

THE RESPONSIBILITY OF THE STATES IN INTERNATIONAL ENVIRONMENTAL LAW

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Abstract: *This research analyzes the transformation of the right to a healthy environment into a human right, as well as the internationalization of this right, aligned with the perception of the existence of transboundary damages, evolved its study and regulation, culminating in the emergence and development of International Environmental Law. Afterwards, the study begins on the International Responsibility of the State for the practice of an international illicit act, that is, when it violates a regulation and damages the right of another sovereign State or territorial area outside its national jurisdiction, tracing the main characteristics of this institute in the environmental field. It then examines the common but differentiated responsibility of states as it studies this form of state accountability as a principle of international environmental law, and demonstrates how its positivity in various international norms contributes to the global integration of countries in the pursuit of terrestrial environmental recovery and sustainable development. Finally, in his conclusion, he discusses how the international protection of the environment is made possible by these two types of state responsibility.*

Keywords: *International Environmental Law, States, Responsibility.*

1. INTRODUCTION

There are rights that are indispensable for human life on Earth, which are guided by the prism of freedom, equality and dignity and, so, they are designated as Human Rights.

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This range of rights represents essential values of society, but without presenting a definitive and predetermined delimitation of its scope, since the new social contingencies raise the need for insertion and / or modification in the list of these rights.

According to Ramos⁵, the human rights assume characteristics of universality, essentiality, normative superiority (referentiality) and reciprocity, being also inherent to human beings, transnational, indivisible, interdependent, non-exhaustive, fundamental, imprescriptible, inalienable, unavailable, with the prohibition of their retrogression. It should also be noted that because they are universal, they are the rights of all human beings on this planet, being inextricably linked to the internationality of human rights.

With globalization and high consumption on a global scale, man witnesses environmental degradation also on a global scale and all the serious consequences resulting from deforestation in the natural environment, which, in turn, already causes damage to the individual's dignity.

In this context, the right to a healthy environment has become a human right and, at the same time, protection of the environment is a pressing need for the existence of dignified life on Earth.

Thus, the study of this topic is justified by the indispensability of analyzing the accountability of States for non-compliance with the rules of international environmental law and for the generation of cross-border damage, as well as to investigate how countries with different levels of economy are compelled to exercise the duty of protection environmental.

The investigative process used goes through a historical and normative contextualization, bringing notions about the emergence of International Environmental Law and some of its most important norms, conceptualizing sustainable development. Then, the international responsibility of States for environmental damage caused in another State or in areas outside their national jurisdiction will be overshadowed, as well as the common but differentiated responsibility of States at the international level.

The methodological approach focuses on interdisciplinary theoretical research with consultations on themes of Public International Law, Human Rights and International Environmental Law through research on doctrines, articles, standards, advisory opinions and decisions of bodies that are part of international organizations, among others. The historical and inductive methods will make it possible to establish the conceptual premises, the historical evolution of International Environmental Law and the International Responsibility of States, the practices applied to sustainable development and the protection and environmental repair by States.

1 BRIEF COMMENTS ON INTERNATIONAL ENVIRONMENTAL LAW

5 RAMOS, André de Tavares. Curso de Direitos Humanos. 4 ed. São Paulo: Saraiva, 2017.

According to Geraldo Eulálio, International Law *deals with the rights and obligations of States and international governmental organizations, as well as individuals in the defense of the environment*⁶ and, once it is a separate branch of international human rights law, brief comments will be made on its origin and evolution.

Human rights began to develop more systematically in the post-World War II period, when the world had just witnessed the barbarities and atrocities carried out by man himself.

According to Cançado Trindade⁷, International Human Rights Law can be understood as the legal body for the protection of human beings, which are enshrined in *rights and guarantees that have the common purpose of protecting human beings in any and all circumstances*.

Thereby, issues referring to Human Rights started to be protected more broadly and structured by International Human Rights Law, being operationalized by the universal system, through the United Nations (UN), as well as by the various regional systems, the example of the Organization of American States (OAS).

Along with industrialization and mass consumption reflected by the globalization process, environmental degradation reached the level of affecting the dignified life of human beings, when it was realized that the lack of a healthy environment would mean the extinction of man and with that the environment has become a human right. Thus, the protection of the environment stems from the right to a healthy quality of life and, consequently, human dignity.

Furthermore, it was found that the domestic legislation of each nation fails to resolve the contingency posed by the present, being necessary the creation of an international legislation in which the cooperation of States is determined in order that the environment has the protection it needs.

In this context, with the need to seek solutions to the environmental problems that surpass the territorial limits of each State, as it is certain that pollution, deforestation, among others, do not recognize the geopolitical boundaries imposed by man and degrade not only the environment of the country that caused the act, but also other parts of the globe, International Environmental Law emerges, which departs from International Human Rights Law, but interrelates with it, to become an autonomous and specific branch, with principles and structural standards.

However, there is a normative complexity in the protection of the environment, because in spite of our existence on this planet depending on environmental preservation, there is an economic interest that, without needing further delay, dominates the world.

This time, as all countries have sovereignty and thereby legal equality at the international level, the binding of international standards to a particular State depends on its ratification, that is, on the country's own willingness to comply with certain rules and in this analysis always there will be a weighting of the economic bias. The United States, for example, participated in the negotiations of the Kyoto Protocol, which aims to

⁶SILVA, Geraldo Eulálio do Nascimento. *Direito Ambiental Internacional*. 2 ed. Rio de Janeiro: Thex Ed., 2002.

⁷TRINDADE, Antônio Augusto Cançado Trindade. *Desafios e Conquistas do Direito Internacional dos Direitos Humanos no Início do Século XXI*. Available at: < <https://www.oas.org/dil/esp/407-490%20cancado%20trindade%20OEA%20CJI%20%20.def.pdf>> Accessed in September 11 th, 2018.

reduce the emission of greenhouse gases (GHG) in the atmosphere and contain global warming and its impacts, but never ratified it, thus, there is no way to demand compliance from the American state, which is one of the biggest polluters on the planet.

The first discussion of great international repercussion on the environment took place at the Stockholm Conference on the Human Environment in 1972, in which a declaration was produced by the United Nations Assembly, without mandatory character and with characteristics of soft law, which was known as the Stockholm Declaration and this was a pivotal moment in which the planet's environmental thinking changed, and also resulted in the creation of the United Nations Environment Program (UNEP).

In Principle 1 of the aforementioned declaration, it was stated that man has the right to adequate living conditions, *in an environment of such quality that allows him to lead a dignified life, enjoy well-being and is a solemn bearer of the obligation to protect and improve the environment, for present and future generations.*⁸

In 1992, the United Nations Conference on Environment and Development was held in Rio de Janeiro, which became known as the Earth Summit, Eco 1992 or Rio 92, the first being after the end of the Cold War. This conference resulted in the creation of the Rio Declaration on Environment and Development, Agenda 21 and the Declaration of Principles on Forests, these three documents being of a non-mandatory nature.

In addition to these documents, the Rio Conference gave rise to two conventions, namely, the Convention on Biological Diversity and the Framework Convention on Climate Change, being the first biosphere conservation visa and the environmental harmony of the planet for those present and futures and the second search for stabilization of greenhouse gases in the atmosphere.

It is important to emphasize that the Rio Declaration consolidated the idea of sustainable development and already in its first principle brings the following statement: *human beings are at the center of concerns about sustainable development.*⁹

Ten years later, the World Conference on Sustainable Development, known as Rio + 10, was held in Johannesburg in order to evaluate the implementation of Agenda 21 and other regulations of Rio 92. At this conference, the principles and agreements of the Stockholm Conference and the Rio 92, and the Johannesburg Declaration on Sustainable Development and the Implementation Plan were also created.

In 2012, the United Nations Conference on Sustainable Development, known as Rio + 20, was held, in which the principles of Rio 92 were reaffirmed, in addition to recognizing that the eradication of poverty is an indispensable condition for sustainable development.

In turn, at the regional level of America, the Additional Protocol to the American Convention on Human Rights in the field of Economic, Social and Cultural Rights, Protocol of San Salvador, dated 11/17/1988

⁸ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Declaração de Estocolmo sobre o Ambiente Humano (Declaração de Estocolmo), adotada de 5 a 16 de junho de 1972. Available at: <<https://www.silex.com.br/leis/normas/estocolmo.htm>> Accessed in September 18 th, 2018..

⁹ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Declaração do Rio de Janeiro sobre Meio Ambiente e Desenvolvimento (Declaração do Rio), adotada de 3 a 14 de junho de 1992. Available at: <<http://www.onu.org.br/rio20/img/2012/01/rio92.pdf>> Accessed in September 16 th, 2018..

and valid on 11/16/1999, contemplates in its article eleven the right of the human being to live in a healthy environment and the need to promote the protection, preservation and improvement of it by the States.

Once pointed some of the main declarations and norms of international environmental law, as well as this one has been structuring itself and presenting itself to the world, it is necessary to expose some considerations about sustainable development, which is a goal principle and the principled environmental basis, so that then we can enter the field of state responsibility.

As seen above, the embryo of sustainable development was the Stockholm Declaration of 1972, when it stated in its first principle that man has an *obligation to protect and improve the environment, for present and future generations*.¹⁰

In 1987, the report of the World Commission on Environment and Development, known as the Brundtland Commission, was produced, better defining sustainable development, while establishing the need to reconcile economic development with environmental protection and well-being of the man.

The report of the referred commission was called "*Our Common Future*" and already that year, aware of the deterioration of the environment and natural resources, it affirmed that the concern with the environment as well as with the economy.¹¹

However, it was the Rio Declaration that consolidated sustainable development on the world stage.

Furthermore, according to the Romeu Thomé teachings, sustainable development is the harmonization of economic growth, environmental preservation and social equity, with sustainability only existing with the presence of those three elements, and adds Francisco Rezek, who is the most responsible for the search for preservationist development.

Furthermore, according to the Romeu Thomé teachings¹², sustainable development is the harmonization of economic growth, environmental preservation and social equity, with sustainability only existing with the presence of the three elements, and adds Francisco Rezek¹³ *that the governments are the most responsible for the search for preservationist development*.

The 2030 Agenda, adopted by the States at the 2015 United Nations Summit for Sustainable Development, also brings sustainable development as a principle and goal, seeking "*to achieve sustainable development in its three dimensions - economic, social and environmental - in a balanced and integrated*"¹⁴.

10 ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Declaração de Estocolmo sobre o Ambiente Humano (Declaração de Estocolmo), adotada de 5 a 16 de junho de 1972. Available at: <<https://www.silex.com.br/leis/normas/estocolmo.htm>> Accessed in September 15 th, 2018..

11 United Nations. Report of the World Commission on Environment and Development. Disponível em: <<http://www.un.org/documents/ga/res/42/ares42-187.htm>> Accessed in September 12 th, 2018.

12 THOMÉ, Romeu. Manual de Direito Ambiental. 6 ed. rev. ampl. Atual. Salvador: JusPOVIM, 2016. p. 56

13 REZEK, Francisco. Direito Internacional Público: Curso Elementar. 15 ed. rev e atual. São Paulo: Saraiva, 201, p. 148.

14 Agenda 2030 - 2. On behalf of the people we serve, we have made a historic decision on a set of universal and transformative goals and targets that are comprehensive, far-reaching and people-centered. We commit ourselves to work tirelessly for the full implementation of this Agenda in 2030. Recognizes that the eradication of poverty

Furthermore, it must not be forgotten that each country has different specific needs to achieve sustainable development, as well as varying degrees of economies, which leads each nation to pursue a different path towards achieving sustainability.

In order to implement the Declarations produced at the Conferences on the Environment, not forgetting that they have characteristics of soft law, that is, they are more guidelines of behavior than strict obligations, States have already ratified several multilateral and bilateral environmental treaties and conventions of mandatory compliance and for sustainable development.

2 THE INTERNATIONAL ENVIRONMENTAL RESPONSIBILITY OF THE STATES

After the comments on the development of International Environmental Law and the search for environmental sustainability, we will begin to discuss the accountability of States for non-compliance with international environmental protection regulations.

It is important to consider that this research is restricted to the study of the violation of a rule and / or the generation of damage from a sovereign state to another sovereign state or to territories outside its jurisdiction.

In general, accountability occurs at the international level when a State practices an illegal act under international law, and must repair the damage caused, and the responsibility is to coerce States so that they do not breach international commitments, such as assigning reparation to the injured state.

The Stockholm Declaration provided in its Principles 21 and 22¹⁵ that States have a sovereign right to exploit their resources, but provided that it does not harm the environment of other States or areas outside their national jurisdiction, as well as that States should cooperate in the development of international law with regard to liability for environmental damage caused by activities carried out within its jurisdiction or under its control to another zone outside its jurisdiction.

in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. We are committed to achieving sustainable development in its three dimensions - economic, social and environmental - in a balanced and integrated way. We will also inherit the achievements of the Millennium Development Goals and seek to achieve their unfinished goals. United Nations Organization. Agenda 2030. Available at: < <https://nacoesunidas.org/pos2015/agenda2030/>> Accessed in September 16 th, 2018.

1521 - According to the Charter of the United Nations and with the principles of international law, States have a sovereign right to exploit their own resources, in accordance with their environmental policy, provided that the activities carried out, within or under their jurisdiction. control, do not harm the environment of other States or areas outside all national jurisdiction 22 - States must cooperate to continue developing international law, with regard to the liability and compensation of victims of pollution and other environmental damage , that the activities carried out within the jurisdiction or under the control of such States, cause to areas located outside their jurisdiction.

It is understood that this obligation of States not to conduct or allow the practice of activity within their territories which results in damage to the environment of other States or areas outside the limits of their own jurisdiction was included in the said declaration because it was already, at the time, customary international law.

Likewise, the second principle of the Rio Declaration reaffirmed the same principle already declared in Stockholm in that it says that States have a responsibility to ensure that activities under their jurisdiction or control do not harm the environment of other States or areas beyond the limits of national jurisdiction¹⁶.

Although international treaties provide for state responsibility, they are of a soft law nature and there is still no codified international treaty or regulation dealing with accountability between states.

However, the UN Commission on International Law (CDI) concluded in 2001 the studies and discussions initiated in 1954 that gave rise to the project entitled Responsibility of States for Internationally Wrongful Acts, which in its first article stated that "Every internationally wrongful act of a State entails the international responsibility of that State".¹⁷

The teaching of Mazzuoli about the international responsibility of States in his doctrine, he comments that *the draft prepared by the CDI has already served as a guide for several international courts, including CIJ itself (also influencing the doctrine, etc.)*.¹⁸

Also, the author defends that the State is responsible for any action or omission that violates public international law, resulting in a violation of an international legal norm previously accepted by the country.

In addition, the international standard may also have the character of obligations erga omnes or jus cogens, with those obligations being imposed on all, regardless of acceptance, such as the protection of human rights and the environment arising from customary international law, and the jus cogens they are norms hierarchically superior to all other international regulations, assuming imperative and non-derogable characteristics.

It is important to note that both rules seek to preserve the fundamental values of international society and their failure to comply subject the State to accountability, regardless of the existence of written regulations.

In order to characterize the State's responsibility, it is necessary to have an international illegal act and the causal link between the fact and the State, and proof of material damage is not mandatory, simply by breaking the law, according to art. 2nd¹⁹ of the UN ICD Project on International Responsibility of States.

¹⁶Principle 2 - States, in accordance with the Charter of the United Nations and the Principles of International Law, have a sovereign right to exploit their own resources in accordance with their own environment and development policies, and the responsibility to ensure that activities under their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.

¹⁷United Nations. International Law Commission .Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Available at: <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> Accessed in 15 de set. 2018

¹⁸MAZZUOLI, Valério de Oliveira. Curso de Direito Internacional Público. 9 ed. rev. atual. E ampl. São Paulo: Editora Revista dos Tribunais, 2015, p. 615.

The illegal act results from a commissive or omissive conduct contrary to international law, not using the internal law of each country as a parameter, but the violation of a treaty, an international custom or another source of international law, as pointed out by Rezek²⁰.

The causal link or imputability arises from the connection of the harmful act to the violating State, being the legal link established between the State injured in its law and the State that violates the international norm.

The State can also be held responsible for acts of its employees when they practice it on their behalf, as well as for acts of a private individual who is in the exercise of a public function or the competence of a public entity, or even if the country has been omitted in the inspection of the individual's activity.

As seen, the State can be held responsible without material damage, and it can be held responsible for non-compliance with international environmental standards, such as injury to the precautionary and / or prevention principle, without the need to wait for the damage to obtain a legal response.

In this regard, the Inter-American Court of Human Rights, in Consultative Opinion OC-23/17, of November 15, 2017, requested by the Republic of Colombia, explains that States must ensure that their territory is not used in a way that may cause significant damage to the environment of other States or areas outside their territorial limits. It also concludes that States have an obligation to avoid causing cross-border damage, and must take all necessary measures under their control so as not to affect the rights of people living outside state territory. In addition, they must act in accordance with the precautionary principle and with a view to protecting the right to life and personal integrity, cooperating in good faith to protect the environment²¹.

Furthermore, the damage to be repaired by International Environmental Law has to be cross-border and of a "significant" character, that is, that which crosses borders, being caused by a State to another State or territory without national jurisdiction.

On the other hand, the requirement of significance of the damage means that any damage is not enough, it must be serious damage, serious damage that exceeds the tolerable limit, being analyzed on a case-by-case basis.

For example, it is worth mentioning the 2010 condemnation of Uruguay by the International Court of Justice (CIJ), when Argentina pleaded the condemnation of the Uruguayan government for the implantation of two pulp mills on the bank of the Uruguay River, bordering river between the respective countries, and CIJ

¹⁹Article 2. Elements of an internationally wrongful act of a State. There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.

²⁰REZEK, Francisco. *Direito Internacional Público: Curso Elementar*. 15 ed. rev e atual. São Paulo: Saraiva, 2014, P. 168.

²¹CORTE INTERAMERICANA DE DERECHOS HUMANOS. OPINIÓN CONSULTIVA OC-23/17 DE 15 DE NOVIEMBRE DE 2017. Available at: <http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_esp.pdf> Accessed in September 07 th, 2018.

decided to that Uruguay did not comply with the Uruguay River Statute of 1975, determining measures to be taken with a view to protecting the environment in the region²².

State's responsibilities according to Mazzuoli's lessons²³, it can happen directly, when the illegal act is practiced by the State, its organs, agents, employees or individuals acting on its behalf; indirect, when the act is performed by individuals or by a group or collectivity that the State represents in the international sphere; commissive, when it comes from positive State conduct; omissive, when the violation of the rule is materialized by omission of the State; conventional, when the country breaches the international treaty to which it is a party or is legally obliged to comply; when the violation is under customary international law.

In the responsibility of States, as a rule, the subjectivist theory applies, in which the practice of the illegal act is culpable, however, such rule includes an exception.

For the configuration of strict liability, that is, that which does not require the analysis of the psychological element, it is necessary that the parties are bound by a treaty, the only case in which the State itself is objectively liable for the damage caused is that of the launch of space objects.

Such a responsibility is channeled in the figure of the launching State and of anyone who contributed to the launch, according to articles 1 and 2 of the Convention on International Liability for Damage Caused by Space Objects, signed jointly in London, Moscow and Washington, in 1972.

International responsibility, for its part, also admits illegality exclusives, which are circumstances that exclude the responsibility of the State that violates the international norm, namely: valid consent of a State, legitimate defense, countermeasures in relation to an internationally illegal act, force greater, extreme danger, state of need, all regulated by articles 20 to 25 of the UN ICD Project on International Responsibility of States.

Furthermore, the aforementioned Draft provides in its article 26 that no exclusion of illegality can be argued in favor of violating an imperative norm of general international law (*norma jus cogens*)²⁴.

As a sanction for non-compliance with an international standard and its consequent liability, a State may be ordered to repair the damage in order to erase the consequences of the illegal act, as well as to restore the situation to the previous state, allowing, individually or cumulatively, restitution in natura, indemnity and satisfaction.

Yet, the injured State has the duty to return to legality, complying with the previously violated rule and to cease and not repeat the illegality practiced, including offering guarantees of non-repetition

Finally, it is clarified that this research deals with the general rules on the State's responsibility, noting that the various international regulations may bring specific rules to be followed in case of non-compliance.

22CORTE INTERNACIONAL DE JUSTICIA. Resúmenes de los fallos, opiniones consultivas y providencias de la Corte Internacional de Justicia 2008-2012. Available at: < <https://www.icj-cij.org/files/summaries/summaries-2008-2012-es.pdf> > Accessed in September 15 th, 2018.

23MAZZUOLI, Valério de Oliveira. Curso de Direito Internacional Público. 9 ed. rev. atual. E ampl. São Paulo: Editora Revista dos Tribunais, 2015. p. 624-625.

24United Nations. International Law Commission .Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Available at: <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> Accessed in September 15 th, 2018.

3 COMMON, BUT DIFFERENTIATED STATE RESPONSIBILITY

Once the questions about the State's international environmental responsibility for the practice of a determined illegal act that damages the right of another State or territories outside its jurisdiction were already explained, it is necessary to analyze the common but differentiated responsibility of the States, which shows that the responsibility for a prism other than the commitment of a determined international illegal act.

It is urgent to point that such responsibility is a principle of international environmental law that seeks to protect the environment globally and within the parameters of sustainable development, establishing different responsibilities for States depending on their economic development and for being a principle, is found on the basis of international environmental law, guiding the interpretation and application of law in this area.

Initially, it is necessary to clarify that the responsibility is common because it is not possible to attribute the cause that generated the environmental damage directly to any State and it is differentiated because it establishes, for the recovery of the environment, different obligations for the countries according to their level of development.

The first international treaty to provide for differentiated responsibility was the Montreal Protocol of 1987, on Substances that deplete the Ozone Layer, and its fifth article established a differentiated obligation for countries without a development situation.²⁵

However, it was enshrined in the Rio 92 Declaration when Article 7 established that *considering the diverse contributions to the degradation of the global environment, States have common, but differentiated responsibilities*²⁶.

The Declaration itself states in its text, in the aforementioned article, that developed countries recognize their responsibility in the pursuit of sustainable development and the protection of the global environment in the face of the technologies and financial resources they control. As for this theme, Lima adds, *stating that the*

25 Article 5: Special situation of developing countries - 1. Any Party that is a developing country and whose calculated level of annual consumption of controlled substances listed in Annex A is less than 0.3 kg per capita as of the date in which the Protocol enters into force for that Party, or on any other date thereafter until January 1, 1999, shall be entitled, to meet its basic internal needs, to defer compliance with control measures for ten years set forth in articles 2A to 2E, provided that any subsequent amendment of the adjustments or Amendment adopted in London, on June 29, 1990, by the Second Meeting of the Parties applies to Parties operating under this paragraph when the examination provided for in paragraph 8 of this article has taken place and provided that such measure is based on the conclusions of that examination.

26 Article 7 - The States will cooperate, in a spirit of global partnership, for the conservation, protection and restoration of the health and integrity of the terrestrial ecosystem. Considering the diverse contributions to the degradation of the global environment, States have common but differentiated responsibilities. The developed countries recognize their responsibility in the international search for sustainable development, in view of the pressures exerted by their societies on the global environment and the technologies and financial resources they control. UNITED NATIONS ORGANIZATION. Rio de Janeiro Declaration on Environment and Development (Rio Declaration), adopted from June 3 to 14, 1992. Available at: <<http://www.onu.org.br/rio20/img/2012/01/rio92.pdf>> Accessed in September 07 th, 2018.

*common but differentiated responsibilities recognize the inequality that exists between the different States, especially with regard to economic development, and the historical difference in pollutants emitted.*²⁷

In this light, it is necessary to understand that the developed countries are the main responsible for the global environmental problems, not being their philanthropy towards developing countries, but their responsibility.

In turn, when the 2030 Agenda reaffirmed all the principles of the Rio 92 Declaration, it explicitly stated the reaffirmation of the principle of common but differentiated responsibility²⁸, taking into account the referred document that takes into account the different national realities, capacities and levels of development, as well as the priorities of each nation, establishing principles that seek the balance between the elements of sustainable development.²⁹

Ademais, tem que ser considerado que os danos ambientais devem ser avaliados mediante o reconhecimento das diversas perspectivas econômicas e culturais dos Estados e que o desenvolvimento sustentável só logrará êxito com a cooperação internacional, conforme previsão já existente no capítulo 2 da Agenda 21³⁰.

Thus, the application of the principle of common but differentiated responsibility is linked to the principle of international cooperation, in view of the cross-border nature of environmental issues, as, as stated above, environmental problems do not recognize the geopolitical boundaries set by man and are not it has the means to determine where and when the harmful event to the terrestrial environment happened, and it is also not possible to solve, for example, the pollution of water, air and the rise in temperature that affect the entire planet without the participation of all nations.

Yet Diz, Oliveira, Lelis and Moreira add that the international cooperation between States in terms of environmental protection is:

27LIMA, Lucila Fernandes. Os princípios do Direito Internacional do Meio Ambiente e sua Aplicação na Questão da Mudança do Clima. Available at : <<https://regimesdenegociacao.files.wordpress.com/2013/07/principios-direito-internacional-ambiental.pdf>> Accessed in September 15 th, 2018.

28Agenda 20130.12. We reaffirm all the principles of the Rio Declaration on Environment and Development, including, among others, the principle of common but differentiated responsibilities, as established in the 7th principle of this Declaration. United Nations Organization. Agenda 2030. Available at: <<https://nacoesunidas.org/pos2015/agenda2030/>> Accessed in September 16 th, 2018.

29United Nation. 2030 Agenda. Available at: <<https://nacoesunidas.org/pos2015/agenda2030/>> Accessed in September 18 th, 2018.

30Agenda 21 - Chapter 2 - International cooperation to accelerate the sustainable development of developing countries and related domestic policies - 2.1. To face the challenges of the environment and development, the States decided to establish a new global partnership. This partnership commits all States to establish a permanent and constructive dialogue, inspired by the need to achieve a more efficient and equitable world economy, without losing sight of the growing interdependence of the community of nations and the fact that sustainable development must make a priority item on the agenda of the international community. It is recognized that, for this new partnership to be successful, it is important to overcome the clashes and promote a climate of genuine cooperation and solidarity. It is also important to strengthen national and international policies, as well as multinational cooperation, to accommodate new circumstances.

an ethical challenge for them, whether in the internal unfolding of sovereignty or in its community manifestation, so that the principle of common but differentiated responsibility, however much it presents itself as a direct violation of sovereignty through the unequal treatment given in matters of interstate politics, is a phenomenon that presents nuances compatible with the government structures in force in contemporary Democratic States, [...].³¹

On the other hand, there are criticisms regarding the application of this principle as it may confront United Nations General Assembly Resolution 2625 (XXV) with regard to the Principle of Sovereign Equality of States, which provides that *all States enjoy equality sovereign. They have equal rights and duties and are equal members of the international community, regardless of economic, social, political or other differences*³².

On the other hand, Tatiane Cardozo maintains that:

The principle of common but differentiated responsibilities is in line with the idea of the principle of equality in treating the unequal in an unequal way, in order to materially equalize them. He confirms that the developed countries are the biggest cause and historical responsible for the imbalance of Gaia, so it is up to them to take the main measures to combat the wear and tear manifested by the environment.³³

Another aspect to be considered in the study of this theme is that the Rio 92 Declaration has a soft law nature including the principle of Common Responsibility, but differentiated. However, like the other norms of international environmental law that have this nature, they contribute to the formation of concepts, principles, guidance in the creation of domestic laws, as well as international ones. Thus, for example, Protocols with mandatory binding for the States that adhere / ratify are elaborated based on valuation in these principles with the nature of soft law.

Thus, with the application of the principle in question, it is possible to establish different obligations for countries, including those of a financial and legal nature. See some examples.

The Montreal Protocol on Substances that Deplete the Ozone Layer was the first to establish different treatment for developing countries, which was signed in 1987 and started in 1989.

³¹DIZ, Jamile Bergamashine Mata. OLIVEIRA, Paulo César Pinto de. LELIS, Ronan Augusto Bravo Lelis. MOREIRA, Oscar de Souza. O Princípio da Responsabilidade Comum, mas Diferenciada no Direito Ambiental e nos Projetos de Infra-estrutura em Âmbito Bi ou Multilateral: Breves Considerações. Available at: < <http://www.rsmconsult.com.br/artigos/o-principio-da-responsabilidade-comum-mas-diferenciada-no-direito-ambiental/>> Accessed in em September 15 th, 2018.

³²United Nations. 2625 (XXV).Declaration on the Principles of International Law relating to Friendly Relations and Cooperation between States, in accordance with the United Nations Charter. Available at: < <http://www.un-documents.net/a25r2625.htm>> Accessed in August 14 th, 2018

³³LIMA, Tatiane Cardozo. O princípio das responsabilidades comuns mas diferenciadas no direito internacional ambiental. Available at: < http://centrodireitointernacional.com.br/static/revistaelectronica/volume4/arquivos_pdf/sumario/art_v4_VI.pdf> Accessed in October 17 th, 2018.

The aforementioned protocol established in its article 5³⁴ that developing countries would have the initial deadline postponed, being able to start its compliance after 10 years, also establishing in its article 10³⁵ the commitment of States parties to help developing countries to comply with the agreement.

The United Nations Framework Convention on Climate Change (UNFCCC) was one of the treaties produced at Rio 92, with the aim of stabilizing concentrations of gases that cause the greenhouse effect in the atmosphere at a level that would prevent dangerous anthropic interference in the climatic system of the terrestrial globe, having this convention established that all countries must reduce the emission of these gases, but developed countries, for being responsible for a large part of their emission throughout history, must make a greater effort, offering financial and technological support so that developing countries can also meet their goals.

The Common but differentiated Responsibility was expressly exposed as the guiding principle of this Convention when the third article³⁶ stated that *the Parties must protect the climate system for the benefit of present and future generations of humanity based on equity and in accordance with their common but*

34Article 5: Special situation of developing countries - Any Party that is a developing country and whose calculated level of annual consumption of controlled substances listed in Annex A is less than 0.3 kg per capita on the date on which The Protocol enters into force for that Party, or on any other date thereafter until January 1, 1999, shall be entitled, to meet its basic internal needs, to postpone for ten years compliance with the control measures set forth in Articles 2A to 2E, provided that any subsequent amendment of the adjustments or Amendment adopted in London, on June 29, 1990, by the Second Meeting of the Parties applies to the Parties operating under this paragraph when it has had place the examination provided for in paragraph 8 of this article and on condition that such measure is based on the conclusions of that examination. United Nations. The Montreal Protocol on substances that deplete the ozone layer. Available at: < <http://www.ozone.unep.org/es/manual-del-protocolo-de-montreal-relativo-las-sustancias-que-agotan-la-capacidad-de-ozono/84046/5>> Accessed in September 15 th, 2018.

35Article 10: Financial Mechanism 1. The Parties shall establish a mechanism to provide financial and technical cooperation, including the transfer of technologies, to the Parties operating under paragraph 1 of article 5 of this Protocol so that they may apply the control measures provided for in articles 2A to 2E, article 2I and article 2J of the Protocol, and any control measures provided for in articles 2F to 2H established in accordance with paragraph 1 bis of article 5. The mechanism, which will receive contributions that will be additional to other financial transfers The Parties operating under that paragraph shall cover all additional agreed costs incurred by those Parties so that they may comply with the control measures provided for in the Protocol. The Parties shall establish at their Meeting an indicative list of the categories of additional costs. When a Party operating under paragraph 1 of Article 5 chooses to use the financing of any other financial mechanism to cover part of its agreed additional costs, that Party shall not use the financial mechanism established pursuant to Article 10 of this Protocol. . United Nations. The Montreal Protocol on substances that deplete the ozone layer. Available at: < <http://www.ozone.unep.org/es/manual-del-protocolo-de-montreal-relativo-las-sustancias-que-agotan-la-capacidad-de-ozono/84046/5>> Accessed in September 15 th, 2018.

36ARTICLE 3 PRINCIPLES In their actions to achieve the objective of this Convention and implement its provisions, the Parties shall be guided, inter alia, by the following: 1. The Parties shall protect the climate system for the benefit of present and future generations of humanity based on equity and in accordance with their common but differentiated responsibilities and respective capacities. As a result, the developed country Parties should take the initiative in combating climate change and its effects. ARTICLE 4 OBLIGATIONS 1. All Parties, taking into account their common but differentiated responsibilities and development priorities, specific national and regional objectives and circumstances, must: (...) United Nations. United Nations Framework Convention on Climate Change. Available at: < <http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/tratados/convencoes-meio-ambiente/convencao-quadro-das-nacoes-unidas-sobre-mudanca-do-clima.pdf/view>. Accessed in September 17 th, 2018.

differentiated responsibilities and respective capacities, and the obligations set out in article four have also been guided by the same principle.

This Convention had its operation and procedures regulated by the Kyoto Protocol, which, in turn, respecting the principled basis of the referred Framework Convention, defined the goals of reducing emissions of carbon dioxide (CO₂), methane (CH₄) gases, nitrous oxide (N₂O), hydrofluorocarbons (HFC) perfluorocarbons (PFC) and sulfur hexafluoride (SF₆) for developed countries and those with economies in transition, with each country having its goal specified according to differentiated responsibility.

As for the financial issue, in 1991 the Global Environment Facility (GEF) was created - in portuguese Fundo Global para o Meio Ambiente - to help developing countries and economies in transition to comply with international environmental agreements and conventions, and currently the Fund has 183 member countries and since its creation only 39 have been donors and with contributions of different values.

Finally, common but differentiated responsibility is a principle widely accepted by international doctrine, and is currently supported by several international regulations.

CONCLUSION

Protection of the environment appears on the world stage as a protection bias to human beings, considering that they only have a dignified life if they have access to a healthy environment.

Thus, the right to a balanced environment has become a human right, internationally protected, considering that the serious environmental problems that affect the world need protection at a global level, based on sustainable development.

In this panorama, several declarations, conventions, protocols, treaties, resolutions, among other documents, were signed by the countries that are members of this planet, in order to preserve and recover the healthy environment, necessary for the quality of life with dignity.

Through this study, it appears that the State has international responsibility for the protection of the environment, with this responsibility having two focuses: the first is that the State violates an international regulation, harming the right of another State or territory outside its jurisdiction and the second is global responsibility for environmental damage that affects the entire globe.

Thus, according to the first approach, the international responsibility of the State is characterized by the existence of a specific commissive or omissive act, carried out by a given country, in breach of international regulation, and which affects the law of another State or territory outside your jurisdiction. Since the damage, even though it is not essential for configuring the liability, is relevant in the analysis of the repair to be made to the injured country.

On the other hand, common but differentiated responsibility is a principle of international environmental law that seeks to hold all countries responsible for the environmental degradation already caused

to the Earth, however, through it a differentiated responsibility is established for different countries, taking into account the economic levels and cultural distinctions.

This type of accountability is applied when there is no way to determine where and when the harmful event to the terrestrial environment happened, as well as there is no way to find a solution to the environmental damage without the participation of all States, such as the global warming.

Finally, it is concluded that State accountability is an important institute for the international protection of the environment, with each model presented having its own characteristics, but both contribute to sustainable development.

REFERENCES

BRASIL. Decreto nº 2.519, de março de 1998. Promulga a Convenção sobre Diversidade Biológica, assinada no Rio de Janeiro, em 05 de junho de 1992. **Diário Oficial da União**. Available at: <http://www.planalto.gov.br/ccivil_03/decreto/D2519.htm>. Accessed in 06 de dez. 2019.

_____. Decreto nº 2.586, de 12 de maio de 1998. PROMULGA O Acordo sobre Cooperação em Matéria Ambiental, celebrado entre o Governo da República Federativa do Brasil e o Governo da República Argentina em Buenos Aires, em 9 de abril de 1996. **Diário Oficial da União**. Available in: <http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6891.htm>. Accessed in 06 de dez. 2019.

CORTE INTERAMERICANA DE DERECHOS HUMANOS. OPINIÓN CONSULTIVA OC-23/17 DE 15 DE NOVIEMBRE DE 2017. **Corte IDH**. San José, 2017. Available at: <http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_esp.pdf> Accessed in 07 de set. 2018.

CORTE INTERNACIONAL DE JUSTICIA. Resúmenes de los fallos, opiniones consultivas y providencias de la Corte Internacional de Justicia 2008-2012. **CIJ**. Haia, 2012. Available at: <<https://www.icj-cij.org/files/summaries/summaries-2008-2012-es.pdf>> Accessed in 15 de set. 2018.

DIZ, Jamile Bergamashine Mata. OLIVEIRA, Paulo César Pinto de. LELIS, Ronan Augusto Bravo Lelis. MOREIRA, Oscar de Souza. O Princípio da Responsabilidade Comum, mas Diferenciada no Direito Ambiental e nos Projetos de Infra-estrutura em Âmbito Bi ou Multilateral: Breves Considerações. **RSM Consult**. [s/l], 2013. Available at: <<http://www.rsmconsult.com.br/artigos/o-principio-da-responsabilidade-comum-mas-diferenciada-no-direito-ambiental/>> Accessed in 15 de set. 2018.

GARCIA, Márcio Pereira Pinto. Responsabilidade internacional do Estado : atuação da CDI. **Revista de informação legislativa**, v. 41, n. 162, p. 273-285, abr./jun. 2004 .Available at: <<http://www2.senado.leg.br/bdsf/handle/id/964>> Accessed in em 14 de set. 2018.

GLOBAL ENVIRONMET FACILITY. Available at: <<https://www.thegef.org/about/funding>> Accessed in 07 de set. 2018.

KOURY, A. B.; SOUSA, D. L. O Direito Ambiental sob a Perspectiva da Proteção Internacional à Pessoa Humana. **Revista dos Estudantes de Direito da Universidade de Brasília**, n. 8, p. 306-345, 2009.

LEITE, Icaro Demarchi Araujo. **O Direito Internacional do Meio Ambiente e a Aplicação de seus princípios e de suas normas pela empresa**. 2011. 141 f. Dissertação (Mestrado) – Faculdade de Direito, Universidade de São Paulo, São Paulo, 2011.

LIMA, Lucila Fernandes. **Os Princípios do Direito Internacional do Meio Ambiente e sua Aplicação na Questão da Mudança do Clima**. Available at: <
<https://regimesdenegociacao.files.wordpress.com/2013/07/principios-direito-internacional-ambiental.pdf>>
Accessed in 16 de set. 2018

LIMA, Tatiane Cardozo. **O princípio das responsabilidades comuns mas diferenciadas no direito internacional ambiental**. Available at:
<http://centrodireitointernacional.com.br/static/revistaelectronica/volume4/arquivos_pdf/sumario/art_v4_VI.pdf>
Accessed in 17 de set. 2018.

Mazzuoli, Valerio de Oliveira. **A Proteção Internacional dos Direito Humanos e o Direito Internacional do Meio Ambiente**. Available at: < <http://egov.ufsc.br/portal/sites/default/files/anexos/32790-40564-1-PB.pdf>>
Accessed in em 11 de set. 2018.

_____. **Curso de Direito Internacional Público**. 9 ed. rev. atual. E ampl. São Paulo: Editora Revista dos Tribunais, 2015.

_____. **Curso de Direitos Humanos**. Rio de Janeiro: Forense; São Paulo: Método, 2014.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Agenda 21**. Available at < <http://www.mma.gov.br/responsabilidade-socioambiental/agenda-21/agenda-21-global> >. Accessed in 16 de set. 2018.

_____. **Agenda 2030**. Available at: < <https://nacoesunidas.org/pos2015/agenda2030/>> Accessed in 16 de set. 2018.

_____. **Convenção-Quadro das Nações Unidas sobre Mudança do Clima**. Available at: <
<http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/tratados/convencoes-meio-ambiente/convencao-quadro-das-nacoes-unidas-sobre-mudanca-do-clima.pdf/view>. Accessed in 17 de set. 2018.

_____. **Convention on the international liability for damage caused by space objects. Opened for signature at London, Moscow and Washington on 29 March 1972**. Available at: <
<https://treaties.un.org/doc/Publication/UNTS/Volume%20961/volume-961-I-13810-English.pdf> > Accessed in 15 de set. 2018.

_____. **Declaração de Estocolmo sobre o Ambiente Humano (Declaração de Estocolmo), adotada de 5 a 16 de junho de 1972**. Available at: <<https://www.silex.com.br/leis/normas/estocolmo.htm>> Accessed in 07 de set. 2018.

_____. **Declaração do Rio de Janeiro sobre Meio Ambiente e Desenvolvimento (Declaração do Rio), adotada de 3 a 14 de junho de 1992**. Available at: < <http://www.onu.org.br/rio20/img/2012/01/rio92.pdf>>
Accessed in 07 de set. 2018.

_____. **Declaração sobre os Princípios do Direito Internacional relativos às Relações Amistosas e à Cooperação entre os Estados, em conformidade com a Carta das Nações Unidas**. Available at: <
<http://www.un-documents.net/a25r2625.htm>> Accessed in 17 de set. 2018.

_____. **El Protocolo de Montreal relativo a las sustancias que agotan la capa de ozono.** Available at: < <http://www.ozone.unep.org/es/manual-del-protocolo-de-montreal-relativo-las-sustancias-que-agotan-la-capade-ozono/84046/5>> Accessed in 15 de set. 2018.

_____. **International Law Commission .Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries.** Available at: < http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> Accessed in 15 de set. 2018

_____. **Report of the World Commission on Environment and Development.** Available at: < <http://www.un.org/documents/ga/res/42/ares42-187.htm>> Accessed in 12 de set. 2018.

_____. **Protocolo de Kyoto de la Convención Marco de las Naciones Unidas sobre el Cambio Climático.** Available at: < <https://unfccc.int/sites/default/files/resource/docs/spanish/cop3/kpspan.pdf>> Accessed in 17 de set. 2018.

ORGANIZACIÓN DE LOS ESTADOS AMERICANOS. **Protocolo Adicional a la Convención Americana Sobre Derechos Humanos en Materia de Derechos Económicos, Sociales Y Culturales "PROTOCOLO De San Salvador"**. Available at: < <http://www.oas.org/juridico/spanish/Tratados/a-52.html> > Accessed in 09 de set. de 2018.

RAMOS, André de Tavares. **Curso de Direitos Humanos.** 4 ed. São Paulo: Saraiva, 2017.

REZEK, Francisco. **Direito Internacional Público: Curso Elementar.** 15 ed. rev e atual. São Paulo: Saraiva, 2014.

SILVA, Geraldo Eulálio do Nascimento. **Direito Ambiental Internacional.** 2 ed. Rio de Janeiro: Thex Ed., 2002.

TEIXEIRA, Gustavo de Faria Moreira. MAZZUOLI, Valério de Oliveira. O direito internacional do meio ambiente e o greening da Convenção Americana sobre Direitos Humanos. **Revista de Direito GV.** Available at: < <http://bibliotecadigital.fgv.br/ojs/index.php/revdireitogv/article/view/20905>> Accessed in 16 de set.2018.

THOMÉ, Romeu. **Manual de Direito Ambiental.** 6 ed. rev. ampl. Atual. Salvador: JusPOVIM, 2016.

TRINDADE, Antônio Augusto Cançado. **Desafios e Conquistas do Direito Internacional dos Direitos Humanos no Início do Século XXI.** Available at: < <https://www.oas.org/dil/esp/407-490%20cancado%20trindade%20OEA%20CJI%20%20.def.pdf>> Accessed in 11 de set. 2018.

TRINDADE, Antônio Augusto Cançado. LEAL, César Barros. coords. **Direitos Humanos e Meio Ambiente.** Fortaleza: Expressão Gráfica e Editora, 2017.

VARELLA. MARCELO D. **Direito Internacional Público.** 4 ed. São Paulo: Saraiva, 2012.