

# **THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (PSNR) VIS-À-VIS BENEFITS FROM EXTRACTIVE INVESTMENTS: A HIGHLIGHT ON NATURAL RESOURCES INVESTMENT ARRANGEMENTS**

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*The Principle of Permanent Sovereignty over Natural Resources (PSNR) is grounded in the need to ensure equitable benefits in the exploitation of natural resources between investors especially from developed economies and developing and less-developed host economies. The debate on inequitable benefits in the exploitation of natural resources started as a political discern in the UN General Assembly. It has now acquired the support of the world community and has developed into a new peremptory norm of international law of the status of a jus cogens principle of law.*

*This paper highlights the weight which the principle of PSNR carries in natural resources investment arrangements. It calls for natural resource-rich countries to reflect on the significance of embedding the principle of PSNR in their investment arrangements for the development of their economies and the people who are the owners of these resources. This paper evolves from the Ph.D. Thesis of the author at the St. Augustine University of Tanzania.*

## **GENERAL OVERVIEW AND THE NATURE OF PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (PSNR)**

Principle of Permanent Sovereignty over Natural Resources (PSNR) articulates the right to benefit from natural resources. This principle is of a long history. It has been alive in the study of international law, in particular, international economic law, which also includes international investment law since 1952. The principle of PSNR is visualized in different United Nations General Assembly (UNGA) Resolutions.<sup>ii</sup> Thus its nature and origin are in the UNGA Resolutions.

As an international issue, the evolution of PSNR was influenced by the political aspiration of the former colonies and developing countries, of self-determination, the fullest of which demanded the guarantee of sovereignty, particularly economic sovereignty over natural resources. The occurrence of natural resources in many former colonies and developing countries were perceived and decoded to kindle the light in the economic future of these countries. As such, former colonies and developing countries raised the voices of their unhappiness concerning the legal arrangements which were put in place before the independencies of these countries in the exploitation of their natural resources.<sup>iii</sup>As official records of UNGA describe:

*“It is indeed to prevent what had been a frequent occurrence in the 19<sup>th</sup> century, namely, that the weak and penniless governments should seriously compromise a country’s future by granting concessions in the economic sphere”<sup>iv</sup>*

Kilangi<sup>v</sup> argues that the arrangements on the exploitation of natural resources in developing and former colonies, which were employed by colonial masters, had legalized inequitable exploitation of natural resources. It is also noted by Schrijver,<sup>vi</sup> that after World War II (WWII) efforts in former colonies and developing countries were made, including debates, to trying to bring light to the world community, through the UNGA what had been happening for their economic development, to design new principles and rules that would respond to the concerns of developing countries in the exploitation of their natural resources. Former colonies and developing countries, having been inspired by the Havana Charter,<sup>vii</sup> which asserted protection and promotion of foreign investments to have been controlled by host countries, had demanded sovereignty over the use and management of their natural resources; *interalia* equitable sharing of benefits derived from the exploitation of natural resources.<sup>viii</sup> This was so because international commercial agreements, including investment arrangements or agreements on natural resources during colonialism, seemed to have had benefitted only former colonial masters and their investment companies.

Literature elucidates that it was not easy to get to the conclusion on the concerns raised by developing countries about how their resources should be utilized for their benefits.<sup>ix</sup> One of the reasons why it was difficult to reach to consensus is that at the time developing countries were very careful to state their economic sovereignty; developed countries had wanted that natural resources be exploited in the greatest interest of the international community.<sup>x</sup> Stated

issues became contentious to UNGA to agree on what could seem an equitable order for harnessing natural resources.

## **PURPOSES AND LEGAL STATUS OF PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (PSNR)**

Many international law scholars, including Schrijver<sup>xi</sup> and Kilangi<sup>xii</sup> argue that the intention of colonial masters in the exploitation of natural resources during colonialism was to safeguard the demands of developed countries, especially to ensure that raw materials, areas for investment, cheap labor and markets are obtained for industrial development in Europe. The debate on the exploitation of natural resources was therefore important even though it was difficult to reach consensus among UN member states. There was much need of reaching consensus in what could construe the proper arrangements that would allow both, developing and developed countries to benefit from natural resources. As Schrijver<sup>xiii</sup> puts the principle of PSNR was brought to the attention of the United Nations for discussion so that:

*“to underscore the claim of colonial people and developing countries to the right to enjoy the benefits of resource exploitation and in order to allow inequitable legal arrangements, under which foreign investors had obtained title to exploit resources in the past, to be altered or even to be annulled ab initio because their very essence conflicted with the concept of permanent sovereignty.” [Emphasis added].*

The international community, through the UN which is a political organ, was called to reconcile the legitimacy of the legal order that had regulated investments in natural resources during the colonial era with the developmental need of the newly independent natural resource owning countries. UN organs, including the Commission on Permanent Sovereignty over Natural Resources, the Commission on Human Rights and the Economic and Social Council spent a long time conducting surveys and after ten years of debate, UNGA came into deliberate a proposed Declaration on PSNR.<sup>xiv</sup> It is argued by Lowenfeld<sup>xv</sup> that the debate reflected much of the whole world’s division on the query of foreign investment.

Through conducted studies, the UNGA became conscious that the arrangements that had existed in the exploitation of natural resources were hindering the right to economic development, which is the inherent right to the right to self-determination, especially in former colonies and developing countries.<sup>xvi</sup> The right to economic development was also reflected in the Purposes and Principles of the Charter of the United Nations.<sup>xvii</sup>

The UN through her General Assembly passed the first resolution that had featured the principle of PSNR on 12 January 1952.<sup>xviii</sup> The passed resolution had intended to facilitate equitable benefits in the exploitation of natural resources in developing countries. Therefore, it is logical to rationalize that the principle of PSNR is a result of the deliberations of the UNGA which is a political organ.

It is of praiseworthy to notify our readers that PSNR at its onset is viewed as a political discern on the wide-ranging and fair standard in the use and exploitation of natural resources. Moreover, after it was accepted, and practiced in the area of international law by states, it has become an international law norm. Today the principle of PSNR is being used in different fields of international law, including international economic law, international environmental law and the law of the Sea.<sup>xix</sup> By the long practices it has acquired, PSNR as a norm of international law has developed into a principle of law, as it was initially intended. This is also the suggestion put forward by Lowenfeld,<sup>xx</sup> that the thought on PSNR was seen at the time as an attempt to record –and perhaps to shape - the customary law then prevailing.

Currently, the principle of PSNR is an international norm that has acquired a special status of *jus cogens*.<sup>xxi</sup> It is being practiced in international law, namely: international economic law, international environmental law, human rights law and the law of the Sea.<sup>xxii</sup> As a *jus cogens* principle of international law, PSNR falls within the rules of customary international law which cannot be set aside by treaty or acquiescence, but only by the formation of a subsequent customary rule of contrary effect.<sup>xxiii</sup> The least examples of the class are the prohibition of the use of force, the law of genocide, the principle of racial non-discrimination, crimes against humanity, the rule of prohibiting trade in slave and piracy and the principle of self-determination.

Article 50 of the Law of Treaties<sup>xxiv</sup> provides the following with regard to *jus cogens*:

*A treaty is void if the conflict with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*

The elements of the principle of PSNR have been embedded not only in UN General Assembly Resolutions, but also in several multilateral treaties,<sup>xxv</sup> regional agreements,<sup>xxvi</sup> and in several arbitral awards.<sup>xxvii</sup> They are embedded in domestic pieces of legislation and in courts' decisions as well.<sup>xxviii</sup>

The principle of PSNR is no longer a political statement as some people would have thought. It is rather a statement with a force of law; it is a principle of international law.

About PSNR it could be summarily stated that the debate of the members of the United Nations on the need for increased benefits derived from investments in natural resources, as demanded by former colonies and developing countries, to realize equitable legal basis between developing countries and developed countries, or their investment corporations, has given birth to the new norm under international law, the principle of PSNR.

## **SOME UN GENERAL ASSEMBLY RESOLUTIONS EMBEDDING THE PRINCIPLE OF PSNR**

UN General Assembly Resolutions that are described hereinbelow, serve only as an example of the many legal documents that contain the essence of the principle of PSNR veiling the peoples' right to benefit from their natural resources.

### ***General Assembly Resolution 523 (VI), 12 January 1952: Integrated Economic Development and Commercial Agreements***

UN General Assembly Resolution 523 (VI), 12 January 1952 on Integrated Economic Development and Commercial Agreements signals the first in the initiatives of the international community, through the United Nations, to dealing with concerns presented by developing countries, regarding the utilization of their natural resources.



This resolution affirms that developing countries owe the right to determine freely the use of their natural resources and that they must exploit such resources in order to be in a better position to further the realization of their plans of economic development in accordance with their national interests.<sup>xxix</sup> This Resolution reminded members of the United Nations on the economic difficulties that developing countries have had experienced, especially on the demand for industrial raw material and how it had resulted in the increase of price in a number of raw materials and in price fluctuations in others.<sup>xxx</sup>

The UN General Assembly Resolution 523 (VI), 12 January 1952 on Integrated Economic Development and Commercial Agreements require members of the United Nations to consider the possibility of facilitating, through commercial agreements, the movement of machinery, equipment, and industrial raw materials needed by developing countries for their economic development, and for the improvement of their standards of living.<sup>xxxi</sup> This resolution calls upon members of the United Nations to help developing countries in the development of their natural resources, which can be used for the domestic needs of their countries and for the needs of international trade.<sup>xxxii</sup>

It has further cautioned that commercial agreements need not have contained economic or political conditions that would disrupt the sovereign right of developing countries, including the right to determine their own plans for economic development.<sup>xxxiii</sup>

There are generally two important issues in this Resolution: the first issue is the affirmation or recognition of the freedom of the developing countries to independently control their natural resources; and the second issue is concerned with aiding the economic development of the developing countries, through commercial agreements, in the movement of machinery, equipment, and industrial raw material, simply means integrated economic development.

Related to the second issue is the need for the exercise of sovereignty of developing countries in all the circumstances of integrated economic development and that this should not be jeopardized either by economic or political disparities.

***General Assembly Resolution 626 (VII), 21 December 1952: Right to Exploit Freely Natural Wealth and Resources***

The United Nations General Assembly Resolution 626 (VII), 21 December 1952 on the right to exploit freely natural wealth and resources is the second in the initiatives of the UN is considering the sovereignty of developing countries over their natural resources. This Resolution identifies three key areas in the enjoyment of the freedom to use and exploit natural resources by developing countries.

The first area is the demand for proper management of resources for economic development and for peacekeeping. This Resolution affirms the need for encouraging underdeveloped countries in the proper use and exploitation of their natural wealth and resources, and it reminds us that the economic development of developing countries is one of the fundamental requisites for the strengthening of universal peace.<sup>xxxiv</sup>

The second area is the one dealing with economic integration/ international commercial/ trade or investment. This Resolution entails that the inherent right of peoples and nations to freely use and exploit natural wealth and resources, as far as is the inherent right of states, when so exercised, should have due regard, consistently with their sovereignty, to the need for maintaining the flow of capital in conditions of security, mutual confidence and economic cooperation among nations.<sup>xxxv</sup>

And the third and last area lays down the demand for abstinence from any performance likely to obstruct sovereignty over natural resources. All members of the United Nations are recommended to refrain from actions, direct or indirect, designed to impede the exercise of the sovereignty of any state over its natural resources.<sup>xxxvi</sup>

***General Assembly Resolution 837 (IX), 14 December 1954: Recommendations Concerning International Respect for the Right of the Peoples and Nations to Self-determination***

This resolution addresses the major three issues which require prompt considerations by members of the United Nations. First, it calls upon all members of the United Nations to consider the preparation of recommendations on measures for promoting the right of self-determination as a matter of immediate concern.<sup>xxxvii</sup> Secondly, it requests the Commission of Human rights to complete its recommendations concerning international respect for the right of peoples and nations to self-determination, including the recommendation concerning the principle of permanent sovereignty over natural resources.<sup>xxxviii</sup> And thirdly, it reminds members of the United Nations to have due regard to the rights and duties of States under international law and

the importance of encouraging international cooperation in the economic development of developing countries.<sup>xxxix</sup>

***General Assembly Resolution 1314 (XIII), 12 December 1958: Recommendations Concerning International Respect for the Right of the Peoples and Nations to Self-determination***

United Nations Assembly Resolution 1314 (XIII), 1958 asserts the following: it reminds members of the United Nations of their affirmation to the right of peoples and nations to self-determination as completed by the Commission on Human Rights in the two draft conventions which contain the principle of PSNR.<sup>xl</sup> It has stated the verdict of the United Nations to establish a Commission consisting of Afghanistan, Chile, Guatemala, the Netherlands, the Philippines, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic, and the United States of America to conduct a full survey of the status of the basic constituent of the right to self-determination, with recommendations, where necessary for its strengthening.<sup>xli</sup>

It further exemplifies the decision that, in the conduct of the full survey of the status of the permanent sovereignty of the peoples and nations over their natural wealth and resources due regard shall be paid to the rights and duties of states under international law and to the importance of encouraging international cooperation in the economic development of underdeveloped countries.<sup>xlii</sup> This resolution invites regional economic commissions and specialized agencies to cooperate with the commission in the fulfillment of its activities; it calls for strengthening its staff and facilities.<sup>xliii</sup>

***General Assembly Resolution 1515 (XV), 15 December 1960: Concerted Action for Economic Development of Economically Less-developed Countries***

This resolution reiterates the major responsibility of the UN, the duty to accelerate the economic and social advancement of the developing countries of the world. Under this obligation, the UN is tasked to contributing to safeguarding the independence of developing countries and to helping to close the gap in standards of living between developing countries and the more developed countries.<sup>xliv</sup> This resolution instills knowledge to understand that the social and economic advancement requires the development and diversification of economic activity, that



is, the improvement of conditions for the marketing and production of foodstuff and the industrialization of economies which are largely dependent on subsistence agriculture or on the export of a small range of primary commodities.<sup>xlv</sup>

General Assembly Resolution 1515 (XV), 15 December 1960 on Concerted Action for Economic Development of Economically Less-developed Countries articulates further the demands in achieving the objects, including, the maintenance of a high and expanding level of economic activity and of generally multilateral and bilateral trade free from artificial restrictions, in order to enable the developing countries and those dependent on the export of a small range of primary commodities to sell more of their products at stable and remunerative prices in expanding markets and so increasingly to finance their own economic development from their earnings of foreign exchange.

The resolution demands more increasing provision of public and private capital on acceptable terms from the more developed to the developing countries, notably through international organizations, and through freely negotiated multilateral or bilateral agreements; expansion of technical cooperation between countries at all stages of development with the aim of aiding the people of developing countries to increase their knowledge of, and capacity to apply, modern techniques; scientific and cultural cooperation and the encouragement of research; and proper regard for the human and social aspects of economic development.<sup>xlvi</sup>

General Assembly Resolution 1515 (XV), 15 December 1960 recommends that members of the United Nations and the international organs concerned should continue as a matter of urgency to seek and apply ways of eliminating both excessive fluctuation in primary commodity trade and restrictive practices or measures which have unfavorable repercussions on the trade-in basic products of the developing countries and those dependent of the export of small range of primary products, and to expand trade in these products;<sup>xlvii</sup> to offer technical training, education and pre-investment assistance, whether under international organizations or by individual governments and to consider this as an important factor in the economic development of the developing countries.

Such support and assistance have had allocated to particular areas, the fullest possible support should be given to the Expanded Programme of Technical Assistance, to the Special Fund, and to the other voluntary programs of the United Nations concerned; technical assistance and the supply of development capital should be increased further, whether provided through existing

and future international organizations and institutions or otherwise should be of a kind in a form in accordance with the wishes of the recipient, and should involve no unacceptable conditions for them, political, economic, military or other; and regional Economic groupings should be designed to offer the opportunities of an expanding market to all trading nations, taking into account the interests of third parties.

This resolution had recommended further that the sovereign right of every state to dispose of its wealth and its natural resources should be respected in conformity with the rights and duties of states under international law.<sup>xlvi</sup>

### ***General Assembly Resolution 1803 (XVII), 14 December 1962: Permanent Sovereignty over Natural Resources***

The proclamation of General Assembly Resolution 1803 (XVII), 14 December 1962 on Permanent Sovereignty over Natural Resources is the manifestation of the cherished work of the United Nations, in aiding the socio-economic development of the developing countries, in the exploitation of natural resources. This Resolution reminds members of the United Nations to understand and respect the sovereign right of every state to dispose of its wealth and its natural resources, considering that any measure in this respect must be based on the recognition of the inalienable right of all states freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of all states.<sup>xlix</sup>

The Resolution obliges members of the United Nations to observe that the right of peoples and nations to PSNR must be exercised in the interest of their national development and of the wellbeing of the people of the state concerned.<sup>li</sup>In the spirit of this Resolution the investment activities such as exploration, development, and disposition of natural resources as well as the import of foreign capital, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction, and prohibition of such activities.<sup>lii</sup>This resolution farther ponders that in the case where authorization of investment is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The benefits 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.<sup>lii</sup>

This Resolution provides investment guarantees as well. It requires the protection of investments from nationalization, expropriation, and requisition.<sup>liii</sup>The UN General Assembly Resolution 1803 (XVII), 14 December 1962 provides further that when acts such as nationalization, expropriation, and requisition are done, must be based exclusively on grounds or reasons of public utility, security or national interests, as these are recognized as overriding purely individual or private interests, both domestic and foreign.<sup>liv</sup>However, such measures should be accompanied by appropriate compensation, in accordance with the rules in force in the state taking such measures and in accordance with international law.<sup>lv</sup>

This Resolution has reminded members of the United Nations on the observances of the principle of *pacta sunt servanda* in the practice of foreign investment agreements. It provides that foreign investment agreements freely entered into by and between sovereign states shall be observed in good faith, states and international organizations shall strictly and consciously respect the sovereignty of the peoples and nations over their natural wealth and resources.<sup>lvi</sup> But where controversy arises, especially in compensation, or during disputes generally, this Resolution has demanded parties to consider first the exhaustion of local remedies before evoking international law.<sup>lvii</sup> So far a room is provided in case of prior agreements by sovereign states and other parties concerned, that settlement of disputes could be made through arbitration or international adjudication.<sup>lviii</sup>

The UN General Assembly Resolution 1803 (XVII), 14 December 1962 on Permanent Sovereignty over Natural Resources declares that international cooperation for the economic development of developing countries, whether in the form of public or private capital investment, exchange of goods and services, technical assistance or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.<sup>lix</sup>Violation of the rights of peoples and nations to sovereignty over their natural resources is contrary to the spirit and principles of the Charter of the UNs and hinders the development of international cooperation and maintenance of peace.<sup>lx</sup>

***General Assembly Resolution 2158 (XXI), 25 November 1966: Permanent Sovereignty over Natural Resources***

UN General Assembly Resolution 2158 (XXI), 25 November 1966 on Permanent Sovereignty over Natural Resources affirms in the preamble all the previous UN General Assembly Resolutions on PSNR and declares substantive issues such as:

**First**, all the management and control of exploitation of natural resources are placed in the domestic legal framework of the country.<sup>lxi</sup>

**Secondly**, the Resolution pronounces for the right of all countries and in particular developing countries and peoples to achieve the maximum benefits from the exploitation of their natural resources. It affirms the right to benefit from natural resources and in particular, the developing countries to secure and increase their share, in the administration of enterprises which are fully or partly operated by foreign capital and to have a greater share in the advantages and profits derived therefrom, on an equitable basis, with due regard to the development needs and objectives of the peoples concerned and to mutually acceptable contractual practices.<sup>lxii</sup>

**Thirdly**, the Resolution obliges foreign investors to ensure capacity building and assistance to nationals of developing countries at all levels and in all fields of exploitation (project), including capital goods and know-how for the exploitation and marketing of their natural resources to accelerate their development.<sup>lxiii</sup>

**Fourthly**, this Resolution calls upon all organizations and commissions; dealing with exploitation of natural resources, to inculcate and keep alive in all countries they are working the principle of PSNR.<sup>lxiv</sup>

There are many UN General Assembly Resolutions passed at different periods that articulate the principle of PSNR. Discussed above are just a few Resolutions that reveal the existence of PSNR under the United Nations. Other General Assembly Resolutions that provide the principle of PSNR, but which are not discussed in this work include General Assembly Resolution 2386 (XXIII), 19 November 1968: Permanent Sovereignty over Natural Resources, General Assembly Resolution 2692 (XXV), 11 December 1970: Permanent Sovereignty over Natural Resources of Developing Countries and Expansion of Domestic Sources of Accumulation for Economic Development, General Assembly Resolution 3016 (XXVII), 18 December 1972: Permanent Sovereignty over Natural Resources of Developing Countries, General Assembly Resolution 3171 (XXVIII), 17 December 1973: Permanent Sovereignty over Natural

Resources, General Assembly Resolution 3201 (S-VI), 1 May 1974:Declaration on the Establishment of a New International Economic Order, General Assembly Resolution 3202 (S-VI), 1 May 1974:Programme of Action on the Establishment of a New International Economic Order, General Assembly Resolution 3281 (XXIX), 12 December 1974:Charter of Economic Rights and Duties of States, and General Assembly Resolution 32/176, 19 December 1977:Development Assistance for the Exploitation of Natural Resources.

In these UN General Assembly Resolutions and in any other legal instruments that PSNR is featured, concepts and terms such as natural wealth and resources, wealth and natural resources, natural resources, national heritages, national resources, natural resources, and all economic activities, wealth, trans-boundary resources, deep seabed resources, the common heritage of Mankind, land and marine resources, are being applied together with the concept of PSNR.

## **GENERAL OBSERVATIONS AND CONCLUSION ON THE PRINCIPLE OF PSNR**

Apart from being found in different UNGA Resolutions; the principle of PSNR has been made available in multilateral/international instruments as well. For example, the principle of PSNR is articulated in the International Covenant on Civil and Political Rights (ICCPR).<sup>lxv</sup> In this human rights instrument, the principle of PSNR is being linked with the right to self-determination. In the ICCPR, PSNR is presented with the value of making the wholeness of the civil and political rights of man.

Article 1(2) of the ICCPR provides among other things, that the disposal of natural wealth and resources should be for the ends of the people, based upon the principle of mutual benefits, and international law. The construction of this clause could embrace the view that exploitation of the natural resources should aim at benefiting the people. Sub-article 2 of Article 1 of ICCPR maintains that in no case may a people be deprived of its own means of subsistence.<sup>lxvi</sup>

Described legal provisions on PSNR as found in the ICCPR is repetitively recalled in some other multilateral agreements/international instruments such as the International Convention on Economic, Social and Cultural Rights (ICESCR) of 1966,<sup>lxvii</sup> the Declaration on the Right to Development, of 1986<sup>lxviii</sup> and in the African Charter on Human and Peoples' Rights, of 1981.<sup>lxix</sup>



There are some national instruments that articulate the principle of PSNR, including the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017<sup>lxx</sup> of Tanzania, the Mineral and Petroleum Resources Development Act, 2002<sup>lxxi</sup> of South Africa, and the Mines and Minerals Act<sup>lxxii</sup> of Botswana.

But what really entails the principle of PSNR? It has been discovered that essentially the principle of PSNR is the principle of rights and duties. This may be observed in the wide-ranging legal resources that contain the principle of PSNR. If these resources were construed in the context of investment, they would suggest several rights and duties. These rights and duties which are the architecture of the principle of PSNR are related to the country's enjoyment of its natural resources vis-à-vis the investor. In this case, the investor could be an individual person or investment based corporate entity, private or public, national or foreigner.

Varied rights from the principle of PSNR were acknowledged as of state. Such include the right: to possess, use and freely dispose of its natural resources; to determine freely and control the prospecting, exploration, development and exploitation, use and marketing of natural resources; to manage and conserve natural resources pursuant to national developmental and environment policies; to regulate foreign investment, including the right to admit or refuse admission of foreign investment; and the right to nationalize or expropriate investments of both, nationals or foreigners.<sup>lxxiii</sup>

Other rights include the right to share in the administration and management of local subsidies of foreign investment companies; the right to withdraw from unequal investment treaties and contracts, especially when the other party is suspected to enrich itself unreasonably, the right to review unilaterally the terms of an agreed agreement in the exercise of its legislative competence, the right to determine unilaterally the amount, moment and mode of payment of damages for expropriation, nationalization or requisition and the right to settle investment disputes exclusively upon the basis of national laws and by national remedies.<sup>lxxiv</sup>

Summarily, about four clusters of rights are well-known to have to found the principle of PSNR, these include the right to assert ownership of natural resources, the right to manage and control the exploitation of natural resources, the freedom to use and exploit natural resources and the right of a country to benefit from the exploitation of its natural resources.<sup>lxxv</sup>

A set of duties adding to rights has been documented from the principle of PSNR. These include the duty to practice the right of PSNR in the interest of national development to ensure that the population benefits from their natural resources, which includes the duty to respect peoples interests and the duty not to compromise the rights of the future generation in the exploitation of natural resources; and the duty to duty to refrain from actions that would likely jeopardize the rights and interest of the people in the exploitation of natural resources, including the duty to observe sovereignty of state over its natural resources.<sup>lxxvi</sup>

Other duties include the duty to pay promptly a fair compensation in case of nationalization, expropriation or requisition when so done in accordance with the rules in force in the state taking such measures and in accordance with international law; the duty to observe international agreements and to accomplish international obligations in good faith in the practice of PSNR; and the duty to ensure capacity building and assistance to nationals of developing countries at all levels and in all fields of exploitation, including capital goods and know-how for the exploitation and marketing of their natural resources to accelerate their development; and the duty to have due care of the environment.<sup>lxxvii</sup>

Generally and as could be observed in some United Nations General Assembly Resolutions described under part three of this paper, there are a lot of responsibilities that are being created in respect of the created rights, that also impose accountability at national and international levels for careful exploitation of natural resources.

Natural resource-rich countries especially developing and less-developed countries in which many of them were colonized should be brave to consider the significance of the principle of PSNR in the exploitation of their resources for the development of their economies. As former leaders of these countries jointly debated for independence of their economies after they had gained political independence, to start with natural resources which have given birth to the principle of PSNR, a *jus cogens* principle of international law, the same way current leaders should uphold their efforts by enunciating the principle of PSNR in their national laws.

Current leaders should also think of the joint efforts of the former leaders of natural resource-rich countries over the arrangements of their resources to allow these resources to serve for the sustainability of their current and future generations. On the other hand, if such laid down good efforts were not realized in domestic arrangements over the use of natural resources such efforts should have been measured hopeless especially by developed economies.

## REFERECENS

<sup>i</sup> Dr. Telesphory D.B Magogo holds a PhD in Law (Regulation of Investment Benefits in Large Scale Extractive Projects for the Country and Its Citizens: Mineral and Petroleum Sectors of Tanzania) from the St. Augustine University of Tanzania. He has graduated LLM in International Trade, Investment and Business Law from the University of the Western Cape, South Africa. He graduated LLB Upper Second Class from the St. Augustine University of Tanzania and has attended Philosophical Studies at St. Anthony of Padua Ntungamo Major Seminary Kagera, Tanzania. Dr. Magogo has published a number of articles in the areas related to Investment, Trade and Business Law such as IP law, Land Law and Regional Integration Law. He is currently the Dean of School of Law of the St. Augustine University of Tanzania.

<sup>ii</sup> UN General Assembly Resolution 523 (VI), 12 January 1952: Integrated Economic Development and Commercial Agreements, UN General Assembly Resolution 626 (VII), 21 December 1952: Right to Exploit Freely Natural Wealth and Resources UN General Assembly Resolution 837 (IX), 14 December 1954: Recommendations Concerning International Respect for the Right of the Peoples and Nations to Self-determination are some of the examples of UNGA Resolutions on PSNR.

<sup>iii</sup> KILANGI, A The Constitutional Re-writing Process In Tanzania: An Opportunity to Create Better Safeguard for Natural Resources, St. Augustine University Law Journal, Vol.1 No. 2 2011.p.100.

<sup>iv</sup> UN GA, 10<sup>th</sup> Session, Official Records, 3<sup>rd</sup> Committee, 672<sup>nd</sup> Meeting, 1952, p.240 as quoted in MAJINGE, Charles Riziki, The Doctrine of Permanent Sovereignty over Natural resources in International Law and its Application in Developing Countries: The Case of Mining Sector in Tanzania, Africa Year Book of International Law, Vol 16, p. 237.

<sup>v</sup> KILANGI, A The Constitutional Re-writing Process in Tanzania: An Opportunity to Create Better Safeguard for Natural Resources, St. Augustine University Law Journal, Vol.1 No. 2 2011.p.100, p.100.

<sup>vi</sup> SCHRIJVER, N.J (1997), Sovereignty over Natural Resources: Balancing Rights and Duties, Cambridge university Press, New York, p.1.

<sup>vii</sup> Final Act of the Havana Charter on International Trade Organisation of 1948, available at (18 December 2019) <http://www.worldtradelaw.net/misc/havana.pdf> .

<sup>viii</sup> General Assembly Resolution 2158 (XXI), 1966.

<sup>ix</sup> MAJINGE, Charles Riziki, The Doctrine of Permanent Sovereignty over Natural Resources in International Law, op.cit. p. 137.

<sup>x</sup> Ibid. Footnote 9 above.

<sup>xi</sup> SCHRIJVER, N.J (1997), Sovereignty over Natural Resources: Balancing Rights and Duties, Cambridge university Press, New York.

<sup>xii</sup> KILANGI, A The Constitutional Re-writing Process in Tanzania: An Opportunity to Create Better Safeguard for Natural Resources, St. Augustine University Law Journal, Vol.1 No. 2 2011.

<sup>xiii</sup> SCHRIJVER, N.J (1997), Sovereignty over Natural Resources: Balancing Rights and Duties, Cambridge university Press, New York, p.1.

<sup>xiv</sup> LOWENFELD, Andreas F (2002) International Economic Law, Oxford University Press, p.407.

<sup>xv</sup> LOWENFELD, Andreas F (2002) International Economic Law, Oxford University Press, p.407.

<sup>xvi</sup> UN General Assembly Resolution 523 (VI), 12 January 1952: Integrated Economic Development and Commercial Agreements, UN General Assembly Resolution 626 (VII), 21 December 1952: Right to Exploit Freely Natural Wealth and Resources UN General Assembly Resolution 837 (IX), 14 December 1954: Recommendations Concerning International Respect for the Right of the Peoples and Nations to Self-determination.

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- xxiv The Law Treaties of 1966. See also Article 53 of the Vienna Convention on the Law of Treaties of 1966 about the definition of a peremptory norm under international law.
- xxv See the two Vienna Conventions on Succession of States of 1878 and 1978 respectively, and the two Human Rights Covenants of 1966.
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- xl Preamble UN General Assembly Resolution 1314(XIII), 1958
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<sup>lxxvii</sup>As observed in UNGA Resolutions described above.

