

PEACE & SECURITY

PAIX ET SÉCURITÉ INTERNATIONALES



12

2024



EUROMEDITERRANEAN JOURNAL OF INTERNATIONAL LAW
AND INTERNATIONAL RELATIONS



ISSN 2341-0868

DOI: http://dx.doi.org/10.25267/Paix_secur_int.2024.112

Citation: ROS, N. , “What is blue colonialism?”, *Peace & Security – Paix et Sécurité Internationales*, No 12, 2024.
Received: 17 April 2024
Accepted: 16 May 2024

WHAT IS BLUE COLONIALISM?

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I. INTRODUCTION — II. AN AVATAR OF THE PRIVATIZATION OF THE SEAS — III. A GEOPOLITICALLY DIFFERENTIATED STRATEGY — IV. CONCLUSION

ABSTRACT: What is blue colonialism? As a concept, it is an avatar of the privatization of the seas, emblematic of the post-new Law of the Sea; it's a phenomenon justified in the name of the blue economy, insofar as the context of the Anthropocene implies the economicization of the sea, and facilitated by the functional spatialization of maritime areas, through the development of marine spatial planning and marine protected areas. But, in practice, blue colonialism appears a geopolitically differentiated strategy, initially developed in the Indo-Pacific, in the maritime areas under national jurisdiction of Small Island Developing States, as a model to be replicated, according to a logic of compensation and in order to secure access to the mineral resources needed for the ecological transition; implemented, via the private environmental governance of NGOs and trusts, and the associated financialization of conservation, in the form of a renunciation of sovereignty in favor of a transnational dynamic, blue colonialism is a new legal paradigm at the service of the dominant economic model, but also a blue injustice intending to transfer the burden of the sacrifices onto those who are not responsible for the triple planetary crisis, to continue the growth process.

KEYWORDS: blue colonialism; blue economy; blue injustice; ecological transition; environmental NGO; functional spatialization; marine protected area; marine spatial planning; privatization of the seas; post-new Law of the Sea; Small Island Developing State; trust fund.

¿QUÉ ES EL COLONIALISMO AZUL?

RESUMEN: ¿Qué es el colonialismo azul? Como concepto, es un avatar de la privatización de los mares, emblemático del derecho del mar post-nuevo; se trata de un fenómeno justificado en nombre de la economía azul, en la medida en que el contexto del Antropoceno implica la economicización del mar, y facilitado por la espacialización funcional de las áreas marítimas, a través del desarrollo de la planificación espacial marina y de las áreas marinas protegidas. Pero, en la práctica, el colonialismo azul parece una estrategia geopolíticamente diferenciada, desarrollada inicialmente en el Indo-Pacífico, en las zonas marítimas bajo jurisdicción nacional de pequeños Estados insulares en

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desarrollo, como un modelo a replicar, según una lógica de compensación y con el fin de garantizar el acceso a los recursos minerales necesarios para la transición ecológica; implementado, a través de la gobernanza medioambiental privada de las ONG y los *trusts*, y la financiarización asociada de la conservación, en forma de una renuncia de soberanía en favor de una dinámica transnacional, el colonialismo azul es un nuevo paradigma jurídico al servicio del modelo económico dominante, pero también una injusticia azul que pretende transferir la carga de los sacrificios a quienes no son responsables de la triple crisis planetaria, para continuar el proceso de crecimiento.

PALABRAS CLAVE: área marina protegida; colonialismo azul; derecho del mar post-nuevo; economía azul; especialización funcional; injusticia azul; ONG medioambiental; pequeño Estado insular en desarrollo; planificación espacial marina; privatización de los mares; transición ecológica; *trust fund*.

QU'EST-CE QUE LE COLONIALISME BLEU?

RÉSUMÉ: Qu'est-ce que le colonialisme bleu? En tant que concept, c'est un avatar de la privatisation des mers, emblématique du droit de la mer post-nouveau; il s'agit d'un phénomène justifié au nom de l'économie bleue, dans la mesure où le contexte de l'Anthropocène implique l'économicisation de la mer, et facilité par la spatialisaton fonctionnelle des espaces maritimes, à travers le développement de la planification spatiale marine et des aires marines protégées. Mais, en pratique, le colonialisme bleu apparaît une stratégie géopolitiquement différenciée, initialement développée dans l'Indo-Pacifique, dans les espaces maritimes sous juridiction nationale de petits États insulaires en développement, comme un modèle à répliquer, selon une logique de compensation et afin de sécuriser l'accès aux ressources minérales nécessaires à la transition écologique ; mis en œuvre, via la gouvernance environnementale privée des ONG et des *trusts*, et la financiarisation associée de la conservation, sous la forme d'un renoncement de souveraineté au profit d'une dynamique transnationale, le colonialisme bleu est un nouveau paradigme juridique au service du modèle économique dominant, mais aussi une injustice bleue visant à transférer la charge des sacrifices sur ceux qui ne sont pas responsables de la triple crise planétaire, afin de poursuivre le processus de croissance.

MOTS-CLÉS: aire marine protégée; colonialisme bleu; droit de la mer post-nouveau; économie bleue; injustice bleue; ONG environnementale; petit État insulaire en développement; planification spatiale marine; privatisation des mers; spatialisaton fonctionnelle; transition écologique; *trust fund*.

I. INTRODUCTION

The history of International Law of the Sea is deeply entwined with that of Public International Law, of which it has always been one of the privileged vectors of development. The legal regime of maritime areas appears in this respect to have been an essential parameter, in connection with the hegemonic phenomenon, insofar as International Law of the Sea has always played a major historical role to the benefit of the dominant economic model, providing a legal basis for the corresponding political ambitions².

² Ros, N., "Droit international de la mer", in Ulbert, J., Cérino, C., Bruneau, J-B. and Le

From the sharing of the world, discovered and to be discovered, between the two Iberian kingdoms³ to the proclamation of the North Sea as an English Sea⁴, the dialectic opposing the partisans of a public appropriation of maritime spaces and the supporters of the freedom of the seas appears to have been articulated around the hegemonic and economic claims of the European powers. If the principle of the freedom of the seas finally prevailed, it is not because Grotius's legal arguments were better than those of his opponents, but because the principle he defended was the best one to promote the expansion of European commercial and political ambitions in overseas territories, at the dawn of mercantilism and colonization, not only in America but also in Asia and Africa. Centuries later, decolonization has logically contributed to disrupting this pattern, as the newly independent States sought to protect themselves from the potentially disastrous consequences of the freedom of the seas. In order to prevent former colonizers, or more generally maritime powers, from burdening their development prospects by practicing forms of economic imperialism, akin to neocolonialism, they proclaimed their permanent sovereignty over natural resources, including at sea⁵. Based on a real claim to economic sovereignty⁶, the public appropriation of maritime

Bouëdec, G. (dirs.), *Dictionnaire historique des institutions maritimes et littorales de la France*, Presses universitaires de Paris-Sorbonne, 2023, pp. 129-132.

³ Alexander VI, Papal Bull *Inter Caetera*, 4 May 1493, <https://www.gilderlehrman.org/sites/default/files/inline-pdfs/T-04093.pdf>, accessed 3 June 2024; Treaty between Spain and Portugal concluded at Tordesillas, June 7 1494, https://avalon.law.yale.edu/15th_century/mod001.asp, accessed 3 June 2024.

⁴ 98 By King James, “A Proclamation touching Fishing”, Westminster 6 May 1609, in LARKIN, J. F. and HUGHES, P.L. (eds.), *Stuart Royal Proclamations, Royal Proclamations of King James I 1603-1625*, Oxford University Press, 1973, pp. 217-219.

⁵ UN GENERAL ASSEMBLY, Permanent sovereignty over natural resources of developing countries, 18 December 1972, A/RES/3016 (XXVII), <https://digitallibrary.un.org/record/191568>, accessed 3 June 2024; SCHRIJVER, N., *Sovereignty over natural resources: Balancing rights and duties*, Cambridge University Press, 1997, particularly Chapter 7 “The Law of the Sea: Extension of Control over Marine Resources”, pp. 202-230.

⁶ GARCIA SAYAN, E., “La doctrina de las 200 millas y el derecho del mar”, *Derecho PUCP*, 1974, pp. 12-27, <http://revistas.pucp.edu.pe/index.php/derechopucp/article/view/6212/6248>; LLANOS MANSILLA, H., “Los países del sistema del Pacífico Sur ante la Convención sobre derecho del mar”, *Revista chilena de derecho*, 1983, pp. 21-38; MAROTTA RANGEL, V., “O Novo Direito do Mar e a América Latina, V - O Alargamento da Jurisdição Horizontal do Estado Costeiro”, *Revista da Faculdade de Direito Universidade de São Paulo*, 1981, pp. 75-85, <https://core>.

areas was therefore presented as a guarantee of development, as shown by the history of the concept of exclusive economic zone (EEZ)⁷, but this strategy was also perfectly in line with the logic of coastal expansionism⁸, because it was convergent with the new interest of maritime powers, as much for the superjacent waters as for the continental shelf, in the context of the rush towards fossil fuels⁹. Emblematic of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the triumph of coastal nationalism¹⁰ thus transformed gigantic parts of the high seas into maritime areas under national jurisdiction, while the supposed visceral inability of States to manage these immense EEZs in a sustainable manner is now being used as a pretext for the privatization of the seas¹¹. If the difficulties are real, even for maritime powers, they are often immeasurable for developing States which certainly do not have sufficient logistical and human resources. This is particularly true in the case of Small Island Developing States (SIDS), while the Large Ocean States¹², as

[ac.uk/download/pdf/268355647.pdf](https://www.ac.uk/download/pdf/268355647.pdf).

⁷ DEL VECCHIO, A., *Zona economica esclusiva e Stati costieri*, Le Monnier - Libera Università Internazionale degli Studi Sociali, 1984; ORREGO VICUÑA, F., “La zone économique exclusive : régime et nature juridique dans le droit international”, *Recueil des cours de l'Académie de droit international de La Haye*, Vol. 199, 1986, pp. 9-170.

⁸ NGUYEN, Q.D., “La revendication des droits préférentiels de pêche en haute mer devant les Conférences des Nations Unies sur le droit de la mer de 1958 et 1960”, *Annuaire français de droit international*, Vol. 6, 1960, pp. 77-110, https://www.persee.fr/doc/AsPDF/afdi_0066-3085_1960_num_6_1_897.pdf.

⁹ DEVAUX-CHARBONNEL, J., “Le régime juridique de la recherche et de l'exploitation du pétrole dans le plateau continental”, *Annuaire français de droit international*, Vol. 2, 1956, pp. 320-333, https://www.persee.fr/doc/AsPDF/afdi_0066-3085_1956_num_2_1_1239.pdf; GIDEL, G., “A propos des bases juridiques des prétentions des États riverains sur le plateau continental: les doctrines du «droit inhérent»”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht - Heidelberg Journal of International Law*, Vol. 19, 1958, pp. 81-101, https://www.zaoerv.de/19_1958/19_1958_1_3_a_81_101.pdf; SCILLE, G., “Plateau continental et droit international”, *Revue générale de droit international public*, 1955, pp. 5-62.

¹⁰ QUÉNEUDEDEC, J-P., “Les tendances dominantes du système juridique issu de la Convention”, in SFDI, *Perspectives du droit de la mer à l'issue de la troisième conférence des Nations Unies*, Pedone, Paris, 1984, pp. 125-173.

¹¹ Ros, N., “De l'appropriation publique à la privatisation des espaces maritimes et de leurs ressources”, *Annuaire français des relations internationales*, Vol. XXI, 2020, pp. 615-628, <https://www.afri-ct.org/wp-content/uploads/2020/09/Article-Ros.pdf>.

¹² The concept was first introduced in 2013, at the United Nations, within the framework of the

they now call themselves, of the Indian and Pacific oceans are precisely the first victims of a new avatar of colonialism, seeking to privatize their maritime areas in order to better appropriate their resources.

In its traditional sense, colonialism is a doctrine of legitimization of the colonial fact which intends to justify colonization described in hegemonic terms and according to a State logic of occupation, political domination and economic exploitation. Colonialism is thus very close to imperialism, a geopolitical strategy aimed at politically and economically subjugating one State to another. With the neoliberal revolution, and the subsequent relativization of the role of the State, theoretical models and practical forms of the colonial fact have naturally evolved; if traditional colonization is with good reason disapproved everywhere, as contrary to *jus cogens* and the right to self-determination, other manifestations of the hegemonic phenomenon, postulating less often occupation than political domination and above all economic exploitation, have developed after decolonization, and even more so since the beginning of the Millennium. Like neocolonialism, of which it is an avatar, this recent evolution has naturally been facilitated by the persistence of colonial patterns, where contemporary colonialism is less political than economic. Generally leaving only a subsidiary and/or indirect role for States and mainly based on public-private partnerships, this hegemonic phenomenon is in fact today essentially developed in the framework of private environmental governance, involving non-governmental organizations (NGOs) and trust funds, charitable foundations and multinationals.

In this new context, the emergence of “blue colonialism” (*colonialisme bleu*)¹³ became obvious, for the first time in relation to Seychelles, a laboratory for the privatization of the seas¹⁴, independently but simultaneously with the reference

Implementation and follow-up to Rio+20, with the communication *Small Island Developing States, Large Ocean States*, presented by Ronny Jumeau, Seychelles Ambassador for Climate Change and SIDS Issues, https://sustainabledevelopment.un.org/content/documents/1772Ambassador%20Jumeau_EGM%20Oceans%20FINAL.pdf, accessed 3 June 2024; CHAN, N., ““Large Ocean States”: Sovereignty, Small Islands, and Marine Protected Areas in Global Oceans Governance”, *Global Governance*, Vol. 24, 2018, pp. 537-555.

¹³ Ros, N., “L’émergence d’un colonialisme bleu”, *Neptunus*, Vol. 27, No. 4, 2021, <https://cdmo.univ-nantes.fr/fr/publications/neptunus-e-revue>.

¹⁴ Ros, N., “Les Seychelles, laboratoire de la privatisation des mers”, *Neptunus*, Vol. 26, No. 1, 2020, <https://cdmo.univ-nantes.fr/fr/publications/neptunus-e-revue>.

to the expression “green colonialism”. First popularized by the NGO Survival International¹⁵, as well as by the media in relation to the WWF¹⁶, and then conceptualized by the French historian Guillaume Blanc¹⁷, “green colonialism” (*colonialisme vert*) describes the ravages of a radical conservationism, supported by the WWF, IUCN and UNESCO, which intends to protect African biodiversity in defiance of the human rights of indigenous populations and inhabitants of the natural parks, victims of the worst violence and expelled from their ancestral lands. As a matter of fact, these iniquitous practices, justified in the name of biodiversity conservation, when they are not purely and simply denied, have hardly been institutionally condemned, except by the United Nations Special Rapporteur on Human Rights and the Environment, now Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Professor David R. Boyd¹⁸, since the environmental argument is considered to be an absolute legitimization.

What is happening in terrestrial nature parks has its equivalent at sea, as the Special Rapporteur points out, with the exponential creation of marine protected areas (MPAs), and especially no-take MPAs, of which fishermen are generally the first victims as well as other local and coastal populations. Such a privatization of the seas¹⁹ is already evident in the Pacific and the

¹⁵ Survival International, “When WWF’s conservation looks like colonialism, it’s time for a new approach”, March 2019, <https://www.survivalinternational.org/articles/3606-when-wwfs-conservation-looks-like-colonialism-its-time-for-a-new-approach>, accessed 3 June 2024.

¹⁶ Pigeaud, F., “Le WWF accusé de «colonialisme vert» au Congo”, *Mediapart*, 20 March 2019, https://www.mediapart.fr/journal/international/200319/le-wwf-accuse-de-colonialisme-vert-au-congo?page_article=2, accessed 3 June 2024.

¹⁷ BLANC, G., *L’invention du colonialisme vert Pour en finir avec le mythe de l’Eden africain*, Flammarion, 2020.

¹⁸ 2020 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Doc. A/75/161, 15 July 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/184/48/PDF/N2018448.pdf?OpenElement>, accessed 3 June 2024; Boyd, D. R. And Keen, S., “Policy Brief, Human rights-based approaches to conserving biodiversity: equitable, effective and imperative”, 2021, <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/policy-briefing-1.pdf>, accessed 3 June 2024.

¹⁹ ROS, N., “La privatisation des mers et des océans: du mythe à la réalité”, in Chaumette, P. (coord.), *Transforming the ocean law by requirement of the marine environment conservation / Le droit des océans transformé par l’exigence de conservation de l’environnement marin*, Marcial Pons Ediciones Jurídicas y Sociales, Madrid, 2019, pp. 169-187, <https://halshs.archives-ouvertes.fr/halshs-02396208/document>.

Indian Ocean, maritime regions characterized by great strategic and economic issues, *a fortiori* in the context of transition subsequent to the Anthropocene, not only for multinationals but also for great powers; the phenomenon is thus inseparable from new forms of political domination and economic exploitation emblematic of blue colonialism. The fact that private actors, especially environmental non-governmental organizations (ENGOs) and trust funds financially and structurally linked with industrial operators, are entrusted with the management of marine protected areas, initially in areas under the national jurisdiction of SIDS, and now of other developing States, in Africa²⁰ or in the Caribbean, is part of a leonine relationship that is reminiscent of colonization, and perfectly in line with its economic logic. It is all the more so because States are effectively deprived of some of their sovereign rights, and their nationals in practice excluded from coastal areas and maritime spaces that NGOs prefer to dedicate to tourism or mining rather than to artisanal fishing or traditional uses. The extraterritorialization of the management of maritime spaces and resources are furthermore justified and facilitated by the contemporary financialization of conservation, and this transnational framework is emblematic of blue colonialism, *a geopolitically differentiated strategy* (III) currently developed as *an avatar of the privatization of the seas* (II).

II. AN AVATAR OF THE PRIVATIZATION OF THE SEAS

The emergence of blue colonialism appears to be justified and facilitated by a new arsenal of concepts. *The blue economy pretext* (1) serves to support evolutions in the perception of the sea and its utilization, and *the functional spatialization tool* (2) to realize the privatization of marine spaces and the appropriation of their economic resources.

1. The blue economy pretext

The blue economy, now defined as sustainable blue economy²¹, and

²⁰ Ros, N., “Le continent africain face aux mirages de la croissance bleue”, in Harelimana, J-B. (dir.), *Liber Amicorum Stéphane Doumbé-Billé Autour du droit international économique en Afrique*, African Academy of International Law Practice, 2024 (forthcoming).

²¹ The role of the European Union has been pioneering, integrating blue growth objective into integrated maritime policy as early as 2012, and then revisiting the strategy via the concept of sustainable blue economy in 2021; *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a new*

originally developed in close connection with the blue growth doctrine²², has rapidly imposed as a major concept²³ because it is a boundary object²⁴, full of promises for those who aspire to development as much as for those who dream of endless growth. *In a context of transition* (A), such as the present one, it assumes a possible overtaking of the terrestrial boundaries via *an economicization of the sea* (B).

A. A context of transition

Notwithstanding scientific controversy, the environmental impact of human activity is now an indisputable fact. Taking into account *the footprint of the Anthropocene* (a), *a doctrine of change* (b) is progressively emerging in the name of ecological transition.

a. The footprint of the Anthropocene

As the concept of Anthropocene²⁵ serves to explain the evolution of the Earth System, highlighting its limits²⁶, and attempting to make Humanity aware

approach for a sustainable blue economy in the EU Transforming the EU's Blue Economy for a Sustainable Future, COM(2021) 240 final, 17 May 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0240>, accessed 3 June 2024.

²² EHLERS, P., “Blue growth and ocean governance-how to balance the use and the protection of the seas”, *WMU Journal of Maritime Affairs*, Vol. 15, 2016, pp. 187-203.

²³ SILVER, J.J., GRAY, N.J., CAMPBELL, L.M., FAIRBANKS, L.W. and GRUBY, R.L., “Blue Economy and Competing Discourses in International Oceans Governance”, *Journal of Environment & Development*, Vol. 24, No. 2, 2015, pp. 135-160; VOYER, M., QUIRK, G., MCILGORM, A. and AZMI, K., “Shades of blue: what do competing interpretations of the Blue Economy mean for oceans governance?”, *Journal of Environmental Policy & Planning*, Vol. 20, No. 5, 2018, pp. 595-616.

²⁴ SCHUTTER, M.S., HICKS, CHR. C., PHELPS, J. and WATERSON, C., “The blue economy as a boundary object for hegemony across scales”, *Marine Policy*, Vol. 132, 2021; TROMPETTE, P. and VINCK, D., “Retour sur la notion d'objet-frontière”, *Revue d'anthropologie des connaissances*, Vol. 3, No. 1, 2009, pp. 5-27, <https://www.cairn.info/revue-anthropologie-des-connaissances-2009-1-page-5.htm>.

²⁵ CRUTZEN, P.J. and STOERMER, E.F., “The “Anthropocene””, *Global Change Newsletter*, No. 41, 2002, pp. 17-18, <http://www.igbp.net/download/18.316f18321323470177580001401/1376383088452/NL41.pdf>.

²⁶ ROCKSTRÖM, J. et al., “A safe operating space for humanity”, *Nature*, Vol. 461, 24 September 2009, pp. 472-475, <https://www.nature.com/articles/461472a>; ROCKSTRÖM, J. et al., “Safe and just Earth system boundaries”, *Nature*, Vol. 619, 6 July 2023, pp. 102-111, <https://www.nature.com/articles/s41586-023-06083-8>.

of the stakes and risks it is running, it represents a contemporary metaphor for Man's relationship with Nature, including oceans and seas. The reference to the Anthropocene raises awareness of the finiteness of the world, first and foremost from the point of view of natural resources, and of human environmental footprint, particularly in terms of energy. As such it is closely intertwined with pollution, climate change and biodiversity decline, the "triple planetary crisis" identified by the United Nations, on land and at sea²⁷.

Characterized in the terrestrial environment, the footprint of the Anthropocene is also evident at sea, as recalled by the United Nations Secretary General in its 2022 Report on the Oceans and the law of the sea: "The global ocean is in a state of emergency resulting from the cumulative effect of decades of unsustainable human activities and anthropogenic impacts, including greenhouse gas emissions, marine pollution and the overexploitation of resources"²⁸. Emerging issues relating to the legal consequences of ocean warming and rising sea levels bear witness to the direct impact of the Anthropocene²⁹, especially on the existence and territorial determination of States³⁰, while the footprint is also visible in relation with marine pollutions, for example the spreading of marine litters, the plastic pollution³¹, or the

²⁷ Andersen, I., "The triple planetary crisis: Forging a new relationship between people and the earth", *UNEP*, 20 July 2020, <https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth>, accessed 3 June 2024; UNFCCC, "What is the triple planetary crisis?", 13 April 2022, <https://unfccc.int/news/what-is-the-triple-planetary-crisis>, accessed 3 June 2024.

²⁸ UN Secretary-General, Report on Oceans and the law of the sea, 9 September 2022, A/77/331, pp. 18-19, para 101, https://www.un.org/Depts/los/general_assembly/general_assembly_reports.htm, accessed 3 June 2024.

²⁹ ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, 21 May 2024, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf, accessed 3 June 2024.

³⁰ AZNAR GÓMEZ, M.J., "El Estado sin territorio: La desaparición del territorio debido al cambio climático", *Revista Electrónica de Estudios Internacionales*, No. 26, 2013, <http://www.reei.org/index.php/revista/num26/articulos/estado-sin-territorio-desaparicion-territorio-debido-al-cambio-climatico>; CALIGIURI, A., "Sinking States: The statehood dilemma in the face of sea-level rise", *Questions of International Law*, 2022, pp. 23-37, http://www.qil-qdi.org/wp-content/uploads/2022/04/03_Sea-Level-Rise_CALIGIURI_FIN.pdf.

³¹ HINOJO ROJAS, M., "Los plásticos y el derecho internacional del mar", in Cabeza Pereiro, J. and Fernández Docampo, B. (coords.), *Estrategia Blue Growth y Derecho del Mar*, Editorial Bomarzo, Albacete, 2018, pp. 251-286; SAVADOGO, L., "La pollution du milieu marin par les

decline of marine biodiversity³². But paradoxically, the depletion of terrestrial resources is leading to a shift in human predation towards the oceans, which transition discourse presents precisely as the new economic *El Dorado*; this is the *credo* of the blue economy³³. As a new socio-economic approach breaking with the myth of endless growth is economically and politically impossible in a society founded on economic and political liberalism³⁴, such as the Anthropocene society, the blue economy appears the one and only solution in order to avoid a real systemic questioning of the model that is responsible for the Anthropocene. Although highly paradoxical, given its inevitable impact on the sea, the shift of the human footprint towards maritime spaces, in terms of both exploitation and conservation, is becoming inevitable.

But there's a second paradox here, because the richest and most developed nations, the main culprits behind pollution, biodiversity decline and climate change, actually intend to transfer the burden of the blue economy and its consequences; to this end, they support the privatization of the sea in order to secure access to mineral resources needed for energy transition and to offset their ecological impact³⁵. In this dual perspective, they try to create a framework likely to facilitate the private appropriation of the marine resources and want to impose, via the proclamation of no-take MPAs, sacrifices on the least developed nations, richly endowed with biodiversity, even though these peoples generally have little or no carbon footprint and live in greater harmony with nature. Blue colonialism is part of the logic of the Anthropocene³⁶,

déchets plastiques et microplastiques”, in Delfour-Samama, O. (dir.), Actes du Colloque “La pollution des océans par les plastiques”, *Annuaire de Droit Maritime et Océanique*, Vol. XI, 2022, pp. 325-340.

³² ROS, N., “Le droit international de la mer à l'épreuve de l'Anthropocène”, *Journal du droit international Clunet*, No. 2, 2023, pp. 409-437.

³³ JOUFFRAY, J-B., “The Blue Acceleration: The Trajectory of Human Expansion into the Ocean”, *One Earth*, Vol. 2, No. 1, 24 January 2020, pp. 43-54, <https://www.sciencedirect.com/science/article/pii/S2590332219302751>.

³⁴ MEADOWS, D.H., MEADOWS, D.L., RANDERS, J. and BEHRENS III, W.W., *The Limits to growth, Report for the Club of Rome's project on the predicament of mankind*, Universe Books, New York, 1972, <https://www.donellameadows.org/wp-content/userfiles/Limits-to-Growth-digital-scan-version.pdf>.

³⁵ ROS, N., “La problemática de la privatización de los mares en un escenario de transición ecológica y digital”, in Oanta, G. (ed.), *Los derechos humanos en el mar ante los desafíos de la transición ecológica y digital*, Editorial Bosch, Barcelona, 2023, pp. 151-184.

³⁶ SULTANA, F., “Whose growth in whose planetary boundaries? Decolonising planetary justice

because those who are called upon to bear the main burden of transition are not those responsible for the ecological impact justifying *a doctrine of change*.

b. A doctrine of change

The Anthropocene calls for a doctrine of change; given that a true paradigm shift towards degrowth is indefensible, the transition has emerged as a process of adaptation, a global scenario integrating multiple dimensions, in particular ecological and energy transitions³⁷; and the blue economy is obviously an integral part of this contemporary dynamic.

The ecological transition assumes a strategy of environmental compensation³⁸, to balance biodiversity decline, climate change, and *in fine* persistent and new forms of pollution due to the industrialization of the sea inherent in the blue economy. The doctrine of change is a conceptual shift departing from *Protection and Preservation of the Marine Environment*, the pioneering approach of Part XII of the 1982 Convention on the Law of the Sea³⁹, focused on the traditional understanding of environmental concerns, developed by reference to the impact of human activities and economic uses of the sea, in other words induced pollution⁴⁰. In order to meet the new challenges of the Anthropocene, this fight against pollution approach and the new Law of the Sea are now considered insufficient, particularly by conservationists. The conventional provisions relating to pollution from or in the Anthropocene, *Geo: Geography and Environment*, Vol. 10, No. 2, July-December 2023, <https://rgs-ibg.onlinelibrary.wiley.com/doi/10.1002/geo2.128>.

³⁷ BOURG, D., “Transition écologique, plutôt que développement durable”, *Vraiment durable*, No. 1, 2012, pp. 77-96, <https://www.cairn.info/revue-vraiment-durable-2012-1-page-77.htm>.

³⁸ Dossier “La fabrique de la compensation écologique : controverses et pratiques”, *Natures Sciences Sociétés*, Vol. 26, No. 2, 2018, <https://www.nss-journal.org/articles/nss/abs/2018/02/contents/contents.html>.

³⁹ BOYLE, A.E., “Marine Pollution under the Law of the Sea Convention”, *American Journal of International Law*, Vol. 79, 1985, pp. 347-372; Kiss, A.Ch., “La pollution du milieu marin”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht - Heidelberg Journal of International Law*, Vol. 38, 1978, pp. 902-932, https://www.zaoerv.de/38_1978/38_1978_3_4_a_902_932.pdf; MCCONNELL, M.L. and GOLD, E., “The Modern Law of the Sea: Framework for the Protection and Preservation of the Marine Environment”, *Case Western Reserve Journal of International Law*, Vol. 23, No. 1, 1991, pp. 83-105, <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1637&context=jil>.

⁴⁰ ROS, N., “Un demi-siècle de droit international de l’environnement marin”, in *Droit, humanité et environnement Mélanges en l’honneur de Stéphane Doumbé-Billé*, Larcier, Bruxelles, 2020, pp. 1025-1047.

through the atmosphere⁴¹ are nevertheless in close connection with the carbon footprint, greenhouse gases and climate change and reflect the paradigm shift now associated with biodiversity/climate issues, as does article 194 paragraph 5, which provides a legal basis for the creation of marine protected areas⁴². Of course, the 1982 Convention could not have made any express reference to biodiversity, since the concept postdates it⁴³. The economic understanding of biodiversity as a resource with a market value has led to an economicization⁴⁴ of nature, including the sea, but biodiversity has also become a political concept, as such invented by conservation circles, popularized by major environmental NGOs, and developed according to a logic of ecological compensation⁴⁵. The evolution is perceptible in terms of vocabulary; it is no longer a question of “protecting and preserving the marine environment”, in line with the classic terminology of the new Law of the Sea, but of “conserving biodiversity” via MPAs, in accordance with the lexicon introduced by the 1992 Convention on Biological Diversity⁴⁶, now enshrined in the Law of the Sea, in place of the

⁴¹ Article 212 *Pollution from or through the atmosphere* and Article 222 *Enforcement with respect to pollution from or through the atmosphere*, United Nations Convention on the Law of the Sea, 10 December 1982, https://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm, accessed 3 June 2024.

⁴² Article 194 para. 5: “The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life”; United Nations Convention on the Law of the Sea, 10 December 1982, https://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm, accessed 3 June 2024.

⁴³ Ros, N., “Sustainable Development Approaches in the New Law of the Sea”, *Spanish Yearbook of International Law*, Vol. 21, 2017, pp. 11-39, http://www.sybil.es/documents/ARCHIVE/Vol21/2_Ros.pdf.

⁴⁴ As a neologism, economicization refers to an emerging phenomenon going beyond mere economization, *i.e.* the inclusion by the economy of fields that were not previously considered according to a commercial logic, their commercialization or commodification; economicization involves an even more ambitious approach, since it is also financial, in the sense that the object becomes an investment sector and an asset to be traded on the markets, for example the vehicle for debt swaps or blue bonds.

⁴⁵ AUBERTIN, C. (COORD.), *Représenter la nature? ONG et biodiversité*, IRD Editions, Paris, 2005; and particularly, DUMOULIN, D. and RODARY, E., “Les ONG, au centre du secteur mondial de la conservation de la biodiversité”, pp. 59-98.

⁴⁶ Convention on Biological Diversity, 5 June 1992, <https://www.cbd.int/doc/legal/cbd-en.pdf>, accessed 3 June 2024.

“protection” still advocated by the 1995 Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks⁴⁷, under the terms of the BBNJ Agreement, the 2023 Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction⁴⁸, the most emblematic manifestation of the post-new Law of the Sea⁴⁹, adopted under the influence of the conservationist movement.

The energy transition can be considered both a means and an end of the ecological transition; it does not assume a radical change involving the banning of fossil fuels and/or a reduction in needs, but rather a shift towards a new energy mix, balancing energy sources through the development of renewable energies, and in particular marine renewable energies (MREs). The new Law of the Sea has undoubtedly encouraged the development of the offshore industry, helping to increase the share of fossil fuels in the energy mix, with all the associated risks⁵⁰, but the doctrine of change now implies

⁴⁷ Article 5: “In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention: [...] (g) protect biodiversity in the marine environment”. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 August 1995, https://www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/files/Projects/UNFSA/docs/unfsa_text-eng.pdf, accessed 3 June 2024.

⁴⁸ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, 19 June 2023, <https://www.un.org/Depts/los/XXI10CTC%28EN%29.pdf>, accessed 3 June 2024.

⁴⁹ Ros, N., “L’évolution du droit de la mer : du nouveau droit de la mer au droit de la mer post-nouveau”, in Caligiuri, A., Cataldi, G. and Ros, N. (eds.), *L’évolution du droit de la mer: réflexions à l’occasion du 20^{ème} anniversaire de l’AssIDMer (2001-2021) / The Evolution of the Law of the Sea: Reflections on the occasion of the 20th AssIDMer Anniversary (2001-2021)*, Cahiers de l’Association internationale du Droit de la Mer 10, Editoriale Scientifica, Napoli, 2023, pp. 11-19; Ros, N., “Nouveau ou post-nouveau, le droit international de la mer est-il sécurisant?”, in Doumbé-Billé, S., Ben Mahfoudh, H. and Neri, K. (dir.), *Le droit international actuel est-il sécurisant ?*, Editoriale Scientifica, Napoli, 2020, pp. 357-380.

⁵⁰ KINDT, J.W., “The Law of the Sea: Offshore Installations and Marine Pollution”, *Pepperdine Law Review*, Vol. 12, No. 2, 1985, pp. 381-426, <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1893&context=plr>; ROS, N., “Environmental Challenges of Offshore Activities in International and European Union Law”, in Caligiuri, A. (ed.), *Governance of the Adriatic and Ionian Marine Space*, Cahiers de l’Association internationale du

shifting the geopolitics of resources from offshore to strategic minerals. Even from this point of view, the 1982 Convention can be seen in retrospect as a particularly avant-garde text. While the consecration of the EEZ is understood primarily by reference to fishing activities, the coastal State also has “sovereign rights [...] with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds” (article 56 paragraph 1 a). In view of the challenges of the Anthropocene, it is therefore quite remarkable that the current development of MREs, as a key element of energy transition⁵¹, should find a solid legal foundation in a text adopted over forty years ago. UNCLOS has provided for the sovereign rights of the coastal State over the continental shelf and its non-living resources⁵², which initially referred to hydrocarbons but also includes minerals, and its Part XI, supplemented by the 1994 Agreement⁵³, also regulated the exploitation of the mineral resources in the Area⁵⁴. The energy transition is precisely reflected in a growing dependence on seabed mineral resources, which explains the current interest in their exploitation, both on the continental shelves of coastal States and in the International Seabed Area, but also in the legitimate questioning of the ecological impact of such activities⁵⁵.

Droit de la Mer 4, Editoriale Scientifica, Napoli, 2016, pp. 203-22; Ros, N., “Problems of Marine Pollution resulting from Offshore Activities according to International and European Union Law”, in Caligiuri, A. (ed.), *Offshore Oil and Gas Exploration and Exploitation in the Adriatic and Ionian Seas*, MaReMaP-AIR, Editoriale Scientifica, Napoli, 2015, pp. 34-42, https://www.assidmer.net/doc/eBook_2015.pdf; Ros, N., “La pollution résultant de l’exploitation du sol et du sous-sol: le cas du plateau continental”, in *Droit des sites et sols pollués. Bilans et perspectives*, L’Harmattan, Paris, 2018, pp. 39-51.

⁵¹ BADIA MARTÍ, A.M., “Las energías oceánicas y su contribución a la Estrategia Blue Growth”, in Cabeza Pereiro, J. and Fernández Docampo, B. (coord.), *Estrategia Blue Growth y Derecho del Mar*, Editorial Bomarzo, Albacete, 2018, pp. 471-484.

⁵² Ros, N., “L’État côtier et son plateau continental: enjeux et perspectives dans le nouveau droit de la mer”, in *Enjeux et perspectives Droit international, droit de la mer, droits de l’homme Liber Amicorum En l’honneur de la professeure Haritini Dipla*, Pedone, Paris, 2020, pp. 109-124.

⁵³ Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 28 July 1994, <https://documents.un.org/doc/undoc/gen/n94/332/98/pdf/n9433298.pdf?token=zhCgfQVypUnnUfk1ie&fe=true>, accessed 3 June 2024.

⁵⁴ Ros, N., “La gouvernance des mers et des océans, entre mythes et réalités juridiques”, *Journal du Droit international Clunet*, No. 3, 2017, pp. 757-812.

⁵⁵ BLANCHARD, C., HARROULD-KOLJEB, E., JONES, E. and TAYLOR, M.L., “The current status of

The strategic dimension of these resources, vital to the ecological transition, is reflected in the need for the securization of the access to rare earths and other strategic metals; for this purpose, the control of the superjacent waters is a key element, explaining the interest in no-take MPAs and the role of ENGOs given their financial links with high-tech and transition industrial operators. In this context, *an economicization of the sea* is inevitable.

B. An economicization of the sea

The blue economy is a way to continue the global growth process by harnessing the economic potential of the oceans, whose spaces are now essentially understood by reference to the activities they support; it postulates the economicization of the sea through *the development of blue industries* (a), which contributes to *a reconceptualization of the sea* (b).

a. The development of blue industries

The blue economy promotes the development of a true economy of the sea, sometimes also presented as an ocean economy, which naturally goes far beyond the maritimization of the world economy⁵⁶, to be developed through the diversification of the maritime sector and the industrialization of the sea. It is nevertheless a paradox, because the development of the blue industries cannot be ecologically neutral and consequently carries the risk of contributing to accentuating the anthropic impact on the marine and terrestrial environment.

The blue industrialization assumes a new vision of the sea, of maritime spaces and activities. It is no longer a question of a traditional maritime economy, understood according to a sectoral approach and focused on navigation and

deep-sea mining governance at the International Seabed Authority”, *Marine Policy*, Vol. 147, 2023, <https://www.sciencedirect.com/science/article/pii/S0308597X22004432?via%3Dihub>; BRÄGER, S., ROMERO RODRIGUEZ, G.Q. and MULSOW, S., “The current status of environmental requirements for deep seabed mining issued by the International Seabed Authority”, *Marine Policy*, Vol. 114, 2020; LANFRANCHI, M-P., “La protection de l’environnement dans la Zone internationale des fonds marins : réflexions sur le droit à venir”, *Annuaire français de droit international*, Vol. 67, 2021, pp. 615-646; MARGHÉLIS, A-G., “L’exploitation minière des fonds marins : où en sommes-nous réellement ? Bilan et perspectives à l’occasion de la vingt-cinquième année de l’Autorité Internationale des Fonds Marins (AIFM)”, *Annuaire de Droit Maritime et Océanique*, Vol. XXXVII, 2019, pp. 65-75.

⁵⁶ ROS, N., “Les nouveaux enjeux juridiques de la maritimisation”, *Neptunus*, Vol. 27, No. 3, 2021, <https://cdmo.univ-nantes.fr/fr/publications/neptunus-e-revue>.

economic uses of mobility, such as maritime transport and fishing, but of a global economic approach which values and prioritizes the development of other activities, essentially innovative and/or newly established in the marine environment, because of their strong economic potential, in sectors presented as real niches in terms of employment and growth⁵⁷. These blue industries are traditionally structured around five main areas: marine renewable energies; marine biotechnologies; aquaculture; maritime, coastal and cruise tourism; and seabed exploitation, including the traditional offshore dedicated to the exploitation of hydrocarbons and new mining industries⁵⁸. The development of this blue industrialization is naturally presented as part of the ecological and energy transition, but some of these activities are nevertheless traditionally considered as having a very high environmental impact, which seriously questions the relevance of the process. This is especially true insofar as all these activities are essentially industrial and require substantial investments, which reinforces the economic model and therefore does not encourage thinking in terms of alternatives. What is more, some of these economic activities may involve a neocolonial approach to the sea, such as tourism, but also exploitation of marine mineral and genetic resources; their development is therefore likely to induce blue colonialism, especially since the priority given to these blue industries also has a potentially serious impact on the legal status of maritime spaces⁵⁹. With the exception of cruise tourism, and to a certain extent biotechnologies, they are indeed distinguished from traditional uses by their fixed character involving a real dominion on the sea. For financial and technical reasons, the industrialization of the sea necessarily imposes a

⁵⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Innovation in the Blue Economy: realising the potential of our seas and oceans for jobs and growth, Brussels, COM(2014) 254 final/2, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2014:254:REV1>, accessed 3 June 2024.

⁵⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Blue Growth opportunities for marine and maritime sustainable growth (Text with EEA relevance), Brussels, COM(2012) 494 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0494:FIN:EN:PDF>, accessed 3 June 2024.

⁵⁹ Ros, N., “Le régime juridique des espaces maritimes quarante ans après Montego Bay”, in Lanfranchi, M-P. (dir.), *A l’occasion des quarante ans de la Convention des Nations Unies sur le droit de la mer*, Confluence des droits, 2024 (forthcoming).

reconceptualization of the sea.

b. A reconceptualization of the sea

In theory, the blue economy is defined as a strategy of inclusive and shared development, which implies being able to effectively reconcile all activities, both traditional and new. The industrialization of the sea is therefore based on the postulate as much as on the bet of the multiplicity of uses, in other words a coexistence of the different maritime activities in space and time, or even a sharing made profitable by the development of a functional cooperation, via infrastructures and common equipment. But the reality is quite different⁶⁰; with rare exceptions⁶¹, competition is unavoidable, not only between new industries that require a spatial dominion, but above all between these fixed activities, considered as priorities in the context of the blue economy, often under the pretext of their contribution to the ecological transition, but above all because of their greater economic profitability, and the traditional uses of the sea based on mobility, such as navigation, which is nonetheless generally respected insofar as the global economy depends on maritime transport, and above all, fishing, which is considered as a real obstacle to the sedentary development of the blue industries⁶².

Conflicts of use are therefore inevitable; they are an integral part of the

⁶⁰ CIRAVEGNA, E. et al., “The hidden costs of multi-use at sea”, *Marine Policy*, Vol. 161, 2024; KLINGER, D. H., EIKESET, A.M., DAVIDSDÓTTIR, B., WINTER, A-M. and WATSON, J. R., “The mechanics of blue growth: Management of oceanic natural resource use with multiple, interacting sectors”, *Marine Policy*, Vol. 87, 2018, pp. 356-362.

⁶¹ Amazon News, “The project North Sea Farm 1 will be located in a wind farm off the coast of the Netherlands, designed to test and improve methods of seaweed farming, while researching the potential of seaweed to sequester carbon”, <https://www.aboutamazon.eu/news/sustainability/introducing-the-worlds-first-commercial-scale-seaweed-farm-located-between-offshore-wind-turbines>, accessed 3 June 2024.

⁶² OWUSU BONSU, P., “Co-location of fisheries and offshore wind farms: Current practices and enabling conditions in the North Sea”, *Marine Policy*, Vol. 159, 2024; SOBRINO HEREDIA, J.M., “La difícil coexistencia entre las actividades pesqueras y la industria minera y petrolera submarina”, in Cabeza Pereiro, J. and Fernández Docampo, B. (coord.), *Estrategia Blue Growth y Derecho del Mar*, Editorial Bomarzo, Albacete, 2018, pp. 201-226; SOBRINO HEREDIA, J.M., “Coexistence de l’activité de pêche avec les industries gazières, pétrolières et minières sous-marines”, in Chaumette, P. (coord.), *Transforming the ocean law by requirement of the marine environment conservation / La transformation du droit des océans par l’exigence de conservation de l’environnement marin*, Marcial Pons Ediciones Jurídicas y Sociales, Madrid, 2019, pp. 413-434, <https://halshs.archives-ouvertes.fr/halshs-02398345/document>.

reality of the blue economy. In order to prevent and/or resolve them, the solution is to allocate a portion of maritime space to each activity, which makes it possible to reconcile uses but also to secure investments. It is therefore necessary to share the common space, which radically changes the relationship of Man, and with him of society, to the sea; the consequence is a reconceptualization of the sea. The sea ceases not only to be considered by and for itself, but also to be free and common; it becomes a territory whose economic development imposes a joint logic of spatial distribution and functional fragmentation. The sea thus loses its physical and legal unity, and the maritime space is apprehended in terms of economic utility, by reference to the function assigned to it, which is henceforth defined in accordance with an objective of exploitation or conservation, and broken down into as many activities as justified by the dogma of the blue economy. In the framework of this reconceptualization, *the functional spatialization tool* becomes a practical and legal necessity.

2. The functional spatialization tool

Functional spatialization plays an essential role in the blue economy toolbox⁶³; it enables the sharing of a space traditionally considered as common and its distribution between different activities and their operators, thanks to *marine spatial planning* (A), but it also fits in perfectly with the logic of ecological compensation, with *marine protected areas* (B). In both cases, it creates the right conditions for the appropriation of the sea and its resources, including from the perspective of blue colonialism.

A. Marine spatial planning

Marine spatial planning, or maritime spatial planning in the vocabulary of the European Union⁶⁴, embodies the most developed, most comprehensive and probably most accomplished form of functional spatialization; it can be defined as *a political-economic process* (a) materialized by *a public-private partnership* (b).

⁶³ ROS, N., “La spatialisation fonctionnelle des espaces maritimes”, *Annuaire de Droit Maritime et Océanique*, Vol. XXXVI, 2023, pp. 35-73.

⁶⁴ HILDEBRAND, L.P. and SCHRÖDER-HINRICHS, J-U., “Maritime and marine: synonyms, solitudes or schizophrenia?”, *WMU Journal of Maritime Affairs*, Vol. 13, 2014, pp. 173-176.

a. A political-economic process

As a concept, marine spatial planning (MSP) originated in the work initiated by the Intergovernmental Oceanographic Commission of UNESCO from 2006⁶⁵, but it was first legally enshrined in the European Union Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning⁶⁶. The generalization⁶⁷ and universalization⁶⁸ of the concept testify to the success of this form of functional spatialization as a component of the blue economy⁶⁹.

As such, marine spatial planning is both an instrument and a product of the doctrine of change. It is a maritime governance tool, based on a management

⁶⁵ EHLER, Ch. and DOUVERE, F., *Marine Spatial Planning: a step-by-step approach toward ecosystem-based management*, Intergovernmental Oceanographic Commission and Man and the Biosphere Programme, IOC Manual and Guides No. 53, ICAM Dossier No. 6, Paris UNESCO 2009, <https://prod.repository.oceanbestpractices.org/bitstream/handle/11329/459/186559e.pdf?sequence=1&isAllowed=y>, accessed 3 June 2022.

⁶⁶ Directive 2014/89/EU of the European Parliament and of the Council establishing a framework for maritime spatial planning [2014] L257/135, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0089>, accessed 3 June 2024; DOUVERE, F. and EHLER, Ch.N., “New perspectives on sea use management: Initial findings from European experience with marine spatial planning”, *Journal of Environmental Management*, Vol. 90, 2009, pp. 77-88; FRIESS, B. and GRÉMAUD-COLOMBIER, M., “Policy outlook: Recent evolutions of maritime spatial planning in the European Union”, *Marine Policy*, Vol. 132, 2021; QUERO GARCÍA, P., GARCÍA SANABRIA J. and CHICA RUIZ, J.A., “The role of maritime spatial planning on the advance of blue energy in the European Union”, *Marine Policy*, Vol. 99, 2019, pp. 123-131.

⁶⁷ EHLER, Ch.N., “Two decades of progress in Marine Spatial Planning”, *Marine Policy*, Vol. 132, 2021; MAES, F., “The international legal framework for marine spatial planning”, *Marine Policy*, Vol. 32, 2008, pp. 797-810.

⁶⁸ According to UNESCO, about one hundred countries or territories now have MSP initiatives, ranging from early stages (new authority and funding arrangements) to plan revisions and adaptation; <https://www.mspglobal2030.org/msp-roadmap/msp-around-the-world/>, accessed 3 June 2024.

⁶⁹ In the future, MSP is to be applied also on the high seas, directly or indirectly in the framework of the BBNJ Agreement. ARDRON, J., GJERDE, K., PULLEN, S. and TILOT, V., “Marine spatial planning in the high seas”, *Marine Policy*, Vol. 32, 2008, pp. 832-839; BECKER-WEINBERG, V., “Preliminary Thoughts on Marine Spatial Planning in Areas beyond National Jurisdiction”, *The International Journal of Marine and Coastal Law*, Vol. 32, 2017, pp. 570-588; WRIGHT, G. et al., “Marine spatial planning in areas beyond national jurisdiction”, *Marine Policy*, Vol. 132, 2021; ZAUCHA, J. and JAY, S., “The extension of marine spatial planning to the management of the world ocean, especially areas beyond national jurisdiction”, *Marine Policy*, Vol. 144, 2022.

plan for each area, which organizes and rationalizes the spatial occupation and sharing of the sea according to a functional logic; it is therefore a form of territorial planning, inspired by what is done on land or on the coastal zone, and transposed to the maritime space. It proceeds from a public process of spatial distribution of human activities at sea, organized in time and according to ecological, economic and social objectives, previously adopted in a political framework.

In the context of the blue economy, marine spatial planning has thus become the mandatory framework in which all maritime activities must be integrated, in order to prevent, reduce and resolve the inevitable conflicts of use. However, MSP is not a neutral process; inspired by neoliberalism, it is a political process with a strategic dimension, but also an economic one, since it is intended to plan industrial activities. Its success is based on the fact that it is a remarkable instrument for prioritizing and thus enhancing economic priorities. On the one hand, it makes it possible to spatially secure blue industries that require an exclusive dominion on vast spaces that are now located far from the coasts. On the other hand, it helps to exclude activities that political and economic decision-makers do not consider to be a priority, either because their limitation is presented as an objective in the context of ecological transition, or because they are ontologically refractory to spatial planning, as is the case for mobile activities. Functional spatialization favors fixed activities; and fishing is naturally the most emblematic victim of this spatial appropriation dynamic, insofar as it is almost impossible to spatialize, considered an obstacle by the blue industries, stigmatized and even demonized by the conservationists⁷⁰. The MSP then reveals its deep ambiguity; as a *public-private partnership*, it effectively participates not only in the movement of privatization of the sea but also in blue colonialism when imposed in a leonine context.

b. A public-private partnership

Marine spatial planning is a political, and therefore public, process of strategic planning of economic activities, and consequently private, but it

⁷⁰ Ros, N., “*Human Sea: les pêcheurs face aux risques de privatisation des espaces maritimes et de leurs ressources*”, in Charbonneau, A., Fotinopoulou-Basurko, O. and Mandin, F. (coord.), *Le travail et la mer Liber amicorum en hommage à Patrick Chaumette*, Pedone, Paris, 2021, pp. 77-84; Ros, N., “Une mer sans pêcheurs”, *Neptunus*, Vol. 27, No. 1, 2021, <https://cdmo.univ-nantes.fr/fr/neptunus-e-revue/annee-2020>; Ros, N., “La pêche durable dans le contexte de privatisation des mers”, *Annuaire de Droit Maritime et Océanique*, Vol. XXXV, 2022, pp. 53-91.

can also be understood from the perspective of public-private partnerships (PPP)⁷¹. In practice, it fulfils a mission of strategic legitimization of industries considered to be a political priority, such as marine renewable energies in the energy transition scenario, but MSP also allows the designation of economic operators. Established in the context of a global PPP, and defined in consultation with the stakeholders, on the scale of a public space subject to the national jurisdiction of the coastal State, such as the exclusive economic zone, MSP is then declined in the form of a network of public-private partnerships concluded between the State and industrial actors; the legal technique refers to the signing of a concession, granting exclusive use rights to a private operator, generally not national, in principle for a determined period of time, but on a vast portion of the national maritime space located far offshore, with a view to developing an economic activity dedicated to the exploitation of the sea, its spaces and resources. From the point of view of International Law of the Sea, the signing of a concession participates in the exercise of the sovereign rights that the State has over both its continental shelf and the resources of its EEZ, but the exclusive use that it confers on each operator results in the private appropriation of the corresponding public space, and the exclusion of other uses and users⁷².

With marine spatial planning, the sea is no longer considered for itself, but according to an essentially utilitarian approach, *i.e.* for its economic potential. Each portion of space is identified and categorized by reference to the strategic function assigned to it, to be finally allocated according to the profitability and/or desirability of the corresponding economic activities. Legally unified, under the jurisdiction of the coastal State, as a shared space in the context of common use, the sea is then divided into a set of lots, allocated

⁷¹ LELONG, S., DU CASTEL, V. and GIRON, Y., “La croissance bleue. Puissances publiques versus puissances privées”, *Diploweb.com La Revue géopolitique*, 19 January 2016, <https://www.diploweb.com/La-croissance-bleue.html>, accessed 3 June 2024.

⁷² BARBESGAARD, M., “Blue growth: saviour or ocean grabbing?”, *International Institute of Social Studies, Global governance/politics, climate justice & agrarian/social justice: linkages and challenges*, No. 5, 2016, https://www.iss.nl/sites/corporate/files/5-ICAS_CP_Barbegaard.pdf, accessed 3 June 2024; ROS, N., “Estrategia Blue Growth y retos de Privatización del mar”, in Cabeza Pereiro, J. and Fernández Docampo, B. (coord.), *Estrategia Blue Growth y Derecho del Mar*, Editorial Bomarzo, Albacete, 2018, pp. 227-250.

to private beneficiaries⁷³; it is thus distributed and therefore appropriated. In the Anthropocene society, the sea therefore ceases to be an open and free space and becomes an economic territory whose development is planned in order to optimize its management, maximizing profitability and minimizing the ecological footprint of exploitation activities, most often by compensating it. It is especially true in the cases where MSP is a tool of blue colonialism, imposed to the coastal States most often as counterpart of a debt swap, or in order to fight against biodiversity loss and climate change, going hand in hand with the development of *marine protected areas*.

B. Marine protected areas

Conservationist circles, and primarily major environmental NGOs, have imposed the concept of marine protected areas as the one and only option for the future of oceans and seas. This strategy developed according to a *logic of compensation* (a), culminating in the paradigm of *the large no-take MPAs* (b) makes it possible to totally exclude certain activities, such as fishing and even some traditional uses of the sea, while facilitating the social acceptability and viability of other activities, mainly mining and tourism. It is an approach of the relations humankind/nature particularly emblematic of blue colonialism.

a. A logic of compensation

Conservationism is the new paradigm to fight against biodiversity decline, climate change and indirectly marine pollutions induced by industrial activities. It can be defined as a dogmatic vision of nature⁷⁴, based on the wilderness doctrine⁷⁵: “conservation” means maintaining nature, and in this

⁷³ According to Professor Jean-Pierre Quéneudec, the Law of the Sea has become “un droit des lotissements marins”; QUÉNEUDEC, J-P., “Le droit et l'utilisation des mers”, *Académie des sciences morales et politiques*, 2016, <https://academiesciencesmoralesetpolitiques.fr/2016/04/11/le-droit-et-l'utilisation-des-mers/>, accessed 3 June 2024.

⁷⁴ GOMEZ-POMPA, A. and KAUS, A., “Taming the Wilderness Myth”, *BioScience*, Vol. 42, No. 4, 1992, pp. 271-279, https://www.researchgate.net/profile/Andrea-Kaus/publication/247843473_Taming_the_Wilderness_Myth/links/558b06e108ae48b7b56da44c/Taming-the-Wilderness-Myth.pdf.

⁷⁵ CRONON, W., “The Trouble with Wilderness; or, Getting Back to the Wrong Nature”, in Cronon, W. (ed.), *Uncommon Ground: Rethinking the Human Place in Nature*, W.W. Norton & Co., New York, 1995, pp. 69-90, https://www.williamcronon.net/writing/Cronon_Trouble_with_Wilderness_1995.pdf.

case the sea, in its original state; it implies considering the ocean as a space devoid of all humanity and identifying given spaces to be conserved, because of their pristine nature or their ecosystem value. The objective is both ecological and economic; it is to compensate for the negative impacts of the industrialization of the sea, so that growth can continue without questioning or jeopardizing the dominant economic model. The generalization of MPAs is the necessary counterpart to the development of the blue economy; strategically, their inclusion in a marine spatial planning scheme is considered a plus, as it allows for targeted compensation under a global management of economic activities⁷⁶. Marine protected areas are of course part of the functional spatialization movement; they are defined as spatialized instruments, identified and categorized according to their purpose, in terms of biodiversity conservation and/or fight against climate change, and they are subject to appropriate legal regulation via a management plan.

Ecological compensation is however ontologically unfair, insofar as the contemporary multiplication of large MPAs follows a geopolitically differentiated logic and is deeply intertwined with blue colonialism⁷⁷. Most of these huge marine protected areas have actually been created in the Pacific and Indian Ocean, mainly in the EEZs of SIDS, and their management has been entrusted to private actors, powerful ENGOs and/or dedicated trust funds. The richest and most developed countries, mainly responsible for the triple planetary crisis (pollution, biodiversity decline, climate change), use the paradigm of *the large no-take MPA* to compensate for their ecological impact by imposing what amounts to a renunciation, in terms of development and sovereignty, on less developed countries with a low or zero carbon footprint and generally greater respect for nature.

b. The large no-take MPAs

The paradigm of the large MPA, totally or partially no-take, has

⁷⁶ TROUILLET, B. and JAY, S., “The complex relationships between marine protected areas and marine spatial planning: Towards an analytical framework”, *Marine Policy*, Vol. 127, 2021.

⁷⁷ As Polynesian anthropologist Tamatoa Bambridge rightly points out, “le problème d’une aire marine protégée, c’est que c’est quand même un peu injuste de demander aux pays du sud de protéger alors que les pays du nord polluent”; BAQUET, C., “Glob’iles #2 : le rahui de Teahupoo à Tahiti, “c’est bon pour l’environnement””, *La 1^{ère}*, 29 September 2015, <https://la1ere.francetvinfo.fr/2015/09/29/glob-iles-2-le-rahui-de-teahupoo-tahiti-c-est-bon-pour-l-environnement-290991.html>, accessed 3 June 2024.

progressively imposed during the last decades⁷⁸. This global trend is the result of a very effective strategy developed in the framework of a public-private partnership between States and private conservation actors, through the adoption of increasingly ambitious quantified targets, such as the 10% of Aichi Target 11 at CoP10 in Nagoya in 2010⁷⁹, or the 30% adopted by CoP15 in Montreal in 2022⁸⁰. This quantification of conservation objectives, initiated by ENGOs, has created a climate of competitive outbidding between States, with the subsequent multiplication and extension of the surface areas of large MPAs⁸¹. Over the last few decades, between 20 and 30 large and very large MPAs, some of them totally no-take, have been created and/or extended,

⁷⁸ SINGLETON, R.L. and ROBERTS, C.M., “The contribution of very large marine protected areas to marine conservation: Giant leaps or smoke and mirrors?”, *Marine Pollution Bulletin*, Vol. 87, 2014, pp. 7-10, https://www.researchgate.net/publication/265018914_The_contribution_of_very_large_marine_protected_areas_to_marine_conservation_Giant_leaps_or_smoke_and_mirrors.

⁷⁹ Conference of the Parties to the Convention on Biological Diversity Tenth meeting, Nagoya, Japan, 18-29 October 2010, UNEP/CBD/COP/DEC/X/2, 27 October 2010, Decision adopted by the Conference of the Parties to the Convention on biological diversity at its tenth meeting, X/2. *The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets*, Target 11, p. 9, <https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.pdf>, accessed 3 June 2024.

⁸⁰ Conference of the Parties to the Convention on Biological Diversity, Fifteenth meeting - Part II Montreal, Canada, 7-19 December 2022 Agenda item 9A, CBD/COP/DEC/15/4, 19 December 2022, Decision adopted by the Conference of the Parties to the Convention on Biological Diversity, 15/4. *Kunming-Montreal Global Biodiversity Framework*, Section H. *Global Targets for 2030*, Target 3, p. 9, <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf>, accessed 3 June 2024.

⁸¹ FÉRAL, F., “L’extension récente de la taille des aires marines protégées: une progression des surfaces inversement proportionnelle à leur normativité”, *Vertigo - la revue électronique en sciences de l’environnement*, No. 9, 2011, <https://vertigo.revues.org/10998>; LEENHARDT, P., CAZALET, B., SALVAT, B., CLAUDET, J. and FÉRAL, F., “The rise of large-scale marine protected areas: Conservation or geopolitics?”, *Ocean & Coastal Management*, Vol. 85, 2013, pp. 112-118, http://www.dulvy.com/uploads/2/1/0/4/21048414/leenhardt.etal_inpress.pdf; Féral, F. and Salvat, B. (dir.), *Gouvernance, enjeux et mondialisation des grandes aires marines protégées*, L’Harmattan, Paris, 2014, and especially, CAZALET, B. and LEENHART, P., “Le phénomène mondial de multiplication et d’extension des surfaces des grandes aires marines protégées”, pp. 25-52, https://www.researchgate.net/publication/301568998_Le_phenomene_mondial_de_multiplication_et_d_extension_des_surfaces_des_grandes_aires_marines_protégees/link/57b193db08ae95f9d8f4a45d/download.

mainly in the Pacific⁸², and secondarily in the Indian Ocean. This strategic process was used by States to reach the required percentages more quickly, by positioning themselves internationally at a lower cost, thanks to the cumulative effects of quantitative and qualitative approaches with the development of integral conservation⁸³, as no-take MPAs enable real economies of scale in terms of management, since virtually all activities are prohibited.

But the concept of large no-take MPA is in fact extremely ambiguous; it evokes the prohibition of all extractive activities, but generally focuses on fishing, in order to promote tourism presented as a sustainable activity, or to secure the interests of blue industries, particularly offshore and mining, according to a logic of compensation and sometimes even by authorizing them. While the ecological benefits of these large no-take MPAs, some of which remain paper parks for lack of effective implementation⁸⁴, are not at all proven⁸⁵, the political and economic benefits of their creation are therefore obvious. The objectives of protecting biodiversity and combating climate change are of course legitimate, but it is no coincidence that almost all of these large MPAs are located precisely in strategic areas rich in the mineral

⁸² BAMBRIDGE, T. and D'ARCY, P., "Large-scale Marine Protected Areas in the Pacific: Cultural and Social Perspectives", in Féral, F. and Salvat, B. (dir.), *Gouvernance, enjeux et mondialisation des grandes aires marines protégées*, L'Harmattan, Paris, 2014, pp. 113-132; GIRON, Y., "The other side of large-scale, no-take, marine protected areas in the Pacific Ocean", in Fache, E. and Pauwels, S. (eds.), *Fisheries in the Pacific The Challenges of Governance and Sustainability*, Pacific-Credo Publications, 2016, pp. 77-117, https://halshs.archives-ouvertes.fr/halshs-01735395/file/2016_Fisheries_in_the_Pacific.pdf.

⁸³ DE SANTO, E.M., "Missing marine protected area (MPA) targets: How the push for quantity over quality undermines sustainability and social justice", *Journal of Environmental Management*, Vol. 124, 2013, pp. 137-146, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.717.5623&rep=rep1&type=pdf>.

⁸⁴ DE SANTO, E.M., "From Paper Parks to Private Conservation: The Role of NGOs in Adapting Marine Protected Area Strategies to Climate Change", *Journal of International Wildlife Law and Policy*, Vol. 15, No. 1, 2012, pp. 25-40.

⁸⁵ Cf. for example, in favor, SALA, E. and GIAKOUMI, S., "No-take marine reserves are the most effective protected areas in the ocean", *ICES Journal of Marine Science*, Vol. 75, No. 3, 2017, pp. 1166-1168, <https://academic.oup.com/icesjms/article/75/3/1166/4098821>; and for more reserved and even critical points of view, EDGAR, G.J. et al., "Global conservation outcomes depend on marine protected areas with five key features", *Nature*, Vol. 506, 2004, pp. 216-220; HILBORN, R. et al., "When can marine reserves improve fisheries management?", *Ocean & Coastal Management*, Vol. 47, 2004, pp. 197-205.

resources needed both to implement the blue economy and achieve the ecological transition, in the EEZs of SIDS, as an instrument of privatization⁸⁶ developed according to a *geopolitically differentiated strategy* emblematic of blue colonialism⁸⁷.

III. A GEOPOLITICALLY DIFFERENTIATED STRATEGY

The paradigm of blue colonialism was initially developed in the Indo-Pacific region, through *the private environmental governance vehicle* (1), but since the beginning it was conceived as a model to be replicated elsewhere, according to a global strategy that progressively became a reality in 2021, 2022 and 2023, confirming *the emergence of a new legal paradigm* (2).

1. The private environmental governance vehicle

With the recent adoption of the BBNJ Agreement, and pending its entry into force, we can assume that, in the future, MPAs will be created on the high seas as well⁸⁸, in order to secure the blue economy and compensate its effect, but blue colonialism is actually characterized by *the entryism of private actors* (A), as developed *in maritime areas under national jurisdiction* (B) of developing States.

⁸⁶ ROS, N., “L’aire marine gérée de Polynésie française Une alternative à la privatisation des mers et des océans”, *Neptunus*, Vol. 28, No. 1, 2022, <https://cdmo.univ-nantes.fr/fr/publications/neptunus-e-revue>.

⁸⁷ The colonialist dimension of no-take MPAs has been denounced by local populations or institutions, particularly in Rapa Nui or in French Polynesia. Cf. DI GIROLAMO, G., “Dirigente rapanui afirma que ONG PEW dio incentivos monetarios a isleños para que aprobaran el Parque Marino”, *El Desconcierto*, 3 October 2015, <https://www.eldesconcierto.cl/bienes-comunes/2015/10/03/dirigente-rapanui-afirma-que-ong-pew-dio-incentivos-monetarios-a-islenos-para-que-aprobaran-el-parque-marino.html>, accessed 3 June 2024; FAATAU, J.-T., “Aire marine protégée des Australes: Refus du gouvernement polynésien”, *Outremers 360°*, 9 April 2016, <https://outremers360.com/politique/aire-marine-protgee-des-australes-refus-du-gouvernement-polynesien>, accessed 3 June 2024.

⁸⁸ DRANKIER, P., “Marine Protected Areas in Areas beyond National Jurisdiction”, *The International Journal of Marine and Coastal Law*, Vol. 27, 2012, pp. 291-350; GUTIÉRREZ FIGUEROA, F., “Áreas marinas protegidas en la alta mar: perspectivas y desafíos en el contexto del derecho internacional”, *Agenda Internacional*, Vol. XXIV, No. 35, 2017, pp. 171-193, <https://revistas.pucp.edu.pe/index.php/agendainternacional/article/view/19369>; SCOTT, K.N., “Conservation on the High Seas: Developing the Concept of the High Seas Marine Protected Areas”, *The International Journal of Marine and Coastal Law*, Vol. 27, 2012, pp. 849-857.

A. The entryism of private actors

As on land, private environmental governance⁸⁹ at sea relies on two categories of actors, working in close connection: *the ENGOs* (a) and *the trusts* (b).

a. The ENGOs

The main vector of blue colonialism, through the privatization of the seas is the conservationist movement, as represented by certain environmental non-governmental organizations⁹⁰; obviously, these are not small and local, grassroots organizations, but very large organizations capitalized and corporatized⁹¹, emblematic of the developed world, and particularly of Anglo-Saxon and even North American origins.

It is common knowledge that these ENGOs maintain close relations and ambiguous, almost incestuous, links with industrial operators and lobbies⁹². It

⁸⁹ CAMPBELL, L.M. et al., “Global Oceans Governance: New and Emerging Issues”, *Annual Review of Environment and Resources*, Vol. 41, 2016, pp. 517-543, <https://www.annualreviews.org/doi/pdf/10.1146/annurev-environ-102014-021121>; FALKNER, R., “Private environmental governance and international relations: exploring the links”, *Global environmental politics*, Vol. 3, No. 2, 2003, pp. 72-87, <https://core.ac.uk/download/pdf/207876.pdf>; ROS, N., “Modern Law of the Sea: From Governance to Privatization”, *Waseda Bulletin of Comparative Law*, Vol. 37, 2019, pp. 11-34, <https://core.ac.uk/download/pdf/286963364.pdf>.

⁹⁰ For classical analyses on ENGOs, cf. CORDONNERY, L. and KRIWOKEN, L., “Advocating a Larger Role for Environmental Nongovernment Organizations in Developing a Network for Marine Protected Areas in the Southern Ocean”, *Ocean Development & International Law*, Vol. 46, 2015, pp. 188-207; HEWISON, G.J., “The Role of Environmental Nongovernmental Organizations in Ocean Governance”, *Ocean Yearbook*, Vol. 12, 1996, pp. 32-51; PARMENTIER, R., “The Role and Impact of International NGO in Global Ocean Governance”, *Ocean Yearbook*, Vol. 26, 2012, pp. 209-229.

⁹¹ STANDING, A., “Understanding the conservation finance industry”, *CFEA*, 14 December 2021, <https://www.cffacape.org/publications-blog/understanding-the-conservation-finance-industry>, accessed 3 June 2024.

⁹² GIRON, Y. and LE SANN, A., “Blue Charity Business – la réforme des pêches européennes – premier panorama – 2000 à 2011”, *Pêche et développement*, 2012, https://peche-dev.org/IMG/pdf/blue_charity_business.pdf, accessed 3 June 2024; GIRON, Y., “Vers une privatisation des océans?”, Conférence Maison de la mer, Lorient, 8 December 2014, <https://www.youtube.com/watch?v=MoxzcNyySQk>, accessed 3 June 2024; LE GALL, C., *L'imposture océanique Le pillage “écologique” des océans par les multinationales*, La Découverte, Paris, 2021; LHUILIER, G., “Big Environmental NGOs need Reigning in – Are BINGOs the face of new corporate rapine?”, *Bulletin Pêche et Développement*, No. 128, 2016, https://peche-dev.org/IMG/pdf/reining_in

is now well documented that the most powerful of these organizations, which operate according to a true financialization strategy, are financially dependent on the industrial sector, including oil and gas but also mining and high technology related to rare earths, sometimes directly but more often indirectly via the charitable trusts and foundations that finance them. These ENGOs are also characterized by their corporatization from the methodological and structural standpoint. Their managerial culture illustrates the neoliberal dimension of the conservationist movement, but these ENGOs are also directly linked to the industrial sector through the composition of their boards of directors, as well as those of the trusts and foundations to which they are associated; their members generally come from the industrial (or sometimes political) sector, the same ones often being simultaneously or successively co-opted into different boards. Furthermore, the leaders of these NGOs are not elected, and the functioning of these organizations is neither transparent nor democratic like that of traditional associations.

While they claim to be representative of civil society, these ENGOs therefore do not represent public opinion or future generations⁹³, and it is no coincidence that their positions in favor of integral conservation, via the concept of no-take marine protected areas, systematically support the interests of their financiers, especially as long as they generally exclude fishing activities with the added benefit of securing offshore and/or mining exploitation. In practice, however, the implementation of this governance model relies more often on *the trusts* than directly on the NGOs.

b. The trusts

The entryism of private actors in marine governance is based on the sharing of tasks. ENGOs lobbying is aimed at convincing, and in some cases at compelling, States to create large MPAs in their maritime areas under national jurisdiction, but these organizations are most of the time not directly in charge of managing these MPAs. In the most successful models⁹⁴, and in the blue

[benvngos_prof_lhuilier_v2.pdf](#), accessed 3 June 2024.

⁹³ ROS, N., “Le droit fondamental des générations futures à la mer comme bien commun”, in Guillet, N. (dir.), *Mer et droits fondamentaux de la personne humaine*, LGDJ, Paris, 2022, pp. 151-176.

⁹⁴ For example, Kiribati with the *Phoenix Islands Protected Area Trust*, Chagos with the *Chagos Conservation Trust*, and Seychelles with the *Seychelles’ Conservation and Climate Adaptation Trust* (SeyCCAT).

colonialism perspective, NGOs only intervene indirectly through a dedicated legal instrument, the trust or trust fund⁹⁵. These trusts are naturally emanations of ENGOs and their industrial partners; they are created, depending on the case, by an act of domestic law of the State, more or less inspired by ENGOs, or even by a transnational contract which then completely escapes the State's legal order.

Always legally independent, the trust makes it possible to concretize but also to rationalize the financing, and to operationalize, according to market logic, the private governance of maritime areas under national jurisdiction of the State. The trust serves as a legal vehicle for raising funds, private or even public, and managing the capital thus constituted in order to generate profits for investors, via debt swaps or blue bonds. Legally, the maritime areas concerned, generally the EEZ and indirectly the continental shelf, remain under the jurisdiction of the coastal State, but actually it is forced to abdicate part of its sovereign rights to the benefit of a private manager; under the pretext of protecting biodiversity or combating climate change, and more and more often in counterpart to a debt swap, it is the trust that is exercising the real decision-making power *in maritime areas under national jurisdiction*.

B. In maritime areas under national jurisdiction

The blue colonialism means *an abdication of sovereign rights* (a) and *an extraterritorialization of management* (b), synonymous with privatization of public areas, most of the time within the framework of a MSP that mandatorily includes MPAs.

a. An abdication of sovereign rights

Ironically, this trend has its origins in the new Law of the Sea; the triumph of coastal nationalism has seen huge maritime areas transformed from high seas to areas under national jurisdiction⁹⁶, in a context of claims to economic

⁹⁵ BLADON, A., MOHAMMED, E.Y. and MILNER-GULLAND, E.J., "A Review of Conservation Trust Funds for Sustainable Marine Resources Management Conditions for Success", *Working Paper International Institute for Environment and Development*, 2014, <https://www.iied.org/16574iied>, accessed 3 June 2024; DOINJASHVILI, P., MÉRAL, Ph. and ANDRIAMAHEFAZAFY, F., "Sustaining protected areas through conservation trust funds: a review", *International Journal of Sustainable Development & World Ecology*, Vol. 28, No. 3, 2021, pp. 193-202; GUERIN-MCMANUS, M., "Conservation Trust Funds", *UCLA Journal of Environmental Law and Policy*, Vol. 20, No. 1, 2001, pp. 1-24, <https://escholarship.org/uc/item/3476614r>.

⁹⁶ APOLLIS, G., *L'emprise maritime de l'État côtier*, Pedone, Paris, 1981.

sovereignty, leading to the recognition of the sovereign rights of the coastal States over these vast areas⁹⁷. Small Island Developing States are emblematic of this paradoxical territorialization of the sea because they are endowed with exponential EEZs, totally disproportionate to the land areas that generate them, but they obviously lack the human and logistical resources to control them. As they are also economically vulnerable, sometimes indebted, and face serious problems related to climate change, all the conditions are therefore in place for them to become the designated victims of blue colonialism.

While traditional marine protected areas are small and generally located close to the coast, in the maritime territory under State sovereignty, internal waters and territorial sea, large MPAs extend to maritime areas under the national jurisdiction of States. Although they potentially include parts of the territorial sea, they essentially concern the exclusive economic zone as regards the superjacent waters, and the continental shelf as regards the seabed and subsoil, which are areas International Law of the Sea subjects to the coastal State jurisdiction, especially with regard to the protection and preservation of the marine environment, and in which the State thus exercises sovereign, exclusive and finalized rights, which are economic dismemberments of sovereignty. The economic and environmental finalities of sovereign rights make them easy to transfer to private operators, both for what the post-new Law of the Sea now refers to as sustainable use and biodiversity conservation⁹⁸.

Even if the coastal State is still legally endorsed with its jurisdiction and sovereign rights, the creation of a large no-take MPA *de facto* and often *de jure* dispossesses the coastal State of its powers dedicated to economic development, because the effective management of the area is transferred to the trust. The conservationism justifies this abdication or confiscation of sovereignty in favor of a private entity, because the States concerned are not considered to be able of properly managing their maritime areas, preserving and protecting the environment, or developing blue economy strategies. The argument is clearly

97 ROS, N., “Le régime juridique des espaces maritimes quarante ans après Montego Bay”, in LANFRANCHI, M-P. (dir.), *A l’occasion des quarante ans de la Convention des Nations Unies sur le droit de la mer*, Confluence des droits, 2024 (forthcoming).

98 Cf. Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, 19 June 2023, <https://www.un.org/Depts/los/XXI10CTC%28EN%29.pdf>, accessed 3 June 2024.

colonialist, reminiscent of the justifications for colonization, and the expertise on which it is based is essentially Western, and more often than not North American. In the name of both economic and ecological efficiency, the private environmental governance leads to *an extraterritorialization of management*.

b. An extraterritorialization of management

Under Public International Law, nothing can naturally be imposed on a sovereign State, but the crises inherent in the Anthropocene and the context of ecological transition encourage and facilitate the development of leonine practices, that participate in blue colonialism and are reminiscent of the logic of unequal treaties, although they are now part of soft or smart power, and declined in the legal form of public-private partnership. The proclamation of a MPA, as well as the creation of the trust, of course require the consent of the State, but this can in practice be obtained following an external and leonine mechanism. A marine protected area does not constitute in itself an instrument of privatization and blue colonialism, but its proclamation may be the first step in a process that participates in the corresponding dynamic; this is particularly the case when the sovereign rights of the coastal State are transferred to the trust according to the guiding principles of private environmental governance, allowing for extraterritorial or at least extraterritorialized management of marine areas and resources. The ideology, interests, people, capital, networks and means are those of the rich and developed world; ignorant of local realities, NGOs and trusts are most often totally out of touch with the needs and expectations of populations who are not effectively associated with the top-down logic of marine governance. A *lex ecologica* become applicable, excluding local populations from their territories and depriving them of their rights, via MSP and/or in accordance with a dedicated management plan, adopted in the name of biodiversity conservation and climate change.

Under Public International Law, nothing can naturally be imposed on a sovereign State, but the Seychelles example shows the extent to which State sovereignty and consent can in practice be coerced, in the context of a debt swap⁹⁹, a blue bond, or more generally in the name of the blue economy¹⁰⁰.

⁹⁹ SILVER, J.J. and CAMPBELL, L.M., “Conservation, development and the blue frontier: the Republic of Seychelles’ Debt Restructuring for Marine Conservation and Climate Adaptation Program”, *International Social Science Journal*, Vol. 68, No. 229-230, 2018, pp. 241-256.

¹⁰⁰ SCHUTTER, M.S. and Hicks, Chr. C., “Networking the Blue Economy in Seychelles: pioneers, resistance, and the power of influence”, *Journal of Political Ecology*, Vol. 26, No. 1, 2019, pp.

The debt swap cannot, of course, be legally imposed on the indebted State, and it must consent to the counterpart, in the legal form of a transfer of sovereign rights. In practice, however, the case of the Seychelles leaves little doubt as to the reality of such an extraterritorialization of marine governance. The entire Seychelles EEZ has been transferred to private management, via the creation of a trust fund and the establishment of MSP, with the obligation to dedicate 30% to MPAs, half of which no-take; actually, it is the trust that authorizes economic and industrial activities, including offshore and mining. The extraterritorialization is furthermore organized for an indefinite period, which means that this mode of governance can be maintained even after the State has repaid its debt. This non-reversibility of the process is emblematic of the abdication of territorial sovereignty imposed on States. MPAs are not created for a fixed duration, nor is marine spatial planning conceived in time; contrary to the letter of the protectorate treaties traditionally concluded for a given number of years, the act creating the trust is generally not adopted for a fixed term, and its termination is often framed in such a way as to benefit only private actors and not the State, as illustrated by the case of Seychelles, one of the few where the text has been published¹⁰¹. All these elements are emblematic of *the emergence of a new legal paradigm*.

2. The emergence of a new legal paradigm

Closely linked to the privatization of the seas, blue colonialism is expected to develop as conservationists claim, and can now be understood and analyzed in International Law as a new relational paradigm, *servicing the dominant economic model (A) by promoting a globalized neocolonialism (B)*.

A. Servicing the dominant economic model

Blue colonialism stems from the alliance of neoliberalism and neoconservationism in favor of environmental compensation¹⁰², and the

425-447; SCHUTTER, M.S., HICKS, Chr.C., PHELPS, J. y WATERTON, C., “The blue economy as a boundary object for hegemony across scales”, *Marine Policy*, Vol. 132, 2021.

¹⁰¹ Conservation and Climate Adaptation Trust of Seychelles, Act 18 of 2015, Supplement to Official Gazette, 19 November 2015, pp. 225-246, <https://macce.gov.sc/wp-content/uploads/2023/12/Act-18-of-2015-Conservation-and-Climate-Adaptation-Trust-of-Seychelles-Act-2015.pdf>, accessed 3 June 2024.

¹⁰² QU, Q., TSAI, S-B., TANG, M., XU, C. and DONG, W., “Marine Ecological Environment Management Based on Ecological Compensation Mechanisms”, *Sustainability*, Vol. 8, No. 12,

privatization of marine areas and resources is then logically made possible by the conjunction of *a shift towards transnationality* (a) and *a financialization of conservation* (b).

a. A shift towards transnationality

The conclusion of a public-private partnership, especially via the creation of a trust to which State sovereign rights are transferred, *per se* entails a shift into the transnational legal order¹⁰³, or a *minima* towards a form of transnationality. MPA management becomes extraterritorial, or at least extraterritorialized, disputes may even escape the courts of the territorial State and be submitted to international commercial arbitration, thus effectively hampering the reality of any effective action by national claimants or even by the coastal State.

The case of the Phoenix Islands Protected Area (PIPA), an MPA announced in 2006 and finalized in 2008 by the Republic of Kiribati, is the best example of the realization of such a risk. It is a large no-take MPA that the State now intends to revoke in order to implement marine spatial planning¹⁰⁴; it is the result of a public-private partnership between Kiribati, a Small Island Developing State in the Pacific, and two private American institutions (New England Aquarium and Conservation International)¹⁰⁵, in a context characterized by its links with the exploitation of mineral resources¹⁰⁶. It was decided and implemented according to an anti-democratic process, through a

2016, <https://www.mdpi.com/2071-1050/8/12/1267>.

¹⁰³ AFFOLDER, N., “Looking for Law in Unusual Places: Cross-Border Diffusion of Environmental Norms”, *Transnational Environmental Law*, Vol. 7, No. 3, 2018, pp. 425-449, https://www.cambridge.org/core/services/aop-cambridgecore/content/view/743A30F183258158FAC8103303CAA0A/S2047102518000080a.pdf/looking_for_law_in_unusual_places_crossborder_diffusion_of_environmental_norms.pdf.

¹⁰⁴ The decision was announced in 2021, in relation with fishing interests and in a geopolitical context involving US and China rivalries, but so far it has not been implemented; “Kiribati lifts the closure of the Phoenix Islands Protected Area and replaces it with Marine Spatial Planning to sustainably use marine resources in the PIPA area”, *Pasifika Environments*, 17 November 2021, <https://pasifika.news/2021/11/government-of-kiribati-lifts-closure-of-phoenix-islands-protected-area/>, accessed 3 June 2024.

¹⁰⁵ ROTJAN, R. et al., “Establishment, Management, and Maintenance of the Phoenix Islands Protected Area”, in Johnson, M.L. and Sandell, J. (eds.), *Advances in Marine Biology*, Vol. 69, Oxford Academic Press, 2014, pp. 289-324.

¹⁰⁶ MALLIN, M-A.F., “From sea-level rise to seabed grabbing: The political economy of climate change in Kiribati”, *Marine Policy*, Vol. 97, 2018, pp. 244-252.

succession of legal acts that are directly or indirectly part of transnational law: first, the act of creation of the trust drafted by a Boston law firm and only formally adopted by the Parliament; then, a conservation agreement, which is in reality a transnational contract for which the Parliament was not even consulted, and whose litigation is not subject to the jurisdiction of the State but to international commercial arbitration¹⁰⁷. The situation here goes beyond transnationality, because the renunciation of sovereignty represents a shift into the transnational legal order and reaches an additional level, since the legal acts do not provide for their reversibility and remain confidential. However, in more recent examples, the process is actually supplemented by a *financialization of conservation*.

b. A financialization of conservation

The example of the Seychelles is a textbook case¹⁰⁸, as it is emblematic of the contemporary dynamic of financialization¹⁰⁹; even in the absence of a transnational contract, the MSP and the creation of MPAs covering around 30% of the EEZ, including 15% as no-take, is the counterpart of a debt swap¹¹⁰ operated by an ENGO, The Nature Conservancy, but the process is

¹⁰⁷ MALLIN, M-A.F., STOLZ, D.C., THOMPSON, B.S. and BARBESGAARD, M., “In oceans we trust: Conservation, philanthropy, and the political economy of the Phoenix Islands Protected Area”, *Marine Policy*, Vol. 107, 2019; SHELLEY, P., “Contracting for Conservation in the Central Pacific: An Overview of the Phoenix Islands Protected Area”, *Proceedings of the Annual Meeting of the American Society of International Law*, Vol. 106, 2012, pp. 511-517.

¹⁰⁸ BENZAKEN, D., ADAM, J-P., VIRIDIN, J. and VOYER, M., “From concept to practice: financing sustainable blue economy in Small Island Developing States, lessons learnt from the Seychelles experience”, *Marine Policy*, Vol. 163, 2024; BENZAKEN, D., VOYER, M., POUPONNEAU, A. and HANICH, Q., “Good governance for sustainable blue economy in small islands: Lessons learned from the Seychelles experience”, *Frontiers in Political Science*, Vol. 4, 2022, <https://www.frontiersin.org/articles/10.3389/fpos.2022.1040318/full>; BOOTH, M. and BROOKS, C.M., “Financing marine conservation from restructured debt: a case study of the Seychelles”, *Frontiers in Marine Science*, Vol. 10, 2023, <https://www.frontiersin.org/articles/10.3389/fmars.2023.899256/full>.

¹⁰⁹ STANDING, A., “The financialization of conservation The case of debt swaps for the oceans”, *TNI*, 21 November 2022, <https://www.tni.org/en/article/the-financialization-of-conservation>, accessed 3 June 2024.

¹¹⁰ The concept has been coined by WWF Vice-President, Dr Thomas Lovejoy, in 1984, and the first debt-for-nature swaps were concluded in 1987 between Conservation International and Bolivia, then between WWF and Ecuador. BRETON-LE GOFF, G., “Echange Dette-Contre-Nature: Un Instrument Utile de Protection de l’Environnement?”, *Canadian Yearbook of International Law*, Vol. 36, 1998, pp. 227-278; GIBSON, J.E. and CURTIS, R.K., “A Debt-for-

complemented by the financialization of the associated ecosystem services¹¹¹. On the one hand, the trust fund set up to manage MSP, and MPAs, was capitalized and invested on the financial markets, and on the other hand, the Seychelles issued so-called sovereign blue bonds, backed by the World Bank, which were privately placed with three American impact funds, *i.e.* investors presenting themselves as socially responsible. The result is not only a private appropriation of part of Seychelles public domain, but also a capitalization directly based on it, and operated for the benefit of private interests, whether represented within the NGO or subscribers to the blue bond. Furthermore, the debt swap does not cancel the debt, and the Seychelles government will have to repay it to the trust fund, with interest, over ten and twenty years; and the same applies obviously to the blue bonds subscribed by the impact funds.

The strategy deployed in the Seychelles was initially conceived by a highly controversial ENGO, the Nature Conservancy (TNC)¹¹² as a model to be replicated¹¹³. The use of debt swaps and blue bonds was also presented, by other ENGOs and the world of finance, both private and public, as a project aimed at the development of a global conservation finance industry¹¹⁴. In 2018, TNC announced what it called its “audacious plan”¹¹⁵, dedicated to debt swap projects with tropical coastal and Small Island Developing States; the plan was presented in 2021 as including more than 20 States, such as Kenya, Ecuador,

Nature Blueprint”, *Columbia Journal of Transnational Law*, Vol. 28, No. 2, 1990, pp. 331-412; THAPA, D., “Debt-for-nature Swaps: an overview”, *International Journal of Sustainable Development & World Ecology*, Vol. 5, No. 4, 1998, pp. 249-262; and, more recently, FRESNILLO, I., “Miracle or mirage? Are debt swaps really a silver bullet?”, *European Network on Debt and Development*, 2023, https://www.eurodad.org/miracle_or_mirage, accessed 3 June 2024.

¹¹¹ MCGOWAN, J. et al., “Prioritizing debt conversion opportunities for marine conservation”, *Conservation Biology*, Vol. 34, No. 5, 2020, pp. 1065-1075, <https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/cobi.13540>.

¹¹² SEZNEC, E., “Main basse sur les Seychelles”, *Revue XXI*, No. 48, 2019, pp. 145-155.

¹¹³ Ros, N., “Les Seychelles, laboratoire de la privatisation des mers”, *Neptunus*, Vol. 26, No. 1, 2020, <https://cdmo.univ-nantes.fr/fr/publications/neptunus-e-revue>.

¹¹⁴ STANDING, A., “Understanding the conservation finance industry”, *CFEA*, 14 December 2021, <https://www.cffacape.org/publications-blog/understanding-the-conservation-finance-industry>, accessed 3 June 2024.

¹¹⁵ TNC, “Blue Bonds: An Audacious Plan to Save the World’s Ocean”, 27 July 2023, <https://www.nature.org/en-us/what-we-do/our-insights/perspectives/an-audacious-plan-to-save-the-worlds-oceans/>, accessed 3 June 2024.

Saint Lucia, and Barbados. In 2021, TNC finalized its second debt swap/blue bonds project¹¹⁶, associated with conservation counterparts, such as MSP and the traditional 30% of MPAs, with Belize¹¹⁷. In 2022, another debt swap/blue bonds deal has been concluded between TNC and Barbados, on the same model¹¹⁸. More recently a new but similar debt swap/blue bonds project has been concluded in July 2023, between TNC¹¹⁹ and Gabon¹²⁰. In May 2023, another ENGO involved in the privatization of the seas and blue colonialism, Pew, has for the first time also concluded a debt swap with Ecuador, in order to fund “perpetual conservation” in the Galapagos Marine Reserve¹²¹.

All these projects of financialization have been realized in collaboration with the Crédit Suisse, with investment guarantees of the US government’s Development Finance Corporation (DFC)¹²², and the support of the Inter-American Development Bank and the World Bank. Under the pretext of protecting biodiversity and combating climate change, this new model of

¹¹⁶ TNC, “How Belize is Transforming the Caribbean”, 4 November 2021, <https://www.nature.org/en-us/what-we-do/our-insights/perspectives/belize-transforming-caribbean-blue-bond/>, accessed 3 June 2024.

¹¹⁷ STANDING, A., “Debt-for-nature swaps and the oceans: The Belize Blue Bond”, *CFFA*, 15 March 2022, <https://www.cffacape.org/publications-blog/debt-for-nature-swaps-and-the-oceans-the-belize-blue-bond>, accessed 3 June 2024.

¹¹⁸ TNC, “The Nature Conservancy Announces Its Third Global Debt Conversion in Barbados”, 21 September 2022, <https://www.nature.org/en-us/newsroom/tnc-announces-barbados-blue-bonds-debt-conversion/>, accessed 3 June 2024; TNC, “Case Study Barbados blue bonds for ocean conservation”, <https://www.nature.org/content/dam/tnc/nature/en/documents/TNC-Barbados-Debt-Conversion-Case-Study.pdf>, accessed 3 June 2024.

¹¹⁹ TNC, “The Nature Conservancy Announces Debt Conversion for Ocean Conservation in Gabon, First Ever in Mainland Africa”, 14 August 2023, <https://www.nature.org/en-us/newsroom/tnc-announces-debt-conversion-for-ocean-conservation-in-gabon/>, accessed 3 June 2024.

¹²⁰ STANDING, A., “Gabon’s Odious Debt-for-ocean Swap: The implications for ocean governance”, *CFFA*, 15 November 2023, <https://www.cffacape.org/publications-blog/gabon-debt-ocean-swap-tnc>, accessed 3 June 2024.

¹²¹ PEW, “To Protect Galápagos Islands, Ecuador Turns to Innovative Financing Debt conversion will fund perpetual conservation of renowned marine habitat”, May 2023, https://www.pewtrusts.org/-/media/assets/2023/09/to_protect_galapagos_ecuador_turns_to_innovative_funding.pdf, accessed 3 June 2024.

¹²² Cf. for the last example, Galapagos Islands, <https://www.dfc.gov/investment-story/empowering-galapagos-marine-conservation>, accessed 3 June 2024.

financial governance is clearly *promoting a globalized neocolonialism*.

B. Promoting a globalized neocolonialism

Even if State interests are naturally also involved in such a process of privatization, the evolution is evident, in the current context of collusion between liberalism and conservationism, from *State colonialism* (a) to *blue colonialism* (b).

a. From State colonialism

The Chagos case illustrates the persistence of State colonialism, linked to the privatization of maritime areas through no-take MPAs; it's even a textbook case. The affair is now relatively well known, particularly because of the legal consequences to which the United Kingdom's actions have given rise, especially before the Permanent Court of Arbitration¹²³ and the International Court of Justice¹²⁴.

In 2010, the United Kingdom made public its decision to establish a large no-take marine protected area around the Chagos Archipelago, to be managed by the Chagos Conservation Trust, justifying it in terms of marine biodiversity conservation and as an important contribution by the UK to its international commitments. As revealed by a WikiLeaks cable¹²⁵, the proclamation of such an MPA over the entire extent of the corresponding EEZ, with the exception of the three-mile zone around Diego Garcia, was in reality aimed less at protecting biodiversity than at paralyzing and even annihilating the right of the deported native populations, as well as that of their descendants, to return to their islands, thus depriving the Chagossians of any economic means of subsistence, in order to allow the renewal of the American concession on Diego Garcia¹²⁶. However, this MPA project had been initiated in 2009

¹²³ PCA, *Chagos Marine Protected Area Arbitration* (Mauritius v. United Kingdom), 18 March 2015, <https://www.pcacases.com/pcadocs/MU-UK%2020150318%20Award.pdf>, accessed 3 June 2024.

¹²⁴ ICJ, Advisory Opinion, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, 25 February 2019, <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>, accessed 3 June 2024.

¹²⁵ "HMG floats proposal for marine reserve covering the Chagos archipelago (British Indian Ocean Territory)", *Wikileaks*, 15 May 2009, https://wikileaks.org/plusd/cables/09LON-DON1156_a.html, accessed 3 June 2024.

¹²⁶ DE SANTO, E.M., JONES, P.J.S. and MILLER, A.M.M., "Fortress conservation at sea: a commentary on the Chagos MPA", *Marine Policy*, Vol. 35, 2011, pp. 258-260; MONEBHURRUN, N., "Creating Marine Protected

by private actors in the framework of a public-private partnership between one, or even two, superpowers (United Kingdom and United States) and a network of ENGOs, The Chagos Environment Network, bringing together nine organizations dedicated to conservation or science¹²⁷, at the initiative and under the leadership of the Pew Environment Group, in connection with the Pew Foundation, one of the most powerful charitable trusts, fellow traveler of all American governments and a major player in the private governance of oceans and seas.

In its Advisory Opinion of 25 February 2019, on the *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*, the ICJ has concluded first “that, as a result of the Chagos Archipelago’s unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968”¹²⁸ and, in consequence, that “the United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State”¹²⁹. The Chagos case is thus characterized by the perpetuation of a true colonial situation¹³⁰ comforted by a manifestation of blue colonialism, more effectively

Areas to assert territorial jurisdiction against the Right of Abode of Native Populations: The Case of the Chagos Archipelago”, in Cinelli, C. and Vázquez Gómez, E.M. (ed.), *Regional Strategies to Maritime Security: a Comparative Perspective*, Tirant lo Blanch, Valencia, 2014, pp. 79-99, <http://www.isgi.cnr.it/wp-content/uploads/2017/10/MARSAFENET-Editorial-Regional-Strategies-to-Maritime-Security.pdf>; SAND, P., “The Chagos Archipelago - Footprint of Empire, or World Heritage?”, *Environmental Policy and Law*, 2010, pp. 232-242; SAND, P., “The Chagos Archipelago Cases: Nature Conservation Between Human Rights and Power Politics”, *The Global Community Yearbook of International Law & Jurisprudence*, 2013, pp. 125-150, <https://ukhumanrightsblog.com/wp-content/uploads/2014/04/sand-gcybilj2-copy.pdf>.

¹²⁷ The Chagos Conservation Trust (CCT), The Linnean Society of London, Pew Environment Group, The Royal Society for the Protection of Birds (RSPB), The Zoological Society of London (ZSL), The Marine Conservation Society (MCS), Royal Botanic Gardens Kew, Blue Marine Foundation, and Professor Charles Sheppard of Warwick University.

¹²⁸ ICJ, Advisory Opinion, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, 25 February 2019, p. 137, para. 174, <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>, accessed 3 June 2024.

¹²⁹ ICJ, Advisory Opinion, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, 25 February 2019, p. 138, para. 177, <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>, accessed 3 June 2024.

¹³⁰ SANDS, Ph., “Colonialism: A Short History of International Law in Five Acts”, *Collected Courses of The Hague Academy of International Law*, Vol. 431, 2023, pp. 285-410.

motivated by geopolitical considerations than deployed in the service of the dominant economic model.

If the Chagos are often described as an “unsinkable aircraft carrier”¹³¹, the Galapagos Archipelago, that has just been placed under a “perpetual conservation” regime by Pew¹³², was also qualified as a “natural aircraft carrier”, in the context of the 2019 agreement, whose exact content was kept secret, between Equator and the United States in order to accommodate US military aircrafts, in the name of maritime cooperation between the two States¹³³. Whereas the U.S. has always had a strong interest in the Galapagos and even had a military base there before the Ecuadorian Constitution forbade it in 2008¹³⁴, the combination of similarities with the Chagos case is striking and testifies to the powerful interweaving that associates geopolitics to *blue colonialism*.

b. To blue colonialism

Even if they have close connections, blue colonialism is not a State

¹³¹ TOSSINI, J.V., “The British Indian Ocean Territory – An unsinkable aircraft carrier in the form of Diego Garcia”, *United Kingdom Defense Journal*, 1 September 2018, <https://ukdefencejournal.org.uk/the-british-indian-ocean-territory-an-unsinkable-aircraft-carrier-in-the-form-of-diego-garcia/>, accessed 3 June 2024; “Chagos: Londres fait état de ‘Serious Concerns’ des US”, *Le Mauricien*, 23 March 2023, <https://www.lemauricien.com/le-mauricien/souverainete-territoriale-chagos-londres-fait-etat-de-serious-concerns-des-us/559636/>, accessed 3 June 2024; DIVER, T., “UK drops plans to hand Chagos Islands back to Mauritius”, *The Telegraph*, 1 December 2023.

¹³² Pew’s investment in this project began in 2019; Pew, “To Protect Galápagos Islands, Ecuador Turns to Innovative Financing Debt conversion will fund perpetual conservation of renowned marine habitat”, May 2023, https://www.pewtrusts.org/-/media/assets/2023/09/to_protect_galapagos_ecuador_turns_to_innovative_funding.pdf, accessed 3 June 2024.

¹³³ BUTRAGO, L., “¿Las islas Galápagos se convertirán en un portaaviones de EE.UU. en Ecuador?”, *El Ciudadano.com*, 15 June 2019, <https://www.elciudadano.com/latinoamerica/las-islas-galapagos-se-convertiran-en-un-portaaviones-de-ee-uu-en-ecuador/06/15/>, accessed 3 June 2024; COLLYNS, D., “Galápagos Islands: outcry after Ecuador allows US military to use airstrip”, *The Guardian*, 17 June 2019, <https://www.theguardian.com/world/2019/jun/17/galapagos-islands-ecuador-us-military-airstrip>, accessed 3 June 2024; “Ecuador: Portaaviones natural”, *Revista Crisis*, 16 June 2019, <https://www.revistacrisis.com/editorial/ecuador-portaaviones-natural>, accessed 3 June 2024.

¹³⁴ TAMAYO, E. and SERRANO, H., “Galápagos: ¿de patrimonio de la humanidad a portaviones de EEUU?”, *Diario y Radio Universidad Chile*, 2 July 2019, <https://radio.uchile.cl/2019/07/02/galapagos-de-patrimonio-de-la-humanidad-a-portaviones-de-eeuu/>, accessed 3 June 2024.

colonialism. The privatization of the seas serves as a vector of a globalized neocolonialism that is an ecolonialism, combining ecology and economy. For its victims, blue colonialism appears in many ways more insidious than colonization, which is now contrary to the fundamental principles of International Law, and therefore easily denounced, because legally and morally unjustifiable.

Blue colonialism is above all a transnational colonialism since it is primarily developed by private actors, and its manifestations and concrete consequences are not strictly speaking International Law topics; it legally proceeds from public-private partnerships that allow for the total or partial extraterritorialization, according to a logic reminiscent of capitulations, of the system of governance as well as of the litigation that it induces, while being, moreover, largely constrained, not to say leonine, which is reminiscent of unequal treaties.

Blue colonialism can also be doubly qualified as ecolonialism, because it is based both on ecological arguments, notably the conservation of biodiversity and the fight against climate change, and on promises of economic development, with reference to the blue economy and blue growth. If it thus appears to be characterized by a seemingly unnatural alliance between conservationism and economic liberalism, it should not be forgotten that these doctrines are, on the contrary, complementary, since the development of large MPAs opportunely makes it possible to avoid any attempt to challenge the liberal exploitation of the oceans and their resources. As on land, the logic of setting up parks in reality responds to multiple purposes, offsetting and not really questioning the economic model, frantically protecting elsewhere what has already been destroyed to support growth, developing tourist destinations often in defiance of any carbon balance, and securing strategic access to mineral resources.

Blue colonialism is actually emblematic of the globalized world responsible for the Anthropocene, in terms of actors, objectives, rationale. The conservationist argument aimed almost everywhere at substituting tourism¹³⁵ for fishing is well known. It is based on the valuation and commercialization

¹³⁵ Diving tourism is an interesting example. Cf. BRETAGNE, L., “Penser la plongée au prisme de la préservation de l’environnement marin”, *Mémoire Master 2*, Science Po, Toulouse, 2023; MORSE, M., “Preferential selection of marine protected areas by the recreational scuba diving industry”, *Marine Policy*, Vol. 159, 2024.

of ecosystem services provided by marine spaces¹³⁶; tourism activity is then presented as an ecological-economic alternative, a source of employment and potential development, without taking into account the right of local populations to continue to exploit their fishing resources in a sustainable manner, perpetuating their traditions and securing their food, but also to live on a coastline preserved from hotel urbanization and respecting their ancestral usage rights, which are in fact often confiscated by tourism. Securing access to mineral resources, classically hydrocarbons and prospectively strategic minerals and rare earths, is certainly more difficult to justify except by reference to the ecological transition, blue economy and marine spatial planning; although it constitutes an essential parameter, this explains why this dimension is often little publicized and generally carried out in a discreet manner. Certain interests linked to the exploitation of marine genetic resources may also be at stake; and such a globalized neocolonialism may also only be justified by the need for compensation. Blue colonialism is in fact part of a wider framework, as evidenced by the CoP28 negotiations¹³⁷, and the current tendency to transfer the burden of the sacrifices made necessary onto those who are not responsible for it¹³⁸.

What is certain is that it is not local populations, especially if they are indigenous, who benefit from the exploitation of their natural resources, nor from the positive aspects of the blue economy and no-take MPAs, while they generally suffer all the negative impacts of blue colonialism: land and

¹³⁶ CASEY, J.F. and SCHUHMAN, P.W., “PACT or no PACT are tourists willing to contribute to the Protected Areas Conservation Trust in order to enhance marine resource conservation in Belize?”, *Marine Policy*, Vol. 101, 2019, pp. 8-14; WHITELAW, P.A., KING, B.E.M. and TOLKACH, D., “Protected areas, conservation and tourism – financing the sustainable dream”, *Journal of Sustainable Tourism*, Vol. 22, No. 4, 2014, pp. 584-603.

¹³⁷ WOESSNER, G., “À la COP28, la brutale prise de conscience d’un renversement géopolitique”, *Le Point*, 5 December 2023, https://www.lepoint.fr/monde/a-la-cop28-la-brutale-prise-de-conscience-d-un-renversement-geopolitique-05-12-2023-2545736_24.php, accessed 3 June 2024.

¹³⁸ HAMOUCHENE, H., “En Tunisie, Algérie et Maroc, transition énergétique rime avec néocolonialisme”, *Reporterre*, 11 December 2023, <https://reporterre.net/En-Tunisie-Algerie-et-Maroc-transition-energetique-rime-avec-neocolonialisme>, accessed 3 June 2024; HAMOUCHÈNE, H. and SANDWELL, K., (dir.), *Face au colonialisme vert: Transition énergétique et justice climatique en Afrique du Nord*, Syllepse TNI, 2023.

sea grabbing¹³⁹, eviction, pollution, impoverishment, de-socialization, identity deficit, cultural asphyxiation; if small fishermen¹⁴⁰ are often the first victims of blue colonialism, the coastal and national communities, as well as the State and future generations¹⁴¹ are actually all affected.

IV. CONCLUSION

The hegemony of biodiversity conservation and climate change arguments makes denouncing blue colonialism difficult if not impossible, and even inaudible. Victims can only denounce, often in vain, what seems to them a plundering of their natural resources, an attempt to their way of life, and a blue injustice¹⁴². The marginalization of State as primary subject of Public International Law, its relative powerlessness in the face of transnationality, are also integral parts of blue colonialism; and the strategic error made by the international community is to underestimate the subsequent violations of the sovereign equality, in the name of the benefits it hopes to receive,

¹³⁹ BENNETT, N.J., GOVAN H. and SATTERFIELD, T., “Ocean grabbing”, *Marine Policy*, Vol. 57, 2015, pp. 61-68; Transnational Institute, *The Global Ocean Grab: A Primer*, 2 September 2014, <https://www.tni.org/en/publication/the-global-ocean-grab-a-primer>, accessed 3 June 2024.

¹⁴⁰ COHEN, Ph. J. et al., “Securing a Just Space for Small-Scale Fisheries in the Blue Economy”, *Frontiers in Marine Science*, Vol. 6, 2019, <https://www.frontiersin.org/articles/10.3389/fmars.2019.00171/full>; SHARMA, C. and RAJAGOPALAN, R., “Aires marines protégées et droits fonciers des communautés de pêcheurs, Entre terre et mer Quel avenir pour la pêche? Points de vue du Sud”, *Alternatives Sud*, Vol. 24, No. 1, 2017, pp. 199-218, https://www.cetri.be/IMG/pdf/asud_entre_terre_et_mer.pdf.

¹⁴¹ Ros, N., “Le droit fondamental des générations futures à la mer comme bien commun”, in Guillet, N. (dir.), *Mer et droits fondamentaux de la personne humaine*, LGDJ, Paris, 2022, pp. 151-176.

¹⁴² BENNETT, N.J., BLYTHE, J., WHITE, C.S. and CAMPERO, C., “Blue growth and blue justice: Ten risks and solutions for the ocean economy”, *Marine Policy*, Vol. 125, 2021; BLYTHE, J.L., “Blue justice: A review of emerging scholarship and resistance movements”, *Cambridge Prisms: Coastal Futures*, Vol. 1, 2023, pp. 1-12, <https://www.cambridge.org/core/journals/cambridge-prisms-coastal-futures/article/blue-justice-a-review-of-emerging-scholarship-and-resistance-movements/1C6826294C8F4429C58C6A4121E53B6D>; BENNETT, N.J., “Mainstreaming Equity and Justice in the Ocean”, *Frontiers in Marine Science*, Vol. 9, 2022, <https://www.frontiersin.org/articles/10.3389/fmars.2022.873572/full>; ERTÖR, I., “‘We are the oceans, we are the people!': fisher people's struggles for blue justice”, *The Journal of Peasant Studies*, 2021, pp. 1157-1186; ISAACS, M., “Is the Blue Justice concept a human rights agenda?”, *PLAAS*, 2019, <https://repository.uwc.ac.za/xmlui/bitstream/handle/10566/5087/POLICY%20BRIEF%2054-BLUE%20JUSTICE.pdf?sequence=1&isAllowed=y>, accessed 3 June 2024.

both economically and ecologically, and because the great majority of States and their inhabitants believe they are not concerned. However, privatization is already underway, albeit with a differentiated approach, in all maritime areas under national jurisdiction (MSP, MPA), international spaces (Area and high seas, Space)¹⁴³, and many sectors of international life (water, sovereign missions, armed conflicts)¹⁴⁴.

¹⁴³ About Area and high seas, Cf. ROS, N., “L’appropriation et la marchandisation des espaces maritimes et de leurs ressources”, in De Raulin, A. (dir.), *Le droit international et européen de la biodiversité*, L’Harmattan, Paris, 2024 (forthcoming) ; About Space, Cf. ACHILLEAS, Ph., “Le New Space ou la privatisation des ambitions spatiales des États – Réflexions sur le droit de l’espace à l’heure de l’innovation entrepreneuriale”, *Annuaire français de droit international*, Vol. 62, 2016, pp. 499-518, https://www.persee.fr/doc/afdi_0066-3085_2016_num_62_1_5036; DE FARAMIÑAN GILBERT, J.M., “La explotación de los recursos naturales en el espacio ultraterrestre”, *El Confidential*, 14 September 2023, https://blogs.elconfidencial.com/espana/blog-fide/2023-09-14/explotacion-recursos-naturales-espacio-ultraterrestre_3728813/, accessed 3 June 2024; MOVILLA PATEIRO, L., “¿Hacia un cambio de paradigma en el Derecho del espacio ultraterrestre?: los Acuerdos Artemisa”, *Revista Española de Derecho Internacional*, Vol. 73, No. 2, 2021, pp. 285-310; RAVILLON, L., “Les organisations internationales de télécommunications par satellite: vers une privatisation?”, *Annuaire français de droit international*, Vol. 44, 1998, pp. 533-551, https://www.persee.fr/doc/afdi_0066-3085_1998_num_44_1_3530; SFDI, *Le droit de l’espace et la privatisation des activités spatiales*, Pedone, Paris, 2003.

¹⁴⁴ About water, Cf. LAVOCAT, L., “À Vittel, Nestlé privatise la nappe phréatique”, *Reporterre*, 26 May 2018, <https://reporterre.net/A-Vittel-Nestle-privatise-la-nappe-phreatique>, accessed 3 June 2024; Lavocat, L. and RICHARD, D., “En pleine sécheresse, Cristaline veut privatiser une nappe phréatique”, *Reporterre*, 5 December 2023, <https://reporterre.net/En-pleine-secheresse-Cristaline-veut-privatiser-une-nappe-phreatique>, accessed 3 June 2024 ; About sovereign missions, Cf. REMY, C., “Les sociétés militaires privées dans la lutte contre la piraterie”, *Pyramides Revue du Centre d’études et de recherches en administration publique*, 2011, pp. 119-138, <https://journals.openedition.org/pyramides/793>; TEPHANY, Y., “La privatisation de la police des pêches”, *Neptunus*, Vol. 29, No. 3, 2023, <https://cdmo.univ-nantes.fr/fr/publications/neptunus-e-revue>; SCHATZ, V.J., “Marine Fisheries Law Enforcement Partnerships in Waters under National Jurisdiction: The Legal Framework for Inter-State Cooperation and Public-Private Partnerships with Nongovernmental Organizations and Private Security Companies”, *Ocean Yearbook*, Vol. 32, 2018, pp. 329-362, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2987883; About armed conflicts, Cf. LE PAUTREMAT, P., “Mercenariat et sociétés militaires privées : expressions divergentes de la privatisation des conflits?”, *Inflexions*, No. 1, 2007, pp. 137-150, <https://www.cairn.info/revue-inflexions-2007-1-page-137.htm>.

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