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Is Internationalizing Amazon Rainforest Admissible?

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Abstract
Purpose This paper aims to examine the effect of climate change on the principle of State sovereignty. It illustrates the case of the Amazon rainforest which is presented as the 'lungs' of the earth, the amazon rainforest, and which has 60% of its land is inside Brazil's territory, provides a natural ecosystem that helps stabilize the world's climate. Some. Indeed, it plays a crucial role by absorbing carbon dioxide (about 2 billion tons of CO_2 per year, which is approximately 5% of the planet's annual emission.
Theoretical Framework: This research focuses on substantial responses that international law can provide to the raised question: *Is the idea of internationalizing Amazon admissible? Wouldn't legitimize intervention to protect the Amazon forest even if it violates the territorial sovereignty of Brazil"*? By using international law approach, the study addresses questions about the conflict of permanent sovereignty over natural resources principle with demands for global environmental protection. The theoretical framework is based on different legal principles of international law, particularly the principle of State sovereignty.
Design/Methodology/Approach: This study adopts the descriptive analytical approach to the different principles of public international law. It addresses questions about the conflict of permanent sovereignty over natural resources principle with demands for global environmental protection. The paper covers the characteristics of the principle of permanent sovereignty over natural resources as well as its limits by focusing *inter alia* on the idea of common heritage on humanity.
Findings: The results of this study prove that until now the international environmental regime failed to influence the conception of sovereign territoriality, and due to the growing emphasis on economic development and social justice in domestic State policies, the notion of climate justice becomes difficult to achieve.
Research Practical and Social Implications: This study covers and analyzes the impact of climate change on our planet earth. It is a matter of convincing the richest countries, the ones that have the biggest responsibility of the emission of more than four hundred million tons of carbon dioxide in the atmosphere, to accept a shared co-responsibility. The study argues that States should work on a new model for biodiversity conservation and a new way of conceiving cooperation between developed and developing countries, based on environmental management that protects biodiversity and addresses climate change. Its findings provide recommendations that future research may use larger data that can allow us to investigate development in strategic environmental management and State policies to counter dangerous effects of climate change.
Originality/Value: Improving research on environmental concerns has become a very important issue. The value of this paper relies on its contribution to the field of environmental law by suggesting many legal solutions to the crucial problem of climate change. In addition to the classic legal solutions that international law can provide, the paper stressed the vital role the NGOs played in this regard through the *Urgenda case* which reassured that international law can become a truly effective tool in this regard.
Keywords: State sovereignty – Climate Change - Responsibility to protect – Amazon Rainforest – Common good of humanity.
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1.Introduction

According to Chris Armstrong: "*The world's forests are tremendously important repositories for greenhouse gases; they contain roughly 650 billion tons of carbon, the equivalent of 2300 billion tons of carbon dioxide. This is more than four times the amount of CO_2 emitted by humanity since the beginning of the industrial revolution. Among the world's forests, rainforests are especially effective in sequestering CO_2, whereas their destruction not only erodes that sequestering capacity but releases huge quantity of* CO_2 *back into the atmosphere, thereby potentially accelerating dangerous climate change*" (Armstrong, 2014). Indeed, one cannot highlight the importance of rainforests for climate justice means without pointing out the importance of the Amazon rainforests for keeping global climate balance, because these forests play a crucial role in absorbing carbon dioxide emissions and breathes out oxygen that is the reason it is designed as the 'lungs of the world'.

When the fires were burning in the Amazon in 2019, it was said that many of the blazes are man-made, the security of the forest was disputed as if the whole planet and life depended on it. Is it a national or international challenge? Is there any consensus that States are responsible to protect the earth? The French President Emmanuel Macron declared the need to discuss the internationalization of the Amazon and a possible intervention to protect the forest (Macedo, 2021, 5). The natural world obeys no sovereign boundaries, and neither does the worsening ecological crisis. As 60% of the Amazon rainforests are situated in Brazil, should this country be considered the rainforest's owner or merely its 'custodian'? (Patrick, 2021, 170). Is it a matter of a common good or a Brazilian sovereignty? One author argues "*As the planet's ecological emergency deepens, countries must expand the definition of the global commons, shared resources managed as part of humanity's common heritage to include all critical ecosystems and natural cycles, and they should agree to forswear all activities that threaten the integrity of the biosphere and open themselves up to external scrutiny*". (Patrick, 2021, 170) But would State really allow others to verify its compliance and accept to be subject to sanctions if it violates this obligation? How can a State legally restrict another State's sovereignty for the sake of the environment? Could we consider that concept of State sovereignty enhances or, on the contrary, mitigates the climate protection?

Bosselmann thinks that there is a flaw of the current international law with its roots in Western epistemology. It is the assumption that humans are somehow separate from nature (Bosselmann, 2022). He argues that international law has been created to maintain peaceful relations between States but fails in relation to the global environment. States do not have jurisdiction over the global commons (the atmosphere, the oceans, and the biosphere), which are outside their national boundaries, so they use them as they wish (Bosselmann, 2022). By exercising its sovereignty over natural resources, does not the sovereign State hinder the establishment of an ambitious climate regime in the interests of the greater humanity? To adapt to the reality of climate change, does international law sufficiently frame the management of natural resources to enable the fight against climate change?

2.Theoretical Framework

The theoretical framework is based on different legal principles of international law, particularly the principle of State sovereignty which represents the cornerstone of international relations, as well as the permanent sovereignty over natural resources principle as an important result of State sovereignty. This research focuses on substantial responses that international law can provide to the raised question: '*Is the idea of internationalizing Amazon admissible? Wouldn't legitimize intervention to protect the Amazon forest even if it violates the territorial sovereignty of Brazil'*? By using descriptive analytical approach, the study addresses questions about the conflict of permanent sovereignty over natural resources principle with demands for global environmental protection. The paper covers the characteristics of the principle of permanent sovereignty over natural resources as well as its limits by focusing *inter alia* on the idea of common heritage on humanity. It suggests the different legal solutions to the adaptability of international law to the reality of climate change starting by stressing the principle of non-intervention as a natural corollary to the principle of State sovereignty, passing by the possibility of asking the International Court of Justice an advisory opinion to address this issue before examining the last conferences of parties on climate change illustrated by the United Nations Framework Conventions on Climate Change (UNFCCC). Other legal solutions may be found in the legal Status of the Amazon, the World Heritage Convention, arbitration, and the *Yasuni-ITT* Initiative or through the NGOs contribution.

2.1 Background

In the aftermath of the 2019 fires devastating the Amazon rainforest, some politicians had accused Brazil of "*ecocide*" arguing that it is not just one State affair considering a common good of humanity that necessitates intervention to protect it. Presented as the 'lungs' of the earth, the amazon rainforest, which has 60% of its land is inside Brazil's territory, provides a natural ecosystem that helps stabilize the world's climate. Some. Indeed, it plays a crucial role by absorbing carbon dioxide (about 2 billion tons of CO_2 per year, which is approximately 5% of the planet's annual emission.

When an ecosystem as crucial for the future of the planet as the Amazon rainforest is so ostensibly endangered by a government, other States may have the right or the duty to remind the latter its obligations. So, should the concept of absolute sovereignty have to make concessions in favor of the common good of all humanity? That may result in the use of what called '*ecological intervention'*. Since natural resources is a matter of territorial

sovereignty in each State and regulated in its domestic law, can the deterioration of the State's own natural resources allow for ecological intervention by other States, in the case of evident situation of transboundary harm affecting the environment? In other words, can States legally restrict another State's sovereignty to protect the climate?

Some States suggested to establish the substantial link between environmental damage and threats to international peace and security. They mean to extend ecological intervention as a possible part of the responsibility to protect principle (*R2P*), which authorizes military intervention against a sovereign State.
If international environmental law recognizes the right of States to exploit their own resources according to their environmental policies, the 'no harm rule' is a widely recognized principle of customary international law whereby a State is duty-bound to prevent, reduce and control the risk of environmental harm to other States. International law provides other useful procedures, among them the request for an advisory opinion from the International Court of justice.

2.2 The Principle of Permanent Sovereignty over Natural Resources

Brazil is a BRICS member along with Russia, India, China, and South Africa, the economically strong emerging countries. By 2050 the economies India, China and Brazil is expected to compete with the richest countries in the world. So, exploiting its agricultural land represents an excellent opportunity for Brazil to stimulate its economy, which has been in recession in recent years[1]. However, Brazilian agriculture is the most polluting economic sector in the country that accelerate the deforestation of the Amazon accounting for 71% of greenhouse gas emissions in 2017. The country is considered as one of the world agricultural leaders which make it difficult for its government to restrict the agricultural exploitation in the Amazon rainforest area. The dilemma is that the farmers and ranchers want to expand their farm area even more, while the environmentalists want to preserve this biodiversity (Tetreault, 2019).[2] For them the case of the state of Mato Grosso is the most worrying. This state is the main cause of the rise in Brazilian deforestation. Its economy is based on agriculture, but the Amazon Forest occupies 40% of its territory. Deforestation was then necessary to increase agricultural production.[3] Landowners in this region alone have removed about 1500 km2 of forest in a single year. In addition, after the extensive fires in the Amazon, deforestation is growing year by year in this part of Brazil.

Over the years, international law has largely been concerned with the concept of a State's permanent sovereignty over its natural resources, and there are many international conventions and legal instruments affirming the right of host States to exploit, govern and control resources fully within their jurisdictions. While many argue that economic development of Brazil is at odds with environmental protection, Brazil- which was relying on the principle of permanent sovereignty over natural resources to develop its economic sector- was acting as having the absolute right to develop the Amazon as it sees fit.[4] Therefore, the exploitation of Amazon rainforests by Brazil as natural resources within its territorial jurisdiction was an essential prerequisite for its economic

[1] Simone Guillette. (2019). L'agriculture au Brésil, Relancer l'économie mais à quel prix ? Published on 17/9/2019. Accessed on 22/12/2022

https://perspective.usherbrooke.ca/bilan/servlet/BMAnalyse?codeAnalyse=1964

[2] Katherina Tétreault, (2019). La situation amazonienne : un éternel débat entre environnement et économie. École de politique appliquée. Faculté des lettres et sciences humaines Université de Sherbrooke, Québec, Canada

[3] Jonathan Trudel, (2016). À qui appartient l'Amazonie ? L'actualité, 3 juillet 2009, http://www.lactualite.com/sante-et-science/a-qui-a... 20 Novembre 2016

[4] Stewart M. Patrick, (2021). The International Order Isn't Ready for the Climate Crisis, Foreign Affairs November/December 2021, at 170.

development, and hence the bedrock of its political independence[1].

In fact, the principle of permanent sovereignty over natural resources is of crucial importance to many developing countries' sovereignty and their ability to control their resources and wealth. Consequently, the State's ability to develop its economy is based on its capacity to control these natural resources in conformity with this principle.

In this context, among the international instruments, the UN General Assembly resolution 1803 of 1962 highlights the vital importance of this principle. It states that the essential condition for affirming a state's sovereignty is the attainment of sovereignty over natural sources. The violation and infringement of that sovereignty constitute a threat to the peaceful realization of international peace and security.

This principle constitutes the economic corollary of State sovereignty, which emphasizes territoriality determined resource rights as an economic expression of State sovereignty[2]. Moreover, this principle translates the principles inherent in the concept of sovereignty (independence-autonomy-non-intervention, and self-determination) into the economic sphere.[3] However, it collides with other concepts such as common good or common heritage of humanity.

The idea that natural resources in a State jurisdiction could be managed by international community as a common heritage of mankind is not accepted by all. In fact, developing countries reject this concept due to their loss of faith in its enforcement to other common natural resources. The principle of common heritage of humanity has only been applied to specific resources in the oceans, namely to the area of the deep seabed and the ocean floor and its subsoil. It remains unclear what the principle entails when it comes to these resources.[4] While the principle of sovereignty over natural resources protects exclusive natural access to resources, common heritage is a form of resource management that prohibits sovereign or private appropriation.[5] It is important to stress that the climate, the atmosphere, outer space, and the high seas are obvious candidates for global commons located outside national borders. Nevertheless, international law does not recognize the concept of global commons, and neither has it adopted any consistent framework for natural resource domains that are not subject to natural jurisdiction but belong to the global community.[6] That means these notions better correspond to global nature and the comprehensive demands of ecological systems, that is why they are legally difficult to be reinforced. In conclusion, the permanent sovereignty over natural resources implies the autonomy to determine the social and economic system of the State. The common heritage of humankind regime, introduced to foster international cooperation for peaceful purposes and to share among all nations the benefits from the use of common resources from oceans, unfortunately remains conceptually underdeveloped and inconsistently applied. It has not provided a real environmental alternative to an essentially economic concept of permanent sovereignty over natural resources.[7]

Natural resources law is an extremely complex field because it is influenced by the interests of many entities. In fact, its legal framework is not composed of a block but of a patchwork of regulations, which does not apply to all entities. In addition, it is not having the same jurisdictional nature because it is based on both the restrictive law (*hard law*) and the flexible law (*soft law*). This international law is then complemented by concession contracts, practices, and national law. However, this principle of permanent sovereignty over natural resources has it its limits. When it comes to Brazil, does that mean to preserve its sovereignty it should take responsibility for the amazon?

[1] Anghie, A., (2005). Imperialism, Sovereignty, and the Making of International Law. Cambridge University Press.
[2] Petra Gumplova, (2014). Restraining permanent sovereignty over natural resources, Enrahonar. Quaderns de Filosofia 53-2014m at 102.
[3] Ibid.
[4] Ibid.
[5] Schriver, N. (2010) Development without Destruction. Bloomington: Indiana University Press, at 9.

[6] Ibid.

[7] Ibid.

3. Results and Discussion

The principle of permanent sovereignty over natural resources is not absolute. Indeed, there are other international environmental law basic principles regarding trans-boundary harm, nature conservation and environmental protection, which derive from treaty law, international case law and soft law instruments. Nonetheless, not every principle has the same scope or status in international law. Some are well established, while others are still emerging.[1] State sovereignty cannot encroach on the territorial sovereignty of others. In addition to the 'no harm rule', there are other limitations to territorial sovereignty such as adages of 'good neighborliness' and *sic utere tuo ut alienum non laedas* which means you should use your property in such a way as not to cause injury to your neighbor's', and the principle of State responsibility for actions causing transboundary damage. In this regard Oppenheim stated: "*A State, in spite of its territorial supremacy, is not allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighboring State*".[2] This was confirmed in another famous case: In the 1928 Island of Palmas Case (*US v. Netherlands*), the sole arbitrator Max Huber, who was then the President of the Permanent Court of International Justice (PCIJ), stated: "*Territorial sovereignty involves the exclusive right to display the activities of a State. This right has corollary a duty: the obligation to protect within the territory the rights of other State*".

The idea that States are free, equal, and independent in everything related to their domestic or sovereign affairs is not new.[3] With the evolution of international environmental law principles, the respect for territorial sovereignty is reviewed with the doctrine of abuse of rights. A strong support of these principles and their implications can be found in the jurisprudence of international law case. In fact, in the principle 2 of the Rio Declaration as well as in in the principle 21 of the Stockholm Declaration the right of the State to exploit its own resources pursuant to their environmental and developmental policies is highlighted. However, State is responsible to ensure that activities within their control or jurisdiction do not cause damage to the environment or other States beyond the limits of its borders. The principle 21 recognized the relationship between permanent sovereignty over natural resources and responsibilities for the environment. As the Stockholm Declaration has no legally binding force, the status of no harm principle was questioned whether it is a part of customary international law or not. The answer came from the International Court of Justice (*ICJ*) in its 1996 famous advisory opinion on the Legality of the *Use of nuclear weapons*. The Court held that the prevention principle, as enshrined in principle 21 in the Stockholm Declaration, and principle 2 of the Rio Declaration, was a part of general international law..[4] In its very first case in 1949, the *Corfu Channel Case*, the ICJ had stated the no harm rule principle inspired by elemental humanitarian considerations.[5] In fact, the Court expressly supported the obligation as a rule of customary international law in this advisory opinion (Sands, Peel, 2018). So, the transition from a treaty-based principle (found in Rio and Stockholm) to a customary norm was made through this case. In the *Gabcikovo Nagymaros Case,* the ICJ has acknowledged the *prevention principle's* character where it stated that "vigilance and prevention are required on account of the often-irreversible of damage to the environment". It declared that: [..] the existence of general obligation of States to ensure that activities within their jurisdiction and control and respect of the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.

The ICJ implicitly acknowledged that the scientific knowledge, the technological innovations and the widely established rules and procedures of environmental policy and law enable at present times States to use their natural resources in a sustainable way, without damaging the environment of other States.[6] Later, the two more recent cases, *Pulp Mills Case*, and in the Border Area Case between Costa Rica and Nicaragua, where the ICJ

[1] Chinthaka Mendis, (2006). Sovereignty vs. trans-boundary environmental harm: The evolving International Law obligations and the Sethusamuduram Ship Channel Project, United Nations / Nippon Foundation Fellow, at 31.

[2] Oppenheim, on International Law (1912:243-44) Chapter Eight at220.

[3] Mortimer, N. S., Sellers, (2014). Intervention under International Law, vol 29:1 Maryland Journal of International Law, at 1.

[4] Pierre-Marie Dupuy and Jorge E. Vinuales, International Environnemental Law, (2nd ed, CUP 2018) at 68.

[5] Pierre Marie DUPUY, (2019) Amazonie : le droit international en vigueur apporte des réponses substantielles, Brazilian journal of International Law. Vol 16, N. 2 2019, at 6.

[6] Stephen M Walt, (2019). Who will the Amazon and how? AUGUST 5, 2019 https://foreignpolicy.com/2019/08/05/who-will-invade-brazil-to-save-the-amazon/ Accessed on 12/9/2022

further confirmed the basis of the prevention principle and explained its origin in the *no-harm principle*. The Court also clarified the obligation of *due diligence* that flows through each State. But this rule has proved difficult to enforce, there is a little consensus on what exactly constitutes transnational environmental damage, what States' obligation look like, or when they should kick in. The ICJ has proved the important role it plays to develop international environmental law in relation to State sovereignty. Indeed, the Court has established a permanent Chamber for Environmental Matters, namely, The Permanent Court of Arbitration (*PCA*), which has adopted strong rules regarding arbitration and conciliation of environmental disputes.[1] As States lack access to international justice, none of them has been used, and this maybe one of the reasons behind the nonexistence of an international agency or institution for the environment.[2] In the next part we will examine the different legal solutions.

4. Legal Solutions

Some authors think there is a valid moral claim that limits the permissible use by a rainforest-rich country of the rainforests in its territory to help mitigate harmful climate change.[3] Indeed, the Brazilian policies of the Amazon deforestation created great agricultural exploitations and pastures that contributed to the country's development but generated environmental consequences. So, some States argue that Brazil is jeopardizing the environmental security of the entire planet.[4] Some of the suggested solutions are drastic and include supporting an international intervention against a government deliberately acting in favor of worsening the environmental crisis.[5] Experts and policymakers consider using the principle of responsibility to protect *(R2P)* by the Security Council to take such international action. The expected target would be to force Brazil to review its stance on environmental policies, but also to hold the international community responsible for a crisis that cannot be tackled by a single developing country.[6] During G7 summit, the French President Emmanuel Macron has condemned Brazil's environmental crimes by referring to it as '*our house'*.[7] During his confrontation with the former Brazilian President Jain Bolsonaro, he accused him of committing a crime against the planet by using the term '*ecocide*', the spokesperson of Brazilian leader reacted by declaring;" *Our sovereignty is nonnegotiable*".[8] So, the question to be raised is the following: Is the idea of internationalizing Amazon admissible? Does it not violate the rules of international law? The international pressure to protect the Amazon rainforests is not welcomed by many Brazilians. To this idea, the former Brazilian Minister of National Education responded that internationalizing the Amazon would also mean internationalizing "*the world's oil reserves*", "*the financial capital of the rich countries*", and "*all the world's major museums*".[9] It is important to examine the possible legal solutions to be implemented by the UN organization.

5. Ecocide and Ecological Intervention

The term '*ecocide*' is a neologism constructed from the words: "*ecosystem*" and "genocide" that refers to significant damage to an ecosystem. This idea is born in the 1970s, but it is not yet considered to be an international crime by the United Nations (Macedo, 2021). This term has been suggested to the International Law

[1] Stephens Tim, (2009). International Courts and Environmental Protection, CUP at 362

[2] Ibid.

[3] Banai, Op. cit.

[4] Gustavo Macedo, (2019) Climate Security, the Amazon, and the Responsibility to Protect. http://orcid.org/0000-0002-7771-5464

[5] Gustavo Macedo, (2021). The responsibility to protect the Amazon- 31 March 2021 https://www.e-ir.info/2021/03/31/opinion-the- responsibility-to-protect-the-amazon/ Accessed on12/5/2022

[6] Ibid.

[7] Laura Medea Hülsemann, (2019). To whom does the Amazon belong? The wildfires in the Amazonas spike up new controversieshttps://www.ufrgs.br/humanista/2019/10/07/to-whom-does-the-amazon-belong-the-wildfires-in-the-amazonas-spike-up-new-controversies/
07 OUT, 2019 ACCESSED ON 11/12/2022

[8] Patrick, Op. cit. at 170.

[9] Chloé Maurel (2019). Déclarer la forêt amazonienne bien commun de l'humanité, une idée pas si neuve (theconversation.com) published on 24/8/2019 accessed on 12/9/2021

Commission (*ILC*), to be included in the Rome Statute in 2010 as a fifth violation of peace (Greene, 2019).[1] According to the ILC, the term ecocide is "*the extensive destruction, damage or loss of ecosystems in a given territory, whether for human or other reasons, to such an extent that the peace of the inhabitants of the territory has been greatly diminished"*..[2] The main raison why ecocide was never included in the Rome Statute was because it was not seen as realistically practicable. Even the States that promoted this idea found out that it was unlikely two thirds of the State parties would agree on a definition of such a crime with reference to the countries' different economic and geopolitical interests.[3] Although this concept has been debated regularly since the 1990s, why has it never been incorporated into international law?

For Marta Torre-Schaub, this is a complex question, because the notion of ecocide itself would imply to prosecute a State or a leader against a perpetuated crime against ecology or nature, like the crimes perpetrated against humanity. Prosecuting someone for crimes against humanity is complicated enough, it would be very difficult to prosecute a single leader for activities against the environment, to prove a single responsibility. But the responsibilities are plural, multiple. [4] Given the great complexity that this notion could cause, the international community is rather reluctant to introduce it as a legal concept. However, the concept of Eco crime already exists and is more specific. This is not a crime against nature but more specific illicit activities such as poaching or trafficking in protected species.

Some authors argue that the legal discourse may shiftoer intervention as a potential form of environmental protection, and the possibility for ecological intervention through an analogy of the R2P concept should not be totally rejected.[5] Others think if a State is unable to and unwilling to protect its own environment and thus its people, like the case in the Amazon, ecological intervention could be relevant..[6] In this regard, Eckersley defines ecological intervention as "the threat or use of force by a State or a coalition of States within the territory of another State and without the consent of that State in order to prevent grave environmental damage".[7] In fact, the justification of ecological intervention poses important questions: at what point does the use of military action become necessary and commonplace, and does protecting ecology require such force? It is unacceptable as it undermines sovereignty, many States would consider it as a clear disrespect for their laws and values even if it is decided by the UN Security Council.

According to the Security Council, climate change is increasingly recognized today as a concrete 'threat multiplier' to international peace and security. Nonetheless, for some the Security Council permanent members it is rather a matter of development not security. It is worth noting that this is the first time in the 70 years of the Security Council's existence that the language of environmental security was used**.** For Pierre-Marie Dupuy, to be implemented, an action by the Security Council permanent members necessitates establishing a substantial link between damage to the environment and threats to international peace and security. However, the R2P principle struggled to apply since it was invoked by the Security Council to decide on the intervention in Libya in 2011.[8]
Besides, not only China and Russia in the Security Council will disapprove this principle, developing countries in the General Assembly will not accept to extend the R2P to the protection of the environment, considering such initiative a Trojan horse used by Western countries to hinder or control their permanent sovereignty over their natural resources. The direct experience of multilateral diplomacy leads us to believe that sovereignties, of both

[1] Greene, Anastacia, (2019) The Campaign to make Ecocide an international crime, Quixotic Quest or moral imperative? vol 30:3 Fordham Environmental Law Review, at 2.

[2] Ibid.
[3] Greene, Op. cit. at 42
[4] Marta Torre-Shaub, (2019) The Conversation- Quelle protection juridique pour les forêts ? Published: September 3, https://theconversation.com/quelle-protection-juridique-pour-les-forets-122732 accessed on 13 March 2022
[5] Evans, Gareth., (2009). The Responsibility to Protect in Environmental Emergencies, Proceedings of the Annual Meeting vol 103, at 29.

[6] Mendis, Op. cit. at 41.
[7] Eckersley, R., (2007). Ecological Intervention: Prospects and Limits. Ethics and International Affaires, at 296.
[8] Pierre Marie DUPUY, (2019) Amazonie : le droit international en vigueur apporte des réponses substantielles, Brazilian journal of International Law. Vol 16, N. 2 2019, at 4.

developing and developed countries, do not willingly abdicate the privileges they enjoy under the law..[1] In fact, the Security Council has raised on many occasions the security implications of climate change and passed resolutions regarding its destabilizing impacts of warming in specific places, such as some African countries and Iraq. But its first resolution linking climate change to international security was voted in December 2021 on an initiative by Ireland and Niger. While the resolution was supported by 12 of the Council's 15 members, Russia vetoed it. China abstained, while India voted against, arguing that global warming was chiefly an issue related on economic development, rather than international security. It is important to stress on this regard that the top five greenhouse gas emitters are the US, China, India, Russia, and Japan- four of them are nuclear weapons States. Threating any of them with sanctions isn't likely to work and threatening serious military action against them is completely unrealistic.[2] If it is unconceivable to apply the R2P by the UN Security Council to rescue the Amazon rainforest, the UN main judicial organ may bring a solution to this urgent issue.

5.1 An Advisory Opinion by the International Court of Justice

If the UN systems lacks a specialized agency for the environment, international law, however, provides other useful procedures: among them, the request for an advisory opinion to the ICJ by the UN General Assembly members States present and voting, to allow the Court to clarify somewhat the legal qualification of the Amazonian space, both located on the national territory of nine South American States, including Brazil, and recognized as having global importance for global climate regulation. And in order also to specify again the conditions under which the international environmental law principles previously described, and some others (prevention and precaution in particular) could be applied to the management of the Amazon rainforest. The ICJ could also be asked how to establish the balance of interests, that of Brazil having its own development being, of course, also indisputable.[3]

5.2 The United Nations Framework Conventions on Climate Change (UNFCCC)

The United Nations Framework Conventions on Climate Change are also called Conference of Parties (*COP)*. These conventions set limits on GHG emissions in countries, but they are not binding and there are no enforcement mechanisms either. However, there are provisions for updates or protocols that can be used to set legally binding emission limits on countries. The means put in place appear clearly insufficient to face the global climate challenges, because they remain thought out, chosen, and built above all on the scale of the State, considering its respective capacities regarding the different national contexts.

The Paris agreement, which was signed four years before the Amazon fires, has unfortunately shown us a tendency to prioritize not a collective approach to climate concerns, but rather an approach based on voluntary agreement and the capacity of the State to face commitments according to its level of development. Defending a higher supranational interest seems to disappear behind the pretensions of the State and respect for its sovereignty of the State in its most classical sense.[4]

Under the Paris climate agreement (*COP 21*), Glasgow (*COP 26*), and Cham El- Sheikh (*COP 27*), there is no sanction, it is rather a country that will have a bad reputation at the international level. The problem is that the control mechanisms are not sufficiently binding and do not impose enough penalties. Signatories States don't want their commitments to be legally enforceable. Is any of it binding can it be enforceable? What is not binding and enforceable is lacks credibility. How to explain such a legislative delay on the preservation of ecosystems? the reason for the lack of international consensus is that States do not give priority to the protection of the environment, climate, and biodiversity. We can explain this by the fact that the economic stakes are extremely high because the exploitation of the forests is incredibly profitable: we can exploit the wood, the land, the species that inhabit, it is possible to develop methods of agriculture that are more economically profitable, etc.

6. Other Solutions: Legal Status of the Amazon

[1] Ibid.
[2] Stephen M Walt, (2019). Who will the Amazon and how? AUGUST 5, 2019 https://foreignpolicy.com/2019/08/05/who-will-invade-brazil-to-save-the-amazon/ Accessed on 12/9/2022

[3] Pierre Marie Dupuy, (2019) Amazonie : le droit international en vigueur apporte des réponses substantielles, Brazilian journal of International Law. Vol 16, N. 2 2019, at 4.
[4] Agnès Michelot, (2019). Protection internationale du climat et souveraineté étatique, Vertigo – la revue électronique en sciences de l'environnement, vol 18 1 mai 2019, at 32. https://doi.org/10.4000/vertigo.19685

The idea to designate the Amazon as a global common good, could it be compatible with respect for the sovereignty of Brazil? How can we tackle the question of an international status for the Amazon in the absence of an international convention on forests? There is no global legal instrument to regulate it. An international treaty only dedicated to forests should be as interested in forests as the lungs of the planet, as their ecosystems apart and their biodiversity. It is a debate that challenges our economic development model. And global protection of nature questions the power of the State in its own territory.[1]

In 1972, American law professor D. Christopher Stone, was dreaming to grant legal rights to forests, rivers, and other "natural" objects of the environment in his provocateur *Should Trees Have Standing?* Can the trees be brought to justice? Should we go as far as the Amazon? In any case, it would be desirable for the international community, through the United Nations, to agree to protect its great ecological wealth and the peoples who inhabit it through an international agreement.[2] Some individual measures taken elsewhere in the world in favor of forests can serve as models, or in any case as a basis for reflection. Thus, in 2014, New Zealand proclaimed that the trees of the Te Urewera Forest would be endowed with the legal personality, that they have the same rights as men. It took the same decision in 2017 for one of its main rivers, the Wahanganui.[3] The Rio Atrato River was recognized in 2016 by the Constitutional Court of Colombia as a legal entity. In other words, it was given a legal personality, which means that it was declared to have a certain number of rights and that, as a result, NGOs, or this river before a judge in case its protection rights are threatened. have the capacity to defend.[4]

International law provides two key avenues: the first is to use international designation systems in the context of existing treaties or institutions; the second is to adopt a *sui generis* treaty covering the area in question. The conclusion of a legally binding convention would not even guarantee the respect of the commitments it would define since it would still depend on the political will of the States. It is very likely, as Professor Kamto says on the subject, that "*in the present state of the fundamental principles of international law, such a legal instrument, insofar as it wishes to be a universal instrument, must be characterized by the flexibility of these norms(fundamental features of International Environmental Law)"* and that *"it must above all emphasize the enunciation of major principles in this field, placing the burden on the forest States, only obligations that are compatible with their sovereignty*".[5]

6.1 The World Heritage Convention

Even if we suggest the idea to consider the Amazon as a 'common good' to grant it a protection and a legal status, several legal and political difficulties will arise. The 1972 World Heritage Convention (The UNESCO Convention) which include a list of world endangered sites- immediately comes to mind as a potential response to the desire to give the Amazon a legal global protected status. Despite allowing the inscription of transboundary properties of a certain scope, no property as vast as the Amazon is yet included in the UNESCO list.

The Convention shall in no case impose itself on the national sovereignty of the States in which the territory or the forest is situated. The will of State in question remains supreme.[6] In fact, each State retains sovereignty and control over its World Heritage Sites, it is responsible for their protection, and pledges to assist others in preservation efforts. Direct authority over individual properties remains with the national State. According to article 4, "*Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation, and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation financial, artistic, scientific, and technical, which it may be able to obtain*".

The other difficulty with this idea is its lack of international operationality. For Marta Torre-Schaub, once a

[1] Marta Torre-Shaub, (2019) The Conversation- Quelle protection juridique pour les forêts ? Published: September 3, https://theconversation.com/quelle-protection-juridique-pour-les-forets-122732 accessed on 13 March 2022
[2] Christopher D. Stone, (2010). Should Trees Have Standing? Oxford University Press
[3] Ibid.
[4] Torre-Schaubm op.cit
[5] M. Kamto, « Les forêt, patrimoine commun de l'humanité et droit international » in M. Prieur et S. Doumbe-Bille (dir.), « Droit, Forets et développement Durable », Bruxelles 1996.
[6] Torre-Schaubm op.cit

property classified as a common heritage, who takes responsibility for its protection and governs its management? Who controls the respect of the mechanisms possibly implemented by the international community for its protection? At present, classified goods are managed by the State on which they are located. It is therefore the principle of sovereignty that applies.[1] Would it be conceivable to establish a system of transfer of sovereignty, as in the European Union? This would take a long time and would imply the renunciation of the country to the management of a part of their territory.

It is important to highlight that Brazil, along with other six South American States (Colombia, Bolivia, Ecuador, Guyana, Peru, and Surinam) had signed a pact in 2019, to protect the Amazon.

6.2 Arbitration

Another possible solution is to mobilize trade agreements, especially those of the World Trade Organization (*WTO*). Several provisions make exceptions to free trade, of which environmental protection is the most important. In other words, if a State considers that another State is in the process of carrying out trade activities which may harm the environment, it may refer the matter to the WTO arbitration tribunal.[2] As the latter is specialized in trade conflicts, it can decide whether a country has infringed international trade rules, in this case fines and trade blockages can be imposed.

6.3 The Yasuni-ITT Initiative

To legitimize the benefits, they draw from their sovereignty over natural resources, States ought to participate in bearing costs that stem from the principle of territorial jurisdiction.[3]

In Ecuador in 2007, the Minister of Energy and Mines had proposed not to exploit 20% of the oil reserves and leave them underground in the Yasuni National Park region, classified in 1989 by UNESCO as the "world biosphere reserve". In return, countries had to have international financial compensation from the donating countries. It was a matter of convincing the richest countries, the ones that have destroyed the planet the most, to accept a shared co-responsibility. On behalf of this one they would participate financially in the Yasuni plan that would avoid the emission of more than four hundred million tons of carbon dioxide in the atmosphere. A Yasuni fund was to be administered by UNDP (United Nations Development Program). The Secretary-General of the United Nations, Mr. Ban Ki-Moon, welcomed the signing of this agreement in 2010, the first in the world that "proposed a new model for biodiversity conservation and a new way of conceiving cooperation between developed and developing countries, based on environmental management that protects biodiversity and addresses climate change". With this initiative to save the Amazon and the respect of the indigenous peoples and nationalities living in this territory, the equator has become a global reference for the preservation of biodiversity and the fight against climate change.

The initiative was *prima facie* right to ask others that contribute to harmful climate change to participate in the costs of mitigation. No one contributes, but the theoretical framework can help identify those that bear stronger obligation to bear costs. First, high emitters, in proportion to their contribution to harmful climate change (polluter pays principle); Second, countries rich in natural resources have strong interest in maintaining the international principle of territorial jurisdiction over natural resources. Thirdly, beneficiaries of the emissions and the deforestation, and arguably past emitters and deforesters are the next bearers of duty to participate, in proportion to their benefit and contribution to the problem respectively.[4]

The goal was to raise $3.6 billion over 13 years, half of the estimated value of untapped oil reserves. But the funds were slow to arrive. The President Correa had to acknowledge the failure of the Yasuni Plan and signed on August 16, 2013, a decree authorizing the extraction of oil in the national parc.[5] Indeed, the decision to exploit oil in Yasuni needs to be understood in the socio-economic context of the country which is considered a marginal polluter. The aim of Ecuador's national plan for good living that it needs these revenues to help the transition of its economy away from commodity exploitation and to a more diversified and high-value one.

[1] Ibid.
[2] Ibid.
[3] Ayelet Banai (2016). Sovereignty over natural resources and its implications for climate change, Wiley interdisciplinary reviews: climate change. February 2016 vol 7 March-April at 246.

[4] Ibid.
[5] Thomas De Koninck, (2020). La responsabilité de protéger : écologie et dignité. PUL

It will be necessary to rethink the model of negotiation in the context of climate protection, at the international level. In fact, in international law only States can legislate. Not only are there always schisms and ruptures between different ways of thinking, between developed and developing countries, but we see very few other negotiating partners, such as multinationals, which bear a great responsibility, and the NGOs, who are observers and who are not allowed to negotiate, even though they took matters into their own hands and brought a great victory for the climate before the internal judge in the Urgenda case.

6.4 NGOs Contribution: a victory for the climate?

On 12 November 2012, the Urgenda Foundation, a Dutch NGO paved the way for climate jurisprudence by asking the Dutch State to commit to reduce CO_2 emissions by 40% by 2020 compared to 1990. And, finding its answer insufficient, decided to refer the matter to the Court of First Instance of The Hague on 24 June 2015, invoking several principles of international law, including climate regulations, which impose on the State an obligation of due diligence.[1]

The Hague Court on 24 June 2015 ordered the State to limit its GHG emissions by 25% by 2020 compared to 1990: "*Its currently very likely within several decades dangerous climate the state must do more to counter the imminent danger caused by climate change, given its duty to protect the environment*." The Court also ordered the State to pay all the legal costs of the Urgenda Foundation, active in the fight against climate change. To this end, the Court made a judgment based on the need to limit the rise in global temperatures below *2 °C* above preindustrial levels. It should be noted that the Netherlands is vulnerable to the impacts of climate change, as two thirds of its territory is below sea level, threatened by rising water levels.[2]

Thus, on December 20, 2019, the Dutch Supreme Court closed this first climate dispute by rejecting the Dutch State's cassation appeal against this decision, and definitively condemned the State, thus creating the "Urgenda jurisprudence" which, for the first time, enshrined the obligation of a State to respect global climate objectives, notably because of its link with the European Convention on Human Rights. The Urgenda case has been extremely influential. It inspired similar cases in many jurisdictions, that many NGOs started proceedings against their governments based on similar reasoning. For instance, on April 29, 2021, following an action by ecological associations, the highest German court urged the government to raise its climate ambitions before 2022, it did not provide for sufficient requirements for the subsequent reduction of emissions from 2031 onwards.

Can we conclude that the decision of the Dutch Supreme Court reverses the trend and gives the commitments made under the Paris Agreements of 2015 an indisputable relevance under the wing of the European Convention on Human Rights? And therefore, the fight against global warming is no longer optional, becoming mandatory for States, because it concerns the protection of human rights*?*

The question of climate change is no longer just economic or political, and has it become a question of survival? In other words, do States that are not respecting their obligations to reduce *GHG* in time violate fundamental rights to life in general? If the answer is affirmative, then international law becomes a truly effective tool. Indeed, it obliged a sovereign State to respect obligations that it has not chosen to respect. The specificity of the Dutch system is that it is monistic (international treaties are directly applicable in the domestic law of the country).

If this victory is important for the defenders of the environment, it is also because it enshrines a great principle: the responsibility of a State in global warming, even if greenhouse gas emissions are global. It is not an easy task to make a State recognize its responsibility. Especially when the subject is as broad as the climate, with considerations that affect the economic development of a country as human rights as affect as much as affect.

7. Conclusion

The principle of permanent sovereignty over natural resources remains the most significant legal and political framework in any effort to tackle climate change problems. Due to the failure by the international environmental regime to impose concepts of common goods of humanity au detriment to permanent sovereignty over natural resources, and due to the growing emphasis on economic development and social justice in internal State policies,

[1] Jean-Pierre Riou, (2022). Le Contentieux climatique devant le juge administratif. http://www.dalloz-actualite.fr/flash/suite-et-fin-de-l-affaire-urgenda-une-victoire-pour-climat#. Published on June 13, 2022. Accessed on October 17, 2022.

[2] Mahir Al Banna, (2019). State Responsibility in Countering Dangerous Climate Change: The Critical Role of Domestic and International Justice, Springer, 263-273.

the degree to undermine permanent sovereignty over natural resources has not increased over time[1] which means that this principle is transcending the urgent need for the international community to take its responsibility to counter climate change effects.

To build international climate regime, international environmental law relies on the principle of State sovereignty to develop its own objectives. However, until now the international environmental regime failed to influence the conception of sovereign territoriality, and due to the growing emphasis on economic development and social justice in domestic State policies, the notion of climate justice becomes difficult to achieve.

International environmental law is developing, based on the awareness of ecological solidarity that unites the entire international community, legal principles and instruments aimed at reintroducing ecological imperatives in international relations. Climate concerns can push States to make concerted actions and legal innovations even relatively limited and always subject to the will of States.[2]

On May 27th, 2022, the former Brazilian President Bolsonaro, who has been many times criticized for his climate inaction, promulgated a decree to step up fines for environmental crimes, to allow more aggressive protection for the Amazon rainforests.

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[1] Petra Gumplova, (2014). Restraining permanent sovereignty over natural resources, Enrahonar. Quaderns de Filosofia 53-2014m at 102.

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