

Instrument out of tune

Using a National Oil Company as a policy instrument

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Summary

The petroleum sector is one of the most interest based political sectors in both domestic and international affairs. This analysis focuses on the government's ability to use the national oil companies to assert influence over the sector, and to ensure national interests.

The state anno 2007 is perceived as being a lot smaller, and a lot less powerful than its predecessors, it is the aim of this thesis to investigate this claim by looking at the potential for government control through National Oil Companies.

This is a case study of the Norwegian government's ability to use StatoilHydro as a policy instrument in the Norwegian petroleum sector. In analyzing the research question: To what extent can the Norwegian government utilize the StatoilHydro as a policy instrument, and under which conditions could this happen? We find that the Norwegian government's ability to effectively use this mechanism is in fact constrained by participating in rigid international regimes – thus subjecting itself to the effects of increased economic interdependence. However, we find that using a representative agent-principal model for exerting influence and control, the government can use the NOC as a policy instrument – albeit in attaining long-term national economic and political interests. This can happen if the government participates actively in the selection of board members, and in that way ensures that the basic understanding of the current political goals are present in the board. The current international climate – emphasizing energy security and security of supply, as well as the trend toward increased national control in some of the competitors of the Norwegian oil and gas industry may also prove to be a crucial circumstance.

From the case of Norway, whose membership in the EEA agreement makes the country especially vulnerable to the constraining effects of economic globalization, we can stipulate that the theories of Linda Weiss is a good explanatory tool for understanding the state anno 2007 – in that while the state is weaker, it is not as powerless as it is presented as in the globalization discourse.

Foreword

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Where the frontier between the state and the market is to be drawn has never been a matter that could be settled, once and for all, at some grand peace conference. Instead, it has been the subject, over the course of this century, of massive intellectual and political battles as well as constant skirmishes. In its entirety, the struggle constitutes one of the great dramas of the twentieth century. Today the clash is so far-reaching and so encompassing that it is remaking our world – and preparing the canvas of the twenty-first century.

- Daniel Yergin, *The Commanding Heights*, 1998: 11

1.0. Introduction

Reading globalisation literature, one might be prone to ask where the states have gone. It is a common belief, that the global market forces have grown very powerful indeed. It would seem that the private industry now runs the table in international economics. If one sees the distribution of power in international and domestic politics as a zero-sum game, then the natural response is to assume that this has left the state virtually powerless over its territories and the policy areas traditionally associated with the state. Using the theoretical framework presented by political economist Linda Weiss, the purpose of this text is to analyse what actually happens within the state – in other words, what has happened with the policy instruments previously available to the governments of states.

The analysis presented here focuses the attention on *one specific* policy instrument, the state ownership of industrial companies. If the domestic politics is indeed so ribbed of power as the globalisation proponents would have it, then the national ownership should be a good place to look in order to put enquire as to what sort of state we can see today. As energy politics remain a sector that encompasses several national interests, such as security, security of supply and the financial spine of the industry, to focus our attention on this sector is prudent. This is a case study of the relationship between a state and its National Oil Company (NOC). The case is the relationship between the Norwegian government and its NOC, StatoilHydro. The research question is: *To what extent can the Norwegian government utilize the StatoilHydro as a policy instrument, and under which conditions could this happen?* The case is chosen to illuminate a broader, more general research question, that is: *To what extent can the state utilize the NOC as a policy instrument and under which conditions could this happen.* The question is based on an assumption that regardless of the “rules of the game”, the NOC still lies somewhere between the state level and the market level.

In Norway the companies Statoil and Hydro recently merged into the company StatoilHydro. This has created a substantial level of debate in Norway regarding the government’s ownership policies. The discussion is also increased by the current

government's whitepaper on ownership – that sets out a more hands on approach than the approach taken by many previous governments.

1.2. A broad framework for analysis

The idea that states, and state agencies, have lost much of their former power can be read as a near consensus in the field of political economy. Where have this power ended up, and how much is left? is a relevant question .

One of the most significant changes in the world economy is the globalisation of production. What before had to be produced nearby the marketplace, can now be produced almost anywhere. As an example we can look at the Norwegian market for fish produce. According to the newspaper Aftenposten (June 3rd) the number one source of white fish imports in Norway is China, which catches the net sum of zero kilos worth of Atlantic cod a year. Much of the fish products we import from China are, in fact, from the Norwegian seas.

In many parts of the world, the big corporations now control many of the things previously controlled by the governments of states. The distribution of wealth, the decision of who gets what, and when, is now a question largely left to the market and the corporations. There lies a paradox in all this. As Susan Strange puts it: *“It was not that the TNCs stole or purloined power from the governments of states. It was handed to them on a plate – and, moreover, for “reasons of state””* (Strange 1996: 44).

Norway is a small state on the outskirts of Europe, with a partial membership in the European Union through the EEA agreement. As an international regime, the EEA agreement is rigid, and the rules and regulations that stem from this agreement are founded on actively seeking a free market within the European Economic Area. This means that Norway is a good case for analysing the impact of globalisation, since the free trade emphasis in global affairs comes to Norway in the form of legally binding regulations.

1.3. Design and structure of the analysis

In effect, this is a study of the impacts globalisation and market orientation has on the choices currently available to nation states. Linda Weiss' description of the globalisation debate stands as a good starting point for this discussion.

[The discussion about globalisations impact on domestic institutions] evokes that well told tale about a drunken fellow who loses his keys a dark place and then goes over by the light to search for them. "What are you doing?" asks a passing stranger. "Well", replies the inebriate, "I won't get very far searching for my keys in a dark place, so I'm looking over here where the light is brighter (Weiss 2003:2)"

In many ways, domestic institutions resemble this dark place. It often seems easier to search for the impact of globalisation where the light is better. The big picture is illuminated; the constraints coming from institutions like WTO and EU are well documented. The response of the states, and the various ways that states cope with the possibilities and constraints imposed by interdependence and economic globalisation seems harder to analyse (Ibid).

This is no normative study, and it is not a study of the options of the current Norwegian government per se. In this analysis, we do not look at the prudence of using the NOC as a policy instrument, and we do not weigh the interests – meaning that while for instance global warming is a grave threat, this analysis will exist regardless of what the government chooses to do with its ownership power in the national oil company. Another thing this analysis is not is a comparison between the ownership as a policy instrument and other policy instruments available. The government has many different policy instruments to use in different situations. This is an analysis of what will happen if the government chooses one specific instrument: the ownership in the oil company StatoilHydro.

The relationship in focus here is that between the government and its national oil company. In order to fully understand it, we need to take into consideration the influence that stem from domestic preferences, domestic institutions, global political preferences and the impact of international regimes the state is a member of.

1.3.1. The case study approach

King, Keohane and Verba describe the process of scientific inference as the “process of using the facts we know, to learn about the facts we do not know” (1994: 46). The scientific design chosen for this analysis is the case study. To investigate the state of the national state, we look at the Norwegian petroleum sector. This analysis is theory testing, in that we compare the empirical findings in this one case, with the broader theoretical conceptions from more macro oriented theories of international political economy. The theoretical unit of analysis here is the states ability to use the NOC as a policy instrument. Choosing the Norwegian sector as the case makes the unit analysis the Norwegian government’s ability to use StatoilHydro as a policy instrument.

Yin (2003) writes about the case study as a scientific approach that enables extensive empirical knowledge in a small segment of reality, and using that knowledge to gain a broader understanding when comparing the findings to the theoretical framework. Compared to other mechanisms for attaining scientific inference and to generalise finds, such as statistics, the case study approach relies more on the analytics. Generalizing from a case study is done through the application of theory, and thoroughly analysing the data. It is also through the use of theory that we gain external validity (Yin 2003: 28ff).

Based on theory, we arrive at three expectations for the empirical data in this analysis.

(i) The states role vis-à-vis the market and the NOC have changed as a consequence of both changes in domestic preferences and international pressure. This has led to institutional reform and changes in the mainstream political attitude towards using the NOC to attain national interests in the sector.

(ii) The states ability to control the NOC is constrained as a consequence of domestic institutional reform, and participation in rigid international regimes.

And, (iii) the state may also be given an extended room to control the NOC as a consequence of interdependence, through the global political currents.

1.4. Structure of the text

The first chapter of the text consists of the theoretical framework for analysis. In the following chapters (3 and 4), the focus is shifted to the case, and the institutional change in Norwegian petroleum politics, and the classification of national interests that can be sought through ownership. In chapter five, we look at the political context in Norway. The political context shapes the goals of the politicians. The historic role of the Norwegian government in the industry is also presented in chapter five. The legal context that needs to be taken into consideration is presented in chapter six. Rules and regulations that surround the petroleum sector, and in general regulate the maneuvering room available to the government are paramount in understanding how the NOC can be used. Chapter seven contains the general discussion of theory and the empirical findings.

2.0. State – market relations: Theoretical perspectives

The different parts of the research question are dependent on each other. We can, in other words, not answer the first part of the question without a sufficient understanding of both the various ways to use a NOC, and the context under which this use is carried out. The luxury of theoretical abstraction is, however, that we are able to separate the parts of the question in order to understand the underlying conceptions first, and then bring them all together again when we bring the empirical data in.

The thought that international relations can have a great influence on domestic affairs is not a new one. Because of increased interdependence and other forms of cross border entanglement what happens on the international level cannot be separated from the domestic scene in the way it's sometimes done in traditional IP-theory. Kenneth Waltz argued that domestic politics influenced the structural reality of international relations, and that the internal dispositions of states had an effect on the prospect of war and peace in international relations (Waltz 2001:81) In the 1978 essay "The second image reversed", Peter Gourevitch asks whether the "traditional distinction between international relations and domestic politics is dead" (Gourevitch 1978: 881). Gourevitch wrote his "Second image reversed" in reply to the Kenneth Waltz' understanding of domestic policy. While I think the distinction is still relevant today, there are a lot of empirical and theoretical contributions that all suggest that the distinction is at least a different one today than it once was. The term interdependence and its relevance for international politics are elaborately discussed from different theoretical perspectives in Keohane (1986). The problem with the term globalisation is that it can mean just about anything from war to hamburgers, and hence the use of the term needs to be precise at some level. For the purposes of this text we could perhaps have used interdependence as a term. However, the ramifications of economic globalisation are larger than just interdependence. National economies are greatly dependent on one another, but the international perspective for policy development also need to be considered, and this is best described by globalisation – since it could theoretically exist without economic dependency.

International relations theory sometimes handles domestic structures as a cause of international politics, meaning that international politics is a consequence of the various structures. The view of Gourevitch and the point of departure of this analysis is that the domestic structures are in turn a consequence of international relations (Gourevitch 1979: 882).

2.1. The second image reversed, and re-focused

Inn all its simplicity, Gourevitch' argument is that "political development is shaped by war and trade" (Ibid: 883). The focus is laid on the institutional structures in domestic society, and on historic concepts such as regime type. More interestingly for us, the coalition structures in domestic society – including the type and mix of dominate elites (ibid). We shall keep the basic understanding of this IP theory, namely the conception that domestic structures can be seen as a consequence of international relations. The theoretical framework can however be strengthened by introducing concepts from the current globalisation discourse.

A common conception in the globalisation discourse is that the state has lost much of its former power – a lot of this power has been transferred to the market, and market actors other than the state. This is the staring point for our analysis as well. The goal of this text is to analyse the impact of globalisation on the states ability to use a NOC as a tool in a political context. In order to make sense of the international and the domestic, we need to further examine our theoretical base. In this chapter I will outline the theoretical backdrop of this paper, and seek to connect the theoretical perspectives of international political economy with those of domestic political management.

In international political economy, there is a near consensus that the state today is smaller than its predecessors. However, there are nuances. In this discussion I will focus on two main voices that differ in some relevant respects. Firstly, Susan Strange was one of the most known proponents of the school of the diminished state. She represented one of the most outspoken theories of the states loss of power (Strange 1996). Secondly, Linda Weiss represents a somewhat different view – that the states still have a crucial influence over many areas. The role of the states is still very important, both on the domestic and on the international scene (Weiss 2001; Weiss 2003).

In the second part of this chapter we will see how the international political economy theories and the basic understanding of IP theory can converge with some theories of domestic public management. To do this we turn to theoreticians and scholars investigating policy change – and the relation between external circumstances and policy change. The domestic theories can enable us to tie the case and the basic theoretical universe together, and to find parameter to measure the states power vis-à-vis the NOC. Combining these understandings will give us a theoretical image of the pathway of globalisation influence on domestic structures, such as the states ability to utilize the NOC. As we shall see later in this chapter, the different conceptions of the states current role give different expectations for the empirical data. Where Strange for instance would expect to find a state whose power vis-à-vis the market is limited, if not non-existent, Weiss may expect to find a state that has merely adapted to the external circumstances. The state expected by the proponents of the view taken by Weiss would seem different, but not necessarily weaker than its predecessors. The doors that are shut as a consequence of economic globalisation may well have opened others, and regarding the use of NOCs that may very well prove to be the case.

2.2. Globalisation and state power – relevant IPE perspectives

There are different views as to when the loss of state power became apparent. Many observers claim that the financial crisis of September 1992 represents the final triumph of transnational market actors over the state.

In his book “Global Political Economy” Robert Gilpin writes this about the financial crisis in the early 1990ies:

In September 1992, an important and disturbing event occurred when, without warning, private investors suddenly transferred huge sums of money out of the British pound, the Italian lira, and other currencies into the German mark, thereby forcing an unwanted devaluation of the pound and other currencies. This devaluation significantly changed reshaped the economic and political landscape of Western Europe and tore apart the Exchange Rate Mechanism (ERM) of the European Monetary System

(EMS), whose purpose was to maintain the values of the European Community currencies within specified narrow bands. As a consequence of this financial crisis, Great Britain withdrew from the ERM and caused the movement toward European economic and monetary integration to divide into a “two-speed” process of European unification (Gilpin 2001: 35)

As noted, many observers see this incident as the definitive failure of domestic institutional economic control. Richard O’Brien (1992) even stated that this was “the end of geography”. In his book from 1992: “Global Financial Integration: the end of geography” he states that nations, and other regulators, no longer have the power to control the economy in their territories. He based much of his analysis on the experiences from Europe in the early nineties. O’Brien also emphasises the financial crisis that culminated in September 1992. While concluding that the end of geography is near, he also argues for the furthering of the EMU (European Monetary Union) (O’Brien 1992: 2ff).

The end of geography is all about reduction of barriers: the EC process is all about reducing internal barriers within the single market, and hopefully not just replacing them with barriers around the EC itself (Ibid: 70).

O’Brien represents a hard-line approach to the diminishing state, arguing for increased devaluation of power to market structures and trans/over-national institutions. As it were, Norway entered the EEA agreement just after O’Brien published his book – this is therefore a topic we shall return to when discussing our case.

Gilpin (2001) presents a different interpretation of the financial crisis in 1992 – emphasizing the specific roles of national governments in this process

Many scholars argue that the developments in the recent couple of decades have stripped the state as we know it. The basic argument is that the state has lost a significant part of its former powers, to the market, as well as to other non-state actors. One of the most vocal supporters of this argument was Susan Strange. In her 1996-book *Retreat of the State* she writes that:

The basic argument put forward is that the impersonal forces of world markets, integrated over the post-war period more by private enterprise in finance, industry and trade than by the cooperative decisions of governments, are now more powerful than the states to which the ultimate political authority over society and economy is supposed to belong (Strange 1996: 4).

The theoreticians who subscribe to this argument, like O'Brian, and especially Susan Strange advocate a view that the very scope of politics has diminished. According to this line of thought, there are two ways of looking at the state in post Cold-War international relations. Firstly, they say, there are those who stipulate that the state still is the central actor in international politics, and that no change has taken place. Secondly, there are those who accept that a change has occurred and that this means that the role of the state now seems to be a different one (Strange 1996: 66).

The financial crisis did in fact illustrate a power shift in international economic and political relations. The power of single states seemed to falter in the face of the powerful financial institutions, in this case the German Central Bank who raised the German interest rates substantially to offset the impact of the German reunification (Gilpin 2001: 37). It illustrated another thing as well, namely the differences in power between a few powerful states and the rest of the world states. While the few and powerful can influence the very dynamics of the world economy, the small economies just have to cope with the same dynamics (Ibid).

There is no doubt that globalization and economic interdependence has had an enormous effect on the state government's room to manoeuvre. The relevant question is then how this has happened, and what is left of this room? The answer to this lie in the responses of the states to the globalization altered context for political movement. In this next section we shall direct our attention towards the movement and responses of the states.

The Strange–O'Brian way of looking at the state yield some theoretical expectations to how the state will appear in our case study. The theories and

descriptions presented by Strange and O'Brian present us with a rather passive state. International forces have stripped the state of its former power to regulate industry and economy. This would certainly also give us reason to believe that the state-marked relation has influences on the nature of the relationship between the State and the NOC. However, the thought that the state has been a passive player in the change, and the scope of the change is not a scientific consensus.

2.2.1. Bringing the domestic institutions back in

The thought that globalization has rendered the state virtually powerless has been given significant attention by contemporary observers. This idea is somewhat contested by Linda Weiss.

However much globalisation throws constraints in the way of state activities, most notably in the macroeconomic arena, it also allows states sufficient room to move, and to act consonant with the social and economic operating objectives (Weiss 2003: 298).

The traditional globalist argument, like the one we find in Susan Strange and O'Brian argue the notion that states gradually become similar – in that the influence of globalization creates such constraints on states. The fault, according to Weiss lie in that many observers seem to view the influence on state power, and distribution of power internationally is a zero-sum game (Weiss 1999: 61). The traditional globalization discourse focus greatly on the influence of globalization *itself*, and do not so much focus on the responses of states to these influences. This naturally leads to the hypothesis that the nature of states is converging. In other words, that since the states face the same environmental pressure, they end up being more similar. This, however, need not be completely true. By shifting the focus to the actual responses of states, we find that the pre-existing institutions and domestic political realities makes the states react to environmental pressure in different ways, giving a diverging rather than a converging trend (Weiss 1998: 11). The states ability to utilize a NOC as a policy instrument relies upon the international and global regimes the state is a part of; it relies a great deal on the institutional framework and the preferences in the domestic

political arena. It also relies on the room to move, generated by other international political currents.

The traditional globalization argument states that globalization creates policy constraints in the domestic political reality. This further intensifies economic interdependence – this in turn intensifies globalization. The causes of these constraints are however far too complex to be summed up by just outer pressure. The causes of domestic policy constraints are just as often a consequence of domestic politics (Weiss 1999: 66). And further, the impact of economic interdependence greatly depends upon the pre-existing institutions and norms in the specific country (Weiss 2003: 301).

Both the normative and organisational configuration of institutions play a key role in conditioning the way states respond to globalisation pressure, enlarging or reducing the room to move, as the case may be (Weiss 2003: 302).

This is an element also present in the analysis of Keohane and Miller (1996). In the following chapters of this text, we will focus on the responses of the state, and on the room in which the state moves. The domestic response to globalization is to be found in the public sector and the industrial policy of the state.

2.3. Domestic policy change as a result of globalisation and interdependence

Following Weiss, it seems clear that the most interesting discussions lie in the crossing of political economy and political science. Placing focus on what happens *within* the states might be the most fruitful way of pursuing this matter. The question then remains. The second image remains reversed, though it needs to be just a little sharper, in order to be used as a starting point in this context.

Within the same tradition as Gourevitch we find other scholars who have pondered the same issues – how does international relations and global economic interdependence actually manifest itself in domestic affairs? One way of answering that question would of course be to say that it manifests itself in different ways in every state, depending on the relative power of the state versus the international

system. This is clearly a statement we can easily subscribe to, though it gives us little new information. Nor does it provide us with a way to understand in what way this manifestation happens.

Keohane and Milner (1996) provide us with an answer, or at least a way to explain how different states respond differently to internationalization. The institutions mediate the impact of globalization in the various nation states. If the domestic institutions are weak, then the domestic impact might be high. Conversely, if the domestic political arena consists of strong institutions, then the impact will be lower. However, one of the reasons for this is that institutions inhibit the ability of the central government to interfere with the day-to-day business and

The more authority over policy rests in the hands of independent bureaucratic agencies, the less policy change should be associated with a given change in the constellation of preferences in the private sphere (Garret and Lange 1996: 54).

This actually means that although globalization and internationalization has some profound effects on all states, the level of impact and effect it has on the government's ability to govern will rely much on the nature of the institutions surrounding the politicians. In the long run however, the institutions may also change. Garrett and Lange discuss the nature of internationalization, institutions and political change. Their model takes it as given that internationalization and changes in the world economy induces change in the preferences of domestic actors. Using that understanding as a starting point, they proceed to investigate how the governments respond to those changes in preferences. Using a game theoretical approach, they arrive at a clean and stylized modeling of how this plays out (see fig 1) (Ibid: 50).

The model presented by Garret and Lange proposes that exogenous changes, like a decrease or increase in prices will induce policy change in the domestic arena. The pressure from international factors is mediated through the countries position in the international economy, the socioeconomic institutions and the formal public

institutions. As we shall see in the Norwegian case, these effects are crucial in understanding the change of institutional policy in the petroleum sector.

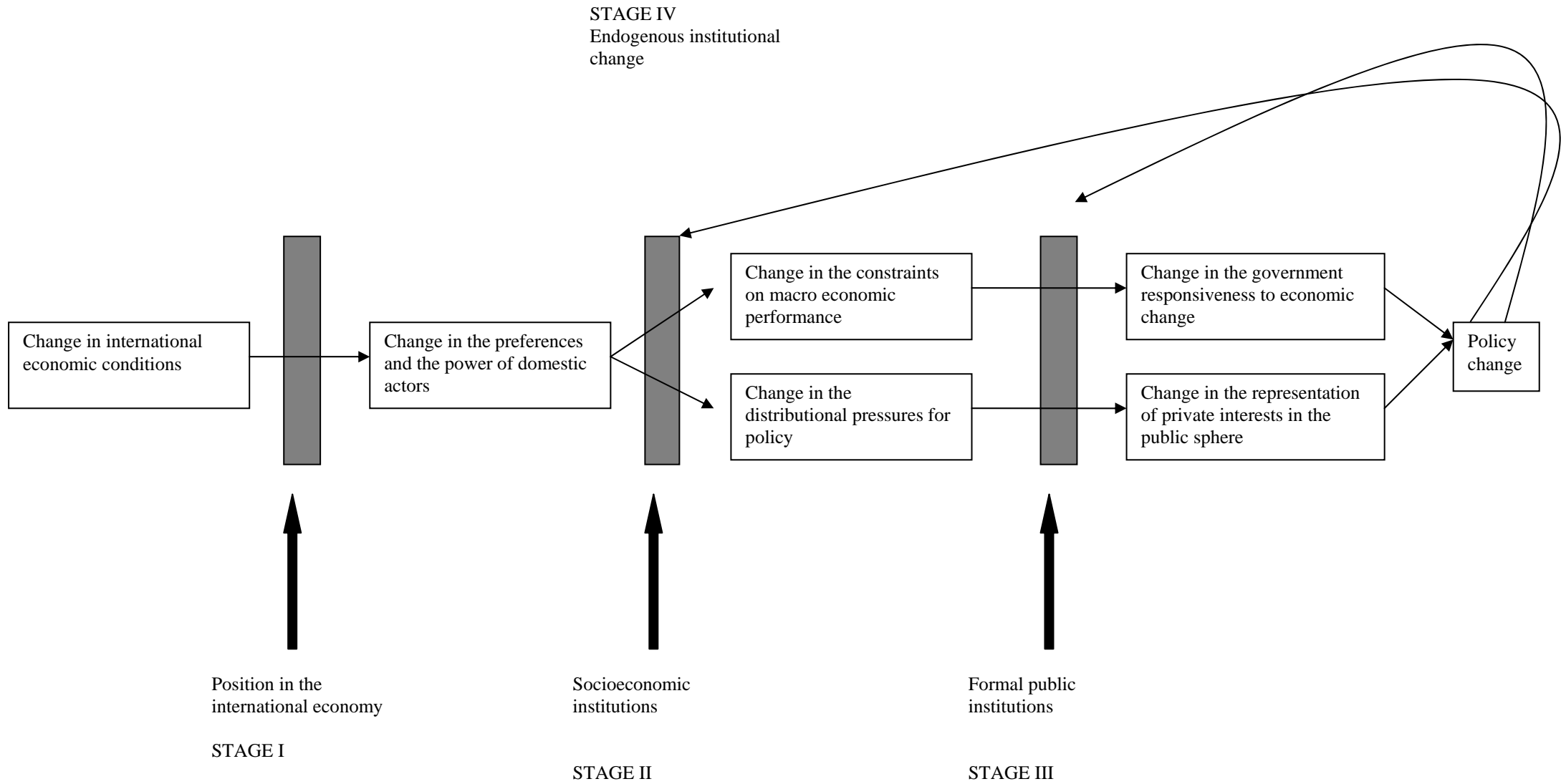


Figure 1 The international economy, domestic institutions and political change (Garret and Lange 1996: 51)

The approach of Garret and Lange places the State at the center of the analysis, and proceed to examine how the institutions mediate the influence the changed domestic preferences – and how the final government policy then is affected by both institutions and preferences. Our task however, is to investigate what happens after the government has decided on a given policy. How are the tools of the government affected by increased interdependence, and increased rigidity on international regimes? While institutions play a crucial role in this view as well, the basic approach is somewhat different. The Garrett and Lange model does however present us with an opportunity to tie the theoretical components of this text together. The pressure from the international economy does indeed induce changes in the domestic sphere, as argued by both Gourevitch (1979) and Weiss (2003). And while institutions do mediate the influences, they are also the result of policies, and policy change in the states. So the influence of institutions may change over time. This shows that the institutions themselves can also change as a result of policy change. The role of the state in relation to a NOC is regulated by institutions. In the Norwegian case, as we shall see later, the surrounding institutions were also subject to change as a result of a change in the political preferences.

For our purposes, the institutions and agencies of the public are crucial in order to apprehend how the state has adapted to the new international community, and also to grasp the sphere of tools available for today's states. The institutions surrounding the Norwegian petroleum sector for instance, have been continually changing through the 30-year history of Norwegian petroleum. The institutional reform has followed a similar pattern of that described by Garrett and Lange for predicting and understanding policy change. The institutions themselves are a result of a policy change. If we pare the theoretical approach of international economy, with the Garrett and Lange model, we can see how the institutions in the Norwegian petroleum sector have changed – from a strictly collective model to more market based approaches. This transition in administration model is sometimes described as New Public Management, and was a popular reform wave through the 1980ies and 90ies. This “reform wave” contained, as we shall see, many of the elements that are connected with the idea of the diminishing

state. In addition, it also changed the distribution of responsibilities between the national oil companies and the government.

2.4. The global political economy in domestic public reform

The trend in public management reform during the 1980ies and far into both the 1990s and 2000 were the so-called “New Public Management” – a response to the increasing management and economic focus in global economic affairs. This type of reform was heavily advocated by international organisations like the OECD.

This purpose of this text is not to give a complete and exhaustive account of the theoretical framework for new public management reform. However, without at least some understanding about where the ideas of reform comes from, the task of analyzing and identifying the relevant factors become even more complex and demanding. In this section we look closer at the theoretical backdrop of the reform wave.¹

2.4.1. Broad thinking governments and specified agencies

The management school draws its inspiration from the private sector. In a study of one of the most NPM inspired countries, New Zealand, Boston et al. (1996) finds that the reforms in general were inspired by the economic public choice theory and organizational economics. They found that agency theories and transaction cost theories played a major role in the ideological and practical foundations of the reforms. In addition, the managerialism borrowed from private enterprise created much of the basis for reform (Boston et al.. 1996: 16).

“The new economic approach” as it’s sometimes called, stipulates that any person will act to maximise ones own goals. As citizens use political means to ensure basic interests, like health care and pension, politicians use their position to gain more power. Following this theory, the smaller the government gets, the better it gets (Todaro and Smith 2006: 121). In a general sense, we can say that politicians and

¹ This sub-chapter is based on a pervious work – handed in as a term paper at the University of Oslo. Refereed to as Vik 2007a.

administrators adhering to this approach, views the role of the state and state agencies with some scepticism (Vik 2007a).

Another important element of these reforms relies on the relationship between the delegating authority and the entity delegated to. In economics and political science this relationship is often described as an agent-principal, where the principal delegates authority to an agent in order to perform a specific task or role. Politically, we can say that the relationship between the people and the members of parliament is a principal – agent relationship. The agency theory, as the public choice theory, assumes that we all are rational, utility maximising self-interested beings. Accordingly, the relationship between agents and principals must be regulated by more or less formal contracts (Ibid 19).

A good deal of agency theory, therefore, is concerned with determining – given various assumptions about the information available to the respective parties and the nature of the task undertaken – the optimal form of contracting, including the best way to motivate agents (Ibid).

As we shall see, reforms inspired by NPM ideas focus a great deal on contracts and the formal divisions between the political and administrative levels of public management.

Management focus are said to be the very foundation of new public management. The theory borrows many central elements from organisation theory, and from practices in private enterprises. According to Boston, the proponents of this particular way of organising public management are mainly practitioners and private sector consultants. Management theory consists of various lessons from private companies, and corporate ways of thinking. The foundation of management theory rests on the idea that management is something pure and instrumental – an activity that bases itself on principles that can just as easy be applied to public management as to private business (Boston et al. 1996: 25; Vik 2007b).

2.4.2. A new distribution of responsibilities

According to Hood (1995) the basis of NPM reforms in the eighties lay in two distinct changes from the “old”, Weberian public management. Firstly, the NPM reforms consisted of downplaying and removing the differences between the public and the private sector. Secondly, NPM means a change in the public sector from process accountability in the direction of increased focus on result accountability (Hood 1995: 94).

New Public Management separates itself from the “old” public management in many ways. Most important is the emphasis it places on vertical and horizontal specialisation. The most crucial point is the vertical specialisation – the creation and structural devolution of power to these agencies (Vik 2007b).

Horizontal specialisation means that units with multiple tasks are being divided into several units with one, or few, focus areas. We can say that a common denominator for both vertical and horizontal specialisation is the creation and structural devolution of agencies. Talbot (summarized in Christensen and Lægreid 2004) has identified three central features of agencies:

1. Structural disaggregating, brought about by the creation of single purpose organisations
2. Performance management conducted by specifying contracts and performance targets, monitoring, reporting and assessment
3. Deregulation attained by delegating control over personnel, finance and other managerial tasks (Christensen and Lægreid 2004)

The main components of NPM are hands-on professional management, which allows for active, visible, discretionary control of an organisation by people who are free to manage; explicit standards of performance; a greater emphasis on output control; increased competition; contracts; devolution; disaggregating of units; and private sector management techniques (Christensen and Lægreid 2001: 19).

2.5. Theoretical expectations

The level of abstract in the theories of Weiss, and Garret and Lange makes it important to arrive at some expectations regarding the empirical data we shall analyze in the following. Through the works of Garret and Lang, as well as Keohane and Miller, we see the line of thought going from the international to the national and local. In theory, the states respond to increasing interdependence and the globalization of the marketplace by changes in policy. In the 1980ies and 90ies, the trend was for states to apply a more business-oriented approach to public sector institutions – thereby

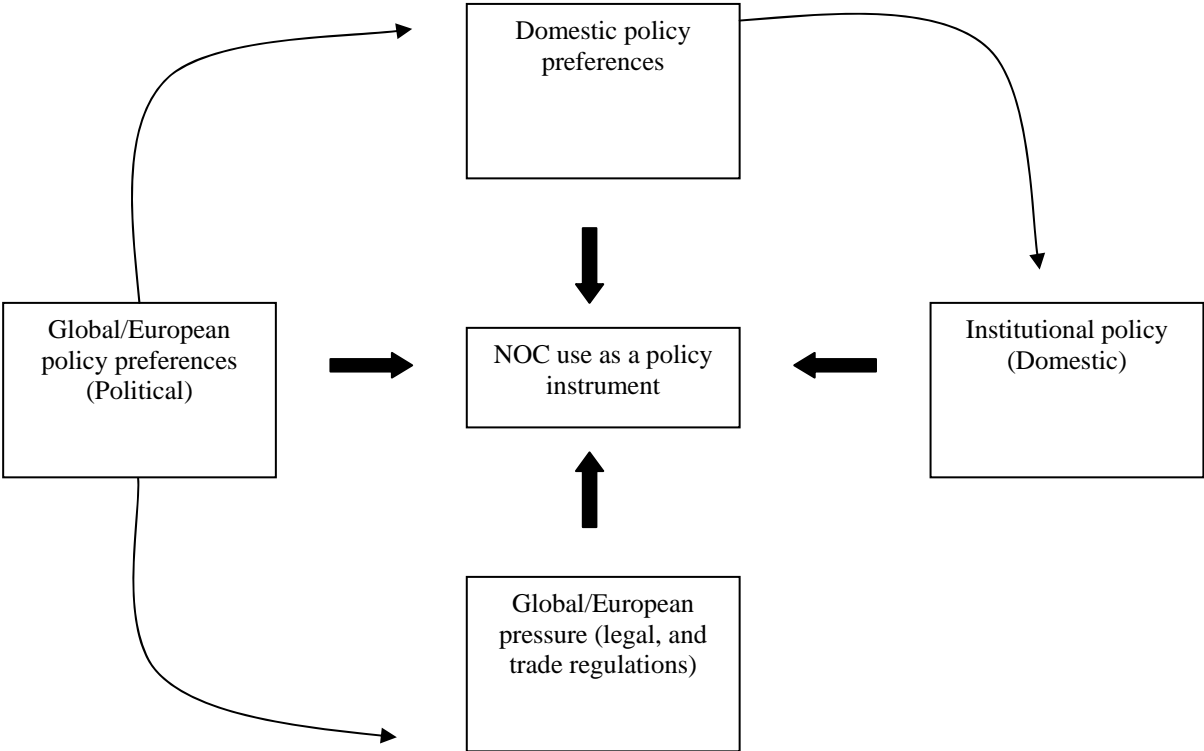


Figure 2 Domestic preferences, institutions and international pressure

changing the government’s role in the market in some cases from participant to observer.

From Garret and Lange’s model of policy change, we derive that the change of government policy comes as a consequence of the institutions framing the sector, the socioeconomic and formal public institutions. The overall change in preferences in the domestic political arena then gives the policy makers either room to maneuver, or constricts them.

The following analysis is based on the broad theoretical framework of Linda Weiss, and from that theory, we arrive at three basic assumptions for the empirical data.

(i) The states role vis-à-vis the market and the NOC have changed because of both changes in domestic preferences and international pressure. This has led to institutional reform and changes in the mainstream political attitude towards using the NOC to attain national interests in the sector.

(ii) The states ability to control the NOC is constrained as a consequence of domestic institutional reform, and participation in rigid international regimes.

In addition, (iii) the state may also be given an extended room to use the NOC, as a consequence of interdependence, through global political currents.

3.0. Ambition, exploration and control in the North Sea

Energy politics is said to be the “commanding heights” of politics. Energy political issues have been on the agenda of nations since the middle of the nineteenth century. Hence, the role of national oil companies have been thoroughly debated, both in political and academic contexts. Several aspects have influenced the relationship between the NOCs and the states. And, as mentioned, the different political dispositions of those who occupy the government offices may have a very great deal of influence over how this relationship evolves.

Following Garret and Lange (1996), policy change and the change in perceptions in the domestic political arena can be explained as a consequence of factors that are exogenous to domestic politics. In other words, the international political economy induces political change. In this chapter the focus lie on the Norwegian petroleum policy and the change of institutional policy during the 1990ies and early 2000.

3.1. Statoil – a cornerstone in the Norwegian petroleum policy

December 23, 1969 the Phillips *Ocean Viking* drilling platform finished drilling the thirty-third well on the Norwegian continental shelf. This was to be the Norwegian moon landing. Shortly after the find, Ed Jobin from Phillips called the industry department in Norway with the following words: “I think we got an oil field here”. The call would change the economic and political reality in Norway inn all foreseeable future (Lerøen 2006: 35).

The first exploration well on the Norwegian shelf was drilled over 40 years ago, and it is more than 30 years since Statoil first discovered oil. In 2003, over 77 000 people were employed in the Norwegian petroleum industry. In a country of 4.5 million people, that’s a lot of people. Oil and gas is without doubt the most important business in Norway. The petroleum industry has contributed more than 1 700 billion NOK to the state treasury (in 2003 money), and will continue to make a substantial economic and technological contribution in the years to come. In 2003 the petroleum sector accounted for 19 percent of the Norwegian GDP – twice the combined revenue from

the industry, and more than 15 times the total value creation in agriculture and the primary industries (OED 2003: 10).

The history of the Norwegian oil adventure is hung on a timeline of geological and technological discovery. For Statoil, much of the company's feeling of self is linked to the discovery and development of the Gullfaks field. The American oil and industry adventure is said to have started with the oil discovery at Spindeltop. According to Lerøen (2006), the same can be said about the Norwegian adventure and the discovery of the Gullfaks field (Lerøen 2006: 11).

From the first discovery of oil in Norway, to the establishment of Statoil, and the Norwegian oil policy we know today, many different approaches were discussed and evaluated. Although different in form, the basic grounding of the Norwegian policies in this sector has always been to try combining the effects of some international competition with a strong national presence (Ibid). The development of petroleum policy in the North Sea could "be seen as two separate learning processes" (Noreng 1980: 13). This is true both for both the UK and Norwegian shelves – where the international petroleum corporations met two states with no experience in the industry, but with a strong desire to make the petroleum work for the states, and not just for the corporations. The desire was that the oil and gas period would be an era and not an episode (Lerøen 2006: 17). This realisation from the young petroleum states in the North Sea can be seen as the first sign of the "oil revolution" that gained footing in the early 1970ies (Noreng 1980: 14 – 15).

The first learning process is the one of the states – in which the states learned the basic economy of the industry, and how to use these to gain control over the corporations. The second and equally important process belongs to the corporations. During the first years of activity in the North Sea the corporations discovered that their activities in the region would be subject to a considerably stricter regulatory regime than had been the case in the USA and the developing countries where they had previously been (Ibid).

After the finding of oil in the North Sea came the discussion about how the government was to organise the state participation in the petroleum sector. In the beginning, the Norwegian government did two important moves. Firstly, the

government in Norway started to see how the concessionary system could be used in the context at hand. In the USA and various developing countries the international oil companies had been virtually sovereign in matter of “exploration, development and depletion policy” (Ibid: 13). The governments in both Norway and the UK early displayed a disliking of this manner of organising the petroleum sector. They wanted more control. However, the new petroleum states in the North Sea needed the competence to develop the recourses.

Consequently, the governments and the energy industry found themselves in a bargaining situation. Neither side can do without the other, but they have diverging interests, perceptions and demands (Ibid: 19)

The bargaining follows two conflict lines. The first being the distribution on income between the bargaining parties, and the second being the distribution of power between the parties.

In Norway we can say that the relationship between the government and Statoil have passed through four different stages – each with its own set of challenges.

(i) The first stage is the “Era of National Governance” which lasted from 1965 to 1980. This stage was, as the name indicates, an era where the national interests were the guiding principles in the petroleum policy.

The regulations put in place by the Norwegian government amount to a legislative framework giving the state ultimate control over the resources, a politically governed concession system, and a strong element of direct state participation through the state oil company – Statoil (Claes 2003: 49).

It was also in this stage that the organizational culture in Norwegian petroleum related organizations were constructed. We can say that the roots of this culture stem from this period in time.

(ii) By internal political challenges we mean that in the period from 1981 to 1984 there was political strife around the role of Statoil as a NOC. The government at

the time, a centre-right government led by Kåre Willoch, thought both the state and Statoil would be better off by loosening the state's grip on the company. The government then proposed a series of changes to policy, which deviated from the "traditional" Norwegian way of looking at energy politics and state ownership. The internal policy changes in this period were also driven by external events, such as the oil price fall, prompting a change in the distributional pressure for policy. The Garret and Lange (1996) model helps us understand how this external economic factor caused a domestic policy change.

While the main tendency in Norway since 1945 has been to integrate organized interests, and thus social conflicts, into the administrative apparatus, the key argument of the conservative-center government was that the state, in order to govern, needed a certain distance from the various interests (Olsen and March, quoted in *Ibid*: 50).

The change in policy meant that the direct involvement of the state in the sector was split from Statoil, and placed in a new agency called The State's direct share of economic involvement (SDØE) - leaving the operator responsibility in the hands of Statoil. Contrary to what one might believe, the background for this initiative were not to reduce the power of politicians over Statoil, but to reduce the power of Statoil over politicians.

The challenge to the existing model thus was not a matter of liberalization, in the meaning of privatization; rather, it was a matter of changing the balance between two government entities, the state oil company firm and the ministry of Oil and Energy in favour of the latter (*Ibid*: 51).

However, the vertical specialization conducted by Willoch can be seen as a prelude to privatization. After the change, Statoil became more like a normal company, more governed by market principles – but still owned by the state. Yet the state-company relationship still was much closer than what we see today. It can be argued that this

gave the reform another dimension as well. Since the result of the reform was a structural devolution – it made it easier to privatize later. When the price of oil fell in the last quarter of 1980 this became a central topic (ibid).

(iii) And (iv) the two next stages: external political challenges and globalization challenge is sufficiently similar to treat them as one stage. They both led to what was now a politically potent discussion about privatization of Statoil.

The external pressure on the Norwegian government to reform its petroleum policy came in two clear forms. Firstly it came in the form of rules, through the Norwegian membership in the European Single Market. These rules sought to split the Norwegian state control in the energy sector – with special emphasis on the downstream ownership. It also came in the form of the decline of oil prices and the following economic crisis in the sector. Though the effect was mediated through institutions, the government eventually decided to fully delegate the company managing to the company itself – leaving the government to do the broad thinking.

3.2. Privatisation of Statoil

The privatization of Statoil had the stated purpose of yielding the following two main results. Firstly the idea was that a partly privatized company would be more efficient than one totally owned by the state. Secondly, the goal was to separate the political level from the administrative/production level, with special emphasis on separating the roles of the state as owner and as administrative authority (OED, White Paper 36 (2000 – 2001)).

The position of the government was that total state ownership in Statoil no longer was necessary to maintain central national interests in the petroleum sector. They regarded both the financial and the political interests as attainable through tax- and concession rules, and through laws and regulations. They also specified in the White Paper outlining the reform that *“the Norwegian membership in the EEA means that the ownership in Statoil cannot be used for political purposes, even though one could wish the opposite”* (Ibid). We return to the European/Legal framework in chapter six.

Due to change in the constraints in macroeconomic performance and a change in the governments receptiveness to economic change, the international pressure to change the way the government related to the industry were huge. This came from the EU, and from the OECD – both in the form of myths and attitudes, but also in the form of specific rules. In other words, the environmental perspectives do have a large explanatory force when it comes to this specific area of politics.

Secondly, the institutional aspect seems relevant in the sense that privatisation only came after a process through over 20 years. The normative institutional structures framing the Norwegian petroleum sector were robust – meaning that not only did this take many, many years, but also the political leadership seemed genuinely interested in making this a consensus decision.

There are several elements in the reform of Statoil and the general relationship between the company and the ministry of petroleum and energy that bear resemblance to NPM. In the beginning, Statoil were a NOC with both an economic and a political mandate. The political control of the company was direct and detail oriented. The initial reform started by Willoch meant that the political thinking and strategising were to be transferred solely to the political leadership in the government, while Statoil was to focus on the business end of the chain. Said with the NPM vocabulary, this meant a vertical specialization of the petroleum politics and policy. The leaders were to “steer not row” as it’s sometimes said in the NPM literature.

One of the consequences of the vertical specialisation was that the door was opened to other NPM inspired reforms, notably the privatisation of Statoil. Privatisation and market orienting of previous state agencies are a well-known reform element in the NPM family (Vik 2007).

As the reform of Norwegian petroleum policy shows, the relationship between the state and the NOC has changed considerably the last 20 years. Much of the change can also be attributed to effects of economic globalisation – such as decline in petroleum prices and falling international regard for large public sectors.

4.0. Interests and Government use of NOC

One of the most central, but also one of the most illusive terms in political science is interests. We often state that national interests are important in determining how a state might act in a certain context. In this paper the term interests plays a crucial role – since the main task of the paper is to find out whether the state can utilize a NOC in order to fulfil some basic interests. In other words, we need to find a model and a typology that will enable us to better grasp this illusive term. After we understand how the interests might play out, we can move on to the manner in which the state can use the NOC – meaning what different tools the state has to its disposal, and what different roles the state can take in its relationship with the NOC. When we have a clear understanding of both interests and the different methods available to the state, we can begin to look at the contextual aspect.

4.1. Political and Economic interests

In the context of state ownership we can differentiate between two main types of interests: those that are of a purely economic character and those that are more political. This principle is also evident in the Norwegian government's statements concerning ownership. There are companies that have a purely economic mandate from the government, and there are companies that have a more mixed mandate. The Norwegian government has a direct ownership in 47 companies, with responsibilities distributed over 12 ministries (MPE 2007). In the following we shall label those companies with strictly economic tasks as commercial national companies, and the remaining just National Companies. The fact that the government chooses to make this split between their companies gives us a hint that we can split the term National Interests in this case into the same two boxes. The government i.e. the ministry in charge of a given NOC has both political and economic interests in the company.

4.2. Regional, national and international interests

We can further classify the governmental or national interests from a geographic standpoint. Some interests are mostly concerned with the national level – like

increasing the R&D for example, that benefits the entire nation. Other interests, like maintaining settlements in the northern part of Norway obviously have a regional dimension. Likewise, whether the headquarters of the new StatoilHydro Corporation lies in Stavanger or Oslo has little or no effect on national issues, but is of a rather important character for the people working in the two corporations current offices in Stavanger and Oslo, not to talk about the municipal authorities and the regional business communities.² Following this model, interests could also be placed at the international or geopolitical level. Considering that the focus here is on the energy sector, international considerations might manifest themselves both in political and economic contexts.

Different interests and political problems can thus be classified within six categories, as we can see in table 1. Note that this is strictly an operational move, and that the author is fully aware that real world interests hardly fit into preset boxes.

	Political	Economic
Regional		
National		
International		

Table 1 Classification of Interests

4.3. Ways to utilize a NOC – roles of states

On the abstract level, the state might position itself in various ways in relation to a NOC. Tore Grønlie (1990b) have identified five different roles the state might take on as an owner of large industry corporations. It is my understanding, that while his

² In the aftermath of the decision to merge the two companies the discussions have centred on name choices and where the headquarters will be. This is an interesting topic for organisational research, but falls well outside the frames of this text.

objective was to describe state involvement in industry in general, that these roles also are useful tools for understanding government activity in our specific sector.

The five roles can be described as; the Entrepreneur role ; the conductor role; the proponent of national values and interests; the social reformer role; and, the crisis solver role (Grønlie 1990b: 3).

The entrepreneur role describes a situation where the state uses its ownership in industry, as well as other means, in order to secure and improve the national industrial basis. The entrepreneurial government will use its position to undertake tasks such as exploiting resources not considered fit for commercial use (yet) or create jobs or job opportunities in rural parts of the country. A common denominator for these tasks is that they are either economically unsound or they are associated with high risks (Ibid: 15). The conductor role means a more subtle government involvement. The state tries to increase the control and organization in the economy – through controlling monopolies, or directing production efforts (Ibid; Norheim 2003; 8). The conductor role fits well as a description of much governmental economic activity in the post-war period, and in fascist Italy and Nazi Germany (Grønlie 1990b: 17).

The state may also use its role in industrial development to further national values and interests. In this context, the state tries to secure national ownership of natural resources, and to secure that the revenues of economic activity based on these resources contributes in positive way to the society as a whole. Self-sufficiency plays a major part in state dispositions, both in this role and in the closely related social reformer role. Here the state uses its power not only to secure economic objectives, but also to balance out injustices in the business sector. The social distribution of power both within the company and in the rest of the society is sought adjusted. One popular way of using state ownership and economic involvement for this end is to further worker participation and to enforce a more social business leadership style (Ibid; 16).

The most passive of Grønlie's five roles is the crisis solver role. Here the state uses its power to avert a specific crisis – for instance if a private company wishes to flag out, or to close production facilities which are crucial for i.e. rural societies (Ibid).

A cross country comparison of government economic involvement does highlight some national differences, but the most valuable lesson is the similarities and the murkiness of the real world compared to the theoretical world.

If we try this role pattern on the motive- and target complexes in different countries we find many similarities. The most important one being that in most of the countries the state is placed in multiple roles at the same time – and that we may well find elements of most roles in most countries at some point in time (Ibid 16).

There are however crucial national differences. For our purposes, the most important point is the variation over time. In light of the theoretical perspectives presented earlier in the text, the expectation is that the government involvement in economic affairs, and the way the state understands its relations to NOCs have drifted from the more active roles in direction of the more subtle roles.

5.0. Political context

When one chose the model of establishing a pure national oil company instead of building on the state dominated Norsk Hydro, this had its reasons. One of the main reasons was the desire to give this company [Statoil] a privileged position in relation to other companies where private interests were represented. I feel the need to issue a reminder about this, as somebody seem to think that it is not right that Statoil is given a privileged position – this was the very the very premise of the company (Labour Party representative Gunnar Berge, referred to in Lie 2005: 31).

In general, we can distinguish five different mechanisms through which the government can exercise control in the energy market: (i) the government can exercise control through regulating the access to the industry, as it does today through the modified concession system; (ii) the control can be exercised through the actual enterprise; (iii) the government can control the actors behaviour as sellers of the industry's end product; (iv) Governments also have the option to regulate the actors behaviour towards each other through the competition rules; And (v) the government can exert control by regulating the distribution of the financial output (Arnesen 1996). In this analysis the focus is placed on what happens if the government should decide to use mechanism number two, to engage actively in the market.

The political preferences in Norway and the international community play a significant role in determining how the relationship between the government and the NOC shall be.

Traditionally the Norwegian government has been very active in the control of the energy market. Most notably the state controlled the market through the mechanisms of regulating access to the industry, through the concessionary system, and through actually taking part in the running of Statoil. Taxes have always been high on the Norwegian shelf. In this respect the government has ensured that a great portion of the financial output from the industry can be used in other sectors such as healthcare and the pension system. Currently, the Norwegian pension fund (set up by the

revenues from the oil industry) is worth 1 939 billion NOK (Norges Bank 2007). This represents a political will to regulate the industry through the distribution of the financial income. In this way the government, and the political near consensus of saving the revenue for future needs, ensures a stable, long term benefit from the petroleum industry.³

After a period of decreased focus on government participation in industry through ownership, the current government has taken a somewhat different approach. Norwegian politics until the last parliament elections were characterized by either minority Labour Party governments or coalitions on the centre-right. The political understanding of state ownership is one of the areas where the change to the current centre-left government (the government today consist of the Labour Party, The Centre Party and the Socialist Left Party). Later in this chapter we shall take a closer look at the governments current political dispositions in the ownership domain. First, however, we need to grasp the political context from a more historic point of view.

Tranøy, Jordfald and Løken (2007) describe the context of government ownership as a combination of the economic-political regime, the current trade and industry policy and the different available models of control. The Norwegian economic-political regime can be described as “the Nordic model”, where the socioeconomic models prescribe a modest and solitary salary policy, in open economic models. In the Nordic model the financial and monetary policies are set in context with the welfare politics. (Tranøy, Jordfald and Løken 2007: 11 – 13). This has had an effect on how the government has positioned itself relative to other market actors.

5.1. Historic roles and mechanisms

When the international companies first found oil on the Norwegian shelf, neither the politicians nor the bureaucrats in Norway knew anything about petroleum politics. Kåre Willoch, a prominent Norwegian politician reflects in hindsight that the understanding at the time was that “oil was something they found in the dessert” (Hanisch 1992:129).

³ The Norwegian Progress Party (FRP) is the only party who has signalled a will to spend the oil revenues in a shorter time frame than the other parties (FRP 2007: 20).

Noreng (1980) describes the exploration of the North Sea as two learning processes. One where the states learn the new business, and one where the companies learn that the states along the north sea (UK and Norway) will not behave in the same manner as the other petroleum states at that time. The first learning process was the one who were to determine the political relationship between the Norwegian government and the petroleum industry.

The quietly expectant state

During the first years of activity on the Norwegian shelf, the government was leaning back, taking a rather quiet expectant role in the petroleum development. The Kontinentalsokkelutvalget (continental base committee) was created by Royal resolution 8 November 1963. The mandate of the committee was to make a recommendation to the government on how to organize the states approach to the petroleum sector. The committee came back with a proposal in three parts. The third of which stressed that the ministry of trade and industry should have the day-to-day responsibility of handling the concessions and the industry in general. To do this they proposed the establishing of an advisory committee to help the ministry, who did not have the competence to do this. Hence, "Oljerådet" (oil council) was established early in 1965. The understanding in the beginning was that the government should use mechanisms of control restricted to controlling the market from the outside. The country was still early in the learning process, and the competence of petroleum policy was scarce. However, the trend was that the government's activity in the sector was gradually increasing (Hanisch 1992: 141ff).

Using Grønlie's (1990b) five roles of the state, the state in this time period chose to act more as a conductor. The government tried to control the petroleum industry by creating rigid rules around the concession, and at the same time trying to learn as much as possible from the industry and from other countries that had experience with exploiting hydrocarbon resources.

The socially reforming entrepreneur

In the last rounds of negotiating the concessions, the government, in cooperation with the Phillips Group decided to add a reservation for state participation in all new concessions. This meant that the government took a much more radical stance in the negotiations than was expected by the other parties (ibid).

In the summer of 1970, the young Hydro officer Arve Johnsen, who was also the leader of the Labour Party Committee on industry, wrote that the finding of oil was to have a profound influence on the future of Norway. He also stated that

We can not leave to a negotiation committee to decide on a case-by-case basis what solution to seek – whether the regard for Norway or to the individual oil company. In this context one consideration is more important than all the others, and that is the socioeconomic consequences for Norway. The second we allow landing of oil in another country than Norway, we have shifted the distribution of power in the favour of a private oil company (Ibid: 163).⁴

Through the 1970ies and 80ies, the Norwegian government action in the petroleum sector more resembled a combination of the conductor, the entrepreneur and the social reformer. The Norwegian parliaments expanded industry committee of 1970 – 71 laid out the “10 commandments” of Norwegian petroleum policy in their proposal to the parliament (Inst. S. Nr 294 1970 – 71). They proposed that

- National control and governing must be secured for all activities on the Norwegian continental shelf,
- the discoveries are exploited in such a way that Norway becomes independent of oil imports,
- the development of an oil industry need to happen under the necessary regard for the existing industry and to nature and environmental concerns,

⁴ The quote is from a meeting in the Norwegian oil directorate, may 1973, and referred in Hanisch 1992. The translation is mine.

- burning of usable natural gas on the Norwegian continental shelf can not be accepted except for shorter trial periods,
- petroleum from the Norwegian continental shelf as a rule is landed in Norway, with the exemption for the single cases where sociopolitical considerations give reasons for other solutions,
- the state is involved in all practical levels, contribute to a coordination of Norwegian interests within the Norwegian petroleum industry and to the formation of a Norwegian integrated oil community with both national and international aims,
- a state owned oil company is set up to safeguard the national financial interests and have a purposeful cooperation with the domestic and international oil interests,
- in the areas north of the 62* latitude a level and pattern of activity is chosen that satisfy the special sociopolitical considerations that is associated with that part of country,
- bigger Norwegian petroleum discoveries will present the ministry of foreign affairs with new tasks (ibid: 638)

As we can see, the committee set out a rather ambitious course of action. And, the petroleum policies in Norway through the 1970ies and 80ies did actually follow this ambitious course. The government in this period took an entrepreneurial role in the industry, and used several of the mechanisms presented above. Most notably, the government control with Statoil was big, and so was the role Statoil was given by the government in this period. One crucial element was the use of the so-called gliding scale. This was a rule according to which Statoil could choose its share of the field *after the discovery*, and the cost of development were divided among the other companies (Claes 2003; Lie 2005: 31) in these years the government in Norway actually used all the mechanisms described by Arnesen (1996). Previously Statoil also had a paragraph 10 in its statutes, demanding that all cases that seemed politically potent were to be addressed in the General Meeting. Calling a General Meeting in the

times before the privatization of Statoil did after all involve calling one person (Sandnes 2006: 60).

Crisis solving through backing off

When the prices of oil began to drop in the mid eighties the approach of the government to petroleum policy changed. As we saw from Garret and Lange (1996), the presence of an international economic factor changed the preferences of domestic actors, and in turn the policy of the government. Through the institutional changes already mentioned, the government distanced themselves from the petroleum industry – first through the vertical devaluation of responsibility, then through the partly privatization of Statoil. These moves meant that the government chose to fall back to a more crisis solver role in their use of the ownership, and continued to exercise control through the concessionary system and the taxation system, thus maintaining the use of the other four mechanisms. This has been the situation from the privatization in 2001 until the election in 2005.

5.2. Ownership discourses in Norway

Though the actual use of the government ownership in Norway was rather stable during the last two governments, the discourse still retained a left-right dimension. The government who privatized the company were a Labour government (following the lead of the “third way” from Giddens, as explained by among others Tony Blair). The next government from the centre-left spectrum (Bondevik 2) of the political sphere took the specialization of Statoil a step further in their ownership whitepaper, stipulating a “Smaller and better state ownership” (NHD 2002).

According to Per Tore Woie (2000), former vice prime minister in the Bondevik 1 government, their view was that any large concentration of ownership in the economy was a bad thing – regardless of whether the ownership was public or private. Further, the government took the view that the scope of public ownership in Norway was determined more by historic coincidences than deliberate planning from the state (Woie 2000: 68).

Woie also expresses concern about the structure of ownership in Statoil, stating that his government was in the process of evaluating the structure (Ibid: 75). However, his government fell, and a Labour Party government took over. The Labour party government then followed the proposition from the board of Statoil to partly privatize the company.

The Bondevik 2 government proposed to reduce the state share in the companies where the ownership is not a part of the sector political administration. The government also stated that in companies whose purpose was purely financial, the onus of proof were on those who advocate continued ownership (NHD 2002: 78). They also reflect on the companies, such as Statoil, where the financial and judicial framework for the enterprise is changing.

Some companies where the ownership is a part of the sector political instruments undergoes a commercialization process, among other things because of liberalization of markets and the implementation of new regulative regimes. For these companies there is reason to believe that the ownership might over time loose its meaning as a sector political instrument (ibid).

The Bondevik 2 government raised an important question in asking for the prudence in continuing with large ownerships in companies that were no part of the policy instruments.

Tore Grønlie (2000) describes the state ownership as the act of trying to combine two different types of activity – business and politics, and stresses that this is not always an easy task. Although historic coincidences might play a role in determining the scope of ownership, and how the state came to involve itself in the market, the state never enter a business solely on the basis of making money or administering values (Grønlie 2000:81).

As we have seen, the governments of Norway have historically been rather active in the petroleum sector. In the choice between both roles and mechanisms

available, the governments have tended to use a fairly broad spectrum of policy instruments.

5.3. Government today – interests and track record

The current government is a coalition of the Labour Party, the Socialist Left Party (SV) and the Centre Party. Of these three, SV is the only party who has never been in government before.

During the parliament election campaign in 2005, the parties represented in the government all campaigned to increase state ownership, and that the government should play a more important role in the market. The discussion of the states role in the market was exemplified during the campaign with the company Norske Skog, who planned to close their “Union” plant in Skien, Norway (Tranøy and Sørheim 2006: 39). The proposed closing of this plant came in the middle of the election – and hence got a huge amount of attention from both the press and the politicians. In the heat of the campaign, many politicians proposed solutions to this closing that would involve that the state entered the plant on the owner side. Another proposition was extensive public-private partnerships in which the goal was to change the primary task of the plant from producing newspaper paper to producing paper for books. A third solution was that some private investors, notably the Norwegian investors Øystein Stray Spetalen and Peter Stordalen (an investor that recently has emerged as somewhat of a corporate idealist, if such a thing exist) took 100 million NOK to the table to create a solution. However, none of the solutions made any progress (Ibid: 40).

The leader of the Labour Party said to the newspaper Dagsavisen that “A red-green government would usher an active industry policy, which hopefully can avoid closings like the one we saw at Union” (Dagsavisen 05.10.2005). Representatives from SV were also very disappointed following the closing of the plant (SV 2005).

The parties who were to form the new government then wanted the state to act as a crisis solver, and as an entrepreneur in this case, either by going into ownership in the company, or by other stimulus aimed at persuading Norske Skog not to close the plant.

Mechanism wise, the government parties have all stated in their programs that they favor an active ownership policy. The Centre Party (SP) states that:

The Centre party sees it as a main task to provide rules for, and to use policy instruments that secure local and national ownership. The Centre party is convinced that the best way of securing national resources and national interests is through interplay between an active state and a chiefly private and Norwegian ownership (SP 2005, my translation).

The Labour Party (AP) also drew on national ownership as a mechanism to reach sector political goals. In their program for the period 2005 to 2009, we find the following paragraph on state ownership.

The state is a large owner in Norwegian industry. Public ownership can secure important political objectives like cantonal politics, transport politics, culture and health politics. In addition to this, state ownership can secure domestic control over the natural resources. State ownership can secure income to the community, and can be crucial to ensure national ownership and national anchoring of key enterprise in Norway. The Labour party wants a strong public and national ownership also in the future. As an owner, the state must remain professional, and give companies that compete in the market equally good conditions as their competitors (AP 2005: 27, my translation).

The Socialist Left Party (SV) is, as the name might suggest, the party in the coalition who places itself furthest to the left in the political spectrum. It is common to expect a stronger desire to see the states interact in the market, the further to the left one gets. In their program for the same period, we find these paragraphs on public ownership.

SV opposes privatisation and deregulation of public services. The welfare state should be strengthened and not weakened. SV wants power and

responsibilities to be given back to the politicians, and to strengthen public ownership. A nonnegotiable goal, and an important strategy against privatisation, is to improve the municipality's economic conditions (SV 2005).

And

Through state ownership we will influence the companies to develop long-term strategies with information development and innovation as key elements (Ibid).

The parties seemed to be in sync when it comes to the generalities of public industrial policy, and that the state should play a role as both a crisis solver, an entrepreneur and as a social reformer.

What has happened?

During the campaign, a lot of focus was placed on industrial policy and ownership. In their article "Sølibatets politiske økonomi" (the celibacy political economy), Tranøy and Sørheim looks at what happened with the government involvement in industry after the election. According to the Tranøy and Sørheim, the election was succeeded by a deafening silence regarding the states role. And the attempts by media and Labour representatives were met by a well known rhetoric claiming that the state-market relationship must not be colluded, and that the state can not intervene in the market (Tranøy and Sørheim 2006: 40).

In the realm of state ownership, the government has indeed taken a new stand, compared to previous governments, at least on paper. In the next chapter, we shall take a look at how the government has outlined interests, and perspectives related to ownership.

5.4. Whitepapers and public reviews [government policy today]

SV, AP and SP agreed on a political platform for the government. That plan was negotiated in a conference centre called Soria Moria, and hence it took that name. The Soria Moria Declaration was signed 13 October 2005.⁵

The program sentiments from the three parties are carried on in the declaration, albeit in a less inflammatory language than before. The paragraph on public ownership from the Labour Party program is, almost, the same as the declaration. In the Soria Moria declaration, we can read that:

The state is a large owner in the Norwegian industry. State ownership secures the national control of our mutual natural resources, and secures funds for the community. State ownership may be crucial to secure a national ownership and a national anchorage of key enterprise in Norway in the years to come. Government ownership is important to secure important political objectives within cantonal politics, transport politics, culture politics and health politics (AP, Sv, Sp 2005: 24).

The Soria Moria Declaration set out the course for the governments work on ownership, and other mechanisms for control of the market. Both the individual parties programs and the declaration appear to place emphasis on the states roles as an entrepreneur and social reformer. This requires a more extensive use of the ownership mechanism. As well as regulating the market from the outside. AP and especially SV state interests that could be attained by using the state ownership. They also state that state owned companies should take the lead in working for gender equality (ibid).

In the declaration the government, also states that they will seek to find new control mechanisms and models in the political economy in both domestic and global affairs. This begs the question of what this actually means. In the ownership discourse, the government seems to follow a well-known political and economic path.

⁵ The negotiation committee consisted of Jens Stoltenberg, Hill-Marta Solberg and Martin Kolberg from the Labour Party, Kristin Halvorsen, Øystein Djupedal and Henriette Westrin from SV, as well as Åslaug Haga, Marit Arnstad and Magnild Meltveit Kleppa from SP. It is worth noting that Marit Arnstad is now interim Director of the Board of Statoil.

Recommendations from the ownership committee

In 2004, the minister of Trade and Industry was handed the propositions from “Statseierskapsutvalget” (the committee on government ownership). The committee was established by royal resolution in 2002, with the mandate to take a close look at both the management of, and the organization of the states ownership in companies where the purpose of the ownership was mainly of a financial nature. The committee was also asked to suggest new models for organizing the states ownership (Statseierskapsutvalget 2004: 9).

In essence, the committee found that the state could use the ownership to attain other goals than the purely financial, although the decisions to do so must follow the appropriate channels. The research conducted by the committee did show that some of the leaders of companies where the state were a bigshareholder found that other private owners often wanted a “state discount”. This can best be described as a financial safeguard for situations where the state tries to use the ownership powers to attain objectives other than the purely financial. Some of the leaders said that government representatives talking about measures not discussed in the general assembly was one the things that could trigger such an insecurity amongst the private owners (ibid: 12 -14).

The key proposition from the committee was that the state always should clarify its objectives. That the state objectives may be more complex than those of a private investor should not discourage the state from being very clear and upright in its relation to the company. This is as much a way to ensure that the state is not held liable to objectives it does not have. A move that would reduce the uncertainty involved with public-private cooperation. The committee also proposed that the state owned companies take a leading role in the work with corporate social responsibility, a corporate role that is not purely financial. (ibid).

The propositions from the committee are carried on in the government whitepaper “Et aktivt og langsiktig eierskap” (St.meld nr 13 2006 – 2007). In the whitepaper, the government draws a line between long term and short-term ownership, and between financial and industrial ownership (table 2).

Time horizon	Financial	Industrial
Short Term	Day trader, Hedge fund	Investment fund
Long term	Pension fund	Companies and larger private investors

Table 1 Types of ownership (OED 2007: 46)

The government places companies in the long-term industrial ownership category, while placing pension funds in the long-term financial category. This places the government involvement in the petroleum sector solely in the long-term arena. In this long-term perspective, the government presents some areas they want to focus on through the ownership in the companies. The focus areas include: Health, environment and security; research, development and competence building; environmental considerations; ethical business conduct; gender equality; anti corruption work, and; security. In addition to this it is expected that state owned companies contribute to smooth transitions when they relocate, close or in any other way change their business (Ibid: 49 – 57).

The starting point for the current understanding of the distribution of responsibilities between the company, and the government is that “the government determines general targets and goals, and the board of the individual corporation implements these goals and targets. In this way the government seeks to use the national ownership to attain progress in the main focus areas mentioned above (Ibid: 49).

When the state chooses the limited company as a model for the ownership, it accepts to a certain degree that the mechanism of direct day-to-day control is made more difficult. Through its ownership, the state shall also contribute to the long-term industrial growth of the company. It follows of this that if the company is instructed to do something that the board find to be commercially unviable, the government then compensate the company through special funding (ibid: 5 - 11).

Petroleum and security

In addition to the extended interests laid out in the whitepaper on state ownership, there are some considerations connected specifically to the petroleum industry.

Energy and petroleum is closely connected to questions of national security. Traditional IP theory tells us that this is the single most crucial national interest that trumps all other (Waltz 2001). According to Daniel Yergin, energy security has been an important international issue since Churchill decided that his navy was to use oil as fuel instead of coal (Yergin 2006). In this period, energy security remains on top of the international agenda. Instability in the Middle East, due to the war in Iraq, the crisis in Palestine and the nuclear dispute in Iran causes high oil prices. The trouble with the gas transport from Russia also causes significant ripples in the European gas market. In addition to this, the increase in focus on energy security is also fueled by the threat of terrorism (Kibsgaard 2001: 6 -8; Yergin 2006).

Norway has different energy security need than many other parts of the world, since we are largely self sufficient in energy, and is a petroleum exporting country. This does however not mean that the Norwegian government need not think about energy security. In the Norwegian case, the government needs to think about the possibility of an attack (by terrorists or other angry people) on the petroleum installations, as well as the energy security of others. As a consequence of the increasing international focus on energy security, the security and production of the installations on the Norwegian shelf has become not only a Norwegian interest, but it has also contributed to lifting Norway back into the geopolitical Centrum. One can note that western Europe only hold 2 percent of the worlds gas reserves, and imports over 40 percent of its gas needs (Bielecki: 2002: 248; Kibsgaard 2001).

In the public inquiry “Når sikkerheten er viktigst” (When security is most important), the issue of security in the petroleum sector is discussed. Since the sector consist of many private actors, state ownership as a security measure is regarded as a partial instrument to attain security – at least as long as the other regulative measures are working (NOU 2006(6): 25).

Interests and ownership

It appears that the current Norwegian government is trying to reposition itself in relation to the market and the approach to ownership. In other words, this means that the government might try to use the mechanism of controlling the market through its ownership in Statoil, as a supplement to regulating the market from the outside. As we saw above, the preferred distribution of responsibilities is that the parliament or the government sets out the broader objectives, while it is up to the companies to follow up and implement the objectives in the day-to-day basis.

Based on the Soria Moria declaration, the ownership white paper and the party programs from the government parties – we can say that the new government wishes to revive some of the states previous roles in the market. We see how, and under which circumstances this can happen later in the text.

5.5. Statoil, Hydro and StatoilHydro

In the beginning there were three Norwegian oil companies: Saga Petroleum, Statoil and Norsk Hydro. Then Hydro bought Saga Petroleum, and there were two large Norwegian oil companies – and the state held a significant amount of shares in both companies. In Norsk Hydro the state had a blocking majority, meaning that the state could block all propositions to change the articles of incorporation. In Statoil, the state had an absolute majority in the general assembly (since 2001).

After both Hydro and Statoil were rejected as partners in the Stockman field in Russia, there were speculations in the Norwegian business press about a possible merger between the two companies (DN 2006). The press and commentators was spot on in their analysis. A merger plan was negotiated in secret between the two companies, and June 8 2007, the Norwegian parliament formally approved the merger between the Norsk Hydro Oil and Gas division and Statoil. October 8 the same year, the merger was a fact.

The boards announced their intention to merge in December 2006, and then appointed a corporate executive committee. In March 2007, the boards of the two companies approve the plan for the merger. In May 2007 both the European Commission and the US Securities and Exchange Commission approved the plan for

the merger. Then, when the parliament in Norway approved the plan, July 5, extraordinary General Meetings in Statoil and Hydro approved the merger (StatoilHydro 2007).

The new company

The new company is the definitively biggest Norwegian oil company. It is the biggest company in the Nordic region, the world’s third largest net seller of crude oil, one of the worlds biggest gas suppliers. StatoilHydro is the world’s largest operator of deepwater fields, and a world leader in using deepwater technology, and in the field of carbon capture and storage (ibid).

StatoilHydro operates 39 producing oil and gas fields around the world. Still, the main activity of the company is still the domestic arena.

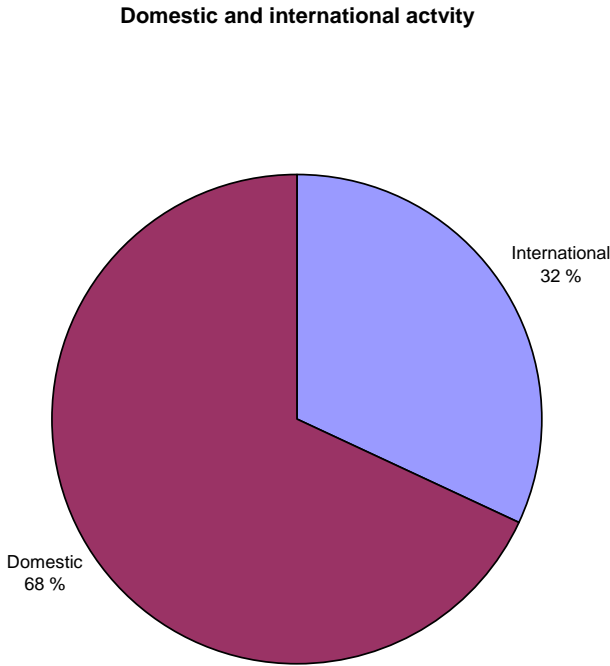


Figure 3 Domestic and international activity (OED 2007b)

The government's share in the new company is 62 percent at the time of the merger, with an expressed intention to increase the share to 67 percent – in accordance with the parliament's decision that the state never shall own less than two thirds of Statoil (OED 2007b).

StatoilHydro in the market

StatoilHydro will naturally be a significant force in the Norwegian petroleum market – not least in the research and development area. The research and development offices of Hydro petroleum and Statoil merged with the rest of the company, leaving the question of what will happen to the sub-contractors in the innovation, research and development market.

When Statoil and Hydro were competing, there was a surge for innovative technology in both companies, giving rise to academic communities feeding the companies with knowledge and technology. When the two companies are no longer competing, that surge no longer exists. This might prove to be a fault in the long run, if the government does not find a way to keep these academic communities alive (OED 2007b: 53). As the government writes in the proposition to parliament on the merger:

The merger might present a challenge to the petroleum research in Norway, especially to the research and development activity at the Norwegian universities and research institutes (ibid).

The government has a clear interest in maintaining these research and development communities in Norway. We shall return to how the government might proceed to do so.

While the merger is still very fresh, already there has been some controversy. When the merger plans were presented, one of the crucial elements was that the director of Norsk Hydro, Eivind Reiten was to be director of the board in

StatoilHydro. Reiten is not a popular man in the left side of the political spectrum (Tranøy and Sørheim 2006: 41).

Shortly before the merger, the political elite in Norway signalled a wish to remove Reiten from his position as director of the board in StatoilHydro. The current government actually called in the government lawyer to look at possible ways of removing Reiten (Dagbladet 2007b).

The same day as the merger between the two companies became a reality, another press release was issued from the offices of StatoilHydro. In this release it read that StatoilHydro now was investigating a possible corruption case from Norsk Hydro's previous contracts in Libya in the late 1990ies.⁶

A case that the administration in Hydro had dismissed was regarded as a serious case in Statoil, and an internal investigation was launched. In a matter of days, the scandal had reached Reiten. And since the press storm rose in accordance with the increased seriousness of the situation, Reiten resigned with immediate effect, October 4 2007 (Dagbladet 2007a; E24 2007; StatoilHydro 2007b).

In his place, the deputy director of the Board, Marit Arnstad took over. Marit Arnstad was one of the negotiators behind the Soria Moria declaration. In a more agency inspired institutional frame, such as the one now surrounding the Norwegian petroleum sector, having a director of the board that has played a big role in formulating the government's interests would be a great help in controlling the company.

5.6. International political preferences

The theoretical expectation for state-market relation is that the states ability to use the NOC has been constrained. There are however many NOCs that still listen to their states. In the OPEC countries, the traditional model is that the state controls the industry – it has been this way since the fall of the seven sisters in the region.

Norway is in a middle position. On the one hand, the Norwegian government looks to the USA and Western-Europe when forming policy. On the other hand, the

⁶ The contracts in Libia did originally belong to Saga, and were transferred to Hydro when they took over the company.

most important market for Norway is the oil and gas market – and in this market the trendsetters are not necessarily the countries that the government most often looks to for public policy advice. Regardless of the normative elements in their example – two countries represent an interesting deviance from theory.

As we have seen in the Norwegian petroleum policy, and as the theory makes us expect the trend has been that the state downsizes its involvement in the petroleum sector. In Norway, the current government seems to at least rhetorically take a different approach. There are especially two countries where the governments beyond any doubt have taken a new “hands on” approach. Both the Russian and the Venezuelan petroleum policy is now significantly more hands on.

In Russia, the government has taken back control over the National Oil Company, and now uses the company as well as the whole sector for political purposes. As I noted in a previous article (Vik 2007b), the current Russian approach to petroleum policy and the institutions that surround the policy closely resemble the Norwegian approach in the 1970ies and early 1980ies.

In Venezuela, the government has taken a more aggressive approach – with nationalizing the entire industry (Offshore 2007). This has of course led to international outcry, not least as Venezuela is one of the closest large petroleum reservoir to the USA

Analyzing whether the current policy development in these countries in the energy sector is prudent or nor, falls outside the scope of this text. One may note though, that the actions of the Russians and the Venezuelans create some international precedence for retaining control with the national oil company. It also signifies the crucial difference between the Norwegian petroleum sector and those with which the Norwegians compete. In Norway the globalisation “rules of the game” come in the form of legally binding rules and regulations, for Russia and Venezuela the come as norms.

Security

Another crucial element is the emphasis placed on energy security, tying the energy sector closely to important national interests. The focus on supply security can make deviances from the market economic route more acceptable. Internationally we have seen that the governments of states take an active role in energy policy. On recent example is the development of the Stockman field in northern Russia.

In this process, the government of France, and the government of Norway lobbied hard to get their companies (Total and StatoilHydro) to get a share in the development. Recently the government in Russia and Gazprom announced that the shares in the development would be as follows: Total 25 percent, StatoilHydro 24 percent, Gazprom 51 percent (Dagsavisen 2007x; Dagsavisen 2007x; Klassekampen 2007).

The price of oil is currently record high – and as the scarcity of petroleum supply increases while disturbances in the Middle East seem not to abate one might assume that the government role in energy will increase further. This create wiggle room for the national governments in the sense that the bandwagon effect of international politics makes the states follow the most effective strategy for ensuring security of supply.

6.0. Legal framework for using a National Oil Company

If the political context create headaches for the people involved, the situation will surely become no better by glancing at the huge legal framework that surrounds the petroleum sector in general, and the added legal hullabaloo that engulfs the national participation. In the Norwegian law, the petroleum activities are closely regulated, as it also is through EU law and the WTO agreements. The role of the state in this market is also regulated by both Norwegian and European law. As the situation often is in politics, the legal framework both enables and constricts. In this chapter we shall begin at the outer shell of legalities, the EU and EEA laws, and then look at the Norwegian law. The laws and directives that stem from the EEA agreement are in a special position, as they are both national and international laws. The rules from the EEA become a part of the Norwegian law, but are overseen by both the EFTA surveillance agency and the national courts.

6.1. European law – the outer shell

In May 1992, on Oporto, the EU countries and the EFTA countries signed the EEA treaty, including EFTA in the internal market in the EU.⁷ This treaty has had a profound effect on the Norwegian legal and political reality in the years to follow. The EEA treaty is a rather complicated piece of international law. On the one side, it represents an international regime regulating the economic behaviour in the member states. On the other side, the rules and regulations stemming from the EEA/EU travels directly into the Norwegian national law, after a brief hearing in the Storting. This makes it difficult to decide how to approach these laws. The EFTA side in the EEA is responsible for monitoring the manner of which the EFTA states comply with the regime of regulations surrounding the membership in the internal market. Most crucially this applies to all rules and regulations concerning the free flow of commodities, services, people and capital.

⁷ Today EFTA consist of Norway, Iceland, Lichtenstein and Switzerland. Switzerland is not a part of the EEA agreement.

According to Hans Peter Graver, the EFTA courts describe the EEA agreement as “an international treat sui generis which contains a distinct legal order of its own”, and that the EEA, while less comprehensive than the EU treaties, is an unusually extensive international treaty (Graver 2000: 7).

The main task of the EFTA Surveillance Authority is to ensure that EEA rules are properly enacted and applied by the EFTA States. These rules include for example, the general principles for the free movement of goods, persons, services and capital, covering fields such as foodstuffs, veterinary and physiosanitary matters, energy, intellectual property rights, the environment, mutual recognition of diplomas, social security, consumer protection, financial services and transport. Specific rules apply to trade in fish and in processed agricultural products.

In general, the EFTA States are obliged to notify the Authority of their transposition of EEA provisions into national law. If a State does not transpose and apply the EEA rules correctly, the Authority will intervene. The Authority may eventually initiate infringement proceedings which, as a last step, may bring the matter before the EFTA Court (ESA 2007).

The central tenet in the EEA agreement is the four freedoms, a concept that stems from the European Union. This means that the agreement is there to ensure the free movement of people, capital, commodities and services. Competition being the key word in the globalized world, the agreement also aims at “levelling the playing field” – removing any obstacles for free competition. This means new, legal difficulties for states that try to intervene in the market.

6.1.1. EEA law

The four freedoms include the free movement of goods, services, capital and persons. In the following, we shall mainly focus on the free flow of capital and goods. Another crucial element of the EEA agreement is the intense focus on free markets – meaning that no trade hindering shall occur within the agreement. Before we proceed, we should however take a look the agreement itself.

EEA agreement membership means a “light” membership in the European Union. The EFTA members enjoy access to the EU internal market, while remaining able to shield some areas from full-blown competition, as well as retaining a higher level of sovereignty than a full membership would mean. This is largely because of the so-called veto right that lies in the agreement, in other words the ability the EFTA countries have to say no to the directives coming from the EU (Seiersted et al. 2004: 21). In signing the agreement, the EFTA countries became an integral part of the internal market, committing them to following the rules and regulations laid out by the EU in these matters. To ensure the EFTA countries’ compliance with the agreement, the EFTA Surveillance Agency (ESA) was established. The ESA situated in Luxemburg, functions as the judge for the EFTA countries on matters relating to the agreement. For the EU side of the agreement, the European Courts serve the same purpose (Arnesen 1996; Ibid).

As one can imagine, the relationship between EFTA on the one hand, and the EU on the other was asymmetrical from the beginning. The original EFTA states that signed the agreement in 1992, Norway, Finland, Sweden, Iceland, Luxemburg, Austria and Switzerland were not the most powerful of states. Switzerland voted no to the agreement in a referendum already in 1992, and Austria, Sweden and Finland became members of the European Union only a year after the agreement was effective. This left Norway, Iceland and Luxemburg as the remaining part of the EFTA side (Seiersted et al. 2004: 32).

The EEA agreement has several facets that make it different from other comparable international regimes. With the agreement, the EFTA countries copied a lot of the EU competition and market law directly into the national law, as well as committing to include any updates and new legislation into the national laws. As

mentioned earlier, the agreement opens for a possible veto from the EFTA countries if the legislation should be unacceptable. Whether the veto could be used in real life is still an open question – in the 13 years the agreement has been in effect, the veto has never been used. Even though some of the directives from the EU have created significant turmoil in the domestic political debate, the veto has never been used (Claes and Fossum 2002: 7).⁸

If we look away from the question of whether or not Norway is to become a full member of the EU, there are mainly two diverging views of the agreement. Firstly, we have the view that the agreement is crucial for maintaining the current level of trade between Norway and the EU. On the other hand, we have the view that the agreement represents in essence an “emasculatation of national sovereignty” (Claes and Fossum 2002: 1)

6.1.2. Free flow – competition, government aid and acquisitions

Ensuring free movement of capital, persons, goods and services requires a lot of regulation. The same can be said about making one single European market. With regards to the role of the states in the domestic economic system, it has fostered a significant regulative effort from both ESA and the European Union. As noted, the EFTA Surveillance Agency can take the government before the EFTA courts if some element in government policy does not comply with the agreement. Many of the previous mechanisms used by the government to control the petroleum market have been criticized for being in violation with the agreement. As we shall see, a more direct approach to government ownership will probably place the government in a situation that is, if not in violation, then at least rather shady with regards to the agreement.

What then, happens if the government loses the case against ESA? The answer to that question is very much dependent on government interest, as we shall see in this example.

In a case that ESA launched itself, concerning the earmarking of certain post Doc positions at the University of Oslo for women; the government lost its case in the

⁸ In Norway the question as to whether or not to include various directives into domestic law have often created huge political debate. No government has ever proposed to use it (Seiersted et al. 2004).

EFTA courts. The Norwegian University law from 1995 contained among other things a paragraph stating that, as a gender equality measure, the University could earmark certain positions for the underrepresented sex. As the law stated

hvis det ene kjønn er klart underrepresentert innen den aktuelle stillingskategorien på vedkommende fagområde, skal de som er av det underrepresenterte kjønn spesielt inviteres til å søke ... Styret kan bestemme at en stilling kun skal utlyses for det underrepresenterte kjønn (Gammel universitetslov § 30).

The last sentence, “The board can decide that a position should be earmarked for the underrepresented sex” created trouble with the non discrimination principle in the EEA agreement.

In this case, the government lost the case. The last sentence was hence changed to a less categorical formulation. The verdict did not however have any consequences for the women who had gotten their jobs through this formulation. If the government were to intervene in StatoilHydro, the EFTA courts might say that the act was in violation of the EEA agreement – but if the process is quick, the verdict need not have any consequences for the outcome of the act.

Free flow – competition rules

In general, the free trade regime created by the EU’s internal market is huge. The parts covered by the EEA agreements also represent an enormous amount of rules and regulations – there to facilitate a very comprehensive free trade regime. The EEA rules and regulations covering the four freedoms can basically be described as a set of prohibition provisions, with appurtenant exceptions. This dualism can be found in most of the regulation basis for the four freedoms: First the rule specifies that forbids restrictions to the free movement, and then secondly a provision stipulating that restrictions may be allowed if this is justified more precisely in specific considerations (such as goods (art 28), establishment (art 31 and 33)). Further, the agreement also specifies any rights that might devolve to the citizens (Seiersted et al. 2004: 260ff).

The provisions on harmonization are closely linked to the four freedoms, and also the very foundation of the agreement. The purpose of the EEA is to create a uniform market. This requires harmonization of the trade rules in the territories. The harmonization of trade rules in order to manage the internal market is the very core of the EEA, and it is against this backdrop the four freedoms must be viewed. In addition, article 3 of the agreement contains the “loyalty” principle. This principle implies that states have a duty to fulfill the intentions of the agreement in general. In principle, this means that the states shall abstain from doing anything contrary to the purpose of the agreement, and from a more positive angle make sure to take measures in order to comply with the agreements purpose (Arnesen 1996: 68 – 69; Ibid: 262).

Non discriminatory regulations

Discrimination can mean different things in different situations. In some situations, total equality means no discrimination, while in other cases a differential approach is the best way to eliminate discrimination. In all its simplicity, the non-discriminatory regulations mean that it is illegal to discriminate based on citizenship. This applies regardless of whether we are talking about an actual person or a legal person. In the case of legal persons, the non-discrimination regulation concerns discrimination on the grounds of what EU or EFTA country the entity is based. The rule is active if the entity is established in an EFTA/EU state (Seiersted et al. 2004: 260 – 378).

The EU courts has stated that

“The prohibition against discrimination ... implies that uniform situations must not be treated different, and that different situations must not be treated uniformly, unless discrimination is objectively justified (EU courts 1983, premises, part 23, my translation).”

One way of exemplifying the non-discrimination rule is to look at the *Phil Collins* verdict (Seiersted et al. 2004: 265). In this case, the English recording artists Phil Collins and Cliff Richards had been subject to illegal bootlegging, meaning that there were unauthorized concert recordings being sold on the market. While the recording

had taken place in the US, the records were being sold in Germany. Germany, at the time had a law guarding recording artists against this sort of illegal enterprise. It did however only apply to artists from Germany. Phil Collins then brought a case for the EU courts, claiming that this was a breach of the EU non-discrimination rule. The Courts agreed with Collins in this, and subsequently the precedence is that any EU/EEA citizen is to be treated the same as a national citizen (Ibid: 265).

As mentioned above, the law applies for real persons and legal persons alike. This means that an energy corporation from an EU/EEA country shall enjoy the same legal rights, and protection from discrimination as Phil Collins, or any other person. In other words, the Norwegian government is prohibited from giving preferential treatment to companies from Norway, be they large oil companies or sub-contractors.

According to Arnesen (1996), there are several ways to demonstrate that uniformity does not exist, in the meaning that actors need to be treated alike. The likeness principle is relative, in the sense that like should be treated alike, and different should be treated different (Ibid: 90ff). This makes the principle of non-discrimination something that in many cases have to be decided on a case-by-case basis. How then can a government, or ESA for that matter, decide whether there has been a breach of this principle, or whether the government can successfully prove that there are objective and legitimate grounds for deviation?

The Courts states that “there cannot be discrimination, in the sense of the treaty’s art 40 (Treaty of Rome), if the difference in the treatment of actors reflects differences in the situations in which these actors find them selves in (Arnesen 1996: 95).”

Direct state support – a steeplechase for government activity

According to the EEA treaty (art 61(1)), all subsidies “given by state funds in any form, that twist or threaten to twist competition by favoring specific businesses or the production of specific goods” is prohibited if the support influence the cooperation between the agreement parties (Seiersted et al. 2004: 582).

Subsidy can take the form of any financial aid that is presumed economically beneficial to the receiver, and is not limited to the transferal of funds from the state to

the entity receiving the subsidy. Article 61 of the EEA agreement also includes transfer of property, overpricing and aid through reduction of taxes and public charges specific for one enterprise. The range of public measures that can be found to fall into the category of state subsidy is rather astonishing.

Even to postpone collection of a tax claim can be seen as government subsidy in the context of article 61. Also the act of converting a claim the public has towards a enterprise into equity deposit would amount to a state subsidy if the value of the claim and the value the deposit has in the business is in accordance (Seiersted 2004: 583).

In these provisions lies a principle of return service. This means that the government can give support to private or public business if the government gets a return service of the same market value. All aid that the state gives can, accordingly, be compared to a market based return service. Should the state give financial (or other) aid to a business, and receive a service at a smaller value than the aid, then the difference between the two will count as government subsidy and is not allowed under article 61 (ibid).

In some cases, the state acts as an investor, similar to private investors. In this case this state channel support to the business through the stock market and as an investor in the company. For situations like this, the Commission has come up with the “market economic investor principle”.

(WWTPID) What would the private investor do?

The market economic investor principle states that the government, in its actions toward a company in which it owns shares, need to act according to market economic principles. In both private and public enterprise, the company gets financial resources from its shareholders. This could create problems in art 61 of the agreement, since aid from governments is not allowed. Naturally, there needed to be some sort of arrangement that enabled governments or government agencies to hold shares in companies. The solution to this apparent problem was the market economic principle.

In the principle, the Commission compares the state with a hypothetical private investor – in such a way that government aid to NOCs is allowed, as long as the terms for the transfer of funds are not better than what had been the case had it been a private investor (ibid).

In its vademecum on rules for state aid, the Commission defines state aid as an aid that “should constitute an economic advantage that the undertaking would not have received in the normal course of business (EU Commission 2007)” The key element being “would not have received in the normal course of business”. Not surprisingly, the hypothetical private investor is a rational economic man, who does not place much value on market economical extra curricular items that may require making less money.

The use of the market economic investor intuitively asks for some immediate clarifications: What interests would the private investor value and pursue? And how does that relate to the interests of the public? The state’s interests are often more comprehensive than those of private investors, and the state interests cannot always be justified in economic terms, at least not in the short run.

If the state were to channel funds to a publicly owned company, the question becomes whether a private investor would have made the same judgment based on the same information, and in the same situation. If the private investor would invest the same amount in the company if he or she had the same share as the state, than the state actions are “market conform”. If, on the other hand, the private investor would judge the investment to be economically unsound, the decision is not market conform, and hence represents a breach of article 61 in the agreement (Seiersted et al. 2004: 580 – 590).

A crucial element here is the difference between the dispositions of majority and minority shareholders. If one investor has a majority of the shares in a corporation, as the government has in Statoil, then the investor would tend to make decisions based on a longer timeframe. Regarding financial and market based returns for the investment, the longer timeframe might enable the investor, or the state to broaden the specter of interests sought through the ownership. If on the other hand the investor

only holds a minority of the shares, then the timeframe shrinks, and the focus shifts in the direction of short-term profits.

The market economic investment principle is a tool to analyze the *decision* to invest. This means that the timing is crucial. The principle does not require that profits are actually made. The purpose of the principle is to enable an analysis of how the decision was made. It is not against the law in Europe to have a bad business sense it is only strongly discouraged. Of course, this also applies for states. What the principle does is that it mandates the states to have a clear expectation of financial return service (Ibid).

State aid through intermediaries

Do the rules on state aid just apply to states, or does it also apply to state owned corporations and government agencies? Yes. While the article 61 only mentions states, several verdicts in both the EU courts and the EFTA court have stated that both municipalities and government agencies can give state aid. In Judgment by the Court, 20 May 1999, the case of *the government of Norway v. ESA* gave an opinion as to who can give state aid, and what constitutes such aid. The case in question were one where the ESA had taken the Norwegian government to court over the so-called “differentiated employment fee” in Norway, where the inhabitants in more rural parts of Norway were subject to lower taxes than the rest of the country. In this case the Court found that regional support of this kind were not in compliance with article 61, citing that to be in compliance the benefit need to be made available generally. The court stated that

It is not in dispute that the differentiated contribution system at issue was designed to benefit certain regions. Although the advantageous contribution rates are formally open to all undertakings, the Court finds that the system does in fact confer direct competitive advantages on undertakings in the favoured regions compared to undertakings located elsewhere, due to the high correlation between the zone of location of an undertaking and the place of residence of its workforce (EFTA Court 1999: Premise 37).

According to Seiersted (et al. 2004) it also follows from the case *Germany v. the Commission (case 248/84)* that municipalities and counties is included in article 61 (Seiersted et al. 2004: 593). In *ESA v. the Norwegian Government*, the court also stated that the article covers government agencies and public companies.

In referring to “any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever”, Article 61(1) EEA is directed at all aid financed from public resources (EFTA Court 1999: Premise 34).

This implies that if StatoilHydro, a public limited corporation is covered by article 61, should they for instance choose to back a subcontractor with a loan priced below the market rates. This is however, true only to a certain extent – as with most of these rules, there are of course exemptions. If there is no “paper trail” from the government to the company giving instructions to give aid, than the company acts as a private entity and a separate legal person from the government. The Courts decisions in cases concerning this are somewhat ambiguous. On the one hand, the courts have established a quite large definition of agencies that can give state aid. On the other hand, the EU Courts decided in the case of *France v. the Commission (Stardust Marine)* that the crucial element is the structural conjunction between the state and the agencies. In this case, the Court stated that one cannot blatantly assume that the state uses its influence at all times in companies where the state is the owner. It then becomes crucial to investigate whether the state had any implicitly in the decision to

grant the benefits in question. If the state did not exert influence then the government goes free, if the state did use its influence the state has violated article 61 (Seiersted et al. 2004: 596).

This implies that the Commission needs to investigate on a case by case basis whether the state had anything to do with a state owned corporations decision to help a third party. The rules on state aid do in this way hinder some government control.

Acquisitions

As with most of the rules in the EEA agreement, the rules regulating public acquisitions exist in order to facilitate free competition in the market. In most countries, the public is one of the biggest consumers, and biggest purchaser of various services. So if the government is making a big purchase, this can potentially twist the competition if the acquisition is not made in a correct, open and transparent way. For small and medium sized companies, getting a government contract could mean the difference between perishing and flourishing. Hence, the regulations are comprehensive.

The acquisitions rules in the EEA agreement are based on four pillars, the first of them being publicity. As one of the most basic criteria for a free and open competition is that all the relevant parties are aware of the competition, this pillar is relatively important. In addition to requiring that the acquisition is published in the European database TED, the directive here stipulate that the public is to inform the market about all planned acquisitions in the coming fiscal year. This is mainly so that the contractors have the time to plan ahead. Bids of this size are not thrown together in a heartbeat. Since the agreement also specify that the entire process, at least the announcement of the competition and the final result is public, the EEA places the responsibility for control, and in the final extent the appeal to the courts with the organizations and corporations competing in the contest. These actors have a vested interest in the outcome, and therefore are ideal for the purposes of monitoring the process (Seiersted et al. 2004: 627ff).

The other pillar is equal treatment. This follows directly from the main purpose of the EEA agreement, where equal treatment of all citizens and corporations in the

European economic area is crucial. In the context of government acquisitions, the concept of equal treatment means that all the bid competitions need to open to companies and persons from the entire area. This relates to the requirement of early notice when public bodies are to make an acquisition. It also makes it extremely hard for governments to favor local business, in order to realize some other, non-economic interest the government may have. To exemplify, when the government announce large-scale petroleum projects, like the Snow-white field in Norway, there are generally big hopes in the local municipality for a surge in local job opportunities. This is often the main reason the local authorities have for approving these large-scale installations in their back yard. Naturally, large-scale installations have a positive effect on the economy all together, and almost automatically create jobs in the service sector. However, should the government choose to earmark some of the construction work for local entrepreneurs, this would be in violation of this rule (ibid).

The two next pillars relate to each other enough to treat them as one. Transparency and control represent the two last of the pillars underpinning the rules of Government Acquisitions. As mentioned above, the main control mechanism is that with a transparent bid system, the applicants themselves will complain to the courts if there is some irregularity with the process (ibid).

Following the verdicts cited above, we can extrapolate that the rules that apply to government acquisitions, also apply for government agencies, such as national oil companies. In other words, the same rules that apply for public sector institutions apply for public corporations – hence Statoil is unable to favor local enterprise, or any other enterprise for that matter. This is a rule that apply to Statoil because it is a NOC, and accordingly do not apply to private companies.

The EEA agreement creates significant barriers to national participation in parts of public policy even loosely connected with the market. However, there are loopholes. And as we saw earlier, the world does not stop even if the EFTA court should say that a government initiative is in breach with the agreement.

6.2. Norwegian petroleum laws – the inner shell

The Norwegian petroleum and shareholder laws regulate the inner shell of legislation in this case.

No one but the state can engage in petroleum enterprise without the approvals and consents that are required according to this law. The regulations incidentally in this law, and the secondary law given in accordance with it, apply to such enterprise as far as they fit (LOV 1996-11-29 nr 72, art 1-3, my translation).

Most of the Norwegian petroleum law and policy as well, stem from this paragraph stating that it is the Norwegian government who runs the petroleum sector. As mentioned earlier, the approach to petroleum policy taken by the UK and Norway was a bit of revolution in the way states managed their resources.

The Norwegian legal framework around the petroleum sector consists of two laws. Firstly, the petroleum law, as already mentioned. Secondly, the petroleum tax law – a law with a rather self-explanatory name. In addition to these laws, there are several EU/EEA directives, notably *directive 92/22/EF 30 May 1994* that regulate the conditions for hydrocarbon exploration. If we were to make a list of the most controversial directives, the next one would be close to the top: *the gas market directive*, or *Directive 98/30EF, 22 June 1998 – Concerning rules for the internal market for natural gas*. In fact, the current prime minister of Norway was Minister of trade and industry when this directive was negotiated. While negotiating the directive, the Norwegian government was ostensibly prepared for an annual loss of up to nine billion NOK as a consequence of the directive (DN 2001).

In addition to this, the concessionary systems consist of various legal documents, as well as standard contracts. Together these rules create the inner shell of laws and regulations.

The specific difference between the laws created in the UK and Norway and the other existing laws for petroleum enterprise was that the laws placed the power in the hands of the state. As we can see from article 1 of the petroleum law, the text clearly

states that no one but the state can make a decision to exploit the resources. This has meant that the state has made a substantial financial profit from the petroleum industry, as well as a historic guarantee that the state, through Statoil took part in the learning process on the Norwegian shelf.

Today, the situation is slightly different – meaning that the government cannot give StatoilHydro fields without an open contest, and the company is on its own concerning internal distribution of power in the operating group. However, the laws do create a special situation, since any company who operates on the Norwegian shelf does so with the expressed permission of the state, and as a legal agency of the state. Though the government aid regulation do not apply, some of the Norwegian laws regarding acquisitions and contracts do.

From the perspective of trying to comprehend the scope of the maneuvering room for politicians and bureaucrats, the legalities is closely tied with the change of institutional policy mentioned above. Do too internal political strife in Norway, and a willingness to follow international trends; the institutions surrounding Norwegian petroleum policy and legislation were changed continually through the 1980ies and 90ies. The different phases I have described previously and hence will not spend time on now. The point in this context is that the legal framework has changed accordingly, from allowing for extensive political interference within the sector, to moving the politics from the market and into the company, and last, moving the politics from the company and into the General assembly of the company- which predictably led to a partial privatization of Statoil.

On the legal side, the main purpose of the petroleum laws now is to ensure that the state has the “final word” in the petroleum sector.

7.0. Instrument out of tune?

Tying together the theoretical framework from international relations, international political economy and some theories of domestic public sector reform, we find a line of globalization influence that we can use to illuminate the dark areas of this discussion. As Weiss (2003) points out, the forces of globalization may also leave some maneuvering room for states. This is not a zero-sum game. If the market acquires more power, it does not necessarily follow from this that the state is left powerless. For our analytical purposes, we cannot assume that the withdrawal of the state from the role as an active player is merely a consequence of this powerlessness. As we have seen in Norway, the government seems ready to reenter the market in a more active way than previously was the case.

Earlier we arrived at three theoretical expectations. These were; (i) the states role vis-à-vis the market and the NOC have changed as a consequence of both changes in domestic preferences and international pressure. This has led to institutional reform and changes in the mainstream political attitude towards using the NOC to attain national interests in the sector. (ii) The ability of the states to control the NOC is constrained as a consequence of domestic institutional reform, and participation in rigid international regimes. And, (iii) the state may also be given an extended room to control the NOC as a consequence of interdependence, through the global political currents.

7.1. State v. market - changing realities

Garret and Lange tells us how external economic events shape the preferences of domestic actors, leading to policy change. In the Norwegian petroleum sector, we see this in the reform of the surrounding institutions and the 2001 reform of Statoil (Claes 2003; Garret and Lange: 1996).

The changes in policy and the changes in the very role of the state have resulted in an asymmetry of resources between the company and the state – if we are to believe Strange (1999) and O'Brian (1992). The institutional reform in the Norwegian

petroleum can be said to follow the same trend – change of institutional policy due to change in external realities.

The role of the Norwegian state in the petroleum industry has indeed changed from the times of the ten oil commandments. The approach, both in institutional policy and in the legal and political contexts have changed dramatically. During the 1980ies and throughout the 1990ies and early 2000 the trend was to downsize the states participation in the petroleum sector.

The institutional reforms that happened in these years followed a pattern of decreasing direct state control over the sector, and switching the focus over to more agent –principal, and representative ways to control the company. The theoretical expectation was to see a state-NOC relationship that had changed from the one we saw in the early years of petroleum industry

Theoretically, the states role in the market has diminished, from a participating entrepreneur to more of a regulating bystander. We have already seen the five roles the government might take in relation to the industry and the market. As Grønlie (1990b) tells us, the most common is to se these roles appear together, rather than a government choosing one and sticking to it. Historically we see that the Norwegian government has chosen a rather comprehensive approach.

The different mechanisms that the government can use covers a vide array of different policy instruments. In this analysis, we focus our attention on the mechanism of direct involvement in the market through ownership in a company. In this case, we focus on the petroleum market, and the NOC StatoilHydro.

Within the use of this one specific mechanism, the case of the Norwegian petroleum sector illustrates a billowing trend, from the hands off approach in the early 1960ies, to the very strict hands on approach that defined the petroleum policy in the 1980ies. Then in the 1990ies and 2000s, the government again let the business be business and retracted to control the market through the mechanisms of the other market-based mechanisms.

In the Soria Moria declaration, and in the various whitepapers discussed above the government presented a range of interests to be attained among other things through ownership. Attaining these interests would imply that the state took a rather

more socially reforming role than the case had been previously. Some of the government interests presented would also stipulate that the government move more into the entrepreneur role – a role that imply taking decisions that may not be economically sound in the short and medium run (Grønlie 1990b: 17).

If the state is able to intervene in the market in this way, then the theoretical approach of O’Brian and Strange might be premature – giving room for the more moderate approach presented by Weiss. It may however be a long way from today to the political and juridical context that enabled the “10 oil commandments” from the 1970ies.

7.2. Constraints

The current Norwegian government writes in the whitepaper on ownership that they place the NOC ownership in the long-term industrial category – meaning that the objectives to be attained through StatoilHydro are not merely to make money. As Grønlie (2001) also pointed out, the objective of government ownership should be seen as something more than pure economics.

In the same whitepaper, the government outlined several focus areas where they stated that state ownership should be used to nudge the market in the right direction. As refereed above, the list is as follows.

- Health, Environment and Security (HMS)
- Research, Development and competence building
- Environmental protection
- Ethical business, Social responsibility
- Gender equality
- Anti-corruption
- Security
- Smooth relocations and reorganizing

In addition to these comes the self-evident interest that the state through the ownership shall make some financial gain over time. The goal for the government is to contribute through the ownership to the industrial long-term growth of the company. In this setting the government might really be trying, as Grønlie (2001) states it, to combine two incompatible goals – that is to combine making money with attaining government interests. Based on the Soria Moria declaration, and the programs of the parties in the current government, one may also add securing jobs in the rural parts of the country to this list.

The goal here is not to give an exhaustive list of interests, but merely to select six interest that illustrate best the subject at hand. For this purpose we will focus on environmental protection; anti-corruption; research, development and competence building; gender equality; security; and the interest of securing jobs in rural parts of the country.⁹ The interests can be sorted into the categories mentioned above – economic, political and regional, national and international (see table 2).

It would seem, intuitively, that the only one of these interests that would yield any short term financial gain for the government, or at least be compatible with what a private investor would choose to pursue, is research, development and competence building. That would be a natural investment for all, also for the private investor. As we remember from the chapter on StatoilHydro, this is one of the goals that have become crucial in the Norwegian petroleum sector – and as we shall see later, it might be hard to utilize the NOC to attain such a goal. We can place this interest in both in the national economic category, and in the national political category.

Anti corruption is another interest where the government and private investor's interests are aligned – in the sense that no one would like to see the kind of bad PR that arises from a corruption scandal – as StatoilHydro has recently experienced. Not to mention that it is also illegal to engage in corruption in most states. Where the picture gets legally murkier is what happens when StatoilHydro, who has a stated goal

⁹ This is not an analysis of the prudence of the current government. And to try to deduce which of these interests the government might prioritize over the other is a task that lies well outside the scope of this text. For the sake of this study, we shall therefore select six governmental interests, and see whether the control mechanism of state ownership can be used to attain such an interest.

to be more active abroad, engages in markets where corruption sometimes is necessary to open the gates to the market. Assuring anti-corruption work fits in with the government’s national and international political interest, but also fits in with what we can call the company’s financial interest as well.

Gender equality is an important interest in Norway, and it is primarily a national political interest, and includes things like equal pay, affirmative action and a significant amount of either sex represented in the board of the company. Environmental protection on the other hand, is both a national, international and regional interest. As well as covering both the political and economic categories. This is mainly because of the sheer size of this category of interests. Environmental protection can relate to local emissions of toxins (in the air, rivers, lakes, fjords) or it can be on the scale of global warming – causing climate change for all the worlds citizens. The economic cost can also be local – in the form of cleanup costs from local emissions, or national. The national economic costs of environmental protection can also range from cleanup costs, to carbon emissions reductions. In the case of StatoilHydro, the company actually is exposed to the entire chain of this interest. From the local plants and platforms, to the global emissions of carbon gas, the company plays a role.

	Political	Economic
Regional	Job opportunities in rural parts of the country Environmental protection	Environmental protection Job opportunities in rural parts of the country
National	Research, development and competence building Gender equality Security Environmental protection	Security Research, development and competence building Environmental protection
International	Anti-corruption Environmental protection	Research, development and competence building

Table 2 Classification of interest, Current government

According to classical international relations theory, the paramount interest of states is security. This is, according to theory, the one crucial national interest in the *realpolitik* that is international relations is the security of the nation. Security can of course be many things, and it has been many things over the years. For decades, the most serious security challenge in the west was the ever present danger of a large-scale nuclear war with the east. Likewise, the greatest fear in the east was a large nuclear war with the west. Over the years, the notion of security has changed and evolved. Today it is common to expand the term security to involve issues like natural disasters – one element that has been on the security agenda for a long time however, is energy security. Energy security implies both security of supply, and the security of the installations that enable the production of energy. As mentioned above, this makes the security of the Norwegian energy sector an interest not only for Norway, but also for our European neighbors. StatoilHydro is one of the largest exporters of natural gas in the world, and the third largest seller of crude oil. Security measures both in and around the company is both a national and international political interest - not to mention a crucial national economic interest.

In comparison to the seriousness of the security interest, one might consider securing jobs and job opportunities in rural parts of the country to be a minor interest. There is on the other hand no doubt that the representatives in the Norwegian parliament, and in the government, party conferences that come from the rural regions do not consider the issue to minor in any way. This makes it a regional political interest. The prospect of running the public sector in rural parts of the country without the revenue of income tax also makes it a significant regional economic interest in Norway.

7.2.1. National Oil Companies as policy instruments

As presented above the state can choose to use the NOC in different ways to attain these interests. The way proposed by the government as we saw earlier, is that the government (either the parliament of the government) sets out the general course, and then it is up to the board of the company to implement these goals into day-to-day

politics. This implies a representative agent – principal relationship between company and owner.

Within the management theory, that dominated much of the public sector reform from the 1980ies and well into the 21st century, this was one of the more central tenets.

There have been cases in the Norwegian political and economical domain where the company representatives have not acted on the governments long-term objectives. In these cases, the government approach to controlling the government would need to be a little more hands on. Still, once the term “hands on” has been mentioned, we need to take another look at the legal framework.

Previously, we outlined two shells of legal frameworks that surround government activity. As we saw these laws and regulations mean putting constraints on StatoilHydro that does not exist in the same way for the private companies. The European laws also place some constraints in the Norwegian petroleum sector and policy that is not present in the same way for Norway’s biggest competitor in the industry – Russia.

7.2.2. Private investors and public institutions

The market economic private investor is the true economic man. This is a person created by the Commission to evaluate the actions of states. The basic tenet of the market economic private investor is that he/she acts in accordance with market economical principles – and that he/she acts on the belief that no investment is prudent unless the investor receives some sort of financial return service. As discussed in greater detail above, the difference between the return service, and the initial investment counts as state aid, and is not permitted under art 61 of the EEA agreement.

In the whitepaper on ownership, the government proposes to organize the ownership in a representative way, where the company “understands” its role as the body implementing the government’s broader objectives. To clarify what will be an accepted way to go about this according to the EEA agreement, we can divide the interests in two – looking at what would require financial measures, and what interests would only require a change in the organization of the company.

Some of the interests that we have mentioned could be seen as scales. For instance gender equality can be sought in different ways. One way of seeking gender equality is to stimulate women (or men) to be project leaders and to encourage leaders to promote the underrepresented sex when possible. One could also picture a more drastic approach, of for instance affirmative action of earmarking of positions. Referring to the example above, where the University of Oslo tried to earmark certain post Doc positions for the underrepresented sex, in this case women, we see that a approach of this kind is not compatible with the non discrimination clause. And legally, the NOC is a representative of the state if seeking gender equality is a goal it seeks on behalf of the state.

Research and development is a goal that can be said to give a financial return service. Since it is commonly accepted, also in among the private investors that in a competence intensive business like the petroleum industry one needs research, development and competence building to stay in the game. However, as we saw in the government's proposition to merge Statoil and Norsk Hydro's petroleum division, there is a concern in the government that some of the research communities connected to the industry might become superfluous when the two companies merged. In addition, there is a clear government interest to further the development of these communities (see chapter x).

If the company acts as a representative of the state, the company has to adhere to strict rules of conduct. In essence, the rules that create the most trouble for state enterprise is the non-discrimination principle and the state aid rules. From the case *ESA v. the Norwegian government* (EFTA court 1999), we see that the state aid rules apply to any form of government aid, and that all use of state resources, in "any form whatsoever" counts as aid (Ibid: premise 34).

As we saw from the case of *France v. the Commission*, the company will be treated as a normal private company, as long as there are no elements linking the state to the decision. So, if StatoilHydro on its own chooses to back some of the superfluous research communities, this is completely all right. But, when the government has stated that this is a government interest, the picture becomes murkier.

We already know from our discussion of the EEA agreement that favoring a specific region is out of the question when it comes to distributing jobs. The EFTA court verdict on the Norwegian differentiated employer fee states that it is not allowed under the non-discrimination clause to give special benefits to limited geographic areas. This is a competition-twisting move. Hence, if StatoilHydro has a need for carpenters in Hammerfest, on contracts of a certain size, then there needs to be a Europe wide competition for the bid.

As many of the other interests, environmental protection can be sought through creating stronger laws. Nevertheless, if the government were to grant StatoilHydro funds to operate in accordance with stricter environmental standards than is legally necessary, this would constitute an illegal competition twisting interference with the market, unless the government could expect a financial return service.

Anti corruption is an interesting interest, since StatoilHydro is currently recovering from a corruption scandal. It is not many years since Statoil was involved with a similar case in Iran. Legally, there is no trouble with the government instructing StatoilHydro not to break the law.

Ensuring security is an interest that can be sought through ownership; it can also be sought through the defense sector, and through other government mechanisms. Security is paramount, and security measures are not covered by the EEA agreement.

As we have seen from the discussion on the legal framework, the EEA agreement places significant strain on the government's ability to use the mechanism of direct control in the company. This is also pointed out by Seiersted et al. (2004), as one of the consequences of the strict government aid rules and the non-discrimination principle in the agreement (ibid: 596). The fact that the governments approach to its ownership in StatoilHydro is explicitly long term and industrial. The government would be allowed to bend the principle of the market economic investor, since the expected financial return service could theoretically be seen only on a long-term basis.

The government also pointed this out in there whitepaper on ownership, that the EEA agreement places constraints the government's ability to directly control the company. The Stardust Marine case and the peculiarities of the EEA agreement do however leave the government with some room to move.

The EFTA courts have as we have seen above, only power to say “that was wrong”, meaning that they can only state that a historic event or ongoing process is wrong. And, the courts decisions have no effect on events that are completely finished. The women that got their post Doc positions at the University of Oslo did not lose their jobs because the EFTA courts said that the decision to earmark the positions were illegal.

In pushing the limits of the agreement, the government can create more room for movement than exist today, if this is politically desirable.

7.3. Room to move?

As Weiss (2003) points out, the forces of globalization also leave some manoeuvring room for states. This is not a zero-sum game. If the market acquires more power, it does not necessarily follow from this that the state is left powerless. For our analytical purposes, we cannot assume that the states withdrawal from the role as an active player is merely a consequence of this powerlessness.

In a controlled environment, the government can use the NOC as a tool by reentering the old paragraph 10 – that meant taking all cases that had a political side to the General Meeting. Another way of governing would be the one the government has chosen today, that is to divide the responsibilities between the company and the state in such a way that the government decides the general goals, and the company implements the goals in the day-to-day business. This does however require a level of trust and a representative relationship between the government and the boards of the state owned companies. Marit Arnstad, his deputy, has replaced Eivind Reiten, the original director of the board of StatoilHydro. Arnstad has a long political career behind her, she has been a minister in the previous government where the Centre Party was involved, and more interestingly for us, and she was one of the writers of the Soria Moria declaration. Together with the leader of the centre party, Åslaug Haga, who today is minister of oil and energy in the Norwegian government, she negotiated the document laying out the government interests for the current election period.

There is no doubt that the relationship between Haga and Arnstad will be of a rather different character than the relationship between their predecessors. As far as

government control goes, the option of exercising control through an agent – principal relationship might seem like a rather efficient way of organizing things today.

There are, as we have seen, many constricting factors on what the government can do with the NOC. The EEA agreement places a lot of strain on the government's potential use of mechanisms in this context, as does the previous policy and institutional change in the Norwegian domestic scene.

There are no legal or political restrictions prohibiting the government from asking the NOC to take measures within areas that do not interfere with the competition of the company or any of its subcontractors. In this area, the government does indeed have some room to move. The general interests such as environmental protection, gender equality and anti-corruption lie within areas that are not cost intensive, and complying with them is completely possible to combine with a healthy company and a healthy competition. The same is true for security – the state can instruct StatoilHydro to comply with stricter security standards, but that will not alter the competition. The problem comes when the state has to enter the arena with money, or when the company has to enter the market to do things on behalf of the state.

For interests like competence and R&D and for securing jobs in the rural parts of Norway the picture is murkier.

Research, development and competence building is of course a central interest for both the government and the company. The problem in this case is the subcontractors in the knowledge area. The change from two to one large oil company in Norway has a profound impact on the knowledge sector in Norway. The country is not the largest in the world, in fact far from it – both in terms of how many people actually live in Norway, and in terms of the size of the knowledge sector compared to the industry. If you change the market from two big to one bigger; this makes the world a lot more difficult for the independent research communities. It is a central national interest to further the existence of these communities. Can the government ask the company to continue using services it does not need? Referring to the case of *France v. the Commission*, we see that StatoilHydro can do this on its own, but not if the government has had anything to do with it. If the government has told StatoilHydro to do this, then the act of the company continuing to use these services, or possibly

giving a loan to them – or any other act the company takes to keep these people floating would constitute state aid, and a breach of article 61 of the EEA treaty.

We already know that favoring employees from one specific part of the country is a breach of the principle of non-discrimination. But this interest leads us to discussing the possible moves the Norwegian government can take, should it decide to try anyway. As we now gather to secure such interests by ownership could present some legal problems. In table 3 the interests that will be hardest, legally, are highlighted.

	Political	Economic
Regional	Job opportunities in rural parts of the country Environmental protection	Environmental protection Job opportunities in rural parts of the country
National	Research, development and competence building Gender equality Security Environmental protection	Security Research, development and competence building Environmental protection
International	Anti-corruption Environmental protection	Research, development and competence building

Table 3 Classification of Interests, feasibility

As mentioned above, the EEA treaty is the third rail of Norwegian politics. The true fans of the treaty are few, but the near consensus is that the treaty is good for now. This is mostly a political reality. The fact is that no prospective majority government exist, that would consist solely of parties either willing to quit the EEA agreement, or apply for membership in the EU – meaning that the EEA agreement is a standing compromise between the two sides in the Norwegian EU debate.

Since the EFTA court only states that a violation has happened, after the act is over. There is a possibility for the government to use swift processes in these cases. For instance, when the contract is already given to a local entrepreneur, the EFTA courts cannot make any changes to the contract. According to Arnesen (2007 [Personal

Correspondence]) there is some trouble with this though. Because the Norwegian government is so dependent on the EEA agreement, the government actually has less room to maneuver than would be the case in this specific area were the country a member of the EU.

Given the rules on state aid, the best form of governing the state owned companies would be to govern through an *understanding* of an agent – principal arrangement. The crucial point here being the understanding. If only the government believes that this is the way things work, the whole point disappears. If the government through the General Meeting has to instruct the board on how to do things, the article 61 becomes a problem. As long as there is a understanding between the board and the government that the board implements and the government points the way, then legally there should be few problems. This would require an active role of the government during selection of the board members.

8.0. Conclusions

The research question in this analysis was: *To what extent can the Norwegian government utilize the StatoilHydro as a policy instrument, and under which conditions could this happen?* The energy sector and especially the hydrocarbon industry is one of the most interest based policy sectors, in both domestic and international affairs. Controlling a country's energy supply is a crucial security interest, and without stable energy prices and supply the state has small chances of generating or maintaining economic growth. This makes the energy market an ideal place to look when we are trying to find out what globalisation does to the states power, and the state-market relationship. The analysis presented here is a case study of the Norwegian petroleum sector, used to illustrate the general relationship between the state and the national oil company – to find out whether the state can use the national oil company as a policy instrument.

The theoretical framework for this analysis consists of a combination of international political economy and international relations. To explain the changes in the applied institutional policy in Norway, the analysis relies on the theoretical

contribution of Garret and Lange (1996) and the understandings presented in the scholarly study of new public management reforms.

Globalisation, and what consequence it has for the human society is one of the defining discussions of our time (Yergin 1998), yet economic globalisation is often discussed as an abstract phenomenon in international political economy. This case study analysis has focused on how the Norwegian government can use its NOC as a policy instrument.

8.1. To what extent can the Norwegian Government use StatoilHydro as a policy instrument?

We find in this analysis that the government is indeed constrained as a consequence of economic interdependence. As the government states it self in the ownership whitepaper: *“the Norwegian membership in the EEA means that the ownership in Statoil cannot be used for political purposes, even though one could wish the opposite”* (OED 2001).

The conclusion of the government might however be somewhat premature. The rules and regulations that stem from the European Union and the EEA agreement do in fact constrain the government in many ways. In our analysis, we have taken some of the government interests that are laid out in various party platforms, the governments Soria Moria Declaration and the whitepaper on ownership. While the EEA agreement does constrain some efforts the government would take, it does not rule out the use of StatoilHydro as a policy instrument.

There are different kinds of interests that can be attained by the use of the NOC. Using the NOC to assure interests such as health, environment and safety on the workplace, promoting gender equality and ensuring that the company itself does not engage in corruption is not prohibited under the EEA agreement. In such a way the government can use the NOC to attain some of its goals.

If the government should want to utilize the NOC to attain other interests, specifically interests that cost money, or interfere with the other companies on the market the question gets legally murkier. We have found that the EEA agreements rules and regulations regarding acquisitions, discrimination and state aid cover the

NOC as well as the state whenever the NOC can be seen as acting on the government's orders. The legal verdicts discussed in chapter six do on the other hand suggest that there might be a way, if it is politically viable.

In the government whitepaper on ownership, the government describes using the state ownership in an agent-principal way. This is also consistent with the change in institutional policy in the petroleum sector under the last four governments in Norway. The petroleum sector is special, in the way that the government's room to maneuver is both constrained and enabled as a cause of globalization and interdependence. The discussion of the legal side of the EEA agreement revealed that the state and StatoilHydro might be brought before the EFTA courts for trying to control the market through the ownership, but the findings also suggest that there are two elements of the EEA agreement that facilitate the use of ownership as an instrument.

The first point is that, should StatoilHydro for instance choose to back a subcontractor that is going through some straitened circumstances; this would generate speculation as to whether the state was involved. But if the state did not instruct the company to do it, then the state, at least as previous cases suggest, cannot be accused of meddling with the market. If the agent-principal relationship between the government and the NOC was truly representative, then the government could have significantly more room to maneuver.

Further more, the principle of the market economic investor do in fact allow for some wiggling room. The state has shown, through political decisions that the share holding in StatoilHydro is of a long-term industrial type. Neither in the EEA agreement, nor in the EU treaties, is having a bad sense of business illegal. If the government can provide sufficient evidence that its investments and moves are in the long term financial interest of the company, and that the return financial services for the government in the long run will match the governments investment, then the legal side is still open.

The second point opening up room in the EEA agreement is more politically potent. The EFTA courts have only a demonstrating power – in the meaning that the courts will state in hindsight whether a decision was in breach with the agreement.

This makes it a theoretical possibility to assert influence in a succession of single issues, without a prospective verdict in the EFTA courts having any say over the actual real-life outcome of the process.

One of the problems with this approach is that such an event would place severe strain on the EEA agreement itself – an agreement that there is not much political support for placing such a strain on, as the agreement by many is said to be one of the reasons that Norwegian export business is prospering at all.

The government can actually use the NOC as a policy instrument within these narrow frames. Although pushing the limits of the EEA agreement is currently not a viable option politically speaking. Using StatoilHydro as a policy instrument in the long run is doable in the legal sense – but the room available to the government is drastically reduced compared to what it was 20 years ago. As we have seen, this is due both to a change in institutional policy and to the constraints from globalization.

8.2. Under what circumstances can such a use occur?

Using StatoilHydro as a policy instrument is not an easy task for any government. Broadly speaking, there are two sets of circumstances that influence the use of the NOC – the political and the legal contexts. In the short and medium term, the legal circumstances are set. Hence, the variable circumstance is the political one.

The current political context is in some ways conducive to using the NOC, and in some ways constraining. First, we find that the Norwegian political perception of the inherent value in the EEA agreement constrains the use of StatoilHydro. On the other hand, the political preferences that led the current government to win last election might signal a will to pay a political price in order to control the market and StatoilHydro.

The political preferences in the international arena could give the government room to move; in the sense that the change from market based reforms in oil exporting countries to more hands on approaches gives the government at precedence to follow. As noted earlier, the oil and gas importing countries might not like the development – but the increasing focus on energy security do allow for more hands on approaches in the energy sector. Deviating from the market-based approaches is more acceptable in

times of stress and security concern – in the global energy market now, the focus has shifted slightly from focusing on the market to focusing more on the actual supply of energy.

The announcement that StatoilHydro will join the Russian national oil company Gazprom in developing the massive Stockman field also signals that international cooperation between nations and their NOCs is a viable solution in the current energy and security political climate.

8.3. *The state of the state*

Case studies do not generate a coherent data stream that is easy to generalize by itself, but by using theory and making sure the empirical data is gathered from as reliable sources as possible one can use the approach to say something about the bigger picture.

As mentioned, the Norwegian case is a interesting case since the impact of economic globalization in Norway do not come only as political pressure and international trade deals, it also come as legally binding rules and regulations from the EEA agreement. This, I argue, make Norway a micro cosmos of the impact of globalization.

The theoretical expectations presented earlier in the text did resonate in the empirical findings. We found that the relationship between the state and the market has changed dramatically the last 20 years, and that a substantial amount of this change is due to international economic interdependence. In this way we find support for the proponents of the idea that the state in 2007 indeed is smaller than its predecessors. However, we also found that the state is not completely powerless. The impact of globalization is mediated through the actual and normative composition of the domestic institutions. The idea of the totally powerless state seems, based on this analysis to be a myth.

Since the other countries where extensive use of NOCs is an option are members of neither the EU nor the EEA agreement – using the NOC as a policy instrument in those states would not be nearly as hard as in Norway. This puts further strain on the idea that the state is powerless.

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