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The Moral Responsibility of Oil-Producing States

With Norway as Case Study

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Abstract

Climate change and environmental damage are some of the biggest challenges we face today. Since the 1960s, the default system of natural resource governance has been permanent sovereignty, which means that states can do more or less as they like with the natural resources that lie within their territorial borders. This thesis address two main philosophical issues that are both related to resource use and climate issues: the first is whether it is justifiable to view states as controllers of offshore mineral resources like oil and gas. The other one is whether – even if we assume for the sake of argument that states are the rightful controllers of their resources – states that produce and export offshore oil and gas should shoulder some costs when it comes to addressing climate change. To the first issue I argue that the principle of Permanent Sovereignty over Natural Resources is not justified and that we need other ways of governing natural resources. I further argue that the fact that states can exploit offshore natural resources for their own benefit is an arbitrary and unjustifiable fact in international law today – a fact that is enabling climate change. To the second issue, I argue that oil-producers and -exporters should in fact shoulder more costs than they currently do. In current environmental governance, only the *emitter* of greenhouse gases is seen as responsible for the emissions, I argue that also oil-producers and -exporters should be seen as responsible because they are *enabling* the emissions. I use the case of Norwegian offshore petroleum resource extraction to exemplify this.

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1 Introduction

Climate change and environmental damage are some of the biggest challenges we face today. For a long time, states have been going about their business as they like, with little regard for the global climate. This is changing, but slowly. It is difficult to change a system that has been around for so long, upon which one has become dependent and which feels like the most obvious (or sometimes even the only) choice. The lack of binding international agreements and international power to oversee these agreements make it difficult to ensure that all states are doing what they should to minimise climate change. Since the 1960s, the default system of natural resource governance has been permanent sovereignty. This means that states can do more or less as they like with the natural resources that lie within their territorial borders. In the last decades there have been many attempts to create binding environmental agreements, making states responsible for their emissions and the effects they have on the global climate. However, these agreements have failed in taking the climate crisis seriously enough, or at least they have failed in getting states to take serious enough measures. This brings us to today, where climate change is already showing its effects. Rising temperatures, rising sea levels, floods, droughts, bush fires, and extreme weather conditions all over the world are driving people away from their homes and have drastic effects on the environment, biosphere, and the earth. This thesis addresses two main philosophical issues that are both related to resource use and climate issues: the first is whether it is justifiable to view states as controllers of offshore mineral resources like oil and gas. I will argue that this is not justifiable. The other one is whether – even if we assume for the sake of argument that states are the rightful controllers of their resources – states that produce and export offshore oil and gas should shoulder some costs when it comes to addressing climate change. To this, I will argue that oil producers and exporters should in fact shoulder more costs than they do, as they can be seen as *enablers* of emissions leading to climate change, and not only as emitters. I will use the case of Norwegian offshore petroleum resource extraction to exemplify this.

In Chapter 2 I will start by showing how the sea has been divided up, by presenting a short introduction to international law regarding the sea and the natural resources in the sea and on the seabed, which provides states with permanent sovereignty over

some of these resources. In Chapter 3 I will investigate whether there is a normative foundation for granting states this permanent sovereignty, and if there is not, what alternative there could be. The example of Norwegian petroleum resources is a special case of natural resources because of the role petroleum emissions play in climate change. This will be the concern in Chapter 4, where I will both show what role petroleum plays with regard to climate change as well as how the responsibility for emissions from the petroleum is currently apportioned in international law and how it should be divided from a moral perspective. In Chapter 5 I will discuss some possible ideal and non-ideal implications which this view could have on a state like Norway with regard to the governing of these resources and their benefits.

2 From Freedom of the Sea to the Law of the Sea

Oceans cover about 70 percent of the earth and has for centuries been important both as a source of resources and as a means for transportation. Since the mid-twentieth century, the oceans have also been an important place for extracting petroleum resources – as in the case of Norway. In order to show how Norway gained control over its petroleum resources and how these resources are governed today, I will here provide a short overview of the international laws concerning the sea and the seabed.

2.1 The need for international regulations of the seas

For a long time, the “freedom-of-the-seas doctrine” was the prominent doctrine for regulating the oceans. This principle limits “national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation’s coastline” (Division for Ocean Affairs and the Law of the Sea, 1998). The rest of the ocean was understood as free; not belonging to any state. But during the twentieth century, countries started making claims to ocean territories beyond this.¹ The need for more regulation of the seas had many reasons. Of course, states wanted more control over the resources, both in the sea and in the seabed, yet the rising pollution due to international long-distance fishing fleets, transport ships, and oil tankers also showed that a complete freedom of the seas with no regulations was easy to exploit and could result in increased pollution and overexploitation. Broader control over the seas and more exclusive control granted to states could be a means to solve this. The idea was that states should be given the possibility of using their existing powers to enforce the regulations.

With new technologies, new ways of exploiting the sea emerged, and the need for more regulations became ever more pressing. One of the resources on which new technologies had an impact was oil. New technologies opened up the possibility for offshore oil drilling and made new ocean areas interesting. Additionally, the use of large fishing vessels able to cover immense distances and travel far from home had a

¹ The United States of America proclaimed sovereignty over the nation’s continental shelf in 1945, and other countries followed. Argentina claimed its shelf and the epicontinental sea above it in 1946. Chile and Peru (1947) and Ecuador (1950) made claims of sovereignty for a 200-mile zone off their coastlines, hoping to reduce the access of distant-water fishing fleets to the rich fishing areas in their regions.

massive impact on the fishing stocks (Division for Ocean Affairs and the Law of the Sea, 1998). There seemed to be a new need for international law regulating the seas.

2.2 The UNCLOS – and the special case of Norway within it

With this backdrop, the first United Nations Conference on the Law of the Sea took place in Geneva in 1958, often also referred to as the Geneva Conference. Eighty-six countries were represented at the conference, with a mandate “to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more conventions or other appropriate instruments” (Office of Legal Affairs, 2021). Four different conventions were agreed upon at the Geneva Conference: The Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Convention on the Continental Shelf. Both the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the Continental Shelf are of relevance to states’ rights to petroleum resources.

Articles 1 and 2 of the Convention on the Territorial Sea and the Contiguous Zone state that “[t]he sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea”, and further that “[t]he sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil” (“Convention on the Territorial Sea and the Contiguous Zone,” 1958). Thus, the principle of sovereign rights to the sea and the resources were clearly stated, though the conference did not reach an agreement as to how far out the territorial sea should extend.

The question was also not only how far out the zone should extend, but also where it should start – where the baseline should be. The traditional, and easiest, way to view this is that the baseline is the low-water line along the coast. Not all coasts look the same, however, and for some this line might not be so clear. A coast like the Norwegian coast, with many small islands, rocks, fjords, and skerries, creates difficulties in stating a clear baseline. In 1951, after a long dispute with the United Kingdom, Norway was granted the right to “drawing its base line independently of the

low-water mark by following the general direction of the coast and linking various points by straight lines passing in part over stretches of water” (Jessup, 1959, p. 243) by the International Court of Justice in what is known as the Norwegian Fisheries Case. The Convention on the Territorial Sea includes this principle, and Article 4 states that “[i]n localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured” (“Convention on the Territorial Sea and the Contiguous Zone,” 1958). All waters that fall on the landside of the baseline counts as internal waters of the state (Article 5, “Convention on the Territorial Sea and the Contiguous Zone,” 1958).

Although the Convention on the Continental Shelf was seen by some to be the most palpable success of the convention (Jessup, 1959, p. 251), it would turn out to be one of the most important reasons why Norway did not ratify the convention until 1971. The problem was the formulation in Article 1 of the convention: “the term ‘continental shelf’ is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas” (“Convention on the Continental Shelf,” 1958). Norwegian politicians were afraid that the stipulation of 200 metres would create a problem because of the Norwegian trench. The Norwegian trench is a trench in the seabed, about 900 kilometres long and 100 kilometres wide, reaching from the Oslo fjord to outside of Stadt in the west of Norway, with a depth of over 600 metres. If the 200 metres mentioned in Article 1 were to be strictly applied, this would mean that Norway might lose the sovereign rights to exploit and explore the natural resources in and on the seabed of the continental shelf, which is referred to in Article 2 of the convention.² The definition used in the convention would turn out not to be of importance for Norwegian petroleum resources, but out of fear that it might, Norwegian politicians were careful not to use the term continental shelf until an agreement over the dividing line between Norway and the United Kingdom had been reached in 1965 (Hanisch & Nerheim, 1992, p. 19).

² “The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources” (Convention on the Continental Shelf, (1958). https://legal.un.org/ilc/texts/instruments/english/conventions/8_1_1958_continental_shelf.pdf).

In the early 60s, an interest in exploring the seabed and the subsoil in the North Sea for oil began to emerge. Before there could be any exploration, however, who had the right to grant exploration rights and how they would do so needed to be clarified. The Geneva Conference made the first suggestion for how the maritime boundaries and rights to natural resources should be seen, but Norwegian politicians thought it both risky (because of the 200 metres mentioned) and unnecessary (because it was built on general international law and should therefore be valid anyway) to ratify the Geneva Convention. Instead, the Norwegian shelf (without using the word shelf) was proclaimed as Norwegian in an Order in Council (kongelig resolusjon) on 31 May 1963 (Hanisch & Nerheim, 1992, p. 20). On the same day, a law was proposed that gave Norway the right to explore and exploit the natural resources on the seabed and subsoil, as deep as is admitted to exploitation of the natural resources while respecting the agreed demarcation line with other countries. The right of ownership over the resources was given to the state, and the king should be in charge of granting licenses to explore and exploit (Hanisch & Nerheim, 1992, p. 25).

Nonetheless, there remained many uncertainties before the licenses could be granted: How should the sea be divided between Norway, the United Kingdom, and Denmark? These issues were settled bilaterally following the median line principle; the agreement with the UK was signed in February 1965 and made way for the first licenses, followed by the agreement with Denmark in December 1965 (Hanisch & Nerheim, 1992, pp. 46-47).

The second United Nations Conference on the Law of the Sea did not result in any agreements, but when the third United Nations Conference on the Law of the Sea met in New York in 1973, it resulted in what is today referred to as “the” Law of the Sea. When the conference ended nine years later, in 1982, more than 160 nations had participated in the negotiations leading up to the agreement on a constitution for the oceans, the United Nations Convention on the Law of the Sea (UNCLOS). “[T]he Convention is an unprecedented attempt by the international community to regulate all aspects of the resources of the sea and uses of the ocean, and thus bring a stable order to mankind’s very source of life” (Division for Ocean Affairs and the Law of the Sea, 1998). It regulates “navigational rights, territorial sea limits, economic

jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and, a more unique feature, a binding procedure for settlement of disputes between States” (Division for Ocean Affairs and the Law of the Sea, 1998). Although the agreement was completed in 1982, it did not come into force before 16 November 1994, in a total of then 60 states. Part XI of the Convention, “which deals with mining of minerals lying on the deep ocean floor outside of nationally regulated ocean areas, in what is commonly known as the international seabed area”, was later added.

Many of the principles in the convention had already been more or less stated in other conventions and in practical international law. The exclusive economic zone (EEZ), on the other hand, had not. The EEZ “recognizes the right of coastal States to jurisdiction over the resources of some 38 million square nautical miles of ocean space” (Division for Ocean Affairs and the Law of the Sea, 1998). In a zone stretching 200 nautical miles out from the baseline, a coastal state has the right to exploit, develop, manage, and conserve all resources in the waters, on the seabed, or in the subsoil:

In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds (UN.org, UNCLOS, Part V, 1982).

This also resulted in about 87 percent of known and estimated hydrocarbon reserves under the sea to fall under some national jurisdiction (Division for Ocean Affairs and the Law of the Sea, 1998).

Although the agreement was not signed and finished until 1982, many countries had declared an economic zone while the negotiations were still ongoing. Norway declared its economic zone in 1976 (Nærings- og fiskeridepartementet, Lovdata,

1976). When the UNCLOS was ratified, it only strengthened the Norwegian zone as well as giving Norway a right to the continental shelf beyond the zone. According to a recommendation of the Commission on the Limits of the Continental Shelf (CLCS) of 2009, Norway was successful in its claim of 235,000 square kilometres of continental shelf beyond the 200 miles economic zone (Grønnestad, 2018).

2.5 How Norway quintupled its area of control

Following the Geneva Convention, the declaration of the economic zone, and the ratification of the UNCLOS, including the EEZs and the Convention on the Continental Shelf, Norway came to control an area that today counts 2,039,951 square kilometres (BarentsWatch & Kartverket, 2018). In comparison, Norway has a total land area of 385,207 square kilometres (including Svalbard and Jan Mayen) (Kartverket, 2021). In other words, Norway, a state with a total area of a little under 400,000 square kilometres, has the right to exploit the resources on the seabed in an area of a total of over 2 million square kilometres, an area more than five times the size of its land area.

The situation in the Barents Sea, to the north of Norway and Russia, was a bit different and has been the subject of many negotiations. Both Norway and Russia have made claims on this sea area. Norway made a request to start negotiating with the Soviet Union in 1967, but the negotiations did not start until 1974. An agreement was reached in 2010, more than 40 years after the initial request. The 2010 agreement was again a bilateral agreement between Norway and Russia, but it did follow the UNCLOS principles as well as different clarifications made by the International Court of Justice (Utenriksdepartementet, 2010). Until the agreement was reached, both countries had agreed not to start drilling for oil in the area. For a short time in the 70s Norway started exploring the area, with immediate reactions from the Soviet Union. When Norway halted these activities, one of the reasons was that more knowledge of the area and the resources on the seabed and in the subsoil could make the negotiations even harder (Hanisch & Nerheim, 1992).

2.6 The lack of an international coherent “plan”

The fact that Norway emphasised that it was better not to know what possible resources the Barents Sea might contain underlines the principle that has been the

case for dividing up the oceans and the seabed in general: states are free to reach agreements with other states over areas, no matter what resources or vulnerable nature lies within that area. There has not been any plan or concept regarding how to protect vulnerable nature or scarce resources, or how the exploitation of those should take place. When division of ocean areas has taken place, either by one state proclaiming sovereignty over an area, bilateral agreements, or agreements between multiple states, the states have been granted sovereignty over the areas and the resources therein. With the massive climate change issues linked to the petroleum resources of the oceans with which we are today familiar, this way of dividing up areas and resources seems outdated and indiscriminate. And it definitely seems very random that some states, for instance Norway, Saudi Arabia, Kuwait, Canada, or Russia, have ended up with the massive petroleum resources that they have. The concept of sovereignty over resources, referred to in international law as permanent sovereignty over natural resources (PSNR), has been the prominent understanding of how to govern natural resources. That this principle is problematic when considering climate change and that it is very difficult to find a normative foundation for it will be my focus in the next chapter. First, however, I want to show that even though the law of the sea makes it clear that states have sovereignty within their EEZs, and that Norway therefore has sovereignty over the offshore petroleum resources within the EEZ or on the Norwegian continental shelf, there are also other international agreements that do regulate the resource use to a certain degree.

2.7 Conflicting resolutions

The principle of Permanent Sovereignty over Natural Resources was first stated in the UN General Assembly Resolution 1803 (XVII): “The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned” (UNGAR, 1962). It can be argued that this principle made sense at the time as a way to ensure that developing countries had a right to the resources within their territory and to keep such resources away from, for instance, international companies wanting to exploit them (Mancilla, 2015a, p. 22). With that in mind, it is understandable that the focus in the principle is on the “national development” and the “well-being of the people of the state concerned”. From today’s perspective, on the other hand, this seems very narrow. How a state uses and governs its natural

resources has an impact not only on the state concerned and its inhabitants, but also well beyond its borders. How we govern natural resources has an impact on the entire earth. In Chapter 4 we will see that Norway has in fact used its offshore petroleum resources both for national development and for the well-being of the people of Norway. Considering how this principle is formulated, it is understandable that this has been the focus also in Norway, and that the way in which Norway has built up the petroleum industry and how it has been governing its resources is perceived as a “best practice” example worldwide (see for example Wenar, 2016, pp. 307, 311). It is, however, difficult to morally defend this narrow principle, as we will see later. Moreover, there are other aspects which show that the focus of the principle is too narrow. Nico Schrijver shows in his book *Sovereignty over Natural Resources: Balancing Rights and Duties* (Schrijver, 1997) that even though states have permanent sovereignty over natural resources, these sovereign rights do not only grant them rights but also duties. Some of these duties concern environmental issues. I will present those duties most relevant to the Norwegian petroleum resources here.

In 1972, the United Nations held its first Conference on the Environment in Stockholm (also known as the Stockholm Conference), which also became the first international conference on environmental issues. A total of 113 countries, including Norway, participated at the conference and agreed upon the 26 principles in the Stockholm Declaration. Principle 21 is especially interesting with regard to permanent sovereignty over natural resources. It states that

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (UN, 1973, p. 5).

This means that the declaration to some extent limited states’ permanent sovereignty over natural resources within their territory. The first part of the principle shows the weaker limitation: states need to follow their “own environmental policies”. This

leaves it up to the state itself to regulate its environmental policies, and means that, theoretically, a state could also adjust their environmental policies to give them more room to exploit the resources. It is easy to imagine that, for instance, Brazil led by Bolsonaro has weaker national environmental policies than states led by politicians who have a strong focus on environmental issues, which would give the state of Brazil much more freedom to exploit its part of the Amazon. Yet, what a principle like this does, is to make it more difficult for private companies, for instance, to exploit resources in collision with the environmental policies decided by democratic institutions. It could therefore help secure the people's control over the resources within the state.

The second part is even more relevant to the case concerning Norwegian petroleum. This part makes states responsible for ensuring that their activities “do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”. What can be a challenge here is to prove the causality of damage to the environment from, in my case, the petroleum exploited from Norwegian territorial waters on the environment and climate beyond the limits of Norwegian jurisdiction. It can also be discussed what precisely is understood as “the activities”: if the Norwegian oil ends up in a fossil fuel car in Denmark, do the emissions from that car count as Norwegian oil activities? Who counts as the polluter in such cases and what responsibilities follow therefrom will be the focus in Chapter 4.

The Stockholm Declaration entails further interesting aspects that might be useful for the later discussion. The first principle states that

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (UN, 1973, p. 4).

The intergenerational aspect here is especially interesting. If the people of Norway are also responsible for protecting and improving the environment for present and future generations, it is difficult to see how one can, knowing what we know today, continue with oil exploitation and exploration. We already see the climate effects of

greenhouse gas (GHG) emissions today, and these effects will be even worse in the future.

The last principle that I would like to highlight from the Stockholm Declaration is the fifth principle, which states that

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind (UN, 1973, p. 4).

Considering that thus far not even half of the estimated resources of the Norwegian shelf have been extracted, the first part of this principle does not comprise a serious problem for our case (Regjeringen.no, 2020). The second part is a bit more puzzling. Even though there are people who suggest that Norway has been using some of the benefits from oil production to help with climate issues and other international issues (Leif Wenar (2016) is one example to which I will return in Chapter 4), and it might be possible to argue that this is a way of sharing the benefits, I see it as quite a stretch to say that Norway has ensured that the benefits from its oil exploitation are shared by all mankind.

3 Can Permanent Sovereignty Over Natural Resources Be Justified?

In the previous chapter I showed that natural resources are, according to international law, connected to a state's territorial rights and governed by permanent sovereignty. The state has a sovereign right to the resources found within its territory, and this right is permanent. The governing of the resources is a national business, and the way of governing them might therefore change according to changes in national politics and needs. Since the principle of Permanent Sovereignty over Natural Resources (PSNR) was first mentioned in the 1962 UN General Assembly Resolution (UNGAR, 1962), this has been widely accepted and not really challenged in international politics. But is this relationship between state sovereignty and resource sovereignty a necessity? Do the rights to natural resources have to be linked to territorial rights, or can we distinguish the territory from the natural resources that can be found on/under/over that territory? If we can in fact distinguish territory and natural resources from one another, then natural resources do not have to automatically be considered as belonging to the territorial state. This again means that we need to see what justification we have for treating natural resources as part of territory, and for the sovereignty of the state to be extended to the resources. Because we can in fact remove at least some types of resources from the land where we find them, we can also ask the question of whether we should treat them as something separate from the land (Armstrong, 2015, p. 131).³ The system, however, where states have permanent sovereignty as the "default position" (Armstrong, 2015, p. 130), is relatively new. There are many other examples of how to organise the world throughout history, which shows that there is nothing necessary regarding this system – the governing of natural resources could just as well be regulated differently (Stilz, 2019, p. 1).⁴

³ Land can itself be seen as a resource, which would then be an immovable resource. But this does not affect the argument that it is possible to imagine natural resources that can be removed from the land where they are found.

⁴ There are also other principles for governing resources which are in fact present in international law. One of these is the "Common Heritage" principle in the UNCLOS, which understands resources as part of the common heritage of mankind as a whole, and not belonging to one state, as well as the principle of stewardship or guardianship to which I will return in Chapter 5 (for common heritage, see Noyes, J. E. (2011). The common heritage of mankind: past, present, and future. *Denver journal of international law and policy*, 40(1-3), 447-471.)

3.1 Defining natural resources

Before looking at possible justifications for PSNR, we need a definition of what we understand as natural resources. The UN and the Organisation for Economic Cooperation and Development (OECD) defines natural resources as “natural assets (raw materials) occurring in nature that can be used for economic production or consumption” (stats.oecd.org, 2001; unstats.un.org, 2016). Armstrong makes a similar definition and defines natural resources as “any raw materials (matter or energy) which are not created by humans but are available to sustain human activities” (Armstrong, 2015, p. 131). Following this, we can say that natural resources can be understood as assets or materials that can be found in nature, that came to be without human intervention, and that can be utilised by humans. In other words, natural materials that can be used for human benefit. This also means that what we consider a natural resource might change over time, according to what we *find useful* at a given time. This definition says nothing about the intrinsic value of a resource, it states only that the resource has an instrumental value to us humans. Thus, according to this definition, a sustainable use of resources is, in some way, only defensible to maximise or delay the production or consumption, not to save the resource itself. There are many things to be said about this purely instrumental view of the nonhuman, natural world.⁵ For the purposes of this thesis, however, my aim is to show that even with this instrumental view, where natural resources have a value only as means for humans, we need to treat the governing of them different than we currently do.

It can be worth noting that natural resources also can be defined without the production or consumption element, but rather as a value for humans in a different manner. Margaret Moore defines natural resources as “things that are derived from the environment and not made by humans, while being related in some way to human purposes and conceptions. [...] land, water, air, and sunshine are natural resources, as well as plants, animals, and mineral ores. A hiking area is a resource; so too is a sacred mountain” (Moore, 2019, p. 7). What makes it a resource is how we see it or whether it is in some way important to us. This means that what is

⁵ As opposed to seeing natural resources as having *intrinsic value*, as having value for their own sake, regardless of whether they are useful to us or not or whether they are a means for something else (see, for example, Curry, P. (2011). *Ecological ethics : an introduction* (2nd fully rev. & exp. ed. ed.). Polity Press. – p. 52–53, for the distinction between intrinsic and instrumental value).

considered to be a resource can vary over time and between cultures; what we see as a resource today might not have been seen as a resource 100 years ago and might not be seen as a resource in another part of the world. This point is also made by Avery Kolers (2012b) and Chris Armstrong (2014). Kolers argues that some resources should not be considered to be natural resources because of the special relation a people might have with it, a view with which Armstrong does not agree. Their conclusions about how this type of resource should be governed also differ, but they both acknowledge that people have different relationships to resources and that these different relationships should matter in how we divide and treat the resources. The point that natural resources may vary with regard to both time and people might make it difficult to defend the permanent aspect of permanent sovereignty.

As is evident, there are many different types of natural resources, and our connection to them as well as our arguments for justifying permanent sovereignty over them, may vary. In the following, I will focus on offshore petroleum resources, as this is what is relevant for my case study. It is worth noting, however, that this makes it easier to argue against PSNR as well. Some of the arguments in favour of PSNR might work better with other resources, but considering both the kind of resources and their location makes the case of offshore petroleum resources a particularly easy and non-controversial one.

3.2 Morally justifying control over natural resources

We have already seen how the principle of permanent sovereignty is explained in international law. For Anna Stilz, there are four rights that modern sovereign states claim: the right to territorial jurisdiction, the right to non-intervention, the right to control their borders, and most relevant for current purposes, resource rights. The right to resources can be understood in different ways. We can, for instance, make a distinction between property rights and jurisdictional rights: a state might have legitimate jurisdictional rights over resources without legitimate property rights or ownership rights over those resources (Stilz, 2009, pp. 197, 224). I will use the understanding of resource sovereignty as used by Armstrong (2017), leaning on the work of Elinor Ostrom, which defines four first-order rights and four second-order rights. The first-order rights are access, withdrawal, alienation, and the right to derive income from the resource. The second-order rights are the right to exclusion,

management, to regulate alienation, and to regulate income from the resource (Armstrong, 2017, pp. 22-23). Yet, the fact that today states have permanent sovereignty over natural resources does of course not automatically mean that this is the most just way of controlling natural resources, or that it is the way in which we should continue to control natural resources in the future. There are many who argue that the normative foundation for making such claims is weak (for instance Stilz, 2019, p. 224). In the following, I will present two different philosophical approaches that seek to justify control over natural resources based on Armstrong's work. The first of these approaches bases the argumentation on the *function* of natural resources; the second approach highlights the *connection* one can have to natural resources. Both of these approaches can be used as a way to justify why states have permanent sovereignty over natural resources: either natural resources have a function that is essential to the state, or the connection is so important that it legitimises the fact that nobody except the state should have control over the distinct resource. When we look at the argumentation in these two approaches, we will see that some claims might seem valid for defending the position that a state should have control over its resources. Where it becomes more unclear, however, is how we can take the step from having control over the resources to having permanent sovereignty over the resources. My aim is to show that no sufficient arguments are provided for justifying PSNR and that none of these theories justifies giving one state full control over the resources, the governing of them, and the benefits derived from them. This is the case for all natural resources, but the case is even clearer when it comes to offshore resources like petroleum. If we can reject the PSNR principle, we need a different principle for governing these resources. I will end the chapter by discussing an alternative view of natural resources and states in general that rejects PSNR: the cosmopolitan view.

3.3 Function-based reasons for control over natural resources

The function-based reasons for legitimising a state's right to PSNR within its territory highlights the function resources can have for the state. Of the many different functions that can be highlighted, I will here discuss the three most relevant to my argument, namely, self-determination, securing basic needs, and conservation of natural resources. In order to make the functionalist argument work, we need to show that these functions or ends that are being highlighted are fulfilled *because of the*

permanent sovereignty over the natural resources. I will focus here on the functionalist claims as presented by Anna Stilz, and I will include some of Chris Armstrong's arguments against Stilz' view. Even Stilz, a defender of permanent sovereignty (although in a more limited sense than the traditional view), does not seem to be able to provide us with the justification we need.

3.3.1 *Self-determination*

The system of permanent sovereignty over natural resources became important in postcolonial times. For the postcolonial states, it was important to gain control over their own natural resources in order to stabilise their economies and to gain self-determination within their territories, and permanent sovereignty seemed like the best way to achieve this (Stilz, 2019, p. 230). The governing of natural resources is important for many aspects of the state and was therefore seen as an important aspect to regain control over. This is an important argument, but even if we accept that the postcolonial states wanted to have control over the resources within their territory, the question remains whether this must be as a system of *permanent sovereignty* over the resources. What part of the control over natural resources is important in this aspect? It would seem as though a postcolonial state would find it important to gain self-determination, to be able to access the benefits of the natural resources in order to build a society and to be able to decide if anyone, and if so, who, should have access to the territory and its natural resources. And yet, is permanent sovereignty the only way to secure this?⁶

Stilz argues that for a nation to have self-determination, it is important to be able to determine the laws regarding property rights and rights over natural resources. According to the different political beliefs and systems on which the nation agrees, they might also decide on different systems for governing the natural resources, which is important for reflecting the nation's identity. People in a socialist society might want a different governing of the resources than those within a capitalist system, or than indigenous people. Stilz therefore argues that in order to secure peoples' ability to form the social and political world in which they live, it is important

⁶ Further, even though this could have been a valid argument for postcolonial states, it does not mean that it is the best solution today, as shown by, for instance, Alejandra Mancilla (Mancilla, A. (2021). From Sovereignty to Guardianship in Ecoregions. *Journal of Applied Philosophy*. <https://doi.org/10.1111/japp.12561> – p. 9).

to let them decide over the management and use of the resources (Stilz, 2019, p. 230). Stilz uses this as argumentation for permanent sovereignty, but if we again look at a distinction between permanent sovereignty as stated in the legal doctrine and a form of control over and overseeing of the resources, it is not completely clear how this could be used as a defence for the former. PSNR gives a state not only the right to decide how resources should be used, but also to exclude all others from those resources and to deny them the benefits of the resource exploitation. One could argue that to regain self-determination it is important to decide how resources should be governed, but that one should still have to consider other states both when exploiting resources and when utilising the benefits.

As we saw in the previous chapter, there are many international agreements posing limitations on states – would these pose the same problems for Stilz? The system of PSNR that we have in the world today does have some restrictions. According to the Stockholm Conference, amongst others, states are committed to respecting the environment as well as the protection of future resources and other states when deciding over their natural resources. These commitments are of course based on the willingness of the states, as is the case with all international law, but in this case that does not make a difference. The different states have used their sovereignty over the resources to accept restrictions on the use of the same resources. These are restrictions to the permanent sovereignty over natural resources that do not conflict with the self-determination of the state. A state with self-determination is a state that can decide over its own laws and governing, which it is perfectly capable of doing even with some restrictions to the PSNR. The situation might be different if some other states were to have control over the resources, as discussed in the case of the colonial powers, but limitations that are valid for all states on the international level should not conflict with this principle. This is a point made by Armstrong as well, who shows that the rise of different international treaties is placing constraints on sovereignty, showing that resource-sovereignty is not a static concept but is rather changing together with changing duties as established in international law (Armstrong, 2015, p. 140). However, changing duties and a dynamic understanding of resource rights have not led to a questioning of self-determination, and he argues that some sort of control over resources should be enough to secure the self-determination of people – it should be enough to have the power to manage the

resources or access them, for example, without having to have permanent sovereignty over them.

We have just seen how Stilz argues that if states did not have resource sovereignty, it would influence their ability to form their own social and economic worlds. But what happens to the social and economic world *of others* when states use their resource sovereignty to extract and use their natural resources? The international agreements limiting resource use have been agreed upon exactly because resource use is not a purely national or domestic case (at least not for all resources). Considering Norwegian petroleum, for instance, we see that how Norway chooses to govern these resources also determines the world that others outside of Norway live in, including the social world, the political world, the economic world, and the natural world. If we want to argue that people have a right to control the world in which they live, we could in many cases just as well argue that natural resources should not be a national affair, and not be fixed to a state's territory on a permanent basis. Again, this is not the case for all resources, but that again merely highlights the problem of treating all natural resources in the same way, regardless of whether they are renewable, they can cause pollution, or they face extinction.

It is difficult to find argumentation that shows that permanent sovereignty is needed for the self-determination of a state, especially when we consider a resource like Norwegian petroleum. A "default position" of permanent sovereignty over all kinds of natural resources within a territory is therefore very difficult to defend. Norway enjoys a large economic gain from the petroleum industry and much of the social world in Norway today is dependent on this gain. But can we use the fact that Norway is to a large extent dependent on resource exploitation for its high standard of living an argument in favour of the continued right to exploit the resource? Margaret Moore argues that resource claims in uninhabited areas or oceans, as is the case with Norwegian petroleum, might not be seen as relevant to a people's self-determination at all: "It is hard to think of territorial claims in the High Arctic or the seabed far from the coast or uninhabited islands in the claimed territorial waters as connected to a strong interest in self-determination on the part of the political community" (Moore, 2015, p. 169). She claims that apart from coastal areas, claims over the oceans do not have anything to do with self-determination. States have made territorial claims

over sea areas, and thereby also over the resources in the water and on the seabed, in order to benefit from the exploitation of these resources. The territorial claims are therefore based on economic benefit, not self-determination, and the oceans and the seabed are treated as instruments for gaining these benefits (Moore, 2015, p. 170).

3.3.2 *Securing basic needs*

Another reason for arguing that states need permanent sovereignty over natural resources is to argue that they need this in order to secure the basic needs of the people. “[S]tates have a duty to meet the basic rights or needs of their citizens, a duty which in turn requires them to exercise control over the natural resources within their territory” (Armstrong, 2015, p. 139). On this view, states can be seen as a guarantor for the people’s interests and security, and control over natural resources is seen as essential to accomplish this. The question here is again whether *permanent sovereignty* is needed for this, or whether other forms of control over natural resources would also be enough.

Cara Nine uses this kind of argumentation – she claims that states have territorial jurisdiction to secure access to resources that can help meet the basic needs of their people (Nine, 2012, p. 42). However, this also leads, on her view, to the fact that everything beyond this is not necessarily justified. States can acquire territory, and with it the right to the resources, in order to secure the basic needs of its people. As soon as these needs are met, there is no longer a legitimate claim to the resources: when a state holds on to resources that it does not need in order to secure the basic needs of the people, these resources are being wasted (Nine, 2012, p. 42).

Armstrong also makes this point and questions the reason for granting states rights to more resources than they need in order to meet the basic needs of the people (Armstrong, 2015, p. 140). There are interesting sides to this argumentation. First, if we accept Nine’s view, what happens with the resource rights after the basic needs of the people have been met? If a state has more resources than it needs for the people within the state, should it then share its resources with other states? And second, not all resources of the earth can be used to secure basic needs; some might even be used to destroy the chance others have for securing their basic needs. Should states then be granted sovereignty over such resources?

I will discuss the point of securing basic needs from two different angles. The first is to say that a state has a responsibility to care for its inhabitants and therefore should be granted the natural resources that happen to be in the territory in order to do so. The second is to say that states have an obligation to secure the basic needs of its inhabitants and should be given the best possible resources with which to do so. What is the difference between the two? The first case, which is the current state of international law, leaves states with a very uneven and unfair distribution of resources. Some states will have more natural resources than they need for their own use, whereas others will not have nearly enough. This, as we know, is the current state and is simply accepted as “bad luck” or “good luck” on a state level. But can we find any normative basis to back this up? The argument in defence of permanent sovereignty over natural resources in order to be able to secure basic needs can just as easily be turned around and used as an argument against permanent sovereignty. If states should in fact try to secure the basic needs of their inhabitants, then it does not seem fair or reasonable to leave some states in control over much more resources than they need themselves, leaving other states with much too little. Again, we can also see that the *permanent* aspect posts a problem; resources might change over time – the status of the resources, how much of the resources are left, and not least what we in fact understand and use as a resource. This means that a state that has enough or too much natural resources for their own good, might not have enough 20 years from now. Granting permanent sovereignty over natural resources is in no way a guarantee that states will be able to secure the basic needs of their future inhabitants.

The second angle that I mentioned above is to say that states have an obligation to secure the basic needs of their inhabitants and that they should be given, or granted, the best possible resources to do this. This is of course far from current world affairs and might sound somewhat farfetched or unrealistic. But when the securing of basic needs argument is used to defend the doctrine of permanent sovereignty, it is worth asking the question of what exactly securing basic needs could look like without permanent sovereignty. Armstrong points to the fact that to meet the basic needs of the people, a state does not necessarily need the rights to the resources within its territory. The state could just as well be granted any resources sufficient to meet this goal, or be granted access to a “general pool of resources” (Armstrong, 2015, p.

140). This idea might sound farfetched because the current state of affairs in which we find ourselves, where sovereign states have permanent sovereignty over the natural resources within their own territory, is much easier for us to manage, and it is the situation that we are used to. Managing a general pool of resources where states are entitled to a fair share would be extremely difficult on a global level and would require an international organisation or authority that has a lot more power than any in existence today. Considering the difficulties states have reaching agreement on an international level and the differences in political views between states, this might sound utopian and unrealistic. However, even though it might seem impossible to reach a world where states are granted access to a general pool of resources, that does not give legitimacy to a world where this is not the case. If our main goal is to secure the basic needs of people of *all* states, the system we have today, of permanent sovereignty over natural resources on a state level, does not seem to be working.

Turning again to the offshore petroleum resources in Norway, in what way are those used to secure the basic needs of the people living in Norway? Before proceeding with this question, it is important to recognise the different forms that natural resources can take and what they are used for. It is also important to notice that all states have different preconditions when it comes to establishing food sovereignty nationally, or if they have to rely on trade to secure food for their people. Norway does not have national food sovereignty and is today dependent on international trade to secure the needs of its inhabitants.⁷ Norway needs some petroleum for its own use, but most of the petroleum that is extracted is sold to other countries.⁸ The income from this trade is what has helped to change Norway from a rather moderately developed country to the wealthy social democracy that it is today (Regjeringen.no, 2020). But who decides what counts as basic needs? And who decides when these are being met? Norway in the 60s and 70s was not a rich country, and one could argue that the country did indeed need the income from the

⁷ In 2020, Norway's food self-sufficiency was calculated to be at 46%, but the potential food self-sufficiency (if nothing is exported), is calculated to be 87% (Nibo. (2021, 13.05.2021). *Slik beregner vi selvforsyningsgrad*. Norsk institutt for bioøkonomi. Retrieved 25.04.2022 from <https://www.nibio.no/nyheter/slik-beregner-vi-selvforsyningsgrad>).

⁸ In 2021, almost 90% of the extracted oil was delivered directly to other countries (Oljedirektoratet. (2022, 18.03.2022). *Norske oljeleveranser i 2021, fordelt på første leveransepunkt*. norskpetroleum.no. Retrieved 25.04.2022 from <https://www.norskpetroleum.no/produksjon-og-eksport/eksport-av-olje-og-gass/>).

petroleum industry to secure the basic needs of the people. On the other hand, on a global level, Norway has never been a poor country; there would always be states that could have just as reasonable claims to the income based on this argumentation. Granting states rights to resources based only on their needs seems like an impossible task. But again, that does not legitimise not even attempting a more just division. Even if we accept that Norway did at some point need the income to secure a better situation domestically, it is difficult to see how this argumentation would hold today, with Norway as one of the wealthiest states in the world and with a petroleum fund that increases every second. The political discussion in Norway focuses on the fact that we need the fund to secure the future – but arguing that Norway should become even richer while other countries currently struggle to meet their basic needs, does not seem to hold up if our goal is to secure the basic needs of all people. It becomes even more difficult to defend this view when we consider that emissions from the exported petroleum that is making Norway rich is also part of the cause of climate change, making it even harder for many states to meet their basic needs due to extreme weather situations.

That natural resources can be a way to secure the basic needs of people does at first glimpse sound like a reasonable way to argue for control over resources. But as we have seen, it is difficult to see how, even if the resources are in fact used to benefit the people, *permanent sovereignty* would be the best way to govern the resources. A right to the benefits or a right to use what one needs at a given time might be more than enough to secure the basic needs. Looking at it from a global perspective rather than a national one, it becomes even more difficult to use this type of argument to give permanent sovereignty some sort of legitimacy.

3.3.3 Conservation of natural resources

The last functionalist reason for PSNR that I will mention here is that PSNR would help in the conservation of natural resources and help prevent their overuse. The idea is that permanent sovereignty will help to create a system of good resource use where nothing is overused (Armstrong, 2015, pp. 141-142)⁹. This argument, as nice

⁹ This type of argument can also be seen in John Rawls' *The Law of Peoples*, where he argues that it can be difficult to maintain the value of resources, or "assets", if there is no agent who has a clear responsibility for assuring that the value is maintained (Rawls, J. (1999). *The Law of Peoples with „The Idea of Public Reason Revisited“*. Harvard University Press. – p. 8, pp. 38–39).

as it sounds in theory, has proven not to have the intended effect. I will not go into detail on this, because it seems without a doubt that this system has not been functioning on a global level. States are concerned with their own well-being and extract resources to profit themselves, not necessarily for the benefit of the earth as a whole: “the idea that states are the best stewards of natural resources and that any alternative arrangement would lead to worse outcomes (like deterioration and overuse) is an empirical claim that has been repeatedly contested with actual evidence” (Mancilla, 2015b, p. 202).

3.4 Connection-based reasons for control over natural resources

Turning away from the function-based claims and towards the connection-based claims for permanent sovereignty, we need to look at the connection a state has to natural resources. This can be a connection based on *improvements* undertaken to resources or an *attachment* to resources. In both cases it is the relationship between the state and resources that is important, what the connection has been in the past and what it is now, rather than what the resources can do for the state in the present and in the future, as we saw in the function-based claims.

3.4.1 Improvement-based claims

According to improvement-based claims, agents or states have a right to territory or resources because of improvements they have undertaken to the resources/territory (Armstrong, 2015, p. 133). In order for this to be a valid claim, there needs to be an understanding that it is possible to make improvements to resources and that these improvements have a universal character: “examples might include cultivating land, digging wells, draining malarial swamps, making land more productive, and so on” (Armstrong, 2015, p. 134). The argument of a universal value is shared by David Miller, who points out that to make the improvement claim work, we must show that there is in fact an increase in value, and this increase needs to be so universal that it is accepted as such by all. If we can agree on certain things that are accepted as basic needs for all human beings, then increasing value to meet those basic needs can be seen as a universal value. “These activities are valuable according to a standard rooted in the very idea of a decent human life, and this cannot reasonably be denied no matter to which cultural group the interlocutor belongs” (Miller, 2012, p.

259). I will here discuss four reasons why the improvement-based claims also fail to provide sufficient justification for PSNR.

First, following Armstrong, we can accept that it would be possible to make improvements to the land that we can count as universal values, but we might still have trouble justifying why the state, because of that, should be granted permanent sovereignty over those resources. Is it the state who has undertaken the improvements, or some parts of the state? And do these kinds of resource improvements necessarily follow state borders? Armstrong argues that in our global world, it might just as well be multinational corporations who undertake the resource improvements – corporations which are difficult to assign to one specific state (Armstrong, 2015, p. 134).

Second, this claim is very limited regarding what resources might be covered by it. Some resources might have been improved, but many resources have not been improved, or as with oil and gas, might not even have been discovered yet. So the scope of this improvement-based claim seems to be very narrow and therefore not suited to justify permanent sovereignty over natural resources as a default principle in international law (Armstrong, 2015, pp. 134-135).

Third, even if we can justify that the state should have a right to receive the benefits of the improvements it has made, or the work it has done,¹⁰ it is not obvious how this would give the state the right to the complete resource, not merely the improvements or benefits resulting from the work (Armstrong, 2015, p. 135). In order for the improvement-based claims to work, we need to explain how this can lead to permanent sovereignty. One way of explaining this might be to argue that granting permanent sovereignty over the resource will help to secure the present and future control over the resource and in such a manner provide the state with the possibility to continue the improvement of the resource. A state's income from the resource might not be secure unless the state also has some political power to secure the resource (Armstrong, 2015, p. 136). There needs to be some continuity and stability to the rules concerning both the governing of the resource and of the benefits derived

¹⁰ Or, according to Locke, it has *mixed* its *labour* with the resources (Locke, J., & Laslett, P. (1988). *Two treatises of government* (Student ed.). Cambridge University Press. – p. 288).

from it. Armstrong argues against this, and states that there is no reason why even if “some” agent should be given control over the jurisdiction of the resources, that agent should be a nation (Armstrong, 2015, p. 136). We can also argue that we do not need a single agent to assume control in order to keep the governing of the resource stable; if we had stable global arrangements concerning this, a state might be given the rights to some control over the resource for a timeframe that is agreed upon by all parties, but with limitations included in the global arrangements.

Fourth, our world is not limited to the human world. If we step outside of our anthropocentric view, we can argue that even if we could agree on some improvements that would provide universal value for *humans*, those will probably not be of universal value for the planet as a whole. Cultivating land, digging wells, draining malarial swamps, and making land more productive all have downsides when thinking about biodiversity, natural processes, animal life, and so on. The negative effects of cultivating land might come with a significant delay, making it difficult to argue for it right away. Another way of saying this, remaining within the anthropocentric view which I will adhere to in this thesis, is to say that these improvements, even though they might look like improvements when they are being made, might in the future turn out to make the earth less productive, more exposed to climate disasters, etc. How can this then be seen as reasons for justifying *permanent* sovereignty over the resources, when we do not know the effects in the future?

In the case of Norway, improvement of resources might not be the first thing that comes to mind when we think of petroleum. But what can be argued is that the Norwegian state has spent a lot of time, energy, and money to get the industry up and running. Although much of the drilling and searching have also been undertaken by foreign companies, the Norwegian state has always been a part of the monitoring and organising of the industry. A large amount of private investments have also been made to offer the right framework and supply chain. We could even assume that at least at some point, extracting petroleum and selling it was seen as a universal value, because the world needs energy. But would that justify state sovereignty over the resources? The Norwegian state has been a major player in the industry from the start and has made large investments therein. But so also have others, many of the foreign companies even lost money in the beginning, and because they had to give a

large portion of their income to the Norwegian state, they made less money from the venture than they anticipated (Hanisch & Nerheim, 1992, pp. 94-123). What makes the state's claims more valid than claims from a different agent who has invested just as much? By now the Norwegian state has received benefits much larger than all of the investments. How can it then be defended that Norway should keep unlimited control over the resources and all resources that might be found in the future, no matter how destructive it might be to the climate?

3.4.2 Attachment-based claims

Attachment-based claims are based on the idea that peoples or nations can form special relationships or attachments to territory or resources, or that they have become adapted to each other, and that this attachment can be the foundation for a justified claim to sovereignty over that land or resource (Armstrong, 2015, pp. 133-134).

These claims might be easier to explain when they are used for claiming sovereignty over territory or over some specific resources, such as forests or water courses. People who have always lived in a forest and base their whole lives around that forest definitely have a stronger attachment to that forest than someone who has no historical connection to the area but wants to gain control over the forest in order to benefit from its timber. The people living in the forest might make a claim to that forest based on the *function* it has for their way of living, but the argument here is that they could also make a claim based on the special attachment and relationship they have to it. Following Miller's arguments, the forest could also be of symbolic value, and this could also be a reason for a valid claim for control of the forest (Miller, 2012, p. 261). Using this example, it is not difficult to argue that the people who have the attachment to the forest should have a more valid claim to control over the forest as opposed to those who merely want to benefit from it. But does this attachment justify a permanent sovereignty over the resources in question as well? Stiliz also highlights the fact that people have different interests, connections, and morally significant relations to different resources. As we have seen, the importance of some resources can vary both between people and times; one special resource might be more important to some people than to others. Because of this, Stiliz argue that there

needs to be some sort of resource sovereignty in order to respect this *asymmetry* in people's relations to different natural resources (Stilz, 2019, p. 228).

Armstrong gives two reasons why attachment-based claims cannot be used to justify permanent sovereignty over other natural resources. First, he argues that when it comes to resources, the sort of attachment that can be used for this kind of justification would normally apply to only one specific resource, not every resource that exists within the state territory (Armstrong, 2015, p. 137). Then the state can have no justified claim to those other resources, and a claim to permanent sovereignty over the resources within the territory is not justified. Second, it might be easier to argue for such resource-attachments existing for smaller communities than for an entire state. Armstrong uses the example of the Saami people in northern Scandinavia and their attachment to reindeer, but many indigenous peoples are strongly attached to the territory where they live and the resources therein, which have been part of their way of living for hundreds if not thousands of years. Other small communities, like the fishing communities around the world, or villages dependent on farming or forests, have a much more direct relationship with the resources than a state can have. For those smaller communities, the resources can be a part of their identity in a way that is not possible for an entire state (Armstrong, 2015, p. 137).

Again, turning to Norway's offshore petroleum, it is difficult to see how this attachment argument could help us to justify permanent sovereignty over the petroleum resources. Norway's economy might have become dependent on the petroleum industry, but this is not based on some kind of special emotional or historical attachment, as has been discussed here. There is no doubt that today Norway is to some degree dependent on the petroleum industry, and that a shift away from it would require a lot of effort, but that is not enough to legitimise the claims that Norway has a moral right to permanent sovereignty over all the petroleum resources within its territorial borders. I do not here question that there do exist special attachments between people and resources or territory, and these special attachments need to be considered when granting control over and access to resources. But the fact that some groups or states might have a special attachment

to some natural resources does not provide us with the justification to grant all states a default permanent sovereignty over all natural resources within that state's territory.

3.4.3 *Limitations on permanent sovereignty*

For Stiliz, the answer to the challenges to PSNR is not to dismiss the principle but to accept it, though with limitations. She argues that states should have resource-sovereignty and that we need to divide our world into different territories (Stiliz, 2019, p. 9). But she does not want to take the territorial state system as a given and claims that it needs moral justification, as does permanent sovereignty. If it is not based on some sort of legitimacy, permanent sovereignty does not make sense. There will also be no legitimacy for a system where states can extract all the resources that they want, with no regard for other states, because we are all dependent on the same “atmosphere, water systems, and central climate-regulating functions” (Stiliz, 2019, p. 219) – and these need to be protected.

There are several limitations to her resource-sovereignty principle. First, she limits resource sovereignty to “*legitimate* political communities that meet the standards of *basic justice* and *collective self-determination*” (Stiliz, 2019, p. 232). Resource sovereignty should not be granted to every state automatically; they need to meet some basic demands, for instance regarding security and freedom of the people. She does not limit this to states: permanent sovereignty can be granted to any group of people who have “a valid claim to self-determination, including indigenous peoples and other qualified minorities” (Stiliz, 2019, p. 224). Second, resource-sovereignty also needs to be limited by international environmental agreements. Stiliz claims that with regard to climate change, permanent sovereignty is neither justifiable nor appealing. Strong permanent sovereignty might conflict with the challenges of climate change – the challenges of climate change cannot be met if states keep using resources in any manner they wish, with no regard for others, defending it with the principle of permanent sovereignty. In this sense, her limited resource-sovereignty could be understood more as control over resources where the governing of these needs to be in accordance with international agreements regarding environmental cooperation. This obviously places some limitations on the rights (Stiliz, 2019, p. 220). These limitations are even stronger with regard to underground oil and gas resources, which she argues might be decided by international agreements and “in

accordance with fair principles of distributive and environmental justice” (Stilz, 2019, p. 233). If both the decisions about exploitation and the distribution of the benefits need to be made in accordance with international conventions and distributive justice, this would mean that there is in fact no real sovereignty over these resources.

Stilz, agreeing with Margaret Moore (Moore, 2015, p. 174), argues that what a state should have with regard to these kinds of resources is rather some sort of control over the rules and governing of the resources, and not a valid claim to the “full value” of the exploitation of the resources if it was to exploit the resources. The state might be compensated for the costs of the extraction but does not have a right to the benefits exceeding this. Part of the surplus should be shared with others according to international conventions, and Stilz argues that although a state or community has the right to decide how a resource is being used, that does not mean that they also have a right to all of the benefits arising from the use of that resource (Stilz, 2019, pp. 233-234).

With all these limitations, clearly showing that the system of PSNR as it is today is not justifiable, the question becomes one of why we would even need permanent sovereignty over natural resources as all. Stilz argues that she wants to keep the permanent sovereignty principle because there is an asymmetry as to how people are situated with regard to different resources, and this should matter, which is something she claims that cosmopolitans “typically fail to notice” (Stilz, 2019, p. 228). This alone, however, is not sufficient to legitimise the system of PSNR.

3.5 The cosmopolitan perspective

Since both the traditional functionalist-based and the attachment-based arguments that have been used to legitimise and justify claims over territory and resources have failed in provide us with a good foundation for the principle of permanent sovereignty over natural resources, I will look at an alternative view that rejects the principle of permanent sovereignty altogether: the cosmopolitan view. Cosmopolitanism, broadly speaking, sees every human being as belonging to one community, without states or nations (Kleingeld & Brown, 2019). Resource cosmopolitanism sees natural resources as belonging to all human beings – not nations or states. I will later discuss

what this could mean for how we treat natural resources today, but first I will look at some key features of cosmopolitanism and how it can be defended.

According to Thomas Pogge, there are three elements that are important to the cosmopolitan view: individualism, universality, and generality. What we should consider on a cosmopolitan view are *individual* human beings, not religious groups, communities, or nations; this view should include all human beings, *universally*; and all individual human beings should be the *general* concern for everyone. “The central idea of moral cosmopolitanism is that every human being has a global stature as an ultimate unit of moral concern” (Pogge, 1992, pp. 48-49).

The cosmopolitan view can be defended for different reasons, but I will here focus on two reasons that are relevant for my case. The first reason is the (moral) arbitrariness of the distribution of natural resources, an argument originally made by Charles Beitz: How can we justify that so much of a state’s income and well-being can be decided by something as random as the distribution of natural resources? The second reason concerns the global effects of resource extraction and use that have become more and more present over the last decades, and that have shown that the ones benefitting the most from the resources are often also the ones who are the least affected by the negative effects.

First, natural resources are distributed randomly across the earth, and it is indeed arbitrary which states have been lucky in terms of resource distribution and which have not – or which states have become “lucky” through invading other states. Charles Beitz argues that since there are no moral claims of distribution underlying this, the distribution can also be claimed to be “morally arbitrary”: “The fact that someone happens to be located advantageously with respect to natural resources does not provide a reason why he or she should be entitled to exclude others from the benefits that might be derived from them” (Beitz, 1979, p. 138, in Stilz, 2019, p. 227). What reasons are there to give special weight to the claims of the states where the resources happen to be? Why not treat the resources as part of a common pool, to which everyone has the same access (Stilz, 2019, p. 227)? When national marine jurisdictions were decided in the UNCLOS, nobody knew how much petroleum resources lay buried in the seabed. If they had known, the process of drawing the

borders might have been very different. On the one hand, since no one knew, it was just a matter of luck who ended up with the most resources. On the other hand, looking at international law and international conventions overall, “luck” is not a very prominent principle, and arguably not morally defensible. It could rather be defended that it is exactly the arbitrariness of the unjust distribution of resources that must be the concern of international agreements.

Second, when considering the earth today, our use of natural resources over the last century has led to both environmental and climate crises. The massive extraction of resources, emissions of GHG, and deforestation has led to a crisis that knows no borders. The problems need to be faced on a global level. Considering this, does it even make sense to talk about permanent sovereignty over natural resources belonging to states? Can we defend treating the benefits as belonging to states, if the entire earth must live with the consequences? We are affected by the resource use of different states. We all need the rainforests for our atmosphere, how can it then be morally justified that only the few states that have rainforests within their territories are the ones making decisions over them?

4 Who Should Shoulder the Costs of Climate Change?

The truly dangerous radicals are the countries that are increasing the production of fossil fuels. Investing in new fossil fuel infrastructure is moral and economic madness.

These are the words of António Guterres, UN Secretary-General, delivered during the press conference presenting the third part of the IPCC Sixth Assessment Report on 4 April 2022. In the week prior to this, the Norwegian government made assurances for an increase in Norwegian gas production. The Norwegian government is planning to reach a new high in gas production in 2022.¹¹ The Norwegian minister of oil and energy has also promised to both open new gas fields and explore for even more gas. How is it that Norway is still subsidising the oil and gas industry and exploring for more petroleum resources even though there is a demand for climate action? Particularly with the backdrop that Norway claims to be one of the more environmental and climate responsible states in the world, often taking charge and pushing for climate negotiations, this does not seem to make sense.¹²

In this chapter I will focus on the second philosophical issue that I set out to address: whether states that produce and export oil and gas should shoulder some costs when it comes to addressing climate change. In international law it has been the standard to see states as responsible only for emissions happening within their territory, which makes Norway *not* responsible for the emissions of the exported oil and gas. In this chapter I will argue that this view, that the producer is not responsible for the emissions, is not morally defensible, and that oil-producing states should take more responsibility for the climate change caused by GHG emissions. Before I

¹¹ The background for this is the ongoing war in Ukraine and that European countries, because of Russia's invasion, wish to stop importing gas from Russia and rather import it from other countries. This has led to an increased demand for Norwegian gas. What effect the war has on the oil and gas market and the demand for other energy sources is a very interesting and relevant topic, but a topic that I will not here discuss further. For more information on the topic see, for example, Krauss, C. (05.05.2022). Europe's Quest to Replace Russian Gas Faces Plenty of Hurdles. *The New York Times*. <https://www.nytimes.com/2022/05/05/business/energy-environment/natural-gas-europe-russia-ukraine.html>

¹² Norway is not alone in such a position though. States like Canada and Australia are also struggling with wanting to maintain their positions as "global climate leaders" and the public's demand for climate action on the one hand and the commercial aspects of exploring their oil and gas resources on the other (Gordon, D. (2021). *No Standard Oil: Managing Abundant Petroleum in a Warming World*. New York: Oxford University Press. <https://doi.org/10.1093/oso/9780190069476.001.0001> – p. 165–167).

address the question of moral responsibility, however, I will present some of the effects that oil and gas have on the global climate.

4.1 The lack of action and continued emissions

Moral responsibility in light of climate change poses many problems. Climate change can in many ways be what Stephen Gardiner refers to as “a perfect moral storm” (Gardiner, 2006). There are different characteristics linked to climate change that alone can make it difficult for us to take the necessary action to limit the damage. When these characteristics are combined, as they are in the case of climate change, it can make it almost impossible for us to act. Stephen Gardiner identifies three main characteristics that make it difficult to act. The first is the spatial dispersion between causes and effects – the spatial dispersion between emissions and the impact they have on the global climate. The second is the fragmentation of agency – the lack of a clear agency and coordination between states on how to act against climate change. The third is the institutional inadequacy or the lack of sanctions.¹³ This all leads to the fact that it becomes difficult to establish a global regulation on GHG emissions, although this is what is necessary to meet the challenges of climate change (Gardiner, 2006, pp. 398-401). Yet, even if there is a lack of an effective global system for regulating this, that should not mean that there is no way of understanding moral responsibility concerning climate change and GHG emissions.

The climate change issue is not new. That human emissions could have an effect on our climate and atmosphere was already becoming a concern in the 80s.¹⁴ The United Nations Framework Convention on Climate Change (UNFCCC) was drafted in May 1992 with the objective of achieving “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (UNFCCC, 1992, Article 2). The 154 states that signed the convention also acknowledged “that the change in the Earth’s climate and its adverse effects are a common concern of humankind” (UNFCCC, 1992, p. 2). Nonetheless, there have been many obstacles on the road to

¹³ Both the fragmentation of agency and the lack of international sanctions are points made by Garrett Hardin in “The Tragedy of the Commons” (Hardin, G. (1968). *The Tragedy of the Commons*. *Science*, 162(3859), 1243-1248.

¹⁴ For instance at the Toronto Conference on the Changing Climate in 1988.

both establishing goals that states commit to and to foster a public understanding that drastic measures are necessary. In recent years there seems to have been a bit of a change – in 2021, two different institutions made it clear that climate change can no longer be overlooked, that it is urgent for us to act, and that fossil fuel needs to be phased out in favour of renewable energy sources.

In May 2021 the International Energy Agency (IEA) released its report “Net Zero by 2050: A Roadmap for the Global Energy Sector”, with a thorough analysis of what it would take to reach the 1.5 degree goal set by the Paris Agreement. In order to reach this goal, the IEA sees no other option than a “total transformation of the energy systems that underpin our economies” (IEA, 2021, p. 3). A main point made in the roadmap is that if we stay on course to meet the goals of the Paris Agreement, the demand for oil and gas will decrease so much that there will be no need for new oil projects. The report also clearly states the energy sector’s responsibility: “The energy sector is the source of around three-quarters of greenhouse gas emissions today and holds the key to averting the worst effects of climate change” (IEA, 2021, p. 13). The IEA therefore calls for a complete overhaul of the energy sector, but at the same time acknowledges that there are differences in how well states are suited to handle this change: “advanced economies have to reach net zero before emerging markets and developing economies, and assist others in getting there” (IEA, 2021, p. 13). Energy and resource use needs to be more efficient; there needs to be less fossil fuel and more renewables – the goal is that in 2050 two-thirds of the energy supply will come from renewable sources and that fossil fuels decrease from almost four-fifths to one-fifth of total energy supply (IEA, 2021, p. 18). This means that there will be “no need for investment in new fossil fuel supply in our net zero pathway [...] Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway” (IEA, 2021, p. 21).

The second international agent to make a clear statement about the climate crisis in 2021 was the United Nations. The Intergovernmental Panel on Climate Change (IPCC) is the United Nations body for assessing the science related to climate change. The IPCC’s main tasks are to prepare reports regarding the scientific, technical, and socio-economic status and knowledge of climate change, “its impacts and future risks, and options for reducing the rate at which climate change is taking

place” (IPCC, 2022b). The first part of the Sixth Assessment Report, which provides the scientific basis for the report, was released in August 2021, and received a lot of media attention. Because of new scientific methods and calculations, the report could predict the future effects of climate change with much more precision. In February 2022 the IPCC also released the second part of the report, which shows the vulnerability of socio-economic and natural systems to climate change, negative and positive consequences of climate change, and options for adapting to it. In the third part, released in April 2022, the IPCC shows that it is not too late to take action, but that this action has to be taken now, and there has to be drastic measures.

The report’s opening statement is that “[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred” (IPCC, 2021). It continues to state that there are already changes to be seen with more extreme weather and climate events around the world. These changes are human-induced, and “these extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence” have increased since the previous report, the Fifth Assessment Report, released in 2014 (IPCC, 2021). The report lays out in much more detail the actual effects that we can already see in the climate around the globe, but also the possible future effects. A lot of the changes that we already see will become even more dominant and severe and are in “direct relation” to global warming, for instance “increases in the frequency and intensity of hot extremes, marine heatwaves, and heavy precipitation, agricultural and ecological droughts in some regions, and proportion of intense tropical cyclones, as well as reductions in Arctic Sea ice, snow cover and permafrost” (IPCC, 2021). The report also refers to the fact that for a lot of these changes that we currently see and that they predict, it is already too late to take meaningful action. Past and future GHG emissions causes damages that “are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level” (IPCC, 2021).

The report makes it clear that there will continue to be changes in the climate and that this will affect the world and the global population. Is there anything we can do to limit these changes? According to the report, we need to reach net zero CO² emissions: “From a physical science perspective, limiting human-induced global

warming to a specific level requires limiting cumulative CO² emissions, reaching at least net zero CO² emissions, along with strong reductions in other greenhouse gas emissions” (IPCC, 2021). These claims are not new. What is new in the report is rather that these claims are stated with much more certainty and that the claims obtained much more public attention. It is no longer possible to look past the fact that “climate change has already disrupted human and natural systems” (IPCC, 2022c). It was also stated clearer than before that humans have caused a massive impact on the climate and that the changes will happen faster than predicted earlier. No matter how we act today, a lot of our impact is irreversible, and the earth will look different in the future because of our actions – but that does not mean that we cannot change the outcome. The report states in a much clearer manner than before that we need to reduce emissions to avoid some of the worst scenarios. It also makes it clear that we need to act in both the near-term and long-term, even though this will not be enough to stop all the negative effects. There will be much more complex impacts with multiple climate hazards occurring at the same time, making it harder to manage them and their aftereffects. The IPCC, as does the IEA, sees the energy sector as a key player in reaching the climate goals, and states that there needs to be a large reduction in the use of fossil fuels with the goal of a global net zero by 2050 (IPCC, 2022a).

Both of these reports have played an important role in changing how the climate crisis is treated in international and national politics. There is a much bigger urgency – which is also more visible – and it has become much more difficult not to offer good solutions for how to meet the crisis. In the 2021 election in Norway, climate and environmental issues were the most important questions for the voters – in the previous election in 2017, climate and environmental issues were seen as the fourth most important questions (SSB, 2022). The election, which took place in September 2021, was to a great extent shaped by the then recently released IPCC report, and almost all the political parties addressed climate and environmental issues in their election campaigns. The Norwegian petroleum industry was also debated, but rather than questioning its legitimacy or raising the moral question of continuing the exploitation and what effect the emissions from the *use* of oil and gas has

internationally, the main issue was to continue to make the industry the “greenest oil industry” in the world and reduce emissions in the petroleum *production*.¹⁵

4.2 How Norway is using its oil wealth

We have seen how the drawing of the borders of the Norwegian territorial sea came to be. Not long after the lines had been drawn, it became clear that Norway had been very lucky. The first important finding was the discovery of the “Ekofisk” field in 1969. In the following years, further discoveries were made, and since the beginning of the “oil adventure” in the early 1970s, the oil industry has been significant for the development of the Norwegian welfare state: the oil industry is responsible for more than NOK 15,700 billion of the Norwegian GDP (Regjeringen.no, 2020). In 1990, the Norwegian parliament decided to establish the Government Petroleum Fund (now officially called Government Pension Fund Global, but known to most as the Oil Fund, which is how I will refer to it hereinafter) with the purpose of supporting the government’s “long-term management of petroleum revenue” (NBIM, 2021). The goal was to invest the money from the oil industry to ensure a long-term management both in case of unstable oil prices and to face the challenges of an ageing population. The current value (April 2022) of the fund is more than NOK 11,600 billion, and it is increasing by the second.

In his book *Blood Oil* (2016), Leif Wenar defines a popular resource sovereignty principle that emphasises the *people’s* access to the benefits of natural resources, where the “people” are the citizens of a state. In the Norwegian case, this is guaranteed in a much clearer manner than in many other petroleum states. The money earned is invested in the fund, which is then used to ensure the Norwegian welfare for all citizens and to secure the future. So, the people are in fact given access to the benefits – the *Norwegian* people, that is. This democratic approach to

¹⁵ Norway is known as one of the most responsible and environmentally friendly oil and gas producers and was one of the first states to prohibit gas flaring (except in emergencies) and is working to electrify the offshore rigs. But as Deborah Gordon points out, Norway’s petroleum production is not reducing, gas production is rising, and Norway is considering exploring for oil in sensitive ecosystems further north than ever before. Gordon also points out that Equinor, the Norwegian state-owned oil company, is emitting more abroad than within Norwegian territory. All of this is for her important for how Norway will be understood in the future; in order to maintain its role as a “global climate leader” it will matter how the oil wealth is spent. Norway needs to produce less and protect the Arctic and Equinor needs to cut emissions abroad (Gordon, D. (2021). *No Standard Oil: Managing Abundant Petroleum in a Warming World*. New York: Oxford University Press. <https://doi.org/10.1093/oso/9780190069476.001.0001> - p. 165–167).

the oil wealth has made Norway the poster child of the oil-producing countries. According to Wenar, Norway's success in doing good with oil money is partly because of its strong people: "Because of the hardy constitution of their body politic and the self-control ingrained in their civic character, when the oil money came in it made the Norwegian people stronger still" (Wenar, 2016, p. 14). Wenar also emphasises the "good" that Norway does with its wealth beyond the Norwegian borders. The Oil Fund has an ethical council which ensures that the fund does not invest in companies that do not adhere to human rights or environmental agreements, and that it "also pressures the companies that it invests in to act on climate change" (Wenar, 2016, p. 13). This last part is of course ironic, considering the effect the oil has on the climate, but the main point here is that Norway has definitely acted for the benefit of its people, as is also stated as a goal in a whitepaper from the Norwegian parliament: "Norway's petroleum resources belong to the Norwegian people, and they must be managed in a way that benefits the entire Norwegian society" (Regjeringen.no, 2011, p. 5). Apart from a couple of scandals concerning companies into which the fund invested, Norway has had a good national and international standing concerning both the oil industry and the management of the benefits.

However, in the last few years more discussion has emerged about the oil itself and there has been a slight change in public opinion. The exploitation of oil and gas is becoming more difficult to defend in light of climate change, and also because states need to reduce the use of fossil energy sources such as oil and gas. Norway has been, and still is, one of the countries that has been putting climate issues on the international agenda for years. But to a certain degree it seems as if Norway is closing its eyes to the fact that the emissions from the oil and gas that is being extracted from the North Sea are part of the problem, and that it is only Norway that can make policy changes when it comes to this extraction.

4.3 Who should take moral responsibility for the emissions?

The fact that Norway does have a good standing has partially to do with how we count emissions and how we assign responsibility for emissions. Norway is the fifth largest oil-exporting country in the world (2020) and the fourth largest gas exporter (2020), but this does not necessarily affect how large Norway's emissions are. The

Paris Agreement, and the other UNFCCC agreements, clearly state that states are responsible for reducing emissions within their own borders. In a global context, Norway is in 61st place when it comes to emissions (41 million metric tons of CO²), with China (10,668 million tons), the USA (4,713 million tons), and Russia (1,568 million tons) taking the top three positions. If, on the other hand, we include the emissions from the exported oil and gas, Norway jumps to 16th place (all numbers in this section are from The Global Carbon Project and Robbie Andrew, Cicero; retrieved from Rommetveit & Topdahl, 2021). The emissions jump from about 41 million tons of CO² to 507 million tons. Yet, in international law, the producer is not held responsible for the emissions.

So, one question is whether a state can be *morally* responsible for emissions, even if it is not *causally* responsible? Another question is who should be morally responsible for paying for actions to both prevent further climate change and to adapt to the changes that are inevitable (mitigation and adaptation). On the question of dividing the costs, there are two principles that are normally referred to in international climate governance: the ability to pay principle (APP) and the polluter pays principle (PPP). I will argue that these two are not sufficient to delineate the responsibility that states have; it is, for instance, difficult to argue for the responsibility of oil-producing and -exporting states using these principles alone. I will therefore also discuss two different principles not referred to in international agreements. The first of these is the beneficiary pays principle (BPP), as argued for by Edward A. Page (2012), for instance. I have chosen to term the second one the enabler pays principle (EPP), using the distinction between allowing, enabling, and doing harm as explained by Christian Barry and Gerhard Øverland (2016).

4.3.1 Ability to pay principle

I will start with a short presentation of the ability to pay principle, since this seems to be the least relevant for the case that I am arguing. The APP refers to the idea that, “Among a number of parties, all of whom are bound to contribute to some common endeavour, the parties who have the most resources normally should contribute the most to the endeavour” (Shue, 1999, p. 537). Those who have more can contribute more, without it destroying their possibility to live a good life. If, however, the poor should have to contribute the same, it could destroy their chances of paying for even

basic necessities. Rich states can without very much effort contribute a lot more to the costs for adaptation and mitigation, without it affecting the population too negatively – at least not without affecting the population’s basic needs. Would it then be just for the poorest states, who, possibly even without contributing, are struggling to meet their populations’ basic needs, to contribute in the same manner? The APP focuses on the resources that states have at hand, it makes no difference where these resources come from; rather, it does not care for the causal connection leading to the harm, but simply for the ability to repair the harm. The principle can be found as a basis both in the way the European Union divides up the costs for climate mitigation as well as a principle in the UNFCCC (Page, 2012, p. 305). The idea that the richer should pay more is not foreign and does make it easier to divide costs with no concern for responsibility. The rich should pay no matter how they became rich and no matter how much they are responsible for climate change. When we know how difficult it is for states to commit to climate measures and a decrease of emissions, the question is whether this principle is very well suited for motivating states to act. If a state is rich but has more or less not at all contributed to climate change (as some might argue is the case with Norway), why should they be the ones accepting the largest part of the bill? Even though it is reasonable to argue that the rich should help the poor, this does not assign any responsibility. Rich states do in many cases give aid to poorer states, and this would be the same in this case. It is difficult to see how the nature of climate change or who is responsible for pollution would matter for this principle; it is rather an act of beneficence than of making amends for wrongdoings. So according to this principle, Norway should in fact be responsible for costs arising from climate change, but not because it is an oil-producing and -exporting state, but only because it is a wealthy state. Where that wealth came from is not relevant. I will therefore turn to the principles where the origin is in fact an issue.

4.3.2 Polluter pays principle

According to the polluter pays principle, the question of causal responsibility for one’s actions is central. The PPP sees the emitter as responsible for the emissions and the burdens from the emissions should reflect the amount of emissions each state has generated (Shue, 2014, pp. 182-186). According to this principle, the polluter should be held responsible for the polluting he or she has been doing and pay the costs for cleaning up or fixing the damages. That one should be responsible for one’s own

mess is in its easiest form a straightforward principle and does not seem very controversial. If I litter outside, I should also be responsible for picking it up. As Henry Shue explains, the principle of cleaning up one's own mess is a principle that parents teach their children all over the world: if we are taught that we have to clean up our own mess, we might avoid making the mess in the first place (Shue, 1999, p. 533). There is often a benefit connected to making the mess; it might be convenience, the mess might be a side-effect of something that one enjoys doing, etc. But knowing that one is responsible for cleaning up, one will also learn that one should not make any more mess than one is able to handle the effects of. The principle can also be seen in light of injustice or justice: if one state is causing environmental harm to another state, it would be *just* that the first state should somehow recompense the second state so that there is no injustice between them anymore (Page, 2012, p. 304). The majority of the emissions that have been made in the past and that are now accumulating in the atmosphere can be traced back to a small group of rich developed states. This trend is not expected to stop, and it is expected that for decades to come this small group of states will be the ones emitting the most (Page, 2012, pp. 304-305). On this view then, the developed states will be responsible for paying a lot of the costs that come from climate change. This is also a principle that can be found in the UNFCCC, and many developing states have, not surprisingly, been arguing that this is the correct way to divide the costs (Page, 2012, p. 305).

There are several objections that can be made to this principle. One common objection is that we cannot hold polluters responsible if they did not know that they were polluting (Caney, 2021). The GHG that are now in the atmosphere and are causing climate change were partially emitted long before anyone knew about the damaging effects they could have. I will here discuss two replies to this objection. The first is that there is a difference between punishment and responsibility (Shue, 1999). Even though people did not know the effects, and therefore cannot be punished for the happenings, they can still be held responsible for their actions. Drawing a parallel to criminal law, there is a difference between murder, manslaughter, and involuntary manslaughter. Where both murder and manslaughter imply that there has been some intent of killing another person, *involuntary manslaughter* means that there was no intention to kill the person – but involuntary manslaughter still involves criminal liability. If a person kills another person without

intending to do so, maybe not knowing that what they do will lead to killing the other, they may still be held responsible for it in criminal law, and will probably also feel responsible for killing the other person, even though they did not know at the time that their actions would lead to killing the other person. The same can be said for GHG emissions made in the previous centuries. Even though for a long time people did not know what the emissions could lead to, it does not mean that they cannot be held responsible for it, at least not that they cannot be held responsible for cleaning up the mess they made. It would perhaps not be just to punish states for GHG emissions, but one could still hold them responsible for the effects (Shue, 1999, p. 535).

The second reply to this objection is that it has been known for decades what effects GHG emissions could have, and it has not led to much action. The emissions made at least in the last 30 years, which are massive, cannot be said to have been made without knowledge of what they can cause (Shue, 1999, p. 536).

Another main objection is that we cannot hold people responsible for the doings of others, we cannot hold the grandson responsible for the actions of the grandfather (Caney, 2021). Here we can of course ask who the emitter in these cases is: is it the individuals making the decisions (in that case it seems like a legitimate objection) or is it the state as an institution? In the latter case it does not seem to fit that well. If the state is seen as the emitter, the state could to some extent be held responsible for carrying the costs of the consequences of polluting, even though the individuals comprising the state have changed. Rich developed countries also still benefit from many of the actions that led to the emissions. Shue shows that the facts and relations concerning pollution might be a bit more complex than this objection makes it seem – and that it might be to overlook that fact if we say that today's generation is “completely unrelated” to the polluting of the past (Shue, 1999, p. 536). But what both of these objections show is that the PPP is stronger in future cases and concerns costs from future pollution (Shue, 1999, p. 534).

Another major objection to the PPP arises when we consider the responsibility of the oil-producing states in terms of the global climate. As we have seen, each state is only responsible for emissions occurring within their own borders. This means that

oil-producing states are not responsible for the emissions from exported oil. It was made clear that this is also the domestic understanding within Norway in what has become known as Norway's first climate lawsuit: the People vs. Arctic Oil case. In the lawsuit, where two Norwegian environmental organisations sued the Norwegian state based on §112 of the Norwegian constitution, it was made clear that Norway has no responsibility for emissions outside Norwegian territory. §112 states that "[e]very person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained". The paragraph further states an important principle for the use of natural resources: "Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well". It also states that people have a right to be informed about decisions concerning resource use, and that the state shall make sure that the principles stated above are followed (Stortinget.no, 2018). The paragraph takes into consideration both environmental issues and intergenerational issues: the state is made responsible for safeguarding the environment and for resource use that takes the next generations into consideration. The case was tried in three different courts in Norway between 2017 and 2020, but the state was acquitted every time, showing that cases concerning the climate will be very difficult to decide on (Backer, 2021). The court stated that Norway is *not* responsible for damages done to the environment outside of Norway. §112 is valid as long as the effects fall within Norwegian territory; for instance the usage of Norwegian oil and gas abroad *when it also affects Norway* (Backer, 2021, p. 140). On this understanding the paragraph provides protection for the national environment but does not contribute to the global environment. Thus, there are two different issues here that need to be discussed; the first is that the state is only responsible for *emissions* happening within the state's territory, and the second is that the state is only responsible for *effects* happening within its borders. Both of these claims seem difficult to defend from both a moral and a practical perspective – especially when we consider the global nature of climate. Thus far I have been concerned with responsibility for emissions, but as we see here, it is also relevant to discuss responsibility for the effects. The climate crisis is a result of many actions and emissions and is a universal challenge. It is difficult to say exactly what effect some specific emissions have, but we can say that emissions do in fact have an effect.

Returning to the question of who should be held accountable for the emissions, who should count as polluter, Lazarus, McDermid, and Jacquet (2021) provide an interesting analogous case when investigating the emissions of different meat and dairy producers. The emissions from international meat and dairy producers are not counted in the headquarters' country, but rather in the producing country. For instance, the emissions made from Nestlé's production are not counted as Swiss emissions, even though the headquarters are in Switzerland. They argue that how emissions are being counted among agents is difficult and that it is difficult to attribute the right emissions to the right sector or agents. "For example, should the emissions (and/or responsibility) from the trucking of beef cattle be assigned to the fossil fuel producers, the transportation sector, the animal agriculture sector, the beef company, the consumer, the country where the trucking occurs, or the country where the consumers live?" (Lazarus et al., 2021, p. 4). This is relatable to the petroleum industry as well. Exported oil and gas are used for many different things, in industry, as fuel, for heating purposes, for products, etc. How should we count the emissions? Should the exporting country be responsible, the factory owner, the designer of the product, the final consumer? There are arguments to be made for all of these possibilities. But in the Nestlé example, Lazarus, McDermid, and Jacquet show that if the company's emissions were to be counted as Swiss, Switzerland would already have exceeded their national targets concerning GHG emissions (Lazarus et al., 2021, p. 13). We have seen that Norway's emissions would be more than 12 times as high if the emissions from oil and gas produced (rather than used) were counted as Norwegian. The point here is not that one is more appropriate than the other, but that the question of who is responsible for the emissions is much more complex than it seems in international environmental agreements and in Norwegian petroleum politics. So, the question of responsibility for the emissions seems to be more complex than how it is treated by policymakers today. It might not be justifiable to say that petroleum exporting states should have all the responsibility; after all, they do not decide how the petroleum is used. Some countries might have much more efficient petroleum use and lower emissions than others – the exporting state does not decide this. But if the exporting states decided to stop producing and exporting petroleum, then there would be no petroleum to use at all. It might not seem very likely that all producing states would stop at the exact same time, but that does not have to be an issue in the argumentation. If a state is exporting petroleum, it is somehow

responsible for supplying petroleum to the world market. The state might not be responsible for *how* the petroleum is used, but it is responsible for there being petroleum to use at all.

To exemplify this, we can think of drug dealers and how we understand their responsibilities, as is suggested in an example by Carlos Joly: “Norway can’t pretend to be environmentally friendly while it exports more and more oil and gas. A drug dealer who is not a user is still a drug dealer and driving a cool Tesla does not cancel the harm oil exports cause” (Joly, 2021). In the same way that an oil-exporting state is not responsible for how the oil is used, a drug dealer is not responsible for how the buyer uses the drug, but we do seem to hold the drug dealer much more responsible for drug use than we hold oil exporters responsible for oil use. There are of course many differences between a drug dealer and a petroleum exporting state,¹⁶ but there are also similarities. A common argument from the petroleum industry and petroleum-friendly politicians in Norway is that it is better that Norway, rather than another state, exports the petroleum, because Norway has one of the “greenest” petroleum industries in the world.¹⁷ The argument is that the petroleum is needed in the world, and that it would be used no matter what – if Norway did not export it, another state would. Although this might to some extent sound plausible, it will also not be difficult to find arguments against this view, and there are studies both backing up this view and arguing against it. There is also a limit to the petroleum in the world. There are still many resources on the Norwegian seabed and if these are left in the ground, there will be less petroleum available in world in the long term. But my concern here is not whether this is true or not, but rather Norway’s responsibility in the question of emissions. Let us return to the drug dealer example: imagine a drug dealer using the same arguments selling illegal drugs to a drug addict. If “our” dealer did not sell them the drugs, someone else would, and they might be more dangerous than the ones our dealer is selling. How would we view this case? Would we not, both legally and morally, say that the dealer is still responsible for the drugs they are selling? There is

¹⁶ The main one being that it is in fact illegal to sell drugs, but it is not illegal to export oil.

¹⁷ It has been claimed that it is the cleanest, but there does not seem to be clear evidence that this is the case, yet it seems to be accepted that Norway is in fact one of the petroleum-exporting states with the lowest emissions in the petroleum industry (see, for instance, Masnadi, M. S., El-Houjeiri, H. M., Schunack, D., Li, Y., Englander, J. G., Badahdah, A., Monfort, J.-C., Anderson, J. E., Wallington, T. J., Bergerson, J. A., Gordon, D., Koomey, J., Przesmitzki, S., Azevedo, I. L., Bi, X. T., Duffy, J. E., Heath, G. A., Keoleian, G. A., McGlade, C., Nathan Meehan, D., Yeh, S., You, F., Wang, M., & Brandt, A. R. (2018). Global carbon intensity of crude oil production. *Science*, 361(6405), 851-853. <https://doi.org/10.1126/science.aar6859>).

no question about the legal responsibility, whoever sells drugs is responsible and will be charged with criminal charges. The big difference here is of course that the illegal drugs are in fact illegal, while exporting petroleum is not. But it is still a paradox that the responsibility is viewed so differently in these cases. In criminal law the drug user is treated more as a victim than a criminal (although there are in fact huge differences between how this is seen in different countries). The user normally receives less punishment than the dealer. Yet in the case of petroleum, all responsibility seems to lay with the “user”.¹⁸ We clearly see that the strategies for blame and responsibility are different in these cases. In the case of drugs, it is the producer/exporter/dealer who is viewed as the most responsible, whereas in the petroleum case it is the other way around. In the drug case, there is a fear that the user will be stigmatised if punished; the user is seen as more vulnerable and it is argued that they need help rather than punishment.¹⁹ The dealer or producer, on the other hand, is understood as more deliberate in their actions and therefore liable to prosecution. In the petroleum case, both the producer and the user are arguably liable to pay for the damages done by petroleum emissions, as both are states and are treated the same by international law. The exporter is just as deliberate in their actions as the user.

The question of responsibility, as we have seen, is not as straightforward as it seems to be, both in international agreements and Norwegian domestic law. There are good reasons for arguing that an oil-producing state should have more responsibility for the emissions from the oil than it currently does. But as we have seen, it is not easy to pin down exactly who should count as the polluter in the case of emissions from exported oil. I therefore believe that it will be fruitful to look at other principles for dividing the costs, where the complexity of the subject is taken more into account.

4.3.3 Beneficiary pays principle

This leads us to the beneficiary pays principle. This principle is not stated clearly in international conventions – but it is a principle discussed by philosophers and I believe that this principle can be fruitful for the petroleum case as well. In the BPP,

¹⁸ It must of course also be pointed out that drug use does not seem to provide any benefits for the user, whereas oil is often used for creating benefits, or essentials needed by the population. Thus the user of drugs is in most cases more vulnerable than the oil user.

¹⁹ As has been a prominent argument in the discussion of a new drug reform in Norway; see, for example, Ruud, S. (2020). Rusreformen: Hva blir lov, og hva skal straffes? *Aftenposten*. <https://www.aftenposten.no/norge/politikk/i/lAkOWy/rusreformen-hva-blir-lov-og-hva-skal-straffes>

what matters for dividing the costs is not how much a state has polluted or how rich the state is, but how much the state has benefitted from activities leading to climate change (Page, 2012, pp. 302-303). Edward. A. Page defines the principle as such: “if a state *benefits from activities within or beyond its borders* that impose climatic disadvantage on another state then the former must remediate the latter’s disadvantage by surrendering benefits up to the point where the benefits that provide the basis of the remedial duty are exhausted” (Page, 2012, p. 306)my emphasis). The most responsible states, according to this principle, are then the rich developed states who have been, and still are, benefitting from activities that have been emitting GHG.

The equity principle behind the BPP is the understanding that if one party has been disadvantaged due to the actions of another party, without the first party’s consent, then the second party should have to make amends and shoulder burdens to even out the disadvantage (Shue, 1999, p. 534). The consequences of GHG emissions are universal, but the economic benefits have not been. The entire world must face climate change, whereas some countries are still making money from the activities contributing to climate change. So according to this principle, those who have posed disadvantages to others, without their consent, should have to shoulder more costs to restore these disadvantages; those who have emitted GHG causing climate change have to pay the costs of climate change in order to restore equity.

Remembering the objections to the PPP, we see that the BPP can manage some of these very easily. The first objection was that the polluters might not have known what their actions could lead to and therefore should not be held responsible for these actions. We see that this is of no concern for the BPP. Those who are benefitting from polluting actions today know what they are benefitting from. The other objection, that one should not be held responsible for other people’s actions, is also not a problem for the BPP, because what matters is who is receiving the benefits, not who is responsible for emitting (Page, 2012, pp. 306-307). This principle is both forward-looking and backward-looking – it addresses both past generations’ emissions and forthcoming benefits. Compared to the APP that, as we have seen, does not care how the rich states became rich or how much they have contributed to climate change, the BPP explains much better the reason why richer countries

should pay: “The argument directed at these states is essentially: ‘you should pay because you are much better off than others as a result of exploiting benefits linked to the creation of climate change’” (Page, 2012, p. 307). The state should be made responsible for undoing the harm done, it should pay because it has benefitted from actions leading to climate change, not only because it is rich.

Page raises some concerns regarding the BPP, for instance that one cannot demand that all benefits that come from activities which affect climate change should be spent to help stop climate change. This seems like a lesser concern, since it should be possible to differentiate between what benefits should be given to the cause and what benefits a state could keep (Page, 2012, p. 308). Following the PPP, there is also no expectation that the polluters should be the *only ones* who pay and that they should bear all the costs. The principle rather explains why polluters should take more of the responsibility. The same could then be argued for the BPP. The benefitters should not have to give up all the benefits but could still be held more responsible than others because they benefit from actions that make others worse off.

The main issue with the BPP in the case of oil-producing states seems to lay somewhere else. The BPP can be understood as making states responsible for benefitting *from climate change* itself. I have deliberately used the term *benefitting from action leading to climate change* here, but BPP can just as well be understood as a principle that makes those who benefit *from climate change* responsible for paying. In the case of oil-producing states, that is not the case. Again taking Norway as the example, climate change has no effect on how much Norway benefits from its actions. It could rather be that Norway is losing out because of it in the long run, as the demand for oil is decreasing. The petroleum resources are there, and have been there, regardless of climate change. And even remaining with the *action leading to climate change* definition, it can be argued that this does not apply for oil-producing states. Oil producers, like Norway, re benefit from exporting the oil, and exporting oil does not lead to climate change. Again, we have the problem of who counts as responsible for the emissions. Norway is benefitting from exporting oil, which in turn can be used in ways that emit GHG and lead to climate change, but Norway does not partake in the emitting action nor does it benefit directly from that.

What then seems to be lost in the BPP is the understanding that the oil producer is contributing to climate change because of the exported oil. What is important on the BPP view is the benefits received, and those might be enjoyed even though the state does not contribute to climate change directly. What I am arguing in this thesis is that the oil producers should be made more responsible for the oil that they are producing and exporting, and the BPP does not seem to be enough with which to do so.

4.3.4 Enabler pays principle

What still stands out as paradoxical and unanswered, is that although Norway is one of the world's largest exporters of oil and gas, the state is not understood as being responsible for emissions leading to climate change and is rather conceived as a responsible state when it comes to climate measures. Norway can be made responsible for accepting a larger portion of the bill concerning climate change, not because it is a polluter or contributor to climate change, but rather because it is a rich state. Norway seems to be escaping some of the responsibility on a technicality, that the emissions from the Norwegian oil and gas are for the most part made outside of Norwegian territory and that Norway is not experiencing much of the effects of climate change within its territory. One possibility to face this challenge could be to extend the understanding of the *polluter* in the PPP, so that it includes those who enable polluting or contribute to it in a wider sense. But there are also reasons to maintain the understanding of the polluter as it is. Taking the example of oil, even though the oil-producing state is delivering the oil, it is the "user" who decides how it is used. There are activities that cause more emissions than others, and the producing state does not necessarily have anything to say when it comes to how the resources are being used. Nevertheless, the oil producer is not an innocent bystander in the same way that any other state is. To highlight these different aspects, I will use the distinction explained by Barry and Øverland (2016) between doing, allowing, and enabling harm, arguing that the principle of enabling harm can be used to give us a better understanding of the role of the oil producers.²⁰ They introduced the concept of enabling harm for the cases where it does not seem to fit either to say that an agent is doing harm nor merely allowing it. Someone who is

²⁰ I will use the concept of enabling harm slightly differently than Barry and Øverland. In their understanding, the enabler is innocent in her actions; the most that can be said is that she is acting in a "risky" manner. The oil-producing state, as I understand it, knows that the oil will have a negative effect on the climate, even though it does not know exactly how it will be used and it is not *causally* responsible.

enabling harm seems to contribute more to the action than an innocent bystander merely allowing the harm to be done, but does not actively undertake the action that is causally responsible for the harm (Barry & Øverland, 2016, p. 89). The question is where the difference between doing harm and enabling harm lies. If an agent is somehow participating in the harm being done, are they not then automatically doing the harm? Barry and Øverland give many examples of different cases where they see an agent as enabling harm instead of doing harm, with a different intuitive feel about them. Consider for instance the difference between the following two cases. In “Duck”, “Sue sees that the bad guy is about to shoot in her direction. She ducks and the shot kills Bill, who is standing behind her” (Barry & Øverland, 2016, p. 90). In “Remove”, “[a] cart is rolling towards a point where there is a rock that would bring it to a halt. Sue removes the rock; the cart rolls down the hill and injures Bill, who is sitting there” (Barry & Øverland, 2016, p. 85). These two cases are very different as to how we understand the action, but they both highlight that there might be cases where we would neither say that the agent is the doer of a relevant action, nor the passive allower doing nothing about the case.

Before I look at the example of the oil producer, I will turn to another example. In a previous section I used the example of a drug dealer, but the fact that it is illegal to sell drugs makes this analogy difficult here. I will instead use the example of legal opioids, which have created an opioid epidemic in the USA. Legal opioids are used to help against severe pain, and it has been proven that they are, contrary to the initial marketing, extremely addictive. And yet, they are still being prescribed in large volumes (see for instance Kibaly et al., 2020). In 2019, 10.1 million US citizens misused prescription opioids (HHS.gov, 2020). I will not go into more detail about the situation or the reasons for it since it is not important for the example. I will only focus on the role of the physicians, who can be said to be the distributors of the opioids in the same way that oil-exporting states are distributing oil. Physicians prescribe these opioids to help patients with their needs, to help them reduce their pain. Oil exporters export oil to states that need it in order to meet their energy needs. Thus both are helping the other, but the physician knows that opioids are extremely addictive, and that they should not be used in the long term. That might cause even more problems for the patient. There might be other drugs that would be better to prescribe. In other words, the physician is in fact doing the patient a disservice rather than a service,

helping their patient with one problem but (possibly) creating a different one. The same can be said in the case of oil exporters. States like Norway are helping other states with a need they have, a need for oil and gas. But the exporting states know that using oil and gas will lead to GHG emissions which affect our climate in a negative way. The oil exporters are then also helping with one thing – the immediate need for oil and gas to keep society running – but causing a new (and maybe much more severe) problem: more GHG in the atmosphere. Neither is doing anything illegal. But how do we morally judge these questions? There are many different aspects that might influence our judgements: Does the physician have an alternative? How severe is the pain which the patient experiences? Is the patient capable of making a well-informed choice about the drugs they are choosing to take? Is there a good follow-up plan to help reduce the intake of the drugs once the immediate pain subsides? Nonetheless, it seems as though we see the physicians as partially responsible for opioid addiction because they have been over-prescribing them.²¹ Patients may not be fully aware of the risks and rely on the fact that if the drug is legal and the physician prescribes it, then it must be safe. But what is the case with Norway, or other petroleum exporting states? It does not seem to be the same kind of responsibility understood here. There is of course a difference in the relationship between a physician and a patient and a petroleum-exporting state and a petroleum-importing state. The physician is responsible for the patient, the exporting state is not responsible for the importing state. But when the trade is being made, then should the exporting state not be held responsible for what it is exporting and how the exported goods are used? Should the oil exporter not, in the same way as the physician, be held partially responsible for the fact that the world is still so “addicted” to oil and gas? If physicians would stop prescribing opioids, there would be fewer people becoming addicted. If states would stop extracting and exporting oil and gas, the world would have to look for alternatives; there would be less petroleum-caused emissions. The question of whether it is possible to stop petroleum extraction and exporting just like that, and what effects that could have, is a question I will address in the next chapter. But there should be enough reason to say that morally there is a difference between an oil-producing and -exporting state and a bystander

²¹ There is also research showing that physicians play an important role in the opioid epidemic; see, for instance, Schnell, M., & Currie, J. (2018). Addressing the Opioid Epidemic: Is There a Role for Physician Education? *Am J Health Econ*, 4(3), 383-410. https://doi.org/10.1162/ajhe_a_00113

state when it comes to the emissions from the exported oil, even when there is a third party who is directly responsible for the emissions.

Barry and Øverland also argue that costs can arise from harmful activities, including for the enabler, but not for the innocent bystander (Barry & Øverland, 2016, p. 97). They argue that the enabler should have their costs increased even though they are innocent, meaning that their action of enabling harm done was not done with intention or even knowledge that it would do harm, and that this cost should increase with the harm done and with the amount of risk they engage in (Barry & Øverland, 2016, p. 98). This brings us to what I have termed the enabler pays principle. Barry and Øverland argue that a person engaging in risky behaviour should be made more responsible and should bear more costs than a person who does not. Leaning on McMahan, they argue that a person who causes a car accident, even if it was through no fault of their own, should be held somewhat responsible because they have chosen to drive a car, which can be risky if, for instance, the car brakes fail (Barry & Øverland, 2016, p. 106). If we use this distinction, we see that it would not even be necessary to show that emissions from oil are in fact causing climate change to argue that oil producers are partly responsible for climate change. We could say that because they engage in risky activity – they produce and export oil which can be used to emit GHG which can have an effect on the climate – they can be held partly responsible and have to bear costs. Barry and Øverland also show that when someone is acting risky, they need to go even further, with higher costs, to protect someone than they would have if they did not act risky. They explain a case where a person is pushing a cart down a hill, not knowing that there is a person at the bottom of the hill that will be hit by the cart. The person pushing the cart still knows that it is risky to push a cart down a hill, so they will now have to go to further lengths to protect the person at the bottom of the hill compared to a person watching the situation, not being the one acting risky and pushing the cart (Barry & Øverland, 2016, pp. 101-102). “It seems fair that when a person gives rise to cost, he is required to absorb some of that cost, even when he does so innocently and perhaps not even through his own agency. This is why enablers of harm, like doers of harm, are in a normatively distinct situation from bystanders who allow harm” (Barry & Øverland, 2016, p. 103). The enabler cannot argue that they are completely innocent; they are more responsible than the allower also because they are engaging in action

that might be dangerous. The oil-producing state knows that exporting oil that can potentially be used in a polluting manner is risky and should therefore be more responsible for preventing harm done (mitigating climate change) and should have to pay for harm already done (adaption to climate change). It should then not matter that we cannot say exactly how much harm is caused by the oil or how likely it is that some specific oil is causing the harm: “He has taken a higher risk of giving rise to cost and should for that reason be required to bear more cost to help protect the person(s) now under threat of harm” (Barry & Øverland, 2016, p. 104).

If we accept this view that enabling harm has its own place in distributing responsibility, and that an enabler of harm should be responsible for both harm done as well as possible harm that could come to be, and should have to bear extra costs for this harm, then it seems that the EPP can be a good way to explain why oil-producing states should have to take more responsibility for GHG emissions and why they should have to bear more of the costs concerning climate change. In the next chapter, I will show what implications this view can have for an oil-producing state like Norway.

5 What Should Norway Do? Ideal and Non-Ideal Implications

In this thesis I have thus far discussed two main philosophical issues. The first is whether we can find justification for PSNR over offshore oil resources, and the second is the moral responsibility of the states that produce and export oil and gas. I have argued that we cannot find a good justification for PSNR over offshore oil resources and that oil-producing and -exporting states should shoulder more costs when it comes to climate change because they are enabling emissions. As there are no good arguments for preserving PSNR over offshore oil resources, this means that on an ideal level, the resources should either not be exploited at all (because they can lead to climate change), or the exploitation of these resources should benefit everyone equally. However, both of these ideal implications might not be feasible in the real world, which leads us to the non-ideal level, where we then have to ask: If the state continues to exploit the resources, how much responsibility should the state bear in the face of climate change? This can be done by sharing benefits with those directly harmed by climate change or by offering help, for instance accepting more climate refugees or helping with adaptation in exposed areas.

In this chapter, I will ask how these ideal and non-ideal implications could impact Norway as an oil-producing and -exporting state. I do not attempt to show all possible implications nor how these implications would in fact be carried out, although that is certainly very relevant. I will focus on three alternative paths. The first one is that Norway needs to stop oil and gas production immediately, both because there is no good foundation for claiming sovereignty over the resources and because the extracted oil and gas can lead to emissions that will continue to speed up the climate change process. The second implication is that Norway can keep on doing what it is doing since there is still a need for oil and gas in the world, but that it needs to compensate for the resource extraction by sharing the benefits with other states. The third implication I will focus on is that Norway needs to offer help to the victims of climate change and accept more climate refugees.

5.1 Should Norway stop extracting oil?

The first option is to stop oil and gas production altogether. Based on the argumentation that Norway has no good normative foundation for permanent

sovereignty over the offshore petroleum resources, this should be the preferred option. If Norway should not have a right to permanent sovereignty over its offshore resources, it should also not have the right to extract those resources. What rights it should have would depend on which system is legitimised. The question is what practical consequences this would have. Unfortunately, we live in a world that has become dependent on oil and gas. To cut the supply from one day to the next could have massive consequences, not only for oil producers. The IEA argues in its report that the demand for oil will decrease with almost 75 percent between 2020 and 2050, but there will still be a need for existing fields to deliver some oil (IEA, 2021, pp. 100-102). According to both the IEA and the IPCC report, oil-producing states like Norway should stop the exploration and drilling of *new* fields, not stop exploitation completely today. The world needs to adapt to a future with less oil and gas, but new investments should not be made. At the moment, however, Norway does not *have to* consider these institutions and reports. As long as Norway has permanent sovereignty over the petroleum resources, it can do what it wants with the resources no matter what the rest of the world thinks.

The question is then how the resources should be governed. In Chapter 3 I gave a short overview of cosmopolitanism, and how this system could affect the governing of resources. But cosmopolitanism does not necessarily mean that the climate and the environment is treated any better than it is today. It could just lead to even more resources being extracted, making it even worse for the climate, so long as the distribution of the profits is deemed fair. The question of how the resources should be governed remains the question. There is no effective global agent that could fill the governing role. We would still have to introduce a system where the resources are governed in a responsible way. I will propose that a way of doing this is to imagine a manner of “guardianship” over resources, as explained by Alejandra Mancilla (2021).²² This is only to show *one* possible alternative to permanent sovereignty, not to argue that it is the best way or that it is completely transferable to the Norwegian offshore resources. Mancilla has shown how the principle of guardianship over

²² This system can also be referred to as stewardship or trusteeship. Margaret Moore, for instance, understands stewardship as “the protection and maintenance of these areas for the common good of humanity, including the value of biodiversity, regulating climate change, and avoiding environmental degradation” (Moore, M. (2020). Is Canada Entitled to the Arctic? *Canadian journal of philosophy*, 50(1), 98-113. <https://doi.org/10.1017/can.2019.8> – p. 98).

natural resources has been successful in Antarctica. Seven states made territorial claims in Antarctica before these were all frozen when the Antarctic Treaty was signed in 1959 (Mancilla, 2018). In 1991, there was also an Environmental Protocol signed, and the Antarctic Treaty and this Environmental Protocol have been very successful for resource preservation and environmental protection, and Mancilla is therefore proposing that this kind of system of guardianship could be applied to other ecoregions (Mancilla, 2021). The question here is whether this could also be applicable to offshore resources or natural resources in general. There is one immediate challenge with arguing for this kind of system, a challenge that Mancilla also faces: there is a major difference in introducing guardianship in an area where there is no state sovereignty or, more precisely, where sovereign claims have been “frozen”, and in introducing it where a state (or more states) already has sovereignty. Mancilla is therefore not suggesting copying the treaty and the protocol, but rather adapting the principles from it. In Antarctica, no state’s sovereignty claims were accepted before the treaty was signed (Mancilla, 2021, p. 9). Thus the territory and resources in Antarctica was under no state’s sovereignty, and did therefore not have to be taken away from a state. In the case of the Norwegian offshore petroleum, on the other hand, Norway has PSNR which would have to be removed. But as Mancilla points out, just because today states have PSNR, and this might have been the best way to govern the resources in earlier times, that does not mean that it has to be the best system for today. “International law is a dynamic field, and it will continue to evolve as we get a better grasp of the fact that the political division of the world into discrete territorial units with extensive sovereign rights is environmentally and morally inadequate” (Mancilla, 2021, p. 9). What is implied in the view of guardianship is that states are not the sole decision-makers of the natural resources within their territory. This does not automatically mean that resource use would be better, but with the addition of some kind of environmental protocol, in accordance with standing international agreements, it could be easier to preserve the resources than when only short-term national financial gain is at stake. Introducing guardianship over resources like offshore resources would also make the governing of the resources less affected by sudden changes in national politics (Mancilla, 2021, pp. 4-5). Today, the governing of the Norwegian offshore resources is dependent on who is in government, which makes it more difficult to plan long-term and can also make it part of a political party’s national campaign promises – where the focus might not be the

global climate. A guardianship that would be in sync with leading international institutions could offer a resource governing more in accordance with global interests.

5.2 Is Norway entitled to its oil wealth?

Independent of the question of how the resources themselves should be governed is the question of who should receive the benefits. As we have seen, according to PSNR, states' rights "over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned" (UNGAR, 1962). The concern with this principle is the *national* development and the people of the *state concerned*. In the previous chapter I argued that oil-producing states should have to take more of the moral and financial responsibility for climate change, since they are enabling GHG emissions which in turn lead to climate change. That a state alone should not be entitled to keep the benefits of its resource use for itself is a much-debated issue (see for example Armstrong, 2017; Pogge, 1994; Steiner, 2005). I will not try to give a complete picture of all the issues or the possible solutions here, but I will rather focus on two theories that I believe to be relevant for the Norwegian case. First, I will provide a short explanation of Thomas Pogge's Global Resources Dividend (GRD) and show some of Tim Hayward's counter arguments against the GRD. That will then lead us to the second approach, which I will argue might be a better fit for the present case: Chris Armstrong's Sovereign Wealth Tax (SWT). Both of these theories are linked to global distributive justice and are concerned with evening out the differences in the world. Although this is a very important issue, my goal here is a different one. I will show how a state like Norway could in a practical sense be made more (financially) responsible for the damage done by the oil extracted and how it could share the (unjust) benefits it has received.

Thomas Pogge has introduced what he originally named the Global Resources Tax, but what has become known as the Global Resources Dividend (GRD). "The basic idea is that, while each people own and fully controls all resources within its national territory, it must pay a tax on any resources it chooses to extract" (Pogge, 1994, p. 200). The tax that he proposes is thus connected to the extraction of the resource, not the use. In the case of oil, that would mean that Norway would have to pay tax on the oil they choose to extract. This is different than the traditional carbon tax where

the emitter must pay a tax on what he is emitting – but the aim is also different. Pogge introduced the GRD as a tool for global distributive justice, to help even out the differences between states with many natural resources and states with less. Pogge argues that it will help to reduce pollution as well, since the tax would not only concern the producers or the extractors of the resources. The taxation of the original resource would be mirrored in the end product, which would lead to the end user/consumer also paying the tax indirectly: “The burdens of the GRT would not be borne by the owners of resources alone. The tax would lead to higher prices for crude oil, minerals, and so forth. Therefore, some of the GRT on oil would ultimately fall upon the Japanese (who have no oil of their own, but import a good bit), even while the tax would be actually paid by the peoples who own oil reserves and choose to extract them” (Pogge, 1994, p. 200).

The GRD has been much debated since Pogge introduced the concept. I will here focus on two problems that Tim Hayward sees with the GRD. First, Hayward argues that the tax will most likely hit poorer states much harder than Pogge explains. For many resources, the initial price of the raw material is low, whereas the end product with “added value” is much higher. Taxing only the “raw material” would then mean that the income from the tax would be much lower than if one were to tax the end product. Natural resources are not only to be found in rich states, there are poor states that are dependent on extracting and selling resources. These resources might be bought by rich states, who are “adding value” to them and selling them for a higher price, possibly even to poor states. Then the poor state who was extracting must pay more than the rich state, and the tax paid will be lower (Hayward, 2005, p. 321). Hayward’s second objection is his argument against the assertion that the GRD will have an effect on pollution. He argues that it is not possible to “have it both ways” – both to generate revenue from the pollution and to stop polluting. If one happens, then the other will not: if we want to generate revenue, then the pollution has to continue and if the pollution stops then we will not have any revenue (Hayward, 2005, p. 322).

Hayward notices that Pogge tends to use the example of petroleum, which in Hayward’s eyes makes the analysis weaker, since other resources might be different. We see, however, that with the Norwegian oil in mind, it is easy to argue against

Hayward's objections. My goal has been both to show that there is a weak foundation for treating natural resources as a purely national phenomenon, and to show that oil *producers* need to take more responsibility. Pogge's GRD does in fact answer to both: since extraction of all natural resources should be taxed and the benefits be shared, they are no longer treated as purely national, and since it is the *extraction* that is being taxed, that would mean that Norway would have to pay more than it currently does. If the emitter or end user would not have to pay tax at all, that would seem unfair in this case, but an additional carbon tax for emitting can very well be used together with the GRD. The GRD is concerned with the resource; a carbon tax would be concerned with the emissions. What Hayward is suggesting, that the state who has "added the value" and is selling it again should be taxed, would in the Norwegian case mean that Norway does not have to pay, which is what I have argued it should be doing. This does not mean that I disagree with Hayward. On the contrary, what it shows is that, although it may be fitting in our case, Pogge's GRD seems not to be the best solution for regulating natural resources, since the resources themselves are extremely different, as are the states that extract them. There is a difference between petroleum resources, food resources, and water resources, as well as the context in which they are extracted, and it is difficult to see how these can all be treated the same.

Hayward's second objection was that we cannot expect to generate revenue with which to make a more just distribution and to simultaneously stop pollution. Considering oil, there will still be oil extraction and usage, even if the taxes were to rise, because we do not have any good enough solutions for replacing it in the short term. Thus the revenue would keep on coming, at least in the short term, which could be used for global measures. But it is possible to imagine that higher taxes would lead to even more attempts to reduce the use of fossil fuels, which again could lead to less extraction, and then there would be less revenue to share. Carbon taxes, for instance, can be used to finance ways to help tackle the effects of carbon emissions, but the goal of the tax is to reduce carbon emissions. The second point is that if Norway were to stop extracting oil tomorrow, Norway would not have to share any of the benefits earned until now, thus would not be helping states that might have become poorer because of climate change, and would not have to take responsibility. The aim of the GRD is different to my aim: the aim of the GRD is to help restore

global justice, whereas mine has been to show that oil-producing states need to take more responsibility. GRD might not be the best solution for that. That leads us to Chris Armstrong's SWT.

Armstrong shows that not only Norway, but also other oil-producing states, have established Sovereign Wealth Funds (SWFs) "in order to manage revenues gained from selling resources such as oil and gas on a tide of rapidly climbing commodity prices" (Armstrong, 2017, p. 195). Like with the Norwegian Oil Fund, the revenue is invested in the international market and the returns are planned to help when there are no more resources (or the extraction stops for other reasons). What Armstrong is suggesting is that rather than taxing the resource itself, or the use thereof, the pure benefit, which in turn is invested for even more benefit, should be taxed. There are two immediate benefits to this as compared to the GRD in the case I have been arguing here. First, a tax on such a SWF would hit exactly where it is supposed to in the case of the oil-producing state: there is no chance that poor countries that are much more dependent on the resources and the income from them would become even poorer, since it would be targeting those states who have gained immense benefits and who have major funds. Second, it would also target past benefits, not only future ones. The money that Norway has been making from the oil in the last few decades is all part of the Norwegian Oil Fund and would be subject to the taxes. It would also not suggest that Norway should give it all away, which would be difficult to defend, but it would acknowledge the fact that Norway should pay more than other states. The revenue from the tax could be used for meeting the challenges of climate change. A tax like this would also show that the resources are not only for national use, but should be spent globally.

5.3 Is Norway responsible for helping climate refugees?

The climate change issues that we see today and that will occur in the future have given rise to a new wave of migration: climate migration. The IPCC report states that "[a]pproximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change" (IPCC, 2022c). These are people who might have to leave their homes if the changes become so drastic that the land becomes unlivable or completely disappears, as is the case with some small island states. This new migration wave brings with it new moral challenges: who is responsible for helping

those who have to leave their homes because of climate change? How do we deal with the situation that complete societies will be lost? What kind of help are they entitled to? Climate migration can take many forms, and I will start by making a distinction between a climate migrant and a climate refugee (as explained by, for instance, Bayes, 2018, p. 15). A climate migrant is a wider concept, used to explain movement in the population due to climate changes and extreme weather, whereas a climate refugee is someone who has lost their home or their livelihood and is forced to find a new home. Climate migration happens both domestically and internationally, and some climate migrants later end up as labour or economic migrants. Bayes shows that “[i]n most cases, climate refugees internally migrate to urban areas in search of livelihoods and living. In the long run, they convert to economic migrants, and many of them travel to foreign countries as labour migrants” (Bayes, 2018, p. 15), making it difficult to keep track of who is a climate migrant and who is not. I will in the following concentrate on climate refugees because those who lose their homes and are forced to move have an even more pressing need for aid and raise even more challenging moral problems. However, it is important to mention that climate refugees are not considered to be refugees in international law because they are not fleeing as a result of political reasons nor fear political persecution (Eckersley, 2015, p. 482). I have nonetheless chosen to use the term climate refugee both because it has become a well-known term when describing climate migration and because it explains what is happening in a clear manner. That being said, there are some important differences between political refugees and climate refugees. One difference that is of importance here is that where political refugees are treated as temporarily refugees (they have a right to stay in a safe country until they can go back home), climate refugees that have lost their homes have no homes to return to and need to be given permanent resettlement.

Robyn Eckersley argues that this should give climate refugees more rights to a choice in the matter of where they resettle to, since it will be a permanent one (Eckersley, 2015, p. 493). Eckersley further argues that both this and the fact that all states are partly to blame for the reason why climate refugees become refugees, makes a good moral case as to why states should have a duty to accept climate refugees and why the refugees should have more say in choosing where they end up (Eckersley, 2015, p. 494). There is another side to the fact that their entire home

disappears, as is the case with the small island states; it is not only their home that disappears, it is also their culture, their way of living, and their self-determination: “the entire structure of the self-determining life of a political community, including not just its distinctive goals but also its distinctive ways of pursuing universal goals such as justice and economic development, are washed away” (Kolers, 2012a, p. 334). The challenge is then not only that the refugees might have a right to choose where they end up, but also that we might need to place a whole community together to respect their life plans and secure their self-determination. This point is also made by Shelley Wilcox, who argues that replacing whole communities will be a better way to ensure that their needs are being met and to re-establish their way of life (Wilcox, 2021, p. 82). The question is then how to do this in the best way, since land and territory is limited. What the international society then needs to do is to make sure that there are enough resources for the technologies, research, and the actual implementation of these kind of projects.

But how does this relate to the implications for Norway in light of oil production and export? At the beginning of this chapter I made the distinction between the ideal and the non-ideal implications for Norway. As I have shown, stopping oil extraction immediately, although ideal, is not likely to happen. What Norway should then do with its oil wealth could be to share the benefits with other states. A different and more feasible implication is to use the oil wealth to help the victims of climate change, because Norway is partly responsible for them being victims. This means that Norway should take a more prominent place in helping climate refugees, which can be both in the form of accommodating refugees in Norway and securing resources with which to help refugees in other areas. This should also impact the humanitarian policies and practices, using more of the sovereign wealth to help with global humanitarian needs.

6 Conclusion and Unanswered Questions

My aim in this thesis has been to provide a critique of the narrow focus that has been the dominant one in the governing of petroleum resources, both with respect to how they are governed and what responsibilities have been connected to the producer of oil, with a concern for climate change. I have argued that this narrow focus needs to be widened and that Norway needs to take more responsibility for paying the costs of climate change and for helping climate refugees, and that it is not legitimate to keep the decision-making concerning the petroleum resources strictly within the state.

There are still many unanswered questions. I have used an instrumental definition of natural resources, but it can be questioned whether this is the best view, and how this view affects our understanding of the resources. How does the fact that we call them “resources” and that we define them as valuable *to us*, as humans, affect our governing of the resources? I have also attempted to show that the normative foundation for PSNR is weak, but I have not answered the question of what a better resource management should look like, which would be a natural next step.

The question of climate refugees is a very complex one, and I have only scratched the surface here. This will be one of the important moral challenges to come and it deserves much more focus and discussion than I have had the possibility to give it here. One important question is how we define climate refugees – my concern here has been those who directly lose their homes because of climate change, but what about those who must flee because of conflict that can be traced back to resource scarcity produced by drought or overflowing? Should we consider them to be political refugees who have to flee because of conflict, or climate refugees who must flee because of climate change and extreme weather? Further, the topic of how best to share benefits that are received from either activities causing climate change or resource use in general is a topic that could be discussed more.

Even though there are many unanswered questions, I believe that I have made a strong case showing that the fact that states own offshore natural resources and can exploit them for their own benefit is an arbitrary and unjustifiable fact in international law today – a fact that is enabling climate change. Ideally, this would mean that we

should stop treating these resources as owned by states, and states should stop exploring them. Realistically speaking, this might not happen anytime soon. I have therefore argued that a current oil-producer like Norway should take some measures to shoulder their responsibility as enablers of climate change, for instance sharing the benefits from oil production and exploring and helping climate refugees, in order to make amends for emissions from Norwegian petroleum over the previous decades.

7 References

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