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UNITED NATIONS COMMISSION ON PERMANENT SOVEREIGNTY
OVER NATURAL RESOURCES

First Session

SUMMARY RECORD OF THE SECOND MEETING,

Held at Headquarters, New York,
on Tuesday, 19 May 1959, at 3.10 p.m.

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(A/AC.97/1, 2 and 3)

PRESENT:

Chairman:

Mr. GAMBOA (Philippines)

Rapporteur:

Mr. ABDEL-GHANI (United Arab Republic)

Members:

Mr. PAZHAWAK Afghanistan

Mr. PINOCHET Chile

Mr. HERRARTE Guatemala

Mr. SCHURMANN Netherlands

Mr. BRILLANTES Philippines

Mr. PETREN Sweden

Mr. SAFOZHNIKOV Union of Soviet Socialist
Republics

Mr. RAYMOND United States of America

Representative of a specialized agency:

Mr. METALL International Labour Organisation

Secretariat:

Mr. SCHACHTER Director, General Legal Division

Mr. FABRY Secretary of the Commission

PROGRAMME AND ORGANIZATION OF THE WORK OF THE COMMISSION (A/AC.97/1, 2 and 3).

Mr. PINOCHET (Chile) said that his Government had been interested in the problems before the Commission. In 1952 Chile had proposed the inclusion of the sentence "The right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources" (document E/CN.4/L.24) in the article on the right of all peoples and nations to self-determination in the draft international covenants on human rights. That proposal had been adopted by the Commission on Human Rights at its two hundred and sixty-first meeting. His Government had considered then, as it did now, that such an article would be incomplete without a paragraph on natural resources. Subsequently, in 1954, Chile had been the co-sponsor of the draft resolution which had proposed the establishment of the present Commission.

Not long ago the right of self-determination, now universally recognized, had been conceived to be largely political in character, but experience had shown that political and economic independence were inseparable.

Freedom and independence counted for nothing if they had no economic basis. National sovereignty must be exercised over the entire territory and wealth of a nation, if it were to be more than a mere figure of speech. The right of self-determination must be applied in the economic sector as well and could be restricted only by the free and sovereign choice of the people. Many people who had lived in poverty for centuries were now able to lead a fuller and more useful life and the less developed countries, which had the highest birth rate in the world, were alarmed at their inability to make use of their enormous natural wealth because of their lack of capital. What was needed was abundant capital on terms which were fair both to the investors and to the countries whose natural resources were to be developed.

It had been argued that the Commission's work would discourage foreign investors, but he considered that to be an unrealistic view. On behalf of his Government he wished to make it clear that Chile's support of the right of peoples to self-determination in respect of their natural wealth and resources did not mean that it condoned either unlawful expropriation or the repeal of legal provisions protecting foreign investors. Investors should be encouraged in an atmosphere of co-operation by the promise of fair rewards.

(Mr. Pinochet, Chile)

His Government had encouraged and protected foreign capital and Chilean legislation did not in general make any distinction between Chileans and foreigners.

With regard to the "actual extent and character" of permanent sovereignty, the Chilean Government considered that a nation's natural wealth and resources were subject to all national legislation affecting the exploration, exploitation and disposal of its resources, owned by nationals or aliens.

It should be clearly understood that the State could expropriate and nationalize such resources provided that its acts were in accordance with its laws, were non-discriminatory and the owner was paid appropriate advance compensation. There were other limitations imposed by the respect for rights legitimately acquired and arising from contracts or treaties signed with other States. A State could not therefore disregard the acquired rights of persons or corporations, whether they were its own nationals or aliens.

The Commission had another important task, namely, to pay due regard to the "importance of encouraging international co-operation in the economic development of under-developed countries" (General Assembly resolution 1314 (XIII)). It should bear in mind previous resolutions on that subject such as Economic and Social Council resolutions 368 (XIII) and 619 B (XXII) and General Assembly resolution 520 B (VI). There were also inter-American arrangements affecting the investment of private capital which might be examined. Although the study which the Secretariat was preparing would unquestionably be of great value, it could not do more than provide an objective survey of the relations between foreign capital and national wealth. The Commission's aim should be not merely to take note of the study but to examine the extent to which those relations could be improved.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) agreed that as had been suggested at the first meeting, an exchange of views should be held to define the character of the work to be done by the Commission and to consider the nature of the survey which the General Assembly had asked it to prepare.

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(Mr. Sapozhnikov, USSR)

His delegation wished to stress the importance of the right to permanent sovereignty over natural wealth and resources, a right which affected millions of people all over the world. He agreed with the Chilean representative that political and economic independence were closely related.

After referring to the decisions which had already been taken on the right of peoples to exploit their natural resources, which themselves illustrated the importance of the Commission's task, he stressed that the survey to be undertaken by the Commission should not confine itself to juridical studies but should consider problems which had in fact arisen in international life. As the Chilean representative had said, it would not be enough to take note of a compilation of legislative measures and agreements and he doubted whether the programme submitted by the Secretariat was consistent with the purposes of the Commission.

The General Assembly had requested a full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources (resolution 1314 (XIII)); a survey could hardly be considered full if it was confined to the juridical aspects of the problem alone. To be of any value, such a survey should not only include examples of national legislation and international agreements in that field but should also contain factual material showing how that legislation and those agreements were being implemented in practice. A mere enumeration of legal texts would not be sufficient, since foreign companies often went beyond the terms of agreements and violations of sovereignty could be concealed under legal forms. The survey must include specific, concrete references to any violations of permanent sovereignty over natural wealth and resources that might exist, otherwise the Commission could not properly discharge the task entrusted to it by the General Assembly and make recommendations for the strengthening of that sovereignty.

Concerning the document on the nature of possible Secretariat studies pertaining to a survey on permanent sovereignty over wealth and natural resources (A/AC.97/3), his delegation felt obliged to make certain criticisms. He was in general agreement with the statement in paragraph 2 that "in view of its terms of reference, the Commission would be especially concerned with

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(Mr. Sapozhnikov, USSR)

such measures as pertain to the rights of foreign nationals to own or exploit the natural wealth and resources of a country", but he objected to the use of the word "especially". Since the problem was one which necessarily had to be considered on the international level, it would be more correct to say that the Commission would be "exclusively" concerned with such measures. Indeed, it was difficult to see how the Commission, under its terms of reference, could be concerned with matters which pertained to the domestic jurisdiction of States, such as the various forms of ownership of land and natural resources which were referred to in paragraphs 3 and 4. The relations between a State and its own citizens could hardly affect the question of its permanent sovereignty over its natural resources and therefore did not properly come within the purview of the Commission's work. The same objection could be made to the use of the word "particularly" in the first sentence in paragraph 7, which read: "The extent to which a state exercises control over its natural resources, particularly in relation to foreign nationals, may also be governed by international agreements". It was only as the result of undue activity on the part of foreign nationals that a nation's sovereignty over its natural resources could be threatened. The Commission should not concern itself with matters of purely national interest, but should bear in mind that the resolution defining its terms of reference (General Assembly resolution 1514 (XIII)) was entitled "Recommendations concerning international respect for the right of peoples and nations to self-determination". Furthermore, it should bear in mind that however helpful such Secretariat studies, in the last analysis it was the Commission itself which was responsible for conducting the survey and making the necessary recommendations to the General Assembly. In preparing the survey, members of the Commission should be given an opportunity to add to the material presented by the Secretariat.

... He reserved the right to make subsequent statements concerning the documents before the Commission.

Mr. PETREN (Sweden) said that the Commission, in order to fulfil its task, had to have a comparative table of the laws of various States along the lines indicated by the representative of the Secretary-General. The Commission was not called upon to define principles but to undertake a comparative study

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(Mr. Petren, Sweden)

of current laws and to make recommendations for the future. In that connexion, the method by which the Secretariat proposed to prepare the comparative table was in general satisfactory. The right of peoples to self-determination ought to be expressed through laws and it was by legal means that States should claim or recover natural resources no longer under their control.

The Commission should be informed of the various legal measures by which States had the authority to reserve for themselves or their nationals the right to own or dispose of the natural resources under their sovereignty. Another aspect of the question would be the conditions under which the States concerned allowed foreign persons or corporations to settle on their territory, acquire property and carry on economic activities.

The crux of the problem appeared to be the means by which, within the framework of national sovereignty and international law, foreign persons or corporations could be prevented from gaining undue control over a country's vital resources without recourse to measures which would discourage foreign capital from participating in its economic activities. While a State certainly had the right, at least under certain conditions, to expropriate natural resources owned by aliens, the principle of international law that equitable compensation must be paid for expropriated property would no doubt have to be maintained. On that important point the amount of the compensation should not be left to the discretion of the government which ordered the expropriation. Unless there was a definite assurance that, failing an agreement between the parties concerned, the question of compensation would be decided by an impartial body such as an arbitration court, foreign capital could not be expected to flow into countries most in need of it for their economic development. That was a point which must ultimately command the Commission's full attention.

Mr. SCHACHTER (Secretariat) wished to make it clear that the Secretariat's tentative plan was a mere indication of what it could undertake on the basis of the sources of information available to it. The Secretariat study would certainly be limited to measures governing the ownership and use of natural resources by foreign nationals, although in some instances such measures might be contained in the framework of provisions having a general application.

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Mr. ABDEL-GHANI (United Arab Republic) asked the Secretariat what action had been taken to implement operative paragraph 2 of General Assembly resolution 1314 (XIII) inviting the regional economic commissions and the specialized agencies to co-operate with the Commission in its task. He was particularly interested in the reaction of the International Bank for Reconstruction and Development and the International Monetary Fund.

Mr. SCHACHTER (Secretariat) said that the Secretariat had communicated with all the regional economic commissions and the specialized agencies, calling their attention to the General Assembly resolution and requesting their participation and assistance. The International Labour Organisation had indicated its desire to participate in the Commission's work, but the other specialized agencies had felt that they would not have anything useful to contribute. The Executive Secretaries of the regional economic commissions had said that they would be prepared to act on any specific request they received from the Commission. The Secretariat was, of course, aware of their work and could refer to it if the Commission so desired.

Mr. PAZHWAQ (Afghanistan) asked whether the Secretariat, in communicating with the specialized agencies, had placed a restrictive interpretation upon the General Assembly resolution.

Mr. SCHACHTER (Secretariat) said that the Secretariat had simply transmitted the General Assembly resolution to them, calling their attention to the relevant paragraph.

Mr. PAZHWAQ (Afghanistan) suggested that the Secretariat should approach the specialized agencies again after the Commission had decided on the aspects of the question to be dealt with, the scope of the proposed survey, and so forth. The specialized agencies would then be in a better position to determine what contribution they could make to the Commission's work and would no doubt respond favourably to the invitation.

The meeting rose at 4.20 p.m.

