2 In their interpretation and application, the provisions of the present Charter are interrelated and each provision should be construed in the context of the other provisions.

Article 34

An item on the Charter of Economic Rights and Duties of States shall be included in the agenda of the General Assembly at its thirtieth session, and thereafter on the agenda of every fifth session. In this way a systematic and comprehensive consideration of the implementation of the Charter, covering both progress achieved and any improvements and additions which might become necessary, would be carried out and appropriate measures recommended. Such consideration should take into account the evolution of all the economic, social, legal and other factors related to the principles upon which the present Charter is based and on its purpose.

DECLARATION ON THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER[25]

The General Assembly

Adopts the following Declaration:

We, the members of the United Nations,

Having convened a special session of the General Assembly to study for the first time the problems of raw materials and development, devoted to the consideration of the most important economic problems facing the world community,

Bearing in mind the spirit, purposes and principles of the Charter of the United Nations to promote the economic advancement and social progress of all peoples,

Solemnly proclaim our united determination to work urgently for THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER based on equity, sovereign equality, interdependence, common interest and co-operation among all states, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations, and, to that end, declare:

1 The greatest and most significant achievement during the last decades has been the independence from colonial and alien domination of a large number of peoples and nations which has enabled them to become members of the community of free peoples. Technological progress has also been made in all spheres of economic activities in the last three decades, thus providing a solid potential for improving the well-being of all peoples. However, the remaining vestiges of alien and colonial domination, foreign occupation, racial discrimination, apartheid and neo-colonialism in all its forms continue to be among the greatest obstacles to the full emancipation and progress of the developing countries and all the peoples involved. The benefits of technological

25 General Assembly Resolution 3201 (XXIX) of 1 May 1974 – adopted without a vote.

progress are not shared equitably by all members of the international community. The developing countries, which constitute 70% of the world's population, account for only 30% of the world's income. It has proved impossible to achieve an even and balanced development of the international community under the existing international economic order. The gap between the developed and developing countries continues to widen in a system which was established at a time when most of the developing countries did not even exist as independent states and which perpetuates inequality.

2 The present international economic order is in direct conflict with current developments in international political and economic relations. Since 1970, the world economy has experienced a series of grave crises which have had severe repercussions, especially on the developing countries because of their generally greater vulnerability to external economic impulses. The developing world has become a powerful factor that makes its influence felt in all fields of international activity. These irreversible changes in the relationship of forces in the world necessitate the active, full and equal participation of the developing countries in the formulation and application of all decisions that concern the international community.

3 All these changes have thrust into prominence the reality of interdependence of all members of the world community. Current events have brought into sharp focus the realisation that the interests of the developed countries and those of the developing countries can no longer be isolated from each other, that there is a close interrelationship between the prosperity of the developed countries and the growth and development of the developing countries, and that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts. International co-operation for development is the shared goal and common duty of all countries. Thus the political, economic and social well-being of present and future generations depends more than ever on co-operation between all the members of the international community on the basis of sovereign equality and the removal of the disequilibrium that exists between them.

4 The new international economic order should be founded on full respect for the following principles:

(a) Sovereign equality of all states, self-determination of all peoples, inadmissibility of the acquisition of territories by force, territorial integrity and non-interference in the internal affairs of other states;

(b) The broadest co-operation of all the states members of the international community, based on equity, whereby the prevailing disparities in the world may be banished and prosperity secured for all;

(c) Full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries, bearing in mind the necessity to ensure the accepted development of all the developing countries, while devoting particular attention to the adoption of special measures in favour of the least developed, land-locked and island developing countries as well as those developing countries most seriously affected by economic crises and natural calamities, without losing sight of the interests of other developing countries;

(d) The right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result;

(e) Full permanent sovereignty of every state over its natural resources and all economic activities. In order to safeguard these resources, each state is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalisation or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the state. No state may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;

(f) the right of all states, territories and peoples under foreign occupation, alien and colonial domination or apartheid to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those states, territories and peoples;

(g) Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of full sovereignty of those countries;

(h) The right of the developing countries and the peoples of territories under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities;

(i) The extending of assistance to developing countries, peoples and territories which are under colonial and alien domination, foreign occupation, racial discrimination or apartheid or are subjected to economic, political or any other type of coercive measures to obtain from them the subordination of the exercise of their sovereign rights and to secure from them advantages of any kind, and to neo-colonialism in all its forms, and which have established or are endeavouring to establish effective control over their natural resources and economic activities that have been or are still under foreign control;

(j) Just and equitable relationship between the prices of raw materials, primary commodities, manufactured and semi-manufactured goods, exported by developing countries and the prices of raw materials, primary commodities, manufactures, capital goods and equipment imported by them with the aim of bringing about sustained improvement in their unsatisfactory terms of trade and the expansion of the world economy;

(k) Extension of active assistance to developing countries by the whole international community, free of any political or military conditions;

(l) Ensuring that one of the main aims of the reformed international monetary system shall be the promotion of the development of the developing countries and the adequate flow of real resources to them;

(m) Improving the competitiveness of natural materials facing competition from synthetic substitutes;

(n) Preferential and non-reciprocal treatment for developing countries wherever feasible, in all fields of economic co-operation whenever possible;

(o) Securing favourable conditions for the transfer of financial resources to developing countries;

(p) Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies;

(q) The need for all states to put an end to the waste of natural resources, including food products;

(r) The need for developing countries to concentrate all their resources for the cause of development;

(s) The strengthening, through individual and collective actions, of mutual economic, trade, financial and technical co-operation among the developing countries, mainly on a preferential basis;

(t) Facilitating the role which producers' associations may play within the framework of international co-operation and, in pursuance of their aims, *inter alia*, assisting in the promotion of sustained growth of the world economy and accelerating the development of developing countries.

5 The unanimous adoption of the International Development Strategy for the Second United Nations Development Decade was an important step in the promotion of international economic co-operation on a just and equitable basis. The accelerated implementation of obligations and commitments assumed by the international community within the framework of the Strategy, particularly those concerning imperative development needs of developing countries, would contribute significantly to the fulfilment of the aims and objectives of the present Declaration.

6 The United Nations as a universal organisation should be capable of dealing with problems of international economic co-operation in a comprehensive manner and ensuring equally the interests of all countries. It must have an even greater role in the establishment of a new international economic order. The Charter of Economic Rights and Duties of States, for the preparation of which the present Declaration will provide an additional source of inspiration, will constitute a significant contribution in this respect. All the states members of the United Nations are therefore called upon to exert maximum efforts with a view to securing the implementation of the present Declaration, which is one of the principal guarantees for the creation of better conditions for all peoples to reach a life worthy of human dignity.

7 The present Declaration on the Establishment of a New International Economic Order shall be one of the most important bases of economic relations between all peoples and all nations.

17.6 Expropriation of foreign-owned property

GENERAL ASSEMBLY RESOLUTION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES 1962[26]

[RESOLUTION 1803 (XVII)]

The General Assembly,

Recalling its Resolutions 523 (VI) of 12 January 1952 and 626 (VII) of 21 December 1952,

Bearing in mind its Resolution 1314 (XII) of 12 December 1958, by which it established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty

26 Adopted by the UN General Assembly on 14 December 1962: 87 states voted in favour, two against (France and South Africa) and the USSR abstained.

over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of states under international law and to the importance of encouraging international co-operation in the economic development of developing countries,

Bearing in mind its Resolution 1515 (XV) of 15 December 1960, in which it recommended that the sovereign right of every state to dispose of its wealth and natural resources should be respected,

Considering that any measure in this respect must be based on the recognition of the inalienable right of all states freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of states,

Considering that nothing in para 4 below in any way prejudices the position of any member state on any aspect of the question of the rights and obligations of successor states and governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule,

Noting that the subject of succession of states and governments is being examined as a matter of priority by the International Law Commission,

Considering that it is desirable to promote international co-operation for the economic development of the developing countries, and that the economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination,

Considering the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organisations are called upon to play in that connection,

Attaching particular importance to the question of promoting the economic development of developing countries and securing their economic independence,

Noting that the creation and strengthening of the inalienable sovereignty of states over their natural wealth and resources reinforces their economic independence,

Desiring that there should be further consideration by the United Nations of the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries,

I

Declares that:

1 The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned;

2 The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorisation, restriction or prohibition of such activities;

3 In cases where authorisation is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient state, due care being taken to ensure that there is no impairment, for any reason, of that state's sovereignty over its natural wealth and resources;

4 Nationalisation, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognised as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the state taking such measures shall be exhausted. However, upon agreement by sovereign states and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication;

5 The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of states based on their sovereign equality;

6 International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources;

7 Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace;

8 Foreign investment agreements freely entered into by, or between, sovereign states shall be observed in good faith; states and international organisations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

II

Welcomes the decision of the International Law Commission to speed up its work on the codification of the topic of responsibility of states for the consideration of the General Assembly.

III

Requests the Secretary General to continue the study of the various aspects of permanent sovereignty over natural resources, taking into account the desire of member states to ensure the protection of their sovereign rights while encouraging international co-operation in the field of economic development, and to report to the Economic and Social Council and to the General Assembly, if possible at its eighteenth session.

GENERAL ASSEMBLY RESOLUTION ON PRMANENT SOVEREIGNTY OVER NATURAL RESOURCES[27]

1 Strongly reaffirms the inalienable rights of states to permanent sovereignty over all their natural resources, on land within their international boundaries as well as those in the sea bed and the subsoil thereof within their national jurisdiction and in the superjacent waters;

2 Supports resolutely the efforts of the developing countries and of the peoples of the territories under colonial and racial domination and foreign occupation in their struggle to regain effective control over their natural resources;

3 Affirms that the application of the principle of nationalisation carried out by states, as an expression of their sovereignty in order to safeguard their natural resources, implies that each state is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation of each state carrying out such measures;

4 Deplores acts of states which use force, armed aggression, economic coercion or any other illegal or improper means in resolving disputes concerning the exercise of the sovereign rights mentioned in paras 1 to 3 above;

5 Re-emphasises that actions, measures or legislative regulations by states aimed at coercing, directly or indirectly, other states or peoples engaged in the reorganisation of their internal structure or in the exercise of their sovereign rights over their natural resources, both on land and in their coastal waters, are in violation of the Charter of the United Nations;

6 Emphasises the duty of all states to refrain in their international relations from military, political, economic or any other form of coercion aimed against the territorial integrity of any state and the exercise of its national jurisdiction;

7 Recognises that, as stressed in Economic and Social Council Resolution 1737 (LIV) of 4 May 1973, one of the most effective ways in which the developing countries can protect their natural resources is to establish, promote or strengthen machinery for co-operation among them which has as its main purpose to concert pricing policies, to improve conditions of access to markets, to co-ordinate production policies and, thus, to guarantee the full exercise of sovereignty by developing countries over their natural resources;

8 Requests the Economic and Social Council, at its fifty-sixth session, to consider the report of the Secretary General mentioned in the last preambular paragraph above and requests the Secretary General to prepare a supplement to that report, in the light of the discussion that are to take place at the fifty-sixth session of the Council and of any other relevant developments, and to submit that supplementary report to the General Assembly at its twenty-ninth session.

27 General Assembly Resolution 3171 (XXVIII) adopted on 17 December 1973: 108 states voted in favour, one against (UK) and 16 abstained (including France, FRG, Japan and the USA).

CHAPTER 18

ENVIRONMENTAL PROTECTION

18.1 Introduction

> The development of modern international environmental law, starting essentially in the 1960s, has been one of the most remarkable exercises in international lawmaking, comparable only to the law of human rights in the scale and form it has taken. The system which has emerged from this process is neither primitive nor wholly without effect, though equally it has many weaknesses ... It is, of course, possible to argue that other approaches to environmental management may be more desirable, and more efficacious. But to say that economic models of control and assistance have as much or more to offer than international law is merely to observe that protecting the environmental is not exclusively a problem for lawyers. Similarly, it would be naive to expect international law to remedy problems of the complexity the world's environment now faces without an underlying political, scientific, and technical commitment on the part of states, and a corresponding response in national legal and political systems. It has not been the purpose of this book to explore the place of international law within this broader context; it will be sufficient to observe the reality that international environmental law has provided the framework for much political and scientific co-operation, for measures of economic assistance and distributive equity, fair resolution of international disputes, and for the adoption and harmonization of a great deal of national environmental law. These developments have clearly not been without considerable significance, and have laid the foundations of a new system of global environmental order.[1]

As Boyle and Birnie indicate, international environmental law is a comparatively new area of international law. This, of course, reflects changes in the general level of interest in protection and conservation of the environment. Although there is some early evidence of international concern with specific environmental matters[2] there was no general system of international environmental regulation until well into the second half of the 20th century. The sovereign equality of states has tended to mean that states are free to act as they chose, even if this is detrimental to the environment. The sovereignty possessed by states over their own territory, however, has long been limited by the obligation not to interfere in the rights of other states. States are under a duty not to act within their own territory in such a way as to cause harm in the territory of other states. The classic example of this point is provided by the *Trail Smelter Arbitration* (*USA v Canada*).[3]

> The Consolidated Mining and Smelting Company owned a smelting works at Trail, which is about 10 miles north of the Canadian-United States border on the Colombia River. As a result of the smelting process a large amount of sulphur dioxide was emitted, some of which was being carried down the Columbia River valley and across the border into the state of Washington where considerable

1 Boyle and Birnie, *International Law and the Environment*, 1992, Oxford: Oxford University Press at p 549.

2 See, for example, the 1885 Convention for the Uniform Regulation of Fishing in the Rhine and the Paris Convention for the protection of Birds Useful to Agriculture of 19 March 1902.

3 (1941) 3 RIAA 1905, 1965–66 (Arbitral Tribunal).

damage was caused. Canada and the United States agreed to refer the dispute to the International Joint Commission established by the Canadian-USA Boundary Waters Treaty 1909. In 1931 the Commission assessed the damage caused by the smelter at $350,000 and Canada agreed to pay the full amount. However, the pollution continued and the matter was referred to arbitration. Question 2 submitted to the arbitral tribunal was 'whether the Trail Smelter should be required to refrain from causing damage in the State of Washington in the future and, if so, to what extent?' The findings of the Tribunal are of general relevance to the question of liability and responsibility for pollution.

> The Tribunal ... finds that ... under the principles of international law, as well as of the law of the United States,[4] no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.
>
> The decisions of the Supreme Court of the United States which are the basis of these conclusions are decisions in equity and a solution inspired by them, together with the regime hereinafter prescribed, will, in the opinion of the Tribunal, be 'just to all parties concerned', as long, at least, as the present conditions in the Columbia River Valley continue to prevail.
>
> Considering the circumstances of the case, the Tribunal holds that the Dominion of Canada is responsible in international law for the conduct of the Trail Smelter. Apart from the undertaking in the Convention, it is, therefore, the duty of the government of the Dominion of Canada to see to it that this conduct should be in conformity with the obligation of the Dominion under international law as herein determined.
>
> The Tribunal, therefore, answers Question No 2 as follows: (2) So long as the present conditions in the Columbia River Valley prevail, the Trail Smelter shall be required to refrain from causing any damage through fumes in the state of Washington; the damage herein referred to and its extent being such as would be recoverable under the decision of the courts of the United states in suits between private individuals. The indemnity for such damage should be fixed in such manner as the governments, acting under Article XI of the Convention, should agree upon.

Since World War Two there has been a growing realisation that the world's resources are not infinite and that the nature of industrial and agricultural practices adopted can have serious implications for future generations. The international community has come to accept that there is a need for common action to help sustain life, in all its forms, on this planet and that this need is incompatible with an absolute notion of state sovereignty.

One particular question that has been raised about international environmental law concerns the nature of the obligations imposed. Several writers have argued that the general obligation to preserve the environment constitutes a norm of *jus cogens* and that it is binding *erga omnes*. In the *Nuclear Tests* cases[5] the International Court of Justice doubted whether rights relating to

4 The parties to the dispute had instructed the tribunal to apply the relevant law and practice of the United States as well as international law.

5 [1974[*ICJ Rep* at p 253.

the high seas could be enforced as *erga omnes* obligations although the reasoning of the court has been criticised by some writers and conflicts with the ILC Draft Articles on State Responsibility 1980. Article 19(3)(d) provides that:

> ... a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas ...

constitutes an international crime and therefore is the concern of all states and not just those suffering injury. The repetition of the obligation on states to safeguard and preserve the human environment in numerous international resolutions including the declaration made at the Rio Conference on the Environment and Development 1992 would seem to support the view that the obligation is indeed now one of *jus cogens*. The full extent of the obligation, however, remains to be clearly enunciated.

18.2 Sources

The bulk of international environmental law is contained in multilateral treaties and the important ones will be discussed in the subsequent sections. Such treaties may be designed to apply globally, such as the Convention on Long-Range Transboundary Air Pollution 1979 or may be concerned with protection of a specific region, for example the Antarctic Treaty 1959 and the Convention on Protection of the Mediterranean Sea 1976. In addition there are a number of treaties which, while not concerned exclusively with environmental matters, nevertheless contain provisions which have significance for the environment, for example the Law of the Sea Convention 1982.

Besides treaty law, there are also some important rules of customary international law affecting the environment. For example, reference has already been made to the prohibition on causing harm in or to the territory of another state. However, although states often make statements in support of environmental protection these statements are not always adhered to in practice. Furthermore it has often been difficult to prove the necessary accompanying *opinio juris* to be able to assert a binding rule of customary international law. Therefore, writers on international environmental law have made considerable use of the concept of soft law. It is often the case that states are unwilling to agree to legally binding obligations in particular areas of environmental protection because of the unavailability of relevant scientific information or knowledge. The concept of soft law allows there to be a statement of principle and intention and the soft law can gradually harden as scientific knowledge expands. Many of the international conventions dealing with environmental matters have been developed from broad statements of principle expressed in resolutions and declarations of the United Nations. Arguably, the declarations themselves could be considered soft law. A considerable amount of soft environmental law is to be found in the resolutions of various international organisations concerned with environmental matters such as the World Health Organisation, the International Atomic Energy Agency, the International Maritime Organisation and the Food and Agriculture Organisation.