate with one another in discouraging and preventing "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."

Any State that fails to cooperate with other States in discouraging or preventing the relocation or transfer to other States of any activities and substances that cause severe environmental degradation and as a result of such failure causes a harm to the environment of another State, is liable for costs of rectifying such environmental harm in terms of principle 14 of the Rio Declaration.

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[50] Ibid.

2.5.2 The Stockholm declaration on environmental liability

The Stockholm declaration acknowledges the importance of maintaining a good state of the environment and therefore the need to hold accountable those whose actions are detrimental to the environment. It affirms that an environment is essential to the person's "well-being and to the enjoyment of basic human rights the right to life itself protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world" and that environmental protection and improvement is a major issue which affects the well-being of peoples and economic development throughout the world."

In terms of principle 21 of the Stockholm declaration States have the duty to take precautionary measures in order to ensure that their activities which causes or are likely to cause environmental harm do not result is causing damage to the territorial environment of other States. It provides that: 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 of the Stockholm declaration can be construed to be imposing environmental liability in that any State that fails to take conduct their activities responsibly by failing to control them with the result that the environment of another State is harmed, the former shall bear the liability for such damage. States are also obliged in terms of principle 22 to cooperate in order 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."

It is clear that the Stockholm Declaration does not only recognise the duty to protect the environment for the wellbeing of all people, it also affirms the imposition of liability upon States who perpetrate environmental harms in the territories of others. The seriousness of environmental liability under the Stockholm Declaration is also evident in the provisions of principle 22 that compel States to cooperate in the development of the "international law regarding liability and compensation for the victims" of environmental harms such as pollution caused by activities in their jurisdictions.

3. Conclusion

Environmental liability for breach of the duty of care for the environment also has international law recognition. Under the international law the States have the obligation to take reasonable measures to ensure that the activities conducted within their territories do no result in causing environmental harm to the territorial environment of other States. The State that fails to do so with the result that harm is caused to the environment in the territory of other State is liable for such harm.

4. Recommendations

At the international level the imposition of environmental liability can be effective if the following is done: All States should take serious the principle of prior notification and consultation by developing their national laws in order to bind themselves through such laws to give prior notification to the neighbouring States of their intention to carry out activities which are likely to cause harm in the latter's territories or to consult the latter about the intended activities. These notifications and consultations must be mandatory and their compliance must therefore not be optional.

A new convention should be promulgated at the UN level and signed by member States which allows for criminal sanctions to ensue and imposed upon the responsible officials of the States whose negligent activities have caused environmental harm in the territories of another States or where such

faulting State has violated any international environmental law.

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