

FILE COPY
RETURN TO
DISTRIBUTION
Bureau C. 111



Distr.
GENERAL

A/AC.97/1
12 May 1959

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON PERMANENT
SOVEREIGNTY OVER NATURAL RESOURCES

HISTORICAL SUMMARY OF DISCUSSIONS RELATING TO THE
QUESTION OF PERMANENT SOVEREIGNTY OF PEOPLES AND
NATIONS OVER THEIR NATURAL WEALTH AND RESOURCES

Paragraphs

I.	Discussions relating to article 1 of the draft international covenants on human rights	
A.	Proposal submitted by the Commission on Human Rights	1 - 2
B.	Discussion of the proposal by the General Assembly	3 - 4
C.	Provision adopted by the Third Committee at the tenth session of the General Assembly	5
II.	Proceedings leading to the establishment of the Commission on Permanent Sovereignty over Natural Resources	
A.	Draft resolution submitted by the Commission on Human Rights at its tenth session (1954)	6 - 3
B.	Recommendations adopted by the General Assembly at its ninth session (1954)	9 - 11
C.	Further consideration by the Commission on Human Rights at its eleventh session (1955)	12 - 13
D.	Discussions by the Economic and Social Council at its twentieth session (1955)	14
E.	Resolution adopted by the General Assembly at its thirteenth session (1953)	15 - 13

HISTORICAL SUMMARY OF DISCUSSIONS RELATING TO THE
QUESTION OF PERMANENT SOVEREIGNTY OF PEOPLES AND
NATIONS OVER THEIR NATURAL WEALTH AND RESOURCES

(Note by the Secretary-General)

I. DISCUSSIONS RELATING TO ARTICLE 1 OF THE DRAFT INTERNATIONAL COVENANTS ON
HUMAN RIGHTS

A. Proposal submitted by the Commission on Human Rights

1. The question of permanent sovereignty over natural wealth and resources, as one of the constituents of the right of peoples and nations to self-determination, was first raised at the eighth session (April-June 1952) of the Commission on Human Rights, in connexion with its work on the preparation of draft international covenants on human rights. By resolution 545 (VI) of 5 February 1952, the General Assembly decided to include in the draft covenants an article, consisting of two provisions, on the right of all peoples and nations to self-determination. On the proposal of Chile, the Commission on Human Rights decided by a vote of 10 to 6 that, in addition to the two provisions drafted by the General Assembly, this article should also include a third paragraph which read as follows:^{1/}

"3. 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."

2. In its report to the Economic and Social Council, the Commission on Human Rights summarized the discussion preceding the adoption of this provision as follows:^{2/}

"45. Some members expressed the view that the right of peoples to self-determination should not be regarded solely from the political point of view but should also be considered from the economic aspect, since political independence was based on economic independence, and that the right of peoples freely to dispose of their own natural resources should be recognized.

1/ Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4 (E/2256-E/CN.4/669), paragraph 91, and annexes, pages 44 and 46.

2/ Ibid., paragraphs 45 and 46.

It was said that that would not mean that States would arbitrarily denounce agreements, but would settle the matter of relations between nations and foreign private undertakings, which made large profits by exploiting a country's natural resources without, in most cases, being affected by its legislation. The realization of the right of peoples to self-determination, in accordance with United Nations principles, should enable any State to acquire complete control of its own natural resources and should place that State in a position to apply its national legislation to any private industry, even if the legislation sanctioned the expropriation or nationalization of certain undertakings on fair conditions.

"46. Other members argued that, in order to correct past abuses of rights granted under contractual arrangements, it would be more appropriate to incorporate limitations in such agreements rather than to include statements in a treaty which might invalidate contracts and make international co-operation impossible. It was also argued that to include such a provision in the covenant would mean that international agreements might be arbitrarily revoked, and that it might discourage foreign investments in the under-developed areas as well as any kind of technical assistance programmes. Another view was that to attempt to define the relations between States owning resources and States or their nationals seeking to develop such resources was not appropriate for inclusion in a covenant on human rights because they concerned rights of States rather than rights of individuals."

B. Discussion of the proposal by the General Assembly

3. The General Assembly considered the draft International Covenants on Human Rights at its ninth session and invited governments and specialized agencies to communicate to the Secretary-General any observations they may wish to make thereon. As regards paragraph 3 of the first article of the Covenants dealing with the right of peoples and nations to self-determination, the following views were expressed:^{2/}

"20. Against this text it was suggested that 'permanent sovereignty' was not a tenable concept as any State could voluntarily limit its own sovereignty at any time. Furthermore, the proposition was considered dangerous in that it would sanction unwarranted expropriation or confiscation of foreign property and would subject international agreements and arrangements to unilateral renunciation.

"21. On the other hand, it was stated that the right of self-determination certainly included the simple and elementary principle that a nation or people should be master of its own natural wealth or resources. The proposal, it was emphasized, was not intended to frighten off foreign investment by a threat of expropriation or confiscation; it was intended rather to warn against such foreign exploitation as might result in depriving the local population of its own means of subsistence."

^{2/} Official Records of the General Assembly, Tenth Session, Annexes, Agenda Item 26 (Part II), page 15.

4. At the tenth session of the General Assembly, the Third Committee continued its consideration of the text of article 1 of the draft Covenants prepared by the Human Rights Commission. In its report, the Committee summarized the general debate on paragraph 3 as follows:^{4/}

"4. Both sentences of paragraph 3 were criticized as being imprecise and dangerous in their existing wording. Some opposed the inclusion of any provision relating to a people's right to sovereignty over their natural wealth and resources in an article on self-determination. Some said that the paragraph as drafted was either superfluous, or else dangerous because it might introduce obstacles to international co-operation. The first sentence was criticized on the grounds that 'permanent sovereignty' had little meaning. Objection was raised to the second sentence on the grounds that, as drafted, its consequences might be too far-reaching and infringe existing international treaties and agreements between States. It could be interpreted to mean expropriation without just compensation. It could discourage foreign investors and, in particular, could harm the policy of assistance to under-developed countries. Those who supported the paragraph recognized that some amendment might be called for to meet some of the objections."

Several amendments to the text prepared by the Human Rights Commission were proposed, and a Working Party was established to consider the provision in the light of the amendments proposed and of the comments and suggestions made.

C. Provision adopted by the Third Committee at the tenth session of the General Assembly

5. The Working Party submitted an amended text of article 1 of the Draft International Covenants on Human Rights, in which the provision proposed by the Human Rights Commission as paragraph 3 became the second paragraph and read as follows:^{5/}

"2. 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."

^{4/} Official Records of the General Assembly, Tenth Session, Annexes, Agenda Item 28 (Part I), page 34.

^{5/} Ibid., page 35, paragraph 57 (2).

It was explained that^{6/}

"that the group had deleted the reference to 'permanent sovereignty' and had redrafted the paragraph to meet the objections which had been expressed that it could be invoked to justify expropriation without proper compensation. The references to international law and international economic co-operation should allay any fears regarding foreign investments in a country, while the words 'based upon the principle of mutual benefit' would provide certain safeguards."

The text proposed by the Working Party for paragraph 2 of article 1 was adopted by the Third Committee by a vote of 26 to 13, with 17 abstentions.

II. PROCEEDINGS LEADING TO THE ESTABLISHMENT OF THE COMMISSION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

A. Draft resolution submitted by the Commission on Human Rights at its tenth session (1954)

6. At its tenth session in February 1954, at which it completed the drafting of the International Covenants on Human Rights, the Commission on Human Rights also considered a request by the General Assembly to prepare recommendations relating to steps which might be taken, within the limits of their resources and competence, by the various organs of the United Nations and specialized agencies to develop international respect for the right of peoples to self-determination.^{7/} On this subject, the Human Rights Commission decided to recommend to the Economic and Social Council the transmission of two draft resolutions to the General Assembly for consideration and adoption. The first of these two draft resolutions, adopted in the Commission by 11 votes to 6, read as follows:^{8/}

"The General Assembly,

"Noting that the right of peoples and nations to self-determination as affirmed in the two draft covenants completed by the Human Rights Commission includes 'permanent sovereignty over their natural wealth and resources',

^{6/} Official Records of the General Assembly, Tenth Session, Annexes, Agenda Item 23 (Part I), page 36, paragraph 65.

^{7/} General Assembly resolutions 637 (VII) and 733 (VIII), transmitted to the Commission by resolutions 472 (XV) and 510 (XVI) of the Economic and Social Council.

^{8/} Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573-E/CN.4/705), annex 4, draft resolution F I.

"Believing it necessary to have full information at its disposal regarding the actual extent and character of this sovereignty,

"Decides to establish a Commission consisting of ... to conduct a full survey of the status of this basic constituent of the right to self-determination with recommendations, where necessary, for its strengthening;

"Invites the Regional Economic Commission and the specialized agencies to co-operate with the Commission in its task;

"Requests the Commission to report to the twentieth session of the Economic and Social Council;

"Requests the Secretary-General to provide the Commission with necessary staff and facilities."

7. During the discussion of this draft resolution in the Human Rights Commission, the following views were expressed:^{9/}

"... it was explained that the purpose was to secure necessary information regarding the actual extent and character of the right. The study could not be entrusted to the regional economic commissions since the activities of such commissions did not extend to all areas of the world. The specialized agencies on the other hand might hesitate to undertake the task because of its political implications. It was therefore thought desirable that a commission be set up by the General Assembly to undertake the study with the assistance of regional economic commissions and the specialized agencies. The task of the commission to be established would not be limited however to gathering information. It would make a study and appraisal of the information gathered with a view to making recommendations for strengthening the right of peoples to permanent sovereignty over their natural resources. Certain members, however, criticized the proposal as premature since it was based on the covenants which had not yet been adopted. Moreover, the proposal was considered illogical since it envisaged the creation of a commission to study only the economic rights of peoples, but not their political rights. It was also pointed out that the proposal was not clear about the aim and method of the study to be undertaken by the proposed commission."

8. The Economic and Social Council considered the draft resolution prepared by the Human Rights Commission at its eighteenth session. Upon the recommendation of its Social Committee,^{10/} the Council decided to return the draft resolution to the Commission on Human Rights together with the records of the meetings of the Council

^{9/} Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573-E/CN.4/705), paragraph 330.

^{10/} E/AC.7/SR.239 to 292 and E/2638.

and of the Social Committee on this question, so that the Commission might reconsider its proposal in the light of the Council's discussion.^{11/}

B. Recommendations adopted by the General Assembly at its ninth session (1954)

9. Afghanistan submitted a draft resolution^{12/} which proposed, inter alia, that the General Assembly should request the Commission on Human Rights "to prepare recommendations concerning international respect for the right of peoples and nations to self-determination with a view to their adoption at the next session of the General Assembly". The representative of Afghanistan accepted an amendment,^{13/} submitted jointly by sixteen delegations, which called for the addition of the words "including recommendations concerning their permanent sovereignty over their natural wealth and resources" after the word "self-determination", and the Third Committee adopted an amendment by India calling for the replacement of the word "prepare" by the words "complete its". Another amendment^{14/} submitted by Brazil, Peru and the United States proposed the insertion in the draft resolution, after the word "recommendations", of the words "having 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". This amendment was divided into two parts for the purpose of voting; the words "obligations under international agreements, the principles of international law and" were rejected by 21 votes to 17, with 14 abstentions; the remaining portion of the amendment was adopted by 23 votes to 11, with 13 abstentions. The revised Afghanistan draft resolution as a whole, as amended, was adopted by the Third Committee by 37 votes to 14, with 1 abstention.^{15/}

10. During the discussion^{16/} some delegations stressed the importance which they attached to the economic aspect of the right of peoples and nations to self-determination, asserting that it must include permanent sovereignty over natural

^{11/} Economic and Social Council resolution 545 G (XVIII); Official Records of the Economic and Social Council, 820th meeting, paragraphs 9 and 10.

^{12/} Official Records of the General Assembly, ninth session, Annexes, agenda item 12, A/2329, paragraph 52.

^{13/} Ibid., paragraph 53.

^{14/} Ibid., paragraph 56.

^{15/} Ibid., paragraphs 59 to 62.

^{16/} Ibid., paragraphs 54 to 57; Official Records of the General Assembly, ninth session, 512th plenary meeting, paragraphs 117-151.

wealth and resources. The three-power amendment was criticized on the grounds that there could be no limitation to the principle of self-determination and that it might, in the case of a nation which has not yet attained statehood, sanction obligations depriving it of its own means of subsistence and undertaken on its behalf by another Power. On the other hand, some representatives argued that self-determination was a political principle applicable to whole peoples and nations but not a legal right vested in individuals, and that a substantive element had been prematurely introduced into the Afghan proposal when it was stated that the Commission should include recommendations concerning permanent sovereignty over natural wealth and resources.

11. The draft resolution recommended by the Third Committee was briefly considered by the General Assembly at its 512th plenary meeting on 14 December 1954. After accepting an amendment submitted by Brazil, Peru and the United States to insert, after the words "with due regard to", the words "the rights and duties of States under international law and", the General Assembly adopted^{17/} by 41 votes to 11, with 3 abstentions, resolution 357 (IX) which read as follows:

"Recommendations concerning international respect for the right of peoples and nations to self-determination

"The General Assembly,

"Recalling its resolutions 637 (VII), 648 (VII) and 738 (VIII),

"Noting the recommendations of the Commission on Human Rights to the Economic and Social Council,

"Noting, further, resolution 545 G (XVIII) adopted by the Economic and Social Council,

"Considering that the preparation of recommendations on measures for promoting the right of self-determination is a matter of immediate concern,

"1. Requests the Commission on Human Rights to complete its recommendations concerning 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, in order that the General Assembly may give those recommendations full and due consideration at its next regular session;

^{17/} Official Records of the General Assembly, ninth session, 512th plenary meeting, paragraph 158.

"2. Requests the Economic and Social Council to transmit these recommendations to the General Assembly for consideration at its next regular session."

At its eighteenth resumed session, the Economic and Social Council formally transmitted resolution 837 (IX) of the General Assembly to the Commission on Human Rights.

C. Further consideration by the Commission on Human Rights at its eleventh session (1955)

12. The item "recommendations concerning international respect for the right of peoples and nations to self-determination" was considered by the Commission on Human Rights at its eleventh session in April 1955. At its 505th meeting the Commission adopted by 11 votes to 6, with 1 abstention, a joint draft resolution submitted by Egypt, Greece, India, Lebanon, Pakistan and the Philippines which read:^{13/}

"The Commission on Human Rights,

"Having received Economic and Social Council resolution 545 G (XVIII),

"Having considered General Assembly resolution 837 (IX) which requests the Commission to complete its recommendations concerning international respect for the right of peoples and nations to self-determination,

"Believing that the consideration and adoption of measures for promoting the right of self-determination are matters of immediate concern,

"Reaffirms the recommendations contained in resolutions F I^{19/} and II adopted by the Commission at its tenth session;

"Recommends that in the conduct of the full survey of the status of permanent sovereignty of peoples and nations over their natural wealth and resources due regard shall 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;

"Requests the Economic and Social Council, pursuant to General Assembly resolution 837 (IX), to transmit these recommendations to the General Assembly for consideration at its next regular session."

^{13/} Official Records of the Economic and Social Council, twentieth session, Supplement No. 6 (E/2731 and Corr.1-E/CN.4/719 and Corr.1), paragraph 122.

^{19/} For text of this resolution, see paragraph 6 above.

13. In the course of the discussion of this draft resolution, the following views were expressed:^{20/}

"With regard to the establishment of the survey commission, the majority were of the opinion that a full survey of the status of permanent sovereignty over natural wealth and resources would be a most constructive step towards the goal of self-determination. The draft resolution, it was maintained, was directed against exploitation and expropriation alike. It was an attempt to allay all honest apprehensions and doubts. On the one hand, it was said, under no circumstances should a people be deprived of its own means of subsistence through the exploitation of foreign investors; on the other hand, foreign investments should not be expropriated without just and fair compensation and only if warranted by public necessity. It was generally recognized that there should be collaboration between those who were in possession of surplus capital and modern techniques and those who were under-developed and non-self-governing. It was for this reason that the Commission recommended that the survey commission should 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 development of under-developed countries". At the same time it was said that under no circumstances should this economic collaboration be used for political purposes. Others stated that the General Assembly had directed the Commission itself to give due regard to the factors quoted above before deciding on any recommendation.

"It was further suggested that, on the basis of a full survey, the United Nations might draw up a social and economic programme with a view to assisting in the development of Non-Self-Governing and under-developed countries or Territories. Such a planned programme, under the auspices of the United Nations, would be the best and most effective form of international co-operation for a full realization of the right of self-determination.

"Questions were raised as to how certain groups could exercise permanent sovereignty over their natural wealth and resources when they were not yet independent, and how that sovereignty could be permanent. It was said that sovereignty was not inalienable as was shown in the case of voluntary cessions of territory which might be considered as partial renunciations of sovereignty. On the other hand, it was pointed out that such an abandonment of sovereignty under political pressure had no significance. It was thought, moreover, that before the permanent right to natural wealth could exist there must be some form of independence or sovereignty; and that no voluntary cessions of territory could be likened to a conquest or to the consequence of an imposed treaty."

^{20/} Official Records of the Economic and Social Council, twentieth session, Supplement No. 6, paragraphs 129 to 131.

D. Discussions by the Economic and Social Council at its twentieth session (1955)

14. The Economic and Social Council decided to transmit the draft resolution, which was proposed by the Commission on Human Rights at its tenth session^{21/} and revised in accordance with the recommendation adopted at its eleventh session,^{22/} to the General Assembly for its consideration.^{23/} The Council summarized the views of its members on this question as follows:^{24/}

"The establishment of a commission to conduct a full survey of the status of permanent sovereignty of peoples and nations over their natural wealth and resources would, it was argued, tend to neutralize the beneficial effects of General Assembly resolution 824 (IX), the purpose of which was to encourage the international flow of private capital. Furthermore, it was argued that the principle of self-determination had nothing whatever to do with control over natural resources, which was an essential attribute of sovereignty. Once that was accepted, it should not prove difficult to solve questions of limitations, under international law or otherwise, to which the exercise of that attribute of sovereignty might be subjected. On the other hand, the view was expressed that permanent sovereignty of peoples and nations over their natural wealth and resources was of the utmost importance to under-developed countries. The survey was not directed against foreign investment, since the proposed commission 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 development of under-developed countries."

E. Resolution adopted by the General Assembly at its thirteenth session (1958)

15. After having been twice postponed, the item "recommendations concerning international respect for the right of peoples and nations to self-determination", including the draft resolution proposed by the Commission on Human Rights, was considered by the General Assembly at its twelfth session in 1957. In view of the short time allotted for the consideration of the item, its further consideration was deferred to the thirteenth session.^{25/}

^{21/} See paragraph 6 above.

^{22/} See paragraph 12 above.

^{23/} Economic and Social Council resolution 586 D (XX).

^{24/} Official Records of the General Assembly, tenth session, Supplement No. 3 (A/2943), paragraph 642.

^{25/} General Assembly resolution 1188 (XII); Official Records of the General Assembly, twelfth session, Annexes, agenda item 32, A/3775.

16. At the thirteenth session of the General Assembly, the Third Committee adopted by 52 votes to 15, with 4 abstentions, the draft resolution proposed by the Commission on Human Rights, leaving it to the General Assembly to determine in plenary meeting how many members the commission proposed in the draft resolution should have, whether it should consist of government representatives or of persons serving in their individual capacity, the mode of their appointment, as well as the session of the Economic and Social Council to which the Commission should report,^{26/}

17. During the discussions preceding the adoption of the resolution by the Third Committee, some representatives felt^{27/}

"that the terms of reference of the contemplated organ were both incorrectly worded and very vague. They pointed out that the preamble of that resolution referred to the 'permanent sovereignty of peoples and nations over their natural wealth and resources', a clause which appeared in article 1 (3) of the Covenants as drafted by the Commission on Human Rights and which had since been replaced by article 1 (2) as revised by the Third Committee.,, ^{28/}

"To some representatives, it seemed illogical to use the word 'sovereignty' in reference to peoples which were not yet sovereign States. In their view, the emphasis thus placed on 'sovereignty' in the economic field might be regarded as a potential threat to foreign investments, and ultimately prevent the expansion of international co-operation for the economic development of less developed areas,

"The majority of representatives, on the other hand, considered that the first draft resolution would promote an essential element of the right of self-determination, as no people could be deemed independent if it were subjected to foreign economic domination. They pointed out that adequate safeguards were provided for foreign investments, since the proposal stressed that 'due regard shall 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.' The resolution, thus worded, contained guarantees against both exploitation and expropriation. Provided the necessary agreements were carried out in good faith, international co-operation in the economic field could be strengthened to the mutual benefit of all countries concerned."

^{26/} A/4019, paragraph 27.

^{27/} Ibid., paragraphs 17-20.

^{28/} See paragraph 5 above.

18. At its 783th plenary meeting, the General Assembly decided, on the proposal of the President, that the Commission on Permanent Sovereignty over Natural Resources shall consist of nine government representatives to be chosen by the President of the General Assembly on the basis of geographical distribution and that the Commission should report to the 29th session of the Economic and Social Council. The Assembly then adopted by 52 votes to 15, with 8 abstentions, the draft resolution thus amended to read as follows:^{29/}

"The General Assembly,

"Noting that the right of peoples and nations to self-determination as affirmed in the two draft Covenants completed by the Commission on Human Rights includes 'permanent sovereignty over their natural wealth and resources',

"Believing it necessary to have full information at its disposal regarding the actual extent and character of this sovereignty,

"1. Decides to establish a Commission consisting of Afghanistan, Chile, Guatemala, the Netherlands, the Philippines, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic and the United States of America to conduct a full survey of the status of this basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and further decides 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 shall 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;

"2. Invites the regional economic commissions and the specialized agencies to co-operate with the Commission in its task;

"3. Requests the Commission to report to the Economic and Social Council at its twenty-ninth session;

"4. Requests the Secretary-General to provide the Commission with the necessary staff and facilities."
