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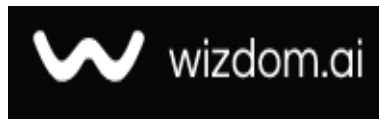
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Risk Theory as a Basis for International Responsibility for The Unilateral Exploitation of Joint Oil Fields

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Abstract

General Background: The exploitation of cross-border natural resources, particularly oil fields, poses intricate challenges in the realm of public international law. **Specific Background:** While the principle of permanent sovereignty grants states the right to utilize resources within their territories, complexities arise when these resources span multiple jurisdictions. **Knowledge Gap:** Current legal discourse lacks comprehensive analysis on the basis of international responsibility for unilateral actions within such joint resource zones. **Aim:** This research investigates the international legal foundations for state responsibility in the unilateral exploitation of shared oil fields. **Results:** The study demonstrates that although a state may act within its sovereign rights, unilateral exploitation can cause transboundary damage, thereby invoking international responsibility grounded not on fault, but on harm caused. **Novelty:** The research introduces risk theory as a legitimate basis for attributing international responsibility, even in the absence of unlawful conduct, emphasizing damage and causation over intent. **Implications:** This approach promotes equitable resource governance and offers a legal framework to mediate disputes between states sharing oil reserves, reinforcing international cooperation and environmental justice principles.

Highlights:

- Defines state responsibility for exploiting transboundary oil fields.
- Introduces risk theory as a legal basis beyond fault.
- Emphasizes equitable and cooperative resource management.

Keywords: Permanent Sovereignty, Unilateral Exploitation, Joint Oil Fields, International Responsibility, Risk Theory

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Introduction

The subject of international responsibility is one of the important topics within the framework of international law as it relates to the regulation of relations between countries by regulating their obligations and rights and the legal consequences of violating these obligations, and raises the management of joint oil fields across the land or sea borders of two or more countries a set of technical, legal, political and economic issues. The exploitation of the joint oil field represents a real challenge for the concerned countries, which have to balance between the rights and duties imposed by the nature of participation in these fields or. In other words, these countries must balance between their sovereignty over their oil wealth and the sovereignty of the countries participating with them, and international responsibility is a necessary means of legal regulation of international relations and ensuring international cooperation on the basis of the common interests of countries, especially in the exploitation of common oil fields.

In light of the growing global dependence on energy, and the increasing discoveries of oil fields in land and sea border areas, the issue of exploiting these fields has become a real challenge for the concerned countries, and the most prominent of these challenges is the position of the countries concerned towards two important principles, the principle of sovereign equality and the consequent agreement and cooperation of countries to exploit field, or if the state adheres to the principle of absolute sovereignty and carries out unilateral exploitation without coordination with other states, and thus this act leads to tension in international relations,

In this research, we try to shed light on the international legal system that applies to the joint oil fields and the foundations and general international legal principles on which it is based and the relevant international conventions and the research was not limited to a specific spatial or regional scale as it aims to demonstrate the international practice of the principles governing the exploitation of joint land and offshore oil fields and reveal the extent of their stability in the international community.

As for the objectives of the research, they are summarized as follows:

1. Analysis of the concept of unilateral exploitation of the joint oil field.
2. Shedding light on risk theory and the extent to which it can be used as a basis for state officials for unilateral exploitation.

Method

The research problem is determined in the following points:

The nature of the subject necessitated the use of several approaches, including the descriptive approach through the study of the theories raised by the exploitation of oil fields extending across international borders, and the analytical method through the review and analysis of United Nations resolutions, general principles of international law and principles adopted in shared natural resources.

This research was divided into two sections:

1. The first section we will devote to the statement of the sovereignty of the state on the common oil fields through two requirements, show in the first the concept of participation and overlap in the oil fields and show in the second requirement the sovereignty of the state on the joint oil fields.
2. The second section examines the theory of risk as a basis for international responsibility for the unilateral exploitation of the common oil field, through two requirements show in the first the concept of risk theory and in the second requirement the work of risk theory as a basis for international responsibility for unilateral exploitation and finally the conclusion of the research, and will include the most prominent conclusions reached and the most important suggestions.

Result and Discussion

A. The First Topic : The Sovereignty of the State Over the Joint Oil Fields

If it is now recognized in the jurisprudence of international law that each country can exercise its permanent sovereignty over its oil fields, this recognition may collide with the economic, technical and practical requirements that must be taken into account in the exploitation of common fields. It will divide this section into two requirements show in the first the concept of participation and overlap in the oil fields and show in the second requirement the

sovereignty of the state on the common oil fields.

1. The first requirement : the concept of participation and overlap in oil fields :

Oil is one of the liquid minerals that are not separated by geographical boundaries, it is possible to exceed the territory of the State and extend to another State in a way that allows it to be partially or completely exploited from the other side of the border, unlike solid metals separated by the border line into independent units that can be identified, each of which is located under the authority of the State in which it is located, and there are many places where the oil fields are located in terms of their geological location in the ground, as their extension may be within the borders of the territory of one State [1]Or it may cross entire regional areas by crossing the boundary line separating States [2],[3]because the natural geological unity of the earth does not recognize the boundaries and separations made by man on its surface, then what is known as common oil fields is achieved.

The rules of internal law govern the exploitation of national oil fields that are located within the territory of one state and this does not lead to the emergence of any legal problem as it is subject to the sovereignty of the state alone and that each country has the right to exploit its land and sea territory optimally, but the matter is different in the common oil field because of what we referred to from the nature of oil being a liquid mineral that is not separated by geographical boundaries as the start of the exploitation of the joint field may lead to the transfer of oil within the scope of the field through The boundaries between countries towards low-pressure areas that arise as a result of the start of production from a specific sector in the field or joint oil installation, as the increase in oil activity and the intensification of the pace of drilling oil wells leads to a reduction in reservoir pressure, allowing oil and gas to move through porous media to the place of low pressure represented by the exploitation of the newly drilled oil well[4]Common oil fields represent those fields that have an extension across the borders of two or more countries, and the joint oil reserve represents the reserve of fields that have an extension within the borders of two or more states and is located partially under the territory of two or more states and this reserve may be in the ground or in the subsoil of the seabed, and in either location is still subject to conflicting national rights in exploitation and as such it is a potential source of international dispute over the nature and extent of the rights that each A State[5][6]

which requires the establishment of an appropriate legal regime regulating the exploitation of these fields in order to prevent future conflicts, since the oil reserves exceed the borders of the State to another State or States [7].

Wild fields: when they are located between the land territories of the participating countries, whether bilateral or multilateral.

a. The unilateral exploitation of the joint oil fields raises a pivotal legal problem represented in the international responsibility that this act entails as a result of the damage achieved due to unilateral exploitation, due to the ability of oil to migrate while it is in the ground, as it is a migratory material if the values of atmospheric pressure on it change, which requires that the countries to which the field extends work together to manage and preserve it.

b. The possibility of international responsibility according to the theory of risk on the State that practices unilateral exploitation?

c. The legality of unilateral exploitation from the perspective of international law?

d. Offshore fields: when they extend to the boundaries of the maritime territories of adjacent or opposite countries, or may sometimes be between the coastal State concerned and the rest of the world, as if such fields extend beyond its maritime territorial boundaries to reach the international zone.

Common oil fields can be defined as fields that have an extension across the borders of two or more countries outside the borders of the land or sea state between neighboring or opposite countries, or may sometimes be between the coastal state concerned and the rest of the world, as is the case if these fields extend beyond their maritime territorial borders to reach the international zone. These fields can be exploited in whole or in part by the countries to which it extends and the exploitation by one of the countries affects the common oil reserves in these fields.

In terms of the diversity of naming these fields as transboundary or cross-border fields or joint oil fields, what is consistent with this study is the naming of oil fields as joint, as the description of the fields as transboundary is a description of the state of oil wealth, either naming them as joint, it arranges provisions related to the way to deal with this participation and the responsibility of the state participating in these fields and its actions and responsibility for unilateral exploitation.

B. Second Requirement : Permanent Sovereignty Over Shared Oil Fields

The term sovereignty in general is the supreme authority of the State within its territory and its independence from others or its non-subordination to the authority of another party or the competence of States to adjudicate and

regulate matters within its competence [8] Its public facilities and in imposing its authority on all the people and things on its territory, and an external appearance based on the independence of the State by managing its foreign relations without being subject to any authority [9] After the stability of the principle of the sovereignty of States, more specific ideas related to the principle of sovereignty such as the principle of non-intervention and the principle of equality between States and the supremacy of international law over any other legal norms [10] The Charter of the United Nations has stipulated the principle of sovereign equality among all its members and the right to self-determination [11] A new phase has begun after a number of developing countries obtained political independence and increased in number began to demand the need to change their economic conditions and reconsider the existing economic system, and make it more just and equitable and in light of these changes States have realized that their sovereignty remains truncated, if not accompanied by the principle of sovereignty over their oil and natural wealth, as they sought to link their sovereignty to their economic independence, the sovereignty of the state over its oil fields is an embodiment of the economic appearance of sovereignty, and the permanent sovereignty of states over their resources means the freedom of the state in Control and direction of the State for the benefit of its people without interference by any foreign State [12] is a consequence of the State's independence, since a State cannot complete its political independence without achieving its economic independence, provided that economic independence does not conflict with international economic cooperation based on equality and mutual benefits in law [13] The completion of the formation of the theory of the economic sovereignty of the State was considered one of the most important mechanisms by which the new States wanted to re-establish their control over their oil fields [14] or intends to exploit them and any other State must obtain the consent of the territorial State to exercise any right over these resources [15] This right means that drilling does not extend to the deep layers located under the territory of a neighboring or opposite state, so as not to constitute an attack on the property and sovereignty of the countries to which the field extends, the principle of territorial integrity will be violated through the unilateral exploitation of the oil field, whether on the territory or continental shelf of a neighboring state, and this principle will also be violated if exploitation on one side of the border causes material damage on the other side, even if these operations are legal, Proving violations of the principle of territorial integrity is particularly difficult in the case of shared oil fields because these deposits are characterized by a complex balance between rock pressure, gas pressure and latent water pressure, so that the extraction of oil at some point changes the conditions in the sediments completely. Without knowing the full geological composition of the field, no one can determine whether and to what extent a State has been damaged as a result of the exploitation of the field by another State. [16]

We believe that the sovereignty of states cannot be complete without their sovereignty over their oil fields and to clarify this since the term sovereignty in general is understood from the supreme authority of the state within its territory and independence from others and not being subject to the authority of another party and in other words it is a completely independent state in the management of its internal and external affairs, the inability of the state to control its oil wealth and its subordination to the authorities of another state makes the sovereignty of these countries incomplete sovereignty, so economic sovereignty It came to complement the sovereignty of political states and support them by affirming their right to control their wealth and the freedom to manage and invest them. The permanent sovereignty of the state over its natural resources is economic sovereignty and it is a consequence of the state's enjoyment of independence. The state cannot complete its political independence without achieving its economic independence by exercising its sovereign jurisdiction over its oil fields without being subject to the authority and direction of any foreign state, provided that economic independence does not conflict with international economic cooperation based on equality The Charter of the United Nations constitutes [17] a fundamental point in the question of sovereignty over natural resources, as it affirms the establishment of the United Nations on the principle of sovereign equality among all its members [18] , [19] The United Nations General Assembly also recognized the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, both of which affirmed the right of peoples to self-determination, the right to determine their political status and the right to pursue their economic and social development, as well as the right of peoples to dispose of their natural resources and wealth without prejudice to international economic cooperation and international law [20] , Without tracking all the effects of international recognition and recognition of the sovereignty of a State over its natural resources, including oil and gas, in international conventions and conventions, there is no longer any international dispute over the right of each State to exercise its sovereignty and permanent control over the sources of its natural resources, especially oil and gas resources located in its land and sea territory, and over all economic and productive activities directed to the exploitation of those resources in a manner commensurate with their circumstances. All reservoirs and oil fields extending within the boundaries of its land and maritime territory without being disputed by any State [20].

1. The second topic : international responsibility on the basis of risk theory in international law :

What distinguishes this theory is that it does not require the availability of the element of error in the behavior or activity of the state, and does not require that the state's harmful behavior came as a result of an internationally wrongful act, but rather is the fulcrum or basis of responsibility on the basis of this theory is damage and its goal is to obtain fair compensation as long as there is a causal relationship linking the damage and the cause of the damage, which can only be applied to a legitimate activity from the point of view of international law. The essence of responsibility lies in the risks involved in this activity and the consequent damage caused by the exercise of damage [22] It is sufficient to achieve damage to a State resulting from the activity of another State, even if that activity is legitimate and the theory of risk is linked to the idea of damage to others without the State issuing any illegal act or error [23] In this requirement, we will try to clarify the concept of risk theory through its definition and

effectiveness in determining international responsibility and confronting the risks of unilateral exploitation of joint oil fields according to the following:

a. The first requirement : the concept of objective theory (risk theory):

The idea of resorting to the traditional rules of international responsibility involves in some cases the consequences of losing the rights of States to repair the damage or loss, as they need to prove the error or wrongful act on the part of the State that caused the damage, and it was necessary for legal systems to search for a compromise solution in light of the technological development known by the international community, which brought about multiple changes. International responsibility is no longer limited to the mere commission of a violation of international law, but has become linked to the existence of damage resulting from an act or omission committed by the State, regardless of whether or not such action or omission involves a violation of international law [24] , Responsibility comes out of the concept of error, which has become difficult to prove, and also led to the distance from the theory of the wrongful act, which has also become difficult to resort to to face the damage resulting from the legitimate acts carried out by states and not responsible for them, although they caused serious damage to other countries, so the "risk theory emerged to solve this problem. Although all due precautions have been taken, some dangerous activities result in damage that in many cases transcends international borders [25] , [26] Liability on the basis of risk is realized because of damage resulting from legitimate activities but contains great risks, regardless of the existence of negligence, negligence or error on the part of the State, it is responsibility without fault for a hazardous activity [27] The State responsible for a hazardous activity bears the damage caused to others, without resorting to proving the fault on its part [28] But this theory requires a causal relationship between the State's activity and the damage [29] , [30] International jurisprudence has divided into two directions on the work of this theory, the first rejecting the introduction of the concept of international responsibility on the basis of risk in the field of international relations, while the second trend called for the adoption of risk theory as a general principle of law, which is based on the principle of territorial sovereignty established in customary international law as a general rule granting States exclusive rights over their territory. It prevents the violation of this sovereignty by others, and in return imposes obligations on States not to cause harm to others outside their territorial jurisdiction and adversely affect the territories of other States [31] Risk theory has found many applications in international justice, public international law and international jurisprudence, at the level of international judiciary we find that judicial rulings have referred to this theory in many international cases that have been filed by States affected by the legitimate act of another State as many conventions have been enshrined International international liability on the basis of risks in various fields [32] The jurisprudence dealt with this theory with several names, the most important of which are risk theory, the theory of objective responsibility, the theory of absolute responsibility, the theory of bearing responsibility, and responsibility without fault, and it has been defined by multiple definitions, including (that the idea of bearing responsibility is necessary to achieve justice, and that the basis of responsibility is just causing damage regardless of the error), including it (a legal situation under which the state attributed to carry out an act or activity is obliged to compensate for the damage which affects another State or one of its nationals as a result of such an act or activity [33] , [34] and also (liability incurred by the State for damage resulting from lawful but dangerous activities, irrespective of the existence of negligence, negligence or fault on the part of the State, it is liability without fault for a hazardous activity).

It can be defined in the scope of our research as the responsibility borne by the state as a result of its legitimate activity in the exploitation of the joint oil field when this exploitation results in damage to the countries involved in the field, provided that the causal relationship between the exploitation activity and the damage is proven, which leads to the achievement of international responsibility and the need to compensate for this damage.

b. The second requirement : the work of risk theory to establish international responsibility for the unilateral exploitation of common fields :

After the concept of risk theory has been reviewed, a question arises about the extent to which the work of this theory can be carried out as a basis for international responsibility in the event of unilateral exploitation of joint oil fields to bypass cases in which it is difficult to prove error or unlawful action on the part of the state that caused the damage in order to preserve the rights of the countries that participate in the oil field from loss. This act?

Applying the basic idea of this theory, which is that the responsibility is borne by the State that carries out certain activities within its territory or areas under its authority, as long as it has resulted in damage without the need to prove that it has committed a mistake or breach of international obligations, on the State's activity in exploiting the common oil field, this activity is considered legitimate as each State can benefit according to its desire from the exploitation of oil fields in its territory as the geographical area over which it is valid to exercise its authority based on its permanent sovereignty. On its oil fields, but this right is restricted by the condition of not harming the interests of other countries involved with it, and this is confirmed by the general principles and what was settled by international dealing, which is consistent with the requirements of the theory, the condition of the existence of legitimate activity within the territory of the state that causes damage to another country, i.e. transboundary damage, and this damage is that the unilateral exploitation of the common field leads to the depletion of oil reservoirs in the common field and damage to them due to reducing pressures and as a result (reservoir damage) can not exploit the rest of the reserve oil, which leads to the need for secondary methods, costly on the one hand and the difficulty of achieving production on the other [35] even if the State that caused the damage, has only extracted its original share that it owns, which is located below the surface of its territory or continental shelf.

There is also another type of damage that can affect other neighboring States as a result of unilateral exploitation, which is to disturb the collective balance of all States participating in this stockpile and that Because of the special nature of the joint oil fields, which have already been referred to and we have shown that the joint oil field, is the field that extends beyond the borders of the state and can be exploited in whole or in part from any side of the border line of the countries to which it extends, where the exploitation by one of the countries affects the common oil reserve in the field being a common property of the participating countries should be shared fairly, in addition to that any unilateral exploitation by the state from Within its territory, it can affect the total exploitation of the field because the exploitation must be in accordance with technical controls that require cooperation between countries in order to sustain this field for the maximum possible period. [36]In order for liability to be realized under this theory, in addition to the damage achieved, there should be a causal link between the damage caused and the unilateral exploitation activity of the common domain, without the need to prove the fault of the State or to prove that it has committed an internationally wrongful act. [37]

We believe that each State is responsible for the damage caused to other States participating with it in the field as a result of the unilateral exploitation activity of the common field because it was carried out within the limits of its jurisdiction, or was carried out under its supervision, or under its powers. It is an illegal act, the absence of error or illegal action or the inability to prove them does not prevent compensation for the countries involved in the oil field for the damage caused to them by wasting their economic resources, in addition to the considerations of justice and fairness call for not leaving them without repairing the damage suffered, which is what the International Law Commission settled on, as international responsibility is an obligation to compensate that does not result from the realization of an illegal act, but simply results from the verification or occurrence of damage Even if that activity is lawful and justified, it is of paramount importance for the protection and maintenance of the rights of States that international responsibility be based more on the mere existence of a causal link between the activity and the injury than on the intention of the injury or other wrongful conduct.

Conclusion

After completing the research of the subject, it is necessary to summarize the conclusions reached, and then derive the proposals that resulted from it, which we hope will be appropriate and appropriate for it, and this will be through dividing the conclusion into two separate paragraphs as follows:

First: Results

1. International responsibility is linked to permanent sovereignty over shared oil fields, as it concerns the balance of the relationship between the rights of states to dispose of their resources and their international obligations.
2. Although states have a permanent sovereign right over their resources, this right is not absolute, but must be exercised in a way that does not harm other countries, as permanent sovereignty gives states the freedom to dispose of their resources, but it is not a shield against international responsibility and any violation of international standards during the exercise of this sovereignty can hold the state legally responsible.
3. The theory of risk serves as the basis for international responsibility for unilateral exploitation, where the responsibility of a State carrying out certain activities within its territory or areas under its authority is incurred as long as they have resulted in damage without the need to prove that it has committed the fault or breach of international obligations.

Second: Proposals :

Based on what was discussed, the researcher reached the following proposals:

1. Countries should adopt the common development model as a temporary arrangement to enable them to jointly exploit oil reserves instead of being preoccupied with disputes related to the delimitation of borders, the resolution of sovereignty over the disputed area or the determination of its borders, until the demarcation of borders is resolved, which requires a long negotiation process.
2. Benefiting from international jurisprudence issued by international judiciary and international arbitration tribunals, as these precedents contribute to the knowledge of states of their rights and duties towards the common oil field.

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