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## INTERNATIONAL LEGAL PERSONALITY OF INTERNATIONAL ORGANIZATIONS: OPEC CASE

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### ULUSLARARASI ÖRGÜTLERİN ULUSLARARASI HUKUK KİŞİLİĞİ: OPEC ÖRNEĞİ

#### Abstract

National legal personality is a matter of domestic law while international legal personality is an immemorial but significant subject of international law. It is generally accepted that an international organization with legal personality can represent its members, and achieve its aims more efficiently than those without having legal personality. There are a few theories about the way of acquisition of international legal personality. These main theories about international legal personality such as, subjective, presumptive and objective legal personality theories should be born in mind to better understand the legal status of international organizations.

Organization of Petroleum Exporting Countries (OPEC) is one of the leading international organizations functioning in petroleum sector with 13 oil rich member countries. The international legal personality of OPEC has been a long discussed yet still contradictive subject in international law. Therefore international legal personality of OPEC was chosen as the subheading, and it is defined according to the legal personality theories to better understand the power and legal status of OPEC which takes vital decisions for the world oil market. It is also presumed that the juridical personality of an entity should indicate legal personality of this entity, OPEC is also examined by its status before courts.

**Keywords:** International Legal Personality, OPEC, International Law, Energy, International Energy Law.

#### Öz

Uluslararası örgütlerin ulusal kişiliği devletlerin iç hukuku ile ilgili bir mesele olsa da uluslararası hukuk kişiliği birden çok devleti ilgilendirmektedir. Zira, uluslararası hukuk kişiliğine sahip bir örgüt bağımsız olarak her devlet ve örgütle hukuki ilişki içerisine girebilmekte ve bu sayede daha etkin şekilde temsil edilebilmekte, kuruluş

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amacını gerçekleştirebilmektedir. Uluslararası örgütlerin uluslararası hukuk kişiliğini kazanma yolları ise çeşitlidir. Bunlardan en sık karşılaşılanları sübjektif ve objektif sübjektif ve objektif hukuki kişilikleridir.

Organization of Petroleum Exporting Countries (OPEC) isimli uluslararası örgütün uluslararası hukuk kişiliği konusunda da tartışmalar mevcuttur. OPEC'in uluslararası hukuk kişiliğinin, yukarıda ifade edilen yollardan hangisi ile kazanılmış olabileceği değerlendirilmesi gerekli bir husustur. Zira OPEC, günümüzde etkin olan ve kararları tüm dünyada sonuç doğuran bir uluslararası örgüt pozisyonundadır.

**Anahtar Kelimeler:** Uluslararası Hukuk Kişiliği, OPEC, Uluslararası Hukuk, Enerji, Uluslararası Enerji Hukuku.

## 1. Introduction

There are many entities in international area with the title of “international organization”; but not all of them are under scope of international law. As it is a generally accepted international rule that an entity should have legal personality to be authorized by international law with rights and duties.

As a matter of fact, an international organization can act independently; and claims its rights before national or international authorities only with legal personality. Hence, legal personality makes international organizations subjects of international law (Portmann 2010: 19). Type and time of acquisition of legal personality bears importance in terms of legal effectiveness of actions of international organization.

Legal personality of an organization bears another important point while claiming rights for its members and having responsibilities against those who are suffered by that Organization's actions. In an Advisory Opinion Report, the International Court of Justice (ICJ) set forth its attitudes about international organizations' rights and duties. In that report the term “*international legal person*” was defined as “*it is intended to exercise and enjoy functions and rights which can only be explained on the basis of the possession of a large measure of international personality.*” Furthermore ICJ distinguished states from international organizations in terms of having legal personality. In the same report, the ICJ held that “*it is not necessary to be a state to have legal personality. If an organization is capable of bringing international claims to protect its rights, it should be accepted that this Organization possesses legal personality.*” (ICJ Reports 1949: 179).

The question is whether an international organization, OPEC in this study, functioning in international area always possesses international legal personality. In order to answer this question, it is necessary to scrutinize the existence and the way of acquisition of legal personality of international organizations, in particular OPEC. It is believed that this examination will shed light on the long-discussed issue of legal personality of international organizations. OPEC was chosen as an exemplary, because OPEC is in all

respect a model organization with its effectiveness, organs, decision mechanisms, and influence in the world oil sector.

In this essay, firstly general specifications of international organizations will be explained, and then international organizations will be evaluated as regards their legal personality. The institutional structure and legal status of OPEC are argued in the fourth part of this study. In this framework, existence of OPEC's international legal personality will be analyzed by way of acquisition theories, and the question of whether OPEC possesses international legal personality will be answered throughout the paper.

## **2. General Specification of International Organizations**

Reasons arising from the necessity of living together in international community and vague structure of international relationships have caused to prepare constitutions for international organizations. In fact, an international organization is an agreement between states or non - state entities or individuals intending to establish *an institution* to act in international area on different grounds (Archer 2014: 2-3). The first international Organizations were established on technical grounds and did not interfere with states' sovereignty. While today's most international organizations continue their existence with authorities derived from states.

International organizations emerge in certain types as technical-political, regional-global etc. Members of international organizations consist of diplomats or delegates of member states. Organs of international organizations vary by the area in which they function. There is not a legal limitation for number of organs, and generally the fundamental organs are stated in founding agreements. These fundamental organs can constitute subsidiary organs (Bozkurt, Kütükçü and Poyraz 2003: 160).

## **3. Legal Personality of International Organizations**

### **3.1. Types of International Organizations**

By number of members, international organizations vary such as World Health Organization (WHO) which is the leading international organization with the number of 194 member states as of 2015 in spite of that D-8 Organization for Economic Cooperation has the lowest number of member states with 8 members. Additionally, international organizations may differ by their character, or in other words members of an international organization can be another international organization as well as states for instance African Development Fund (ADF).

International organizations also vary by their complicated structures. For example, it is not clear who the authorized organ of European Union (EU) to

represent it in international area. In this respect, EU has a complicated structure. However, European Patent Office is an example of simple structured international organizations.

In terms of authorities, there are some international organizations which have wide range of authorities besides some with limited authorities. For example, United Nations (UN) has significantly broad authorities while European Broadcasting Union has very limited authorities. Limited authorized organizations are not able to act dependently from its member states. Authority and using it independently are some of the most determinant principles of legal personality of an international organization.

The legal status is also a significant criterion to determine the legal personality of international organizations. Some international organizations are established by a new agreement between parties, while others are established by subordinating to a party's domestic law. In general, the latter is set to perform a commercial project and called *intergovernmental corporations of private law*' (Bozcek 2003: 37-39). Trans Anatolian Natural Gas Pipeline Project (TANAP) can be considered as an *intergovernmental corporation*. In TANAP, it is presumed that disputes will be resolved by means of an arbitrator committee specified by parties pursuant to Article 12 of TANAP Agreement (<http://www.tanap.com/kurumsal/anlasmalarimiz>). In this respect it can be argued that, such organizations do not possess legal personality.

Finally, international organizations can be classified by their functions. Accordingly, some international organizations which vary by quality and quantity perform many important tasks while some others have very restricted and ability to perform only minor tasks. After all, it can be said that OPEC stands on the place which has simple structured and average number of members with 13 member states.

### **3.2. The Matter of Legal Personality of International Organizations**

Not all international organizations are falling into the scope of international law. There are many entities with the title of "international organization" which function in international area. However, these entities first should be an international legal person to be considered as an international organization in international law. Therefore it is crucial to determine and understand the concept of legal personality in international law.

According to the classic socialist doctrine, only states possess legal personality. International organizations are established by states for their interest, and they owe their existence to founding states. In this respect, it cannot be possible to consider that international organizations are utterly independent from their founding states.

States are primary persons as they are sole entity reigning over a particular territory. Similarly, rebellious are considered as primary persons by international law, as they reign over a land. Rebellious' that position is temporary until their declaration of a state after their victory, or the rebellion ends up with failure so rebellious lose their primary legal personality (Cassese 1994: 74).

After the 1950's, the idea of that there would be subjects of international law except states was first accepted (Brownlie 2003: 57-69). Accordingly, recognized international organizations exist in international area and have different specifications compared to states. In fact, international organizations by their own are not able to use some competences of states. Additionally, international organizations lack of a country and citizens which are fundamental requirements for being a state. Moreover international organizations do not have the unlimited rights to use force. For example, there are a few international organizations having the right to use force, for instance UN with UN Security Council and North Atlantic Treaty Organization (NATO). In this respect, international organizations arise from their member states' mutual will and they differ from states since their personalities are functional and limited with founding aims. This argument is a reflection of subjective theory. However, it is not valid for OPEC as this organization acts in compliance with founding states' will and founding aims but there is not an explicit reference to legal personality in founding agreements.

From *erga omnes* point of view, regardless there is an international entity with necessary organs; responsibilities of this organization are performed by founding states. Consequently, an international organization should be recognized by all states to possess legal personality, otherwise it will be influential only for its founding states (Quadri 1964: 424; Cited in: Reçber 2002: 93). This argument is also called objective legal personality (Gudbrandsen 2003:11).

### **3.3. National Legal Personality of International Organizations**

There are three fundamental points which are crucial to take into consideration to determine the national legal personality of international organizations. The first point is whether the founding agreement of an international organization offers personality. For example, legal personality of International Money Fund (IMF) and Food and Agriculture Organization (FAO) are included in their constituent agreements (Amerasinghe 1994: 350).

The second point is how an international organization becomes legitimate in line with the legal systems of its members (Amerasinghe 1996: 71). In Continental European Law, international organizations become effective with the signature of founding agreement. However, an approval of the founding agreement is necessary to complete the process.

Finally, legal status of an international organization in a legal system of non-member institutions including states should be evaluated. If there is not a legal personality of that international organization under the legal system of non-member institutions, disputes before the judicial authorities of non-member institutions should be resolved by rules of conflict of laws. Accordingly, the rules of conflict of laws specify that existence of legal personality should be settled in accordance with the domestic law of that organization (Amerasinghe 1994: 351). As a matter of course, domestic law of an international organization is its own founding agreement; the issue will be settled by looking at whether the founding treaty offers a legal personality. *International Tin Council v. Amalgamated Inc.* case<sup>1</sup> can be given as an example. In this respect, OPEC's Statute does not propose legal personality. Therefore, the question of whether OPEC possesses legal personality would be solved by further research on its structure and activities.

#### **4. International Legal Personality of OPEC**

##### **4.1. History and Reasons for Establishment of OPEC**

OPEC (or called "the Organization") is an international organization which consists of several oil producing and exporting member states. OPEC was first established in Baghdad on 14 September 1960 by 5 oil rich countries, and then the headquarters of the organization was moved to Vienna.<sup>2</sup> The legal framework was shaped by a statute, which is hereinafter called "OPEC Statute or the Statute"<sup>3</sup>, accepted and approved by all the members of OPEC in Caracas, January 1961. The reasons behind establishment of such an organization functioning in the world oil sector are explained by three main factors; long lasting oligarchic structure of oil sector, an increase in vertical integration between some oil companies, and the types of oil service and sharing agreements which granted substantial concessions to international oil companies (Stoehr 1979-1980: 91-10). Finally, the oil producing countries were decided to stop market abuses by giant international oil companies, which held unequal oil concessions and vertically integrated in the market and grow up their oil exporting revenue. As a result, OPEC was set up to control the oil producing and pricing policies by the states whose economies are significantly rely on oil revenue.

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<sup>1</sup>For further details about see the case: United States District Court, S. D. New York, October 20, 1986. [http://www.leagle.com/decision/19861524645FSupp879\\_11356.xml/INTERNATIONAL%20TIN%20COUNCIL%20v.%20AMALGAMATED%20INC](http://www.leagle.com/decision/19861524645FSupp879_11356.xml/INTERNATIONAL%20TIN%20COUNCIL%20v.%20AMALGAMATED%20INC), Accessed September 17, 2015).

<sup>2</sup>The Founding States of OPEC,: Iran, Iraq, Kuwait, Saudi Arabia and Venezuela.

<sup>3</sup>A new version of the OPEC statute can be found at:

[http://www.opec.org/opec\\_web/static\\_files\\_project/media/downloads/publications/OPEC\\_Statute.pdf](http://www.opec.org/opec_web/static_files_project/media/downloads/publications/OPEC_Statute.pdf)

OPEC's historical background and reasons behind its establishment imply that the Organization designed to have legal personality, since such an entity, which was established to influence the world oil sector, remains unsuccessful without having legal personality.

#### **4.2. OPEC's Aims**

As explained above, the aim of an organization is one of the most convenient factors that gives us a clue about its legal personality. An entity wishes to possess legal personality in order to achieve its aims if those aims require a separate legal structure. Therefore, it is hereby assumed that OPEC's aims require legal personality to be achieved.

There are several different types of international organizations in terms of their aims. Ultimately international organizations are divided into two categories; first economically concentrated international organizations and public interest and welfare organizations (Lashbrooke 1981: 305) OPEC takes place in the first category as its aims are more related to economical welfare and development of its member states. OPEC in the world oil market has vast importance as OPEC's member states have approximately 40% of market share and hold almost 80% of the world oil reserves (Terhechte 2010: 185).

The principal aim of the OPEC is defined under Article 2/A of the OPEC Statute "*The principal aim of the Organization shall be the coordination and unification of the petroleum policies of Member Countries and the determination of the best means for safeguarding their interests, individually and collectively.*" (Article 2/A, OPEC Statute). Likewise Article 2/B of the Statute points out that the Organization shall ensure the stabilization of oil prices and remove the obstacles causes negative fluctuations in international oil market. As seen in the Article 2 of the OPEC Statute, OPEC in general is dealing with oil policies and international oil market to create uniformed petroleum policies and stable oil prices.

#### **4.3. OPEC's Structure and Organs**

The structure and effectiveness of organs of an international organization proofs its legal personality. Since certain structure and organs of OPEC defined in the Statute, it is implied that OPEC's organizational structure was proposed to be linked to international legal personality by founding states. This hypothesis will be discussed in this section.

OPEC is based on sovereign equality of its Members according to Article 3 of the Statute. This provision shows that full members of OPEC are equal to each other in all aspects and the Organization's legitimacy arises from member's sovereignty. In addition to that, the official language of the Organization is defined as English in Article 6 of the Statute while none of member states are

English speaking country. This equality and chosen English as official language indicate that the Organization has been in shape for an international legal actor.

OPEC' Statute sets forth three organs: the Conference, the Board of Governors and the Secretariat (Article 9, OPEC Statute). The highest authority of the Organization is the Conference (Article 10, OPEC Statute) which consists of delegates of all Member States (Article 11, OPEC Statute). To make a Conference, a quorum of three quarters of delegations shall be needed; in a Conference each Member States has one vote and decisions are made by unanimous agreements (Article 11, OPEC Statute). The main duty of the Conference is to formulate the general policy of OPEC and determine the appropriate ways and means of its implementation (Article 15, OPEC Statute). The Board of Governors is mainly responsible for direct management of the affairs of the Organization, the implementation of conference decisions and preparing the next year's budget. Governors of the Board are nominated by each member states and confirmed by the Conference.

As set forth by Article 25 of the Statute, the main function of the Secretariat of OPEC is to perform the executive tasks of the Organization in compatible with the provisions of the Statute under the direction of the Board of Governors. The Secretariat of the Organization consists of the Secretary General who performs its duties in the Headquarter of OPEC and appointed for three years period. As it falls under the scope of this essay, it should be mentioned that the staff of the Secretariat are defined as international employees with an exclusively international character in Article 31 of the Statute. They are also asked that they should perform their duties with the sole object of bearing in mind the interest of OPEC.

OPEC Statute also allows that the Organization may have some specialized organs which shall be established by the Conference and function in accordance with the Resolutions or Statutes prepared to that effect. Separate legal organs, duties and recruitment of international employees refer to that OPEC acts in international area similar to a legal person.

#### **4.4. OPEC's Membership and Decision Making**

Analyzing status of members and decision making procedure of an international organization is another appropriate method to determine the existence of legal personality of this organization. Therefore membership structure and decision making process is examined in this section.

Pursuant to Article 7 of the Statue; the membership of OPEC is divided into categories: Full membership and associate membership. Full membership is formed by the nature of participation and twofold: the Founder Members and joint Members in fact there is no difference between these two forms of full

membership in term of the authorities and responsibilities. To become a full member of OPEC, the willing country shall meet two criteria, first substantial net export of crude petroleum and the application must be accepted by three fourths of Full Members (Article 7/c, OPEC Statute). Any willing country to become a member of OPEC who does not qualify for full membership may become an associate member by acceptance of three-fourths, including the concurrent vote of all Founder Members.

Three-quarters of Member Countries shall be necessary for a conference meeting and each member state has one vote. The Organization's decisions are made by unanimous agreement of all full Members except procedural affairs as per Article 11/C of the Statute. However, it is said that this unanimity is "relative unanimity" which allows adaptation of an act even in the absence of one or more member states (Voitovich 1995: 79). As a matter of fact that the last paragraph of Article 11/C provides that "*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*".

It is worth emphasizing that the procedure of conference decision making is substantially different from that of the Board of Governors. While Governors of the Board are nominated by each member states and approved by the Conference, the decisions at the Board are made by majority vote of attending Governors. Having considered the voting procedure and duties of the Board, it can be stated that the organization has a separate competent body which is generally accepted a sign of legal personality of the Organization.

#### **4.5. OPEC before Courts as a Burden of Its Legal Personality**

The question whether affected parties by OPEC's activities should have a judicial remedy for their alleged losses gives us a clue to determine existence of the legal personality of OPEC. We argue that suing or being sued at national or international courts reveals the juridical personality (implicitly legal personality) of an international entity. Especially competition cases filed against OPEC, which is considered a cartel in the world oil market, may help understand whether OPEC is an independent legal person authorized by law with duties and rights.

In United States, one of the landmark cases is *International Association of Machinists v. OPEC* (*International Association of Machinists v. OPEC*, 649 F. 2D 1354, 9th Cir, 1981) which evaluated and gave rise to the concept of international legal personality of OPEC as an international organization. In this case, the Court of Appeals of the Ninth Circuit discussed the applicability

of the “*Act of State Doctrine*”,<sup>4</sup> a principle accepted by United States Courts which may ban citizens of the United States to open a file against sovereign states. The case was dismissed on the basis of lack of personal jurisdiction over OPEC. The District Court stated that the action of OPEC is a reflection of its member states’ foreign sovereignty not based on a commercial activities (Bardos 1981: 179). The District Court also reasoned that, foreign states could not be sued as they could not be considered as a person under The Sherman Act (Spencer 2002, <http://www.luc.edu/media/lucedu/law/centers/antitrust/pdfs/publications/workingpapers/opec.pdf>, Accessed 17 September, 2015). The Court of Appeals reached the same conclusion but with a different reasoning, the Court of Appeals stated that “*Foreign States Immunities Act (FSIA)*” (Pub. L. No. 94-583, 90 Stat. 2891, 1976) is inapplicable because OPEC does not possess foreign sovereignty. Additionally the “*International Organization Immunities Act*” could not also be applied since the US is not a member of OPEC (IOIA, Title I, Section 1. Para.1). However, the *Act of State Doctrine* was found applicable to the case for the political sensitivity of activities of OPEC (Bardos 1981: 185). As a result, the Appeal Court, by finding applicable the Act of State Doctrine to OPEC’s activities, implicitly accepted that OPEC possesses international legal personality.

In Europe, it is accepted that activities of OPEC as long as affecting the European member states and the world oil market, fall within the scope of Article 101 of the Treaty of Functioning of the European Union (TFEU). Pursuant to this Article; all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market are prohibited. The term “*undertaking*” in this Article is widely interpreted by European Court of Justice (ECJ) applied to all entities as well as the Member States and third countries. According to a commission decision about the scope of Article 101<sup>5</sup> “*regardless the existence of sovereign immunity of an*

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<sup>4</sup>Act of State Doctrine was introduced in the case *Underhill v. Hernandez*, 168 U.S. 250 (1897), The Court held that: “Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.” Also in *International Association of Machinists v. OPEC* case the Court held that “The act of state doctrine declares that a United States court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state.”

<sup>5</sup>Commission Decision of 19 December 1984, 85/206/EEC, Official Journal L 092, 30/03/1985 P. 0001 – 0076. In this decision Commission stated that “Entities which engage in the activity of trade are to be regarded as undertakings for the purposes of Article 85, whatever their precise status may be under the domestic law of their country of origin, and even where they are given no separate status from the state. It

*international organization, it is still a legal person under EU law and can be sued for its economically motivated activities.”* From the European Commission and the ECJ’s point of views, it is inferred that OPEC can be defined as an implicit legal person before the European Courts. In this context, it is to reveal that OPEC has implicit international legal personality regarding its economic activities in the world oil market (Terhechte 1991:190).

#### **4.6. International Legal Personality of OPEC as a Whole**

It is a long-discussed and unanswered question whether all types of international organizations have legal personality under international law (Voitovich 1995: 18). Having said the above arguments on structure, decision making process and status of OPEC before courts, the legal personality of OPEC will be broadly discussed in this section.

Pursuant to Article 1 of the OPEC Statute: OPEC was designed as “*a permanent intergovernmental organization in conformity with the Resolutions of the Conference of the Representatives of the Governments.*” (Article 1, OPEC Statute). As per the definition of its own Statute, OPEC’s legal personality needs to be argued since it is an international organization, and there is not an explicit reference to legal personality of the Organization in the constituting Statute.

Notwithstanding an explicit reference to personality in the Statute, in order to determine whether OPEC has legal personality, the legal status of OPEC should be re-defined. Some authors and the Statute of OPEC state that OPEC is an intergovernmental organization while others points out that OPEC is an international economic entity (Desta 2003: 523-551). This difference bears an essential point that ordinary intergovernmental organizations have international legal personality while international economic entities are not likely to have separate legal personality in terms of their dependent structures and authorities delegated by member states (A Transnational Corporation can be given as an example to international economic entities, Samuel Asante KB, “International Law and Foreign Investment: A Reappraisal 1988: 558-628).

Başlar states that there is not an explicit reference to legal personality of the Organization in OPEC Statute; however, it is inferred that OPEC has been an implicit international legal person since the foundation of OPEC Fund for International Development established by OPEC Member Countries in 1980, in which the founding Agreement included the term of “*legal personality*”

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follows that the applicability of Article 85, since it relates to trading activities, is not defeated by claims of sovereign immunity. Such claims are properly confined to acts which are those of government and not of trade.”

(Başlar 2012: 8).<sup>6</sup> The Author argues that OPEC has been recognized as a juridical person by way of a headquarters agreement in Austria (Headquarters Agreement between the Republic of Austria and OPEC 1965; Cited in; Stoehr 1979-1980: 91). Some provisions of this headquarters agreement state that OPEC has the capacity of to make contracts, to acquire and dispose of property, and to sue, OPEC also enjoy the immunity from legal proceedings, state action, and taxation (Stoehr 1979-1980: 91).

Muller also concluded that there are a few main features indicating international legal personality: an entity, an agreement (such as a statute) under international law, and essential organs of the organization which can express the will of the organization (Muller 1995: 77). Having regarded all the features explained in this essay, it can be assumed that OPEC with essential organs has international legal personality.

As explained above, an international organization should have some elements to be determined as a legal person in the international area such as independency, sovereignty, capacity to act and organs to express its will. Constituent treaty of OPEC has all of these elements but the existence of its legal personality is still an ambiguous case. It is generally accepted by many scholars that the power of OPEC is capable of changing global economic and political balances (Frieden and Rogowski 1996:30). OPEC also has power to take retaliatory actions “include embargoes, regulation of operations, and controlling foreign investments of oil proceeds” against governments and private entities for the best interest of its Member States (Amuzegar 1973: 684; Cited in: Stoehr 1979-1980: 103). By taking retaliatory measures as a legal body, it can be argued that OPEC acts as a sovereign entity with an international legal personality.

On the other hand, the OPEC lack some important institutions to be defined wholly independent legal person, such as a uniform code of petroleum, a supreme court for dispute resolutions and legally binding Conference decisions for all Member States. Stoehr claimed that lack of those institutions is an obstacle before OPEC to be regarded as an independent and strong legal entity (Stoehr 1979-1980: 104).

With reference to the above explanations it can be said that OPEC possesses legal personality; however, it is hard to define a way of the acquisition of this personality by using one of the main personality theories in the area of international law. At least, it is clear that the Organization did not acquire its

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<sup>6</sup>The Agreement Establishing the OPEC Fund for International Development Article 1.01 says: “The OPEC Fund for International Development (hereinafter called the Fund) is a multilateral agency for financial cooperation and assistance established by OPEC Member Countries and endowed by them with an international legal personality.”

legal personality by way of subjective theory since there has not been an explicit attribution to its personality in the founding agreement of OPEC.

On the other hand, it can be argued that OPEC has legal personality by means of presumptive legal personality approach, which considers that founding states of an organization should have intention to grant separate and independent personality when they establish the organization. From our point of view, OPEC founding States' intention was also to create an independent and separate legal entity.

Alternatively, it can be argued that OPEC has an implicit legal personality in regard that the Organization made agreements with third countries. One of these agreements is the headquarter Agreement between OPEC and Austria (Headquarters Agreement between the Republic of Austria and OPEC 1965). The signatories of this Agreement are Federal Minister for Foreign Affairs of the Republic of Austria and the Secretary General of OPEC. An organ of an Organization with the authority of signature international agreement with third countries is one of the main indicators of legal personality. This status of OPEC also supports *headquarter agreement* and *the objective legal personality theories* since the Organization has permanent organs with the ability to perform independently in international area.

## **5. Conclusion**

International organizations' aim is to provide more convenience and benefits to its members. For the sake of this aim, organizations should have international legal personality to act independently and be represented in international area.

Actions of OPEC as an international multinational organization world oil sector are always under long-discussed. OPEC takes measures and determines oil pricing policy for the best interests of its member states. The Organization has a few necessary organs to function effectively and authorities given by its Statute. In this work, it is claimed that OPEC has legal personality with its authorized rights and duties. Theories about legal personality clearly show that an international organization, which is able to make decision independently and to have properties, to enter into contract with third parties, has legal personality. Therefore, it is not hard to say OPEC with all these features has legal personality under international law. Possessing international legal personality has advantages besides disadvantages. OPEC with international personality acts effectively and easily in international area for the benefit of its members, and OPEC can enjoy immunities from some jurisdiction for its political decisions. On the other hand, OPEC can sue or be sued by third parties for its commercial activities. Before the USA and EU's courts OPEC is considered as a legal person, and naturally the Organization has duties before courts as all legal persons have.

To sum up, it is clear that OPEC has been an effective organization in the world petroleum sector for more than a half century. However it is hard to define its legal personality with one argument theory explaining legal personality, since the founding agreement of the Organization does not include an explicit reference to its legal personality. Therefore, OPEC's legal status is incompatible with only subjective legal personality theory while all other personality theories, and structure, decision making process and status of OPEC before courts lead us that the Organization is an international legal person which has rights and duties in international area.

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