

**ARBITRATION UNDER THE TREATY BETWEEN
THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ECUADOR
CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION
OF INVESTMENTS AND THE UNCITRAL ARBITRATION RULES (1976)**

PCA CASE N° 2012-5

1. I, the undersigned, Professor at the University Paris Ouest, Nanterre-La Défense, former Chairman of the International Law Commission of the United Nations and Associate Member of the *Institut de Droit International*, have been asked to write a short expert opinion¹ on the following question:

1. Does a dispute, within the usual meaning of the word in international law, presupposes in all cases a "positive opposition"? If yes, what is the precise meaning of this expression?

2. Can a dispute concerning the interpretation of a treaty be submitted to an international tribunal, absent any dispute on the application of the treaty? In particular, when a compromissory clause allows for arbitration of disputes "concerning the interpretation or application" of a treaty, may a tribunal exercise jurisdiction in circumstances where the dispute at issue concerns only the interpretation of the treaty and does not include an allegation that the respondent State breached the treaty?

3. The US are under an obligation to enter into consultation on the interpretation of the BIT (under Article V). If they refuse to do so, is there a dispute between the Parties? Can such a dispute be submitted to an interstate arbitration in application of Article VII?

4. In the circumstances presented here, is the Tribunal warranted in finding that a dispute exists between Ecuador and the United States regarding the interpretation of Article II (7) of the Treaty? In particular, does a dispute concerning the interpretation of a treaty satisfy the requirement of concreteness under international law notwithstanding the absence of an allegation that the treaty was breached?

¹ I have had to write the present opinion under very tight time constraints. However, it represents my sincere opinion, even though in some respects I have not been able to develop the reasons for my position with all the details I would have deemed useful.

In addition, I have been invited to express my views on any issues raised by Professor Reisman and Professor Tomuschat in their legal opinions joined to the Defendant's Memorial on Objections to Jurisdiction, that I think should be addressed.

2. These questions have been asked in the context of the Arbitral Proceedings initiated by the Republic of Ecuador *v.* the United States of America concerning the encouragement and reciprocal protection of investments and the UNCITRAL Arbitration Rules.

3. For the preparation of the present Opinion, I have been given:

- the Diplomatic Note of the Republic of Ecuador, entitled 'Misinterpretation of Article II (7) of the Treaty for Encouragement and Reciprocal Protection of Investment, by the Arbitral Tribunal in the Case Chevron', No. 13528-GM/2010, Quito, June 8, 2010;

- the Request of the Republic of Ecuador to the United States of America pursuant to Article VII of the Treaty between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, June 28, 2011;

- the Expert Opinion of Professor W. Michael Reisman, 'Opinion with Respect to Jurisdiction in the Interstate Arbitration initiated by Ecuador against the United States', April 24, 2012;

- the Expert Opinion of Professor Christian Tomuschat, 'The Construction of Article VII of the Bilateral Investment Treaty between the United States and Ecuador', April 24, 2012;

- the Memorial of Respondent United States of America on Objections to Jurisdiction, April 25, 2012; and

- the Transcript of the Preparatory Hearing before the Tribunal, PCA Case No. 2012-5, March 21, 2012.

4. Although it is not easy to clearly appreciate the scope of the above questions, which partly overlap, I have come to the conclusion that it was convenient to answer them in the order in which they are asked, at the risk of some overlaps. I will include some specific remarks on Professors Reisman and Tomuschat's legal opinions in each of the corresponding answers; however, I will abstain from expressing general academic and/or ideological views on the "dangers" they attribute to the Ecuadorean request on the "system" of protection of investments; from my point of view, these considerations tend to blur legal issues, rather than clarifying them.

1. Does a dispute, within the usual meaning of the word in international law, presupposes in all cases a "positive opposition"? If yes, what is the precise meaning of this expression?

5. In a celebrated *dictum*, the Permanent Court of International Justice (PCIJ) defined a dispute as "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons".² As rightly noted by Professor Tomuschat, "this proposition has continually been referred to also by the International Court of Justice (ICJ), the successor of the PCIJ..."³ It can be added that it has become the standard-definition very commonly accepted by arbitral tribunals⁴, including in matters of investment⁵.

² PCIJ, Judgment, 30 August 1924, *Mavrommatis Palestine Concessions (Greece v. Great Britain)*, P.C.I.J., Series A, No. 2, p. 11.

³ C. Tomuschat, Expert Opinion, 24 Apr 2010 (hereinafter C. Tomuschat), para. 6. See e.g. : ICJ, Judgment, 2 December 1963, *Northern Cameroons (Cameroon v. United Kingdom)*, Preliminary Objections, I.C.J. Reports 1963, p. 27 ; ICJ, Advisory Opinion, 26 April 1988, *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, I.C.J. Reports 1988, p. 27, para. 35 ; ICJ, Judgment, 30 juin 1995, *East Timor (Portugal v. Australia)*, I.C.J. Reports 1995, pp. 99-100, para 22 ; ICJ, Judgment, 10 February 2005, *Certain Property (Liechtenstein v. Germany)*, Preliminary Objections, I.C.J. Reports 2005, p. 18, para. 24 ; ICJ, Judgment, 1 April 2011, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 16, para. 30.

⁴ See e.g. : Award on Jurisdiction and Admissibility, 4 August 2000, *Southern Bluefin Tuna Case (Australia and New Zealand v. Japan)*, RIIA, vol. XXIII, para. 44.

⁵ See e.g. : Preliminary Award, 27 November 1975, *Texaco Overseas Petroleum Company and California Asiatic Oil Company v. Libyan Arab Republic*, ILR, vol. 53, p. 389, para. 41; *Siemens A.G. v. Argentina*, ICSID No. ARB/02/8, Decision on Jurisdiction, 3 August 2004, para. 159; *Empresas Lucchetti, S.A. and Lucchetti Peru S.A. v. Peru*, ICSID No ARB/03/4, Award of 7 February 2005, para. 48; *Maffezini v. Spain*, ICSID, ARB/97/7, Decision on Jurisdiction of 25 January 2000, paras. 93-94; *Tokios Tokeles v. Ukraine*, ICSID ARB/02/18, Decision on Jurisdiction of 29 April 2004, at paras. 106-107; *Impreglio v. Pakistan*, ICSID ARB/03/3, Decision on Jurisdiction of 22 April 2005, at paras. 302-303; *AES v. Argentina*, ICSID ARB/02/17, Decision on Jurisdiction of 26 April 2005, at para. 43; *El Paso Energy Intl. Co. v. Argentina*, ICSID ARB/03/15, Decision on Jurisdiction of 27 April 2006, at para. 61; *Pan American Energy LLC and BP Argentina Exploration Company v. Argentina*, ICSID ARB/04/8, Decision on Preliminary Objections, 27 July 2006, paras. 76 and 80 ;

6. However, the distinguished author adds that:

“in practice, the ICJ applies the term dispute more narrowly. ... In particular, it has emphasized that the claim by one party must be positively opposed by the other.”⁶

And the Respondent’s Memorial on Objections to Jurisdiction makes a strong case of that supposed narrowing of the definition of the term dispute.⁷ However such an evolution is quite uncertain.

7. There can, indeed, be no doubt that a dispute can stem from a “positive opposition”. But this has never been considered as a pre-requisite for the existence of a dispute whether by the International Court of Justice (I.C.J.) or by arbitral tribunals. As early as 1927, the PCIJ observed that:

“In so far as concerns the word “dispute”, ... according to the tenor of Article 60 of the Statute, the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required.”⁸

8. Moreover, the present Court made clear, in *Georgia v. Russia*, that the expression “positive opposition” must not be taken literally:

“30. [...] Whether there is a dispute in a given case is a matter for “objective determination” by the Court (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). ‘It must be shown that the claim of one party is positively opposed by the other’ (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). The Court’s determination must turn on an examination of the facts. The matter is one of substance, not of form. As the Court has recognized (for example, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 315, para. 89), *the existence of a dispute may be inferred from the failure of a*

M.C.I. Power Group L.C. and New Turbine, Inc. v. Ecuador, ICSID ARB/03/6, Award of 31 July 2007, para. 63; *ATA Construction, Industrial And Trading Company v. The Hashemite Kingdom of Jordan*, ICSID ARB/08/2, Award, 18 May 2010, para. 99; *AES v. Hungary*, ICSID ARB/07/22, Award, 23 September 2010, para. 6.2

⁶ C. Tomuschat, citing ICJ, Judgment, 21 December 1962, *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, *I.C.J. Reports 1962*, p. 319, para. 328; ICJ, Judgment, 3 February 2006, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, *ICJ. Reports 2006*, p. 40, para. 90; ICJ, Judgment, 5 December 2011, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, *I.C.J. Reports 2011*, p. 16, para. 30.

⁷ Cf. Memorial of Respondent United States of America on Objections to Jurisdiction, April 25, 2012, (hereinafter: Memorial), pp. 34-36.

⁸ PCIJ, Judgment, 16 December 1927, *Interpretation of Judgments Nos. 7 and 8 (The Chorzow Factory)*, P.C.I.J. Series A, N° 13, pp. 10-11.

State to respond to a claim in circumstances where a response is called for. While the existence of a dispute and the undertaking of negotiations are distinct as a matter of principle, the negotiations may help demonstrate the existence of the dispute and delineate its subject-matter.”⁹

9. The ICJ Advisory Opinion of 26 April 1988, on the *Obligation to Arbitrate* confirms that a “positive opposition”, in the strict sense of the word, is not required for ascertaining the existence of a dispute. In that case, the United States had passed legislation designed to lead to the closure of the PLO Mission to the United Nations, but had not actually taken action to close the Mission. The United States took the position that there was no dispute, since the legislation had not yet been implemented; also, pending litigation in the domestic courts, no other action to close the Mission would be taken.¹⁰ The ICJ dismissed the US argument:

“The Court cannot accept such an argument. While the existence of a dispute does presuppose a claim arising out of the behavior of or a decision by one of the parties, it in no way requires that any contested decision must already have been carried into effect. What is more, a dispute may arise even if the party in question gives an assurance that no measure of execution will be taken until ordered by decision of the domestic courts.

... [T]he Court is obliged to find that the opposing attitudes of the United Nations and the United States show the existence of a dispute between the two parties to the Headquarters Agreement.”¹¹

10. Moreover, while, to my knowledge, the issue never expressly occurred before the ICJ, the principle according to which silence kept during a reasonable period of time amounts to a rejection a request is received in international law. Thus, the Conciliation Commission between France and Italy noted in its Decision n° 175 of 15 November 1954 that:

*“L’absence de réponse au fond, de la part du Ministère des Affaires étrangères, doit être retenue comme constituant une décision implicite de rejet et fait naître le litige soumis par la présente requête à la Commission de Conciliation.”*¹²

⁹ ICJ, Judgment, 1 April 2011, *Application of the International Convention on Elimination of All Forms of Racial Discrimination, Preliminary Objections*, I.C.J. Reports 2011, p. 16, para. 30 – italics added.

¹⁰ 26 April 1988, on *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, I.C.J. Reports 1988, pp. 29-30, paras. 39-43.

¹¹ *Ibid.*, p. 30, paras. 42-43.

¹² “The absence of response on the merits, from the Ministry of Foreign Affairs, has to be regarded as constituting an implied rejection and is at the origin of the case submitted by this request to the Conciliation Commission” (my translation) (Commission de Conciliation franco-italienne, Déc. N° 175 du 15 novembre 1954 et N° 192 du 15 septembre 1955, *Società Anonima Michelin Italiana, RIIA*, vol. XIII, p. 615). See also: Commission de Conciliation franco-italienne, Déc. N° 108 du 15 septembre 1951, *Société des explosifs et des*

Similarly, in *AAPL v. Sri Lanka*, an ICSID Tribunal decided that:

“The claim submitted on March 9, 1987, remained outstanding without reply for more than the three months period provided for in Article 8.(3) of the Bilateral Investment Treaty to reach an amicable settlement, and hence AAPL became entitled to institute the ICSID arbitration proceedings.”¹³

2. Can a dispute concerning the interpretation of a treaty be submitted to an international tribunal, absent any dispute on the application of the treaty? In particular, when a compromissory clause allows for arbitration of disputes “concerning the interpretation or application” of a treaty, may a tribunal exercise jurisdiction in circumstances where the dispute at issue concerns only the interpretation of the treaty and does not include an allegation that the respondent State breached the treaty?

11. The answer to this question is clearly given in the PCJI Judgment of 25 May 1926 in the case concerning *Certain German interests in Polish Upper Silesia*, a precedent on which the Memorial as well as Professors Reisman and Tomuschat’s Expert Opinions keep silence:

“There are numerous clauses giving the Court compulsory jurisdiction in questions of the interpretation and application of a treaty, and these clauses, amongst which is included Article 23 of the Geneva Convention, appear also to cover interpretations unconnected with concrete cases of application. Moreover, there is no lack of clauses which refer solely to the interpretation of a treaty; for example, letter a of paragraph 2 of Article 36 of the Court’s Statute. There seems to be no reason why States should not be able to ask the Court to give an abstract interpretation of a treaty; rather would it appear that is one of the most important functions which it can fulfill. It has, in fact, already had occasion to do so in Judgment No. 3.”¹⁴

produits chimiques: “La demande doit être déclarée recevable. Elle a été précédée, en effet, non seulement par des pourparlers entre les parties intéressées, mais aussi par la présentation au Gouvernement italien de la note verbale du 17 juin 1949 du Gouvernement français. Aucune réponse n’ayant été donnée à cette note, le Gouvernement français était autorisé à croire, le 13 novembre 1949, que sa réclamation n’était pas admise et qu’il y avait dès lors différend; l’existence du différend a été confirmée d’ailleurs au cours de la procédure” (“The application must be declared admissible. It was preceded, indeed, not only by talks between the parties, but also by the presentation to the Italian Government of the verbale note of 17 June 1949 of the French Government. No reply having been given to the note, the French Government was entitled to believe, on November 13, 1949, that its claim was not accepted and there was therefore a dispute; the existence of the dispute has been confirmed moreover during the proceedings.” - my translation) (*RIIA*, vol. XIII, p. 283).

¹³ Award, 27 June 1990, *AAPL v. Sri Lanka*, ICSID ARB/87/3, para. 3; see also: Award, 3 August 2004, *Siemens AG v. Argentina*, ICSID ARB/02/8, para. 159.

¹⁴ PCJI, Judgment, 25 May 1926, *Certain German interests in Polish Upper Silesia, Merits*, P.C.I.J. 1926, Series A, N° 7, p. 18. In its Judgment N° 3, the PCIJ, had to “determine the precise meaning of the last sentence of the first sub-paragraph [French text] of paragraph 4 of the Annex to Section IV, Part IX” of the Treaty of Neuilly (PCIJ, Judgment, 12 September 1924, *Treaty of Neuilly, Article 179, Annex, Paragraph 4*, Interpretation, P.C.I.J. Series A, No. 3, p. 5).

12. For its part, the present Court too¹⁵ was called to answer purely interpretive questions – for example in the case concerning *Rights of Nationals of the United States of America in Morocco*, where France, without allegation of treaty breaches, asked the Court to adjudge and declare:

“That the privileges of the nationals of the United States of America in Morocco are only those which result from the text of Articles 20 and 21 of the Treaty of September 16th, 1836, and that since the most-favoured-nation clause contained in Article 24 of the said treaty can no longer be invoked by the United States in the present state of the international obligations of the Shereefian Empire, there is nothing to justify the granting to the nationals of the United States of preferential treatment which would be contrary to the provisions of the treaties; ... That no treaty has conferred on the United States fiscal immunity for its nationals in Morocco, either directly or through the effect of the most-favoured-nation clause.”¹⁶

The Court had no difficulties in answering these questions and gave the requested interpretation. It agreed with France’s interpretation of MFN clauses and held that the US could not rely on them to expand its consular jurisdiction beyond the scope established in the 1836 Treaty and it also interpreted another Article of the General Act of Algeciras of 1906 following a counter-claim by the United States.¹⁷

13. More recently in its 2009 Judgment relating to *Navigational and Related Rights* on the San Juan River, the Court devoted the most important of the *dispositif* to settling general interpretative differences between the Parties, which I copy hereafter since it constitutes a clear illustration that interpretation of a treaty can be the subject matter of a dispute before a judicial or arbitral body:

“THE COURT,

¹⁵ Besides, the ICJ has also been seized of a number of requests in interpretation of its previous judgments (see: ICJ, Judgment, 27 November 1950, *Request for Interpretation of the Judgment of November 20th 1950, in the Asylum Case (Colombia v. Peru)*, I.C.J. Reports 1950; ICJ, Judgment, 27 February 1998, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom and United States of America)*, I.C.J. Reports 1988; ICJ, Judgment, 10 December 1985, *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, I.C.J. Reports 1985; ICJ, Judgment, 25 March 1999, *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, I.C.J. Reports 1999; ICJ, Judgment, 19 January 2009, *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, I.C.J. Reports 2009 – see also : (PCIJ, Judgment, 16 December 1927, *Interpretation of Judgments Nos. 7 and 8 (The Chorzow Factory)*, P.C.I.J. Serie A No 13).

¹⁶ ICJ, Judgment, 27 August 1952, *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, I.C.J. Reports 1952, p. 179.

¹⁷ *Ibid.*, pp. 212-213.

(1) As regards Costa Rica's navigational rights on the San Juan River under the 1858 Treaty, in that part where navigation is common,

(a) Unanimously,

Finds that Costa Rica has the right of free navigation on the San Juan River for purpose of commerce;

(b) Unanimously,

Finds that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of passenger;

(c) Unanimously,

Finds that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of tourists;

(d) By nine vote to five,

Finds that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to obtain Nicaraguan visas;

(e) Unanimously,

Finds that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to purchase Nicaraguan tourist cards;

(f) By thirteen votes to one,

Finds that the inhabitants of the Costa Rican bank of the San Juan River have the right to navigate on the river between the riparian communities for the purposes of the essential needs of everyday life which require expeditious transportation;

(g) By twelve vote to two,

Finds that Costa Rica has the right of navigation of the San Juan River with official vessels used solely, in specific situations, to provide essential services for the inhabitants of the riparian areas where expeditious transportation is a condition for meeting the inhabitants' requirements;

(h) Unanimously,

Finds that Costa Rica does not have the right of navigation on the San Juan River with vessels carrying out police functions;

(i) Unanimously,

Finds that Costa Rica does not have the right of navigation on the San Juan River for the purposes of the exchange of personnel of the police border posts along the right bank of the river and of the re-supply of these posts, with official equipment, including service arms and ammunition;

(2) As regards Nicaragua's right to regulate navigation on the San Juan River, in that part where navigation is common,

(a) Unanimously,

Finds that Nicaragua has the right to require Costa Rican vessels and their passengers to stop at the first and last Nicaraguan post on their route along the San Juan River;

(b) Unanimously,

Finds that Nicaragua has the right to require persons travelling on the San Juan River to carry a passport or an identity document;

(c) Unanimously,

Finds that Nicaragua has the right to issue departure clearance certificates to Costa Rican vessels exercising Costa Rica's right of free navigation but does not have the right to request the payment of a charge for the issuance of such certificates;

(d) Unanimously,

Finds that Nicaragua has the right to impose timetables for navigation on vessels navigating on the San Juan River;

(e) Unanimously,

Finds that Nicaragua has the right to require Costa Rican vessels fitted with masts or turrets to display the Nicaraguan flag;

(3) As regards subsistence fishing,

By thirteen votes to one,

Finds that fishing by the inhabitants of the Costa Rican bank of the San Juan River for subsistence purposes from that bank is to be respected by Nicaragua as a customary right."¹⁸

14. Moreover, it is far from unusual to call arbitration tribunals to decide disputes bearing exclusively on matters of interpretation. Thus:

¹⁸ ICJ, Judgment, 13 July 2009, *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, I.C.J. Reports 2009, pp. 270-271, par. 156. See also: ICJ, Judgment, 25 September 1997, *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, I.C.J. Reports 1997, pp. 75-76, paras. 130-131 quoted below, para. 37.

- by their Special Agreement (*Compromis d'arbitrage*) of 22 November 1900, Italy and Peru instituted an arbitral tribunal in order to

*“mettre fin amiablement au différend qui a surgi entre eux au sujet de l’interprétation de l’Article 18 du Traité d’amitié et de commerce, en date du 23 décembre 1874, en vigueur entre les Pays...”*¹⁹

Consequently,

*“L’arbitre croit, en formulant le dispositif de son jugement, devoir s’en tenir strictement à la question litigieuse, conçue d’une manière abstraite ; mais il rend sa Sentence en ayant égard spécialement au cas concret, tout en reconnaissant que les Autorités judiciaires de l’État où l’exequatur est demandé seraient aussi compétentes ...”*²⁰ ;

- similarly, in 1951, in a case concerning the interpretation of Article 79, para. 6, letter C, of the Peace Treaty with Italy, the Conciliation Commission between France and Italy noted:

*“Le litige porte, en premier lieu, sur l’interprétation de l’article 79, par. 6 litt. c, du Traité, et plus spécialement sur l’interprétation de l’expression «autorisés à résider».”*²¹ ;

- and, more recently, in the case concerning the *Question of the re-evaluation of the German mark*, the Arbitral Tribunal constituted in accordance with the 1953 Agreement on German External Debt considered that:

9. The Applicant’s right to an authoritative interpretation of the clause in dispute ... is grounded on the bedrock of the considerations which the Applicants gave and the concessions which they made in exchange for the disputed clause. They have a right to know what is the legal effect of the language used. The Tribunal in the exercise of its judicial functions is obliged to inform them.”²²

¹⁹ “resolve amicably the dispute which has arisen between them concerning the interpretation of Article 18 of the Friendship and Commerce Treaty, dated December 23, 1874, in force between the Countries” (my translation) (Arbitral Award, 19 September 1903, *Interprétation de l’article 18 du Traité d’amitié et de commerce conclu entre l’Italie et le Pérou le 23 décembre 1874 (Italie c. Pérou)*, RIAA, vol. IX, p. 85).

²⁰ “The arbitrator believes, that in formulating the dispositive part of his judgment, he must adhere strictly to the question at issue, designed in an abstract way; but he delivers his award by having special regard to the concrete case, while recognizing that the judicial authorities of the State where enforcement is sought would also be competent”(my translation) (*ibid.*, p. 97).

²¹ “ The dispute concerns, first, the interpretation of Article 79, para. 6 litt. c, of the Treaty, and especially the interpretation of the phrase ‘permitted to reside’” (my translation) (*Différend concernant l’Interprétation de l’article 79, par. 6, lettre C, du Traité de Paix (Biens italiens en Tunisie – Échange de lettres du 2 février 1951)* – Décisions n° 136, p. 395.

²² , 16 May 1980, *The Question whether the re-evaluation of the German Mark in 1961 and 1969 constitutes a case for application of the clause in article 2 (e) of Annex I A of the 1953 Agreement on German External Debts*, RIAA, vol. XIX, p. 84.

15. An affirmative answer to the question under review seems all the more inevitable that if interpretive dispute were not arbitrable, the expression “dispute between the Parties concerning the interpretation *or* application of the Treaty” found in Article VII (1) of the Bilateral Investment Treaty between the United States and Ecuador (hereinafter: ‘BIT’ or ‘the Treaty’) as well as in a great number of treaties concerning the peaceful settlement of disputes²³) would be meaningless since the word “or” inserted between “interpretation” and “application” would remain without any significance. As is well known, “[i]t would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect.”²⁴

16. By contrast, other treaties providing for arbitration only contemplate the settlement of disputes relating to their *application* and do not mention interpretation, or replace “or” by “and” and provide for the settlement of disputes relating to the “interpretation *and* application” of the treaty. In such cases, it can be legitimately sustained that a purely interpretive dispute does not fall under the jurisdiction of the Tribunal under the compromissory clause. This is not the case when a treaty, like the Ecuador/US BIT provides for the submission of “any dispute between the Parties concerning the interpretation or application of the Treaty” to an arbitral tribunal.

3. Are the United States under an obligation to enter into consultation on the interpretation of the BIT (under Article V or otherwise)? If they refuse to do so, is there a dispute between the Parties? Can such a dispute be submitted to an interstate arbitration in application of Article VII?

17. According to Article V of the BIT:

²³ See e.g. : Article 38 of the Convention Relating to the Statuts of Refugees, 26 July 1951; Article 8 of the UNESCO Convention Against Discrimination in Education, 14 December 1960; Article 48 of the Single Convention on Narcotic Drugs, 30 March 1961; Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination, 20 November 1963; Article VIII of the BIT between United States of America and Argentina, 14 November 1991; Article 2004, Chapter 20 of NAFTA; etc..

²⁴ ICJ, Judgment, 9 April 1949, *Corfu Channel case*, *I.C.J. Reports 1949*, p. 24; see also : ICJ, Judgment, 1 April 2011, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, *I.C.J. Reports 2011*, p. 52, para. 134; ICJ, Judgment, 5 December 2011, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, *I.C.J. Reports 2011*, p. 30, para. 92.

“The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.”

18. There is no doubt that this provision:

- *first*, imposes a binding obligation upon the Parties – it is an integral part of the Treaty which, as the US acknowledges is subject to the principle *pacta sunt servanda* as reflected in Article 26 of the 1969 Vienna Convention on the Law of treaties²⁵; and,

- *second*, covers all kinds of controversies which can occur in relation with the Treaty: “*any disputes in connection with the Treaty*” and “*any matter relating to the interpretation or application of the Treaty.*”

19. It is hardly debatable that the subject-matter submitted by the Government of Ecuador to that of the United States by its Note dated 8 June 2010 concerned not a dispute in connection with the Treaty (at least between the two States) but, clearly a matter relating to the interpretation of the Treaty. As a consequence, the United States was under a legal obligation to discuss that matter with Ecuador. It is my understanding that it did not: by its letter of 23 August 2010 to the Ecuadorean Foreign Minister, the US Assistant Secretary of State for Western Hemisphere Affairs stated that “the U.S. government is currently reviewing the views expressed in your letter and considering the concerns that you have raised,” and that its Government “look[ed] forward to remaining in contact” on the matter.²⁶ Moreover, as explained in the Request for Arbitration, “the State Department Legal Adviser informed the Chief of Mission of the Ecuadorian Embassy ‘that his Government will not rule on this matter’.”²⁷ This has not been refuted by the United States and both Parties seem to agree “that the United States did not express a view on Ecuador’s interpretation of Article II(7) [in the letter] or thereafter.”²⁸ And I agree with this analysis. But, thus doing, the United States failed to comply with their obligation under Article V of the BIT. In this respect, two remarks are in order.

²⁵ See Memorial, pp. 40-41.

²⁶ Letter from U.S. Assistant Secretary of State for Western Hemisphere Affairs Arturo A. Valenzuela to Ecuadorian Minister for Foreign Affairs, Trade and Integration Ricardo Patiño Aroca (Aug. 23, 2010).

²⁷ Request for Arbitration, para. 13 ; see also Preliminary Hearing, 21 March 2012, Transcript, pp. 10-11 (Mr Reichler).

²⁸ Memorial, p. 14.

20. *First*, I note that the Respondent makes a strong case of the fact that Ecuador did not formally requested consultations under Article V of the Treaty.²⁹ This is irrelevant. Thus, in *Nicaragua*, the ICJ considered that:

“... it does not necessarily follow that, because a State has not expressly referred in negotiations with another State to a particular treaty as having been violated by conduct of that other State, it is debarred from invoking a compromissory clause in that treaty. The United States was well aware that Nicaragua alleged that its conduct was a breach of international obligations before the present case was instituted; and it is now aware that specific articles of the 1956 Treaty are alleged to have been violated. It would make no sense to require Nicaragua now to institute fresh proceedings based on the Treaty, which it would be fully entitled to do. As the Permanent Court observed:

‘the Court cannot allow itself to be hampered by a mere defect of form, the removal of which depends solely on the party concerned’ (*Certain German Interest in Polish Upper Silesia, Jurisdiction*, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6, p. 14).”

Accordingly, the Court finds that, to the extent that the claims in Nicaragua’s Application constitute a dispute as to the interpretation or the application of the Articles of the Treaty of 1956 described in paragraph 82 above, the Court has jurisdiction under that Treaty to entertain such claims.³⁰

21. *Second*, I am somewhat baffled by the declaration made by the representative of the Claimant during the Preparatory Hearing held by the Tribunal on 21 March 2012, according to which: “

“Ecuador has not accused the United States of any wrongdoing. It does not accuse the United States of violating any of its international obligations. It does not seek compensation from the United States. It does not seek an order against the United States. Ecuador seeks only an interpretation of a treaty provision.”³¹

This may well be, of course, the position of Ecuador in the proceedings it has instituted. Nevertheless, it is hardly debatable that, by refusing *de facto*, through a long remaining silence, to discuss with Ecuador a matter clearly related to the interpretation of the Treaty, the United States is in breach of one of its Treaty obligations.

²⁹ See e.g. Memorial, p. 3 (underlined) or p. 11 ; C. Tomuschat, p. 6.

³⁰ ICJ, Judgment, 26 November 1984, *Military and Paramilitary Activities (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, *I.C.J. Reports 1984*, pp. 428-429, para. 83. See also: PCIJ, Judgment of 16 December 1927, *Interpretation of Judgments Nos. 7 and 8 (The Chorzow Factory)*, P.C.I.J. Series A, N° 13, pp. 10-11; ICJ, Judgment, 1 April 2011, *Application of the Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, *I.C.J. Reports 2011*, p. 16, par. 30.

³¹ Preliminary Hearing, 21 March 2012, Transcript, p. 15 (Mr Reichler).

22. Indeed, “the United States does not owe Ecuador an obligation ... to confirm, Ecuador’s unilateral interpretation of the Treaty”³² but this is not to say that it has any “discretion” to respond³³ – or not – to a request relating to the interpretation of the BIT. Suffice it to recall in this respect that, as made crystal clear in the celebrated *dictum* of the PCIJ in the *Wimbledon* case, it cannot be seen

“in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty”³⁴

Exactly for this reason, the US is bound by its treaty commitment under Article V of the BIT: it may agree or disagree with the interpretation offered by Ecuador; what it cannot legally do is to refuse to discuss the matter and, in case, of disagreement, to consult with the other Party in view to resolve the ensuing dispute. If it does, it is in breach of one its binding treaty obligation and the ensuing dispute may, without any doubt, be submitted to an Article VII Tribunal.

23. In this respect, I regret that I am not able to agree with my eminent colleague Professor Michael Reisman who, in an effort to limit the scope of both Articles V and VII of the Treaty puts the emphasis on the so-called “two-tracks system” which the BIT would have created³⁵, at least insofar as this “system” would limit the range of the disputes or matters falling under Article V (and, as a consequence, under Article VII):

- neither Article V³⁶, nor Article VII, whose paragraph 1 provides that: “*Any dispute* between the Parties concerning the interpretation or application of the Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision...”, limits the scope *ratione materiae* of the disputes concerned;

³² Memorial p. 36.

³³ See e.g. Memorial, pp. 36, Preparatory Hearing, pp. 10-11.

³⁴ PCIJ, Judgment, 17 August 1923, S.S. Wimbledon, P.C.I.J. Series A, No. 1, p. 25.

³⁵ See e.g. M. Reisman, Expert Opinion, 24 April 2012 (Hereinafter: “M. Reisman”), para. 3 (Summary of conclusions) (b), (c) and (d); or paras. 16-19.

³⁶ See above paras 13 and 15

- the structure of the Treaty is telling in this respect: the substantive parts are included in Articles I to IV; then Articles V to VII are devoted to the consultations between the Parties and the settlement of disputes; they precede the final clauses; moreover, Article VI, which is limited to investment disputes, is placed between the two provisions concerning inter-States disputes: this implies that State-to-State disputes may also concern investment problems.

24. This certainly does not mean that an inter-States Tribunal under Article VII could review or thwart an Award given by an investment Tribunal under Article VI, let alone that an Article VII Tribunal could act as an appellate jurisdiction when such an Award has been rendered. But it means that the fact that an Article VI Tribunal has based itself on a particular interpretation of certain provisions of the Treaty, an Article VII Tribunal is, by no means prevented to give its own interpretation of the same provisions. Or, to put it otherwise, exactly as an interpretation given *ex post* by an Article VII Tribunal is not binding upon an Article VI Tribunal and can have no bearing whatsoever on the binding nature of its Award, an interpretation given by an Article VI Tribunal is not binding upon an Article VII Tribunal, which may adopt its own interpretation according to the applicable law.

25. This being said, I have no difficulty to accept that, even in the absence of Article V, the situation is one were an issue was raised by one Party to a treaty calling for a response – not necessarily an agreement on the proposed interpretation – but were met with a refusal by the other to enter into any discussion on the matter.³⁷

26. It is widely recognized “that behaviours capable of legally binding States may take the form of ... mere informal conduct including, in certain situations, silence, on which other States may reasonably rely.”³⁸ The US muteness on Ecuador’s request constitutes such a situation.

27. As the International Court noted in *Cameroon v. Nigeria*,

“However, a disagreement on a point of law or fact, a conflict of legal views or interests, or the positive opposition of the claim of one party by the other need not necessarily be stated *expressis verbis*. In the determination of the existence of a dispute, as in other matters, the position or the attitude of a party can be established by inference, whatever the professed view of that party.

³⁷ See Request for Arbitration, para. 14.

³⁸ ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, Preamble, para. 2 (ILC *Report*, 2006, A/61/10, p. 368).

And, as recalled earlier in this opinion³⁹, the Court has recognized

“(for example, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 315, para. 89), the existence of a dispute may be inferred from the failure of a State to respond to a claim in circumstances where a response is called for. While the existence of a dispute and the undertaking of negotiations are distinct as a matter of principle, the negotiations may help demonstrate the existence of the dispute and delineate its subject-matter.”⁴⁰

28. Finally, before discussing the more general issue in view of the precise circumstances of the case, as the former Special Rapporteur of the International Law Commission (ILC) on “Reservations to Treaties”, a topic which included interpretative declarations, I feel obliged to briefly comment on the developments in the US Memorial concerning this matter.

29. The United States devotes two pages of its Memorial to demonstrate that “general international law does not require a State to respond to an interpretative declaration.”⁴¹ What is written there is good law – but is simply irrelevant in the framework of the case before the Tribunal: the issue here is by no means whether a State is compelled to react to an interpretative declaration – which it is certainly not (at its own risk) – but whether, in the framework of the particular Treaty constituted by the Ecuador/US BIT (and in particular in view of Article V), the US was under an obligation to discuss on the interpretative issue brought to their attention by Ecuador. The answer to this question is firmly in the affirmative.

4. In the circumstances presented here, is the Tribunal warranted in finding that a dispute exists between Ecuador and the United States regarding the interpretation of Article II (7) of the Treaty? In particular, does a dispute concerning the interpretation of a treaty satisfy the requirement of concreteness under international law notwithstanding the absence of an allegation that the treaty was breached?

³⁹ See para. 9 above.

⁴⁰ ICJ, Judgment, 1 April 2011, *Application of the Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia), Preliminary Objections, I.C.J. Reports 2011*, p. 16, para. 30

⁴¹ Memorial, pp. 41-43.

30. In the circumstances, it seems to me that the Tribunal could follow two different tracks, which both should draw the Tribunal to decide that a dispute exists between Ecuador and the United States regarding the Interpretation of Article II (7) of the Treaty:

- the most simple and direct one would be to find that it has jurisdiction to give the interpretation requested by Ecuador;

- alternatively, it could take the indirect route and base itself on the breach by the United States of its obligation under Article V.

31. Considering the second hypothesis first, in view of my answers to the previous questions, the issue concerning the interpretation of Article II (7) of the BIT can also be linked to the *application* of the Treaty. I have shown that a dispute has arisen between Ecuador and the United States following the latter's refusal to discuss the question raised by the Claimant relating to the interpretation of Article II (7) of the BIT. Such a refusal results from the lengthy silence kept by the Respondent on the Request to that purpose made by Ecuador in contradiction with the clear meaning of Article V of the Treaty.

32. In this hypothesis, the 'abstract' nature of the dispute is not at stake: there is a concrete and well-defined dispute between Ecuador and the United States in respect to the application of Article V of the Treaty. But the problem is that this dispute concerns the implementation of this last provision – Article V – and not, primarily, the interpretation of Article II (7). Therefore, the question remains whether, in the circumstances, an Article VII Tribunal has jurisdiction to pronounce itself on the interpretation of this last provision.

33. Indeed, if the Tribunal follows this track, there is a risk that, instead of deciding itself the right interpretation to be given to Article II (7) of the Treaty, it simply decides that the United States must cease its wrongful act⁴² and perform the obligation breached⁴³. In the present case, this would mean that the United States would be compelled to accept to discuss with Ecuador on the requested interpretation and, if the views of both States do not concur, to consult to resolve the matter before, eventually, seizing an Arbitral VII Tribunal. However, even if it wishes to bind interpretation and application of the Treaty in contradiction with the text of Article VII (2) – which clearly offers an alternative

⁴² Cf. *ibid.*, Article 30 (a) (Cessation and Non-Repetition).

⁴³ Cf. *ibid.*, Article 29, Article 29 (Continued Duty of Performance) – “The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached”.

(“interpretation *or* application”)⁴⁴, it is not prevented to decide itself on the right interpretation of Article II (7) since it could draw the consequences of the violation by the United States of its obligation under Article V of the Treaty. Indeed, Counsel for Ecuador made clear during the Preliminary Hearing⁴⁵ that Ecuador “does not seek compensation from the United States”. But compensation is not the only consequence of an internationally wrongful act and an interpretation by the Tribunal could be a proper form of “satisfaction” which is a convenient form of reparation under international law⁴⁶ as well as an appropriate way to put an end to the violation⁴⁷.

34. However, this would be quite a tortuous outcome and it would certainly be more logical and “economical” for the Tribunal to follow the faster track and to directly decide on the proper interpretation of Article II (7) and it can certainly do so. In effect, it can be sustained that the Tribunal could draw the consequences of the violation by the United States of its obligation under Article V of the Treaty. As rightly said by Counsel for Ecuador during the Preliminary Hearing,⁴⁸ Ecuador “does not seek compensation from the United States.” But compensation is not the only consequence of an internationally wrongful act, and an interpretation by the Tribunal could be a proper form of “satisfaction” which is a convenient form of reparation under international law.⁴⁹

35. This being said, as explained above,⁵⁰ more convincingly, it should recognize its jurisdiction to make a declaratory award on the right interpretation of this provision. Therefore, the most logical way to definitely solve the indisputably existing dispute between Ecuador and the United States would certainly be for the Tribunal to find that it has jurisdiction to settle a dispute concerning the interpretation of a treaty independently of an allegation that the treaty was breached.

36. In this respect, the main question is whether such a dispute concerning the interpretation of Article II (7) of the Treaty satisfies the requirement of concreteness under

⁴⁴ See above paras. 15-16.

⁴⁵ See above, para. 21. See also Preliminary Hearing, p. 18.

⁴⁶ Cf. Article 34 of the ILC Articles of 2001 on Responsibility of States for internationally wrongful acts (Forms of reparation).

⁴⁷ See above, fn 41.

⁴⁸ See above, para. 21. See also Preliminary Hearing, p. 18.

⁴⁹ Cf. Article 34 of the ILC Articles of 2001 on Responsibility of States for internationally wrongful acts (Forms of reparation).

⁵⁰ See para. 26.

international law. My considered view is that the answer should be in the affirmative and the reason can be made briefly: once it is accepted – as it must be⁵¹ – that an Arbitral Tribunal constituted under Article VII has jurisdiction to settle a dispute concerning the interpretation of the Treaty, I see no reason why it should decline to exercise said jurisdiction in the present case.

37. Contrary to what was the case in the case of the *Northern Cameroons* before the ICJ,⁵² such an interpretation, without constituting an interference in the transnational ongoing dispute⁵³, would affect existing legal rights and obligations of the parties by removing uncertainty from their future legal relations. In this respect, comparison can be made with the ICJ Judgment in the case concerning the *Gabcikovo-Nagymaros Project* where the Court observed

“that the part of its Judgment which answers the question in Article 2, paragraph 1, of the Special Agreement has a declaratory character. It deals with the past conduct of the Parties and determines the lawfulness or unlawfulness of that conduct between 1989 and 1992 as well as its effects on the existence of the Treaty.

131. Now the Court has, on the basis of the foregoing findings, to determine what the future conduct of the Parties should be. This part of the Judgment is prescriptive rather than declaratory because it determines the rights and obligations of the Parties are. The Parties will have to seek agreement on the modalities of the execution of the Judgment in the light of this determination, as they agreed to do in Article 5 of the Special Agreement.”⁵⁴

38. Similarly, in the present case the Article VII Tribunal’s exercise of jurisdiction over Ecuador’s claims would clarify the scope of obligations between the Parties. This is fully in keeping with the integrity of the functions of an arbitral tribunal.

SUMMARY

39. In view of the above, my answers to the questions asked to me are as follows:

⁵¹ See the answer to question 2 above.

⁵² ICJ, Judgment, 2 December 1962, *Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections*, *I.C.J. Reports* 1962, pp. 33-34

⁵³ See above para. 24.

⁵⁴ ICJ, Judgment, 25 September 1997, *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, *I.C.J. Reports* 1997, pp. 75-76, paras. 130-131.

1. It can be accepted that a dispute, within the usual meaning of the word in international law, presupposes a "positive opposition". However, this expression is widely defined: the opposition of one Party can manifest itself by the silence kept on a formal request made by the other; such a silence must be interpreted in the circumstances as an implied rejection of the request.
2. A dispute concerning the interpretation of a treaty is a dispute in itself and can no doubt be submitted to an international tribunal absent any dispute on the application of the treaty, in particular when a compromissory clause allows for arbitration of disputes "concerning the interpretation *or* application" of a treaty the treaty to be interpreted. In such a case, a tribunal exercise jurisdiction in circumstances where the dispute at issue concerns only the interpretation of the treaty and does not include an allegation that the respondent State breached the treaty.
3. Under Article V of the Ecuador/United States BIT, the US is under an obligation to enter into consultation on the interpretation of the Treaty. Their refusal to do so, is a breach of the Treaty from which a dispute between the Parties ensues. Such a dispute be submitted to an interstate arbitration in application of Article VII of the BIT.
4. In the circumstances presented here, the Tribunal warranted in finding that a dispute exists between Ecuador and the United States regarding the interpretation of Article II (7) of the Treaty and the present dispute satisfies the requirement of concreteness under international law notwithstanding the absence of an allegation that the treaty was breached.

A handwritten signature in blue ink, appearing to read 'A. Pellet', is centered on a light green rectangular background.

Alain PELLET

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ACADEMIC QUALIFICATIONS :

- Agrégation in public law and political science (1974)
- State Doctorate in public law (1974 - University of Paris II, Panthéon - Assas)
- Diploma of advanced studies in public law (1969 - Faculty of Law and Economics, Paris)
- Diploma of advanced studies in political science (1969 - Faculty of Law and Economics, Paris)
- Diploma of the Institute of Political Studies, Paris (Sciences-Po) (1968 - public service section,)
- Bachelor of laws (public law) (1968 - Faculty of Law and Economics, Paris)
- Auditor at the Academy of International Law, The Hague (public international law courses, 1967, 1969 and 1971)

FOREIGN LANGUAGES :

- English : read, speak, write
- Italian : read and speak (poorly)

POSTS :- At the University Paris Ouest, Nanterre-La Défense,

Professor (1990 -)

Courses given :

- General Public International Law (degree course, third year)
- International Development Law (Master's degree)
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- International Law of the Economics (Post-graduate studies)
- The International Legal System (Post-graduate studies)

Director of the Centre for International Law (CEDIN – 1991-2001)

Director, Post-graduate Studies in International and European Law of Economics Relations (1991-2009), then Co-director (with Jean-Marc Thouvenin) of the Master 2 (research) Laws of International Relations and of the European Union (2009-).

Member of the Faculty Board (1995 - 2003)

Chairman of the Commission of Specialists in Public Law (1998 - 2007); Member (1990 - 2008); Member of the consultative Committee – Public Law (2009 -).

- At the Institute of Political Studies, Paris (Sciences-Po)

Professor (1980 - 1999)

Courses given :

- "The legal framework of international relations" (1990 - 1999)
- "The legal framework of international economic life" (1980 - 1989)

From 1972 to 1975 and from 1977 to 1981, Senior Lecturer in international law (International relations section, second and third years)

From 1970 to 1975, leader of a seminar on international relations (with Professor M. Merle).

- At the Faculty of Law and Political Science of the University of Paris-Nord :

Professor (1974 - 1990) (seconded to the University of Constantine until 15 september 1977)

Courses given :

- Public international law (general course) (degree course, third year)
- International development law (degree course, fourth year)
- International economic law (post-graduate studies in public law and business law)

- International administrative law (post-graduate studies in public law)

Member of the University Council and the Scientific Council (1979 - 1986)

Director of the Study Group on International law, economics and development (GERDIED)

Delegate for international relations of the University (1978 - 1982)

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Member of the Faculty Board (1978 - 1982 and 1987 - 1990)

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- At the University of Constantina (Algeria) :

From 1975 to 1977, Agrégé Professor in public law, seconded by the University of Paris-Nord under the civilian cultural co-operation scheme.

Courses given :

- International development law (degree course, fourth year)
- Petroleum law (degree course, fourth year)
- Public international law, general course (three semesters, degree course, third and fourth years)

- At the National School of Administration, Algiers :

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Courses given :

- The law of international organizations (diplomatic section)
- General public international law (general section and diplomatic section)

- Lecturer at the Faculty of Law and Economics, Paris, and at the University of Law, Economics and Social Sciences, Paris, from 1968 to 1974

- At René Descartes University (Paris V) - Institute of Legal Sciences of Development :

Courses and Seminars in International Law of Development (1978-1988)

- At the National School of Administration, Paris :

Member of the admissions panel (1980 : second external competitive examination; 1981 : first external competitive examination and of the graduation panel (1982))

Course on the "framing" of international relations : "Third world and development - legal aspects" (1984 - 1985)

- At the University of Law, Economics and Social Sciences, Paris (IHEI) :

Courses on "International law, disarmament and development" (1979 - 1980) and on "The codification of the law of international responsibility" (1994 - 1995)

LECTURES, MISSIONS ABROAD, GUEST PROFESSOR :

Consejo Argentino para las Relaciones Internacionales (CARI) (Buenos Aires) (2011)
 Universidad de Buenos Aires, Facultad de Derecho (Buenos Aires) (2011)
 Yale Law School (2010)
 Instituto del Servicio Exterior de la Nación (Buenos Aires) (2010)
 Université Laval, Québec (2009)
 Diplomatic Academy Bucharest (2006)
 Université Lyon III (2005)
 University of Singapore (2004 and 2008)
 Universidad del Rosario, Bogota (2004)
 Universidad Centroamericana, Managua (2004)
 University Carlos III, Madrid (2002)
 Waseda University, Tokyo (2001)
 Humboldt University, Berlin (2000)
 University of Helsinki (2000)
 State University, Higher School of Economics, Moscow (1999)
 Law Faculty, Edinburgh (1999)
 Universities of São Paulo (USP), Brasilia (Catholic University, UnB, Instituto Rio Branco), Belo Horizonte (UFMG) and Rio de Janeiro (PUC/RJ, University Estácio de Sá and UERJ) (1998)
 University of French West Indies and Guyana, Fort-de-France (1997, 2001, 2006, 2008 and 2009)
 Dong-A University (Pusan, South Korea) (1997)
 MGIMO (Moscow) (1996)
 International Development Law Institute (Rome) (1995)
 British Institute of International and Comparative Law (London) (1994, 1998)
 Faculty of Law of Sarrebrück (Germany) (1994)
 Faculty of Law of Granada (Spain) (1992)
 International Institute of Postgraduate Studies (Geneva) (1992, 2007 and 2009)
 New York University (1991)
 European University Institute, Florence, (1990)
 University of Mauricius, School of Law (1989)
 Faculty of Law of Athens (1988)
 University College (London) (1986)
 Faculty of Law of Tunis (1985, 1988, 1992, 1995)
 Faculty of Law of Casablanca (Morroco) (1984)
 Warwick University (England) (1984)
 Faculty of Law of Damascus (Syria) (1983)
 Center for External Relations Dar-es-Salaam (Tanzania) (1982)
 United Nations University (Tokyo - 1981) (Cairo - 1983)

University Mohamed V of Rabat (Morocco) (1981, 1982)

National University of Benin (1979)

University of French West Indies and Guyana, Pointe-à-Pitre (1979-1986, 1992, 1994-1996, 1999-2006)

Thammasat University of Bangkok (Thailand) (1978)

University of Constantina (1978, 1979, 1980, 1982)

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- At the Centre for International Law (CEDIN), Faculty of Law, Federal University of Minas Gerais (Belo Horizonte - Brazil) – Winter Courses

General Course in Public International law: "International Law between State Sovereignty and the International Community – The Law-Making Process in Public International Law" (2005)

Course: "International law in its infinite variety – eulogy of the *soft law*" (2009)

- At the Centro Internacional Bancaja Para la Paz y el Desarrollo (Castellón, Spain) :

Basic Course: "International Law on the Eve of the XXIst Century - The Law of the International Society" (1997)

- At the International Institute of Human Rights (René Cassin) (Strasbourg) :

Course : "The International Criminal Responsibility of the Individual" (1995)

- At the Academy of European Law (Florence) :

Course : "The International Legal Foundations of the European Communities Law" (1994)

- At the International Law Institute, Thessalonica :

Course, "Aspects of the normative process in international economic and development law" (1988)

Course, "Criminalizing the law of armed conflicts" (1999)

Course, "The international 'crimes' of States - a 'penal' responsibility of the State?" (2001)

- At the Academy of International Law, The Hague :

Leader of the French-language seminars during the course on public international law (1985)

Inaugural Lecture of the public international law session (2007): “L’adaptation du droit international aux évolutions de la société internationale”.

ACTIVITIES IN THE INTERNATIONAL LAW COMMISSION OF THE UNITED NATIONS :

Member (1990-2011)

Chairperson (1997-1998)

Member of the Drafting Committee (1991, 1993, 1994, 1995, 1996, 1998, 2000, 2001, 2003, 2007, 2008)

Chairman of the Working Group on the U.N. Decade for International Law (1992 - 1995)

Chairman of the Long Term Programme Group (2001-2006)

Chairman of the Working Group on the Unilateral Acts of States (1998-2006)

Chairman of the Working Group on The Obligation to Extradite or Prosecute (*aut dedere aut judicare*) (2008-2011)

Special Rapporteur on the topic : "Reservations to Treaties" (1994-2011)

Preliminary Report, 1995, doc. A/CN.4/470 and Corr. 1 and 2, 78 p.

Second Report, 1996, doc. A/CN.4/477 (24 p.) and Add. 1 (87 p.) and Corr. 1 and /CN.4/478 (23 p).

Third Report, 1998, doc. A/CN.4/491 et Add.1 à 6.

Fourth Report, 1999, doc. A/CN.4/

Fifth Report, 2000, doc. A/CN.4/508 et Add. 1 and 2, 84p.; Add. 3 to 5

Sixth Report, 2001, doc. A/CN.4/518 (9 p.) and Add. 1 to 3

Seventh Report, 2002, A/CN.4/526 and Add. 1 to 4

Eighth Report, 2003, A/CN.4/535 and Add.1

Ninth Report, 2004, A/CN.4/544

Tenth Report, 2005, A/CN.4/558 and Add. 1 and 2.

Eleventh Report, 2006, A/CN.4/574.

Twelfth Report, 2007, A/CN.4/584 et Add. 1.

Thirteenth Report, 2008, A/CN.4/600.

Fourteenth Report, 2009, A/CN.4/614 and Add.1 and 2.

Fifteenth Report, 2010, A/CN.4/624 and Add. 1 et 2.

Sixteenth Report, 2010, A/CN.4.626 and Add. 1.

Seventeenth Report, 2011, A/CN.4/647 and Add. 1

ACTIVITIES AT THE INTERNATIONAL COURT OF JUSTICE :

Counsel and Advocate for Thailand in the case concerning the *Request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (2011-present)

Counsel and Advocate for Japan in the case concerning *Whaling in the Antarctic* (2010-present)

Counsel and Advocate for Greece in the case concerning *Application of the Interim Accord of 13 September 1995* (2008-2011)

Counsel and Advocate for the Russian Federation in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (2008-2011)

Counsel and Advocate for Peru in the case concerning *Maritime Delimitation between Chile and Peru* (2008-present)

Counsel and Advocate for Argentina in the case concerning *Certain Pulp Mills on the Uruguay River* (2006-2010)

Counsel and Advocate for Romania in the case concerning *Maritime Delimitation in the Black Sea* (2004-2009)

Counsel and Advocate for Singapore in the case concerning *Pedra Branca* (2003-2008)

Counsel and Advocate for Iran in the case concerning *Oil Platforms* (2002)

Counsel and Advocate for Benin in the case concerning the *Border Dispute* (2002-2005)

Counsel and Advocate for Liechtenstein in the case concerning *Certain Properties* (2001-2005)

Counsel and Advocate for India in the case concerning the *Aerial Incident of 10 August 1999* (2000)

Deputy Agent, Counsel and Advocate of the Republic of Guinea in the *Sadio Ahmadou Diallo* case (1999-2001)

Counsel and Advocate for Indonesia in the case concerning the *Sipadan and Ligitan Islands* (1997-2002)

Deputy Agent, Counsel and Advocate for Cameroon in the case concerning the *Land and maritime boundary* (1994-2003) and the *Request for Interpretation of the Judgment of 11 June 1998 in the case concerning the land and maritime boundary between Cameroon and Nigeria, Preliminary Objections* (Judgment of 25 March 1999)

Counsel and Advocate for Bosnia and Herzegovina in the cases concerning *Application of the Convention on the prevention and punishment of the crime of genocide* (1993-2007) and the *Request for Revision of the Judgment of 11 June 1996* (2001-2002).

Counsel and Advocate for Slovakia in the case concerning the *Gabčíkovo-Nagymaros Project* (1993-present)

Deputy-Agent, Counsel and Advocate for Chad in the case concerning the *Territorial Dispute* (Judgment of 3 February 1994)

Counsel and Advocate for Australia in the cases concerning *Certain Phosphate Lands in Nauru* (Judgment of 26 June 1992) and *East Timor* (Judgment of 30 June 1995)

Counsel and Advocate for Burkina Faso in the *Frontier Dispute* case (Burkina Faso against Mali) (1984-1986); in the *Frontier Dispute* (Burkina Faso against Republic of Niger) (2010-present)

Counsel and Advocate for Nicaragua in the case concerning *Military and paramilitary activities in and against Nicaragua* (1986-1992), in the cases concerning *Border and transborder armed actions* (Nicaragua v. Costa Rica and Nicaragua against Honduras) (1986-1992) and in the cases concerning the *Maritime Delimitation between Honduras and Nicaragua* (2000-2007), the *Maritime Delimitation between Colombia and Nicaragua* (2001-present), the *River San Juan* (2005-2009) and *Construction of a Road in Costa Rica along the San Juan River* (Nicaragua v. Costa Rica) (2010-present).

Counsel for the French Republic in the case of the *Application for Review of Judgment n° 273 of the United Nations Administrative Tribunal (Mortished case)* (Advisory – 1982) and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion – 2004) and Counsel and Advocate in the cases concerning the *Legality of the use by a State of nuclear weapons in armed conflict* (Request for an Advisory Opinion by the World Health Organization, 1994); the *Legality of the threat or use of nuclear weapons* (Request for Advisory Opinion by the General Assembly of the U.N., 1995); the *New Zealand's Request for an Examination of the Situation in accordance with Paragraph 63 of the Court's 1974 Judgment in the Nuclear Tests Case* (1995); *Legality of Use of Force (Serbia and Montenegro v. France)* (1999- 2005); *Certain Criminal Proceedings in France (Republic of the Congo v. France)* (2003-2010) and *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)* (2006-2008) and *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo* (2008-2010).

ACTIVITIES AT THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

- Counsel of Japan in case No. 14 (The “*Hoshinmaru*” Case (Japan v. Russian Federation), Prompt Release) and 15 (The “*Tomimaru*” Case (Japan v. Russian Federation), Prompt Release) (2007);
- Counsel and Advocate of Myanmar in case No. 16 (*Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*) (2010-2011).

ACTIVITIES IN ARBITRATION MATTERS

Participation in various cases as an arbitrator, a counsel and advocate or a consultant in ICSID, ICC and PCA cases (current cases are omitted).

Designated to the Panel of Arbitrators of the International Centre for the Settlement of Investment Disputes (ICSID) by the Chairman of the Administrative Council (2011-present)

Alternate Arbitrator, Arbitration and Conciliation Court of the OSCE (2001-present)

Permanent Court of Arbitrage cases:

- Counsel and lawyer of France in the *Eurotunnel* case(2005-2010);
- Counsel and lawyer of Sudan in the *Abyei* case (2008-2009).

ICSID cases:

- Expert mandated by the defendant in the case *E.T.I. Euro Telecom International N.V. v. Plurinational State of Bolivia* (ARB/07/28) (2009);
- Expert mandated by the defended in the case *Hulley Enterprises Ltd., Yukos Universal Ltd., Veteran Petroleum Ltd* (decision on jurisdiction) (2008-2010);
- Expert mandated by the plaintiff in the case *Brandes Investment Partners, LP v. Bolivarian Republic of Venezuela* (ARB/08/3) (2008-present);
- Consultant for the Republic of the Philippines in the case *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines* (ARB/03/25) (2008-2009);
- Appointed Arbitrator by Argentina in the case of *Mobil Exploration and Development Argentina Inc., Suc. Argenina S.S. v. Republic of Argentina* (ICSID ARB/04/16) (2005)

Various arbitration cases:

- Counsel and lawyer for the Republic of Chad in the case *SOFRECO v. Republic of Chad* (EDF) (2009-2011)
- Arbitrator designated by Eutelsat in the case *Eutelsat S.A. v. Georgia* (*ad hoc* arbitration – friendly settlement) (2007-2008);
- Counsel and lawyer for the Kyrgyz Republic in the case *Oxus Gold PLC v. Kyrgyz Republic* (UNCITRAL) (2006-2008);
- Appointed Arbitrator by Argentina in the case *Banka of Nova Scotia v. Argentine* (UNCITRAL – suspended) (2005).

OTHER ACTIVITIES :

Numerous legal consultations on administrative law and international law at the request of various authorities in France and abroad (French and foreign Ministries of Foreign Affairs), public and semi-public bodies and international organizations (UNESCO and various other organizations; Federation of International Civil Servants Associations (FISCA), staff associations of several international organizations, United Nations University) and private companies.

Associate Consultant, LYSIAS Advocates (Paris) (1993 - 2007)

Consultant-Expert to the Arbitration Commission of the International Conference on Yugoslavia ("Badinter Commission") (1991 - 1993)

Rapporteur of the French Committee Jurists on the Creation of an International Criminal for Former Yugoslavia ("TRUCHE Commission") (1993)

Member of the French Delegation to the E.C.S.C. (Helsinki, 1992, Geneva, 1992)

Legal Adviser of the World Tourism Organization (W.T.O. - Madrid) (1990 -)

Alternate member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations Commission on Human Rights (1983 - 1991)

Member of the French delegation at the GATT ministerial session (Geneva, 1982), at UNCTAD VI (Belgrade, 1983) and a number of sessions of the Trade and Development Board

Adviser to the French representative on the Working Group of Governmental Experts on the Right to Development, set by the United Nations Commission on Human Rights (1981)

Government expert at the UNESCO Congress on Education for Disarmament (June 1980). Report on "Disarmament in the teaching of international questions". Consultant on the same subject (August 1981)

From 1969 to 1975, served on the staff of an Advocate to the Council of State and the Court of Cassation (drafting written procedural documents for applications to the Council of State and to administrative tribunals)

President of the French Association for Disarmament Research and Studies (AFRED) (1979-1982)

President of the Association for the study of external legal policies (POJUREX) (1987 -)

Director (with P. Daillier), "International and European Law Library" (L.G.D.J. - Montchrestien publishers).

Director (with P.-M. Eisemann), collection "International Law", Economica Publishers.

Member, Board of Editors of the *Annuaire français de Droit International*

Member, Advisory Board, *European Journal of International Law*

Member, Board of the Editors, *International Criminal Law Review*

Member, Honorary Board, *Romanian Journal of International Law*

Member, Editorial Board, *Miskolc Journal of International Law*

Member, Scientific Council, *Annales de Droit* (Rouen)

Member, Advisory Board, Amsterdam Centre for International Law

DECORATIONS :

Légion d'honneur (Knight, France - 1998)

Palme académique (France) (Knight, 1986; Officer 2007)

Knight Romanian National Order “Serviciul Credincios” (Romania, 2009).

Order of the Double White Cross (Slovakia, 2006)

Commander, Ordre de la valeur (Cameroon, 2003)

Officer, Order of merit (Chad, 1995)

Gold Star of Nahouri (Burkina Faso, silver medal, 1987)

Associate of the Institut de Droit international (2007)

Docteur *honoris causa* de l'Université Estácio de Sá (Rio de Janeiro - 1998), de l'Université de Miskolc (Hongrie - 2000), et de l'Académie russe du Commerce extérieur (Moscou - 2002) et de la Faculté de Droit d'Athènes (2011).

Member of the Institute of International Public Law and International Relations of Thessaloniki (Greece, 2001)

René Maheu Prize for the International Civil Service, Special award (1995)

Medal of the Faculty of Law of Granada (Spain, 1992)

Lemonon prize of the Institute of France (Moral and Political Sciences Academy) for the book on the *United Nations Charter* (with J.P. Cot - 1986)

RESEARCH AND PUBLICATIONS :

Books (as author or editor):

- *The Law of International Responsibility* (with James Crawford & Simon Olleson), Oxford University Press, 2010, 1296 p. Edition française à paraître en 2011 aux éditions Pedone (with James Crawford, Sandra Szurek & Pierre Bodeau-Livinec).
- *Actualité du droit des fleuves internationaux*, Actes des journées d'étude franco-roumaines (ADIRI/CEDIN), 23-24 October 2008 (with Bogdan Aurescu), Pedone, 2010, 310 p.
- *Droit international public* (with Patrick Daillier & Mathias Forteau), LGDJ, Paris, 8th edition, 2009, 1709 p. (7th edition, 2002, 1510 p.; 6th edition, 1999, 1457 p., 5th edition, 1994, 1379 p.; 4th edition, 1992, 1269 p.; 3rd édition 1988, 1189 p.; 2nd edition, 1979, 994 p.; supplement with update of 1st edition by Nguyen Quoc Dinh, 1977, 132 p.); partial publication in Greek (by H. Dipla, *Δημοσιο Διεθνές Δικαιο, Το Δικαιο της Θαλασσης*, Papaxis, Athens, 1991, 160 p.) and in Hungarian (by P. Kovács, *Nemzetközi Közjog*, Osiris, Budapest, 1997, 566 p.); translations in Portuguese, Gulbenkian Foundation, Lisbon, 2000, 1230p.; 2nd ed. 2005, 1517 p., and in Russian, 2004, 2 vols., Sphera Publishers (Kiev).
- *International Law Between Universalism and Fragmentation – Festschrift in Honour of Gerhard Hafner*, (co-ed. with I. Buffard, J. Crawford et St. Wittich), Nijhoff, Leiden-Boston, 2008, xlvii-1083 p.
- *La Charte des Nations Unies, Constitution mondiale?* (co-ed. with Régis Chemain), actes du colloque du CEDIN, Cahiers internationaux n° 20, Pedone, 2006, 237 p.
- *La Charte des Nations Unies* (co-edited with Jean-Pierre COT), Economica, Paris, 1985; 2nd edition 1991, XIV-1,571 p.; preface by Mr. J. Pérez de Cuéllar (work awarded the Lemonon Prize of the Institut de France, Academy of Moral and Political Sciences); 3rd ed. 2005, XV-2363 p., preface by Mr. Kofi Annan; translations into Japanese (1993) and English (to appear in 2006); commentaries of the Preamble and Article 55.
- *Droit international pénal*, ed. (with Hervé ASCENSIO and Emmanuel DECAUX), Paris, Pedone, 2000, XVI-1053 p.
- *Le droit international du développement social et culturel* (ed., with Jean-Marc Sorel), Acts of the Round Table organized by the Faculty of Law of the University of Paris-North, 11-12 May 1990, L'Hermès, Paris, 1997, 408 p.
- *Les fonctionnaires internationaux* (with David Ruzié), PUF, Paris, "Que sais-je ?" n°2762, 1993, 128 p.
- *Le droit international du développement*, Paris, PUF, "Que sais-je ?", n°1731, 2nd edition, 1987, 128 p., 1st edition, 1978. Japanese translation 1989.

- *Droit international public*, PUF, Memento Themis, Paris, 1981, 154 p. Translation in Japanese, 1992.
- *Le cadre juridique de la vie économique internationale*, duplicated lecture notes (Institute of Political Studies, Paris, 1981 - 1982); fasc. I : *Droit et économie internationale, le droit des relations monétaires internationales*, 322 p., updated 1982 - 1983.
- *Les voies de recours ouvertes aux fonctionnaires internationaux*, Pédone (extract from the *Revue Générale de Droit International Public*), 1982, 202 p.
- *Répertoire de la jurisprudence des tribunaux administratifs internationaux*, prepared at the request of FICSA, vol. II, *Le droit procédural*, United Nations, 1987, 1, 304 p., vol I, *Le droit applicable*, 1988, 528 p., and vol. III, *Le droit substantiel*.
- *Recherche sur les principes généraux de droit en droit international public*, Doctoral thesis, Paris II, 1974 (examining board: S. Bastid, Chairwoman, P. Reuter, M. Virally), 504 p.

Case-books :

- *Les Nations Unies - Textes fondamentaux*, P.U.F., coll. "Que sais-je ?", n°3035, 1995, 128 p.
- *Droit d'ingérence ou devoir d'assistance humanitaire?, Problèmes politiques et sociaux*, n°758-759, 1-22 Dec. 1995, La documentation française, 133 p.

Forewords:

- A. Beaudoin, *Uti possidetis et sécession*, Dalloz-Sirey, 2011, 667 p.
- M. Montjoie, *Droit international et gestion des déchets radioactifs*, L.G.D.J.-Lextenso, Paris, 2011, xvi-395 p.
- C. Bories, *Le patrimoine culturel en droit international – Les compétences des Etats à l'égard des éléments du patrimoine culturel*, Pedone, Paris, 2011, 556 p.
- *The Law of International Responsibility* (J. Crawford, A. Pellet, S. Olleson eds), Oxford University Press, 2010, v-1296 p.
- B. Tchikaya, *Mémento de la jurisprudence du droit international public*, Hachette Supérieur, Paris, 2010, 160 p.
- N. Kreipe, *Les autorisations données par le Conseil de sécurité des Nations Unies à des mesures militaires*, L.G.D.J., 2009, XII-321 p.
- A.-L. Vaurs-Chaumette, *Les sujets du droit international pénal – Vers une nouvelle définition de la personnalité juridique internationale ?*, Pedone, Paris, 2009, IX-545 p.

- J. Fouret and D. Khayat, *Recueil des commentaires des décisions du CIRDI (2002-2007)*, Bruylant, Bruxelles, 2009, XXIV-710 p.
- N. Susani, *Le règlement des différends dans le Mercosur - Un système de droit international pour une organisation d'intégration*, L'Harmattan, Paris, 2008, 324 p.
- H. Lesaffre, *Le règlement des différends au sein de l'OMC et le droit de la responsabilité internationale*, L.G.D.J., Paris, 2007, XVII-614 p.
- F. Latty, *La lex sportiva – Recherche sur le droit transnational*, Nijhoff, Leiden/Boston, 2007, XX-849 p.
- M. Forteau, *Droit de la sécurité collective et droit de la responsabilité internationale de l'État*, Pedone, Paris, 2006, vi-699 p.
- V. Rodriguez Cedeño e Milagras Betancourt C., *Temas de Derecho Internacional VII – Introducción al Estudio de Derecho de los Tratados y de los Actos Jurídicos Unilaterales de los Estados*, Caracas, 2004, XXIII-265 p.
- G. Guillaume, *La Cour internationale de Justice à l'aube du XXI^{ème} siècle – Le regard d'un Juge*, avec R. Abraham, Pedone, 2003, 331 p.
- L. Nemer Caldeira Brant, *A autoridade da coisa julgada no direito internacional público*, Forense, Rio de Janeiro, 2002, XVIII-510 p et *L'autorité de la chose jugée en droit international public*, L.G.D.J., 2003, XI-396 p.
- P.-H. Ganem, *Sécurisation contractuelle des investissements internationaux - Grands projets (Mines, énergie, métallurgie, infrastructures)*, FEC/Bruylant, Paris/Bruxelles, 1997, 906 p.
- P. Boniface, *Les sources du désarmement*, Économica, 1989, 263 p.

Articles on international law :

- “Reservations to Human Rights Treaties : Not an Absolute Evil...”, with Daniel Müller, in *From Bilateralism to Community Interest – Essays in Honour of Judge Bruno Simma*, Oxford University Press, 2011, pp. 521-551.
- “Reservations to Treaties: An Objection to a Reservation is Definitely not an Acceptance”, with Daniel Müller, in Enzo Cannizzaro (ed.), *The Law of Treaties Beyond the Vienna Convention*, Oxford University Press, 2011, pp. 37-59.
- “Peaceful Settlement of International Disputes”, in Rüdiger Wolfrum (dir.), *Max Planck Encyclopedia of Public International Law*, Oxford UP, à paraître ; disponible en ligne [available on line] (<http://www.mpepil.com/>).
- Articles 19 and 22 and, with William Schabas, article 23 (Reservations) in Olivier Corten et Pierre Klein, dirs., *The Vienna Convention on the Law of Treaties – A commentary*, Oxford University Press, vol. 1, 2011, pp. 405-488, 568-593 and 594-627.

- “Article 42 of the 1951 Convention / Article VII of the 1967 Protocol”, in Andreas Zimmermann ed., *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol - A Commentary*, Oxford U.P., 2011, pp. 1615-1639.
- Afterwords to Régis Chemain (dir), colloque du CEDIN, *La refondation du système monétaire et financier international – Evolutions réglementaires et institutionnelles*, Pedone, 2011, pp. 347-356.
- Conclusions générales in S.F.D.I., colloque d’Orléans, *L’eau en droit international*, Pedone, 2011, pp. 395-402.
- “Les techniques interprétatives de la norme internationale” (Forewords), *R.G.D.I.P.*, 2011 n° 2, pp. 291-295.
- “Shaping the Future in International Law : The Role of the World Court in Law-Making” in *Looking to the Future – Essays on International Law in Honor of W. Michael Reisman*, Martinus Nijhoff, Leiden/Boston, 2010, pp. 1065-1083.
- “The Palestinian Declaration and the jurisdiction of the International Criminal Court”, *Journal of International Criminal Justice*, 2010, vol. 8, pp. 981-999; also published in Al-Zaytouna Centre for Studies & Consultations (Beirut), *Israel and international Law*, Beirut, 2010, pp. 379-406; and in French (with some changes and additions): “Les effets de la reconnaissance par la Palestine de la compétence de la Cour pénale internationale”, *Mélanges en l’honneur de Madjid Benchikh – Droit, liberté, paix, développement*, Pedone, Paris, 2011, pp. 327-344.
- “The ILC’s Articles on State Responsibility for Internationally Wrongful Acts and Related Texts” in J. Crawford, A. Pellet, S. Olleson eds., *The Law of International Responsibility*, Oxford University Press, 2010, pp. 75-94.
- “The Definition of Responsibility in International Law” in J. Crawford, A. Pellet, S. Olleson eds., *The Law of International Responsibility*, Oxford University Press, 2010, pp. 3-16.
- “Les problèmes posés par l’alluvionnement” in B. Aurescu et A. Pellet dir., *Actualité du droit des fleuves internationaux* (Actes des journées d’étude franco-roumaines (ADIRI/CEDIN) des 23-24 octobre 2008), Pedone, 2010.
- “Remarques sur l’(in)efficacité de la Cour internationale de Justice et d’autres juridictions internationales” in *Liber Amicorum Jean-Pierre COT - Le procès international*, Bruylant, Bruxelles, 2009, pp. 193-213.
- “Adieu Philippines – Remarques sur la distinction entre les réclamations conventionnelles et contractuelles dans le droit de l’investissement international” in *Le droit international économique à l’aube du XXI^{ème} siècles - Mélanges offerts à Dominique Carreau et Patrick Juillard*, Pedone, Paris, 2009, pp. 97-110.
- “Les rapports de systèmes après l’affaire *Kadi* – Constitutionnalisation du droit des Nations Unies ou triomphe du dualisme ?”, *Revue du Marché commun et de l’Union européenne*, juin 2009, pp. 415-418.

- « Force and the Settlement of Political Disputes: The Debate” (debate with Michael Glennon) in Y. Daudet ed., *Topicality of the 1907 Hague Conference, The Second Peace Conference*, Colloquium of The Hague Academy of International Law (6-7 Sept. 2007), Nijhoff, Leiden/London, 2008, pp. 225-249.
- “The Anatomy of International Courts and Tribunals”, *L.P.I.C.T.* 2008, n° 3, pp. 275-287.
- “Anglo-Saxon and Continental Approaches to Pleading Before the ICJ” (with J. Crawford), in *International Law Between Universalism and Fragmentation – Festschrift in Honour of Gerhard Hafner*, Nijhoff, Leiden-Boston, 2008, pp. 831-867.
- “L’adaptation du droit international aux besoins changeants de la société internationale” - inauguration lecture, *Recueil des cours* 2007, vol. 329, Nijhoff, Leiden/Boston 2008, pp. 9-47.
- “Lotus que de sottises on profère en ton nom!: remarques sur le concept de souveraineté dans la jurisprudence de la Cour mondiale”, *Mélanges en l'honneur de Jean-Pierre Puissechet : l'État souverain dans le monde d'aujourd'hui*, Pedone, Paris, 2008, p. 215-230.
- “Legitimacy of Legislative and Executive Actions of International Institutions” in R. Wolfrum and V. Röben eds., *Legitimacy in international Law*, Springer, Berlin, 2008, pp. 63-82.
- “Cours Général : Le droit international entre souveraineté et communauté internationale – La formation du droit international”, *Anuário Brasileiro de Direito Internacional*, vol. II, 2007, pp. 12-74.
- “Le renforcement du rôle de la C.I.J.” in Yves Sandoz ed., *Quel droit international pour le 21^{ème} siècle ?* (actes du colloque de Neuchâtel), Bruylant, Bruxelles, 2007, pp. 134-143.
- “La seconde mort d’Euripide Mavrommatis ? Notes sur le projet de la C.D.I. sur la protection diplomatique”, *Droit du pouvoir, pouvoir du droit – Mélanges offerts à Jean Salmon*, Bruylant, Bruxelles, 2007, pp. 1359-1382.
- “Comments in Response to Christine Chinkin and in Defense of *jus cogens* as the Best Bastion against the Excesses of Fragmentation”, *Finnish Yearbook of International Law*, 2006, pp. 83-90.
- “Le droit international dans l'ombre de l'Empire”, Proceedings of the Inaugural Conference of the European Society of International Law, *Baltic Yearbook of International Law*, 2006, pp. 27-36.
- “Le projet d'articles de la C.D.I. sur la protection diplomatique: une codification pour (presque) rien”, in Marcelo G. Kohen ed., *Promoting Justice, Human Rights and Conflict Resolution through International Law – Liber Amicorum Lucius Caflich*, Brill, Leiden, 2007, pp. 1133-1155.

- Articles 19 et 22 and, with William Schabas, article 23 (Reservations) in Olivier Corten et Pierre Klein, eds., *Les Conventions de Vienne sur le droit des traités – Commentaire article par article*, Bruylant, Bruxelles, 2006, vol. I, pp. 639-796, 934-970 et 971-1022.
- “Vous avez dit 'monisme'? – Quelques banalités de bon sens sur l'impossibilité du prétendu monisme constitutionnel à la française”, *L'architecture du droit – Mélanges en l'honneur de Michel Troper*, Economica, Paris, 2006, pp. 827-857.
- “Remarks on Proceedings before the International Court of Justice” in A. del Vecchio ed., *New International Tribunals and New International Proceedings*, Giuffrè, Milano, 2006, pp. 99-118 and in *The Law and Practice of International Courts and Tribunals*, 2006, pp. 163-182.
- “Les voies d'un ordre mondial”, avec M. Delmas-Marty et P. Lamy, *Le débat*, novembre-décembre 2006, pp. 4-18.
- “Article 38” in A. Zimmermann, Ch. Tomuschat and K. Oellers-Frahm, *The Statute of the International Court of Justice : a Commentary*, Oxford UP, 2006, pp. 677-792.
- “Unity and Diversity with Regard to International Treaty Law”, Comment, in A. Zimmermann and R. Hofmann (eds.), *Unity and Diversity in International Law (Proceedings of an International Symposium of the Kiel Walther Schücking Institute of International Law, November 4-7, 2004)*, Duncker & Humblot, Berlin, 2006, pp. 247-251.
- Ch. Tomuschat and J.-M. Thouvenin (eds.), *The Fundamental Rules of the International Legal Order – Jus Cogens and Obligations Erga Omnes* (conclusions), Nijhoff, Leiden/Boston, 2005, pp. 417-424.
- “Complementarity of International Treaty Law, Customary Law, and Non-Contractual Law Making” in R. Wolfrum and V. Röben, *Developments of International Law in Treaty-Making*, Springer, Berlin, 2005, pp. 409-415.
- “Les nouvelles tendances du droit international. Aspects ‘macro-juridiques’”, *Études internationales* (Tunis) n° 92, 3/2004, pp. 62-82.
- Postface: “Internationalized Criminal Courts: Better Than Nothing...” in Cesare P.R. Romano, André Nollkammer and Jann K. Kleffner eds., *Internationalized Criminal Courts and Tribunals*, Oxford U.P., 2004, pp. 437-444.
- “Strengthening the Role of the International Court of Justice as the Principal Judicial Organ of United Nations”, *The Law & Practice of International Courts and Tribunals*, 2004, pp. 159-180 (translated and updated version of : “Le renforcement du rôle de la Cour en tant qu'organe judiciaire principal des Nations Unies” in Gregory Peck and Roy S. Lee eds., *Increasing the Effectiveness of the International Court of Justice - Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court*, Nijhoff/ Unitar, 1997, pp. 235-253).

- “Can a State Victim of a Terror Act Have Recourse to Armed Force? ”, *Humanitäres Völkerrecht*, 2/2004, pp. 68-72 (with Vladimir Tzankov); in French: "L'État victime d'un acte terroriste peut-il recourir à la force armée?" in S.F.D.I. and Deutsche Gesellschaft für Völkerrecht, *New Threats to International Peace and Security*, Pedone, Paris, 2004, pp. 95-107 (summaries in English and German).
- Communication: “Le rôle et la place du droit international dans la pratique- le point de vue des praticiens; la pratique dans les travaux de la C.D.I. ” in S.F.D.I., colloque de Genève, *La pratique et le droit international*, Paris, Pedone, 2004, pp. 259-263.
 - “Between Codification and Progressive Development of the Law: Some Reflections from the ILC”, *International Law Forum* 2004, pp. 15-24.
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 - "The Charter of the United Nations: A Commentary of Bruno Simma's Commentary", *Michigan Journal of International Law*, 2004, vol. 25, n° 1, pp. 135-151.
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 - "Law of Treaties" (comments) in M. Byers and G. Nolte ed., *United States Hegemony and the Foundations of International Law*, Cambridge U.P., 2003, pp. 418-422.
 - “Les réserves aux conventions sur le droit de la mer” in *La mer et son droit – Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec*, Pedone, Paris, 2003, pp. 501-520.
 - “Les articles de la C.D.I. sur la responsabilité de l'État pour fait internationalement illicite; suite – et fin?”, *A.F.D.I.* 2002, pp. 1-23.
 - “Les rapports de Roberto Ago à la C.D.I. sur la responsabilité des États”, *International Law Forum*, 2002, pp. 222-229.
 - “La competencia material y el derecho aplicable en el estatuto de la Corte penal internacional” in Instituto Pedro Gual, Serie Cuadernos 2, *Promoción y Protección Internacional de la Persona*, Caracas, 2002, pp. 51-57.
 - “The New Draft Articles of the International Law Commission on the Responsibility of States for International Wrongful Acts: A *Requiem* for States' Crimes?”, *Netherlands Yearbook of International Law*, 2001, pp. 55-79 (in French: “Le nouveau projet de la C.D.I. sur la responsabilité de l'État pour fait internationalement illicite: *Requiem* pour le crime” in *Man's Inhumanity to Man – Festschrift Antonio Cassese*, Kluwer, The Hague, 2002, pp. 654-681).

- “La C.I.J. et les réserves aux traités – Remarques cursives sur une révolution jurisprudentielle” in *Liber Amicorum Judge Shigeru Oda*, Kluwer, The Hague, 2002, pp. 481-514.
- “Entry Into Force and Amendment of the Statute” in A. Cassese, P. Gaeta and J.R.W.D. Jones eds., *The Rome Statute of the International Criminal Court: A Commentary*, Oxford U.P., 2002, pp. 145-184; “Applicable Law”, *ibid.*, pp. 1051-1084 and “Settlement of Disputes”, *ibid.*, pp. 1841-1848.
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