European Journal of Business and Social Sciences, Vol. 3, No. 8 , **November 2014.** **P.P. 34 - 44**
URL: *http://www.ejbss.com/recent.aspx-/*
ISSN: 2235 -767X

STATE SOVEREIGNTY AND ENVIRONMENTAL LAW

Nico P. Swartz

University of Botswana, Department of Law
Private Bag 00705, Gaborone, Botswana.
E-mail: nico.swartz@mopipi.ub.bw

Academic Assistants:
Mpho Ceasar Setshegetso & Kagiso Tshwene.
University of Botswana, Department of Law.
Private Bag 00705, Gaborone, Botswana.

ABSTRACT

It is trite that sovereign states are to refrain from interference in the domestic affairs of other states on the one hand and, but, on the other hand, the territorial limitation of a state empowers it to do as it pleases. In so far as international boundaries exist, the possibility that disputes may arises are obvious. Boundary disputes are engendered by the procurement of natural resources beyond a state's border. The concept of state sovereignty is therefore designed to protect a state's independence from and legal impermeability in relation to foreign powers on the one hand and the state's exclusive jurisdiction and supremacy over its territory and inhabitants on the other. The status quo has seemed to be changed now. The sovereignty of states has been challenged by NGO's (non-governmental organizations) and multinationals. These non-governmental organizations influences over foreign policy will have rendering them active in environmental endeavours. This will probably signalled the decline of state sovereignty.

Key words: *State sovereignty, Stockholm and Rio Principles, ecological protection, co-operation, prior consultation, territorial supremacy*

1. INTRODUCTION

Irrespective of the economic stand of a country, states are obliged to rely on their sovereignty. A small or weak country is theoretically no less equal to the biggest or most powerful country (Note 1).

State sovereignty, however, is not absolute. But, if states ignore this caveat, manifold legal obligations co-operating within a network of international instruments may restrain states' freedom of action and consequently their exercise of sovereignty. Such instruments neither deprive states of their sovereignty nor diminish it (Note 2).

2. THE ORIGIN AND EVOLVEMENT OF THE CONCEPT OF SOVEREIGNTY

In Hobbes's *Leviathan*, he asserts that human nature inclines to self-preservation, coupled with whatever he/she regards to be his/her personal and individual good. As human nature usually operates in this way, the outcome will be conflict among individuals. Hobbes names this phenomenon a "state of war" (Note 3). In a state of war, it seems that human nature is allotted free rein in dealings between people. Under this condition, man supposes he has a right to do whatever is necessary to protect his life and person. This notion was followed in earlier times, but the outcome was rather disastrous or chaotic. This sentiment highlights the absenteeism of law authority under the guise of a sovereign. Hobbes alluded that a lawless society would renders human nature "few, fierce, short-lived, poor and nasty […]" (Note 4).

This would occur in terms of the non-availability of an organized body politic (state). The natural, unrestrained human behaviour thus need a force to stamp out waywardness. Thus, unless some power greater than our individual selves can be devised to control us, a horrible fragmented conflict steers to be the norm (Note 5).

That "greater power" is the sovereign to which we give up our right of nature, our freedom to do whatever we desire (Note 6). In this regard man yields some of his natural freedom to a common power, a sovereign. Sovereignty is a community's monopoly on the legitimate use of force (Note 7).

During the Age of Enlightenment, the idea of sovereignty gained both legal and moral force as the main Western description of the meaning and power of a state. Sovereignty is the quality of having independent authority over a geographic area, such as a territory. It can be found in a power to rule and make laws. The idea that a state could be sovereign was also connected to its ability to guarantee the best interests of its own citizens. If a state could not act in the best interests of its own citizens, it could not be thought of as a "sovereign" or state (Note 8).

Sovereignty is to be recognized by others if it is to have meaning. As natural law and divine law confer upon the sovereign the right to rule, the sovereign is thus not above divine law or natural law. The fact that the sovereign must obey divine and natural law imposes ethical constraints on it (Note 9). The natural law concept become to be characterised by ethical motivations couched in international instruments, like the Rio and Stockholm Declarations, for a state's conduct.

3. AN INDENT ON SOVEREIGNTY AND ENVIRONMENTAL CONCERNS

It is assumed that control over natural resources depends on the acquisition of sovereignty over land territory and territorial areas. The principle of sovereignty over natural resources developed after 1945 as a response by newly independent developing states to the problem of foreign ownership of natural resources. Their efforts resulted in the adoption in 1962 by the UN General Assembly of resolution 1803 XVII. It proclaimed: "The right of peoples and nations to permanent sovereignty over their natural wealth and resources," and the preamble recommended that "the sovereign right of every state to dispose of its natural wealth and resources should be respected […] in accordance with their national interests" (Note 10).

The General Assembly adopted two resolutions: The Declaration on the Establishment of a New International Economic Order (NEIO), wherein permanent sovereignty over natural resources and the right to nationalize them was affirmed. And the Charter of Economic Rights and Duties of States, which asserted that every state has and shall freely exercise full permanent sovereignty including possession, use and disposal over all its natural resources (Note 11). These resolutions allude to the untrammelled sovereignty of states over natural resources (Note 12). This observation is to be cemented in Stockholm Principle 21 and Rio Principle 2. These treaties pertain to the protection of each state's natural resources as well as for the protection of common spaces (Note 13).

As sovereignty becomes pervaded with environmental concerns as per the Stockholm and Rio Principle, it is in no sense absolute or unfettered. Economic security, ecological protection and common interest involve a redefinition of sovereignty so that it is no longer a basis for exclusion of others, but entails instead a commitment to co-operate for the good of the international community at large. This notion purports that states no longer have unlimited sovereignty with regard to shared resources. For example, Resolution 3129 XXVIII called for adequate international standards for the conservation and utilization of natural resources common to two or more states to be established and affirmed that there should be co-operation between states on the basis of information exchange and prior consultation (Note 14).

Buttressed by the Stockholm and Rio Principles and Resolution 3129 XXVIII, International law confirmed the sovereign's right to exploit its own resources in accordance with national laws and policies subject to an obligation not to cause injury to others.

4. AN ENERVATION OF SOVEREINGTY

In earlier times states assumed full and absolute sovereignty, which mean they could freely use resources within their territories regardless of the impact this might have on neighbouring states (the so-called Harmon doctrine). But, in modern day contexts, state sovereignty cannot be exercised in isolation, because activities of one state often bear upon those of others (Note 15). As Oppenheim put it: "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 – for instance to stop or to divert the flow of a river which runs from its own into neighbouring territory" (Note 16).

Thus states find their limitations where their exercise touches upon the sovereignty and integrity of other states. This notion arises from adages such as "good neighbourliness" and *sic utere tuo ut alienum non laedas* (you should use your property in such a way as not to cause injury to your neighbour's) as well as by the principle of state responsibility for actions causing trans-boundary damage (Note 17). International law does not allow states to conduct or permit activities within their territories without regard for the rights of other states or for the protection of the environment. The International Law Commission, for example, asserts that states have a duty to prevent, reduce, and control pollution and environmental harm and that they (states) have also a duty to co-operate in mitigating environmental risks and emergencies through notification, consultation, negotiation and in appropriate cases, environmental impact assessment (Note 18). These obligations enforced upon states seem to be clearly a case for the enervation of their sovereignty.

5. INTERNATIONAL AGREEMENTS AND TRANS-BOUNDARY HARM

Principle 2 of the Rio Declaration emphasises the "good neighbourliness" concept that states are to prevent harm to the environment of other states. State sovereignty seems somehow to undergo a metamorphosis from individual state concern for the utilisation of its natural resources to embrace a co-operative motif with regard to the interests of other states.

The Rio Declaration has provided a starting point for the further elaboration of international environmental law by the International Law Commission (ILC) and the International Court of Justice (ICJ). The Rio Declaration accords these two bodies legal significance in the sense that they be able to accommodate the conflicting interests of neighbouring states on an equitable basis (Note 19). The Rio Declaration serves therefore as an offshoot or begets the Convention on the Prevention of Trans-boundary Harm from Hazardous Activities, which was adopted in 2001. The Convention's aim is the prevention or minimising of the occurrence of trans-boundary harm with regard to the procurement of natural resources (Note 20).

The Convention applies to all activities within the jurisdiction or control of states which involve a risk of causing significant trans-boundary and environmental harm. Risks, in this context, include the possibility of disastrous accidents, such as industrial air pollution (*Trail Smelter*), natural water-shed (*Gabčíkovo-Nagymaros Dam*), the law of international watercourses (*Lac Lanoux*).

The ILC reflects the relevant principle (Principle 2) of the Rio Declaration, which purports the undertaking of appropriate measures to prevent or minimise the risk of trans-boundary harm. States are urged to co-operate to this end. They are also obliged to oversee that no hazardous activities may be undertaken without prior impact assessment and authorization by the state in which it is to be conducted. States likely to be affected by hazardous activities must be notified and consulted with a view to agreeing measures to minimise or prevent risk of harm. These bodies, however, recognizes state sovereignty, which underpinned the freedom of states to carry on or permit activities under their jurisdiction. State sovereignty, however, as a matter of protection for the environment, must yield to the diction of these obligations (Note 21).

These two bodies (the ILC and ICJ) purport to states, concerned in hazardous circumstances, to negotiate an equitable balance of interests where necessary. These institutions are aware of the uncertainty around trans-boundary environmental relations. They demand therefore clearer and more precise rules which afford states a more secure and predictable basis on which to protect their own interests (Note 22). This seems to be going back again to the antique concept of state sovereignty.

The ICJ has established in its *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* that states must ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control (Note 23). For example, a watercourse state's right to utilize an international watercourse in an equitable and reasonable manner finds its limit in the duty of that state not to cause harm to other watercourse states. In the *Case Concerning the Gabcikovo-Nagymaros Dam*, the ICJ held that Czechoslovakia, by "unilaterally assuming control of a shared resource, and thereby depriving Hungary of its right to an equitable and reasonable share of the natural resources of the Danube, failed to respect proportionality which is required by international law." In this case, environmental effects had a significant impact on the overall equitable balance. Slovakia's abstraction of over 80 per cent of the flow of water was found to be inequitable and required adjustment. The ICJ judgment affirms the existence of a legal obligation to prevent trans-boundary harm and to utilize shared resources equitably (Note 24).

In the *Trial Smelter* case, the tribunal insists that states have no right to cause serious injury by pollution, nor do they have a right to cause inequitable or unreasonable injury (Note 25).

The ICJ asserts that its arbitral and judicial decisions are now part of the corpus of international law relating to the environment. This sentiment can be traced in the *Trial Smelter* arbitration, in which a tribunal awarded damages to the USA and prescribed a regime for controlling future emissions from a Canadian smelter, which had caused air pollution damage. This arbitration may serves as a bulwark against state sovereignty as it concluded that 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 (Note 26).

States must control sources of harm to others or to the global environment arising within their territory or subject to their jurisdiction and control. If this ideal cannot be reached, then another international environmental protection framework will in the stead of sovereignty, soon serve to be the norm for the protection of the environment and for the inhibition of trans-boundary harm.

As state sovereignty will lose its impact and value, international instruments like the Rio and Stockholm Declarations, is going to replace state sovereignty in order to adhere to the modern trend of globalisation for the protection of the environment.

6. PRINCIPLE 21 OF THE 1972 STOCKHOLM DECLARATION AND PRINCIPLE 2 OF THE RIO DECLARATION

Principle 21 of the Stockholm Declaration affirm both the sovereign right of states to exploit their own resources pursuant to their own environmental policies and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or to areas beyond the limits of national jurisdiction.

The first part of the Stockholm principle asserts that a state has unlimited sovereignty over its environment. This notion is echoing in Article 3 of the Convention on Biological Diversity and is also reiterated in Principle 2 of the Rio Declaration and in the preamble to the Convention on Climate Change. Birnie & Boyle exert that it is doubtful that the addition "pursuant to their own environmental and developmental policies" would confirmed a reconciliation with the principle of sustainable development and the sovereignty of states over their own natural resources. According to Birnie & Boyle the additional words merely affirm that states are entitled to pursue their own developmental policies (Note 27). They accord that Principle 2 of the Rio Declaration does not confer on states absolute freedom to exploit natural resources (Note 28).

The ILC found it difficult to determine the right balance between the freedom to make equitable use of an international watercourse and the duty not to cause harm to other states. Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration both refer explicitly to responsibility for controlling damage to the environment of other states or of areas beyond national jurisdiction. Principle 21 requires states to do more than make reparations for environmental damage. It recognizes the duty of states to take suitable preventative measures to protect the environment.

The *Trial Smelter* Arbitration illustrates how even a judicial or arbitral tribunal can find ways of reconciling the prevention of trans-boundary harm with economic development (Note 29). In this arbitration, Canada was ordered by the tribunal to take measures to prevent future injury to property located at the border of the United States (Note 30).

7. SHARED SOVEREIGNTY/ NGO'S AND GLOBALIZATION: AN INFLICTION ON STATE SOVEREIGNTY OR AN ENHANCEMENT PERHAPS?

It is evident in the current context that increasing globalization presents both opportunities and challenges. If globalization is to be harnessed and channelled toward sustainability, collective, binding international principles and instruments become essential. International law is therefore needed to govern the intersections between conflicting global priorities and norms in this area to ensure a balanced outcome (Note 31). From this viewpoint, international law exists to regulate relations between co-existing independent communities, and to provide mechanisms for the achievement of common aims (Note 32).

The rules of international law thus limit jurisdiction which belongs solely to states. State sovereignty must therefore be interpreted in view of and combined with general principles of international law such as the general prohibition of abuses of rights and respect of other state's sovereignty.

According to the Harmon doctrine, states enjoy absolute sovereignty over water within their territory and are free to do as they please with those waters, including extracting as much as necessary, or altering their quality, regardless of the effect this has on the use or supply of water in downstream or contiguous states. Modern commentators dismiss this doctrine. Apart from its bias in favour of upstream states, it does not seem to represent international law (Note 33).

In *Lac Lanoux* international watercourses are treated as "shared resources" subject to equitable utilization. Equitable utilization rests on a foundation of shared sovereignty. It entails a balance of interests which accommodates the needs, and uses of each state. In the *Lac Lanoux* arbitration, the tribunal recognized that in carrying out diversion works within its own territory, France had an obligation nevertheless, to consult Spain and to safeguard her rights in the watercourse. This arbitration does indicate that the sovereignty of a state over rivers within its borders is qualified by recognition of the equal and correlative rights of other states (Note 34).

The tribunal held that France had complied with its obligations to consult and negotiate in good faith before diverting a watercourse shared with Spain. The Court noted that conflicting interests must be reconciled by negotiation and mutual concession. This implied that France must inform Spain of proposals, allow consultations, and give reasonable weight to Spain's interests. It did not mean that it could act only with Spain's consent. In the absence of agreement it was for France to determine whether to proceed with the project and how to safeguard Spain's interests (Note 35). In such way due account is taken of the sovereignty and interests of states.

8. ENVIRONMENTAL IMPAIRMENT AND INTERNATIONAL AGREEMENT

Environmental impairment induces trans-boundary consequences and thus affecting several legal systems. In view of the growing risks of trans-boundary environmental impairment, national legislation and systems of liability and compensation should be as uniform and coherent as possible. Uniform liability systems are an advantage and have the potential for providing better protection, as differences among national laws lead to unequal conditions between states (Note 36).

An international agreement is nothing more than a contractual deal between sovereign states. International treaties enable states to take action by themselves. By negotiating an international agreement, states can establish rules governing each other's behaviour. In much the same manner as a contract, the rules contained in an agreement between states are legally binding on the states that are party to it and these rules are enforceable under international law. There is no court of general jurisdiction in the international legal

system. It means that in the event of a dispute or breach, no neutral third-party tribunal automatically has the authority to adjudicate the controversy (Note 37).

Natural resources that span the borders between states, like rivers and natural watersheds that straddle or cross an international border contrives a matrix for international environmental co-operation or agreement. These natural resources do not necessarily correspond to the arbitrary political boundaries drawn by human hands, but may require coordinated action by more than one state for their protection.

Toxic by-products from a manufacturing process in one state may cause harm in another state, because a factory may be located at or near the border between the two countries (*Trial Smelter* arbitration). The international setting raises complexities. Certain questions come to mind, like, does the victim state have any rights at all? What about impacts on private parties, including landowners and citizens, in the victim state? In the *Trial Smelter* Arbitration (supra) a privately owned metal smelter operating in Trial, British Columbia, had been belching sulphur dioxide fumes into Washington State, causing damage to orchards and other property on the US side of the border. No private remedy was available to the injured US citizens. The courts of British Columbia did not have jurisdiction to hear the case because the injury was physically located across the border, and the courts of Washington lacked jurisdiction because the polluters had no business presence in their state.

The first problem which arises is whether the question should be answered on the basis of the law followed in the US or on the basis of international law. The Tribunal finds that this problem need to be solved as the law followed in the US (Note 38).

9. ENFORCEMENT AND COMPLIANCE

The protection of the environment is off little significance unless accompanied by means of enforcements and compliance. Injured states whose rights are affected are the primary actors in seeking compliance with legal standards of environmental protection (Note 39). This notion has the effect that private parties or companies are not in general bound by public international law. But the problem of attributing private conduct to states will seldom impinges on responsibility in international law for non-performance of the state's own environmental obligations. Where an activity causing environmental harm is conducted by private parties, the issue remains one of the state's duties of control, co-operation, or notification, which cannot be avoided by surrendering the activity itself into private hands. This idea evokes a discussion and the *Trial Smelter* case purport to be a suitable example (Note 40).

The regime of state responsibility can be invoked by states only and not private actors, such as individuals and corporation. The real parties in the *Trial Smelter* case are not states, but individuals. The question one purports to ask, is: How could you overcome the doctrine that international law does not regulate the behaviour of the Canadian Smelter because the owner of the smelter is not a "subject" of international law? Similarly, how would one establish standing (*locus standi*), given that your client is an individual and not a state? In order to cater for this dilemma in international law, a legal construct, known as "espousal" has been contrived. Because of this legal instrument, the Tribunal in the *Trial Smelter* case is not adjudicating a dispute between two private parties, but between two states – the US and Canada. The claimant state, in this case the US, has espoused the claim of the Washington landowners, in effect adopting the injuries of its nationals as its own (Note 41). Under the principle 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 person therein.

States would retain the sovereign right to pursue activities in their own territory, provided the interests of other affected states are accommodated. Under the principle of *restitutio in integrum*, Canada was ordered to adopt a regime for regulating the future operation of the smelter including the payment of compensation for any damage done to the US. Canada's right to operate the smelter was thus maintained (Note 42).

10. FORUM NON CONVENIENS

The principle of *forum non conveniens* allows the court to look at all the relevant factors in order to decide which legal system is better placed to decide a case. In *In re Union Carbide Corporation Gas Plant Disaster at Bhopal* (Note 43), the US courts declined to hear Indian claims against Union Carbide because, in their view, the Indian courts were a more appropriate forum. The plaintiffs were Indian, most of the evidence was in India, the applicable law was likely to be Indian, and India had the stronger interest in setting appropriate standards of care. It was not, the court held, a matter of determining the most favourable forum for the plaintiff, but of balancing the public and private interests. The US courts had no public interest in trying cases of this kind. In effect, the judgment ensured that the plaintiffs' claims would never come before a court in either country, and left Union Carbide free to negotiate a very favourable settlement with the Indian government.

Similarly in *Aguinda v Texaco Inc*., (Note 44) a US district court was persuaded that Ecuador was the more appropriate forum, on grounds similar to those relied on in Union Carbide. The *forum non conveniens* doctrine as applied in these cases thus discriminates against foreign plaintiffs while at the same time protecting the forum's own companies from liability for their actions abroad. It is evident that these cases discriminate against foreign plaintiffs while at the same time protecting the forum's own companies from liability for their actions abroad. Because of its discriminatory character, *forum non conveniens* connotes a breach of the right to a fair hearing (Note 45).

But not all jurisdictions follow the trend of the US courts as per the abovementioned two cases. The UK courts have, for example, declined to dismiss actions on *forum non conveniens* grounds, where no legal aid or financial assistance would be available to enable a suit to be brought abroad (Note 46).

Australian courts require an abuse of process and will dismiss an action only if the defendant can show that Australia is clearly an inappropriate forum on this ground. Thus, in circumstances similar to *Phopal*, indigenous peoples harmed by Australian mining operations in New Guinea, and denied access there, were able to bring proceedings in Australia (Note 47).

10.1 CHOICE OF LAW

Given that a claim for trans-boundary environmental damage may involve events, impacts, and persons in several countries, and possibly on the high seas, the question which legal system should determine liability is important. According to Birnie & Boyle, jurisdiction generally exist in the courts of the defendant's residence, domicile or place of business. They also contend that jurisdiction usually exist in the place where the injury occurs, as for example, in *Aguinda v Texaco* and in the *Phopal* case, where there were no doubt that Ecuador and India respectively had territorial jurisdiction (Note 48).

A plaintiff who litigates where the damage occurs, rather than where the defendant is located, may also have to overcome the defence of sovereign immunity, if the enterprise responsible for the damage belongs to or is part of a foreign government, or is otherwise exercising sovereign functions. Some states now deny immunity from

suit where the tort is deemed to have taken place within their own territory. The latter point could be relied on to exclude immunity for most industrial activities on the ground that they are *iure gestionis*, which is the view taken by German and Austrian courts when the Soviet Union was sued in respect of the Chernobyl disaster (Note 49).

Countries may have concurrent jurisdiction. A plaintiff will have a choice of jurisdiction in which to proceed. In the case of *Handelskwekerij G.J. Bier v Mines de Potasse d'Alsace* (Note 50) an action in tort was brought with regard to both the place where the harmful effects are felt and where the harmful activity is located. Article 5 of the 1968 *EC Convention on Jurisdiction and the Enforcement of Judgments* were used to enable Dutch plaintiffs to proceed in the Dutch courts against a French mining company whose polluting activities in France caused loss downstream to crops in Holland. The same article would also have allowed them to opt for suit in France, where the mine was located, or under Article 2 in the defendant's domicile, also France.

CONCLUSION: CHALLENGING STATE SOVEREIGNTY/ DECLINE OF STATE SOVEREIGNTY

Fifteen year ago "new" transnational actors have their way onto the international scene. Economic development and the development of the media, communications and transport technology, have all contributed to the increase in the number and the role of new actors. Non-governmental organizations, multinational firms, financial operators, etc. make up these new actors. As they appear on the scene, states have ceased to appear as the only elements making up the international system (Note 51). These transnational actors connote to the decline of state sovereignty, because the latter is unable to control their activities (Note 52). The state has no longer a free hand in the control of events. The inter-state system therefore is no longer the pivot of international politics. Non-state agents have rather become the main determinants of international politics. The competence of states or national governments has as a result been eroded with the proliferation of these non-state agents (Note 53).

Cohen alleges that NGO's are responsible for the misfortunes of states. As a result, we will have to enter in the near feature a world without borders. According to Cohen globalization is said to be the reign of multinationals. He believes this signalled the inevitable decline of the state. He echoes the notion: "Where states were once the masters of markets, now it is markets which, on many crucial issues, are the masters over the governments of states" (Note 54). This citation heralds the perception that states can no longer control their economic policy, because they are no longer capable of controlling their borders. The state appears to have become inadequate (Note 55).

The nation state will have to become an outdated concept due to the impact of globalisation. But the question that needs to be posed here, is, if the state is to disappear, who will take responsibility for the numerous international regulations? Cohen exerts that the decline of the state adumbrates a new, more democratic world, which can lead to the organization of world civil citizenship. Non-governmental organizations influences over foreign policy have rendered them active in human rights, humanitarian and environmental endeavours. As a number of these organizations have deployed themselves in the global arena, they cannot be ignored by states. This notion serves as a harbinger for the idea that the state is dead or it signals the end of sovereignties. These sentiments proclaim the end of an era and the coming of a new international system.

Bibliography

1. *Advisory Opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, ICJ Reps. (1996), 66 (WHO) and 226 (UNGA).
2. *Aguinda v Texaco Inc*. 945 F. Supp 625 (1996).
3. Bateman, C.G. 2011. *Nicaea and Sovereignty: Constantine's Council as an Important Crossroad in the Development of European State Sovereignty*. University of British Columbia.
4. Birnie, P & Boyle, A. 2002. *International Law & The Environment*. Second Edition. Oxford. Oxford University Press.
5. Cohen, S. 2003. *The Resilience of the State. Democracy and the Challenge of Globalization*. Translated from the French by Jonathan Derrick. Hurst & Company. London.
6. *Convention on the Prevention of Trans-boundary Harm from Hazardous Activities* (2001).
7. *EC Convention on Jurisdiction and the Enforcement of Judgments* (1968).
8. Gaskin, J.C.A. 1996. *The World's Classics*. Oxford. Oxford University Press.
9. *Handelskwekerij GJ Bier v Mines de Potasse d'Alsace*, Case 21/76, II ECR (1976).
10. Hobbes, T. *Leviathan*.
11. http://em.wikipedia.org/wiki/Sovereignty Accessed 2013/02/25.
12. *In re Union Carbide Corporation Gas Plant Disaster at Bhopal* 634 F. Supp 842 (1986).
13. *Lac Lanoux Arbitration*, 24 ILR (1957.)
14. Masahiro, M. *Sovereignty and International Law*. 20th Annversary Conference. "Celebrating 20 years of Boundary Studies." 1-3 April 2009. Durham University, UK.
15. Oppenheim, LFL. 1912. *The Future of International Law*. Oxford: At the Clarendon Press. London.
16. Plater, ZJB et al. 2010. *Environmental Law and Policy: Nature, Law, and Society*. Fourth Edition. Wolters Kluwer. Law 7 Business. Aspen Publishers. New York.
17. *Resolution 3129 XXVIII* (1973).
18. *Rio Declaration on Environment and Development*, 31 ILM 876 (1992), Principle 2.
19. Segger MC & Khalfan, A. 2004. *Sustainable Development Law. Principles, Practices and Prospects*. Great Clarendon Street. Oxford. Oxford University Press.
20. *Stockholm Declaration* (1972), Principle 21.
21. *The Declaration on the Establishment of a New International Economic Order (NEIO)*. General Assembly Resolution, 1974.
22. *The Case Concerning Gabcikovo-Nagymaros Dam*, ICJ Rep. (1997).
23. *The Charter of Economic Rights and Duties of States* (1974).
24. *Trial Smelter Arbitration* (US v Canada) 3 UNRIAA 1965 (1941).
25. *United Nations Convention on Biological Diversity* (1992).
26. Wetterstein, P. 1997. *Harm to the Environment: The Right to Compensation and the Assessment of Damages*. Clarendon. Oxford. Oxford University Press.

Notes:

Note 1. Masahiro: Sovereignty and International Law (2009): 6.
Note 2. Masahiro. Sovereignty and International Law: 7.
Note 3. Thomas Hobbes. Leviathan. Edited by J.C.A. Gaskin. 1996. The World's Classics. Oxford. Oxford University Press: xx.
Note 4. Hobbes. Leviathan xxx.3.
Gaskin (1996) xxxi.
Note 5. Gaskin (1996) xxxi.

Note 6. Gaskin (1996) xxxiv.
Note 7. http://en.wikipedia.org/wiki/Sovereignty Accessed 2013/02/25.
Note 8. Bateman, C.G. 2011. Nicaea and Sovereignty: Constantine's Council of as an Important Crossroad in the Development of European State Sovereignty. University of British Columbia: 54-91. In http://en.wikipedia.org/wiki/Sovereignty Accessed on 25/2/2013.
Note 9. http://en.wikipedia.org/wiki/Sovereignty Accessed on 25/2/2013.
Note 10. Birnie & Boyle (2002) 138.
Note 11. Birnie & Boyle (2002) 138.
Note 12. Birnie & Boyle (2002) 138.
Note 13. Birnie & Boyle (2002(138-9.
Note 14. Birnie & Boyle (2002) 139.
Note 15. Birnie & Boyle (2002) 139.
Note 16. Oppenheim (1912) 243-44.
Note 17. Birnie & Boyle (2002) 104, 121, 127, 140.
Note 18. Birnie & Boyle (2002) 104-5.
Note 19. Birnie & Boyle (2002) 105.
Note 20. Birnie & Boyle (2002) 106.
Note 21. Birnie & Boyle (2002) 107.
Note 22. Birnie & Boyle (2002) 107.
Note 23. ICJ Rep. (1996), 226 at para 29, In Birnie & Boyle (2002) 108.
Note 24. Birnie & Boyle (2002) 108, 307.
Note 25. Birnie & Boyle (2002) 308.
Note 26. The judgment of the ICJ in the Corfu Channel case supports a similar conclusion. Here the Court held Albania responsible for damage to British warships caused by a failure to warn them of mines in territorial waters. The Court indicated that it was every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states.
Note 27. Birnie & Boyle (2002) 110.

Note 28. Birnie & Boyle (2002) 110.
Note 29. Birnie & Boyle (2002) 110.
Note 30. Birnie & Boyle (2002) 111.
Note 31. Segger & Khalfan (2004) 5.
Note 32. Segger & Khalfan (2004) 10.
Note 33. Birnie & Boyle (2002) 301.
Note 34. Birnie & Boyle (2002) 302.
Note 35. Birnie & Boyle (2002) 126.
Note 36. Peter Wetterstein . 1997. Harm to the Environment: The Right to Compensation and the Assessment of Damages. Clarendon Press. Oxford: 2.
Note 37. Plater et al (2010) 289.
Note 38. Plater et al (2010) 935.
Note 39. Birnie & Boyle (2002) 178.
Note 40. Plater et al (2010) 937.
Note 41. Plater (2010) 938.
Note 42. Birnie & Boyle (2002) 191.
Note 43. 634 F. Supp. 842 (1986)
Note 44. 945 F. Supp. 625 (1996).
Note 45. Birnie & Boyle (2002) 273.
Note 46. Birnie & Boyle (2002) 273.
Note 47. Birnie & Boyle (2002) 274.
Note 48. Birnie & Boyle (2002) 277.
Note 49. Birnie & Boyle (2002) 278.
Note 50. Case 21/76, II ECR (1976).
Note 51. Samy Cohen. 2003. The Resilience of the State. Democracy and the Challenge of Globalization. Translated from the French by Jonathan Derrick. Hurst & Company, London: 1.
Note 52. Cohen (2003) 2.
Note 53. Cohen (2003) 3.
Note 54. Cohen (2003) 4-5.
Note 55. Cohen (2003) 5.