"Protection of multinational companies investments in Natural Resources and the hurdle of the sovereignty of the host state".

"حماية استثمارات الشركات متعددة الجنسيات في الموارد الطبيعية وعائق السيادة للدولة المضيفة."

By LL.M. Samir Raheem Taher Alsoodani The Faculty of Law

College of Law\Al-Nahrain University- iraq

تاريخ إرسال المقال: 2020/05/03 ------تاريخ قبول المقال :2020/05/05

Email :dralimajeed82@gmail.com

Abstract:

Internationally, natural resources have been commonly considered as elements of production or as goods that can be traded globally.

It appears unlikely to find a unique definition of "natural resources", and these will be defined according to the treaty applicable to each case or situation. "Natural resources" is thus a wide concept that encompasses, among others, including energy resources.

However, some common features can be determined for the majority of them, for instance, their exhaustibility and the uneven distribution across countries, particularly in the instance of energy resources, their value volatility .

Since the emergence of the industrial societies, and the subsequent growing need on raw materials, natural resources of developing countries have been commonly exploited by foreign businesses. Historical, this exploitation by multinational corporations often implied the ownership of the resources, without intending to endorse the social and economic growth of the host country, and without due attention paid to an equitable and responsible exploitation of the resources .

Keywords:

Multinational companies, Sovereignty, development, natural resources, exploitation, United Nation, declaration, economic, resolutions.

الملخص:

على الصعيد الدولي, تعتبر الموارد الطبيعية بشكل عام من عناصر الانتاج او السلع التي يمكن تداولها على مستوى العالم. ويبدو من غير المحتمل ان نجد تعريفاً فريداً لمصطلح "الموارد الطبيعية" في القانون التجاري الدولي, لذلك سيتم تعريفها وفقاً للمعاهدات المنطبقة فيما بين الدول. وبالتالي فأن "الموارد الطبيعية هي مفهوم واسع يشمل مسائل اخرى من بينها موارد الطاقة. ومع ذلك , يمكن تحديد بعض السمات المشتركة. على سبيل المثال, قابليتها للنضوب, التوزيع غير المتكافيء عبر البلدان وايضا تقلب قيمتها في السوق.

منذ ظهور المجتمعات الصناعية والحاجة المتزايدة اللاحقة على المواد الخام حيث تتم من خلال استغلال الموارد الطبيعية للبلدان النامية على نطاق شائع وواسع من قبل الشركات الاجنبية. تاريخيا وغالبا ما كان هذا الاستغلال من قبل الشركات متعددة الجنسيات مما

يؤدي الى الاستحواذ على ملكية الموارد دون قصد دعم النموالاقتصادي والاجتماعي للبلد المضيف ودون ايلاء الاهتمام الواجب للاستغلال المنصف والمسؤول للموارد.

ستبحث هذه الورقة في بعض القواعد الاساسية للقانون التجاري الدولي التي تحمي الشركات المتعددة الجنسية واستثماراتها حتى نتمكن من تحديد الاهمية القانونية لمختلف هذه الادوات القانونية المتاحة لهذه الشركات مع مراعاة السيادة الدائمة للدولة المضيفة على مواردها الطبيعية والحاجة الى التنمية المستدامة, والقواعد التي تنطبق من اجل حل النزاعات وتفسير المعايير بحسب القانون التجاري الدولي. واخيرا, سنختم بموقف قانوني تجاه المعادلة بين حماية هذه الشركات الاجنبية ومبدأ السيادة على الموارد الطبيعية ومفهومه الذي يتعلق بالاثر على التنمية المستدامة.

الكلمات الدالة:

الشركات متعددة الجنسيات ، السيادة ، التنمية ، الموارد الطبيعية ، الاستغلال ، الأمم المتحدة ، الإعلان ، الاقتصادي ، القرارات.

I INTRODUCTION

Ce document constitue un modèle pour Microsoft Word. Ne changez pas la taille des polices de caractères ou l'interlignage pour insérer plus de texte. Le titre du papier doit être écrit en lettres majuscules et minuscules, pas tout majuscules.

PROCEDURE DE SOUMISSION

I Emergence of the principle of "Permanent Sovereignty over Natural Resources" and the concept of "Sustainable Development "

A) Permanent Sovereignty over Natural Resources :

Art.2 (1) of the 1945 Charter of the United Nation declares the equal sovereignty of all the members of the organization, Art.1 of the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights, state that all peoples have the right of self-determination. This right enables States to determine, without external interference, their political status as well as to freely pursue their economic, social and cultural development .

As this paper introduced before, developing countries have seen the principle of self-determination as a tool to recover control over their natural resources historically appropriated and exploited by foreign multinational corporations .

Yet in 1952, the UN General Assembly adopted resolution 626(VII) where the right of States to freely use and exploit their natural wealth and resources was proclaimed as a way to achieve the economic development of under-developed countries .

But it was not until 1958 and the UN GA 1314(XIII) resolution that permanent sovereignty over natural resources was considered as a basic constituent of the right of self-determination .

In 1962, the UN GA 1803 resolution, entitled "Permanent Sovereignty over Natural Resources", was adopted its principle that the right of the State has to be exercised in accordance with national development and the welfare of the

people of that State. Principle 4 asserts the corollary right of the sovereign State to nationalize or expropriate for public purposes, with compensation, in accordance with both domestic and international laws .

As an effect of the increasing participation of developing countries in the global economy, the Declaration of the New International Economic Order was adopted in 1974 as part of UN GA resolution 3201(S-VI). The declaration reiterated in its paragraph 4, principle e), the permanent sovereignty of the State over its natural resources and its consequent right to expropriate. However, reimbursement was not mentioned and this led a group of countries such as the United Kingdom, Germany, France, Japan and the USA, to devise reservations to certain aspects of the Declaration .

In 1974, the Charter of Economic Rights and Duties was approved by UN GA resolution 3281 (XXIX). It can be noted that the growing influence of developing countries hesitant to trust international law to defend their interests, and asserting in their right to determine the use of their natural resources, as article (2c) of the Charter recognizes compensation in the instance of expropriation but does not associate it with international law .

Article (2c) of the Charter states that "appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all the circumstances that the State considers pertinent". While the acknowledgment of permanent sovereignty raised no oppositions, this

clause on the law applicable to compensation raised objections by the United States and many other countries .

Undoubtedly there has been, amongst the gradual formation of this principle, a defense of own interests by developing States and yet developed States, but the recognition of permanent sovereignty over natural resources as part of the corpus of international law is now unquestionable .

"The description of this sovereignty as permanent signifies that the territorial State can never lose its legal capacity to change the destination or the method of exploitation of those (natural) resources ".

B) Sustainable Development :

Both the understanding in the last decades of the environmental impact of our economic activities and the depleting of natural resources, have brought a debate into the dilemma of continuing economic growth while at the same time safeguarding the maintenance of environment and natural resources for future generations .

Therefore, in 1972 the Stockholm Conference of 1972 adopted a declaration of principles asserting in its principle 1 the fundamental right to an environment of quality. It additionally states, at principle 5, that non-renewable resources must be utilized in such a way "as to guard against the danger of their future exhaustion" whereas principle 11 provides that "the environmental policies of

all States should enhance and not adversely affect the present or future development potential of developing countries ."

As for principle 21 of the Stockholm Declaration reiterates the sovereign right of States to exploit their natural resources "pursuant to their own environmental policies" and asserts a "responsibility to guarantee that actions within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction ."

It is evident that principle 21 deals with environmental damage outside the jurisdiction of the host State, but does not force any commitment with regard to the management of its natural resources. Thus, in this principle there is no threat to the sovereignty of the host State .

Actually, a meaning of "sustainable development" was not devised until the 1987 in the Brundtland Report (issued by the Bruntland Commission that was established by UN GA Resolution 38/61), which defined it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs ."

Let's look at Sands 1999, where he identified four main components in this broad definition of the concept:

- -"the need to preserve natural resources for the benefit of future generations (which has been acknowledged as the principle of intergenerational equity.

- **- the aim of exploiting natural resources in a manner which is sustainable, or prudent, or rational, or wise or appropriate (known as the principle of sustainable use (**
- **- the equitable use of natural resources, which implies that use by one State must take account of the needs of other States (the principle of equitable use, or intra-generational equity); and**
- **- the need to ensure that environmental considerations are integrated into economic and other development plans, programs and projects, and that development needs are taken into account in applying environmental objectives (the principle of integration "(**

In 1992 the Rio Conference raised expectations among enthusiasts of the protection of environment. However, it emerges rather symbolic that the Rio Declaration echoes principle 21 as principle 2, hence stressing the place of State's sovereignty over natural resources in relation to environment protection. Likewise, principle 2 adds to principle 21 "developmental policies" and consequently reads: "States have (...) the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction "

According to Schirjver 1997, "this phrase expresses the conviction of developing countries that their environmental policies cannot override their developmental policies, especially not as regards the exploitation of natural resources ."

Notwithstanding this fact, the significance of the Rio Declaration for the development of international environmental law cannot be denied as it marked the opening for signature of two new global environmental treaties: the UN Framework Convention on Climate Change, and the Convention on Biological Diversity .

In 1997 the Kyoto Protocol to the Convention on Climate Change sets objectives for industrialized countries and the European Community to reduce Greenhouse Gas Emissions but hasn't yet been ratified by the USA.

The list of many other multiparty and regional agreements where sustainable development has played an important role is very long, among many others it can cite the World Charter of Nature, the Espoo Convention, or at a regional level, the Aarhus Convention, the Energy Charter Treaty ect... Hence, sustainable development is a concept that has found wide recognition in the corpus of international law, while it has also assisted the development of international environmental law, through International Bodies and International Agreements.

Then, does this concept represent a real threat to the exercise of the State's permanent sovereignty to run its natural resources? To address this question it is essential to look at some general rules of international law.

II International Commercial Law:

the legal framework of the concept of "Sustainable Development" and the doctrine of "Permanent Sovereignty over Natural Resources:"

International Commercial law can be defined as the body of law that regulates relations between businesses across the glob. A particular characteristic of international commercial law is that its subjects, States, are also, as sovereigns, its own policymaker. But, if it is true that States are one of the key players of international commercial law, the international community has much evolved since the founding of the United Nations. Currently, the main impact of international bodies such as committees on conferences established under the United Nations, but also non-governmental bodies or worldwide companies cannot be denied .For instance, the World Trade Organisation.

A) How can States be obliged by an international obligation ?

Sources of international law are a central element to define the legal value of the principle of permanent sovereignty over natural resources and the concept of sustainable development. " The International Court of Justice acts as a world

court. (...) It decides, in accordance with international law, disputes of a legal nature that are submitted to it by States "

Art.38.1 of the Statute of the ICJ, the Court shall apply: "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; subject to the provisions of Article 59,judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law ".

Hereafter, the primary sources of international law are international conventions or treaties, international customary rules, and the general principles of international law, usually applied in absence of any conventional or customary rule.

A treaty in the Vienna Convention 1969 can be defined as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation ."

Custom on the other hand, is based on two components: the general practice of States, and "opinio juris". The term "general" means that the practice does not need to be applied by all States but by a majority of the States concerned by the emerging norm and that this practice has to be uniform, while the second

element "opinio juris" means that, through this practice, States consider they are acting in accordance with a legal obligation.

Looking at Art.38 of the Statute of the ICJ, it doesn't establish any hierarchy between obligations arising from a treaty and those arising from a rule of international custom. Despite the supremacy established at art.53 of the Vienna Convention 1969, of absolute standards of international law or "jus cogens", hierarchy cannot be found between a treaty obligation and an obligation arising out of international customary rule.

But, it perceived that neither the principle of State's permanent sovereignty over its natural resources, nor the concept of sustainable development, have evolved through treaties but through the United Nations General Assembly Resolutions and declarations or recommendation deriving from international bodies that were founded by the United Nations. This is why this paper will examine the legal value of these instruments.

B) Hard-Law and Soft-Law:

These terms, used in international law, serve to distinguish between a formal rule, legally binding (hard-law), whose violation amounts to a breach of an international obligation that can leads to the international responsibility of the State (in order to hold a State internationally responsible, the breach of an international obligation attributable this State is needed); and a norm or legal principle which has been formulated through non legally binding instruments

)soft-law), with the consequence that if it is violated it cannot lead to State's responsibility because it does not amount to a breach of an international obligation.

Although its status of mere recommendation and thus not binding, it is now widely accepted that UN resolutions do have legal relevance in international law and in its development, because "the proceedings of the General Assembly, as of any international conference, are a vehicle for the formulation and expression of the practice of States in matters pertaining to international law. Thus the proceedings and the resolutions themselves constitute evidence of the formation of rules of customary (or general) international law .

Actually, General Assembly resolutions can codify existing rules ("lex lata") of customary international law, or "have a catalytic effect and provoke a development in State practice which in due course becomes coherent enough to satisfy the criteria for the formation of a rule of customary international law ."

That means that despite their status as "soft-law", resolutions are able, through a process of codification or progressive development, to transform a non-binding norm into a binding one, that is to say, into "hard-law ."

Therefore, it can here conclude that a legal principle contained in a resolution of the General Assembly can be considered as a rule of international custom, if it meets the requirement of general State practice and "opinio juris", and thus as a primary source of international law .

Nevertheless, the doctrine of the "persistent objector" means that a State which has formally objected, since its emergence, to a rule of customary international law will not found itself bound by this same rule .

In the same way, a concept included in resolutions or declarations adopted by international bodies, such as committees on conferences, can acquire the status of a binding customary international rule, otherwise it can also assist the development of international law leading to the formulation of international obligations in international agreements .

Conflict and interpretation of different sources of international commercial law and international law :

If there is no hierarchy between the primary sources, how can be a conflict between them resolved? What is the relationship between different sources of legal obligations, particularly between a customary rule of international law and a treaty obligation ?

As regards the relationship between a treaty and a customary norm of "jus cogens", this is governed by article 53 of the 1969 Vienna Convention. This provides that a treaty will be void if at the time of its conclusion it conflicts with a peremptory norm of international law .

But the Vienna Convention does not set any rule of application between a customary norm of international law which does not amount to be a norm of "jus cogens", and a particular treaty obligation .

It is true that some general principles exist to solve conflicts of norms such as the latin principles, "prior in tempore, potior in jure" or "lex specialis derogat lex generalis" but the doctrine (qualified publicists) and judicial decisions, relevant as subsidiary means of international law, don't seem to have acclaimed these principles as a way to solve the possible conflicts that could arise out of an international custom related to a treaty obligation .

More recently, the "Institut de Droit International", association of recognized international lawyers, attempted to determine a general rule on this matter and proposed the conclusion that relevant norms of a treaty will prevail over related norms of customary international law between the parties. But it does not seem to have gained much support among the doctrine, as even among the 132 members of this Institute, according to the voting records only 32 members expressed their opinion, 11 supporting this conclusion, 13 abstaining and 10 voting against. Furthermore, not only does this rule establish a hierarchy between sources of international law, where according to the ICJ Statute there is not, but it also "assumes conflict when conciliation could be achieved .

According to P. Sands this will have to be dealt as a matter of interpretation, particularly under article 31.3c) of the 1969 Vienna Convention that tates that

when it comes to interpret a treaty, in accordance with its context, object and purpose (article 31.1), and together with subsequent practice or agreement regarding its interpretation (article 31.3 a) and b)), any other general rule of international law shall be taken into account .

Hence, under article 31.3c) a treaty is to be interpreted in the light of a customary international rule, but it is not applied instead of it. This approach is the closer to what the Vienna Convention seems to stipulate, moreover, it "would tend to unify rather than fragment the international legal order "

According to all this, this document is now going to identify :

a) The legal status, in international commercial law, of the principle of permanent sovereignty: is it binding? Does it represent international custom? Is it a peremptory norm of international law?

b) The legal value, in accordance with international commercial law, of the concept of sustainable development: is it a binding rule? Does it constitute international custom? What is its role in international law ?

c) Finally, how the principle of permanent sovereignty and the concept of sustainable development can be read together ?

III THE LEGAL RELATIONSHIP BETWEEN THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES AND THE CONCEPT OF SUSTAINABLE DEVELOPMENT

A) The legal status of the principle of permanent sovereignty over natural resources :

As previously observed, the formation of this principle has progressed by means of UN General Assembly resolutions. Apart from treaties, UN resolutions can be considered as providing evidence of customary international law insofar as they identify, specify, confirm or reformulate rules of customary law. While they do not create legal obligations they can reflect a consensus of opinion about what is already practice thus becoming evidence of customary international law .

The declaration of the New International Economic Order and the Charter of Economic Rights and Duties received objections among many States about the compensation due to an expropriation or nationalization as a consequence of the State's permanent sovereignty of State over its natural resources. According to the speech of the United States representative when the adoption of UN GAResolution 3201(S-VI) "if the offending principle (that the right to nationalize is not coupled with a compensation determined in accordance with international law) was to emerge as a new principle of customary international law, the United States would rank as a "persistent objector" and would not be bound by the new principle "

Receiving these objections in their formulation of State's permanent sovereignty over natural resources and its consequent right to expropriate, neither this Declaration, nor the Charter, can be considered as reflecting

international custom. Nevertheless, as it can observe in the speech of the USA representative, the principle as formulated in UN GA Resolution 1803(XVII) was strongly reaffirmed: "the statement constitutes a clear acceptance of the normative significance and evidential value as an expression of State practice of the original resolution1803 (XVII)

This document can here identify the two elements on which international custom is based: "normative significance" as equivalent of opinion juris, and "expression of State practice". Thus, the principle of permanent sovereignty is recognized as customary international law and it has, as such, been proclaimed by the International Court of Justice: "The Court recalls that the principle of permanent sovereignty over natural resources is expressed in General Assembly resolution 1803 (XVII) of 14 December 1962 (...) While recognizing the importance of this principle, which is a principle of customary international law . The principle of permanent sovereignty over natural resources is, reflecting international custom, a primary source of international law. As regards its possible status as jus cogens, article 53 of the Vienna Convention establishes that no derogation is permitted to such a norm and that they can only be modified by another peremptory norm. Taking into account that in international law it has been recognized that States can enter into negotiations and agreements on corrections of boundaries, associations, or integration, it

seems that we can here observe a possible obstacle for the recognition of permanent sovereignty over natural resources as a peremptory norm .

Furthermore, a large majority of States must have accepted and recognized it as such, that is to say that the acceptance of all States is not needed, but at least a majority of States having a direct interest in the matter to which the norm pertains .

According to N.Schrijver: "here we run into difficulties with the qualification of permanent sovereignty as a peremptory norm, since it clearly follows from the voting records and preparatory works (recognized as a supplementary mean of interpretation according to art.32 of the 1969 Vienna Convention) that permanent sovereignty as a peremptory norm has not gained the support of many States principally concerned ."

That implies that permanent sovereignty does not override other principles of international law and that it can evolve in accordance with new rules and progressive general State practice, "thereby allowing it to encompass new duties ."

Although other concepts or principles repeatedly expressed in international instruments, whether binding or not, don't achieve independent customary international law status, they can be seen as standards that develop international law through the formulation of treaty obligations, and they can also, as standards have a considerable influence on interpretation .

B) The legal value of the concept of sustainable development :

As it has shoed previously, the difference between hard-law and soft-law lies in the consequence of its breach, but the legal character of a rule of soft-law remains .

That is to say, whether binding or not, "the real difference between hard and soft-law lies in the processes by which the rule is articulated and in the consequence of its breach. The essential natures of the normativity of hard-law and of soft-law are not different ."

The important role of the concept of sustainable development has been widely recognized since the Stockholm and the 1992 Rio Declaration. The same year the "Agenda 21" was adopted as an international program of action which calls for further development in international law of sustainable development also implementing concrete measure, thus, one year later in 1993, the UN Commission on Sustainable Development was established .

Art.1 of the 1992 Biodiversity Convention makes a direct reference to the sustainable use and fair and equitable sharing of the benefits arising out of the utilization of genetic resources. It can here identify the principle of sustainable use, and the principle of intra-generational equity as two elements of the concept of sustainable development identified by P. Sands .

As well, in Art.2 of the Convention on Climate Change, it is stated that the objective of the Convention is the "stabilization of greenhouse gas

concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner." Reflecting in this way that the concept of sustainable use is aimed to reconcile the protection of the environment with the pursuit of economic development .

Nevertheless, despite being usually employed or reflected in both non-binding, such as the Stockholm and Rio Declarations, and binding instruments, such as the two cited multilateral conventions, it is hardly arguable that the concept of sustainable development is a rule of customary international law. When there is a norm, binding or not upon the States concerned, the behavior imposed by it seems clear because there is an exact meaning of the duty that the norm settles . But it seems hard to identify a sufficient and precise normative meaning of the concept of sustainable development in order to consider it as a self-contained norm. As A.V. Lowe argues, any extraction of oil for example is in itself an activity which is not sustainable as it is a non-renewable resource, but every extraction of this resource cannot constitute a violation of the concept of sustainable development. Therefore, despite the wide evidence of its recognition through its frequent use in international declarations and international treaties, it cannot be considered as custom because it clearly lacks

of a fundamentally norm-creating character. "No matter what its utility as a description of policy goals in international treaties might be "

"Sustainable development looks like a convenient umbrella term to label a group of congruent norms "

The concept of sustainable development does not achieve, such as the principle of permanent sovereignty of the State over its natural resources, the legal status of International custom .

Nevertheless, its relevance in balancing economic development with the protection of the environment cannot be denied, as it has, since the last decades, widely contributed, through international conventions to the development of international environmental law .

Indeed, it has contributed to the emergence and development of specific fields of international law, such as international economic law and international environmental law, inspiring the conclusion of many international agreements such as the two multilateral conventions cited before. But also the 1991 Espoo Convention that sets out the obligations of the parties to it, to assess the environmental impact of certain activities and projects (we can here recognize the idea of the principle of integration identified previously by P. Sands), or the 1997 Kyoto Protocol to the Climate Change Convention settling targets for States parties to reduce their greenhouse gas emissions (principle of sustainable use .(

It can thus been considered as a "meta-principle" that provides standards for the further development of specific areas of international law .

According to Lowe, "it is a meta principle, acting upon other legal rules and principles-a legal concept exercising a kind of interstitial normativity, pushing and pulling the boundaries of true primary norms when they threaten to overlap or conflict with each other ."

C) How does the concept of sustainable development affect the principle of permanent sovereignty over natural resources ?

As a "meta-principle" or a concept providing for a "set of standards" to reach policy goals, sustainable development acts as an agent which, once combined with a primary rule, such as the permanent sovereignty over natural resources, can modify the interpretation and scope of this rule .

In the Gacikovo Case, concerning a hydroelectric project between Hungary and Slovakia, the ICJ interpreted a treaty according to the evolution of the subsequent development of international environmental law, particularly with the recognition of the concept of sustainable development (ICJ judgments are a subsidiary mean for the determination of rules of law :

"It is clear that the project impact upon, and its implication for, the environment are of necessity a key issue. (...) Owing to new scientific insights and to a growing awareness of the risks for mankind-for present and future generations-

of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development ."

Thus, in this case the Court invoked the concept of sustainable development to establish the duty to take into account the environmental impact assessment of the project and the obligation to ensure that a sufficient level of water would still be released to the main original arms of the river .

Since then, many treaties and other international instruments, as well as decisions of international courts have followed this sustainable approach in the pursuit of national and economic development and the use of natural resources, such as for example at paragraph 177 of the 2010 ICJ judgment in the Pulp Mills Case between Argentina and Uruguay, where it was recalled that States have the responsibility to ensure the sustainable use of natural resources, reconciling the sovereignty of the State with the concept of sustainable development .

Indeed, apart from its wide recognition and acceptance by the international community, sustainable development "has also been expressly incorporated

into a number of binding and far-reaching international agreements, thus giving it binding force in the context of those agreements. It offers an important principle for the resolution of tensions between two established rights ."

This paper has cited before some of these international agreements. Despite the fact that Art.6 of the Espoo Convention does not provide that the conclusions of the environmental impact assessment are binding on the final State's decision to pursue its activity or project, and despite the non-ratification of the United States and the recent withdrawal of Canada to the Kyoto Protocol, it is indubitable that the concept of sustainable development has here affected the principle of permanent sovereignty by adding a number of duties to the State's sovereignty, such as the environmental impact assessment .

Examples of the duties that State have to comply with when it comes to attribute the use and exploitation of natural resources can be identified through different international agreements :

-the duty to respect the rights and interests of indigenous people (the principle of intra-generational equity) proclaimed in the 2007 Declarations on the Rights of Indigenous Peoples and recognized in some treaties such as the Biodiversity Convention at Art.8 ;

-the duty to look after the fundamental right to an environment of quality (principle of integration) that it can relate to the Espoo Convention through the prescription of environmental impact assessments ;

-the need to preserve resources for future generations (inter-generational principle) whose idea it could be found in the World Heritage Convention and so on.

The concept of sustainable development has also assisted the development of international economic law, as many modern multilateral economic agreements oblige states to comply with minimum environmental standards. Hence, Art.XX(g) of the GATT allows its members to impose measures for the conservation of exhaustible natural resources provided they are not applied in a discriminative manner.

Art.19 of the Energy Charter Treaty, a multilateral regional agreement that entered into force in 1998 between 51 States and two regional organizations, enjoins Member States to among other goals "strive to take precautionary measures to prevent or minimise environmental degradation", and is said to have "broken new ground by coupling its trade and investment provisions with emphasis on the importance of environmental protection in all aspects of the energy industry .

It is true that many of the provisions included in these treaties do not always have a precise content and, despite their status of treaty provisions, they appear to be more policy goals than true hard-law obligations.

Nevertheless, it showed before that a customary international rule can evolve in the light of subsequent development of international law, and this is how we see

the relationship between permanent sovereignty of the State and the concept of sustainable.

The principle of permanent sovereignty of the State over its natural resources has undoubtedly been affected by the "set of standards" the concept of sustainable development.

States remain sovereign to orient their developmental policies but their permanent sovereignty over the management and use of their natural resources, when in conflict with a treaty obligation protecting indigenous people or more generally the environment, will have to be interpreted, in accordance with Art.31.2c) of the 1969 Vienna Convention, in the light of the concept of sustainable development, to reconcile this principle of international custom with new developments of international law.

CONCLUSION :

This paper can assert that the principle of permanent sovereignty of States can no longer serve as a mere instrument for the State to decide its economic development and the way it wants to pursue its national developmental policies .

This principle has reached the status of international custom and the consequent status of primary source of international commercial law, while the concept of sustainable development cannot by itself propose a self-contained normativity to develop into such a norm. Nevertheless, it might be evident that

how this concept has been widely recognized in international commercial law and how it has contributed, mainly through the adoption of international declarations and treaty obligations, to the development of international economic and environmental law .

As this document shows, the interpretation of a norm of international law and international commercial law has to take into account any relevant rule. This is how it can achieve to reconcile permanent sovereignty over natural resources with the concept of sustainable development and foreign investment; the latter has to guide the interpretation, application and consequences of the former .

Thus, permanent sovereignty over natural resources has been affected by the concept of sustainable development in the sense that its interpretation has evolved and now the State's permanent sovereignty over its resources implies in addition a duty of careful management .

"In view of its strong developmental and increasingly environmental orientation, the principle of permanent sovereignty can serve as an important cornerstone of this proposed international sustainable development law. This new role of permanent sovereignty coincides with the current reinterpretation of some of the traditional connotation of State sovereignty which can no longer be equated to unfettered freedom of action and is bound to become interpreted in a functional sense ."

BIBLIOGRAPHY:

Books:

- **Higgins, R. (1994). Problems and Process: International Law and How We Use It. Oxford: Clarendon Press**
- **Redgwell, C. (2007). International Regulation of Energy Activities, in M. Roggenkamp, C. Redgwell, I. Del Guayo and A Ronne (eds)., Energy Law in Europe: National, EU and International Regulation, OUP, 2nd (ed.). Oxford: Oxford University Press**
- **Sands, P. (2003). Principles of international environmental law. Cambridge: Cambridge University press**
- **Schrijver, N. (1997). Sovereignty over Natural Resources. Cambridge: Cambridge University press**
- **UN GENERAL ASSEMBLY RESOLUTIONS:**
- **General Assembly Resolution 1803 Declaration on Permanent Sovereignty over Natural Resources 1962**
- **General Assembly Resolution 3201, Declaration on the Establishment of a the New International Economic Order 1974**
- **General Assembly Resolution 3281, Charter of Economic Rights and Duties of States 1974**
- **General Assembly Resolution 61/170, Declaration on the Rights of Indigenous Peoples 2006**

INTERNATIONAL CONVENTIONS :

- **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998**
- **Convention on Biological Diversity, 1992**
- **Convention on Environmental Impact Assessment in a Transboundary Context, 1991**
- **Energy Charter Treaty, 1994**
- **International Covenant on Civil and Political Rights, 1966**
- **International Covenant on Economic, Social and Cultural Rights, 1966**
- **Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997**
- **Statute of the International Court of Justice, 1948**
- **United Nations Framework Convention on Climate Change, 1992**
- **Vienna Convention on the Law of Treaties, 1969**
- **World Heritage Convention, 1972**
- **World Charter of Nature, 1982**

CASE-LAW:

- **Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), ICJ Judgment 2005**
- **Dissenting Opinion of Judge Weeramantry, Legality of the Threat or Use of Nuclear Weapons, ICJ Advisory Opinion of 8 July 1996**
- **Gab..kovo-Nagymaros Project (Hungary/Slovakia), ICJ Judgment 1997**
- **Legality of the Threat or Use of Nuclear Weapons, ICJ Advisory Opinion of 8 July 1996**
- **Pulp Mills on the River Uruguay (Argentina v. Uruguay), ICJ Judgment 2010**
- **Texaco v Libya, 53 International Law Reports 389 (1979) and BP v Libya, 53 International Law Reports 297 (1979(**

ACADEMIC ARTICLES:

- **Brownlie, I. (1979). Legal Status of Natural Resources in International Law: Some Aspects, (1979-I) RCADI 162**
- **Lowe, A.V. (1999). Sustainable Development and Unsustainable Arguments, in A. Boyle and D. Freestone (eds.), International Law and Sustainable Development, OUP**

- Sands, P. (1999). Sustainable Development: Treaty, Custom and the Cross-fertilisation of International Law, in A. Boyle and D. Freestone (eds.), International Law and Sustainable Development, OUP
- Sands, P. (1994). International Law in the Field of Sustainable Development, 65 BYIL 303
- Triggs, G. (2002). The Rights of Indigenous Peoples to Participate in Resource Development: An International Legal Perspective. In D Zillman, A Lucas & G Pring (Eds.), Human Rights in Natural Resource Development - Public Participation in the Sustainable Development of Mining and Energy Resources, (pp. 123-154). UK: Oxford University Press.
- Walde, T and Kolo, A. (2001). Environmental regulation, investment protection and regulatory taking in international law, 40(4) ICLQ (2001 (