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UNITED NATIONS COMMISSION ON PERMANENT SOVEREIGNTY
OVER NATURAL RESOURCES

First Session

SUMMARY RECORD OF THE FOURTH MEETING

Held at Headquarters, New York,
on Thursday, 21 May 1959, at 10.50 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. GAMBOA	(Philippines)
<u>Rapporteur:</u>	Mr. ABDEL-GHANI	United Arab Republic
<u>Members:</u>	Mr. PAZHWAQ	Afghanistan
	Mr. PINOCHET	Chile
	Mr. HERRANTE	Guatemala
	Mr. SCHURMANN	Netherlands
	Mr. BRILLANTES	Philippines
	Mr. PETREN	Sweden
	Mr. SAPOZHENIKOV	Union of Soviet Socialist Republics
	Mr. RAYMOND	United States of America

Representatives of specialized agencies:

	Mr. METALL	International Labour Organisation
	Mr. ACHARYA	Food and Agriculture Organization
<u>Secretariat:</u>	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)
(continued)

Mr. PAZHWAK (Afghanistan) said that the Commission must organize its work with a view to the most effective performance of the task entrusted to it by the General Assembly. Referring to operative paragraphs 1 and 2 of General Assembly resolution 1314 (XIII), he said that the Commission had to decide, firstly, who was to undertake the task of securing the necessary information; secondly, what aspects of the question were to be covered by the proposed survey; thirdly, what areas of the world should be included, and fourthly, the date by which the survey should be completed to enable the Commission to make the necessary recommendations.

The Afghan delegation considered that the Secretariat could be asked to assemble the necessary information, with the co-operation of the Governments of Member States, the regional economic commissions and the specialized agencies. He regretted that the specialized agencies had not shown greater interest in such an important question and found it surprising that they had given no explanation of their non-participation, in spite of the General Assembly's explicit invitation; he considered that appropriate measures should be taken to request an explanation.

The Commission would not be able to make practical and realistic recommendations unless it had comprehensive information on all aspects of the question, and it must have a full knowledge of the prevailing conditions if it was to be able to carry out its task. Something more than a mere compilation of existing legislation was clearly required and the Commission should be able to count on the co-operation of both the Office of Legal Affairs and the Department of Economic and Social Affairs.

With regard to the geographical scope of the study, the Afghan delegation considered that attention should be concentrated on the under-developed areas and the Non-Self-Governing Territories. It should be emphasized that the latter term, as used in the United Nations did not include certain areas which it was nevertheless important not to exclude from a study of the exercise of the right of peoples and nations to self-determination. That point should not be overlooked, since the General Assembly had decided to establish the Commission

(Mr. Pazhwak, Afghanistan)

precisely in order that there should be a body competent to deal with certain questions that were outside the terms of reference of other bodies. The study should also cover all areas of the world.

The Afghan delegation had no specific suggestion to make regarding the number of sessions the Commission should hold or on the time-table of its work. The Secretariat should, however, be given enough time to make a comprehensive study and should have clear terms of reference. He would put forward suggestions on those points at the end of the general debate.

In conclusion, he said that his delegation, which was aware of the contribution that international co-operation could make to the economic development of the under-developed countries and staunchly supported the right of peoples to self-determination, felt in duty bound to call on all members of the Commission, especially the representatives of the economically developed countries, to organize the Commission's work in such a way as to facilitate practical recommendations that would effectively strengthen the permanent sovereignty of peoples and nations over their natural wealth and resources.

Mr. ABDEL-GHANI (United Arab Republic) said that the General Assembly had established the Commission and defined its terms of reference in resolution 1314 (XIII), because the need had been felt to look into a new and far-reaching subject of which no detailed study had thus far been made. The full scope of that resolution could be understood only in relation to the provisions of the Charter, in particular Article 13, which defined the purpose of studies initiated and recommendations made by the General Assembly, and Article 55 on international economic and social co-operation. In carrying out its task, the Commission should be guided by those two Articles; in other words, the principal purpose of the survey that the Commission had been asked to make should be to promote peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, from both the economic and political standpoint.

The under-developed countries, had refuted the idea that exercising the right of economic self-determination was likely to hinder the flow of foreign capital to their countries. Those Governments were taking all possible measures to encourage foreign investments necessary for their economic development. In that

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(Mr. Abdel-Ghani, United Arab Republic)

connexion he referred to the various measures taken to that effect by the Government of the United Arab Republic. He asserted that upholding the inherent right of all peoples to economic self-determination was an effective way of promoting international co-operation in the economic field and consequently, for accelerating the process of economic development of the under-developed countries.

With regard to the scope and nature of the survey, he agreed with the representative of the Soviet Union that the Commission should not confine itself to a purely academic study and that its work should cover the practical as well as the legal aspects of the question. Such an interpretation was in accordance both with the General Assembly resolution and with the statement by the Secretary-General's representative. The General Assembly had not confined itself in its resolution solely to the legal aspects of the question, since it had stressed the importance of international co-operation in the economic development of under-developed countries and had invited the co-operation of the regional economic commissions and the specialized agencies.

During the general debate, several members of the Commission had attempted to define the principles that should guide the Secretariat, a matter in which the delegation of the United Arab Republic also wished to comment. Firstly, although there were many sources of information open to the Secretariat, it should not overlook one of the most readily available, namely, United Nations documents. The General Assembly had adopted several resolutions relating directly or indirectly to the task entrusted to the Commission, such as resolution 626 (VII) on the right to exploit freely natural wealth and resources, Economic and Social Council resolution 144 C (VII) on the restoration and development of the economy of the countries of Asia and the Far East, and the preamble of General Assembly resolution 523 (VI) on integrated economic development and commercial agreements. It would be remembered that in a well-known nationalization case a Rome court had based its decision on General Assembly resolution 626 (VII); the General Assembly's recommendations were thus not entirely without effect, and the Secretariat, rather than confining itself to a mere compilation, should attempt to determine how far those recommendations were serving to strengthen the right of peoples to self-determination and their sovereignty over their natural resources.

It was essential that the survey should include Non-Self-Governing and Trust Territories, which were of particular concern to the United Nations. The General Assembly had referred in its resolutions to the permanent sovereignty of /...

(Mr. Abdel-Ghani, United Arab Republic)

"peoples and nations", not to that of independent States. In so doing, the Assembly had based itself on the draft Covenants on Human Rights, and in that connexion it should be recalled that the right of peoples to economic self-determination was explicitly recognized in the text adopted by the Third Committee, as it had also been in the original text of the Commission on Human Rights. The general debate had shown that there was no difference of opinion in the Commission on that point; it was therefore only logical that the proposed survey should deal with the extent to which dependent peoples effectively exercised their right of sovereignty over their natural wealth. Relevant information on that question was contained in the records of the Trusteeship Council, the Fourth Committee of the General Assembly, and the Committee on Information from Non-Self-Governing Territories, and also in petitions submitted to the United Nations. The Trusteeship Council, had, in particular, considered two cases of flagrant violation of the right of permanent sovereignty over natural wealth and resources, one concerning a tribe in Tanganyika, and the other the people of the Territory of Nauru. In addition, the Committee on South West Africa would be submitting to the General Assembly a report which should certainly be included among the documents to be studied.

It would also be appropriate to examine the regional arrangements which in some respects governed the exercise of the right of sovereignty over certain natural resources. States parties to such new types of agreement as the treaties establishing the European Coal and Steel Community, EURATOM or the European Economic Community voluntarily relinquished part of their sovereignty over their natural resources and renounced the exercise of certain of their rights, in the common interest. But proposals by certain Powers that the Non-Self-Governing Territories they administered should participate in such arrangements could hardly be described as a voluntary relinquishment of sovereignty by those Territories. Those were questions to which the Commission would have to devote its attention.

The Commission should also examine international agreements by which States permitted aliens to exploit certain natural resources. In conducting such an investigation, the Commission should remember that the world did not stand still, and that the idea that such agreements were something immutable and sacrosanct was out of date. Just as States amended their laws or enacted new laws to meet new

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(Mr. Abdel-Ghani, United Arab Republic)

developments, so in the international field small nations now wished to free themselves of agreements concluded at a period when circumstances had been entirely different from those of today, and which gave foreign enterprises certain rights and concessions which were incompatible with the interests of the national economy.

Mr. BRILLANTES (Philippines) said that in order to organize its work the Commission must know exactly what it could and should do. Under General Assembly resolution 1314 (XIII) its purpose was twofold: to conduct a survey and, "where necessary", to make recommendations.

Such a survey should clearly be related to facts derived from the laws and agreements in force. Member Governments, the regional commissions and the specialized agencies could be asked to co-operate in obtaining them. It would be necessary to gather all information of value bearing on the constitutions and laws of States and on international treaties and agreements; but it would also be necessary to show how such texts were interpreted and applied in practice, both nationally and internationally, and to make a special study of judicial, administrative and arbitral decisions.

The Commission should also bear in mind the fact that it would have to make recommendations, and that they would necessarily depend upon the information and data obtained. The Commission must decide at the outset just what kind of information it wanted, since it would be unable to submit suitable recommendations unless it was in possession of full information on the present situation. It was in appraising that situation that the real difficulties would arise.

He asked who would decide whether the right of sovereignty needed strengthening. If that was the responsibility of the peoples and nations concerned, it might well be asked whether it was not also for them to propose the measures to be taken to that end. If, on the other hand, the Commission were to rule on the question, would it not be obliged to assume the role of spokesman for the people or nation concerned, or even that of judge?

General Assembly resolution 1314 (XIII) referred to the importance of international co-operation in the economic development of under-developed areas. It was evident that co-operation could not be unilateral and it was also clear that the nation concerned was the best judge of what its economic development should be and how it should be achieved. The General Assembly resolution

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(Mr. Brillantes, Philippines)

established a link between sovereignty and economic development; that link consisted of due regard for the rights of States and international co-operation. The question arose whether such international co-operation was compatible with the permanent sovereignty of peoples and nations over their natural resources, whether it amounted to a derogation from such sovereignty or whether it constituted an exercise of such sovereignty. The Charter regarded international co-operation as both a right and a duty. It affirmed both the importance of international co-operation in solving international problems of an economic, social, cultural or humanitarian character (Article 1 (3)) and the principle of sovereign equality (Article 2 (1)): It was evident that international co-operation could best be promoted by the application of the principle of sovereign equality but, in the case of the economic development of under-developed areas and of the sovereignty of their peoples over their natural wealth, it was doubtful whether it would be as easy to apply that principle as it was to affirm it.

The Commission should remember that nations were living in an international community which was more closely inter-dependent than ever before, and it should not overlook the fact that international co-operation must be accepted voluntarily and not imposed. In undertaking the survey and in drafting its recommendations, it should maintain a balance between zeal and hard facts. His delegation regarded the plan of study proposed by the Secretariat as a useful guide, though not necessarily exclusive of other approaches.

Mr. SCHURMANN (Netherlands) said that he would speak at greater length when the Commission dealt with the substance of the subject at the next session and when the Secretariat had provided it with the necessary data. He was in agreement with the Director of the General Legal Division concerning the documentation the Secretariat would be able to provide. In his opinion, such documentation should contain a comprehensive summary of national laws and regulations governing the ownership and use of land, subsoil and water resources in Member States, with special emphasis on the measures pertaining to the rights of foreign nationals to own or exploit the natural resources of those countries and the conditions under which such rights were granted. It should also contain a study of bilateral and multilateral treaties concerned with rights granted to the nationals of one State to engage in gainful occupations or to establish enterprises in the territory of another, and with the conditions under which such nationals could exploit the natural resources of the other State. In addition, /...

(Mr. Schurmann, Netherlands)

there should be a study of international law relating to sovereignty over natural wealth and the rights and obligations of States in the field of foreign investments. As had been pointed out, in particular by the Swedish representative, it was important, under the terms of resolution 1314 (XIII) that the documentation should enable the Commission to make a full survey of international rules governing expropriation, the property rights of foreign nationals and the obligation to avoid discrimination and to pay prompt, adequate and effective compensation.

If the Secretariat could furnish the Commission with documentation along those lines, the Commission would be able to submit the questions of substance to a thorough debate.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) recalled the comments he had made at the second meeting on the document submitted by the Secretariat (A/AC.97/3).

The survey called for under General Assembly resolution 1314 (XIII) did not need to deal with the form of ownership within States, a matter exclusively within their own jurisdiction; it should be kept on a strictly international plane. The Secretariat's agreement on that point was not apparent from the summary record of the meeting in question and he wished it to be confirmed.

It was essential that the documentation should go beyond a mere enumeration of legal texts; other delegations had already stated that they wanted factual information and an account of the real situation. The survey should show whether there had been any violations of the principle of sovereignty over natural wealth and, if so, what they were. Without such information, the Commission would be unable to make recommendations. Some very valuable indications of the nature of such violations were already available; such violations could be cloaked with legality. Some foreign companies exceeded the rights granted to them under agreements, or the agreements deliberately disguised their complete domination. He agreed with the observations submitted to the Commission on the evolution of international law. It was clear that some agreements were out of date.

Certain problems, and in particular that of the alienation of land, were very acute in the Non-Self-Governing Territories. Under discriminatory laws or even without any legal justification, some Administering Authorities took their lands away from the indigenous inhabitants in order to lease them to foreign companies,

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(Mr. Sapozhnikov, USSR)

which thus secured the lion's share for themselves while the people lived under appalling conditions. In some cases their very existence was threatened by the complete exhaustion of their resources. The representative of the United Arab Republic had mentioned Nauru and South West Africa as specific examples. Others could be given. Moreover, that representative's comments on the Non-Self-Governing Territories in the European Economic Community were completely justified. All those examples served to show that the survey could not be solely legal and that it ought to contain factual information which would enable the Commission to form an opinion. The work of the Secretariat and of the Commission itself should be directed to that end.

Regarding the organization of the work, the United States representative had said that the Secretariat should send a questionnaire to Governments. That would, however, tie its hands, and it should be free to use all the means at its disposal for the collection of the necessary information. If, in some cases, the Secretariat felt it would serve a useful purpose to approach a Government, there was no objection to its so doing. The co-operation of the regional economic commissions and the specialized agencies would also be valuable, and it was to be regretted that some of the latter were not represented.

In any case, it was too early to settle all the questions at issue and it would be better to concentrate on the broad outlines of the survey.

From the practical point of view it would be advisable to concentrate especially on the regions in which the problem occurred in the most acute form. Mainly on practical grounds, but also for reasons which went to the very heart of the problem, it was necessary to devote attention first of all to the under-developed countries and the Non-Self-Governing and Trust Territories, while it was perhaps unnecessary to carry out an inquiry in the highly developed countries, such as the United States and some European countries. It was not a question of restricting the study a priori but of selecting the most practical approach; if the Secretariat collected the type of documentation he had indicated, namely, a documentation which was not confined to the legal aspect of the problem, the Commission would have a sound basis for its decisions.

Mr. RAYMOND (United States of America) explained that he had never intended that any restriction should be placed on the Secretariat's working methods. The Secretariat should be absolutely free, if the need arose, to fill in the gaps in replies from Governments by drawing on information from other sources. He had meant merely that all States should be given the opportunity to provide the Secretariat with information on their legislation.

As reference had been made to the need to take into account other General Assembly resolutions which had a bearing on the Commission's survey, he drew attention to the terms of General Assembly resolution 1318 (XIII), concerning the promotion of the international flow of private capital. The report which the Secretary-General was requested to prepare under that resolution would certainly be of great interest to the Commission, since it dealt with one of the questions with which it had to concern itself. Reports of this type would be more useful to the Commission than an attempt by the Secretary-General to report on violations. With regard to alleged violations, one should not overlook the fact that neither the Commission nor the Secretariat was a judicial body.

Mr. METALL (International Labour Organisation) said that the ILO had shown its great interest in the Commission's deliberations by sending a representative to the current session. Both the International Labour Organisation and the International Labour Office would deem it a duty and a pleasure to collaborate with the Commission and the Secretariat and, inter alia, were making available to them the documentation they had assembled.

Mr. SCHACHTER (Secretariat) assured the USSR representative that he agreed with him on the kind of study which should be undertaken and that the summary record would be corrected to take his observations into account. The Secretariat's study would be concerned with the right of foreign nationals to own or exploit the natural resources of a country not their own and on the means by which the State could control their activities. It was only in so far as the national legislation applied to foreigners that the Secretariat would feel it should study the principles applicable in each country to the ownership of natural resources.

As regards the collaboration of the regional economic commissions, to which the General Assembly resolution had been duly transmitted, he pointed out that they

(Mr. Schachter, Secretariat)

had their own programmes of work, which were already very heavy, and that neither the Commission nor the Secretariat could invite them to undertake new surveys. The Commission could only request them to transmit to it the information which they had already collected or the studies which they were currently engaged in.

While it was true that the agreements on the exploitation of natural resources did not always reflect the actual facts of the situation, he did not see how the Secretariat could institute an inquiry into possible violations. Perhaps the USSR representative had meant that the Commission should undertake such an investigation. The Secretariat, for its part, had to confine itself to consulting official publications and the documentation available to it and to requesting information from Governments.

Moreover, the Secretariat's study should not duplicate other reports, such as the one mentioned by the United States representative or the publications on the Non-Self-Governing Territories. The Secretariat would be able to refer to the relevant passages in those documents in its study.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) did not think that the Secretariat should confine itself to obtaining information from Governments. There were certainly other sources on which it would be able to draw, as it did when it prepared the World Economic Survey and other economic studies and reports on specific problems. The Secretariat would be able to find some information on questions in which the Commission was interested in the reports of the Trusteeship Council and of the Administering Authorities and in letters from petitioners.

Mr. ABDELGHANI (United Arab Republic) expressed the hope that the Secretariat would transmit to the regional economic commissions the text of the statements in which the members of the Commission had indicated how anxious they were that those bodies should co-operate with the Commission and what they hoped to gain from that collaboration.

(Mr. Abdel-Ghani, United Arab Republic)

Furthermore, since the Commission was an organ of the General Assembly and was to report to the Economic and Social Council, everything seemed to indicate that it could request the regional economic commissions to undertake studies on permanent sovereignty over natural resources.

The CHAIRMAN said that at the next meeting he would attempt to sum up the position and the views expressed concerning the study to be made by the Secretariat, the questions to be addressed to Governments and possibly to the specialized agencies, and the date of the next session. Those were the three points on which the Commission had to reach a decision before the end of the current session.

The meeting rose at 12.50 p.m.

