SOVEREIGNTY OVER NATURAL RESOURCES, Nico Schrijver (Cambridge: Cambridge University Press, 1997)

A book that takes as its focus the principle of permanent sovereignty over natural resources may at first blush seem oddly dated in a world where common heritage of humankind, global commons and intergenerational equity have become terms of common currency. Permanent sovereignty may strike many as one of those concepts that had its primary relevance in the post-war, post-colonial period, and that was informed by such particular circumstances as de-colonization and the socialist and nationalist constituencies that characterized that era. As the recent Kyoto conference has reminded us, however, the ability of the international community to put into practice some of the soft law principles developed by international environmental law over the past quarter century is in many respects still significantly constrained by old and persistent attachments to national interest that often are phrased in the language of state sovereignty.

Schrijver has three stated objectives in this book: "to map the evolution of permanent sovereignty over natural resources ... to show that the principle of permanent sovereignty has not evolved in isolation but as part and parcel of other trends in international law ... [and] to demonstrate that, apart from rights, duties relating to resource management can also be inferred and ... are being given increasing significance."[1] These objectives are reflected in the organization of the book, which is divided into three parts: the first dealing with the origins and development of the principle of permanent sovereignty, especially in the UN General Assembly; the second addressing the movement of natural resources law from creeping national jurisdiction towards international co-operation; and the last providing an analysis of the balancing of rights and duties in the modern international law on natural resources. While, as discussed below, the three parts do not always fit together seamlessly, the result is nevertheless a useful and interesting discussion of an important principle of modern international law.

The first part of the book alone will prove interesting to both natural resources and international lawyers in its detailed description of the development of the principle of permanent sovereignty, beginning with the early years of the United Nations and continuing to the present day. Schrijver's analysis reveals that the history of the principle is in many ways a history of the geopolitics of the international community, especially insofar as it was linked directly to such pressing post-war concerns as de-colonization, nationalization (and nationalism) and the right of peoples to self-determination. Schrijver also demonstrates the degree to which the articulation of the principle changed over time as new political realities emerged, especially in the General Assembly. While in most international law courses, the discussion of permanent sovereignty begins with the 1962 General Assembly *Resolution on Permanent*

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1 Nico Schrijver, *Sovereignty Over Natural Resources* (Cambridge: Cambridge University Press, 1997) at 2-3.

Sovereignty Over Natural Resources,[2] and then typically in the context of state responsibility consequent on expropriation,[3] Schrijver traces the origins of the concept to the earliest days of the United Nations, including the 1952 "nationalization" resolution.[4] The latter followed, and was no doubt influenced by, the 1951 nationalization of the Anglo-Iranian Oil Company by the new Mossadegh government in Iran, which led eventually to that government's overthrow and the return of the Shah in 1953, allegedly with the covert support of US and UK intelligence services. The decade following the nationalization resolution saw important changes not only in the conceptualization of the legal rights and duties associated with sovereignty over natural resources, but also in the composition of the General Assembly as the result of the rapid movement toward decolonization.[5] Schrijver provides a detailed and useful description of the geopolitical manoeuvring in the United Nations (especially in the Permanent Sovereignty Commission and the Second Committee) over these years, which led ultimately to the compromise reflected in Resolution 1803 of 1962.

Schrijver then describes the evolution of the concept of permanent sovereignty after 1962, beginning first with the gradual consolidation of the principle by 1970, and then the renewed and intense debates over the principle in the 1970s, debates which were influenced once again by geopolitical changes, especially those following the 1973 oil embargo. The divisions between north and south on the principle of permanent sovereignty in this period focused especially on the question of compensation, and specifically on whether international law imposed any standard in this respect. This division was reflected most obviously in the 1974 debates over the *Charter of Economic Rights and Duties of States* (CERDS) and the *Declaration of a New International Order*. Interestingly, while the divisions on the issue of compensation appeared deep at the time, Schrijver suggests that they were not as long-lasting as one might assume. Indeed, in the years immediately following the adoption of CERDS, Schrijver traces a noticeable softening of both the rhetoric and the resolutions dealing with this issue. In his view this softening was at least partly because of the recognition by developing states of a need for multilateral financial and technical cooperation in areas such as the creation of the Common Fund for Commodities (in 1980) and the exploitation of seabed resources under the *Law of the Sea Convention* of 1982. In the result, "[i]n the permanent sovereignty discussion, emphasis gradually shifted from setting the parameters for foreign participation in the exploitation of natural resources ... towards the question of what international co-operation could contribute to exploration, exploitation, processing and marketing of the natural resources of

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2 *Resolution on Permanent Sovereignty Over Natural Resources*, GA Res. 1803 (XVII), UN GAOR, 17th Sess., Supp. No. 17 at 15 [hereinafter *Resolution on Permanent Sovereignty*].

3 This reflects the treatment accorded the principle in the standard international law casebooks. See for example D.J. Harris, *Cases and Materials on International Law*, 5th ed. (London: Sweet & Maxwell, 1998) at 549 *et seq.*; L. Henkin *et al.*, *International Law Case and Materials* (St. Paul: West Publishing Co., 1980) at 743 *et seq.*; and H.M. Kindred *et al.*, *International Law Chiefly as Interpreted and Applied in Canada*, 5th ed. (Toronto: Emond Montgomery, 1993) at 550 *et seq.*

4 *Right to Exploit Freely Natural Wealth and Natural Resources*, GA Res. 626 (VII) (1952), UN Doc. A/PV.411 (VII).

5 Culminating of course in the *Declaration on the Granting of Independence to All Colonial Territories and Peoples*, GA Res. 1514 (XV), 14 December 1960.

developing countries [so that today] the content of the debate and of the resolutions adopted has been far removed from that of the original permanent-sovereignty resolutions."[6]

Two final chapters in this first part deal, respectively, with the relationship between permanent sovereignty and environmental issues (including sustainable development) and the relevance of permanent sovereignty to territories under occupation or foreign administration. The former provides a brief overview of the history of international multilateral concern[7] over environmental problems, primarily in the context of such UN initiatives as the 1972 Stockholm Conference, the Brundtland Commission and the 1992 Rio Conference, as a means of illustrating the degree to which the principle of permanent sovereignty must now take account of environmental considerations. With respect to the issue of permanent sovereignty and territories under occupation, Schrijver again is selective in his approach, focusing on three case studies: pre-independence Namibia, "national" resources in Israeli-occupied territories and sovereignty over the Panama Canal Zone. The thrust of these case studies is to remind us that permanent sovereignty is a right that accrues not only to states but also to peoples that have not yet been able to exercise their rights to self-determination. As a practical matter, of course, this aspect of the principle of permanent sovereignty has much less significance today than it once did.

In Part II of his book, Schrijver attempts to demonstrate "that permanent sovereignty ... did not take shape in a legal vacuum but in the practice of international relations ... and ... to provide the background information to be used in [the final part of the book] in the systematic identification of the hard-core content of permanent sovereignty ... in modern international law."[8] He does this by devoting one chapter each to three areas of international law where the concept of permanent sovereignty has had particular relevance: international investment law, the law of the sea, and international environmental law. Unfortunately, Schrijver is not always clear about the exact impact that the principle of permanent sovereignty has had on each of these areas of international law (or vice versa).

With respect to the chapter on international investment law, for example, Schrijver provides a discussion of an eclectic list of topics. Some of these, such as the debate over the applicable standard to be applied in investment disputes, are clearly relevant to the concept of permanent sovereignty. For others, however, such as the description of World Bank and other multilateral instruments for promoting and protecting foreign investment, or the discussion of international legal mechanisms that may be used to settle investment disputes, the relevance to an analysis of the principle of permanent sovereignty seems somewhat tangential.

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6 Schrijver, *supra* note 1 at 167.

7 Restricting the focus to multilateral initiatives was probably necessary to keep the discussion manageable. However, given the significance of bilateral and regional actions on the environment, especially those that antedate and foreshadow multilateral actions, one should not expect to find in Schrijver's summary a comprehensive overview of the development of international environmental norms.

8 Schrijver, *supra* note 1 at 172.

Similarly, while the history of the law of the sea may well have some implications for how one views the concept of permanent sovereignty over natural resources (or vice versa), it is not clear from Schrijver's discussion precisely how he views this relationship. What is largely provided in the chapter on law of the sea is an overview of how marine law has developed from its classical origins to its modern state. Again, though, the treatment is necessarily eclectic and it is not always clear why particular topics are being emphasized. For example, Schrijver provides a relatively detailed description of international dispute resolution mechanisms under the 1982 Law of the Sea Convention, compared to a brief two pages at the end of the chapter on what one would think is the critical issue of the relationship between permanent sovereignty and the concept of common heritage of humankind.

Finally, the third chapter in this part provides a brief overview of the history of international environmental law, together with a discussion of twelve principles of modern environmental law that have arguably developed over the past few decades. One of these is the principle of permanent sovereignty itself. The others cited, including such well-known examples as the precautionary principle, the principle of equitable utilization, the principle of intergenerational equity and the duty to co-operate in cases of transboundary environmental problems, raise significant questions as to the scope of the principle of permanent sovereignty, and indeed seem potentially in conflict with it. However, this critical issue is again disposed of somewhat cursorily in one page at the end of the chapter, with the rather general conclusion that within the context of all this emerging international environmental law "national sovereignty over natural resources, as an important cornerstone of environmental rights and duties, may well continue to serve as a basic principle."[9]

Part III, which is designed to provide an understanding of the content of permanent sovereignty begins with a chapter devoted to a discussion of the rights that may be claimed on the basis of the principle, followed by a chapter devoted to the concomitant duties that might be argued to balance these rights. A final chapter suggests the future of the principle of permanent sovereignty in the light of modern international relations, including, most importantly, the understanding of international law in an increasingly interdependent world.

The chapter on rights analyzes the legal rights following from the UN resolutions discussed in the first part of the book and asks to what extent "they have become recognized in relevant sources of international law."[10] The list of rights put forward by Schrijver is not new, although their articulation, taxonomy and content have varied over time and amongst writers.[11]

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[9] *Ibid.* at 250.

[10] *Ibid.* at 259.

[11] Schrijver's major headings for a discussion of rights are: the right to dispose freely of natural resources, the right to explore and exploit natural resources freely, the right to regain effective control and to compensation for damage, the right to use natural resources for national development, the right to manage natural resources pursuant to national environmental policy, the right to an equitable share in benefits of transboundary natural resources, the right to regulate foreign investment, the right to expropriate or nationalize foreign investment, and the right to settle

Of perhaps even greater interest to modern international lawyers is the treatment of the flip side of the coin — the possibility that the exercise of permanent sovereignty carries with it certain duties.[12] In this respect, it is not always clear how Schrijver conceives of such duties. At times he seems to conceive of them as inherent in the very concept of permanent sovereignty; he writes for example of the "duties the principle of permanent sovereignty may give rise to."[13] At other times, however, he seems to consider such duties as constraints on the exercise of the right of permanent sovereignty rather than as inherent in the principle itself. This latter approach is probably the more normal one, and indeed is reflected in United Nations practice. For example, Resolution 1803 refers to the "the *right* of peoples and nations to permanent sovereignty over their natural resources,"[14] and then goes on to note how this right may be qualified by other rules of international law (for example, any international rules relating to compensation). Similarly, the well-known Principle 21 of the *Stockholm Declaration* affirms that states have "the sovereign right to exploit their own resources pursuant to their own environmental policies *and* the responsibility to ensure that activities ... do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."[15] Moreover, as discussed below, there would seem to be advantages in taking the narrow approach to defining permanent sovereignty as a right, albeit a right that must be interpreted and exercised in the light of other principles of international law, rather than as a broader concept that embraces a wide range of both rights and duties.

However one defines permanent sovereignty, an analysis that focuses first on the rights and then on the duties associated with the principle seems a sensible way to structure the discussion. However, Schrijver's actual presentation of the material is in some respects somewhat cumbersome. Much of the evidence for or against the existence of the various rights and obligations is drawn from earlier discussions in the first two parts of the book. In the result, some of the discussion tends to be repetitious, as once again we see illustrations from the law of the sea, General Assembly resolutions, and various UN conferences such as Stockholm and Rio that we have already encountered in previous chapters. It is not that these examples are irrelevant or unhelpful, but a somewhat different structuring of the book might well have added force to the arguments presented. For example, in Part I, a full chapter is devoted to "Permanent sovereignty, environmental protection and sustainable development." Again, in Part II, we find a chapter on "International environmental law: sovereignty *versus*

disputes on the basis of national law. Some of these, such as the right to regulate foreign investment, may themselves comprise a number of more specific rights.

[12] The duties discussed by Schrijver include the exercise of permanent sovereignty for national development and the well-being of the people, respect for the rights and interests of indigenous peoples, the duty to co-operate for international development, conservation and sustainable use of natural wealth and natural resources, equitable sharing of transboundary natural resources, respect for international law and fair treatment of foreign investors, and obligations related to the right to take foreign property.

[13] Schrijver, *supra* note 1 at 306.

[14] *Resolution on Permanent Sovereignty, supra* note 2 at para. 1 [emphasis added].

[15] *Stockholm Declaration on the Human Environment*, UN Doc. A/CONF. 48/14/ Rev. 1 (1973), (1972) 11 Int. Leg. Mat. 1416 [emphasis added].

the environment?" Finally, in Part III, we find yet again discussions of permanent sovereignty and environmental law, both in the chapters on rights and duties and in the concluding chapter on "Sovereignty over natural resources as a basis for sustainable development." Similar comments apply with respect to the treatment of permanent sovereignty and foreign investment.

As to the future of permanent sovereignty as an influence in international law, Schrijver rightly identifies in the concluding chapter some of the tensions between the rights associated with the invocation of the principle and the constraints that are increasingly being attached to it. These mirror the reservations increasingly being attached to the concept of state sovereignty more generally, especially in areas such as human rights law. However, the tantalizing — and to many readers, probably counter-intuitive — promise in the final chapter's title, of using permanent sovereignty as a foundation for sustainable development, is not fully realized. The actual discussion of the relationship between permanent sovereignty and sustainable development is left to the last three pages, and it is not clear exactly how Schrijver views the interaction between the two concepts. He sees permanent sovereignty as important because it "is a key principle of both international economic law and international environmental law. As such it can play an important role in the blending of these two fields of law with the aim of promoting sustainable development."[16] Again, however, as noted earlier, this reflects a broad view of permanent sovereignty, which, it is submitted, is not fully borne out in practice. The inclusion of the concept of permanent sovereignty in both the *Stockholm Declaration* and the *Rio Declaration* might well have been accepted by environmentalists as a necessary evil reflecting the continuing influence of state sovereignty as a principle of international law, but few would consider it as desirable. It may well be that Schrijver is correct that "permanent sovereignty can serve as an important cornerstone of [a] proposed international sustainable-development law," but it will not be the only foundation upon which this law is built. It is true that one can define permanent sovereignty (and Schrijver seems to want to do this) so as to encompass a very wide range of factors, including environmental as well as developmental objectives. Such a re-interpretation, however, amounts to identifying permanent sovereignty with sustainable development. There is surely some question as to whether such a wholesale refitting is really necessary or desirable. Permanent sovereignty is useful as a descriptor of *one* of the forces that will shape the evolution of sustainable development law. Arguably it should not take on the more ambitious burden of describing the full range of competing rights and duties with respect to natural resources, which international law will have to reconcile over the next few decades.

Clearly, however, just as it is premature for international lawyers to write the obituary of sovereignty as a fundamental principle guiding interstate relations, the principle of permanent sovereignty over natural resources will continue to exert an important influence on the development of international law for some time to come. Schrijver's careful and thorough analysis of the evolution of permanent sovereignty

16 Schrijver, *supra* note 1 at 394.

demonstrates not only the protean nature of the principle, but also its continuing vitality.

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