THE UNIVERSITY OF HULL

The Organisation of Petroleum Exporting Countries : A Study of its Organisation, Policies and Legal Significance

being a Thesis submitted for the Degree of
Doctor of Philosophy in the Law School
in the University of Hull

by

Ali Abu Sedra

LL.B. (Garyounis University), LL.M. (Hull University)

The University of Hull Law School

August 1998

THE UNIVERSITY OF HULL

Summary of Thesis submitted for PhD Degree

by

Ali Abu Sedra

on

The Organisation of Petroleum Exporting Countries : A Study of its Organisation, Policies and Legal Significance

This thesis provides a comprehensive study of OPEC. It seeks to ascertain and analyse the international legal status of OPEC and its characteristics, to examine how OPEC functions and what its stated aims and objectives are, to evaluate the performance of OPEC in the context of these objectives, and to suggest improvements for the future.

OPEC was originally established in 1960 by a group of developing oil-producing countries as an institutional response to the need which they all felt to assert their independence and ensure their economic survival. In this context *Part One* examines and analyses the general pre-history and overall background of OPEC from a variety of different perspectives including but not limited to such relevant areas as international conflicts over the distribution of wealth and power between producers and consumers in particular, and between the developing and developed countries in general.

Part Two considers the constitutional legal foundations of OPEC which are to be found in the original OPEC Resolution of 1960 and in its subsequent OPEC Statute (as amended) which defines the Organisation's aims and objectives, its internal structure, its decision-making processes, its financial resources and its dispute settlement procedures. *Part Three* of the thesis enlarges on this initial survey by examining OPEC's structure, composition, organs and membership in greater detail.

Part Four considers OPEC's international legal status and its standing *vis-a vis* the larger international community and other international organisations. *Part Four* also considers OPEC in the context of the internationally recognised principle of a state's right to exercise permanent sovereignty over its natural resources, and therefore of the OPEC Members' rights to organise the production, marketing and pricing of their oil resources. *Part Four* also explores the proposition that although OPEC may not have been founded with the express contemplation of such international legal and economic milestones as the Havana Charter and the General Agreement on Tariffs and Trade (GATT) in mind, it has in fact proved to be quite consistent with International Commodity Agreements (ICAs) in more than one respect, while at the same time displaying characteristics which are uniquely different from a typical ICA.

Bearing the above in mind, *Parts Five* and *Six* seek to examine OPEC's track record since its inception thirty-eight years ago. *Part Five* examines the decision-making processes and financial contributions in OPEC, while *Part Six* then focuses on OPEC's actual policies and resulting activities – and their legal significance.

Finally, *Part Seven* is concerned with a general evaluation of the main features and relative failures and successes of OPEC up to now, as well as with a conclusion as to its future role, including – in order to enhance that role – recommendations as to how OPEC's practices and policy could perhaps be improved in the years to come.

(N.B. : A more comprehensive summary appears in the *Abstract* on pages xi – xiv.)

Acknowledgements

I am indebted to my Supervisor, **Professor David Freeston**, who supported this thesis and gave me valuable advice. He provided guidance and perceptive insights. I would also like to thank the **Rev. Professor Hilaire McCoubrey**, the Director of Postgraduate Affairs, for all his advice and assistance.

My appreciation and thanks are also extended to **Professor R. Khan** of the University of Edinburgh who spent precious time reading my work and offering constructive suggestions and thoughtful criticism.

I would also like to thank **Professor R.W. Bentham** of the University of Dundee, at the Centre for Petroleum and Mineral Law Studies, for his suggestions and comments and for reading part of this work.

They are all true professors and without their valuable contributions, this thesis would be a lesser work indeed.

My thanks also go to:

Professor R. Higgins of London University,
Mr. M.A. El Bagdadi, Legal Advisor to OPEC,
Dr. Fernando Santos-Alvite, Head of OPEC's Legal Affairs Unit,
Mr. Alberto, Legal Adviser to OPEC Special Fund,
Mr. Osam Jamile, OAPE Secretary General,
Mr. R. Kawan, Economic Consultant to OAPEC,
Mr. A. El Nasse, Libyan Governor for OPEC,
Mr. R. Omari, ex-Oil Minister for Kuwait,
Mr. A. Al Ayoub, ex-Legal Adviser of the Oil Ministry of Kuwait,
Mr. Omar Ateefa, Director of OAPEC Library,
Mrs. Sabah Alnamas, Assistant to the Director of OAPEC Library, and
Mr. A. Sassi, ex-Minister for Libya.

All of the above have helped me at one stage or another, giving me advice, making comments, providing material and allowing me to hold discussions with them.

Finally, my special thanks go to my parents, wife and children for their support and patience during my work on this thesis.

Ali Abu Sedra
London

August, 1998

Dedication

This thesis is dedicated to all those who recognise that there are indeed more than enough oil resources in the world for everyone to benefit from without their having to fight over them – and to all those responsible people who have endeavoured to create practical processes, systems and markets so as to make the benefits of oil available to as many people as possible, while causing as little harm as possible to the environment and all those who live in it.

Table of Contents

I. Abbreviations viii

II. Abstract xi

III. Introductory Note xv

Part 1 : A General Overview and Historical Background 1

1.1 The International Economic and Political Climate in the 19th and 20th Centuries prior to the First World War 1

1.2 Changes following the Second World War 2

1.3 The Emergence of the New International Economic Order 4

1.4 International Commodity Agreements 11

1.4.1 Commodity Agreements before the Second World War 11

1.4.2 Further Developments in International Commodity Trade 13

1.4.3 Developments within the United Nations Organisation relating to International Commodity Trade 15

1.4.4 The United Nations General Assembly and ICAs 18

1.4.5 UNCTAD's Integrated Programme for Commodities (IPCs) 19

1.4.6 The Common Fund 20

1.4.7 The Common Fund and Individual ICAs 22

1.4.8 General Comments on the IPCs 23

1.5 Early Developments in the International Oil Industry 24

1.6 Early Co-operation in the International Oil Industry 32

1.7 General Conclusions as regards the pre-OPEC Era 35

Part 2 : The Establishment of OPEC, the Legal Character and Classification of the Instruments Governing OPEC, and the Main Objectives of OPEC 38

2.1 The Establishment of OPEC 38

2.2 The Legal Character and Classification of the Instruments Governing OPEC 46

2.2.1 The Legal Character of the OPEC Constituent Instrument of 1960 46

2.2.2 The Legal Classification of the OPEC Constituent Instrument of 1960 52

2.2.3 The Legal Character and Classification of the OPEC Statute 56

2.3 The Main Objectives of OPEC 58
2.3.1 The Co-ordination of National Petroleum Policies 58
2.3.2 The Stabilisation of Oil Prices 64
2.3.3 A General Evaluation of OPEC's Pricing Objectives 68
2.3.4 A General Summary of OPEC's Objectives 71
2.4 A General Classification of OPEC 76

Part 3 : The Structure, Composition, Organs and Membership of OPEC 83
3.1 The Structure of OPEC 83
3.1.1 The Conference 84
3.1.2 The Board of Governors 85
3.1.3 Sessions 89
3.2 The Functions and Powers of the Organs of OPEC 90
3.2.1 The Functions and Powers of the Conference 91
3.2.2 The Functions and Powers of the Board of Governors 92
3.2.3 The Functions and Powers of the Secretariat and the Secretary General 92
3.2.4 General Remarks on the Structure and Organs of Opec 104
3.3 Membership of OPEC 104
3.3.1 Procedures Leading to Membership 106
3.3.2 Acquisition of Membership 107
3.3.3 Specific Membership Problems 115
3.3.4 The Status of Observers 121
3.3.5 Termination of Membership and Re-admission 123
3.3.6 Concluding Remarks on Membership of OPEC 126

Part 4 : The International Legal Framework of OPEC 130
4.1 OPEC and the Law of International Commodity Agreements 130
4.2 The General Normative Principles which govern OPEC 131
4.2.1 Permanent Sovereignty over Natural Resources ... 132
4.2.2 The Right to Adopt a Suitable Economic and Social System 138
4.2.3 International Solidarity and Economic Co-operation 139
4.3 International Decisions which Endorse the Legality of OPEC 140
4.3.1 International Decisions outside the UN System ... 141
4.3.2 International Decisions within the UN System ... 144
4.3.3 The Legal Effect of UN Resolutions 147
4.3.4 The Legal Significance of International Decisions as regards the Legal Status of OPEC ... 150

4.4 The Legal Personality of OPEC within the Framework of International Institutional Law 153
4.4.1 The Municipal Legal Personality of OPEC 153
4.4.2 The International Legal Personality of OPEC 158
4.4.3 The Legal Personality of OPEC vis-a-vis Non-Members 167
4.5 OPEC and the Anti-Trust Laws of the United States of America 173
4.6 Concluding Remarks on the International Legal Personality of OPEC 177

Part 5 : The Decision Making Process of OPEC, and its Financial Contributions 179

5.1 The Entry into Force of OPEC Decisions 180
5.1.1 Voting Procedures for Substantive Matters 180
5.1.2 Voting Procedures for Procedural Matters 185
5.1.3 Voting Procedures for Admission to Membership 186
5.2 The Implementation of OPEC Decisions 187
5.3 The Rule Applicable to Absent Members 189
5.4 The Legal Effect of OPEC Decisions 191
5.4.1 Decisions Adopted by the Organs of OPEC 192
5.4.2 Decisions Adopted by the Conference of OPEC ... 194
5.4.3 Decisions Addressed to the Organs of OPEC 194
5.4.4 Decisions Addressed to the Members of OPEC ... 194
5.4.5 The Legal Effect of OPEC Decisions on its Member Countries' Legal Systems 196
5.4.6 The Legal Effect of OPEC Decisions on the OAPEC Member Countries 197
5.4.7 The Legal Effect of OPEC Decisions on International Law 201
5.5 OPEC's Capacity to Adapt to Change 204
5.5.1 Amending the OPEC Statute 205
5.5.2 Settling Disputes 207
5.5.3 Requests for Interpretation by OPEC Members ... 212
5.6 The Finances of OPEC 220
5.6.1 The OPEC Budget 220
5.6.2 OPEC Members' Subscriptions 223
5.6.3 Methods of Payment and Sanctions for Non-Contribution 224
5.7 Concluding Remarks 225

Part 6 : OPEC's Petroleum Policy: An Examination of OPEC's Policies, Operations and Activities 227

6.1 General Introduction 227

6.2 Sources of OPEC Petroleum Policy 227

6.3 OPEC's Main Operations 231

6.4 OPEC's Non-Pricing Policy 233

- **6.4.1** The Control and Ownership of Oil Production by OPEC Member Countries 233
  6.4.2 Compensation by OPEC Member Countries: the Cost of Participation and Nationalisation 242
  6.4.3 A General Evaluation of OPEC's Participation and Nationalisation Policy 248
- **6.4.4** An Introduction to OPEC's Conservation Policy 250
  6.4.5 The Early Development of OPEC's Conservation Policy 251
  6.4.6 OPEC's Conservation Policy and the New International Economic Order 255
  6.4.7 The Implementation of OPEC's Conservation Policy 257
  6.4.8 The Conservation Policy of the Oil-Consuming Countries 260
  6.4.9 A General Evaluation of OPEC's Conservation Policy 265
- **6.4.10** OPEC's Information Policy 270
  6.4.11 The Organs Responsible for OPEC's Information Policy 272
  6.4.12 The Implementation of OPEC's Information Policy 273
  6.4.13 Legal Requirements for the Transfer of Information 280
  6.4.14 A General Evaluation of OPEC's Information Policy 283

6.5 OPEC's Pricing and Production Policy 288

- **6.5.1** Royalties and Income Tax 288
- **6.5.2** OPEC's Production Policy 293
  6.5.3 The Objectives of OPEC's Production Programme 299
  6.5.4 Legal Aspects of OPEC's Production Programme 300
  6.5.5 Limitations on OPEC's Production Programme ... 307
- **6.5.6** OPEC's Pricing Policy 310
  6.5.7 A General Evaluation of OPEC's Current Pricing Policy 334

6.6 A General Evaluation of OPEC's Policies, Activities and Operations 336

Part 7 : General Summary, Evaluation and Conclusion 350

7.1 OPEC's International Legal Status and Characteristics 351

7.2 OPEC's Successes and Failures 358
7.2.1 OPEC's Successes 358
7.2.2 OPEC's Failures 359
7.2.3 The Reasons for OPEC's Failures 361
7.3 Suggestions for OPEC's Future Petroleum Policy 363

IV. Footnotes 367

V. Glossary 431

VI. Bibliography 434

Appendices :

Appendix I : Resolutions of the First Conference held in Baghdad from 10th to 14th September 1960 ... 445

Appendix II : The Statute of the Organisation of the Petroleum Exporting Countries (June 1986 Edition) 448

Appendix III : Agreement between the Organisation of the Petroleum Exporting Countries and the Republic of Austria regarding the Headquarters of the Organisation of the Petroleum Exporting Countries (Effective from 10th June 1974) 458

Appendix IV : Solemn Declaration made at the Conference of the Sovereigns and Heads of State of the OPEC Member Countries (4th – 6th March 1975) 470

Appendix V : Holders of the Office of Secretary-General of OPEC (January 1961 – August 1998) 477

Appendix VI : Meetings of the Conference of OPEC, including its Dates, Venues, Presidents and Chairmen from September 1960 – June 1998 ... 478

Appendix VII : OPEC Member Country Populations, OPEC and World Crude Oil Reserves, Production and Exports & Refined Products Exports and Consumption 487

Abbreviations

ADMA	Abu Dhabi Marine Areas (Company).
ADNOC	Abu Dhabi National Oil Company.
ADPC	Abu Dhabi Petroleum Company.
AIOC	Anglo-Iranian Oil Company (formerly APOC and later BP).
AIOEC	Association of Iron Ore Exporting Countries
AJIL	American Journal of International Law.
ANRPC	Association of Natural Rubber Producing Countries.
AOPC	African Oilseed Producers' Organization.
APC	Arab Petroleum Congress (of the League of Arab States).
APCC	Asian and Pacific Coconut Producing Countries.
APEF	Association International des Pays Exportateurs de Mineral de Fer (Association of Iron Ore Exporting Countries).
APOC	Anglo-Persian Oil Company, renamed Anglo-Iranian Oil Company in 1953, and B.P in 1954.
ATPC	Association of Tin Producing Countries.
B/D	Barrels per Day.
BJIS	British Journal of International Studies.
BP	British Petroleum Company.
BPC	Basrah Petroleum Company.
BYBIL	British Year Book of International Law.
CEP	Compagnie Francaise des Petroles.
CIF	Cost, Insurance, Freight.
CIOP	Consortium of Iranian Oil Participants Ltd.
CIPEC	Conseil Intergouvermmental des Pays Exportateurs de Cuivre (Intergovernmental Council of Copper Exporting Countries).
CLJ	Cambridge Law Journal.
CLR	Commonwealth Law Reports.
CMLR	Common Market Law Review.
CPA	Cocoa Producers Alliance.
CVP	Corporation Venezolana del Petroleo.
DC (or FDC)	Federal District Court
Dutch/Shell	Royal Dutch/Shell Group of Companies.
FAO	Food and Agriculture Organization.
FOB	Free On Board.
GA	General Assembly (of the United Nations).
GAOR	United Nations General Assembly Official Records.
GATT	General Agreement on Tariffs and Trade.
GCC	Gulf Cooperation Council for Arab States.
Gulf	Gulf Oil Corporation.
Harvard ILJ	Harvard International Law Journal.
Harvard LR	Harvard Law Review.
Hunt	Hunt Oil Company.

IACO	Inter-Africa Coffee Organization.
IAEA	International Atomic Energy Agency.
IBA	International Bauxite Association.
IBRD	International Bank for Reconstruction and Development.
ICA (O)	International Coffee Organization.
ICAs	International Commodity Agreements.
ICCA(O)	International Cocoa Agreement (Organization).
ICJ	International Court of Justice.
ICJR	International Court of Justice Reports (of Judgements, Advisory Opinions and Orders).
ICLQ	International and Comparative Law Quarterly.
IEA	International Energy Agency.
IJIL	Indian Journal of International Law.
ILC	International Law Commission.
ILM	International Legal Materials.
ILO	International Labour Organization.
ILR	International Law Reports.
IMF	International Monetary Fund.
INOC	Iraq National Oil Company.
INRA(O)	International Natural Rubber Agreement (Organization).
IPAs	International Producers Associations.
IPC	Iraq Petroleum Company.
IPC	Integrated Programme for Commodities.
ISA(O)	International Sugar Agreement (Organization).
ITA(C)	International Tin Agreement (Council).
ITO	International Trade Organization.
JWTL	Journal of World Trade Law.
KNPC	Kuwait National Petroleum Company.
KOC	Kuwait Oil Company.
LAS	League of Arab State.
LDCs	Less Developed Countries (also called Developing Countries).
LNOC	Libyan National Oil Corporation.
LQR	Law Quarterly Review.
MEED	Middle East Economic Digest.
MEES	Middle East Economic Survey.
MEJ	Middle East Journal.
Mobil	Mobil Oil Corporation.
MPC	Mosul Petroleum Company.
NATO	North Atlantic Treaty Organization.
NIEO	New International Economic Order.
NILR	Netherlands International Law Review.
NIOC	National Iranian Oil Company.
NLJ	Netherlands Law Journal.
NNOC	Nigerian National Oil Company.
NOCs	National Oil Companies.
NY Times	New York Times.
OAPEC	Organization of Arab Petroleum Exporting Countries.

OAS	Organization of American States.
OAU	Organization of African Unity.
OECD	Organization for Economic Co-operation and Development.
OJEC	Official Journal of the European Community.
OJLN	Official Journal of the League of Nations.
OLADE	Organizasion Latino Americana De Energia (The Latin American Energy Organization).
OPEC Resolutions	OPEC Resolutions Adopted at OPEC Conferences (no date, loose leaf).
OPEC WB	OPEC Weekly Bulletin.
OPEC ARR	OPEC Annual Review and Record.
OPEC ASB	OPEC Annual Statistical Bulletin.
OSF	The OPEC Special Fund.
PCIJ	Permanent Court of International Justice.
PDVSA	Petroleos de Venezuela, S.A.
Pertamina	PN Pertambangan Minjak Nasional (Indonesia).
Petromin	General Petroleum and Mineral Organization (Saudi Arabia).
PIW	Petroleum Intelligence Weekly.
PN or PNZ	Partitioned Saudi-Arabia Kuwait Neutral Zone.
PPS	Petroleum Press Service (now Petroleum Economist).
QGPO	Qatar General Petroleum Organization.
Shell	Royal Dutch/Shell Group of Companies.
Socal	Standard Oil Company of California.
Sonatrach	Societe Nationale Pour la Recherche, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures (Algerie).
Texaco	Texaco Inc.
TPC	Turkish Petroleum Company.
UKMIL	United Kingdom Materials on International Law.
UKTS	United Kingdom Treaty Series.
UN	United Nations.
UNCITRAL	United Nations Commission on International Trade Law.
UNCTAD	United Nations Conference on Trade and Development.
UNDP	United Nations Development Programme.
UNESCO	United Nations Educational Scientific and Cultural Organization.
UNIDO	United Nations Industrial Development Organization.
UNRRA	United Nations Relief and Rehabilitation Agency
UNTS	United Nations Treaty Series.
UPEB	Union de Paises Exportadores del Banano (Union of Banana Exporting Countries).
VAJIL	Virginia Journal of International Law.
WHO	World Health Organization.
WLR	Weekly Law Reports.
Yale LJ	Yale Law Journal.
YBILC	Yearbook of the International Law Commission.
YUN	Yearbook of the United Nations.

Abstract

Since its foundation almost 40 years ago, in 1960, OPEC has been subjected to great criticism. Volumes of literature have been written on it – but no thorough critical and objective multi-dimensional analysis has yet been carried out to examine in depth its structure and functions as a basis for evaluating its role and its worth, both in the past and in the future. This work aims at correcting that omission. Thus this thesis seeks to define, examine and analyse the principles, rules, procedures, institutions and techniques constituting both the internal and the international law of OPEC and to then evaluate the performance of OPEC in the context of its objectives, as well as suggesting improvements and making recommendations for the future.

OPEC was brought into being exclusively by a group of developing oil-producing countries as an institutional response to the need which, at that particular stage in time, they all felt was necessary and indeed indispensable as regards international oil markets and their survival. Up until then these oil-producing countries had been mainly the passive resource-owning partners of the more aggressive and experienced oil-exploiting captains of industry of the developed world. In creating OPEC it was intended to redress this imbalance by helping to strengthen the bargaining power of the oil-producing countries, by ensuring fairness and equity in the availability of information as between themselves and the developed world with regard to market factors, thereby enabling the proper marketing and pricing of the valuable resources which were the main source of income of its Member Countries.

It is in this context that *Part One* of the thesis examines and analyses the general pre-history and overall background of OPEC from a variety of different perspectives including but not limited to such relevant areas as international conflicts over the distribution of wealth and power between producers and consumers in particular and also between the developing and developed countries in general. As William Blake once observed, 'Without contraries is no progression.'

Part Two of the thesis then proceeds to consider the legal foundations of OPEC which are to be found in the original OPEC Resolution of 1960 and in its subsequent OPEC Statute which defines the Organisation's aims and objectives, its internal structure, its decision-making processes, its financial resources and its dispute settlement procedures (see Appendices 1 and 2 for the original and current texts). *Part Three* of the thesis enlarges on this initial survey by examining OPEC's structure, composition organs and membership in greater detail.

Clearly an inherent aspect of OPEC's legal status is its standing *vis-a vis* the larger international community. Accordingly *Part Four* of the thesis considers this important dimension. The basis for the recognition of OPEC's legitimacy in International Law emanates *inter alia* from the decisions and resolutions of other international organisations which clearly accept OPEC as a *bona fide* international organisation. These include the UN General Assembly, the Group of Non-Aligned countries, and the Group of 77, all of which endorse and legitimise institutions such as and including OPEC, recognising their legal personality in International Law and accordingly their underlying institutional purposes and activities aimed at securing the economic emancipation of their members – a membership that is, which is constituted entirely of independent sovereign nation states – and thereby lending support to and confirming these nation states in their independent political status as equal partners of the more developed non-member countries who belong to the world community of nations.

Part Four also considers OPEC in the context of the internationally recognised principle of permanent sovereignty over natural resources. This principle confirms the inherent right of the Members of OPEC, and accordingly OPEC itself, to organise the production, marketing and pricing of their oil resources so as to benefit not only the consumer oil companies and interests of the ultimate consumer, but also to advance their own economic development and social well-being of their peoples.

Part Four also explores the proposition that although OPEC may not have been founded with the express contemplation of such international legal and economic milestones as the Havana Charter (November 1947/March 1948) and the General Agreement on Tariffs and Trade (GATT) in mind, it has in fact proved to be quite consistent with the International Commodity Agreements (ICAs) in more than one respect: firstly, because OPEC protects producers' interests within a framework similar to ICAs; secondly, because OPEC harmonises divergent and competing views; and thirdly, because OPEC facilitates negotiations with consumers rather than merely attempting to ignore their demands as much as possible. At the same time OPEC has four characteristics which differ from the principles of ICAs as envisaged by the Havana Charter, namely:

(i) OPEC does not accept as valid the concept that there is a mutuality of interests between producers and consumers, but rather admits the proposition that it is often impossible to implement schemes which safeguard simultaneously the interests of both producers and consumers. Producers will always want to be paid more. Consumers will always want to pay less. A balance between these two tendencies has to be found and agreed upon, and then any such agreement has to be honoured.

(ii) OPEC operates on the basis that there is no substantive principle of international law which requires unconditionally producers to make supplies available to international or transnational oil companies on terms dictated by them.

(iii) OPEC rejects the view that the international oil market is governed simply by the market forces of demand and supply; rather it perceives that oil prices in this market have always been traditionally dominated and determined by the powerful international oil companies and other organised buyers.

(iv) Thus OPEC recognises that its real opponents in the international oil market arena are not the governments of consuming countries, but rather the international and / or transnational oil companies – the traditionally few captains of the international oil industry working together with a handful of organised buyers.

It is this underlying situation and tension between interests which have been and will continue to be the *raison d'être* of OPEC, which came into being because of the shared need for co-operation and solidarity between all like-minded oil-producing countries, whose common interest was, and remains, their continued survival on an economically viable basis by means of the sensible utilisation of their unreplenishable and (in that sense) relatively scarce and finite natural resources, so as to secure optimum benefit for both their own populations and eventually through rationalisation techniques the world at large.

It has been regrettable to observe that many of the conflicts and wars during the present century have arisen out of the desire to gain at least control but preferably ownership of the important oil resources which are to be found in strategic areas of the world – notably in the Middle East, but also, for example, in Checheniya, in southern Sudan, in Algeria, in Nigeria and in the Falklands. Control through conflict has never been the policy or practice of OPEC or its members, who have always sought success by means of negotiation and agreement, and if this example can be followed in the future by the more greedy and rapacious forces in the world, then perhaps mankind as a whole will be able to enjoy the benefits of oil without having to be maimed and even killed either for it or by means of it in the process.

Bearing the above in mind, *Parts Five* and *Six* seek to examine OPEC's track record since its inception almost forty years ago. *Part Five* of the thesis examines the decision-making processes and financial contributions in OPEC – for decisions determine both policy and practice, while size of budget affects extent of operations and influence, while *Part Six* then focuses on OPEC's actual policies and resulting activities – and their legal significance. OPEC has used a number of co-ordinating tech-

niques, ranging from the general collection and publication of information, to the more specific and complex co-ordination and implementation of conservation, production and pricing policies, taxation and the imperative to maintain recommended prices at a stable level. Given the number and variety of external influences beyond OPEC's control, this has not always been an easy task.

Finally *Part Seven* of the thesis is concerned with a general evaluation of the main features and relative failures and successes of OPEC up to now, as well as with a conclusion as to its future role, including – in order to enhance that role – recommendations as to how OPEC's practices and policy could perhaps be improved in the years to come. Up to now, the operations of OPEC have not been able to change significantly the fundamental relationships between the OPEC Members and the buyers and users or consumers of oil. This lack of success may be attributed not only to internal problems of co-ordination and lack of funding – which are capable of being improved – but, more importantly, to the domination of the international marketing and pricing of oil by institutions over which OPEC has little or no control or even influence.

Whatever the future holds, it is the general conclusion of this thesis that the creation of OPEC was not only inevitable, but also that the Organisation has since its inception contributed towards supporting and ensuring world stability – and that it will continue to do so for the forseeable future, that is, for as long as the oil-producers have oil resources which are needed by the oil-consumers.

Introductory Note

Firstly, it would help to begin by clarifying who the current Member Countries of OPEC – the Organisation of Petroleum Exporting Countries – are, since often people are either unaware of exactly which countries OPEC represents, or else they confuse OPEC with OAPEC (the Organisation of Arab Petroleum Exporting Countries), especially in connection with the key events which affected the oil industry during 1973.

It should therefore be noted that having begun with five Founder Members in 1960 – namely Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, OPEC subsequently admitted eight New Members – namely Qatar (1961), Libya (1962), Indonesia (1962), Abu Dhabi (1967), Algeria (1969), Nigeria (1971), Ecuador (1973), Gabon (1975), and the United Arab Emirates (January 1974, through conveyance of the membership held by Abu Dhabi), making a total of thirteen Full Members.

During the course of writing this thesis, however, the total of OPEC Member Countries has been reduced to eleven: Ecuador terminated its membership in 1995, and Gabon's membership has been suspended since 1996, probably because it cannot afford to pay its membership subscription. It should therefore be appreciated that because of these fluctuations in the membership of OPEC at various stages in its existence, the thesis refers to some countries either as members or as non-members of OPEC, depending on which particular stage of the evolution of OPEC is under consideration.

The *Abstract* which appears at pp.xi to xiv above provides in itself a concise *Introduction* to this thesis. However it is appropriate to make a few more general statements at this point in order to clarify the focus and extent of this work, and to introduce the reader to Part One.

The purpose of the introductory section of the thesis, *Part One*, is to highlight the various inter-relationships between international developments in different areas, namely those of politics and economics, and commodities and oil. The aim of this brief historical analysis is to assist in understanding the salient features of organisations composed only of producers, such as OPEC, the subject of this thesis. Thus *Part One* examines the historical roots and conditions which gave rise to the creation of OPEC as an important economic organisation which is concerned primarily with the oil industry, but whose influence inevitably extends beyond it.

Historical conceptions are partially to be blamed for the mislabelling of OPEC as *inter alia* a 'cartel', a 'threat to the peace', or an 'international conference'. These are terms borrowed either from a history which pre-dates OPEC, or from continuing rela-

tionships with which OPEC has no connection. An examination of these misplaced conceptions and relationships will help also in achieving a broader understanding of OPEC in the context of the conflicts of interests between the developed and underdeveloped countries. Such an understanding has been vital for international lawyers since the earliest developments in international law – and this requirement will continue unless and until economic equality and economic independence (as opposed to their political counterparts) between nations is achieved.

The appearance of OPEC as an 'influential' element in the conduct of international economic relations in general and in the international oil industry in particular, with its ability to affect, decisively, the structure of advanced industrial economies, must be considered an important development in modern international institutional relations. In this context OPEC may be viewed as having played an effective part in the de-structuring of the traditional international oil industry. OPEC has also to a certain but lesser extent had some impact on the traditional international economic order (which involved *inter alia* a major transfer of natural resources to the wealthy countries of the north from the indigent nations of the south), by its helping to create, by means of the wealth generated by oil production and revenues, a contra-flow in the opposite direction of finished products and services from the developed countries to the developing countries. This trend has emphasised the inter-dependability which exists between the 'haves' and the 'have-nots' in the world.

Thus the significance of the role of OPEC can also be appreciated in the context of the expectations of its Member Countries who have relied principally on the production of oil to generate sufficient external income to finance their own national, economic and social development. This is also relevant as regards perceptions of the behaviour of oil trading nations and of their success in correcting allocative inequities in the utilisation of the material wealth generated by the development of national resources. However it must be appreciated that the expectations, opinions and objectives of the OPEC Member Countries regarding the structure and co-operation of the international petroleum industry constitute merely one aspect of the underdeveloped countries' total vision of the nature of the functioning and impact of the post-European post-Gulf war international economic system.

In order to understand the present and future role of OPEC and its significance within the New International Economic Order, a brief examination of the early development of the international economic system, and of recent changes which have occurred in the system, is vital – and this will be included in the subject matter contained in the pages which follow:

Part 1
General Overview and Historical Background

1.1 The International Economic and Political Climate in the 19th and 20th Centuries prior to the First World War

The developing countries (including the OPEC member countries) were, before they were granted independence, either colonies or economic and political dependencies of one of the industrially developed countries of the West. Any policy measures taken in their names were mainly aimed at protecting the interests of the colonial or metropolitan powers. These powers monopolised their colonies and dependencies as much as possible for their own economic benefit, as regards both exports and imports.

Before the outbreak of the First World War, there existed a much more closely integrated world community than today, based more on political than economic factors. The world economy was an interdependent system. Due to the very close relationships between national markets, that is the markets of developed nations and their dependencies, the world market was virtually one unit. The essential conditions of economic integration were practically fulfilled to such an extent that the difference between regional and international interchange was not distinct. [1]

The integrated structure of the world economy during this period was also characterised by the free movement of the mobile factors of production, labour and capital. Such movements were not hampered by national frontiers, exchange controls or migration restrictions. In addition to the free movement of capital markets and forces, the world's peace and security were salient features of the pre-war world economy. In short it can be said that the 19th century saw a gradual and almost uninterrupted process of international economic expansion and integration based on the theories of International Comparative Advantage and the Free Trade Doctrine. However, such theories were based on the highly integrated economy of the old world community. If applied to current international problems they prove to be inadequate and unrealistic.[2]

The Principle of Comparative Advantage was known as Ricardian Theory. Ricardo argued that nations may well specialise in the production of those goods in which they have greatest advantage.[3] This theory was later refined by John Stuart Mill around the middle of the 19th century. According to Mill, a country tends to export those products in the production of which it has the greatest advantage or the least comparative disad-

vantage, and to import those products in the production of which it has the least advantage or the greatest comparative disadvantage. This principle is also referred to as the Principle of Comparative Costs.[4]

The effect of the First World War on the world community was cataclysmic and far-reaching. Although it was principally a European phenomenon, the European colonial powers involved in the war relied heavily on their colonies and dependencies to supply both raw materials and manpower. The significance of ensuring an adequate oil supply also emerged with the technological advances which were made as a result of the war. Clearly no war from then on could be fought or won without oil.

As regards the pattern of world trade, however, there was after the end of the First World War an almost complete renewal of the pre-war scenario – until the consequences of the Second World War ensured that it would never be re-created again.

1.2 Changes Following the Second World War

Since the end of the Second World War, major changes have occurred which have resulted in the disintegration and re-shaping of the former world community. This has been characterised particularly by the collapse of the political Western colonial system, in which international law was first shaped and founded, accompanied by the emergence of new economic control (through debt) systems. In fact the Western world has continued to develop international law, 'the law of civilised nations', in the form, for example, of the Charter of the United Nations, as well as by means of numerous international treaties, covenants and protocols.

The dismantling of colonial systems and the granting of independence to a large number of people and nations have lead to a corresponding increase in the number of distinct world community entities and members. The United Nations, which in 1945 was originally inaugurated with 51 founding member states, now has a membership in excess of 184 states today.

The end of political colonisation was regarded as political 'independence' by the underdeveloped and economically backward nations. The economic effects of political independence were direct. As regards the economies of former colonial powers, the surrender of former colonial lands involved grave threats to old investments. To the newly independent nations, economic and social independence were regarded as indispensable components of political sovereignty. The political nationalism that led to independence took on the form of economic nationalism after independence was achieved. The new nations were no longer inhibited from putting into effect economic policies

conceived to be in the interests of their own national development, although they were not always aware that in so doing they were being colonised by the financial system.

Long before the newly independent states had started demanding changes in the world economic order, 44 members of the developed world community had already during the last year of the Second World War assembled at Bretton Woods, in 1944, to consider and define the institutional framework which would be required for international economic co-operation once the war had been concluded.[5] These deliberations led to the establishment of the International Monetary Fund (the IMF) and the International Bank for Reconstruction and Development (the IBRD), also known as the World Bank. It was also the intention to set up an International Trade Organisation (the ITO), but this could not be brought about. As a partial substitute the General Agreement on Traffic and Trade (GATT) was established as an interim arrangement and later became the main instrument for regulating post-war international commerce.[6]

Following the implementation of the Bretton Woods agreements, the developed countries concluded a large number of additional agreements which were intended to establish the comprehensive regulation of international trade. These arrangements can be summarised mainly as follows:

1. The Havana Charter which resulted from the UN Conference on Trade and Employment was established in Havana in November 1947/March 1948.
2. The Chicago Convention (1944) which established the framework for regulating competition in international commercial air transport.
3. The Washington Agreement (1955) which established the framework for regulating International Finance Cooperation.
4. The International Telecommunication Convention (1961) which established the International Communications Union.
5. The Washington Convention (1947) which established the World Metrological Organisation.
6. The United Nations Convention (1948) which established the Intergovernmental Maritime Consultative Organisation.
7. The General Agreement on Tariffs and Trade (1948).
8. The Geneva Consortium on the Law of the Sea (1958).
9. The General Assembly Declaration of Legal Principles Governing Activities of States in the Exploration and use of Outer Space (1963).

10. The International Convention for the Protection of Industrial Property (1958).

The purpose of the above arrangements and agreements has been described as follows:

> "The fundamental purpose of the international economic framework established at the end of the Second World War was to encourage a progressive movement toward a multilateral system of trade and payments. The dominant theme reflected a determination to avoid both a return to the discriminatory trade and currency practices of the 1930s and recourse to competitive exchange rate devaluations."[7]

The new arrangements have also been criticised:

> "Distributions of power in these institutions were based on the significance of national economic power in the global economy, and such a basis will determine the orientation of their policies in favour of their own economies."[8]

1.3 The Emergence of the New International Economic Order

As a result of the developments which had taken place after the Second World War, the need for change in the international economic system became widely recognised and resulted in demands being made especially by the underdeveloped countries. Among the chief developments were the appearance of new economically dependent states, the collapse of the pre-war international monetary system (which coincided with the abandonment of the Gold Standard), the growing dependence of advanced industrial societies on raw materials from developing countries and the increasing importance in general of resource politics.[9]

Such factors lead to a growing conviction among the developing countries that modification of the international economic order was both necessary and inevitable. The changes had to "deal with structural modifications of the institutional framework that operates to stunt new national economic development." [10]

It is not the purpose of the present analysis or indeed of the thesis to provide a detailed study of the formation of the New International Economic Order. For the purposes of the thesis it will be sufficient to list briefly the main declarations, resolutions, conferences and agreements which together constitute the main sources for the principles and foundations of the New International Economic Order.

The following are the main instruments which constitute these sources:

1. The League of Nations Statute and the UN Charter:

According to some authors the shaping of the principles of a new international economic order first started when the UN Charter adapted the principle of Technical Assistance and the financing of economic development during the first and second decades after the UN was formed. Article 22 of the League of Nations Statute and Article 73 of the UN Charter are seen as first steps in the direction of the international co-ordination of activities for economic development.[11]

According to this view:

> "It is to the UN and its agencies that the international community is primarily indebted for any progress in what has come to be called, from the nineteen seventies onward, The New International Economic Order."[12]

The early League of Nations and UN activities in spheres such as Technical Assistance, avoidance of preferential treatment, self-determination, non-interference, non-discrimination, and finally, the principle of economic regulation by means of the banking system are regarded by some as marking the beginning of this evolutionary process. These principles which characterised and initiated the new international economic order were then embodied into subsequent resolutions of the Assembly as well as being adopted by successive conferences of the non-aligned countries.[13]

2. The First United Nations Conference on Trade and Development:

This was held in Geneva in 1964 and adopted its final Act on the 15th June, recommending fifteen General Principles to govern International Trade Resolutions and Trade Policies conducive to development. These fifteen general principles were voted for by the developing countries. The United States of America (the USA) voted in favour of only four of the fifteen UNCTAD general principles. The USA and twenty other western countries abstained from voting on the fourteenth principle which stipulated total decolonisation.[14]

3. Four Regional Documents:

During the period separating UNCTAD I and UNCTAD II, four regional documents were drawn up:

1. The Declaration of the Ministerial Meeting of the Developing Countries belonging to the Economic Commission for Asia and the Far-East.[15]
2. The Charter of Tequenduma adopted by the Latin American Countries belonging to CECLA.[16]

3. The African Declaration signed in Algiers by the participants of the Ministerial Meeting preparatory to UNCTAD II.[17]
4. The Charter of Algiers signed by the representatives of the governments of the 'Group of 77' on October 24th, 1967.[18]

The above four documents dealt mainly with questions which later became the subject matter of UNCTAD II and UNCTAD III.

4. UNCTAD II:

This was held in New Delhi in 1968 and adopted nine principles which concerned (1) the right to develop; (2) sovereignty over natural resources; (3) generalised preferential treatment; (4) the right to technological information; (5) participation in decisions affecting social and economic development; (6) shares in 'invisible operations'; (7) exploitation of marine resources within and beyond the limits of national jurisdictions; (8) recognition of the links between human environment and development; (9) recognition of the impact on the developing countries of the balance of payments problems of the developed countries. [19]

The above mentioned principles, as with the case of the principles of UNCTAD I, were not accepted by the developed countries. However, these principles did have an enormous impact on the preparatory works for the Charter of Economic Rights and Duties of States which commenced at the meeting in Lima. The economic gap between the developing and developed countries had failed to narrow significantly and their economic situation had worsened. This steadily worsening situation had increasingly led to attempts by the developing countries to obtain a legally binding commitment by the developed countries to certain economic rights and duties favouring the Third World economies.

The vaguely defined 'principles' were very open to counter-measures by the developed countries since they embodied desires unsupported by prior negotiations with the other groups of countries which they sought to affect. As with the UNCTAD I principles, there was no real structuring or hierarchisation of the importance or feasibility of the proposed regulations. Despite the ineffectuality of the proposals and the lack of wide-spread recognition, they were still discussed and considered by UNCTAD III when it met and proposed the Charter of Economic Rights and Duties of States. [20]

5. UNCTAD III:

This was held in Santiago in 1972 and witnessed the further polarisation of the positions taken by the developed (and planned economy) countries and by the under-

developed countries. This conference also saw the disintegration of the co-operation mode of procedure which had been used at UNCTAD I in Geneva, where the different countries, despite their often conflicting interests, had together worked through all the principles adopted. The representatives of the developed countries omitted mentioning the Lima principles at all and were somewhat surprised at the raising of these principles by the developing countries as a matter for deliberation. This was because the developed countries were confident that after the virtual rejection of these principles in New Delhi, and after repeated failures to involve UNCITRAL in them, the developing countries would have received the message that the principles had no future. [21]

Thus it was to their chagrin that the President of Mexico utilised his formal speech to the Conference to propose, on behalf of the developing countries, the formation of a charter of economic rights and duties of states. [22] This proposal was supported by the 'Group of 77' who undertook to begin work on such a charter. The purpose it was to serve was to replace the Geneva principles which were no longer seen as strong enough by the developing countries, and to assert their economic rights firmly in an international legal document to which they could refer in defence of their rights.

The western states gave nominal support to the idea of the charter, but nothing more than that. The votes polled on the UNCTAD III principles were 72 in favour, 16 against and 18 abstentions – the worst results in terms of support that the developing countries had experienced since the UNCTAD was first set up. This statement of principles, which had been insufficiently prepared and were of limited practical use, gained nothing new for the developing countries, who in their hurry to secure spectacular results had lost the co-operation of the developed countries.

6. The 6th Special Session of the UN General Assembly:

The confrontational mood which had characterised the proceedings of UNCTAD III in Santiago persisted, despite the conciliatory efforts made by all groups in the General Assembly. The developing nations continued to act unilaterally. Thus the Georgetown Declaration adopted by the Non-Aligned Countries in August 1972 condemned the pressure exerted on them by the developed countries and gave its full support to governments carrying out nationalisation policies. It disapproved of those countries who tended to monopolise the decision–making in matters of universal concern, and recorded its view that up to now international law had been in the field of economic relations biased in favour of the developed countries. It noted that the UNO and its organs were ignored in the fundamental decision making process whenever this was expedient. The Programme of Action which accompanied the Declaration stressed self-

reliance and the widespread use of producers and exporters' associations to protect their interests when contracting with developed countries. [23]

This spirit of co-operation and self-reliance manifested again at the meeting of the Group of 77 in September 1973 in Algiers. Its 'Economic Declaration' noted the 'failure' of the First UN Development Decade, the inadequate implementation of the principles proposed by UNCTAD III, and its continuing disappointment with the UN Development Programme. It called on the non-aligned states to void international agreements that had been forced upon them by the stronger developed countries, in order to secure "a reversal" of this negotiating pattern and the formation of "a new international economic order which would be in alignment with the requirements of true democracy."

A declaration of Islamic countries in Lahore in 1974 also cited, in the same vein, the exploitation of the poor and warned against attempts by developed countries to 'divide and rule' the developing countries in order to exploit their natural resources.

It was in this climate of opinion that the 6th Special Session of the UN General Assembly convened, in New York. Two major resolutions were adopted – the Declaration on the Establishment of a New International Economic Order [24] and the Programme of Action on the establishment of a New International Order, as well as some documents relating to raw materials. [25] The Chairman of the 'Group of 77' gave a weighty speech at the Session, emphasising the need for the solidarity of developing countries to be given expression by the institution of procedures providing for the re-structuring of raw materials exporting practices, based on the OPEC Model. He noted that the criticism by the developed countries of OPEC showed that they did not yet acknowledge the right of the owners of raw materials to set their own prices, and therefore that they did not yet really acknowledge the principle of sovereignty over natural resources.[26]

The general mood in the 6th Special Session was one more conducive to increasing the polarisation of the whole international process than to problem solving in specific areas. Indeed, the US representative said that from his country's point of view, the Programme of Action contained so many unacceptable propositions that to discuss these in a short address was quite impossible. Most of the developed countries shared the American view, although as regards detailed responses these varied from the outright rejection of (most of) the Declaration and of the Programme of Action (the United States) to the acceptance of all other matters that had not met with clear opposition. However, the western nations were unanimous in their rejection of the proposed version of point 4(e) of the Declaration regarding sovereignty over natural resources – and almost as unanimous in their not supporting the composition postulate [point 4(f)]. [27]

Despite the obvious barriers to the establishment of an accepted international legal system for the governance of international economic relations which were inherent in these fundamental disagreements, it has nevertheless proved to be the case that the developed countries have withdrawn their opposition to the idea of such regulation in principle. At Santiago, for example, the developed nations relied on public international law when insisting that the provision of indemnity for nationalisation should be governed by UN Resolution 1803 (xvii).

Thus it can be argued that the Group of 77 succeeded in bringing about a watershed change in the conceptual approach of the developed countries as regards the role of international institutions in the regulation of international economic affairs. This was to a great extent the result of the resolution consensus advanced by the Group 77. Thus the point was reached where the developed countries saw that it was ultimately in everyone's interests for the international economy to be regulated by law. It could also be argued that the developing countries ended up following the course of action which had been prepared in advance for them, a course of action which ensured their continued reliance on the international banking system and obedience dictated by debt.

The measures set out in the instruments mentioned above cover wide and various international economic relations. A detailed examination of the content of these measures is beyond the immediate scope of this work. However, a brief summary is needed since:

1. They provide us with an insight as to what the perception of the developing countries is regarding the traditional international economic system.
2. They provide us with an indication of the developing countries' view of what is meant by the New International Economic Order.

By understanding the perceptions and the views of the developing countries, it will enable us to have a broader and deeper understanding of OPEC itself and of its policies within this international context.

In summary, the measures set out in the instruments mentioned above include:

(a) With regard to raw materials and primary commodities, developing countries should be encouraged to adopt measures for the recovery, exploitation, development, marketing and distribution of their national natural resources – and to link the prices of exports of developing countries with the prices of their imports from developed countries.[28] Also such measures should facilitate the functions and further the aims of producers' associations, including joint marketing arrangements, the improvement of exports generated income

and terms of trade of their members, and sustained growth of the world economy.

(b) With regard to the field of transportation, an increasing and equitable participation of developing countries in world shipping should be promoted.

(c) With regard to the field of industrialisation, all efforts should be made by the international community to encourage the industrialisation of the developing countries.

(d) With regard to the international monetary system, all efforts should be made by the international community to improve the system of compensatory financing of export revenue fluctuations through the enlargement and liberalisation of the existing facility. Efforts should also be made to improve the financial ability of the fund so as to be able to assist directly the international buffer stocks of primary products in order to enable developing countries to make more effective use of them.

(e) With regard to the field of insurance, all efforts should be made to minimise the cost of insurance and re-insurance for developing countries – with the establishment, as appropriate, of institutions at a national or regional level towards this end.

(f) With regard to the transfer of technology, all efforts should be made to formulate an international code of conduct for this transfer corresponding to the needs and conditions prevalent in developing countries; to give them access on improved terms to modern technology; and to adapt that technology, as appropriate, to the specific economic, social, and ecological conditions and to the varying stages of development of the developing countries.

(g) With regard to international trade, a number of urgent measures were contemplated to finance the development of developing countries and to meet the balance of payment rises in the developing world. Countries should be encouraged to adopt measures to promote the expansion and diversification of the production capacity of developing countries; to improve access to markets in developed, consuming countries through the removal of tariff and non-tariff barriers within the framework of multinational trade negotiations, and to eliminate restrictive business practices; to encourage the establishment of commodity agreements and an integrated programme for commodities of export interest to developing countries.[29] In this connection all efforts should be made to establish all forms of international market arrangements to secure remunerative and equitable prices for commodities of export inter-

est to developing countries. Also long-term and medium term contracts should be promoted. [30]

(h) With regard to primary commodities, the measures adopted called for the promotion of the processing of raw material in developing countries: developing countries should be encouraged to be able to transport, process, market and distribute their primary commodities products. They should be encouraged to be able to produce, market and distribute their own finished manufactured goods. They should also be able to manage exchange institutions for their trade and finally work towards the establishment of general principles of pricing policies for primary commodities, which should be fair, equitable and remunerative ones. [31]

The above principles are varied in nature and cover a wide scope of relations affecting the international community. If they are implemented, they will eventually lead to a significant change in the structure of the economic relations of the world in general – and in the international commodities markets in particular.

1.4 International Commodity Agreements

Intervention in the international trade in commodities is not new. Examples of it can be found as a far back as early 1902, when the Brussels Sugar Convention was signed by all the major sugar-producing countries, except Russia and Argentina. The agreement obliged members to refrain from giving any direct subsidy to the production and export of sugar. [32] The first concrete attempt to influence commodity prices was the Brazilian Coffee Valorisation Scheme of 1907, in which the state government of Sao Paulo purchased large quantities of coffee from local farmers and stored it for future sale. [33]

The development of the phenomenon of International Commodity Agreements (ICAs) will be discussed below in order to examine the inter-relationship and transition between past and current arrangements. Such an analysis will in turn assist in the examination of OPEC as an international producer association.

1.4.1 Commodity Agreements before the Second World War

Between the beginning of the 20th century and the Second World War a significant number of commodity agreements were concluded, including:

1. The International Rubber Agreement 1934:

As a result of the First World War, prices in the rubber market dropped sharply and the British Government decided to intervene to halt the downward trend. The Stevenson

Committee was set up for this purpose . The Committee recommended the reduction of the production and export of rubber. This policy succeeded in reducing the rubber supply by forty per cent and by 1925 rubber prices had more than doubled.[34] This angered the consumers who protested against the policy in 1925 and 1926. As a result the policy was dropped in November 1928.

The abandonment of the policy caused a sharp decrease in rubber prices between 1929 and 1931. In an attempt not to repeat the same pattern, the United Kingdom, Indo-China and the Netherlands chose a different avenue. They concluded a Rubber Agreement in 1934.[35] This was a more subtle arrangement, based on production control and export quotas. Article 15 of this Agreement established a Committee to allocate exports. The Committee was empowered to penalise those parties who exceeded their quotas.[36]

2. The First International Sugar Agreement, 1937:

In 1931, Mr Chadbourne who represented Cuba called for a conference of the leading sugar producers. He proposed the use of export quotas to regulate supplies by private sugar producers in Java, Peru and European producing countries. The scheme was regarded with suspicion and hostility and was criticised by consumers as an attempt to secure monopolistic profits through the imposition of production and export quotas.

The scheme failed to prevent the decline of prices, mainly because the parties controlled only a small fraction of the total world supply. Accordingly therefore, the governments of the main sugar producing countries (and of the main sugar consuming countries) concluded the First International Sugar Agreement in 1937, with the clear objective of ensuring national marketing through the use of export quotas to reduce sugar supplies.[37]

3. The First International Tin Agreement, 1931:

Between the years of 1921 and 1931 a large number of schemes and arrangements were made to try and slow falling prices.[38] The governments of Malaya, the Netherlands, the East Indies, Nigeria and Bolivia concluded the first International Tin Agreement in March 1931. It utilised export quotas as its main regulatory tool. By restricting supply, prices in 1933 rose to twice their 1932 level. Because of its manifest success, the Agreement was re-negotiated in 1933 and, when the second Agreement came into force in 1934, it was also entered into by French Indo-China, the Belgian Congo and the United Kingdom. This brought roughly 90 per cent of the total world production

under the Agreement. Export quotas were gradually relaxed, but the export restriction scheme nevertheless succeeded in keeping tin prices above what they would otherwise have been. The appreciation and confidence of member governments in the Agreement was evidenced by their replacing it with updated Agreements in 1937 and 1942.

4. The Copper Exporters Association:

The Copper Exporters Association was established by the major United States copper companies, who controlled 80 per cent of total world production. On the collapse of the Association the same companies established the Copper Exporters Corporation in 1926. This organisation was able to raise copper prices by over 60 per cent, until a buyers' strike in 1929 forced prices down.[39]

1.4.2 Further Developments in International Commodity Trade

As part of the rebuilding of the international economic regime after the First World War, a number of international conferences were held, agreements made and actions taken in the field of international commodity trade. Examination of these initiatives indicates that most governments had accepted the need to intervene to prevent or reduce price instability. Their second objective was to make available regular supplies at fair prices which assured producers of adequate economic returns for their exports and which were not seen by consumers as exorbitant.

Between the years 1927 and 1943, three important conferences were held to discuss the international economic system in general, including the international commodity trade:

1. The World Economic Conference:

This was held in 1927.[40] This Conference recognised the need to devise international commodity arrangements as an integral part of international economic strategy.

2. The London Monetary and Economic Conference:

This was held in 1933. The conference recommended the co-ordination of the production and marketing of commodities, to enhance international prosperity. The key points were:

1. The commodities involved must be of great significance in world trade and experiencing problems of over-production.
2. Control schemes must be fair to both producers and consumers and should be designed in co-operation with consumers so as to ensure regular supplies at fair and stable prices.

3. Control schemes must ensure co-operation among all major producing countries, including non-exporters.

The conference agreed that in order to ensure world prosperity, it was essential to increase the purchasing power of producers to a reasonable level – an idea which bears a close similarity to the present day concept of inter-dependence. The conference also clearly recognised the necessity of governmental involvement in commodity schemes, especially in ensuring compliance with the terms of the agreements.

The next comprehensive review of international commodity trade arrangements was undertaken by the League of Nations Committee for the Study of the Problem of Raw Materials, which issued a report in 1937. The Committee recognised that the chief problems were overproduction and falls in commodity prices to uneconomic levels. The Committee called for fair and equitable price levels and the reduction of stocks.[41] The Committee reaffirmed the 1933 Conference call for the restoration of the purchasing power of producers with a view to increasing their consumption of imported manufactured goods, and enhancing world trade in general. The Committee also reaffirmed the importance of promoting the long term interests of producers, rather than emphasising short term profit motives.

3. The United Nations Conference on Food and Agriculture:

This was held at Hot Springs, Virginia in 1943, and recommended the creation of international commodity agreements.[42] The Conference recognised the need for effective representation of both producers and consumers and for price levels fair to both. It recommended the establishment of an international body to study the feasibility and desirability of such arrangements.

The above examination reveals the crystallisation of a set of coherent principles regarding commodity arrangements, later to influence international regulation of commodity trade. One may summarise these principles as follows:

1. Consumers should be represented and 'producers only' arrangements rejected as a matter of policy.
2. The interests of both producers and consumers would be better served if they worked together to promote their common interests.
3. There is a need for intervention in international commodity trade to reduce price instability and make regular supplies available at fair prices, but intervention should be seen as a solution for the short term. Delegates at all the major conferences mentioned above, combined against interference in the allocative functions of the market system. Even J.M. Keynes, who in his

memorandum [43] of 1942 to the UK treasury on commodity control had denounced the 'orthodoxy of free trade', nonetheless suggested that market forces be allowed to work undisturbed save in exceptional circumstances. Thus international commodity agreements were not thought of as permanent arrangements.

4. 'Laisser-Faire' principles should govern the regulation of international commodity trade.
5. Three regulatory schemes could be used for intervention in commodity markets: production controls, export quotas and buffer stock schemes.

1.4.3 Developments within the United Nations Organisation relating to International Commodity Trade

As part of the post-Second World War reconstruction of the world economy, the United Nations held a number of conferences and adopted various arrangements relating to international commodity trade, including the following:

1. The Havana Charter:

The United Nations Conference on Trade and Employment was convened in Havana from November 1947 to March 1948. The general aim of this conference was the expansion of international trade on a multilateral non-discriminatory basis with a view to inducing peaceful and friendly relations between states. [44] The Conference produced the 'Havana Charter' recommending the creation of an International Trade Organisation (ITO).

The Charter was signed by 53 countries but ratified only by Liberia and Australia. It was rejected by the US Congress, which thereby deprived it of any practical relevance, since the United States was the leading economic power. [45] Although the Havana Charter was not ratified, the sixth chapter dealing with inter-governmental commodity agreements was adopted by the UN Economic and Social Council (ECOSOC) in a serious of resolutions. ECOSOC Resolution 30(IV) of the 28th March, 1947 recommended that:

> "Pending the establishment of the International Trade Organisation, members of the United Nations adopt as a general guide in intergovernmental consultation or action with regard to commodity problems the principles laid down in Chapter VI of the Havana Charter". [46]

Thus Chapter VI of the Havana Charter has had an exhortatory effect. Notwithstanding its non-binding nature it has acquired the status of respected authority as a

general guide for ICAs; it is generally accepted as the core of the law for ICAs;[47] and it has been endorsed by GATT.

Article 57(c) of the Charter defines the central objectives of ICAs as the prevention or moderation of price instability and the availability of adequate supplies at prices that are fair to consumers and remunerative to producers. The Charter also provides for consumers and producers to be equally represented.

Article 62 of the Charter states that ICAs are to be resorted to only where there has been a finding of an actual or potential burdensome surplus or widespread unemployment. In the absence of these conditions, competitive market forces should be allowed to operate without any intervention.[48]

On subjecting the Chapter VI Havana Charter provisions to close scrutiny, it becomes evident that those who framed the Charter were not interested in directly sanctioning interventionist policies. The Charter prescribed the adoption of interventionist policies only in certain circumstances, namely when there is a burdensome surplus or widespread unemployment. The latter condition has proved irrelevant as far as ICAs are concerned. No ICA has been negotiated or operated for the sake of reducing widespread unemployment.

2. The General Agreement on Tariffs and Trade (GATT) and the Special Agreement on Commodity Arrangements (SACA):

In the post-Second World War world, the General Agreement on Tariffs and Trade (GATT) was intended to play the premier role in regulating international trade, within the framework of the ITO. With the failure of the ITO proposal, however, the GATT began to evolve as a separate phenomenon. As a multilateral agreement, GATT provides a legal and institutional framework for regulating and facilitating international trade by removing obstacles which impede it. By its very nature, therefore, GATT is more applicable to manufactured goods than to primary commodities, since trade in the latter is characterised by interventions by government.[49]

GATT (sometimes irreverently referred to as the General Agreement to Talk and Talk!) never formally adopted a comprehensive legal framework for ICAs. Thus, a large section of international trade remained virtually unregulated. The contracting parties recognised this and accordingly agreed to the draft agreement known as the Special Agreement on Commodity Arrangements (SACA).[50] This Agreement provided that in the event of competitive market forces being unable to bring about an equilibrium between the production and consumption of commodities, it was the obligation of the contracting parties to:

1. Achieve a reasonable degree of stability on the basis of prices that are fair to consumers and provide a reasonable return to producers.
2. Prevent shortages in world supplies, or the burdensome accumulation of stock.
3. Accomplish the equitable distribution of a commodity in short supply.
4. Direct production to places where world market requirements can be satisfied in the most effective and economic manner.

The United States refused to join SACA and this discouraged many contracting parties from doing so,[51] while other contracting parties feared that free trade as guaranteed by GATT would be jeopardised if the regulation of commodity trade resulted in quantitative restrictions.[52]

The failure directly to ratify Chapter VI of the Havana Charter or to implement SACA has meant that there are no specific commitments on ICAs. Thus the legal obligations of contracting parties regarding ICAs are far from clear.[53]

3. The United Nations Conference on Trade and Development (UNCTAD):

The first UN Conference on Trade and Development (UNCTAD I) took place in Geneva from 23 March to 16 June 1964. In December 1964, the UN General Assembly adopted Resolution 1995 (XIX) by which UNCTAD was made a permanent organ of the General Assembly.

Although UNCTAD I dealt with the question of international trade and development in general,[54] international commodity trade was identified as an important instrument for promoting the economic development of developing countries:

> "as stimulating a dynamic and steady growth and ensuring reasonable predictability of the real export earnings of developing countries so as to provide them with expanding resources for their economic and social development, while taking into account the interests of consumers ... through remunerative, equitable and stable prices for primary commodities having due regard to their import purchasing power, assured satisfactory access and increased imports and consumption, as well as co-ordination of production and marketing policies".[55]

Despite the fact that most of the ideas cited in the above provision originated from the pre-1945 era, UNCTAD I can be seen as a step forward in the development of International Commodity Agreements (ICAs), and in the general recognition of the importance of International Producers Associations (IPAs).

Firstly, UNCTAD I accepted the mutuality of interest concept underlying ICAs,

but quite significantly recognised IPAs as useful economic organisations which could help producers defend their interests. In this connection the final Act of UNCTAD I recommended:

> "That international organisations set up by the developing countries which are the principal exporters of non-renewable natural products be recognised and encouraged to enable them to defend their interests". [56]

This recognition of IPAs reflects the fact that UNCTAD I considered the overall objectives of ICAs as facilitating the economic development of the developing countries. For this reason the general attitude of UNCTAD I was that the rules of international commodity arrangements should reflect the differences in the levels of economic development and bargaining ability of different countries. Thus IPAs were seen as vital organisations to enhance the bargaining position of developing producer countries.

Secondly, UNCTAD I placed emphasis on the provision of 'expanded resources' and the reasonable predictability of real export earnings for producer countries. The price objectives of UNCTAD I were not confined simply to price stability but also to predictable and enhanced resources in real terms, having due regard to producers' import purchasing power. This amounts to indexation, a process which seeks to link automatically the prices of commodities and manufactured goods.

Thirdly, UNCTAD I proposed a comprehensive approach to commodity problems. This approach would not only regulate prices and quantities: it would extend also to other areas such as the reduction of tariffs and non-tariff trade barriers against imports of developing country exports, and strengthening trade in natural products at the expense of synthetics and substitutes. Equally importantly, UNCTAD decided to promote studies relating to the marketing, processing and diversification of the economies of developing countries, as well as research into improved marketing techniques and the dissemination of market intelligence. [57] So defined, this comprehensive approach puts the UNCTAD I objectives closer to the objectives of IPAs.

1.4.4 The United Nations General Assembly and ICAs

The United Nations General Assembly has endorsed the negotiation of ICAs as a means of contributing to the overall economic development of producers and consumers of commodities, particularly developing producing countries. The Action Programme on the Establishment of a New International Economic Order (Resolution 3202(vi) of May, 1974) contained broad provisions on various aspects of International Commodity Trade. Section I not only provides for improved access for products of developing

countries, it also calls for the expansion, processing and diversification of exports from producing countries and the establishment of buffer stocks within ICAs. The clearest endorsement of ICAs is contained in the Charter of Economic Rights and Duties of States (Resolution 3281 of December, 1974), Article 6 of which states:

> "It is the duty of states to contribute to the development of the international trade of goods, particularly by means of arrangements and by the conclusion of long-term multilateral commodity agreements, where appropriate, and taking into account the interest of producers and consumers ..."

The legal effect of UN General Assembly resolutions is analysed in Section 4.3.3. It may be noted at this point, however, that although General Assembly resolutions do not instantly create law, they do nonetheless indicate commonly accepted state practise regarding ICAs and in this respect constitute sources of customary law, at least for the majority of UN members who voted for these resolutions. It is reasonable to argue therefore firstly, that the General Assembly's endorsement of ICAs is to be regarded as of equal, if not greater, importance as their endorsement of the Havana Charter (the principles of which, relating to international commodity trade, were merely recommended by ECOSOC, an organ of the General Assembly). Secondly, since the GATT provisions on ICAs, which have been described as 'low in the range of legal obligation' [58] only bind the contracting parties, it is difficult to place these obligations above the General Assembly resolutions. Thirdly, assuming the above argument is valid, it immediately becomes apparent that the same General Assembly endorsement of International Producers' Associations, as discussed in Section 1.4.3 above, is not inferior to their endorsement of ICAs. This argument is supported by the fact that both UNCTAD and the UN General Assembly make it abundantly clear that ICAs are designed to facilitate economic development in producer developing countries.

1.4.5 UNCTAD's Integrated Programme for Commodities (IPCs)

As part of the high-tec North/poor South dialogue, the developing countries presented a set of demands for the restructuring of international economic and institutional relationships. [59] With respect to the international commodity regime, the Programme of Action for the New International Economic Order mandated:

> "the preparation of an overall integrated programme setting out guidelines and taking into account current work in this field, for a comprehensive range of commodities of export interest to developing countries." [60]

In 1975, the UN General Assembly again added its political weight to the IPC as formulated by the UNCTAD secretariat. The Seventh Special Session adopted Resolution 3362(S-VII) in which it mandated UNCTAD IV "to reach decisions on ... an integrated programme and the applicability of elements thereof." [61]

In 1976, the fourth session of UNCTAD, which met in Nairobi, adopted UNCTAD Resolution 93(IV). This resolution was designed:

> "to constitute the point of departure of the establishment of a new international commodity order. It was intended, above all, to promote economic development in developing countries through a broad range of international measures which would enhance the returns from their production of commodities entering international trade." [62]

This resolution defined the objectives of the IPC to include prices that are remunerative and just to producers and equitable to consumers, with due account being taken of world inflation; increased real export income; diversification of production in developing countries and expansion of processing with a view to promoting their industrialisation and increasing their export earnings; and increasing the developing countries' participation in marketing, distribution and transport. [63] These objectives were to be implemented by means of the Common Fund and through International Commodity Agreements or Arrangements (ICAs).

1.4.6 The Common Fund [64]

Resolution 93(IV), Section IV, provided the procedures and a timetable for negotiations on a Common Fund. The final Agreement on the Common Fund was reached in June, 1980 and has been open for signature since the 1st October 1980, but has not been ratified. The Agreement states that the principle objective of the IPC is to facilitate the conclusion and functioning of ICAs. In fulfilling these objectives, the Fund functions through two entirely separate accounts, the First Account and the Second Account. [65]

1. The First Account

The purpose of the First Account is to finance internationally held or coordinated national buffer stocks within the framework of ICAs. Before any party to an ICA can draw upon the resources of the First Account, it must become legally associated with the Fund, and its buffer stock system has to be financed jointly by both producers and consumers. It therefore follows that Producers' Associations cannot draw on the resources of the First Account, since their buffer stock systems are not financed by both producers and consumers. [66]

The First Account is financed through three resources. The first source is the Directly Contributed Capital (DCC) for which each participating government must contribute one million dollars. The second source of finance is takes the form of mandatory contributions from associated ICOs. The third source derives from direct borrowing from members and international financial institutions in capital markets. [67] The size of the First Account, therefore, depends on the number of countries which join the Fund, the number of ICOs which associate with the Fund and the credit-worthiness of the Fund in capital markets. Thus the Common Fund has evolved into something radically different from what was originally intended. The Common Fund was to have been a powerful pre-financed institution with about 6 billion dollars at its disposal. [68] Instead of a Common Fund as a source of finance channelling direct government contributions into ICAs, however, Group B's proposal for a 'pool' of finance drawn from ICAs negotiated separately was put forward. The final outcome is a combined 'pool' and 'source' fund.

2. The Second Account

The Second Account of the Fund was created because 8 of the 18 commodities covered by the IPC are either not suitable for stocking or unlikely to benefit from stocking. It was accepted that these commodities could nonetheless benefit from commodity development measures which are arrived at by improving the structural conditions in markets, including research and development, and implementing measures designed to assist vertical diversification, processing, marketing, distribution and shipping, on the part of the developing countries. [69]

The principal source of funding for the Second Account is voluntary contributions. [70] Like the First Account, the Second Account does not cover IPAs. Despite the fact that the commodity development measures to be pursued by the Second Account largely reflect the objectives of IPAs, group B countries would not allow IPAs to draw on the resources of the Second Account.

As regards the administration of the Common Fund, it is administered by a governing council, an executive board and a managing director who, assisted by staff appointed by him, run its day to day affairs. [71] The governing council is the highest policy-making organ of the Fund and is constituted by governors and their alternates appointed by the members of the Fund.

The voting structure of the Fund is another significant feature which merits attention, since one of the requirements of the New International Economic Order was modification of the distribution of power in existing financial institutions. The Fund has

adopted a dual approach whereby there is a combination of basic votes for all countries with additional votes being given so as to reflect a country's contribution to the DCC and its participation in commodity organisations.[72] The details of the system are to be found in schedule A of the Articles of Agreement of the Fund.[73] Decisions are reached by a qualified majority or unanimous vote depending on how important they are, and the governing council of the Fund is authorised to adjust the distribution of votes to ensure that no one economic group has an absolute majority.

Like the capital structure, the voting procedure bears the scars of hard bargaining between the Group of 77 and Group B. The former had hoped to set up an institution in which its members would have a dominant say in its running. For this reason, they objected to a voting structure which, like that prevailing in the IMF and IBRD, is based upon financial contributions. Group B countries, on the other hand, advocated a voting system linked to financial contributions.[74] It is thus clear that the voting system leaves no doubt that the main intention is to prevent domination by any group of countries. The desire of the Group of 77 to pioneer a financial institution controlled by its members has not been fulfilled: both the capital structure and the voting arrangements provide sufficient evidence that the Fund is meant to operate as a financial institution and not as a political institution of the Group of 77.

1.4.7 The Common Fund and Individual ICAs

The Common Fund is designed to facilitate the negotiation and operation of ICAs but, ironically, its very existence and success depend on the prior negotiation and operation of ICAs. So far only 3 ICAs have been concluded within the framework of the IPC. The first was the INRA which is based on buffer stocks and therefore comes within the ambit of the First Account. Two other agreements, on jute and on timber, do not have economic provisions. Despite intensive inter-governmental efforts, negotiations and discussions on copper, cotton, tea, hard fibres, bauxite and manganese have not led to agreements with economic provisions.[75] It is clear therefore that the Common Fund has failed to generate interest in ICAs. This lends support to the view that finance is not the main problem. In fact the difficulties and obstacles lie mainly in the conflicting interests and attitudes of producers and consumers.

On the one hand, consumers believe that commodity markets should be governed by free market forces which are best for both consumers and producers.[76] The consuming countries, support existing relationships and object to controlled markets, because they do better with present arrangements.[77] In addition, consumer countries want commodity prices as low as possible as part of their strategy to keep inflation and unemployment low and under control.

In other words, of a former Assistant Secretary of the US Treasury Department:

> "Our primary purpose in pursuing them (ICAs) is to reduce the risk of inflationary pressures in the U.S. Indeed we will sign no commodity agreement unless we are convinced that it will promote that objective". [78]

On the other hand, developing countries regard ICAs as instruments of economic development – a perspective strengthened by UNCTAD I. Therefore demands for improvement in price levels or terms of trade are seen as an integral part of the strategy to enhance economic development in developing countries.

1.4.8 General Comments on the IPC

The foregoing examination of the developments on the IPC reveals that:

1. Any attempt to adopt an integrated approach or multi-commodity negotiations has to face the fact that commodities do differ and that there is an inherent weakness in negotiating ICAs on a general basis.

2. The achievements of the IPC have fallen far short of expectations. The only positive outcome after over ten years of negotiations has been the adoption of the text of the Common Fund Agreement – but the fact that only a few developing countries have signed or ratified the Agreement suggests that they have little conviction that the drastically weakened Common Fund will live up to its over expectations.

3. As regards International Producers' Associations, the Common Fund has failed to secure membership of the Fund for them and to guarantee them access to the resources of the Fund. Ironically the ICAs, whose membership might include non-members of the Fund, are 'guaranteed' access to the Fund, but then automatically barred from benefiting from it if some of the parties to the ICAs are also non-members of the Fund.

4. Finally the process of negotiating and implementing ICAs reveals the differing attitudes and perceptions of producers and consumers to ICAs. The attempt to embark on multi-commodity and multi-purpose negotiations and operations of ICAs have failed to eliminate or disguise the disagreements over objectives and methods between producers and consumers. These fundamental differences support the case for IPAs, by admitting and establishing the fact that it is not always possible to implement measures which integrate simultaneously the interests of both consumers and producers.

Bearing the preceding overview of international commodity trade in mind, it is now necessary to begin to focus on the oil industry:

1.5 Early Developments in the International Oil Industry

The modern international oil industry is one of the greatest industries if not the greatest that the world has ever known. It was born about 130 years ago.[79] Petroleum has become virtually indispensable to the life of human communities at almost all levels of civilisation.[80] Other sources of energy are being developed, but conventional sources (namely petroleum, natural gas, solid fuel and hydropower) still constitute the main form of energy resources. Figures show that the demands for petroleum products in the world is increasing, with world reserves of petroleum estimated to reach in the year 2000, over 1045.7 billion barrels.[81]

There is therefore apparently no danger of the world running out of petroleum during the coming generations. Although total world reserves are, for the present and foreseeable future, sufficient to satisfy total world consumption, this does not mean that the volume of reserves in each of the main areas of the world bears any relation to the present and future consumption needs of each particular area. This is very far from the case. If we consider them in terms of the 'developed' and the 'under-developed' regions, we find the following striking disproportion: The under-developed regions hold 80% of total poured petroleum reserves, but their consumption of petroleum is only about 22% of total world consumption – whereas the developed areas hold only 20% of world reserves while their consumption amounts to 78% of total world consumption.

Turning to production, we find that total world production of petroleum in 1996 amounted to 6662.2 thousand barrels per day. These were produced from the following seven areas in the following approximate proportions: the OPEC member countries 41% of world total; the Middle East 21%; North America 12%; Latin America 11%; Africa 9%; and Western Europe 6%. On examining these figures, we find that over 80% of total world production of petroleum takes place in under-developed countries.[82] (See Tables 2–10, Appendix VII).

This disparity between the location of reserves, the ratios of production and the main areas of consumption has had far-reaching consequences for the petroleum industry. It has given it a highly international character, making the developed and under-developed parts of the world greatly dependent on each other; it has necessitated the creation of special and specific legal relationships considerably influencing petroleum legislation; and it has affected the economies of the industry in respect of investments, price fixation, division of the net proceeds of the industry, and so forth – which in turn has had a profound effect on the world economy as a whole, and therefore the whole of mankind's economic, political and social environments.[83]

From the beginning of the twentieth century, as petroleum became more and more indispensable to civilised life, it became increasingly evident that the rich and the poor countries of the world greatly needed each other. The latter had to turn to countries which were able to furnish the means of exploitation, namely capital, technicians, equipment, transport and marketing. The former had to procure sources of supply which would be adequate and secure. This situation naturally demanded an atmosphere of understanding, co-operation and solidarity among three distinct groups: the owners of petroleum resources, the suppliers of the means of exploitation, and the consumers. Little reflection is needed to conceive of the ideal conditions which would have been needed to ensure a harmonious relationship between these three major entities. World markets had to be guaranteed an uninterrupted supply of petroleum on reasonable terms; investors and operators had to be assured of an equitable remuneration; and the producing countries had to benefit from the maximum amount of revenue compatible with the other two principles. However, because of a fundamental inequality between the parties concerned, the coming together of the owner countries and the would-be operators did not result in equitable solutions – at least, that is, from the viewpoint of the producing countries which were and remain mainly under-developed countries. The early concessions which provided for the operation of the oil industry in the Middle East and elsewhere fell far short of the basic principles of fairness, not only as regards the methods employed for their acquisition, but also in the nature of their terms and the manner in which these concessions were subsequently operated. This was partly a matter of greed, and partly the results of a historical process which could not have been divined before it had unfolded. [84]

At the birth of the modern oil industry, which can be said to have occurred between 1859 and 1880, petroleum production took place almost entirely in the United States of America. The legal relationship between the owner of the mining rights and the operator took shape and crystallised as oil and gas leases were concluded between the parties. The provisions contained in these instruments, and their subsequent interpretation in the course of litigation, naturally had a great influence on the American legislation regulating petroleum exploitation and production, and as a result some of their features are still reflected in world petroleum legislation today. [85]

It must be appreciated, however, that the law governing these relationships was not suitable to serve as a model for the oil industry in the under-developed parts of the world, because of important differences in the characteristics of the industry as between the United States and these other regions. In the United States, mining rights were held by private persons and not by the State; operating companies were nationals

University Library

and not foreigners; and the industry did not depend on exports for its growth.[86] An examination of the terms of oil concessions, agreements and laws in under-developed countries shows that they have been influenced by these factors in no small measure, even though this has not always been appropriate:

> "When the U.S. domestic oil companies extended their activities into the international arena, it was not surprising that they carried with them their customary forms of business organisation, jurisprudential concepts and legal documentation derived from the concepts developed in the United States for petroleum operations. These Western Concepts are often not consistent with those applied in other parts of the world, such as the domical law system, the regalian right approach, and the Islamic perspective; they are also at variance with the United Nations resolutions on natural resources ownership." [87]

The development of the oil industry throughout the world, and the definition and determination of what became the traditional legal relationships between the granting state and the producing company, are largely the work of the well-known major oil companies. The history of these giants of the industry in America goes back to the foundation of Standard Oil by Rockefeller in 1870 and the monopolising influence which he exercised on the industry.[88] The years from 1880 to the beginning of the First World War in 1914 saw the extension of the industry to Eastern Europe, The East Indies, Mexico, Venezuela, the Baker region and Iran, facilitated by the appearance of the great companies (known as the Seven Sisters) which still dominate the oil industry today. These were Royal Dutch, which became Royal Dutch Shell after its amalgamation with Shell Transport and Trading Company; the Anglo-Persian Oil Company (the APOC), which is now British Petroleum; the Gulf Oil Corporation; the Texas Company (Texaco); and three Companies which emerged from the dismemberment in 1911 of Rockefeller's Standard Oil, namely Standard Oil of New Jersey, Standard Oil of California (Socal), and Socony Vacuum, which became Socony Mobil Oil. (CFP of France is sometimes owned by one of them).

It was the directors of these seven companies who not only decided the rates of oil production and the prices and places of marketing, but also refined the products in their refineries. In the words of Mr Hamilton: "No other industry has ever been organised for so long by such a tight group of international companies with such common interests, let alone an industry of as much importance to the world economy as oil." [89]

The international oil industry at the end of the Second World War was dominated by the Seven Sisters. The proportions of total crude oil production (outside the USA, Canada, USSR, Eastern Europe and China) held in 1950 by the major companies were as follows:[90]

Company	Quantity in Tons	Proportion
Jersey Standard	50 million	25%
British Petroleum	40 million	20%
Royal Dutch Shell	38.5 million	19%
Gulf Oil	15 million	7%
Texaco	12 million	6%
Standard Oil (California)	7 million	4%
Mobil Oil	7 million	3%
	169.5 million	85%
Others	30.5 million	15%
Total:	200 million	100%

The estimated reserves held by the major companies in 1953 were as follows:[91]

Company	Amount (in barrels)	Proportion
BP	28.3 billion	35.7%
Jersey Standard	11.2 billion	14.2%
Gulf	10.7 billion	13.5%
Shell	8.0 billion	10.1%
Texaco	5.4 billion	6.9%
Socal	5.2 billion	6.5%
Mobil	3.9 billion	4.9%
Total:	72.7 billion	91.8%

At the end of the Second World War in 1945, the major oil companies constituted a virtual cartel, having agreed on market shares. The combined effects of the war and of US Anti-Trust legislation eliminated formal agreements between them, but because of the nature of their organisation and control over supplies, they were able to work the industry the way they wanted it, with mutual understanding over pricing policies en-

suring high profits for all of them. The major oil companies had by then also developed and controlled their own refining, transport and marketing, thereby achieving what is characterised as 'vertical integration'. Thus it has been said that the combination of the vertical integration of these companies with oligopoly in product markets provides the single most important key to the understanding of the economic policies of the industry, and of the post and present relations between oil companies and governments of both the countries exporting and those importing crude oil or its products. [92]

The first type of legal instrument which was used to lay down the conditions governing a petroleumen operation was the traditional 'Concession Agreement'. The first lease ever issued in the history of the oil industry was the lease issued on December 30, 1857 to Colonial Edmin L. Drake, which led to the first exploitation of oil in modern times in July 1859 at Titusville, Pennsylvania. The text of the lease is as follows: [93]

Pennyslvannia Rock Oil Company	Dated December 30, 1857
to	Deed Book P, pl 357
E.B. Bowditch and E.L. Drake	$1 in hand

'Demise and let' all the lands owned or held under lease by said company in the Country of Vanago, State of Pennsylvania, 'To bore, dig, mine, search for and obtain oil, salt water, coal and all materials existing in and upon said lands, and take, remove and sell such, etc ., for their own exclusive use and benefit, for the term of 15 years, with the privilege or renewal for same term. Rental, one-eighth of all oil as collected from the springs in barrels furnished or paid for by lessees. Lessees may elect to purchase said one-eighth at 45 cents per gallon, but such election, when made, shall remain fixed. On all other minerals, 10 per cent of the net profits. Lessees agree to prosecute operations as early in the spring of 1858 as the season will permit, and if they fail to work the property for an unreasonable length of time, or fail to pay rent for more than 60 days, the lease to be null and void.'

That lease, brief and superficial thought it may seem, contains in essence those elements which still form the basic contents of petroleum agreements today [94] – and these essentials were incorporated into foreign agreements by the US oil companies when they extended their activities into the international arena. Their domestic prac-

tices were first exported at the turn of the present century, with the first legal instrument which laid down conditions governing a petroleum operation in an under-developed area being granted in Iran in 1901. The Persian government granted in 1901 an oil concession to W.K. D'Arcy and this became known as 'the D'Arcy Concession'. Thereafter, all the Gulf-countries granted similar concessions. Since the terms, rights and obligations contained in these concessions were virtually identical, this supports the view that such agreements were very much influenced by the practice of the oil companies back on their home territory. [95]

Most, if not all, of these concessions were granted in completely different political and economic circumstances to those prevailing today. Most significantly, they were concluded under political and social conditions which were unfavourable for the producing countries, since most of them at that time did not exercise full sovereign rights over their territories or over their natural resource. Furthermore, the nationals of these countries lacked the knowledge and experience necessary to make a proper evaluation of the real value of the oil rights being granted. In the case of the Batautse Concession, for example, the agreement was concluded with a Dutch company by a Dutch dominated country. [96]

In the case of the Iraqi Petroleum Company (the IPC) Concession in Iraq, the agreement of 1925 was concluded not only during the time when Iraq was still under the mandate of Great Britain, but also in an extreme case of duress. The chief consideration in awarding that concession was the threat to cut off the vital 'willayet' of Mosul from the state of Iraq. The frontier Commission, appointed by the League of Nations to settle the border dispute between Iraq and Turkey after the First World War, was reluctant to give a decision in favour of Iraq until after the conclusion of an agreement with the IP C – in which incidentally, the British Government was a major shareholder. The British Government informed Iraq at the time that the IPC's claim to the oil concession was valid – and that in view of the Turkish Government's definite undertaking in August 1914, the Iraqi Government was under a binding obligation to grant IPC the concession. The Iraqi negotiator had no alternative but to accept the terms offered by the Company. [97]

The nature of the grant, and more specifically the area to which it applied and its duration, were defined in the concession agreement. This also dealt with the payments that were to be made by the concessionaire and broadly stated the mutual rights and obligations of the parties. The term concession was generally the one used to describe the agreement, but sometimes it would be described as a lease or a contract. The rights granted normally included exclusive rights to prospect for, exploit and export crude petroleum and associated materials.

The wide ranging and almost completely exhaustive extent of the rights and freedoms granted by these concessions was often matched only by the terrestrial limits within which they could be exercised within the country concerned. For example, the D'Arcy Concession extended throughout the entire Persian Empire (Article 1), barring five provinces (Article 6), with a total area of 480,000 square miles. This was reduced to 100,000 square miles in 1933 in the grant to the APOC which replaced the D'Arcy Concession. Similarly in Iraq, the IPC Concession of 1925 covered the whole area bordering the Tigris except for Basra and a few other minor regions. Saudi Arabia granted a concession originally to the Standard Oil Company of California. This was later assigned to Aramco and covered an area of almost 371,000 square miles, which was extended in 1939 to about 496,000 square miles. The KOC Concession applied to the whole of Kuwait. The 1934 Bahrain Concession was initially limited to 100,000 miles but was later extended to cover the Sheikh's entire dominion. Again the Concession given to the Anglo-Persian Oil Company in 1935 covered the whole country.

In addition to the vast geographical areas which could be explored and exploited, the duration of these grants was also substantial, with time-spans of 60 to 75 years being the norm.

In contrast, the benefits guaranteed by these concessions to the host countries was not that high in terms of the royalty per ton of crude oil: the concessions of the 1930s usually provided for a mere four shillings of gold per ton.

As the oil industry developed, however, the monopoly enjoyed by the major companies became less effective with the appearance of new firms known as the 'Independents' or the 'Newcomers'. The Independents secured for themselves a number of oil agencies in different parts of the world, notably in Iran, Iraq, Libya and Venezuela. In fact during the period 1953 to 1972, more than three hundred of these private companies either extended the oil industry or significantly expanded their participation in it.[98] The appearance of these companies (as will be seen in Chapter 6.5) had a strong influence and played a major role in helping to redefine the nature of the relationship between oil producing states and oil companies.[99]

With the appearance of the Independents and their enthusiasm to share in foreign production, the host countries (the HCs) were able to raise their political and economic sights and their bargaining power with the oil companies started to become more of a reality. This new assertiveness on the part of the producing countries was reinforced by and developed in parallel with the new changes in the New International Economic Order. In particular, the producing countries' position was reinforced by a series of United Nations resolutions regarding the sovereign ownership of natural resources – which have already been examined earlier (see Chapter 1.3 and also 4.2).

The original relationship established between the oil companies and the producer states, which mainly took the form of the concession system, did not leave much control over their basic natural resources in the hands of producers countries, most of which have in recent times gained their full political independence. And yet the income derived from these natural resources accounted for between 60 and 90 per cent of the foreign exchange earnings of each of these producer countries. Accordingly, the producer states inevitably began to search for means by which maximum benefits could be gained from their natural resources and for ways to exercise their full sovereignty over their oil resources.

Venezuela took the initiative and enacted a special tax law which stipulated a 50/50 profit sharing principle. Saudia Arabia followed suit in 1950, and Iraq, Kuwait and Abu Dhabi applied the same principle some time later. In following the example of Venezuela, Saudi Arabia negotiated with Aramco an agreement which was signed on the 31st December 1950. As a result of that arrangement, Saudi Arabia nearly quadrupled its petroleum revenues. The 50/50 profit sharing principle spread to most oil producing countries with the exception of Iran, where the method of direct nationalisation was adopted. Mossadegh's regime chose this more radical policy by nationalising the oil industry in 1951. At that time, however, the dominance of the oil market by the major International Oil Companies (the IOCs) was such that they succeeded in imposing an embargo on Iranian oil. This eventually led to the downfall of Mossadegh and the reinstatement of the Shah on his throne, from which he had been briefly deposed.

The nationalisation method proved to be a failure. It is beyond any dispute that the national governments at that time could not afford or manage either the capital, or the expertise, or the marketing outlets essential for first extracting and then selling the oil produced.

In fact what happened was that whichever option the HCs exercised, whether it was the profit sharing system or the nationalisation system, the IOC's managed to retain virtually complete control over both the conduct of operations and the pricing of petroleum. In particular, the control of production schedules remained in the hands of the IOCs.

The failure of either of these two systems to satisfy the oil-producing countries in their ambition to exercise full sovereignty over their natural resources, however, provided them with an incentive to search for a third method. This method involved their attempt to re-mould the old concessionary system by re-negotiating its terms through the collective bargaining system of what became known as the Organisation of the Petroleum Exporting Countries (OPEC). By acting as one united body, the oil-produc-

ing countries were able to increase their bargaining power so as to counterbalance the otherwise superior bargaining position of the exclusive club of the major oil companies. This unique approach resulted in the development of entirely new rules in the sphere of the international law governing and regulating economic cooperation *vis-a-vis* Commodity Agreements. [100]

Before embarking on a more detailed examination of the establishment of OPEC, it would assist, in seeking to provide a succinct yet balanced general overview and background to OPEC, to make a few brief references to previous co-operation within the oil industry as a whole:

1.6 Early Co-operation in the International Oil Industry

Ever since the evolution of the use of oil as an important source of energy first began, different forms of co-operation have been attempted between the various different groups involved, namely:

1. between oil companies;
2. between importing countries;
3. between exporting countries.

In this context, the most significant agreements and arrangements in the sphere of international co-operation have included the following:

1. The Petroleum Producer's Union

In the very early days of the oil industry, Rockefeller needed to expand both his supply and his production output of petroleum products – and for this he needed the cheapest possible rates from the railways. The transportation from the oilfields and from Cleveland was dominated by three major rail systems: the Erie, run by Jim Fish and Jay Gould; the New York Central, the creation of Commodore Vanderbilt; and the Pennyslvania. In 1872, with a widespread recession, Rockefeller was faced with the joint demands made by the three railway systems and the thirteen major refineries in Cleveland, to arrange discounts not just on the oil his company transported but also on any oil transported by other companies. When Rockfeller refused to accept their demands, the independent refineries responded by establishing the Petroleum Producer's Union. Its secretary was a young independent refiner, John Archbold. Rallying around the slogan: 'No oil for the Ring', they agreed not to sell even a barrel of crude oil to the members of the South Improvement Society and stuck to their resolution for over a month. This agreement was the beginning of the struggle between the oil producers and the oil refiners and marketers. [101]

2. The International Petroleum Cartel of September 1928

In the 1920s, once Palestine had been secured by the British during the First World War, and after the San Remo Conference of 1920 had confirmed the Balfour Declaration of 1917 (to establish a Jewish Homeland in Palestine) and the decision to give the mandate from the League of Nations to Great Britain, the major oil companies turned their attention to the Middle East in earnest and there was fierce competition to acquire concessions in this region of the world.

This activity was in accordance with the Agreement which had already been signed on the 3rd January 1919, by King Feisal of Iraq on behalf of the Arabs as a whole, and by Chaim Weizmann on behalf of the Zionist Organisation, whereby it was agreed that the Zionist Organisation would use its best efforts to assist the Arabs in providing the means for developing their natural resources and the economic possibilities thereof (Article VII) in return for Arab co-operation in assisting with the speedy implementation of the Balfour Declarationand accordingly the eventual creation of the state of Israel (Articles III and IV). [102]

An intense rivalry in distribution activities broke out between Standard Oil, Royal Dutch Shell and the Anglo-Persian Oil Company in 1927, and this continued until they decided that it was in their common interest to put an end to their competition. Finally, in September, 1928, in the course of their favourite grouse-shooting party at Achnacarry, Scotland, and after a discussion lasting two weeks, a secret agreement was concluded between the leaders of these three companies, whereby they divided up the world oil market between them. The Agreement was formally named 'the Pool Association', but later became known as the 'As Is Agreement'. The Agreement embodied a set of principles, policy decisions, and codes of procedures aimed at pooling industry resources, maintaining the *status quo* in respect to markets, and in particular protecting the price structure by controlling production. [103] The Agreement laid down the following guidelines:

1. That each participating company should accept its current market share and should contribute to any future increase in supplies in such a way as to ensure the maintenance of prevailing market shares.
2. That companies should co-operate where appropriate by making any existing surplus facilities available to each other.
3. That no new facilities should be introduced other than those required to meet increases in total demand "in the most sufficient manner".

4. That each company should price its oil at the effective ceiling level for each marketing area (calculated according to a formula which reflected the pattern of world oil trade in 1928), while supplying each area from the lowest cost source which was available to it in accordance with paragraphs (5) and (6) below.

5. That the industry's transport costs should be kept as low as possible by drawing supplies from the nearest available source of production.

6. That an inter-company protectionist system should be established by the oil producers in each geographical region, and that steps should be taken to ensure that the co-operation of any given region's system was not undermined by an influx of surplus supplies from any other region.

7. The Companies should avoid the introduction of any measures which would materially increase costs in the industry.

Each of the participating companies was free to use its own commercial judgement in making practical arrangements to meet their common objectives in implementing the 1928 Agreement, many aspects of which were initially left open to very flexible interpretation. Further inter-company meetings took place at regular intervals to review the effectiveness of the agreement in the light of changing circumstances and to build up a corpus of detailed procedures for its implementation. By the mid-1930s, the Cartel had become very powerful.

3. The United States and United Kingdom Agreement of 8th August 1944 [104]

This agreement was concluded between the governments of the United States of America and the United Kingdom whereby the two governments agreed to co-ordinate their petroleum policy in securing their mutual interests, as opposed to the conflicting interests of the oil producing countries, in particular those situated in the Middle East. At this point in time, the Americans were eager to secure their oil concession rights in Saudi Arabia, and the British in Kuwait. Accordingly the two governments agreed on a joint policy so as not to undermine each other's negotiations.

4. The Iraq and Saudi Arabia Agreement of June 1953 [105]

In the wake of the nationalisation of the IOC in Iran in 1951, which led to a boycott by the international oil companies of Iranian nationalised oil, Saudi Arabia and Iraq sought to co-operate with each other with the aim of improving their bargaining position *vis-a-vis* the major oil companies. Accordingly, they signed a petroleum Agree-

ment to this effect, on the 20th June 1953. This was the first formal agreement of cooperation made between two petroleum exporting countries. The Agreement provided for the exchange of information and views and for a co-ordination policy through periodical consultation.

Moreover, the Agreement was designed to secure for the host governments the acceptance of the so-called 'most favoured nation clause' from their concessionaires. This clause was first introduced into the Middle East oil concessions in the early 1950s. The clause provides that the governments can call on the concessionaires to discuss possible revision of the concession in the light of any better or more favourable terms negotiated by a neighbouring country or countries.

Although this Agreement was the first arrangement to be made between oil-producing countries, attempts at co-operation between producing countries of other basic commodities were already commonplace, even at that time. The importance and significance of this particular agreement is that it signifies the early recognition of the degree of incompatibility that exists between the interests of oil producers and consumers, and that therefore 'oil-producers-only' arrangements were necessary and vital to protect these oil producers' interests.

1.7 General Conclusions as regards the pre-OPEC Era

The above analysis reveals that the early oil agreements were not concerned exclusively with safeguarding the interests of private groups, that is, the oil companies. The 1944 and 1951 Agreements, for example, were negotiated and implemented by national governments. It is therefore difficult to support the contention that the early arrangements were promoted exclusively for the benefit of private interests – although clearly the policies of the oil companies would receive the backing of their national governments where these policies would help ensure a steady supply of oil at reasonable prices. In the words of A.D. Law, there has always been a lack of a clear boundary between the aims of private cartels and the objectives of government-backed or sponsored control schemes. At times there has been an overlap, at other times a conflict of interests. [106]

It is very clear, however, that the interests of the oil producers and the oil consumers, although inexorably interlinked, have not always had the same objectives in common. Those responsible for extracting the oil and selling it on have always wished to do so at a minimum expense and with a maximum profit. Those responsible for permitting the extraction of oil from their territory have increasingly wished to derive the best

possible income in the process for the benefit of their countries and their peoples. It was the desire of the oil-producing countries to maximise the benefits that could be derived from their essential exports that inevitably led to the creation of OPEC. It was equally inevitabe that the creation of OPEC would not be regarded favourably by those who felt that either their profits or their supply of oil or both would be threatened as a result.

Those oil consumer's (companies and countries) organisations who regarded OPEC as a threat to the *status quo* which they had established, immediately began an urgent campaign to stigmatise OPEC, accusing its members of seeking to maximise their profits by means of regulating oil production and export quotas – which in fact were precisely the same aim and methods which they themselves had demonstrated and utilised in the past. It was for this reason that oil producers' organisations – OPEC in particular – were viewed with hostility. Thus the hostile attitude of some developed countries towards OPEC derived from their assumption that OPEC was imitating their own past corporate arrangements.

As we are about to see, however, an examination of the historical developments leading to the creation of OPEC reveals that there is no historical connection between the structure and *modus operandi* of OPEC and previous arrangements in the oil industry. One important distinction which must be made between the 'cartels' of the past and OPEC is that they were exclusively promoted by producing interests in or from the developed countries. Even where production took place in what are now developing countries, these were at the time often colonies or mandated territories with no sovereign jurisdiction over their own resources, with the oil production operations owned and operated by interests from the developed countries. OPEC, on the other hand, has from the very start been promoted by developing countries as a new international economic organisation in order to safeguard their interests and prevent their being exploited – but never in order to exploit the developed countries!

It is also clear from the forgoing chapter that the entire matter of utilising oil throughout the world so as to benefit all of mankind is a both unique and complex matter. Oil is power – and accordingly power struggles have always developed for it and around it. It is probably because of this that –unlike the arrangements made before 1945 regarding International Commodity Agreements concerning other basic world commodities, which were organised by both producers and consumer countries – arrangements in the oil industry were only developed by the consumer countries.

The early arrangements in the oil industry also provide a clear indication that most governments soon accepted the need to intervene in the international trade of oil

in order to prevent or reduce price instability and to make available regular supplies at a low cost. Unfortunately, however, and unlike the case with other international commodities arrangements, there was in the oil industry no general acceptance that the goals of both producing and consuming countries should be both considered and catered for in such arrangements.

As long as the oil industry was controlled predominantly by oil consumers, the oil producers perceived that they were being exploited – while the notion that the oil industry should never be controlled predominantly by oil producers, merely reflected the fact that the oil consumers were afraid that this would mean that they would be treated by the oil producers in exactly the same way as the oil consumers had treated them, which in practical terms might well mean planned reductions in oil output and export quotas with resulting increases in prices and even the possibility of oil shortages.

It is against this general background that this thesis will now seek to examine and analyse in greater detail the reasons for the establishment and the structure of OPEC; its legal status and standing in the light of international law; its policies and track record during almost the last 40 years; and perhaps most importantly of all its past, present and future role in the context of the struggle between those countries which have been defined during the present century as either developed or developing, as either consumers or producers, as either High-Tech North or Poor South – and in the context of the struggle to end that struggle and replace it with genuine co-operation.

Part 2

The Establishment of OPEC, the Legal Character and Classification of the Instruments governing OPEC, and the Main Objectives of OPEC

2.1 The Establishment of OPEC

Having examined in Part One those factors which led to a perception that producers-only organisations were needed in the international oil industry, it is now possible to pin-point the precise centralising factors and events which culminated in the establishment of OPEC. Since the creation of OPEC was influenced by a series of earlier initiatives and for a number of reasons, it is necessary to consider the main steps and efforts aimed at co-operation made between the petroleum exporting countries that eventually formed OPEC:

1. The Venezuelan Initiatives

After the First World War, Venezuela became the largest and most sophisticated of oil exporting countries in the world. This consequently led to its desire to obtain a greater share in the profits made by the oil companies from its natural resources. The first step towards achieving this aim was the Venezuelan government's decree No. 122 on the 31st December 1945 which declared unilaterally and for the first time that the Venezuelan government would share in the oil revenues generated by the international oil companies operating in its territory. [1]

The Venezuelan government realised that the wealth of the oil companies was based on Venezuela's own indigenous oil resources. They had the feeling that their own wealth was being exploited by somebody else. The attitude underlying Venezuela's demands for a fair share in the profits was expressed by Rivers Vasques when he said, "We do not want to take away from the petroleum companies their equitable reasonable and just profits, but we want to defend our land and our Venezuelan people by obtaining just participation which corresponds to us from the exploitation of our national wealth." [2]

As things turned out, however, the fluctuations in the Venezuelan regime between communism and socialism were in turn responsible for variations in the government's policy towards participation in the oil companies' profits. [3]

In January 1948, after the first free election in the history of Venezuela, the new government started working out the details of an income tax law which would guarantee the government a 50 per cent share in the oil companies' profits. On the 12th November of the same year, this income tax law came into effect as law. However, within less than a fortnight of it coming into effect the government was overthrown by a coup. It is said that the coup had nothing to do with oil: The army was becoming restless and disliked the growing power of the trade unions. By 1950, the government had come back to the 50/50 split profit sharing formula which was introduced in the Middle East countries at the same time

The first application of this system in the Middle East was made by Saudi Arabia in its agreement with Aramco on the 30th December 1950. It was followed by Kuwait and Iraq. Thus most of the Middle Eastern concession contracts were aimed to conform with the Venezuelan contracts. Nevertheless, the pattern of terms which emerged in the Middle East was different to that in Venezuela in two major respects: firstly, Venezuela received separate royalty payments over and above income tax payments – whereas in the Middle East, their governments received income tax payments only; secondly, the Middle Eastern governments could not legislate unilateral changes in concession terms, in particular, fiscal terms. Thus under the the Middle East 50/50 arrangements, the 50 per cent rate of income tax was limited to that maximum, whatever later tax changes followed – whereas in Venezuela, the concession agreements did not fix the income tax, and so the government was therefore entitled to change this just like any other tax. [4]

There was an underlying strategy to this approach: The oil companies wanted to pressurise Venezuela into not interfering in the oil business, by increasing oil production in the Middle East oil fields, from which oil could be delivered to the US East Coast more cheaply than Venezuela's crude.

This strategy, however, did not succeed in making Venezuela change its policy. In fact the oil companies actually helped Venezuela to identify the real threat to its petroleum revenues as coming from the Middle East – and accordingly prompted it to deal with the countries of that region, by seeking to gain them as allies rather than treating them as rivals. Accordingly the Venezuelan Oil Minister said that his government was working on a two point programme:

(i) To persuade Washington to give Venezuela a "guaranteed fixed market". [5]

(ii) To persuade the Middle Eastern producing countries to join Venezuela in an international compact to stabilise oil prices. [6]

In the course of implementing the second point of this programme, Venezuela in 1949, sent delegations to visit Iran, Iraq, Kuwait and Saudi Arabia, and suggested that they should exchange views and explore venues for regular and closer communication between them. However, whilst sporadic contact was established, no formal arrangement emerged at this stage. These visits are nevertheless considered as one of the first steps towards the formation of OPEC.[7] The proposal of joint action was welcomed by the Middle Eastern oil producers, who had much to gain from an association with Venezuela and much to learn from that country's experience in the oil industry, particularly as regards bargaining with the oil companies.[8] As a result, representatives from Venezuela were invited to the Arab League Conference which was held in Cairo in 1959.[9]

The following figures provide a comparison between Venezuela's and Saudi Arabia (Aramco)'s per barrel oil revenues between 1953 and 1962:[10]

Year	GVT Revenue ($ per Barrel)		GUT Revenue (% of Gross Profits)	
	Venezuela	Saudi Arabia	Venezuela	Saudi Arabia
1953	0.75	0.69	54	50
1954	0.74	0.81	53	50
1955	0.76	0.78	52	50
1956	0.82	0.78	52	50
1957	0.94	0.81	52	50
1958	1.02	0.79	65	50
1959	0.90	0.73	68	50
1960	0.83	0.70	68	50
1961	0.86	0.69	66	50
1962	0.88	0.69	67	50

It is clear from these figures that during the period 1953 to 1962, Venezuela's oil revenues per barrel were consistently higher than those of Saudi Arabia, especially in terms of the percentage of the profits going to their respective national governments.[10]

2. The Middle Eastern Initiatives

The Middle East oil producing region is quite different to that of Venezuela in its geographical, political and other conditions. Furthermore, the arrival of Middle Eastern oil on the world market was relatively recent in comparison to that of oil from

Venezuela. Consequently, Venezuela was already more advanced in the oil industry and had gained valuable bargaining experience with the oil companies. [11]

In order to understand the Middle Eastern initiatives, it is necessary to study two important events:

(A) The Iraqi – Saudi Agreement of 1953.

(B) The League of Arab States Initiatives.

(A) <u>The Iraqi – Saudi Agreement of 1953:</u>

After the nationalisation of the Iranian oil industry on the 1st May 1951, Iranian oil exports were almost brought to a standstill from May 1951 to October 1954, as a result of a collective boycott instituted by the international oil companies in support of the nationalised Anglo Iranian Oil Company (which was renamed British Petroleum Co. Ltd. (BP) in 1954). [12]

Bearing in mind the gravity of the deadlock between Iran and the international oil companies, Iraq and Saudi Arabia signed an agreement on the 19th June 1953, which, as has already been noted in Part One, was the first formal agreement of co-operation to be concluded between two Middle Eastern oil-exporting countries. This agreement provided for the exchange of information between the two countries and the holding of periodical consultation concerning petroleum policies. Moreover, the agreement assisted the host governments in winning the so called 'best terms clauses' from their concessionaires. [13] As has already been noted, these clauses first found their way into Middle Eastern Oil Concession agreements in 1950. In accordance with such clauses, the host government was entitled to re-negotiate the terms of its Concession Agreements and to discuss the possible revision of such agreements if neighboring countries had obtained better terms.

(B) <u>The League of Arab States:</u>

The League of Arab States (the Arab League) [14] came into existence on the 22nd March 1945 as a regional organisation. One of the Arab League's objectives is the close co-operation between member states in economic and financial affairs. [15] Accordingly the Arab League established on the 14th June 1952, a Committee of Oil Experts who were to be concerned with the co-ordination of the Arab States' oil policies, together with studying oil projects which would result in common benefits for the Arab world. [16]

In order to assist the Committee, the Arab League's Council decided on the 20th January 1954 to establish a permanent Petroleum Bureau (re-named the Department of

Oil Affairs in 1959) under the supervision of the League's Political Committee. One of the major activities of the League's Department of Oil Affairs has been the sponsoring of the Arab Oil Congress. The general purpose of this Congress was educational – "to spread petroleum knowledge among the Arab population, in order to induce responsible quarters to create a generation of young people trained in the importance of oil as a principal source of national income." [17]

In April 1957, the Economic Council of the Arab League took the lead in seeking to establish oil-producer's unity, and called for the holding of a Petroleum Congress in Cairo in February 1958. In fact the Congress was held a year later in April 1959, when those attending included a nineteen-man delegation from Venezuela and a four-man delegation from Iran. [18]

The Congress adopted a number of resolutions by which the members stated their agreement on various demands, including the alteration of the profit-sharing formula in their favour. The resolutions also expressed the view of the delegates that changes in the structure of prices should not be made without prior consultation with the governments of the oil-producing countries, and that these governments should consider the establishment of a common consultative board to facilitate the exchange of views on their common problems, including the protection of their oil resources, oil production, exports and other matters. [19]

What was happening outside the Congress was probably more important than what happened inside. Between the sessions, many informal meetings and discussions took place between the representatives from the largest oil exporting countries regarding the creation of an organisation for oil-producers consisting of non-Arab as well as Arab exporting Countries. [20] These informal discussions resulted in the conclusion of a 'Gentlemen's Agreement' with the Venezuelan delegation which was, in the words of Alfonzo, one of the Venezuelan delegates, [21] "The outcome of the gentlemen's agreements that were signed by the heads of the delegations of the exporting countries." [22]

Another important step by the League of Arab States in its efforts to create the organisation which was to become known as OPEC was the Agreement signed in March 1960 which called on the Arab oil-producing countries to co-ordinate their oil policies among themselves, and which noted that there was nothing to prevent them from co-operating with other oil-producing countries in the world, such as Iran and Venezuela, in view of their common interests and market considerations. [23]

It is clear in retrospect that the Cairo deliberations, the principles embodied in the 'Gentlemen's Agreement' and the various activities of the Arab League which included meetings, studies and conferences, constituted the first seeds of the creation of OPEC.[24]

3. Reasons behind the Establishment of OPEC

As well as the various initiatives discussed above, there were also various underlying reasons for the establishment of OPEC, some of them indirect and some of them direct:

(A) Indirect reasons:

These include:

1. The oligopolistic structure and behaviour of the international oil industry, as noted in Part One, also influenced the creation of OPEC. The joint operations of the oil companies in several host countries, characterised by the implementation of a common policy, triggered reactions leading eventually to the creation of OPEC – by encouraging the development of closer links between individual oil exporting countries with a view to improving their bargaining position. A spokesman of OPEC commented as follows:

> "Through OPEC, the exporting countries could, for the first time, face the international major oil companies as a team. Previously only the major companies were in a position, through ownership of concessionaire companies in the Middle East, to practice collective bargaining in dealing with the exporting countries." [25]

2. The Middle Eastern oil-producing countries believed that their Concession Agreements did not give adequate protection to their national interests, and that the provisions of these agreements were often ambiguous or equivocal. [26] Under these circumstances it was not surprising that most of the oil-exporting countries were dissatisfied with their concession agreements and sought ways of amending them. The Iranian nationalisation movement is an example of this dissatisfaction.

3. Most of the oil-producing countries were also developing countries. This meant that most of their oil revenues were channelled back to the oil-consuming countries to pay for imports. In other words, 85% of exported petroleum was being consumed by the highly industrialised countries as payment for manufactured goods imported into the oil-producing countries.

4. The oil-exporting countries were well aware of the fact that petroleum is a non-renewable resource which will eventually be exhausted – hence the necessity of being able to generate sufficient oil revenues in the short term in order to be able to diversify their industrial base in the longer term.

5. From a political viewpoint, most of the oil-producing countries had gained their political independence and sovereignty relatively recently, and now wanted to achieve economic independence as well.

(B) Direct reasons:

The main direct cause that led to the establishment of OPEC was the large reductions in posted prices that took place in 1959 and 1960. [27] The reduction of posted prices of oil made unilaterally by the international oil companies in 1959 – 60 was naturally of grave concern to the host countries. [28] This was because the posted prices are used as the base reference for the purpose of calculating the income tax payable on oil revenues – which constitutes the principal, if not the sole source of oil revenue which the taxing countries have. Moreover, the uneven reduction of posted prices may favour the oil exports of one country or area at the expense of another. [29]

Shortly after the first major reduction in posted prices, the first Arab Oil Congress, to which Iran and Venezuela were invited as observers, met in April 1959 in Cairo. The Congress called on the oil companies to first consult with oil-producing governments, rather than making their own unilateral decisions on oil prices. [30] The demands of the Arab Congress in 1959 were in turn reaffirmed and adopted by the Arab League Committee of Oil Experts who met in Jeddah in the same year. [31] Furthermore, Venezuela's Minister of Minerals and Hydrocarbons, Penze Alfonzo, and Saudi Arabia's Director-General of Petroleum Affairs, Abdullah Taraiki, issued a joint declaration calling for the formation and execution of a common petroleum policy to safeguard the legitimate interests of the oil-exporting countries. [32] Nevertheless, in August 1960, the international oil companies announced a further reduction in the posted price of Middle East crude oil. [33]

It is clear, one may conclude, that these price cuts generated a feeling of economic insecurity in the oil exporting countries and emphasised the need for collective defence measures to counteract and counterbalance the powerful policy and actions of 'the Majors'. In retrospect, however, one can clearly see that the establishment of OPEC was attributable to a variety of factors, both indirect and direct, which combined to create a climate of opinion which recognised and favoured such a grouping. It is arguable that even if these price cuts had not been unilaterally implemented, this climate of opinion would still have arisen and probably led to the creation of OPEC at a later date, even if this was due solely to the general momentum of the international development of ICAs as discussed in the Part One.

4. The Baghdad Conference of 1960: The Birth of OPEC

The 1959 and 1960 price reductions, combined with the fact that a number of factors were common to the oil-producing countries, intensified the feeling in these states to co-operate together in order to protect their common interests and achieve their common goals. [34] Accordingly, Iraq called for a Conference to be held by the five major oil-exporting countries. [35]

From the 10th to the 14th September 1960, the representatives of Venezuela, Iran, Iraq, Kuwait and Saudi Arabia met in Baghdad – and after five days of deliberations the representatives signed an international agreement or treaty which took the form of a number of Resolutions establishing a permanent inter-governmental organisation to be called 'The Organisation of Petroleum Exporting Countries' – OPEC. As agreed at the Conference,the Agreement came into force on the 10th October 1960. [36]

Unlike the constitutions of other international organisations, the OPEC Constituent Instrument does not contain provisions establishing its organisational structure. [37] The reason for this can be deduced from the fact that the members' intention was to create the organisation as swiftly as possible to defend themselves against the policy of the major oil companies, and accordingly they left such matters to be worked out at a later date.

The Baghdad Agreement was comprised of three Resolutions and a Preamble. [38]

The Preamble cites the main reasoning behind the member countries' decision to establish OPEC:

> "That Members must rely on petroleum income to a large degree in order to balance their annual national budgets. That petroleum is a wasting asset and to the extent that it is depleted must be replaced by other assets. That all nations of the world, in order to maintain and improve their standards of living must rely almost entirely on petroleum as a primary source of energy generation. That any fluctuation in the price of petroleum necessarily affects the implementation of the Members' programmes and results in a dislocation detrimental not only to their own economies, but also to those of all consuming nations."

The First Resolution, [Res. I. 1(1) (4)] provides that the members shall endeavour by all means available to them to restore present oil prices to the levels before the reductions were made. This Resolution reveals that the objectives set by the member countries were designed to unify their oil policies and to lay down the best means for

safeguarding their interests, both individually and collectively, as well as to stabilise prices, with due consideration for the interests of both producing and consuming nations. The Resolution also indicates that it was also intended to secure both a steady income for the oil-producing countries and also a regular supply of oil at a reasonable price to consumers – a fair return on the capital invested in the petroleum industry. These objectives demonstrate that OPEC was not created with a view to raising prices above accepted levels by creating an artificial shortage in oil supplies in world markets. In other words, it was not intended to be an offensive but rather a defensive instrument.

In order to give effect to the First Resolution, the Second Resolution [Res.1.2 (1)(6)] is concerned with the practical implementation of OPEC's aims: the meetings of its membership, its secretarial budget, headquarters and elections, all to be prepared by an OPEC sub-committee.

The Third Resolution [Res. I.3(1)(2)] deals with administrational and procedural matters, such as the ratification of the Agreement and the arrangements for the date and place of the next Conference, to be fixed by the chairman of the first Conference.

In pursuance of the Second Resolution, on the 4th December 1960, a sub-committee met in Baghdad to discuss the budget for the OPEC Secretariat, the content of the Statute for the Organisation, and a place for its Headquarters. The second OPEC Conference was held in Caracas from the 15th —21st January 1961. The Conference admitted Qatar as the sixth Member of OPEC and adopted thirteen resolutions, concerning the formation of the OPEC Board of Governors, approval of OPEC's Statute and the Selection of Geneva as the place for the Headquarters of OPEC. [39]

2.2 The Legal Character and Classification of the Instruments governing OPEC

There are two main legal instruments governing the structure and administration of OPEC: the OPEC Constituent Instrument of 1960, and the OPEC Statute – as amended from time to time:

2.2.1 The Legal Character of the OPEC Constituent Instrument of 1960:

It is usual for most international organisations to be established by a convention concluded between member states. [40] However, there is some controversy as to whether a treaty is a necessary requirement to establish an international organisation:

Seyersted considers that the use of a treaty is not a necessary requirement either to formally constitute an international organisation, or to establish it as a subject of inter-

national law. [41] Quite a number of international organisations have been established solely by resolutions. This, for example, is the way in which, *inter alia*, the Asian-African Legal Consultative Committee, the Council for Technical Co-operation in South and South-East Asia (the Colombo Plan), Comecon, The Inter-American Defense Board, the International Cotton Advisory Committee, the International Hydrographic Bureau and the International Rubber Study Group were established. [42]

Schermers, on the other hand, regards the treaty as a better criterion to distinguish public from private international organisations and this is widely accepted by the United Nations. [43] Brierly provides a definition of what an international organisation is in his Report on the law of treaties to the International Law Commission – and this includes the term 'treaty' as a basic element for defining an international organisation. [44] Fitzmaurice provides the following definition, with similar emphasis on the term 'treaty':

> "The term 'International Organisation' means a collective of states established by treaty with a constitution and common organs, having a personality distinct from that of its member states, and being a subject of international law with treaty-making capacity." [45]

OPEC does not fall neatly within this definition: As we have just noted, the organisation was established by Resolution of the first OPEC Conference held between the 10th – 14th September, 1960. This was embodied in the Second Resolution:

> "The conference decides to form a permanent organisation called the Organisation of Petroleum Exporting Countries."

Furthermore, Article 13 of the Conference provides:

> "Members participating in this conference shall before 30th September submit the texts of the Resolution to the appropriate authorities in their respective countries for approval."

The words of the above provision clearly indicate that the Constituent Institution was intended to come into force before the 30th September 1960. The Conference did not specify exactly which authority was required to approve the Resolution. As it happened, all the relevant heads of state approved the Resolution before the specified date, and on the 20th September 1960, it was published in Baghdad, Caracas, Kuwait and Tehran. The Resolution was also signed by the heads of state of Venezuela and Iraq.

Accordingly, as regards the legal character of such a Constituent Instrument, two questions arise: *firstly*, is it necessary, for the purposes of international law, for such a Resolution to be approved and signed by the participating heads of state? And *sec-*

ondly, for the purposes of domestic law, is such a procedure legally valid in the context of the legal systems of each of the participating states? These two questions are interrelated.

As regards the first question – as to whether international law requires or recognises heads of state as the only representative of a state for the purposes of entering into valid international agreements and subsequent ratification – it is firmly established, as international practice, that heads of state are considered as representing their state for the purposes of all acts relating to the conclusion of a treaty. [46] However, it is not always easy to conclude that therefore there is a general rule that international law attributes the right to represent a state in its international relations to the head of state and that any treaty concluded by him is internationally valid. This is because some jurists hold the view that the measure of competence to conclude a valid treaty-lies in the authority which is conferred under domestic law – without any reference to international law. [47] For example, the constitutional limitations upon the competence of a head of state to conclude valid treaties is emphasised by Oppenheim when he states:

> "Treaties concluded by the heads of state in person do not require ratification provided that they do not concern matters in regard to which constitutional restrictions are imposed upon the heads of state." [48]

The development, however, of the constitutional system of government under which various organs are given powers in the treaty-making process, has increased the importance of ratification. Thus some states insist on parliamentary approval of a treaty, even though the treaty expressly provides that it shall operate as from the date of signature.[49]

In this context, Philip Jessup affirms that, despite the fact that there is no residuary rule as regards ratification, and although international law recognises that a treaty may come into force on signature, it remains a matter of the constitutional law of the state in question to provide for any particular procedures that need to be performed. [50]

Similarly, Fitzmaurice agrees that a treaty needs no ratification if it is expressed to take effect as from signature. However, if the constitutional law of the contracting party requires the consent of the legislature, then it must be obtained. [51]

In a modern approach to this subject, Article 46 of the Vienna Convention on the Law of Treaties provides:

> 1. A state may not invoke the fact that its consent to be bound by treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as in validating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any state conducting itself in the matter in accordance with normal practice and in good faith. [52]

This Article establishes that a state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law unless this violation is objectively manifest to the other contracting parties.

As regards the power of the member states of OPEC to conclude valid international agreements, all the constitutions of the member states – with the exception of Kuwait – confirm the exclusive treaty-making power vested in their heads of state or alternatively their executive representatives:

Saudi Arabia has no formal constitution as such, other than the Qur'an and various other sources of classical Islamic law. [53] However, its king has issued a regulation, described as 'a regulation of the Council of Ministers', which organises, *inter alia*, the treaty-making powers in Saudi Arabia. [54] Articles 18 and 19 of the regulation give the king an exclusive power to approve international treaties and any amendments by Royal Decree. The OPEC Constituent Instrument was approved by Royal Decree prior to its being published on the 20th September 1960.

As regards Iraq, Venezuela and Iran, the OPEC Constituent Instrument was approved by their oil minister, despite the fact that their respective Constitutions require different procedures for the approval and ratification of international treaties: Iraq's constitution requires the head of state's ratification; Venezuela's requires the approval of Parliament; and Iran's (at that point in time) a Royal Decree. [55]

Accordingly, an academic question may arise as a result of the 'infringements' by these countries of the technical requirements of their respective constitutions: Is it possible to successfully assert that the OPEC Constituent Instrument is not internationally valid because it was not ratified in accordance with the constitutional requirements of three of its member states?

In considering such an assertion, one author has argued that on closer examination of these particular constitutions it is evident that the ratification by head of state, by parliament, or by Royal Decree is required only for major treaties which affect the fundamental rights of their citizens, or the sovereignty and interests of state. Thus a further question arises, as to whether or not the OPEC Constituent Instrument belongs to this particular category of major treaty as defined by this author.

Clearly it can be argued that the OPEC Constituent Instrument does belong to this type of treaty: It refers to the creation of a permanent international organisation, composed of several member states, which will deal with the most important source of

their nations' wealth – and which accordingly will define some of these nations' policies – namely their petroleum reserves. These are clearly matters which affect all the citizens of these countries, and which can be considered as affecting the sovereignty of these states. The entering into such a treaty is definite, and will have some bearing on the exercise by these states of their sovereignty over their oil resources. [56]

However, the position at international law is that treaties of co-operation may imply a voluntary restriction of sovereignty. [57] Schwarzenberger points out that the acquisition of any jurisdiction by international institutions must rely on the acts of transfer from the member states. He further confirms that:

> "By consenting to the establishment of an international institution each member must be taken to have transferred these rights to the institution in question. Thus the functional jurisdiction exercised by international institutions is merely the sum total of the pooled and delegated rights of positive sovereignty which result from the transfer of rights from the members to these organisations." [58]

This is the case with OPEC: the OPEC Constituent Instrument calls for the unification of the policies of its member countries in respect of their most vital natural wealth. The oil-rich states established OPEC to strengthen this co-operation. Thus there exists an international organisation, OPEC, by which its member states seek reciprocal support in the field of petroleum exports. OPEC has power to take decisions as well as to make recommendations to member states on a broad range of oil subjects. Although, as we shall see in greater detail in Sections 5.4.5 and 5.4.6 below, these recommendations are not legally binding, they may have political repercussions if not followed. [59] They may, for example, affect foreign relations between member states. Thus these provisions may have implications which affect the concept of the absolute and inviolable sovereignty of these states – for, in making such provisions, the sovereignty of each state must acquiesce to the decisions and recommendations of the international organisation, OPEC, to the extent stipulated in its Constituent Instrument.

Having established, therefore, that the Constituent Instrument of the OPEC could well be included in the type of major treaty envisaged by the said author, it is necessary now to consider whether or not any of the members who did not comply with the requirements of their Constitutions could use this omission, if it suited them, to declare that their lack of compliance provides them with sufficient reason not to be bound by the Constituent Instrument! Although it might be argued that this scenario is academic, it is nevertheless a possible scenario and therefore worth considering.

It is argued by Fitzmaurice that, other than those cases in which a treaty specifically provides that entry into force is dependent on the municipal legislature, a state cannot invoke its failure to comply with the provisions of its Constitution to escape its international obligations. [60] Hyde, on the other hand, disagrees with this view and states that an unconstitutional treaty must be regarded as void. [61] Similarly, Wheaton states:

> "Where, indeed, such auxiliary legislation becomes necessary in consequence of some limitation upon the treaty-making power, expressed in the fundamental laws of the State, or necessarily implied from the distribution of its constitutional power, such as for example a provision prohibiting the alienation of the national domain, then the treaty may be considered as imperfect in its obligation until the national assent has been given in the forms required by the municipal constitution." [62]

McNair, however, points out that a distinction should be made between a state whose constitutional limitation as regards the requirement for consent by the legislative power is 'notorious', that is, well-known, and a state whose constitutional provision in this regard is 'obscure', that is, unknown, to the other contracting parties. Only in the former case, suggests McNair, should a state be able to plead constitutional incapacity. [63]

The Vienna Convention on the Law of Treaties 1969 has restricted the power of states to invoke internal law so as to invalidate their consent to be bound by a treaty. Such a plea is possible now only where the violation would be objectively manifest and would concern a rule of its internal law of fundamental importance. [64]

In the light of the foregoing, it appears likely that the members of OPEC in question could succeed in any claim that they were not bound by the Constituent Instrument because their constitutional requirements regarding its prior approval and ratification were not followed. It could be argued by them that these constitutional requirements were 'notorious' – and therefore 'objectively manifest' – and that as regards their internal laws, these requirements were 'of fundamental importance', and that therefore they were entitled to rely on Article 46 of the Vienna Convention on the Law of Treaties.

Not only that, but it could also be further argued that the absence of the approval and consent of the relevant authorities could be regarded as constituting manifest violations of their Constitutions – which are all clearly 'of fundamental importance'. [65]

In fact, however, whatever arguments and counter-arguments might be offered on this subject, the discussion is largely an academic one, since all of the members of

OPEC committed themselves voluntarily and wished the Organisation to succeed in its objectives right from the very start. The possibility of it being desirable or expedient for any member of OPEC to withdraw from this commitment and this wish has never arisen, and with the passage of time, OPEC's existence and the involvement its members have long been a *de facto* matter, accepted by the international community as a whole, as well as by its own members.

It is now possible and necessary to return to the main question raised earlier on in this section, as to whether or not it is necessary to have an international agreement or treaty in order to establish a *bona fide* international organisation. In so doing, therefore, it will be necessary to consider, in legal terms, what kind of a document the OPEC Constituent Instrument actually is:

2.2.2 The Legal Classification of the OPEC Constituent Instrument of 1960:

Since, according to Schermers, an international agreement is needed for the establishment of an international organisation, [66] and since the Constituent Instrument of 1960 is the instrument establishing OPEC, the first question that should be asked is whether OPEC was created by an international agreement – or, to put it differently, the question is: Is the Constituent Instrument of 1960 a treaty or not?

Unlike [67] the majority of public international organisations which are based on multilateral treaties, [68] OPEC was created as a result of the Resolutions adopted at the first Conference of the Petroleum Exporting Countries held in Baghdad from the 10th – 14th September 1960. The question in connection with this point is, therefore, whether or not these 'Resolutions' constitute a treaty in the light of international law?

A close analysis of these 'Resolutions', it is submitted, and of the procedures followed for the purposes of their formal adoption and entry into force, will reveal that they do constitute an 'international treaty' in the technical sense of that term. In support of this view, the Vienna Convention on the Law of Treaties 1969 can be utilised to provide the appropriate criterion. Article 2(1) of the Convention defines a treaty for the purposes of the Convention as:

> "An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whether it has a particular designation."

According to this definition, a treaty has three constituent elements:

(A) It is an agreement between states.

(B) It is governed by international law.

(C) It is in written form.

The third requirement, that the agreement is in 'written form', is easily satisfied, since the Resolutions creating OPEC are in written form. Accordingly the following analysis focusses on the other two necessary constituent elements of a treaty:

(A) <u>The Agreement must be between States:</u>

There is no doubt that we are dealing with an 'agreement', since the Resolutions embody 'an agreement' to establish a permanent international organisation to co-ordinate the member states' national policies regarding the exploitation of their oil resources (especially as regards production and prices) and the agreement was intended to create rights and obligations between its members. The question therefore arises as to whether the founder members possessed 'statehood' at the time the agreement was made. Kuwait was in fact the only member which was not fully independent at the time, since it was still a British protectorate. [69] Since the other members were fully fledged states, the mere fact that a non-state entity is a party to an agreement between other state entities does not necessarily mean that the agreement cannot therefore be a treaty. [70]

Moreover, the participation of non-self-governing states in a treaty constituting an international organisation does not effect the legal status of that treaty. [71] The practice of the UNO does not require fully independent statehood as a condition for its membership. India and the Philippines, for example, were original members of the UN although they were not fully independent states at the time of their admission. [72]

Since the Resolutions were negotiated, adopted and signed at the Baghdad Founding Conference by the legally authorised representatives (either ministers or top officials in charge of petroleum affairs) of the Governments of the respective participating states, and since they were subsequently either ratified or approved by the appropriate authorities of these states, it is clear that the inter-state character of the OPEC Constituent Instrument is unquestionable – and accordingly the first of the above three requirements is satisfied.

(B) <u>The Agreement must be Governed by International Law:</u>

It is clear from the contents of the Resolutions that the participating members intended to create legal relations to be governed by international law in their setting up "a permanent international organisation" whose principle objectives, as declared in the

Resolutions themselves, is "the unification of petroleum policies for the Member countries and the determination of the best means for safeguarding [their interests] individually and collectively." [Res. I.2(4).]

If such an agreement were only governed by municipal law, it would be excluded by the Vienna Convention definition of a treaty [Article 2(1)(a)]. [73] It follows therefore that the instrument creating OPEC is subject to international law since it has declared this intention expressly. Jenks says in this connection, "If a body has the character of an international body corporate, the law governing its corporate life must necessarily be international in character. It cannot be the territorial law of the headquarters of the body corporate or any other municipal legal system as such without destroying its international character. The law governing its corporate life will naturally cover such matters as the membership of the body, its competence, the composition and mutual relations of its various organs, their procedure, the rights and obligations of the body and its members in relation to each other, financial matters, the procedures of constitutional amendment, the rules governing the dissolution or winding up of the body, and disposal of its assets in a contingency. It may also cover the mutual relations of the body, its members and its various organs in respected matters involving third parties."[74]

Furthermore, the manner in which the Resolutions were approved, together with the procedure which was followed for their formal adoption and entry into force, also indicate the international character of the Resolutions – and accordingly the intention of the parties to the agreement to be bound by international law:

The Vienna Convention on the Law of Treaties makes it clear that a State's consent to be bound by a treaty can be expressed by the signature of its representatives [Article 12], in which case ratification is not necessary. [75]

In this context, the authorised representatives of the participating governments not only adopted the text of the Resolutions creating OPEC by signing it at the end of the negotiations at the conference held in Baghdad from the 10th to-14th September 1960, but also in so doing followed the traditional procedure when concluding an international treaty-by providing that: "Members participating in this Conference shall before September 30th submit the texts of the Resolutions to the appropriate Authority in their respective countries for approval, and as soon as such approval is obtained shall notify the Chairman of the First Conference (Minister of Oil of the Republic of Iraq) accordingly. [Resolution I.3(1).]

The term 'approval' used by the Resolutions to express the consent of the signatory states to be bound by their agreement in fact signifies the same meaning as the term 'ratification' used in Article 11 of the Vienna Convention which states: "The con-

sent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed."

In this case, authorised representatives of the member countries first signed and then approved the Resolutions, with the designated Iraqi Minister of Oil receiving notification of their approval on the following dates: Kuwait, the 19th September 1960; Iraq, the 27th September 1960; Venezuela, the 30th September; Iran, the 2nd October 1960; and Saudi Arabia, the 6th October 1960.

As to the entry into force of the Resolutions, the member countries had agreed that this would take place immediately after a stipulated date (the 30th September 1960), by which time formal approval of the Resolutions by the parties to the agreement was required to have been submitted. As agreed, the Resolutions entered into force on the 1st October 1960, notwithstanding the fact that the ratification or approval of some countries were actually received (very soon) after this date. [76]

Again, this did not contradict the provisions of the Vienna Convention on the Law of Treaties, which states: "A treaty enters into force in such a manner and upon such date as it may provide or as the negotiating states may agree." [Article 24(1).]

More specifically, as regards the legal validity of the two notifications which were received after the Resolutions had already come into effect, the Vienna Convention provides that: "when the consent of a state to be bound by a treaty is established on a date after the treaty came into force, the treaty enters into force for that state on that date, unless the treaty otherwise provides." [Article 24(3).]

Furthermore, Article 102 of the UN Charter provides that every treaty and every international agreement entered into by any member of the UN should be registered with the UN Secretariat and published by it. [77] Accordingly, on the 6th November 1962, the Resolutions creating OPEC were registered by Iran, Libya, Saudi Arabia, Kuwait and Venezuela with the UN Secretariat and were subsequently published by the latter under the title "Agreement in the UN treaty series". [78] Since, however, the Resolutions were registered as an agreement, rather than as a treaty, this registration does, on the face of it, constitute a "presumption against the registering state that the document is a treaty." [79]

Nonetheless, even the choice of title of 'Resolutions' which was given to the OPEC Constituent Instrument has no influence upon its character from the point of view of international law. [80] Whereas the OPEC Statute [Art 7(A)] refers to the 'Resolutions' which created OPEC as 'the original agreement', the Organisation's publications refer to them as 'the treaty' [81] which created OPEC, thereby clearly demonstrating the intention of the member states.

It is clear, therefore, that as well as being signed and approved in accordance with internationally accepted procedures, the Resolutions conform to the necessary conditions and fulfil the technical requirements as stipulated in the Vienna Convention on the Law of Treaties 1969. The representatives of the governments participating in the constitutional conference of OPEC in using the term 'Resolutions' to refer to the unanimous agreement reached by them, clearly intended to conclude between themselves a proper international treaty – and accordingly the second of the above three requirements is satisfied. [82]

In conclusion, since all three requirements of Article 2(1) of the Vienna Convention on the Law of Treaties 1969 have been fulfilled as regards the OPEC Constituent Instrument, it follows that as regards its legal classification, it can safely be regarded as an international treaty.

2.2.3 The Legal Character and Classification of the OPEC Statute:

As has been mentioned previously, the OPEC Constituent Instrument of September 1960 was concerned mainly with setting out the aims of the Organisation and with its actual creation. A further instrument devoted to the task of spelling out the details of the administrative set-up and the mode of operation of the Organisation was therefore necessary. [83] Thus at its January 1961 meeting, the OPEC Conference adopted the first Statute of OPEC, which contained the necessary provisions dealing with these more detailed matters. Subsequently, in April 1965, the Statute of the OPEC Economic Commission and the present Statute of OPEC which replaced the first Statute were adopted in the same way as the first Statute had been adopted.

As with the OPEC Constituent Instrument, these Statutes were not given a typical treaty form, but unlike the former – which was adopted at a Conference attended by state representatives – the Statutes were adopted by the supreme organ of the Organisation, namely the Conference. [84] These Statutes further differ from the OPEC Constituent Instrument in that they did not provide for approval or ratification by the member states, and they were not registered with the UN Secretariat. [85]

The question therefore arises as to whether the Statutes can be regarded as being on a par with the Constituent Instrument, that is, as a treaty. While it is true that the non-ratification and [86] the non-registration with the UN Secretariat [87] of a treaty do not *per se* have any automatic effect on its legal character, it is nevertheless clear that despite their close resemblance to international agreements in simplified form and also their binding effect upon the Member Countries, the OPEC Statutes, being solely decisions of the OPEC Conference, cannot be classified as treaties in the traditional sense of the term.

Discussion of the reasons for this has been postponed to a later stage, in Part Five, when the legal status of OPEC decisions is dealt with, [88] but it is useful to make the following broad points at this stage:

1. It must be stressed that the reason why the Statutes cannot be qualified as treaties in the traditional sense of the term does not simply lie in the mere fact of the manner of their adoption by an international agreement, but in the special characteristics of the decision-making process of OPEC, which gives OPEC decisions a *sui generis* nature in comparison to other international decisions. As will be seen later, OPEC decisions are subject to a special 'notification' procedure which is, in effect, a negative ratification procedure. Thus the fact that the Statutes have been adopted by means of this form of decision might explain why no specific reference to ratification is made in them.

2. The fact that the member countries, in their adoption of the OPEC Statutes, followed a different procedure to that utilised as regards the Constituent Instrument indicates that they apparently did not seek to apply traditional treaty law to these Statutes. This attitude becomes more readily understandable if it is appreciated that unlike the Constituent Instrument, which is mainly concerned with the actual creation of OPEC as an international organisation, the Statutes include detailed provisions dealing with matters such as the internal organisation of the OPEC Secretariat and the specific functions of each of its departments, which of necessity require to be regulated in an easily adaptable instrument in order to cope with the rapidly changing developments in the international petroleum industry. This is probably the main reason why the member states chose to adopt the Statutes in the same manner as any other ordinary decision of the Organisation.

Examination of the instruments establishing OPEC clearly shows that OPEC was intended to be an international inter-governmental organisation governed by international law. However, these instruments may also include objectives and aims which have private corporate or personal objectives which are not subject to international law. Thus it may be the case that in fact international law is not the main body of law which governs OPEC's activities and operations.

It is therefore now necessary to examine OPEC's main objectives with the aim of ascertaining whether or not this is the case.

2.3 The main Objectives of OPEC

Unlike most international organisations, OPEC's main objectives are not set out in simply one governing instrument, but – since the initial expression of these objectives subsequently evolved and came to be more closely defined over a period of time – are to be found in various different sources, namely:

1. The OPEC Constituent Instrument.
2. The OPEC Statute.
3. OPEC Petroleum Policy Declarations.
4. OPEC Resolutions and Declarations.
5. OPEC Activities and Operations.

The OPEC Statute also refers to the main principles which are to serve as a basis for achieving its objectives. (A full examination of these principles follows at a later stage).

This section is concerned solely with examining OPEC's main objectives, and not with considering its achievements. The following classifications are not exclusive, but special attention is given to the objective of co-ordination of national petroleum policies, since this was the Organisation's primary objective at its inception – and has proved to be the constituent umbrella under which most of OPEC's main activities and operations have been conducted:

2.3.1 The Co-ordination of National Petroleum Policies:

It is clear from Article 2(a) of the OPEC Statute that the member states considered that it would not be possible for them to undertake meaningful and lasting concerted action together unless they adopted a unified petroleum policy. Accordingly this is referred to as OPEC's 'principle aim'. Article 2(a) of the Statute provides:

> "The principle aim of the organisation shall be the 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."

Although the general sense of the term 'unification'is clear, it has in practice come to be widely interpreted. It is important to examine the meaning of the word as used in this Article. OPEC's Secretary General, Mr. Lukman, recently referred to this term as an 'elastic' one, which responds to changes and developments in petroleum policy and the degree to which it is accomplished. It does not define or limit such policy. It is

flexible, wide and allows for any future activity. Thus as we shall see in Part Six, OPEC's activities and operations in seeking to implement such a unified policy have consisted of a wide range and variety of concerted actions, including ensuring just payments, imposing penalties, ascertaining validity, assisting participation and unification of petroleum industries, granting aid to developing countries, and so on.

In spite of the fact that the OPEC Statute refers to the 'unification of the petroleum policies of member countries' as an objective of the Organisation, it does not indicate a clear intention on the part of the member countries to relinquish any significant measure of sovereignty – as would be necessary for a complete unification. Each member state has preferred to retain its own national executive, legislative and judicial powers. Nevertheless, a co-ordination and unification of their petroleum policies has in reality been achieved, by means of co-operation at a ministerial level and between the authorised representatives of the member states who belong to the OPEC Board of Governors. Regular and extraordinary meetings and conferences have been held to resolve any disagreements regarding certain issues affecting directly and indirectly the member countries. The most important issues dealt with so far have included price controls, control of petroleum production and export quotas, and participation, nationalisation, conservation and information gathering.

In some cases, OPEC has been successful in establishing its international status and role with other major international organisations such as the OAPEC, the Arab League, the UN, and the UNCOS). The OPEC member countries have in this way sought to present a united and coherent group expressing a united voice in respect of such issues which, by means of exchanging information and developing a common position, have been thoroughly examined and explored.

Member states are not obliged by the OPEC Statute to consult about and co-ordinate every detail of their respective oil polices. However, in practice, member states are requested by OPEC to refrain from following certain policies. For example, when OPEC decided in 1992, 1993 and 1994 to control oil production ceilings, Nigeria and Venezuela nevertheless signed long term agreements to supply without consulting OPEC in advance.[89] This behaviour by the two OPEC members was construed by other member states as being incompatible with the objectives of OPEC. They added that all decisions taken through OPEC organs required prior discussion and co-ordination – at least as regards important oil matters. Furthermore, one of the functions of OPEC's Secretary General in achieving the objectives of the Organisation is to establish a basis for and channels of communication in dealing with other states and international organisations – and to be assisted in this by a public information department. [90]

Having said this, however, if there is any obligation to consult, it can only be a moral one, not a legal one. The implementation and enforcement of decisions of OPEC appears to depend entirely on the good faith of its members. As such, it may be argued that the relationship between the OPEC member countries is akin to that between the member states belonging to a loose confederation. [91]

A confederation is defined as an association of independent states bound together by international treaty having its own organisation. The constituent treaty gives the organisation certain powers which can be exercised *vis-a-vis* the member states but not towards individuals, although these powers do not impinge upon the full sovereignty of the member states. Although the members of a confederation [92] of states may have some obligations regarding their international relations, their competence in foreign affairs is not restricted. [93] Nevertheless, there are essential differences between former confederations which have ceased to exist and modern international organisations. [94]

The object of confederations is declared to be the preservation of the external and internal security of the confederate states. [95] The common features of the confederation differ greatly from those of international organisations. The main purpose of confederation is to maintain a common difference and foreign policy through binding decisions of the supreme organ. [96]

Furthermore, the constitutions of confederations contain provisions quite alien in nature to those of international organisations. For example, in the Germanic confederation, the Diet had power to establish a fundamental basis for the confederation, and to frame regulations organising its foreign, military and internal relations. [97] When war was declared by the confederation, no state could negotiate separately with the enemy, nor conclude peace or an armistice without the consent of the rest. [98] In cases of denial or unreasonable delay of justice by any member state to its subjects, the aggrieved party was entitled to invoke the mediation of the Diet. [99] Furthermore, the confederation envisaged the threat of war as a valid sanction, either within the confederation against a member guilty of violating the constitution of the confederation, or against a state outside the confederation, in which case the obligation arose to enact laws whereby individuals were obliged to do military service and to pay taxes. [100]

Another marked contrast between a confederation and an international organisation is that, whereas an international organisation has international personality, the union of confederated states is not an international entity in itself. [101] Another cardinal distinction between the confederal structure and that of an international organisation is that in the former case, the various rules governing its establishment and the relationship between its member states both in peace and in war are contained solely in their

constitutions – whereas in the case of the latter, its constitution has to observe certain universal rules as contained in the U.N. Charter.

Thus it can be seen that there are some similarities and some differences between a typical confederational structure and that of OPEC. However these similarities are not sufficient to qualify OPEC as a typical confederation.

The fact that OPEC's main objective is the co-ordination and unification of petroleum policies gives rise to the question as to whether it was intended that this should include economic integration – since there are bound to be economic factors involved in any joint programme involving the production and export of oil. As we shall see later in this study, OPEC operations were indeed extended to include activities such as joint ventures, development funds and the organisation of common shipping and marketing programmes. However this policy of economic integration has only met with limited success and is facing serious difficulties, because of the differences between member countries as regards their political, economic and social systems. Thus as regards the OPEC unification programme, unlike the IEA or the European Economic community, no specific targets or deadlines for their implementation have been decided. [102]

In an attempt to remedy this problem, OPEC did establish various Committees charged with the task of drawing up recommendations and setting realistic target dates for their implementation in order to achieve this policy of integration, including the following:

1. A Committee for the establishment of a joint Tanker Fleet.
2. A Committee for the establishment of a joint Marketing Agency.
3. A Committee for the Establishment of a Monitoring Agency.

The Organisation failed in implementing these measures. A more detailed study of the reasons for this appears in Part Six, but at this point the following explanatory factors should be noted:

1. <u>Supremacy of Petroleum Policy Resolutions over Bilateral Treaties:</u>

Before the establishment of OPEC, there were many bilateral agreements already in force between OPEC member countries, especially the Arab countries. Unlike other organisations, OPEC did not have any specific articles or provisions dealing with the question as to whether or not such bilateral agreements would be superceded by OPEC petroleum policy decisions.

According to the principle of autonomous operation which applies mainly to international organisations, the presumption is that:-"each international organisation must

regard itself as being bound in the first instance by its own constitution and will naturally apply instruments which it is itself responsible for administering, rather than other instruments with which they may be in conflict, [103] which will lead to the exclusion of applying these treaties."

2. Conflict between OPEC Petroleum Policy and Other Treaties Concluded with Third Parties:

The conflict of treaty obligations may also arise as regards those bilateral agreements concluded between each of the OPEC member countries and third parties before and after the establishment of the organisation. Some of those agreements deal in part with the same subject matter as these two categories. [104]

According to Article 30.4(b) of the Vienna Convention on the Law of Treaties 1969, the obligations of OPEC member countries cannot override the obligations within the bilateral agreements concluded with third parties.[105] However, the above provision does not reflect customary law, since the state practice in this area of law is continually developing and fixed guidelines have not been established yet. [106]

3. Supremacy of OPEC Petroleum Policy over Internal Law:

The hypothesis of possible conflict between OPEC policy and municipal law can be viewed from different perspectives. In accordance with the principle of *pacta sunt servanda*, the state is legally obliged to fulfil in good faith the international obligations it has undertaken and to refrain from subsequent practice or concluding future agreements which would be contradictory to those obligations.

Article 26 of the Vienna Convention on the Law of Treaties provides: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." This rule in fact demonstrates one of the most fundamental principles of the customary international law governing treaties.

Article 26 is further strengthened by Article 27 of the Convention which states that a party to a treaty may not invoke the provisions of its constitution or its domestic laws as an excuse for failure to perform any international obligation it has undertaken under a treaty. It provides: "A party may not invoke the provisions of the internal law as justification for its failure to perform a treaty ..." Furthermore, a state can only derogate from its obligations through procedures prescribed in the treaty and not merely by a unilateral act.[108]

Having said this, however, it has to be accepted that an academic 'proof' of the supremacy of international law over national law does not therefore necessarily mean

that OPEC petroleum policy enjoys automatic supremacy over the internal laws of its member states. [109] Thus the constitutions of the member states of OPEC do not contain provisions of this sort. [110] As history has often demonstrated, it is usually what appears to be expedient that acts as the final arbiter and often determines the nature, conduct and final outcome of international relations. The acceptance of the application of external law within the territory of a state cannot be achieved merely by making provision for its supremacy over municipal law in an overseas Convention.

Returning now to the wording of Article 2(a) of the OPEC Statute which speaks of the 'unification' of the petroleum policies of member countries, it goes on to refer to 'the best means of safeguarding their interests'. [111] It is accordingly appropriate to examine what is meant by the 'interests' of the member countries, and what are the best means for safeguarding them.

Since its inception, OPEC has not attempted to specifically define these concepts, although the underlying determination inherent in this general statement of intent of the member states not to be exploited any further by the major oil companies is probably clear to everyone. It is plain that the aim of co-ordination and unification was formulated in terms sufficiently general to retain its full value for a very long time, and to include almost every activity related to the petroleum industry of the member countries, either directly or indirectly. Obviously, the founders of OPEC preferred to endow their organisation with a rather general aim for the following reasons:

(a) OPEC is intended to be a permanent organisation. Its continuity would not have been ensured if it had only been entrusted with a few specific objectives, such as the restoration of price levels and the negotiation of royalties and profit-shares, since once these objective had been achieved, the organisation would have become superfluous and perhaps even dissolved.

(b) If only a few specific objectives had been enumerated in the OPEC Statute, this would have limited the scope of OPEC's activities and, as a consequence, any activities beyond that scope may have been considered *ultra vires*.

(c) The inclusion of too much specific detail in the OPEC Statute was undesirable, because this might lead to inflexibility as conditions changed, particularly in such a changeable market as petroleum, and which would necessitate further and possibly inconvenient amendments to the Statute.

However, while the long-term 'general' aims stipulated in the OPEC Constituent Instrument and in the OPEC Statute have remained valid and intact, the Organisation has gradually been moving towards achieving more precisely defined goals, or rather

sub-objectives, which fall within the general aims and whose attainment is easier to verify.

Thus, the general aims have been elaborated and amplified by subsequent resolutions of the OPEC Conference. New objectives have been added when existing ones have been realised. Former objectives, if they proved unattainable, have been replaced by more realistic ones. For example, the goal of maximising revenue units through adjustment of financial arrangements was pursued in place of the earlier aim of restoration of price levels. As a result, a multitude of objectives of an immediately attainable nature have been adopted. These can be divided into three groups, a brief description of which follows later.

2.3.2 The Stabilisation of Oil Prices:

This is the only specific objective expressly mentioned in the OPEC Statute [Article. 2(b)] and was clearly precipitated by events in 1959 1nd 1960. As already indicated earlier in Part One, owing to certain characteristics of the international petroleum industry and of the traditional concession system, the operating companies had the right, will and ability to make unilaterally all decisions concerning all phases of the petroleum industry of the member countries including the determination of price levels. This enabled them in 1959 and 1960 to effect successive reductions in the posted prices of oil of OPEC member countries. As already explained, it was the implementation of this policy which was perhaps the most single direct cause of the creation of the OPEC.

Article 2(b) of the OPEC Statute expressly states the aim of 'ensuring the stabilisation of prices in international oil markets'. This raises several important questions: What, for example, is meant by the term 'prices'? Does it mean the 'posted prices' or the 'market prices'? Also, which year is to be treated as a base-year for such stabilisation? Does the stabilisation aim to cover the prices of gas as well as oil? And does it extend to the prices of other petroleum products? Or is it confined solely to the prices of crude petroleum? Furthermore, does 'optimisation of prices' conflict with the aim of 'stabilisation of prices'? Is OPEC entitled to slow or stop oil production for stabilisation purposes?

Clearly whatever the prices sought to be stabilised, this is a fundamental goal of both producer and consumer. Thus the ensuring of the stabilisation of prices which is stated as a fundamental objective of OPEC can also be found in other IPA's. Similarly, and for the same reasons, the same objective can also be found in most ICA's. As has already been noted in Part One, stable prices which ensure steady export earnings for the producer and a guaranteed supply for the consumer are essential to economic and political well-being and quality of life:

> "the general purpose ... in the establishment of international economic organisations to control commodity prices is to improve their standard of living through the stabilisation and augmentation of the prices of their natural resources." [112]

Thus the price objective of OPEC, like those of other ICA's, is designed to combat two defects which can adversely affect in international commodity trade - price instability and declining terms of trade of primary commodity producers.

On different occasions, the term 'stabilisation' has been used by OPEC officials or in OPEC decisions to indicate one of two things – either 'fair' or 'remunerative' prices, or sometimes 'fair and reasonable returns'. All these terms have also been used by other IPA's and these have always been taken to be referring to 'stabilisation of prices.' This view is also supported by the Havana Charter, which uses the expressions 'fair' or 'reasonable' or 'remunerative' prices to mean 'stable prices' at an acceptable level. Thus there is no reason why these expressions should not carry the same meaning when used in connection with OPEC.

It can and has been argued, however, that if OPEC is committed to maximising oil revenues by, *inter alia*, increasing oil and posted prices, then this is not consistent with the aim of ensuring the stabilisation of prices' as set out in Article 2(b)of the OPEC Statute, and that therefore:

1. OPEC's pricing decisions are unconstitutional.
2. OPEC's pricing decisions contradict its commitment to the stabilisation of prices.

The short answer to such criticisms is that probably they are unfounded and unsustainable as long as these pricing decisions are equitable and not motivated by greed. Nevertheless, they deserve more consideration:

1. <u>Are OPEC's Pricing Decisions Unconstitutional?</u>

Whether or not OPEC's decisions to increase the price of oil violate the OPEC Statute, particularly Article 2(b), is of more than practical interest. The fact that OPEC has for many years been adopting decisions in relation to oil prices which have been implemented by member countries with no question of legality being raised is a *de facto* answer. But what of the *de iure* position?

There are a number of situations in which the question of the validity of the acts of an international organisations may arise. [113] Schermers states: "The powers of all international organisations are limited to those expressly granted by the constitution. No

decision can be proposed outside these powers." [114] It follows that one of the basic requirements for the legality of a decision of an international organisation is that the organisation must act in accordance with its constitution. [114]

The most important question therefore is whether or not an OPEC decision which contravenes one of its own constitutional provisions is valid. Article 41 of the OPEC Statute answers this question in the negative by providing that: "All resolutions contrary to the context of this statute shall be abrogated."

A literal interpretation of Article 41 would suggest that a decision conflicting with the OPEC Statute would be regarded as invalid even if such a decision was adopted in conformity with the unanimity rule provided for by the Statute. [115] This would be, *prima facie*, the orthodox interpretation, since the validity of a decision is normally governed not only by its conformity with the procedural rules on voting, but also by the constitutional provisions which set out the powers conferred on the organ or organisation. The only alternative would be to validate the decision by removing or altering the constitutional provision which it contravenes. In order to make such a decision valid in this way, the relevant provision would have to be amended in accordance with the relevant constitutional procedure before the decision could then be adopted.

In reality, however, this formal requirement of prior amendment does not possess much significance, since in this situation, statutory amendments are adopted and brought into effect using exactly the same procedure as any other ordinary decision of the Conference. [116] Furthermore, this issue has an air of unreality, because if an unconstitutionally invalid decision is nevertheless adopted unanimously, there is in fact no one to challenge its validity – since as regards OPEC, there is no external, 'higher' imperial body to which such a matter could be referred. [117]

In the absence of any constitutional provision regulating the effects of any unconstitutional acts by OPEC, and in the absence of any judicial machinery for adjudicating any disputes arising from such acts, OPEC – like all other international organisations in a similar position – may encounter difficulties if any such dispute does arise. The only solution to deal with this scenario would be to establish a higher judicial body before which such disputes could be brought – an option to which OPEC has agreed but which has not been implemented. [118]

2. Do OPEC's Pricing Decisions Contradict its Commitment to Price Stabilisation?

The question here is whether or not OPEC's decisions to increase oil prices are consistent with its declared aim of ' ensuring the stabilisation of prices' as provided in Article 2(b) of the OPEC Statute.

As has been argued above, a literal interpretation of Article 2(b) of the OPEC Statute might suggest a negative answer, unless of course a price rise was fixed at a level which was both fair and stable, in which case there would be no contradiction. Alternatively, a more liberal approach can be adopted, if one takes into consideration *firstly*, the Preamble of the Constituent Instrument, in which the OPEC members underline how significant oil revenues are to their economies, and *secondly*, the provisions of Article 2(c) of the OPEC Statute, which states that at all times the organisation is to pay due regard to "the interests of the producing nations and to the necessity of securing *a steady income* to the producing countries." When these factors are taken into consideration, it should be apparent that any problem of 'inconsistency' is more imaginary than real: What OPEC is really aiming at is the stabilisation of oil prices – and consequently of oil income – in *real terms*, taking into account several factors such as inflation, depreciation of currencies used for settling oil payments and terms of trade and indexation. At any rate, this is the approach which subsequent OPEC Resolutions and practice have endorsed.[119]

Returning now to our examination of ensuring prices stabilisation as an objective of OPEC, it is clear that this prime objective of OPEC goes beyond mere price stabilisation so as to maximise price enhancement. On the face of it, price enhancement is an essential ingredient in ensuring increased export earnings; and at the same time it does reduce the impact of declining terms of trade of oil. But whether or not price enhancement will result in increased export earnings depends very much on the demand for oil at a particular time. Prices may rise – but if exports fall, then net gains may be less than before.

OPEC officials, resolutions and declarations do not all follow one clear pattern with regard to price enhancement. The following are examples of the price objectives of OPEC: To assure fair terms of trade, the best possible price and optimal pricing. [120] Elsewhere the price enhancement objective of OPEC is described as being: "To assist member countries to secure fair and remunerative returns from the exploration, exploitation, marketing and investing of petroleum with a view to improving their export earnings and terms of trade." It has also been said that the price objectives of OPEC are to provide "a dynamic and continuous growth of real earnings from oil exports." [121] This explains why one of the perceptions of OPEC's objectives is: "to increase resources for the economic and social development of oil producing countries, bearing in mind the interests of consumers." [122]

In discussing the ultimate aim of OPEC's pricing policy, Mr. Ali Jaidah explained OPEC's pricing objectives in the following terms:

"OPEC has thrown all of its weight into the effort to bring about a new economic order for the world; a world in which those who had little say in the evaluation of their resources would share in the controlling power. We want a fair deal; a package in which the producers, manufacturers and users of the exhaustible resources of the world would co-operate in striving towards a higher quality of life for all people." [123]

2.3.3 A General Evaluation of OPEC's Pricing Objectives:

The foregoing survey of OPEC's pricing objectives permits the following observations:

1. OPEC Price Objectives and International Commodity Agreements:

The price objectives of OPEC are no more radical than those of normal ICA price objectives to stabilise or increase commodity prices or producers' income or terms of trade, although sometimes it is not apparent that ICAs intend to stabilise prices and to increase producers' income through price enhancement. [124]

For example, Article 1(a) of the International Sugar Agreement (1977) provides that: "one objective of the ISA is to increase the export earnings of developing exporting countries." Further, Article 1(b) states that in achieving price levels which are remunerative to producers and equitable to consumers, "account will be taken of the effect of inflation or deflation, variations in exchange rates and trends in the prices..." The purpose and effect of this provision is to ensure that producers receive earnings in real terms, thus placing the price objectives of the ISA, which is a producer – consumer agreement, well beyond the Havana Charter principles. [125]

This clearly demonstrates that the OPEC price objectives cannot be classified as being more radical than those of normal ICAs.

2. OPEC Price Objectives and Oil Consumers' Interests:

The price objectives of OPEC do recognise the legitimate interests of oil consumer states. The fact that OPEC recognises 'consumer interest', raises the question as to whether or not price enhancement is incompatible with recognition of consumer interests because consumers want oil prices as low as possible. Clearly, much depends on the extent to which prices are enhanced. In this respect, OPEC has tried to find a workable formula for international co-operation in the UN, UNCTAD, the Paris Conference and other forums, on the one hand, while also accepting its share of the responsibility of meeting world requirements for crude oil on the other hand. [126]

3. OPEC Price Objectives and Price Enhancement:

The OPEC Statute does not make it absolutely clear whether or not OPEC's purposes include price and revenue enhancement. One of the reasons for this is that OPEC's establishment took place well before the negotiation and debates concerning the New International Economic Order. Had they been contemporaneous, the founders of OPEC would undoubtedly have benefited from the debate and as a consequence would have most probably provided for price enhancement as a clear and distinct objective of their new organisation.

In spite of the absence of a clear statement of intent in this respect, the following reasons can be advanced in support of the proposition that the ultimate objective of OPEC is to secure maximum financial resources for the economic development of its member countries, and that price enhancement is a key element in achieving this objective:

(i) One of the principal reasons for the establishment of OPEC was the failure to negotiate ICAs which guaranteed oil producers adequate and remunerative prices, since producers usually demand an upward revision of prices during the life time of an ICA. Further, the attitude adopted by producers in negotiations concerning ICAs suggests that they demand more than stable prices – this attitude has been reflected in the ISA of 1977.

(ii) The practices of OPEC clearly show, through statements and actions, that one of OPEC's main objectives is to secure just and remunerative prices, both for the export of products of the oil producing countries and in order to protect and insure in real terms the purchasing power of their export earnings.

(iii) Since the oil-producing countries depend on oil exports for the bulk of their foreign exchange, it is obviously desirable that price enhancement should be one of the objectives of OPEC if its member countries are to receive sufficient resources and income to facilitate their economic and social development. In the words of one commentator:

> "A legitimate objective of commodity trade policy on the part of developing countries should be the maximisation of returns from their production. This means that whatever opportunities exist for price enhancement must be grasped." [127]

OPEC has also confirmed this in its Solemn Declaration made by the Conference of the Sovereigns and Heads of State of the OPEC member countries in March 1975, part of which states:

The Sovereigns and Heads of State point out that an artificially low price for petroleum in the past has prompted over-exploitation of this limited and depletable resource, and that continuation of such policy would have proved to be disastrous from the point of view of conservation and world economy.

They consider that the interest of the OPEC Member Countries, as well as the rest of the world, would require that the oil price, being the fundamental element in the national income of the Member Countries, should be determined taking into account the following:

- the imperatives of the conservation of petroleum, including its depletion and increasing scarcity in the future;
- the value of oil in terms of its non-energy uses; and
- the conditions of availidity, utilisation and cost of alternative sources of energy.

Moreover, the price of petroleum must be maintained by linking it to certain objective criteria, including the price of manufactured goods, the rate of inflation, the terms of transfer of goods and technology for the development of OPEC member countries ...

The Sovereigns and Heads of State declare that their countries are willing to continue to make positive contributions towards the solution of the major problems affecting the world economy, and to promote genuine co-operation which is the key to the establishment of a new international economic order.

In order to set in motion such international co-operation, they propose the adoption of a series of measures directed to other developing countries as well as the industrialised nations.

> They, therefore, wish to stress that the series of measures proposed herein constitute an overall programme, the components of which must all be implemented if the desired objectives of equity and efficiency are to be attained. [128]

Thus it is clear that both price stabilisation and price enhancement are objectives of OPEC. Price stabilisation may be the short term price objective, but producers will seize every legitimate opportunity that allows price enhancement. It will, however, require a considerable improvement in the political and economical environment and

technology of the OPEC member countries, before OPEC is able to pursue the more ambitious objective of indexation – the automatic linking of the price of oil with those of manufactured goods, the rate of inflation and the rates of exchange in the money markets.

2.3.4 A General Summary of OPEC's Objectives:

As well as the main objectives already considered, OPEC has, since its inception in 1960, proposed many specific short-term and long-term related objectives, which can be summarised as follows:

1. Early Objectives (1960-1968)

(1) The establishment of uniform accounting procedures, (Res. III.26 of 1961). [129]

(2) The restoration of posted prices to pre-August 1960 levels, (Res. IV.32 of 1962).

(3) Expensing a royalty level, as well as fixing it at a uniform and equitable rate, (Res. IV.33 of 1962). [130]

(4) The elimination of marketing expenses, (Res. IV.34 of 1962).

(5) The compilation of a Code of uniform Petroleum Laws, (Res. V.41 of 1963).

(6) The establishment of an Inter-Member State-OPEC High Court, (Res. V.41 of 1963). [131]

(7) The adoption of a Joint Production Programme, (Res. IX.61 of 1965). [132]

(8) The complete abolition of allowances granted to the major oil companies, (Res. XI.71 of 1966).

2. Objectives in the Declaratory Statement of Petroleum Policy of 1968: [133]

(1) The direct exploitation of hydrocarbon resources by the governments of the OPEC member countries. If this is not feasible, the latter may conclude contracts of various types, to be drawn up in accordance with their own legal systems but subject to the principles of the Declaration. Such contracts shall be subject to periodical revision together with the existing concession agreements.

(2) Governmental participation in the equity of concession-holding companies. [134]

(3) Progressive and effective relinquishing by the oil companies of acreage covered by existing contracts.

(4) All financial arrangements between oil companies and member countries should be made on the basis of posted or reference prices. This price shall be set by the governments of the latter, indexed to the price of manufactured goods traded internationally and be uniform in all member countries.

(5) No excessive high net earnings obtained by the companies shall be permitted. Contracts giving rise to such excessive earnings shall be subject to revision.

(6) Accounting documents and information related to the activities of the operating companies shall be kept in conformity with the instructions of the governments of the OPEC member countries and be made available to the latter.

(7) Conservation rules shall be drawn up by the Governments of the OPEC member countries and be applied by all companies operating in their territories. [135]

(8) Except as otherwise provided for in the municipal legal systems of the OPEC member countries, all disputes between their governments and the operating companies shall be settled solely through the competent national or specialised regional courts.

3. Objectives adopted by the Caracas Conference of 1970: [136]

(1) The establishment of a minimum tax rate of 55%.

(2) The elimination of disparities in existing posted or tax-reference prices.

(3) The establishment of a uniform general increase in posted or tax-reference prices.

(4) The adoption of a new system for the adjustment of gravity differentials of posted or tax-reference prices.

(5) The complete elimination of the allowances granted to the operating companies as from the 1st January 1971.

Assessment of Early Objectives: The following observations regarding OPEC's policy towards its own objectives are relevant at this point:

(i) Unlike the first group of objectives listed above (the Early Objectives) which were not formulated at one time but which were the products of various Resolutions over the years, all of the second (1968) and and all of the third (1970) groups of objectives were adopted by means of a single Resolution. The second group of objectives (1968) are distinguished by the fact that they were simply recommended guidelines to govern the petroleum operations in OPEC member countries, whereas the third set of objectives (1970) were intended to be legally binding rules to be followed by all OPEC

member countries. Thus the language used by the Conference changed from 'recommending' in Resolution XVI.90 of 1968 to 'resolving' in Resolution XXI.120 of 1970.

It is clear from this pattern of progression, that the gradual development and evolution of OPEC objectives stem primarily from the gradual consolidation and growing power of the collective bargaining position of the Organisation [137] *vis-a-vis* the position of the transnational oil companies. The stronger this power has become, the more far-reaching the objectives adopted by OPEC.

(ii) In setting new objectives, the Conference often does not indicate which of the earlier ones have either been fulfilled or become obsolete and consequently should be abandoned. Such ommissions could lead to a multiplication and confusion of objectives, with a corresponding diffusion in the work of OPEC's various organs.

In one instance, however, namely the Joint Production Programmes, the Conference has resolved that this be suspended and held 'in abeyance' until such time as a true need for them arises. [138]

(iii) In setting objectives, the Conference has sometimes also indicated the means for their implementation and specified a time-limit for their attainment. For example, in the case of the 1970 objectives (Res. XXI.120), the Conference specified a time-limit as well as the primary means (negotiating with the operating companies) and even an alternative means (introduction of legislative and legal measures by the Governments of the member countries) for their implementation. [139] But this approach is not always followed – the 1968 objectives are a case in point.

(iv) The lack of priority listing has been a general feature of OPEC's objectives since its inception. Neither the Conference nor the Secretariat have attempted to define or prioritise the relative importance of each of the Organisation's objectives. As a matter of sound management, it would be desirable not only to establish a priority listing but also to develop principles for selecting criteria to govern the fixing of these priorities.

In other words, OPEC would probably be well-advised to develop a medium-term planning system establishing the objectives, priorities and means (as well as alternative means) and time-limit for their attainment, together with a system of objective measurement of programme effectiveness and performance. [140]

4. Objectives Adopted by the 'Solemn Declaration' of 1975:

In the early days, OPEC's horizons did not extend much beyond regulating the activities of the oil companies which were the immediate focus of their initial strug-

gles. However, the great transformation during 1973-74, when far-reaching moves were made to curb the behaviour of OPEC, obliged the member states to take heed of a much wider spectrum of international realities, problems and pressures.

Accordingly, and in response to the invitation of the Algerian government, the Sovereign and Heads of State of the OPEC member countries met in Algeria from the 4th to 6th March, 1975. They reviewed the current world economic crisis and considered, in the context of international solidarity and co-operation, the measures they would need to take to safeguard the legitimate rights and interests of their peoples. They declared themselves prepared to contribute through their efforts to the basic objectives of world economic development and stability, as stated in the Declaration and Programme of Action for the Establishment of a New International Economic Order adopted by the General Assembly of the United Nations during its VIth Special Session.

The Solemn Declaration of 1975 also listed a number of third world demands directed towards the developed countries, many of them deriving from the Programme of Action adopted by the UN's VIth Special Session. These included:

(1) Support for developing countries for measures taken to stabilise the prices of their exports of raw materials.
(2) Fulfillment by the developed countries of the international aid commitments for the Second UN Development Decade.
(3) Implementation of an effective food programme under which the developed countries should extend grants and assistance to the most seriously affected developing countries with respect to their food and agricultural requirements.
(4) Acceleration of the development process of the developing countries, particularly through the adequate and timely transfer of modern technology.
(5) Co-operation of the industrialised nations in building a major portion of the planned new petrochemical complexes, oil refineries and fertiliser plants in the territories of the OPEC member states, with guaranteed access for the products of such operations to the markets of the developed countries.
(6) Opening up the markets of the developing countries to primary commodities and manufactured goods produced by the developing countries.
(7) Reform of the world monetary system to allow for participation in the decision-making process by the developing countries on a basis of equality.
(8) Adequate protection against depreciation of the value of the external reserves of OPEC members, as well as assurance of the security of their investments in the developed countries.

Thus the Declaration of 1975 can be considered as representing a major change in the nature of OPEC objectives – which are now no longer confined solely to oil prices, but extending towards much wider considerations. Clearly these more recent objectives are more concerned with the general issues of control over resources and transfer of wealth between developing and developed countries – and with the proposed transition to the new international economic world order in which this distinction is no longer so marked. By this Declaration, OPEC reconfirmed that it regards itself as an integral part of the third world and that by its bargaining power it can give firm backing to the developing countries' demands for equitable changes in the international economic order.

5. Objectives derived from OPEC Activities and Operations:

As we have seen, all the OPEC objectives stated so far are to be found in the OPEC Constituent Instrument, or in the OPEC Statute, or in various OPEC policy declarations and conference resolutions, or in other documents. Perhaps the most important of all the OPEC objectives, however, are those which can be deduced by observing and understanding the actual behaviour of the Organisation: What is most important is what OPEC does, and not what it says. The Organisation has been active since its establishment, and already such activities have revealed that actually there are more OPEC objectives than those recorded in documents. A full examination of these objectives appears in Part Six, which deals specifically with OPEC activities and operations. However, at this point it would be helpful to provide a summary of these objectives, together with some brief comments:

(1) Collection and dissemination of information concerning the oil industry, (including, marketing, processing, production and research).
(2) Ownership of and control over oil resources by member countries.
(3) Co-ordination of production prices.
(4) Harmonisation of marketing prices.
(5) Solidarity and joint bargaining procedures and strategy.
(6) Co-operation with other international bodies.
(7) Transfer of technology, particularly oil technology, between member countries.

Irrespective of the language of commitment embodied in the OPEC Constituent Instrument, the OPEC Statute and other documents, there can be no doubt that the general thrust and ultimate seal of these objectives is the firm intention to achieve the

net transfer of resources from the developed consuming countries to the developing oil-producing countries, by means of the enhanced control of the oil market and industry.

It is for this reason that OPEC has always been seen *either* as a potent instrument of change in helping to fulfill the desire of the developing oil-producing countries to enhance their wealth and bargaining power in the international economic system in general, and in the oil industry in particular – *or* as a threat to the existing *status quo*, by the dominant high-tech northern countries of the world.

Thus OPEC symbolises, and has always been at the forefront of, the oil-producing countries' endeavours to secure a more equitable share in the distribution of power and wealth between the oil-producing and oil-consuming countries in particular, and between the developing and the developed countries in general.

2.4 A General Classification of OPEC

OPEC is an inter-governmental organisation of oil-producing-exporters comprised exclusively of developing countries, operating without the oil-consuming countries' co-operation or participation. This distinctive absence of consumer participation is the principal distinguishing characteristic of such an International Producers Association (IPA) as compared to the Havana-Charter type of International Commodity Agreement (ICA), which is modelled on the concept of producer-consumer co-operation which was developed in the inter-war period.

An IPA like OPEC is also distinguishable from a typical ICA in its being a permanent organisation – whereas ICAs are established as temporary instruments of limited duration, usually for five years. The third feature which distinguishes an IPA like OPEC from a typical ICA is that OPEC does not define the regulatory mechanisms to be used to achieve its objectives – whereas ICAs are typically characterised by the type of regulatory mechanisms which are pre-defined and used.

The fact that OPEC was created by oil-producers only caused indignant 'outside' observers to comment that a new cartel, 'a producer cartel to hold up prices', had been formed. [141] Paul Frankel wrote that even Mattai could hardly have been in favour of a 'cartel of producing countries', as it was being planned at the time of his death 'in the form of the organisation of petroleum exporting countries (OPEC) ...' [142]

In contrast, Zuhayer Mikdashi viewed OPEC as a 'bilateral oligopoly' which, 'though broad or loose, has evolved in the market for oil rights. On the demand side are the international companies, and on the supply side are the oil exporting countries.' [143]

Harvey O'Conner supported the same view, stating that, 'the creation of OPEC was widely regarded as the most momentous event of the decade in the near East. For the first time a cartel of countries faced a cartel of companies ...' [144]

In fact it is not only OPEC which has been labelled 'a Cartel'. Virtually all other producers' associations have also been labelled as 'Cartels', [145] as were also the parties to some of the pre-Havana Charter producers-only International Commodity Agreements. For example, the first two international Tin Agreements, which were in force between 1931 and 1936, were labelled as 'Cartels' by economists and commentators because they contained no provisions for consumer co-operation. [146]

The question therefore arises as to whether or not the Organisation of Petroleum Exporting Countries should be or can be classified as a 'Cartel':

It is true that the formation of OPEC was '... an embodiment of the will of all its members to achieve certain objectives through collective actions ...', as one of its former Secretaries General correctly wrote. It is equally true that from its inception, OPEC was '... a force to be reckoned with by oil companies in all their negotiations with producing countries.' [147]

This does not necessarily mean that OPEC was a real cartel, or a *sine qua non* to an effective cartel, in the same way that the major oil companies were. Officially, member countries denied that their intentions were to establish a cartel:

> "OPEC member countries have repeatedly stated that they have no desire to form a cartel that would exclude the consumers. They wish to enter into an agreement that would be favorable both to producers and to the consumers ..."

This statement is in conformity with Article 1(c) of the OPEC Statute which pays special regard towards the needs of the consuming nations and pledges to ensure an '... economic and regular supply of petroleum to consuming nations and a fair return on their capital to those investing in the petroleum industry.' [148]

If this was truly one of the purposes behind the establishment of OPEC, then clearly, OPEC was far from being an effective cartel. A cartel has been defined as: 'a co-ordination of the economic behavior of independent partners, based upon their consent which results in regulation of one or more markets.' [149] This definition encompasses the standard type of cartel which is based on a 'detailed agreement between several enterprises that provides for sanctions, arbitration agreements and other precautions, to enforce it,' and which is a form of 'enterprise co-operation that exercises an internal influence on the decision-making of competitors by force of custom entanglements or contracts even though there is no formal contract.' [150]

Thus the essential characteristic of a cartel is the consent of the parties to adopt parallel or complementary behavior that influences or regulates the market. However, the definition of a cartel as quoted above is very broad, and a more specific definition is necessary for particular types of cartels. As regards cartels concerned with commodities, Professor Kronstein has suggested that by means of '... an international raw material cartel, enterprises of different nationalities seek to regulate the market for a specific raw material. This definition does not include the frequent governmental agreement in this area.' [151]

The term 'cartel', as with many other legal concepts, derives from the domestic public law of Anglo-American legal systems and refers primarily '... to the conduct of non-state actors who have entered into a horizontal arrangement between former competitors or ought-to-be competitors designed to avoid the rigours of market forces." [152]

Thus, not only is it evident that the term 'cartel' is customarily used to describe an association for economic purposes of non-state actors – whereas OPEC members are all states – but also it should be noted that the term originates from the domestic law of developed countries – and should not be unthinkingly transplanted and applied to international (inter-state) relations without proper analysis and prior consideration. As Lord McNair has advised elsewhere, 'International law does not import private law rules and institutions lock, stock and barrel.' [153] Echoing this view, Kronstein advises that: '... legal concepts developed in national economic legislation are inappropriate for an analysis of a new private order in the international economy.' [154]

It follows from this that if the domestic legal concept of a 'cartel' is inappropriate for analysing new forms of private cartels, then it requires more than a flight of imagination to consider the same concept appropriate for analysing new inter-governmental economic organisations like OPEC. And yet even today the distinctions between OPEC and a typical cartel is not always recognised. [155]

A second distinctive characteristic which distinguishes cartels from OPEC lies in the intention behind the activities of the parties:

Cartels usually exist primarily to eliminate competition or potential competition by means of, *inter alia*:

(i) adjustment of total production to estimated demand in order to maximise prices;

(ii) allocation of sectors of the trade market to reduce or eliminate competition, i.e. market sharing.

(iii) standardisation of the terms upon which the suppliers in the cartel will trade with customers;

(iv) the use of coercion against non-members, including the illicit use of force against opponents; and

(v) policing the activities of members: penalising violators, rewarding abiders. [156]

OPEC, on the other hand, has a different outlook. Its objectives, as we have seen throughout Part Two, are concerned *inter alia* with state ownership of and control over national resources, as well as the social and economic regulation of the exploitation, use and marketing of oil produced in member countries. Although one of the purposes of OPEC is to enhance the bargaining power of its members in the international oil industry and trade, it does not have any means to coerce non-members or to use force (illicit or otherwise) against its opponents – and it does not police the activities of its members as cartels do. All of its decisions are not enforceable on members. Thus, since OPEC is not primarily designed to eliminate competition, or to engage in market sharing, to describe it as a 'Cartel' is inappropriate and inaccurate, even though its members' admitted aim is to use their combined economic power over their essential resources to achieve political, economic and social ends.

It is only if we adopt a casual definition of a cartel as 'an association or agreement to regulate the market for commodities in respect of price or production or both,' [157] that it can perhaps be argued that OPEC qualifies as a cartel. If we opt for this definition, however, then even ICAs can be construed as cartels, since the main difference between a typical ICA and an IPA like OPEC is not so much the methods or techniques used, or their objectives, but simply the non-participation of consumers in OPEC.

To avoid this problem, a further attempt has been made to distinguish between a cartel and an ICA by introducing an added qualification which states that: 'a cartel is an association of producers that seeks to intervene actively in the market, whilst a commodity agreement is an organisation of both producers and consumers that seeks to intervene actively in the market, but presumably in a more balanced fashion than a cartel.' [158]

If this definition is accepted, whatever difference there is lies in the meaning attached to the presumption of 'a more balanced fashion', which makes the test a very subjective one. It is not therefore surprising to learn that because of the difficulty in distinguishing between OPEC and ICAs in terms of their objectives and methods of operation, ICAs have also been branded cartels. In this connection, Profession S. D. Metzger speaks of 'commodity cartels with or without consuming country participation.' [159]

It appears, therefore, that the term 'cartel' has lost its original legal and economic connotations and now tends to be used in the political sense, with both developed and developing countries using it in a derogatory manner, [160] especially now that it is commonly used to describe illegal associations involved in the international drug trade. The lack of objectivity regarding cartels has been summed up thus: 'Cartels are commodity agreements the US does not like; commodity agreements are cartels the US approves.' [161]

On balance, it can be argued that the OPEC members, like the parties to an ICA, do have the potential to adopt cartel-like measures such as production and export control [162], but this possibility does not automatically transform OPEC into a cartel – just in the same way, for instance, that an international organisation operating in accordance with international law is not thereby transformed into a State.

As will be made evident in due course, to describe OPEC as a cartel is to misunderstand its legal, economic and political structures and perceptions. Thus, whereas OPEC is an intergovernmental organisation and therefore subject to international law, [163] cartels do not operate on the international plane but only within domestic systems of various countries. Furthermore, there is a full range of cartel action which OPEC cannot undertake, 'including price setting, allocation of production, and imposition of sanctions against non-conforming members.' [164]

In examining OPEC's operations in Part Six, it will be possible to establish that the mere drafting of a loosely worded resolution calling for a reduction in oil production and the restoration of prices to the pre-1960 level is not sufficient to make OPEC a cartel. A closer examination of OPEC operations reveals that OPEC activities in relation to oil prices, participation, production, sovereignty over oil resources, the transfer of oil technology, acquisition of information, ownership of the oil industry and granting assistance to undeveloped countries in the form of aid – all mean that it is not possible realistically to classify OPEC as a cartel.

The most that can be said is that there is some superficial resemblance between OPEC and a cartel in that several entities have combined together in order to strengthen their joint bargaining position and seek a larger share of profits. As we have already seen, this was prompted not so much by greed as by a sense of outrage – when oil prices were unilaterally and dramatically lowered by the major oil companies, acting as a cartel, in 1959 and 1960.

Thus the establishment of OPEC was more a defensive than an offensive measure, and up to now its role has continued to be characterised by this quality. The oil-consuming world has not been held to ransom by the members of OPEC, although it is

more than likely that it was the fear that this might possibly happen which initially led to OPEC being branded as a cartel, and eventually resulted some 30 years later in the Gulf War and the accompanying economic de-stabilisation of the Middle East (by making it pay for the war), and the introduction of a permanent military US presence in Saudi Arabia in order to 'guard' the oil fields against 'future attack'.

In spite of these dramatic and most probably unnecessary events, it has always been understandably a fundamental objective, and indeed the *raison d'être* of OPEC, to foster solidarity and co-operation between its members. This objective is axiomatic and underlies the very existence of OPEC, for the *raison d'être* of OPEC is that since each individual oil-producing country was and would be vulnerable in the international oil trade, while and if it stood alone, and if the oil-producing countries pooled their economic and political forces, they could improve their collective bargaining power and protect themselves against exploitation by the oil-consumers, it was inevitable that the creation of OPEC would be perceived as the means to achieving this measure of protection and of ensuring a more equitable distribution of oil revenues.

Thus Article 4 of the OPEC Constituent Instrument and Article 4(2) of the OPEC Statute both clearly express the policy of unification of the member countries, a natural result of which is the strengthening of the bargaining power of all OPEC members – which in turn can be used:

(1) as a defence mechanism to prevent any erosion of their common interests by third parties, and to ensure that third parties do not play one member off against another member;

(2) as an effective means for re-adjusting and balancing the relations between the oil-exporting countries and the powerful international oil companies, including a more equitable distribution of oil revenues between the oil-producing countries and the international oil companies;

(3) as a conservative mechanism for ensuring ongoing regional and global stability in an area of the world which by reason of the oil resources naturally there, has already and is inevitably going to continue to be a locus of power struggles.

Clearly OPEC has from the outset had to bear a grave responsibility in seeking to achieve its legitimate objectives by legitimate and peaceful means. These, as we shall see in more detail in Part Six, have included:

(1) Legislative decisions, recommendations and declarations.

(2) The application of economic power – including sanctions, oil embargoes and unilateral amendments to contractual arrangements concerning oil production.

(3) Control of oil industry institutions, processes and market outlets.

Having considered how OPEC first came into existence, and having analysed its legal classification and objectives, it is now possible, in order to understand better how it actually functions, to examine in closer detail its Structure, Composition and Organs:

Part 3
The Structure, Composition, Organs and Membership of OPEC

3.1 The Structure of OPEC

As has already been noted in Parts One and Two, the creation of OPEC was precipitated by events in 1959 and 1960. Although the desire and decision to establish the Organisation did not occur overnight, it is clear nevertheless that OPEC began relatively simply and then came to be further defined during the course of time and with the unfolding of situations unforseeable at its inception – not only, as we have already seen, in terms of its objectives, but also in terms of its structure.

Given its relatively simple beginnings, it is not surprising that OPEC's founding instrument is relatively short and uncomplicated. The OPEC Constituent Instrument does not itself contain provisions which determine the administrational structure of the organisation or the mode of its operation. This is due to the fact that the Founder Members were at that time intending to create the organisation while leaving the details of its institutional and organisational structures to be worked out at another stage. [1] The present structure of the organisation derives from its Statute (as amended) which was formally adopted at the 1961 Conference in Caracas.

The purpose of this chapter, in examining the organisational structure of OPEC, is to confirm that it is indeed a permanent international institution with an identifiable structure established to achieve definite aims, and to determine whether or not its structure is sufficiently developed for the attainment of these aims. For example, it is necessary to ascertain whether or not the powers given to the organs of OPEC provide them with enough flexibility to enable them to accommodate to any unforeseen circumstances.

On examining the internal structure of OPEC, compared with other organisations, the OPEC structure is relatively simple and hardly original. It presents the characteristics of a traditional, classical type of international organisation with three main organs, the Conference, the Board of Governors, and the Secretariat, together with two specialised organs, namely the Economic Commission and the Consultative Meeting. In addition an independent institution, the OPEC Special Fund, was created in 1976. One distinctive feature of the OPEC organs, as well as of the Fund, is that they are plenary organs, in which all the members of the Organisation are represented.

In addition to OPEC's main organs, further ancillary bodies including various *ad hoc* committees have been established. These committees are appointed by the Conference, usually with members being selected from the national administrations of the Member States. They have different roles: some carry out studies or act in a purely advisory capacity, some are given the responsibility of co-ordinating certain policies, and some act as negotiaters with the international oil companies on behalf of the Member Countries.[2]

It should be noted that OPEC's organisational structure is typically orthodox in that only States are represented. In common with most international institutions, all OPEC's members are represented in its main organs. It has been suggested [3] further that OPEC could follow the example of the International Energy Agency (the IEA) of the oil-importing countries in appointing an Industry Advisory Board with representatives from 15 major oil companies, responsible for providing the Agency with regular reports and recommendations.[4] In the view of the present writer, however, there is little practical value in this proposal, as little would be gained for OPEC by involving the member countries' own oil companies, since these are virtually all state ventures anyway – nor is it likely that the participation of foreign oil companies would be seen as beneficial.

We will now examine in greater detail the two main organs of the Organisation of Petroleum Exporting Countries which are: the Conference and the Board of Governors. Clearly the Secretariat plays a vital part in the day-to-day administration of OPEC, and it too will be considered subsequently:

3.1.1 The Conference:

The Conference of OPEC is the supreme authority of the Organisation and endowed with the widest powers, in line with those of any other inter-governmental organisation. This is why it has been stipulated that the Conference is composed of delegations which represent all Member States, without any distinction being made between the original founder members and members who have joined subsequently (adherent members).[5]

This structure which reflects the composition of the main decision-making bodies in all international organisations, ensures that all members share an equal opportunity of participation in the Conference. In addition, the OPEC Statute provides for the possibility of inviting non-member states to participate in the Conference as 'associate members' who are entitled to join in any discussions and deliberations, but who may not vote.[6]

Each Member State may send a delegation to the Conference, but it must nominate one person as its head,[7] who will act as the sole voter for that State. This person is usually, by convention, the Oil Minister of the State concerned. This is a very practical and common-sense practice, since the Conference sometimes takes important decisions which require *bona fide* authorised assurances by its members that such measures, which may seriously affect the domestic economic arrangements of each of the Member Countries, will be implemented. It therefore makes sense if each Member Country is represented by a high ranking offical, such as its Oil Minister, who has sufficient rank to bind his government without having to obtain its prior consent. The importance of the tasks facing the heads of delegations was noted by the Secretary General of OPEC in a letter in which he recommended that heads of delegations should be Ministers.[8] The silence of the OPEC Statute itself on the question as to who should be sent indicates a recognition of the fact that it may not always be convenient or feasible for every state to be represented by one of its Ministers on a particular date.

Usually the practice of OPEC Member States is to each send a delegation of about 5 to 6 delegates to the conference. The Secretary General has advised that delegations should be of a 'reasonable size', so as to facilitate the effective operation of the Conference. This is the same requirement as that imposed by the Vienna Convention on the Representation of States 1975, which stipulates that "delegations shall not exceed what is reasonable and normal for the functions of the delegation."[9] Thus for example the Kuwaiti delegation usually consists of five or six delegates,[10] who are selected from different departments within the Oil Ministry.

3.1.2 The Board of Governors:

The Board of Governors is the second plenary organ of OPEC and is composed of representatives nominated by the Member States and confirmed by the Conference, [OPEC Statute, Article 17A]. Although each Member State should be represented at each Meeting of the Board of Governors, the *quorum* necessary for the holding of a Meeting is two thirds [Article 17B]. When a Governor is prevented from attending a Meeting of the Board of Governors, a substitute must be nominated by the Member Country whom he represents to serve on an *ad hoc* basis. This nomination does not require the confirmation of the Conference, and while the *ad hoc* Governor is serving he enjoys the same status as the other Governors except that he is not eligible for Chairmanship [Article 17C]. Each Governor has one vote and a simple majority vote is required for decisions of the Board to be effective [Article 17D]. Each Governor serves a two year term of office [Article 17E]. (Previously, only the Founder Members were

entitled to nominate one Governor each, while adherent members only had the right to nominate five additional Governors between them.)

If a two-thirds majority of Governors decides that the continued membership of any particular Governor is detrimental to the interests of OPEC, then the Member Country must be informed and nominate or substitute a Governor before the next meeting of the Board of Governors [Article 23].

There is no election as such for the appointment of the Chairman of the Board (or of the deputy chairman who presides in his absence). The chairmanship rotates annually and automatically to each of the different Governors in turn, in accordance with the date of their joining OPEC and in alphabetical order. [11]

The head of the Chairman's Secretariat is appointed by the Conference. As regards the appointment of a Governor, however, the role of the Conference is limited to confirming the choices made by the Member States. It is not altogether clear why the Conference has not been given the power to dismiss or directly appoint Governors, since it is the supreme body of OPEC. However the fact that each Member Country can choose its own Governor means that it can be represented as it wishes, while at the same time whoever is selected as a Governor is then able to enjoy security of tenure of office subject only to his own government's control – or in exceptional circumstances, as outlined above, to a two thirds majority vote of the Board of Governors.

There is no requirement that either members of delegations (apart from their head) or Governors be nationals of the Member States concerned. Thus, for example, the Kuwaiti delegation which attended the Conference held in July 1990, included non-national experts. It is however customary for the heads of the Conference delegations to be Ministers and therefore nationals. It has been suggested in the past that there be added into the OPEC Statute a requirement that all representatives attending the Conference should have held a position of responsibility in the oil industry of their home country. This suggestion was not adopted, although it does seem a sensible idea which reflects a genuine concern about quality of representation and commitment.

The requirement of plenary representation of all Member States in the Conference and the Board of Governors is clearly a wise one, since it affords to all Members States the opportunity to participate in policy formulation and decision making. This is particularly important with respect to an executive organ such as the Board of Governors which is responsible for much of the actual governing of OPEC.

The question which arises at this juncture concerns the exact nature and role of the representatives sitting on the Board of Governors: Are they primarily the representatives of their respective governments, or are they primarily the administrators of OPEC?

In answering this question it is clear that the extent to which the Governors of OPEC are subject to instructions from and answerable to their respective governments would provide clear criteria for determining their real nature and exact role. Although the OPEC Statute says nothing specific on these points, the absence of any provision similar to that relating to the members of the Secretariat staff – namely that they are 'international' and that 'in the performance of their duties, they shall neither seek nor accept instructions from any government nor from any other authority outside the Organisation' [Article 32] – suggests that the character of the Governors is predominantly governmental. However, the fact that according to the Statute their final appointment has to be made by a decision of the Conference should not be entirely overlooked. Moreover, the power granted to the majority of the Board under Article 23, whereby the membership of any undesirable Governor can be terminated, does not lend support to the argument that the Governors are purely government representatives. Furthermore, an examination of their functions also reveals that they are the managers and administrator of the organisation. Finally, unlike the heads of the delegations to the Conference and to the Consultative meetings [Article 43(A)], the Governors receive their remuneration from the funds of the organisation and not from their respective governments [Article 43(B)].

Therefore despite this admittedly governmental character, which is indeed predominant, the Governors can be seen as possessing a dual function – both as representatives of their respective governments and as administrators of OPEC.

It can be noted that three aspects of this arrangement – namely, the power granted to the Board of Governors by virtue of Article 23, the requirement for confirmation of appointments of Governors by the Conference, and the payment of Governors out of OPEC central funds – are highly unusual in organisations of this kind. None of the other petroleum related organisations and IPAs have any of these characteristics. [12]

As regards terms of office, these have often been the subject of controversy in international organisations. [13] Within OPEC, different terms of office obtain in its various organs. The president of the conference holds office "for the duration of the meeting of the conference and shall retain the title until the next meeting". [14] As noted above, Governors hold office for two years. [15]

During the discussions that took place at the committee stage of the drafting of the OPEC Statute, different arguments were advanced by the various Member States, proposing both a long duration and short duration of the office of Governor. Saudi Arabia, Kuwait, Libya and Venezuela were in favour of a long period, arguing that the Board's work involves a great deal of administrative and routine work which requires extensive

perusal, and also that as the Board meets only twice a year, and since it is therefore operating over a longer time span, it therefore requires a longer term of office in order to maintain continuity .

In contrast Iraq and Algeria argued that short-term appointments would be better, in order to encourage Governors to do their best before their term expired, and in order to provide the opportunity to benefit from this useful experience to as many officials as possible. In the end, OPEC adopted short appointments for its plenary organs, including the Board of Governors, whereas the duration of appointments to the subsidiary organs has been left for determination by those organs themselves.

The term for a Governor's appointment is two years, and as no provision has been made for a staggered system, they are all appointed at the same juncture, normally at the second conference of every second year. Although the OPEC Statute does not expressly provide for the renewal of such appointments, the permissibility for this is implied from the absence of any provision prohibiting or limiting re-appointment. In practice the Governors have been appointed not only more than once, but even as much as for nine times.[16] This indicates that the appointments are more of a technical than a political nature. Obviously such re-appointments provide the Board with the benefits of accumulated experience and reinforces the argument that Governors are more attached to the organisation than simply being representatives of their respective governments.

The duration of the term of office of the Secretary General of OPEC has been the subject of much controversy, debate and amendment. The Secretary General is considered the legal representative of the Organisation and has the authority to direct its affairs in accordance with the directions of the Board of Governors.[17] Until 1970, the Secretary General was appointed for a period of one year and his appointment was by alphabetical rotation. This affected the efficiency with which the office was carried out, because the period of one year was not long enough for any one Secretary General to ensure that measures were carried through to their conclusion. Furthermore, the application of the alphabetical principle did not guarantee that the position would be filled by the most suitable candidate. In an attempt to rectify the situation and strengthen the administrative machinery of OPEC, the Conference at its meeting of the 22nd-26th June 1970,[18] amended Article 28 of the OPEC Statute with the result that now the term of office is initially three years, with provision for an incumbent to be reappointed for one further term.

It appears that OPEC was influenced, in making this change, by the practice of OAPEC, which had been electing its Secretary General for three year periods, and

which had allowed the OAPEC Secretary General to institute and conclude meaningful medium and long-term studies which were of benefit to the OAPEC countries. [19]

It may be noted that the introduction of the provision for the renewal of the office of any particular Secretary General for a further term has subsequently been adopted by some International Producers Associations (IPAs). See, for example, such Article XII(2) of the IBA Agreement which provides that its Secretary General's appointment is for three years, and is eligible for renewal for a further term. [20] One of the benefits of such a system is that incompetent incumbents can be replaced after three years, whereas more gifted incumbents can remain in office for twice as long in order to bring longer term policies to fruition.

As well as the Secretary General, there is also a Deputy Secretary General who is appointed for a period of three years which may be extended for a period of one year or more at the suggestion of the Board of Governors and with the approval of the Conference. [21] This holder of this office is appointed on the basis of talent from among the highly qualified candidates put forward by the Member States. The selection is made by the Board of Governors, [22] and represents a clear advance on the national-based scheme of appointment used for the posts of Secretary General and Chairman of the Board of Governors.

3.1.3 Sessions:

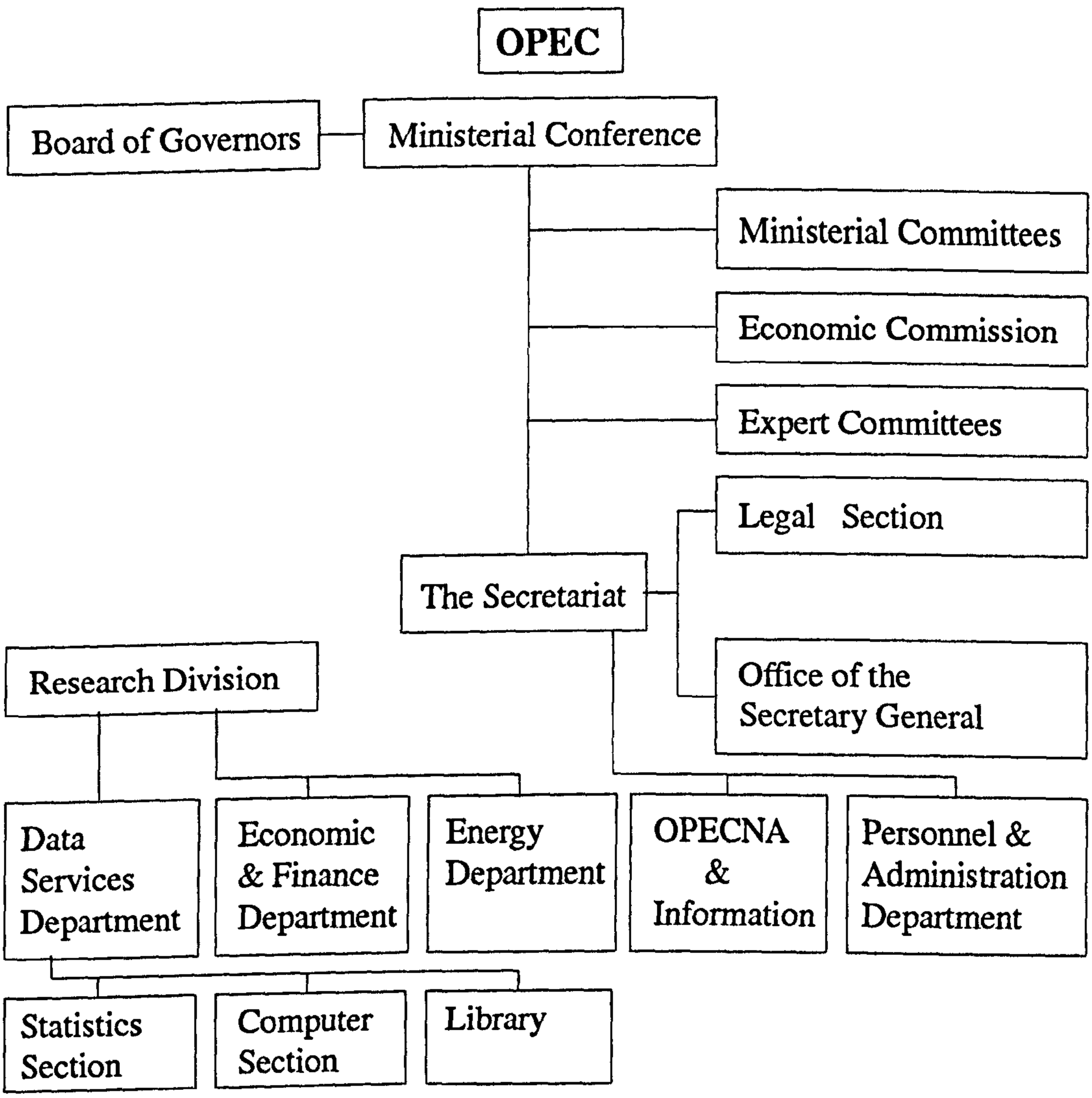
The lengths of the intervals between the sessions of the different organs of OPEC have an inverse relationship with the importance of the organ concerned. Thus, the Conference holds only two ordinary meetings per year. [23] These are usually held in June and in November or December, the date of the next meeting being fixed at the end of each Conference. The Conference can also hold an extraordinary meeting at the request of a Member State, through the Secretary General who consults with the President of the Conference and the consent of the majority of the assembled Member Countries is required. [24] The absence of any limit on the number of extraordinary meetings which can be held has enabled frequent use to be made of this facility, so that in one particular year, for example, four extraordinary meetings were held. [25] The Conference Meetings are held "... at the Headquarters of the Organisation, but it may meet in any of the Member Countries, or elsewhere as may be advisable."[26] Each Conference elects a new President and a new Alternate President who hold office until the next Conference. [27]

The Board of Governors are required to meet "no less than twice each year" at suitable intervals to be fixed by the Chairman of the Board after consultation with the

Secretary General of the Organisation.[28] These meetings are normally held a few days before the ordinary meetings of the Conference in order to do the general groundwork and prepare the Agenda for the latter. An extraordinary meeting of the Board of Governors can be called by the Chairman, the Secretary General, or two-thirds of the Governors.[29] As in the case of the Conference, the Meetings of the Governors are normally held at the Headquarters, although they can also be held elsewhere.[30]

3.2 The Functions and Powers of the Organs of OPEC

International organisations vary considerably as regards the volume of powers delegated to them by their member states. All organs of international organisations possess some powers – at the very least, the power of deliberation.[31] Clearly the powers of an international organisation's organs are defined and limited by the competence of the organisation itself. Thus the powers of OPEC's main organs are limited by the competence of OPEC which is defined in the OPEC Statute. In turn, the Economic Commission and the organs established by the Organisation are limited and defined by the decisions establishing them. OPEC's organisational flowchart is as follows:



It should be pointed out that the authors of the OPEC Statute do not appear to have taken much care in defining the nature of the powers of the OPEC organs.[32] Nevertheless, it is now necessary to look more closely at the functions and powers of the organs of OPEC, in order to be able to assess their and its efficiency.

3.2.1 The Functions and Powers of the Conference:

The powers and duties of the Conference of OPEC are concerned principally with the formulation of the general policy of OPEC and the determination of the means of its implementation;[33] the deciding upon any applications for membership of the organisation;[34] the confirming of appointments to the Board of Governors;[35] the issuing of directions to the Board to submit reports or recommendations on pertinent issues;[36] the consideration of or decisions on reports or recommendations submitted by the Board;[37] the consideration of and decisions on the OPEC Budget, the statement of accounts and the Auditors Report, as submitted by the Board;[38] the calling of such consultative meetings as it deems necessary;[39] the approving of any amendments to the OPEC Statute;[40] and the appointing of the chairman [41] of the Board of Governors and an Alternate of the Secretary General, [42] the Deputy Secretary General, [43] and also of the Auditor of OPEC, who is appointed for the duration of one year. [44]

As the supreme organ of OPEC, the Conference is basically concerned with general policy decisions, and the consideration of fundamental matters which do not recur frequently and therefore do not require constant attention. The functions stated above are chiefly matters that do not occur frequently, indicating that the day to day running of OPEC is left to its subsidiary organs. This supervisory role of the Conference is underlined by the fact that it is in this role that it meets in ordinary session twice a year and therefore only general and important matters can be placed on the agenda.

The bestowal of powers on a dual plenary structure as practised by OPEC has been followed as a model by many other producer's organisations, such as the organisation of Wood Producing and Exporting Countries and the Intergovernmental Council of Copper Producing Countries, which all employ the term 'conference' for their supreme body and which were all established after OPEC was created.

It is clear from the above analysis that while the OPEC Conference has some executive duties, it is primarily a legislative body. This is demonstrated most clearly by its power to amend the OPEC Statute, although its powers as regards deliberations and decisions upon policy also reflect a legislative role. Although the Statute does not provide for the Conference to have any judicial powers, [45] it was decided by the Conference to establish a 'High Court' [46] for the resolution of disputes – which decision has

not yet been implemented. The Conference does however sometimes play a quasi-judicial role, when any question of interpretation of the OPEC Statute arises.[47]

3.2.2 The Functions and Powers of the Board of Governors:

As a general rule the Board of Governors is responsible to the Conference and therefore plays a subordinate role in the formulation of policies designed to pursue the objectives of OPEC. However, this does not mean that the Board of Governors has no independent power of its own. It has real powers and functions which have been spelt out in the Statute: Article 20 sets out these powers and functions, which comprise of directing the affairs of OPEC and implementing the decisions of the Conference;[48] considering and deciding upon the reports submitted by the Secretary General;[49] submitting reports and recommendations to the Conference on the Organisation's affairs;[50] drawing up the annual budget of OPEC and submitting it to the Conference for approval;[51] nominating the OPEC Auditor;[52] considering the statement of account and the Auditor's Report and submitting them to the Conference for approval;[53] approving appointments of Departmental Chiefs;[54] convening any Extraordinary Meeting of the Conference;[55] nominating the Deputy Secretary General;[56] and preparing the Agenda for every Meeting of the Conference.[57]

Article 40 of the OPEC Statute invests the Board with the function of considering any proposed amendments to the Statute that may be submitted by Member States. If it decides in favour of their adoption it has to recommend this to the Conference. As we have already seen, Article 23, however, provides a striking example of powers that have been delegated to the Board of Governors. It provides that a two thirds majority of the Board shall be able to dismiss any Governor whose membership is felt by them to be detrimental to the interests of OPEC. In such an event the relevant country has to nominate a substitute Governor whose nomination is then confirmed at the next Conference. Article 23 is a revised version of a previous Article, [4(4)], which merely provided for the suspension of a Governor pending a final decision by the Conference. Article 23 also revised the situation by providing that the relevant country has to appoint a substitute Governor before the next meeting of the Board, (previously it had to do this before the next 'regular' meeting). It is clear therefore that Article 23 represents a significant extension of the powers of the Board of Governors.

3.2.3 The Functions and Powers of the Secretariat and the Secretary General:

The principle executive organ of OPEC is its Secretariat, which performs its functions in accordance with the provisions of the OPEC Statute and with the directives of

the Heads of Delegations, subject to the co-ordination of the Board of Governors.[58] It is comprised of the Secretary General, his Deputy and other staff. The Secretary General represents the organisation on all occasions. He is charged with the executive functions of the organisation.[59] He allocates to each Department its responsibilities in accordance with the Statute;[60] he prepares reports for each meeting on all matters; he keeps the Board informed of all the activities of the Secretariat and of the progress made in the implementation of Conference Resolutions; and he ensures that any duties which have been assigned to the Secretariat by the Conference or the Board are performed.[61]

Further, the Secretary General must attend all meetings of the Conference [Article 14(C)] and of the Board [Article 28(E)]. He is also charged with appointing the officers of the Secretariat and the chiefs of Department, subject to approval of the latter appointments being made by the Board of Governors [Articles 31(A) and (B)].

If the Secretary General feels that the Departments are not able to undertake certain studies or provide advice on special matters, he can entrust these tasks to special consultants [Article 35(A)]. He can also engage experts of any nationality if required by OPEC, for a period approved by the Board of Governors, provided that there is provision for such appointments in the Budget [Article 35(B)]. He also has the right to set up working parties at any time to undertake any studies on specific topics of common interest to the Member States, [Article 35(C)].

The Secretary General also has a very important specific functions, chiefly as the official spokesman of OPEC and as its legally authorised representative [Article 27(A)]. He thus undertakes agreements on behalf of OPEC with non-Member Countries, such as the Headquarters Agreement, and represents it before other Organisations and Conferences.

The powers and duties of the Secretary General are not limited to those enumerated in the OPEC Statute. Further functions can be assigned to him by subsequent decisions, regulations, and directions of the Conference – or by other agreements. An example of such delegation of powers is the authorisation by the Conference for him to conclude Headquarters Agreements with the host country, Austria, which he has done in 1965 and 1974. The Conference has also from time to time directed him to invite the representation of the multinational oil companies to meet with registrations of Member States (usually Petroleum Ministers) for the negotiation of issues relating to oil concession agreements.[62] More significantly, the first Secretary-General, Mr Ruhani, was in 1964 authorised to negotiate directly, on behalf of OPEC, with the oil companies on specific issues, most importantly the royalty expressing issues.[63]

Another major example of delegated powers invested in the Secretary-General is the decision of the Conference [64] in 1972 to appoint the then incumbent of the position, the late Nadini Pachachi, as a mediator between the Iraqi Government and the IPC, whose operations in Iraq were nationalised on the 1st June 1972. The result of this mediation was the Agreement of the 28th February 1973, which succeeded in settling all the accumulated disputes which had arisen between the two parties since the 1950s and including the 1972 nationalisation. [65]

The various Secretaries General have not, however, actively sought out a mediative role, perhaps due to their short term of office (for details of the Secretaries General of OPEC and their terms of office, see Appendix V), or because of the limited extent of their powers. The Secretry General of OPEC lacks, for example, certain functions usually given to Secretaries General of other organisations, such as making an annual report to the supreme body, preparing all Agenda for the Conference, and drawing up the Budget. As we have seen, all these tasks are specifically entrusted to the Board of Governors. Nor is the Secretary General given any right to prepare proposed amendments either to the OPEC Statute or to the Statute of the Economic Commission.

Moreover, unlike the Secretary General of OAPEC, the OPEC Secretary General is not directly responsible for the supreme organ, the Conference. Rather, he is responsible for himself and the Secretariat as a whole to the Board of Governors, which issues him with his instructions. [66] Also, unlike his OAPEC Counterpart, he does not enjoy diplomatic immunities within the territories of the Member States, and nor do the other officials of the Secretariat.

It is clear from the points noted above that the Secretary General's policy-making role is limited. He has less autonomy and less opportunities to exercise influence than his counterparts in other organisations. In such regard he must resort to the suggestions and proposals which he can make in the reports that he prepares for the meetings of the Board of Governors, [67] and in preparing special studies which, again, must be submitted to the Board, which itself can only recommend actions to the Conference. Thus what influence lies within the power of the Secretary General is mainly indirect.

The functions assigned to the Secretariat are carried out mainly by the offices of the Secretary General and four Departments, namely a Personnel and Administrative Department, a Research Department, a Public Relations Department and a News Agency – and any other division or department as the Conference may see fit. [68] The present structure has been arrived at by a process of many amendments and changes in the OPEC Statute. [69] The main functions of these various departments are as follows:

1. The Personnel and Administrative Department

This deals with matters relating to the administration of the organisation which include: "all organisation methods, the provision of administrative services for all meetings, personnel matters, budgets, accounting and internal controls."[70] The department "keeps abreast of the current administrative policies and or policy changes occurring in the international petroleum industry which might affect the organisation or be of interest to it."[71] The functions assigned to this department are accordingly directly relevant and connected to the emergence of the New International Economic Order.

2. The Research Department

This is responsible for conducting a continuous programme of research aimed at fulfilling the needs of the organisation, with particular emphasis on energy generation and conservation and related matters.[72] The department monitors, forecasts and analyses developments in the energy and petrochemical industry, and the evaluation of hydrocarbons and products and their non-energy uses;[73] it analyses economic and financial issues of significant interest, in particular those related to international financial and monetary matters and the international petroleum industry;[74] and it maintains and expands information services to support the research activities of the Secretariat and those of the Member Countries.[75]

The Research Department is composed of three sub-departments, namely, the Energy Studies Department, the Economics and Finance Department , and the Information Services Department, which is made up of a Computer Section, a Statistics Unit and a Library.

3. The Public Relations Department

This carries out a central public relations programme concentrating on the dissemination of OPEC views in order to promote an improved understanding of the Organisation. It is responsible for the production and distribution of publications and other informational materials; it communicates the nature of OPEC objectives, decisions and actions to the world at large; and it identifies suitable areas and arenas for the promotion of the Organisation's aims.[76]

4. The News Agency

This assists the Public Relations Department, with the emphasis being more on the collection and dissemination of relevant information than on the preparation of general public relations material.

The above departments were all developed by and are subordinate to the office of the Secretary General. [77] They provide the Secretary General with executive assistance, particularly in carrying out contacts with governments, organisations and delegations, in matters of protocol, in the preparation for and co-ordination of meetings, as well as any other duties assigned to them by the Secretary General.

5. The Legal Section

Unlike OAPEC, OPEC does not now have a Legal Department. Since 1980, OPEC's legal affairs have been dealt with by its legal office, now renamed the Legal Section, which operates under the General Secretary's office. This office is charged with the task of reviewing the legal aspects of the international petroleum industry and carrying out a continuous programme of legal studies in order to accelerate the realisation of the organisation's objectives. The Section conducts studies on legal issues relating to the petroleum industry with the aim of identifying the interests of the Member Countries and equipping their representatives with relevant legal arguments in their negotiations with the operating oil companies. An important example of this was the legal support provided to assist in the negotiations between the two sides on the issue of equity participation, which lead to the conclusion of the General Agreement of 1972,[78] where the Legal Office dealt with the legal issues such as the types, scope, legal bases and legal forms of participation. The Legal Office submitted a Code of Uniform Petroleum law for the Member Countries and also carried out preparatory work for the establishment of an Inter-OPEC High Court. The Legal Section [79] is also responsible for keeping the Organisation up to date with all legal developments in the petroleum industry.

As is clear from the above, OPEC's structure and powers do not differ in essence from those of traditional inter-governmental organisations. The internal structures and composition of OPEC are intended to ensure the existence of adequate machinery for the expression of the collective aims of its Member States – and to ensure that in the formulation of these aims, the bodies charged with governance have access to the necessary amounts of relevant information, and that implementation methods exist for these aims once they have been formulated. These goals are normally achieved by virtue of the constitutional provisions contained in the relevant basic Statute, which facilitate the establishment of policy making and the necessary administrative and executive organs. Again, in common with traditional inter-governmental organisations, OPEC is organised on the basis of the sovereign equality of states, notwithstanding their varying circumstances and volume of oil resources.

6. The OPEC Economic Commission

The OPEC Economic Commission was established by the OPEC Conference in 1964 by virtue of Article 33 of the OPEC Statute which empowers the Conference to set up specialised organs. [80] This happened in November 1964 at the meeting of the OPEC Conference, which decided by Resolution VII. 50 to set up the Economic Commission as a permanent and specialised organ of the Organisation. On the 10th April 1965 the Conference by Resolution VIII.55 adopted the Economic Commission Statute which took effect on that date. [81]

The principle aim of the Economic Commission as stated in Article 2 of its statute is to assist OPEC in promoting stability in world petroleum prices at an 'equitable level' in accordance with OPEC's principles, in particular those embodied in the Conference Resolutions I.I IV [82], 32 [83] and V.42. [84] In these Resolutions the Member Countries declared that they could no longer remain indifferent to the position taken by the operating oil companies, namely their unilateral determination of oil prices, and demanded the restoration of prices levels which had existed before 1960. In Resolution V 42 mentioned above, they decided to 'jointly formulate a rational price structure to guide their long-term price policy'. Such a structure would include a mechanism for indexing the prices of their crude oil with those of the manufactured goods which they were importing. In order to secure these goals, the Economic Commission is required by Article 3 of its statue to carry out the following:

1. Establishing necessary contacts;
2. Collecting necessary data;
3. Examining the position of world petroleum prices on a permanent basis;
4. Studying all factors, including economic factors, which can significantly affect the structure and level of oil prices;
5. Submitting 'monthly reports', to the Member States on the state of petroleum prices, together with its own recommendations;
6. Submitting researched recommendations;
7. Representing through the Secretary General, in all activities to every meeting of the Conference.

Although prices are still the main item on the Agenda of the Economic Commission, its functions are no longer restricted solely to that area. Petroleum taxes levied by governments, evaluation of inflationary trends, royalties, the effects of currency re-evaluations on OPEC and revenues and terms of trade, as well as most other economic and financial aspects of the international oil industry, are also now monitored and researched by the Economic Commission.

The Board of the Economic Commission is comprised [85] of the Deputy Secretary General, the National Representatives, and a Commission Co-ordinator who is *ex officio*, and the Director of the Research Division of the organisation's Secretariat. [86] The Board is presided over by the Deputy Secretary General, and meets twice a year, generally at the Seat of the Organisation. [87] It can, however, meet at any other place, and can hold extraordinary sessions. [88] For the opening of discussions, the presence of a simple majority of members is necessary. [89] To arrive at its recommendations, the Board needs a simple majority vote of its present members, provided this represents not less than half of the total number of National Representatives. [90] The Board's task is to keep itself informed of the world economic situation insofar as it influences petroleum prices, and to submit monthly reports thereon to member countries, as well as recommendations to the Conference through the Secretary General. [91] The subject on which the Conference expects recommendations from the Board is that of combatting the erosion of petroleum prices. The Conference has requested member countries to provide the Board with all the information necessary for the accomplishment of its task, and to assist it in establishing contact with any private or public institution dealing with petroleum matters. [92]

The role of the National Representatives is to ensure that there is a close relationship between the petroleum authorities in their countries and the Economic Commission, especially in furnishing the organisation with regular information concerning the market prices of petroleum in their countries. The National Representatives are not attached to the Secretariat, and their remuneration, travel costs, and residence expenses abroad are borne by their respective countries. [93]

The Commission staff are composed of the Commission Co-ordinator and other members of the Secretarial staff who are entrusted with the mark of the Commission by the Deputy Secretary General in consultation with the Co-ordinator. [94]

The Conference may make any amendment to the Economic Commission Statute, either on the proposal of a member country or on the recommendation of the Economic Commission Board, subject to the approval of the Board of Governors. [95]

7. The OPEC Special Fund

The idea of creating an OPEC wide fund was first conceived in 1972. At that point in time, the oil income of the Member Countries was, generally speaking, low and their bargaining position vis-a-vis the transnational oil companies, though relatively improved, was still weak. More to the point, they were engaged in hard negotiations with these companies over significant issues, of which the most important was the issue of

their participation in the equity of the operating companies. In such circumstances, an inter-OPEC financial safety net facility, which would complement the Organisation's other collective petroleum security measures, appeared to be necessary, for two main reasons:

Firstly, in order to strengthen the Member Countries' bargaining power and to show to the companies that they were serious in their demands and ready to make a collective stand. Such a fund would be even more necessary if the negotiations over participation proved unsuccessful and they had to nationalise the oil concessions, for this course of action might trigger off major boycotts or embargoes against any such nationalised oil concerns by the oil companies. [96]

And secondly, in order to protect the Member Countries from any harmful measures, such as the deliberate induction of production levels, which the operating companies might adopt against a Member Country as a result of being subjected to policies not favourable to them. In each case, the companies' actions might have a devastating effect on the economies of the Member Countries. [97]

It was for these reasons that the OPEC Conference, at its 11th-12th March 1972 meeting, decided to instruct the Secretary General to convene a working party of experts from the Member Countries in order to: "prepare a study on the establishment of a fund to assist any Member Country affected by actions taken against it by oil companies, and report back on the subject to the next Conference." [98]

As events transpired, however, by the end of 1973 participation in the ownership of the concession holding companies was realised, together with full control over price levels, production rates and other basic policy decisions being achieved. This led to a considerable improvement not only in the bargaining power of the Member Countries, but also in their oil revenues. Consequently, the proposed Fund of 1972 was shelved [99] and instead the Organisation turned its attention to the issue of strengthening co-operation with other developing countries.

The question of OPEC aid and co-operation with other developing countries was fully discussed at the 17th-18th November 1975 Conference of the Finance Minsters of OPEC Member Countries which was held in Vienna. They decided to recommend to their governments 'the establishment of a new facility for the provision of additional financial support' to other less developed countries (LDCs) under the aegis of OPEC. [100] The Ministers entrusted to a sub-committee of "experts on financial and monetary matters the task of examining the specific proposals for the institutional shape such a facility would assume." The experts in due course submitted different proposals and options for the establishment of the OPEC aid facility. These proposals and options

reflected in varying degrees the different circumstances and outlook of OPEC's small but diverse membership.[101]

The proposals put forward, which concerned the full range of existing institutional approaches to aid giving, were as follows:

(a) The establishment of a Multilateral Development Agency to act as an independent multilateral lending entity similar to the traditional development finance agencies;[102]

(b) The establishment of a Special Account to be held and administered by one or more of the Member Countries' central banks, for the purpose of channelling balance of payments surpluses to LDCs in the form of outright grants;[103]

(c) The establishment of OPEC's own Special Account to be owned and administered by OPEC itself;[104]

(d) The establishment of a Trust Fund to be administered by the World Bank whose representatives would act as trustees for the account of the Fund.[105] The resources of the fund would be used to provide soft loans for specific development projects and programmes and for balance of payments support.[106]

(e) The establishment of an OPEC Special Fund, which was proposed by the Kuwaiti representative. This was a comprehensive proposal which tried to incorporate elements from all of the other suggestions. The proposal called for the establishment of an 'OPEC Special Fund' which would be a special account administered by a joint Committee, thus preserving OPEC's name and ensuring its Members' control over its operation and activities. The Fund would not be a special organ of OPEC, nor would it have any legal or administrative link with the Organisation. The Fund's resources which were deposited within the territories of its contributing Members would be treated as international assets, enjoying immunity from seizure, sequestration, exchange control regulations and taxation.

It was the Kuwaiti proposal, which had achieved a satisfactory balance between all the OPEC Member's various concerns, which was finally accepted as the Agreement establishing the OPEC Special Fund, and was signed by all OPEC members on the 28th January 1976.[107] The Agreement entered into force on the 10th May 1976 after being ratified by nine countries, and in August 1976 the Fund started its operations.[108] In 1980, the Fund's status was changed to that of a permanent international agency with its own legal personality, and it was renamed the OPEC Fund for International Development.[109]

The OPEC Fund for International Development is an intergovernmental develop-

ment assistance institution which seeks to promote solidarity among all developing countries in the establishment of the New International Economic Order, [110] and to promote co-operation between the member states of the Organisation of Petroleum Exporting Countries and other developing countries by providing financial support to assist the latter group of countries in their economic and social advancement. [111] All OPEC Member Countries are Members of the Fund. [112] The Fund extends loans on concessionary terms for project and program financing and for balances of payments support. The Fund also provides grants to support technical assistance, food aid, research and similar activities. It makes financial contributions to other development institutions whose work benefits developing countries. As a collective agency of the OPEC Member Countries, the Fund extends financial support on behalf of those countries as a group. It also serves, when deemed appropriate by the Member Countries and within limits set by the Ministerial Council, as a co-ordinator of multilateral OPEC initiatives in the area of financial co-operation among developing countries. [113]

What, it may be asked, is the relationship between the Fund and the OPEC Secretariat? As their names imply, the two institutions have different functions. The Fund's main concern is reinforcement of financial co-operation between its Member Countries and other developing countries. The Secretariat's principal aim, on the other hand, is to co-ordinate and determine the best means for safeguarding the interests of the OPEC Member Countries, both individually and collectively. However, as the preamble of the Fund Agreement states, the Fund Agreement was signed on behalf of OPEC.

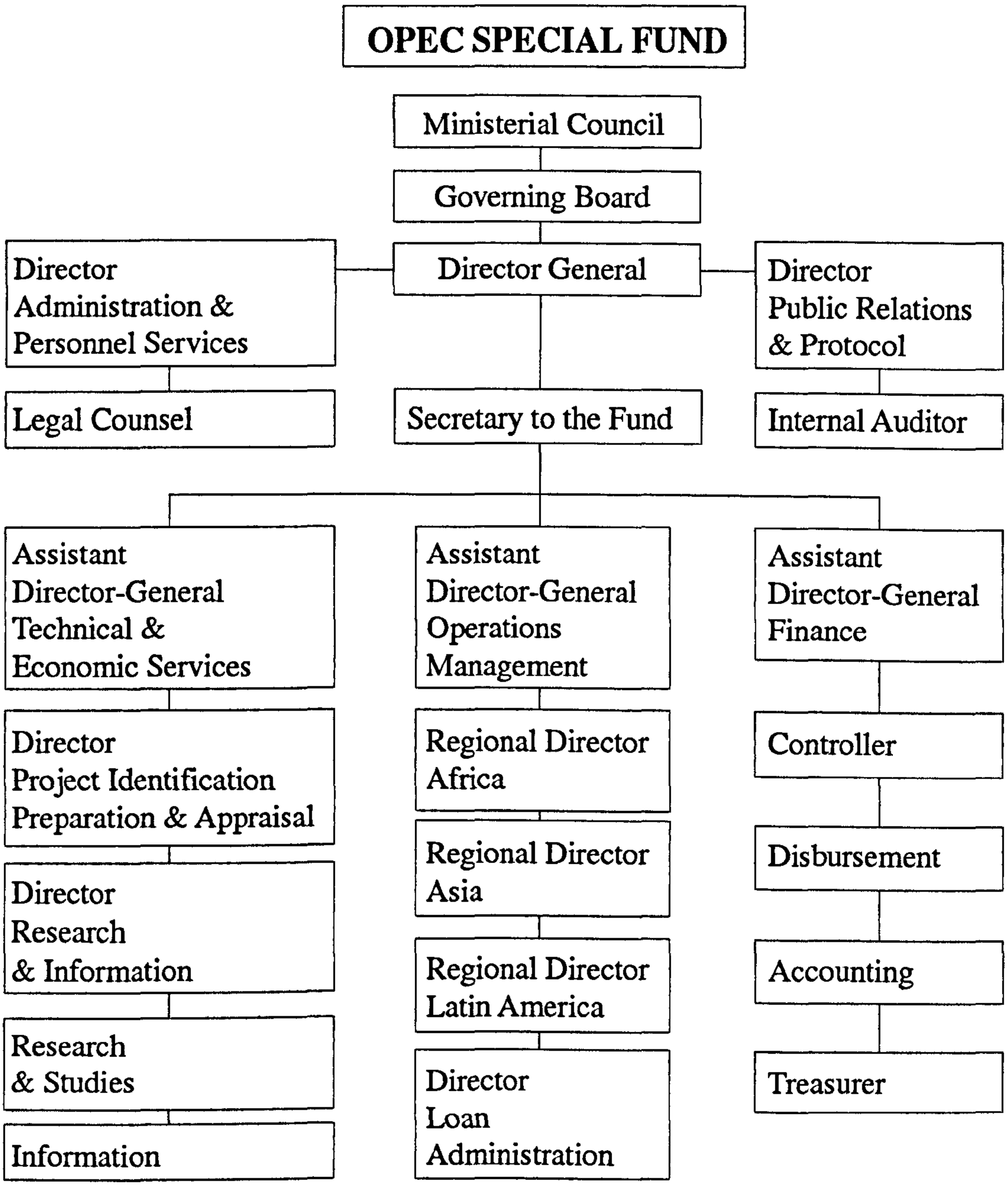
The Fund has a simple structure which consists of a Ministerial Council, a Governing Board and a Director General, who have the following functions:

The Ministerial Council is the Fund's supreme authority and comprises the Ministers of Finance of the Member Countries or any other authorised senior representatives. The Council issues policy guidelines to be followed by the Governing Board, approves the replenishment of the Fund's resources, authorises the administration of special funds and makes major policy decisions. It normally meets once a year. [114]

The Governing Board is comprised of one representative and one alternate each from each of the OPEC Member Countries. Subject to directives issued by the Ministerial Council, the Board is responsible for the conduct of the Fund's general operations. It stipulates, in particular, policies with regard to the use of the Fund's resources. It usually meets four times a year. [115]

The Director-General is appointed by the Ministerial Council and is the chief executive officer of the Fund. He conducts the day to day business of the Fund and is its legal representative. [116]

The OPEC Special Fund has three main departments: Finance; Technical and Economics Services; and Operations. Its organisational structure is as follows: [117]



The OPEC Special Fund enjoys, in the territory of its Member Countries, immunity from all confiscation, as well as from sequestration, mareva or any other form of seizure by executive or legislative action. [118] Its assets, property, income, and its operations and transactions are also exempted from rules and regulations applicable to national public funds, as well as from exchange control regulations and all forms of taxes and duties which exist in the Member Countries. [119] The Fund also ensures, by virtue of appropriate provisions in its loan agreements, that its assets, transactions, revenues and documents receive in borrowing countries adequate immunity and are exempt from taxation and charges, control over transfer of currencies, measures of expropriation,

nationalisation, sequestration, custody or seizure, as well as submission to the jurisdiction of national courts in matters related to its loan agreements. [120] The Fund has a headquarters agreement with its host country, the Republic of Austria, by virtue of which it enjoys all the privileges and immunities within the general framework of the Vienna Convention on Diplomatic Relations, 1961. [121]

The resources of the Fund consist mainly of contributions by OPEC Member Countries and accumulated income derived from the Funds' investment and loans. [122] All developing countries, with the exception of the OPEC Member Countries, are in principle eligible for Fund assistance. The least developed and most seriously affected countries, however, are accorded higher priority. Also eligible for Fund assistance are international institutions whose activities benefit the developing countries. [123] Naturally many questions spring to mind concerning the uses to which the Fund is put, and these are answered in Part Six of the thesis. Such questions include the following:

What are the resources of the Fund? How much have the Member Countries contributed to the Fund? Who benefits from Fund assistance? Why are OPEC Member Countries not eligible for Fund assistance? How is the assistance of the Fund allocated? How are the lending programs established? What types of loans are extended by the Fund? Why does the Fund provide different types of loans? How are the Fund's lending activities carried out? How are the terms of lending determined? What is the general procedure for obtaining a loan from the Fund? How are Fund projects and programs identified? Does the Fund appraise projects and programs itself? Why does the Fund call on the services of other development finance institutions? Does the Fund charge interest on its loans? Does the Fund finance local costs of development projects and programs? How does the Fund encourage the mobilisation of local funds to finance development projects and programs?

It is beyond the scope of this present study to explore the answers to these questions in any depth, since they could form the basis of an entire thesis in themselves. It should be noted, however, as we shall see in Part Six, that OPEC's loan and assistance programme has played a part in helping the developing countries to become more fully integrated in the New International Economic Order.

8. The Consultative Meeting

As well as the organs which meet at regular intervals (the Conference, the Board of Governors, the Economic Commission) or function continuously (the Secretariat, the Special Fund), the OPEC Statute provides for a further organ which neither meets regularly nor functions continuously, namely the Consultative Meeting. At the request

of the President of the Conference, consultative meetings can be held at any time.[124] It is composed of the Heads of the Delegations of the Member Countries and their representatives. It is the responsibility of the President to prepare the Agenda for each Consultative Meeting.[125] Consultative meetings may make decisions which shall be submitted to the next meeting of the Conference for approval. Since the inception of OPEC, Consultative Meetings have only rarely been held (in 1975, 1976, 1979, 1981, and 1984].[126] They are usually held to discuss or deal with issues or problems of a pressing nature, or matters referred to it by a previous Meeting of the Conference.[127]

3.2.4 General Remarks on the Structure and Organs of OPEC:

The above examination of the organisation of OPEC reveals that OPEC is a highly structured permanent institution established to perform specific tasks. The organisational structure in general terms is satisfactory and adequate to pursue the aims and objectives of OPEC. The powers given to the organs of OPEC, in particularly those given to the Conference, are flexible enough for them to be able to accommodate any unforeseeable circumstances. The fact that OPEC has lasted for the last 38 years and has managed to adapt itself successfully to a changing world speaks for itself. Had it not been an effective or useful institution, it would not have lasted the course.

Generally speaking, the structure of OPEC is not very different from many other similar international organisations. As already noted in Part Two, the establishment of OPEC as an international organisation with a permanent headquarters distinguishes it from a typical Cartel – which is not an international organisation and which does not have a permanent headquarters. Another distinguishing factor which differentiates OPEC from a typical Cartel, is the nature of its membership, which is discussed in the next section.

3.3 The Membership of OPEC

From the standpoint of international law, international organisations are composed of sovereign states, although sometimes different political entities can form components of an international organisation, for instance the IMF and the Asian Development Bank. Similarly, OPEC is an international organisation which at its inception was comprised of countries which possessed different international status: sovereign states and protected states.[128]

There are usually two categories of membership in international organisations. Full members enjoy privileges of rights give to all members of the organisation by the constitutive charter.[129] This is the case with founder members of OPEC and members

who have joined afterwards. [130] The associate members, for various reasons, enjoy just some of the rights given to full members. [131]

However, the terms in which the provisions of membership are stated and the practice of the organisation in admitting new members may raise several problems which need to be solved. The study of these problems is important in many ways. Dr. Thomas Buengenthal explains that:

> "Few other aspects of the practice of an international organisation tell us as much about the role of law in the organisation's decision making process as does the manner in which it has over the years resolved its membership problems. The legal questions that arise in connection with the admission of states to membership, with their expulsion, suspension, or withdrawal from the organisation, often require extensive interpretation of its constitutive instrument, and thus account for a substantial part of the constitutional practice of many international organisations. Membership disputes tend, moreover, to be either the product of or the vehicle for advancing the different ideological views that divide the members of the organisation. Although the will of the ideologically dominant force within the organisation usually prevails, the manner in which this will is asserted probably differs from organisation to organisation, depending upon the functions of the organisation, its *modus operandi*, the various economic, political, or social states which the member states may have in the smooth operation of the organisation, and many other factors."

Many of the same legal and political considerations that apply to membership disputes in large measure also affect the outcome of other constitutional disputes. It is therefore not surprising that an organisation's approach to membership questions tends to be rather characteristic of the manner in which it deals with constitutional problems generally. The membership practice of an international organisation accordingly provides a useful introduction to the methodology and character of its decision making process." [132]

The study which follows is designed to see how OPEC has resolved its membership problems, and how its membership rules differ from other international organisations. It shows both the practice and the methodology of OPEC's approach to constitutional questions and through that gives an insight in to international law generally.

3.3.1 Procedures Leading to Membership:

The customary formal procedure leading to OPEC membership begins with a letter of application addressed to the Secretary General of OPEC by an official of the applicant country acting on the instructions of his government. Obviously, communication of the letter is often preceded by much debate in governmental and other circles on the benefits and burdens of membership. [133] The practice of OPEC is that it is the Minister of Petroleum or Energy of the candidate country who applies on his country's behalf for membership. [134]

OPEC does not stipulate a model formula for a letter of application for membership. However any such letter usually states in terms that the person who has signed the letter has been instructed by his government to apply in the name of that government of the country concerned for membership of OPEC. In the case of a dependent countries, as originally happened with Kuwait, the application is not made by the former colonial power (in this case the UK) but by the state itself. [135] This practice is not followed by other international organisations. [136]

The letter of application is forwarded to the President of the OPEC Conference by the Secretary General and circulated to the other Members of the Organisation. Then, normally, the Conference in its next meeting decides. Any decision of acceptance has to be ratified by the Member Countries and published, usually within a month of the decision being taken. In accordance with the OPEC Statute Articles, new members can enjoy the benefits of the Organisation as soon as their applications have been accepted – they do not have to wait to be formally admitted. [137]

The admission of a new member does not make any constitutional amendment necessary, because the Articles of the OPEC Statute do not lay down the composition of the members and specify each member's seats. Also the provisions relating to voting remain unaffected – which can be contrasted with the practice of Community Councils, where the balance of votes between producers and consumers must be restored. [138]

Acceptance of new members is a bilateral act. [139] Not only must OPEC agree, but also the approval of the applicant country is also necessary. The internal law – that is, the national constitutional law of the applicant country – must provide a procedure whereby such national approval may be given. Accordingly OPEC cannot interfere with this process, but should be satisfied that it has been completed at the time when a competent delegate informs the Organisation of his country's acceptance of the OPEC Statute. [140]

However, as we have already noted in Part One, in accordance with the law of Treaties, existing OPEC members cannot avoid obligations arising from their member-

ship on the grounds that the approval of that membership was not carried out in accordance with their national law if they have for sometime actually participated as members. [141]

Finally, it is worth noting that a country applying for a specific category of Membership may be offered a different one. Thus, for example, in 1973 Ecuador was offered Associate rather than Full Membership. [142]

3.3.2 Acquisition of Membership:

Membership of OPEC can be obtained either by virtue of having been a Founder Member who participated in the signing of the original treaty that created OPEC, or by admission in accordance with Article 7 of the OPEC Statute:

A. Founder Membership

Resolution I.2(2) of the First Conference, held in Baghdad during the 10th-14th September 1960, states that:

> "Countries represented in this Conference shall be the original Members of the Organization of the Petroleum Exporting Countries."

Also Article 7(A) of the Statute provides:

> "Founder Members of the Organisation are those countries which were represented at the First Conference, held in Baghdad, and which signed the original agreement of the establishment of the Organization"

Obviously, ratification of the treaty of the Baghdad Conference is not required by Article 7(A), simply because the Founder Members had already ratified it well before the adoption of the OPEC Statute. This ratification was required by Res.I.3 of the Treaty. [143] It is worth noting that, unlike some other international organisations, OPEC Founder Membership has only been granted to those who participated in the Baghdad Conference, and cannot be obtained simply by subsequent ratification of the treaty establishing OPEC. [144]

The representatives of the five countries present at the Baghdad Conference signed the OPEC Constituent Instrument in the capacity of founding members. Thus the first constitutive act of OPEC gave them a privileged position in matters concerning the possibility of admission of other oil-producing countries: the unanimity of all Founder Members was to be obtained for every decision of the Conference, the supreme authority of the organisation. Besides this, the Founder Members were entitled to nominate one Governor each, whereas all the new members could only nominate a single Governor collectively.

This situation, however, did not last for more than two years. The 5th Conference of OPEC, held in Riadh in November 1962, decided that from that time onwards, every member of OPEC, whether Founder or Admitted, was to be represented at all the Conferences of the Organisation, and on the Board of Governors. [145] Only the rule requiring unanimity of acceptance of all the Founding Members for the admission of New Members was preserved. By virtue of this rule, the five original members are able to exercise an additional influence on the composition of the Organisation. [146] Thus the failure of Trinidad and Tobago's attempt to join OPEC was due to the exercise of this veto power by one of the Founder Members, namely Iraq. [147]

Both Founder and New members are also called 'Full Members', in order to distinguish them from Associate Members. Thus out of the eleven Full Members which now comprise OPEC, the original five – Saudi Arabia, Iraq, Iran, Kuwait and Venezuela – have retained the status of Founding Members.

B. Membership by Admission

Apart from obtaining OPEC membership by having participated in the treaty that created OPEC, the OPEC Constituent Instrument, other countries can be granted membership in accordance with Article 7(C) of the OPEC Statute in the case of Full Members, and Article 7(D) in the case of Associate Members. Observer status can also be granted to other non-member countries in accordance with Article 11(D).

A short analysis of each of the above types of membership follows:

1. New Full Members:

New Full Members are those countries that have been admitted to the Organisation subsequent to its establishment. The term 'new' does not appear in the revised OPEC Statute. It has been replaced (since 1965) by the phrase, "those countries whose application for membership has been accepted by the Conference." However in practice the Conference has still used the term "new" whenever a country has been admitted as a member.

At present there are six New Full Members (reduced relatively recently from eight), namely, Qatar (January 1961), Indonesia and Libya (June 1962) Abu Dhabi (November 1967), Algeria (July 1969), Nigeria (July 1971), Ecuador (associated member, June 1973; full member, November 1973; suspended its membership, November 1992; terminated its membership in November 1995), Gabon (associated member, November 1973; full member, June 1975; suspended its membership in July 1996), and the United Arab Emirates (January 1974, through conveyance of the membership held by Abu Dhabi).

In accordance with the requirements listed in Article 7(C) of the OPEC Statute, a country applying for full membership should be a net exporter of crude oil in a substantial quantity, and its petroleum interests should be fundamentally similar to those of the founder members. In order to be successful, its application should be accepted by a three-fourths majority of the Full Members, provided that this majority includes the concurrent vote of all five Founder Members.

It is important to analyse these requirements in order to clarify any ambiguities which may surround them:

(a) The meaning of 'country'

Membership of some international organisations is available to 'states', [148] and of others to 'nations' [149] or 'countries'. [150] In Article 7 of the OPEC Statute the word 'country' is used. Accordingly, the quality of statehood is not a necessary requirement for membership of OPEC. The choice of the term 'country' may have been due to one of the following factors:

(i) The word 'state' is imprecise and has been the subject of much discussion. [151] It is often defined as an entity with a permanent population, living in its own territory, which it governs, with independence in regulating its internal and external affairs – that is, it is not under the control of another state in the conduct of its own affairs. Some authorities who accept these criteria do not insist on their being absolute in character. For instance Lauterpacht refers to: "a reasonably well-defined territory, a population, and the existence of an independent government enjoying a reasonable degree of stability." [152]

Thus the word 'country' may have been adopted partly because of the absence of complete agreement on the definition of a 'state', and partly because any such definition may have excluded Kuwait, which although it enjoyed a certain degree of autonomy at the time was still nevertheless technically a British protectorate. During the initial deliberations, the statehood of Kuwait was questioned by Iraq, but not by the other members. This is illustrated by the support which Kuwait received from Iran, Saudi Arabia and Venezuela in its application for admission to the United Nations, whereas, in contrast, it was as a result of Iraq's and the USSR's vetos that Kuwait failed to gain admission until 1962. [153]

(ii) Another possibility is that use of the term 'country' was preferred in order to facilitate full membership not only for one of the Founder Members, but also for some future prospective members as well – which, although still not fully independent states, it was thought would contribute to the effectiveness of the Organisation if they were accepted as members, owing to their substantial production of oil.

This is confirmed by the admission of Kuwait, Qatar, and Abu Dhabi as Full Members of the Organisation in 1960, 1961 and 1967 respectively, despite the fact they had not yet obtained their formal independence at the time that they applied for and gained membership. [154] Such practice is precedented by other international organisations. Thus Professor Kovar observes that:

> "sometimes, the constitutions of international organisations seek to avoid the problem of the nature of 'state' by using the word 'country' or 'nation' to designate entities capable of being admitted." [155]

(b) The meaning of 'substantial net export of crude petroleum'

Article 7 (C) requires that any new member of OPEC should be a country with 'a substantial net export of crude petroleum'. It follows therefore that membership of OPEC is not open to oil-importing countries – whereas, in contrast, in the case of virtually all other international commodities institutions, the importing countries are not excluded from membership. [156]

Neither the OPEC Constituent Instrument nor the OPEC Statute define the exact meaning of a 'substantial net export'. However Perez Alfonso, who played a fundamental role in the creation of OPEC, suggested that only countries accounting for at least 1 per cent of the total world production of crude oil could be considered important producers. [157] The admission of Qatar [158] in 1961, Ecuador [159] in 1973 and Gabon [160] in 1975 with production levels of only 0.79 per cent, 0.38 per cent and 0.42 per cent of total world production respectively, indicate that Alfonzo's criterion was not applied strictly when interpreting the term 'substantial'. Moreover, there is nothing to 'prove' that a lower amount than these can not be considered 'substantial' by the Organisation.

The OPEC Secretariat did at one point attempt to define the term 'substantial net export' and to formulate guidelines to assist the Conference in evaluating the eligibility of new applicants for membership. The Conference, however, discussed the question of membership in detail at its November 1973 meeting and came to the conclusion that it would be better to study each case on its own merits and not to be bound by rules restrictive of its freedom of action. Some member countries felt, perhaps justifiably, that not only exports but also the size of oil reserves should be taken as a criterion. [161]

(c) The meaning of 'similar interests'

Any country applying for OPEC membership, whether Associate or Full, must have fundamentally similar interests to those of the Member Countries before it can be accepted. This requirement was introduced in April 1965. [162] Neither the OPEC Con-

stituent Instrument nor the OPEC Statute provide a definition of the term 'similar interests'. However, some authors have concluded that the use of this term was politically motivated and was intended to placate anti-communist or anti-socialist members and to prevent the entry of the UAR (then a potential oil exporter) and the USSR. These two countries' regimes were regarded as suspect by some Founding Members. [163]

Perez Alfonso had stated that the one major common interest shared by OPEC Members was the necessity of protecting themselves *vis-a-vis* the powerful international petroleum industry which at the time managed their national resources. [164] However this argument is not valid any more since all the member countries have obtained their full sovereignty over their oil resources since 1973. Also the force of this argument was further reduced after the OPEC Solemn Declaration of March 1975 (which appears in Appendix IV).

The common interest shared by the Member Countries can be deduced by reviewing the common conditions and circumstances shared by the five founder members. According to Dr Rouhaini, these common interests can be summarised as follows:

(1) The founder members were developing countries;

(2) They were large exporters of petroleum;

(3) The financing of their development projects and the balancing of their budgets depended on the revenue of these exports;

(4) They were not able to exploitheir oil resources without the assistance of foreigners, and accordingly their oil industry was in the hands of the major oil companies;

(5) The agreements that governed the operation of their oil industry were to a large extent similar, and consequently the problems that presented themselves and the disputes that arose between the host countries and the operating countries were often identical. [165]

In addition to these factors, Mr Adobe has suggested another element which helped drive the Middle Eastern countries, in spite of various obstacles and differences, to band together . This was the common feeling of bitterness inherited by the people of these countries which had grown in consequences of the injustices inflicted on them by the inequitable oil concessions granted to the international oil companies under special political circumstances. They therefore shared a common interest in erasing the consequences of injustice and remedying the situation. [166]

(d) The criteria for final acceptance of an application

The degree of acceptance from existing members needed for an application to join OPEC to be successful has been defined and re-defined at various stages: At the first

Conference in Baghdad by which OPEC came into being, the Organisation decided that: "any country with a substantial net export of crude petroleum can become a new member if unanimously accepted by all five original members of the organisation". Thus at this point in time the admission of a new member would depend on the unanimous consent of the five founder members. The following new members were admitted under this rule: Qatar in January 1961, and Libya and Indonesia in June 1962.

On the 10th of April 1969, the Conference held in Geneva adopted resolution VII.56 whereby certain amendments were made to the OPEC Statutes – which, *inter alia*, now required for the purposes of admission of a new member: "a majority of three fourths of Full members, including the concurrent vote of all five Founder Members." All subsequent new members – namely, Abu Dhabi, Algeria, Nigeria, Ecuador and Gabon, admitted in 1967, 1969, 1971, 1973 and 1975 respectively – were accepted on this basis, which continues to be the current requirement.

Thus, generally speaking, the act of acceptance and admission to membership of OPEC is a bilateral act which requires both the agreement of the applicant country to accept the obligations that follow from admission on one hand, and the acceptance by the Organisation on the other hand, such acceptance being expressed by a sufficient vote of acceptance by the existing members of OPEC.

At present, since the Organisation currently has eleven members, the admission of an additional new member would therefore require at least four affirmative votes from among the New Full Members in addition to the concurrent vote of all five Founder Members. The continuing requirement of the 'concurrent vote' of all Founder Members means that the five original members, namely Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, have retained the power of veto exclusively. The use of this power by any one of the Founder Members could prevent the admission of a new member. This has occurred in recent years. For example the application of Trinidad and Tobago for OPEC full membership has been vetoed three times by Iraq. [167]

Although, given the circumstances in which OPEC came into being, the desire of the Founder Members to retain their power of veto is understandable, it may be pointed out that this right of veto is in conflict with "the principle of the sovereign equality" of the Member Countries which is embodied in Article 3 of the OPEC Statute. It is also in conflict with the principle established for budget appropriations under the financial provisions of the organisation which require apportionment on an equal basis among the members, irrespective of their volume of production. At a time when there is a general outcry against the special powers of veto enjoyed by "the Big Five" in the Security Council of the United Nations, this similar provision in the OPEC Statute is equally difficult to justify and equally unlikely to be changed.

In the present writer's personal interview with Dr. Francisco, the Head of the Legal Section of OPEC, he stated that no justification for this provision could be found, except that it is a privilege for the Founder Members which reflects the great effort they made to establish the Organisation in the first place, and which pays due regard to their reasonable wish that the organisation which they established should only include as its members those of whom they approve.

2. <u>Associate Members</u>:

Where the particular situations of certain countries prevent them from being admitted as full members of OPEC, they can still be given a particular juridical status as Associate Members which permits them to participate in some of the activities of the Organisation without enjoying all the rights and duties of the Full Members. This new juridical category has recently acquired importance in other international organisations, especially among some of the specialised institutions of the UN (for example, FAO, UNESCO, and WHO), in the Council of Europe and the European Communities.

As in the case of the admission of New Full Members, the Organisation has at its disposal a control mechanism to regulate the admission of Associate Members. The act of joining is again a bilateral act, since it requires, on one hand, an application and agreement to be bound by the conditions of associate membership by the prospective Associate Member and, on the other hand, the acceptance of that application in accordance with a set voting procedure by the Full Members of the Organisation.

Article 7(D) of the OPEC Statute provides for the admission of Associate Members subject to the following requirements:

(1) Only a 'country' can join the Organisation as an Associate Member.

(2) It must be a net petroleum-exporting country.

(3) It must "fundamentally have interests and aims similar to those of Member Countries."

(4) It must be accepted by a majority of three-fourths of the Members of OPEC including the concurrent vote of all Founder Members.

(5) The country has to comply with "such special conditions as may be prescribed by the Conference.

Requirements (1), (3) and (4) are identical to those conditions required for full membership and have already been considered above. [168] Accordingly only the other two remaining conditions will be analysed here:

(a) The meaning of 'net petroleum-exporting country'

In contrast to the requirement that a Full Member be a 'substantial' exporter of petroleum, an Associate Member is only required to be a 'net' exporter of petroleum. As with the term 'substantial', there is no hard and fast definition of the term 'net', but it is clear that it is intended to indicate that the required size of an Associate Member's export, while exceeding any import of petroleum it may have, is smaller than that of a Full Member.

(b) The meaning of 'special conditions'

Although Article 7(D) of the OPEC Statute provides that Associate membership may be granted subject to "such special conditions as may be prescribed by the Conference", up to now there has been no case where such conditions have been imposed. Clearly this requirement gives the Member Countries the ability to stipulate conditions other than those expressly enumerated in the OPEC Statute, should this be deemed necessary.

In accordance with Article 7(E) of the OPEC Statute, Associate Members may be invited by the Conference to attend any meeting of a Conference, the Board of Governors or Consultative Meetings. Thus OPEC Associate Members cannot participate in the Organisation's activities as of right, but only by invitation. Furthermore, if invited, although they can participate in the deliberations, Associate Members do not have a right to vote. They are, however, fully entitled to benefit from all general facilities of the Secretariat, including its publications and library, just like any Full Member.

An Associate Member has to pay, in accordance with Article 38(B) of the OPEC Statute, an annual subscription which is fixed by the Conference at the time of its admission.

The status of an Associate Member is usually temporary and in practice has on at least two occasions come to be considered as a transitional phase prior to becoming a Full Member. Two members, for example, Ecuador in June 1973 [169] and Gabon in November 1973, [170] acquired the status of Associate Members – but this did not last for very long, before they were granted Full membership. In contrast, the applications of Trinidad and Tobago in June 1972 to become Associate Members were vetoed by a Founder Member namely Iraq. [171]

In spite of the fact that Article 7(E) of the OPEC Statute does not grant Associate Members the right to vote, the Organisation has not always followed this in practice. In the case of Gabon (whose Associate Membership lasted from November 1973 to June 1975), it was allowed to vote and thus the signature of the head of its delegation contin-

ued to appear side by side with the signatures of full members on all resolutions of the Conference which were adopted prior to the time of its admission as a full member. [172] This confirms Mr Kubbah's statement that, in accordance with decisions made at the Conference of November 1973, Associate Members were granted all the rights and privileges enjoyed by Full Members, including voting at the Conference and at meetings of the Board of Governors – but with the exception of the right of veto. [173] However, it should be made clear that any such decision has never been officially published as one of the resolutions of OPEC and never been publicised by any other means.

Thus the question of whether or not Associate Members have the right to vote is not altogether clear – and it can be anticipated that this question may well arise in the future should additional new Associate Members join OPEC.

Finally, by way of comparison, it may be observed that although OPEC Associate Members have similar rights and duties to those enjoyed by associate members of other international organisations, they are different in the following ways:

(i) The privileges which Associate Members of OPEC enjoy are not rights *per se* but rather are subject to prior invitation by the Conference.

(ii) Associate Members of OPEC do not hold any office in the headquarters of the Organisation.

(iii) The status of OPEC Associate Members is temporary and can be described as a 'stepping-stone to full membership'. [174]

(iv) The power of discretion in admitting Associate Members is wider than it is as regards Full Members.

3.3.3 Specific Membership Problems:

Up to now, there have been a limited number of problems regarding membership of OPEC, of which the most prominent have been as follows:

1. The Status of Countries which are not Fully Independent States

As has already been noted earlier on in this thesis, Kuwait was one of the original OPEC Founder Members, despite the fact that its statehood was questionable [175], since it was not granted UN membership until 1963 and it was under British mandate until 1961. [176]

The question which has therefore arisen in this context – a question, it may be added which is now largely academic, given that the transition from the former European colonial era to the New International Economic Order is now virtually complete – is: What was the legality of Kuwait's Membership before it had obtained full independence?

When this question was first raised, it was not in an academic forum, but rather in the arena of politics. The question of the legality of Kuwait's membership did not become a subject of debate within OPEC until the Iraqi government boycotted the meetings of the Conference from 1961 to February 1963. The Iraqi delegation claimed that Kuwait had always been considered, legally as well as historically, an integral part of Iraq. (It was this claim which resurfaced and contributed towards the recent Gulf War in 1991). At the time, the question of Kuwait's statehood was not debated in the OPEC Conference as much as it was in the United Nations. [177]

In the present writer's opinion, the Membership of OPEC of Kuwait was legally valid from the outset, for the following reasons:

(a) From a constitutional point of view, the Organisation has never required 'statehood' as a precondition for its membership. As we have already seen, the Organisation uses the geographical term 'country' instead of 'state'. Such a term is described by Professor Kovar as: [178] "a geographical term frequently used in treaties and often in diplomatic acts and in works of international law without having received a proper and constant meaning; its meaning must, in each case, be determined by the qualifications which accompany it, or in accordance with the context in which it is used." It follows that the Organisation must have originally used the word 'country' quite consciously for the specific purpose of permitting the admission of such entities whose 'statehood' was questionable. The creation of OPEC, after all, can only be fully understood within the context of its original members' desire to cast off the yoke of the former colonial exploitation of their natural resources. The Iraqi government's desire to turn back the pages of history to the *status quo* which existed prior to the European colonial era is understandable, but was impractical and not viable.

(b) Even as regards those international organisations which require statehood as a prerequisite for the admission of new members, a number of new members were admitted before they obtained their independence. Thus in the case of the United Nations, India and the Philippines became members of the UN on the 30th October 1945 and the 24th October 1945 respectively, *before* they obtained their independence, (India on the 14th August 1947, and the Philippines on the 4th July 1946). [179] Thus it could be argued that this constituted a valid legal precedent which the founder members of OPEC were entitled to follow.

(c) Public International Law does grant to a body which is recognised at an international level, the right to bind itself in that capacity, even though it is under the protection of another state – although in that case it is necessary that the protecting state either gives its consent or serves as an intermediary. The question which therefore

arises in this context is whether or not Kuwait, a founding member of OPEC, which was at that time under the protection of Great Britain, was authorised by the latter to sign the treaty of OPEC. The answer to this question is that although such consent was never expressly granted, it can be argued that since Kuwait obtained its independence soon after, in 1961, and since Great Britain never raised any protest concerning the signing of the OPEC Constituent Instrument by Kuwait, then that consent was tacitly acquired. [180]

(d) Finally, it is also worth noting that the Iraqi Government did not initially question the legality of Kuwait's membership of OPEC, when Kuwait was in fact invited to participate in the creation of OPEC which after all took place in Baghdad, in Iraq itself, from the 14th to the 16th September 1960. Subsequent events have proved that the ambivalent policy of Iraq did not make the question of Kuwait's statehood seem important in the eyes of the Organisation's other Members – and this explains why the Organisation treated the Iraqi boycotts as a series of absences rather than as a withdrawal.

2. Changes in Sovereignty

Up to now the legal personalities of two OPEC members have become subject to change, the first, when it was proposed that Libya would unite with Tunisia in a single state to be called the Arab Islamic Republic. The two countries were to form a union 'with a single constitution, flag, president, army and legislative, judicial and executive authorities." [181] This plan was in fact never realised.

The second union of states occurred when Abu Dhabi and Dubai along with five other Trucial states formed a federation called the United Arab Emirates (the UAE). In accordance with the constitution of the UAE, they constitute a single sovereign independent federal state, which is solely responsible for foreign affairs and for the ratification and implementation of international treaties and agreements. [182]

In the context of OPEC membership, these two cases raised the question as to what the effect of the formation of these new political entities would be on the original OPEC membership status of Libya and of Abu Dhabi. [183]

From a practical point of view, there is no point in discussing the case of Libya, since the proposed union never actually materialised. However, the case of the UAE raises several questions since Abu Dhabi was a member of OPEC before the formation of the UAE.

It has been suggested that OPEC would have accepted the principle of the continuing and separate membership of Abu Dhabi as a full member of OPEC, represent-

ing itself and not the UAE.[184] This may well have been the case had Abu Dhabi remained member of OPEC after the formation of the UAE. However Abu Dhabi asked for its membership to be transferred to the UAE and this request was granted. Accordingly the question of whether the continuing and separate membership of Abu Dhabi was viable ceased to matter.

It can be pointed out in passing, however, that the transfer of Abu Dhabi's membership to the UAE does not present any significant departure from the precedent established by other international organisations. The United Nations and the specialised Agencies, for example, accepted without objection the change of membership of Egypt and Syria to that of the United Arab Republic (the UAR). The UAR does not seem to have been considered by any of the organisations as having formed a new political entity, and consequently it was not required to file a formal application for membership.[185] Similarly, in the transfer of Abu Dhabi to the UAE, no new formal application for membership was required and no new admission procedures were required for the new entity.

Thus one may conclude that the creation of the UAE was and should be regarded as a case of amalgamation rather than of secession. If the creation of the UAE had raised an issue of secession, then previous practice suggests that the UAE would have had to apply for membership of OPEC in the usual way. The authority for this proposition can be derived from the statement made – in relation to the participation in the United Nations of India and Pakistan in 1947 – by the legal committee of the General Assembly of the United Nations in which it laid down the following principles:

> "That, as, a general principle, it is in conformity with legal principles to presume that a state which is a member of the organisation of the United Nations does not cease to be a member simply because its constitution or its frontiers have been subjected to changes and that the extinction of the state as a legal personality recognised by the international order must be shown before its rights and obligations can be considered thereby to have ceased to exist.
>
> That, when a new state is created, whatever may be the territory and the population which it comprises and whether or not it formed part of a state member of the United Nations, it cannot under the system of the Charter claim the status of a member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter."[186]

Thus if the formation of the UAE had amounted to the creation of a union which involved the complete extinction of the former political identities of the participating Arab Sheikhdoms, then the above general principle suggests that the newly formed UAE would have had to apply for OPEC membership in the normal manner in accordance with Article 7 of the OPEC Statute, since it would have represented an entirely new state. It is clear, however, that the OPEC Conference took the view that the political personalities of Abu Dhabi and the other states had not been entirely extinguished, but rather were continuing in a combined form. There is certainly much force in the view that it is only reasonable and practical that countries which have been admitted to OPEC in the proper way should not be subjected to the trouble and inconvenience of having to re-apply for membership simply because they have combined in a union or a federation.

3. The Right to Membership

Since OPEC has specified the conditions for the admission of new members, it follows that any such admission can only take place if a decision is reached in accordance with the conditions and procedures described earlier. The question which arises at this point, therefore, is to what extent may OPEC Members vote freely in taking this decision? In other words, may they base their votes on factors other than those specified in the OPEC Statute? And if the answer to this is in the affirmative, then does this mean that there is little point in having conditions which must first be fulfilled? It is possible that the answers to these questions may be found by first considering the practice of the United nations:

In 1947 the General Assembly requested the International Court of Justice to give an advisory opinion on the following questions:

> "Firstly, is a member of the United Nations which is called upon, by virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a state to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided for by paragraph 1 of the said Article? And secondly, can a member subject its affirmative vote to the additional condition that other states must be admitted along with the state which is being voted upon?" [187]

The court considered that this request was for an interpretation of paragraph 1 of Article 4 of the UN Charter which states:

> "Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the organisation, are able and willing to carry out these obligations."

The Court concluded by nine votes to six firstly that there were five conditions for membership in the United Nations. In order to be admitted, an applicant must:

(1) be a state;
(2) be peace-loving;
(3) accept the obligations of the UN Charter;
(4) be willing to carry out these obligations; and
(5) be able to do so.

The Court also concluded that these conditions were both necessary and sufficient, and that therefore there was no need to impose additional conditions. This construction did not, however, prevent the Organisation in exercising its judgement from taking into account any facts that could enable it reasonably and in good faith to determine whether or not these conditions were satisfied.

As a result of its interpretation, the Court concluded that a member when voting on the admission of a state that met the five express conditions could not make its consent to admission be dependent on any other conditions that were not expressly provided for, and in particular, any condition that other states must also be admitted together with the applicant.

The opinion of the dissenting judges placed much weight on paragraph 2 of Article 4 which states:

> "The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

In their view this provision involved the exercise of judgement and did not involve automatic admission on the basis of the routine application of rules. Admission was subject to decisions taken by the General Assembly and the Security Council, which would inevitably take political factors into account, even though these were not expressly mentioned in Article 4. The organs and members of the UN were bound by the Charter not to admit a state that did not fulfil certain conditions, but the Charter did not expressly provide that these conditions were exhaustive. The language used in Article 4, such as the expression "membership is open" and "admission ... will be effected", was permissive in tone and not obligatory, involving an element of discretion.

Turning now to the case of OPEC, even if the principles contained in the Court's majority decision were to be applied, the generality of the words used in the OPEC Statute still leaves a wide discretion when it comes to their interpretation and application. For example, when the applications of Tobago and Tunisia to become members of OPEC were vetoed by one of the Founder Members, it was on the basis of the absence of 'similar interests'. Since the term 'similar interests' is not further defined in the OPEC Statute, it has been left open to wide interpretation – and accordingly to the exercise of a wide general discretion.

Furthermore, it must be pointed out that any applicant who is denied admission to OPEC, and who feels that it has met the criteria for membership and has been turned away capriciously, has no direct recourse against OPEC. This is due to the fact firstly, that there are no obvious principles for determining what would be considered an arbitrary and unjustified rejection, because secondly, since there is no juridical organ to affirm the obligation to admit any applicant which meets the prescribed requirements.[188]

Thus even though it is clear that the existing requirements stipulated in the OPEC Statute must be met before membership can be granted, nevertheless, existing members of OPEC do have a great deal of leeway when it comes to deciding whether or not to accept the application of a new would-be member.

3.3.4 The Status of Observers:

Article 11(D) of the OPEC Statute provides that:

> "A non-Member country may be invited to attend a Conference as Observer, if the Conference so decides."

In spite of the fact that this provision was only introduced two years after the creation of OPEC,[189] states such as Qatar and Libya were prior to this invited to attend the Conference meetings as observers before their admission as Full Members – an example of practice preceding precept. The Board of Governors used to be the body responsible for deciding on the admission of observers, but in 1965 this power was given to the Conference itself.

In applying Article 11(D), all international organisations and other international entities [190] other than actual countries are excluded from observer status. In contrast, such international entities are granted observer status by other organisations – for example the Untied Nations, which has in the past invited the representatives of a number of national liberation movements to participate as observers in many conferences of the UN. Similarly, the EEC has concluded a number of agreements on the mutual exchange of documents and information, and on the mutual admission of observers. [191]

In the opinion of the present writer, OPEC would be well advised to follow such examples by extending the scope of observer status beyond the limits of non-member countries to include other international organisations which have similar interests such as, for example, OAPEC and OLADE. For the time being however, OPEC's stance on this issue reflects the general position: In the field of the law governing international institutions, the question as to who may be an observer is at times controversial and the scope of its application is uncertain. In other words, there is at present no coherent legal theory about 'observer status'.[192]

Thus OPEC has taken no formal constitutional approach in relation to observer status and no proposal has been made to analyse and institutionalise this status. Unlike other international organisations, OPEC has not concluded any agreement with potential or actual observers to regulate the relationship between them and to determine the powers, if any, and the status of observers. Thus most observers have up to now been invited on an *ad hoc* basis without concluding any such agreement.

At present, observer status amounts to a kind of quasi-membership of OPEC and has been held at one time or another by a number of states including: Algeria, Bolivia, Congo Brazzaville, Columbia, Ecuador, Nigeria, Qatar, and Trinidad and Tobago. Observers have free access to the facilities of the Secretariat, including access to information. If an issue arises that directly affects an observer country's interests, the appropriate OPEC organ may make an *ad hoc* request to its government for communication on the matter. Observers also have access to relevant meetings of the different OPEC organs, and can conduct consultations on matters of mutual interest. They obviously have no right of voting, and they have no office or staff within the Organisation. In other words, they are not permanent observers. Moreover, the privileges and immunities granted to the OPEC members in Austria do not extend to those with observer status, since no provision of the Headquarters Agreement (see Appendix III) covers them. In short, one may describe those who enjoy observer status at OPEC as 'honoured guests' (rather than as being part of the official OPEC family), or as 'non-voting members'.[193]

Observer status is a means whereby a government which is not a member of OPEC can have its representatives on the scene while the affairs of the international petroleum business are being deliberated. Thus one of the advantages of holding observer status in OPEC is that it provides the opportunity for states to promote their membership applications and to prepare themselves for future membership in the Organisation, as well as making it possible for the observer representatives to accurately inform their governments as to the respective advantages and disadvantages of either joining or not joining the Organisation.

3.3.5 Termination of Membership and Re-admission:

As with most constitutions of international organisations, OPEC expressly provides that membership may be brought to an end by (unilateral) withdrawal.[194] This possibility indicates an important difference between constitutional and multilateral contractual treaties, from which withdrawal is only possibly by mutual consent.

Until 1965, the OPEC Statute did not make any provision for withdrawal. Nor was there any provision prohibiting withdrawal. These lacunae could be explained as representing a way of encouraging other producer countries to join the Organisation and of ensuring that existing members did not think of leaving it.[195]

However, in 1965 [196] the OPEC Statute was amended and provision for withdrawal introduced by means of Article 8(A) which states:

> "No Member of the Organisation may withdraw from membership without giving notice of its intention to do so to the Conference. Such notice shall take effect at the beginning of the next calendar year after the date of its receipt by the Conference, subject to the Member having at that time fulfilled all financial obligations arising out of its membership."

According to the above Article, a member can withdraw if it satisfies the following conditions:

(i) Previous notice of its intention to withdraw should be submitted to the Conference by the member intending to do so. This notice obviously should be in written form.

(ii) The member must have fulfilled at the time of withdrawal all financial obligations arising out of its membership.

The notice of withdrawal takes effect from the beginning of the calendar year following the year in which the notice was received by the Conference. This requirement arises from the fact that, in accordance with Article 38(A) of the OPEC Statute, the Budget of the Organisation starts at the beginning of each calendar year.

In practice, the question of actual withdrawal from OPEC has only arisen once, in the case of Ecuador, which suspended its membership in 1992 and terminated its membership in 1995. As we have seen earlier, Iraq's boycott of the meetings of the Conference held between the 25th June 1961 and the 8th February 1963 was viewed as an absence, and not as a withdrawal.[197]

The requirement that a member wishing to withdraw should fulfil its prior budgetary commitments before it does so is the only element of Article 8(A) which is of

practical significance, since an OPEC member is not obliged to follow any policy which it does not accept. This is due to the fact that there will always be some degree of uncertainty as to the exact nature of OPEC decisions before they are made – except these relating to the admission of new members. Thus even if a member has voted in favour of a decision, it can still disassociate itself from that decision at any time up until it ratifies it. As Alfonso Perez stated:

> "It must be borne in mind that their governments are sovereign and can in no way be compelled to fulfil to the letter their obligations towards OPEC which, in my case, are more in the nature of moral obligations."[198]

Apart from withdrawal, the OPEC Statute does not include any other means of terminating membership. Questions therefore arise as to whether or not there are any other means of terminating OPEC membership, and whether or not OPEC should include any such means in its Statute:

Needless to say, OPEC membership would automatically end for any Member of the Organisation which ceased to exist. Furthermore, although the OPEC Statute does not contain any expulsion clause, OPEC would be entitled to expel any Member if this was necessary to safeguard and protect the Organisation. The defensive measure of expelling a member might become inevitable in the following circumstances:

(i) Where a member becomes deliberately obstructive and attempts to block all decisions (since all the decisions of the Organisation are required to be voted on and ratified by its members before becoming effective). Jerks observes in this context that the possibility of expulsion, which was originally not planned for the League of Nations was finally included in its constitution in order to protect the Organisation.[199]

(ii) Where a member no longer qualifies for membership because it has ceased to fulfil the necessary conditions for the existence of the membership – for example, if it ceases to export of oil. However, these need not be entirely the same as the requirements for admission to membership discussed above. Membership will end if the member changes in such a way that it no longer complies with the most elementary conditions of membership.

As regards the question as to whether or not provision for expulsion should be introduced into the OPEC Statute at this stage – even though it could be presumed that the Founder Members did not think this necessary – it could be argued, on the one hand, that such a provision could create a hostile atmosphere among the oil-exporting countries and that in the long run expulsion is not a good option. On the other hand, it

could be suggested that such measures should be included in OPEC statute, not with the intention of using them, but just in case it did ever become necessary to do so.

In spite of the absence of any express provision regarding expulsion, OPEC probably still could resort to expulsion as a way of ending membership should this become necessary, on the following bases:

(i) Articles 2 and 4 of the OPEC Statute stipulate a measure of general co-operation among OPEC members. Also Article 3 requires the Member Countries to fulfil, in good faith, the various obligations stated in the Statute. Accordingly any deliberately obstructive activities directed against the interests and objectives of OPEC would constitute a manifest violation of these provisions. This violation could provide sufficient basis for OPEC to expel any such member by way of Resolution by the Conference.

(ii) Any deliberately obstructive activities directed against the interests and goals of the Organisation would constitute a 'material breach' of the OPEC Constituent Instrument establishing the Organisation. Consequently, and in accordance with Article 60 of the Vienna Convention on the Law of Treaties1969, the treaty could be terminated or suspended in its operation in whole or in part.

(iii) OPEC is a relatively closed organisation whose membership is restricted to a particular group of countries. The membership of this group is determined by economical and political factors. If a member were to place itself outside the political or economical sphere of OPEC, it would then no longer need to belong to the Organisation and the other members would no longer need it. It would therefore lose its membership quite naturally, even without the existence of any express provision regarding expulsion, as soon as it was recognised by all the remaining members that its continued membership had ceased to be viable or compatible with their own political and economic positions.

As regards re-admission, in any case where membership has come to an end in one of the above mentioned ways, whether by withdrawal or by expulsion, any ex-member wishing to resume membership of OPEC again must, as stipulated by Article 8(B) of the OPEC Statute, seek readmission in accordance with Article 7(C). Accordingly it follows that a former member may not be re-admitted if, for example, its oil exports have dropped below the required level, or if its interests are no longer 'similar' to those of the other members, of if it has failed to attract the votes of all the founder members and of at least three quarters of all the full members as a whole. Any ex-member gaining re-admission would – as yet this situation has not yet actually arisen – be given the title of 'New Member', even if it had originally been a founder member.

3.3.6 Concluding Remarks on Membership of OPEC:

The foregoing study may have indicated that OPEC has been able to remain aloof from the ideological conflicts that have had such disruptive effects on the work of some other international organisations. This has been due, in part at least, to the special nature of the functions entrusted to OPEC. Furthermore, the policy of OPEC in dealing with the at times problematical issue of membership, which has always been politically motivated, has been to avoid any conflict and to manage the Organisation in a way similar to that in which a prestigious club deals with its affairs: discreetly, with a minimum of disruption and recrimination, and with a tendency to decide no more than is absolutely necessary.

One of OPEC's most significant policies in this context has been to leave major political issues to be decided by other international bodies, such as the United Nations – as in the case, for example, of the Iraqi and Kuwaiti conflicts. This policy has helped the Organisation to perform its functions without being hampered unduly by political disturbances.

It has only really been possible to pursue this policy as long as the number of members of the Organisation has been limited. However, if in the future, there is a rapid increase in OPEC's membership, which will bring into the Organisation many more members whose immediate interest is in the functional aspects of the international petroleum industry, then everything will inevitably change.

It may well be that the limiting of OPEC's membership to only the larger oil-exporting countries reveals that the Organisation is only too well aware that the inclusion of the smaller oil-producing countries as members might bring with it a host of political debates which the present members of the Organisation would not welcome. This attitude has been illustrated by the rejection of the applications for membership of OPEC of Trinidad and Tobago, The Popular Republic of Congo (Brazzaville), Malaysia, Tunisia, Columbia, Bolivia, Peru, Syria, the UAR and Angola.

Another reason for excluding the smaller oil-producing countries is that under the present voting system each member, however small or large its oil production, has one vote. Unless this voting system were to be changed, an influx of the smaller oil-producing countries as members of OPEC would result in their having a disproportionate say in the affairs of the worldwide petroleum industry.

In conformity with the Organisation's objectives, OPEC limits its membership to oil-exporting countries and excludes oil-importing countries. The functions entrusted to OPEC are only meant to be carried out by producers and not by importers. This policy of limiting membership to producers only is a new feature which has been intro-

duced by OPEC to the world of international organisations. Prior to this the importing countries have always been granted membership rights in the international commodity councils. Such circumstances make it possible to say that OPEC has set an example for similar organisations involving other developing countries, such as the Inter-governmental Council of Copper Exporting Countries (ICCEC), and the Organisation of Arab Petroleum Exporting Countries (OAPEC), to name but two.

As regards the conditions for admission as a full member, it appears that the two most important conditions which a country must fulfil before it can be considered for admission, are firstly, that it must be a 'substantial' net exporter of crude petroleum and secondly, that it must share 'fundamentally similar interests' with the other member countries of OPEC. If the rule of literal interpretation is applied to the word "substantial" in Article 7(C) of the OPEC Statute, great oil producers such as the United States, the Soviet Union, Canada, Mexico and Argentina would qualify for membership in the Organisation. However, the practice of OPEC regarding admission shows that the two requirements must be read conjunctively.

The three fundamentally similar interests which the present OPEC members share with each other are firstly, that both the financing of their national development projects and the balancing of their budgets depend on revenues from oil, and secondly, that they were and still are unable to exploit their oil resources without the assistance of foreigners, especially the major oil companies, and therefore thirdly, it is essential to their political, economic and social well-being and stability that they receive healthy oil revenues and are not unfairly exploited in the process.

It is clear that while all OPEC member countries share these interests, the same could not be said of the great producers such as the United States, the Soviet Union, Canada and Great Britain. These are technologically developed countries in their own right and do not require outside help, as a matter of necessity, to exploit their own natural resources. Furthermore, since these countries are in a position to assist the OPEC members in exploiting their oil resources, it inevitably follows that they will always want to charge more than the OPEC members wish to pay, in order to maximise their own profits. Since their interests are therefore not fundamentally similar, this is the reason why the great oil producers from the High-Tec North have not been invited to become members of OPEC.

The reason why the term 'country' is used rather than 'state' as a criterion for membership has already been explained. In fact the particular considerations which motivated this choice of terminology, and which were pertinent at the time of the Baghdad Conference, are today virtually obsolete and no longer relevant. There is no real

practical difference now between the words 'country' and 'state'. Thus although use of the word 'country' gave OPEC some flexibility and enabled it at its inception to admit as members entities whose 'statehood' was in question both among the members of the United Nations and by one of the OPEC members, this is today in the post-colonial era no longer a live issue. Today virtually the whole world has been colonised by the international banking system, and it matters little whether the various political entities which are subject to it, be they great or small or ancient or modern, describe themselves as states, or as countries or as nations. Thus the New International Order is not described as being 'Political', but rather as 'Economic'. Nowadays countries can be controlled or defeated not by invading armies, but by the value assigned to their currency by the banking system.

In keeping with these still emerging economic realities, OPEC has always arrived at its own conclusions, for its own purposes, as to whether an applicant is a 'country', and accordingly it has not been bound or hampered by the recognition of 'statehood' accorded or withheld either by its own members or by other international organisations. Thus although, as a matter of policy, OPEC tends to avoid action that might be regarded as premature or too highly political, its admission of Kuwait as a Founder Member indicates that OPEC recognised Kuwait as a country even before the United Nations did.

As we have seen, another significant condition for admission as a member of OPEC is that a prospective applicant must be accepted by a majority of at least three-fourths of full members, including the concurring vote of all the Founder Members. The implication here is that the five Founder Members of OPEC enjoy some sort of hegemony within the organisation similar to that enjoyed by the 'Big Five' in the Security Council of the United Nations. As has been noted, this requirement is in conflict with the principle of equality of Member Countries embodied in Article 3 of the OPEC Statute. It is also in conflict with the principle established for Budget appropriations by the financial provisions in the OPEC Statute, which require apportionment on an equal basis among OPEC Members irrespective of their rank of oil-production levels. At a time when there is a general outcry against the special powers of veto enjoyed by the "Big Five" in the Security Council of the United Nations, this provision is rather difficult to justify but, for reasons of expediency, unlikely to be changed.

Finally, it is appropriate to observe here that there is a move in some international organisations to break down the monopoly status enjoyed by certain states with regard to both their representation and powers within international organisations. One way of helping to realise this aim is the use of the device of 'associate membership' in order to

secure the representation of non-state entities. Prime examples of this include the Council of Europe, the WHO, and OAPEC. Despite this trend, however, OPEC Associate Membership is still only open to countries, not organisations, and for the time being no other entities are entitled to Associate membership.

Having examined the structure, organs, composition and membership of OPEC in relative isolation, it is now necessary to consider the Organisation in a wider context, by examining its place within the overall international world order, from a broadly legal perspective:

Part 4
The International Legal Framework of OPEC

The international legal framework of OPEC will be discussed along the following lines:

1. OPEC and the law of International Commodity Agreements (ICAs).
2. The general normative legal principles which govern OPEC.
3. International decisions which endorse the legality of OPEC.
4. The legal personality of OPEC within the framework of international institutional law.
5. The status of OPEC under the anti-trust laws of the United States of America.

4.1 OPEC and the Law of International Commodity Agreements

As we have seen from Part One, the core of the law governing ICAs derives from the Havana Charter and GATT principles, and it is clear that their essential characteristic is the involvement and participation of both producers and consumers. OPEC does not have this characteristic. In the immediate aftermath of the Havana Charter the question of the international legality of producer-only agreements arose in connection with the International Tea agreement of 1950-55 whose members - India, Pakistan, Indonesia and Ceylon - were all not only tea-producing and exporting counties, but also were members of GATT. There was no consumer representation during the negotiations, and no consultation with the UN took place before the Agreement was concluded. According to Rowe, [1] it was true that members of the Agreement operated export quotas, but that "there was no need to restrict supplies at all drastically, and, presumably for that reason no consumer country challenged the international legality of that agreement." However, the Interim Co-ordinating Committee for International Commodity Arrangements (ICCICA) ruled that because the Agreement did not provide for equal representation of producers and consumers, it was not in conformity with the principles of Chapter VI of the Havana Charter. [2]

Since OPEC's international legality has been challenged on the same basis, it therefore follows that it is an issue whether or not OPEC contravenes the law of ICAs. This challenge to the legality of OPEC (based upon the Havana principle of equal representation of both producers and consumers being infringed) would seem, how-

ever, to also have to apply to such organisations as the IEA, CPA, ATPC, IACP, ANRAX and GEPLACEA. However, in view of the fact that no legal obligation flows from the Havana principles, which are at most only customary international law, there is no reason why producers cannot form such an association. The practice of forming IPAs is itself evidence that a new state practice has emerged.

With respect to GATT, not all OPEC members are contracting members of GATT – and clearly only those who are members are in a position to infringe GATT provisions. Since GATT is a multilateral agreement, its provisions bind only the contracting parties – they do not bind third parties. Thus, although some members of OPEC belong to GATT, the legality of OPEC itself cannot be challenged even though its members may be infringing some of the GATT provisions. Even if we were to assume that all OPEC members belonged to GATT, the question of legality would then only be a contingent one, depending on the actual contents of their contracts of GATT membership.

In a study of the legality of ICAs in the context of the GATT provisions, it was concluded that:

> "So far over twenty-five ICAs have been formed and not one of them has been challenged as contrary to GATT. Two reasons may be advanced for this position. In the first place, the GATT provisions on ICAs are unclear; there are no specific commitments on ICAs. GATT does not have positively to approve on ICA; it is sufficient if contracting parties do not disapprove of it." [3]

It follows, therefore, that OPEC's legality cannot be questioned on the ground of its incompatibility with ICAs. Further, as can clearly be seen, there are other legal bases for assessing OPEC which in any case override any apparent contradictions between ICAs and OPEC.

4.2 The General Normative Principles which Govern OPEC

In defining the legal basis of OPEC, no assistance is derived from classical international law. In the words of Professor I. Brownlie: "In classical international law, natural resources had no place." [4] It follows that the legal foundations of OPEC lie in contemporary or conventional legal principles which have emerged to justify and explain new developments in inter-state economic relations. With respect to OPEC, three such principles can be identified as providing a useful link between the goals and practice of OPEC. These three principles are:

1. The principle of a state's permanent sovereignty over its natural resources and national wealth;
2. The principle that every state is entitled to adopt its own suitable economic and social arrangements;
3. The principle of the right to establish international solidarity and economic co-operation between developing countries.

4.2.1 Permanent Sovereignty over Natural Resources

(1) Background

The principle of permanent sovereignty over natural resources emerged during the decolonisation process in Africa and Asia in the early 1950s, [5] and was first widely used in connection with self-determination and human rights. [6] Both the International Covenant on Economic, Social and Cultural Rights 1966 and the International Covenant on Civil and Political Rights 1966 provide in identically worded Article 1(2)s that:

> "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 ..." [7]

Since 1952, the UN General Assembly, in a series of resolutions, [8] has repeatedly reaffirmed and elaborated on the principle of the inalienable right of all countries to use their natural resources for their economic development. Resolution 523 of January 1952 stated that:

> "the under-developed countries have the right to determine freely the use of their natural resources and that they must utilise such resources in order to be in better position to further the realisation of their plans of economic development in accordance with their natural interests."

The underlying concern of the principle is that political independence would be meaningless if independent countries did not control their economic destiny. Explaining the implicit ideological basis of the principle, the Foreign Ministers Conference of the Group of Non-Aligned Countries, held in Georgetown in 1987, stressed that:

> "the full exercise of their sovereignty over natural resources is essential for economic independence which is closely linked to political independence and that the latter is consolidated by strengthening the

former. The sovereign rights of each state to dispose of its natural wealth and resources, including nationalisation is inherent in the principles of self-determination of their peoples." [9]

(2) The Nature and Scope of Permanent Sovereignty Over Natural Resources

In 1958 the UN General Assembly established the Commission on Permanent Sovereignty Over Natural Resources [10] with a mandate to conduct a full survey of the status of the concept of permanent sovereignty over natural resources and wealth. Through the efforts of this Commission [11] and the related works by ECOSOC, the UN Declaration on the Permanent Sovereignty over Natural Resources was passed on the 14th December 1962. Resolution 1803 declared that:

"1. The right of Peoples and of 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 peoples of the State concerned;

2. The exploration, development and disposition of such resources ... should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable ..." [12]

The central theme of Resolution 1803 is that a state should have control over the production, use and disposition of natural resources within its territory, and should have absolute power to direct the destiny of these resources. Since 1962, a number of General Assembly resolutions have elaborated the principle of permanent sovereignty over natural resources. For example, General Assembly Resolution 3171:

> "reaffirms the inalienable rights of a state to permanent sovereignty over all the natural resources on land within its international boundaries, as well as those in the sea bed and subsoil thereof within the national jurisdiction and in the superadjacent waters."

An important aspect of the principle of permanent sovereignty over natural resources is that it recognises the inherent rights of every country to dispose of its resources for the benefit of their national development. Thus, according to Resolution 3171 the principle covers "all stages from exploration to marketing". [13]

(3) Legal Status of the Principle of Permanent Sovereignty over Natural Resources

The question of the legal status of the principle of permanent sovereignty over natural resoures can be considered from two angles: Firstly, it can be argued that this

principle is merely a re-statement of the traditional principle of territorial sovereignty. Secondly, it can be argued that this principle has attained legal status by virtue of the legal effect of the numerous UN General Assembly resolutions reaffirming the principle of permanent sovereignty over natural resources:

(4) Territorial Sovereignty and Permanent Sovereignty

Opinion is divided as to whether the principle of permanent sovereignty is a re-statement of the traditional principle of territorial sovereignty. The decisions in Texaco Overseas Petroleum v Libya, [14] and The International Association of Machinists and Aerospace Workers v OPEC [15] assume that the numerous General Assembly resolutions re-state the well-established traditional law principle. However, it can also be argued that it is evident from the conceptual development of the principle of permanent sovereignty that it is not a mere re-statement of the traditional principle. The development of the principle is attributed largely to the efforts and persistence of the developing countries who regard the principle as the cornerstone of their economic development strategy. Thus, the principle of permanent sovereignty over natural resources is essentially a key concept in the international economic development of developing countries.

Furthermore, it should be pointed out that the principle is sometimes declared mainly with the developing countries in mind. Thus, for example, General Assembly Resolution 3016 [16] is entitled 'Permanent Sovereignty over the Natural Resources of Developing Countries'. Thirdly, the principle of permanent sovereignty has been given constant reiteration in such form in UNCTAD and by the Group of Non-Aligned Countries [17] – and it would hardly be the case to suggest that these forums have been labouring to re-establish a well respected principle of classical international law. A fourth distinction between the traditional concept and the new principle is that the former may be restricted or limited by contractual obligation and by "international customary law and the general principles of law recognised by civilised nations", [18] whereas the latter overrides international customary law, and is arguably a peremptory norm of general international law (*jus cogens*). [19]

(5) The Legal Effect of UN General Assembly Resolutions on the Principle of Permanent Sovereignty over Natural Resources

The numerous UN resolutions on permanent sovereignty are not themselves binding because, in general, General Assembly Resolutions are merely recommendations. Even though these resolutions do not instantly make new laws, however, their legal

effect is that through constant reiteration, they constitute evidence of what has come in the course of time to be accepted as customary international law. Thus state practice regarding the principle of permanent sovereignty has emerged as a new customary international law principle and, in particular, the contents of Resolution 1803 (quoted on p. 132 above) is universally accepted as accurately reflecting customary international law. [20]

(6) <u>Permanent Sovereignty Over Natural Resources as the Legal Basis of OPEC</u>

Bearing the above development of customary international law in mind, it is clear that the application of the principle of permanent sovereignty over natural resources provides a sound legal basis for OPEC's development measures, and for co-operation between the oil-producing countries. [21] Indeed such co-operation would be impossible unless the producing countries could continue to exercise some measure of control over the production, marketing and pricing of their commodities. Thus when Dr. Jafar Saad was speaking on behalf of OPEC to the Arab Energy Conference he said:

> "What all the experts agreed on was not simply the need for more equitable prices for their most valuable natural resources but, more importantly perhaps, the need to subject the production and pricing of this asset to national political sovereignty and national economic development needs. The post-colonial experience of all developing countries has left no one in doubt of the fact that political independence would remain devoid of substance in the absence of economic independence. Moreover, for oil-producing countries, economic independence would remain a mirage as long as the exploitation and pricing of their most vital natural resource was fully controlled and regulated by foreign companies, whose business motives and interests could not be isolated from the politico-economic strategies and schemes of their mother countries. In a way therefore, the conclusion of the agreement establishing OPEC in Baghdad in 1960, represented the materialisation of an aspiration long nurtured by the people of the Member Countries of OPEC." [22]

The connection between the principle of permanent sovereignty over natural resources and IPAs is explained in General Assembly Resolution 3171 thus:

> "One of the most effective ways in which the developing countries can protect their natural resources is to establish, promote or strengthen

> machinery for co-operation among them which has as its main purposes to concert pricing policies, to improve conditions of access to markets, to co-ordinate production policies, and thus guarantee the full exercise of sovereignty by developing countries over their natural resources."

As has already been seen, OPEC's Statute itself reflects the relevance of the principle of permanent sovereignty over natural resources. Thus, OPEC refers in its Statute to the need to safeguard its Members' permanent sovereignty over their natural resources. It also recognises the desirability of effective national control over the exploitation of oil within the territories of its Member Countries.

This is a common attitude within all the commodities producing organisations. For instance the IBA agreement makes direct reference to national control of the bauxite industry of its members countries. The preamble of the IBA Agreement notes: "the need to safeguard their permanent sovereignty over their natural resources," and recognises: "the power and influence of multinational corporations in the exploitation ... of bauxite." Further, under Article IV(c), IBA members have an obligation to: "take action aimed at ownership of, and effective national control over, the exploitation of this natural resource with their territories ." [23]

Thus it is clear that the now well-established principle of permanent sovereignty over natural resources provides a strong legal basis as well as a justification for OPEC. Furthermore, this conclusion can be highlighted by looking at the case between OPEC and the International Association of Machinists and Aerospace Workers:

(7) International Association of Machinists and Aerospace Workers v OPEC [24]

This case, which was decided in the domestic courts of the United States of America, upheld the principle of permanent sovereignty over natural resources as constituting a legal basis for OPEC. This was an action brought by a US labour union against the OPEC Member Countries for the alleged price-fixing of crude oil in violation of the anti-trust laws of the USA. The Plaintiffs alleged that they had suffered loss because of their having to pay higher prices for gasoline "by virtue of the anti-competitive actions of the Defendants". In deciding whether the activities of OPEC were "governmental or commercial in nature", the Court, per Hauk J., ruled that OPEC's actions were governmental. In explaining the court's decision, Hauk J. stated:

> "The United Nations with the concurrence of the United States has repeatedly recognised the principle that a sovereign state has the sole power to control its natural resources".

In support of this statement, the Court quoted the entire preamble and paragraph 1 of Resolution 1803. It also referred to Resolutions 2158, 3016, 3171, 3201 and 3281. Furthermore, the Court judicially recognised the principle of permanent sovereignty as constituting a basic entitlement to economic development, stating *inter alia*:

> "The Defendants' control of their oil resources is an especially sovereign function because oil, as their primary, if not sole, revenue-producing resource, is crucial to the welfare of their nations' peoples." [25]

The Court further defined and described OPEC in terms of a series of co-ordinated sovereign acts. In the words of Hauk J.:

> "It is ridiculous to suggest that the essential nature of an activity changes merely by the act of two or more countries coming together to argue upon how they will carry on that activity. The action of sovereign nations coming together to agree on how each will perform certain sovereign acts can only itself, be a sovereign act." [26]

This statement is a clear confirmation of the principle of combined permanent sovereignty over natural resources as a legal basis of OPEC.

On appeal to the Circuit [27] Choy J. reasoned that:

> "... the record reveals no international consensus condemning cartels ... and production agreements. The United States and other nations have supported the principle of supreme state sovereignty over natural resources." [28]

Thus the clear and concise reasoning in this case confirms the applicability of the principle of permanent sovereignty over natural resources to OPEC. Furthermore, it is submitted that this case was not decided on the traditional principle of state sovereignty, because in the lower court Hauk J. cited General UN Resolutions when referring to 'permanent sovereignty', while in the superior court, Choy J. referred to the 'principle of supreme state sovereignty'.

(8) <u>No duty to make supplies available to consumers:</u>

One basic implication, however harsh it may seem, of the principle of permanent sovereignty over natural resources is that if this sovereignty is supreme, then it follows that this includes the right of producing countries to withhold commodity supplies from and to deny access to consuming countries. Thus, in the absence of any bilateral or multilateral commitments, producing countries do not have a duty to make com-

modity supplies available to consumers. There is no conventional international law principle which requires producers to provide consumers with ready access to commodity supplies.

Arguably, the Havana Charter can be said to require producers to make regular supplies available to consumers. However, the duty to make supplies available is inextricable linked to the right to receive fair and remunerative prices. Since producers cannot legally demand that consumers pay fair and remunerative prices, it follows that producers, in the absence of fair and remunerative prices, do not incur any duty to make supplies available to consumers. What constitutes 'fair and remunerative' prices is of course a subjective matter. The phrase can only take on an objective aspect after a price range has been agreed upon between producers and consumers.

Naturally, whatever the legal position may be, it can be argued that morally, especially in today's inter-dependent world, no country is entitled either to withold natural resources unjustly, or to demand unfair prices unjustly.

It follows from the above analysis that the Member Countries of OPEC are legally justified, at an international level, not only to either limit petroleum production or regulate the price of oil, but more importantly, to join together as an organisation, one of whose basic objectives is to co-ordinate the production and pricing policies of its members. In this respect, the overriding legal principle is the combined permanent sovereignty over natural resources of the OPEC Member Countries. What each country can do legitimately, can also be done with equal legitimacy and justification by a group of these countries acting in unison.

4.2.2 The Right to Adopt a Suitable Economic and Social System

Flowing from the principle of permanent sovereignty over natural resources is the principle that every country has the right to adopt the economic arrangements which it considers most suitable. This principle is contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, [29] and it is reaffirmed by the Charter of Economic Rights and Duties of States which provides in Article 1 that: "Every state has the sovereign and inalienable right to choose its economic system ..." [30] This broad principle is then defined more specifically as follows:

> "In pursuit of international trade and other forms of economic co-operation every state is free to choose the forms of organisation of its foreign economic relations."

If we consider OPEC in the light of this principle, it is clear that it is an organisation of like-minded countries who have adopted the form of economic co-operation which they consider will best further their collective interests and enhance their foreign economic relations.

4.2.3 International Solidarity and Economic Co-operation

It is one of the fundamental aims of the United Nations to promote solutions of international economic problems through international co-operation. [31] Article 1(A) of the Charter of Economic Rights and Duties of States endorses international co-operation for development as a principle to govern international economic relations. The normative standards inherent in the principle of international economic co-operation have been well articulated since 1945, in terms of 'Co-operative International Law' by Wolfgang Friedman, [32] and of 'the International Law of Co-ordination' by Schwarzenberger, [33] while Fitzmaurice *inter alia* regards 'International Co-operation' as 'a general principle of international law'. [34]

Whilst international co-operation has emerged as one of the general principles of economic relations among nations, [35] there is no absolute requirement that in every sphere where co-operation is possible or desirable, it should therefore encompass all nations of the world. International economic co-operation is a process possessing various degrees of universality which reflect the extent of common interests and values that unite the participants. In the words of Freidman:

> "Certain groupings of nations, more closely bound to each other by common values, common interests, common fears and stronger affinities in their social and legal structures are proceeding to develop common legal organisations and a corresponding evolution of their substantive laws in fields where mankind as a whole is still too disunited or too disparate to attempt legal organisation or integration". [36]

Herein lies an important confirmation of the legal basis of OPEC, since this description clearly applies to OPEC, which can be viewed as a lawful inter-regional economic institution.

Established practice in international economic relations reveals that the international community has accepted the fact that all states do no always share the same interests and perceptions. Thus, the UN General Assembly has passed resolutions specifically relating to economic co-operation among developing countries. [37] In 1962, Resolution 1803, to which reference has already been made earlier in this Part, provided that:

> "International co-operation for the economic development of developing countries whether in the form of ... exchange of goods and services, technical assistance or exchange of scientific information, shall be such as to further their independent national development ..."

The Charter of Economic Rights and Duties of States, in particular Article 12, reaffirms the rights of every state to participate in sub-regional, regional and inter-regional co-operation in the pursuit of their economic and social development. In explaining this, Tiewul states that: "... it is an exercise of right, and therefore legitimate to form organisations of primary commodity producers". [38] And as we have seen earlier, one of OPEC's fundamental objectives is to improve and develop the economic and social well-being of the countries belonging to the Organisation. It therefore follows, applying Tiewul's critique, that this exercise of right is legitimate.

In 1975 the UN General Assembly called on the International Community to give "support and assistance to developing countries in strengthening and enlarging their mutual co-operation at sub-regional, regional and inter-regional levels". [39] Thus it is clear that international economic relations based not on universality but on sectional or regional interests are now well established in international law. [40] Of the Charter of Economic Rights and Duties of States, a commentator has noted that it "purports to deal with economic relations not only between the developed and developing countries, but also between developing countries *inter se* ..." [41]

The relevance of the legal principles of international economic co-operation among developing countries which apply to OPEC is further demonstrated and emphasised by the fact that OPEC aims to co-ordinate the activities of its Member States in order to achieve a level of solidarity, effective economic co-operation and bargaining power which would otherwise be beyond the reach of its individual members if they were acting alone.

4.3 International Decisions which Endorse the Legality of OPEC

A number of international conferences and meetings have elaborated on the nature and validity of International Producers Associations (IPAs). Examining the content and outcome of these meetings and their decisions will contribute towards further defining the international legal status of OPEC. The role ascribed to IPAs has been set out in several declarations and resolutions which have been adopted in various international forums, both inside and outside the United Nations system:

4.3.1 International Decisions outside the UN System

The various international decisions endorsing IPAs which have taken place outside the United Nations forum have taken a variety of different forms.

1. The Group of Non-Aligned Countries:

The Group of Non-Aligned Countries, numbering 95 developing countries, has been at the forefront in the evolution and development of producers associations as viable international economic organisations. The first high-level non-aligned forum to discuss producers associations was their Foreign Conference held in Georgetown in 1972. The action programme for economic co-operation adopted by the Conference enjoined all groups of non-aligned countries and other developing countries to take immediate action to strengthen producers associations and joint marketing arrangements in commodities. Care was taken to recommend that the formation of producers associations should embrace all developing countries which are major producers of commodities. [42]

The Georgetown Action Programme was to serve as a useful springboard from which to launch a comprehensive programme regarding commodity trade in general and producers associations in particular. This comprehensive programme was eventually launched during the 1973 Algiers Summit. [43] The Algiers Summit not only heralded what has become known as the new international economic order, but also its prescription for producers associations in general and for OPEC in particular are vital for an understanding of the current orientation of OPEC.

Another important conference of developing countries which can be mentioned here is The Dakar Conference, which was convened in Dakar from the 4th – 8th February 1975. [44] This Conference was important for two reasons: In the first place, it elaborated further the principles of strategy behind IPAs, and secondly, it called for the establishment of two vital institutions to augment and strengthen the organisation of individual IPAs and to enhance their capability to intervene actively in the international commodity markets. The two main institutions established as a result of this recommendation were the Council of Associations of Developing Countries who are Producers and Exporters of Raw Materials, and the Fund to Finance Buffer Stocks. The principle function of the former institution is to facilitate consultation and co-operation among the various IPAs so as to co-ordinate and mutually support their activities, [45] while the main function of the latter is ostensibly to assist developing countries in exercising control over the marketing of their products and the stabilisation of their prices at remunerative levels – whilst also in fact ensuring an uninterrupted supply of their products to the consuming countries. [46]

After the Dakar Conference three important conferences were held by the Non-Aligned Countries. These conferences were: [47]

1. The Fifth Foreign Minister Conference, 1975;
2. The Fifth Heads of Government Conference, 1976; and
3. The Sixth Heads of Government Conference, 1978-9 (also known as the 1979 Havana Summit).

At these Conferences, the emerging producers associations received support and encouragement to improve and increase both their bargaining position and indeed those of all developing countries. The following are examples of these Conferences' outcomes:

1. The endorsement of the proposal to form the Council of Associations;
2. The re-affirmation of the determination of the developing countries to re-structure their international economic relations by means of the formation of producers and exporters associations;
3. The call for the formation of new IPAs and for the strengthening of existing ones;
4. The declaration of the importance of IPAs as mechanisms for developing countries to exercise their legitimate and inalienable rights to determine the prices of their raw materials and primary commodities in order to obtain just and remunerative prices, and to protect and improve the purchasing power of the exporters. [48]

Another significant international grouping which has been concerned with the establishment of IPAs is the Group of 77:

2. The Group of 77:

Although the Group of 77 is occupied principally with matters concerning 'North-South' issues and negotiations, it has nonetheless contributed significantly to the formulation and elaboration of the principles governing IPAs. The members of the Group of 77, like the members of the Group of Non-Aligned Countries, have realised that the co-operation outside the UN of all developing countries is an essential negotiating tool for effective negotiating with the UNCTAD. For this reason, the Group of 77 has recognised, "the necessity of organising all producers to ensure an effective bargaining stance against consumers and organised buyers." In its second resolution on Economic Co-operation among Developing Countries, the Group of 77 called for the strengthening of existing producers associations, the creation of new ones, and the co-ordination of the activities and policies of these associations with a view to strengthening the collective bargaining power of the developing countries.

The contribution of the Group of 77 towards the promotion and development of IPAs continued at the fourth Ministerial Meeting of the Group of 77 held in Arusha, Tanzania, in February 1979. Like the Manila [49] and Mexico [50] Conferences before it, the Meeting endorsed the various measures proposed by producers associations and the Council of Associations, and urged that emphasis be placed on multinational marketing arrangements through the mechanism of state trading organisations and producers associations. To this effect the Meeting advised:

> "producers and exporters to detect opportunities and promote new initiatives for multinational marketing action at the sub-regional, regional and international levels." [51]

The question which now arises is: What is the legal effect or normative significance of these various decisions on IPAs? The starting point is to emphasise that these decisions are the conclusions of international conferences of independent states. Although they fall short of treaties, [52] they constitute cogent evidence of state practice – of the members of IPAs [53] in particular, and in general, of all developing countries as regards IPAs. The constant reiteration of the relevant rules, policies and techniques of producers associations by the Group of Non-Aligned Counytries and by the Group of 77 provides incontrovertible evidence of the cumulative and collective will of these states as regards the promotion and operation of IPAs. As a result of this will to power, there has emerged a general awareness among the developing countries concerning the particular or general rules which have come to govern and regulate the practices of IPAs. As the Permanent Court of International Justice noted in the S.S. Lotus Case:

> "International law governs relations between independent states. The rules of law binding upon states therefore emanate from their own free will as expressed in conventions, or by usages generally accepted as expressing principles of law and established in order to regulate the relations between those co-existing independent communities, or with a view to the achievement of common aims." [54]

While it may be legitimate to argue that, as regards IPAs, the international decisions and practices described above have only created customary laws or norms for the purposes of the members of the Group of Non-Aligned Countries and the Group of 77 – but not for any other countries or states, such an argument does not take into account the fact that these two bodies between them have over 120 Member Countries, and that they have unanimously accepted the resolutions made at these various conference, cou-

pled with the forceful and declaratory nature of these decisions. Further, as has been argued by Professor Friedman:

> "The acceptance of bilateral, multilateral, regional and other international conventions of less than universal scope as sources of modern international law is (therefore) ... no longer a matter of doubt. [55]

Thus it follows that the international process of promoting and establishing fully functioning IPAs can no longer be ignored when it comes to determining and defining OPEC's legal status, since OPEC is now, after almost 40 years, a well-established, fully functioning IPA.

4.3.2 International Decisions within the UN System

International discussion of IPAs has not been confined to the meetings and conferences of the developing countries alone. Meetings within the UN system have been used by the developing countries to emphasise the role and legitimacy of producers associations in international commodity trade and international economic relations. OPEC's first Secretary General, Fuad Rouhani, for instance noted that:

> "The creation of OPEC is itself in conformity with UN views and ideas on various aspects of the international petroleum industry, which were carried out under the aegis of the UN Economic Commission for Asia and the Far East." [56]

As has already been noted in Part One, the organ of the United Nations which has been concerned principally with IPAs from the outset is the UNCTAD:

1. The United Nations Conference on Trade and Development:

The UNCTAD at its very inception in 1964, underlined its status as an organisation designed to reflect the economic interests of developing countries by recognising the potential of producers associations. In this connection, the Final Act of UNCTAD called for the recognition and encouragement of international organisations set up by developing countries for the export of non-renewable natural products. [57] When this recommendation was made, its authors must have had OPEC firmly in mind, because in 1964 this was the only organisation concerned with exporting a non-renewable product. However the real significance of this recommendation lies in the fact that OPEC, which had virtually been rejected and invalidated by the Havana Charter and GATT (both of which had been organised by developed consuming countries), was immediately elevated from obscurity by UNCTAD, an organisation exclusively dominated by developing countries.

In 1972 the UNCTAD adopted a resolution in which it was decided to encourage producers associations, through intensive consultation, to establish appropriate policies leading to the establishment of producers associations. [58] The first major report on IPAs presented by UNCTAD's Secretary General (the so-called 'Corea Plan') concluded that: "co-operative action by producing countries has a legitimate and important role to play in solving the problems of individual commodities."

2. <u>The United Nations Industrial Development Organisation:</u>

UNIDO, another organ of the UN General Assembly, elaborated further the rationale behind producers' associations by defining the role of IPAs as strengthening the bargaining position of developing countries vis-a-vis developed countries. To achieve this objective the UNIDO Conference first called for the mobilisation of all developing producing exporting countries at sub-regional, regional and interregional levels with the aim of guaranteeing full sovereignty over their natural resources. Secondly, the Conference identified two measures which could be implemented by IPAs to achieve their objectives: the adoption of joint production measures and joint pricing policies in order to end speculative practices and erratic movements in commodity prices. There is no doubt that as such OPEC's objectives and its means of their achievement are in conformity with these measures. [59]

3. <u>The United Nations General Assembly:</u>

The United Nations General Assembly has adopted various resolutions which are of assistance in determining the international legal status of OPEC. In particular it has adopted two resolutions which contain provisions designed to change the rules governing international commodity relations and to establish institutions which protect the interests of developing countries:

In December 1973 the General Assembly adopted two resolutions both of which have a direct bearing on OPEC. In a resolution on permanent sovereignty over natural resources, it was stated:

> "One of the most effective ways in which the developing countries can protect their natural resources is to establish, promote or strengthen machinery for co-operation among them which has as its main purpose to concert pricing policies, to improve conditions of access to markets, to co-ordinate production policies and, thus to guarantee the full exercise of sovereignty by developing countries over their natural resources." [60]

On the same day, a second resolution urged the establishment of appropriate machinery to defend the prices of exportable commodities. The combined significance of the two resolutions lies in the fact that they identify some of the measures that could be used to achieve the objectives of IPAs, while also emphasising that the permanent sovereignty of members over their natural resources provides a legitimate basis for the co-operation of producer countries.

Another relevant set of resolutions are the three resolutions which refer directly to the establishment of the New International Economic Order. [61] The net effect of these three resolutions is the general acceptance at an international level of producers associations as viable instruments of the New International Economic Order. [62] Thus the Declaration, in paragraph 4(b), accords:

> "full respect for the role producers associations play as instruments for international co-operation in accelerating developing countries."

The Programme of Action in contrast went a step further by urging efforts to facilitate the functioning of producers associations and by specifying the functions of these associations as: "including their joint marketing arrangements, orderly commodity trading, improvement in the export income of producing developing countries and ... their terms of trade and sustained growth of the world economy for the benefit of all." [63]

There is a marked difference in wording between that of the Programme of Action which unambiguously endorses producers associations, and that of the Declaration which speaks in less direct terms of: "facilitating the role which producers may play within the framework international co-operation." This passage is open to at least two distinct interpretations:

On the one hand, it could be argued that it means that IPAs are required to co-operate within the context of existing producer/consumer arrangements for co-operation. If this was the case, then this interpretation would mean that the Declaration could not serve as a means for establishing a legal basis for producer associations such as OPEC. This would be in conformity with the Belgian representative's position when he argued, during the NIEO debates in the General Assembly, that the IPAs mentioned in the Programme of Action, "must be understood within the framework of international co-operation as explicitly mentioned in paragraph 4(t) of the Declaration." [64]

However an opposite interpretation has also been made, by the developing countries. Thus one of the OPEC Member States, namely Iraq, gave the following interpretation when its representative said:

"On paragraph 4(t) of the Declaration, and on paragraph (i)(c) of Section 1 of the Programme of Action, both of which relate to producers associations, my delegation understands that the main objectives and aims of such associations are to defend and to safeguard the common interests of the raw materials producing developing countries which are constituent members of such associations, and to determine the right value and prices of the commodities concerned ... The establishment and strengthening of the producers associations is the only way of counter-balancing the overwhelming force of the monopolistic grouping in the industrialised countries." [65]

It is submitted that the correct interpretation of paragraph 4(t) of the Declaration and section 1(i)(c) of the Programme of Action is that they emphasise the dual role of IPAs – both with and without ICAs: Where ICAs exist, IPAs facilitate the negotiation and operations of ICAs by aggregating the demands and positions of all the producing countries involved. At the same time, where no ICAs exist, or where producers and consumers are unable to agree, IPAs play a vital role in ensuring that the interests of producers are fully protected. It will be recalled that this was the central message of the 'Corea Plan' when it endorsed both IPAs and ICAs, side by side.

4.3.3 The Legal Effect of UN Resolutions

As when considering the legal effect of international decisions outside the UN system, the question which now arises is: What is the legal effect or normative significance of these various UN resolutions on IPAs, especially as regards OPEC?

The resolutions dealing with the New International Economic Order have been considered to have only exhortatory significance. This view has been championed by the states which voted against it, and has been supported by some commentators. Other commentators, however, have acknowledged that the resolutions do have some legal significance.

Casteneda, the Mexican diplomat who was chairman of the working group which drafted the Charter of Economic Rights, thought that the Charter would contribute to the progressive development of laws since it takes into account the present and future requirements of international society. [66] According to White, "although the documents are not perfect and have met with severe criticism from the highly industrialised nations, they do present a comprehensive series of norm-creating statements on a new international law of co-operation in the sphere of the economic rights and duties of states." [67]

In evaluating the legal significance of Article 5 of the Charter of Economic Rights, paragraph 4(t) of the Declaration, and Section 1(i)(c) of the Programme of Action for the New International Economic Order, attention must be paid to the circumstances leading up to the making of these resolutions; the response to them, including state practice, after their adoption; the statements of delegates in the debates; the proportion of states who supported the resolutions; and the positions taken by those who objected to them in other situations.

An examination of the reasons advanced by the developed countries to explain their concern over Resolutions 3202 and 3281 reveals that there are three main areas of concern:

(i) the existence of producers-only associations;

(ii) misconceptions about the objectives of IPAs; and

(iii) the disequilibrium between the right to form associations and the duty to refrain from using such associations to apply political and economic pressure or coercion.

The first two of the above issues have already been discussed at other places in this study, principally in Part One. As regards the third issue, the Netherlands rejection of Article 5 was based specifically on the duty to refrain from applying economic and political coercion. The other developed countries on the whole felt that Article 5 provided IPAs with an open licence to 'boycott' developed countries. As noted by C.T. Oliver, "the disequilibrium between the assertion of rights and the negation of duties" which is revealed in these two recommendations of the General Assembly is well known, and these recommendations are, on the whole, discounted as to both their legal and political effect in the developed countries precisely because of this flaw. [68]

In discussing the prohibition against applying political and economic coercion – a practice with which the colonial powers of the past were very familiar, and without which they probably could not have become as 'developed' as they are – it was made clear that the principle has a separate existence of its own, as an international customary law rule, and that it is not 'correlative' with the right to join or form IPAs such as OPEC.

Furthermore, it was argued that Article 5 could not have guaranteed consumers ready resources of commodity supplies without at the same time guaranteeing producers "fair and remunerative prices". Thus, it was further argued, Article 5 merely stated the 'right' to form or join IPAs, which right is derived from the concept of the permanent sovereignty over natural resources.

1. UN Resolutions 3201 and 3202:

As to the voting pattern, Resolutions 3201 and 3202 were adopted by consensus, without a vote, by the sixth special session of the General Assembly on the 1st May 1974. However, after the adoption of these Resolutions, a number of developed countries then made some reservations, explaining how they would have voted had they been voted on. It appears from a study of these reservations that all the developed countries would have voted for paragraph 4(t) of Resolution 3201, because it called for the facilitation of IPAs within the framework of international co-operation. However they would only have been prepared to accept section 1(i)(c) of Resolution 3202 if it was strictly construed within the context of paragraph 4(t) of Resolution 3201. Thus France's position was that: "We felt that the role of producers associations should be as it was defined in 'The Declaration on the Establishment of a New International Economic Order'." [69]

2. UN Resolution 3281:

The reaction to Article 5 of Resolution 3281 presents a different picture. During the Second Committee stage debates, eleven developed countries moved for the deletion of Article 5, but their motion was lost by 98 votes against, 15 in favour and 8 abstentions. Therefore, in the General Assembly, Article 5 was not put to a separate vote because the Second Committee by an overwhelming majority had already rejected an amendment to it. Furthermore, Canada and Australia did not oppose Article 5. Further, the entire Charter was adopted by 120 votes in favour, 6 against with 10 abstentions. [70] Positive votes were cast by all the Eastern European countries, and by Australia, Sweden and Finland.

On the other hand, all the major industrialised countries either voted against the Charter or abstained from voting altogether. It has accordingly been suggested that this fact evidences the "non-binding nature of the Charter because of the unwillingness of those major powers to consent ... to all of the rights and duties set forth in the Charter." [71] Clearly, such reasoning is at odds with the principles of democracy which the same major powers are swift to advocate in other contexts when it suits them.

It should also be pointed out, that although it is true that some developed countries opposed certain aspects of the Charter, this view ignores the fact that the Charter was not concerned solely with the economic relationships between the developed and developing countries. It deals also with the relationships between the developing countries and the socialist countries, as well as between the developing countries *inter se*.

What is significant about the overall voting pattern is that the vast majority of countries not only supported the Charter, but also, more specifically, voted for the retention of Article 5. [72] Even some of the countries which opposed Article 5 of the Charter did not challenge the legitimacy of IPAs. Thus the vast majority of UN members – including some developed countries – have accepted and recognised IPAs as legitimate international bodies – provided of course that they do not use their collective strength to exert the same kind of unjust pressure or coercion which their members may have experienced in the past.

An examination of the positions taken by some of the developed countries in other situations reveals that some developed countries have themselves joined or participated in IPAs. For example, Australia and Sweden are members of APEF; Italy, Turkey and Spain are members of the International Association of Mercury Producing Countries; and Canada participates as an observer in the Primary Tungsten Association.

It is accordingly safe to conclude, from the above examination of both the voting patterns and the actual practice of most of the states of the world, that a new international customary law has during the present twentieth century emerged which both acknowledges the existence of and validates the legitimacy of IPAs.

Whether or not such IPAs behave responsibly, is of course a completely different issue altogether. The fear that they might not behave responsibly is clearly not a valid ground to deny them any legitimacy in the first place.

4.3.4 The Legal Significance of International Decisions as regards the Legal Status of OPEC

From the foregoing discussion on the numerous resolutions relating directly or indirectly to IPAs, and whether emanating from without or from within the United Nations system, and from observing the actual practice of states, it is apparent that a new international customary law has now emerged regarding the legitimacy of IPAs which therefore in turn provides a sound basis for international recognition of the legitimacy of OPEC, which is itself an IPA.

In describing the broad impact of UN General Assembly resolutions, Rosalyn Higgins has said:

> "International custom is to be deduced from the practice of States, which includes their international dealings as manifested in their diplomatic actions and public pronouncements. With the development of international organisations, the votes and views of states have come to have legal significance as evidence of customary laws ..." [73]

Not only have Article 5 of Resolution 3281 and section 1(i)(c) of Resolution 3202 created new international customary law, but also none of the countries which have objected to OPEC have based their objections on grounds of non-compatibility with existing principles of international law, customary or otherwise. In the words of one commentator:

> "Such objections as there are among developed countries to the concept of producers associations cannot be based on any existing rule of general international law." [74]

Thus the legality of OPEC has only really been questioned on the basis that producers-only associations will make co-operation between producers and consumers difficult. In other words, it is not legal validity which has been questioned, but rather practical expediency. Such an attitude has been strongly held by the USA. A similar view was held by other countries. Thus in the United Nations General Assembly, during the 29th session of the 2nd Committee on the 9th December 1974, the UK delegate expressed his concern about producers-only associations when he stated: "We still believe that a successful economic relationship must hang primarily on greater co-operation between producers and consumers." [75] A similar view was expressed at a conference in Australia when the speaker: "did not contest the right of states to associate, but considered that such organisations should not be limited to commodity producers." [76]

Similarly, Switzerland denied OPEC legal status on the basis that it was of the view that OPEC should not be limited to oil-producers only and that the interest of consumers should be taken into account. [77] Thus it becomes ever more clear that in the past OPEC has not been rejected for any reason other than the fact that its members are oil producers sharing common aspirations and a common identity. If anything, these objections to the existence of OPEC in its present form demonstrate the desire of oil consumers to 'promote co-operation' between oil producers and consumers – in order of course to make it easier to ensure that the oil-consumers have reliable supplies of oil at reasonable prices.

In other words it may perhaps be deduced that the repeated insistence on securing 'producer/consumer co-operation' masks an underlying anxiety on the part of oil-consumers about the possibility of their being exploited in the future – just as the original insistence on the creation of OPEC was fuelled by an underlying frustration on the part of oil-producers about the fact of their having been repeatedly exploited in the past. This is the underlying reality of Sweden's argument that: "co-operation among producers would be facilitated if it is carried out within the framework of broad interna-

tional co-operation, taking into account the interests of both producers and consumers." [78]

This suggestion does in fact conform with OPEC's view and status, since the OPEC Statute refers to the Organisation as an organisation of members having the same aspirations and objectives, while at the same time making it clear that OPEC as an organisation shall take account of the interests of oil consumers. [79] It is in this context that an OPEC Secretary General stated:

> "OPEC has always been willing to co-operate with consumers but that does not mean oil producers cannot have their own organisation with these common objectives. [80]

Perhaps more important than words are actions: Part Six of this thesis is directly concerned with OPEC's track record, and accordingly this is not the place to go into detail. Suffice it to say, at this stage, that in the course of almost the last 40 years, the worst fears of the oil consumers have not materialised. OPEC has neither exploited nor ignored the need for co-operation with the oil-consuming countries. Time has shown that such co-operation does not contradict the viability of also having producers-only co-operation. OPEC has earned its legal status more by action than by precept – although it is submitted that by reason of the arguments already put forward, OPEC is in fact equally entitled to international legal status on both counts.

In conclusion, it is possible to say that the cumulative weight of international legal opinion and practice – which has crystallised from the series of international decisions outlined above, culminating in Article 5 of the Charter of Economic Rights, and confirmed by subsequent state practice – is such that it is no longer possible to dispute the fact that a new customary international law has emerged which both endorses and validates IPAs, including OPEC. Thus, in the words of Professor Fatouros:

> "The legitimacy of commodity producers associations was for a long time questioned, although no clear cut prohibition could be found in customary or conventional international law ... It would seem that, given the weakness of this earlier norm [he is referring here to the Havana Charter as reflected in GATT), the provision of Article 5 of the Charter, strongly endorsing such associations, is enough to carry the day, even though developed countries objected to the article. Accordingly, it no longer would be possible to argue that producers associations are unlawful in international law." [81]

4.4 The Legal Personality of OPEC within the Framework of International Institutional Law

Whereas the wider question of the legal status of OPEC in international law has been discussed in the preceding pages, in the following pages, the focus is on the legal personality of OPEC within the framework of international institutional law.

4.4.1 The Municipal Legal Personality of OPEC

Unlike the constitutional instruments of the organisations of commodity exporters [82] neither the OPEC Constituent Instrument nor the OPEC Statute contain any provision regarding the legal personality of OPEC. In fact the only document dealing directly with the legal personality of OPEC is the Headquarters Agreement (See Appendix III), which was concluded between OPEC and the Government of Austria in 1974. [83] Article 7 of this Agreement provides that:

> The Government recognizes the juridical personality of OPEC and, in particular, its capacity (a) to contract; (b) to acquire and dispose of movable and immovable property; and (c) to institute legal proceedings.

It is clear that the acts indicated in Article 7 are only examples, and that the Organisation is capable of performing all other legal acts required to put its functions into operation. This can be seen clearly from Article 4 (1) of the Agreement which refers specifically to OPEC's powers of making regulations to apply at its headquarters: "for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of the Republic of Austria which is inconsistent with a regulation of OPEC authorized by this Article shall, to the extent of such inconsistency, be applicable within Headquarters Seat."

The Headquarters Agreement contains ample evidence that OPEC possesses legal personality under the national law of the host state, Austria. However what is not clear is whether or not OPEC also possesses municipal legal personality in the territory of its Member Countries as well as in that of the host country. Unlike other international organisations, there is no provision in the OPEC Constituent Instrument providing for such personality under the national law of the Member Countries. [84] Furthermore, as has been mentioned before, no agreement has been concluded between the Member Countries concerning this matter.

Having said this, it is nevertheless clear from the following that the Organisation does in fact enjoy such personality under the national law of the Member Countries:

1. Recognition by the Member Countries themselves:

Municipal legal personality flows from the very fact of OPEC's members' own recognition of the Organisation's international legal personality. In support of this is the case of Bronno v Ministry of War, where the Italian Court of Cassation derived the legal personality of the North Atlantic Treaty Organisation for the purposes of Italian law from its international legal personality. [85] Similarly, in the case of OPEC, since the members have clearly recognised the international legal personality of the Organisation which they created, its municipal legal personality follows directly from this.

2. Recognition by the Member Countries' Legal Systems when Ratifying the OPEC Constituent Instrument:

The fact that the Member Countries complied with the procedural requirements of their domestic legal systems when ratifying the OPEC Constituent Instrument is in itself evidence of their recognising OPEC's legal personality at a municipal level. This is the same reasoning which was applied when: "in the UN v B, 27th March 1952, the Court of Brussels founded the legal personality of UNRRA, as well as that of the UN, on the fact that the Organisation had been recognised by the Belgian law (of ratification). Since it had usually been accepted by the national court as having such personality, the court apparently saw no reason to deny the legal personality of an organisation in which their own state participates." [86]

From the foregoing it is clear that OPEC does enjoy legal personality under the laws both of the host state of Austria and of the OPEC Member Countries. However, it would make sense for the OPEC Member Countries to follow the example of other international organisations by concluding an Agreement between them on privileges and immunities. Such an Agreement would benefit the Organisation in the following ways:

(1) It would be taken as a sign of strong co-operation and unity between the Member Countries.

(2) It would provide express recognition by the Member Countries of the Organisation's legal personality under their national laws.

(3) It would facilitate the functions of the Organisation being carried out in the Member Countries.

Since it is clear that OPEC enjoys legal personality under the laws of both the host state and the Member Countries, questions therefore arise as to the scope of this municipal legal personality with regard to what law is applicable to the Organisation and

its officials, both within and without its premises. Is it the Austrian law which applies, or the Organisation's own regulations, or both? The only document which deals directly with such questions is the Headquarters Agreement. Therefore in order to answer them, a close examination of some of the terms of the Agreement is necessary:

1. Competence to make use of National Laws:

As we have just seen, OPEC as an international organisation with municipal legal personality is recognised by the Austrian Government and has the capacity to perform all acts which legal persons may normally perform (Article 7). Thus OPEC can buy and sell goods, own land, be a party to legal proceedings in court and make contracts, without the national authorities having any right to object to this. As already stated, the Acts indicated in Article 7 are only examples. The Organisation is capable of performing all other legal acts required in order to be able to function smoothly. Finally, in contrast with other international organisations, OPEC enjoys the same capacity to make use of national law which national organisations enjoy.

2. Competence to make its own Regulations:

In accordance with Article 4(1) of the Agreement, OPEC has the power to make its own regulations, operative within the Headquarters Seat, for the purpose of enabling the Organisation to execute its functions. Consequently, OPEC is required to inform the Austrian Government of any regulations made by it. However, the ability of OPEC to make its own regulations does not prevent the application of any relevant fire protection and sanitary regulations by the appropriate Austrian authorities. Where there is any inconsistency between OPEC regulations, made for the functioning of the Organisation, and Austrian law, the former will be applicable within the Headquarters Seat – but where there is any dispute between OPEC and Austria as to whether an OPEC regulation and a law of the Republic of Austria are inconsistent, then it is to be settled by reference to an arbitration tribunal. [87] Any such arbitration tribunal consists of three arbitrators: one to be chosen by the Secretary General, one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria – and the third, who acts as Chairman of the tribunal, to be chosen by the first two arbitrators. In the absence of any agreement as to who should be the third arbitrator, the President of the International Court of Justice, at the request of either OPEC or the Austrian Government, may designate the third arbitrator if the other two arbitrators have failed to choose one within six months from the date of the request made for the submission of the dispute to arbitration. [88]

Finally, it should be noted that OPEC's capacity to make its own regulations, without outside interference, is not less than that which is granted to other international organisations.

3. Restrictions Imposed on the Applicability of Austrian Law:

As we have seen, Austrian law can be applicable to OPEC. This raises the question as to whether there are any limitations imposed by the Headquarters Agreement which exempt OPEC from the application of Austrian national laws. The answer is that there are. As a result of the privileges and immunities granted to OPEC, some limitations are imposed such that Austrian laws are not to be applied to OPEC. These limitations can be seen from the Headquarters Agreement as follows:

(A) Limits arising from privileges; and

(B) Limits arising from immunity from jurisdiction.

(A) Limits arising from privileges

For different reasons, some types of national legal provisions (and all government action based thereon) are not applicable to OPEC. In order to protect the independence of OPEC, Austria cannot impose its laws on OPEC as regards:

(a) Direct taxation

The Headquarters Agreement provides that OPEC, its assets, income and other property, shall be exempt from all forms of taxation. It is understood, however, that OPEC will not claim exemption from taxes which are in fact no more than charges for public utilities, or as regards the owner or lessor of any property rented by OPEC [Article 12(i)]. OPEC is also exempt from customs duties and prohibitions on imports and exports in respect of importation of services, automobiles and spare parts required for its official purposes. The exemption is subject to the understanding that articles are imported in accordance with paragraphs 4 and 5 of Article 12, or are obtained from the Austrian Government in accordance with paragraph 6 of Article 12. Selling any articles obtained in this way is subject to some restrictions, whereby these articles can only be sold by OPEC in Austria in one of two cases:

(i) At least two years after their importation or acquisition.

(ii) As agreed by the Austrian Government.

Moreover, Austrian taxation law cannot be applied in respect of the salaries, emoluments, indemnities and pensions aid to OPEC officials for services past or present or in connection with their service with OPEC. The Headquarters Agreement also provides

that officials of OPEC shall enjoy "Exemption from any form of taxation on income derived by them from sources outside the Republic of Austria [Article 22(d)-(e)].

Thus OPEC and its officials enjoy the same exemptions from all forms of taxation as granted to other large international organisations such as the UN and its Agencies, and NATO. [89]

(b) Search, requisition, confiscation and expropriation of property

The Headquarters Agreement provides privileges and immunities in the above cases in order to enable the Organisation to carry out it functions properly and to avoid the application of the national law of Austria because it would endanger the independent functioning of the Organisation. Consequently the Headquarters Agreement provides that OPEC property enjoys immunity from search, registration, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action (Article 10).

Thus OPEC enjoys the same privileges and immunities in the above respects as the other large international organisations. [90]

(c) Censorship

All official communications directed to and from OPEC, or to any of its officials, are immune from censorship and from any other form of interception or interference. Immunity from censorship and interception is granted to all OPEC communications by whatever means or in whatever form transmitted (Article 14). Moreover, OPEC can use courier or sealed bags in order to dispatch and receive correspondence and other official communications. OPEC couriers and bags enjoy the same privileges and immunities as diplomatic couriers and bags [Article 14(2)].

Finally, no rule of Austrian law designed to protect the economy of Austria may be applied in relation to OPEC if this would prejudice the functioning or independence of OPEC. For these reasons OPEC remains beyond the reach of laws restricting the holding and transfer of currency. The Agreement in this respect provides that OPEC, without being subject to any controls or regulations of any kind, may for official purposes freely transfer its funds, securities and currencies to or from the Republic of Austria, or to or from any other country, or within Austria itself. [Article 15(2)].

(B) Limits Arising from Immunity from Jurisdiction

Apart from the exceptions above, most rules of Austrian law are applicable to OPEC in the same way as to other subjects within the national jurisdiction of Austria. The Agreement provides that the law of Austria shall apply within the Headquarters

Seat, except as otherwise provided in the Agreement and subject to any regulations formulated under Article 4 of the Agreement. Thus: "Except as otherwise provided in this Agreement, the courts or other appropriate organs of the Republic of Austria shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the Headquarters Seat [Article 3(3)].

For officials of OPEC, immunity from every form of legal process before national courts is expressly provided for in the Headquarters Agreement. Article 22(a) provides that they shall enjoy: "immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of OPEC."

Thus the foregoing clearly demonstrates the recognition of the Austrian government of the international legal personality of OPEC by means of which the Organisation has the capacity to perform all acts necessary to carry out its functions. Although Austrian law is applicable in some situations to OPEC, its application to OPEC is restricted by the immunities and the privileges expressly provided for OPEC and its officials. Finally one should mention that OPEC and its officials are granted the same privileges and immunities as other large international organisations, and in some cases these are the same privileges and immunities as are granted to members having the rank of diplomatic mission in the Republic of Austria [Article 14(2)].

4.4.2 The International Legal Personality of OPEC

In determining whether or not an organisation created by a group of states has legal personality, two distinct approaches have been developed by international lawyers. These two approaches may be described respectively as the 'inductive' approach and the 'objective' approach.

According to the inductive approach, the existence of international legal personality depends very much on how the organisation was created. Thus this approach requires the examination of the treaty bringing the organisation into being and of the evidence surrounding the organisation's formation, in order to determine the intent of the founding states. This examination ascertains the extent and the scope if any of the international legal personality of the organisation solely by reference to its governing legal instrument(s). Therefore, according to those who follow this approach, international organisations: "do not come into existence on the basis of general international law, when certain facts are present, but through an international convention which contains their constitution." [91]

In contrast, the objective approach does not depend solely on the intent of the forming states as expressed in the governing documents of the organisation. According to this approach an international personality can be ascertained from the existence of specific elements pertaining to the structure of the organisation itself – and once these prerequisites are confirmed, then the international legal personality of the organisation is established. Those who adopt this approach believe that: "the foundation of the personality is not the will of the states creating the organisation, but is to be discovered in general international law." [92] In other words, this view asserts that international organisations enjoy international personality as of right as a consequence of their foundation under international law. [93]

The objective approach to international legal personality was utilised by the International Court of Justice in its advisory opinion concerning reparation for injuries suffered in the service of the United Nations. [94] Here, the court set out four necessary preconditions for the existence of international legal personality: First, the organisation must be created as more than a mere centre for the harmonisation of states' actions in the attainment of common ends. [95] This precondition distinguishes between organisations such as the United Nations and the British Commonwealth. Second, the organisation's charter must have equipped the organisation with organs, which possess special powers and independence of action in relation to both member states and towards third parties – otherwise a congress of states would not satisfy this precondition. [96] Third, special tasks must have been assigned to the organisation, and in order to achieve such objectives and tasks, the attribution of international personality must be indispensable. [97] Fourth, the position of the organisation *vis-a-vis* its members must be defined in such a way as to give the organisation a life and identity of its own, separate from those of the member states which have created it. [98] In other words, the organisation must be capable of expressing a will of its own, either by a power of decision binding on members by majority vote, or by the competence of the organisation to exercise certain independent functions. Once these four preconditions are met, then the international legal personality of the organisation is established. [99]

Certain consequences then follow as a result of this determination. The primary consequences of establishing that an organisation possesses international legal personality are that such an organisation is deemed subject to international law and capable of possessing international rights and duties. [100] The main attributes of international legal personality are generally considered to be:

1. the power to make treaties;
2. the attribution of privileges and immunities;
3. the power to contract and the power to undertake legal proceedings.

Despite the significance of these attributes, possessing international legal personality clearly does not place an international organisation on the same legal footing as a state. [101] As we have seen earlier, there are other necessary elements which must be present for statehood to exist, such as a territory, a people and an independent government.

It is against this background and by applying the above criteria, that the international legal personality – or lack of it – of OPEC can best be analysed: Beginning with OPEC's governing instruments, the OPEC Statute does not refer to the Organisation's international status. The absence of such an express provision has led some international lawyers – who favour the inductive approach – to deny the existence of OPEC's international legal personality. [102]

It is submitted, however, that this is not a valid criticism since it is a well settled principle of international law that an express constitutional provision is not a precondition for the assumption of international legal personality. The most obvious example in this respect is the United Nations, which has been accepted largely as possessing an international legal personality – despite the absence of any constitutional provision to this effect, other than Article 104 which refers expressly to the municipal legal personality of the Organisation rather than its international legal personality. [103] It should also be noted that the type of express constitutional provisions which the inductive approach demands are, in practice, very rare. [104]

OPEC's international legal personality has also been denied on the basis that the requirement of unanimity for its decisions to be valid indicates that the Organisation has no international legal personality distinct from that of its members – in other words, that the Organisation lacks an 'independent' will of its own, [105] since its decisions are clearly decisions of the Member Countries and not the Organisation's decisions.

As with the preceding criticism, it is submitted that this is not a valid ground on which OPEC's international legal personality can be denied. Practice shows that the unanimity requirement has not precluded organisations from possessing international legal personality, the most obvious example being that of the League of Nations. Also, the fact that UN decisions are majority decisions was not one of the grounds on which the ICJ accepted the international legality personality of the UN. Moreover, writers have never referred to a 'requirement' of majority voting as a prerequisite for the establishment of international personality. [106]

Although it is not necessary for the Organisation to have a 'majority decision' procedure in order to 'qualify' for the possession of international legal personality, there are in fact a number of decisions which OPEC can make on the strength of a majority vote, including the following:

(1) The admission of new members to the organisation, as we have already seen in Part Three, is possible by a majority vote of three quarters of the Full Members including the concurrent vote of all five Founder Members of the Organisation. Furthermore, all the decisions taken by OPEC prior to the admission of New Members remain valid as far as the latter are concerned, and the OPEC Statute does not require their subsequent approval. All OPEC decisions become applicable to its Members from the moment they are adopted by the Conference. [107]

(2) The Board of Governors has the power, as we have already seen in Part Three, acting on a two thirds majority vote, to terminate the membership of any undesirable Governor, and in such cases the Governor is obliged to withdraw immediately, leaving his government to appoint a replacement, subject to the approval of the Conference. [108]

(3) The Conference, by a vote of two thirds of Full Members including the concurrent vote of at least three Founder Members, can approve the appointment of the Deputy Secretary General who should be selected by the Board of Governors. [109]

(4) The decisions of the Board of Governors can be made by a simple majority vote at any meeting of the Board at which there is a quorum. [110]

In addition to the existence of the 'majority vote' element in some of OPEC's decision-making procedures, the OPEC Statute does also contain certain provisions which manifest the separate 'independent will' of the Organisation such as:

(i) The OPEC Conference can amend the Statute of the Organisation by an ordinary decision without the need for the traditional procedure of ratification by the Member Countries. [111]

(ii) The Secretary General of OPEC is the legal representative of the Organisation and can act in the name of the Organisation with regard to third parties. [112]

Having confirmed the invalidity of the arguments which have been utilised in attempts to deny OPEC's international legal personality, it is now appropriate to consider whether or not OPEC satisfies the criteria, as summarised above, stated by the International Court of Justice and accepted by international lawyers as preconditions for an international organisation to possess international legal personality:

1. The first criterion – that an international organisation must be more than a mere centre for the harmonisation of its member states' actions in the attainment of common ends – is easily satisfied. As we have seen in Part Two, at its inception OPEC was intended to be more than simply a conference of oil ministers. Furthermore, OPEC also fulfils the criterion of being permanent – the Organisation was formed to last as

long as its aims and goals, that is to say as long as the intentions which motivated its formation, remain to be realised. OPEC policies are not merely determined at Conference meetings and then left to the individual members to implement within their own territories. OPEC is more than a Conference of oil ministers and is at least a co-ordinator of state conduct. In short, OPEC possesses the characteristic of permanence, since it is defined by the terms of its Constitutent Instrument and its Statute, as an 'intergovernmental permanent organisation', with no fixed time-limit within which to achieve its aims, and, furthermore, with a substantial institutional composition corresponding to the classic structure of other typical international organisations. [113]

2. The second criterion – that an international organisation must have an infrastructure of its own, with its own organs which have independence of action in relation to both member states and towards third parties – is also clearly satisfied. As we have seen in Part Three, OPEC has three main organs: the Conference, the Board of Governors, and the Secretariat, as well as other subsidiary organs, over which OPEC exercises exclusive jurisdiction. It exercises legislative powers by setting up regulations which govern the procedural rights and duties of the staff *vis-a-vis* the Organisation as well as the relations within and between the various organs of the organisation. It also makes administrative and judicial decisions as between officials and the organisation. Thus, as we have seen, the OPEC organs are empowered with certain functions and the relations between them are clearly set out in the OPEC Statute.

3. The third precondition to international legal personality, as defined under the objective approach – that special tasks must be assigned to the organisation, tasks which could not be realised if it did not possess an international legal personality – is wide-ranging. The International Court of Justice in its Advisory Opinion in the Reparation Case did not single out any particular type or types of special tasks as being necessary to satisfy this particular precondition to international legal personality. In this context the Court said of the UN: "The organisation is a political body charged with political tasks of an important character and concerning a wide field namely, the maintenance of international peace and securing the development of friendly relations among nations, and the achievement of international co-operation in the solution of problems of an economic, social, cultural or humanitarian character (Article 1), and in dealing with its members it employs political means." [114]

Clearly, in the particular case of OPEC, many of the Organisation's stated aims and activities come within the ambit of the Court's general observations. Article 2 of the OPEC Statute sets out the Organisation's tasks, of which the primary one is the co-

ordination and unification of its Members' petroleum policies. OPEC's secondary task, to find ways and means of ensuring stabilisation of prices in the international oil market, while taking into account the needs of oil-consumers, is also clearly stated. Clearly these tasks involve 'friendly relations among nations', 'the achievement of international co-operation', and 'the solution of problems of an economic ... character', which in turn have profound social effects – and accordingly adequately fulfil this third precondition, especially since they could not be realised if OPEC did not have an international legal personality of its own.

The Swiss government attempted to deny that OPEC possessed international legal personality because of the alleged 'commercial' nature of its aims and objectives. It is important to underline that OPEC's aims and objectives are not purely commercial in nature: the Organisation is not charged to negotiate commercial treaties on behalf of the Member Countries, or with specialised agencies or companies. As we have already seen in section 4.2.1 above, it is significant that with regard to this particular objection Judge Andrew Hauk concluded:

> "In view of all the evidence presented, this Court finds that the activity carried on by the defendant OPEC Member nations is not 'commercial activity'." [115]

4. The fourth criterion – that an international organisation must have its own independent will which is separate from those of the member states which have created it – is also satisfied in the particular case of OPEC. This is demonstrated by the contents of the OPEC Constituent Instrument (notably Resolution I.2), together with the provisions in the OPEC Statute (notably Articles 2, 11-12 and 15-16), by which the Conference, as the supreme organ of the Organisation, is empowered to take decisions and to formulate the general principles of the activity of the organisation. It may be asked how independent the will of the Organisation actually is, if its decisions require certain degrees of unanimity in order to be valid. What is important, however, is not so much the procedural requirements of the decision-making process – although this is necessary – as is the fact that the power to make decisions is there and is utilised, often in a way with which not all the Member Countries necessarily agree. Clearly every organisation, whatever its nature and size, has a decision-making process – without which, of course, no decision could be made! And just because all the Members may happen to agree on a particularly wise or uncontroversial decision, does not mean that OPEC therefore does not have its own separate identity.

In this context, we must note to begin with that the unanimity requirement princi-

pally concerns only the Founder Members, since as we have just seen earlier, majority decisions which have their backing can be carried, contrary to the will of a minority of disagreeing members. In this context, Professor Gunham explained in his consultation document addressed to the Swiss government on behalf of OPEC that: "It is important to underline that independent will is understood not to mean a will necessarily susceptible of being expressly contrary to the view of one or the other of the members, but a will that appears to be that of the organisation. Of course, the special rules of unanimity which will in general have effect as decisions of the organisation are less numerous and they cannot be regarded as being under the rule of majority, but nevertheless when the decisions are taken, they are those of the organisation and not of those of members acting together."

It is true, in this context, that the existence of a rule requiring majority decision-making can constitute one factor which is helpful in distinguishing an international organisation possessing a legal personality on one hand, from a common simple organ which does not, on the other – but, it is submitted, this is not as decisive a criterion as that which emerges from a more detailed study of the more profound structural elements which may be required for executing decisions. Thus for example, as we have just seen, in this regard the OPEC Statute confers on the Board of Governors large powers of decision-making and execution based on a simple majority. It may therefore be concluded that the particular requirement of the unanimity of Founder Members as regards decisions of the Conference does not therefore mean that OPEC does not have an autonomous will.

In conclusion, it is submitted that OPEC meets the four preconditions for international legal personality as enunciated by the International Court of Justice in the Reparation Case. Therefore, OPEC possesses the attributes of international personality regardless of its treatment by the municipal laws of any non-members. It may well be that certain countries have attempted to deny OPEC its international legal personality for political reasons of expediency, but this is all that their reasoning amounts to – a political blocking device disguised in the clothing of apparently respectable legal argument, but without any sound basis in the legal reasoning applicable in matters concerning international institutional law.

As well as satisfying the preconditions for international legal personality required by the objective approach as cited in the Reparation Case, there are also further attributes and arguments which support the inescapable conclusion that OPEC possesses international legal personality, including the following:

1. The Capacity to Contribute to the Creation of New Rules of International Law:

This characteristic or requirement is difficult to define precisely. Professor Gunham has defined it thus: "The organisation considered should, by its structure and powers be in a position to contribute to the elaboration of rules of the law of Nations". This cannot be denied of OPEC. In effect, the mere fact that it has the power to conclude agreements such as, for example, the Headquarters Agreement (see Appendix III), demonstrates its capacity – in accordance with the will of its Members – to participate in the elaboration and creation of the rules of international law. Conversely, it can be argued that OPEC could not have made such an agreement if it did not have an international legal personality. Furthermore, as we have already seen in the earlier parts of this study concerning the development of the rules of international law governing ICAs and IPAs, and as we shall see in further detail in Part Six, it is in fact perfectly clear that OPEC has already contributed to the creation of new rules of international law, thereby transforming what was potential into what is actual.

2. The Capacity to Enter into External Relations similar to those Entered into by States:

Again, this is something which OPEC has done, and it accordingly provides further corroboration that OPEC enjoys an international legal personality. Thus OPEC has entered into relations with the UN, [116] ECOSOC, [117] UNCTAD, [118] OAPEC, [119] OLADE, [120] The Arab League, [121] and CIPEC. [122] In addition to these, and as well as its relations with its own Member States, OPEC has also entered into relations with other states including Austria, Switzerland, France, Italy and Sweden. [123] With the exception of the more detailed Headquarters Agreement with Austria, these relations have principally concerned the provision of security for the meetings of the OPEC Conference when held in these countries' territories.

3. The Capacity to Create other International Entities:

The obvious example of such a capacity as regards OPEC is the creation of the OPEC Special Fund, which, as we have already seen in Part Three, is an international entity separate from, and yet connected to, OPEC. Briefly, the steps in its creation were as follows:

At the XXXVII (extraordinary) meeting of the Conference of OPEC, held in Geneva between the 7th and 9th January 1974, the Conference decided amongst other things to request the Ministerial Committee on Energy Crises to study the creation of a

financial institution for the purposes of development and to report to the next ordinary meeting of the Conference. On the 19th January 1976, at the Meeting of the Ministers of Finance of the OPEC Member Countries, the ministers unanimously approved and signed the agreement establishing the OPEC Special Fund. On the 11th May 1976, at the meeting of the Ministers of Finance of the OPEC Member Countries, the ministers agreed on the Constituent Agreement of the Fund and constituted themselves as the Governing Committee of the OPEC Special Fund. In order to begin operations as early as possible, the same meeting selected Mr Mohammed Lagnnesh, the Finance Minister of Iran, as Chairman of the Meeting of Governors, while Mr Ibrahim F.I. Shihata of Kuwait was appointed Director General of the OPEC Special Fund.

The Fund functioned as an international special account collectively owned by the contributing parties. On the 16th January 1980, the Oil Ministers Committee reviewed the Agreement establishing the OPEC Special Fund and amended it according to the recommendations of its Governing Committee to convert the Fund into an international aid agency for providing financial assistance to other developing countries and to vest it with an international legal personality. [124] According to Article 1 of this Agreement the agency is named the OPEC Fund for International Development (hereinafter called the Fund) and is endowed by them with an international legal personality.

Article 1 also provides that the Fund shall be open to all OPEC Member Countries, and that the Fund is to be governed by the provisions of this Agreement and by the relevant recognised principles of international law. Furthermore, in order to carry out its functions effectively, the Fund's headquarters is located in Geneva, separate from the headquarters of OPEC in Vienna. [125]

Since its elevation to the status of an international aid agency, the Fund has also concluded loan agreements with a number of states, such as the agreements signed on the 21st January 1982 with Tanzania, Mozambique, Liberia and Guinea. [126] The organisation has also participated in a number of international conferences and inter-organisation activities. [127] It is clear therefore that in creating the OPEC Fund for International Development, OPEC has actualised its capacity to create and establish another international entity endowed with an international legal personality of its own. Furthermore, the practice of this entity has clearly demostrated that it does indeed enjoy such a personality. Therefore, it is safe to conclude that OPEC's creation of an entity with an international legal personality is evidence enough that OPEC itself possesses such a personality.

The above examination of OPEC's international activities – which demonstrate not only that the Organisation has these various capacities, but also that it has trans-

lated them into action – are thus strong grounds for concluding that OPEC possesses international legal personality. Ultimately, the *fait accompli* is always more convincing than the academic theory.

4.4.3 The Legal Personality of OPEC vis-a-vis Non-Members [128]

Having reached the conclusion that OPEC possesses international legal personality, but in view of the fact that some states have disputed this, the question therefore nevertheless arises as to whether or not OPEC possesses international legal personality *vis-a-vis* third-party states.

In view of its relatively limited membership (which classifies OPEC as a closed organisation), and of its relatively restricted powers and objectives, it must be admitted that OPEC does not have the same objective international personality as is enjoyed by the more 'universal' organisations such as the United Nations.

However, these restrictions do not affect OPEC's capacity to act under international law. As we have seen, it can enter into relations with other international entities, whether states or organisations, and conclude agreements with them – but this has always depended upon the willingness of these 'international entities' to recognise the international personality of OPEC. As has been seen, Austria has concluded two Headquarters Agreements with OPEC – the first in 1965 and the second in 1974. By the very act of concluding these agreements, in addition to its explicit recognition of the municipal legal personality of OPEC within the agreements, Austria has also implicitly recognised the international personality of the organisation.

In contrast, as we have also seen, Switzerland refused to recognise any such legal personality and to make any such agreement with OPEC. Ironically, when the OPEC Special Fund became an international aid agency some fifteen years later, it would appear that perhaps Switzerland could not resist the chance of looking after so much money, and so was prepared to recognise that the 'child' of OPEC did have international legal personality – even if they had earlier refused to grant the same recognition to its 'mother'!

On a more serious note, the events leading up to and the reasoning which lay behind Switzerland's rejection of OPEC's international legal status were as follows:

OPEC Status and the Swiss Government:

By the terms of Resolution 11-10, which was adopted at OPEC's second Conference in January 1961, the Organisation selected Geneva as the most suitable location for its new headquarters, and instructed the Secretary General to negotiate a Host Agree-

ment with the Swiss Government. In March 1961, the Secretary General notified the Swiss authorities of the Organisation's desire to establish its Headquarters in Switzerland and to have its status determined by means of a formal agreement. In September 1961, the federal political department of the Swiss government authorised OPEC to establish itself within the territory of the confederation and to develop its activities there within the framework of its Statute.

The Organisation waited for four years in Switzerland, facing enormous difficulties as a result of the lack of a proper Headquarters Agreement and of definition of its status. These various difficulties include the imposition of a ceiling on the number of its personnel; the subjection of the organisation and its personnel to various kinds of taxation and import restrictions; the hardship regarding the entrance and residence of the organisation's personnel and of all other people connected with its activities; and the fear of possible legal involvement as a result of the lack of judicial immunities.

This unsatisfactory state of affairs resulted in the Organisation's decision, adopted by Resolution 52 at its seventh Conference, which was held in Djarkarta from the 23rd-28th November 1964, to move its Headquarters somewhere else. The new country of the Organisation's choice was Austria, which had already given the Organisation the desired assurances in the course of discreet enquiries. The transfer of the OPEC Headquarters from Geneva to Vienna took place in 1965, and on the 24th June of that year, the Austrian Minister of Foreign Affairs and the Secretary of OPEC signed a Headquarters Agreement (see Appendix III) which was subsequently ratified by the Conference on the 13th July 1965, and by the President of the Republic of Austria in December of the same year. [129]

The hostile atmosphere which existed between the Swiss authorities and OPEC between 1961 and 1965 highlighted many important questions regarding the bases of the arguments which were used by both parties in support of their respective attitudes – particularly whether or not there are any general rules in international law which support these bases, and also whether or not the attitude of the Swiss authorities had any effect on OPEC's international legal personality. In order to answer these questions properly, both sides' arguments need to be examined:

1. OPEC's Position:

The Secretary General of OPEC, who wished to secure for the Organisation the privileges and immunities usually enjoyed by a large international organisation, argued that the Swiss Government had by implication recognised the international personality of OPEC simply by authorising the organisation to establish its headquarters

and develop its activities in Switzerland. Furthermore, he argued that by virtue of this recognition OPEC was entitled – even if not to have its status determined by a Host Agreement – at least to benefit from certain immunities by virtue of international custom. This view was supported by OPEC's legal adviser, Paul Euggenhim, who in an advisory opinion submitted to OPEC on the 21st March 1962 maintained that: "It seems to us that the recognition of OPEC by Switzerland results from the authorisation given to this organisation by the Political Department to fix its Headquarters in Geneva. In admitting a governmental organisation to its territory in order that it may develop the activities envisaged by its Statute, a state indisputably recognises such an organisation." [130]

In referring to 'international custom', OPEC did not actually claim that this custom had already been universally accepted, and admitted that such custom was still in its formative stages. However, it argued, as far as Switzerland was concerned there was overwhelming evidence that this custom had already been established. In support of this claim, OPEC referred to the message which the deferral council had addressed to the federal assembly on the 28th July 1955, in connection with the debates on the legal status of the UN and other international organisations. Part of this message reads as follows:

> "An international organisation, founded by virtue of a treaty between states, enjoys in accordance with international law, a certain number of privileges in the state where it has fixed its headquarters: it is customary that it should conclude with such state an agreement setting out the nature of such privileges. A state that has the honour of welcoming on its territory an international organisation has thus the corresponding obligation, consecrated by the law of nations, of enabling it to exercise its activities with all the necessary independence required ... We were therefore confronted with a customary right that our country was not able to disregard; the question was not that of assuming new obligations, but rather of confirming obligations that were already in existence." [131]

Thus although there was no universally accepted customary rule of law supporting the practice of granting privileges and immunities to international entities, it could still be argued that once a state has consented to the presence of an international organisation within its territory for particular purposes, it is bound by the principal of a good faith, to extend all such privileges and immunities as are necessary for the proper functioning of the organisation and the achievement of its purposes. [132]

For example, a similar situation had indeed arisen in the Congo, in whose territory the United Nations placed UN forces prior to its becoming a member of the United Nations. In claiming privileges and immunities for these forces, the United Nations did not argue that such privileges and immunities vest by virtue of rule of customary international law but instead stated that its reasoning was based on the principle of good faith. [133]

2. The Swiss Government's Position:

The Swiss government based its refusal of OPEC's request for the grant of the usual privileges and immunities accorded to international organisations on the following reasoning, that the membership of the Organisation was limited to only one side of the petroleum trade, namely the exporting countries, and was not open to the other side, namely the importing countries – a situation which, in the opinion of the Swiss government, contravened the principles envisaged by the Havana Charter for an international trade organisation, since firstly, Article 60(d) of the Charter provides that international commodity agreements: "shall include provision for adequate participation of countries substantially interested in the importation or consumption of the commodity as well as those substantially interested in its exportation or production;" and secondly, Article 63(6) of the Charter also requires that each agreement must provide for equal voting power for the two groups on substantive decisions. [134]

Bearing the analysis of ICAs made in Part One in mind, the Swiss government's reasoning and refusal to accede to OPEC's requests could be criticised on the following grounds:

(1) The Havana Charter was drawn up as long ago as 1948 by the United Nations Conference on Trade and Employment, but has never entered into force. Accordingly its legal value as such is obviously limited.

(2) There is a significant inconsistency between the Swiss government's authorisation of OPEC to set up its Headquarters and carry out its activities within Swiss territory on the one hand, and on the other hand, its questioning of the Organisation's legitimacy in the context of the provisions of the Havana Charter, which itself is not a legally binding document. Furthermore, on the basis of the general 'principle of good faith', already established by UN practice, the Swiss Government should not have denied OPEC's requests for the privileges and immunities it needed to function effectively as an international organisation.

(3) The objectives embodied in the Havana Charter – which were mainly to prevent or moderate the excessive fluctuation of prices by providing a framework for

regulating and relating production to consumption, while also in the long run maintaining an equilibrium between supply and demand – are in any event virtually identical to the fundamental objectives of OPEC. [135] Although the founders of OPEC did not envisage in their programme for future action the possibility of attaining their objectives by means of multilateral agreements between producers and consumers, they were in fact concerned with achieving the same goals – but by a different means. It was never the aim of OPEC to exploit the needs of oil-consumers by charging unfair prices for an essential commodity, but, as has already been pointed out earlier, it would appear that the anxiety that this might happen, influenced the Swiss government to bring pressure to bear on OPEC by refusing its requests.

(4) It is also fair to say that the OPEC Founder Members, in establishing OPEC, acted in strict observance of UN principles and purposes: In the spirit of international co-operation, they concluded an inter-governmental agreement between states, to take action to solve the problem of price instability in the international oil market, which was affecting their economic and social progress and development. It was because of this absolute conformity by OPEC with the principles and purposes of the UN – which accordingly one would have expected the Swiss government to acknowledge and support – that OPEC had already been acknowledged by various UN organs. Thus the OPEC Secretariat had already been invited to and participated in meetings of the UN and its specialised agencies, particularly UNCTAO and ECAFE, both of which include Switzerland as a member.

In the light of such recognition from the UN and its Agencies, it therefore follows that the Swiss argument – which attempted to justify its rejection of OPEC on the ground that it did not entirely conform with the provisions of an already outdated Havana Charter – was not a particularly strong or convincing one, however much the Swiss government was entitled to adopt whatever position it decided to choose.

Perhaps the only argument that can be utilised to defend the Swiss Government's position is that at the time, OPEC was an unknown factor with hardly any history, and that in these circumstances Switzerland was entitled to be cautious and not to give OPEC the benefit of any doubt. If this was the case, it is submitted that subsequent events and practice have proved such caution and doubts to have been both unnecessary and unfounded.

(5) In demonstrating the weakness of the Swiss argument with the benefit of hindsight, it should also be pointed out that throughout its existence, OPEC has followed the ideals of the United Nations – a landmark being the 'Solemn Declaration' of 1975 which was adopted by the first Conference of the Sovereigns and Heads of States

of the OPEC Member Countries (see Appendix IV), and in which they stressed that world peace and progress depend on the mutual respect of the sovereignty and equality of all nations as members of the international community, in accordance with the UN Charter, while also emphasising that the basic vision statement of the 'Solemn Declaration' falls within the context of the decisions taken by the VIth Special Session of the UN General Assembly on problems of raw materials and development.

(6) It is also safe to assert that recent declarations and decisions made at international forums demonstrate the increasing invalidity and unsustainability of the basis of the Swiss refusal. As we have already noted earlier on in Part Four, these declarations and decisions clearly indicate that a new trend – which is very different from that which was envisaged at the time that the Havana Charter was being formulated – is now emerging at an international level. This trend not only favours the creation of commodity exporters organisations, but also supports them and protects them. Thus at the United Nations first session held in 1964, the United Nations Conference on Trade and Development adopted a resolution recommending:

> "That international organisations set up by the developing counties, which are the principle exporters of non-renewable natural products, be recognised and encouraged to enable them to defend their interests." [136]

That the contents of this Resolution apply to the Member Countries of OPEC, and to OPEC itself as an Organisation, is self-evident. That the Swiss argument is therefore now correspondingly outmoded and irrelevant is also equally self-evident.

Thus there can be no doubt that even as far back as the early 1960s, UNCTAD greatly emphasised the need for the liberalisation and expansion of trade in the primary commodities on which the developing countries depend – including oil. The 1964 Conference also recommended that developed countries should effectively reduce or eliminate the obstacles and discriminatory measures employed by them against the developing countries, and in particular, any internal taxes applied to trade in and consumption of primary commodities. [137] Some ten years later, the UN General Assembly, on the 12th December 1974, confirmed that the producers of primary commodities should form their own organisations, and it further laid down safeguards against undertaking 'economic' and political measures that would limit this.' [138]

By way of conclusion it can be said that OPEC as an international intergovernmental organisation possesses international legal personality and the fact that it has limited membership and objectives makes its legal personality *vis-a-vis* third par-

ties entirely dependent on the recognition of the latter. Another prime example of this phenomenon is to be found in the relations between OPEC and America:

4.5 OPEC and the Anti-Trust Laws of the United States of America

Examination of the legal status of OPEC in terms of the anti-trust laws of the US is important, because of all the countries in the world only the US vigorously applies its domestic economic laws extra-territorially – a practice which has met with stiff opposition from many other countries. The backbone of US anti-trust law is the Sherman Act of 1890, section 1 of which states that: "Every contract, combination in the form of trust or otherwise or conspiracy, in restraint of trade or commerce among several states or with foreign nations, is hereby declared to be illegal ..." [139] However the Webb-Pomerence Act of 1918 allows US exporters to join or create export associations, and such associations are considered lawful so long as they do not restrain the export trade of their domestic competitors. [140]

These US anti-trust policies, which have been effected by means of a number of legislative acts and judicial decisions, have made significant inroads into well-established principles such as the sovereign equality of states (which allows every country to regulate its foreign trade in any manner it wants), and absolute sovereign immunity (by virtue of which a foreign state cannot be sued in the domestic court of another state without its consent). US courts do, however, acknowledge and apply a restrictive theory of state immunity which states that the immunity of the sovereign state is recognised with respect to 'private' or 'commercial' acts. In the words of Marshall, C.J.: "When a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of the company, of its sovereign character and takes that of a private citizen." [141] In 1976 the Foreign Sovereign Immunity Act (FSIA) in codifying the restrictive theory of state immunity stated that:

> "A foreign state shall not be immune from the jurisdiction of courts in the US in which the action is based upon a commercial activity carried on in the United States ... or upon an act outside the territory of the US ... and that act causes a direct effect in the US." [142]

Thus the FSIA 1976 incorporates also the 'effects doctrine', by virtue of which commercial activities that take place outside the US, but whose effects are directly felt in the US, are actionable in the US courts. [143] It was in this context, as has already been mentioned in section 4.2.1 above, that the International Association of Machinists and Aerospace Workers brought an action against OPEC in the US courts:

The International Association
of Machinists and Aerospace Workers v OPEC [144]

The Plaintiffs in this case, a labour union ('the IAM'), brought an action jointly and separately against OPEC and the OPEC Member Countries. The IAM sought relief for the alleged price fixing of crude oil prices in violation of The Sherman Act. The Plaintiffs alleged that they had suffered loss because of their having to pay higher prices for gasoline "by virtue of the anti-competitive actions of the Defendants". The IAM claimed that because OPEC made agreements to fix prices, for the sake of profit, it was involved in commercial activities and therefore not immune from the US courts' jurisdiction; and further, that since they had experienced a direct effect of these activities, to their detriment, therefore the Defendants should not enjoy any immunity under the FSIA 1976.

OPEC and its Member States, on the other hand, argued that they did not recognise the American courts' jurisdiction regarding matters that pertained to the sovereignty of the OPEC Member States and which would affect the international legal status of the Organisation. [145]

The court had to examine various aspects of international law before it came to its conclusion – and, in so doing, inevitably had to make various observations regarding the legal status of OPEC. The first issue which the district court had to consider was that of jurisdiction. For the court to have subject-matter jurisdiction, the Plaintiffs had to show that the activities engaged in by the Defendants (OPEC and its Member States) were 'commercial'.

The IAM claimed that price fixing which is the main activity of OPEC is without doubt 'a commercial activity'. [146] On the other hand OPEC considered such activity as an exercise of sovereignty. Thus the Department of Foreign Affairs of the Republic of Indonesia submitted that such activity involved public, governmental, non-commercial acts of state "which were carried out in exercise of its sovereign rights over its petroleum resources," and that therefore, "the Government of Indonesia does not recognise the jurisdiction of the United States District Court on matters that affect its sovereignty." [147]

In order to determine whether or not these activities were 'commercial activities', the court referred to the FSIA for guidance. Section 1603(d) defines 'commercial activity' as follows:

> "A commercial activity means either a regular course of commercial conduct or a particular commercial transaction or act. The commer-

> cial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose."

The court also considered the House Report which refers to a foreign state's commercial acts as, "those which private persons normally perform," and, 'of the same character as might be made by a private person." [148] The court also, in determining the nature of OPEC activity, referred to those standards recognised under international law, especially those adopted by the United Nations. [149] After due consideration, the court came to the conclusion :

> "that the activity carried on by the defendant OPEC member nations is not 'commercial activity'; that therefore the defendants (OPEC and Member States) are entitled to immunity under 28 USCS 1604; and that, consequently, this court lacks subject matter jurisdiction." [150]

In addition to the above the court also gave the following reasons:

1. The control which OPEC and its Member States exercise over oil resources is an especially sovereign function because oil, as their primary, if not sole, revenue producing resource, is crucial to the welfare of their nations' peoples. [151] In support of this, the court referred to the following statement of Dr. Adelman:

> "It is either difficult or impossible to separate the OPEC governments as governments from their role as oil producers. They began their price fixing role by levying taxes on foreign companies operating within their borders. The oil revenues are the great bulk of governmental revenues. Indeed for the OPEC nations supplying most of the oil, the oil revenues are the great bulk of the whole national product." [152]

2. The federal states and the US had taken a determinate role in the marketing of these neutral resources which amounted to an anti-trust challenge. [153]

3. The United States Government itself had implicitly recognised the activities of the OPEC member nations to be sovereign activities in connection with the production and marketing or crude oil, when the United States entered into consent decrees with the so called 'Big Seven' or 'Seven Sisters' oil companies. These decrees granted specific 'exceptions' and 'permissive provisions' allowing these American companies to engage in price fixing, production control and market allocation – and to do so by the law of any foreign national, which were in fact specifically the sovereign states which later organised and became members of OPEC. [154]

Furthermore, after having determined that OPEC's activities were not commercial in nature, the court also dismissed the case on the basis that OPEC cannot be classified as a person as defined in the Sherman Act. [155] This judgement therefore accepted the OPEC Secretary General's protest to the court in which he stated that OPEC is not a person who can be sued by national courts of any state, since it is an inter-governmental body enjoying an international legal personality.

In accepting the Secretary General's argument, the court rejected the IAM's assertion that, while this may be true, "the actions of the OPEC nations in coming together to conspire to fix prices is commercial and thus not immune from suit." [156] The court rather concluded that it is ridiculous to suggest that the essential nature of an activity changes merely by the act of two or more countries coming together to agree upon how they will carry on the activity: "The action of sovereign nations in coming together to agree on how each will perform certain sovereign acts can only, itself, be a sovereign act. The act derives its authority and efficacy from the command of the sovereign nations and is not intended to operate or become effective without that command." [157]

In the court of Appeal, [158] the circuit court per Choy J. dismissed the case on the sole ground that the act of state doctrine (which says that the courts of one country should not sit in judgement on the acts of a foreign sovereign state) applied. In the words of Choy J., the court would not "adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state. [159] Contrary to what Judge Haulk, of the district court had held, the appellate court were of the opinion that OPEC activities are 'commercial' – but, Choy J. reasoned, the act of state doctrine is not diluted by the commercial activity exception, and further, the act of state doctrine is not within the court's jurisdiction. Thus the appellate court refused to grant any of the relief prayed for by the Appellants, because:

> "The granting of any relief would in effect amount to an order from a domestic court instructing a foreign sovereign to alter its chosen means of allocating and profiting from its own valuable natural resources."[160]

In conclusion, it is accurate to state that it has been clearly decided that the US anti-trust laws are inapplicable to OPEC, and accordingly the legality of OPEC, the measures it implements and its legal status cannot be questioned or undermined by these laws. This decision in itself also firmly confirms that OPEC possesses an international legal personality, since the US courts could not have reached the decisions they did if this had not been the case.

4.5 Concluding Remarks on the International Legal Personality of OPEC

In this Part, it has been demonstrated that the legal status of OPEC can best be determined by an examination of both well-established conventional principles of international law, and also of more recent and still developing principles of international customary law. These principles cannot be understood only in terms of the reaffirmation of the inalienable sovereign right of the oil-producing countries to operate their economic affairs, and in particular the oil industry, in whatever manner they think fit. They must also be understood in the more modern context of the recognition of the need to encourage and assist the oil-producing countries to co-operate and co-ordinate in harmonising their policies, to the mutual benefit of both producers and consumers – and indeed of mankind as a whole.

The endorsement of IPAs by the UN General Assembly, combined with current practice and modern trends, has placed OPEC on a sound legal footing, at an international level – and neither multilateral agreements (in the form of GATT and ICAs), nor the US anti-trust laws, nor the now old-fashioned former Swiss government attitude towards producers-only organisations, can erode the now well and relatively long established legal bases of OPEC.

It may well be that at its inception, when OPEC was an unknown entity, there were those who viewed its stated objectives and possible activities with suspicion rather than hope. With the passage of time, however, and as we shall see in more detail in Part Six, OPEC has proved its worth as a stable international organisation whose contribution to the world's economic stability has been a major factor in the emerging New International Economic Order. As we have seen, by acting in such a responsible manner, OPEC has not only lasted and stood the test of time – it has also contributed to the development of modern international law, both confirming and earning its now well-established international legal status.

The basic fact which emerges from the above analysis is that the legal status of OPEC cannot be ascertained only by reference to classical international law. OPEC is a new international economic organisation which is viewed primarily by the oil-producing countries, as developing countries, as a potent instrument for protecting their bargaining position in the sphere of international economic relations, but not as a weapon to be utilised in the cynical exploitation of the oil-consuming countries – the remote possibility of which, it would appear, was perhaps the main reason behind the rejection of OPEC by some developed countries during the Organisation's early years.

It is perhaps for this reason that OPEC today represents, on the whole, the successful resolution of the conflicts of the past over the distribution of wealth and power between the oil-producing and the oil-consuming countries in particular, and between the developing and the developed countries in general. It is in seeking to justify this assessment that the next two Parts, Parts Five and Six, will examine OPEC's track record in greater detail, firstly, by considering OPEC's decision-making process and its financial contributions, and secondly, by examining OPEC's policies in terms of its operations and activities, and their legal significance:

Part 5

The Decision[1] Making Process of OPEC, and its Financial Contributions

Decision making is one of the most important activities of international organisations, since decisions shape policy and give effect to it, with varying degrees of effectiveness. [2] What begin as constitutional debates, fact-finding projects and research studies eventually lead to decisions or recommendations. Procedures and substantive matters are inter-related to each other. [3] Thus Voitorich states:

> "The task of those who have adopted the constitutions of international organisations is to establish such a procedural mechanism, as will keep a balance between operative decision-making and the adequate protection of the Member States' interests." [4]

Thus in order to assess OPEC's operations and activities, it is first necessary to examine OPEC's procedures as regards decision – and therefore policy – making. Furthermore, as has been noted in Parts One and Two, the decision-making process of OPEC cannot be understood outside the context of the oil industry. Thus the respective needs and demands of the oil companies and consumers, as well as of the OPEC Member Countries constitute equally important aspects and elements of the dynamics of the decision-making process of OPEC. In addition, the political and geographical characteristics and locations of the OPEC Member Countries are also important factors which play their part in decision making issues within OPEC. [5]

The procedures for making decisions by the members of OPEC are clearly set out in the OPEC Statute, and are directly related to the obligations which accompany membership of the Organisation. OPEC decisions directly and significantly affect the economies of Member Countries and this explains why OPEC defines for its Members the extent of consent needed to effect a binding decision in any given situation.

The OPEC Statute does not distinguish between decisions and recommendations. [6] The Statute deals with decisions only. As a normal rule, in the case of other international organisations, recommendations do not create legally binding obligations. However, the situation in OPEC is different. The OPEC Statute only considers resolutions, which are binding provided certain requirements are fulfilled. Thus any recommendation which is contained in a resolution in fact shares the same status as a binding decision, provided that the necessary legal requirements for them to be effective have been

satisfied. In the light of this, and in this context, recommendations will be dealt with on the same footing as resolutions.

5.1 The Entry into Force of OPEC Decisions

The adoption of OPEC decisions by the competent organ, namely the Conference, is not sufficient *per se* to bring them into immediate effect. They come into effect if no objection to them has been made by the Member Countries within a prescribed period of time. The procedures which have to be followed for OPEC decisions to come into force are as follows:

5.1.1 Voting Procedures for Substantive Matters

Voting procedures in international organisations have been the subject of much debate among scholars and academics, particularly between the proponents of unanimity and consensus, on the one hand, and of majority decision, on the other. [7]

Most International Producers Associations' constitutions make provision for the voting procedures of their executive bodies to be the same as those of their supreme policy-making bodies. Some constitutions, however, leave their executive bodies to regulate their own voting procedures. OPEC in this matter is unique. The OPEC Statute provides for voting procedures for its executive bodies which are fundamentally different to those prescribed for its supreme policy-making body, the Conference. Thus on one hand, Article 11(C) of the OPEC Statute provides that each Full Member Country has one vote and that, to be binding, the decisions of the Conference must be unanimous. On the other hand, Article 17(D) which governs voting procedures by the Board of Governors requires only a simple majority vote for the Governors' decisions to be effective.

All OPEC Conference decisions are subject to the 'one Member, one vote' and 'must be unanimous to be binding' rules, with the exception of two cases, where the Conference can take decisions without being subject to the unanimity requirement:

(i) decisions concerning procedural matters; and

(ii) decisions concerning the admission of new Members.

A closer examination of these various rules and requirements and their exceptions now follows:

(A) The 'One Member, One Vote' Rule

As a result of the adoption of the Unanimity Rule, the One Member One Vote Rule became inevitable. According to Article 11(C) of the OPEC Statute, "Each Full Member Country shall have one vote." [8]

(B) The Unanimity Rule [9]

All decisions made by the supreme organ of OPEC, namely the Conference, are subject to the unanimity requirement. Article 11(C) provides that: "All decisions of the Conference, other than on procedural matters, shall require the unanimous agreement of all Full Members." The requirement of strict unanimity results from the terms of Article 3 of the OPEC Statute, which provides that: "The Organization shall be guided by the principle of the sovereign equality of its Member Countries." Thus each Full Member enjoys the same status as regards voting rights, irrespective of size or wealth.

Given that this is what the OPEC Member Countries have chosen, various questions arise: What influenced OPEC to choose this system of voting? Are the reasons which influenced OPEC's choice still valid or still essential for the Organisation today? Has the system proved to be workable during the history of OPEC? If the answer is no, what is the remedy? And is there any possibility that OPEC will adopt a new decision-making process in the future? In seeking to answer these questions, the following observations can be made:

Although it has been accepted by the vast majority of international lawyers that the requirement of unanimity is a poor basis for effective decision-making, [10] the OPEC members had a number of reasons for choosing this system, including the following:

1. The unanimity requirement was adopted at a time when the number of Members was only five – namely, Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. This small number did not obstruct the Organisation in reaching unanimity. [11]

2. The unanimity requirement ensures the trouble-free implementation of decisions, because all the Members have already accepted them. [12]

3. Equality of voting power was justified at the inception of the Organisation by similarity, if not equality, of judgement and interests. Similarity of judgement existed because all members were able to base their judgement on the same factors, especially since in the early days, the Members had specific, certain, well-defined objectives to achieve, which as we have already seen in Part Two, were notably:

(a) to return the price of oil back to its level before the 1959-1960 reduction in oil prices made unilaterally by the major oil companies; and

(b) to secure their national sovereignty over their own oil resources and halt the major oil companies' strategy of becoming the dominating power inside their own countries in respect of oil matters. [13]

These main objectives were held in common by all five Founder Members and were their primary concern. Moreover, these were the principal reasons behind the

establishment of the Organisation in the first place. Therefore, in this specific and unique situation, unanimity and equality of voting power were not at all inappropriate, as long as their judgement and interests remained similar.

4. The unanimity requirement was incorporated to encourage other countries with similar interests to join OPEC, since this would ensure that no decision would be taken or be binding against the will of any member. As we have seen in Part Four, there was initially intense international pressure directed against OPEC, especially from Switzerland and the USA, but also from the major oil companies generally, in an attempt to render it ineffective. The unanimity requirement assisted the Member Countries in taking a firm stand against such pressure.

Although the above factors justifed OPEC's choice at its inception of the 'one member, one vote' and 'unanimity' rules, the question remains as to whether or not these reasons are still valid some forty years later on, now that OPEC's membership has increased from five to eleven (up until three years ago, it was thirteen), and includes countries from different regions of the world, with different religions, different cultures and, more specifically, different volumes of oil-production. (Please see the tables contained in Appendix VII for further details.)

With reference to the information contained in Appendix VII, it can be argued that the reasons which originally influenced OPEC's choices of the 'one member, one vote' and 'unanimity' rules are no longer relevant, and that the choices are therefore no longer valid, for the following reasons:

1. Until relatively recently, the Organisation's membership had grown from five to thirteen Member Countries, although it currently stands at eleven – Ecuador terminated its membership in 1995, and Gabon's membership has been suspended since 1996, probably because it cannot afford to pay its membership subscription. These Member Countries are scattered across the globe, embracing over 480 million people and a great diversity of cultures, religions and societies. From Africa, there is Algeria, Libya, Nigeria, (and Gabon); from Asia, there is Indonesia; from the Middle East, there is Iran, Iraq, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates; and from Latin America there is Venezuela (and Ecuador). As a result of the differences between them, it has become more difficult to obtain the unanimous consent of all Members all the time, and in some cases it has been impossible.

2. As we shall see in more detail in Part Six, OPEC has already achieved some of its specific objectives, such as the increase in oil prices to a reasonable level, and the re-assertion by its Member Countries of their national sovereignty over the oil resources

in their own countries. As a result, OPEC has now adopted more general and much wider objectives, such as facilitating the co-ordination and unification of the oil policies of its Members. Again, because of the different global, economic and political situations in which they find themselves, it has become correspondingly more difficult to achieve unanimity.

3. There is no longer such a vital need to increase OPEC membership in order to ensure the Organisation's survival. Political pressure to neutralise OPEC has largely been withdrawn now that OPEC has come to be accepted as a recognised and moderating force in the international oil industry. The main incentive to become a Member is no longer the need for economic survival, but rather the desire to enjoy the benefits which come with membership.

4. The amount of oil production and export now varies tremendously between Member Countries. The Organisation now consists of a few members who between them account for 32.5% of the total OPEC crude oil and refined products exports, whereas other members such as Ecuador (at present no longer a member) produce less than 1% of OPEC's total production. With such differences in volumes of production, it is unfair to give each of the Member Countries equal voting power. [14]

Thus it is clear that the general situation and factors which influenced OPEC's original choices as regards voting procedures and requirements are no longer particularly operative, and accordingly the choices based on them are no longer particularly valid or essential any more. Experience has shown that the 'one member, one vote' and 'unanimity' rules have proved to be increasingly unworkable, causing in the process both difficulty and unpleasantness [15] within the Organisation. There are, furthermore, instances where use of the veto power enjoyed by the original Founding Members – which is part and parcel of the unanimity requirement – has caused more harm than good, such as:

1. In 1977, 1979, 1980 and 1987, Saudi Arabian price policy diverged from that of the rest of the OPEC to the extent of a split in actual pricing. [16]

2. As a result of the unanimity system, the organisation was not able to reach an agreement on a joint production programme until 1982. Also, as is discussed in Part Six, the organisation is still unable to agree upon whether or not certain formulae or criteria should be used as bases for deciding oil production and distribution quotas. [17] At times there is also a lack of clarity as to how much of any given production quota is destined for the traditional export market, and what remaining proportion will be retained for the purposes of increasing home consumption.

3. One of the Conference's responsibilities is to appoint the Deputy of the Secretary General [OPEC Statute, Article 15(12)]. This post was not filled for eight years because of the failure among the Members to agree upon a suitable candidate. This failure to agree is one of the disadvantages inherent in the unanimity rules adopted by the conference. [18] The same difficulty was also encountered with the appointment of the Secretary General, so the Conference had to resort to the alternative system of appointing nominees of Member Countries by alphabetical rotation instead of utilising the system of appointing a qualified person. [19]

In order to avoid any further impasses and damage caused by the 'one member, one vote' and 'unanimity' rules, the obvious suggestion is that OPEC's voting system could be altered to a weighted voting system, with a weighted majority requirement. [20] The problem, however, remains as to exactly what criteria should be adopted in order to formulate any new weighted voting system for reaching binding Conference decisions. Should voting power be linked, for example, to the rate of petroleum production, the rate of petroleum exports, the size of petroleum reserves, the significance of petroleum exports to national income, or the size of the population, of Member Countries? These are difficult issues to resolve, especially since, with the system as it is at present, it would need a unanimous decision to decide that majority decisions would suffice in the future!

According to Article 7(C) of the OPEC Statute, membership of the Organisation is open to any "country with a substantial net export of crude petroleum". It could be suggested, on this basis, that the most appropriate criterion for an OPEC weighted voting system would be the rate of petroleum net exports of each Member Country. However, this suggestion is not in line with the fact that in recent years an increasing part of oil production has been directed towards the growing domestic consumption of some OPEC Member Countries, [21] which means that the volume of oil exports no longer gives an accurate reflection of the size of oil production.

Another valid question which may also be asked is what does 'petroleum' mean nowadays? Is it crude petroleum, or refined petroleum, or both? It may be suggested that the criterion 'net petroleum export' should be applied to cover both crude petroleum and processed petroleum. This suggestion is based upon the fact that in recent years, refined products have begun to form an increasing proportion of the petroleum exports of some of the Member Countries, as they become more conversant with the technologies needed to effect such processes. Present trends indicate that there will be an even greater increase in the OPEC countries' refining capability as the future unfolds.

One possible solution is to have a weighted voting system whereby binding decisions of the Conference should be reached by a two-thirds majority of the Organisation's Members, provided that the two-thirds represents not less than a certain percentage – for example, 80%, or 75% – of OPEC total exports over the previous year, or two years. This suggested system is based upon two elements: firstly, the 'national element', whereby each Member is entitled to vote; and secondly, the 'amount of export element', whereby each Member is given a number of votes which will vary according to that Member's percentage share in the total amount of oil exported by the OPEC member countries as a whole. [22]

5.1.2 Voting Procedures for Procedural Matters

Under the first OPEC Statute of 1961 [23] all decisions of the Conference required merely the unanimous agreement of the Founder Members [Resolution II 6(3.6)]. At that time, procedural matters were considered important and thus had to gain every Member's vote. However, as the membership of OPEC increased, together with the bargaining power and influence of the Organisation and the degree of co-operation between Member Countries, a constitutional and structural change had to be made in order to enable the newly admitted Members to participate in the decision-making of the Organisation, albeit not on an equal footing with the original Founder Members, as far as decisions regarding procedural and membership matters were concerned.

The amended OPEC Statute of 1965 responded to this need and a new voting system was introduced by virtue of Article 11(C) which is fully reproduced in the present Statute of 1986 (see Appendix II). As we have already seen, Article 11(C) provides *inter alia*: "Each Full Member Country shall have one vote. All decisions of the Conference, other than on procedural matters, shall require the unanimous agreement of all Full Members."

By virtue of this provision, all Conference decisions on non-procedural matters require the unanimous vote of all Members (that is, both Founder and Admitted Members). Conversely, decisions on procedural matters are not subject to this unanimity rule. The Statute is silent, however, about the number of votes required for decisions on procedural matters. It is arguable that a simple majority is sufficient for such matters. Such an assumption is based on the fact that decision making by a simple majority of the votes cast is common in most international organisations as regards procedural decisions. [24]

The question arises in this context, however, as to what matters should be regarded as procedural matters and what matters should be regarded as non-procedural

matters? In practice, there seems to have been no concerted attempt to provide a comprehensive definition of what procedural matters are – over which no right of veto can be exercised – and therefore in practice this has meant that all decisions of the Conference have to be passed by a unanimous vote. [25]

In contrast, the OAPEC Agreement provides that: "The Council shall determine by a simple majority vote of all the members, which matters shall be considered substantive and which procedural." It is to be noted that OAPEC resolutions relating to the second category, procedural matters, need a simple majority vote only [Article 11(d)], while those relating to the first category, substantive matters, require a three-quarters majority vote, including the vote of at least two (out of three) founding members [Article 11(c)].

If OPEC is serious about excluding decisions concerning procedural matters from the unanimity requirement, then it could easily follow OAPEC's example – but to do so, it will first be necessary to amend the OPEC Statute so as to specifically enable the Conference firstly, to determine what are procedural matters and what are not, and secondly, to make it clear exactly what proportion of a majority vote is necessary in order to make a decision on a procedural matter binding on all OPEC's Members.

As long as unanimity is still required for all Conference decisions, therefore, this problem will not be solved, and the Organisation will continue to face the possibity of the double veto, similar to that affecting the Security Council in the context of Article 27(3) of the Charter of the United Nations. It follows that in order to avoid such a problem, OPEC should not insist on the unanimity requirement when the decision concerning the criteria "by which procedural matters and non-procedural matters are distinguished" is taken. [26]

5.1.3 Voting Procedures for Admission to Membership:

The voting procedures in respect of decisions on admissions to OPEC have undergone various changes. At the first Conference, at which OPEC came into being, the Organisation decided that: "Any country with a substantial net export of Crude Petroleum can become a new Member if unanimously accepted by all five original Members of the Organization." [Resolution 1.2(3)].

Thus at this early stage, the admission of a New Member depended simply on the unanimous consent of the five Founder Members. Three new members were admitted under this rule: Qatar in January 1961, and Libya and Indonesia in June 1962. The question therefore then arose for the first time, as to whether or not Admitted Members should have any say in the admission of further New Members.

On the 10th of April 1965, the Conference held in Geneva adopted Resolution VII 56, whereby an amendment was made to the OPEC Statute. It required that for the admission of a New Member, a majority vote of three-fourths of all Full Members (that is, both Founder and Admitted Members) was required, including the affirmative votes of all five Founder Members. This new requirement for the admission of New Members was incorporated into and remains part of the current OPEC Statute: Article 7(C) provides that an applicant may become a Full Member of the Organisation: "if accepted by a majority of three-fourths of Full Members, including the concurrent vote of all Founder Members."

At present, the organisation has eleven members. The admission of a new member would therefore require four affirmative votes of the newly Admitted Members in addition to the concurrent vote of all five Founder Members. This means that even if all the Founder Members were in favour of admitting a New Member, this could not in fact happen without the support of at least four other Full Members. Conversely, even if ten Full Members were in favour of admitting a New Member, if the remaining Member was one of the Founder Members, then that Member could exercise its power of veto and prevent this from happening. As has already been noted in Part Three, (see Section 3.3.2. p. 112), this power of veto is sometimes difficult to justify, but is equally unlikely to change. Clearly the Founder Members, as Founder Members, will always wish to retain some element of control over the Organisation which they originally founded, and to be able to exert an influence over the composition of the organisation.

As with most things, it is necessary to strike a balance: If the requirements for the admission of New Members were less stringent, then it would be easier for OPEC to have more members. If the unanimity rule applied, it might prove impossible for any Applicant to be admitted. The fact that five New Members were admitted between 1965 and 1974 gives some indication that perhaps the current voting requirements for the admission of New Members are about right. [27]

5.2 The Implementation of OPEC Decisions

Article 11(C) of the OPEC Statute provides, *inter alia*:

> "The Conference Resolutions shall become effective after 30 days from the conclusion of the Meeting, or after such period as the Conference may decide unless, within the said period, the Secretariat receives notification from Member Countries to the contrary."

Thus it is clear that, unlike many other international organisations, OPEC decisions do not become effective as soon as they have been adopted by the Conference, but rather 30 days later, or when the Conference may decide. The reason for this delay is that such Resolutions always deal with oil matters, on which all of the OPEC Member Countries' economies are based. Accordingly, the Statute provides them with extra time and opportunity to review their position before deciding finally to accept any such Resolutions.

It could be argued that such a 'cooling off' period is not needed, because the delegations of the Member Countries who are usually headed by their respective Petroleum Ministers are always well instructed at the voting stage by their government. Even if, during the Conference meeting – which usually lasts for two or three days – a head of delegation finds that the outcome of the meeting is not going to be what was expected when instructions were last given to him, he is always free to contact his government and seek further instructions before he finally casts his vote and signs any Resolutions which have been adopted. This has become a very common practice within OPEC in recent years. [28]

The OPEC Statute does not stipulate what authority is required to effect the 'ratification' of OPEC Resolutions. The respective domestic legal systems of each of the Member Countries define how this is to be done. In practice the national administrative authority usually responsible for such ratification is, unsurprisingly, the Ministry in charge of Petroleum Affairs. This is for two basic reasons:

(i) The shortness of the prescribed period (usually 30 days), by the end of which any notification of disapproval has to be received by the Secretariat, makes it difficult for any such notification to be first approved by any national legislative authority – which would probably require a greater amount of time than the prescribed period in which to make its decision. This is the case, for example, as regards the Libyan, Kuwaiti and Algerian legislative authorities. [29]

(ii) The respective Ministries of Petroleum Affairs, which represent the governments of the OPEC Member Countries at the OPEC Conference, are not only best informed as to the significance and likely consequences of any Resolution should it be implemented – but also will be responsible for implementing any Resolution which has been fully adopted and ratified.

As regards any 'notification' of disapproval, the OPEC Statute makes it clear that this is not effected unless and until it is actually received by the Secretariat. However, the number of separate notifications actually required to invalidate a Resolution is not

stated in the Statute. Since Article 11(C) refers to 'Member Countries' in the plural, it might be concluded that a single notification is not sufficient to invalidate a Resolution. However such reasoning is not correct, since Resolutions have to be adopted by the unanimous agreement of all Full Members to be effective. This means that just one notification of disapproval is enough to invalidate a Resolution – and that Article 11(C) should have been more carefully worded!

It follows, therefore, that unanimity is in fact required at two stages: firstly, for a Resolution to be adopted, and secondly, in order not to be subsequently rejected within the 30 day period thereafter. This in effect means that each Full Member has a 'double veto', one at each stage. As we have already noted, although this makes the decision-making and implementation procedures of OPEC very 'safe', it also makes it very difficult for any major decision to be taken and followed through.

If the suggestion made earlier – that OPEC should adopt a proportional weighted voting system in order to facilitate a more dynamic decision-making procedure – were to be also followed through at the secondary implementation stage, then it follows that the current individual right of veto against the entry into force of OPEC Resolutions should be replaced by a system whereby any subsequent veto could only be exercised if a sufficient percentage of Members, accounting for say a quarter, a third or a majority of the total petroleum exports of OPEC, were in favour of it.

In order to consider this argument with a due sense of proportion, it should be noted that so far there has not been a single instance of a 'notification' being lodged with the Secretariat to invalidate a Resolution. On the other hand, one injudicious exercise of the double veto in the future, could well be one too much.

5.3 The Rule Applicable to Absent Members

Article 11(C) of the OPEC Statute also provides:

> "In the case of a Full Member being absent from the Meeting of the Conference, the Resolutions of the Conference shall become effective unless the Secretariat receives a notification to the contrary from the said Member at least ten days before the date fixed for publication of the Resolutions."

This means that an absent Member has the right to veto any Resolution adopted at a Conference at which its representative was not present, simply by lodging its notification of disapproval with the Secretariat of the Organisation at least 10 days before the date fixed for publication of the Resolution – which, as we have just seen, would have to be at least 30 days after it was originally adopted.

It would appear that this shorter period puts any Member who has been absent from a Conference at a disadvantage as compared to the other Members who were present, as far as the period of ratification is concerned. While Members who were present at a Conference normally have thirty days within which to lodge any notification of disapproval, Members who were absent have only twenty days within which to lodge any notification. It would seem that one of the purposes for stipulating a shorter period for notification for any Member who was absent when a Resolution was adopted is to encourage all the Members of the Organisation to make sure that they attend all the Conference meetings in the first place and to avoid any unnecessary absence. Certainly since the adoption of Article 11 in its present form, there have only been five recorded absences during the last 105 Conferences. This is a good record for an intergovernmental organisation consisting of a number of developing countries and belonging to widely varying regions and political systems.

Clearly the main purpose of this part of Article 11(C) is to give any Member who does miss a Conference, or rather the adoption of a Resolution by a Conference, an opportunity to study any such Resolution and, if it does not agree with that Resolution, the chance to reject it before it becomes effective. In other words, this particular rule is designed to provide some measure of protection to the individual rights of OPEC members, and to prevent the situation arising whereby a Member might otherwise be bound by a Resolution which it would have voted against at the Conference if it had had the chance to do so. At the same time, by imposing a time limit within which this 'right to reply' must be exercised, Article 11(C) ensures that there is no possibility of an unexpected retrospective veto, long after a Resolution has been adopted. If such a possibility existed, this would have the effect of introducing an element of uncertainty into all OPEC Resolutions.

It is worth noting in this respect that a Member who was absent when a Resolution was adopted does only have the right of veto. It does not have the right of either 'contracting out' or of re-wording any Resolution. (If this were the case, it would encourage Members never to agree to a Resolution unless it really suited them down to the ground.) A Member who was absent only has the right either to veto a Resolution or, by not lodging any notification of disapproval within the time limit, to accept it. In the latter situation, Article 11 does not, however, state when a Resolution enters into force for any Member who was absent when it was adopted. The question does therefore arise as to whether any such Resolution binds a Member who was absent after it becomes binding on the other Members who were present when it was adopted, or at the same time.

It would appear that the most likely answer to this question is that, in the absence of any notification of disapproval, any such Resolution should enter into force for all Members at the same time, whether or not they were present when it was adopted. It could be argued that a Member who was absent should only be bound by any such Resolution 30 days after becoming aware of its existence and contents, so as to be on an equal footing with those Members who were present. In all probability, however, and in this age of virtually instant global communication, any Member who was absent probably would, in any event, be made aware of any such Resolution on the same day that it was adopted.

Thus in practice, and given that absenteeism is so rare, up to now whenever Resolutions are adopted, and in the absence of any exercise of the right of veto, they become effective for all OPEC Member Countries upon their publication 30 days after the conclusion of the meeting of the Conference at which they were adopted, whether there were any absentees or not.

In conclusion, although this part of Article 11(C) was clearly drafted with the intention of protecting the interests of any Member who missed a Conference, and of maintaining the principle of unanimity of decision, [30] in practice no Member has ever had to utilise it. So far, no negative notification has ever been received by a Member who missed a Conference. And if the reason behind the fact that there have been so few absences at the OPEC Conferences is because of the manner in which Article 11 has been drafted, then it has succeeded.

Finally, it should be noted that as regards the weighted voting system suggested earlier in this study, clearly if it were to be adopted in the future, then the whole of Article 11 would have to be completely re-written.

5.4 The Legal Effect of OPEC Decisions

Between September 1960 and June 1998, the OPEC Conference has held 105 meetings at which approximately three hundred and sixty-five Resolutions on a wide range of matters have been adopted. As we have seen from the parts of Article 11 of the OPEC Statute quoted in the preceding pages of Part Five, both the term 'decisions' and the term 'Resolutions' are used to refer to what the Conference has decided. It is clear that for the purposes of Article 11, these two terms are interchangeable.

The first question which therefore arises at this stage is what is the legal value or legal effect of OPEC decisions? Do they create legally binding obligations, or are they more in the nature of political or moral commitments? As we have already seen in Part

Three, Alfonso Perez observed that in his view obligations towards OPEC "are more in the nature of moral obligations." [31]

Unfortunately, neither the OPEC Constituent Instrument nor the OPEC Statute contain any provisions which deal specifically with the legal nature or effect of OPEC decisions. There are some who maintain that all decisions of the OPEC Conference are binding on its Members and do not need further legislation by the OPEC Member Countries' national law-making bodies before they can be legally effective and binding. Not only does this view not find any specific support in the OPEC Statute, however, but also practice reveals that it is only by virtue of municipal law, and not by virtue of the fact that an OPEC Conference decision has been formally adopted as a Resolution, that such decisions come to be implemented internally. Thus although the prior agreement of the OPEC Member States is a necessary requirement for formulating and implementing OPEC's decisions, this does not in itself render them legally binding and enforceable. In the experience of OPEC, as with many other similar organisations, it is essential to draw a line and distinguish between the obligations of states at an international level, and those obligations at a municipal level which need further legislation to be binding on the member states belonging to an international institution. [32]

Since – depending on the subject matter, and on what action is actually envisaged, and by whom – there is more than one kind of decision, it is always helpful to bear these factors in mind when considering how binding a particular OPEC decison is. Since the OPEC Statute itself does not indicate which decisions are binding, it is important to distinguish between the following easily identifiable categories:

5.4.1 Decisions Adopted by the Organs of OPEC

All OPEC organs have the right – and indeed the need – to adopt and implement decisions in order to carry out the functions ascribed to them. The degree to which such decisions are 'binding' can be ascertained partially by examining the hierarchical relationship which exists between the various OPEC organs, and which has alreday been examined in Chapters 3.1 and 3.2 of this study. For example, if the OPEC Board of Governorsreaches a decision at one of its meetings regarding a task to be carried out by a Department in the Secretariat, then in all probability that task will be carried out – although as we have already seen, Article 10 of the OPEC Statute clearly spells out the hierarchical relationship which exists between the various OPEC organs, whereby the Conference "shall be the supreme authority of the Organization." This means that the decisions of the Board of Governors must be in line with what has been decided by the Conference and cannot contradict this.

Thus as regards the internal administration of the OPEC Organs, decisions are adopted and implemented in accordance with the *modus operandi* that has gradually become established since these Organs were first created. These decisions are not 'binding' in the sense that they are legally binding in a court of law, but rather they are 'binding' in the sense that if the correct procedures are followed, then they will be implemented as a matter of course.

As we have seen in Part Three, the main function of the subsidiary Organs of OPEC is to assist in the realisation of OPEC's main objectives. Part of their work therefore involves carrying out research work, gathering information, and conducting negotiations. As a result of these activities, it is inevitable that recommendations and decisions will be made – and indeed may well form the basis of decisions which become Resolutions once they have been adopted by the Conference. As regards the status of any decisions and recommendations which emerge from the OPEC subsidiary Organs and which are subsequently discussed and decided upon at the Conference, there is nothing in the OPEC Statute to suggest that any such decisions or recommendations have any binding effect. This observation is reinforced both by the language in which they are framed, which tends to use expressions such as 'recommends', 'suggests', and 'proposes', as well as by the language used in the OPEC Statute itself when describing the OPEC Organs' functions. For example, Article 20(3) refers to one of the functions of the Board of Governors as being to: "submit reports and make recommendations to the Conference on the affairs of the Organization," while Article 20(7) refers to the Board's duty to: "prepare the Agenda for the Conference." The Secretariat is in turn answerable to the Board of Governors (please see OPEC's Organisational Flow Chart at page 90).

Thus it is clear that although the work of the OPEC subsidiary Organs is essential to the success of the Conference – especially in terms of the preparation beforehand of what is to be discussed at the Conference itself, as well as the implementation thereafter of what has actually been decided – their functions are, nevertheless, subsidiary. Although their proposals and recommendations may be the fruit of firm decisions, they are in themselves no more than proposals and recommendations, and as such they have no legally binding effect on the Conference. It may well be that these decisions will become effective and binding on the OPEC Members as soon as they have been approved by the Conference and formally adopted as Resolutions – but it is clear that any such binding effect will have come from the decisions of the Conference, and not from the subsidiary Organs even though members of their staff may well have been the first to formulate and recommend them.

Having said this, there is of course one exception, which has already been mentioned in Part Three, and which is embodied in Article 23 of the OPEC Statute, whereby the Board of Governors can decide by a majority of two-thirds to terminate the membership of any Governor who is detrimental to the interests of the organisation. Any such decision is not subject to the approval of the Conference and is addressed directly to the Member Country concerned – whose nomination of a replacement Governor must, in accordance with Article 24, then be confirmed by the next Conference before it becomes fully effective. This is the only main exception to the subsidiary role of the OPEC Organs to the Conference as stated in Article 10 of the OPEC Statute.

5.4.2 Decisions Adopted by the Conference of OPEC

As we have already seen, the Conference is the supreme organ of the Organisation and is endowed with extensive powers. The legal effect of the decisions adopted by the Conference in the form of Resolutions has already been discussed, but can be further examined and clarified in terms of:

(i) Decisions addressed to the OPEC subsidiary Organs; and

(ii) Decisions addressed to the OPEC Member Countries:

5.4.3 Decisions Addressed to the Organs of OPEC

In view of the hierarchical relationships which exist between the various OPEC subsidiary Organs, as discussed above in Section 5.4.1, it is clear that all decisions addressed by the Conference to the OPEC subsidiary Organs have a legally binding effect. If there was no such legal effect, there would be no meaning to the Article 10 description of the Conference's role as: "the supreme authority of the Organization," and it would be impossible to administer OPEC's affairs efficiently and effectively.

As regards the decisions addressed to the OPEC subsidiary Organs, the way in which they impose obligations can vary. Some can be very specific, necessitating literal obedience – for example, a precise order as regards internal administrational rules; while others are of a more general nature, giving directions and guidelines, but permitting a measure of freedom of action and an element of discretion as regards the manner in which they are to be implemented – for example, an instruction to carry out research in a particular field or to gather information on a particular subject.

5.4.4 Decisions Addressed to the Members of OPEC

Decisions addressed to the OPEC Member Countries have already been discussed in general terms in Chapters 5.2 and 5.4 above, and can now be analysed in greater detail:

As we have seen, a decision of the OPEC Conference does not become fully effective until firstly, it has been formally adopted as a Resolution by a meeting of the Conference in accordance with the voting procedures set out in the OPEC Statute, and secondly, it has been subsequently ratified by the Member States without any notification of disapproval having been lodged beforehand with the Secretariat, either by a Member who was present at the meeting of the Conference (within 30 days), or by a Member who was not present at the meeting (within 20 days).

Since the Conference's decisions can only become effective after the prescribed period, which is normally 30 days, it might be asked what their legal status is before they become fully effective. Two explanations can be given to this question:

The first explanation is that the decisions of the Conference are at best no more than recommendations in the form of proposals – which it is hoped the Member Countries will implement since they have just agreed to them at the Conference – but which do not become decisions with legal effect unless and until they have been subsequently ratified by the Member Countries.

The second explanation, which in fact is very similar to the first, is that the voting for and signing of a decision at a meeting of the Conference, although unanimous, can only constitute a conditional agreement – because of the provisions in the OPEC Statute for the 'cooling off' period which do make it possible for any Member Country to change its mind – but that the decision not to lodge a notification of disapproval, combined with the subsequent ratification of the Resolution by all the Member Countries, together constitute a final agreement to be bound by that decision.

Thus it can be further argued that the Resolutions initially adopted at the Conference by the Member Countries do become legally binding on them once the above constitutional safeguards and procedures have been completed. The fact that the Member Countries have in effect voted twice in favour of such Resolutions, as well as refraining twice from exercising their power of double veto, can be taken to indicate a firm agreement to be bound by such Resolutions, and where appropriate to implement them.

By way of comparison, and in the context of customary international practice, it is worth mentioning that in its Advisory Opinion on the Railway Traffic between Lithuania and Poland, the Permanent Court of International Justice considered that the two states were bound by the Resolution of the Council of the League of Nations of the 10th December 1927, on the ground that their representatives had cast affirmative votes for this Resolution on that date.

From the foregoing, it is submitted that it is safe to conclude that OPEC decisions do have binding force on its Member Countries. This conclusion is based on the fact that before OPEC decisions can become fully effective, they are not only voted for, and signed unanimously by the Member Countries' representatives (usually their Petroleum Ministers), but are also subsequently ratified unanimously by them as well.

This conclusion leads naturally on to the stage at which it becomes necessary to examine the legal effect of OPEC decisions on the internal legal systems of its Member Countries. This has already been mentioned in general terms in Chapter 5.4, but now needs to be considered more closely:

5.4.5 The Legal Effect of OPEC Decisions on its Member Countries' Legal Systems

Article 3 of the OPEC Statute states:

> "The Organization shall be guided by the principle of the sovereign equality of its Member Countries. Member Countries shall fulfil, in good faith, the obligations assumed by them in accordance with this Statute."

In the absence of anything more specific, it becomes clear that the Organisation leaves Member Countries with a free choice as to how their international legal obligations arising from its decisions are to be implemented. Reliance that decisions will be implemented is based on the 'good faith' of the Member Countries, rather than on the threat of any legal sanction if they do not fulfil their obligations.

Although implementation of the Conference's decisions is not specifically safeguarded in the OPEC Statute by any threat of sanction if there is a failure or refusal to implement, there has in fact been one case where the Organisation did threaten to apply sanctions if necessary in order to ensure the implementation of one of its decisions. This occurred on the 4th February 1971, when the Conferences adopted the following Resolution, Resolution XXII 131:

> "Each Member Country exporting oil from gulf terminals shall introduce on the 15th of February 1971 the necessary legal or legislative measures for the implementation of the objectives embodied in Resolution XX 120. In the event that any oil company concerned fails to comply with these legal and/or legislative measures, within seven days from the date of their adoption in all the countries concerned, Member Countries ... shall take appropriate measures, including a total em-

bargo on the shipments of crude oil and petroleum products by such a company." [33]

This Resolution demonstrates clearly that the Organisation was so keen to implement Resolution XX 120 that it was prepared to use the threat of a 'total embargo' in order to do so. Admittedly this threat was aimed principally at foreign oil companies, rather than national oil companies – and presumably OPEC was relying on its Member Countries to act 'in good faith' in introducing 'the necessary legal or legislative measures' which had to precede any possible threat of total embargo if these measures were not then complied with by the oil companies at which they were aimed. Nevertheless, this case does set a precedent for the proposition that OPEC is prepared to impose a total embargo if and when necessary – and presumably this could be extended to apply to a recalcitrant Member Country if necessary.

In asking, therefore, whether or not OPEC Conference decisions possess any legally binding force, the answer is that although there is no specific sanction for non-compliance with any such decision, nevertheless the collective will of the Member Countries is such that they do regard such decisions as binding – and, on the whole, if any such decision had not been to their advantage, they would not have assented to it in the first place. It is only if the weighted voting system – which was suggested earlier – were to be introduced, that the possibility of there being a decision with which not every Member Country was in agreement might arise – in which case the question of how any such decision was to be enforced might then arise in a meaningful way, since it would require a practical rather than a merely academic answer.

Returning now to the question of whether or not there is any need for the Member Countries to introduce legislative measures in order to give legal effect to OPEC decisions within their own internal domestic legal systems, it is clear that OPEC decisions do not have the self-executing character enjoyed by the decisions of some other supranational organisations such as, for example, those 'regulations' of the EEC which have direct effect. [34] It follows therefore that an extra legislative or executive act is technically needed in order to give OPEC decisions the force of law in the internal sphere of the Member Countries.

Nevertheless, even in the absence of any such legislative or executive measures being taken, OPEC has still had a great influence on the internal legal systems of the OPEC Member Countries, especially with regard to oil production, oil prices, oil agreements, conservation and compensation – all of which are examined in greater detail in Part Six. [35] Perhaps it should also be pointed out that none of the OPEC Member Countries are the source of the current dominant constitutional and international legal sys-

tems, which have been developed more in Europe and in America, and with which they are still trying to integrate.

The traditional systems of governance to which the OPEC Member Countries still have a natural affinity are based far more on individual authority than on bureaucratic structuralist systems. It therefore comes as no surprise to observe that in practice, OPEC decisions are usually brought into effect in the domestic sphere by an executive act authorised by the Minister in charge of Petroleum Affairs, rather than by means of parliamentary debate in a legislative assembly. Although the person responsible for giving effect to such executive acts is now called 'the Minister of Petroleum', the manner in which such acts are executed is still very much that of the traditional 'Amir' or 'Wazir', acting 'in good faith' by 'keeping his word' – rather than out of fear of what might happen in some remote court of law if he does not comply with 'the law'. This is perhaps an area of research which up to now has been ignored but which might prove well worth exploring. However, it does not come within the scope of this thesis, and cannot be pursued further here.

5.4.6 The Legal Effect of OPEC Decisions on the OAPEC Member Countries

As a general rule, treaties cannot impose obligations or confer rights upon third parties without their consent. This general rule is sustained by well-established legal doctrine, the decisions of international tribunals, the practice of states and Article 34 of the Vienna Convention on the Law of Treaties 1969.[36] It follows, therefore, that OPEC's constitutional acts and decisions cannot impose obligations on non-Member Countries without their consent; nor, for that matter, can OPEC acquire rights from treaties to which it is not party. Having said this, however, Article 3 of OAPEC's Constituent Agreement (1968) appears to introduce an exception to this general rule by providing:

> "The provisions of this Agreement shall not be deemed to affect those of the Agreement of the Organisation of Petroleum Exporting Countries (OPEC), and especially in so far as the rights and obligations of OPEC Members in respect of that Organisation are concerned. The parties to this Agreement shall be bound by the ratified resolutions of OPEC, and shall abide by them even if they are not members of OPEC."

Before discussing the above provision, it would help to clarify the overlap in membership that exists between these two organisations: The Organisation of Arab Petroleum Exporting Countries (OAPEC) was established in the wake of the 1967 Arab/

Israeli war by an International Agreement concluded between Libya, Saudi Arabia and Kuwait in Beirut on the 9th January 1968. The other Arab countries who became members of OAPEC joined at later dates. [37]

At present, four of the eleven members of OPEC (this used to be six out of eleven when Ecuador and Gabon were members of OPEC), namely Indonesia, Iran, Nigeria and Venezuela are not members of OAPEC, while three of the ten members of OAPEC, namely Bahrain, Egypt and Syria are not members of OPEC. Seven Arab countries, namely Algeria, Iraq, Kuwait, Libya, Qatar, Saudi Arabia and the UAE are members of both organisations.

The main reason why OAPEC was formed some seven years after OPEC was political. As a result of the conflict in the Middle East between the Arabs and the Jews over the disputed territory of Palestine, and fearful of the declared intent of fundamentalist Jews to establish an *Eretz Israel* extending from the Nile to the Euphrates, some of the Arab leaders wished to be able to use the threat of oil embargo against Israel and her allies in order to gain political leverage and prevent Israel's borders being extended any further. Since OPEC's membership was global rather than Middle Eastern, and since in any event, none of OPEC's aims and objectives were or are political, OAPEC was formed for this purpose.

It is only if the tense political situation which gave birth to OAPEC is understood, that the reason for its creation can be understood – and it is because of this that Article 3 of OAPEC's Constituent Agreement, quoted above, makes the sweeping assurances that it does. In effect, what Article 3 is saying, reading between the lines, is that OAPEC has not been established to compete with OPEC in any way, but rather to achieve objectives which different to those of OPEC. If the aims and functions of these two separate organisations are compared, then broadly speaking it can be asserted that while OPEC's sphere of activity is broadly economic, OAPEC's sphere of activity is broadly political. There is an overlap between these two spheres, and although it could never be said that they are mutually exclusive, it is submitted that it can be safely asserted that OPEC has in fact acted as a moderating influence on the activities of OAPEC.

In other words, it is evident that the Arabs had two major aims: on the one hand they wanted to achieve political goals through OAPEC by using their control over oil production and oil exports as a means of exerting political pressure. On the other hand, they still wanted to maintain the united front of OPEC *vis-a-vis* the major oil companies and to continue to achieve the economic goals for which OPEC had been originally established. Article 3 was therefore needed to allay the suspicions of the non-Arab members of OPEC and to assure them that, in setting up and joining OAPEC, it

was not the intention of the Arab members of OPEC either to abandon or weaken OPEC, or to create an Arab bloc within the Organisation. This clearly explains why Article 3 not only refers to the 'Agreement of OPEC', but also guarantees, as it were, its primacy over the OAPEC Agreement by stating firstly, that the rights and obligations of OPEC Members are not affected by the OAPEC Agreement, and secondly, that the parties to the OAPEC Agreement actually agree to be bound by the ratified resolutions of OPEC (even though some of them will have played no part at all in discussing, adopting and ratifying them).

Thus in a sense Article 3 of the OAPEC Agreement asserts that the Agreement of OPEC – as embodied in the OPEC Constituent Instrument and the OPEC Statute – and all subsequent OPEC decisions which have been ratified by OPEC's Members, are to be treated as a constitutional framework to govern OAPEC's economic activities – while at the same time leaving it free to pursue its political aims. Article 3 also makes it clear that as regards those countries which are members of both Organisations, the rights and obligations arising from OPEC membership have precedence.[38] It should be noted that since the OPEC Agreement does not actually prohibit political activity, there is in fact no real possibility of any significant conflict arising between the two sets of rights and duties arising out of both Agreements.

What is of particular interest in the context of the present study is the agreement of OAPEC members to be bound by fully ratified OPEC decisions:

1. As regards the OPEC members of OAPEC:

This secondary commitment confirms the conclusion reached in the preceding section – of the intention of the OPEC Member Countries to be legally bound by OPEC decisions.

2. As regards the non-OPEC members of OAPEC:

Since this is a unilateral commitment to be bound by OPEC decisions, it is no more than 'an agreement to agree' and could not be legally enforced by OPEC in the event of any non-OPEC member of OAPEC deciding not to be bound by any particular OPEC decision. Thus in practice, this commitment will only continue to be honoured if this is done voluntarily. Inherent in the 'agreement to agree' is the 'freedom to disagree'. As the preceding analysis has demonstrated, the wording of Article 3 was influenced by the political situation prevailing some thirty years ago. Events have moved on since then, and it would be safe to assert that in any event Article 3 no longer possesses the same significance now as it did when first drafted.

In practice, OAPEC members have usually been content to accept OPEC decisions, especially those relating to oil prices, royalty expenses and related fiscal matters – and those who are not also members of OPEC have probably been grateful to benefit from OPEC's endeavours, which in any case it is unlikely they could have bettered. It is significant, however, that non-OPEC members of OPEC have not been implementing OPEC decisions relating to the control of oil production – and it is also equally significant that OPEC has not attempted to make them do so.

Although it is clear that one of the effects of Article 3 of the OAPEC Constituent Agreement is that fully ratified OPEC decisions are technically legally binding on all OAPEC members, the question does arise as to what is the legal effect of OPEC recommendations, announcements and general declarations on non-OPEC members of OAPEC. Since there is no provision in either the OAPEC Constitution or the OPEC Statute obliging either OAPEC members or OPEC members to follow such recommendations, announcements and general declarations, it follows that they are not binding on anyone – and will only be accepted and followed by those who agree with them.

Finally, it need hardly be pointed out – except for the benefit of those who are unable to distinguish between the two Organisations and continually confuse one with the other – that OAPEC decisions are <u>not</u> binding on OPEC or on its members in their capacity as Members of OPEC. Thus, for example, the decisions of the OAPEC Member Oil Ministers to impose an oil embargo and production cutbacks on Israel and her allies following the outbreak of the October 1973 war did not affect the non-Arab members of OPEC and were not followed by them – although of course those members of OPEC who were also members of OAPEC did do so in their capacity as Members of OAPEC.[39]

In conclusion, therefore, the provisions of Article 3 of the OAPEC Constituent Agreement are unique in the world of international organisations, in that one of their effects is that OPEC decisions are legally binding on those OAPEC members who are not also members of OPEC. Moreover, the basis of the legal effect of these decisions on non-OPEC members of OAPEC derives not from the decisions themselves, but from the OAPEC Agreement.

5.4.7 <u>The Legal Effect of OPEC Decisions on International Law</u>

It is of interest to examine the question as to whether OPEC decisions constitute a source of international law. The judicial nature and legal status of resolutions adopted by international organisations is not entirely clear. Article 38 of the Statute of the Inter-

national Court of Justice does not refer directly to the resolutions or decisions of international institutions as constituting a source of International Law on which the Court should rely, although it does refer to 'international customs, as evidence of a general practice accepted as law'. [40]

It has been suggested that resolutions of international organisations do not constitute a new source of International Law, especially those adopted under the rule of unanimity, because they belong to the category of treaties. However, the contrary view, which considers the law-making resolutions of international organisations as a new source of International Law, is increasingly finding doctrinal support:

> "A state that votes for the adoption of a law-making resolution acts in a double capacity. It expresses its consent to the act (and here the analogy with a treaty is strong), but it also participates in the making of an act that is one of the organisation as a legal person, distinct from any individual member state ... The legal effects of a law-making resolution are no doubt binding rules of conduct for their addressees. But identity of effects should not be confused with identity of source." [41]

It is particularly relevant to note that this is a view which increasingly claims that the resolutions of international organisations can be drawn on as a new source in developing 'the emerging law of permanent sovereignty' over oil resources, [42] and in this context it is appropriate to quote the following statement of Mughraby:

> "It is submitted that the emerging law of permanent sovereignty over oil resources, as part of the international law of economic co-operation, will draw on three sources, in addition to the traditional sources of international law: the general principles of comparative law, equity, and resolutions of the United Nations and other prestigious international organisations reflecting world consensus." [43]

It should nevertheless be accepted that the more limited the scope of an organisation's functions, the fewer its rule-making resolutions, and the more limited its membership – the fewer, if any, will be its resolutions which have a universal bearing. In the light of this fact, and of the fact that OPEC is relatively limited both in the scope of its functions and in its membership, one can say that OPEC's rule-making resolutions are consequently few in number and restricted in their range of application.

Furthermore, there is no express provision in the OPEC Statute which provides that OPEC rule-making resolutions are to have international legal effect – although

Article 4 does contain some provisions that may be considered as constituting law-making rules for the Member Countries themselves:

> "If, as a result of the application of any decision of the Organization, sanctions are employed, directly or indirectly, by any interested company or companies against one or more Member Countries, no other Member shall accept any offer of a beneficial treatment, whether in the form of an increase in oil exports or in an improvement in prices, which may be made to it by such interested company or companies with the intention of discouraging the application of the decision of the Organization."

Moreover, although they may not be many, there are nevertheless a number of OPEC Resolutions which could be said to have contributed significantly to the development of the emerging law of permanent sovereignty over oil resources, especially those directly concerned with pricing and production quotas policies. [44] These are examined in greater detail in Part Six of this study. Suffice it to say at this point that OPEC decisions have considerable significance because in being implemented by the Member Countries they result in identical basic oil prices and uniform regulations and policies applicable to all oil company contracts with Member Countries. In this way, OPEC decisions have had a significant and positive influence on the agreements and policies of the major transnational oil companies, resulting on the whole in more favourable terms not only for the OPEC Member Countries but also, indirectly, for the other non-OPEC member oil-producing countries. [45]

In this sense, these general practices, extending well beyond OPEC membership, may be said to be creating 'international customs, as evidence of a general practice accepted as law', as quoted above from Article 38 of the Statute of the International Court of Justice. Although it is probably too early to assess at this point in time, it will be interesting to see what happens as the oilfields in the former southern USSR republics, stretching round in a flat crescent from Azerbaijan to Tadzikistan, are developed. It still remains to be seen whether or not these countries will either join OPEC, or follow the generally accepted practices established by OPEC during the course of the last forty years or so.

As regards other instances of OPEC practices derived from OPEC decisions having an effect and influencing International Law, it should of course be noted that OPEC has, as we have seen earlier, already exercised and demonstrated an important rule-making competence in establishing itself as an internationally recognised institution

with its own international legal personality, administered internally by its own rules and regulations.

Moreover, OPEC has, for example, had a great influence on the voting structure of the International Fund for Agricultural Development (IFAD). [46]

From the foregoing, one can conclude that, in spite of the absence of express provisions in the OPEC Statute to this effect, some of its resolutions have by way of the practices established by them re-defined the principles and norms which are now commonly applied in the international oil industry – and which are not the same as those which were being applied fifty years ago. These new principles and norms largely reflect the system of values recognised by the oil-exporting countries and indicate an order of principles assigned to different values. In creating different and more equitable customary practices in the oil industry – which have influenced not only the terms contained in legally binding contracts with oil companies, but also the nature and conduct of international relations between the OPEC Member Countries and other sovereign states – it is submitted that OPEC decisions have had a significant effect on International Law, especially in providing a dynamic source of law for the international oil industry. By constantly taking account of and adjusting itself to important changes in this field, a number of changes in the customary practices common in the oil industry have been effected and established as a direct result of OPEC decisions.

In this context, it would be useful now to consider briefly how well-equipped OPEC itself is to adapt to change and how effective its decision-making process is in facilitating this:

5.5 OPEC's Capacity to Adapt to Change

In Schermers' words:

> "A constitution drafted to establish an international organisation will gradually prove to defective." [47]

No matter how comprehensive and effective any governing instrument is, as a result of changing situations and unforeseen events, it will eventually prove inadequate for its needs – and it may then become necessary to revise it in order to remove inherent defects and to accommodate new developments. The OPEC Statute is no exception. Indeed, because of the dynamic nature of the areas in which OPEC operates, it has always been a necessary part of OPEC's decision-making strategy to be able to amend the OPEC Statute to ensure that its provisions continue to reflect changes al-

ready put into practice. Thus the OPEC Statute provides OPEC with an express power for amending the text of its Statute. Article 40 of the OPEC Statute provides that:

> "Amendments to this Statute may be proposed by any Member Country. Such proposed amendments shall be considered by the Board of Governors which, if it is so decides, shall recommend their adoption to the Conference."

Article 15(9) provides that one of the functions of the Conference is to: "approve any amendments to this Statute." Since the final decision on amendments is taken by the Conference, this means that the above Article must be applied subject to Article 11(C) which, as we have already seen, governs the adoption and entry into force of Conference decisions, [48] in cluding the requirement of "the unanimous agreement of all Full Members."

In all OPEC has amended its Statute nineteen times between November 1961 and July 1998. All these amendments have been concerned with improving the structure, powers and duties of its organs, including the addition of new powers and institutional procedures. The most recent amendment was that adopted at the 103rd meeting of the Conference, held in Jakarta, Indonesia from the 26th November to the 1st December 1997, whereby, upon the recommendation of the Board of Governors, Articles 15, 20, 26 and 28(E) of the OPEC Statute were amended. [49]

5.5.1 Amending the OPEC Statute

With reference to Articles 40, 15(9) and 11(C) quoted above, in order to amend the OPEC Statute, the procedure is as follows:

1. Initiation, Consideration and Recommendation:

As a general rule of treaty law, all parties to a multilateral treaty have to take part in the deliberations concerning the amendent of that treaty for any amendment thereto to be valid. [50] Any proposed amendment to the OPEC Statute must first be initiated by a Member Country and considered by the Board of Governors. [51] In this respect, it is interesting to note that, unlike the Director-General of the Special Fund who enjoys the right to initiate proposals for amendments to the OSF agreement, the OPEC Secretary General is not, at least within the literal meaning of the words of the relevant provisions, entitled to propose or initiate amendments to the OPEC Statute. Likewise, the Board of Governors is not granted such right either. In practice, this is somewhat impracticable, for both the Secretariat and the Board of Governors are responsible for the application of the Statute and consequently they are more aware of any apparent or

hidden deficiencies and lacunae than anybody else. However, the actual practice of OPEC has given a different interpretation to the relevant provisions – with the result that it is in fact the Board of Governors and the Secretary General who usually propose amendments. Thus eleven out of the nineteen amendments made so far were originally prepared by the Secretariat before being given to Member Countries to initiate them. Since all amendments to the OPEC Statute are required to be adopted by the Conference, there is no apparent reason to prevent OPEC from amending the OPEC Statute so as to expressly permit the Secretary General and the other main OPEC organs to initiate amendments to its Statute. This proposal is in fact in conformity with the practice of other international organisations. [52] Thus, for example the Assembly (General Congress) of the I.C.A.O. permits anybody belonging to the organisation, including its Council (i.e. its Board) and its Secretariat to propose amendments. [53]

2. <u>Adoption and Ratification:</u>

Any proposed amendment to the OPEC Statute first needs to be adopted by the Conference to become effective. The question then arises as to whether or not there is any other requirement for amendment decisions to become effective. The OPEC Statute does not specify any special requirements. It only requires Adoption by the Conference. This is in contrast to some other international organisations which require amendment decisions to be ratified or approved by member states before they come into force. In these organisations, the appropriate organs can only recommend amendments to the member states, while the final decision lies with the member states themselves. This is because these organisations recognise that some amendments may have the effect of altering quiet substantially the initial rights and obligations of its members and therefore they think it only right that member states should be able to directly approve such changes. [54]

Again, this is an argument which militates against the suggestion made earlier for a weighted voting system, since if such a voting system were introduced, this might mean that significant changes – with which not all OPEC Members were in full agreement – could nevertheless be made to the OPEC Statute.

With reference to the voting procedures examined earlier in Part Five, it goes without saying that since OPEC resolutions have to be adopted by all Full Members at a meeting of the Conference, and since they then subsequently require ratification by all the Member Countries within thirty days before becoming effective, OPEC amendment decisions clearly fall within the same category and are subject to the same possibility of double veto as discussed earlier. This means that no effective amendment can

be made to the OPEC Statute unless it has first been doubly approved by all the Full Members of OPEC.

In other words, since the ratification procedure required for amendments to the OPEC Statute is exactly the same ratification procedure as is required in the case of other OPEC decisions, it is not subject to the ratification procedures followed by the Member Countries when entering into other international treaties with other states which are not OPEC based. This observation is based on the fact that, in accordance with the procedure discussed earlier, some OPEC amendment decisions became effective once no notification of disapproval had been lodged with the Secretariat within the 30 days.

Of course if OPEC were to adopt the weighted voting system suggested earlier, then as in the case of OPEC voting procedures in general, the voting system regarding amendments to the OPEC Statute would have to be changed accordingly.

3. Variation:

Variation differs from Amendment in that as regards variation, the text is not changed even though a different practice has come to be followed, and is so well established that it is regarded as binding by all members. OPEC has no express agreement and no provision in its Statute which specifically provides for the OPEC Statute to be varied. However, in some cases, OPEC has utilised the variation technique to resolve certain difficulties. For example, in the past, OPEC Conferences have sometimes been held upon the request of the Board of Governors, and not by the Secretary General. This may on the face of it be categorised as a minor breach of the technical requirements of the OPEC Statute, or it can be regarded as a practical demonstration of a certain degree of flexibility which is rarely found in other international organisations like OPEC. [55]

5.5.2 Settling Disputes [56]

The term 'dispute' has been a subject of great controversy amongst international lawyers. However, it has generally been agreed that in international law, 'a dispute' refers to 'any claim', whether or not supported by an identical legal interest in the relevant subject matter, which operates to elicit a counter-claim. This view is supported by the findings of the International Court of Justice in the case of the Mavranmates Concession, [57] and in the cases involving South West Africa. [58] Disputes and interpretations have also been taken to mean the same thing. [59]

Since OPEC is an organisation which has had and continues to have, a profound effect on the oil industry of its Member States – of vital importance to their national

well-being – it is important to examine how the Organisation deals with disputes, since this is in fact part of its decision-making process. Bearing in mind the fact that the environment of the international oil industry with which OPEC is required to cope is extremely volatile, it must be appreciated that new and sudden developments in the oil industry may suddenly and fundamentally affect the economic, political and social circumstances of the OPEC Member States – thereby giving rise to views concerning individual national interests which might be radically different to those which may have been held at the time when a decision to participate in a common endeavour under certain specified conditions was originally made. When this type of unseen situation occurs, any disputes which may arise as a reslt are more likely to involve conflicts of interests than conflicts about legal rights.

Since OPEC is an international inter-governmental organisation, whose judicial status is similar to that of other subjects of international law, it would not be unreasonable to assume that the types of disputes arising in OPEC would normally be both of an international public law nature and of a private law nature. Undoubtedly, however, disputes of a private international law nature could and do arise, because OPEC often recruits nationals from areas outside that of its headquarters. The examination which follows here, however, will be confined to disputes of a public international law nature relating to disputes between Members of OPEC. In the present context, these principally involve allegations of non-compliance with obligations imposed by or under the OPEC Statute. [60]

1. Dispute Settlement Procedures:

In the case of settling disputes, like other IPAs, OPEC does not refer to an outside body, and an aggrieved party cannot appeal to any outside judicial body or tribunal. The OPEC Statute does not make express provision for the settlement of disputes. Accordingly the question has arisen, within OPEC, as to which organ of OPEC should possess the necessary powers to interpret and resolve disputes.

In seeking to answer the question, and in the absence of any express provision which might be of assistance, it has proved to be of little help to look outside OPEC at the constitutions and practices of other IPAs, since such studies reveal striking divergences of approach: Some constitutions make no express provisions for the settlement of disputes. Others appear to confer on the supreme policy-making body the power to consider and determine disputes relating to the interpretation and application of their constitutions. Other constitutions refer disputes to a specific judicial body. [61]

Although studies concerning the settlement of disputes were carried out by a number

of international jurists, no firm conclusions were reached and no action was taken. Recently in February 1996, the Legal Enforcement Section of the OPEC Secretariat was instructed by the General Secretary to draft New Unified Petroleum Laws and to prepare a feasibility study for the establishment of an OPEC High Court. As yet this plan has shown little sign of coming to fruition, but if such a court were to be established, along with clear guidelines concerning interpretation and adjudication, then disputes between Member Countries could be referred to the OPEC High Court for sympathetic resolution.

As matters now stand at present, it is possible to support the assertion that the Conference is in fact empowered to settle disputes arising either from or under the OPEC Statute, based on the following premises:

(1) The concept of implied powers may be reasonably applied in favour of the supreme (policy-making) organ of OPEC which is in charge of the drafting and implementation of the objectives of the Organisation and its proper operation – which, in this case, is the Conference.

(2) Article 16 of the OPEC Statute is an umbrella provision which stipulates:

> "All matters that are not expressly assigned to other organs of the Organization shall fall within the competence of the Conference."

Consequently, one may conclude that the Conference, either by default or by compelling inference, is empowered to settle disputes arising from or under the basic agreement, since 'all matters' may reasonably be construed to include those envisaged by the parties to the agreement – and it would be inconceivable that they had not envisaged the possibility that sometimes there would be disputes either among members, or between members and the Organisation, concerning the interpretation and application of the OPEC Statute.

Alternatively, on a strict construction of the relevant provisions of the OPEC Statute, it may also be argued that the Board of Governors, the executive body of OPEC, is also competent to consider and determine disputes arising from the interpretation and application of the basic agreement: Article 29(3) of the OPEC Statute obliges the Secretary General to: "prepare reports for submission to each Meeting of the Board of Governors concerning matters which call for consideration and decision." And Article 20(2) of the Statute obliges the Board of Governors to: "consider and decide upon any reports submitted by the Secretary General." It is submitted that the language of commitment in these provisions is sufficiently broad to allow the Secretary General to submit to the Board of Governors reports on disputes arising from or under the agree-

ment, and for the latter to consider and determine matters of substance referred to in such reports. This might well be politically acceptable for minor disputes, and in the last resort, any such disputes could be transmitted to the Conference for final consideration and determination, should it not be possible for the Board of Governors to resolve them satisfactorily.

2. Interpretation [62]

Obviously, interpretation, that is, ascertaining the proper meaning of a norm, is an indispensable stage in its implementation. Even if rules are well formulated, they will still need to be interpreted from time to time if they are to be uniformly understood by those to whom they apply, since those who have drafted the rules could not possibly have foreseen all the possible *de facto* situations to which the norms they had drafted would be applied. As regards norms with unclear wording (either because of the lack of a clear agreement between the parties, or due to the fault of the drafters), it is always virtually impossible to apply them without official interpretation. In the latter case, interpretation may generate both norm-making and norm-executing effects. [63] As a general overview, there are some international organisations, such as the IMF for example, which have explicit provisions on interpretation. [64] In contrast, the OPEC Statute has no express provisions regarding interpretation.

Three questions therefore arise, as to what may be interpreted by OPEC, and how, and by who. Obviously, the OPEC Constituent Instrument, the OPEC Statute, and OPEC's decisions and declarations, as well as its own normative acts, are most likely to need interpretation – and in so doing, it is submitted that OPEC may be guided by the general principles of interpretation as contained in Article 2(1)(a) and 3 of the Vienna Convention on the Law of Treaties. The relevant principles are:

(i) Recourse to the text of the constitution as a clear expression of the parties' intentions;

(ii) Intentions of the parties are a subjective element independent of the text which can be ascertained from all other relevant sources;

(iii) Institutional effectiveness - to give effect to the declared and apparent objects and purposes of the organisation.

Both the objective textual approach and the subjective establishing the intentions of the parties from all relevant sources approach are useful techniques of interpretation. Even more relevant, in the specific context of OPEC, is the approach of giving effect to the expressly stated and implied objectives and purposes of OPEC, since it

takes into account the dynamic nature of OPEC, and helps make it possible for OPEC to adapt to the rapid changes which the international oil industry is prone to undergo – even if this implies that OPEC is to some extent removed from its treaty basis. [65] This method of interpretation, which is concerned with fulfilling in an effective manner the purpose for which the institution was created, is not so much concerned with, for example, ascertaining the international legal status of OPEC, but is of practical use in furthering the objectives of OPEC. In this connection, its application means that OPEC may be able to implement measures not directly provided for by virtue of its status, if such measures would facilitate the achievement of its objectives.

Accepting that OPEC is an autonomous, self-regulating international organisation, then several questions need to be asked: Firstly, what is the scope of the interpretative functions devolving on the organs in OPEC charged with the power of interpretation and settlement of disputes? Secondly, in the absence of any express provision in the OPEC Statute to this effect, do interpretative determinations of such bodies definitively and conclusively dispose of issues of law which arise and create legally binding obligations for the parties concerned? Thirdly, what recourse is available to an aggrieved party, or to the Organisation itself, where a delinquent party declines to respect an interpretative determination of the organs concerned? Fourthly, where determinations are said in the relevant legal constitutive instruments to be legally binding, what recourse is there available to the Organisation or to an aggrieved party in a dispute concerning the interpretation or application of these basic instruments, where the other party alleges invalidity of the decision on the grounds of *ultra vires*, in the absence of appropriate machinery for review?

Even in highly developed municipal systems of law which boost centralised machinery for reviewing the actions of policy-making bodies and for invalidating or enforcing them, as the case may be, questions of nullity and validity often pose intractable problems. Such problems are even more acute in the international community, where no centralised system of courts exists, and where enforcement machinery is highly decentralised. [66]

The OPEC Statute does not specify the scope of powers available to determine disputes. It does not specify whether or not any power of interpretation applies to the interpretation and application of the OPEC Statute itself. Also, it is not clear whether OPEC can determine questions of facts or law alone, or facts and law. As regards the issue of the conclusiveness of interpretative determinations of competent organs, the OPEC Statute is also silent on the issue. Also, the OPEC Statute does not provide that interruptive decisions are legally binding on the parties to a dispute. [67] Furthermore, the

OPEC Statute does not contain any specific provision as to which organ or body of the Organisation should be endowed with the functions of interpretation and acting as a judicial body.

It is submitted that this lack of a clearly identifiable judicial body within OPEC, with precise powers of interpretation and adjudication, and whose decisions are final and binding, is a serious deficiency in the structure of OPEC today and, if it is not remedied, of the OPEC of tomorrow. It may well be that at its inception, it would have been rather grandiose and premature to be setting up an OPEC 'High Court' with powers of interpretation and adjudication, but now that OPEC has grown, both in international stature and in the extent of its influence, it is submitted that an OPEC High Court, or at least some quasi-judicial body, is entirely appropriate and indeed essential for the future well-being and efficient decision making capacity of the OPEC of the future. In instituting such a court or body, OPEC would not be the first international organisation to do so. [68]

Even if such functions were – by way of Resolution by the OPEC Conference – to be specifically attributed, along with guidelines, to one of the existing OPEC organs, such as the Board of Governors or the Secretariat, this would be a great improvement, and again not without precedent, whether such functions were granted to the Organisation's executive body, [69] or to a special subsidiary organ specifically set up for this purpose. [70]

In contrast, the OPEC Special Fund, unlike OPEC itself, endows its supreme and executive bodies with the functions of interpretation. Article 12 of the Agreement establishing the Fund provides that:

> "Any question of interpretation of the provisions of this Agreement, and any dispute between the members of the Fund or between an Executive National Agency and the Fund shall be settled by the Government board and failing this by the Ministerial Council."

Although the OPEC Statute does not contain any provisions as to whether members of OPEC or other entities may submit request to OPEC for the interpretation of the provisions of the Statute. The organisation has, however, been called upon to deal with such matters in the past, and its practice on the subject may help in clarifying the points raised above:

5.5.3 Requests for Interpretation by OPEC Members

In the last thirty-eight years, few requests have been submitted to OPEC by its Members for the interpretation of the OPEC Statute. It is neither possible nor neces-

sary for the purposes of this thesis, to consider all of these requests, but two of them will be examined briefly in order to establish the manner in which the function of interpretation has been exercised: [71]

1. Request for Interpretation submitted by the Government of Libya in 1995:

This request was submitted by the Government of Libya to the OPEC Board of Governors in July 1995. The request related to Articles 2 and 4 of the Statute. Article 2(A) refers to the principal aims of OPEC which include:

> "... the determination of the best means for safeguarding their interests, individually and collectively."

while Article 2(B) states:

> "Due regard shall be given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries: an efficient, economic and regular supply of petroleum to consuming nations ..."

and Article 4 provides:

> "If, as a result of the application of any decision of the Organization, sanctions are employed, directly or indirectly, by any interested company or companies against one or more Member Countries, no other Member shall accept any offer of a beneficial treatment, whether in the form of an increase in oil exports or in an improvement in prices, which may be made to it by such interested company or companies with the intention of discouraging the application of the decision of the Organization."

As a result of alleged Libyan involvement in the notorious Lockerbie air disaster, and because of a dispute concerning how the extent of Libyan territorial waters in the Gulf of Sirte was to be measured, both the UN and the US imposed use of air-space and economic sanctions against Libya. Accordingly the request of the Libyan government to the OPEC Board of Governors was framed in terms of firstly, seeking assistance from the OPEC Member countries to beat the US sanctions which were affecting the Libyan oil industry, and secondly requesting collective action by the OPEC Member Countries against the US by way of imposing an oil embargo so as to bring pressure to bear to have the US sanctions lifted.

Having considered the Libyan request in the context of the Articles of the OPEC

Statute on which the Libyans were relying, the Board of Governors issued a sympathetic statement in which they stated that OPEC was not a political body and could not become involved in political affairs, and declared that all the OPEC Member Countries hoped that Libya would be able to settle their disputes with the US as early as possible.

It is not the purpose of this thesis to explore the rights and wrongs of the dispute between Libya and the US, and in the present context, what is of particular interest for the purposes of this thesis is the manner in which the Libyan request was dealt with by OPEC, which reveals some interesting points. It is significant, for example, that the request was submitted to the Board of Governors, rather than to the Conference. The Government of Libya did not state that the request was being submitted in accordance with any particular Article of the OPEC Statute, nor did the Board of Governors refer to any particular Article as a basis for granting them *locus standi* to issue an official reply to the request on behalf of OPEC.

It might be argued that reliance was being placed on Article 40, which, as we have already seen, provides that any proposed amendments should initially be submitted to the Board of Governors. However it is clear that the Libyan government was proposing certain courses of collective action, not amendments. If anything, the Libyan request could have placed reliance on the catch-all Article 16, whereby: "All matters that are not expressly assigned to other organs of the Organization shall fall within the competence of the Conference," but if this had been the case, then clearly the request should have been directed to the Conference, not the Board of Governors.

This lack of clarity and the uncertainty it creates underline the suggestion made earlier that OPEC seriously needs to define which organ of OPEC - whether already existing or still to be created – should be endowed with interpretative and adjudicative functions, along with the necessary guidelines to make it possible to perform these functions efficently and effectively. Until this is done, the manner in which OPEC interprets its own legal instruments, and on what basis, will remain a mystery.

2. A Question of Interpretation concerning Nigeria, Algeria and Qatar

In 1993, the Governors of Algeria and Qatar submitted a complaint to OPEC that Nigeria was not complying with a particular Resolution of the Organisation whereby the production ceiling was to be restricted to a specific daily maximum amount of oil that could be exported. They also requested that the Board of Governors should recommend to the Conference that Nigeria be required to withdraw from membership of the Organisation 'in accordance with the provisions of the OPEC Statute'. However, no particular provisions were mentioned by either country in their complaint. In reply,

Nigeria asserted that the Board of Governors did not have the power to take the actions requested by the two countries.

The Board of Governors initially discussed the request at its ordinary meeting and asked the Governors of the three countries concerned to assist the Board in dealing with the matter. What provisions in the OPEC Statute, it was asked, empowered the Board to deal with this matter? The two representatives from Algeria and Qatar referred the Board to Article 20(1), which authorises the Board of Governors to: "direct the management of the affairs of the Organization and the implementation of the decisions of the Conference." The Nigerian Governor disputed that the wording of Article 20(1) was sufficiently precise or wide to grant the Board such sweeping powers of interpretation and adjudication. Accordingly the Board of Governors referred the matter to the Legal Department of the Secretariat, asking for a legal opinion as to whether or not the Board of Governors did have jurisdiction to consider the complaint and reach a binding decision on it. [72]

As far as the present writer could establish, no legal opinion was forthcoming from the Legal Department, no further action was taken, and the matter was never revived or reviewed again.

If we compare the handling of this request to that of the Libyan request discussed above, there are marked similarities: The request was initially referred to the Board of Governors – who did not refer the matter to the Conference. The only difference between the two is that whereas in the case of the Libyan request, other than making an unhelpful (for the Libyans that is) policy statement, nothing was done, while in the case of the Algerian and Qatari request, nothing was done, other than the making of a request for a legal opinion – which was never forthcoming. Thus it was never even established whether or not the Board of Governors had sufficient *locus standi* firstly, to consider the complaint, and secondly, to do something about it.

Of course there is always the possibility that something was decided or done behind the scenes – for example, American advisors made OPEC an offer it could not refuse as regards the Libyan request, or Nigeria agreed to comply with the OPEC Resolution as regards the complaint from Algeria and Qatar, but such possibilities remain in the realm of speculation and may well have no basis in fact. What does appear to be clear at present is that when there is a complaint or a request for interpretation, then in either case it goes to the Board of Governors – and goes no further!

This is hardly a satisfactory state of affairs, and reinforces the repeated suggestion that it is time that OPEC remedied the situation by establishing a judicial or quasi-judicial body, equipped with appropriate guidelines, to deal effectively on behalf of the

OPEC Members with matters involving interpretation, complaints, disputes and the enforcement of OPEC Statute provisions and Conference Resolutions. Although there has been a natural tendency to initially raise such matters with the Board of Governors, it is questionable whether they are the appropriate organ to deal with such matters – even if the OPEC Statute were to be amended so as to specifically grant them this *locus standi* and jurisdiction – and for the following reasons:

1. Although the Board of Governors are full-time salaried officers of OPEC, the behaviour of the Governors from Algeria, Qatar and Nigeria would appear to indicate that they each nevertheless owed particular allegiance to their own native country – and it is likely that this holds true for all the Governors, who are after all only human.

2. This might well mean that if endowed with powers of interpretation and adjudication, they might not be able to interpret and judge impartially.

3. In other words, there might well be a conflict of interest either between conflicting national (and maybe even personal) interests or between the interests of one or more OPEC Member Countries and the interests of OPEC itself – which as we have seen is an Organisation which has always endeavoured to confine its activities to the economic realm of setting reasonable oil prices and production levels, while avoiding becoming embroiled in the political realm, where the potential of utilising collective action – whether by oil embargo or otherwise – to achieve political ends is both enormous and potentially disastrous in terms of the forces that could be unleashed in response.

4. The functions of interpretation and adjudication require well-trained legal minds, accustomed to legal concepts and analysis, and with an awareness of the practical consequences which can result from theoretical decisions. The interpretation of the provisions of the OPEC Statute – and the ability to identify lacunae and recommend appropriate amendments – is an interpretation of an important legal document. And although the exercise of this type of function requires considerable legal expertise, yet the OPEC Governors are normally financial experts who may have little or no legal training. Thus, their competence to carry out these interpretative functions in a proper judicial manner must be open to doubt.

5. For example, although we know, in the second example given above, that the Board of Governors referred the matter to the Legal Department of the Secretariat, it is not clear either on what basis they did so, or whether or not their reference was framed in a meaningful way. Did it, for example, ask if the Board of Governors had the *locus standi* to consider the complaint in the first place, or did it ask what the Board's powers

were in dealing with the complaint if it did have *locus standi*, or did it simply ask the Legal Department how the complaint could best be handled and resolved? Or was it framed in such a way as to make little sense in the context of a request for a formal legal opinion?

Thus it is suggested not only that OPEC establishes a judicial or quasi-judicial body to deal with these matters, but also that any such body is administered by appropriately trained office holders equipped to deal with such matters in an impartial manner. The above analysis reveals that at present OPEC entrusts, more by by default than by design, the power to render opinions or reach decisions on contested questions of interpretation or application of its Statute to the Board of Governors – who are in fact not suitably qualified to perform such functions. Even with the best will in the world, this system of internal dispute settlement has three major drawbacks: Firstly, there is no provision for appellate recourse to any outside or independent body or tribunal, and so any aggrieved party must accept the decision reached by the organ. Secondly, there is open licence for aggrieved or interested parties to act as arbitrators in their own cause, which gives rise to an inherent conflict of interest and lack of impartiality. And thirdly, in some cases, the organ is expected to reach a decision by a unanimous vote including those of interested parties.

On the whole, therefore, OPEC has not yet adopted effective procedures for handling disputes and complaints. A number of reasons can be advanced by way of explanation for this situation:

1. In the beginning, the Founder Members of OPEC did not contemplate that there would be many disputes requiring sophisticated legal arguments and elaborate procedures. An important condition of membership is 'similar interest' among members, which means that on the whole OPEC Members are homogenous, with identical interests. Furthermore, the absence of consumers means that there is virtually only one interest group. OPEC therefore avoids the usual producer-consumer conflicts.

2. The absence of quantitative control mechanisms, namely production and export quotas, means that the chief potential source of conflict among producers has been eliminated. However, as regards the OPEC Member Countries, this argument has lost its validity in the course of the evolution and development of the OPEC pricing, production and other petroleum policies which are examined in detail in Part Six. The reality of the situation now is that OPEC operates a form of production control which gives rise to alot of disputes – as we have just seen, for example, in the case of the complaint made by Algeria and Qatar about Nigeria – which in turn require effective

interpretative mechanisms, especially as regards establishing appropriate criteria for both production quota definition and production quota allocation.

3. Elaborate judicial procedures and criteria have not been developed mainly for political reasons. It would be a source of political embarrassment if members of OPEC were seen to be quarrelling openly among themselves. It would weaken their negotiating position *vis-a-vis* the oil companies and oil consumers if they came to be perceived as producers incapable of resolving or administering their own affairs.

4. The Founders of OPEC anticipated that whatever disputes did arise must be resolved within the political framework of OPEC – hence the importance and centrality of the Conference of Ministers. Thus in fact OPEC exhibits a common characteristic found in most international economic organisations, namely the absence of formal procedures for judicial settlement of disputes, including arbitration, and the reliance upon the political process of 'organised persuasion'. [73]

In the words of one authority:

> "There is every reason to believe that a considerable part of the disputes arising within IEO's is prevented or resolved by virtue of direct negotiations and consultations among the disputants. With regard to the disputes that fail to be resolved by pre-administrative and pre-adjudicative means, the general trend within most IEO's is to refer such disputes to the supreme and executive organs of IEO's, which are often assisted by subsidiary specialised examining bodies. Most IEO's consider this choice of dispute-resolving bodies as the most suitable and efficient for the disputant parties and the IEO within which the dispute arises ... Arbitral and judicial means of disputes settlement, although provided for in the constituent instruments of most IEO's, remain a potential rather than a practical tool, to which the disputant parties resort only in rare cases." [74]

Even if this tendency is true of OPEC, it is nevertheless submitted that OPEC still needs to have effective interpretative and judicial mechanisms in place, with their own guidelines as regards both procedural and substantive matters, and manned by appropriately trained personnel. Even if these were resorted to 'only in rare cases', at least in such cases the outcome would be certain and positive. This in turn might lead to these arbitral and judicial means of disputes settlement being used more regularly and confidently. It may well be that at present, Member Countries who have a valid question or complaint do not bother to refer it to OPEC because they perceive that they will not be dealt with effectively.

If OPEC is going to survive for another forty years, and as the discovery and development of new oil-fields in other parts of the world signals the possibility of New Members and new situations for OPEC to deal with, it is clear that the Organisation cannot remain in the past, but must keep up with the future. If it cannot provide an effective and streamlined service to both oil-producers and oil-consumers, there is always the possibility of a new bloc of oil-producers forming, with a new organisation, with a more comprehensive constituent instrument – a neo-OPEC – which would then render the present OPEC probably redundant and possibly extinct.

If OPEC is to survive, it is submitted that there are two possible dimensions of future development in this context:

Firstly, OPEC could follow the example of OAPEC, which has its own judicial tribunal (established by a special Protocol which became effective on the 20th April 1980), with its own advisory and dispute settlement jurisdiction, procedures and guidelines. [75] These have already been utilised successfully, for instance, to give but one example, when a dispute between Iraq and Syria concerning the terms under which oil from Iraq could pass through Syrian territory via pipeline was settled by the OAPEC judicial tribunal in 1995.

Secondly, and more ambitiously, if OPEC were to pursue its proposed feasibility study into drafting new Petroleum Laws and establishing an OPEC High Court – as already mentioned in Section 5.5.2 above – and if OPEC were to bring such a project out of the realms of the potential into the actual everyday world, and if this was done well, and if the judges who were appointed were competent, and if the criteria they were to apply were well-formulated and equitqble, then there is every possibility that such a court could become the internationally recognised court for dealing with all disputes in the oil industry - whether or not they involved OPEC members. If this transpired, then clearly in time the decisions of such a court would create valuable precedents which in turn would become a valuable source of customary international law.

The second of these two possible dimensions for future growth, may seem ambitious, and may seem dependent on too many 'ifs', but the first step has already been taken: as has already been noted, the Legal Enforcement Section of the OPEC Secretariat has been instructed by the General Secretary (in February 1996) to draft New Unified Petroleum Laws and to prepare a feasibility study for the establishment of an OPEC High Court. The second step now needs to be taken: the implementation of that instruction. As Samuel Johnson observed: "Example is always more efficacious than precept."

The matter of translating proposal into action is important. It is part and parcel of any decision-making process. If a decision is made and not implemented, then it is mostly a waste of time. With a large international organisation like OPEC, there are three main requirements for effective implementation to take place: there must be efficient implementation mechanisms; these must be manned by efficient personnel; and there must be a sufficient Budget to finance the entire process of implementation. This last requirement leads naturally into the next section, which is concerned with the finances of OPEC:

5.6 The Finances of OPEC

5.6.1 The OPEC Budget

As in the case of other public international organisations, the OPEC budgetary process has to go through stages of preparation, approval, execution and control.

As regards preparation, although Article 20(4) of the OPEC Statute states that the Board of Governors shall "draw up the Budget of the Organization", in reality, and acting on the initial proposals and actual groundwork done by the Departments of the Secretariat, it is the Secretary General who prepares the preliminary draft of the Budget and submits it to the Board of Governors. This is because it is one of the Secretary General's functions, under Article 29(3) of the Statute, to "prepare reports for submission to each Meeting of the Board of Governors concerning matters which call for consideration and decision," and budgetary matters are no doubt among these matters. The task of the Board of Governors therefore is to examine, finalise and approve the draft Budget and then submit it to the Conference for approval.

In accordance with Article 15(6), the final approval of the Budget is a matter for OPEC's policy-making organ, namely the Conference, and as with all OPEC decisions, it must be by a unanimous vote. This approval is traditionally forthcoming at the November/December meeting of the Conference in the year preceding the implementation of the Budget. (In accordance with Article 38(A) of the Statute, OPEC's financial year is from the 1st January to the 31st December.) The most recent Budget to have been approved by the OPEC Conference was approved on the 1st December 1997, by Resolution No. 103.361. The Budget for the year 1998, totalled Austrian Schillings 209,271,070.

Execution and Control of the OPEC Budget will now be considered:

1. The Expenditure of OPEC:

OPEC expenditure, as with any other large organisation can be classified as either

'administrative' or 'operational':

Administrative costs are the expenses incurred in running and managing OPEC, and include all the usual overheads such as staff salaries, costs of Conferences, services, buildings, equipment, stationery and insurance.

Operational costs, on the other hand, are the direct costs which result from the implementation of OPEC's policies and agreed measures, including all activities and projects undertaken in furtherance of the objectives of OPEC.

For expenses relating to Conferences and meetings, the general practice is that OPEC is responsible if the meeting is held at the Headquarters of OPEC or in a non-OPEC member country's territory. However if a Conference is held in an OPEC Member's country, then the government of that country is responsible for the expenses. Perhaps this is the reason why since 1981, no Conference has been hosted by a Member Country!

OPEC is not responsible for meeting the expenses of the Member Countries' delegations attending OPEC meetings. Such expenses are met by the Member Countries' respective governments. Thus Article 39(A) provides that: "Each Member Country shall bear all expenses incurred in sending delegations or representatives to Conferences, Consultative Meetings and Working Parties." In contrast, in the case of the Governors who attend the meetings of the Board of Governors, OPEC bears the cost of their travelling expenses. Thus Article 39(B) provides that: "The Organization shall bear the travelling expenses and remuneration of the Governors who attend the meetings of the Board of Governors."

As we shall see in greater detail in Part Six, as regards the main operational costs concerned with technical research and information gathering, no special fund is allocated. Nor is any special fund allocated for the purpose of implementing specific programmes and studies. Such programmes and studies are budgeted for from the general fund. It is submitted that OPEC needs to allocate special funds for its information studies, research and other programmes, since without sufficient financial backing, nothing is done. Resolutions are made at Conferences, but because of a lack of adequate targeted funding, they are not implemented.

Furthermore, OPEC's Budget also does not provide for costs relating to market intervention to stabilise or enhance oil prices. Indeed there is no evidence that OPEC has sufficient resources to be able to intervene actively in the oil markets, apart from 3 million dollars which were allocated to the Ministerial Monitoring Committee and Sub-Committee in order to carry out their monitoring functions in supervising Member Countries' adherence to production quotas.

Thus there is at present a significant gap between the stated objectives of OPEC and the actual means available for achieving them. This is partly due to the absence of collective funds, apart from the one just mentioned. In practice, collective decisions are generally adopted in the form of Resolutions or Recommendations to OPEC Members, who are then invited to utilise their own resources and decide on the extent of their involvement in the implementation of such Resolutions. This means that although the adoption of Resolutions is unified, their implementation is not. This is, in the present writer's submission, the most important organisational or institutional flaw in OPEC and it is largely responsible for the general ineffectiveness of OPEC, a phenomenon which is fully explored and demonstrated in Part Six.

2. The Income of OPEC:

All of OPEC's income is derived from its Members' annual contributions. OPEC does not have any other sources of income apart from the annual contributions of each Member. In the light of the observation made in the preceding paragraph, it is suggested that OPEC should adopt a policy which enables Members to contribute into a special fund for special purposes such as, for example, financing 'programmes and studies'. Such contributions could start as voluntary payments and then be made obligatory at a later stage, or perhaps a combination of obligatory and voluntary elements. It is surprising that while OPEC has established the OPEC Special Fund for financing and helping other Third World countries (considered in Section 3.2.3 above), it does not have any special fund to finance its own activities and programmes. The lack of will among Members is probably the reason behind this, since it is not the lack of financial means in the Member countries. It is interesting to note that other IPAs – which in fact were established after OPEC and as a result of OPEC's influence – have provisions in their constitutions which provide for such funds. Thus Article 21(A)(c) of GEPLACEA, for example, provides that members have to contribute into a special fund for the purpose of financing the organisation's 'programmes and studies'.

If OPEC were to follow this example it would be transformed into a much more dynamic and effective organisation. Additionally, OPEC could include a new provision in its Statute granting the Conference the poer to approve, and the Board of Governors or the Secretary General the power to prepare reports on behalf of OPEC, for the purposes of directing financial and other forms of assistance in support of specific petroleum studies and projects. By adopting this approach, OPEC could benefit from the at present unused funds available both in the OPEC Member Countries and from international organisations, such as the financial assistance provided by the UN and its specialised agencies, particularly the United Nations Development Programme.

5.6.2 OPEC Members' Subscriptions

At present, OPEC follows the practice of collecting equal subscriptions from all its Members, no matter how relatively poor or wealthy they are, and no matter how great or small their volume of oil production. The advantage of this system is that it is simple to assess and to administer. It also conforms with the 'one country, one vote' voting procedure used by OPEC in adopting its decisions, which has already been explained earlier in Part Five. It is equitable in that it matches Members' equal rights with equal obligations – although clearly when viewed from the perspective of ability to pay, some Members find this easier than others. However, on the strength of this argument, it is fair that the annual contributions of Associate Members of OPEC (considered in Section 3.3.2 above) are less than those of Full Members, because Associate Members do not have the right to vote. However because Associate Members are entitled to attend all Conferences and to benefit from all the facilities of the Secretariat, it is understandable why they have to make some financial contribution.

If the suggestion made earlier, that OPEC should adopt a weighted voting system, is adopted then clearly different arrangements as regards annual contributions would have to be made, with the larger oil producers paying larger contributions and enjoying a corresponding greater voting power. Although this would be more complicated to assess and administer, it would be more equitable. Furthermore, with reference to the suggestion made above as regards the necessity of OPEC having its own fund to finance the implementation of its own specific programmes and projects, clearly this would also benefit from a weighted system of assessment, which would mean that payments were related to means rather than to rights and obligations.

Thus, for the reasons already given, it is submitted that it would be extremely advisable for OPEC to adopt in conjunction with a weighted voting system a weighted subscription system. Such a system is already used in other organisations, particularly in some IPAs such as IACO, CPA, UPEB, GEPLACEA, IBA, ANRPC and PC, so it has already been established in practice that such a system works. These organisations follow a system of assessing members' financial contribution based wholly or partly on predetermined criteria in the form of exports, [76] or production, [77] or both, [78] or a mixture of equal basis contributions and weighted contributions. [79]

It is submitted that the weighted contributions system would be suitable for OPEC, because there already exist clearly definable assessment criteria in the form of oil production and export levels – and because OPEC now adopts a production control system which involves the allocation of specific quotas for each and every Member Country, which depend on their individual circumstances and situation, and which are agreed

upon by the Organisation. Thus, in addition perhaps to a basic minimum contribution payable by all Members (including Associate Members), assessment of weighted contributions could be tied in directly to the production and export quotas already allocated for each country. Furthermore, this system would also be relatively easy to administer by virtue of the fact that the number of OPEC Members is limited and unlikely to increase significantly in the future.

One observation which can be made in this context is that up to now OPEC has tended to base its financial contributions requirements and voting procedures on the principle of the sovereign equality of States: it is on this basis that OPEC Members are at present granted the same voting rights and share equal financial liability. It could be said that in adopting this approach, this reflects a certain rigidity which has rubbed off as a result of OPEC's stance in interpreting the meaning of the OPEC Member Countries' right to exercise complete political sovereignty over their oil resources. It is submitted that there is an element of confusion here: Clearly each Member Country has the right to exercise complete sovereignty over its own particular oil resources. As we have seen in Parts One and Two, it was this stance which was taken in order to bring the exploitation of these oil resources by foreign companies to an end. However, although the OPEC Member Countries are equally entitled to adopt this stance, this does not necessarily mean that they are equally able to shoulder the financial responsibilities that come with joining together by means of an international organisation, nor does it necessarily mean that they should have an equal say in the running of that organisation, OPEC.

Although some OPEC Members appear to believe that to exercise their right of sovereignty over their oil resources effectively, the principle of sovereign equality of Member Countries must be observed and respected within OPEC, it is submitted that this does not accord with the realities of everyday life, whereby those who have more and pay more usually shoulder more responsibilities and have greater influence than those who have less and pay less. It is submitted that the adoption of a weighted contributions system, combined with a weighted voting system, would achieve a more equitable balance within OPEC and make it a far more dynamic and effective organisation.

5.6.3 Methods of Payment and Sanctions for Non-Contribution

OPEC's Statute does not specify the manner of payment of contributions. However, in practice, OPEC Resolutions related to the Budget show that OPEC requires payment of Members' contributions in the local currency of the host country, Austria. Once the Budget has been prepared and the next year's contribution for individual

Members decided, Members are immediately placed under an obligation to pay their contribution. This is because decisions relating to the Budget and Members' financial contributions are binding on all Members whether or not they voted for the decision in question. This approach is functional and necessary, since without subscriptions the Secretariat and the Board of Governors could not function.

Perhaps a little surprisingly, the OPEC Statute does not specify any sanctions for non-payment of contributions within a specific time. However, in practice, OPEC members have never failed to pay their subscriptions. Recently, at the end of 1995, Gabon did not pay its subscription and its membership was suspended in 1996. However up to now it has not publicly been made clear whether the suspension was related to non-payment, or if it was due to Gabon's intention to withdraw from OPEC, or if Gabon did not pay the subscription because it had already given notice of its intention to suspend its membership a full year earlier in accordance with Article 8(A) of the OPEC Statute. As we have already seen in Section 3.3.5, the only reference in the OPEC Statute to non-payment of financial obligations appears in Article 8(A) which requires a Member Country who wishes to withdraw its membership from OPEC to first fulfil all financial obligations arising out of its membership.

Although, therefore, the non-payment of contributions by OPEC Member Countries has never up to now been a problem, it is interesting to note in passing that the prescription of sanctions for non-payment of financial contributions has been taken as evidence by Professor Bowett that the payment of financial contributions is regarded as a legal obligation, and that until it is paid the defaulting member is not released from its obligation. [80] It could also be noted that if the weighted contributions system recommended above were to be adopted, then presumably those Members who are most likely to default now because of inability to pay, would be less likely to default then, because the size of their contribution would have been reduced.

5.7 Concluding Remarks

It should be clear from the foregoing examination of the decision-making processes of OPEC that there is room for improvement. At present decisions relating to the external operations of OPEC are no more than recommendations – even though they are called either 'resolutions' or 'decisions') to Members without having any legal obligation to implement them attached to them. This is one of the major factors which has contributed towards the lack of, or at any rate limited, success of OPEC in initiating and pursuing the measures necessary to significantly influence the oil industry, especially as regards oil prices and unified petroleum policies for Member Countries.

As regards the operations and activities of OPEC, there is a very real gap between the Organisation's stated objectives and proposed measures on one hand, and the actual means necessary to pursue and implement them on the other. The failure to ensure that OPEC is provided with adequate funds to finance the implementation of its general operations and specific activities has resulted in a marked inertia. Sufficient funds have been made available to enable OPEC to concern itself with its own internal operations and administration, but little more. This has left it largely up to individual Members to decide on a voluntary basis to what extent they will comply with decisions and resolutions adopted at meetings of the OPEC Conference. This has in turn resulted either at worst in a complete lack of implementation, or in a haphazard implementation, or at best in an unco-ordinated implementation of what are, after all, key OPEC decisions and policies. It also means that all the preliminary efforts which have been directed towards the preparation and formulation of these decisions and policies, have not been carried forward into the next phase of implementation, meaning that often they have been largely wasted.

It is with these features very much in mind that the next Part, Part Six is devoted to a review of OPEC's external operations and activities, including pricing, production, conservation, information and other related matters – in order that firstly, it is possible to evaluate how effective and successful OPEC has been up to now in realising the purposes and objectives for which it was created; and secondly, so that it is possible to identify what improvements could realistically be made in order to increase OPEC's effectiveness and success in the future; and thirdly, so that their legal significance can be evaluated.

Part 6
OPEC's Petroleum Policy: An Examination of OPEC's Policies, Operations and Activities

6.1 General Introduction

Policy and means are interrelated terms which it is not possible to divorce from each other. Understanding or defining one is totally dependent on understanding and defining the other. [1] OPEC's operations are the means to achieve its policy. To define or determine the latter one must examine the former. That is why we shall examine both together. It is true to say that it is easier to talk about petroleum policy than to say what it actually is. This may explain why OPEC, apart from its OPEC Declaratory Petroleum Policy in 1968, has never adopted a comprehensive and detailed statement of petroleum policy. However the lack of such statements or declarations does not mean that there is no policy. In addition to OPEC's activities, there are a number of decisions, resolutions, recommendations, and declarations which can be regarded and examined as sources for ascertaining the content and scope of OPEC's petroleum policy.

6.2 Sources of OPEC Petroleum Policy

The primary source of OPEC Petroleum Policy is its Statute, particularly Article 2, which presents the general framework for OPEC's policies and activities:

A. The principal aim of the Organization shall be the 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.

B. The 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.

C. Due regard shall be given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries: 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.

There is no doubt that Article 2 has been the platform for all policies and activities adopted by the Organisation. OPEC's petroleum policies derive their legality and inspiration from the OPEC Statute and accordingly Article 2 not only provides the constitutional validity for OPEC Petroleum Policy, but also defines its key elements which are:

(1) the co-ordination and unification of petroleum policies of Member Countries;

(2) safeguarding Member Countries' interests individually and collectively;

(3) the stabilisation of oil prices;

(4) securing a steady income for oil-producing countries;

(5) securing an efficient, economic and regular supply of petroleum for oil-consuming countries; and

(6) ensuring a fair return for those investing in the petroleum industry.

These elements represent the functional limitations which restrict the law-making power of OPEC in relation to its petroleum policy and activities. They are drafted in general terms because they are meant to present the general framework for OPEC's future policies. More detailed and specific elements are found in other secondary sources.

Other major sources of OPEC's Petroleum Policy can be found in the OPEC Declaratory Statement which was adopted in 1968, [3] and which contains the main guiding principles which the OPEC Member Countries were to follow in their relationship with the major oil companies, particulalrly the principles to be included in Member Countries' hydrocarbon laws. Understandably, these principles were drafted in general terms, with the minimum common denominator in mind, and with the intention of accommodating and encompassing the wide differences and particular circumstances of each Member Country government, in order to obtain a consensus. As we have already seen in Part Two, the Declaratory Statement emphasised that Member Country governments should: "... endeavour to explore and develop their hydrocarbon resources directly;" [4] "... acquire reasonable participation in the ownership of the concession-holding companies;" [5] "... participate in choosing the acreage covered by existing contracts to be relinquished;" [6]; and "... base the assessment of the oil companies' income, taxes and any payments to the State on a posted or tax reference price for those hydrocarbons produced under contract." [7] The Declaratory Statement further emphasised:

> "... the inalienable rights of all countries to exercise permanent sovereignty over their natural resources in the interests of their national development, the exploitation of which natural resources should be aimed at securing the greatest possible benefit for Member Countries." [8]

It pointed out that this aim:

> "... could better be achieved if Member Countries were in a position to undertake themselves directly, the exploitation of these resources so that they would be able to exercise their freedom of choice to utilise them under the most favourable conditions." [9]

In short the Declaratory Statement was more specific than the OPEC Statute, and more oriented towards the actual implementation of OPEC's objectives. It called for increased participation by the Member Countries in their own oil production, progressive relinquishment of the control exercised by the major oil companies, an increase in income derived from and direct development of oil resources. It cited the Member Countries' inalienable right to exercise permanent political sovereignty over their territories and the valuable natural resources situated in them as the legal basis for these demands.

A third and important source of OPEC policy can be found in the Solemn Declaration [10] which was adopted in Algiers in March 1975 by the Sovereigns and Heads of State of the OPEC Member Countries (see Appendix IV). This Declaration, which has already been considered in Part Two, was and is of considerable importance, for it not only outlines, *inter alia*, the policy of the OPEC Member Countries towards the emerging New International Economic Order, but also presents a new objective for OPEC – that of providing development assistance. The Solemn Declaration reiterated the commitment of the OPEC Member Countries to the establishment of the New International Economic Order and declared that they were: "... prepared to contribute with their efforts to the objectives of world economic development and stability," [11] as stated in the Declaration and the Programme of Action for the establishment of the New International Economic Order.

This third source, like the primary source of OPEC Petroleum Policy, is again framed in general terms and provides a general framework on which OPEC's Petroleum Policy is based, but this time the emphasis is different: The Solemn Declaration is not directed inwards to its own Members so much as it is directed outwards to the world in general and the Third World in particular. This change in emphasis was partly a natural consequence of developments taking place in the world at the time this Declaration was made – when the features of the new global economy were becoming more apparent, and also it was one of the natural consequences of OPEC's initial success which had resulted from its early collective actions and activities – and as a result of which it was in a stronger position to extend assistance beyond the immediate scope of its Member Countries.

As we have already seen in Chapter 2.3, yet another source of OPEC policy can be found embedded in the various Resolutions which the Organisation has adopted from time to time. In addition to these, there are also the unilateral actions taken independently by Member Countries to which the Organisation has subsequently given its support – thereby indirectly indicating one aspect or another of its approved Petroleum Policy. An obvious example is the nationalisation of the oil industry in Libya, Kuwait, Iraq and Venezuela, which was undertaken independently by each of these individual members, and which the Organisation fully supported. Thus OPEC's approval of such actions therefore constitutes a source of OPEC Petroleum Policy.

Finally, from time to time OPEC has attempted to have unified petroleum laws drafted, [12] culminating as we have seen in Chapter 5.5, with a relatively recent proposal in February 1996 to have one set of Unified Petroleum Laws and an OPEC High Court. Up to now these earlier attempts at what is after all a complex matter have taken the form of studies leading to recommendations and proposals – which although they have been printed and considered by the OPEC Member Countries themselves, have never been formally proposed or publicly published. Despite the fact that none of these earlier attempts at codification have ever been formally adopted by a Conference of OPEC, their importance and impact cannot be ignored and should not be underrated. In an interview with the chief OPEC Legal Adviser, Dr. Fernando Santos-Alvite, the present writer was informed that in spite of the fact that none of the unified petroleum law proposals have been formally adopted, in fact many of them have been informally adopted and implemented by Member Countries over the years. Thus many of the petroleum laws and oil arrangements in the Member Countries have been either directly or indirectly influenced by the provisions of these draft unified petroleum laws – and in this capacity they constitute not only an indirect source of OPEC Petroleum Policy, but in fact a very important one, which might well prove to be an important subject of research in the future.

The extent of this influence can only be ascertained by analysing the content and similarity of the OPEC Member Countries' respective petroleum laws. Clearly, the greater the influence, the more one would expect to see once disparate legal systems becoming more similar over the course of time. However at this stage, and within the scope of this present thesis, it is sufficient to appreciate that the eventual realisation of Unified Petroleum Laws has always been of great importance as regards OPEC Petroleum Policy, and for the following reasons:

1. Serious attempts to formulate unified petroleum laws commenced after and as a direct result of the OPEC Declaratory Statement of 1968, considered above.

2. Prolonged studies and discussions involving experts from all the Member Countries took place over a long period.

3. Each Member Countries' ideas and views were submitted to the Board of Governors for their consideration.

4. After about three years, the Board of Governors eventually manged to prepare a draft proposal – but this was never approved by the Conference.

5. Since then, attempts have been made from time to time to arrive at a formula with which all Members agree, and so this project has never been abandoned.

The nature of the above direct and indirect sources of OPEC Petroleum Policy shows clearly that OPEC policy is a dynamic process which has continually been developing and been developed throughought the life-span of the Organisation. Examination of these various sources raises questions such as: What are the main aims and objectives of OPEC Petroleum Policy? What are the main elements of OPEC policy? Why does OPEC not have one clear policy statement? Why do we have to look at different sources to acsertain what it is? What are the means agreed among Member Countries to achieve OPEC policy? How far has OPEC succeeded in unifying its Member Countries policies? How successful has OPEC been in implementing its Petroleum Policy? What are the reasons for OPEC's failures and success in this context? And finally, how have OPEC's policies and operations evolved – and where are they heading towards?

In order to answer these and other related questions, it is necessary to examine and assess OPEC's activities and operations – but before doing so, the following general observations should be noted:

6.3 OPEC's Main Operations

OPEC's operations can be categorised under three main heads:

1. Operations unilaterally undertaken by individual Member Countries, either with or without the support of OPEC, such as, for example, the nationalisation of the Libyan, Iraqi, Algerian and Iranian oil industries, discussed above.

2. Operations undertaken by a Member or Members of OPEC in furtherance of OPEC decisions, recommendations or policies, backed by practical support from OPEC such as participation, royalty expenditure and compensation.

3. Operations undertaken by OPEC in conjunction with certain international bodies, particularly UNCTAD, UN, OAPEC, and OLADO.

It is clear, even from a brief glance at the above three heads, that even though OPEC is an international inter-governmental organisation, not every OPEC measure is implemented by all of its Members acting together. Three reasons can be advanced for this situation:

Firstly, as we have seen in Part Five, virtually all decisions taken by OPEC are in effect not enforceable and effective unless voluntarily implemented by its Member Countries. Since OPEC does not at present have any effective means of enforcing its decisions or dealing with complaints made by Member Countries concerning non-implementation of decisions, each Member is free to decide whether or not to implement any decision in question.

Secondly, certain functions can only be performed by individual Member Countries at a national level. In other words, since, as we have seen in Part Four, OPEC is not a supra-national organisation, it cannot for very practical purposes pursue certain objectives which principally concern a Member Country's own political sovereignty, such as obtaining control or ownership over natural resources within that Member's territory – which can only be implemented at a national level. However, this is not to suggest that OPEC cannot co-ordinate national efforts in this regard. As we are about to see, although OPEC has never been in a position to dictate its Member Countries' policies, it has nevertheless played a major role in co-ordinating them.

Thirdly, as has already been pointed out in Chapters 5.6 and 5.7, OPEC does not have sufficient funds set aside to directly finance its operational activities – nor does it even have an appropriate mechanism to facilitate this. As a result OPEC has been unable to undertake any measures which require a substantial amount of funds – and usually it is the most important and far-reaching measures which fall into this category. Instead OPEC has up to now remained content to loosely co-ordinate the activities of its Members, while leaving it entirely up to individual Members to determine to what extent they wish to implement any relevant collective measures. Obviously the effect of this approach has been to weaken both the individual and the collective bargaining power of the OPEC Member Countries, especially since – as we have already seen in Parts One and Two – many of the operations and activities of oil producers in the oil industry do require the collective action of all Members, and even sometimes of non-members, if they are to prove successful.

Bearing these general observations in mind, it is now possible to scrutinise OPEC Petroleum Policy in more detail, commencing with its non-pricing policy:

6.4 OPEC's Non-Pricing Policy

6.4.1 The Control and Ownership of Oil Production by OPEC Member Countries

A necessary precondition for the successful implementation of OPEC's policies and operations is that Member Countries either own or control [13] the oil produced in their countries. Not only must the oil be produced in the Member Countries, but also the governments of the Member Countries must be in a position to control or regulate both its production and export. In cases where oil ownership is already in the hands of Member nationals, it is sufficient if the government regulates its export, but the need to ensure control or ownership is paramount in cases where foreign oil companies are involved. Conflicts over ownership and control between OPEC Member Country goverments and oil companies have been experienced by OPEC – as in the case of other IPAs, such as the Copper and Bauxite industries. [14]

The OPEC objective of securing national control or ownership of oil resources by its Member Countries merely takes the form of a general directive to its Member Countries, simply because OPEC itself is not legally in a position to recover ownership or gain control on their behalf. Effective decisions and judgements regarding such measures can only be taken and implemented at a national level. However, OPEC has always been in a position to give support and ensure that such policies are not undermined by outside forces, particularly the oil companies directly involved in any measures which OPEC's Member Countries may have decided upon in implementing this directive. As we have seen earlier, when discussing Article 4 of the OPEC Statute, in this connection OPEC Members have an obligation to support as far as possible any action on the part of Member Countries to secure maximum national ownership of, and effective control over, their own national oil resources. As a practical expression of support, OPEC members are obliged to ensure that the operations or projected operations by oil companies in the oil industry of one Member Country is not used to damage the interests of other Member Countries.

Conflicts over ownership and control of oil resources between OPEC Member Country governments and oil companies have been experienced from the early days of the establishment of OPEC. The question of who 'owns' the oil 'underground' was made clear by OPEC very soon after its establishment. From the start OPEC Members agreed that there was no difference of opinion concerning state ownership of petroleum resources. In April 1963 the OPEC Conference agreed that there was no need for those attending the Conference to discuss the ownership of oil underground because all

OPEC Members had agreed that: "All petroleum resources existing throughout the territory and the continental shelf of a Member Country are the exclusive and imprescriptible property of the State and subject to its sovereignty, jurisdiction and control."[15] However, the question which was more important as far as OPEC was concerned was the ownership of the oil produced.

The real challenge for oil companies as regards ownership rights was expressed in the Solemn Declaration made by the Sovereigns and Heads of State of the OPEC Member Countries in Algiers in 1975:

> "The Sovereigns and Heads of State reaffirm the solidarity which unites their countries in safeguarding the legitimate rights and the interest of their peoples, reasserting the sovereign and inalienable right of their countries to the ownership, exploitation and pricing of their natural resources and rejecting any idea or attempt that challenges those fundamental rights and, thereby, the sovereignty of their countries."[16]

In asserting these fundamental rights, OPEC played a major role in assisting its Member Countries to achieve ownership over oil resources, either directly – by facilitating joint participation, or indirectly – by supporting those Members who opted for nationalisation:

1. <u>Participation:</u>

National participation in the petroleum industry is not a new phenomenon. Its origins, both in the OPEC Member Countries and in other oil-producing countries of the world, pre-date the creation of OPEC. [17] However, as we have seen earlier, pre-OPEC participation provisions only envisaged the 'symbolic' participation of the oil-owning countries, while their foreign partners, the major oil companies, continued to exercise effective control in more than one sphere and at a more than one level. [18]

For this reason, control of the activities of foreign oil companies from within soon became one of the prime targets of OPEC. One of the key points of the OPEC Declaratory Statement of 1968 was that control of the oil companies from within, through the medium of concessionary ownership participation in these companies, had been formally adopted by the Organisation as a cardinal principle of its collective official policy for all of its Member Countries.

Indeed, it was on the basis of this particular resolution that the next firm step was taken by OPEC to make a living reality out of what had been no more than an unfulfilled hope on the part of its Member Countries. Thus the subject of state participation in the domestic operations of foreign oil companies continued to be on the agenda of

almost all of OPEC's Conferences for the next three years. During this period, a number of in-depth internal studies were undertaken by the various departments within OPEC, dealing solely with the issue of participation in all its various legal, economic and technical aspects – and the best means of implementing it.

The question was again raised at the XXIst conference held in Caracas, from the 9th-12th December 1970, with the result that a Ministerial Committee was established specifically for the purpose of studying the matter and reporting its recommendations to the next Conference. Seven months later, on the 13th July 1971, Resolution XXIV. 135 was adopted by the XXIVth Conference, held in Vienna. This took the matter of the implementation of the principle of participation a step further. In considering that changes in circumstances favoured the implementation of the OPEC Member Countries' 'right to participate in existing oil concessions', the Resolution called upon Member Countries to: "take immediate steps towards the effective implementation of the principle of participation in existing oil concessions." To this end, the Conference formed a Ministerial Committee in order to:

> "... draw up the bases for the implementation of effective participation by Member Countries in existing concessions, and to submit its recommendations to an Extraordinary Meeting of the Conference, to be convened on 22nd September 1971." [19]

On this date, the XXVth Conference adopted Resolution XXV. 139 which, in referring to the earlier Resolution XXIV. 135, invited all Member Countries to: "establish negotiations with the oil companies, either individually or in groups, with a view to achieving effective participation on the bases proposed by the Ministerial Committee (established by Resolution XXIV. 135)." It also resolved that: "the result of the negotiations shall be submitted to the Conference for co-ordination," and continued that: "In case such negotiations fail to achieve their purpose, the Conference shall determine a procedure with a view to enforcing and achieving the objectives of effective participation through concerted action."

At the next meeting, held in Vienna on the 8th December 1971, the XXVIth Conference discussed the progress being made in the implementation of Resolution XXV. 139. It decided that the Secretary General of OPEC should invite fully authorised representatives of the major oil companies to meet the Oil Ministers of the OPEC Member Countries in Geneva on the 10th January 1972, in order, among other things, to negotiate reasonable terms concerning participation – and that, if these negotiations failed, then an Extraordinary Meeting of the Conference should be called to decide on such

'concerted action' as would be considered necessary by the Conference to assist in the implementation of Resolution XXV. 139, (and also Resolution XXV. 140 which was concerned with the then current international developments).

As a result of this collective bargaining strategy utilised by OPEC, the oil companies made a written offer to Sheikh Yamani, the Saudi Oil Minister, agreeing to the introduction of a 20% participation by Saudi Arabia in their oil operations in Saudi territory. Similar letters offering the same terms were sent to Kuwait, Abu Dhabi, and Qatar. This initiative of the oil companies in fact pre-empted OPEC's plan to implement participation by means of national legislation. As a result of further OPEC pressure and negotiations, a participation agreement was concluded in October 1972 between Sheikh Yamani on behalf of Saudi Arabia and the oil companies operating in Saudi territory which provided for Saudi government participation in existing oil concession agreements. This agreement later came to be known as the General Agreement on Participation. [20] The General Agreement provided for 25% initial government participation with effect from the 1st January 1973, to remain at that level for five years, and then rising to 30% on the 1st January 1978, 35% on the 1st January 1979, 40% on the 1st January 1980, 45% on the 1st January 1981 and 51% on the 1st January 1982.

This General Agreement was subject to great criticism and viewed with distrust. In Kuwait, for example, public opinion was against it, and it was regarded as 'a joke full of monopolistic companies' tricks'. The Kuwaiti government was only prepared to negotiate a participation agreement based on more favourable terms. Eventually a Kuwaiti Participation Agreement was signed in 1974. In contrast to the General Agreement with Saudi Arabia which only guaranteed a 25% share of participation, Article 1 of the Kuwaiti Agreement provided that Kuwait's initial share in participation in existing oil concession agreements would be 60%.

The second advantage of this Agreement was that the Kuwaiti government agreed to pay 112 million US dollars as compensation to the oil companies, calculated on the basis of OPEC's suggested criterion (net book value), whereas the Saudi General Participation Agreement agreed that 150 million US dollars should be paid in compensation to the oil companies.

As regards management arrangements, the parties to the Kuwaiti Agreement agreed to establish a management committee consisting of four members – two members to be appointed by the Kuwaiti Government, and the other two by the two oil companies. The Kuwaiti government was to have a 60% share in general management, with decisions being taken by a 75% majority vote.

The achievement of the Kuwaiti government in negotiating such an apparently favourable Participation Agreement encouraged the Kuwaiti government to sign further similar participation agreements with oil companies, [21] and also encouraged other Gulf countries to follow suit. [22] These Participation Agreements uniformly secured a 60% management share for the oil-producing states, which was much higher than the original levels negotiated for the purposes of the Saudi General Participation Agreement – and, needless to say, the old participation arrangements which had been in existence before OPEC's Participation policy was declared. It should be noted that although participation did not entirely put an end to the oil concessionary regime, it was regarded as a necessary step towards full nationalisation, since it at least gave the national OPEC Member Country managers the opportunity to gain valuable management experience and expertise at a higher level than had previously been possible.

Participation did nevertheless have its disadvantages and setbacks: the oil companies gained large sums of money as compensation which eventually was used to develop alternative sources of energy; the oil-producer states became responsible for the expenses of exploration and production – discovering that exploitation of oil resources does have its costs and risks as well as its revenues; and in addition, all the participation arrangements granted foreign investors – whose capital input was still needed – perhaps more than their fair share of voting power and management in the oil producers' day-to-day operations. In effect, these participation agreements enabled the OPEC Member Countries to participate more in sharing in paying the costs of oil production than in sharing in the resulting profits.

Thus the marketing of the oil was still fully controlled by the oil companies, and all the Participation Agreements signed with the OPEC Member Countries make arrangements for 'buying back agreements'. [23] In short, 'participation' did not, as originally hoped, transfer control of the oil industry into the hands of the Member Countries. It remained firmly in the hands of the major oil companies, contrary to the aims of OPEC Petroleum Policy, and did not result in the long-expected transfer of wealth and technology to the producing (developing) countries. Accordingly nationalisation became an increasingly attractive option.

2. Nationalisation:

Nationalisation involves complicated and sophisticated issues of law. Its definition, application and legal aspects have been subject to great debates, arguments and counter-arguments. [24] Dealing with such issues in detail falls outside the scope of this study, and any analysis of nationalisation must be restricted to the immediate purposes of this thesis.

Nationalisation is not an objective in itself. It is a means to achieving objectives. It sometimes happens that international organisations confuse or combine the two together.[25] There is no mention in the OPEC Statute, or in any other of the sources of its Petroleum Policy, that the promotion of nationalisation itself is an objective of the Organisation. However, as we have seen, OPEC did support the actions of those of its Member Countries who opted for nationalisation, since it viewed nationalisation as a means to achieving the aim of the transfer of ownership of oil production in the territory of the Member Countries to their respective governments. During this process of transfer of ownership by means of nationalisation, each individual Member Country took the steps which its respective government considered appropriate – except for the Gulf States, who negotiated a General Agreement collectively. The organisation of OPEC was the real power behind these actions. As a result, by the end of 1975, by means either of participation or of partial or full nationalisation, all OPEC Member Copuntries had been able to secure control or ownership of not less than 50% of their total petroleum production.[26]

A brief historical summary of the main events in this process as regards some of the Member Countries, by way of example, now follows:

(1) <u>Algeria:</u>

On the 24th February 1971, Algeria nationalised 51% of all the activities of the French petroleum companies operating in Algerian territory: Sonatrach took over 51% of all shares, rights and interests in the oil concessions belonging to the French companies operating in Algeria and purchased at least 51% of the shares in other foreign oil companies. All natural gas fields and allied installations were nationalised completely. The Algerian State also took over all rights concerning gas by-products derived from oil-producing wells. All non-Algerian interests with respect to transportation of oil or gas pipelines were completely nationalised. Two months later, on the 12th April 1971, Algeria passed the Hydrocarbon Law. By virtue of the terms of this law the concession system was abolished and all mining titles, as well as the control of all petroleum reserves that might be discovered in the future in any part of the country, were transferred to Sonatrach.[27]

OPEC's involvement in all of this was advisory and supportive and in this context a special Resolution, XX. 114, was passed:

> "OPEC ... reaffirms its total solidarity with the Algerian government and declares itself ready to fully and actively support any appropriate measures taken by the Algerian government to safeguard its legitimate interests."[28]

(2) Libya:

By virtue of Article 1 of the Libya Nationalisation Act of 1970, [29] the properties, assets, portions, shares, activities and any other oil interests of British Petroleum, [30] Bunker Hunt, [31] Occidental, [32] Oasis [33] and the remaining majors operating in Libya, [34] were nationalised. [35] The law stated that the Libyan government should pay compensation to these companies on the basis of net book value. [36]

As in the case of Algeria, the Libyan Nationalisation Act received full support from OPEC and its Members. Similar decisions were also passed to ensure that Libya would achieve full transfer of ownership of its oil industry by means of nationalisation.

The efforts of several of the expropriated companies in seeking legal redress for the very substantial financial losses which they suffered as a result of this complete nationalisation led to litigation being commenced before municipal and international courts and tribunals. The judgements in these cases raised a considerable number of key issues, such as the right to nationalise, the criteria to be used in the calculation of compensation, the law applicable to oil agreements, the legal validity and status of oil agreements breached as a result of compulsory nationalisation, and so on.

In all the litigation which ensued, the question of the right of nationalisation was raised. It was debated between the government and the oil companies, and was one of the main issues which had to be determined by the arbitrators who were appointed to decide the three Libyan cases. In all three cases, the right of Libya to nationalise the oil companies was firmly asserted by Libya and accepted by all the arbitrators. However, the actual application of this right did not receive the same degree of acceptance from all of the learned arbitrators, who concluded on the whole that it had not been exercised correctly. [37]

(3) Venezuela:

In 1971, a very significant law was passed in Venezuela, namely, the Hydrocarbons Reversion Law, which provided that upon expiration of current oil concession agreements (most of the oil concessions granted in 1943 were due to expire during 1983), all industry assets would revert to the nation. [38]

The resolution of OPEC, in September 1971, that Member Countries should seek effective participation in existing oil concessions had repercussions in Venezuela. By the autumn of 1973, the idea of 'early reversion' before 1983 had been introduced and had started to gain credence, replacing the original aspiration to start nationalising the oil industry from 1983 onwards, as concession terms began to expire. The reversion process actually took two years to accomplish and was carried out by due processes of

law. A 36-man Presidential Commission studied all aspects of this reversion of the oil industry to the Venezuelan State, including the key issue of compensation. The present institutional structure of the Venezuelan oil industry owes its origin to the Report of this Presidential Commission. The Commission benefited from direct assistance from the OPEC Secretariat and its Nationalisation Law was drafted in consultation with the OPEC Secretariat's legal department.

The law by means of which the oil industry was nationalised was approved in August 1975, and came into effect on the 1st January 1976. The law introduced sweeping changes in the patterns of ownership in the Venezuelan Petroleum Industry – which up until that point had been totally controlled by foreign companies.[39] The law provided for the creation of a holding or parent company to co-ordinate, supervise, control and plan the activities of its subsidiaries, made up of the former 14 concessionaire companies and a research affiliate (INTEVEP), set up at the time of nationalisation. One interesting aspect of the whole nationalisation process was that it was not followed by an exodus of the industry's foreign technical and managerial personnel. In fact, the entire industry gave its firm support to the process of reversion, thereby enabling the management structure of the former concessionaire companies to be transferred intact to the subsidiaries that had taken their place.

Unlike the case of Libyan nationalisation, the Venezuelan take-over avoided great clashes with the oil companies and initiated a new relationship between the government of Venezuela and the foreign oil companies. The new relationship involved a change in ownership, but the oil companies continued to function exactly as they had before, only with a different name and a different ownership. In effect, therefore, nationalisation in this manner did not result in a real transfer of ownership and control to the host country of its national oil resources. On paper, ownership had been transferred. In reality, control remained in the same hands.

(4) <u>Iraq:</u>

On the 1st June 1972, the Iraqi government issued Law No. 69 which nationalised the operations of the Iraq Petroleum Company (IPC). By operation of this law, all IPC's assets and rights reverted to a government company, the Iraqi Company for Oil Operations (ICOO), which later, in 1976, became an organisation attached to INOC. A settlement was reached between the Iraqi Government and the nationalised IPC. By means of nationalisation, the entire Iraqi oil industry was now completely owned and run by the government. Concession agreements were now specifically banned by law, and no new concession agreements between INOC and foreign companies were permitted or negotiated.

Every stage of the negotiations between the IPC and the oil companies were closely monitored by OPEC, and Iraq had the Organisation's full support. Thus OPEC considered Iraq's nationalisation of its oil own resources a lawful exercise of sovereignty. In the Conference held in Vienna in June 1972, H.E. Dr. Sadoon Hammadi, the Iraqi Oil Minister thanked the Members of OPEC who had "... supported the action of the Government of Iraq, for its Nationalisation Act, as a lawful act of sovereignty to safeguard its legitimate interests." [40] On the 19th June 1972, a Special Resolution was passed by OPEC with regard to the nationalisation of oil companies by the Iraqi government. The Resolution referred to all the previous Resolutions passed in support of Iraq (including Resolution III. 18 in 1961; VII. 49 in 1964; XI. 73 in 1966; XXIII. 81 in 1967; XX. 115 & 116 and XXI. 125 in 1970), which expressed the concern of OPEC over the attitude of oil companies operating in Iraq and promised the Organisation's full support for any appropriate action taken by the Iraqi government to safeguard its legitimate interests. Accordingly, by this Special Resolution the Conference formally gave its support to the action taken by the Iraqi government in nationalising the operations of the Iraq Petroleum Company, justifying the Iraqi action as: "a lawful act of sovereignty to safeguard its legitimate interests." [41] OPEC not only gave its support and asserted the legal justification of Iraqi nationalisation, but went further by recommending that special measures should be taken to ensure that the oil companies complied with this decision. Thus the Conference requested Member Countries:

> "not to allow oil companies to replace the crude oil exported by the Iraq Petroleum Company at the level of 1970 by oil produced in their territories and/or to substitute that oil in its traditional markets; also, the Conference established a special committee to be formed of the Heads of the Delegations of Abu Dhabi, Iran, Libya, Saudi Arabia and Venezuela, and assisted by the Secretary General, to formulate effective ways and means to implement and follow-up these proposals." [42]

The above resolutions and declarations made by OPEC in support of the Iraqi nationalisation policy demonstrate that it was the collective action of OPEC which provided the real bargaining power to assist its Member Countries in gaining ownership and control of their own oil industries.

(5) <u>Kuwait:</u>

In Kuwait, the Kuwait Oil Company was originally set up by two foreign concessionaire companies, BP (Kuwait) Ltd. and Gulf (Kuwait) in 1931. [43] The Company was granted an exclusive concession to explore for and produce oil in Kuwait and

in the country's territorial waters for a period of 75 years. As we have just seen, it was as a result of OPEC's participation policy and in order to implement it, that Kuwait signed the General Participation Agreement which gave the Kuwaiti government a majority shareholding in the Company. Thanks to the collective bargaining power and negotiations of OPEC, the General Participation Agreement was signed on the 9th August 1975. This was soon followed by nationalisation.

On the 3rd April 1976, under Law No. 10 of 1976, the Kuwaiti government purchased from the two foreign companies their 40% shares in KOC, thereby assuming full control of the company. On the 19th September 1997, the Kuwaiti government passed Law No. 124, thereby "terminating the Agreement between the Kuwaiti government and Aminoil."[44] This law provided that the concession granted to Aminoil "shall be terminated," (Article 1) and that all property of the company in Kuwait "shall revert to the State," (Article 2). A compensation committee was to be set up, "to assess the fair compensation due to the Company, as well as the company's outstanding obligations," (Article 3). The matter was disputed and put before an arbitration tribunal.[45] The tribunal's decision became known as the Aminoil Award, and was later described as: "the most significant arbitral contribution in recent years to the law of state contracts and state responsibility for these contracts."[46] During the Hearing, the question of the Kuwaiti government's right to nationalise its own oil industry was never disputed. The questions of what was a fair level of compensation and what criteria were to be applied in assessing it, were however discussed in great detail by the Tribunal. In the context of the present study, what is important to note is OPEC's contribution in all of this: nationalisation was an act of Kuwait inspired and supported by OPEC, and the collective bargaining power provided by OPEC gave the Kuwaiti government the power to go ahead and complete the process.

6.4.2 Compensation by OPEC Member Countries: the Cost of Participation and Nationalisation:

As a result of the OPEC Member States' practice in relation to participation and nationalisation, important questions were raised regarding the appropriate level of compensation to be paid by participating and nationalised governments, and the nature of the criteria used to assess it. OPEC's policy in regard to this matter is not very clear. The Resolution which spells out OPEC Petroleum Policy as regards participation calls on Member Countries to retain "the greatest measure possible of participation and control over all aspects of operations," but there is no mention of compensation. However this is not to suggest that OPEC denied any right to compensation.

Thus in the Participation Agreement signed by the Gulf Member States, OPEC's Twenty Ninth Conference decided that: "Compensation should be based on the net book value of the assets, and refused to consider any other basis for compensation."[47] It was not made clear at the time whether the 'net book value' basis of evaluation of compensation for the purposes of the implementation of participation policy had been officially adopted as the OPEC approved criterion to be applied in all such cases, or whether it was only related to this particular agreement. The ambiguity of OPEC's policy on this issue can be seen reflected both in the conflicting views advanced by OPEC Member Countries in their negotiations with the oil companies, and in their arguments before arbitration.

A comparison between the various compensation provisions found in the respective practices of OPEC Member States serves to illustrate these differences in approach:

(1) Libya:

The Libyan nationalisation of B.P. provided for compensation to be established by a committee chaired by the Minister of Petroleum. The decision of this committee was to be final and no appeal was possible. This committee was reported by the Libyan Press Company as having been constituted on the 13th February 1972, but no actual sum of compensation was ever announced or communicated to B.P. as required by the Nationalisation Law.

The matter was brought before arbitration, and while the Hearing was still in progress, B.P. accepted an offer of compensation by the Libyan government and the proceedings were dropped. The two parties agreed to evaluate the compensation to be paid on the basis of the OPEC formula of 'updated net book value', which included additional increments for, *inter alia*, inflation. The other major oil companies – Exxon, Texaco, Mobil Oil and Shell – also agreed to the same formula.

Dr. Mahmassani appears to have been the only arbitrator who seriously addressed himself to the question of the measure of damages to be awarded. He was in no doubt that Liamco was entitled to compensation. In his view, there was no problem or dispute concerning the principle that emerged and was applicable, that the indemnity should include the value of all the corporeal property nationalised, including the value of all assets, installations and expenses incurred. Difficulty arose, however, in connection with the scope of compensation payable for incorporeal property and whether there should be payment for *lucrum lessens*, or loss of profits. Dr. Mahmassani identified the principle of *lucrum lessens* as being consistent with Libyan law and with Islamic law. In the field of International Law, however, he found difficulty and confusion: Although

the principle is clearly mentioned and supported by old precedents, Dr. Mahmassani nevertheless found it unclear as to whether or not it can or should apply in the case of what is termed a 'lawful nationalisation' – a lawful nationalisation apparently being one where the only wrongful act has been the failure to pay the just price of what has been appropriated. In this context he quoted with approval the following statement by Gillian White:

> "In a lawful appropriations ... the compensation due should be the value of the undertaking at the time of dispossession."[48]

Dr. Mahamassani also detected a trend away from the classical doctrine of 'prompt, adequate and effective compensation'. His conclusion was that the International Law was in such a "confused state" that:

> "... there is no conclusive evidence of the existence of community or uniformity in principles between the domestic law of Libya and international law concerning the determination of compensation for nationalisation, and in particular concerning whether or not all or part of the loss of profits should be included in that compensation."[49]

In the absence of such uniformity, Dr. Mahamassani continued, he was obliged to look to the "general principles of law." On this basis, he decided to adopt the formula of "equitable compensation". Liamco had claimed a total of $207,652,667, calculated as follows: Physical Plant and Equipment: $ 13,882,667; Concession No. 20: $186,270,000; and Concession No. 17: $ 7,500,000[50]

The value of the plant and equipment was accepted, and has been seen, there was no doubt that Libya was liable for these items. As regards loss of profits, equity has often been said to be 'as long as the chancellor's foot' and it is certainly difficult to discern any firm principle running through the arbitrator's judgement on this point. Perhaps he was, in fact, acting '*ex aequo et bono*' as best he could. Clearly it was not an easy matter to calculate an equitable level of compensation, since there was no real precedent on which to rely, and calculating loss of possible future profits – dependant as it was on estimating either what might have happened or what would happen to oil prices in the future – was a great imponderable based on speculation. In the end, he awarded Liamco $66,000,000 for Concession No. 20, while for Concession No. 17 – which had not been developed because it was uneconomic in view of the world prices prevailing between 1960 and 1971 – he awarded nothing. He dismissed Liamco's claim that because of the sharp increase in oil prices since 1973, the field would have become not merely economic but profitable. Liamco made no claim for Concession No. 16, where oil had not been found.

Liamco had also claimed interest from the time of the expropriation. Dr. Mahmassani ruled, however, that he could not grant this. Interest could only run from the time when the sum of damages was assessed. Furthermore, Libyan law forbids usurious interest. He awarded instead a compensatory indemnity at 5% *per annum* in conformity with Libyan law. This was to run from the date of the award to the date of actual payment. Finally, having regard to the provisions of the Libyan Code of Civil Procedure, he awarded Liamco $203,000 towards its costs.

As regards calculating compensation for corporeal property in connection with other claims, the Libyan Agreements with Gelsenberg A.G., Libyan Branch (1973) and the Oasis Group (1973) provided that:

> "Such amounts ... are intended to represent the net asset value as recorded in the books ... on the date of this Agreement. Net asset value is defined as the total accounts receivable, materials and supplies inventory, crude oil inventory in storage and system, prepaid and defined charges, capitalised pre-effective date costs less amortisation to-date, physical assets less depreciation to-date, and work-in-progress as shown by books and records." [51]

(2) The Gulf States:

In contrast, the provisions of the participation agreements between the Gulf States and the international oil companies in 1972, already mentioned above, provided that:

> "The initial percentage level of participation in each concession shall be an amount equal to twenty-five percent (25%) of the Book Value of the crude oil production facilities (whether in existence or under construction) and of exploration and intangible development (whether complete or in process) of such concession on the day before the effective date of participation ..." [52]

Paragraph (2)(a) of the same Article provided that the Book Value of the Company's assets should be calculated in the following manner:

(i) for each year of such concession calculate the difference between the capitalised expenditures made in such year and the amount of depreciation and amortisation allowed for such years;

(ii) for each calculation for the years prior to 1945 apply an inflationary multiplier of 100, and for 1945, as well as for subsequent years, apply the appropriate multiplier shown in the Middle East Construction Price Factors Table set forth in Annex 5 of the Agreement;

(iii) determine the sum of all above calculations.

The basis of compensation according to the text of the Agreement was thus not in fact the 'Net Book Value' but rather the 'Up-Dated Book Value', which takes into consideration rising price levels throughout the period during which the companies' assets were acquired. Preliminary estimates of the compensation to be paid by each participating Gulf State against the acquisition of a 25% equity share of the 1972 total production were as follows: [53]

Country	1972 Production Capacity	Compensation
Saudi Arabia	5.70 million b/d	$500 million
Kuwait	3.00 million b/d	$150 million
Abu Dhabi	1.05 million b/d	$152 million
Qatar	0.48 million b/d	$71 million

If total compensation is allocated to 25% of the total number of barrels of crude oil produced daily in 1972 in the four Gulf States mentioned above, then compensation per barrel were as follows: [54]

Saudi Arabia : $3.51/barrel
Kuwait : $2.00/barrel
Abu Dhabi : $5.80/barrel
Qatar : $5.90/barrel

These figures, seen from the vantage point of the oil companies constituted without any question the best compensation so far offered in such cases by any host country, both before and after the conclusion of the Participation Agreement. They certainly ranked higher than the sums obtained by the oil companies in Iran, Libya, Algeria, Venezuela, and elsewhere.

(3) <u>Algeria:</u>

Algeria adopted a completely different basis for calculating the compensation due to the foreign (both French and non-French) oil companies operating within its territory which were nationalised between February and April 1971. Neither the 'net book value' nor the 'adjusted book value' criteria were used as a basis for assessing compensation. Instead, the 'discounted cash flow' method was used to compensate the present value of each concession over a ten year period. The parameters included in the computations were the expected production, the relayed price, the exploration and development expenditures incurred, the operating and indirect costs, and the depreciation costs of each concession. [55]

This method of calculating indemnification resulted in a lower compensation per barrel than that resulting from application of the 'net book value' criterion. This was due to the fact that concessions granted to foreign companies in Algeria were relatively recent, with heavy investments in the form of fixed assets thus still appearing in the companies' balance sheets. It is precisely for this reason that, ironically enough, the nationalised foreign oil companies in Algeria wished to use the 'net book value' approach instead of the 'discounted cash flow' method as a basis for calculating their compensation. [56]

(4) Kuwait:

In the case concerning the Kuwaiti nationalisation of Aminoil, the tribunal took into account "all the circumstances relevant to the particular concrete case," [57] and especially three main factors: the nationalising state's attitude towards foreign investment, [58] the value of the oil company's assets, [59] and the legitimate expectations of the investor (as evidenced both by the contract and by the investor's conduct). [60]

The above comparison between the various compensation provisions found in the respective practices of OPEC Member States which illustrates several (more or less simultaneous) different approaches is seen by some as an indicator of the various regional non-legal and economic factors which affected the issue of compensation. The following quotation by a well known authority on the subject confirms this statement:

> "At any rate, the companies did enter long negotiations on participation. In these, the United States played one major role, forcefully noting that it would have to consider compensation based on 'book value' as confiscation. In the discussions, it was pointed out that many of the OPEC countries themselves would soon be investing large sums abroad; any principle that meant in practice no compensation might later apply to their own investments. Ultimately, the issue was resolved by a new compensation formula, based on many complex factors. Face was thus saved on all sides." [61]

Whatever considerations did play their part in the negotiations which resulted in the various compensation formulae which were more or less acceptable to all parties concerned, the following conclusions can be clearly drawn:

1. There was general agreement among all OPEC Member Countries that compensation should be paid to nationalised companies.

2. No unified approach was adopted by the OPEC Member Countries as regards the issue of evaluation of compensation.

3. One of the reasons why, unlike some other undeveloped countries, the OPEC Member Countries did not deny the right of nationalised companies to receive compensation was the fact that most of the OPEC Member Countries were or would be investing in western countries – and they did not want to establish any inequitable practices which might subsequently be applied to them in the future.

6.4.3 A General Evaluation of OPEC's Participation and Nationalisation Policy:

Participation and nationalisation were supported by OPEC as means to assert its Member Countries' right to own and control their own oil resources. The analysis made in this study of OPEC's participation and nationalisation policies, when compared to the traditional market structure of the oil industry which existed in the pre-OPEC era (considered especially in Parts One and Two of this study), reveals that these policies facilitated the transfer of ownership and control of national oil resources from the developed oil-consuming countries to the developing oil-producing countries. In this respect it can be asserted that these participation and nationalisation operations resulted in a modification of the oil market structure in favour of the OPEC Member Countries, improving their terms of trade with the developed countries and leading to a net transfer of ownership and control of assets and resources into their hands.

In this context, it is important to point out that ownership is not, in itself, conclusive evidence of effective control. To be effectively in control means having actual responsibility for vital decision-making in the oil industry – and not merely title to a formal, legal right of control. Unless the oil-producing countries actually had a decision-making role as regards the exploitation of resources, establishing production levels, and regulating location decisions, procurement policies, transportation, distribution, marketing and pricing – then having the 'legal right' to do these things was not likely to effect the traditional sources of power and power structures in the oil industry.

Clearly, however, it was a necessary precondition for the OPEC Member Countries to technically own and have control of the oil produced in their countries, before they could have any effect on the traditional sources of power and power structures in the oil industry. Not only did the oil have to be produced in Member Countries, but also it was necessary for the governments of the OPEC Member Countries to gain control of or regulate oil production and exports. Thus from this perspective it is clear that the implementation of OPEC's participation and nationalisation policies was an inevitable result of the struggle between its Member Countries and the major foreign oil companies, to gain ownership and control of valuable national oil resources.

Events proved that these measures could only be implemented by the OPEC Member Countries' governments at a national level. However OPEC played a significant role in this process, both directly and indirectly, by encouraging the implementation of these policies, by providing the necessary research, collective bargaining power and institutional framework for its Member Countries, and by publicly endorsing and giving moral support to their actions in implementing these measures. The Resolutions passed by the OPEC Conferences in support of the Libyan, Iraqi, Iranian, Venezuelan, and Kuwaiti nationalisation measures clearly demonstrate this. As regards the introduction of participation, OPEC itself negotiated on behalf of Gulf states – and without its collective stand the General Agreement may never have been signed. In addition, the OPEC Secretariat played a major role in promoting these policies generally and in assisting the Member Countries in relation to legal, economic and other matters in relation to the subsequent implementation of their respective nationalisation programs. Thus as we have seen earlier, the Algerian nationalisation laws were drafted in consultation with the experienced legal and economic professionals attached to the OPEC Secretariat – and the cumulative experience gained in the process, combined with OPEC sponsored seminars and conferences, was then used to assist nationalisation in other Member Countries. As we have seen, there was no unified policy or practice as regards establishing an equitable level of compensation, other than the recognition that it should be paid. Given the fact that each Member Country had its own particular situation and unique set of factors to consider, it was probably inevitable that compensation would be negotiated in different ways by different governments and different companies.

Thus at this relatively early stage of its history OPEC was instrumental in creating the conditions which allowed Member Countries to implement their participation and nationalisation programmes. Of course once these goals had been achieved, then the role of OPEC would have to change, as it became necessary to direct the Organisation's efforts towards fresh endeavours in the realisation of its main objectives.

Finally, as regards measuring the relative success of the OPEC Member Countries in gaining control over their own oil industry and national resources by the implementation of various participation and nationalisation measures, it is clear that such success cannot simply be tested by the fact of mere ownership alone, but by seeing what was achieved by the OPEC Member Countries once they had secured that ownership, and it is with this aspect of their membership of OPEC – and of OPEC's involvement in their operations – that much of the remainder of this study is principally concerned. In the context of OPEC's Non-Pricing Policy, therefore, the remainder of the present Chapter will accordingly consider OPEC's Conservation and Information Policies:

6.4.4 An Introduction to OPEC's Conservation Policy:

OPEC's work in conservation, as with OPEC's other activities in the petroleum industry explained earlier, derives its legality from the OPEC Constituent Instrument, the OPEC Statute and various OPEC Resolutions. Both the Resolutions by which OPEC was originally established and the OPEC Statute did not speak directly of conservation, but they were framed in sufficiently broad terms so as to provide a firm basis for future petroleum policies in general, including that of conservation. [62] Thus OPEC developed its conservation policy as part of its Petroleum Policy in general. As with other aspects of its policies in general, the development of OPEC's conservation policy was an evolutionary process. In the pre-OPEC era generally, there was a common attitude that all the resources of the world were somehow inexhaustible and could be exploited at will, whether they came in the form of whales, or woods, or oil-wells. Accordingly conservation was regarded more as a precautionary measure to maximise profits, rather than as a prudent approach towards conserving finite reserves and protecting the environment for the benefit of both present and future generations – which is what it has generally come to mean today.

Before OPEC's conservation policy was formulated and adopted, Venezuela was the only OPEC Member Country which had developed and enforced an elaborate body of conservation rules. [63] Libya was another country which was in the process of adopting conservation policy. The Libyan Petroleum Law of 1955 provided in Article 24 that the Minister of Petroleum Affairs should issue the necessary regulations for safety precautions and the conservation of petroleum resources. [64] Other OPEC Member Countries made no specific provision for conservation of oil resources in their internal legislation. Most of the concession agreements which were in force in these countries at the time did, nevertheless, provide in one way or another for certain restrictions on petroleum operations which could reasonably be interpreted as requiring the application of some basic conservation measures. [65] Thus we find, for example, that the oil companies were contractually obliged in general terms to: "conduct their operations with diligence and good oil fields practice," to: "exclude certain tracts from the area of operation," and to: "prevent damage to water or third parties' interests." [66] These provisions were described as 'symbolic'. [67] The OPEC Legal Department later had this to say about conservation provisions: "... the oil companies concerned had never meant these provisions to be more than theoretical expressions designed to psychologically and ostensibly satisfy national sentiments in each country at the time of the granting of the concession agreement". [68]

In short, the conservation patter of country–company relations, which was incorporated into oil concession agreements with the OPEC Member Countries, derived directly from the framework of traditional petroleum concessions which had been established in the pre-OPEC era, and which had been so deeply and firmly embedded in these countries during the European colonial era, as explained and illustrated in Part One of this study. Thus these early conservation provisions were not in harmony with the basic spirit of OPEC Petroleum Policy in general. [69]

6.4.5 The Early Development of OPEC's Conservation Policy:

As we have just seen, when OPEC was first established, the limited conservation measures applicable to oil resources existing in its Member Countries were largely non-effective and symbolic. They were not sufficiently exhaustive or wide-ranging, and if anything tended to be technical, scientific and limited. In a series of gradual measures, and as attitudes towards conservation in general began to change throughout the world, OPEC was instrumental in adopting a more responsible approach towards the conservation of oil resources:

1. Resolution 90 : A Declaration of Intent:

In June 1968, the OPEC Conference approved a Declaratory Statement, in which conservation was one of its main principles, by virtue of Resolution 90, which stated:

> "Operators shall be required to conduct their operations in accordance with the best conservation practices, bearing in mind the long-term interests of the country. To this end, the Government shall draw up written instructions detailing the conservation rules to be followed generally by all contractors within its territory." [70]

This was the first collective action to be taken in the oil industry in relation to the question of conservation. [71] In fact even at an international level, there was no evidence that the international community had ever previously taken collective steps in relation to conservation of oil resources. [72] This statement demonstrates the concern and willingness of third world countries to take practical steps towards conservation. However, it was unfortunate that the statement did not, in general, differ that much from the general and ambiguous provisions which were to be found in the earlier oil concession agreements. Nevertheless, this was the first time that conservation had been explicitly connected and related to the long term interests of the countries in which the oil resources were situated. This in itself gave the concept of conservation a more general and wider connotation than the technical and specific elements to which the early oil

agreements had sparingly referred, and which viewed 'conservation' solely in terms of 'good oil fields practice' and 'prevention of damage to water or third parties' interests'. Thus at least in this respect OPEC contributed towards extending the concept of conservation into the realm of what was in its Member Countries' interests. However, what was the interest of the OPEC Member Countries in relation to conservation? Resolution 90 was silent on this, leaving this aspect to be defined and refined at a later stage.

2. Resolution 93 : New Elements in OPEC Conservation Policy:

Following the declaration of intent contained in Resolution 90, both the legal and technical departments of the OPEC Secretariat became engaged in drawing up draft legislation on conservation to be adopted in the OPEC Member Countries. After intensive work they completed a draft set of model regulations, which was then presented to the XVII Conference, held in Baghdad in November 1968, along with a separate legal presentation setting out the legal arguments in favour of its adoption by Member Countries. [73] With only minor modifications, the Conference accepted this set of model regulations and adopted Resolution XVII - 93, by virtue of which the Conference:

> "... recalling the principle on conservation embodied in the Organisation's 'Declaratory Statement' of Petroleum Policy in Member Countries set out in Resolution XVI - 90; bearing in mind that petroleum is a non-renewable resource found in limited amounts and must therefore be exploited in conformity with efficient and natural methods in order to prevent its waste and maximise its ultimate yield; taking into account that the protection of Member Countries' legitimate interests in the conservation of their natural resources requires governmental regulation thereof; having noted that the "Pro-Forma Regulation for the Conservation of Petroleum Resources", submitted by the Secretariat and approved of and recommended by the Board of Governors, is a suitable model for such governmental regulations; resolves that, subject to the modifications appropriate in each case, Member Countries adopt and implement the said pro-forma conservation regulation as soon as possible." [74]

Thus Resolution 93 endorsed the Pro-Forma Regulation for the Conservation of Petroleum Resources as the embodiment of the new OPEC conservation policy. It should be noted that this Resolution placed specific emphasis on the OPEC Member States' right to exercise permanent sovereignty over their oil resources as the legal basis of

OPEC's conservation policy, [75] while also recognising that their legitimate interests needed to be protected. It is also significant that the Resolution contains explicit recognition that petroleum is 'a non-renewable resource found in limited amounts'. However the most significant aspect of all of Resolution 93 was the proposed adoption of the Pro-Forma Regulation which, after having been approved, could therefore be implemented. Thus this time, the declaration of intent was accompanied by a proposed course of action. Arguments and counter-arguments had been forthcoming, but the result was the firm unanimous decision to adopt the Regulation. [76]

As regards the actual content of the Regulation, it provided that 'conservation' means the prevention of waste, and defined waste to mean 'physical and economic waste'. Detailed examples of the kinds of waste envisaged were given in the Regulation, [77] which also made it clear that oil producing operations were to be subject to regulatory supervision, stating that operators: "shall comply with any instructions and orders from time to time given by the Petroleum Authority in writing relating to any conservation matter." [78] The Regulation did not, however, go on to explain how the Member Countries were to enforce the implementation of this Regulation *vis-a-vis* the operators, or what was to be done if the terms of existing oil agreements were not fully compatible with the new conservation measures.

The Regulation, for the first time in OPEC's history, connected conservation with production:

> "For the sound development and conservation of petroleum resources the Petroleum Authority may determine the amount of petroleum and petroleum products that may be produced in the country and allocate the allowable production among the operators on a reasonable basis."[79]

Explicit references to environmental issues are also made in the last provision of the Regulation, reflecting the increasing awareness of OPEC's Member Countries of the connection between conservation and the environment, and of the increasingly urgent need to adopt measures to protect the environment based on collectively agreed objectives and criteria. This particular provision was included in the Pro-Forma Regulation after a committee composed of five members was appointed to study environment and conservation. [80] The committee, working under the supervision of the Board of Governors, prepared detailed recommendations. Unfortunately the committee's studies were not taken seriously by the Conference which was satisfied with the one provision adopted in the Regulation. Although it was a step in the right direction, this provision was so broad and general as to amount only to a nod in the direction of the envi-

ronment – whereas the industry addressed by OPEC policy has been associated over the years with some of the most dramatic and far-reaching environmental damage. This provision stated:

> "Operators shall carry out their operations in such a manner as to avoid pollution of waters and not interfere unjustifiably with navigation or fishing or with the conservation of the living resources of the sea." [81]

Thus this provision, despite its generality and limitations, nevertheless reinforced the prospective rather than the retrospective nature of the provisions of OPEC's conservation policy.

One of the reasons for the lack of detail in the provisions dealing with the protection of the environment was that OPEC was reluctant to impose detailed obligations on the oil companies in this respect because: "... oil companies would be deterred from investing if there was any suggestion of potential liability for clean-up costs of pre-existing damage." [82] Also, the OPEC Conference regarded environmental matters as being mainly an internal issue which each Member Country was to deal with as it saw best, in accordance to its own interests and rights. [83] This attitude was not unique to OPEC, and could be found in other international organisations at that time. Thus, for example, the UN Framework Convention on Climate Change and the EEC Convention on Long-Range Trans-Boundary Air Pollution described protection of the environment as a secondary concern for the contracting parties, [84] and Principle 21 of the Stockholm Declaration of the UN Conference on the Human Environment refers to States' sovereignty rights to set their own environmental policies in exploiting their resources, subject only to a responsibility not to cause damage outside their own boundaries. This principle is now well established as an international law. [85]

While the exact wording in the Pro-Forma Regulation was not indicative of any particularly strong commitment by the Member Countries, at least mention of the environment and connecting its protection with conservation was indicative of the increasing importance being attached to environmental issues. Unfortunately, apart from this, OPEC did not deal with these issues to the same standard and with the same seriousness as international society. [86] However, as shall be seen later, this initial attempt to link conservation with protection of the environment did add a new dimension to the understanding of what conservation is, and it did increase the concern of national legislators in making legal provision for the protection of environment. [87] Thus OPEC's Pro-Forma Regulation gave OPEC's conservation policy a much wider context than the rather limited and technical meaning that had been attached to 'conservation' in the early years of the oil industry.

6.4.6 OPEC's Conservation Policy and the New International Economic Order:

The year 1974 witnessed the beginning of formal world-wide discussions on the need for structural change in the world economic order. One of the reasons that motivated the developing countries to initiate these discussions was that these countries recognised the success which the OPEC developing countries had enjoyed in improving their terms of trade. The unique position of the OPEC Member Countries, who now owned and controlled one of the developed world's most vital commodity imports, gave them important leverage which could be utilised to negotiate a new package with the High-Tec North involving a whole range of economic, financial and other issues. These issues were articulated in the Resolution on Development and International Co-operation adopted by the UN General Assembly in its Seventh Special Session in September 1975. [88] During the debate, the OPEC Member Countries insisted that the Resolution should include references to various important new issues, including those related to oil conservation, and also the need to transfer real resources to the developing countries and to encourage co-operation among them.

After the adoption of the Declaration, the Programme of Action, and the Charter by the UN General Assembly in 1974, attempts were made by the OPEC Member Countries to support the demand for the New International Economic Order at other conferences. [89] As we have seen in Part Two, OPEC held the Algerian Conference in March 1975 in Algeria and adopted the Solemn Declaration. [90] This Declaration (see Appendix IV), asserted that the dis-equilibrium which besets the present international economic situation had been aggravated by different factors, among them being "the general tendency of the developed countries to consume excessively land and to waste scarce resources," including of course oil. This excessive use and "over-exploitation of this limited and depletable resource" was viewed by OPEC as "disastrous from the point of view of conservation and world economy." [91] The Declaration attributed this state of affairs in part to "an artificially low price for petroleum in the past." [92] Thus in paragraph 7, the Declaration stated:

> "The Sovereigns and Heads of State point out that an artificially low price for petroleum in the past has prompted over-exploitation of this limited and depletable resource and that continuation of such policy would have proved to be disastrous from the point of view of conservation and world economy." [93]

In order to solve this problem the Declaration suggested the co-ordination of OPEC Member Countries in all activities including conservation. [94]

During the period 1975-77, the North-South dialogue made the headlines for a while when the Conference on International Economic Co-operation, which brought together eight industrial countries and nineteen developing countries, was held in Paris. [95] Among other things the Conference discussed the importance of energy availability and supply, the depletable nature of oil and gas, and the necessity for a gradual shift from an 'oil-based energy mix' to other more permanent and renewable sources of energy. The Conference agreed on the significance of conservation and the importance of increased efficiency of energy use [96] and the need to develop all forms of energy. The OPEC Member Countries emphasised the need for the conservation of oil for the benefit of both consumer and producer states. [97] OPEC suggested that prices determination and control of oil production could be used as means of regulating consumption and protecting conservation of oil resources. [98] Also, the OPEC Member Countries argued that 'conservation' was no longer simply a technical term used to indicate the need to limit oil wastage. It should be seen, they asserted, in the overall context of the world economy and in particular, in the practical use of oil in implementing combined development plans. [99]

The developed countries responded negatively to these demands and in the end the Conference only agreed in general, if not vague, terms on the issue of conservation by making no more than a re-statement of the obvious by referring to: "the importance of energy availability and supply; recognition of the depletable nature of oil and gas, and the necessity for a gradual shift from an 'oil-based energy mix' to a more permanent and renewable source of energy; the significance of conservation and increased efficiency of energy use; and the need to develop all forms of energy." [100]

Although this was no more than a repetition of what had already been articulated, one significant aspect of the debate was that the position of the OPEC Member Countries was co-ordinated and expressed by a single spokesman, and so they spoke with one voice during the debate. [101] This ensured that greater importance was attached to the OPEC Member Countries' views both within the UN Group of 77 and also *vis-à-vis* the oil-consuming developed countries. [102]

As we have seen in Part One, the Declaration on the establishment of the New International Economic Order was adopted without vote at the plenary meeting No. 2229 of the 6th Special Session of the UN General Assembly on the 1st May 1974. [103] By virtue of this Declaration, the members of the UN proclaimed their united determination to work urgently for the establishment of a New International Economic order. As we have seen in Part Four, among the principles adopted in this Declaration was the principle of the right of every state to exercise its full sovereignty over its natural re-

sources and all economic activities. In order to safeguard these resources, each state was entitled to exercise effective control over them and their exploitation by whatever lawful means were appropriate to its own particular situation. The Declaration also emphasised the need for all states to put an end to the waste of natural resources, [104] and the need for the developing countries to concentrate all their resources towards development. [105] As we have seen, the Declaration also clearly supported the formation of Producers Associations for these purposes and in this context. [106]

It is significant that the Declaration's references to conservation mirrored what had already been expressed in respect of OPEC's conservation policy. Thus it is clear that this wider concept of conservation of natural resources linked to protection of the environment had by now gained international recognition. [107] This recognition was reaffirmed and reinforced at other international conferences, and in other declarations and UN resolutions, including, for example, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States; [108] the Declaration and Programme of Action on the Establishment of the New International Economic Order, (Resolutions 3201 (s.vi) and 3202 (s.vi), respectively); [109] the Charter of Economic Rights and Duties of States, (General Assembly Resolution 3281 (xxix)); [110] General Assembly Resolution 3362 (s.vii) [111] on Development and International Economic Co-operation; and General Assembly Resolution 35/S6, confirming the importance of energy and the need to conserve it. [112] Although the OPEC Member Countries did not play a direct part or have a major role on such international occasions, it is nevertheless clear that OPEC's concept of conservation and protection of the environment as previously publicised in the Organisation's conservation policy, must have had a general and positive influence. [113]

6.4.7 The Implementation of OPEC's Conservation Policy:

1. Implementation in General:

It has already been pointed out in Part Five, when examining OPEC's decision-making process, that OPEC decisions have no self-executory nature and it is left to each Member Country to implement these decisions as they see fit. Thus OPEC's conservation policy was no different, and required national action by each of its Member Countries to implement it, [114] either by means of legislation, or by incorporation of its terms into new oil agreements. In this particular case, the Member Countries all opted primarily for legislation, although they did not rule out the alternative 'oil agreements method' whenever the opportunity arose. Saudi Arabia was the only country which did not pass any legislation at all to regulate conservation. Ecuador (who was a member of

OPEC at the time) did not pass any legislation, but included in its National Energy Plan for the years 1984-88 a special section dealing with conservation.

It is not within the scope of this present study to examine each and every provision of the conservation laws and regulations adopted by the OPEC Member Countries in implementing the Organisation's conservation policy. However, suffice it to say that almost every Member Country passed laws and regulations which consisted of detailed rules and regulations governing conservation and covering all the stages of petroleum extraction, such as exploration, drilling, production, storage, transportation and other related issues. [115] No precise definition of conservation was given in any of the petroleum conservation legislation, except the Libyan laws which defined 'conservation' as having a meaning opposite to that of 'waste'. The reasons for the absence of comprehensive definitions of 'conservation' in the petroleum conservation legislation are not entirely known, although both an ex-Oil Minister of Kuwait and a legal consultant of the Oil Minister of Kuwait, did inform the present writer that the absence of definition can be attributed to the fact that the term 'conservation' was at the time a dynamic concept still in the process of formation – and accordingly it would have been premature to attempt to define the term too precisely and perhaps too narrowly. Thus its meaning was framed in general terms in order to allow new developments and changes in its definition to unfold and occur naturally. [116]

This attitude was exactly the same attitude as was adopted, for example, in the E.E.C., the I.E.A., and other European Countries. Thus the British government's Energy Conservation Policy, promulgated in a White Paper in July 1976, did not give a specific definition of conservation. Similarly, when the Secretary of State for Energy announced on the 12th December 1977, a substantial reinforcement of the British government's energy conservation policies and outlined the main features of conservation, he did so without giving any specific definition. [117]

As regards OPEC, the body responsible for assisting with the implementation of the conservation legislation left each Member Country to decide what to do. In practice, this task was given to the Technical or Operations Department of the National Oil Authority of each state – with the exception of Kuwait, which established a Board of Governors responsible for the implementation of conservation legislation and policy. [118] All the various national petroleum conservation legislation provisions shared one basic feature in that they gave detailed scientific conservation requirements. In addition, the environmental dimension of conservation was also a common element in them. [119] Article 30 of the Conservation of Petroleum Resources Law of the U.A.E., for example, provided that: "The operator shall take all necessary measures to prevent dam-

age or hazard as a result of its operations, to the life or health of individuals, properties, natural resources, cemeteries, or archaeological, religious or touristic places." [120] The same kind of provision could be found in the legislation of the other Member Countries, embodying exactly the environmental dimension which OPEC conservation policy had originally suggested in its Pro-Forma Regulation.

In spite of the significance and importance of these new elements in the OPEC Member Countries' petroleum conservation legislation, however, these provisions contain little more than general environmental good will sentiments. Thus in Zhiguo Gao's study on environmental provisions in offshore petroleum agreements, he concluded that: "most agreements from the 1970s and 1980s examined, contain little more than a general environmental good will clause." [121] Nevertheless, there are a number of specific matters regarding which this legislation does make provision, including restriction of offshore and onshore oil exploration to areas not used for tourism purposes, and an obligation to submit a separate environmental impact statement using recognised independent environmental expertise. [122]

This legislation was the first petroleum conservation legislation specifically drafted and adopted for the regulation of conservation. It is unfortunate that since then, neither OPEC as an Organisation nor its Member have adopted new policies or drafted further legislation to deal with conservation and environmental matters. New and recent events have taken place within the oil industry in particular and in the world in general which have raised fresh issues with regard to the question of conservation, including, for example, the signing of the European Energy Charter on the 17th December 1994. A Protocol to this Treaty establishing co-operation in the fields of energy and efficiency was also signed in Lisbon by thirty nine countries and the European Community which examined the question of conservation in different and more up to date terms. [123] Thus although they have made a start, time has passed, and it is submitted that OPEC and its Member Countries need to re-examine their conservation policy in this context in order to keep abreast of the times.

2. Implementation by Means of Production and Price Control:

Neither Resolution 90 nor Resolution 93, considered above, mentioned the possibility of utilising price determination or production control as means of implementing policy for conservation purposes. The Pro-Forma Regulation did, however, state explicitly that production control is an important method of ensuring the implementation of conservation measures. Clearly the less that is produced, the longer finite resources should last. However there is no reference to price control as a means of achieving

conservation. There is, however, a link between the two which is considered in Chapter 6.5 below. Clearly the higher the price of oil, the lower the demand for and therefore the consumption of oil are likely to be. Thus as former OPEC Secretary General Ali Jadeih said, "Conservation ... must be linked with price."

It should be pointed out that this view is not unique to OPEC and should not be viewed cynically as simply an excuse to raise prices and increase profits. Other international organisations have held similar views. In the EEC, for example, and especially during the period between 1974 and 1980, there were various resolutions setting community energy objectives whose main feature was the aim of reducing dependence on oil. A communiqué was issued which listed five priorities for community actions, of which two were related to prices, namely: **(a)** the development of a common approach to energy pricing and taxation, and **(b)** the establishing of measures to promote community solidarity and avoid instability on the markets. There was also an agreement on an international energy programme which had as one of its main objectives the aim to "reduce Member Countries' dependence on imported oil by undertaking long term cooperative efforts on conservation of energy, on accelerated development of alternative sources of energy, and on research and development in the energy field."

3. <u>Implemention by Means of Other Activities:</u>

OPEC has always recognised that it is not the sole actor or the prime mover in making things happen in the oil industry, and that the Organisation is not in a position to dictate terms to the rest of the world. OPEC appreciated that its attempts to bring about positive change in the oil industry as regards conservation and the protection of the environment, by means of legislation and changes in oil agreements, were going to be limited in terms of their impact. Thus as well as pursuing these courses of action, and in order to promote its views on and philosophy of conservation, OPEC has also participated in and contributed towards various international conferences and seminars hosted by other international organisations, by giving talks, submitting papers and attending as an observer. The Secretary General of OPEC has also held various seminars and symposiums in relation to this topic for representatives of its Member Countries to contribute and exchange views.

6.4.8 <u>The Conservation Policy of the Oil-Consuming Countries:</u>

In the pre-OPEC era, the main oil consuming countries regarded oil as cheap energy, which lead them to believe that "... national economies could grow at a faster pace if more energy, especially oil, were consumed." [124] The reasoning behind this

unusual economic phenomenon relied on the artificially low cost of energy acquisition from the developing countries by the industrialised developed countries. Cheap oil prices provided a convenient and very low subsidy to finance the economic growth of the industrialised countries, [125] and as a result they were able to achieve "very high growth rates that would never have been possible if oil had been 'lifted' at an economic cost reflecting the true value of depleting resources." [126] While in contrast, the oil-producing countries' economic and social development actually slowed down. This situation led to what became known as "a basic energy imbalance", [127] whereby oil and gas consumption represented more than two-thirds of the total energy consumption in the consuming countries.

After the establishment of OPEC, however, the situation did not remain the same. As is explained in more detail in Chapter 6.5 below, the pre-OPEC pattern of energy consumption witnessed important structural changes as a result of the implementation of OPEC's pricing policy, which commenced with increases in royalty payments, continued with the conclusion of a series of new oil agreements – notably the Tehran Agreement, the Geneva I & II Agreements, and the General Agreement on Participation – and finally culminated in the total takeover of oil production in the Autumn of 1973, which coincided with other serious events, including the collapse of the traditional oil concession system. [128]

As a result of these far-reaching changes, the West suddenly "became aware of the existence of a world energy imbalance", [129] and started searching for alternative ways and means to continue and prolong "the maintenance of economic growth at the lowest cost." [130] It had suddenly become apparent that high growth rates "could not be sustained unless dependence on oil was reduced." [131] This state of affairs was the catalyst which started energy policy makers in the consuming countries thinking of conservation. Suddenly the former pattern of energy consumption was in reverse and the consuming countries started to assert that "national economies must grow with less consumption." [132] It was in this new context that 'conservation' came to mean "the attempt to obtain the greatest advantage from a limited resource." [133] As with water, now that oil was more expensive, it was no longer economically viable to leave the tap running. This new priority clearly manifested in new policy initiatives, including the following:

1. <u>The International Energy Agency (IEA)</u>
   <u>and the International Energy Programme (IEP):</u>

The oil crisis of 1973-74 brought home to the industrialised nations the dangers inherent in total reliance on imported oil. It became all too apparent that the existing

energy provisions within the Organisation for Economic Co-operation and Development (OECD) and the EEC were inadequate, and that the impact of the unexpected and large increase in oil prices would have long-term effects on the world economy and would require a long term solution. At the Washington Energy Conference in 1976, the energy co-ordinating group agreed that an International Energy Programme (IEP) be formulated. The International Energy Authority (IEA) was set up to administer the IEP. [134] The IEA was formally established by a decision of the Council of the OECD taken on the 15th November 1974. The main aims of the Agency's International Energy Programme are:

(i) to bring about "a better world energy supply and demand structure";

(ii) to prepare Member Countries against the risk of oil supply disruption and to co-ordinate sharing of remaining oil supplies in a period of severe supply disruptions;

(iii) to develop alternative energy sources and to increase the efficiency of energy use through co-operative research and development programmes; and

(iv) to promote co-operative relations with oil-exporting and oil-importing non-Member Countries.

In furtherance of the implementation of these aims, the Governing Board of the IEA met at a ministerial level, on the 5th and 6th October 1977, and agreed 12 basic principles. These principles formed the basis of the general energy policy of the IEA. Almost half of these principles have either a direct or an indirect connection with the issue of conservation. In accordance with these principles, the Member Countries are required to adopt a "national energy programme." Principle 1 advocates the reduction of oil imports "through conservation of energy." Similarly, Principle 2 relates energy policy with environmental issues – but unlike the case of OPEC's conservation policy, the connection between conservation and protection of the environment is not made.

In contrast, however, the clear relationship between the price of energy and energy conservation is explicitly stated. In this respect both OPEC and IEA share the view that regulation of oil prices can be used as an effective tool to achieve conservation. Thus Principle 3 refers to: "allowing domestic energy prices to reach a level which encourages energy conservation and development of alternative sources of energy." This policy is re-affirmed in Principle 4 which is devoted to the question of conservation, and which advocates a strong re-enforcement of energy conservation by implementing vigorous conservation measures, including "pricing policies which give incentives to conservation."

The technical and scientific elements of conservation are also included, in Principles 4, 5 and 6, while special emphasis is given to the search for other sources of energy and the need to encourage research and development, in Principles 8, 9 and 10. As in the case of OPEC, economic development and social progress are considered as important elements in any conservation policy for the future. In pursuance of Principle 4, which is concerned with the question of the conservation of energy in all its uses, further special "suggested conservation measures" were adopted, dealing with: industry, [135] residential and commercial areas, [136] transport, [137] and the energy sector. [138]

2. The European Economic Community:

As with other parts of the oil-consuming world, European concern with conservation policy increased sharply as a direct result of the 1973-74 oil crisis. For example, a consultation document submitted in February 1978 to the European Parliament by the Secretary for Energy commenced by stating:

> "In the 1960s and 1970s energy policy was concerned almost entirely with questions of supply. With oil available in apparently unrestricted quantities and at low and even falling prices, the levels of efficiency at which energy was used seemed of little importance." [139]

Once oil prices started rising, there was a marked change in priorities, including those of the member states of the European Community. Their newly emerging policies were no different to those of the IEA and the IEP. The European Union Petroleum Policy was still at an early stage and to begin with there was no clear conservation policy. Thus Professor Paul Harty, who was presiding over a debate on the European Commission Green Paper in June 1995, stated:

> "In 1973 community documents still spoke of a common energy policy and an effort was made to define it. Little by little, we began talking about co-ordinating energy policies, then the era of convergence of national policies was on us. Next we began talking about coherence in the various national policies, and today we talk about ensuring compatibility amongst national energy policies." [140]

In the opinion of some, the European Community did not manage to set in motion a real energy policy. They maintain that all the efforts made by the European Community never amounted to anything more than 'a timid start'. Thus Mr. P. Defraigne, a Director General for External Relations in the European Commission stated that: "There is as yet no overall energy policy in the European Community."

Despite the absence of a fully unified conservation policy in the EEC, its members were always active in seeking to develop a unified conservation policy for the Community. [141] Evidence of this concern can be found in a number of documents, treaties and policies. What is significant for the purposes of this study is that the energy policy of the European Community started dealing comprehensively with the oil sector in the 1970s, when it became "synonymous with the need for security of energy supplies, particularly by diversification of oil suppliers and fuels, and energy conservation." [142]

In the mid-1980s, however, the Single European Act transferred important powers from national governments to the Council of Member States, to the Commission, and, to some extent, to the European Parliament. This transfer of powers has resulted in a sharp switch in the focus of interests that affect the energy industry. Notably policies to promote a single market and to enhance the environment have taken precedence over security of supply issues. Both the Council decision to extend the single market to the energy sector (an internal energy market) and the relatively new issue of global warming have meant that 'energy policy' *per se* is no longer easy to define. However this does not mean that the basic elements of European Community energy policy cannot be defined. They can be identified quite clearly as: "security of supply, the environment and the drive for more competition in a free market."

These three elements – which include conservation – form the heart of European Community energy policy, and have been regarded by its members with different degrees of emphasis at different times. Thus, the security of oil supply was the dominant concern during the oil crisis in 1973. This became less important in the 1980s when there were no threats to oil supplies and prices were falling. [143] At this point protection of the environment and freedom of competition became the dominant themes of European Community energy policy. However, when Iraq invaded Kuwait in 1990 and oil supplies were interrupted, security of oil supplies became a major issue again. This was clearly reflected in the Green and White Papers of the time, and more recently in the European Energy Charter.

What it is important to note is that during these various stages, from the 1970s to the 1990s, conservation was an issue which was developing and evolving within the general framework of European Community energy policy. In addition, it should also be noted that conservation policies in Europe - as is the case in all consuming countries - are also linked with internal economic matters such as maintaining levels of employment, creating new jobs, ensuring security of oil supply, improving living standards, and sustaining steady economic growth. These were all among the issues discussed at the Conference on European Union Energy Policy, which was held in Brussels be-

tween the 22nd and 23rd June 1995. As regards jobs and oil conservation, it was agreed that there were eight strategic benefits from conservation investments, and that these eight benefits would lead to an 'increase of employment'. [144]

Finally, it should be noted that underpinning the entire development of European Union energy policy was the influence of OPEC operations and conservation policies – which had simultaneously precipitated the need of the oil-consuming countries to have energy policies, and helped to define more precisely what 'conservation' and 'protection of the environment' actually entail.

6.4.9 A General Evaluation of OPEC's Conservation Policy:

The term 'conservation' is a dynamic one, whose definition has been subject to the largescale changes which the oil industry has experienced during the last 50 years. Prior to the increase in oil prices by OPEC in 1973-74, 'conservation' only applied in a limited sense to avoiding unnecessary wastage during oil production. At this stage it was defined mainly in technical and scientific terms. However, after the increase in oil prices, 'conservation' became an issue of concern for the world in general, including both the oil-consuming and the oil-producing states. However, the reasons for such concern differed between the former and the latter. The oil-consuming countries were very much concerned with security of oil supply, employment, national economy and environment issues. The oil-producing countries were more concerned with the fact that oil is a depletable source and should be used to generate income, in order to be able to provide alternative sources of income and the financing of their national economic development programmes.

These differences in the philosophy and reasoning behind their respective conservation policies explains the different emphasis and priorities attributed to the content and elements of the conservation policies of each group. On the one hand oil consumers paid great attention to the scientific and technical aspects of conservation which were designed to help in reducing expense and harm to the environment while increasing opportunities for jobs – which was clearly manifested in the EEC Green and White Papers of the time. Also great attention was paid to adopting measures designed to ensure security of supply, as demonstrated by the IEA, the IEP and the European Energy Charter. On the other hand, the oil-producing countries were more concerned with the question of regulating the production and pricing of oil so as to ensure long-lasting reserves and beneficial revenues. Apart from the OPEC Pro-Forma Regulation, relatively little importance was attached to the more scientific aspects of conservation, and little more than goodwill was devoted towards protection of the environment.

As a result of these differences, it is possible to say that conservation is a descriptive and not a qualifying term. Indeed, considering that conservation is attainable in more than one form, on more than one basis, and by more than one method, and given that each 'kind' of conservation entails certain legal, economic, managerial and other consequences, it may be said that conservation cannot be said to denote always one and the same thing. In other words, there is nothing intrinsically unique or completely and invariably singular about conservation considered in general. Thus conservation may be said to denote a 'situation' which can vary from place to place and from context to context, rather than constituting any specific and inherently unique, rigid and exclusive pattern. [145]

In line with the foregoing, it may be said therefore that each particular conservation formula must be examined and assessed within its own peculiar legal and economic context, and in the light of the various constituent elements which determine its distinctive pattern and scope of applicability, together with all the legal, economic and other consequences which follow from them. There are of course certain general principles of law applicable to conservation formulas in general, but the differences between the various formulas available - and some of these differences between the various formulas can be fundamental and are in any case determinable by and at the discretion of the parties concerned - remain pertinent.

If anything, as time has passed, these different conservation formulas have tended to 'borrow' elements from each other – partly because of the effects of today's instant global communication systems, and partly because as the developing countries have become more developed, they have also increasingly become oil-consumers themselves. Thus it has become common practice among both the OPEC Member Countries and the 'traditional' oil-consuming countries that the scientific elements of conservation are shared by both. Also, protection of the environment is a conservation formula which has found acceptance by each group. All the oil-consuming countries' sources' of energy policy (the IEA, IEP, European Energy Charter and EEC) have agreed on conservation for the purpose of environmental protection. [146] OPEC also expressed the same sentiment in its Declaratory Statement which then subsequently manifested in the OPEC Member Countries oil legislation and agreements. [147]

However, at present OPEC is lagging behind in this aspect. Since its Declaratory Statement, no other resolution or policy as regards protection of the environment has been adopted, because OPEC has left each Member Country to deal with this issue individually. The need for a common policy on this issue is vital if OPEC is to play its proper role in the formulation and implementation of an internationally co-ordinated

programme for conservation and protection of the environment. This is a process which is already under way – and as it unfolds new customary rules of international law are evolving and being developed. OPEC has much to contribute in this process, but it is unlikely that it will be in a position to do so unless it can represent a unified common conservation and environmental policy which has been adopted and is being implemented by all the OPEC Member States together. [148]

This lack of a unified policy is at present reflected in the price element of conservation. Price control, as a means of regulating conservation, has been subject to several setbacks as a result of fluctuations in the international markets of the consuming countries, and often because of the rivalries between the OPEC Member Countries themselves. This rivalry has led to the situation where the primary responsibilities for conservation remain with each Member Country, simply because they are not working as closely together as they could. Thus different national conservation policies have been developed, based on their perceived different specific needs. [149] Clearly the best means of resolving this lack of co-ordination is OPEC itself. This, after all, was why OPEC was established in the first place. If OPEC wants to play its role as the Organisation which represents the interests of the oil-producing countries, it needs to reach a conciliation formula whereby Member Countries' national interests can be jointly pursued by means of one unified conservation policy.

This is not to suggest that OPEC has not played any part in the unification of conservation policies at all. As we have seen earlier, it was as a result of OPEC conservation policy that all its Member Countries passed laws concerning the regulation of conservation: Libya in 1969, Venezuela in 1968, Iraq in 1971, Qatar, Kuwait and UAE in 1973, Ecuador (conservation policy) in 1987 and Algeria in 1976. [150] This was a good start, but unfortunately after the adoption of this legislation (which was, after all, limited in nature), neither OPEC nor its Members have taken any further positive steps.

Whereas, on the other hand, there has been a significant increase in laws promulgated by the oil-consuming countries in relation to conservation. The United States has made the greatest contribution to date in this field in terms of the volume of domestic legislation, although significant contributions have also been made by Australia, Japan and certain countries of the European Union. [151]

In addition to the increase in conservation legislation, the international community (as defined by the High-Tech Northern countries), has concluded several international conventions, agreements and treaties in relation to conservation, including, for example, the Climate Change Convention; the Energy Charter Treaty; the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects; the Economic Sum-

mit Meeting in Tokyo in June 1979; the Vienna Summit in 1980; and the European Community Energy Conference in 1995.

As a result of these increases in the volume of legislation and international activities, it has been suggested that: "new principles and customary rules of international law will be evolved," and international lawyers anticipate that there will be: "future international legal obligations on nations to take legislative action in this area." [152] The question therefore arises as to whether or not OPEC, with all the valuable experience and expertise that it has, will be taking a pro-active or a passive role in this process.

The general situation in the oil industry has changed a great deal since OPEC first began to formulate a conservation policy in circumstances which greatly differed from those prevailing at present. As we have seen, at that point in time, OPEC's conservation policy was unique. That policy now needs to be modified, developed and expanded in order to keep abreast with the developments which have taken place since the radical changes which occurred in the international oil industry during the period of nationalisation and price control. [153] If OPEC does not take such necessary action, its Member Countries may well find themselves back in a situation where radical changes are made unilaterally without consultation: either by the oil-consuming countries – the very same scenario which triggered the establishment of OPEC when oil prices were lowered unilaterally; or by individual oil-producing countries – the very same scenario in which terms of oil concessions were changed unilaterally as a result of nationalisation, which triggered protracted and expensive judicial disputes.

In order to avoid the disputes and setbacks arising from such unilateral and radical action, whichever of the two scenarios may be the setting, it is clearly up to OPEC to become more involved in the process of creating customary international law with regard to conservation issues – and to be involved in this manner, it is submitted that it should firstly, work towards the unification of its own Member Countries' conservation policies, so that secondly, it can represent them as one group which can then contribute in a significant and meaningful way in all future international agreements, conventions and treaties which are concerned with conservation of vital resources and protection of the environment.

In conclusion one may say that prior to OPEC's Resolutions 90 and 93, 'conservation', in the sense it has subsequently taken on, was a relatively new concept in the industrialised oil-consuming countries, with its meaning tending to be limited to what wastage could be avoided through improved technical and economic efficiency. As a result of the artificially low prices of oil, an enormous transfer of wealth from the developing to the developed countries was being generated, and not much attention

was being paid to the fact that oil reserves were finite, and that the oil-producing countries were having to 'pay' for the rapid economic growth of the oil-consuming countries, by not generating sufficient oil revenues to finance their own economic and social development. By gaining ownership and control of their own oil resources, and by raising the price of oil, OPEC was successful in reversing the trend of traditional exploitation without limitation, and was able to formulate and launch a more sensible conservation policy, which in the longterm would be more beneficial to everyone – to the oil-consuming countries, because by limiting the excessive use of oil, oil reserves and therefore supply would last longer; and to the oil-producing countries, because by making oil reserves last longer, it would be possible to avoid the exhaustion of vital national wealth and the collapse of national development programmes and the economic prosperity of the OPEC Member Countries.

In achieving this new balance, OPEC was recognised and perceived as an organisation which served the interests of the underdeveloped countries by securing a more equitable distribution of wealth. As we have seen, there was also a knock-on effect in that the oil-consuming countries had to think seriously about avoiding unnecessary waste in their energy consumption, thereby extending the meaning of 'conservation' from simply conserving oil reserves to not burning it up wastefully as well – and, as we have seen, this was then linked to not wasting wealth by harming the environment unnecessarily, since the results were unpleasant to live with and expensive to remedy. Having set the whole process in motion, OPEC now needs to catch up with the results – and help formulate future policy and future implementation of that policy.

Finally, it should be pointed out that the early conflict between the respective conservation policies of the traditional oil-consuming countries and the OPEC Member oil-producing countries reconfirms the observation made in Part One of this study, that it is not always possible to implement measures which safeguard simultaneously the interests of both consumers and producers. However, it is submitted that as the perception of the world as one unified global entity with interdependent elements and entities gains acceptance and understanding, this should inevitably result in a merging of conservation and environmental policies, since it is in everyone's interests to look after the world in which we live together. Given this understanding of life, a 'them against us' mentality is neither productive nor viable. In this context, the conservation policy of OPEC can be viewed not as a struggle to seize control of the 'power' base of the international oil trade, but rather as a genuine attempt – by improving their bargaining power – to promote greater international equity, fairness and justice, and a fairer distribution of wealth for the weak and the disadvantaged.

6.4.10 OPEC's Information Policy:

One of OPEC's main activities is to collect and disseminate information on the oil industry in order to assist in the implementation of its petroleum policy. [154] As the saying goes, "Information is power." Thus the need to gather accurate information springs from the realisation that in the absence of such information, the OPEC Member Countries would be vulnerable in their dealings with the oil-consuming countries and international oil companies. In the words of a former OPEC General Secretary:

> "Efforts of information gathering by OPEC reflect the widespread belief that OPEC Member Countries cannot bargain effectively with the oil companies without a thorough understanding of the industry and market structure, nor can they intervene intelligently in the market." [155]

Thus the availability of key information is an economic necessity for the oil companies and a prerequisite for the implementation of OPEC's Petroleum Policies and the control by its Member Countries of their own oil industry.

When OPEC was first established, there was inevitably a conflict between its Member Countries and the major oil companies over the issue of information. This arose from the fact that the oil companies possessed the skills and technology necessary to run the oil industry which, traditionally, they considered as proprietary and extremely sensitive and confidential. They were subject to only limited and selective disclosures. The basic reason for this attitude was that the oil companies regarded the skill and expertise which they had acquired as an expensive investment which it was necessary to keep to themselves to gain a competitive edge, [156] whereas the oil-producing countries believed that the limited information which was made available to them under the traditional oil concession agreements regime left them firstly, with little or no influence over the policy decisions taken by these companies, and secondly, with little or no control over the exercise of their national sovereignty over their own oil resources. In the words of one OPEC Secretary General, "This old system was frequently seen as an infringement of state sovereignty over natural resources," [157] and in the words of another OPEC Secretary General, "This old regime did not allow the flow of information from Oil Companies to Member Countries." [158] In order to change this state of affairs by enabling its Members to acquire such vital information, OPEC adopted its information policy and designated its special organs to pursue the implementation of this policy. So fundamental are this information-gathering and information-analysing policy and activity that it is the only activity which is common to all IPA's. In this regard Scheige has said:

> "The most important function of international producer associations lies in their facilitating the flow of information to member nations." [159]

Although the OPEC Constituent Instrument does not refer to the reasons for having an information policy, Article 34(C) of the OPEC Statute does:

> "The Public Information Department shall be responsible for:
>
> **1.** presenting OPEC objectives, decisions and actions in their true and most desirable perspective;
>
> **2.** carrying out a central public information programme and identifying suitable areas for the promotion of the Organization's aims; and
>
> **3.** the production and distribution of publications and other materials."

In other words, OPEC's information policy is to assist in creating a general awareness of OPEC and its aims and objectives among the public, governments and other bodies in both Member and non-Member Countries. In contrast, information as conceived in the Declaratory Statement of 1968, was seen as a prerequisite for direct exploitation of oil resources by Member Counties. [160]

According to OPEC's information plan which was adopted by the Secretary General for the period between 1962-1968, [161] the flow of information and communication would "play a greater role in improving the well-being of the Member Countries," [162] and would help to "develop OPEC economic thought that would reflect as much as possible the current developments in this vital industry." [163] This last observation adds another dimension to OPEC's information policy, namely the aspiration that OPEC's and other third world countries' views would become part of the international information system. Thus OPEC declared that:

> "Third World Countries tend to be at disadvantage, since the international media machinery is traditionally located in the industrialised countries. Such a structure aggravates the problem of third world communication by making it necessary for developing countries to go through the main media centres of the United States and Europe to disseminate their news. As a result, a relatively small number of international news agencies have a disturbingly large measure of control over distribution of third world news. Sometimes, indeed more often than not, these agencies circulate those items of news about the third world that support their own interests – interests which do not necessarily coincide with those of the developing countries. [164]

In the light of the above it becomes clear that for OPEC, perhaps unlike other IPAs, collecting information is not an aim in itself, but rather is a means of enhancing the implementation of OPEC's Petroleum Policy. [165] Although, as we have just seen, there is no express reference in the OPEC Statute to gathering useful information for this objective, this function is in fact expressly recognised as an important necessity by the Secretariat which provides for the establishment of information organs and departments within its structure. [166]

The question as to which kind of information OPEC's information policy is most concerned is governed by two main principles, namely that the information is in the interests of the oil industry as a whole, and that it serves the common interests of the OPEC Member Countries. In other words, OPEC information policy is concerned with any information related to OPEC activities. [167] In the words of one OPEC General Secretary, "The information goal and plan of the Organisation is not secondary element, but it is like a permanent shadow of the activities of the organisation." [168]

6.4.11 The Organs Responsible for OPEC's Information Policy:

OPEC's first attempts to develop organs responsible for executing its information policy can be found in the OPEC Statute which was adopted in 1961. In accordance with its provisions, the Secretariat was empowered and required to carry out certain duties, including the duty: "to collect information, study and review all matters of common interest relating to the petroleum industry, and report them to the Board of Governors." [169] In this the Secretariat acted as a clearing house for information collected from different sources and submitted by Member Countries. Such information was routinely analysed and then whatever was considered important or significant was submitted to the Board of Governors.

Over the years OPEC has amended its Statute at various times in order, *inter alia*, to organise its information policy more thoroughly and to designate specific powers to different organs in order to facilitate the execution and implementation of its growing information policy. In accordance with the latest amendment made on the 23rd November 1997, the organs currently involved in implementing OPEC's information policy are: the Secretary General; the Research Division; the Public Relations Department; the Library; the Public Information Department; the OPEC News Agency; and the Data Bank Centre. [170] The common problem which these organs face in their implementation of OPEC information policy is the lack of an adequate budget. They have no independent budgets of their own. [171] Unlike other organisations, these OPEC organs do not establish direct contact with the OPEC Member Countries and other organisa-

tions, apart from general correspondence and an exchange of information activities. Furthermore, these organs have not yet developed a well-defined plan for their information policy. [172] This state of affairs is hardly satisfactory, and has limited any really effective implementation of OPEC's information policy.

6.4.12 The Implementation of OPEC's Information Policy:

OPEC's information activities are carried out in a number of different ways:

1. Publications: [173]

Like most international organisations, [174] OPEC gathers and analyses information and publishes some of it either for internal consumption, as a necessary input for the work of the organisation, including decision making and policy review functions – or for external consumption, in providing information to Members and non-Members alike. OPEC publishes reports, [175] books, [176] bulletins, [177] reviews, [178] and pamphlets. [179] These are regarded as one of the most important and distinguished information and public relations activities of the Organisation, by which the Organisation serves what is called 'propaganda on behalf'. [180]

Although OPEC publications serve as channels for transferring information to and from the Organisation, the following observations should be noted:

(a) OPEC, unlike OAPEC, publishes a very limited number of books. [181] However, compared to other IPA's, the number of OPEC's books and publications is greater. [182] Since books are capable of having a profound influence and can exert a continuous effect both on international and internal relations, OPEC needs to encourage the publication of quality books.

(b) In the past the Organisation published *Basic Laws and Materials/Documents in Member Countries* which covered the period from 1963 to 1978. [183] It is submitted that if this publication could be resumed and continued, it would facilitate the organisation's aim of unifying the petroleum laws of the Member Countries. Also it could help provide OPEC with rules and laws in relation to specific questions of law. This publication would be invaluable to both local legislators and oil legal consultants alike who are respectively responsible for regulating and drafting oil agreements. The codification of laws and regulations would result in greater certainty, and the publication of standard agreement clauses would provide useful precedents. When the present writer asked the OPEC Legal Department why this publication had been discontinued, [184] he was told that the budget which had been allocated to this project had been stopped, and that the Member Countries' co-operation was decreasing. [185]

(c) OPEC's publications (including those providing basic facts and figures and other information booklets in general) are not published or distributed in adequate numbers. Also, they are only published in English. The widespread areas of OPEC activities and operations require the translation of its publications into other languages. If we compare circulation figures and contents of publications emanating from the main Western European States in the fields of the oil and energy industries with those published in the OPEC Member Countries, we find that the OPEC Monthly Bulletin in the English language has an annual circulation of 120,000 copies – as compared to 15 periodicals published in certain European States with a circulation of about 2.5 million copies annually, all covering virtually the same topics and trends as the OPEC Monthly Bulletin. The English language oil periodicals distributed by the Princedom of Monaco alone, for example, amount to about 192,000 copies annually, which is thus greater than the total circulation of the OPEC Monthly Bulletin. [186] These comparisons are not favourable for OPEC.

As regards a similar comparison of the periodicals on oil and energy published in the Arabic language, there is a similar bias. OPEC distributes about 88,000 copies of six oil periodicals in Arabic. This is about half the circulation figure by France of the Arabic Journal *'Petrol and Oil'*, which is distributed in France, Europe and the Arab World with circulation of about 150,000 copies annually. Similarly, West Germany distributes two Arabic language oil journals with similar content and a circulation of 80,000 copies in the Arabic language – more than 12 times the comparable circulation of OPEC. [187] This means not only that Western petroleum economic thought is imposed upon OPEC and its Member Countries, but also that to a certain extent it inevitably affects and even dictates OPEC Petroleum Policy. In other words, the provision of and access to key information still has a similar concessional framework as that which existed at the time of OPEC's establishment. [188]

(d) OPEC's editing and printing department, which is responsible for checking and reviewing the contents of books which are to be published by OPEC is not – due to a lack of funds – staffed with personnel of a sufficiently high calibre – qualified and trained in the art of journalism, editing and language correction, and familiar with the actual subject-matter of the publications they are reviewing – who are able to do their work to a high professional standard. [189]

(e) OPEC publications do not enjoy exemption from customs and excise tariffs, barriers and limitations imposed on the export and import of all publications by the OPEC Member Countries. In order to facilitate the distribution of OPEC publications to its own Members, exemption from tax duties should be granted by all OPEC Member Countries.

2. Research and Studies

Research and studies have been recognised by OPEC as important activities of the Organisation's information programme. OPEC conducts research and studies through its different organs and departments which cover all aspects of the oil industry, including its technical, economical, political, legal and scientific aspects. In addition, the Conference may request that certain studies be carried out by a special body or specific organ, department, commission or firm of private consultants. [190] The Research Division of the OPEC Secretariat is responsible for conducting a continuous programme of research in fulfillment of the needs and aims of the Organisation, with particular emphasis on the energy and petrochemical industries; the evaluation of hydrocarbons and their by-products and non-energy uses; analyses of economic and financial issues of significant interest, in particular, those related to international petroleum industry; and maintaining and expanding its basic information services in order to support the research activities of the Secretarial and those of the OPEC Member Countries. [191] However, so far this section of the Secretariat has not been able to conduct any independent studies.

Up to now all research and studies have been carried out by the OPEC Economic Commission, while the work which has so far been carried out by the Research Division has been described simply as 'information studies'. It is submitted that this department should carry out the research and studies which are part of the general strategy of the Organisation. Again, the failure to do this has been connected to lack of funds. It is submitted that OPEC needs to allocate a special fund specifically for financing research and studies. By way of comparison, the European Community allocates a very significant portion of its funds specifically for research and studies. For example, the expenditure on Energy Research & Development in the UK alone is estimated to be over £240 million. [192]

Furthermore, it is noticeable that OPEC research and studies tend to be short-term case studies related to specific issues at particular times – for example, the studies prepared by private consulting services on the issues of Participation, or on the unification of Petroleum Laws [193] – whereas other organisations and oil companies, as well as having short-term projects, also have a long-term strategy for their research and studies. [194] The EEC, for example, has long-term research projects which last for three or four years, and which are approved by the Parliament and ultimately by the Council. To facilitate these projects, the EEC has established several centres for research in energy – whereas OPEC does not even have one. [195] It is true to say, however, that OPEC did attempt to make some provision for long-term research and studies when it

established a long-term strategy committee. This committee, however, largely due to a lack in the political will of the Member Countries, [196] did not last for long, and what work it did do was concentrated solely on issues connected with oil prices. [197] Thus up to now OPEC's research and studies are limited in nature and lack coherence and co-operation with other research centres, whether in its Member Countries or other international organisations. The only relationship with these countries takes the form of exchanging publications. This could be done by the Library Department.

Thus it is suggested that in addition to the necessity of providing adequate funding for research, OPEC should also agree on a long term strategy for research and studies, in conformity with the objectives of the Organisation and in co-ordination with the various research and studies institutions in the Member Countries. Lines of communication should also be opened up with other international organisations and oil companies involved in research and studies, and strengthened through collective activities. Thus, for example and by way of comparison, each of the European countries have established permanent arrangements with international organisations responsible for Energy and Development. The IEA has organised a Committee on Research and Development on which all members are represented by representatives from their respective Departments of Research and Development. Also, all members of the European Community have an expert representative working at the Joint Research Centre of the Community. [198]

Recently OPEC has realised the need for improvements in its activities in the field of research and studies, and as a result the Research Division has taken a closer look at the Organisation's long term policies. From 1997 onwards, the Research Division has carried out activities which could be described as being in line with the suggestions made above. In the light of these changes, the Secretary General declared that:

> "The time has long gone when monitoring oil price development was the Secretariat's only concern. Now the scope of interest has widened to include the role of oil as a strategic commodity, an economic input, a critical part of modern life and, last but not the least, as a focus of investment as well as an item on the global environmental agenda." [199]

With this perspective in mind, the OPEC Research Division has recently carried out the following research and studies:

(1) A review of oil market fundamentals in order to improve market stability.

(2) Research on medium-term issues and policy options in the face of increasing supply by non-OPEC oil producers.

(3) A study of the impact of oil consumption on the environment, given that "oil and energy consumption are used as scapegoat for environmental problems." [200]

Climate change is also an issue which has become a current concern of the international community. It is a complex, inherently long-term issue, where definite trends cannot be deduced from short-term phenomena. Predictions of long-term drought are often soon refuted by the wettest summer for years! For this reason OPEC has realised that a more scientific approach is needed before any specific policy is adopted, let alone implemented. Taking account of the importance of these issues, the OPEC Research Division has established an Environmental Task Force composed of experts capable of monitoring and reviewing developments, and of participating at all levels of the environmental debate. [201] Thus at least in this respect, the OPEC Research Division has continued to provide reliable and impartial information, as well as access to reliable measurement and monitoring facilities, for the OPEC Member Countries.

3. Seminars and Conferences

In addition to its publications, research and studies activities, OPEC also conducts other informational activities such as holding seminars [202] and conferences. [203] In the last three years alone, the Organisation held more than 180 seminars and conferences. OPEC has also participated in hundreds of other conferences, meetings and international book fairs sponsored by other international organisations. The Organisation does not restrict the location of its conferences and seminars to its Headquarters in Vienna, but holds them in various countries. It is noticeable, however, that the Organisation's activities are concentrated in the European Western Countries. OPEC's main activities are focused on the Oxford Seminars carried out in co-operation with British Scientific Institutions and the meetings of the Energy Commission. This particular emphasis does not altogether comply with the aspirations of OPEC to gain access to the international community, and with its aim to establish a more equitable world distribution of key information. A further observation that must be made is that, as regards holding conferences and seminars in developing countries, these have always been characterised by an extremely low level of participation. This does not conform with the desire of OPEC to support south – south co-operation.

4. External Relations as a Means of Information Activities:

In addition to the above, OPEC also conducts its information activities by means of its external relations. Thus, for example, OPEC maintains contact with non-Member Countries. The OPEC Statute, as we have seen in Part Three, provides for the admis-

sion of the representatives of such countries to its meetings as observers, and in practice a number of these countries have been granted such a status. [204] However, unlike the OAPEC Agreement, [205] OPEC does not have an express provision by which it can establish appropriate relations for the purposes of consultation and co-operation with other inter-governmental organisations. However, there is a relevant provision in the OPEC Statute, namely Article 33(3), which requires the Office of the Secretary General to assist him in carrying out contacts with "governments, organizations and delegations". In practice, OPEC has established both formal and informal relations with, and participated in the meetings of, a number of other inter-governmental organisations.

OPEC has also succeeded in securing and establishing relations with UN bodies whose functions are relevant to OPEC, such as ECOSOC and UNCTAD. The ECOSOC, at its 1365th plenary meeting held in 1985, adopted Resolution 1053 (XXXIX), [206] whereby it decided to establish relations with OPEC and to this end requested the UN Secretary General to take the steps necessary for : **(a)** ensuring the reciprocal exchange of information and documentation; **(b)** making provision for the representation of OPEC at the meetings of the UN organisations which deal with questions of common interest; and **(c)** making provision for consultation and technical co-operation between OPEC and the UN on matters of mutual interest. As a result, OPEC has since been invited to and has actually participated in the meetings of UN bodies such as ECOSOC and its regional economic commissions. Such participation has undoubtedly proved fruitful as regards the transfer of information to and from OPEC and other international organisations. OPEC also participates in the UNCTAD and its subsidiary bodies on questions which fall within the scope of its activities. [207] Consequently, OPEC has often taken an active part in the work of UNCTAD and its subsidiary bodies, including the presentation of papers to their meetings. [208]

As regards OAPEC – with whom, as we have already seen, OPEC shares a substantial overlap of membership – no formal agreement has been made between OPEC and OAPEC to regulate their relationship and the exchange of information, or to establish a joint information gathering and exchange strategy. No observer status is granted by either to the other, nor do they participate in each other's meetings. However, despite the absence of any formal agreement, in practice OPEC and OAPEC exchange visits, publications, reports and attendance of officials from either organisation at their respective working group meetings, and there is also an informal exchange of views regarding matters of mutual concern between the Secretariats of both organisations. Obviously, this provides a useful basis for a minimum level of co-operation between

the two organisations, but it is submitted that these informal arrangements are not sufficient to achieve the aims of OPEC's information policy, nor are they well enough organised to prevent unnecessary duplication or inconsistency of work. This was expressed by Dr. Ali Attega, the Secretary General of OAPEC, who said: "We do not want to duplicate their [OPEC's] work." [209] It is submitted that in order to avoid such duplication and inconsistency, what is urgently needed is an agreement providing for a permanent liaison committee and a formal detailed agreement similar to those existing between the UN and its specialised agencies, which provides for reciprocal representation (without voting rights) at each other's meetings. The granting to OPEC of observer status at OAPEC meetings would be especially appropriate, since it would give those OPEC Member Countries which are not members of OAPEC the opportunity to voice their opinions directly to OAPEC, as well as assisting in the implementation of a joint information policy.

OPEC has also been in close contact with the Arab Petroleum Congress of the Arab League. Meetings between the two organisations have been organised and held by the Department of Petroleum and Energy Affairs of the League of Arab States. It will be recalled that the creation of OPEC itself had its origins in the 'gentlemen's agreement' reached between the representatives of the major petroleum exporting countries when attending the first meeting of the Congress held in April 1959. [210] Therefore OPEC has always attended the meetings of the D.P.E.A. The last one was held from the 10th to the 13th May 1998, in Syria. OPEC attended and submitted reports and papers on oil industry matters. [211]

OPEC also implements and carries out its information activities by means of its special relations with other IPAs such as CIPEC. Contacts between OPEC and CIPEC were initiated soon after the formation of the latter in 1967. [212] Another IPA with whom OPEC succeeded in making strong relations was OLADE. The latter passed a special resolution to establish the necessary relations and co-operation mechanisms between both OLADE and, *inter alia*, OPEC. [213]

As a final word on OPEC's information activities *vis-a-vis* other organisations, it may be mentioned that the OPEC Secretariat participates in a large number of conferences and symposia relating to the field of petroleum and energy, which are sponsored by various international, regional and national bodies such as IMCO, IMF, WB, IAEA, ILC and IPEC. The organisation also maintains intermittent contact with the energy officials of the European Community in Brussels. [214]

All the above mentioned contacts and relations with other international organisations are an important part of OPEC's information activities. They confirm the interna-

tional recognition of OPEC's international status by the international community and also – and more importantly – in the context of OPEC's information policy, they assist in keeping OPEC's role in the international community an effective one by either directly or indirectly ensuring that OPEC is kept informed of recent developments, trends and discoveries. This international dimension in turn assists the OPEC Member Countries in the conduct of their own internal affairs, in that it ensures that they do not become isolated and cut off from what is happening in other parts of the world. [215]

In addition to all the above, the OPEC Secretariat also organises, as part of its information activities, meetings between the chief executives of the OPEC National Oil Companies (NOCs). The purpose of these meetings is: " to discuss areas of co-operation among OPEC NOCs which should, through close discussions and joint actions, work towards their mutual interests and thus give the world a real example of co-operation among developing countries." [216] These relatively informal meetings discuss a variety of subjects and prove to be very effective in facilitating an exchange of information between OPEC Members. Their success has, for example, been noted during the exchange of views and information related to conservation, the OPEC tanker fleet, the transfer of oil and gas technology, and manpower planning and training within OPEC Member Countries. The nature and importance of these meetings was described by the OPEC Personnel and Administrative Department as "... a forum for continuing training among the Member Countries ... These meetings have increased general awareness of the importance of planning human resources and the exchange of ideas on their utilisation in the oil industry in OPEC countries. The continued dialogue has increased prospects of our capabilities in identifying areas of common interest and for future studies of common interest and co-operation for future studies of precise problems and how to tackle them." [217]

6.4.13 Legal Requirements for the Transfer of Information:

The information activities examined above have, during almost the last forty years, led to a transformation of the flow of information to and from OPEC and the outside world. However, they do not deal with perhaps the most important transfer of all, the transfer of information from oil companies operating in the OPEC Member Countries' territories. In general there is no legal obligation on oil companies to transfer such information to Member Countries, as much as they might want this. To enable Member Countries to have access to such information, OPEC suggested that the Member Countries should include in their oil agreements provisions obliging oil companies to make at least basic information available on demand.

Thus one of the OPEC principles which was adopted in the OPEC Declaratory Statement of 1968 called for the supply of information to the Member Countries. This principle reads:

> "The operator shall be required to keep within the country clear and accurate accounts and records of his operations, which shall at all times be available to Government Auditors upon request. Such accounts shall be kept in accordance with the Government's written instructions, which shall conform to commonly accepted principles of accounting, and which shall be applicable generally to all operators within the territory. The operator shall promptly make available, in a meaningful form, such information related to its operations as the government may reasonably require for the discharge of its functions." [218]

Similar provisions were adopted in OPEC's first draft unified petroleum law, considered earlier in Part Six. As a result more information provisions appeared in subsequent oil agreements. For example:

1. Indonesian PIA's stated that the Host Country's national company:

> "... shall have title to all original data resulting from petroleum operations, including but not limited to geological, geophysical, engineering, well logs and completion, status reports and any other data as the contractor may compile during the term of the production-sharing agreement, provided that all such data shall not be disclosed to third parties without informing the contractor and giving the contractor the opportunity to discuss the disclosure of such data if the contractor so desires, and further provided that the contractor may retain copies of such data." [219]

2. Article 25 of the Scimitar Petroleum Concession Agreement, which was concluded between the Government of the Emirates of Ajman and Scimitar Production Limited, provides: [220]

> "25.1 The Company shall keep the Government fully informed as to the progress and results of all its operations within Ajman and shall give the government maps and quarterly and annual reports concerning the same. The Company shall also furnish the government with such technical and economic reports as may be prepared from time to time including geological and geophysical data and drilling reports.

Upon expiry or termination of this Agreement, the Company shall furnish the government with a complete copy of all information, maps, reports not previously provided to the government hereunder.

25.2 Throughout the term of this Agreement, all such information, maps, records and reports shall be treated as confidential by the government and the company and shall not be divulged to third parties without the mutual consent of the government and the company, except in so far as they are required for the settlement by arbitration of a dispute between parties to this Agreement." [221]

3. Similar provisions can be found in all other oil agreements concluded between OPEC Member Countries and oil companies, such as the Joint Production Agreement concluded between the Qatar General Petroleum Corporation and AMOIL International Ltd., [222] the Agreement between National Titanium Dioxide Inc. and the Government of Saudi Arabia, Article 23(1)(ii) of the Model Production Sharing Contract for the Second Recovery between SONATRACH and International Oil Companies, the Exploration and Production Sharing Agreement between National Oil Company and Aquamarine Libya, and the Kuwaiti Production Agreement. [223]

One important observation about these requirements for transferring information to Member Countries is that, as well as helping them to determine whether oil companies are meeting their contractual obligations, also the geological data can help in evaluating the likelihood of discovering petroleum fields elsewhere in the country, thereby raising the value of any particular site being explored – but the ability of Member Countries to be able to exercise a higher degree of control and participation in petroleum operations depends on both the quantity and quality of information and data that is required to be made available to them. More significantly, these provisions do not deal with the transfer of the actual 'know-how' of petroleum extraction – which is what OPEC information policy in this sphere has always ultimately been aiming at. This is probably because the oil companies would not agree to such a transfer in the first place. Perhaps one way of getting round this would be for Member Countries to include in their oil agreements provisions requiring the oil companies to educate, train and employ nationals of Member Countries. This would be the most practical method of transferring 'know-how', although in practice such employees would only be shown so much." [224] Ultimately, the OPEC Member Countrie national oil companies will have to acquire the necessary 'know-how' in the same way as the major oil companies – through actual experience.

6.4.14 A General Evaluation of OPEC's Information Policy:

As we have just seen, many methods have been utilised in the implementation of OPEC's information programme, both at local and international levels. Although the main thrust of OPEC's information policy has been, understandably, the acquisition and transfer of information for its own use and for the direct benefit of its Members, part of this process has also of course involved an exercise in public relations in order to keep others informed as to the nature and activities of OPEC. This has taken the form of press releases and periodicals in the English language; participation in international book fairs; active involvement in various research works and studies of a general nature; the production of films and other audio-visual resources; the establishment of diversified relationships with other organisations and the media in general; and organising visits to different countries and also visits from the greatest possible number of countries by groups from various levels and specialities. It is difficult to measure the relative success of these various measures, but on the whole it is submitted that the general image people have of OPEC is a benign, apolitical one.

In spite of the comprehensive nature of the ways and means which OPEC has at its disposal for the implementation of its information policy, the following general observations are worth noting:

1. OPEC's Share in World Information is Limited:

Despite the fact that OPEC has been able to conduct research and produce various publications and other information materials, these are still relatively limited in terms of quality, quantity, distribution levels and the number of languages in which they are published. Accordingly their effect and impact on the international petroleum information system as a whole is relatively limited.

2. Lack of Coherence between General Strategy and Information Strategy

There is an absence of a long-term information policy strategy which is linked to OPEC's overall aims and objectives. Each problem, or issue, or activity tends to be examined individually as an isolated case, without paying adequate attention to the general context of OPEC's activities as a whole. In other words, it could be said that certain activities of OPEC are carried out as a response to the pressure of events, without due consideration being paid to other complementary or auxiliary activities, leading to the attainment of basic goals, which must nevertheless continue to be pursued.

3. Dependence on Other Sources of Information

OPEC and its Member Countries are still largely dependent in most cases upon

the transmission of news and analyses from the foreign press. Thus the OPEC News Agency Centre does not operate independently, but relies on Western News Agencies in the conduct of its activities. The OPEC Bulletin which is published monthly, relies heavily for all its reports, tables, figures, public events and studies on sources which are outside OPEC and its Member Countries. For example, in each Bulletin there is a section entitled 'Market Review' with about 15 tables which provide information on different aspects of the oil market. [225] Of these 15 tables, only one table relies on information supplied by OPEC Member Countries, and the contents of this table do not tally with what other sources provide.

What is even more unfortunate, from OPEC's point of view, is that the OPEC Economic Commission which presents OPEC with information on the oil market – on the basis of which information important OPEC decisions are usually made – relies on tables which have been provided by the oil-consuming countries, the major oil companies and other institutions from the oil-importing countries, whose identities are clearly provided with each Table. [226] This demonstrates that the thinking, policy and decision-making process of OPEC and its Member Countries are still directly influenced and shaped by what information is made available to them by the specialised information and research centres of the industrially advanced countries. Although the information provided to OPEC in this way may not be misleading, it may inevitably be selective, and it would do OPEC no harm to have its own independent sources of information, both in order to assess the accuracy of information emanating from these other sources, and also in order to be able to make its own independent decisions.

4. OPEC's Information Activities are Primarily Concerned with the Pricing of Oil:

It is clear that the OPEC information activities described in this chapter are all supposed to further all OPEC's aims and objectives, including that of oil pricing. However, a closer examination of the nature of OPEC's information activities reveals that they are mainly directed towards one aim, that of oil prices. Virtually all OPEC Economic Commission and Information Department reports and studies submitted to the OPEC Conference are related to oil prices and production. Having said this, however, it is true to say that there have been limited activities which were designed to serve other aims – for example, the studies conducted by the Legal Department in connection with the unification of the petroleum laws and policies of the OPEC Member Countries. The Legal Department has also contributed in presenting OPEC's legal opinion on various matters at international conferences, meetings and seminars. For instance, OPEC contributed to the law of the sea conferences held by the UN.

In spite of the intensive efforts of OPEC in collecting information in relation to oil prices – on the basis of which the Conference can decide on questions of oil production and price determination – OPEC, unlike other IPAs, seems to have attached very limited importance to the collection and exchange of information concerning the marketing of oil. [227] In contrast, other IPAs have displayed considerable interest in gathering information on agents, brokers and other participants in the international commodity markets, and the position of TVCs in marketing and price formation institutions including commodity exchanges and transfer pricing. In this connection, for example, the IBA has compiled information and statistics on bauxite and alumna prices and conducted a study on the development of a free market price for aluminium on the London Metal Exchange. [228] In the case of the CPA, to give another example, the Sale Executive Committee helps facilitate exchange of market intelligence among its members. Thus in 1966, when the CPA decided to actively interfere in the world cocoa market, it was agreed that its members would give details to the Secretariat of their domestic purchases, sales and exports of cocoa. The Secretariat then passed on this information to the other members. [229]

In contrast, OPEC does not interfere or interact with its Member Countries' marketing processes and mechanisms. No joint action or activities involving the marketing departments of the national oil ministries or the national oil companies of the OPEC Member Countries has ever been conducted. Each country continues to act on its own initiative and regards all marketing activities as being outside OPEC's jurisdiction and competence.

It is accordingly submitted that OPEC should begin to provide on a regular basis marketing information to its Member Countries in order to assist and improve their marketing ability. GEPLACEA, for example, serves as a source of marketing information for its Member Countries by means of both daily and fortnightly publications which provide vital information on the marketing and pricing of sugar. [230]

One area in which OPEC needs to improve the quality of information at its disposal is the operation of oil exchanges and market places. Up to now there have been no collective activities conducted by the OPEC Member Countries concerning the collection of information on the volumes traded, the quantities involved, the main participants, and the costs and benefits of direct collective participation in these markets by opening up their own marketing channels and strategies – as opposed to the continued reliance by the OPEC Member Countries on the marketing channels presently provided by the oil-consuming countries.

5. Lack of Long Term Strategies:

At present, OPEC lacks an agreed long-term information strategy, apart from the 1960 plan and the more recent 1996 plan drawn up by the OPEC Secretariat. It is submitted that a long-term information strategy should be adopted. Other IPAs have managed to do this. For example the members of the International Pepper Association adopted a long-term strategy in 1976, based on the aim of collecting and supplying as much statistical data and other related information as possible to its member countries on all aspects of the processing and marketing of pepper.

6. The Absence of Proper Educational and Training:

One obvious set-back which impedes OPEC's information policy is the complete absence of appropriate educational and training facilities and institutions for the provision of specialised training. Up to now, each Member Country has adopted its own education system for the purposes of the oil industry, establishing universities, colleges and training centres to enable their own nationals to acquire the necessary knowledge and skills. Some Member Countries have insisted on provisions in their oil agreements with foreign companies to contribute towards these institutions both financially and educationally. Member Countries have also requested oil companies to train their nationals and to help in implementing measures whereby nationals eventually take over positions in the oil industry which are filled by foreigners.

OPEC as an organisation has supported such actions, but no collective or common action has been taken except in 1981, when OPEC suggested the establishment of an 'OPEC Institute of Education'. This institution could have proved to be a very successful instrument in assisting the implementation of the OPEC information programme – including the specialised training of staff to work within OPEC itself – but it is unfortunate that this proposal was never actually implemented. It is submitted that it should.

7. Conclusion:

OPEC information policy is not spelt out in one document, nor is it written in stone. It can be ascertained from a number of sources including the OPEC Statute, Resolutions of the Conference, the Declaratory Statement of 1968, the Solemn Declaration of 1975, and the activities and operations of OPEC itself. Clearly it is a policy which has evolved and changed with the times, with different priorities at different stages. Having examined these sources and the history of OPEC, however, one may conclude that the general parameters within which and for which OPEC's information policy operates are as follows:

(1) To utilise the real value of every barrel of oil exported by the OPEC Member Countries;

(2) To work towards the development of the petroleum industry in the OPEC Member Countries;

(3) To develop effective joint action in the oil sector between the OPEC Member Countries;

(4) To contribute towards the formulation of a unified petroleum policy among the OPEC Member Countries;

(5) To increase general awareness throughout the world of the aims and objectives of OPEC and of its concern in conserving and utilising prudently current crude oil reserves;

(6) To promote the dissemination of knowledge which is useful in energy preservation;

(7) To support the developing countries and joint co-operation among them; and,

(8) To work towards establishing a more balanced and equitable international economic order, based on the free exchange of key information and due consideration for both oil producers and oil consumers.

Although its original basis has not changed, OPEC's information policy and its related programmes and activities have been evolving and developing in line with the main developments of OPEC's aims and objectives. When OPEC was first established, its information policy was limited to the collection of information needed to assist in achieving OPEC's first main objectives, such as settling disputes over royalty issues and restoring oil prices to a reasonable level. Subsequently OPEC's information policy became concerned with questions of participation, nationalisation and ownership and control of oil production. Once the OPEC Member Countries had gained full control of the oil resources in their territories in 1973, and the subject of the New International Economic Order had become a matter of debate in the international arena, then OPEC's information policy also became wider and more international in its content and strategy. This development was summed up by the OPEC Secretary General at the first Conference of the International Ministries of the Non-Aligned Countries (COMINAC) when he said, "There is now a need for a new International Information and Communications Order." [231]

In view of these developments, there is an increasing need for OPEC's information policy to develop a long-term strategy, and to have its affairs administered by properly trained personnel who are adequately funded. Until this happens, it will always lag behind its Western European and American counterparts and be dependent on

them for information and analysis – which as we have seen is the situation at present. OPEC's ability to collect and interpret useful information depends, *inter alia*, on the technical knowledge of the personnel employed in the OPEC Secretariat's various departments, the availability of the relevant communications equipment, and adequate funds – to pay, in particular, the monthly salaries of the limited number of staff currently responsible for administering OPEC's information policy. [232] In view of the small budget allocated for this purpose, coupled with the fact that there are limited funds for operational activities, there is not much scope for collecting relevant information or attracting sufficiently qualified staff to analyse it. Thus in an oil industry still dominated and indirectly controlled by the High-Tech Northern consuming countries and oil companies, the ability of the OPEC Member Countries to exchange relevant information and act on it is still relatively restricted.

The struggle for access to adequate information resources reconfirms the conclusion reached in Parts One and Two that the fundamental differences between oil consumers and oil producers provide a *raison d'être* for having oil producers associations alone. However that is not to suggest that their demands for a fair economic order and for a limitation of damaging negative propaganda, as well as for access to the powerful information networks and data monopolies of the industrially advanced countries, cannot be voluntarily met by predominantly oil-consumers associations. The real struggle is to avoid conflict in the first place and to arrive at mutually satisfactory arrangements – and to achieve this the gathering and sharing of key information is essential.

6.5 OPEC's Pricing and Production Policy

6.5.1 Royalties and Income Tax [233]

When OPEC was created in 1960, individual Member Countries had different financial arrangements in their dealings with the major oil companies. Some countries were levying a 50% income tax rate on the oil companies' crude oil profits based on posted prices, other countries were levying the same percentage, but based on realised prices. [234] Furthermore, there was the problem of unrestricted discounts, or marketing allowances. Oil companies were allowed, by law and practice, to give discounts. [235]

The revenues which the oil producer states received at that time were a combination of royalties and income tax without any clear distinction being made between the two. The tax laws of the OPEC Member Countries did not require a 50% tax from oil companies, but required that the total amount of tax, rentals and royalties paid by the oil companies should not exceed 50% of the oil companies' profits. [236]

Accordingly, the OPEC Member Countries' per barrel revenues were deteriorating and not identical. They deteriorated in proportion to the average fall in price each year, and, depending on the terms of each particular contract, were not identical from one oil company to another. [237] The OPEC Members, of course, did not like these variations in income, or the deterioration of their per barrel revenues. [238]

At the second session of its Fourth Conference in June 1962, OPEC issued several Resolutions designed to ameliorate this situation. The first required the oil companies to pay their income tax on the basis of posted prices. The second stated that payments should be listed at uniform rates which Members considered equitable, and should not be treated as a credit against income tax liability. It also called for the elimination of marketing expenses. In other words, OPEC argued that royalties ought to be counted as pre-tax expenses, and that the profit after expenses ought to be divided evenly between company and country. [239] The argument of OPEC in favour of this accounting change, which hinged on a distinction between payment to the government as a fiscal authority with the power to tax companies, drew heavily on the nascent doctrine of permanent sovereignty.

OPEC's Resolution IV.33 followed this reasoning to its logical conclusion and provided for the distinct separation of royalties and income tax. The Resolution, issued in 1962, began by stating that:

> "The companies enjoying in Member Countries the right of extracting petroleum which is a wasting asset should in conformity with the principle recognised and the practice observed generally in the world compensate the countries for the intrinsic value of such petroleum altogether apart from their obligations falling under the heading of income tax. [240]

The Resolution then observed that under the agreements then in force, in general "no compensation is paid for the intrinsic value of petroleum, royalty or stated payment commitments being treated as credits against income tax liabilities. [241] Finally, the resolution stated that the member countries' right "to receive compensation for the intrinsic value of petroleum is incontestable. [242] OPEC recommended that each member country work out with the companies concerned a formula which fixed royalty payments at an equitable rate and did not treat them as a credit against income tax liability. At the same time, however, the collective solidarity of the Organisation was not ruled out. In the same resolution the OPEC Members also confirmed their joint solidarity and commitment to each other and agreed to maintain an exchange of views in this matter.

OPEC's Explanatory Memorandum, also issued in 1962, moved closer in emphasising its Members' reliance on the doctrine of permanent sovereignty over natural resources. The Memorandum argued that while the line between royalties and income tax had become blurred, the two were in fact quite separate categories of liability. The state possessed a dual identity, both as landlord and as tax-levying sovereign. As landlord, the state owned the mineral and petroleum wealth of its territory -- and royalties were payable in exchange for the state's agreement to let oil companies remove this wasting asset. As tax-levying sovereign, the state enjoyed the right to tax the profit of any individuals and corporations operating within its territory. [243]

OPEC's adversaries, the concessionary oil companies, reacted sharply against this demand for a change in the method of royalty expensing. Significantly, the hot debate over the distinction between taxes and royalties began in 1962, the same year in which the United Nations adopted its path-breaking Resolution 1803, which affirmed the right of a country to exercise its permanent sovereignty over the natural resources within its territory. Significantly, the unfolding of the conflict between OPEC and the major oil companies concerning payment of royalties and income tax bore a strong parallel to the debate between the Western and the World delegations at the United Nations concerning the right to exercise permanent sovereignty. In both cases, the actual concept that any country retained the right to exercise control over its own natural resources was accepted in principle -- but the logical consequences and practical procedures flowing from this acceptance formed a subject of great controversy.

The counter-arguments of the oil companies and the rebuttals of OPEC generated more heat than light, and also forcibly demonstrated the importance of the concept of equity. For their part, the representatives of the oil companies asserted that OPEC was demanding an unwarranted modification of the relevant existing concession agreements whose terms had already been agreed. OPEC's Oil Ministers accepted this in principle, but argued, also as a matter of principle, that the interests of equity required this modification in the way oil revenues were shared. The oil companies also maintained that the royalty was conceptually separate from the income tax because it would be payable even if the companies made no net profits. OPEC agreed completely with this and pointed out that this supported and confirmed their position, that the royalty and income tax were independent of each other -- and that the former ought to be expensed and paid whether or not profits were registered. In the final analysis, OPEC's appeal was to equity. THE OPEC Secretary General declared that: "The best way to protect our idea is to be realistic and to be directed by a deep sense of fairness and equity." [244]

Negotiations between the two sides continued throughout 1963. The oil companies were unwilling to concede on the issue of royalty expensing, perhaps fearing that one thing would lead to another, and that if they made any concession this would lead to future demands. In August 1963, marking a shift to a stronger sense of collective identity, OPEC's Member Countries substituted OPEC in place of Iran and Saudi Arabia as their legally empowered representative and negotiator. At this stage the oil companies offered to accept the principle of royalty expensing in exchange for a discount in the posted prices of petroleum for the purposes of taxation, hoping by this manipulation to avoid having to pay any more than they had been paying before. OPEC rejected this offer, and by March 1964 negotiations were at a deadlock. However, in July of that year the oil companies made a new offer. Under the terms of this proposal, the companies said that they were prepared to accept the expensing of royalties as from the 1st January 1964, in exchange for an 8.5% discount off posted prices for tax purposes; then during the next two years, that discount rate would be reduced by 1% annually; then thereafter, individual country-to-company bargaining could take place, with the various parties free to agree whatever terms were mutually acceptable. OPEC's Seventh Conference approved this new joint offer of the oil companies of progressive expensing in its Resolution VII.49 of the 28th December 1964. Of the individual OPEC Member Country governments, only Iraq rejected the oil companies' offer – while Iran, Kuwait, Libya, Qatar and Saudi Arabia accepted the new royalty settlement.

As we have already noted, the link between this episode and events at the 1962 session of the United Nations lies in the increasing prominence of the doctrine of the right to exercise permanent sovereignty over natural resources – and in the controversy over the financial implications which this doctrine entailed with regard to the relationship between the producing countries and the foreign companies operating within their territories. The main difference in the exchanges between the developed and developing countries at the United Nations in 1962 on the one hand, and between OPEC and the oil companies on the other hand, was that in the United Nations, despite some rhetorical salvos, there was a mood of compromise and a search for consensus – whereas the attitude of the two main protagonists in the royalty expensing case was more absolute and intransigent. Business was business. When the oil companies finally decided to make some concessions, they were driven to do so not by a spirit of compromise, but by a determination to prevent the Members of OPEC from taking unilateral action on the royalty expensing issue and on the reduction of posted prices.

In these tussles, the immediate financial stakes – although not the more lasting effects – were more critical in the OPEC negotiations than in the United Nations de-

bate. The prospect of a slowdown or complete stoppage of oil production by the Member Country governments of OPEC outweighed in gravity the prospect of failure at the United Nations to work out a satisfactory resolution proclaiming the international community's agreement on a state's right to exercise control over the natural resources situated in its territory.

Another difference between these two confrontations was that the status of the participating parties differed in the two conformations. At the United Nations, each of the delegations enjoyed an unquestioned right to take part in the debate because each of their states claimed formal sovereign equality with every other state. In contrast, the oil major companies even refused to recognise OPEC as a negotiating entity at first, and insisted to the very end of the royalty expensing controversy that they were only negotiating with individual governments, and not with the OPEC as a whole. It is in this context that the continued refusal of Switzerland to accept OPEC as an international legal entity during the early 1960s – which was examined in Part Four – can be understood. The technical arguments used by the Swiss government masked the real motive, which was to impair OPEC's collective bargaining strength as much as possible – even to the extent of precipitating the Organisation's collapse.

OPEC's relative success in the royalty expensing negotiations represents an early triumph of the doctrine of permanent sovereignty as a foundation of Third World policy as regards relations with High-Tech Northern States and foreign companies. It also demonstrates that OPEC was acting as an organisation whose activities resulted in wealth being transferred from the developed to the developing countries. In this context its actions had an impact that went far beyond benefiting its own immediate Members – although it must also be appreciated that OPEC's success in expensing royalties did have the short-term effect of increasing the OPEC Member Countries' oil revenues at a time when oil prices were falling. [245] Finally, OPEC's relative success in the royalties negotiations reaffirms the point made earlier, that oil producers' interests necessitate the existence of oil producers-only organisations – and this explains why the members of other IPAs have followed suit. [246]

As we are about to see later on in Part Six, in the end, the only way that the revenues of the developing countries could be minimised – so that the revenues of the developed countries could be correspondingly maximised – was by ensuring that the currencies of the developing countries were consistently devalued on the international money markets and banking system, so as to effectively neutralise any price increase in the cost of basic natural resources – a relatively easy exercise in manipulation, once there remained not one currency backed by gold.

6.5.2 OPEC's Production Policy [247]

Control over decisions relating to the regulation of the volume of oil produced has been an important issue since the creation of OPEC. [248] However OPEC's main recourse to production programming began as late as 1982, twenty-two years after the creation of the Organisation. [249] OPEC's inability to agree on a production programme earlier was due to a number of internal and structural considerations which were not under the control of OPEC's Members. [250] However, the concept of an OPEC production programme was evolving since its inception, and has of course been influenced by economical, legal, political and institutional issues along the way. The purpose of the following pages is to determine what OPEC's production policy is. Since there is no specific document, decision or declaration which summarises this policy, it is necessary to consider all the various sources and to draw our own conclusions:

1. The Development and Evolution of OPEC's Production Policy:

During the inaugral Baghdad OPEC Conference in 1960, Tariki and Alfonzo were the first to advocate a production programme. Thus the third paragraph of the First Resolution of OPEC's First Conference called for: "the regulation of production." [251]

Sheikh Tariki was in favour of the programme, but his government, Saudi Arabia, was not. In 1962, he was fired because of this. Immediately after his removal the policy was changed. [252] The new Oil Minister, Ahmed Zaki Yamani, dropped Saudi Arabia's call for a pro-ration programme and several years later he declared that Saudi Arabia: "does not believe that the OPEC production programme is a useful or workable instrument for strengthening prices." [253]

Venezuela's position continued to advocate a pro-ration programme. Its support was based on a rational and consistent economic policy. It was not the personal point of view of someone who happened to be a Minister of Oil at the time, as had been the case with Sheikh Tariki of Saudi Arabia. The main point was that the existence of a surplus of oil supplies affected all the OPEC Member Countries, but in different ways. Countries like Saudi Arabia and Kuwait were low-cost producers, with a high potential for increasing their production. Any deterioration in the price of oil could affect their income per barrel – but not necessarily affect their total income, if they increased their output so as to compensate for any fall in prices. [254] For Venezuela, which was more of a high-cost producer, the danger from a supply surplus was not the deterioration of income as a result of price cuts, so much as a possible reduction in volume of production, and consequently a more dramatic fall in its revenues, because its production costs per barrel were greater. This was the reason for Venezuela's adamant support for

a pro-ration programme. [255] Iran, for its part, wanted more money and did not care whether the per barrel government take was decreasing, so long as the total revenues from oil were increasing. [256] The Iranian attitude was not entirely economically motivated, since politically, Iran wished to appear as being independent and the leading country in the Gulf. Thus the Iranian Prime Minister, when elaborating on production control, declared that: "Iran is determined to maintain her historical role as the biggest exporter of oil in the Middle East." [257] This role was viewed by Iran in terms of, *inter alia*, "... the regional commitments to Iran ..." [258] and "... forming one of the principles of the country's oil policy." [259]

Given this attitude on the part of Iran, it is not surprising that when Venezuela continued in its efforts to pressure the other OPEC Member Countries into agreeing to production control, the Shah of Iran, as in the case of Saudi Arabia, clearly denounced the programme and described it as: "nice in theory but unrealistic in practice." [260] However, unlike the Saudi attitude, the Iranian rejection of production control was not dictated by the major oil companies, but was more a flamboyant expression of the exercise of the state's sovereignty, as was indicated by these words of its Shah:

> "The needs of this country are clear. No firm, no company, nor organisation can tell us, merely because it has an agreement with us, that 'We will produce and export so much of your national wealth. You cannot touch the rest because we do not wish to exploit it ...'" [261]

It is clear from these words that the Shah was thinking in – or perhaps utilising for his own political purposes – terms of a production programme which was hypothetically dictated <u>by</u> the oil companies, rather than in terms of a production programme which could be dictated <u>to</u> the oil companies, which is clearly what Venezuela had in mind. On the face of it, however, the Iranian position in this matter was guided mainly by factors such as "...the country's population, its size and the needs of its development plan," [262] – which required considerable revenues, which in turn Iran was content to generate by selling lots of oil, undercutting other oil producers if necessary.

Kuwait's position in relation to the proposed oil production programme was made clear at the Second Arab Petroleum Congress by its representative when he said: "The more I look at it, the less I see how pro-ration could work in reality." [263] Libya also, before its revolution, did not support pro-ration, saying that Libya was a newcomer to the world of oil, and should have time to develop its resources and assess its reserves. Furthermore, its need to generate foreign receipts in order to diminish its unfavourable balance of payments deficit was never in any doubt. Indonesia was also against the

introduction of a production programme, like Libya because of its acute balance of payments problems and the need for foreign exchange. Nigeria did not join OPEC until it was sure that such a programme would never be implemented.

Thus in the early days, the only country that insisted on the implementation of a pro-rationing programme, was Venezuela. It was logical for Venezuela to sponsor such a programme, since it could not increase its production, its potentials were already known and its reserves were very small compared with those of Saudi Arabia and Kuwait. [264]

Given this preponderance not to have a production programme, the subject was repeatedly deferred from one OPEC meeting to another, and from one committee to another. In spite of the Member Countries' doubts about the efficacy of such a programme, however, in 1965 they returned to the subject and gave it their verbal support by issuing resolutions from time to time re-affirming OPEC's 'conviction' that: "... a joint production programme is an effective instrument for the pursuit of the Organisation's fundamental objectives of stabilising and maintaining crude and product prices at equitable levels ..." [265] and instructing the Economic Commission "to undertake a comprehensive study in depth." [266] All such resolutions were mildly phrased and were not meant to be implemented. The first programme planned by OPEC, for the year July 1965 to June 1968, assigned certain increments to each country. No one followed it. [267]

OPEC's Economic Commission, however, which was responsible for researching the feasibility of a production programme, did continue its efforts to assist OPEC Members in achieving a closer understanding of the subject. It presented six formulae to be taken as basic criteria for OPEC's proposed production programme. They were: (1) Reserves; (2) Historical rates of growth of oil production; (3) Population; (4) Area of country; (5) Government expenditure on certain development items; and (6) Proportion of oil income in government revenues. In order to implement any such programme, however, it would require full agreement among all the Member Countries. This was impossible. Also, the question of assessing each factor, let alone assigning a weight to it within an overall formula, was difficult.

Despite the failure to implement the Economic Commission's proposals, OPEC's attempts to reach an agreement on production continued and were manifested in the adoption of further resolutions on the subject. In June 1970, OPEC adopted a plan calling for a "production programme during the period 1971-1975." [268] This five year plan did not take off, however, and in the meantime the OPEC Member Countries' attention was diverted from output regulation to certain other developments in the oil industry other than production control – which are examined in the next Chapter, on OPEC's pricing policy.

In 1973, when the war between the Arab countries and Israel took place, the OPEC Member Countries were able to have control over production of oil for the first time in their history. Despite this major structural change in the oil industry, however, the OPEC Member Countries were not able to agree on a production programme through OPEC. The reason behind this was that there was a great increase in demand for oil in the world market, and the Member Countries were producing at their highest capacity and selling at the highest possible prices. These market forces drove OPEC to act blindly on the issue of instituting a production programme.

These market conditions did not last. In the 1980's, oil demand started declining and the question of OPEC's production programme came onto the agenda once more for discussion. The OPEC production programme was agreed on for the first time at OPEC's Extraordinary Conference, held on the 19th-20th March 1982. Despite certain differences of opinion, it was finally agreed to place a ceiling of 18,000,000 barrels per day on OPEC's aggregate production with effect from the 1st April 1982, to be reviewed at the next meeting of the Conference. The Conference also decided to establish a Monitoring Committee, comprised of the Oil Ministers of Algeria, Indonesia, Venezuela and the United Arab Emirates, which would keep market developments under constant review and make recommendations to the Conference. [269] This programme was not in fact implemented, however, for a number of different reasons, the main ones being:

(1) Saudi Arabia was still insisting that production programmes did not fall within the Organisation's jurisdiction. Accordingly, it did not accept to be a member of the Monitoring Committee and in order to make the point, it delayed its announcement of a 500,000 barrels per day cut in the AramCo ceiling until after the Conference was over. This attitude was also re-confirmed by the Oil Minister of Saudi Arabia at the next meeting of OPEC, which was held in May 1982, when he stated that the Saudi production ceiling of 500,000 barrels per day decided at the previous Conference was self-imposed and not subject to alteration by OPEC. [270] This, however, did not appear to be an objection to oil production control *per se*. Thus this was the first time that Saudi Arabia had accepted the idea of production control – but it nevertheless wanted this to be a matter of national jurisdiction and outside the scope of OPEC's jointly organised activities.

(2) Algeria, Libya, Iran and Nigeria simply did not comply with the programme, presumably because they needed the money.

(3) The programme could not be implemented because there was no effective monitoring body. The Monitoring Committee was not able to put the programme into

practice because it lacked any powers for the purposes of enforcing any production decisions. In fact, the Committee's role was only to submit a general report at each Conference about its view of what would be the best production ceiling for the forseeable future. [271]

(4) Basic questions such as what the criteria should be for formulating the production programme and fixing quotas were not agreed upon. Thus there was an absence of clear vision for both the Organisation and the Monitoring Committee. Thus, for example, when the President of the Committee, Dr. Otaiba, was asked about differentials, he replied:

> "The differentials issue is not ready to be decided at this stage. It requires further study and we are allowing more time for the experts to look at it. It is a rather complicated issue and we in the Monitoring Committee did not feel that it had been given sufficient time." [272]

2. <u>The Establishment of a Ministerial Executive Council:</u>

Because of the lack of an effective body to monitor and implement OPEC's decisions on production, the Organisation finally agreed on establishing a Ministerial Executive Council at the 1972 OPEC Conference, which was held in Vienna on the 29th January 1985. [273] The necessity for the Council arose from the need to have complete internal transparency of information concerning Member Countries' petroleum sales, in order to promote sufficient trust and credibility between Members to make the implementation of OPEC's decisions on production possible.

The Council is composed of five Oil Ministers, and the OPEC General Secretary is also the Secretary of the Council. [274] However, an understanding was reached that any other head of a Member Country's delegation could also participate in the work of the Ministerial Executive Council, if he so wished. The Ministerial Council is empowered to establish its own rules and procedures for its work, and it can take any measures it deems necessary to fulfil its tasks. So far, the Ministerial Council has not in fact established any rules or procedures! Accordingly there are still important aspects of the Council and its work which need to be clarified – such as, for example, the composition of the Council and its decision making system. Other questions also arise, such as, for example, does it adopt recommendations and decisions or does it merely submit reports; and is it a temporary or permanent body? The Resolution by which this Council was created does not clarify these points – and it is a difficult task to examine the actual practice of the Council, since none of its proceedings and activities are published. [275]

The Ministerial Council interacts with several international auditing firms. The task of these firms is defined in the Resolution as follows: "to provide a check on Member Countries' petroleum sales, tanker nominations, shipments, prices, quantities, etc." [276] In order to carry out its task, any auditing firm instructed by the Council is empowered: "to send its representatives to Member Countries to check the books, invoices, or any other documents that are deemed necessary by the firm in fulfilment of its task." [277] Any such firm is also empowered to: "choose any other means of checking and controlling, such as tanker tracking methods to be undertaken by consultative firms." [278] The Council also has the right to: "send its representatives to pay visits to the ports and loading terminals of Member Countries to provide checking and control, besides the auditing firms' representatives." [279] The Member Countries are obliged to co-ordinate with the Council and its auditors by: **(a)** making available to the representatives all required documents, and **(b)** sending all relevant information on tanker nominations to the OPEC Secretariat. [280]

The Ministerial Council is given an annual budget of US$3 million in order to carry out its tasks, which – unlike the other unfunded or inadequately funded OPEC operations considered earlier – means that it is capable of functioning. However there is still some lack of clarity concerning the scope and extent of its function. For example, the Council is required to check on Member Countries' petroleum sales, but no definition is given for the term 'petroleum'. Does it just cover crude oil, or does it also include refined products and condensates? Also, no definition of 'petroleum sales' is given. Does this include barter deals, counter-trade sales, processing agreements, government-to-government agreements, exchange and direct sales, equity oil, participation oil, etc., or not? Finally, although the Council is empowered to do and has been doing its monitoring at Member Countries' ports, what about the loading terminals outside Member Countries where petroleum is loaded? In a recent Council report submitted to the Conference in 1997, there was reference made to ports outside Member Countries. This suggests that 'terminals' will cover places both in and outside Member Countries from which petroleum is loaded.

In addition, the Council has a long term objective which is: 'to consider and prepare the Organisation's long-term strategies, including the setting of OPEC production quotas on a permanent basis." [281] Recently, the Council submitted to the Conference a report (which at the present point in time, August 1998, is still on-going) listing its suggested criteria for determining quotas. However, until the OPEC Conference actually adopts these or other criteria, the subject will remain a matter of speculation and, as the conclusion shows, is likely to remain that way.

Before making any final comments about the OPEC production programme, it should be noted that one important effect of OPEC's efforts to establish a production programme was that in the late 1980s and during the 1990s, there was a degree of co-ordination achieved with oil producers who were not OPEC members. However, because this co-ordination was mainly concerned with achieving pricing objectives, it is considered in the next Chapter, on pricing policy. [282]

6.5.3 The Objectives of OPEC's Production Programme

The OPEC production programme explained earlier does not specify or set out the objectives it aims to achieve. However, at the first meeting in Baghdad in September 1960, OPEC agreed to:

> "... study and formulate a system to ensure the stabilization of prices by, among other means, the regulation of production, with due regard to the interests of the producing and of the consuming nations and to the necessity of securing a steady income to the producing countries, an efficient economic and regular supply of this source of energy to consuming nations, and a fair return on their capital to those investing in the petroleum industry." [283]

Clearly the aims of "stabilisation of oil prices', 'securing a steady income to the producing countries', and 'an efficient economic and regular supply ... to consuming nations' and 'a fair return' are the basis of OPEC's Petroleum Policy in general, including its production policy. Apart from these general objectives, OPEC has not specified any more detailed objectives for its production programme. However, OPEC's activities and operations in relation to control of production reveal the following more specific objectives:

1. To replace the oppressive oligopolistic control of the major international oil companies with its own control mechanisms in order to resist sustained pressures on crude oil and product prices.

2. To prevent oil companies from exploiting their bargaining strength by using production capacity ceilings as a means of regulating exports from any oil-producing country – should it wish to exert some pressure.

3. To improve the bargaining position of the OPEC Member Countries in their negotiations with the oil companies.

4. To assist in achieving OPEC's conservation objectives by not exhausting oil reserves too rapidly.

On a number of occasions, OPEC Member Countries have individually decided to control oil production for the purposes of conservation, but no general agreement between them has yet been reached to adopt a general strategy whereby production programmes will be set up specifically to ensure the preservation of oil resources – despite numerous statements made by OPEC expressing the intention to do so. [284] As already noted in Part Five, the differences between the OPEC Member Countries in political doctrine, culture, religion, population, geographical location, volume of known reserves, and production capacity, have made such an agreement more difficult to reach. [285]

It is clear, however, that the main underlying objective of OPEC's production programme is not so much conservation of oil reserves, although in the long-term this is important, but rather preservation of oil revenues – which is why the production programme only became acceptable to all its Members once its potential for stabilising prices and maintaining oil revenues was appreciated. The importance of production control was described by Seymour as follows:

> "For the producer governments, the privation of the power of decision-making on oil production levels, as well as on pricing and management of operations, was tantamount to a loss of sovereignty in an extremely vital area of the life of their countries. It was as if an essential steering mechanism was missing from the ship of state. It was difficult, if not well-nigh impossible, to plan for the overall development of a country's economy so long as the massively dominant oil sector remained a self-contained enclave, a state within a state, subservient to the dictates of international rather than national exigencies." [286]

6.5.4 Legal Aspects of OPEC's Production Programme

As explained earlier, OPEC's production programme objectives were economically motivated, but unlike OAPEC, production control was not adopted for the purposes of furthering political aims. To give two recent examples, after the American missile attack on Libya in 1986, and the invasion of Kuwait in 1990, the two countries attacked by America demanded the use of production control in order to achieve political retaliation. The Libyans asked for an embargo against the Americans and the British, while the Iraqis – who claimed that the Gulf War was a set-up designed to destabilise the Middle East region and plunge its countries into debt so as to ensure American control over oil supplies in the Gulf – asked for an embargo against the Western Countries. Both requests were refused by OPEC, who made it clear that its Petroleum Policy

is not concerned with any political elements or aims. Accordingly, the question of the legality or otherwise of the use of production control for political purposes is not a subject of discussion which falls within the scope of this work. [287]

Having made this clear, however, as we have just seen, ever since 1982 OPEC has agreed on a production control programme and has issued each of its Member Countries with production quota ceilings. This policy has raised some legal questions which it would now be appropriate to examine:

1. <u>The International Legality of Production Control:</u>

Article 2(4) of the United National Charter provides that:

> "All members shall refrain in their national relations from the threat of use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

In the present context, the question arises as to whether or not the word 'force' refers only to armed aggression or whether it applies also to economic and/or political pressure. If it does apply to economic pressure, then a further question arises as to whether or not OPEC's production control programme could amount to economic force.

The narrow interpretation of Article 2(4) is that it does not apply to economic or political pressure but only to physical armed force. [288] The supporters of this interpretation argue that the express language of this Article, [289] and its negotiation history, [290] and the way it has been interpreted since it was promulgated, [291] all lead to the conclusion that the 'use of force' does not apply to economic or political pressure, but only to physical armed force.

On the other hand, the supporters of the wider interpretation of Article 2(4) believe that the very fact that no restrictive adjectives are included before the word 'force' shows that it was originally intended not to limit the scope of the provision merely to armed attack. They support their arguments on the basis of the wording of the Articles [292] or subsequent UN Resolutions specifically addressing economic coercion, and also other international documents drafted since the UN Charter first came into effect. [293]

The debate between the two schools over the definition of the term 'use of force' extends also to the delimitation of the term 'aggression', which has been the subject of a long dispute within the United Nations. [294] Those who support the wider interpretation of the term and who assert that it covers measures other than armed aggression and includes economic, ideological and cultural attacks, have made a number of attempts to have their interpretation adopted by means of concluding international agreements,

submitting suggestions, and delivering arguments to and in the UN institution and its activities. [295] However, this effort was weakened by the adoption of General Assembly Resolution 3314 (XXIX) which defines aggression as follows:

> "Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition." [296]

In the light of this Resolution's emphasis that 'aggression' means the use of armed force, it is submitted that any suggestion that OPEC's production control programme should be considered as an act of aggression cannot be sustained. Furthermore, it is submitted that in view of the UN definition of 'aggression', the meaning of 'use of force' should be interpreted in the same manner.

Although OPEC's production control programme cannot be realistically classified as 'use of force' or 'aggression', there is another Article of the UN Charter which may give rise to similar arguments, that is, Article 2(3) which requires members of the UN to: "settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered." In fact, however, OPEC has never actually used its production control programme as a means of settling its disputes with other states. For example, as we have seen in Part Four, OPEC did not resort to such tactics in its dispute with Switzerland concerning its and its Headquarters' international status. Nor did it use production control to gain leverage in its dispute with the EC countries over the issue of taxation on petrochemical products.

However, as we shall see in the next Chapter, in its disputes with the major oil companies concerning the Tehran-Tripoli Agreement – and in other issues already considered (such as participation, nationalisation, compensation, and royalties expensing) – OPEC did make use of the threat of resorting to oil production control as part of its negotiating muscle. Can one argue, therefore, that the use of such 'economic pressure' amounts to the violation of Article 2(3)? In other words, was OPEC justified in using the threat of an embargo to settle such issues? Furthermore, would OPEC be justified in actually imposing an embargo to achieve its aims?

These questions were the subject of great debate when OAPEC imposed an oil embargo in 1973 after the Arab-Israeli war. It was argued – by those who define embargos, boycotts, blockades, reprisals or other kinds of economic pressure as constituting a non-peaceful settlement of disputes – that the oil embargo was illegal because it violated the principle of 'peaceful means'. Brosche, for example, argues that:

> "They are not peaceful means and not appropriate for the solution of disputes. The use or imposition of such measures would constitute a violation of the obligation to settle international disputes by peaceful means. Due to these facts it becomes evident that the use of any kind of [economic] pressure is contrary to the [Charter] principle of peaceful settlement of disputes." [297]

It should be noted, however, that this embargo was imposed by OAPEC, not by OPEC. As we have already seen earlier, those countries who were members of both organisations did not attempt to pressurise non-OAPEC members to join in imposing the embargo. Furthermore, Brosche's argument – which in fact only amounts to the repetition of one assertion expressed in three different ways – may apply to inter-state conflicts, but cannot plausibly be extended to apply to disputes between states and oil companies. It can only be applied to disputes between states, whereas all of OPEC's threats to use production control were directed against oil companies.

Even if we were to presume that this argument could apply to OPEC, it would contradict the reality of present world economic relations between sovereign states – where economic competition between states is just as unavoidable as economic co-operation. [298] Any buyer and any seller in any market need each other – but will also try to strike the best bargain possible. Therefore, it is submitted, the real question is not whether or not economic coercion is illegal, but rather, at what point does it becomes illegal? By putting the question in this way, it should be possible to determine up to what point OPEC's production control programme would be permissible, and cannot be considered economic coercion – and at what point it would become economic coercion. In practical terms, it is submitted, OPEC has not reached this point – and in fact it would be safe to assert that it is an implied aim of its production policy never to reach this point. OPEC's continued refusal to become involved in political disputes is proof of this.

In short, the Articles of the United Nations Charter discussed above do not provide a decisive answer as to the legality of OPEC's oil production control programme. They indicate the broad parameters of what is acceptable and unacceptable to the international community – but cannot possibly pinpoint the exact mark which cannot be overstepped with impunity. They do, however, define the main areas of debate, as well as paving the way for further discussion – which in the present context leads us to assess OPEC's production control programme in view of the UN General Assembly's Non-Intervention Declaration, [299] in particular Paragraph 2, which requires member states not to use or encourage the use of economic measures to: "coerce another State

in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind." [300]

This provision, it is submitted cannot be applied to OPEC's production control programme because there is no question of the Organisation's attempting to obtain from another state the subordination of the exercise of its sovereign rights. If anything this is exactly what the major oil companies were attempting to obtain from the OPEC Member Countries prior to the establishment of OPEC. As for the words "or to secure from it advantages of any kind", these are too vague to be capable of precise definition and could hardly be extended to apply to driving a hard bargain.

The crux of this matter, it is submitted, is to be found in the UN Resolutions concerning the exercise of Permanent Sovereignty over Natural Resources. [301] Since these Resolutions have already been discussed more than once in other parts of this work, there is no need for repetition at this stage, other than to make brief observations specifically in relation to oil production control:

OPEC has on a number of occasions made it very clear that its Member Countries are entitled, by virtue of this now well-established and widely accepted principle, to implement oil production control. References to this, as has already been noted, can be found in the Declaratory Statement of 1968, the Solemn Declaration of 1975, and several other OPEC Resolutions. OPEC has also relied heavily on various UN Resolutions, particularly Resolution 523 of January 1952 which provides that:

> "The under-developed countries have the right to determine freely the use of their natural resources in order to be in a better position to further the realisation of their plans of economic development in accordance with their national interests." [302]

Clearly if OPEC's production control programme is aimed at enhancing the economic development of its Member Countries, then the above Resolution provides it with a strong legal justification for implementing that programme. Even clearer support can be found in UN General Assembly Resolution 3171, which makes an explicit connection between the exercise of permanent sovereignty over natural resources and production control:

> "One of the most effective ways in which the developing countries can protect their natural resources is to establish, promote or strengthen machinery for co-operation among them, which has as its main purpose to ... co-ordinate production policies and thus guarantee the full exercise of sovereignty by developing countries over their natural resources." [303]

This provision does not in itself indicate whether the OPEC Member Countries' right to exercise sovereignty over their own oil resources entitles OPEC to exercise an unlimited right of oil production control. Clearly it is a question of balance. A judicious and prudent use of oil production control has never been seriously challenged – whereas a threat to hold the whole of Europe to ransom most surely would.

Another Resolution on permanent sovereignty on which OPEC has always relied is UN Resolution 1803. On the basis of this Resolution alone, production control has been regarded by some as a rightful and justified exercise of sovereignty. In this regard Schachter says:

> "On the international level, the principle of permanent sovereignty has become the focal normative conception used by States to justify that right to exercise control over production and distribution arrangements without being hampered by the international law of state responsibility as it had been traditionally interpreted by the capital-exporting countries ... It would be a mistake to consider the idea of permanent sovereignty over resources as an anachronistic rationale. It should be viewed as a fresh manifestation of present aspiration for self-rule and of great quality." [304]

In light of the above, it is clear that the right to exercise permanent sovereignty over natural resources is undisputed. It is also clear that implementation of OPEC's production policy programme is 'a fresh expression' of the exercise of this right. What is in question is the extent to which this right can be exercised, since in the exercise of any right, care should be taken not to impinge upon or infringe the equally legitimate rights of others. This dilemma was clearly manifested in a former OPEC Secretary General's Statement:

> "The important issue to be settled, however, in connection with production control is whether oil producing countries are in fact free to exercise fully sovereignty over their natural resources by programming production." [305]

Although this is a question to which there is no definitive answer, it is clear that a reasonable exercise of this right is justifiable. What is not clear is at what precise point any such exercise would be considered unreasonable. The question as to exactly when OPEC control over oil production would become illegal, if at all, remains a question which only a judge can decide, should this matter ever come before a court or arbitration tribunal.

2. The OPEC Production Programme vis-a-vis GATT:

As discussed earlier in this work, not all OPEC countries are parties to the GATT. Accordingly the question arises as to the validity of the OPEC oil production programme in relation to those who are GATT members. In this respect Article XI of the Agreement provides:

> "No prohibition or restrictions other than duties, taxes or other charges, whether made effective through quotas, imports or export licenses or other measures shall be instituted or maintained by any contracting party or on the importation of any product of the territory of any other contracting party on the exportation or sale for export of any product destined for the territory of any other contracting party." [306]

Article I of the Agreement which is concerned with General Most Favoured Nations Treatment provides that any advantages, favours, privileges or immunities granted by one party to another in respect of the import and export of a product shall be automatically extended to all other parties in respect of their dealings in similar products. Article II outlaws prohibitions and restrictions, other than taxes and duties on the export of products by one contracting party to another, "whether made effective through quotas, import or export licences, or other measures."

These provisions, taken on their own, might appear to provide a valid basis for proposing that the OPEC production programme is illegal as far as member of GATT are concerned. There are two answers to this. The short answer is that whichever state is not a party to the GATT is not bound by its provisions. The other answer is that such a conclusion is undermined by the fact that the GATT provisions are not intended to harm the interests of the economically weaker countries and perpetuate rather than reduce an existing economic dis-equilibrium. Accordingly, it is quite consistent with the general purposes of the GATT that special provisions are made in favour of countries whose economies are in the early stages of development and can only support low standards of living. These countries may impose quantitative restrictions in order to safeguard their financial position and to ensure a level of monetary reserves adequate for the implementation of programmes of economic development.

If OPEC's production control programme is legally accepted on the basis that its aim is to achieve a level of monetary reserves which are adequate to enable its Member Countries to implement their programmes of economic development, then it is clear that there is no conflict between OPEC's production control programme and the aims and provisions of the GATT.

3. The OPEC Production Programme vis-a-vis Bilateral International Trade Law

Some of the OPEC Member Countries are parties to the so-called 'Friendship, Commerce and Navigation Treaties' (FCN Treaties) with many different nations. These agreements include 'most favoured nation' provisions and prohibitions of quantitative restrictions. [307] The question therefore arises as to whether or not the implementation of the OPEC production control programme by OPEC Member Countries who are also parties to the FCN Treaties is a violation of such contractual commitment.

In general, by way of an answer to this question, it could be argued that the FCN Treaties do present contractual obstacles to OPEC's power to control oil production. However, such apparent obstacles have in fact been undermined by the subsequent practices and actions of members to these treaties, particularly those of the United States, which imposed a quota system for the import of oil which discriminated in favour of oil imported from certain countries. The preferential treatment given to Canada was not in conformity with these treaties. Furthermore, no state ever claimed there these treaties had been breached when the Arab Countries imposed the post-Israeli/ Arab war oil embargo in 1973. Finally, these provisions should not be read separately from the principles embodied in the UN Resolutions which are concerned with the exercise of Permanent Sovereignty over Natural Resources and the New International Economic Order. [308]

In conclusion, it is clear from the above examination that the reasonable control and regulation by the OPEC Member Countries of their oil production in a collective manner cannot be described as constituting a violation of international law. Equally, it has to be admitted that the above examination has been unable to establish precisely to what extent OPEC can justifiably exercise control over oil production, other than to indicate that there clearly are limitations. The following pages are devoted to exploring the nature of these limitations in further detail:

6.5.5 Limitations on OPEC's Production Programme

As stated earlier, the OPEC Member States rely on their absolute right to exercise permanent sovereignty over natural resources when exercising their control over the production of oil. If this right is absolute and cannot be subjected to any restrictions, then does it follow that OPEC's right to control oil production is also absolute and cannot be subject to any limitations? Clearly the answer to this question is in the negative. There are certain limitations to OPEC's right to control oil production, of which the main ones are as follows:

1. Constitutional Limitations:

The OPEC Statute contains certain provisions which restrict the power of OPEC to control oil production. Thus Article 2(B) of the OPEC Statute provides that:

> "The 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."

This Article clearly shows the undertaking which OPEC has given from the outset, namely not to cause any harmful and unnecessary fluctuations in the oil markets. The scope of this statement of intent may not be precisely defined, but its meaning is clear, and its applicability to OPEC's oil production programme is definite – since this Article presents an important element of OPEC's Petroleum Policy in general, of which its production policy is a part. This aspect of OPEC's general Petroleum Policy was specifically recognised during the discussions by the OPEC Member Countries on the implementation of the quota system. In a report submitted by the Qatari representative to the OPEC Conference in December 1989, it was said, *inter alia*, that the total amount of quotas should take into account the contents of the basic articles of the OPEC Statutes including Article 2(B). [309]

Similarly, Article 2(C) provides that:

> "Due regard shall be given at all times to ... the necessity of securing ... a fair return on their capital to those investing in the petroleum industry."

Those investing in the OPEC Member Countries' oil production expect a fair return from their investments in the form of financial benefits which sometimes include a share in the production. This share, which is guaranteed by contractual arrangements, presents further limitations on OPEC's power to control oil production.

Article 2(C) also provides that:

> "Due regard shall be given at all times to ... the necessity of securing ... an efficient, economic and regular supply of petroleum to consuming nations."

As explained earlier, this pledge has always been periodically reconfirmed by OPEC and is a cornerstone of the Organisation's Petroleum Policy. Perhaps the most memorable renewal of this assurance was contained in the Solemn Declaration of 1975, made at the Algiers Conference, which reaffirms that any co-ordination among pro-

ducers should seek to maintain a "balance between oil production and the needs of the world oil market." The literal meaning of these commitments clearly demonstrates that OPEC is under an obligation, by the terms of Article 2, to continue to supply oil to the consuming nations. Furthermore, in practice OPEC has always honoured this commitment. When the Arab countries imposed the oil embargo in 1973, the Venezuelan representative was asked, after the OPEC Conference, whether OPEC intended to cut oil production. He replied that Article 2(C) did not allow the Organisation to do so. [310]

2. <u>Other Limitations:</u>

It is well known that most OPEC Members have acquired downstream assets in the oil-consuming countries' markets, particularly in the North and West of Europe, but also in North America. Other Members may follow this path of vertical integration. Already, millions of barrels worth of OPEC oil revenues are invested in these assets or simply deposited in European and American bank accounts. If OPEC were to embark on an unacceptable (to the oil-consuming countries) course of oil production control, these assets and deposits would be very vulnerable. This has already been demonstrated by what has happened to Iranian assets in the past, and to Iraqi assets at present. This points to a most significant fact - which lies at the very heart of the question at issue - namely, that by launching into vertical integration in the traditional consuming markets, some OPEC Members are not only consolidating outlets for their crude and products, but also *ipso facto* are guaranteeing the supply of oil to consumers in these markets. The degree of inter-dependency between the oil producers and the oil consumers has reached such a point, that neither can possibly do without the other – which means that both have to behave accordingly. Not only has the point been reached where it is understood that mankind has to look after the environment, but also it is becoming increasingly clear that those who represent mankind have to look after each other.

3. <u>The U.A.E. Quota Problem:</u>

As a result of the particular legal identity and constitutional framework of the U.A.E. – in particular the division of powers between the Federal Government and the individual Emirates – specific problems have arisen in relation to OPEC's oil production programme. Despite U.A.E.'s acceptance of the quota specified by OPEC, practical difficulties still arise, [311] which have marred OPEC's production agreements from 1982 up until now. To understand the nature of the problem, it is essential to appreciate firstly, as mentioned earlier in this study, that the U.A.E. is a loose federation of 'independent' oil states, and secondly, that the nub of the problem arises from the relationship between Abu Dhabi and Dubai:

Dubai usually produces oil to the limits of its production capacity and does not consider itself bound by either production or price agreements. Dubai's production capacity is approximately 400,000 barrels per day, and so any quota allocated to the U.A.E. translates into a 'residual' quota for Abu Dhabi after Dubai's production has been 'deducted'. This means that any change in the U.A.E. quota leads to a barrel for barrel change in Abu Dhabi's 'residual' quota. It follows therefore that: **(a)** any increase in the U.A.E. quota has greater significance on the margin for Abu Dhabi than may be apparent at first, since the percentage increase in Abu Dhabi's residual quota is greater than the corresponding increase in the U.A.E. quotas taken as a whole; and likewise **(b)** on the margin, the burden on Abu Dhabi of any decrease in the U.A.E. quota is much greater than apparent. [312]

The U.A.E. production problem was discussed specifically in March 1983, December 1988, March 1991 and July 1996. On each occasion the U.A.E. accepted its quota along with the promise from OPEC to give U.A.E. priority over the other Member Countries in adjusting its quotas in an upward direction. This promise has always been used by U.A.E. as a justification for exceeding its quotas, and as an argument for rejecting urgent pleas made by OPEC for discipline on production. In short, it can be observed that Abu Dhabi's economic self-interest overwhelmingly militates against its abiding by OPEC's oil production agreements. Recourse to worthless promises, as the precedents of 1983, 1988, 1991 and 1996 clearly show is non-effective and counter-productive. In short OPEC would have been better off had the Abu Dhabi Membership not been transferred to the U.A.E. [313]

6.5.6 OPEC's Pricing Policy

In order to understand OPEC's pricing policy, it is necessary to bear in mind the economic imbalance, analysed in Parts One and Two of this study, which was a feature of the international oil industry before the establishment of OPEC. As we have seen, this imbalance resulted in an international pricing system for oil which was set up, controlled and operated to benefit mainly the oil companies and oil-consuming nations, while paying scant attention to the interests and needs of the oil-producing countries. This system was facilitated by oil agreements between the major oil companies which were aimed at: "price fixing, market sharing, cross hauling and other elements of economic behaviour that had the effect of limiting competition in favour of an international oil cartel." [314] As early as 1928, agreements and arrangements were made between these companies to: "eliminate competitive pricing by fixing market shares, controlling output growth from various sources," [315] and finally, by agreeing to: "sell

crude oil and products at a fixed price regardless of source or production cost." [316] Thus prices at the US Gulf (of Mexico) coast terminals became the basis for price quotations throughout the world. It was because of this system that consumers in Iraq, for example, were charged prices based upon quotations at the US Gulf coast, despite the fact that: "the crude oil was produced in Iraq at low cost, refined in a nearby refinery, and marketed by a local company." [317]

This system might have continued if the dominant position of the US had remained unchanged. However this was not the case. The discovery of huge oil reserves in the Middle East, with cheaper production costs, combined with the large scale military operations in the Eastern Hemisphere which stepped up the demand for Middle Eastern oil, as well as other political factors associated with the two world wars, transformed the Middle East into another major oil production centre. [318] Accordingly, the British government questioned the validity of the US Gulf coast pricing system, with the British Auditor General commenting as follows:

> "It was a matter of policy and principle to draw supplies from the nearest available source. It was no longer a matter of commercial competition. It was a matter of imposed policy that every ton of oil that could be drawn from a near source had to be taken from that source and none other." [319]

To solve the contradictions between these two major oil-producing centres, an agreement was reached by which Middle East oil had its own centre with its own new basing point, making its own F.O.B. sales in adjacent as well as other markets. [320] This system was justified on the famous 'watershed' theories which demanded that: "oil coming into Europe had to have a similar price, whether it was exported from the Middle East or from the Gulf of Mexico." [321] This meant that Middle East oil prices were lowered. Later on, oil prices in the Middle East were brought down even further when the same watershed theories were adjusted to allow the United States to import oil from the Middle East. As a result: "By the late forties, oil prices in the Middle East were lower than those on the Eastern seaboard of the USA by the same magnitude by which they were higher prior to the war." [322]

After the two world wars (whose outcome to some extent depended on which side had access to and control over Middle East oil) were over, and as a result of the US becoming a major oil importer, and with the growing demand for oil generated by post-war reconstruction programmes, combined with the increase in the Middle East's oil production capacity, the price structure of oil pricing was reviewed, by those who needed it most, who predictably decided that oil prices should be lowered still further.

In addition, another force appeared in the post-war period which lead to further price reductions in Middle East oil prices. This, as we have seen in Part One, was the entrance into the international oil industry of the 'independents' or the 'newcomers'. This development, along with other agents of change, resulted in "larger quantities of oil being offered on the world market outside and beyond the control of the major oil companies." [323] This rise in supply and in the number of buyers and sellers had the effect of reducing the price-setting powers of the established oligopolists, which in turn led to a series of reductions in the price of crude oil. These series of reductions meant little for producing countries, "apart from the fact that the value of their resources was being downgraded." [324] OPEC, as we have seen in Part One, came into existence as a direct result of these reductions, and with the aim of eliminating such an unjust system by introducing and working towards a new pricing system which would take into account the interests of all parties involved, including those of the oil-producing countries whom it represented.

Thus the price of oil was not only the initial *raison d'être* [325] of OPEC, but has remained its focal and primary concern throughout the first 38 years of its existence. [326] In tracing the development of this main issue within OPEC, its pricing policy, it is possible to discern the following distinct stages:

1. <u>The Period Between 1960 and 1973:</u>

During these early years OPEC sought to stabilise the price of crude oil and eliminate harmful and unnecessary downward price fluctuations. As envisaged in its various resolutions, the manner in which the Organisation considered this goal should be achieved was briefly as follows:

(a) Restoration of the *status quo ante*, namely the oil price levels which had prevailed prior to August 1960.

(b) Oil companies should refrain from modifying posted prices without prior consultation with the OPEC Member Countries.

(c) Posted or reference prices should be uniformly applied by all OPEC Members for the purposes of assessing tax liability. Subject to regional differences in gravity, quality and geographic location, these posted prices should be the same in the entire OPEC area. This was designed not only to remove any possible competition and friction between OPEC members, but also to restrict the ability of the oil companies to grant excessive discounts – which would in turn fix a floor below which realised prices could not fall.

(d) Posted prices should be linked to an index of the prices of manufactured goods imported by Member Countries, in order to counteract inflation. [327]

In its Declaratory Statement of 1968, under the principle entitled 'Posted Prices', OPEC reiterated the above formula and added a new element. Instead of insisting on the prior consultation by the oil companies with the OPEC Member Country governments before modifying posted prices, the policy statement now provided that the governments alone should have the exclusive right to determine oil prices.

None of the above goals were realised, except for the uniform adoption of posted prices by all OPEC Members, which was easily achieved during 1965 and 1966. As regards the other goals, no serious step was taken until the Fourth Conference in 1961, at which Resolution IV.32 was adopted, calling for: "formal negotiations with oil companies for the rescinding of the August 1960 price reduction." The oil companies were not prepared to concede to this demand. Although Resolution IV.32 did indicate that if negotiations failed, OPEC countries would: "consult with each other with a view to taking such steps as they deem appropriate," no such steps were taken to rectify the situation. During this period, the surplus supply of petroleum on the world market made it difficult for OPEC to achieve the above goals .

Instead, as we have already seen in Section 6.5.1, OPEC concentrated on the royalty issue which it was able to resolve by 1964. As explained earlier, OPEC also attempted to reduce the weakening effect on oil prices due to excess production by means of the introduction of oil production programming, but this was not possible at the time, due to some of the OPEC Members' need to obtain foreign revenues at any cost. Despite its Members' failure to agree on an oil production plan, OPEC continued to take the view that such an expedient did have an important role to play in the realisation of its pricing policy objectives. Thus the Fourteenth Conference instructed the Economic Commission to undertake a comprehensive in depth study with a view to formulating and perfecting an economically practicable production plan. [328] By this time, however, higher economic growth rates in the West, combined with the entry of the United States into the world market as a purchaser of OPEC crudes, led to an increased demand for OPEC Member Countries' production and accordingly the abandonment for the time being of the search for a workable oil production programme. [329]

Taking advantage of these changes, especially the increased demand for oil, initiatives were taken by individual Member Countries, particularly Libya, outside the framework of OPEC, to reduce their oil production and demand an increase in posted prices, as well as raising the income tax rate from 50% to 55%. [330] Venezuela also amended its Income Tax law, empowering its Executive to establish unilaterally the export values of petroleum, on the basis of which Venezuelan income tax was computed. The Libyan achievements provided a strong stimulus to the rest of the Member

Countries of OPEC to rally together and score their first major collective success *vis-à-vis* the oil companies, evidenced in the five-year Tehran and Tripoli Agreements.

Even before the conclusion of these agreements, OPEC followed Libya's footsteps, and at Caracas in December 1970, the OPEC Conference adopted several important resolutions. Firstly, it was resolved, under Resolution XXI.120, that Member Countries were to seek a general and well-balanced increase in posted prices. Secondly, the income tax rate was to be raised from 50% to 55%. Thirdly, all discounts from posted prices agreements, which derived from agreements made in 1964 and 1968, were to be eliminated with effect from the 1st January 1971. Negotiations to secure these aims were to be undertaken with the oil companies by a Ministerial Committee representing the Gulf producers. [331]

Thus the stage was set for the celebrated Tehran negotiations. These negotiations, which were OPEC's first major foray into the arena of collective bargaining, also marked the first time that the oil companies had agreed to negotiate with OPEC as an intergovernmental organisation in an effort to restructure important aspects of the oil industry, as described in Part One, including the mechanism for effecting price increases – meaning price control. Another sign of the world's accepting OPEC's new international role and status was the US government's granting the US oil companies anti-trust clearance in order to facilitate their collective negotiations with the OPEC Ministerial Committee.

The negotiations between OPEC and the major oil companies culminated in the Tehran Agreement of February 1971 – but not before a special OPEC Conference had threatened to legislate the terms of the proposed agreement and to impose an embargo on companies that refused to comply with the legislation. This agreement provided for the raising of income tax from 50% to 55%; the elimination of existing OPEC allowances granted to the oil companies; an increase in oil prices which would take into account the expected development in the international oil market; and the adoption of a new system for the adjustment of gravity differentials.

No sooner was the Tehran Agreement concluded, however, than the negotiators had to deal with oil prices again in an entirely new and unexpected context, that of the international monetary crisis which culminated in the collapse of the international monetary system as then constituted, and the end of the convertibility of the American dollar into gold. From that point on it was possible to assert that all paper currencies were no more than IOUs, with no intrinsic value of their own. The new round of negotiations which had been triggered off by this sudden state of affairs were conducted in Tripoli. The OPEC negotiating team for the four OPEC Mediterranean counties (Alge-

ria, Libya, Saudi Arabia and Iraq) delegated Libya to negotiate on their behalf. As in the case of the Tehran negotiations, they agreed to collective action, including the threat of legislation in the event of a deadlock. After various offers and counter-offers by both parties, agreement was finally reached and the Tripoli Agreement signed on the 2nd April 1971, retroactive to the 20th March 1971, and valid for five years. [332] The Agreement provided for more financial benefits in terms of oil prices than those provided by the Tehran Agreement.

When viewed as a whole, the main developments which took place between 1960 and 1973 reveal that:

(1) This was a period during which many studies were made and many consultations took place. [333] These studies and information-gathering exercises were important preliminary steps for the formation and formulation of OPEC's oil pricing policy.

(2) OPEC's early pricing policy stemmed from a combination of both individual Member Countries' successes and from the collective actions of OPEC. Libyan success in raising crude oil prices and income tax rates confirm the former, and the Tehran and Tripoli Agreements prove the latter.

(3) The first coherent OPEC pricing policy introduced during this period, through the adoption of the Declaratory Statement of 1968, was based on preventing deterioration of oil prices and connecting oil prices to the value of manufactured goods traded internationally.

(4) The gradual introduction of OPEC's pricing policy during this period was accompanied by significant achievements, including OPEC's establishing recognition of its Members' right to exercise permanent sovereignty over their own natural resources, and its securing greater independence *vis-à-vis* the multinational oil companies as regards mechanisms for fixing oil prices. It is unlikely that such achievements could have been achieved had it not been for a combination of favourable economic and political developments. [334]

(5) The policy of applying collective bargaining pressure during the course of the negotiations which preceded the Tehran and Tripoli Agreements paved the way for OPEC Members to eventually obtain full ownership and control over their national oil industries. It was the acquisition of this ownership and control which slowed down the enormous and vast exploitation of oil resources which had characterised the pre-OPEC era, and which was mainly designed to generate sufficient cheap energy to facilitate the industrialised countries' economic programmes. By gaining ownership and control over their own oil resources, it was possible for the Member Countries to benefit their own national economic development programmes. In this process of transfer, OPEC

acted as an organisation of developing countries transferring wealth from the developed countries to developing countries.

(6) OPEC's oil pricing policy, combined with the transfer of ownership and control to its Members of their own oil resources, presented the first challenge to – or, to put it more accurately, it ended – the monopoly which the major oil companies had enjoyed in the pre-OPEC era over the oil industry as a whole, and over pricing decisions in particular. [335]

(7) The right of any state to exercise permanent sovereignty over its natural resources always formed the legal basis on which the conduct of OPEC's pricing policy depended for its justification and validity.

2. The 1973 Oil Price Revolution

Three weeks before the Arab–Israeli war of 1973, OPEC held an Extraordinary Conference in Vienna from the 15th to the 16th September 1973. In their resulting communiqué, the Member Countries stated that the level of posted prices and the annual escalation provisions contained in the Tehran and Tripoli Agreements were: "no longer compatible with prevailing market conditions as well as galloping world inflation." [336]

Sheikh Yamani, speaking on behalf of the Gulf countries, criticised the two Agreements and called for them to be amended in order to: "reflect more realistically the current rates of world-wide price inflation." [337] The dissatisfaction of OPEC with the two Agreements arose from the fact that the average annual growth rate of energy consumption, had, up to 1973, been higher than that of the consuming countries' gross national products (5.1% versus 4.7% for the period 1965-1973), while the growth rate of oil production had been much higher than that of other energy sources (7.7% versus 3.2% for the same period). It was clear from these growth rates, that oil was being used not only to satisfy the expanding world energy demand, but also to displace other sources of energy - mainly coal - as non-energy input. It is important to note that between 1957 and 1970 government per-barrel revenue in the Middle East had stood at US$0.86. During the same period, however, the prices of overall exports had increased by 22% in the US, by 14% in Canada, by 17% in the UK, by 14 % in France, by 21% in Germany, by 7% in Italy, and by 4% in Japan. [338] Thus, while these countries' oil import prices had declined in *real* terms, the prices paid by OPEC Members for goods imported from these countries had risen substantially. In other words, the purchasing power of the OPEC Members' oil revenues had suffered a sharp decrease, irrespective of what the price of oil was.

The extent of this decline was such that the landed price of oil was much lower in Germany, Italy, the Netherlands and Japan in 1970 than it had been in 1957. In terms of dollars, the selling price of Middle East oil had undergone a long and sustained decline of 32% between 1957 and 1970. Even with the subsequent income tax and price increases agreed by virtue of the Tehran and Tripoli agreements of 1971, the 1972 Middle East oil prices were as much as 20% lower than the 1957 level in terms of most consuming countries' own currency outlays. [339] In addition, and in accordance with a statistical study conducted on behalf of the United Nations, further evidence showed that the increases OPEC had obtained by the two agreements was not enough to even neutralise the effects of inflation. While the purchasing power of the OPEC Member Countries' oil revenues had been falling at a rate of 2.5% a year, the price of manufactured goods imported by the OPEC Member Countries had increased by approximately 7% a year between 1969 and 1972. [340]

Given these economic conditions and realities, it has been rightly concluded that:

> "There has been a sustained and massive transfer of wealth from the oil-producing countries to the developed countries, owing to the structure of the international oil industry and the international economy. The net effect of these institutional arrangements was to force these countries to pay higher prices for goods whose production was greatly helped by the constantly declining price of oil." [341]

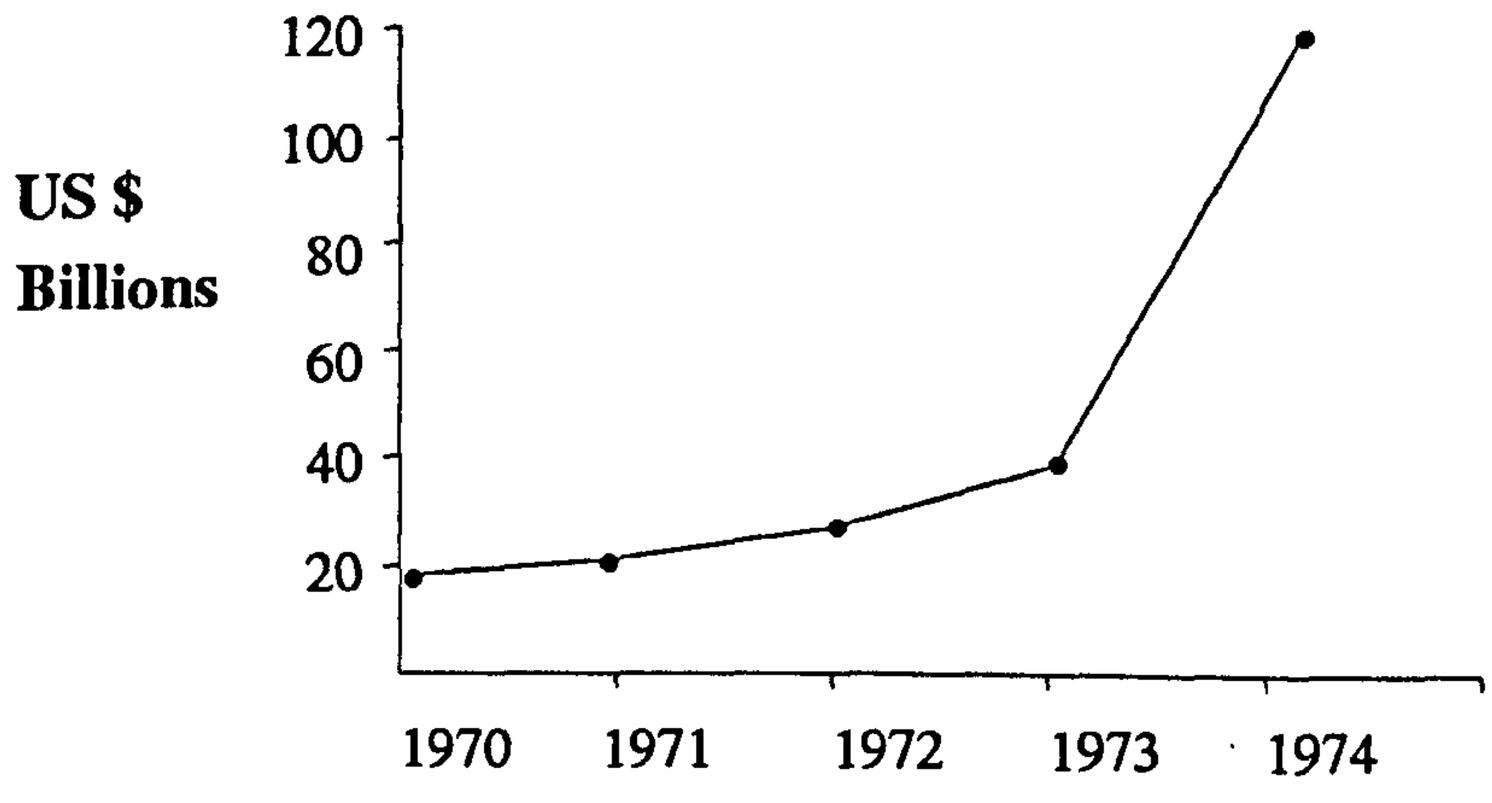
In an attempt to remedy this situation, the OPEC Member Countries, individually but with the support of OPEC, chose to adopt conservation measures. Libya in 1970 and Kuwait in 1972 decided to reduce oil production. [342] Iraq decided to nationalise its oil industry entirely. [343] These measures were neither effective nor sufficient to meet the needs and corresponding demands of the OPEC Member Countries. Negotiations were taking place with the oil companies, but no agreement was being achieved. Matters came to a head when the Israeli-Arab War broke out on the 7th October 1973. As a result, the Arab OAPEC member countries imposed an oil embargo on certain Western countries who had supported Israel. Furthermore, on the 12th October 1973, their oil ministers decided unilaterally to raise immediately the posted price of crude oil to $5.12 per barrel. The whole oil-consuming world was in an uproar. Although OPEC as an organisation was not involved in the oil embargo, from this point on, OPEC was never again to consult with the oil companies over oil prices. Thus this was a landmark in the Organisation's history, because it established an irreversible policy concerning crude oil price determination.

It was this step, translating legal theory into practical action, which effectively established the OPEC Member Countries' sovereign rights over their own vital natural resources. [344]

As with the 1970-1971 turning point in OPEC's fortunes which culminated in the Tehran and Tripoli Agreements, the 1973 oil price explosion had its roots in a complex interplay of economic and political forces stretching back over decades - but on a significantly magnified scale. In the public mind – which more often than not did not and could not distinguish between OAPEC and OPEC, and the nature of the overlap between the two organisations – the decision to unilaterally take control over oil prices by OPEC in 1973 was a natural consequence of the embargo imposed as a result of the Israeli-Arab War, which had in the short term inevitably forced up oil prices on the open market as oil was suddenly both in short supply and great demand. However it should be clear from the present study that this development was the result of a combination of different factors, of which the Israeli-Arab War and the subsequent oil embargo were simply dramatic catalysts. [345]

In January 1974, OPEC decided unilaterally to adjust the set prices for crude oil to US$11.651 per barrel. This provided the governments of the OPEC Member Countries with a net additional income of US$7 a barrel. This increase in oil prices corrected the economic imbalance described earlier, and the OPEC Member Countries gained a tremendous increase in their revenues from oil as this graph shows: [346]

OPEC Oil Revenues 1970 - 1974



3. The Search for a Long Term Pricing Policy Strategy

By early 1974, OPEC members had taken into their hands all the effective levels of power at the crude oil producing end of the oil industry: control over oil operations, control over prices and control over production volumes.

Following this, OPEC found itself facing for the first time the problems of the oil industry previously handled by the major oil companies, as well as a number of new difficulties arising from the structural change in the oil industry, such as the determination of a market price structure and the establishment of a workable system for fixing relative differentials between the various OPEC crudes. OPEC was at a new crossroads. Accordingly, OPEC met in Algeria at the beginning of March 1975, for a Summit Conference to tackle the broad issues of the next stage of OPEC Petroleum Policy – which as well as continuing to further the Organisation's basic aims and objectives also had to take into account its Member Countries' international relations with the industrialised nations on the one hand, and the non-oil exporting countries of the Third World on the other. The outcome of this Conference was the Solemn Declaration of 1975 (see Appendix IV).

The Solemn Declaration adopted, *inter alia*, the principles and guidelines to be utilised in the determination of crude oil prices in particular, and of OPEC policies in general. Thus in essence, the Solemn Declaration outlined the main elements of OPEC's pricing and production policies and declared the ultimate aims and objectives which OPEC sought to attain, especially:

(1) the competitiveness of oil *vis-à-vis* other energy sources;

(2) the protection of the per barrel purchasing power of oil export revenues, by taking into account the price inflation of OPEC imports from the rest of the world, especially from the industrialised world, and the fluctuations in the value of the US dollar;

(3) appreciating the intrinsic value of oil, both as a non-renewable resource and as a raw material which could be used for the production of a wide range of petrochemicals and fertilisers (the so called 'noble' uses of petroleum);

(4) monitoring the impact of prices in the world economy and especially the efforts of the developing countries to establish a 'new international economic order';

(5) the regulation or control programming of oil production in order to secure an equilibrium between supply and demand in the market. [347]

OPEC was especially interested in the question of North-South dialogue and in assisting the developing countries of the world with its Member Countries' new found wealth. As we have already seen in Part Three, the OPEC Finance Ministers created the OPEC Special Fund in Paris, in 1976. In the meantime, however, internal re-balancing market forces had been at work in the oil industry, and as a result, although oil prices might be rising, the value of world currencies in terms of purchasing power was falling.

In 1978 the OPEC members analysed the effect of US dollar devaluation on their oil revenues, as it had lost considerable ground against the world's major currencies. Because of this, OPEC was obliged to compensate these losses with a 10% increase in the price of its crudes. No agreement on pricing policy was discussed until the year 1978 which witnessed the birth of OPEC's long-term strategy committee. The report containing this committee's conclusions was immense. It referred to the need to index future oil prices, so as to take into account the effects of inflation and also the participation of the OPEC Member Countries in the generation of wealth in the industrialised countries. In short, the report considered it vital to guarantee secure supplies to the oil-consuming countries, to promote the New International Economic Order and to also strengthen its solidarity with the Third World countries. As regards the manner in which prices were to be fixed, the committee more or less reconfirmed the principles originally expressed in OPEC's 1968 pricing policy (minus any stipulation that there should be consultation with the oil companies before oil prices were modified), namely:

(1) prices should be determined by the government;

(2) there should be an indexation of prices; and

(3) prices should be consistent with each between the various Member Countries, subject to location and quality differentials. [348]

However, no mechanisms of how OPEC could implement these policies were subsequently agreed.

4. Pricing Policy from 1979 - 1990:

Both in absolute and in relative terms, the price adjustments of 1975 and 1977 had been modest. The average price of market crude in 1978, for example, was only $12.24 per barrel, that is, 21% higher than the 1974 average, even though the export price index of the industrial countries (the OECD group) had risen by about 40% in the meantime, and even through the actual price inflation of OPEC imports from the OECD was appreciably higher than that of the official OECD export price index. [349]

At the end of 1978, amid signs of an imminent short-term supply disruption, OPEC worked out an elaborate quarterly price adjustment scheme aimed at increasing average prices in 1979 by 10%, relative to 1978. [350] It was not possible to implement this carefully prepared scheme, however, due to the stoppage of Iranian production brought about by the demise of the Shah and the Iranian revolution. The oil companies and oil-consuming countries took advantage of the situation to create the general impression that oil production was soon going to fall. They exploited the temporary uncertainty of the market created by the Iranian revolution to reap huge profits at the expense of both

consuming and producing nations – and especially at the expense of those least able to bargain, namely, the non-oil producing, developing countries.

In fact, in 1979, OPEC's export of crude and products were nearly 1 million barrels per day higher than in 1978, and total world production was up by nearly 2.5 million barrels per day. [351] Considering that total world consumption of oil had increased by a mere 600,000 barrels per day between 1978 and 1979, it is clear in retrospect that the supply shortages experienced in 1979 were artificial shortages, engineered largely by the oil companies and speculators to drive oil prices to levels which would inflate the oil companies' profits and net worth, while at the same time boosting the development of other energy sources, including the development of high cost non-OPEC oil. [352]

Consequently, whereas OPEC had planned to raise prices gradually from $12.70 per barrel at the end of 1978 to $14.16 per barrel in the third quarter of 1979 and to $14.54 per barrel in the fourth quarter, market prices actually rocketed to more than $40 per barrel in the second half of 1979. [353] With production at maximum capacity, most OPEC members found it impossible to charge official prices to buyers who were willing, and in some cases pleading, to acquire oil at prices two or even three times as high. By the end of that year, OPEC had not only lost its control over oil prices, but more significantly perhaps, it appeared to have lost its internal unity – with the adoption of first a two-tier and then a three-tier pricing system. [354]

It was not until October 1981, that OPEC managed to restore its cohesion and to unify its pricing structure on the basis of a price of $34 per barrel for the market crude (Arabian light). [355] This achievement was, perhaps, too late to correct the imbalance that had been brought about by the upheavals of 1979 and 1980, namely the accumulation of very substantial oil inventories by the oil companies and oil-consuming countries, the fragmentation of the market, the increased role of speculators and mediators and, last but by no means least, the impetus provided by higher oil prices towards conservation efforts on the one hand, and to the development of other energy sources, especially non-OPEC oil supplies, on the other hand. Thus, barely two months after the unification of OPEC oil prices, the Organisation was faced with what may be described as the classical dilemma of declining world demand and an increase in non-OPEC supplies.

This situation left the Organisation with two options, namely either to reduce its already declining overall oil production, in order to support its official price structure – or to reduce its prices in order to discourage and curtail non-OPEC supplies of high-cost crude. Both options entailed a drastic reduction in total OPEC oil revenues, which had begun declining sharply from their 1980 peak of $287 billion. [356]

The situation was extensively debated by OPEC in early 1982. No-one was quite sure what to do. There were views in favour of reducing oil production on the grounds that since the price elasticity of demand for oil is negligible in the short term, this course of action would minimise the decline in total OPEC revenues. Others argued that, particularly from a longer-term perspective, reducing production to support high prices would only encourage greater non-OPEC supplies and accelerate the shift from oil to other energy sources, with the result that OPEC's share in the world oil market – and subsequently its control over prices – would rapidly diminish. [357]

Although OPEC decided, in March 1982, to reduce its total production to 18 million barrels per day, a year later it also decided to reduce prices by $5 per barrel and to lower its overall production ceiling to 17.5 million barrels per day. With world oil consumption remaining virtually unchanged, however, and non-OPEC production increasing steadily – from 18.84 million barrels per day in 1981 to 20.09 million barrels per day in 1982, and from 20.88 million barrels per day in 1983 to 22.20 million barrels per day in 1984 - the price reduction could not arrest the declining trend of OPEC's share in total world production. By 1985 this share had dropped to as low as 40%, partly because OPEC had reduced its overall production ceiling to 16.00 million barrels per day with effect from the beginning of November 1984, in an attempt to offset the destabilising impact of the North Sea oil producers' decision to reduce their prices in the preceding month. In fact, the impact of that reduction, as well as the lowering of Nigerian crude prices, spilled over into 1985 and in spite of the overall reduction of OPEC crude prices by about $1.00 per barrel in February 1985, the situation continued to deteriorate and most Member Countries found it difficult to market their reduced production quotas at official prices. [358] Consequently, a variety of marketing practices, which involved granting direct or indirect discounts from official prices, were increasingly adopted by most OPEC Member Countries, who felt compelled to preserve their competitiveness *vis-à-vis* non-OPEC producers who were not bound by production quotas or official prices. [359] It was as if the wheel was coming the full circle – and nothing could stop it.

Some OPEC Member Countries found this situation totally intolerable and in December 1985, the 76th Meeting of the Conference ambitiously decided: "to secure and defend for OPEC a fair share in the oil market consistent with the necessary income for its Member Countries' development." [360] This statement was immediately interpreted (or rather misinterpreted) by the market as an indication that OPEC had given up its policy of defending prices and had declared a 'price war' on the other oil producers. [361] This situation was definitely aggravated by the failure of OPEC through-

out the first seven months of 1986 to formulate a clear policy with respect to both production and, more importantly, with respect to price. As a result, prices continued to drift downwards and by July they had dropped to below $10 per barrel, a level that in nominal terms was lower than that of 1974 – and in real terms lower than that preceding the first dramatic price adjustment of October 1973. [362]

The developments of 1986 were, in effect, not the outcome of OPEC policies, but rather a manifestation of the problems that OPEC had encountered since assuming the role of market leader. The major difficulties experienced by OPEC in this respect may be summarised as follows:

(1) The attitudes of both the USA and UK: who are both major oil producers and the leading opponents of OPEC among the major industrialised countries, are both members of the International Energy Agency (IEA). It is true that the IEA, which was established at the end of 1974 on the initiative of the USA, was designed partially to be a means of confronting and neutralising the power exercised by OPEC at that time, but one must be careful not to fall under the illusion that the IEA's main objective was to bring prices down, or even to prevent further price adjustments after 1974. Indeed, the situation has been very much the opposite as far as prices are concerned. [363] Both the USA and the UK were, and indeed still are, interested in higher oil prices – and certain regions of the USA and the UK were among those most severely affected by the collapse of crude oil prices in 1986. [364] Moreover, one of the IEA's first acts was to establish a floor price of $7 per barrel as early as 1976.

The IEA was also partially responsible, through the governments of its member countries and the oil companies, for the artificially induced price upheaval witnessed in 1979, as noted earlier. The objective of the IEA in supporting this strategy was to weaken OPEC considerably, and to thereby prevent the Organisation from becoming a major economic power that could threaten the structure of the inequitable economic and political dependency which had been nurtured and established between the developed countries and the developing ones in the wake of the 'end' of the European colonial era and the apparently gracious granting of 'independence' - a structure which had been imposed on the latter politically since the early days of colonisation, and economically since the early days of independence (by means of national debt and currency devaluation) – and which had remained virtually unchallenged and unquestioned until the emergence of OPEC as a substantial economic power in the mid-1970s. [365]

(2) The production maximisation policies of other oil producers: who took it for granted that the defence of oil prices was exclusively the responsibility of OPEC. These countries, the majority of which became oil producers only due to OPEC's adjustment

of crude prices, therefore continued to produce as much as they could. They consistently overpriced their crudes relative to OPEC when market conditions were tight and undercut OPEC when conditions were slack. In the ten years from 1976 to 1985, production from the other developing countries increased by about 134%, and production from the UK and Norway increased by an astounding 571%, while total OPEC production declined by almost 50%. In 1986, some of the developing oil-producing countries (namely Mexico, Egypt, Malaysia, Oman and Angola), as well as Norway, agreed to co-operate with OPEC in order to support the oil price structure, agreeing that: "the defence and restoration of the price structure is the joint responsibility of all oil-exporting countries in the world." [366]

(3) OPEC's failure to formulate a viable long-term strategy: Although it may be argued that OPEC's failure to formulate a viable long-term strategy, with a built-in short-term stabilisation mechanism, contributed to the deterioration of the general market situation, culminating in the disastrous collapse of 1986, the truth is that OPEC did embark on the preparation of such a strategy as early as May 1978. A high-level Ministerial Committee, comprising the five Founding Members and Algeria, was entrusted with the task of drawing up a long-term strategy, as was explained earlier. Apart from minor differences within OPEC about details of that strategy, the main factors that precluded its implementation were the market upheavals of 1979 and 1980, and the subsequent deterioration of prices since then – not the inability to agree among OPEC Members.

In retrospect, therefore, it can be said that the price collapse of 1986 was not actually the result of a price war, but rather the logical outcome of difficulties that were largely beyond OPEC's control. The proponents of this ideology would be the first to admit that the pricing of a depletable and strategically vital commodity like oil cannot be left to the standard textbook free market approach, because this would mean, first and foremost, the elimination of their own high-cost oil. A depletable asset cannot be priced on the cost of production in the same manner as reproducible goods and services. Even though, privately, these free-market advocates would admit the fallacy of their public statements, and even though the traumatic experience of 1986 affected them adversely, it is unfortunate that not one of them has had the courage to admit this publicly. It is ironic that the very same media and commentators who waged a rabid campaign against OPEC in the immediate wake of the first price adjustment in 1973, were equally vociferous in their criticism of OPEC in 1986 for what they considered to be its failure to prevent the oil price collapse. Instead, they turned to OPEC to restore a reasonable measure of stability in the world oil market, and indeed it was none other

than OPEC that managed, through its fixed-pricing policy, to reverse the 1986 situation and to restore a credible degree of stability in the market in 1987. [367]

In so doing, the Organisation adhered to its original policy guidelines as far as prices were concerned, namely, the achievement of a price level commensurate with its combined production capacity and reserves; the protection of the per barrel purchasing power of export revenues; and the use of oil pricing and production as a means of bringing about a radical change in the structure of international economic relations. [368] As the developments of 1987 proved, OPEC was indeed determined to implement its fixed prices policy, which since the beginning of 1987 was anchored to a reference price of $18 per barrel, representing the average price of seven crudes, including one non-OPEC crude, and a set of official prices for the major OPEC crudes.

In conclusion, therefore, it may be stated that OPEC's production and pricing policies did not become a reality until 1974 and that the intermittent turmoil witnessed since then has had a deep effect on these policies. Notwithstanding the difficulties faced by OPEC during the 1980s, the achievements of the Organisation over a relatively short period of time underscored the ability of developing countries to act as a united group in order to secure full control over their valuable economic resources and to utilise such control in furthering their development programmes, even though from time to time they were completely out-manoeuvred by their competitors.

5. 1990's Pricing Policy and Effects of the Gulf War: [369]

In 1990 the oil market became highly erratic. [370] To begin with, the first quarter's demand for OPEC crude was lower than had been estimated, while production was over and above the OPEC ceiling. This situation promoted a significant decline in crude prices and created the need for OPEC meetings in April and May, meetings with the group of non-OPEC countries, and finally, visits by the President of the OPEC Conference, Sadek Bossena, to the various OPEC countries, in order to reduce overproduction. [371] Prices of the OPEC basket had once more reached critical levels of US$15.35 per barrel in the first week of May 1990. In the May meeting of the Ministerial Monitoring Committee, it was agreed to maintain production levels at 22 million barrels per day, while the President of the Conference urged the OPEC Member Countries to reduce their individual production by 430 thousand barrels per day, reducing the total quota by 5.38 million barrels per day. This meeting succeeded in briefly halting the fall of prices, which still had not reached US$18 per barrel. By the end of the month, however, they started to drop again, until the third week of June when they reached between US$13 per barrel and US$14 per barrel – their lowest level since 1987. [372]

In June 1990, the OPEC President visited the Gulf countries, trying to persuade them to lower production. This had the effect of changing the perception regarding compliance with OPEC quotas and brought about a recovery of oil prices, creating a suitable atmosphere for the OPEC Conference in July 1990, at which it was decided to raise the OPEC ceiling to 22.5 million barrels per day. For the first time in several years, a decision was taken to raise the reference price of the OPEC basket to US$21 per barrel, after Iraq had requested US$25 per barrel. [373]

Then on the 2nd August 1990, Iraq invaded Kuwait, taking the oil industry by surprise and, among other things, prompting the oil companies to make bulk advance purchases of oil in anticipation of further military escalation by Iraq. This triggered a price stampede which pushed prices close to US$30 per barrel. Preliminary estimates suggested that the sudden supply withdrawal from the world market of about 4.5 million barrels per day from Iraq and Kuwait could be compensated for by increased production by other countries, and that, in addition, inventories were at their highest levels for the past eight years. [374] For these reasons, prices were not expected to rocket sky high.

Extremely concerned about the situation, Venezuela forced OPEC to hold a Conference in order to free quotas that would allow an increase in production, thus suffocating the violent increase being witnessed in oil prices. [375] The International Energy Agency was also urged to use its strategic inventories to reduce market pressures. [376] Nonetheless, prices reached US$37 per barrel in October 1990, from which point they started to fall, touching US$25 per barrel at the end of December. Although the invasion of Kuwait by Iraq had caused 4.5 million barrels per day of OPEC's oil production to disappear, OPEC nevertheless managed to increase its total average production levels in 1990 to 23.00 million barrels per day – their highest since 1980, representing an increase of almost 2 million barrels per day over the 1989 figures, and one which once more improved its world market share to 38%. [377] In other words, unlike the situations which it had faced in 1973 and 1979, OPEC had enough surplus production capacity at its disposal to stabilise the situation, and therefore authorised its Members to increase their production to the limit of their spare capacity in order to stabilise the world market and ensure a regular supply of oil worldwide. [378]

The Gulf War began in earnest on the 17th January 1991 and, contrary to what most oil experts had expected, by the time it had ended, the world oil market was in a state of excess supply. Price expectations changed rapidly as a pronounced downward trend set in, caused by the rapid victory of the American forces, the production hikes of the OPEC countries in response to the original emergency, and the promises to use strategic inventories to meet demand if necessary. [379]

In response to this situation, the OPEC Ministerial Monitoring Committee met on the 12th March 1991 and decided to reduce supply by 5%, that is, to lower the OPEC ceiling to 22.1 million barrels per day. [380] Despite this measure, excess supply persisted and the price of the OPEC basket for the second half of the year only earned prices of about US$17.00 per barrel – as compared to the US$21.00 per barrel target set by the Conference. It has to be taken into account that in the spring semester, oil demand was at its lowest for the year. Under these circumstances, in its June meeting, OPEC decided to maintain the supply ceiling of 22.1 million barrels per day for the third semester. As of July, prices began to recover as a result of the reduction of Soviet exports, surpassing US$18 per barrel. Faced with the possibility that demand for winter inventories could create higher than anticipated pressures on prices, in September 1991 the Committee decided to once again increase the supply ceiling to 23.65 million barrels per day. The market continued to show an upward trend as prices reached the US$21 per barrel that had been proposed. Nonetheless, from October 1991 onwards, prices again started to fall, ending the year at about US$16 per barrel.

At the last meeting of the year the OPEC Ministerial Monitoring Committee decided to maintain the ceiling set in September 1991, taking into account the downward trend of prices, which, as mentioned above, had started again at the end of October. This was because of the uncertainty surrounding the exact timing of the gradual reincorporation of the Kuwaiti and Iraqi (if any) oil supplies; by reason of the state of the world economy, especially that of the United States, which was showing signs of recession; and because the political situation of the former Soviet Union Republics was deteriorating. As far as OPEC was concerned, the resulting balance was an average basket price of US$18.62 per barrel, US$22.00 lower than in 1990. Due to a slight contraction in world oil consumption, combined with a drastic reduction in the crude oil production of Iraq and Kuwait, the entire OPEC oil production was kept at the same level as the previous year. Under these circumstances, OPEC failed to increase its oil revenues in 1991, which fell by 5% to an estimated US$127.6 billions. [381]

Up until May 1992, the oil market continued presenting weaknesses inherited from the previous year. At its 91st Conference, OPEC decided to freeze the established quotas at their current levels. Saudi Arabia gave its full support to this decision – which surprised those who believed that Saudi Arabia was now only interested in maintaining a policy of low prices in order to please its strong American ally who had now established military bases in eastern Saudi Arabia in order to secure its oil fields. [382] This decision led to an increase in oil prices. However, by June 1992, oil prices started to weaken again and fall below the target of US$21 per barrel because some Members

had exceeded their quotas. This was a pattern which repeated itself. OPEC tried to solve the problem of fluctuating prices by sometimes increasing production and sometimes decreasing it, while Members kept on violating whatever quotas had been set. As a result, during 1992, the average price of the OPEC basket dropped to US$18.44 per barrel as compared to the 1991 average of US$18.62 per barrel.

In 1993, international incidents – such as the attempted coup in Russia, civil unrest in Algeria caused by the denial of democracy in favour of military regime, and Nigeria's political problems – were expected to affect the world oil market and increase the price of OPEC oil. However, the contrary happened. OPEC's basket crude price sank to its lowest level since 1989, falling below US$15.00 per barrel. In order to halt this slide and reverse the current downward trend, the 94th OPEC Conference, held in September 1993, resolved to set the overall production ceiling for the following six months at 24.5 million barrels per day. The Conference distributed the quotas and there was an expression of determination to make the agreement work. The OPEC press release stated that:

> "During the deliberations, it was noted that all Member Countries had shown the political will, spirit of co-operation, and mutual understanding required to achieve their objectives." [383]

As a result of a continuing stand-off between Iraq and the United nations, Iraq was not a party to this agreement.

In 1994 [384] the world economic recession which had characterised the early 1990s finally seemed to be over. The USA's economy began to grow again. The demand for oil in the Asia-Pacific region maintained its strength. Frequent supply interruptions created by bottlenecks and similar situations arising from a lack of investment affected the oil sector and maintained a price momentum. This price increase, higher than that anticipated by the experts, was the result of a prudent decision taken by the Market Monitoring Committee in March to maintain during 1994 the production ceiling set by the 94th Conference in September 1993, namely 24.52 million barrels per day. It was also the direct result of a moderate fulfilment of the quotas by the OPEC Member Countries. [385] This combination of factors allowed prices to recover, so that from a basket quoted at the beginning of the year of US$13.70 per barrel, the figure had reached US$15.84 per barrel by December 1994. This improvement was not enough to bring OPEC's 1994 basket average price above that of 1993, and it only reached a level of US$15.53 per barrel, eighty cents less than the preceding year. Nevertheless, the cold winter did lead to an increase in demand for oil and prices did in fact go up further. [386]

During 1995 and 1996, oil prices moved up slowly. In short, OPEC prices rose by $5.75 per barrel from $17.76 in December 1995 to $23.51 per barrel in December 1996. The average for the year 1996 of $20.29 per barrel registered $3.43 per barrel above the average for 1995. The crude price's upward trend in the fourth quarter of 1995 continued in January 1996, when OPEC's average basket price improved by $0.29 per barrel to $18.05 per barrel, its highest level since January 1991. This price gain was achieved on the back of cold weather in Europe and the USA, combined with low stock levels and crude oil loading disruptions in Mexico and Russia. Strong demand in the Far East supported Minas which surpassed the $20.00 per barrel level. In February 1996, crude spot prices weakened, with OPEC's average basket price decreasing by $0.15 per barrel to $17.90 per barrel, resulting from the news that Iraq and the UN had agreed to resume discussions on limited Iraqi oil exports, as well as heavy fund selling in the US futures markets. However, IEA's upward revision of its world demand forecast for 1996 and the continued disruption of supply from Australia's offshore fields prevented further price losses. [387] Other factors which affected price levels included the political tension between China and Taiwan, the state of the US economy, weather forecasts, the USA's threats to impose sanctions on Nigeria and a general feeling of optimism at OPEC conferences. Bearing these various events and factors in mind, OPEC's spot prices record was as follows: [388]

Average Monthly OPEC Prices in 1996

OPEC Reference Basket

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Average
18.10	17.90	19.35	20.24	18.92	18.37	19.29	19.94	21.68	23.28	22.23	23.51	20.23

It is clear from these figures that OPEC oil prices were relatively stable during 1996.

The developments briefly summarised above reveal that during the 1990s:

(1) OPEC's general nominal revenue was improved.

(2) OPEC's production and market share were also improved.

(3) OPEC's efforts to avoid a price collapse, by restricting and establishing new market strategies with the support of its most active group, the Market Monitoring Committee, were on the whole successful. Sometimes these efforts were very fruitful, while less encouraging on other occasions, but in many cases this was because they did not receive the same measure of support from non-OPEC countries as they did from the OPEC Member Countries.

(4) The level of dissatisfaction among OPEC Members as regards the efficacy of

OPEC during the 1990s increased. As has already been noted earlier, Ecuador terminated its membership in 1995, and Gabon's membership has been suspended since 1996. Iraq has not participated actively in OPEC activities since the Gulf War, due to the fact that its oil exports are, at the present time (August 1998) still suspended, by mandate of the United Nations.

(5) Similarly, some OPEC Members have not been satisfied with the distribution of production quotas, which have not, at times, appeared to follow either technical or economical criteria. Other OPEC Members have expressed their dissatisfaction with the delimitation applied for the determination and monitoring of quotas.

It would appear that the above state of affairs affected OPEC's ability to influence oil prices and develop a more dynamic pricing policy for the Organisation. Also it created rivalry among members. This could effect the efficiency of the Organisation on a medium or long term basis – and therefore has become one of its most important challenges.

As the world economy becomes increasingly systematised and computerised, what was always in fact the case is now becoming more apparent: OPEC's Member Countries are only part of a web made up of various entities, factors, influences and even rumours that is greater than just the international oil industry itself – and when anything happens to one part of the web, then like it or not, its effects are experienced throughout every other part of the web. The better policy-makers understand the web, the more likely they are to formulate policies which are effective.

6. The Oil Prices Crisis of 1997/98 [389]

In bringing this resumé of OPEC's pricing policy up to date and up to the present moment, situated as it is in the closing days and months of the present millenium, the degree of OPEC's control over oil prices is not really any more or less than it has been during the early 1990s. Oil prices have fallen since the end of November 1997 to well below a level of $18.00 per barrel, a price level which both petroleum exporting countries and oil companies had recently come to consider as an acceptable norm. The price of oil of dated Brent – an important marker for crude oil exports to Europe and some other parts of the world – hit a trough at $11.29 per barrel on Tuesday the 17th March 1998, while the Dubai price – the marker for exports to Asia – fell below the $10.00 per barrel level. [390]

Perhaps one of the main reasons for this dramatic fall in oil prices is the fact that the OPEC countries have been – with some notable exceptions – going on a 'production binge' in recent years. The exceptions, until late 1997, were Saudi Arabia, Kuwait

and the U.A.E., which voluntarily restricted their production to the levels of quotas agreed by OPEC in 1993. However, the quotas for the U.A.E. and Kuwait happened to be set fairly close (at about 90% or 95%) to the production capacity available to these countries, which means that only Saudi Arabia was carrying a significant volume of idle capacity. Another exception, as already noted, was of course Iraq, whose oil production is still restricted by UN sanctions. [391]

The above situation which was mainly responsible for the 1997/98 oil crisis gives cause for concern, not only because prices fell, but also because they fell so rapidly. All the OPEC Member Countries, with the exception of Iraq which is already on its knees, felt extremely vulnerable when this sharp decline in oil prices occurred, simply because at present the OPEC Member Countries:

(i) rely heavily on oil for foreign exchange earnings;

(ii) require present earnings to finance future oil production and national development programmes; and

(iii) have economies which are burdened by foreign debt, especially the Arab Members who are still paying for the cost of the Gulf War, and so their financial systems run the very real risk of collapse if oil revenues fall either too much or too swiftly.

The only exception at present is Iraq, which was indifferent to the level of oil prices when allowed by the UN, as in 1997, to secure export earnings of $2 billion every six months, since this involved the sale of a relatively small volume of oil. Any fall in price could easily be compensated for by a feasible increase in volume to reach the $2 billion revenue target, [392] and because Iraq was in such need of the export revenue, it was prepared to sell oil at any price, however low. From this perspective, the UN sanctions can be viewed as a device for ensuring a supply of cheap oil to the oil-consuming countries whenever it may be needed.

In their attempts to deal with declining oil prices, the oil-exporting countries (including non-OPEC producers) are aware that any oil price fall of significant magnitude can only be reversed by co-operative action on the production front. By jointly limiting supply, they believe, prices must inevitably rise. Agreement on this general proposition is always universal. [393] Where disagreements appear is over the question of who should, or is expected, to co-operate. Usually the non-OPEC countries want to leave this aspect all up to OPEC, and because of the lack of a clear pricing policy and production strategy within OPEC – this study has demonstrated that the two are always inextricably linked – Members within OPEC usually would like to leave it all up to Saudi Arabia and the other Gulf countries. [394]

Saudi Arabia, however, has refused to cut its output to influence the course of oil prices, [395] partly because it does not want an action replay of what occurred in 1985 and 1986, and partly because it is under pressure to generate as much income as possible, whatever the price, in order to pay off its substantial share of the Gulf War bill as well as honouring its subsequent commitments to make large armaments purchases.

Naturally this state of affairs has alarmed the residual oil producers. In the wake of the 1997/98 oil crisis, the Iranian and Venezuelan presidents communicated by telephone and a communiqué was issued in Caracas expressing their worries about the declining level of oil prices. As a result, the former Iranian President, Mr Rafsanjani, immediately led a delegation to Saudi Arabia and held talks with Saudi officials. A joint communiqué was subsequently issued expressing the intention to take whatever steps were necessary. [396] Algeria led further negotiations and predictably came up with a proposal exhorting all OPEC Member Countries to support a comprehensive production agreement. [397] Saudi Arabia, being the largest producer, was predictably strongly opposed to the idea of equal percentage reductions, since this would result in a large reduction in its output and accordingly in a large reduction in its revenues, even if the effect of the productiuon decrease was a slight increase in prices. [398]

Ironically, this failure of OPEC and its Members to agree on any firm course of action, has persuaded the non-OPEC oil producers to abandon their old policy of leaving it all up to OPEC. Instead, they have offered to co-operate with OPEC in regulating production and stabilising oil prices, thereby finally bringing OPEC limited success in an area where it has consistently met with failure – since in the previous 15 years, OPEC's call for co-operation was never answered. [399] In offering their co-operation, the non-OPEC producers took the following steps: [400]

(1) Oman called for a meeting of the independent petroleum exporting countries (IPEC).

(2) Norway expressed its concern about the 1997/98 crisis and declared it would consider action on output, but had not yet been asked to participate in such a policy.

(3) Mexico approached Venezuela and held a secret meeting in Miami during a Conference on Latin America held on the 4th March 1998. Neither the host country nor the media were aware of the meeting until details were released subsequently.

(4) Oman, Mexico, and the Russian Federation expressed their willingness to co-operate with OPEC by reducing their output and attending OPEC meetings.

Surprisingly, this last offer made by a non-OPEC Member Country – namely Mexico – led to another important and serious meeting which decided on practical steps to solve the crisis. The Saudis, the Venezuelans and the Mexicans met in Riyadh,

again secretly, over the weekend of the 21st and 22nd March 1998. As a result of the efforts of the Mexican intermediaries, an agreement on production between the two founder members of OPEC who were present - Saudi Arabia and Venezuela – was finally reached, something on which they had always previously disagreed, by virtue of the fact that Venezuela's oil reserves are relatively limited, while Saudi Arabia's reserves are relatively unlimited. The two countries agreed that: [401]

(1) production cuts would be applied to actual production levels and not from quotas;

(2) quotas should not be discussed;

(3) non-OPEC Member Countries should also be involved in production level cuts; and

(4) the problem to be addressed was the current supply surplus on the oil market and not long-term investment plans.

This meeting cleared up many misunderstandings which had always existed between Saudi Arabia and Venezuela. The meeting was especially important because it meant that future problems would be dealt with directly and immediately – and without the need for a mediator. [402] The media view, which was widely held, that Venezuela was no longer interested in OPEC, had been proved wrong simply by holding such a meeting and by reaching such an agreement. It would also appear that by having the meeting in these circumstances, OPEC recognised for the first time the importance of secret diplomacy, a fact that had a great impression upon the market – although of course it can be argued that since successful secret diplomacy is secret, it may well have been going on for many years without anyone knowing anything about it!

What is most significant about these recent developments is the fact that both the non-OPEC oil producers and the OPEC Members have realised that they both have common interests which they need to – and can only – protect together, regardless of their respective institutional status and degree of involvement. The results of the Mexican mediations have proved this. It was agreed by the parties at the Riyadh meeting that they would leave the implementation details of their agreement to be finalised at the next OPEC Conference which had already been scheduled for the 30th March in Vienna. [403] OPEC held the March Conference in due course, and a production cut was agreed. However, this reduction did not in fact improve the situation – and accordingly at the 105th Meeting of the OPEC Conference, held in Vienna on the 24th June 1998, a further reduction was agreed upon. Mexico, the Russian Federation and the Sultanate of Oman attended the Conference as Observers and reconfirmed their willingness to continue reductions as they had been doing since March 1998.

After reviewing the current market situation and after having reviewed the Secretary General's report, the report of the Economic Commission, and the report of the Ministerial Monitoring Sub-Committee (MMSC), the Conference agreed to make further reductions in the oil production of the Member Countries (excluding Iraq, whose UN regulated production was already well below the agreed new production levels), bringing the total reduction to 2.6 million barrels per day to be divided as follows:

Country	Base	Reductions	Production
Algeria	868,000	80,000	788,000
Indonesia	1,380,000	100,000	1,280,000
Iran	3,623,000	305,000	3,318,000
Kuwait	2,205,000	225,00	1,980,000
Libya	1,453,000	130,000	1,323,000
Nigeria	2,258,000	225,000	2,033,000
Qatar	700,000	60,000	640,000
Saudi Arabia	8,748,000	725,000	8,023,000
U. A. E.	2,382,000	225,000	2,157,000
Venezuela	3,370,000	525,000	2,845,000
Total Reduction:		**2.6 million barrels per day**	

This agreement was effective from the 1st July 1998 and valid for one year. The OPEC Member Countries emphasised their commitment to honour the agreement. [404] At the time of writing (August 1998), it is still too early to assess either the short-term or longer term effects of this latest strategy, other than to observe that it does demonstrate a renewed attempt to co-ordinate collective action, not only by OPEC Members, but also with non-OPEC Members.

6.5.7 A General Evaluation of OPEC's Current Pricing Policy

The OPEC policy during and after the 1997/98 oil crisis resulted in certain achievements, as summarised above, but to have an effective pricing policy further work is needed along, it is submitted, the following lines:

1. OPEC and its Members were clearly avoiding committing themselves to a long-term strategy for their pricing policy. Important issues such as definition of quotas and determination of quota criteria were not discussed. The need for open discussion on these issues is indispensable for a successful long-term pricing policy.

2. Although there was a change of emphasis in agreeing cuts in production levels rather than cuts in quotas, in substance, OPEC's policy which emerged in the wake of the 1997/98 crisis was not sufficiently explicit as regards the basis of the agreed cuts. Although it was clearly stated that the cuts would be in actual production levels, questions immediately arise as to how these levels are to be actually determined in the absence of verifiable reporting of output data, and how they are to be gently enforced if they are not honoured. It is not enough to agree on cuts as a short-term measure. OPEC also needs to establish a *modus operandi* which makes it possible to regulate production levels swiftly and easily and in a co-ordinated manner on a long-term basis.

3. As regards regulating oil production and therefore affecting price levels, the offer of co-operation by the independent non-OPEC oil producers and the expression of their wish to be involved in agreeing oil production levels should be acted upon. As realisation grows that all oil-producers are in fact inter-dependent, it is clearly in their interests to work together. OPEC is in a unique position to act as a focus and as a co-ordinator for such activity, but this will need concerted and concentrated efforts if it is to come to anything practical.

4. As we have already seen earlier in relation to OPEC's information policy, OPEC's pricing policy has always relied on secondary sources – that is, reporting agencies and consultancies – for the information which it uses to establish the agreed basis for cuts in either quota or production levels. These secondary sources were used, for example, to estimate (through a simple averaging of the numbers published by these sources) production levels for February and June 1998, on the basis of which proposed cuts in production levels were calculated. This was because OPEC Members did not wish to disclose their own export statistics. Their rather extreme and restricted definition of sovereignty made them reluctant to disclose in a transparent way their production output statistics. Without a certain degree of mutual trust, it will always remain impossible for OPEC to gather its own reliable information from its own members and base informed decisions on this – yet this is clearly what is needed if the Organisation's pricing and production policies are to have a firm and effective basis, free from possible misinformation and even disinformation.

5. In order to improve its pricing and production policies, OPEC needs to take into consideration and include in its agreements issues such as volumes held in storage outside Member Countries' boundaries. At present, however, and unfortunately, Member Countries do not wish to disclose this kind of information. Clearly, OPEC's pricing and production policies would prove to be more effective if Members were more open

in disclosing their oil storage supplies outside their territorial boundaries, since it would be then possible to make better-informed decisions. As has been pointed out:

> "It is not the numbers agreed upon that really matters, but the number of barrels which will actually appear in the international oil trade in the coming months." [405]

Further suggested elements for an effective pricing policy appear in Part Seven.

6.6 A General Evaluation of OPEC's Policies, Activities and Operations

It is clear from the above analysis of OPEC's policies, activities and operations that there have been several key stages in OPEC's history, beginning with its efforts to obtain a more equitable share of oil revenues for its Member Countries; followed by its efforts to obtain ownership and control of their own national oil resources for its Member Countries; followed by its efforts to regulate production and prices so as to ensure a regular supply for oil-consumers and a steady income for oil-producers. Part and parcel of these main efforts have been ancillary measures, especially information gathering and analysis, prudent conservation of what is a wasting resource, and linked to it, protection of the environment. With an industry as vast and as complex as the international oil industry, there have been a variety of global events and factors which have influenced the outcome of these efforts – some within OPEC's control, some not. As a result OPEC's activities and operations have met with a combination of failure and success. The remainder of this study is concerned with identifying and analysing the main features of this pattern, in order to view the past with understanding and the future positively.

OPEC's Petroleum Policy, both as initially envisaged and as subsequently manifested in practice, represents the measured institutional response of the oil-exporting developing countries to the challenge presented by world economic systems, including the abuse of their dominant position by the major international oil companies. In other words, OPEC's Petroleum Policy is the product of the collective action taken by the developing oil-producing countries to: "take advantage of perceived changes in the distribution of powers among various participants in resource politics, which play an important part in interstate relationships." [406]

It is clear from the examination of OPEC's policies and activities in this Part that since its inception and up to now OPEC has achieved a certain degree of success in co-ordinating its Member Countries' efforts to effect the modifications they desired in the

traditional structure of the international oil industry, rooted in the European colonial era. In these efforts, especially as regards those designed to raise prices and increase oil revenues, they have continually discovered that their achievements have been consistently eroded by the effects of inflation and paper currency devaluation, which are both features of an economic system both intimately related to the international oil industry and also almost completely beyond the control or even influence of OPEC. The tendency of the various powerful international financial institutions to redefine – whether as policy or by operation of market forces – the value and therefore purchasing power of the national currencies of the OPEC Members, so as to negative any increase in oil prices negotiated by OPEC by a corresponding devaluation in their national currencies, has repeatedly left OPEC powerless to effect significant change.

It is perhaps not a mere coincidence that when OPEC first raised oil prices dramatically in 1973, the US dollar ceased to be backed by gold at about the same time, thereby joining the other paper and electronic currencies of the world as being susceptible to instant revaluation, either upwards or downwards, by the various international financial institutions which now dominate the New International Economic Order. It is not within the scope of this thesis to explore the possible impending collapse of these international financial institutions, but as the markets concerned with futures and derivatives continue to balloon out of control and beyond conception, and as electronic money with no intrinsic value continues to be created out of nothing at an alarming rate by means of the application of the inexorable mathematics of compound interest, it may well be that at some point in the future, the OPEC Member Countries will return to their traditional means of exchange, gold *dinars* and silver *dirhams*, which have their own intrinsic value, irrespective of any design or number or electronic coding which may happen to be imprinted on them.

At the time of writing this thesis, this possibility appears remote, but if it ever came to be adopted, it could be argued that this might mean that OPEC would be in a more favourable position to negotiate more equitable oil prices, while at the same time helping the new international economic order to return to and base itself on what would appear to be a more traditional and reliable monetary foundation. Again, exploring this possibility is well beyond the scope of this thesis. As far as the remainder of this thesis is concerned, analysis of the past and present and any recommendations for the future are firmly based on the assumption that the present international financial institutions will continue to survive and operate as they are at present.

An important issue as regards the implementation of OPEC policies is the inadequacy of finance. As we have seen, in several instances – including information policy,

conservation and marketing arrangements – it does appear that the effectiveness of these policies is closely connected with the adequacy of financial provisions. Put simply, if they are not funded, they are not implemented, which means they are ineffective. The connection and interrelation between adequate funding by Member Countries and effective petroleum policy formulation and implementation is therefore vital. In the absence of adequate financial provision, the discrepancy between expectation and attainment is likely to be significant. Given that the main thrust of the objectives of OPEC, as identified in Part Two, is towards a fundamental restructuring of the oil market, it goes almost without saying that the financial requirements for that purpose are likely to be substantial. Although the OPEC Member Countries established the OPEC Special Fund to help Third World countries, they also need help in this respect themselves. Up to now, the political will of the Member Countries has not been directed towards this issue with sufficient concentration.

One of the most critical policies of OPEC is that concerned with the collection, evaluation and dissemination of relevant oil industry and market information. As we have seen, prior to the creation of OPEC, the oil-producing countries partially abandoned their sovereignty over their oil resources, through the concessionary system, in exchange for modest financial returns from the oil companies – who on their part were expected to assume all the risks in terms of capital investment, outlays and the marketing of the oil. This assumption of risk by the oil companies was mutually viewed as involving the correlative entitlement to certain management prerogatives relating to investment decisions, procurement policies, location decisions, employment policies, and arrangements for technology, shipping and the marketing of oil.

In these circumstances, the oil companies did not consider themselves obliged to provide the Member Countries with information on any of these matters – while the oil-producing countries were at that time more concerned with information as regards the duration and the area of the concession, the royalties they would receive, and the tax incentives they would grant. It was accepted at the time that the oil companies were entitled to retain information on exploration data, the extent of reserves, the quality of oil, the rate of exploitation, shipments, marketing institutions and trends, and industrial technology. After the establishment of OPEC, the gradual implementation of its policies concerning participation, nationalisation and conservation resulted in a quantitative and qualitative improvement in the information flow from the oil companies to the Member Countries as they, through joint management, were given access for the first time to the sensitive information required for critical management decisions. As such, this change in ownership and control structure , brought about by OPEC policy, re-

sulted in greater market transparency and the enhancement of the negotiating positions of the various host countries in their dealings with the oil companies. Although this made a significant contribution towards increasing the benefits enjoyed by OPEC Members from the exploitation of their oil resources, as we have seen, even today they still have to rely on outside sources for the information about their own resources which serves as the basis for their key decision-making concerning production and pricing control. Thus as already noted, there is room for improving OPEC's existing information-gathering and analysis facilities – which will only be possible if adequately funded, and there is room for improving OPEC's existing relations with the oil companies.

The OPEC Member Countries regard OPEC's policies as an important instrument for effecting structural change in both their own national economies and in the global economic system as a whole. Clearly the wealth generated by OPEC's activities and operations has contributed towards far-reaching structural changes in the national economies of various countries, both oil-producing and oil-consuming, and both developing and developed. If, for example, all the Member Countries were to withdraw whatever oil revenues are deposited in the banking system at present, it might well swiftly collapse as a result – in which case the money which they had just withdrawn would be instantly worthless! Thus it is clear that there is a strong inter-dependence between the oil-producers and the oil-consumers not only as regards the oil itself, but also as regards the revenues generated by it. They need each other – and therefore the basis of any sound policy has to incorporate the aim of enhancing co-operation and good relations.

Projections about the future prospects of OPEC Petroleum Policy tend to adopt as their point of departure the available evidence as regards the degree of cohesion existing between its Members and the likelihood of their reaching agreement on production and pricing policies. In this context, emphasis is usually placed on the factors tending to fragmentation such as the varying levels of the economic development of OPEC's Members, the differences in degree of their dependence on foreign exchange earnings from oil, the cultural heterogeneity of its members – (see Appendix VII) – and any political conflicts of a deep-seated character, such as, for example, the Iran/Iraq and Kuwait/Iraq divides. On the economic side, there is a tendency to underscore the difficulties of arriving at common pricing policies, agreement on production controls, and establishing arrangements for market sharing. What is often forgotten, however, is that these fragmentary influences were in evidence from the very birth of OPEC, and that even though they continue to exist, yet they do not seem to have had an unduly detrimental effect on the continued survival and enlargement of OPEC.

As we have seen, OPEC is very well aware of the factors impeding institutional cohesion and co-operation on production and pricing policies among its Members. However the breadth of its policies has allowed OPEC and its Members to focus more on the issues that unite than on the forces tending towards disintegration and discord. The compelling impulse towards co-operation and solidarity is grounded in OPEC's and its Members' common perception of the international economic system and its perceived adverse effects on their efforts at national economic and social development. Having shared a common experience of economic deprivation at the hands of the oil companies in the past, the motivation to collaborate in a common endeavour is unlikely to be diminished in intensity, so long as the conditions which determine OPEC and its Members' economic and political dependence continue. Indeed as we have seen, recent developments appear to indicate that even non-Members of OPEC wish to co-operate and collaborate with OPEC. As already noted, this is significant in terms of what is yet to happen as regards the relatively new oil fields situated in the former USSR southern states, now being opened up for the first time.

The oil industry is extremely complex. OPEC Petroleum Policy has to deal and come to terms with an arena of activity which raises and is affected by serious legal, economic and political issues. This complexity is made even more complicated by the fact that the trade in oil has expanded, advanced and became inter-related with many other important issues including protection of the environment, provision and transportation of food, war, financial institutions and so on. As a result, in developing its policies to keep abreast of the times, OPEC has had to divorce itself from the more traditional approach based on the narrow legal interpretation of classical doctrines. OPEC policies can no longer afford to be designed only in terms of the preoccupation with the revenues of the oil-producing countries, the settlement of investment disputes, the sanctity of international contracts and the *pacta sunt servanda* versus rightful exercise of sovereignty syndrome. Although it is useful to be familiar with these concepts as an academic exercise, and as a starting point towards undestanding the present situation, such an approach will not, however, in itself be sufficient to illustrate, understand and deal with the present dynamism of an increasingly volatile modern world – from which OPEC Petroleum Policy is neither separate nor separable. Thus as we have seen, the basis of OPEC Petroleum Policy and its underlying attitude towards the world and current developments has become, to a great extent, either inspirational or interdictory – rather than doctrinal and conceptual.

In what is swiftly becoming the distant past, OPEC Petroleum Policy was primarily concerned with securing the ownership and control of its Members' oil resources

and a larger share of the revenues derived from them. The nationalisation of the oil industry by OPEC Member Countries in Iran, Libya, Iraq, Kuwait, Algeria and Venezuela, the royalty issue and posted and administrated prices, all indicate that OPEC policies at that time (including information and conservation policy) were designed either to achieve the highest cash value of crude oil exports or to satisfy its Member Countries' nationalistic sentiments. This policy, while understandable and useful in its time, it is submitted, is no longer entirely appropriate to serve the fundamental goals of the Member Countries in terms of their actual and dynamic participation in the world petroleum trade at present. Having acquired ownership and control, the OPEC Member Countries should now become more concerned with the long-term benefits of gaining expertise in not only exploration and production, but also in the secondary processes of refining, transportation, marketing, and research into new technologies benefical to the oil industry. In other words there are still areas of 'know-how' which traditionally were the domain of the oil companies, and which the OPEC Member Countries now need to enter. As we have seen, this will only become possible with adequately funded specialised training. With knowledge comes responsibility, and accordingly OPEC policies also now need to concentrate on ensuring the fulfilment of one of their main objectives, namely the provision of a steady supply of oil at reasonable prices.

The legal aspects of OPEC petroleum policy have not developed commensurably with the Organisation's economic might. The changes OPEC petroleum policy made in the traditional concessionary system reflected certain legal developments which were confirmed, *inter alia*, by OPEC's Declaratory Statement of 1968 and further witnessed in the Solemn Declaration of 1975. Apart from these limited changes, which mainly confirmed the right to exercise permanant sovereignty over natural resources, OPEC's Petroleum Policy in recent years has been directed almost entirely towards securing a reasonable amount of revenues from oil resources. Although understandable, this relatively insular and selfish attitude is unlikely to be able to deal effectively with the problems presently being generated by a dynamic and modern international petroleum industry, which is susceptible to the effects of any major global event, wherever it happens.

In short, OPEC needs to wake up – and in formulating its present and future policies it must take into account current events, including: the effect of the activities and policies of other international organisations concerned with energy such as the IEA, OAPEC and OLADE; the emergence of new non-OPEC member oil-producers, especially in the south of the former USSR; the possibility of such independent oil producers joining OPEC; the possibility of co-operating with such oil-producers, there and

elsewhere, even if they do not join OPEC; the long-term effects of the indebtedness caused by the Gulf War; the effects of civil unrest in some of the OPEC Member Countries (notably at the time of writing in Algeria and Nigeria); the recent amalgamation of BP and Amoco, forming the third largest oil company in the world; the significance of the new nuclear capability of India and Pakistan; the shift in Iran's post-revolution politics; the discovery of oil and gold in the Sudan; the construction of oil pipelines linking African oilfields to Europe; the development of large oil storage facilities which can be used to counteract the effects of short-term supply shortages; and the fact that the oil-producing countries are increasingly becoming oil-consuming countries, to name but a few.

All these factors emphasise the fact that the oil industry is volatile, vulnerable and unpredictable. OPEC's Petroleum Policy accordingly needs to be correspondingly a policy which has a stabilising influence. This means co-operation is needed with both OPEC and non-OPEC members – and with the oil companies. Therefore ownership and control and profit are no longer the main objectives. Stability and balance, based on sound analysis of comprehensive information, are, it is submitted, of paramount importance – and this indicates the need to establish a legal and economic regime whereby the petroleum industry can become dynamic and progressive, rather than insular and aggressive. Once stability is ensured then consistent supply and reasonable prices can be restored – simply as a side-effect, rather than as a goal in itself.

The Declaratory Statement of 1968, the Pro-Forma Regulation and the Solemn Declaration of 1975 – all of these expressed a desire among the Member Countries to be involved with more than money, and to utilise oil and the wealth it generates to help create a better world for its inhabitants. These sentiments, which appear to have been put on ice for the last twenty years, need to be re-activated and translated into action. These issues are precisely the ones which are, in the words of Professor Roston 'preconditions' necessary for the developing countries to 'take off'. [407]

The way forward in this respect, it is submitted, is for OPEC to take on a new role, similar to the one it had at its inception – as a focus for and a co-ordinator of change – only this time around the change that is needed is the formulation of unified petroleum laws, the setting up of an OPEC High Court with trained judges to settle disputes, and a much improved information-gathering and analysis capability. As we have seen, these measures have all been proposed in the past, but for one reason or another, not followed through. All that is necessary now is to re-activate these proposals and translate them into action. By concentrating on these simple measures, it should be possible for OPEC not only to become the central regulating organisation of the oil industry –

which would be a far more preferable destiny than its gradually becoming more and more obsolete – but also to deal effectively with the following current issues:

1. Issues between OPEC Member Countries:

Current disputes between Member Countries demonstrate the need for unambiguous laws and regulations, tailored to the oil industry and backed up by sound adjudication, to be developed. Conflicting claims of sovereignty over the contents of underground reserves by various Gulf states have caused a series of disputes – which, to everyone's detriment, have considerably limited the actual process of the exploration and exploitation of the oil in this area, because precise agreements and a degree of certainty about the future are necessary before oil companies can commence any activities. [408] These disputes are not only between Kuwait and Iraq. There are also other disputes: between Iran and Saudi Arabia, between Saudi Arabia and Qatar, between Qatar and Bahrain, and betwen the U.A.E. and Iran. It is no longer relevant or helpful to attach blame on former colonisers for having drawn the borders where they did when they did. The point is, these disputes need to be resolved, and it should be part of OPEC Petroleum Policy to find an effective means or mechanism for achieving this.

2. Issues Between the OPEC Member Countries and the Oil Companies:

The main issues between the OPEC Member Countries and the oil companies have always existed and probably always will. It is how the two parties deal with these issues which is important. As well as the issue regarding the proportions in which oil revenues should be shared between the two, the other main related issue is that of information-sharing and 'know-how'. This issue will automatically gain prominence if OPEC adopts a 'non-financial' petroleum policy along the lines suggested above – and in the present context it is more important. What is at issue now is the increased participation of the OPEC Member Countries in management, access to information, integration of the oil industry in national economic development plans, and then, only finally – returning to the first issue – the process of collective bargaining between OPEC (on behalf of the oil-exporting countries) and the oil companies. Although the two parties will never become one, these vital areas require a spirit of co-operation, rather than the more traditional 'them-against-us' attitude of the past.

Up to now, OPEC's Petroleum Policy has not been developed sufficiently to cope with these issues. As indicated above, what is needed is a development in the petroleum laws which governs the relations between the two 'sides', thereby helping to create greater certainty and to avoid unnecessary and wasteful conflict. Many lawyers

involved in the oil industry believe that up to now no adequate legal regime has yet been established to cope with these issues. [409] For example, despite numerous attempts, no legal regime for the conservation of oil resources has been finalised. [410] OPEC's Petroleum Policy needs to develop unified petroleum laws so that it can provide at least a source of reference for the oil industry in the emerging new world order.

As already suggested, OPEC could also contribute significantly by establishing its High Court as originally suggested in 1968 and again in 1996, providing a forum for clarification of petroleum laws, as well as a practical means of solving disputes, mending strained relations and where necessary settling otherwise intractable situations by means of decisive judgements. Of course there would initially be very practical matters which would have to be clarified – legal issues such as the extent of the proposed Court's jurisdiction, the type of disputes subject to its jurisdiction and procedural matters. If perceived as adequate and reliable, it could become a standard clause in every contract dealing with an oil-related transaction that in the event of any dispute or matter of interpretation, the parties would submit to the jurisdiction of the Court for a binding decision. For this happy state of affairs to happen, the judges would of course need to be of an international calibre, experts in their field and as impartial as is humanly possible.

It is outside the scope of this study to examine these issues in depth. Hopefully this will be an endeavour which OPEC itself embarks upon! Suffice it to say that if the OPEC High Court could be established, it would not only contribute to the stability of the oil industry as a whole, but also it would inevitably in time make a valuable contribution to the development of both international public law and international private law in what is a key area of the current global situation. OPEC's Petroleum Policy has up to now either ignored or failed to come to grips with this important issue. Action is needed. As we have seen earlier, this is not an impossible project. OAPEC has already set a precedent in establishing its Judicial Court – in which disputes between members have already been settled, notably the pipeline dispute between Syria and Iraq.

It must be emphasised that if OPEC were to establish such a Court, then the decisions of this Court would provide a source of customary rules of international law in the oil industry, filling the vacuum which exists at present in the international legal regime of the oil industry. This vacuum cannot be filled by OPEC Member Countries alone. It requires the international efforts of all parties involved in the international oil industry. OPEC should make it part of its Petroleum Policy to encourage such efforts in a practical manner.

3. Issues Concerning Oil Pipelines Transport:

As the example of the Syria/Iraq pipeline dispute just cited indicates, one of the key issues which the proposed OPEC High Court could clarify is the international regulation of oil pipelines transport, or oil transit, as it is sometimes described. Oil pipelines transport has been regulated rather meticulously in the United States, Canada and France. [411] Recently the EC Countries signed the European Energy Charter and Treaty in 1994. One of this Charter's critical concerns is the secure transport of energy products between different parts of the area covered by the Treaty. Some believe that: "... security of energy supply was one of the most important reasons for the initiative by the European Community in 1990 that led to the Charter being proposed." [412]

In spite of the evident concern shown by the High-Tech North concerning this issue, it has not been a subject of concern in OPEC's Petroleum Policy. No studies, conferences, or national petroleum representative meetings have been held under the auspices of OPEC. This is another example of OPEC's failure to keep abreast with current events and present developments – and yet this is an issue which concerns not only the OPEC Member Countries but also both oil-producers and oil-consumers. The OPEC Member Countries have experienced disputes and conflicts concerning this issue. More seriously, some oil pipelines have been sabotaged. These factors affect everyone, at both ends of the pipeline. Thus as Verzijl has noted:

> "Very strong political undertones can be detected in conventions concerning the construction, exploitation and legal status of oil or gas pipelines. Well-known incidents in the Middle East and North Africa have proved how precarious the existence of such pipelines can be, since they can be and are in fact sometimes cut off by the territorial state even contrary to valid undertakings." [413]

As already pointed out, there is a lack of an international legal regime which governs these issues. The European Energy Charter and Treaty and the UNCLOS Treaty are directed towards the establishment of such a regime, in Europe, but the vacuum still exists and this has led some international lawyers to suggest the creation of an international organisation for this purpose. [414] This could be OPEC, with its High Court based in Vienna. It is submitted that OPEC's Petroleum Policy should take these matters seriously and adopt a policy which takes the following factors into account:

(1) The right of OPEC Member Countries to utilise oil pipelines transport.
(2) The impact of transportation policy on prices.
(3) The need to modernise oil transit facilities for the benefit of all Countries.

(4) The need to prevent the interruption of oil flow.

(5) The need to develop good inter-connections.

(6) The need to encourage the removal of obstacles to the creation of extra capacity in order to make marginal pipelines commercially feasible.

(7) The need to have a mechanism for determining what particular route a pipeline being laid across a Member Country's territory can take.

(8) The need to agree on a standard tariff.

(9) The need to establish a legal mechanism settling any disputes arising between Member Countries in relation to transit issues swiftly and equitably.

Just as Article 7 of the European Energy Charter and Treaty deals with most of these points, so too does OPEC's Petroleum Policy need to address these issues. As regards point 9, clearly establishing the proposed OPEC High Court would go a long way towards satisfying this need.

4. Issues Concerning the International Regulation of Environmental Pollution:

As already indicated earlier, interest in the legal regulation of environmental pollution is one of the current issues in the international petroleum industry. The development of legally-binding environmental standards by international organisations is a relatively recent yet growing phenomenon. [415] Clearly environmental issues will dominate the energy debate in the years to come. This will lead, as it already has in the past, to the introduction of policies whose main impact will inevitably be on the demand for energy. These policies will include both taxes and regulations which may well affect prices. At present, however, the number of cars in use is still increasing – and with it the demand for fuel, and the resulting pollution.

Clearly OPEC Petroleum Policy has to confront the problems created by environmental pollution which the international petroleum industry will witness. As yet, no effective legal regime has been provided in the oil agreements and no OPEC policy has been established to tackle this issue. The potentially detrimental effects of such negligence on everyone may take the following forms:

(1) Policies adopted on the grounds of environmental protection may lead to an overall reduction in oil consumption. Such policies adopt different measures including using oil in different forms, carbon taxes, energy taxes, import fees, or a combination of these. At present such measures are either being seriously considered or actually being implemented, despite the fact that their effectiveness has been questioned and doubted. [416]

Due to the discrimination against oil, many industrialised countries have reached a point where taxes on a barrel of petroleum products equal three to four times the price of a barrel of crude – while coal, which emits more carbon dioxide than oil per unit of energy, is currently receiving generous subsidies, reaching $105 per ton in Germany and Japan. OPEC's calculations show that the prevailing implicit carbon tax on oil in the USA is around $100 per ton of carbon, while in the European Community, it has reached $450 per ton.

From the perspective of the OPEC Member Countries, the negative policy trends as regards oil and the environment are indeed alarming. OPEC Member Countries rely on their oil revenues not only to develop their economies and improve the standards of living of their peoples, but also to aid the developing countries. These revenues also assist, by way of investment, in increasing their production capacities so as to assure the world of adequate oil supplies in the years ahead, to help in reducing oil spillages, and finally to upgrade their refineries so as to supply a cleaner barrel to the market. If oil consumption is reduced, whether as a result of environmental protection measures or otherwise, this will gravely affect their economies and future prospects.

It is perhaps also ironic that the increasing taxation of oil in the oil-consuming countries are in fact benefiting the developed countries and having a negative effect on the under-developed ones. Thus in 1993, for example, the revenues derived from the developing country oil exports of OPEC, arising from the export of 11.6 million barrels per day, amounted to $70 billion – while in the same year the countries of the European Community collected $222 billion in taxes on petroleum products, arising from the consumption of the same 11.6 million barrels per day!

(2) In addition, current trends in the environmental debate may create a future where one member country may substantially lose its exports in competition with another member country whose crude oil is of a more attractive quality for environmental purposes (because it has a different specific gravity or sulphur content for instance). This in turn would adversely affect the policy of companies who might otherwise have invested in that particular country, causing further economic deterioration and new rivalries between members.

At present, most countries in the world are still at an experimental stage as regards regulation of the environment. There is a vacuum in the international legal regime regulating environmental pollution. International environmental law is still in the process of evolving and for some it does not yet exist. [417] The few environmental treaties which directly affect the energy sector have, until relatively recently, been reactive in character. For example, treaties on civil liability and emergency intervention in the

event of marine oil pollution were only adopted after the shipwrecks of the Torrey Canyon and Amoco Cadiz oil tankers, in 1967 and 1978 respectively. The nuclear catastrophe at Chernobyl in 1986 resulted in no less than two treaties within six months, the Vienna Conventions on Notification Procedures and International Assistance in the Event of a Nuclear Accident.

In the energy sector, the most recent evidence of international consensus on the need for anticipatory action is to be found in the United Nations Framework Convention on climate change, the Climate Change Convention, signed in Rio de Janeiro in 1992. This treaty too has a purely environmental focus, namely the legal and financial measures to combat global warming. Finally, as already noted, the EC signed the Energy Charter Treaty in 1994 which has special Articles devoted to environmental protection. Measures such as these confirm the fact that:

> "... environmental matters require a clear an effective lead from the global organisations." [418]

OPEC Petroleum Policy has yet to display such a lead. Apart from a few general references to the importance of environmental protection in petroleum policy, the Organisation has not tackled these issues. As we have seen earlier, in June 1972 – which in relative terms is already a long time ago – the OPEC Conference passed Resolutions by which it expressed its concern over the growing problem of environmental and pollution problems and instructed the Secretary General to prepare a study for submission to the next meeting of the Conference. At its 34th meeting in June 1973, the Conference instructed the Secretariat to draw up a uniform code of preventative regulations. The Organisation also provided a platform for meetings of experts from the OPEC Member Countries to exchange their views – but no practical or concrete actions were taken as a result. These meetings may have helped in harmonising the OPEC Member Countries' views, but clearly further action is required.

The serious question of oil policy and practice with regard to environmental issues cannot be solved simply by such exchanges of views. It requires joint action by the international community – and in order to maximise the effectiveness of such action, the participation of OPEC and its Member Countries is indispensable. This is because it appears extremely likely that oil will remain the main source of energy on earth for many years to come, which means that if the environment is to be protected, then development in the Third World countries will need careful planning and regulating – and without the continuation of oil revenues at a certain level, the OPEC Member Countries will not be able either to achieve such development for themselves or assist others to do likewise.

In the words of the former OPEC Secretary General, Dr. Subroto:

> "Alleviating the unenvironmental impact of oil exploitation will require the heavy utilisation of resources and much investment, and this can only be done in a climate of robust, vigorous economic growth."

In this context, OPEC has declared that:

> "Environmental protection must be achieved by paying due attention to the many causative factors, and the Conference does not believe that the hydrocarbon is the sole or even the main culprit responsible for any environmental degradation." [419]

It is nevertheless clear that there are aspects of pollution which are connected to the transport and uses of oil, both before and while it is processed or used as an energy source. Care has to be taken at every stage. This brief consideration of environmental issues *vis-a-vis* the oil industry indicates a definite vacuum in the legal system governing the international petroleum industry. It has rightly been said that: "the international petroleum industry has not kept pace with the changing features of international law." [420] This is especially true as regards OPEC's Petroleum Policy, which is still lagging seriously behind the developments taking place in international society. There is still time for the Organisation to seize the initiative and act positively – and under the present circumstances, and in the absence of any clearly articulated principles of law, the Organisation should feel free to act on the *dictum* of the late Lord Asquith in the Abu Dhabi Case by searching for: "the good sense and common practice of the generality of civilised nations - a sort of modern law of nature." [421]

In bringing this general evaluation of OPEC's policies, activities and operations to a close, it must be emphasised that although OPEC has achieved much in the past, both for its Members and for oil-producers and oil-consumers in general, the global situation today is very different to that which existed at OPEC's inception. Accordingly, although the aims and objectives for which OPEC was originally established still remain valid, the Organisation's policies and actions nevertheless need to be adapted and tailored both to present and future needs and priorities.Potentially, OPEC still has much to offer – and as the saying goes, 'Life begins at forty!'

Since this section has been concerned primarily with assessing OPEC's track record during the last thirty-eight years, all that remains now for the purposes of the present study is to make a final evaluation of the performance of OPEC in the context of its objectives, as well as summarising the present writer's suggested improvements and recommendations for the future:

Part 7
General Summary, Evaluation and Conclusion

In the course of this study, general evaluations and recommendations have been made, particularly in the final section of Part Six which deals with OPEC's policies, activities and operations. Although reference is made to most of these evaluations and recommendations in this final Part of the thesis, it is not the present writer's intention to simply repeat what has already been said earlier, and accordingly what follows should be read with what has already been stated firmly in mind.

Perhaps the point should first be made that although OPEC has not always fallen neatly into the definitions of classical legal theory and practice, already its continued existence for almost the last 40 years indicates not only that the existence of such an organisation was initially and continues to be needed and necessary – but also the fact that OPEC has indeed come to be legally recognised at an international level. It is understandable that at its inception, OPEC was viewed in some quarters, especially those most resistant to any change in the international *status quo*, with suspicion and as a threat – and accordingly one of the ways in which attempts were made to close down the Organisation or render it ineffective was by denying it any legal status or validity. As it became apparent that in fact OPEC had a valuable role to play and was on the whole a positive force in the international oil industry, then such opposition dwindled and OPEC's international legal status was assured, even by those who had at first rejected it.

The main issue to be addressed at present, therefore, is not the legal status of OPEC *per se* – although of course this is important and has been considered and analysed in the present study – but rather whether or not the Organisation and its policies and operations need to be modified for and in the future, especially now that there are so many new developments in the overall global situation, including environmental, economic and political factors – as well as new oil reserves being discovered in new countries, all of which could potentially either join or at least co-operate with OPEC – or form an alternative organisation which might then oppose or replace OPEC as the major oil-producers' organisation, thereby rendering OPEC obsolete. This is a possibility which OPEC needs to consider seriously. Given the expertise and experience the Organisation already has, it is in a unique position to be a leader, but it does need to take the lead.

7.1 OPEC's International Legal Status and Characteristics

The examination and analysis of the law and practice of OPEC reveals that OPEC was from the outset intended to be and established as an international organisation whose identity, legal status and activities and operations were to be subject to International Law. Whether this was actually the case is a question of fact to be determined principally from several main factors, particularly from OPEC's activities and operations, as well as from its relations with other international organisations.

As we have seen, the OPEC Statute – as amended from time to time, most recently in December 1997 – not only defines the Organisation's international legal status, but also its organisational structure and the main powers and functions which its various organs exercise and perform. Having subjected the organisational structure to close scrutiny, this study reveals that the organs are well equipped to perform the functions entrusted to them, although they are at times hindered and impeded by a lack of adequate funding. The nature of the plenary organs of OPEC – the Conference and the Board of Governors – ensures that each Member Country is represented in the meetings of the supreme organ, the Conference, which is the final authority in both making and implementing major policy decisions.

This study's analysis of the decision-making process of OPEC confirms that at present OPEC upholds the principle of the sovereign equality of states. OPEC takes all its decisions - apart from certain exceptions in the case of the admission of new Members and some procedural matters - on the basis of unanimity, with each Member having an equal and single vote. This study has suggested – with emphasis, and in light of the fact that membership of the Organisation has increased since its inception, and could increase further – the adoption of a weighted voting system which, if adopted, would in some circumstances bind dissenting Members. It can be argued that in this situation the sovereignty of OPEC's Members, including any dissenting ones, would not be infringed because firstly, all Members are presumed to have consented in advance to the decision-making process and secondly, every Member has a right of voluntary withdrawal from any particular decision if it considers its sovereignty infringed. Thus the practical effect of a weighted voting system would be the avoidance of having good decisions blocked by minor dissent, rather than the imposition of decisions on some unwilling Members. At present if any resolution is not unanimously accepted by all the Members, then technically it cannot be adopted by the OPEC Conference.

It is interesting to note that in practice OPEC has recently avoided the legal technique of majority vote, let alone the unanimity requirement, even though the constitu-

tional provisions requiring unanimity are clear. Thus recent decisions relating to production control and quota allocations have not received the approval of all Members, and yet they have been adopted by the Conference. This clearly indicates the need for the formal adoption by OPEC of a weighted voting system, so as to enable practical decisions which affect the entire oil industry to be reached and implemented.

The advantages of the present decision-making process are of course that no one country has been able to dominate OPEC, although as we have seen the five Founder Members do have the right of double veto. It means that only resolutions on which everyone is agreed will be adopted. From one perspective, this augurs well for OPEC as it removes causes of jealousies and rivalries. At the same time, however, it can lead to apathy and a lack of initiative on the part of Member Countries, especially at times when urgent action or major policy decisions are needed, thereby generally ensuring the ineffectiveness of OPEC rather than what is actually required.

A second major area where the strict application of the doctrine of the sovereign equality of Member Countries prevails is in connection with the enforcement of OPEC decisions. OPEC is not a supranational organisation, and yet it has failed to create a mechanism for enforcing decisions. It is essential that OPEC remedies this situation, since, especially in times of crisis, collective decisions can only be effective if they are implemented collectively – and this cannot always be left up to moral conscience. At present, and as a result of this ommission, decisions which ought to be declared binding are labelled recommendations, and Members are then implored to use their best endeavours to implement them. Thus, the governing force behind the decisions of OPEC, which should be the collective will of its Members, is at times considerably weakened by the self-interests of individual Members.

It is this voluntary basis of decision implementation – in combination with the lack of a weighted voting system just discussed – which is partly responsible for the lack of effectiveness of OPEC in fulfilling its objectives. At the same time, it has to be accepted that the present voluntary basis of decision implementation is a practical concession to reality. International organisations cannot compel compliance by Member Countries, even if those Members have voted for the decisions or proposals in question. However, if the Members of OPEC could voluntarily agree on an appropriate decision enforcement mechanism, then this would encourage them to make committed decisions on which they fully intended to act, rather than paying lip-service to Resolutions with the intentiomn of forgetting all about them as soon as the Conference was over. This is an area in which the proposed OPEC High Court, which is considered in more detail in Chapter 6.6, could be extremely helpful.

A third fundamental organisational flaw of OPEC, which is in urgent need of remedial action, is the lack of adequate financial resources to fund the performance of the Organisation's functions, the fulfilment of its objectives, and the implementation of its decisions and projects – all of which need personnel who have been adequately trained. As we have seen, OPEC provides little or no financial resources for the execution of its external policies. This lack of financial resources partly explains why the implementation of its decisions is on a voluntary basis, and why no Member is compelled to implement decisions. OPEC would become a far more dynamic and effective organisation if it could channel some of the financial assistance which it directs to the Third World towards its own pressing needs.

The above analysis reveals that the implementation of OPEC's collective decisions largely depends on its Member Countries' capability and willingness to implement them. As regards their capability, the internal arrangements in the Member Countries regarding the ownership, production and marketing of oil are vital. As we have seen in this study, OPEC succeeded in enabling its Member Countries to secure ownership and control of their own oil resources and oil production. This in itself is not enough – control has to be exercised efficiently. This requires the necessary 'know-how' and expertise applied by properly trained personnel – and facilitating this is another area in which OPEC could be of great and further assistance to its Members.

In this context, OPEC has emerged as a model for other International Producers Associations. Not only do Members of OPEC own their respective industries, but also they have established their own national companies and institutions by which they own production and marketing organisations in their respective countries and sales offices in consuming countries. This structure which exists in the OPEC Member Countries contrasts sharply with that of many other IPAs, whose members, unlike OPEC's, cannot establish state-owned producing enterprises and marketing agencies to enhance their bargaining strength. Up to now only the CIPEC members have been able to follow OPEC's example. Thus the four large founding members, Chile, Peru, Zaire and Zambia have established state-owned production and marketing organisations in their respective countries and sales offices in consuming countries.

The leading normative principle of OPEC is the doctrine of the right to exercise permanent sovereignty over natural resources. The application of this principle has been the expression of the inherent and legitimate freedom of the oil-producing countries to organise the production, marketing and pricing of oil – and it is the 'combined exercise of sovereignty' by the OPEC Member Countries which underlines and confirms the legally recognised status of the policies, functions and operations of OPEC.

This does not mean that by joining OPEC, individual Members have forfeited their sovereignty. What it does mean is that OPEC is the practical result of the joint practice of sovereign states working together. In other words, the practices of OPEC are the result of the joint performance of sovereign acts.

As regards their joint performance of sovereign acts, the primary arena of activity of the OPEC Member Countries has been their international co-ordination of activities regarding the production, marketing and pricing of oil. This necessarily implies that the successful operation of OPEC depends on how effective and mutually conducive the internal arrangements in Member Countries are. It implies further that the effectiveness of OPEC is a function of the degree of co-ordination possible or achieved.

Thus the second normative principle governing OPEC is the solidarity which makes the degree of co-ordination possible and is in fact the *raison d'être* of OPEC. This essential attribute, the principle of solidarity, is what enabled this group of like-minded states to act in concert in order to acquire ownership and control of their own natural resources. Once this was achieved, it is this same principle of solidarity which enabled the OPEC Member Countries to become more involved in setting production and price levels – and it is the same principle which will continue to assist OPEC in the collection of information and the marketing and pricing of oil in the future, and, it is hoped, to formulate and implement effective policies which benefit oil-producers and oil-consumers alike. In short, it is this principle of solidarity which has enabled the OPEC Member Countries, by acting together collectively, to achieve a measure of success and a degree of effectiveness which would have otherwise been well beyond the reach of any individual Members acting alone.

By considering the historical context within which OPEC came to be established, it became clear that the will to create OPEC reflected the recognition of the fact by its Founding Members that international trade in oil was dominated by powerful and well-organised institutions which exploited the fact that the oil-producers were relatively diverse, weak and fragmented. In this respect, OPEC represented an institutional response to the economic power behind oil-consuming interests. It expressed concern over the pervasive influence of the oil companies and developed countries not only as oil-consumers but also as producers and channels for the marketing and pricing of oil. This concern still persists today and continues to unite the OPEC Member Countries, whatever their superficial differences may be. Flowing from their perception of the economic *status quo* is a recognition on the part of OPEC and its Members that individual Members are powerless and vulnerable in the face of such a concentration of economic power, which is why the co-operation of all oil-producers, whether they are

members of OPEC or not, is vital if they are to serve as an effective countervailing force in the quest for an equitable distribution of wealth and power between the producers and consumers of oil, and between the developing and the developed countries.

The above analysis reveals that OPEC recognises that ultimately the international oil trade is governed by different political and economic powers and motives, and not necessarily by legal or economic principles. As a result, and because of this recognition, most developing countries have accepted and sought to imitate OPEC's example by adopting similar organisations, including IPAs, as their key institutions – which not only represent the political and economic aspirations of all developing producing countries, but which also serve as a useful instrument to ensure a more equitable redistribution of wealth and power. Like OPEC, however, they are at the mercy of powerful financial institutions which have the capacity to revalue any currency, and therefore to neutralise any rise in price which may have been achieved.

For these reasons, OPEC has won and retained the support and respect of all developing countries organised under the banners of the Group of 77 and the Group of Non-Aligned Countries, whether or not they are Members of OPEC. This support has among other things culminated and manifested in discussions and debates by international organisations in conferences called purposely to examine and endorse producers' organisations such as OPEC. Such conferences have taken place within UNCTAD, the Group of Non-Aligned Countries, and the UN General Assembly – at which some developed countries who opposed organisations such as OPEC were also present. As we have seen, however, the conclusions and resolutions of such conferences, not only evidenced state practice regarding recognition of OPEC's international legal identity, but, more importantly, crowned OPEC with legal justification and moral legitimacy.

Furthermore, continued participation in various international forums has involved OPEC in wider economic and political relationships with both developing and developed countries. This development is significant for two reasons. Firstly, it confirms that OPEC is playing an important role in the formation of the New International Economic Order – not only in the sense that OPEC is an embodiment of the desire of developing countries to create institutions which embody their political and economic aspirations, but also because it is actively assisting them in this gradual process of restructuring international economic and political relations, particularly those connected with the international petroleum industry – without which relatively little development would be possible. For this reason, even when OPEC's activities have resulted in higher prices for developing consuming countries, they have continued to support and accept OPEC. Secondly, OPEC not only symbolises to some extent the 'power' base of the

international oil trade, but also it seeks to promote greater international equity, fairness and justice for the weak and the disadvantaged in the international process by improving their bargaining power with the ultimate aim of redressing the balance in the distribution of wealth and power between producing and consuming countries. Thus the political and economic leverage displayed by OPEC partly led to the NIEO debates in the UN General Assembly in 1974, and more recently in 1991 to Venezuela and France working together towards opening the debate between the North and South at an international level – which in turn led to the meeting held in Venezuela in September 1995. Whether OPEC can take the lead in this is a matter which remains to be seen. It is however, unlikely that OPEC can take the world by surprise. Everybody, including OPEC, has learned a good lesson from the events of 1973-74. Even so, there is every reason to believe that with proper organisation (and perhaps good fortune) OPEC can influence the course of international relations between developing and developed countries in a positive manner. In this, OPEC is the only IPA which had in the past – and still has – the potential to pressurise oil-consumers and at least to some extent dictate terms.

The establishment and subsequent operations of OPEC as a lawful international economic institution have had some important implications for the law governing ICAs. This is because there are both similarities and differences between the two. There are similarities with regard to the establishment of OPEC and a typical ICA, as international economic institutions, in that both have been created by treaties, which among other things define the rights and obligations of their members, and the legal status of the organisations themselves. In the second place, both organisations have received endorsement from international conferences and organisations, in particular, the Havana Conference on Trade and Employment, UNCTAD and the United Nations General Assembly Resolution for ICAs – and the Dakar Conference and the UN General Assembly (including the Charter of Economic Rights and Duties of States) for OPEC. In the course of this analysis, it was concluded that a plain reading of Chapter VI of the Havana Charter and its subsequent endorsement by ECOSOC and GATT suggests that OPEC was not contemplated.

In spite of its unique character, the establishment of OPEC has not been responsible for creating any new major legal or economic principles. As confirmed above, it provides practical demonstrations of some existing principles of International Law, particularly that of the right to exercise permanent sovereignty over natural resources. At the same time, OPEC symbolises the negation of four fundamental assumptions which underlie typical ICAs and the Havana Charter principles:

Firstly, OPEC contradicts the idea of mutuality of interest between producers and consumers in the production, marketing and pricing of oil. Rather, OPEC reflects the basic proposition that the interests of consumers and producers are at times diametrically opposed to each other. It follows that certain measures which are of paramount interest to producers cannot be pursued within the typical ICA producer-consumer framework. The formation of OPEC thus confirms that oil producers and consumers do not necessarily have to form a common organisation in order to solve problems relating to the international oil trade, since it is often impossible to safeguard simultaneously the interests of producers and consumers in a manner which is mutually beneficial. On the contrary, OPEC has confirmed the fact that the producers have identical interests, thus qualifying the producer-consumer basis of ICAs.

Secondly, and stemming from the previous point, OPEC rejects the idea that consumers have an unqualified right of access to oil supplies. This rejection may at first sight appear to be at variance with the Havana Charter principles which demand regular supplies for consumers. Assuming, however, that these Havana Charter principles form part of the norms of customary international law, it is correct to point out that the right of consumers to regular supplies of oil is inextricably intertwined with their duty to pay fair and remunerative prices for it. OPEC accordingly accepts no overriding responsibility to provide regular supplies, because the Organisation cannot legally demand that consumers pay fair and remunerative prices for them. Furthermore, the practice of IPAs suggests that the terms 'regular supplies' and 'fair and remunerative prices' lack objective definition, except where producers and consumers have agreed a price and a definite range of export and import quotas.

Thirdly, it can be argued that the principle of the right to exercise permanent sovereignty over natural resources means that OPEC Members have an absolute right to restrict the supplies of their oil resources – subject only to the constitutional limits which the Organisation has freely imposed on itself, combined with the moral obligation not to act irresponsibly in this matter. There is no customary or conventional principle of international law, however, which by way of legal obligation requires the OPEC Member Countries to make supplies of oil available to consumers. Thus, in the absence of any negotiated bilateral or multilateral commitment, OPEC and its Members would incur no legal liability for failing or refusing to sell oil to any oil-consuming country.

Fourthly, a basic tenet of the law of ICAs suggests that the allocative functions of free market forces should be allowed to operate freely, and should be interfered with only in exceptional cases. It follows from this line of thought that as far as ICAs are concerned it is assumed that 'impersonal forces' operate in commodity markets. OPEC,

however, characteristically rejects the free market philosophy. It asserts that trade in oil has never been 'free' – either from political motivation, or from economic speculation. Oil markets have always been dominated by economic power – which is then used to achieve both economical political ends. Such domination has expressed itself not only in the form of the major oil companies and the oil-consuming countries' marketing institutions – but also in the major financial institutions which finance and facilitate all operations in the international oil industry – and which, ironically, cannot do without the revenues generated by such operations.

It is clear therefore that, as far as the OPEC Member Countries are concerned, the international oil industry is dominated and affected by powerful institutions and not by fixed principles or rules. It is for this reason that OPEC constitutes an institutional response and, it is submitted, a very necessary counter-balance to such domination – which would otherwise be exercised unchecked not only by the organised buyers and oil-consumers, but also by speculators. It is also clear from OPEC's track record, that on the whole the Organisation has behaved responsibly and with moderation, and that it has acted as a stabilising force – not only within the international oil industry itself, but also in a broader global context. It is also clear that as the general situation has changed, OPEC has had to change with it, and that this is a continuing process, entailing new priorities and new policies.

Having summarised OPEC's international public legal credentials and characteristics, therefore, we shall now turn to more specific conclusions on the following points:

1. OPEC's Successes and Failures
2. The Reasons for OPEC's Failures.
3. Suggestions for Future OPEC Petroleum Policy.

7.2 OPEC's Successes and Failures

7.2.1 OPEC's Successes

OPEC succeeded in:

1. restoring oil prices to the pre-1960s unilaterally reduced levels which caused the creation of OPEC, and in preventing any further major deterioration of oil prices;

2. expensing royalties;

3. introducing participation agreements between Member Countries and the oil companies;

4. enabling Member Countries to nationalise their oil industries;

5. preventing oil companies from playing one Member off against another;

6. enabling Member Countries to exercise full sovereignty over their own natural resources. By the beginning of 1974 all Members had full ownership and control over their oil resources;

7. reaffirming the critical and strategic value of oil resources in general and the need to conserve supplies and avoid wastage;

8. increasing the OPEC Member Countries' oil revenues: in the 1970s, their oil revenues rose from $14.6 billion to $107.4 billion in 1975; $202.6 billion in 1979; and $276.0 billion in 1980; oil revenues then fell to $144.4 billion in 1985; and $107.6 billion in 1989; in the 1990s they amounted to $144.1 billion in 1990, $127.60 billion in 1991, $122.79 billion in 1994 and $134.00 billion in 1996. The increase in OPEC revenues enabled OPEC to increase trade with Third World Countries and also increase the amount of aid to these countries. Over $140 million have been poured into the developing Countries by OPEC;

9. tailoring the exploitation of oil resources to the development needs of each of the Member Countries;

10. enabling Member Countries to train and employ their own nationals, thereby assisting them to acquire the necessary 'know-how' to participate in and run their own national oil industries;

11. building a world leadership position that has helped to attain its geopolitical objectives, as well as having a stabilising and moderating influence on the international oil industry.

12. contributing towards global changes in awareness and use of energy. It was the implementation of OPEC's policies which helped put an end to the mindless wastage of energy in the era of cheap oil dominated by the international oil companies, and inspired a change in world energy consciousness, with all participants in the energy industry appreciating the fact that oil is, after all, a finite and exhaustible resource.

7.2.2 OPEC's Failures

OPEC failed to:

1. anticipate changes in market behaviour during the Iraq/Iran War, in the late 1980s, and finally in the recent 1998 oil crisis. This took the Organisation by surprise and prevented it from taking the necessary measures to reverse negative trends and minimise the damaging effects on its Member Countries' revenues and economies;

2. agree or formulate a clear pricing system, with both short-term and long-term strategies and horizons. The Organisation has not been able to set criteria for

pricing for crude differentials, which has heightened the differences between Member Countries;

3. determine the priority of criteria which it uses for determining prices such as reservation capacity, national development programmes requirements, population size, production capacity, price of manufactured goods and dollar evaluation. Up to now the Organisation has been summarising these principles as necessary elements in an oil pricing policy, but has not established what weight or priority is to be given to each of them;

4. develop a long-standing pricing strategy in dealing with non-OPEC sources such as the IEA and other oil producing states. These non-OPEC producers have taken advantage of market situations in the absence of an OPEC strategic plan in relation to them;

5. establish a flexible system for increasing or reducing oil prices as necessary;

6. agree on definitions of the fundamental parameters for ascertaining production and reserves, which are basis for setting quotas and production ceilings;

7. establish its own oil information gathering and analysis system to assist in implementing its objectives; formulating policies; setting production levels, quotas and prices; and enabling its Members to acquire the latest oil technology and know-how;

8. create technical research centres and scientific and technological co-operation agreements with international organisations and educational institutes;

9. develop its policy in relation to environmental issues. This absence of clear planning prevented the Organisation from assuming the leadership in the oil industry of one of the world's most important concerns today;

10. achieve a programme of economic development based on oil revenues, which would have enabled its Member Countries to have emerged as fully developed countries. This is particularly the case regarding the failure of the co-operation envisaged in the North-South Dialogue;

11. establish unified petroleum laws for the benefit of its Member Countries – and of any other oil-producer or oil-consumer who would like to take advantage of them; and to establish an OPEC High Court in order to unify the legal opinions of Member Countries on certain issues, such as the criteria for the evaluation of compensation, oil transit regimes and shipments, and ascertaining ownership of disputed oil fields – as well as providing a means for settling disputes swiftly and equitably for any parties accepting the jurisdiction of the Court;

12. set up joint projects between Member Countries in the oil industry, such as joint oil companies, joint shipping companies, and joint marketing companies;

13. co-ordinate the activities of the national companies of its Member States;

14. settle the conflict between Venezuela and Saudi Arabia over each other's quota allocations, which in turn divided other OPEC Members for a long period and made them indifferent to honouring their own agreed quota levels. These differences are the result of the absence of definition of certain basic components of OPEC's quota agreements, including 'own-use' oil and refinery loss, as well as condensates. There is also the matter of pricing differentials between light and heavy crudes which OPEC has never satisfactorily resolved.

7.2.3 The Reason's for OPEC's Failures

There are many factors which have contributed to OPEC's modest results, particularly in pricing policy. These factors can be divided into: **(a)** external factors, that is factors beyond the control of OPEC which are inherent in the economic, political and institutional structure of the international petroleum industry; and **(b)** internal factors, that is factors related to intra-organisational problems involving disagreements among Members and staffing and management difficulties.

1. External:

The main external factors are:

(a) The non-OPEC share of world oil supply and therefore degree of control over oil exports affects OPEC's ability to regulate or influence the oil market. When OPEC was first established, oil was controlled by the major oil companies and Member Countries were not able to determine either production or price levels. As soon as the OPEC Member Countries secured ownership and control over their oil resources in 1974, OPEC's effectiveness was witnessed. When at a later stage the IEA was established, and both oil stocks and non-OPEC oil-producers' exports increased, OPEC became less effective. OPEC has no means of preventing non-OPEC Members from taking over their share of the oil market.

(b) OPEC has no control over the availability of other sources of energy such as coal, nuclear and other sources.

(c) The oil-consuming countries' policies affect OPEC's effectiveness. For example, their internal taxation on oil exports from OPEC Member Countries eventually has an effect on the final demand.

(d) The availability of reserves, capacity of production, and stocks available in other oil-producing and oil-consuming countries.

(e) Political and military conflicts which have unpredictable effects on the oil market, especially as regards the activities of speculators.

(f) The vulnerability of the world's paper and electronic currencies to re-valuation. A rise in prices can be neutralised by a corresponding devaluation in the national currency, which also means that imports are then 'more expensive'.

2. Internal:

A number of internal factors militate against OPEC's success. These factors are either economic, political, or institutional – or a combination of these.

(a) Disparity in cost production. The Middle East Member Countries of OPEC have the lowest cost of production, while Venezuela and other non-Middle East countries have a higher cost of production. The disparity obviously affects the abilities of Member Countries to cope with falls in price.

(b) Dependence on oil exports for foreign exchange is another factor which affects Members' ability to deal with revenues derived from oil exports.

(c) The tendency of Member Countries to promote what they perceive as being in their national interests, regardless of whether or not it impedes the overall effectiveness of the Organisation. The fact that the Member Countries of OPEC are unwilling to abandon short-term national interests springs from the fact that OPEC is not a supranational organisation. There are no enforcement mechanisms, and decisions and recommendations are largely implemented on the basis of 'collective self-interest'. Thus a Member Country will only implement a decision if it considers that its national interests will be served. It was on this basis, for example, that Saudi Arabia refused to comply with the production quotas decided in the 1980s, because it considered that its national interests would be better served otherwise. Also, other Members were cheating in relation to quotas, particularly Nigeria and Libya, on the same grounds. Venezuela refused to abide by OPEC quotas for a long period for the same reasons.

(d) A weak organisational structure and a number of institutional flaws have contributed to OPEC's lack of success in achieving its objectives and implementing its policies:

Firstly, a basic problem facing OPEC is the absence of qualified and experienced personnel. OPEC policy demands that the employees of top level personnel be nationals of Member Countries. Since, however, most Members of OPEC do not have relatively well-developed political and administrative structures, the personnel they provide are not very qualified or experienced – and yet the competence of the Board of Governors and the Secretariat in judging the state of the oil market is of paramount importance for successful and fruitful decisions.

Secondly, in spite of having been responsible for generating so much in oil rev-

enues, OPEC lacks adequate financial resources. The result is that the Organisation's organs are poorly financed and therefore weak. Further, lack of adequate funding impedes the ability of OPEC to achieve its objectives, in particular, intervening in oil markets, as no financial backing is provided for external operations. Similarly, the Organisation lacks a proper information gathering and analysis organ, and worthwhile research projects have had to be abandoned, simply because there is no budget allocated for these essential activities. There is thus a wide gap between objectives and the means and commitment required to fulfil them.

Thirdly, decisions relating to the external operations of OPEC do not create binding obligations on its Members. The voluntary basis of decisions, coupled with the absence of supervisory, monitoring and enforcement measures imply that the success of OPEC operations depends very much on the collective goodwill of Members.

(e) There are religious, political and ethnic differences among the OPEC Member Countries. Because of these differences OPEC will continue to manage itself within a difficult and complex context – at least until oil loses it strategic importance.

7.3 Suggestions for OPEC's Future Petroleum Policy

Given the great uncertainty that surrounds us, and taking into account the fast and vast changes taking place in the world in every aspect – whether it be in the oil industry, in politics, in economics, in social patterns, in the environment, even in the climate – it makes it even more difficult than ever to see into the future. OPEC's future is closely connected to these developments. The fundamental priority for OPEC is to formulate a policy whereby it is possible to maintain oil prices at a level which will have no negative impact on oil supply and consumption, while also guaranteeing its Member Countries the level of revenues which their economies need and on which they depend. The level of such revenues should also take into account and generate sufficient financial resources to permit a sufficient level of investment directed towards the location of fresh oil reserves, so as to facilitate and maintain a production capacity adequate to meet the demands of the oil-consuming countries in the medium and long term future.

As we have just seen, any future policy of OPEC will have little control over various external factors – although as already indicated, there is much that can be done by OPEC in remedying the various adverse internal factors which are within its control. Although no-one knows what is around the next corner, it is submitted that the following factors will shape the future policy of OPEC:

(a) World demand for oil is expected to grow. Other sources of energy will be second to OPEC. There will be no immediate threat from another energy source. The total increase in OPEC production between 1996 and 2010 is expected to be in the order of 13 million barrels per day. OPEC's ability to remain effective is supported by the fact that its Members between them possess 77% of the world's known reserves of crude oil; are responsible for almost 40% of total world production; and account for over 50% of world exports of crude and petroleum products.

(b) It is therefore inevitable that the OPEC Member Countries, albeit in different degrees, will meet part of this incremental demand for oil, especially since production capacity in the OPEC Member Countries is expected to increase.

(c) If the current economic sanctions on Iraq are lifted, the amount of oil production will increase by 2 million barrels per day at first, followed by higher production levels and increased production capacity.

(d) It follows that investments in oil production capacity should be planned with great care. This is an issue that requires considerable attention and should be kept continually under review in the light of the best (but often changing) information on oil demand and supplies. OPEC Secretary General Dr. Lukman recently stated:

> "Although OPEC Member Countries have development and production costs which are the lowest in the industry, they will need to invest tens of billions of dollars over the next 10-15 years. There are very good reasons why this investment should be forthcoming."

The pitfalls that are to be avoided are the creation of excess capacity – which is wasteful of scarce resources, and at the other extreme under-investment – which represents a loss of opportunities when world demand is expanding.

(e) Non-OPEC exporters face similar problems as the OPEC Member Countries. As we have seen earlier, they are aware of this, and have shown concern – including Mexico, Egypt, Norway and Oman - and some of them have expressed their willingness to co-operate in forming a joint policy with OPEC. It follows that OPEC needs now to negotiate and establish a framework which would allow countries both from within and outside the Organisation to jointly discuss, formulate and implement policy. This framework should be flexible – meaning that it should not require non-OPEC countries to join the Organisation and make international commitments which might subsequently prove politically difficult or economically unviable.

(f) The presentation of policy or an agreement is important. This requires skills and more particularly a deep understanding of how the oil market functions, how it

forms its views, and how it responds to news. As we have seen, OPEC lack this at present and urgently needs to invest in personnel with these particular talents rather than relying on staff whose main qualification is only that they are government representatives.

(g) OPEC Member Countries should discuss among themselves their investment plans within, say, a five year time-frame. A programme of proposed short-term quantitative cuts or increases, in order to respond to price fluctuations swiftly and flexibly, needs to be designed, taking into account these investment plans as well as the volume of any surplus capacity available to oil-consuming countries. Naturally Member Countries which are expanding their production should have to accept a relatively more major role when cuts are required, while Member Countries with surplus capacity should be given a relatively more major role when increases are necessary.

(h) At present OPEC Member Countries hold 40% of the world's reserves of natural gas, so as that sector gains a larger share of the energy market in the years ahead - as it is expected to do - then the world will increasingly turn to OPEC not only for oil, but also for its gas supplies. OPEC needs to agree on a firm policy to deal with this anticipated trend.

(i) As has been emphasised more than once, OPEC should develop an effective information-gathering and analysis institute, on whose findings it can reliably base all its decisions and policies – without having to rely on outside sources as at present. This will need to be adequately funded.

(j) OPEC should agree on a collective plan with regard to its Member Countries' investments in the oil sector abroad. These should be related to OPEC's other policy plans.

(k) All OPEC Member Countries have a crucial interest in revenues and these are a function of both volume and prices. The main problem is that a policy of expanding volumes significantly in pursuit of higher revenues may result in reduced prices and accordingly reduce some or all of the revenues gained – and in some cases even lead to a loss of revenue. It is therefore important for OPEC to co-ordinate its Members' production policies. Failure to co-operate can only ultimately have adverse effects on revenues even in countries which are running ahead with production. In order not to find themselves standing in the shoes once worn by the oil companies in the pre-OPEC era, OPEC's Member Countries must ensure a steady supply of oil to the oil-consuming countries at reasonable prices. This is, after all, one of the original commitments and objectives of the Organisation.

(l) In order to reduce unnecessary uncertainty and conflict to a minimum, and in

order to be able to provide advisory opinions and settle disputes swiftly and equitably, and in order to make a valuable contribution to both public and private International Law, OPEC should re-activate its proposals to formulate Unified Petroleum Laws and establish the OPEC High Court, probably in Vienna.

(m) The population is growing fast in the OPEC Member Countries (see Table 1, Appendix 7). In the long term oil is threatened by technical progress in utilising alternative energy sources, and ultimately, by depletion. OPEC should therefore facilitate the agreement of Member Countries on economic development and on diversification of investment into other sectors.

To conclude, OPEC should in a modern context concentrate on its original aims and objectives of assisting its Members and other Third World Countries to 'take-off' and extricate themselves from under-development, taking advantage of the benefits of the most valuable resource that its Member Countries possess – before it is too late. As the saying goes, 'You don't miss your oil, 'til your well runs dry.'

Finally, it is easy to overlook past successes and exaggerate present shortcomings. During the last thirty-eight years, OPEC has transformed the international oil industry. It has facilitated the global use of a valuable energy source to such an extent that many people take its day-to-day accessibility completely for granted. Although OPEC has not succeeded in fulfilling all of its aims and objectives, and although there is still much room for improvement, it is beyond question that that the Member Countries' confidence in OPEC is not shaken. Such confidence has been – and hopefully will continue to be – justified by the recognition that OPEC provides the best means for the realisation of its Members' objectives.

Notes

Part One:

1 See Wilhelm Ropke, *International Economic Disintegration* [London: William Boyle and Co. Ltd. 1942], p. 15.

2 The world economic order in the 18th century was based on the classical theory of International Trade and the doctrine of Comparative Advantage. The Free Trade doctrine was based on enhancing the advantage to a country of importing in exchange for national products, those goods which either could not be produced at home, or else could only be produced at costs substantially greater than those at which they could be produced in other countries. Thus under the Free Trade doctrine, all goods tended to be produced only in those countries which enjoyed a clear advantage in terms of real costs. This was, in short, the case advanced by the great economist, Adam Smith. See Jacob Vinor, *Studies in the Theory of International Trade* [London: George Allen and Unwin Ltd., 1955], pp. 439-440.

3 David Ricardo, *Principles of Political Economy and Taxation* [3rd edn., London, 1921], chap. 8. Taken from Mohammed Mughuraby, "Permanent Sovereignty over Oil Resources", [New York, 1968], p. 132.

4 Ibid., p.133.

5 The Bretton Woods Agreement was intended to establish a multilateral regime for the comprehensive regulation of international trade. See *Proceedings and Documents of the United Nations Monetary and Financial Conference* [Vol. I, 1948, Resolution vii, p. 941].

6 See M.R. Shusten, *The Public International Law of Money* [Oxford University Press, 1973], p. 113. At the time of writing there are 120 contracting parties. Now most OPEC Members are members of GATT. Saudi Arabia has applied but has not yet been accepted; Kuwait joined in 1963; Qatar and the UAE joined in December 1993; Libya and Iraq are not members of GATT. For studies of GATT see Eisawi Ebrahim, GATT and its Sisters: *The New Trade Order and the Future of Arab Developments*, (in Arabic), [Arabic Unity Studies Centre, Beirut, 1995]. For an excellent historical and critical analysis of the GATT approach to developing countries, see Robert Hudec, *Developing Countries and the GATT Legal System* [Gower, London, 1987].

7 *The International Monetary Situation: Impact on World Trade and Development* [TD/140/Revil], p. 7.

8 See Mughrabi, op. cit., p. 129. It has also been said: "The present world economic order is supposed to be guided by the operations of free market forces propelled by free competition and enterprise and based on free movement of goods and services, including technology. In the field of trade, it has been governed by the so-called General Agreement on Tariffs and Trade (GATT) principle of non-discrimination and free trade of fixed parties and the dollar standard till recently. In practice, however, these principles have not been applied, in an untrammelled or consistent manner, but have been guided and manipulated in many respects." See M. Dubey, "Problems of Establishing a New International Economic Order", [India Quarterly, Vol. XXXII, No. 3 (July-September, 1976], p. 269 at pp.269-70.

9 See *Assessment of the Progress Made Towards the Establishment of the New International Economic Order* [WNCTAO document TD/B/757], p.2, guaranteed at Pollard, p. 3. See also, Robin C.A. White, "A New International Economic Order", I.C.L.Q., Vol. 24, July 1975, p. 524 at p. 531..

10 For a full examination of this evolution see Jerzy Makarczyk, *Principles of a Constitute New Economic Order: A Study of International Law in the Making* [Martinus Nijhoff, Publishers, The Netherlands, 1988]; Geiser, *A New International Economic Order: Its Impact*

on the EVolution of International Law [9 Annals of International Study 97, 1978]; Brower and Tuegez, *The Charter of Economic Rights and Duties of States: A Reflection or Rejuvenation of International Law* [9 International Law 306, 1975]; Shinaya M., *International Law Marking for the NIEO* [The Japanese Annals of International Law, Vol. 25, 1982]; Singh J.S., *A New International Economic Order* [New York, London, 1977]; Cox, R.W., *Ideologies and the NIEO: Reflections on some Recent Developments* [International Organisation, No 3, 1979]; Hossmin, K, (ed.), *Legal Aspects of the New International Order* [London, 1980]; Hebbart D., *The International Law Commission on the NIEO* [GVIL, Vol, 22, 1979].

11 For a full examination of the early development see Jerzy Makarczyk, *Principles of A New International Economic Order,* pp. 23-35. See also, White, op. cit., p.533.

12 Ibid. p. 27.

13 The Non-Aligned Movement was founded when 29 countries of Africa and Asia signed the final communique of the Bunduny Conference on April 24th, 1955. Six years later the final declaration of the Non-Aligned Movement was signed at the Belgrade Conference. The Declaration was signed by 25 countries. Neither the People's Republic of China nor Japan were among the participants. See *Non-aligned and Developing Countries: Basic Documents*, [New Delhi, Indian Society of International Law, 1970], pp. 6-7. The second conference of the Heads of States and Governments of non-aligned countries was held in Cairo, October 10th, 1964, [UNITAR Documents, Vol. I, p. 91], and the following.

14 For a full examination of the voting on the fifteen general principles of the first UNCTAD see Jerzy Makarczyk, op. cit., pp. 44-52.

15 Bangkok Declaration by the Asian Group. of 77, September 27th, 1967, Bangkok, 1967, [UNITAR Documents, Vol. I], p. 99.

16 Charter of Tequenduma, Bagota, September 29, 1967, adopted by the Latin American Countries, members of The Special Committee on Latin American Co-ordination (CECLA), [UNITAR Documents, Vol. I, p. 114], and the following.

17 African Declaration of Algiers, 1967, adopted by the African Ministerial Meeting preparatory to UNCTAD II, organised jointly by the UN Economic Commission for Africa and the OAU, [UNITAR Documents, Vol. I, p. 123] and the following.

18 The Charter of Algiers, adopted at the Ministerial Meeting of the 'Group. of 77', [UNCTAD II, New Delhi Proceedings, Vol. I, Report and Annexes (UN, 1968; TD/97, Annex IX), pp.431-455].

19 See Dr. S.K. Kapoor, "International Law", [South Africa, 1994], p. 24.

20 See Dubey, op. cit., p. 269.

21 See Kapoor, op. cit., pp. 28-29.

22 UNCTAD III was held at Santiago, Chile, in April, 1972. The President of Mexico put forward the following proposal: "We must strengthen the precarious legal foundations of the International economy. A just order and stable world will not be possible until we create obligations and rights which protect the weaker states. Let us take economic co-operation out of the realm of goodwill and put it into the realm of the law." See A/PV/231 S, p. 67.

23 See Rahmatullah Khan, "The Struggle for World Resources", [Foreign Affairs Reports, Vol, XXIV, No. 7, (July, 1975)], p. 101 at pp. 112-113.

24 For the text of the Resolution see Foreign Affairs Reports, Vol. XXIII, No. 6, (June 1974), pp. 119-22; UN Press Release GA/5022, 2nd May, 1974.

25 G.A. Resolution 3202 (S-VI), of 16th May, 1974.

26 Hussin, op. cit., p. 32.

27 Ibid., p. 33.

28 In this connection, the Secretary-General of the UNCTAD was mandated to study direct and indirect indexation schemes and other options and to make concrete proposals to

UNCTAD IV. See UNCTAD documents TD/B/603; TD/B/563; TD/B/503 supp. 1 and TD/B/503 supp. 1/Add. 1.

29 See UNCTAD documents TDB/C.1/166; TD/B/573; TD/B/C.1/188; TD/B/C.1/189; TD/B/C.1/194; TD/B/C.1/185 and TD/B/C.1/185 Add.1.

30 See UNCTAD documents TD/B/C.1/166 supp. 2, TD/B/C.1/184; TD/B/C.1/184/Add 1; TD/B/C.1/196 and TD/B/C.1/196 Add.1.

31 See UNCTAD document UNCTAD/CD/Misc. 60.

32 See P.L. Valeo, *Commodity Control* [London: Jonathan Cape, 1943], p. 49.

33 See J.W.F. Row, *Primary Commodities in International Trade* [Cambridge Univ. Press, 1965], p. 66.

34 The Stevenson plan was implemented in 1922 and inVolved rubber production in three British territories: Ceylon, the Federated Malay States (the F.M.S.) and the Straits – who were responsible for about 70 per cent of total world production. See G. W. Stocking and W.M. Watkins, *Cartels in Action* [New York: The Twentieth Century Fund, 1947], pp. 65-66.

35 For the text of Agreement, see *International Labour Organisations, Intergovernmental Commodity Control* [Montreal, 1943], p. 104.

36 Ibid., Articles 5, 9, 10 and 11.

37 See P. L. Valeo, *Commodity Control* [London: Jonathan Cape, 1943], p. 52.

38 The first scheme was adopted in 1921 by the governments of Malaya (Britain) and the Netherlands East Indies. The scheme was named Bandoneny Pool. See A.D. Law, *International Commodity Agreements* [Massachusetts: Neath, 1975], pp. 56-57. In 1929 the Producers Association was formed by the Anglo-Oriental Mining Corporation and the Enterprises. The Association attempted a number of schemes, which all failed. See Valeo, op. cit., p. 148; Rowe; op. cit., p. 141; and W. Fox, *Tin: The Working of a Commodity Agreement* [London: Mining Journal Books, 1974] pp. 122-126.

39 Ibid.

40 See *World Economic Conference: Final Report* [League of Nations Documents, G.E. I 1927].

41 Report of the Committee for the Study of the problems of Raw Materials [Series of League of Nations Publications, 1937, II B7].

42 Final Act Section Reports, cited in ILO, op. cit., pp. 146-148.

43 J. M. Keynes' memorandum dated 14th April 1942 has been reprinted in the *Journal of International Economics* [1971], pp. 299-315. In this memorandum, Keynes canvassed the need to intervene in commodity markets through the use of export quotas and buffer stocks.

44 P.W. Bidwell and W. Diebold Jr., *The United States and the International Trade Organisation*, [International Conciliation (1949), no 449, p. 221].

45 Bidwell and Diebold Jr., op. cit., pp. 221-2.

46 See also ECOSOC Resolution 512A (XVIII) of 30 April, 1954 and Resolution 28D(XVIII) of 5 August, 1954.

47 H. Walker, *International Law of Commodity Agreements* [Law and Contemporary Problems (1963), pp. 392, 414]; K. Khan, *The Law and International Commodity Agreements* [The Hague: Martinus Nijhoff, p. 66].

48 Havana Charter, Article 63.

49 S. Harris, *The Case for a New International Commodity Regime: Confused Arguments and Unresolved Issues* in G.G. Goodwin and J. Mayall (eds.) *A New International Commodity Regime* [London Croom Helm, 1979, p. 51]. Harris comments that "the GATT rules for agricultural and fishery commodities are substantially more permissive of trade barriers than for manufactured goods, and the provisions on subsidies more permissive than for all primary commodities."

50 GATT, Doc. L/320, 11 February 1955, *Developing Countries in GATT* [UNCTAD I Proceeding, Vol. V, pp. 456-7].

51 F. Curzon, *Multilateral Commercial Policy: the GATT and its Impact on National Commercial Policies and Techniques* [London: Michael Joseph, 1965, p. 292].

52 Ibid., p. 171; L.N. Ranagarajan *Commodity Conflict* [London Croom Helm, 1978], p.292.

53 The question as to whether a contracting party can violate GATT obligations if it participates in a commodity arrangement which either does not conform with Chapter VI of the Havana Charter, or has not been approved by the contracting parties, is discussed below in Part ( ).

54 The Reports of the Conference are contained in 8 Volumes, with Volume 3 devoted exclusively to International Commodity Trade.

55 UNCTAD I Report, p. 12.

56 UNCTAD I Final Act and Report, Annex A (vi), 2 (1964), p. 63.

57 UNCTAD I Report, Annex A, II A; see also Annex A. II. 7.

58 J. Fawcett and A. Parry, *Law and International Resources Conflict* [Oxford: Clarendon Press, 1981, pp. 78-9].

59 The New International Economic Order has been comprehensively defined as: **(i)** a series of specific demands and considerations embodied in documents adopted by international conferences; **(ii)** a negotiation process between developed and developing countries concerned with possible agreements on both revised international policies and reformed or new institutions including governing power relationships; **(iii)** a debate about the real and desirable structure of world economic relations ranging from the domestic and transnational to international structures; **(iv)** a challenge to the intellectual hegemony of liberal economies and its claims to an exclusive nationality, and **(v)** a debate about the form of knowledge appropriate to understanding North-South issues.

60 Resolution 3202 (S-VI), Section 1 (2)(a) (iii) and (iv).

61 Resolution 3362 (S-VI) was adopted by consensus on 16 September 1975. However, a number of Group. B countries, and Czechoslovakia on behalf of some Group. D countries, appended reservations.

62 D.E. Pollard, *Law Policy of Producers' Associations*, [Oxford, 1984], p. 46.

63 The resolution identified 18 commodities to be covered by the IPC. These are: coffee, cocoa, tea, sugar, cotton, jute, sisal, natural rubber, copper, tin, (labelled core commodities), together with bananas, bauxite, iron ore, manganese, phosphate, tropical timber and vegetable oils (including olive oil and oilseeds), added by the group. of 77 in Manila in 1976.

64 See UNCTAD, *Agreement Establishing the Common Fund for Commodities* [Doc. TD/ IPC/CF/ CONF/24, 29 July, 1980. P.I.; also I.L.M number 4, p.896 (1980), 1 October, 1980].

65 Further, Article 16(2) and (3) state categorically that the funds of one Account shall not be used for financing activities of the other.

66 Ibid., Article 7(2) provides for re-negotiation of ICAs which do not conform to the principle of buffer stocks financed jointly by both producers and consumers.

67 Ibid., Articles 14, 15, 16(s) and 17.

68 K. Laidlaw and R. Laishley, *Fund for the Future* [UNCTAD/Development Press Service, 1980, p. 12]. The authors explain that the figure of $6 billion was based on the estimated requirements for stocking the 10 'core' commodities – of which one third was to be contributed in cash and the remaining two thirds to be borrowed.

69 Fund Agreement, Article 18.

70 Ibid., Articles 13 and 18(i)(b). During the long negotiations, developing countries were unhappy that the Second Account depended on 'charity' – but their insistence that it be

funded in the same way as the First Account was rejected by the Group. B countries. By the end of 1982, pledges of Voluntary contributions totalled $255 million as against the target of $280 million. See UNCTAD, ID/B/C.I. 24 (1983), p. 7; and ibid., ID/IPC/CF/CONF/26.

71 The detailed functions of different organs are stated in Articles 12 and 20 of the Fund Agreement. For full analysis of the organs of the Fund see Pollard, op. cit., pp. 76-79.

72 Votes are distributed to countries, not to groups, but on the basis of basic votes and DCC contributions. The division of votes to the UNCTAD Groups is as follows: Group. of 77, 45%; Group. B, 40.2%; Group. D, 7.7%; China 2.9%; others 4.2%.

73 See also Articles of Agreement of the Fund, Final Schedule D: Allocation of Votes.

74 UNCTAD, ID/IPC/CF/CONF/26, p. 8 and p.14.

75 FAO, Commodity Review and Outlook: 1980-81, pp. 105-117.

76 The Report of the Commonwealth Technical Group. on the Common Fund stated: "The coherence of international commodity trade, dominated as it has been by developed countries committed to free market mechanisms (except in the case of their own domestic primary production and its international marketing) has been reflected in the fragmentation of efforts to negotiate commodity agreements." [The Common Fund: Report of the Commonwealth Technical Group. (London) 1977, p.12].

77 See G. Erb and B.S. Fisher, *U.S. Commodity Policy: What Response to the Third World?* [Law and Policy in International Business (1977), p. 479, and pp. 491-492].

78 C.F. Bergsten, *The International Economic Policy of the US: Selected Papers of C.F. Bergesten 1977-1979* [Lexington: Heath, 1980, p. 266]. Dr Bergsten served in President Carter's Administration which was generally regarded as more sympathetic towards ICAs than others US Administrations.

79 This does not mean that oil was discovered recently, in fact, petroleum has been known and used from the most ancient times. For the story of early oil history, see Tugendlat, "Oil: The Biggest Business", [1968].

80 It has been rightly said "... oil has been the most important resource of our time. Without it the advances of the twentieth century would not have been possible. The car, the aircraft, the tank, and the space shuttle could never have happened. Communications, transport, mechanised warfare and the mobility of man have made this century what it is and they are there because oil has powered them." See Adrian Hamilton, *Oil: the Price of Power.*

81 See OAPEC Publication, *OAPEC in Brief* [1996], p. 45. See also Part 6 and Appendix VII, Table 2.

82 See Appendix VII, Tables2-10.

83 See Hussain, op. cit., p. 13.

84 See Keith W. Blinn, Claude Duval, Honoré le Leuch, André Pertuzio, *International Petroleum Exploration and Exploitation Agreements: Legal, Economic and Policy Aspects* [Euroman, Bristol, 1986], pp. 21-28. (**N.B.** : hereinafter referred to as 'Blinn').

85 Ibid., p. 24.

86 For a full examination of the major conceptual differences in this area between the United States and other legal systems, see Blinn and others, op. cit., pp. 21-23. Professor Walker describes the two theories of ownership. that have developed in the United States in the following terms: "In the main, oil producing states today are divided into two groups: those following the qualified ownership. theory, exemplified by such states as Oklahoma, California, Indiana and Louisiana; and those following the ownership. theory, among which include Texas, Pennsylvania and Arkansas. The principal physical characteristic of these minerals that is responsible for this present difference of viewpoint is the unquestioned fact that oil and gas, although in a static condition in the natural subsurface structural trap. within which they are as effectively enclosed as if within a gigantic tank, nonetheless will migrate across property lines towards any low pressure area created by the penetration of the producing reservoir by a well. The primary legal problem has been to formulate some

theory satisfactorily consistent with this non-liability for drainage, which all courts argue is the only practical rule to adopt." [Walker, 16 Tex L.R. 370 (1938), quoted at Blinn, op. cit., p. 23].

87 Ibid., p. 21-22.

88 For a comprehensive summary of the first beginnings and early technology of oil, see Robbert O. Anderson, *Fundamentals of the Petroleum Industry* [Weidenfeld & Nicolson, 1984]. For a full detailed history of the John D. Rockfeller oil empire, see Allan Nevins, *A Study in Power: John D Rockfeller, Industrialist and Philanthropist* [Charles Scribner & Sons, 1940-53].

89 See Hamilton, op. cit., p. 52; for a more detailed summary of the history of the Seven Sisters, See Hamilton, op. cit. pp. 32-64. Also, Anthony Sampson, *The Seven Sisters* [Hodder and Stoughton, 1975].

90 Quoted from Hussain, op. cit., p. 31.

91 Ibid.

92 See Hussain, op. cit., p. 36.

93 Quoted from Blinn, op. cit., p. 43.

94 Ibid.

95 See F. Rouhani, *A History of OPEC* [1968] p.33.

96 Mughrabi, op. cit., p. 132.

97 For a detailed description and comparison of the main characteristics of Concession Oil Agreements in the Middle East, see Torignian, *Legal Aspects of Oil Concessions in the Middle East*, chapter 2, pp. 45-62 [1972].

98 These companies managed to break the monopoly of the Seven Sisters and enter the arena of the international oil industry by virtue of a number of different factors including: (i) their possession of important financial and technical resources; (ii) the embarking of some industrial states (such as Italy) on an expansionist petroleum policy; (iii) the increased determination of oil-producing state enterprises to play a more effective role in the exploitation of their own petroleum resources. For a full and comprehensive examination of the Newcomers in the oil industry, see Hamilton, chapter 5, entitled *The Independent*, op. cit. pp. 110 - 128. See also Harry Hurt, *Texas Rich* [Orbis, 1981] in Stephen Fay's *The Great Silver Bubble* [Hodder & Stoughton, 1982].

99 See Part ....

100 Mughrabi, op. cit., p. 123.

101 For a full examination of this, see Tugendlat, op. cit., p. 18.

102 See Joan Peters, *From Time Immemorial* [Michael Joseph, 1985].

103 See Anthony Sampson, *The Seven Sisters* [Hodder & Stoughton, 1975]; see also Christopher Tugendlat, *Oil: The Biggest Business* [Egne & Sputhwood, 1968]; and also Hamilton, op. cit. pp. 48-49.

104 See Text in Cmnd. 6555 (1944) [Published by HMSO, London], pp. 1-6.

105 See Tugendlat, op. cit., p. 23.

106 See A.D. Law, *International Commodity Agreements* [Heath, Massachusetts, 1975], p. 35.

Part Two:

1 It took the Middle Eastern petroleum exporting countries over a quarter of a century to learn the Venezuelan lesson. It was only in October 1973 that these countries decided for the first time to determine the price of their oil unilaterally. See Zuhary Mikdashi, *The Community of Oil Exporting Countries* [London, 1972], pp. 22-23.

2 Tugendlat, op. cit., p. 130.

3 To see how changes in the Venezuelan regime affected the attitude of Venezuela *vis-a-vis* the oil companies, see Romulto Betanon, *Venezuela's Oil* [George Allen & Unwin, London, 1978]; see also Tugendhat, op. cit., pp. 126-134.

4 Ibid., pp. 132-34; see also Anibal Martinez, *The Origins and Aims of OPEC*, a lecture given on the 3rd May 1963, at the Scola 'Enrico Matteri' di Studi Supri Sigli Idrocarburi in Milano], p. 3; cf. a detailed financial analysis of Middle East Concessions in Zuhary Mikdashi, *A Financial Analysis of Middle East Oil Concessions 1901-65* [Prayen, New York, 1966] pp. 135-45.

5 The "guaranteed, fixed market" was designed to ensure Venezuela a specific share of the total export quota. This quota would then be allocated among the companies producing oil in Venezuela, with the proviso that the price should not be lower than that of equivalent US crude. Betanon, op. cit., p. 23.

6 In the words of the Venezuelan Oil Minister, "It was my government's policy as soon as it took office, to pursue further talks with the Arabs and with the North African Countries by which we were producing oil, with a view to setting up. not what might be called a cartel but an agreement between producing countries, to turn against the cartel of the oil companies which were closely identified with the industrialised countries of the world and share out the fantastic spoils with those countries." Betanon op. cit., p. 36. (See also infra, Sections 6.5.1 and 6.5.3).

7 See *OPEC Bulletin* [OPEC Publication, Vol. XIV, No. IX, October 1983] p.66; see also *The Organisation of Petroleum Exporting Countries Information Booklet*, July 1983 p. 1; and also *OPEC Chronology*, 1980, p.1.

8 The Middle Eastern oil producing countries had no reason to be afraid of Venezuelan competition, simply because they possessed vastly superior oil reserves accompanied by lower production costs, which meant that Venezuela would have been the loser if it had entered into a competition with the Middle Eastern oil producers. Moreover, Venezuela made it clear from the outset that it had no interest in engaging in any struggle for supremacy in the world oil markets.

9 Abdul Amir Kubbah, *OPEC Past and Present* [Petro Economic Research Center, Vienna, 1974], p. 8.

10 Ian Seymour, *OPEC Instrument of Change* [Billing & Sons Ltd., Guildford, Great Britain, 1980] p. 29. As we shall see, one of OPEC's first objectives was to endeavour to correct this evident disparity.

11 Ibid., p.25.

12 For a legal analysis of the Anglo-Iranian Oil Company dispute, see Alan W. Ford, *The Anglo-Iranian Oil Dispute of 1951-1952* [1954].

13 Mikdashi, op. cit., p. 24. For an explanation of the expression 'best terms clauses', s e e Part One, p.49.

14 The League of Arab States represents the first occurrence of formal multilateral multipurpose co-operation in modern times among the Middle East Countries, since the end of the Turkish Khalifate in 1924. The League's pact was signed on the 22nd March 1945 and was brought into force on the 23rd August 1952 by the following independent Arab Countries: Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria and Yemen. A Palestinian delegation participated only with observer status when the pact was signed in 1945, since Palestine was at that point a British mandate. For the text of the pact see *Al-Ahram* [Daily Newspaper, Cairo, October 8, 1944], p. 3. The term 'League' is not in fact an accurate translation of the word 'jamia' which was particularly chosen to indicate a close association for the Arab group. of states. See Robert Macdonald, *The League of Arab States: A Study in the Dynamic of Regional Organisation* [Princeton University Press, 1965] and Paul Seabury, *The League of Arab States: Case Study of a Regional Pact* [Journal of International Affairs, III, Spring, 1949], pp. 56-67; see also Kladdun Majid, *The Arab League as a Regional Arrangement* [AJIL, XL, October 1946], pp. 756-77.

15 For the main objectives of the Arab League, see Article 2 of the Pact.

16 The main reason behind the establishment of the Committee was political, namely the national security of the Arab Countries. It was hoped at the time that this would be achieved by instituting a general economic boycott, including a boycott of oil supplies to Israel, with a view to limiting the latter's military capacity for expansion into neighbouring Arab countries.

17 Quoted from Mikdashi, op. cit., p. 29. In addition to the preparation of the Oil Congress, a number of agreements and projects were adopted by the Department of Oil Affairs, including agreements on the co-ordination of oil policy, a draft treaty on the formation of an Arab Petroleum Organisation, and a project for an Arab oil-producing company.

18 Perez Alfonso, *The Organisation of Petroleum Exporting Countries* [Monthly Bulletin, NS. 2, 1966].

19 For the resolutions of the first Arab Oil Congress held in Cairo, see *Venezuela and OPEC* [Caracas Reprenta National 1961, IP], p. 105.

20 Ibid., pp. 103-4.

21 The text of the agreement is reproduced in Ibid., pp. 103-104.

22 Ibid., p. 103.

23 Mustapha El Sayed, *L'Organisation des Pays Export des Pays Petrol* [Paris 1967], p. 125.

24 Kubbah, op. cit., p.9.

25 OPEC Publication, *OPEC and the Principle of Negotiation*, paper presented by OPEC at the Vth Arab Petroleum Congress held in Cairo, from the 16th – 22nd March 1965.

26 Thus, for example, the Iraqi concessions recognised the principle of 20% participation by Iraqi nationals in the capital of the companies – but this principle was not implemented in practice on the pretext that the companies were private companies which did not issue shares to the public. See ibid., p. 10.

27 In 1959 the oil companies reduced the posted price for Venezuela crude by $0.05 and $0.25 per barrel and that of the Middle East by $0.18 per barrel – and in 1960 the price was between $0.1 and $0.14 per barrel. See *OPEC Information Booklet* [1983] p. 1.

28 Mikdashi, op. cit., p. 29.

29 This explains why the Venezuelan government protested to the British Ambassador in February 1959 about excessive reductions in the Middle East posted prices (about 8% and averaging $0.18 per barrel) made by BP, despite the fact that this Company had no operations in Venezuela. For the Memorandum sent to the British Ambassador in Caracas, from the Venezuela Ministry of Mines and Hydrocarbons in March 1959, see *Venezuela and OPEC*, op. cit., p. 55.

30 See *OPEC Information Booklet*, op. cit., p. 1.

31 See *Venezuela and OPEC*, op. cit. p. 105.

32 Mikdashi, op. cit., p. 32.

33 *OPEC Information Booklet* [1983] p.1.

34 Ibid., p. 9.

35 The Conference was sponsored by the Iraqi government. The reason for this sponsorship, apart from the price cuts problem, was that Abdul Karim Qassim wanted the participating countries to strengthen his hand in his negotiations with the concessionaire – with whom Iraq was then in acute conflict. See Mikdashi, op. cit., p. 33.

36 *OPEC Information Booklet* [July 1983], op. cit., pp. 1-2.

37 The Constituent Instrument of the Organisation of Petroleum Exporting Countries, for example, provides in its Preamble the reasons behind the establishment of OPEC; Articles 1 to 6 explain the objectives and powers of the Organisation; Article 7 deals with membership; and Articles 8 to 25 provide for the composition and voting procedures for each of its organs. The Budget of the Organisation is described in Articles 26 and 27.

38 For the text see Appendix No. I.

39 OPEC Publication, *OPEC – Chronology* [1980], pp. 6-7.

40 Schermers, Henry G., *International Institutional Law* [Sijthoff and Noordhoff, 1980], p. 11.

41 Seyersted, F., *International Personality of International Organisations: Do their Capacities really Depend upon their Constitution?* [I.J.I.L. (1964] pp. 43-48.

42 These examples are found in Peaslee, A.J., *International Governmental Organisation Documents*, revised 3rd edition, [Martinus Nijhoff, The Hague, 1974], pp. 79, 273, 326, 805, 243, 306 and 367 respectively.

43 Schermers, op. cit., p. 11.

44 See *Yearbook of the International Law Commission.* First report on relations between States and Inter-governmental Organisations, by Abdullah El Erian [C/CN 4/161, 11 June, 1963] p. 166.

45 Ibid., p. 167.

46 Sinclair, I., *The Vienna Convention on the Law of Treaties*, 2nd edn., [Manchester University Press, 1984], p. 31.

47 Holloway, K., *Modern Trends in Treaty Law* [Stevens & Sons, London, 1967], pp. 123-128. See also, Wildhaber, L., *Treaty Making Power and Constitution* [Helbing and Lichtenhahm, 1971], pp. 149-152.

48 L. Oppenheim, *International Law* [Vol. 1, 7th edn., Longman, 1948], pp. 511-12.

49 Starke, S.G., *Introduction to International Law*, 9th edn., [Butterworths, 1984].

50 Jessup, P.C., *A Modern Law of Nations* [Archon Books, 1968] p. 126.

51 Fitzmaurice, G.G., *Do Treaties Need Ratification?* [B.Y.I.L., XV, 1934] p. 127.

52 See Brownlie, *Basic Documents*, op. cit., pp. 368-69.

53 Saudi Arabia is one of ten countries in the world which does not have a modern constitution. It has often been stated that its constitution is the Qur'an. See *Constitutions of the Countries of the World*, op. cit., issued March 1976, p. 1.

54 For the text, see the *G.C.C. Legal Gazette* [No. 2, 1982] pp. 73-83.

55 Article 45 of the Iraqi Constitution provides: "The president of the Republic shall approve and ratify international treaties and agreements." Similar provisions can be found in the Constitutions of Venezuela and Iran. For the text of the Constitutions of the OPEC Member States see: Abid A. Al-Marasati, *Middle East Constitution and Electoral Laws* [Fedrick A. Praege, New York, Washington, London]. The Constitution of Iraq was published in the *Official Gazette* [No. 3808, 19th July 1956].

56 See Appendix I.

57 See *Report of the International Law Association* [45th Conference, Lucerne, 1952] pp. 30, 35.

58 Schwarzenberger, G., *'The Forms of Sovereignty'*, in *Defence of Sovereignty*, edited by W.J. Stankiewkz, [Oxford University Press, 1969] pp. 178-79.

59 Thomas and Thomas, *Non-intervention: The Law and its Import in America* [Southern Methodist University Press, Dallas, 1956] pp. 108-9.

60 Fitzmaurice, *Do Treaties Need Ratification?*, op. cit., p. 130.

61 Hyde, C., *International Law, chiefly as Interpreted and Applied by the United States*, Vol. 2, [Little Brown & Co., 1947] pp. 1,383-86.

62 Wheaton, *Elements of International Law* [Stevens & Sons Ltd., London, 6th English edition, Vol. 1, 1929] p. 499.

63 McNair, A.D., in his introduction to Mr. Ralph Arnold's *Treaty-Making Procedure* [Oxford and London, 1933, p. 118.

64 *The Vienna Convention on the Law of Treaties*, Article 46. See Brownlie, I., *Basic Documents*, op. cit., pp. 368-69.

65 This issue is raised only for academic purposes and is unlikely to arise in the 'real' world.

66 Schermers, op. cit., p. 6.

67 OAPEC, for example, was formed by a multilateral agreement signed in the city of Beirut on the 9th January 1968 between Saudi Arabia, Kuwait and Libya.

68 It is worth noting that agreement between states can be expressed in other ways without using the form of a treaty and without the usual provision for subsequent ratification by each of the parties. Moreover, it is worth mentioning that some authors do not view the formation of a treaty as a prerequisite for the establishment of an international organisation – such as Brownlie, who says, *"It may be noted also that, whilst an organisation with legal personality is normally established by treaty, this is by no means necessary and the source could equally be the resolutions of a conference of states or uniform practice."* See I. Brownlie, *Principles of Public International Law* [3rd edition, 1980], p. 680.

69 It is not the purpose of this study to examine the legality of the Kuwait membership, but it is necessary to examine whether the lack of independence of Kuwait may cast doubt on the legality of the treaty. See *Foreign and Political Department*, Part 5, *Treaties and Undertakings between the British government and Rulers of Kuwait (1884-1913)*, pp. 1-14. For the History of Kuwait, see Lorimer, J. G., *Gazette of the Persian Gulf, Oman and Central Arabia* [Vol. 1, 1916]; Hay, Sir Rupert, *The Persian Gulf State* [the Middle East Institute, [1959]. On the 19th June 1961, the United Kingdom concluded with the ruler of Kuwait, the late Sheikh Abdullah Al-Salem Al-Sabah a new treaty by virtue of which the former recognised Kuwait as a sovereign independent state. For the text, see *W.K.T.S.* [No. 1, 1961, Cmnd. 1409].

70 R. Higgins, *The Development of International Law through the Political Organs of the United Nations* [1963] p. 249.

71 The most obvious examples in this connection are India and the Philippines. Both were not fully independent states at the time, but they were accepted as original members of the UNO – and this did not affect the treaty status of the UN Charter.

72 India became a member of the UN on the 30th October 1945 and obtained its independence on the 14th August 1947. The Philippines became a member on the 24th October 1945 shortly before its independence on the 4th July 1946. It is worth mentioning in this connection that membership. of international organisations may sometimes be open to certain entities which are not states, particularly those with certain territorial attributes like provinces and overseas territories, accepted by certain technical organisations like ITV, the UPU and the WHO. See Manuel Ram-Montaldo, *International Legal Personality and Implied Powers of International Organisations* [Vol. 44, BYBIL, 1970] p. 145.

73 See Clive Parry, *The Law of Treaties*, in *Manual of International Law*, edited by Max Sorensen, [Macmillan Press Ltd., London, 1978] p. 179.

74 C. W. Jenks, *The Proper Law of International Organisations* [London, 1962] p. 3.

75 See *UNTS*, Vol. 443 (No. 6303/1962), [UN New York, 1963] p. 248.

76 *UNTS*, op. cit., p. 248.

77 See also Article 80 of the Vienna Convention on the Law of Treaties 1960.

78 *UNTS*, op. cit., p. 247.

79 See D. O. O'Connel, *International Law*, Vol. II, 2nd edition, [London, 1970] p. 205.

80 See Clive Parry, op. cit., p. 177.

81 See *OPEC Information Booklet* [March 1980] p. 16.

82 Schermers, op. cit., p. 11.

83 A two phase approach was also followed in respect of the IEA of the petroleum importing countries, although the IEA's activities themselves are different to those of OPEC. The IEA was set up. by a Decision of the OECD Council adopted on the 15th November 1974, followed by a supplementary Agreement, setting out the details of the organisational struc-

ture, the mode of operation and the programmes of the agency, which was adopted by the member states on the 18th November 1974. For the texts of the Decision and the Agreement, see: *ILM* [Vol. XIV, 1975], pp. 1-35 and pp. 789-93 respectively. For more details on the IEA, see infra Sections 6.4.8 and 6.5.6.

84 See supra, pp. 116-17. The first Statute of OPEC was adopted by Res. II. 6 of the 21st January 1961: see text in *OPEC Resolutions*, op. cit., Vol. 1, pp. 10-18. The Statute of the OPEC Economic Commission was adopted by Res. VIII.55 of the 10th April 1965. The new Statute of OPEC was adopted by Res. VIII. 56 of the 10th April 1965: see text in *OPEC Resolutions*, op. cit., Vol. 1, pp. 80-98. Since then, various amendments to the OPEC Statute have been made. The text of its latest edition of June 1986, which includes all amendments, is reproduced infra, Appendix II. All references in the text to the OPEC Statute refer to this edition. (**N.B.** : This text does not include the minor amendments which were made to the OPEC Statute by virtue of Resolution No. 103.360 adopted at the 103rd Meeting of the OPEC Conference, held in Jakarta, Indonesia from the 26th November – 1st December 1997, and which have not yet been published as part of a full incorporated text, and which do not in any case affect the specific focus of this thesis.) See also Part Five, note 49).

85 Consequently they are not published in the *UN Treaty Series*.

86 The Vienna Convention on the Law of Treaties makes it clear that the state's consent to be bound by a treaty can be expressed by the signature of its representative (Art. 12). In such a case, ratification is not necessary. For the cases in which ratification is required under the Vienna Convention see Art. 14. On the relationship. between signature and ratification generally see McNair, *The Law of Treaties*, op. cit., pp. 129 et seq.; Akehurst, *International Law*, op. cit., pp. 154 et seq.; Starke, *Introduction to International Law*, op. cit., pp. 477 et seq.; and Brownlie, *Principles of Public International Law*, op. cit., pp. 585-7.

87 Under Article 102(2) of the UN Charter the only impediment against a non-registered treaty is that it cannot be invoked before the UN organs. But this does not deprive the treaty of its binding effect upon the parties to it, or of its being invoked before bodies other than the UN organs. See McNair, *The Law of Treaties*, op. cit., pp. 185-90; Starke, *Introduction to International Law*, op. cit., pp. 487 et seq.; Higgins, op. cit., pp. 328 et seq.; and Akehurst, *International Law*, op. cit., p. 162.

88 See infra, Chapter 5.4.

89 See *OPEC Monthly Bulletin*, op. cit., August 1996, p. 34.

90 See infra, Section 6.4.10.

91 See Rivlin, P., *The League of Nations as Confederacy* [International Relations, 5 (1975-77), Vol. V, No. 4, November 1976, pp. 1121-38]. Rivlin in this article compares the theory and practice of the League of Nations with the model of confederacy as presented by Professor Christopher Hughes in his inaugural lecture, *Confederacies* [Leicester University Press, 1963]. See also, Schwarzenberger, *International Law* [1949], p. 520, who describes both the League of Nations and the United Nations as "typical confederations as distinct from federations." See also Makarim, E., *The Positive Impact of the Establishment of Gulf Co-operation Council on the Issues of Private International Law in Member States*, [presented to a seminar on the Unification of Private International Law Legislations of the Gulf, held at the Centre of Gulf and Arabian Peninsula Studies, Kuwait, on the 21st-23rd November 1987], pp. 23-25. Makarim regards the Gulf Co-operation Council as a confederation of states.

92 See Oppenheim, L. *International Law* [Vol. 1, 1905, p. 128]. See also Reuter, P., *International Institutions* [George Allen and Unwin Ltd., 1955], p. 184. Corbett, P., cites Jellinke's definition of confederation as "a permanent union of independent states, based on agreement and having for its object the protection of the territory of those states and the preservation of peace between them. Other objects may by agreement be pursued. This union requires a permanent organisation for the realisation of its end." Corbett concludes that

Jellinke's definition is sufficient to consider the League of Nations as a confederation of states: See *What is the League of Nations?* [5 B.Y.I.L., 1924], pp. 147-48.

93 Kelsen, H., *Principles of International Law*, op. cit., p. 263. Kelsen concludes that there is no essential difference between these confederations and international organisations. See also Kunze, J., *The Changing Law of Nations* [Ohio State University, 1968], pp. 28-33 and also p.107, where he states that the O.A.S., the Arab League and the various international European organisations are no more than loose associations of sovereign states which have their highest form as a type of confederation.

94 For example, the defunct Germanic confederation (1815-1866); the American Confederation (1776-1787), later converted into a federation; and the Swiss Confederation (1291-1798), also converted into federation.

95 Wheaton, H., *Elements of International Law with a Sketch of the History of the Science*, [London, Vol. I, 1836], p. 69.

96 Verzijl, J., *International Law in Historical Perspective* [A.W. Sijthoff, Leiden, Vol. II, 1969], pp. 160-61.

97 Acte Final, Art. 58, Wiener Schlass Acte Art. 12-15, in Wheaton, op. cit., p. 73.

98 Ibid., p. 74.

99 Article 29 of the Wiener Schlass Acte, ibid., p. 75.

100 Kelsen, H., *Principles of International Law*, op. cit., p. 263.

101 Oppenheim, op. cit., Vol. I, p. 171: "A union or so-called confederation states is not an international person."

102 For a full examination of the European Communities and International Energy Agency Policies, see Kenneth M. Ross, *The European Communities and Natural Resources*. Dissertation submitted at Dundee University, at the Centre for Petroleum and Mineral Studies, May 1984.

103 Jenks, W., *The Conflict of Law-Making Treaties* [30 B.Y.I.L., 1953] p. 448. In this regard, it is worth mentioning that Article 30 of the *Vienna Convention on the Law of Treaties* does not include this principle, although the principal of hierarchy may be applicable according to the Article. This principle is to establish the superiority of the constitution of the organisation over the provisions of bilateral treaties. See Sinclair, I., *The Vienna Convention on the Law of Treaties*, [2nd edn., Biddles Ltd., Guildford and King's Lynn], at p. 96.

104 There are a number of bilateral economic agreements concluded between each OPEC member state and other parties. For example: between UAE and Iraq, (3 October 1977), [*UAE Official Gazette*, No. 58, 8th June, 1987], pp. 32-4; UAE and Greece, ibid., p. 212; Qatar and Jordan (1980), ibid., pp. 105-6; Qatar and Pakistan, 16 April 1984, ibid., p. 217; Qatar and India, 19 April 1984, ibid., pp. 214-5.

105 More details see Chapter, see the text in Brownlie, *Basic Documents*, op. cit., p. 362.

106 Sinclair, I., *The Vienna Convention on the Law of Treaties*, op. cit., pp.97-98.

107 Sinclair, I., op. cit., pp. 84-119; Elias, T., *The Modern Law of Treaties* [Oceana Publications Inc., Dobbs Ferry, N.Y.; A.W. Sijthoff, Leiden, 1974], p. 40. For the text, see Brownlie, op. cit., p. 361.

108 McNair, *The Law of Treaties* [Oxford Clarendon Press, 1961], pp. 493-4.

109 In spite of the fact that Al-Awadi, B., accepts the view that the Constitution of Kuwait 1962, and the explanatory note annexed to it, do not refer to the question of primacy of international law over national law, she maintains that this could be inferred from treaties concluded by the Kuwaiti government which provide so. She gives two examples of treaties which provide for this sort of supremacy: (i) the treaty establishing the Arabian Maritime Company of Oil Transportation, 1972; and (ii) the treaty establishing the Arabian Company for Petroleum Services, 1975. See her book, *Public International Law in Time of Peace and War and its Application in the State of Kuwait*, [Dar-Alfiker, Damascus, 1979, (in Arabic)], pp. 43-5.

110 Such as: Article 47 of the UAE Constitution; Article 70 of the Kuwaiti Constitution; Article 18 of the Saudi Arabian Cabinet Order; Article 24 of the Qatar Constitution; and Article 15 of the Iraqi Constitution. Other constitutions of other member states have similar provisions which adopt the dualist theory which requires informative measure for the rules of international law. For the text, see *Constitutions of the World*, op. cit.

111 This question is discussed in more details in Part Six of this study. As we shall see in this study, question such as what are the best means for the realisation of permanent sovereignty over petroleum resources? It is outright nationalisation or amicable resources? It is outright nationalisation or amicable take over or participation? The first two formulas have been adopted by various member countries without prior guidance from the organisation. And while OPEC recommended participation at the same time, it has supported nationalisation after this has been carried out.

112 See the ANRPC, PC and APCC Constitutions, which expressly mention the term 'stabilisation'. Article 3(c) of the ANRPC Agreement states: "The purpose of the Association is to bring about fair and stable prices of natural rubber." Similarly, under Articles 3(3) and 3(8) of the APCC and PC respectively, the respective associations undertake to investigate the causes of price instability and to study suitable measures, including stabilisation of prices.

113 See Schermers, op. cit., pp. 364-65; and E. Lauterpacht, *The Legal Effect of Legal Acts of International Organisations*, [Cambridge Essays on International Law], op. cit., pp. 88-121, esp. p. 89.

114 See Ibid., p. 364.

115 For a full examination of this rule, see Chapter 5.1.

116 See Section 5.5.1.

117 See Chapter 5.6.

118 See Section 5.5.2.

119 See Chapter 6.5.

120 Such terms can be found in various OPEC resolutions such as Res. XXIV.93 and Res. XXII.87, the OPEC Constituent Instrument and Statute, and various declarations, such as the following statement made by the OPEC General Secretary: "The principal aim of OPEC, as stated in paragraph 4 of Resolution I.2 ... has to be taken only in the light of the intention clearly elaborated in paragraph 3 of Resolution I.1, namely, that if it is true that the members were to study and formulate a system to ensure the stabilisation of prices as the solution to maintaining the benefits accruing to them from the exploitation of oil, free from unnecessary, unwanted and damaging unexpected fluctuations, due regard was to be shown at all times to the interests of the consuming - as well as of the producing nations, to the necessity of securing an efficient and regular supply of that source of energy to consuming countries and a fair return on their capital to those investing in the petroleum industry. OPEC should not be labelled or understood as an organism "trying to raise the price of oil or its products to consuming countries". Member countries desire to receive a fair share of the profits made by the corporations operating in their territories with which to develop. other resources and improve the conditions of living of their peoples." See *OPEC: Origin and Aims*, a lecture given by Anibal R. Martinez at the Scola 'Enrico Matteri' di Studi Supri Sigli Idrocarburi in Milano on May 3, 1973, reproduced by OPEC's Enforcement Department, obtained personally from the OPEC Library.

121 See *OPEC Official Resolutions*, p.131.

122 Ibid., p. 132.

123 See OPEC Special Fund internal opinion written by Ali M. Jaidah under the title: *Pricing of Oil: the Basic Facts*, July,1991.

124 See P. Hallowood, *Stabilisation of International Commodity Markets* [Greenwich, Connection J'ai, 1979], p. 32; and J. R. Behrman, *International Commodity Agreements* [Washington: Overseas Development Council, 1977], p. 46.

125 See Part One.

126 See Jaidah, op. cit., p. 6.

127 Comments by Dr. B. Persaud in A. Sengupta (ed.), *Commodities Finance and Trade* [1980], op. cit., p. 255 at p. 256. Similar views are expressed in Alfred Mayelo, *New International Strategy for Primary Commodities*, in G. K. Helleiner (ed.), *A World Divided: The Less Developed Countries In The International Economies*, [Cambridge University Press, 1976], p. 40.

128 See *OPEC Official Resolutions*, op. cit., p. 132.

129 See OPEC, Exporting Countries and International Oil, op. cit., pp. 21-2.

130 On these questions, see OPEC, Explanatory Memoranda on the OPEC Resolutions IV.32, 33, 34 (1962); OPEC, OPEC and the Principle of Negotiation (1965); *OPEC and the Oil Companies*, suppl. to MEMS, (28 August 1964); Vafai, Thesis, op. cit. pp. 357-40; Rouhani, *A History of OPEC*, op. cit., Chap. 16; Mikdashi, *The Community of Oil Exporting Countries*, op. cit., pp. 142-5; Kubbah, op. cit., pp. 41-4; Al-Otaiba, op. cit., pp. 141-7.

131 See infra, pp. 406-7.

132 See infra, Part Six, Note 81.

133 The Declaration was adopted (under Res. XVI.90) by the Sixteenth Meeting of the Conference held in Vienna on the 24th-25th June, 1968; see *OPEC Resolutions*, op. cit., Vol. 2, p. 11 et seq. For a valuable discussion of this Declaration, see F. R. Parra, (ex Sec. Gen. of OPEC), *OPEC: Its Present and Future Role* in *Continuity and Change in the World Oil Industry*, [AUB Seminar Papers, 1969], edited by Z. M. Mikdashi, S. Cleland and J. Seymour [Beirut, 1970], pp. 135-47, (N.B. : hereinafter cited as 'Continuity and Change'); Dr. H. S. Zakariya (then Chief of the Legal Department of OPEC), *Some Analytical Comments on OPEC's Declaratory Statement of Petroleum Policy*, suppl. to MEES, Vol. XII, No. 16 (14th February, 1969), pp. 1-16; Dr. Zakariya, *Progressive relinquishment under OPEC Declaratory Statement of Policy*, (1968), a paper presented to the Seventh Arab Petroleum Congress, Kuwait, March 1970, and published in suppl. to MEES, Vol. XIII, No. 22 (27th March, 1970); Stocking, op. cit., pp. 437-47.

134 On this question, see A. Anbari, *The Law of Petroleum Concession Agreements in the Middle East - An Inquiry into the Role of Law in the Development of the Middle East Petroleum Industry* (unpublished doctoral dissertation, the Law School of Harvard University, 1967), pp. 391-40; S. Habachy, *Participation and Change of Circumstances*, MEES, Vol. XII, No. 8 (20th December, 1968); M. T. Al-Ghunaimi, *Participation and Change of Circumstances*, MEES, Vol. XII, No. 24 (11th April, 1969); A. Z. Yamani, *Participation versus Nationalisation*, ibid., No. 33 (13th June 1969); Dr. H. S. Zakariya, *Sovereignty, State Participation and the Need to Re-construct the Existing Concession Regime*, ibid., Vol. XVI, No. 3 (12th November 1971); Gunter Mulacky, *The Claim to Participation in Existing Oil Concession Agreements - EVolution and Legality*, [Verf Assung und Recht in Ubersee, Hamburg, W. Germany, Vol. IV, 1st Quarter, 1971], pp. 169-86; The General Agreement on Participation in Respect of Crude Oil Concessions in the Arabian Gulf States, contributed to and co-ordinated by Dr. M. Khalil Khalil, [Pan Arab Consultants for Petroleum Economic & Industrial Development, Beirut, 1973]; *From Concession to Participation: Restructuring the Middle East Oil Industry* [New York University Law Review, Vol. 48, No. 4 (October 1973), pp. 774-816; *Host Government Participation in Oil Trade*, (H. P. Drewry Ltd., London, 1974]; Kubba, op. cit., pp. 77-86; Al-Otaiba, op. cit., pp. 161-78. For the text of the General Agreement on Participation on 20th December 1972, see OPEC, Selected Documents of the International Petroleum Industry - 1972, [Vienna, February 1973], pp. 107-130; Suppl. to MEES, Vol. XVI, No. 9 (22nd December 1972), pp. 1-22.

135 See infra, pp. 379-80.

136 These were adopted (under Res. XXI.120) by the Twenty-First Conference held in Caracas on the 5th-12th December 1970. For the text of this Resolution see *OPEC Resolutions*, op. cit., Vol. 2, pp. 45-7.

137 See OPEC, OPEC and the Principle of Negotiation, a paper presented by OPEC to the Vth Arab Petroleum Congress held in Cairo on the 16th-23rd March 1965; A. Alnasrawi, *The Collective Bargaining Power of OPEC* [JWTL, Vol. 7, No. 2, (March - April 1973], pp. 188-207.

138 See Res. XXIII.133 adopted by the Twenty-Third Meeting of the Conference held in Vienna on the10th July 1971. For the text of this Resolution see *OPEC Resolutions*, op. cit., Vol. 2, p. 61.

139 See the text of Res. XXI.120 and Res. XXII.131, ibid., pp. 45-7 and 58-9 respectively.

140 For a valuable discussion of the experience of the UN in this respect, see Medium-Term Plan for the Period 1976-1979, General Assembly, Official Records: "Third Session, Suppl. No. 6A - (A/10006/Add. 1); (UN, New 1975).

141 Tugendlat Christopher, *Oil, the Biggest Business*, [New IML, G. P. Putnama Sona, 1968], p. 160.

142 Paul Frankel, *Mattai, Oil and Power Politics*, [New York, Praeger Publishers, 1962], p. 112.

143 Mikdashi, *The Community of Petroleum Exporting Countries*, p. 39.

144 Harvey O'Conner, World Crisis in Oil, [Monthly Review Press, New York, 1962], p. 378.

145 S. D. Metzger, *Cartels Combines and Commodity Agreements and International Law* [11 Texas Int. L-J 1976], pp. 327 and 537; Beloff et. al, *Non-Fuel Mineral Cartels*. in Law and Policy in International Business (1975), pp. 863, 403.

146 Fox Tin: *The Working of Commodity Agreements* [Mining Journal Books 1974] pp. 132-3.

147 Petroleum Press Service London, September 1964, p. 324.

148 *OPEC Official Resolutions*, op. cit., p. 32.

149 H. Kronstein, *The Law of International Cartels* [Cornell University Press, 1973] p. 41.

150 Ibid., pp. 39-40. Following Kronstein, R. E. Smith, *Economic and Political Characteristics of Cartel and Cartel-like Practices* in O. Schachter and Hellawell (eds.), *Competition in International Business* [Columbia University Press, New York, 1981], pp. 179 and 180, defines a cartel as, "encompassing a broad array of techniques to co-ordinate horizontal inter-firm activities."

151 Kronstein, op. cit., p. 77. Throughout his book, Professor Kronstein maintains a strict dichotomy between 'cartels' and inter-governmental regulation of commodity trade by insisting that cartels are private enterprises of different nationalities. For example, in Chapter 2 of his book, he discusses governmental regulation and refers to OPEC, CIPEC and CPA – but he does not discuss them under Chapter 4 which is entitled 'The Raw Material Cartels'. On p. 77 however, he observes that, "the limits between private and public market regulation are however, fluid and vague, and international cartels often supplement or form the basis for governmental agreements ..."

152 C. T. Oliver, *State Export Cartels and International Justice*, [72 North-Western University Law Review, 1977], p. 181, at p. 182.

153 *The International Status of South West Africa: Advisory Opinion*. [ICJ Reports, 1950], p. 148.

154 Kronstein, op. cit., p. 4.

155 For instance it has been suggested that: "A producers' cartel is an agreement among raw materials suppliers located in different countries under private or government control to achieve the goal of raising prices or reducing losses for its members through a mechanism of restricting exports to consuming countries." Statement by J. D. Theberge, Hearing on Outlook for Prices and Supplies for Industrial Raw Materials before the Sub-Committee on Economic Growth of the Joint Economic Committee 93rd US Congress 2nd Session (1974), p. 158.

156 Covey, op. cit., p. 82; Z. Mikdashi and A. Shlaim *OPEC and the Politics of Oil*, in Shlaim (ed.), *International Organisations in World Politics* [Croom Helm, London, 1976] pp. 140-141.

157 Such a definition was adopted by Anthony Edwards, The Potential for New Commodity Cartels Covering OPEC or Improved International Commodity Agreements [Economist Intelligence Unit, Quarterly, Economic Review, Special No. 27, 1975].

158 *D. L. McNicol:* Commodity Agreements and the Cartel [Institute of Technology Social Science Working Paper No. 144, 1976, p. 6], as referred to and endorsed by R. L. Rothstein: *Global Bargaining* [Princeton, University Press, 1979], p. 42.

159 S. D. Metzger: *Cartels, Combines, Commodity Agreements and International Law* [11 Texas Int. L. J., 1976], pp. 527 and 537.

160 As S. D. Metzger, op. cit., pp. 534-535, notes, "the less developed countries treat as a blatant exercise in hypocrisy the complaints of the richer countries directed against their own cartelisation efforts in the raw materials area."

161 Bidwell and Diebold Jnr., op. cit., p. 221.

162 J. Fawcett and A. Parry, *Law and International Resource Conflicts* [Oxford: Clarendon University Press, for the Royal Institute of International Affairs, 1981] p. 55; the authors describe IPAs as: "Cartel-like arrangements, based on intergovernmental agreement between producer countries."

163 This subject is treated in detail in Part 4.

164 S. A. Zorn, *Producers Associations and Commodity Markets: The case of CIPEC*, in G. Adams and S. Klein (eds.), *Stabilising World Community Markets* [D. C. Heath & Co., Lexington, Mass., 1978), p. 215 at p. 220.

Part Three:

1 See Chapters 1.5, 1.6, 1.7 and 2.1.

2 In this regard mention can be made of: the Coordination Committee of National Oil Companies (NOCs) of Member States (1968), [See OPEC's Ann. Rev. and Rec., 1968, pp. 6-7, 12, 14, 31, 32, 40-41; Ibid., 1969, pp. 10, 11, 22, 30-1; ibid., 1970, pp. 13, 35-6 44-5]; The Ministerial Committee on Participation (1970) [See ibid., 1970, p. 36]; The Committee on Participation (1970) [See ibid., 1970, p. 36]; The Committee on Joint Production Programme (1970) [See Res XXI, 121 of 12 December 1970, OPEC Resolution, op. cit., Vol. 2, p. 48; The Ad Hoc Committee on Prices (1970), The Special Committee on Relative Values of OPEC crudes (1970), [See OPEC: Annual Review and Rec., 1975, p. 45]; The Committee for Coordinating Gas Pricing and Policies of the Member Countries (1975), [See ibid., pp. 53, 78]; The Middle East (London), No. 12 (October 1975), pp. 42-7; Petroleum Economist, Vol. X LIV, No. 5 (May 1977), p. 202.

3 Gabon suggested this in January 1993. See internal document entitled OPEC Press Release published occasionally by the office of the Secretary General (**N.B.**: hereinafter referred to as 'OPEC P.R.'), p. 3.

4 See OECD - IEA, Press Release, *The International Energy Agency*, 18th November 1974 - 18th November 1975, (Press Release, no date), p. 3.

5 See Article 11(A) of the OPEC Statute.

6 See Article 7 of the OPEC Statute.

7 See Article 11 (A) of the OPEC Statute.

8 The Libyan Oil Ministry, Official Correspondence with OPEC, unpublished materials.

9 Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character (1975), [Article 46, WNJY 1975, p. 101; 69 AJIL (1975) p. 744].

10 From a discussion held in January 1995 with Dr Ayoub Al-Ayoub an ex-legal adviser to the Oil Minister of Kuwait. Different states give different titles to their delegations. For exam-

ple Kuwait terms a delegate as a 'mummathil', or representative, while Libya uses the word 'khabir', or expert.

11 Article 21 of the OPEC Statute.

12 See the relevant constitutional provisions relating to the executive boards of OAPEC, OLADE, IEA, CIPEC, ANRPC, IBA and AIOEC.

13 See Schermers, op. cit., pp. 220-223.

14 Article 14(A) of the OPEC Statute.

15 Article 17(E) of the OPEC Statute.

16 For instance the post of Iran's Governor was held by Dr Fuad Rouham for nine years continuously; see *OPEC: Official Resolutions*, op. cit.

17 Article 27(B) of the OPEC Statute.

18 At Algiers; see OPEC Resolution XX. 117, *OPEC Official Resolutions*, op. cit., p. 72.

19 See OAPEC, The Secretary General's First Annual Report [Kuwait, 1975], and The Secretary General's Second Annual Report, [Kuwait, 1976].

20 IBA Secretariat, Information on the International Bauxite Association, January 1981, p. 4.

21 Article 13(B) of the OPEC Statute. For details of all Secretaries General appointed by OPEC and their terms of office, see Appendix 5.

22 Unanimity is necessary for the decision.

23 Article 12 of the OPEC Statute. Some of the supreme organs of the exporting organisations meet only once every two years – e.g. AIDEC, Article 8; while others meet once a year – e.g. CIPEC, Article 4. The more frequent meetings of OPEC's Conference enable the Member Countries to have closer co-operation and co-ordination at top. policy-making levels. Recently, the Libyan delegate proposed to the Conference that it hold its meetings three or four times a year. This proposal was rejected to give the Oil Ministers enough time to deal with other matters. However the Conference may hold extraordinary meetings whenever the need arises. The Report of Libyan Delegation to the Legal Department, [unpublished, dated the 16th October 1994], p. 3.

24 See Article 12 of the OPEC Statute. For critics of the timing of the OPEC Conference, see Dr. Ramzi Salman, Conference Timing: Could it be Made More Effective?, [OPEC Bulletin, February 1993], pp. 8-9.

25 See ibid., p.9.

26 Article 13 of the OPEC Statute. Usually organs of international organisations meet at the Headquarters of the Organisation. (See Schermers, op. cit., p. 130.).

27 Ibid., Articles 14(A) and (B).

28 Ibid., Article 18(A).

29 Ibid., Article 18(B).

30 Ibid., Article 19.

31 Schermers, op. cit., p. 202.

32 Schermers interprets vagueness concerning competence as an indicator of the absence of real power. International organisations do not tend to specify their competence if they only issue recommendations to the members, while this is not the case with the treaties of the European Communities which provide for binding decisions. Therefore they define the powers of the organs for each subject. Ibid., op. cit., p. 202.

33 Article 15 of the OPEC Statute, Clause 1.

34 Ibid., clause 2.

35 Ibid., clause 3.

36 Ibid., clause 4.

37 Ibid., clause 5.

38 Ibid., clauses 6 and 7.

39 Ibid., clause 8.

40 Ibid., clause 9.

41 Ibid., clause 10.

42 Ibid., clause 11.

43 Ibid., clause 12.

44 Ibid., clause 13.

45 In both the IBA and the UPEB, the top. organ is the highest quasi-judicial body, charged with settling disputes and interpreting their respective constitutions.

46 See Part Six. See also the OPEC Declaratory Statement of 1968.

47 See Sections 3.22 and 5.5.3.

48 Article 20, clause 1, of the OPEC Statute.

49 Ibid., clause 2.

50 Ibid., clause 3.

51 Ibid., clause 4.

52 Ibid., clause 5.

53 Ibid., clause 6.

54 Ibid., clause 7.

55 Ibid., clause 8.

56 Ibid., clause 9.

57 Ibid., clause 10.

58 See Article 25 of the OPEC Statute.

59 See Article 29, clause 1.

60 See Article 29, clause 2.

61 Ibid., clauses 4 and 5.

62 For example, see OPEC Annual Review Record, 1971, pp. 53-4.

63 See OPEC Exporting Countries and International Oil [DOC.EC/64/I], p. 21.

64 See Natt Al Arab (Arabic) Kuwait, Vol. 7, No 10.

65 See INOC, The Nationalisation of Iraq Petroleum Company Operations in Iraq - The Facts and Causes, the Ministry of Oil and Minerals, Iraq, 1973. For further examples, see Section 6.5.6 – The Oil Prices Crisis of 1997/98.

66 See Articles 27(B) and 28(D) of the OPEC Statute.

67 Ibid., Article 29(3).

68 Article 33(1) of the OPEC Statute.

69 Initially the OPEC Secretariat was not created as a principal organ but depended on the Board of Governors. According to the original 1961 Statute, the Secretariat was to consist of the Technical, Administrative and Public Relations Departments and an Enforcement Section. (See Articles 4(14) - 13(3). Text in *OPEC Resolutions*, op. cit. Vol. 1, pp. 15-18. Also certain changes were made in November 1961: see Conference Res. III. 24, *OPEC Resolutions*, op. cit. Vol. I, p. 37; in July 1964 Conference Res. VI. 46, ibid., pp. 60-3; in April 1965 when the entire text of the Statute was revised: Conference Res. VIII, 56, ibid., pp. 80-98; in December Res XII. 76, ibid., pp. 119-21; and in June 1968. This last one was made by a decision of the Board of Governors at its XXII Meeting. A recent amendment was made in December 1997, by a Resolution adopted at OPEC's 103rd Conference held in Jakarta between the 26th November and 1st December 1997, by virtue of which Article 33 became Article 32, and the Secretary General's Departments became known as: (i) Research Division; (ii) Administration and Human Resources Department; (iii) Public Relations and Information Department. See Opec Bulletin [1998] pp. 1-6. Although the names

are slightly different, the structure is still basically the same. Since no information has yet been made available of any possible re-structuring in the offices of the Secretary General since the Resolution was published, the present work is based mainly on the pre-1998 amendments.

70 Article 34(B)(1).

71 Article 34(B)(2).

72 Article 34(B)(3).

73 Article 34(A)(2).

74 Article 34(A)(3).

75 Article 34(A)(4).

76 Article 34(A)(1), (2), (3) and (4). This Department was originally created in the first OPEC Statute; in 1966 it became the Information Department; and later the Statute was amended again and now it is called the Public Relations Department: See the original provisions of Art. 37(A) of the 1965 Statute and Conference Res XII. 76, *OPEC Resolutions*, op. cit., Vol. 1, pp. 119-121. OPEC also publishes a Press Release issued at the end of every Meeting of the Conference, as well as those of the Finance Ministers of the OPEC Member Countries. The actual text of the Conference Resolutions is usually issued a month after the conclusion of the Meeting. See Annual Review and Record, Annual Statistical Bulletin, Selected Documents of the International Petroleum Industry" (Annual Pre-1966 Series of Documents), 'Weekly Bulletins', OPEC Reviews (published quarterly); Facts and Figures (published yearly); General Information and Chronology, and Library News (monthly bulletin).

77 This office was created in December 1966. See the original provisions of Art. 33 of the 1965 Statute Conference, Res. XXII 76 of December 1966, amending the said Article and creating the office referred to above, *OPEC Resolutions*, op. cit., Vol. I, pp. 117-20.

78 For the text see OPEC Selected Documents of the International Petroleum Industry, 1972, op. cit., pp. 107 et seq.; supp. to MEES, Vol. XVI, No. 9 (22nd December 1972), pp. 1-22. By virtue of the most recent changes discussed in note 69 supra, the Legal Office (which used to be called the Legal Department) has now been re-named the Legal Section. Whichever of these three names is used in the text, depending on the period under consideration, they each refer to the same legal office.

79 See Conference Res. V. 41 of December 1963, *OPEC Resolutions*, op. cit., Vol. 1, p. 55.

80 See Article 1 of the Statute of OPEC Economic Commission. (**N.B.** : hereinafter referred to as 'the Commission Statute').

81 See ibid.

82 For text see ibid.

83 Ibid.

84 Ibid.

85 Article 5 of the Commission Statute.

86 See OPEC Official Resolution, op. cit. Resolution LV.214(1) p. 172.

87 Article 6(C) and (D) of the Commission Statute.

88 Ibid., Article 6(E) and (F).

89 Ibid., Article 6(H).

90 Ibid., Article 6(H).

91 Chapter 1, Article (1)-(4) of the Commission Statute.

92 Ibid., Article 6 II(A) and (E).

93 Ibid., Article 7.

94 Article 6 II(A).

95 Ibid., Article 8.

96 The French Companies' boycott in response to the Algerian nationalisation of 1971 was then still fresh in the minds of the OPEC Member Countries. On this boycott see Petroleum Press Services (new Petroleum Economist) (June 1971), pp. 204-5; and MEES (18th June 1971), p. 5.

97 For example, as a result of the disputes between the Iraqi Government and the IPC, which preceded the nationalisation of the latter operations in June 1972, the IPC carried out a severe cutback in Iraqi oil production, reaching 44 per cent in April 1972 as compared with February of the same year. This meant a loss of over 50 per cent of Iraq's foreign exchange receipts. See INOC, *The Nationalisation of Iraq Petroleum Company's Operation in Iraq*, op. cit., pp. 17-20.

98 OPEC's Ann Rev & Rec, 1972, p. 44.

99 OPEC's estimated governments' oil revenue was increased from 14-374 million US dollars in 1972 to $22,512, $90,510, $93,296, and $113,200 in 1973, 1974, 1975 and 1976, respectively. See Petroleum Economist, [Vol. XIV, No 5, May 1977], p. 167.

100 OPEC Press Release, No. 7-75, Vienna, November 18th, 1975, reproduced in OPEC Official Resolutions and Press Releases, 1960-1980, p. 160.

101 See Ibrahim F. I. Shihata, *The OPEC Fund for International Development: the Formative Years* [UK 1983], pp. 13-40.

102 See OPEC Press Release, No. 4-74, Vienna, April 8th, 1974. The proposal was submitted by Iran.

103 This was proposed by the Venezuelan Delegation dated the 19th October, 1975 (unpublished paper).

104 This proposal was submitted by Iraq and Libya, (unpublished paper) p. 12.

105 This proposal was submitted by Saudia Arabia in November 1975, ibid., pp. 16-28.

106 The Kuwaiti proposal which was submitted to the Committee of Experts has never been made available to the general public and still remains unpublished. The Legal Adviser of OPEC gave the present writer permission to read but not to photocopy it.

107 Published in ILM, Vol. 15, p. 1357, November 1976. Also see JPEC Press Release, Vienna, 28th January 1976.

108 See OPEC Press Release, Vienna, 7th August 1976.

109 The Fund Statute was revised on the 27th May 1980.

110 See chapter as to the effectiveness of OPEC organisation in establishing the NIEO.

111 See the preamble of OPEC Fund Statute.

112 Article 1-01 of the Fund Statute reads: 'Membership. in the Fund shall be open to all OPEC Member Countries'. The fund has 13 Member Countries: Algeria, Ecuador, Gabon, Indonesia, Islamic Republic of Iran, Iraq, Kuwait, Libyan Arab Jamahiriya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates and Venezuela.

113 See The Fund Statute, Article 2-01, 2-02 and 2-03.

114 Ibid., Article 5-02, 5-03.

115 Ibid., Article 5-04, 5-05, 5-06 and 5-07.

116 Ibid., Article 6-04 and 6-05.

117 This chart is published in an OPEC Fund publication entitled *The OPEC Fund for International Development* [Vienna, Austria, September 1987].

118 Ibid., Article 9-01.

119 Ibid., Article 9-02.

120 Ibid., Article 9-03 and 9-04.

121 For the text of The Agreement see

122 The Fund Statute, Article 4.

123 Ibid., Article 2.

124 Article 36 of the OPEC Statute.

125 Ibid., Article 36(c).

126 See OPEC Official Resolutions, Vols. 1 and 2.

127 A recent example is the 1984 Consultative Meeting in Geneva which was convened to consider ways and means by which the OPEC price structure could be defended in the light of price reductions by the British National Oil Company and StatOil of Norway; see ibid., Vol. 2, p. 219.

128 See infra, Section 5.3.3.

129 See Schermers, op. cit., p. 34.

130 Both types of member are called Full Members.

131 See infra, Section 3.3.4, and p. 112.

132 See Thomas Buergenthal, *Law-Making in the International Civil Aviation Organisation* [Syracuse University Press, 1st edn., 1969] p. 13.

133 Personal information given during the present writer's visit to the Headquarters of OPEC in Vienna from the 5th to the 17th April 1984.

134 OPEC Bulletin, (May 1969), p.1.

135 See infra Section 3.3.2, and pp. 108-110.

136 See Schermers, op. cit., pp. 38-60.

137 New members sometimes have to wait with other international organisations – for instance: WHO, ANS, WMO – Article 39, and IMF – Article 2.

138 For instance the Council of Europe must modify the Article laying down the composition of the Consultative Assembly in which each Member has a specific number of seats, COE – Article 26.

139 See Schermers, op. cit.., p. 53

140 In accordance with Article 7 of the Vienna Convention on the Law of Treaties 1969, such informative action or announcement may be made by any duly authorised person or by the Head of State, the Head of the Government, the Minister for Foreign Affairs or the Diplomatic Representative accredited with the organisation or with the state charged with receiving the ratifications.

141 See the Vienna Convention on the Law of Treaties 1969, Article 46. As regards the question of the validity of Treaties see Natulk, Vol. 69, A.J.I.L. p. 736 (1971).

142 MEES, Vol. XVVII No. 5 (23rd November 1973), p. 46.

143 Resolution 1.3 reads "Members participating in this Conference shall before September 30th submit the texts of the Resolutions to the appropriate Authority in their respective countries for approval, and as soon as such approval is obtained shall notify the Chairman of the First Conference (Minister of Oil of the Republic of Iraq) accordingly."

144 Whereas, in contrast, membership. in ICAP. can be obtained by ratification of the Convention. See Article 91(A) of the ICAO Convention.

145 Res. V. 37; for the text of the Resolution see *OPEC Resolutions*, p. 23.

146 The same distinction is made by the Asian-African Legal Consultative Committee; see Statutory Rule 4.

147 See infra, p. 112.

148 See the Charters of the International Labour Organisation (ILO); the United Nations Educational, Scientific and Cultural Organisation (UNESCO) – Article 2(2); and the International Development Association (IDA) – Art XI, Sections 2(c) and (d).

149 See the Constitution of the Food and Agriculture Organisation (FAO) – Article 2.

150 See the Articles of Agreement of the International Bank for Reconstruction and Development (IBRD) – Article XI, Sections 2(c), (e), and (f); and of the International Finance Cooperation (IFC), Art IX, Sections 2(c) and (d).

151 See Rosalyn Cohen (Higgins), *The Concept of Statehood in the United Nations Practice* [University of Pennsylvania Law Review, Vol. 109, 1961], pp. 1127-71. See also Rosalyn Higgins, *The Development of International Law Through the Political Organs of the United Nations* [London, 1963] pp. 11-12, 35-76, and 54. (**N.B.** : hereinafter referred to as 'Higgins' *Development of International Law*').

152 Lauterpacht, International Law, Vol. 1, p. 316.

153 For the question of Kuwait admission to the United Nations see *Higgins'* De*velopment of International Law*, p.

154 At the present time, all Full Members of OPEC are fully independent states.

155 Professor K Kovar, *La Participation des Territoires non Autonomées aux Organisations Internationales*, AFDI, 1969, pp. 522-549.

156 For example, in the case of the agreements concerning sugar, tin and coffee.

157 Perez Alfonso, *The Organisation of Petroleum Exporting Countries* [Caracas, Monthly Bulletin, No. 2, 1966].

158 Its production was 177,200 barrels per day, when world production was 22,405,000 barrels per day.

159 Ecuadorian production was 208,800 barrels per day, when world production was 55,414,500 barrels per day. See OPEC's Background Information, op. cit. p. 19.

160 Gabon's production was 223,000 barrels per day, when world production was 53,401,200 barrels per day.

161 Kubbah, op. cit. p.19.

162 Res VIII. 56; for the full text of the Resolution, whereby an entirely revised Statute of the Organisation was introduced and adopted, see *OPEC Resolutions*, op. cit., pp. 41-51.

163 Mikdashi, op. cit., p. 97. The UAR changed its name to the Arab Republic of Egypt on the 2nd September 1971; see UN Doc BN/72/1 Jan. 1972, op. cit., p. 2. It must be noted that the USSR, through the first Secretary General Mr Rouhani, made known their interest to join the Organisation, but no further action was taken. See Sampson, *The Seven Sisters*, op. cit., p. 163.

164 Kubbah, op. cit., p. 19.

165 Rouhani, op. cit., p. 82.

166 Al-Adobe, op. cit., p. 80.

167 From an interview by the present writer with the Legal Adviser of OPEC, Dr Francisco.

168 See supra pp. 108-112.

169 Ecuador was admitted as an Associate Member by Resolution No XXVI 162 which was adopted unanimously at the thirty-sixth meeting of the Conference, held in Vienna on the 19th and 20th November 1973. In June 1975, it was admitted as a Full Member by Resolution XLIV 178, adopted unanimously at the forty-fourth meeting of the Conference held in Libreville, Gabon from the 9th to the 11th June 1975. For the texts of these Resolutions see, *OPEC Resolutions*, op. cit., p. 140 and p. 156 respectively.

170 Gabon was admitted as an Associate Member by Resolution XXXIV 154 which was adopted unanimously by the thirty-fourth meeting of the Conference, held in Vienna on the 27th and 28th June 1973. In November 1973 it was admitted as a full member by Resolution XXXVI 161 which was adopted unanimously by the thirty-sixth meeting of the Conference, held in Vienna on the 20th of December 1973. For the texts of these resolutions see *OPEC Resolutions*, op. cit., p. 136 and p. 141 respectively.

171 See Kubbah, op. cit., p. 18.

172 For Gabon's voting on the Resolutions adopted during the period indicated above see *OPEC Resolutions*, op. cit., pp. 142, 144, 147, 148, 150 and 154.

173 See Kubbah, op. cit., at p.20.

174 Ibid., p.20.

175 As regards the question of Kuwait's statehood see Higgins, *The Development of International Law*, op. cit.; and Al-Baharna, *The Arabian Gulf States - Their Legal and Political Status and their International Problems* [2nd edn., 1975]. There are other countries who have been permitted to become members of an international organisation before they were granted independence, for example, Burma, Indonesia and Tunisia, who became members of the FAO before the date of their independence. See N.D. White, The Law of International Organisations [Manchester University Press, Manchester, 1996], p. 62.

176 Kuwait was a protected state until the 19th June 1961, with a special treaty relationship. with the United Kingdom by virtue of which the latter assumed responsibility for handling Kuwait's foreign affairs. This treaty was signed in 1899 between the UK and the Ruler of Kuwait. For the text see Al-Baharna, op. cit., Appendix 1.

177 See Al-Baharna, op. cit., and Higgins, *The Development of International Law*, op. cit., pp.

178 Professor K Kovar, *La Participation des Territoires non Autonomées aux Organisations Internationales*, AFDI, 1969, pp. 522-549, p. 523, Note 3.

179 See Schermers, op. cit., p.

180 According to the treaty concluded between Kuwait and the United Kingdom, the validity of any agreement entered into by the former without the consent of the latter could not be questioned if it was not challenged by the protector state within a reasonable period of time.

181 See Arab Report and Record, Issue No. 1 (1st-5th January, 1974) p. 11; and Issue No. 4 (15th-23rd February 1974) p. 72; and The Economist, 19th January, 1974, p. 15.

182 On the 27th February 1968, the Rulers of Abu Dhabi, Dubai, Qatar, Sharjah, Fujairah, Ajman, Umm al-Qaiwain and Ras al-Khaimah, signed the agreement for the formation of a 'Federation of Arab Emirates'. For the text of this agreement see Al-Baharna, op, cit, Appendix XIII. For the constitution of the Union see MEJ; Vol. 26, No. 3 (1972), pp. 307-325.

183 Such a problem did not arise either in the UN or in the Arab League, since the UAE was admitted as a single member to both organisations on the 2nd and 6th December 1971 respectively. It is also worth noting that since then, the UAE has been admitted as a single member to the following organisations IMF, WHO, ILO, WNID, and FAO.

184 See Saleh, M., *Legal Aspects of OPEC* [Cambridge University Press, 1977], p.85.

185 See Eugene Cetran, Some Legal Aspects of the Formation of the United Arab Republic and the United Arab States, 8 ICLQ (April 1959), pp. 346-390.

186 Quoted from Gold, op. cit., p. 165.

187 *Conditions of Admission of a State to Membership. in the United Nations (Article 4 of the Charter)* [Advisory opinions; ICJ Reports 1948], pp. 57, 62-63. See also Schermers, op. cit. pp. 73, 76.

188 This is also the case with the UN and the European Communities. Most believe that it would have been possible for the Court of Justice of the European Communities to declare France in default when it barred the United Kingdom and other European States from the Communities for political reasons which were alien to the requirements of the Community Treaties. See Schermers, op. cit. p. 51.

189 This was adopted in November 1962 by the first session of the fifth Conference held in Riyadh. The Resolution reads: "... a non-member country may be invited to attend a Conference as an observer, if the Board of Governors so decides."

190 Other organisations may provide observer status to liberation movements, public or private international organisations and individuals. See Schermers, op. cit., pp. 101-111.

191 E. Noel, *The External Relations of the EEC and its International Problems*, 10 : Government and Opposition [1975], pp. 159-166.

192 See Schermers, op. cit., p. 97.

193 See Saleh, op. cit., p. 38.

194 See Article 8(A), OPEC Statute.

195 Rouhani, F., Interview in OPEC Bulletin, May 1989, p.11.

196 Now Article 8(B), OPEC Statute.

197 The 92nd OPEC Conference, held on the 25th November 1992, agreed to accept Ecuador's application to suspend its full membership of OPEC. Gabon's withdrawal was accepted in 1997. There are no details available relating to its application to withdraw.

198 Rouhani, op. cit., p.128.

199 For further details on expulsion from international organisations, see Schermers, op. cit., Vol. 1, p.55; J. Gold, *Membership and non-Membership in the International Monetary Fund*, pp. 360-372; and S. A. Voitorich, *International Economic Organisations with International Legal Process* [publication of The European University Institute, Vol. 18, Netherlands, 1994], p. 151.

Part Four:

1 Rowe, op. cit., p. 162; this position is endorsed by C.R. Johnston, *Law and Policy of International Primary Commodity Agreements*, 2 Vols. [Dobbs Ferry, New York, Oceana, 1980], p. 64.

2 Interim Coordinating Committee for International Commodity Arrangements, Review of International Commodity Problems [ICCICA Review, 1949], Para. 66.

3 Anyemedu, K., Law of International Producers Associations [University of London Ph. D. Thesis, London 1985], p. 129.

4 Professor Ian Brownlie, *Legal Status of Natural Resources in International Law* (some aspects), [Academie de Droit International Recueil des Cours, 1979], pp. 248 and 253.

5 Ibid., p. 244, and pp. 255-256.

6 J.N. Hyde, *Permanent Sovereignty Over Natural Wealth and Resources Law* [50 AJIL, 1956] p. 854; I. Brownlie (ed.) *Basic Documents in International Law* [Oxford, Clarendon, 1978], p. 187.

7 These Covenants were both adopted on the 16th December 1966 by the UN General Assembly, and entered into force on the 3rd January 1976 and the 23rd March 1976, respectively. For the text, see: Brownlie, *Basic Documents*, op. cit., p. 150.

8 General Assembly Resolutions 523(VI) of 12th January 1952; 626 (VII) of 21st December 1952; 1515 (XV) of 15th December 1980; 1803 (CVII) of 14th December 1962; 2158 (XXII) of 25th November 1966; 2386 (XXIII) of 19th November 1968; 25626 (XXCV) of 24th October 970; 3171 (XXVIII) of 17th December 1973; 3201 (s. VI) and 3203 (s. VI) both of 1st May 1974; and 3281 (XXIX of 12th December 1974.

9 Reports and Resolutions 3281 (XXIX) of 12th December 1974. Conference in O. Jankowitsch and K. P. Sauvant (eds.), *Third World Without Super Powers: The Collected Documents of Non-Aligned Countries* [Dobbs Ferry, New York, Oceana, 1978], p. 447.

10 Resolution 1314 (XVII) of 12th December 1958. Members of the Commission were Chile, Guatemala, United Arab Republic, USSR, Philippines, USA, Afghanistan, Sweden and the Netherlands.

11 United Nations, The Status of Permanent Sovereignty Over Natural Resources and the Report of the Commission on Permanent Sovereignty Resources, [New York, 1962], UN Doc. A/AC 97/SS/Rev. 2.

12 For the text of Resolution 1803, See Brownlie, *Basic Documents*, 2nd ed., op. cit., p. 140.

13 *The Charter of Economic Rights and Duties of States*. See also Resolution 3281, which provides that every country: "has and shall freely exercise full and permanent sovereignty, including possession, use and disposal over all its wealth, natural resources and economic activities."

14 Texaco Overseas Petroleum v Libya 17 ILM (1978), p. 3, para. 87.

15 International Association of Machinists and Aerospace Workers v OPEC 477 Federal Supplement (1979), 553.

16 UN General Assembly Resolution 3016 (XXVII) of 18th December 1972.

17 See: UNCTAD, Permanent Sovereignty over Natural Resources Trade and Development [Board Resolution 88 (XX1) TD/421 1971]; See also *Reports of the 1972 Ministerial Conference of the Non-Aligned Countries*, in Jankowitsch and Sauvant (eds.), op. cit., p. 447.

18 G. Schwarzenberger, *International Law*, Vol.1, 3rd edn., [London 1957], p. 121.

19 I. Brownlie, *Principles of Public International Law*, op. cit., p. 513.

20 Ibid., p. 543; see also O. Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations* [Leyden: Martinus Nijhoff, 1966], pp. 98-100; Texaco v Libya, op. cit., p. 3, para. 87.

21 Ria Kemper believes that the principle of permanent sovereignty over natural resources provides a legal basis for commodity development measures, and for co-operation among producing countries. See Ria Kemper, *The Concept of Permanent Sovereignty and its Impact on Mineral Contracts, in Legal and Institutional Arrangements in Minerals Developments* [London, Mining Journal Books, 1982], p. 31.

22 Dr Jafar Mansour Saad, OPEC's Oil Production and Prices Policies, a paper presented to the Fourth Arab Energy Conference in Baghad, Iraq, March 14-17, 1988, [published in the OPEC Bulletin, April 1988] pp. 12-13.

23 The decision of Australia, a member of the OECD to join the IBA was influenced by the desire to seek greater national control over its natural resources and effectively put an end to the admitted TNCs control of the Bauxite Industry. See Z. Mikdashi, op. cit., p. 112-113.

24 International Association of Machinists and Aerospace Workers v OPEC 477 Federal Supplement (1979), 553.

25 Ibid., p. 568.

26 Ibid., p. 589.

27 649f.2d. (1981), p. 1,354.

28 Ibid., p. 1,361.

29 UN General Assembly Resolution 2625 (XXV), adopted without a vote on the 24th October 1970.

30 General Assembly Resolution 3281 (1984).

31 UN Charter, Articles 55 and 56. See also Resolution 2625.

32 W. Friedmann, *Some Impacts of Social Organisation on International Law* [50 AJIL 1956], p. 475; and *The Changing Structure of International Law* [Stevens & Sons, London, 1964], pp. 67-69.

33 G. Schwarzenberger, *The Frontiers of International Law* [London: Stevens and Sons, 1962], pp. 29 and 34.

34 G. Fitzmaurice, *The Future of Public International Law and the International Legal System in the Circumstances of Today* [Institute De Droit International, (Special Report), 1973], p. 123, as quoted in Whiteman, *Jus Cogens* in International Law, [IGA Journal of International and Comparative Law, 1977], p. 609 and pp. 611-612, footnote 12.

35 E.A. Laing, *International Economic Law and Public Order in The Age of Equality* [12 Law and Policy in International Bus, 1980], p. 727 and pp. 764-768.

36 W. Friedman, *Changing Structure*, op. cit., pp. 62-63.

37 Resolutions 1988 (XIX) of 30th December 1964; 3177 (XXVIII) of 17th December 1973; 3241 (XXIX) of 29th November 1974; 3443 (XXX) of 9th December 1975; 3201 (x-VI) of 2nd May 1974; 3281 (XXIX) of 12th December 1974; 3362 (s-VII) of 16th September 1975.

38 See S. Tiewul, The United Nations Charter of Economic Rights and Duties of States, [10 Journal of International Law and Economics, 1975], p. 670.

39 Resolution 3362 (s. VIII) of 16th September 1975.

40 W. Friedmann, *Changing Structure*, op. cit., p. 69. Where he writes: "The acceptance of bilateral, multilateral, regional and other international conventions of less than universal scope as sources of modern international law is ... no longer a matter of doubt."

41 See Tiewul, op. cit., pp. 645 and 685.

42 The provision was necessary in view of the fact that before 1972 only two Latin American Countries – Cuba and Guyana – were full members of the Non-Aligned Group. Other Latin American countries did not participate until 1972, when Argentina, Bolivia and Panama joined as full members, but Brazil and Mexico still participated in the Group. of Non-Aligned Countries Conferences as observers.

43 For the text of the summit see Appendix IV.

44 For documents relating to the Dakar Conference, see Jankowitsch and Sauvant, op. cit., pp. 1989-2057.

45 See Anymedu, op. cit., p. 150.

46 Ibid., p. 152.

47 See Jankowitsch and Sauvant, op. cit., pp. 812-813; Abo, ibid., p. 150. The text of the Havana Conference Action Programme for Economic Co-operation is reproduced in P. Willest, *The Non-Aligned in Havana* [Francis Pointer, London 1981], p.170.

48 See Anymedu, op. cit., p. 150.

49 This was the Ministerial Meeting of the Group. of 77 held in Manila in 1976. The Conference was designed to harmonise the position of developing countries before the 1976 UNCTAD IV Meeting 1976 took place. In this Conference were mentioned: "Stimulation and promotion of action by producers associations and ... the adoption of measures designed to promote and increase trade in commodities among developing countries." For documents relating to the Manila Conference, see, K.P. Sauvant, (ed.), *The Third World Without Super Powers (second series): The Group. of 77 (collected documents)*, 8 Vols., [Dobbs Ferry, New York; Oceana, 1981], Vol. IV, pp. 335-609, and Vol. III pp. 1-145.

50 The Conference of Mexico was held in Mexico City from the 13th-22nd September 1976, and was the first Conference of the Group. of 77 on economic co-operation between developing countries to be held outside the UN framework. The Group. of 77 not only mobilised support for IPAs by inviting more developing countries to join IPAs, but it also joined the ranks of those international conferences which had drummed up. support for the Council of Associations as first envisaged by Resolution 6 of the Dakar Conference. In this connection, paragraph 10 of The Decision of the Conference stated as follows: "10. The Council of Producers Associations should become operational as soon as possible. To this effect, producers associations established at the initiative of developing countries should formulate appropriate proposals regarding relevant features of this Council. The associations are also invited to consider necessary steps for joining the Council upon its establishment." For documents relating to the Mexico Conference, See Sauvant (ed.) op. cit., Vol. VI., pp. 113-368.

51 The Arusha Programme for Collective Self-Reliance and Framework for Negotiations is reproduced in K.P. Sauvant, *The Group. of 77, Evolution Structure and Organisation* [Dobbs Ferry, New York, Oceana, 1981], p. 137 at p. 146.

52 The Vienna Convention on the Law of Treaties already defines a treaty as "and international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

53 See Brownlie, *Principles*, op. cit., p. 14; and M. Akehurst, *A Modern Introduction to International Law*, 5th edn., [London: Unwin & Allen, 1984], p. 37; both authors identify deci-

sions of international conferences as evidencing state practice. This subject is discussed in greater detail in connection with the UN resolutions.

54 PCIJ (1927) Ser. A no. 10, p.18.

55 W. Friedman, op, cit, p. 69; See also O. Schachley, The Evolving International Law of Development [Columbia Journal of Transnational Law, 1976].

56 F. Rouhan: International Agreements and Contracts in the Field of Petroleum, a paper presented at the United Nations Inter-Regional Seminar on Techniques of Petroleum Development, held by the UN from the 23rd January – 21st February 1962.

57 UNCTAD, Final Act and Report (1964) p. 63.

58 UNCTAD, Declaration on Trade Expansion, Economic Co-operation and Regional Integration Among Developing Countries, 11th Plenary Meeting held on the 18th May 1972.

59 See Parts Two and Six.

60 Economic Co-operation Among Developing Countries, Resolution 3177 (XXVIII) of December 1973.

61 The Declaration on The Establishment of the New International Economic Order, Resolution 3201 (s. VI) of 1st May 1974; The Programme of Action on the Establishment of the New International Economic Order, Resolution 3202. (s. VI) of 1st May 1974; The Charter of Economic Rights and Duties of States, Resolution 3281 (XXIX) of 12th December1976.

62 L.B Francis, *Producers' Associations in Relation to the New International Economic Order* [30 ICLQ 1981], p. 745.

63 Resolution 3202 (s. VI) of 1st May 1974, Section 1(i)(c).

64 UN Official Records of the General Assembly Sixth Special Session of the General Assembly Plenary Meeting, 9th April – 2nd May 1974: 29th Meeting, para. 158. A similar position was taken by the Italian delegation who approved only the concept of co-operation as appearing in the text of the Declaration and therefore interpreted para. 1(c) of the Programme of Action as implying that co-operation will be a basic action of these associations: 30th Meeting, para. 27.

65 UN General Assembly, 6th Special Session, 30th Meeting, 2nd of May 1974, paras. 154 and 155.

66 J. Castaneda, *Les Chailes des Droits et Devoirs Economique des Etats* [20 Annuaire Francais, [1974] p. 31: "... le development progress de nouvelles regles qui repondent aux necessities presentes et surtout futures de la societe internationale ..." Quoted from M. Sornarajah, *The Pursuit of International Property* [Martinus Nijhoff, 1986], pp. 19 and 69.

67 R.C.A. White, A New International Economic Order [24 ICLQ 1975], p. 542 at p. 552.

68 C.T. Oliver, State Export Cartels and International Justice [72 North Western University Law Review 1977], p. 181 at p. 188.

69 Official Records of the General Assembly, 6th Special session, 229th Meeting, para. 1985. Belgium's position was similar: see para. 158.

70 Countries voting against were Belgium, Denmark, West Germany, Luxembourg, the United Kingdom and the United States. Abstaining were Austria, Canada, France, Ireland, Israel, Italy, Japan, the Netherlands, Norway and Spain.

71 Brower and Tepe Jr., op. cit., p. 301.

72 O.Schachter explains that the adoption of the resolutions, "by large majorities though parliamentary and conference voting procedure is seen as attempts to impose obligatory norms on dissenting minorities and to change radically the way in which in international law is created." O. Schachter, The Evolving International Law of Development, [Journal of Transnational Law 1976], pp. 1-4.

73 R. Higgins, *The Development of International Law through the Political Organs of the UN* [Oxford University Press, London, 1963]; see the Introduction. With particular reference to the NIEO resolutions, Professor O. Schachter has observed that they: "are not neutral prin-

ciples. They are, by and large, challenges to the existing order and their leading motif is the demand for a wider distribution of wealth." O. Schacter, op. cit., p. 3.

74 L.B. Francis, op. cit., p. 754.

75 See Anymedu, op. cit., p. 162.

76 Ibid., p. 163.

77 See infra, Sections 4.4.2 and 4.4.3.

78 See infra, Sections 4.4.2 and 4.4.3.

79 See Article 2(C) of the OPEC Statute.

80 See Rouhani, op. cit., p. 148.

81 A.A. Fatoures, (Book Review of) R.F. Meaghew, *An International Redistribution of Wealth and Power: A Study of the Charter of Economic Rights and Duties of States* [1979] in [12 NVULJ of International Law and Politics 1979]. p. 653, at p. 655.

82 For example, OAPEC, Article 4(2); ANRPC, Article 83; CPA, Article 13; APEF, Article 14; UPEB, Articles 10(d) and 11; and IBA, Article VIII (g).

83 For the text of the Agreement, as published [Austrian Official Gazette BGBL 382/74 of 11 July 1974], see Appendix III.

84 The most obvious example is Article 104 of the United Nations Charter which provides: "the Organisation shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes." See also: FAO, Article 16; and UNESCO, Article 17. Moreover, some organisations have similar provisions in separate treaties, such as the Council of Europe, Article 1.

85 The court held: "Subjects of international law and public bodies alike, in order to achieve the purposes for which they were established, may not only perform acts of a public law nature, but when they do not take advantage of their special status, they may perform acts of a private law nature including entering into contracts which are regulated by rules of private law." Quoted from Schermers, op. cit., p, 790.

86 See Ibid., p. 790.

87 See Article 4.

88 See Article 29.

89 See: Convention on the Privileges and Immunities of the United Nations, 13th February 1946, [1 UNTS, Section 7(a)], p. 16; Convention on the Privileges and Immunities of the Specialised Agencies, 21st November 1947, [33 UNTS, Section 9 (a)], p. 262; and Agreement on the Status of the NATO National Reprsentatives and International Staff, [TS 11 (1955; Cmd. 9383).

90 See, for example: UN Convention, Articles 3-4; Agencies Convention, Articles 5-6; OAS Agreement, Articles 3-4; COE General Agreement, Articles 4-5; Communities Protocols Agreement, Articles 1-2: referred to in Schermers, op, cit., p. 793.

91 Ibid.

92 Ibid., p. 112.

93 Ibid.

94 Reparation of Injury Suffered in the Service of the United Nations, Advisory Opinion, [ICJ Reports 1949], pp. 178-81. In the Reparation Case, the International Court of Justice advised that the UN has international legal personality. In reaching this conclusion, the ICJ adopted a functional test and explained that to realise the purposes and principles enshrined in the UN Charter, "the attribution of international personality is indispensable," because the Charter "has equipped" the UN "with organs and has given it special tasks." This is why those working for the UN have specific duties and privileges: "It has defined the position of the members in relation to the Organisation by requiring them to give it every assistance in any action undertaken by it, by giving the Organisation legal capacity and privileges and immunities in the territories of each of its agreements between the Organisation and its

members". For these reasons, the ICJ concluded that the UN was: "entitled to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane ... what this does mean is that it is a subject of international law and capable of possessing international rights and duties."

95 Ibid.

96 Ibid.

97 Ibid.

98 Ibid., at pp. 178-179.

99 Ibid., at p. 179.

100 D. Bowett, op. cit., p. 302.

101 ICJ Reports, 1949, op. cit., p. 179.

102 See C.R. Johnston *Law and Policy of Inter-governmental Commodity Agreements* [New York 1976], Vol. II , chapter 3, p. 53. See also L. Henkin, R.C. Pugh, O. Schachter and H. Smith, *International Law; Cases and Materials* [West Minnesota, 1980] pp. 234-235.

103 See Bowett, op. cit., pp. 301-2.

104 Ibid., op. cit.

105 See Johnston, op. cit., p. 53. A similar criticism is also made by the Egyptian writer J. Ghunimie.

106 For example, Brownlie, op. cit., pp. 300-305; Bowett, op. cit., pp. 501-505; Sequorsted, op. cit., pp. 1-68; and Schermers, op. cit., pp. 774-780.

107 Article 11(C) of the OPEC Statute.

108 Article 23 of the OPEC Statute.

109 Article 30(A) of the OPEC Statute.

110 Article 17(D) of the OPEC Statute.

111 Article 40 of the OPEC Statute.

112 Article 27(A) of the OPEC Statute.

113 See Part 3 for OPEC's structure.

114 ICJ Reports, 1949, op. cit., p. 179.

115 For more details of the case see supra pp. 136-137, and infra pp. 174-176.

116 The first act establishing relations between OPEC and the UN was in November 1962, when the document which brought OPEC into existence was registered with the Secretariat of the United Nations, under No. 6363, in accordance with Article 102 of the United Nations Charter. See, Rouhani op. cit., p. 139.

117 In 1964 OPEC addressed an application to the United Nations, being granted a consultative status with the Economic and Social Council. The ESOSOC at its 13th plenary meeting held on 30th June 1965, adopted a Resolution (Resolution 1053 XXXXIX) whereby it decided to establish a relationship. with OPEC. The Secretary General of the UN was required to take the necessary measures to: (a) ensure the reciprocal exchange of information and documents with OPEC; (b) have OPEC represented at meetings of the organs of the United Nations at which questions of mutual interests are schedule to be discussed; and (c) ensure consultation and technical co-operation between OPEC and the United Nations with regard to matters of mutual interest.

This official recognition by ECOSOC of OPEC as an international organisation proved to be a great success for OPEC, especially since it occurred in the initial years of OPEC, when establishing firm relationships with international institutions was very necessary for its continued survival, especially since the consuming countries did not receive the organisation at all well – with the major oil companies refusing to recognise OPEC as a significant force in the oil industry, and the original host country, Switzerland, declining to conclude a

headquarters agreement with OPEC and grant it the necessary privileges and immunities it needed to function properly.

For the full text of Resolution 1053 XXXIX of ECOSOC, see Official Records of the Economic and Social Council, Ninth Session (30th June – 31st July), Resolutions Supplement No. 1 Dec. 14.11.7, [UN, New York, 1965]. p. 41. See also: OPEC Information Booklet, March 1980, p.11.

118 OPEC succeeded in securing recognition from and establishing relations with the United Nations Conference on Trade and Development (UNCTAD) as a result of its inviting OPEC to participate in the deliberations of UNCTAD and its subsidiary bodies, on the basis that OPEC may participate, without voting rights and upon the invitation extended to it by the president or chairman as the case may be, in the deliberations of UNCTAD and its subsidiary bodies on questions which fall within the scope of its activities. See Rouhani, op. cit., pp. 145-146; and Ian Seymour, op. cit., pp. 260-262.

119 OPEC has special relations with OAPEC in the spheres of exchange visits, the exchange of publications and reports, and the attendance of officials from both organisations at each other's committee meetings of working groups, whenever possible. The OAPEC Council's first meeting was held outside the Member Countries' territories in August 1988 at the OPEC Headquarters in Vienna. This is but one example of the close relationship. which exists between the two organisations. See also: OPEC Bulletin, October 1986, p. 36.

120 The meeting of ministers of the Lane American Energy Organisation, 'OLADE', passed a decision empowering the Executive Secretary to establish the necessary relations and co-operation mechanisms between both organisations during the course of an OLADE Seminar on Energy and Development in which OPEC had been invited to participate. See: OPEC General Secretary's Internal Reports, [15, October 1979], p. 82.

121 See the Part One, pp. 41-42, in which the role of the Arab League in establishing OPEC is discussed.

122 CIPEC in June 1974 adopted a resolution in which it noted with satisfaction the increased co-operation with OPEC. OPEC in its 40th Session of 1974 charged the Board of Governors, "to establish similar relations of co-operation with other commodity exporters organisations". See CIPEC's Annual Report, 1974, pp. 93 and 101.

123 For a special study of OPEC's relationships with Switzerland see infra, pp. 167-172.

124 See: OPEC Bulletin, February 1982, pp. 67-80.

125 Ibid., p. 78.

126 Ibid., pp. 67-80.

127 Ibid., p. 67-80.

128 For general studies of international personality *vis-a-vis* third parties, see Schermers [1980] Vol. 1, p.82; Bowelt [1982] p. 341; P.H.F. Bekker, *The Legal Position of Intergovernmental Organisations* [1994] p. 96; M. Ramon Montalda, International Legal Personality and Implied Powers of International Organisations, [B.I.B.I.L. 1970], p.111 at p.112.

129 However the Agreement was replaced by a new Agreement signed by the Secretary General of OPEC and the Federal Government of the Republic of Austria on the 18th February 1974.

130 Guggenheim's opinion, op. cit., p. 13; also cited in Rouhani, *A History of OPEC*, op. cit., p. 133.

131 Message dated the 28th July 1955, [Feuille Federale 1955], p.389.

132 Bowett, op. cit., p. 312.

133 See Basic Agreement of the 27th July 1960 with Congo [A14800] p. 170. See Irans 1957, IYB of ICLCS.

134 For the text, see the Final Act and Related Document of the UN Conference on Trade and Employment, (held in Havana, from the 2nd November 1947 to the 24th March 19480. UN Doc. G/EN-2/7-8 (Havana, March 1948).

135 For full cover of the reasons why OPEC was not established in the form of an international commodity arrangement as envisaged in the Havana Charter, and for comparison between OPEC and these arrangements, see Buchan, op. cit., pp. 146-151; and Mughrabi, *Permanent Sovereignty Over Oil Resources*, pp. 155-57.

136 For full text see Final Act and Report of the United Nations Conference on Trade and Development, (First Decision), UN Doc. E/CONF, 46/141, Vol. I, Annex. V12, p.63 [1964].

137 United Nations Conference on Trade and Development Document, Final Act and Report, Vol. I, Annex A(ii). In the same connection, see also: (i) UN GA Resolution 2158 (XXI) of 25th November 1966, on the Report of the Second Committee (A/6518) on Permanent Sovereignty over Natural Resources; UN GA Resolution 3201 (S-VI) of 1st May 1974, Declaration on the Establishment of the NIEO, (Section 4(1); and Res. 3202 (S-VI) of 1st May 1974, Programme of Action on the Establishment of the NIEO, Section 1(i)(c); and (ii) Resolution 1956 (LIX) of 25th July 1975, concerning ECOSOC fifty-ninth session (2nd-31st July 1975), Resolution and Decisions Doc. E/5740, Suppl. I., p.11.

138 For the text, see ILM, Vol. XIV, No. 1 (Jan. 1975), p. 251.

139 Section 1 of the Sherman Act 1890, 25 USC 51.

140 Ibid.

141 Bank of the US v Planters Bank of Georgia [Wheat USS 1824], pp. 904 and 905.

142 The categorisation of activity as commercial or non-commercial is a source of controversy. Two different tests were developed to determine the character of state activity. One focused on the purpose of the activity, the other on the nature of the activity. The 'purpose' test, which asks whether the act in question was undertaken for sovereign ends, is subjective. The 'nature' test, which focuses on the nature of the act itself is objective. The purpose test grants broader immunity, since even the most commercial activity could have an underlying governmental purpose. For example, the purchase of furniture is objectively a commercial act. If the furniture is purchased for a state's embassy, however, under the purpose test the act is sovereign and immunity applies. The problem with the purpose test is that the expectation of the furniture seller relying on the commercial appearance of the activity would be frustrated if the foreign government could claim immunity and declaim its obligation to pay. In this situation, only the objective nature test would protect the seller's reliance on the nature and appearance of the purchase as a commercial activity subject to domestic laws.

143 The effects doctrine was originally developed in US v ALCOA [48 F. 2d. 416 2d Cit 1948].

144 Memorandum of Decision and Order of Judgement for the Defendants in the United States District Court Central District of California, No. 78-5012-AAH (SX) (18 Sept 1979), International Association of Machinists and Aerospace Workers (IAM), An Association v. the Organisation of the Petroleum Exporting Countries (OPEC) and Member States. A copy of the Memorandum was given to the present writer by the Legal Office of OPEC. (N.B. : hereinafter referred to as 'Order of Judgement').

145 See: the OPEC Secretary General's protest submitted to the United States Embassy in Vienna, dated August 1979, which was transmitted to the District Court via the State Department. (N.B. : hereinafter referred to as 'Secretary General's Protest Report').

146 The IAM argued that these price-setting activities violated Section 1 of the Sherman Act, 15 USC S 1. See Order of Judgement, op. cit. p. 4.

147 The second diplomatic note regarding this case from the Department of Foreign Affairs of the Republic of Indonesia to the United States Embassy, transmitted to the District Court, reads in part as follows:

"The reference to civil proceedings appears to assert a claim on behalf of a private domestic entity in the United States against OPEC, in which Indonesia is named as a defendant together with other members of OPEC, because of public, governmental, non-commercial Acts of State it has done in exercise of its sovereign rights over its petroleum resources

exclusively within its own jurisdiction ... The Government wishes to refer to the 'Act of State Doctrine' which is fully recognised and applied by the international community, and expects that the United States will continue to honour this universal principle of international law and that, therefore, the District Court will not attempt to review the validity of acts performed by foreign sovereign nations within their own jurisdiction ... Therefore the government of the Republic of Indonesia does not recognise the jurisdiction of the United States District Court on matters that affect its sovereignty..."

At least eight others of the sovereign states (defendants) protested at this attempt to exercise jurisdiction over them, by means of diplomatic note sent to the United States, which the Department of State then conveyed to the District Court. These states were: Algeria, Ecuador, Kuwait, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates and Venezuela. See: Motion of the Indonesia - US Business Committee of the Indonesian Chamber of Commerce and Industry for leave to file Brief as Amicus Curiae. In the Supreme Court of the United States, [October Term, 1981, No. 81-645], pp. 2-3.

148 See: House Report No: 94-1487, at pp. 14 and 16, [5 USC Cong Ad. N. 1976], pp. 6613 and 6615.

149 These standards are those referred to in the UN GA Resolution 1803, Article 1; the Charter of Economic Rights and Duties of States, UN GA Resolution 3281, Chapter 2, Article 1, (1974); the Declaration on the Establishment of a New International Economic Order, in UN GA Resolution 3201, 1974; and UN GA Resolution 3171.

150 See note 144 above.

151 Ibid., p. 23.

152 Court Exhibit 26, Statement Made by M.A. Adelman, Ibid., p.9.

153 Further, having cited the cases of Parker v Brown, California Officials, and the Federal Connolly Hot Oil Act, the court stated: "In view of our own state and federal domestic crude oil activities, there can be little question that establishing the terms and conditions for removal of natural resources from its territory, when done by a sovereign state, individually and separately is a governmental activity." See Order of Judgement, op. cit., p. 25.

154 These decrees were entered into on the 14th November 1960 for a period of 25 years, until the 14th November 1985; see Ibid., pp. 25-26.

155 The Sherman Act provides in part that: "... every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony ..." Section 8 of the Sherman Act and section 1 of the Clayton Act define 'person' or 'persons', "to include corporations and associations existing under or authorised by laws of the territories, the laws of the states or the laws of a foreign country."

156 Order of Judgment, op. cit., p. 25.

157 Ibid., p. 25.

158 Ibid., pp. 25-26.

159 Decision of the Supreme Court of the United States, October 1981, No. 81-64s.

160 Ibid., p. 1358.

Part Five:

1 The term 'decision' is often used to indicate both binding and non-binding pronouncements of a body, although some international organisations use the word only to describe legally binding decisions. The vast majority of decisions of international organisations are not binding *per se*. However, where a decision is binding under the constituent treaty, a member state still needs to incorporate it into its municipal legislation in order to give it binding effect. See Stephen M. Schwebel, ed., The Effectiveness of International Decisions, paper presented in a conference of the American Society of the Conference, [Lyde, 1971], pp. 366-385.

2 Schermers, op. cit., p. 362.

3 In the words of Voitorich: "... substantive and procedural matters interrelate like train and railway. If the latter is out of order, the former can not move." Sergei A. Voitorich, *International Economic Organisations in the International Legal Process* [Martinus Nijhoff, Dordrecht, Boston, London, 1995]. p.70.

4 Ibid., p. 69.

5 See Parts One and Two of this study.

6 Some international organisations' statutes do however distinguish between decisions and recommendations. See, for example, Article 14 of the GEPLACEA Statute, and Article 15 of the OAS Statute.

7 See *Change and Stability in International Law-Making*, edited by A. Cases and J. Weiler [Berlin 1988]. In general, both majority decision and unanimity have their respective advantages and shortcomings. See O. G. Zaitsera *International Organisations: Decision Making* [Moscow, 1989], pp. 71-78.

8 For a detailed analysis of Full and Founder membership, see section 3.3 supra, pp. 104-115.

9 Some authors prefer to use the term 'relative unanimity' which they define thus: "Voting in its prevailing variant means that abstentions do not prevent the adoption of an act which requires unanimity." See Voitorich, op. cit., p. 79.

10 Consequently, the unanimity rule has gradually been abandoned in favour of majority rule in such organisations. However, the unanimity rule has still been applied, either exclusively or partially, in a number of organisations which have limited membership, including, for example, the North Atlantic Treaty Organisation (NATO), Article 10, North Atlantic Treaty; the League of Arab States (LAS), Articles 6 and 7, Pact of the League of Arab States; and the Council of Mutual Economic Assistance (COMECON), Article IV(3), COMECON Charter. See Stephen Lanora, Voting in International Economic Organisations, [AJIL, 1980], pp. 273 - 274. For full details of the advantages and shortcomings of both majority decision and unanimity, see O. G. Zaitsera, op. cit., pp. 71 and 78 (in Russian), and Schermers, op. cit., pp. 391 - 393.

11 See Kubbah, op. cit., p. 26.

12 For the advantages of the unanimity system in general, see Schermers op. cit., pp. 391-393.

13 See Mana Saeed Al-Otaiba, *OPEC and the Petroleum Industry* [London 1975], p. 183; F. Rouhani, op. cit., p. 79; Seymour, op. cit., p. 39; and Kubbah, op. cit., p. 38.

14 See Kubbar, op. cit., p. 26; and Mughrabi, op. cit., p. 139.

15 Ibid., p. 26.

16 See Seymour, op. cit., pp. 136-139; and also the OPEC Annual Report, 1995, p. 173.

17 See Al-Otaibia, op. cit., p. 116; and the OPEC Bulletin, March 1996, p. 38.

18 See Kubbah, op. cit., p. 26; and the OPEC Secretariat Internal Reports, 1993, No. 86, p. 3.

19 See Kubbah, op. cit., p. 26.

20 This system of voting was suggested on a number of occasions by different Members at different times, but was never approved by all the members at any one time. For instance in 1976, 1982 and 1988, the Conference discussed the issues but could not reach a unanimous decision on them. The details of the arguments and counter-arguments can be found in the OPEC Secretariat Internal Reports of 1976, 1982 and 1988. Also, an internal unpublished opinion was drafted by the Legal Department of the Organisation in July 1979, entitled: Voting System and Procedures : a Legal Opinion.

21 See Appendix VII.

22 This proposed voting system is derived from the decision-making process of the OPEC Special Fund. For the voting procedures of the OPEC Special Fund, see Article 51(3) of the Fund Constitution. See also section 3.2.3, pp.98-103 of this study.

23 See OPEC Resolutions, op. cit., pp. 4-7.

24 See Schermers, op. cit., p.146.

25 See Kubbah, op. cit., p. 46.

26 See W. D. Bowett, *The Law of International Institutions* [1975], p. 27.

27 For the philosophy of OPEC membership. admission policy, see Chapter 3.3, pp. 104-126.

28 For example, Dr. Ayoub Al-Ayoub, ex-legal advisor of the Oil Minister of Kuwait, confirmed to me that during the OPEC Conference in July 1990, the Oil Minister himself was in continuous contact with the Government of Kuwait before final essentials were given. This practice was also confirmed in an unofficial interview with Mr. Frost, the permanent representative of BP. in the OPEC Conference, at a meeting with the present writer in Kuwait, in October 1996.

29 To give another example, it took the Venezuelan National Congress about nine months (14th September 1960 - 26th May 1961) to ratify the OPEC Constitutuent Instrument. For the text of these decisions, see *Venezuela and OPEC*, op. cit., p. 45.

30 For further comments on the voting procedures of international organisations generally, see Schermers, op. cit., pp. 672-773.

31 See Part Three, p. 124.

32 See A. Al-Hawrani, Al-Hougmi Journal, Vol. 5, 1989, p. 368, [published by Garyounis University, Benghazi, Libya]. Pollard, op. cit., p. 223, holds, by implication, a similar view when he states: "... barring a practice implying the contrary to the parties concerned, valid decisions may be presumed to create binding obligations under the member agreement. Where the constituent instruments of these organisations contain provisions regarding the general undertakings of member countries, the presumption in favour of the binding nature of validily taken decisions is even more compelling."

33 See *OPEC Official Resolutions*, op. cit., p. 98.

34 See *Article 189* of the *Treaty of Rome* (as amended); see also D. Lasok and J. W. Bridge *Introduction to the Law and Institutions of the European Communities* [Butterworths, London, 2nd edn., 1976], p. 199.

35 It should be pointed out, however, that it is neither the purpose, nor within the scope, of this study to examine the influence which OPEC has had on the internal laws and regulations of its Member Countries.

36 See PCJJ Series A/B, No. 42 (15th October 1931), p. 116.

37 For OAPEC's objectives, functions, membership. requirements and organisational structure, see Rouhani, op. cit., pp.159-65; Mikdashi, *The Community of Oil Exporting Countries*, pp. 83-91, and 103-10; and Dr. M. T. Al-Ghunaimi, *Arab Petroleum and the Middle East Crisis* (in Arabic), [Cairo 1974]. pp.101-17.

38 On the subject of treaties and third party states, see H. W. Briggs, *The Law of Nations: Cases, Documents and Notes* [New York, 2nd edn., 1952], pp. 879-92; C. Parry, The Law of Treaties, in *A Manual of Public International Law*, edited by Max Svensen [London, 1968], pp.601-3; and O'Connell, op. cit., p. 246.

39 On these decisions, see J. J. Daust and A. P. Blanstein, The Arab Oil Weapon - A Threat to International Peace, [AJIL, Vol. 68, No. 3, July 1974], pp. 410-39; and I. Shihata, Destination Embargo of Arab Oil: Its Legality under International Law.

40 For sources of International Law, see Michel Virally, The sources of International Law, in *A Manual of Public International Law*, op. cit., pp. 116-171. Article 38 of the Statute of the International Court of Justice provides:

> **I.** The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> **(a)** International conventions, whether general or particular, establishing rules expressly recognised by the contesting states;

(b) international customs, as evidence of a general practice accepted as law;

(c) the general principles of law recognised by civilised nations;

(d) subject to the provisions of Article 59, judicial decisions and the teaching of the most highly qualified publicists of the various nations, or subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

41 K. Skubiszewski, *A New Source of the Law of Nations of International Organisations* [Geneva, 1968] pp. 509-517 and 519. See also: W. Friedmann, *The Changing Structure of International Law* [New York, 1964], p. 774; O. B. Rivero, *The New International Economic Order and International Development Law* [Mexico, 1980], p.141; and The Development of International Economic Law in the Context of Co-operation among States with Different Levels of Economic Development, [Indian Journal of International Law, 1988].

42 Mughrabi, op. cit., pp. 170 and 174.

43 Ibid., p. 170.

44 See, for example, Resolution 90 adopted on the 24th June 1968 and ratified a month later whose preamble states: "... the inalienable right of all countries to exercise permanent sovereignty over their national resources in the interest of their national development is a universally recognised principle of public international law and has been repeatedly reaffirmed by the General Assembly of the United Nations, most notably in its Resolution 2158 of November 25, 1966." See also Resolutions 1,13, 23, 42, 80, 90, 95 and 72, concerning pricing policies. For a full examination of the subjects and areas which OPEC decisions have most affected, leading perhaps to the creation of customary law, see infra Part Six of this study.

45 For the influence of OPEC on international relations in the oil industry generally, see Rouhani op. cit., Qutaibi op. cit., and Seymour op. cit.

46 Stephen Zamor, Voting in International Economic Organisations, [AJIL, Vol. 74, 1980], p. 586. See also supra, note 20.

47 Schermers, op. cit., p. 565.

48 For the text of this Article, See infra, Appendix II.

49 For details of these most recent amendments see: OPEC Bulletin, January 1998, p. 4; since the OPEC Statute has not yet been published with these changes incorporated, they do not appear in the 1986 version which is reproduced in Appendix II; see also Part Two, note 84.

50 Vienna Convention on the Law of Treaties 1969, Article 40. In the present context, Schermers argues that: "with respect to constitutions established by multilateral treaties, any amendments made by non-plenary organs are illegal." See Schermers, op. cit., p. 582.

51 As regards the voting procedures of the Board of Governors, see Section 3.2.2, p. 92 of this study.

52 For other organisations with similar practices, see IPAS-APEF, IBA, CIPEC, PC and APCC. All these organisations require the unanimous decision of all members before a proposed amendment can be accepted.

53 ICAO Assembly, 4th session, 1950, Resolution A4-3.

54 For example, both the IBA and the APEC require ratification thirty days after adoption by all members for amendments to become effective: IBA (Article XXIV); APEC (Article 37).

55 The only example of an IPA with a special provision regarding variation of its constitutive instrument is to be found in the CIPEC Agreement. By virtue of Article 29, a unanimous vote of all members is required in order to support the decision to adopt a majority-voting system for any particular session for adopting decisions which are distinct from those es-

tablished under the Agreement. The effect of this is that this enables the Conference of Ministers to remove the potential conflict which might arise because of the double veto.

56 For a detailed study of the question of disputes in international law in general and within international organisations in particular, see: Shermers, op. cit., pp. 653-683; Robert E. Hudac, *The GATT Legal System and World Trade Diplomacy* [Preeger, 1975], pp. 66-190; and Ervin P. Herner, Interpretation by Public International Organisations of their Basic Constitutions, [53 AJIL, 1959, pp. 356-366].

57 The Court held that a dispute was "a disagreement on a point of law or fact, a conflict of legal views or interests, between two persons." I.C.J. Reports, 1962, pp. 342-44.

58 See: A. No. Z, p. 11.

59 Shermers states: "Questions of interpretation are actually disputes, or prospective disputes, on the interpretation of the rule by the applicant." See Schermers, op. cit., p. 658. In this study both disputes and interpretation are considered at the same time.

60 Pollard states: "... obligations expressly imposed on members by the constituent instruments of producers associations would normally relate to contributions to the administrative expenses of these organisations; respect for the international status of officials serving in their secretariats; the defraying of expenses incurred by representation at meetings of these organisations; representation at meetings of various bodies; the immunities and privileges to be accorded these organisations and officials of their Secretariats; the settlement of disputes; and so forth. Other disputes of a public international law nature in the present context may also arise between these organisations and their members. Such disputes may relate to the payment of contributions; the entitlement to representation at meetings of constituent bodies; the right to withdraw from the organisation; the liability to be suspended or expelled from the organisation; and, in extreme cases, the validity of decisions taken by policy-making bodies of the organisation." See Pollard, op. cit., p. 244.

61 See, for example, the OAPEC Constitution.

62 For studies on interpretation in international financial organisations, see M.E.P. Herner, Interpretation by Public International Organisations of their Basic Instruments, [AJIL, 1959, No. 2], pp. 341-370; F. A. Mann, The Interpretation of the Constitutions of International Financial Organisations, [BYIL 1968-1969, Oxford, 1970], pp. 1-19.

63 See Voitorich, op. cit., p. 106.

64 The Articles of Agreement of the IMF have an elaborate interpretation procedure. Article XXIX provides: "Any question of interpretation of the provisions of this agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Board for its decision." Within three months from the date of any such decision, any member may request that the question be referred to the Board of Governors, whose decision is final. The Board of Governors establish a committee on interpretation, whose decision is regarded as the decision of the Board, unless the latter decides otherwise. Pending the result of the reference to the Board of Governors, the Fund may, if it deems it necessary, act on the basis of the decision of the Executive Board. In addition to this, Article XXX provides explanations of some of the terms used in the agreement. It is important to note that the Fund has exclusive power to interpret its own Articles of Agreement. Such interpretations given by the Fund have been recognised in the courts of the IMF member states. A similar scheme of interpretation follows from the statutory acts of other international financial organisations, such as the IBRO, the IFC, the IDA, the EBRD, the IADB, and the AMF. The main difference, in comparison to the Fund, is the absence of provisions providing for the setting up. of a special committee on interpretation. See P.I.B. Kohena, *The Regulation of International Economic Relations through Law* [Dordrecht (Boston) Lancaster 1975], pp.106-107.

65 Bowett, 1984, op. cit., p. 302.

66 See R. Y. Jennings, Nullity and Effectiveness in International Law: Cambridge Essays in International Law [Stevens & Sons, London, 1965], p. 64; and Felice Morgenstern, Legal-

ity in International Organisations, [British Year Book of International Law, 1976-7, p. 255.

67 Professor Mann argues that interpretive decisions are by their very nature binding. This view is not without some judicial support. See F. A. Mann, op. cit., p. 607.

68 For example, under Article 177 of the Treaty of Rome, "The Court of Justice shall have jurisdiction to give preliminary rulings concerning; (a) the interpretation of this treaty; (b) the validity and interpretation of facts of the institutions of the community; (c) the interpretation of the statutes of bodies established by an act of the Council, whose statutes so provide." On judicial interpretation in EEC law, see Anna Bredimas, *Methods of Interpretation and Community Law* [Amsterdam/New York/Oxford 1978]. Similar provisions can be found, for example, in Article 2 of the Statute of the Court of Justice of the Cartagena Agreement; Article 18 of the treaty establishing the AEC; Article 11 of the treaty of the Ecouss; Article 16 of the treaty for the establishment of ECCAS; Article 10 of the treaty for the establishment of the PTA; and Article 25 of the convention establishing CEPCL.

69 For example, under Article 16 of the Agreement establishing the ITPA, "in the event of any question of interpretation of any clause of this Agreement arising, the matter shall be referred to the governing board of the association whose decisions shall be final and binding on all parties." Schermers supports the view that an organisation's supreme organ should be the body responsible for interpretation. For full details of his reasons and arguments, see Schermers, op. cit., p. 1203.

70 For example, the FAO established a committee on constitutional and legal matters, in accordance with Rule XXXIV of the Organisation, whereby the Committee: "shall consider specific items referred to it by the Council or the Director-General which may arise out of: (a) the application or interpretation of the Constitution, these rules and the financial regulations or amendments thereto; (b) the formulation, adoption, entry into force and interpretation of multilateral conventions and agreements concluded under Article XIV of the Constitution; (c) the formulation, adoption, entry into force and interpretation of agreements to which the organisation is a party under Articles XIII and XV of the Constitution ..." For examples of the interpretive works of the Committee, see UN Judicial Year Book, 1985, N.Y., 1992, pp. 81-85.

71 It is not possible, because OPEC has not published the reports of these cases, nor allowed their contents to be disclosed to the general public. It is not necessary, because considering two cases will be sufficient to illustrate the particular point that needs to be made for the purposes of this study. It is worth mentioning that these two cases were only given to the present writer to read during his visit to OPEC headquarters, when permission to photocopy them was withheld.

71 See OPEC internal document No. O.P.B.G./92/19785/JU/13, (unpublished).

73 See J.E.S. Fawcett, *International Economic Conflicts: Prevention and Resolutions* [London, 1977], pp. 75-82.

74 Sergei A. Voitorich, International Economic Organisations within the International Legal Process, [European University Institute, Disputes of Law, Vol. 10], p. 143.

75 OAPEC Publication, *OAPEC in Brief* [1996], pp.14-17.

76 See, for example, UPEB, Article 29; GEPLACEA, Article 22(b); and IACO, Article 11.

77 See, for example, CPA, Articles 8 and 12; and ANRPC, Article 6.

78 See, for example, PC, Article 8.

79 With respect to APCC, Rule 34 of the Producer and Financial Rules states that the basic contribution should not exceed $5,000. In the case of ANRPC, Article 5 provides that each member should pay a basic subscription of $5,000, but that if the total basic contributions prove insufficient to meet the expenses of the Association, then an additional assessment will be made on the basis of the respective production levels of its members.

80 D.W. Bowett, *The Law of International Institutions* [Stevens and Sons, 4th edn., 1982] p. 420.

Part Six:

1 Policy is defined in the Chambers Thesaurus Dictionary as meaning: "action, approach, code, course, plan, position, practice, procedure, programme, protocol, prudence, rule, sagacity, scheme, shrewdness, stance, stratagem, theory, wisdom." Anne Seaton, George Davidson, John Simpser, (Eds.), *Chambers Thesuarus* [Allied Chambers (India) Limited, New Delhi, 1994]. The *Webster Third New International Dictionary* defines policy as meaning: "a definite course or method of action selected (as by government, institution, groups or individual) from among alternatives and in the light of given conditions to guide and usually determine present and future decisions ... Specific decision or set of decisions designed to carry out such a chosen course of action ... Such a specific decision or set of decisions together with the related actions designed to implement them ... Projected program consisting of desired objectives and the means to achieve them (formulation)." p. 1754. It has also been defined by the Oxford Advanced Learner as: "to make a plan of action, statement of ideas, etc. proposed or adopted by government, political party, business, etc." A. S. Hornby, *Oxford Advanced Learner* [Oxford University Press, 4th Edn., 1994].

2 See generally Parts Two and Three.

3 For details of the Declaratory Statement 1968, see supra, Section 2.3.4, pp. 71-72.

4 Ibid.

5 Ibid.

6 Ibid.

7 Ibid.

8 Ibid.

9 Ibid.

10 The text of the Solemn Declaration of the Algiers Conference of Sovereigns and Heads of State of the OPEC Member Countries is reprinted in: 18(20) Middle East Economic Survey (MEES), 7th March 1975, and in *OPEC Official Resolutions and Press Releases: 1960-1983*, [Programme Press, Oxford, 1984], pp. 130-135. See also infra, Appendix IV).

11 Ibid., p. 134.

12 It is very difficult to provide a comprehensive summary of all the unified petroleum laws provisions, but it is sufficient at this stage to list in brief the main areas which they cover:

1. State ownership. of petroleum resources;
2. Application of petroleum law;
3. The conduct of petroleum operations (e.g. whether by local government, or by state-owned organisation, or as a joint venture by a combination of organisations with a joint structure).
4. Participation.
5. Petroleum areas.
6. Extent of petroleum rights.
7. Conservation.
8. Financial obligations.
9. Data and information.
10. Transfers.

13 'Ownership' is a legal concept and refers to the possession of property rights in a productive enterprise. 'Control', on the other hand, is a factual description of decision-making structures. Ownership. does not necessarily result in control, as for instance where the granting of management contracts to foreign companies denies host governments any effective control. At the same time, it is possible to exercise control over an enterprise without necessarily owning it. Thus, in the arbitration proceedings between Anaconda and the Overseas Private Investment Corporation of the US [14 ILM, 1975, p. 1237], the panel

concluded that even though the state-owned enterprise CODELCO had the appearance of predominance, Anaconda still retained effective control because it possessed the ultimate decision-making powers. See Asante and Stockmayer, op. cit., p. 56; and E. Penrose, Ownership. and Control: Multinational Firms in Less Developed Countries, in G.K. Helleiner (ed), *A World Divided* [1975], op. cit., p. 147.

14 For a full examination of the practices of IPAs and the Nationalisation of Bauxite Resources, see Girvan, op. cit. , pp.140-145; Mikdashi op. cit., pp. 113-119; M. Deal, United States Dependence On Carribean Bauxite and the Formation of the International Bauxite Assocation, [International Trade L.J., 1978-79], pp. 68-71. For the practice of CIPEC as regards nationalising copper mines see UNCTAD, Production and Marketing of Copper by Developing Countries, [TD/B/C. 7/S6, 16th May 1983], p. 45; G. Martner, op. cit., p. 93; D. Mezge, *Copper in the World Economy* [Heinemann, London, 1980] pp. 145-149; and S. Picciotto (ed.), *The Nationalisation of Multinationals in Peripheral Economies* [Macmillan, London, 1978] pp. 155-156.

15 See *OPEC Official Resolutions*, op. cit., p. 46.

16 Ibid., p. 133

17 Historically, its origins can be traced back to the 1901 D'Arcy Agreement with the Persian government (discussed supra in Chapter 1.5) which included provision for limited participation. This was replaced in 1933 by a new agreement, and then in 1957 the NIOC signed an agreement with AGIP. which established a separate entity in which each party held a share of the capital. See Cattan, H, *The Evolution of Oil Concessions in the Middle East and North Africa*, pp. 123-124; Hassan Zakariya, Sovereignty State Participation and the Need to Restrict the Existing Petroleum Concession Regime, [Middle East Economic Survey, Vol. XV, No. 3, 12th November 1971], pp. 4-5; and Mughrabi op. cit., pp. 55-109. The formula of the early Iranian Participation Agreement was also followed by Saudi Arabia, Kuwait and Iraq. For a full examination of the experience of these countries and the full texts of these participation agreements, see Saad Allam, *Encyclopaedia of Petroleum Legislation in the Arab States – the Gulf Area*, (in Arabic), [Qatar, 1978], pp. 188 ff. Finally, for more information related to participation by non-OPEC member countries, see for example the British government participation agreement with the Anglo-Persian Oil Company. See Daried, *La Politique Petroleum International Oil Company* [Paris Pas Universities de France, 1962], p. 102. There is also the example of the former U.S.S.R. State participation in the oil industry, which was was one of the early steps towards establishing a socialist state. See *Basic Provisions of Oil and Gas Legislation of the Soviet Union*, [United Nations ECAFE Document, No. INR/P4].

18 See Part One

19 See supra Footnote 17

20 For the text of the Agreement see OPEC Selected Documents, [1972], pp. 130; M.E.E.S. (Suppl.), Vol. XVI, No. 9, 22nd December 1972, pp. 1-22, and Special Supplement, 25th December 1972, pp. 9-16; and Arab Oil and Gas, 20th December 1972. For a study of its full legal, economic and financial aspects, see the studies made by Dr. Muhammad Kalil Khalil on behalf of Pan Arab Consultants for Petroleum, Economical Industrial Development, Beirut, Lebanon, under the title The General Agreement on Participation in respect of Crude Oil Concessions in the Arabian Gulf States [1st January 1973].

21 On the 23rd of August 1974, Kuwait signed a Participation Agreement with 10 Arab-Japanese Oil Companies which followed the same pattern as the previous Participation Agreement. For the text of the Agreement, see Kuwait Oil Today, [KOC Monthly Bulletin], p. 1972.

22 Following the Kuwaiti example, several of the Gulf countries signed Participation Agreements, including: (i) Qatar, who signed a Participation Agreement with the Saudi and Qatar Oil Company on the 20th February1974; (ii) Saudi Arabia, who signed an agreement with ARAMCO in June 1974; (iii) Abu Dhabi, in 1974; (iv) Oman, in 1976; and (v) Bahrain. For full texts of these Participation Agreements, see OPEC Selected Documents [1974].

23 See Abulamini Alanburi, Oil Agreements and their Development in the Middle East, a legal and administrative study, [Gas and Oil Basic Facts, Part 3], p. 27.

24 Nationalisation has taken place both in developed countries – such as Bulgaria (1942-1947), France (1944-1945), Czechslovakia (1945), and Austria (1946-1947), and in third world countries – such as Algeria, Libya, Nigeria, Saudi Arabia and Kuwait. For an examination of nationalisation by European countries, see N.R. Doman, Post-War Nationalisation of Foreign Property in Europe, [Columbia Law Review 48, 1948], pp. 1125-61; and Gittian M. White, *Nationalisation of Foreign Property* [Stevens, London, 1961]. Further discussion of nationalisation can be found in:

(a) for US Practice: James E. Akins, The Oil Crisis: This Time the Wolf is Here, [Petroleum Intelligence Weekly, 26th March 1973], p. 14. See also: Juliedo, The Practice of U.S. Nationalisation and its Legal Consequences, [1973].

(b) for UK Practice: [16 Law and Contemporary Problems, No. 4, 1951].

(c) for practice in France: De Vries and Hoeniger, Post-Liberation Nationalisations in France, [50 Columbia L.R.P., 1950], p. 629; and see Law No.48-1305, J.O.8306, [1948], referred to by De Vries at p. 635.

(d) For practice in Canada and Australia: Todd, *The Law of Expropriation and Compensation in Canada*; and see The Expropriation Act (Ontario), [1968-1969], Chapter 36, Sections 13 and 14.

(e) For practice in Ghana: Administration of Lands Act [1962] (Act 123); the State Lands Act [1962] (Act125); the Minerals Act [1962] (Act126); and The Investment Policy Decree [1975], N.R.C.D. 329, (as amended).

(f) For practice in Tanzania: R.W. James and G.M. Fimbo, *The Customary Land Law of Tanzania: A Source Book*, p.30; and The Arusha Declaration and TANU's policy of Socialism and Self-Reliances, [Government Printer, Dar-es-Salaam,1967].

(g) For practice in Uganda: Sharma and Woddridge: Some Legal Questions Arising from the Expulsion of the Ugandan Asians, [23 I.C.L.O.P., 1974], p. 397.

(h) For practice in Kenya: Article 75 of The Constitution of Kenya, Act No. 5 of 1969.

25 Pollard, op. cit., p.162.

26 Ibid., op. cit., p.168.

27 For an examination of the relations between Algeria and the major oil companies, see Nicolas Sarkis, *Le Pétrole à l'Heure Arab* [Editions Stock, 1975], pp. 212-213; and Altaf Soulimane, *The Battle for Petroleum in Algeria*, (in Arabic), [Dar-El-Talia, Lebanon, 1974]. See also. S. Bougerra, Methods of Calculating Indemnification Following Nationalisation Practised in Algeria, [Arab Oil & Gas, Vol. 6, No.19, 1st July 1972]; Sonatrach Explains Its Case, [MEES, (Supplement), Vol. XIV, No. 30, 21st May 1971]; and Sad Allam, *Petroleum Legislation in the Arab World*, (in Arabic), p. 362.

28 See *OPEC Official Resolutions*, op. cit., p.71.

29 Law No. 69 of 1970, restricting the activity of importing, selling or purchasing and distributing oil products of the National Oil Institute of Libya, [Official Gazette of Libya, No. 44, August 1970], pp. 3-7. (N.B. : hereinafter cited as 'Law No. 69 of 1970 (Libya)'.)

30 See OPEC: Selected Documents, 1973, op. cit., pp. 83-85; and Wall St. Journal, 3rd February, 1972, p. 1, Col. 6.

31 100% of Bunker Hunt's interests were nationalised pursuant to Law No.42, 11th June, 1973, referred to in Platt's Oilgram News Service, 11th June 1973, p. 1, and reprinted in 13 International Legal Materials, 1974, pp. 58-59.

32 After failing to negotiate a previous demand for 100% of all Occidental's possessions. In return, Occidental was to receive $135 million (net book value) with the right to buy from Libya 57% of its output for the remaining duration of the concession agreement. See Platt's Oilgram News Service, 14th August 1973, p. 1. For the text of the law, see OPEC Selected Documents, 1974, op. cit., pp. 39-48.

34 51% was likewise acquired pursuant to Law No. 66. The text of the law can be found in 13 International Legal Materials, 1974, p. 60. All these companies were later nationalised completely.

35 Article 1 of the Libya Nationalisation Act provides that: "... the ownership. of all property, rights, assets, portions, shares, activities and interests in any form, owned by the following petroleum companies as regards petroleum concession deeds which are shown beside the name of each company, shall be nationalised and shall be transferred to the State ..." See OPEC Selected Documents, 1974, op. cit., p. 30.

36 Article 2 of the same Act provides for compensation to be based on the net book value, Ibid. See MEES, Vol. XVI, No. 06, 8th September 1973, p. 7; and also Best. T.G., Middle East Oil and the U.S. Energy Crisis, [Law and Policy in International Business, Vol. 5, 1973], p. 223.

37 In the case of British Petroleum -v- Libyan Arab Republic, the British government in a note of protest delivered on the 23rd of December 1971 to the Libyan Government stated: "Her Majesty, the Government are bound to conclude that the measures in question amount to a breach of international law and are invalid." The note continued: "An act of nationalisation is not legitimate in international law unless it satisfies the following requirements: (i) it must be for a purpose related to the internal needs of the taking state; and (ii) it must be followed by the payment of prompt, adequate and effective compensation." The Libyan government replied that the Libyan Nationalisation Act was in conformity with international law. The Libyan Ambassador to the United Nations stated that "... our steps violate no principle of the Charter or international law; it is in accordance with those principles and also with the General Assembly resolutions concerning the natural resources of a state." The case was heard by arbitrators who stated that: "... the taking by Libya of the property, rights and interests of British Petroleum clearly violates public international law, as it was made for purely extraneous political reasons and was arbitrary and discriminatory in character."

Unlike the case of British Petroleum, Libya's right to nationalise its oil resources was recognised by the Judge Deputy in the case of Texaco Overseas Petroleum Company and California Asiatic Oil Company -v- Libyan Arab Republic when he concluded that: "The right of a State is unquestionable today. It results from international customary law, established as the result of general practices considered by the international community as being law. The exercise of national sovereignty to nationalise is regarded as the expression of the State's territorial sovereignty. Territorial sovereignty confers upon the State an exclusive competence to organise as it wishes the economic structures of its territory and to introduce therein any reforms which may seem desirable to it. It is an essential prerogative of sovereignty for the constitutionally authorised authorities of the State to choose and build freely an economic and social system." However, he also noted that: "... foreign investment agreements freely entered into by or between sovereign states should be observed in good faith." Thus, a State could not invoke sovereignty in order to disregard its commitments, or use its internal law to suppress the rights of another party to a contract. The recognition by international law of the right to nationalise did not empower a State to disregard its commitments. Thus the Judge concluded, without denying the right of the Libyan government to nationalise, by stating that: "Neither the concept of sovereignty nor the nature of the nationalisation measures taken ... provide any legal justification for these measures," para. 79, p. 483.

In the case of Libyan American Oil Co. (LIAMCO) -v- Libyan Arab Republic, the Arbitrator, Dr. Mahmassani, in considering the nature of the concession concluded that it had special characteristics, because of the parties involved and the object of the contract. With

regard to the right of nationalisation, Dr. Mahmassani stated that the right of private ownership. or property has always been a universally recognised fundamental right. Although tempered sometimes by questions of public policy, it has been constantly reaffirmed in such documents as the Hague Conventions of 1890 and 1907, and the United Nations Bill of Human Rights of 1948. The concept had been adopted by Civil Law. It was also to be found in Islamic Law. He also pointed out that natural resources tend now to belong to the State rather than to a private landowner. He cited the Libyan Petroleum Law which states:"All petroleum in Libya in its natural state is the property of the Libyan State." He observed that nationalisation had become a much more common practice, and that the criterion of 'public necessity' had been replaced by that of the State's public, social or economical policy. After World War II, the practice had become even more common and since 1950 had been applied increasingly to concessions for exploitation of oil or other international resources. Thus Dr. Mahmassani concluded that: "Most publicists today uphold the sovereign right of a State to nationalise its property, in the sense that a State, possesses as an attribute of its sovereignty and supreme power the right to nationalise all things ... belonging to any person within its jurisdiction." What is important in the context of the present study is that Dr. Mahamassani reached the conclusion that: "The right of a State to nationalise its wealth and natural resources is sovereign, subject to the obligation of indemnification for premature termination of concession agreements." He expanded on this by then stating: "Nationalisation of concession rights, even before the expiration of the concession term, if not discriminatory and not accompanied by a wrongful act or conduct is not unlawful as such, and constitutes not a tort, but a source of liability to compensate the concessionaire."

For full texts of these cases and awards see: B.P. -v- Libya (1979) 53 ILR 297; Texaco -v- Libya (1979) 53 ILR 389 475; Liamco -v- Libya (1981) 20 ILMI.

38 For a full examination of the process of transition of the Venezuelan Oil Industry from private to public control, see Rossi-Guerrero, The Transition from Private to Public Control in the Venezuelan Petroleum Industry, 9 V & J Transnational LJ, 1976, p. 475, at p. 482.

39 For the text of the law, see OPEC Selected Documents, 1977, op. cit., pp. 83-170; also reprinted in 14 ILM, 1975, p. 1992.

40 XXVIIIth Extraordinary Meeting of the Conference, Press Release No. 8-72, Vienna, 12th June 1972.

41 This support was reiterated in another Resolution passed by OPEC in Vienna on the 30th November 1972, in support of Iraqi's nationalisation of the oil companies. See *OPEC Official Resolutions*, op. cit., p. 104.

42 Ibid., p. 105.

43 The text of the original K.O.C. Concession Agreement of 1934, the subsequent agreements and the Acquisition Agreement of 1975 are published in OPEC Selected Documents, op. cit., 1977, pp. 9-210, and 1978, pp. 33-211, and are reproduced in Fischer, A Collection of International Concessions and Related Instruments, [Contemporary Series, 1975–96, p. 133.

44 The Law was published in the Middle East Economic Survey, Vol. XX, No. 49, 26th September, 1977.

45 The Award is reproduced in 21 I.L.M., 1982, p. 976.

46 See Pierre Yves Tchanz, The Contributions of the Aminoil Award to the Law of State Contracts, op. cit., p. 245; and International Lawyer, Vol. 18, No. 2.

47 See *OPEC Official Resolutions*, op. cit., p.101.

48 See International Legal Materials, 58-59, 1974, p. 69.

49 See supra, note 37. For a full examination of the compensation paid in the Libyan cases, see Hussin, op. cit., pp.45-85.

50 Ibid.

51 Ibid.

52 See Khalil, op. cit., p. 38.

53 See supra, note 49.

54 Ibid.

55 For an examination of the relations between Algeria and the major oil companies, see Nicolas Sarkis, *Le Pétrole à l'Heure Arab* [Editions Stock, 1975], pp. 212-213; and Altaf Soulimane, *The Battle for Petroleum in Algeria*, (in Arabic), [Dar-El-Talia, Lebanon, 1974]. See also. S. Bougerra, Methods of Calculating Indemnification Following Nationalisation Practised in Algeria, [Arab Oil & Gas, Vol. 6, No.19, 1st July 1972]; Sonatrach Explains Its Case, [MEES, (Supplement), Vol. XIV, No. 30, 21st May 1971]; and Sad Allam, *Petroleum Legislation in the Arab World*, (in Arabic), p. 362.

56 See Sonatrach Explains Its Case, [MEES, (Supplement), Vol. XIV, No. 30, 21st May 1971]; and also. S. Bougerra, Methods of Calculating Indemnification Following Nationalisation Practised in Algeria, [Arab Oil & Gas, Vol. 6, No.19, 1st July 1972].

57 Award, 21 I.L.M., 1982, p. 976, para. 144, at p. 1033.

58 Ibid.

59 Award, 21 I.L.M., 1982, p. 976, para. 165, at p. 1038.

60 The notion of 'equitable expectations' has been previously advocated by Katzarov, *The Theory of Nationalisation* [1964] p. 452. See also Francioni, Compensation for Nationalisation of Foreign Property: The Border Level Between Law and Equitor, [I.C.C.P., 1975], p. 255.

61 See Bougerra, op. cit., p. 33.

62 Note that they represent the general framework of OPEC's Conservation Policy and other OPEC policies. See pricing, production, royalty and other OPEC policies and operations discussed in this part.

63 See OPEC's selected documents, op. cit., 1978, p139. Also see OPEC internal memorandum submitted by the legal department to the Board of Governors in discussion of conservation and unification of Petroleum Legislation. OPEC Library, p. 19. Also see Venezuela's Law Hydrocarbon of 1930, the law of 10 Aug 54 and the law of 20 Jul 67 to some extent regulate the conservation of mineral resources in that country.

64 See Dr. Abdelrazeg El Murtadi, "Libyan Petroleum Legislation" Annex 142, Faculty of Law, Garyounis University, Benghazi, Libya, 1982, p.130.

65 See Allwani, op. cit., pp15-168.

66 Mohammed Khalil Khalil, Development of Arab Oil Legislation's legal adviser for OAPEC published in studies and researches submitted in the training program in oil and gas industries held in Kuwait 01 Mar 86 (in Arabic) OAPEC publication, P132, 3, hereafter shall be referred as Khalil. For list of examples of provisions of oil agreements dealing with conservation, see summary of proceedings of the 9th (internal) Meeting of the Chief Executives of the OPEC National Companies. Hassi R'Mel, Algeria, 06 Apr 88, unpublished document, obtained from OPEC legal department, it carries reference number EFD100/88/9NOC/428, pp. 8-19. The author has examined all conservation provisions in the oil agreements concluded between oil companies and member countries for the period 1948 until 1986 published in Barrow & Barrow edition from 1970-89, Allwani op. cit. OPEC selected documents op. cit. El Murtadi op. cit.

67 See Anibal R. Martiniz "Origin and Aims of OPEC", a lecture given at the Scuola "Enrico Matter" at Studi Superori Su Hydrocarburi in Milan on 03 May 1963, Page 8.

68 See Khalil, op. cit., P18132.

69 See Part 2, pp. 58-71, and Part 6 pp. 227-233.

70 See *OPEC Official Resolutions*, op. cit., p. 61-64.

71 See AlQasmi, op. cit., p32

72 See A. Adrian J. Bradbrook, "A Legislative Framework for Renewable Energy and Energy

Conservation" in JE4N Resource Law, Vol.15 No.4 (Nov. 1997) pp313-337. Also see Stephen P.A. Brown and Hillard G. Huntington "LDC Co-operation in World Oil Conservation" in The Energy Journal Special Issue (1994), pp310-328.

73 For an examination of the arguments and counter arguments, see Muhamad Mughrabi, "Opinion Report on the Legal Aspects of the Principles of the Draft Declaratory Statement of Petroleum Policy by OPEC Member Countries" legal opinion paper obtained from OPEC library through private contacts under file No. 7600710, 12 May 1986.

74 See *OPEC Official Resolutions*, op. cit., p.65.

75 Among the sources consulted in formulating the "Pro-forma Regulation" were the Venezuelan Law of Hydrocarbons and its regulations, the Inter-state Oil Compact Commission's Suggested Form of General Rules and Regulations for the conservation of oil and gas and the province of Alberta's Oil and Gas Conservation Act and its regulation, see the statement of Francisco Parra, then Secretary General of OPEC, published in the OPEC, A pro-Forum for the Conservation of Petroleum Resources op. cit., P4.

76 OPEC admitted that the application of conservation rules might cause certain inconveniences to the operators concerned. However, OPEC said inconvenience is usually inherent in most measures of a regulatory nature and therefore can never be accepted a valid argument against the enforcement. OPEC argument keep. saying that "Force may in this connection inject a purely ethical element, conservation rules should prevail since they are aimed at the promotion of good and prevention of evil. About the contractual rights of operator OPEC had this to say "these rights must give precedence to the over-rating effect of the doctrine of police power" of the state a doctrine which is well recognised in the public law of Western Countries. OPEC's arguments goes on to say that implementation of conservation policy is an exercise of the right of permanent sovereignty over oil resources. For an examination of the validity of these arguments and counter-arguments, see Pro-forma, April pp. 4-7 and for further details on argument in favour of the adoption of conservation rule see The Legality of the Adoption by Legislation of the Proposed Conservation Regulation in Member Countries, a report prepared by the OPEC legal department in October 1978 and submitted to the XVII Conference.

77 The regulation gave examples such as the insufficient storage of petroleum, the unauthorised storing of gas, the production of petroleum in excess and the location, spacing, drilling, completing, equipping or operating of or from any well in a manner which causes adverse effects, ... etc. See Pro-forma op. cit. p.17. Also see Dr. Hassan Zakariya, OPEC Resolution 90 - Background and Some Analytical Comment. Three reports submitted on behalf of OPEC legal department to the conference in 1976.

78 Article 19 of the regulation

79 Ibid., Article 49.

80 The committee composed of five members working under the supervision of the Board of Governors. Unfortunately, the commission's studies were not taken seriously.

81 Article 43 of the regulation.

82 See Commission Study, op. cit., p. 18.

83 Ibid., p. 31.

84 See Lorna Brazall, Catalysing Growth: the Main Treaty Provision, their Interaction and Effect, in Energy charter Treaty detected topics by Tiw Waelde and K M Chritie, University of Dundee, Centre for Petroleum and Mineral law and Policy, Dundee, Scotland, UK - Chapter 3, pp. 3-36, (1996) (hereinafter referred to as Waelde).

85 Affirmed by the UN General Assembly resolution 2996 (XXVII) (1972), passed without opposition although the east block States abstained, reiterated in principle 2 of the Rio Declaration on the Environment and Development, June 1992 (UNCED UN Doc A / Conf ISI-S - 1992). The early case on trans-boundary pollution, Trail Smellet (33 AJIL (1932) 182) established this rule quoted from Ibid., pp. 3-36.

86 See infra, Chapter 6.6.

87 See infra, Chapters 6.5 and 6.6.

88 The resolution invited all countries to join in the search for solution to world problems, pointing out in particular for the following areas: international trade, transfer of real resources to developing countries, international monetary reforms, science and technology, industrialisation, food and agriculture, co-operation among developing nations and restructuring the economic and social sectors of the UN system.

89 See Appendix IV.

90 See Appendix IV.

91 See Solemn Declaration, op. cit. preamble.

92 Ibid., preamble.

93 Ibid.,

94 Ibid.,

95 Ibrahim F.1. Shihata, *The OPEC Fund for International Development : The Formation Years*, [1983], printed in Great Britain, pp. 138-140.

96 Ibid., p. 142.

97 Ibid., p. 145.

98 Ibid., p. 146.

99 Ibid., p. 143.

100 Ibid., p. 141.

101 Ibid., p. 146.

102 Ibid., p. 146

103 The declaration on the establishment of a new International Economic Order was officially voiced for the first time at the UNCTAO - 333 in Santiago (Chile) in 1973, by the developing countries. It was at instance of the developing countries that the sixth special session of the UN Federal Assembly was concerned. The sixth special session was devoted entirely to the consideration of matters relating to the international economic order. See Part 3 of this study.

104 See Declaration on the establishment of a new international economic order G.A. Res. 3201, 6th special session, WNGA or supp. 1 at WN Doc. No. A/9SS9, 1974. For one text of the resolution. See foreign affairs report, Vol XXIII, No. 6 (June 1974), pp. 119-12, UN press release GA 5022, 02 May 1974. See Part 3 of this study.

105 Article 5 of the Economic Charter recognises the right of all states to associate in rganisations of primary commodity producers n order to develop. their national economic resources to achieve stable financing for their development, and in pursuance of their aims assisting in the promotion of sustained growth of the world economy in particular accelerating the development of developing countries. See A/C: 2/L.1406. Also see Kapoor, op. cit. pp434

106 The UN Declaration on the Establishment of NIEO stated the principles on which NIEO should be founded. Among these principles: "facilitating the role which producers associations may play within the framework of international co-operation, and in pursuance of their aims ..." This declation was without vote at the Plenary Meeting No.2229 of the Sixth Special Session of the UN General Assembly on 1 May, 1976. For the text of the Resolution, see Foreign Affairs Reports, Vol. XXIII, No.6 (June 1974), pp.119-122; UN Press Release G/A5022, 2 May, 1974.

107 The Declaration did not mention the OPEC Conservation Policy, but the adoption of the view of conservation for the purposes mentioned re-confirm OPEC's view of conservation. See Ibid. p.442

108 Ibid., p.443

109 Ibid., p.443

110 See p. Chandrasekhara Rao, "Charter of Economic Rights and Duties of States" I.J.J.L. Vol.15 (1975), p.351 at p.356.

111 Ibid., p.352

112 Ibid., p.352

113 OPEC's main rules were taken through the Group. of 77. The question of conservation was not direct subject of discussion.

114 See Chapter 5.1.

115 For member counties conservation regulations, laws and legislation see:

a) The Libyan oil ministry decision No. 9 for the petroleum regulations No. 9. The decision paused in 1973 of 4 articles. The regulation consists of 27 articles. It covers all petroleum stages published in Libyan official newspapers No. 36 year 1973 (in Arabic - Al-Jarida Al-Rasmia). Copy of this also published in Dr. Al- Murtathi, pp. 109-128 (in Arabic).

b) Iraqi law No. 229 year 1970 for the conservation of oil resources conservation of seven sections and 58 articles published in Iraqi newspaper (Al-Wagaee Al- Iraqia) on 02 Jan 1971. It reappeared in Dr. Saad Allam, Encyclopaedia of Petroleum : Legislation in the Arab Times. The Gulf Area 1st edition Doha, Qatar, 1978, pp. 102-118.

c) Qatar passed Amiri Decree No. 4, 1977 for the Conservation of Oil Resources published in the official newspaper on 30 Nov 1977 consists of 15 articles appears in Ibid., pp. 483-487.

d) Abu Dhabi, passed law No. 8 year 1978 for the conservation of oil resources consist of five sections and 61 articles published in the official newspaper and reappears in Ibid., pp. 553 - 571.

e) Algeria, passed law in 1976 consists of 38 articles, Venezuela had a detailed legislation before OPEC conservation, Nigeria passed conservation law in 1978 consists of 48 articles. All these laws are published - OPEC standard documents, Vol. 23 ad 5.

f) Equador did not pass law particularly for conservation but included this in its 1984-88 National Energy Plan which is renewed automatically in OPEC bulletin, April 1984, p. 68.

116 Oral discussion with Dr. Ayoub Al-Ayoub, legal advisor for the oil ministry of Kuwait for the period 1989-91. Also, an oral discussion with Dr. Rashid Alamuri ex-oil minister of Kuwait for the period 1988-91.

117 See Energy Policy, a consultative document presented to the parliament by the Secretary of State for Energy , February 1978, London. Her Majesty's stationery office reprinted 1979 (Cmnd. 7101 pp. 19-21). See also clause Dieter Ehlermann, Role of the European Commission as regards National Energy Policies, J.E.N.R,. 1994, pp. 342-352.

118 See OPEC Conservation law, op. cit., p. 138.

119 See infra, Chapter 6.5.

120 See Article 3 of the Conservation of Petroleum resources law of the UAE adopted on the 12 Jul 1973. See Allawi, op. cit., p. 149.

121 See Gao, Recent Trends and new directions in international petroleum exploration and exploration agreements in World Competition, 17th March 1994. Quoted from Thomas W. Waeldo, The Current Status of International Petroleum Investment: regulating, licensing and contracting, Chapter 4 in *Energy Charters Treaty: Selected Topics*, op. cit., pp. 4-32.

122 Examples of these provisions can be found in Article (3) of the Iraqi Conservation Law, Article (3) of the Kuwaiti Conservation Law and Article (4) in the Qatar Conservation Law. Note that the provision are almost identical.

123 The purpose of this co-operation will be to enhance the quality of the European environ-

ment by promoting the use of more energy efficient practice and technology. See Annex 3, Energy charter, protocol, in Waled, op. cit., p. 9-10.

124 See Chalabi, op. cit., p. 19. Also see Chapter 6.5.

125 Ibid., p. 19.

126 Ibid., p. 20.

127 Ibid., p. 21.

128 See Chapter 6.5.

129 Chalabi, op. cit., p. 23.

130 Ibid., p. 23.

131 Ibid., p. 24.

132 See President Carter's programme, which arrived at reducing the annual energy growth rate in the US to 21 from its historical rate of over 4% while sustaining the ENP growth ___ at around 4%.

133 See Anthony Rogers, Petroleum Conservation Policy and Legal Issues, May 1985, LLM thesis, Dundee University, p. 66.

134 Founder members are: Austria, Belgium, Canada, Denmark, West Germany, Irish Republic, Italy, Japan, Luxembourg, Netherlands, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

Subsequent members are New Zealand Norway (February 1975), Greece (May 1976), Australia (March 1979), Portugal (April (1980). Headquarters is in Paris.

It was established a separate international agreement to develop. an international energy programme, which was signed by the founder members of the IEA on Nov. 18, 1974, and took full legal effect on Jan. 19, 1976, after completion of the necessary ratification procedures. The OECD itself was formed in 1961 as a co-ordinating body concerned primarily with issues connected with the domestic economic and social policies of its member countries and with their external aid policies towards developing countries.

The OECD is the successor organisation to the Organisation for European Economic Co-operation, established in 1948 in the context of the Marshall Plan under which US economic assistance was made available for post war reconstruction in Europe.

The IEA has the status of an autonomous body within the OECD, at whose headquarters the IEA Secretariat is based. In addition to the individual IEA member countries, the Commission of the European Communities is also represented on the IEA's Governing Board (notwithstanding the non-membership. in the IEA of an important EEC member, France).

The IEA's policy-making body is its Governing Board, comprising senior representatives of member countries and of the European Commission. Some meetings of the Board are held at official level and others at ministerial level, national delegations being led in the latter case by ministers responsible for energy. Decisions of the Board are normally taken by consensus, but a complex system of weighted voting (broadly designed to relate each country's voting power to its volume of oil consumption) exists for use when no consensus can be reached on any of over 20 key issues, including aspects of the holding of oil stocks, the sharing and conservation of oil supplies in emergencies and relations between governments and oil companies.

Table below shows the distribution of votes among the 20 full members (i.e. excluding Norway, which is a non-voting associate member) following Portugal's accession in 1980.

[Please see next page]

Distribution of voting power on IEA Governing Board

	General Votes	"Oil Votes"	Weighted Total
Australia	3	1	4
Austria	3	1	4
Belgium	3	2	5
Canada	3	5	8
Denmark	3	1	4
West Germany	3	8	11
Greece	3	1	4
Irish Republic	3	0	3
Italy	3	5	8
Japan	3	15	18
Luxembourg	3	0	3
Netherlands	3	2	5
New Zealand	3	0	3
Portugal	3	0	3
Spain	3	2	5
Sweden	3	2	5
Switzerland	3	1	4
Turkey	3	1	4
United Kingdom	3	6	9
USA	3	47	50
Totals	**60**	**100**	**160**

The Governing Board appoints an Executive Director to head a Secretariat responsible for the collection and analysis of energy data, the study of member countries' energy policies and programmes, the preparation of energy use forecasts and the publication of special studies.

Five specialist groups made up. of experts from the member countries hold regular meetings and report to the Governing Board on various aspects of the IEA's activities, as follows: **(i)** the Standing Group. on Long-term Co-operation promotes conservation and substitution measures designed to reduce dependence on oil in the long term; **(ii)** the Standing Group. on Oil Market Information analyses international oil market developments and oil companies' activities; **(iii)** the Standing Group. on Emergency Questions is responsible for the development and operation of the IEA's emergency oil-sharing system, which includes procedures for arbitration in disputes between buyers and sellers of oil; **(iv)** the Standing Group. on Relations with Producer and Other Consumer Countries is responsible for the promotion of co-operation with non-member countries on oil matters; and **(v)** the committee on Energy Research and Development promotes research into the use of new technologies to increase the efficiency of existing energy use and to develop. alternative energy sources through international projects. The IEA has sponsored numerous international energy research projects in such fields as conservation technology, coal technology, enhanced oil recovery, nuclear power, solar energy, geothermal energy, biomass conversion, ocean energy, fusion energy, wind energy and the production of hydrogen from water.

The Standing Group. on Emergency Questions is assisted by an industry advisory board made up. of senior oil company supply executives. There is also a coal industry advisory board, made up. of leaders of coal-related enterprises, which advises the governments of member countries on issues connected with the production, trade and use of coal. In its

consideration of nuclear energy questions, the IEA co-operates closely with the OECD's Nuclear Energy Agency (established in 1958, originally with an exclusively European membership. but now comprising all the full members of the OECD except New Zealand).

See Richard H. Lauwaars, Some Institutional Aspects of the International Agency, Netherlands Year book of International low 1982 pp. 113- 45; U. Lantzke, The International Energy Agency. XXVI European Yearbook 1978, pp. 41 -67 and M. Willrich and M. A. Conant, The International Energy Agency: An Interpretation and Assessment, 71 AJIL(1977), pp. 199-223.

For Examination of the developments lead to the establishment of I.E.A see R.F. Scott, Innovation in International Organisation; the International Energy Agency, Hosting International and Legislative Law Review 1977, pp. 1-56 at pp. 18-19.

135 **Industry:** (i) Effective incentives for energy saving investments, including encouragement of the manufacturer of more durable goods; (ii) advice for small and medium industry and energy reporting, auditing and target setting for energy-intensive industries.

136 **Residential/Commercial:** (i) Building codes with minimum thermal and air-conditioning efficiencies for all new buildings; (ii) effective incentives for retrofitting existing buildings; (iii) education and information programmes; (iv) individual metering of gas/electricity, heat and hot water; (v) minimum energy efficiency standard for appliances

137 **Transport:** (i) Minimum fuel efficiency standard for motor vehicles; (ii) significant taxes on gasoline and progressive taxes on cars according to weight or fuel efficiency; (iii) incentives for public transport; (iv) investments in infrastructure and equipment for public transport; (v) speed limits on roads.

138 **Energy sector.** (i) Incentives and regulations of district heating, combined production of heat and power and for the greater use of wasted products and wasted heat; (ii) full cost tariffs for electricity generation, taking into account the costs of replacement. See Green Paper, op. cit., p. 160.

139 See Waeled, op. cit., p.31. "Indeed, The Community, along with many others, took the costs of energy so entirely for granted that the formation of an oil produce is cartel in the early 1970s created the equivalent of an earthquake throughout the western economies, the cartel forced oil prices to increase ... Since the OPEC phenomenon, supply security has been considered of vital importance and has been at the heart of the European Commissions activities in the energy sector" See Paul K. Lyons, EC Energy Policy A detailed guide to the community, impact on the Energy Sector. A financial Times Management Report (F.T.M.R) (1996) Report published and distributed by financial Times, Business Information 7th floor, Broadway Buildings 50-64 Broadway London JW117 ODB. Hereafter refer to as Financial Times RP.

140 Proceedings of the conference "What should European Union Energy Policy be?" Debate on the European commissions Green Pipe Conference Organised by the Club de Bruxelles with the support of the European commission (DGXVIJ) Brussels Palais de Congres 22 & 23, June, 1995.p.14 hereinafter referred as Debate E.C.G.P.

141 Ibid., p. 18.

142 Ibid., p. 30 and Financial Times Report, op. cit., 91

143 Ibid.

144 For Jobs and Energy Conservation, see: (a) - Employment Effects of Energy Conservation Investments in EC Countries, Fraunkofe Institute for DG XVII, 1985; (b) - Energy Efficiency : The Policy Agenda for the 1990, Policy Studies Institut, op. cit., 1993; (c) Waking Future ? Jobs and the Environment Friends of the Earth Centre, 1996.

145 OPEC Secretary General Ali Al-Jaidah in lecture before the international association said: "Conservation encompasses a wide range of policy options. It has become a watch card of energy policy in all industrialised countries and yet definition differ widely in all industrialised countries and yet definitions differ widely as to what as to what we really mean by energy conservation. OPEC bulletin, op. cit., April, 1978. Also reproduced is Ali Al-

Jaidah, An Appraisal of OPEC Oil Policies, 1983, p84.

146 See supra Footnotes 73, 78 and 79

147 See Allawani, op. cit.

148 N.D. White says in this connection: "More so than human rights, environmental matters require clear and effective lead from the global organisation. Nevertheless, despite these deficiencies in institutional competence, environmental protection is much higher on the agendas of universal, regional and even trade organisations, and has led to the creation of new organisations, developments which may eventually lead to an effective unitary environmental organisation along national lines, one with mandatory and enforcement powers vested in an executive body. It is to be hoped this development is not too late." Se N.D. White, *The Law of International Organisations* [Manchester University Press Manchester 1996]. p.274.

149 See infra, Section 6.4.9.

150 See Allwani, op. cit. and Almurtathi op. cit.

151 For further details on these contributions, see Brook, JE4N Resources Law, op. cit. supra Footnote 11

152 For coverage of those actions see Ibid.

153 See supra, Sections 6.4.2 and 6.4.3 for nationalisations and infra Chapter 6.5 for price controls.

154 According to the final report of the international committee for studying educational problem made by UNESCO it was said that it is not possible to formulate a single concept of definition of information. However, it has been said that information is a medium, that facilitates change, but is not denote means of change. It also performs an important role in the attainment of political, economic and social goals of all nations, both in the internal and external fields.

See the Final Report of the International Committee for studying communication problem. UNESCO, Paris, 1979, p.3.

155 OPEC press Release, OPAT, 19 (1971) OPEC library pamphlet OPEC/L/1971/891/p.3. Also it has been said that the raison d'être of OPEC is to transfer information from oil companies to Member Countries. See Mikio Tajima " Peace through Economic Justice" this book written in the Memory of Perez - Guerrero of OPEC Founders, RN, (1991), p.3.

156 See Pollard, op. cit., p.161-3, Kate Baragna and Simon Gleason, "Uzbekistan, on the Road to Re Future", in T.W. Waelde and K.M. Christie "Energy Charter Treaty Selected Topics" University of Dundee Mineral Law and Policy, (1995), p. g-3;

Kamal Hussin, op. cit., p.10, and also see UNCTAO VI : Commodity Issues: A Review and Proposals for Further Action. TD / 273 (Belgrade: June, 1983), p.p. 43-44. In the United States, oil companies have sought.

157 See Rouhani, op. cit., p.123

158 See Ingman, OPEC bulletin, (April 1997), p.3.

159 See D.E Schnze, ett al Mining Ventures In Developing Countries part 2 (The Netherlands, Denmark: Kluwe . (1981), p.79

160 See OPEC Declaratory statement, op. cit., preamble.

161 See "OPEC information policy" Secretary general internal Document in OPEC library, O.J.P.L.F 16/68. P.3.

162 Ibid., p.4.

163 Ibid., p.4

164 See OPEC Annual report, op. cit., (1982) p.105.

165 Large number of IPAs recognise the information activities as "either an objective or function of the Organisation". See Pollard, op. cit., p. 188. Examples of these IPAs are the

African Groundnut Council, The Pepper Community, The Union of Banana and the International Tea Promotion Associations.

166 The role of the Secretariat in this regard is expressly recognised in most of the IPA Constitutions. Examples of these can be found; the constitution of O.W.P.E.A.C. which provides that the collection and dissemination of information is given to the Secretary General through the establishment of a department of information within the secretariat structure. Also see Article 19 of the CIPEC Agreement. See Pollard op. cit., pp.189-190.

167 See OPEC Information Policy, op. cit., p.1.

168 Other IPA; information activities ever all aspects of their field of concern. Thus IBA Secretariat confirm that one activity going on is "exchanging information concerning all aspects of the exploitation, processing, marketing and use of bauxite and its derivative". See IBA Secretariat, "Information on the international bauxite association". (Mimo 1981, p.3). Agreement on International Energy Program Article 42 shows area of concern in one Agency Information Activities which provide: " exchange of information on such matters as resources, supply and demand, price and taxation."

169 See OPEC official Res. Op. cit., p.6.

170 According to the conference No. 103 held in Jakarta, Indonesia from November 26 to December 1, 1997 adopted resolution No.103. 359 and according to this amendments article 32 (formally Article 33 reads as follows;

"The secretary general shall be arrested in the discharge of his duties by a division of research, an administration and Human Resources Department, a Public Relations and Information Department, his own office and any division or department the conference may see fit to create."

See OPEC monthly bulletin, op. cit., January 1998.p.3

171 Strangely the budget designated by the conference to the secretariat is not sub designated to each department. Except few years these department did not have separate budget to operate. They have to require the finance for each specific work or project to be carried.

172 In an organisation such as OAPEC, organs responsible for the information policy under the General secretary are empowered to draw their own long term plan, and also yearly budget. These plans are adapted as part of the secretary general information plan. They are also empowered with these plan to co-ordinate and agree directly on long term policies with member countries.

173 On the basis of the periods of their emergence, OPEC publications could be classified into permanent, annually, quarterly, monthly, or weekly.

174 Almost all international organisations have certain publications. The content, purposes, methods and way of distributions may differ but no organisation without publications. See Schermer, op. cit., p.319

175 OPEC publishes Annual reports. The first was in 1970 and the last was in 1997. The reports until 1994 was covering full report about each and every member of the organisation, review the oil market, provide legislative developments in member countries and give full coverage of the oil companies in member states. However, since 1994 the report became smaller in size and it cover in brief reports on OPEC in re world economy, oil market developments, OPEC press release, activities of the secretariat. It is usually opened until forward by the secretary general. Other IPAs publish similar reports Thus the CIPEC publishes an annual statistical bulletin which provides information on individual CIPEC members as well as of CIPEC; position in the world coffee trade. Classifying the materials on the basis other type of subjects published in OPEC periodicals they could be divided into information and treatment materials. The latter cover discussions, documentation legal and statistical subjects.

In addition to the annual reports OPEC publishes monthly oil market reports, weekly market new reports and monthly secretariat activities report.

(a) Monthly oil market report consist of a selection of key economic data and analyses used in the properties of the organisations assessments of the state of the international oil market. Usually it contains highlights of the world economy, crude oil price movements, product markets and refinery operations, the oil futures market, the tank market, world oil demand, world oil supply, stock movements, balance of supply and demand. First publication of this report was in 1992.

(b) Weekly market news : This is small pamphlet printed in loose papers and distributed freely. It contains news of production, pricing and consumption of oil. The information deserved for member countries resources and outside resources.

(c) Monthly secretarial activities report is published inside the organisation and distributed to member of staff.

176 Unfortunately OPEC publication's book is very poor compared to OAPEC. The latter published over 120 books whereas OPEC published not more than 20 books if we include small booklets.

177 OPECs most important publication is the monthly bulletin. It is the largest distributed publications in OPEC. It is published by OPECNA information department. Its marketing is done by local representatives in different places such as, London, USA, South Africa, Japan and for East. Unfortunately no representatives are in member countries and other third world countries. This contradicting OPEC call for transfer of information to member countries and third world countries.

178 OPEC review is an energy and development forum which is published quarterly for the last seven years. This contains reports and articles which are more academic than informative ones.

179 OPEC publishes certain pamphlets such as OPEC press release as weekly basis also pamphlet we published giving chronological events. The latter was stopped in 1983.

180 See OPEC bulletin op. cit. , April, 1981,p.71. In addition OPEC publishes booklets such as: (a) Facts and figures (1986-1993), (b) OPEC official resolutions (1960-83), (c) OPEC official resolution (1984-88), (d) OPEC official resolution (1988-90), (e) OPEC at a glance (f) OPEC view point (1992-94)

The head of OPEC ID indicated that "we have become one of the most important sources of petroleum information. The universities started to teach subjects related to energy and petroleum with the assistance of the organisations publications."

181 To date, OAPEC has published 160 books in Arabic, English and French language whereas OPEC publications of books do not exceed 20 books. all in English language. For OAPEC publications of books see " OAPEC in brief 1996" published by OAPEC, Kuwait (1996), p. 43

182 International Bauxite Association, "Issues related to the Marketing and Shipping of Bauxite and Alumina". (IBA /CB/1/6/80-Rev.1), November 1980.

183 OPEC published series for the period between 1963-1978 "selected documents of the international petroleum industry."

184 Unofficial interview with Mr. Baghadi Mohammed, Libyan national head of legal department in OPEC 1983-87. Interview held at headquarters of OPEC, Vienna, 16th.April 1986.

185 Ibid. If OPEC wants this type of publication to continue it must allocate budget and urge Member Countries to operate. In the past OPEC Legal Department played a great role in this by creating a network comprised of all Member Countries' Legal Departments in the Oil Ministries and National Companies of Member States. These departments acted for co-ordinating between Member Countries and the organisation. Now a Legal Department has to write to Member Countries through the Secretariat office and the latter has to write to the Oil Ministries in the Member Countries. This indirect communication resulted in great delay and sometimes in loss of interest.

186 These figures and analysis obtained from visits to OAPEC data bank for a number of times in Kuwait and at OAPEC headquarters in Kuwait. Also see " OAPEC data bank" paper

presented at the fifteenth session of Oil & Gas industry, Kuwait March 1997, by OAPEC Economic department.

187 Ibid.

188 See first part of this study.

189 Interview held at OPEC Headquarters in Austria also reviewing OPEC budget reports, unpublished internal document, reconfirm this. In fact this section has no separate budget. The staff work as an employee but no special budget is located for this section.

190 The tenth meeting of OAPEC conference held between 12-15-1965, decision was taken to instruct the economic commission to carry out this study. See OAPEC, information booklet, op. cit., p.20.

OPEC Economic commission carries out studies and submits them to the Board of Governors. It has been doing this since it established detailed studies. See OPEC official resolution, op. cit., 1960-83 pp. -27,43,46,58,70,77,88,116,119,129 and optic official resolution, op. cit., 1984-88,pp. 216,229,236,254,260,268,275,284. Examples of these studies are: Market developments, Reference of the oil price structure and oil market stability, oil supply and demand situation, application of posted prices, way of linking oil prices to manufactured goods, and studies on integration of the petroleum industry in the national economics of Member Countries.

191 See OPEC official resolution No. 7/1997 adopted by OPEC conference held in Jakarta, Indonesia, from November 26 to December 1st.1997 in which the OPEC Statute was amended. Published in OPEC monthly bulletin, op. cit., (January 1998) PS. Article 33 (formerly Article 34)

192 See "Energy policy" a consultation document presented to parliament by one secretary of state for energy by command of his Majesty (February 1978), published by his Majesty's stationary office, (Index 1979) p.58.

193 OPEC instructed private consultants to submit studies on the following subjects: (a) a Participation Study was submitted by Khalid Al Kholy in Lebanon. See Footnote: (b) Legal Aspects of the OPEC Declaratory Statement was submitted by Mr. Zuhayr Mikdashi; (c) OPEC Unified Petroleum Law by Mr. Mohammed Mughrabi.

194 For instance the BP. and Shell have plans for their information programmes which extend to a period of 20 years. In this regard Mr. A. Olaiya Board of Governor in his mission report said " My visit to shell perhaps remains more significant by their long term view of business and personnel planning and objectives. Shell apparently has a large form of planning than most stage companies with planning period of 20 years." See A. Olaiya "Mission Report" head of personnel unit, published as annex JI in "Report of the monthly activities of the OPEC secretariat, Vienna, April, 1982. Ref. No. 540/91/82/M.A. 4/369, p.16. The lack of long term strategy can also be derived from the statement made by Mr. Othman A. Khilky when he said: "Whilst I found the seminar to be very interesting and worthwhile, I feel that the areas in which I personally gained additional knowledge cannot be effectively post to immediate use within the secretariat but rather one a longer period of time when the secretariat is planning for the future." See Ibid., p.21.

195 See Paul K. Lyons " EC Energy Policy a detailed guide to the Communities impact on the energy sector", A financial times management report published and distributed by Financial Times Business Information 7th. Floor, Broadway Building, 50-64. Broadway, London SWIH ODB, (1997) pp. 53-56. (Hereafter referred to as financial report).

196 Fadel Challabi, statement at TV interview, Gazira TV Broadcasted in July 1998. Mr. Challabi was previous Secretary General of OPEC and now in charge of centre of global energy studies in London.

197 In 1978 OPEC long term strategy committee was established. The committee in 1978 submitted study which referred to the need to index future oil prices, taking into account imported inflation and participation of the OPEC countries in the generation of wealth for the

industrialised countries: In short, to guarantee secure supplies to the consuming countries, promote a new economic order and strengthen solidarity with the third world countries. The organisations approved its recommendations, which were opposed by Algeria, Iran and Libya. They could not however, be implemented. See Luis Lugs "The amazing story of OPEC" Caracas, (1997), p.32.

198 Other IPAS have arrangements of co-operation with other organisations in the field of research. For instance in collaboration with WNDP,PC has initiated a pepper processing research and product development centre. See T. Manoharan, op. cit., pp.141-142. Also the three Asian JPAs - PC, APCC, and ANRPC have had fruitful co-operation with ECCAP. ANRPC and ESCAP. have jointly conducted research and studies on price fluctuation of natural rubber, the involvement of TNCs in the natural rubber industry and a projection of world demand for natural rubber. See Lugs op. cit., p.255.

199 See OPEC annual report, op. cit., (1995), pp.44-45.

200 Ibid., p.41

201 See OPEC bulletin, December 1996, op. cit., p.3.

202 The aim of OPEC seminars is to promote dialogue between procedures and consumer nations. The seminars usually attended by high official people and influential figures in local governments. The seminars also attended by large number of international and regional organisations and institutions represented, including WNCTAD, OECD, IAEA, OLADE, UNDP, IIASA, UNIDO and OAPEC.

203 Examples of OPEC's participation in outside conferences, seminars and meetings are as follows: Conferences held by the Financial Times, Council for Energy & Studies, IMF, NNCTAD, UNIDO, House of Commons in England, Informal Meeting in Energy Policy Committee of Conservation Party, Oxford Energy Seminars, Oxford Energy Club, European Public Relations Roundtable, UN Third Conference on the Law of the Sea, NIEO meetings, American Petroleum Institute, EEC, UK Institute of Petroleum, Centre for Education in International Management, Kenya Academy of Science, NNEP, Arab European Business Council, UNITAX, Oil Ministries of Member Countries Seminars, Canadian Bar Association, International Iron and Steel Institute, World Bank and Universities.

204 This question was fully discussed in Part of this study.

205 See Article 34

206 For full text see Official Records of the Economic and Social Council, Thirty-ninth session (30 June - 31 July, Resolutions Supplement No. 1, Doc., E/4117, (UN, New York, 1965), p41.

207 OPEC was invited to UNCTAD under the terms of rule 80, OPEC may participate, without voting rights and upon invitation extended to it. See UNCTAD's Rules of Procedure, (TD/63/Rev.1. 2 February 1968), UN, New York, 1968).

208 See for Example "UNCTAD Meeting attended by Representative of OPEC", OPEC Bulletins No. 4 (July 1997(, p.4; No. 4. Vol XXII (April 1991). 0.63. and OPEC Annual Reports 1988/89/90/95/96.

209 See Attega, op. cit., p.39

210 See supra, pp.

211 For the history of relations between OPEC and the Arab League, see Rouhani, op. cit., pp. 140-141. The recent conference was held in Damascus, Syria, on 10-13 May 1998 under the title "Energy and Arab Co-operation". See OPEC Bulletin (July 1998) p.98.

212 See OPEC's Ann.Rev. Rec - 1968, p.15

213 See Salhi, op. cit. p.348.

214 See OPEC's Ann.Rev. Rec. - 1968, p.14

215 In this connection See Rouhani, op. cit., 141, Vafai, Thesis, op. cit., pp370 et seg. On the UN's work relating to the petroleum field, see also Mughrabi, *Permanent Sovereignty Over Oil Resources*, op. cit. A.A. Anbari, The Law of Petroleum Concession Agreements in the

Middle East, An Inquiry into the Role of Law in the Development of the Middle East Petroleum Industry" (unpublished doctoral dissertation, Law School of Harvard University, 1967).

216 See OPEC Annual Report (1986), op. cit. p.43

217 Ibid. P. 52

218 See Basic Oil Laws and Concessions Contracts (original texts) (Supplement 131), Barrows, op. cit., p. 22

219 Ibid., supplement 128, p.10

220 Ibid., supplement 120, p.82

221 Ibid., supplement 58,pp.22-28.

222 See Allam, op. cit., p.128.

223 Ibid. 58. See also article 7(1) of Mitsubishi & Abdhabi in OPEC isolated document, (1968) p.45.

224 Now member countries are on an individual basis included in their oil agreements and petroleum legislation's provisions requiring foreign oil companies to train nationals and set up. programmes by which nationals will take over the operational jobs of the industry.

225 See OPEC Monthly Bulletin, [December 1997], pp.32-64.

(a) Monthly average spot quotations of OPEC Reference Basket and selected crude including differentials. [Source : Argus Euroilstock Inventory Report / IEA].

(b) Refined products prices. (Source : same as above).

(c) Refined operations in selected OECD countries. (Source : same as above).

(d) OPEC crude oil production based on Member Countries. (Source :

(e) OPEC crude oil production based on secondary sources. (Source PIW and IEA).

(f) Summarised supply / demand balance. (Source : selected secondary sources).

(g) World crude oil demand and supply (prepared by the Secretariat's Energy Studies Department but based on sources provided by courtesy of Platt's Energy Services).

(h) Spot crude oil prices. (Source : RVM, Platt's Oilgram Price Report).

(i) Selected no OPEC crude oil prices. (As above).

(j) North European market prices. (Sources : Platt's Oilgram Price Report & Platt's Global Alert).

(k) South European market prices. (Source : Same as above).

(l) The US east-cost market. (Source : Same as above).

(m) Caribbean Cargoes. (Source : Same as above).

(n) Singapore Cargoes. (Source : Same as above)

(o) Middle East Cargoes (Source: Same as above)

226 See OPEC monthly bulletins, op. cit., in all bulletins under market review and tables.

227 For other IPAS experience in this field see Anyemeder, op. cit., pp.252,256.

228 Internal Bauxite Association, Issues related to the Marketing and Shipping of Bauxite and Alumina. (IBA/ca/1/6/80-rev. 1), November 1988.

229 Harisch, R, "Confrontation between primary commodity producers and consumers; the Cocoa hold-up. of 1964-65", 13 Journal of Common Wealth and comparative politics (1975), p.251.

230 Manuel Rico Santos, Possibilities for trade Expansion and other forms of WNCTAD TD/B/C.7/54 (1982,p.23.

231 See OPEC Bulletin (May 1998) p.19

232 Generally these organs lack much of the requirements of successful work, such as the human qualified forces (OPEC Libreary for example has two librarians, one assistant librar-

ian, on research assistant and one typist). Their monthly salary ranges between 10,000 AU to 30,000. Such low salaries cannot obtain high quality staff and with such limited staff, a lot fewer activities can be carried out. The same thing can be said about other departments such as the Public Information Department (5 members) and the News Agency (3 members).

233 This subject has been examined extensively in vast amounts of literature. For the purposes of this thesis, however, we shall deal with it in brief. For a discussion of these issues, see: Rouhani, op. cit., p. 132; Mikdashi, op. cit., p. 81; Challabi, op. cit., p. 87; Dr. Rajai M. Abu Khada, A Brief History of OPEC, (paper obtained from OPEC Library), pp. 39-46; Shukri Ghanem, OPEC, A Cartel or a Group of Competing Nations ?, (a paper presented at the Conference on the Economics of Energy, University of Colorado, Boulder, May 9-11, 1974), obtained from OAPEC Library, [Ref. No. 6655 (12), GHA], pp. 28-41; Mughrabi, op. cit., pp. 141-160; Otaiba, op. cit. p. 96; Tauna, *Discretion*, op. cit., pp. 48-53; Supplement to MEES, op. cit. (August 1964) vol 28; Seymour, op. cit., pp. 43-52; and Adelman, M., *The World Petroleum Market*, pp. 182-187.

234 Companies in the same countries differed in that the majors mainly paid their income taxes on the basis of posted prices, minus some discounts – while independent oil companies paid their income taxes on the baisi or realised prices.

235 Libya, for example, was practically levying companies income taxes according to the realised prices, in spite of the fact that an amendment of the Libyan petroleum law took place in August, 1961, introducing for the first time a formula which used the posted prices as a base for calculating royalties. See Article 13, paragraph C, Royal Decree amending provisions of the Petroleum Law No. 25 of 1955, Official Gazette, July 1961, reproduced in Al Murtathi, op. cit., Vol. 1, p. 35.

236 For a review of royalty systems worldwide, see Barrow & Barrow, op. cit., pp. 23 – 63. Also see Shihata, op. cit., pp. 18-31.

237 Professor Adelman says: "In 1960 Soviet circles were the most prominent low-priced sellers. In 1964 and 1965, North African, particularly Libyan crude, were the most notable low-priced sellers." Consequently, Libya's as well as the other Middle Eastern Countries per barrel revenues were deteriorating and not identical. They deteriorated according to average price each year and were not identical among oil companies. While, according to Hartshorn, Esso Oil Company's average payment to the Libyan Government was 90 cents per barrel for the years 1964 and 1965, the average payment per barrel to the government by Oasis Oil Company was about fifty cents per barrel. See Hartshorn, J.E., *Politics and World Oil Economics*, pp. 21-22.

238 See *OPEC Official Resolutions*, op. cit., Resolution no. 3V 32, 33 & 34, pp. 40-48.

239 See *OPEC Official Resolutions*, op. cit., p. 7. OPEC decisions in regard to royalties can be summarized as follows: (i) Resolution no. IV. 33, *OPEC Official Resolutions*, op. cit., p.17.; (ii) Resolution no.VII. 49, *OPEC Official Resolutions*, op. cit., pp. 25 –26; (iii) Resolution XI. 72, *OPEC Official Resolutions*, op. cit., pp. 48 – 49.

240 See *OPEC Official Resolutions*, op. cit., p.25.

241 Ibid.

242 See Mughrabi, op. cit., p.141. Also OPEC relied on the law and practice of the U.S, Venezuela, and other countries to support its claim. In this connection OPEC said, "Even when the federal government in the United States is the land owner, the royalty is distinctly separated from tax liabilities." The significance of the distinction between royalties and income tax was argued by the Secretary General of OPEC, in a memorandum presented to oil company representatives. See Fouad, Memorandum Concerning the Expensing Royalties, presented by the Secretary General of OPEC to oil company representatives during the London Talk, October 1969 (unpublished), p. 3.

243 See Mughrabi, op. cit., p. 143. For a full detailed study of the arguments and counter arguments in relation to the issue of expensing royalties, see ibid., pp. 142-149. However, by

way of a summary, one may say that OPEC's legal argument was mainly based on the necessity and need of uniformity between OPEC member countries: 'Most favorable nations' clause; substantial changes of circumstances; U.S practice which distinguished between royalty and tax; doctrine of economic compulsion; *droit .administrative*; and most importantly the doctrine of permanent sovereignty. The oil companies' legal arguments were based on: *pacta sunt survanda*; 50/50 percent formula; royalties are payable even if the companies did not make a profit; and finally there is no justification in comparing the royalty system in the U.S. with the situarion of the OPEC Member Countries.

244 See *OPEC Official Resolutions*, op. cit., p.27.

245 See *OPEC Official Resolutions*, op. cit., p. 124. The expensing royalty arrangements raised the income per barrel for the countries who agreed on it without raising the posted prices. For detailed examinations of these and the economical and financial benefit of royalties arrangements, see Middle East Pay-Off, [The Economist, January 23, 1965], p.353; Shukri Ghanem, op. cit., pp. 30-38; and Adelman, op. cit., p. 183.

246 For a full examination of other IPAs' successes in this matter, see, OAUYD, op. cit., pp.243-259.

247 We are not intending to study the production programme in relation to the issue of prices. This subject will be discussed in OPEC's pricing policy infra.

248 According to Dr. Jafar Mansour Saad, the creation of OPEC itself was designed by the need "to subject the productions and pricing of this asset to national political sovereignty and national economic development needs." See OPEC Bulletin (April 1988) op. cit., p.12. See also Part One of this study. Rouhani, op. cit., pp75-77. In fact this was in the minding fathers of OPEC. Sheikh Abdullah Tariki and Perez Alfonzo called for "international proration", by which they meant that exporting countries should limit their production and exports rather than continue to sell their non-renewable national assets at falling prices. See F.R. Parra, The Development of Petroleum Resources Under the Concession System in Non-Industrialised Countries OPEC Vienna, 1964 p.35. Finally, see Ian Skeet, OPEC "Twenty-five years of prices and politics", 1988, pp.6-36.

249 See Robert Mabro "OPEC's Production Policies: How do they Work? Why don't they work?" (12988 Oxford), Oxford Institute for Energy Studies.

250 For full examination of these structural aspects, see Part One of this study. Also see Rouhani, op. cit. pp.8-94 and Mikdashi, op. cit. pp.139-144 and Hussin, op. cit. pp1-98.

251 See OPEC Official Resolutions, Resolution No. II, op. cit. p.2

252 Ghanemm, op. cit., p.15

253 Financial Times, 14 February, 1966 Quoted also at OPEC bulletin (March 1966), p.38 op. cit., p.38. While Iraq and Iran were demanding oil increases to meet their need for revenues, the Saudi Oil Minister, Yemani claimed that his government "had never interfered with the export plans of the companies operating in Saudi Arabia". See MEES, 1968.

254 Ghanemm, op. cit. p.16

255 For full survey of Venezuela's efforts to convince OPEC to adopt a production programme, see "OPEC and Venezuela: The Pioneering Attempt to Stabilise Oil Prices" Francisco R. Parra in Peace Through Economic Justice. Essay in Memory of Manuel Perez Guerras edited by Mikai Tazmes, pp11-20.

256 Ibid., p.16

257 MEES, Supplement, 18 December 1960, op. cit. p.2

258 Ibid.

259 Ibid.

260 What will OPEC Mean? The Economist, 14 January, 1961, p.177

261 MEES, 22 March, 1968 op. cit.. p.20

262 MEES, Survey, Supplement, 18 December, 1960 op. cit. p.2

263 The Economist, op. cit. p.155

264 Saudi reserves in 1972 were 140 billion bbl, Kuwait 76.1 billion. Reserves were (in billion bbl) in 1972, Saudi 14, Kuwait 76.1 and Iran 55 whereas Venezuelan reserves were 14-75. See Appendix No.

265 See OPEC bulletin, (March 1967) op. cit. p.8

266 Resolution XIV - 84. See OPEC Official Resolution, op. cit. p.69

267 Resolution XX-112 and XX1-121 Resolution XXIII-133. See OPEC Official Resolution; op. cit. p.89, p.92 and p.114.

268 Resolution XX.112 adopted at the 20th Conference of OPEC held in Vienna on 27 July 1977. See OPEC Official Resolution, op. cit. p.70

269 Ibid. p. 202

270 See Mabro, op. cit., p.12 Also see OPEC Bulletin (May 983), p.22

271 See Ibid.

272 See Hassan S. Zakariya, Convergence and Divergence between the Exporting Countries, paper submitted to the United Nations, obtained from OPEC Library. p. 103

273 See OPEC Official Resolutions (1984-1988), op. cit. 0.225

274 Ibid. p.226

275 Ibid. p.226

276 Ibid. p.226

277 Ibid. p.226

278 Ibid.

279 Ibid.

280 Ibid.

281 Ibid.

282 See infra, Section 6.5.3.

283 See OPEC Official Resolution, op. cit., p.16

284 See Conservation Policy of OPEC in this Part

285 For full examination of these differences see Mabro, op. cit. pp12-38, Ali Jaidah, op. cit. pp16-28. Mikdashi, op. cit., pp97-129 and Ashraf Lufti, pp. 54-65.

286 Symour, op. cit. pp194-195

287 For an examination of this subject, see Illich, op. cit.

288 See 2 OPPENHEIMS, Self Defence in International Law S4, and 119 (1958), and The Law of the United Nations 915 (1951)

289 Bowett said "Taking the words n their plain, common sense meaning, it is clear that since the prohibition is of the use or threat of force, they will not apply to economic or political pressure but only to physical, armed forces." Bowett, International Law and Economic Coercion, 16 VA.J. Int'l 245 (1976)

290 In the 1945 San Francisco Conference during the drafting of Article 2(4) voted 26-2 against a Brazilian proposal to extend the prohibition to specifically cover economic measures. Doc. 784, *I/I/27*, UN C.I.O. (1945) Vol. 6, pp. 334-335.

291 In the course of the debates, the Belgian delegate put forward the view that Brazilian concern about the use of economic pressure was met with the general provisions that force should not be used in "*any... manner inconsistent with the purpose of the United Nations*". The most reasonable interpretation would appear to be the Brazilian amendment was rejected on the grounds that article 2(4) as drafted, does forbid the use of economic warfare if - but only if - the measures in question are substantially equivalent to a use of military force of the kind clearly forbidden by the Article. Another argument used by the supporters of narrow interpretation that if Article 2(4) is extended to cover economic and political pres-

sure, difficulties will arise in separating legal from illegal economic and political coercion. See Kenkin, Force, Invention, and Neutrality in Contemporary International Law, 57 AM.SOC. V INT'LL. PROC. (1963) 147 pp158-159.

292 See Lee. C. Buchheit "The Use of Non-violent Coercion: A Study in Legality under Article 2(4) of the Charter of the United Nations" Lillich pp.55-57. Buchheit argues that: "...why would the drafts, after eloquently expressing their desire for a peaceful, harmonised world, limit the first clear precept embodying this goal to one particular kind of disharmonising activity - armed warfare?" Another basis for a wider interpretation is the United National Charter's Constitutional Charter. This argument is summarised by Buchheit in the following terms: "The language of Article 2(4) had to be open-ended if it was to remain effective as a behavioural norm; the history of the United States constitution has shown the necessity of formulating new protections for liberty as new dangers to it arise. Similarly the Charter of the United nations must either permit or even encourage the evolution of the norms that are responsive to new dangers, or be related to the status of an irrelevant historical document. Such an event would clearly be repugnant to the spirit of the Charter and to the intention of those who wrote it." Ibid., p.57

293 Buchheit argues that "... While these sources cannot directly affect the meaning of Article 2(4) they do evidence world recognition of the need to define more precisely the notion of impermissible coercion, and offer some indication of current trends of thought in this regard." Ibid. p.57 These sources have been defined as the definition of aggression; General Assembly resolutions speaking directly to the subject of non-military coercion; and international treaties.

294 For the literature which discusses the different argument for the definition of Aggression See Frencz, Defining International Aggression, 2 Vols. (1975); Stone, Conflict through Causes: UN Approaches to Aggression (1977) and Ibid.

295 For full examination of this see Lee C. Buchheit, The Use of Non-violent Coercion: A Study in Legality under Article 2(4) of the Charter of the United Nations, in Lillich op. cit., pp41-69

296 The International Law Commission of the UN discussed the issue of uses of aggression and force included economic warfare. It included that it was best simply to have a general statement concerning the use of force and to refrain from specifying one way or the other whether economic warfare fell into that category.

Report of the International Law Commission on the work of its 18th Session, General Assembly Official Records, 21st Session, Supplement No.9, UN Doc.A/6309/Rev.I (1966), reprinted in Yearbook of the International Law Commission, 1966, Vol.2, pp.172-246, UN Doc. A1 CN.4.SERA/1966/Add.I (1966). On the debate within the Commission on the subject see Malawer "A New Concept of Consent and World Public Order": Vanderbitt Journal of Transnational Law, 4(1920), p. I. at pp22-25.

297 Brosche is supported in this view by Blum who concludes that: "(Boycotts) are ... unquestionably incompatible with the duty of states under Article 2(3 of the Charter to settle their international disputes by peaceful means and are likely to exacerbate international tensions and to endanger international peaceful security the maintenance of which is the control objective of contemporary international society."

298 Bowett, "International Law and Economic Coercion" at Lillich op. cit. p.89.

299 For the legal nature of the United Nationals Declarations and Resolutions, see Part 3 of this study. With regard to the UN Intervention Declaration, Professor Bowett says that despite the fact that UN and General Assembly Resolutions are not binding, this does not lead us to conclude that these non-binding Resolutions are to be disregarded totally, therefore he suggests that these resolutions cannot be dismissed out of hand. See Illich, op. cit. p.111.

300 General Assembly Official Records, 20th Session, 1st Committee, 14, 22nd Meeting at pp430-4, UN Doc. A/C I/SR.1422 (1965).

301 See Part 3 of this study.

302 Ibid.

303 Ibid.

304 O. Schachter, "Sharing the World's Resources", New York Columbia University Press, (1977), p.172

305 See Kubber, p.97

306 Article XI of the General Agreement on tariffs and Trade (GATT). The GATT is primarily directed towards the reduction of tariffs and elimination of discriminatory treatment in international commerce.

307 These agreements were taken by some international lawyers as a legal basis for the illegality of the Oil Embargo in 1973. See Bowett "Economic Coercion and Reprisals by States", BVA.J.Int'l, 1, 2 (1972).

308 For full examination of these grounds, see Ibid. and Faust and Blastein, op. cit. pp. 136-139.

309 See OPEC Press Release, D/89/41, obtained from OAPEC through personal connection.

310 See Ali Jaidah, op. cit. p.38

311 See Part 2 for the impact of U.A.E. Constitution on the implementation of OPEC's decisions. For more details of the U.A.E. Constitution See Taryam, A., "The Establishment of U.A.E., 1950-1985", Crown Helm, London (1987), p.207. For the text of U.A.E. Constitution in English See "The Constitutions of the Countries of the World, ed. Albert P. Blaustein, 4 Gusbert New York (1982). The text in Arabic is found in GCC Legal Gazetteer ed.3 (1983).

312 Mabro (1989) pp. 32-35

313 Ibid.

314 See Abbas Alnasrawi *OPEC in a Changing World Economy* (USA 1985). The John Hopkins University Press, p.19. For more details of oil pricing history See Seymour, op. cit., pp34-38, Ian Skeet, OPEC: Twenty-five years of prices and politics, 1988 pp6-34.

315 Ibid. p.20

316 Ibid., p20

317 Ibid., pp. 20-21

318 Ibid., p20

319 Ibid., p48

320 Jaidah, op. cit. pp18-19

321 Alnasrawi, op. cit. p.48

322 Ibid., p60

323 Jaidah, op. cit. p.19

324 Ibid., p20

325 See Part One

326 See in particular the Conclusion of Part 6.

327 See H. Zakariya, p.115

328 Resolution XX.112

329 At the same time the pipeline transporting about half a million barrels per day of Saudi production was fractured.

330 In addition to these advantages Libyan bargaining power was strengthened by accumulated reserves and the existence of large number of oil companies by which Libya can play one against another and finally the Libyan political will which came as a result of coming of the militant regime.

331 For full examination of these developments see Alnasrani, op. cit. pp20-58.

332 For full examination of the OPEC pricing activities during this period, see Alnasrani, op. cit., pp20-50, Jaidah, op. cit. , (Chapter 8), pp91-99; A. Lufti, pp.68-78 and Seymour, op. cit., pp388-120.

333 In 1961 OPEC passed Resolution 11-13 in Caracas which instructed the Board of Governors to take additional study concerning oil prices policy. In accordance with this Resolution, two well-known consultancy companies Arthur D. Little of US and the Economic Intelligence Unit of Britain concluded an extensive study on this matter.

334 Evan's argues that "... the price increase merely reflected the effect of political and economic developments on international oil market conditions, which would have occurred even in the absence of OPEC." See A.C. Evans "OPEC Pricing Policy", (J.W.T.L.) Vol. 16 No. 6 (Nov/Dec 1982), p.529

335 This monopoly was discussed in Part One. For detailed examinations of this see F. Para, "OPEC and the Stabilisation of Petroleum Prices" a talk given at the Graduate Institute of International Studies (Geneva 1968), p.3 OPEC Library pages No. LD/RES/XV.90.

336 For the text of OPEC communiqué, see MEES, September, 21, 1973, op. cit. p.4a.

337 See Kubbah, op. cit. p.52

338 See Zakariya, op. cit., p.118

339 Petroleum Intelligence Weekly (PIW), March 27, (1972), pp5-6. Quoted from A. Alnasrawi, op. cit. p.27.

340 See Luis Lugo, op. cit. p.30.

341 OPEC Bulletin (May 1983), p.21

342 See Conservation Policy in this study.

343 See Sections 6.4.1 - 6.4.3.

344 This act was seen by OPEC as the "first act of sovereignty on the part of OPEC". See OPEC Bulletin, (October, 1989), p.5. The reasons for these price adjustments summarised by the OPEC Secretary in the following terms: "price adjustments were dictated by a need to put right a grievous wrong, to establish the right group. of developing country oil producers to obtain a just price for a developing resource which forms the bread and butter of their economies."

345 For different opinions and arguments see Evans, op. cit., pp522-530. For similar argument see Lufti, op. cit. pp50-83, and Alnasrawi, op. cit. pp19-64.

346 The information in this table taken from Luis Lugo, op. cit., p.31

347 See OPEC Official Resolutions, op. cit. pp....

348 See Shihata, op. cit., pp138-164.

349 See OPEC Anniversary Collections, Press Release No. 5-78-Vienna, 15 September 1978, p.1.

350 See OPEC Official Resolution, op. cit. pp159-60

351 See Alnasrawi, op. cit. p.58.

352 Ibid

353 See "A Year of Solid Achievement" OPEC Press Release No. 7-79-Vienna, 18 September 1979, pp1-3. Appears also in OPEC Official Resolutions, op. cit. pp167-168.

354 See Alnasrawi, op. cit., p.66 also pp40-43.

355 See OPEC Press Release No. 6-81 Djakarta, 20 October 1981. Appears in OPEC Official Resolutions, op. cit., p198.

356 See OPEC Facts and Figures Booklet (1980), p.32 and OPEC Annual Report (1980).

357 See OPEC Bulletin; (April 1988) p.15

358 Ibid., p.14-15

359 Ibid., p.15

360 See OPEC Press Information No. 4/85 - Geneva, 7 December 1985. Appears in OPEC Official Resolution (1987-88), op. cit. pp233-4.

361 See Alnasrawi, op. cit., p.142

362 OPEC Bulletin (April 1988) p.16

363 For Energy Policy in the IEA See "Energy Policies of IEA Countries/IEA. 1993 ed. Paris: OECD, 1994.606.

364 OPEC Bulletin (April 1988), p.16.

365 See H. Zakariya, op. cit., pp104-120 and "OPEC its Members and World Market", op. cit. pp322 - 338. Also see Anyemedu, thesis, op. cit. p.304.

366 See OPEC Bulletin (April 1988), p.17.

367 Ibid., 17

368 Ibid., p.18

369 For literature examining prices in the 1990s see R. Mabro, "The Oil Price Crisis of 1998", Institute for Energy Studies publication (1998 -UK), J. Gabillon, "The Term Structure of Oil Futures Prices" (Oxford, UK, 1991); "Price Formation and Price Mechanisms in the Oil Market"; Oslo, Norway, March 31-April 1, 1992. Papers. Osloi Norsk Petroleiumsforening (NPF), 1992; "World Oil Trends", 1995-Cambridge, Mass. CERA; Arthur Andersen, 1995, Seymour, Ian. "Oil Price Outlook through 2000" Oxford Energy Forum - No. 24 (02/1996) p.3-5; "Oil Prices" Centre for Global Energy Studies - London: CGES, 1996 p80; Lee Kiseok, et alia "Oil Shocks and the Macro Economy: The Role of Price Variability. The Energy Journal. Vol.16, No. 4 (1995) pp. 39-56, and Mabro, Robert: "Some Thoughts on OPEC's Chronic Dilemma over Oil Prices and Output. MEES. Vol. XXXiX, No. 34 (20/05/1996). P. D1-D5.

370 Mabro, MEES, op. cit. p.22.

371 See OPEC Bulletin (June 1990) p.21. Also see Lugo, op. cit., p.43.

372 Lugo, op. cit., p.45.

373 Ibid. p. 45.

374 Ibid., pp45-47. Also see Mr. Summonu A. Adeyeyo, "Oil Producer - Consumer Dialogue: An Assessment" OPEC Bulletin (May 1993) p.10.

375 For Venezuelan Diplomacy to convince Member Countries to hold a Meeting see ALSHARQ ALAWJAT (in Arabic) Middle East Newspaper No. 4250 - 10th August, Business and Finance Page.

376 Ibid. Also see Energy Policies of IEA Countries/IEA - 1993. ed.-Paris:OECD, 1994 p.420

377 Lugo, op. cit., pp45-47, Also OPEC Bulletins (September - October 1990) op. cit.

378 See Adeyeyo, OPEC Bulletin (1993) op. cit., p.11

379 See Mabro, MEES, p.28. Also see Lugo, op. cit., pp. 45-49.

380 See OPEC Bulletin (April 1991), p.3.

381 For full coverage of pricing development during the invasion of Kuwait, see Lugo, op. cit., pp45-49. For this period information heavily relied on his work. Also see "World Oil Trends" 1995 Cambridge, Mass. CERA; Arthur Andersen, 1995.

382 Mabro, op. cit., p.33. Also see OPEC Press Release No. 3/92 (Vienna, Austria), appears in OPEC Bulletin (June 1992), p.8.

383 OPEC Press Release, op. cit., No. 6/93, Vienna, p.2.

384 For full examination of OPEC's policy for the period between 1990-1994 see Dr. Subroto "Major Energy Issues in the 1990s: An OPEC Perspective" OPEC Bulletin (May 1993) pp. 4-9.

385 See supra Footnote No. 368.

386 See OPEC "Market Review" OPEC Bulletin, op. cit. (July 1994), pp22-35.

387 See "Oil Market Developments" in OPEC Annual Report (1996) published in 1997 in Austria pp.19-38. Also see the 1995 OPEC Annual Report, pp19-41.

388 See Dr. Subroto, (OPEC Bulletin 1993), op. cit., pp4-9.

389 For an examination of the 1997/98 Oil Crisis see R. Mabro, op. cit., (1998), p.43; R. Mabro, "Global Energy Developments and their Implications for the Arab World" published by Oxford Institute for Energy Studies, paper submitted to the Arab Energy Conference held in Damascus, Syrian Arab Republic, 10-13 May 1998. pp1-70. This crisis led some to believe that OPEC is collapsing and other suggested reformation of the whole institution. Thus the ex-Saudi Oil Minister M. Hesham Mouhi Eldeen Nather called for the reformation of OPEC from an organisation of oil exporting countries to an organisation of oil producing countries. See Middle East Newspaper (Al Sharlq Alawjat) in Arabic, No. 7043 - Wednesday 11/5/1998, Business and Finance page.

390 See, Ibid.

391 Ibid. Also see Mabro, (998) op. cit., pp1-11

392 Ibid. p.10

393 See Mr. Hasham M. Nather interview at Middle East Newspaper (in Arabic) op. cit., Business & Finance page.

394 This situation made in the past, Saudi officials declare that Saudi Arabia is no longer willing to act as residual producer. Thus Sheikh Ali Khalifa Al Sabah, in an interview at Asharq Alawsat Newspaper (in Arab) Middle East, called other members not to put the burden on Saudi Arabia and other Gulf countries, to reduce prices by reducing their production. Also he asked for an equitable distribution of reduction in oil prices. He added that OPEC must find a system whereby all Members implement their OPEC quotas. Mr. K. Sabah was ex-Kuwaiti Oil Minister. he explicitly said that Members are discussing side issues leaving the core of the issue such as who shall bear the burden of reducing oil? Is it Gulf countries alone or all Members? See Asharq Alawsat, op. cit., Business & Finance Page May 1990.

395 Saudi Arabia declared not to cut output as long as other OPEC Members (referring to Venezuela, which was over-producing by 900,000b/d). Venezuela's quota is 2.6 mb/d. Venezuela's difficulty in following OPEC's quotas arose from different reasons, one of which is that Venezuela concluded a partnership. agreement with oil companies who are investing heavily in the Venezuelan oil industry. See Ibid.

396 See full coverage of this in Asharq Alawsat Newspaper in editions during May 1998. Also see OPEC Bulletins (June/July 1989), op. cit.

397 OPECNA files.

398 See Mabro, (1989) p.12 and Ibid.

399 For OPEC's policy to persuade non-Members to co-operate in pricing policies including production control, see Subroto, OPEC Bulletin (May 1993), op. cit., pp4-9. Also see, "OPEC/Non-OPEC Joint Communiqué" published in OPEC Bulletin p.cit. (May 1988), p.3. The non-OPEC Member Countries who were members of the communiqué were: Angola, China, Colombia, Egypt, Mexico and Oman.

400 For non-OPEC's steps in this direction, see Mabro (1989) op. cit. "Oil Producers' Responses to the Price Crisis". pp29-37.

401 Ibid. p.34

402 Ibid., pp34-35

403 Ibid., p.35.

404 See OPEC Press Release (Vienna 24 June, 1998), No. 4/98 p.2.

405 Mabro (1989) op. cit., p. 37.

406 See Pollard, op. cit., p. 300, and Mikdashi, op. cit., p. 76.

407 W.W. Roston, The Take-Off into Self-Sustained Growth, [Economic Journal, March 1956].

408 Development of the Bargan field in Kuwait has been delayed from 1990 until now, due to conflict between Iraq and Kuwait. The field is located at the northern boundaries of Kuwait, near to Iraq, and was one of the reasons behind the invasion of Kuwait by Iraq. Kuwait is now thinking of putting this development in the hands of companies from the five permanent members of the UN Security Council (who hold the right to veto). This information was obtained from a private interview with Mr. Fyfe, the Regional Manager of BP, with Mr. Abdullah Al Ayoub who is the Solicitor for Sheikh Saad, the Prime Minister of Kuwait.

409 See Vafai, R., *Opec and the Changing Petroleum Industry*, op. cit., pp. 1-53.

410 See Davidson, *The Law of Natural Resources*, op. cit., p. 16.

411 See Vafai, op. cit., p. 27. For a full examination of these regulations, see J. Chapelle, The Legal and Economic Framework: II : Transport, Refining, Distribution, [UN Seminar on Petroleum Administration, Port of Spain, 16th-27th April 1978].

412 Jeremy Carver, *The Energy Charter Treaty and Transit*, in Waelade, op. cit., p. 71.

413 Quoted from ibid., p. 71.

414 See White, op. cit., p. 274.

415 Those who believe in a formalised and realist concept of international law deny the existence of a body of international environmental laws. They consider it to be in conflict and violate the concept of the freedom of state and state sovereignty. See P.W. Birnie and A.E. Boyle, *International Law and the Environment,* [United States, 1990], p. 10.

416 See Subratue, op. cit., OPEC Bulletin, May 1989.

417 See White, op. cit., p. 274.

418 Ibid.

419 See OPEC Bulletin, March 1979, p. 12.

420 See Vafai, op. cit., p. 28.

421 Int. and Comp. L.Q. (1952), p. 247.

Glossary of Terms

Arab light crude: Crude oil produced in the Kingdom of Saudi Arabia. It is OPEC's most abundant crude and regarded as the Organisation's marginal crude. On many occasions it has been the balance crude and has been used as the OPEC marker crude oil. Its technical production cost is very low (between 10 and 30 cents U.S. per barrel).

Barrel: Measurement unit (volume) commonly used in the oil industry. It is equvalent to 42 American gallons or 158,984 litres.

Barrels per day: Measurement unit resulting from the division of the yearly produced barrels by 365 days. The use of this term is very common in the oil industry.

Crudes differentials: They are also called relative values of the OPEC's crudes. They result by comparing the differences between each member country's crude quality, its geographical location and distance to consumption centers with the Organisation's marker or bench-mark crude.

Down-stream activities: Operations carried out by the oil industry that starts from refining, up to the sale of refined products to the final consumers.

Downstream Operations: Activities relating to the refining, transportation, and marketing of petroleum.

Elasticity: Elasticity is an economic term. It measures the sensitivity of one variable in relation to the changes in some other. Therefore, the price elasticity of the oil demand is the degree of response of oil demand when there are changes in oil prices. Similarly, the oil's income elasticity refers to the changes in oil demand because of changes in the country's Gross National Product. GNP is measured in current and real terms or deflated monetary values.

Government Take: The sum of the royalty (at present fixed at 20% of the posted price) and the income tax (at present 85 percent) paid by the concession-holding companies to the Governments of the host (producing) country for each barrel of crude oil.

Inflation: Process of constant price increase resulting in a decrease of acquisition power by a given nominal monetary sum.

Marker Crude: From the 1st January 1974 the Arabian (Saudi Arabian) Light of 34 API has been designated by OPEC as the "Marker" Crudes forming the basis of the prices of all other crudes. Thus prices of other crudes have been priced at Arabian Light plus or minus gravity differential, sulphur premium, and freight differential.

Marketing Allowance: A certain percentage of the posted price, amounting to about 2.5 cents per barrel, which the concession-holding companies used to deduct from gross income before determining taxable income. This allowance was eliminated by OPEC in 1971.

Net-back contract: Under this type of contract, the sale value of the crudes (FOB) is determined as a function of the market value of what this product yields from that crude, and then netted back, to the export terminal, through the supply chain, by deducting agreed margins based on the importing refiner's prevailing profit margins as well as agreed allowances for the costs of shipping and refining.

Nominal Value: Nominal value is the value of a variable measured in the current money or that of the period.

OPEC Basket: Centre of gravity of the crude oil prices established by the Organisation. Its price is the link between the market and the objectives and policies set by the Conference of Ministers. It substituted OPEC's marker crude, the 34 API Arab Light, for FOB Ras Tanura, as of 1st January 1987.

The price of the basket is derived from the arithmetical average of the prices of seven world crudes, of which six are from OPEC's area and one is from Mexico's Isthmus. These crudes represent the main commer-cialisation currents of international markets. Their values are calculated from the daily spot price as reported by Platt's Oilgram.

OPEC's selected crudes were Arab Light from Saudi Arabia, Bonny Light from Nigeria, Dubai crude from United Arab Emirates, Mines from Indonesia, Tia Juana Light from Venezuela and Sahara Blend from Algeria.

The spot prices for Tia Juana Light derive from the results of the Replacement Values Method of OPEC's Secretariat. This model estimates values of OPEC's different crudes as a function of their yield, quality and location. Platt's Oilgram feed the price information needed by this model.

OPEC Production: Total amount of crude oil coming from the separation plants, received and directly measured from the storage tanks.

OPEC Production Ceiling: Maximum production level agreed by the Organisation for a given period. This is based on OPEC's estimated crude demand and it generally comes with a production program for the member countries. The first attempt of establishment was during Conference 23, July 10th 1971. The first production ceiling was established at Conference 63, March 20th, 1982.

OPEC Production Quota: OPEC's production quota is the maximum level that each member country can produce during a given time. The quotas are fractions of the Organisation's production ceiling. As yet no lasting method of calculating quotas has been agreed by OPEC.

Price: In economics the term 'price' is the sum of cost plus rent, rent being the part of the price above the production cost that the seller obtains from the buyer.

If the cost of crude produced in the field were $1 per barrel, with a sale price of $18 per barrel, the rent element contained in the price would be $17.

Posted Price: A national price used in the calculation of royalties and taxes payable by the companies to the governments of the producing countries. For a long time posted prices used to be set unilaterally by the concession-holding companies but since October 1973 they have been determined unilaterally by OPEC. In October 1975 OPEC decided that in future actual State Sales Price would be the basis for calculation of the cost of crude oil to the companies and thus the system of post prices has now lost most of its relevance.

Real Value: This is the value of an economic variable measured through a currency of a particular year called 'base'. The OPEC Secretariat arrives at the real value of a variable by deflating its values. For this purpose they use inflation indexes provided by international organisations, for example, Exported inflation index of the International Monetary Fund, or OECD index of private domestic consumption.

Royalty Expensing: The practice of separating royalty payments from tax payments, i.e. treating royalty as an item of expense (forming part of the total cost of the oil to the company) rather than a credit against the income tax payable to the Government of the host country. Under agreements made between OPEC Member Countries and the concession-holding companies in 1964 and 1968, the companies agreed to the full expensing of royalties.

Royalty: The amount paid by the concession-holding company to the government of the host country equal to an agreed percentage of the posted price. In principle, the royalty is intended to compensate the owner of the oil – in OPEC's case, the state – for the raw material itself.

State Sales Price: The official price charged by the government or the National (Sale) Oil Company of the producing countries in their direct sales contracts. In countries such as Nigeria and some of the Middle East States, when participation arrangements were being followed, the concession-holding companies would buy back most of the State's entitlement at the state Sales Price.

Up-stream activities: This term identifies the operations carried out by the oil industry that cover the exploration for oil, the oil production activities and the sale of the crude or its delivery to a refinery.

Upstream Operations: Activities relating to the exploration, development, and production of petroleum.

Selected Bibliography

BOOKS

Abi-Saab, G., *The Concept of International Organisation* [1981], p. 51.

Adams, G., *Stabilizing World Commodity Markets,* editor Klein, S., [Health and Co., Lexington, 1978]

Adelman, M.A., *The World Petroleum Market, published for resources for the future, Inc.* [: John Hopkins Univ. Press , Baltimore and London 1972].

Akehurst, M., *A Modern Introduction to international Law* [George Allen and Unwin Ltd., London, 1970].

Akehurst, M., *A Modern Introduction to international Law* , [George Allen and Unwin Ltd., 6th edition, London, 1987].

Al-Baharna, H.M., *The Arabian Gulf States - Their Legal and Political Status and their International Problems*, [2nd edition, Beirut, 1975].

Al-Chalabi, Fadhil J., *OPEC and the International Oil Industry: A Changing Structure* [Oxford University Press, Oxford, 1980].

Alexandrowicz, C.H., *The Law-Marketing Functions of the Specialised Agencies of the United Nations* [Angus & Robertson, London, 1973].

Al-Otaiba , M.S., *Opec and the Petroleum Industry* [Croom Helm, London, 1975].

Arsanjani, M.H. , *International Regulation of Internal Resources: A Study of Law and Policy* [University Press, Charlottessville, 1981]

Atimomo, E. , *Law and Diplomacy in Commodity Economics* [Macmillan, London, 1981]

Beckford, G.L., *Persistent Poverty Underdevelopment in Plantation Economics in the Third World* [Oxford University Press, London, 1972].

Bedjaoui, .M., *Towards a New International Economic Order* [Holmes and Meir for UNESSO, London,1979].

Bekker, P.H.F., *The Legal Position of Intergovernmental Organisations* [Kluwer Academic Publishers, 1994]

Bergsten. C.F., *Towards a New International Economic Order: Selected Papers of CF Bergsten* [Health and Co., Lexington, 1975].

Bhagwti, J. (ed), *The New International Economic Order The North -South Dabate* [LMIT Press, Cambridge, Massachusetts, 1977].

Birnie, P.W. and Boyle, A.E., *International Law and the Environment,* [1972].

Blair, J.M., *The Control of Oil* [Macmillan, London, 1977].

Boson, R and Varon B., *The Mining Industry and the Developing Countries* [Oxford University Press for the World Bank, 1977]

Bowett, D.W. *The Law of International Institutions* [Steven,3rd ed., London, 1975].

Bowett, D.W. *The Law of International Institutions* [Steven, 4th ed., London,1982].

Brierly, J.M., *The Law of Nations: An Introduction to the international Law of Peace,* (ed. Sir Humphery Waldock), [Oxford University Press , 6th ed., 1963].

Briggs, H.W., *The Law of Nations, Cases,Documents, and Notes* [Appleton Century Crofts, 2nd ed., New York, 1952].

Brown C.P. . *The Political and Social Economy of Commodity Control* [Macmillan, London, 1980]

Brownlie, I., *Principles of Public Iinternational Law* [Clarendon Press, 2nd ed., Oxford,1973].

Brownlie, I., *Principles of Public Iinternational Law* [Clarendon Press, 4th ed., Oxford,1990].

Castanda, J., *Legal Effects of UN Resolutions* [Colombia University Press, New York 1969]

Clarfield W. et. Al., *Eight Mineral Cartels New Challenge to Industrialized Nations* [: McGraw-Hill, New York, 1975].

Claude, I.L. , *Swords Into Plow-Shares: The Problems and Progress of International Organizations*, [Random House, 4th Ed., New York,1971]

Commonwealth Experts' Group, *Towards a New International Economic Order* [Commonwealth Secretariat, Final Report, London 1977].

Connely, P. and Perlman, R., *The Politics of Scarcity-Resource Conflicts in International Relations* [Oxford University Press, London, 1975].

Curzon,G., *Multilateral Commercial Diplomacy: The General Agreement of Tariffs and Trade and Its Impact on National Commercial Policies and Techniques* [Michael Joseph, London, 1965]

Dam K., *The GATT Law and International Economic Organisation* [University of Chicago Press, London, 1970]

Dorner, P. and El Shafie, *Resources and Development* [Croom Helm, London, 1980]

Edwards, A. , *The Potential for New Commodity Cartels Copy OPEC or Improved International Agreements* [The Economist Intelligence Unit Ltd. Quarterly Economic Review, Special No. 27, 1975]

El-Bundok, M.,*The Oil Story* [Beirut, 1974-Arabic].

Elian, G. ,*The Principle of Sovereignty Over Natural Resources* [Sijthoff and Noordhoff, Leden, 1979].

El Mallakh, R. and McGuire, C., [eds.], *Energy and Development, Proceedings of the International Conference on the Economics of Energy and Development held by Colorado University in May 1974.*[The International Research Center for Energy and Economic Development, Boulder, Colorado, 1974].

Faundez J. and Picciotto, S., *The Nationalization of Multinationals in Peripheral Economics* [Macmillan, London, 1978].

Fawcett, J.E.S., *The Law of Nations*, [Penguin Books, 2nd ed., England,1971].

Fawcett , J.E.S., *International Economics Conflicts: Prevention and Resolution* [Buropa for the David Davies Memorial Institute of International Studies, London, 1977]

Fawcett J. and Parry A., *Law and International Resources Conflicts* [Clarendon Press, Oxford, 1980].

Fesharaki, F., *Development of the Iranian Oil Industry: International and Domestic Aspects* [Praeger, New York, 1976].

Fox W., *Tin, The Working of a Commodity Agreement* [London Mining Journal Books 1974]

Girvan N., *Corporate Imperialism: Conflict and Expropriation Transnational Corporation and Economic Nationalism in the Third World* [White Plains, New York, 1976].

Goodspeed, S.S., *The Nature and function of International Organization* [Oxford University Press, 2nd ed., New York ,1967].

Goodwin G. and Nayall J. [eds], *A New International Commodity Regimes* [Croom Helm, London, 1979].

Graham, Ronald, *The Aluminum Industries and The Third World: Multinational Corporations and Underdevelopment* [Zed., London, 1982].

Haraszti, G., *Some Fundamental Problems of the Law of Treaties* [Akademiai Kiado, Budapest, 1973].

Hartson, J.E., *Objectives of the Petroleium Exporting Countries* [Middle East Petroleum Economist, Nicosia, 1978].

Hasa, M. [ed], *Basic Documents of Asian Regional Organizations* [Dobbs Ferry, Ocean, 8 Vols, New York: 1979].

Haveem, H. ,*The Political Economy of Third World Producer Associations* [Also: Universitetssforlaget, 1978.].

Helleiner, G.K. [ed], *A World Divided: The Less Developed Countries in the International Economy* [Cambridge University Press, 1976].

Henkin, L, Pugh, R. Schahter, O. Smit H., *International Law: Cases and Materials* [West, Minnesota, 1980].

Higgins R., *The Development of International Law Through the Political Organs of the United Nations* [Oxford University Press, London, 1963].

Hossain, K. [ed] *Legal Aspects of the New International Economic Order* [Frances Pinter, London, 1980]..

International Labour Organization, *Intergovernmental Commodity Control Agreements* [ILO, Montréal, 1943].

INOC, *The Nationalisation of Iraq Petroleum Company's Operations in Iraq-the Facts and Causes,* [Baghdad, 1973].

Jaidah, A.M., *An Appraisal of OPEC Oil Prices* [London, 1983].

Jankowitsch, O and Sauvant, K.P. (eds), *The Third World without Superpowers: Collected Documents of the Non-Aligned Countries*, [Dobbs Ferry, 4 vols. , New York, 1978].

Jenks, C.W., *The Proper Law of the International Organisations* [Stevens, London, 1962].

Johnson, D.Y., McCann, Kevin, *EU Energy Policy: An Evolving Agenda* [Financial Times, London, 1997].

Johnston, C.R., *Law and Policy of Inter-governmental Primary Commodity Agreements Vols. I and II*[Oceana, Dobbs Ferry, New York, 1986].

Johnston, C.R., *Law and Policy of Inter-governmental Primary Commodity Agreements* 2 *Vols.* [Ocean Publications, New York, 1976].

Kapteyn, P.J.G. *International Organisation and Integration* [1983].

Khaiki, A.A., *The Organisation of Arab Petroleum Exporting Countries: A Comprehensive Study (in Arabic)* [OAPEC publication, 1983]

Khan, K.R. *Law and Organisation of International Commodity Agreements* [Martins Nijthoff, Layden, 1982].

Kirgi, F.L., *International Organisations: In the Legal Setting* [West, 2nd Edition, Minnesota, 1993].

Klebanoff, S., *Middle East Oil and U.S. Foreign Policy with Special Reference to the U.S. Energy Crisis* [Praeger, New York 1974]

Klepacki, Z.M. *The Organs of International Organisations* [Polish Scientific Publishers, Warsaw, Poland, 1978].

Kosteeck, M.M. (ed) *State Trading in International Markets* [Macmillan, London, 1982].

Krnostein, H., *The Law of International Cartels* [Ithaca Cornell University Press, 1973].

Kubba, A., *OPEC Past and Present* [Petrol-Economic Research Centre, Vienna, 1974].

Lall, S. and Sreeton, P., *Foreign Investment, Transnational Corporations and Development* Countries [Macmillan, London, 1977].

Lasok, D., and Bridge, J.W., *Introduction to the Law and Institutions of the European* Communities [Butterworths, 2nd Edition, London, 1976].

Laszolo, E. et al, *The Objectives of the New International Economic* Order [Pergamon Press, New York, 1978].

Law, A. D., *International Commodity Agreements* [Health & Co., Lexington, 1975].

Lillich I.R. (ed), *Economic Coercien and the New International Economic Order* [Michie, Virginia, 1976]

Lozalo, J and Green R. (eds), *International Trade, Industrialization and The New International Economic Order* [Pergamon Press, New York, 1981]

Luard, E., *International Agencies: The Emerging Framework of Interdependence* [Macmillan, London, 1977]

Luis Lugo, *The Amazing Story of OPEC* [Caracas 1997].

Lutfi, A., *OPEC Oil, Middle East Monograph No. 6* [The Middle East Research & Publishing Center, Beirut, 1968].

Lyons, P.K., *EC Energy Policy: A detailed guide to the Community's impact on the Energy Sector* [Financial Times, London, 1992].

Mabro, R., *The Oil Crisis of 1998* [Oxford Institute for Energy Studies, 1998].

MacBean A.I. & Snowden, P.N., *International Industries In Trade and Finance* [George Allen & Unwin, London]

Mac Donald, R.W., *The League of Arab States* [University Press, Princeton, 1965].

Mackay, D.I., and Mackay, G.A., *The Political Economy of North Sea Oil* [Martin Robertson, London, 1975].

Maddox,. J,. *Beyond the Energy Crisis* [London, 1975].

Marchisio Sergio and Antoinetta Di Blase, *The Food and Agriculture Organisation (FAO)* [Martinus Nijhoff, Netherlands, 1991].

Martinez, A., *Our Gift Our Oil* [Vienna, 1996].

Martner, G., Producers-Exporters Associations of Developing Countries: *An Instrument For The of a New Economic Order* [IFDA, Geneva, 1979].

McNair, Lord, *The Law of Treaties, British Practice and Opinion*, [2nd Edition, London,1961].

Meagher, R.E., *An International Redistribution of Wealth and Power: A Study of the Charter of Economic Rights and Duties of States* [Pergamon Press, New York, 1979]

Meerhaeghe, M.A.G., *International Economic Institutions* [Longman, 2nd Edition London, 1971].

Michaels, D.B., *International Privileges and Immunities- A Case for a Universal Statute* [Nijhoff, The Hague, 1971].

Mikdashi, Z, *The International Politics of Natural Resource* [Preager, Ithaca, New York, 1980]

Mikdashi, Z., *A Financial Analysis of Middle Eastern Oil Concessions: 1901-65* [Praeger, New York,1966].

Mitchell, E.J [ed]., *Dialogue On World Oil, Proceedings Of A Conference On World Oil* [American Enterprise Institute for Public Policy Research, Washington, D.C., 1974].

Mughraby, M.A., *Permanent Sovereignty Over Oil Resources, A Study of Middle East Oil Concessions and Legal Change, Middle East oil Monographs: No 5* [The Middle East Research and Publishing Center, Beirut, 1966].

Murray, R. [ed], *Mutinationals Beyond The Market* [Harvester Press, Brighton, 1981].

Mutharika, A.P., *International Development Law* 4 Vols. [Dobbs Ferry, Oceana, New York, 1978]

Nicol, D. and Pecei, L.E. [eds], *Regionalism and the New International Economic Order* [Pergamon Press, New York 1981]

O' Connell, D.P., *International Law*, 2 Vols., [Stevens, 2nd ed., London 1970].

Oppenheim, L., *International Law*, editor H. Lauterpacht, Vol. 1. [Longmans, 8th Edition, London. 1955].

Oswaldo, de Rivero, B., *New International Economic Order and International Development Law.* [Pergamon Press, New York, 1980]

Peaslee, A.J., *International Governmental Organisations, Constitutional Documents*, 2 vol. [Nijhoff, 2nd Edition, The Hague, 1961].

Penrose, E., *The Large International Firm in Developing Countries -The International Petroleum Industry* [George Allen and Unwin Ltd., London, 1968].

Pollard, D.E. *Law and Policy of Producers Associations* [Oxford Clarendon Press, 1984

Rangarajan, L.N. *Commodity Conflict* [Croom Helm, London, 1978].

Reynolds, P.D., *International Commodity Agreements and the Common Fund* [Praeger, New York, 1980].

Rifai,. T., *The Pricing of Crude Oil: Economic and Strategic Guidelines for an International Energy Policy*,. [Praeger, 2nd Edition, New York1974].

Rothstein , L.R., *Global Bargaining* [Princeton University Press, Princeton, 1979]. .

Rouhani, F., *A History of OPEC Success and Prospects* [New York, 1976].

Rowe, J.W.F., *Primary Commodities in International Trade* [Cambridge University Press , 1965].

Rustow, D.A. and Mungo, J.F., *OPEC Success and Prospects* [New York, 1976].

Rybczynski, T.M. [ed], *The Economics of the Oil Crisis* [London,1976].

Salah, A., *Aspects of the Organisation of Petroleum Exporting Countries* [Cambridge, 1977]

Sampson, A., *The Seven Sisters- The Great Oil Companies and The World They Made* [Hodder and Stoughton, London, 1975].

Sauvant , K.P. [ed] : *Changing Priorities on the International Agenda : The New International Economic Order* , [Pergamon Press, New York, 1981].

Schachter , O. and Hellawell,*Sharing The World's Resources* , [Columbia University Press, New York, 1977] .

Schachter, O. and Hellawell : *Competition In International Business : Law and Policy On Restrictive Practices* [Columbia University Press, New York, 1981].

Schanze , E, : *Mining Ventures In Developing Countries : Analysis of Project Agreements Parts 1 and 2* , [Kluwer , Amsterdam, 1981] .

Schermers,.H.G., *International Institutional Law*, 2 vols. [Sijthoff, Leiden, 1972].

Schermers,.H.G., *International Institutional Law*, 2 vols. [Sijthoff, Leiden, 1980].

Schmitthoff, C. and Simmonds, K.R.. *International Economic and Trade Law : Universal and Regional Integration* [Sijthoff , Leiden , 1976] .

Schwarzenberger, G., *A Manual of International Law*, 2 vols.,. [Stevens, 4th ed. London, 1960].

Sengupta , A. [ed.], *Commodities Finance and Trade* [Pinter, London, 1980].

Starke, J.G., *An Introduction to International law*, [Butterworth, 8th ed., London, 1977].

Stocking, G.U., *Middle East Oil* [The Penguin Press, Allen Lane, London, 1971].

Voitorich, Sergei A., *International Economic Organisations in the International Legal Process* [Martinus Nijhoff, Netherlands, 1995].

White, N.D., *The Law of International Organisations* [Manchester University Press, 1996].

Willets, P., *The Non-Aligned in Havana : Documents of the Sixth Summit of the Non-Aligned Countries* [Pinter, London, 1980].

Williams,.M.J., *"The Aid programs of the OPEC Countries", Foreign Affairs* [American Quarterly Review, vol.54,January 1976], pp. 308-24.

Yates , P.L., *Commodity Control* [Jonathan Cape, London, 1943] .

ARTICLES AND OTHER SOURCES

Adede,O.A. , A Profile in the State Contracts for Natural Resources Development between African Countries and Foreign Companies , [12 N.Y.U.J. Int'l. & Pol., 1980], p. 479.

Adeyeye, S., Oil Producers-Consumers Dialogue: an Assessment, [OPEC Bulletin, Vol. 1, XXIV, No.5, May 1993], pp. 4-10.

Agarwal, J.P. , International Law and Properties of Aliens, The Old Order Changeth , [19 Mel. L.R. , 1977], p. 175.

Agrawala, S.K. , The Role of General Assembly Resolutions As Trend-Setters of State of Practice , [21 Indian J.I.L. , 1981] p. 512.

Akinsanya, A. and Davies, A., Third World Quest for A New International Economic Order " An Overview " [33 Int. & Comp. L.Q., 1984] p. 208.

Akinsanya, A., *Host Government's Responses to Foreign Economic Control : The Experiences of Selected African Countries*, [30 I.C.L.Q., 1981] p. 769. Permanent

Sovereignty Over Natural Resources and The Future of Private Foreign Investment in the Third World, [18 I.J.I.L. ,1978] p. 175.

Alston, P., The Right to Development at the International Level in the Dupuy ,ed.) op.cit. p. 99

Amerasinghe, F.C., State Breach of Contracts with Aliens and International Law , [58 A.J.I.L. 1964] p. 881.

Anand, P.R., Attitude of the Asian-African States Towards Certain Problems of International Law [151 I.C.L.Q.,1966], p. 73.

Ardebili, H.K., The Caspian Sea, its Resources, its Legal Status, its Future, [OPEC Bulletin, Vol. XXVIII, No. 3, March 1997], pp. 4-8.

Arechaga, .E., State Responsibility for the Nationalization of Foreign Owned Property, 11 N.Y.U.J. Int'l. & Pol. , 1978], p. 1.

Asante, K.B.S., Restructing Transnational Mineral Agreements , [73 A.J.I.L. 1979], p. 401. ,

Stability of Contractual Relations in the Transnational Investment Process [I.C.L.Q. 1979] , p. 401.

Barraz, P., The Legal Status of Oil Concessions, [5 J.W.T.L. ,1971], p. 609.

Behrman, N.J., Multinational Corporations, Transnational Interests and National Sovereignty [4 Col. J.W.Bus., 1969], p.15.

Bilder, N.C., International Law and Natural Resources Policies, [20 N.R.J., 1980].

Brower, N.C. & Tepe, P.J., The Charter of Economic Rights and Duties of States. A Reflection or Rejection of International Law ? [9 Int'l. Lawyer, 1975], p. 305.

Brown, R., Choice of Law Provisions in Concessions and Related Contract , [39 Mo. L.R., 1976], p. 245.

Brownlie, I., Legal Status of Natural Resources in International Law-Some Aspects [162 R.D.C., 1979-81], p. 245.

Butte. W.L., New Contacts Through Old Eyes , [13 Tex. Int'l. L.J. , 1977], p. 1.

Castaneda, J., The Underdeveloped Nations and the Development of International Law [15 Int'l. Org., 1961], p. 38.

Cheng, B., The Rational Compensation for Expropriation, [44 T.G.S. ,1958-59], p. 207.

Chowdbury, S.R., Legal Status of the Charter of Economics Rights and Duties of States. [Hossein ,ed.) op.cit.] p. 79.

Delaume, R.G., State Contracts and Transitional Arbitration, [75 A.J.I.L. 1981], p. 784.

Dolzer, R., New Foundation of the Law of Expropriation of lien Property, [75 A.J.I.L., 1981], p. 553.

Donke, M., Foreign Nationalisation, [55 A.J.I.L. ,1961] p. 585.

Duby, M. Problems of Establishing a New International Economic Order [32 India Quarterly, 1974] p. 269.

Erich Schanze & Others, Mining Agreements in Developing Countries, [12 J.W.T.L. ,1978], p. 135.

Faber, M. & Brown R. Changing the Rule of the Game: Political Risk, Instability and Fair play in Mineral Concession Contracts [2 T.W.Q., 1980] p. 100.

Falk, A.R., The New States and International Legal Order, [118 R.D.C.,1966-11], p. 1.

Farer, T.J., Economic Development Agreements: A Functional Analysis, [10 Col. Tr. L., 1971], p. 200.

Fatouros, A.A., International and the Internationalised Contract , [74 A.J.I.L.,1980],p. 134.

Fawcett, J.E.S., Some Foreign Effects of the Nationalised Property ,[27 B.Y.I.L., 1950], p. 355.

Ferguson, C.C., The New International Economic Order , [University of Illinois, L.R.,1980]. p. 693.

Francis, B., Producers Associations in Relation to the New International Economic Order [30 Int. & Comp. L.Q., 1981] p. 745.

Fischer, J., International Law and the Protection of Aliens , [9 B.Y.I.L., 1928] p. 28.

Francisco, F., Compensation for Nationalisation of Foreign Property : The Borderland Between Law and Equity [24 I.C.L.Q. ,1975], p. 255.

Friedman, W., Social Conflict and Protection of Foreign Investments, [57 A.J.I.L., Proc, 1963], p. 126.

Fukami, H., Problems of Natural Resources and the Japanese Economy [15 K.E.S., 1978], p. 83.

Gantz, A.D., The Marcona Settlement : New Forms of Negotiation and Compensation for Nationalised Property ", [71 A.J.I.L., 1977] p. 474.

Garcia-Amador, V.F., The Proposed New International Economic Order : A New Approach to the Law Governing Nationalisation and Compensation by Foreign States for the Taking of Alien Owned Property, [13 V and.J.Tra.L., 1980], p. 1.

Gess, N.K., Permanent Sovereignty Over Natural Resources: An Analytical Review of the United Nations Declaration and Its Genesis , [13 I.C.L.Q. ,1964], p. 398.

Ghai, Y.P, & Others, Expulsion and Expropriation in International Law : The Right to Leave, to Stay, to Return, 67 A.S.I.L. Proc., 1975] p. 122.

Gosovic, B. & Ruggie, G.J., On the Creation of a New International Economic Order : Issue Linkage and the Linkage and the Seventh Special Session of the United Nations General Assembly . [Intl. Org., 1976] , p. 309.

Griffin K., Economic Developmnets in A changing World , [9 W.D., 1981] p. 221.

Hyde, N.J., Permanent Sovereignty Over Natural Wealth and Resources, [50 A.J.I.L.,1956], p. 854. Economc Development Agreements, [105 R.D.C. , 1962-2] p. 271.

Hohenveldern, I.S., International Economic 'Soft Law' [163 Recueil Des Cours, 1979] p. 169.

Jennings, Y.R., State Contracts in International Law , [37 B.Y.I.L. ,1961], p. 156.

Jessup, P., Non-Universal International Law , [12 Col.J.Tr.L. ,1973], p. 413.

Juda, L., UNCLOS III and the New Economic Order , [7 Ocean Deve. I.L , 1971]. p. 221.

Kenneth, S.C., Concessions Agreements and Nationalisation , [52 A.J.I.L. ,1950], p. 260.

Kohrini, J.S., Foreign enterprises and Forced Investments in LDC's [43 Int'l. Org. ,1980], p. 65.

Kojanec, G., Recent Developments in the Law of State Contracts, [Y.B.W.A. ,1970], p. 180.

Lall, S., Less Developed Countries and Private Foreign Direct Investment: A Review Article [2 W.D. ,1974], p. 43.

Lapres, D.A., Principles of Compensation for Nationalised Property, [26 I.C.L.Q. ,1977], p. 97.

Leonard, J.H., Multinational Corporations and Politics in Developing Countries , [32 W.P., 1980], p. 454.

Lillich, B.R., The Current Status of the Law of States Responsibilities for Injuries to Aliens [73 A.S.I.L. Proc.,1979] p. 244.

Mann, .S., International Corporations and National Law, [42 B.Y.I.L. ,1967] p. 145; Outline of a History of Expropriation, [75 L.Q.R. ,1959], p. 188; Wrong in National and International Law [48 B.Y.I.L. ,1977], p. 1; The Proper Laws of Contracts Concluded by International Persons, [35 B.Y.I.L. ,1959], p. 34.

Mestdagh, K.V., The Right to Development, [28 Netherland Int. L.R., 1981], p. 30

Minta, I.K., The Lone Convention and the New International Economic Order , [27 Howard L.J. ,1984], p. 954.

Mervis, D.S., The United Nations Seventh Special Session Proposals for a New World Economic Order , [9 Van. J. Tra.L. ,1976], p. 601.

Metzger, D.S. , Property in International Law , [50 V.L.R. ,1964], p. 601.

Muller, H.M., Compensation for Nationalization : A North-South Dialogue [19 Col.Tra.L. ,1981], p. 35.

McNair, L., The General Principles of Law Recognised by Civilised Nations [33 B.Y.I.L., 1957], p. 2.

Nawaz, K.M., Nationalisation of Foreign Oil Companies - Libyan Decree of 1 September 1973, [141 I.J.I.L. ,1974], p. 70.

Neville, K.M., The Present Status of Compensation by Foreign States for the Taking of Alien Owned Property , [13 Van.J.Tra.L.,1980], p. 65.

O'Keefe, J.P. , The United Nations And Permanent Sovereignty Over Natural Resources , [8 J.W.T.L. ,1978], p. 239.

Pronk, J., A New International Order is in the Interest of the Developed Countries Too, [18 Deve. R,1976],.p. 8.

Pavils, P., International Arbitration and the Inapplicability of the Act of State Doctrine, [14 N.Y.U.J. Int'l. & Pol. , 1981], p. 65.

Rich, R.Y., The Right to Development as an Emerging human right , [23 Virginia J.I.L. 1983], p. 287.

Rahmatullah, K., International Law: Old and New , [15 I.J.I.L ,1975], p. 371.

Rainer, G., The Unilateral Change of Economic Development Agreements, [23 I.C.L.Q. ,1974], p. 73.

Raman, U.K., Transnational Corporations , International Law and the New International Economic Order, [6 Syr.J.I.L. & CoM ,1978], p. 17.

Rohwer, A.J., Nationalisation [14 H.I.L.J. ,1973], p. 378.

Roots, T.E., Economic Influences on the History and Development of the Mining Joint

Venture as a Vehicle for Hard Mineral Exploration and Development [12 Nat. R.L. ,1979], p. 491.

Roy, G., Is the Law of Responsibility of States for Injuries of Aliens a Part of the Universal Law ? [55 A.J.I.L. ,1961], p. 863.

Rubin, J. S., Multinational Enterprise and National Sovereignty: A Skeptic's -Analysis,[4 C. J. W.B. ,1969]. p. 1.

Schachter,O., The Evolving International Law and Development , [15 Colum. J. Transnat'l L., 1976], p. 1.

Schachter,O., The Evolving International Law and Development,[15 Col.J. Tra. L. ,1976], p. 11.

Schanze, E.& O., Sovereignty Over Natural Resources, [49 A. B. A.,1963], p. 463.

Schwebel, S. M. & Wetter, G. L., Some Little Known Cases on Concessions, [40 B. Y. I. L. ,1964], p. !83.

Schewebel, S. M., The Effect of Resolutions of the United Nations General Assembly on Customary International Law. [75 A. S. I. L. Proc. ,1979]p. 301.

Seyersted, F., International Personality of intergovernmental organizations: Do their capacities really depend upon their constitutions?, [IJIL, vol.4, no. 1 ,1964], pp. L-74.

Shahabudden, M.,Nationalisation of Guyana Bauxite : The Case of ALCAN [Georgetown : Ministry of Information , 1981] .

Shihata,I.F.L., The _____ [69 A. J. I .L. ,1975], p. 560.

Sohn, B. L. & Baxter , R.P., Responsibility of States for Injuries to the Economic Interests of Aliens , [55 A. J. I. L. 91961], p. 545.

Sornarajah, M., The Myth of International Contract Law, [15 J.W..L. ,1981], p. 187.
Compensations for Expropriation -The Emergence of New Standards, [13 J. W. T. L. ,1979],p. 108.

Subash, C.J., Legal Dichotomy of Concessions [9 I.JI.L. ,1969], p. 513; Permanent Sovereignty Over Natural Resources and Nationalisation in International Law , [19 I.J.I.L. ,1977], p. 241; Reversion to Sovereignty : An Inquiry , [9 I.J.I.L. ,1969], p. 525.

Suratgar, B., Considerations Affecting Choice of Law Clauses in Contracts Between Governments and Foreign Nationals, [2 I.J.I.L. ,1962], p. 273.

Szawlowski, R., The Budget and the Budgetary Law of an International Governmental Organization , Public Finance [International Quarterly Journal, vol. XVI/ XVI , The Hague, 1961], pp. 343-63.

Skubiszewski, K., Resolutions of International Organizations and Municipal Law [The Polish Yearbook of International Law, vol.11, 1968/1969], pp. 80-107.

Tanzer, M., Oil Exploration Strategies for Developing countries [2 N.R.F. ,1978], p. 319.

Tariki, A., The Organization of Petroleum Exporting countries:Why was it established and what objectives has it achieved since its establishement? [The Arab Oil and Gas Journal [now Naft Al-Arab] [Arabic], vol. 1, no.3 , Nov.1965], pp. 13-17.

Varma, A., Petroleum Concessions in International Arbitration : Texaco Overseas Petroleum v. Libya Arab Republic, [18 Col.J. Tra.L.,1979-80], p. 259.

Verdross, A., Quasi-International Agreements and International Economic Transaction, [Y.B.W.A. ,1964], p. 230.

Vafai, J., Conflict resolution in the international petroleum Industry, [JWTL, vol.5, 1971], pp. 427- 460.

Valki, L., The juristic personality and treaty-Making power of international organizations", in Questions of International Law [Hungarian Branch of the international Law Association, Budapest, 1968], pp. 285-308.

Vanzant, J.C., Character on economic right and duties of state a solution to the development Aid problems? , [GA.JINT'L & COM.L , vol.4, no 2 , 1974], pp. 441 - 462.

Verway, W.D. , The New International Economic Order and the Realisation of the Right to Development and Welfare - A Legal Survey , [21 Indian, J.I.L., 1981], p.1; The Recognition of the Developing Countries as Special Subjects of International Law Beyond The Sphere of United Nations Resolutions [in Dupuy ,ed. op.cit.,] p. 372.

Vicuna, F., Some International Law Problems Posed by the Nationalisation of the Copper Industry by Chile, [67 A.J.I.L. 1973], p. 711.

Walde, W.T., Transnational Investment in the Natural Resources Industries, [11 L.& Pol. I.B. ,1979], p. 691.

Walton, A., Atlantic relations: Policy Co-ordination and conflict-Atlantic Bargaining over energy, [International Affairs, vol.52 no., April 1976], pp. 180-96.

Wehbergh, H., Pacta Sunt Servanda , [53 A.J.I.L. ,1959], p. 775.

Weinstein, P.D., The Attitude of the Capital Importing Nation Towards the Taking of Foreign Owned Private Property [5 I.J.I.L]

Weston, N.B., The Charter of Economic Rights and Duties of State and the Deprivation of Foreign Owned Wealth, [75 A.J.I.L. ,1981], p. 437.

White, A.R., Expropriation of the Libyan Oil Concessions - Two Conflicting International Arbitration's , [30 I.C.L.Q. ,1981], p.1.

White, G., A New International Economic Order ?, [16 V.J.I.L. ,1976], p. 323.

White, R.C.A. , A New International Economic Order, [24 Int.& Comp. L.Q. ,1975], p. 542.

Williams, L.M., The Extent and Significance of the Nationalisation of Foreign Owned Assets in Developing Countries, [27 O.E.P. ,1975], p. 260.

Williams, M.J., The Aid Programmess of The OPEC Countries ,[54 Foreign Affairs 1976], p. 308.

Winston, C., Limitations on Sovereignty Over Natural Resources, [Int'l. Per. ,1977], p. 13.

Woodliffe, J.C., A New Dimension to international cooperation The OECD International energy Agreement, [ICLQ, vol. 24, part 3 July 1975], pp. 525-41.

Zakariya, H., Sovereignty, State Participants and the Need to Restructure the Existing Petroleum Concessions, [10 A.L.R. , 1972], p. 218; New Directions in The Search for and Development of Petroleum Resources in the Developing Countries, [9 Van. J.T.L. ,1976], p. 545.

Zakariya, H.S., Convergence and Divergence between the Exporting Countries: The OPEC experience in The New Petroleum Order -From The Transnational Company to Relations Between Governments, (Colloque International Tenn à l'université de Laval du 2 au 4 oct.1975), [Research Group for Energy Economics, Laval University Press, Québec, 1976], pp. 97-130.

Appendices

APPENDIX I

RESOLUTIONS OF THE FIRST CONFERENCE HELD IN BAGHDAD FROM 10th TO 14th SEPTEMBER 1960

By invitation of the Republic of Iraq, the Conference of the Petroleum Countries, composed of representatives of the Governments of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, hereafter called Members, met at Baghdad from the 10th to the 14th September, 1960, and having considered:

- That the Members are implementing much needed development programs to be financed mainly from income derived from their petroleum exports.
- That Members must rely on petroleum income to a large degree in order to balance their annual national budgets.
- That Petroleum is a wasting asset and to the extent that it is depleted must be replaced by other assets.
- That all nations of the world, in order to maintain and improve their standards of living must rely almost entirely on petroleum as a primary source of energy generation.
- That any fluctuation in the price of petroleum necessarily affects the implementation of the Memberís programs and results in a dislocation detrimental not only to their own economies, but also to those of all consuming nations have decided to adopt the following resolutions:

RESOLUTION I.1

1. That Members can no longer remain indifferent to the attitude heretofore adopted by the Oil Companies in effecting price modifications.

2. That Members shall demand that Oil Companies maintain their prices steady and free from all unnecessary fluctuations; that Members shall endeavor, by all means available to them, to restore present prices to the levels prevailing before the reductions; 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 to explain the circumstances.

3. That Members shall study and formulate a system to ensure the stabilization of prices by, among other means, the regulation of production, with due regard to the interests of the producing and of the consuming nations and to the necessity of securing a steady income to the producing countries, an efficient economic and regular supply of this source of energy to consuming nations, and a fair return on their capital to those investing in the petroleum industry.

4. That if as a result of the application of any unanimous decision of this Conference any sanctions are employed, directly or indirectly, by any interested Company against one or more of the Member Countries, no other Member shall accept any offer of a beneficial treatment, whether in the form of an increase in exports or an improvement in prices, which may by made to it by any such Company or Companies with the intention of discouraging the application of the unanimous decision reached by the Conference.

RESOLUTION I.2

1. With a view to giving effect to the provisions of Resolution No.I.1 the Conference decides to form a permanent Organization called the Organization of the Petroleum Exporting Countries, for regular consultation among its Members with a view to co-ordinating and unifying the policies of the Members and determining among other matters the attitude which Members should adopt whenever circumstances such as those referred to in Paragraph 2 of Resolution No.I.1 have arisen.

2. Countries represented in this Conference shall be the original Members of the Organization of the Petroleum Exporting Countries.

3. Any country with a substantial net export of Crude Petroleum can become a new Member if unanimously accepted by all five original Members of the Organization.

4. The principal aim of the Organization shall be the unification of petroleum policies for the Member Countries and the determination of the best means for safeguarding the interests of Member Countries individually and collectively.

5. The Organization shall hold meetings at least twice a year and if necessary more frequently in the capital of one or other of the Member Countries or elsewhere as may be advisable.

6. (a) In order to organize and administer the work of the Organization there shall be established a Secretariat of the Organization of the Petroleum Exporting Countries.

(b) A subcommittee of not less than one member from each country shall meet in Baghdad not later than the first of December 1960 in order to formulate and submit to the next Conference draft rules concerning the structure and functions of the Secretariat; to propose the budget of the Secretariat for the first year: and to study and propose the most suitable location for the Secretariat.

RESOLUTION I.3

1. Members participating in this Conference shall before September 30th submit the texts of the Resolutions to the appropriate Authority in their respective countries for approval, and as soon as such approval is obtained shall notify the Chairman of the First Conference (Minister of Oil of the Republic of Iraq) accordingly.

2. The Chairman of the Conference shall fix, in conjunction with the other Members, the date and place of the next Conference.

Done at Baghdad this 14th day of September, 1960.

Head of the Delegation of the Republic of Iraq.

(Signed) Fuad Rouhani.

The Head of the Delegation of the Government of Iran.

(Signed) Dr.Talaíat al-Shaibani

The Head of the Delegation of Kuwait.

(Signed) Ahmed Sayad Omar

The Head of the Delegation of Saudi Arabia.

(Signed) Abdullah Tariki

The Head of the Delegation of Venzuela.

(Signed) J.-P. Perez Alfonzo

APPENDIX II

THE STATUTE OF THE ORGANIZATION OF THE PETROLEUM EXPORTING COUNTRIES

(June 1986 Edition)

[The original text of the OPEC Statute was approved by the Conference in January 1961 in Caracas [Resolution II.6]. This edition supersedes all previous editions published by the OPEC Secretariat , Obere Donaustrasse 93, A-1020 Vienna, Austria.]

CHAPTER I
ORGANIZATION AND OBJECTIVES

Article 1

The Organization of the Petroleum Exporting Countries (OPEC), hereinafter referred to as 'the Organization', created as a permanent intergovernmental organization in conformity with the Resolutions of the Conference of the Representatives of the Governments of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, held in Baghdad from September 10 to 14, 1960, shall carry out its functions in accordance with the provisions set forth hereunder.

Article 2

A. The principal aim of the Organization shall be the 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.

B. The 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.

C. Due regard shall be given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries: 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.

Article 3

The Organization shall be guided by the principle of the sovereign equality of its Member Countries. Member Countries shall fulfil, in good faith, the obligations assumed by them in accordance with this Statute.

Article 4

If, as a result of the application of any decision of the Organization, sanctions are employed, directly or indirectly, by any interested company or companies against one or more Member Countries, no other Member shall accept any offer of a beneficial treatment, whether in the form of an increase in oil exports or in an improvement in prices, which may be made to it by such interested company or companies with the intention of discouraging the application of the decision of the Organization.

Article 5

The Organization shall have its headquarters at the place the Conference decides upon.

Article 6

English shall be the official language of the Organization.

CHAPTER II
MEMBERSHIP

Article 7

A. Founder Members of the Organization are those countries which were represented at the First Conference, held in Baghdad, and which signed the original agreement of the establishment of the Organization.

B. Full Members shall be the Founder Members as well as those countries whose application for membership has been accepted by the Conference.

C. Any other country with a substantial net export of crude petroleum, which has fundamentally similar interests to those of Member Countries, may become a full Member of the Organization, if accepted by a majority of three-fourths of Full Members, including the concurrent vote of all Founder Members.

D. A net petroleum-exporting country which does not qualify for membership under paragraph C above may nevertheless be admitted as an Associate Member by the Conference under such special conditions as may be prescribed by the Conference, if accepted by a majority of three-fourths, including the concurrent vote of all founder Members.

No country may be admitted to Associate Membership which does not fundamentally have interests and aims similar to those of Member Countries.

E. Associate Members may be invited by the Conference to attend any meeting of a Conference, the Board of Governors or Consultative Meetings, and to participate in their deliberations without the right to vote. They are, however, fully entitled to benefit from all general facilities of the Secretariat, including its publications and library, as any Full Member.

F. Whenever the words 'Members' or 'Member Countries' occur in this Statute, they mean a Full Member of the Organization, unless the context otherwise demonstrates to the contrary.

Article 8

A. No Member of the Organization may withdraw from membership without giving notice of its intention to do so to the Conference. Such notice shall take effect at the beginning of the next calendar year after the date of its receipt by the Conference, subject to the Member having at that time fulfilled all financial obligations arising out of its membership.

B. In the event of any country having creased to be a Member of the Organization, its readmission to membership shall be made in accordance with Article 7, paragraph C.

CHAPTER III
ORGANS

Article 9

The Organization shall have three organs:

I. The Conference;
II. The Board of Governors; and
III. The Secretariat.

I. The Conference

Article 10

The Conference shall be the supreme authority of the Organization.

Article 11

A. The Conference shall consist of delegations representing the Member Countries. A delegation may consist of one or more delegates, as well as advisers and observers. When a delegation consists of more than one person, the appointing country shall nominate one person as the Head of the Delegation.

B. Each Member Country should be represented at all Conferences; however, a quorum of three-quarters of Member Countries shall be necessary for holding a Conference.

C. Each Full Member Country shall have one vote. All decisions of the Conference, other than on procedural matters, shall require the unanimous agreement of all Full Members.

The Conference Resolutions shall become effective after 30 days from the conclusion of the Meeting, or after such period as the Conference may decide unless, within the said period, the Secretariat receives notification from Member Countries to the contrary.

In the case of a Full Member being absent from the Meeting of the Conference, the Resolutions of the Conference shall become effective unless the Secretariat receives a notification to the contrary from the said Member at least ten days before the date fixed for publication of the Resolutions.

D. A non-Member country may be invited to attend a Conference as Observer, if the Conference so decides.

Article 12

The Conference shall hold two Ordinary Meetings a year. However, an Extraordinary Meeting of the Conference may be convened at the request of a Member Country by the Secretary General, after consultation with the President and approval by a simple majority of the Member Countries. In the absence of unanimity among Member Countries approving the convening of such a meeting, as to the date and venue of the Meeting, they shall be fixed by the Secretary General in consultation with the President.

Article 13

The Conference shall normally be held at the headquarters of the Organization, but it may meet in any of the Member Countries, or elsewhere as may be advisable.

Article 14

A. The Conference shall elect a President and an Alternate President at its first Preliminary Meeting. The Alternate President shall exercise the responsibilities of the President during his absence, or when he is unable to carry out his responsibilities.

B. The President shall hold office for the duration of the Meeting of the Conference, and shall retain the title until the next meeting.

C. The Secretary General shall be the Secretary of the Conference.

Article 15

The Conference shall:

1. formulate the general policy of the Organization and determine the appropriate ways and means of its implementation;

2. decide upon any application for membership of the Organization;

3. confirm the appointment of Members of the Board of Governors;

4. direct the Board of Governors to submit reports or make reports or make recommendations on any matters of interest to the Organization;

5. consider, or decide upon, the reports and recommendations submitted by the Board of Governors on the affairs of the Organization;

6. consider and decide upon the Budget of the Organization, as submitted by the Board of Governors;

7. consider and decide upon the statement of accounts and the Auditor's Report, as submitted by the Board of Governors;

8. call a Consultative Meeting for such Member Countries, for such purposes and in such places, as the Conference deems fit;

9. approve any amendments to this Statute;

10. appoint the Chairman of the Board of Governors and an Alternate Chairman;

11. appoint the Secretary General;

12. appoint the Deputy Secretary General; and

13. appoint the Auditor of the Organization for a duration of one year.

Article 16

All matters that are not expressly assigned to other organs of the Organization shall fall within the competence of the Conference.

II. The Board of Governors

Article 17

A. The Board of Governors shall be composed of Governors nominated by the member Countries and confirmed by the Conference.

B. Each Member of the Organization should be represented at all meetings of the Board of Governors; however, a quorum of two-thirds shall be necessary for the holding of a Meeting.

C. When, for any reason, a Governor is prevented from attending a Meeting of the Board of Governors, a substitute adhoc Governor shall be nominated by the corresponding Member Country. Such nomination shall not require confirmation by the

Conference. At the meetings which he attends, the ad hoc Governor shall have the same status as the other Governors, except as regards qualifications for Chairmanship of the Board of Governors.

D. Each Governor shall have one vote. A simple majority vote of attending Governors shall be required for decisions of the Board of Governors.

E. The term of office of each Governor shall be two years.

Article 18

A. The Board of Governors shall meet no less than twice each year, at suitable intervals to be determined by the Chairman of the Board, after consultation with the Secretary General.

B. An Extraordinary Meeting of the Board of Governors may be convened at the request of the Chairman of the Board, the Secretary General, or two-thirds of the Governors.

Article 19

The meetings of the Board of Governors shall normally be held at the headquarters of the Organization, but they may also be held in any of the Member Countries, or elsewhere as may be advisable.

Article 20

The Board of Governors shall:

1. direct the management of the affairs of the Organization and the implementation of the decisions of the Conference;

2. consider and decide upon any reports submitted by the Secretary General

3. submit reports and make recommendations to the Conference on the affairs of the Organization;

4. draw up the Budget of the Organization for each calendar year and submit it to the Conference for approval;

5. nominate the Auditor of the Organization for a duration of one year;

6. consider the Statement of Accounts and the Auditor's Report and submit them to the Conference for approval;

7. approve the appointment of Directors of Divisions and Heads of Departments, upon nomination by the Member Countries, due consideration being given to the recommendations of the Secretary General;

8. convene an extraordinary meeting of the Conference;

9. nominate a Deputy Secretary General for appointment by the Conference; and

10. prepare the Agenda for the Conference.

Article 21

The Chairman of the Board of Governors and the Alternate Chairman, who shall assume all the responsibilities of the Chairman whenever the Chairman is absent or unable to exercise his responsibilities, shall be appointed by the Conference from among the Governors for a period of one year, in accordance with the principle of alphabetical rotation. The date of membership in the Organization, however, shall take precedence over the principle of alphabetical rotation.

Article 22

The Chairman of the Board of Governors shall;

1. preside over the Meetings of the Board of Governors;

2. attend the Headquarters of the Organization in preparation for each Meeting of the Board of Governors; and.

3. represent the Board of Governors at Conferences and Consultative Meetings.

Article 23

Should a majority of two-thirds of Governors decide that the continuance of Membership of any Governor is detrimental to the interests of the Organization, the Chairman of the Board of Governors shall immediately communicate this decision to the Member Country affected, who in turn shall nominate a substitute for the said Governor before the next Meeting of the Board of Governors. The nomination of such substitute as a Governor shall be subject to confirmation by the following Conference.

Article 24

Should a Governor, for any reason, be precluded from continuing in the performance of his functions on the Board of Governors, the corresponding Member Country shall nominate a replacement. The nominated Governor shall assume his functions upon nomination subject to confirmation by the following Conference.

III. The Secretariat

Article 25

The Secretariat shall carry out the executive functions of the Organization in accordance with the provisions of this Statute under the direction of the Board of Governors.

Article 26

The Secretariat of the Organization shall consist of the Secretary General, the Deputy Secretary General and such staff as may be required. It shall function at the headquarters of the Organization.

Article 27

A. The Secretary General shall be the legally authorized representative of the Organization.

B. The Secretary General shall be the chief officer of the Secretariat, and in that capacity shall have the authority to direct the affairs of the Organization, in accordance with directions of the Board of Governors.

Article 28

A. The Conference shall appoint the Secretary General for a period of three years, which term of office may be renewed once for the same period of time. This appointment shall take place upon nomination by Member Countries and after a comparative study of the nominees' qualifications.

The minimum personal requirements for the position of the Secretary General shall be as follows:

a) 35 years of age.

b) A degree from a recognized university in Law, Economics, Science, Engineering or Business Administration.

c) 15 years experience, of which at least 10 years should have been spent in positions directly related to the oil industry, and 5 years in highly responsible executive or managerial positions. Experience in Government–Company relations and in the international aspects of the oil industry is desirable.

Should in any case a unanimous decision not be obtained, the Secretary General, in that case, shall be appointed on a rotation basis for a term of term of two years without prejudice to the required qualifications.

B. The Secretary General shall be a national of one of the Member Countries of the Organization.

C. The Secretary General shall reside at the Headquarters of the Organization.

D. The Secretary General shall be responsible to the Board of Governors for all activities of the Secretarial. The functions of the different departments shall be carried out on his behalf and under his authority and direction.

E. The Secretary General shall attend all meetings of the Board of Governors.

Article 29

The Secretary General shall:

1. oorganize and administer the work of the Organization;

2. ensure that the functions and duties assigned to the different departments of the Secretariat are carried out;

3. prepare reports for submission to each Meeting of the Board of Governors concerning matters which call for consideration and decision;

4. inform the Chairman and other Members of the Board of Governors of all activities of the Secretariat, of all studies undertaken and of the progress of the implementation of the Resolutions of the Conference; and

5. ensure the due performance of the duties which may be assigned to the Secretariat by the Conference or the Board of Governors.

Article 30

A. The Deputy Secretary General shall be selected by the Board of Governors from amongst the highly-qualified and experienced national candidates put forward by the Member Countries, for appointment by the Conference by a vote of two-thirds of Full Members including the concurrent vote of at least three founder Members.

B. The term of service of the Deputy Secretary General shall be for a period of three years. It may be extended for a period of one year or more, at the suggestion of the Board of Governors and with the approval of the Conference.

C. The Deputy Secretary General shall reside permanently at the headquarters of the Organization.

D. The Deputy Secretary General shall be responsible to the Secretary General for the co-ordination of the research and administrative activities of the Secretariat. The functions of the different departments are exercised under the general supervision of the Deputy Secretary General.

E. The Secretary General may delegate some of his authority to the Deputy Secretary General.

F. The Deputy Secretary General shall act for the Secretary General, whenever the latter is absent from headquarters.

Article 31

A. The Directors of Divisions and Heads of Departments shall be appointed by the Secretary General with the approval of the Board of Governors.

B. Officers of the Secretariat, upon nomination by their respective Governments, or by direct recruitment, shall be appointed by the Secretary General in accordance with the Staff Regulations. In making such appointments, the Secretary General shall give due consideration, as far as possible, to an equitable nationality distribution among Members, but such consideration shall not be allowed to impair the efficiency of the Secretariat.

Article 32

The staff of the Secretariat are international employees with an exclusively international character. In the performance of their duties, they shall neither seek nor accept instructions from any government, or from any other authority outside the Organization. They shall refrain from any action which might reflect on their position as international employees, and they shall undertake to carry out their duties with the sole object of bearing the interests of the Organization in mind.

Article 33

1. The Secretary General shall be assisted in the discharge of his duties by the Deputy Secretary General, a Division of Research, a Personnel and Administration Department, a Public Information Department, a News Agency, any division or department the Conference may see fit to create, and his own Office.

2. The OPEC News Agency (OPECNA) shall be a special unit responsible for collecting, producing and disseminating news of general interest regarding the Organization and the Member Countries, and on energy and related matters.

3. The Office of the Secretary General shall provide him with executive assistance, particularly in carrying out contacts with governments, organizations and delegations; in matters of protocol; in the preparation for, and co-ordination of, meetings; and other duties assigned by the Secretary General.

4. Notwithstanding the provisions of Article 34, and where the efficient functioning of the divisions and departments of the Secretariat so requires, the Board of Governors may, upon the recommendation of the Secretary General, authorize the Secretary General to transfer functions or minor units from one division or department to another.

Article 34

A. The Division of Research shall be responsible for:

1. conducting a continuous programme for research fulfilling the needs of the Organization, placing particular emphasis on energy and related matters.

2. monitoring, forecasting and analyzing developments in the energy and petrochemical industries; and the evaluation of hydrocarbons and products and their non-energy uses.

3. analysing economic and financial issues of significant interest, in particular those related to international financial and monetary matters, and to the international petroleum industry; and

4. maintaining and expanding data services to support the research activities of the Secretariat and those of Member Countries.

B. The Personnel and Administration Department shall:

1. be responsible for all organization methods, the provision of administrative services for all meetings, personnel matters, budgets, accounting and internal control;

2. study and review general administrative policies and industrial relations methods used in the oil industry in Member and other countries, and advise Member Countries of any possible improvements; and

3. keep abreast of the current administrative policies and/or policy changes occurring in the international petroleum industry which might affect the Organization or be of interest to it.

C. The Public Information Department shall be responsible for:

1. presenting OPEC objectives, decisions and actions in their true and most desirable perspective;

2. carrying out a central public information programme and identifying suitable areas for the promotion of the Organization's aims; and

3. the production and distribution of publications and other materials.

Article 35

A. The Secretary General shall commission consultants, as necessary, to advise on special matters or to conduct expert studies when such work cannot be undertaken by the Secretariat.

B. The Secretary General may engage such specialists or experts, regardless of nationality, as the Organization needs, for a period to be approved by the Board of Governors, provided there is a provision for such appointment in the Budget.

C. The Secretary General may at any time convene Working Parties to carry out any studies on specific subjects of interest to the Member Countries.

CHAPTER IV
CONSULTATIVE MEETINGS AND SPECIALIZED ORGANS

Article 36

A. A Consultative Meeting shall be composed of Heads of Delegations of Member Countries or their representatives.

B. In case a Conference is not in session, a Consultative Meeting may be convened at any time at the request of the President of the Conference.

C. The Agenda of each Consultative Meeting shall be prepared by the President of the Conference, unless it has been previously specified by the Conference itself.

D. The Consultative Meeting may pass decisions or recommendations to be approved by the next Conference unless otherwise authorized by a previous Conference.

Article 37

A. The Conference may establish specialized organs, as circumstances require, in order to assist in resolving certain problems of particular importance. The specialized organs shall function in accordance with the Resolutions or Statutes prepared to that effect.

B. The specialized organs shall operate within the general framework of the Secretariat of the Organization, both functionally and financially.

C. The specialized organs shall act at all times in accordance with the principles of the Organization, as set out in the Resolutions of the Conference.

CHAPTER V
FINANCIAL PROVISIONS

Article 38

A. The Budget of the Organization shall be drawn up for each calendar year.

B. The Conference, in accepting any Associate Member to the Organization, shall ask it to pay a fixed annual subscription, to be considered as its financial contribution to the Organization.

C. Budget appropriations shall be apportioned on an equal basis among all Member Countries, after taking into consideration the annual subscriptions of the Associate Members.

Article 39

A. Each Member Country shall bear all expenses incurred in sending delegations or representatives to Conferences, Consultative Meetings and Working Parties.

B. The Organization shall bear the travelling expenses and remuneration of the Governors who attend the meetings of the Board of Governors.

CHAPTER VI
ADDITIONAL PROVISIONS

Article 40

Amendments to this Statute may be proposed by any Member Country. Such proposed amendments shall be considered by the Board of Governors which, if it so decides, shall recommend their adoption to the Conference.

Article 41

All Resolutions contrary to the context of this Statute shall be abrogated.

Article 42

This Statute shall be applied from the 1st May 1965.

[N.B. : As regards recent minor amendments to the OPEC Statute, See Part 2, Note 84.]

APPENDIX III

AGREEMENT

BETWEEN THE ORGANIZATION OF THE PETROLEUM EXPORTING COUNTRIES AND THE REPUBLIC OF AUSTRIA REGARDING THE HEADQUARTERS OF THE ORGANIZATION OF THE PETROLEUM EXPORTING COUNTRIES

(Effective 10 June 1974)

The Organization of the Petroleum Exporting Countries and the Republic of Austria, desiring to conclude a new agreement regarding the seat of the Organization of the Petroleum Exporting Countries in the City of Vienna and to regulate questions connected therewith, have agreed as follows:

ARTICLE 1

When used in this Agreement:

(a) 'OPEC' means the Organization of the Petroleum Exporting Countries;

(b) 'The Government' means the Federal Government of the Republic of Austria;

(c) 'Secretary General' means the Secretary General of OPEC or any officer designated to act on his behalf;

(d) 'Member Country' means a State which is a member of OPEC;

(e) 'Governor' means a member of the Board of Governors of OPEC, as defined in the Statute of OPEC;

(f) 'Representatives of Member Countries' means accredited representatives of Member Countries and members of their delegations, but does not include administrative and technical or other auxiliary staff;

(g) 'Meeting convened by OPEC' means any meeting of the Conference of OPEC or of the Board of Governors of OPEC, or any international conferences or other gatherings convened by OPEC or under its sponsorship;

(h) 'Archives of OPEC' means records and correspondence, documents, manuscripts, still and moving pictures, films, and sound recordings belonging to or held by OPEC;

(i) 'Officials of OPEC' means the Secretary General and all members of the staff of OPEC, except those who are locally recruited and assigned to hourly rates;

(j) 'Property' means all property, including funds and other assets, belonging to OPEC or held or administered by OPEC in furtherance of its statutory functions and all income of OPEC;

(k) 'Headquarters' means the headquarters area with the building or buildings upon it, as defined in a supplemental agreement between OPEC and the Government, and the Secretary General's Residence, and, as the case may be, any other land or building which may from time to time be included, temporarily or permanently, therein in accordance with the provisions of Article 2(2).

ARTICLE 2

(1) The permanent headquarters of OPEC, as approved by Resolution of the Conference of OPEC and as defined in the supplemental agreement between OPEC and the Government referred to in Article 1(k), shall be in the Headquarters Seat.

(2) Any building outside the Headquarters Seat which is used with the concurrence of the Government for meetings convened by OPEC shall be temporarily included in the Headquarters Seat.

ARTICLE 3

(1) The Government recognizes the extraterritoriality of the Headquarters Seat, which shall be under the control and authority of OPEC as provided in this Agreement.

(2) Except as otherwise provided in this Agreement and subject to any regulation enacted under Article 4, the laws of the Republic of Austria shall apply within the Headquarters Seat.

(3) Except as otherwise provided in this Agreement, the courts or other appropriate organs of the Republic of Austria shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the Headquarters Seat.

ARTICLE 4

(1) OPEC shall have the power to make regulations, operative within the Headquarters Seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of the Republic of Austria which is inconsistent with a regulation of OPEC authorized by this article shall, to the extent of such inconsistency, be applicable within the Headquarters Seat. Any dispute between OPEC and the Republic of Austria as to whether a regulation of OPEC is authorized by this article or as to whether a law of the Republic of Austria is inconsistent with any regulation of OPEC authorized by this article, shall be promptly settled by the procedure set out in Article 29. Pending such settlement, the regulation of OPEC shall apply and the law of the Republic of Austria shall be inapplicable in the Headquarters Seat to the extent that OPEC claims it to be inconsistent with the regulation of OPEC.

(2) OPEC shall from time to time inform the Government, as may be appropriate, of regulations made by it in accordance with paragraph 1.

(3) This article shall not prevent the reasonable application of fire protection or sanitary regulations of the appropriate Austrian authorities.

ARTICLE 5

(1) The Headquarters Seat shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, shall enter the Headquarters Seat to perform any duties therein except with the consent of, and under conditions approved by, the Secretary General. The consent of the Secretary General may, however, be assumed in case of fire or other disaster requiring prompt protective action.

(2) The service of legal process, including the seizure of private property shall not take place within the Headquarters Seat except with the express consent of, and under conditions approved by, the Secretary General.

ARTICLE 6

(1) The appropriate Austrian authorities shall exercise due diligence to ensure that the tranquillity of the Headquarters Seat is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbances in the immediate vicinity of the Headquarters Seat, and shall provide on the boundaries of the Headquarters Seat such police protection as may be required for these purposes.

(2) If so requested by the Secretary General, the appropriate Austrian authorities shall provide a sufficient number of police for the preservation of law and order in the Headquarters Seat.

(3) The appropriate Austrian authorities shall take all reasonable steps to ensure that the amenities of the Headquarters Seat are not prejudiced and that the purposes for which the Headquarters Seat are required are not obstructed by any use made of the land or buildings in the vicinity of the Headquarters Seat. OPEC shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the Headquarters Seat are not prejudiced by any use made of the land or buildings in the Headquarters Seat.

ARTICLE 7

The Government recognizes the juridical personality of OPEC and, in particular, its capacity:

(a) To contract;
(b) To acquire and dispose of movable and immovable property; and
(c) To institute legal proceedings.

ARTICLE 8

The Government recognizes the right of OPEC to convene meetings within the Headquarters Seat or, with the concurrence of the Government, elsewhere in the Republic of Austria.

ARTICLE 9

OPEC and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case OPEC shall have expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

ARTICLE 10

The property of OPEC, wherever located and by whomsoever held, shall enjoy immunity from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

ARTICLE 11

The archives of OPEC shall be inviolable wherever located.

ARTICLE 12

(1) OPEC, its assets, income and other property shall be exempt from all forms of taxation, provided, however, that such tax exemption shall not extend to the owner or lessor of any property rented by OPEC.

(2) Insofar as the Government, for important administrative considerations, may be unable to grant to OPEC exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to OPEC, including rentals, the Government shall reimburse OPEC for such taxes by the payment, from time to time, of lump sums to be agreed upon by OPEC and the Government. It is, however, understood that OPEC will not claim reimbursement with respect to minor purchases. With respect to such taxes, OPEC shall at all times enjoy at least the same exemptions and facilities as are granted to Austrian governmental administrations or to chiefs or diplomatic missions accredited to the Republic of Austria, whichever are the more favorable. It is further understood that OPEC will not claim exemption from taxes which are in fact no more than charges for public utility services.

(3) All transactions to which OPEC is a party, and all documents recording such transactions, shall be exempt from all taxes, recording fees, and documentary taxes.

(4) Articles imported or exported by OPEC for official purposes shall be exempt from customs duties and other levies, and from prohibitions and restrictions on imports and exports.

(5) OPEC shall be exempt from customs duties and other levies, prohibitions and restrictions on the importation of service automobiles, and spare parts thereof, required for its official purposes.

(6) The Government shall, if required, grant allotments of gasoline or other fuels and lubricating oils for each such automobile operated by OPEC in such quantities as are required for its work and at such special rates as may be established for diplomatic missions in the Republic of Austria.

(7) Articles imported in accordance with paragraphs (4) and (5) or obtained from the Government in accordance with paragraph (6) of this article, shall not be sold by OPEC in the Republic of Austria within two years of their importation or acquisition, unless otherwise agreed upon by the Government.

ARTICLE 13

OPEC shall enjoy, as far as may be compatible with any international conventions, regulations and arrangements to which the Government is a party, for its official communications, treatment not less favorable than that accorded by the Government to any other organization or government, including diplomatic missions of such other government, in the matter of priorities and rates for mails, cables, telegrams, radiograms, telephotos, television, telephone and other communications, and press rates for information to press and radio.

ARTICLE 14

(1) All official communications directed to OPEC, or to any of its officials at the Headquarters Seat, and all outward official communications of OPEC, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy.

(2) OPEC shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags; which shall have the same privileges and immunities as diplomatic couriers and bags.

ARTICLE 15

(1) Without being subject to any controls or regulations of any kind, OPEC may freely for official purposes:

(a) Purchase any currencies through authorized channels and hold and dispose of them.

(b) Operate accounts in any currency;

(c) Purchase through authorized channels, hold and dispose of funds and securities; and

(d) Transfer its funds, securities, and currencies to or from the Republic of Austria, to or from any other country, or within the Republic of Austria.

(2) The provisions of paragraph 1 shall not apply to amounts in Austrian currency, which are subject to the Austrian regulations concerning blocked accounts, nor shall they affect any international payments agreements of the Republic of Austria which are in force.

ARTICLE 16

Any pension fund or provident fund established by or conducted under the authority of OPEC shall enjoy legal capacity in the Republic of Austria if OPEC so requests, and shall enjoy the same exemptions, immunities and privileges as OPEC itself.

ARTICLE 17

OPEC shall be exempt from all compulsory contributions to, and officials of OPEC shall not be required by the Government to participate in, any social security scheme of the Republic of Austria.

ARTICLE 18

The Government shall make such provision as may be necessary to enable any official of OPEC who is not afforded social security coverage by OPEC to participate, if OPEC so requests, in any social security scheme of the Republic of Austria. OPEC shall, insofar as possible, arrange, under conditions to be agreed upon, for the participation in the Austrian social security system of those locally recruited or temporarily employed members of its staff to whom it does not grant social security protection at least equivalent to that offered under Austrian law.

ARTICLE 19

(1) The Government shall take all necessary measures to facilitate the entry into, and sojourn in Austrian territory and shall place no impediment in the way of the departure from Austrian territory of the persons listed below, shall ensure that no impediment is placed in the way of their transit to or from the Headquarters Seat and shall afford them any necessary protection in transit:

(a) Representatives of Member Countries and their families.

(b) Governors and their families.

(c) Officials of OPEC their families and other members of their households.

(d) Persons, other than officials of OPEC, performing missions authorized by OPEC or serving on specialized organs of OPEC, working parties or other subsidiary bodies of OPEC, and their spouses.

(e) Representatives of States which are not Members of OPEC who are sent as observers, in accordance with rules adopted by OPEC, to meetings convened by OPEC; and

(f) Representatives of other organizations or other persons invited by OPEC to the Headquarters Seat on official business.

(2) Visas which may be required by persons referred to in this article shall be granted without charge as promptly as possible.

ARTICLE 20

Representatives of Member Countries, Governors and representatives of States which are not Members of OPEC who are sent as observers, in accordance with rules adopted by OPEC to meetings convened by OPEC, shall, without prejudice to any other privileges and immunities which they may enjoy while exercising their functions and during their journeys to and from the Headquarters Seat, enjoy within and with respect to the Republic of Austria, the following privileges and immunities:

(a) Immunity in respect to themselves, their spouses and dependent children from personal arrest or detention and from seizure of their personal baggage.

(b) Immunity from legal process of any kind in respect of words spoken or written, and of all acts done by them in the performance of their official functions, such immunity to continue notwithstanding that the persons may no longer be engaged in the performance of such functions.

(c) Inviolability of all papers and documents.

(d) The right to use codes and to dispatch or receive papers and correspondence by courier or in sealed bags.

(e) Exemption, in respect of themselves, their spouses and dependent children from immigration restrictions, alien registration and national service obligations.

(f) The same privileges with respect to currency and exchange restrictions as the Government accords to representatives of foreign Governments on temporary official missions; and

(g) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank, of diplomatic missions in the Republic of Austria.

ARTICLE 21

The privileges and immunities accorded by Article 20 are conferred, not for the personal benefit of the individuals them selves, but in order to safeguard the independent exercise of their functions in connection with OPEC. Consequently, it is incumbent upon a Member Country as well as upon any State sending observers to waive the immunity of any of its representatives or of the Governor nominated by the respective State, in any case where, in the judgment of the Member Country, the immunity would impede the course of justice and where it can be waived without prejudice to the purposes for which it was accorded.

ARTICLE 22

Officials of OPEC shall enjoy within and with respect to the Republic of Austria the following privileges and immunities:

(a) Immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in their official capacity, such immunity to continue notwith standing that the persons concerned may have ceased to be officials of OPEC.

(b) Immunity from seizure of their personal and official baggage.

(c) Immunity from inspection of official baggage, and, if the official comes within the scope of Article 23, immunity from inspection of personal baggage.

(d) Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by OPEC for services past or present or in connection with their service with OPEC.

(e) Exemption from any form of taxation on income derived by them from sources outside the Republic of Austria.

(f) Exemption, with respect to themselves, their spouses, the dependent relatives and other members of their households from immigration restrictions and alien registration.

(g) Freedom to acquire or maintain within the Republic of Austria or elsewhere foreign securities, foreign currency accounts, and other movable and under the same conditions applicable to Austrian nationals immovable property, and at the termination of their OPEC employment, the right to take out of the Republic of Austria through authorized channels without prohibition, or restriction, their funds in the same currency and up to the same amounts as they had brought into the Republic of Austria.

(h) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as the Government accords in time of international crises to members, having comparable rank, of diplomatic missions in the Republic of Austria, and

(i) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

(i) Their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same.

(ii) At the time of first installation two cars; however, customs duties are to be paid if they are sold in the Republic of Austria within a period of two years, the lapse of time being counted from the date of importation.

(iii) Limited quantities of certain articles for personal use or consumption and not for gift or sale; OPEC shall enjoy the right to establish a commissary of its own or its officials shall have access to one of the existing commissaries in Vienna, a supplemental agreement shall be concluded to regulate the exercise of these rights.

ARTICLE 23

In addition to the privileges and immunities specified in Article 22:

(a) The Secretary General shall be accorded in respect of himself, his spouse and his dependent children, the privileges and immunities, exemptions and facilities accorded to ambassadors who are chiefs of mission.

(b) The Deputy Secretary General, the Chiefs of the Departments, Senior Offic-

ers and such additional categories of officials as may be designated, in agreement with the Government, by the Secretary General on the ground of the responsibilities of their positions in OPEC the same privileges an d immunities, exemption and facilities as the Government accords to members, having comparable rank, of diplomatic missions in the Republic of Austria.

ARTICLE 24

(1) Persons, other than officials of OPEC, performing missions authorized by OPEC or serving on specialized organs of OPEC working parties or other subsidiary bodies of OPEC and representatives of other organizations or other persons invited by OPEC to the Headquarters Seat on official business shall, without prejudice to any other privileges and immunities which they may enjoy for other reasons, enjoy immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them in direct connection with their official business.

(2) They shall further enjoy the same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as the Government accords in time of international crises to members, having comparable rank, of diplomatic missions in the Republic of Austria.

(3) Where the incidence of any form of taxation depends upon residence, periods during which the persons referred to in paragraph 1 may be present in the Republic of Austria for the discharge of their duties shall not be considered as periods of residence.

ARTICLE 25

(1) The privileges and immunities accorded by Articles 22, 23 and 24 are conferred in the interest of OPEC and not for the personal benefit of the individuals themselves. Consequently it is incumbent upon the Organization to waive the immunity of any of its officials or of any person covered by the provision of Article 24 in all cases where the immunity impedes the course of justice and where it can be waived without prejudice to the interests of OPEC. In any case where these privileges and immunities arise, the official or other person involved shall immediately report to the Secretary General, who shall decide, in consultation, where appropriate, with the Board of Governors, whether they shall be waived. In the case of the Secretary General, the Conference of OPEC shall have the right to waive immunities.

(2) OPEC and its officials shall co-operate at all times with the appropriate Austrian authorities to facilitate the prompt execution of the laws of the Republic of Austria and to prevent the occurrences of any abuses in connexion with the privileges and immunities accorded by this Agreement.

ARTICLE 26

All persons of Austrian citizenship and all stateless persons resident in Austria and employed by OPEC shall enjoy the privileges and immunities, exemptions and facilities accorded by this Agreement to the Extent recognized by international law as accepted by the Government, provided, however, that Article 17 shall not and Article 22(d) shall, in any event, apply to officials of OPEC who are Austrian citizens or who are stateless persons resident in Austria. They shall also have access to the commissary

established in accordance with Article 22 paragraph (i) sub-paragraph (iii), the exercise of this right being regulated by the supplemental agreement provided for in that sub-paragraph.

ARTICLE 27

(1) OPEC shall communicate to the Government a list of persons within the scope of Articles 20, 22 and 24 and shall revise such list from time to time as may be necessary.

(2) The Government shall furnish persons within the scope of Article 22 with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Austrian authorities.

ARTICLE 28

The Secretary General shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur. Should the Government consider that abuse of a privilege or immunity conferred by this Agreement has occurred, the Secretary General shall upon request, consult with the Federal Minister for Foreign Affairs of the Republic of Austria to determine whether any such abuse has occurred. If such consultations fail to achieve within a reasonable time a result satisfactory to the Secretary General and to the Government, the matter may be referred by either party for final decision to a tribunal of three arbitrators: one to be chosen by the Secretary General, one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. If the tribunal is not constituted within three months from the date of the request made for the submissions of the dispute to arbitration, the appointment of the arbitrators not yet designated shall be made by the President of the International Court of Justice at the request of OPEC or the Government.

ARTICLE 29

Any dispute which may arise between OPEC and the Government as to the interpretation or application of this Agreement, shall, at the request of either of them, be referred to arbitration. The arbitration tribunal shall consist of three arbitrators: one to be chosen by the Secretary General, one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. If the tribunal is not constituted within six months from the date of the request made for the submission of the dispute to arbitration, the appointment of the arbitrators not yet designated shall be made by the President of the International Court of Justice at the request of OPEC or the Government.

ARTICLE 30

(1) This Agreement shall enter into force upon an exchange of notes between the Secretary General duly authorized thereto by Resolution of the Conference of OPEC and the Federal Minister of Foreign Affairs of the Republic of Austria.

(2) Upon the entry into force of this Agreement the 'Agreement between the Organization of the Petroleum Exporting Countries and the Republic of Austria re-

garding the Headquarters of the Organization of the Petroleum Exporting Countries' of June 24, 1965, ceases to be in force.

(3) Consultations with respect to modification of this Agreement shall be entered into at the request of OPEC or the Government. Any such modification shall be by mutual consent.

(4) This Agreement shall be construed in the light of its primary purpose of enabling OPEC at its headquarters in the Republic of Austria fully and efficiently to discharge its responsibilities and fulfill its purposes.

IN WITNESS WHEREOF, the respective representatives of the Organization of the Petroleum Exporting Countries and the Republic of Austria have signed this Agreement.

DONE in duplicate in Vienna, this day of February 18 of 1974, in the English and German languages, both texts being equally authoritative.

For the Organization of the
Petroleum Exporting Countries

(Signed)

Dr. A. Khene

For the Republic of Austria

(Signed)

Rudolf Kirchschlager

Vienna, February 18, 1974

ADDENDUM : EXCHANGE OF NOTES
FORMING PART OF THE ABOVE AGREEMENT

His Excellency
Dr. Abderrahman Khene
Secretary General of the
Organization of the Petroleum
Exporting Countries
Vienna

The Federal Minister
for Foreign Affairs

February 18, 1974

Excellency,

With reference to the Agreement between the Organization of the Petroleum Exporting Countries and the Republic of Austria regarding the Headquarters of the Organization of the Petroleum Exporting Countries, to which I have this day affixed my signature, I have the honour to propose that:

(1) The articles mentioned in paragraph (7) of Article 12 of the Agreement may be disposed of without charge only for the benefit of international organizations or charitable institutions.

(2) Having regard to Article 38 (1) of the Vienna Convention on Diplomatic Relations and to the practice of Austria, the Republic of Austria will accord persons referred to in Article 26 of the Agreement – persons of Austrian citizenship and stateless persons resident in Austria – only the immunity from legal process of any kind in

respect of words spoken or written, and of acts performed by them in direct connection with their official business.

(3) In accordance with the practice of the Republic of Austria which is in conformity with Article 42 of the Vienna Convention on Diplomatic Relations to which Austria is a party, diplomatic agents accredited to the Republic of Austria may not practise for personal profit any professional or commercial activity. It is understood that the same restriction shall apply to all persons to whom the Agreement accords the same privileges and immunities as are accorded to members, having comparable rank, of diplomatic missions in the Republic of Austria.

(4) Persons to whom the Agreement applies, who are not Austrian nationals or stateless persons resident in Austria, shall not benefit from Austrian regulations governing family and maternity allowances.

(5) Without prejudice to the provision of Article 22 (g) of the Agreement, officials of OPEC and persons, other than officials of OPEC, performing missions authorized by OPEC or serving on specialized organs of OPEC, working parties or other subsidiary bodies of OPEC shall be allowed, over and above the facilities granted by the Agreement, to make transfers to other countries up to a maximum amount of one thousand U.S. dollars (U.S. $1,000.00) per year, to the debit of accounts in Austrian Schilling held in their names at Austrian credit institutions; if the afore-mentioned persons wish to make Austrian currency transfers exceeding the amount mentioned above, such transfers shall be authorized by the Austrian authorities up to the amount of all salary previously received in Austrian currency by the person concerned from CPEC, provided that OPEC agrees that the amount to be transferred shall be deducted from transferable Austrian currency balances of OPEC.

If OPEC agrees to this proposal, I have the honour to propose that this note and your note of confirmation shall constitute an Agreement between OPEC and the Republic of Austria, entering into force on the same day as the Headquarters Agreement.

Accept, Excellency, the assurances of my highest consideration.

(signed)

Rudolf Kirchschlager

His Excellency
Dr. Rudolf Kirchschlager
Federal Meminster For Foreign Affairs
Vienna

Organization of the Petroleum
Exporting Countries
Vienna, February 18, 1974

Excellency,

I have the honour to acknowledge receipt of your note of 18 February, 1974, which reads as follows:

"With reference to the Agreement between the Organization of the Petroleum Exporting Countries and the Republic of Austria regarding the Headquarters of the Organization of the Petroleum Exporting Countries, to which I have this day affixed my signature, I have the honour to propose that:

(1) The articles mentioned in paragraph (7) of Article 12 of the Agreement may be disposed of without charge only for the benefit of international organizations or charitable institutions.

(2) Having regard to Article 38 (1) of the Vienna Convention on Diplomatic Relations and to the practice of Austria, the Republic of Austria will accord persons referred to in Article 26 of the Agreement – persons of Austrian citizenship and stateless persons resident in Austria – only the immunity from legal process of any kind in respect of words spoken or written and of acts performed by them in direct connection with their official business.

(3) In accordance with the practice of the Republic of Austria which is in conformity with Article 42 of the Vienna Convention on Diplomatic Relations to which Austria is a party diplomatic agents accredited to the Republic of Austria may not practise for personal profit any professional or commercial activity. It is understood that the same restriction shall apply to all persons to whom the Agreement accords the same privileges and immunities as are accorded to members, having comparable rank, of diplomatic missions in the Republic of Austria.

(4) Persons to whom the agreement applies, who are not Austrian nationals or stateless persons resident in Austria, shall not benefit from Austrian regulations governing family and maternity allowances.

(5) Without prejudice to the provision of Article 22 (g) of the Agreement, officials of OPEC and persons, other than officials of OPEC, performing missions authorized by OPEC or serving on specialized organs of OPEC, working parties or other subsidiary bodies of OPEC shall be allowed, over and above the facilities granted by the Agreement, to make transfers to other countries up to a maximum amount of one thousand U.S. dollars (U.S. $1,000.00) per year, to the debit of accounts in Austrian Schilling held in their names at Austrian credit institutions, if the afore-mentioned persons wish to make Austrian currency transfers exceeding the amount mentioned above, such transfers shall be authorized by the Austrian authorities up to the amount of all salary previously received in Austrian currency by the person concerned from OPEC, provided that OPEC agrees that the amount to be transferred shall be deducted from transferable Austrian currency balances of OPEC.

If OPEC agrees to this proposal, I have the honour to propose that this note and your note of confirmation shall constitute an Agreement between OPEC and the Republic of Austria, entering into force on the same day as the Headquarters Agreement."

I have the honour to confirm that OPEC agrees with the above proposal and that your note and this reply will constitute an Agreement between OPEC and the Republic of Austria, entering into force on the same day as the Headquarters Agreement.

(Signed)

Dr. Abderrahman Khene
(Secretary General)

APPENDIX IV

SOLEMN DECLARATION

CONFERENCE OF SOVEREIGNS AND HEADS OF STATE OF OPEC MEMBER COUNTRIES

ALGIERS, March 4 – 6, 1975

The Sovereigns and Heads of State of the Member Countries of the Organization of the Petroleum Exporting Countries met in Algiers on March 4 – 6, 1975, at the invitation of the President of the Revolutionary Council and of the Council of Ministers of the Democratic People's Republic of Algeria.

1. They reviewed the present world economic crisis, exchanged views on the causes of the crisis which has persisted for several years, and considered the measures they would take to safeguard the legitimate rights and interests of their peoples, in the context of international solidarity and co-operation.

They stress that world peace and progress depend on the mutual respect for the sovereignty and equality of all member nations of the international community, in accordance with the U.N. Charter. They further emphasize that the basic statements of this Declaration fall within the context of the decisions taken at the VIth Special Session of the General Assembly of the United Nations on problems of raw materials and development.

The Sovereigns and Heads of State reaffirm the solidarity which unites their countries in safeguarding the legitimate rights and the interest of their peoples, reasserting the sovereign and inalienable right of their countries to the ownership, exploitation and pricing of their natural resources and rejecting any idea or attempt that challenges those fundamental rights and, thereby, the sovereignty of their countries.

They also reaffirm that OPEC Member Countries, through the collective, steadfast and cohesive defence of the legitimate rights of their peoples, have served the larger and ultimate interest and progress of the world community and, in doing so, have acted in the direction hoped for by all developing countries, producers of raw materials, in defence of the legitimate rights of their peoples.

They conclude that the interdependence of nations, manifested in the world economic situation, requires a new emphasis on international co-operation and declare themselves prepared to contribute with their efforts to the objectives of world economic development and stability, as stated in the Declaration and Programme of Action for the establishment of a new international economic order adopted by the General Assembly of the United Nations during its VIth Special Session.

2. The Sovereigns and Heads of State note that the cause of the present world economic crisis stems largely from the profound inequalities in the economic and social progress among peoples; such inequalities, which characterize the under-development of the developing countries, have been mainly generated and activated by foreign exploitation and have become more acute over the years due to the absence of adequate international co-operation for development. This situation has fostered the drainage of natural resources of the developing countries impeding an effective transfer of capital

resources and technology, and thus resulting in a basic disequilibrium in economic relations.

They note that the disequilibrium which besets the present international economic situation has been aggravated by widespread inflation, a general slow-down of economic growth and instability of the world monetary system in the absence of monetary discipline and restraint.

They reaffirm that the decisive causes of such anomalies lie in the long-standing and persistent ills which have been allowed to accumulate over the years, such as the general tendency of the developed countries to consume excessively and to waste scarce resources, as well as inappropriate and short-sighted economic policies in the industrialized world.

They, therefore, reject any allegation attributing to the price of petroleum the responsibility for the present instability of the world economy. Indeed, the oil which has contributed so significantly to the progress and prosperity of the industrialized nations for the past quarter of a century, not only is the cheapest source of energy available, but the cost of imported oil constitutes an almost negligible part of the Gross National Product of the developed countries. The recent adjustment in the price of oil did not contribute but insignificantly to the high rates of inflation which have been generated within the economies of the developed countries, basically by other causes. This inflation exported continuously to the developing countries has disrupted their development efforts.

3. Moreover, the Sovereigns and Heads of State condemn the threats, propaganda campaigns and other measures which have gone so far as to attribute to OPEC Member Countries the intention of undermining the economies of the developed countries; such campaigns and measures that may lead to confrontation have obstructed a clear understanding of the problems involved and have tended to create an atmosphere of tension that is not conducive to international consultation and co-operation. They also denounce any grouping of consumer nations with the aim of confrontation, and condemn any plan or strategy designed for aggression, economic or military, by such grouping or otherwise against any OPEC Member Country.

In view of such threats the Sovereigns and Heads of State reaffirm the solidarity that unites their countries in the defence of the legitimate rights of their peoples and hereby declare their readiness, within the framework of that solidarity, to take immediate and effective measures in order to counteract such threats with a united response whenever the need arises, notably in the case of aggression.

4. While anxious to satisfy the legitimate aspirations of their peoples for development and progress, the Sovereigns and Heads of State are also keenly aware of the close link which exists between the achievement of their national development and the prosperity of the world economy. Increased interdependence between nations makes them even more mindful of the difficulties experienced by other peoples which may affect world stability. In view of this, they reaffirm their support for dialogue, co-operation and concerted action for the solution of the major problems facing the world economy.

In this spirit, the OPEC Member Countries, with increased financial resources in a relatively short period of time, have contributed through multilateral and bilateral channels, to the development efforts and balance of payments adjustments of other

developing countries as well as industrialized nations. As a proportion of Gross National Product, during 1974, their financial support to other developing countries was several times greater than the average annual aid given by industrialized nations to developing countries during the last development decade. In addition, OPEC Member Countries have extended financial facilities to developed countries to help them meet their balance of payments deficits. Furthermore, the acceleration of their economic development and the trade promotion measures adopted by OPEC Member Countries, have contributed to the expansion of international trade as well as balance of payments adjustments of developed countries.

5. The Sovereign and Heads of State agree in principle to holding an international conference bringing together the developed and developing countries.

They consider that the objective of such a conference should be to make a significant advance in action designed to alleviate the major difficulties existing in the world economy, and that consequently the conference should pay equal attention to the problems facing both the developed and developing countries.

Therefore, the agenda of the aforementioned conference can in no case be confined to an examination of the question of energy; it evidently includes the questions of raw materials of the developing countries, the reform of the international monetary system and international co-operation in favour of development in order to achieve world stability.

Furthermore, this conference may, for reasons of efficiency, be held in a limited framework provided that all the nations concerned by the problems dealt with, are adequately and genuinely represented.

The Sovereigns and Heads of State stress that the exploitation of the depletable oil resources in their countries must be based, first and foremost, upon the best interests of their peoples and that oil, which is the major source of their income, constitutes a vital element in their development.

While recognizing the vital role of oil supplies to the world economy, they believe that the conservation of petroleum resources is a fundamental requirement for the well-being of future generations and, therefore, urge the adoption of policies aimed at optimizing the use of this essential, depletable and non-renewable resource.

7. The Sovereigns and Heads of State point out that an artificially low price for petroleum in the past has prompted over-exploitation of this limited and depletable resource and that continuation of such policy would have proved to be disastrous from the point of view of conservation and world economy.

They consider that the interest of the OPEC Member Countries as well as the rest of the world, would require that the oil price, being the fundamental element in the national income of the Member Countries, should be determined taking into account the following:

- the imperatives of the conservation of petroleum, including its depletion and increasing scarcity in the future;
- the value of oil in terms of its non-energy uses; and
- the conditions of availability, utilization and cost of alternative sources of energy.

Moreover, the price of petroleum must be maintained by linking it to certain objective criteria, including the price of manufactured goods, the rate of inflation, the terms of transfer of goods and technology for the development of OPEC Member Countries.

8. The Sovereigns and Heads of State declare that their countries are willing to continue to make positive contributions towards the solution of the major problems affecting the world economy, and to promote genuine co-operation which is the key to the establishment of a new international economic order.

In order to set in motion such international co-operation, they propose the adoption of a series of measures directed to other developing countries as well as the industrialized nations.

They, therefore, wish to stress that the series of measures proposed herein constitute an overall programme, the components of which must all be implemented if the desired objectives of equity and efficiency are to be attained.

9. The Sovereigns and Heads of State reaffirm the natural solidarity which unites their countries with the other developing countries in their struggle to overcome underdevelopment, and express their deep appreciation for the strong support given to OPEC Member Countries by all the developing nations as announced in the Conference of Developing Countries on Raw Materials, held in Dakar between 3rd and 8th February, 1975.

They recognize that the countries most affected by the world economic crisis are the developing countries and therefore reaffirm their decision to implement measures that will strengthen their co-operation with those countries. They are prepared to contribute within their respective possibilities to the realization of the U. N. Special International Programme and to extend additional special credits, loans and grants for the development of developing countries.

In this context, they have agreed to co-ordinate their programmes for financial cooperation in order to better assist the most affected developing countries especially in overcoming their balance of payments difficulties. They have also decided to co-ordinate such financial measures with long-term loans that will contribute to the development of those economies.

In the same context, and in order to contribute to a better utilization of the agricultural potential of the developing countries, the Sovereigns and Heads of State have decided to promote the production of fertilizers, with the aim of supplying such production under favourable terms and conditions, to the countries most affected by the economic crisis.

They reaffirm their willingness to co-operate with the other developing countries which are exporters of raw materials and other basic commodities in their efforts to obtain an equitable and remunerative price level for their exports.

10. To help smooth out difficulties affecting the economies of developed countries, the Sovereigns and Heads of State declare that the OPEC Member Countries will continue to make special efforts in respect of the needs of these countries.

As regards the supply of petroleum, they reaffirm their countries' readiness to ensure supplies that will meet the essential requirements of the economies of the developed countries, provided that the consuming countries do not use artificial barriers to distort the normal operation of the laws of demand and supply.

To this end, the OPEC Member Countries shall establish close co-operation and co-ordination among themselves in order to maintain balance between oil production and the needs of the world market.

With respect to the petroleum prices, they point out that in spite of the apparent magnitude of the re-adjustment, the high rate of inflation and currency depreciation have wiped out a major portion of the real value of price re-adjustment, and that the current price is markedly lower than that which would result from the development of alternative sources of energy.

Nevertheless, they are prepared to negotiate the conditions for the stabilization of oil prices which will enable the consuming countries to make necessary adjustments to their economies.

The Sovereigns and Heads of State, within the spirit of dialogue and co-operation, affirm that the OPEC Member Countries are prepared to negotiate with the most affected developed countries, bilaterally or through international organizations, the provision of financial facilities that allow the growth of the economies of those countries while ensuring both the value and security of the assets of OPEC Member Countries.

11. Recalling that a genuine international co-operation must benefit both the developing and developed countries, the Sovereigns and Heads of State declare that parallel with, and as a counterpart to, the efforts, guarantees and commitments which the OPEC Member Countries are prepared to make, the developed countries must contribute to the progress and development of the developing countries through concrete action, and in particular to achieve economic and monetary stability, giving due regard to the interests of the developing countries.

In this context, they emphasize the necessity for the full implementation of the Programme of Action adopted by the United Nations General Assembly at its VIth Special Session, and accordingly they emphasize the following requirements:

- Developed countries must support measures taken by developing countries which are directed towards the stabilization of the prices of their exports of raw materials and other basic commodities at equitable and remunerative levels.
- Fulfillment by the developed countries of their international commitments for the second U. N. Development Decade as a minimum contribution to be increased particularly by the most able of the developed countries for the benefit of the most affected developing countries.
- Formulation and implementation of an effective food programme under which the developed countries, particularly the world major producers and exporters of foodstuffs and products, extend grants and assistance to the most affected developing countries with respect to their food and agricultural requirements.
- Acceleration of the development processes of the developing countries, particularly through the adequate and timely transfer of modern technology and the removal of the obstacles that slow the utilization and integration of such technology in the economies of the developing countries. Considering that in many cases obstacles to development derive from insufficient and inappropriate transfer of technology, the Sovereigns and Heads of State attach the greatest importance to the transfer of

technology which, in their opinion, constitutes a major test of adherence of the developed countries to the principle of international co-operation in favour of development. The transfer of technology should not be based on a division of labour in which the developing countries would produce goods of lesser technological content. An efficient transfer of technology must enable the developing countries to overcome the considerable technological lag in their economies through the manufacture in their territories of products of a high technological content, particularly in relation to the development and transformation of their natural resources. With regard to the depletable natural resources, as OPEC's petroleum resources are, it is essential that the transfer of technology must be commensurate in speed and volume with the rate of their depletion, which is being accelerated for the benefit and growth of the economies of the developed countries.

- A major portion of the planned or new petrochemical complexes, oil refineries and fertilizer plants be built in the territories of OPEC Member Countries with the co-operation of industrialized nations for export purposes to the developed countries with guaranteed access for such products to the markets of these countries.
- Adequate protection against the depreciation of the value of the external reserves of OPEC Member Countries, as well as assurance of the security of their investments in the developed countries.

Moreover, they deem it necessary that the developed countries open their markets to hydrocarbons and other primary commodities as well as manufactured goods produced by the developing countries, and consider that discriminatory practices against the developing countries and among them, the OPEC Member Countries, are contrary to the spirit of co-operation and partnership.

12. The Sovereigns and Heads of State note the present disorder in the international monetary system and the absence of rules and instruments essential to safeguard the terms of trade and the value of financial assets of developing countries.

They emphasize, particularly, the urgent need to take the necessary steps to ensure the protection of the developing countries' legitimate interests.

They recognize that the pooling of the financial resources of both the OPEC Member Countries and the developed countries, as well as the technology ability of the latter, for the furtherance of the economy of the developing countries, would substantially help in solving the international economic crisis.

They stress that fundamental and urgent measures should be taken to reform the international monetary system in such directions as to provide adequate and stable instruments for the expansion of trade, the development of productive resources and balanced growth of the world economy.

They note that the initiatives so far taken to reform the international monetary system have failed, since those initiatives have not been directed toward the removal of the inherent inequity in the structure of the system.

Decisions likely to affect the value of the reserve currencies, the Special Drawing Rights, and the price and role of gold in the international monetary system, should no longer be allowed to be made on a unilateral basis or negotiated by developed countries

alone; the developed countries should subscribe to a genuine reform of the international monetary and financial institution, to ensure its equitable representation and to guarantee the interests of all developing countries

The reform of the monetary and financial system should allow a substantial increase in the share of developing countries in decision-making, management and participation, in the spirit of partnership for international development and on the basis of equality.

With this in mind, the Sovereigns and Heads of State have decided to promote amongst their countries a mechanism for consultation and co-ordination for full co-operation in the framework of their solidarity, and with a view to achieving the goal of a genuine reform of the international monetary and financial system.

13. The Sovereigns and Heads of State attach great importance to the strengthening of OPEC and, in particular, to the co-ordination of the activities of their National Oil Companies within the framework of the Organization and to the role which it should play in the international economy. They consider that certain tasks of prime importance remain to be accomplished which call for concerted planning among their countries and for the co-ordination of their policies in the fields of production of oil, its conservation, pricing and marketing, financial matters of common interest and concerted planning and economic co-operation among Member Countries in favour of international development and stability.

14. The Sovereigns and Heads of State are deeply concerned about the present international economic crisis which constitutes a dangerous threat to stability and peace. At the same time, they recognize that the crisis has brought about an awareness of the existence of problems whose solution will contribute to the security and well-being of humanity as a whole.

Equally aware of the hopes and aspirations of the peoples the world over for the solution of the major problems affecting their lives, the Sovereigns and Heads of State solemnly agree to commit their countries to measures aimed at opening a new era of co-operation international relations.

It behoves the developed countries, which hold most of the instruments of progress, well-being and peace, just as they hold most of the instruments of destruction, to respond to the initiatives of the developing countries with initiatives of the same kind, by choosing to grasp the crisis situation as an historic opportunity in opening a new chapter in relations between peoples.

The anxiety generated by the uncertainty marking relations between those who hold power, coupled with the climate of uneasiness created by the confusion reigning in the world economy, would then give way to the confidence and peace resulting in an atmosphere of genuine international co-operation in which the developing countries would derive the greatest benefit and to which they would contribute their immense potentialities.

At the same time when, thanks to man's genius, scientific and technological progress has endowed peoples with substantial means of surmounting natural adversity and of bringing about the most remarkable changes for the better, the future of mankind ultimately depends solely on man's capacity to mobilize their imagination and willpower in the service and interest of all.

The Sovereigns and Heads of the OPEC Member Countries proclaim their profound faith in the capability of all peoples to bring about a new economic order founded on justice and fraternity which will enable the world of tomorrow to enjoy progress equally shared by all in co-operation, stability and peace. They accordingly make a fervent appeal to the Governments of the other countries of the world and solemnly pledge the full support of their peoples in the pursuance of this aim.

APPENDIX V

Holders of the Office of Secretary General of OPEC [1]

Name	Country	Period of Office	Terms of Appointment
Fuad Rouhani	Iran	Jan 61 – Apr 64	2 years + 1 year extension + 4 months extension
Abdul Rahman al-Bazzaz	Iraq	May 64 – Apr 65	1 year
Ashraf T. Lufti	Kuwait	May 65 – Dec 66	1 year + 8 months extension
Mohammad Salch Joukhdar	Saudi Arabia	Jan 67 – Dec 67	1 year
Francisco R. Parra	Venenzuela	Jan 68 – Dec 68	1 year
Elrich Sanger	Indonesia	Jan 69 – Dec 69	1 year
Omar El Badri	Libya	Jan 70 – Dec 70	1 year
Nadim Pachachi	U. A. E.	Jan 71 – Dec 72	2 years
Abderrahman Khene	Algeria	Jan 73 – Dec 74	2 years
Meshach O. Feydi	Nigeria	Jan 75 – Dec 76	2 years
Ali Jaidah	Qatar	Jan 77 – Dec 78	2 years
René G. Ortiz	Ecuador	Jan 79 – Dec 81	2 years + 6 months extension
Marc S. Nan Nguema	Gabon	Jul 81 – Jun 83	2 years
Dr. Subroto	Indonesia	Jun 88 – Jun 94	3 years + 3 years extension
Alhaji Rilwanu Lukman	Nigeria	Jan 95 – present	2 years + 3 years extension

1 From January 1961 until April 1965, when the posts were separated, the Secretary General was also Chairman of the Board Of Governors. Up until 1970 the Secretary General's normal term of office was one year. Since July 1983, Article 28 of the OPEC Statute has provided for a maximum initial period of office of three years, renewable for a further three years.

APPENDIX VI

Meetings of the Conference of OPEC, including its Presidents and Chairmen: September 1960 – June 1998

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
1st	Sep 10 – 14 1960	Inaugural	Baghdad	Mohammed Salman	Nov 1960	04	Tal'at Al-Shaibani	Iraq
2nd	Jan 15 – 21 1961	Ordinary	Caracas	Juan Pablo Perez Alfonzo	Jan 1961	09	Juan Pablo Perez Alfonzo	Venezuela
3rd	Oct 28 – Nov 01 1961	Ordinary	Teheran	Fuad Rouhani	Oct 1961	06	Fuad Rouhani	Iran
4th	Apr 05 – 08 & Jun 04 – 08 1962	Ordinary	Geneva	Ahmed Zaki Yamani	Apr 1962	15	Ahmed Zaki Yamani	Saudi Arabia
5th	Nov 24 – 25 & Dec 24 – 31 1963	Ordinary	Riyadh	Ahmed Zaki Yamani	Jul 1963	12	Ahmed Zaki Yamani	Saudi Arabia
6th	July 06 – 14 1964	Ordinary	Geneva	Hassan Kamel	Jul 1964	04	Hassan Kamel	Qatar
7th	Nov 23 – 28 1964	Ordinary	Jakarta	Chairul Saleh	Nov 1964	05	Chairul Saleh	Indonesia
8th	Apr 05 – 10 1965	Extra-Ordinary	Geneva	Manuel Perez Guerrero	Apr 1965	03	Manuel Perez Guerrero	Venezuela
9th	Jul 07 – 13 1965	Ordinary	Tripoli	Fuad Al-Kabazi	Jul 1965	05	Fuad Al-Kabazi	Libya
10th	Dec 15 – 17 1965	Ordinary	Vienna	Jamshid Amouzegar	Dec 1965	04	Jamshid Amouzegar	Iran
11th	Apr 25 – 28 1966	Ordinary	Vienna	Saleh Kubba	Apr 1966	08	Saleh Kubba	Iraq

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
12th	Dec 04 – 08 1966	Ordinary	Kuwait	Sheikh Sabah Al-Ahmed Al-Jaber	Dec 1966	09	Sheikh Sabah Al-Ahmed Al-Jaber	Kuwait
13th	Sep 15 – 17 1967	Extra-Ordinary	Rome	Hassan Kamel	Sep 1967	02	Hassan Kamel	Qatar
14th	Nov 27 – 29 1967	Ordinary	Vienna	Ahmed Zaki Yamani	Nov 1967	02	Ahmed Zaki Yamani	Saudi Arabia
15th	Jan 08 – 09 1968	Extra-Ordinary	Beirut	Jamshid Amouzegar	Jan 1968	05	Jamshid Amouzegar	Iran
16th	Jun 24 – 25 1968	Ordinary	Vienna	Abdul-Rahman Al-Ateeqy	Jun 1968	05	Abdul-Rahman Al-Ateeqy	Kuwait
17th	Nov 09 – 10 1968	Ordinary	Baghdad	Rashid Al-Rifa'I	Nov 1968	08	Rashid Al-Rifa'I	Iraq
18th	July 08 – 09 1969	Ordinary	Vienna	Nadim Pachachi	Jul 1969	05	Nadim Pachachi	Abu Dhabi
19th	Dec 14 – 16 1969	Ordinary	Doha	Hassan Kamel	Dec 1969	06	Hassan Kamel	Qatar
20th	Jun 24 – 26 1970	Ordinary	Algiers	Belaid Adbesselam	Jun 1970	06	Belaid Adbesselam	Algeria
21st	Dec 09 – 12 1970	Ordinary	Caracas	Hugo Perez La Salvia	Dec 1970	02	Hugo Perez La Salvia	Venezuela
22nd	Feb 03 – 04 1971	Extra-Ordinary	Tehran	Jamshid Amouzegar	Feb 1971	05	Jamshid Amouzegar	Iran
23rd	Jul 10 1971	Extra-Ordinary	Vienna	Abdul Rahman Al-Ateeqy	Jul 1971	05	Abdul Rahman Al-Ateeqy	Kuwait
24th	Jul 12 – 13 1971	Ordinary	Vienna	Abdul Rahman Al-Ateeqy			Abdul Rahman Al-Ateeqy	Kuwait

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
25th	Sep 22 1971	Extra-Ordinary	Beirut	Abdul-Rahman Al-Ateeqy			Abdul-Rahman Al-Ateeqy	Kuwait
26th	Dec 07 1971	Ordinary	Abu Dhabi	Mana Saeed Otaiba	Dec 1971	03	Mana Saeed Otaiba	Abu Dhabi
27th	Mar 11 – 12 1972	Extra-Ordinary	Beirut	Ahmed Zaki Yamani	Mar 1972	08	Ahmed Zaki Yamani	Saudi Arabia
28th	Jun 09 1972	Extra-Ordinary	Beirut	Ahmed Zaki Yamani				
29th	Jun 26 – 27 1972	Ordinary	Vienna	Ahmed Zaki Yamani				
30th	Oct 26 – 27 1972	Extra-Ordinary	Riyadh	Ahmed Zaki Yamani				
31st	Nov 29 – 30 1972	Ordinary	Lagos	Alhaji Shettima Ali Monguno	Nov 1972	07	Alhaji Shettima Ali Monguno	Gabon
32nd	Mar 16 – 17 1973	Extra-Ordinary	Vienna	Alhaji Shettima Ali Monguno				
33rd	May 26 1973	Extra-Ordinary	Vienna	Alhaji Shettima Ali Monguno				
34th	Jun 27 – 28 1973	Ordinary	Vienna	Abdul-Rahman Al-Ateeqy	Jun 1973	05	Abdul-Rahman Al-Ateeqy	Kuwait
35th	Sep 15 – 16 1973	Extra-Ordinary	Vienna	Abdul-Rahman Al-Ateeqy				
36th	Nov 19 – 20 1973	Ordinary	Vienna	Jamshid Amouzegar	Nov 1973	07	Jamshid Amouzegar	Iran

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
37th	Jan 07 – 09 1974	Extra-Ordinary	Geneva	Jamshid Amouzegar				
38th	Mar 16 – 17 1974	Extra-Ordinary	Vienna	Jamshid Amouzegar				
39th	Apr 07 1974	Extra-Ordinary	Geneva	Jamshid Amouzegar				
40th	Jun 15 – 17 1974	Ordinary	Quito	Gustavo Jarrin Ampudia	Jun 1974	06	Gustavo Jarrin Ampudia	Ecuador
41st	Sep 12 – 13 1974	Extra-Ordinary	Vienna	Gustavo Jarrin Ampudia				
42nd	Dec 12 – 13 1974	Ordinary	Vienna	Valentin Hernandez Acosta	Dec. 1974	06	Valentin Hernandez Acosta	Venezuela
43rd	Feb 25 – 27 1975	Extra-Ordinary	Vienna	Valentin Hernandez Acosta				
44th	Jun 09 – 11 1975	Ordinary	Libreville	Edouard Alexis M'bouy Boutzit	Jun. 1975	06	Edouard Alexis M'bouy Boutzit	Gabon
45th	Sep 24 – 27 1975	Extra-Ordinary	Vienna	Edouard Alexis M'bouy Boutzit				
46th	Dec 20 – 21 1975	Ordinary	Vienna	Jamshid Amouzegar	Dec 1975	05	Jamshid Amouzegar	Iran
47th	May 27 – 28 1976	Ordinary	Bali	Mohammad Sadli	May 1976	07	Mohammad Sadli	Indonesia
48th	Dec 15 – 17 1976	Ordinary	Doha	Abdul Aziz Bin Khalifa Al Thani	Dec 1976	12	Abdul Aziz Bin Khalifa Al Thani	Qatar

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
49th	Jul 12 – 13 1977	Ordinary	Stockholm	Abdul Aziz Bin Khalifa Al Thani				
50th	Dec 20 – 21 1977	Ordinary	Caracas	Valentin Hernandez Acosta	Dec 1977	06	Valentin Hernandez Acosta	Venezuela
51st	Jun 17 – 19 1978	Ordinary	Abu Dhabi	Al Khalifa Al-Sabaha	Jun 1978	06	Al Khalifa Al-Sabaha	Kuwait
52nd	Dec 16 – 17 1978	Ordinary	Abu Dhabi	Mana Saeed Otaiba	Dec 1978	12	Mana Saeed Otaiba	UAE
53rd	Mar 26 – 27 1979	Extra-Ordinary	Geneva	Mana Saeed Otaiba				
54th	Jun 26 – 28 1979	Ordinary	Geneva	Mana Saeed Otaiba				
55th	Dec 17 – 20 1979	Ordinary	Caracas	Humberto Calderon Berti	Dec 1979	06	Humberto Calderon Berti	Venezuela
56th	May 07 – 08 1980	Extra-Ordinary	Taif	Humberto Calderon Berti				
57th	Jun 09 – 11 1980	Ordinary	Algeria	Belkacem Nabi	Jun 1980	06	Belkacem Nabi	Algeria
58th	Sep 17 1980	Extra-Ordinary	Vienna	Belkacem Nabi				
59th	Dec 15 – 16 1980	Ordinary	Bali	Dr. Subroto	Dec 1980	12	Dr. Subroto	Indonesia
60th	May 25 – 26 1981	Ordinary	Geneva	Dr. Subroto				
61st	Oct 29 1981	Extra-Ordinary	Geneva	Dr. Subroto				
62nd	Dec 09 – 11 1981	Ordinary	Abu Dhabi	Mana Saeed Otaiba	Dec 1981	05	Mana Saeed Otaiba	UAE

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
63rd	Mar 19 – 20 1982	Ordinary	Vienna	Mana Saeed Otaiba				
64th	May 20 – 21 1982	Ordinary	Quito	Eduardo Ortega Gomez	May 1982	07	Eduardo Ortega Gomez	Ecuador
65th	Jul 09 – 10 1982	Extra-Ordinary	Vienna	Eduardo Ortega Gomez				
66th	Dec 19 – 20 1982	Ordinary	Vienna	Mallam Yahaya Dikko	Dec 1982	07	Mallam Yahaya Dikko	Nigeria
67th	Mar 14 1983	Extra-Ordinary	London	Mallam Yahaya Dikko				
68th	Jul 18 1983	Ordinary	Helsinki	Mana Saed Otaiba	Jul 1983	05	Mana Saeed Otaiba	UAE
69th	Dec 07 – 09 1983	Ordinary	Geneva	Kamal Hassan Maghur	Dec 1983	10	Kamal Hassan Maghur	Libya
70th	Jul 10 – 11 1984	Ordinary	Vienna	Kamal Hassan Maghur				
71st	Oct 21 – 31 1984	Ordinary	Geneva	Dr. Subroto	Oct 1984	14	Dr. Subroto	Indonesia
72nd	Dec 19 – 21 & 27 – 29 1984	Ordinary	Geneva	Dr. Subroto				
73rd	Jan 28 – 30 1985	Extra-Ordinary	Geneva	Dr. Subroto				
74th	Jul 22 – 25 1985	Ordinary	Geneva	Dr. Subroto				
75th	Oct 03 – 04 1985	Extra-Ordinary	Vienna	Dr. Subroto				

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
76th	Dec 07 – 09 1985	Ordinary	Geneva	Arturo Hernandez Grisanti	Dec 1985	06	Arturo Hernandez Grisanti	Venezuela
77th	Mar 16 – 24 & Apr 15 – 21 1986	Extra-Ordinary	Geneva	Arturo Hernandez Grisanti				
78th	Jun 25 – 30 & Jul 28 – Aug 05 1986	Ordinary	Brioni	Alhaji Rilwanu Lukman	Jun 1986	49	Alhaji Rilwanu Lukman	Nigeria
79th	Oct 06 – 22 1986	Ordinary	Geneva	Alhaji Rilwanu Lukman				
80th	Dec 11 – 20 1986	Ordinary	Geneva	Alhaji Rilwanu Lukman				
81st	Jun 25 – 27 1987	Ordinary	Vienna	Alhaji Rilwanu Lukman				
82nd	Dec 09 – 14 1987	Ordinary	Vienna	Alhaji Rilwanu Lukman				
83rd	Jun 11 – 14 1988	Ordinary	Vienna	Alhaji Rilwanu Lukman				
84th	Nov 21 – 28 1988	Ordinary	Vienna	Alhaji Rilwanu Lukman				
85th	Jun 05 – 07 1989	Ordinary	Vienna	Alhaji Rilwanu Lukman				
86th	Nov 25 – 28 1989	Ordinary	Vienna	Alhaji Rilwanu Lukman				
87th	Jul 26 – 27 1990	Ordinary	Geneva	Sadek Boussena	Jul 1990	11	Sadek Boussena	Algeria

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
88th	Dec 12 – 13 1990	Ordinary	Vienna	Arturo Sadek Boussena				
89th	Jun 04 1991	Ordinary	Vienna	Celestino Armas	Jun 1991	06	Celestino Armas	Venezuela
90th	Nov 26 – 27 1991	Ordinary	Vienna	Jibril Aminu	Nov 1991	06	Jibril Aminu	Nigeria
91st	May 21 1992	Ordinary	Vienna	Yousef Omeir bin Yousef	May 1992	06	Yousef Omeir bin Yousef	UAE
92nd	Nov 25 1992	Ordinary	Vienna	Alirio A. Parra	Nov 1992	07	Alirio A. Parra	Veneuzela
93rd	Jun 08 – 10 1993	Ordinary	Geneva	Jean Ping	Jun 1993	05	Jean Ping	Gabon
94th	Sep 25 – 29 1993	Extra-Ordinary	Geneva	Jean Ping				
95th	Nov 23 1993	Ordinary	Vienna	Abdullah bin Hamad Al-Attiyah	Dec 1993	07	Abdullah bin Hamad Al-Attiyah	Qatar
96th	Jun 15 – 16 1994	Ordinary	Vienna	Abdulla Salem El Badri	Jun 1994	05	Abdulla Salem El Badri	Libya
97th	Nov 21 – 22 1994	Ordinary	Bali	Ida Bagus Sudjana	Nov 1994	07	Ida Bagus Sudjana	Indonesia
98th	Jun 19 – 20 1995	Ordinary	Vienna	Erwin Jose Arrieta	Jun 1995	05	Erwin Jose Arrieta	Venezuela
99th	Nov 21 – 22 1995	Ordinary	Vienna	Ammar Makhloufi	Nov 1995	07	Ammar Makhloufi	Algeria
100th	Jun 05 – 07 1996	Ordinary	Vienna		Jun 1996	05		
101st	Nov 27 – 28 1996	Ordinary	Vienna	Abdulla Salem El Badri	Nov 1996	07	Saddam Zabin Hassan	Iraq
102nd	Jun 25 – 26 1997	Ordinary	Vienna	Abdullah bin Hamad Al-Attiyah	Jun 1997	06	Hamad Al-Attiyah	Qatar

No.	Date	Type	Location	President	Appointment : Chairman Date – Months			Country
103rd	Nov 26 – Dec 01 1997	Ordinary	Vienna	H E Ida Bagus Sudjana	Nov 1997		Bijan Namdar Zangeneh	Iran
104th	Mar 1998	Extra-Ordinary	Vienna	[not published]			[not published]	
105th	Jun 24 – 25 1998	Ordinary	Vienna	H E Obaid Bin Saif Al-Nasseri	Jun 1998		H E Obaid Bin Saif Al-Nasseri	UAE

APPENDIX VII

OPEC and World Crude Oil Reserves, Production and Exports & Refined Products Exports and Consumption

TABLE 1 : **OPEC Member-Countries' Estimated Mid-Year Population, 1960-1994 (Thousand of Inhabitants)**

Country	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
ALGERIA	10,600	11,920	14,330	15,770	16,780	18,670	20,520	21,850	25,010	26,310	26,980	27,667
GABON	415	450	560	625	671	810	910	990	1,160	1,250	1,300	1,352
INDONESIA	95,133	105,394	116,786	124,983	131,038	147,490	157,212	164,047	179,300	186,472	190,058	193,713
IRAN	21,520	24,810	28,660	31,230	33,380	39,300	44,080	47,820	55,970	59,462	61,246	63,084
IRAQ	6,890	8,050	9,440	10,413	11,124	13,238	14,586	15,585	18,920	20,240	20,922	21,627
KUWAIT	280	480	740	890	1,010	1,370	1,570	1,712	2,130	2,336	2,434	2,536
LIBYA	1,350	1,620	1,980	2,240	2,430	3,040	3,470	3,790	4,540	4,880	5,050	5,226
NIGERIA	51,598	58,490	66,182	71,328	74,884	84,732	93,367	99,669	115,456	122,062	125,365	128,757
QATAR	50	70	110	150	170	230	270	300	375	415	431	448
SAUDI ARABIA	5,980	6,090	6,324	6,756	7,250	9,370	10,680	11,600	14,870	15,776	16,239	16,716
U.A.E.	90	160	230	420	510	1,010	1,210	1,350	1,590	1,670	1,710	1,751
VENEZUELA	7,350	8,710	10,280	11,280	12,670	15,020	16,390	17,320	19,330	20,250	20,710	21,180
TOTAL OPEC	201,256	226,244	255,622	276,085	291,917	334,280	364,265	386,033	438,651	461,123	472,445	484,057

Sources: International Monetary Fund; International Financial Statistics; United Nations, Monthly Bulletin of Statistics; World Bank, World Tables.
OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 2 : **OPEC Proven Crude Oil Reserves by Country, 1960 - 1994**
(Million Barrels)

Country	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
ALGERIA	5,200	7,400	8,098	7,640	7,370	8,200	9,200	8,820	9,200	9,200	9,200	9,979
GABON	50	275	485	761	580	471	547	678	1,775	2,412	2,349	2,349
INDONESIA	9,500	9,825	10,000	10,500	14,523	11,603	10,080	9,180	10,785	5,598	5,129	5,129
IRAN	35,000	40,000	60,000	62,861	64,500	58,296	55,257	59,000	92,850	92,860	92,860	94,300
IRAQ	27,000	25,000	32,000	31,500	34,300	30,000	65,000	65,000	100,000	100,000	100,000	100,000
KUWAIT	65,000	68,700	79,950	72,750	71,200	67,930	67,000	92,464	97,025	96,568	96,500	96,500
LIBYA	2,000	10,000	27,655	25,036	23,942	20,330	21,784	21,300	22,935	22,800	22,800	22,800
NIGERIA	150	3,000	9,300	20,000	20,200	16,700	16,550	16,600	17,100	20,991	20,991	20,991
QATAR	2,500	3,000	4,300	6,500	5,850	3,585	3,330	4,500	4,352	4,056	3,914	3,776
SAUDI ARABIA	53,000	66,200	141,350	143,227	170,567	168,030	168,848	171,490	260,342	261,203	261,203	261,374
U.A.E.	250	10,000	12,783	25,500	32,200	30,410	32,340	32,990	98,100	98,100	98,100	98,100
VENEZUELA	18,500	17,250	14,000	13,812	18,398	19,530	25,887	54,454	60,054	63,330	64,448	64,877
TOTAL OPEC	218,150	260,650	399,021	420,087	463,630	435,085	475,842	536,475	774,518	777,117	777,493	780,174

Notes: As at December 31 of the corresponding year. Figures when added up, may not correspond to totals, due to rounding off.

Sources: Oil and Gas Journal; National Sources; World Oil; Middle East Economic Survey; Petroleum Intelligence Weekly; Petroconsultants; The Economic Intelligence Unit; Arab Oil and Gas.

OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 3 : **Crude Oil Production in OPEC Member-Countries, 1960-1994 (Thousand Barrels per Day)**

Country	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
ALGERIA [1]	181.1	558.7	1,029.1	1,097.3	982.6	1,019.9	660.9	672.4	789.9	756.5	747.3	752.5
GABON	15.4	24.9	108.8	150.2	223.0	174.5	155.4	171.7	269.1	292.0	312.3	296.9
INDONESIA	409.6	480.6	853.6	1,338.5	1,306.5	1,575.7	1,245.3	1,181.5	1,280.8	1,347.7	1,327.7	1,331.5
IRAN	1,067.7	1,908.3	3,829.0	5,860.9	5,350.1	1,467.4	2441.7	2,192.3	3,194.7	3,431.6	3,425.2	3,596.0
IRAQ	972.2	1,312.6	1,548.6	2,018.1	2,261.7	2,646.4	1,098.8	1,404.4	2,113.7	526.2	659.5	748.7
KUWAIT [2]	1,691.8	2,360.3	2,989.6	3,020.4	2,084.2	1,663.7	1,054.1	936.3	1,172.2	1,058.1	1,880.8	2,006.5
LIBYAN	-	1,218.8	3,318.0	2,174.9	1,479.8	1,831.6	1,104.9	1,032.2	1,397.0	1,432.7	1,361.0	1,389.8
NIGERIA	17.4	274.2	1,083.1	2,054.3	1,783.2	2,058.0	1,235.5	1,498.9	1,726.7	1,957.0	1,905.2	1,820.9
QATAR	174.6	232.6	362.4	570.3	437.6	471.4	269.0	293.1	405.6	423.2	390.3	378.7
SAUDI ARABIA [2]	1,313.5	2,205.3	3,799.1	7,596.2	7,075.4	9,900.5	4,539.4	3,175.0	6,412.5	8,331.7	8,047.7	8,049.0
U.A.E.	-	282.2	779.6	1,532.6	1,663.8	1,701.9	1,149.0	1,063.1	2,062.0	2,266.6	2,159.3	2,166.5
VENEZUELA	2,846.1	3,472.9	3,708.0	3,366.0	2,346.2	2,165.0	1,800.8	1,564.0	2,135.2	2,345.6	2,326.0	2,367.9
TOTAL OPEC	8,689.4	14,331.4	23,408.9	30,779.7	26,994.1	26,675.9	16,754.8	15,184.9	22,959.4	24,168.9	24,542.2	24,905.0

1 Prior to 1978, including condensate production.

2 Including production from Neutral Zone.

Sources: OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 4 : **World Crude Oil Production by Region, 1960-1994**
(Thousand Barrels per Day)

Country or Region	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
NORTH AMERICA	7,615.0	8,694.2	10,965.3	11,018.0	9,807.2	9,977.4	10,058.1	10,426.3	8,861.5	8,776.8	8,526.7	8,370.3
LATIN AMERICA	3,746.8	4,634.0	5,194.5	5,149.4	4,314.7	5,569.3	6,097.5	6,184.7	6,858.3	7,267.0	7,347.4	7,535.3
EASTERN EUROPE	3,241.4	5,174.5	7,401.8	8,804.9	10,222.3	12,383.4	12,699.6	12,248.3	11,670.5	9,201.0	8,051.9	7,347.1
WESTERN EUROPE	306.0	441.6	469.5	472.5	633.0	2,520.2	3,381.4	3,878.2	4,068.8	4,591.9	4,867.1	5,585.0
MIDDLE EAST	5,330.4	8,424.7	13,779.4	21,052.6	19,438.3	18,345.1	11,136.1	9,767.1	16,750.2	17,593.1	18,263.6	18,793.1
AFRICA	282.3	2,217.0	6,032.1	5,888.0	4,944.6	6,064.3	4,427.0	4,900.3	5,978.9	6,336.4	6.163.0	6,122.1
ASIA & FAR EAST	551.4	777.2	1,375.6	2,501.5	3,280.4	4,566.2	4,343.2	4,946.3	5,662.9	5,803.8	5,842.5	6,012.3
OCEANIA	-	6.7	167.0	422.2	416.0	385.9	429.4	586.6	613.1	626.7	664.4	695.5
TOTAL WORLD	21,073.2	30,370.0	45,385.3	55,309.3	53,056.6	59,811.9	52,572.1	52,937.8	60,464.3	60,196.8	59,726.6	60,460.6
OPEC	8,689.4	14,331.4	23,408.9	30,779.7	26,994.1	26,675.9	16,754.8	15,184.9	22,259.4	24,168.9	24,542.2	24,905.6
OPEC Percentage	41	47	52	56	51	45	32	29	38	40	41	41

Note: Totals may not add up due to independent rounding.

Sources: Twentieth Century Petroleum Statistics; De Golyer and MacNaughton; Various national and secondary sources.
OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 5 : **Consumption of Refined Products in OPEC Member-Countries, 1960-1994**
(Thousand Barrels per Day)

Country	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
ALGERIA	21.9	23.0	39.5	60.4	66.1	101.4	122.2	143.5	177.5	190.7	186.8	177.3
GABON	0.9	1.4	6.3	8.6	4.6	7.8	7.8	9.4	7.4	6.9	7.7	7.3
INDONESIA	78.4	120.4	114.1	170.5	220.5	424.5	467.6	462.8	629.7	701.4	711.4	733.4
IRAN	66.8	101.1	182.2	259.0	352.1	511.7	871.4	735.0	853.8	940.7	960.2	922.2
IRAQ	34.3	48.0	61.9	81.0	98.0	188.9	249.7	256.0	324.7	440.3	563.6	623.5
KUWAIT	7.2	7.1	14.4	16.9	21.9	37.0	74.4	101.7	65.2	101.1	95.2	113.4
LIBYA	4.4	9.0	16.4	32.7	51.2	89.5	117.3	103.0	100.5	107.5	125.5	153.5
NIGERIA	15.9	25.4	28.4	48.9	68.1	171.0	225.9	214.0	254.8	244.9	211.1	182.1
QATAR	1	0.9	1.6	2.7	4.2	6.1	8.5	10.5	13.2	13.9	13.7	16.3
SAUDI ARABIA	13.1	16.6	42.5	68.2	101.2	407.2	603.6	632.1	680.0	729.4	767.5	792.4
U.A.E. [1]	0.4	1.2	2.2	5.1	25.5	58.3	85.0	100.0	115.9	124.9	133.1	132.1
VENEZUELA	74.3	119.9	148.2	219.5	229.5	366.7	384.2	355.8	375.0	402.3	419.8	412.1
TOTAL OPEC	318.6	474.0	657.9	973.5	1,242.9	2,370.1	3,217.6	3,124.7	3,597.7	4004.1	4,195.8	4,265.5

1 1960-1979, Abu Dhabi only.

Sources: National Sources; OECD, Energy Statistics and Balances of NON OECD Countries; BP Statistical Review; United Nations, Energy Statistics Yearbook.
OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 6 : **Crude Oil Exports by OPEC Member-Countries, 1960 - 1994**
(Thousand Barrels per Day)

Country	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
ALGERIA [1]	173	546	974	993	878	716	260	272	281	279	308	329
GABON	15	25	84	119	205	151	136	164	240	273	297	311
INDONESIA	220	266	625	1,012	995	988	858	706	685	652	682	793
IRAN [2]	673	1,462	3,309	5,277	4,671	797	1,719	1,568	2,220	2,528	2,600	2,650
IRAQ	906	1,253	1,496	1,926	2,059	2,482	702	1,085	1,596	61	59	60
KUWAIT	1,494	2,035	2,580	2,642	1,803	1,297	544	476	645	696	1,440	1,263
LIBYA	-	1,213	3,312	2,175	1,431	1,693	937	895	1,090	1,180	1,110	1,125
NIGERIA	17	270	1,051	1,978	1,713	1,960	935	1,333	1,550	1,585	1,557	1,590
QATAR	171	227	363	570	428	466	280	280	348	362	341	323
SAUDI ARABIA	1,081	1,859	3,217	7,015	6,601	9,223	3,921	2,151	4,500	6,582	6,293	6,234
U.A.E.	-	280	777	1,522	1,661	1,697	1,077	978	1,895	2,060	1,970	1,955
VENEZUELA	1,997	2,332	2,435	2,124	1,472	1,287	977	826	1,242	1,404	1,613	1,696
TOTAL OPEC	6,747	11,767	20,223	27,352	23,918	22,757	12,347	10,733	16,291	17,661	18,270	18,329

1 Prior to 1978, including condensates.

2 As of 1989, the years correspond to fiscal period ending March 20.

Note: Data includes re-exports.

Sources: United Nations, Energy Statistics Yearbook; Secretariat's estimations.

TABLE 7 : **OPEC Crude Oil Exports by Region, 1960-1994 (Thousand Barrels per Day)**

Country or Region	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
NORTH AMERICA	1,220	1,317	1,370	2,917	3,372	4,234	1,335	1,226	3,846	3,545	3,812	3,986
United States	877	992	934	2,346	2,682	3,777	1,225	1,134	3,647	3,461	3,656	3,773
LATIN AMERICA	1,118	1,429	1,936	2,857	2,805	2,241	1,219	915	724	864	782	818
EASTERN EUROPE	-	-	49	429	305	345	122	221	332	242	143	175
WESTERN EUROPE	3,150	6,302	11,291	13,687	10,385	9,102	4,690	4,498	5,494	5,594	5,615	5,329
France	635	1,264	2,145	2,719	2,091	2,009	889	752	806	894	1,053	927
Germany.	423	909	1,380	1,283	1,253	1,322	654	414	705	741	627	748
Italy	496	1,198	2,190	2,448	1,740	1,356	1,062	992	1,137	1,142	1,120	940
United Kingdom	862	1,489	2,147	2,929	1,619	693	250	211	297	270	348	231
MIDDLE EAST	340	334	405	357	312	439	387	384	301	309	299	313
AFRICA	30	261	476	656	628	325	150	165	296	283	281	300
ASIA & FAR EAST	687	1,773	4,310	6,245	5,599	5,732	4,275	3,268	5,179	6,655	6,954	7,224
Japan	488	1,327	3,251	4,586	3,997	3,540	2,699	2,304	2,973	3,266	3,400	3,610
OCEANIA	202	308	304	214	177	214	107	47	119	170	213	184
Unspecified	-	44	82	-	335	125	62	9	-	26	100	-
OECD Area	5,060	9,254	16,216	21,394	17,937	17,089	8,831	7,930	12,256	12,758	13,300	12,972
TOTAL WORLD	6,747	11,767	20,223	27,352	23,918	22,757	12,347	10,733	16,291	17,687	18,197	18,328

Notes: Data includes re-exports.

Sources: United Nations, Energy Statistics Yearbook; Secondary sources: Secretariat's estimations.
OPEC ANNUAL STATISTICAL BULLETIN.

TABLE 8 : **Percentage Share of Total OPEC Crude Oil Exports by Region, 1960-1994**

Country or Region	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
NORTH AMERICA	18.1	11.2	6.8	10.7	14.1	18.6	10.8	11.4	23.6	20.0	20.9	21.7
United States	13.0	8.4	4.6	8.6	11.2	16.6	9.9	10.6	22.4	19.6	20.1	20.6
LATIN AMERICA	16.6	12.1	9.6	10.4	11.7	9.8	9.9	8.5	4.4	4.9	4.3	4.5
EASTERN EUROPE	-	-	0.2	1.6	1.3	1.5	1.0	2.1	2.0	1.4	0.8	1.0
WESTERN EUROPE	46.7	53.6	55.8	50.0	43.4	40.0	38.0	41.9	33.7	31.6	30.9	29.1
France	9.4	10.7	10.6	9.9	8.7	8.8	7.2	7.0	4.9	5.1	5.8	5.1
Germany.	6.3	7.7	6.8	4.7	5.2	5.8	5.3	3.9	4.3	4.2	3.4	4.1
Italy	7.4	10.2	10.8	9.0	7.3	6.0	8.6	9.2	7.0	6.5	6.2	5.1
United Kingdom	12.8	12.6	10.6	10.7	6.8	3.0	2.0	2.0	1.8	1.5	1.9	1.3
MIDDLE EAST	5.0	2.8	2.0	1.3	1.3	1.9	3.1	3.6	1.8	1.7	1.6	1.7
AFRICA	0.4	2.2	2.4	2.4	2.6	1.4	1.2	1.5	1.8	1.6	1.5	1.6
ASIA & FAR EAST	10.2	15.1	21.3	22.8	23.4	25.2	34.6	30.4	31.8	37.6	38.2	39.4
Japan	7.2	11.3	16.1	16.8	16.7	15.6	21.9	21.5	18.3	18.5	18.7	19.7
OCEANIA	3.0	2.6	1.5	0.8	0.7	0.9	0.9	0.4	0.7	1.0	1.2	1.0
Unspecified	-	0.4	0.4	-	1.4	0.5	0.5	0.1	-	0.1	0.5	-
OECD Area	75.0	78.6	80.2	78.2	75.0	75.1	71.5	73.9	75.2	72.1	73.1	70.8
TOTAL WORLD	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Sources: United Nations, Energy Statistics Yearbook; Secretariat's estimations.
OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 9 : **World Crude Oil Exports [1] by Region, 1960-1994**
(Thousand Barrels per Day)

Country or Region	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
NORTH AMERICA	124	298	676	1,028	633	475	446	687	763	926	1,086	1,053
LATIN AMERICA	2,140	2,496	2,572	2,497	1,902	2,400	2,825	2,613	3,001	3,308	3,528	3,719
EASTERN EUROPE	358	864	1,323	1,700	1,846	2,415	2,515	2,299	2,133	1,271	1,480	1,855
WESTERN EUROPE	21	12	42	108	254	1,352	1,952	2,346	2,651	3,179	3,475	4,151
MIDDLE EAST	4,325	7,116	12,142	19,328	17,748	16,359	8,705	7,073	12,212	13,333	13,844	13,808
AFRICA	222	2,088	5,852	5,617	4,606	5,140	3,000	3,663	4,365	4,593	4,486	4,582
ASIA & FAR EAST	366	378	859	1,358	1,462	1,733	1,723	1,850	1,840	1,849	1,810	1,931
OCEANIA	-	-	0	6	4	4	2	102	135	231	300	361
TOTAL WORLD	7,555	13,253	23,466	31,642	28,456	29,876	21,168	20,633	27,099	28,690	30,009	31,459
OPEC	6,747	11,767	20,223	27,352	23,918	22,757	12,347	10,733	16,291	17,661	18,270	18,341
OPEC Percentage	89	89	86	86	84	76	58	52	60	62	61	58

1 Prior to 1978 Algeria figures includes condensates. Certain revisions were made for the whole time series.

Note: Data includes re-exports.

Sources: United Nations, Energy Statistics Yearbook; Secondary sources: OPEC Secretariat's estimations.

OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 10 : **Exports [1] of Crude Oil and Refined Products by OPEC Member Countries, 1960-1994 (Thousand Barrels per Day)**

Country	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
ALGERIA	172.9	560.3	985.5	1,028.7	939.6	863.6	552.0	592.0	733.4	698.5	682.6	713.2
GABON	15.4	24.7	95.2	132.5	211.9	161.7	147.5	167.7	241.8	278.4	303.3	317.0
INDONESIA	343.1	348.8	724.7	1,167.3	1,095.1	1,150.6	988.5	855.5	924.4	906.4	920.7	1,042.7
IRAN	906.5	1,677.2	3,518.9	5,424.0	4,886.1	937.7	1,775.7	1,607.7	2,280.0	2,598.0	2,670.0	2,725.0
IRAQ	905.6	1,253.6	1,498.9	1,933.3	2,096.3	2,517.0	740.3	1,097.7	1,676.0	77.6	77.6	80.0
KUWAIT	1,590.9	2,259.0	2,830.9	2,847.3	1,943.9	1,639.9	958.7	968.8	1,025.0	951.6	1,859.0	1,885.8
LIBYA	-	1,212.7	3,312.9	2,209.5	1,478.3	1,765.5	1,016.1	985.5	1,240.0	1,350.0	1,252.0	1,255.0
NIGERIA	17.0	271.8	1,055.4	1,993.1	1,718.6	2,034.8	951.5	1,353.3	1,580.0	1,615.0	1,589.5	1,615.0
QATAR	170.6	226.7	362.8	570.3	428.3	467.5	296.3	308.3	421.8	466.1	456.8	425.6
SAUDI ARABIA	1,176.3	2,037.6	3,563.9	7,346.3	6,931.8	9,636.4	4,310.0	2,725.0	5,805.6	7,869.5	7,678.6	7,593.7
U.A.E.	-	280.2	777.0	1,522.1	1,661.4	1,716.9	1,138.0	1,069.8	2,060.0	2,233.0	2,130.0	2,110.0
VENEZUELA	2,685.0	3,252.6	3,469.6	3,150.1	2,086.2	1,851.8	1,484.3	1,356.6	1,858.8	2,044.2	2,174.8	2,329.9
TOTAL OPEC	7,983.3	13,405.2	22,195.7	29,324.5	25,477.5	24,743.4	14,358.9	13,087.9	19,846.8	21,088.3	21,794.9	22,092.9

1 Data includes re-exports and exports of products from gas plants. Prior to 1978, Algerian exports include condensates. Exports of Gabon for 1977 applies to May-Dec and for 1988, to Feb-Dec.

Note: Certain revisions were made for the whole time series.

Sources: United Nations, Energy Statistics Yearbook; Secondary sources: OPEC Secretariat's estimations.

OPEC ANNUAL STATISTICAL BULLETIN 1994.

TABLE 11 : **Natural Gas Exports by OPEC Member-Countries, 1960-1994**
(Million Standard Cubic Metres)

Country	1960	1965	1970	1973	1975	1980	1983	1985	1990	1992	1993	1994
ALGERIA	—	892	1,532	2,484	3,417	6,352	18,361	21,640	31,330	35,488	35,054	31,692
GABON	—	—	—	—	—	—	—	—	—	—	—	—
INDONESIA	—	—	—	—	—	11,480	12,962	20,250	27,530	31,630	31,930	35,090
IRAN	—	—	864	8,143	9,570	220	—	—	1,500	—	500	—
IRAQ	—	—	—	—	—	—	—	—	2,000	—	—	—
KUWAIT	—	—	—	—	—	—	—	—	—	—	—	—
LIBYA	—	—	—	3,160	3,330	2,134	770	1,230	1,240	1,840	1,600	1,480
NIGERIA	—	—	—	—	—	—	—	—	—	—	—	—
QATAR	—	—	—	—	—	—	—	—	—	—	—	—
SAUDI ARABIA	—	—	—	—	—	—	—	—	—	—	—	—
U.A.E.	—	—	—	—	—	2,604	2,476	3,036	3,200	3,420	3,350	4,250
VENEZUELA	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL OPEC	—	892	2,396	13,787	16,317	22,790	34,569	46,156	66,800	72,378	72,434	72,512

Note: Totals may not add up due to independent rounding.

Sources: Cedigaz; Institut Française du Pétrole; The World Gas Industry; Middle East Economic Survey; Petroleum Intelligence Weekly; Arab Oil and Gas; OECD, Quarterly Oil and Gas Statistics; OECD, Energy Statistics of Non-OECD Countries.

OPEC ANNUAL STATISTICAL BULLETIN 1994.

[N.B. : All Tables in Appendix 7 are from: Luis Lugo, *The Amazing Story of OPEC* [Caracas, 1997], Appendices, pp. 191-226.]

ACKNOWLEDGEMENTS

I consider myself fortunate that the subject of my doctoral thesis, is very close to my heart; it is the story of a Muslim, Pakistani, Pukhtun woman attempting to analyse her identity amidst the multiplicity of regulatory norms surrounding her. The fact that my husband and three children have valiantly stood by me and struggled for three years to make it possible, is proof itself of the diversity of Muslim women's lives. I certainly do not present the image of the stereotype, oppressed women, we are portrayed to be! My husband and children have adequately seen to that.

This labour of love, that has been writing the PhD thesis, owes its fruition to many people and institutions and I owe them all an eternal debt of gratitude.

My special thanks to each and every one . . . .

To my husband Sardar Ali Khan, and children Gulsanga, Isfand, and Zara, who patiently *waited for me to come home, and always had the dinner ready!* Who never in these three years complained about the absent-mindedness of a wife and mother, who worked at the computer all day and stared vacantly into space in the evenings, supposedly spinning away new arguments towards the thesis in her head!

To my dear mother, whose love, affection and prayers were always a source of valuable support and solace, particularly when things weren't going just quite right.

A giant "Thank You" to Ann, for her proficient handling of the word-processing! I didn't think we would get this far. Thank you for donating your lunch-breaks and for doing it with such grace and willingness! God bless you!

To my supervisor Professor Ferdinand von Prondzynski for his time and invaluable comments on various drafts.

To an army of friends and colleagues who rallied around me, read drafts of various chapters and provided very useful comments. I would not be writing the acknowledgements page had it not been for their unstinting faith in me.

My friend and colleague, Dr. Javed Rehman tops the list of this army. He read the thesis cover to cover in a record time and maintained a steady stream of emails and phone calls.

Dr. Surya Subedi, friend, colleague and mentor, who despite his busy schedule always found time to look at draft chapters and offer valuable comments and encouragement.

I owe a special debt of gratitude to Professor Patrick Birkinshaw, whose rigorous research methods helped me immensely.

My friends and colleagues, Joshua Castellino and Diamond Ashiagbor, deserves special mention for reading through draft chapters and for their excellent comments.

Professor Hilaire McCoubrey, Stuart Toddington, Mike Feintuck, Karen Gresham and Naz Waseem for reading draft chapters, thesis outlines and innumerable other chores. . . Thank you!

To Irene Loh for being a very efficient, professional and supportive office mate!

To each and every member of the Law School for their warmth, friendliness and co-operation in making me feel at home. Thank you all.

My students, colleagues and friends in Pakistan without whose constant flow of information and materials, the thesis would have been rather impoverished. In particular, my deepest sense of gratitude to Kamran Arif and Ayesha Shahid.

To the many undergraduate and postgraduate Human Rights students whom I have tutored over the past three years; the interaction has been rich, and invaluable.

The title of the thesis owes its formulation to Dr. Werner Menski, who some years ago, when reading my work, made the comment.

To my colleagues at the Faculty of Law, University of Peshawar and the University of Peshawar for awarding me study leave to undertake the present research.

I would especially like to thank the Association of Commonwealth Universities for sponsoring me, and the British Council for administering the grant, and providing me with this excellent opportunity for research.