

LEGAL DIRECTIONS AND DEVELOPMENT PERSPECTIVES OF COOPERATION WITHIN OPEC IN THE FIELD OF OIL PRODUCTION AND EXPORT

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Abstract

The article analyzes in detail legal directions and development perspectives of cooperation within OPEC in the field of oil production and export based on disagreements in the legal literature and international documents. It is noted that OPEC plays a significant role in world oil supplies, serving mainly the interests of the member states and in accordance with the principle of ensuring energy security when supplying energy resources. Such an important role of OPEC in the international arena creates the basis for the participation of non-member states in this Organization. The author concludes that, the need for cooperation between oil-producing OPEC member states and non-member oil-producing states is due to the fact that interstate relations in the era of globalization are possible only on the basis of mutual benefit. The fact that oil exporting countries defended their interests as a result of joint activities within the framework of OPEC served as a legal guarantee in regulating relations with the main oil exporting countries of individual entities occupying unequal positions (large oil companies, countries with developed economies).

Keywords: *oil production, income, oil market prices, member states, exporting countries, cooperation, taxation, international energy law, oil companies, crude oil, OPEC.*

In the context of international energy law, OPEC is the most important international organization capable to influence the oil sector. This impact encompasses not only energy, but also related environmental issues, including oil production and trade, as well as investments in this area. Currently, OPEC member States control 75% of the world's oil resources and 40% of oil production. At the same time, the cheapest crude oil is produced in the OPEC member States. As a result, there is a drop in oil prices and an increase in the market share of the OPEC member States, which has been increasingly manifested in recent years. Nonetheless, geopolitical tensions and abnormally high oil demand in 2004 and 2005 pushed oil prices to their highest levels [11, p.190].

In general, during its existence, within the framework of OPEC, many achievements have been achieved, mainly not related to the regulation of market oil prices. During the first decade of its existence, the Organization sought to increase the revenues of oil-producing countries through collective bargaining to raise the mineral extraction tax and other taxes, despite the fall in crude oil prices. Reducing incomes of large oil companies, which were considered inviolable at that time, and increasing incomes of producing states per barrel of oil were achievements that no other economic organization could achieve [7, p.5]. In the 1960s, the OPEC member states could not influence the oil market prices. And international oil companies tried to preserve the concessions signed in the 1920s and 1930s, which, with the exception of tax collection, nullified the role of local authorities in oil production and determining oil market prices. In accordance with the agreements concluded in Tehran in 1971 and in Tripoli in 1973, OPEC achieved an agreement between the member states to increase oil market prices by transferring its members from the consumer market to the producer market, as well as through nationalization and participation as holders of shares in various consortia providing direct control over the oil production of their members. Despite the choice of different national strategies, cooperation within OPEC was of paramount importance to strengthen the capacity of member states to

control and monitor all aspects of their oil sector. Since 1973, OPEC member states have been able to control market oil prices. However, during the 1979-1980 oil crises, OPEC was unable to influence the sharp rise in oil prices, which led to unpleasant consequences. Thus, in 1982, OPEC established quotas for oil production for its member states in order to prevent a fall in oil prices. However, in the mid-1980s, OPEC lost control over the oil markets. Due to tensions within OPEC over different quotas between member states, national oil companies tended to compete rather than cooperate [8]. Only in the late 1990s, the growth in demand from China and other Asian countries as the main consumers ensured the growth of OPEC oil exports. The transformation of China, which became an oil-exporting country in the 1980s, into the world's largest oil consumer in 2015, affected its relations with OPEC not only economically, but also politically and ideologically [16, p.133-140].

The reality is that, despite serious attempts and even successes of the OPEC member states, changes in the oil market are much more important for oil-producing countries than for oil consumers. Oil exporting countries are considered more vulnerable than oil consumers and may benefit more from cooperation than from competition. Thus, when prices fall, the economies of oil and gas countries are threatened with destruction; this, in turn, can lead to a change in the political regime in the country and even to a social and economic downturn. On the other hand, when prices rise, consumer states are forced to radically change their energy policies, but crude oil prices act as a small factor influencing the development of the complex economies of industrialized countries in a positive way. Cooperation within the framework of OPEC has helped to establish new states such as Nigeria and the UAE as important members of the international community and strong states in their region. Despite being one of the poorest countries in Latin America in the 1920s, Venezuela had become the richest country in the region in terms of per capita income by the mid-1970s [19, 33-53].

Thus, from the point of view of coordinating the activities of the member states within the framework of OPEC, the following objective law is manifested: when cooperation between the member states increases, the well-being of their populations increases, however, when competition and anarchy prevail between the member states, governments are forced to apply tough economic measures and the country's population suffers from economic hardship and political instability. In this sense, cooperation within the framework of OPEC is essential for the development and economic stability of the member states.

In general, OPEC plays a significant role in world oil supplies, serving mainly the interests of the member states and in accordance with the principle of ensuring energy security when supplying energy resources. Such an important role of OPEC in the international arena creates the basis for the participation of non-member states in this Organization. So, since 1998, Mexico and Oman, having received observer status in OPEC and participating in its sessions, coordinate their oil strategies with the decisions adopted by this Organization. And, since the end of 2008, due to a sharp drop in prices on the world oil market, oil-exporting countries that are non-OPEC members (Russia, Azerbaijan and other CIS countries) have been taking part in OPEC sessions on quotas [2, 84]. These states participating in OPEC sessions as observers, in accordance with Article 7 of the Statute, are called associate members and they are not considered full members and do not have the right to vote at meetings [32].

Taking into account the current state of the world oil market, in order to coordinate the market, reduce the level of reserves and ensure the stability of the oil market in December 2016, a Declaration on Cooperation was adopted between the OPEC member states and 10 non-member oil exporting countries. In 2019, the Cooperation Charter was adopted, which is considered a long-term platform dedicated to cooperation, exchange of views and information within the framework of OPEC [31]. Later, on June 6, 2020, a Declaration of Cooperation was adopted at a ministerial meeting of OPEC and non-OPEC member states. According to the Declaration, all major oil-producing countries (OPEC member states and non-member oil exporting countries) agree on a proportional contribution to the stability of the world oil market.

At the same time, the mandate of the Joint Monitoring Committee of Ministers and its members was approved. The Monitoring Committee, with the support of the Joint Technical Committee and the OPEC Secretariat, should carefully consider the general conditions of the energy market and other related factors, study the activities of the member states and non-members on the basis of this Declaration. To this end, it was planned to hold a monthly meeting of the Joint Monitoring Committee of Ministers by December 2020. In accordance with the methodology applied by the OPEC Secretariat, compliance by OPEC and non-OPEC member states with a Declaration of Cooperation should be monitored, taking into account the production of crude oil, based on information obtained from secondary sources [9].

Since decisions on production and export quotas are made collectively within the framework of OPEC, this testifies to the Organization's unique status in the global energy market. Such decisions made by OPEC, and the way they are implemented, have a serious impact on oil market prices. Undoubtedly, since stable prices themselves are of decisive importance for both consumers and exporters, this activity was also enshrined in the OPEC Statute adopted in 1961. Consequently, the adoption of such decisions allows OPEC to monitor the situation in the oil markets and, if necessary, make new necessary decisions. The OPEC agreements set maximums for total oil production distributed among member states through a quota system. For example, on June 3, 2004, at a Ministerial Conference in Beirut, it was noted that for OPEC-10 (all members except Iraq), production should be increased in a maximum of 2 stages – from July 1 to 2 million barrels, an increase of 25.5 million barrels, and from August 1, up to 26 million barrels. The purpose of this decision was that the conference was to “provide adequate supply, demonstrate commitment to OPEC's intentions to achieve market stability and maintain prices for both miners and consumers, and maintain a stable and stable global economy” [18].

The high production threshold is specified by the Conference from time to time based on the fundamental indicators of the world oil market. The frequency of such revisions depends on price changes and innovations that affect the market [17, p.209].

With the independent determination of group and individual maximum oil production quotas in order to maintain the stability of the international oil market under certain market conditions, important requirements can be put forward for countries that are significantly dependent on oil incomes for their national development. That is why OPEC, always pointing out the stability of the oil market, assigns this responsibility to all parties, including exporting states, consumer states that are not members of OPEC, as well as multinational oil companies and international financial institutions [22]. When analyzing oil data, it turns out that most of them are uncertain and require revision [14].

It should also be noted that Iraq was excluded from the OPEC quota system in 1998. Thus, compliance with OPEC quotas mainly implies actual production versus previously set high limits. In the literature, sometimes the phrase “compliance” is used in different meanings, and the accrued interest on such a match differs from each other. The reasons for the difference may be the lack of accurate production data, as well as the different indicators for determining compliance [15].

Taking into account the issues of technical and technological support of cooperation between the member states within the framework of OPEC, as well as the regulation by the member states within the Organization of quotas for oil production and prices, one can see how important the role of the cartel is in the world oil market. At the same time, the important role of OPEC in the development of international energy law determines the interaction of international energy law with other branches of international law (international trade law, international economic law, international environmental law, international competition law, international sustainable development law) [23, 560].

OPEC's activities in this direction are directly expressed in the Statute of the Organization. Thus, according to the OPEC Statute, the Organization must seek stability and harmony in the oil

market between oil producers, consumers and investors (Article 2(A)(B)(C)). To this end, the OPEC member states coordinate their oil policies to ensure stability in the international oil market, focusing on fundamental market factors. The limitation of production is the most important measure determined by the Member States in this direction. When demand rises or some oil-producing countries produce small amounts of oil, OPEC raises oil production quotas to prevent a sudden rise in prices. In other cases, the entity reduces oil production quotas in accordance with market conditions in order to prevent price declines. It is in this form that the process of regulation of the world oil market by OPEC takes place [5, p.12-13].

If in the 1970s and 1980s the market prices for crude oil were determined by OPEC, now the situation has changed dramatically. Of course, in order to stabilize the oil market and prevent sharp price fluctuations, the OPEC member states voluntarily limit the production of crude oil, which meets the interests of not only the OPEC member states, but also the consumer states and investors.

Currently, the price of crude oil in complex world markets is driven by the mobility that occurs across three major oil exchanges: the New York Mercantile Exchange (NYMEX) [29], the London International Petroleum Exchange (IPE) [28], and the Singapore International Currency Exchange (SIMEX) [34].

The current role of OPEC in the development of international energy law stems from two main problems. First, the Organization was formed on the basis of the natural interests of the member states in the “lease of natural resources” subject to increased income and maintenance of stability, as well as preservation of sovereignty over oil and gas resources. These interests are still considered the main pillars of the Organization’s existence. The general idea is that a balance must be maintained within the Organization between short-term price and production optimization and long-term strategy. Long-term strategies are aimed at maintaining a high share of OPEC in the oil market compared to competing countries that are not members of OPEC. At the same time, there is a division of interests between the OPEC policy and high rates of excise taxes on oil and oil products from Western states, in particular Great Britain [25, 363]. For example, in the UK, a high excise tax of 4 times the price of gasoline is justified by environmental factors in terms of the impact of gasoline on the environment and road infrastructure. However, this justification appears to be a justification used to offset the perceived reduction in income tax rates [27]. In this sense, the conflict between OPEC and consumer countries is not based on high oil prices, but on who gets more oil incomes [24]. In a sense, the European Union and the United States tried to present the rise in oil prices as a result of the work of OPEC [26]. In the 2000s, these states did not want to admit that OPEC was interested in maintaining stable oil prices [13]. In this sense, as A.I.Sadigov noted, OPEC members are concerned about “green” taxes on oil in developed countries [1, p.143].

And in the context of global problems of the 21st century, claims against OPEC began to be justified by the amount of carbon emissions generated by burning fuel derived from oil. Already in 2020, a tendency was formed that if low or zero carbon emissions in the oil industry are not achieved, the participants in the oil market will lose their “social license” [12, p.346]. So, in January 2020 in Aberdeen, the chairman of the UK Department of Oil and Gas, Tim Eggar, speaking to the heads of the oil departments of the oil exporting countries, noted that the existence of an industrial license for the extraction, export and import of oil is under threat; the oil and gas industry has a leading role to play in addressing a range of climate change issues [30].

A number of participants in the oil industry have already begun to respond to this issue to some extent after the six largest European oil and gas companies (BG Group, BP, ENI, Shell, Statoil and Total) sent an open letter to the UN in June 2015. The letter said that the governments of states involved in the extraction, export and import of oil should implement systems for estimating carbon emissions at the national and regional levels, as well as form an international plane that will ultimately unite national systems [33]. These companies have developed an

internal carbon footprint to influence investment agreements of oil exporting countries [6]. And in May 2020, executives from a number of major energy companies, including BP and Royal Dutch Shell, prepared a new appeal stating that in the wake of the COVID-19 pandemic, government stimulus measures should be aimed at creating a healthier and more resilient economic network [3]. In addition, Repsol, BP, Royal Dutch Shell, Total, Equinor and ENI have announced plans to reduce the intensity of carbon emissions, which will be reduced to zero by 2050. Unlike major European oil companies, US oil companies have generally not disclosed any plans [12, p.347].

In addition, one of the most important challenges facing OPEC today is preventing global warming. The OPEC Fund for International Development [21, p.879-890], founded in 1976, is currently implementing important projects aimed precisely at solving this problem. This is due to the fact that at present the main problem facing the states of the world is no longer a colonial regime that exploits natural resources, or a cartel of international companies limiting incomes from natural resources in the host state, but a global crisis related to climate change. ... The threat of global climate change has pushed OPEC to the fact that at present the Organization prefers to conduct the international struggle to mitigate the effects of global warming, rather than to exercise control over the management of the oil market since the 1970s [10]. In the coming years, in the event of a tightening of national and multilateral international climate rules and a decrease in oil demand, it will be impossible to maintain oil prices at the desired level through any production quotas. This will lead to the fact that in the future more and more OPEC members will leave the cartel, and oil-producing countries will remain in the cartel with minimal costs. As an alternative, a number of opinions are put forward on the prospects for further development and cooperation of OPEC:

- it is necessary to inform the countries of the world, especially the developed countries with a high level of income, that climate change will lead to more severe consequences for the population of countries with a low level of income;

- despite the fact that oil will remain the most important source of energy for a long time to come, the goals of the 2015 Paris Convention on Climate Change can only be achieved if most of the oil reserves are not being produced. Currently, a number of large oil companies have recognized this need and have begun to significantly reduce their oil reserves [35];

- Member States should be assisted in assessing the possibilities of using renewable energy sources in petroleum operations, thereby reducing oil consumption and carbon emissions by Member States. From this point of view, Norway has some experience in the production, transportation and processing of oil [4, p.300-311];

- OPEC should encourage oil saving, carbon reduction and carbon pricing among its member states. A number of large oil and gas companies have benefited from this experience over the years [20, p.83-87];

- OPEC should implement programs that provide for mutual assistance in diversifying the economies of its member states, encourage cross-border direct investment between member states, instruct the Secretariat to study the potential for diversifying the economies of member states;

- The Organization should include and publish in the World Oil Outlook or in the annual OPEC statistical bulletin information reflecting the internal capabilities and activities of member states towards economic diversification and shared access to energy.

The adoption of these measures is possible only at OPEC summits, regardless of the will of the governments of the member states [12, p.351-352]. By implementing these measures, the OPEC member states can ensure the long-term sustainable development of their economies and the existence of OPEC as an Organization for Economic Cooperation.

OPEC is also making efforts to expand dialogue on a number of issues with interested structures and states in the field of oil exports. In recent years, these have included the International Energy Agency, the European Union, as well as China, Russia and other non-OPEC states.

Legal regulation of interaction with international organizations in the context of OPEC's involvement in issues related to oil and energy, resolved on high-level political platforms, such as the G20, is one of the main intentions of the OPEC member states. The need for such cooperation between oil-producing OPEC member states and non-member oil-producing states is due to the fact that interstate relations in the era of globalization are possible only on the basis of mutual benefit.

Thus, summing up what has been said about cooperation between oil companies, consumers and investors within OPEC, a number of important points should be noted. So, if the 20th century was considered the oil century, then already in the 21st century the importance of alternative energy sources, in particular, "green energy" that does not affect the environment, is highlighted. However, a significant drop in demand for oil on world markets does not look realistic in the next few decades. During the evolutionary period from the creation of OPEC to the present, there have been two important achievements and two major bankruptcies of the organization. The first achievement was the regulation of market oil prices to ensure a sufficient level of profitability for the member states as a goal set when the organization was created by setting production quotas. During the oil crises, OPEC held full power in this sense. However, after 1983, this force became relative. At present, OPEC, by regulating the total oil exports by its member states (by determining production quotas), indirectly affects oil prices on the world market. The second achievement during the existence of OPEC was the development of the national economies of the member states at the expense of incomes from oil exports. Despite the obvious differences between the levels of economic development of the member states, undoubtedly, as a logical result of cooperation within the framework of OPEC, the economies of the member states reached a sufficiently high level than 50 years ago, which can be expressed as a result of the satisfactory activity of OPEC in the field of production and export of crude oil.

As for the failures that the organization relied on during the period of its activity, the first of them is the weak diversification of the economies of the OPEC member states (economic diversification). The economies of the member states continue to be heavily dependent on oil exports, which lead to their weakening in the event of a fall in oil prices. At the same time, it can be assumed that with the depletion of oil reserves, a number of member states will fall to the level of economic development that they had before obtaining the status of an oil exporter. The UAE and Venezuela may be listed as an exception. Thus, both states, at the expense of oil incomes, have diversified the country's economy, which will allow maintaining a stable level of economic development in the region where they are located. The second setback is that the Organization, as a common platform for action by member states, has failed to end serious historical, political and economic divisions among oil-exporting countries. Sometimes even such conflicts led to military clashes.

However, in our opinion, the overall balance in OPEC activities continues to be a positive trend and can be assessed by two main criteria: the approach of the member states and from the point of view of the world oil market. Joint activities within the framework of OPEC allowed member states to advance personal interests, and control over oil prices in the world market led to significant income growth and further economic development. Consequently, at present, cooperation within the framework of OPEC is essential for the development and economic stability of the member states.

With regard to the world oil market, we believe that OPEC provides a balance of power between exporting and importing states. The fact that oil exporting countries defended their interests as a result of joint activities within the framework of OPEC served as a legal guarantee in regulating relations with the main oil exporting countries of individual entities occupying unequal positions (large oil companies, countries with developed economies). Thus, tensions between oil exporting states and oil importing states were resolved at the negotiating table (through oil export and sale agreements). In the absence of OPEC, numerous oil wars and oil crises could have erupted.

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