International law and governance of natural resources in conflict and post-conflict situations

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2 Defining the right of peoples and States to freely exploit their natural resources: permanent sovereignty over natural resources

2.1 Introductory Remarks

International law establishes a right for States and peoples to freely exploit their natural resources. This right originates in UN General Assembly Resolution 523 (IV) of 12 January 1952, which formulates a right for "under-developed countries" to freely determine the use of their natural resources. Soon after the adoption of this resolution, the right developed along two different but interrelated tracks. First, the right was asserted in terms of the principle of permanent sovereignty over natural resources.[1] In addition, as Chile proposed, the right of peoples to freely dispose of their natural resources was inserted into the two human rights covenants of 1966 as inherent in their right to self-determination.[2]

Today the right of States and peoples to freely dispose of their natural resources is firmly established in the principle of permanent sovereignty over natural resources which incorporates this right. The principle of permanent sovereignty over natural resources constitutes the very foundation on which the protection and management of natural resources in modern international law is based. Its relevance for the protection and management of natural resources has been confirmed in many international legal instruments, as well as in resolutions of the UN Security Council and the UN General Assembly. In addition, the International Court of Justice has recognised the importance of the principle and considers it to constitute a principle of customary international law.[3]

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1 It should be noted that the concept of permanent sovereignty over natural resources itself was for a long time asserted as a right before it received recognition as a legal principle. For example, compare the landmark 1962 Declaration on Permanent Sovereignty over Natural Resources, which designates permanent sovereignty over natural resources as a right accruing to both peoples and nations. See UN General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, 14 December 1962.

2 The original proposal for Article 1(2) introduced by Chile in 1952 provided in relevant part that "the right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources". For a discussion of the Chilean proposal, see N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997), pp. 49-56.

3 International Court of Justice, Case Concerning Armed Activities in the Territory of the Congo (Democratic Republic of the Congo *v.* Uganda), Judgment of 19 December 2005, *I.C.J. Reports 2005*, para. 244.

This chapter first aims to determine the content of the right of States and peoples to freely dispose of their natural resources. For this purpose, this chapter examines the evolution, the nature and the legal status of the principle of permanent sovereignty over natural resources. Furthermore, the principle of permanent sovereignty identifies States and peoples as holders of the right to freely dispose of "their" natural resources. This chapter examines the implications of this dual ownership in relation to the right to freely dispose of natural resources. It argues that the dual ownership construction has two implications. First, it emphasises that the right to exercise permanent sovereignty over natural resources is an essential component of State sovereignty, which other States must respect in their international relations. Secondly, the recognition of peoples as also being subjects of the principle of permanent sovereignty over natural resources in addition to States must be interpreted as qualifying the right of the government of a State to dispose of the State's natural resources. The government exercises this right on behalf of the people of the State.

2.2 Evolution of the principle of permanent sovereignty over natural resources

This section outlines the evolution of the principle of permanent sovereignty over natural resources. It demonstrates that this is a dynamic principle, which has adapted to changing circumstances. For this reason the principle has not only remained relevant over time, but has in fact become the governing principle for the management and protection of natural resources.

2.2.1 Early recognition: permanent sovereignty and the right to self-determination

The principle of permanent sovereignty over natural resources originates in resolutions of the UN General Assembly. It emerged in the 1950s following the decolonisation movement, and was advanced by newly independent and developing countries as a means of protecting their ownership rights over the natural wealth and resources situated within their territory.[4] At the time, the main idea behind – what was then still called – the *right* to permanent sover-

4 For a detailed examination of the principle of permanent sovereignty over natural resources, see N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997); D. Rosenberg, *Le Principe de Souveraineté des Etats sur Leurs Ressources Naturelles*, Paris: Librairie Générale de Droit et de Jurisprudence (1983); G. Elian, *The Principle of Sovereignty over Natural Resources*, Alphen aan den Rijn: Sijthoff & Noordhoff (1979).

eignty over natural resources was to provide these countries with the legal tools to regain control over their natural resources and to exploit them for their own benefit. Therefore, initially the principle was primarily associated with such controversial issues as the right of States to regulate foreign investment, and in particular with the right to nationalise natural resources. In this respect, Resolution 626 (VII) was the first resolution to make an express link between the right of peoples to freely exploit their natural resources on the one hand, and the exercise of sovereignty on the other.[5]

A few years later, Resolution 837 (IX) determined that the right to permanent sovereignty over natural resources was an inherent part of the right of self-determination and requested the Commission on Human Rights to make recommendations concerning the right of peoples and nations to self-determination, "including recommendations concerning their permanent sovereignty over their natural wealth and resources".[6] This resolution marked the beginning of a process aimed at the clarification of the concept of permanent sovereignty over natural resources leading up to the 1962 Declaration on Permanent Sovereignty over Natural Resources.[7]

2.2.2 The 1962 Declaration and the following years: regulating foreign investment

The Declaration on Permanent Sovereignty over Natural Resources, adopted by the General Assembly on 14 December 1962 by 87 votes to 2, with 12 abstentions, lays down eight basic principles concerning the exercise of permanent sovereignty over natural resources.[8] The focus of the Declaration is on the regulation of foreign investment in the natural resources sector. In this respect, the Declaration aims to strike a balance between the interests of States

5 UN General Assembly Resolution 626 (VII) of 21 December 1952 on the right to exploit freely natural wealth and resources determines that "the right of people fully and freely to use and exploit their natural wealth and resources is inherent in their sovereignty". This resolution is quite controversial, because of its political context. Although references to a right to nationalise natural resources ultimately have not been inserted in the text, the resolution became known as the "nationalisation resolution". See N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997), pp. 41-49.

6 UN General Assembly Resolution 837 (IX) on recommendations concerning international respect for the right of peoples and nations to self-determination of 14 December 1954.

7 Instrumental in this development has been the Commission on Permanent Sovereignty over Natural Resources, set up by the UN General Assembly in Resolution 1314 (XIII) of 12 December 1958 "to conduct a full survey of [permanent sovereignty over natural wealth and resources as a] basic constituent of the right to self-determination".

8 See N.J. Schrijver, 'Natural Resources, Permanent Sovereignty over', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, 3rd ed., available through <http://www.mpepil.com> (2008), para. 10. For the voting records, see *Yearbook of the United Nations* (1962), pp. 502-503. The negative votes were cast by France and South Africa.

exporting capital in protecting their investments and the interests of States importing capital in retaining control over their natural resources.[9]

Furthermore, the Declaration attempts to clarify the nature and scope of the concept of permanent sovereignty over natural resources. In this respect, paragraph 1 of the Declaration asserts a right to permanent sovereignty over "natural wealth and resources", *i.e.*, over every part of the environment.[10] It attributes this right to "peoples and nations" and specifies that it must be exercised "in the interest of their national development and of the well-being of the people of the State concerned".

Arguably this obligation is also incumbent upon States when they nationalise, expropriate or requisition natural wealth and resources. According to paragraph 4 of the declaration, the nationalisation, expropriation or requisitioning of natural wealth and resources is permitted only on "grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign". Although the primary objective of this paragraph is the protection of foreign investment, it can also be read as emphasising the obligation to exercise permanent sovereignty in the interest of national development and the well-being of the population of the State.

The final provision that is of interest is paragraph 7 of the declaration, which determines that "violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations". Although the objective of this provision was originally to protect developing States against foreign investors exploiting their natural resources on unequal terms, it is arguably also relevant for situations in which foreign States plunder a State's natural resources, which happened (and is still happening to some extent) in the DR Congo. In these cases, States are therefore committing an internationally wrongful act, activating the law on State responsibility.[11]

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9 The principal question that was before the Committee discussing the draft resolution was the "achievement of a formula which would safeguard and reconcile two essential principles, namely, respect for the national sovereignty of developing countries in need of foreign capital for the development of their natural resources, and provision of adequate guarantees for potential investors". *Yearbook of the United Nations* (1962), p. 500.

10 See N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997), p. 16, who notes that the "concept of natural wealth may come close to what is commonly called 'the environment' as a description of a physical matter, being the air, the sea, the land, flora and fauna and the rest of the natural heritage".

11 Nevertheless, in the Congo-Uganda case, the Court of Justice dismissed the relevance of this principle to the particular situation of looting and plundering of the DRC's natural resources by soldiers of the Ugandan army. See International Court of Justice, Case Concerning Armed Activities in the Territory of the Congo (Democratic Republic of the Congo *v.* Uganda), Judgment of 19 December 2005, *I.C.J. Reports 2005*. These aspects of the case are discussed in more detail in Chapter 5 of this study.

Subsequent General Assembly resolutions focus mainly on the implementation of the principle of permanent sovereignty over natural resources and place it in a more prominent developmental context. In addition, these resolutions increasingly point to States rather than peoples as the subjects of the principle of permanent sovereignty. Resolution 2158 (XXI) of 6 December 1966, for example, "reaffirms the inalienable right of all *countries*", while Resolution 2692 (XXV) of 11 December 1970 is entitled "Permanent sovereignty over natural resources of developing *countries*" and Resolution 3171 (XXVIII) of 17 December 1973 "[s]trongly reaffirms the inalienable rights of *States* to permanent sovereignty over all their natural resources".[12]

At the same time, these resolutions emphasise that States must exercise the right to permanent sovereignty in order to promote development. For example, Resolution 2158 (XXI) determines that countries exercise permanent sovereignty "in the interest of their national development". Similarly, Resolution 2692 (XXV) reaffirms that permanent sovereignty "must be exercised in the interest of their national development and of the well-being of the people of the State concerned".

The political situation changed dramatically as a result of the economic crisis that broke out in the early 1970s. Discontented with the existing international economic order, developing countries advocated the establishment of a New International Economic Order (NIEO), which was aimed at addressing inequities in the economic system. Among the founding principles of this new economic order permanent sovereignty over natural resources figured prominently, and this was to extend to "all economic activities".[13] Therefore the NIEO Declaration significantly extended the scope of the principle of permanent sovereignty over natural resources. This is one of the principal reasons why the NIEO Declaration has continued to be controversial.[14]

Another interesting feature of the NIEO Declaration is that the principle of permanent sovereignty is considered to accrue exclusively to States and that it is no longer explicitly subject to the obligation to use this right in the interest of national development. At the same time, the Declaration expresses "the need for developing countries to concentrate all their resources for the

12 UN General Assembly Resolution 2158 (XXI) on Permanent Sovereignty over Natural Resources, adopted on 6 December 1966, UN General Assembly Resolution 2692 (XXV) on Permanent sovereignty over natural resources of developing countries and expansion of domestic sources of accumulation for economic development, adopted on 11 December 1970, UN General Assembly Resolution 3171 (XXVIII) on Permanent sovereignty over natural resources, adopted on 17 December 1973. Author's emphasis added. It should be noted that contrary to what its title suggests, Resolution 2692 (XXV) reaffirms the right to permanent sovereignty of both nations and peoples, especially in paragraph 2.

13 See the Declaration on the Establishment of a New International Economic Order, UN General Assembly Resolution 3201 (S-VI) of 1 May 1974, para. 4(e).

14 See N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997), pp. 96-100.

cause of development".[15] This is considered one of the founding principles of the NIEO.

The NIEO Declaration is accompanied by a programme of action which stipulates the measures that need to be taken for it to become fully effective. One of the measures referred to in the programme of action is the adoption of a Charter of Economic Rights and Duties of States as "an effective instrument towards the establishment of a new system of international economic relations based on equity, sovereign equality, and interdependence of the interests of developed and developing countries".[16]

The purpose of the Charter of Economic Rights and Duties of States, which was adopted later that year by a majority of the UN General Assembly,[17] was to promote "the new international economic order, based on equity, sovereign equality, interdependence, common interest and co-operation among all States".[18] With regard to natural resources, the Charter proclaims the right for "every State" to "freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities".[19]

From these resolutions it may be inferred that, in the context of the debate in the UN General Assembly during the 1960s and early 1970s, the principle of permanent sovereignty over natural resources gradually shifted from a right accruing to peoples and nations, as in the 1962 Declaration, to a right accruing to States, as in the 1974 NIEO Declaration and Charter of Economic Rights and Duties of States. In addition, during this same period, the scope covered by the principle was extended from "natural wealth and resources" in the 1962 Declaration to "natural resources and all economic activities" in the NIEO Declaration, and finally to "all its wealth, natural resources and economic activities" in the Charter of Economic Rights and Duties of States. However, the latter continued to be controversial.

15 *Ibid*., para. 4(r).

16 Programme of Action for the Establishment of a New International Economic Order, UN General Assembly Resolution 3202 (S-VI) of 1 May 1974, under VI.

17 The Charter was adopted with 120 votes to 6, with 10 abstentions. It met with considerable opposition from developed States. See N.J. Schrijver, *Development without Destruction: The UN and Global Resource Management*, United Nations Intellectual History Project Series, Bloomington and Indianapolis, Indiana University Press (2010), pp. 50-54.

18 UNGA Resolution 3281(XXIX) of 12 December 1974 on a Charter of Economic Rights and Duties of States.

19 The text was adopted in spite of criticism by the developed states. See N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997), pp. 102-103.

2.2.3 From resource rights to duties: permanent sovereignty and sustainable development

Whereas the main focus of the debates in the UN General Assembly during the first two stages of the evolution of the principle was on establishing rights, the principle was increasingly incorporated in declarations and treaties as a duty-based concept in the following decades. As a result of the evolution of international environmental law during the 1970s and 1980s, the exercise of permanent sovereignty over natural resources by States gradually became qualified by obligations pertaining to the protection and management of natural wealth and resources.[20] These obligations relate both to the extraterritorial effects resulting from the use of natural resources by States, as well as to the protection of parts of the environment within State boundaries that represent a value to the international community as a whole.

The first obligation relates to the responsibility of States "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". According to the International Court of Justice, this obligation has become part of "the corpus of international law relating to the environment".[21] The obligation not to cause extraterritorial damage to the environment, which was first expressed in the 1941 Trail Smelter case,[22] was formulated in Principle 21 of the 1972 Stockholm Declaration on the Human Environment and in Principle 2 of the 1992 Rio Declaration on Environment and Development as a corollary of the sovereign right of states "to exploit their own resources pursuant to their own environmental and – in the Rio Declaration – developmental policies".[23]

In addition, the sovereign right of States to exploit their natural resources and the corresponding responsibility not to cause transboundary environmental

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20 For a detailed analysis of the impact of international environmental law on the notion of permanent sovereignty over natural resources, see N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997), Chapters 8 and 10.

21 According to the Court, "the existence of a general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment". Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, *1996 I.C.J. Reports 66*, para 29.

22 In the Trail Smelter Arbitration, the arbitral tribunal held that "under the principles of international law […] no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence", Trail Smelter Arbitration (United States v. Canada) 16 April 1938, *3 RIAA 1907 (1941)*.

23 Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, *11 I.L.M. 1416 (1972)*; Declaration of the United Nations Conference on Environment and Development, Rio de Janeiro, 13 June 1992, *31 I.L.M. 874 (1992)*.

harm has been incorporated in several international environmental conventions, including the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1992 Convention on Biological Diversity (CBD), the 1992 UN Framework Convention on Climate Change (UNFCCC), and the 1994 Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.[24]

Moreover, some of these conventions formulate more precise obligations aimed at the prevention of extraterritorial damage to the "global commons".[25] For example, the 1985 Vienna Convention for the Protection of the Ozone Layer, obliges parties to "take appropriate measures . . . to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer".[26] Similarly, the 1992 UNFCCC formulates as a general principle that the parties should "protect the climate system for the benefit of present and future generations" and to that end must, inter alia, "promote sustainable management" of sinks and reservoirs.[27]

While the prohibition against causing extraterritorial damage to the environment relates to the protection of the environment of third States and of areas beyond national jurisdiction, international environmental law also contains obligations for States with regard to the protection of their own natural wealth and resources. These obligations flow from the general obligation to conserve and use natural wealth and resources in a sustainable way for the benefit of current and future generations, which is discussed in more detail in Chapter 4 of this book.[28]

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24 See the second paragraph of the preamble of the Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, *1513 UNTS 323*; Article 3 of the Convention on Biological Diversity, Rio de Janeiro, 5 May 1992, *1760 U.N.T.S. 79*; paragraph 8 of the preamble of the UN Framework Convention on Climate Change, Rio de Janeiro, 9 May 1992, *1771 U.N.T.S. 107*; and paragraph 15 of the preamble of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, New York, 17 June 1994, *1954 U.N.T.S. 3*.

25 The term 'global commons' refers to what the Stockholm and Rio Declarations call the areas beyond national jurisdiction. For an examination of the concept of 'global commons', see N.J. Schrijver & V. Prislan, 'From Mare Liberum to the Global Commons: Building on the Grotian Heritage', in *Grotiana,* Vol. 30 (2009), pp. 168–206.

26 Article 1 of the Vienna Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, *1513 U.N.T.S. 323*, while paragraph 2 of the preamble recalls that states have "the sovereign right to exploit their own resources pursuant to their own environmental policies".

27 Articles 3(1) and 4(1)(d) of the UNFCCC, while paragraph 8 of the preamble recalls that states have "the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies".

28 For an examination of the notions of sustainable use, intergenerational equity and other notions related to the concept of sustainable development, see N.J. Schrijver, 'The Evolution of Sustainable Development in International Law: Inception, Meaning and Status', *Recueil des Cours,* Vol. 329 (2007), Leiden/Boston: Martinus Nijhoff Publishers (2008), Chapter 5.

While affirming the sovereignty of states over their natural resources, the 1972 Stockholm Declaration already placed great emphasis on the responsibility of man to protect the environment and the earth's natural resources.[29] The obligation to conserve and use natural wealth and resources in a sustainable way is also inherent in the notion of sustainable development, which is commonly described as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[30]

Several international environmental treaties take the sovereignty of states over their natural resources as their starting point, but simultaneously contain obligations which qualify the exercise of this sovereignty for the benefit of the international community as a whole. Examples include the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage, which obliges parties to identify, protect, conserve, present, and transmit to future generations sites that have been designated as "natural heritage", i.e., natural features, geological and physiographical formations and natural sites "for whose protection it is the duty of the international community as a whole to co-operate",[31] and the 1992 Convention on Biological Diversity, which obliges parties to cooperate with other states "for the conservation and sustainable use of biological diversity", i.e., "the variability among living organisms from all sources […] and the ecosystems and ecological complexes of which they are a part", the conservation of which is designated by the convention as a "common concern of humankind".[32] In addition, the 1982 UN Convention on the Law of the Sea (UNCLOS) contains a mixed obligation, referring to parts of the sea both within and outside the jurisdiction of States. UNCLOS's Article 193, one of the convention's environmental provisions, asserts the sovereign right of States to exploit their own natural resources and links this right to the duty to protect and preserve the marine environment.[33]

It can therefore be stated that international environmental law has both expressed and qualified the sovereign right of States to exploit their own

29 In this respect, Principle 1 of the Stockholm Declaration states that "[m]an ... bears a solemn responsibility to protect and improve the environment for present and future generations". In addition, Principle 2 determines that "the natural resources of the earth ... must be safeguarded for the benefit of present and future generations through careful planning or management".

30 Brundtland Commission, *Our Common Future*, Report of the World Commission on Environment and Development (1987).

31 Articles 4 and 6 of the Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 23 November 1972, *1037 U.N.T.S. 151*. Article 6 also states that the parties to the Convention fully respect "the sovereignty of the States on whose territory the . . . natural heritage . . . is situated".

32 Article 5, Article 2 and the third paragraph of the preamble of the Convention on Biological Diversity. Article 3 formulates the principle that states have "the sovereign right to exploit their own resources pursuant to their own environmental policies".

33 United Nations Convention on the Law of the Sea, New York, 10 December 1982, *1833 UNTS 3*, Article 193.

natural resources. International environmental law prescribes that States must take due account of the environment when they exercise the rights flowing from the principle of permanent sovereignty, both outside and inside their national jurisdiction.[34]

2.2.4 Other duties: towards a people-oriented concept of permanent sovereignty

During the 1990s and the first decade of this century, international legal and political instruments increasingly emphasised that sovereignty over natural resources should be exercised in the interests of the country and its people. In a way, this development can be regarded as a return to the foundations of the principle of permanent sovereignty. As mentioned before, early resolutions related to permanent sovereignty over natural resources were based on the premise that States and people had the right to freely dispose of their natural resources on condition that the natural resources were exploited for national development and the well-being of the people. The very first principle of the 1962 Declaration on Permanent Sovereignty over Natural Resources proclaims that "[t]he right of peoples and nations to permanent sovereignty 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".[35]

As noted by Nico Schrijver, this condition gradually disappeared from the permanent sovereignty-related resolutions.[36] The condition re-emerged in the context of resource-related armed conflicts. It was first referred to in legal and political instruments adopted to address resource-related armed conflicts. In a resolution entitled "Strengthening Transparency in Industries", adopted in 2008, the UN General Assembly reaffirmed that "every State has and shall freely exercise full permanent sovereignty over all its wealth, natural resources and economic activities" and in this respect recalled "its resolution 1803 (XVII) of 14 December 1962, in which it declared that the right of peoples and nations to permanent sovereignty 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".[37] In addition, Article VII of the Lomé Peace Agreement for Sierra Leone provides that "the Government shall

34 These obligations are discussed in more detail in Chapter 2 of this study.

35 Declaration on Permanent Sovereignty over Natural Resources, *UN General Assembly Resolution 1803 (XVII)* of 14 December 1962.

36 See N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997), pp. 308-309.

37 UN General Assembly Resolution 62/274 on Strengthening Transparency in Industries, adopted on 26 September 2008, paras. 4 and 5.

exercise full control over the exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone."[38]

These legal and political instruments illustrate a new tendency to qualify the principle of permanent sovereignty over natural resources for the purpose of promoting development. Article 3 of the Protocol of the International Conference of the Great Lakes Region Against the Illegal Exploitation of Natural Resources, a regional treaty adopted by the members of the International Conference on the Great Lakes Region to address the illegal exploitation of natural resources in the Great Lakes Region of Africa, provides first of all that "Member States shall freely dispose of their natural resources" and adds that this right "shall be exercised in the exclusive interest of the people". It then specifies that "in no case, the populations of a State shall be deprived of it".[39] In addition, the Protocol determines that "[m]ember States shall develop and implement a participatory and transparent mechanism for the exploitation of natural resources, according to their respective economic and social systems".[40]

It is interesting to note that Article 3 of the Protocol to a certain extent reproduces Article 21 of the African Charter on Human and Peoples' Rights, which provides: "All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it". However, there are some important textual differences between the Protocol and the African Charter. The Protocol vests the right to freely dispose of natural resources in States and not in peoples. In addition, it determines that "populations" rather than "peoples" may not be deprived of their right. By distinguishing so clearly between States on the one hand, and peoples and populations on the other, the Protocol emphasises the obligation of States to exploit their natural resources for national development and the well-being of the population.

A similar trend to qualify the principle of permanent sovereignty over natural resources can be recognised in resolutions of the Security Council. For example, in Resolution 1457 (2003) on the DR Congo the Security Council reaffirms the sovereignty of the Democratic Republic of the Congo over its natural resources and emphasises that these should be exploited "transparently, legally and on a fair commercial basis, to benefit the country and its people".[41] In the same resolution, the Security Council encourages the Congolese government to reform the natural resources sector "so that the riches of the Demo-

38 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999.

39 Article 3(1) of the Protocol Against the Illegal Exploitation of Natural Resources, adopted by the members of the International Conference on the Great Lakes Region of 30 November 2006.

40 *Ibid*., Article 3(4).

41 UN Security Council Resolution 1457 (2003), in particular, paragraph 4.

cratic Republic of the Congo can benefit the Congolese people".[42] Another example is provided by Resolution 1521 (2003) on the situation in Liberia, in which the Security Council emphasises that government revenues from the Liberian timber industry must be used "for legitimate purposes for the benefit of the Liberian people, including development".[43] It also encourages the Liberian government to "establish transparent accounting and auditing mechanisms" for this purpose.[44]

These instruments reveal a trend towards the adoption of a people-oriented interpretation of the principle of permanent sovereignty over natural resources.[45] This people-oriented interpretation strengthens an interpretation of the principle of permanent sovereignty which concentrates on the obligations of governments vis-à-vis the people of the State. Thus, arguably, while the principle of permanent sovereignty has always given rise to horizontal rights and – at a later stage – obligations, a contemporary interpretation of the principle increasingly adds a vertical dimension to the right to exercise permanent sovereignty.[46]

2.3 THE NATURE AND LEGAL STATUS OF THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

The principle of permanent sovereignty over natural resources has acquired a strong status in international law. While it originated in resolutions of the UN General Assembly, the principle has received recognition in various binding legal instruments as well. First, several international environmental conventions take the sovereign right of States to exploit their natural resources as their starting point. Examples include the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1992 UN Framework Convention on Climate Change (UNFCCC), and the 1994 Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, which all refer to the principle in their preambles. In addition, the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage and the 1992 Convention on Biological Diversity contain references to the principle.

The principle of permanent sovereignty is also reflected in human rights law as a component of the right to self-determination. The 1966 Human Rights

42 *Ibid.*, para. 7.
43 UN Security Council Resolution 1521 (2003), in particular, paragraph 11.
44 *Ibid.*, para. 13.
45 Compare E. Duruigbo, 'Permanent Sovereignty and Peoples' Ownership of Natural Resources in International Law', *George Washington International Law Review*, Vol. 33, p. 33-100 (2006), for a thorough analysis of a people-centred construction of permanent sovereignty and its implications for the management of natural resources in a state.
46 Also see chapter 3 of this study.

Covenants formulate a right for peoples to freely dispose over their natural resources,[47] while a similar provision has been inserted in the African Charter on Human and Peoples' Rights.[48] In addition, the principle has been included in the preamble and the provisions of the Protocol Against the Illegal Exploitation of Natural Resources, referred to in the preceding section.[49]

Furthermore, the principle has found recognition in the practice of the UN Security Council in relation to the maintenance of international peace and security. In its Presidential Statement of 25 June 2007 on natural resources and conflict, the Security Council "reaffirms that every state has the full and inherent sovereign right to control and exploit its own natural resources in accordance with the Charter and the principles of international law".[50] The Security Council has also occasionally referred to the principle, e.g., in Resolution 330 (1973) on "Strengthening of International Peace and Security in Latin America" and in Resolution 1457 (2003) on "The situation concerning the Democratic Republic of the Congo", referred to in the preceding section.[51]

It can be concluded that the principle of permanent sovereignty over natural resources has found widespread recognition in legal and political documents. While not all of the treaties that refer to the principle of permanent sovereignty do so in their provisions, the principle of permanent sovereignty is consistently included as a basic principle for international regulations relating to natural resources found within national jurisdiction. Therefore it can be argued that the principle of permanent sovereignty over natural resources is one of the organizing principles of international law relating to natural resources.

It can also be argued that the principle of permanent sovereignty is part of customary international law. The status of the principle of permanent sovereignty over natural resources as a principle of customary international law was also expressly recognised by the International Court of Justice in the

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47 See the identical Articles 1(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), New York, Annex to UNGA Resolution 2200 (XXI) of 16 December 1966, *993 UNTS 3*; and of the International Covenant on Civil and Political Rights (ICCPR), New York, Annex 2 to UNGA Resolution 2200 (XXI) of 16 December 1966, *999 UNTS 171.*

48 See Article 21 of the African Charter on Human and Peoples' Rights, Banjul, 27 June 1981, *21 I.L.M. 58 (1982)*.

49 Protocol Against the Illegal Exploitation of Natural Resources, adopted by the members of the International Conference on the Great Lakes Region of 30 November 2006, Article 3.

50 Presidential Statement on 'Maintenance of international peace and security: natural resources and conflict', *UN Doc. S/PRST/2007/22* of 25 June 2007, para. 2.

51 In Resolution 330 on 'Strengthening of International Peace and Security in Latin America', adopted on 21 March 1973, the Security Council recalls several General Assembly resolutions and notes "with deep concern the existence and use of coercive measures which affect the free exercise of permanent sovereignty over the natural resources of Latin American countries". In Resolution 1457 on 'The situation concerning the Democratic Republic of the Congo', adopted on 24 January 2003, para. 2 of the preamble, the Security Council reaffirmed "the sovereignty of the Democratic Republic of the Congo over its natural resources".

DR Congo-Uganda case.[52] However, the Court did not elaborate on its findings. Instead, it simply recalled that the principle of permanent sovereignty is expressed in the Declaration on Permanent Sovereignty over Natural Resources and is elaborated in greater detail in the NIEO Declaration and the Charter of Economic Rights and Duties of States.

The references of the Court to these three UN General Assembly resolutions raise some important questions. The first concerns the legal basis for the customary international law status of the principle of permanent sovereignty over natural resources. Did the Court imply that the principle of permanent sovereignty derives its status as a principle of customary international law from these UN General Assembly resolutions? This does not seem likely, given their legal status, as well as the controversies regarding the resolutions. Rather it could be argued that the Court referred to these declarations because they comprehensively set out the principle of permanent sovereignty.

The second question concerns what is covered by the customary international law principle of permanent sovereignty. As discussed above, the NIEO Declaration, as well as the Charter of Economic Rights and Duties of States, significantly widened the scope of the principle of permanent sovereignty from "natural wealth and resources" in the 1962 Declaration to "all its wealth, natural resources and economic activities" in the Charter of Economic Rights and Duties. In line with international practice, it is argued here that as a legal principle, the principle of permanent sovereignty applies only to natural wealth and resources.

The final question concerns the rights and obligations related to the principle of permanent sovereignty. Does the customary international law status of the principle extend to all rights and obligations ensuing from the principle? In particular, does it include an obligation to exploit natural resources for national development and the well-being of the people, as formulated in the 1962 Declaration? In his Declaration on the judgment, Judge Koroma argues in favour of such an interpretation. Moreover, he argues that the obligation to exploit natural resources for national development and the well-being of the people, as well as the basic right to exploit natural resources, "remain in effect at all times, including *during armed conflict and during occupation*".[53]

52 Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005, *I.C.J. Reports* 2005, para. 244.

53 Declaration of Judge Koroma to the Judgment of the International Court of Justice of 19 December 2005 in the Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), *I.C.J. Reports* 2005, para. 11. Emphasis in original.

2.4 LEGAL SUBJECTS OF THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

The principle of permanent sovereignty over natural resources accrues to States as well as peoples. For States, the principle of permanent sovereignty over natural resources must be regarded as an attribute of State sovereignty. This is how the principle appears in international environmental instruments. Principle 21 of the 1972 Stockholm Declaration, Principle 2 of the 1992 Rio Declaration and Article 3 of the 1992 Convention on Biological Diversity all proclaim 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…" Similarly, Article 6 of the 1972 World Heritage Convention expresses its full respect for "the sovereignty of the States on whose territory the cultural and natural heritage […] is situated".

Furthermore, the principle of permanent sovereignty has developed as part of the right to self-determination of peoples and has been inserted in the identical Articles 1(2) of the ICESCR and the ICCPR as a right for peoples to freely dispose over their natural resources. In this respect, it should be noted that peoples are referred to both as legal subjects and as beneficiaries of the principle of permanent sovereignty. This is particularly clear from the authoritative 1962 Declaration on the Principle of Permanent Sovereignty over Natural Resources, which declares that "the right of *peoples* and nations to permanent sovereignty over their natural resources must be exercised in the interest of their national development and of the well-being of the *people* of the State concerned".[54]

The dual character of peoples as subjects and beneficiaries of the principle of permanent sovereignty has two important implications. First, it implies that natural resources must be exploited for the benefit of the people of a State. Secondly, as legal subjects of the principle of permanent sovereignty, peoples can also assert rights over the State's natural resources. These issues are discussed in more detail in the following chapter, dealing with peoples' rights. This chapter will also deal with the preliminary question of defining the groups that qualify as "peoples" under international law.

2.5 THE POSITION OF GOVERNMENTS UNDER INTERNATIONAL LAW

International law designates States and peoples as subjects of the principle of permanent sovereignty, and there is an implicit assumption that States and peoples have institutions that exercise the relevant rights and obligations on their behalf. The existence of such institutions even constitutes one of the

54 See UN General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, 14 December 1962, especially paragraph 1. Author's emphasis added.

defining features of a State, as demonstrated by the definition of a State in the 1933 Montevideo Convention on the Rights and Duties of States. This definition, which is generally considered to be part of customary international law, determines that a State should possess the following qualifications: a permanent population; a defined territory; a government; and the capacity to enter into relations with other States.[55]

In most cases, States do have a government that represents the State and its people. In these cases, the government is also the appropriate body to exercise control over the State's natural resources. Nevertheless, there are also situations where the government of a State does not represent or no longer represents the people of the State. Examples include the illegal white minority regime that ruled Southern Rhodesia between 1964 and 1978, and the Gaddafi regime that lost its legitimacy as a result of its actions against the Libyan population during the armed conflict in 2011.

Furthermore, in most internal armed conflicts the legitimacy of the government is contested by opposition forces. In some cases, there are even parallel government authorities that enjoy a certain measure of recognition by foreign States. One of the most prominent examples of this was the Angolan opposition group UNITA that – until it lost the democratic elections in 1992 – enjoyed some support from western States, notably from the United States and South Africa. During this period, UNITA was in control of part of the territory of Angola, where it exploited diamonds and even issued concessions to companies to mine diamonds.

The question that arises is whether international law contains rules to determine whether particular entities in a State are entitled to exercise permanent sovereignty over natural resources. For the most part, international law remains silent on these matters.[56] Formally, international law deals with the recognition of States, and not of governments. It generally presumes that a government represents the State, even when the government has been installed as a result of an internal revolution.[57] Furthermore, international

55 Article 1 of the Montevideo Convention on the Rights and Duties of States, 26 December 1933, *165 LNTS 19*.

56 For a thorough analysis of issues regarding the recognition of governments in international law, see, in particular, S. Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, Oxford: Clarendon Press (1998); and B.R. Roth, *Governmental Illegitimacy in International Law*, Oxford: Clarendon Press (1999). An older example is H. Lauterpacht, *Recognition in International Law*, Cambridge: Cambridge University Press (1947).

57 See H. Lauterpacht, *Recognition in International Law*, Cambridge: Cambridge University Press (1947; paperback edition 2012), pp. 91-93.

law presumes that the *de jure* government continues to represent the State as a whole, as long as an internal power struggle continues.[58]

The question that arises is whether these long-standing rules of customary international law have retained their relevance over time. An examination of modern State practice in relation to recent changes in government demonstrates the continuing relevance of these rules, but it also demonstrates the importance attached by the international community to the existence of a representative government in States. This can be illustrated with reference to the response of the international community to the coups d'état in Haiti and Sierra Leone on the one hand, and to the revolutions in Libya and Syria on the other.

First, the response of the international community to the coups in Haiti in 1991 and Sierra Leone in 1997 underlines the importance it attaches to upholding democratic governance.[59] In both cases the international community condemned the coup d'état and proceeded to take further action, including military intervention, to restore the democratically elected government.

In response to the coup d'état in Haiti in 1991, which brought down the democratically elected President Jean Bertrand Aristide, the UN General Assembly immediately adopted a resolution in which it strongly condemned "the attempted illegal replacement of the constitutional President", considering "as unacceptable any entity resulting from that illegal situation". It also demanded "the immediate restoration of the legitimate Government".[60] Two years later, in its Resolution 841 (1993), the UN Security Council deplored the fact that "despite the efforts of the international community, the legitimate government of Jean Bertrand Aristide has not been reinstated". It went on to emphasise the "unique and exceptional circumstances" of the situation, notably the requests by the Permanent Representative of Haiti and the Organization of American States to adopt sanctions, as well as the general humanitarian situation in Haiti, as the basis for further Security Council action.[61]

Reference can also be made to the coup d'état which took place in Sierra Leone in 1997. As a result of this coup, a military junta was established by

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58 See H. Lauterpacht, *Recognition in International Law*, Cambridge: Cambridge University Press (1947; paperback edition 2012), p. 93. For the distinction between *de jure* and *de facto* governments, see S. Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, Oxford: Clarendon Press (1998), in particular, pp. 226-231. Talmon defines a *de facto* government as: "an authority which has gained effective control of the State by overthrowing the constitutional government in a coup d'état or a revolution but [which] has not (yet) been recognized as legally qualified to represent the State on the international plane". *De facto* governments should be distinguished from occupation governments, although the latter are also regarded as exercising *de facto* authority. However, in contrast to *de facto* governments, the legal position of occupants is regulated through international law. For more details, see Chapter 6 of this study.

59 See also K.M. Manusama, The United Nations Security Council in the Post-Cold War Era: Applying the Principle of Legality, Leiden: Nijhoff (2006), pp. 153-154.

60 UN General Assembly Resolution 46/7 of 11 October 1991, paras. 1 and 2.

61 UN Security Council Resolution 841 (1993), paragraphs of the preamble.

the opposition group AFRC (and later joined by the RUF) which lasted over a year. The Security Council immediately condemned the coup. In particular, it demanded that the military junta "take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically elected Government and a return to constitutional order".[62]

While the cases of Haiti and Sierra Leone serve as examples of the attitude of the international community with regard to coups d'état against democratically elected governments, the recent revolutions in the Arab region, including the revolution in Libya in 2011 and the current revolution in Syria are examples of the attitude of the international community to popular revolutions against authoritarian regimes.

The response of the international community to the situation in Libya is most telling in this respect.[63] It is relevant to note that during the armed conflict in Libya, neither the UN Security Council nor individual States made any explicit pronouncements about the illegality of the existing *de jure* government. For example, in the resolutions adopted by the UN Security Council in response to the events during the civil war in Libya in 2011, the UN Security Council refrained from making any pronouncements about the legal status of the Gaddafi regime. Even though it imposed economic and diplomatic sanctions against the regime, the Security Council continued to address the Gaddafi government in the role of the official authorities representing the Libyan State in its resolutions. The UN Security Council did not pronounce on the status of the National Transitional Council (NTC), the main opposition group in Libya.

However, individual States started to express their recognition for the NTC during the course of the armed conflict, although these States did not recognise the NTC as the official government of Libya, but rather as the representative of the Libyan people.[64] In other words, the recognition by States of the NTC as the representative of the Libyan people did not affect the legal position of the Gaddafi regime as the official *de jure* government of Libya. The official position of States changed only after the defeat of the Gaddafi regime. In Resolution 2009 (2011), the Security Council implicitly recognised the National Transitional Council, formed by the opposition forces, as the new Libyan authorities.

Similar responses can be observed in relation to the ongoing conflict in Syria. In 2011, protests broke out in Syria, demanding democratic reforms. After these protests were violently repressed by the Syrian President Assad,

62 See the Security Council's Presidential Statements of 27 May 1997 (S/PRST/1997/29), 11 July 1997 (S/PRST/1997/36) and 6 August 1997 (S/PRST/1997/42) as well as Resolution 1132 (1997), especially paragraph 1.

63 For more details on the Libyan conflict, see Chapter 7.

64 See S. Talmon, 'Recognition of the Libyan National Transitional Council', *ASIL Insights*, Vol. 15 (16), 16 June 2011.

an armed conflict broke out in the country. The opposition forces, organized in the National Coalition for Syrian Revolutionary and Opposition Forces (NCS), have gained control over parts of the country. However, the international community has so far been divided on the issue, and consequently the UN Security Council has not been able to adopt any measures. The UN General Assembly, on the other hand, has adopted several resolutions regarding Syria, calling on the Syrian authorities to put an end to the human rights violations committed by the authorities and to embrace a peace plan prepared under the auspices of the League of Arab States.[65] However, while the General Assembly stressed its support "for the aspirations of the Syrian people for a peaceful, democratic and pluralistic society"[66] in several of its resolutions, it has not pronounced on the illegality of the Assad government.

Furthermore, while individual States have expressed their support for the opposition, recognising the NCS as the sole representative of the Syrian people, none of these States – except Libya – has recognised the NCS as the new government of Syria.[67] Nevertheless, as was the case in the Libyan conflict, third States have started to provide the NCS with active support. For example, in a recent decision the European Union decided to ease its embargo on oil from Syria and to allow exports of oil from rebel-held territory in Syria in order to "support and help the opposition".[68] In addition, both the European Union and the United States have expressed their intention to permit the supply of weapons to the Syrian opposition, if scheduled peace talks between the Syrian government and the opposition fail.[69]

These case studies lead to the conclusion that the international community makes a distinction between coups d'état against democratically elected governments and internal revolutions against authoritarian regimes. Whereas coups against democratically elected governments are unanimously condemned by the international community, regime changes that have been brought about through internal revolutions against authoritarian regimes are considered legitimate. This conclusion is supported by regional instruments that deal with the recognition of governments. It is relevant to note that the two regions that have suffered most from coup d'états in recent history, i.e., Africa and Latin America, have both adopted instruments that attach legal consequences to unconstitutional changes in government.

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65 See UN General Assembly Resolution 66/176 of 19 December 2011; Resolution 66/253 of 16 February 2012; and Resolution 67/183 of 20 December 2012.

66 See, *e.g.*, UN General Assembly Resolution 67/183 of 20 December 2012, para. 4.

67 For the position of Libya, see 'Libya NTC says (it) recognises Syrian National Council', Khaleey Times of 11 October 2011.

68 Council of the European Union, Press release: Council eases sanctions against Syria to support opposition and civilians, *EU Doc. 8611/13*, 22 April 2013.

69 See, *e.g.*, the Decision of the Council of the European Union of 27 May 2013 on Syria, available through http://www.consilium.europa.eu/.

Article 7(g) of the 2002 Protocol Relating to the Establishment of the Peace and Security Council of the African Union provides that the African Peace and Security Council shall "institute sanctions whenever an unconstitutional change of Government takes place in a Member State, as provided for in the Lomé Declaration".[70] The Lomé Declaration distinguishes between four situations of unconstitutional changes of government, including a military coup d'état against a democratically elected government, as happened in Sierra Leone in 1997, and the refusal by an incumbent government to relinquish power to the winning party after elections, as happened in Côte d'Ivoire in 2011.[71] Similarly Article 9 of the Charter of the Organization of American States provides that the right to participate in the sessions of the principal organs of the organization may be suspended for a member of the Organization whose democratically constituted government has been overthrown by force.[72]

An important conclusion that can be drawn from these regional instruments is that there is an indirect premise that the legitimacy of governments is based on a popular mandate. Although both instruments clearly show that neither of the regional systems recognises a government that has taken power by force, this applies only to the extent that this force is directed towards the overthrow of a democratically elected government. The instruments therefore leave open the possibility of recognising a government that has been established as a result of a coup d'état directed against an authoritarian regime.

Some cautious conclusions can be drawn from modern State practice in relation to regime change. The first conclusion is that regime change resulting from coups d'état against democratically elected governments is generally not accepted by the international community. In contrast, the international community does recognise governments that are established after a successful internal revolution against an authoritarian regime. This demonstrates the great importance attached by the international community to the representative character of governments. Another conclusion that can be drawn from modern state practice is that, even when States express their support to opposition forces, the *status quo* of a ruling *de jure* government is maintained until the conflict is over.

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70 See Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Adopted by the 1st Ordinary Session of the Assembly of the African Union, on 9 July 2002.

71 The Lomé Declaration distinguishes the following situations as unconstitutional changes in government: i) military coup d'état against a democratically elected Government; ii) intervention by mercenaries to replace a democratically elected Government; iii) replacement of democratically elected Governments by armed dissident groups and rebel movements; iv) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections. See the Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government (AHG/Decl.5 (XXXVI).

72 Charter of the Organization of American States, adopted on 30 April 1948 (last amended on 10 June 1993), *119 UNTS 3*.

There is still the question of the implications of modern State practice for the right of opposition groups to exploit natural resources and to issue mining concessions in situations where the legitimacy of the government is contested. The cases of Libya and Syria provide a partial answer to this question. Although official recognition of the opposition forces as the new government of the State has not occurred in either of these situations during the armed conflict, the opposition movements are considered to be entitled to exploit the State's natural resources. This is clearly shown by the decision of the European Union referred to above, which lifted the EU embargo on oil from Syria for exports of oil from rebel-held territory.

How can this decision be explained? Arguably, the most logical explanation is to interpret the support provided to the opposition groups in Libya and Syria in the light of the nineteenth- century theory of recognition of belligerency, discussed in Chapter 6 of this book. According to this theory, third States can recognise an armed group as an official belligerent, thus rendering the armed conflict international. This recognition has the effect of making armed groups that are in effective control of portions of the State territory subject to international occupation law, which grants occupants a qualified right to exploit the natural resources in occupied territory.

In conclusion, it can be stated that the right to exploit a State's natural resources pursuant to the principle of permanent sovereignty is normally vested in the government of a State. However, in those cases where the legality of the government is contested, the right to exploit the State's natural resources can accrue to opposition groups as well, provided that these groups enjoy recognition by a sufficient number of third States as the sole representative of the people. It can be inferred from the case studies and legal instruments referred to above that recognition is granted when the *de jure* government can no longer be considered to represent its people. It can further be inferred from the case studies of Libya and Syria that this occurs when a government deliberately harms its people. This is what happened in Libya and Syria, where the *de jure* governments were accused of gross human rights violations against their own population.

2.6 Concluding remarks

The principle of permanent sovereignty is a typical product of the era of decolonisation. It was established to help newly independent and developing States to regain control over their natural resources. It was intended to provide a shield for these countries to defend their interests against other countries and foreign companies, in particular against inequitable arrangements for the exploitation of their natural resources. Initially permanent sovereignty was therefore primarily a rights-based concept, applicable in inter-state relations.

Over the years, the principle of permanent sovereignty has proved to be a dynamic concept. It has become the organizing principle for the governance of natural resources within States, entailing both rights and obligations for States. States have qualified their right to exercise permanent sovereignty over natural resources, amongst other things, to protect the environment. Moreover, the rights and obligations attached to the principle have increasingly been given a vertical as well as a horizontal dimension. Recent legal and political instruments emphasise the promotion of national development as the central objective of the exercise of permanent sovereignty over natural resources. In addition, these instruments assign a central position to peoples in this regard, and stipulate that natural resources must be exploited for the benefit of the people.

The following chapters examine these issues in more detail. Chapter 3 discusses permanent sovereignty as an inherent part of the right to self-determination. In addition, it examines the closely related right to development. Subsequently, Chapter 4 discusses obligations arising from international environmental law and their impact on the principle of permanent sovereignty over natural resources.