Chapter Two

The Fundamental Principles of International Environmental Law

2.0 Introduction

In its short history, international environmental law has already developed (and developed around) a core of fundamental, guiding legal principles. Because these principles are embodied in the issue-specific chapters that follow this one, this chapter acts a guide for topics and concepts to come. While some of the principles discussed here apply generally in international law, many others apply specifically to international environmental law. Unlike some other fields of international law, international environmental law has no single treaty or declaration setting out the basic rules and principles. Its fundamental principles range from the clearly accepted “hard law” ones, to those said to be “emerging” or “in progressive development” (accepted by many but still lacking thorough consensus), to the merely “aspirational” or futuristic values.

Some of the principles address substantive issues, focused on ends or outcomes – such as sovereignty, the no-harm rule, sustainable development, common heritage, etc. Others can be seen as more procedural in nature, focused on means or process – prior notification, consultation, negotiation, equal access to justice, etc. Still others are hard to classify as one or the other, partaking of both – such as good neighborliness/cooperation, erga omnes, and the right of access to information. While the following sections use the substance-procedure categories, this is simply for ease of organization and should not be taken as a limitation on the principles.

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2.1 Fundamental Substantive Principles

2.1.1 State Sovereignty

The state-centered nature of the modern world exacerbates environmental problems and is the main reason for the inadequacy of international environmental law and institutions. As discussed in Chapter 1, international law must work around the doctrine of state sovereignty – the doctrine holding that, within its territory, each nation-state has complete, supreme, and independent political and legal control over persons, businesses, entities, and activities, and over “its” environment and natural resources. There is a “fundamental tension between a State’s interest in protecting its independence (i.e. its sovereignty) and the recognition that…regional and global environmental problems, require international cooperation.” No state is a sealed-off “island” with impenetrable boundaries, given the interconnectedness of the environment and globalization today.

While the modern nation-state is a relative newcomer historically, dating only from the 17th century, its doctrine of sovereignty is firmly fixed, and international law is, in one sense, a body of state-created exceptions to that sovereignty. National sovereignty over natural resources and the environment has been affirmed in numerous international agreements and declarations (see Chapter 1). The tension between sovereignty and the environment is captured perfectly in the “First Commandment” of international environmental law, Stockholm Principal 21:

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.

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