

Direito Internacional do Ambiente e da Energia

Licenciatura em Engenharia da Energia e Ambiente – Aula 3

3. Princípios de DI do Ambiente

- **Princípios gerais de DIP têm uma leitura diferente**
 - **Soberania tem de ser vista como limitada**
 - **Silêncio da lei não é permissão: o princípio “Lotus” não se aplica**
 - **Princípios próprios:**
 - **Preocupação comum da humanidade (e não património comum da humanidade)**
 - **“No harm rule” – Dever de evitar o dano**
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Designation	Jurisdiction	Start	Completion / state of procedure
Pulp Mills on the River Uruguay (Argentina v. Uruguay)	Art. 60 of the 1975 Statute	4 May 2006	Judgment 20 April 2010
Aerial Herbicide Spraying (Ecuador v. Colombia)	Article XXXI of the Pact of Bogotá of 30 April 1948, and Art. 32 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.	31 March 2008	Revoked by Ecuador
Whaling in the Antarctic (Australia v. Japan)	Article 36, para 2, of the Statute	31 May 2010	Judgment, March 31 2014
Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)	Article XXXI of the Pact of Bogotá of 30 April 1948 and both parties acceptance of jurisdiction according to Article 36, para 2, of the Statute	18 December 2010.	United by the Court in 2013
Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)	Article XXXI of the Pact of Bogotá of 30 April 1948 and both parties acceptance of jurisdiction according to Article 36, para 2, of the Statute	21 December 2011	

Dever de evitar Dano

- Princípio 2 da Declaração do Rio
- Devida diligência

“The existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment.” (TIJ, Parecer consultivo sobre a Legalidade da Ameaça e Uso de Armas Nucleares, 1996)

Evitar Dano e boa vizinhança (Cooperação)

“A State is thus obliged to use all of the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another state” (TIJ, Argentina v. Uruguai, Pulp Mills on the River Uruguay, para 101)

Obrigaç o de notifica o e consulta sobre atividades com impactes transfronteiri os – e.g. cursos de  gua internacionais (Caso Lac Lanoux)

AIA – ‘it may now be taken as a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial; activity may have a significant adverse impact in a transboundary context’ (TIJ, Pulp Mills, para. 204)

Responsabilidade ambiental

Do caso Trail Smelter (1938-1941) até ao Nicarágua v. Costa Rica (2018)

“The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage” TIJ, caso Gabčíkovo-Nagymaros (1998), parag 140

Outros princípios de DIA:

- **O princípio da prevenção (Princ. 2 do Rio: atuar razoavelmente para prevenir danos ambientais prováveis) e da precaução (Princ. 15 do Rio: mesmo se o perigo sobre o ambiente for incerto, a incerteza científica não afasta o dever de evitar/mitigar esse perigo)**
 - **Princípio do poluidor-pagador**
 - **Princípio do desenvolvimento sustentável**
 - **Princípio da justiça intergeracional**
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Muito obrigado!

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