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Il divieto di inquinamento transfrontaliero

Tullio Scovazzi¹

Abstract

According to well established principle of international environmental law, stated in the Stockholm (1972) and the Rio (1992) Declarations, States are bound 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. This principle was for the first time applied in the arbitral award on the Trail smelter case (United States v. Canada, 1941), where the Court found that no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes to the territory of another State or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence. Since then, it was consistently confirmed by several international courts decisions and many international treaties. The principle applies also as regards polluting activities carried out by private subjects, where a State fails to exercise an adequate control, and has been extended to protect also the environment in areas beyond national jurisdiction (high seas, Antarctica, outer space). It covers also the risk of pollution, in cases where dangerous activities are carried out without prevention measures. Most breaches of the rule on the prohibition of environmental harm depend on the lack of due diligence in carrying out activities hazardous for the environment and on lack of cooperation with potentially affected States.

Key words: International law, Environment, Transboundary harm, Prevention, Reparation, Co-operation.

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Riassunto

According to well established principle of international environmental law, stated in the Stockholm (1972) and the Rio (1992) Declarations, States are bound 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. This principle was for the first time applied in the arbitral award on the Trail smelter case (United States v. Canada, 1941), where the Court found that no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes to the territory of another State or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence. Since then, it was consistently confirmed by several international courts decisions and many international treaties. The principle applies also as regards polluting activities carried out by private subjects, where a State fails to exercise an adequate control, and has been extended to protect also the environment in areas beyond national jurisdiction (high seas, Antarctica, outer space). It covers also the risk of pollution, in cases where dangerous activities are carried out without prevention measures. Most breaches of the rule on the prohibition of environmental harm depend on the lack of due diligence in carrying out activities hazardous for the environment and on lack of cooperation with potentially affected States.

Parole chiave: Diritto internazionale, Ambiente, Danno transfrontaliero, Prevenzione, Riparazione, Cooperazione

■ 1. Inquinamento transfrontaliero e inquinamento globale

Come prevede il Principio² della Dichiarazione di Rio su ambiente e sviluppo del 1992, che riprende quasi testualmente il Principio 21 della Dichiarazione di Stoccolma sull'ambiente umano del 1972²,

States have, in accordance with the Charter of the United Nations and the principles of international law, (...) 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.

² «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»