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Chairman: Mr. Bohdan LEWANDOWSKI
(Poland).

AGENDA ITEM 39

Permanent sovereignty over natural resources (A/4905, A/5060, A/5225, A/AC.97/5/Rev.2 and Corr.1, A/C.2/L.654 and Corr.1, E/3511, E/L.914, E/L.915, E/L.918, E/L.919, E/SR.1177-1179, E/SR.1181) (continued)

CONSIDERATION OF THE DRAFT RESOLUTION OF THE COMMISSION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (A/C.2/L.654 AND CORR.1) (continued)

1. Mr. ZADOTTI (Italy) recalled the doubts which his delegation had expressed at the 846th meeting in regard to the draft resolution submitted by the Commission on Permanent Sovereignty over Natural Resources (A/C.2/L.654 and Corr.1), particularly as to its advisability from the legal point of view and to the principles it had set forth, which had not appeared likely to promote international co-operation, a most necessary element in the progress of the developing countries. In that respect the final text adopted at the preceding meeting^{1/} was worse, and his delegation would normally have voted against it. It had, however, abstained, because a large number of developing countries had been in favour of the text, and also because Italy hoped that there might still be some possibility of improving it.

2. Mr. GOLSALA (Chad) said that his delegation had fully supported the original draft resolution and had hoped that the amendments and sub-amendments would bring the points of view closer together rather than separate them; the preceding meeting had proved, however, that it was easier to reconcile the opinions of nine countries than those of 110 Member States. The changes made in the original text had somewhat altered Chad's position but had not prevented his delegation from voting in favour of the revised draft resolution as a whole.

3. Mr. SOUSSAN (Morocco) explained that his country, while appreciating the praiseworthy intentions of the Soviet Union, had been unable to support the third

of its amendments (A/C.2/L.760) because the idea of the "creation" of permanent sovereignty was inconsistent with the Moroccan conception of sovereignty that already existed. Morocco had likewise been unable to take up a position on the first of the Lebanese and Syrian sub-amendments (A/C.2/L.697), because it was not for the Committee but rather for Governments to decide what the parties concerned should be: States, investors or private companies.

4. U MAUNG MAUNG (Burma) said that, in accordance with its policy, Burma had voted in favour of all proposals aimed at protecting the interests and sovereign rights of the developing countries; it had accordingly supported the amendments of the Soviet Union, the sub-amendments of Lebanon and Syria and the first of the United Kingdom and United States amendments (A/C.2/L.686/Rev.3). Burma had also endeavoured to obviate the restrictive effect of certain proposals by voting, for instance, against the other United Kingdom and United States amendments, which placed undue emphasis on the protection of private companies' interests and went beyond the recommendations made by the General Assembly in its resolution 1314 (XIII). As those amendments had been incorporated in the final text, his delegation had abstained in the vote on the amended draft resolution, which would therefore have no binding force for the Government and people of Burma.

5. Mr. CARANICAS (Greece) expressed the frank opinion that the Committee had never shown such immaturity and irresponsibility as at the 858th meeting. It was unprecedented that it should have devoted three hours to twenty-seven different votes, including numerous roll-call votes. That could only be explained by lingering memories of colonialism in many of the developing countries and their unjustified but deep-seated fear of new foreign investments. They had to decide whether, by giving the necessary guarantees, they wished to attract foreign capital in order to accelerate their economic growth, or whether they preferred to isolate themselves and make the best of their own resources. It was for them to solve the problem, but their recollection of the past was probably impeding a better understanding of the economic necessities. Referring to the sub-amendments of Lebanon and Syria, which had pleaded the cause of absolute liberty of the executive and legislative power, seeing in that freedom the expression of absolute national sovereignty without regard to international law, he pointed out that all countries were admittedly sovereign but that they were also largely interdependent. Since 1953, Greece had had a law on foreign investment which the Parliament could not modify, in case of need, by a simple majority decision; that precaution was a safeguard against any demagogic tendencies and a guarantee for foreign investments. Other countries also might find it advisable to adopt laws imposing a certain degree of moderation.

^{1/} Subsequently circulated as document A/C.2/L.705.

6. He shared the views of the delegation of the United Arab Republic on the subject of the draft resolution and quoted from the statement of the representative of that country (842nd meeting). Greece was in favour of a charter on permanent sovereignty over natural resources that would give every assurance to investors and Governments alike, in the interest of the developing countries themselves. That was why his delegation had voted for the draft resolution, which was the outcome of three years of careful study; but it noted that, in a last minute change of positions, several of the large industrial countries had voted against it and that the Soviet Union had abstained. The result was disappointing, and Greece might be obliged to change its position when the draft resolution was submitted in plenary meeting if it did not command a wider majority.

Miss Sellers (Canada), Rapporteur, took the Chair.

7. Mr. TODOROV (Bulgaria) said that his delegation had voted in favour of all of the Soviet Union amendments because they improved the original text, and he was pleased to note that they had almost all been adopted. His delegation had voted in favour of the first paragraph of the first United Kingdom and United States amendments but still believed that its scope should not have been limited to paragraph 4 of the draft resolution. As to the second paragraph, it might lead to confusion because of the preceding text, and that question was not exclusively of a legal nature. As his delegation had therefore considered the second paragraph unnecessary, it had voted against it. It had also voted against the second and third United Kingdom and United States amendments because they constituted a charter of foreign investment which was out of place in the resolution. Bulgaria had voted for the Mauritanian amendment (A/C.2/L.690) and for the second and fourth amendments submitted by Burma and the Sudan (A/C.2/L.696); the latter amendments were of some importance, for the large number of amendments and the result of the vote had shown that several questions remained pending; furthermore, since the basis of the discussion was permanent sovereignty, it might be of interest to have a body to deal with it on a permanent basis. His delegation had abstained in the vote on the draft resolution as a whole because it incorporated certain passages on the protection of private capital which were out of place in a text concerning permanent sovereignty over natural resources.

8. Mr. BUTTI (Iraq), speaking in the exercise of his right of reply, expressed regret that the representative of Greece had spoken of immaturity and irresponsibility on the part of the developing countries and their persistent fear of colonialism. On the contrary, those countries were only too well aware of the struggle they had to make against a new form of colonialism even more dangerous than the old one. The Greek representative had misunderstood the amendment of Lebanon and Syria, which did nothing more than restate the principle of absolute sovereignty proclaimed by the Charter of the United Nations. He would reply more fully to the representative of Greece when explaining his delegation's vote; he would then expound his own conception of the choice that lay before the developing countries.

9. Mr. KANO (Nigeria), speaking in the exercise of his right of reply, supported the statement of the representative of Iraq and said that the members of the Committee, far from showing immaturity, had evinced great patience in the conduct of their work. The concept of the developing country was, moreover, a

relative one, for development was a continuing process even in countries that were already developed. Nigeria had freed itself from the colonial yoke but certainly retained the memory of it, and in that memory there was mingled a feeling of pride in the country's past. The developed countries should give due thought to that fact before speaking of immaturity or irresponsibility, for all countries must work together if they wished to make the United Nations a foundation for peace.

10. Mr. CARANICAS (Greece) expressed regret that certain of his previous remarks had been misunderstood. In stating the view that the Committee should have shown greater maturity and responsibility, he was by no means forgetting that the Greek delegation must also bear its share of the blame. In any case, those words had been directed at no delegation in particular. The term "under-developed country" should certainly be taken to mean "economically under-developed". Greece, which could not yet be counted among the industrialized countries, had been a colonial Power and then had itself been colonized for several centuries. In expressing himself as he had done, he had only been anxious to have the Committee recognize a situation for what it was.

11. Mr. FARHADI (Afghanistan), referring to the comments of the Greek representative, recalled the extreme complexity of the questions covered in the draft resolution that had been adopted. In view of the fact that Member States had very different backgrounds and that prevailing conditions were not the same everywhere, it was understandable that delegations should not all adopt similar positions. It should also be noted that the Committee had considered the problem of permanent sovereignty over natural resources, which pertained to the field of human rights, and not the protection of investments, which was a practical question that was clearly related to the first but might none the less be considered separately. The permanent sovereignty of peoples over their natural resources had been affirmed in the Charter of the United Nations and in the Universal Declaration of Human Rights. As to the special question of foreign investments, many countries, including Afghanistan, had already passed legislation designed to encourage them. If certain delegations held that the rights of the capital-exporting countries needed to be safeguarded, there was nothing to prevent them from submitting appropriate draft resolutions.

12. U MAUNG MAUNG (Burma), exercising his right of reply, said that the vote on the draft resolution and the amendments was of great importance to many delegations, a fact that explained their concern and hesitation. The so-called "complex of formerly colonized countries" was attributable to a still too recent past. Moreover, the countries that had just gained their independence did not forget that their still precarious sovereignty continued to be threatened by a new form of colonialism. His country, for its part, remembered that when it lost its independence, it had been colonized originally, not by the United Kingdom Government, but by the British East India Company. His delegation therefore felt that developing nations must be protected against the possible encroachments by companies of the rights of the State.

Mr. Allana (Pakistan), Vice-Chairman, took the Chair.

13. Mr. TCHEN (China) stressed the cardinal importance of the draft resolution which had been adopted.

Among the very many amendments submitted, some usefully complemented the original text but others were inspired by considerations that in some cases had nothing to do with safeguarding the sovereignty of peoples over their natural resources. Yet others, which would have done more to meet the need for mutual confidence essential for economic development, had, unfortunately, not been adopted by the Committee. In its vote, his delegation had been guided by the desire to remain faithful to General Assembly resolution 1314 (XIII) and by the desire not to overload a text the various parts of which were well balanced.

14. Mr. ANOMA (Ivory Coast) referred to the extreme complexity of the questions covered by the draft resolution which had been adopted. Some aspects of the problem of permanent sovereignty over natural resources might properly have been examined by other organs and the International Law Commission was still studying its legal implications. It would certainly have been difficult to reconcile all the points of view and, in its final form, the text was an acceptable basic document.

15. In emphasizing the need to ensure the full sovereignty of the developing States and their exercise of that sovereignty over all their resources, particularly their natural resources, the draft resolution reiterated the principles set forth in the Charter of the United Nations. It also brought out the need for co-operation between the industrialized countries and the developing countries. His country attached great importance to that idea which, incidentally, had inspired the drafting of its investment code. It had accordingly been unable to support the amendments which might have impeded the functioning of that code, but it had voted in favour of the proposals which had expanded or clarified the original draft resolution.

Mr. Lewandowski (Poland) resumed the Chair.

16. Mr. UNWIN (United Kingdom) said that the attitude of his delegation, which was anxious to do as much as possible for the development of the under-developed countries, had been based on the fear that certain provisions of the draft resolution might discourage investments and thereby interfere with the development of those countries which saw advantage in seeking private foreign capital. The original United Kingdom amendment (A/C.2/L.669) and the compromise amendment submitted jointly with the United States (A/C.2/L.686/Rev.3) had been put forward with that in mind. He was glad that those compromise amendments had been embodied in the draft resolution adopted, but that text was far from being generally satisfactory. Moreover, certain matters dealt with in the draft resolution were still being examined by other organs, more particularly by the International Law Commission, and, in the United Kingdom's view, the draft resolution was without prejudice to any decisions that might be adopted on the subject. Equally, it did not prejudice the position of any Member State on matters which were not dealt with expressly in it.

17. In its desire for compromise, the United Kingdom delegation might have voted in favour of the text proposed if last-minute changes, particularly the adoption of the fourth Soviet amendment, had not completely destroyed the balance of the draft resolution. Judging from the voting figures, those fears seemed to have been shared by other delegations.

18. Mr. ROUANET (Brazil) said that his vote had been prompted by the desire for a balanced text which would

be able to satisfy both the capital-exporting countries and the countries seeking foreign investments. The tangle of amendments and sub-amendments had made the task difficult for all delegations. Accordingly, though commending the lofty intentions evidenced by certain amendments, Brazil had been unable to support them in those cases where they might upset the desired balance.

19. Mr. LUBBERS (Netherlands) said that his delegation, anxious that the Committee should arrive at a balanced text which would take into account the rightful interests of the parties concerned, had been compelled to adopt a very flexible position. Some of the amendments that his country had been unable to support had been likely to upset the balance aimed at and even further complicate a question that was already extremely complex. Those remarks applied particularly to the amendments of the Soviet Union and of Burma and the Sudan.

20. Mr. DJENGUE N'DOUMBE (Cameroon) said that his delegation, which had voted in favour of the draft resolution, was glad that the sponsors had succeeded, by an outstanding effort of compromise, in reconciling the inalienable right of States to undivided sovereignty over their natural resources and the demands of economic development, which required a considerable amount of foreign capital. He thought that the text that had been adopted ought to reassure the capital-exporting countries by reason of the safeguards it offered with respect to the treatment of foreign capital. His country, though guarding its rights of sovereignty over its large natural resources, was also anxious for the rapid and rational development of those resources and, on gaining its independence, had drawn up programmes which drew widely on foreign capital and at the same time offered it ample guarantees. Consequently, his country would be very happy to examine any recommendation based on the principles set forth in the draft resolution adopted.

21. His delegation had been unable to vote in favour of the amendments of Burma and the Sudan since, as everyone knew, the problem was extremely complex and it would be a long and difficult task to achieve positive results: the compromise solution adopted by the Committee had been the only acceptable one. He did not share the view expressed by the representative of Greece, since everyone knew how delicate the question of sovereignty over natural resources was, particularly as that right had been frequently violated in the past. His delegation deeply regretted the attitude of the great Powers which had not voted in favour of the draft resolution but hoped that they would reconsider their decision so that the resolution could be adopted by the General Assembly with a greater majority.

22. Mr. DAVIS (Australia) recalled that during the debate, his delegation had made it clear that despite some reservations as to the drafting, it regarded the draft resolution substantially as an attempt to achieve a balance between statements of principles respecting sovereignty over natural resources and international co-operation. It had also felt that the amendments submitted by the United States and the United Kingdom, by Mauritania and by Argentina and Peru clarified the text without upsetting its balance, and it had therefore voted in favour of them.

23. On the other hand, it had voted against the fifth, sixth, seventh and eighth Soviet Union amendments

which, in its view, introduced political and polemical elements that were likely to upset the balance of the text by emphasizing the independence rather than the interdependence of nations. His delegation had also voted against the sub-amendment submitted by Lebanon and Syria as it felt that the obligations deriving from agreements between two States were not fundamentally different from those deriving from contracts between a State and a private individual or company. A State was free to terminate a contract but should do so only in exceptional cases, as such action did not encourage co-operation. Furthermore, a State could not be prevented from agreeing in advance that the problem of compensation should be settled by arbitration or by international adjudication rather than by resort to a national jurisdiction, if it found that more advantageous. His delegation had not voted in favour of the amendments submitted by Burma and the Sudan either, as it did not think that the differences of opinion that had arisen during the debate could be reduced by an enlarged commission. Lastly, his delegation had voted against the draft resolution as a whole, though it might possibly reconsider its decision in plenary meeting if the ideas put forward in the various Soviet amendments he had mentioned were themselves reconsidered.

24. Mr. FINGER (United States of America) said that his delegation was very gratified that the amendments which it had submitted, together with the delegation of the United Kingdom, had been adopted by the Committee. The Committee was also to be congratulated on the adoption of paragraphs 3, 4 and 9 of the draft resolution in their present form. As now drafted, those paragraphs struck a judicious balance between the rights and the obligations deriving from sovereignty over natural resources. His delegation was particularly pleased because the Committee had affirmed the binding nature of agreements concerning foreign investment, including agreements by States with private investors, and also noted with satisfaction the reaffirmation of the principle of international law which called for prompt, adequate and effective compensation in the event of expropriation. It likewise welcomed the statement that the economic development of all countries, and particularly of the economically less developed countries which should enjoy to the full the advantages deriving from their natural resources, should be promoted.

25. His delegation might have voted for the draft resolution as a whole even with the adoption of certain amendments to the preamble which had been anything but helpful; it had voted against it for one reason only: because it included, as paragraph 5, an amendment of the Soviet Union which upset the carefully established balance of the draft resolution and contradicted principles stated elsewhere in it. It was unwise to draft a resolution which set forth the rights and obligations deriving from sovereignty over natural resources and, at the same time, support indiscriminately all measures which States might take, or have taken, to exercise their sovereignty. Such unconditional support might embrace actions contrary to international law and even to the national legislation of the countries concerned. It was tantamount to saying that no limit could be placed on those measures by virtue of either a legal principle or the economic interdependence of nations. The French translation of the word "unreservedly" was "pleinement", a more reasonable term. One delegation had informed the United States delegation that it had voted on the basis of the French text, but that it would not have voted for the draft

resolution if it had known what the original English text was.

26. In addition, the paragraph 5 which had been adopted suggested that sovereignty over natural resources was not being exercised, which was certainly questionable. As the representative of Ghana had recalled several times, States which had achieved sovereignty knew how to exercise it without instructions from anyone, including the Committee. He believed that the adoption of that paragraph at the preceding meeting was due to the fact that the members of the Committee were tired and perhaps to the complexity of the work; he found it difficult to explain otherwise the inclusion of a paragraph which was in complete contradiction with the substance of the rest of the draft resolution. He therefore hoped that, after further examination, that paragraph could be deleted in plenary meeting. It was advisable for the General Assembly to decide on the issue, but it was important that it should not contradict itself. A resolution from which paragraph 5 was deleted would meet those conditions and rally the vast majority which the text adopted had not received.

27. Mr. EL BANNA (United Arab Republic) said that his delegation had voted for the draft resolution because of the importance of the matter to the developing countries, but that it would have preferred unanimous agreement on the original text of the draft resolution. The latter text, which was the outcome of the excellent work done by the Commission on Permanent Sovereignty over Natural Resources, had confirmed the rights both of nations and of foreign investors, whether private companies or Governments. He was convinced that all delegations which had submitted amendments and sub-amendments had done so in a constructive spirit and had sought to contribute to the clarity and strength of the draft resolution. He particularly welcomed the amendments submitted by the Algerian delegation (A/C.2/L.691), which made a distinction between investment contracts entered into before and after the independence of formerly colonized States. Particular emphasis ought to have been laid on that important factor in the draft resolution. His delegation had accepted certain parts of the amendments of Burma and Sudan, because it had considered the advantages which the subsequent study of the draft resolution might offer, particularly with a view to clarifying certain juridical aspects. All the matters which the Committee had studied should be the subject of a continuous study by it and by other organs.

28. He felt that the paragraphs which the Committee had decided to include in the draft resolution were not inconsistent with the spirit of the resolution, because they confirmed the rights of foreign investors by providing for recourse to international adjudication whenever an agreement to that effect existed and after the possibilities of national arbitration had been exhausted. One paragraph could not be singled out and declared to be inconsistent with the text as a whole, because the Committee had to decide on the resolution as a whole and not on the sum of its parts. The resolution also provided adequate safeguards for the rights of foreign investors and the rights of national sovereignty.

29. Mr. NYLANDER (Ghana) said that his delegation had abstained in all the votes because, as it had indicated during the debate, it considered that the right of every sovereign State to dispose as it wished of its national wealth and natural resources could not be a subject of discussion. His Government would exercise

its sovereignty in the interest of the people of Ghana and respect whatever agreements it might consider advisable to enter into with foreign investors with a view to developing its resources.

30. Mr. VIAUD (France) said that his delegation would be the last to challenge the existence and validity of the principle of the permanent sovereignty of peoples over their natural resources, but to establish that principle in law was quite a different thing from applying it. As soon as the question arose of making a principle an element of international law—although that was still not yet so in the case of the principle of permanent sovereignty over natural resources—thorough study by competent jurists was an obvious necessity. His delegation had voted against the draft resolution as a whole because it believed that it dealt with juridical problems which the Second Committee was not in a position to solve by itself. Moreover, if the sovereignty of States over their natural resources was an obvious natural right, it had, like all other rights, its own limits. Its exercise was limited by the rights which other States and their nationals might have legally acquired, and every company, whether national or international, was confronted with the problem. With regard to the amendments submitted, his delegation certainly believed in the value and usefulness of compromises, but felt that, with regard to the very delicate matter under consideration, compromises must not lead to the adoption, for the sake of political reconciliation, of texts which might be either imperfect or even dangerous. It had voted, for example, against the sub-amendments submitted by Lebanon and Syria, because their adoption would have produced a real juridical monstrosity, and it had been absolutely essential to weigh not only its terms but also all its implications.

31. The negative attitude of the French delegation towards the draft resolution and most of the amendments submitted was not attributable to any restrictions it might have wished to impose on the need and usefulness of international economic co-operation. It was, on the contrary, because it considered that such co-operation was an increasingly important element in international life that it had sought to avoid provisions of the kind which appeared in the draft resolution and amendments adopted, provisions which, because they were not precise enough, might lead to juridical impasses instead of facilitating the solution of the problem.

32. Mr. URTUBEY (Argentina), explaining his vote on the amendments and particularly the amendments to paragraphs 4 and 8 of the draft resolution, said that although his delegation accepted the phrase "national jurisdiction shall be exhausted", it had abstained in the vote on the second amendment of the United States and the United Kingdom which contained that phrase on the ground that, in its view, the word "However" in

the following phrase weakened the true meaning which his delegation attributed to the exhaustion of national jurisdiction; in fact, that word indicated that other methods of settling controversies which might arise could be used before national jurisdiction was exhausted.

33. With regard to paragraph 8 of the draft, his delegation had considered, in submitting, together with the Peruvian delegation, the amendment contained in document A/C.2/L.700, that it was better to speak of principles than of provisions in such a declaration as that contained in document A/C.2/L.654 and Corr.1. That document was a simple declaration, and, in accordance with international law, it had no binding legal force.

34. The vote had in no way detracted from the value of the work done by the Commission on Permanent Sovereignty over Natural Resources, whose report was a formula asserting the right of sovereignty over natural resources and, at the same time, a guarantee of the rights of foreign investors in accordance with international law. Argentina attached great importance to foreign investment provided on acceptable terms, because it helped to offset the deficit in national savings and made it possible to apply techniques which enabled better use to be made of natural resources for national development. From the legal point of view, Argentina granted the same rights under its Constitution to Argentine citizens and aliens alike and the national jurisprudence upheld all international commitments. Argentina was trying to strengthen those safeguards in order to increase the flow of capital in support of its national efforts. For that purpose, it had adopted modern legislation taking into account the interests of both parties and, freely exercising its sovereignty, it had entered into negotiations with the principal capital-exporting countries with a view to concluding agreements on investments.

Organization of the Committee's work (A/C.2/L.701)

35. The CHAIRMAN drew the Committee's attention to paragraphs 5 and 7 of his note (A/C.2/L.701) concerning the organization of work.

36. After an exchange of views, in which Mr. VIAUD (France), Mr. ROUANET (Brazil), Mr. CARANICAS (Greece), Mr. ARKADYEV (Union of Soviet Socialist Republics), U MAUNG MAUNG (Burma), Mr. BRILLANTES (Philippines) and Mr. TODOROV (Bulgaria) took part, Mr. FINGER (United States of America), supported by Mr. HAKIM (Lebanon), proposed the adoption of the suggestions made in the Chairman's note on the organization of work.

It was so decided.

The meeting rose at 1.15 p.m.