Sovereignty over natural resources
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Part I

The Birth and Development of the Principle: The UN General Assembly as Midwife
Introductory Remarks to Part I

This Part maps the history of the principle of PSNR from its birth in the United Nations and its evolution from a political claim to an accepted principle of international law. The hypothesis is that resolutions of the political organs of the United Nations, especially the General Assembly, have been instrumental in achieving this acceptance. This is not to say that UN resolutions have become the ‘modern source of international law’, as Bedjaoui suggested in reference to their flexibility, rapid formulation and democratic nature as opposed to the inability of custom to respond to contemporary challenges and to the limitations of treaties which are not always a manifestation of free will. However, on the other hand we do not subscribe to Schwarzenberger’s view that the entire PSNR exercise ‘is no more than a convenient para-legal ideology of power economics’ and that the term PSNR is ‘meaningless’.

The intention is to present and discuss facts gleaned from a reading of primary sources in order to put the UN debate on PSNR in perspective and to show that the UN Organization performed a number of key functions in the process of acceptance. The United Nations took stock of demands initially formulated in particular by Latin American States but shortly thereafter supported by socialist countries from Eastern Europe, thus embroiling the PSNR debate in Cold War rivalry, as well as demands by newly-independent States of Asia and Africa, which caused PSNR to become an issue of North-South confrontation. Furthermore, the United Nations served as a vehicle for letting off political steam; identified and articulated problems and needs of developing countries; provided a forum of debate between capital-exporting and capital-importing countries; pointed out policy measures to promote economic development and foreign investment flows, and, more recently, sustainable development and environmental conservation. In the end, it also served as ‘quasi-law-maker’ or—as Cheng put in another context—‘midwife for the delivery of nascent rules’. Indeed, to continue this metaphor, the cradle of the principle of PSNR stood in the UN General Assembly. Occa-

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1 Bedjaoui (1979: 133–44).
2 Schwarzenberger (1970: 49) and (1976: 22).
3 See Falk (1966).
sionally, there were some growing pains and at times a miscarriage threatened as
reflected in some deeply-split votes. However, PSNR eventually matured as a
fully-fledged legal principle in treaty law and State practice as discussed in Parts
II and III.

This part examines in Chapter 2 the period up to 1963 when the principle was
introduced, an effort which bore fruit in the adoption, in 1962, of the landmark
Declaration on Permanent Sovereignty over Natural Resources. Chapter 3 reviews
the manner in which the exercise of PSNR subsequently became linked with ef-
forts to promote the economic development of developing countries and to estab-
lish an NIEO. After 1975 the emphasis shifted towards the promotion of explora-
tion and exploitation of natural resources in developing countries and the role to
be played by international institutions and foreign investment.

Meanwhile, environmental preservation and sustainable use of natural resour-
ces had become an important focus of concern for the United Nations though
PSNR remained a very important element in the discussion of sustainable develop-
ment policies. While some early resolutions on the conservation of nature are
identified, Chapter 4 focuses on the way in which during the period from the
‘Stockholm Conference’ (1972) up to and including the ‘Rio Conference’ (1992)
the PSNR debate was put in an environmental context by formulating responsibil-
ities for proper and environmentally sound management of natural wealth and re-
sources and by integrating environmental and developmental policies. Chapter 5
deals with a relatively controversial aspect of PSNR, namely that applying to ter-
ritories occupied or administered by foreign powers by briefly describing the legal
situation with respect to the natural resources of pre-independent Namibia, of the
territories occupied by Israel and of the Panama Canal and the Canal Zone before
1978.

Throughout the entire PSNR debate an inherent tension can be noted between
efforts, on the one hand, to formulate as many rights as possible of (colonial)
peoples and developing States and to define them as ‘hard’ as possible and, on the
other hand, efforts to qualify PSNR by formulating duties incumbent upon right-
holders in order to create a balance between the interests of all parties involved
and thus to serve best the main objective of PSNR—to promote development.
This chapter analyses the development of the principle of permanent sovereignty over natural resources (hereafter PSNR) through the political organs of the United Nations in the period up to 1963. Section 1 discusses the concerns during the immediate post-war years regarding the scarcity, optimum utilization and conservation of natural resources, which led to a number of initiatives in the United Nations. Part of the discussion relates to the question whether a State has the right to dispose freely of its own natural resources or that, in the management of its natural resources, it should take into account the overall needs of the world economy as well.

Latin American countries, especially Chile, took the initiative of introducing the principle of PSNR in the United Nations. They used the United Nations as the main forum to express their uneasiness about their relationship with the United States, which they perceived as very unequal. Consequently, they consistently emphasized principles such as national sovereignty, sovereign equality and non-intervention as well as the primacy of national law and domestic courts. Their initiatives resulted, first, in GA Resolution 626 (VII), often perceived as the genesis of the principle of PSNR but which became branded as ‘the nationalization resolution of the Seventh General Assembly session’ (section 2). The second result was the inclusion of a provision on sovereignty over natural resources in draft Article 1 on the right of peoples to self-determination in the two Human Rights Covenants, despite vigorous opposition from Western countries in the UN Commission on Human Rights, ECOSOC and (the Third Committee of) the General Assembly (section 3).

In 1958, the General Assembly established a nine-member Commission to conduct a full survey on the status of permanent sovereignty over natural wealth and

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1 In English, the expression ‘dispose of’ can have two different meanings, i.e., (a) to alienate or abandon; and (b) to have at one’s disposal powers of decision-making how something is to be used. Throughout this study it is used in the latter sense.

2 See, for example, Chapter IV on Fundamental Rights and Duties of States as included in the Charter of the Organization of American States, 30 April 1948, 119 UNTS, p. 3; see also the Convention on Rights and Duties of States, signed in Montevideo, 26 December, 1933, 165 LNTS p. 19.

3 Brownlie (1990: 539)
resources and to make recommendations for its strengthening, where necessary. The Commission concluded its work on this project in 1961 by submitting a draft Declaration on Permanent Sovereignty over Natural Resources, which is reviewed in section 4. The detailed proceedings of the Commission, the Second Committee (for Economic and Financial Affairs) and the Plenary of the Assembly serve as highly relevant travaux préparatoires for a proper interpretation of the Declaration. Though carefully prepared, the draft text was the object of lengthy debates and extensive amendment, requiring many votes to be taken in the Second Committee and, subsequently, the Plenary of the General Assembly (see section 5).

1. The Early Years (1945–51):
   Balancing National and Global Interests

1.1 Immediate Post-War Concerns

In the aftermath of the world economic crisis of the 1930s and of the devastating Second World War, industrialized States—especially the USA—became aware of their dependence on overseas raw materials and of the vulnerability of their supply lines. This concern was explicitly reflected in the Atlantic Charter of 1941, which pointed out that the Allies:

... will endeavour, with due respect for existing obligations, to further the enjoyment of all States, great or small, victor or vanquished, of access, on equal terms, to the trade and the raw materials of the world which are needed for their economic prosperity.\(^4\)

Subsequently, this concern was implicitly expressed in the Articles of Agreement of the IBRD\(^5\) and IMF\(^6\) and in the preamble of the General Agreement on Tariffs and Trade (GATT). Reference is made in these documents to the need of developing 'the productive resources of all members' (IBRD, IMF) and 'the full use of the resources of the world' (GATT) in order to contribute to a balanced and expanding world economy.

It may also be illustrative for the spirit prevailing at that juncture to refer to a surprising initiative of the International Co-operative Alliance (ICA), a consumers’ organization, which in 1947 submitted to ECOSOC a proposal concerning control over world oil resources.\(^7\) On this issue the ICA had adopted a resolution in 1946 in which it emphasized:

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\(^5\) See Art. I-i and iii.

\(^6\) Art. I-iii.

\(^7\) *UNYB 1946–47*, p. 849.
Chapter Two

the need of placing control and administration of the oil resources of the world under the authority of an organ of the United Nations, and, as a first step in that direction, the oil resources of the Middle East; administered by and with the consent of the States involved, in such a way as to assure an equitable share of that oil to co-operative organizations.\(^8\)

The ICA proposed the establishment of a UN Petroleum Commission under the authority of ECOSOC. In its report to ECOSOC, it referred to the Atlantic Charter’s principle of equal access for all States to the raw materials of the world and stated:

> From the consumers’ viewpoint it is absolutely necessary that raw materials should be made available to the whole of humanity on equal terms. No valid reason can be constructed for regarding every raw material as the monopoly of the State within whose boundaries it happens to exist or can be produced. On the contrary, raw materials should be the first thing after armaments to be placed under the control of the United Nations.\(^9\)

The ICA further proposed that the United Nations should draw up a convention on international control over oil resources, especially those in the Middle East, where the greater part of the unexploited oil resources of the world appeared to be located. The convention should stipulate that oil resources be exploited in the public interest, that all have equal access to them and that sufficient reserves be left for the needs of future generations.\(^10\) This convention should also be agreed to by the Middle East countries. The ICA’s representative pointed out that these proposals did not purport to infringe on the sovereign rights of these States, since they were not meant to transfer property titles.\(^11\)

The ICA requested the United Nations to consider the question urgently, because: (a) rivalry for the acquisition of new oil fields might endanger world peace; (b) equitable access to world oil resources was a vital condition for the world’s economic reconstruction; and (c) there was a tendency on the part of large oil enterprises to fix prices without considering the interests of the consumer. The proposals, however, have never triggered any action in the United Nations.

In the late 1940s concern also arose about the conservation and effective utilization of natural resources. In view of the timber shortage in Europe, the Food and Agriculture Organization (FAO) organized an international timber conference in 1947, and stressed the need for a satisfactory distribution of timber supplies and

\(^8\) UNYB 1947–48, p. 549.


long-term measures to restore forests as a part of European reconstruction. In addition, following a proposal of the USA, submitted as early as 14 September 1946, ECOSOC organized in 1949 a UN Scientific Conference on the Conservation and Effective Utilization of Natural Resources as a joint project of the United Nations and relevant specialized agencies. The primary concern of the Conference was the exchange of ideas and experience in the field of resource management and human use of resources. Discussions focused on the world resource situation, including the issues of resource depletion, critical shortages, use and conservation, and resource exploitation techniques suitable for less developed countries. The central issue was how to meet growing demand. Although the Conference did not adopt specific recommendations, it stated that 'scientific knowledge can discover and create new resources and husband better those already in use, so that a new area of prosperity awaited mankind . . . ', on condition that war and the wasteful depletion of resources associated with it would be eliminated.\(^\text{12}\)

These proposals reflected the war-time problems of the Allied Powers in getting access to vital resources and properly managing natural resources. However, in the post-war period it soon turned out to be impossible to agree on international co-operation, let alone on a common régime for the management of natural resources; on the contrary, efforts to reinforce national control over natural resources soon came to dominate the political scene.

1.2 Using Natural Resources in the National and Global Interest

On 26 November 1951, Poland introduced, under the item ‘Economic Development of Under-developed Countries’, a draft resolution on integrated economic development and long-term trade agreements.\(^\text{13}\) Member States were invited to conclude long-term trade agreements ‘for supplying to the under-developed countries machinery and equipment essential for the fulfilment of the plans for the economic development of these countries in exchange for the raw materials exported by them’. Poland pointed out that such agreements ‘must not contain any economic or political conditions violating the sovereign rights of the economically under-developed countries or conditions which are contrary to the aims of the plans for economic development of these countries’.\(^\text{14}\) This document gave rise to an interesting debate which stimulated a flood of amendments and focused on the extent to which under-developed countries should take world economic interests into account in their natural resources policy. The Polish draft referred to economic development plans and national interests of the under-developed countries

\(^{12}\) UNYB 1948–49, pp. 481–82.


\(^{14}\) Ibid., para. 5.
only. The USA submitted amendments proposing to insert, for example, a reference to ‘the interests of an expanding world economy’. Poland considered this as an attempt ‘to submerge’ the problem of economic development of the under-developed countries into that of the needs of the USA, which was ‘particularly desirous of securing the supply of raw materials for its armaments race’. This would result in ‘a further increase of United States pressure on under-developed countries to secure strategic raw materials’. Egypt, India and Indonesia submitted a compromise sub-amendment to the American proposal, according to which the relevant part of the preamble should read: ‘. . . that they must utilize such resources to promote further the realisation of their plans of economic development, in accordance with their national interests, thereby participating in the expansion of the world economy’. Furthermore, the operative part should recommend that member States conclude trade agreements in order to facilitate:

. . . the development of natural resources which can be utilized in the first instance for the domestic needs of the under-developed countries and also for the needs of international trade, provided that such trade agreements shall not contain economic or political conditions violating the sovereign rights of the under-developed countries, including the right to determine their own plans for economic development.

In the opinion of the USA, however, this formulation did not reflect sufficient emphasis on the needs of the world economy. During the debate in the Second Committee, India agreed on behalf of the three delegations to replace the words ‘thereby participating in’ by the words ‘and to further’. Earlier, Egypt had already pointed out that under-developed countries ‘were under the obligation to use their resources for their own economic development as well as for that of the world in general.’ Thereupon, the compromise text was adopted unanimously as GA Resolution 523 (VI).

The relevance of this resolution lies in the fact that it formulated:

- for the first time the (sovereign) right of ‘under-developed countries’ to determine freely the use of their natural resources;

15 See preamb. para. 1.
16 UN Doc. A/C.2/L.120, 20 December 1951.
20 UN Doc. A/C.2/SR.174, 4 January 1952, p. 175, para. 3.
• for the first time the obligation to utilize such resources in order to be in a better position to further the realization of their plans of economic development in accordance with their own national interests;
• for the first (and last!) time the obligation to utilize such resources not only in their own national interests, but also in order to further the expansion of the world economy.  

2. The 1952 ‘Nationalization’ Resolution: The Demand for Economic Independence

2.1 First North-South Nationalization Clash: The Anglo-Iranian Oil Company

The nationalization by Iran of the Anglo-Iranian Oil Company in 1951 provided the first major economic ‘North-South clash’ in the post-war period. By the terms of a concession agreement, concluded in 1933 between the British-owned Anglo-Persian Oil Company and the Government of Iran, the Company had acquired, up to 1993, the exclusive right to extract and process petroleum in a specified area in Iran. On 1 May 1951, Dr. Mossadegh, the Prime Minister of the then socialist Iranian Government, announced the official decision to nationalize the Company and to annul the 1933 oil concession agreement. The National Iranian Oil Company was established to take over the exploitation of the nationalized oil fields. Obviously, this situation jeopardized the free flow of oil to the United Kingdom. When the Iranian Government announced its unwillingness to submit the dispute arising from this act of nationalization to arbitration, the British Government, on 27 May 1951, filed an application with the International Court of Justice. It requested the Court to declare that the Iranian Government was under an obligation to submit the dispute to arbitration under the provisions of the arbitration agreement or, alternatively, that the Iranian Government was acting contrary to international law, particularly to its obligations under the 1933 Agreement. In a provisional order of 5 July 1951, the Court prescribed a number of interim measures which parties should observe in order to prevent an aggravation of the dispute, including permission to continue the operations of the Anglo-Iranian Oil Company pending settlement of the dispute. Iran, however, refused to comply with these interim measures. The British Government, subsequently, requested the Security Council in October 1951 to order Iran to obey the provisional Court order (cf. Art. 94.2 of the UN Charter). But after an extensive debate the Security Council decided,

22 For a brief review of the debate see UNYB 1951, pp. 417–19.
23 ICJ Reports 1951, pp. 89–98.
24 See on the concurrent use of these two UN organs, van Elzen (1986: 57–60).
following a French proposal, to adjourn its debate on the issue until the Court had ruled regarding its jurisdiction on the matter. On 22 July 1952, the Court gave a final judgment, by nine votes to five, concluding that it had no jurisdiction to deal with the case. One of its main arguments was that the concession contract did not fall within the meaning of the term ‘international conventions’ of Article 38, paragraph 1 of the Court’s Statute. The Court stated that the agreement itself could not be considered as anything more than a ‘concessionary contract between a government and a foreign corporation’. In 1953, a new Iranian Government under the leadership of the Shah came to power after a coup d’état in which the British and US secret services were reportedly involved. In 1954, the new Government signed a new agreement with an international oil consortium consisting of British, Dutch, American and French oil companies.25

During the years of the Anglo-Iranian dispute, ECOSOC and the UN General Assembly discussed the right of peoples and nations to take charge of their own natural resources. This occurred in two different contexts, namely the debates on: (a) the promotion and financing of economic development in under-developed countries; and (b) the drafting of human rights treaties. The first context has often been overlooked, both in international law literature and in relevant UN documents.26

2.2 The ‘Nationalization’ Resolution Debate: Victory for Communist Propaganda?

Draft resolution of Uruguay

On 5 November 1952, Uruguay submitted a draft resolution under the item ‘Economic Development of Under-developed Countries’.27 The preamble recognizes ‘the need for protecting under-developed nations which are tending to utilize and exploit their own natural resources’. The operative part recommended that member States respect ‘the right of each country to nationalize and freely exploit its natural wealth, as an essential factor of economic independence’. Moreover, in the preamble, nationalization of this wealth was said to be in line with Article 1.2 of the UN Charter. When introducing the draft resolution, Uruguay explained that in its view the free exploitation of a country’s natural wealth was directly linked to financing its economic development. It pointed out that:28

26 See, for example, UN Doc. A/AC.97/1, 19 May 1959.
28 UN Doc. A/C.2/SR.231, 6 December 1952, p. 253 (Mr Cusano).
Foreign financing in the form of aid, loans or private investment was certainly a valuable and indeed an essential factor in the development of under-developed countries but it was not the ideal situation. The ideal for an under-developed country was to attain economic independence, to dispose freely of its own natural resources, and to obtain foreign exchange by selling its products to buyers of its own choice.

Since Uruguay had always pursued a policy of ‘scrupulous observance of its obligations towards foreign investors and foreign capital’, it claimed to have ‘the necessary moral authority to introduce its draft resolution’. It added that the sovereign right of States to exploit ‘what belonged to them’ should certainly not be confused with the ‘manifestations of an aggressive and destructive ideology’.29 Despite this introduction, the draft resolution triggered a considerable amount of negative reactions from Western delegations, the media and business organizations such as the International Chamber of Commerce, and provoked heated debates in the GA’s Second Committee. Eight meetings of the Committee and even a Plenary Meeting of the UN General Assembly were devoted to it.

Unbalanced draft resolution? The debate in the Second Committee

The Uruguayan initiative was warmly welcomed by some Latin American countries (such as Bolivia and Argentina), while others (for example, Mexico and Haiti) were sceptical.30 Bolivia, a country which had proclaimed the nationalization of its tin mines in April 1952, following a social revolution, submitted an amendment purporting to include the operative provision that ‘Member States in deference to the right of each country to nationalize and exploit its natural wealth, should not use their governmental and administrative agencies as instruments of coercion or political and economic intervention’.31 In the debate Bolivia recalled the ‘bitter experience’ of Mexico and Iran in the course of the nationalization of their petroleum resources. Furthermore, it gave an extensive review of its own ‘dramatic experience’ in connection with the nationalization of its mining industry and the concomitant economic and political implications.

However, in the view of Mexico (which had nationalized its oil industry in 1938) there was no need for an international recognition of ‘the right of States to nationalize their natural resources, as any such proposal would seem to cast doubt on the validity of a right the exercise of which was one of the clearest manifestations of national sovereignty’.32 For similar reasons Australia, Haiti, Honduras, Iran, New Zealand, the Philippines, Saudi Arabia, South Africa, Sweden and Tur-

30 UNYB 1952, p. 387.
31 UN Doc. A/C.2/L.166, 6 November 1952.
key and cast doubts on the usefulness of this project. Chile, on the other hand, argued that the United Nations was the most appropriate organization to discuss this kind of matter:

It was the only body in which due recognition could be achieved of the fact that the recovery and free disposal by the under-developed countries of their natural wealth and resources was a historical necessity which could no more be disregarded than could man’s inevitable growth from childhood to maturity.\(^{33}\)

The Netherlands took a rather strong stand against the draft resolution, in particular since ‘it omitted any mention of the obligation to give adequate compensation in the event of nationalization and spoke of economic independence just at a time when efforts were being made to stress the interdependence of economic problems and the need for international co-operation’. In addition, the Netherlands considered it to be contradictory to adopt, on the one hand, a resolution advocating the establishment of an international finance corporation and, on the other, to adopt a resolution ‘which could deepen existing misgivings and deter foreign investment.’\(^{34}\)

After informal consultations, Uruguay and Bolivia submitted a revised draft resolution,\(^{35}\) taking into account the various suggestions and objections pertaining to the original draft of Uruguay. The explicit reference to the ‘right of each country to nationalize and exploit its natural wealth’ was deleted and replaced by the following operative paragraph:

- **Recommends** States Members to maintain proper respect for the right of each country freely to use and exploit its natural wealth and resources as an indispensable factor in progress and economic development, and therefore to refrain from the use of any direct or indirect pressure such as might jeopardize, on the one hand, the execution of programmes of integrated economic development or the economic stability of the under-developed countries, or, on the other hand, mutual understanding and economic co-operation between the nations of the world.

The preamble, incidentally, said that ‘the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the purposes and principles of the Charter of the United Nations’.\(^{36}\)

The USA submitted amendments according to which the reference to the ‘need to maintain mutual understanding and economic co-operation between the nations of the world’ should be moved to the preamble; it proposed to replace the aforementioned operative paragraph by three new paragraphs, embodying, among other

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34 *UN Doc. A/C.2/SR.232, 8 December 1952, p. 259, para. 4.*

35 *UN Doc. A/C.2/L.165/Rev.1, 8 December 1952.*

36 Emphasis added.
things, recommendations relating to the need for international economic co-operation and promotion of foreign investment. 37

Although the word ‘nationalization’ was no longer mentioned in the revised version (reference is made to the right ‘to use and exploit’ only), the ‘nationalization’ issue continued to be at the centre of the debate. Many delegations questioned whether nationalization or ‘government exploitation’ was an indispensable feature of progress in under-developed countries. Some (for example, Canada) criticized the bias of the draft resolution to ‘centralized government planning of economic affairs’, and expressed the fear that the draft resolution, even in its revised form, would contribute to creating an atmosphere unfavourable to private investment.

Australia pointed out that the whole discussion had been characterized by certain political overtones and that it was therefore difficult to pass judgment on the draft ‘dispassionately’. The Philippines expressed itself in favour of the principle that States should have ‘permanent sovereignty over their own natural resources’, but referred to the debate in the Commission on Human Rights and ECOSOC on the incorporation of the right of self-determination of peoples in the draft covenants on human rights (see below). Therefore, it would be better to wait for the results of this debate. The actual proposal for adjournment was submitted by Denmark, but it was rejected. 38 At the very last moment, the Bolivian and Uruguayan delegations accepted the text of an Indian amendment, which proposed a new operative part:

Recommends all Member States in the exercise of their right freely to use and exploit their natural wealth and resources wherever deemed desirable by them for their own progress and economic development, to have due regard, consistently with their sovereignty, to the need for the maintenance of mutual confidence and economic co-operation among nations;

Recommends further all Member States to refrain from acts, direct or indirect, designed to impede the exercise of the sovereignty of any State over its natural resources.

After rejection of a substantial part of the US amendments, the Second Committee adopted the draft resolution incorporating the Indian amendment. 39 The USA explained why in its view the draft resolution was ‘unbalanced’:

37 UN Doc. A/C.2/L.188, 10 December 1952.

38 After a procedural debate, the Danish proposal was put to a roll-call vote on 11 December 1952 and rejected by 28 votes to 16, with 7 abstentions; UN Doc. A/C.2/SR.237, 11 December 1952, p. 281.

39 By 31 votes to 1 (USA), with 19 abstentions. The abstentions mainly came from other Western countries, plus Haiti, Peru, Venezuela and the Philippines. UN Doc. A/C.2/SR.237, 11 December 1952, p. 281.
... whilst it specifically recognized the responsibilities of member States towards
governments which felt that their people's welfare would be furthered by exploit-
ing their resources through nationalization, it failed to recognize any reciprocal
responsibility towards private investors whose property was expropriated as a
result of nationalization. The USA amendment could have remedied that unbal-
ance.40

Nineteen other delegations explained their votes in the Second Committee, anoth-
er seven Western delegations and twelve from the developing part of the world. It
can be inferred from the Committee’s debate that there was widespread, if not
unanimous, support for the principle that a State has the sovereign right to freely
use and exploit its own natural wealth and resources. Moreover, no delegation
questioned the right of a State to nationalize its natural resources, whenever the
State concerned deemed this to be in the public interest. However, deep-seated
controversies were revealed on:

a. the competence of the United Nations to discuss, and international law to inter-
fere with, these matters. For example, Mexico argued that it was ‘for national
constitutions, and not for the United Nations’ to recommend the manner in
which the right to nationalize should be exercised;41

b. the procedural appropriateness of adopting a resolution on this issue. The Phil-
ippines repeatedly referred to the more elaborate discussion on this issue in the
Commission on Human Rights and ECOSOC,42 while the French delegate put
it as follows: ‘a good principle does not necessarily produce a good resolu-
tion’;43

c. the actual rights and obligations of States under international law, especially in
the context of nationalization of foreign investment;
d. the appropriateness of the subject of the debate and any resolution resulting
from it, notably its impact on the willingness of private investors to invest in
under-developed countries, and thus on the efforts of the United Nations to
further economic development of under-developed countries.

42 See UN Doc. A/C.2/SR. 231 and 238, 6 and 12 December 1952. Apart from avoiding du-
plication of work, the Philippines also mentioned that a Covenant would be binding and
thus more effective in serving the intentions of Uruguay and Bolivia and that the procedure
would be sounder from a legal point of view, since States would be free to ratify the Cov-
enants or not.
Will capital, like water, find its own level?

During the debate in the Second Committee various newspaper articles, including one in the New York Times, argued that the adoption of the draft resolution in the Second Committee was ‘a victory for communist propaganda’ and showed that the USA had ‘far fewer friends on whom it could rely in a diplomatic pinch’. 44

Against this strongly politicized background the General Assembly intensively discussed the draft resolution on Saturday 21 and Sunday 22 December 1952. In a further effort to generate confidence from capital-exporting countries, India—in this period often taking the initiative to bridge differences within the United Nations—submitted an amendment to insert into operative paragraph 1 the phrase: ‘the need for maintaining the flow of capital in conditions of security’. 45 In its view ‘fair and equitable compensation’ should be paid in the event of nationalization. 46 While many Western delegations expressed their appreciation (in contrast to Eastern European countries) of this suggestion, they said at the same time that it was not sufficient to remove their strong objections to what they continued to see as a ‘nationalization resolution’. Colombia and Costa Rica asked ‘what better way could be found of saying that inequitable, confiscatory and unfair procedures should be discarded than to lay the stress in the recommendation on the absolute need for the maintenance of mutual confidence and international co-operation?’ 47 Later, the USA stated it ‘voted against it, not because of what it contains, but because of what it does not contain’. It obviously referred to the American draft amendments rejected in the Second Committee and concluded that: ‘this resolution may be interpreted by private investors all over the world as a warning to think twice before placing their capital in under-developed countries’. 48

Similarly, the United Kingdom, which also voted against the draft resolution, drew particular attention to operative paragraph 2, which ‘demonstrates by its omission of any reference to the obligations of the State receiving the investment just how one-sided the whole matter is. The under-developed countries are crying out for capital. Capital investment depends upon confidence. Confidence, we must admit, has been somewhat shaken in some countries’. 49 The UK reiterated that capital is not ‘like a tap which can be turned on at will’. This came—perhaps unintentionally—close to an earlier statement by India: ‘Capital, like water, will

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45 UN Doc. A/L.143, 21 December 1952.
47 Ibid., p. 486, para. 56.
48 Ibid., p. 496, para. 168.
49 Ibid., p. 496, para. 165.
find its own level. It will not flow into countries which do not provide conditions of security and stability. 50

The Western objections obviously were accepted by some Latin American countries (such as Cuba, Haiti, Nicaragua, Peru and Venezuela) which decided not to vote in favour. For example, Haiti explained:

a vote in favour would be tantamount to breaking down an open door and would lead to uneasiness and insecurity from the persons from whom we seek capital. We might receive a disappointingly cool reception from those upon whom we called for help. 51

Eventually, the General Assembly adopted the draft resolution on the right to freely exploit natural wealth and resources as Resolution 626 (VII). 52

Although it may be concluded that this Resolution cannot be said to have been very instrumental in the legal formulation and clarification of the principle of PSNR, the UN General Assembly undoubtedly performed here one of its principal roles: to serve as platform for political debate and as stock-taker of the views of the various groups of member States. The American delegate wrote three years later that the resolution "may have had some beneficial effects as a safety valve for "letting off steam", and as "a timely reminder to the United States that many of the other free countries do not share our views". 53 On the basis of a detailed analysis of the debate and the issues involved, Rosenberg correctly concludes:

en effet la résolution 626 servit de fondement avoué à des actions et des sentences, qui confirmeront que le droit des peuples à disposer librement de leurs ressources naturelles était à l’ordre du jour des relations internationales. 54

3. Linking Human Rights, Self-Determination and Natural Resources (1952–55)

3.1 Chilean Proposal to the Commission on Human Rights

After the adoption of the Universal Declaration of Human Rights in 1948, the Commission on Human Rights energetically continued with ‘painting’ the second
panel of the envisaged three-panel ‘International Bill of Rights’. One of the main controversies related to the inclusion and formulation of the right of self-determination of peoples. By Resolution 545 (VI) of 5 February 1952, the General Assembly decided to include in the draft Covenants a provision on this right, consisting of two paragraphs which would embody the right of peoples to political and economic self-determination. This issue became even more complicated when Chile, on 16 April 1952, proposed to include a third additional paragraph:

The right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States.\textsuperscript{55}

Chile pointed out that its proposal was to be interpreted as ‘a practical way of giving moral support to a country’s democratic struggle for the control of its own means of subsistence’, its main aim being ‘to enable the people to remain masters of their own natural wealth and resources’.\textsuperscript{56}

This proposal gave rise to a debate which touched upon such sensitive issues as the meaning of ‘sovereignty’, the legal status of self-determination in international law and the concept of peoples’ rights as opposed to rights of States, the validity of treaties, contracts, concession agreements, etc. As Hyde wrote in 1956, it clearly reflected ‘the historic conflict between capital-importing and capital-exporting countries over the issue of the taking of private property’.\textsuperscript{57} Indeed, all Western delegations opposed the incorporation of the principle of permanent sovereignty because of the fear that it would open the door to unilateral deviations from international obligations, notably expropriation without ‘prompt, adequate and effective compensation’.\textsuperscript{58}

The most substantive and detailed comments on the Chilean proposal came from the UK. In its opinion, the word ‘sovereignty’ had been used in a most unusual way, because of its alleged connotation with control over ‘natural resources’ and the adjective ‘permanent’. The latter word could not be tolerated because the conclusion of ‘every international treaty involved a deliberate derogation of sovereignty’.\textsuperscript{59} Such a qualification could imply that in fact every concession would be invalid. A second major objection was that the Chilean proposal dealt with the relations of States under international law rather than with human rights; the Com-

\textsuperscript{55} UN Doc. E/C.4/L.24, 16 April 1952.
\textsuperscript{56} UN Doc. E/CN.4/SR.260, 6 May 1952, p. 6 (Mr Valenzuela).
\textsuperscript{57} Hyde (1956: 855–56).
\textsuperscript{58} See for a discussion of this ‘triple’ standard, Chapters 5, 9 and 10.
\textsuperscript{59} UN Doc. E/CN.4/SR.260, 6 May 1952, p. 7 (Mr Samuel Hoare).
mission on Human Rights was not competent to deal with rights and duties of States. France took a similar position and added that it could not accept:

a conception of sovereignty which would legalize the autarchic practices of certain States which had a virtual monopoly of the raw materials indispensable to the international community. The object was the rational exploitation of natural resources; to do that some sovereignty would have to be surrendered to international organizations, such as the Schuman Plan.\textsuperscript{60}

The USSR strongly opposed the ‘formalistic criticism’ of the Western delegations:

All that the draft resolution implied was that peoples could not be deprived of their natural resources, the very basis of their existence, which in turn was the basis of their possibility of exercising the right to self-determination. No reputable international lawyer would dream of sanctioning the looting of a people’s natural resources by another State nor would he deny the elementary right of peoples to retain their basic right to independence.\textsuperscript{61}

Later on the Soviet delegate concluded that: ‘The poor arguments adduced by some delegations were merely a shield for their desire to maintain their colonial domination and to perpetuate their economic exploitation of the territories under their control’.\textsuperscript{62} Support for the Chilean proposal was further expressed by Lebanon, Pakistan, Poland and Yugoslavia, while China (Taiwan) and Greece cast some doubts on its usefulness in the light of the paragraph already adopted on economic self-determination. On 8 May 1952, the Commission on Human Rights adopted it by 10 votes to 6 (all votes against by Western nations), with 2 abstentions (China and Greece).\textsuperscript{63}

\subsection*{3.2 The 10th General Assembly Debate: Protecting Penniless Governments?}

\textit{Major opposition from Western Countries in the Third Committee}

During the general debate in the UNGA’s Third Committee (for Social, Humanitarian and Cultural Affairs) it soon became clear that, while virtually every article of the draft covenants would give rise to some dissatisfaction among some delegations, the most serious problem arose over the provisions on the right to self-determination. Since ‘the ship of the covenants was encountering heavy weather and the possibility of securing wide support for the texts was in doubt’, the UK

\begin{itemize}
  \item \textsuperscript{60} Ibid., p. 9.
  \item \textsuperscript{61} Ibid., p. 8.
  \item \textsuperscript{62} Ibid., p. 12.
  \item \textsuperscript{63} Commission on Human Rights, Report of the Eight Session (April–June 1952), in \textit{UN Doc. E/2256}, p. 8. See Table 1.2 for further details.
\end{itemize}
questioned whether it would help the cause of human rights ‘if the ship were to founder with the flag of self-determination still flying’. In this debate the UK again made the most substantive comments, re-emphasizing that it considered self-determination as a political rather than a legal principle. Furthermore, it argued that:

there was no such thing as ‘permanent’ sovereignty, as was shown by the historical fact that States had in the past made voluntary cessions of territory. [. . . ] If the drafters of the article had intended to affirm simply that sovereignty over national wealth and resources was inherent in the conception of national sovereignty, that was an understandable and indeed generally accepted, concept . . . but such a concept was quite distinct from that of ‘permanent’ sovereignty and in any event had no relevance to the question of self-determination.

The USA also strongly maintained its rejection of the right of peoples to PSNR, albeit from a more political perspective, particularly on account of its general association with the ‘nationalization’ Resolution 626 (VII):

. . . the resolution had been a serious error, and had had important economic repercussions among sources of capital available for international investment. The same idea was now being linked to the concept of self-determination. . . . the attempt to combine the two ideas would surely hamper the efforts of those who supported the progressive realization of the right of peoples freely to determine their own political future and of those who wished to promote international cooperation in world economic development.

Developing countries argued, on the other hand, that the inclusion of such an article was appropriate since the right of self-determination was essential for the enjoyment of all other human rights. Afghanistan challenged the UK by saying that it was astonishing that its representative, ‘who had made so admirable a criticism of the wording of the article, had found nothing to propose other than its outright deletion’. Other delegates of developing countries (such as Argentina, El Salvador, Mexico, Pakistan and Venezuela) and pointed out their willingness to discuss further the formulation of draft Article 1 with a view to making it more acceptable to Western delegations. For example, Argentina suggested adding after the first sentence of paragraph 3:

65 Ibid., p. 91, para. 18
In accordance with accepted principles of international law, the present article shall not, in any circumstances, be interpreted as justifying measures likely to prove harmful to the public and private property of nationals and foreigners.\(^{68}\)

Chile felt that the permanent sovereignty paragraph had been misinterpreted and made a passionate plea to maintain it:

All it meant was that a country could not exercise the right of self-determination unless it were master of its own resources. There was no question of expropriation. . . . self-determination must be based on economic independence. Self-determination would be an illusion in a country whose natural resources were controlled by another State, and it would be farcical to give a country political freedom while leaving the ownership of its resources in foreign hands.\(^{69}\)

*Establishment of an ad hoc working group*

During the debate various suggestions were made to break the stalemate: (a) to have the question studied further by a committee of experts; (b) to draft a protocol on self-determination as an annex to the draft covenants; (c) to prepare a third covenant on self-determination; and (d) to request the Secretary-General to invite member and non-member States to submit observations and proposals for consideration by the General Assembly at its 11th session in 1956.\(^{70}\) Finally, a joint proposal by Cuba, Ecuador and El Salvador was adopted to establish a Working Party composed of nine countries to be designated by the Chairman of the Third Committee.\(^{71}\) It is noteworthy that the Chairman, Mr Loufti (Egypt), selected its members only from proponents of the inclusion of an article on self-determination and that nearly all of them were developing States.\(^{72}\) In its report a majority of the Working Party proposed a substantial change to the text on permanent sovereignty:\(^{73}\)

The peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

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\(^{68}\) *UN Doc. A/6 SR.643*, 25 October 1955, p. 97, para. 43.

\(^{69}\) *UN Doc. A/6 SR.645*, 27 October 1955, p. 104, para. 11.

\(^{70}\) See *UNYB 1955*, pp. 154–56.

\(^{71}\) By 35 to 13 votes, with 10 abstentions.

\(^{72}\) See Table 2.2.

\(^{73}\) *UN Doc. A/6 L.489* and Corr. 1 and 2. The Working Party held six meetings. Unfortunately, there are no records of its proceedings.
This new text differed from that proposed by the Commission on Human Rights in three respects: Firstly, the explicit reference to ‘permanent sovereignty over natural wealth and resources’ had been deleted. According to the Chairman of the Working Group, Mr Urquia (El Salvador), this had been done in view of the strong opposition it had aroused and because such a reference ‘seemed out of place when the article as a whole referred only to peoples . . . for sovereignty was an attribute of nations organized as States’.74 Secondly, a clear, new reference to ‘obligations arising out of international economic co-operation and international law’ was included. Obviously, this was meant to reduce fears with respect to treatment of foreign investors in developing countries. Finally, in the last sentence, the last part of the original sentence had been deleted (‘on the grounds of any rights that may be claimed by other States’), since the preceding sentence of the new text clearly stated that action in this field was also subject to international law.

A mysterious overriding principle? Second round of debate in the Third Committee

The new draft paragraph gave rise to a renewed extensive debate in the Third Committee.75 The text came once again under attack from the UK. First of all, it argued that ability to dispose of natural wealth and resources was dependent on full control and power. If the term ‘peoples’ in paragraph 2 would have the same meaning as in paragraph 1, namely groups which are not yet independent and sovereign, the statement in paragraph 2 could not be true. If the provision was intended to refer to sovereign States representing peoples, then that should be stated explicitly. Secondly, the UK delegate objected to the phrase ‘for their own ends’, since in the English language it implied that the ends in view were ‘nefarious or purely selfish and, consequently, that the peoples would be pursuing activities contrary to the interests of the others’. Thirdly, he feared that the qualification ‘based upon mutual benefit’ made the meaning of the phrase ‘without prejudice to any obligations arising out of international economic co-operation’ ambiguous since it might provide an ‘escape clause, enabling States to evade those obligations’. Fourthly, in the last sentence he objected to the term ‘means of subsistence’ since that could not be applied to States, and to the sentence as a whole since this ‘mysterious overriding principle . . . seemed to be open to dangerous interpretation of removing the limitations imposed in the preceding sentences’.76

The USA reiterated that sovereignty of States over their own natural wealth and resources was out of place in an article on self-determination. The new word-

74 UN Doc. A/C.3/SR.668, 22 November 1955, p. 221, para. 5.
75 This took place from 24 to 27 October and from 21 to 30 November 1955.
The Formative Years

ing of the paragraph was not sufficiently clear to banish fears with regard to ex-
propriation without prompt, adequate and effective compensation or to the impair-
ment of property rights. The second sentence was even more ambiguous: the
words ‘in no case’ implied that the principle was intended to be ‘absolute’. Fur-
thermore, it was not clear what the difference was between ‘natural wealth and re-
sources’ and ‘means of subsistence’, or what resources were included under the
latter term. Australia feared that paragraph 2 could be interpreted so ‘as to allow a
minority within a State to claim the free use of its natural resources, regardless of
the economy of the State as a whole or the interests of other groups’. 77

During the debate developing countries also voiced objections. Some preferred
the original text of the Commission on Human Rights; for example, Indonesia sta-
ted that the new text seemed to stress ‘the obligations of peoples rather than their
rights’. 78 Several developing countries challenged the criticism of Western coun-
tries. Thus, Saudi Arabia stated that the concepts of ‘peoples’ and ‘self-determina-
tion’ were no more obscure than ‘freedom’, ‘justice’ or ‘peace’. In any case, they
could not ‘by questioning the legal force of such expressions hold back the trend
which was causing all peoples to claim the right to decide their own future’. 79

‘Mutual benefit’ implied ‘the equality of parties, and fair play’, while:

... ‘means of subsistence’ unambiguously intended to prevent a weak or penni-
less government from seriously compromising a country’s future by granting
concessions in the economic sphere—a frequent occurrence in the 19th century.
The second sentence was intended to serve as a warning to all who might con-
sider resorting to such unfair procedures. 80

Likewise, the El Salvadorian Chairman of the Working Party regretted that the
UK ‘had seen fit to construe the phrase “for their own ends” in a pejorative
sense’. 81 Egypt indicated that ‘in a spirit of conciliation a number of limitations
and restrictions had been inserted into the new text’, but that in fact these were
unnecessary since ‘the right of peoples to dispose of their natural resources had
never authorized arbitrary confiscation or expropriation or justified the breach of
freely negotiated agreements’. 82

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80 Ibid., para. 36.
Some delegations proposed further study and delay of a decision on Article 1. 83 As proponents and opponents of the draft Article were irreconcilable, Denmark proposed a delay of any decision making on Article 1 but this proposal was eventually rejected. 84 The Third Committee then moved to a series of votes on specific phrases of the text. Finally, it adopted paragraph 2 as a whole by 26 votes to 13 (11 Western nations plus China [Taiwan] and Turkey), with 19 abstentions (16 developing countries plus Denmark, Iceland and Israel). 85 It read:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

A number of delegations gave an explanation of their vote. Especially Latin American countries, which were at the forefront during the adoption of Resolution 626 (VII), now underlined that they considered the text of paragraph 2 unsatisfactory because:

- it was ambiguous and did not clearly specify the limitations to which the inalienable right of peoples to their natural resources might be subjected (Mexico);
- although it provided guarantees on the security of private property and foreign investment, others might give it a different interpretation, in which case there was a real danger that it might have an adverse effect on international economic co-operation and investment for economic development (Guatemala);
- some machinery should have been provided for safeguarding the rights of private property and foreign investments as was done in the Constitutions of many countries (El Salvador).

The most pointed explanation came from the USA, which informed the Committee that because of paragraph 2 it had voted against Article 1 as a whole:

The text did not sufficiently make clear the Committee’s intention that paragraph 2 should not be interpreted as impairing the legal rights of individuals or as authorizing expropriation without adequate, prompt and effective compensation.

The USA recognized the right of a State to control its natural wealth in itself, provided that ‘the obligation to make prompt payment of just compensation, in a realizable form and representing the full amount of the property taken or the legal rights extinguished’ was also recognized.

83 Lebanon and Pakistan even proposed the deletion of paragraph 2, since there was no agreement on a satisfactory text which would not endanger international economic co-operation. Others felt, however, that decisions should be taken since the article on self-determination had been under study for several years.

84 By 28 votes against, 25 in favour and 5 abstentions.

Although enthusiasm for the formulation of the draft article was far from general in 1955, the text was maintained. Consequently, it appears as Article 1 in both Human Rights Covenants adopted in 1966. But in October 1966, following an amendment submitted by African, Asian and Latin American countries, the Third Committee decided to insert an additional article in both Covenants which features as Article 25 in the Economic Rights Covenant and Article 47 in the Civil Rights Covenant: 86

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

4. From Self-Determination of Peoples to Sovereignty of States: The UN Commission on Permanent Sovereignty over Natural Resources (1958–61)

4.1 Establishing the Commission: Potential Threat to Foreign Investors?

In 1954, the Commission on Human Rights 87 had recommended that the General Assembly, through ECOSOC, establish a Commission with the task of conducting a full survey of the right of peoples and nations to ‘permanent sovereignty over their natural wealth and resources’, which they labelled a ‘basic constituent of the right to self-determination’. The main purpose of this survey would be to provide full information regarding the actual extent and character of that right and to make recommendations, where necessary, for its strengthening. 88 However, its establishment proved to be far from easy.

In ECOSOC’s Social Committee the recommendation stranded on the opposition of the Western nations which had a majority in ECOSOC. 89 Nonetheless, in 1954 the Third Committee of the UNGA extensively discussed the matter. Sixteen countries from Latin America, Africa and Asia proposed to request the Commission once again to include recommendations concerning permanent sovereignty in

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87 In its Resolutions 637 (VII) and 738 (VIII) the General Assembly had instructed the Commission on Human Rights to continue preparing recommendations on international respect for the rights of peoples and nations to self-determination.
88 See the Report of the tenth session of the Commission on Human Rights, February–April 1954, UN Doc. E/2573, pp. 35–38, paras 322–35. This initiative was taken by Chile, China, Egypt, India, Pakistan and the Philippines. The recommendation was adopted by 11 votes to 6 (5 Western nations and Turkey).
its proposals relating to the right to self-determination.\textsuperscript{90} Through a joint amendment, Brazil, Peru and the USA reiterated the by now usual stipulation that such recommendations should have due regard to ‘obligations under international agreements, the principles of international law and the importance of encouraging international co-operation in the economic development of under-developed countries’.\textsuperscript{91} Yet, the Third Committee only adopted the last part of the amendment (‘importance . . . under-developed countries’).\textsuperscript{92} The Committee thus refused to subordinate ‘permanent’ sovereignty in any way to the validity of what developing countries perceived as ‘unequal treaties’ and principles of international law in the formulation of which they had not participated. In the plenary meeting, however, Brazil, Peru and the USA succeeded in obtaining a reference to international law through the phrase ‘to have due regard to the rights and duties of States under international law’.\textsuperscript{93} The relevant part of this Resolution 837 (IX) requests the Commission on Human Rights:

\ldots to complete its recommendations concerning the international respect for the right of peoples and nations to self-determination, including recommendations concerning their permanent sovereignty over their natural wealth and resources, having due regard to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries . . .

Subsequently, during its eleventh session in 1955, the Commission on Human Rights repeated its proposal for the establishment of a commission on permanent sovereignty.\textsuperscript{94} ECOSOC, during its 20th session in 1955, discussed the issue again. Western nations repeated that the principle of self-determination had nothing to do with control over natural resources, which was an attribute of sovereignty. Similarly, they argued that the establishment of such a commission could ‘neutralize the beneficial effects of GA Resolution 824 (IX), the purpose of which was to encourage the international flow of private capital’. A number of developing countries replied again that the survey to be conducted by the proposed Commission would not be directed against foreign investment, since it would be instructed to pay due regard to ‘the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic devel-

\textsuperscript{90} UN Doc. A/C.3/L.435/Rev.2.

\textsuperscript{91} UN Doc. A/C.3/L.441.

\textsuperscript{92} The first part was rejected by 21 votes to 17, with 14 abstentions.

\textsuperscript{93} UN Doc. A/L.187, 14 December 1954. This amendment was adopted by 23 votes to 14, with 19 abstentions. The General Assembly adopted the draft resolution as a whole (by 41 votes to 11, with 3 abstentions) as Resolution 837 (IX), 14 December 1954.

\textsuperscript{94} By 11 votes to 6, with 1 abstention.
opment of under-developed countries’. This time, ECOSOC did decide to transmit the proposal of the Commission on Human Rights to the UN General Assembly.95

It was only in 1958 that the General Assembly took up this recommendation. During the debate in the Third Committee some Western countries repeated that they found it illogical to use the term ‘sovereignty’ in reference to peoples which were not yet sovereign States and repeated their fear that this exercise might ultimately constitute a potential threat to foreign investment and international cooperation for the economic development of under-developed areas. Yet, most Third Committee members supported the proposal and it was adopted by 52 votes to 15, with 4 abstentions. The new Commission had nine member States chosen by the President of the UNGA on the basis of geographical distribution: Afghanistan, Chile, Guatemala, the Netherlands, the Philippines, Sweden, the USSR, the United Arab Republic (UAR)96 and the USA. On 12 December 1958, the General Assembly established the Commission on Permanent Sovereignty over National Resources by Resolution 1314 (XIII).97

The Commission held three sessions (with 33 meetings). Its proceedings have been well recorded and serve as highly relevant travaux préparatoires for a proper interpretation of what finally became its main outcome: GA Resolution 1803 (XVII), entitled Declaration on Permanent Sovereignty over Natural Resources.

4.2 Formulating a Declaration in an Ideologically Divided United Nations

The first session: General debate

At its first session in May 1959, the Commission held a general debate on its terms of reference and the question of permanent sovereignty over natural resources in general. It also discussed the set-up of a study which the Commission requested the UN Secretariat to prepare on the ownership and exploitation of natural resources by foreign nationals, companies or governments.

In an introductory statement at the Commission’s first meeting, Schachter (at the time Director of the UN Office of Legal Affairs) pointed out that the Commission would be ‘especially concerned with the provisions of Constitutions, national laws and international treaties defining or restricting the rights of foreign nation-

95 ECOSOC Res. 586 D, XX, adopted by 13 votes to none, with 5 abstentions; see also UNYB 1955, p. 159.

96 On 1 February 1958, Egypt and Syria had formed the United Arab Republic, an initiative of President Nasser. A few years later, on 28 September 1961, this union was dissolved. Egypt retained the name UAR until September 1971.

97 For a report on the background and adoption of GA Res. 1314 (XIII) of 12 December 1958, see UN Doc. A/AC.97/1, 12 May 1959 and UNYB 1958, pp. 212–14.
als, companies or governments to own or exploit the natural wealth and resources of a country’. 98

During the general debate Chile recalled that experience had shown that political and economic independence were inseparable: ‘Freedom and independence counted for nothing if they had no economic basis. National sovereignty must be exercised over the entire territory and wealth of a nation, if it were more than a mere figure of speech’. Chile referred to the inability of many peoples and the developing countries to make use of their natural wealth because of lack of capital and addressed the issue of regulation of foreign investment and nationalization of foreign property. Its support of the right of peoples to self-determination in respect of their natural wealth and resources did not mean, however, that it condoned either unlawful expropriation or the repeal of legal provisions protecting foreign investors: ‘Investors should be encouraged in an atmosphere of co-operation by the promise of fair rewards’.

A State could expropriate and nationalize such resources provided that its acts were ‘in accordance with its laws, were non-discriminatory and the owner was paid appropriate compensation’. It is to be noted that this was the very first time that the term ‘appropriate compensation’ was referred to in a UN forum. Ever since this concept has played a prominent role in discussions on permanent sovereignty and nationalization. According to Chile, there were additional limitations imposed by respect for rights legitimately acquired and arising from contracts or from treaties concluded with other States: States could not disregard the acquired rights of persons or corporations, whether they were nationals or aliens. 99

Furthermore, Sweden stated that ‘the crux of the problem appeared to be the means by which, within the framework of national sovereignty and international law, foreign persons or corporations could be prevented from gaining undue control over a country’s vital resources without recourse to measures that would discourage foreign capital from participating in its economic activities’. As to the question of nationalization Sweden observed that: 100

While a State certainly had the right, at least under certain circumstances, to expropriate natural resources owned by aliens, the principle of international law that equitable compensation must be paid for expropriated property would no doubt have to be maintained. On that important point the amount of the compensation should not be left to the discretion of the government which ordered the expropriation. Unless there was a definite assurance that, failing an agreement between the

98 UN Doc. A/AC.97/SR.1, 18 May 1959, p. 4. See also A/AC.97/3, ‘The nature of possible Secretariat studies pertaining to a survey of permanent sovereignty over wealth and resources’, 18 May 1959.

99 UN Doc. A/AC.97/SR.2, 19 May 1959, p. 3.

100 Ibid., p. 7.
parties concerned, the question of compensation would be decided by an impartial body such as an arbitration court, foreign capital could not be expected to flow into countries most in need of it for their economic development.

Likewise, Guatemala and the UAR stressed that many developing countries wished to foster investment but were anxious to have adequate safeguards for managing their natural wealth and resources in the interest of their economic development.

Various delegations made suggestions with respect to the scope of the UN Secretariat study. In the view of Guatemala this study should not only summarize relevant national legislation and international agreements but should also deal with general aspects of the rights and duties of States under international law and with international co-operation in the economic development of developing countries. The USSR stressed that the report should not confine itself to abstract studies but must include specific, concrete references to any violations of PSNR that might exist.

The UAR raised the question of ‘unequal treaties’. In its view:

The Commission should also examine international agreements by which States permitted aliens to exploit certain resources. In conducting such a survey, the Commission should remember that the world did not stand still, and that the idea that such agreements were something immutable and sacrosanct was out of date. Just as States amended their laws or enacted new laws to meet new developments, so in the international field small nations now wished to free themselves of agreements concluded at a period when circumstances had been entirely different from those of today, and which gave foreign enterprises certain rights and concessions which were incompatible with the interests of the national economy.

The Philippines recalled that the General Assembly had established a link between sovereignty and international co-operation in its Resolution 1314 (XIII). The Charter regarded international co-operation as both a right and a duty: ‘international co-operation must be accepted voluntarily and not imposed’.

The USA recalled that, under GA Resolution 1318 (XIII), the Secretariat also had to prepare a study on the international flow of private capital and that it would make sense to combine these efforts.

On behalf of the Secretariat, Schachter responded to various suggestions. In his view the Secretariat study should be mainly concerned with the right of foreign nationals to own or exploit the natural resources of a country not their own and with the means by which States could control these foreigners’ activities. In response to the suggestion of the USSR, he acknowledged that the terms of agree-

101 UN Doc. A/AC.97/SR.3, 20 May 1959, p. 3.
102 UN Doc. A/AC.97/SR.4, 21 May 1959, pp. 6–7.
103 Ibid., p. 8.
ments on exploitation of natural resources did not always reflect reality, but he did not see how the Secretariat could institute an inquiry into possible violations.\footnote{UN Doc. A/AC.97/SR.5, 22 May 1959, p. 10.}

Finally, Chile suggested that the report also should take into account all relevant GA resolutions, including in particular those which dealt with the international flow of private capital.

\textit{The second session: Discussion of the preliminary Secretariat study}

At its second session in February-March 1960, the Commission considered the preliminary study prepared by the Secretariat which included the replies to a questionnaire from governments, specialized agencies and regional economic commissions.\footnote{Ibid. and Add.1 and Corr.1} While there was widespread satisfaction with the work of the Secretariat, the discussion turned out to be far from easy. Suggestions were made to include additional subjects. Thus, Afghanistan proposed to pay attention to the question of ‘general transit rights’, which were also an essential aspect of sovereignty over natural resources, as well as of water resources common to two or more States.\footnote{UN Doc. A/AC.97/SR.8, 23 February 1960, p. 5.} The USSR criticized the lack of detailed information on nationalization and on the extent to which foreign companies attempted to impede the exercise of this sovereign right.\footnote{Ibid., p. 7.}

The Netherlands requested more information on foreign investment protection. In its view the section on expropriation was somewhat one-sided in the sense that it did not mention, let alone analyse, the fundamental rule of protection of property and the rights and duties of States under international law.\footnote{UN Doc. A/AC.97/SR.9, 25 February 1960, p. 9.} At a later point, the USSR objected to this by stating:

\begin{quote}
The Commission’s function was not to accommodate the foreign and domestic economic policies of the under-developed countries to the interests of foreign investors or to help foreign companies to gain control over still more of those country’s natural resources. Its function was to promote the development of the under-developed countries’ economies and to strengthen their sovereignty over their natural resources.\footnote{UN Doc. A/AC.97/SR.10, 1 March 1960, p. 12.}
\end{quote}

Chile, Guatemala and the Netherlands wanted to see an analysis of relevant GA resolutions and other documents pertaining to ‘the importance of encouraging international co-operation in the economic development of under-developed countries’, as it was called in Resolution 1314 (XIII). Chile wanted the Commission
not just to present a compilation of existing legislation on sovereignty over natural wealth and resources, but to aim at the improvement of relations between foreign capital and countries needing that capital for the development of their natural resources, and repeated that foreign investment might be discouraged by emphasizing sovereignty over natural resources. Measures aimed at strengthening sovereignty should in any case be ‘fair and objective’. 110

Guatemala drew attention to the relevance of the International Law Commission’s (ILC) work on State responsibility with respect to property and contracts of aliens.

Peru was the first to relate the work of the Commission on Permanent Sovereignty to law of the sea issues. The exercise of sovereignty over the resources of the sea deserved attention. Old concepts of ‘straightforward selfish appropriation, leading in practice to complete disappearance of certain marine species’, were to be replaced by new notions of ‘common interest’, particularly ‘the "right" of riparian peoples (sic) to the wealth of the seas which washed their shores’. 111

Disagreement continued to exist on the issue of additional subjects and even on the sources from which additional information should be gathered. As to the latter, the question was whether the Secretariat should rely primarily on information submitted by governments (by reference to the argument that governments were the best judges of data regarding sovereignty over natural resources in their respective countries) or on that from the United Nations and other sources. It was finally decided to include ‘appropriate references’ to UN decisions, reports and studies relating to ‘rights and duties of States under international law and to co-operation in the economic development of under-developed countries’. 112 There was also an extensive discussion regarding the ways and means by which the diverging views of the Commission members should be taken into account in a revised study. 113 A related issue was whether these diverging views should be communicated to member States and specialized agencies with the request to take them into account in submitting additional pertinent information. This was accepted. 114

112 See UN Doc. A/AC.97/7.
113 UN Doc. A/AC.97/SR.11, 2 March 1960, p. 10.
Third session: Discussion of the revised Secretariat study

The third session of the Commission took place in May 1961. The Secretariat had submitted its revised study on ‘The Status of Permanent Sovereignty over Natural Wealth and Resources’. The revised study was comprehensive, covering 235 pages, and included the following chapters: (I) National measures affecting the ownership or use of natural resources by foreign nationals or enterprises; (II) International agreements affecting the foreign exploitation of natural resources; (III) International adjudication and studies prepared under the auspices of intergovernmental bodies relating to the property and contracts of aliens; (IV) Status of permanent sovereignty over natural wealth and resources in newly-independent States and in Non-Self-Governing and Trust Territories; and (V) Economic data pertaining to the status of sovereignty over natural wealth and resources in various countries.

In response to the deliberations during the Commission’s second session, Chapters IV and V had been considerably expanded in comparison with the previous draft. More economic data on sovereignty, in particular over natural resources in less developed countries and in non-self-governing territories, were added. The Commission’s Chairman called the study a ‘remarkable achievement’, which had provided member States, especially the less developed countries, with ‘examples and models of legislative provisions which they would be free to adapt to their systems and traditions when they sought to establish control over the development of their natural resources’. The USA was among many to applaud it as ‘a monumental work’. Yet, a few delegations were less enthusiastic. The USSR, the UAR and Afghanistan felt that the report, even in its revised form, did not reflect ‘the real situation in the field of exploitation by foreigners and their companies of natural wealth and resources of Non-Self-Governing Territories, Trust Territories and less developed countries’. They wanted more information on the profits made by foreign companies in the natural resources sector of less developed countries and non-self-governing territories and on violations of the sovereignty of peoples over their natural wealth and resources. With regard to the last point, the USSR referred to the situation in Belgian Congo, Cuba, the Portuguese colonies and Tanzania. Afghanistan repeated its request for more information on the issue of water resources and transit rights, especially the right of land-locked countries to free access to the sea. The UAR raised the question of sovereignty over international water courses and pointed out that ‘a riparian State upstream of an-

116 UN Doc. A/AC.97/SR.19, 3 May 1961, p. 3.
118 UN Doc. A/AC.97/SR.20, 4 May 1961, p. 11.
other State on the same water course did not possess absolute sovereignty over that water course’. For example, it claimed that ‘no State would have the right to alter natural conditions in its territory to the detriment of natural conditions in the territory of a neighbouring State’. The Commission’s final report to ECOSOC was approved by 3 votes to 2, with 4 abstentions. It was also decided to submit the Secretariat study to ECOSOC, together with the observations made by members of the Commission.

**Two draft resolutions**

The Commission had two tasks. Apart from conducting a full survey on the status of permanent sovereignty, GA Resolution 1314 (XIII) also requested that the Commission make recommendations, where necessary, for its strengthening. For the latter purpose, the USSR on 5 May 1961 tabled an extensive draft resolution on Permanent Sovereignty over Natural Resources, on 10 May 1961, Chile submitted an alternative draft. The Soviet draft proposed, first of all, that the General Assembly should ‘reaffirm the permanent sovereign right of peoples and nations freely to own, utilize and dispose of their natural wealth and resources in the interests of their independent national development’. Secondly, its operative paragraph 1 spelled out in detail the discretionary rights of peoples and nations arising from permanent sovereignty, including the right to admit or to refuse establishment of foreign investment for the exploitation of resources; to control foreign investors in their territory, including the distribution and transfer of profits; and to carry out nationalization and expropriation measures ‘without let or hindrance’ (*sic*). Thirdly, it declared the violation of these sovereign rights contrary to the spirit and principles of the UN Charter (para. 2) and fully supported measures of newly-independent countries to restore and strengthen their sovereignty over natural resources. The USA and the Netherlands, in particular, heavily criticized the Soviet draft as a one-sided document which disregarded the importance of international economic co-operation for development and the need of respect for rules of international law. Afghanistan and the UAR made a

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119 Ibid., p. 6.
122 *UN Doc.* A/AC.97/L.2, 5 May 1961.
123 *UN Doc.* A/AC.97/L.3, 10 May 1961.
number of detailed comments, most of which were taken into account by the USSR when it submitted a revised version.\textsuperscript{126}

Chile claimed that its draft was ‘better balanced’ and reflected more closely the terms of reference of the Commission than did the Soviet draft.\textsuperscript{127} The Chilean draft purported to deal, firstly, with the basic concept of the right of peoples and nations to permanent sovereignty and with its objective that it ‘must be exercised for the benefit of the people of the State concerned’. Secondly, should a State freely decide to admit foreign capital, then the capital imported and the earnings on that capital ‘must be protected on the same conditions as domestic capital similarly invested’. In case of nationalization, expropriation or requisitioning, the owner ‘shall be paid appropriate compensation’, in accordance with the law of the host State \textit{and} with international law. Thirdly, its draft supported the promotion of international co-operation by increased capital investment and exchange of technical and scientific information. Specific proposals for amendments were made by Afghanistan and, less extensively, by the UAR.\textsuperscript{128} Most of them were taken into account by Chile when it presented a revised draft on 18 May 1961.\textsuperscript{129}

**Amendments to the Chilean draft resolution**

Various delegations, notably the Netherlands, the USA, the Philippines and Sweden urged a stronger reference to respect for international law.\textsuperscript{130} A USA amendment to operative paragraph 3, to add at the beginning of the second sentence the phrase ‘Agreements freely made in each case should be faithfully observed and . . . ’,\textsuperscript{131} was rejected by 5 votes to 4. Chile said not to be opposed to its contents, but felt that it was out of place in this operative paragraph which dealt with the basic concept and nature of permanent sovereignty.\textsuperscript{132}

Considerable debate took place on amendments relating to the nationalization and compensation paragraph of the Chilean draft, reading:

Nationalization, expropriation or requisitioning shall be effected on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases, the owner shall be paid appropriate compensation, in accordance with

\textsuperscript{126} UN Doc. A/AC.97/L.2/Rev.1, 16 May 1961.
\textsuperscript{128} UN Doc. A/AC.97/SR.27, 16 May 1961, pp. 3–7.
\textsuperscript{129} UN Doc. A/AC.97/L.3/Rev. 2.
\textsuperscript{130} For example UN Doc. A/AC.97/SR.28, 17 May 1961, p. 4.
\textsuperscript{131} UN Doc. A/AC.97/L.10, sub 4.
\textsuperscript{132} UN Doc. A/AC.97/SR.31, 22 May 1961, p. 6.
the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.\textsuperscript{133}

Various delegations observed that ‘public purpose’ (instead of ‘public utility’), as proposed by the USA, would be a better translation of the Spanish phrase \textit{utilidad pública} in the Chilean draft, but felt that this should be left to the Secretariat and the translators. Eventually, by 4 votes against 0, with 5 abstentions, it was decided to retain the word ‘utility’ in the English text (in French ‘utilité publique’). The USA had also proposed to delete the words ‘or the national interest’, but withdrew this amendment after the vote on ‘public utility’.

Afghanistan and the UAR submitted a joint amendment to insert the words ‘when and where appropriate’ after the word ‘compensation’ and to replace the word ‘appropriate’ by ‘adequate’. However, the first part of this amendment was heavily opposed by Western countries and Chile itself, since it would jeopardize the very obligation to pay. The second part also caused objections, since the word ‘adequate’ was one of the traditional elements of the trinity ‘prompt’, ‘adequate’, and ‘effective’, while ‘appropriate’ was said to have a more neutral meaning. Launching a compromise proposal, the Philippines noted that a large majority of the Commission appeared to accept a duty to pay compensation, but was divided as to how much and under what conditions. It would therefore be better not to enter into details and not to use any adjective, including ‘appropriate’. Neither this compromise proposal nor the second part of the joint amendment were acceptable to Chile. Both were therefore finally withdrawn.

Sweden proposed to refer to international adjudication and arbitration: ‘prior agreement on that question could be decisive in inspiring confidence in foreign investors by establishing that the country in which the investments were made would respect international obligations’.\textsuperscript{134} Its amendment read: \textsuperscript{135} ‘In case the question of compensation gives rise to an international dispute, it would be appropriate to settle it by international adjudication or arbitration.’

However, Chile felt that domestic jurisdiction should not be excluded in matters of compensation, attaching fundamental importance to respect for national jurisdiction. International adjudication or arbitration could only be envisaged as a result of agreement between the parties concerned.\textsuperscript{136} When Chile did not incorporate the Swedish proposal into its revised draft, a joint amendment was submitted by Sweden and Afghanistan in which the words ‘provided the parties to the

\textsuperscript{133} \textit{UN Doc. A/AC.97/L.3/Rev.1.}
\textsuperscript{134} \textit{UN Doc. A/AC.97/SR.30, 22 May 1961, p. 5.}
\textsuperscript{135} \textit{UN Doc. A/AC.97/L.5, 16 May 1961.}
\textsuperscript{136} \textit{UN Doc. A/AC.97/SR.27, 16 May 1961, p. 9 and SR.31, 22 May 1961, p. 6.}
dispute agree to such a procedure\textsuperscript{137} were added at the end of the original Swedish amendment. Thereupon, a sub-amendment\textsuperscript{138} was submitted by the UAR reading:

> In any case where the question of compensation gives rise to a controversy, national jurisdiction should be resorted to.

Upon agreement by the parties concerned settlement of the dispute may be made through arbitration or international adjudication.

The USSR proposed to split this sub-amendment into two parts, one dealing with domestic and the other dealing with international dispute settlement, but this proposal was not accepted.\textsuperscript{139} Subsequently, the UAR sub-amendment as a whole was adopted by 5 votes to 3, with 1 abstention, and the joint amendment of Sweden and Afghanistan was dropped.

\textit{Amendments to and rejection of the Soviet draft resolution. Adoption of amended Chilean resolution}

Discussions on the Soviet draft were far less extensive. The USSR, somewhat bitterly, repeated its accusation that ‘some representatives were attempting to divert the Commission from its task by steering it, not towards the protection and reinforcement of sovereignty over natural resources, but towards the defence of the interests of foreign corporations exploiting the resources of the under-developed countries’. The UAR submitted a number of amendments to the Soviet text, most of which were accepted by the USSR in its revised draft resolution.\textsuperscript{140} Hence, the UAR insisted only on a vote on its proposal to replace all specifications of sovereign rights arising from permanent sovereignty by the phrase ‘and to take all measures to strengthen the sovereignty over their natural resources in accordance with principles laid down by the Charter of the United Nations’.\textsuperscript{141} The Commission adopted this amendment by 3 votes to none, with 5 abstentions.

Operative paragraph 3 read:

> Fully supports the measures adopted by the countries which have won independence to restore and strengthen their sovereignty over natural wealth and resources;

At the request of the USSR itself, it was put to a roll-call vote, where it was rejected by three votes (Afghanistan, UAR, USSR) to 4 (USA, Netherlands, Swe-

\textsuperscript{137} UN Doc. A/AC.97/L.5/Rev.1, 16 May 1961.
\textsuperscript{138} UN Doc. A/AC.97/L.10.
\textsuperscript{139} Rejected with 4 to 1, with 4 abstentions.
\textsuperscript{140} UN Doc. A/AC.97/L.2/Rev.2.
\textsuperscript{141} UN Doc. A/AC.97/L.4, sub 3.
den, Philippines), with 1 abstention (Chile). The rest of the USSR draft (with the exception of its very first provision, dealing with the submission of the Secretariat study to ECOSOC, together with the observations made on it by the members of the Commission) met with the same fate.

Finally, the Chilean Resolution, as amended, was adopted by 8 votes to 1.

4.3 Stalemate Following Commission’s Report

Only three of the 18 members of ECOSOC (Afghanistan, USA, USSR) had been a member of the Commission. Japan opened the August 1961 ECOSOC debate with some fundamental remarks on the legal status of self-determination in international law. Self-determination was recognized as a ‘principle’ and not as a ‘right’ in the UN Charter and it was doubtful whether the legal concept of ‘permanent sovereignty over natural wealth and resources’ did in fact exist in international law. Nevertheless, Japan acknowledged that a sovereign State should be able to dispose of the wealth and natural resources within its own territory. Therefore, it felt that it would be wiser to bring the draft text in line with operative paragraph 5 of GA Resolution 1515 (XV) reading:

The sovereign right of every State to dispose of its wealth and its natural resources should be respected in conformity with the rights and duties of States under international law.

Afghanistan argued in reply that political and economic self-determination were indivisible and referred in this respect to the emergence of the Calvo doctrine, certain judicial decisions, the Porter-Drago Convention, and Articles 1 (paragraph 2) and 55 of the UN Charter. Afghanistan’s own criticism of the Secretariat study on permanent sovereignty particularly related to the lack of information on measures affecting the capital and profits of foreign companies exploiting natural resources as well as on the rights of land-locked countries. Moreover, it re-tabled

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142 UN Doc. A/AC.97/L.3/Rev. 2.
143 32nd Session of ECOSOC, August 1961.
146 UN Doc. E/SR.1178, pp. 172–73. A detailed explanation of the Calvo doctrine is given in Chapter 6. The Porter Convention was adopted by the Second Hague Peace Conference in 1907 and named after US Secretary of State Porter. This Convention incorporates the principle that States have no right to intervene militarily in a State which defaults on its public debt owed to aliens or another State. This principle is also known as the Drago doctrine after the Argentine foreign minister who formulated this proposition in response to the British-German-Italian blockade of Venezuela in 1902.
Box 2.1
Text of the Draft Resolution Submitted by the Commission on Permanent Sovereignty over Natural Resources (A/AC.97/10), 25 May 1961

The General Assembly,

Bear in mind resolution 1314 (XIII) adopted by the General Assembly on 12 December 1958, which established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries,

Bear in mind resolution 1515 (XV) adopted by the General Assembly on 15 December 1960, which recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

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

Considering that in order to promote international co-operation for the economic development of under-developed countries, based on respect for the principles of equal rights and the right of peoples and nations to self-determination, it is desirable to establish in advance economic and financial agreements,

Considering that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

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

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

(Continued on next page)
Declares that,

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

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

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

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

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

6. International co-operation for the economic development of under-developed countries, whether in the form of public or private capital investments, technical assistance, or exchange of scientific information, shall be so encouraged as to contribute in every possible way to the exercise of sovereignty as described in paragraph 5 above;

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

8. States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the United Nations Charter and the provisions of this resolution.
its amendment to operative paragraph 4, designed to replace ‘appropriate’ by ‘adequate’ and to insert, after the word ‘compensation’, the words ‘when and where appropriate’.\textsuperscript{147} The USSR repeated that the payment of compensation was ‘a purely domestic matter to be decided by each sovereign State in accordance with its national laws’.\textsuperscript{148} In addition to the USSR, France, the USA and the UK submitted amendments to the crucial paragraph 4. It is striking that the USA proposed deleting the last two sentences dealing with dispute settlement.\textsuperscript{149}

No wonder that ECOSOC soon became caught in a stalemate and, following a proposal by Venezuela, could only decide to submit the report of the Commission—together with the summary records of the Council’s discussions—to the 16th session of the General Assembly.\textsuperscript{150}

ECOSOC’s report on ‘Permanent sovereignty of peoples and nations over their natural resources’ featured as the last item of the agenda of the Second Committee. Following a proposal by Afghanistan, the Committee decided to postpone substantive discussion of the subject matter to the next session of the General Assembly, due to lack of time. It was also decided that the United Nations’ work on permanent sovereignty over natural wealth and resources be continued and that priority be given to discussion of this matter during the 17th session of the General Assembly.\textsuperscript{151}

5. Bridging the Gap: The Near-Consensus on the Declaration on Permanent Sovereignty over Natural Resources (1962)

5.1 Discussion in the Second Committee: Emotions Running High

\textit{General debate}

During the 17th session of the UNGA, the Second Committee devoted 17 meetings to the discussion of PSNR and as many as 26 separate votes were taken on sections of the draft resolution. Initially, the Netherlands and Chile proposed refraining from changing any part of the Commission’s draft resolution,\textsuperscript{152} since

\textsuperscript{147} UN Doc. E/L.915.
\textsuperscript{148} UN Doc. E/L.914.
\textsuperscript{149} UN Doc. E/L.918.
\textsuperscript{150} ECOSOC Resolution 847 (XXXII), 3 August 1961, meeting 1181 (UN Doc. E/SR.1181).
\textsuperscript{151} See UNYB 1961, pp. 530–33. Resolution 1720 (XVI) of 19 December 1961 was adopted with 85 votes in favour, none against, with 5 abstentions.
\textsuperscript{152} UN Doc. A/C.2/L.654, 31 October 1962.
It constituted a careful compromise between developed and developing countries as well as between respect for national sovereignty and other rights and obligations under international law. Several delegations supported this proposal in their opening statements. A French proposal to refer the draft text to the ILC hardly drew any attention. Burma and the Sudan proposed sending the draft back to the Commission, which was to be enlarged to eighteen member States, so as to take into account the increased membership of the United Nations and the need for adequate geographical representation, in particular of the developing countries. Alternatively, they proposed deleting operative paragraphs 3 and 4. None of these proposals were accepted. The only trace they left was a new preamble calling for ‘further consideration by the United Nations of the subject of permanent sovereignty over natural resources in the spirit of international cooperation in the field of economic development, particularly of the developing countries’, which was adopted by 47 votes to 1 (France), with 44 abstentions.

Afghanistan opened the debate, presenting its earlier amendments to operative paragraph 4. The UK, not represented on the Commission, took the view that the draft of the Commission did not adequately reflect the two principles on which the Commission’s mandate had been based in Resolution 1314 (XIII), namely respect for national sovereignty and due regard for the rights and duties of States under international law. The UK hence submitted a number of amendments. The USSR, repeating its well-known critical assessment of the work of the UN Secretariat and the Commission, introduced a series of amendments, one of which demanded a reference to the importance of UNGA Resolutions 523 (VI) and 626 (VII).

Like Chile, Peru called the draft ‘a happy combination of ideals and interests’ and Sweden described it as a ‘delicate balance of interests’ and ‘a guide for the future’. According to the Philippines it contained ‘nothing which could be interpreted as undermining the sovereignty of any State’.

153 Including Afghanistan, Bolivia, Brazil, Congo, Costa Rica, Greece, India, Indonesia, Nigeria, Sweden, Uruguay, and the UAR.


155 UN Doc. A/C.2/834, 12 November 1962, p. 228.


When the USA asked Chile directly whether the draft proposed any modification of existing international law, Chile responded that ‘the text proposed no modification of existing principles of international law and, in fact, called in two places for observance of these principles’. Nevertheless, the USA stated that it did not want its ‘sovereignty to be impaired by voting for a resolution which, unless clarified, might put in question the fundamental concept of its nationhood and the rights of its nationals’.

Amending and voting on the draft resolution

On 3 December 1962, the Second Committee embarked on a series of votes on the various amendments to the draft resolution. As regards the preamble, the first amendment to be adopted was that by the USSR recalling Resolutions 523 (VI) and 626 (VII). The second vote related to the important question of State succession in a colonial context: Algeria had submitted an amendment according to which ‘the obligations of international law cannot apply to alleged rights acquired before the accession to full national sovereignty of formerly colonized countries and that, consequently, such alleged acquired rights must be subject to review as between equally sovereign States’. This amendment obtained wide support from developing countries. Some developed countries considered it inappropriate to deal with this complicated question of acquired rights while the ILC was studying it on a ‘priority basis’. The UK and the USA tried to accommodate the developing countries with the following preambular paragraph:

Considering that nothing in operative paragraph 4 of this resolution in any way prejudices the position of any Member State on any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule,

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

Algeria accepted this amendment ‘in a spirit of compromise’, since it left it to ‘the discretion of States to decide on the legitimacy of acquired rights and on the granting and amount of compensation’. A Bulgarian proposal to delete the

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words ‘operative paragraph 4 of’, aimed at widening the scope of the US/UK amendment, was rejected.\textsuperscript{167} Subsequently, the amendment was adopted.

At the initiative of the USSR,\textsuperscript{168} another new preambular paragraph was inserted, reading:

\textit{Noting} that the creation and strengthening of inalienable sovereignty of States over their natural resources and wealth strengthens their economic independence,

As this amendment reflected one of its crucial demands, the USSR requested a roll-call vote: it was adopted by 37 votes to 12 (11 Western countries plus Mexico), with 45 abstentions.\textsuperscript{169}

As to the operative part, the Committee first voted on a Soviet amendment to insert the words ‘of their national development and’ in paragraph 1, after the words ‘must be exercised in the interest’. This received wide approval.\textsuperscript{170} It purports to broaden the objective of the exercise of permanent sovereignty by serving both the well-being of the people of the State concerned and national development in general. The next amendment by the USSR—to delete operative paragraph 3 entirely since in its view it had no direct relation with the objective of strengthening permanent sovereignty over natural resources—was rejected.\textsuperscript{171}

Subsequently, the Committee took a round of votes on amendments relating to the core paragraph 4 on nationalization and compensation. Firstly, a Soviet amendment to insert the following opening words was put to a vote:

\textit{Confirms} the inalienable right of peoples and nations to the unobstructed execution of nationalization, expropriation and other essential measures aimed at protecting and strengthening their sovereignty over their natural wealth and resources.

It was rejected as there was no majority: 30 votes to 30, with 33 abstentions. So was the next Soviet amendment,\textsuperscript{172} to replace the second sentence of paragraph 4, which deals with the duty to pay compensation, by the following:

The question of payment of compensation to the owners shall in such cases be decided in accordance with the national law of the country taking those measures in the exercise of its sovereignty.

\textsuperscript{167} Ibid., p. 388. The words ‘operative paragraph 4 of’ were adopted by 39 votes to 18, with 34 abstentions. The first paragraph of the UK/USA amendment was adopted by 85–1–6, and the second one by 63–12–16.

\textsuperscript{168} \textit{UN Doc. A/C.2/L.670}, 9 November 1962.

\textsuperscript{169} \textit{UN Doc. A/C.2/SR.858}, 3 December 1962, pp. 388–89.

\textsuperscript{170} It was adopted by 87 votes to 1, with 3 abstentions.

\textsuperscript{171} The paragraph was maintained by 55 votes to 15, with 21 abstentions.

\textsuperscript{172} This amendment received 28 votes in favour, 39 against, with 21 abstentions.
Next, the Committee dealt with the dispute settlement clause. The UK and the USA wished to indicate that national jurisdiction should be ‘exhausted’ rather than ‘resorted to’. At stake here was the issue whether, after the exhaustion of local remedies, an international dispute settlement procedure could be pursued. In addition, they wished to make clear that upon agreement by ‘the parties concerned’, settlement of the dispute should be made through arbitration or international adjudication.\textsuperscript{173} Lebanon and Syria claimed that this could only occur upon agreement ‘between sovereign States’.\textsuperscript{174} Whereupon, the UK and the USA proposed the phrase ‘by sovereign States and other parties concerned’. The important question here was whether non-State entities, namely foreign companies and nationals, could have a \textit{locus standi} with an international tribunal and whether they enjoyed certain rights under international law, for example, those emanating from the \textit{pacta sunt servanda} principle. Eventually, the Lebanon/Syria sub-amendment was rejected,\textsuperscript{175} while the UK/USA proposal was accepted.\textsuperscript{176}

Emotions in the Western camp ran high once again, when the Committee adopted—by 43 votes to 32, with 32 abstentions—the following Soviet amendment to insert a new provision after paragraph 4 by which the General Assembly:

Unreservedly supports measures taken by peoples and States to re-establish or strengthen their sovereignty over natural wealth and resources, and considers inadmissible acts aimed at obstructing the creation, defence and strengthening of that sovereignty.

Less controversial\textsuperscript{177} was the last Soviet amendment, to replace the second part of paragraph 6 by the words ‘such as to further their independent national development and be based upon respect for their sovereignty over their natural wealth and resources’.

With respect to operative paragraph 8, the UK and the USA submitted an amendment to insert the following sentence at the beginning: ‘Foreign investment and technical assistance agreements freely entered into by or between sovereign States shall be observed in good faith’.\textsuperscript{178} As in the case of the dispute settle-


\textsuperscript{174} UN Doc. A/C.2/L.697, 30 November 1962.

\textsuperscript{175} By 38 votes to 30, with 24 abstentions. A similar sub-amendment submitted by Lebanon and Syria was proposed with respect to paragraph 8, namely to replace ‘by, or between, sovereign States’ by merely ‘between’. This was rejected by 47 votes to 35, with 11 abstentions. See UN Doc. A/C.2/SR.858, 3 December 1962, pp. 389–90.

\textsuperscript{176} By 52 to 28, with 13 abstentions.

\textsuperscript{177} Adopted by 46 votes to 24, with 19 abstentions.

ment clause in paragraph 4, Lebanon and Syria submitted a sub-amendment to delete the words ‘by or’ which was aimed at denying that agreements between States and foreign investors could have a status under international law. This being rejected, the UK/USA amendment was adopted.\(^{179}\)

At the end of the debate, upon the request of Mauritania and Bulgaria, a separate vote was taken on paragraph 4 as a whole, as amended. This key paragraph was adopted by 52 votes to 18, with 17 abstentions. After three and a half hours of voting on separate paragraphs and clauses therein the Chairman could finally put the draft resolution as a whole to a vote: it was adopted by 60 votes to 5, with 22 abstentions.\(^{180}\)

### 5.2 Final Round in the General Assembly: Eliminating a Major Stumbling Block

On 14 December 1962, the Rapporteur of the Second Committee presented the Committee’s report\(^{181}\) to the Plenary Meeting of the General Assembly. On behalf of 13 countries, Tunisia submitted a number of widely-acceptable amendments to the draft resolution, including one requesting the Secretary-General to continue the study of the various aspects of PSNR.\(^{182}\) For the Western countries, the new paragraph 5, inserted at the initiative of the USSR, remained a major stumbling block. As the USA stated:

> It does not make sense, painstakingly to compose a draft resolution which sets forth the rights and obligations of States, which affirms the sovereignty and the modalities of the exercise of that sovereignty, and, at the same time, declares unreserved support for measures to ‘re-establish’ or strengthen their sovereignty over natural wealth and resources.\(^{183}\)

Several Western countries, including Canada, Greece and the UK, indicated that they could only accept the draft resolution if operative paragraph 5 were removed. Notwithstanding this situation the USSR once more insisted on incorporating, at the beginning of operative paragraph 4, the sentence:

> Confirms the inalienable right of peoples and nations to the unobstructed execution of nationalization, expropriation and other essential measures aimed at pro-

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\(^{179}\) By 53 votes to 22, with 15 abstentions. An amendment submitted by Argentina and Peru (UN Doc. A/C.2/L.700), to replace the words ‘the provisions of’ in paragraph 8 by ‘the principles set forth in’, was adopted by 47 votes to 2, with 37 abstentions.

\(^{180}\) See UN Doc. A/C.2/SR.858, 3 December 1962, p. 391, para. 58.

\(^{181}\) UN Doc. A/5344/Add.1 and Add. 1/Corr.1. Rapporteur was Ms Sellers from Canada.

\(^{182}\) UN Doc. A/L.412 and Rev. 1 and Rev. 2, 12–14 December 1962.

\(^{183}\) UN Doc. A/PV.1193, 14 December 1962, p. 1124.
tecting and strengthening their sovereignty over their natural wealth and resources.\textsuperscript{184}

It was rejected again, this time by 48 votes to 34, with 21 abstentions.

Mauritania, finally, once more tried to have the words ‘shall be exhausted’ replaced by ‘should be resorted to’, but failed again.\textsuperscript{185}

At the request of the USA, the Assembly took a separate vote on operative paragraph 5\textsuperscript{186} and rejected it.\textsuperscript{187}

Subsequently, the draft resolution as a whole was adopted as GA Resolution 1803 (XVII) with 87 votes to 2 (France and South Africa), with 12 abstentions. France explained that it had cast a negative vote because advice had not been sought from UN organs competent to deal with legal matters, such as the Sixth Committee or the International Law Commission.

Table 2.2 General Assembly Resolutions on Permanent Sovereignty over Natural Resources (1952–62)

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<th>GA Resolution</th>
<th>Date of Adoption</th>
<th>Voting Record</th>
<th>Title</th>
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<tbody>
<tr>
<td>523 (VI)</td>
<td>12 Jan 1952</td>
<td>Adopted unanimously</td>
<td>Integrated Economic Development and Commercial Agreements.</td>
</tr>
<tr>
<td>626 (VII)</td>
<td>21 Dec 1952</td>
<td>36 (60%)–4–20</td>
<td>Right to Exploit Freely Natural Wealth and Resources.</td>
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<tr>
<td>837 (IX)</td>
<td>14 Dec 1954</td>
<td>41 (80%)–11–3</td>
<td>Recommendations Concerning International Respect for the Right of Peoples and Nations to Self-Determination.</td>
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<tr>
<td>1720 (XVI)</td>
<td>19 Dec 1961</td>
<td>85 (95%)–0–5</td>
<td>Permanent Sovereignty over Natural Resources.</td>
</tr>
<tr>
<td>1803 (XVII)</td>
<td>14 Dec 1962</td>
<td>87 (86%)–2–12</td>
<td>Permanent Sovereignty over Natural Resources.</td>
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</tbody>
</table>

\textsuperscript{184} UN Doc. A/L.414, 14 December 1962.

\textsuperscript{185} The amendment was rejected by 25 votes in favour, 25 against and 33 abstentions.

\textsuperscript{186} See Article 18, paras. 2 and 3 of the UN Charter and rule 87 of the rules of procedure of the UN General Assembly.

\textsuperscript{187} By 41 votes to 38, with 15 abstentions.
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<tr>
<th>Forum</th>
<th>Draft Text / Proposal</th>
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<tr>
<td>UN Commission on Human Rights, 8 May 1952, on Chilean proposal.</td>
<td>'The right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources.'</td>
<td>10 votes to 6 (all Western nations), with 2 abstentions (China and Greece)</td>
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<td></td>
<td>'In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States'. Proposal to include this Article in both Human Rights Covenants.</td>
<td>9–8–1 (Lebanon)</td>
</tr>
<tr>
<td>Third Committee, 1955</td>
<td>Proposal by Cuba, Ecuador and El Salvador to establish an ad hoc Working Party composed of nine countries.</td>
<td>35–13–10</td>
</tr>
<tr>
<td>Ad hoc Working Party of Third Committee of UNGA, consisting of Brazil, Costa Rica, El Salvador, Greece, India, Pakistan, Poland, Syria and Venezuela</td>
<td>'The peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence'.</td>
<td>7–0–2</td>
</tr>
<tr>
<td>Third Committee, 1955</td>
<td>Proposal by Denmark to delay decision-making on Article 1. Specific phrases of the text of the Working Party: a. 'for their own ends'. b. 'based upon the principle of mutual benefit'. c. 'in no case may a people be deprived of its own means of subsistence'.</td>
<td>25–28–5</td>
</tr>
<tr>
<td>Third Committee, 1955, separate votes on:</td>
<td>Text as proposed by ad hoc Working Party.</td>
<td>26–13–19</td>
</tr>
<tr>
<td>Third Committee vote on proposal as a whole, 29 November 1955</td>
<td>'Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.' As Article 25 of the Covenant on Economic, Social and Cultural Rights, and Article 47 of the Covenant on Civil and Political Rights.</td>
<td>75–4–20</td>
</tr>
<tr>
<td>General Assembly, 16 December 1966</td>
<td>G.A. Resolution 2200 A (XXI), adopting the Human Rights Covenants.</td>
<td>Unanimously</td>
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