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Nigeria and UN on Permanent Sovereignty over Natural Resources: Genesis of Decay

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Abstract
The law regulates identifiable issues of conflict and grapples with them as they emerge or change. Socio-economic relations also change the law along. Therefore, nothing is permanent except change whether sovereignty or natural resources. The ability of the law to change as social relations change is the social engineering nature of law. When the United Nations made the declaration on permanent sovereignty over natural resources in favour of developing states, foreign investments and investors were at risk and it was not envisaged that the peoples of the states and their communities would come to the cross-roads they are currently such that it was not envisaged that the states would act contrary to their utmost interest 60-70 years after. So much want and lack have already been identified with the peoples and their communities. So much lives have equally been lost in the struggle to upturn the resolution not to even converse on the environmental degradation that the scrimmages between the parties have caused to the present and future generation leading for instance to the Stockholm Declaration of 1972 and sustainable development issues. This paper which adopts the doctrinal method takes a critical look at the case of the peoples and communities that make up the developing states which donated their sovereignty to their states for the purpose of realizing the gains inherent in the Chilean proposal that led to the United Nation Organization's resolution in 1962 and which peoples and communities have now been utterly undermined and shortchanged. Can they now turn around against their states and the multinational companies in an era in which there appears to be a cozier relationship between the state and company than between them and their governments? Evidence from Zimbabwe, Congo, Sudan, Nigeria and Tanzania are not in favour of the state and company. In the Niger delta the crucible of conflict is at boiling point. In a few more decades to come, the table may completely turn - full circle.

Keywords: United Nations, Resolution, Nigeria, Natural Resources, Niger Delta, Permanent Sovereignty

Introduction
The United Nation Organization was not born out of peace and love. It was a child of urgent necessity and survival. It was christened by Roosevelt in 1942 when 26 nations pledged to work together for their survival against the Axis powers in world war two. They quickly saw the need to push for independence of colonized peoples and by so doing canvassed the newly independent nations into the liberal democratic sphere of influence. And in the end the UNO became a dominant international institution in the world when about 50 of the members drew up a popular Charter in San Francisco, USA. Notable amongst them were China, USSR, USA, France, and UK. It did not take long before crisis of true independence arose in the third world over economic resources. It was found by the developing nations particularly Chile, that political independence was merely flag and the advanced nations that they had fought had continued to tap their natural resources through transnational companies.

In order to gain economic independence and chart their course of development, they raised the proposal of permanent sovereignty over their natural resources in order to leverage on them to achieve sovereign independence and shift away from economic dependency. Great scrimmages trailed the debates between the developed nations and their multinationals on the one hand and the developing countries over ownership issues and applicable laws in circumstances when these natural resources governance were called to question. While the developed nations and the owners of the multinationals preferred investor ownership, the developing nation preferred state ownership. The crisis was so compelling that it resulted in the nationalization of Anglo-Iranian Oil Company in 1951, United fruit Company in Guatemala in 1953, Suez Canal Company in 1956, Dutch property in Indonesia in 1958, Chilean Copper Industry in 1972 and the Libyan Oil Industry in 1971 -1974 (Schrijver, 2002) [40].

The battle for economic survival of both the advanced nations and their transnational companies and the developing nations saw the arrival of several national and international legal regimes one of which was the resolution and municipal domestication

of the resolution in constitutional law and detailed contractual agreements. These led to licensing regimes, leases, petroleum sharing contracts, joint ventures, risk ventures, modern concessions, marginal field contracts and local content vehicles etc. But, as these regimes began to sprout and stabilize, new issues of the people and their communities began to crop up. Corruption began to gnaw at both the governments of the developing nations and the working relationship between them and the multinational oil companies. Diversion of oil resources, oil theft and illegal refineries began to blossom in Nigeria for example. The state and the companies became involved in all manner of unwholesome activities and completely forgot the people and the communities they rose to defend and they owed in corporate social responsibility.

The State having largely failed to develop the Niger Delta by way of infrastructural facilities and its actors having been implicated in the plunder of natural resources and the multinational oil companies having failed to deliver on corporate social responsibilities and its agents having also been fingered in oil theft to the extent that the phenomenon can hardly be classified as crime in the creeks, the indigenous Communities have started to agitate for the takeover of their land and oil and to pay tax to any government in place having been disillusioned by the posture of nonchalance of the Federal government. This paper argues that behind the plunder of natural resources in the creek is the agitation for a paradigm shift from State to indigenous community control of natural resources. This agitation is beginning to gain token recognition in international law and national statutory acts in the three percent concession to indigenous communities in the Petroleum Industry Act (PIA), 2021 which stayed on the floor of the National Assembly for almost 30 years. Judicial pronouncements in recognition of indigenous community rights to permanent sovereignty over natural resources are also beginning to trickle in. The paper argues that the plundering of natural resources and kindred crimes like oil theft and illegal refineries have arisen from lack of the development of the Niger Delta by both the State and the multinational oil companies and that they are an expression of the rights of the peoples and communities to inclusion, participation and resource control by indigenous communities after 60 years of State and industry control of land and mineral resources have failed to yield development on the legal ticket of the United Nation's Resolution 1803 of 1962 guaranteeing permanent sovereignty over natural resources to the states.

Statement of the Problem

Is the law of international subjects about to change? Oppenheim (as cited in Schrijver, 2002) [40] had stated, 'since the law of nations is based on the common consent of the individual states and not individual human beings, states *solely* and *exclusively* are subjects of international law.' Over the years, the net has been widened. International persons like United Nations, World Bank and IMF, self-determination groups like ANC, human rights groups like Amnesty International and Transnational Corporations like ENI and Shell have broken the myth of subjects of international law. Objects of international law are gradually becoming subjects by virtue of the roles they have been playing on the changing landscape of the international arena. The admission of indigenous communities like Ogoni of Niger delta, Sami of Finland, Norway and Netherlands, Cheney islanders and native Indians of USA, etc have found their ways into the comity of international subjects. Non-state actors like oil militants and ethnic communities like Ogoni which have suffered deprivation and marginalization under nation states are beginning to aspire for recognition not only as objects but subjects of international law.

The right to the principles resolved in 1962 was vested in peoples and states. Schrijver has opined that as time progressed, emphasis shifted from peoples and developing states to 'all states'. However, the extent to which Niger delta communities and non-state actors therein are entitled to recognition on the principle of permanent sovereignty over natural resources is a question of domestic politics as it shall be demonstrated in this study that they have been sufficiently subject to conditions of marginalization, discrimination and degradation that the Federal government can no longer been seen to represent them. A government that took so much to their detriment cannot be said to be for them.

In 1975, when derivation dropped to 20 percent, the Obasanjo-Yar'Adua administration raised it to 25 percent after the Ojetunji Aboyade Technical Committee on Revenue Allocation. But the Shagari administration reduced it to five percent in 1981. Under the Buhari military administration, it crashed further to 1.5 percent but Gen. Babangida administration raised it to three percent. It took the rise of the ethnic Ogoni and its non-state actor of MOSOP under Ken Saro Wiwa (who died for it) for consideration to be given to a 13 percent. It may well be stressed that the progressive reduction in the amounts available to the oil producing communities or states was accompanied by a very cavalier indifference of both the federal state and the multinational oil companies to the devastation that oil prospecting was wrecking in the Niger delta. Each time the people rose up against the environmental despoliation and virtual biocide in the delta, the state sent in soldiers to contain the agitators and gave oil companies authority to raise and fund special military outfits to exercise police powers to deal with supposed owners of the land and oil. More resources became plugged into counter-insurgency measures that would have been enough to develop the peoples and their communities.

Looking at the problem from the Marxist viewpoint, Agba and Ndum (2014) [2] argue that sections of obnoxious laws like the Constitution of 1999, the Land Use Act of 1978, and the Petroleum Industry Act, 2021 amongst other repugnant laws, took absolute ownership and controlling authority over natural resources. In the onslaught, marginalization, oppression, degradation and innumerable vices became the lot of citizens and their communities. The state has not only used the legal and constitutional instruments in this desperate act of seizure of wealth, monopolization of civil governance, appropriation of police, security and military powers to itself, it also smashed the resources of the people and communities from 100 percent in 1953 to 50 percent in 1960 to 45 percent in 1970 to 20 percent in 1975 to two percent in 1982 to 1.5 percent in 1984 to three percent in 1992 (Hadi) [17]. Over six decades the state has employed such metaphors as population, land mass, state creation, creation of local government councils, need assessment, quota, federal character, catchment area, geo-political zones in the continuous subterfuge of deceiving itself to the utter detriment and retardation of the development of the people

and their communities.

For Ota *et al* (2022) [32] resource control is an agitation against state's de-emphasis on derivation because the people and communities where the resources are mined have been rendered politically and economically weak since the end of the last civil war. In an attempt to keep the country as one, the military took control of everything and enslaved its federating states, citizens and communities. It was better for the country to be one united insoluble entity, at the risk of the lives of its citizens and communities. It was country first before the citizens and communities. In a messianic disposition, the slogan appeared writ large during the last civil war that 'to keep Nigeria one is a task that must be done'. This refrain has continually informed the desire of the Federal government to list resource control as a 'no-go area'. Therefore, the principles of permanent sovereignty over natural resources is also a no go area. Of what value is such sovereignty? There is nothing sovereign, permanent, full and free about the resolution again in a changing world. Don Herzog (as cited in Tatar & Moisi, 2022) [42] has come to bury sovereignty not to praise it. Rest in peace sovereignty!

The Resolution informed the promulgation of national laws like the 1968 Petroleum Act (now replaced with Petroleum Industry Act, 2021), the 1978 Land Use Act and the 1999 Constitution of the Federation that provide for State ownership of land and oil resources. After 50 years of State and industry control, the agitation for resource control by indigenous communities have erupted relentlessly thus culminating in hostage taking, vandalism and sabotage of oil installations of the State and oil companies. Since 1962 peoples and communities have not fared better from the state's control of mineral wealth and multinational oil companies on the other hand have also not demonstrated better scorecards in corporate social responsibility. These two negative results have fueled militant agitations and scholarly argument for paradigm shift to communal ownership of mineral resources. Is communal ownership of oil the new way to go? In Ebeku (2002) [11] can be found the best expression of the attitude of the communities in the Kaiama declaration as follows: All land and natural resources (including mineral resources) within the Ijaw territory belong the Ijaw communities and are the basis of 'our survival…we cease' to recognize all undemocratic decrees that rob 'our people and communities' of the right to ownership and control of 'our lives' which were enacted without 'our participation and consent'.

Theoretical Framework

Sovereignty Theory

In political theory sovereignty means the supreme legitimate authority over some polity; in international law, it means the exercise of the power of a state. It means both the legal right to do so and the factual ability to do so (https://www.en.m.wikipedia.org>wiki>soverei...)

Sovereignty, according to the Montevideo Convention of 1933 on the Rights and Duties of States, is one of the characteristics of Statehood. Another is territory (Tyagi, 2015) [43]. A state is a person under international law if, and only if, it is recognized as sovereign by at least one other state (https://www.en.m.wikipedia.org>wiki>Soverei...). Jean Bodin theory of sovereignty believes that a body is as supreme as the body wishes, but is also limited by natural and divine law (https://www.plato.standford.edu>entries> bodin). It is a political concept that refers to the dominant power or the supreme authority and in Nigeria it rests with the people and is exercised through their representatives as elected into government as the executive and legislature or appointed into the judiciary (https://www.law.cornell.edu>Wex).

Sovereignty is at the confluence of community, constitutional and international law (Tartar & Moisi, 2022) [42]. In the context of this study popular sovereignty maintains that the people are the ultimate sovereign in a state and it is guaranteed by the popularity enjoyed by the authority in a state. Thus, if a state becomes unpopular it loses its sovereignty (Ene 2023) [14].

Social Contract Theory

The social contract theory is relevant to this study as it proposes that the foundation of society is based on the sovereignty of the 'general will'. As postulated by Hobbes it is a method of justifying political principles by appeal to the agreement that would be made among free and equal persons (https://www.plato.standford.edu>hobbes-moral). The notion of social contract is one of the planks upon which the present political and legal systems are constructed. This is the notion that the state only exists to serve the will of the people, and the people are the source of all political and legal powers enjoyed by the state, and the people can choose to give or withhold the power (Martin, 2013) [23]. Consent of the governed has thus re-emerged as the leading structure of political and legal legitimacy.

Hobbes (as cited in Goldie & Wokler, 2006) [16] argued that the right of all sovereigns is derived originally from the consent of everyone that is to be governed and John Locke (as cited in Freeman, 1996, pp 102 -103) [15] argued that voluntary agreement gives political power to governors.

In Hobbes', Locke's and Rousseau's eras, it was used to justify the duty to obey the law or, more generally, the acceptance of the decisions of the state as binding. But in recent eras when it has been revisited by Rawls (1994) [36] it takes the state as given and is then employed as a mechanism for identifying proper social institutions, policies and laws that reflect justice as the basic virtue in society. The principal function of the theory is to give governance legitimacy, and establish the theoretical and institutional underpinnings that characterize the reciprocal rights and obligations amongst citizens and between the citizens and the state (Freeman, 1996) [15].

Rusling (2013) [39] defines it as a sort of hypothetical or actual agreement between society and state by which citizens abide by government's rules and regulations in the hope that others do same; subsequently leading to more secure and comfortable life. Individuals unite into a society by a process of mutual consent and state authority and legitimacy derive from the consent of the governed. It is an individual's rational self-interest to voluntarily give up his natural freedom in order to obtain the benefit of political and economic order that is the hallmark of social contract theory (Theories of social contract…2013). Theorists in this space posit that individuals have consented, either explicitly or implicitly or tacitly, to surrender some of their freedoms and submit to the authority of the state in exchange for protection of their remaining rights. But when do citizens have a right to rebel, to withdraw from the contract?

Rebellion Theory

There is no right to rebel except for self-preservation and common humanity. A citizen has no duty to obey a sovereign that cannot protect him or keep the peace. Critical conversations on the subject were developed by Rousseau (1762) [38] who postulated that inasmuch as the state arises on the basis of the social contract, the citizens have a right to dissolve the contract in the event of the abuses of the terms of the contract by the regime. John Locke (as cited in Elegido, 1994, p. 172) [13] equally declared that under natural law, all people have the right to life, liberty and estate and the people could instigate a revolution against the government when it acts against the interest of the people to replace the government with one that serves their interest. The right to rebellion is more importantly, the duty of the people of a nation variously stated throughout history to overthrow a government that acts against their common interests (Social Contract. www.encyclopedia2.thefreedictionary.com).

The Magna Carta of 1215 against the king of England and the Golden Bull of 1222 against the king of Hungary were constitutional charters in the repudiation of the limitless powers of the sovereign. They established the right of rebellion when the state acts contrary to the law or against the general will of the people or an outright embodiment of corruption as in the case of the Nigerian petro-state in Niger delta.

The right to resist tyrannical rule was also published in the *Summa Theologiae* by Acquinas. The 1776 American Declaration of Independence also stated the basic philosophy that citizens were endowed by the creator with inalienable rights including economic survival and could alter or abolish any government destructive of those rights. The various states of the United States of America go farther from the mainstream right of rebellion. Articles 1 and 2 of the Constitutions of Tennessee and North Carolina provide that government ought to be instituted for the common benefit, protection and security of the citizens; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive to the good and happiness of mankind (Right of Revolution or…)

Right of rebellion is both a natural and a positive law right. Under common law, Blackstone (1765-1769) called it the law of redress against public oppression. It arose from a contract between the people and the sovereign (state) to preserve the public welfare. The paradigm of the contract was rested on a traditional model of government based on the existence of a hypothetical bargain struck in the mists of antiquity between the sovereign and a people whereby the people were protected by the sovereign in return for the allegiance of the people to the sovereign. And as noted Hamilton in 1775, state exercised powers to protect the 'absolute rights' of the people and state forfeited those powers and the people could reclaim those powers if the state breached the contract.

Conceptual clarifications

Natural Resources

Natural and mineral resources law concerns that body of law which governs and regulates the socio-economic and political activities connected with natural and mineral resources. What are natural and mineral resources, where they occur, how they occur, who owns them, how they are mined, harvested and tapped, how they are refined and marketed are all subject of legal regimes and regulations. The body of law is so extensive that it draws from the ordinary and the not too ordinary, from the clear and the not too clear. It draws extensively from geography, economics, politics, and international law, law of arbitration and constitutional law. It involves aspects of technology, law of contract, land and environmental laws. It takes on aspects of litigation between individuals, multinational corporations, the state and its agencies. Because of the importance of natural and mineral resources, the body takes on laws of armed conflict and war, laws of the sea and air.

It is necessary to remark that natural and mineral resources are basically of two types: solid minerals and hydrocarbons. In AG Federation V AG Abia State & Ors (2002 Vol. 96 LRCN 559 p. 609) natural resources are defined by the Supreme Court as any material in its native state which when extracted has economic value like timberland, oil and gas wells, ore deposit and other products of nature that have economic value. It includes features that supply a human need and contribute to the health, welfare and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational activities and purposes. To the Supreme Court, oil, natural gas and coal come within this foregoing definition but not ports, wharves, mangoes, groundnuts, livestock, hide and skin, horns, beans, grains, pepper and cotton which are agricultural products.

Hydrocarbons shall be the major subject matter of this study. The following issues in the area shall engage the attention of this study: the ownership theories and interests capable of acquisition in minerals, state participation in minerals exploitation and its administration of the revenue so derived, natural resources and manpower development in the mineral oil sector, degradation arising from mineral exploitation on the environment, international organizations, petroleum refining and conveyance.

Literature Review

Daes' Adelaide Lecture

Daes'(2004) [9] lecture at the *National Native Title Conference*, Adelaide reiterates that it was the General Assembly Resolution 1803 (XVII) in 1962 that gave the principle of permanent sovereignty over natural resources momentum under International Law in the decolonization process. The Assembly declared inter alia 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 the well-being of the people of the state concerned'. In tandem with the resolution, Daes argues that the exploration, development and disposition of such resources, as well as the importation of the foreign capital required for these purposes, should be in conformity with the rules and conditions which people freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities. And that a violation of the right is contrary to the spirit and principles of the charter and hinders development, cooperation and peace.

A principle which originally arose as merely a political claim by newly independent states and colonized peoples, by 1966, according to Daes, acquired the status of a general principle of international law finding expression in Common Articles 1 and 2 of the *Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural*

Rights which state that 'All peoples have a right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. And, 'All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligation arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence'. By Articles 25 and 47 of the Covenant, 'Nothing in the present Covenant shall be interpreted as impairing the inherent right of all people to enjoy and utilize fully and freely their natural wealth and resources'.

Daes equally cites the International Labour Organization Indigenous and Tribal Peoples Convention No. 169/1989 now ratified by 17 countries. Article 7 of the Convention states that 'The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own cultural development.' Article 15 of the Convention states that, 'The right of the peoples concerned to natural resources pertaining to their lands shall be specifically safeguarded. These rights include the right of these people to participate in the use, management and conservation of these resources'.

It is trending in international law and practice to extend the concept and principle of self-determination to peoples and groups within existing states. In the light of this, Daes argues that 'sovereignty' refers not to the abstract and absolute sense of the term as in the eras before the sixteenth century, but rather to government control and authority over resources in the exercise of self-determination since the nineteenth century particularly after the publication of Emmerich de Vattel's *Law of Nations*. It does not mean the supreme authority of an independent State and does not place indigenous people on the same pedestal as the State or does it in the least diminish or contradict the sovereignty of the state but rather, places communities as 'a lesser sovereign under a greater sovereign'. Tyagi (2015) [43] stated this when he observed that it is a fundamental principle of states as well as of the peoples. In recent times, as it applies to the rights of peoples, it is beginning to outshine the rights of states as originally configured.

In other words, the principle is expressive enough of the rights of the people and not just the states; and a discernible trend has evolved to make the people exact control over the oil resources on their native lands. Such trilogy rights are self-determination, informed consent and traditional ownership. Consequentially, state rights have been largely circumscribed and subordinated to those of the people and indicating that both the state and indigenous people share a common foundation in self-determination (Alam & Faruque, 2019) [3]. Therefore, indigenous people have become recognized in many parts of the world as being sovereign like the Indian tribes of the United States of America. In Nicaragua, New Zealand and Canada, laws are emerging recognizing indigenous governance authority over land, territories and resources providing examples of various forms of indigenous sovereignty over natural resources within a sovereign state.

Resolution's Related Instruments

The UN resolution of 1962 is not a stand-alone document. It has more than five kindred resolutions within the ambit of the United Nations General Assembly such as: General Assembly Resolution 523(1V) 1952 on Integrated Economic Development and Commercial Agreements; General Assembly Resolution 626 (VIII) 1952 on Right to Exploit Freely Natural Wealth and Resources; General Assembly Resolution 1314 (XIII) 1958 on Recommendation Concerning International Respect for the Rights of the Peoples and Nations to Self-determination; General Assembly Resolution 1515 (XV) 1960 on Concerted Action for Economic Development of Economically Less-Developed Countries; General Assembly Resolution 1803 (XVII) 1962 on Permanent Sovereignty over Natural Resources; and General Assembly Resolution 2158 (XXI) 1966 on Permanent Sovereignty over Natural Resources (Magogo, 2020) [22].

In 1968 the Organization of Petroleum Exporting Countries (OPEC) issued a similar principle in a declaratory statement of policy to the effect that the inalienable rights of all countries to exercise permanent sovereignty over their natural resources shall be guaranteed as enunciated by the UN. In 1975 OPEC further adopted the proposal for New International Economic Order to promote more equitable global economic order to alleviate poverty and other injustices affecting developing countries by encouraging interdependence between the north and the south of the world (Rahman, 2004) [35].

The principle which has a fairly long history was articulated for the benefit of natural resources of developing countries and their peoples instead of the multinational companies which had already established firm roots before the decolonization process when 'weak and penniless governments may seriously compromised a country's future by granting concessions in the economic sphere'. This consideration was made because according to international scholars like Schrijver and Kilangi (as cited in Magogo, 2004) the aim of colonialism was never the benefit of the colonial state or the colonized peoples. It was for the benefit of the imperial state and it was the imperial states that goaded the colonized to grant ludicrous concessions that gave up whole countries out for no benefit for the colonized peoples. The colonial natural resources concessions were to make raw materials and labour cheaply available to the home empires.

Thus, developed countries and their multinational companies erected the legal regimes in the oil sphere before the UNO's resolution. The resolution changed the balance of power in favour of the developing nations and when they formed OPEC their power took a crescendo that catapulted them into a major world economic power bloc. The developed nations came under so much economic and political pressure as oil consumers that they had to form the International Energy Agency (IEA) to balance the powers of OPEC and her groups of oil producers (Mommer, 2000) [24]. With the balance of power-struggle between OPEC and IEA, the Chilean resolution, as the UNO's resolution is sometimes called, became extremely controversial in international law as it got intertwined with international human rights issues and in the process its understanding became differently interpreted by different peoples and

countries especially as it impacted on foreign investment, political independence and new world economic order (Visser, 1988) [44].

Nigeria and the Resolution

In Nigeria for instance, in 1938 the Colonial state gave Shell the whole of Nigeria covering 357,000 sq miles to prospect for oil. The Colonial state, in the light of the grant, was synonymous with Shell. This is because unmindful of the future interest of the people and communities where the resources might be found, the Colonial state 'gave out too much for too little' as it has turned out to be currently (Nwobodo, 2020) [30]. The concession covered too long a duration, covered too large an area and had no consideration in law of contract howsoever. And as demonstrated by Nwobodo, immediately after the Berlin Conference, by 1889 the Colonial state came up with the Petroleum Ordinance and followed it up with the Mineral Regulation Ordinance of 1907. After the amalgamation the 1914 Mineral Ordinance made mining a strictly British business as only a Briton could be granted concession or a firm a Briton was a Chair or a significant other and natives were not factored in until 40 years later in 1959 when the Mineral Oil Act was passed into law and later superseded by the 1968 Petroleum Act now replaced 53 years later by the Petroleum Industry Act 2021.

In all these nothing has been negotiated for the people and ethnic communities where these natural resources are found except three percent in the current law and the so-called three percent is to be factored out from the annual capital expenses of the multinationals in terms of their direct foreign investment. And this same three percent is ironically to be paid into a fund for whatever reasons while on the other hand 30 percent of the profit of the national oil company NNPCL is to be funneled into the exploration of frontier basins in the north. In other words while the Niger delta communities and peoples are the goose laying the golden eggs, the eggs are being frittered away into oil exploration in frontier basins that have been barren since Adam. As at 2011, Shell's Oil Mining Lease (OML) in Niger delta alone was covering an area of 31,000 Sq km with 6,000 km of pipelines and flow lines, 87 flow stations, eight gas plants and more than 1,000 producing wells and her operations since inception had witnessed more than 5,000 major oil spills discharging over 1.5 million crude oil in the creeks, rivers and farmlands (Augenstein, 2016) [5]. In these circumstances, the resolution has not yielded any substantial benefits for the people and communities where the resources are housed and rather than taking care of them from the profit of the resources they are being used to find resources where they do not exist creating a crucible of conflicts and violence in the region.

Application to Subjects and Objects

The application of the principle of indigenous sovereignty has received both affirmative and non-affirmative advocacy. Firstly, the indigenous people suffer from unfair and unequal economic arrangements that exclude them. Secondly, it is necessary to level the economic and political playing fields and provide protection against unfair and oppressive arrangements and guarantee indigenous inclusion. Thirdly, the resources in question originally belong to indigenous peoples and were not in most situations freely and fairly given up with informed consent. Fourthly, increased extractive activities on indigenous peoples' traditional lands without guarantees for their rights have often created public disorder, health concerns, political and social instability and legal uncertainty. Daes for instance cites the decision of the African Commission on Human and Peoples' Right in the case involving the Ogoni People of Nigeria to the effect that the term 'peoples' referred to in Article 21 of the African (Banjul) Charter on Human and Peoples' Right (affirming a right of 'all peoples to freely dispose of their wealth and natural resources') include a distinct indigenous people within a state and does not refer only to the whole people of the state.

Non-affirmatively, opposition to indigenous sovereignty over natural resources comes mainly from states and their legislatures. Pereira and Cough (2013) [33] believe that indigenous peoples' right is an integral part of the right to self-determination especially when they are led by the state in outlawry as in the Niger delta. To them, communities must be regarded as beneficiary of the principles and a level of self-government ought to be accorded to them as new trends are emerging from the classical conceptualization of the principle. Even though states are not favorably disposed to self-determination, every opportunity ought to be accorded to them to regularize any activities that have greatly affected them or in which they have already been deeply involved to add a new meaning and colour to the principles after several decades.

For instance, a recommendation for official recognition of illegal crude oil refineries by the state and its setting up of a development agency and programme for crude technology to harness illegal refineries for better performance in the Niger delta was shunned by the 2014 National Conference in Nigeria. King Daukoru (2004), the Amanayabo of Nembe and former Petroleum Minister, argued in the Conference that the 'technology being used by these local refineries is too crude' and 'without the cracking capacity, you recover just about a third of the crude oil stock being put in. And also what is being put out in terms of quality is not friendly with the kind of usage it is being put to, whether into generating sets or sophisticated automatic engines, they actually destroy your engines'. Yet, it is the very reason for which the programme was to tackle that the king and state-actor gives for not establishing the programme and legislation. The same 2014 National Conference rejected the call for the establishment of a special court for environmental issues but endorsed resource democracy defined as the right of the people to own and manage their resources by prospecting for and developing such resources in their territories (Confab Rejects…2014) [28].

The case of the indigenous people of Sami in the coastal lands of Norway, Sweden, Finland and Russia is also illustrative. The Sami have occupied and used the coastal lands since time immemorial but legislations to give the lands, resources and governance in the traditional Sami area of northern Norway has strongly been opposed by the Sami Parliament (Daes, 2004) [9]. But as submitted by Daes, while International Instruments, Tribunals and Commissions continue to grapple with advancing our understanding of the scope of indigenous peoples' right to their lands and resources, and as laws, mechanisms and measures are developed to address the issue, states and indigenous people should concern themselves less with what the right might be named such as self-determination, and more with whether indigenous peoples' ownership of and governing authority

over their natural resources are adequately recognized and protected. In the light of these, researches have recommended that communities should matter more and be crucial in the oil and non-oil extractive sectors (Naibbi & Chindo, 2020) [29].

Therefore, Daes reaches the following conclusions: firstly, laws and legal systems that arbitrarily declare that resources which once belonged to indigenous peoples are now the property of the state are discriminatory against the indigenous peoples, whose ownership of the resources predates the state, and are thus contrary to international law. Secondly, if indigenous people are deprived of the natural resources pertaining to their lands and territories, they are deprived of meaningful economic and political self-determination, self-development and in many situations, would be effectively deprived of their cultures and enjoyment of other human rights by reason of extreme poverty and lack of access to their means of subsistence. Thirdly, State laws and policies that arbitrarily deny or limit indigenous peoples' interest in the natural resources pertaining to their lands appear to be vestiges of colonialism that ought to be abandoned (Daes, 2004) [9].

Application to Non-State Actors

Critical conversations have also surrounded the application of the UN resolution to non-state actors. The debated to widen the scope to legitimize the claim of non-state actors to be captured within the principles have been brought forward by Pereira and Cough (2013) [33]. It is canvassed by them that the rights which non-state actors can exercise are inclusion, participation in decision making, ownership, consultation and informed consent and the rights to share benefits from the exploration of minerals on indigenous lands. They believe that by according non-state actors such rights, the state is doing well to concede inclusion and a paradigm shift from Oppenheim's conceptualization that only states are actors and subjects of international law. In order to transform the principle from abstraction into a living reality as complained by Zakariya (1980) [47] who complains that the principle 'still represents a little more than an abstract ideal' non-state actors can be looked upon for consideration.

If Zakariya's suggestions are coupled with the current state of economic business in the oil and gas industry, non-state actors can have the net widen for them. Rodriguez-Padilla (1991) [37] has made the substantial and significant points that petroleum nationalism seems to be coming to an end and that the oil and gas industry is no longer synonymous with the state. The multinational oil companies are no longer looked upon as villains and marauding wolves in the African continent but partners in progress with the state. There are new state-company relationships that can now be considered as familiar terrain for non-state actors. In fact, with slump in the prices of petroleum products, revisionism and denationalizations in the industry, and massive sell-off of blocks, wells, reserves, outright elimination of the rights of states, the entry of non-state actors into the business and contractual space with international respectability is open after several decades of failure of public ownership and the triumph of private public partnerships and initiatives.

In Nigeria, for instance, in the Niger delta, the state has demonstrated evidence of incapacity to secure its oil pipelines and it has farmed out the surveillance of the pipelines to oil militants. This specie of contracting space has been open for more than three decades when corruption and huge decay became noticeable in the oil and gas sector. It has expressed itself in even large scale oil theft and illegal refineries in the creeks of the delta. The state has continuously mulled the out-right scale of its four refineries in Part-Harcourt, Warri and Kaduna. It has failed to turn them around despite several attempts with huge resources going down the drain and the dinosaurs failing to refine a single drop of fuel for more than four decades after Nigeria accepted the Structural Adjustment Programme (SAP) that was dictated by the IMF and World bank that counseled it to disinvest from the public corporations and commanding heights of the economy.

Conflicts Incidental to the Resolution

If the resolution was actuated by the desire of new and developing nations to gain economic independence, critical economic conflicts arose after the passage of the resolution between foreign businesses and the new nation states. The problem was no longer imperial domination in the political space as flag independence was granted but foreign multinational companies began to step into the shoes of the colonial masters. While the new nation states postulated that the foreign business empires were to be subjected to and governed by national legal regimes, the foreign investors argued that as international entities, they were to be regulated by international law.

The conflicting postures were further consolidated by a division of the United Nations into the Socialist and Capitalist camps of USSR and USA. The struggle for the survival of foreign investments in the new states and the determination of the new states to assert their economic independence became tied with the ideological battle of supremacy and a cold war that was to last for more than 40 years ensued. The critical arrow of the struggle became for authorities like Hossain (2018) [19] the nature of the relationship between a developing host state and a foreign company like Shell which had hitherto taken up the entire country of Nigeria as its sphere of mining interest. To expropriate such a commercial interest in the post resolution period became a critical issue of conflict. Mwashambwa (2023) [25] for instance, considered the question of what law was to apply in disputes relating to production sharing contracts in Tanzania: whether it was international law or national law or the agreement of the parties.

To resolve this nature of conflict, minimum standards of economic behaviour were developed resulting in economic strategies like joint ventures and production sharing contracts. The foreign investors which had previously anchored their economic foundation on nebulous concessions were made to bring up their commercial activities to speed and plug them with modern concessions and licenses. By so doing, huge economic gains and resources inured to the host states' coffers so much that the need for the tax of the citizen for the revenue to run the state became ignored. In Nigeria, a complete disconnection or gap grew between the state and the populace. While the state was swimming in economic flamboyance of unearned resources which is paid to her through the multinationals, the state left the citizens unhinged to the question of the survival of the state.

How the state earned its revenue no longer became the business of the citizen and the moral courage to call the state to account for how, where and on what the state resources

are applied for no longer arose or existed. The state also lost the moral courage to go back to the citizens to validate its periodic mandate because the citizens no longer determined the finances of the state through their payment of tax. It was obvious that a citizen who did not participate in the baking of the national cake will only be passive as to how it is shared or spent. If he gets a crumb from the sharing table it will be alright and it will become the good will and largesse of the state. Thus, as found by Augenstein (2016) [5], increases in natural resource wealth are strongly correlated with more corruption, authoritarianism, insecurity and civil war due largely to lack of tax ensuing from the citizens for the running of the state craft.

As it happened to the citizen so the various communities that constituted the state were unhinged to the government. A conspiracy grew up between the multinationals and the state. The economic conspiracy was for the multinationals to farm and mine the resources and bring same to the sharing table after deduction of cost of production. This became the new minimum standard. The neo-colonial state arose and in comingling with multinationals a new economic order arose. The multinationals simply assumed the garb of the ex-colonial state by shedding it political-administrative duties and took up the economic one strongly. The multinationals (acting through the ex-colonial states) took up technical assistance as the new missionary fervor in the host states.

Great store was given to technical assistance so much that unhealthy rivalry grew between the east and the west over economic influence in the new states some of which took more to the east in order to better assert and extricate themselves from colonialism. The eastern bloc equally took revolutionary tendencies to the developing states and within them rival governments and bitter wars of liberation struggle took ascendancy. By the 1990s the golden age of capitalism (neo-colonialism) over socialism and absence of opposition to multinational plunder led to economic devastation and excesses of the foreign companies. In the domination of the world by big business and the pursuit of profit in conjunction with state-actors at the expense of the humanity of the citizens, communities and their ecological environment, moral and ethical values became called into question. This comes in conflict with the express intention of the UN resolution which was captured by Atsegbua (1993) [4] in the terms that: on no condition may a people be deprived of its own subsistence on the ground of any rights that may be claimed by another state or its state.

The challenge of the aftermath of the resolution became neo-colonial state oppression of its citizens and communities where these natural resources are found. The inhuman methodology of exploration and the unsafe ecological effect on the citizens and the communities no longer became the worry and concern of the new nation states. Having become the new Lords of the manor, the new nation states could no longer realize the role they had to play, and instead, became an end in themselves. The welfare of the citizens and the communities no longer became the purpose of government and governance. The citizens and the communities became the victims of the law that the principle was advocated to help.

The new states that emerged that were to exploit the natural resources for the good and economic welfare of the peoples, citizens and the communities, became self-conceited and vain. Academics, intellectuals, non-governmental organizations, non-state actors, human right activists, rights campaigners, environmentalists took up the gauntlet. Ethnic nationalities and organizations grew up in the new states. Little wars, small conflicts, localized disputes, boundary grouses became the order of the day. Yamamoto (1976) [45] reached a conclusion that in the years to come rather than expect a world war three, or large nation wars, boundary disputes, small nation wars and local disputes may proliferate over natural resources differences as currently between Russia and Ukraine over separatist agitations.

A new genre of ethnic nationalism has thus arisen across the oil producing communities because of the after effect of the resolution. The ethnic communities have realized that the principles enunciated in the resolutions have resulted in a huge deficit in their development. They have mustered a great number of ethnic frameworks in agitations. They have instituted bodies, agencies, committees, groups, age grades, movements, revolutionary structures, militias, vigilantes, foundations, clubs, cults, initiatives, unions, bands, etc against not only the multinationals but against the state. The current era is thus the era of the citizen, the communities and their frameworks against both the multinationals and the state.

The believe that these frameworks have resonated against the two beneficiaries of the UN resolution can find validation in the recent works of Bagia and Dike (2020) [6] who found that although the resolution is an internationally acclaimed instrument and principle and that the circumstances in which the resolution was proclaimed were applicable to Nigeria, they submit that the people of the country have not benefitted from the pronouncements of the principles because the Federal government had deployed the instruments of legal regimes to appropriate what belongs to the people and multinationals have keyed into the advantages of such weak but obnoxious legal regimes and regulations to undermine the entrenchment and enjoy of the provision of the principle in Nigeria.

A similar study in Zimbabwe reached the same result as that by Bagia and Dike. Yolanda (2013) [46] believes that although extensive researches have demonstrated that exploitation of natural resources can conduce to national development, many countries like Zimbabwe, through her corrupt state-actors, have negligently failed to deploy the benefits of exploitation of mineral resources for the benefit of the people of Zimbabwe. Yolanda submits that those in position of power have squandered the opportunities that natural resources wealth had afforded the country. Opining that legal regimes in Zimbabwe have not been used to facilitate a people driven interpretation of the UN resolution, mining regulations have vested the custodial right over gold in the Presidency creating opportunities for wide ranging abuse in the sector and diminishing the access of the people into the sector. Jong (2015) [21] and Ibiam & Faga (2021) [20] had reached a similar conclusion as Bagia, Dike and Yolanda.

Experience from South Sudan is not different. The negotiations which eventually culminated in the independence of South Sudan addressed the issue of the sharing of the huge oil wealth of the country which only but gave a negligible portion for communities living within the vicinity of the deposits (Perouse de Montclos, 2023) [34]. Defining the rights of the peoples and their states to freely exploit and determine the use of their resources have been locked up in a jinx that is manufactured and manipulated by international oil companies so much so that the principle has

largely turned out to be a mirage in the face of the realities of the third world nation states.

Era of Non-State Actors

The resolution can be said to be innocuous. It was made for the benefit of the new nation states (when their numbers proliferated) to assert that they were economically independent and had the permanent sovereignty over their natural resources regardless of what existed or per-existed before their independence (Subedi, 2007) [41]. But the new nation states were made up of citizens and communities. The sovereignty of a state derives from the citizens and the communities which donated their powers; and their interests have not been keyed into the interest of the new states. These have given rise to the duplication of interest or bifurcation of loyalty and delegation of part of the right to all manner of pseudo institutions, whether legitimate or illegitimate, to fight for them. These frameworks have also been recognized by states, multinationals and international organizations as non-state actors. The fact of their recognition and existence has called to question, the legitimacy of the resolution. These frameworks have been so forceful in recent times, that multinationals and the state have had a hell of pressure in the manner of having to deal with them. They have had to come clear to the fact that they would not recognize these frameworks or entities except the 'communities'.

In other words, in dealing with the peoples and communities, multinationals and even the new nation states have come-clean with the minimum standard that they do not deal with individuals or families and all these foregoing itemized (non-state actors) frameworks but with communities. Yet the policy has neither been safe nor true to type. Contracting has thus become the easiest way to identify and deal with these pseudo frameworks. In the process, the commercial space and the corporate world have seen a sea of so many incorporated companies, organizations and partnerships that have been disguised as these various frameworks. These militias, vigilantes, revolutionary bands, and cults have morphed into corporate structures swarming the economic space of the corridors of state power and the premises of multinational companies for one form of commercial-contractual deal or the order. Because the state has failed to capture them in its regular activities and the multinationals have also failed to capture them in their corporate social responsibilities, they have taken to these pseudo corporate outfits. And it seems to be working out. What the frameworks have failed to get through the official channels of regular government activities they have accessed through rent and contract. What the state would have used to provide social amenities and infrastructure, and what the multinationals would have spent on tax and social responsibilities are frittered away through rentierism, contractarianism and predendalism. As captured by Aisha Ismail (as cited in Okeke, 2014) [31] the problem became how a country with huge natural resources is going around with its citizens fighting a never-ending war for commissions from multinationals. In the process the people and their communities (as the appropriate legal entities to be catered for) are sidelined. Infrastructure are thus neglected, formal sector jobs are un-provided. Across the terrain wealth without labour is flaunted.

The resolution did not envisage a cluster of sustainable development issues and challenges such as corruption, waste and ethnicity; it did not envisage that the new states would not apply the wealth of their nations for the economic and social benefits of their peoples and communities and that infrastructural decay of the magnitude currently in the communities would arise. The resolution did not envisage that there could be recklessness on the eco-environment of the communities housing these natural resources and that so much callous plunder could be brought to bear on the mining of the resources that the fear for the safety of the present and future could arise in a few decades down the line. In other words, the resolution was a blank cheque to the new nations and upon the opportunity falling on their laps, they forgot their people and communities and sold out to the same forces they initially rose to attack and against their people they initially rose up to defend.

Doctrines such as nationalism, nationalization and indigenization became moribund and instruments of rabid transfer of the commonwealth of the new nation states into the private and foreign bank accounts of the state-actors and the nationalists. In Zimbabwe as in Nigeria, the laws have limited the 'say' of the people over how revenue from the harvests of gold, diamonds and oil is utilized and how they intend to benefit from them. This has made Tyagi (2015) [43] to reemphasize that all peoples shall have the right to self-determination to freely determine their political, economic and social cultural status including control of natural resources for their wellbeing.

Conclusion

There are no doubts that the Nigerian state is suffering from natural resources disease. She is being buffeted on all sides by self-determination agitations because of her failure in the management of the huge natural resources that she has used the instrument of law on the basis of the UN resolution to arrogate to herself. If called upon to show concrete evidence of how the citizens and the communities have benefitted from the control of such enormous resources since independence, there may be little or nothing to show.

In the circumstances, the concept of permanent sovereignty over natural resources by the state has been terribly assailed and brought to disrepute by relevant concepts like the people, communities and non-state actors. Where the state and multinationals ought to have won laurels and accolades they are being festooned with crowns of thorns, odium and opprobrium. Evidence is abundant that corruption has impacted negatively on the operations of the state and multinational companies. Philip Watts of Shell has demonstrated that work can only go on with heavy presence of armed militias and continued civil unrest and conflicts can only result in force-majeure.

Millions of dollars that the state was contractually required to pay as counter-part funds to develop reserves found their way into the Swiss bank accounts of corrupt government officials. 'A succession of Ministers not only stole the eggs but refused to even feed the goose' (Bower, 2009, p. 66) [8] In 2006, the multinational oil companies had paid 90 percent of their counter-part fund of $25 billion over three years to the Nigerian state but the state failed to contribute its share of the oilfields development (Bower, 2009, p. 389) [8]. The Natural Resource Governance Institute (NRGI), an international watchdog has equally accused the NNPCL of failing to remit $12.3 billion into the federation account from Okono field between 2005 and 2014 in volumes

totaling over 100 million barrels (Eboh, 2015) [12]. Yet the people and communities have not fared any better.

Recommendations

- Legal reforms and legislative reviews are needed for people and community driven development as they sink deeper below the poverty line and the recent 16-point Constitutional review and amendment by the out-going Buhari administration would be required.
- The oil and gas resources should be placed on the concurrent list as energy has been currently done in the said 16-point Constitutional amendment.
- Nigeria should fight corruption in the natural resources sector head on than waiting to be goaded to do so by International Agencies when in fact the corruption is fueled by multinational oil companies

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