

**OIL AND INTERNATIONAL LAW: THE GEO POLITICAL SIGNIFICANCE  
OF OIL CORPORATIONS**

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## ***ABSTRACT***

*Today certain commodities had become so important that most of the world leaders are fighting for it. One of them is Oil and Gas and it has changed the whole industrial society due to its importance in energy sector. The reason behind this importance is geopolitics of oil. It refers to the broad aggregation of geographic, economic, socio-political and environmental factors that influence global oil supply. This paper deals with geopolitics of oil and various issues involved in it. It also talks about the governance of international oil market and dominance of certain countries over it. Various institutions came into picture as to resolve the issues in the oil market as well as to maintain the balance between the demand and supply. It also throws light on the legal aspect related to the whole market which governs it and there has been a shift of balance due to the use of force by various powerful countries which is a major issue which can be resolved by the approach of a well-structured legal institution as well as valid international law as per the WTO and some basic domestic laws.*

## **I. INTRODUCTION**

Oil is the world's most important commodity. Without oil, today's industrial society would simply be impossible. Oil and natural gas are the fuel for the engine of modern capitalism, with Organization for Economic Cooperation and Development (OECD) nations accounting for two-thirds of all oil consumed in the world.<sup>1</sup> Oil and gas are not only the source of 62 percent of the energy used in the world, they are integrated into the production of many goods and products that we take for granted. The last decade has seen a dramatic rise in global oil demand, exposing all of the oil-importing countries to a risk of supply shortfalls and heightening international energy security concerns. The international oil industry has, off late been considered as one of the primary pillars of international or global political economy, and economists and political scientists the world over have devoted considerable attention to oil

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<sup>1</sup>Energy Information Administration (EIA), "World Oil Demand, 1970-2001," Table 4.6, available at [www.eia.doe.gov](http://www.eia.doe.gov).

diplomacy.<sup>2</sup> Due to the economic and military importance of petroleum products, oil-thirst creates important tensions in regions such as the Persian Gulf, the Caspian Sea basin, and the China Sea.<sup>3</sup> 'Geopolitics' can be defined as the struggle between rival powers for control over territory, natural resources (oil and gas, minerals, food products, water, etc), vital geographic features (strategic harbours and military base locations, rivers and canals, trade routes, etc), and other sources of economic and military advantage.<sup>4</sup> Geopolitics includes both domestic and international issues.<sup>5</sup> The major issues and phenomenon involved in the geopolitics of oil have been explained below:

### **I.1. ENERGY SECURITY RISK**

At the heart of the fear of the oil weapon is the concern over energy security. Energy security risk is said to arise because oil is concentrated in a handful of politically unstable countries.<sup>6</sup> However, reducing dependence on a single country does not necessarily weaken that country's influence on world markets. For example, the US ceased to import oil from Iran in 1979 yet Iran has continued to collect revenues from oil sold to Europe, Japan and China, leaving the US with no geostrategic advantage.<sup>7</sup> The growing global dependence on oil has contributed to a lingering perception that oil exporting countries somehow hold the oil importers hostage. Dependence on foreign oil is not the sole determinant of energy security risk. Energy security can be undermined by any number of factors anywhere along the supply chain, such as technical failures, weather-related events, strikes, terrorist attacks, war and similar events. Geopolitical factors nonetheless generate the most debate and concern.<sup>8</sup> Global

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<sup>2</sup> Louis Turner, *Oil Corporations In The International System* (1978), Economics And Geopolitics Of Oil: Southern Poi View, Alternatives South, VOL. 10, No. 2, 2003.

<sup>3</sup> Michael T. Klare, Resource Wars: The Changing Landscape of Global Conflict (New York: Henry Holt 2001), p 51-137

<sup>4</sup> Lynn Walsh, *Geopolitics of Oil*, at <http://www.socialistalternative.org/news/article21.php?id=450>, last visited on 12<sup>th</sup> September, 2013.

<sup>5</sup> M. Bunter, *The Geopolitics of Oil and Gas* ,(2003) 1(3) OGEL

<sup>6</sup> A. Florini, *Global Governance and Energy* in C. Pascual and J. Elkind (eds), *Energy Security: Economics, Politics, Strategies and Implications*(Washington DC: The Brookings Institution, 2010), p.153

<sup>7</sup> P. Nivola and E.E.R. Carter, *Making Sense of 'Energy Independence* in Pascual and Elkind (eds), *Energy Security: Economics, Politics, Strategies and Implications* (2010), p.110

<sup>8</sup> Fattouh, *How Secure Are Middle East Oil Supplies?*, 2007, pp.7-9.

deficiencies and degradation of natural resources, both renewable and non-renewable, coupled with the uneven distribution of these raw materials, can lead to unlikely and thus unstable alliances, to national rivalries, and, of course, to war.<sup>9</sup>

## **I.2. RESOURCE WARS**

Natural resources have gained a new strategic importance in wars. With the withdrawal of Cold War foreign sponsorship in the late 1980s, local resources have become the mainstay of most war economies. Beyond financing war, natural resources have been depicted as an important motive of several wars in the 1990s, from the Iraqi invasion of Kuwaiti oilfields, to civil wars fuelled by diamonds in West Africa. While much attention had been previously devoted to the risk of armed conflicts resulting from the vulnerability of supply of ‘strategic resources’ for major powers or environmental scarcity in poor countries, most resource-related wars in the 1990s have opposed domestic or regional politico-military entrepreneurs over locally abundant and internationally valuable resources, such as oil, timber, or diamonds. The ‘resource wars’ has been defined as armed conflicts revolving *‘to a significant degree, over the pursuit or possession of critical materials’*.<sup>10</sup> The term ‘resource war’ itself emerged in the US in the early 1980s in reference to perceived Soviet threats over US access to Middle Eastern oil and African minerals.<sup>11</sup> Resources have specific historic, geographic, and social qualities participating in shaping the patterns of conflicts and violence. The phenomenon of ‘resource wars’ and the connection between resource scarcity and violent conflict has been long acknowledged and researched in international relations.<sup>12</sup> Beyond the conventional geopolitical and strategic perspective on resource competition, the significance of resources in wars is largely rooted in the political and economic vulnerabilities of resource dependent states.

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<sup>9</sup> Arthur H. Westing, Global Resources and International Conflict. Environmental Factors in Strategic Policy and Action (Oxford: Oxford University Press 1986) p. 1

<sup>10</sup> Supra Note 3 at p.23

<sup>11</sup> Supra Note 3 at p.20-23

<sup>12</sup> Philippe Le Billon , *The Geopolitics of Resource Wars- Resource Dependence Governance and Violence*, (New York, Frank Cas Publishing 2005 ) p.188

### ***I.2.1. Resource War: A myth***

Just as there are great advantages in co-operation between exporters and importers, there are great disadvantages in conflict. According to one commentator, despite fast-increasing demand for a fast-decreasing resource, war over oil is unlikely to occur for three reasons:<sup>13</sup>

1. It will be cheaper to buy oil at almost any price than to fight over it;
2. The interests of consumers and producers are in line with each other--without stability, neither benefits; and
3. The world is on the whole less war-torn, the 21st century is likely to be a great deal more stable than the 20th, and there is no reason why oil politics should prove to be an exception to this.<sup>14</sup>

Wars over oil producing countries are very different to internal wars *in* oil producing countries. Internal wars may prevent oil from flowing outward but that is very much against the interests of both exporters and importers. Neither have an interest in the tap being turned off, nor does this provide a powerful, stabilising incentive for the peaceful development of oil resources. In summary, the oil import-export relationship is symbiotic in nature--co-operation between exporters and importers bringing clear advantages to both. There may be divergent interests in pricing, but there are mutual interests in making the transaction: "Oil-producing countries have an interest in keeping the price high; consumer states wish to see it low. Both, however, want it to keep flowing."<sup>15</sup> In essence, dependence on a global oil market that functions well is beneficial, not harmful. It is the function of global governance to ensure that the market functions reliably and efficiently.<sup>16</sup>

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<sup>13</sup> Robert Pritchard & Paula Hanasz , *Demystifying the contemporary geopolitics of oil supply and demand*, 2011 International Energy Law Review p.4

<sup>14</sup>C. Fettweis, *No Blood for Oil: Why Resource Wars Are Obsolete* in G. Luft and A. Korin (eds), *Energy Security Challenges for the 21st Century* (Santa Barbara: Praeger Security International, 2009), pp.67-68.

<sup>15</sup>Id at p.71.

<sup>16</sup>Florini, *Global Governance and Energy in Energy Security: Economics, Politics, Strategies and Implications*, 2010, p.152

### **I.3. THE “RESOURCE CURSE”**

One of the most common issues that can affect the stability of oil exporters and their oil production capacity and export policies is the “resource curse” (sometimes called the “paradox of plenty”). It arises from the failure of governments to promote economic and social development, to diversify their economies and to share their resource wealth amongst their populations in an equitable way.<sup>17</sup>

Countries with resource wealth are blessed with the revenues that flow from the export of their surplus resources but they are also prone to mismanagement and corruption, and often have lower rates of growth. Countries with resource wealth typically depend much more on their national oil revenues than on tax revenues. This may allow their governments to be less accountable to the public, and may make their non-resource sectors less competitive. This can in turn lead to the so-called “Dutch disease” (a term first used in 1977 to describe the decline in the manufacturing sector in the Netherlands following an increase in its natural gas exports).<sup>18</sup>

The resource curse can also manifest itself in wastefulness and mismanagement of resources, due to their abundance, which can impact negatively on growth.<sup>19</sup> The resource curse can also lead to domestic conflict if those in power do not placate politically-involved taxpayers. Furthermore, resource-rich powerbrokers can use oil wealth to buy the loyalty of the army and security services to suppress opposition movements, which can incite opposition movements to resort to violence as their only effective means of dissent.<sup>20</sup>

## **II. GLOBAL GOVERNANCE OF THE OIL MARKET**

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<sup>17</sup>Maloney, *Energy Security in the Persian Gulf: Opportunities and Challenges in Energy Security: Economics, Politics, Strategies and Implications*, 2010, p.47.

<sup>18</sup>A. Elhiraika and A. Hamed, *Explaining Growth in an Oil-Dependent Economy: The Case of the United Arab Emirates*, presented at the Workshop on the Global Research Project “Explaining Growth” in Rio de Janeiro, Brazil, December 13-14, 2001, p.12.

<sup>19</sup>Ibid.

<sup>20</sup>M. Klare, *There Will be Blood: Political Violence, Regional Warfare, and the Risk of Great-Power Conflict over Contested Energy Sources* in Luft and Korin (eds), *Energy Security Challenges for the 21st Century* (2009), p.48.

## **II.1.HISTORICALBACKGROUND**

In the 1950s, the United States became a net importer of oil and the Middle East became an important exporting region. A major structural change of the oil economy commenced in 1971 when OPEC resolved that each member country exporting oil from Persian Gulf terminals should take legal measures to engage in the direct development of their resources. Host governments were to directly participate in the concessions held by oil producers. In December 1971, Libya nationalized its oil concessions, followed in June 1972 by Iraq. These events led to the complete nationalization of the oil industry in the Middle East over the next two years. Since the mid-1970s, the global oil economy has undergone two further major structural changes. The first has been an unprecedented increase in cross-border trade and investment activity in freely operating global and regional energy markets. The second structural change has been the wave of economic liberalization that has transformed domestic energy markets, best exemplified by the abandonment of central planning in the former communist economies.

## **II.2.OPEC AS A FORCE FOR STABILITY**

For the last 40 years, the world has prospered from a highly competitive, dynamic and robust global oil market, due in part to the role played by OPEC. Some commentators still see OPEC as an institutionalized way for the oil-rich, mostly Middle Eastern, countries to tighten their grip on the West, and as a threat to the global economy. This is because of the control OPEC exercises over production quotas--control that may seem arbitrary and even malevolent. But it is not. OPEC cannot mete out punishment to recalcitrant importers nor discipline rogue exporters. OPEC monitors the global oil market and takes whatever measures it can to maintain its stability. OPEC implements production quotas when the market is perceived to be oversupplied and when oil prices fall below what OPEC deems acceptable. Considering the uncertainties of demand and supply, the lack of reliable and timely data about consumption, production and inventory levels and the unreliability of short-term forecasts, OPEC does not always correctly predict the direction of the market and does not always agree on changes to production levels.<sup>21</sup> If OPEC reduces production levels excessively, or fails to increase them in times of excessive demand, this can result in price spikes. If energy security is considered from the perspective of

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<sup>21</sup>Supra Note 8 at p.22.

the oil exporters, low prices are a source of insecurity, especially in the Middle East where oil revenues constitute the bulk of national income. Low oil prices equal low income in the oil exporting countries and may induce economic and social unrest which can in turn undermine the security of oil supplies to the rest of the world.<sup>22</sup>

In addition to the institutionalized role of OPEC, there are a number of treaty arrangements that govern global oil markets. The Energy Charter Treaty was signed in 1994. There were early hopes for its success as the first multilateral treaty to facilitate energy trade, energy transit and energy but the treaty has not lived up to these hopes. Renewed efforts are now being made towards its modernization.<sup>23</sup>

One of the advancements in improving the functioning of the global oil market was the adoption of a new Charter for the International Energy Forum (IEF) by its 87 participating countries on February 22, 2011. This has brought oil producers and consumers closer together in an institutionalized format.<sup>24</sup>The IEF maintains a transparent database of key oil production and other statistics known as the Joint Organizations Data Initiative (previously Joint Oil Data Initiative) (JODI). The IEF will also act as a bridge between OPEC and the IEA.

### **II.3. THE ROLE OF NATIONAL OIL COMPANIES**

National Oil Companies” (NOCs) are state-owned or state-controlled economic actors. They ordinarily conduct their affairs in an economically rational way. That is, economic self-interest is paramount in their decision-making and they rarely act in a manner that would contradict this.<sup>25</sup>This is not to deny that they can sometimes act irrationally. State-controlled economic actors whose board and management are politically appointed may not always make business decisions in the more predictable, profit-maximising way of privately-controlled economic actors

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<sup>22</sup>Ibid.

<sup>23</sup>Energy Charter Secretariat, *Road Map for Modernisation of the Energy Charter Process* (Brussels, Belgium:2010)

<sup>24</sup>B. Fattouh and C. van der Linde, *Twenty Years of Producer--Consumer Dialogue* [2011] (84)(May) Oxford Energy Forum 1, 17.

<sup>25</sup>J. Taylor and P. Van Doren, *The Energy Security Obsession*, (2008) 6(2) Georgetown Journal of Law & Public Policy 1, 15

such as the international oil companies (IOCs). NOCs may make decisions in response to, or in anticipation of, political directions, or to retain the confidence of their political sponsors. Such state-controlled actors are of course found in all systems of government, albeit decreasingly in Western economies.

Another factor that has contributed to uncertainty about oil production and export is the nationalization of the oil sector. All of the countries of interest in the context of this article nationalized their oil industries, over 30 years ago. Iraq, however, has recently opened up its oil sector to investment by international oil companies. NOCs hold 92.5 per cent of global proved oil reserves and account for 81.5 per cent of global oil production.<sup>26</sup> Each NOC is unique and will always be susceptible to political directions from the ruling government. The relative inefficiency that characterizes some NOCs and the redistribution of oil revenues away from reinvestment is still claimed to have a negative impact on global supply,<sup>27</sup> and because NOCs tend to lack transparency, they are thought to be more prone to corruption than IOCs.<sup>28</sup>

#### **II.4. THE PIVOTAL ROLE OF SAUDI ARABIA**

Saudi Arabia, is a pivotal force for stability in the global oil market. More than a quarter of the world's proven oil reserves are found in Saudi Arabia, and the Kingdom is the world's leading oil producer and exporter. It is an attractive supplier because the costs of production in Saudi Arabia are amongst the lowest in the world and the Kingdom itself consumes relatively little oil, meaning that most of it is available for export.<sup>29</sup> Saudi Arabia is also more open and straightforward about its oil policies than any of the other major oil exporters.<sup>30</sup> Saudi Arabia serves as a swing producer for the global oil market and has, over the years, demonstrated a willingness to increase or lower its oil production to calibrate oil prices to levels targeted by

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<sup>26</sup>P. Johnston, *The Security Impact of Oil Nationalization: Alternate Futures Scenarios*, (2010) III(4) Journal of Strategic Security 4

<sup>27</sup>Id at p. 18.

<sup>28</sup>Transparency International, *Promoting Revenue Transparency: 2011 Report on Oil and Gas Companies* (2011).

<sup>29</sup>G. Bahgat, *The New Geopolitics of Oil: The United States, Saudi Arabia, and Russia* (Foreign Policy Research Institute, Summer 2003), p.455.

<sup>30</sup>H.E. Al-Naimi, *A Roadmap to the Energy Future: Saudi Arabia's Perspective*, address by the Petroleum Minister of Saudi Arabia to CERA's Fourth Annual Global Oil Summit, Houston, Texas, 2006.

OPEC or in some instances levels that meet simply its national policy goals. By contrast, the majors produce every barrel of developed resource to ensure that they return maximum profits to shareholders.<sup>31</sup>

### **III. CONTEMPORARY GEOPOLITICS OF OIL**

The dynamics of the global oil market are economically rational. But there are still many socio-political factors in oil producing regions that cause concern for the rest of the world.<sup>32</sup> The oil exporting countries on the whole are undergoing a period of political unrest from a cocktail of social and demographic change. The recipe varies from country to country but can include the frustrations of better-educated youth, lack of employment opportunities, dissatisfaction with unresponsive governments, a desire for greater political freedom, hostility towards political discrimination on the grounds of race, gender, religion, culture or locality, and grievances over the inequitable sharing of oil surpluses. This challenge reportedly remains unmet because of outmoded education systems, anaemic job programmes and reliance on cheap foreign labour.<sup>33</sup> The case of Shell operating in Ogoniland in Nigeria is notorious, as is the repressive military action taken by oil corporations in Myanmar.

Further, Terrorism festers in conditions of discontent and socio-political tension. In countries that are resource-rich, there is a risk that terrorists will target energy facilities. Terrorism is not limited to attacks against facilities but can include kidnapping and theft of oil to support or finance a terrorist organization. The terrorism risk is considered to be increasing because energy facilities are strategically important targets and because the most extensive petroleum reserves are found in countries that are politically volatile.<sup>34</sup>

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<sup>31</sup> Amy Myers Jaffe & Ronald Soligo*The International Oil Companies*, Paper Presented at Baker Institute Petroleum Energy Center Policy Report organized by James A. Baker III Institute for Public Policy of Rice University, (2007)

<sup>32</sup> Supra Note 13

<sup>33</sup> S. Maloney, *Energy Security in the Persian Gulf: Opportunities and Challenges*, in Pascual and Elkind (eds), *Energy Security: Economics, Politics, Strategies and Implications* (2010), p.49.

<sup>34</sup> Id at p.52.

In situations of civil wars *strictosensu*, oil corporations can generally be involved at two different levels in sustaining patterns of violence. At a first and general level, violence is used by the government to maintain itself in place. When a government is highly dependent on oil-generated revenues for its maintenance, the extraction contracts are part of the system that maintains it in place rather than a challenger. The second level of oil company involvement in sustaining patterns of violence—when oil companies become involved, directly or indirectly, in defending oil concessions or pipelines<sup>35</sup>

Environment is another dynamic which plays a vital role in deciding upon the geopolitics of Oil. Reducing oil consumption simply because of geopolitical concerns may not be justifiable but the rise in global demand makes it so. Environmental factors reinforce this.<sup>36</sup> It is increasingly accepted that climate change is principally attributable to human-induced emissions of greenhouse gases.

Climate change must come into the global discourse on energy security, as it increasingly comes to affect energy availability, reliability, and affordability. Three main reasons have been advanced for this:

- Decisions made today will have long-term implications for how energy is produced, converted, and used, meaning that the carbon emissions situation in decades to come is determined by near-future decisions;
- Promoting energy security without regard to sustainability will promote use of technologies and practices that may exacerbate climate change; and
- Climate change will affect energy systems, for example, through the necessity to redesign transportation infrastructure because of declining shorelines.<sup>37</sup>

Climate change is a global problem requiring a global solution; and, as with the symbiotic relationship that characterizes the global oil market, it is in the best interests of all parties

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<sup>35</sup> United Nations Development Programme, Human Development Report 2003, at 240 (2003), available at [http://www.undp.org/hdr2003/pdf/hdr03\\_HDI.pdf](http://www.undp.org/hdr2003/pdf/hdr03_HDI.pdf).

<sup>36</sup>Supra Note 7 at p.116.

<sup>37</sup>Elkind, *Energy Security: Call for a Broader Agenda*, in Energy Security: Economics, Politics, Strategies and Implications, 2010, pp.128-129.

concerned to co-operate. However, the limited progress to date of the climate change negotiations highlights the “prisoner's dilemma” of the situation--all parties involved could be better off through continued co-operation, but have little incentive to act unilaterally on emissions reduction, which is extremely costly.

#### **IV. ROLE OF INTERNATIONAL LAW**

##### **IV.1. INTERNATIONAL LAW ON OIL MOTIVATED INTERSTATE USE OF FORCE**

International law is relevant in the sustenance of schemes of violent oil exploitation both as a form of justification for the means used by governments and oil corporations to carry out their desires and as a discourse that helps shape the very creation of the pursued objectives. Interstate resource conflicts also arise in order to keep oil transportation routes open or to pacify a region in order to establish one.<sup>38</sup> Such largescale, spectacular, and, usually, media-covered interstate military operations no doubt benefit oil corporations, but they are, to a large degree, conducted and mediated by states. International law, with its prohibition of aggression and of acquisition of territory by force, regulates behavior of that sort.<sup>39</sup> International Law is rich in doctrines and institutions aimed at constraining and sanctioning states which fail to abide by international law such as in the U.S.-U.K. military operation in Iraq<sup>40</sup>

Beyond oil-motivated interstate use of force, the petroleum industry is also entangled in another form of violence, generally involving small-scale episodic and highly localized operations. This form of violence is located on or around resource exploitation concessions. It is aimed at keeping or gaining control over these resources, repressing manifestations of local discontent in the resource-rich areas and along transportation routes, or at extorting money by conducting nuisance operations involving kidnapping or vandalism. In some instances, resort to violence is

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<sup>38</sup> Examples include the Suez Canal Crisis of 1956 and the current fierce competition—involved military built-up, exercises, and feeding conflicts in the Caucasus—over the location of pipelines transporting oil and gas from the Central Asian Republics

<sup>39</sup> U.N. Charter art. 2, para. 4.

<sup>40</sup> Thomas M. Franck, *What Happens Now? The United Nations After Iraq*, 97 Am. J. Int'l L. 607, 614 (2003)

so closely associated with the operations of oil corporations that it becomes part of the habitual conditions of the conduct of their activities. It is petty-violence as an integral feature of business-as-usual.<sup>41</sup> But, as opposed to the interstate violence alluded to above, the fabric of international law seems more pervious to internal violence associated with oil exploitation- less able to name it and to limit it.

#### **IV.2. ROLE OF INTERNATIONAL LAW IN PETROLEUM AGREEMENTS.**

The authority or competence of oil corporations to contract for exploration and exploitation of oil in foreign countries is rooted in the principle of freedom of contract, which is expressed transnationally as the freedom to trade. In its decision of December 12, 1996, on preliminary objections in the Case Concerning Oil Platforms, the International Court of Justice quoted with approval a decision of its predecessor interpreting freedom of trade as:

*"the right—in principle unrestricted—to engage in any commercial activity, whether it be concerned with trading properly so-called, that is the purchase and sale of goods, or whether it be concerned with industry, and in particular the transport business; or, finally, whether it is carried on inside the country or, by the exchange of imports and exports, with other countries.* <sup>42</sup>

Generally speaking, oil corporations do not enter into contracts or alliances with rebels controlling the area containing the oil deposits. Rather, they make sure that their exploitation is conducted with the approval of the recognized government of the country.<sup>43</sup> Oil corporations are a threefold object of preoccupation: as involved in the 1960s-1980s fight over nationalization and the measure of compensation (adequate or full); as holders of *sui generis* property rights under international law; and, more recently, as targets for the application of norms of international environmental law and international labor law.<sup>44</sup> International law is relevant in the

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<sup>41</sup>Arundhati Roy, Power Politics (2d ed., 2001) p. 13

<sup>42</sup> Oil Platforms (Iran v. U.S.), 1996 I.C.J. 803, 819 (Dec. 12). This definition was originally drafted in the case of Oscar Chinn, 1934 P.C.I.J. (ser. A/B) No. 63, at 84 (Dec. 12).

<sup>43</sup> David Keen, The Economic Functions of violence In Civil Wars (Int'l Inst. for Strategic Studies, Adelphi Paper No. 320, 1998) p. 40-43

<sup>44</sup>Dufresne, Robert, *Opacity of Oil: Oil Corporations, Internal Violence, and International Law*,; 36 N.Y.U. J. Int'l. L. & Pol. 331 (2003-2004)

sustenance of schemes of violent oil exploitation both as a form of justification for the means used by governments and oil corporations to carry out their desires and as a discourse that helps shape the very creation of the pursued objectives.

With respect to contractual formation and to the rights created therein, oil corporations' position suggests that they belong to a realm in which both the host government and its population, vicariously through it, are present. This allows oil corporations to derive automatically an entitlement to full enforcement of the rights validly created under petroleum agreements. However, when the actual enforcement of contractual rights and its modalities are at stake, oil corporations immediately take some distance and portray themselves as uninvolved or neutrally caught in a domestic political struggle. This combination allows them to claim that the rights that they hold are valid *erga omnes* and enforceable, while remaining separate from and unaccountable for the violence involved as part of the concrete conditions of their enforcement.

#### **IV.3. NOTION OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES IN INTERNATIONAL LAW.**

Prior to the actual constitution of a contractual relationship over oil exploitation, TNCs are merely holders of a freedom that does not yet translate into positive claims on oil deposits. It is only when that freedom is exercised by contracting with the state or with a state enterprise, that the freedom is turned into actual rights.<sup>45</sup> As for state authorities, questions relative to their outward contracting capacity over oil and other natural resources fall today under the principle of permanent sovereignty over natural resources.<sup>46</sup>

Prior to the formation of the notion of sovereignty over natural resources, there was no umbrella or unifying principle under international law. According to Professor Brownlie:

*"In classical international law natural resources had no place. The disposition of resources was assumed to follow the delimitation of sovereignty in spatial terms between the*

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<sup>45</sup> Nguyen Quoc Dinh Et Al., *Public International Law*, (7th ed., 2002) p. 648-49

<sup>46</sup> Ian Brownlie, *Legal Status of Natural Resources in International Law (Some Aspects)*, 162 R.C.A.D.I. 245, 269-271 (1980)

*States. Access to resources was a question managed within the legal categories of acquisition of territory, the making of agreements, the concept of freedom of the seas, and the doctrines of intervention, so far as the last were comprehensible. “*

Given the principle of permanent sovereignty over natural resources, Petroleum Agreements (PAs) always involve the state in which the resources are located.<sup>47</sup>

#### **IV.3.1. Principle of Permanent Sovereignty in U.N. Circles**

The principle of permanent sovereignty over natural resources is the outcome of a process of gestation taking place mostly in U.N. circles.<sup>48</sup>

(I)ts main expression is found in *Resolution 1803 (December 14, 1962) of the U.N. General Assembly*, and, although arising in the context of decolonization, it is rooted in the principle of self-determination. The first three paragraphs of the resolution provide:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.
3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.<sup>49</sup>

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<sup>47</sup> A.Z. El Chiati, *Protection of Investment in the Context of Petroleum Agreements*, 204 R.C.A.D.I. 9, 50-57 (1987)

<sup>48</sup> G.A. Res. 1515, U.N. GAOR, 15th Sess., Supp. No. 16, 948th plen. mtg., at 9, U.N. Doc. A/4684 (1960); G.A. Res. 1314, U.N. GAOR, 13th Sess., Supp. No. 18

<sup>49</sup> G.A. Res. 1803

(II) Subsequently to resolution 1803, *the Charter of Economic Rights and Duties of States* was adopted in 1974<sup>50</sup>. In that document, permanent sovereignty over naturalresources is clearly enshrined in the wider concept of economic sovereignty.

Chapter II, Article 2 reads:

1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all itswealth, natural resources and economic activities.
2. Each State has the right:
  - (a) To regulate and exercise authority over foreign investmentwithin its national jurisdiction in accordance with its lawsand regulations and in conformity with its national objectives and priorities. No State shall be compelled to grantpreferential treatment to foreign investment;
  - (b) To regulate and supervise the activities of transnationalcorporations within its national jurisdiction and take measures to ensure that such activities comply with its laws,rules and regulations and conform with its economic andsocial policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every Stateshould, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph;
  - (c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

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<sup>50</sup> G.A. Res. 3281

(III) Other statements of the principle can be found in the International Covenant on Civil and Political Rights,<sup>51</sup> and International Covenant on Economic, Social and Cultural Rights,<sup>52</sup>

Article 1, paragraph 2 of both Covenants reads:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence

(IV) Article 21 of the *African Charter on Human and Peoples' Rights* provides:

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interests of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.

Despite much controversy over practical questions and the difficulty of identifying clear corollaries to the principle of permanent sovereignty over natural resources, it is no longer tenable to deny the principle legal character.<sup>53</sup> It now stands for norms that command a significant common consensus, that states have a very special position in regard to their own resources. If, in their infancy as independent states, they assumed obligations out of all line with commercial realities, and if such arrangements were made for very long periods of time, tribunals look sympathetically at ways to liberate the state from the disadvantageous contract.<sup>54</sup> At the same time, nationalizations do require compensation, and will only be lawful if they are

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<sup>51</sup> G.A. Res. 2200

<sup>52</sup> G.A. Res. 2200A

<sup>53</sup> Supra Note 46 at p. 270

<sup>54</sup> Supra Note 44

not discriminatory and serve a public purpose. The concept of permanent sovereignty over natural resources does not leave a state free to ignore contracts it has voluntarily entered into.<sup>55</sup>

#### **IV.3.2. Functions undertaken by states under the umbrella of their sovereign prerogatives over oil**

Threefold functions are undertaken by states under the umbrella of their sovereign prerogatives over oil. The first two of which are internal to the contractual relationship between states and oil corporations. First, states act as public authorities regulating the conditions under which agreements of that sort are concluded and carried out. Second, states are partners in a commercial endeavor and, as such, beneficiaries of it.<sup>56</sup> In its regulatory role, the state seeks to ensure the protection of public goods, whereas its position as party to a business venture creates an interest to make the oil exploitation as financially successful and rewarding as possible. The third function is indirect and externally oriented: It consists in the conferral of a valid and opposable title to the oil extracted to whomever the state contracts with (i.e., a sort of *erga omnes* property title).

#### **IV.3.3. How over-focus on permanent sovereignty leads to violence in oil exploitation**

The violence involved in oil exploitation schemes arises out of the over-focus on permanent sovereignty and of the customary non-insistence on the peoples prong of the legal institution. It mainly takes place due to representation gap. As public prerogatives are always exercised through a form of representative body, there is a structural representational gap between peoples, who are the nominal and residual holders of the prerogatives over natural resources, and governmental representatives, who actually exercise the prerogatives. In international law, the gap between government and people is rarely given operative value. For obvious and defendable reasons, governments are presumed to act on behalf of their state, which is the politico-legal form meant to provide its population with a vast array of social goods. Yet, there is no doubt that

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<sup>55</sup> Rosalyn Higgins, *Problems And Process: International Law And How We Use It* (1994) p. 141

<sup>56</sup> A.Z. El Chiati, *Protection of Investment in the Context of Petroleum Agreements*, 204 R.C.A.D.I. 9, 36-38 (1987)

this structural feature of representation can be exploited. International prerogatives over natural resources recognized under international law do not impact strictly on a state's dealing with aliens, but provide a form of empowerment within the state.<sup>57</sup>

## **V.NEW DYNAMICS OF GEOPOLITICS**

A new dynamic has emerged in oil market that is likely to push prices on to a higher path in the years ahead than almost anyone had forecast a year ago. It relates to the now unfolding critical dimensions of what can be called the “new geopolitics” of oil.<sup>58</sup>

These can be recognized as:

- First, the profile of many oil-producing countries has long been seen as precarious. The profile includes a combination of rapidly growing, young populations, high unemployment, skewed distribution of income, geriatric and kleptomaniac leaders with diminishing political legitimacy, and rising public expectations. The prospect of the largest oil producing countries confronting challenges, in the form of an explosive wave of popular discontent can lead to civil disorder and regime change and spark contagion.
- Second, in order to ward off popular discontent, oil producing countries are dramatically increasing public expenditures. In Saudi Arabia, King Abdullah has announced two packages of spending equivalent to \$125bn where the important impact is on what Saudi Arabia needs to earn from oil exports. These spending commitments cannot easily be wound down, and looking at OPEC as a whole, pressure for ever higher prices is likely to become a more permanent part of the petroleum landscape.
- Third, as part of the pressure to deliver more material goods at home, oil producers are likely to continue domestic subsidies, including for energy, accelerating domestic oil demand and decreasing oil production available for exports. Middle East producers are set to consume 1m b/d more in 2015 than in 2010 with another 1.5m b/d by 2020. That could tighten markets considerably.

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<sup>57</sup> Supra Note 44

<sup>58</sup> Ed Morse, *The New Geopolitics of Oil*, Published in Financial Times on April 6 2011

## **VI. CONCLUSION**

From the above discussion, it is clear that geopolitics of oil is shifting under modern dynamics in favour of public expectations. But, at the same time present theories of responsibility in international law are unsatisfactory and are used as legal justifications to eschew calls of responsibility by oil corporations for the violence associated with their activities.

It has been noted from the above discussion that there is an actual enrichment of developing countries through oil exploitation, but this enrichment is clearly not shared evenly and is generated under conditions of violence, environmental degradation, population displacement, and other forms of human rights violations. What is needed to tackle the problem of oil-fueled violence is to develop legal institutions operating within the nodal point formed by the interactions of state authorities, oil corporations, and local groups. Reliance on the public/private and international/domestic divides to settle appropriately conflicts that are located at the juncture of those divides proves unsatisfactory. It seems necessary to go beyond a principle of responsibility that only acknowledges the direct commission of human rights abuses and open the floodgates for more open involvement of all concerned parties.

However, it needs to be reemphasized that the traditional geo-political factors, more importantly the use of oil weaponry as a mode of politicization, though grave, is losing some of its edge in the present day global oil dynamics, and the problems intrinsically linked with the environment and the supply-demand imbalance are slowly replacing them in the evaluation of geo-politicism of oil.

There is moral duty placed upon producers and possessors of important commodities and raw materials to make these available to those States whose economies are significantly dependent upon such items.<sup>59</sup> The actual conditions of oil exploitation—characterized by a symbiotic collaboration between host governments and oil corporations, and the externalization of costs or burdens onto the local people—raise a complementary set of moral issues pertaining to the

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<sup>59</sup> Supra Note 46 at p. 273

existence of correlative duties on those who benefit from such oil exploitation. Theories of responsibility that are too lenient might have little deterrent effect and simply lead to processing human rights violation linked to oil exploitation through a purely commercial or economic matrix, i.e., computing human rights litigation as an additional cost of doing business.

The problem which arises due to representation gap while exercising permanent sovereignty over natural resources can be solved by closing the gap between creation of property or exploitation rights and the conditions in which those rights are exercised. This principle, without affecting the government's positive ability to attribute rights to foreign investors, could sanction abusive corporate behavior by negating the ability of oil corporations to exercise their rights in certain conditions.

