Sovereignty Redefined: Margins on the Unfettered State's Authority over Natural Resources

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Introduction

Since the early 1950s the principle of permanent sovereignty over natural resources (PSNR) became a central principle for the nationals fighting for decolonization and forms an integral part of the right of self-determination. The principle has been advocated as a means of securing for peoples living under colonial rule, the economic benefits derived from the natural resources within their territories and to give newly independent States the legal authority to combat and redress of their economic sovereignty arising from oppressive and inequitable contracts and other arrangements.[1] The Principle acknowledges that the right of permanent sovereignty of peoples and nations over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.[2] Literally, absolute sovereignty is not possible under international law. International law is nothing but some sets of rules which become binding upon a State only if the State freely accepts and submits its sovereignty under those rules.[3] Therefore, the concept of PSNR cannot be said untouchable, either in law or in practice, as a formal legal definition might imply. It is generally accepted that cultural, economic and environmental influence does not value any boundary and does not acknowledge the absolute dominance of any State. This article challenges the obdurate proposition of PSNR on several grounds and tries to

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Daes, Erica-Irene A. 2003. 'Indigenous peoples' permanent sovereignty over natural resources', available at:
<http://www.treatycouncil.org/section_21131511114222111111.htm> last accessed on 14 November 2010.

2 Article 1 of General Assembly resolution 1803 (XVII) 1962.

3 Perrez, Franz Xaver. 1996. "The Relationship between Permanent Sovereignty and the Obligation Not to Cause Transboundary Environmental Damage", Vol. 26, *Environmental Law*, at p. 1190.

establish the view that PSNR is not unconditional and it has certain boundaries in national as well as in international sphere.

Definition of Sovereignty and Natural Resources

The attempt to challenge the obdurate proposition of PSNR requires first the analysis of definitions given to sovereignty and natural resources.

Sovereignty

The term 'sovereignty' refers to the supreme, absolute, and uncontrollable power by which an independent state is governed and from which all specific political powers are derived; the intentional independence of a state, combined with the right and power of regulating its internal affairs without foreign interference.[4] One of the proponents of the concept Jean Bodin defined 'sovereignty' as the "supreme power over citizens and subjects, unrestrained by law."[5] Hugo Grotius defined it as the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden."[6]

An important factor of sovereignty is its degree of absoluteness. A sovereign power has absolute sovereignty to control everything and every kind of activity in its territory. This means that it is not restricted by a constitution, by the laws of its predecessors, or by custom, and no areas of law or behavior are reserved as being outside its control. Theorists have diverged over the necessity or desirability of absoluteness.[7]

Natural Resources

Typically the phrase "natural resources" serves as a general descriptive phrase following a list of specific words in statute, such as air, water, land, and other natural resources or oil, natural gas, minerals and all

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4 Lehman, Jeffrey. and Phelps, Shirelle (eds.). 2008. *West's Encyclopaedia of American Law*, 2nd edn. Michigan: The Gale Group.

5 According to Jean Bodin the essential element of sovereignty is the law making power of the sovereign. Since the sovereign makes the law, he does not intend to bind himself by that law. He has tend to add that the sovereign is however bound by the Divine Law. Slowly and gradually the concept of sovereignty became distorted and it became synonymous with absolutism. For details see, Jean Bodin's*De la Rėpublique*, 1576.

6 Kapur, A. C. 1999. *Principles of Political Science,* New Delhi: S. Chand and Company Ltd, at p. 184.

7 'Sovereignty', available at: <http://en.wikipedia.org/wiki/Sovereignty> last accessed on 17 October 2010.

other natural resources. *Black's Law Dictionary*[8]gives two wide definitions. First definition is that "any material from nature having potential economic value or providing for the sustenance of life, such as timber, minerals, oil, water and wildlife." The second definition is that the "environmental features that serve a community's well-being or recreational interests, such as parks."

Under international law, the term 'natural resources' has been defined variously in various UN resolutions. An analysis of relevant PSNR resolutions shows the range of recourses and activities covers within the ambit of natural resources. These includes natural resources and natural wealth and resources,[9] natural resources on land with their international boundaries as well as those in the sea bed, in the subsoil thereof within their national jurisdiction and superjacent water,[10] natural resources both terrestrial and marine and all economic activities for the exploitation for these resources,[11] all wealth, natural resources and economic activities.[12]

The United Nations has been the origin of the principle of PSNR and the main forum for its development and implementation. On December 21, 1952 the United Nations general Assembly issued Resolution No. 626(VII) which was the first General Assembly text in using the term "permanent sovereignty over natural resources" where it says that the right of peoples to exploit their natural resources as part of their sovereignty. Thereafter, the United Nations has adopted more than 80 resolutions[13] relating to the principle of PSNR. These resolutions were closely related to arrangements between States and foreign private companies for the exploitation of natural resources, particularly oil and minerals in developing countries. They address the need to balance the rights of the sovereign State over its resources with the desire of foreign companies to ensure legal stability of its investment.[14] But it was the General

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8 Garner, Bryan A. (eds.). 2004 *Black's Law Dictionary*,8th edn. USA: Thomson West, at p. 1056.

9 General Assembly Resolution 523 (1952).

10 General Assembly Resolution 3016 (1972).

11 UNIDO II, 1975.

12 General Assembly Resolution 3281(1974).

13 For example UN General Assembly Res. 523 (VI) (1950), UN General Assembly Res. 626(VII) (1952),UN General Assembly Res. 837(IX) (1954), UN General Assembly Res. 1314(XIII) (1958), UN General Assembly Res. 1515(XV) (1960).

14 Sands, Phelippe. 2003. *Principles of International Environmental Law*, 2nd edn. Cambridge: Cambridge University Press, at p. 236.

Assembly Resolution 1803 (XVII) in 1962 that gave the principle momentum under international law in the decolonization process.[15]

Resolution 1803 (XVII) proclaims that "the right of peoples and nations to permanent sovereignty over their natural wealth and resources."[16] At the same time, it states that "foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith." Moreover, in cases of nationalization, "the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law."[17]

Limitations of Sovereignty over Natural Resources

In the earlier century the term sovereignty referred to the supreme power within a State without any restriction whatsoever. Today, no sensible person would agree that this obsolete version of PSNR really exists. A multitude of treaties and customary international law norms impose international legal constraints that circumscribe extreme forms of arbitrary actions even against a sovereign's own citizens.[18]

A. Restriction under General Assembly Resolution 1803

By its wording, the Resolution imposes restriction mentioning that "the free and beneficial exercise of the sovereignty of peoples and nations over their national resources must be furthered by the mutual respect of States based on their sovereignty equality."[19] Violation of national sovereignty over natural resources is "contrary to the spirit and principles of the maintenance of peace."[20] Thus, Resolution 1803 (XVII) recognizes an important and basic limitation on the notion of relative sovereignty i.e. a state's sovereignty over its natural resources is subordinate to international law.[21]

Moreover, in case of foreign investment, the Resolution declares that the capital imported and the earnings on that capital shall be governed by

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[15] Art. 1 of UN General Assembly Resolution 1803 (XVII)(1962).

[16] *Ibid.*, Art. 8.

[17] *Ibid.*, Art. 5.

[18] Jackson, John H. 2003. "Sovereignty – Modern: A new Approach to an Outdated Concept", Vol. 97, No. 782 *The American Journal of International Law*, pp. 782-802, at p. 789.

[19] Art. 5 of UN General Assembly Resolution 1803.

[20] Art. 7, *Ibid.*

[21] See above note 3, at p. 1190.

the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.[22] It was widely recognized that the importance of the resolution would lay not so much on the abstract assertions of sovereignty as in the concrete conditions laid down for the exercise of the sovereignty.[23]

A careful analysis of the Resolution points out that the resolution talks more on obligation of a State to handle its natural resources than on its exercising sovereign rights. Probably is this the reason why United States did not oppose to the resolution which it did in the previous resolution on the same context.[24] Developing countries, principally, have criticized the resolution as "conservative in character" and "not going far enough."[25]

In 1992 the then United Nations secretary-general Boutros Boutros-Ghali said in his report to the Security Council,

> *Respect for (the State's) fundamental sovereignty and integrity (is) crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality.*[26]

B. Restriction under International Environmental Laws

State sovereignty equated as it is with non-interference with domestic jurisdiction and discretion in the legal sphere has become increasingly qualifies. Legally our planet can be split up in to about 200 independent states but in practice the world is recognized as interdependent on many different levels.[27] For certain issues like economic and energy crisis, deforestation, acid rain, pollution of international water, the threat of

22 Art. 3 of UN General Assembly Resolution 1803.

23 Schwebel, Stephen Myron. 1994. *Justice in International Law: Selected Writings of Stephen M. Schwebel,* Cambridge: Cambridge University Press, at p. 402.

24 General Assembly Resolution 626(VII) of December 21, 1952.

25 *Ibid.*

26 Boutros Boutros-Ghali, 1992 'An Agenda for Peace – Preventive Diplomacy, Peacemaking, and Peace-keeping', UN Doc.A/47/277–S/24111, at para. 17.

27 Schrijver, Nico. 1997. *Sovereignty over Natural Resources: Balancing Rights and Duties* Cambridge: Cambridge University Press, at p. 2.

global warming, damage in the ozone layer and loss of biodiversity other issues States are interdependent with each other. In an age of globalization, issues like resource depletion and environmental degradation compels to think twice where 'permanent sovereignty' is. As already mentioned we can split the planet into too many independent States but we cannot split the nature. Only joint initiatives of States can insure protection of the eco-system around us.

The need to preserve the environment and to safeguard natural resources is now commonly accepted but is usually balanced against the aim of poverty eradication in developing countries. It is clear that PSNR has become encompassed with environmental concerns alone with issues of war and peace, safety and security for all of us.

In the post war era, PSNR evolves as a new principle of international economic law. Since the early 1950s this principle was advocated by the developing countries in an effort to secure, for those people still living under colonial rule, the benefits arising from exploitation within their territories and to provide newly independent State with a legal shield against infringement of their legal sovereignty as a result of property rights or contractual obligations claim by other States or foreign companies.[28] These objectives are set out in the Principe 21 of the Stockholm Declaration 1972, which provides:

> *States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction*

If we closely analyze at the Stockholm declaration, the Principle 21 has two diverging component i.e. State sovereignty over its natural resources and State responsibility. In fact, Stockholm Declaration is advocating strongly State's responsibility rather than State's right over the resources. While emphasizing on sustainable use of natural resources the Principle 2 of the Declaration proclaims that the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning and management, as appropriate. In case of renewable resources it is argued in the Principle 3 that the vital 'renewable resources' must be

28 *Ibid*, at p. 4.

maintained, restored or improved. In case of 'non renewable resources' the Principle 5 utters that it must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that the benefits from such employment are shared by all mankind. About the wild life and habitat the Principle 4 announced that nature conservation, including wildlife, must receive importance in planning for economic development. This declaration also ensures state responsibility for any damage causes to the environment as the Principle 22 states that States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction. Thus, unlike early approaches which aimed at guaranteeing states full sovereignty over their resources, the developments in the various fields of international law, under the overarching concept of sustainable development, have resulted in an integrated eco-system approach concerning the utilization of natural resources.

The responsibility of States not to cause environmental damage in areas outside their jurisdiction predates the Stockholm Conference, and is related to the obligation of all states 'to protect within the territory the rights of other states, in particular their right to integrity and inviolability in peace and war. The obligation was elaborated in much cited *Trail Smelter case*,[29] which states that:

> *Under the principles of international law ....no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence*

In fact, the Principle 2 of the Rio Declaration, 1992 is almost the same as the Principle 21 of the Stockholm Declaration adding only two important words, "and development" in its second principle, giving greater liberty and freedom to the developing countries for their development. Thus even the RioDeclarationemphasizes on State responsibility. The Principle 21 of Stockholm and the Principle 2 of Rio Declaration is also conformed

[29] *United States v. Canada*, (1938/*1941*) 3 R.I.A.A. 1905. The arbitral Tribunal decided that, first of all, Canada was required to take protective measures in order to reduce the air pollution in the Columbia River Valley caused by sulphur dioxide emitted by zinc and lead smelter plants in Canada, only seven miles from the Canadian-US border. Secondly, it held Canada liable for the damage caused to crops, trees, etc. in the state of Washington and fixed the amount of compensation to be paid.

by the ICJ's 1996 Advisory Opinion on *the Legality of the Threat or Use of Nuclear Weapons* [30]where it prohibits nuclear tests if the explosion would cause radioactive debris "to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted".

There are many other treaties and conventions besides the Rio Declaration and the Stockholm Declaration which also speak of State's responsibility in regard to environmental and issues.[31] The Article 3 of the *Convention on Biological Diversity,*[32] provides that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. So we can see the reference of PSNR in different instruments but everywhere it is in chain.

The Brundtland Commission[33] observed that 'legal regimes are being rapidly outdistanced by the accelerating pace and scale of impacts on the environmental base of development'.

C. The Limitation of Sovereignty by Contract

PSNR is one of the leading controversial issues in modern international law after the Second World War involving the issue of foreign investment. This is the period when decolonization took place and newly emerged States tried to build their position and hold strength in international arena by claiming sovereign power over their natural recourses. The principle of PSNR was introduced in UN debates in order to underscore the claim of colonial peoples and developing countries to the right to enjoy the benefits to resources exploitation and in order to allow 'inequitable legal arrangements, under which foreign investors had obtain title to exploit resources in the past to be altered or even to be annulled *ab initio,* because they conflict with the concept of permanent

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30 See above note 14, at p. 236.

31 Hossain, Md. Iqbal. 2004. *International Environmental Law Bangladesh Perspective,* Dhaka: Dhaka International University, at p. 31.

32 5 June 1992, entered into force Dec. 29, 1993.

33 World Commission on Environment and Development (WCED), 1983. The General Assembly Resolution 38/161.

sovereignty.[34] Developed countries opposed this by referring the principle of *pacta sunt servanda.*[35]

The first half of the 20th century saw the creation and then rapid growth of the international energy industry. Many governments granted generous concessions in the early years to multinational oil corporations in which title to the oil in place was conveyed to the companies, the concession covered large areas, the terms of the concessions were very long (*e.g.*, 60 years or more) and the royalties payable to the government were low.[36] So the developing nations soon decided to annul the conditions. Accordingly, the second half of the 20th century was characterized by the nationalization of the oil industry, the termination of those same concession agreements and the expropriation of the assets connected to the concessions. These have included sensitive nationalization cases, such as take over of Anglo Iranian Oil Company (1951), the United Fruit Company in Guatemala, (1953) the Suez Canal Company (1956), the Dutch property in Indonesia (1958), the Chilean Copper industry (1972) and the Libyan oil industry (1971-4).[37]

By the end of the 20th century, the pendulum had swung once again. The 1980s and 1990s were characterized by the growing interest of developing nations in receiving foreign investment by means of new projects or privatizations of already existing state-owned enterprises.[38] Added to this, many nations agreed to enter into bilateral investment treaties and multilateral agreements to promote themselves as investment-friendly countries. But the foreign investors were losing their interest for the insecurity of their investment and legal protection.

In 1980's, however developing nations attempted to make some compromise within the concept of PSNR and introduce changes into the legal principles of nationalization. In 1974, Resolution 3281[39] affirms that the right to nationalize foreign owned property required "appropriate compensation and added that, if compensation was not paid the

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[34] See above note 25, at p. 1.

[35] Latin word means "agreements must be kept".

[36] Vielleville Daniel E. and Vasani, Baiju Simal.2008. "Sovereignty over Natural Resources versus rights under investment contracts: Which one prevails?" available at: <http://www.crowell.com/documents/Sovereignty-Over-Natural-Resources-Versus-Rights-Under-Investment-Contracts_Transnational-Dispute-Management.pdf>, last accessed on 21 December 2010.

[37] *Ibid.*

[38] *Ibid.*

[39] General Assembly Resolution 3281(XXIX) (1974).

nationalizing State's international obligation would not have been fulfilled in 'good faith'. [40]

The term good faith was well defined in the case of *Tecmed v. Mexico*,[41] where the Arbitral Tribunal considers that in light of the good faith principle established by international law, requires the contracting parties to provide to international investments a treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment. The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations. Any and all State actions conforming to such criteria should relate not only to the guidelines, directives or requirements issued, or the resolutions approved there under, but also to the goals underlying such regulations. The foreign investor also expects the host State to act consistently, *i.e.* without arbitrarily revoking any pre-existing decisions or permits issued by the State that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities. The investor also expects the State to use the legal instruments that govern the actions of the investor or the investment in conformity with the function usually assigned to such instruments, and not to deprive the investor of its investment without the required compensation.

For better security of investment, most foreign investors today are making demand for the inclusion of stabilization clause[42] in the agreement with the host State. In the case of *Government of the State of Kuwait v. American Independent Oil Co*[43] the tribunal rejected Kuwait's arguments that the stabilization clause was contrary to domestic and international law. The tribunal held that a State could agree not to nationalize specific foreign-owned property within a limited period of time. The tribunal, however, also implied that the stabilization clause would only apply in cases of a confiscatory measure taken by the State.[44]

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[40] Article 4, General Assembly UN Res. 1803.

[41] ICSID Case No.ARB (AF)/00/2, Final Award of May 29, 2003, at para 154.

[42] Stabilization clauses in investment agreements serve the purpose of freezing the effects of changes adopted by a State in its national system of law as of the date of the contract.

[43] Award of 24 May 1982.

[44] See above note 33.

International tribunals have, over the last few decades, recognized that contracts between the host State and the investor itself (i.e., outside of any treaty regime), may place a limitation on the State's sovereignty over its natural resources.

D. State Sovereignty and Restriction by Treaties and Customary Laws

In the modern period there have been dramatic and substantial changes in the concept of sovereignty because of which it is not appropriate to state that States sovereignty is invincible and illimitable. In the present time, States have entered into many international treaties thereby surrendering a part of their sovereignty.[45] For example, the members of the United Nations have accepted many obligations under the Charter.[46] It is recognized in international law that a sovereign could be under the protection of another, greater sovereign without losing its own sovereignty.[47]

Sometime the principle of non-interference on the nation-state level is closely linked to sovereignty, yet today's globalize world flourishes in instances in which the actions of one nation (particularly an economically powerful nation) constrain and influence the internal affairs of other nations. For example, powerful nations have been known to influence the domestic elections of other nations and to link certain policies or advantages (such as aid) to domestic policies relating to subjects such as human rights.[48] Henry Schermers, rightly states:

> *... under international law the sovereignty of States must be reduced. International co-operation requires that all States be*

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[45] In this regard Starke rightly marked that: "Sovereignty has a much restricted meaning today than in the 18th and 19th centuries, when with the emergence of powerful highly nationalized States, few limits on States' autonomy were acknowledged. At the present time there is hardly a State which in the interest of the international community has not accepted restrictions on its liberty of actions." For details see Starke, J. G. 1994 *Starke's International Law,* 12th Edn. London: Butterworth. In Union of *India v. Sukumar Sengupta,* Sabyasachi Mukharji, C.J. of the Supreme Court of India quoted with approval the above observation of Starke. His Lordship added, "Any State in the modern time has not acknowledge and accept customary restraints on its sovereignty in as much as no State can exist independently and without reference to other States. Under the general international law the concept of inter-dependence of States has come to be accepted."

[46] Kapoor, S. K. 2003. *International Law and Human Rights*, 12th Edn. Allahabad: Central Law Agency, at pp. 49-50.

[47] Vattel, Emmerich de. 1803 *The Law of Nations*, BK. Ch.1, at p. 60.

[48] See above note 16, at p. 789.

bound by some minimum requirements of international law without being entitled to claim that their sovereignty allows them to reject basic international regulations. . . . we may conclude that the world community takes over sovereignty of territories where national governments completely fail and that therefore national sovereignty has disappeared in those territories. The world community by now has sufficient means to step in with the help of existing States and has therefore the obligation to rule those territories where the governments fail."[49]

Although in earlier times States assumed 'full' and 'absolute' sovereignty to mean that they could freely use resources within their territories regardless of the impact this might have on neighbouring States, few would argue today that territorial sovereignty is an unlimited concept enabling a State to do whatever it likes.[50]In post-modern period it is a commonplace to observe that no State enjoys unfettered sovereignty, and all States are limited in their sovereignty by treaties and by customary international law.[51] The principle of territorial sovereignty is also limited when the question fingers upon the territorial sovereignty and integrity of another State. Furthermore, the scope for discretionary action arising from the principle of sovereignty is determined by principles like 'good neighbourliness' and *sic utere tuo ut alienum non laedas* (you should use your property in such a way as not to cause injury to your neighbour's). As Oppenheim rightly put in 1912:

A State, in spite of its territorial supremacy, is not allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighbouring State—for instance to stop or to divert the flow of a river which runs from its own into neighbouring territory.

In *The Island of Palmas Case* [52] the sole arbitrator Huber, who was then President of the Permanent Court of International Justice, declared:

Territorial sovereignty involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in

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49 Schermers, Henry. 2002. "Different Aspects of Sovereignty," in Gerard Kreijen (ed.): State, Sovereignty, and International Governance. New York: Oxford University Press, at p. 192.

50 See above note 25, at p. 219.

51 *Ibid*, at p. 2.

52 *United States v The Netherlands*, award in 1928.

> *particular their right to integrity and inviolability in peace and war, together with the rights which each State may claim for its nationals in foreign territory.*[53]

It is also evident by various international agreements between States that provide for joint use of natural resources and address matters such as transboundary resource use, transboundary pollution, conservation and sustainable development.

Even within the territorial limit State must ensure safety knowingly its territory to be used for acts of other State. For example, in 1949, in the *Corfu Channel Case*[54]the International Court of Justice rendered a judgment, in fact in its very first case, on the responsibility of Albania for mines which exploded within Albanian waters which resulted in the loss of human life and damage to British naval vessels and on the question whether the United Kingdom had violated Albania's sovereignty. The Court came to the conclusion that the laying of the minefield in the waters in question could not have been accomplished without the knowledge of Albania. The Court held that the Corfu Channel is a strait used for international navigation and that previous authorization of a coastal State is not necessary for innocent passage. In view of the passage of foreign ships, the Court held therefore that it was Albania's obligation to notify, 'for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters' and to warn 'the approaching British warships of the imminent dangers to which the minefield exposed them'. Since Albania failed to do so on the day of the incident, the Court held Albania responsible for the damage to the warships and the loss of life of the British sailors and determined the amount of compensation to be paid. For our purposes it is relevant that the Court referred to:

> *...Every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.*[55]

E. Sovereignty and Extraterritoriality

The sovereign right to exploit natural resources includes the right to be free from external interference over their exploitation. But in case of shared natural resources, that are the resources which do not fall wholly within the exclusive control of one State, Article 3 of the *Charter of Economic Rights and Duties of States* decrees that:

[53] *Island of Palmas Case*, (1949) 2 RIAA 829.

[54] *United Kingdom v. Albania*. 1949.

[55] ICJ Reports 1949, at p. 22.

resources. Those decisions do not rest easily, however with a more modern conception of an ecologically interdependent world in which limits are placed on the exercise of sovereignty or sovereign rights.[61]In absence of generally accepted international standards of environmental protection and conservation, States with strict national environmental standards may seek to extend their application of activities carries out in areas beyond their territory, particularly where they believe that such activities cause significant environmental damage to share resources (such as migratory species, transboundary watercourses, or air quality and climate system) or affect vital economic interest.

The permissibility of extra-territorial application of national laws remains an open question in international law. The PCIJ[62] has stated that 'the first and foremost restriction imposed by international law upon a state is that- failing the existence of a permissive rule of the contrary –it may not exercise its power in any form in the territory of another state outside its territory except by virtue of a permissive rule derived from international custom or form a convention. [63] However in the same case the PCIJ went on to state that international law as it stands at presents does not contain a general prohibition to states to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory and that the territoriality of criminal law was 'not an absolute principle of international law and by no means coincides with territorial sovereignty'.[64]

Conclusion

To conclude, it can be said that the principle of PSNR, in contrast with other State practices (bilateral treaty agreement with foreign investors, environmental obligations, obligation of customary international laws, etc.) has brought to a situation in which it can only be presumed the existence of a very vague principle of PSNR.

It only gives the general right of a state to manage and control its natural resources and that it has the duty to make its people benefited from the exploitation of such resources. Then the obvious question comes why the principle was introduced and welcome by United Nations. The answer is probably, the term was introduced to persuade those tormenting nations under going the phase of decolonization to fight with their limited

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[61] See above note 14, at p. 238.

[62] Permanent Court of International Justice.

[63] Lotus case (*France v. Turkey*), PCIJ 1927.

[64] See above note 14, at p. 239.

resources to cope up with world's advance economy. But, that era of decolonization is gone.

Moreover the concept is becoming shrinking due to the State interdependence with others for technological benefit, sharing common resources or for protecting the environment globally. It is also evident that, while in the past emphasis has been placed on the States rights aspect of PSNR, it is now time for a shift in focus to duties flowing from this right. The development of PSNR has trended to focus on the formulation of rights in the earlier periods, but balance with duties has been increasingly created by stipulating that PSNR be exercised for national development and well-being of the people. It is even addressed in the resolution of PSNR that the term 'sovereignty' refers not to the absolute sense of the term, but rather to governmental control and authority over the resources in the exercise of the well being of the people of the state concerned.[65] To wrap up, it can rightly be said that the concept of State oriented sovereignty is gradually transforming into mankind oriented sovereignty around the globe.

[65] Art. 1 of Resolution 1803.