5 Permanent Sovereignty over Natural Resources in Territories under Occupation or Foreign Administration

In Chapter 3 it was noted that during the 1960s the discussion on the principle of PSNR was increasingly confined to developing countries. From the early 1970s, the General Assembly and other UN organs also frequently stressed the principle that PSNR included the right of peoples to regain effective control over their natural resources. For example, in Resolution 3171 (XXVIII) the General Assembly ‘supports resolutely the efforts of the developing countries and of the peoples of the territories under colonial and racial domination and foreign occupation in their struggle to regain effective control over their natural resources’. The NIEO Declaration stipulates that the right to permanent sovereignty includes, in case of violation, the right to ‘restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples’. Problems have arisen over the question of PSNR in territories being administered and/or occupied by third States. In this Chapter three cases are reviewed. Firstly, South West Africa/Namibia: its status and the exploitation of its vast mineral and fish resources by South Africa, other States and foreign enterprises. Secondly, the exploitation of resources of the Sinai and other territories occupied by Israel. Thirdly, the Panama Canal and Zone; the operation and administration of the Panama Canal Zone.

1. The Status of Namibia and its Natural Resources before Independence in 1990

1.1 The Status of South West Africa/Namibia

Namibia, up to the late 1960s called South West Africa, was a German colony from the Berlin Conference (1884–85) up to the First World War, when newly-

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1 Para. 4(f) of GA Res. 3201 (S-VI). See also Art. 16 of CERDS and para. 33 of the Lima Declaration of UNIDO II.
independent South Africa conquered the territory. It soon became clear that South
Africa had plans to annex it, but in 1918 President Woodrow Wilson opposed this.
South West Africa came under the ‘mandate system’ of the League of Nations and
in 1920 the Mandate over this territory was conferred upon the British Crown, to
be exercised by the Union of South Africa. This granted South Africa ‘full power
of administration and legislation over the Territory’ and the right to apply its own
laws. 2 But South Africa was also obliged to promote the material and moral well-
being and the social progress of the people (Art. 2 of the Mandate). This Mandate
may have prevented South Africa from unilaterally annexing the Territory, but the
South African statesman Smuts had a point when he called it ‘annexation in all
but name’.

During the League of Nations period some problems arose between the League
and South Africa because of the application of racially discriminatory laws in
South West Africa, originally termed segregation and later apartheid. However,
South Africa could easily disregard these protests made by the weak and deeply-
divided League of Nations.

In 1946, during the first UNGA session, South Africa proposed the integration
of South West Africa into the Union of South Africa. But the Assembly rejected
this plan and stated, in its Resolution 65 (I) of 14 December 1946, that South
West Africa should now fall under the Trusteeship System of the United Nations.
South Africa, in turn, was not willing to recognize that the responsibilities of the
League regarding mandated territories had passed to the United Nations. An advi-
sory opinion of the International Court of Justice (ICJ) in 1950 was not very clear
on this issue. The Court stated, on the one hand, that South Africa had no right to
alter unilaterally the international status of the territory and that the United
Nations as the de facto successor to the League of Nations could fulfil the super-
visory functions which earlier had been carried out by the League, but, on the
other hand, it did not provide a clear answer to the question whether South Africa
was under a legal obligation to place the Territory under the new Trusteeship
System. 3

In November 1960, Ethiopia and Liberia, the only two African countries which
had been members of the League, instituted proceedings against South Africa at
the ICJ on the ground that South Africa had violated the obligations arising from
the Mandate, primarily by applying apartheid policies in the territory. In 1966, the
Court, deeply divided on this issue, ruled by a narrow majority that Ethiopia and
Liberia ‘. . . cannot be considered to have established any legal right or interest

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21/31/14D, 17 December 1920.

Occupied Territories

appertaining to them in the subject-matter of the present claims and that, accordingly, the Court must decline to give effect to them.4

In the meantime, through decisions of the political organs of the United Nations, the rules of international law pertaining to self-determination and PSNR developed rapidly.

The United Nations and Namibia

Against this background, the General Assembly decided to take matters in its own hands. In GA Resolution 2145 (XXI) of 27 October 1966, the Assembly declared that South Africa:

has failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa and has, in fact, disavowed the Mandate.

For these reasons the General Assembly terminated the Mandate and placed the Territory under the direct responsibility of the United Nations. The Assembly also stated in this Resolution that the people of South West Africa had an inalienable right to self-determination, freedom and independence in accordance with the Charter of the United Nations and the 1960 Decolonization Declaration.5 In 1967, the General Assembly established a UN Council for South West Africa to administer the Territory until independence (which was envisaged for 1968) and entrusted the Council, inter alia, with the power ‘to promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory until a legislative assembly is established following elections conducted on the basis of universal adult suffrage’.6 It also renamed the country as Namibia.7 In Resolutions 264 and 269 (1969), 276 and 283 (1970), the Security Council recognized the termination of the Mandate by the General Assembly. The resolutions called upon South Africa to withdraw from Namibia immediately. In its Resolution 276, the Council declared that all actions by South Africa on behalf of or regarding Namibia since the termination of the Mandate were ‘illegal and invalid’. This resolution also called upon all States to refrain from any dealings with South Africa in so far as they concerned Namibia. Through its Resolution 284 (1970), the Security Council requested an advisory opinion from the ICJ on the question:

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4 South West Africa Cases, (Ethiopia and Liberia vs. South Africa), ICJ Reports 1966, p. 6 (Final Judgment). See also ICJ Reports 1962, p. 319 (Judgment on Preliminary Objections).

5 GA Res. 2145 (XXI), 27 October 1966, was adopted by 114 votes to 2 (Portugal and South Africa), with 3 abstentions (France, Malawi and the UK).

6 GA Res. 2248 (S-V), 19 May 1967. For the work of the UN Council on Namibia, see Arts (1989).

7 GA Res. 2372 (XXII), 12 June 1968.
What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?

In 1971, this time within less than a year after the request, the Court gave its opinion:

1. that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;
2. that States Members of the United Nations are under obligation to recognize the illegality of South Africa’s presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration. 8

The Security Council, in Resolution 301 (1971), agreed with the Court’s findings by 13 votes to nil, with 2 abstentions (France and UK). It declared that South Africa’s illegal occupation constituted ‘an internationally wrongful act’, and that South Africa was responsible for any violations of its international obligations or the rights of the Namibian people. In relation to foreign companies working in Namibia, the Council declared:

. . . that franchises, rights, titles, or contracts relating to Namibia granted to individuals or companies by South Africa after the adoption of General Assembly Resolution 2145 (XXI) are not subject to protection or espousal by their States against claims of a future lawful Government of Namibia.

1.2 Decree No. 1 for the Protection of the Natural Resources of Namibia

Intensive foreign mining operations carried out in Namibia worried the UN Council for Namibia a great deal. Exploitation of natural resources was taking place without the permission of the Council. Royalties or taxes were not paid to the Council for the benefit of the Namibian people but to the South African Government. Another cause for concern was the overfishing of stocks off the Namibian coast, which would take years to recover. In this way, Namibia’s resources were being rapidly depleted.

This situation clearly conflicted with the principle in Article 1 of the 1966 Human Rights Covenants that peoples should be able freely to dispose of their natural resources and that these should be exploited in their interests. On the basis of its mandate in Resolution 2248 (S-V) of 1967, the UN Council for Namibia on 27 September 1974 enacted Decree No. 1 for the Protection of the Natural Resources of Namibia. In the preamble, the Council pointed out that the political aim of the

8 ICJ Reports 1971, p. 58.
The main points of the operative part of the Decree can be summarized as follows:

a. **Prohibition of exploitation and export.** Paragraph 1 of the Decree forbade the prospecting, mining, processing, selling, exporting, etc., of natural resources within the territorial limits of Namibia without permission of the UN Council. Paragraph 2 declared concessions, licences, etc., granted by others, for example, the South African Government, to be null and void no matter when granted. Paragraph 3 forbade the export of natural resources without permission of the UN Council.

b. **Seizure and forfeitures of illegally obtained resources and the means of transport thereof.** If minerals or other natural resources were exported contrary to the above provisions, these resources could be seized and declared forfeited by the UN Council (paragraph 4). Paragraph 5 stated that every vehicle, ship or container which transported illegally-obtained Namibian resources could be seized and forfeited for the benefit of the Namibian people.

c. **Future claims for damages.** Paragraph 6 stated that the future government of an independent Namibia could hold each person or firm contravening the provisions of the Decree liable for damages caused to the Namibian people. This related to an action for damages and not to criminal proceedings.

**The legal value of Decree No. 1**

The form (not just another resolution, but a Decree), the formulation (not general but specific, not worded as a recommendation but mandatory) and the content (not only objectives but prohibitory provisions) created the initial impression that this concerned a binding decision which was meant to be ‘directly applicable’. The Decree was clearly meant to have extraterritorial effect, in other words to be valid and to be applied outside Namibia. Such an extraterritorial effect would in principle be possible, except that from a legal point of view the paragraphs on seizure and forfeiture of the means of transportation of Namibian raw materials outside Namibia seemed untenable. Formally, the Decree was a decision of a subsidiary organ of the General Assembly. The question arose whether the Decree, as a decision of a subsidiary organ, could be binding, while decisions of the main organ, the General Assembly, were in principle non-binding. The UN Council for Namibia had been vested with the power to administer the territory and to serve as the caretaker government until independence. Moreover, in various resolutions the General Assembly had reaffirmed the Decree and reiterated its core contents. For example, in its Resolution 33/182 A, on the work of

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9 Including GA Res. 33/40, 33/182 A and C.
Conscious of its responsibility to protect the natural resources of the people of Namibia and of ensuring that these natural resources are not exploited to the detriment of Namibia, its people or environmental assets, the United Nations Council for Namibia enacts the following decree:

The United Nations Council for Namibia,

Recognizing that, in the terms of General Assembly resolution 2145 (XXI) of 27 October 1966 the Territory of Namibia (formerly South West Africa) is the direct responsibility of the United Nations,

Accepting that this responsibility includes the obligation to support the right of the people of Namibia to achieve self-government and independence in accordance with General Assembly resolution 1514 (XV) of 14 December 1960,

Reaffirming that the Government of the Republic of South Africa is in illegal possession of the territory of Namibia,

Furthering the decision of the General Assembly in resolution 1803 (XVII) of 14 December 1962 which declared the right of peoples and nations to permanent sovereignty over their natural wealth and resources,

Noting that the Government of South Africa has usurped and interfered with these rights,

Desirous of securing for the people of Namibia adequate protection of the natural wealth and resources of the Territory which is rightfully theirs,

Recalling the advisory opinion of the International Court of Justice of 21 June 1971,

Acting in terms of the powers conferred on it by General Assembly resolution 2248 (S-V) of 19 May 1967 and all other relevant resolutions and decisions regarding Namibia,

(Continued on next page)

the UN Council for Namibia, the General Assembly declared that the natural resources of Namibia were ‘the birthright of the Namibian people and that the exploitation of those resources by foreign economic interests . . . is illegal and contributes to the maintenance of the illegal occupation régime’. In this connection, it is also relevant to recall an observation the ICJ made in its advisory opinion on Namibia:

it would not be correct to assume that, because the General Assembly is in principle vested with recommendatory powers, it is debarred from adopting in specific cases within the framework of its competence resolutions which make determinations or have operative design.\(^\text{10}\)

\(^{10}\) ICJ Reports 1971, p. 50.
Decrees that

1. No person or entity, whether a body corporate or unincorporated, may search for, prospect for, take, extract, mine, refine, use, sell, export, or distribute any natural resource, whether animal or mineral, situated or found to be situated within the territorial limits of Namibia without the consent and permission of the United Nations Council for Namibia or any person authorized to act on its behalf for the purpose of giving such permission or such consent;

2. Any permission, concession or licence for all or any of the purposes specified in paragraph 1 above whensoever granted by any person or entity, including any body purporting to act under the authority of the Government of the Republic of South Africa or the ‘Administration of South West Africa’ or their predecessors, is null, void and of no force or effect;

3. No animal resource, mineral, or other natural resource produced in or emanating from the Territory of Namibia may be taken from the said Territory by any means whatsoever outside the territorial limits of Namibia by any person or body, whether corporate or unincorporated, without the consent and permission of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council;

4. Any animal, mineral or other natural resource produced in or emanating from the Territory of Namibia which shall be taken from the said Territory without the consent and written authority of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council may be seized and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

5. Any vehicle, ship or container found to be carrying animal, mineral or other natural resources produced in or emanating from the Territory of Namibia shall also be subject to seizure and forfeiture by or on behalf of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

6. Any person, entity or corporation which contravenes the present decree in respect of Namibia may be held liable in damages by the future Government of an independent Namibia;

7. For the purposes of the preceding paragraphs 1, 2, 3, 4 and 5 and in order to give effect to this decree, the United Nations Council for Namibia hereby authorizes the United Nations Commissioner for Namibia, in accordance with resolution 2248 (S-V), to take the necessary steps after consultations with the President.
In earlier work the present author concluded that the legal validity of the Decree varied from one legal order to another as well as from country to country.\textsuperscript{11} In general, the legal status of the Decree is bound to be less than that of a binding decision of, say, the Security Council, but greater than that of an ‘ordinary’ General Assembly resolution or a law of a foreign State. It concerned fundamental provisions which resulted from the unique international status of Namibia and which aimed at protecting the development potential of a people that had hitherto been unable to exercise its fundamental right to political and economic self-determination. For example, taking into consideration the relative ‘receptiveness’ of the legal system of the Netherlands for decisions of international institutions (Art. 93 of its Constitution) and the statements of the Netherlands Government recognizing the authority of the UN Council for Namibia to enact such decrees, the legal force of the Decree in the Netherlands was greater than in countries with a less receptive legal system or another Namibia policy. Thus, on 21 October 1975, Herman Burgers, the delegate of the Netherlands stated in the Fourth Committee of the UN General Assembly:

My Government, however, has no doubt of a legal nature concerning the competence of the General Assembly to create the Council and to invest it with executive powers . . . In the Netherlands’ view, the Council was legally entitled to decree that the exploitation, etc., of natural resources in Namibia would henceforward require the consent and permission of the UN Council for Namibia.\textsuperscript{12}

1.3 The UN Council for Namibia vs. Urenco, UCN and the Netherlands

The Netherlands and Namibian uranium

During the 1970s, the involvement of the Netherlands Government and of companies based in the Netherlands in the processing of Namibian uranium was under discussion. It seemed very likely that uranium, originating from Namibia, was being enriched at the Urenco plant in Almelo (the Netherlands). Before enrichment, the uranium had been processed into uranium hexafluoride in France and the UK. The Dutch Government regarded the purchase and utilization of Namibian uranium as ‘undesirable’ but it pointed out that Urenco itself did not become the owner of the uranium which it only enriched for its clients. The Decree, however, also prohibited the ‘processing’ and ‘refining’ of natural resources of Namibia without the permission of the UN Council. The Netherlands Government stated that it was impossible to determine which part of the material originated from Namibia, since it had been mixed in British and French processing plants with uranium from other countries. Consequently, its origin could no longer be deter-

\textsuperscript{11} Schrijver (1985: 29–35).

\textsuperscript{12} Publication no. 116 of the Netherlands Ministry of Foreign Affairs, 1976, pp. 548–49.
mined and it could no longer be regarded as the same product as before. Additionally, the Government referred to an obligation incumbent upon the parties to the Treaty of Almelo (the Netherlands, Germany, and the UK) to accept all enrichment orders. The Government argued that it was unable to undertake any action itself, but stated that ‘it was up to the Council to seek the implementation of the Decree in the courts of the Netherlands’. 13

The writ of summons

On 14 July 1987, the UN Council for Namibia summoned Urenco Nederland, Ultra Centifruge Nederland (UCN) and the State of the Netherlands to appear in the District Court in The Hague. 14 The Council stated that defendants:

are acting unlawfully vis-à-vis the people of Namibia, viz. infringing and contributing towards the infringement of the right to self-determination of the people of Namibia, the rights of that people with respect to the ownership and exploitation of the natural resources of Namibia (. . .) and (. . .) are acting contrary to the diligence they are bound to observe vis-à-vis the people of Namibia and its natural resources.

The Council based its writ not only on the infringement of the Decree, but also on the 1920 Mandate, the UN Charter, the General Assembly resolutions concerning PSNR and the termination of the Mandate, the 1971 advisory opinion of the ICJ and the Security Council resolutions ordering South Africa to terminate its exercise of power over Namibia and all other States and companies under their direct or indirect control to refrain from any dealing with respect to commercial or industrial enterprise or concessions in Namibia. 15

In the writ of summons, the UN Council asked for a court order prohibiting any further carrying out of enrichment orders by Urenco and UCN which were placed wholly or partly on the basis of Namibian uranium. In order to ensure compliance with this prohibition, Urenco and UCN would have to submit a negative certificate of origin (‘a written statement from the party by or on whose behalf the order is placed’) as obtained from their principals. Moreover, the UN Council required the State of the Netherlands to supervise the observance of these court orders and to do everything in its power to prevent the enrichment of Namibian uranium. It is striking that the Council did not file a claim for compensation for damages, seizure or forfeiture in conformity with the Decree, but only aimed at a declaratory judgment and at a prohibition on the carrying out in future of any order to enrich uranium originating from Namibia.

15 See the section above on The United Nations and Namibia.
The State of the Netherlands was held jointly liable and was consequently summoned as well by the Council, because the Treaty of Almelo had provided for a Joint Committee—consisting of the three States Parties—with wide policy-making powers, which enabled the governments to exercise a decisive influence on the policy of the industrial companies.\textsuperscript{16} 

\textit{The response of the Dutch Government}

Following the writ of 14 July 1987, the Dutch Government on 23 July 1987 sent a letter to the UN Secretary-General, expressing dissatisfaction that it had not been offered an opportunity to explain its point of view during a formal meeting of the UN Council for Namibia and its dismay at the accusation of having committed a wrongful act towards the people of Namibia:

By levelling such an unwarranted accusation against the Netherlands, the Council seemed to question the sincerity of the Netherlands Government on this vital issue, despite the latter’s long-standing commitment to the well-being and legitimate aspirations of the Namibian people.\textsuperscript{17}

On 6 November 1987, the Netherlands, commenting on reports of the UN Council for Namibia, stated that the Council ought to concentrate on ‘evidence and actual forms of plunder and depletion of the natural resources of Namibia’. It pointed to the overfishing by ‘some States’ and called upon the Council ‘to undertake any decisive action to put an end to this form of exploitation’. Concerning the Urenco suit, it declared that the Government’s position was based upon ‘convincing legal arguments’. Nonetheless, the Dutch Government felt compelled to state:

\begin{quote}
We wish to stress that our votes on draft resolutions in the Assembly, be it in the past or the present, may in no way be construed as supportive of the Council’s claim in the case pending before the court in the Netherlands.
\end{quote}

\textit{Namibian independence in 1990}

After instituting the proceedings, the claimant did not actively pursue the court case. Because of the many factual and legal complications, there was no guarantee of success. In view of the prospects for a settlement of the Namibian question, the UN Council considered it better to await events. Indeed, after years of negotiation, stalemate and breakthroughs, the independence process finally gathered momentum in 1989 and on 21 March 1990 Namibia acquired its independence.\textsuperscript{18} In

\textsuperscript{16} The text of this treaty has been published in \textit{Tractatenblad} of the Kingdom of the Netherlands, Vol. 1970, no. 41.

\textsuperscript{17} \textit{UN Doc.} A/42/414, 14 July 1987.

\textsuperscript{18} Schrijver (1994a: 1–13).
1990 the court case in the Netherlands was withdrawn and thus this PSNR case was terminated inconclusively.

2. Permanent Sovereignty over ‘National’ Resources in Israeli-Occupied Territories

On 15 December 1972, the General Assembly affirmed for the first time ‘the principle of the sovereignty of the population of the occupied territories over their national wealth and resources’.\(^{19}\) It called upon all States, international organizations and specialized agencies not to recognize or co-operate with any measures undertaken by the occupying power, Israel, to exploit the resources of the occupied powers. This Resolution was adopted in response to a report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of Occupied Territories.\(^{20}\) In subsequent years, this finding was elaborated in a series of resolutions specifically dealing with this issue.\(^{21}\)

In 1973, Pakistan, supported by 17 other developing countries,\(^{22}\) submitted a draft resolution on ‘Permanent Sovereignty over National Resources in the Occupied Arab Territories’,\(^{23}\) in which it drew particular attention to the economic consequences resulting from Israeli exploitation of the natural resources of the occupied Arab territories. It referred particularly to exploitation of oil in the Sinai area by Israel, which accounted for two-thirds of Israeli needs. Israel regretted attempts to involve the Second Committee of the General Assembly in this highly politicized subject, while China, the GDR, Egypt, Kuwait and the USSR spoke in support of the draft resolution. The resolution, adopted on 17 December 1973,\(^{24}\) recalled, \textit{inter alia}, the 1962 Declaration on PSNR and affirmed the right of ‘the Arab States and peoples whose territories are under foreign occupation to permanent sovereignty over all their natural resources’. It reaffirmed that the Israeli measures ‘to exploit the human and natural resources of the occupied Arab territories are illegal’ and called upon Israel to bring such measures forthwith to a halt. It also affirmed the right of Arab States and peoples whose territories were under Israeli occupation to ‘the restitution of and full compensation for the exploitation and looting of, and damages to, the natural resources . . . of the occupied territo-

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\(^{19}\) Para. 4 of GA Res. 3005 (XXVII); emphasis added.

\(^{20}\) \textit{UN Doc. A/8828}.

\(^{21}\) See Table 4.1.

\(^{22}\) Three from Asia, 12 from Africa, and Cuba and Yugoslavia.

\(^{23}\) \textit{UN Doc. A/C.2/L.1333}, emphasis added.

\(^{24}\) GA Res. 3175 (XXVIII), adopted by 90 votes to 5, with 27 abstentions.
ries'. Finally, it declared that these principles applied to ‘all States, territories and peoples under foreign occupation, colonial rule or apartheid’. In 1974 the Assembly adopted Resolution 3336 (XXIX) which was similar to that of 1973. New elements were that the right to permanent sovereignty was extended to ‘all resources and wealth’ and that it called for a report of the Secretary-General on adverse effects for Arab States and peoples resulting from ‘repeated Israeli aggression and continued occupation of their territories’. Pakistan claimed that the concept of ‘national wealth’ comprised all forms of wealth, including items of cultural or national heritage, personal wealth of Arab people, etc. While in essence the debate took place along similar lines as that of 1973, more countries participated and the tone on both sides was more militant. This also applied to the language of the resolution itself, which employed terms like ‘resolutely supports . . . their struggle to regain effective control over their natural resources’ (preamble), ‘full and effective permanent sovereignty’ (para. 1).

On 11 October 1977, the Secretary-General submitted his final report, entitled ‘Permanent Sovereignty over National Resources in the Occupied Arab Territories’. The report analyses in detail the economic effects of the 1967 conflict and its aftermath on Egypt, Syria, Jordan and the occupied territories, including the West Bank and the Gaza strip. In the absence of a response by Lebanon and in view of the difficult situation existing there, it had not been possible to include Lebanon in the analysis. Egypt claimed that the report did not cover all losses suffered by Egypt as a result of continued occupation of Egyptian territories, including losses incurred in the Sinai resulting from ‘excessive reduction in exploitable oil reserves due to exceptionally high rates of exploitation of the oil wells during the occupation’ and the loss of and damage to items of national, religious and cultural heritage, such as ancient mosques and monuments, particularly in the devastated Suez Canal Zone.

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25 It is interesting to note that all exploitation of natural resources is deemed illegal here, while a subsequent Egyptian note (see note 30 below) referred to the ‘excessive’ reduction of reserves and ‘exceptionally high’ rates of exploitation.

26 This paragraph was adopted in a separate vote by 94 to 4 (Israel, Nicaragua, Portugal and the USA).

27 On 17 December 1974, the Assembly adopted the resolution with 99 votes to 2 (Israel and the USA), with as many as 32 abstentions.

28 Second Committee meetings 1630 and 1635; draft resolution UN Doc. A/C.2/L.1372. Plenary meeting no. 2323.

29 UN Doc. A/32/204. In previous years, the Assembly had requested the Secretary-General to make the necessary arrangements to submit a comprehensive report; see GA Res. 3516 (XXX) and GA Res. 31/186.

30 UN Doc. A/32/398, note verbale of 29 November 1977 from Egypt.
On 19 December 1977 the Assembly adopted a new resolution in which it: (1) emphasized the right of the Arab States and peoples to full and effective permanent sovereignty and control over their natural and all other resources, wealth and economic activities; (2) reaffirmed that all measures undertaken by Israel to exploit the human, natural and all other resources, wealth and economic activities in the occupied Arab territories were illegal and called upon Israel immediately to desist forthwith from all such measures; (3) reaffirmed the right to restitution and full compensation; (4) called upon all States to support and assist the Arab States and peoples in the exercise of these rights; and (5) called upon all States, international institutions, investment corporations and all other institutions not to recognize, or co-operate with or assist in any measures undertaken by Israel to exploit the resources in the occupied territories or to effect any changes in the demographic composition or geographic character or institutional structure of those territories.

In 1979 the Assembly requested the Secretary-General to prepare a report for its 1980 session, taking into account specific areas of loss noted by the Assembly in its 1977 resolution. The contents of subsequent resolutions in the years 1980–83 were basically the same, except that after Resolution 36/173 (1981) they contained explicit references to the ‘Palestinian territories’ both in the titles and the operative parts. The voting records on all these resolutions remained virtually the same (see Table 5.1), with Israel and the USA persistently casting a negative vote and nearly all other Western countries abstaining. Portugal, while voting in favour, consistently reserved its position with respect to the right of States and peoples under occupation to restitution and compensation for the exploitation and depletion of their resources. Japan reserved its position with respect to the principle of PSNR as such but declared its sympathy for the cause of the Arab States and peoples. From 1980, Kuwait instead of Pakistan took the initiative and in 1982 and 1983 Senegal took the lead.

Over the years the reports of the Secretary-General have provided substantial information and specific data on wealth and resources—natural, human, cultural and other—in occupied territories. In 1983, the Secretary-General submitted a report on the implications, under international law, of all these UN resolutions relating to PSNR in the occupied territories and on Israel’s obligations concerning

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32 This Resolution 34/136 was adopted by 118 votes to 2 (Israel, USA), with 21 abstentions.

33 GA Res. 35/110, 36/173, 37/135 and 38/144.

34 See UN Docs. A/33/204 and A/36/648.
its conduct in those territories. In an annex Professor Sloan, a former Director of the UN Office of Legal Affairs, concludes that the primary right of peoples and nations to PSNR entails a right freely to use, control and dispose of them. Full exercise of that right could take place only with the restoration of control, namely sovereignty over the occupied territories to the States and peoples concerned. As long as that does not materialize, the occupying power is under an obligation not to interfere with the exercise of permanent sovereignty by the local population. Under the law of belligerent occupation, natural resources could not be used by the occupying power beyond the limits imposed by the Regulations respecting the Laws and Customs of War on Land, annexed to The Hague Convention IV of 1907, and by the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949. These stipulate that land cannot be taken for settlement and that other resources cannot be used beyond usufruct and only in connection with the occupation. From this it follows that reparation can be claimed for loss or damage to natural resources suffered as a result of violations of these rules of belligerent occupation.

After 1983 no further separate resolutions have been adopted by the General Assembly on this issue. This is due to the Camp David agreements which resulted, on the one hand, in a return of the Sinai to Egypt, and on the other hand, in a temporary split in the group of Arab States. Only incidental references can be found to the ‘inalienable national rights’ of the Palestinian people, which may be held to include a right to permanent sovereignty over the natural resources and wealth of its occupied territories as well as a right to claim from Israel restitution of land and compensation for loss of, and damages to, their natural wealth and resources. Similarly, since 1983 ECOSOC and its Committee on Natural Resources have ceased to address this issue. Discussions have focused on a political settlement of the conflicting territorial claims to Palestine.

On 4 May 1994, Israel and the Palestine Liberation Organization concluded a very detailed agreement on the withdrawal of Israeli forces and administration from the Gaza Strip and the Jericho Area. The agreement also includes a lengthy protocol on economic relations between Israel and the PLO, dealing with such is-

36 See also the 1899 Hague Convention II, Annex Article 55, and the 1907 Hague Convention IV, Annex Article 55.
37 Ibid., pp. 20–21.
sues as import policy, monetary and financial issues, taxation, labour, and agricultural and industrial co-operation.\textsuperscript{40} There are no references to natural resource management or to compensation for depletion of these resources in the past.

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<th>GA Resolution</th>
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<td>3005 (XXVII)</td>
<td>15 Dec 1972</td>
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<td>Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.</td>
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<tr>
<td>3175 (XXVIII)</td>
<td>17 Dec 1973</td>
<td>90 (74%)/26</td>
<td>Permanent Sovereignty over National Resources in the Occupied Arab Territories.</td>
</tr>
<tr>
<td>3336 (XXIX)</td>
<td>17 Dec 1974</td>
<td>99 (74%)/32</td>
<td></td>
</tr>
<tr>
<td>3516 (XXX)</td>
<td>15 Dec 1975</td>
<td>100 (78%)/26</td>
<td></td>
</tr>
<tr>
<td>31/186</td>
<td>21 Dec 1976</td>
<td>107 (77%)/30</td>
<td></td>
</tr>
<tr>
<td>32/161</td>
<td>19 Dec 1977</td>
<td>109 (79%)/26</td>
<td></td>
</tr>
<tr>
<td>34/136</td>
<td>14 Dec 1979</td>
<td>118 (84%)/21</td>
<td></td>
</tr>
<tr>
<td>35/110</td>
<td>5 Dec 1980</td>
<td>122 (83%)/23</td>
<td></td>
</tr>
<tr>
<td>36/173</td>
<td>17 Dec 1981</td>
<td>115 (82%)/24</td>
<td>Permanent Sovereignty over National Resources in the Occupied Palestinian and Other Arab Territories.</td>
</tr>
<tr>
<td>37/135</td>
<td>17 Dec 1982</td>
<td>124 (85%)/20</td>
<td></td>
</tr>
<tr>
<td>38/144</td>
<td>19 Dec 1983</td>
<td>120 (86%)/18</td>
<td></td>
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3. Sovereignty over the Panama Canal and Zone

3.1 The 1903 Canal Convention

On 18 November 1903, the USA concluded a treaty with Panama, after this country had declared its independence from Colombia a few days earlier. The USA had supported the secessionists and the US Navy prevented Colombia from acting against them. In return for its support, the USA acquired in the Hay-Bunau-Varilla Treaty of 1903:

\[
\ldots \text{in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed.}
\]

Furthermore, Panama conferred on the USA:

\[
\text{all the rights, powers and authority \ldots which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.}
\]

In 1914 the construction of the Panama canal was completed by the USA, which had replaced the French Compagnie Universelle du Canal Interocéanique de Panama. In 1878 this company had obtained a concession for the construction and a right of use for 99 years from Colombia, but it went bankrupt before it actually started the operation. The USA retained all necessary rights to exercise jurisdiction over the Panama Canal and Zone for the purpose of operating the canal, but Panama retained general sovereignty over the zone. However, following the early 1960s Panama undertook efforts to revise or terminate the 1903 treaty. Eventually, in 1977 new Panama Canal treaties were concluded, which reaffirmed Panama as ‘the territorial sovereign’ but now provided it with full jurisdiction in the zone where the canal is located. The USA retained the rights necessary for operating, protecting and defending the canal, supervised by a joint Panama Canal Consultative Committee. But before the conclusion of these new treaties could be accomplished, tension rose between Panama and the USA during the late 1960s and early 1970s.

\[\text{Text in Martens, Nouveau Recueil Général de Traités (NRG) 2, Vol. 30, p. 631.}\]
\[\text{Hartwig (1990: 285).}\]
\[\text{Text and introductory note to the treaties in} 16 \text{ILM (1977: 1022).}\]
3.2 Security Council Debating ‘Unequal Treaty’ in Panama City

In 1972–73 Panama served as a member on the UN Security Council and in March 1973 it held the presidency. On its invitation the Council decided to hold meetings in Panama City from 15 to 21 March 1973. The official agenda item was ‘Consideration of measures for the maintenance and strengthening of international peace and security in Latin America in conformity with the provisions and principles of the Charter’. The Council addressed a wide variety of issues under this item, including the question of Panama’s sovereignty over the Panama Canal, and economic dependence and economic domination of Latin America. The major part of the meetings was devoted to the question of the Panama Canal and Zone. In his opening speech, the President of Panama underscored his country’s legitimate aspirations to regain complete jurisdiction over its whole territory and to exercise sovereign rights over all its natural resources:

... a certain group of nations ... is shocked because peoples claim the right to exploit their own natural resources, the wealth of their own sea, of their ports, of their soil, of their subsoil, of their labour and of their geographical position in order to benefit their nationals and not to do them harm, and struggle so that their non-renewable resources will not be used to subsidize the economies of the rich nations and because they wish the wealth of their own soil to bear the nationality of the country that possesses it. That is an inherent right of all nations, as the right of Panama to exploit its geographical position for the benefit of its own people is inherent.

Peru held that the situation of the Canal could legally be defined as ‘a colonial enclave’ and advocated that:

... an agreement should be arrived at that will unequivocally establish the full sovereignty and unhampered jurisdiction of Panama over its entire territory, and enable Panama to have full responsibilities for the functioning of the inter-oceanic Canal allowing it freely to dispose of its natural resources and to enjoy just participation in the economic benefits derived from it.

Other Latin American countries expressed support for Panama in similar terms. Cuba, not a Council member but addressing it as a guest, went a step further by referring to ‘a threat to international peace and security in the hemisphere that lay in neo-colonial relations imposed on Panama by the United States under a treaty that infringed and violated the most elementary norms of international law’ and by

45 UN Doc. S/RES/325(1973), unanimously adopted. Art. 28.3 of the UN Charter provides for the possibility that the Security Council is convened outside UN headquarters.
calling for ‘the nationalization of this natural resource for the benefit of its people’ as ‘an inalienable and imprescriptible right’.49

China also expressed support for Panama in its ‘patriotic struggle against an unequal treaty’ and in its ‘struggle to recover full sovereignty over its entire territory’. The USSR called for a realistic and reasonable approach that respected ‘the effective sovereignty and complete jurisdiction of Panama over all of its territory and also guaranteed freedom of international shipping.’50 France and the UK took similar positions. The USA stated that it also supported Panama’s ‘just aspirations’. Therefore, it had already recognized that: (1) the 1903 Canal treaty should be replaced by a new, modern treaty; (2) any new treaty should be of a fixed duration; (3) Panama should get back ‘a substantial territory now part of the Canal Zone, with arrangements for use of other areas . . . [which] should be the minimum required for United States operations and defence of the Canal’; and (4) Panama should exercise its jurisdiction in the Canal area pursuant to a mutually-agreed timetable. At the same time it believed that it would be ‘necessary that the United States be responsible for the operation and defence of the Canal for an additional, specified period of time’.51 Finally, the USA explicitly stated:

We do not want to question the principle of ‘permanent sovereignty’. However, at the same time we wish to point out that we do not believe that [this] complex issue is properly before the Security Council. In accepting the principle of permanent sovereignty we strongly reaffirm our support for the principles of General Assembly Resolution 1803 (XVII) including inter alia the observance in good faith of foreign investment agreements, the payment of appropriate compensation for nationalized property, as required by international law, and the recognition of arbitration and international adjudication.52

Kenya also explicitly linked the discussion to the various General Assembly resolutions on PSNR and repeated a position taken earlier:

Sovereignty over natural resources is inherent in the quality of statehood and is part and parcel of territorial sovereignty—that is, the power of a State to exercise supreme authority over all persons and things within its territory. Sovereignty over natural resources, which is essential to economic independence, is functionally linked to political independence, and consolidation of the former inevitably strengthens the latter. Since it excludes allegiance or subordination to any

52 Ibid., p. 16, para. 130.
authority, sovereignty over natural resources implies complete freedom of action for a State in determining the use of those resources.\(^{53}\)

### 3.3 American Veto on Draft Security Council Resolution

On 16 March 1973, Panama and Peru submitted a draft resolution requiring the Council to take note that the Governments of Panama and the USA had agreed to reach ‘a fair and just agreement’, specifically mentioning a number of elements including the abrogation of the 1903 Canal Convention and the conclusion of a new one, and calling on the parties to execute promptly such a new treaty. On 20 March 1973, a revised version was submitted, co-sponsored by other non-aligned countries.\(^{54}\) This text included a new preambular paragraph asking the Council to observe that ‘the free and fruitful exercise of permanent sovereignty by peoples and nations over their natural resources should be fostered through mutual respect among States, based on their sovereign equality (General Assembly Resolutions 1514 (XV), 1803 (XVII) and 3016 (XXVII))’. The operative part was less specific with respect to elements of an agreement, but took note of the willingness of the parties ‘to conclude a new, just and fair treaty concerning the present Panama Canal which would fulfil Panama’s legitimate aspirations and guarantee full respect for Panama’s effective sovereignty over all its territory’. On 21 March 1973, its adoption by the Security Council was vetoed by the USA.\(^{55}\) The USA afterwards declared that there was much in the draft resolution to which it could agree, but since these matters were in the process of bilateral negotiation it did not consider it appropriate or helpful for the Council to adopt a resolution on matters of substance ‘in the form of sweeping generalities when we know that the real difficulties lie in the application of those generalities’. It also observed: ‘the Panama Canal is not a work of nature or, as some have tried to put it, a natural resource’.\(^{56}\) Kenya replied to this that the Panama Canal is ‘as much a natural resource of Panama as the copper mines and installations in Chile are the natural resources of those countries and as the oil wells and installations in Iran, Saudi Arabia and Indonesia are the natural resources of those countries’.\(^{57}\)

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\(^{55}\) It received as many as 13 affirmative votes, one against and one abstention.


\(^{57}\) *UN Doc.* S/PV.1704 and Corr.1, 21 March 1973, p. 10. However, it can be noted that the Kenyan reply does confuse mines with copper ore and wells with crude oil; while copper ore and crude oil *in situ* clearly are natural resources, mines, wells and installations are not.
3.4 First and Last Security Council Reference to Permanent Sovereignty

Panama, Peru and Yugoslavia had submitted another draft resolution which dealt in more general terms with sovereignty over natural resources, economic independence and freedom from coercion. On 21 March 1973 the Security Council adopted this as Resolution 330 (1973) by 12 votes to nil, with 3 abstentions (France, UK and USA). In its preamble, the resolution recalls GA Resolutions 1803 (XVII) and 3016 (XXVII) and the section of Resolution 2625 (XXV) on freedom from coercion. The Council noted with deep concern the existence and use of coercive measures which affected the free exercise of PSNR of Latin American countries. In its operative part, the Council ‘urges States to adopt measures to impede the activities of those enterprises which deliberately attempt to coerce Latin American countries’ and requests States ‘to refrain from using or encouraging the use of any type of coercive measures in the region’. The three Western powers declared that they had abstained since they regarded this a matter for the General Assembly and ECOSOC and outside the competence of the Security Council. The USA added that it did not accept the premise that coercive measures were being used in Latin America in a manner likely to endanger peace and security.

This Resolution 330 (1973) is the only Security Council resolution which contains an explicit reference to the concept of PSNR.
Summary and Appraisal of Part I

The UN debate on the management of natural resources began with discussions on the extent to which, if at all, States should take into account the interests of other States, and of the world economy as a whole, in their natural resource policies. In 1952, a balance was achieved in GA Resolution 523 (VI). Although shortly thereafter the debate took a quite different course, it is striking to see that in the 1990s these early concerns have come once again to the fore.¹

Between 1952 and 1962, the period between the submission of Chile’s proposal to include the principle of PSNR in the Human Rights Covenants and the adoption of the 1962 UN Declaration, an extensive debate took place on the nature and legal status of the principles of self-determination and sovereignty over natural wealth and resources. Changing political relationships in the world exerted a major impact on this debate. Membership in the United Nations increased from 60 in 1952 to 110 in 1962 as a result of the decolonization process which led to the causes of under-development and the necessary conditions for development also becoming an issue in the debate. The evolution of the principle of PSNR was marked by an increasing re-emphasis on the sovereignty of States, in particular of developing countries. In this respect, it is symbolic that in the year of the adoption of GA Resolution 1803 (1962) terms such as ‘under-developed’ or ‘less-developed’ countries were replaced by ‘developing’ countries. Yet, at the same time ‘international economic co-operation for economic development of developing countries’ had become an established concept in world affairs.

The principle of permanent sovereignty over natural wealth and resources became the subject of much politicized debate due to competing ideologies in the same period. This debate was characterized by the presentation of over-simplified rival options: on the one hand, to increase the flow of foreign capital by reinforcing respect for acquired rights and for international law in general; on the other hand, to allow the taking of foreign investment ‘without let or hindrance’ whenever national development and the strengthening of sovereignty was required. The debate was brought into high relief by actual nationalizations, including those of the Suez Canal Company in 1956, of Dutch property in Indonesia in 1958 and of French investments in Algeria in 1961.

¹ See Chapter 10, sections 4 and 5.
Consequently, the discussions in the United Nations on PSNR in the period 1952–62 had a dual character as they focused on these two conflicting perspectives which were controversial and widely publicized. Some Western business organizations reacted by approaching some developing countries with the request not to vote in favour of a ‘hostile’ resolution. In fact, discussions focused sometimes on these underlying diametrically opposed perspectives rather than on the actual content of texts. For example, the text of Resolution 626 (VII) was—certainly after the first Indian amendment—relatively non-controversial. The final result of the process in the period under review in Chapter 2 was the 1962 Declaration on Permanent Sovereignty over Natural Resources, which is widely considered as embodying a balance between the interests of capital-exporting and capital-importing countries and between permanent sovereignty and the international legal duties of States. All Soviet proposals for unrestricted nationalization were eventually rejected and the observance of agreements and respect for international law was accorded a prominent position. Unfortunately, as a result of the necessary compromise, there is considerable ambiguity in key paragraphs of the Declaration, such as the term ‘appropriate’ compensation and the ‘However, upon agreement’ phrase in the dispute settlement clause. Therefore, it would be incorrect to view this 1962 Declaration as the economic equivalent of the 1960 Decolonization Declaration. The latter is less controversial and more outspoken in outlawing colonial relationships and in establishing the right of all colonial territories to political self-determination.

Nonetheless, the travaux préparatoires of the PSNR Commission (1958–61) and the Second Committee and Plenary Meetings of the 1962 session of the General Assembly reveal virtually unanimous support for the principle that every State has the right to take control of its natural wealth and resources. A constructive debate on the modalities of this principle took place, taking into account both the obligations arising from international law and the development needs of developing countries. From this perspective, the 1952–62 debate on permanent sovereignty can be qualified as a constructive North-South dialogue, which resulted in a landmark UN Declaration. The preparation and adoption of the Declaration on Permanent Sovereignty over Natural Resources also marks a shift in emphasis from the self-determination of peoples to the sovereignty of States. This was illustrated by the fact that the forum of debate was transferred from the Commission...

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2 Kellogg (1955: 12). See also statements by Costa Rica and Colombia during the debate which eventually resulted in GA Resolution 626 (VII).

3 The American delegate Kellogg said: ‘In fact, there is nothing affirmative to which the United States can specifically object in the final text’. Kellogg (1955: 15).

4 GA Res. 1514 (XV), Declaration on the Granting of Independence to All Colonial Territories and Peoples, adopted on 14 December 1960, by 89 votes to none, with 9 abstentions.
After 1963 the UN debate on PSNR evolved in various directions. With the near-completion of the decolonization process during the 1960s, general PSNR resolutions increasingly referred to developing countries only or to all States as subjects of the right to PSNR, with the exception of specific resolutions on the right of certain peoples, notably those ‘under foreign occupation, colonial domination or apartheid’. The debate initially focused on elaborating the 1962 Declaration with a view to linking the exercise of PSNR more closely with the cause of promoting development. Especially GA Resolution 2158 (XXI) of 1966 was instrumental in this, entailing as it did a comprehensive programme on how to implement PSNR through an active role of the State both in natural resource management and in constructive co-operation with foreign investors. During the period 1963–70 the principle of PSNR found a well-established place in human rights law and development-related resolutions.

Controversy raised its head again during the early 1970s. Developing countries, assembled in the Group of 77, attempted to broaden and deepen their right to PSNR. They sought to broaden it by claiming PSNR over marine resources in substantially extended sea areas and over resource-related economic activities, and eventually over all economic activities and ‘wealth’ in general rather than natural wealth and resources only. Western States strongly opposed these extensions. In addition, the Group of 77 sought to deepen PSNR by expanding the series of rights to be derived from PSNR, including the right to share in the administration and profits of foreign companies, the right to determine freely the amount of ‘possible’ compensation to be paid after nationalization, and the right to settle disputes solely upon the basis of national law and by national remedies.

In 1974, this controversy culminated in the 74 voting rounds on CERDS, especially in the deeply-split vote by which Article 2 was adopted. In retrospect, one may wonder why the mutual distrust of each other’s intentions was so strong. The result was that nearly every opportunity for a meaningful compromise was lost, such as the possibility of inserting a reference to ‘just compensation’ in CERDS as proposed by 14 OECD countries. Most likely the initial successes of OPEC, the establishment of other commodity producers’ associations, various large-scale nationalizations in the early 1970s and the weakened position of the Western world, as a result of world economic recession and the Vietnam War, strengthened the Group of 77 in their resolve to insist upon formulations which they knew were utterly unacceptable to the Western group. In its turn the latter also hardened its position.

Be that as it may, some of the rough edges were removed from subsequent references to the principle of PSNR and there was a gradual return to a strategy of compromise and co-operation. In 1975, the unanimously adopted GA Resolution 3362 (S-VII) on Development and International Economic Cooperation does not
even use such terms as ‘permanent sovereignty’ and ‘nationalization’. Agreement could be reached on an Integrated Programme for Commodities in 1976 (UNCTAD IV), the establishment of a Common Fund for Commodities in 1980, and a new Law of the Sea Convention in 1982, albeit that the signatories did not include all Western States. In the PSNR discussion, emphasis gradually shifted from setting the parameters for foreign participation in the exploitation of natural resources (including participation in management and profits, and the training of national personnel) towards the question of what international co-operation could contribute to exploration, exploitation, processing and marketing of the natural resources of developing countries. By 1994, although discussions in ECOSOC on these issues have usually taken place under the agenda item of PSNR, the content of the debate and of the resolutions adopted has been far removed from that of the original PSNR resolutions.

Along another trajectory, the General Assembly has also adopted a series of environmentally-relevant resolutions since the 1960s. The need to preserve the environment and to safeguard natural resources is now commonly accepted but is usually balanced against the aim of poverty eradication in developing countries. It is clear that PSNR has become pervaded with environmental concerns. Various instruments entail guidelines for natural resource management at a national level. However, all instruments discussed fall short explicitly of restricting the principle of PSNR. They exemplify the conviction—to interpret them in a positive vein—that the primary responsibility for proper and environmentally-sound management of nature and natural resources and for integrating environmental and development policies rests with States.

Simultaneously, UN organs have discussed certain long-standing cases or situations in which peoples and States entitled to self-determination and PSNR were unable to exercise freely their decision-making power with respect to their natural resources and wealth. All three cases described—Namibia, Israeli-occupied territories and the Panama Canal Zone—were forcefully pursued during the early 1970s when the developing countries took an assertive stand on many world affairs, including PSNR. Although some elements of the resolutions in question contained fairly new and controversial elements, their main thrust was to reaffirm that: (1) apart from States, PSNR is also vested in peoples that could not yet exercise their right to self-determination; and (2) the right freely to use, control and dispose of natural resources or, if this is not the case, the right to regain effective control over their natural resources are core rights to be derived from the principle of PSNR.

The development of PSNR has tended to focus on the formulation of rights in the earlier periods, but balance with duties has been increasingly created by stipulating that PSNR be exercised for national development and the well-being of the people; by inserting phrases such as ‘in accordance with international law’ in nationalization and marine resources related paragraphs; or by adding references
to other principles of international law such as the observance in good faith of international obligations, the duty to co-operate or the responsibility of States for transboundary damage. UN resolutions are thus providing support for the thesis that rights and duties are two sides of the same coin.