From Sovereignty to Sustainability

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From Sovereignty to Sustainability:

Natural Resources and Investment Protection in International Economic Law

Natural resources represent a cornerstone of international economic relations. This relevance relies, on the one hand, on the fact that states depend on them as drivers of development and strategic autonomy; on the other one, on foreign investors that need such resources to sustain projects and obtain long-term returns. This dual meaningfulness leads the natural resources to be constantly a central topic within international economic law (IEL).

At the same time, the governance of natural resources is no longer limited to purely economic considerations. Increasing attention to environmental protection, human rights, and sustainability has profoundly transformed the legal landscape. As a result, the traditional balance between state sovereignty and investor protection has become more complex and contested.

However, this tension is not new, since historical arbitral practice already illustrates the conflict between the sovereign right of states to control their natural resources and the expectations of foreign investors to receive legal protection. A paradigmatic example is the dispute between *Texaco Overseas Petroleum Company, California Asiatic Oil Company, and Libya* (1977), where the assertion of state sovereignty through nationalization measures clashed with legal obligations toward investors.

Against this background, this article addresses the following research question: how does the principle of permanent sovereignty over natural resources interact with modern international investment treaties, and what legal tensions emerge in this context?

The analysis examines key legal instruments such as United Nations resolutions, bilateral and multilateral investment agreements, and arbitral case law, alongside relevant academic commentary. The focus of this article is on how legal principles have evolved over time and how they interact with each

other within international economic law: policymakers and international institutions today need to find a balance between economic development, state regulatory powers, and the protection of foreign investors, while also taking into account broader concerns such as environmental protection and human rights.

The central claim advanced here is that permanent sovereignty over natural resources remains a foundational principle of IEL, but its exercise is significantly shaped and constrained by the legal architecture of modern investment treaties, generating tensions that can only be addressed through careful legal interpretation and policy balancing.

2. Principles and Distinctive Elements of International Economic Law

2.1 Permanent Sovereignty over Natural Resources

The principle of permanent sovereignty over natural resources constitutes one of the cornerstones of international economic law (Schrijver, 1997). it's formally articulated in United Nations General Assembly Resolution 1803 (1962) and it establishes the right of states to freely dispose of their natural wealth and resources in accordance with their national interests (United Nations General Assembly [UNGA], 1962).

This principle, originally conceived in the context of decolonization, had the aim of empowering newly independent states by affirming their authority over economic activities within their territories, including those involving foreign investors, as a tool of economic self-determination.

While this principle was originally rooted in the classical Westphalian notion of sovereignty, understood as exclusive state authority over territory and resources, contemporary international economic law emphasizes regulatory sovereignty, intended as the ability of states to pursue public policy objectives while operating within a framework of international legal obligations. This evolution helps explain why state control over natural resources is today balanced against commitments toward foreign investors.

However, the scope of this sovereignty is not absolute and it is limited by the need to respect obligations toward foreign investors, particularly in cases of expropriation.

2.2 Sovereign Equality and State Independence

Closely related to permanent sovereignty is the principle of sovereign equality, according to which all states, regardless of their economic or political power, are formally equal and possess the same legal rights and duties.

In the context of natural resources, sovereign equality reinforces the idea that each state has exclusive authority over its territory and resources. Yet, in practice, economic differences between states create asymmetries that

undermine this formal equality. In particular, developing countries often depend on foreign investment, which can limit their ability to fully regulate their resources.

2.3 Compensatory Inequality and Differentiated Treatment

To address these asymmetries, IEL has developed mechanisms of compensatory inequality, granting special and differential treatment to developing countries. This approach can be seen especially in the World Trade Organization and in international financial institutions, where more flexible rules and special conditions are used to support developing countries.

In the context of natural resources, compensatory inequality reflects an attempt to balance formal sovereign equality with substantive economic disparities. However, it is not always effective, especially when compared to the strong protections given to foreign investors under investment agreements.

This issue is particularly relevant for developing countries with abundant natural resources. These states often rely on foreign investment to develop and exploit their resources, while also seeking to retain control over how those resources are managed. Although international economic law recognizes the different economic circumstances of developing countries, investment agreements may limit their ability to regulate in line with national priorities. As a result, tensions can arise between development goals and the protection of foreign investors.

2.4 Sanctions and the Logic of Balance

Unlike other areas of international law, sanctions in IEL are generally not conceived as punitive measures, but rather as instruments aimed at restoring balance between parties.

This logic of proportionality is central to understanding how conflicts between states and investors are managed. It shows that international economic law aims to ensure stability and predictability, but this can also limit the regulatory freedom of states.

3. Historical Background: Decolonization and the New International Economic Order

3.1 The Origins of Permanent Sovereignty

The principle of permanent sovereignty over natural resources cannot be fully understood without reference to its historical roots in the decolonization process of the mid-twentieth century. During the 1960s and 1970s, newly independent states tried to assert control over their economic resources as a fundamental component of their political independence.

The adoption of United Nations General Assembly Resolution 1803 marked a decisive moment in this evolution, codifying the right of states

to freely dispose of their natural wealth (UNGA, 1962). This development reflected a broader shift in international law, since economic relations were increasingly viewed through the lens of equity and development.

Furthermore, the assertion of permanent sovereignty was not merely declaratory: rather it served as a legal and political foundation for a series of measures adopted by developing states, including the renegotiation of concession agreements and, in some cases, the nationalization of assets owned by other States. However, these practices, even though they were applied for reasons related to sovereignty, also generated significant tensions with traditional principles of international law, especially those relating to the protection of foreign property.

3.2 The New International Economic Order (NIEO)

The emergence of the New International Economic Order (NIEO) further consolidated the connection between sovereignty and economic justice. Advocated primarily by developing countries, the NIEO aimed to restructure the global economic system in order to promote a more equitable distribution of wealth and resources (UNGA, 1974a).

Within this framework, permanent sovereignty over natural resources became a central principle: it was seen as a tool for correcting structural imbalances in the international economy. The NIEO agenda emphasized the right of states to regulate foreign investment, determine the conditions under which natural resources could be exploited and ensure that the benefits deriving from such activities contributed to national development (UNGA, 1974b).

At the same time, the NIEO sought to decrease the dominance of capital-exporting states. Nonetheless, despite its ambitious goals, the NIEO project encountered significant hindrances and ultimately failed to produce a comprehensive restructuring of the global economic order.

Several factors contributed to the decline of the NIEO project: strong resistance from industrialized countries limited the implementation of many proposed reforms, particularly those aimed at redistributing economic power and restructuring global trade and investment relations. Furthermore, the debt crises and economic instability that affected many developing countries during the 1970s and 1980s shifted attention away from collective demands for systemic reform toward immediate economic stabilization. The rise of neoliberal economic policies and market-oriented globalization further weakened support for the NIEO's interventionist vision, causing the initiative to gradually lose political momentum.

Still, its legacy persists in contemporary debates on sovereignty, development, and fairness in IEL.

3.3 Foreign Investment within Economic Sovereignty

A key feature of this historical phase was the gradual incorporation of foreign investment into the broader context of economic sovereignty. Instead of entirely rejecting foreign capital, many developing states strived to regulate it consistently with their national interests.

This approach reflected a pragmatic conception of the role of foreign investment in enhancing economic development, in particular in sectors requiring significant capital and technological expertise, such as natural resource extraction. At the same time, it highlighted the necessity for legal mechanisms that would allow states to retain ultimate control over their resources.

The resulting tension between openness to investment and the assertion of sovereignty laid the framework for the following evolution of international investment law.

4. International Investment Protection: Expansion and Constraints

4.1 The Rise of Investment Treaties and Institutions

From the late twentieth century onwards, the international legal framework governing foreign investment underwent a profound transformation. This development was largely driven by the increasing globalization of economic activity and the growing importance of foreign direct investment (FDI) as a source of capital, technology, and economic growth. Host states, especially developing countries, sought to attract foreign investors by offering stronger legal guarantees, while capital-exporting states aimed to protect their nationals from risks such as expropriation, political instability, and unpredictable regulatory changes (Dolzer & Schreuer, 2022).

In response to concerns over political risk and legal uncertainty, states increasingly turned to bilateral investment treaties (BITs) and other international investment agreements (IIAs) as instruments to promote and protect transnational investments.

These agreements typically establish a set of substantive protections for investors, including guarantees against unlawful expropriation, commitments to fair and equitable treatment, and provisions ensuring non-discrimination. Alongside this concept, institutional mechanisms for dispute settlement were developed, most notably through the International Centre for Settlement of Investment Disputes (ICSID), which provides a forum for resolving disputes between investors and states (ICSID, 1965).

These developments contributed altogether to the rise of a dense and highly structured regime of international investment law, that operates in parallel, and sometimes in tension with, traditional principles of state sovereignty.

4.2 Core Investor Protections and Regulatory Constraints

At the heart of modern investment law lies a set of legal standards designed to protect the economic interests of foreign investors: among these, primarly the prohibition of unlawful expropriation. While states possess the right to expropriate property for public purposes, such measures must generally fulfill conditions of legality, non-discrimination, and the payment of prompt, adequate, and effective compensation (Dolzer & Schreuer, 2022).

In addition to direct expropriation, most investment agreements also address indirect or regulatory expropriation, where state measures may significantly affect the value of an investment and this has led to an increse in the scrutiny of domestic regulatory actions under international law (Dolzer & Schreuer, 2022).

The standard of fair and equitable treatment further reinforces these constraints, requiring states to maintain a stable and predictable legal environment for investors.

4.3 Arbitration as a Mechanism of Balance

Investor–state arbitration has become the primary mechanism through which conflicts between sovereignty and investment protection are addressed: by allowing investors to bring claims directly against host states before international tribunals, this system distances itself from traditional diplomatic protection (ICSID, 1965).

Arbitration is often presented as a neutral forum designed to balance the interests of investors and host states: it protects investors against arbitrary or discriminatory treatment, while also recognizing the right of states to regulate in the public interest. In practice, however, this balance is often contested. Critics argue that arbitration mechanisms may privilege investor interests and lead to a decrease of democratic decision-making. At the same time, supporters emphasize their role in ensuring accountability and enhancing a stable investment climate.

In recent years, these concerns have contributed to what is often described as a broader legitimacy crisis of the investor–state dispute settlement (ISDS) system: critics have questioned the transparency of arbitral proceedings, the consistency of arbitral awards and the significant influence that private tribunals may have over public matter. Furthermore, concerns have been raised regarding the limited accountability of arbitrators: these criticisms have prompted calls for reform at both the regional and international levels, including proposals for greater transparency, appellate mechanisms, and the establishment of permanent investment courts (UNCTAD, 2023).

This tension reflects a broader structural feature of international economic law: the coexistence of sovereign authority and binding legal commitments toward private actors.

5. Legal Tensions in International Economic Law

5.1 Sovereignty versus Investment Obligations

The coexistence of permanent sovereignty over natural resources and binding investment obligations represents one of the central structural tensions within international economic law. On the one hand, states retain the sovereign right to legislate upon economic activities within their territory, including the exploitation of natural resources. On the other hand, by participating to international investment agreements, they accept legal constraints that limit the exercise of this authority.

This tension becomes particularly evident when states adopt measures aimed at pursuing public policy objectives related to social and environmental matters that affect foreign investments. While such measures may be justified from a domestic perspective, they can give rise to claims under international law if they are perceived as violating treaty obligations. As a result, sovereignty in the context of IEL is no longer absolute, but relational and conditioned.

5.2 Nationalization and Regulatory Measures

One of the most contentious areas in this regard concerns the forms of state intervention in the economy. Among these, nationalization was historically regarded as a legitimate expression of permanent sovereignty, especially in the context of post-colonial resource governance. However, under modern investment law, such measures are subject to strict conditions.

International investment agreements generally recognize the right of states to expropriate foreign investments, but only if certain requirements are satisfied, including the existence of a public purpose, non-discrimination, due process, and the payment of compensation. Were these conditions not fulfilled, this may result in a finding of unlawful expropriation.

Beyond formal expropriation, a wide range of regulatory measures can also fall within the scope of investment protection: environmental regulations, changes in taxation, or modifications to licensing regimes may affect the value of an investment.

At the same time, international investment law recognizes the so-called Police Powers Doctrine, according to which states may adopt non-discriminatory regulations aimed at protecting legitimate public welfare aims without being liable for compensation. Measures relating to public health, environmental protection, public safety, or other essential public interests are generally considered a lawful exercise of sovereign regulatory authority, even when they negatively affect the economic value of an investment. The doctrine therefore operates as an important counterbalance to investor protection by preserving a degree of regulatory autonomy for host states (Dolzer & Schreuer, 2022).

This expanded scope of protection has intensified the tension between regulatory autonomy and investor rights. States may face a "regulatory chill": the risk of costly arbitration discourages them from adopting measures in the public interest.

5.3 Case Study: Texaco v. Libya

The dispute between Texaco Overseas Petroleum Company, California Asiatic Oil Company, and Libya (1977) provides a paradigmatic illustration of the tension between sovereignty and investment protection. In this case, the Libyan government nationalized oil concessions previously granted to foreign companies, invoking its sovereign right to control natural resources (Texaco Overseas Petroleum Co. v. Libya, 1977).

The arbitral tribunal acknowledged the existence of the principle of permanent sovereignty, but emphasized that this principle did not operate in isolation: it held that Libya was bound by its contractual commitments and by applicable principles of international law, including the obligation to compensate for expropriation. The decision is particularly significant because it reflects an attempt to reconcile competing legal frameworks: on the one side, it affirmed the legitimacy of nationalization as an expression of sovereignty; on the other, it reinforced the idea that such sovereignty must be exercised in accordance with international legal standards.

More broadly, the case illustrates the emergence of a hybrid legal order in which public international law, contractual obligations, and economic considerations interact, reshaping the concept of sovereignty by embedding it within a network of legal constraints and expectations.

5.4 Vattenfall v. Germany

A more recent example of this evolving tension can be found in the Vattenfall v. Germany disputes: in these cases, the Swedish energy company challenged German regulatory measures adopted first to strengthen environmental requirements for a coal-fired power plant and later in the context of Germany's nuclear phase-out policy. Unlike Texaco, where the dispute centred on the nationalization of natural resources, Vattenfall illustrates how contemporary investment disputes increasingly arise from public-interest regulations aimed at environmental protection and sustainable development. The case highlights a key challenge for modern international economic law: ensuring that states retain sufficient regulatory space to pursue legitimate sustainability objectives while maintaining a stable and predictable framework for foreign investment (Vattenfall AB and Others v. Germany, 2012).

6. New Trends in International Economic Law

6.1 The Rise of Non-Economic Values

In recent decades, international economic law has undergone a significant normative transformation: while traditionally focused on trade liberalization and investment protection, it is increasingly influenced by non-economic values such as environmental protection, human rights, and sustainable development (United Nations, 2015).

This shift reflects a growing recognition that economic activity cannot be detached from its broader social and ecological impact, which is particularly eviden in the context of natural resources, as extraction and exploitation often raise issues related to environmental degradation, indigenous rights, and intergenerational equity. As a result, the traditional tension between sovereignty and investment protection is now enshrined within a more complex normative landscape, where multiple and sometimes competing values must be taken into account.

6.2 Integration into Legal Frameworks and Institutions

These emerging values are progressively being integrated into the legal architecture of IEL: modern investment agreements are increasingly including more provisions on environmental protection, corporate social responsibility, and the right of states to regulate in the public interest (UNCTAD, 2023). Similarly, dispute settlement bodies are beginning to consider these factors in their interpretation of treaty obligations.

In parallel, international economic institutions such as the International Monetary Fund (IMF) and the World Bank have incorporated governance, transparency, and sustainability criteria into their operations through governance assessments, anti-corruption measures, and environmental and social safeguard policies. Trade regimes also reflect this evolution, as demonstrated by conditional trade preference schemes that link market access to compliance with human rights, labour, and environmental standards. This integration does not eliminate the tension between economic and non-economic objectives, but it provides new tools to manage it. It signals a gradual move toward a more comprehensive and systemic understanding of international economic law.

6.3 Toward a Rebalanced Legal Order

The incorporation of non-economic values raises fundamental questions about the future direction of IEL. Although it offers an opportunity to reassess the balance between state sovereignty and investor protection, nevertheless, it introduces new complexities and uncertainties.

Judicial and arbitral practice plays a crucial role in this process: through case-by-case interpretation, tribunals are increasingly called upon to rec-

oncile competing norms and to define the specifities of acceptable state conduct, effectively shaping the evolution of IEL.

7. Conclusion: Toward a New Balance in Global Economic Governance

The relationship between permanent sovereignty over natural resources and international investment protection encapsulates a fundamental tension at the heart of international economic law. While sovereignty remains a foundational principle, its exercise is no longer unconstrained. The proliferation of investment agreements and dispute settlement mechanisms has created a dense web of legal obligations that shape and, in some cases, limit state autonomy.

At the same time, the emergence of non-economic values is redefining the normative landscape in which this tension operates. Environmental protection, human rights, and sustainable development are no longer peripheral concerns, but integral components of contemporary IEL. Their integration into legal instruments and interpretative practices reflects an ongoing effort to align economic governance with broader societal objectives.

The challenge for the future lies in achieving a sustainable balance between these competing imperatives: this requires not only legal refinement through clearer treaty drafting and more coherent interpretative approaches, but also a broader policy reorientation that recognizes the interdependence of economic, social, and environmental goals.

In this emerging order, sovereignty is not diminished, but redefined: it becomes the capacity to navigate and shape a complex network of legal relationships, rather than to act in isolation. If this transformation succeeds, it may pave the way for a more equitable and sustainable form of globalization: one in which the governance of natural resources reflects not only economic efficiency, but also fairness, responsibility, and long-term resilience.

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