PARAMETERS FOR COLLECTIVE ECOLOGICAL INTERFERENCE IN A COOPERATIVE INTERNATIONAL SOCIETY

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ABSTRACT

This article starts with a brief normative overview of the principle of sovereignty to then explore its content and transformations throughout history, which have led to the enhancement of its external function to safeguard common core values, such as the protection of the human right to the environment. It is demonstrated that this new stage demands from international society a duty to intervene in the event of inaction by States of origin to take due diligence to prevent or hinder the aggravation of serious ecological risks of catastrophic proportions. However, the fulfillment of this obligation must comply with the parameters already established for humanitarian interference, otherwise there is a serious risk of distorting its objectives. Using a qualitative approach, the research examined bibliographic and documentary sources from which it was possible to reach conclusions based on the analytical-deductive method.

Keywords: sovereignty; human rights; ecological interference.

PARÂMETROS PARA A INGERÊNCIA ECOLÓGICA COLETIVA EM UMA SOCIEDADE INTERNACIONAL COOPERATIVA

RESUMO

Este artigo parte de um breve panorama normativo do princípio da soberania para, então, explorar seu conteúdo e transformações ao longo da história, os quais levaram ao aprimoramento de sua função externa para salvaguardar valores fundamentais comuns, como a proteção do direito humano ao meio ambiente. Demonstra-se que esse novo estágio demanda da sociedade internacional um dever de ingerência em caso de inércia dos Estados de origem em agir com a devida diligência para prevenir ou impedir o agravamento de graves riscos ecológicos de proporções catastróficas. No entanto, o cumprimento dessa obrigação deve estar de acordo com os parâmetros já estabelecidos para a interferência humanitária, caso contrário, há um sério risco de distorção de seus objetivos. Utilizando uma abordagem qualitativa, a pesquisa examinou fontes bibliográficas e documentais a partir das quais foi possível formular conclusões com base no método analítico-dedutivo.

Palavras-chave: soberania; direitos humanos; ingerência ecológica.

1 INTRODUCTION

Sovereignty is the fundamental principle on which modern nation-states were built. Its enshrinement in legal texts occurred in an attempt to preserve peace, ending a cycle of wars that plagued Europe. However, its content had to be reformulated after two major world wars in order to guarantee peaceful coexistence and ensure compliance with universal values linked to human dignity.

In environmental matters, the difficulty of reconciling a world divided into sovereignties with a unitary and indivisible environment, which does not recognize the borders artificially defined by States, has long been clear. From the obligation of due diligence in preventing transboundary environmental damage to ecological interference, the existence of limits to sovereign action has been recognized, little by little, but without suppressing the rights of States to dispose of their natural resources and to establish their own environmental policies.

The subject is timely and relevant insofar as sovereignty is a recurring issue in international relations and technological advances have allowed the increasingly early identification of serious ecological risks that can be avoided by the due diligence of States of origin, which are primarily responsible for solving the problem.

The investigation was divided into three parts, the first being dedicated to the norms that enshrine the principle of environmental sovereignty, the second reserved for the examination of its content and transformations and, finally, the third focused on the right of interference and its parameters of application in cases of major ecological risks.

Using a qualitative approach, the research examined bibliographic and documentary sources from which it was possible to reach conclusions based on the analytical-deductive method. By analyzing international norms, doctrine and case law, it was assessed to what extent a right of ecological interference can be accepted in the current international order.

2 BRIEF NORMATIVE OVERVIEW OF THE PRINCIPLE OF ENVIRONMENTAL SOVEREIGNTY

Although its foundations were formulated centuries earlier, the principle of sovereignty, as a legal manifestation, emerged after the Peace of Westphalia (1648), a historical moment in which the treaties of Münster and Osnabrück were signed. These

agreements ended the Thirty Years' War in Europe and proclaimed the sovereign power of States over their territories, in recognition of the progressive weakening of papal power and the emergence of national States (Varella, 2018).

The Peace of Westphalia paved the way for the establishment and consolidation of an international society and set the fundamental principle of absolute equality of European States, which began to govern international relations (Mazzuoli, 2021). This model, identified as an international law of coexistence, was not designed to pursue common goals, but rather to maintain the exclusive authority of each nation (Floh, 2009).

However, this situation changed with the end of World War II, when the United Nations (UN) was established in 1945. The UN Charter in its first two articles, dedicated to its purposes and principles, in addition to reaffirming the principle of sovereignty and its corollaries (equal rights, self-determination of peoples and territoriality), made explicit the need for cooperation between States in the pursuit of common goals (United Nations, 1945).

This new cooperative and multilateral model, centered on the United Nations, promoted the progressive awareness among States that the unitary and transboundary character of the environment would require the adoption of uniform international standards for its protection, which until the 1960s had been pulverized in several national legal systems (Soares, 2003). The milestone of this transition occurred at the United Nations Conference on the Human Environment, held in 1972 in Stockholm, whose main objective was to address air pollution and the pressure exerted by population growth on natural resources (Ribeiro, 2014).

As a result of the Conference, a written declaration was approved comprising 26 principles, which represent the international consensus reached by the various countries present at that occasion. Among these principles, the following are worth mentioning: economic and social development is essential for improvement of the quality of life (principle 8); environmental policies should not restrict the growth potential of developing countries (principle 11); States have the sovereign right to exploit their own resources pursuant to their own environmental policies, as long as they do not harm the environment of other States or areas beyond the limits of national jurisdiction (principle 21); cooperation is essential to effectively control, prevent, reduce and eliminate adverse environmental effects, in such a way that due account is taken of the sovereignty of all States (principle 24) (United Nations, 1972).

The content of the Stockholm Declaration underlined the tension between developed and developing countries, which feared that the environmental concerns of the richer countries would be used to limit their sovereignty over their own environmental resources, thus impeding their economic and social development. Indeed, even before the Conference,

the Club of Rome group of experts had warned of this risk in its report on the limits to growth:

> We unequivocally support the contention that a brake imposed on world demographic and economic growth spirals must not lead to a freezing of the status quo of economic development of the world's nations. If such a proposal were advanced by the rich nations, it would be taken as a final act of neocolonialism (Meadows *et al*., 1972, p. 194).

In this debate, the Third World and socialist bloc countries were strong defenders of state sovereignty, because they perceived that a greater centralization of power would not result in the redistribution of wealth and power in their favor, but in the consolidation of the values and interests of the great Western powers (Bull, 2012). As a developing country, Brazil, which was in the midst of a military dictatorship and with high growth rates, adopted a defensive position at the Conference, questioning the scientificity of the arguments presented, which were seen as a threat to its sovereignty, especially regarding the vast natural resources present in the Amazon rainforest (Aguiar; Mattos; Cardoso, 2015).

Another relevant point of the Conference was the approval of principle 21 of the Stockholm Declaration, which reaffirmed the link between two inseparable elements: sovereignty over natural resources and responsibility not to cause environmental damage to other jurisdictions (Sands; Peel, 2018). The formula was drafted as follows:

> 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 (United Nations, 1972, p. 11).

In 1992, at the United Nations Conference on Environment and Development, the Rio Declaration was approved, whose principle 2 reaffirms, with practically the same text, principle 21 of the Stockholm Declaration. The new document innovates, however, in its principles 18 and 19, which establish, respectively, the obligation of immediate notification in the face of natural disasters and emergency situations that may affect other States and the duty of notification, consultation and provision of information to affected States in cases of activities with transboundary environmental impact (United Nations, 1992a).

This general obligation of States to prevent the occurrence of transboundary environmental damage from their territory, established in the Stockholm and Rio Declarations, would later be recognized by the International Court of Justice (ICJ) as a customary norm of international law in its Advisory Opinion on the Legality of the Threat or

Use of Nuclear Weapons, in 1996 (Sands; Peel, 2018).

Brazil's concern to reaffirm its sovereignty in the face of this new international scenario was reflected in the provisions of the Constitution approved in 1988, after the re-establishment of the democratic order. Comparatively, the Brazilian Constitution of 1988 was the most emphatic in enshrining the principle of sovereignty, since the other charters, in general, do not expressly mention it, although they present several closely related concepts, such as national interest, power of the people and national independence (Oliveira, 2000).

The establishment of rules governing sovereignty is a typical element of Constitutions, whose content traditionally includes rules for the structuring and organization of the State, in addition to the forms of exercise of power by its organs (Silva, 2014). Therefore, sovereignty, as a legal principle, is an inseparable element of the very concept of Constitution and represents an indispensable condition for the effectiveness of constitutional norms dictated by the constituent power.

Since the bourgeois revolutions of the late 18th century, internal and external sovereignty have taken opposite directions. The rise of the rule of law and modern constitutionalism has witnessed the progressive weakening of this principle in the internal sphere, as the sovereign state has also come to be limited by the legal norms it has enacted. At the same time, in the external sphere, there was a progressive absolutization of the notion of sovereignty, and this movement lasted until the end of the Second World War, in the middle of the 20th century (Ferrajoli, 2002).

In the Brazilian Constitution of 1988, sovereignty is presented as the first fundamental principle of the Federative Republic of Brazil (article 1, I) and based on a model of a Democratic State of Law. Besides, by declaring that all power comes from the people (article 1, sole paragraph), the Magna Carta affiliated itself with the doctrine of popular sovereignty, establishing the mechanisms of direct and indirect exercise of this sovereignty, namely universal suffrage, voting, plebiscite, referendum and popular initiative (article 14) (Brasil, 2022). Such decisions of the constituent power led to the imposition of constraints on this sovereign power, which is bound by the duties of: (i) rotation in the exercise of political power; (ii) democratic action; and (iii) state subjection to the legal norms created, as well as to the norms agreed at the international level (Gomes, 2022).

Regarding Brazilian foreign policy, the Constitution reaffirms the principle of sovereignty by establishing that the principles of national independence, self-determination of nations, non-intervention and equality among States (article 4, I, III, IV and V) govern its international relations (Brasil, 2022). At this point, it is worth mentioning the reference to national independence as a principle to be observed by Brazil in its international relations, as

it is an innovation, since previous Constitutions mentioned only the independence of Brazil, and not that of other States (Galindo, 2018).

Sovereignty is still expressly mentioned in the following passages of the 1988 Constitution: by providing for the writ of injunction as an instrument to make feasible the exercise of prerogatives inherent to sovereignty (article 5, LXXI); by guaranteeing the creation and organization of political parties, safeguarding national sovereignty (article 17, II); by establishing the National Defense Council as a body to consult the President on matters related to sovereignty (article 91); by indicating national sovereignty as the first governing principle of economic activity (article 170, I); by providing for the possibility of removing indigenous groups from their lands in the interest of sovereignty, after deliberation by the National Congress (article 231, § 5) (Brasil, 2022).

Therefore, the constituent power was concerned with underlining the importance of sovereignty for the new constitutional order that was established. The brief normative path exposed above denotes the importance of the principle of sovereignty for the affirmation of modern national States, as well as the tensions that arose after the Second World War due to the necessity of adopting a cooperative model capable of restricting the unlimited power of States in order to protect essential values for the international community.

3 CONTENT OF THE PRINCIPLE OF ENVIRONMENTAL SOVEREIGNTY AND ITS TRANSFORMATIONS

The modern notion of sovereignty is characterized by ambiguities. On the one hand, it is praised as a legitimate expression of the self-determination of nations; on the other, it is rejected as an obstacle to the guarantee of more urgent values, such as human rights and environmental protection (Lee, 2021). This ambivalence is well illustrated in the following excerpt:

> Sovereignty is the linchpin of global governance. Sovereignty is the main obstacle to achieving global governance. International trade agreements represent the exercise of sovereignty. International trade agreements erode sovereignty. Sovereignty permits nations to protect the environment. Sovereignty prevents nations from protecting the environment. Sovereignty protects despots who violate human rights. Sovereignty justifies the removal of despots who violate human rights. Sovereignty is a legal principle. Sovereignty is a political principle. Sovereignty is not a principle at all (Condon, 2006, p. 231).

Sovereignty can be conceived from two distinct concepts: the first, based on force and defended by Thomas Hobbes and John Austin, who define it as a mechanism to ensure order

through the strategic use of sanctions; and the second, based on Law and supported by Jean Bodin, who sees it as a resource to guarantee the political unity of the State, which does not arise from force, but from the existence of a legal obligation to respect the legitimacy of the sovereign (Lee, 2021).

Sovereignty can also be seen from two perspectives. In the internal legal sphere, States exercise their sovereignty through supremacy over all other authorities and persons in their territory; in the external sphere, they assert their sovereignty not on the basis of supremacy, but through their independence from other States (Bull, 2012).

Addressing the international order, Crawford (2019) argues that the principles of sovereignty and equality between States have three main consequences: (i) the existence of a jurisdiction, in principle exclusive, over a certain territory and its population; (ii) the duty of other States not to intervene in this area of exclusive jurisdiction; and (iii) the requirement of consent for the establishment of international obligations, whether by custom or by treaties.

Throughout the nineteenth century, the positivist doctrines of sovereignty and domestic jurisdiction were prevalent, assigning exclusively to national States virtually all matters that would today be classified as human rights issues. The change in this scenario would only occur after the horrors of the Second World War, when the need for an international system for peacekeeping and human rights protection became evident to all (Shaw, 2021).

After the creation of the United Nations in 1945, it became clear that the model of coexistence in force until then, based exclusively on the individual will of States, would have to give way to the necessary development of norms of cooperation for the achievement of common goals and values (Jubilut, 2010). This change, from a paradigm of coexistence to one of cooperation, led to the improvement of the external function of the principle of sovereignty, which no longer played primarily a demarcation role, but became permeable and allowed the common exercise of power through international organizations. This transformation, however, did not lead to the loss of sovereignty of States, but to the displacement of their sovereign will to external levels, enabling the creation of a series of rights and obligations aimed at global environmental protection (Haedrich, 2000).

This new scenario has led to the admission of limitations on the external sovereignty of States, even without their consent. An example of this restriction is the recognition of the legal categories of jus cogens and erga omnes obligations, which represented a softening of the voluntarist theories of international law.

According to article 53 of the 1969 Vienna Convention on the Law of Treaties, jus cogens consists of "[…] a norm accepted and recognized by the international community of

States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." (United Nations, 2005a, p. 18). Articles 53 and 64 of the Convention also indicate that treaties whose content conflicts with a jus cogens norm will be null and void.

As expected, the acceptance of the concept was resisted by States due to the difficulty of establishing which norms would be considered jus cogens. Thus, many States have not ratified the Vienna Convention, as they feared that their freedom to conclude treaties would be affected (Varella, 2018). Nevertheless, this category of norms has been accepted and used by international scholars and courts, and there is a certain consensus that the prohibitions of genocide, slavery, torture, piracy and the use of force at the international level are part of the category of jus cogens norms (Jubilut, 2010).

The erga omnes obligations, in turn, had their definition in the Barcelona Traction case, judged by the International Court of Justice in 1970. According to the Court, these are obligations of States towards the international community as a whole, which, because they concern everyone and due to the importance of the rights involved, can be demanded by any State (International Court of Justice, 1970).

The concepts of jus cogens and obligations erga omnes are similar but not identical. According to the UN International Law Commission Study Group on the fragmentation of international law, jus cogens norms are distinguished by their non-derogability and normative weight, while erga omnes obligations have a procedural scope, in the sense that all States have a legal interest in demanding their fulfillment. Hence, it can be stated that all jus cogens norms are erga omnes obligations, but not every erga omnes obligation bears the weight of a jus cogens norm. This is because "from the fact that all States have an interest in the fulfilment of an obligation it does not necessarily follow that those norms are peremptory - that is to say, they do not necessarily render conflicting obligations null and void" (International Law Commission, 2006, p. 83).

In environmental matters, Bachelet (2017) argues that particularly serious ecological aggressions, because they pose a serious risk to human existence and the planet, are prohibited by jus cogens norms and require the mobilization of the international community in the event of inaction by the States of origin. For Dupuy and Viñuales (2018), however, the current state of international law reveals that it is still difficult to conceive of environmental protection as a norm of jus cogens, although it is possible that certain environmental norms could be considered as erga omnes obligations, as suggested by the UN International Law Commission in its comments on article 48 of the Draft Articles on International Responsibility of States.

4 SOVEREIGNTY AND THE POSSIBILITY OF ECOLOGICAL INTERFERENCE

As discussed in the previous section, the principle of sovereignty traditionally implies a duty of non-intervention and a requirement of consent for international obligations to be imposed. However, international society, especially after the Second World War, has come to admit the existence of duties that are independent of state consent, as they are indispensable to peace and the affirmation of fundamental values. Thus, the idea of absolute power of States over their territories has given way to new forms of international interference, with emphasis on environmental issues.

Sands and Peel (2018) state that, while there are artificially created borders to delimit the sovereignty of States, the environmental order is composed of a biosphere of interdependent ecosystems, which means that the use of natural resources in one territory invariably has repercussions in another. And they note that "[...] the challenge for international law in the world of sovereign states remains to reconcile the fundamental independence of each state with the inherent and fundamental interdependence of the environment." (Sands; Peel, 2018, p. 13).

The basic duty of States not to cause transboundary environmental harm by activities carried out on their territory has long been affirmed in the historical Trail Smelter case, decided in 1941 by an international arbitral tribunal. The case involved a dispute between Canada and the United States over damage caused by smoke from a Canadian smelting plant to trees and crops located on the American side of the border. On that occasion the Court declared:

> […] under the principles of international law, [...] no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence (United Nations, 1941).

This obligation to prevent transboundary environmental harm was reaffirmed when principle 21 of the Stockholm Declaration (1972) and principle 2 of the Rio Declaration (1992) were adopted. In the latter, it is also worth mentioning principles 18 and 19, which established the duty of immediate notification in the face of natural disasters and emergency situations that may affect other States and the obligation to notify, consult and provide information to affected States in cases of activities with transboundary environmental impact (United Nations, 1992a).

Another particularly decisive step was taken by the International Court of Justice in 2015, when it ruled jointly on the Certain Activities/Construction of a Road cases involving Costa Rica and Nicaragua, which disagreed over works carried out in the border region of the two countries with serious environmental repercussions. In this decision, the Court established that:

> […] if the environmental impact assessment confirms that there is a risk of significant transboundary harm, a State planning an activity that carries such a risk is required, in order to fulfil its obligation to exercise due diligence in preventing significant transboundary harm, to notify, and consult with, the potentially affected State in good faith, where that is necessary to determine the appropriate measures to prevent or mitigate that risk […] (International Court of Justice, 2015, p. 63).

Craik (2020) emphasizes the importance of the decision because, unlike the Pulp Mills case, judged in 2010, the International Court of Justice was called upon to decide whether, even in the absence of a treaty, States would have a duty to conduct a transboundary environmental impact assessment. As a result, the Court ruled that, in the event of a significant transboundary impact, the State of origin must conduct an assessment and this is an implicit duty in the obligation of due diligence to prevent environmental damage, which is independent of treaty provision (International Court of Justice, 2015).

The due diligence test, understood as the verification of the adoption of all necessary measures, according to the available means and state possibilities, is shown as an element of flexibility in the assessment of the responsibility of States, which makes it possible to assess their behavior in the particular circumstances of the specific case (Shaw, 2021).

The cases mentioned above illustrate the limitations that have been recognized by international jurisprudence in relation to the sovereign power of States to develop activities with significant transboundary environmental impact on their territory. Such restrictions do not arise from the will of the State, but from the need to reconcile a world of multiple sovereign nations sharing the same environment.

It is precisely in this context that Bachelet (2017) proposes another possibility of intervention in States regardless of their consent: ecological interference, which would consist of the intrusion into a State that, even in the face of a major ecological risk of catastrophic proportions, fails to adopt adequate measures to prevent the damage or, if it occurs, to avoid its aggravation.

A risk of this magnitude could be observed recently in the context of the war between Russia and Ukraine. The constant bombings in the region of the Zaporizhzhia nuclear power plant, the largest in Europe, have aroused worldwide fear of the possibility of a disaster of

catastrophic proportions, with incalculable damage to human life and the environment (United Nations, 2022a).

According to Bachelet (2017), ecological interference would not differ from humanitarian interference, which has been frequently used within the United Nations, as both have in common the protection of the population and arise from the failure of States of origin to guarantee human rights.

The similarity with the instrument of humanitarian interference can be observed from recent manifestations of the bodies of the global and regional human rights protection systems, which have recognized not only a link of interdependence and indivisibility of the right to the environment with other human rights, but also its condition as an autonomous human right.

In Advisory Opinion (OC) No. 23/2017, delivered by the Inter-American Court of Human Rights, the right to a healthy environment was recognized as an autonomous human right, which can be extracted from the economic, social and cultural rights guaranteed by Article 26 of the American Convention on Human Rights. On that occasion, the Court underlined that it is an essential right whose degradation has repercussions on several other human rights, with which it maintains a link of interdependence and indivisibility, such as the right to life, health, housing, food, water, etc. (Corte IDH, 2017).

Similarly, the UN General Assembly, on July 28, 2022, adopted Resolution 76/300, which addresses the human right to a clean, healthy and sustainable environment. The text received 161 votes in favor, none against and 8 abstentions (Belarus, China, Cambodia, Ethiopia, Iran, Kyrgyzstan, Russia and Syria), a circumstance that revealed the broad international consensus on the subject (United Nations, 2022b). Resolution 76/300 recognizes the clean, healthy and sustainable environment as a human right, highlights its relationship with other rights, states that its promotion depends on the implementation of multilateral environmental treaties and calls on States, international organizations, companies and stakeholders to adopt policies aimed at improving cooperation (United Nations, 2022c).

Discussions involving the imperative of humanitarian assistance or the right of interference emerged in the late 1980s, with the purpose of rescuing, with or without the consent of the rulers, populations that were suffering, either due to a natural disaster or unjust power (Defarges, 2017).

In 1988, the United Nations General Assembly adopted Resolution 43/131, which emphasized the importance of humanitarian assistance for victims of natural disasters (United Nations, 1988). Years later, in 1992, the UN Security Council recognized the possibility of instabilities in the economic, social, humanitarian and ecological fields becoming threats to

international peace and security (United Nations, 1992b). Finally, in 2005, the General Assembly adopted Resolution 60/1, which established the mechanism known as responsibility to protect (R2P), aimed at protecting populations against genocide, war crimes, ethnic cleansing and crimes against humanity (United Nations, 2005b).

The R2P mechanism is based on three pillars: (i) primary responsibility of the State of origin; (ii) responsibility of the international community to assist States in exercising their primary responsibility; and (iii) responsibility of the international community, through the United Nations, to use diplomatic, humanitarian and other necessary means, including the use of force, through the Security Council, when peaceful means prove inappropriate (United Nations, 2005b).

Legal scholars also point out five parameters to be observed in the implementation of humanitarian intervention: seriousness of the threat to people, integrity of the motives of the international community, use of military force as a last resort, proportionality of resources and adequacy of consequences (Heintze, 2010).

Based on the premise that the environment is part of the common heritage of humanity, Bachelet (2017) argues that certain ecological aggressions, due to their seriousness and the high risk to human existence, would be prohibited by jus cogens norms and would therefore trigger the same response process as humanitarian interference.

The thesis, if accepted by the United Nations, would imply the adoption of the restrictions already established to the right of interference. Thus, ecological interference, as an exception to the principle of non-intervention enshrined in the UN Charter, would be limited to particularly serious situations in which the consummation or aggravation of ecological risks is absolutely unacceptable. In addition, in compliance with UN General Assembly Resolution 60/1 (responsibility to protect), the primary responsibility for the issue would always lie with the State of origin, and the decision to intervene, in case of omission, would always be collective, through the United Nations, thereby allowing greater control of its motives and avoiding the double standards typical of unilateral actions by States.

With regard to the means employed, once the need for international interference is recognized, diplomatic means would initially be adopted, in addition to other proportional and peaceful means, in order to assist the State of origin in exercising its primary responsibility. Only in the event that the initial measures were ineffective, and as a last resort, would it appear possible to use military force, with the endorsement of the Security Council, under the terms of Chapter VII of the UN Charter (United Nations, 1945).

The possibility of abuse in the use of ecological interference for geopolitical purposes is not overlooked, as can occur in certain humanitarian interference actions. As an example,

Moura (2015) warns of the possibility that developed countries, with more advanced environmental legislation, seek through this instrument to impose higher environmental standards on developing countries, which depend largely on the exploitation of their natural resources to thrive.

Nevertheless, the risk of misuse, common to all legal instruments, could be reduced by requiring a high standard of seriousness of the reasons invoked, as well as by the need for any decision on ecological interference to be adopted collectively, through the United Nations, as occurs with humanitarian interference. In this way, the reasons invoked would be subject to the scrutiny of other States, which could examine their relevance and curb any distorted use of the institute, ensuring universal, objective and non-selective action, as required by the Vienna Declaration and Program of Action (United Nations, 1993).

5 CONCLUSION

Nowadays, it is no longer possible to sustain the existence of an absolute right to environmental sovereignty. Although States may define their environmental public policies, there are important limitations on the activities carried out in their territory, such as the duty of due diligence to prevent transboundary environmental damage, as well as the duty of notification, consultation and information to affected States. This restriction stems from the unitary and indivisible nature of the environment, which does not recognize the artificial borders drawn by States.

With the recognition of the environment as a human right by both the regional and global human rights protection systems, a new possibility has become more evident: the use of the right to interfere based on ecological grounds. It is not, though, an instrument to challenge the legitimate choices of sovereign States in the definition of their environmental public policies, but an exceptional measure, to be implemented always collectively, through the United Nations, when the consummation or aggravation of serious ecological risks prove to be absolutely unacceptable and the State of origin does not act with due diligence to resolve the issue.

If ecological interference is necessary, the means adopted should encourage the State of origin, which has primary responsibility, to solve the problem through its own choices, as long as they are adequate to address the serious risk identified. In addition, the parameters set out in UN General Assembly Resolution 60/1 (responsibility to protect) and developed by the doctrine on humanitarian interference should be observed. With these precautions, it is expected that the collective mobilization of international society and the adoption of

diplomatic and peaceful measures will have the desired effect on the State of origin, so that it assumes its responsibility and removes the serious ecological risk verified in its territory, without the use of force, the last available resource.

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