Best Friends Forever? The NOPEC Bill and US-OPEC Relations in the 21st Century

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Contrary to conventional wisdom, OPEC owes its lineage to American oil companies and regulatory agencies. [Reuters]

Introduction: The Ties that Bind

Politicians in developed countries often take the Organization of the Petroleum Exporting Countries (OPEC) to task whenever oil prices creep upward. At the same time, when OPEC oversupplies the market, as occurred during the oil price collapse of 2014-2017, harsh recriminations arise that prompt it to engage in uncompetitive behaviour to undercut domestic U.S. producers.

Over the past several oil price spikes, various proposed laws, such as the No Oil Producing and Exporting Cartels Act (or, the NOPEC bill), have been introduced in the U.S. Congress to confront OPEC over the allegation that it is an unlawful monopolist. Ultimately, these bills do not make their way into law due to the simple fact that as soon as prices begin to moderate, the urgency fades away. But then, the spectre of NOPEC-type legislation resurrects yet again during the next round of price volatility.

This time is no exception. At the onset of the Covid-19 pandemic in March 2020, Saudi Arabia and Russia engaged in a bitter market share competition. This supply shock, conjoined with the stark drop in demand due to the global lockdown, sent worldwide oil prices hurtling downward and even briefly cratered to below zero by May 2020. Soon afterward, with an agreement between the OPEC+ countries (an alliance of 21 countries) on the table, global oil prices began a steady ascent to settle between $70-80 by the end of 2021. On the back of production restraints by OPEC and its partners,

this rapid price increase was the impetus of the latest round of politically motivated legal recriminations against the organisation in the United States.

This article will discuss how the inextricable linkages between OPEC and the United States will obviate proposed antitrust proceedings against OPEC. It will also illustrate how contrary to conventional wisdom, OPEC owes its lineage to American oil companies and regulatory agencies, and that the robust economic and geopolitical ties between the two confirm that the two sides are wedded in an insoluble marriage for the long term.

American Roots of the Arabian Oil Tree: Standard Oil and The Texas Railroad Commission

Contrary to the media posture in the United States, many Western governments, smaller domestic (U.S.) oil companies and international oil companies favour OPEC and its organisational mission. In fact, OPEC based its ideological foundations on American companies and governmental organisations, most notably, Standard Oil Company (Standard) and the Texas Railroad Commission (TRC). And, without them, it is unlikely that OPEC would exist in its present form.

To understand this, we must go back in time to the early period of American oil production where Standard played a dominating role.

John D. Rockefeller and Henry Flagler established Standard in 1870. During its heyday, Standard was the largest oil refining company and one of the first multinational corporations straddling the world. At its peak, Standard controlled 91 percent of American production and 85% of final sales. (1)

Yet, as we know from history, Standard's meteoric rise crashed to a halt in 1911 when the U.S. Supreme Court ruled that it was an illegal monopoly under the Sherman Antitrust Act and consequently determined that it must be dismantled into 34 separate companies. The U.S. Congress overwhelmingly passed the Sherman Antitrust Act in 1890 to forbid every scheme, contract, deal or conspiracy to restrain trade; however, what is noteworthy is that the definition of "restraint of trade" was – and remains – highly subjective.

Standard's main detractors alleged that it utilised aggressive pricing-otherwise known as predatory pricing-to undercut its competitors to drive them to ruin. The focal charge was that Standard methodically attacked its rivals one market at a time until it assumed monopoly status everywhere. While we may surmise that Standard was perhaps engaging in some form of price collusion, it seems that the core issue was that Standard was a victim of its own success in that it was a master of horizontal and vertical integration and economies of scale. The company substantially lowered costs

and prices for the end consumer with its streamlined business practices, which its competitors could not match. For instance, due to its nationwide business deals, kerosene prices declined from 58 to 6 (U.S.) cents from 1865 to 1897. (2)

In short, Standard was simply too efficient.

Therefore, when we hear the term "monopoly," it is not entirely a negative outcome for the end consumer. In many aspects, a monopoly may just have superior streamlined operations while efficiently delivering lower prices to the market. We can witness this currently with Amazon, a company that revolutionised global logistics but remains vulnerable to constant criticism for various ills that it is considered to inflict upon society, from causing small businesses to close to padding its stock price increases from the alleged low wages it pays to its workers.

The above is not meant to imply that Standard did not engage in somewhat suspect business practices; it undoubtedly did. Rockefeller, who continues to rank as one of the richest men in modern history, was notorious for his cutthroat business acumen.

But unsavoury business practices were not uncommon during what was known as the "Gilded Age" in American history (1870–1900), an era of rapid economic growth and industrialisation starkly juxtaposed with rapidly rising wages for the average worker, but also a time of abject poverty for many that were left out in the economic cold. This tumultuous period arose from the ashes of the Civil War (1861-1865) and saw a multitude of bloody conflicts that flared up between the embryonic working class in the vast American oil fields and management that sought to suppress worker agitation with an iron fist. Decades later, America's oil fields bore the indelible scars of vicious uprisings by oil roughnecks and the pervasive socialist agitation, as assiduously epitomised in Upton Sinclair's haunting 1926 novel, *Oil!* During the late 18th and early 19th centuries, oil fields around the world over provided volatile ground for all kinds of revolutionary provocation. A little-known fact was that a certain young Bolshevik renegade, known to history by his *nom de guerre*, Joseph Stalin, cut his teeth on the teeming oil fields of Baku during 1902-1910, engaging in brutal extortion, ruthless armed robbery, and implacable racketeering to advance the proletarian uprising.

Nonetheless, Standard was not an anomaly; Rockefeller was an apt pupil of the prevailing trends in American economic development. Ever the astute observer, Rockefeller recognised that a tragedy-of-the-commons scenario had enrooted itself in the American oil sector, and the only way to address this disarray was by rational management of the nation's petroleum wealth.

Even though the Supreme Court ordered the dissolution of Standard, its legacy of oil sector rationalisation soldiered on. For instance, the Texas legislature established the Texas Railroad Commission (TRC) 1891 as part and parcel of what was known as the Efficiency Movement (also

known as Taylorism or scientific management) during the Progressive Era (1890-1929). This movement's core goal was to identify and mitigate wasteful practices to promote operational efficiency and implement best practices. The father of this then novel philosophy, Frederick Taylor (1856–1915), developed some of the initial forays into applying scientific principles to industrial production and natural resource management.

The TRC, as evident from its name, was responsible for the state's railroads. But it expanded its role into the hydrocarbon sector in 1917 by regulating pipelines, oil and gas production in 1919, and natural gas transportation infrastructure in 1920.

Within a decade, the TRC had to apply its broadened mandate. The East Texas oil boom in the 1930s generated an existential crisis for the oil sector. Oil prices declined to nearly 25 (U.S.) cents per barrel, leaving many investors penniless; and domestic oil companies collapsed one by one. The TRC recognised that for oil prices to remain stable, without the extreme volatility that was detrimental for energy sector coherence, it must implement a quota (prorationing) system so that producers would be able to maintain higher profit margins to stay afloat.

The TRC enacted the first state-wide quota order in 1930. The quota system strictly mandated the number of barrels that a producer could drill per day to bring some order to the violently fluctuating prices and discipline the untamed oil market. There was some opposition by smaller oil companies as they viewed the quota system as a dark conspiracy between the government and larger oil companies to force them out of business. But this objection did not stand in the way of the TRC exercising its duties.

But it was the advent of the New Deal (1933-1939) that expanded the federal government's regulatory powers, which allowed the TRC to bring its prorationing philosophy to the national stage and effectively hammer out a domestic oil policy. By the mid-20th century, the TRC gained operative control over nearly half of U.S. crude oil production and approximately half of estimated proven oil reserves. From the 1930s to the 1960s, the TRC had an outsized influence on global oil prices through the boundless Texas fields until around the OAPEC (Organisation of Arab Petroleum Exporting Oil Countries) oil embargo of 1973. (3)

Even here, in an event that the Middle Eastern oil-exporting countries are most well-known for, the oil embargo, it was the United States that had instituted the first politically motivated oil embargo in history. In August 1941, the U.S. government launched a comprehensive blockade on oil trade with Imperial Japan – over 80% of Japan's oil imports hailed from the United States – as punishment for its militarist activities. Unlike the OAPEC embargo of 1973 against the United States and several of its allies (including Rhodesia, Portugal and South Africa), the embargo against Japan was life-

threatening against the island nation. It was estimated that Japan only had a three-year supply of oil in reserve and arguably was the *casus belli* that made war with the United States inevitable. (4)

But it was the lessons from the experiences of Standard and the TRC that OPEC's founders learned that unbridled competition, in their view, was not necessarily positive for oil companies or countries, the global economy, or the end consumer. The issue that plagued the American oil sector was the chronic boom-and-bust cycles that would rapidly increase and decrease prices in the industry, leaving chaos in its wake. Although inimical to Adam Smith's invisible hand, the founders also realised they would have to systematise oil production.

Nevertheless, oil production rationalisation was not the only impetus that motivated OPEC's organisers; the decolonisation movement and anti-Imperialist ideology that gained sway during the late 1950s were also animating them.

Many oil-producing countries were aggrieved at the power Western oil companies wielded over what they considered their national and sovereign birth right, and by extension, their governmental budgets, geopolitical presence, and foreign policy; in short, the perceived domination that the policymakers in the developing world believed that these foreign enterprises ostentatiously brandished over their very destiny.

Juan Pablo Perez Alfonzo, the Minister of Petroleum in Venezuela, extensively studied the TRC's methodology of production rationalisation, i.e. quotas and regulatory structure. Alfonzo's meticulous research into the history of the TRC planted the requisite seeds in his consciousness of how oil-rich developing countries should forge a multilateral regulatory oil production organisation. This, according to his thinking, would grant them the independence to foster geopolitical and economic linkages amongst themselves to spur macroeconomic development.

A serendipitous moment occurred, as is often the case with momentous events, when during a chance meeting, the influential petroleum journalist, Wanda Jablonski, introduced Alfonzo and Abdullah Tariki (former Saudi Minister of Petroleum) at the First Arab Petroleum Congress convened in Cairo in 1959. Both men were upset when Western oil companies reduced the posted prices for Middle Eastern and Venezuelan oil by ten percent weeks earlier. What finally sparked the move to establish closer coordination among the oil-producing countries was when the largest oil companies of that era, known as the Seven Sisters (and essentially a cartel in their own right), without consultation with the oil-producing countries, decided to reduce the tax and royalty rate, or the rent that they would pay to the host governments. (5) The vast reduction of the rent paid to the countries that would later form OPEC proved to be the final straw and sparked the organization's genesis. (6)

Before 1950, the Seven Sisters and Middle Eastern oil-producing countries had a concessionary framework with fixed royalty payments disbursed to the host governments. But as the oil-producing countries sought to increase the revenue from their oil production, the Arabian American Oil Company (Aramco) and King Abdulaziz bin Saud struck an agreement for a 50-50 profit split from the oil proceeds in 1950. (7) Alfonzo played a significant role in persuading the king to emulate the profit-sharing agreement that Venezuela had developed with New Jersey Standard Oil and Royal Dutch Shell in 1943 that obligated them to give half of their profits to the state. Although upset with foreign concerns control over his oil resources, bin Saud assented to the increased revenue under the new contract in lieu of moving ahead with his threatened nationalisation.

That agreement served as the template for succeeding contractual renegotiations across the region for the general terms of investment with Middle Eastern oil-producing countries. The oil companies would set the posted price for oil sold on the international market and then utilise that to calculate the taxes and royalties paid to the governments under their profit-sharing arrangements. Yet, this posted price did not adequately reflect structural market conditions. In addition, by having the power to tailor the posted price as they saw fit, the oil companies could still determine the revenue inflows for the oil-producing countries. Therefore, even though the oil-producing countries had leveraged a new contractual model with the international oil companies, the host governments still accused them- and, by extension, Western countries- of unfairly benefiting from the surplus value, or the difference between the amount of profit the international oil companies acquired from their sales and the production cost, generated from their natural resources.

Ultimately, at the heart of the conflict was the perennial question about which stakeholder was to receive the lion's share of the rent from the oil proceeds. Was it the oil companies that incurred the not insignificant capital investment risk and added value to a stranded asset by infusing their expertise to discover, produce and market the oil? Or should the host countries that had sovereignty over the subsoil hydrocarbons and jurisdictional control be the beneficiary of the profit? For that reason, we should not view the dispute between oil-producing countries and the international oil companies as merely a contractual clash, but indeed recognise that it rested upon centuries-old European philosophy and legal theories. Hugo Grotius (1583-1645), widely credited as being the father of international law, and no doubt driven by the desire of European countries in the Age of Exploration (15th to 18th centuries) to secure the natural resources of conquered territories, maintained that: "If within a territory of a people there is any deserted and unproductive soil…it is the right of foreigners even to take possession of such ground for the reason that uncultivated land ought to not be considered occupied." (8)

John Locke's famed book, *The Second Treatise of Government*, formulated the legal template for imperial possessions in the new world. Locke argued that in the idyllic state of nature, "nobody has originally a private dominion exclusive of the rest of mankind." (9)

It was through "the labour of his body and the work of his hands…whatsoever then he removes out the state that nature has provided…he has mixed his labour with, and joined to it something that is his own, and thereby makes it his property…" (10) Locke contended that there was both a right and a duty to own property, according to the divine plan for man to increase and thrive upon Earth. The basic premise of Locke's argument was that the land under consideration must be actively developed. (11)

On that account, as determined under Grotius's legal edifice of natural resource exploitation and Locke's labour theory of property, international oil companies – and their home governments – felt that they held the unchallenged usufructuary rights to the oil reserves of the developing countries as these resources were not being productively developed. Simply put, as per their deeply embedded *weltanschauung*, they had the lawful right to the surplus-value of the oil production. As to be expected, the oil-producing countries did not concur with this assessment.

It was during the Cairo meeting mentioned above that Alfonzo and Tariki (both subsequently lauded as the fathers of OPEC) arrived at a meeting of the minds and convinced the other delegates to form the Maadi Pact, in which the oil-producing countries would create an "Oil Consultation Commission" that would obligate Western oil companies to inform them of any plans to modify the oil price. This auspicious meeting imbued the oil-producing countries' representatives with a newfound confidence that facilitated the groundwork for OPEC's birth in 1960, with the founding members composed of Saudi Arabia, Venezuela, Kuwait, Iraq and Iran. Upon its establishment, OPEC had two aims. The overarching strategy was to promote cooperation amongst the significant oil-producing countries to improve their bargaining position vis-à-vis the Seven Sisters; and the more immediate tactic to achieve the enhanced bargaining position was to define future engagement with international oil companies to prevent them from unilaterally reducing posted prices.

Even though there was a fair amount of enmity between the OPEC member states and international oil companies during the former's rocky birth, OPEC's entire edifice was based on the American experience with overproduction and its methods to stabilise oil production and prices, as embodied by Standard Oil and the TRC. With OPEC's formation, a changing of the guard occurred. While the international oil companies previously controlled global oil production to ensure stability, the reins were finally passed, albeit fitfully, to OPEC to become the guardian of the worldwide oil market. The formation of OPEC inspired other poorer nations to cooperate to establish their own international commodity cartels covering a broad range of primary products (tin, coffee, cocoa, etc.), which can

be thought of as the "trade unions of the developing world." Even natural gas exporting countries attempted to emulate OPEC's blueprint to form the Gas Exporting Countries Forum (GECF) in 2001. (12)

In true dialectical fashion, importing countries also formed their own consumer cartels as a counterweight to OPEC, such as the International Energy Agency, formed in response to the 1973 oil crisis.

Ultimately, most of these associations failed, either collapsing or not exercising any effectual control in their chosen markets, leaving OPEC as the only capable, enduring model of international commodity production coordination.

OPEC, the Global Oil Price, and the Quota System

As to whether the U.S. government and American oil companies are "against" OPEC, well, it is not what it may appear despite slightly jingoistic statements to the contrary criticising OPEC in local American media.

While it is commonly assumed that OPEC "controls" prices, it does not any longer. During OPEC's heyday in the 1970s and 1980s, OPEC administered a large share of the world's oil production. The organisation also assumed control of oil prices for the first time in history after the 1973 oil embargo. But the posted price system ceased in the 1980s, as OPEC began to allow market forces to determine global oil prices. In its current iteration, OPEC merely develops a consensus amongst its members (and some non-members) about how much each should produce, which, of course, does influence but does not "set" global oil prices.

Smaller domestic U.S. oil companies, known as "minnows" in the oil world, typically have a much higher lifting cost (the cost of retrieving oil from the ground) than most oil producers in the Middle East (an average of 40+ dollars versus several cents per barrel). As a result, they heartily applaud when OPEC voluntarily restricts its oil production. If OPEC member countries produced without any restraint, many of the domestic U.S. oil producers, which are an extremely influential lobby in the U.S., would be out of business. We witnessed this during the oil price collapse from 2014–2017 when many American oil and gas producers went bankrupt due to being over-leveraged while the survivors operated on razor-thin margins. Accordingly, in their perspective, OPEC's quota framework helps stave off the financial ruin of the domestic U.S. oil industry. Many U.S. states depend quite heavily on the revenue derived from their oil industries. They would be in for hard times indeed if that revenue were to dry up; hundreds of thousands of jobs that depend upon the oil sector would vanish, with the consequent socio-political disruption that could result from the withering away of the tax base.

Be that as it may, higher oil prices do hurt the American transportation sector, not just for the average driver. Elevated prices ripple throughout the national economy, raising prices for food, other commodities, and the nearly 6000 everyday consumer products manufactured from petrochemicals. Consequently, from the perspective of the United States, a delicate balancing act must be maintained whereby the domestic U.S. oil industry does not collapse due to extremely low prices while also making certain oil prices do not rise so high, which would impose inflationary pressure on the macroeconomy. In general, OPEC seeks to maintain a type of Goldilocks (neither too high nor too low) price band, which would moderate the pressure on the global economy.

In terms of the international oil companies, they, of course, prefer when the price of oil is higher. As a result, when OPEC reduces output, and global oil prices rise, their balance sheets become healthier.

Of course, it must not be forgotten that a type of circular relationship between many of the wealthier Gulf states (principally Saudi Arabia) and the United States developed after the OAPEC price revolution of 1973-74 in which the price of oil nearly quadrupled. After the infusion of vast sums of foreign revenue into the coffers of many regional governments, an unspoken agreement arose whereby the revenue would be funnelled back to Western countries (primarily the United States) by way of multinational banks and multibillion-dollar arms sales. To illustrate the immense revenue inflows that accrued to the region with the first oil price revolution between 1973 and 1980, the value of exports from the Arab petroleum-producing countries rose precipitously from less than $23 billion to $220 billion. (13)

This is not to say that OPEC's interests are always aligned nor unfailingly benefit Western countries. This is not the case. It just happens that there are overlapping interests that often align.

Some OPEC members (most notably Venezuela, Algeria, Iraq, Iran and Libya) comprise what is known as the "price hawks," and promote oil prices as high as the market can bear. This was exemplified when the late Hugo Chavez of Venezuela-somewhat eagerly predicted in 2007 that global oil prices would reach $200. Of course, he was soon proven wrong by the onset of the global financial crisis in 2008; but that certainly was not from lack of trying.

In contrast, the "price doves," comprised of the Gulf countries, historically sought to moderate oil prices. The reason for the divergence in opinion between the hawks and the doves concerning optimal oil pricing is due to economic, demographic and geopolitical factors. The doves typically had conservative monarchical governments, smaller populations, a less diversified industrial base, and a much lower economic absorptive capacity (or the ability for the national economy to absorb large amounts of foreign revenue for domestic investment profitably), while also being under the umbrella of the Western global security apparatus.

The hawks tended to be more “revolutionary” countries in their state ideologies (Arab nationalism, socialism, anti-West, anti-imperialism, etc.) with larger populations, a lower per capita GDP, and a broader industrial base. They, therefore, required elevated oil-based revenues to sustain their budgetary expenditures.

This simple framework is evolving as many Gulf countries are experiencing a demographic boom, led by Saudi Arabia, and their economies are rapidly diversifying. The fiscal breakeven oil price, or the price that a country needs to balance its budget, has significantly increased across the MENA region over the past two decades, quadrupling in many cases. Even though the Gulf countries have some of the lowest oil production costs globally, their relatively high fiscal breakeven prices mean that they must advocate for higher oil prices to remain solvent. Inflation is also a factor that influences the push for higher oil prices.

Much of this increase in breakeven oil prices has been driven by the massive expansion of the oil exporters’ welfare, subsidisation and entitlement programmes, especially after 2011 in a bid to keep a lid on Arab Spring-style political crises. But, at the same time, the enlarging debt profile of many Arab oil-producing countries forced them to initiate broad-scale macroeconomic reform, energy price reconfiguration and industrial diversification projects, as witnessed in the mid-2010s.

Conclusion: NOPEC: Dead on Arrival?

As discussed above in the introduction, the NOPEC bill currently making its way through the U.S. Congress would strip the sovereign immunity shield from OPEC and its national oil companies and allow the Justice Department to sue OPEC members for alleged antitrust violations in its attempts to reduce global oil supply to influence prices. The immediate purpose of the bill is to rectify the fact that under current U.S. federal law, foreign governments or multilateral organisations cannot be explicitly sued for pricing collusion or for not adhering to U.S. antitrust regulations. The bill is essentially formulated to extend the Sherman Antitrust Act extraterritorially. If NOPEC were to become law, the Justice Department could potentially levy billions of dollars in financial penalties upon OPEC member states. But even though the bill's introduction plays upon certain populist notions, all previous legislative efforts against OPEC have proven to be unsuccessful.

Some version of the NOPEC bill has been introduced nearly 16 times since 2000, but ultimately failed each time. In this most recent iteration, the House Judiciary Committee blessed the bill in April of 2021, while the Senate version gained bipartisan support from both Republicans and Democrats. President Biden has, thus far, expressed no opinion on the bill. Still, at the same time, he implored the Federal Trade Commission in a 17 November letter to launch a probe on potential illegal conduct in U.S. gasoline markets, in which he declared there was “mounting evidence of anti-consumer

behavior by oil and gas companies." (14) The White House also noted that "the two largest oil and gas companies in the United States" are reaping the benefits of higher oil prices, presumably referring to Exxon and Chevron. (15)

As a senator in 2000, Biden co-signed a letter that advocated for legal action against OPEC, which he claimed was violating U.S. antitrust laws. Then, in 2007, he co-sponsored another version of NOPEC legislation. (16) In 2007, the NOPEC bill had passed both chambers of Congress, but the effort collapsed when President George W. Bush threatened to veto it. (17) It seems that the strategy of the bill's promoters in the hope that the mere existence of such a bill, without actually having to weaponise it, would motivate OPEC to open the spigots to reduce oil prices.

Nonetheless, there is a fair amount of domestic resistance to such a measure. On the one hand, the State Department has come out against NOPEC on several occasions, trepidatious about the diplomatic fallout that could result. Also, the U.S Chamber of Commerce and the American Petroleum Institute, an influential trade association of domestic American oil producers, have criticised the bill because of the likely downward pressure on oil prices that would result if OPEC increased production. They argued that such a scenario would cause economic distress for many American oil producers, repeating the disastrous oil price collapse of 2014-2017. All in all, the passage of the NOPEC bill would likely lead to increased volatility in the oil market, the eruption of international trade disputes, a decline in domestic hydrocarbon investment, and potentially, higher prices for the consumer in the end.

There is also the fear that NOPEC would set a dangerous precedent and initiate a type of domino effect. If sovereign immunity were to be removed from one state or its agents, it could also be employed capriciously against other states leveraged by politicians based on short-term political expediency. (18) Others expressed concerns that such a law could cause capital flight from the U.S. or the removal of the significant funds that the OPEC member states invest in the U.S. economy and its banks. This is not to mention the massive multi-billion arms sales that would be at risk from such enforcement actions.

Additionally, there could be retaliatory action against U.S. assets abroad if a U.S. court awarded damages in such a lawsuit. Lastly, the very bedrock of the international oil system, the dollarisation of most of the oil bought and sold, could be under threat as OPEC member states could be inclined to price oil in other currencies in a tit-for-tat cycle that could detonate.

Outlining these threats to American interests, Neil Bradley, the chief policy officer of the U.S. Chamber of Commerce, wrote to the U.S. House of Representatives Judiciary Committee and warned in a letter on 13 April 2021 that: "Under reciprocal legal regimes, the United States and its

agents throughout the world could be tried before foreign courts – perhaps including the military – for any activity that the foreign state wishes to make an offense." (19)

Considering the above, it is exceedingly unlikely that the NOPEC bill would become law as a practical matter. Legally, there are similar obstacles to the bill's realisation. In similar judicial rulings, U.S. courts judged that they lacked subject matter jurisdiction and that such an issue is so politically charged and expressly concerns matters of foreign and defence policy that federal courts should not adjudicate the issue. In general, U.S. courts have determined that such a decision belongs to the domain of the executive branch involving international diplomacy. (20)

In the unlikely event that the NOPEC bill becomes law, there would remain the issue of meeting the legal burden of proving that OPEC violated all the elements of American antitrust provisions. While OPEC member states agree to coordinate production with each other to manage global oil supply, and therefore the oil price, it is far from certain that OPEC could meet the legal threshold of being an unlawful monopoly as defined under the Sherman Antitrust Act.

The first deficiency of any antitrust allegation against OPEC is that it does not control the majority of worldwide oil production, meaning that the organisation simply does command sufficient market power. While OPEC countries boast approximately 80% of global oil reserves (2020), it collectively controls about 37% of the total crude oil production (2020). (21) OPEC's proportion of global oil production has been declining over the past several decades, from its peak of approximately 50% of global oil production in the early to mid-1970s.

OPEC must compete with other major oil producers, such as Canada, the United States, Mexico, Brazil, Norway, and others, for market share. Non-OPEC countries freely operate in the market to set their own production targets, which drastically reduces any overarching control OPEC would ostensibly have in the global market. And, to consider the issue realistically, Saudi, and hence OPEC, spare capacity is eroding precipitously. The U.S. Energy Information Administration defines spare capacity as "the volume of production that can be brought on within 30 days and sustained for at least 90 days." (22) OPEC's power over the global oil market depends principally on Saudi spare capacity and Saudi Arabia's unparalleled ability to ramp up or reduce its immense oil production rapidly. However, Saudi domestic demand has been increasing on the back of its population growth, increasing urbanisation, industrialisation, and low domestic oil pricing framework. (23) Due to these domestic constraints, the central tenets of Saudi market power are how much oil it can bring to the international market, how quickly, and at what cost to the long-term health of its reservoirs. It remains to be seen whether Saudi Arabia would continue to maintain its spare capacity with its growing population and field maturation over the next decade.

Secondly, since its inception, OPEC has been plagued by coordination issues. A cartel, by definition, is a grouping whereby its members agree and coordinate their policies to ensure an equal market share and discourage competition emanating from outside of the cartel. OPEC, at best, is often beset by a lack of compliance amongst member states with pledged production quotas. Each OPEC member state usually has its own geopolitical and economic interests that make coordination exceptionally difficult.

Despite its attempt at cohesion, OPEC is not a monolithic organisation. Its member states are often at odds, and many do not comply with pledged quota production. Each OPEC member state usually has its own geopolitical and economic interests that make coordination exceptionally difficult.

Further complicating collaboration, at many points throughout OPEC's history, members have either invaded each other (Iraq and Kuwait in 1990), launched wars against each other (Iran and Iraq from 1980 to 1988), seized each other's territory (Imperial Iran and the United Arab Emirates' islands in 1971), or have had border disputes (Saudi Arabia, Qatar and the UAE), intra-Gulf embargos (Qatar, the UAE, Saudi Arabia and Bahrain from 2017 to 2021), or a geopolitical cold war against each other (Iran vs. Saudi Arabia from 1979 until present).

Proving sustained and consistent, coordinated action amongst all the member states would be burdensome.

While beyond the scope of this article, numerous other issues militate against OPEC meeting the evidentiary burden of antitrust violations.

Despite the bluster, it is a remote possibility that the NOPEC bill would enter into law not only because of the diplomatic, geopolitical, and legal issues mentioned above, but also because of the inevitable price decline that will happen eventually. This will enable NOPEC's proponents to shelve the bill, only to be dusted off again when the next pricing spike occurs.

Suffice it to say, several factors will likely cause OPEC to increase oil production, even without the looming threat of NOPEC.

The Green Paradox, a theory posited by German economist Hans-Werner Sinn, argues that as international decarbonisation policies, such as the COP 21, become more stringent with time, they function as an announced expropriation for oil-producing countries. Seeing that their assets would lose value, the oil-producing countries would then accelerate production before their vast oil reserves become stranded assets. (24) This observation appears to be bearing fruit as Saudi Arabia announced in October 2021, prior to COP26, that its flagship national oil company, Aramco, would substantially increase its oil production capacity from 12 million barrels per day to 13 million barrels

per day by 2027. (25) Following that announcement, the UAE declared in December 2021 that it would invest $127 billion capital spending plan for 2022-2026 in its oil and gas sector. (26)

The impetus behind these renewed oil investment policies is that the hydrocarbon-rich Gulf countries foresee that subsequent multilateral climate negotiations will increasingly target carbon emission sources rather than simply aggregate emissions, and would devalue their oil reserves. For instance, in 2020, for the first time in its existence, OPEC officially forecast that peak oil demand will occur around 2040, rising from approximately 100 million barrels per day to 109.3 million barrels per day. (27) Accordingly, while many oil-producing Gulf countries are implementing domestic decarbonisation policies and pledging to reach net-zero emissions by approximately the middle of this century, they fully intend to increase oil production for export to the global market before their natural resource bounty depreciates beyond repair.

Moreover, as with the American shale boom that launched in the late 2000s, higher oil prices are already beginning to see an uptick in American shale oil and gas production, which OPEC is likely to address as it views American shale oil production as a type of existential threat-free riding off of its oil production restraint. Still, it is doubtful that developed countries with substantial oil reserves would be able to continue producing oil significantly for the midterm. The reasons for that are both due to internal and external pressures. Internally, developed countries face increasing resistance from their constituents about continued domestic oil production, such as from established environmental groups, youth organisations, divestment campaigners, institutional investors and many high-ranking politicians. Many oil companies face a myriad of lawsuits about their purported role in climate change. Externally, many developed countries have committed to net-zero pledges and strengthened nationally determined contributions (NDCs) during the COP26 meeting in Glasgow.

Glasgow was notable in that it was the first time that an international climate conference explicitly targeted hydrocarbon. This new position coincided with the International Energy Agency's statement that no new oil and gas fields should come online if the world is to avert a climate crisis. (28)

As discussed above, it is expected that subsequent global decarbonisation agreements will focus on oil production more unambiguously. In order to remain faithful to the spirit of the Paris Agreement and Glasgow, the developed countries are in the beginning process of eventually phasing down domestic oil production. For example, in 2018, Ireland became the first country to sell off its investments in fossil-fuel companies. (29) Furthermore, in 2021, investment in the North Sea, which provides 70% of British oil and gas requirements, had dropped to its lowest level in half a century. (30)

The British government has proposed a series of six climate change tests to determine whether new offshore oil and gas projects would be aligned with the United Kingdom's net-zero pledge and within the decline in global emissions required to keep global warming within 1.5 degrees Celsius. (31) The UK indicated that new projects could potentially be approved only if the operators can prove that their carbon emissions would be less than that of imported hydrocarbons. The British policy came on the heels of Shell's exit from plans to develop the Cambo oil field in the North Sea. Shell's prospective investment spurred a legal challenge from environmental groups that argued that new hydrocarbon development projects conflict with British climate change laws and regulations. (32) The added burden of more expansive environmental and climate change policies will only increase the production cost of oil and gas assets in the developed world, making American and European oil and gas much more expensive to produce than OPEC oil.

This divestment trend in Western jurisdictions is very likely to proceed apace during this decade.

That being the case, the world will still require oil until the clean energy transition begins to accelerate in any appreciable manner. While domestic Western oil production is becoming progressively besieged in their jurisdictions, OPEC will take up the slack.

Even though oil politics continue to garner news coverage and inspire populist rhetoric, the United States and OPEC are inseparable. The unwritten contract of their symbiotic relationship is that as the United States undertook to protect global sea lanes from potential disruption in the oil market, OPEC would carry out the mandate to prevent extreme oil market volatility, and thereby ensure global economic stability. All in all, OPEC's influence on the world is quite multifaceted; and contrary to the conventional narrative, many in the West would grieve the loss of OPEC's moderating influence on the global oil sector.

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(4) This experience has informed Japanese national energy policy until the present. See, for example, Blair K. Blacker, *The Impact of the 1941 Oil Embargo Upon Japanese Foreign Policy* (Moscow: University of Idaho, 1975).

(5) The Seven Sisters consisted of the Anglo-Iranian Oil Company (originally Anglo-Persian, now British Petroleum), Royal Dutch Shell, Standard Oil Company of California (originally SoCal, later Chevron), Gulf Oil (now merged into Chevron), Texaco (now merged into Chevron), Standard Oil Company of New Jersey (originally Esso, later Exxon, and now part of ExxonMobil), and Standard Oil Company of New York (originally Socony, later Mobil, and now part of ExxonMobil). Collectively, they controlled approximately 85% of global oil reserves. See: Anthony Sampson, *The Seven Sisters: The Great Oil Companies and the World They Shaped* (New York City: Viking Press, 1975).

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