

OPEC FROM MYTH TO REALITY

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“When the rules of law and the rules of equity are in conflict, the rules of equity must prevail.”¹

“[W]e are Arab Muslims, and our religion and civilization enjoin us to cooperate with other peoples and to meet good with good. The world today is divided into one part with the soul, that is the Arabs, and one with the body, the West. We have the energy and you have the industries, and without a meeting of the soul

1. ABDUL AMIR Q. KUBBAH, *OPEC: PAST AND PRESENT* 132 (1974) (quoting Abdul Rahman al-Bazzaz in an address to the Iraq Petroleum Company negotiators on Mar. 11, 1964).

and the body there is no life. Any separation of the two will only result in death. We want to give to the West and to take from it, and there is no taking without giving.”²

I. INTRODUCTION—THE IMPORTANCE OF ENERGY SECURITY, RESOURCE DIPLOMACY, AND THE MAIN CHANGES IN NEARLY HALF A CENTURY OF OPEC’S FORMATION

The expression “mid-life” crisis is associated with that time when individuals reach their forties and ask themselves many questions about what they have done with their lives and what they want to do with whatever existence they think they may have left.³ It is a time of crisis, reflection, and sometimes, profound change. Although institutions do not necessarily suffer from these same symptoms, OPEC is now forty-six years old⁴ and may be going through such process in its institutional history. This document analyzes the main challenges of transforming OPEC so that it may successfully live through the end of the hydrocarbon era.

Forty-six years after the creation of the Organization of Petroleum Exporting Countries (OPEC), in Baghdad in 1960, while petroleum crude is still a strategic and critical commodity for the world economy,⁵ the international petroleum industry

2. *Use of Oil as a Political Weapon*, AL-HAWADITH, Aug. 24, 1973, reprinted in KUBBAH, *supra* note 1, at 122–23 (quoting H. R. H. The Ruler of Abu Dhabi, Shaikh Zayed bin Sultan Al Nahyan).

3. Psychology Today’s Diagnosis Dictionary: Mid-Life, <http://psychologytoday.com/conditions/mid-life.html> (last visited Feb. 8, 2008).

4. WILLIAM OCHSENWALD & SYDNEY NETTLETON FISHER, *THE MIDDLE EAST: A HISTORY* 704 (McGraw Hill 2004) (1959).

5. DANIEL YERGIN, *THE PRIZE: THE EPIC QUEST FOR OIL, MONEY, AND POWER* 14 (Simon & Schuster 1992) (1991). Crude oil futures trading started in 1983 in the New York Mercantile Exchange and “is the most heavily traded commodity.” Crude Oil Futures Prices—NYMEX, <http://www.wtrg.com/daily/crudeoilprice.html> (last visited Feb. 8, 2008). Crude oil futures trade in units of 1,000 barrels and are quoted in U.S. dollars. *Id.* The world oil market is a \$2 trillion market. Nelson D. Schwartz & Jon Birger, *Slick Operators: How Hedge Funds, Traders, and Big Oil are Really Driving Gas Prices*, FORTUNE, May 29, 2006, at 72, 74; see also *Oil Dependence and Economic Risk: Hearing Before the S. Comm. on Foreign Relations*, 109th Cong. (2006) (statement of

has changed substantially and many of the challenges that lie ahead are complex and may require different and creative international institutions and effective cooperation. Borrowing the words of Robert Schumann in 1950, when proposing the creation of the European Coal and Steel Community, “[w]orld peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it.”⁶

The price of oil and hydrocarbon reserves are not the only important economic issues. Crude oil prices and inflation, the impact of the Chinese and Indian economic growth, and excessive liquidity in the international capital markets partially caused by higher oil prices are some of the “risk factors for the international economy.”⁷

Crude oil prices and production distribution have also become foreign policy and energy security issues and sensitive matters directly related with war and peace.⁸ Those prices will determine the futures of many single commodity producing countries, and of an entire region, the Middle East. The economic growth and stability of the main energy consumers—the United States, Japan, China, and the European Union—

Alan Greenspan, President, Greenspan Associates LLC, *available at* <http://www.senate.gov/~foreign/testimony/2006/GreenspanTestimony060607.pdf>. “Crude oil is the world’s most actively traded commodity, and the NYMEX Division light, sweet crude oil futures contract is the world’s most liquid forum for crude oil trading, as well as the world’s largest-volumes futures contract trading on a physical commodity.” New York Mercantile Exchange, Light Sweet Crude Oil, http://www.nymex.com/lSCO_pre_agree.aspx (last visited Feb. 8, 2008). The standard contract trades in units of 1,000 barrels and the delivery point is Cushing, Oklahoma. *Id.*

6. Robert Schuman, Declaration of 9 May 1950, http://europa.eu/abc/symbols/9-may/decl_en.htm.

7. *See generally* MINISTRY OF ECON., TRADE & INDUS., WHITE PAPER ON INTERNATIONAL ECONOMY AND TRADE 2006: TOWARD “SUSTAINED POTENTIAL FOR GROWTH” 35–47 (2006), *available at* <http://www.meti.go.jp/english/report/index.html> (Japan) [hereinafter WHITE PAPER 2006] (explaining the risk factors in the international economy). According to this document “oil money held by oil producing countries has reached the same level as that recorded during the second oil shock.” *Id.* at 92.

8. *See* Daniel Volman, *The Bush Administration & African Oil: The Security Implications of US Energy Policy*, 30 REV. OF AFR. POL. ECON. 573, 574 (2003) (discussing the relationship between American energy policy and national security).

depend on reliable and stable oil and gas sources.⁹ Control of energy sources by the United States through military action has challenged the legitimacy of the United Nations, international law, and international institutions. Undoubtedly, energy security is a major concern for all countries and many have designed and are pursuing true “resource diplomacy.”

So far, competition for limited resources has not prompted a major confrontation between the largest consuming nations. The U.S.-led invasion of Iraq, a founding member of OPEC, has substantially deteriorated international relations and international law.¹⁰ Others have questioned U.S. legitimacy to act as a leader of international relations and the world’s lack of effective instruments to prevent breaches of the peace and of the U.N. charter.¹¹ It would seem that the United Nations is not capable of thinking or acting when the world leader does not think or act. The very purpose of “united nations”—to prevent war¹²—failed in Iraq and offers an opportunity to question whether international organizations like OPEC should reconsider their mandate and role. The invasion has also shown the many limitations and weaknesses of the “mighty power” and its system. The Chinese attempt to purchase Unocal,¹³ the

9. See *Hearing Before the H. Subcomm. On Energy Res. & H. Subcomm. On Nat'l Sec., Emerging Threats, & Int'l Relations*, 109th Cong. 1 (2006) (testimony of Karen A. Harbert, Ass't Sec'y for Policy and Int'l Affairs, U.S. Dep't of Energy) (“Energy is the lifeblood of economies around the world; global economic growth depends on adequate, reliable and affordable supplies of energy.”).

10. See, e.g., Stephen Farrell, *French Official's Iraq Visit Offers Lift, U.S. Says*, N.Y. TIMES, Aug. 20, 2007, at A1 (stating that President Jacques Chirac of France criticized U.S. policy on invading Iraq).

11. *Almost 1,000 Days After U.S. Invasion of Iraq, Democratic Senators Call in Secret Session for Investigation of Pre-War Intelligence*, DEMOCRACY NOW!, Nov. 2, 2005, <http://www.democracynow.org/article.pl?sid=05/11/02/1546206> (explaining the change in American status in the global community).

12. Image & Reality: Questions and Answers About the UN, <http://www.un.org/geninfo/ir/index.asp> (last visited Feb. 8, 2008).

13. See Jonathan Weisman, *Chinese Firm Gives U.S. Details of Bid to Buy Unocal*, WASH. POST, July 2, 2005, at D1 (explaining that a Chinese firm sought to purchase Unocal).

Sudan-Darfur debate,¹⁴ potential different interpretations of Iran's nuclear program,¹⁵ and Russia's decision to supply gas to Europe as opposed to the United States indicate that the difference between competition and confrontation could be very small.

Politically, the loss of faith in most institutions prevails in many countries and "nationalism," understood as a struggle to control resources or prevent imperial impositions from the North, is growing.¹⁶ Movements from the left that understand the concerns of the working man, the problems of the poor and which more than anything else provide hope, are extending their influence. Thus, many of the issues that challenged the international economy when a New International Economic Order was proposed in the 1970s maintain their validity, and once more we realize that resources are scarce and endless economic growth is not possible.

At the sunset of the hydrocarbon era, countries dependent on oil and gas resources have a last opportunity to use their competitive advantage to prepare for the time when their resources will no longer be desired nor valued. This critical moment could also be perceived as the opportunity for oil revenues to benefit not regimes and politicians but individuals, the people of the resource rich nations.

Environmental degradation, military interventions, disruptions created by natural disasters, terrorist threats to key industry facilities, poverty, and massive immigration problems are some of the most important issues that must be addressed by the international community.

14. United Human Rights Council, Genocide in Sudan, http://www.unitedhumanrights.org/sudan_genocide_genocide_in_sudan.php (last visited Feb. 8, 2008).

15. See *Iraqi Minister Defends Iranian Nuclear Program*, CNN, May 26, 2008, <http://www.cnn.com/2006/WORLD/meast/05/26/iraq.iran/> (illustrating different views on an Iranian Nuclear Program).

16. See, e.g., Robert Little, *Oil Nationalism, the Oil Industry, and Energy Security Concerns*, OFFNEWS.INFO, July 7, 2007, <http://www.offnews.info/verArticulo.php?contenidoID=9742> (explaining the history of oil nationalism).

The United Nations has revealed its limitations and its very life may depend on whether the United States believes that it may profit from using its membership in said organization as a more effective tool to pursue its foreign policy interests.¹⁷

Although September 11, 2001, initially created the world's sympathy for the United States and a sense of international solidarity, the U.S. invasion of Iraq and Bush's foreign policy drastically transformed such perception.¹⁸ The United States is viewed as an arrogant, hypocritical power that has a narrow interest and money driven conduct that uses moral discourse and international mechanisms as tools to accomplish selfish means. The most important consequence of the events of the last five years has been the loss of legitimacy of U.S. leadership and foreign policy, which may signal the decline of the "superpower." September 11 and Hurricane Katrina revealed dramatic internal U.S. weaknesses comparable to the Perestroika revelations in the former Soviet Union.¹⁹ These last years have shown that not everything is perfect and shiny in Fantasy Land.

One of the challenges that lie ahead consists of building hope. Universally accepted values must guide individuals in redesigning many relationships for the sake of mankind's

17. John McCain, the presumptive Republican Presidential nominee, promotes the creation of a "League of Democracies" to act when the United Nations fails. John McCain, *An Enduring Peace Built on Freedom: Securing America's Future*, FOREIGN AFF., Nov./Dec. 2007, at 26.

18. Tim Harper, *Goodwill Squandered; George W. Bush Prepares to Quietly Mark 9/11 Anniversary with Little to Show for His War on Terror, in Just 24 Months, the President Has Lost Sympathy Abroad and Now Faces Eroding Support at Home*, TORONTO STAR, Sept. 7, 2003, at F1.

19. Compare PAUL HOLLANGER, POLITICAL WILL AND PERSONAL BELIEF: THE DECLINE AND FALL OF SOVIET COMMUNISM 87 (1999) (quoting Adam Ulam, that "before Perestroika [no one] could readily spot those social and economic weaknesses of the system that, within a few years, would contribute to its crash"), with Brenna G. Nava, *Hurricane Katrina: The Duties and Responsibilities of an Attorney in the Wake of a Natural Disaster*, 37 ST. MARY'S L.J. 1153, 1153-54 (2006) ("In 2005, Hurricane Katrina . . . highlighted major weaknesses in America's disaster preparedness and recovery plans."), and STANLEY BRUNN, 11 SEPTEMBER AND ITS AFTERMATH: THE GEOPOLITICS OF TERROR (Taylor and Francis 2004) (discussing the consequences of the attacks of September 11, 2001).

sustainable future. An international organization designed primarily to maintain minimum prices of crude oil in the international markets and which may behave under the traditional role of “holding conferences,” “issuing declarations,” and “resolutions” is not apt to perform a significant role in shaping a new international framework and economic environment. The many limitations of the U.N. system confirm this theory. Creative efforts are required to design modern organizations that may overcome the narrow mindsets of “sovereign states,” improve the international system of checks and balances, and contribute to the well being of populations with only nominal or paper-like representation both at the national and the international levels.

Production, distribution, and marketing of oil and gas resources to satisfy consumer needs could be treated primarily as technical issues to be addressed by experts. Adequate and stable supply of petroleum resources could become a matter of international treaty law that would provide a smooth passage to a new energy era for both producers and consumers. If initially, energy resource issues were dealt with between a western entrepreneur and a monarch, and then shifted to a multinational company-sovereign approach, energy security now demands more than a sovereign-to-sovereign agreement, thus requiring a true global international solution in which an organization like OPEC may lead the way.

Thirty years from now many of the consuming nations may drastically change their energy needs. If so, the day under the sun for oil producing nations will be gone. A new OPEC may be the only forum at which, in addition to country-based issues, global issues are also analyzed and considered. The strategy of consumer nations of diversifying their suppliers may mean that nonOPEC oil exporting countries may profit while the transition is implemented. However, that strategy would again miss the multiple global effects of such approach, while it is still uncertain whether the level of nonOPEC oil reserves may suffice.

In the midst of overwhelming volumes of information, market participants lack adequate data to make objective decisions and subjective factors fuel speculation.²⁰ A first class multidisciplinary, professional, highly technical, and transformed international organization may provide the answers to many of the challenges that lie ahead.

This paper addresses some of the main challenges and issues to be discussed if OPEC's transformation is desired. The nature and scope of this document is limited and many issues may only be raised. However, the importance of the issues involved justifies a thorough process through which OPEC's reform is launched and discussed.

A potential OPEC-academic effort could be instrumental in creating, from an independent serious research analysis foundation, a process that would enable a profound review of such reform and serve to prepare the draft instruments for consideration by OPEC member countries and the Organization's Conference. One of the advantages of such approach would be to enable some creative formulas that while embedded on profound knowledge of the oil and gas industry, could only come from an academic as opposed to a politically biased and interested environment.

A. Energy Dependency, Foreign Policy, and the U.S. Example

Undoubtedly, oil and gas and energy supply issues are no longer a matter reserved to a few petroleum industry businessmen. Control of limited resources and access to a diverse supply of oil are essential to the United States, China, Europe, and Japan, and therefore, for the rest of the world.²¹

20. See generally Insop Pak, *International Finance and State Sovereignty: Global Governance in the International Tax Regime*, 10 ANN. SURV. INT'L & COMP. L. 165, 168 (2004) (stating that the global integration of information has become a challenge to market participants and regulatory and supervisory authorities should keep pace with the rapidly changing market).

21. See Economist Intelligence Unit, *Energy for China*, ECONOMIST, July 12, 2007, http://www.economist.com/displayStory.cfm?story_id=9488954 (explaining China's need

Understanding that petroleum and energy policies are now a critical component of foreign policy is particularly important when considering the main issues that should focus the attention of an organization devoted to coordinating the petroleum policies of its members. The United States as the largest oil consumer offers a good example.²²

For over forty years, access to Persian Gulf oil and the security of oil supply has been “vital” to U.S. national security to the extent that oil dependency has been compared to “the Achilles heel of the most powerful country on Earth.”²³ References to an imminent energy crisis abound.²⁴

for diverse oil supplies); *Oil Supply to Trail Demand by 2030, Study Predicts*, BLOOMBERG NEWS, July 19, 2007, available at http://www.boston.com/business/globe/articles/2007/07/19/oil_supply_to_trail_demand_by_2030_study_predicts/ (stating that global production is “as much as 11 percent below U.S. government forecasts for 118 million barrels a day of demand”).

22. Sean O’Grady, *Crude Oil Hits Record \$93, Fueling Fears of a Recession*, INDEPENDENT, Oct. 30, 2007, <http://news.independent.co.uk/business/news/article3109961.ece>.

23. Senator Barack Obama, Remarks at the Governor’s Ethanol Coalition (Feb. 28, 2006), available at http://obama.senate.gov/speech/060228-energy_security/ According to Senator Obama, oil dependency is such an important issue that he proposes the creation of a Director of Energy Security as a direct advisor to the National Security Council. *Id.*

24. See James Williams & A.F. Alhaji, *The Coming Energy Crisis*, ENERGY ECON. NEWSL., <http://www.wtrg.com/EnergyCrisis/index.html> (explaining the impending oil crisis). The authors define an energy crisis as:

a situation in which the nation [(the U.S.)] suffers from a disruption of energy supplies [(in our case, oil)] accompanied by rapidly increasing energy prices that threaten economic and national security. The threat to economic security is represented by the possibility of declining economic growth, increasing inflation, rising unemployment, and losing billions of dollars in investment. The threat to national security is represented by the inability of the US government to exercise various foreign policy options, especially in regard to countries with substantial oil reserves.

Id. The “oil crisis” is identified with the 1973 agreement of the OPEC members to cut production to increase prices. M.A. Adelman, *The Real Oil Problem*, REGULATION, Spring 2004, at 17.

Energy security is also an issue for China,²⁵ the world's second largest consumer,²⁶ as well as for Japan²⁷ and Western Europe.²⁸ Further, energy security is now a global defense security concern. For example, one of the many issues to be considered when assessing global defense security regards nuclear energy and the promotion of nuclear power generation without creating nuclear waste and enhancing many countries' bomb capabilities.²⁹

25. INT'L ATOMIC ENERGY AGENCY, CHINA'S WORLDWIDE QUEST FOR ENERGY SECURITY 10 (2000), available at <http://www.oecdchina.org/OECDpdf/china2000.pdf> ("Every evidence points to China's rising awareness that its diplomatic goals with respect to energy, primarily oil and gas, must aim toward participation in the energy system in a way that maximizes domestic energy security.")

26. Top World Oil Producers, Exporters, Consumers, and Importers, 2006, <http://www.infoplease.com/ipa/A0922041.html> (last visited Feb. 8, 2008).

27. *Id.* Japan is the world's third largest oil consumer importing 90% of its crude from the Middle East. MITSUHIITO ONO, ECON. RESEARCH DEPT., JAPAN EXTERNAL TRADE ORG., RISING CRUDE OIL PRICES AFFECT THE JAPANESE ECONOMY 3 (2004), available at http://www.jetro.go.jp/en/stats/survey/pdf/2004_07_other.pdf.

28. Energy Info. Admin., U.S. Dep't of Energy, *OECD Countries Total Net Petroleum (Oil) Imports, 1999-2006*, INT'L PETROLEUM MONTHLY, Nov. 2007, <http://www.eia.doe.gov/emeu/ipsr/t47.xls>.

29. Fred Weir & Howard LaFranchi, *Russia and US as Global Nuclear Waste Collectors?*, CHRISTIAN SCI. MONITOR, Feb. 7, 2006, at 1, available at <http://www.csmonitor.com/2006/0207/p01s03-wogi.htm>. Nuclear energy is the only nonfossil alternative to develop large scale electricity production. Dennis Spurgeon, U.S. Dep't of Energy Assistant Sec'y, Remarks at IAEA Special Event on "Assurances of Nuclear Supply and Nonproliferation" (Sept. 19, 2006), available at <http://www.energy.gov/news/4173.htm>. The challenge consists of developing nuclear energy for peaceful purposes only without increasing proliferation risks. *See id.* (explaining the goal of American nuclear energy policy). As energy demand is expected to double within the next forty years, nuclear energy is an essential component of a cleaner energy source, as it will reduce dependence on fossil fuels and will provide abundant energy without generating greenhouse gases. Press Release, Senator Lamar Alexander, Corker Statements Regarding Announcement by TVA and NuStart Energy (Oct. 30, 2007), available at http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Print&PressRelease_id=1311&SuppressLayouts=True. In President George Bush's words in June 2004: "To build a secure energy future for America, we need to expand production of safe, clean nuclear power." President George W. Bush, President Discusses Energy Policy (June 15, 2005), available at <http://www.whitehouse.gov/news/releases/2005/06/20050615=2.html>. The Global Nuclear Energy Partnership (GNEP) proposes a consortium of nations with advanced technology that will create new methods to recycle nuclear fuel, reduce nuclear waste and that would provide nuclear energy to developing

Profitability of the oil producing countries may no longer be an issue that exclusively interests such nations. The economic growth of countries such as China, Japan, the United States, and Europe depend on a sustained flow of crude oil at stable prices.³⁰ In order to maintain a minimum level of production for oil supply to meet a stronger demand, producing countries require capital and an incentive to increase their upstream industries.³¹ Thus, international dependence prevails not only in terms of producer-consumer relations, but also in terms of capital investment and resource exploitation to meet the needs of many different populations.³² Therefore, more than ever

nations at reasonable cost and without proliferation of risk. OFFICE OF FUEL CYCLE MGMT., U.S. DEPT OF ENERGY, GLOBAL NUCLEAR ENERGY PARTNERSHIP STRATEGIC PLAN 4 (2007), available at <http://www.gnep.energy.gov/pdfs/gnepStrategicPlanJanuary2007.pdf>; see Global Nuclear Energy P'ship, A Reliable Fuel Services Program, <http://www.gnep.energy.gov/gnepReliableFuelServices.html> (last visited Feb. 8, 2008) (explaining the GNEP program); see also Press Release, U.S. Dep't of Energy, DOE Continues Path Forward on Global Nuclear Energy Partnership (Aug. 3, 2006), available at <http://www.energy.gov/news/3893.htm> (explaining the GNEP program).

30. See *Asian Development Bank Says Growth Depends on Oil Rates Falling*, BLOOMBERG NEWS, <http://www.bloomberg.com/apps/news?pid=10000080&refer=asia&sid=acT0YExoTrgo> (explaining the consequence of high oil prices on Asia); John Wilen, *Oil Prices Fall on More Economy Worries*, BOSTON GLOBE, Nov. 8, 2007, http://www.boston.com/business/articles/2007/11/08/oil_prices_fall_on_more_economy_worries/ (explaining the consequence of high oil prices on the United States).

31. See GREG MUTTIT, PLATFORM, CRUDE DESIGNS: THE RIP-OFF OF IRAQ'S OIL WEALTH 14 (2005), available at [http://www.globalpolicy.org/security/oil/2005/crude designs.pdf](http://www.globalpolicy.org/security/oil/2005/crude%20designs.pdf) (stating heavy capital is needed to find producing fields, which can result in large profits due to high demand).

32. An additional example of this "mutual dependence" is reflected by the fact that while in 2003 U.S. Treasury bonds held by oil exporting countries stood at \$42.6 billion, in March 2006 they reached \$96.0 billion, the highest increase among countries holding U.S. bonds. See WHITE PAPER 2006, *supra* note 7, at 95–96 ("The balance of Treasury bonds held by oil exporting countries stood at only US\$42.6 billion at the end of 2003 . . . [a]s of the end of March 2006, it reached US\$98.0 billion . . . and ranked 4th among all countries and regions, showing their increased presence."). The report also notes that about 70% of oil money is unaccounted for, as it may flow to investment between oil producing countries or hedge funds which do not disclose their customers. *Id.* at 96.

global dialogue between energy-supplying countries and energy-consuming countries is needed, and has become a basic component of many countries' energy strategies.³³

The United States role as the "father" of the oil and gas industry, substantive oil producer, and current largest consumer has determined international petroleum transactions.³⁴ Thus, understanding the most important issues for the world's greatest oil and gas consumer is essential. The world, international relations, U.S. foreign policy and international petroleum transactions were very different in 1960 than now. This is revealed by comparing the State of the Union delivered to Congress by the U.S. President on the year when OPEC was formed and most recently in 2006.³⁵ The differences are profound and range from a policy of noninterference in the internal affairs of other nation-states to the military invasion of Iraq; from a concern for developing countries to a disregard for poor people wherever they may be found; from restraint of consumption to arm twisting if necessary to satisfy consumption; from peace and the effort to maintain peace to war and being "on the offensive"; from a "Free World" to a world where no one may be truly free.³⁶

33. See, e.g., ORG. OF PETROLEUM EXP. COUNTRIES, OPEC ANNUAL REPORT 2006 35 (2007), available at <http://www.opec.org/library/Annual%20Reports/pdf/AR2006.pdf> (showing dialogue between energy supplying countries, OPEC and Russia, and energy consuming countries, China and EU).

34. See YERGIN, *supra* note 5, at 19–20 (explaining the early American discovery and production of petroleum); see also ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, ENERGY IN THE UNITED STATES: 1635–2000, PETROLEUM, <http://www.eia.doe.gov/emeu/aer/eh/frame.html> (providing a history of American oil consumption).

35. Compare President George W. Bush, State of the Union Address (Jan. 31, 2006), in 152 Cong. Rec. H15 (2006) [hereinafter President Bush, State of the Union 2006] (stating "we [are] on the offensive" in Iraq and Afghanistan), with President Dwight D. Eisenhower, State of the Union Address (Jan. 7, 1960), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: DWIGHT D. EISENHOWER 1960–61 3 (1963) [hereinafter President Eisenhower, State of the Union 1960] (stating that the "United States has no intention of interfering in the internal affairs of any nation" and must not neglect the poor).

36. *Id.*

In 1960, U.S. foreign policy was conceived in terms of the “Soviet Union against the Free World,”³⁷ Alaska and Hawaii had recently joined the American union,³⁸ and the signature of a treaty for the peaceful and scientific research of Antarctica was viewed as a model multilateral international agreement for cooperation.³⁹ Concern for a better life for “emerging nations” was considered not only an issue for the United States but also for every other nation who shared its “Free World” values.⁴⁰ Eisenhower believed that the “industrial countries [were] ready to participate actively in supplementing the efforts of the developing countries to achieve progress.”⁴¹ He also believed in

37. President Eisenhower, State of the Union 1960, *supra* note 35, at 3. In his speech, Eisenhower stated: “Certainly it is not necessary to repeat that the United States has no intention of interfering in the internal affairs of any nation; likewise we reject any attempt to impose its system on us or on other peoples by force or subversion.” *Id.* at 5.

38. Alaska State Chamber of Commerce—State History, <http://www.alaska.chamber.com/artman/publish/shistory.html> (last visited Feb. 8, 2008); HawaiiHistory.org, World War II to Statehood (1941–59), <http://www.hawaiihistory.org/index.cfm?fuseaction=ig.page&PageID=361> (last visited Feb. 8, 2008).

39. Scientific Comm. on Antarctic Research, Antarctic Treaty, <http://www.scar.org/treaty/> (last visited Feb. 8, 2008).

40. President Eisenhower, State of the Union 1960, *supra* note 35, at 5.

Their natural desire for a better life must not be frustrated by withholding from them necessary technical and investment assistance. This is a problem to be solved not by America alone, but also by every nation cherishing the same ideals and in position to provide help. . . . To remain secure and prosperous themselves, wealthy nations must extend the kind of cooperation to the less fortunate members that will inspire hope, confidence and progress.

Id. at 5–6.

41. *Id.*

A rich nation can for a time, without noticeable damage to itself, pursue a course of self-indulgence, making its single goal the material ease and comfort of its own citizens—thus repudiating its own spiritual and material stake in a peaceful and prosperous society of nations. But the enmities it will incur, the isolation into which it will descend, and the internal moral and physical softness that will be engendered, will, in the long term, bring it to disaster. America did not become great through softness and self-indulgence. Her miraculous progress and achievements flow from other qualities far more worthy and substantial—adherence to principles and methods consonant with our religious philosophy—a satisfaction in hard work—the

the importance of living within your own means, which required “restraint in expenditure, constant reassessment of priorities and maintenance of stable prices to prevent inflation.”⁴²

In 2006, when thousands in New Orleans had not yet recovered from the huge damages caused by Hurricane Katrina, and the world noticed that poverty also exists in the United States, the President proudly conveyed the message that the American economy was healthy, vigorous, and growing faster than other industrialized nations, despite being “addicted to oil.”⁴³ He reported on its “war on terrorism” and against radical Islam, as “being on the offensive” in Afghanistan and Iraq⁴⁴ and made a pledge to replace more than 75% of U.S. oil imports from the Middle East by 2025.⁴⁵ It is very difficult to reconcile this image of America with the Wilsonian approach of the “city upon a hill,” opposed to all forms of colonialism and under which “[t]here is only one possible standard by which to determine controversies between the United States and other nations, and that is compounded of these two elements: Our own honor and our obligations to the peace of the world”⁴⁶ or to Carter’s pledge that “our power will never be used to initiate a threat to the security of any nation or to the rights of any human being.”⁴⁷

readiness to sacrifice for worthwhile causes—the courage to meet every challenge to her progress—the intellectual honesty and capacity to recognize the true path of her own best interests.

Id.

42. *Id.*

43. President Bush, State of the Union 2006, *supra* note 35, at H17.

44. *Id.* “A sudden withdrawal of our forces from Iraq would abandon our Iraqi allies to death and prison, would put men like bin Laden and Zarqawi in charge of a *strategic country*, and show that a pledge from America means little.” *Id.* (emphasis added).

45. *Id.* Bush mentioned that ten billion dollars have been spent since 2001 in research for “cleaner, cheaper and more reliable alternative energy sources” and announced a new “Advanced Energy Initiative” that would increase clean energy research to “make our dependence on Middle Eastern oil a thing of the past.” *Id.*

46. President Woodrow Wilson, Report on the State of the Union to Congress (Dec. 2, 1913), *in* 51 CONG. REC. 74 (1913).

47. President Jimmy Carter, State of the Union Address (Jan. 23, 1980), *in* PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: JIMMY CARTER 1980–81 195 (1981)

Since “Project Independence” was launched in 1973 with the promise of ending energy dependency on foreign countries,⁴⁸ an energy crisis has been a matter of concern for all U.S. presidents.⁴⁹ On December 22, 1975, the United States enacted the Energy Policy and Conservation Act which created a one billion barrel Strategic Petroleum Reserve.⁵⁰

[hereinafter President Carter, State of the Union 1980]. Carter’s concern whether the Soviet Union would “help promote a more stable international environment in which its own legitimate, peaceful concerns can be pursued,” or would “continue to expand its military power far beyond its genuine security needs and use that power for colonial conquest” may apply today to U.S. foreign policy. *Id.* at 196.

48. President Richard Nixon, Address to the Nation About National Energy Policy (Nov. 25, 1973), in 9 PUB. PAPERS 1363, 1366 (Nov. 25, 1973) [hereinafter President Nixon, Energy Address]. Two months later, during his State of the Union Address, Nixon said of Project Independence: “Let this be our national goal: At the end of this decade, in the year 1980, the United States will not be dependent on any other country for the energy we need to provide our jobs, to heat our homes, and to keep our transportation moving.” President Richard Nixon, State of the Union Address (Jan. 30, 1974), available at <http://print.infoplease.com/t/hist/state-of-the-union/187.html> [hereinafter President Nixon, State of the Union 1974].

49. See, e.g., President Carter, State of the Union 1980, *supra* note 47, at 199 (“Our excessive dependence on foreign oil is a clear and present danger to our nation’s security.”); President Bush, State of the Union 2006, *supra* note 35, at H17 (“America is addicted to oil, which is often imported from unstable parts of the world.”); President Gerald Ford, State of the Union Address (Jan. 15, 1975), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: GERALD R. FORD 1975 40 (1977) [hereinafter President Ford, State of the Union 1975] (“[T]his nation and, in fact, the world must face the prospect of energy difficulties.”). Jimmy Carter declared on April 18, 1977, that achieving energy independence was the “moral equivalent of war.” President Jimmy Carter, Address to the Nation on Energy (Apr. 18, 1977), in PUBLIC PAPERS OF THE PRESIDENT OF THE UNITED STATES: JIMMY CARTER 1977 656 (1979). Carter’s pledge was: “Beginning this moment, this Nation will never use more foreign oil than we did in 1977—never.” President Jimmy Carter, Crisis of Confidence Speech (July 15, 1979), in PUBLIC PAPERS OF THE PRESIDENT OF THE UNITED STATES: JIMMY CARTER 1979 1239 (1980). In 2003, George Bush stated one of the goals of his administration was to promote energy independence. President George W. Bush, Report on the State of the Union to Congress (Jan. 28, 2003), in 149 CONG. REC. S1664 (daily ed. Jan. 28, 2003) [hereinafter President Bush, State of the Union 2003].

50. U.S. Dep’t of Energy, Strategic Petroleum Reserve Profile, <http://www.fe.doe.gov/programs/reserves/spr/index.html> (last visited Feb. 8, 2008) [hereinafter Strategic Petroleum Reserve Profile]. The strategic petroleum reserve (SPR) is composed of four sites located in underground caverns along the coastline of the Gulf of Mexico and may hold up to 727 million barrels of petroleum. *Id.* “The Energy Policy Act of 2005 directs

In 1975, Gerald Ford declared that “the state of the Union [was] not good” because prices were too high, millions of Americans had no work, the deficit was of about \$30 billion, the national debt \$500 billion, and for years nothing had been done to end U.S. dependency on others for essential energy.⁵¹ The immediate reaction was imposing import quotas and using presidential powers to establish higher fees on imported oil.⁵²

Possible courses of action for the United States were described at the time as policy choices between self sufficiency,⁵³

the Secretary of Energy to fill the Strategic Petroleum Reserve [up] to its authorized one billion barrel capacity.” *Id.* Reserves from the SPR were used for emergency purposes during the 1991 Gulf War and were also sold in 2005 for emergency purposes following hurricane Katrina. *Id.* The SPR is filled with royalty in kind payments by offshore operators. *Id.*

51. President Ford, State of the Union 1975, *supra* note 49, at 36. Ford believed that:

Economic disruptions we and others are experiencing stem in part from the fact that the world price of petroleum has quadrupled in the last year. But, in all honesty, we cannot put all of the blame on the oil-exporting nations. We, the United States, are not blameless. Our growing dependence upon foreign sources has been adding to our vulnerability for years and years and we did nothing to prepare ourselves for such an event as the embargo of 1973. . . . I am recommending a plan to make us invulnerable to cutoffs of foreign oil.

Id. at 39.

52. *Id.*

53. See, e.g., President Nixon, Energy Address, *supra* note 48, at 1366 (noting that future independence will depend upon self sufficiency); JOSEPH A. YAGER & ELEANOR B. STEINBERG, ENERGY AND U.S. FOREIGN POLICY 390–91 (1974) (noting a policy of self-sufficiency). Self sufficiency requires energy conservation in the form of “reductions in home heating, reductions in driving speeds, [and] elimination of unnecessary lighting.” President Nixon, Energy Address, *supra* note 48, at 1366. Self sufficiency was described as “Project Independence” by Richard Nixon in 1973, as follows:

Let me conclude by restating our overall objective. It can be summed up in one word that best characterizes this Nation and its essential nature. That word is “independence.” From its beginning 200 years ago, throughout its history, America has made great sacrifices of blood and also of treasure to achieve and maintain its independence. In the last third of this century, our independence will depend on maintaining and achieving self sufficiency in energy. What I have called Project Independence 1980 is a series of plans

unilateral international oil policy, and a multilateral international oil policy.⁵⁴ The unilateral oil policy was described in 1974 as having four components:

1. [S]pecial oil supply arrangements with selected oil-exporting countries,
2. [E]fforts to improve bargaining relationships with the exporting countries,
3. [M]easures to prepare for interruptions in oil imports, and
4. [E]fforts to defuse the Arab oil weapon.⁵⁵

All these policies were tailored toward preventing the formation of a strong and solid block of petroleum exporting countries, particularly from the Middle East. More than thirty years later energy independence is still a “goal.”⁵⁶

The U.S. oil policy is based on a geographically diversified supply provided essentially by Canada, Saudi Arabia, Venezuela, and Nigeria without creating an excessive dependence on any single one of them to the extent it may trigger the “oil weapon”; having an available emergency reserve to meet potential disruptions through the Strategic Petroleum Reserve; and promoting a transition to cleaner and nonfossil fuel

and goals set to insure that by the end of this decade, Americans will not have to rely on any source of energy beyond our own.

Id.

54. See generally YAGER & STEINBERG, *supra* note 53, at 391–415 (noting differences in policies of self sufficiency, unilateral sufficiency, and multilateral sufficiency). Already in 1973 the possibility of a multilateral international oil policy was conceived in terms of importing and exporting countries joining forces to create a stable oil industry “serving a smoothly functioning world economy.” *Id.* at 403.

55. YAGER & STEINBERG, *supra* note 53, at 392. Such measures included military interventions and stock pilings. *Id.* at 399. The U.S. involvement in the Arab-Israeli dispute may be primarily explained as an interest in protecting U.S. sources of Middle Eastern oil or defusing the use of the oil weapon. See *id.* at 401–02 (discussing the effects of defusing the Arab Oil Weapon by settling the Arab-Israeli dispute).

56. President Bush, State of the Union 2003, *supra* note 49, at S1664. In his 2003 State of the Union address, George W. Bush stated: “Our third goal is to promote energy independence for our country, while dramatically improving the environment.” *Id.*

sources of energy.⁵⁷ The other most important consumers have similar dependence, emergency supply, and supply diversification issues.

B. Some of the Major Changes in the Oil and Gas Industry Since OPEC's Formation.

When OPEC came to life, production, marketing, and prices were controlled unilaterally by the multinational companies and there was really no concern for the environmental and social impacts of the extractive industry such as global warming and ozone depletion.⁵⁸ Today many things have changed. The price of oil is established primarily through the New York Mercantile Exchange and the London International Petroleum Exchange⁵⁹ and substantially influenced by speculation and perceptions regarding “geopolitical tensions.”⁶⁰ Crude oil production is determined by multiple operators, many of which are national oil companies.⁶¹ Further and most meaningfully, the industry

57. See Energy Info. Admin., U.S. Dep't of Energy, Crude Oil and Total Petroleum Imports Top 15 Countries (2007), http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications/company_level_imports/current/import.html (noting the top U.S. oil and petroleum importers); Strategic Petroleum Reserve Profile, *supra* note 50 (noting the purpose of the Strategic Petroleum Reserve); President Bush, State of the Union 2006, *supra* note 35 (noting the advocacy of cleaner and other nonfossil fuel sources of energy).

58. See Klaus Rehaag, Int'l Energy Agency, *Disappearing Benchmarks: The Demise of Market Indexed Pricing?*, in ENERGY PRICES AND TAXES xi, xi (4th Quarter, 1999), available at <http://data.iaea.org/ieastore/assets/products/eptnotes/feature/4Q1999.pdf> (noting that before OPEC “a small group of multinational oil companies” controlled most oil production and supply); Oilwatch's Statement to the General Assembly of OPEC (Sept. 19, 2005), http://www.oilwatch.org/2005/english/documentos/decla2005_opeping.htm [hereinafter Oilwatch Statement] (noting the economic, environmental and social problems OPEC countries are experiencing as a result of their “oil civilization”).

59. Richard Freeman & John Hoefle, *LaRouche: Bankrupt Speculators with \$25 per Barrel Oil*, EXECUTIVE INTELLIGENCE REV., Jun. 11, 2004, at 4, 5. The three largest markets in which crude oil is traded are the New York Mercantile Exchange, the International Petroleum Exchange and the Tokyo Commodity Exchange. WHITE PAPER 2006, *supra* note 7, at 85. These markets trade in West Texas Intermediate oil, Brent oil and Dubai oil as benchmark oils. *Id.*

60. See WHITE PAPER 2006, *supra* note 7, at 84–85.

61. See How World Oil Markets Work: Fuel Focus, http://fuelfocus.nrcan.gc.ca/fact_sheets/oilmarket_e.cfm (last visited Feb. 8, 2008) (stating that while there are

involved in the exploration, exploitation, and marketing of oil and gas resources must deal with issues such as resource wars, international military interventions, the threat of international terrorism, sustainable development, energy poverty, environmental protection, nation building, and transparency.

When OPEC was formed, “sovereignty” was used to protect the national bounty, and the main concern was preserving the member countries’ immediate and most important source of income.⁶² Now, the seven sisters no longer even introduce themselves exclusively as petroleum production companies.⁶³ In the 21st century sovereignty may be associated with a state’s capability to successfully afford a peaceful, stable, sustainable, and rule-abiding environment to the population living within its borders in which hope and the pursuit of happiness are possible for all.⁶⁴ These concepts involve such issues as energy security,

several oil companies, many are state-owned). According to the Canadian government “just ten companies control 68 percent of the world’s proven oil reserves” and eight out of those ten are national oil companies. *Id.* OPEC members controlled nearly 70% of the world’s proven reserves in 2005. OPEC Share of World Crude Oil Reserves (2006), <http://www.opec.org/home/PowerPoint/Reserves/OPEC%20share.htm> (last visited Feb. 8, 2008).

62. See Oilwatch Statement, *supra* note 58 (noting the success of OPEC nations in controlling natural resources by sovereignty); Rehaag, *supra* note 58, at xi–xii (noting that OPEC countries exercised great control over oil price).

63. See, e.g., The Global Homepage of the Shell Group, <http://www.shell.com/> (last visited Feb. 8, 2008) (noting that the company presents itself as a “worldwide group of oil, gas and petrochemical companies with interest in biofuels, wind and solar power and hydrogen.”); see also Beyond Petroleum, <http://www.bp.com/sectiongenericarticle.do?categoryId=9010219&contentId=7019491> (last visited Feb. 8, 2008) (noting BP’s “Beyond Petroleum” campaign). BP introduces itself as an energy company with a growing presence in solar power generation. See Alternative Energy, <http://www.bp.com/sectiongenericarticle.do?categoryId=22&contentId=2006538> (last visited Feb. 8, 2008) (noting that BP is a leading solar power company). For BP, “[b]eing a responsible business means taking steps to improve the things we can control and contributing to wider issues that we can only influence, such as climate change and social and economic development.” What Responsibility Means for BP, <http://web.archive.org/web/20061110180645/http://www.bp.com/extendedsectiongenericarticle.do?categoryId=9008947&contentId=7016573> (last visited Feb. 8, 2008).

64. Such concept will most likely have little to do with citizenship and primarily refer to a semifudal system in which an authority is able to guarantee basic protection to those living within its boundaries.

economic independence and financial viability of many nations, man's capability to stop the continued deterioration of the environment, establishing mechanisms through which the people may benefit from their land's natural resources, and determining rationally and peacefully access and control over scarce nonrenewable resources.

The petroleum industry in the 21st century will focus on production of oil and gas from unconventional sources such as heavy oils, tar sands, oil shale, renewables, nuclear power, biomass, and clean coal technologies such as coal liquefaction in a potential transition into a hydrogen based economy.⁶⁵ In addition to technological developments, population growth and economic activity, international politics and carbon pricing will play a crucial role in the closing years of the hydrocarbon age.⁶⁶ Securing a stable oil and gas supply and preventing drastic price fluctuations will be very important while alternate sources of energy are developed.

65. See J.J. George Stosur, *Energy in the XXIst Century—Unconventional Oil and Gas*, REVUE GEOLOGUES, No. 127, available at [http://www.planetforlife.com/pdf/Gas UnconventionalOiland%20Gas.pdf](http://www.planetforlife.com/pdf/Gas%20UnconventionalOiland%20Gas.pdf) (defining unconventional oil and gas resources and noting that they are expected to become important in the future). See generally C. W. FORSBERG, OAK RIDGE NAT'L LAB., ASSESSMENT OF NUCLEAR-HYDROGEN SYNERGIES WITH RENEWABLE ENERGY SYSTEMS AND COAL LIQUEFACTION PROCESSES (2006), available at <http://www.ornl.gov/~webworks/cpr/y2001/rpt/125102.pdf> (giving background on nuclear-hydrogen, liquid fuels and biomass and fossil-liquification).

66. See generally EXXONMOBIL, THE OUTLOOK FOR ENERGY—A VIEW TO 2030 (2005), http://energy.sipa.columbia.edu/PDFs/2005_energy_outlook.pdf [hereinafter EXXONMOBIL, OUTLOOK FOR ENERGY] (noting the link between population growth, economic activity and energy); EUROPEAN COMM'N, GREEN PAPER: TOWARDS A EUROPEAN STRATEGY FOR THE SECURITY OF ENERGY SUPPLY 27 (2001), available at http://ec.europa.eu/energy/green-paper-energy-supply/doc/green_paper_energy_supply_en.pdf [hereinafter GREEN PAPER] (noting that instability in energy price may be caused by "geopolitical disputes"); Malcolm Brown, *The Right Climate for Carbon Pricing*, BP MAGAZINE, Issue 2, 2006, at 25, 25–29, available at http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/B/bp_magazine_issue2_06.pdf (explaining "carbon pricing" and how it could change the energy industry). "Carbon pricing" is the term used to refer to a potential price for CO₂ emissions for such emissions to no longer be an externality of the energy business but a true cost to burden the producer of the emission. Brown, *The Right Climate for Carbon Pricing*, *supra*, at 27. Therefore, energy produced from coal with higher CO₂ emissions would be more expensive than that generated by burning gas with lower CO₂ emissions. *Id.*

Peace in the Middle East, a future for the underprivileged of the world, effective actions to prevent multiple forms of environmental contamination, and the economic feasibility of the oil producing countries when oil is no longer relevant are all issues that require serious attention by the international community of states. Unfortunately, the selfish interests of individual nations and their short term objectives have limited effective cooperation. Nation-states' individual foreign policies are not capable of providing solutions to goals that go beyond a presidential term, and concern humanity as a whole.

C. Oil and Gas Will Be the Dominant Energy Sources for at Least Two More Generations.

In the year 2000, the European Union acknowledged that if nothing was done fossil fuels would continue dominating its energy needs.⁶⁷ Oil prices, availability, and adequacy of oil supplies continue to play today, as it was the case in 1973, a critical role in formulating foreign policy.⁶⁸ Economic growth in the next twenty-five years is expected to continue at a rate of 2.7% per year, with the fastest growth in China, India, Indonesia, and Malaysia countries which are expected to grow at

67. GREEN PAPER, *supra* note 66, at 45. The European Union expected in 2000 that its energy demand by 2030 would be 38% for oil, 29% for gas and 19% for solid fuels with only 8% for renewables and 6% for nuclear power. *Id.*

68. YAGER & STEINBERG, *supra* note 53, at 5. "High oil prices and the danger of renewed manipulation of oil supplies for political purposes are two of the major foreign policy problems in the energy field that face the United States and other oil-importing countries today." *Id.* American presidents since Richard Nixon have pledged to "break the back of the energy crisis." President Nixon, State of the Union 1974, *supra* note 48; *see also* President Ford, State of the Union 1975, *supra* note 49, at 175-76 (outlining President Ford's recommendation plan to make the United States "invulnerable to cutoffs of foreign oil"); President Carter, State of the Union 1980, *supra* note 47, at 381 (stating that the United States must have a "comprehensive energy policy"); President Bush, State of the Union 2003, *supra* note 49 (noting that the best way to break the addiction to foreign oil through technology and announcing the "Advanced Energy Initiative"). In 1974, Nixon stated that his message to Congress was the first State of the Union message in U.S. history in which the first priority was energy. President Nixon, State of the Union 1974, *supra* note 48.

a rate of more than 5% per year.⁶⁹ Demand for energy is thus expected to increase by almost 50% from 205 million barrels per day of oil equivalent to 335, and according to ExxonMobil this means that the world will need 60% more energy in 2030 than in 2000.⁷⁰ Greatest energy demand growth will most likely come from Asia (3.2% increase) and Latin America (2.2% increase).⁷¹ Currently 45% of the European Union's oil imports come from the Middle East.⁷² At the same time, in 2005, the Arab countries became the most important source of Chinese oil imports.⁷³ The vehicle fleet in Asia will quadruple in twenty-five years.⁷⁴ Fuel demand is expected to grow particularly to satisfy electric generation and transportation needs.⁷⁵

Therefore, we may conclude with ExxonMobil that "[t]hrough the year 2030, traditional fossil fuels will continue to supply the vast majority of energy needs" and that the largest fuel share today and in 2030 is and will be oil.⁷⁶

Total oil reserves have been estimated around 3.2 trillion barrels while total production may have reached one trillion.⁷⁷ If accurate, this means that two trillion barrels would remain.⁷⁸ In 2005, the world's top oil consuming nations included the United States, China, Japan, Russia, and Germany.⁷⁹

69. EXXONMOBIL, OUTLOOK FOR ENERGY, *supra* note 66.

70. *Id.*

71. *Id.*

72. GREEN PAPER, *supra* note 66, at 2.

73. *Arab Countries, Principal Source of China's Oil Imports*, PEOPLE'S DAILY ONLINE, Jan. 19, 2006, http://english.people.com.cn/200601/19/eng20060119_236602.html.

74. EXXONMOBIL, OUTLOOK FOR ENERGY, *supra* note 66.

75. *See id.* (noting that energy demand growth is highest for transportation, chemical use and electricity).

76. *Id.* ExxonMobil expects that although solar and wind energy will increase, their share of total energy in 2030 will only be 1%. *Id.* By 2030 the hybrid fleet in North America is expected to reach only 10%. *Id.*

77. *Id.*

78. *Id.*

79. Energy Info. Admin., U.S. Dep't of Energy, Top World Oil Producers and Consumers, http://www.eia.doe.gov/emeu/cabs/topworldtables1_2.htm (last visited Feb. 8, 2008). According to the Energy Information Agency the top 10 consuming nations

These figures confirm OPEC's importance in satisfying the world's thirst for oil. OPEC's oil is cheap and easy to develop.⁸⁰ Most technical analyses agree that with increased demand OPEC's production should grow from its current 30 million barrels a day (b/d) to 47 million b/d by 2030.⁸¹ Carbon dioxide emissions are also expected to grow with 85% of such increase attributed to developing countries.⁸²

The United Kingdom has recognized its challenge of becoming a "net energy importer"⁸³ as oil, gas, and coal production have decreased and made energy diversification a matter of its national energy policy, through many sources of energy and many suppliers.⁸⁴ However, unlike the United States, the United Kingdom acknowledged "mutual dependence" and a trade off of supply for income.⁸⁵

were the United States, China, Japan, Russia, Germany, India, Canada, Brazil, South Korea, Mexico, France, and Saudi Arabia. *Id.* The U.S. consumption, at 20.8 million barrels per day, was more than three times the amount consumed by the second largest consumer, China, with 6.9 million barrels a day. *Id.* The top importers were the United States, Japan, China, and Germany. *Id.*

80. Tracey A. Beecher, *An Examination of the U.S.-Iraqi War's Effect on the Global Oil Trade and the Global Economy*, 12 CURRENTS: INT'L TRADE L.J. 105, 106 (2003). Extracting a barrel of oil from Alaska may cost between \$15 to \$18 while extracting a barrel of oil from the Middle East may cost \$2. *Id.*

81. EXXONMOBIL, OUTLOOK FOR ENERGY, *supra* note 66.

82. *Id.*

83. U.K. DEP'T OF TRADE & INDUS., ENERGY WHITE PAPER: OUR ENERGY FUTURE—CREATING A LOW CARBON ECONOMY 6 (2003), <http://www.dti.gov.uk/files/file10719.pdf> [hereinafter ENERGY WHITE PAPER 2003]. According to the Energy White Paper, the United Kingdom will become a net oil importer by 2010, and by 2020 it will be an importer of three-fourths of its total energy needs. *Id.* at 9.

84. *See id.* at 9 ("We need many sources of energy, many suppliers and many supply routes.")

85. *Id.* at 9–10.

D. A New OPEC in an International Environment in Which the End of the Hydrocarbon Era Is in Sight

So far, the balance of most international organizations is quite poor.⁸⁶ International bureaucracy and meaningless resolutions prevail over effective practical answers to man's daily needs.⁸⁷ Yet, more than ever, an international order that may control the selfish aspirations of individual nation-states is required. International good governance solutions may be required when traditional state sovereignty powers fail. Many important international issues such as energy security and the stability of the world economy may not be seriously and effectively discussed at the U.N. General Assembly⁸⁸ and the

86. See Giulio Gallaroti, *The Limits of International Organization: Systematic Failure in the Management of International Relations*, 45 INT'L ORG. 183, 183 (1991) (stating that international organizations can be counterproductive because they are mismanaged and poorly executed, and also when they are in excess). Assessing success or failure of an international organization is not easy. The very nature of an organization and its limited resources impose burdens as to what may be accomplished. However, when the basic needs of billions of people remain unsolved many of the institutionalized instruments to address said problems must be questioned. *Id.* at 184–85 (stating that when “failures [of international organizations] make international problems worse or generate new problems . . . bureaucrats and scholars alike need to reassess the role of multilateral management and its effects on international relations”).

87. See generally Thomas G. Weiss, *International Bureaucracy: The Myth and Reality of the International Civil Service*, 58 INT'L AFFAIRS 287, 288 (1982) (“International institutions fail to be effective not only because of a shortage of resources or insurmountable political problems, but also because of the processes by which resources are allocated.”); Keith Bradsher, *Opportunity Lost in Indonesia: Drastic Fall in Oil Output Reflects a Squandering of Resources*, INT'L HERALD TRIB., Mar. 21, 2005, at 1R (explaining that despite rising oil prices and its longstanding membership in OPEC, “Indonesia’s oil industry . . . has been burning money for years, squandering the nation’s mineral wealth through underinvestment, bureaucracy, corruption and a wariness of multinational companies.”).

88. See generally Felix Dodds & Richard Sherman, *Climate and the UN: A New Bid For Control?*, BBC NEWS, May 18, 2007, <http://news.bbc.co.uk/2/low/science/nature/6665205.stm> (explaining that debates on energy security may produce inequitable responses, debates have failed to produce a consensus on climate security, and that there should be further discussion on how to address certain issues).

Security Council is per se an exclusive forum.⁸⁹ Smaller, effective, professional, and specialized international organizations are required to adequately address many issues that while producing global effects lack an efficient international forum.⁹⁰ The time is ripe for technical international organizations that may have power over nation-states regarding issues that may not be left to world politics for the sake of mankind's peace and security. Thus, true supranational entities must be completely reshaped to overcome provincial national prejudices, discrimination, and inequality. Only strong international organizations may strive for the effectiveness of universally accepted values preventing their distortion by military and economic power.

A truly supranational organization with powers to bind its members and capacity to play an important role in shaping the international relations of the 21st century is required to face many challenges, including the prevention of international wars for resources; securing the efficient exploitation of nonrenewable resources and preventing the unsustainable depletion of fossil fuel reserves; implementing mechanisms for more efficient energy consumption; addressing global environmental impact concerns; and promoting the stability of the world economy while protecting the wellbeing of its population.

OPEC has been vilified as responsible for petroleum price hikes and supply shortages.⁹¹ Some refer to the Organization as

89. See U.N. Charter art. 39 (stating that the duty of the U.N. Security Council is to determine whether there are threats to peace and to maintain and restore international peace and security).

90. See Inge Kaul, *Governing Global Public Goods in a Multi-Actor World: The Role of the United Nations*, in *NEW MILLENNIUM, NEW PERSPECTIVES: THE UNITED NATIONS, SECURITY AND GOVERNANCE* 296 (Ramesh Thakur et al. eds., 2000) (stating that due to the increasing movement toward multilateral cooperation, there has been an "out migration" of issues from the U.N. to specialized forums and agencies and that these forums "progress without serious political conflict").

91. James C. Halas, Editorial, *Send in Delta Force*, *CHI. SUN TIMES*, Mar. 10, 2000, at 34.

a clumsy and “shortsighted cartel.”⁹² However, OPEC is far from being solely responsible for such price increases and has been a convenient scapegoat when someone must be blamed politically for inflationary trends.⁹³ Determining what really drives oil prices is not easy: “Big Oil is pointing fingers at hedge fund managers, who blame commodity index funds, who in turn cite surging demand in China, production losses in Nigeria and Iraq, and hostile regimes in Iran and Venezuela.”⁹⁴ Japan’s 2006 White Paper on International Trade and Economy concludes that the current level of crude oil prices, unlike the previous oil shocks, is not supply driven and is caused by the expansion of the U.S. and Asian economies⁹⁵ which creates an expansion of demand, anxiety about reduced surplus supply capacity of petroleum products,⁹⁶ reduced upstream investments in oil producing countries,⁹⁷ heavier crude oil trading to secure profits by purchasing crude oil in advance,⁹⁸ and poor energy saving investments by consumer countries.⁹⁹

92. M.A. Adelman, *The Real Oil Problem*, REGULATION, Spring 2004, at 16.

93. *See, e.g., id.* at 19 (describing that the supposed 1973 “oil embargo” against the United States by OPEC Arab Members never happened and the long lines at U.S. gas stations were actually caused by domestic price controls and allocations). The Indonesian Justice Minister was quoted in 2002 as follows: “It is not easy to reach a consensus in OPEC about the oil price, [never mind] about the use of oil as a weapon.” *Oil Surges on Iraqi Supply Threat*, BBC NEWS, Apr. 2, 2002, <http://news.bbc.co.uk/2/hi/business/1906849.stm> (alteration in original).

94. *See* Schwartz & Birger, *supra* note 5, at 74.

95. WHITE PAPER 2006, *supra* note 7, at 81. The growth in energy demand is attributed to the United States, China, and India. Press Release, Energy Info. Admin, U.S. Dep’t of Energy, World Energy Use Projected to Grow 57 Percent Between 2004 and 2030 (May 21, 2007), available at <http://www.eia.doe.gov/neic/press/press283.html>.

96. WHITE PAPER 2006, *supra* note 7, at 81.

97. *Id.* at 85. Paradoxically high oil prices may reduce upstream investments, producers may fear that such investments will be unprofitable if prices go down and do not have the incentives to make such investments. *Id.*

98. *Id.* at 86.

99. *Id.* at 91.

OPEC's history has a poor record of true organizational achievements.¹⁰⁰ Price increases may be attributed to speculation and OPEC's Conference has played a role in fueling speculators' predictions.¹⁰¹

Today, as in 1980, hydrocarbon reserves primarily in the Middle East are still a "vital interest[] of the United States."¹⁰² Military intervention has already taken place to protect such interests.¹⁰³

In the United Kingdom, energy demand and consumption has also grown steadily in the past decade confirming the importance of a stable oil supply.¹⁰⁴ The country's energy policy is based on "pursuing closer international relationships to promote region stability and economic reform in key energy producing areas."¹⁰⁵ At the same time "energy efficiency,"

100. DANKWART A. RUSTOW & JOHN F. MUNGO, OPEC: SUCCESS AND PROSPECTS 90–92 (1976) (discussing how OPEC's purpose as an organization is limited to maximizing monetary gains from oil).

101. STAFF OF PERMANENT SUBCOMM. ON INVESTIGATIONS OF THE S. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS, 109th Cong., The Role of Market Speculation in Rising Oil and Gas Prices: A Need to Put the Cop Back on the Beat 19–20 (Comm. Print 2006).

102. President Carter, State of the Union 1980, *supra* note 47. In 1980 Jimmy Carter declared:

Let our position be absolutely clear: An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force.

Id.

103. Memorandum from Amy Myers Jaffe to the Bd. Of the Nat'l Comm'n on Energy, at 1 (Sept. 2003), *available at* <http://www.energycommission.org/ht/a/GetDocumentAction/i/3184>. Desert Storm in 1991 to force Iraq out of Kuwait and the 2003 U.S. invasion of Iraq offer enough analysis material. *Id.* at 4.

104. U.K. DEP'T OF TRADE & INDUS., ENERGY CONSUMPTION IN THE UNITED KINGDOM 8 (2002). For example, in the United Kingdom energy consumption has increased by 15% since 1970. *Id.* 36% of such energy consumption was in the transport sector while industry consumed 21%. *Id.* at 10. The European Union in its 2000 Green Paper also acknowledged that it is consuming more and more energy and importing more and more energy products. GREEN PAPER, *supra* note 66, at 2. The European Union recognized its constant increase in external dependence for energy. *Id.*

105. U.K. DEP'T OF TRADE & INDUS., UK ENERGY SECTOR INDICATORS 2006: A SUPPLEMENT TO THE THIRD ANNUAL REPORT ON THE ENERGY WHITE PAPER "OUR ENERGY

ultimately meaning using less energy, is also the goal of the most important consumer countries.¹⁰⁶

However, the end of the hydrocarbon era is in sight. The United States Geological Survey predicts that conventional oil will peak in 2037.¹⁰⁷ Determining objectively the world's undeveloped reserves, protecting and making available production surplus to adjust for contingencies, controlling consumption, improving energy efficiency, developing new technologies, reducing greenhouse emissions, and preventing resource wars are all issues that should be treated technically and through a multinational effort.

Among others, Lester Brown has noted that “the western economic model—the fossil fuel-based, auto-centered, throwaway economy—is not going to work for China and if it does not work for China it will not work for India which by 2031 is projected to have a population even larger than China's, nor will it work for the 3 billion other people in developing countries who are also dreaming the “America dream.”¹⁰⁸

OPEC's member resources, the Organization's history and experience, and foremost its potential, call it will play a decisive role.¹⁰⁹ OPEC may be the only realistic means through which countries that otherwise would have no voice in the international community of nations may be seriously taken into account.

FUTURE-CREATING A LOW CARBON ECONOMY” 4 (2006), available at <http://www.berr.gov.uk/files/file29698.pdf>.

106. See, e.g., GREEN PAPER, *supra* note 66, at 27 (stating that the energy demand trend “could be reduced by international efforts to promote renewable energy and energy efficiency”).

107. See John Wood et al., Energy Info. Admin., U.S. Dep't of Energy, *Long Term World Oil Supply Scenarios: The Future is Neither as Bleak or Rosy as Some Assert*, Aug. 18, 2004, http://www.eia.doe.gov/pub/oil_gas/petroleum/feature_articles/2004/worldoilsupply/oilsupply04.html.

108. LESTER BROWN, PLAN B 2.0: RESCUING A PLANET UNDER STRESS AND A CIVILIZATION IN TROUBLE 11 (2006) [hereinafter PLAN B 2.0].

109. *OPEC's Duty to Help Ensure Stable, Secure Supplies at Reasonable Prices: OPEC President*, EMIRATES NEWS AGENCY, Oct. 30, 2007, <http://www.zawya.com/story.cfm/sidWAM20071030113625718/SecMain/pageHomepage>.

The complexity of the many issues involved is well beyond the limited scope of this work, the main purpose of which is to stimulate and open the dialogue for the restructuring of the Organization and its conversion into a more powerful and effective international player. Obviously, any OPEC amendment is conditioned by the effective political will of its members.¹¹⁰ Only if current members reach the necessary consensus to transform the Organization and have a basic agreement on its proposed new goals, would an amendment have any practical sense. This document addresses some of the most important topics of a proposed road map to be discussed among OPEC members to determine if such political will is possible. In reviewing this matter the following issues will be addressed.

1. Are OPEC's goals and structure outdated in view of the emergent trends in the international energy industry?
2. Do proposed amendments to the United Nations system and the economic realities of the twenty first century justify a rethinking of OPEC, its nature, objectives and role?
3. How can OPEC's Secretariat meet the challenges of the international oil industry in the 21st Century?

The many challenges of a truly global environment and issues that will affect every person living in the planet may not be adequately handled with a 1960's mindset. New effective institutions are required to deal with competing interests and complex issues. If the use of limited resources requires a world regulator, we need to empower it soon.

Ultimately, history and institutions are shaped by the character or lack thereof of individuals. True honest leadership and dedication may make the difference between an organization that plays a role in the lives of individuals or fades away as the burning flares of an extinguishing lamp. The stage is set for true honest leadership to make a difference in a world

110. OPEC Frequently Asked Questions, <http://www.opec.org/library/FAQs/OPEC.htm> (last visited Feb. 8, 2008).

hungry for depth and values. Time will tell whether we were up to the task. The challenge is to transform the current OPEC into a coalition for change, both inside the Organization and most importantly for the benefit of the world's economy and as an effective instrument for peace. This may require creativity and the ability to use "loose and temporary global policy networks."¹¹¹

II. ARE OPEC'S GOALS AND STRUCTURE OUTDATED IN VIEW OF THE EMERGENT TRENDS IN THE INTERNATIONAL ENERGY INDUSTRY?

A. OPEC's Formation and Goals

When the OPEC was established in 1960 the petroleum industry was dominated by the Seven Sisters¹¹² and the producing countries were merely trying to avoid further reductions of their internal revenues through lowered posted prices established unilaterally by the multinationals.¹¹³ The first OPEC Conference was far from being an act of war. Oil producing countries were only asking that the oil companies

111. See KOFI ANNAN, U.N. SEC'Y GEN., WE THE PEOPLES: THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY 14, U.N. Sales No. E.00.I.16 (2000), available at <http://www.unmillenniumproject.org/documents/wethepeople.pdf> [hereinafter ANNAN, WE THE PEOPLES] (suggesting "loose and global policy networks" as instrument to meet some of the U.N. challenges created by globalization).

112. See ANTHONY SAMPSON, THE SEVEN SISTERS: THE GREAT OIL COMPANIES AND THE WORLD THEY MADE 185 (1975) (explaining how OPEC's creation in the 1960s failed to end the dominance in the oil industry of the Seven Sisters). The Seven Sisters are Exxon, Mobil, Standard Oil of California, Gulf, Texaco, BP, and Shell. *Id.* at 5. The application of the name "seven sisters" to these companies is attributed to former ENI's CEO Enrico Mattei, who called them "le sette sorelle." *Id.* at 59 n.1.

113. OPEC's Resolution I.1 called its members to "demand that Oil Companies maintain their prices steady and free from all unnecessary fluctuations [and that] Members shall endeavor, by all means available to them, to restore present prices to the levels prevailing before the reductions." OPEC, *Resolutions of the First OPEC Conference, Baghdad, September 10-14 1960*, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960-1980 1 (1980) [hereinafter OPEC, *Resolutions of First OPEC Conference*].

consult with them before unilaterally reducing posted prices.¹¹⁴ At this time member states were primarily concerned with reductions of their national budgets, lacked the necessary petroleum exploration and exploitation technical know how¹¹⁵ and were thus not fully aware of the nature and value of their resources. Many things have changed since then. Today, member countries own and control their hydrocarbon resources, operate national oil companies that develop them,¹¹⁶ and prices are established by complex international market petroleum exchanges.¹¹⁷ When OPEC was formed issues such as the scarcity of the oil wealth, rights of indigenous peoples, the environmental consequences of petroleum production and energy security were not contemplated.¹¹⁸

After more than forty-five years of searching for its identity the time has come for OPEC to affirm its role as a truly supranational power that may effectively enhance the sovereignty of its people and allow true economic development toward a post-hydrocarbon based economy.

Considering its important purposes, potential influence and goals, the public knows little about OPEC and its role. However, OPEC is vilified in the United States as responsible for the 1973

114. *Id.* “[I]f any new circumstances arise which in the estimation of the Oil Companies necessitate price modifications, the said Companies shall enter into consultation with the Member or Members affected in order fully to explain the circumstances.” *Id.*

115. IAN SKEET, OPEC: TWENTY-FIVE YEARS OF PRICES AND POLITICS 24 (1988) (referring to the “profound ignorance of both technical and economic aspects of oil within the governments and national companies”).

116. *See, e.g., Nigeria Looks to Saudi’s Aramco as Its Model*, THE AUSTRALIAN, Sept. 15, 2007, <http://www.theaustralian.news.com.au/story/0,25197,22414683-5005200,00.html> (showing that Saudi Arabia, an OPEC member, operates a national oil company).

117. OPEC, Does OPEC Set Crude Oil Prices?, <http://www.opec.org/library/FAQs/aboutOPEC/q20.htm> (last visited Feb. 8, 2008) (explaining that oil prices are set by the three major international exchanges: the New York Mercantile Exchange (NYMEX), the International Petroleum Exchange (IPE) in London, and the Singapore International Monetary Exchange (SIMEX)).

118. *See RUSTOW & MUNGO, supra note 100, at 2* (explaining that the main concern of OPEC at the time of its formation was “the pricing practices of the major international oil companies”).

oil embargo, lines and no fuel at gasoline stations and even for not lighting that year's national Christmas tree.¹¹⁹ In reality, OPEC may not be to blame for high oil prices.¹²⁰ Further, few are aware that using oil as a political weapon was "never discussed in OPEC Conferences or by other organs of the Organization."¹²¹

OPEC controls 902 billion barrels of oil or 75% of the world's proved reserves and 61% of the world's proved reserves are located in the Middle East.¹²² According to OPEC's data, 78% of the total world's oil reserves (897 billion barrels) are located in OPEC countries, with 57% of those reserves concentrated in Iran, Iraq, and Saudi Arabia.¹²³ In 2005, OPEC produced an average of 30.7 million barrels a day while nonOPEC production averaged 41 million barrels a day.¹²⁴

119. Jay E. Hakes, Energy Info. Admin., U.S. Dep't of Energy, 25th Anniversary of the 1973 Oil Embargo, <http://www.eia.doe.gov/emeu/25opec/anniversary.html>. The Energy Information Administration refers to the 1973 oil crisis in the following terms:

Most memorably, October brought an oil embargo by members of the Organization of Arab Petroleum Exporting Countries, cutting further into the supply of oil and elevating prices to levels previously thought impossible. Customers experienced lines and sometimes no fuel at gasoline stations. A year of bad news was punctuated in December, when the President announced that because of the energy crisis the lights on the national Christmas tree would not be turned on.

Id.

120. BRITISH PETROLEUM, QUANTIFYING ENERGY: BP STATISTICAL REVIEW OF WORLD ENERGY JUNE 2006 (2006), available at http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/publications/energy_reviews_2006/STAGING/local_assets/downloads/pdf/statistical_review_of_world_energy_full_report_2006.pdf. In 2005, BP explained high energy prices as caused by: "Tight capacity, extreme weather, continued conflict in the Middle East, civil strife elsewhere and growing interest in energy among financial investors." *Id.*

121. KUBBAH, *supra* note 1, at 98.

122. OPEC Share of World Crude Oil Reserves (2006), *supra* note 61.

123. *Id.*

124. OPEC, OPEC ANNUAL STATISTICAL BULLETIN 2005 24 (Jerry Haylins ed., 2005) [hereinafter OPEC ANNUAL STATISTICAL BULLETIN 2005].

OPEC was formed as an instrument for its member countries not to “remain indifferent” to the unilateral conduct by the oil companies, to demand stable prices from them,¹²⁵ and to provide a forum for regular consultation among its members to unify and coordinate their policies.¹²⁶

Article 2 of OPEC’s Statute describes the Organization’s principal aim as “co-ordination and unification of the petroleum policies of member countries and the determination of the best means for safeguarding their interests, individually and collectively.”¹²⁷

Today, OPEC’s Statute includes as organizational goals the following:

- a. Stabilization of prices in international oil markets.¹²⁸
- b. Securing steady income for producing countries.¹²⁹
- c. Securing an “efficient, economic and regular supply of petroleum to consuming nations.”¹³⁰
- d. Securing a fair return on capital investments in the petroleum industry.¹³¹

In 1968, the Sixteenth OPEC Conference issued its “Declaratory Statement of Petroleum Policy in Member Countries” establishing basic petroleum policy principles.¹³² It must be noted that according to Resolution XVI.90, these principles were simply “recommended” and ultimately depended on the implementation by the government of each member country.¹³³ Such petroleum policy principles included:

125. See OPEC, *Resolutions of First OPEC Conference*, *supra* note 113, at 1.

126. *Id.* at 2.

127. OPEC, OPEC Statute art. 2(A), Apr. 2006 [hereinafter OPEC Statute].

128. *Id.* art. 2(B).

129. *Id.* art. 2(C).

130. *Id.*

131. *Id.*

132. OPEC, *Resolutions of the Sixteenth OPEC Conference Vienna, June 24–25, 1968*, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960–1980 80 (1980) [hereinafter *Resolutions of the Sixteenth OPEC Conference Vienna 1968*].

133. *Id.*

- a. Direct resource development by member countries. If countries are unable to undertake direct development they may implement granting instruments that retain the “greatest measure possible [of Government] participation in and control over all aspects of operations.”¹³⁴
- b. Contract terms open to review based on change of circumstances, which essentially meant revising existing concession contracts.¹³⁵
- c. Progressive and more accelerated area relinquishment of existing contract areas.
- d. Operator’s income based on posted or tax reference prices to be determined by the Government.
- e. Guarantee of fiscal stability by Governments to operators over reasonable periods of time.
- f. No right of “excessively high net earnings” by operators, and excessive earnings deemed as a valid cause for renegotiation.¹³⁶
- g. Requiring operators to keep clear and accurate accounts and records according to the Government’s instructions.¹³⁷
- h. Requiring operators to work pursuant to the “best conservation practices” considering “the long-term interests of the country.”¹³⁸
- i. Dispute resolution according to national laws and before local courts.¹³⁹

134. *Id.* at 80–81.

135. *Id.* at 81.

136. *Id.*

137. *Resolutions of the Sixteenth OPEC Conference Vienna 1968*, *supra* note 132, at 82.

138. *Id.*

139. *Id.*

In 1971, OPEC members agreed to “establish 55 per cent as the minimum rate of taxation on the net income of the oil companies operating in the Member Countries.”¹⁴⁰

In 1973, OPEC adopted Resolution XXXIV.55 issuing a Policy Statement on the world energy market.¹⁴¹ Under Resolution XXXIV:

- a. The exploitation and trade of hydrocarbons from member countries should be linked to their economic growth process.
- b. OPEC countries should undertake any actions to gain access to the technology and markets of the developed countries.
- c. OPEC members should cooperate with import developing countries.¹⁴²

OPEC’s goals have been reiterated by OPEC officials. For example, in July 2003 OPEC’s Secretary General confirmed OPEC’s mandate of coordinating member countries’ oil policies to ensure price stability in the world oil market, stable revenue for oil producing nations, a “regular, reliable, efficient and economic supply to consuming countries and a fair return to investors in the oil industry.”¹⁴³ OPEC’s most important goals may be understood as true “petroleum industry goals” since both consumers and producers agree on the importance of four basic issues:

140. OPEC, Press Release, Information Department, No. 7–70, Vienna, December 28, 1970, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960–1980 98 (1980).

141. OPEC, *Press Release, Information Department, No. 13–73, Vienna, July 27, 1973*, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960–1980 135 (1980).

142. *Id.* at 136.

143. Alvaro Silva-Calderón, Sec’y Gen., OPEC, The Role of OPEC in the 21st Century, Address to the European Energy Foundation (July 9, 2003), available at <http://www.opec.org/opecna/speeches/2003/eurenebrus.htm> [hereinafter Silva-Calderón, The Role of OPEC in the 21st Century].

- a. Stable prices, or “a fair and stable price range,”¹⁴⁴ which includes fair return to investors and secure petroleum revenue for member countries.
- b. Security of supply, or an “efficient, economic and regular supply of petroleum to consuming countries.”¹⁴⁵ This includes replacement of exhausted reserves and ensuring spare capacity.¹⁴⁶
- c. Security of demand or a predictable demand, which is the only instrument to determine the level of required investments.¹⁴⁷ This implies coordination with consumers and nonOPEC producers.
- d. Sufficient investment. Increasing production and replacing reserves requires important investments. OPEC members may lack the necessary resources to fund such investments.¹⁴⁸

OPEC has repeatedly made a call for dialogue and cooperation.¹⁴⁹ In 1960, it sought dialogue before posted prices were fixed.¹⁵⁰ Now it envisions dialogue as the instrument that may guarantee a stable and reliable supply, but also a

144. Alvaro Silva-Calderón, Sec’y Gen., OPEC, OPEC’s Role and the Challenges We Face in the Petroleum Industry, Address at the Institute of Petroleum’s Autumn Lunch (Oct. 22, 2003), *available at* <http://www.opec.org/opecna/speeches/2003/petinstlon.htm> [hereinafter Silva-Calderón, OPEC’s Role and the Challenges We Face in the Petroleum Industry].

145. *Id.* OPEC’s secretary general also described it as “absence of disturbances in the supply side, caused by interruptions, shortages and uncertainty.” *Id.*

146. *See* Silva-Calderón, The Role of OPEC in the 21st Century, *supra* note 143 (recognizing the need for producers to replace depleted reserves and expand production).

147. *See* Silva-Calderón, OPEC’s Role and the Challenges We Face in the Petroleum Industry, *supra* note 144 (stating one of the desired elements of an oil market is steady and predictable demand).

148. *See id.* (declaring that OPEC members will require investments of \$100 billion by 2010 and up to \$200 billion by 2020 to meet the growth of global demand).

149. *See* Edmund M. Daukoru, President, OPEC Conference, Closing Remarks by OPEC President to the 3d OPEC Int’l Seminar (Sept. 13, 2006), *available at* <http://www.opec.org/opecna/speeches/2006/daukoruclosingremarks.htm> (stating OPEC will continue to call for dialogue and cooperation).

150. *See* YERGIN, *supra* note 5, at 523 (describing the formation of OPEC and collaboration of countries in respecting posted prices).

predictable and stable demand, and most importantly a setting that may enable the vast investments necessary to make this happen.¹⁵¹

Understanding that OPEC's mandate is a truly global mandate that is above the limited interests and aspirations of nation-states and involves the well being of humanity and of the petroleum industry is key to determining the Organization's future role.

B. Significant International Developments Since OPEC's Formation

The oil and gas industry has changed substantially since OPEC's formation. The Organization was created to protect its members' interests when on a worldwide scale their governments were becoming aware of the value and importance of petroleum resources.¹⁵² However, during OPEC's initial years issues such as resource depletion, global warming, energy security, corruption and transparent markets were simply not considered.¹⁵³

The granting instruments pursuant to which the multinational companies obtained mineral rights to the vast oil wealth were modeled after the standard U.S. oil and gas lease, and the first OPEC years may be compared to the landlord's process of understanding the contract he entered into, getting to know his lessee, the lessee making substantial fixture invests and finding a treasure and the landlord discovering only later

151. See HE Abdalla Salem El-Badri, Sec'y Gen., OPEC, Statement by the Secretary General of OPEC to the High-Level Segment of the United Nations Commission on Sustainable Development-15 (May 10, 2007), available at <http://www.opec.org/opecna/speeches/2007/uncsd-15sg.htm> [hereinafter El-Badri, UNCS-15] (recognizing OPEC's strong support for dialogue).

152. See A Brief History of OPEC, <http://www.opec.org/aboutus/history/history.htm> (last visited Feb. 8, 2008) (stating the organization sought to assert Member Countries' legitimate rights in the oil market).

153. Compare RUSTOW & MUNGO, *supra* note 100, 20–21 (showing concerns in the 1970s over revenue and control of oil assets), with OPEC ANNUAL REPORT 2006, *supra* note 33, at 11, 29, 35 (showing concerns in 2006 focused on natural depletion, energy security and transparency in energy markets).

the great value of his property.¹⁵⁴ A second OPEC phase corresponded to the first renegotiation of the basic international petroleum agreements with the landlord being fully aware of the value of his property and seeking substantially improved economic terms and conditions and his share of the treasure.¹⁵⁵ The most important changes in international petroleum contracts reflect the transition between these two phases. Now we are starting the third and last phase in which the lessee left and the landlord knowing that his property may only be leased for a limited term needs the necessary funds to transform it into a new different source of income.¹⁵⁶ While the lessee still needs the treasure and is willing to pay and even kill for it, both landlord and lessee know that the treasure's value is slowly vanishing.¹⁵⁷

When OPEC was organized, differences between the multinational companies and one exporting country were not relevant as production could be easily replaced by increasing the output from another producer's source.¹⁵⁸ Today, while new energy sources are developing, all available resources are necessary to meet higher energy demand from multiple consuming nations.¹⁵⁹

154. See RUSTOW & MUNGO, *supra* note 100, at 8–9 (describing the oil companies' control over the counties oil resources).

155. See *id.* (describing how OPEC wrestled control of their oil resources from the oil companies).

156. See JAMES M. GRIFFIN & DAVID J. TEECE, OPEC BEHAVIOR AND WORLD OIL PRICES 14–15 (1982) (showing a slow decline in value depleting assets unless prices increase more than the discount rate).

157. *Id.*

158. See, e.g., RUSTOW & MUNGO, *supra* note 100, at 5 (explaining how nationalization of oil assets by one country had no effect on oil production or price).

159. See HE Abdalla Salem El-Badri, Sec'y Gen., OPEC, Balancing the Interests of Producing and Consuming Countries, Keynote Speech at the High-Level Energy Charter Policy Conference (Nov. 8, 2007), available at <http://www.opec.org/opecna/Speeches/2007/SGEnergyCharter.htm> (recognizing the world's resources are sufficient to meet future demands).

Whether fossil fuels dominate a country's energy foundation also becomes an issue that transcends that specific nation as greenhouse gases and global warming impact the entire globe.¹⁶⁰

International oil prices are important not only for the producing nations but also for the consumer countries both of whom benefit from a stable economy.¹⁶¹ Prices also determine whether there may be a smooth transition to a next energy generation era or whether international conflict to control limited resources will prevail.¹⁶²

Some of the most significant changes include the issues of permanent sovereignty over natural resources, awareness of climate change and humankind obligations to reduce greenhouse effects, international examples of successful integration models based on industrial integration, generalized demand for transparency and multiple international instruments to fight corruption, and resource wars.

1. Permanent Sovereignty Over Natural Resources and a New International Economic Order

OPEC's creation and development corresponded to a specific mindset and reflected the frustrations of an unfair international economic system and the valid aspirations of millions of people in less developed countries.¹⁶³ The notion of "permanent sovereignty over national resources" symbolized

160. See El-Badri, UNCSD-15, *supra* note 151.

161. See Adnan Shihab-Eldin, Acting for the Sec'y Gen., OPEC's Perspective on the World Oil Market, Speech at the 5th Russian Oil & Gas Week (Oct. 31–Nov. 2, 2005), available at <http://www.opec.org/opecna/Speeches/2005/Moscow.htm> (recognizing that extreme oil prices, both high and low, are damaging for producers and consumers).

162. See *id.* (acknowledging that price dialogue and cooperation will prevent future volatility).

163. See Adnan Shihab-Eldin, Acting for the Sec'y Gen., OPEC, Oil and Development: The Role of OPEC: A Historical Perspective and Outlook to the Future, Speech to the Cosmopolitan Club Vienna (Mar. 24, 2005), available at <http://www.opec.org/opecna/Speeches/2005/CosmoVie.htm> (discussing history and explaining the developing countries' need for OPEC).

empowerment.¹⁶⁴ Grasping power away from those who controlled it (a few multinational companies) and transferring it to the people. The people's interests in the middle of the 20th century were represented by the nation-state through its government.

Thus, in 1963, the United Nations General Assembly adopted Resolution 1803 (XVII) recognizing the right of permanent sovereignty over natural resources.¹⁶⁵ Resolution 1803 specifically called for international cooperation¹⁶⁶ and considered a violation of permanent sovereignty over a country's natural resources a violation of the U.N. Charter.¹⁶⁷ Permanent sovereignty over national resources meant shifting control over exploration, development and disposition of those resources from the multinational companies to the countries; governing all disputes between foreign investors and indigenous owners of resources by a combination of local legislation and international law; and confirming the state's power of nationalization or expropriation under specific terms and conditions.¹⁶⁸

In 1967, the U.N. General Assembly adopted Resolution 2158 (XXI), which specifically provided that international organizations, formed by developing countries to develop and market their resources, play a significant role in ensuring the right of permanent sovereignty over natural resources.¹⁶⁹ The U.N. General Assembly adopted in 1974 the Charter of Economic Rights and Duties of States.¹⁷⁰ That same year, the

164. See G.A. Res. 88, pmb., U.N. GAOR, 2nd Sess., U.N. Doc. E/RES/1991/88 (Aug. 30, 1991) ("Reaffirming that all countries, in particular developing countries, have the inherent and sovereign right to determine freely the use of their natural resources.").

165. G.A. Res. 1803 (XVII), ¶ 1, U.N. Doc. A/RES/1803 (Jan. 1, 1963).

166. See *id.* pmb. (stating such cooperation may be in the form of "public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information").

167. *Id.* ¶ 7.

168. See *generally id.* (explaining that nationalization required a public or national interest, appropriate compensation, and arbitration).

169. See G.A. Res. 2158 (XXI), ¶ 7, U.N. Doc. A/RES/2158 (Nov. 28, 1966) (stating developed countries should make available, at their request, assistance).

170. G.A. Res. 3281 (XXIX), U.N. Doc. A/RES/3281 (Dec. 12, 1974).

General Assembly adopted a declaration on the establishment of a New International Economic Order¹⁷¹ which specifically called for producer associations, improved terms of trade and better incomes for developing countries.¹⁷² The Stockholm Declaration¹⁷³ in 1972 and the Rio Declaration¹⁷⁴ in 1992 confirmed the sovereign right to exploit natural resources. Article 18 of the Energy Charter Treaty and article III–256 of the Constitution of Europe confirm the principle of energy sovereignty by providing each State's right to determine the conditions for exploiting its energy resources, choosing between different energy sources and determining the general structure of its energy supply.¹⁷⁵

As late as 1914, states joining to seek international solutions to prevent war agreed in the Inter-Allied Declaration that the “only true basis of enduring peace is the willing cooperation of free peoples in a world in which, relieved from the menace of aggression, all may enjoy economic and social security.”¹⁷⁶ Those economic and social issues led to the creation of the United Nations Economic and Social Council (ECOSOC) in 1945.¹⁷⁷ The need for economic and social security was

171. G.A. Res. 3201, U.N. GAOR, 6th Special Sess., Supp. No. 1, U.N. Doc. A/9559 (May 1, 1974).

172. *Id.* ¶ 4.

173. See Declaration of the U.N. Conference on the Human Environment, Stockholm (June 5–16, 1972), available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503> [hereinafter Stockholm Declaration] (Principle 21 of the Stockholm Declaration provides: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own [natural] resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”).

174. Rio Declaration on Environment and Development, June 13, 1992, 31 I.L.M. 874.

175. See Treaty Establishing a Constitution for Europe, Oct. 29, 2004, 2004 O.J. (C 310) 1 [hereinafter Europe Constitution Treaty].

176. The Declaration of St. James's Palace, <http://www.un.org/aboutun/charter/history> (last visited Feb. 8, 2008).

177. U.N. Charter pmbl.; *id.* art. 7, para. 1; *id.* art. 62, para. 1.

addressed again through the notion of a New International Economic Order, which some have criticized.¹⁷⁸ However, this concept highlighted the many injustices of the international system of economic relations. Under this approach, success of the industrialized countries would have been possible through the uninterrupted supply of cheap petroleum, which until 1970 was priced at \$1.25 a barrel, at the expense of poor suppliers.¹⁷⁹ Injustice was created by unfair international trade practices. International commodity agreements were a tool to stabilize prices for the benefit of exporting developing countries.¹⁸⁰ Under this notion, industrialized countries would lack or have exhausted their own natural resources and would depend on resources of “third world,” “undeveloped,” or “developing” countries. This would strengthen the bargaining economic power of resource-exporting countries with OPEC members as natural and obligatory leaders of the Third World as the owners of a powerful tool to introduce a new economic order.¹⁸¹

The possibility that countries rich in hydrocarbon resources could choose to destroy their oil wealth to deprive western economies of a resource that would destabilize the world economy and the notion of mutual dependence may justify reexamining this concept both from its economic and political implications.

178. Harry G. Johnson, *The New International Economic Order*, CHICAGO GSB SELECTED PAPERS SERIES NO. 49, at 1 (1976), available at <http://www.chicagogsb.edu/faculty/selectedpapers/sp49.pdf>. Harry Johnson refers to it as:

one of those propaganda slogans that have come to figure large in politics in our day, an attractive encapsulation of a series of objectives of a deliberately ambiguous or vaguely defined sort; a phrase designed to give those who are unfamiliar with it the feeling that they are ‘one down’ on those who use it familiarly.

Id. Johnson stated that “it is not new; it is not international; it is not economic; and it is not an order.” *Id.* at 2.

179. LUIS VALLENILLA, *OIL: THE MAKING OF A NEW ECONOMIC ORDER* 248 (1975).

180. Johnson, *supra* note 178, at 3–4. Johnson also includes the shift of power from nation states to the United Nation’s bureaucracy as part of the notion of a new international economic order which ultimately means a redistribution of power. *Id.* at 1, 14–15.

181. VALLENILLA, *supra* note 179, at 237–39.

The idea of a New International Economic Order is still alive in the Millennium Declaration¹⁸² and the Millennium Development Goals as the world deals with the many challenges of globalization. Equality (“[n]o individual and no nation must be denied the opportunity to benefit from development”),¹⁸³ solidarity (“[g]lobal challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice”),¹⁸⁴ respect for nature (“management of [] natural resources, in accordance with the precepts of sustainable development”),¹⁸⁵ and shared responsibility (“[r]esponsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally”)¹⁸⁶ are some of the fundamental values considered essential to international relations.

The notions of “sovereignty” and “permanent sovereignty over national resources” are challenged by issues that are beyond control of state jurisdictions such as threats to global security like international terrorism, climate change, poverty, and immigration.

Whether cutting oil supplies is a valid extension of a state’s right of permanent sovereignty over natural resources is a political issue worth thorough analysis. Is oil supply a purely

182. See G.A. Res. 55/2, ¶ 6, U.N. Doc. A/RES/55/2 (Sept. 8, 2000) (expressing the embodiment of some characteristics of the new international economic order). The United Nations Millennium Declaration upheld the “sovereign equality of all States, respect for their territorial integrity and political independence, . . . the right of self-determination . . . , noninterference in the internal affairs of States, respect for human rights and fundamental freedoms, . . . and international cooperation in solving international problems of an economic, social, cultural or humanitarian character.” *Id.* ¶ 4.

183. *Id.* ¶ 6.

184. *Id.*

185. *Id.*

186. *Id.* The fundamental value of “shared responsibility” addresses the relevance of international organizations such as the United Nations. OPEC may accept such share of responsibility and become an active participant in shaping the international relations of the 21st century.

commercial issue or are there state and international community public interests involved that may supersede private agreements? OPEC's Secretary General in 1968 referred to the petroleum producer countries international responsibility to supply oil to the world.¹⁸⁷ The answer to this question determines the very nature of OPEC as an organization and the terms and provisions that regulate petroleum investments and control over petroleum revenue, two of the issues in which the Organization should play a significant role.

Some authors have noted that when OPEC was formed Kuwait, one of its founding members, was not recognized as an independent state by the international community.¹⁸⁸ They add that when Qatar became an OPEC member in 1961, and Abu Dhabi in 1967, they were not independent members of the United Nations¹⁸⁹ and thus may have lacked the condition of "sovereign states." Remembering that the Swiss government did not consider OPEC a political international organization, but rather a group of commodity exporters, and denying it for that reason the recognition of international status and immunity

187. See OPEC, *Press Release, Information Department, Vienna, No. 9-68, Nov. 13, 1968*, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960-1980 84 (1980); OPEC, *Press Release, Information Department, Vienna, No. 10-68, Dec. 10, 1968*, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960-1980 85 (1980).

188. *E.g.*, Fadhil J. Chalabi, *Occupied Iraq and OPEC Conference Meetings*, MIDDLE E. ECON. SURV., Sept. 15, 2003, available at <http://www.mees.com/posted/articles/energy/iraq/a46n37a02.htm>. Kuwait was a British protectorate until June 1961 when it achieved independence. *Id.* However, after Kuwait claimed its independence Iraq claimed Kuwait arguing that it had been part of the Ottoman Empire. Majid Kadduri, *Iraq's Claim to the Sovereignty of Kuwait*, 23 N.Y.U. J. INT'L L. & POL. 5, 5 (1990). In 1963, Iraq accepted Kuwait's sovereignty. Kuwait was not admitted to the United Nations until May 14, 1963. United Nations Member States, <http://www.un.org/members/list.shtml> (last visited Feb. 8, 2008).

189. Chalabi, *Occupied Iraq and OPEC Conference Meetings*, *supra* note 188. Qatar only proclaimed its independence in 1971 and was admitted to the United Nations on September 21, 1971. *Id.* Abu Dhabi, which became the United Arab Emirates was a federation of Arab Sheikdoms under British control and only became a U.N. member on December 9, 1971. *Id.*; United Nations Member States, *supra* note 188; A Brief History of the United Arab Emirates, http://www.uaeembassyuk.net/ebrief_history.htm (last visited Feb. 8, 2008).

benefits contributes to the analysis of OPEC's nature.¹⁹⁰ OPEC's charter lacks the characteristics of a modern international organization foundational document, although it clearly refers to the sovereign equality of its members.¹⁹¹ Whether or not being a sovereign state was critical to OPEC membership became an issue when the OPEC Conference denied Iraq its right to attend the OPEC Conference while it was under the control of the Coalition forces.¹⁹²

An analysis of the arbitrary divisions based on "citizenship" and the true meaning of "sovereignty" may be enhanced by appealing to the Islamic doctrine of the *umma*, or "community of the faithful," the *umma* is "one and indivisible," transcending Sunni-Schi'a divisions¹⁹³ and making the division into national states "absurd, false and evil."¹⁹⁴ Thus, from this perspective good actions are pursued for a broader community than the one arbitrarily limited by state border lines.

190. Chalabi, *Occupied Iraq and OPEC Conference Meetings*, *supra* note 188.

191. *See id.* (noting that OPEC membership is not contingent upon state sovereignty or for a member country to be internationally recognized). "[T]he sole criteria for a member country [is] its production and export of oil and not whether or not it is a sovereign state, or temporarily colonized, or under a foreign mandate, or, for that matter, under occupation." *Id.*

192. *See id.* Commenting on Iraq's sovereignty OPEC's Secretary stated in July 2003: "Regarding Iraq's participation in OPEC's decisions, I would say that, since OPEC is an international organization of sovereign nations, it must be patient and wait until Iraq has formed a sovereign government. Once this has been achieved, then the country's representatives can take their rightful places at the table with other Member countries." Silva-Calderón, *The Role of OPEC in the 21st Century*, *supra* note 143.

193. LIESL GRAZ, *THE TURBULENT GULF* 60–61 (1990).

194. *Id.* at 61–62.

Those who have been able to found a state based on righteousness, even in one small territory of the *umma*, have the right, are in fact duty-bound, to take an interest or a hand in what is happening anywhere and everywhere within the *umma*, in any territory where Muslims are or could conceivably be in a majority. Following this line of reasoning, the notion of noninterference in the internal affairs of another country has no meaning within the *umma*.

Id.

With many of its members sharing a history of international protectorate, with Iraq's present situation of being under "control" of foreign military forces,¹⁹⁵ a thorough analysis of "sovereignty" and its development over control and development of natural resources is certainly fascinating. The possibility of OPEC reaching beyond "sovereignty" to create a supranational organization that aims at benefiting peoples is particularly attractive. Certainly, some may prefer limiting OPEC's scope to a commodity group of traders. The analysis of this matter, however, is well beyond the limited scope of this document. Its very origins and history may well justify the recreation of a unique international organization that would overcome "sovereign formalities" to make a difference in international relations and set a standard for the 21st century.

Petroleum revenues for exporting countries have increased dramatically since OPEC's inception.¹⁹⁶ However, in many countries higher revenues are not reflected in better conditions for most of the population.¹⁹⁷ Again, this triggers questions of what sovereignty is all about. With globalization, the gap between rich and poor has widened.¹⁹⁸ The Millennium goals of solidarity—which include equity, social justice, and shared responsibility—justify revisiting these issues. Are these vain words void of any real meaning and impact? Are these voices of a "United Nations" system that no longer makes any sense? Or are they the new terms that still raise valid issues that must be addressed to maintain peace and security in the world?

The scarce nature of hydrocarbon resources and the sunset of the hydrocarbon age are inconsistent with the notion of "permanency." Awareness of depletion creates challenges that should include the analysis of the many hidden costs associated with oil production and determination of the "fair price" of a

195. Chalabi, *Occupied Iraq and OPEC Conference Meetings*, *supra* note 188.

196. VALLENILLA, *supra* note 179, at 119.

197. See ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, OPEC REVENUES: COUNTRY DETAILS (2005), <http://www.eia.doe.gov/cabs/orevcoun.html> (describing how a country's high petroleum revenues have not necessarily solved all of its economic problems).

198. G.A. Res. 55/2, *supra* note 182, ¶ 5.

scarce resource. The price of such resource, among many other considerations, should promote conservation.¹⁹⁹ Energy security presents additional challenges to the concept of sovereignty. A supranational organization like OPEC may be the only mechanism that provides a credible voice to nations that otherwise lack any international weight, and the forum where many of these issues may be addressed to accomplish specific tangible results.

2. *Environmental Obligations and Climate Change*

The Energy White Paper in 2003 described the United Kingdom's energy policy, mentioning as its first challenge an environmental one because "[c]limate change is real" and levels of carbon dioxide in the atmosphere have risen by more than one third since the industrial revolution.²⁰⁰ The paper declared reducing carbon dioxide emissions by 60% by 2050 as the first objective of the U.K.'s foreign policy.²⁰¹

Following the 1972 U.N. Conference on Human Environment, the U.N. Environment Programme was established "[t]o provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life

199. Organization of Petroleum Exporting Countries: Declaration Concerning the International Economic Crisis arts. VI–VII, Mar. 6, 1975, 14 I.L.M. 566 [hereinafter OPEC Solemn Declaration 1975].

200. ENERGY WHITE PAPER 2003, *supra* note 83, at 6. Among others, the report refers to the following changes in the world: ice caps retreating from many mountain peaks; rise in sea levels; more frequent and intense El Niño events; arctic ice is thinner by 40%; and in this century the Earth's temperature has risen at a faster rate than in the past 10,000 years. *Id.* at 7. The first challenge of the United Kingdom's energy policy is environmental; a second challenge is the decline in the United Kingdom's indigenous energy supplies and the goal of maintaining reliable energy supplies; and the third challenge is the need of updating energy infrastructure. *Id.* at 6, 9–10.

201. *See id.* at 8.

without compromising that of future generations.”²⁰² This environmental conscience initiative led to the approval of the United Nations Framework Convention on Climate Change on May 9, 1992.²⁰³ The Convention acknowledged that the earth’s climate is a common concern of mankind, expressed its alarm for greenhouse gas concentration and greenhouse effects and tried to reconcile development and sovereignty to exploit a country’s resources with environmental protection recognizing the need for immediate action.²⁰⁴ The Convention’s objective is to stabilize greenhouse gas concentrations in the atmosphere and still enable economic development in a sustainable manner.²⁰⁵ Parties to the Convention agree to promote a “supportive and open international economic system that would lead to a sustainable economic growth and development.”²⁰⁶ The European Economic Community approved the Convention on December 21, 1993. The parties to the Convention, with the sole exception of the United States and Australia, executed the Kyoto Protocol²⁰⁷ on December 11, 1997 with specific targets to reduce

202. UNITED NATIONS ENV’T PROGRAMME, ORGANIZATION PROFILE 2 (2006), available at <http://www.unep.org/PDF/UNEPOrganizationProfile.pdf> [hereinafter UNEP ORGANIZATION PROFILE]. The UNEP was created through General Assembly Resolution 2997 (XXVIII) on December 15, 1972. *Id.* at 8. The UNEP has a 58 nation Governing Council that reports to the General Assembly. *Id.* at 3.

203. United Nations Framework Convention on Climate Change art. 22, May 9, 1992, 1771 U.N.T.S. 107, 31 I.L.M. 849, available at <http://unfccc.int/resource/docs/convkp/conveng.pdf> [hereinafter UNFCCC]. The Convention has been ratified by 192 countries. The U.N. Framework Convention on Climate Change: Essential Background, http://unfccc.int/essential_background/convention/items/2627.php (last visited Feb. 8, 2008). The United States signed the Convention on June 12, 1992 and ratified it on October, 15 1992. U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, STATUS OF RATIFICATION 7 (Aug. 22, 2007), http://unfccc.int/files/essential_background/convention/status_of_ratification/application/pdf/unfccc_conv_rat.pdf.

204. UNFCCC, *supra* note 203, pmb1.

205. *Id.* art. 2.

206. *Id.* art. 3.

207. KYOTO PROTOCOL, STATUS OF RATIFICATION (2007), available at http://unfccc.int/files/kyoto_protocol/background/status_of_ratification/application/pdf/kp_ratification.pdf.

or limit their emissions of greenhouse gases and agreed to not exceed their assigned carbon dioxide emissions.²⁰⁸

There is no doubt that the main energy consumers are committed to diversifying their energy sources and improving energy efficiency, allocating important resources to renewable energy.²⁰⁹ It is also clear that very high energy prices stimulate energy efficiency and contribute to the reduction of carbon emissions, while also affecting nations with lower incomes.²¹⁰

China's increased energy demand and high coal dependency with high levels of atmospheric pollution creates multiple environmental challenges.²¹¹ Today it is clear that an agreement involving the United States, Europe, China, and India would be necessary to effectively reduce global warming trends.²¹²

The passage to a new energy era has been called by some the "Environmental Revolution" as man's need to come to peace with nature by transforming its energy needs, consumption and energy sources.²¹³

208. Kyoto Protocol to the United Nations Framework Convention on Climate Change, arts. 3, 28, Dec. 11, 1997, 37 I.L.M. 22 [hereinafter Kyoto Protocol]. Annex A of the Protocol enumerates the following greenhouse gases: carbon dioxide, methane, nitrous oxide, hydro-fluoro-carbons, perfluoro-carbons, and sulphur hexafluoride. *Id.* at Annex A.

209. In 2000, the United Kingdom introduced the "Renewables Obligation" pursuant to which England and Wales suppliers are required to obtain an increasing percent of electricity from renewables every year. ENERGY WHITE PAPER 2003, *supra* note 83, at 12.

210. *Id.* at 11.

211. United Nations, Energy, Coal Combustion and Atmospheric Pollution in Northeast Asia, <http://esa.un.org/techcoop/flagship.asp?Code=RAS92461> (last visited Feb. 8, 2008).

212. Geoff Hiscock, *China Crucial to Climate Debate*, CNN, Apr. 5, 2006, <http://edition.cnn.com/2006/WORLD/asiapcf/03/29/china.climatechange/index.html>. A ministerial conference of the Asia-Pacific Partnership for Clean Development and Climate took place on January 2006 with participation by the United States, China, India, Japan, Republic of Korea and Australia. Asia-Pacific Partnership on Clean Development and Climate, Inaugural Ministerial Meeting, <http://www.asia-pacificpartnership.org/InauguralMinisterial.htm>.

213. See PLAN B 2.0, *supra* note 108, at 247–48. Brown compares the transition from an Agricultural Revolution to the Industrial Revolution, with the current changes toward an "Environmental Revolution," and how this requires restructuring the global

In a similar fashion as the United Nations has recently favored international interventions to enforce gross human rights violations, a specialized supranational energy organization should play a role when oil and gas exploration and development takes place in areas of special environmental interest for all mankind.²¹⁴ The planet's environmental well being should supersede selfish national interests when the potential harm to the environment is greater than the benefits of exploiting and developing nonrenewable resources. To date there is no international organization that may effectively review these issues, and most importantly, play a role in protecting the world's environment.²¹⁵ OPEC's oil and gas expertise and its mandate to protect the collective interests of its members place it in a privileged position to make a contribution in these fields.

Paradoxically, OPEC's quota system and price control mechanisms are an effective control of hydrocarbon production, which has been one of the objectives of environmental groups.²¹⁶ Thus, OPEC's very own mandate could enable it to effectively play an environmental protection role.

economy according to the principles of ecology. *Id.* Such new economy would invest in wind power, solar cells and geothermal energy. *Id.* at 248.

214. Emily Yoffe, *What Is an International Protectorate?*, SLATE, Mar. 28, 2007, <http://www.slate.com/id/1007382/>; UNEP ORGANIZATION PROFILE, *supra* note 202, at 9.

215. SWISS AGENCY FOR THE ENV'T, FORESTS & LANDSCAPE, TRADE AND THE ENVIRONMENT: GLOBALIZATION SERVING AN ENVIRONMENTAL FUNCTION 2 (2003), available at <http://www.news-service.admin.ch/NSBSubscriber/message/attachments/1143.pdf>.

216. See OPEC Solemn Declaration 1975, *supra* note 199, art. VII; *The Second Summit of Heads of State and Government of OPEC Member Countries, Solemn Declaration*, pmbl., art. X, Sept. 27–28, 2000, available at <http://www.opec.org/aboutus/Solemn%20Declaration%20I-III.pdf> [hereinafter *OPEC Solemn Declaration 2000*].

3. *International Integration Models Such as the European Union Experience*

Ensuring the “uninterrupted physical availability of energy products on the market” is essential to the European Union’s long term energy supply security.²¹⁷ At the same time the European Union recognized that despite its importance, there has not been a “real debate on the choice of energy sources [nor] on energy policy regarding security of supply.”²¹⁸ Europe’s 2000 Green Paper asked whether the Union could “afford to ignore [its] dependence of more than 40% on oil imported from OPEC countries?”²¹⁹ Europe’s integration model offers an example of successful international union based on the integration of key energy industries.²²⁰

Since 1951, Europe’s coal and steel industries were integrated into the European Coal and Steel Community (ECSC).²²¹ The ECSC reflected both an economic and political decision because, as it is the case with oil for OPEC members, the coal and steel industries were essential for ECSC member countries.²²² French foreign minister Robert Schuman referred to the “pooling of coal and steel production [to set up] common foundations for economic development.”²²³ The objectives sought by the European countries could well apply today to the OPEC

217. See GREEN PAPER, *supra* note 66, at 3.

218. *Id.* at 4.

219. *Id.* at 11.

220. See GREEN PAPER, *supra* note 66, at 3–5 (showing integration of energy market, transportation and construction industries, and fiscal policy to mitigate energy dependence). Two out of the three treaties that established the European Communities dealt with energy, the European Coal and Steel Community and the Euratom Treaty. *Id.* at 11.

221. Summaries of Legislation, Treaty Establishing the European Coal and Steel Community, ECSC Treaty, http://europa.eu/scadplus/treaties/ecsc_en.htm (last visited Feb. 8, 2008) [hereinafter Summary of ECSC Treaty]. The members of the European Coal and Steel Community were Belgium, West Germany, Luxembourg, France, Italy and the Netherlands. *Id.* The ECSC treaty was signed in Paris on April 18, 1951 and entered into force on July 24, 1952. *Id.*

222. *Id.*

223. See Schuman, *supra* note 6.

members: “to strengthen . . . solidarity, banish the spectre of war and open the way to . . . integration.”²²⁴ A supranational entity, the “high authority,” with binding powers was established to adopt all decisions regarding the coal and steel industry for the member countries,²²⁵ which led to the formation of the European Atomic Energy Community and European Economic Community in 1957.²²⁶ On February 7, 1992 at Maastricht the relationship between members was broadened to include issues such as defense, energy and the environment and the European Union was established.²²⁷ Some of the objectives sought through the ECSC could well apply to OPEC today:

- securing in the shortest possible time the modernization of production and improvement of its quality;
- the supply of coal and steel on identical terms to the French and German markets, . . . [and access to the sources of production and production forecasts to be made by the highest authority];
- the development in common of exports to other countries;
- the equalization and improvement of living conditions of workers in these industries.²²⁸

224. See Summary of ECSC Treaty, *supra* note 221.

225. When the ECSC was created it was provided that a United Nations representative would be accredited to the “high authority” to make public reports to the United Nations two times a year. See Schuman, *supra* note 6.

226. F. Roy Willis, *Origins and Evolution of the European Communities*, ANNALS AM. ACAD. POL. & SOC. SCI., NOV. 1978, at 6–7.

227. See The History of the European Union: 1990–1999 A Europe Without Frontiers, http://europa.eu/abc/history/1990-1999/index_en.htm.

228. Schuman, *supra* note 6. Robert Schuman declared: “In contrast to international cartels, which tend to impose restrictive practices on distribution and the exploitation of national markets, and to maintain high profits, the organization will ensure the fusion of markets and the expansion of production.” *Id.*

On January 1, 2004 the European Union was amended to include a total of twenty-five countries.²²⁹ On March 10, 2001, with the admission of new members the Treaty of Nice was entered into and on December 16, 2004 the treaty establishing the Constitution of Europe²³⁰ was executed. The members of the European Union agreed constitutionally to maintain price stability and achieve close economic policy coordination between them.²³¹

The European Union specifically agreed to establish trans-European networks particularly in the area of energy infrastructure.²³² Europe's Constitution specifically provides a mandate to "ensure security of energy supply" and to promote energy saving and efficiency.²³³ The European Constitution provides that European framework laws shall establish an environmental policy and "choice[s] between different energy

229. Europa, The History of the European Union, http://europa.eu/abc/history/2000_today/2004/index_en.htm. The countries that were members of the European Union as of 2004 were Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom. *Id.* The new members added in 2004 were Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, the Slovak Republic, and Slovenia.

230. Summaries of Legislation, Introduction, http://europa.eu/scadplus/nice_treaty/introduction_en.htm (last visited Feb. 8, 2008); Summaries of Legislation, A Constitution for Europe, http://europa.eu/scadplus/constitution/introduction_en.htm (last visited Feb. 8, 2008). Through the Constitution of Europe, the Member countries declare the need to be "[u]nited in diversity" and each individual's responsibility towards future generations and the Earth. Europe Constitution Treaty, *supra* note 175, pmbl. Likewise the citizens and countries of Europe pledge to promote environmental protection and sustainable development. *Id.* art. III-119.

231. Europe Constitution Treaty, *supra* note 175, art. III-177.

232. Treaty Establishing the European Community, art. 154, Nov. 10, 1997, 2002 O.J. (C 325) 33 [hereinafter EC Treaty].

233. Europe Constitution Treaty, *supra* note 175, art. III-256. Specifically, Article III-256 provides:

In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to: (a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union, and (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy.

Id.

sources and the general structure of its energy supply.”²³⁴ Interestingly, the European Constitution confirms the principle of sovereignty to exploit a country’s energy resources by providing that although European laws on energy may be established they shall respect each “Member State’s right to determine the conditions for exploiting its energy resources, its choices between different energy sources and the general structure of its energy supply.”²³⁵

On December 17, 1991, members of the European Community approved the European Energy Charter to promote long term energy cooperation.²³⁶ Europe tried to get Russia to join the Energy Charter without success.²³⁷

Europe represents the most successful example of integration based on an energy integration initiative. OPEC may provide important assistance to its member countries toward cooperation and integration founded on common energy interests.

4. *Transparency and the Fight Against Corruption*

Every western international world leader refers to the importance of promoting transparent energy markets. The market is perceived as the most efficient way of allocating resources, as long as such market follows clear, enforceable rules. The fight against corruption is a critical component to achieve transparency.²³⁸

234. *Id.* arts. III–234.2.(c), 234.4.

235. *Id.* art. III–256.

236. Counsel and Commission Decision 98/181, pmb., art. 2, 1998 O.J. (L 69) 1.

237. *Putin Firm on EU Energy Charter*, BBC NEWS, Oct. 21, 2006, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/6068386.stm>. When deciding not to join the European Energy Charter, Putin stated that “energy co-operation needed to be rooted in the principles of predictability of energy markets and the mutual interdependence of suppliers and consumers.” *Id.*

238. See PETER LANGSETH, GLOBAL PROGRAMME AGAINST CORRUPTION CONFERENCES, VALUE ADDED OF PARTNERSHIP IN THE FIGHT AGAINST CORRUPTION 11 (2001), <http://www.unodc.org/pdf/crime/gpacpublications/cicp11.pdf>.

An international voluntary initiative known as the “Global Compact” was presented by Kofi Annan on January 31, 1999, to promote corporate responsibility.²³⁹ The Global Compact is described as a network that brings together U.N. agencies, private sector such as civil society, and labor and governments toward a sustainable world economy. The Global Compact promotes values-based markets through “responsible global corporate citizenship.”²⁴⁰ Through this initiative, participating companies²⁴¹ agree to abide by ten principles which include: support and protection of international human rights; not being complicit with human rights abuses; uphold the freedom of association and the right to collective bargaining; elimination of all forms of forced labor; effective abolition of child labor; elimination of discrimination in employment; support a precautionary approach to environmental challenges (which includes the notion of paying for ecological debts); promote environmental responsibilities; and environmental friendly technologies; and work against all forms of corruption.²⁴²

On December 17, 1997, Organization for Economic Co-Operation and Development (OECD) member countries and five nonOECD members executed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.²⁴³ The Convention entered into force on February 15, 1999.²⁴⁴

239. Press Release, United Nations, Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos, U.N. Doc. SG/SM/6881 (Feb. 1, 1999).

240. GLOBAL COMPACT OFFICE, THE UNITED NATIONS GLOBAL COMPACT: ADVANCING CORPORATE CITIZENSHIP 2 (2005), http://www.unglobalcompact.org/docs/about_the_gc/2.0.2.pdf [hereinafter U.N. GLOBAL COMPACT].

241. Participating U.S. companies do not include major oil and gas companies like ExxonMobil or Chevron. See Lynn Bennie et al., *The Logic of Transnational Action: Good Cooperation and the Global Compact*, 55 POL. STUD. 733, 747 (2007).

242. U.N. GLOBAL COMPACT, *supra* note 240, at 3–4.

243. Ronald Oman, *TEC Case Study No. 623: Transnational Bribery* (2000), <http://www.american.edu/TED/bribery.htm>.

244. *Id.*

On October 31, 2003, the General Assembly adopted the U.N. Convention against Corruption, which entered into force on December 14, 2005.²⁴⁵ All OPEC members are signatories to the Convention²⁴⁶ which so far has been ratified by, Algeria,²⁴⁷ Indonesia,²⁴⁸ Libya,²⁴⁹ Nigeria,²⁵⁰ and the United Arab Emirates.²⁵¹ The Convention acknowledges that corruption is a “transnational phenomenon that affects all societies” and that preventing and combating corruption is a responsibility of all states.²⁵² One of the Convention’s purposes is to “promote integrity, accountability, and proper management of public affairs and public property.”²⁵³ State parties to the Convention agree to implement anticorruption policies that reflect the principles of the “rule of law, proper management of public affairs and public property, integrity, transparency and

245. United Nations Convention Against Corruption, G.A. Res. 58/4, U.N. Doc. A/58/422 (Oct. 31, 2003) [hereinafter U.N. Convention Against Corruption]; Press Release, Dep’t of Pub. Info., Convention Against Corruption Ratified by 30th State, Will Enter into Force 14 December 2005, U.N. Doc. L/T/4389 (Sept. 15, 2005). The Convention is a United Nations effort to combat corruption following multiple multilateral instruments which include the Inter-American Convention Against Corruption (Mar. 29, 1996), Convention on the Fight Against Corruption involving Officials of the European Communities or Officials of Member States of the European Union (May 26, 1997), Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Nov. 21, 1997), and the African Union Convention on Preventing and Combating Corruption (July 12, 2003). U.N. Convention Against Corruption, *supra*, pmb1.

246. Signatories to the United Nations Convention Against Corruption, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last visited Feb. 8, 2008).

247. *Id.* Algeria ratified the Convention on August 25, 2004. *Id.*

248. *Id.* Indonesia ratified the Convention on September 19, 2006. *Id.*

249. *Id.* Libya ratified the Convention on June 7, 2005. *Id.*

250. *Id.* Nigeria ratified the Convention on December 14, 2004. *Id.*

251. *Id.* The UAE ratified the Convention on February 22, 2006. *Id.*

252. U.N. Convention Against Corruption, *supra* note 245, pmb1.

253. *Id.* art. 1(a). Oil and gas reserves fall under the Convention’s definition of “property” described as “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.” *Id.* art. 2(d).

accountability.”²⁵⁴ State parties also agree to adopt the necessary mechanisms to guarantee transparency in public contracting, including “invitations to tender” and awarding of contracts.²⁵⁵ The Convention requires member states to establish several corruption related criminal offenses.²⁵⁶ The Convention establishes civil and criminal liability of legal persons.²⁵⁷

The G8 meeting in June 2006 confirmed in its plan of action to achieve global energy security the importance to increase transparency, predictability and stability of the global energy market.²⁵⁸

Another example of the interest to combat corruption effectively is provided by the Norwegian Pension Fund—Global a \$263 billion fund established to provide for Norway’s population when oil resources are exhausted—which invests with a “do good” mind set, and tries not to contribute to unethical business to “ensure that [the] money doesn’t go to companies linked to such things as weapons production, human rights abuses, environmental damage or corruption.”²⁵⁹

OPEC could elaborate on the Global Compact values with several purposes. First, it could review the present oil and gas marketing structure and provide transparent alternatives in which oil cost and the price paid to the producer would be clearly reflected and distinguished from price increases caused by speculation and financial pressures. Second, it could promote transparency in the management of oil and gas as state resources, part of the public patrimony, providing guidelines for

254. *Id.* art. 5.

255. *Id.* art. 9.1(a).

256. *Id.* arts. 15–25. All state parties are to establish the following criminal offenses: bribery of national public officials, bribery of foreign public officials, embezzlement, misappropriation or diversion of property by a public official, trading in influence, abuse of functions, illicit enrichment and bribery in the private sector. *Id.*

257. *Id.* art. 26.

258. G8 SUMMIT, GLOBAL ENERGY SECURITY (2006), <http://en.g8russia.ru/docs/11.html>.

259. Doug Mellgren, *Norwegian Fund Stresses Ethics*, HOUS. CHRON., Nov. 20, 2006, at D1.

the adequate exploitation of such resources, clear applicable and enforceable rules of law, objective bidding and adjudication processes, and most importantly sound investments that would enable the oil and gas industry to become a tool that could transform societies for the better. Lastly, it could even play a role in enforcing international human rights by analyzing the situation of those countries rich in hydrocarbon resources and with poor human rights compliance records. Human rights should not be used as political excuses to advance foreign policy strategies. Comparing the permanent right of sovereignty over natural resources with *jus cogens* provisions is required to preserve the higher values that justify any legal or state regimes. OPEC could become proactive in these matters adding its petroleum industry expertise and its “developing” world perspective to a global dialogue that needs balance and objectivity.

5. *Resource Wars*

The use of military force to prevent “the strangulation of the industrial world” was contemplated by Richard Nixon and Henry Kissinger in 1975 as an emergency alternative to solve an oil crisis.²⁶⁰ At the time, a U.S. military intervention in the Middle East may have been prevented out of the fear that could lead to the Soviet Union reaction creating what was already referred to as a “War of Energy Resources.”²⁶¹

Such a “War of Energy Resources” is on its way. On August 2, 1990, over 100,000 Iraqi soldiers invaded Kuwait.²⁶² Saddam Hussein declared that Kuwait was Iraq’s nineteenth province.²⁶³ The invasion was branded as “absolutely unacceptable” by British Prime Minister Margaret Thatcher and as a “naked act

260. VALLENILLA, *supra* note 179, at 239–40.

261. *Id.* at 240.

262. *The Revenge of the Arabs: Saddam Hussein, Petro-Capital, and the “Peace Process,”* WORLD AFFAIRS MONTHLY, Sept. 2003, <http://www.worldaffairsmoonthly.com/printfriendlybyid.php?id=275>.

263. Operation Desert Shield, http://www.globalsecurity.org/military/ops/desert_shield.htm.

of aggression” by U.S. President George H. W. Bush.²⁶⁴ “In response to the news of the invasion the price of oil rose dramatically.”²⁶⁵ On the same date, the U.N. Security Council unanimously condemned Iraq’s invasion and decided that it was a breach of international law.²⁶⁶ Four days later, on August 6, 1990, the Security Council established an embargo of all exports and imports by and to Iraq and imposed economic sanctions under the U.N. Charter.²⁶⁷ In November, the Security Council required Iraq to withdraw from Kuwait by January 15, 1991, and authorized the use of force if Iraq did not comply.²⁶⁸ On January 16, 1991, the United Nations authorized the use of force to restore Kuwait’s sovereignty.²⁶⁹ Operation Desert Storm was launched to force Iraq out of Kuwait.²⁷⁰ On April 14, 1995, the Oil for Food Program was established through Security Council Resolution 986 authorizing the export of Iraq’s petroleum products to be sold at the price determined by the United Nations, and with payment made to Iraq through a U.N. Security Council escrow account which funds would be used exclusively to meet the humanitarian needs of the Iraqi

264. *1990: Iraq Invades Kuwait*, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/august/2/newsid_2526000/2526937.stm.

265. *Id.*

266. S.C. Res. 660, U.N. Doc. S/RES/660 (Aug. 2, 1990).

267. S.C. Res. 661, ¶¶ 3–4, U.N. Doc. S/RES/661 (Aug. 6, 1990).

268. S.C. Res. 678, ¶¶ 1–2, U.N. Doc. S/RES/678 (Nov. 29, 1990).

269. *War in the Gulf; Allies Tell U.N. Security Council of Attack*, N.Y. TIMES, Jan. 17, 1991, at A17; *see also* S.C. Res. 661, *supra* note 267, at para. 3 (stating that the U.N. is determined to restore the sovereignty of Kuwait); S.C. Res. 678, *supra* note 268 (stating that the U.N. authorized Member-States cooperating with the Government of Kuwait to use all necessary means to uphold resolution 660 if Iraq did not implement the U.N. resolutions by January 15, 1991).

270. *1991: Mother of All Battles Begins*, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/january/17/newsid_2530000/2530375.stm.

people.²⁷¹ Thus, Oil War I took place with the blessings of the “international community.”

Only thirteen years later, Oil War II was declared. In April 2002 Iraq called other Arab producers to stop oil supplies to the United States.²⁷² Iran considered this proposal “effective” as long as all Muslim countries backed such decision.²⁷³ The possibility of once more using oil as a weapon was such that on April 4, 2002 OPEC’s secretary general formally dismissed such possibility.²⁷⁴ Four days later, Ayatollah Ali Khomeini expressed his views on the paralyzing effect on the global economy of an embargo on oil exports from the Islamic world, stating “[i]f [the Western countries] do not receive oil their factories will come to a halt. This will shake the world.”²⁷⁵ U.S.-Saudi relationships were particularly tense at this time since a majority of the

271. S.C. Res. 986, ¶¶ 1, 8, U.N. Doc. S/RES/986 (Apr. 14, 1995). Russian and French companies were the first and second preferred Iraqi customers under the Oil for Food program, in which Iraq established a surcharge between ten and thirty cents per barrel. *Oil Scandal: Court Rules Against State Company*, EVER-FASTERNEWS.COM, Oct. 23, 2006, http://www.ever-fasternews.com/index.php?php_action=read_article&article_id=290. There was a “universal market recognition” that Iraqi oil could not be purchased without a surcharge, and the government of Iraq succeeded in using the sale of oil under the Programme as a tool of foreign policy and a sizeable source of illicit revenue. Indep. Inquiry Comm. into the United Nations, *Report of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme on the Manipulation of the Oil-for-Food Programme by the Iraqi Regime*, at 4 (Oct. 27, 2005), available at <http://www.iic-offp.org/story27oct05.htm>. “Iraq’s largest source of illicit income from the Programme came from ‘kickbacks’ paid by companies that it selected to receive contracts for humanitarian goods under the Programme.” *Id.*

272. *Oil Surges on Iraqi Supply Threat*, *supra* note 93; *see also Oil Price Surges as Tensions Grow*, CNN, Apr. 2, 2002, <http://archives.cnn.com/2002/BUSINESS/04/02/oil.prices/index.html?related>.

273. *Oil Surges on Iraqi Supply Threat*, *supra* note 93. The Iranian Foreign Minister was quoted as stating that “If they [Iraq] decide to use oil as a weapon certainly Iran would consider it.” *Id.*

274. *See OPEC Dismisses Threat of Anti-US Action*, BBC NEWS, Apr. 2, 2002, <http://news.bbc.co.uk/2/hi/business/1910607.stm> (“[OPEC] did not receive until now any concrete proposal to use oil as a weapon.”).

275. *See James Arnold, Analysis: Another Oil Embargo?*, BBC NEWS, Apr. 8, 2002, <http://news.bbc.co.uk/2/hi/business/1913252.stm>.

September 11 high-jackers were Saudis.²⁷⁶ At a meeting toward the end of April 2002, Saudi Crown Prince Abdulla complained that “[i]f the U.S. doesn’t do more to reduce the violence [in the Middle East] there will be grave consequences for the U.S. and its interests.”²⁷⁷

Further, Iraq had been announcing since 2000 its threat to suspend all oil exports unless the United Nations allowed it to receive payments in euros instead of dollars.²⁷⁸ Iraq succeeded in this effort, and since October 2000, Iraqi exports could only be paid in euros.²⁷⁹

With all that pressure built, finally Carter’s pledge became effective, and in 2003, the United States invaded Iraq.²⁸⁰ Saddam Hussein referred to the U.S. goal as an “imperialistic quest for oil.”²⁸¹ Kofi Annan, the U.N. Secretary General, considered that the invasion was illegal and a breach of the U.N.

276. Andrew North, *Troubled Times for US-Saudi Ties*, BBC NEWS, Aug. 28, 2002, http://news.bbc.co.uk/2/hi/middle_east/2221680.stm.

277. Brian Knowlton, *Saudis Tell the U.S. Oil is Not a ‘Weapon’*, INT’L HERALD TRIB., Apr. 26, 2002, http://www.iht.com/articles/2002/04/26/saudi_ed3_2.php.

278. *See Iraq Oil Threat over Dollar Row*, BBC NEWS, Oct. 26, 2000, http://news.bbc.co.uk/2/hi/middle_east/992585.stm.

279. *U.N. to Let Iraq Sell Oil for Euros, Not Dollars*, CNN, Oct. 30, 2000, <http://archives.cnn.com/2000/WORLD/meast/10/30/iraq.un.euro.reut/>. Many view this as the political move that determined Saddam Hussein’s fate by disputing the dollar hegemony over international oil sales. *See When Will We Buy Oil in Euros?*, THE OBSERVER, Feb. 23, 2003, <http://observer.guardian.co.uk/business/story/0,6903,900867,00.html> (“It was a political move on the part of the Iraqi government to show that the euro could be a substitute for the dollar in denominating the oil price.”); *see also* William Clark, Ctr. for Research on Globalization, *The Real Reasons Why Iran is the Next Target: The Emerging Euro-Denominated International Oil Market*, GLOBAL POLICY FORUM, Oct. 27, 2004, <http://globalpolicy.org/empire/intervention/iran/economy/2004/1027realreason.htm> (concluding that the invasion of Iraq had less to do with any threat from Saddam Hussein’s WMD program or with fighting international terrorism than it had to do with gaining control over Iraq’s hydrocarbon reserves and in doing so maintaining the U.S. dollar as the monopoly currency for the critical international oil market).

280. *U.S. Launches Cruise Missiles at Saddam*, CNN, Mar. 20, 2003, <http://www.cnn.com/2003/WORLD/meast/03/19/sprj.irq.main/>.

281. Michael Moran & Alex Johnson, *The Rush for Iraq’s Oil*, MSNBC, Nov. 2, 2002, <http://www.msnbc.msn.com/id/3071521>.

Charter.²⁸² However, less than two months after the invasion the United Nations lifted international sanctions against Iraq legalizing international negotiations of Iraq's crude.²⁸³ According to a U.S. Department of State report:

U.S. projects have helped Iraq stabilize its oil production, and recover from decades of neglect under the previous regime. In 2002, UN Oil for Food data show[ed] that Iraq produced 2.0 million barrels a day, and exported 1.3 million barrels per day. . . . In June [2005], Iraq averaged 2.3 million barrels a day of production, and 1.6 million barrels a day in exports. . . . Iraq's overall production target (for both production and capacity) is 2.8 million barrels a day, which [is expected] by September 30, 2007. Iraq hopes to average a total of 1.65 million barrels a day of exports in 2006.²⁸⁴

The revenues for 2005 and 2006 oil production and exports reached \$23.5 billion and \$27.5 billion up to November 6, 2006.²⁸⁵ Notwithstanding the above, only a year after the invasion the Department of State reported that Iraq's oil infrastructure was already producing 2.5 million barrels of oil per day.²⁸⁶

282. *Iraq War Illegal, Says Annan*, THE TRIBUNE, Sept. 17, 2004, <http://www.tribuneindia.com/2004/20040917.htm#2>. In an interview in September of 2004, Annan stated,

I am one of those who believe that there should have been a second resolution from the UN Security Council to green-light the U.S.-led invasion that toppled Saddam Hussein's regime. . . . I have indicated that it was not in conformity with the UN Charter from our point of view, and from the Charter point of view it was illegal.

Id.

283. S.C. Res. 1483, ¶ 18, U.N. Doc. S/RES/1483 (May 22, 2003). The Resolution provides that Iraqi petroleum and petroleum products shall be immune from legal proceedings against them until title passes to the initial purchaser. *Id.* ¶ 22.

284. U.S. DEP'T OF STATE, QUARTERLY REPORT TO CONGRESS 2207 REPORT 13 (July 2006), available at <http://www.state.gov/documents/organization/68988.pdf>.

285. U.S. DEP'T OF STATE, IRAQ WEEKLY STATUS REPORT 22 (Nov. 8, 2006), available at <http://www.state.gov/documents/organization/75926.pdf>.

286. U.S. DEP'T OF STATE, IRAQ ONE YEAR LATER: FREEDOM AND PROGRESS (2004), available at <http://www.state.gov/documents/organization/30927.pdf>. The report stated

In 1997, Saddam Hussein's Iraq signed agreements to develop important Iraqi oil fields with Lukoil (Russia) and China National Petroleum Corporation (China), and later it negotiated an agreement with Total-Fina-Elf (France).²⁸⁷ With the U.S. invasion, it is unclear what will be the future of previous negotiations and whether American companies will benefit from the U.S.-led military operation. How an upgraded Iraqi infrastructure will increase the country's production causing severe impact on OPEC's output remains to be seen.²⁸⁸ Amendments to such oil and gas contracts in place, and/or new oil and gas investment laws in Iraq, will reveal one of the consequences of this resource war. In November 2006, the newly appointed U.S. Secretary of Defense responding to inquiries about a U.S. withdrawal from Iraq declared: "It seems to me that the United States is going to have some kind of presence in Iraq for a long time."²⁸⁹

Amazingly when the hostilities in Iraq commenced in March 2003, OPEC did not call for an extraordinary meeting notwithstanding the fact that a major breach of international law was affecting one of its Founding members.²⁹⁰ OPEC's secretary general issued a statement:

reiterating OPEC's resolve to make up for any supply shortfall resulting from developing events. To this end, Member countries have pledged to use, in the interim, their available excess capacities to ensure continued supply. In taking such measures, OPEC is, once again,

that Iraq's infrastructure was being rebuilt, and Iraqi industry was producing 2.5 million barrels of oil per day. *Id.*

287. James A. Paul, *Iraq: The Struggle for Oil*, GLOBAL POLICY FORUM, Aug. 2002 (revised Dec. 2002), <http://www.globalpolicy.org/security/oil/2002/08jim.htm>.

288. See generally John Schoen, *Iraqi Oil, American Bonanza?*, MSNBC, Nov. 11, 2002, <http://www.msnbc.msn.com/id/3071526/> (explaining that a revitalized oil industry in Iraq creates uncertainty for OPEC).

289. Bennett Roth, *Candid Gates Tells Panel U.S. is Not Winning the War*, HOUS. CHRON., Dec. 6, 2006, at A1.

290. OPEC, OPEC ANNUAL REPORT 2003 30–41 (2004), available at <http://www.opec.org/library/Annual%20Reports/pdf/AR002003.pdf> (showing that the 124th Meeting merely discussed "increasing geopolitical tensions" but did not mention Iraq).

acting in conformity with an objective set forth in its Statute since the establishment of the Organization in 1960, namely to secure an efficient, economic and regular supply of petroleum to consuming countries.²⁹¹

A supranational organization that coordinates the petroleum policy of its members should not remain silent when one of its founding members is invaded and its resources are controlled through military force. Silence may become complicity. Iraq's critical situation calls for broad international involvement and for a transparent management of the Iraqi people's natural resources. Again, a new OPEC could lead in the right direction.

6. *International Law*

A comprehensive review of the many changes in international law between 1960 and today is beyond the scope of this document. However, some very important developments that clearly may impact OPEC's structure, goals, and objectives must be noted.

Nine years after OPEC was created, the Vienna Convention on the Law of Treaties was signed.²⁹² On March 21, 1986, the Convention on the Law of Treaties between States and International Organizations or between International Organizations was executed in Vienna confirming the importance of international organizations in shaping modern international relations and international law.²⁹³

The International Energy Agency (IEA) was established on November 15, 1974, as a direct response to the creation of OPEC and an Agreement on an International Energy Program was executed three days later on November 18, 1974.²⁹⁴

291. Press Release, OPEC, Press Release No. 5/2003 (Mar. 20, 2003).

292. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

293. Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, Mar. 21, 1986, 25 I.L.M. 543 (1986).

294. Agreement on an International Energy Program, Nov. 18, 1974, 1040 U.N.T.S. 272.

Particular important developments have taken place in the field of international environmental law and sustainable development including the Stockholm Declaration (1972),²⁹⁵ the UN Framework Convention on Climate Change (1992),²⁹⁶ the Rio Declaration (1992),²⁹⁷ and the Kyoto Protocol (1997).²⁹⁸

The approval of the U.N. Convention on the Law of the Sea in 1982—noting specifically its provisions regarding deep seabed resources and resources beyond the limits of national jurisdiction, which were declared the “common heritage of mankind”—must be also considered as fields of international energy law that would be appropriate for OPEC to address as a supranational energy organization.²⁹⁹ A potential agreement between OPEC, the IEA and the International Sea-Bed authority, for example, could ensure that limited resources are developed for the benefit of all mankind and not only a few states.

Further, an important body of international law has developed from international arbitral awards involving the petroleum industry in what could be the basis of a new *Lex Petrolea*.³⁰⁰

These and many other developments, which for reasons of space cannot be mentioned at this time, justify from a legal point of view updating the Organization’s legal instruments through an international treaty and its corresponding binding Statute.

295. Stockholm Declaration, *supra* note 173.

296. UNFCCC, *supra* note 203.

297. Rio Declaration on Environment and Development, *supra* note 174.

298. Kyoto Protocol, *supra* note 208.

299. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

300. Luis Enrique Cuervo, *The Alien Tort Statute, Corporate Accountability, and the New Lex Petrolea*, 19 TUL. ENVTL. L.J. 151, 209–10 (2006).

7. *Fuel Poverty and Hydrocarbon Development in Countries Affected by Trade Sanctions*

In issuing the Millennium Declaration, the U.N. General Assembly recognized the challenges of globalization, including the wide gap between rich and poor, and pledged to “spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected.”³⁰¹ The General Assembly agreed to reduce in half the proportion of the world’s poor living on less than \$1 a day by 2015.³⁰² The elimination of poverty requires “good governance” at both the national and international levels, and “transparency.”³⁰³ In 2002, the U.N. Secretary General commissioned the so called Millennium Project to reverse poverty, hunger and disease affecting billions.³⁰⁴

It is well settled that to reduce poverty, energy poverty must be tackled. The G8 member countries, meeting in June 2006 in St. Petersburg, agreed that neither global energy security nor the Millennium Development Goals may be achieved without providing access to fuels to the 2.4 billion people who lack them and electricity to the 1.6 billion people living without it and

301. G.A. Res. 55/2, *supra* note 182, ¶ 11.

302. *Id.* ¶ 19.

303. *Id.* ¶ 13. Transparency was described as a commitment to an “open, equitable, rule-based, predictable and nondiscriminatory multilateral trading and financial system.” *Id.*

304. Millennium Project, About the UN Millennium Project, http://www.unmillenniumproject.org/documents/UNMP_AboutMP_E.pdf (last visited Feb. 8, 2008). The Millennium Development goals were described as follows: 1. Eradicating extreme hunger and poverty; 2. Achieve universal primary education; 3. Promote gender equality and empower women; 4. Reduce child mortality; 5. Improve maternal health; 6. Combat HIV/Aids; 7. Ensure environmental sustainability; 8. Develop a global partnership for development. UN Millennium Project, *Report of the Millennium Project on Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*, xvi, to the UN Secretary General (2005), available at <http://www.unmillenniumproject.org/documents/MainReportComplete-lowres.pdf>.

committed to “addressing the energy challenges for the poorest populations in developing countries” and to reducing energy poverty.³⁰⁵

One of the challenges of the international energy market is to allocate enough resources to combat so called “fuel poverty.”³⁰⁶ While some countries have substantive oil and gas revenues, they still maintain an important part of their populations under conditions of poverty.³⁰⁷ Thus, as eradicating poverty becomes one of the universally accepted goals of the community of states, an effective program to reduce poverty includes expanding fuel and electricity access to those who do not have it, extending the economic benefits of oil exports to the peoples of the producing countries, and managing with transparency oil and gas revenues.

A statement by the Director of the International Labor Organization was true in 1963 and remains valid today when he recalled that “[p]rosperity in the industrialized countries could not long be sustained if persisting poverty and rising frustration in the less-developed countries were to endanger the peace of the world.”³⁰⁸ OPEC’s Caracas Declaration urged industrialized countries to recognize that the “biggest environmental tragedy facing the globe is human poverty.”³⁰⁹

305. G8 SUMMIT, *supra* note 258, paras. 3, 6.

306. For example, the United Kingdom has the goal of eliminating fuel poverty by 2016. See ENERGY WHITE PAPER 2003, *supra* note 83, at 15. According to Mr. Mohammed Barkindo, who acted for the OPEC Secretary General at the first International Conference on the Clean Development Mechanism, 1.1 billion people live on less than one dollar a day, 1.6 billion lack access to modern energy services, and almost two billion have no electricity. Mohammed Barkindo, Acting for the OPEC Secretary General, The Clean Development Mechanism: Is It Meeting the Expectations?, Speech to the First International Conference on the Clean Development Mechanism (Sept. 19, 2006), available at <http://www.opec.org/opecna/Speeches/2006/BarkindoCDM.htm>.

307. See Ralph Fischer, *The Expansion of Intellectual Property Rights by International Agreement: A Case Study Comparing Chile and Australia’s Bilateral FTA Negotiations with the U.S.*, 28 LOY. L.A. INT’L & COMP. L. REV. 129, 168 n.269 (2006). Russia and Venezuela may be mentioned as examples. *Id.*

308. KUBBAH, *supra* note 1, at 130.

309. OPEC Solemn Declaration 2000, *supra* note 216, pmb1.

An additional important issue addresses resource exploitation in environments where the government may directly or indirectly disregard human rights. This matter may also be analyzed as the political use of human rights issues by raising human rights violations as tools to impose economic sanctions or using the veto power at the U.N. Security Council, not to maintain peace but as a foreign policy instrument to secure reliable energy sources.³¹⁰

To satisfy its huge demand for oil, China is entering into agreements with countries like Sudan, Angola, and Iran.³¹¹ These agreements present an interesting international law question regarding human rights violations, and whether members of the U.N. Security Council may avoid enforcing international sanctions due to their individual country's interests and economic relations at stake. Thus, reviewing basic compliance with *jus cogens* provisions by any nation-state and enforcing human rights anywhere on Earth should limit commercial transactions that may otherwise support regimes that do not respect human rights. OPEC, as an oil exporter's organization, would have great legitimacy to address these issues and to propose the basic international law conditions for oil and gas investment and development.

The fact that Angola and Sudan may become new OPEC members, as announced in November 2006, would allow OPEC's involvement in human rights issues and in the debate of who

310. See, e.g., Don Mayer, *Corporate Citizenship and Trustworthy Capitalism: Cocreating a More Peaceful Planet*, 44 AM. BUS. L.J. 237, 262–63 (2007) (discussing how China diluted a U.N. Security Council resolution “condemning Sudan’s role in the violence in Western Darfur . . . [.] blunting U.S. efforts to use the threat of international sanctions against Sudan’s oil industry to rein in its human rights abuses”). In this sense, criticism has been made of “monstrous regimes in the world that can continue with their evil deeds for a long time, making many democratic countries crawl in front of them just because they need to have oil and gas for their living.” Vladimir Anokhin, *Putin Creates New Axis in Europe to Oppose USA’s Global Hegemony*, PRAVDA, Sept. 9, 2006, http://english.pravda.ru/print/russia/economics/84676-European_axis-0.

311. Richard Giragosian, Inst. For the Analysis of Global Sec., *Sino-Japanese Competition for Russia’s Far East Oil Pipeline Project*, ENERGY SEC., Jan. 19, 2006, <http://www.iags.org/n0119063.htm>.

profits from oil revenues. Angola is a case on point on the inconsistencies between high oil revenues and rampant poverty.³¹²

8. *United States Based Litigation Against OPEC*

Attempts to bring civil causes of action against OPEC before U.S. Courts are not new. In December 1998, the International Association of Machinists and Aerospace Workers filed an action for antitrust violation against OPEC and its then thirteen members.³¹³ At that time the court, reviewing the principle of a state's permanent sovereignty over natural resources, dismissed the complaint concluding that the activities of OPEC members were by its nature sovereign and governmental, and entitled to sovereign immunity.³¹⁴ In assessing this matter the court noted that "certain States in the United States have restricted production of crude oil in order to maintain and stabilize prices and, thereafter, the Federal Government not only acquiesced in this activity, but made the States' acts effective by the assistance of Federal law enforcement."³¹⁵

For the court the activities of OPEC members were clearly governmental, not commercial and entitled to sovereign immunity.³¹⁶ Further, it was argued that antitrust violations could only be incurred by persons and not by states.³¹⁷ The court also followed precedents pursuant to which foreign states cannot be defendants of antitrust complaints because allowing so would interfere with sensitive foreign policy questions.³¹⁸

312. *Oil Helps Angola but Poverty Rife*, BBC NEWS, Mar. 30, 2006, <http://news.bbc.co.uk/1/hi/business/4861108.stm>. Angola's oil revenues in 2006 increased to \$10 billion while most of its population survives with less than \$2 a day. *Id.*

313. *Int'l Ass'n of Machinists & Aerospace Workers v. OPEC*, 477 F. Supp. 553, 558 (C.D. Cal. 1979).

314. *Id.* at 575–76.

315. *Id.* at 568.

316. *Id.* at 569.

317. *Id.* at 570.

318. *Id.* at 572.

Interestingly, the California Federal Court went far enough to address the merits of price increases and concluded that “[f]ederal regulation of the petroleum market has posed a greater threat to the American consumer than any other single factor.”³¹⁹ In its opinion, the court stated that OPEC could not be legally served under the Foreign Sovereign Immunities Act³²⁰ or the International Organizations Immunities Act,³²¹ because OPEC is not a sovereign and is not an international organization in which the United States participates.³²² Thus, despite concluding that OPEC is not a foreign sovereign, the court dismissed OPEC from the lawsuit, because it could not be served with legal process.³²³

On appeal, the District Court for the Ninth District reviewed the above decision and affirmed it on act of state doctrine grounds.³²⁴

On April 4, 2000, Prewitt Enterprises Inc.—an Alabama based company that purchased refined petroleum products for its gasoline station in Birmingham, Alabama—filed a class action against OPEC before the U.S. District Court for the

319. *Id.* at 574. The court concluded:

The Federal Executive Branch, through its Cost of Living Council and regulations, its Federal Energy Administration and Emergency Petroleum Allocations, its Department of Energy and accompanying maze of enigmatic and incomprehensible regulations, along with inept State interventions, has helped to create the energy crisis, has helped to intensify this crisis, and has utterly failed to resolve it, through inaction and ineffective action, as illustrated by the domestic gasoline price increases and long service station lines.

Id. at 575.

320. Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended in scattered sections of 28 U.S.C.).

321. 22 U.S.C. § 288 (Supp. IV 2000).

322. Int’l Ass’n of Machinists & Aerospace Workers, 477 F. Supp. at 560.

323. *Id.*

324. Int’l Ass’n of Machinists & Aerospace Workers v. OPEC, 649 F.2d 1354, 1361-62 (9th Cir. 1981). The act of state doctrine is a judge-made doctrine of judicial restraint based on foreign sovereignty and separation of powers. *Id.* at 1358-59. Under it, a court refrains from reviewing a case whenever the executive or legislative branches of government are better equipped to solve a politically sensible issue. *Id.*

Northern District of Alabama for alleged antitrust violations.³²⁵ OPEC did not appear before the court.³²⁶ Notwithstanding the above, the court entered an order certifying a plaintiff class of all persons or entities that purchased refined petroleum products in the United States between March 1999 and April 2000.³²⁷ The claim alleged a conspiracy to restrict production and export of crude oil to unlawfully and illegally raise prices.³²⁸ In its findings of fact, the court concluded that it was “beyond dispute that OPEC was created and exists for the express purpose of coordinating, limiting, stabilizing and otherwise controlling crude oil production and export in order to increase its members’ revenues.”³²⁹ The complaint alleged that OPEC coordinated and implemented production cuts to reduce crude oil supply and increase price to maintain it within a price band of \$22–28 per barrel, as a “balancing of the cartel’s short term and long term interests” and fixing prices above “competitive levels.”³³⁰ The complaint also averred that OPEC was assisted by Norway, Mexico, the Russian Federation, and Oman.³³¹ The court concluded that it had subject matter jurisdiction under the Sherman and Clayton acts, that OPEC as an “unincorporated association” may be sued in Federal Court and that OPEC activities were within the court’s antitrust jurisdiction due to their substantial and foreseeable adverse impact on U.S. trade and commerce.³³² The court also concluded that OPEC did not have any form of jurisdictional immunity and is not a “foreign state or agency or instrumentality of a foreign state”³³³ and that as a “voluntary intergovernmental organization” the Foreign Sovereign Immunities Act and the act of state doctrine did not

325. *Prewitt Enters., Inc. v. OPEC*, No. CV-00-W-0865-S, 2001 U.S. Dist. LEXIS 4141, at *3–4 (N.D. Ala. 2001).

326. *Id.* at *3.

327. *Id.*

328. *Id.* at *3–4.

329. *Id.* at *6.

330. *Id.* at *8–10.

331. *Id.* at *12–13.

332. *Id.* at *17–18.

333. *Id.* at *19–20.

apply.³³⁴ The court also established that the acts of price fixing were commercial in nature and therefore excluded from sovereign immunity and act of state protection.³³⁵ The court enjoined OPEC for a twelve month period.³³⁶

On August 2, 2002, reviewing the issue of whether process had been validly served on OPEC, the court concluded that under Austrian law no such service was possible and dismissed the complaint.³³⁷ The U.S. Court for the Eleventh District affirmed such dismissal.³³⁸ The court's decision concluded that "the individual Member States of OPEC are afforded immunity from suit brought for damage caused by their commercial activities when they act through OPEC" but not when acting individually because they would be subject to the commercial activity exception under the Foreign Sovereign Immunity Act.³³⁹

Thus, recent U.S. precedents indicate an OPEC exposure to litigation before U.S. courts. Certain amendments to the OPEC Statute and international binding agreements could limit such potential risks.

The nature of OPEC as an international exporter commodity agreement or as a truly political supranational organization will be critical in determining whether its activities have a "commercial nature" and thus may not be entitled to sovereign immunity.

These precedents once more confirm that OPEC's charter has weaknesses and could be referred to as precedents against the recognition of the Organization as a true political international organization.

334. *Id.*

335. *Id.* at *20–21.

336. *Id.* at *28–29.

337. *Prewitt Enters., Inc. v. OPEC*, 224 F.R.D. 497, 502 (N.D. Ala. 2002).

338. *Prewitt Enters., Inc. v. OPEC*, 353 F.3d 916, 928 (11th Cir. 2003).

339. *Id.* at 922.

9. *Consolidation of Saudi Arabia as Most Important Producer and Country with the Most Reserves and Its Foreign Policy Challenges*

According to the U.S. Department of State, Saudi Arabia's oil reserves are "the largest in the world, and [the country] is the world's leading oil producer and exporter."³⁴⁰ With one fourth of the world's oil reserves, Saudi Arabia is not matched by any other country and has been referred to as the "mother lode" of oil and gas reserves.³⁴¹ The kingdom is the world's largest net oil exporter.³⁴² Saudi Arabia was OPEC's "swing producer" until 1985 when it agreed to a production quota.³⁴³

According to OPEC's 2005 Annual Statistical Bulletin, only one country, Saudi Arabia, has enough proven crude oil reserves to independently influence the international oil market.³⁴⁴ In

340. BUREAU OF NEAR EASTERN AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTE: SAUDI ARABIA (June 2007), <http://www.state.gov/r/pa/ei/bgn/3584.htm> [hereinafter BACKGROUND NOTE: SAUDI ARABIA].

341. Fed. Research Div., Library of Cong., *Crude Oil Reserves and Production Capacity*, in A COUNTRY STUDY: SAUDI ARABIA (1993), available at [http://lcweb2.loc.gov/cgi-bin/query2/r?frd/cstdy:@field\(DOCID+sa0064\)](http://lcweb2.loc.gov/cgi-bin/query2/r?frd/cstdy:@field(DOCID+sa0064)); see also ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, COUNTRY ANALYSIS BRIEFS: SAUDI ARABIA (Feb. 2007), http://www.eia.doe.gov/emeu/cabs/Saudi_Arabia/Background.html [hereinafter BRIEF ON SAUDI ARABIA]. Saudi Arabia has one of the lowest production costs and in 2006 it provided 14% of the total U.S. imports at 1.4 million barrels per day. *Id.* The United States is its biggest customer followed by Europe, Japan, and South Korea. *Id.* The country has a population of 24.5 million which includes 6.5 million foreigners. *Id.* The CIA estimated the country's population at 27,601,038 in July 2007. CIA World Factbook, Rank Order-Population, <https://www.cia.gov/library/publications/the-world-factbook/rank-order/2119rank.html> (last updated Jan. 17, 2008).

342. BRIEF ON SAUDI ARABIA, *supra* note 341. Saudi Aramco, the national oil company, has a monopoly of upstream development and controls the country's reserves. *Id.* Oil export revenues represent about 90% of Saudi's total export earnings. *Id.* Higher oil prices have increased the country's revenues and its security expenditures. *Id.* The country's production capacity runs between 10.5–11 million barrels a day (b/d) with alleged potential of increasing to 12 million b/d. *Id.* Its OPEC 2005 production quota was 9.099 million b/d. *Id.*

343. BACKGROUND NOTE: SAUDI ARABIA, *supra* note 340.

344. See OPEC ANNUAL STATISTICAL BULLETIN 2005, *supra* note 124, at 19 (showing that Saudi Arabia owns over 25% of proven oil reserves owned by OPEC Member Countries).

2005, its crude oil reserves of 264,211 m/b represented almost 30% of total proven reserves and were followed by Iran (136,270 m/b); Iraq (115,000 m/b) Kuwait (101,500 m/b), United Arab Emirates (97,800 m/b), and Venezuela (80,012 m/b).³⁴⁵ The differences in terms of crude oil reserves between OPEC members are substantial.³⁴⁶ Algeria (12,270 m/b), Indonesia (4,301 m/b), Libya (41,460 m/b), Nigeria (36,220 m/b), and Qatar (15,207 m/b) all lack meaningful reserves to make a difference in terms of potential future supply.³⁴⁷

Saudi Arabia also dominates in terms of crude oil production with 9,353.3 (1,000 b/d) followed by Iran (4,091.5), Venezuela (3,128.0), Kuwait (2,573.4), and Nigeria (2,356.9).³⁴⁸

This clearly means today as it meant twenty-five years ago that any agreement toward stabilizing the international price of crude oil must include Saudi Arabia. After the Saudis, only Iran and Iraq have enough reserves and production to influence oil prices.³⁴⁹ Recently Saudi Arabia's share of OPEC's production increased from 25% to 35%.³⁵⁰

OPEC figures are not far away from the 2006 United States Energy Information Administration Energy Outlook according to which Saudi Arabia's oil reserves are the highest at 264.3 billion barrels followed by Canada (178.8),³⁵¹ Iran (132.5 b/b), and Kuwait (115.0 b/b).³⁵² Saudi Arabia is the only country with

345. *Id.*

346. *Id.*

347. *See id.* (showing that Algeria, Indonesia, Libya, Nigeria, and Qatar have the five smallest amounts of proven crude oil reserves among the OPEC Member Countries).

348. *Id.* at 23.

349. *See id.* at 19, 23 (noting that Iran and Iraq come in second and third, respectively, behind Saudi Arabia in proven crude oil reserves and come in second and fourth, respectively, behind Saudi Arabia in crude oil production).

350. Fed. Research Div., Library of Cong., *Crude Oil Reserves and Pricing Policy*, in A COUNTRY STUDY: SAUDI ARABIA, *supra* note 341.

351. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, INTERNATIONAL ENERGY OUTLOOK 28 tbl.3 (2006), *available* at [http://www.eia.doe.gov/oiaf/ieo/pdf/0484\(2006\).pdf](http://www.eia.doe.gov/oiaf/ieo/pdf/0484(2006).pdf) [hereinafter EIA ENERGY OUTLOOK]. The Canadian Association of Petroleum Producers included 174.1 billion barrels of oil sands as conventional reserves. *Id.* at 27.

352. *Id.* at 28 tbl.3.

readily accessible spare production capacity that may replace supply disruptions.³⁵³ However, the Kingdom's reserves and spare production capabilities are a matter of speculation.³⁵⁴

Both OPEC and nonOPEC production is expected to augment to cover an overall increase of future world oil supplies by 2030.³⁵⁵ However, only 38% of the total supply is expected to come from OPEC members.³⁵⁶ This is an important reduction from OPEC's 52% share of world supply in 1973.³⁵⁷ NonOPEC oil is expected to supply 62% of the world market in 2030.³⁵⁸ Some of the important sources of nonOPEC additions to world supply are expected from the Caspian Basin region, Sudan, West Africa, Australia, Malaysia, and South America.³⁵⁹

In the last six years OPEC's production has fluctuated between a high of 44.5% of total world production and a low of 39.4%.³⁶⁰ If each OPEC's member average production in 1973 is compared with average production in 2005 the numbers decreased for six of the ten OPEC members.³⁶¹ Only Algeria, Nigeria, Qatar, and Saudi Arabia reported production increases.³⁶²

353. Neela Banerjee, *Saudis Stock Oil Reserve to Make Up for Iraq Loss*, N.Y. TIMES, Mar. 18, 2003, at C1.

354. Jad Mouwad, *Saudis Aim for Precision, Not Surplus, in Meeting Global Oil Needs*, N.Y. TIMES, Dec. 6, 2005, at C1.

355. EIA ENERGY OUTLOOK, *supra* note 351, at 29–30.

356. *Id.* According to the International Energy Agency (IEA), OPEC is expected to produce 45.3 million barrels in 2030 while nonOPEC is expected to produce 72.6 million barrels. *Id.* at 29, 30 tbl.5, 31 tbl.6.

357. *Id.* at 29. OPEC's market share has declined from 52% in 1973 to 39% in 2003. *Id.*

358. *Id.* at 31.

359. *Id.* In West Africa, the noted source on nonOPEC additions to the world supply would be Angola. *Id.* In South America, the noted source would be Brazil. *Id.* at 32.

360. OPEC, OPEC ANNUAL STATISTICAL BULLETIN 22 tbl.14 (2006), available at <http://www.opec.org/library/Annual%20Statistical%20Bulletin/pdf/ASB2006.pdf>. The years 1984 and 1985 represented some of the worst in terms of OPEC's share of the total world supply with 30.1% and 28.5% respectively. OPEC ANNUAL STATISTICAL BULLETIN 2005, *supra* note 124, at 24 tbl.14.

361. *Id.* at 23 tbl.13.

362. *Id.*

Therefore, with divisions among OPEC members, only Saudi Arabia's share is significant enough to cause an impact in the world market. OPEC's share of the market has been reduced, and thus its control over total supply is smaller.³⁶³ Thus, this creates multiple challenges, such as whether OPEC should be proactive in increasing its membership to include some of the nonOPEC producing countries; and/or whether OPEC should contemplate broadening its organizational scope beyond strict crude oil pricing issues.

An additional important issue to be considered refers to Saudi Arabia's unique foreign policy characteristics. Saudi Arabia is a party to a mutual defense assistance agreement with the United States.³⁶⁴ The agreement declares that Saudi Arabia's ability to defend itself is important to the security of the United States, and provides for "adequate numbers of qualified United States Army, Navy and Air Force personnel to provide training," delivery of arms and equipment.³⁶⁵ A U.S. Military Training Mission to the Kingdom of Saudi Arabia was created pursuant to a 1977 agreement between the two countries.³⁶⁶ Also, in furtherance of military cooperation between the two countries, as of 1957 the United States has

363. EIA ENERGY OUTLOOK, *supra* note 351, at 29. According to the Energy Information Administration, OPEC has a "significant capability of influencing crude oil price" because its members possess such a great portion of the world's supply, accounting for about 40% of the world's production of crude oil and holding more than two-thirds of the world's crude oil reserves. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, A PRIMER ON GASOLINE PRICES (2006), *available at* http://www.eia.doe.gov/bookshelf/brochures/gasolinepricesprimer/eia1_2005primerM.html.

364. Mutual Defense Assistance Agreement, U.S.-Saudi Arabia, June 18, 1951, 2 U.S.T. 1460 (1951).

365. *Id.* arts. 1-2, 4.

366. Military Training Mission Agreement, U.S.-Saudi Arabia, Feb. 8-27, 1977, 28 U.S.T. 2409. An additional loan of aircraft agreement was executed between the United States and Saudi Arabia in 1962 pursuant to which the United States agreed to loan for an indefinite period of time eleven F-86 aircraft to Saudi Arabia. Loan of Aircraft Agreement, U.S.-Saudi Arabia, art. 1, Nov. 10-13, 1962, 14 U.S.T. 1181. The U.S. Military Training Mission (USMTM) is based in Riyadh and has a land and air defense forces division, a naval forces division, an air force division and a Marine Corps technical assistance field team. GlobalSecurity.org, Military Training Mission, <http://www.globalsecurity.org/military/agency/dod/usmtm.htm> (last visited Feb. 8, 2008).

rights to use the Dhahran airfield.³⁶⁷ In April 2003 the U.S. Secretary of Defense announced an end to the presence of military personnel in Saudi Arabia.³⁶⁸

Saudi Arabia and the United States have executed multiple technical cooperation agreements. One of these agreements entered into force in 1975 and provides for cooperation in the fields of economics, technology, and industry.³⁶⁹ The agreement provides for a joint commission on economic cooperation and for the United States to provide technical assistance to Saudi Arabia in the development of its economic and human resources.³⁷⁰ Another technical cooperation agreement in science and technology was executed one year later, and one of its purposes is to assist Saudi Arabia in the “optimum use of [the Kingdom’s] petroleum energy resources.”³⁷¹

Finally, in its condition as premier oil exporter, Saudi Arabia maintains strong financial relationships with western financial institutions.³⁷²

367. United States Rights at Dhahran Airfield and Related Matters Agreement, U.S.-Saudi Arabia, arts. 1–2, 4, Apr. 2, 1957, 8 U.S.T. 403.

368. Stephen J. Hedges, *Military to Leave Saudi Arabia*, CHI. TRIB., Apr. 30, 2003, at C1. After declaring that the Persian Gulf “is now a safer region because of the change in Iraq” the U.S. Secretary of Defense announced the withdrawal of 7,000 military personnel from Saudi Arabia, ending the long U.S. military presence in the country and allowing speculation about the status of U.S.-Saudi relations. *Id.* Now the United States may use air bases in Iraq instead of Saudi Arabia. *Id.*

369. Technical Cooperation Agreement, U.S.-Saudi Arabia, Feb. 13, 1975, 26 U.S.T. 880.

370. *Id.* pmbl., art. 1.

371. Technical Cooperation in Science and Technology, U.S.-Saudi Arabia, Feb. 29, 1976, 29 U.S.T. 3393, 3405.

372. See, e.g., James Cordahi, *Saudi Prince Says He’s Bullish on Citigroup and Time Warner*, BLOOMBERG NEWS, Nov. 7, 2005, available at <http://www.nysun.com/article/22637> (discussing Prince Alwaleed investing in Citigroup and Time Warner). Saudi Arabia’s first petroleum minister Abdullah Tariki studied at the University of Texas while Ahmad Yamani went to Harvard Business School. Youssef M. Ibrahim, *Sheik Abdullah al-Tariki, 80, First Saudi Arabian Oil Minister*, N.Y. TIMES, Sept. 15, 1997, at D23; Associated Press, *‘Everything is Just Fine,’ Ousted Sheik Yamani Says*, LOS ANGELES TIMES, Nov. 2, 1986, at 8. Saudi Arabia is strongly committed to the capitalist global order. See, e.g., Cordahi, *supra* (discussing Princ Alwaleed investing in Western Companies and engaging in various investment activities).

The U.S. Department of State summarized the status of bilateral relationships as follows:

The United States and Saudi Arabia share a common concern about regional security, oil exports and imports, and sustainable development. Close consultations between the U.S. and Saudi Arabia have developed on international, economic, and development issues such as the Middle East peace process and shared interests in the Gulf. The continued availability of reliable sources of oil, particularly from Saudi Arabia, remains important to the prosperity of the United States as well as to Europe and Japan. Saudi Arabia is one of the leading sources of imported oil for the United States, providing [about 20% of total U.S. crude imports and 10% of U.S. consumption.] The U.S. is Saudi Arabia's largest trading partner, and Saudi Arabia is the largest U.S. export market in the Middle East. . . . Saudi Arabia's relations with the United States were strained after the September 11, 2001, terrorist attacks in which 15 of the suicide bombers were Saudi citizens. On May 12, 2003 suicide bombers killed 35 people, including nine Americans, in attacks at three housing compounds for Westerners in Riyadh. On November 8, 2003 terrorists attacked another compound housing foreign workers from mainly Arab countries. At least 18 people, including 5 children died in this attack, and more than 100 were injured.³⁷³

Notwithstanding the above, Saudi Arabia is an Arab and Muslim country and a member of the Gulf Cooperation Council³⁷⁴ and the League of Arab States.

373. BACKGROUND NOTE: SAUDI ARABIA, *supra* note 340.

374. *Gulf Cooperation Council*, BACKGROUND BASICS, Oct. 15, 2007, <http://www.middleeastprogress.org/2007/10/gulf-cooperation-council-gcc/>. The Gulf Cooperation Council was formed in 1981 between Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. *Profile: Gulf Co-operation Council*, BBC NEWS, May 8, 2007, http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/4155001.stm. A customs union between the Persian gulf countries was established in 1999. See Robert E. Looney, *Economic Integration in the Gulf Region: Does*

Therefore, Saudi Arabia's political decisions conflict between economic and foreign policy issues. Thus, its critical weight inside OPEC determines the very existence and future of the Organization. In many ways, OPEC's future is tied to the future of Saudi Arabia's foreign policy. The Organization could be instrumental to providing stability not only in terms of crude oil prices but also of foreign policy issues in the region.

Another important factor to be pondered is the growth of demand primarily for transportation from China and India but also from Africa and South America.³⁷⁵ Allocation of limited resources between competing consumers poses not only economic but also geopolitical consequences.³⁷⁶ Saudi Arabia could profit by allocating its resources through an OPEC-based international mechanism as a way to avoid inconsistent diplomatic relations. As much as OPEC needs Saudi Arabia, Saudi Arabia may need OPEC to successfully allocate its production among competing consumers.

10. *Russia's Energy Power*

Russia is the largest country in the world³⁷⁷ and is blessed with natural resources including oil, gas, and minerals. Its oil reserve base is calculated at 60 billion barrels. In 2005, the country's oil production averaged 9.5 million barrels a day making it the world's second largest oil producer.³⁷⁸ In 2005,

the Future Hold More Promise Than the Past?, STRATEGIC INSIGHTS, Mar. 2003, available at <http://www.ccc.nps.navy.mil/si/mar03/middleEast2.pdf> (stating that the Gulf Cooperation Council leaders agreed to postpone common tariffs).

375. Wood et al., *supra* note 107, at 2. According to this article this high demand did not exist a decade ago. *Id.*

376. EIA ENERGY OUTLOOK, *supra* note 351, at 33.

377. *Russia*, MSN ENCARTA ENCYCLOPEDIA, http://encarta.msn.com/text_761569000___/Russia.html (last visited Feb. 8, 2008). Russia has seventeen million square kilometers. *Id.*

378. ENERGY INFO. ADMIN., U.S. DEPT OF ENERGY, MAJOR NON-OPEC COUNTRIES' OIL REVENUES (June 2005), <http://www.eia.doe.gov/cabs/opecon.html> [hereinafter EIA, NON-OPEC OIL REVENUES]. Russia's most important oil-producing regions are the Volga-Ural and West Siberia. Alexander Joukov & Tagir Galikeev, *Russia's Oil Sector and Its Geophysical Industry: An Overview*, LEADING EDGE, May 2003, at 426, 426.

Russia produced 470,196 tons of oil.³⁷⁹ Gas is the country's most important resource as Russia holds one third of the world's natural gas reserves,³⁸⁰ and in 2004, Russia was the world's number one gas producer.³⁸¹

Its 2004 GDP growth rate of 7.1% surpassed all other G8 members and was a direct consequence of the country's increased oil production and exports at higher international prices.³⁸² The boom of Russia's oil and gas industry was represented first in the rise of the so called "oligarchs"³⁸³ as

379. President Vladimir Putin, President of Russia, Speech at Meeting with the G8 Energy Ministers (Mar. 16, 2006), available at <http://www.rusembcanada.mid.ru/pr/200306.html> [hereinafter President Putin, G8 Speech].

380. EIA ENERGY OUTLOOK, *supra* note 351, at 39. Iran's gas reserves are the second largest but are just over half Russia's gas reserves, which is calculated at 1,680 trillion cubic feet. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, COUNTRY ANALYSIS BRIEFS: RUSSIA (Apr. 2007), <http://www.eia.doe.gov/emeu/cabs/Russia/pdf.pdf> [hereinafter BRIEF ON RUSSIA].

381. BRIEF ON RUSSIA, *supra* note 380. Russia's gas production was of 22.4 trillion cubic feet in 2004 becoming the largest gas exporter. *Id.* Russia's gas sector is monopolized by Gazprom the state owned company. *Id.*

382. EIA, NON-OPEC OIL REVENUES, *supra* note 378. Oil prices increased from \$10 a barrel in December 1998 to \$33 a barrel in September 2000, contributing to a major cash flow into the Russian economy. FIONA HILL, FOREIGN POLICY CTR., ENERGY EMPIRE: OIL, GAS AND RUSSIA'S REVIVAL 10 (2004), available at <http://fpc.org.uk/fsblob/307.pdf>.

383. The "oligarchs" were the rich Russian businessmen that emerged after the sale of State assets by Boris Yeltsin, they acquired assets worth billions at a fraction of their real value. Saeed Shah & Fred Weir, *The Russian Oligarchs Are Coming . . . but How Did They Make Their Money?*, INDEPENDENT, July 9, 2003, at 18, available at http://news.independent.co.uk/business/analysis_and_features/article95319.ece. Twenty two of them owned 40% of the Russian economy. Sergei Guriev & Andrei Rachinsky, *Russian Oligarchs: A Quantitative Assessment*, BEYOND TRANSITION, Oct.–Dec. 2004, at 4. Mikhail Khodorkovsky was the most important of all after purchasing Yukos, the first Russian privatized integrated oil and gas company, for \$300 million and becoming the country's richest man. Andrew Meier, *Autumn of the Oligarchs?*, N.Y. TIMES, Nov. 5, 2003, at A25. In 2003 he was charged with fraud of tax evasion, tried and convicted two years later to nine years in a Siberian prison. Russian Oil Tycoon Sentenced to 9 Years, ASSOC. PRESS, May 31, 2005, available at <http://www.msnbc.msn.com/id/7845597/>. Yukos's shares were listed in the main international stock exchanges in 2001 and it became a major China supplier. *Timeline: The Rise and Fall of Yukos*, BBC NEWS, May 31, 2005, <http://news.bbc.co.uk/2/hi/business/4041551.stm>. Yukos first dispute with the Russian government took place in 2003 regarding control of a pipeline to China. *Id.* The government argues Yukos owes \$3.4 billion in taxes. KEN KOYAMA, JAMES A. BAKER III

Mikhail Khodorkovsky and Roman Abramovich, and as of 2000, as a direct increase of the government's coffers.³⁸⁴ The State is now reacquiring the most important large deposit reservoirs and assets.³⁸⁵

In 2005, Russia's exports blossomed, particularly in the oil and gas sectors leaving a 118.3 billion trade surplus.³⁸⁶ In terms of capitalization, Gazprom became the third biggest company in the world.³⁸⁷ This revenue is certainly critical in Putin's plan to restore "greatness," and Russia's place in the world. Of particular interest is Russia's management of its oil wealth to solve its development problems. Some of the oil revenues have been frozen through a Stabilization Fund³⁸⁸ that reached 1.5 trillion rubles in 2006 and has become an "important part of the

INSTITUTE FOR PUBLIC POLICY OF RICE UNIVERSITY REORGANIZATION OF RUSSIAN PETROLEUM INDUSTRY AND ITS EFFECTS ON BUSINESS STRATEGY 2 (2004), available at http://www.rice.edu/energy/publications/docs/PEC_Koyama3_10_2000.pdf. In December 2004 Yukos filed for bankruptcy in the United States. *Timeline: The Rise and Fall of Yukos*, *supra*.

384. HILL, *supra* note 382, at 35.

385. Andrew E. Kramer, *Russians Report Huge Loan to Buy More Assets of Yukos*, N.Y. TIMES, Mar. 20, 2007, at C8.

386. See WORLD BANK, RUSSIAN ECONOMIC REPORT 8 (2006), available at http://ns.worldbank.org/ru/files/rer/RER_12_eng.pdf [hereinafter RUSSIAN ECONOMIC REPORT 2006] (stating that "oil, oil products and gas exports account[ed] for 61 percent of the total" exports). Gross foreign reserves set a record at \$205.9 billion in March 2006. *Id.* Sovereign debt was reduced by \$24 billion in 2005. *Id.* at 9 (stating that Russia's debt decreased from \$106 billion to \$82 billion).

387. President Vladimir Putin, President of Russia, Annual Address to the Federal Assembly of the Russian Federation (May 10, 2006), available at http://www.kremlin.ru/eng/text/speeches/2006/05/10/1823_type70029type82912_105566.shtml [hereinafter President Putin, Annual Address 2006].

388. RUSSIAN ECONOMIC REPORT 2006, *supra* note 386, at 13. The Stabilization Fund is today a separate account at the Central Bank and its management is one of Russia's crucial policy decisions. *Id.* at 14, 17. Usually, a Stabilization Fund consists of a fiscal surplus that is saved or removed from the economy through a portfolio of foreign assets to be used when oil prices decline. See *id.* at 13 (noting that investing its surplus in a portfolio Russia would allow its budget to be less dependent on oil). Norway has specialized in such managing commodity funds. *Id.*

wealth of the country.”³⁸⁹ Thus, Russia’s oil production is a source of international cash while the country’s gas production primarily sustains the domestic industry.³⁹⁰

Notwithstanding the good news, important challenges lie ahead. In 2005, a World Bank report noted lower investments in the oil sector which was in “need of large fixed investments, and [was] still suffering from fallout over the Yukos affair, uncertainty surrounding state-private relations in oil, and very high marginal tax rates that weaken the link between oil profits and world market prices.”³⁹¹ Growth of the oil industry may be limited by capacity constraints that require important investments.³⁹²

Despite its recent economic success, still 17.8% of Russia’s population lived below the subsistence level in 2004.³⁹³ This is why the government launched a program with four basic national projects: health, housing, education, and agriculture.³⁹⁴

Taking into account the rebirth of the Russian oil industry, its reserves, and its production, OPEC may not be indifferent to a country where natural resources constitute around 80% of its

389. *Id.* at 14.

390. HILL, *supra* note 382, at 12.

391. WORLD BANK, RUSSIAN ECONOMIC REPORT 6 (2005), available at http://siteresources.worldbank.org/INTRUSSIANFEDERATION/Resources/RER11_eng.pdf [hereinafter RUSSIAN ECONOMIC REPORT 2005]. The report also mentioned how “[e]xceptionally high world oil prices once again brought higher than expected revenues to the federal government in 2005, generating a budgetary surplus of an estimated 1.17 billion rubles.” *Id.* at 9.

392. See RUSSIAN ECONOMIC REPORT 2006, *supra* note 386, at 4.

393. RUSSIAN ECONOMIC REPORT 2005, *supra* note 391, at 10. This number was apparently reduced to 15.8% in 2005. RUSSIAN ECONOMIC REPORT 2006, *supra* note 386, at 12. In his annual address to the Federal Assembly of the Russian Federation in 2005, Putin stated that following the collapse of the Soviet Union “mass poverty began to be seen as the norm.” President Vladimir Putin, President of Russia, Annual Address to the Federal Assembly of the Russian Federation (Apr. 25, 2005), available at http://www.kremlin.ru/eng/text/speeches/2005/04/25/2031_type70029type82912_87086.shtml [hereinafter President Putin, Annual Address 2005].

394. RUSSIAN ECONOMIC REPORT 2006, *supra* note 386, at 11.

exports while oil and gas represent 55% of all exports.³⁹⁵ Further, as 37% of Russia's budget comes from taxes on the oil and gas industry, and the country does require important capital investments to maintain and increase oil and gas production, the Russian government could have many arguments in favor of an OPEC membership.³⁹⁶

Russia's foreign policy³⁹⁷ may stand solid on its energy independence and seems oriented toward approaching its biggest partner, Europe,³⁹⁸ and becoming a world energy power. For the country's leadership, "Russia's well-being in the present and the future directly depends on the place [it] occup[ies] in the global energy market."³⁹⁹ However, in pursuing this objective Russia's President has confirmed "interdependence," multilateralism, and specific references to the importance of insuring a stable demand as the instrument to enable a stable energy supply.⁴⁰⁰ Lastly, Russia's nuclear energy program and

395. Fiona Hill, *Putin, Yukos and Russia*, BROOKINGS INST., Dec. 1, 2004, available at http://www.brookings.edu/articles/2004/1201russia_hill.aspx [hereinafter Hill, *Putin, Yukos, and Russia*]. In Putin's words: Russia has "certain competitive and natural advantages as well as the technical opportunities to occupy a more significant position in the energy market." President Vladimir Putin, President of Russia, Opening Address at the Security Council Session on Russia's Role in Guaranteeing International Energy Security (Dec. 22, 2005), available at http://www.rusembcanada.mid.ru/pr/261205_2.html [hereinafter President Putin, Security Council Address].

396. Hill, *Putin, Yukos, and Russia*, *supra* note 395.

397. Such foreign policy is based on pragmatism, predictability and the supremacy of international law. President Putin, Annual Address 2006, *supra* note 387.

398. Anokhin, *supra* note 310. Meeting in Paris in September 2006 Putin, Chirac and Merkel agreed to create the "axis of energy" as a response to Washington's aspiration to dominate the whole world. *Id.* According to this meeting, Gazprom would shift its sale of production from the Shtokman field to Europe as opposed to previous plans of delivering it to the United States via liquified natural gas. *Id.* This is another step in Russia's integration with "old Europe." *Id.* Putin has also recognized that "[a]bove all else, Russia was, is and will, of course, be a major European power." President Putin, Annual Address 2005, *supra* note 393.

399. President Putin, Security Council Address, *supra* note 395. Russia's leadership position in the energy market is targeted through energy innovation, new technology, and modern forms of resources and resource efficiency. *Id.*

400. President Putin, G8 Speech, *supra* note 379. As Putin said:

[I]t is of vital importance that we develop a common vision of the global energy security challenges we face and use this as a basis for defining the

initiative to create a network of international uranium enrichment center⁴⁰¹ may be instrumental to positive dialogues with countries like Iran.

Since 1992 Russia has enjoyed OPEC observer status and has participated in several OPEC Conferences. Some of the following issues that are important for the Russian energy sector⁴⁰² could potentially be best served if Russia were to become an OPEC member. Further, these are issues that may also guide the new activities and/or type of services which a new OPEC could address or provide to its members:

- improving the country's business climate;
- introducing adequate legislative regulation;
- optimizing subsoil use taxes;
- having access to modern technology;⁴⁰³
- having clear and reliable resource data;
- efficient energy use;
- the role of the market and building a reliable and transparent market;
- the possibility of trading oil at export countries and in other currencies;⁴⁰⁴

most effective solutions to the existing problems. Russia supports the entire international community uniting efforts in order to work together to solve the whole range of tasks that we have before us.

.....

... Open and predictable supply of energy resources should be matched by open and predictable energy resource demand. This formula creates a responsible interdependence that is in everyone's interests.

Id.

401. *Id.*

402. President Putin, Annual Address 2006, *supra* note 387.

403. Russian industry uses technological equipment that lags decades compared to the most advanced technologies. *Id.*

404. Putin declared in his annual 2006 address: "[W]e need to organise markets on Russian territory for trading oil, gas and other goods, markets that carry out their transactions in roubles. Our goods are traded on world markets, but why are they not traded here in Russia? The government should speed up work on settling these issues."

Id.

- low levels of public trust in institutions of state power and big business;⁴⁰⁵
- the role of the State in providing adequate legal, administrative and organizational support;
- international cooperation.

As of December 2005, OPEC and Russia established a formal Energy Dialogue, considering that Russia has supported OPEC in measures adopted to stabilize the oil market, and that many of OPEC's purposes and activities are also of primary concern for Russia.⁴⁰⁶

In reviewing a potential amendment to the Organization's statute, considering either a potential Russian membership or participation, would be critical and would enhance the Organization's power and capabilities. At the very least, OPEC and Russia should adopt specific measures to implement a truly global energy partnership.

III. CHALLENGES OF AMENDING OPEC AND ITS STATUTE

In addition to the multiple political issues and many differences between its members, when reviewing whether OPEC may and/or should be transformed two main questions may be addressed:

A. *Should OPEC's Objectives and Scope Go Beyond Playing a Role in Determining the International Price of Oil?*

Since its inception, OPEC's main organizational activities have focused on the international price of oil. In 1960, OPEC's purpose consisted primarily in allowing the producing countries to play a role in determining oil prices.⁴⁰⁷ However, by then the oil exporting countries lacked any crude oil marketing

405. *Id.*

406. OPEC–Russian Federation Set Up Formal Energy Dialogue, Dec. 26, 2005, <http://www.opec.org/opecna/Latest%20Stories/OPECRussia.asp>.

407. KUBBAH, *supra* note 1, at 9.

experience.⁴⁰⁸ Further, since the initial goal was to prevent reduction of posted prices, many believed that the Organization would have a short life.⁴⁰⁹ In its 1968 Declaratory Statement of Petroleum Policy, OPEC stated that “price[s] [should] be determined by the Government and shall move in such a manner as to prevent any deterioration in its relationship to the prices of manufactured goods traded internationally.”⁴¹⁰ The nature of petroleum as a “wasting asset” was considered in 1962 when OPEC’s Conference recommended royalty payments as a compensation for the intrinsic value of petroleum.⁴¹¹ Iran’s Shah promoted high prices arguing that prices should be high to reflect the “noble” and depletable nature of oil.⁴¹²

The 1971 Teheran Agreement was an agreement between the multinational oil companies and six OPEC members to raise fixed prices.⁴¹³ In 1973, the OPEC Persian gulf countries decided to increase prices unilaterally without cooperation with the multinational companies.⁴¹⁴

Over time, OPEC’s role changed to become an active market participant affecting prices by controlling production. At some point some analysts even suggested that prices were no longer a

408. *See id.* at 15 (showing that OPEC was thought to lack any general organizational skills).

409. MANA SAEED AL-OTAIBA, OPEC AND THE PETROLEUM INDUSTRY 6–7 (1975); Toni Johnson, *Non-OPEC Oil Production*, COUNCIL ON FOREIGN RELATIONS, Oct. 19, 2007, <http://www.cfr.org/publication/14554/>.

410. KUBBAH, *supra* note 1, at 40.

411. OPEC, *Resolutions of the Fourth OPEC Conference Geneva, April 5–8 (First Session) June 4–8 (Second Session) 1962*, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960–1980, 20–21 (1980). According to the Resolution, royalty payments should be fixed and should not be treated as a credit against income tax liability. *Id.* at 21. Royalty was understood as compensation for using a wasting asset to be paid whether or not profit is made. *Id.*

412. Fadhil J. Chalabi, *A History of OPEC*, U.S. ENCYCLOPEDIA OF ENERGY, Jan. 2003, at 13, available at <http://www.cges.co.uk/pub/otherpapersHistoryofOPEC31.pdf>.

413. AL-OTAIBA, *supra* note 409, at 119–20.

414. SKEET, *supra* note 115, at 92.

subject of conflict⁴¹⁵ and should be “scientifically arrived at, in full consciousness of economic and monetary realities”⁴¹⁶ to determine the long term and short term pricing of crude oil.

A new shift, while still focusing on prices, could specifically focus on the exhaustive nature of the commodity and the limited term in which it may provide revenues to countries for which it is still the most important export product, when the end of the hydrocarbon age is in sight.⁴¹⁷

Today, determining a single driver of international oil prices is not easy, and OPEC is reviewing the effects of speculative markets on oil prices.⁴¹⁸ Some of the factors affecting crude oil prices include insufficient refining capacity (particularly in the United States), market speculation, overreaction to low market inventories and excessive fuel taxes (especially in Europe).⁴¹⁹ Crude oil prices are affected by natural factors, such as the kind of winter and potential natural disasters, such as hurricanes, affecting the oil infrastructure in the southern United States.⁴²⁰ However, disruption of production in an OPEC member’s output,

415. See, e.g., KUBBAH, *supra* note 1, at 87 (“Prices, which were once the driving force behind all attempts at producers’ groupings and the *raison d’être* of OPEC, are no longer a subject of conflict between governments and oil companies, because they are now determined unilaterally by the governments themselves.”).

416. *Id.*

417. The nature of oil as a nonrenewable resource causes that “the decision to produce today results in an opportunity cost or a user cost, since production today precludes its production in some future period. . . . [E]very time a barrel is produced, resource owners should recognize this component of costs in their decisions.” GRIFFIN & TEECE, *supra* note 156, at 14.

418. Edmund Maduabebe Daukuro, Opening Address to the OPEC 142nd Meeting of the OPEC Conference (Sept. 11, 2006), available at <http://www.opec.org/opecna/Press%20Releases/2006/PR142006.htm>. The OPEC Conference noted a record high oil price of US \$70 per barrel in June 2006 despite the fact that the market is well supplied (rising OPEC spare capacity, plentiful strategic reserves) and has very high levels of commercial stocks (highest inventory levels since 1998). *Id.*

419. Rilwani Lukman, *Foreword to the OPEC ANNUAL REPORT 2000*, at 4, 5 (2001), available at <http://www.opec.org/library/Annual%20Reports/pdf/AR002000.pdf>.

420. See, e.g., OPEC, OPEC ANNUAL REPORT 2005 11 (2006), available at <http://www.opec.org/library/Annual%20Reports/pdf/AR2005.pdf> [hereinafter OPEC ANNUAL REPORT 2005] (noting that in the United States, energy supplies were disrupted and fuel prices soared when the hurricanes hit).

“geopolitical tensions,” and speculation in the futures markets were some of the most important reasons for recent price increases.⁴²¹

Stabilization of prices in the international oil markets is one of OPEC’s organizational purposes, and becomes particularly relevant when nonindustry players affect the prices through speculation, and if potential harsh competition for limited resources is considered.⁴²²

Most OPEC members are still single commodity earners and, therefore, fluctuations in oil prices are critical for their local economies.⁴²³ The vital role of oil resources for the OPEC members’ economies was reaffirmed by the Organization in its September 2000 Caracas Declaration.⁴²⁴ The OPEC’s Heads of State and Government Summit in Caracas in 2000 resolved “[t]o develop oil pricing policies that are remunerative, stable and

421. Mohammed S. Barkindo, *Foreword to the OPEC ANNUAL REPORT 2005*, at 6 (2006).

422. Lukman, *supra* note 419.

423. See Youssef M. Ibrahim, *Gulf War’s Fallout: Political Concerns of OPEC Members Make Oil a Secondary Consideration*, N.Y. TIMES, Dec. 17, 1987, at D7 (showing that the economies of Saudi Arabia, Kuwait, United Arab Emirates and Nigeria have suffered from oil price changes). Some argue that the Soviet Union collapse was prompted by the decline in crude oil prices when Gorbachev went into power and depletion of the country’s oil fields without new investments. David R. Francis, *New Insights on the Soviet Union’s Collapse*, CHRISTIAN SCI. MONITOR, July 23, 2007, available at <http://www.csmonitor.com/2007/0723/p15s01-wmgn.htm>. Thus, the Soviet Union got caught between decreasing oil prices and increasing foreign debt. Dmitry Orlov, *Closing the ‘Collapse Gap’: The USSR Was Better Prepared for Collapse Than the US*, ENERGY BULLETIN, Dec. 4, 2006, available at <http://www.energybulletin.net/23259.html>.

424. As part of the Caracas Declaration, OPEC

not[ed] that oil has become the main source of energy during the last century, thus contributing significantly to world economic, social, technological and scientific development; Recognizing the strategic importance of oil as an energy source for mankind; the contribution of Member Countries to world economic prosperity through the provision of oil; [and] the vital role of oil resources in our national economies.

OPEC Solemn Declaration 2000, *supra* note 216.

competitive with other energy sources, in conjunction with a production policy that ensures a fair share for OPEC in the world of oil supply.”⁴²⁵

As a means to achieve price stability, OPEC agreed to establish the \$22–28 per barrel OPEC price band in 2000. OPEC’s Conference has agreed to reduce production several times as a means to prevent price collapses.⁴²⁶ In 2005, after noting that oil prices were outside the OPEC Reference Band for more than a year⁴²⁷ OPEC decided to suspend the price band as “unrealistic.”⁴²⁸ Most recently, OPEC’s Conference agreed to reduce production by 1.2 million barrels a day, effective November 1, 2006, considering that supplies are well in excess of demand and that an over-supply situation has destabilized the market.⁴²⁹

425. *Id.*

426. OPEC ANNUAL STATISTICAL BULLETIN 2005, *supra* note 124, at 7; see ENERGY INFO. ADMIN., U.S. DEP’T OF ENERGY, COUNTRY ANALYSIS BRIEFS: OPEC (Aug. 2006), <http://www.eia.doe.gov/cabs/opec.html> [hereinafter BRIEF ON OPEC] (showing sharp oil price drops in 2001 and 2003 were followed by reductions in OPEC production). See, for example, OPEC’s 113th extraordinary meeting on January 17, 2001, whereby the Conference agreed to reduce production by 1.5 million barrels a day and OPEC’s 114th Conference at which a further reduction of 1.0 million barrels per day was agreed to. OPEC, OPEC ANNUAL STATISTICAL BULLETIN 2001 40, 42 (2002), *available at* <http://www.opec.org/library/Annual%20Reports/pdf/AR002000.pdf>. A new output reduction was agreed to at the 117th Conference meeting reducing production by 1.5 million barrels a day. *Id.* at 44. Another reduction in OPEC’s production was agreed to in its Consultative Meeting of the Conference on April 24, 2003, becoming effective on June 1, 2003, and reducing production by 2 million barrels per day. OPEC ANNUAL REPORT 2003, *supra* note 290, at 34.

427. OPEC ANNUAL REPORT 2005, *supra* note 420, at 49. The OPEC Reference basket reached an average of \$36 per barrel in 2004. BRIEF ON OPEC, *supra* note 426. Prices in 2005 started at \$36.43 per barrel and ended at \$53.47 per barrel, overwhelmingly above the \$22–28 OPEC Price Band. OPEC ANNUAL STATISTICAL BULLETIN 2005, *supra* note 124, at 121.

428. OPEC ANNUAL REPORT 2005, *supra* note 420, at 49.

429. Press Release, OPEC, Consultative Meeting of the OPEC Conference, Doha, Qatar, 19–20 October 2006 (Oct. 20, 2006), *available at* <http://www.opec.org/opecna/Press%20Releases/2006/pr172006.htm>. The OPEC reference basket dropped from \$72.67 in August 2006 to \$54.10 in October 2006. *More Good News on Petrol Prices*

In what may be perceived as a clear indication of the nature and role of the Organization, on September 11, 2001⁴³⁰ and on March 20, 2003⁴³¹ OPEC's Secretary General issued statements confirming the Organization's commitment to price stability, assuring OPEC's commitment to make up for any supply shortfalls and refuting suggestions that some OPEC members could use oil as a weapon. Whether the Organization should have responded differently to military attacks on one of its founding members may now be a moot issue. However, these facts do challenge the nature, strengths, and weaknesses of OPEC's Conference.

Focusing primarily on prices has led to the characterization of OPEC as a cartel. By broadening the scope of its activities, OPEC would not only rebut such arguments but would also confirm its nature as a supranational organization with broader and higher goals. Even OPEC detractors agree that the international oil market needs an organized supply system that may provide stability.⁴³²

on the Cards, MAIL & GUARDIAN ONLINE, Oct. 19, 2006, http://www.mg.co.za/articlePage.aspx?area=/breaking_news/breaking_news_national/sa_good_news/&articleid=287162#.

430. OPEC, OPEC ANNUAL REPORT 2001 45 (2002), available at <http://www.opec.org/library/Annual%20Reports/pdf/AR002001.pdf> [hereinafter OPEC ANNUAL REPORT 2001]. On September 11, 2001 OPEC's Secretary General Alí Rodríguez Araque issued the following statement:

"All Member Countries remain committed to continuing their policy of strengthening market stability and ensuring that sufficient supplies are available to satisfy market needs[.]" "Furthermore, OPEC's members are prepared to use their spare capacity, if deemed necessary, to achieve these goals[.]" . . . [H]e categorically refuted suggestions that some of the Organization's Members could use oil as a weapon, stressing OPEC's continued commitment to securing a stable market.

Id.

431. On this date the U.S. attacks on Iraq started. President George W. Bush, Speech Announcing the Start of Military Action Against Iraq (Mar. 19, 2003), in *Bush's Speech on the Start of War*, N.Y. TIMES, Mar. 20, 2003, at A20.

432. See EC Treaty, *supra* note 232, art. 154 (mandating the development of market networks to link Member countries).

OPEC's accomplishments regarding its principal aim of coordinating the petroleum policies of member countries have been rather poor.⁴³³ OPEC has been a tool for its members to act as a group primarily to affect international prices.⁴³⁴ However, it has failed as a source of international petroleum policies for the member countries.⁴³⁵ During its forty-six years, OPEC has not authored a model petroleum code, an oil and gas investment law, a model granting contract, or a model international treaty to govern supply-demand issues.⁴³⁶ If petroleum exporting countries allow upstream foreign investment, many contractual issues regarding the terms and conditions of such investments could be a subject matter for OPEC review. However, currently there are important differences among OPEC members regarding the oil and gas legal systems in place, including control and access to upstream activities.

OPEC may be a successful foreign policy tool for its members, allowing them to assume positions as a group that otherwise they would never adopt individually. However, this international relations dimension of OPEC has not been used to the advantage of its members.⁴³⁷ All OPEC members have critical relationships with the United States and the European

433. See Ibrahim, *supra* note 423, at D7 (showing how OPEC's failures to regulate oil prices has had severe effects on Member countries).

434. KUBBAH, *supra* note 1, at 11.

435. See, e.g., OPEC, *Resolutions of the Fifth OPEC Conference Riyadh, December 24–31 1963*, in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960–1980 26 (1980) (showing a Code of Uniform Petroleum Laws was considered in 1963 but still not enacted in 1980). The 1968 Declaratory Statement of Petroleum Policy and the 1971 Resolution XXIX.135 pursuant to which members should take immediate steps toward the effective implementation of the principle of Participation, are some of the high notes regarding coordination of petroleum policy. KUBBAH, *supra* note 1, at 79.

436. See generally ORG. OF THE PETROLEUM EXP. COUNTRIES, OPEC GENERAL INFORMATION (2005), <http://www.opec.org/library/General%20Information/pdf/geninfo.pdf> (describing OPEC's history, accomplishments, and interaction with international governing bodies).

437. See OYSTEIN NORENG, CRUDE POWER: POLITICS AND THE OIL MARKET 138 (2002) (explaining that OPEC has not been able to reach its full potential as a political bargaining tool). "OPEC's record, so far, is that of an imperfect cartel. . . . The dichotomy of the membership causing diverging economic interests is the essential obstacle to OPEC performing as a perfect cartel." *Id.*

Union.⁴³⁸ Some are also building relationships with Japan and China.⁴³⁹ OPEC could be a foreign policy instrument that would allow it to advance, as a group, issues in which, acting individually, member countries would be weak in bilateral or multilateral negotiations.

The Organization may also profit by addressing other issues related with the international petroleum industry. However, it is uncertain whether an amendment to the Organization may be politically supported by member countries. Some have argued that OPEC “was never intended to be a political organisation representing sovereign states enjoying international, political recognition[,]”⁴⁴⁰ and that it is in essence an economic group of commodity exporters.

Some of the areas in which a new OPEC could act would include:

- a. Discussing and proposing foreign policy issues;
- b. Fighting poverty and contributing to international sustainable development;
- c. Providing assistance for transparent investment of petroleum revenues;
- d. Upholding the rule of law, both from an international law perspective and from a local law investment perspective;
- e. Establishing oil exporter’s positions regarding environmental issues;

438. Ed Crooks & Javier Blas, *US Reliance on OPEC Highest in 15 Years*, FIN. TIMES, Jan. 2, 2007, at 7 (noting that as of 2007 OPEC supplies more than 54% of the oil imports of the developed countries and more than half of the total U.S. oil imports).

439. See Pundita: Iran Has Become the Engineer of China’s Economic Growth, <http://pundita.blogspot.com/2007/11/iran-has-become-engineer-of-chinas.html> (last visited Feb. 8, 2008) (discussing the growing strength of the Iran-China relationship); Abdulaziz Sager, *Saudi-Japan Relations*, ARAB NEWS, Apr. 5, 2006, available at <http://www.arabnews.com/?page=7§ion=0&article=80278&d=5&m=4&y=2006> (discussing the growing strength of the bond between Saudi Arabia and Japan).

440. Chalabi, *Occupied Iraq and OPEC Conference Meetings*, *supra* note 188, at 1.

- f. Drafting model petroleum investment laws and regulations and granting instruments that could be used by member countries;
- g. Promoting a system of international OPEC managed investments that would effectively spread risk and guarantee adequate levels of investment for member countries.

B. Is OPEC Still Relevant in Determining the Price of Oil and Will this Continue in the Future?

The petroleum market has been traditionally described as an oligopoly, and the fact that several OPEC members hold approximately 75% of the total world's oil reserves confirms a high degree of concentration with few countries controlling a very important part of potential future production.⁴⁴¹ However, for decades nonOPEC production has surpassed OPEC's production.⁴⁴² OPEC's production was greater than nonOPEC production only in the 1973–1974 period when nonOPEC production reached an all time low figure of 48% of total world production.⁴⁴³

When oil prices have been considered at low levels, as was the case in 1999 and 2001, OPEC had to reach agreements with nonOPEC countries to prevent further price reductions.⁴⁴⁴ In 2001, in order to stop a declining tendency of the international

441. AL-OTAIBA, *supra* note 409, at 10–11.

442. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, NON-OPEC FACT SHEET (2005), <http://www.eia.doe.gov/emeu/cabs/nonopec.html> [hereinafter NON-OPEC FACT SHEET]. Oil finds in the North Sea, Alaska, and Mexico in the 1960s and 1970s reduced OPEC's share of world oil from 53% in 1973 to 38% in 1981. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, 25TH ANNIVERSARY OF THE 1973 OIL EMBARGO: ENERGY TRENDS SINCE THE FIRST MAJOR U.S. ENERGY CRISIS, PERCENT OF OPEC AND PERSIAN GULF WORLD OIL PRODUCTION, <http://www.eia.doe.gov/emeu/25opec/sld003.htm>.

443. NON-OPEC FACT SHEET, *supra* note 442. Since 1970, nonOPEC production has been higher than OPEC production but for 1973, when OPEC production represented 52% of total production. *Id.* NonOPEC's highest share of production was in 1985 when it reached 71% of total production. *Id.*

444. See OPEC ANNUAL REPORT 2001, *supra* note 430, at 47–48. OPEC agreed to reduce output by 1.5 million barrels a day as long as nonOPEC producers agreed to reduce production by almost 500,000 barrels a day. *Id.* at 5.

oil prices, OPEC members reached an agreement with nonOPEC countries to reduce output production.⁴⁴⁵ Norway, Mexico, Angola, Oman, and Russia agreed to reduce their production levels to stabilize oil prices.⁴⁴⁶

Iraq's production has been outside OPEC for over a decade, first due to international sanctions imposed by the U.N. Security Council following Iraq's invasion of Kuwait, and most recently due to the U.S. invasion of Iraq.⁴⁴⁷

Some argue then that OPEC is no longer an effective instrument to guide world oil markets because the high prices of the 1970s shifted important investments to higher risk and higher cost nonOPEC areas, eventually leading to "new oil" replacing OPEC oil in the world market.⁴⁴⁸ Under this line of argument OPEC oil would have become the last resort in the world market.⁴⁴⁹ Thus, by controlling a lower share of the market, OPEC would have lost its significant role as price stabilizer. Further, OPEC's strength would have been seriously affected by the Iran-Iraq war, the 1990 Gulf War and international sanctions against Iraq, which took substantial supplies off the market.⁴⁵⁰ This line of argument would remind one that Ecuador was the first member to withdraw from OPEC

445. *Id.* at 5.

446. *Id.* at 48–49.

447. See PIJUSH PAUL, OPEC'S ACTION TO MANAGE PRICES AND RELATIONS WITH NONOPEC NATIONS 7–8, available at http://srb.stanford.edu/nur/GP200A%20Papers/Pijush_Paul_paper.pdf (explaining why Iraq's oil production has been outside of OPEC's production).

448. Fadhil J. Chalabi, *OPEC and the Struggle to Control Oil Prices*, CTR. FOR GLOBAL ENERGY STUD., 1999, at 4, available at <http://www.cges.co.uk/pub/otherpapers/OPECoilprices31.pdf>. Chalabi argues that OPEC's production by 1998 was about 27 million barrels per day, reduced by 4 million barrels per day if compared with peak production in 1978, while in the same period world consumption increased in more than 17 million barrels per day. *Id.* Chalabi points that OPEC's market share was over 50% in 1972 and fell to 26% in 1997. *Id.* at 5.

449. *Id.* at 5.

450. *Id.* at 5–6. It is estimated that international sanctions removed approximately 3 million barrels a day of Iraqi production from the international markets. *Id.* at 6.

in 1992,⁴⁵¹ followed by Gabon in 1996,⁴⁵² and would add that in 2002 Nigeria threatened to leave OPEC.⁴⁵³ The argument would also point out that Indonesia is no longer an oil exporter⁴⁵⁴ and it will interpret OPEC's invitation to Angola and Sudan to join the Organization as a desperate sign to prevent further production losses.⁴⁵⁵ Even the Kuwaiti oil minister declared in 2002 that OPEC "cannot control the oil market anymore[.]"⁴⁵⁶

451. *Ecuador to Withdraw from OPEC; Group to Maintain Present Flow*, OIL & GAS J., Sept. 28, 1992. Sixto Durán Ballen, Ecuador's president at the time, issued a notice of Ecuador's withdrawal from OPEC on September 17, 1992. *Id.*

452. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, COUNTRY ANALYSIS BRIEFS: GABON (Nov. 2007), <http://www.eia.doe.gov/emeu/cabs/Gabon/pdf.pdf>. Gabon, the smallest OPEC member, wanted to reduce its OPEC production quota and ultimately decided to leave in 1996 after threatening that if its membership fee was not reduced, it would withdraw from the Organization. *Gabon Plans to Quit OPEC*, N.Y. TIMES, Jan. 9, 1995, at D10. OPEC refused to reduce Gabon's annual contributions. *Id.* Contributions to OPEC were shared equally by all OPEC members regardless of their production. *Id.*

453. *Nigeria Might be Leaving OPEC*, AFROL NEWS, July 21, 2002, http://www.afrol.com/News2002/nig036_leave_opec.htm. The article refers to Nigeria's disagreement with OPEC's low export quotas and to the fact that OPEC claimed that Nigeria was producing 300,000 b/d above its assigned daily quota in 2001. *Id.*

454. See Dana Hooper, *Another Shockwave in Indonesia—Life Without OPEC*, REEF SECS. INC. ENERGY NEWS, http://www.enewsbuilder.net/wasecurities/e_article000358111.cfm?x=b11,0,w. In 2005, the Indonesian Oil Minister acknowledged that Indonesia was a net oil importer for four months in 2004 and was studying whether it was still eligible to be an OPEC member. *Id.* However he stated that OPEC membership had some political benefits. *Id.* Indonesian analysts were concerned about the negative message that withdrawal from OPEC would send to foreign energy investors. *Id.*

455. See *OPEC Considers Adding Angola, Sudan and Ecuador*, AFRICAN OIL J., June 2, 2006, available at <http://www.africanoiljournal.com/6-2-2006%20opec%20considers%20adding%20angola%20sudan%20and%20Ecuador.htm> (noting OPEC's desperation in acquiring more members due to erosion of its control over the oil market). Venezuelan president Hugo Chavez asked that Bolivia be given observer status at OPEC. *Id.* In June, Sudan's Oil Minister declared that he hoped his country would be able to join OPEC soon after the delivery of a formal invitation to join by the President of OPEC's Conference. *Sudan Hopes to Join OPEC Soon—Minister*, SUDAN TRIB., June 16, 2006, <http://www.sudantribune.com/spip.php?article16222>.

456. *OPEC's Fading Power*, BBC NEWS, Mar. 7, 2002, <http://news.bbc.co.uk/2/hi/business/1860361.stm>.

OPEC has always been surrounded by allegations of members' poor discipline and noncompliance with the quota system.⁴⁵⁷ The Organization lacks the legal instruments to apply sanctions whenever a member may not be in compliance with its assigned production quota.⁴⁵⁸ Members with smaller reserve levels may try to profit when prices are high selling at their maximum capacity causing disagreement with large resource members and encouraging noncompliance with the quota system.

According to OPEC's detractors, oil prices would now be determined by producers outside OPEC including Russia, Mexico, and Norway, and side agreements entered into by Saudi Arabia and Iran. There is no question that from a reserve point of view the Middle East would be a natural oligopoly. The U.S. Energy Information Administration projects an increase in petroleum demand to 118 million barrels per day in 2030, from which OPEC members are expected to produce 14.6 million barrels per day while nonOPEC members are expected to produce 23.7 million barrels per day; thus, nonOPEC would account for 62% of the increase in total world supplies.⁴⁵⁹ If nonOPEC production declines when the major consumer countries are still highly dependent on oil, OPEC will naturally recover a substantial portion of the market. This is why, when considering a potential new OPEC, some reduce it to the main producers which happen to be the five Founding Members.⁴⁶⁰

457. See PAUL, *supra* note 447, at 10 (referencing how OPEC members exceed quotas and lie about production levels). Nigeria and Algeria have offered the most notorious of production quotas violations. A.F. Alhaji, Letter to the Editor, *Comment on 'OPEC—It's Time to Say Good-bye . . .*, OIL, GAS & ENERGY L. INTELLIGENCE, Mar. 2003, available at http://www.gasandoil.com/ogel/samples/freearticles/article_11.htm.

458. See PAUL, *supra* note 447, at 4 (explaining how OPEC never developed a mechanism for enforcing its production quotas).

459. EIA ENERGY OUTLOOK, *supra* note 351, at 25.

460. Chalabi, *OPEC and the Struggle to Control Oil Prices*, *supra* note 448, at 8–9. Chalabi believes that a new OPEC would include its five Founding Members and other countries like Mexico, Norway, and Russia. *Id.*

C. Some of the Challenges of Reforming OPEC

Today, as it was the case in the earlier years of the Organization the following issues remain critical:

- a. Identifying a true unity of purpose and avoiding divisions between OPEC members;⁴⁶¹
- b. Advancing an organizational “group” interest over individual national interests;
- c. Striving between a technical or a political organization, if at all possible;⁴⁶²
- d. Reconciling the differences between its members in terms of oil production, reserves and economic needs;
- e. Establishing the economic value of resources that are subject to being depleted, while advancing the importance of stable oil prices for the world economy and of conservation;⁴⁶³
- f. Overcoming political, economic and cultural differences between its members;⁴⁶⁴
- g. Losing technical legitimacy by addressing highly political issues;

461. See AL-OTAIBA, *supra* note 409, at 78, 80 (referencing the similar interests requirement of prospective OPEC members and the problems with expanding OPEC’s membership). OPEC’s first Secretary General Fuad Rouhani described the common conditions shared by the five Founding Members as follows: they were large exporters of crude, they were developing countries, their development depended on their crude exports, they needed the assistance of foreigners to exploit their resources, and they had similar problems with the oil companies. *Id.* at 79–80. Al Otaiba also adds their common feeling of bitterness caused by the injustices of the oil concessions. *Id.* at 80.

462. The words of Tariki should be remembered: “Oil prices are a political matter, entirely unrelated to supply and demand.” SKEET, *supra* note 115, at 43.

463. See OPEC Solemn Declaration 1975, *supra* note 199.

464. Many are the differences between OPEC members. Some of those differences are linguistic and religious, others are geographic and political. *Profiles: OPEC, OIL, GAS AND ENERGY LAW INTELLIGENCE*, Mar. 2003, at 20. Some OPEC members are countries with small populations, while countries like Nigeria and Indonesia have large populations. *Id.*

- h. Deciding how to manage oil wealth in the best interest of the people and not just the national budget;
- i. Timely diversifying the economies of single commodity exporters;
- j. Notwithstanding the overwhelming geological reality of world crude oil reserves in the Middle East, deciding how to act as an organization that is not perceived as an Arab organization;⁴⁶⁵ and
- k. Encouraging energy conservation and the rational exploitation of nonrenewable resources.

Other challenging issues that could be addressed by a revolutionized OPEC would include:

- a. Accepting new members that may not have a clean human rights record and by doing so losing international law consistency;
- b. Addressing the issue of combating corruption and promoting transparency and introducing effective tools consistent thereto at the expense of reducing the flow of investments;
- c. Redefining the concept of nation-building and participating in or monitoring nation-building efforts through oil revenue financing. This could include providing technical assistance to member and/or nonmember countries in the fight against poverty;
- d. Advancing a true *Lex Petrolea* to govern international petroleum transactions and disputes arising there from;

465. In 1972 Trinidad's application to join OPEC was denied. AL-OTAIBA, *supra* note 409, at 81 (1975). Iraq opposed Trinidad's admission because Trinidad did not meet OPEC membership qualifications. *Id.* Venezuela and Indonesia considered that rejection an attempt by the Arab countries to preserve an Arab majority. *Id.*

- e. Establishing and implementing international sanctions affecting oil supply whenever a breach of international law or a conduct in breach of the U.N. Charter is verified;
- f. Actively participating in environmental law and sustainable development discussions; thereby establishing a joint position as an industry;
- g. Analyzing the threats of resource wars and engaging in serious international cooperation to prevent them, and to limit preemption as an available instrument of foreign policy;
- h. Addressing the issue of energy security, increasing the international stature of its members risking division and economic challenges;⁴⁶⁶
- i. Defining the main international obligations of consuming nations including, energy conservation, protection of the environment and combating corruption;
- j. Defining the nature of the interests it advocates and structuring a legal framework in which private interests are distinguished from public policy interests;
- k. Analyzing international economic sanctions such as commodity or trade embargoes; and
- l. Abolishing OPEC's Conference unanimity rule or limiting to a few essential issues.⁴⁶⁷

Many recent changes in international law and international relations, including globalization, technological and communication developments, threats of international terrorism, and stronger international relations between peoples

466. This issue would include assessing the risks of international terrorism to critical industry infrastructure and devising an international cooperation program to safeguard a stable supply of resources. In analyzing these issues OPEC could enter into international agreements with other international organizations.

467. Article 11.C of OPEC's statute requires unanimity to adopt all Conference decisions. OPEC Statute, *supra* note 127, art. 11. Unanimity may have been workable when the Organization was created with only five Founding Members.

and countries, justify an update of the Organization's structure and role. Several voices have referred to the need to modernize OPEC.⁴⁶⁸ Some speak about a new energy era⁴⁶⁹ of "heightened energy consciousness around the world, . . . uncertainties and of increasing interdependencies among nations[,] with energy security being crucial."⁴⁷⁰

An ambitious project would realize that oil depletion is a world reality and that we are living the final years of the hydrocarbon-based economy. Attention would be devoted to issues of foreign policy and international relations. An international organization devoted to the stability of petroleum supply necessarily should be involved in a thorough analysis of facts, such as the U.S. invasion of Iraq as a consequence of a perceived attempt by Middle Eastern countries to join forces to improve their economic and political influence through oil, or Chinese investment in the Sudan oil industry limiting international humanitarian intervention. While considering the inclusion of an OPEC member as a permanent representative of the U.N. Security Council may be unrealistic, nothing prevents an organization like OPEC from addressing energy security issues. By assuming an active role in determining the future of areas blessed with fossil fuel resources, OPEC could automatically improve its international standing and effects.

When the main hydrocarbon consumers are devoting important resources toward finding and producing economic alternative fuels, petroleum producing and exporting countries should realize the importance of taking advantage of their

468. See *Profiles: OPEC*, *supra* note 464, at 19 ("It seems that the organisation, including its system of decision-making, its mandate, its staffing and its budget level are much in need of modernization to adapt to post-2000 globalisation.").

469. Arne Walther, Sec'y Gen. of the Int'l Energy Forum, OPEC in a New Era: Challenges and Opportunities (Sept. 12–13, 2006), in *Producer-Consumer Relations in a New Era*, MIDDLE E. ECON. SURVEY, Sept. 25, 2006, available at <http://www.mees.com/postedarticles/oped/v49n39-5OD01.htm>.

470. *Id.* Walther describes the new energy era as characterized by ample oil and gas resources; a need for more and cleaner energy, accessible to a larger share of the world's population; increased competition for energy resources; and awareness of long term common interests of producers and consumers. *Id.*

resources as a critical commodity while this is still the case. The timing to justify cooperation and a unified position among producers could not be more appropriate in the advent of potential resource-based confrontations. An international organization acting as information gatherer, organizer of conferences, and maker of recommendations is just not up to the great task of securing the economic and financial future for the oil producing and exporting countries beyond petroleum.

Thus, despite the fact that it is entrusted with defining the petroleum policies of its member countries, OPEC's mandate has little real power. In its latest era OPEC has focused on the stability of crude oil prices.⁴⁷¹ Even in this sense the Organization's attributions are limited, and it is questionable whether it may even be able to effectively control production quotas.⁴⁷²

OPEC's 21st century challenge is to adjust to the demands of new international relations assuming a protagonist role at a time when it shares an important control over a still vital economic resource.

OPEC's member countries' technological knowledge of the oil and gas industry, expertise in operating oil and gas fields, and promoting exploratory and development investment, represents a wealth of knowledge⁴⁷³ that could assist countries less blessed with these resources and with lower levels of production development. Thus, OPEC could become not only the decisive actor in effectively securing adequate incomes for its member countries, but also a source of fundamental international

471. Silva-Calderón, *The Role of OPEC in the 21st Century*, *supra* note 143.

472. See PAUL, *supra* note 447, at 9 (noting problems of quota discipline within the OPEC cartel).

473. See generally OPEC, OPEC GENERAL INFORMATION 11 (2005), <http://www.opec.org/library/General%20Information/pdf/geninfo.pdf> (noting that OPEC "seeks to devise ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations, due regard being given at all times to the interests of the producing nations and to the necessity of securing a steady income for them; an efficient, economic and regular supply of petroleum to consuming nations; and a fair return on their capital to those investing in the petroleum industry").

petroleum industry information for the benefit of the world at large, and the natural forum to discuss international environmental related issues and settle transnational oil and gas and energy related disputes.

Surprisingly, although crude oil is produced and sold in an international background, it is reputed as the largest internationally traded commodity, and little doubt exists of its strategic international importance, few truly international rules govern the industry.⁴⁷⁴ Advancing the construction of a true *lex petrolea*⁴⁷⁵ could only contribute to international investment and cooperation.

OPEC's role should be decisive in guaranteeing that member countries whose economies are primarily dependent on oil and gas exploitation will be able to adequately profit and save from their competitive advantages before their resources lose all economic relevance and interest. The major crude oil exporting countries still depend on their oil revenues as sole or primary source of foreign exchange.⁴⁷⁶ What will happen to these nations when the hydrocarbon age is officially over? Should OPEC be the instrument to find international solutions to true international problems affecting the interests of the oil producing nations?

With a substantial concentration of hydrocarbon reserves in the Middle East, should war and peace issues affecting the region be dealt without an active OPEC role and involvement? May military intervention in rich oil countries be allowed and tolerated to promote specific country agendas without any collective reaction?

Thus, an ambitious amendment would provide for true OPEC economic law and for OPEC international tribunals for settlement of economic disputes.

474. EDWIN A DEAGLE JR., *THE FUTURE OF THE INTERNATIONAL OIL MARKET* 2 (1983).

475. For a reference to *Lex Petrolea* and its development through international arbitral channels, see Luis Enrique Cuervo, *supra* note 300, at 209–10.

476. Zuhayr Mikdashi, *Cooperation Among Oil Exporting Countries with Special Reference to Arab Countries: A Political Economy Analysis*, 28 INT'L ORG. 1, 19–20, (1974).

It may be concluded that the particular 21st century needs to urge the oil producing countries, as was the case with the OECD members in 1974,⁴⁷⁷ to redefine an international organization which is capable of really meeting their particular challenges and problems. In a similar fashion as was the case with the industrialized countries in 1974 when the IEA was formed, OPEC members may realize that “[t]he consumers are not without power of their own—or they would not be if they were united.”⁴⁷⁸ This structural change, as was also the case with IEA,⁴⁷⁹ should not be viewed as a challenge to the industrialized countries, nor as an effort to raise oil prices, but as an instrument to effectively protect the producers. OPEC’s continuing relevance will depend on its adaptability to change.

Establishing and maintaining a fair price for oil and allocating sales among its members have been traditional OPEC challenges. However, OPEC countries should have a voice in issues such as development of nuclear energy as an alternative to fossil fuels and providing commercial energy access to the more than two billion people in the world who lack it.

D. Energy Security and a Potential OPEC Role

The United States, Europe, China, and Japan—in other words, all but one of permanent members of the U.N. Security Council⁴⁸⁰—share the condition of lacking energy independence.⁴⁸¹ Having their economies depend on what are

477. See RICHARD SCOTT, ORIGINS AND STRUCTURES OF THE IEA 41 (1994) (stating that future members of the International Energy Agency favored creating a new intergovernmental organization capable of meeting their specific needs).

478. See RICHARD SCOTT, MAJOR POLICIES AND ACTIONS OF THE IEA 31 (1994) (quoting James E. Akins, *The Oil Crisis: This Time the Wolf is Here*, 51 FOREIGN AFF. 462, 485 (1973)).

479. When the IEA was created, its members explained that it was neither in order to drive prices down nor to ruin the producers, but rather to protect the consumers. See *id.* at 32 (citing Akins, *supra* note 478, at 487–88 (1973)).

480. United Nations Security Council Members, <http://www.un.org/sc/members.asp> (last visited Feb. 8, 2008). The other member of the U.N. Security Council is Russia. *Id.*

481. See BP STATISTICAL REVIEW OF WORLD ENERGY 21 (2007), available at <http://www.bp.com/multipleimagesection.do?categoryId=9017892&contentId=7033503>

perceived as unstable regions of the world and regimes becomes a threat to the stability and reliability of energy supply.

The importance of energy security was outlined by the Joint Doctrine and Concepts Center, a UK Ministry of Defense think tank, as follows:

Global demand for energy resources will increase significantly due primarily to development and industrialization in South and East Asia. There is little prospect of revolutionary breakthroughs in alternative supplies. Renewable and nuclear energy sources will remain of moderate importance but fossil fuels, and particularly oil and gas, will remain dominant. These will stay the key strategic resources as the main areas of supply and demand are separate. Their location and transport routes will therefore be security drivers for the developed and developing nations alike.⁴⁸²

The threat of climate change may also have surpassed that of international terrorism, as global warming is arguably a greater threat than international terrorism.⁴⁸³

The price of oil is still a governing factor in the price of energy, and high energy prices adversely impact less developed countries, seriously affecting their viability.⁴⁸⁴

Energy security and guaranteeing stable energy supply may be dealt with in pure economic cost terms. If so, the question becomes an issue of price. They may also be dealt with in terms

(select "Review 2007" from "Statistical Renew 2007" drop-down menu; then follow "God" hyperlink) (comparing the relative crude and product import and export volumes of the nations); James Schofield, *Russia's Oil Renaissance*, BBC NEWS, June 24, 2002, <http://news.bbc.co.uk/1/hi/business/2058214.stm> (stating that Russia is "the world's number one oil producer for the first time since the 1980s").

482. Dan Plesch, *New Energy for Global Security*, in BRITAIN'S ENERGY FUTURE: SECURING THE 'HOME FRONT' 1-2 (2005), available at <http://fpc.org.uk/fsblob/575.pdf>.

483. See *Global Warming 'Biggest Threat'*, BBC NEWS, Jan. 9, 2004, <http://news.bbc.co.uk/2/hi/science/nature/3381425.stm> (discussing Sir David King's, the U.K.'s Chief Scientific Advisor, opinion that global warming is a greater threat than terrorism).

484. See Andrew Walker, *The World's Thirst for Oil*, BBC NEWS, Mar. 24, 2000, <http://news.bbc.co.uk/2/hi/686682.stm> (contrasting the effects of higher oil prices on rich countries and developing countries).

of international power and politics. From both of these perspectives, reshaping OPEC seems only natural if its member countries want to participate actively in deciding their own future, as opposed to leaving it to the conflicting interests of powerful consumer nations.

In March 2006, a CNN special program analyzed the potential outcome if a category five hurricane in the Gulf of Mexico damaged the oil infrastructure, including damage to Houston-based refineries, coupled with a terrorist attack on Saudi Arabia's most important export terminals of Ras Tanura and Yanbu.⁴⁸⁵ Experts estimate that an attack like this could disrupt supply of around seven million barrels of oil a day.⁴⁸⁶ The immediate effects of this hypothetical are an increase in the price of oil to \$150 a barrel, gasoline to \$7 a gallon in the United States and \$10 a gallon in Europe, disruptions in several developing countries, and the United States' tapping its Strategic Petroleum Reserve.⁴⁸⁷ One year earlier a group of former White House senior national security officials convened to participate in a simulated work group analyzing a similar oil crisis.⁴⁸⁸ After taking part in the simulation, the then recently appointed U.S. Secretary of Defense Robert Gates observed that "the real lesson here [is that] it only requires a relatively small amount of oil to be taken out of the system to have huge economic and security implications."⁴⁸⁹ The group's most important findings were the following:

485. *We Were Warned: Tomorrow's Oil Crisis* (CNN television broadcast Mar. 18, 2006), available at <http://transcripts.cnn.com/TRANSCRIPTS/060318/cp.01.html>.

486. *Id.* On February 24, 2006 an attack in fact took place against the Saudi Arabian Abqaiq oil facility. *Q&A: Saudi Oil Attack*, BBC NEWS, Feb. 24, 2006, available at http://news.bbc.co.uk/2/hi/middle_east/4748978.stm. This was the first direct attack against oil facilities in Saudi Arabia. *Id.* Oil prices jumped immediately. *Id.*

487. *We Were Warned: Tomorrow's Oil Crisis*, *supra* note 485.

488. NAT'L COMM'N ON ENERGY POL'Y, OIL SHOCKWAVE: OIL CRISIS EXECUTIVE SIMULATION 1 (2005), available at http://www.secureenergy.org/reports/oil_shock_report_master.pdf [hereinafter OIL SHOCKWAVE].

489. *Id.* at i (alteration in original).

- “Oil is a fungible global commodity [and a] change in supply or demand anywhere will affect prices everywhere;”⁴⁹⁰
- “the [United States] is vulnerable to attacks on key energy infrastructure both at home and abroad . . . [b]ecause the infrastructure is too vast to protect;”⁴⁹¹
- “Political unrest . . . in key oil producing countries may pose a greater threat to the long term stability of world oil markets than terrorism;”⁴⁹²
- America’s Strategic Petroleum Reserve offers only limited protection against supply disruptions.⁴⁹³

It is clear then that energy security is a matter of global concern and requires global action and cooperation. The worst case scenario would contemplate direct military confrontations to control energy resources. The last fifteen years confirm that such scenario may already be underway.⁴⁹⁴ The U.S.-led invasion of Iraq may teach another lesson that “there is a limit to what armor and technology can do against a people with faith and who fight because they feel their country has been violated.”⁴⁹⁵

Monitoring the future of Iraq’s oil wealth, with reserves estimated at 112 billion barrels will be critical to determine among others the following issues:

490. *Id.* at 2.

491. *Id.*

492. *Id.*

493. *Id.*

494. See Erich Follath, *Natural Resources are Fuelling a New Cold War*, SPIEGEL ONLINE INT’L, Aug. 18, 2006, <http://www.spiegel.de/international/spiegel/0,1518,429968,00.html> (discussing the current conflicts over natural resources in Nigeria and Russia, as well as potential conflicts in Asia).

495. Tim Pritchard, Op-Ed., *When Iraq Went Wrong*, N.Y. TIMES, Dec. 5, 2006, at A27.

- whether war and military might effectively change control or access to these resources from Russia, China, and France to companies organized in any of the countries of the U.S. Coalition forces. An affirmative answer to this question would only send a message that might is stronger than right, setting a terrible international precedent;
- whether the “new Iraq” will still behave as a founding member of OPEC and whether its production will once more contribute to OPEC’s total output, and if so, whether Iraq will agree to comply with a quota system that may limit its possibilities of growth;
- whether Iraq may be considered today a sovereign country free to dispose of its oil production, or whether any decisions made while foreign forces have effective control is in breach of the notion of permanent sovereignty over natural resources and with what consequences, if any.

These and many other issues would require the effective participation of a specialized oil and gas supranational entity that could advance solutions that would promote energy security, peace in Iraq, and the well being of the Iraqi people.

IV. TO WHAT EXTENT DO THE PROPOSED AMENDMENTS TO THE U.N. SYSTEM AND THE ECONOMIC REALITIES OF THE 21ST CENTURY JUSTIFY A RETHINKING OF OPEC, ITS NATURE, OBJECTIVES, AND ROLE?

A. *The U.N. Example*

The United Nations is the paradigm of an international organization. Reviewing its origins, purposes, limitations, and proposed reform is useful in the analysis of potential amendments to OPEC’s Charter.

Franklin Roosevelt, Joseph Stalin, and Winston Churchill met in Yalta after World War II and agreed that a “world body” was needed to prevent war.⁴⁹⁶ Thus, a conference in San Francisco was scheduled and attended by fifty countries at the

496. CHARLES PATTERSON, UNITED NATIONS 7 (1995).

U.N. Conference on International Organization.⁴⁹⁷ The Organization's name evoked the alliance of several nations in their fight against the Axis powers.⁴⁹⁸ The term "United Nations" may refer to the organization itself, to a group of nations having a common goal, or to a forum for international dialogue.⁴⁹⁹ In fact, the U.N. Declaration issued on January 1, 1942, was a joint war commitment to devote "full resources, military or economic, against those members of the Tripartite Pact."⁵⁰⁰

497. United Nations, Basic Facts About the United Nations, <http://www.un.org/aboutun/basicfacts/unorg.htm> (last visited Feb. 8, 2008). The U.N. charter was drawn at the Conference and the Organization officially came into existence on October 24, 1945. *Id.* The framework of the U.N. was discussed in the Dumbarton Oaks meetings in 1944, which were attended by the "allied powers." PATTERSON, *supra* note 496, at 16.

498. United Nations, History of the United Nations, <http://www.un.org/aboutun/unhistory> (last visited Feb. 8, 2008). On June 12, 1941 the governments of the United Kingdom, Canada, Australia, New Zealand, South Africa, Belgium, Czechoslovakia, Greece, Luxemburg, the Netherlands, Norway, Poland, and Yugoslavia and representatives of general De Gaulle signed the St. James Place declaration, pursuant to which they agreed to continue to struggle against German or Italian aggression and stated:

[t]hat the only true basis for enduring peace is the willing cooperation of the free peoples in a world in which, relieved of the menace of aggression, all may enjoy economic and social security; and that it is their intention to work together with other free peoples both in war and peace to this end.

Fourteen Allies Vow to Fight Until Victory is Won, INTER-ALLIED REVIEW, July 1941, available at <http://www.ibiblio.org/pha/policy/1941/410612a.html>.

499. See James C. N. Paul, *The United Nations and the Creation of an International Law of Development*, 36 HARV. INT'L L. J. 307, 308-09 (1995) (describing the meanings of "United Nations"). The term "United Nations" may refer to an Organization or to a forum in which states may cooperate. *Id.*

500. Declaration by the United Nations, Jan. 1, 1942, 55 Stat. 1600. The name "United Nations" was first used in this 1942 document. History of the United Nations, *supra* note 498.

Franklin Roosevelt's vision of a world order based on four essential human freedoms⁵⁰¹ was central to the idea of the new International Organization. It could be said that the U.N. is indebted at least indirectly to the oil and gas industry, as it was John D. Rockefeller, Jr., who in 1946 donated \$8.5 million for the U.N. to purchase its permanent headquarters in New York.⁵⁰²

Until 1945, there were only a few international organizations.⁵⁰³ The League of Nations⁵⁰⁴ and the United Nations are creations of the nation-state, conceived as extensions of state sovereignty to facilitate the peaceful settlement of disputes or collective action, but prevented from intervening in matters within a state's domestic jurisdiction.⁵⁰⁵

501. Franklin Delano Roosevelt, State of the Union Address: The Four Freedoms (Jan. 6, 1941), in 87 CONG. REC. 44, 46–47 (1941). In his address to the members of Congress Roosevelt referred to a world founded upon four essential human freedoms: “freedom of speech and expression[,] . . . freedom of every person to worship God in his own way everywhere in the world[,] . . . freedom from want, . . . [and] freedom from fear The world order which we seek is the cooperation of free countries, working together in a friendly, civilized society.” *Id.*

502. See PATTERSON, *supra* note 496, at 21.

503. See DONALD C. BLAISDELL, INTERNATIONAL ORGANIZATION 5–11 (1966) (discussing the accelerated rate of growth of international organizations). There were only a handful of international organizations created before 1945: the Central Rhine Commission, the European Commission of the Danube, the International Telegraph Union, the Universal Postal Union, and the League of Nations. PATTERSON, *supra* note 496, at 8–12.

504. The League of Nations was created at the 1919 Paris Peace Conference, and as part of the Treaty of Versailles. PATTERSON, *supra* note 496, at 12. In the United States, Congress refused to ratify the Treaty of Versailles because many objected U.S. involvement in the League, preferring isolationism. See GEORGE SCOTT, THE RISE AND FALL OF THE LEAGUE OF NATIONS 38–50 (1973) (discussing the American political resistance against joining the League of Nations). The League created the Permanent Court of International Justice and the International Labour Organization. PATTERSON, *supra* note 496, at 12. It had three permanent bodies, an Assembly, a Council and a Secretariat (responsible for keeping records, planning meetings and managing day to day business). *Id.* at 12–13. One of the League's weaknesses was its inability to force strong nations to act against their interests, and thus it was unable to prevent World War II. See *id.* at 13–14 (noting that the League of Nations had neither the will nor the means to combat the fascist dictatorships that arose in the 1930s in Italy, Germany, and Japan).

505. U.N. Charter art. 2, paras. 1, 3, 7. The First Hague Peace Conference in 1899,

Critics of the U.N. system abound. In 1996, Former U.S. Senator Jesse Helms stated:

Its bureaucracy is proliferating, its costs are spiraling, and its mission is constantly expanding beyond its mandate—and beyond its capabilities. Worse, with the steady growth in the size and scope of its activities, the United Nations is being transformed from an institution of sovereign nations into a quasi-sovereign entity in itself. That transformation represents an obvious threat to U.S. national interests. Worst of all, it is a transformation that is being funded principally by American taxpayers. The United States contributes more than \$3.5 billion every year to the U.N. system as a whole, making it the most generous benefactor of this power-hungry and dysfunctional organization.⁵⁰⁶

Boutros Boutros-Ghali believed that the United Nations “cannot meet the new challenges, for it is trapped by a second dilemma. With the emergence of the problems associated with globalization and fragmentation, the world body has been given vast responsibilities, but it lacks the political, military, material, and financial resources required to accomplish these tasks.”⁵⁰⁷

The war in Iraq confirmed the United Nations’ limitations as a peacekeeping organism.⁵⁰⁸ Many have questioned whether the United Nations may even act as an effective mediator, as it is totally dependent on its member states for military and economic support.⁵⁰⁹ Genocide in Bosnia in the late 1990s and

attended by 26 nations is an early example of attempts of international cooperation to stop the arms race. PATTERSON, *supra* note 496, at 9.

506. Jesse Helms, *The United States Should Force the United Nations to Reform*, in THE UNITED NATIONS 29 (Karin L. Swisher ed., 1997) (footnote omitted).

507. Boutros Boutros-Ghali, *Global Leadership After the Cold War*, FOREIGN AFF., Mar.–Apr. 1996, at 88.

508. See *Anger at UN Chief's Iraq Comments*, BBC NEWS, Dec. 4, 2006, http://news.bbc.co.uk/2/hi/middle_east/6206480.stm (describing Kofi Annan’s “sadness at [the U.N.’s] being unable to prevent the invasion in 2003”).

509. See Saadi Touval, *Why the U.N. Fails*, FOREIGN AFF., Sept.–Oct. 1994, at 44–46 (discussing the U.N.’s inability to serve as a mediator).

As currently constituted, the United Nations has great difficulty performing many basic functions required of an effective mediator. It does not serve well

currently in Darfur challenges the Organization's effectiveness in promoting human rights. Many voices have joined to question whether the "international community" serves any practical use.⁵¹⁰ The Oil for Food Program indicates that corruption must also be fought at the highest international levels. Examples like the General Assembly resolutions,⁵¹¹ issued over fifteen years supporting the end of the U.S. embargo on Cuba, confirm the irrelevance of such resolutions. The United Nations has been criticized as bureaucratic, having an excessive membership that prevents effective action, and operating at a very high cost.⁵¹²

as an authoritative channel of communication. It has little real political leverage. Its promises and threats lack credibility. And it is incapable of pursuing coherent, flexible, and dynamic negotiations guided by an effective strategy.

Those limitations are ingrained. They are embedded in the very nature of intergovernmental organizations, and no amount of upgrading, expansion, or revamping of U.N. powers can correct those flaws. Rather, it is time to recognize U.N. shortcomings and to quit dumping on the organization tasks that it cannot perform.

Id. at 45.

510. See Hugo Chavez Frias, Speech Before the 60th U.N. General Assembly (Sept. 15, 2005), available at <http://www.embavenez-us.org/news.php?nid=1745> (arguing that the international community is dominated by "elitist" members of the U.N. Security Council, and a new, more democratic international order should be established). "The United Nations has exhausted its model, and it is not all about reform. The XXI century claims deep changes that will only be possible if a new organization is founded. This [United Nations] does not work. We have to say it. It is the truth." *Id.*

511. See, e.g., G.A. Res. 61/11, U.N. Doc. A/Res/61/11 (Dec. 5, 2006). "For the fifteenth consecutive year, the General Assembly called on States to refrain from promulgating laws in breach of freedom of trade and navigation, as it overwhelmingly passed a resolution on the need to end the economic, commercial and financial embargo imposed by the United States against Cuba." Press Release, General Assembly, General Assembly Overwhelmingly Supports End to United States Embargo on Cuba, U.N. Doc. GA/10529 (Nov. 8, 2006). The draft Resolution was adopted by a vote of 183 in favor and 4 against (Israel, Palau, the United States, and the Marshall Islands). *Id.*

512. See Stefan Halper, *The United States Must be Radically Reformed*, in THE UNITED NATIONS, *supra* note 506, at 10, 13-16 (criticizing the U.N.'s systemic inefficiencies).

Being aware of the criticism made to the United Nations may be particularly useful when considering potential amendments to OPEC. Some of the most important concerns raised include:

- an almost total lack of accountability that gives rise to corruption;⁵¹³
- unelected bureaucrats who acquire great powers at the expense of elected national leaders;⁵¹⁴
- weak decision making;⁵¹⁵
- political divisions of the General Assembly and an imbalance between member financial contributions and voting power;⁵¹⁶
- the Security Council's not being representative of today's world;⁵¹⁷ and
- either a limited budget for the many tasks assigned to U.N. operations or an excessive cost of an international bureaucracy.⁵¹⁸

513. *Id.* at 10. According to Halper, “[e]xisting evidence indicates that corruption and mismanagement go beyond the routine fraud, waste and abuse of resources that mark all public-sector enterprises.” *Id.*

514. *See* Helms, *supra* note 506, at 29 (stating that the U.N.'s expanding bureaucracy threatens countries' national sovereignty).

515. Mark M. Brown, U.N. Sec'y Gen., Power and Super-Power: Global Leadership in the Twenty-First Century, Address at the Century Found. & Ctr. for Am. Progress (June 6, 2006), in U.N. Doc DSG/SM/287 (June 7, 2006) [hereinafter Power and Super-Power].

516. *Id.*; *see also* Brett Schaefer, The Status of United Nations Reform (Sept. 11, 2006), in HERITAGE LECTURES NO. 966, Oct. 2006, at 7, available at <http://www.heritage.org/Research/InternationalOrganizations/hl966.cfm> (discussing the disproportionate monetary of U.N. member states to the budget). Countries that contribute \$19,000 per year have the same one vote as the United States, contributing \$430 million per year. Schaefer, *supra*, at 7.

517. Power and Super-Power, *supra* note 515. Countries like Brazil, Japan, Germany and India contribute twice as much to the United Nations as China, Britain, France and Russia contribute. *Id.*

518. *See* Halper, *supra* note 512, at 16 (stating that after 70% of the U.N.'s budget is spent on salaries for bureaucrats, there are precious few financial resources for actual U.N. missions). The United Nation's annual budget is \$1.8 billion, and it is financed through the mandatory contributions of U.N. members. VOLKER LEHMANN & ANGELA MCCLELLAN, DIALOGUE ON GLOBALIZATION, FINANCING THE UNITED NATIONS: FACT

U.N. Secretary General Kofi Annan referred in 2003 to the need for fundamental reform of the U.N. to meet the challenges of terrorism, poverty, disease, and climate change, among others.⁵¹⁹

Some amendments are already underway through the creation of the Ethics Office and whistleblower policy, the Democracy Fund, the new Peacebuilding Commission, and the Human Rights Council.⁵²⁰ However, the United States, the major U.N. financial contributor, threatened not to pay its mandatory contribution to the U.N. budget if certain reforms

SHEET (2006), <http://www.globalpolicy.org/finance/docs/2006/04factsheet.pdf>. Following the 1995 U.S. decision to unilaterally limit its contributions, no U.N. member may pay more than 22% of the budget. *Id.* However, the budget of U.N. peacekeeping operations reached \$5 billion. *Id.* The top five contributing members to the United Nations are: the United States (\$4,227 million), Japan (\$1,853 million); United Kingdom (\$1,433 million); Germany (\$921 million), and the Netherlands (\$888 million). *Id.* at 2 tbl.1.

519. Dharam Shourie, *United Nations in Need of Fundamental Reform*, REDIFF INDIA ABROAD, Oct. 2, 2003, <http://www.rediff.com/news/2003/oct/02un.htm>.

520. See Sec'y Gen.'s Bull., Ethics Office-Establishment and Terms of Reference, U.N. Doc. ST/SGB/2005/22 (Dec. 30, 2005) (establishing the Ethics Office); Gen. Assembly Sec. Council, *Report of the Peacebuilding Commission on its First Session*, 1, U.N. Doc A/62/137-S/2007/458 (July 25, 2007) (setting forth the reasons behind establishing the Peacebuilding Commission); United Nations, *What is the United Nations Democracy Fund (UNDEF)?*, <http://www.un.org/democracyfund/XWWhatisUNDEF.htm> (last visited Feb. 8, 2008) (discussing the establishment and purposes of UNDEF); G.A. Res. 60/251, ¶ 1, U.N. Doc. A/RES/60/251 (Apr. 3, 2006) (establishing the Human Rights Council); G.A. Res. 60/283, art. II, U.N. Doc. A/RES/60/283 (Aug. 17, 2006) (establishing the position of Chief Information Technology Officer). The Human Rights Council replaced the Commission on Human Rights. See Judy Aita, *United States Will Not Seek Human Rights Council Seat*, U.S. STATE DEP'T, Apr. 6, 2007, <http://usinfo.state.gov/is/Archive/2006/Apr/07-534030.html> (referencing the new U.N. Human Rights Council as the successor to the discredited Commission on Human Rights). The United States decided not to participate in the newly created Council, in part because its members will be elected by a simple majority of a General Assembly dominated by the vote of Third World countries. See *id.* (outlining the official reasons for the U.S. opposition to the council).

were not approved.⁵²¹ To date, the United States has not paid its 2006 mandatory contribution to the United Nations' budget.⁵²²

International humanitarian intervention conditioned on U.S. approval or approval by any of the five permanent members of the Security Council, and international activities limited to those supported by the world super power question whether the U.N. system serves as a rubber stamping role for U.S. foreign policy.⁵²³

Some of the amendments to the United Nations organizational structure that may be worth reviewing when considering potential amendments to OPEC include the following:

- a. Granting limited budgetary discretionary powers to the Secretary General and increasing its accountability;⁵²⁴

521. Brett D. Schaefer & Nile Gardiner, *Malloch Brown is Wrong: The U.S. Should Press Even Harder for UN Reform*, HERITAGE FOUND., Web Memo No. 1122, June 13, 2006, at 3, http://www.heritage.org/upload/wm_1122.pdf. “[L]inking [U.S.] contributions to the [United Nations] with essential [U.N.] reform is not ‘unchecked [U.N.]-bashing and stereotyping,’ but an effort to induce reforms that will allow the United Nations to serve its invaluable function.” *Id.* at 4 (quoting Press Release from Henry Hyde, Former Chairman of the Comm. on Int’l Relations, Comments on United Nations Deputy Secretary-General’s Criticism of the United States (June 7, 2006)).

522. The United States, Japan, and the European Union, who pay 82% of the U.N. budget, established a budget cap to the U.N. conditioned on the U.N.’s implementing reforms. Thalif Deen, *Rich Vs. Poor in Power Struggle, Says Top UN Official*, GLOBAL POLY F., May 31, 2006, <http://www.globalpolicy.org/reform/topics/manage/2006/0531struggle.htm>. The current U.N. budget crisis is described as an issue of “numbers versus pocketbooks.” *Id.* (quoting U.N. Deputy Secretary-General Mark M. Brown).

523. See James Traub, *Who Needs the U.N. Security Council?*, N.Y. TIMES, Nov. 17, 2002, § 6 (Magazine), at 46, 48, 50–51 (discussing the Security Council’s perceived rubber stamping of U.S. foreign policy and the increasing willingness of the United States to insist upon its own course of action). The analysis of this issue far exceeds the limited scope of this paper.

524. G.A. Res. 60/283, *supra* note 520, ¶¶ 1, 3.6. The General Assembly authorized the Secretary General on an experimental basis to have limited budgetary discretion for up to \$20 million. *Id.* ¶ 3.6. The Secretary General is to define clear accountability mechanisms to the General Assembly. *Id.* ¶ 3.13. One of the challenges of modern international organizations is to spend less time and resources discussing administrative and bureaucratic matters while devoting the bulk of those resources to finance effective

- b. Enhancing the Organization's information and communication technology;⁵²⁵
- c. Creating a Working Capital Fund;⁵²⁶
- d. Improving public awareness of the Organization's work and access to its information and documentation;⁵²⁷
- e. Interaction with civil society and national and regional parliaments;⁵²⁸
- f. Appointment of the Secretary General.⁵²⁹

work. *See, e.g.*, Richard Goldstone, Justice of the Constitutional Court of S. Afr., Conference Luncheon Address for the Minnesota Advocates for Human Rights (Mar. 23, 1996), in 7 *TRANSNAT'L L. & CONTEMP. PROBS.* 1, 12 (1997) (illustrating the dichotomy of the inefficiency and necessity of international bureaucracies). In the process of becoming more efficient, organizations like the U.N. are contemplating the possibility of outsourcing certain services. *See generally* Björn Möller, *Privitisation of Conflict, Security and War 4–7* (Danish Inst. For Int'l Studies, Working Paper No. 2, 2005) (discussing the international outsourcing trend that attempts to achieve greater efficiency).

525. *See* G.A. Res. 60/283, *supra* note 520, ¶ 2 (describing the measures taken by the United Nations to improve its informational and communication systems). The same G.A. Resolution provides for the creation of a Chief Information Technology Officer at the level of the Assistant Secretary General to create and implement an effective information management strategy. *Id.*

526. *See* G.A. Res. 60/250, ¶ 1, U.N. Doc. A/RES/60/250 (Feb. 1, 2006) (establishing a \$100 million Working Capital Fund for the years 2006 and 2007). The Working Capital Fund was increased to \$150 million in August 2006. G.A. Res. 60/283, *supra* note 520, ¶ 4.4.

527. G.A. Res. 60/283, *supra* note 520, ¶ 5.6. Under the Resolution, the Secretary General intends to prepare a single financial programme and comprehensive annual report in addition to the report on the work of the organization. *Id.* ¶ 5.3.

528. G.A. Res. 60/286, ¶ 1.12–13, U.N. Doc. A/RES/60/286 (Oct. 9, 2006). The modernization of the General Assembly as contemplated by the G.A. itself includes greater interaction with nongovernmental organizations and parliamentary institutions. *Id.* ¶ 1.12.

529. *See id.* ¶ 2.17–22 (regarding the selection of a Secretary General). The process of appointing a Secretary General should be transparent and inclusive of all Member States to chose the best possible candidate. *Id.* ¶ 2.18.

B. The Millennium Summit and the Millennium Development Goals

The Millennium Summit, the largest gathering of world political leaders in history, was held in September 2000, and the world nations reflected on the international community as a whole, the role of the United Nations and the main challenges of globalization.⁵³⁰ At the Summit, the Millennium Development Goals were presented as the “most broadly supported, comprehensive, and specific poverty reduction targets the world has ever established.”⁵³¹ The first of such goals is to “[e]radicate extreme poverty and hunger” by reducing the number of people living on less than one dollar a day in half between 1990 and 2015.⁵³² The goals are primarily meant to be accomplished at country levels, as national aspirations that require good governance, adequate investments, and transparency, but are essentially basic human rights.⁵³³ “For the international political system, [the Millennium Development Goals] are the fulcrum on which development policy is based.”⁵³⁴

The goal to eradicate poverty is tied to economic success, which is directly related to good governance. “Good governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights and the participation of all

530. Amy Bucossi, *The Millennium Assembly Presents Opportunities to Strengthen International Human Rights Protection*, 17 N.Y.L. SCH. J. HUM. RTS. 883, 883–84 (2001).

531. JEFFREY SACHS, *INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS 2* (1995). The U.N. Millennium Project was created as an independent advisory body to report directly to the Secretary General to propose the strategy to achieve the Millennium Development Goals. *Id.* at 1–2. The Millennium Project is interesting as an example of “global partnership suitable for an interconnected world.” *Id.* at x.

532. *Id.* at xviii.

533. *Id.* at 2–4.

534. *Id.* at 2. The Millennium Development Goals have been confirmed at several international summits such as the 2001 Doha Round, the 2002 Monterrey International Conference on Financing for Development, and the 2002 Johannesburg World Summit on Sustainable Development. *Id.* at 3.

citizens in the decisions that affect their lives.”⁵³⁵ Development assistance, which is already being provided through the OPEC Fund, is one of the pillars of international solidarity to eradicate poverty.

At the Summit, the General Assembly resolved to “make the United Nations more effective in maintaining peace and security by giving it the resources and tools it needs.”⁵³⁶ Such strengthening contemplated confirming the General Assembly’s role as chief policy making and representative organ; reforming the U.N. Security Council; strengthening the Economic and Social Council and the International Court of Justice; and ensuring better cooperation between the United Nations and other multilateral bodies.⁵³⁷

Amendment of the United Nations to serve no longer the needs of an international world but instead of globalization include:

- redesigning the Security Council to meet the needs of the globalized world as opposed to the 1945 world;⁵³⁸
- redesigning major economic forums;
- opening the United Nations to nongovernmental organizations, the private sector, and scientific and educational institutions;⁵³⁹
- implementing effective global corporate citizenship; and
- a new partnership between developed and developing countries.

535. ANNAN, WE THE PEOPLES, *supra* note 111, at 22.

536. G.A. Res. 55/2, *supra* note 182, ¶ 9. “We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common home.” *Id.* ¶ 29.

537. *Id.* ¶ 30.

538. See ANNAN, WE THE PEOPLES, *supra* note 111, at 13 (outlining the need for reforms to the U.N. Security Council to meet the needs of a globalized world much different from that of 1945 when the Council was created).

539. *Id.*

Energy security is a key issue in the internal and foreign policies of the most powerful nations. Such idea contemplates national energy strategies that combine “resource diplomacy,”⁵⁴⁰ energy conservation, promotion of nuclear energy, and in some cases outright aggression.

Meeting the Millennium Goals, and reforming international organizations that may contribute to attaining such goals may be the strongest way of preventing resource-based conflicts and the erosion of the international development system.

C. OPEC's Formation, Structure, and Statute

OPEC was created as an intergovernmental organization in Baghdad on September 10, 1960, by the five countries from which the majority of oil was exported to the international markets, which would be known as founding members Iran, Iraq, Kuwait, Saudi Arabia, and Venezuela.⁵⁴¹

Previous attempts at international cooperation between oil exporting countries included contacts between Venezuelan, Iranian, and Soviet Union representatives in 1940, when Juan Pablo Perez Alfonso was Minister of Development of Venezuela.⁵⁴² Such contacts led to a meeting of Venezuelan and

540. See Gawdat Bahgat, *Redefining Energy Security in the Persian Gulf*, 31 W.T.R. FLETCHER F. WORLD. AFF. 215, 215–17 (2007) (discussing the dynamics of energy security). For example Japan's resource diplomacy contemplates cooperation with China (development of resources in the East China Sea), India (Japan and India signed a Joint Declaration on Comprehensive Energy Cooperation on September 29, 2005), Brazil (Japan agreed to import ethanol from Brazil), Russia (Japan and Russia signed two agreements for energy cooperation on November 21, 2005), and Iraq (Joint Iraqi-Japanese declaration dated December 6, 2005). AGENCY FOR NATURAL RES. AND ENERGY MINISTRY OF ECON., TRADE, AND INDUST., JAPAN FISCAL 2005 ANNUAL ENERGY REPORT 7 (2006), available at http://www.meti.go.jp/english/report/downloadfiles/FY2005EnergyWP_outline.pdf.

541. A Brief History of OPEC, *supra* note 152.

542. See Juan Pablo Perez Castillo, *Comment*, OIL, GAS & ENERGY L. INTELLIGENCE, Mar. 2003, at 28 (explaining how the modern OPEC organization was created). Venezuelan President Gallegos was overthrown in 1948 by a military coup and such contacts were interrupted. *Id.*

Iranian officials in 1949 to exchange income tax⁵⁴³ and royalty information.⁵⁴⁴ In 1953, Iraq and Saudi Arabia executed a cooperation agreement to exchange oil information.⁵⁴⁵ On October 7, 1944, representatives of six Arab nations executed the Alexandria Protocol and agreed to establish a League of Arab Nations.⁵⁴⁶ On March 22, 1945, Syria, Jordan, Iraq, Saudi Arabia, Egypt, Yemen, and Lebanon had entered into the Pact of the League of Arab States.⁵⁴⁷ Since its foundation, the Arab League contemplated the creation of a petroleum association of Arab countries.⁵⁴⁸ In 1952, the Political Committee of the Arab League created a Committee of Oil Experts.⁵⁴⁹

543. Mikdashi, *supra* note 476, at 22–23. In 1948, Venezuela enforced the so called 50–50 formula, pursuant to which the multinational oil companies' income tax obligations should be equal to 50% of their profits. Jane Perry Clark Carey & Andrew Galbraith Carey, *Oil and Economic Development in Iran*, 75 POL. SCI. Q. 66, 71 (1960). After Venezuela passed this tax law, it sustained in September of 1949 contacts with several Arab countries seeking approval by them of a similar tax to avoid tax based competition between producers. Mikdashi, *supra* note 476, at 22–23. This was the first attempt to coordinate policies between petroleum exporting countries. *Id.* This led Saudi Arabia, Iraq, and Kuwait to charge a fixed royalty system for 50% of the net profits based on posted prices. *Id.* at 23.

544. *Id.* at 23. Venezuela appointed a delegation to visit the Middle East out of fear of competition from Middle Eastern oil producing countries and as a tool to safely implement its profit sharing and royalty legal amendments. *Id.* at 22–23.

545. *Id.* at 24. The agreement was executed on June 29, 1953, and provided for the exchange of oil information and consultation on petroleum policies. *Id.*

546. See The Alexandria Protocol art. 1, Oct. 7, 1944 (establishing the League of Arab States), available at <http://www.yale.edu/lawweb/avalon/mideast/alex.htm>. Protocol Article 1 provided that no state would be allowed to adopt a foreign policy which could be prejudicial of the League's policy or of any of its individual members. *Id.* Article 3 hoped that the Arab States would consolidate their ties through institutions that would bind the various powers closer together. *Id.* art. 3. Protocol Article 5 stated that Palestine is an important part of the Arab World and that "the rights of the Arabs in Palestine cannot be touched without prejudice to peace and stability in the Arab World." *Id.* art. 5. The same provision referred to the independence of Palestine as a permanent Arab right. *Id.*

547. Pact of the League of Arab States, pmbl., art. 1, March 22, 1945, available at <http://www.yale.edu/lawweb/avalon/mideast/arableag.htm>. The League's purpose was to strengthen cooperation between Arab countries to "safeguard their independence and sovereignty." *Id.* art. 2. The League's permanent seat is in Cairo. *Id.* art. 10.

548. KUBBAH, *supra* note 1, at 7.

549. *Id.* at 11.

An Arab Petroleum Congress was held in Cairo in April 1959, with participation of Venezuela and Iran in which a “Gentlemen’s Agreement” was reached which would become the basis for OPEC’s foundation one year later.⁵⁵⁰ The degree of cooperation that was proposed within the Arab League was significant and may be evidenced by Iraq’s proposal in 1959, which included an agreement on the adoption of a common oil law, maintenance of oil prices through control of production and coordination of oil policies, exchange of information and experts, and establishment of an Oil Studies Institute.⁵⁵¹ Perez Alfonso had been appointed as Minister of Mines in Venezuela and could resume his efforts to create an international organization for the benefit of the Third World.⁵⁵² In addition to him, the names of Fuad Rouhani⁵⁵³ (Iran), Tala’at al-Shaibani (Iraq), Ahmed Sayed Omar (Kuwait), and Abdullah Tariki, may be referred to as the Organization’s founding fathers.⁵⁵⁴

The direct cause for the creation of OPEC was the unilateral reduction of posted prices—without even consulting the producing countries—by the multinational companies in 1959 and 1960, which reduced the producing countries’ revenues.⁵⁵⁵

The first OPEC Resolution asked for consultation by the multinational companies, providing that:

550. AL-OTAIBA, *supra* note 409, at 48–49.

551. *Id.* at 51.

552. Perez Castillo, *supra* note 542, at 28–29.

553. Fuad Rouhani stated in 1963 that, similar to a Persian proverb which says that “if God so wills, good will come out of evil,” OPEC was created out of the evil deeds of the oil companies’ unilaterally reducing prices without consulting the producing countries. See KUBBAH, *supra* note 1, at 129 (referencing Rouhani’s speech as OPEC’s first Secretary General).

554. KUBBAH, *supra* note 1, at 13.

555. AL-OTAIBA, *supra* note 409, at 52–53. Even “[d]espite the strong position taken by the oil-exporting countries regarding any further reductions in their per barrel incomes through unilateral measures . . . by the companies, the major companies went ahead and cut prices again in August 1960. The exporting countries responded by founding OPEC one month after this reduction.” *Id.* at 53.

Members shall demand that Oil Companies maintain their prices steady and free from all unnecessary fluctuations . . . [and] that they shall ensure that if any new circumstances arise which in the estimation of the Oil Companies necessitate price modifications, the said Companies shall enter into consultation with the Member or Members affected in order fully to explain the circumstances[.]⁵⁵⁶

OPEC's founding charter is based on the traditional notion of state sovereignty.⁵⁵⁷ The Baghdad Conference was limited to agreeing that cooperation among petroleum exporting countries was necessary to counter the oil companies' decision to affect prices, to collectively demand price stabilization, and to form a permanent organization between countries with "substantial net export[s] of [c]rude [p]etroleum."⁵⁵⁸ Only a year later in Caracas,

556. Agreement Concerning the Creation of the Organization of Petroleum Exporting Countries, resol. I.1.2, Sept. 14, 1960, 443 U.N.T.S. 6363.

557. See OPEC Statute, *supra* note 127, art. 3. Some have challenged this notion arguing that the OPEC resolutions and history are not contingent upon state sovereignty or U.N. membership. Chalabi, *OPEC and the Struggle to Control Oil Prices*, *supra* note 448, at 2. Such arguments point at references to countries with substantial crude petroleum exports in Resolution I.2. *Id.* They argue that membership is based on a country having substantial oil exports and not on whether the country is a sovereign state. *Id.* This argument also refers to Kuwait's membership in 1960 when the country was a British protectorate and was not recognized internationally as a sovereign state. *Id.* at 3. It also mentions that Qatar (1961) and Abu Dhabi (1968) joined OPEC before they became U.N. members, when they were not recognized as independent sovereign states. *Id.*

558. Agreement Concerning the Creation of the Organization of Petroleum Exporting Countries, *supra* note 556, resol. I.1.2, I.2.3-4; see also FOSTER ASSOCIATES, INC., ENERGY PRICES 1960-73 33 (1990) ("OPEC's initial goal was to maintain the posted prices at the highest possible levels so as to receive larger income tax payments.").

the Conference chose its headquarters in Geneva⁵⁵⁹ and agreed on its initial statute.⁵⁶⁰

The agreement creating OPEC was registered with the United Nations on November 6, 1962, with OPEC's Secretary General as its legal representative.⁵⁶¹ In 1965, OPEC established relations with UNCTAD and ECOSOC.⁵⁶² OPEC's Statute was approved by Resolution VIII.56 at the Eighth Conference of the Organization in Geneva in 1965.⁵⁶³

The Organization's membership doubled during OPEC's first decade to include Qatar (1961), Indonesia (1962), Libya (1962), the United Arab Emirates⁵⁶⁴ (1967), and Algeria (1969).⁵⁶⁵ Three additional members, Nigeria (1971), Ecuador (1973), and Gabon⁵⁶⁶ (1975), joined the Organization during its second decade.⁵⁶⁷ OPEC turned down applications for membership by Trinidad and Tobago and Congo at the thirty-sixth Conference meeting.⁵⁶⁸

559. KUBBAH, *supra* note 1, at 14. Geneva was chosen as a neutral ground; Baghdad and Beirut were considered as options, but Geneva was preferred as an indication of an international organization with neutral objectives. SKEET, *supra* note 115, at 24. The first OPEC Secretary General Fuad Rouhani, Chairman of the National Iranian Oil Corporation, never requested diplomatic immunity with the Swiss government. *Id.* Only when such request was made and the Swiss government refused to grant diplomatic privileges were OPEC's headquarters relocated to Vienna. *Id.* The Geneva headquarters were effective between January 21, 1961, and August 1965. KUBBAH, *supra* note 1, at 14.

560. *See* KUBBAH, *supra* note 1, at 39 (outlining an early resolution adopted by OPEC). OPEC's first statute was approved in January 1961. *Id.*

561. *Id.* at 17.

562. *Id.*

563. OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960-1980, *supra* note 113, at 37-38, 41.

564. United Arab Emirates was formerly known as Abu Dhabi. KUBBAH, *supra* note 1, at 17.

565. *Id.*

566. Gabon was admitted as an Associate Member. *Id.* at 18.

567. *Id.* at 17-18.

568. KUBBAH, *supra* note 1, at 18.

The Swiss authorities perceived OPEC as a mere commodity producers' agreement and failed to grant it diplomatic status.⁵⁶⁹ Headquarters were therefore moved to Vienna following the agreement, executed on June 24, 1965, between the Republic of Austria and OPEC, granting the latter diplomatic immunity benefits.⁵⁷⁰

OPEC established an Economic Commission and approved the Statute thereof in 1965.⁵⁷¹ The Economic Commission was created as a permanent specialized organ,⁵⁷² and its purpose is to assist the Organization in promoting stability of international petroleum prices.⁵⁷³

The OPEC Statute was reviewed and amended in 1966.⁵⁷⁴ Article 2.B was added pursuant to which "[t]he Organization shall devise ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations."⁵⁷⁵ The names of some of

569. Chalabi, *OPEC and the Struggle to Control Oil Prices*, *supra* note 448, at 2.

570. Austria and Organization of the Petroleum Exporting Countries: Agreement Regarding the Headquarters of the Organization of the Petroleum Exporting Countries art. 6, June 24, 1965, 1967 U.N.T.S. 136. Through this agreement, the Austrian government recognized the extraterritoriality of OPEC's headquarters in Vienna, and its inviolability. *Id.* art. 3. The Austrian government also recognized OPEC's juridical personality and its capacity to contract. *Id.* art. 4. Recently, there has been speculation regarding the potential change of the Organization's headquarters to Beirut. Vienna has positioned itself as the seat of thirty-one international organizations, and renovation of OPEC headquarters were being financed with the assistance of funds from the Austrian Government and the city of Vienna. Press Release, Austrian Foreign Ministry, Ministry for Foreign Affairs: Vienna—Official Seat of 31 International Organisations (July 21, 2004), available at <http://www.bmeia.gv.at/index.php?id=63854&L=1>.

571. *See generally* Statute of the OPEC Economic Commission arts. 1–9, Apr. 1965, 5 I.L.M. 157. The Economic Commission was created through Resolution VII.50, and its Statute approved through Resolution VIII.55, adopted at the Eighth OPEC Conference in April 1965. *Id.* pmb., art. 1.

572. *Id.* art. 1.

573. *Id.* art. 2.

574. OPEC Resolution XII.76, Dec. 8, 1966, 6 I.L.M. 358 (1967).

575. *Id.* art. 2(B). Article 36 was also amended to rename the Enforcement Department as the Legal Department, eliminating from it the authority to "follow up the implementation of the Resolutions and recommendations of the Conference which call for action by the Member Countries or by the Secretariat, and submit reports to the Secretary General on the progress made." *Compare* OPEC Statute, *supra* note 127, art.

the departments established in 1965 were changed.⁵⁷⁶ The Office of the Secretary General, not the Enforcement Department, would be entrusted with the task of following up the enforcement of the Resolutions.⁵⁷⁷ Lastly, the Information Department was entrusted with maintaining an information center to include a library and a documentation center.⁵⁷⁸

One of the most important OPEC efforts towards coordination of the petroleum policies of its members was Resolution XVI.90.⁵⁷⁹ The Resolution called for OPEC members to explore and develop their hydrocarbon resources directly.⁵⁸⁰ Absent direct development of their petroleum resources, the Resolution called for granting instruments based on government participation; relinquishment of acreage; operator's income based on posted or tax reference prices to be determined by the governments; limited guarantees of fiscal stability to operators; governments' right to renegotiate whenever the operator is obtaining excessive earnings; operator's obligation to maintain records and provide information to the government, requiring operators to operate under best conservation practices; and solving all disputes before local tribunals.⁵⁸¹

Resolution XVI.90 is referred to as the Declaratory Statement of Petroleum Policy in member countries.⁵⁸² It must be noted that at this time some OPEC members favored outright nationalization.⁵⁸³ Thus, the Resolution may be seen as a less

36 (describing the duties of the Enforcement Department), *with* OPEC Resolution XII.76, *supra* note 574, art. 36 (creating the Legal Department).

576. The Enforcement Department was renamed the Legal Department; the Public Relations Department was renamed Information Department. OPEC Resolution XII.76, *supra* note 574, arts. 33, 36, 37.

577. *Id.* art. 33.

578. *Id.* art. 37.

579. *See generally* OPEC Resolution XVI.90, Apr. 25, 1968, 7 I.L.M. 1183 (1968) (laying out the details of OPEC member policies regarding such topics as modes of development, prices, conservation, and settlement of disputes).

580. *Id.* § 1, ¶ 5.

581. *Id.* § 2, ¶¶ 4–10.

582. *See id.*

583. SKEET, *supra* note 115, at 48. The then OPEC Secretary General Francisco Parra declared at the time: "This is then a very far cry from any call for nationalisation;

controversial approach. Its main contents may be outlined as follows:

1. Direct control over their resources by the OPEC member countries. The Resolution called for the member countries to explore and develop their hydrocarbon resources directly and “under the greatest measure possible of participation in and control over all aspects of operations.”⁵⁸⁴
2. Renegotiation and revision of existing concession agreements. The Resolution referred to the principle of changing circumstances as a justification for amending concession contracts in place and for changing the terms of any new contracts at predetermined intervals.⁵⁸⁵
3. Protection or indexation of prices. Whether calculated as posted or tax reference prices, petroleum crude prices should maintain an international purchase power when compared with manufactured goods.⁵⁸⁶
4. Prices for hydrocarbon production to be determined by the government and established in relation to the prices of manufactured goods traded internationally.

on the contrary, it is an effort to work out the proper place of foreign capital within the national interest, and for the long term.” *Id.* at 50.

584. *Id.* at 49. Members should seek to introduce a participation clause to obtain a direct participation in concessions in place. *Id.*

This statement called for the renegotiation of existing contracts with the international oil firms. It was recommended that the posted prices be determined by the host governments and that prices should move in relation to the prices of manufactured goods traded internationally. Mention was also made of member countries’ eventual participation in concessions.

FOSTER ASSOCIATES, INC., *supra* note 558, at 34.

585. SKEET, *supra* note 115, at 49. Another suggested contractual change referred to a reduction of the contract’s area to be determined by the government. *Id.*

586. *Id.* The concept of renegotiation included the recommendation that the financial provisions of a contract be reviewed whenever there were “excessively high net earnings.” OPEC Resolution XVI.90, *supra* note 579, § 7.

Although its member countries meet and review issues that are central to the world's economy—production and prices of petroleum crude and control over such resources—the most important achievements overall, other than preventing the further deterioration of posted prices, may not be attributed to an OPEC decision, but to efforts of individual countries.⁵⁸⁷

In 1971, Standard Oil of California, Texaco Inc., Mobil Oil Corporation, Chevron Oil Trading, and other companies formed a group called The London Policy Group to plan policy and bargain jointly as a common front to OPEC.⁵⁸⁸ The group negotiated jointly and agreed to supply oil to each other if any OPEC country nationalized any of the members' interests.⁵⁸⁹

Resolution XXIV.135 of 1971, recognizing the principle of participation, may also be pointed out as another of the few high notes within the Organization toward establishing a coordinated petroleum policy. The Resolution called all members to “establish negotiations with the oil companies, either individually or in groups, with a view to achieving effective participation.”⁵⁹⁰

587. See SKEET, *supra* note 115, at 47 (noting that in 1967, OPEC's weakness was revealed when, after negotiating with the companies on behalf of OPEC, only Saudi Arabia, Iran, and Kuwait confirmed their agreement while Libya rejected it, leading to the formation of OAPEC). “OPEC could be guaranteed to pass Resolutions in support of their claims but it kept well away from involving itself in any individual member's negotiation.” *Id.* at 48. During this period the companies joined forces to protect the status quo. See FOSTER ASSOCIATES, INC., *supra* note 558, at 33 (noting that oil companies made several reductions in posted prices because they had been set too high, resulting in payment of income taxes for income not actually realized). “To ease the burden of expensing royalties, companies were allowed to make allowances off the posted price. The basic rate was set at 8.5% in 1964, 7.5% in 1965, and 6.5% in 1966, after which the situation was to be reviewed.” *Id.* at 34. Skeet concludes, “[a]s in earlier years, what happened within individual OPEC member countries was, in 1968/69, of far greater immediate interest and significance to those countries and the oil companies than the developments, or lack of them, in OPEC.” SKEET, *supra* note 115, at 51.

588. Long Island Lighting Co. v. Standard Oil Co., 1978 U.S. Dist. LEXIS 18991, at *5 (S.D.N.Y. Mar. 16, 1978).

589. *Id.*

590. OPEC Resolution XXV.139, Sept. 22, 1971, compiled in OPEC OFFICIAL RESOLUTIONS AND PRESS RELEASES 1960–1980 112–13 (1980).

In 1975, the OPEC members reflected on the Organization's tasks and functions, agreeing on the reinforcement of OPEC to coordinate the activities of the members' national oil companies as well as OPEC's role in the international economy.⁵⁹¹ At this time, OPEC members saw the urgency to concert their actions regarding oil production policies, oil conservation, oil prices, and the marketing of oil.⁵⁹²

In 1976, OPEC members established the OPEC Special Fund.⁵⁹³ The Fund was created with an amount of \$800 million⁵⁹⁴ as an international special account collectively owned by all founding members⁵⁹⁵ for the purpose of providing financial assistance through loans to nonOPEC developing countries. In 1980, the Fund acquired international legal personality and was renamed OPEC Fund for International Development.⁵⁹⁶

OPEC's objective is to coordinate and unify the petroleum policies of its member countries and determine the best means of safeguarding their individual and collective interests.⁵⁹⁷ OPEC's 46-year life has been devoted primarily to the stabilization and protection of oil prices⁵⁹⁸ as the means of securing steady incomes for the producing countries.⁵⁹⁹ The Organization's greatest achievements have been identified with the 1973 and

591. OPEC Solemn Declaration 1975, *supra* note 199, art. XIII.

592. *See id.* art. XIV (proclaiming OPEC's goal of a new economic order founded on justice and fraternity).

593. Agreement Establishing the OPEC Special Fund, Jan. 28, 1976, 15 I.L.M. 1356. The Agreement was executed by Algeria, Gabon, Iran, Kuwait, Nigeria, Saudi Arabia, Ecuador, Indonesia, Iraq, Qatar, Libyan Arab Republic, United Arab Emirates, and Venezuela. *Id.* The Agreement entered into force on May 10, 1976. IBRAHIM F.I. SHIHATA, OPEC FUND FOR INT'L DEV., THE OPEC SPECIAL FUND: A NEW APPROACH TO INTERNATIONAL FINANCIAL ASSISTANCE 6 (1976), *available at* http://www.ofid.net/publications/PDF/pamphlet/pamphlet_archive/archive_01_fin_2.pdf.

594. Agreement Establishing the OPEC Special Fund, *supra* note 593, art. 4.

595. *Id.* art. 1.01.

596. The OPEC Fund for International Development, OFID at a Glance, <http://www.ofid.net/about/about.aspx> (last visited Feb. 8, 2008).

597. OPEC Statute, *supra* note 127, art. 2.A.

598. *Id.* art. 2.B.

599. *Id.* art. 2.C.

1979 drastic increases in oil prices.⁶⁰⁰ An additional, important feature of the Organization's mandate, which is frequently overlooked, is to contribute to the "efficient, economic and regular supply of petroleum" to the consuming nations.⁶⁰¹ OPEC's Statute, however, also provides for a "fair return on their capital to those investing in the petroleum industry."⁶⁰²

OPEC's Statute distinguishes between three types of members: founding,⁶⁰³ full,⁶⁰⁴ and associate⁶⁰⁵ members. However, there is no substantive difference between a founding and a full member.⁶⁰⁶ The Statute also contemplates nonmember countries participating at OPEC Conferences as observers.⁶⁰⁷

OPEC's internal structure follows the traditional tripartite form with a Secretariat responsible for preparing meetings and collecting information,⁶⁰⁸ a Conference or meeting of all member

600. *Key Events in OPEC History*, REUTERS, Sept. 26, 2000, available at <http://archives.cnn.com/2000/WORLD/americas/09/26/energy.opec.chronology.reut/index.html>.

601. OPEC Statute, *supra* note 127, art. 2.C.

602. *Id.*

603. "Founding members" are defined as the five countries that participated at the 1960 Baghdad First OPEC Conference. *Id.* art. 7.A.

604. "Full members shall be the Founder Members as well as those countries whose application for membership has been accepted by the Conference." *Id.* art. 7.B. According to OPEC's Statute, having a "substantial net export of crude petroleum" is required to become a member. *Id.* art. 7.C.

605. "Associate members" are countries whose exports of petroleum do not meet the substantial export requirement, but are nevertheless accepted to attend OPEC Conferences under special conditions. *Id.* art. 7.D.

606. *See id.* art. 7.B–C (discussing the requirements of becoming a Full Member and how the "Full Member" group includes Founding Members).

607. *Id.* art. 11.D.

608. The "Secretariat" represents the executive branch of the organization and is formed by the Secretary General, who is appointed for three-year terms and acts as the organization's legal representative, and such staff as is necessary. *Id.* arts. 26–28. The Secretary General prepares reports for presentation to the Board of Governors. *Id.* art. 29. The Secretary General holds the appointment power, designating the Directors of Divisions and Heads of Departments with the Board of Governors' consent. *Id.* art. 30.A–B. The Statute provides for a Division of Research, an Administration and Human Resources Department, and a Public Relations and Information Department. *Id.* art. 33.A–C.

states,⁶⁰⁹ and a Board of Governors or council to perform day-to-day functions.⁶¹⁰ The Conference is the organ with the broadest powers⁶¹¹ and determines OPEC's policies and budget, accepts new members, and has the power to amend the Organization's statute and authority to make the most important appointments.⁶¹² Decisions by OPEC's Conference must be unanimous.⁶¹³

In 2000, OPEC members agreed to institutionalize a Summit of Heads of State and Government to enhance the Organization's ability to extend the "numerous successes which it has achieved in [its] first 40 years."⁶¹⁴ In that same year, the OPEC website was launched.⁶¹⁵

OPEC members may control or substantially influence several interrelated factors, including the amount of oil in the world market, the price of oil in that market, the income of the exporting countries, and the economic development of each exporting country. OPEC's Secretary General described OPEC's main role as threefold: stabilizing oil prices; securing an efficient, economic, and regular petroleum supply to consumer

609. The Conference, an assembly of the Member countries, is the highest OPEC authority and is integrated by member country delegations. *Id.* arts. 10–11. The Conference holds two ordinary meetings per year at the Vienna Headquarters, with a quorum of three-fourths of its members. *Id.* arts. 11–12. It may hold extraordinary meetings at the request of any member country. *Id.* art. 12.

610. See MARK JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 200 (4th ed. 2003) (discussing the general structure of international organizations). The Board of Governors is trusted with the organization's management and implementation of any Conference decisions; it acts as an intermediary between the Conference and the Secretary General. OPEC Statute, *supra* note 127, art. 20. Each country appoints a "Governor" to the Board which may hold meetings with a two-third quorum of its members represented. *Id.* art. 17.

611. Any matter which is not assigned by statute to another OPEC organ is within the Conference's authority. OPEC Statute, *supra* note 127, art. 16.

612. *Id.* art. 15. Such appointments include designating the Secretary General and the Organization's auditor. *Id.*

613. *Id.* art. 11.C.

614. *OPEC Solemn Declaration 2000*, *supra* note 216, art. XX.

615. OPEC, OPEC ANNUAL REPORT 2000 55 (2000), available at <http://www.opec.org/library/Annual%20Reports/pdf/AR002000.pdf>.

nations; and guaranteeing fair returns to investors.⁶¹⁶ Thus, OPEC's main purposes have focused on accomplishing three market conditions: stable demand, stable supply, and fair and stable prices.⁶¹⁷

For some, OPEC is the "international organisation with the greatest impact on the oil sector," as OPEC countries control about 75% of the world oil reserves and 40% of oil production.⁶¹⁸ It is undeniable that OPEC members provide the world with the oil supplies needed to preserve a stable market and have contributed significantly to stabilizing prices through production quotas.⁶¹⁹

Although the Organization has existed for nearly half a century, its history is clouded with some doubt about its personality under international law. As we reviewed previously, OPEC has been the named defendant in U.S.-based litigation.⁶²⁰ Since its creation, there has been controversy as to whether OPEC has a political nature or simply gathers countries with commodity export interests.⁶²¹

616. Silva-Calderón, OPEC's Role and the Challenges We Face in the Petroleum Industry, *supra* note 144.

617. *Id.*

618. *OGEL Profiles: International Organisations in the Energy Sector, No. 2: OPEC, OIL, GAS AND ENERGY LAW INTELLIGENCE*, Mar. 2003, at 17.

619. ORGANIZATION OF ARAB PETROLEUM EXPORTING COUNTRIES [OAPEC], THE SECRETARY GENERAL'S 31ST ANNUAL REPORT 24 (2004). According to the report, OPEC's supplies accounted for 67% of the total increase in world supplies in 2004. *Id.* at 25. At its 2004 February and March meetings, OPEC decided to lower its production ceiling by 1 million barrels a day. *Id.* at 26. Despite these decisions, OPEC's production increased. *Id.* In the June and September 2004 meetings, OPEC decided to increase production as a means to stabilize prices. *Id.*

620. *Int'l Ass'n of Machinists & Aerospace Workers v. OPEC*, 649 F.2d 1354 (1981); *Prewitt Enter. v. OPEC*, 353 F.3d 916 (2003).

621. Compare Gary North, *The Trouble with OPEC*, LEWROCKWELL.COM, June 5, 2003, <http://www.lewrockwell.com/north/north178.html> (describing OPEC as a cartel with political power), with OPEC Statute, *supra* note 127, art. 2.A (describing the goal of OPEC as the "co-ordination and unification of the petroleum policies of Member Countries and the determination of the best means for safeguarding their interests").

Through OPEC's Statute, OPEC members delegate almost no power to the Organization. In fact, as an organization that preceded the Vienna Convention on the Law of Treaties, the OPEC Statute lacks many of the modern treaty provisions typical of the creation of a supranational organization. For example, the OPEC Statute is silent on the issue of diplomatic immunity.⁶²² OPEC has been represented at multiple international forums.⁶²³ Most recently, OPEC has been involved in important initiatives, such as contacts with Russia and China and involvement in the Joint Oil Data initiative.⁶²⁴

622. See OPEC Statute, *supra* note 127 (containing no provision on diplomatic immunity). A modern and carefully drafted Statute, combined with international agreements entered into by the Organization with third party States, could establish legal precedent adequate to enforce all issues related to diplomatic immunities and protection. See generally FREDERIC L. KIRGIS, INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING 7–21 (2d ed. 1993) (explaining that most international organizations gain an international personality by entering into international treaties, and that most international organizations have provisions in their constituent instruments that spell out their capacity, privileges, and immunities in detail).

623. For example, OPEC was represented as an international organization at the Rio de Janeiro United Nations Conference on Environment and Development in 1992. United Nations Conference on Environment and Development, Rio de Janeiro, June 13–14, 1992, *Report of the United Nations Conference on Environment and Development*, Ch.II.11, U.N. Doc. A/CONF.151/26 (Vol. IV) (Sept. 28, 1992). OPEC's President was invited to address the 2005 World Economic Forum. His Excellency Sheikh Ahmad Fahad Al-Ahmad Al-Sabah, OPEC Conference President & Minister of Energy for Kuwait, Speech by OPEC's Conference President to the World Economic Forum (Jan. 27, 2005), available at <http://www.opec.org/opecna/speeches/2005/DavosFor.htm>. OPEC is a member of the International Energy Forum along with the IEA and thirteen other countries. *Second and Third Meeting of the IEFS Executive Board*, INT'L ENERGY FORUM NEWSL., (Int'l Energy Forum Secretariat, Riyadh, Saudi Arabia), July 2003, at 3, available at http://www.iefs.org.sa/IEF_MTNG/9th/Docs/Newsletter_issue2.pdf. OPEC, along with the World Bank and the G8, was invited by the ECOSOC Committee on Energy and Natural Resources to contribute to a revolving fund as a commitment to help the poorest countries with their energy problems. U.N. Econ. & Soc. Council [ECOSOC], *Extract from the Report of the Committee on Energy and Natural Resources for Development on Its Second Session*, § 1.3, U.N. Doc. E/2001/L.1 (Jan. 30–Feb. 2, 2001).

624. See OPEC, *OPEC-Russia Meet on Energy Dialogue*, No. 25/2005 (Dec. 26, 2005), available at <http://www.opec.org/opecna/Press%20Releases/2005/PR252005.htm> (detailing the energy discussions between OPEC and Russia); OPEC, *Joint Statement of the 1st China-OPEC Energy Dialogue*, No. 24/2005 (Dec. 22, 2005), available at <http://www.opec.org/opecna/Press%20Releases/2005/PR242005.htm> (discussing the

OPEC's international notoriety came to be during the two so called oil wars, when its members used the "oil weapon."⁶²⁵ However, the significant price increases of 1973 and 1979 were not OPEC accomplishments.⁶²⁶ These events confirmed though the economic power of the so called "oil weapon."⁶²⁷

OPEC's Conferences review whether the oil market is well supplied, implement measures to maintain market and price

formal energy dialogue between China and OPEC). The Joint Oil Data Exercise was commenced by APEC, EUROSTAT, IEA, OLADE, OPEC, and UNSD to raise awareness of the need of more transparency in oil market data. Joint Oil Data Initiative, About JODI, <http://www.jodidata.org/aboutjodi.shtm> (last visited Feb. 8, 2008). The idea received support from more than seventy participating countries. *Id.* In 2002, the exercise became a permanent mechanism being renamed to Joint Oil Data Initiative; in 2004, the members recommended that it be a freely accessible data base. *Id.*

625. See A Brief History of OPEC, *supra* note 152 (explaining that OPEC rose to international prominence during the 1973 oil embargo and the Iranian Revolution of 1979); GRIFFIN & TEECE, *supra* note 156, at 9 (describing how, in response to the 1973 outbreak of Arab-Israeli hostilities, Arab OPEC members used oil as a weapon by announcing a unilateral increase in the tax reference price, instituting production cutbacks, and instituting an oil embargo against the United States). There have been six major disruptions of world oil supply as follows (numbers are approximate values): in 1956, with the Suez War, when 2 million barrels per day of production output were lost; in 1967 with the Six Day War, when 2 million barrels per day were also lost; in 1973 with the oil embargo, when output was diminished by 2.9 million barrels per day; in 1979 during the Iranian revolution, when the world output lost 3.5 million barrels per day; during the Iran-Iraq war in 1980, when production output diminished by 3.3 million barrels per day; and in 1990 during the Gulf War, when the production output lost 4.6 million barrels per day. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, INTERAGENCY DATABASE AND PROJECTIONS WORKING GROUP, <http://www.eia.doe.gov/emeu/25opec/sld001.htm>.

626. See GRIFFIN & TEECE, *supra* note 156, at 9–11 (explaining how the price increases of 1973 and 1979 were due to some Arab countries' responses to the political turmoil in those years). The 1973 price increases were produced by the embargo imposed by some Arab states on the United States and the Netherlands. *Id.* at 9. The 1979 price increases were caused by Iranian revolution and the Iran-Iraq war. *Id.* at 11.

627. It is interesting to note that on July 17, 1999, Saddam Hussein called all Arab nations to take control of their oil wealth and stated: "America and the Western states who share its imperialist ambitions . . . control oil from extraction to sale. It is they who decide its price, keeping it low, and oil no longer has any political or strategic value." *World: Middle East: Saddam Attacks US and Israel*, BBC NEWS, July 17, 1999, http://news.bbc.co.uk/2/hi/middle_east/396885.stm. At that time, Saddam suggested a dialogue between Arab countries independent of OPEC. *Id.*

stability,⁶²⁸ review the effect of nonOPEC production levels, analyze crude oil price behavior and the need to expand OPEC production,⁶²⁹ change the composition of the OPEC Reference basket of Crudes,⁶³⁰ decide whether to establish a price band,⁶³¹ and choose whether to reduce or increase maximum production outputs or ceilings.⁶³² However, OPEC has not been successful in enforcing production quotas.

One of OPEC's characteristics has been the nonbinding effect of its decisions. It would appear that OPEC member countries use OPEC to send specific signals to the market, maintaining full control over their product outputs.⁶³³ It is also

628. OPEC, *138th Extraordinary Meeting of the OPEC Conference*, No. 23/2005, Dec. 12, 2005, available at <http://www.opec.org/opecna/Press%20Releases/2005/PR232005.htm>.

629. OPEC, *135th Meeting of the OPEC Conference*, No. 5/2005, Mar. 16, 2005, available at <http://www.opec.org/opecna/press%20releases/2005/opr052005.htm>. Increases in crude oil prices were explained at the Conference as the outcome of a late cold winter spell in the Northern Hemisphere, a very strong and unabated global oil demand over the medium term, price pressure and volatilities from hedge funds in futures markets, geopolitical tensions, and downstream bottlenecks (particularly a shortage in refining capacity). *Id.*

630. *Id.* OPEC's Reference Basket of crudes, as of June 16, 2005, is made up of the following crude: Saharan Blend (Algeria), Minas (Indonesia), Iran Heavy (Islamic Republic of Iran), Basra Light (Iraq), Girassol (Angola), Kuwait Export (Kuwait), Es Sider (Libya), Bonny Light (Nigeria), Qatar Marine (Qatar), Arab Light (Saudi Arabia), Murban (UAE), and BCF 17 (Venezuela). OPEC, *OPEC Basket Price*, <http://www.opec.org/home/basket.aspx> (last visited Feb. 8, 2008).

631. OPEC, *130th Meeting of the OPEC Conference*, No. 5/2004, Mar. 31, 2004, available at www.opec.org/library/Annual%20Reports/pdf/AR2004.pdf (reporting OPEC's decision to keep the price band for the OPEC Reference Basket of Crudes at \$22 to \$28/barrel).

632. See OPEC, *124th Meeting of the OPEC Conference*, No. 4/2003, Mar. 11, 2003, available at <http://www.opec.org/opecna/press%20releases/2003/042003.htm> (reporting that the OPEC Conference decided to maintain the production ceiling); OPEC, *132nd Meeting of the OPEC Conference*, No. 15/2004, Sept. 15, 2004, available at <http://www.opec.org/opecna/press%20releases/2004/pr152004.htm> (reporting that the OPEC Conference decided to raise the production ceiling to 27.0 mb/d); OPEC, *135th Meeting of the OPEC Conference*, *supra* note 629 (reporting that the OPEC Conference raised the production ceiling to 27.5 mb/d).

633. See OPEC Statute, *supra* note 127, art. 2 (stating that one of the goals of OPEC is to stabilize the oil market); Randy Fabi, *Update 1—OPEC Head Warns U.S. Lawmakers on Anti-OPEC Bill*, REUTERS, June 27, 2007, <http://uk.reuters.com/article/>

interesting to note that several nonOPEC countries have attended OPEC Conferences,⁶³⁴ in what may be perceived as a greater dialogue between oil producers.

In assessing OPEC's success throughout its lifetime, certainly the fact that its members' oil income increased tenfold between 1960 and 1973 and a hundredfold by 1980,⁶³⁵ and that in 2005, oil revenues for OPEC members reached \$510.5 billion, must be considered.⁶³⁶

In terms of international trade, some have compared the value of a bushel of wheat with the value of a barrel of oil, noting how in 1950 the former cost \$1.89 and the latter \$1.71, while in 2005, their prices were \$3.90 and \$52.00, respectively.⁶³⁷

ousiv/idUKL2776518120070627 (noting that OPEC maintains that its decisions are nonbinding). Crude oil production ceiling allocations may be traced back to OPEC's 63rd Extraordinary Conference meeting on March 19, 1982. OPEC, *Member Countries' Crude Oil Production Ceiling Allocations*, <http://www.opec.org/home/quotas/ProductionLevels.pdf>. Since then, more than forty-five OPEC Conferences have been devoted to reviewing the appropriateness of the production ceilings per country. *See id.* (noting that the production ceilings were considered and agreed upon at forty-seven OPEC Conferences).

634. For example, Angola, Mexico, Russia, Egypt, and Syria were represented at the 142nd OPEC Conference. OPEC, *142nd Meeting of the OPEC Conference*, No. 15/2006, Sept. 11, 2006, *available at* <http://www.opec.org/opecna/press%20releases/2006/pr152006.htm>. The Sultanate of Oman was represented at OPEC's 111th Conference. OPEC ANNUAL REPORT 2001, *supra* note 430, at 41. Kazakhstan, Equatorial Guinea, and Sudan were represented at the 117th Conference meeting. *Id.* at 46.

635. *See* RUSTOW & MUNGO, *supra* note 100, at 131. The figure of OPEC petroleum exports in 2004 was \$353.7 billion. OPEC ANNUAL REPORT 2005, *supra* note 420, at 17.

636. OPEC ANNUAL REPORT 2005, *supra* note 420, at 17 tbl.3. At least one source reported that 2005 revenues for oil producing countries exceeded \$750 billion. Robert J. Samuelson, *The Oil Factor*, NEWSWEEK, May 8, 2006, at 37. Oil company profits quadrupled from 2002 to 2005 to almost \$140 billion per year. *Id.*

637. PLAN B 2.0, *supra* note 108, at 29 tbl.2-1. Brown notes that this trade difference is contributing to the greatest U.S. trade deficit in history and may be one of the greatest transfers of wealth ever known. *Id.* at 30.

D. Amendments to the OPEC Statute

Amendments to OPEC's Statute may be proposed by any member country.⁶³⁸ A proposed amendment is presented to the Board of Governors for consideration.⁶³⁹ Upon approval by the Board of Governors, a proposed amendment would be presented to the Conference, requiring its unanimous approval.⁶⁴⁰

The following limitations may be found in OPEC's present Statute:

- Membership classifications are meaningless;
- The unanimity requirement limits the Organization's effective capacity of action;
- The Organization lacks a true legislative body;
- The Organization lacks enough power to enable it to act effectively as a supranational entity;
- The Organization lacks a supranational authority that may solve international petroleum-related issues in which member countries are involved;
- The Secretary General's powers do not contemplate true authority to bind the member states.

OPEC has been criticized as a cartel of countries as opposed to an organization of companies.⁶⁴¹ The Organization should probably design an internal structure that distinguishes two different levels of cooperation: a political one and a purely economic one.

The international community will benefit from diversity and checks and balances. OPEC members have the resources that could allow them to play a unique role in the design of a true

638. OPEC Statute, *supra* note 127, art. 39.

639. *Id.*

640. *Id.* arts. 11.C, 39.

641. North, *supra* note 621 (portraying OPEC countries as robber states, calling OPEC the "Mother of All Cartels," and incorrectly referring to OPEC's origins as acts of expropriation).

new international order.⁶⁴² This may only be accomplished through a profound redefinition of the Organization as a true supranational collective power.

The many limitations and criticisms of the international financial organizations created at Bretton Woods in 1944, the International Monetary Fund and the International Bank for Reconstruction and Development, have been widely recognized.⁶⁴³ OPEC's Fund could become a model of a new international financial organization for a world in which eliminating poverty is really a priority.

Although OPEC plays an important role in world energy and economic relations, its functions under the present statute are not specific and are not binding on its own members. Thus, OPEC appears in the international arena, just as its member states appeared when the petroleum resources were first found: sovereigns with great potential but completely unaware of their possibilities.

When some countries have questioned whether they benefit from their membership in the Organization, some of OPEC's accomplishments come to light, such as having a voice in the international community and profiting from its research center, which gives access to valuable information and up-to-date market analysis.⁶⁴⁴

642. See Simon Webb, *OPEC's Enviably Dilemma—How to Spend the Cash?*, REUTERS, Nov. 14, 2007, <http://www.reuters.com/article/reutersEdge/idUSL0759487120071114> (noting that in 2007, OPEC members could expect oil export revenues of \$658 billion); NON-OPEC FACT SHEET, *supra* note 442 (noting that OPEC countries produced 40% of the world's oil in 2004).

643. See Steven R. Weisman, *Cracks in the Financial Foundation: Roles of 3 Institutions Questioned in a Changing Global Economy*, N.Y. TIMES, May 23, 2007, at C1 (discussing how both institutions are cracking under "the weight of globalization, trade disputes and the ambitions of rising economic powers in Asia and elsewhere").

644. See discussion *supra* note 616 and accompanying text (citing examples of OPEC's involvement in the international community); OPEC, The Research Division, <http://www.opec.org/aboutus/management/rd.htm> (last visited Feb. 8, 2008) (explaining the role of the research division of OPEC).

Some of the conditions that would be required in order to guarantee the success of a potential OPEC reform include:

1. Understanding the importance of cooperation between oil producers to effectively acquire economic and political power⁶⁴⁵ and determining whether current members have the necessary political will to form a stronger supranational entity;
2. Increasing OPEC membership and making the different membership levels meaningful;⁶⁴⁶
3. Introducing legally binding mechanisms;⁶⁴⁷
4. Establishing efficient decision making mechanisms;
5. Providing OPEC with the necessary autonomy from its members to act meaningfully and effectively;

645. The foreign policies of many consuming countries will continue to pursue divisive mechanisms to prevent a solid block of producing countries. See SKEET, *supra* note 115, at 106–07, 117–19 (detailing the response of some consumer countries to the oil embargoes in the 1970s and the creation of the International Energy Agency, which is an organization of consuming countries that is focused on reducing consumer countries' dependence on oil). The issues at stake go far beyond national incomes and stability of the world's oil market; they involve true political power and resource-based wars. See C. FRED BERGSTEN & THE INSTITUTE FOR INTERNATIONAL ECONOMICS, UNITED STATES AND THE WORLD ECONOMY: FOREIGN ECONOMIC POLICY FOR THE NEXT DECADE 215–16 (2005) (discussing the political turmoils in Nigeria, Venezuela, Russia, and Saudi Arabia, and the effect of the Iran-Iraq War on oil supplies). Producers should focus on their mutual interests, challenges, and goals.

646. In an energy market in which dependence is key, smaller producers also play a very important role. Compare OPEC Statute, *supra* note 127, art. 7 (explaining that to join OPEC, Member countries must have a substantial net export of crude petroleum), with NON-OPEC FACT SHEET, *supra* note 442 (explaining that nonOPEC Member countries produced 60% of the world's oil in 2004). Thus, creating a mechanism that enables medium-sized and smaller producers to profit from the Organization's benefits and transforming OPEC membership into a tool for stable international economic relations and development would be critical.

647. A voting system that would take into account the differences between oil producers, their levels of reserves, and possibilities to attend emergency demand requirements could be established, similar to the IEA voting mechanism. See Agreement on an International Energy Program, *supra* note 294, arts. 61–62 (describing the voting weights allocated to the different Member countries on certain issues).

6. Enhancing the Secretariat and providing it with true powers that may allow it to act during emergency scenarios;
7. Introducing multiple cooperation mechanisms between OPEC members far beyond the OPEC conference;
8. Understanding the current role of national oil companies and producing governments in the international oil and gas industry and establishing mechanisms through which both may profit from a country's OPEC membership;
9. Establishing reputable academic and research centers that may assist OPEC and its members and provide a solid basis for a constructive energy dialogue with consumer countries;
10. Introducing truly supranational mechanisms that strengthen the bond between OPEC members toward a true economic block that may speak with one voice;
11. Improving the public's awareness of energy related issues, particularly energy security, and providing reliable information and petroleum-related data.

V. THE COMPARATIVE APPROACH

OPEC's history reminds one that Juan Pablo Pérez Alfonso considered the Texas Railroad Commission and its role when he designed an international organization of oil-producing countries.⁶⁴⁸ Only for future reference purposes, a review of the structure, nature, and scope of some of the other entities or organizations that in some fashion or another deal with a few of the issues that are or may be of OPEC's interest is listed below. In some cases, the organizations listed below may also be contemplated as potential participants in a comprehensive

648. See SKEET, *supra* note 115, at 17 (describing how right before announcing the formation of OPEC, Perez Alfonzo attended the Annual Meeting of TIPRO and was able to study the oil production system set up by the Texas Railroad Commission).

international energy dialogue. The limited scope of this paper only enables at this time a passing reference narrowed to listing some of these entities and does not envision to be by any means exhaustive. However, a comparative approach is always useful as a source for new models or ideas.

A. *The Texas Railroad Commission*

Although apparently confined to the boundaries of an internal subdivision of a nation-state, the State of Texas, the example of the role played by the Texas Railroad Commission is illustrative of the exercise of power, of police power, with direct influence over oil supply and prices, with the specific purpose of preventing waste.⁶⁴⁹ The Texas Railroad Commission controlled the price of oil both in the United States and the world until 1970,⁶⁵⁰ and its important role as referee between opposing economic interests is worthwhile to review in analyzing whether OPEC could potentially be transformed into an international regulator for the petroleum industry.

Awareness of the history and powers of the Commission is particularly relevant when reflecting on many of the challenges facing OPEC, such as those related to price fixing and any potential amendments to the OPEC Statute. OPEC member countries already face, and will need to collectively address, the need to limit waste and dispose of a nonrenewable resource.⁶⁵¹

649. See YERGIN, *supra* note 5, at 249 (explaining that the Texas Railroad Commission was given authority to regulate production of oil and gas in order to prevent waste). Other states in the United States also have oil and gas conservation legislation. See, e.g., LA. REV. STAT. ANN. § 30:1–2 (2007) (prohibiting the waste of oil and gas and establishing a Department of Conservation headed by a Commissioner of Conservation). Under Louisiana legislation, “waste” includes physical waste and any use or dissipation of reservoir energy that is improper, inefficient or excessive. *Id.* § 30:3(1)–(1)(a). The Commissioner has authority to issue the necessary rules, regulations, and orders to stop and prevent waste. *Id.* § 30:4(C).

650. WILLIAM R. CHILDS, *THE TEXAS RAILROAD COMMISSION: UNDERSTANDING REGULATION IN AMERICA TO THE MID-TWENTIETH CENTURY* 3 (2005).

651. See PLAN B 2.0, *supra* note 108, at 108–10 (explaining the world is consuming most of the resources of cheap oil used in manufacturing and transporting throwaway products).

Such need is greater today, when the lifespan of the hydrocarbon age is in sight and strong efforts are devoted to alternate sources of energy.⁶⁵² In a similar fashion, as was the case with the Texas Railroad Commission, OPEC needs to understand how economic forces work and how powers may be distributed between different political subdivisions; in OPEC's case, those subdivisions are the nation-state and the powers of a supranational entity. A potential international regulator could learn from the pragmatism of the American federal regulation.⁶⁵³ In a tension that could be compared to the one existing in the United States between the states and the federal government, OPEC members have in place today, and could adopt in the future, what could be named a "defensive mode" that excludes supranational regulation that may control production.

On December 19, 1890, Article X, § 2 of the Texas Constitution was amended to provide for the Railroad Commission.⁶⁵⁴ The Railroad Commission of Texas was created on April 3, 1891.⁶⁵⁵ The Commission, as an agency to broker economic controversies and shape economic growth patterns, was intended as a more effective instrument to promote economic growth in Texas than either the legislature or the attorney general's office were.⁶⁵⁶ Initially, as its name indicates,

652. See *Green Paper: Towards a European Strategy for the Security of Energy Supply*, at 41, COM (2000) 769 final (Nov. 29, 2000) (noting that the need to develop new and renewable sources must be a political priority); OPEC Solemn Declaration 1975, *supra* note 199, art. 7 (expressing the need for OPEC Member countries to pursue conservation and the availability and cost of alternative sources of energy).

653. See CHILDS, *supra* note 650, at 6 (explaining the American process of regulatory policymaking and the significance of state involvement in the process). Childs refers to how "Texans and Americans struggled to balance the desire for state control on the one hand with the competing need to centralize policy-making in the national framework." *Id.*

654. Railroad Commission of Texas, Chronological Listing of Key Events in the History of the Railroad Commission of Texas (1866–1939), <http://www.rrc.state.tx.us/history/h01.html>.

655. *Id.*; see also 1891 Tex. Gen. Laws 55 (providing the details regarding the duties and responsibilities of the Railroad Commission).

656. CHILDS, *supra* note 650, at 68.

the Commission was exclusively focused on railway regulation.⁶⁵⁷ On February 20, 1917, the Texas Legislature declared pipelines to be common carriers and gave the Railroad Commission jurisdiction over them.⁶⁵⁸ Also, “[i]n 1917 Section 59a, Article 16 of the Constitution of Texas was adopted, . . . requir[ing] the legislature to ‘pass all such laws as may be appropriate to the conservation and development of all the natural resources of [the] State.’”⁶⁵⁹

Like oil for the OPEC members, railways by the end of the 19th century influenced all aspects of the Texas economy.⁶⁶⁰ The Commission promoted business-government cooperation and became a tool to advance the cultural and economic forces that would support progressive and probusiness policies.⁶⁶¹ As new economic activities became important for the State, they were added to the industries under the Commission’s regulatory power.⁶⁶²

It soon became the policy of the State of Texas to conserve from waste its vast deposits of oil and gas.⁶⁶³ In 1935, the Texas Supreme Court summarized the rationale for the Railroad Commission as follows:

The oil industry in this State has become stupendous. There are now many separate oil fields operated in this State, under varying conditions. Texas is now the leading State in the production of oil and in oil refineries. The handling of this giant industry and its

657. *Id.* at 69.

658. Railroad Commission of Texas, *supra* note 654. This has been noted as the first act entrusting the Railroad Commission with oil and gas conservation laws. *Id.*

659. *Brown v. Humble Oil & Refining Co.*, 83 S.W.2d 935, 937–38 (Tex. 1935) (quoting TEX. CONST. art. XVI § 59(a) (1917)).

660. *See* CHILDS, *supra* note 650, at 73 (explaining that the reason the Commissioners believed they could use regulation to promote business was because the railways touched every facet of the Texas economy).

661. *Id.* at 143.

662. *See id.* at 144–45 (observing that petroleum production fell under the Commission’s regulation in 1917 and natural gas utilities in 1920, and that special divisions were created within the Commission to oversee these industries).

663. TEX. REV. CIV. STAT. ANN. art. 6014 (Vernon 1925).

complex problems calls for the services of trained and experienced persons. It is utterly impossible for the Legislature to meet the demands of every detail in the passage of laws relating to the production of oil and gas. The necessities of the situation require that this duty be placed upon some tribunal to carry out some just and reasonable public policy. This duty is placed on the Railroad Commission.⁶⁶⁴

Title 102, Article 6004 of the Texas Civil Statutes provided that “[t]he production, storage or transportation of crude petroleum oil or of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited.”⁶⁶⁵ The notion of “waste” included “[t]he production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand. The Commission [was] authorized to determine when such excess production exists or is imminent, and to ascertain the reasonable market demand.”⁶⁶⁶

Texas jurisprudence confirmed that the Texas Legislature may validly delegate certain powers.⁶⁶⁷ Orders or rulings of the Railroad Commission may only be set aside by the courts whenever the Commission acts arbitrarily, unreasonably, or unlawfully.⁶⁶⁸ The Texas Supreme Court concluded that the Railroad Commission “acting under valid laws, has ample authority, under both the Constitution and the police power, to prevent waste and conserve the mineral interests of this State.”⁶⁶⁹

664. *Brown*, 83 S.W.2d at 938.

665. *Id.*

666. *Id.*

667. *Trimmier v. Carlton*, 296 S.W. 1070, 1082 (Tex. 1927) (citing *Kinney v. Zimpleman*, 36 Tex. 554 (1872)). The court concluded that it is not a delegation of legislative power in violation of the Constitution to grant to some designated body powers which the Legislature cannot itself practically and efficiently exercise. *Id.* at 1083.

668. *Tex. & Pac. Motor Transp. Co. v. R.R. Comm'n of Tex.*, 73 S.W.2d. 509, 510 (Tex. 1934).

669. *Brown*, 83 S.W.2d at 941.

Regulation of the oil industry by the Commission was based on the premise that applies to today's top world oil producers: the need to conserve oil as the sole means of promoting an industry based on a nonrenewable resource. The Railroad Commission's power to regulate the oil and gas industry to prevent waste was also confirmed by federal courts.⁶⁷⁰

Under its Constitutional and legislative powers, the Railroad Commission has issued well-spacing rules,⁶⁷¹ investigated price cutting activities,⁶⁷² and has limited well production.⁶⁷³ Today, the Railroad Commission issues multiple regulations affecting the oil and gas industry, including but not limited to the obligation to file organizational⁶⁷⁴ and financial reports,⁶⁷⁵ well circulation,⁶⁷⁶ cementing,⁶⁷⁷ drilling,⁶⁷⁸ and

670. *F. C. Henderson, Inc. v. R.R. Comm'n of Tex.*, 56 F.2d 218, 220 (W.D. Tex. 1932). The court stated:

[U]pon considerations of conserving the natural resources of the state, ample power exists in the Legislature to prevent the wasteful utilization of oil and gas, and to regulate and control their production and use in such reasonable way as to bring about their conservation, and to prevent their dissipation by waste. We therefore reject all of plaintiff's contentions against the statutes founded upon legislative want of power, and address ourselves to a consideration of the question whether the Legislature has clearly and in a reasonable way undertaken to exercise that power. We think it has. We find in the enactment of article 6008, requiring persons discovering gas in order to prevent its waste by escape, to confine it, and providing for inquiry by the commission into the propriety of an authorization, if found, of other uses, neither unreasonable exertion or prohibited delegation of legislative power.

Id. at 221; *see also* *Oxford Oil Co. v. Atl. Oil & Producing Co.*, 22 F.2d 597, 598–99 (5th Cir. 1927) (confirming the authority of the Railroad Commission to conserve the oil and gas resources of the state of Texas pursuant to authorization granted by the Texas Legislature in 1919).

671. 16 TEX. ADMIN. CODE § 3.37(a) (2007).

672. *See* CHILDS, *supra* note 650, at 182 (noting audit reports requested by the Railroad Commission of two of the state's largest utility companies).

673. Pieter M. Schenkkan, *When and How Should Texas Courts Review Agency Rules?*, 47 BAYLOR L. REV. 989, 1045–46 (1995).

674. 16 TEX. ADMIN. CODE § 3.1 (2007).

675. *Id.* § 3.1(a)(1).

676. *Id.* § 3.1(a)(1)(A).

677. *Id.* § 3.13(b)(2)(B).

678. *Id.* § 3.1(a)(1)(A). Under Texas law, drilling, deepening, plugging back, or

completion requirements,⁶⁷⁹ orders the plugging of wells,⁶⁸⁰ and pollution-related clean-up.⁶⁸¹ Rule § 3.52 specifically limits well oil production on a daily basis.⁶⁸² Thus, the Commission has issued strict and specific regulations controlling drilling, production, storage, and transportation. Some suggest that by regulating the oil and gas industry, the Railroad Commission became the most powerful state administrative agency in America.⁶⁸³

Interestingly, the Railroad Commission faced similar challenges as those faced by OPEC. In 1931, following an order to reduce production, the Commission was challenged before federal courts for cooperating with private interests to increase and maintain oil and refined products prices “to bring supply within the compass of demand . . . to bring and keep oil prices up.”⁶⁸⁴ A Texas federal court reviewing such Commission’s powers in 1931 considered forcing prices by governmental action contrary to state policy and forbidden by penal laws.⁶⁸⁵ One year later, the U.S. Supreme Court reversed the district court’s judgment.⁶⁸⁶ In 1941, the U.S. Supreme Court ruled that federal courts could not review Railroad Commission orders.⁶⁸⁷

reentering operations may not start until a permit is granted by the Railroad Commission. *Id.* § 3.5(e). This control is greater than practice in many other countries where operators have only reporting obligations vis-à-vis the government.

679. *Id.* § 3.13(c).

680. *Id.* § 3.14.

681. *Id.* § 3.1(d)(1)–(2).

682. *See id.* § 3.52(b) (limiting daily production to a maximum of 110% of the top well allowable).

683. *See Schenkkan, supra* note 673, at 1044 (arguing that the Railroad Commission became more powerful than most sovereign countries).

684. *MacMillan v. R.R. Comm’n of Tex.*, 51 F.2d 400, 404–05 (W.D. Tex. 1931).

685. *Id.* at 405.

686. *R.R. Comm’n of Tex. v. MacMillan*, 287 U.S. 576, 576 (1932) (per curiam).

687. *R.R. Comm’n of Tex. v. Rowan & Nichols Oil Co.*, 310 U.S. 573, 584 (1940).

The Commission has always had to ponder the key fact of the petroleum industry: its foundation on the limited supply of a nonrenewable resource “whose aggregate supply is not known and is constantly changing—as oil is used and as new sources are discovered.”⁶⁸⁸

Among others, some of the following issues addressed by the Commission are of concern and relevancy for OPEC and its members:

1. Preventing both physical and economic waste;⁶⁸⁹
2. Controlling production that will enable a profitable business;⁶⁹⁰
3. Conservation of a vital resource for the wellbeing of the nation;⁶⁹¹
4. Preventing predatory pricing that will harm smaller producers;⁶⁹²
5. The importance of self regulation;⁶⁹³
6. Enhancing economic prosperity for the industry and the State;⁶⁹⁴

688. CHILDS, *supra* note 650, at 149.

689. *See id.* at 153 (describing how physical and economic waste occurred in Texas and stating that both waste concerns were “at the center of public-policy controversies” in the state).

690. *See id.* at 262–63 (discussing American regulation’s effect on business activities).

691. *See* Jacqueline Lang Weaver, *The Politics of Oil and Gas Jurisprudence: The Eighty-Six Percent Factor*, 33 WASHBURN L.J. 492, 518–19 (1994) (explaining how the Railroad Commission worked with the Federal Power Commission to shut down Texas oilfields following World War II until the operators adopted less wasteful procedures).

692. *See* CHILDS, *supra* note 650, at 153 (referencing Oklahoma operators’ arguments to lawmakers for protection from the power of major oil companies to drive out smaller producers).

693. *See* Weaver, *supra* note 691, at 497–98 (describing the Railroad Commission’s efforts to promote efficiency and self regulation through threats of prorationing and unitization).

694. *See id.* at 496 (explaining how the Railroad Commission’s regulations have focused on bringing economic benefits to both the Texas independent oilman and the citizens of the state).

7. Promoting the most efficient technology;⁶⁹⁵
8. Balancing the needs of today's producers and the interests of the greater public.⁶⁹⁶

The Commission's strategy, which may guide OPEC in the process of reshaping its own role, was focused on three main areas:

1. Educating oil field operators in sound field practices;⁶⁹⁷
2. Gathering and analyzing information (statistics);⁶⁹⁸
3. Developing cooperation between producers.⁶⁹⁹

Today crude oil production by national oil companies resembles in many ways the days of the rule of capture; indeed, some countries try to produce as much as they can from their subsoil, particularly when prices are high.⁷⁰⁰ No doubt enormous waste results, and an international regulatory mechanism that would prevent such waste could only benefit producers and consumers alike.

Certainly the Texas Railroad Commission, its powers, and its role in the oil arena are subjects that should be addressed when considering potential amendments to OPEC, especially if the Organization is to be redesigned as a supranational petroleum industry regulator. Property rights and permanent

695. See, e.g., *id.* at 514–16 (describing the Commission's decision to invalidate LTX gas-compression technology thereby eliminating inefficient extraction practices).

696. See, e.g., *id.*, at 519 (explaining how the Commission increased allowable limits, benefiting producers, during the Arab oil embargo in 1967 to make up for national shortages, benefiting the interests of the public).

697. CHILDS, *supra* note 650, at 162.

698. *Id.*

699. *Id.*

700. See Christopher F. Richardson, *The Influence of Offshore Leasing Regimes on Commercial Oil Activity: An Empirical Analysis of Property Rights in the Gulf of Mexico and the North Sea*, 17 GEO. INT'L ENVTL. L. REV. 97, 110 (2004) (referencing the "race to produce" under the traditional rule of capture).

sovereignty over natural resources may be revisited, as was the case with the rule of capture, to include public policy notions that preserve a limited resource and optimize its production.⁷⁰¹

B. OECD and IEA

Only three months after OPEC was created,⁷⁰² twenty countries⁷⁰³ executed the Convention on the Organization for Economic Co-Operation and Development (OECD) in Paris.⁷⁰⁴ The Organization's purpose is to reach the highest sustainable economic growth, employment, and standard of living for all its members; to contribute to economic expansion and development in all countries; and to promote nondiscriminatory world trade.⁷⁰⁵ As means to achieving these goals, OECD members agree to "promote the efficient use of their economic resources" and promote the scientific and technological development of

701. See generally R. Quentin Grafton et al., *Private Property and Economic Efficiency: A Study of a Common-Pool Resource*, 43 U. CHI. J.L. & ECON. 679, 680–83 (2000) (discussing property rights relating to efficient production of common-pool resources, such as the management of fisheries).

702. A Brief History of OPEC, *supra* note 152 (referencing OPEC'S creation at the Baghdad Conference on September 10–14, 1960).

703. The signatories to the OECD Convention were the Republic of Austria, the Kingdom of Belgium, Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of Greece, the Republic of Iceland, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Portuguese Republic, Spain, the Kingdom of Sweden, the Swiss Confederation, the Turkish Republic, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Convention on the Organisation for Economic Co-operation and Development, Dec. 14, 1960, 12 U.S.T. 1728, *available at* http://www.oecd.org/document/7/0,3343,en_2649_201185_1915847_1_1_1_1,00.html.

Later, ten more countries became OECD members as follows: Australia (1971), the Czech Republic (1995), Finland (1969), Hungary (1996), Japan (1964), Korea (1996), Mexico (1994), New Zealand (1973), Poland (1996), and the Slovak Republic (2000). Ratification of the Convention on the OECD, http://www.oecd.org/document/58/0,3343,en_2649_34483_1889402_1_1_1_1,00.html (last visited Feb. 8, 2008).

704. In doing so they reconstituted the Organisation for Economic European Co-operation. Convention on the Organisation for Economic Co-operation and Development, *supra* note 703.

705. *Id.* art. 1(a)–(c).

their resources.⁷⁰⁶ OECD members agree to “co-operate closely and where appropriate to take co-ordinated action.”⁷⁰⁷ The Organization’s decisions are binding on all its members.⁷⁰⁸

The International Energy Agency (IEA) was formed as an autonomous energy forum for some of the OECD member countries to coordinate their energy policies.⁷⁰⁹ The IEA was created as a response to OPEC and the 1973 oil crisis.⁷¹⁰ The industrialized countries perceived that their weakness was due to a lack of organization in the field of energy supply.⁷¹¹ Thus, the IEA was the organized international cooperation mechanism

706. *Id.* art. 2(a)–(b).

707. *Id.* art. 3(c).

708. *Id.* art. 5(a).

709. See Overview of the IEA, <http://www.iea.org/about/docs/iea2007.pdf> (describing the origin and role of the IEA); About the International Energy Agency, <http://www.iea.org/about/index.asp> (last visited Feb. 8, 2008) (describing the goals of the IEA). The International Energy Agency (IEA) was established by a decision of the OECD Council at its 373rd meeting on November 15, 1974. DECISION OF COUNCIL OF THE OECD TO ESTABLISH THE IEA 1 (1999), <http://www.iea.org/about/docs/apendx4.pdf>. The countries that participated in the creation of the Agency were Austria, Belgium, Canada, Denmark, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, with the abstentions of France, Finland, and Greece. *Id.* art. 2(a). Later, these three countries withdrew their abstentions and became participating members. SCOTT, ORIGINS AND STRUCTURES OF THE IEA, *supra* note 477, at 54–55. Today the IEA has twenty-six members that, in addition to the original signatories, include Australia, the Czech Republic, Finland (1992), France (1992), Greece, Hungary, Korea, New Zealand, and Portugal. Int’l Energy Agency, Member Countries, <http://www.iea.org/about/membercountries.asp> (last visited Feb. 8, 2008). The OECD Council’s decision was open for accession by the European Communities. DECISION OF COUNCIL OF THE OECD TO ESTABLISH THE IEA, *supra*, art. 3. The Council’s decision to create the IEA became effective on November 15, 1974, the same day it was enacted. *Id.* art. 14. The Agency is located in Paris. International Energy Agency—Contacts, <http://www.iea.org/about/contact.asp> (last visited Feb. 8, 2008). In 1975, Norway agreed to participate under a special agreement. SCOTT, ORIGINS AND STRUCTURES OF THE IEA, *supra* note 477, at 52.

710. See SCOTT, ORIGINS AND STRUCTURES OF THE IEA, *supra* note 477, at 27 (describing origins of the IEA). The background for the creation of the agency was the perception that the oil producing countries were “well organized to utilize their new oil based economic and political power, while the industrial countries were inadequately equipped with information and organization to meet the corresponding challenges to them.” *Id.* at 11.

711. *Id.* at 29.

established to counter the economic and political power of oil-producing countries.⁷¹² The Agency has a Governing Board, which may adopt decisions that are binding upon the participating countries,⁷¹³ an Executive Director, and a Secretariat.⁷¹⁴ The Board carries out an energy program for cooperation in the field of energy.⁷¹⁵ Such energy programs are specifically tailored from the perspective of the oil-consuming nations and include development of emergency oil supplies self sufficiency; common demand restraint measures and allocation of oil during emergencies; development of a system of information on the international oil market and a framework for consultation with international oil companies; a plan to reduce dependence on imported oil; and promotion of cooperative relations with oil producing countries.⁷¹⁶

Following an oil embargo imposed on the United States and the Netherlands, the industrial countries were faced with the need to respond to their immediate consumption needs, not to mention the substantial increases in oil prices.⁷¹⁷ The IEA treaty was established through the Agreement on an International Energy Program (IEP) signed on November 18, 1974,⁷¹⁸ by most of the same signatories of the OECD convention, with the purpose of securing oil supplies, reducing

712. *See id.* at 19–20 (noting that the effect of the 1973–74 embargo caused industrial countries to form the IEA).

713. DECISION OF COUNCIL OF THE OECD TO ESTABLISH THE IEA, *supra* note 709, art. 4. The Governing Board was described in the OECD Council's decision whereby the Agency was created as "the body from which all acts of the Agency derive." *Id.*

714. *Id.* art. 7(a). The Governing Board reports to the OECD Council. *Id.* art. 8.

715. *Id.* art. 6(a).

716. *Id.* art. 6(a)(i)–(vi).

717. SCOTT, ORIGINS AND STRUCTURES OF THE IEA, *supra* note 477, at 28. The industrial countries blamed themselves for the "oil crisis" due to their excessive reliance on imported oil, insufficient investment in indigenous oil exploration and exploitation, nondiversification of energy sources, little development of energy technologies, and lack of a plan in place to meet supply shortages. *Id.* at 19.

718. *Id.* at 20. The Agreement on an International Energy Program entered into force on January 19, 1976. *Id.* at 55.

dependency on foreign oil,⁷¹⁹ and adopting mechanisms to meet oil supply emergencies.⁷²⁰ The IEP called each one of its participating countries to establish emergency reserves to sustain consumption during a sixty-day term without oil imports.⁷²¹ These reserves were to increase to a level necessary to sustain ninety-day consumption by 1975.⁷²² The IEP calls for mandatory oil demand restraints during oil supply reductions.⁷²³ The program allocates oil during supply emergencies, in cases of consumption reductions per country of more than 7% of their average daily rate of final consumption, using shares contributed by participating countries⁷²⁴ and considering historical oil trade patterns. The IEP established a comprehensive, confidential information system of the international oil market and oil company behavior⁷²⁵ and an analysis of the emergency measures to restrict demand and ensure emergency supply.⁷²⁶ The IEA has four organs: a

719. *Id.* at 20; Agreement on an International Energy Program, *supra* note 294, art. 41. The International Energy Program's long term objective is "to reduce over the longer term" the participating countries' dependency on foreign oil. Agreement on an International Energy Program, *supra* note 294, art. 41.

720. Agreement on an International Energy Program, *supra* note 294, pmb1.

721. *Id.* art. 2.1.

722. *Id.* art. 2.2.

723. *Id.* arts. 5.1–2, 12. Demand restraint measures required under the Program shall reduce consumption by 7%–10% per country, depending on whether supply shortages reduce supply by 7% or 12%, respectively. *Id.* arts. 13, 14.

724. *Id.* arts. 8.1–2, 17.1. In determining the allocation rights, all crude oil, petroleum products, refinery stocks, and finished natural gas and crude oil products are considered. *Id.* art. 9.1.

725. When referring to "oil companies," the IEP includes international companies, national oil companies, and any other entity that plays a significant role in the international oil industry. *Id.* art. 26. Participating countries are required to provide company-related information, including corporate structure, financial information, contractual agreements, rates of production, costs of crude oil and oil products, and prices. *Id.* art. 27.1(a)–(b), (d)–(e), (h)–(i). They are also required to provide oil consumption and supply information, demand restraint measures, and levels of emergency reserves. *Id.* art. 33.

726. *Id.* art. 25.1–2.

Governing Board,⁷²⁷ a Management Committee, four Standing Groups, and a Secretariat.⁷²⁸ IEP provides for four Standing Groups, integrated by representatives from the participating countries as follows: on the Oil Market,⁷²⁹ on Emergency Questions,⁷³⁰ on Long Term Cooperation,⁷³¹ and on Relations with Producer and other Consumer countries. All of these groups report to the Management Committee.⁷³² IEA members are required to inform each other if they conduct any cooperative action with oil-producing countries.⁷³³ An Industry Advisory Board was established in 1975⁷³⁴ and a Dispute Settlement Center in 1980.⁷³⁵

The IEA's goals are referred to as the "three E's of energy policy": energy security of supply,⁷³⁶ sustainable economic growth, and environmental protection.⁷³⁷ The IEA strives to

727. The Governing Board is integrated by the ministers of each member country and adopts program management decisions by majority rule, while unanimity is required for all other decisions. *Id.* arts. 50.1, 61.1(a)–(b). Not all Member countries have the same voting weights. *Id.* art. 62.2. While most Member countries have one oil consumption voting weight, Greece, Ireland, Luxembourg, New Zealand, and Portugal have none; the United States has the most with 43, followed by Japan (14), Germany (8), France (6), United Kingdom (5), Italy (5), and Canada (4). *Id.*

728. *Id.* art. 49.1–3. The Secretariat consists of an Executive Director and its staff. *Id.* art. 59.1.

729. The Standing Group on the Oil Market is responsible for collecting all information from participating countries and oil companies, evaluating such data, and preparing a report to the Management Committee. *Id.* arts. 27.1, 29.1, 38.1, 39.1.

730. The Standing Group on Emergency Questions reviews compliance with emergency reserves and allocation thereof, and it submits reports to the Management Committee. *Id.* arts. 6.2, 55.2.

731. The Long Term Cooperation Standing Group reviews issues of energy conservation, alternative sources of energy, energy research and uranium enrichment programs. *Id.* art. 42.1(a)–(d).

732. *Id.* art. 49.1.

733. *Id.* art. 46.

734. SCOTT, ORIGINS AND STRUCTURES OF THE IEA, *supra* note 477, at 220. The Industry Advisory Board is integrated by executives of fifteen private and state oil companies. *Id.* at 414.

735. *Id.* at 416–17.

736. This includes supply of oil, gas, and electricity. *See* Overview of the IEA, *supra* note 709 (describing IEA's policy analysis).

737. *See* About the International Energy Agency, <http://www.iea.org/about> (last

understand how oil markets work. The IEA is working with nonmember countries China and India on issues like energy poverty.⁷³⁸ The main challenges for the IEA are sustainable development, growth without pollution, and stabilization of global warming.⁷³⁹

OPEC may learn from the IEA's joint efforts, decision making mechanisms, emergency allocation instruments, and corruption combating agreements, among others. Enhancing the contacts and dialogue between OPEC and the IEA is one of the necessary steps toward a global energy security agreement.

C. *The Nuclear Energy Agency (NEA)*

The Nuclear Energy Agency (NEA) offers an interesting example of a small, technical, international body with specific energy production, and use purposes. Although many differences could be noted between the NEA and OPEC, the NEA's structure,⁷⁴⁰ joint development projects, and decision mechanisms are worth considering when addressing a potential OPEC amendment.

The Nuclear Energy Agency was created by the OECD Council in 1958 as a European agency for nuclear energy cooperation.⁷⁴¹ It is a specialized agency within the OECD with

visited Feb. 8, 2008) (describing IEA's mandate to incorporate the "Three E's"). Environmental protection is concerned with having less green house emissions. See Overview of the IEA, *supra* note 709 (describing the IEA's environmental protection policy).

738. See INT'L ENERGY AGENCY, WORLD ENERGY OUTLOOK 2002 373 (2002), available at <http://www.iea.org/textbase/nppdf/free/2000/weo2002.pdf> ("More than 80% of the people who currently have no access to electricity are located in South Asia and sub-Saharan Africa."). See *id.* at 365 ("Some 1.6 billion people . . . have no access to electricity.").

739. Claude Mandil, Executive Director, Int'l Energy Agency, Dialogue on Climate Change, Clean Energy and Sustainable Development (Dec. 5, 2005).

740. See generally The Nuclear Energy Agency—About Us, <http://www.nea.fr/html/nea/flyeren.html> (last visited Feb. 8, 2008) (stating that "[t]he NEA Secretariat serves seven specialised standing technical committees under the leadership of the Steering Committee for Nuclear Energy").

741. See THE NUCLEAR ENERGY AGENCY, NEA BROCHURE 5 (2001), <http://www.nea.fr/html/pub/neabrochure.pdf> [hereinafter NEA BROCHURE].

27 members that account for 85% of the world's installed nuclear capacity.⁷⁴² Its purpose is to develop nuclear energy for peaceful purposes through cooperation.⁷⁴³

The agency's work focuses in the following areas: nuclear safety and regulation, nuclear energy development, radioactive waste management, radiation protection and public health, nuclear law and liability,⁷⁴⁴ nuclear science, a data bank,⁷⁴⁵ and adequate information and communication.⁷⁴⁶ The NEA operates with a small staff and publishes consensus positions on key issues for its members. Its two organs are a Secretariat and a Steering Committee to address each one of the issues mentioned above to be presented to the OECD Council. Decisions by country representatives at the Steering Committee "commit only those countries which have accepted them."⁷⁴⁷

The NEA's statute is a decision adopted by the OECD Council on December 20, 1957.⁷⁴⁸ The NEA promotes joint undertakings for the production and uses of nuclear energy.⁷⁴⁹ Countries willing to participate in such undertakings share the cost of the endeavors.⁷⁵⁰ The NEA encourages research for production and use of nuclear energy for peaceful purposes and the exchange of scientific and technical information.⁷⁵¹

742. *Id.* at 6.

743. See The Nuclear Energy Agency, *Statute of the OECD Nuclear Agency*, art. 1, July 13, 1995, <http://www.nea.fr/html/nea/statute.html> [hereinafter NEA Statute].

744. The agency encourages both national nuclear legislation and an international liability regime. NEA BROCHURE, *supra* note 741, at 21.

745. The NEA serves as an international reference center with respect to nuclear tools for its Member countries. *Id.* at 23.

746. *Id.* at 7.

747. NEA Statute, *supra* note 743, art. 11(d).

748. *Id.* Foreword. The NEA's statute has been amended several times, with the last amendment taking place in July 1995. *Id.*

749. *Id.* art. 5(a).

750. NEA BROCHURE, *supra* note 741, at 12.

751. NEA Statute, *supra* note 743, art. 7(a), (c).

D. Committee on Energy in the U.N. Economic and Social Commission.

At its 50th plenary meeting, the U.N. Economic and Social Commission established a Committee on Energy for Western Asia.⁷⁵² Three years later in July 1998, ECOSOC decided to merge two of its committees, the Committee on New and Renewable Sources of Energy and the Committee on Energy for Development, into a single body known as Committee on Energy and Natural Resources for Development.⁷⁵³ The Committee is integrated by experts from different countries.⁷⁵⁴

Following the 2002 World Summit on Sustainable Development, the United Nations launched UN-Energy as the principal interagency mechanism in the field of energy that helps ensure coherence in the U.N. system response to the Millennium Goals.⁷⁵⁵ The most important U.N. economic agencies are members of UN-Energy.⁷⁵⁶

752. See U.N. Econ. & Soc. Council [ECOSOC], *Establishment of a Committee on Energy Within the Economic & Social Commission for Western Asia*, ¶ 1, U.N. Doc. E/1995/25 (July 24, 1995), in *Resolutions and Decisions of the Economic and Social Council*, U.N. Doc. E/1995/95.

753. See ECOSOC, *Committee on New and Renewable Sources of Energy and on Energy for Development: Committee on Natural Resources*, ¶ 14, U.N. Doc. E/1998/46 (July 31, 1999), in *Resolutions and Decisions of the Economic and Social Council*, U.N. Doc. E/1998/98.

754. Resolution 1998/46 calls for “six members from African States, five members from Asian States, four members from Latin American and Caribbean States, three members from Eastern European States and six members from Western European and other States. The term of office is to be four years.” *Id.* ¶ 15. The Committee meets biennially for two weeks. *Id.* ¶ 16.

755. See UNITED NATIONS, *ENERGY IN THE UNITED NATIONS: AN OVERVIEW OF UN-ENERGY ACTIVITIES 1–2* (2006), http://esa.un.org/un-energy/pdf/un_energy_overview.pdf [hereinafter *ENERGY IN THE UNITED NATIONS*].

756. UN-Energy member agencies include the following: U.N. Economic Commissions for Africa, Europe, Latin America, Asia and the Pacific, and Western Asia; the Food and Agriculture Organization; the International Atomic Energy Agency; the U.N. Human Settlements Programme; the U.N. Conference on Trade and Development; the U.N. Development Programme; the U.N. Educational, Scientific and Cultural Organization; the U.N. Framework Convention on Climate Change; the U.N. Industrial Development Organization; the U.N. international Research and Training Institute for the Advancement of Women; the World Health Organization; the World Meteorological

UN-Energy was established to promote cooperation within the U.N. system on energy issues “since there is no single entity in the [United Nations] system that has primary responsibility for energy.”⁷⁵⁷ UN-Energy promotes energy integration and improving energy accessibility, and acknowledges that energy is “the topmost sector on the agenda of issues in need of global management.”⁷⁵⁸

The U.N. system has many limitations, and its legitimacy is challenged whenever it is perceived as a mere instrument to advance the foreign policies of certain powerful countries. An organization like OPEC should participate in the 21st century global energy dialogue. By doing so, it would enhance the possibilities of a “united nations” effort.

E. International Energy Forum (IEF)

A dialogue between consumers and producers was initiated at a Paris meeting held at the initiative of France and Venezuela.⁷⁵⁹ Since then, meetings have been held at the ministerial level, a Secretariat based in Riyadh was established in 2002, and the International Energy Forum (IEF) has become the largest “recurring global gathering of energy ministers.”⁷⁶⁰ Under the IEF setting, informal discussions are conducted; the IEF is not a decision making organization, but rather only a forum for informal exchange of concerns.⁷⁶¹

F. World Energy Council

Headquartered in London, the World Energy Council was established in 1923 as a nongovernmental and nonpolitical organization “[t]o promote the sustainable supply and use of

Organization; and the World Bank. *Id.* at i.

757. UN-Energy, <http://esa.un.org/un-energy/> (last visited Feb. 8, 2008).

758. ENERGY IN THE UNITED NATIONS, *supra* note 756, at 1–2.

759. International Energy Forum, History, <http://www.iefs.org.sa/pages/history.htm> (last visited Feb. 8, 2008).

760. *Id.*

761. *Id.*

energy for the greatest benefit of all people.”⁷⁶² Every three years it holds a world energy congress.⁷⁶³ Its members are autonomous member committees in more than ninety different countries, representing energy interests including governments, companies, and environmental organizations.⁷⁶⁴

G. Latin America Energy Organization (OLADE)

The Organización Latinoamericana de Energía (OLADE) was established on November 2, 1973, with the signing of the Lima Convention, which has been ratified by twenty-six Latin American countries.⁷⁶⁵ OLADE is a regional, specialized international organization focused on energy.⁷⁶⁶ OLADE’s purpose is to promote cooperation among its members to meet their energy needs through sustainable development of their

762. World Energy Council, About WEC, What is WEC?, http://www.worldenergy.org/about_wec/ (last visited Feb. 8, 2008); World Energy Council, About WEC, WEC History, http://www.worldenergy.org/about_wec/wec_history/default.asp (last visited Feb. 8, 2008). The Organization known today as the World Energy Council established the World Power Conference in 1924. World Energy Council, About WEC, WEC History: The Early Years, http://www.worldenergy.org/about_wec/wec_history/360.asp (last visited Feb. 8, 2008). In 1968, the World Power Conference changed its name to the World Energy Conference. *Id.* The organization adopted the name the World Energy Council in 1992. World Energy Council, About WEC, WEC: Recent History, http://www.worldenergy.org/about_wec/wec_history/362.asp (last visited Feb. 8, 2008).

763. World Energy Council, Previous WEC Congresses, http://www.worldenergy.org/news_events/world_energy_congress/454.asp (last visited Feb. 8, 2008).

764. World Energy Council, About WEC, What is WEC? *supra* note 762.

765. Latin American Energy Organization [OLADE], The Organization, <http://www.olade.org/organizacionEn.html> (last visited Feb. 8, 2008) [hereinafter OLADE, The Organization]. The following countries are parties of the OLADE Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haití, Honduras, Jamaica, Mexico, Nicaragua, Panamá, Perú, República Dominicana, Surinam, Trinidad & Tobago, Uruguay, and Venezuela. *Id.* Pursuant to Article 1 of the Lima OLADE Convention, the Organization has its base in Quito, Ecuador. Latin American Energy Organization (OLADE) Charter art. 1, available at http://e-mar.sct.gob.mx/fileadmin/user_upload/dgmm/CONVENIOS/MULTILATERALES/C_OLADE_1973_.pdf#search=%22convenio%20de%20Lima%201973%20organizaci%C3%B3n%20latinoamericana%22 [hereinafter OLADE Charter].

766. OLADE, The Organization, *supra* note 765.

energy sources.⁷⁶⁷ The Organization was created to promote regional energy integration among its members.⁷⁶⁸ One of the Organization's goals is to market and protect the region's energy resources.⁷⁶⁹ The Organization's structure includes a Conference of Ministers,⁷⁷⁰ a Board of Experts, and a Permanent Secretariat.⁷⁷¹

At its thirty-seventh meeting, the Conference of Ministers authorized the Permanent Secretariat to act as mediator in disputes between member countries and to propose an alternative dispute resolution mechanism.⁷⁷² OLADE focuses on achieving energy efficiency and integration; its Conference reviewed three main issues: development of a legal structure that may enable energy integration through public and private investments, modernization of the Organization's information and database,⁷⁷³ and implementation of conservation programs

767. *Id.*

768. *Id.* During the 37th meeting of Ministers, OLADE authorized its Secretariat to develop legal instruments to promote regional and subregional energy integration and to prepare an energy integration plan for the region. *See* Organización Latinoamericana de Energía [OLADE]: Decision Ministerial XXXVII/D/446 [OLADE Ministerial Decision XXXVII/D/446], *in* XXXVII REUNIÓN DE MINISTROS, RESUMEN DE DECISIONES Y DECLARACIONES MINISTERIALES (2006), *available at* <http://www.olade.org/documentos/DECISIONES%20Y%20DECLARACIONES%20MINISTERIALES.pdf>.

769. *See* OLADE, The Organization, *supra* note 765. OLADE's Charter Article 3.1 establishes as one of the Organization's goals to create a Latin-American energy market. *See* OLADE Charter, *supra* note 765, art. 3(i).

770. The Conference of Ministers adopts decisions by the vote of two-thirds of its members. OLADE Charter, *supra* note 765, art. 14.

771. *Id.* art. 8(a)–(c). The Permanent Secretariat is the administrative body of the Organization and is headed by an Executive Secretary. *Id.* art. 19. Following the OPEC Statute as a model, OLADE's charter also requires that the Executive Secretary be a citizen of one of the State members. *Id.* art. 21.

772. Organización Latinoamericana de Energía [OLADE]: Decision Ministerial XXXVII/D/445 [OLADE Ministerial Decision XXXVII/D/445], *in* XXXVII Reunión de Ministros, *supra* note 768.

773. World Energy Council, *XXXVII Meeting of Latin American Energy Ministers*, WORLD ENERGYFAX, Oct. 1, 2006, <http://www.sanea.org.za/media/worldenergyfax/folder.2007-03-30.3149711726/World%20Energy%20Fax%20-%201%20October%20Final.pdf>. OLADE's Conference instructed the Permanent Secretariat to procure financial resources with international organizations including OPEC, the World Bank and the Inter-American Development Bank to implement a better data base.

for both the efficient use of energy and lower environmental impacts.⁷⁷⁴

The Conference of Ministers also decided that OLADE's structure requires changes to become a modern, efficient, and dynamic organization.⁷⁷⁵ Among others, the proposed changes include eliminating administrative and purely operational issues from the Conference's agenda to focus on defining energy policy and implementing sub regional structures.⁷⁷⁶

H. International Association of Oil and Gas Producers (OGP)

The International Association of Oil and Gas Producers (OGP) was formed in Paris on August 7, 1974, as a forum for private and national oil and gas companies, including service providers.⁷⁷⁷ OGP's mission is to represent the interests of the upstream industry before specific international organizations, including the European Union, the International Maritime Organization, the World Bank, the International Organization for Standardization, and the Commission for Sustainable Development.⁷⁷⁸ Membership is open to any company in any part of the world that holds the right to explore and drill for oil

Organización Latinoamericana de Energía [OLADE], Decisión Ministerial [Ministerial Decision] XXXVII/D/447, art. 2, *compiled in* XXXCII Reunión de Ministros, Decisiones y Declaraciones Ministeriales [XXXVII Meeting of Ministers, Ministerial Decisions and Declarations] (Sept. 8, 2006).

774. World Energy Council, *supra* note 773.

775. Organización Latinoamericana de Energía [OLADE], Decisión Ministerial [Ministerial Decision] XXXVII/D/448, art. 1, *compiled in* XXXCII Reunión de Ministros, Decisiones y Declaraciones Ministeriales [XXXVII Meeting of Ministers, Ministerial Decisions and Declarations] (Sept. 8, 2006). A meeting of the Ministers is scheduled for March 2007 to review and approve such changes. *Id.* art. 2.

776. *Id.* art. 3.

777. Int'l Ass'n of Oil & Gas Producers, About OGP, <http://www.ogp.org.uk/AboutOGP/index.html> (last visited Feb. 8, 2008). The OGP was previously known as the Oil Industry International Exploration and Production Forum. *See* INT'L ASS'N OF OIL & GAS PRODUCERS, MEMORANDUM AND ARTICLES OF ASSOCIATION AND REGULATIONS PREFACE (2001), <http://www.ogp.org.uk/pubs/ArtAssoc.pdf> (noting the organization's name "E&P Forum"). The Association became a Company Limited by Guarantee under English law as of 1983. *Id.*

778. Int'l Ass'n of Oil & Gas Producers, About OGP, *supra* note 777.

or natural gas pursuant to a title to petroleum reserves, a license, or an agreement and is involved in operations for the production of such petroleum, and to any company that provides oil and gas field services.⁷⁷⁹ The Association claims that its members control over 50% of the oil and gas produced in the world.⁷⁸⁰ OGP members are attributed units of account in proportion to the extension of the geographical areas in which they conduct operations, and members are entitled to voting rights consistent with such units of account.⁷⁸¹ The Association has a Management Committee and an Executive Director.⁷⁸²

The Association's mission is to promote responsible and profitable operations.⁷⁸³ It prepares reports and guidelines to assist its members in their operations.⁷⁸⁴ Among other areas, OGP has worked in the field of Corporate Social Responsibility, participating in the Extractive Industries Transparency Initiative.⁷⁸⁵

779. INT'L ASS'N OF OIL & GAS PRODUCERS, MEMORANDUM AND ARTICLES OF ASSOCIATION AND REGULATIONS, *supra* note 777, art. 4(a), (c).

780. INT'L PETROLEUM INDUS. ENVTL. CONSERVATION ASS'N & INT'L ASS'N OF OIL AND GAS PRODUCERS, INDUSTRY AS A PARTNER FOR SUSTAINABLE DEVELOPMENT 2 (2002).

781. INT'L ASS'N OF OIL & GAS PRODUCERS, MEMORANDUM AND ARTICLES OF ASSOCIATION AND REGULATIONS, *supra* note 777, arts. 10, 35.

782. *Id.* art. 71.

783. Int'l Ass'n of Oil & Gas Producers, Vision, Mission & Objectives, <http://www.ogp.org.uk/AboutOGP/index.html> (follow "Vision, Mission & Objectives" hyperlink) (last visited Feb. 8, 2008).

784. Int'l Ass'n of Oil & Gas Producers, Publications, <http://www.ogp.org.uk/Publications/index.html> (last visited Feb. 8, 2008).

785. Int'l Ass'n of Oil & Gas Producers, Corporate Social Responsibility, <http://www.ogp.org.uk/Info/index.html> (last visited Feb. 8, 2008). OGP has made clear that it is in favor of transparency and opposed to corruption in any form. Int'l Ass'n of Oil & Gas Producers, OGP Position on Transparency, <http://www.ogp.org.uk/Info/CSR/OGPtransparency.pdf> (last visited Feb. 8, 2008). OGP understands transparency as clear public reporting of the size, nature, and destination of payments made to governments or their agencies in the context of the oil and gas industry. *Id.*

I. *Organization of Arab Petroleum Exporting Countries (OAPEC)*

The Organization of Arab Petroleum Exporting Countries (OAPEC) was established in Beirut on January 9, 1968, between Libya, Saudi Arabia, and Kuwait.⁷⁸⁶ The founding members' main purpose was to separate politics from the oil and gas business after the 1967 Arab-Israeli war.⁷⁸⁷ OAPEC was conceived as an Arab forum and not as an opposition to OPEC.⁷⁸⁸ OAPEC's membership increased to ten by 1972.⁷⁸⁹ Although OAPEC is less known than OPEC, OAPEC was responsible for the so called 1973 use of the "oil weapon" or oil embargo.⁷⁹⁰

OAPEC has held multiple energy conferences to debate cuts in oil production outputs⁷⁹¹ and is reputed as a technically and economically oriented organization as opposed to a politically tainted one.⁷⁹² OAPEC focuses on the development of the oil and gas industry and on promoting joint ventures and building an integrated petroleum industry as the basis for the economic

786. Org. of Arab Petroleum Exp. Countries, About OAPEC, <http://www.oapecorg.org/About.htm> (last visited Feb. 8, 2008).

787. See M.S. Daoudi & M.S. Dajani, *The 1967 Oil Embargo Revisited*, 13 J. PALESTINE STUD. 65, 65 (1984) (observing several scholars' views that the 1967 Arab oil embargo failed as a political weapon, leading to OAPEC's formation).

788. SKEET, *supra* note 115, at 47. OAPEC was formed after OPEC's 15th Conference and the companies' success implementing a seven year discount for over payments, in what could be perceived as an OPEC failure. See *id.*

789. Mikdashi, *supra* note 476, at 19–20. The following countries became OAPEC members: Algeria (1970), Bahrain (1970), Egypt (1973), Iraq (1972), Kuwait (1968), Libya (1968), Qatar (1970), Saudi Arabia (1968), Syria (1972), Tunisia (1982), and the United Arab Emirates (1970); Tunisia withdrew in 1986. Org. of Arab Petroleum Exp. Countries, About OAPEC, *supra* note 786.

790. SCOTT, ORIGINS AND STRUCTURES OF THE IEA, *supra* note 477, at 32. The 1973 oil embargo was imposed by Arab oil producers of OAPEC, including nonOPEC members Egypt and Syria. *Id.* The oil embargo was imposed against the United States, the Netherlands, Portugal, Rhodesia, and South Africa. *Id.*

791. See *Arab Energy Conference Opens*, BBC NEWS, May 10, 1998, available at http://news.bbc.co.uk/2/hi/middle_east/90420.stm (referencing the four day Arab Energy Conference in May 1998).

792. BACKGROUND NOTE: SAUDI ARABIA, *supra* note 340.

integration of the Arab countries.⁷⁹³ In 1978, OAPEC created the Arab Petroleum Training Institute as a center to educate technical professionals for the industry; the Institute was also conceived as a documentation and information center.⁷⁹⁴ OAPEC members exchange information to review technological developments and have established four Arab companies: a Petroleum Maritime Transportation Company,⁷⁹⁵ a Shipbuilding and Repair Yard Company, a Petroleum Investments Corporation,⁷⁹⁶ and a Petroleum Services Company with three subsidiaries that engage in well logging, drilling, and geophysical work.⁷⁹⁷

J. Latin American Reciprocal State Petroleum Assistance Association (ARPEL)

The Latin American Reciprocal State Petroleum Assistance Association (ARPEL)⁷⁹⁸ was established in 1965 as an international nonprofit organization between oil and gas companies doing business in Latin America and the

793. See Org. of Arab Petroleum Exp. Countries, About OAPEC, *supra* note 786.

794. Org. of Arab Petroleum Exp. Countries, OAPEC and Joint Arab Action, http://www.oapec.org/About_2.htm (last visited Feb. 8, 2008). The center's administration was entrusted to Iraq in 1995 for two years, and its achievements are unclear. *Id.*

795. The Arab Maritime Petroleum Transport Company was created in 1972 to provide maritime carriage of petroleum products. *Id.*

796. The Arab Petroleum Investment Corporation (APICORP) was created in 1974 with \$1.2 billion of capital and all OAPEC members as its shareholders. *Id.* APICORP provides financial assistance to petroleum investment projects. *Id.* APICORP reviews technical studies and petroleum investment projects. *Id.*

797. *Id.* The Arab Petroleum Services Company (APSCO) was established in November 1975, and all OAPEC members are its shareholders. *Id.* APSCO establishes subsidiaries that provide specialized services for the oil and gas industry. *Id.* So far it has created three companies that provide drilling (Arab Drilling and Workover Company), well logging (Arab Well Logging Company), and geologic services (Arab Geophysical Exploration Services Company). *Id.*

798. Asociación de Asistencia Recíproca Petrolera Estatal Latinoamericana.

Caribbean.⁷⁹⁹ ARPEL's objectives are to promote the integration of the regional energy policies and full cooperation among its twenty-four members.⁸⁰⁰

The above list is by no means exhaustive. With globalization, the number of entities engaged in similar activities has proliferated exponentially. This creates the risk of irrelevancy. When compared to some of the entities engaged in the international analysis of petroleum industry related issues, OPEC's history, strengths, and vocation stand out. Today's challenge is to transform OPEC into a strong political international organization that may profit from its nearly half-century experience assuming the role it is called to play to make a difference for the "developing world" and world peace.

VI. HOW CAN OPEC'S SECRETARIAT MEET THE CHALLENGES OF THE INTERNATIONAL OIL INDUSTRY IN THE 21ST CENTURY?

A. OPEC's Secretariat, Its Mandate and Limitations.

Pursuant to Article 25 of the OPEC Statute, the Secretariat is responsible for the Organization's executive functions.⁸⁰¹

799. See ARPEL, *40 Years of ARPEL*, at 3, available at <http://portal.arpel.org/docs/newweb/brochurearpel/ing/ingles.pdf> (recounting ARPEL's history and founding in 1965). The Association has its domicile in Montevideo, Uruguay. ARPEL, *Bylaws*, art. 2, available at <http://portal.arpel.org/docs/newweb/estatutos/ing/bylaws.pdf>.

800. ARPEL, <http://www.arpel.org/en/> (follow "About ARPEL" hyperlink under "About ARPEL" dropdown list) (last visited Feb. 8, 2008). Arpel's members are Administración Nacional de Combustibles Alcohol y Portland (ANCAP); BP Exploration Company Ltda; ChevronTexaco, Empresa Colombiana de Petróleos (ECOPETROL); Empresa Nacional de Petróleo (ENAP); Encana Corporation; ExxonMobil; Petroleum Corporation of Jamaica (PCJ); Petróleos de Venezuela (PDVSA); Petróleos Mexicanos (PEMEX); Petróleo Brasileiro S.A. (PETROBRAS); Petróleos del Ecuador (PETROECUADOR); Petróleos Paraguayos (PETROPAR); Petróleos del Perú (PETROPERU); Petroleum Company of Trinidad and Tobago Limited (PETROTRIN); Refinadora Costarricense de Petróleo S.A. (RECOPE); RepsolYPF; State Oil Company Suriname N.V. (STAATSOLIE); Den Norske State Oljeselskap A.S. (STATOIL); TOTAL; and Yacimientos Petrolíferos Fiscales Bolivianos (YPFB). ARPEL, <http://www.arpel.org/en/> (follow "Members" hyperlink under "About ARPEL" dropdown list) (last visited Feb. 8, 2008).

801. OPEC Statute, *supra* note 127, art. 25.

OPEC's Secretariat is modeled after the League of Nations 1919 Secretariat—that is, as an organ responsible for keeping records, organizing meetings, and managing day-to-day matters.⁸⁰²

There are two sources of the Secretariat's executive functions: the OPEC Statute and specific directions by the Board of Governors. Pursuant to Article 27 of the OPEC Statute, the Secretary General is the Organization's legal representative and Chief Officer of the Secretariat.⁸⁰³ Article 29 of the OPEC Statute determines part of the Secretary General's functions to include:

- organizing and managing the work of the Organization;
- ensuring that the several departments carry out their work;
- preparing reports to be presented to the Board of Governors;
- being informed on all activities of the Secretariat, including studies and the status of Conference Resolutions; and
- ensuring compliance with Conference and Board of Governors directives.⁸⁰⁴

Article 32 establishes the Secretariat's various divisions, which include the Office of the Secretary General, the Division of Research, an Administration and Human Resources Department, and a Public Relations and Information Department.⁸⁰⁵ Further, the Conference has the power to create any other division or department.⁸⁰⁶

802. See, e.g., The Covenant of the League of Nations, art. 1 (Dec. 1924), available at <http://www.yale.edu/lawweb/avalon/leagcov.htm> (giving the Secretariat responsibility of accession of new member nations); *id.* art. 6 (establishing the Secretariat as permanent); *id.* art. 18 (requiring that treaties be registered with the Secretariat); *id.* art. 24 (vesting authority with the Secretariat to collect and distribute information).

803. OPEC Statute, *supra* note 127, art. 27.A–B.

804. *Id.* art. 29.

805. *Id.* art. 32.A.

806. See *id.* (authorizing the Secretary General to create “any division or department the Conference may see fit to create”).

Under the present statute, the Board of Governors acts as an intermediary between the Conference and the Secretariat and has the power to “direct the management of the affairs of the Organization” and implement the Conference decisions.⁸⁰⁷ The Governors who integrate the Board represent each one of the member countries and are not international OPEC employees.⁸⁰⁸

Prima facie, I find that the present structure limits the Secretariat’s possibilities to act as an efficient manager and representative of the Organization’s affairs. The Organization would benefit by making a redistribution of functions, adopting a clear system of checks and balances. If OPEC were to assume a greater role in terms of shaping international relations, market regulation, and energy security, its small present Secretariat would be inadequate. Providing for a Secretariat with greater autonomy integrated by professionals of any nationality would only enhance the Organization’s legitimacy.

It is unclear whether there is a difference between “executive functions” entrusted to the Secretariat⁸⁰⁹ and “direct[ing] the management of the affairs of the Organization” entrusted to the Board of Governors.⁸¹⁰ It would appear that the statute confers the Secretariat with purely managerial tasks, leaving all substantive decisions on the affairs of the Organization to the Conference and limiting the Board’s powers to “making recommendations.” This structure severely limits what the Organization may accomplish through the work of its sole permanent organ, the Secretariat. By the same token, it reduces the supranational character of the Organization, strengthening the idea that it may provide simply a forum to discuss sovereign states’ interests.

Modifying the structure of the Organization’s permanent organ would be justified to the extent member countries agree that OPEC should broaden the scope of its affairs and more

807. *Id.* art. 20.

808. *Id.* art. 17.A.

809. *Id.* art. 25.

810. *Id.* art. 20.

effectively accomplish its current aims. The structure and powers of a new Secretariat would depend on the amendments to the Organization's scope and functions. Joint projects financed by countries willing to participate and decisions that are binding on those countries that agree to them—as opposed to a unanimity requirement and steering committees that may accomplish specific tasks—may be immediate ways of introducing change in the necessary direction.

From a legal perspective, the statute should determine the powers of the Secretary General as legal representative for the Organization and the scope of the Secretary General's authority as such. It is unclear to what extent the Secretary General could bind the Organization on issues that do not refer to purely administrative tasks of maintaining a permanent mission.

The Secretariat lacks, under the present structure, the necessary resources to coordinate and propose the unification of its member countries' petroleum policies. It would seem natural that one of the Secretariat's divisions would be a Petroleum Policy Division, with its main tasks of covering an understanding of the present oil and gas policies of all members and the drafting of proposals to amend such policies, whether as a group or individually. The Energy Studies Department—which is not mentioned in the Organization's statute, while responsible for environmental and government policies—seems primarily focused on energy supply/demand analysis.⁸¹¹ Further, the Research Division does not conduct either policy or legal research.⁸¹² To date, the unification of petroleum policies has focused primarily on controlling production as a means to

811. See OPEC, The Energy Studies Department, <http://www.opec.org/aboutus/management/esd.htm> (last visited Feb. 8, 2008) (describing the department's function as monitoring, analyzing, and forecasting “world energy developments in the medium and long term”).

812. See OPEC, The Research Division, <http://www.opec.org/aboutus/management/rd.htm> (last visited Feb. 8, 2008) (stating that the department “forecasts and analyzes developments in the energy and petrochemical industries and studies the evaluation of hydrocarbons and products and their non-energy uses[, and it] analyzes economic and financial issues, in particular those related to the international oil industry”).

stabilize international prices.⁸¹³ However, the Organization could be a particularly important tool to assist its members in determining their energy policies, which include energy diplomacy and foreign policy issues. The Organization could be a particularly useful instrument to analyze amendments to the structure of international investment in the oil and gas industry, as a tool for dialogue with the consumer nations without necessarily committing individual members.

The Secretariat should include several deputy secretariats who may be responsible for handling the following issues: energy security, environment, development and poverty eradication, international law and human rights, and oil and gas policies. Such officers could represent the Organization at international forums, giving OPEC a stronger and more active international presence. As a means to confirming the Organization's commitment to price stabilization, a special officer under the Secretary General could be a direct liaison with the IEA, the G8 countries, and China. Further, another special officer should be directly responsible for contacts and dialogue with nonOPEC countries.

A modern and interesting transformation of the Secretariat would perceive it not as a bureaucracy to be sustained by member contributions, but as an entity capable of acting as well as a service provider for the benefit of its members. Thus, through this approach and by transforming part of the Secretariat's functions into a top notch technical think tank, member countries, and even nonmember countries and third parties, could enter into service agreements for a fee with the Secretariat to accomplish specific analyses.

Until now, international organizations have been perceived as costly bureaucratic entities whose work and contributions are

813. See Joel Brandon Moore, Note, *The Natural Law of Legal Obligation: International Antitrust and OPEC in Context*, 36 VAND. J. TRANSNAT'L L. 243, 246-47 (2003) (noting that OPEC has attempted to unify petroleum policies in order to eliminate "harmful and unnecessary" price fluctuations).

sometimes vague.⁸¹⁴ OPEC could transform itself into a model of a new technical international organization, which, while preserving some of the traditional characteristics of an international organization, could also become a profit creation center, consistent with the very nature of the oil and gas industry. Severing sensitive policy issues from technical services that could be provided to the industry would certainly be particularly important. One of such potential services could include marketing for its members.

OPEC should consider appointing permanent representatives to the most important consumer countries and to the IEA. This would only contribute to a more permanent dialogue and enhance the possibility of energy cooperation. Appointing a permanent representative to the United States would immediately eliminate all litigation related risks against OPEC. Further, the Organization should consider diversifying geographically its structure in a modern way to adjust to the modern reality of the oil and gas industry with presences in the Middle East, West Africa, North America, and Asia. Only a supranational organization with a true global presence may adequately address global problems. This may be accomplished by appointing local representatives with limited budgets, not necessarily creating a big bureaucratic expense but nevertheless enhancing the Organization's capabilities.

It is well known that most of the disputes involving international oil and gas transactions are seldom litigated before local courts of law.⁸¹⁵ The stability of international oil investments could substantially benefit if OPEC assumes a role

814. See David A. Koplow, *How Do We Get Rid of These Things?: Dismantling Excess Weapons While Protecting the Environment*, 89 NW. U.L. REV. 445, 471 (noting that "any international bureaucracy can . . . become an expensive proposition").

815. Terri Truitt Griffiths & Timothy J. Tyler, *Arbitrating International Oil and Gas Disputes: Practical Considerations*, in INTERNATIONAL OIL AND GAS VENTURES: A BUSINESS PERSPECTIVE 187, 187, 190 (George E. Kronman, Don B. Pelio & Thomas E. O'Connor eds., 2000), available at <http://www.interarbitration.net/pdf/amr18000.pdf> (asserting that parties to international oil and gas deals frequently choose arbitration or litigating in a third country to avoid being "hometowned" in a forum favoring the other party).

in the process of adjudicating international disputes. Such a role may be as mediator or even arbitrator. If so, OPEC could create a new organ which would have the specific purpose of reviewing disputes arising under international oil and gas transactions. It may even be contemplated that the IEA and the main operators be consulted regarding recommendations of officers to serve in such an organ.

OPEC's Office of the Secretary General is primarily engaged in preparing documentation for and servicing the several meetings that take place in the Organization, whether they involve the Conference, the Ministerial Monitoring Subcommittee, the Board of Governors, or the Heads of State Summit; preparing reports; preparing the several missions conducted by the Secretary General; and managing the work of the Research, Public Relations and Information, and Administration and Human Resources Divisions.⁸¹⁶

While these tasks are instrumental to maintain the level of activities conducted so far by the Organization, they do not allow the Secretariat to play a leading role in terms of effectively coordinating the petroleum policies of member countries, and they prevent the Organization from being proactive on many fronts in which its involvement could be beneficial.⁸¹⁷

Several levels of the Secretariat's functions could be distinguished:

- a. Purely administrative tasks;
- b. Management of technical information and the possibility of adopting emergency technical decisions; and
- c. Leading the Organization towards enhanced international relationships and agreements, becoming a stronger foreign policy and international economic tool for its members.

816. See OPEC Statute, *supra* note 127, arts. 25–34 (enumerating the responsibilities of the Secretary General).

817. See *id.* art. 15 (delegating the power for formulating “general policy” to the Conference, not the Secretary General).

B. Some Areas in Which a New OPEC Could Strengthen Its International Role

Some of the areas in which a new OPEC could focus its attention include the following:

1. Providing a permanent surplus production cushion that enables stable prices;⁸¹⁸
2. Establishing a reliable system of petroleum demand data;⁸¹⁹
3. Establishing an international oil marketing system that avoids price fluctuations based on speculation;
4. Studying and implementing mechanisms to help small oil-producing states adequately manage and preserve their oil wealth for the true benefit of their population;⁸²⁰
5. Creating a world class center for technological research that could assist oil producers and institutions concerned with global warming and carbon capture and storage concerns;

818. Pierre-Noel Giraud, *The Equilibrium Price Range of Oil*, ENERGY POL'Y, Vol. 23, no. 1, at 10–11 (1995), available at <http://www.cerna.ensmp.fr/Documents/PNG-EnergyPolicy.pdf>. According to Noel Giraud, “[a] mineral commodity market can only be stable if there is a continuous ‘cushion’ of surplus production capacities in relation to the average consumption.” *Id.*

819. Many have noted that oil demand data is “notoriously unreliable.” Paul Stevens, *The Prospects for the Oil Market and Oil Prices*, CTR. FOR ENERGY, PETROLEUM, & MIN. L. & POL'Y (Sept. 28, 2000), available at <http://www.dundee.ac.uk/cepmlp/journal/html/vol7/vol7-11.html>. According to Stevens, weekly data is available through the American Petroleum Institute regarding U.S. stock positions and monthly data through the IEA Oil Market Report. *Id.* Stevens argues that these figures do not include nonOECD players, do not reflect inventories held by oil-producing countries, and do not include either stocks at sea, secondary stocks held by wholesales, or tertiary stocks held by consumers. *Id.* The gap between the produced volume and the consumed figure is around 150 million barrels. *Id.*

820. Some small oil-producing countries like Gabon and Ecuador, with fairly small populations, should be able to establish an efficient and transparent system to manage their petroleum resources and wealth. OPEC could provide assistance to these countries along these lines.

6. Acting as a supranational organization to protect the interests of mankind, such as exploration and exploitation of resources in international areas or specially-protected areas of interest from a U.N. human heritage concern;
7. Providing assistance to its members and to other oil-producing countries regarding social development programs and plans to improve the quality of lives of specific communities;
8. Behaving as a truly international organization as opposed to a regional organization or an organization with limited interests and goals;
9. Reviewing the U.N. Millennium Declaration and determine how OPEC may coordinate with several U.N. agencies in furtherance thereof;
10. Considering means of opening up, consistent with modern principles of governance, to allow participation by private sectors, nongovernmental organizations, and scientific and educational institutions; and
11. Addressing the concept and practice of global corporate citizenship and implementing programs in its support

C. Specific Recommendations Regarding Amendments to the OPEC Statute

Provided below are some recommendations regarding potential amendments to OPEC's Statute:

1. The OPEC Statute should have the legal nature of a binding treaty between its signatories. The ideal would be for the statute to be a self-executing treaty between OPEC members. To date, OPEC is not founded on a solid, binding international agreement from which clear international law obligations arise between its members and vis-à-vis the Organization. My conclusion is that the current statute is not a binding treaty under international law. The OPEC Statute should become a valid and binding treaty under international law and include

the necessary provisions that will allow accession by nonmembers. The Organization's nature may be amended to reflect a clear international political organization with a broader scope that will include energy security and environmental issues, among others. Although customary international law confirms its character as an international organization,⁸²¹ documenting OPEC's nature as an international political organization is recommended.

2. OPEC's statute should refer to the Organization's capacity to conclude treaties with states and other international organizations. To date, there is no provision in the OPEC Statute that governs how the Organization may enter into binding international agreements, nor a specific provision establishing the necessary majority for purposes of adopting, accepting (by signing or exchanging instruments), ratifying, acceding, or formally confirming an international treaty or convention, or formulating reservations thereto.⁸²² The statute refers to the Secretary General as the legal representative of the Organization,⁸²³ but there is no provision that develops what its "full powers" are, or whether any other members of the Board of Governors are authorized to communicate the consent of the Organization. The OPEC Statute is far from constituting "rules of the Organization" for all international law purposes. Third parties should know what the powers of the Secretary General are and to what extent he may validly bind the Organization and its members.
3. OPEC's objectives should be broadened to adjust to the new realities of the oil and gas industry. Among others, the Organization should be involved in the following issues: energy security; exploitation of

821. See Spencer Weber Waller, *Suing OPEC*, 64 U. PITT L. REV. 105, 143–45 (2002) (discussing OPEC's treatment as an international body by the United Nations).

822. See generally OPEC Statute, *supra* note 127.

823. *Id.* art. 27.

nonrenewable resources located beyond the boundaries of nation-states; global warming and carbon sequestration issues; the implementing of measures that will protect an exhaustible resource; adequate disclosure to the public about the policies of the petroleum-producing countries; and the advancement of transparency and good governance policies to its member countries.

4. There is no reference in the OPEC Statute to diplomatic immunity or to the privileges to which the Organization and its representatives are entitled.⁸²⁴ The statute should be amended to clearly contemplate the status, immunities, exemptions, and privileges to which the Organization, its officers, assets, and correspondence are entitled.
5. Today, OPEC lacks a worldwide presence. Establishing a global presence and impact is important. True supranational organizations may no longer maintain a single presence at their headquarters. Maintaining offices or representatives in the United States⁸²⁵ and China, two of the most important oil consumers, and in at least one of its founding members, like Saudi Arabia, would only seem natural to properly accomplishing OPEC's objectives.
6. OPEC's Statute should provide practical effects to the condition of a "founding member." Under the current statute, being a founder member carries no weight whatsoever within the Organization.⁸²⁶ Consideration may be given to providing special powers to the founding members, taking into account their oil reserve and production capacities.

824. See generally OPEC Statute, *supra* note 127.

825. Such an office could be opened with the granting of diplomatic immunity by the U.S. Department of State, automatically eliminating all risks associated with U.S. civil litigation against the Organization.

826. See OPEC Statute, *supra* note 127, art. 7.B (stating that Founding Members are included along with other accepted members under the "Full Member" label).

Only “founding members” may react to a potential oil supply disruption. OPEC’s charter should address such power and its implications.

7. Extending membership to a broader number of countries may be considered.⁸²⁷ This would enable the Organization to strengthen its international mandate and presence. Once OPEC may be perceived as an organization interested in securing peace through energy security and preventing waste of a nonrenewable resource, nonOPEC countries like Russia and Mexico may be attracted to join. Membership of countries like Norway and the United States,⁸²⁸ two very important oil producers, could improve the overall dialogue between producers and consumers.
8. Oil reserves are not evenly distributed between OPEC members.⁸²⁹ For this particular reason, having a “one-member, one-vote” system does not

827. While this study was being prepared, the press reported the potential addition of Sudan, Angola, and Ecuador as new OPEC members. *OPEC to Step Up by New Members*, KOMMERSANT, Dec. 1, 2006, <http://www.kommersant.com/p726525/>. Angola joined OPEC December 14, 2006, with membership effective as of January 1, 2007. *Angola: New OPEC Member Should Tackle Corruption Not Critics*, HUMAN RIGHTS WATCH, Dec. 15, 2006, available at http://hrw.org/english/docs/2006/12/15/angola14859_txt.htm. Ecuador reactivated its membership in October 2007. *OPEC Accepts Ecuador as Active Member*, CHINA VIEW, Oct. 24, 2007, http://news.xinhuanet.com/english/2007-10/24/content_6931568.htm.

828. The U.S. presence in Iraq may have already given it an indirect voice in OPEC; however, this matter requires an analysis that is beyond the limited scope of this work. See, e.g., Timothy Noah, *Has the U.S. Joined OPEC?: An Unanticipated Burden of Empire*, SLATE, Apr. 9, 2003, <http://www.slate.com/id/2081361/> (discussing the issue facing the United States as to whether to send a representative to OPEC’s June 2003 meeting). Perhaps inviting the United States and China to join OPEC may be the best way of addressing a direct dialogue between consumers and producers. Many would challenge that the United States, by being a net oil importer, does not meet the current requirements to be an OPEC member. Some would argue that the United States is not a developing country and does not rely on oil as its predominant source of revenue. However, dialogue could produce much better results than confrontation, and creative efforts are required to safeguard world peace.

829. See *OPEC Share of World Crude Oil Reserves* (2006), *supra* note 61 (stating that the majority of oil reserves are in the Middle East countries).

correspond to the reality of the petroleum market. OPEC should consider implementing a different voting system that reflects production capabilities and reserve volumes.

9. Requiring unanimity for all Conference decisions limits substantially the Conference's opportunities to act efficiently. OPEC's Statute should require unanimity only for a limited number of decisions and should implement two-thirds majority and simple majority requirements for other types of decisions. Promoting joint initiatives and making certain decisions binding to those members that accept them may allow a more effective decision making process.
10. As a truly supranational authority, Conference decisions should be binding on OPEC members.
11. If the Secretariat is enhanced, the Board of Governors may no longer be needed. The Board of Governors could be transformed into a permanent body, conducting day-to-day work for the Organization as opposed to meeting twice a year. The Board should become a true legislative organ and should review and approve specific binding regulations.
12. Requiring that the Secretary General be a national of one of the member countries limits the Organization's possibilities. The ideal scenario would be that the Secretary General and the staff of the Secretariat may come from any nation as long as they have the necessary qualifications to serve the Organization well. By doing so, the legitimacy of the Organization and its international officers would be enhanced. The Secretary General shall be the legal representative of the Organization for all purposes and its head at all international forums.

13. The Secretary General should have the power to sign international conventions and binding treaties on OPEC's behalf, in addition to having specific powers that may allow him or her to act effectively to adequately protect members' interests, be able to appoint meetings of the Conference, and be capable of adopting emergency production allocations.
14. The statute should enhance the Organization's budget and the Secretary General's authority to enable the effective creation of global networks that may allow active participation of the private sector and nongovernmental organizations.
15. The statute should introduce the Secretary General's accountability to the Organization and its members.

VII. CONCLUSION

Scarcity of oil and gas resources is real and may drastically transform the modern trend of globalization and suburban life. "[I]n a world of declining oil production, no country can use more oil except at the expense of others."⁸³⁰ Individual countries continue shaping their economies to follow ever expanding growth.⁸³¹ An international organization capable of peacefully allocating economically scarce resources, in the spirit of OPEC's mandate of coordinating producer and consumer needs, is indispensable. Energy security grows in importance as scarce resources are exhausted and competition increases. A technical petroleum world body is needed to ensure that stable supply and demand of oil and gas meet and provide a smooth transition to a new nonhydrocarbon based economy.

A spirit of unity and cooperation enabled the creation of the United Nations in 1945;⁸³² such spirit of unity and cooperation is required to transform OPEC, molding it into a stronger and

830. PLAN B 2.0, *supra* note 108, at 38.

831. *See id.* (observing that most countries are expecting higher oil consumption in the future, counting on "cheap oil" to last forever).

832. DONALD C. BLAISDELL, INTERNATIONAL ORGANIZATION 21 (1966).

more active supranational political organization that may significantly enhance peace and prosperity by contributing to energy security.

Since 1967, the U.N. General Assembly recognized the important role of international organizations of developing countries for ensuring the right of permanent sovereignty over natural resources.⁸³³ The notion of a New International Economic Order specifically called for producer associations.⁸³⁴ Only OPEC may perform the role contemplated by the General Assembly in 1967 and envisioned by the New International Economic Order.

U.S. President Woodrow Wilson called for “open covenants” in 1918, as opposed to secret diplomacy, if international peace wanted to be pursued.⁸³⁵ The international oil and gas industry has been characterized by secrecy and confidentiality. For example, still today the contents of many international petroleum contracts are confidential for the parties thereto.⁸³⁶ Saudi Arabia and Nigeria have claimed that the true status of their reserves is a matter of national security, and thus, secret.⁸³⁷ Bidding processes to award exploration contracts are not always open,⁸³⁸ and they therefore provide the occasion for corrupt payments. Hedge funds do not disclose the identity of

833. G.A. Res. 3201 (S-VI), ¶ 4(e), U.N. Doc. A/RES/3201 (May 9, 1974) (citing G.A. Res. 2626 (XXV), U.N. Doc. A/8124 as the progressive resolution that paved the way for the Declaration on the Establishment of a New International Economic Order).

834. *Id.* ¶ 4(t).

835. President Woodrow Wilson, *The Fourteen Points* (Jan. 8, 1918).

836. See ERNEST E. SMITH ET AL., *MATERIALS ON INTERNATIONAL PETROLEUM TRANSACTIONS* 542 (2d ed. 2000) (referencing confidentiality agreements used in international transactions).

837. *Oil's Peak: The End May Be Nearer*, SOUTH FLORIDA SUN-SENTINEL, Sept. 22, 2005, at A27; See ENERGY INFO. ADMIN., U.S. DEPT OF ENERGY, *NIGERIA MONTHLY ENERGY CHRONOLOGY* (2002–2004) 2 (Aug. 2004), <http://www.eia.doe.gov/emeu/cabs/nigiachron.html> (claiming that Nigeria stopped releasing its crude oil production figures to the public on February 14, 2002); Jeff Gerth, *Forecast of Rising Oil Demand Challenges Tired Saudi Fields*, N.Y. TIMES, Feb. 24, 2004, at A1 (stating that outsiders have lacked access to official Saudi production data for more than 20 years).

838. See SMITH ET AL., *supra* note 836, at 396 (noting that licenses on specific bidding tracts are awarded solely through selection of competitive sealed bids).

their investors.⁸³⁹ It may be time for the international petroleum industry to work on international open covenants that may enable a balance between stable demand and supply, providing a strong foundation for energy security.

International organizations were created as a consequence of mankind's innovations in communications, as exemplified by the nineteenth century European river commissions and the Telegraphic and Postal unions.⁸⁴⁰ A new form of international organization remains yet to be formed to follow the most recent technological advances in communication. OPEC could take the steps to become a leader in this field.

Wilson called for a "general association of nations' to guarantee political independence and secure borders for great and small powers alike."⁸⁴¹ However, the "general association of nations" simply does not work for small powers. Since the U.N. General Assembly has no effective power and has become a speech delivery center with no practical consequences, small powers lack a venue from which they may conduct meaningful international relations.⁸⁴² OPEC could provide many small powers such an opportunity, becoming a forum from where they may have a significant international presence.

Considering the catastrophic possibilities of a major energy disruption for lack of sufficient energy resources, populations in most countries have little knowledge of such risks, and few nation-states have serious energy conservation programs in

839. Martin A. Sullivan & Lee A. Sheppard, *Offshore Explorations: Caribbean Hedge Funds, Part I*, TAX NOTES, Jan. 7, 2008, available at <http://www.taxanalysts.com/www/features.nsf/Articles/35244A221EDD1BF7852573D00071118E?OpenDocument>.

840. PETER MALANCZUK, *AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW* 22 (7th ed. 2004).

841. PATTERSON, *supra* note 495, at 11.

842. See Muchkund Dubey, *Multilateralism Beseiged*, 45 INDIAN J. INT'L L. 215, 219 (2005) (stating that the U.N. discussions only offer "gratuitous advice, standardized prescriptions, and measly technical assistance" to developing countries).

place.⁸⁴³ A supranational organization that helps educate the world about the energy challenges and that may assist local governments to deal with issues that are not “politically correct” ones is required. OPEC could make a significant contribution and impact on this front.

The world’s oil and gas infrastructure extends through such a vast area that trying to secure it from the potential threats of terrorist attacks may be impossible.⁸⁴⁴ International cooperation may offer an alternative to enhance the safety of such infrastructure. Further, focusing on solving the breeding causes of social unrest by reducing poverty and bringing hope to peoples who currently have no future may be a most efficient tool against terrorism.

There is a limit to what military intervention and war can accomplish. Ultimately, while oil continues to drive the world’s economy, delivering a stable supply to satisfy demand requires investments, technology, and work, all of which may sometimes be disrupted by war. To date the so called “oil crisis” has been addressed as a national security concern.⁸⁴⁵ Such a short-sided perspective should be replaced by a “global security approach” in which international dialogue and supranational organizations are instrumental in finding adequate solutions for all. A broad, open, and comprehensive international dialogue at the highest level between consumers and producers has not yet taken place. As a natural development of its contacts with the European Union, Russia, China, and the IEA, OPEC should play a leading role in addressing these matters

843. See Evan Mills et al., *Energy Management in the Government Sector—An International Review*, IAEEL, 1998, at 1, <http://eetd.lbl.gov/emills/PUBS/PDF/FEMP9804.pdf> (noting that “as a rule, comprehensive [sophisticated inhouse energy management] programs are rare”).

844. Jan K. Fedorowicz, *The Ten-Thousand Mile Target: Energy Infrastructure and Terrorism Today*, CRITICAL ENERGY INFRASTRUCTURE PROTECTION POL’Y STUD., Mar. 2007, at 17, http://www.carleton.ca/cciss/res_docs/ceip/fedorowicz.pdf.

845. See, e.g., OIL SHOCKWAVE, *supra* note 488, at 1.

Oil riches should not fuel Dutch diseases or private account coffers. The tremendous wealth associated with oil and gas production should be adequately managed to benefit poor populations owning such resources. OPEC could become involved in true nation-building efforts by providing support to member countries regarding transparent management of oil revenues and monitoring their investment.

Energy demands from the United States, Europe, and China contribute to create tension in the Middle East, particularly regarding the foreign relations of its founding members.⁸⁴⁶ OPEC may be an instrument through which OPEC founding members may, from a position of strength, implement international agreements and explore cooperation for which they otherwise might lack the necessary international leverage.

OPEC's history, from its very organization with Kuwait as a founding member, when Kuwait was not even an independent state, to Iraq's membership during the 2003 occupation through today, when Iraq's sovereignty may be questioned, and the Islamic doctrine of "*umma*" are indicative of the Organization's informal approach toward "permanent sovereignty."⁸⁴⁷ A new vision of "sovereignty" that may overcome many obstacles imposed by nation-states may address peoples' problems and help find practical solutions.

A dialogue between oil and gas consumers and producers has been continuously advised and is unavoidable. It represents the only reasonable strategy to address the pressing issues of

846. See Jad Mouawad, *At OPEC, Some Worry as Oil Prices Start Falling*, N.Y. TIMES, Sept. 11, 2006, at C2 (observing increased demand by China and the United States, and the geopolitical tensions that plague the Middle East); *U.S. Uranium Sought by EC*, WASH. POST, Mar. 17, 1977, at C1 (discussing the EC energy commissioner's acknowledgement of increased oil demand in Europe).

847. See David L. Rousseau, *History of OPEC*, Sept. 1, 1998, <http://www.cnr.vt.edu/lsg/intro/oil.pdf> (referencing Kuwait's status as a territory in the 1960s); *Iraq to Attend OPEC Meeting*, BBC NEWS, Sept. 16, 2003, available at <http://news.bbc.co.uk/2/hi/business/3113856.stm> (noting Iraq's first invitation to attend an OPEC meeting since U.S. occupation); Barbara J. Metzger, *Revelation and Reason: A Dynamic Tension in Islamic Arbitrament*, 11 J.L. & RELIGION 697, 699 (1994-95) (explaining how God is the head of *umma*, and that the state exists to enforce the laws of *umma*, thus making the states subordinate to God's will).

energy security, global warming, and eradication of poverty, or the “three Es” of energy policy: Energy security, sustainable Economic growth, and Environmental protection.⁸⁴⁸ Under its current structure, OPEC is ill-suited to adequately handle such comprehensive potential dialogue. A revitalized and strengthened Organization would improve the level of such dialogue, permitting more productive outcomes.

The great challenges that lie ahead require immediate responses from world leaders. Such responses may no longer be laconic international declarations to the press or vibrant but unproductive speeches at the U.N. General Assembly. International organizations need to transform themselves before budget constraints and lack of effective results condemn them to disappear or to become irrelevant.

The last decades of the hydrocarbon age are at sight.⁸⁴⁹ The consumers’ strategy is to diversify their supply sources, avoid excessive dependence from any single source, promote new energy technologies, engage in energy diplomacy, and in some cases intervene militarily to prevent producer agreements and conditions of dependence.⁸⁵⁰ OPEC oil producers have concentrated in the last twenty-five years on controlling production to try and maintain prices and thus a flow of revenue.⁸⁵¹ The threats raised by powerful nations, if the “oil weapon” were ever used, have deprived oil producers from controlling their own destinies. While “oil riches” are generated, world leaders find support and resources to maintain power. Meanwhile, severe global problems grow and become worse—

848. INT’L ENERGY AGENCY, IEA ACTIVITIES FOR ENERGY TECHNOLOGIES 1 (2004), http://www.iea.org/Textbase/Papers/2004/tech_brochure.pdf.

849. See CITY OF PORTLAND PEAK OIL TASK FORCE, DESCENDING THE OIL PEAK: NAVIGATING THE TRANSITION FROM OIL AND NATURAL GAS 1 (2007), <http://www.portlandonline.com/shared/cfm/image.cfm?id=145732> (predicting that peak range will peak somewhere between present day and 2040).

850. See Press Release, Nat’l Comm’n on Energy Pol’y, Bipartisan Commission Issues Strategy to Address Long-Term U.S. Energy Challenges (Dec. 8, 2004), <http://www.energycommission.org/ht/display/ReleaseDetails/i/1555/pid/500> (making recommendations regarding the issues facing U.S. oil security and U.S. oil supply).

851. PAUL, *supra* note 447, at 1.

during the party, no one dares turn off the lights. The real cost of oil has not been discussed, considering its exhaustive nature as well as environmental and sustainable development issues. The world's 21st century confrontations will involve control of limited resources, with control of energy sources being at the top of the list. In less than twenty years, billions of dollars and thousands of lives have been wasted in an attempt to control oil and prevent the accumulation of power by nations rich in hydrocarbon resources.⁸⁵² It is not a coincidence that two of those wars have involved OPEC founding members.⁸⁵³ OPEC is called to play a definite role in addressing these important issues. However, its present structure and scope prevent any significant contributions and question whether the Organization is a truly political organization or a commodity producers' association.

Returning to the words of Sultan Al-Nehyan, the "body" of the world desperately needs a "soul" that may guide it.⁸⁵⁴ The Middle Eastern members of OPEC could overcome their differences to decisively create an inclusive "small powers" leading force that would contribute balance and stability to the petroleum industry and the world.

Energy is the capacity to do work, and OPEC's future, as the future of the world, will only be measured by the energy we devote to more work and less politics and war. Hopefully, instead of referring to OPEC's midlife crisis, we will in the future look back to this period as the Organization's Middle Ages, as a passage from antiquity to its renaissance, from myth to reality.

852. INST. FOR POL'Y STUD., A FAILED "TRANSITION": THE MOUNTING COSTS OF THE IRAQ WAR ii–iii (2004), available at http://www.southbaymobilization.org/flyers/2005/05.0217.AFailedTransition_88pgs_ips-dc_org.pdf (noting human costs to the United States and its allies and economic costs to the United States).

853. A Brief History of OPEC, *supra* note 152 (noting OPEC founding members Iraq and Kuwait, central participants in the Persian Gulf War in 1991 and the Iraq War in 2003).

854. See *supra* note 2 and accompanying text.