1 Introduction

1. Objectives of the Study

‘Permanent sovereignty over natural resources’ is one of the more controversial new principles of international law that have evolved since World War Two. During this period the decolonization process has taken place and newly-independent States have sought to develop new principles and rules of international law in order to assert and strengthen their position in international relations and to promote their social and economic development. The principle of permanent sovereignty over natural resources was introduced in United Nations debates in order to underscore the claim of colonial peoples and developing countries to the right to enjoy the benefits of resource exploitation and in order to allow ‘inequitable’ legal arrangements, under which foreign investors had obtained title to exploit resources in the past, to be altered or even to be annulled ab initio, because their very essence conflicted with the concept of permanent sovereignty. Industrialized countries opposed this by reference to the principle of pacta sunt servanda and respect for acquired rights.

This study has three main objectives. Firstly, to map the evolution of permanent sovereignty over natural resources (hereafter permanent sovereignty or PSNR) from a political claim to a principle of international law. The hypothesis is that resolutions of the political organs of the United Nations have been instrumental in this. Secondly, to show that the principle of permanent sovereignty has not evolved in isolation but as part and parcel of other trends in international law. Hence, the study entails excursions through various branches of international law, such as international investment law, the law of the sea and international environmental law. Finally, to demonstrate that, apart from rights, duties relating to resource management can also be inferred and that under modern international law they are being given increasing significance. Evidence has been assembled and assessed to support this position.

The key words featuring in the subject of this study are: sovereignty, permanent and natural resources. Ever since the Treaty of Augsburg (1555) and the Peace of Westphalia (1648) sovereignty has served as the backbone of international law, or—as Brownlie phrases it—as ‘the basic constitutional doctrine of the

1 Röling (1960, Chapter III); Falk and Black (1969: see particularly pp. 43–48).
law of nations’; but sovereignty has also been described as ‘the most glittering and controversial notion in the history, doctrine and practice of international law’. In the context of discussion on sovereignty over natural resources, various adjectives have been used to emphasize its hard-core status: in addition to permanent, also ‘absolute’, ‘inalienable’, ‘free’ and ‘full’. However, State sovereignty—equated as it is with non-interference, with domestic jurisdiction and discretion in the legal sphere—has become increasingly qualified. Legally, our planet may be split up into almost 200 sovereign States (apart from some international areas, such as the high seas, the deep sea-bed and perhaps Antarctica), but in practice the world is now recognized as being interdependent on many different levels. Economic and energy crises, speculation in the international money market, deforestation, acid rain, pollution of international waters, the threat of global warming, damage to the ozone layer and loss of biodiversity, all these and other issues provide compelling evidence of the fact that in real life States are no longer masters of their own destiny. States are intertwined in a network of treaties and other forms of international co-operation, which qualify the range of matters that—according to Article 2.7 of the UN Charter—are ‘essentially within the domestic jurisdiction of the State’. Hence, in an age of globalization, drastic political change, resource depletion and environmental degradation, a first question is ‘what is permanent sovereignty?’ To what extent have claims to ‘permanent’, ‘full’, ‘absolute’ and ‘inalienable’ sovereignty over natural resources become tempered or even replaced by demands for ‘restricted’, ‘relative’ or ‘functional’ sovereignty? In addition, from a political perspective, the State is said to be riddled with disease, its role in economic affairs is being reviewed and self-determination of peoples is being revitalized. But does this imply that sovereignty is ‘in abeyance’? Moreover, the definition of natural resources is no longer as clear cut as it used to be. Until recently, it tended to be economically oriented, focusing on the use to be made of it by humankind, thus neglecting the intrinsic value of natural resources and the integrity of ecological systems. It is note-

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5 Berman (1988: 105).

6 It may be illustrative to refer to Adam Smith, who pointed out in his Wealth of Nations (1776, 4th ed. in 1850: xxxii):

... water, leaves, skins, and other spontaneous productions of nature, have no value, except what they owe to the labour acquired for their appropriation. The value of the water to a man on the bank of a river depends on the labour necessary to raise it to his lips; and its value, when carried ten or twenty miles off, is equally dependent on the labour necessary to convey it there. Nature is not niggard or parsimonious. Her rude
worthy, however, that the UN debate on sovereignty over natural resources has always dealt with ‘natural wealth’ as well as with natural resources. Occasionally, attempts have been made to broaden the range of matters to which permanent sovereignty applies to include ‘wealth’ and ‘economic activities’. This issue is addressed in section 5 of this introductory chapter.

2. Genesis of Permanent Sovereignty as a Principle of International Law

In the postwar era permanent sovereignty over natural resources evolved as a new principle of international economic law. Since the early 1950s this principle was advocated by developing countries in an effort to secure, for those peoples still living under colonial rule, the benefits arising from the exploitation of natural resources within their territories and to provide newly-independent States with a legal shield against infringement of their economic sovereignty as a result of property rights or contractual rights claimed by other States or foreign companies. Although permanent sovereignty was soon to gain currency in international law, its birth was far from easy. Without doubt, one main reason for this was that the provenance of the principle lay in the UN General Assembly. This allowed its development to be more rapid than it would have been through more conventional methods of law-making, such as evolving State practice or diplomatic conferences. The legal merits of the development of international law through resolutions of political organs have always been a major source of doctrinal controversy.\textsuperscript{7} Another reason for the difficult general acceptance relates to the subject matter itself: permanent sovereignty touches on such highly controversial topics as expropriation of foreign property and compensation for such acts, standards of treatment of foreign investors (the national standard versus the international minimum standard) and State succession. These matters are at the heart of official relations between States and at the centre of international and domestic political disputes, North-South confrontations, and interesting doctrinal duels amongst international lawyers. Indeed, permanent sovereignty has not developed in isolation, but as an instrument used during or as a reaction to international political events. These

have included sensitive nationalization cases, such as the take-over of the Anglo-Iranian Oil Company (1951); the Suez Canal Company (1956); Dutch property in Indonesia (1958); the Chilean copper industry (1972); and the Libyan oil industry (1976–77). These events also included unprecedented political processes, such as the struggles of colonial peoples for political self-determination and the efforts of developing States to pursue economic self-determination and to establish a New International Economic Order. Thus, the principle of permanent sovereignty was very much part and parcel of the development of ‘United Nations law’.

3. The International Context

Efforts in the immediate post-World War Two period to develop the principle of permanent sovereignty were largely derived from and inspired by the following important concerns and developments:

- concerns about the scarcity and optimum utilization of natural resources. During the Second World War, the Allied Powers became painfully aware of their dependence on overseas raw materials and of the vulnerability of their supply lines. In the immediate post-war period this led to initiatives for natural resource development and full utilization of resources as well as to proposals that every State should take into account the interests of other States and of the world economy as a whole;

- deteriorating terms of trade of developing countries. The trend in the prices of industrial products continued upward while prices of raw materials sharply fluctuated around an overall downward trend. During the early 1950s it became obvious that the 1948 Havana Charter, which resulted from the UN Conference

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8 Akinsanya (1980: 3).
9 See VerLoren van Themaat (1981) and Verwey (1981a).
10 The term ‘United Nations law’ has been used on various occasions by Schachter. See Schachter (1991: 452) and (1994: 1).
11 For example, the 1947 International Timber Conference of the Food and Agriculture Organization and the 1949 UN Scientific Conference on the Conservation and Effective Utilization of Natural Resources.
12 See the preamble of the General Agreement on Tariffs and Trade (1947), in which the Contracting Parties recognize that their relations in the field of trade and economic endeavour should be conducted with a view to ‘... developing the full use of the resources of the world and expanding the production and exchange of goods’.
on Trade and Employment at Havana and which sought to provide for regulatory mechanisms for commodity prices, would not come into effect.\textsuperscript{14} The Economic Commission for Latin America (ECLA) at an early stage drew attention to the terms of trade which were so problematic for developing countries;

- **promotion and protection of foreign investment.** At the Havana Conference, agreement had been reached on a substantive article dealing with the treatment of foreign investment.\textsuperscript{15} It recognized, on the one hand, the great value of such investment in promoting economic development and social progress and it requested member States to provide adequate security and to avoid discrimination. On the other hand, it provided for certain rights of host States, including the right to non-interference in their internal affairs and domestic policies and the right to determine whether, to what extent, and on what terms they would admit foreign investment in the future. In the early UN debates, different opinions as to the role of foreign investment in the development process were voiced. Western countries, and also countries such as India and Haiti, openly acknowledged the positive role of foreign investment, while others, for example Bolivia, Uruguay and Colombia, explicitly referred to its adverse effects;

- **nationalization.** The early debates in the United Nations on permanent sovereignty took place at a time when memories of the Mexican oil nationalizations of 1938 were still fresh, when the Anglo-Iranian Oil Company dispute (1950–52) was still a ‘hot issue’, and nationalizations also were taking place or were seriously considered in Latin America. For example, in 1951, Bolivia nationalized its tin mines, Guatemala was about to launch an agrarian land reform programme under which it would take over United Fruit Company properties, and other Latin American countries (including Chile and Argentina) were considering similar action. Later in the decade, there were dramatic experiences arising from the nationalization of the Suez Canal Company (in 1956) and of Dutch property in Indonesia (in 1958);

- **Cold War rivalry** added to the heat of the debate. The ideological competition between the two major social and economic systems had a profound impact on the debate on permanent sovereignty. There were significant opposing views on the rights of colonial peoples, on issues of State succession, on the right to property protection and the respect for acquired rights, on the role of foreign investment in the development process and on the inclusion of the right to self-determination and of socio-economic rights in international human rights law;

\textsuperscript{14} On the Havana Charter for an International Trade Organization, see Wilcox (1949).

• the demand for economic independence and strengthening of sovereignty. The decolonization process entailed a claim to economic self-determination. This came especially to the fore in the context of drafting an article on the right of peoples to self-determination to be included in the Human Rights Covenants. In addition, Latin American countries grew increasingly unhappy about their unequal relationship with the USA and wanted to demonstrate their independence. Furthermore, in an effort to avoid having to take sides in the evolving Cold War between the Western and Eastern blocs, the newly-independent countries of Asia and Africa and liberation movements in Non-Self-Governing Territories combined forces in the search for a politically and economically independent position, later termed ‘non-alignment’;\textsuperscript{16} and

• the formulation of human rights. In the UN Commission on Human Rights, the Economic and Social Council (ECOSOC) and the Third Committee (charged with social, humanitarian and social affairs) of the UN General Assembly (UNGA), the question was discussed whether the right to self-determination included an economic corollary, in particular the right of peoples and nations to have free disposal of their natural wealth and resources.

All these developments exerted a profound influence on international politics during the formative years of the principle of permanent sovereignty and in general terms induced major changes, both in international law—which progressively developed, in the words of Röling, ‘from a European-oriented law towards a truly universal law’\textsuperscript{17}—and in the United Nations as an organization, where emphasis shifted from peace and security issues to decolonization and to the promotion of development in developing countries.\textsuperscript{18}

4. The Subjects: A Widening and a Contracting Circle

A basic question concerns who is entitled to and endowed with the legal capacity to dispose freely of natural resources. Of course, the discussion on the subjects of the right to permanent sovereignty cannot be dissociated from the general discussion on the subjects of international law. In general, in international law there has been a gradual extension of the circle of subjects.\textsuperscript{19} In 1912 Oppenheim could still write: ‘Since the law of nations is based on the common consent of individual

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  \item[\textsuperscript{16}] See for the background of the Non-Aligned Movement Syatauw (1961: 16) and (1994: 132–35).
  \item[\textsuperscript{17}] Röling (1960: 68–99) and (1982: 181–209).
  \item[\textsuperscript{18}] Among a vast body of literature see the pioneering book of Claude (1967: 49–124).
  \item[\textsuperscript{19}] See in general terms Mosler (1984) and Menon (1990).
\end{itemize}
\end{footnotesize}
States, and not of individual human beings, States solely and exclusively are subjects of international law.\(^{20}\)

However, although States are still the primary subjects of international law today, they are no longer the only subjects. In the course of this century additional subjects have obtained legal personality under international law. In its 1949 Advisory Opinion in the *Reparation Case*, the International Court of Justice (ICJ) concluded that the United Nations is ‘an international person’, and ‘is a subject of international law and capable of possessing rights and duties’.\(^{21}\) Other intergovernmental organizations have since been treated similarly. The circle has further widened due to legal developments pertaining to the principle of self-determination of peoples and to human rights, which have endowed peoples and individuals with rights and obligations under international law. Furthermore, (transnational) corporations have obtained a limited, functional international personality,\(^{22}\) as evidenced by the procedures under the World Bank Convention on the International Settlement of Investment Disputes between States and Nationals of Other States\(^{23}\) and by provisions relating to international settlement of deep sea-bed mining disputes in the 1982 UN Convention on the Law of the Sea.\(^{24}\) However, it should be noted that this legal status is conditional since it depends on consent by the corporations’ home States. Finally, reference should be made to the development of the concept of ‘mankind’, or rather—as it is termed today—‘humankind’, which includes both present and future generations. In international law relating to the oceans, outer space and the global environment, rights and entitlements accrue to humankind as such.\(^{25}\)

The circle of subjects entitled to dispose of natural resources has changed considerably over the years. Initially, during the 1950s, the right to permanent sovereignty was alternatively vested in ‘peoples and nations’ and ‘underdeveloped countries’ due to the fact that permanent sovereignty had taken root in both the promotion of the economic development of ‘underdeveloped’ countries and the self-determination of peoples.\(^{26}\) As the decolonization process progressed the emphasis on ‘peoples’ and the connection with ‘self-determination’ diminished

\(^{20}\) Oppenheim (1912: 19).

\(^{21}\) *ICJ Reports 1949*, p. 174.

\(^{22}\) See Kokkini-Iatridou and de Waart (1986).

\(^{23}\) As reviewed in Chapter 6, section 3.

\(^{24}\) See in particular section 6 of Part XI of UNCLOS; see also Merrills (1991: Chapter 8) and Chapter 7, section 6 of this study.

\(^{25}\) See Chapters 7 and 8. Occasionally, the term ‘humanity’ is used, e.g., in the 1992 Biodiversity Convention.

\(^{26}\) GA Res. 523 (VI) and 626 (VII), 12 January 1952 and 21 December 1952.
and gradually shifted to ‘developing countries’, while during the 1970s ‘all States’ became the primary subjects of the right to permanent sovereignty. From the relevant resolutions and treaty provisions one can only infer that this increasingly ‘étatist’ orientation was tempered by a rising number of obligations incumbent on States, in particular the obligation to exercise permanent sovereignty in the national interest and for the well-being of ‘their peoples’. Recently, furthermore, the rights of indigenous peoples have become an issue, although these peoples feature as objects rather than as subjects of international law.\(^{27}\) During the 1970s and 1980s only peoples whose territories were under foreign occupation or under alien or colonial domination were identified as subjects of the right to permanent sovereignty and considered as deserving UN attention. For example, in 1974 the UN Council for Namibia formulated the right of ‘the people of Namibia’ to the natural wealth and resources of the territory of Namibia, which was called ‘their birthright’, and the Council appointed itself more or less as the new trustee of Namibia’s natural resources. In the same vein, the UNGA gave emphatic attention to a corresponding right of the Palestinian people. For a time, similar rights of particular States, such as some in Latin America and Arab areas under Israeli occupation, received special attention.\(^{28}\)

Yet, beyond doubt, during the 1970s and 1980s a clear tendency to confine the circle of permanent sovereignty subjects solely to States, that is all States, re-emerged. Both the UNGA’s Charter of Economic Rights and Duties of States (CERDS, 1974) and the Seoul Declaration (1986) of the International Law Association (ILA), a major non-governmental international law organization which includes lawyers from both industrialized and developing countries, exemplify this tendency: neither Article 2 of CERDS, nor section 5 of the Seoul Declaration, which deal with permanent sovereignty, contains any reference to ‘peoples’.\(^{29}\)

**Meaning of terms**

It can be inferred from relevant PSNR-related UN debates that the term *peoples* was originally meant to refer to those peoples which had not yet been able to exercise their right to political self-determination. This is not to say that after these peoples had exercised this right, States were free to do with their natural resources whatever their governments saw fit. Various injunctions have been formulated according to which States have to exercise the right to permanent sovereignty in

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\(^{27}\) See section 3 of Chapter 10.

\(^{28}\) See Chapter 5 for three case studies.

the interest of their populations and to respect the rights of indigenous peoples to
the natural wealth and resources in their regions,30 where ‘peoples’ are objects
rather than subjects of international law. The extent to which the people in a re-
source-rich region of a State (for example, the province of Groningen in the Neth-
erlands) are entitled to (extra) benefit from resource exploitation in their region is
in principle a matter of domestic politics. International law is only relevant when
a State manifestly discriminates against a certain people and can thus no longer
claim to be ‘possessed of a government representing the whole people belonging
to the territory without distinction as to race, creed or colour’.31

In international law the term nation is often used as a synonym for ‘State’,
‘nation-State’ or ‘country’. For example, Article 1 of the UN Charter points out
that the purposes of the inter-State organization include ‘to develop friendly rela-
tions among nations’ and ‘to be a centre for harmonizing the actions of nations’.
In the social sciences the term ‘nation’ refers to a society of people united by a
common history, culture and consciousness:

... the vital binding force of the nation is variously derived from a strong sense
of its own history, its special religion, or its unique culture, including language. A
nation may exist as an historical community and a cultural nexus without political
autonomy or statehood.32

During the 1950s and 1960s reference to ‘nations’ as subjects of the right to per-
manent sovereignty was probably meant to reinforce the right of peoples to eco-
nomic self-determination, both prior to and after the exercise of their right to
political self-determination. Whatever its legal meaning may be, after the adoption
of the 1962 Declaration on permanent sovereignty, the word ‘nation’ was only
once included in a PSNR-related resolution, namely in GA Resolution 2692
(XXV), and we do not find it in any treaty. A justified conclusion is hence that
the term nation has lost its relevance as a subject of the right to permanent sover-
eignty.

The term State has a stable and well-defined meaning in international law.33
An authoritative definition of States is provided in the 1933 Montevideo Conven-

30 See Chapter 10, sections 2 and 3. See also Cassese (1976: 103).
31 GA Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly
Relations and Co-operation among States in accordance with the Charter of the United
Nations, principle V.7. 24 October 1970. See Röling (1985: 97–99) and de Waart (1994a:
73 and 1994c: 390).
32 J. Gould & W.L. Kolb (eds), Dictionary of the Social Sciences, New York/UNESCO
tion on Rights and Duties of States, adopted during the Seventh International Conference of American States. Article 1 reads:

The State as a person of international law should possess the following qualifications: (a) permanent population; (b) a defined territory; (c) a government; and (d) capacity to enter into relations with other States. 34

UN resolutions, in contrast to treaties, frequently refer to what was originally called ‘underdeveloped countries’ and, after 1960, developing countries. 35 From the debates on permanent sovereignty it has become obvious that these are generic terms meant to include all countries of Africa (before 1994 with the exception of South Africa), Asia (with the exception of Japan) and Latin America, in addition to some European countries such as Albania, Cyprus and Malta. The Vienna Conventions on State Succession introduce an additional sub-category in the PSNR-debate, namely newly-independent States and stipulate that agreements between the predecessor State and the newly-independent State must not infringe the principle of permanent sovereignty of any people. 36 The term newly-independent State is defined as ‘a successor State the territory of which, immediately before the date of the succession of States, was a dependent territory for the international relations of which the predecessor State was responsible’. 37

5. The Objects to Which Permanent Sovereignty Applies

An analysis of relevant PSNR resolutions shows a gradual extension of the range of resources and activities covered by the principle of permanent sovereignty: from (a) ‘natural resources’ and ‘natural wealth and resources’ (as from GA Res. 523, 1952); through (b) ‘natural resources, on land within their international boundaries, as well as those in the sea-bed, in the subsoil thereof, within their national jurisdiction and the superjacent waters’ (GA Res. 3016, 1972), (c) ‘natural resources, both terrestrial and marine, and all economic activities for the explo-

34 Convention on Rights and Duties of States, signed in Montevideo, 26 December 1933, 165 LNTS, p. 19.

35 For an identification of various (sub-)categories of developing countries, see Verwey (1983: 359–74).


itation of these resources’ (UNIDO II, 1975) and (d) ‘natural resources and all economic activities’ (GA Res. 3201, 1974); to (e) ‘all wealth, natural resources and economic activities’ (GA Res. 3281, CERDS, 1974). The last citation can be seen as the culmination of a series of PSNR claims. Only the resolutions on permanent sovereignty in the occupied Arab territories consistently employ the phrase ‘national resources’, both in their titles and their substantive paragraphs.

UN organs have not always consistently used specific phrases in a particular period. For example, the 1962 Declaration on Permanent Sovereignty over Natural Resources alternates, rather arbitrarily, between references to permanent sovereignty over ‘natural resources’ and ‘natural wealth and resources’; and the 1974 Declaration on the Establishment of a New International Economic Order (NIEO, GA Res. 3201, 1974) refers to permanent sovereignty over ‘natural resources and all economic activities’, while the accompanying NIEO Programme of Action (GA Res. 3202, 1974) refers to permanent sovereignty over ‘natural resources’ only.

Western countries and authors have consistently and strongly opposed the extension of the scope of permanent sovereignty beyond ‘natural wealth and resources’, although some of them (including the FRG) have occasionally invoked the extended doctrine in order to justify permanent sovereignty over their own technology.

It is noteworthy that in the PSNR-related UN resolutions adopted during the 1980s and 1990s there has been a tendency to return gradually to the original scope of the principle of permanent sovereignty, namely ‘natural resources’ or ‘natural wealth and resources’. An example is the 1986 Declaration on the Right to Development. What is the significance of these four terms in regard to the object of the right to permanent sovereignty?

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38 It is rather confusing that the NIEO resolutions also contain references to ‘resources’ as such (on three occasions), ‘natural and other resources’ (once) and ‘natural resources’ (twice).

39 See Chapter 5, section 2.

40 The term ‘natural resources’ occurs 14 times and ‘natural wealth and resources’ 11 times in Declaration 1803 (XVII). The Declaration refers only once to ‘all its wealth and natural resources’ and once to ‘resources and wealth’. One can only presume that here we are dealing with slips of the pen, since during these days the extension of the principle of PSNR beyond natural wealth and resources was not yet an issue.

41 Yet, in the ‘Principles Relating to Remote Sensing of the Earth from Space’ (GA Res. 41/65), adopted only one day earlier, the General Assembly refers to ‘the principle of full and permanent sovereignty of all States and peoples over their own wealth and natural resources’ (emphasis added).
Definition of natural resources

In non-legal literature there are plenty of definitions of natural resources: for example, that ‘natural resources are naturally occurring materials that are useful to man or could be useful under conceivable technological, economic or social circumstances’⁴² or ‘... supplies drawn from the earth—supplies such as food, building and clothing materials, fertilizers, metals, water and geothermal power’.⁴³ For a long time, natural resources were the domain of the natural sciences. As the economist Zimmerman stated in 1933:

... for centuries resources were the stepchild of economic thought. If they were recognized at all, they were absorbed into the market process, acknowledged only in so far as they were reduced to working tools of the entrepreneur—land, labor and capital—or recognized through their effects on cost and price, supply and demand.⁴⁴

In international law, before 1945 natural resources were not exactly an object of systematic study and regulation, fisheries and international rivers being to a certain extent an exception. However, the emergence of the principle of permanent sovereignty, the law of the sea and commodity trade regulation have given rise to a somewhat more active interest in natural resources law.⁴⁵

During recent decades natural resources have become the object of a variety of scientific disciplines. This makes a definition both desirable and difficult. Every description of the concept will be determined by the specific angle from which the object is studied; the natural scientist will emphasize the generation of living and non-living resources, the economist the abundance or scarcity of resources and their exploitability and distribution at certain cost levels, the environmentalist the intrinsic value of natural resources and the need for their sustainable use, while the lawyer will study their ownership and usufruct rights.

⁴³ Skinner (1986: 1).
⁴⁴ Zimmerman (1933, reprinted 1951: 6). This view may be somewhat exaggerated. For example, at various places in his Principles of Political Economy John Stuart Mill (1896) paid attention to the natural advantages of a country such as fertile soil, climate, abundance of mineral deposits (‘... the coalfields of Great Britain, which do so much to compensate its inhabitants for the disadvantages of climate’, p. 64) and natural water-power, good natural harbours and navigable rivers as factors which determine the degree of productiveness and prosperity of a country. See also Lewis (1955: 249–52).
⁴⁵ Nonetheless, it may be symptomatic that an American textbook on natural resources and energy law can still afford to ignore the role of international law and international institutions; see Jan G. Laitos and Joseph P. Tomain, Energy and Natural Resources Law in a Nutshell, St. Paul: West Publishing Co., 1992.
In modern economic and geographic reference books natural resources are commonly divided into the following categories:

a. non-renewable or stock resources, such as minerals and land, which have taken millions of years to form and the quantity of which, from a human perspective, is fixed (of course, with the Dutch as an exception in view of their reclamation of land from the sea);

b. renewable or flow resources, which naturally regenerate to provide new supply units within at least one human generation.\(^{46}\)

It has often been stated that the distinction between the two categories is blurred. Data on availability and exploitability of resources depend very much on knowledge, technology, social structures, use and human investment. As Zimmerman put it in a well-known comment: ‘resources are not, they become; they are not static but expand and contract in response to human wants and human actions’.\(^{47}\)

For example, fossil fuels are non-renewable and are consumed by use, but the size of their exploitable reserves depends very much on their price and on the knowledge, technology and investment to exploit them. Forests, plants, animals, fish and soils are in principle renewable resources, but their renewability and regeneration will often depend on actual use levels and human decisions relating to investment and management. Political factors also may be involved:

In peacetime available reserves are also known as commercial reserves in capitalistic countries because availability is measured by commercial standards, i.e., in terms of profitableness reckoned in money. But in war, when victory and the lives of many hinge on certain mineral supplies, the cost-price relationship drops more or less out of sight and availability becomes a matter of geological realities and of technical proficiency, scientific know-how, and availability of capital and labor determined not by a free and automatic market but by government decree. . . .

When peace hangs delicately balanced, considerations of national security demand that mineral reserve problems be approached not solely from the standpoint of business profit but also with due regard to their vital significance for national security.\(^{48}\)

For political reasons governments may decide not to publish accurate records on known reserves of mineral resources. With the aim of strengthening their negotiating position and business prospects, oil and gas companies may do the same. During the 1960s and 1970s, Shell and the Netherlands Oil Company (NAM, a


\(^{47}\) Zimmerman (1951: 15).

\(^{48}\) Zimmerman (1951: 445).
joint venture of Esso and Shell) consistently published minimum figures relating to natural gas reserves in the north of the Netherlands. In contrast, the South African Government used to publish maximum figures in order to demonstrate its powerful resource basis and its relaxed attitude towards the threat of economic sanctions.49

Despite the intensive work on natural resources law in recent decades, no general definition exists of the term natural resources in international law. Some treaties provide their own definition of specific natural resources. Thus, in Article 2 of the 1958 Convention on the Continental Shelf, repeated in Article 77 of the 1982 Law of the Sea Convention, it is provided that:

The natural resources . . . consist of the mineral and other non-living resources of the seabed and the subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or are unable to move except in constant physical contact with the seabed or the subsoil.

For the purposes of the 1968 African Convention on the Conservation of Nature and Natural Resources, the term natural resources means 'renewable resources, that is soil, water, flora and fauna',50 while the 1992 Biodiversity Convention employs the term 'biological resources' as meaning 'genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity'.51 Nor does international law literature provide a legally-oriented definition of natural resources. So far, the most detailed attempt at systematic definition and classification of natural resources has been made by the Argentinean lawyer Cano in a report to the Food and Agriculture Organization of the United Nations (FAO). He advocates to treat the whole complex of natural resources as an integrated whole and as a constitutional element of the human environment and defines natural resources as 'physical natural goods, as opposed to those made by man (which are termed "cultural resources").52 During a conference in 1985, Rosenne approached the question from a similar angle, namely which resources are not 'natural'. With reference to the sea, he mentioned shipwrecks, sunken aircraft, archaeological and historical objects.53 Artificial islands and oil platforms could be added to this. Trumpy tried to broaden Rosenne’s definition and proposed that: ‘A resource is any tangible or intangible which may be used in an economic manner or to create economic val-

49 Brouwer (1983).
52 Cano (1975: 1 and 30–33).
53 Rosenne (1986b: 64).
ue, and which is not a manufactured product or tool'.

This is, however, not a satisfactory definition, since it is only economically oriented and disregards the intrinsic value of natural resources and the integrity of ecological systems, including the sea, the air, the land and flora and fauna.

**Natural wealth and wealth in general**

The term ‘natural wealth’ has frequently been used in UN resolutions and other legally-relevant instruments, but hardly in legal doctrine. It cannot easily be inferred from those documents what is actually meant by ‘natural wealth’ and in which respect it differs from physical natural resources. It seems logical to presume that it refers to the natural wealth of our planet, such as land, soil, forests, wetlands, natural harbours, rivers, lakes, beaches, seas and oceans, flora and wildlife, rainfall and other beneficial climatic conditions, including the sun, the wind and natural sources of energy. Problems of definition may arise in certain cases, for example concerning the question whether or not the inter-oceanic Panama Canal as ‘a product of human labour’ but based on the natural characteristics of the territory comes within the scope of Panama’s permanent sovereignty over natural wealth. In the opinion of this author and by reference to particular geographical circumstances, the answer should be affirmative. Reference should also be made to the rather peculiar opinion of Katzarov that the working capacity of workers should as well be considered a natural resource of the country concerned.

The concept of natural wealth may come close to what is commonly called ‘the environment’ as a description of a physical matter, being the air, the sea, the land,

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55 The concept of ‘natural wealth and resources’ as used in early UN debates does not link up with the ‘wealth of nations’ as analysed by Adam Smith and numerous classical economists since then. Tinbergen has pointed out that the wealth of any nation consists of two components: [i] its natural wealth, such as land for agricultural purposes, minerals, natural means of communication, geographic position and climate, and [ii] the capital goods it owns, i.e. the goods partly produced by human labour which are used for further production or consumption: Buildings, roads, harbours, machinery, raw material stocks, stocks of consumer goods.’ Tinbergen (1965: 4).

56 See, for example, the definition of ‘land’ in the 1994 UN Convention to Combat Desertification: ‘the terrestrial bio-productive system that comprises soil, vegetation, other biodata, and the ecological and hydrological processes that operate within the system’ (Art. 1(e)).

57 See Chapter 5.3.

flora and fauna and the rest of the natural heritage. Alternative terms are sometimes used, such as ‘ecosystems’ (the ‘natural capital of the earth’) and ‘biological diversity’. Adler-Karlsson has used the phrase ‘harrying and carrying capacity’ of the earth to acknowledge the basic interrelationships between developments in the fields of population, utilization and distribution of resources, and the state of technology. Opschoor has introduced the term ‘environmental utilization space’ which aims to emphasize that the capacity of the natural environment to be used as a basis for supply of natural resources and for the absorption of waste is limited. The physical availability of resources, the regenerative capacity of nature, the way economic processes function and the state of technology are among the main factors determining the size and the limits of the environmental space. These concerns are also echoed in the concept of ‘sustainable development’ adopted by the Brundtland Commission in 1987. This concept seeks to integrate environmental and developmental concerns to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. Obviously, sustainable development requires that we do not structurally operate beyond the limits of the environmental space.

It is doubtful whether the coverage of permanent sovereignty can be extended to ‘wealth’ in general, that is including non-natural wealth, as claimed in CERDS, in some treaties and in the 1986 Seoul Declaration of the ILA. Wealth is a fundamental concept of economics with different connotations at different times. It features in the titles of such classic treatises of economics such as Adam Smith’s *The Wealth of Nations* (1776) and John Bates Clark’s *The Distribution of Wealth* (1908). According to the Oxford English Dictionary wealth is a generic term: ‘a collective term for those things the abundant possession of which (by a person or

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59 See also the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques which refers in its Article II to ‘the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space’. On this ENMOD Convention see Falk (1984) and Goldblat (1984).
63 World Commission on Environment and Development (1987: 8).
a community) constitutes riches, or "wealth" in the popular sense. Apart from natural wealth, the term wealth may thus cover artificial (capital goods) and cultural wealth. Yet, the principle of permanent sovereignty is, historically speaking, a resource- and investment-related concept and rather remote from wealth in general. Therefore, it is neither appropriate nor wise to put 'wealth' in general under the permanent sovereignty umbrella.66

**Economic activities**

The concept of permanent sovereignty over natural resources and economic activities was introduced in the Resolution launching the International Development Strategy for the Second UN Development Decade (DD II) in 1970.67 It also features in the 1974 NIEO Declaration and the CERDS, but not in the NIEO Action Programme. The NIEO Declaration uses in one place the phrase 'natural resources and all economic activities'.68 In contrast, one year later the UNIDO II conference referred to 'natural resources . . . and . . . all economic activities for the exploitation of these resources'. In the latter formulation, the scope of permanent sovereignty has not been significantly extended. Diaz also argues that the principle of permanent sovereignty should cover not only control over the resource, but also control over the production, especially in the case of oil: 'for the one who controls production also controls the market, since production is a key to determining the price of oil, and therefore, the value of the resource. Sovereignty over a resource is meaningless unless it includes sovereignty over the value of the resource.'69 This appears to be the case in the 1994 European Energy Charter Treaty, one of the few international legal instruments which contains a definition of the term 'economic activity'. For the purposes of this treaty, it is defined as: 'economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of energy materials and products'.70 These activities come within the purview of the principle of sovereign rights over energy resources as provided for in Article 18 of

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66 See also Peters (1989: 7–9).
68 Paragraph 4 (e) of GA Res. 3201 (S-VI), 1 May 1974.
this treaty.\textsuperscript{71} However, the term ‘(all) economic activities’ may cover a much wider spectrum and could also include non-extractive industries and financial services (banks and insurance). Economic activities are undoubtedly part and parcel of the scope of economic jurisdiction of the host State. However, the principle of permanent sovereignty does not have much to add to this since it is in any case a rule that economic activities within the territorial jurisdiction of a State are subject to its sovereignty.

\textit{National resources and national wealth}

In UN resolutions concerning the sovereignty of the territories occupied by Israel, the terms ‘national wealth and resources’, ‘national resources’ and ‘all resources and wealth’ are used. In this regard, as we shall see in Chapter 5, (a majority of) the UNGA preferred to extend the scope of permanent sovereignty beyond natural resources in order to include: the exploitation of ‘human resources’; use and ownership of cultural, religious and other aspects of the national heritage; and the personal wealth of Arab people. In this particular context, permanent sovereignty over national wealth and resources is used as a comprehensive concept, linked up with the right of self-determination of the Palestinian people and ‘permanent’ sovereignty of Arab States, individually or perhaps collectively, as an element of pan-Arabism (‘Arab fatherland’), over territories occupied by Israel.\textsuperscript{72}

\textit{Definitions used in this study}

In line with the recent tendency to limit the object of permanent sovereignty once again to ‘natural wealth and resources’, this study focuses on jurisdiction over ‘natural wealth’ and ‘natural resources’. For its purposes it can be presumed that ‘natural wealth’ refers to those components of nature from which natural resources can be extracted or which can serve as the basis for economic activities. Not all natural-resource benefits are extractable; ecosystems can provide many subtle services, for example, flood amelioration or air purification. Natural resources can be described as supplies drawn from natural wealth which may be either renewable or non-renewable and which can be used to satisfy the needs of human beings and other living species.\textsuperscript{73} Both ‘natural wealth and resources’ and ‘natu-
6. Goals and Objectives for the Exercise of Permanent Sovereignty

Claims regarding permanent sovereignty were initially motivated by efforts to reinforce the sovereignty of newly-independent and other developing States. Subsequently, claims regarding permanent sovereignty of peoples over natural resources were motivated by the desire to secure the benefits of natural resource exploitation for non-self-governing peoples.

Once most of the formerly colonial peoples had gained independence, emphasis shifted back to States as the main subjects invested with the right to permanent sovereignty, but with the injunction—as the 1962 Declaration puts it—that permanent sovereignty over natural wealth and resources ‘must be exercised’ in the interest of the ‘national development and the well-being of the people concerned’.

Likewise, subsequent resolutions increasingly emphasized that natural resources of developing countries must be utilized in the interest of development of these countries themselves.

Only a few references have been made to world economic interests, and most of them in an indirect way. The very first PSNR-related Resolution 523 (1952) included as one of the objectives ‘to further the expansion of the world economy’; the DD-II Resolution (1970) pointed out that ‘. . . production policies should be carried out in a global context designed to achieve optimum utilization of world resources, benefitting both developed and developing countries’; and, finally, CERDS linked the right to association (and the right to form cartels) of primary commodity producers—a right sometimes claimed to arise from permanent sovereignty—to ‘the promotion of sustained growth of the world economy, in par-

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74 See the statement by Uruguay and Poland when they tabled proposals which finally resulted in the adoption of the first PSNR-related GA Resolutions 523 and 626 in 1952.
75 For a discussion see Chapter 2.
76 Para. 1 of GA Res. 1803 (XVII), 14 December 1962. Emphasis added.
77 See GA Res. 2158 (XXI), 25 November 1966.
78 Para. 73 of GA Res. 2626 (XXV), 24 October 1970; see also para. 11.
79 See para. 7 of GA Res. 3171 (XXVIII), 17 December 1973.
ticular accelerating the development of developing countries’. Such references are, however, the exception rather than the rule. The rule in PSNR-related paragraphs of the NIEO resolutions is that they spell out vague objectives—such as ‘to safeguard these resources’ (NIEO Declaration)—or none at all (Art. 2, CERDS), providing States with maximum discretion in the management of natural resources.

As regards the right to permanent sovereignty of peoples living under colonial or racial domination or foreign occupation, the primary objective undoubtedly has been ‘to regain effective control over their natural resources’. The objective of Decree I for the Protection of the Natural Resources of Namibia was indeed to secure ‘for the people of Namibia adequate protection of the natural wealth and resources which is rightfully theirs’.

It can be inferred from the series of environmentally-relevant resolutions that States, as subjects of the right to permanent sovereignty, have increasingly been charged with the duty to manage the natural resources within their jurisdiction in an environmentally sound way or, in other words, in a sustainable way.

Treaties which implicitly or explicitly formulate the right of permanent sovereignty hardly ever spell out its objectives. The Human Rights Covenants of 1966 provide that peoples may for their own ends dispose of their natural wealth and resources and that they should enjoy and utilize these fully and freely. The African Charter on Human and Peoples’ Rights of 1981 is slightly less general: ‘This right shall be exercised in the exclusive interest of the people.’ It is further provided that States shall exercise this right ‘with a view to strengthening African unity and solidarity’.

Article 56 of the 1982 UN Convention on the Law of the Sea spells out that the sovereign right to natural resources is conferred upon States ‘for the purpose

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80 Article 5 of CERDS reads: ‘All States have the right to associate in organizations of primary commodity producers in order to develop their national economies, to achieve stable financing for their development and, in pursuance of their aims, to assist in the promotion of sustained growth of the world economy, in particular accelerating the development of developing countries. Correspondingly, all States have the duty to respect that right by refraining from applying economic and political measures that would limit it.’

81 See GA Res. 3171 (XXVIII), 17 December 1973.

82 Preamble. For a review of this Decree, see Chapter 5, section 1.2.

83 See Chapters 4 and 10, section 5.

84 Art. 1 and Arts 25 and 14, respectively.

85 Art. 21, para. 1.

86 Ibid., para. 3.
of exploring and exploiting, conserving and managing the natural resources’. Innovative is the injunction enshrined in Article 193:

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

Finally, the two State Succession Conventions (1978 and 1983) contain provisions that agreements between the predecessor State and a newly-independent State shall not infringe the principle of permanent sovereignty. They thus purport to provide newly-independent States with maximum discretion (a *tabula rasa*) as far as control over and management of natural resources of their territories is concerned. This enables them to ensure that their peoples will fully benefit from the advantages to be derived from their natural resources.

Legal literature provides a fair account of the objectives to be pursued by the exercise of permanent sovereignty in the various periods of its evolution, as described in Part I of this study. For example, Hossain points out that:

The principle was originally articulated in response to the perception that during the colonial period inequitable and onerous arrangements, mainly in the form of ‘concessions’, had been imposed on unwary and vulnerable governments. In another context, Hossain was more specific:

For developing countries the principle of permanent sovereignty was important because it provided a basis on which they could claim to alter ‘inequitable’ legal arrangements under which foreign investors enjoyed rights to exploit natural resources found within their territories. Such alteration could be affected through an exercise of (a) the right to nationalize, that is, to acquire the rights enjoyed by the foreign investor or (b) the right to alter certain terms of the arrangements (or to repudiate an agreement entered into with the foreign investor).

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87 See *Vienna Convention on Succession of States in respect of Treaties*, 23 August 1978, not yet in force, 17 *ILM* (1978), p. 1488. The theory of *tabula rasa* is closely related to the ‘Nyerere doctrine’ named after the Tanganyikan prime minister who in 1961 advocated that newly-independent African States should have the right to a ‘period of reflection’ and the right to review the terms of bilateral treaties within a period of two years from the date of independence. The Government of Tanganyika (later incorporated into Tanzania) announced that this would not be applied to multilateral treaties which instead would be reviewed individually. See *Yearbook International Law Commission* 1962, Vol. II, p. 115 and p. 121. See also Makonnen (1984). See generally Bedjaoui (1970), who served as ILC Rapporteur on the issue during the drafting of the Conventions on Succession of States.


89 Hossain (1980b: 35).
Socialist international lawyers have paid ample attention to the principle of permanent sovereignty. For example, Brehme analysed the need to exercise it within the framework of ‘the struggle of the young independent states and other developing countries’ for their economic independence:

It arises from the contradiction between the potentials which most of these countries have on the basis of their natural conditions for a blossoming and independent economy and the actual exploitation of this natural wealth by foreign capital to its own advantage. [...] National sovereignty over natural wealth and resources therefore means the objective driving out of foreign monopolies from the key positions of the economy, elimination of the domination of foreign monopoly capital, . . . , abolition of the plundering of the natural wealth for the advantage of foreign monopolies and their home states which ensues on the basis of inequality and pressure.

While Western commentators have acknowledged that States have the right to control their natural wealth and resources, their main preoccupation was—and still is—how permanent sovereignty could be made compatible with international obligations arising from general international law or contractual undertakings. As Hyde put it in 1956:

A state has the power to control and use its natural wealth and resources. It may thus enter into binding agreements for the development of its natural wealth and resources. In the exercise of its power, it is obligated to act in accordance with recognized principles of international law as well as international agreements and with due regard for existing legal rights or interests, with adequate, prompt and effective compensation as one remedy, if the exercise of powers impairs them.

Schachter points out that the development of the permanent sovereignty entailed a challenge to some traditional international law concepts. In his view permanent sovereignty has become ‘the focal normative conception used by states to justify their right to exercise control over production and distribution arrangements without being hampered by the international law of State responsibility as it had been traditionally interpreted by the capital-exporting countries’. He argues:

It would be a mistake to consider the idea of permanent sovereignty over resources as anachronistic nationalistic rhetoric. It should be viewed as a fresh manifestation of present aspirations for self-rule and greater equality.

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90 See generally on socialist conceptions of international law, Tunkin (1974 and 1986).
92 Hyde (1956: 865).
94 Ibid., p. 126.
Among Third World international lawyers, Abi-Saab observes that the principle of permanent sovereignty ‘addresses the question of the limits imposed by international law on States regarding alien economic interests within their national jurisdiction’ and takes the view that while ‘this exclusive power is subject to any limitations imposed by international law . . . sovereignty is the rule and can be exercised at any time, . . . limitations are the exception and cannot be permanent, but limited both in scope and time.’

In the same vein Chowdhury concludes:

The principle underlines the domestic jurisdiction of the State over natural resources, economic activities and wealth within its national jurisdiction without however exempting it from the application of relevant principles and rules of international law.

Bedjaoui takes a more radical position:

When they treat the claim for permanent sovereignty of States and nations over their own natural wealth as mere logomachy, traditional lawyers are singularly failing to understand the real facts about how the Third World countries have been dispossessed of their sovereignty for the benefit of foreign economic coteries.

Bedjaoui considers the ‘stronger and stronger assertion of the right of peoples and States to be in control of their natural resources’ as a method of defence against the ‘violent reaction by the imperialists to counter their demands for a new international economic order’. In this respect he is supported by the French lawyer Rosenberg who analyses permanent sovereignty from the perspective of ‘un droit à l’émancipation et une arme de libération pour les peuples du tiers monde’. Zakariya also analyses the principle in the context of the search for an NIEO, but in more specific terms. He points out that ‘petroleum, the natural resource par excellence, . . . kindled the big controversy’ concerning the search for a new international economic order. However, NIEO debates and resolutions:

. . . reaffirm the crucial place of natural resources, and the manner in which they ought to be developed and disposed of both for the benefit of the producing countries and in the interests of the world community at large.

In this study there will be a tendency to stress that the exercise of permanent sovereignty should coincide with sustainable use of natural wealth and resources.

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98 Ibid., p. 153.
99 Rosenberg (1975–76) and (1983).
100 Zakariya (1980: 209).
Chapter One

Elian refers to the necessity for all States to ensure “better husbanding of their natural resources” \(^{101}\) and Weiss observes that:

While States have sovereignty over their territory, this sovereignty is of necessity tempered by the requirements of intergenerational equity. They have rights to use and benefit from the resources of the planet, but not to destroy it for future generations. \(^{102}\)

In summary, the motives for formulating the principle of permanent sovereignty and the objectives to be pursued by it are obvious. The principle was developed during the 1950s, as part of an effort both to secure the benefits arising from exploiting natural resources for peoples living under colonial rule and to provide newly-independent States with a shield against infringements upon their sovereignty by foreign States or companies. A far-reaching series of rights was claimed on the basis of the principle of permanent sovereignty. In recent texts a growing emphasis can be discerned on the obligation of all States to manage their resources in the interest of economic development and that of their population, and in an environmentally responsible way, while also taking into account the interests of other States and humankind. This will be discussed further in Part III.

7. Scope and Orientation of the Study

Part I of this book summarizes and assesses the evolution of the principle of permanent sovereignty through the political organs of the United Nations during the period 1945–94. Approximately 65 resolutions are reviewed, as well as—for the most important ones—the records of the relevant debates conducted in working groups, committees and sessions of the UNGA, ECOSOC, the Commission on Human Rights, UNCTAD and, on one occasion, the Security Council.

The overall aim of Part I is to analyse the major norm-setting legal instruments which initially shaped the principle and which later tailored it to new circumstances, practices and needs. These legal instruments include in particular, but not exclusively, UNGA resolutions. \(^{103}\)

Part II shows that permanent sovereignty is deeply rooted in international law and has not evolved as a legal principle in isolation but rather as part and parcel of other modern trends in public international law. These related developments in modern international law have had a major impact on the evolution, application and interpretation of the principle of permanent sovereignty. Chapter 6 deals with

\(^{101}\) Elian (1979: 217).


\(^{103}\) See the list contained in Appendix I. The text of the main UN resolutions on PSNR is contained in Appendix II.
developments in international investment law, in particular the controversies relating to the National versus the International Minimum Standard; Chapter 7 discusses the international law of the resources of the sea, especially the extension of exclusive economic jurisdiction over marine resources; and Chapter 8 reviews trends in international environmental law and assesses their impact on the principles of territorial sovereignty and permanent sovereignty over natural resources.

Part III examines the hard-core content of permanent sovereignty, particularly the rights and duties of States and peoples arising from the principle. Chapter 9 focuses on what kind of corollary rights have been claimed on the basis of permanent sovereignty and can be derived from it: the right to dispose freely of natural resources; to choose freely a socio-economic system; to expropriate or nationalize foreign investment; to regain effective control over natural resources and to receive compensation for damages to natural resources inflicted by other States or by foreign enterprises; and the right of States to pursue their own environmental and developmental policies. To what extent are these rights recognized in the sources of international law?

The main questions to be answered in Chapter 10 are: does the principle of permanent sovereignty raise issues not only of rights but also of obligations incumbent on States and peoples? If so, what are these obligations? An analysis will be made of the emergence of obligations pertaining to national management of natural resources. This will entail a search for State obligations toward peoples and nationals of the managing State itself, toward other States (for example, with respect to transboundary natural resources) as well as toward other subjects of international law (for example, ‘humankind’ in general). Such obligations may relate to: respect for the rights of (indigenous) peoples and future generations; fair treatment of foreign investors; due care for the environment (including that of other States and of areas beyond the limits of national jurisdiction); equitable use of transboundary resources; and international co-operation for sustainable development, in particular of developing countries.

This analysis consistently takes as a starting point the rights and claims contained in the approximately 65 UN resolutions reviewed in Part I. Then, partly building on the discussion of various branches of international law in Part II, the recognition and further development of the principle of permanent sovereignty will be investigated, with reference to the main recognized sources of international law, along the lines of Article 38 of the Statute of the ICJ. Thus the analysis includes:

- **multilateral treaties**: for example, the Law of the Sea Conventions of 1958 and 1982, the World Bank Convention on the Settlement of Investment Disputes between States and Nationals of Other States, human rights treaties, the Vienna Conventions on State Succession, commodity agreements, and selected multi-
lateral treaties in the field of international trade, foreign investment and the environment;\textsuperscript{104} 

- major trends in \textit{State practice}, especially as they are manifested in the form of bilateral investment protection treaties between (a) industrialized and developing countries, and (b) developing countries \textit{inter se};
- \textit{international judicial decisions and arbitral awards}, especially those dealing with the settlement of disputes arising over nationalization of foreign investments; and
- the literature in international law and the work of international law forums (such as the UN International Law Commission and the non-governmental International Law Association).

Chapter 11 provides conclusions and final observations. Principal issues to be addressed in this chapter on the basis of the study relate to:

1. The origin, development and current legal status of the principle of permanent sovereignty over natural wealth and resources. Is it correct to assert, as is often done, that during the initial years permanent sovereignty evolved as a corollary of the principle of \textit{self-determination of peoples}, while in later years the link with self-determination and human rights has become looser and (territorial) \textit{sovereignty of States} has come to serve as its main legal foundation? If so, at what point did the emphasis shift, and for which reasons? Has the principle of permanent sovereignty become firmly accepted in international law or does it still belong to the ‘grey zone’ between mere political claims and international law?\textsuperscript{105} What conclusions can be drawn as to the ‘law-making’ functions of the political organs of the United Nations?

2. The impact of the various challenges to State sovereignty and of the changing perceptions of the role of the State in economic development on the current relevance and interpretation of permanent sovereignty. Will awareness of economic interdependence and the process of environmental globalization eventually result in ‘the end of permanent sovereignty over natural resources’? Have relevant traditional doctrines, notably the ‘national standard’ and the ‘international minimum standard’, and in particular the principles and rules pertaining to the treatment of foreign investment, lost legal significance? Otherwise, to what extent have they been or can they be reconciled with the principle of permanent sovereignty? What role can be attributed to international law in the peaceful settlement of disputes over the distribution and management of natural resources?

\textsuperscript{104} See the list of treaties in Appendix III.

\textsuperscript{105} See generally on these grey zones in international law, Verwey (1984: 536–45).
3. The new directions of permanent sovereignty in an interdependent world. What are the consequences of the increasing attention for the rights and interests of (indigenous) peoples and humankind as a whole for the status and content of the principle of ‘permanent’ sovereignty of States? Can a changing approach to the exploitation of natural resources be discerned: from full use toward optimal utilization? Can one, as in certain other branches of international law, deduce from the evolution of the principle of permanent sovereignty a trend from ‘coexistence’ towards ‘co-operation’, from mere attention for its corollary rights towards gradual recognition of corollary obligations, from emphasis on the rights of States towards the interests of people and mankind as a whole? If the answer is yes, how do these rights and duties relate to each other? What is the impact of the emergence of the international law of sustainable development on the principle of permanent sovereignty? Is its original linkage with the cause of promoting the development of developing countries being replaced by increasing emphasis on proper and environmentally-sound management of natural wealth and resources?

In order to be able to examine the issues arising from these questions we shall embark on a long excursion through various chapters of international law. A definitive characterization of the principle of permanent sovereignty may prove difficult to attain at this stage, given the controversial nature of the issues involved. This is partly a consequence of the nature of the discipline. International law does not lend itself easily to definitive conclusions as it still has to take shape in many fields and is characterized by the inadequacy of international legislative and judicial bodies. As a consequence of the predominant status of the principle of sovereignty, States still have a right to make their own interpretations in many fields. Furthermore, many international law instruments referred to in this study have been formulated in broad terms rather than precise legal language. The contents of these instruments often resemble codes of conduct if not programmes of action, even though they may have been concluded in the legal form of a treaty. Therefore, it will often not be immediately clear what their implications are and logical methods of interpretation, such as the use by analogy of the interpretation rules of Article 31 of the Vienna Convention on the Law of Treaties, may not be sufficient. Even if the rules are clear, it is by no means certain that they will provide an unambiguous conclusion on the state of the law. For example, State practice may not be in accordance with treaty law. A treaty may not have been ratified by a significant or representative majority of States. Consequently, various alternative interpretations may have legal merits, and this is often evidenced by separate and dissenting opinions of judges and arbitrators in international courts and tribunals. This means that majority decisions can only be taken as authoritative statements on the state of the law in a particular field at a particular point of time and not as final rulings for all time. Finally, as noted above, permanent sovereignty touches
on controversial issues in international law and international relations and one has
to enter the grey zone between politics and law in order to understand its evol-
uction and content. Permanent sovereignty has never been a static principle but one
often in a state of flux. Hence, it can only be assessed if law is seen as a process.
Basically, this process has been characterized by progress in a positive sense, but
the evolution of permanent sovereignty has also been affected by stagnation and
even regression. The international law status of the principle has increasingly been
recognized and permanent sovereignty is expected to serve a host of causes, includ-
ing promoting the economic development of developing countries, contributing
to the attainment of self-determination of peoples and effectuating State economic
sovereignty, promoting respect for peoples’ and human rights and optimal utiliz-
ation of the world’s natural resources, enhancing nature conservation and pursuing
sustainable development.

All this requires that permanent sovereignty should be perceived and interpret-
ed as a fully-fledged principle which gives rise to duties in addition to rights. In
view of the particular background of the principle, namely that of a main element
of the decolonization process and an instrument for the development of newly-
independent States, it is only logical that in the past legal development and even
academic analysis have tended to focus on rights rather than obligations. Yet, it is
a deeply-rooted presumption of international law that rights and duties are correla-
tive. As early as 1925 Rapporteur Huber, the then President of the League of
Nations’ Permanent Court of International Justice, pointed out in the Spanish Zone
of Morocco Claims: ‘responsibility is the necessary corollary of a right. All rights
of an international character involve international responsibility’. 106 This comes
—perhaps by coincidence—close to the finding of the International Court of Jus-
tice in the Barcelona Traction Case (1970): ‘Responsibility is the necessary corol-
ary of a right’, 107 a case which is best known for the Court’s obiter dictum
about obligations erga omnes. To summarize, whoever is endowed with the legal
capacity to manage natural resources has to accept a balance between rights and
duties in order to do justice to the various objectives that permanent sovereignty
over natural wealth and resources is meant to serve.

106 Spanish Zone of Morocco Claims, 2 RIIA (1925), p. 615.
107 Barcelona Traction, Light and Power Company Ltd. Case (Belgium v Spain), ICJ Rep.
1970, para. 36.