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Thesis Booklet

The Impact of International Courts and Tribunals on the Development of International Responsibility of States for Environmental Damage

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1. Research background

1.2. The reason for the choice of the topic

In my opinion, environmental protection is one of the most important issues of our time, which partly justifies the choice of the topic of the dissertation. Every day we are confronted with the exploitation of humanity's exploitative behaviour. Climate change, acid rain, etc. are just some of the problems we have to face. With technological change, there are more and more activities, which can damage the environment not only locally, but globally too. In parallel with economic development came the first transnational problems. A hydroelectric or nuclear power plant or an atomic power station can have serious and long-term negative effects not only on the territory of the state in which the activity takes place, but also to other neighbouring states. The state cannot impose the effects of its actions, the consequences cannot be ordered to stay within the borders of the state. It follows from the sovereignty of states that they may carry out within their territory such activities as they see fit, but there are limits to this.

Not surprisingly, the transboundary harmful effects of industrial activities give rise to inter-tate disputes. The question logically arises: how are the rules on state liability for environmental damage evolving? In my view, environmental protection is for the safe keeping of all of us and future generations, therefore the problems need to be addressed at international level. What obligations does international environmental law impose on states? How can responsibility of states for environmental damage be established? I used these questions as a starting point when I chose the topic. These were the questions that made me interested. The problems of state liability in international environmental law can be traced back to the fact that the primary obligations of states are still unclear. The International Law Commission during the codification of rules of state responsibility, has distinguished between primary and secondary norms. According to this, primary norms are considered to be those which states the rights and obligations of states, while secondary norms are considered when there is a breach of a primary norm. The meaning and content of many primary norms in international environmental law are still largely unclear, which gives the topic its actuality. In my view, international judicial bodies can make a major contribution to clearing up the ambiguity surrounding these obligations. In the course of the research, I therefore considered it necessary to look not only at secondary but also at primary standards, mainly because I believe that they should be examined together in

order to obtain a comprehensive picture of the evolution of the responsibility of states for environmental damage.

1.2. The aim of the research

This research aims to make a gerenal conclusion about the responsibility of states and international environmental law, with the interpretation and process of relevant international courts and tribunals decisions. The thesis therefore focuses primarily and mainly on the decisions of international courts and tribunals, and based on these, it tries to paint a picture of current trends in environmental liability and the prevailing rules in international environmental law. The research questions are followed logically from the purpose of this research, which can be briefly summarised as follows.

The first question relates to the forms of liability for environmental damage. The idea of objective or sine delicto liability of states for environmental damage has been raised in the Trail Smelter dispute. This suggested that under general international law, the responsibility of states may incur not only ex delicto but also sine delicto for transboundary environmental impacts. The International Law Commission has also discussed the existence and applicability of the latter liability regime in international law, but narrowed it down to the category of transboundary environmental damage. The rules of liability have been shaped to a large extent by the international courts, so the question arises whether states sine delicto liability for environmental damage has been established in the case law. Is it clear from the clase law that general international law accepts this type of liability?

The second question relates to the basis for liability for environmental damage. What is the basis for the liability of states for environmental damage according to case law?

The third question relates to the no-harm rule in respect to responsibility for environmental damage. All damage is prohibited? What is the meaning of the rule and what are it’s consequences?

The fourth question comes from the previous one. In what situations arises the no-harm rule obligation and what other duties do derive from it? The case law emphasizes the obligation of prevention in respect of the no-harm rule. Environmental damage is often very difficult to prove, often almost impossible, both because in many cases the effects are long-term and

because it is difficult to prove causality, given that the effects are often cumulative (e.g. air pollution).

The fifth and last reasearch question is related to the due diligence standard. In the dissertation, I research what role the due diligence standard plays during the evaluation of state responsibility regarding of environmental harm, in other words, how international courts and tribunals use it when they establish state responsibility. It follows from this the question the next one: when is the State diligent, and what is the standards relationship with other obligations and principles.

2. Method and sources used in the research

2.1. The method of research

In examining the chosen topic, i.e. the international legal responsibility of states for environmental damage, I used the inductive approach. In choosing the method of research I heavily relied on Gerog Schwarzenberger. In Schwarzenberger's view, the correct definition of the principles of international law is based on judicial decisions and on the dissenting opinions of judges, thus achieving an appropriate level of generalisation and abstraction.[1] In his view, courts are "law-making agencies" that determine the existing rules of international law through case law. The former was a starting point for me in my research methodology and approach to the topic.

The approach to the topic and the background of the chosen research methodology is discussed in several subsections of the thesis. In my opinion, the chosen method of the research and the approach of the topic is justifiable by i) the function of the judge; ii) the specificity of international legislation; iii) the consistency of decisions; iv) and by the role of customary international law and the difficulty of identifying it.

In examining this topic, my main starting point was that the role of the judge is broader than it might first appear. Judges not only decide the case before them, not only apply and interpret the case but also develop the law. In my view, judges contribute to the development of the law by deciding cases and interpreting and applying the law. Through this activity, the

[1] Georg SCHWARZENBERGER,: *The Fundamental Principles of International Law*, Recueil des Cours, Vol. 87., 1955/I and Georg SCHWARZENBERGER: *The Inductive Approach to International Law*, Stevens, London, New York, 1965

consequences of decisions taken in individual cases are not only inter partes but also affect relations with other states. In my view, the law-developing activity of international courts and tribunals is an explicit requirement of international law. This is partly due to the specific nature of international legislation. Unlike domestic law, international law does not have a specific legislative body and the nature of the international legal order is essentially consensual. This leads to several problems: on the one hand, international legislation is much slower, and, on the other, it is less precise than domestic law. International law is more ambiguous and it is often unclear exactly what obligation a norm imposes on a state. International courts and tribunals may be able to remedy these problems through their law development activities, especially in the field of international environmental law and the rules relating to the responsibility of states for environmental damage.

In my opinion, there is consistency in the decisions of international judicial forums, and not only the International Court of Justice, but all international courts take into account their own previous decisions. It is interesting and significant to note that in several cases, not only do international judicial bodies refer back to their own earlier decisions, but they also refer to the judgments of other international courts and tribunals. This suggests that the international judicial bodies have regard to each other. This phenomenon can also be observed in cases such as the World Trade Organization's Appellate Bodies decisions, but there have also been cases, when the Permanent Court of Arbitration has referred to a decision of the International Tribunal for the Law for the Sea. International judicial bodies play an important role in identifying customary international law, and although there are a large number of international treaties in the field of international environmental law, the rules of state responsibility remain dominated by general international law and customary international law remains relevant.

2.2. Sources and the limitation of the research

As the title of the thesis indicates, the main sources of the thesis are the relevant case law of international courts. The dissertation examines the relevant decisions of the International Court of Justice, the International Tribunal for the Law of the Sea, different arbitral tribunals and the World Trade Organization. In my analysis of the case law, I have also taken into account the dissenting and separate opinions of the judges who delivered the judgments, which I believe provide information for the interpretation and understanding of the decision.

This thesis does not discuss the decisions of the Court of Justice of the European Union, both for reasons of length and because of the sui generis nature of the European Union. The paper also does not deal with arbitration in the World, the International Centre for Settlement of Investment Disputes, and the North American Free Trade Agreement. The former is justifiable by the fact, that in these cases, disputes between host states and foreign investors, who are private individuals or non-resident state actors. Logically, the treatise does not address the issue of human rights tribunals cases of human rights courts.

The dissertation also seeks to review the relevant literature. In the course of the research, I have placed great emphasis on the review of both domestic and foreign literature. In addition to the domestic literature, the dissertation also focuses on the foreign literature, the latter being dominated by the search for and presentation of studies and monographs in English. In my research gretaly helped me Patricia Birnie, Alan Boyle and Catherine Redgwell book of International Law and the Environment[2] and also Philip Sands's, Jacqueline Peel's, Adriana Fabra's and Ruth MacKenzie's work called Principles of Internaitonal Environmental Law.[3] I would like to also refer to the book of Alexandre Kiss és Dinah Shelton, titled Guide to International Environmental Law.[4]

In addition to hard law I also used some soft law documents as sources for my research. Of particular note are the Stockholm Declaration of 1972 and the Rio Declaration of 1992, which set out a number of environmental principles. The thesis also draws on the 2001 draft articles on state responsibility [5]and prevention of harm instruments adopted as by the International Law Commission.[6]

3. Structure and structural units of the thesis

3.1 The first section of the thesis

[2] Patricia, BIRNIE – Alan, BOYLE – REDGWELL Catherine*: International Law and the Environment*, Third Edition, Oxford University Press, Oxford, New York, 2009

[3] Philippe SANDS – Jacqueline PEEL – Adriana FABRA – Ruth MACKENZIE: *Principles of International Environmental Law*, Third Edition, Cambridge University Press, Cambridge, 2012

[4] Alexander KISS – Dinah SHELTON,*: Guide to International Environmental Law*, Leiden, Martinus Nijhoff Publisher, 2007

[5] ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001

[6] ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities 2001

The thesis is structured using the inductive method, so the case law is presented first, followed by the conclusions that can be drawn from it. The thesis is in fact divided into eight parts, which can be broken down into three major sections. The first unit is the introduction, where I clarify the purpose of the research, the research questions and the research methodology, as well as the rationale behind the approach and research methodology chosen. In the latter, I have identified the judicial function, the problems arising from international legislation, the consistency between decisions and the role of customary international law and the difficulties of identifying it. In this section, the thesis is also delimited. At the end of the introduction, there is a brief review of what I consider to be the most important cases that have shaped and influenced to a large extent the rules of the responsibility of states for environmental damage (e.g. Trail Smelter, Corfu Channel, Paper mills). This is merely intended to give the reader a 'taste' of the cases discussed in the thesis.

3.2. The second section of the thesis

Parts II-IV comprise the second structural unit of the thesis. These sections are intended to introduce and elaborate on the decisions of international courts and tribunals that have an impact on the responsibility of states for environmental damage under international law. In the thesis, I examined the cases in three "waves". Each case is followed by a concise summary of the impact and significance of the case. In making this division, I took into account the study and monographs of Jorge E. Vinuales and Philip Sands. Vinuales has divided the cases brought before the International Court of Justice into two major groups.[7] In the thesis, I have taken the former approach to the cases dealt with by various international judicial forums. The grouping follows a chronological order rather than a division by international courts and tribunals, because in my opinion this provides a better overview and transparency of the issues that arose in each period, the solutions that were reached and the trends that can be read from it.

Part II of the thesis presents the first wave of international judicial decisions shaping the international responsibility of states for environmental damage. A characteristic feature of this wave is that the focus of attention has shifted to resolving the conflict of rights arising from sovereignty. I have included inter alia the Trail Smelter, the Corfu Channel, Lac Lanoux and the Nuclear testing cases. Part III covers the second wave, where the protection of the

[7] Jorge E. VINUALES: *The Contributiofn of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment,* Fordham International Law Journal, Vol. 32, No. 1, 2008

environment per se and the obligations related to it are already at stake. In this section among others, the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons, the Bős-Gabcikovo case, and the MOX plant case in Hungary are presented. Part IV of the dissertation deals with the third and still ongoing wave of cases. This wave has seen the crystallization of the rights and obligations of states under international environmental law. The wave includes cases such as Iron Rhine, Paper mills, Kishenganga, and the South China Sea cases.

3.3. The third section of the thesis

The third and final section of the dissertation examines the impact of the decisions presented earlier in the thesis on international environmental law, comparing the ratio decidendi and obiter dictum of the judgments, drawing the conclusions on the evolution of responsibility for environmental damage and the norms of international environmental law, reaching the level of generalisation. This section aims to examine what trends in case law can currently be read, while at the same time trying to give a sense of the impact and role of international court and trobunals in the development of law.

Part V first deals with the form of liability sine delicto for environmental damage, i.e. liability for transboundary damage caused by lawful activities. In this context, the thesis clarifies first the relationship between sine delicto liability and transboundary effects. The following chapters of the thesis clarify the distinction between sine delicto and ex delicto (responsibility for the internationally wrongful acts of states), and examine whether thourgh case law the objective liability has been accepted in international law, along the lines of the hazardous liability known from domestic law. Part V also deals with the codification of responsibility, with particular reference to the three liability drafts produced in the framework of the work of the International Law Commission, and the solutions to the sine delicto liability issue that was already raised there. The thesis also raises the possibility of a lex specialis, looking at current trends, i.e. whether there can be, and is, a multilateral treaty that accepts liability sine delicto stricto sensu.

Part VI of the thesis deals with the basis and content of liability for environmental damage. In this part I examine the relationship between the sic utere tuo ut aliaenum non laedas maxim as a liability clause, used as a solution in case law, and other principles such as good neighborliness, abuse of rights, and prohibition of torts. This chapter also discusses the threshold of harm, which refers to the harm that a neighboring state must tolerate. I think that

it is important to clarify the former at the outset, i.e. at the beginning of Chapter VI, because this is the basis for several norms of international environmental law, such as the requirement to prevent environmental damage, which permeates the whole environmental environmental law. Chapter 1 is thus logically followed by Chapter 2, which deals with the obligation of states to prevent environmental damage. Here, I examine the customary law status of the obligation in the light of the case law, but I was also curious about the nature of prevention, i.e. whether we are faced with a result or rather an obligation of conduct.

In relation to prevention, it is inevitable to discuss due diligence. The third chapter of Part VI of this thesis undertakes this task. In this section, it is explained inter alia whether case law is objective or subjective, i.e. whether its fulfilment is judged on the basis of the state's own capabilities or on the basis of objective requirements. The remaining chapters of the thesis examine the case law on when states act with due diligence. Thus, the fourth chapter discusses and identifies the duty to cooperate and the forms in which it is implemented. The fifth chapter explains the purpose, timing and content of the notification and consultation obligation, while the sixth chapter looks at the obligation to conduct an environmental impact assessment. The former chapter also covers the status, purpose, content and timing of the environmental impact assessment, i.e. when and under what circumstances the obligation arises. In Chapter 7, I attempt to interpret the precautionary principle by examining how it is reflected in case law. It appears in the arguments of the states on several occasions, so I thought it was important to analyze it, as well as to the principle of sustainable development. The final chapter of Part VI seeks to dispel the ambiguity surrounding the role of the principle of sustainable development in international law, both by examining soft law documents and, in particular, by studying case law.

Finally, Parts VII and VIII conclude the thesis. Part VII contains some further reflections, while Part VIII is intended to provide the reader with a summary of the most important results of the research, summarising the answers to the questions examined in the thesis, which can be concluded from the analysis of the case law.

4. Summary of the research findings

The thesis statements and relevant scientific research findings are summarised below.

The first wave of cases examined raised the possibility that sine delicto liability of states was accepted. Early cases such as the Trail Smelter arbitration award suggested that the arbitral tribunal had accepted the sine delicto liability of states by analogy. According to the award „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." [8] However, further decisions analysed in this thesis show that the former liability clause does not refer to the acceptance of sine delicto liability for environmental damage, but to the obligation to prevent environmental damage. The previous passage in the award was further developed by the International Court of Justice in the Corfu Channel case, where it was confirmed in general terms that no state may knowingly allow its territory to be used to the detriment of the rights of other states. The causal link in this case is established between the act and the damage caused, as in many other cases. The case law does not therefore support the view that that the sine delicto liability of the states for environmental damage is accepted in general international law. It follows that the general rules of international responsibility apply to environmental damage.

The question is whether there is possibility of regulating liability sine delicto of states for environmental damage by lex specialis? The International Law Commission's a forementioned 2001 draft - which, although formally soft law, but in practice reflects customary international law norms - does not rule out the possibility of such. However, so far not much attempts have been made to define states sine delicto, or primary objective liability in the field of international environmental law. There is though one multilateral treaty that accepts liability sine delicto of the states: the 1972 Convention on International Liability for Damage Caused by Space Objects[9] is a treaty, which explicitly accepts the objective, absolute liability of states for damage caused by space objects. In my view, environmental damage is included in the definition of damage in the treaty, although it does not cover the category of environmental damage expressis verbis. There are also one or two bilateral conventions on the liability of states sine delicto, but these are considered extraordinary. This form of liability for environmental damage can be regarded as very exceptional, even in the case of lex specialis, and it is by no means possible to conclude that this type of liability is widely accepted by states, and cannot therefore be regarded as a widely accepted practice or as a manifestation of opinio iuris. Instead, the prevailing trend

[8] Ld. Reports of International Arbitral Awards, Trail Smelter Case, (USA, Canada) 1938 and 1941, 1965. p.
[9] The Convention on International Liability for Damage Caused by Space Objects 1972

is that international treaties place primary responsibility on the operator, with state responsibility only arising in a subsidiary manner.

The case law, by means of the sic utere tuo maxima, provides for the prohibition of damage and, in this context, the requirement to prevent transboundary environmental damage. The decisions examined in this thesis suggest that, following the approach of the International Law Commission, liability for environmental damage is expressed at the level of primary standards, and that in case of their violation, the general rules of liability apply, i.e. liability for internationally wrongful acts. On the basis of the case law, the content of sine delicto liability in this sense can also be defined, such as the obligation of prevention and the various procedural obligations that may be attached to it, such as notification and consultation or cooperation.

The results of my research show that the focus of liability for environmental damage is on prevention, which has been repeatedly recognized as a norm of customary law in case law. The prevalence of the former obligation appears to be emerging from the case law. The question arises as to whether the former is a duty to achieve results or a duty of conduct. Is it a duty to prevent all harm or does it refer to a form of behaviour? Based on the decisions in the litigation, I have come to the conclusion that prevention is a duty of care, and therefore does not imply a requirement to prevent damage altogether.

Moreover, prevention is linked to a number of obligations, from which several other obligations of a procedural nature follow. Crucially, my examination of the case law has led me to conclude that states have a duty of care to prevent environmental damage, and must therefore act with due diligence in preventing environmental damage. As I have already mentioned, prevention entails the fulfilment of a number of obligations which, together with prevention, are linked to a certain magnitude of damage, namely the category of significant environmental damage. This means that states do not have an obligation for all levels of damage, but only when it reaches a certain level, which is defined as "significant." The precise meaning of "significant environmental damage" is unclear and not objectively defined, but the International Law Commission's commentary to its 2001 draft Preventive Action Plan provides guidance on the issue. According to this "significant" is more than can be detected, but does not rise to the level of "serious", and that the assessment must take into account the circumstances of the case. In the absence of clarification, it is the states who ultimately determine what constitutes significant when a particular activity is planned.

The erga omnes nature of prevention is still questionable as it cannot be clearly established on the basis of the case law, that it is an erga omnes obligation. Since environmental damage is

ultimately in the interest of humanity as a whole, the possibility cannot be excluded, that the question will arise more and more in the future.

Whether the state has fulfilled its duty to prevent transboundary environmental damage is determined by the test of reasonable care. There is a close link between due diligence and prevention, as they are achieved by fulfilling the same obligations. Failure to act with due diligence raises the issue of state responsibility even in the absence of environmental damage, so responsibility can arise even if no environmental damage has occurred. In this case, as I have already indicated, there is therefore a presumption of illegality, soa the general rules of responsibility will apply. The due diligence requirement is clear from the case law, the causal link is to the wrongful act and not to the activity per se.

From the above, the logical question is: when does the state act with due diligence? On what basis is it necessary to judge, i.e. subjective or objective?

The subjective approach is that the care required of the state is that which is appropriate with the means available to the state. In this sense, it can be established by taking into account various subjective factors, such as the economic development of the state, etc. The Rio Declaration refers to the principle of common but differentiated responsibilities of States, stressing that they should act "according to their means". The objective approach is that there are standards by which to judge what behaviour or care is expected of a state. My conclusions from the case law are that there are certain standards that can be expected of any state. One might say that these are the minimum requirements that ar expected of a good government.

What can reasonably be expected of a prudent state, i.e. what is the content of due diligence? These elements can be gleaned from the cases examined. In my view, a state will act with due diligence if it (i) prepares an environmental impact asssesment (EIA); (ii) notifies the state concerned; (iii) engages in consultations with the state concerned; (iv) cooperates in preventing environmental damage; (v) and monitors the activities.

The purpose of an EIA is to provide states with timely information on the likely environmental impacts and risks of their activities. The International Court of Justice has declared beyond doubt that failure to carry out an adequate EIA constitutes a failure to exercise due diligence. Another important finding is that case law now considers environmental impact assessment to be part of customary international environmental law. States are thus under an obligation to prepare an EIA in each case where there is a risk that the consequences of an activity could cause significant transboundary environmental damage in the territory of another

state. Environmental impact assessment is an ongoing obligation, so it is not sufficient to carry it out once, which reflects due diligence. States must be satisfied about the environmental impact of their activities, which is expected of all diligent states. However, there are questions about what exactly the EIA should contain. While the case law suggests that there are certain minimum requirements - of which the South China Sea case is an excellent example - exactly what these are, still remains unclear. What is clear in this respect is that the EIA must cover not only the territory of the source state, i.e. the state where the activity is to take place, but also the effects on the environment of the potentially affected state. It can also be concluded from the case law that the EIA must be completed before the activity starts.

It follows from the principle of good neighbourliness that it is necessary to inform the state concerned of the activities that put it at risk. In this respect, the obligation of notification and consultation, as already established by the International Court of Justice in the Corfu Strait case, has an important role to play. The notification must take place before the decision on the fate of the project is taken, and the obligation arises if the results of the environmental impact assessment indicate that there is a risk of significant transboundary damage. In this case, the source state must notify and inform the state concerned. However, the "notification" can also be initiated by the affected state: the conclusion from the case law is that all states have the right to request information. However, the obligation to notify is not the same as asking for permission: the source state is not obliged to ask for permission from the state concerned to start an activity, but it is obliged to consult and take into account the proposals of the state concerned when it finally decides on the fate of the project. Consultation can thus contribute to resolving conflicting interests, leading to a compromise solution.

In the also dealt with the precautionary principle, which I considered important to study both because I believe it is linked to prevention and because in disputes it is often invoked by states to justify their conduct as a rule of customary international law or as a reversal of the burden of proof. In examining environmental cases, I have found that case law does not recognise the customary international law status of the precautionary principle. It is usually referred to by the use of the words "prudence" or "vigilance" or even "caution", and is not recognised as having the effect of shifting the burden of proof.

Among the principles of international environmental law, I also considered it essential to look at the principle of sustainable development. It is widely accepted that sustainable development means development that meets the needs not only of the present but also of future generations. Examining the case law, I conclude, on the one hand, that sustainable development

cannot be considered a norm and, on the other hand, that international courts interpret and apply it as a necessity to reconcile interests when a conflict arises between the right to development and the interest in environmental protection.

In my view, overall, the thesis is capable of providing the reader with an insight into current trends and recurring problems related to the responsibility of states for environmental damage. In my view, there is a de lege ferenda need for a multilateral convention of a general nature to deal with environmental damage, which could codify obligations already established in customary international law and help to clarify a number of problematic issues that usually arise in litigation. In this regard, I believe that the draft on prevention of the International Law Commission could be an excellent starting point, as it sets out a number of norms that are now recognised as customary international law. However, in my opinion, certain amendments would be necessary as regards the content of certain primary obligations. In order to achieve effective environmental protection, the requirement for an environmental impact assessment should, in my view, be more explicit and more clearly defined. This is because environmental impact assessment is a first step in effective damage prevention, and the minimum requirement of good governance is that the state informs itself about the likely negative impacts of activities under its jurisdiction or control. It is at this stage that data is collected, evaluated and analysed to determine the likely level of risk and impact. I therefore think it is particularly important that the environmental impact assessment is realistic and reliable. The case law leaves it to the discretion of the states as to what the content of such an impact assessment should be, but in my opinion this is not a good approach. In many cases, the question has been raised and debated as to when a study can be considered an environmental impact assessment. While in one case a study was deemed adequate, in another it was not. In this respect, I believe that what is needed is, first and foremost, the formulation of minimum requirements, for which the 1994 Espoo Convention on Environmental Impact Assessment in a Transboundary Context could be a starting point. I think that in defining the it’s contents elements, it would be useful to compare the way in which states prepare environmental impact assessments based on the requirements of domestic law, which would help to identify common points and elements, highlighting practices.

Environmental impact assessment is also closely linked to the notification and consultation requirements. In my view, the timing and content of the notification should also be clarified. In my view, notification can play a role not only when there is a risk of significant harm as a result of the EIA, but also before. For example, if the source state notifies the affected state during

the planning stage of an activity, this could open up the possibility of starting consultations and thus cooperation at a much earlier stage, so that solutions can be found jointly to avoid or minimise damage. For example, if the source state notifies the affected state during the planning stage of an activity, this could open up the possibility of starting consultations and thus cooperation at a much earlier stage, so that solutions can be found jointly to avoid or minimise damage. For example, when it comes to a shared natural resource such as a river, states could, in good faith, jointly assess the environmental impacts of the activity. In this respect, it would be essential to set out exactly what such a notification should contain, what it should cover and what information it should provide to the state concerned.

In my view, the triad of environmental impact assessment, notification and consultation is the right way for cooperation between states and, in my opinion, the only way to achieve effective damage prevention. Therefore, the heart of a treaty dealing with environmental damage in general should be the clarification of these requirements, defining and specifying the forms of cooperation. In my view, this would also clarify to a large extent what kind of due diligence is required of a state, and ultimately would greatly assist the work of international courts and tribunals in assessing the conduct of states. Nevertheless, it is clear that the law-development activities of the international courts and tribunals contribute greatly to the development of international environmental law standards and will continue to do so in the future.

In my view, liability for environmental damage has undoubtedly shifted towards prevention and due diligence, and this seems to be the way to solve the problem of state liability for environmental damage for the time being. The question is, however, what happens when a state has demonstrated that it has acted with due diligence in the prevention of environmental damage, but somehow environmental damage still ocurred. This has not yet happened in case law, but it does not exclude the possibility.

5. Publications regarding the dissertation

1. A környezeti kár fogalma a nemzetközi jogban, KRE-Dit: A KRE-DOK ONLINE TUDOMÁNYOS FOLYÓIRATA, 2019/1

2. Covid-19 járvány és a vadvilág nemzetközi kereskedelmének kapcsolata In: Miskolczi-Bodnár, Péter (szerk.) XVIII. Jogász Doktoranduszok Szakmai Találkozója 2020, Budapest, Magyarország: Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar (2021)

3. A Nemzetközi Bíróság és az Antarktiszi bálnavadászat ügy In: Csanádi, Viktor; Farkas, György Tamás; Jakab-Köves, Gyopárka; Jeki, Gabriella; Segesdi, Gergő; Tóth-Gyóllai, Dániel (szerk.) Studia Iuris, Historiae, Theologiae: A KRE I. Multidiszciplináris Doktori Konferenciájának Tanulmánykötete, Budapest, Magyarország: Károli Gáspár Református Egyetem Doktorandusz Önkormányzata (2021)

4. A Nemzetközi Jogi Bizottság nemzetközi környezetvédelmi joggal kapcsolatos munkája In: Csanádi, Viktor; Farkas, György Tamás; Jakab-Köves, Gyopárka; Jeki, Gabriella; Segesdi, Gergő; Tóth-Gyóllai, Dániel (szerk.) Studia Iuris, Historiae, Theologiae: A KRE I. Multidiszciplináris Doktori Konferenciájának Tanulmánykötete, Budapest, Magyarország: Károli Gáspár Református Egyetem Doktorandusz Önkormányzata (2021)

5. A nemzetközi ítélkezési gyakorlat hatása a nemzetközi környezetvédelmi jog fejlődésére In: Miskolczi, Bodnár Péter (szerk.) XVI. Jogász Doktoranduszok Országos Szakmai Találkozója, Budapest, Magyarország: Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar (2020)

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