TWENTY-ONE

AN APPRAISAL OF THE ROLE OF REGIONAL AND SELECTED INTERNATIONAL ORGANISATIONS IN THE OIL AND GAS INDUSTRY: FOCUS ON OPEC, IEA, WORLD BANK AND UNITED NATIONS.

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Abstract

Since the late 1970s international oil markets have been fundamentally transformed. One important consequence of these transformations is the existence of a liquid, competitive, and truly global market for oil. Before the first oil shock in 1973 international oil markets were dominated by the internal trading schemes of the major Western oil companies that had concessions in oil-exporting countries. Alongside these arrangements, though less prominently, ran state-to-state deals between consumer and producer nations. As a result, most of the globally traded oil was bound up in long-term bilateral contracts, resulting in low liquidity in international markets. These bilateral contracts were drawn up in an era during which supply cutoffs were simply not expected and rarely materialized (the few exceptions included the closing of the Suez Canal in 1956 and the embargo on Iranian oil exports in 1967 after the nationalization of the Anglo-Iranian Oil Company by the shah). This Paper examines the role and operation of the major international organisation responsible for the development of Oil and Gas Industry and policy, and focus was made to OPEC, IEA, World Bank and United Nations , with comments on their role and functions, the study recommended that the International oil industry will thrive in a more global World Energy Agency (WEA).

Keywords: ***Organisation, OPEC, IEA, World Bank and United Nations***

1.0 Introduction.

The oil shocks of the 1970s fundamentally changed the rules of the game in international oil. Consumers found themselves facing tremendous difficulty in replacing oil supplies lost as a result of the 1973 embargo and the political turmoil in the Persian Gulf region at the end of the decade. In the immediate aftermath of the 1973 crisis (compounded by the removal of U.S. import quotas by the Nixon administration), finding alternative sources proved complicated and costly. While oil market conditions eased significantly in the late 1970s, consumers had, for the first time in history, seen the effective application of the oil weapon by producer nations.[1] This perceived vulnerability also triggered the sense that a forum for consumers was needed for effective information sharing and emergency coordination in response to supply shocks.

Thus, in the aftermath of the oil shocks, consumer nations of the Organization for Economic Cooperation and Development (OECD) created emergency sharing mechanisms and combined forces in the International Energy Agency (IEA). At the same time, oil exporters' efforts to nationalize domestic production not only deprived Western Big Oil of concessions and hence access to reserves, it also broke up the vertical integration of the industry and, as a consequence, deprived the newly created national oil companies (NOCs) of refining and retail outlets in importing markets. This process had dramatic results, significantly increasing the fungibility of crude oil and thus helping to create a virtual global pool of oil that made price formation more transparent and predictable. In fact, it marked the starting point of large-scale liberalization of the global oil market. This push toward liberalization was at least tolerated by some of the producer countries (most notably Saudi Arabia), which hoped to attain a higher degree of control over government budgets that were highly sensitive to fluctuating oil prices. While admittedly driven by market forces rather than government design, this process also resulted in the creation of spot oil markets in New York and London and of oil futures contracts (paper oil), thereby crafting a new oil world no longer depending on bilateral long-term contracts. In turn, the liberalization of international oil generated major efficiencies, facilitated the development of new supplies, and fostered price competition.

This paper sets out some functional institutions in the international Oil Industry and use it as a purely heuristic device to highlight and emphasize the important role these institutions play in making energy markets tick. Some of these institutions are designed to correct market failures. International oil and gas markets are no nearer perfect than any other market structure. Following the 1973–74 oil price shocks major energy-consuming nations established the IEA. In addition to acting as a source of energy market statistics, the IEA introduced distinct rules for two specific mechanisms of short-term supply (risk) management: the International Energy Program (IEP, founded in 1974, which established national emergency oil stocks among members) and the Coordinated Emergency Response Mechanism (CERM, founded in 1979).

1.1 Overview of International Organization in the Oil Industry.

International organizations play a central role in the emergence of international energy law. They represent a response to the globalisation of the regulatory challenges. As national regulation loses its grip, international agencies emerge to mirror the global scope of action of relevant actors – multinational companies, banks, non-state actors, criminal groups, but also the global scope of problems – trans boundary environmental impact, need to create more level playing fields for competition in global trade, development and administration of a system of global legal disciplines to ensure the wealth-creating machine of the global economy can function properly, including its social

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[1] . As it turned out, however, the years following the 1973 embargo saw an easing of oil market conditions, primarily as a result of the global economic downturn, which depressed demand for oil. In addition, the price hike initiated by OPEC also triggered powerful conservation and technologyswitching efforts in consumer countries, which progressively reduced the energy intensity of consuming economies.

safeguard. One could qualify the role of international agencies in this sense as "collaborative international regulation;" it is rare that governments yield all or even a substantial portion of their regulatory jurisdiction to international agencies, except where inevitable, and even then with safeguards. The much more homogeneous and integrated European Union's relation with its member states – and the well-known British reluctance to yield sovereignty – is a good example. International agencies in this area are therefore more a prototype of true international regulation; they help its member states to regulate better by providing model guidelines, collective and better regulatory intelligence and a forum of dialogue and collegiality.[2] As we shall see, they are primarily intergovernmental collegial networks. This, in turn, helps national regulation to be more aligned with each other.

National administrations usually establish formal and informal channels for collaboration as part of their participation in international agency activities (conferences, workshops, elaboration of model codes). There is an explicit, visible role of international agencies in the regulatory process – servicing the negotiation and administration of treaties, formal elaboration of standards and guidelines and, though rarely, direct regulatory power. Elaborating technical standards, usually in collaboration with experts in governments, companies and industry associations, is a latent, but key, direct regulatory role.[3] Such standards maybe directly binding, but in most cases they have an indirect legal effect: as standards of due diligence for defining civil responsibility, by explicit incorporation into contracts or by reference in national or international (e.g. GATT/WTO-based) law. They also work by providing national governments and domestic experts and social forces with a ready made set of usually well researched, tested and often elsewhere applied rules. These possess the political and technical legitimacy pertaining to "authoritative" international standards. Standards by the IMO for offshore pollution and dumping, by the IAEA for nuclear safety of facilities and transport, by the OECD on good conduct by multinational companies, by the World Bank on environmental assessment of lending projects, by UNCITRAL on infrastructure concession contracts, by the UN on environmental considerations in mining or by non-governmental organizations such as the Institute of Petroleum or the American Petroleum Institute on safety and environmental best practices of oil and gas operations are in many ways the most significant rules applicable in the respective industries.

Their "legal" nature is often not immediately apparent; the fact that they are usually not produced by lawyers, but by engineers should not blind the analyst from their significance. But international organizations also have an implicit, informal and less visible role: serving as a forum for discussion, an actor (often with some autonomy and independent dynamics) with agenda-setting power, international agencies also provide legitimacy and a benchmark for national regulatory action. There is a feedback process between the national level, the NGO and business level, the authoritative media (foremost the Financial Times) and the international level. Innovations and new concepts jump from the domestic level to the international agency level. They are here processed, refined and negotiated into a more universally accepted format. They then leapfrog by way of an agency endorsement to the level of national regulation.[4] At times, international agencies acquire true international regulatory competencies. The EU is the best example. The new EU energy law emerging out of the 1996/98 electricity and gas directives and its current amendment proposals illustrates the balance between true EU Commission powers and national regulatory powers to be exercised within the EU energy law framework. The more technical the subject and the more homogeneous the membership, the more it is likely that international agencies obtain true and direct regulatory powers, often exercised jointly with national enforcement authorities. IMO, WIPO and other specialised agencies illustrate this angle. Here, there are superior technical and efficiency reasons for transferring direct regulatory powers, and less "sovereignty" reasons related to more politicised issues for keeping such power at home.

[2] J. Weiler, "The Rule of Lawyers and the Ethos of Diplomats – Reflections on the Internal and External Legitimacy of WTO Dispute Settlement" (2001) 35 *J. World Trade* 191.
[3] A. Wawryk, 20 *JENRL* (2002), on international environmental standards in the oil industry: Improving the Operations of Transnational Oil Companies in Emerging Economies
[4] N. Beredjick, T. Wälde, *Petroleum Investment Policies in Developing Countries* (1987).

International agencies serve as vehicles for transnational coalitions[5] to impose or influence by persuasion of national regulation, usually to counter the stronger influence of domestic pressure groups (protectionist business or labour lobbies, ideological pressure groups).[6]

The agency, with its experts, funds and machinery for consultancy work, meetings and publications, serves as forum for the elaboration of common rules by such specialized communities. The national representatives then return to their domestic regulatory process with the added legitimacy and technical and informational underpinning gained in the international agency process. The international agency, so to speak, is the nest to which and from where "birds of the same feather" fly into their domestic political and regulatory context. This leads to another non-conventional observation. One generally ignored quality of international agencies is their scapegoat role for domestic politics.

1.2 Impact of International Organization & Regulation in the Oil Industry.

There is nothing more convenient than putting the blame and political responsibility for necessary action which is strongly contested by vociferous interest groups, on international agencies and international obligations. The EU is the perfect example of national civil servants negotiating a regulatory agenda with the EU Commission staff. National politicians then blame an external and therefore intrinsically unpopular organization for the result they have all designed jointly. The current politicization of the most visible international agencies (World Bank, IMF, WTO, OECD) resulting in agitation by the inchoate and disparate forces of the anti-globalization movements is a consequence of governments re-directing protest to faceless international agencies. In fact, national governments often encourage and later sympathetically take up such protest, to the extent it serves their interest in gaining legitimacy and public opinion support.

In consequence, such international agencies have to engage in a political, not only technical dialogue with non-governmental forces. This is likely to lead to a further weakening of nation states and to more "real" power and legitimacy than the currently only apparent power of international organizations. The anti-globalization onslaught on the "pretend" power of international agencies may therefore result in the end in real power. International agencies are therefore in the midst of globalization: proto-regulators of the global economy, they become the target of the anti-globalization protest. They will in turn become politicized actors in global media campaigns, rather than just acting as the "servants" deriving funds, power and legitimacy from the members of the "nation states club."
The primary and traditional function of international agencies is to provide the secretariat services for conferences out of which emerge regulatory instruments such as multilateral treaties. The WTO services the GATT-related treaties (and subsidiary instruments such as protocols and understandings), the Energy CharterSecretariat, the protocols and decisions of the Energy Charter Conference and IMO for various offshore pollution and dumping protocols. International agencies always proclaim that they are mere "servants" of the governments meeting in conference.

This is an essential element of the official self-presentation. They will use such defence in particular when attacked by outside forces (press, NGOs) for disliked treaties, treaty administration and their mandate-based activities. This is formally correct: intergovernmental organizations consist of a "secretariat" providing faceless "clerical" services to their governmental masters: preparing studies, conferences services, support of negotiations, reports on implementation. Formal decision powers, treaty-making and the making of subsidiary law under treaties rests as a rule with the conferences or governing bodies composed of government representatives – economic ministry delegates in the case of the OECD, finance ministry delegates in the case of the World Bank (here acting through the World

[5] E.g. national ministry, international business associations and international agency officials and their expert networks or, with a similar structure, national environment agencies, international NGOs and the environmental agency network. On the competition of such transnational constituencies, see T. Wälde, "Sustainable Development and the 1994 Energy Charter Treaty: between Pseudo-Action and the Management of Environmental Investment Risk", in F. Weiss *et al.*, (eds), *International Economic Law with a Human Face* (1998), at 223–271.

[6] R. Putnam, "Diplomacy and Domestic Politics: The logic of Two-Level Games"
(1988) 42 *International Organization* 427.

Bank executive directors), environmental ministry delegates in UNEP and so on. The view of the role of the organization is usually described in the charters and other legislative documents setting up the organization. But such defensive escape into anonymity, while formally correct, also intentionally ignores the reality.

An international organization, while professing to be only the servant of its governmental masters, develops within a short while a life, interests, external constituencies and an organizational dynamic of its own. Pure formal descriptions focusing on founding instruments and organizational self-representation are therefore unable to capture the reality of an international agency and its role in the evolution of energy law. International agencies foremost develop a corporate self-interest in perpetuating themselves, even when their original purpose has evaporated. Since they are usually not set up with explicit "sunset" clauses, i.e. a finite end, like a task force, they will continue to exist even when the original purpose no longer exists nor requires the organization's continued existence. International agencies will therefore work hard at pretending that the original purposes still exist and are valid – and justify the considerable expense, usually by membership fees, to maintain them. They will in addition adapt to respond to issues they see as suitable for their survival.

2.0. Organization of Petroleum Exporting Countries (OPEC)

If one tries to deal with truly "international" Oil Industry, OPEC is the international organization with the greatest impact on the oil sector, but also with influence on energy and energy-related environmental questions, and not only on production and trade, but also on investment. OPEC countries currently control about 75% of the world's oil reserves and 40% of oil production. What is more, most of low-cost oil is produced by OPEC countries. This means that a prolonged slump in prices will tend to enhance these market shares.[7] High-cost producers also tend to deplete their reserves much more rapidly. This means that the lower the price, the greater the subsequent enhancement of future OPEC's market share. The suppression of the existence of OPEC that one finds in Western international law literature reflects a Euro- or US-centric perspective.

OPEC is an actor that does not fit well into a traditional perspective given that it has been seen, since the 1970s, as at least co-responsible for high oil prices, nor into the modern "green" perspective since it pushes, naturally, for hydrocarbon consumption. The fact that a high oil price has as much of an energy-efficiency impact as most other measures undertaken by Western governments does not help – it is a high oil price imposed by the interest of producing countries and not, as the EU large gasoline excise taxes, for, at least ostensibly, environmental reasons. It also does not fit into the mind-set of Western NGOs: OPEC does not conform with the dominant view of developing countries as victims and passive beneficiaries in need of high-minded Western support and guidance, but it is rather an independent actor outside Western control. It is also barely, if at all, the object of NGO attention or exposed to NGO pressure.

NGOs play virtually no role in the political systems of almost all OPEC countries. In the 1970s, OPEC was viewed with great hostility (including US calls for "resource wars") as it seemed to set up a dependence of Western countries on a group of developing countries – which is counter to the situation seen as normal. OPEC still carries the image of the 1970s with Sheiks swimming in petrodollars. But, apart from Qatar, UAE and Kuwait, OPEC countries are much closer in their socio-economic make-up to developing countries. It was also seen in Western countries, particularly in the US, as threatening the high standard of living, which is largely based on comparatively high per capita hydrocarbon consumption. OPEC, is observed to be currently the one global force which keeps the US and European petroleum production, its industry and its companies, alive and in healthy profit. This fact is counter-intuitive and counter to the standard reference to the "OPEC cartel".

It facilitates worldwide adaptation of companies' production to demand, thus smoothing destabilizing price cycles; it also makes addition of new capacity, with its destabilizing influence on the normal

[7] Low oil prices will also tend to increase the efficiency in high-cost areas (e.g. North Sea). Significant results in terms of lowering production cost have been achieved, e.g. by the UK CRINE initiative. This incentive for efficiency is not present in the Middle Eastern low-cost producers. But the difference between, say, North Sea and Saudi production cost is still very large

price cycle of this commodity, more difficult by restricting access to acreage for new oil development.[8] In other words, it carries out the functions of the corporate petroleum cartels – then supported by their governments – of the past. In addition, by working against a fall of prices to their marginal cost, OPEC's effects are the equivalent of adding the ideal climate-change tax on hydrocarbon consumption. Restriction of investment in OPEC countries – basically for production likely to exceed the present and perhaps expected future quota – has an effect of supply restriction, again something that environmental groups opposed to oil have called for. Multinational companies and environmental groups are thus the silent partners of OPEC, though still quite unconscious of this and mostly trapped in the frame of mind of the 1970s.

The only divisive issue of substance at this time is, as is normal, the division of spoils. The main cost of OPEC falls on consumers. Though, arguably, its pricing strategy – well beyond marginal production cost – also means greater security of supply as otherwise uneconomic reserves, as a rule outside OPEC countries, have been developed. Without OPEC, the only reserves worth developing would be those low-cost reserves, mainly in a very few countries in the Middle East. OPEC was founded in the 1960s through a Venezuelan-Saudi initiative to reduce dependence on the international oil companies.[9] At the root of OPEC's formation were pricing disputes with the companies and US import restrictions. The main objective was to establish a common front vis-à-vis the oil companies with respect to several fiscal issues ("expensing royalties" in lieu of crediting them against tax; calculation of the proper reference price for oil taxes and royalties). Its objectives evolved in the 1960s in response to US government and oil company action moving gradually from a focus on tax matters to oil pricing.

First, a developing country producers' association to develop links, information and discussion, it supported the efforts of major producing countries in the 1960s and 1970s (Iran, Gulf countries, Venezuela) to take over foreign-owned operations and set prices. OPEC Resolution XVI.90 of 1968 formulates a common agenda and the legal position of producing countries.[10] This crucial, now quite dated, resolution also expresses explicitly the otherwise implicit OPEC policies restricting acreage access by the international oil companies; the principle is still alive in the Middle East, but has been disregarded in Indonesia, Venezuela and Nigeria.
In terms of impact on international law, that was perhaps the period of the major impact: OPEC's position was fully aligned with the then prevailing "Third World" claim for a "New International Economic Order" with "Permanent Sovereignty over Natural Resources" and exclusive jurisdiction over foreign investment, including the right to nationalize. OPEC's then success fed directly into the formulation of the NIEO resolutions of the UN General Assembly, and those in turn provided and amplified legitimacy to OPEC actions without much attention paid to the fact that the increase of the oil prices then affected developing countries most.[11]

Similarly, much of the Western strong and instinctive opposition to the NIEO concept was based on the fear of being at the mercy of the oil producers grouped in OPEC, a fear that, with the NIEO being buried, energy of more plentiful and supply of more diversified, is hard to appreciate in times of oversupply and low prices. This fear, naturally, recurs in times of tight supply and high prices, and in particular if there are concerns over politically (or now religiously) motivated supply disruptions. With most of the upstream oil and gas reserves and production in the hands of producing countries' state enterprises by 1980, OPEC became the forum for dialogue, and sometimes collective action, by its members. While the very early days of OPEC focused on royalty/tax questions, by the 1970s the focus was price setting. This was later replaced by the use of production quota for each country. The intention then was that through the change of the production quota in response to market conditions,

[8] B. Mommer, *Global Oil and the Nation State*, 2002, develops this as an implicit function of OPEC since the 1970s
[9] P. Stevens, *Oil and Gas Dictionary* (1988), 138–140; L. Lugo, *The Amazing Story of OPEC* (1997).

[10] H. Zakaryia, quoted in: T. Wälde, "Revision of Transnational Investment Agreements" (1978) 10 *Lawyer of the Americas* 265.
[11] T. Wälde, "Requiem for the New International Economic Order," in G. Hafner and G. Loibl (eds), *Festschrift fuer Ignaz*

prices within desired price bands could be achieved. With oil revenues dramatically increased after 1973 and again 1981, it set up the OPEC Special Fund for development aid.

OPEC was seen as a threatening "cartel" in the 1970s when it tried to set prices, but it is not clear if market conditions and actions by the major producing countries (in particular Saudi Arabia) or OPEC as a common voice of the producing countries were the real cause. The view of OPEC has largely mirrored the ups and downs of oil prices: a threatening cartel in the 1970s and early 1980s, it became a "paper tiger" and mere façade for Saudi policies after the oil price declines in 1985 and again in 1998.[12] When quota discipline did seem to stick again in 2000, to the US it was again viewed as an illegal cartel.

OPEC did move closer to the image of a conventional cartel in the 1980s when it set production quotas for its members. These failed to a large extent due to lack of discipline, but the severe collapse of oil prices in 1985 and again in 1998 seems to have persuaded its members (and significant non-members such as Russia, Oman, Norway, Mexico and the US oil industry) that there is mutual overall benefit in the quite normal market logic to reduce production and capacity in a low-demand, low-price context, and increase it in a high-demand and high-price context. As of 2002, OPEC seems to have managed to respond, even if not perfectly and to all theoreticians' recipes, to oil price volatility by a corresponding adjustment of the OPEC member's quota. OPEC is an international organization headquartered in Vienna with a staff of about 120 (with 25 senior professionals from member countries). The secretariat does not, unlike other international agencies, seem to have developed a major autonomous role. It is engaged in research, monitoring of market trends and technical preparation of the meetings of ministers. Attempts to acquire a larger role of its own seem to be regularly rebuffed by its members.

3.0 International Energy Agency (IEA)

The IEA in Paris is the Western response to OPEC, though to mention explicitly this reverse-mirror role seems to be taboo. It is the main international organization dealing with energy, though its mandate, membership and operations are very limited essentially. It is an intergovernmental energy policy institute for Western countries which also manages an emergency sharing system. Its importance also derives from the fact that there is no global intergovernmental energy agency. Quite likely, the division between the Western (IEA) and producer country world (OPEC) is the reason that there has not been enough political interest and effort to create a World Energy Agency (WEA). Existing international agencies with an energy mandate (UN, UNCTAD, UNEP, UNIDO, World Bank) would also see their turf threatened if a World Energy Agency were to be created and would seek to take on such mandates.

The IEA was founded in 1974 on a suggestion by Henry Kissinger made in 1973, at the height of the first oil crisis, sudden increase in oil prices and take-over of foreign-owned oil production by the producing countries. OPEC, whose existence was disregarded in the 1960s, came to be seen as the main instigator and a powerful cartel threatening western countries' in particular the USA's oil supply. The IEA was, and is, explicitly limited to Western, that is most OECD countries.[13] South Korea, Hungary and the Czech Republic have recently joined the IEA.[14] The IEA was not meant to be or become a universal energy organization. As with the EU (*infra*), there have been intermittent calls for a UN Energy Organization, most recently to be attached or within UNIDO, but these have so far come to nothing. The IEA's basic purpose was to develop a system of collective energy security mirroring the collective producer power embodied in OPEC, then at the height of its power. Such collective energy security operates through the continuing emergency sharing system administered by the IEA. This system was never put into operation, though that may have been close at the time of the first Gulf war in 1991.[15]

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[12] V. Stagliano, "The Ghost of OPEC in Energy Security Policy," *Resources for the Future*, Spring 1995, No. 119, 6–9

[13] Members, at present, include the EU countries (plus Hungary and Czech Republic), Turkey, the US, Japan, Canada, Australia, NewZealand and South Korea. The EU participates, but is not a member (though it could accede). Norway is member of the IEA, but notof the emergency system, based on a special agreement with the IEA.

[14] J. Abramowski, "Mexican Energy Laws," (1995) 13 *JENRL* 29.

[15] The IEA is again preparing plans to ready its emergency sharing system.

The most significant supply disruptions in the EU came about not because of OPEC and Middle Eastern conflict, but because of resistance to another round in gasoline tax increases by the British and other EU governments in October 2000. The IEA's *raison d'être* has therefore diversified away from its earlier focus Western solidarity in the face of OPEC-faced threats, towards energy-focused research and market intelligence, which is the type of work that is also well carried out by academic institutions, consultancy and investment firms. The IEA advantage or difference is that it is publicly and internationally funded, and therefore with much more historical continuity, financial stability and less dependence on markets, clients and national budgeting processes than private or nationally based public energy research institutes.

While still in charge of the OECD countries' energy sharing mechanism, it now fulfils a function of centralized research and intelligence quite similar to the role of national energy institutes or the pooled research and intelligence function of international business associations. Focused on something that is still seen as strategic, and insulated from the questioning of national agencies of that type by its character as an international organization, it may have to justify its continuing usefulness by defining more closely the "public good" it delivers and its distinctive comparative cost and quality advantage over private, more market-driven organizations. The International Energy Programme of 1992 is the treaty constituting the IEA.[16]

Membership is limited to OECD countries, but there is no automatic membership of OECD countries. Accession therefore requires a double hurdle to the OECD and then to the IEA. The close-to-membership association agreement with Norway might, though, be a relatively simple way of proto-membership for non-IEA countries (if this was considered desirable). An IEA path towards a universal energy agency is therefore in all likelihood blocked; given the common economic and political orientation, one could advocate a link-up with the Energy Charter Conference, if the US were to join (see *infra*), but a full merger seems not to be on the cards as long as Russia and the other former Soviet countries are not OECD members. The IEA is open to membership by the European Community (Art. 72 of the IEP), but this has not happened as yet.

The EU Commission participates in all meetings without voting rights. There seems to be a low-profile competition with the EU Commission. Decision-making by its governing board is mainly by majority voting, not by consensus as in the OECD. This should make the Agency able to act more rapidly, theoretically, in view of energy disruptions, which was the intention of a voting arrangement different from the OECD. Votes are weighted by pro-rata oil consumption highlighting the economic weight and role in emergency sharing. The IEA is in a complex relationship with the OECD as an "autonomous agency" with its own Executive Director, its own budget (though formally integrated into the OECD budget) and governance process, with some integration into and use of OECD administrative services.[17]
Funding is by membership contribution based on the OECD scale, plus voluntary, project-related contributions. The IEA has a separate division on "non-member countries" which is used for an energy policy dialogue, economic studies and joint research projects. A modest "global energy window" is thus open to the IEA via its "non-member" activities and structures. Unlike other national or international agencies (e.g. World Bank, UN, UNIDO, UNCTAD, IMF, IMO), the IEA seems not to have provided technical assistance (policy advice; legislative, tax and institutional reform; training; assessment of energy projects and programmes; privatization; investment promotion) in member or non-member countries. Given that the IEA has a large core of expertise, a comparative edge in its specialty field and an energy policy link with all the IEA and many non-IEA countries, that is regrettable.

Energy assistance, when provided by other agencies (including the EU Commission) is never the central focus of expertise and interest and therefore often provided with rather uneven know-how.

[16]Its character as a proper international treaty independent from the OECD seems to have been questioned in bureaucratic turf battles with the OECD, but is strongly defended by the IEA.
[17] The IEA is much more autonomous than the "Nuclear Agency," a part of the OECD proper.

Member states must have preferred energy policy assistance to come through their bilateral aid agencies, perhaps with the idea of gaining a competitive advantage for their own energy industries and consulting firms rather than providing regular programme funding for technical assistance to the IEA. Also, the IEA may have intentionally avoided vigorously seeking voluntary contributions which would have placed it in competition with most other international agencies. The rough-and-ready tumble of international aid competition does usually not sit easily with well-funded international organizations staffed by Western civil servants on secondment. The dual character rarefied and rare emergency sharing here, intergovernmental research institute there may also not sit easily with the competitive vigour required to develop a sizeable role in policy advice. The traditional core of the IEA is its emergency oil sharing programme now better described with the wider term "emergency response measures".

It consists, first, of measures by member states to reduce demand and to maintain oil stocks at 90 days of net imports. If emergency situations for the whole IEA group occur (two levels of group shortage: a 7% and a 12% shortfall, to be determined by the IEA Executive Director), a rationing plan is triggered which also requires surplus countries to provide for imports into deficit countries. IEA-based oil companies may have to be directed by member states to re-order supplies. There is a regular coordination mechanism between the IEA and such oil companies. The trigger is an actual shortage – rather than a sudden price explosion, so that the mechanism is rather akin to a war-time international rationing plan than a market intervention mechanism.
The distinction between the two is sometimes questioned. Price spikes can both indicate and cause a disruption of physical supplies and market intervention can help to manage scarcity situations. One might envisage an IEA consisting of two components an emergency-sharing, OECD based side and a universal, all-energy-based side. This could be developed gradually, and might emerge over time, but it would also make sense to consider amending the IEA Agreement to provide for formal associate membership to non-OECD countries. In terms of influence on international energy law, the IEA's contribution has been mainly the emergency-sharing system as a free-standing element. IEA studies – generally of high quality, often prepared by seconded government and industry staff – will have an influence on policy-making by accentuating policy shifts (as presently towards liberalisation and environmental mechanisms), but there is little direct influence on national energy law reform.

4.0 World Bank

The original reasons for the establishment of World Bank are basically to provide the means and power adequate to provide the capital necessary to aid economic reconstruction of the Allied countries, to facilitate rapid and smooth transition from a war time to a peace time economy and to provide short term capital necessary to increase the volume of world trade. The coming to limelight of the World Bank was as a result of compromise by the US with the major European trading nations to allow the establishment of the IMF.[18] The technical assistance of the institution has so far played a visible role in the evolving International Oil and Gas Industry. The energy industries are coalescing into a truly globalized industry. energy activities of the World Bank has been through research and dialogue activities of OPEC, IEA and through WTO in a bid to modernize the international institutional set-up for energy policy in order to strengthen, both in content, linkages and name, the incorporation of sustainable development.

5.0 United Nations

The UN system consists of the UN proper with its various departments and other units and specialized agencies. Some of those, like the World Bank or IMO, are for practical purposes completely independent. UN has main and secondary organs and many secretariat groups and specialized agencies. What follows is therefore rather a selection with comments than a systematic survey.

[18] M K Keynes Treatise on Money, Vol. II (1930) p.219.

5.1 Climate Change Secretariat

For the energy industries, in particular the oil and gas industry, the one UN activity with most relevance is the UN Framework Convention on Climate Change with its secretariat in Bonn. The fate of the Kyoto Protocol is not clear, with its specified caps on CO2 and other relevant greenhouse gas emissions for industrialized (including post-Soviet) countries, unspecific good-will obligations on developing countries, introduction of emission trading and other emission reduction measures and absence of the US, the largest CO2 emitter. But the negotiations held by the COP ("Conference of the Parties") towards implementing the Kyoto Protocol are likely to put pressure on governments, in particular within the EU and the EU accession countries, to favour renewable (and possibly later nuclear) electricity generation and reduce coal, and possibly later oil and then gas-based power generation and consumption in transportation. With US absence, there will also be a trade issue to the extent that implementation of the Kyoto mechanisms is likely to develop intra-corporate, national and international trade in emission rights, but also financing of joint implementation and the clean development mechanism (CDM) it is hard to see how US companies, operating outside the Kyoto membership, can be full beneficiaries of the emerging trade in emission rights and equipment/services for climate-change management with a tension between free trade under the WTO agreements and restricted trade among the Kyoto member states.[19]

5.2 Compensation Commission

The political arm of the UN has had an involvement in oil and gas affairs through the UN Compensation Commission, instituted after the Gulf War to administer Iraqi liability for war damage, in particular large environmental and other damage to the oil production facilities in Kuwait[20] by Security Council resolutions 687 and 705 (1991) and 986 (1995). The UNCC was created in 1991 as a subsidiary organ of the UN Security Council. Its mandate is to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait. A specified percentage of the revenue – currently 25% – from authorised Iraqi oil exports is earmarked for the compensation of damages resulting directly from the invasion of Kuwait by Iraq.

Such damages are to include, according to the Security Council resolution, commercial losses, "environmental damage" and depletion of natural resources.[21] The UNCC is in form and name not a tribunal, but an administrative process set up to expedite claims.[22] One needs to bear in mind that the Commission received over 2.3 million claims. Practical and expedient justice was therefore the primary aim different from the US-Iran Claims Tribunal (*supra*) where claims are still being litigated in depth. Most claims have been settled by 2002.[23] There have been decisions awarding very large amounts to Kuwait for damage to its oil installations, for oil extracted and environmental damage caused by oil spills. These have been subject to criticism of over-valuation, an issue that may be more problematic in view of the legal and financial resources available to Iraq to put its own position effectively. In practice, however, two things have transpired that, in the opinion of many, may vitiate this concern.

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[19] B. Müller, "The Kyoto Mechanisms Linking Technology to Ratification," (2002) 36 *J. World Trade* 57. One needs to examine here the implications of Art. XXI (g) GATT and analogies to the role of regional economic integration organizations and the
non-inclusion of international organizations in the WTO membership and obligation system.

[20] R. Lillich (ed), *The United Nations Compensation Commission* (reviewed in (1996) 90 *AJIL* 532); a bibliography is published on: http://www.unog.ch/uncc/publicat.htm (1996); UN Compensation Commission, "Text of Well Blowout Claim" (1997) 36*ILM* 1343.

[21] UN Compensation Commission, Governing Council, Doc S/AC.26/2001/16 of 22 June 2001, in particularly p. 65 re Kuwait (also contains an overview of the mandate, process and procedures of the UNCC. The issue is, if the belligerent occupant, with the right of usufruct, can continue to extract the "normal" amount of (technically depletable) hydrocarbon (or water) resources.

[22]56 *See* the explicit statement on the UNCC website on "claims processing": "The Commission is thus neither a court nor a tribunal with an elaborate adversarial process. Rather, the Commission was created as a claim resolution facility that could make determinations on a large number of claims in a reasonable time. As such, the Commission operates more in an administrative manner than in a litigation format. The Commission's claims processing procedures were prescribed by the Security Council and were further elaborated by the Governing Council…"

[23] For detailed reference to the various UN SC resolutions, the various claims types and claims processing methods: www.unog.ch/ uncc/clmsproc.htm

First, at the Panels' direction, the Commission staff has taken an aggressive role in verifying the claims. As a result, the Commission sought and received significant budget increases to permit the legal and valuation staff to conduct thorough investigations of the circumstances of many of the commercial and environmental claims. Some claimants objected that the process was more intrusive than they would have experienced under most normal adversarial processes. Budget figures and the success rates for category E claims bear this out. Second, Iraq has had far more access than the Commission's designers anticipated. Iraq receives all claims submitted to the E1 (oil sector) Panel and is permitted to make its own submissions. In the larger claims, the E1 Panel has also held oral proceedings and has permitted Iraq to appear through counsel and argue the issues raised for decision. One should bear in mind that the panels only issue reports and recommendations – the final decision (not always the same) is made by the Governing Council. Reportedly, various governments, including Russia and France, used experts to review the E1 (oil-related) awards.

On the other hand, participants of the process – inside and outside the UNCC – have also communicated to me that the Governing Council's decisions were intensely political, with only marginal adjustment of the procedures to afford to Iraq more than a mere formal opportunity to argue against in particular the valuations proposed by the UNCC's consultants. The UN Compensation Commission practice should lead to international precedent for valuation of damage to the oil industry and oil-related environmental damages. The activity of the UNCC in the field of oil industry-related liabilities would merit deeper examination.[24] It is in my view regrettable that the impact of this significant precedent is somewhat weakened by the absence of full "due process" to the de factodefendant Iraq.
The panels of the UNCC have reportedly, in response of such criticism, made considerable efforts to stretch the existing rules to provide as much of a hearing to Iraq as possible [25] Future litigants will cite them as examples of legitimate ways to address problems such as valuation of oil and gas losses. This is particularly so as there is not much direct precedent.

5.3 Conclusion

All international agencies have at their core a "cross-border network" function: they bring "colleagues" together, typically from a ministry with a similar regulatory and operational task. There is a secretariat which acts to organize the network, its typically very formalized gatherings and provide permanent expertise (mainly of a comparative nature). This function is not often perceived so clearly, but it may be the vital function of the organization. The network now increasingly includes, often relegated to a lesser rank in communication priority, non-state actors: non-government, commercial, professional organizations and consultants. If the agency does not have direct regulatory powers (they rarely do), the "network" nevertheless exercises considerable influence over national and international energy law: it identifies best (or at least prevailing and current) practices.

These provide a persuasive and practical blueprint for national regulation. There should be much more formal and directly "legal" focus of international agencies framework which revolves around their respective treaties. The secretariats service the treaties, the governmental delegates negotiate (with low profile secretariat influence) such treaties and then "implement" them at home. It is only in the EU, a hybrid between an international organization and a federated country, that the international authorities (Commission, Council, Court) have some direct regulatory powers.

The OECD and its predecessor started out to manage the Marshal Fund; it is now the major intergovernmental policy think-tank on any subject that moves governments. The World Bank started off as a financing agency for reconstruction in Europe after WWII it sees itself now as the "premier development institution." The IAEA started off to encourage nuclear power, it is now mainly an institution to develop and enforce disciplines relating to nuclear risk, by accident, mismanagement or terrorism. What they lack is a natural death. It is very hard to make an obsolete international agency

[24] Mr Loftis is planning to write a comment for the JENRL (2003).
[25] Communication by Mr Loftis, former legal staff of the UNCC

disappear; it – its leaders, staff, clients and constituency – will cling to life, sometimes with (self-) deception over its continued usefulness, often with a desperate attempt to latch on the currently fashionable paradigm so that criticism against the agency can be presented as criticism of the current high-ground moral values. International agencies seem to adapt more easily in form and substance.

They re-baptise readily what they have always done and will continue to do inthe fashions of the day – they are much better at re-designing their public relations than what they do and how they do it. Probably every organisation examined is in some way or other seriously out of date, mainly with respect to its internal structure and organisation. They should all be modernised – in my view towards more professional competence, but also inclusion of non-state actors in their formal decision processes. Their funding – almost exclusively by government contribution (e.g. national taxes) – is also in need of review. More dependence on the value of services rendered in a more competitive situation would make them more modern, responsive and efficient. Some of them – e.g. OPEC or the IEA – were borne out of a particular crisis which no longer exists in this form; here, adaptation has been particularly difficult and modernization particularly pressing. But as intergovernmental organizations they are mainly controlled by diplomats, themselves removed from elections, politics, competition and markets so that the need for modernization is delayed by a double wall of insulation. There is a considerable difference between two types of international agencies: the general ones (primarily the UN, also to some extent the OECD) are mainly "talking-shops".

They do not have a very specific andcertainly very little or no regulatory or operational focus, but they serve to accommodate the public concerns and themes of the day, to process them into organisational language of some (though in reality much less thanis claimed) authority. This is an important function as they conduct a public dialogue, albeit in very stiltedform, about "global politics." The weaker the nation state, and the greater pressure for public participation, now expressed on the international level mainly by the NGOs, the more is there a need for a "parliament" in the original sense, i.e. a "talking-shop". Not surprisingly, general international agencies have found it least problematic to accommodate the pressure of NGOs for involvement. Both actors look for legitimacy – and reciprocal recognition of legitimacy helps both.

They operate politically in symbiosis. The problematic legitimacy of both is less of a problem as the operational impact is minimal – even international treaties emerging are typically neither legally effective (because not ratified) nor, even if ratified, specific enough to make a difference.Very much in contrast to the more discursive and symbolically acting international organisations are technically specialised and focused agencies. Here, specific regulation emerges, either sometimes directly when delegating such powers to an international agency seems inevitable, or in the form of standards and guidelines which re then used by national authorities by reference, incorporation or copying. These are the agencies which have most influence on the specific content of international energy law. Their advantage is a professional network and culture, great competence through specialisation and direct significance in their field of play.

On the other hand, such agencies typically are "captive," i.e. they operate for the benefit and through the participation of specific industries. They will only very grudgingly open up to challenges brought from the outside into their well fortified citadels. "Civil society" has left these agencies largely in peace and focused on the "talk-shop" and the most prominent agencies – the Globalisation Triad of World Bank, IMFand WTO. In practical terms of influencing the rules for the global energy economy, this strategy is wrong. It is mainly in the specialised agencies that specific and effective rules are made. This rule-preparation or rule-making activity cannot be influenced much by scoring significant rhetorical successes in UN forums. My conclusion is that both the international agencies and the manifold actors within "civil society" need to open up to each other, in a professional way. There is a good reason for "civil society" to be present in the talk-shop forums. But there is also the temptation that NGOs and such agencies continuously run like lemmings into the same, regularly changing fashionable direction, scoring successes that do not count.

I suggest that there is a good reason for the specialised, and practically influential, international organisationsm to open up, not just formally, and not only by being more transparent, but by effectively allowing formal representation of non-state actors on their governing boards. Multinational companies now have sometimes representatives from public-interest organisations and academia on their boards. Intergovernmental organisations are a child of the club of nation states. Such adjustment to a world where governments do not play exclusively and where many non-state actors are now significant actors is difficult for international organisations and their nation-state governors. Even if non-state actors now compete with governmental actors on the global scene, it is difficult for the places where governments still call the tune, to yield a part of their formal power.

But I suggest this is nothing but to accommodate to the changing reality of global society. How to do it is much more difficult. NGOs, for example, are mainly self-appointed, with weak governance, transparency and accountability. Commercial companies, their associations and professional groupings, on the other hand, are better structured and in a formal sense more easily identifiable. In principle, international, organisations should gradually co-opt those who represent power – commercial, financial, political and public-opinion – into their governing structures. Similarly, treaty negotiations should, as the OECD debacle with the MAI has shown,[26] incorporate in a much more active sense those who have power and a voice in thefield.
There are inchoate precedents: the ILO tripartite system of decision-making (itself child of the 1950s corporatist world-view), the meek OECD, BIAC and TUAC (largely it seems lunch opportunities for retired functionaries). But these need to be developed, experimented with and at the end formalised. There is no reason why those with a powerful voice — Greenpeace, Shell, the ICC or the International Bar Association should not be able to be part of the directorium of international organisations and part of the treaty negotiators whose consensus is necessary. From "civil society" this would require a sea-change in attitude: from a merely critical, destructive and political-campaigning attitude to a position where constructive alternatives have to be designed, bargained for and where positive responsibility and accountability for results (not just for criticism) has to be accepted. International agencies now fulfil a vital role for the proper functioning of the global economy as designed in the Bretton Woods discussions in 1944. They help to provide rules, institutions and stability to facilitate the transnational commercial and financial transactions. All criticisms of them by "civil society" have not shown any constructive alternative. But they are also now held accountable for the ills of the world the defects of globalisation.

There is very much the need for clearly identified scapegoats here at play. Most of the ills of the world existed before intrnational agencies emerged. Poverty is nothing new. But in response to these accusations and in some cases because this is their original or newly acquired mandate (e.g. the World Bank), such international organizations now take "economic development" as their prime task. I doubt that the underlying philosophy of much of the "development industry" has ever been properly reflected on and debated. In essence, the idea that by development aid one can help "underdeveloped" countries become "developed countries" (using the periodically changing catch-words ruling the agency rhetoric for a time), assumes that it is practical and possible to fundamentally change the nature of a society by well-thought out and largely funded external intervention.

Recommendations

There is very little evidence that global social engineering that can transform the oil industry in the international market can actually work for all the oil exporting countries. Countries which have developed rapidly tend to have a cultural, institutional and geographical make-up that favours prosperity. Countries which have not maximised foreign aid have often not developed at all. we therefore recommend that;

i. There should be international framework that centers on Aid, providing investment capital (and then later loan forgiveness) which seems overall to have little correlation with development.

[26] E. Graham, *Fighting the Wrong Enemy: Antiglobal Activists and Multinational Enterprises* (2000).

ii. There should be the inclusion of "civil society" group with recognized status to seek for aid. They will act as aid industry for investors.

iii. That the International oil industry will thrive in a more global World Energy Agency (WEA) therefore focus should be paid to a more enhanced World Energy Convention.