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New World Challenges

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ABSTRACT

The coronavirus (Covid-19) is a singularphenomenonwhoseeruption has transformed planet Earth into a planetary village generating a kind of cosmopolitanism.

Given the disagreements observed in the world on the posture of WHO, to deal with the above phenomenon, this specialized agency of the United Nations system can appeal to the International Court of Justice and request an advisory opinion so as to have elements of policy which is favored by the greatest number.

Ladies and gentlemen. Sincethereisthis "carpentrydevice" thatiscalledthrone and men to settle in, man himself has nowhere to go. In other words, the individualis in exile in the society of states.

One can observe the unreliability of the paradigmdominating the world. In fact, in one quarter, the virus caused the world'sgreatestpowers to retreat by 70 years, withoutendowingthemwithgreaterwisdom, because the leaders of our world are "business-minded". Developing countries must have a resilience system thatwillallowthem to deal withthis type of devastating and unpredictablephenomenonforever.

On the other hand, the measurestakenlinked to the confinement and the closing of borders have generated a singularreduction in pollution, whichpromotessustainability for all the states with, on the one hand, climate change, and on the other , the issue of marine geneticresources.

INTRODUCTION

The coronavirus has transformed the world into a global village creating a cosmopolitan situation. What's more, containment measures and border closures stopped pollution in a quarter. This has consequences for resilience and sustainability.

Ever since that“wood joinery”called throne was created and men sit on it, man began wandering. In other words, the individual is in a perpetual exile within the community of States. It is through a principle of inter States sharing that the law of the sea was instituted, making individual interest eventually laid to rest.

The Third United Nations Conference on the Law of the Sea, the subject of which was the national appropriation of maritime areas between different categories of States, brought together all States of the world, and indeed, witnessed unprecedented talks. Debates were more about spaces than principles. States take part in it, but only to conceal their interests or to justify their appropriations[1].

As stated by an author, the problem with UNCLOS and other laws of the sea instruments is that they are designed for States and not for individuals.

The law of the sea is a State-centered regime, in which States that have the rights (and obligations) while people may at most be considered as beneficiaries”.

Traditionally, even when it has had at heart human concerns, the law of the sea has spoken the language of States duties and not of individual rights”. That is to say, individuals are deprived of Locus Standi because only on behalf of States can a matter be brought before ITLOS. However, The Seabed Dispute Settlement Chamber is opened to individuals, providing specific conditions. Legal instruments relating to the sea have a different goal, even if human rights considerations are set in their legal frame.

What we can see is the coexistence of ineffective legal rules with political attitudes that trample them daily.

Power is no longer institutionalized; it is personalized insofar as one no longer distinguishes a person from his function. The public, official position is the object of private appropriation by its holder and this, at all levels of power. The

political leader can thus constitute a personal network of power allowing him to control the State. Likewise, each depositary or assignee of the smalle stparcel of public authority, monetizesit for his profit. In this way, power is concretized in the attitude of the clerkor the bailiffso as not to go far ... Thus, the search for power generates the logic of the accumulation of resources which ends up happening because of men's ethics.

This is how power, wealth and prestige maintain a synchronous relationship because access to power becomes a privileged mode of access to wealth and social prestige. This situation reflects the fact that politicians are 'business-minded' and reflects the posture observed absolutely in the world in the face of the eruption of the Coronavirus (Covid-19) which, in the space of a quarter has made regress 70 years the world economic powers, which however think of wanting to live with the virus for reasons of economy.

This means that the basic paradigm they use is neither reliable norsustainable because in one quarter, we go from recession (system aticreduction in the rate of growth, singularstubble& large-scalebankruptcies of the largest businesses) todepression.

1. R.J. Dupuy, L'oceanpartagee, Paris, Pedone, 1979, p. 1

CORONAVIRUS, COVID-19: ADVISORY OPINION FROM ICJ

- This coronavirus appears to be a real challenge, both at the state level and at that of the specialized agency of the United Nations system known as the WHO.
- Besides that, there is a need for resilience at the level of States, in particular, those in development
- Finally, sustainability for other environmental phenomenon.

Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus[2].

Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness[3].

The best way to prevent and slow down transmission is be well informed about the COVID-19 virus, the disease it causes and how it spreads. Protect yourself and others from infection by washing your hands or using an alcohol-based rub frequently and not touching your face.

The COVID-19 virus spreads primarily through droplets of saliva or discharge from the nose when an infected person coughs or sneezes, so it's important that you also practice respiratory etiquette (for example, by coughing into a flexed elbow).

At this time, there are no specific vaccines or treatments for COVID-19. However, there are many ongoing clinical trials evaluating potential treatments. WHO will continue to provide updated information as soon as clinical findings become available? Coronavirus disease (COVID-19) outbreak situation 10922324 confirmed cases523 011 Confirmed deaths 216 Countries, areas or territories with cases

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WHO can request an advisory opinion from the International Court of Justice in The Hague. Faced with the dissensions observed in the world over its role and its posture in the face of the Coronavirus.

2. World Health Organization (WHO) website, 2020, Coronavirus
3. Ibid

- The advisory function is, at present times, reminiscent of a museum artefact to be restored requiring the legal practitioner to play an archaeological role at a time when there is a lack of cases before international courts and tribunals. It can be assessed as a fallback procedure, a peaceful settlement of disputes that is less constraining than contentious proceedings before international courts and tribunals. Yet, recourse to international judicial settlement—Permanent Court of International Justice (PCIJ)/ International Court of Justice (ICJ)—and arbitration was considered, over a century ago, a crucial stage in international law.
- However, if the attitude of States towards the international judicial settlement of disputes is anything to go by, we can see

that overcoming the hurdles is a challenging task.[4] One would think that the abhorrence of States for judicial settlement is inherent in the very structure of an international society fashioned by political processes and where the individualistic interests of States are omnipresent. This explains the under-utilization of international courts and tribunals. The reasons for this stance taken by States have often been debated and fingers have been pointed at the composition of permanent courts and tribunals, the red tape and significant cost of the procedure, the uncertainties or divisions with regard to the content of the applicable law, etc. Nowadays, the fragmentation of international law is widely talked about as well as the supposed risks to which the proliferation of Courts could lead.[5]

- This being the case, one can comprehend the many reservations made by States, for instance, to their declarations accepting compulsory jurisdiction, which eventually cleanse the latter of their meaning. The consent of States parties to the dispute is hence essential. Indeed, States consider their right to refuse to appear before a third party as a fundamental element of their sovereignty. When an applicant submits a case in a compulsory jurisdiction system, it is rare for the respondent not to contest this mechanism and it is precisely for this reason that proceedings relating to the conditions for the exercise of jurisdiction are profuse on the international scene.[6] And the ICJ often points out that "one of the fundamental principles of its Statute is that it cannot decide a dispute between States without the consent of those States to its jurisdiction".[7]
- The golden rule in the judicial policies of States concerning courts and tribunals has always been that an international judge can only decide disputes of an "exclusively legal"nature, i.e. those that are not likely to generate a domestic crisis and do not cause significant damage to policy decisions. Besides, international courts can assist in breaking stalemates over difficult negotiations or rally the public to accept an unpopular decision. In other words, disputes brought before an international court are mostly of lesser significance.
- Another key issue is the judicial risk inherent in the settlement of disputes through judicial proceedings. All parties are at equal risk[8] and States are not thrilled at this knowledge because, though it is a fact that decisions of international courts have the authority of res judicata,[9] determination of the applicable law or consideration of the facts may differ from one court to the another. It is true that for certain types of disputes—delimitation of maritime boundaries for instance—the predictability of court rulings is virtually impossible.[10] This predictability is nonetheless one of the major assets of the judicial process.[11]

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4. V.M. Virally, Le champ opératoire du règlement judiciaire international, LXXXVII RGDIP (1993), 281–314.
5. See G. Guillaume, The Future of International Judicial Institutions, 44 ICLQ (1995), 848–862.
6. As noted by Judge M. Bedjaoui, in the case of the institution of proceedings by application, the respondent nearly always starts by contesting the jurisdiction of the Court, frequently accompanied by an objection as to the admissibility of the application. Mélanges Michel Virally, Le droit international au service de la paix, de la justice et du développement (Pédone, Paris, 1991), 87–107 (specifically page 89). See also T.M. Ndiaye, La recevabilitédevant les juridictionsinternationales, in: Ndiaye and Wolfrum (eds.), Law of the Sea, Environmental Law and Settlement of Disputes (MartinusNijhoff, Leiden/Boston, 2007), 249–295.
7. Case concerning East Timor, ICJ Reports 1995, 101, para.26; see also Case concerning Qatar/Bahrain, ICJ Reports 1995, 23, para.43.
8. As noted by Professor Reuter, "the free acceptance of this judicial risk is the backbone of the authority of arbitral awards … [and] … regardless of the actions taken, the quality of arbitrators or judges recruited, the multiciplity of jurisdictions and appeals, the risk still exists". Pr. Reuter, La motivation et la révision des sentences arbitrales à la Conférence de la Paix de 1899 et le conflit frontalier entre le Royaume Uni et le Venezuela, Mélanges Andrassy, La Haye (Martinus Nijhoff, 1968), 245.

- Two decades after the "end of the Cold War",12 one would have expected the advent of a true international justice. Today, the world is without the divisions that served as reference points—East/West, North/South. The United Nations Convention on the Law of the Sea (UNCLOS) itself appears under certain aspects as a Cold War product, as it harbors the interests of the various categories of States.[13] The low activity level of the International Tribunal for the Law of the Sea (ITLOS or Tribunal)

must be considered in light of the various factors identified above as well as the number and diversity of commitments of States to submit applications to the Tribunal.[14] The number is rather insufficient though not negligible. Other multilateral instruments also provide for the submission of applications to the Tribunal, covering varied areas.[15] As of 18 June 2010, there are 162 States Parties to the UNCLOS. About 30 States have opted for the Tribunal in their declaration concerning the choice of procedure. This implies that, as a result of their silence, 130 States have accepted arbitration by default.16 The enthusiasm observed within political bodies dealing with the law of the sea with regard to the advisory function[17] of the Tribunal is therefore understandable.

- With regard to the origin of the concept, it shall be recalled that pursuant to Article 14 of the Covenant of the League of Nations, the PCIJ was not only called upon to render judgments. It was given the possibility to render an advisory opinion on any dispute or any point submitted to it by the Council or the Assembly.
- The first drafts of the Covenant, particularly the famous draft of 14 February 1919, included no provisions in this regard. It was the French delegation, eager to provide a means to resolve issues that might arise concerning the interpretation of the Covenant, which proposed to entrust the future Permanent Court with the mission to adjudicate upon any question submitted by the Council or the Assembly relating to"any issue with regard to the interpretation of the Covenant". The proposal was supported by Lord Cecil. The Italian delegation, however, had objections, preferring to entrust the task of interpreting the Covenant to the organs in charge of its application, namely the Council and the Assembly.[18]
- The provision was ultimately included in the Covenant with the support of the US delegation. However, no specific provision was made in the Statute19; the Assembly rejected the suggestion of the committee of legal experts to make a distinction with regard to the composition of the Court, dependent on whether it was required to render an opinion on a point of international law or on a present and existing dispute. The Assembly felt that it was impossible to draw a clear line between disputes and points of law insofar as a theoretical point today can become a dispute tomorrow.

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9. See Arbitration decision of 11 March 1941 in the Trail Smelter Case, UN/RIAA, Vol. III, 1950, where it states"That the sanctity of res judicata attached to a final decision of an international tribunal is an essential and settled rule of international law".
10. Merely think of two related concepts: the "relevant area"and the "relevant coast"for delimitation and issues relating to its determination and its effectiveness. For determination purposes, the judge refers to the request of the Parties as expressed in the special agreement or as reflected in their arguments. Case concerning the Gulf of Maine (Canada/United States), ICJ Reports 1984, para.5; Canada–France Maritime Boundary Case, 31 ILM 1149 (1992), para.35. The issue of its effectiveness arises because of the existence of the concept of "relevant coasts". These are defined as being straddling coastal areas. However, things are much more complex in reality. See Case concerning Libya/Malta, ICJ Reports 1985, para.74, where the Court stated that the geographical setting for the determination of the relevant coasts and the relevant areas was so broad that virtually any alternative could be retained. Seealso E. Zoller, Commentaire de l'Affaire de la délimitation des espaces maritimes de Saint-Pierre-et-Miquelon, AFDI 1992, 484, whichdiscusses"the anarchy that has prevailed since 1982 in maritime delimitation law".

11. See Derek Bowett, Predictability in the Legal Process, 180 RCADI (1983-II), 191–203.
12. Symbolized by the fall of the Berlin Wall on 9 November 1989.
13. See UNCLOS, art. 287, Part XI and the Agreement on the Implementation of Part XI (adopted on 28 July 1994).

14. Visit the Division of Ocean Affairs and the Law of the Sea (UN) website: www.un.org.
15. Ibid. Multilateral Treaties: Guide to Multilateral Treaties and Other International Instruments Related to the United Nations Convention on the Law of the Sea.
16. Art. 287, para.3, of the Convention stipulates that: "A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII."
17. See below, the ITLOS full Court
18. See Ch. Rousseau, V Droit International Public (Sirey, Paris, 1983), 421.

19. See Statute of the PCIJ (16 December 1920), SERIE D, 1.

- In the League of Nations system, a request for an advisory opinion can only come from the Council or the Assembly.

- The institution of the advisory procedure was maintained by the drafters of the UN Charter, who increased the number of organs entitled to request opinions from the International Court and gave the procedure a non-binding force. The organs directly authorized by the UN Charter and specialized agencies authorized by the General Assembly shall be pointed out. According to Article 96 of the Charter, the UN General Assembly and Security Council may request an advisory opinion from the ICJ, as well as all other organs of the United Nations (UN) and specialized agencies, which may be so authorized by the General Assembly.[20]
- The General Assembly and the Security Council may request the Court to give an advisory opinion on "any legal question", whereas other organs so authorized may request advisory opinions on "legal questions arising within the scope of their activities". The ICJ thus has an advisory function as did its predecessor.
- Only States may be parties in cases before the ICJ; public international organizations may not, as such, be parties to any contentious case before the Court. However, the advisory procedure is only open to these organizations. This is not the case with the ITLOS because of its institutional setting pursuant to the Convention of Montego Bay.

20. UN organs: General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly. Specialized agencies: ILO, FAO, UNESCO, WHO, IBRD, IDA, IMF, ICAO, ITU, WMO, IOM, WIPO, IFAD, UNIDO. Related organization: IAEA.

Jurisdiction

Article 65 of the ICJ Statute provides:"the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request"(see also Arts. 102-109 Rules of Court). Article 96 of the UN Charter states that, in addition to the UN General Assembly (UNGA) and Security Council, other UN organs and specialized agencies may request advisory opinions on"legal questions arising within the scope of their activities", if duly authorized by the UNGA.

Request by the UN General Assembly or the World Health Organization

The World Health Organization (WHO) is duly authorized to request such an opinion from the ICJ. Article 76 of the WHO Constitution reads:

"Upon authorization by the General Assembly of the United Nations or upon authorization in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal question arising within the competence of the Organization."

On the basis of this normative framework, the WHO has previously requested the ICJ to render two advisory opinions: Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt and Legality of the Use by a State of Nuclear Weapons in Armed Conflict. Yet, the ICJ declined to render the latter opinion because, after examining the functions of the WHO in light of its Constitution and subsequent practice, the Court concluded that the WHO was not authorized to deal with matters of legality, but only with the health effects, of the use of such weapons.

Accordingly, the Court held that the question asked by the WHO did not arise within the scope of activities of the WHO itself, as defined in its Constitution.

Pursuant to Article 2 of the WHO Constitution, the WHO's competence extends to all questions related to the sphere of public health. A request for an advisory opinion relating to the COVID-19 pandemic, which is a global health crisis, would fall within the limit of the WHO and, as a result, the ICJ would have jurisdiction to comply with such a request.

On this basis, the ICJ could request all the know-how of the doctors and health specialists all over the world before issuing the legal advice connected with health issues. Therefore, the ICJ could help the WHO to implement relevant decisions relating to the Coronavirus.

Developing countries do need a self-reliance system to deal properly with the virus

Resilience At The State Level: The Example of Permanent Sovereignty Over Natural Resources

Developing states must give themselves the means of collective self-reliance to avoid the eruption of viruses like Covid-19 which can

destroy their economy in no time. They need a new resilient and sustainable economic order.

We will take the example of permanent sovereignty over natural resources to illustrate this point.

When the principles of the Havana Charter were established, most of the so-called developing countries were still under colonial supervision21. The latter's awareness at the time of decolonization of the importance of natural resources and the need for their control was not long in coming. And very quickly, the principle of sovereignty over natural resources would be affirmed, and later, the legal techniques for its exercise, established22.

The outgrowth of the concept of so vereignty will then consist of a passage from a general and indeterminate power linked to the quality of the State in a power which is concretized in things, is specified in the control of goods. So vereignty is no longer just formal, it also becomes material. 23.

21. Notons toutefois que la Charte de La Havane contient un chapitre III portant sur le développement économique et reconstruction "dont les dispositions furentIntroduites à la demande de pays sous-développés tels que ceux du Moyen-Orientet des pays européens ravagés par la guerre. On y traite de la coopération entreles divers pays et des moyens de mettre à la disposition de ceux d'entre eux qui enfont la demande, les capitaux, les matières premières, les équipements etc,nécessaires à leur progrès. 22. Les études relatives au concept de souveraineté permanente sur les ressources naturelles commencent à être nombreuses. Voir les références citées dans lespages introductives à la présente recherche. M. G. FEUER op. cit. p.107 écrit: « bien qu'à I 'origine les Etats nouveaux eussent surtout en vue I 'indépendance politique, ils ont très rapidement pris conscience que celle-ci serait illusoire sans I 'indépendance économique, et que le développement ne pourrait se faire autre- ment que dans le cadre de cette dernière. Considérant que le rapatriement des capitaux et des bénéfices constituait une ponction sur la substance vive du pays, c'est précisément ce phénomène auquel on a donné le nom de néo-colonialisme, les pays en voie de développement ont entendu lutter contre les conséquences d'une situation historique défavorable pour eux ». 23. Mme le Pr. B. STERN constate cette évolution en parlant du passage" de la souveraineté juridique a la souveraineté permanente sur les ressources naturelles", in Un Nouvel Ordre Economique International ? Recueil de textes et documents, Vol. I, Paris, Economica 1983, LXI + 740 p., cf. p. L II. Voir également la bibliographie abondante pp. 710-740.

Classic, traditional overeignty appears to developing countries as an illusion. It gives the outward signs of power but is not real sovereignty 24.

For these states, driven by the desire to recover "their property", the imperium and the dominium become one. We observe a sort of sublimation of the property that we give to people whose state now appears as the manager of interests. Permanent so vereignty then deviating from the corollary of the right of peoples to self-determination; historically on the grounds that Economic Independence is the pledge of Political Independence.

A / Genesis and Evolution of the Concept of Permanent Sovereignty over Natural resources

The question wasraised for the first time at the United Nations in 1952 by the countries of Latin America concerningindependence and economic development 25. It will be taken up again in the debate onhumanrights 26. It It was then that the General Assembly of the United Nations was to decide in 1958 to set up a commission on permanent sovereignty over naturalresources, charged: "To carry out a thorough investigation into the situation of this fundamental element of the right of peoples and nations to self-determination and to make… recommendations to strengthen this right "27. After four years of study and intense discussions in the various commissions of the United Nations, the General Assemblyadopted the famous Resolution 1803 (XVII) of December 14, 1962 28. It declares that: "The right to permanent sovereignty of peoples and nations over their wealth and natural resources must be exercised in the interests of national development and the well-being of the population of the State concerned "29.

24.W. FRIEDMANN observe que: "Les règles actuelles du droit international ontétéposées par les Etats riches ou qui possédaient des colonies. Elles favorisent,par, conséquent, des situations que les Etats économiquement faibles cherchent àmodifier"in"The Positions of Underdeveloped Countries and the Universalityof International Law", Columbia Journal of Transnational Law, 1963,pp. 78-86; voir p.81; voir, en outre, J. COMBACAU op. cit. pp.17-24; A.MAHIOU,"Les implications juridiques du Nouvel Ordre Economique et ledroit international"Revue Belge du droit international,

Vol. XII. 1976 II.L'auteur observe que"des conditions historiques précises donnent à ce conceptde souveraineté une portéeconcrète et une efficacité qu'il ne peut nullement avoiren dehors de ces mêmes conditions. C'est par conséquent par une extrapolationabusive que M. COMBACAU conclut que n'importe quel Etat peut, par l'usagede la souverainetédéfinie comme un pouvoir d'agir par la voie de normesde commandements, atteindre exactement le mêmerésultat dans la logique estapparemment impeccable, est viciée a la base lorsqu'il pose le postulat de l'équivalence des conditions, retombant par la même dans le piège du formalismejuridique qu'il avait pourtant cherche àesquiver». 434.Dans son rapport au colloque d'Alger sur"Souveraineté, développement et perspectives de nouvel ordre international", pp.15-47 in Actes du Colloque international (11-14 octobre 1976), Alger, Office des Publication Universitaires, 492 p.,M. BENCHIKH se demande p. 17"pourquoi la souveraineté dont sont affublesces Etats, reste impuissante a produire les mêmes effets que ceux obtenus grâceàelle dans les pays développés. Existerait-il en droit international une souverainetéqui conduit au développement et une souveraineté qui maintient dans le sous-développement? L'auteur poursuit: L'analyse de la souveraineté pour rendrecompte de la réalité doit intégrer le processus historique de formation de l'inégalité entre les Etats. En effet, la souveraineté n'est pas un principe désincarne. Elleest exercée par des Etats portes par des forces sociales au milieu d'autres forcessociales. Comme elle, elle a donc une histoire, et comme elles, elle est toujoursen mouvement". Voir également dans le même esprit M. BEDJAOUI, Pour UnNouvel Ordre Economique International, Paris, UNESCO 1978, 295 p., surtoutpp.100 et suivantes.Voir aussi D. ROZENBERG, Le principe de souveraineté des Etats sur leurs ressources naturelles, Paris, L.G.D.J. 1983, 395 p.

25. Voir la Résolution 523 (Vl) de l'Assemblée Générale des Nations Unies portant Développement économique intégré et accords commerciaux • du 12 janvier1952, in Doc. N. U. A. / 2119 (1952) reproduit in B. STERN op. cit. p.166; aussi la Résolution 626 (VII) du 21 décembre 1952 portant"Droit d'exploiter librementIesrichesses et ressources naturelles • Doc. N. U. A/2361, reproduit in B. STERNop. cit. p.617. Voir également HYDE op. cit.'p.855.

26. Voir la Résolution 837 (IX) de l'Assemblée Générale de 1954 portant sur les "recommandations relatives au respect du droit des peuples et des nations a l'autodétermination"Doc. N.U. A/2890 (1954):Résolution 1314 (XIII) du 12décembre 1958 sur "Recommandations concernant le respect, sur le plan inter-national, du droit des peuples et des nations a disposer d'eux-mêmes"in B.STERN op. cit. p.169:Résolution 1514 (XV) du 14 décembre 1960"Declarationsur l'octroi de l'Independence aux pays et peuples coloniaux" lbid. P.110.

27. Résolution 1314 (XIII) op. cit. Paragraphe 1.

*28. Résolution 1803 (XVII) du 14 décembre1962 sur la « Souveraineté permanentesur les ressources naturelles » Doc. N.U. A/5217 (1962) reproduit in B.STERNop. cit. p. 178. Ce texte sera d'abord discute par la commission sur la sauvera in été permanente sur les ressources naturelles da sa dix-neuvième a sa trente troisièmeréunion: voir Doc. des Nations Unies A/AC/SR. 19-SR.33 (1961). On trouve lerapport de la commission dans E/3511 et Add. I ou A/AC.97/13 et Add. L (1961). La question fut ensuite portée devant le Conseil Economique et Social a satrente-deuxième session tenue àGenève du 4 juillet au 4 aout 1961: voir Docu-ments officiels de l'ECOSOC (1177eme réunion et 1181eme réunion) in Doc. N.U. E/SR 1177-SR 1179 et E/SR 1181 (1961), Enfin, le problème sera soumis à la deuxième Commission de l'AssembléeGénérale et sera l'objet de ses réunions N*798 a 821 et 842 et 846, 848, 850 a 861, 876, 877, tenues à New York du 19 septembre au 17 décembre 1962. Voir Doc. N.U. A/C.2/SR, 798-SR 877 (1962). Voir également G. FISCHER op. cit. pp.516 et suivantes.*

The newly independent states will inject increasing dynamism into the principle and will try to make it a focal point in the international institutions already working on the ideology of development. This consolidation work will push them to recognize in principle an inalienable character. There is a kind of shift which gave the concept of permanent sovereignty the sense of property. And Resolution 1803 (XVII) took on deeppoliticalsignificance, no doubt unsuspected at the time. It served, in fact, as an implicit legal basis for the claim of the "new States" to control their natural resources. No doubt many delegations did not fail to point out during the discussions that the concept had never been questioned in the past.

However, its recognition on the international levelappeared as an authorization given to developing countries to restore theirs over eighty where they considered it to have been lost, but above all to exercise a property right for the future over their resources. 30, everything at a time when the newly independent states felt they had been robbed of their natural wealth and resources by colonization. They patiently worked to operate a "hammering of conscience" with the principle and to delimitits contours.

We are thus witnessing a gradual "expulsion" from classic international law which appears to the new States as a possible obstacle to the full and effective implementation of the principle in the sense that they give it. The latter no doubt remembered that Western countries

hadwelldefended the old principles of international law during the discussions relating to Resolution 1803 (XVII) by obtaining the protection of foreign investors, the multiple references to international law and in particular the obligation to submit disputes to "international judicial settlement".

Thus, while recognizing that foreign investments could play an important role in the development of a country's natural resources, the General Assembly affirms that the exploitation of natural resources in each country must bedone on the basis of laws and procedures of this country 32. And:"The application of the principle of nationalization by States, as an expression of theirs overeignty to safe guard their natural resources, implies that it is up to each State to fix the amount of any compensation as well as the terms of their payment and that any dispute which may arise should be settled in accordance with the national law of each State which takes such measures "33.

This kind of arrangement is naturally not made to obtain the favor of the Western countries, themselves exporters of capital. They were quick to reject them.

Developing countries then had to look for more appropriate ways to get their claims accepted. Also, the group of "77" proposed to the third UNCTAD held in Santiago de Chile from April 13 to May 31, 1972, the establishment of a "Charter of Economic Rights and Duties of States" 34.

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29. Resolution 1803 (XVII) op. cit. paragraphe I. 30. Voir St. SCHWEBEL op. cit. pp.463 et siuvantes. 31. Voir Resolution 2158 (XXI) du 26 novembre 1966 sur"lasouverainete permanente sur les ressources naturelles"in Doc. N.U. A/6316 (1966):Res. 2386(XXIII) du 19 novembre 1968 sur "lasouverainete permanente sur les resources naturelles", Documentation N.U. A/7218 (1968):Resolution 2625 (XXV) du 24octobre 1970 portant"Declaration relative aux principes du droit internationaltouchant les relations amicales et la cooperation entre Etats, conformementa laCharte des Nations Unies"in Documents des Nations Unies A/8028 (1970)reproduit in B. STERN op. cit. p.206:Resolution 2692 (XXV) du 11 decembre 1970portant sur"lasouverainete permanente sur les ressources naturelles despays en voie de developpementeconomique"Doc. Nations Unies A/8028 (1970):Resolution 3016 (XXVII) du 18 decembre 1972 sur"lasouverinete permanentesur les ressources naturelles des pays en voie de developpement "Docmentation N.U. A/8730 (1972):Resolution 3171 (XXVIII) du 17 decembre 1973 surlasouverainetepermenante sur les ressources naturelles "Doc. N.U. A/9030 (1973)reproduite in B. STERN op. cit. p.228. S'y ajoutent les Resolutions prises dans lecadre des autres institutions de la famille des Nations Unies:a la CNUCED laResolution 46 (III) du 18 mai 1972, Res. 88 (XII) du 19 octobre 1972 prises par leConseil du Commerce et du Développement. Meme le Conseil de Securite a prisune Resolution sur la"souverainete permanente…". Resolution 330 (XXVIII)in Doc. N.U. S/INF/29 (1973) sans parler des nombreuses Resoltuions du ConseilEconomique et Social.

32. Resolution 2158 (XXI) op. cit. paragraphe 4. 33. Resolution 3171 (XXVIII) op. cit. paragraphe 3, in B. STERN op. cit. p.228.

This proposal followed the observation made by developing countries that the international economic policies practiced did not make it possible to bridge the still too wide gap which separates them from the industrialized countries and that consequently it was necessary to find a set of compulsory rules. likely to govern more just international economic relations 35. The resolution adopted in this connection notes that: "The international community feels the urgent need to establish generally accepted norms which will systematically govern economic relations between States" 36 .

In 1974, the General Assembly of the United Nations met in an extraordinary session at the initiative of the former President of Algeria, Mr. BOUMEDIENE, to study the problems relating to the matters program of action concerning unsaturation resumed fundamental questions which affect economic relations between developing and industrialized countries and states that:"International cooperation for developmentre presents the objective and the duty of all the country" 39.

And among the twenty principles set out in paragraph 4, there is one, principle (e), which directly concerns our subject. It can be read:

"Permanent sovereignty of each State over these natural resources and over all economic activities. With a view to safe guarding these resources, each State has the right to exercise effective control over them and their exploitation by the means appropriate to its particular situation, including the right to nationalize or transfer property to its nationals, this right being an expression to be subjected to an economic, political or other coercion, aiming

to prevent the free and complete exercise of this inalienable right".

The interest of the concept of permanent sovereignty over natural resources will culminate with the adoption by the General Assembly of the United Nations of the Charter of Economic Rights and Duties of States 40. Which, after having stated before, that its main purpose is to promote the establishment of the new international economic order based on equity and sovereign equality, interdependence, common interest and the cooperation of all the States, whatever their economic and social system on the one hand, and to identify the basic elements of international economic relations on the other hand, sets out in Chapter II the concept of permanent sovereignty in a revolutionary way.

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*34. Voir TD/180, Actes de la CNUCED, 3eme session, Vol. I, paragraphe 209.Voir-aussi la Resolution 45 (III) du 18 mai 1972 relative a la Charte des droits et devoirs economiques des Etats adoptee par 90 voix contre 0 et 19 abstentions, in Actes de la CNUCED, 3eme session, Vol. I, p. 131. En fait, l'initiative de la propositionrevient au President du Mexique d'alors, M. ECHEVERRIA, qui l'a faite dans son allocution a la conference dans laquelle il enonce plusieurs principes devantregir les relations economiques internationales qui seront repris dans la Charte.Voir l'allocution in Actes de la CNUCED, 3eme session, Vol. I A, premierepartie, p.187. pour l'analyse de la Charte des droits et devoirs economiques desEtats, les etudes sont nombreuses. On retiendra plus particulierement: J.P.MARTIN."Le projet de Charte des droits et devoirs economiques des Etats"in"Pays en developpement et transformation du droit international", colloqued'Aix en Provence de la SFDI, Paris, Pedone 1974, pp.47-57: J. CASTANEDA,"La Charte des droit et devoirseconomiques des Etats, Note sur son processus d'elaboration"AFDI 1974, pp.31-56: du memeauteur,"La Charte des droits etdevoirs economiques des Etats du point de vue du droit international"in"Justiceeconomiqueinternational"o uvragecollecti, Paris, Gallimard 1976.pp.75-117: M. VIRALLY,"La Charte des droits et devoirs economiques desEtats, Notes de lecture"AFDI 1974, pp.57-78: D. YIANOPOULOS,"Premiersefforts pour une Charte des droits et devoirs economiques des Etats"RBDI,1974-2, pp.508-538: G. FEUR,"Reflexions sur la Charte des droits et devoirseconomiques des Etats", RGDIP, avril-juin 1975, N*2. pp.273-320: D.COLARS,"La Charte des droits et devoirs economiques des Etats", Etudesinternationales (Quebec), Vol. IV, N*4, decembre 1975, pp.439-461: E.O.RABASA, "The Charter of Economic Rights and Duties of States"inprocee-ding of ASIL, 68th annual meeting, 1974, pp.302-305: A. MAHIOU op. cit.pp.421-450: K. GESS op. cit. pp.318-449: E. JIMENEZ DE ARECHAGA ,Cours General, RCADI, Vol. 159, 1978 (I), pp. 297-310: R. CA. WHITE op. cit.pp.542-552: I. BROWNLIE,"Legal Status of Natural Resources in International Law, Some aspects "RCADI, 1979 (I) pp.249-317: B. STERN op. cit. pp.XXXII et suivantes. 35. TD/180 op. cit. p.35.*

36. Resolution 45 (III) de la CNUCED op. cit. paragraphe I.

37. Voir M. SALEM,"Vers un nouvel ordre economique international: A propos des travaux de la 6eme session extraordinaire des Nations Unies", J.D.I., 1975,pp.753-815: D. CARREAU, Chroniques de Droit International Economique, AFDI, 1975, pp.647-700:meme auteur, LE NOEI, J.D.I. 1977, pp.595-605:R.N. COOPER,"A New International Economic Order for mutual gain" ,Foreign Policy, 1977, pp.66-120: G. FEUER,"Les Nations Unies et le Nouvel Ordre economique international (1974-1976)", J.D.I., 1977, pp.606-629: K.A. HUDES, "Towards a new international economic order "Yale Studies in World Public Order, Vol. 2, 1975, N 1, pp.88-181: E. Mc WHINNEY,"The interna-tionallaw-making process and the new international economicorder"theCana-dianYearbook of international law, Vol. 14, 1976. pp. 57-72. 38. Voir A/RES/3201 S (VI) et A/RES/3202 S (VI) du ler mai 1974 Doc. N.U.A/9559 (1974) reproduites in B. STERN op. cit, pp.3 et 6. Les resolutions ont eteadoptees par consensus main ont fait l'objet d'un certain nombre de reserves. Voir Ibid pp.7-56. 39. A/RES/3201 S (VI) op. cit. paragraphe 3. 40. A/RES/3281 (XXIX) du 12 decembre 1974 portant"Charte des droits et devoirs economiques des Etats"adoptee par 120 voix pour, 6 contre et 10 absetntions. Voir Doc. N.U. A/9631 (1974). Voir le detail du vote in Doc. N.U. A/PV.2315.Pour les etudes relatives a la Charte, voir supra note N* 118.*

Indeed, Section 2 of the Charter Reads

Each State freely holds and exercises complete and permanent sovereignty over all its wealth, natural resources and economic activities, including possession and the right to use and dispose of them.

Each State has the right:

a. regulate foreign investments within the limits of its national jurisdiction and exercise its authority over them in accordance with its laws and regulations and in accordance with its national priorities and objectives. No state will be forced to grant special treatment to foreign investment;

b. to regulate and supervise the activities of transnational corporations within the limits of its

national jurisdiction and to take measures to ensure that these activities comply with its laws, rules and regulations and are in conformity with its economic and social policies.

Transnational corporations will not interfere in the internal affairs of the host state. Each State should, having due regard to its sovereign rights, cooperate with the other States in the exercise of the right set out in this paragraph ;vs. nationalize, expropriate, or transfer ownership of foreign property, in which case hes hould pay adequate compensation, having regard to his laws and regulations and all the circumstances he considers relevant. In all cases where the question of compensation givesrise to a dispute, the latter will be settled in accordance with the internal legislation of the State which takes measures of nationalization and by the courts of that State, unless all the States concerned do not freely agree to seek other peaceful means on the basis of the sovereign equality of States and in accordance with the principle of free choice of means ".

In legal terms, the concept of permanent sovereignty over natural resources has been the subject of fairly intense controversy given the issues looming behind it. We will endeavor to identify its meaning and legal significance.

Meaning and Legal Scope of Permanent Sovereignty over Natural resources

The concept of permanent sovereignty has undergone a transformation commensurate with the hopes placed in it. As a simple means of expressing the equality desired by the newly constituted States, it very quickly appears as the implicit legal basis for the will to recover natural resources for the developing countries. The assertion of the right of peoples to self-determination was circumscribed in international law, but references to its oonfaded away.

Resolution 1515 (XV) of December 14, 1960 recommended: "respect for the sovereign right of each State to dispose of its wealth and natural resources, in accordance with the rights and duties of States under international law". No doubt we wanted to avoidob structing the free flow of capital between different countries. The way was thus opened to Resolution 1803 (XVII), which perceived the balance of benefits as a necessity.

If it affirms the principle of permanent sovereignty over natural resources, it subjects its exercise to its conformity with international law. The resolution delimits the conditions for the exploitation of natural resources, as well as those for the importation of capital 41. and involves international law in the management of capital as well as in the question of nationalization 42. Thus, if the law to nationalize all sunder the discretionary power of the State, the compensation procedureis, on the other hand, governed both by internal law and by international law 43. As we can see, Resolution 1803 (XVII) tries to reconcile interests of the host State and the foreign investor and bases their relations on international law; this is his fundamental contribution. The perspective remained classic.

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41. Le paragraphe 2 se lit: "La prospection, la mise en valeur et la disposition de ces ressources, ainsi que l'importation des capitaux etrangersnecessairesa ces fins devraient etre conformes aux regles et conditions que les peuples et nations consi-derent en route liberte comme necessaries ou souhaitables pour ce qui est d'auto riser, de limiter ou d'interdire ces activites". 42. Aux termes du paragraphe 3,"Dans les cas ou une autorisation sera accordae, les capitaux importes et les revenus qui en proviennent seront regis par les termes de cette autorisation, par la loi nationale en vigueur et par le droit international. Les benefices obtenus devront etre repartis dans la proportion librement convenuedans chaque cas entre les investisseurs et l'Etat ou ils investissent, etant entendu qu'on veillera a ne pas resreindre, pour un motif quelconque, le droit de souve-rainete dudit Etat sur ses richesses et ses ressources naturelles". 43. Puisque le paragraphe 4 est libelle comme suit:"La nationalisaion, l'expropriation ou la requisition devront se fonder sur des raisons ou des motifs d'utilite publique, de securite ou d'interet national, reconnus comme primant les simples interest particuliers ou prives, tant nationaux qu'etrangers, Dans ce cas, le propriétaire recevra une indemnisation adequate, conformement aux relges en vigueur dans l'Etat qui prend ces mesures dans l'exercice de sa souverainete et en conformite du droit international. Dans tour cas ou la question de l'indemnisation donnerait lieu a une controverse, les voies de recours nationales de l'Etat qui prend lesdites mesures devront etreepuisees. Tou-tefois, sur accord des Etats souverains et autres parties interesses, le differend devrait etre soumis a l'arbitrage ou a un reglement judiciaire international".

This conception was gradually opposed by developing countries, who feared that the practice subsequent to 1803 would make private investors into matters of international law. We then move on to an approach of so

vereignty where the substance is complete control of natural esources. This transition from the moderate formulation to the revolutionary formulation of permanent so vereignty will take place gradually before finding a particularly clear expression in the Charter of Economic Rights and Duties of States. Which will give a considerable ideological dynamism to the concept by adding to its irreducible principles as if to reinforce it.

It was thanks to nationalizations that the difficulties arose, particularly with regard to compensation. In Chile of Mr. ALLENDE as in Libya, the desire to escape the classicruleswas real 44.

While some subordinated nationalization to fair, equitable or even prior compensation, others argued the need for profit-based calculation 45; this justifies, for the latter, the absence of reference to international law. From then on, sovereignty merges with property, and the qualifier "permanent" takes on its full significance. It reveals that developing countries can no longer bind themselves by their commitment, which does not apply to the holder of sovereignty - as in classical law - in its content. Formals overeignty gives way to the sovereignty of the people whos eresources are managed by the state, and this so vereignty becomes permanent.

Thus, we are witnessing a permanent reserve of mutability which leads to denying the stabilization, intangibility, or even immutability clauses. This frozen right which the State could not change and appeared in the classic approach as a right of reference is found to bedevalued, hence the concern of privateinvestors or their State of origin, because: ”the flag follows finance ”.

This situation puts the Contracting State above the contract, and the principle of innovative scope that is property becoming truly revolutionary because it introduces a perpetual clause of continual recovery of property using its own techniques. 46 can measure the magnitude of the problems posed by the principle of permanent sovereignty over natural resources of which the question of its legal value is not the least, because the principle is mainly affirmed in the resolutions of the General Assembly of Nations United.

We will not resume here the debate on the legal value of the resolutions of the General Assembly of the United Nations. It suffices to recall that they are merely recommenders (Article 10 of the UN Charter), except in cases where the General Assembly has expressly received decision-making power 47.

However, the declarations of principle of the General Assembly by their repetition constitute a presumption of normatively in that they reflect an opiniojuris. Therefore, they influence what they wear. And the proof of this presumption is to be found in the fact that States feel the need to formulate reservations at the time of the adoption of Resolutions containing principles which have only practiced compulsory insofar as it does not elicitany reaction contrary to on the part of the States concerned 48.

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44. Voir F. ORREGO-VICUNA,”Some International Law Problems posed by the Nationalisation of the Copper Industry by Chile”, A. J. I. L., 1974, pp.711-727; B.STERN, I’OPEPet la crise de l’energie op. cit. pp.53 et suivantes.

45. J. ROBERT-VASTINE”United States…”op. cit. p.458; voir aussi TD/217 pour les discussions relatives au projet de Banque international de ressource. Voirenoutrela reaction de M.M. H. KISSINGER et W. SIMON (Secretary of the Treasury) qui temoigne de leuramertumeapres le rejet du projetamericain in Dep’t State Presse Release, N 279 du 1 join 1976, p.2”The United States, whose role is so vital, does not expect when it makes major efforts to cooperate, that its proposals will be subject to accidental majorities”. 46. Sur la nationalisation, les etudes ne se comptent plus. On retiendra plus particulierement: P. WEIL,”Problemes relatifs aux contrats passes entre un Etat et un particulier”, RCADI, 1969 (III), T. 128, pp.95 et suivantes;idem,”Les clauses que”inMelange ROUSSEAU, Paris, Pedone, 1974, pp.301 et suivantes;Idem”Principesgeneraux du droit et contrats d’Etats”inMelanges GOLDMAN,Paris, Litec 1982, pp.387 et suivantes; W. WENGLER,”Les accords entre Etatset entreprises etrangeres sont-ils des traits de droit international ?”, RGDIP1972, pp.313 et suivantes; J VERHOVEN,”Contrats entre Etatset ressortis-sants d’autres Etats”in le Contrat Economique International, Paris, Pedone,1975, pp.115 et suivantes; Sentence TEXACO-CALASIATIC C/LIBYE pro-nonce par le Pr. R.J. DUPUY le 19 janvier 1977, in J.D.I., 1977, pp.350 et sui-vantes; B. STERN,”Trois arbitrages, un memeprobleme, trois solutions, les nationalisations petrolieres libyennes devant l’arbitrage international”, Revue de l’arbitrage 1980, pp.3-43; G. COHEN-JONATHAN,”L’arbitrage Texaco-Calasiatic c/Gouvernement libye”AFDI 1977, pp.452 et suivantes; F.RIGAUX,”Des dieux et des heros, Reflexions sur une sentence arbitrale”,Revue critique de droit international prive, 1978, pp,435 et*

siuvantes; P. WEIL,"Droit International et Contrats d'Etats"inMelanges REUTER, Paris, Pedone,1981, pp.549-581.
47. Voir J. CASTANEDA,"La valeur juridique des Resolutions des Nations Unies ",RCADI, 1970 (I), r. 129, pp.125 et suivantes; G. ARANGIORUIZ, "Thenor-mativerole of the General Assembly "RCADI, 1972, (III), t.137, pp.431 et sui-vantes; R. FALK,"On the quasi legislative competence of the General Assembly "A. J. I. L., 1966, pp.782 et suivantes; G. FEUER op. cit. pp.299 et suivantes.
48. Voir CH. ROUSSEAU, Droit International public, Tome I, pp.326-327.

Thus, during the adoption of the declarationconcerning the establishment of a new international economicorder (Resolution 3201 S (VI), the United States, the FRG, France, the United Kingdom and Japan, issuedreservations on the principle of permanent sovereignty over naturalresources 49.

They thus intend to take advantage of special terms allowing them, where appropriate, to avoid the application of customary rules, convinced that they are not to bebound by a rule against which they have manifested 'in a constant and unequivocalmanner their refusal to acceptit. On the other hand, the statement by the American representative shows an acceptance of the normative value and therefore of the legal nature of Resolution 1803 (XVII) on permanent sovereignty over natural resources. There is thus a substantial duplication of the same principle, accepts when it is formulated in a moderate way and rejected if it becomes more demanding.

This is how the Western countries have rejected Article 2 of the Charter of Economic Rights and Duties of States, which sets out the principle of permanent sovereignty in a particularly revolutionary way in their eyes. But are these reservation snot constantly expressed against United Nations resolutions an implicit recognition of their legal value? We have so far recognized that the resolutions could convey the evolution of State practice, but the practice of reservations with regard to them gives us the feeling that they have more weight than they are formally recognized. Are they not, moreover, a snapshot of the opinion of the international community if one dismisses the requirement of unanimity in order to retainonly generality and representativeness in consent? 50.

In the Texaco sentence, Professor DUPUY recognizes in Article 2 of the Charter only a value of lege ferenda which "must beanalyzed as a declaration of a political rather than a legal nature entering into the ideological strategy of development and , as such, supported only by non-industrialized states "51.

Judge JIMENEZ DE ARECHAGA considers article 2 of the Charter as well as the other resolutions of the General Assembly as a source of contemporary international law52. The position of this author, who avoids all formalism, is perfectly conceivable. If it is admitted that section 2 of the Charter sets out a new customary norm, it follows that permanent sovereignty only consolidates the already existing principle of the legality of nationalization for reasons of public utility, which does not in anyway deny the principle of compensation. And what the authors forget when they analyze section 2 of the Charter is that it subjects nationalization, expropriation or the transfer of ownership of foreign property to the obligation to: "payadequate compensation , having regard to the laws and regulations and all the circumstances which it (the nationalizing State) deems relevant "53.

Consequently, any failure by a national court to award compensation would be contrary to the rules laid down in Article 254.

We have even been able to confer on the principle of permanent sovereignty a value greater than that of a simple dispositive standard by recognizing that the capacity to nullify an engagement which is contrary to it. In other words, the principle would be jus cogens.

Thus, Mr. Jimenez De Arechaga Writes

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49. Le representant des Etats-Unis a alors fait la declaration que voici;"Perhaps the mostdifficultwith the Declarations of Principles adresses isthat of permanent sovereignty over naturalresources. It will be recalled that this problem was successfully dealt with by the General Assembly in 1962, when, in a meeting of mids of developing and developed countries, widespread agreement was achieved on the terms of resolution 1803 (XVII). The United States delegation regrets that the compromise solution which resolution 1803 (XVII) embodies was not reproduced in this Declaration. If it were, on this count the United States would gladly lend its support. Resolution 1803 (XVII) provides, among other things, that, where foreign property is nationalized, appropriate compensation shall be paid in accordance with national and international law; it also provides that foreign investment agreement by and between States be observed in good faith. By way of contrast, the present Declaration does not couple the assertion of the right to nationalize with the duty to pay compensation in accordance with

international law. For this reason, we do not find this formulation complete or acceptable. The governing international law cannot be and is not prejudiced by the passage of this resolution"in International Legal Materials (I.L.M.), 13, 1974, p.746; Cf. B. STERN op. cit. pp.15 et suivantes.

50. La doctrine arrive a des conclusions differentes. Elle envisage le plus souvent la question avec un formalism rebutant. Voir F. BLAINE SLOAN,"The bindingforce of a recommendation of the General Assembly of the United Nations" BYBIL, Vol. XXV, 1948, pp. 1 et suivantes; M. VIRALLY, "Lavaleurjuridiquedes recommandations des Organisations Internationales" AFDI, 1956, pp.56 et suivantes: F.A. VALLAT, "The Competence of the United Nations General Assembly "RCADI, 1959 (III), t.97, pp.203 et suivantes; D.H.N. JOHNSON," The Effects of Resolution of the General Assembly of the United Nations" ,BYBIL , 1955, pp.97 et suivantes. Voir aussi supra note numero 131. 51. Sentence Texaco op. cit. page 379. 52. E. JIMENEZ DE ARECHAGA, RCADI. Cours General op. cit. pp.297 et sui-vantes. Voir aussi M. BEDJAOUI op. cit. pp.140 et suivantes. 53. Article 2 paragraphe 2 C.

"Contemporary international law recognizes the right of every State to nationalize foreign-owned, even if a predecessor State or a previous government engaged itself, by treaty or by a contract ; not to doso. This is a corollary of the principle of permanent sovereignty of a State over all its wealth, natural resources and economic activities, as proclaimed in successive General Assembly resolutions in particular in article 2, paragraph 1 of Chapter II of the Charter of Economic Rights and Duties of States. The description of this sovereignty as permanent signifies that the territorial State can never lose its legal capacity to change the destination of the method of exploitation of those resources, whatever arrangement have been made for their exploitation and administration"55.

We thus see the principle elevated to the rank of a peremptory norm of general international law within the meaning of articles 53 and 64 of the Vienna Convention on the Law of Treaties 56.

In fact, this debate on permanent sovereignty, like that on the principles of the new order in general, is governed by the other debate which deals with the value of the resolutions of international organizations. And the jurists of the various categories of countries represented at the United Nations wall themselves in their respective conception, thus maintaining a dialogue of the deaf.

The question of the value of resolutions will be decided the day weapproachit in both formal and material terms. Of course, the most commonly accepted solution remains that taken from Article 10 of the Charter of the United Nations. However, one cannot help but notice that the resolutions are the barometer most on the consensus or not of the members of the international community facing a question of international law at a given moment. This finding is reinforced by the fact that the United Nations is the most universal political organization today and therefore the most important forum for measuring the degree of support of States for a particular issue. Consequently, the resolutions adopted at the General Assembly level have a certain legal value, especially if they are adopted by a representative majority, because by expressing the conviction of the General Assembly on a specific question, they translate by the event that of the States which will b erepresented there. Obviously, it is necessary to examine the voting conditions and analyze the provisions set out in the resolutions because they are prolific.

Be that as it may, the concept of permanent sovereignty over natural resources has enabled developing countries to deploy a whole "normative strategy", not the assertion of irreducible principles intended to precipitate the process of change in the international order that they are calling for their wishes. This strategy is materialized by a sprawlingdesire for regulation by developing countries no doubt driven by the ambiguity of "legislative" developments in the international order. These countries want to "nationalize what is at home and internationalize what is with others", to use one of the formulas of which Professor DUPUY has the secret. They note with LACORDAIRE that "between the strong and the weak, it is freed om that oppresses and law that frees" 57., To draw their basic philosophy from the problems of the new international economic order. We are witnessing a questioning of international economic relations which finds its framework at the United Nations. International organizations thus appear as a teleological laboratory at the service of development. Developing countries are claiming special protection there that the liberal order cannot guarantee them, and the GATT triad (equality, reciprocity and non-discrimination) is unfair to them. From the first UNCTAD, they denounced the triad as a source of exploitation between unequalpartners;

thusbegins the critique of free trade in the name of development.

54. Cf. R.B. LILLICH,"The Diplomatic Protection of Nationals Abroad: an Ele- mentary Principle of International Law Under Attack"A.J.I.L., T.69, 1975, pp. 359-365. Cet auteur considere la reference, par l'article 2 de la Charte des droits et devoirs economiques des Etats, au seul interne de l'Etat nationalisant comme une volonte de reconnaissance de la doctrine CALVO. Mais il perd de vue le fait que la reference au droit international ne concerne que l'indemnisation. Il y a donc manifestement exageration de sa part.
55. Voir JIMENEZ DE ARECHAGE op. cit. p.297. Voir egalement pp.300 et sui- vantes.
56. Pour une approche contraire, cf. P. WEIL,"Versnormativite relative en droit international"RGDIP, T.86, 1982, I, pp.5-47, specialement 11 et suivantes, et 19 et suivantes. Voir, en outre, M. BEDJAOUI op. cit. pp.133 et suivantes; H. THIERRY, J. COMBACAU, S. SUR, Ch. VALLEE, Droit international public, 3eme Edition, Paris, Montchretien 1981, 780 p., spec. pp.136 et suivantes et 628 et suivantes; B. STERN. I NOEI ? op. cit. pp. XLV et suivantes.
57. Ceuvres du R. P. LACORDAIRE, Tome IV, Paris, 1972, p.494.

These questions are decisive in our latitudes and thereneeds to betransparency and professionalismthatchases the arbitrary. Nowadays, with the prospect of naturalresourcesenjoying a specialstatus in the national legalorder, the merepresumption of irregularity must immediately lead to the suppression of all the legalactsinvolved.

In otherwords, there must be 'restitution in integrum' so as to have, on the one hand, the respect of the international community as a whole, and on the other, the favor of the overwhelmingmajority of the population whichmayappropriate the decisionstaken by the state authorities in the matter.

The over-priorityoffered to foreign capital is a structural bottleneck that responds to a logic of looting. For example, the so-called stabilization or intangibility clauses found in many contracts signed by African states and foreigninvestors are the result of an outrightscamsincethese state contracts are hardly international contracts but rathercontractswhich must begoverned by the internallaw of the State, whatiscalled the law of the forum (lexfori). On the other hand, a win-wincontractwith national negotiatorsdemanding on the interests of the country can be a good exit.

SUSTAINABILITY

The sources and modes of pollution of the marine environment as well as their nature have been the subject of a number of studies even if it turns out that a more regular and systematic assessment of the state of the environmentis necessary.

The sources and modes of pollution of the marine environment as well as their nature have been the subject of a number of studies even if it turns out that a more regular and systematic assessment of the state of the environment is necessary. It will be remembered that at the World Summit on Sustainable Development, held in Johannesburg in 2002, a permanent assessment of the status of the environment of the later confirmed by the "General Assembly of the United Nations". Inquires pollution from land-based sources; pollution resulting from activities relating to the seabedin the Area; pollution by immersion; pollution from ships; and atmospheric and transatmospheric pollution.

It appears that pollution from land-based sources and that from atmospheric origin account for almost 80% of pollution of the marine environment per year. As indicated in a report by the Secretary-General of the United Nations: pollution due to good marine results from earthly activities. Thus, almost 3600 tonnes of mercury are discharged into the environmenteach year, most of which invade the marine environmental lowingit to bioaccumulate in the food chain. The sources of pollution are sometimes located far from the coasts and are transported towards the latter, among others, by the pollution regulations reviews at the point of discharge can sometimes prove to be a real headache.

There is a conceptual migration taking the environment rom a third generation human right 63 to a search for a legal system.

63. Les droits de l'homme sont typifies en trots générations dans l'ordre international. Les droits civils et politiques ou droits de la première génération s'analysent en droits, comme opposables l'Etat. Ils supposent pour être mis en œuvre une abstention de l'Etat. Ces droits ont connu leur consécration avec la révolution française de 1789. On les qualifie parfois de droits-attributs ou de droits de liberty. Ces droits apparaissent le plus souvent homme des droits individuels: droit d'aller et venir, liberté d'expression, etc. En ce qui concerne les droits économiques, sociaux et culturels, aussi

appe165 droits de la deuxième génération, ils naissent avec les révolutions mexicaine (1910) et bolchevique 1917) et peuvent s'apprécier comme des droits de l'homme, non pas opposables L'stat mais exigibles de lui. Ils s'analysent ainsi en cr6ances la charge de L'stat. Ce sont les droits de l'6galite doit la mise en œuvre suppose une prestation de l'Etat. Ces droits sont le plus souvent des droits collectifs: droit au travail, droit la sante, droit l'éducation, droit L'information, etc. Mais les droits de L'homme ne sont pas des concepts statiques. Chaque jour peut apporter son nouveau droit de L'homme. Aussi parle-t-on de droits de L'homme de la troisième génération ou encore de solidarité. Ce sont des droits la fois opposables L'Etat et exigibles de lui et qui supposent la conjonction des acteurs du jeu social. Il s'agit, par exemple, du droit au développement; du droit la paix; du droit à l'environnement sain (que l'on retrouve dans nombre de constitutions contemporaines), qui trouve une assise dans la Déclaration de Stockholm du 16 ruin 1972; du droit au patrimoine commun de l'humanité; etc. Voir Tafsir Malick NDIAYE, « les droits de L'Homme aujourd'hui », in R. WOLFRUM, M. SERIC, T, SOSIC (eds.). Conremporary developments in International Law. Essays in honour of BudislavVukas, Brill/Nijhoff, Leiden/Boston, 2016, PP. 574 et s.

64.See United Nations document A/65/69/Add.2, para.374
65 UN GA, Resolution 69.245

66 See UN Secretary-General report 1°5 Ibid.
68 See resolution 68/70, annexe.

69 See www.un.oceans.org

There are two problems of concern to the international community of States as a whole. It is about:

Consequences of Climate Change

The consequences of climate change on the oceans are likely to be on the Law of the Sea agenda for a long time and may well occupy a number of international institutions. The 2010 report of the UN Secretary-General on Oceans and the Law of the Sea highlights the various aspects of these consequences: "rising sea levels; the melting of ice in the Arctic Ocean; The issue of ocean acidification; the challenges of marine biodiversity; increased frequency of extreme weather events and transfers in the distribution of biological species64. . That is why the United Nations General Assembly continues to stress the urgent need to address the effects of climate change and ocean acidification on the marine environment and marine biodiversity and recommends a number of measures.

One of the flagship measures is raising public awareness of the adverse effects of climate change on the oceansl04. As part of its revised mandate, approved by the General Assembly, UN-Oceans, the inter-agency coordination mechanism for oceans and coastal issues, continued to give priority to a searchable online database containing an inventory of mandates and activities67. In accordance with its mandate68, the UN-Oceans Coordinator held the sixteenth meeting of the consultative process on the work of this mechanism69. UN Oceans also organized a briefing session on the activities of UN-Oceans members on the sidelines of the Conference of the Parties (COP 21) at the United Nations Framework Conference on Climate. 930e

Change in Paris the issue of Oceans and climate change and the acidification of the oceans70. The issue of climate change is of global concern. It is multidimensional71in that it covers the most diverse and dissimilar domains72.

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70 See http://unfccc.int/files/meetings/Bonnjun_2015/
71 See UN document A/65/69/add.2, para 374; R. Rayfuse and Scott (eds.) International lawin the Era of Climate Change, London, 2012; Dryzek, Norgaard and Schlosberg (eds.), OxfordHandbook of Climate Change and Society Oxford, 2011; A. Boyle,"Climate Change and OceanGovernance", in M.C. RIBEIRO (ed.), 30 years after he signature of the UNCLOS ... op. cit.pp. 357-382, oùl'auteurécrit: "Rather, the important lesson is that climate change shouldbe on the negotiating agenda of all international institution whose mandate is affected by it. Itis a human rights issue. It is a trade issue. It is also an issue for IMO and those convention secretariatsresponsible for protecting the marine environment pursuant to part XII of the 1982Convention", p. 358.

72 As stated in the 2014 summary report dedicated to the leaders:"1) Human influence on the climate system is clear ... recent climate changes have had widespreadimpacts on human and natural systems;2) many of the observed changes are unprecedented;3) the atmosphere and oceans have warmed, that amounts of snow and ice have diminished, andsea level has risen,4) anthropogenic greenhouse gas emissions are extremely likely to have been the dominant causeof the observed warming since the mid-20th century;5) Continued emissions ... will cause further warming and long-lasting changes ... increasingthe likelihood of severe, pervasive and irreversible impacts;6) Limiting climate change would require substantial and sustained reductions in greenhousegas emissions;7) It is very likely that

heat waves will occur more often and last longer, and that extreme precipitationevents will become more intense in frequent in many regions. The ocean will continueto warm and acidify, and global mean sea level to rise;8) Many aspects of climate change and associated impacts will continue for centuries;9) The risks of abrupt or irreversible changes increase as the magnitude of the warming increases;10) Without additional mitigation efforts ... warming by the end of the 21st century will lead tohigh , to very high risk of severe, wide-spread and irreversible impacts globally and11) there are multiple mitigation pathways that are likely to limit warming to below 2°C relativeto pre-industrial levels. the pathways would require substantial emissions reductions over thenext few decades and near zero emissions of CO2 and other long-lived greenhouse gases by theend of the century", IPCC, Climate Change 2014 Synthesis Report, Summary for Policymakers,http://www.ipcc.ch/pdf/assessment. Report/ar5/syr/AR5 SYR FINAL SPM. pdf. 73. Ph. Sands,"Climate change and the Rule of Law: Adjudicating the Future in InternationalLaw", Public Lecture, United Kingdom Supreme court, 17 September 2015, 530 pm, pp. 1-21,spec.p.6. 74 It is estimated that one third of the increase is due to the melting of continental glaciers andpolar ice (averagewinter temperature in Antarctica rose by 6 degrees in 50 years), another thirdto dilation of Sea water because of its warming, even minimal, the last third causal being stillindeterminate. See J.P. Pancracio, Law of the Sea, Précis Dalloz 2010, p. 2. 75 This is the case for the archipelagos of Tuvalu (Pacific Ocean), the Maldives (Indian Ocean)and the Seychelles (Indian Ocean). These archipelagos are classified as Small Island DevelopingStates, many of whose islands are only 1 or 2 meters high; Which exposes them singularly.

As Ph.Sands says: "It is plain that climate change poses significant challenges to international law. The subject transcends the classical structure of an international legal order that divides our planet into territorially defined areas over which states are said to have sovereignty. Issues associated with climate change permeate national boundaries: emissions or actions in one state will have adverse consequences in another, and in areas over which states have no jurisdiction or sovereignty. (...) there is no other issue like climate change, where the sources of the problem-according to the IPCC-are so many and so broad, requiring actions that touch upon virtually every aspect of human endeavor and action. Each of us contributes to climate change; each of us will be affected by climate change73." Given the prolific nature of the problems raised by the changes and, above all, their differences in nature, several specialty criteria will have to be put in place to deal with the situation. Sea-level rise is likely to affect many islands and the low tide elevation that may disappear. The problem of the rights to the maritime areas which fell within the jurisdiction of the said islands after the disappearance of the low-tide elevation will have consequences for the determination of the baselines.

Scientists have revealed that sea-level rise was faster from 2000 to 2009 than in the previous 5,000 years74. The immediate challenge facing this situation is the protection of archipelagos likely to be threatened by rising sea levels and populations living on the coast. The various island formations of certain archipelagos are at a very low level above the present level of the sea75.

The melting of continental glaciers and polar ice will affect the law of the sea. It will generate new continental shelves; new shipping routes and may be a new piracy due to the idleness of indigenous peoples likely to be and the migration of fish stocks to these new ice-free areas. This situation can create new fishing activities at the same time as a new hydrocarbon or gas industry, that is to say also a possible pollution.

This means that many issues will emerge and will require a very close international cooperation to remove these zones from a geo-economic and geostrategic conflict situation. Meanwhile, States may rely on UNCLOS for the protection and preservation of the marine environment."States have an obligation to protect and preserve the marine environment"76.. They are thus required to take measures to prevent, reduce and control pollution of the marine environment.

In particular, States must take all necessary measures to ensure that activities within their jurisdiction or control are conducted in such a way as not to cause pollution damage to other States and their environment and to ensure that the resulting pollution Incidents or activities within their jurisdiction or control does not extend beyond the areas where they exercise sovereign rights77.

This principle of non-harmful use of the territory 78 appears to be adue diligence 79obligation, and therefore liable to involve the responsibility of a State80

The other major challenge is the acidification of the oceans, whos elevel of scientific knowledge is in the limbo of stagnation, promptingthe

Community of Nations to take note of the situation. As Tommy Kohpoints out:

76 Article 192 of UNCLOS and Article 194 paragraph 5 to clarify that"measures taken in accordance with this Partshall include measures necessary to protect and preserve rare or delicate ecosystems and the habitat of species and other marine organisms in decline , Threatened or threatened with extinction". These obligations should be considered in tandem with those relating to the conservation and management of the living resources of the high seas as contained in articles 117 to 120 of UNCLOS

77Article194,para.2
78 See Tafsir Malick NDIAYE The International Responsibility of States for Marine Damage", in B. Vukas, T. SOSIC (eds.), International Law: New Concepts, Continuing Dilemma, Liber Amicorun? BoziclarBakotic, MartinusNijhoff Publishers, Leiden / Boston 2010, pp. 265-279, 267; See also the Basel Convention of 22 March 1989 on the Control of Transboundary Movements of Hazardous Wastes, International Legal Materials (ILM), Vol. 28, p. 649 (1989).
79 See ITLOS, Case No. 17, Responsibilities and Obligations of States Sponsoring Persons and Entities in Activities Conducted in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Tribunal), par. 115-120.

80. On the justiciability of climate change, see A. BOYLE, op. cit. [Note 109] pp.378-380; Ph. Sands op. cit. [Note 111],p. 11-15. 81 See, T. Koh, in L. Del Castillo (ed.) Law of the Sea, from Grotius to the International Tribunalfor the Law of the Sea, Liber Amicorum Judge Hugo Caminos, Brill / Nijhoff, 2015, p.108;In its resolution, the General Assembly of the United Nations says: "§81 Takes note of the workof the Intergovernmental Panel on Climate Change, including its conclusions that, The effectsof ocean acidification on marine biology are not yet known, this progressive acidification is expectedto have a negative impact on shellfish marine organisms and their dependent species,and in this regard encourages States to continue, Urging research on ocean acidification, in particularobservation and measurement programs", A / RES / 62/215 of 14 March 2008, Resolutionadopted by the General Assembly of the United Nations on 22 December 2007 , P. 16, para. 8182 See A / 61/65 and Corr. 1
83 As requested by the United Nations General Assembly in paragraph 91 of Resolution 61/222.The Working Group held several meetings from 2006 to 2015.
84 See document A / RES / 62/215 of 14 March 2008, p.24, para. 133.

"The nexus between climate change and the oceans is insufficiently understood. People generally do not know that the oceans serve as the blue lungs of the planet, absorbing Cot for the atmosphere and returning oxygen to the atmosphere. The oceans also play a positive role in regulating the world's climate system. One impact of global warming on the oceans is that the oceans are getting warmer and more acidic. This will have a deleterious effect on our coral reefs. In view of the symbiotic relationship between land and sea, the world should pay more attention to the health of our oceans81"

Marine Genetic Resources

The issue is being considered by an Ad Hoc Open-ended Informal Working Group, established by the United Nations General Assembly in 2004, to address issues related to the conservation and sustainable use of marine biodiversity in Areas beyond national jurisdiction" the Ad Hoc Working Group82".

This work is carried out through the Open-ended Informal Consultative Process on Oceans and the Law of the Sea ("the Consultative Process"), which focuses on marine genetic resources and agrees that the Ad Hoc Working Group To consider this issue83. Discussions were held on the legal regime to be applied to marine genetic resources in areas beyond national jurisdiction, in accordance with UNCLOS and the General Assembly had to ask States to continue consideration of this issue in within the mandate of the Ad Hoc Working Group, to advance the work84.

The community of States is doubly aware of the abundance and diversity of marine genetic resources and their value in terms of the benefits that can be derived from it and the goods and services to which they may give rise, a part. On the other hand, it is also aware of the importance of research on marine genetic resources to better understand and better manage marine ecosystems and their potential uses and applications85.

The first meetings of the Informal Working Group saw very little progress in the discussions where there was strong disagreement and divergence on the issue of the applicable legal regime for marine biodiversity, including marine genetic resources beyond the national jurisdictions.

The particular nature of genetic resources, which must be thoroughly explored, makes discussions very difficult. The question that arises is whether they belong to the seabed or to the superjacent waters. The answer to this

question reflects on the applicable rules of the law of the sea. Thus, two opposing and exclusive points of view have clashed in the process. On the one hand, some States have argued that the fundamental principle to be applied in this matter is that of the common heritage of mankind, while other States have asserted the principle of freedom of the high seas, other.

Three types of arguments are advanced to support the different positions.

85 Ibid. Paragraphs 134 and 135; See also J. Wehrli and Th. Cottier "towards a treaty instrumenton marine genetic resources"in M. C. Ribeiro (ed.), 30 years after the signature of theUNCLOS ... op. cit. [Note 112] pp. 517-549 where it is stated that"The law, and internationallaw, finds itself in the classic constellation of ex post assessment of the implications of rules notper se designed to deal with novel and impending challenges. [...]Even the deep sea, which belongs to the least explored areas in the world, supports mammalsand fish, including sea stars, sponges, jellyfish and bottom — dwelling fish, worms, molluscs,crustaceans, and a board range of single-celled organisms", p.518; M. Allsopp and al., WorldWatch Report 174: Oceans in Peril: Protecting Marine Biodiversity, World Watch Institute, WashingtonDC, September 2007, p. 7.; T. Heidar,"Overview of the BBNJ Process and Main Issues",CIL International Workshop, Conservation and Sustainable Use of Marine Biological Diversityof Areas Beyond National Jurisdiction: Preparing for the PrepCom, Singapore, 3-4 February2016 [PowerPoint].

First, the question of whether the regime applicable to the Area concerns resources other than minerals. It is well known that UNCLOS means resources of all in situ solid, liquid or gaseous mineral resources in the area that are on the seabed or subsoil thereof, including polymetallicnodules and once extracted from the Zone, are called "minerals"[86].

The argument is sometimes developed on the basis of an analogy withthe status of sedentary species on the continental shelf. Second, the question of whether Article 143 of UNCLOS can be invokedin support of the idea that the prospecting of genetic resources should be conducted for exclusively peaceful purposes and in the interest of all humanity in accordance with Part XIII[87]. Finally, the question of whether the International Seabed Authority is called upon or not to playany role in this matter, since the Authority is the organization through which States Parties organize and Control activities in the Area, including the administration of its resources[88].

It was in 2011 that the Working Group was to recommend the establishment of a process whereby the legal framework for the conservation and sustainable use of marine biodiversity in areas not under national jurisdiction reflects Different points of view of States. In particular, "taken jointly and as a whole", issues relating to marine genetic resources ,including those related to benefit-sharing, measures such as area management tools, including marine protected areas, Impact on the environment, as well as capacity building and transfer of marine technology.

This recommendation will be adopted by the United Nations General Assembly and is presented as the package deal of negotiations in the development of an international legally binding instrument related to UNCLOS on the conservation and sustainable use of Marine biodiversity in areas not under national jurisdiction (BBNJ)[89].

The Working Group continued to examine these issues in the context of the new process. It held two workshops in 2013 on marine genetic resources and on the conservation and sustainable use of marine biodiversity on the other. The General Assembly convened that the Working Group should hold several meetings to prepare the decision it was due to take at its 69th session and for which it requested recommendations on terms of reference[90], application, parameters and possibilities for the development of an international instrument related to the Convention.

After considering the recommendations[91]of the Ad Hoc Open-ended Working Group and welcoming the progress made by the Working Group in implementing, in accordance with its mandate[92], the General Assembly decided to develop a legally binding international instrument on 19 June 2015.

86 UNCLOS, article 133, para. a) and b).
87 The words of Article 143, paragraph 1, of the UNCLOS relating to"Marine Scientific Research"in the Area, that is to say, the seabed and its subsoil beyond the limits of jurisdiction national.
88 UNCLOS, article 157.

89 See United Nations document A / RES / 69/292 of 6 July 2015, adopting the Resolutionadopted by the General Assembly on 19 June 2015"Preparation of an international instrumentrelating to UNCLOS,

Sustainable use of marine biodiversity in areas beyond national jurisdiction", p. 2, para. 1. 90 on the adoption of an international instrument relating to the United Nations Convention on the Law of the Sea before the end of its sixty-ninth session".
91See doc. A/69/780, annex sect.l
92 See resolutions 66/321 of 24 december 2011 and 67/78 of 11 December 2012

It also decides to establish, before the date of an inter governmental conference, a preparatory committee, open to all Member States of the United Nations, members of the specialized agencies and parties to theConvention93. The Committee is responsible for making substantive ecommendations to the General Assembly on the elements of the draft international legally binding instrument relating to the Convention. The Committee will have to take into account the various Co-Chairs' reports on the work of the ad hoc informal working group on issues related to the conservation and sustainable use of marine biodiversity. The committee began its work in 2016 and will hold two sessions of two weeks each. The first session took place from 28 March to 8 April and the second session will take place from 26 August to 9 September. The same will happen in 2017 and the Preparatory Committee will report to the General Assembly on the status of its work by the end of 2017. The Preparatory Committee is chaired by Ambassador Eden Charles of Trinidad and Tobago94.

The General Assembly of the United Nations decided that before the end of its seventy-second session it would take a decision, taking into account the report of the Preparatory Committee, on the organization and date of the opening of an intergovernmental conference , To be held under the auspices of the United Nations; The recommendations of the Preparatory Committee and the development of an international legally binding instrument related to the Convention.

On 28 February 2017, the Chairman of the Preparatory Commission submitted a text entitled 112 pages "Non-paper" and 759 proposals from States, which constitute the elements. of the draft international legally binding instrument on the conservation and sustainable management of Biodiversity beyond national jurisdiction.

The text is a reference document, which will greatly assist delegations in the consideration of issues and ideas under discussion in the Preparatory Committee95.

Section E of Chapter III, "Environmental Impact Assessments", is particularly important for the protection and preservation of the marine environment with the suggested principles: "Precautionary principle / Approach; Ecosystem approach; Science-based approach; Transparency in decision making; Inter-and-Intra Generational Equity; Responsibility to protect and preserve marine environment; Stewardship; No-net-loss principle96.

This process of negotiation will undoubtedly be enhanced by the interpretation and application of Part XII of UNCLOS. Moreover, the dialogue between international and arbitral tribunals will gradually establish an international regime for the protection of the environment. To this end, it would be desirable to give the International Courts or Tribunals the opportunity to examine the merits of - whatever the retained referral — cases relating to the protection of the marine environment — whatever the mode of referral (contentious or advisory) and thus avoid the resort to urgent procedures which confine to a summary examination of the facts of the case; given, that the time of protection of the marine environment is rather that of urgency.

93 See doc.A/RES/69/780, annex sect. I
94 Ibid. For the organisation and the ruling of the preparatory committee, paragraph 1
95 See http:// www. un.oredepts /losibiodiversity /prepcorn.htm]
96 See Non Paper, ibid, pp. 64-78

In addition, there should be a universal treaty for the protection ofthe marine environment that will not exclude the possibility of concludingegional agreements. The universal and the regional must heremaintain a harmonious link to organize cooperation on a global scale.

These mutual relations and influences are an important phenomenon tobe taken into account in attempting to determine the prospects of internationallaw for the protection of the marine environment.

97. R.J. Dupuy, dir., L'avenirdu droit international de l'environnement, Nijhoff, Dordrecht, 1985,514 p.; R.J. Dupuy et D. Vignes, dir., Traité du Nouveau droit de In mer, Economica/Bruylant,1985,1447 p.; EM. Dupuy, La responsabilité internationale des Etats pour les dommages d'originetechnologique et industrielle, Pedone, 1977, p. 319 p.; L. Boisson de Chazournes, «La miseen œuvre du droit international

dans le domaine de la protection de l'environnement. Enjeu etdéfis», Revue générale de droit international public (RGDIP), 1995/1, pp. 37-7®; PM. Dupuy,« La preservation du milieu marin », in R.J. Dupuy et D. Vignes, op. cit., Chapitre 20, pp. 979-1045; N. de Sadeleer, Les principes du pollueur-payeur, de prévention et de précaution, Bruylant,Bruxelles, 1999,437 p.; P. Martin-Bidou,"Le principe de précaution …"RGDIP, 1999, pp. 631-666; P.M. Dupuy, «Ou en est le droit international de l'environnement a la fin du siècle?»,RGDIP, 1997/4, pp. 873-904; L. Boisson de Chazournes, R. Desgagne, C. Romano, Protectioninternationale de Tenvironnement; Recueil d'instruments juridiques, Paris, Pedone, 1998, 1117p.; R. Wolfrum, « Purposes and principles of international environnemental law », German Yearbookof International Law, 1990, vol. 33, pp. 308-330; Fred L. Morrison and RudigerWolfrum(eds.), International, Regional and National Environnemental Law, The Hague/London/Boston, Kluwer Law International, 2000, 976 p.; R. Wolfrum, Ch. Langen feld, P. Minnerop, Environmental Liability in International Law: Towards a Coherent Conception, Berlin, Erich Schmidt Verlag, 2005, 586 p.; P. Daillet, A. Pellet, Droit international public, Paris, L.G.D.J., 2002,7eed., 1510 p.; P.M. Dupuy, Droit international public, Paris, Dalloz, 1998, 4C ed., 684 p.; J. Combacau,S. Sur, Droit international public, Paris, Montchrestien, 2004,6' ed., 809 p.; T.M. Ndiayeet R. Wolfrum (eds.), Law ofSea, Environmental Law and Settlement of Disputes; Liber AmicorumJudge Thomas A. Nensah, Martinus Nijhoff Publishers,2007, Leiden, 1186p. spéc.pp.1055-1186. Tafsir Malick Ndiaye, MatieresPremieres& Droit International, Dakar nea 1992, 360 pages.

CONCLUSION

With the advisory opinion of the International Court of Justice in The Hague, the W.H.O has elements which enable it to establish as well as possible the elimination of the pandemic and the procedure for health recommendations relating to protective measures.

In contrast, policymakers are business-minded and tend to develop economic and other activities. Developing countries, on the other hand, must have a resilient posture that allows them to escape from a phenomenon as unexpected as Covid-19.

Finally, containment measures and the closing of borders can have a beneficial effect against pollution and sustainability.

Citation: *Judge Tafsir Malick Ndiaye, "New World Challenges", Journal of Law and Judicial System, 3(2), 2020, pp 15-34.*