

Permanent sovereignty over natural resources



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The general assembly adopted the resolution 1803 (XVII) on the permanent sovereignty over natural resource, on the 14 of December 1962 by 87 votes in favour to 2 against, with 12 abstentions. The general assembly also established the united commission on permanent sovereignty over natural resources on 12 December 1958 under resolution 1314 (XIII). In 1961, this commission adopted a draft resolution outlining principles concerning permanent sovereignty over natural resources.

Following consideration of this draft resolution by the economic and social council and the second committee of the general assembly, the general assembly adopted resolution 1803 (XVII). That resolution declares that ' the right of peoples and nation to permanent over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned' Permanent sovereignty reflects the inherent and superseding right of a state to control exploitation and the use of its natural resources.

That is, a state has the right to exercise this right for the benefit of its citizens. The permanent sovereignty over natural resources was an issue in the deliberation over the legality of nationalizing foreign enterprise. The foreign investors insisted that they have right to exploit another nation's natural resources, because it was acquired during the colonial period and continued after the independence of the formerly colonized countries.

Then, the developing nations argued that permanent sovereignty over natural resources is necessary to protect their economic sovereignty. They also claimed that permanent sovereignty includes the right to expropriate

foreign enterprises. It is one thing to note that natural resources is a political and not a legal problem, is a major reason why agreements on the parameters of this fundamental principle has not been reached . There was a recent claim the ICJ ruled upon by raising the question of permanent sovereignty over natural resources.

Austria had negotiated a treaty with Indonesia that created a zone of cooperation in the Timor gap, a portion of the continental shelf near East Timor. East Timor was an incorporated Indonesian territory under the administering power of Portugal, its long-term colonial master. Portugal asserted that Australia had no right to enter into treaties that contravened East Timor's right to its resources. Portugal alleged that Australia had violated its obligation to respect East Timor rights to self-determination and permanent sovereignty over its natural resources. However, the majority accepted Australia's argument that resolution of Portugal's claims demanded that the court address the issues of the lawfulness of Indonesia's presence in East Timor, the validity of the Australia-Indonesia's rights under that treaty. Thus, because Indonesia was an important party to the case and had never consented to ICJ jurisdiction to hear the case.

There are two opinions that addressed the principle of permanent sovereignty over natural resources because the majority issued its opinion without reaching the substance of that principle, the arguments of the two dissenting opinions have to be given considerable weight. Resolution 1803 (XVII) provides ' that states and international organizations shall strictly and conscientiously respect the sovereignty of people and nations over their

natural resources and wealth in accordance with the charter of the united nations and the principles set out as contained in the resolution’.

At the same time it also provides that ‘ foreign investment agreement freely entered into by or between states shall be observed in good faith’. Moreover in the case of nationalization, “ the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of state based on their sovereign equality. ’ The violation of national sovereignty over natural resources is “ contrary to the spirit and principles of the charter of the United Nations and hinders the development of international co-operation and the maintenance of peace. ” In this manner, resolution 1803 (XVII) identifies an important and basic limitation on the notion of relative sovereignty. The Arbitrator in Texaco Overseas petroleum considered the legal force of the UN. Resolutions when he examined Assembly voting conditioned and analysed the relevant provisions of the resolutions.

While a great number of states, representing not only all geographical areas, but also all economic systems, assented to the principles stated in Resolution 1803 (XVII), including Resolution 3281 (XXIX), were adopted without the assent of the most prominent western countries and without general consensus among the states with respect to the most important provisions, particular those concerning nationalization. The reference to nationalization was an essential factor in the support given by several western countries to resolution 1803 (XVII).

Therefore, resolution 1803 seems to reflect the state of customary law existing in this field. Today, the international community generally accepts that Resolution 1803 (XVII) – it is sometimes referred to as a ‘carefully worked out compromise’. The United Nations gave further consideration on the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly in the developing countries. The principles of the Resolution of 1803 are set out in eight articles concerning ;

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of their wellbeing 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. . 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.

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

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case where the question of compensation gives rise to a controversy, the national jurisdiction of the state taking such measures shall be exhausted. However, upon agreement by sovereign states and other parties concerned, settlement of the disputes should 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 developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

7. Violation of the rights of people and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the charter of the United Nations and hinders the development of international co - operation and the maintenance of peace. 8. Foreign investment agreements freely entered into by or between sovereign states shall be observed in good faith; states and international organization shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the charter and the principles set forth in the present resolution.

In summary, the resolution has helped in the bridging of gap between developing and developed countries and also ensures that the rights of their

resources are not violated by multinational co -operations. It has also helped in the sovereignty of the people and their resources in accordance with the charter of the United Nations.