The Principle of International Financial Transparency and Prospects For its Application in Libya

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Abstract

Oil revenues can lift millions of citizens in developing countries out of poverty, but they can also allow corruption through the secrecy that is manifest in many contractual deals and the discretionary power of public officials over national resources. This is recognised as the resource curse. Refers to the United Nations General Assembly Resolution No 2158of 1966 recognises that the natural resources of the developing countries comprise a corner stone of their economy's development in general and their industrial progress. Except that, many citizens in developing countries have suffered from corruption, which leads to conflict and illegal foreign exploitation of extractive wealth. Greater corporate transparency in the oil sector will help to face corruption, tax abuse, and mismanagement. Recently, there was an orientation toward more transparency in petroleum sector. Moreover, various international initiatives and parties called for more financial transparency in financial reporting, especially based on country-by- country reporting. In the same context, some international initiatives and legislation have started to put in place a reporting system demanding specific financial data based on country-by-country projects. The extractive industry transparency initiative (EITI), for example, is an international coalition set up an international standard basically aimed to promote transparency in the oil sector. Adhering states have the responsibility to provide financial statements and reports for citizens. Furthermore, the Dodd-Frank Act requires listed firms operating in the United States in the petroleum sector to disclose and publish the payments made to governments. Comparably, the European Union, established the EU Accounting and Transparency Directive on July 2013 imposed on listed and no listed oil companies to disclose payments to national governments in their annual financial report.

In the case of developing countries such as Libya, the concept of financial transparency has recently taken on a greater importance. Accurate and adequate financial transparency is crucial to ensure that oil revenue is managed to profit the whole population. Actually, the control of oil and gas revenues appear as a main cause of the conflict that has separated Libya in two side since 2014. This conflict has demonstrated itself in military fighting over Libya oil crescent. The competition has affected Libyan oil institution by dividing the financial oil institution (National Oil Corporation and Central Bank of Libya) in two over east and west of Libya among Libyan army in east and government militias in west. The question still to ask: Does foreign actors after Berlin conference stop the civil war? In purpose to protect their interest, foreign bankers have only accelerated the war instead to pave the way of peace to Libya. The instable politic situation leads Libya to a large civil war around the Libya capital city with Therefore, the implementation of the international standards of the principle of financial transparency could be a legal solution to make the necessary reforms in Libya's legal financial reporting system and oil institutions to supervise and monitor the management of its oil wealth. The international initiatives and different regulations should encourage Libya to adopt the international rules and set-up a new reporting system founded on international accounting standards. This could be the solution to create its own legal mechanisms in purpose to form its legal reporting system framework. However, Libya should adopt these international rules while balancing between foreign investments those of local stakeholders. The Libyan chairman of the National Oil Company and legal researchers are convinced to promote financial transparency in oil sector management by providing transparent process that respects the legal framework for licensing protocols, exploration, and production with foreign

investments. The main objective of this study is to find how Libya can implement the IFT principle.

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List of Abbreviations and Acronyms

API	**American Petroleum Institution**
CG	**Corporate Governance**
DTRs	**Disclosure and Transparency Rules**
EU	**European Union**
FSMA	**Financial Services and Markets Act (2000)**
FCPA	**Foreign corruption practices act**
FSA	**Financial Services Authority's**
FCA	**Financial Conduct Authority**
GNA	**Government of National Accord**
IAS	**International Accounting standards**
IFT	**International Financial Transparency**
IFRS	**International Financial Reporting Standards**
IMF	**International Monetory fund**
ICJ	**International Court of Justice**
IBRD	**International Bank for Reconstitution and Development**
IFC	**International Finance Cooperation**
LPL	**Libyan Petroleum Law**
LPA	**Libyan Political Agreement**
LEAA	**Libyan Economic Activity Act**
LSMA	**Libyan Stock Market Act**
LCP	**Libyan Constitution Project**
NDA	**Non-Disclosure Agreement**

PCAOB	**Public Company Accounting Oversight Board**
PSA	**Producing Sharing Agreement**
PC	**Presidency Council**
PCIJ	**Permanent Court of International Justice**
OECD	**Organisation for Economic Cooperation and Development**
MDA	**Mining development agreement**
NTC	**National Transaction Council**
NOC	**National Oil Company**
UK	**The United Kingdom**
UAE	**United Arab Emirates**
UKTR	**2015 UK Transparency Regulations**
USA	**United States of America**
WBG	**World Bank Group**

1.1 Table of Contents

Chapter 1: Introduction

1.1 Motivation

A civil war, a divided nation, two governments, two central banks, and Libya's oil revenue has put east in conflict with west[1]. Roughly eight years after revolution and the fall of Mummar Gaddafi, the country is profoundly divided between east and west. The wealth from petroleum revenue has played a key role in the current civil war. Currently, the militias are fighting to seize and redistribute the oil revenues. The Libyan NOC chairman, Mustafa Sanallah, accused foreign oil companies of dealing with illegal and parallel institutions, which can lead Libya to division[2]. Sanallah, furthermore, added that: "we hope we could strike a quick solution to this dilemma, so the NOC can work without any restrictions". Transparency is an important part of Corporate Governance in the commercial sector, especially for listed commercial companies[3]. Transparency helps to rebuild trust and provides confidence between investors and international firms by providing adequate financial data to profit local stakeholders. Therefore, what does financial transparency mean in the extractive industry? And why does transparency in the oil and gas matter?

The meaning of the general concept of financial transparency, as a fundamental concept, is to identify the general principle of International Financial Transparency (IFT), which could not be done without understanding the main term of Corporate Governance in general and the extractive sector. However, Corporate Governance is a large concept[4] and is

[1] 'Haftar and the Battle for Libya's Oil Wealth' Aljazeera News, broadcasted 06/04/2019.
<https:// www. Aljazeera .com/programmes/ counting the cost/2019/04/03.
Accessed on 16/05/2019.
[2] Abdulkadir.A(2018) 'Libya's State oil firm chief warms of dealing with eastern parallel institution', (Libya Observer) posted in Economy July 01.2018.
<https:// www.Libyaobserver.ly/economy/Libyas-state-oil-firm-chief-warms-dealing-eastern>.
[3] Sonmez.M (2014), the role of better transparency law in corporate governance and financial markets and its practicability in legal systems: A comparative study between the UE and Turkey, Durham university thesis 2014.
[4] A deep definition and identification of the concept of CG will be done consecutively in chpter2 and 3.

not easily defined. Basically, Corporate Governance means taking control and making corporations accountable by the fulfilment of the social obligations of corporation leaders for the purpose of sustainability[5]. The concept of financial transparency is more explicit, clear, and easy to distinguish from the concept of Corporate Governance because it requires business to be socially responsible transparent for their activities.Corporate Governance, no longer confined to the relationship of managers and shareholders but treats the firm as quasi-public institution answerable to its stakeholders and society in general[6]. So, the identification of this concept has to be done to avoid any confusion with the concept of financial transparency.

The inability for the resource- rich country to effectively use their wealth to develop especially after the financial crisis of 2008 and 2009 and its effects on financial market regulation. Legislators and law makers always react with a new rule which focus on the difficulties relating to Corporate Governance in general and transparency in special[7]. Refers to Quian Guili and Tsang Albert after the week of Enron accounting scandal of early 2000, which is quickly followed to BMY, World com, and Xerox. Many stakeholders, customers, the media, and investors began to pay more attention to corporate financial transparency and transparency misconduct[8]. At the last decade the need in financial transparency increased whilst there was a steady decrease in the principle of confidentiality in financial market. Thereby their financial

[5] Wilson. I (2006) Regulatory and Institutional Challenges of CG in Nigeria Post Banking Consolidation, (Nigeria Economic Summit Group Indicators 12(2) 1-10).
<https://www.Sciejb.com/reference203899>
accessed on 16/04/2016.
[6] Osso. L(2012)'The Concept and Practice of CG in Nigeria, the need for public relations and effective Corporate communication V3(1) JCS4.
<https;//www.semanticsholar.org/Paper/The concept-and-Practice-of-Corporate-Governance>
Accessed on 28/03/2020.
[7] Marsh. T and Pbleiderer. P (2010) 'the 2008-2009 financial crisis, risk model transparency an incentive', (Rock Centre for Corporate Governance at Stanford University), working paper n 72, posted on 14/01/2010.
<https://www.resrachgate.net/Publication/228294301-the2008-2009-Financial-Crisis-Risk>....
Accesses on 16/05/2015.
[8] Guili. Q and Albert .t (2015) 'corporate philanthropy, and ownership type, and financial transparency', journal of business ethics, 4 (30), p851-867.

economy has attracted a lot of attention.[9] The majority of authors thought that the relation between Corporate Governance and financial transparency are the main cause of the gap between developed and developing countries.[10] In fact, disclosure and transparency in the commercial sector play crucial roles in Corporate Governance allowing organisations to publish financial data on management practices, such as financial statements or annual financial reports[11]. Good Corporate Governance based on effective financial transparency, furthermore, helps oil sector in developing countries to limit the gap between it and developed states in general and the gap between the interests of the majorities shareholders and minorities inside oil firms[12].

The challenge for the resource-rich countries is to be able to properly manage their resources. The need of financial transparency in oil and gas sector could be explained also, by a lot of money which are paid to governments in the form of taxes, royalties, licence fees and dividends, which should participate in economy development of resource – rich countries. Those countries, however, were unable to transform resource wealth into wellbeing[13]. when Funds generated by oil sector are not well used, this wealth could convert in resource 'curse' for the resource –rich countries and especially the developing countries. That why, IFT paves the way for different governments to think how they can make oil and gas sector work for societies and not against them[14]. One instance, governments can use the bonuses come from

[9] SUzoigwe .M (2011), exploring multi-stakeholder initiatives for natural resource governance, the example the (NEITI), a thesis submitted to the University of Birmingham for the degree of doctor of philosophy, p16.
[10] Many authors such as, Prebich, 1950, Singer, 1950, Harshman, 1958.
[11]Al-Habshan.K (2015), 'Corporate governance Disclosure Practices and Protection of Shareholders in Saudi Arabia', thesis submitted to LLB Abdul – Aziz University for the Doctor of Philosophy in law, p27-35.
[12] EL Diftar. D (2016)' Institutional Investors and Voluntary Disclosure and Transparency in Egypt', thesis submitted to Cardiff Metropolitan University for the degree Doctor in philosophy, p18-25.
[13] International Transparency (2011)' promoting revenue transparency report on oil and gas companies' <https;//www.transparency.org/news/feature/Promoting.revnue>.
Accessed on 16/5/2015.
[14] Aljazeera News (1).

extractive industry to develop the others basic needs such as, health, education, and transportation sector.

In addition, making the management of natural resources more transparent could help developing countries facing poverty and reducing corruption due to the misconduct of the money releases by extractive industry. Many of these countries were unable to control the activities of extractive companies and promoting the welfare of their citizens[15]. Libya as one of these states is still incapable to manage its oil and gas revenue in favour of its citizens. Libya has been heavily reliant on its hydrocarbons sector. Hydrocarbon revenues accounted for approximately 90 per cent of government revenues, which are generally associated with corruption and a lack of accountability and financial transparency (the 'resource curse').

It is clear today that financial transparency in the Libyan oil sector is almost non-existent, reflected in corruption and unequal distribution of natural resources among Libyan citizens. Also, the absence of an adequate Libyan reporting system with a weak financial transparency legislation, especially, in oil sector. The 2007 report issued by the Crossroads Freedom House gave Libya a score of 0.66/7.00 in the anti-corruption and transparency category before the 2011 Revolution, since which Libyan international transparency has further declined to the rank of 146 out of 178 countries, making it the third-most corrupt nation in the Middle East and North Africa (MENA), ahead of only Yemen and Iraq[16]. There has been no financial transparency during the last four decades in Libya, which is why the application of the IFT in extractive industries is proffered as a solution to improve its oil-dependent economy[17].

[15] Aljazeera News (1).
[16] Natural Resources Governance Institute, 'Libya transparency snapshot', www.resoursesgovernance.org, <https://resourcegovernance.org/.../Libya/Transparency-snapshot.>
[17] Fekete. J (2013)' Canada promises to improve corporate transparency in oil gas and mining sector'. <https:// Canada.com/news/Canad-promises-to-improve-corporate-transparency-in -oil-gas> Accessed on 1/12/2015.

The situation of Libya oil and gas sector could explain the main motivation. It is important to analyse how Libya's government could enforce its transparency rules to promote its oil and gas governance. The crucial motivation is to help Libyan oil institutions to adopt an effective financial reporting system based on the international standards set up by international initiatives. Essentially, with balancing between the interests of foreign oil firms and those of local stakeholders. Consequently, how does Libya go to implement this IFT principle? In purpose, to attacking the issues come from the resource 'curse'.

Ultimately, to summarize the motivation of the research is firstly, to determinate the features of the IFT and its application in the world. Secondly, is the potential of its application in Libya, in way to affect positively its oil sector.

1.2 The context of this study

The context of the research is understanding and defining the main concept of this research. The study seeks to identify firstly, the international principle of financial transparency. After that, I will ask if the international rules form this principle can be applied in Libya with taking in consideration the Libyan legislation features and its current financial reporting system. So, analysing progressively the main concept of this study will help to answer the main question of the eventuality to implement the principle of IFT in Libya. The context of the research is divided in three-parts: financial transparency, IFT in oil and gas sector, and the prospect of its application in Libya.

Firstly, the main concept is financial transparency. This will become clear when the concept of financial transparency is identified it and to distinguish it from another similar concept such as Corporate Governance and accountability. In purpose, the context becomes clear and comprehensive.

Corporate Governance is not financial transparency. Transparency and disclosure are important elements of a vigorous Corporate Governance because they keep shareholders, stakeholders and potential investors informed of capital allocation, corporate transaction and financial performance[18]. Transparency and disclosure are key elements and steps for Corporate Governance[19]. Corporate Governance, in addition, consists of the mechanisms by which shareholders ensure that the interests of the board of directors and management are aligned with their own. this definition is broadly consistent with the views of authors such as Jensen (1993), Mehran (1995), and Sheilfer (1997).[20] In the last decade, Corporate Governance has become the main interests of some researchers in the business environment where they have tried to explain the relation between CG and firm's performance which is the financial transparency. Many studies have been published treating this relation; for example,[21]. All of them demonstrated that transparency and financial disclosure can be identify it in many ways as being key to improving the structure of Corporate Governance.[22] Finally the concept of Corporate Governance constitute a controversial issue in business because it is a system which can from country to country due to different historic, cultural and academic backgrounds, also there are many definitions that refer to the organisation for Economic Co-operation and Development (OECD)[23]:" Corporate Governance is one key element in improving economic efficiency and growth as well as enhancing investor confidence. Corporate Governance

[18] Fung. B (2014) 'the demand and need for transparency and disclosure in corporate governance', Universal Journal of Management, 2(2), p72-80.
[19] Ibid
[20] Amstrong. C, Wayne R.G, Mehran. H, Weber. B, J (2015) ' the role of information and financial reporting in CG:a review of the evidence and the implication for banking firms and the financial services industry, Economic Policy Review., posted 1/06/2015.
<https:// paper.ssn.com/Sol3/delivery. FM/SSRN-ID2613230-code1042935>
Accessed 5/4/2016.
[21] Ibid.
[22] Sunnmez. M (n 3) 7.
[23] Ibid

involves a set of relationship between company's management, its board and other stakeholders."

Financial transparency, furthermore, the study has to be identified from the concept of accountability. This later means that officials in public, private and voluntary sector organisations are answerable for their actions and that there is redress when duties and commitments are not met. Accountability is a process in which accounted are required to defend their actions.[24]

Accountability refers to the need for market participants including the authorities, to justify their actions and policies and accept responsibility for their decision and result. Whereas transparency refers to the process and methodology of providing the information and market policy decision known through timely dissemination and openness.[25] The concept of transparency become in business sector, and it is difficult to give a complete definition about it. Despite this difficulty there are some definitions that could further define and identify the main elements and features of financial transparency.

So, what does financial transparency mean? Financial transparency is needed for discovery and advertising on various business processes carried out by national and international commercial companies. In this context, the financial transparency is defined as a process by which information about existing financial conditions, decisions and actions is made accessible[26]. Moreover, it is about making the decision visible and understandable.[27] Transparency can be defined such as the quality or state of being transparent. Something

[24] Al Habshan. K (n 11)9.
[25] Lepatadu. G, Pirnau. M (2009)' transparency in financial statement (IAS/ IFRS)', European Research Studies, 7(1), p102-107.
[26] Barth. M, Shipper. K (2008)' Financial reporting Transparency' Journal of Accounting and Finance,23(2).
[27] Morris. R, Pham. T (2011) 'the value relevance of transparency and corporate governance in Malaysia Before and After the Asian financial crisis', Journal of Accounting and Business Studies, 2(47). https://onlinelibrary.Wiley.com/dol/abs/10.111/j.1467-6281.2011.00339 accessed on 1/12/2015.

transparent is operating in such way that it is easy for others to see what actions are being performed. On the other hand, the simple definition is "the perceived quality on internationally shared information from a sender".[28] Transparency can be practiced in companies, organisations, administrations, and communities.[29] In management, financial transparency suggests three aspects: information disclosure, clarity and accuracy. Increasing the financial transparency, managers actively infuse greater disclosure and accuracy in their communications with stakeholders and investors[30]. The Willard Report (1998) defined transparency as a process by which information about existing conditions, decisions and actions is made accessible, as well as making the decision visible and understandable.

In addition, financial transparency is a financial statement of high quality, which is very clear, easily understood, candid and frank.[31] A financial statement is a formal record of any business, individual, or entity's financial activities. All the important financial information is presented in the financial statements as these are easy to understand because of their structured presentation.[32] Moreover, it means placing all financial and public information online in an easy to use readily understandable system.[33] Financial transparency as the one of most important element of Corporate Governance[34] is about disclosure financial information concerning the financial performance of the company and it depends on a high level of information disclosure. The financial information released gives to the public a right of access to all kinds of recoded information about a company.[35] The importance of this concept becomes

[28] Morris. R and Pham. T (27) 13
[29] Ibid
[30] Morris. R and Pham. T (27) 13.
[31] Nonprofit. J (2014)' financial transparency and the road to donor happiness', posted May6, 2014. https://**www.jitasgroup.com/jitasa-nonprofit-blog/financial-transparency** **accessed on 22/2/2016.**
[32] Ibid
[33] Stendebach.L (2010)'why government transparency is important, united for Missouri, posted jul22,2010. <www.unitedformisouri.org/news/governement-transparency-important-misouri> Accessed on 23/02/2016.
[34] The other elements are fairness, accountability and responsibility.
[35] Stendebach (33) 14.

at an international level in all sectors, especially the extractive industries. That why the research is going to study the principle of IFT in oil and gas sector and its possibility application in Libya.

Secondly, the definition of this international principle becomes necessary to achieve the scope of the research. Consequently, the question should be asked is how does this principle defined and transformed to the international level?

In the last decade there was a rapid proliferation of international initiatives to make the management of natural resources transparent in goals, to tackle development problems resulted by the resource "curse". In fact, there was a need to improve transparency in the oil and gas sector in the entire world especially the developed countries such as the USA, the UK, and the UE. These countries where the first to set legislations at international to promote financial transparency in extractive sector

The USA, for example, has created the Dodd-Frank law relative to the Consumer Protection Act added the section 1504 relating to disclosure of payments by resource extraction issuers. The UE following the USA transparency disclosure requirement has approved by the European Parliament the Extractive Transparency Act on June 12, 2013.[36] Both of them The Dodd- Frank law and the UE directive require disclosure where company has agreements with the jurisdictions in which it operates.[37]

Those initiatives by the developed countries were achieved by the international transparency initiative in extractive industry (EITI) which set an international standard for the

[36] Feldkamp. C, O'Callaghan. K (2013)' the international progress on resource extraction transparency', Corporate Social Responsibility Law Bulletin, posted Jun,2013.
https://www.Fasken.com/ end/Knowledge/2013/06/Corporate social
accessed on 15/42016.

[37] In the same context the Canadian Prime Minister Steven Harpen announced that Canada would be joining other G8 countries in an initiative regarding resource transparency. See Lepatadu. G, Pirnau. M (n25)13.

oil and gas companies to publish what they pay for governments and for this later to disclose what they receive[38].

"This international principle has as purpose to shining sunlight on these millions of dollars has been paid in taxes and royalties to the governments in natural resources rich countries" demonstrated Alex Blair from Oxfam[39].

Today no one can deny the importance of the international principle to fighting corruption and misconduct management in oil and gas sector. This sector its operations are characterised by a high level of corruption, especially in resource-rich countries[40]. the international principle which is the context of today the research represent a great moment and occasion for a lot of people in resource-rich countries living on less 2 dollar per day[41] to host their governments on what they receive as revenue in purpose to promote the economy and social development.

The conceptual Context of the study could be relevant and benefit for Libya because the control of extractive sector export and income appear as a main reason of the conflict that has separated Libya since 2014.[42] This fighting has appeared across the oil crescent and has

[38] This international initiative sponsored by British government aimed to encourage transparency practices in the management of extractive resources revenue. This international organization involves participation of governments, companies, civil society, international organization such as the world bank…. see Bature.BG)'an empirical study of the Nigerian extractive industries transparency initiative amended 2014', PHD thesis submitted at university of Aberdeen.
https://rgu.repository.worktribe.com/output/248480
accessed 15/06/2016.

[39] Blair. A (2014)' transparency in advancing in the UK, while the USA needs to catch up Oxfam', Oxfam, December 1,2014, pages1-4.
https://politicsofpoverty.oxfamamerica.org/2014/oil-gas.minig
Accessed 15/4/2016.

[40] See Bleshmitz. R(2014)' transparency in the extractive industries: time to ask for more, global environmental politics' Global Environmental Politics, 4(14) ol14, p1-9.
<https:// www.mitpressjournals.org/doi/abs/10.1162/GLEP-e-00254>
Accessed 15/4/2016.

[41] Ibid

[42] 'After show down in Libya's oil crescent', Crisis Group (2015), Report n:119 Middle East and North Africa, posted on Aug 9,2015.
<https:// www.Crisisgroup.org/middle-east-north-africa-libya/189-after-slowdown-Libya-Oil-crescent>
Accessed 6/2020.

affected the political sector, as well over the main financial institutions in country[43]. It is therefore important to determinate the Libya political current situation and demonstrate its influence on oil sector in general and oil institutions to see if it is possible to implement the principle of IFT in this political and economic situation. It is relevant to assesses how crucial it is to apply IFT principle in Libya, and how this could help to bring an end to the internal conflict.

1.2.1 The current political situation in Libya

Libya is a country rich in natural resources and has the largest proven oil reserves in the world, which gives it a substantial position in the oil market[44]. However, Libya's political situation is much more complicated, and this has impacted the extractive sector[45]. Nine years after the collapse of Muammar Quaddafi's regime, Libya is still struggling with civil war and has yet to construct new institutions[46]. International actors have exacerbated Libya's political problems by supporting either the Libyan army in the east or the militias in west by supplying them with weapons or money[47]. At the national level, the ongoing conflict has provoked feuds between players such as tribes and ethnic groups[48]. It is with a deep regret to say that Libya's political situation has gone from bad to worse. The country has fallen into chaos and lacks governance and institutions[49]. The western half of the country is controlled by the Government of National Accord (GNA), which is a UN-backed government that is established in Tripoli. However, the GNA has struggled to assert its authority, it lacks popular support, and it is still

[43] Ibid
[44] Bremer. I (2019)'The Quick Read about What is Happening in Libya', Time, posted on April12,2019.
< https:// Time.com/5569624/whats.happening.in.Libya>
Accessed on 03/03/2020.
[45] Ibid
[46] The Current Situation in Libya (2020), (United States Institutes of Peace, March20,2020)
<Https: www, Usip.org/publications/2020/03/current-situation-Libya>
Accessed om 03/03/2020.
[47] Ibid
[48] A deep analyse of Libyan institutions (organisation, functions) will be treated into next chapter 5 of this thesis.
[49] Bremer. I (44)17.

dominated by the NATO-backed non-governmental militias who overthrew Quaddafi[50]. The oil-rich east of Libya is controlled by the Libyan National Army (LNA), which is led by General Haftar, who convinced the eastern militias to join his goals to invade Tripoli and take control of the country. The international organisations led by the UN have been talking about political resolution, but Hafter has become a crucial player in Libya's future[51]. In fact, Hafter is making his play for Tripoli by the fact that he has the best equipped army, and thus has a good opportunity to take the city[52]. However, Haftar will face a strong battle to restore the country to political health. Recent the international efforts to find a resolution to the conflict in Libya, from Turkey to UAE, and from Russia to European states, have failed[53].

The latest attempt was the Berlin Conference, hosted on January14, 2020, which tried to take further political steps to stop the conflict. The most important conclusion of the conference is to create a new committee 5+5 shared equally by the internationally recognised government and the pro-Khalifa Hafter side. Its objective is to implement the conclusions of Berlin Conference[54]. The conference was built around the Paris, Palermo and Abu Dhabi process, as well as the 2015 Skhirat Libyan Political Agreement, and all relevant UN and UN Security Council resolutions[55]. The conference called for the equal distribution of wealth to fight corruption and injustice, with the right of the state on the legitimate use of force and reintegrate the militias. Moreover, the document called for the respect of country sovereign institutions such as the Central Bank (CB), the Libyan Investment Authority (LIA), and the NOC[56]. Despite

[50] Bremer. I (44)17.
[51] Bremer. I (44)17.
[52] Ibid
[53] Hill.TM and Wilson. N (2020)'From Foreign Interferences to Failed Diplomacy, Libya's Conflict Drags on' (UN Institute of Peace, March 24,2020).
<Https : www, Usip.org/publications/2020/03/curent-situation-Libya>
[54] Zaptia. S (2020)'The Berlin Conference on Libya: Conference Conclusions', Libya Herald, London January19,2020.
<https:// www.Libyaherald.com/2020/01/the Berlin-Conference-on Libya-Conference-Conclusion> Accessed on 03/03/2020.
[55] Ibid
[56] Zaptia. S (54)18

that, Berlin Conference failed for the simple reason that Hafter did not sign the documents. Then, Libyan tribes the next day decided to suspend the eastern Libyan oil firms from working. So, the question remains—what will happen next? What impact could the conflict have on Libya's oil sector? In fact, Libyan peace is possible only if foreign interference ends. Mohamed Syala (Libyan Foreign Minister) said that foreign power has to turn off their evil participation in Libya[57]. After determining the political context of this thesis, it is important to describe the effects of this unstable situation on Libyan institutions, especially in the oil sector.

1.2.2. Impact of the conflict on Libya's political institutions

Libya was one of 'Arab Spring' countries where protests the regime started on December 2010[58]. The reasons of the uprising still need to be researched. In the case of Libya, the revolution led to internal conflict and massive human rights violations on both sides. This conflict is between different cities and geosocial groups based on historical grievances[59]. Since it is independence in 1950, and the nationalization of international petroleum firms, Libya when compared to other developing countries enjoyed a total sovereignty over the county and its natural resources. This sovereignty was considered as important to Libya's economic development and for the redistribution of wealth. The main problem is that only one authority, the government, controlled and manged this sovereignty. This difficulty led Libya to internal conflict[60]. This led to the current split of Libya into two centres of power. The formal shape of

[57] Gallaghan. M (2019)'In Libya, Peace is Possible if foreign interference Ends', (UN Institute of Peace, January 21,2020).
<Https: www, Usip.org/publications/2020/03/current-situation-Libya>
Accessed on 03/03/2020.
[58] El Kilani. E and Salah. Z (2012)'Extractive industry and conflict risk in Libya', Brussels held on October 29,2012, p3.
<eplo.org/. /upload/2017/CSDN-policy meeting-private sector-Libya>
Accessed on 15/5/2015.
[59] Ibid
[60] El Kilani. E and Salah. Z (58) 19.

the central authority changed but the concept of permanent sovereignty over Libya's wealth has not changed[61].

Since the summer of 2014, political power has been divided between two governments in only one country. The first centre of power is the Presidency Council (PC) instituted on 30/03/2016 issued from Libyan Political Agreement (LPA) hosted in December, 2015[62]. The PC is headed by Fayyaz AL-Sarraj a former member of the Libyan Parliament. New institution is established because of the GNA, which should be endorse by the Libyan Parliament in Tobruk. However, the Libyan House of Representatives has voted down the LPA. The second centre of power is established by the authority in Tobruk and Bayda, which should also work under the LPA. The Libyan Parliament become the legitimate legislative authority under this agreement[63]. Reciprocally, the House of Representative has created the government of Prime Minister Abdullah El Thini, which operates from eastern Libya. Furthermore, this government, favours the eastern side and pledge a fare distribution of wealth, and has set up a second CB and NOC. Consequently, Libya now has two governments: the CB and the NOC. In Libya it is merely impossible to see national actors, most of them are local players[64]. Many of them represent the interests of their regions more than represent those of their country. Political turbulence and insecurity followed as the national governments and local authorities all tried to unify the armed forces[65].

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[61] Ibid

[62] Toaldo. M (2016)'A Quick Guide to Libya's Main Player' (International Affairs, October 2016). <https://www.ecfr.eu/mence/mapping-Libya-conflict>.
Accessed on 15/3/2020.

[63] Ibid20

[64] Ibid 20

[65] Baltrop. R (2019)'Oil and Gas in New Libya Era: Conflict and Continuity' (the Oxford Institute for Energy Studies, February,2019, p6)
<https:// www.oxfordenergy.org/publication /oil-gas-new-Libya-era.>
Accessed 15/03/2020.

Fighting and instability have affected the oilfield exports and production has fallen to an average of less than 500,000 barrels per day. However, in 2016 oil production turned due to the enhancements in oil cooperation between the NOC, the local governments in Tripoli and east, and the army. The impact on the oil sector was huge.

1.2.3. The impact of the conflict on Libya's oil sector

It is essential to understand the current situation in Libya if we are to understand the prospects of IFT implementation. It is, furthermore, important to study its oil sector context regarding the possibility to implement the IFT principles.

Since the revolution in 2011, many authors[66] have written about Libyan political upheaval. However, no study has examined the impact on Libya's extractive sector[67]. The reflection on what happened in Libya since 2011 can help to predict what may happen in future and to improve the chances for successful IFT implementation. Understanding, moreover, what has changed and what continuities there are in Libya political economy allows us to harmonise the rules and legislations considering oil sector in general and corporate transparency and help Libya's oil institutions to pledge a fair distribution of oil wealth in favour of the citizens. In fact, conflict and instability affect Libya extractive industry in way that accessing financial data appears to be difficult due to the tendency between Libyan authorities and oil companies to consider oil issues as confidential[68]. So, it is relevant to review the background of the oil sector, especially from 2011 to 2018, focusing on how that affects Libya's oil institutions.

The period from 2011 to 2014 was characterised by a period of conflict, which caused obstacles for national government in general and NOC, to physically control and manage the

[66] See WEST.J" The new Libyan's Oil minister's Secret Weapon Transparency", Guardian, August,26. Also see El Kilani. E and Salah. Z (58) 19.
[67] Baltrop. R (65)8.
[68] Baltrop. B (65)21.

oil sector[69]. This period of disruptions is due to many factors. First, government failed to demobilize the militias and integrate them into unified forces. Secondly, weapons spread in all regions and rebels start favouring their personnel advantages. The oil fields were unstable for both Libyan companies and foreign oil firms[70]. In 2014, new fighting between militias started and led to heavy damage at the main Libyan airport, with the capture of the "Golf of Sirte" oil field by Jadhran[71], who is under the eastern Libyan authorities. This obliged the NOC to announce a case of "Force Majeure".

The period from 2014 to 2017 was marked by the establishment of the GNA in March 2016[72]. In this period, the battle for the control of the NOC continued between the GNA and Libyan Parliament located in Tobruk. However, the GNA took control of the NOC, and with it the mantle of international recognition. These battles reflect how important the management of NOC is because it led to the control of financial income generated by the oil fields. A main player in this period was the NOC chairman Mustafa Sanalla[73]. When the House of Representative (HoR) declared the appointment of its own NOC chairman, Sanalla with government in Tripoli did not accept the decision. This led the HoR, as the legitimate institution in Libya, to establish a new NOC in the east separate to that in Tripoli[74]. Sanalla tried to avoid parallel oil institutions and said that the NOC is a neutral and independent from both the

[69] Elhammami. A (2013) 'oil Production Down to a Quarter of a Million Barrels a Day', Libya herald, August29,2013.
< https:// www.libyaherald.com/2013/08/29/oil-production-down-to-quarter.>
Accessed on 3/04/2020.
[70] Elhammami. A (68).
[71] Jadhran become a PFG commander in 2012 and gained attention in subsequent years because of his militia's activities in the gulf of Sirte. In 2018 the UN added him to list of Libyan individuals subject to financial and travel sanction.
[72] Baltrop. B (65) 18
[73] Mustafa Sanalla has been chairman since 2014, while the Transitional National Government still in power in Tripoli. He had been a member of the NOC board since 2011 and previously worked for some 25 years forthad been appointed to replace Nouri Berrwin, after he resigned. Reuters, May 23,2014<https:// Uk.reuters.com>
[74] Nasralla. S (2014) 'Libya's recognised government appoints new chairman of Libya's state oil regions', Reuters news, November 27,2014.
<https:// UK.news.yahoo.com/Libyas-recognised-gov-.appoint>
Accessed 8/04/2020.

government in Tripoli and Tobruk[75]. To end the fighting between east and west to control the NOC, in March 2016 the UN security council passed a resolution extend the measures taken on 2014 by prevent elicit oil exports from Libya. This allowed the GNA government to take effective control over the NOC, the CB and LIA[76].This resolution planned to prevent any attempt to export oil illicitly by parallel institutions not under the authority of the GNA[77].

In 2018, Mustafa Sanalla announced that parallel oil corporations aim to manipulate prices by selling oil at a price lower than the official prices in the market with oil companies available to the UN sanctions. This is recognised, in addition, as a negligence of state sovereignty[78]. This perhaps shows the efforts of Libya's NOC chairman to guarded against the possibility of taking management and control of NOC. Furthermore, he succeeded in protecting the oil institution from a parallel corporation, which is sure to affect the extractive sector.

Overall, the NOC and subsidiaries, such as Sirte oil company and Zueltina oil company, have successfully maintained steady relations with each other, despite the security and financial difficulties faced by the NOC. The Libyan authorities have not made any changes in the formal relationships between the NOC and its subsidiaries[79]. The Libyan oil institutions post-2011 have, despite the unstable political situation, had major effects on extractive sector production and exports. This was true until Hafter's militias in 2016 created their own NOC and took control of the Gulf of Sirte. It was true, also, until the Libyan trips in east, decided to close and suspended oil production in the named oil Golf, after Berlin Conference[80]. The NOC, in the

[75] 'Libya rivals fight for control of NOC', Middle East Eye, march22, 2015.
<https:// www.middleeasteye.net/news/Libya-rivals-fight-control-national>
Accessed on 9/04/2020.
[76] UN security council resolution 2278, s/RES/2278(2016), March31,2016.
[77] Baltrop. B (65) 19
[78] 'head of NOC says parallel institutions sells Libyan Oil Under market Value', the Libya Observer, June28,2018.
https://www.Libyaobserver.Ly/economy/head-NOC-saysparallel - institutions-sells-Libyan-oil-under-market-value.
Accessed on 8/04/2020.
[79] Baltrop. B (65) 23.
[80] See the previous paragraph of this thesis about Libyan political situation p22.

same context, has announced that the financial damages due to the ongoing blockade of its oil production now pass over $ 4 billion[81].

It is therefore relevant to analyse the impact of Libyan political circumstances on the oil sector to understand why the implementation of IFT principles is crucial. It is also beneficial to understand the forces that are fighting for control of the oil sector and how these principles could help Libya's oil institutions to protect the oil wealth.

1.3 The aims of this research

In the current economic climate, many developing countries face the challenge of growing their fragile economies. In this environment, it is crucial to increase business financial transparency and for government to set up a regulation to promote corporate financial reporting.[82] Financial transparency can help business in general and the oil sector to attract investments.[83] Financial transparency should traverse national borders, and economies should become more interconnected and interdependent. In fact, there is a global need to improve transparency in the oil sector, especially after the financial crises of 2007and 2009[84]. This was especially true for developing and explorative countries because it can help to increase revenue transparency in the petroleum sector. However, the performance of the implementation of the rules of the international principle of (IFT) is still a problem because, generally, oil firms opt towards confidentiality regarding the existing agreements between the oil international firms. This study will deal with the legal part of this subject, which will involve studying the rules

[81] 'Oil Revenues Losses Approach $2', Libya-business news, February23,2020.
<https:// www.Libya business news.com/tag/oil-production>
Accessed on 11/04/2020.
[82] 'Effective and Transparent Financial Reporting is Good for Business', the World bank, October1,2013.
https://www.worldbank,org/en/news/feature/2013/10/1/effective-and-transparent-financial- reporting-is-good-for-business.
Accessed on 8/04/2020.
[83] Ibid
[84] see about the financial crisis of 2007and 2009 AnjanV. T (2015)'the Financial Crisis of 2007 and 2009: why did that happen and what did he Learn?' the Review of Corporate Finance Studies, 4(2), page 155-205.

and effects of this general principle on oil sector generally at international level and on Libya especially.

Consequently, this thesis has developed three main research questions:

1. The first research question is: How is the concept of financial transparency defined and what are the legal contents and effects of this concept in the commercial sector?

   Before studying the features of the general principle of (IFT), the legal concept of financial transparency should be defined as precisely as possible[85]. There is a considerable lack of clarity in legal and scholarly debate concerning the exact meaning of financial transparency. To understand the general principle of (IFT), the legal contents and the effects of the concept must be made from several different angles. First, by distinguishing the concept of financial transparency from other similar legal concepts, such as, transparency, Corporate Governance, and accountability. Second, by studying how the different national and international legal systems determine this concept.[86] For example, how is this legal concept defined by the World Trade Organisation (WTO), international investment law, and international financial law? Finally, to reach a definition that covers all aspects of this legal concept and allows to more understand and determines the characteristics of the general principle of (IFT), this study will analyse the scholars and tribunal debates about the exact meaning of the legal concept of financial transparency.

[85] 'Transparency: An Analysis of an Evolving Fundamental Principle in International Economic Law', Hein Online, p583.
< https:// heinonline.org/HOL/Landingpage? -hein- journals/mji27>.
Accessed on 9/4/2020.

[86] See for example, the EU Accounting and Transparency directive of 2013, the New UK reporting and disclosure obligation under the FSA's Transparency rules of 2006. The Law n: 23 of 2010 regarding the Libyan commercial code.

2. What are the legal characteristics of the general principle of (IFT) in extractive industry? And what is its status as a principle of international law? And how will this principle ensure the balance between the right of the stakeholders to have enough information about the financial position of the oil company and the right of petroleum firms to manage their interests?

   The legal characteristics of the international principle in the extractive industry includes the scope and effects of its implementation. In other words, it refers to the rules of this international principle and what kind of financial transparency is required in the oil sector, for example, financial revenue transparency or financial contract transparency. A framework of its implementation raises the question of who has to report? And what has to be reported? While the effects of its implementation mean the process followed by the oil firms to obey to the rules of this principle of IFT. To achieve that this research will treat the diverse local jurisdictions which concretised this principle in oil sector, such as Section 1504 of the Dodd-Frank Wall Street reform, the EU Transparency Directive (EUTD) and the UK Transparency Act of 2014. At the same time, this research will analyse the various reforms or the international coalition, which fostered and pledged the rules of financial transparency in the oil sector, essentially for developing countries, such as the Extractive Industry Transparency Initiative (EITI) and Publish What You Pay (PWYP). Despite this fact, the question still to asking, do these reforms develop good governance that developing countries need to grow its economy?

   The status of the principle of IFT in international law is a subject of debate among academics, law practitioners, regulators, and judges[87]. The main issue is to identify this

[87] case w1/ DS26' Principle of International Law', (WTO), paragraph 123-124.

general principle as a principle of international law while it is still not recognised by some countries. In other meaning the rules of the principle still just initiative. Referring to Article 38 of the statute of International Court of Justice (ICJ). In other words, this principle is still not strong enough to create legal obligation. Consequently, it cannot be a strong source of international law and may be an uncertain source of international law. This research will treat this important question from different legal approaches, scholars, and tribunals to discover about the debate on this issue and to determine if this general principle is a strong principle or a flexible international law.

3- The last main question of this research is: how are Libyan regulators going to implement this principle of IFT in Libyan oil sector? Does Libya really need to apply the international rules of the principle or not? Furthermore, what are the legal mechanisms that contribute to better implementation of this international principle in Libyan oil sector?

Currently, financial transparency in Libyan oil sector is almost non-existent, as reflected in the corruption and unequal distribution of natural resources among Libyan citizens. The inexistence, approximately of financial transparency regulation in Libyan commercial legal system will be demonstrate by the assessment of this later. There will be an attempt to discover the Libyan legal disclosure system before confirming that Libya needs the implementation of those international rules of the principle of IFT. In addition, on this issue of transparency, Libyan stakeholders want and need to know where their oil revenue is going. An analysis of Libyan oil industry[88] shows that there has been no financial transparency during the last four

[88] Libyan oil regulation such as, the petroleum law n: 25 of 1955 as amended by the law n:30 of 1970, the law n:24 of 1970 regarding the national oil corporation (NOC), and the decision of General People's Congress n: 10.

decades in Libya. Thereby, the application of the rules of this principle of IFT in extractive industries is preferred as a solution to improve its oil-dependent economy.[89]

This research will study the various parts of Libyan legislation to assess the actual transparency in Libya and to make recommendations to the Libyan authorities to help them set up a specific financial transparency rules in the oil sector, taking into consideration the current Libyan situation. In other words, to balance between the interests of stakeholders and the interests of international oil companies who operate in Libya.

1.4 The methodology of this study

To establish the legal principles of IFT, this study will base its analysis on the black letter Law method. In fact, this research method will allow me to focus on various questions about the national laws, treating the principle and its rules. This latter grants the practical relevance, origin, context, and value of the law. This thesis will analysis the different local approaches in various countries where the rules of IFT and international standards of the principle are applied, together with diverse global reforms, such as EITI and PWYP. The black letter method refers to this goal to offer a precise view of how the law operates and excludes hypothetical opinions. It will also aim to solve the controversy over the status of the general principle of IFT and how this principle could be identified as a principle of international law. These international approaches, as the first approaches concretise the IFT rules in the oil sector, will be analysed to elaborate and develop the characteristics and the effects of financial transparency rules on the oil sector, and to show how this general principle of international law started to appear. This thesis will also help the Libyan government to evaluate and choose the best legal mechanisms to apply this principle of IFT. This international coalitions mentioned

[89] Fekete.J, (2013) 'Canada promises to improve corporate transparency in oil, gas and mining sectors', Canada.com, June12,2013.
http://o.canada.com/news/canada
Accessed on 15/3/2016.

above give only a strict analyse with a narrow definition of the principle. In other words, it provides just a single and conclusive definition without interpreting widely the principle and its prospect at international level. Beside the black letter method, this thesis will use the comparing method to determine the exact effects of the principle with a precise assessment. Assessing the experience of different countries whose applied the rules of the international principle and have the same political and economic situation with Libya, such as Nigeria, will give a specific interpretation of the principle, and will unify its content and effects on states. This comparing method, furthermore, will help to assess the implementation of the IFT principle in the oil sector. Then, it will be possible to provide an answer about the prospects of its implementation in Libya. In fact, studying the application of this principle will help to identify its features and effects in Libya. However, this method will not be used throughout this thesis and exclude the black letter method. It will simply be used just to identify the international principle and assess its importance for Libya's oil sector.

This research will first give a general background about the subject and define the similar concepts close to the concept of financial transparency. Furthermore, it will treat the different theories associated with it such as theory of shareholders, stakeholders, and public. In Chapter 2, the focus will be on the first practical steps of the principle in oil sector. Before that, this thesis will try in this chapter to define the concept of financial transparency from similar concepts, such as the concept of Corporate Governance and accountability. It is crucial to distinguish the concept of financial transparency from the general concept of Corporate Governance. Although CG it is an important instrument for the effectiveness of the company. Corporate Governance is a concept that is used in the business sector, as well as in commercial literature, but to date there is no unanimity on its meaning. Corporate Governance could be a controversial subject because it is a system where its application differs from country to country. More precisely, Corporate Governance organises the ownership and control

mechanism in corporations, protects the participants rights and responsibilities, and serves wider societies in the financial market[90]. Corporate Governance, furthermore, has numerous meaning and various studies have attempt to define it. Therefore, it would be practical to identify it from different studies rather than just using one definition[91]. From other side, it is also useful to study the relationships between financial transparency and accountability to understand and comprehend the principle of IFT. There is, in realty, many corporations and financial institutions recognise that transparency and accountability enhance the expectation of any financial issues and ameliorate the policy of decision making[92]. In other words, transparency forces the corporation to face up to the reality of a situation. However, Accountability makes management or officials more responsible[93]. Transparency and Accountability are complementary. They improve the quality of decision making by holding management responsible for their actions[94]. Chapter 2 will analyse the different theories associated with the Corporate Governance concept, such as the theory of shareholders, stakeholders, and theory agency. The features, effects, and the legal status of the general principle of IFT in the extractive industry will be examined in Chapter 3. It will also examine the main concept of financial transparency as the main concept of IFT and its implementation within national law. For example, the EU Transparency Directive of 2013 /50/EU which amended the original directive of 2004/109/EC, section 1504 of Dodd-Frank Act issued on 21 July 2010 relating to the Consumer Protection Act, and the UK Transparency Regulations issue on 26 November 2015 which amended the original UK Transparency Directive implemented from January 2007 through the Financial Services Authorities (FSA). A study of the

[90] Clarke. T and Dela roma. M (2008)' Fundamentals of CG: the fundamental dimension and dilemmas of CG' SAGE, London, 2008, p1.
https://www.researchgate.net/publication/228285574_The_Fundamental...
Accessed on 20/7/2020.
[91] The definition of CG will be done in the chapter 2 of this thesis.
[92] Leptadu. GV, Pinau. M (25)13.
[93] Ibid.
[94] Ibid.

implementation of the principle of IFT through these national laws will help to understand its characteristics and content in general with its establishment in international law before identifying the international principle in the oil sector. Therefore, Chapter 3 will be divided into three sections, which are the establishment of financial transparency, and the role of the financial transparency in commercial companies with global IFT institutions.

Chapter 4 will analyse the legal rules form the international principle of financial transparency in extractive industry by studying its characteristics, and its implementation or effects on the oil and gas companies. Also, studying the basis establishment of this principle as principle of international law. Better financial transparency is related to better information released to the financial markets at an international level[95]. After the financial crisis of 2007, many countries raised their use of International Financial Reporting Standard (IFRS). So, protecting investors and facing corruption are not only possible by simply providing financial information but also by guaranteeing the accuracy and clarity of this information, which should be publicly reported and published. The study of the internal and external legal institutions which guarantee the accurate and performant implementation of the principle of IFT will be treated in the section 3 of the Chapter 4. This section demonstrates the crucial role of EITI[96] in protecting stakeholders by improving governance, increasing transparency of payments made to governments in oil companies, and fostering cooperative relationships with authorities[97]. Moreover, the regulators must impose a strict audit on this information and establish an

[95] Fekete. J (87)28

[96] EITI: has been formed to promote improved accountability systems for the management of natural resource revenues. The EITI was launched in 2002 as a coalition of governments, companies, civil society groups, investors, and international organisation. For more information, see publish what you pay, fact sheet on the UK regulations and rules for mandatory reports on payment to governments, published on 26 January 2016.

[97] Repsol (2013) , our commitments ethics and transparency.
https://www.repsol.com/en/sustanability/ethics-and-transparency
accessed on 16/06/2016.

effective disclosure process. Without forgetting the criminal punishments if the information released by oil companies is erroneous and does not reflect its financial situation.

The research will be completed with Chapters 5 to 6, which examine the possibility to implement these international standard norms in Libya or if the Libyan government is going to foster a specific rule to make its oil revenue and oil contracts more transparent in order to balance between the interests of stakeholders and the interests of international oil firms operating in Libya, because the latter still want to promote its economy.

Chapter 5 studies the Libyan oil legislations sand how it works by analysing its legal reporting systems. This assessment will be done through the demonstration of Libyan law, especially, the Libyan Commercial Law (LCL), and the Petroleum law (PL). The named chapter will discover if Libyan regulation promote and encourage the principle of disclosing and publishing the important financial data considering the oil deals, especially the payments made to Libyan governments by the international firms. The main objective of this chapter is to assess the Libyan legal transparency system, is it strong enough to enforce the implementation of transparency rules in Libyan oil sector or it is important to integrate the international disclosure standards that pleading an accurate financial data in favour of stakeholders. while Chapter 6 examines how international rules of the principle can be integrated into the Libyan legal system. The conclusion will answer the primary questions of the study: Does Libya needs to comply with the principle of IFT? Does Libyan legislation have enough rules to concretise the financial transparency in the oil and gas sector? Is the oil sector in Libya, including Libyan National Oil Company NOC, ready to accept these international rules as a principle and not as an exception in extractive industry as a business sector?

In conclusion, is the implementation of the general principle of IFT the best solution to make the Libyan oil sector more transparent and at the same time protecting the interests of the international oil firms? How will the Libyan government implement these rules? Or will Libya

join an international coalition such as the EITI and PWYP to apply the rules of financial transparency. Data will be collected from several different sources, such as the legal department of NOC, from national and international oil and gas companies operating in Libya, from previous studies and government reports based on the descriptive approach assessment, and from the civil organisation established now in Libya, especially after the revolution.[98]

Finally, to make this research more practical, a visit to the Libyan transparency association[99] will be undertaken to get a more detailed view about how the oil Libyan sector works and how to make the financial transactions inside the sector more transparent from the legal side. This practical step aims to help the law makers to adopt the international principle of IFT; in other words, analyse the theory prospects of its legal implementation in Libya. It will also provide the Libyan legislator with the international transparency rules and help Libya's oil sector to foster an efficient transparency rules and then promote Libya's economic development. It will also shed light on how stakeholders deal with firms operating in the Libyan oil sector, and how they could be protected. This study is of great practical benefit because this is a pioneering area of research, given that this Libyan organisation was very recently established on 25 October 2015 at a conference about international transparency in the extractive industries.

1.5 Originality

This research will be one of the first studies to give a precise definition of the concept of financial transparency. In fact, the analysis of the international principle of financial transparency cannot be done without an accurate determination of the concept of financial

[98] Karam P (2018) 'Libya's Political in Uncertain Times', the International Republican Institutes, November 07, 2018.
< https://mepc.org/journal/libyas-future-uncertain-despite-political-agreement>
Accessed on 20/07/2020.

[99] Libyan Transparency Association was established in May 2011. It is first Libyan NGO focuses curbing corruption, promoting the principles of transparency and good governance. Concrete transparency should be written into the transitional constitution to ensure the just exploitation of Libya's natural resource.

transparency. However, this concept is still unclearly defined. this study, in addition, will contribute to find an adequate solution and a specific way to implement the principle of IFT and ensure good governance in the Libyan oil sector. Given its specific culture as a developing country and its actual political, social, and economic situation, the Libyan government should find a specific way to implement the international legal rules form the principle of IFT. Libya as a developing country needs to reconcile between the interests of international oil firms and the need to provide local stakeholders the necessary useful financial data, they need to protect their interest. Almost, the most of researchers[100] are convinced about the importance of the implementation of IFT rules to help country make its oil sector more transparent and guarantee the fair distribution of its oil wealth. This research will no doubt assist decision makers in senior management of the oil sector by giving several recommendations on how the Libyan authorities may implement this international principle and what effect this principle will have on the Libyan oil sector.

Also, this research will contribute to determine the nature of the principle of IFT and answer the question of how this principle could become a source of international law. Moreover, how this principle will create an obligation on several states.

Finally, this research will improve the legal framework of the Libyan oil and gas companies and develop their performance by enriching academic research on constitutional legislation in the field of extractive industries.

[100] PHD students, lawyers, and academic researchers. See for example: El Kailani. E (58) 19.

Chapter 2: Introduction to the Concept of IFT and Its Relationships with Corporate Governance and Accountability

2.1 Introduction:

In the last few decades, transparency and disclosure have become crucial elements of a solid Corporate Governance because they authorise the various agencies associated with it (e.g. stakeholders, shareholders, and investors) to publish the financial data that they need in relation to capital allocation, financial transactions, and the financial position of the corporation.[101] The significance of transparency in general and financial transparency in particular has been widely recognised by both scholars and legislators regarding the multiple rules introduced to ensure timely and reliable disclosure of financial information.[102] The new concept of transparency places more responsibilities on firms, not only by publicly publishing accurate financial information but also by obligating the company to disclose it to every stakeholder.[103]

This chapter will first try to provide an approximate definition of the concept of financial transparency, before giving a brief analyse of the IFT principle. It will also try also to identify the concept of financial transparency from similar concepts, such as Corporate Governance and Accountability. The first objective is to fix a definition of the general concept of financial transparency that covers all the legal aspects. This will serve as a corner stone for the main subject of this research, which is the general principle of IFT. However, the concept of financial transparency is still difficult to define because of its complexity. Therefore, this thesis will also attempt to give a strict definition of financial transparency. Studying its

[101] Fung. B (18) 12
[102] Ibid
[103] Ibid

relationship with the concept CG and accountability appear is essential, as is defining the theories associated with them, such as stakeholder, shareholder, and theory agency.

Corporate Governance in today's global environment has become more complicated in recent years due to the enormous number of regulations and legislation required from the board of directors to comply with a strict governance standard, and to address the demand of shareholders and stakeholders for transparency and disclosure.[104] Following the Asian financial crisis, a huge amount of attention has been given to the meaning of the Corporate Governance concept. The main reason for financial failure has been directly related to the lack of financial disclosure and inadequate governance practices.[105] Actually, companies should focus on increasing their transparency and disclosure as essentially standards of Corporate Governance for the benefit of all their stakeholders. Several theories have participated in enhancing and developing Corporate Governance, such as shareholders, stakeholders, and theory agency.[106] This chapter aims to identify the concept of Corporate Governance by focusing on the differences between the last three theories. It has always been interpreted that these theories have had different effects for Corporate Governance.[107] It has been understood that these theories are done to be opposite to the functions of Corporate Governance.

Efficient CG depends on accurate financial transparency of accountability. This intervenes when the disclosure of information is insufficient, sophisticated, and negative (i.e., not enough information to analyse the financial information), which could damage the company[108]. Accountability is the need for market actors, including authorities, to rationalize their regulations and decisions, and accept the responsibilities of their results.[109] Transparency

[104] Fung. B (18) 2
[105] Ibid
[106] Al- Habshan. K (11) 9
[107] Ibid
[108] Leptadu. GV, Pinau. M (25)13.
[109] Ibid

and Accountability are both complementary. The former is necessary for the latter, it allows us to hold the three major market participants—borrowers, lenders, and national authorities—responsible for their financial decisions.[110] Transparency and Accountability, furthermore, are mutually reinforcing. Transparency improves accountability by favouring controlling and this enhances transparency by ensuring that the decisions of policy makers are properly published and understood.[111] Together transparency and Accountability will develop a discipline that enhances the quality of the financial information that is released. Consequentially, they ensure that the decision making will be more efficient.

The second goal of this chapter, after defining the similar concept to financial transparency, is to briefly identify the principle of IFT[112]. In other words, how will this emerging principle in the extractive industry become a source of international law and create an obligation on extractive companies to transparently make their payments to the government. Furthermore, this study, will demonstrate the importance of the principle of IFT by explaining if this principle is a strong or flexible principle of international law based on the analysis of Article 38 (I) (3) of the Statute of International Court of Justice (ICJ). IFT, furthermore, is not only about to make the payments paid by the international firms to the governments transparent, but also how to promote effective governance in extractive industry and its financial operations. Global governance and financial transparency in the oil sector require adequate and appropriate institutions, which should have the objective of pledging great and effective transparency in extractive sector. Therefore, this chapter will focus on the international financial institutions, and their role to promote effective transparency and combating the resource curse.[113]

[110] Leptadu. GV, Pinau. M (25)13.
[111] Ibid
[112] A deep analyse of the IFT principle will be done in the chapter 4 of the thesis.
[113] Caspray. G (2012) 'Practical Steps to Help Countries Overcome the Resource Curse: the EXITI', Global Governance, 18 (2), Jun 2012, page 171.
<https://www.researchgate.net/publications/279938081-Practical-steps-to..>
Accessed on 15/04/2020.

Overall, this chapter will analyse in its first part the relationship between financial transparency and the concepts of Corporate Governance, together with the different theories associated to this concept, such as shareholders theory, stakeholder's theory, and agency theory. While it will treat the relationship between financial transparency and accountability. In the second part, this chapter will attempt to give background on the principle of IFT. It will then study the most important international institutions involved in combating the resource curse and promoting a transparent extractive industry.

2.2 Analysis of similar concepts to the concept of financial transparency

The goal looking from studying the relationship between financial transparency and CG, and financial transparency and accountability is to identify the meaning of financial transparency, which is the corner stone of the concept of IFT. Furthermore, it will place the international principal in its origin as legal fundamentals of the principle and its roles at national and international level in the extractive sector. Therefore, the first section will be studying the relationship between Corporate Governance and financial transparency (2.2.1). The second paragraph will study the relationships between accountability and financial transparency (2.2.2).

2.2.1 Analyse of the relationship between financial transparency and Corporate Governance:

Corporate Governance can be explained both narrowly and broadly, depending on whether it is viewed from the perspective of the shareholder or the stakeholder. In its narrow definition, Corporate Governance deals with the relationships between the company's managers, the board of directors and the shareholders. This definition views proper Corporate Governance as the accountability of management to the board of directors and of the board to the shareholders, and as the harmonic management of the corporation's affairs with the interests of the

shareholders, who are the owners of the company. The broad definition includes the firms' relationship not only to shareholders but also to all stakeholders and society in general. This definition also includes the combination of numerous laws, rules of the stock exchange, and codes of conduct and private sector practices that authorise the firm to attract capital, perform according to its charter, generate profit, and accomplish its obligations both under the law and in the expectations of society in general. Thereby, this section will attempt to give close definition to the concept of Corporate Governance (2.2.1.1). It will then study the theories associated with this concept (2.2.1.2)

2.2.1.1 The concept of CG

Corporate Governance in the last decade has been an object of great interest around the world. It has been considered a crucial element in improving both economic efficiency and the investors' confidence[114]. It also provides the structure organisation through which the objectives of the company are set. It is the essential means of reaching those goals and controlling the financial performance of the company[115]. Nevertheless, Corporate Governance is still a controversial concept for the simple reason that there is no consensus on its definition. It is a system that can vary from country to country regarding their different historic, cultural, and academic backgrounds[116]. The term of Corporate Governance is generally defined as a form of authority regime in firms[117]. It organises the ownership and monitor the mechanisms in a company by protecting the shareholders rights and responsibilities[118] In addition, seeks to engage the responsibility of the parties for their decision making in disfavour of the stakeholders. Furthermore, Corporate Governance definitions can generally be given in two

[114] El Diftar.D (12) 9.
[115] 'Principles of CG', (OECD), 2004.
< https:// www.oecd.org/daf/ca/oecd-principles-corporation-governance-2004-htm>
[116] Sonmez.M (3) 7.
[117] Ibid
[118] Ibid

ways: by the enclosed and by the broad manner. Corporate Governance from the enclosed definition describes the relationships that exist between the corporation's managers, board of directors, and shareholders. This definition identifies Corporate Governance as the accountability of management to the board of directors, and of the latter to the shareholders[119]. In contrast, the broad definition gives responsibility not only to shareholders but also to all stakeholders and society in general. It encompasses the combination of numerous laws, regulations, and rules of the stock exchange.

The growing importance of Corporate Governance, in the past 20 years, shows its prominence in the modern economic environment[120]. There are five specific reasons for this growing importance: wave of global privatisation, pension fund reform, growth of private savings, and integration of capital.[121] In fact, good Corporate Governance at an individual company level helps to reduce the distance between those manging the company, which normally includes large shareholders. This will absolutely lead to major investor confidence[122]. This confidence is reflected through the regulations governing the relationship between key stakeholders, such as managers, shareholders, creditors, employees, which contributes to the overall growth and financial stability[123].

However, Corporate Governance is not financial transparency: financial transparency and disclosure in the stock market is an important element in Corporate Governance, which enable firms to publish information about management practices, such as financial and non-

[119] Ibid.
[120] Becht. M, Roaell. A (2002) 'European CG Institute Finance', working paper No 02/2002, October2, 2002.
<https:// ssn.com/abstract =343461>
Accessed on 15/4/2020.
[121] OECD principles of CG (109) 38.
[122] El Diftar. D (12) 9.
[123] Jesover. F, KirkPatrik. G (2005) 'the Implementation of OECD CG Principles', CG an International review 13 (2), page 127-136.
<https:// escipub.com/ijibm-2019-02-0306>
Accessed 15/04/2020.

financial statements.[124] These statements ensure the shareholders of their investments and warns them of any issue that may affect them. Disclosure and transparency are the main principles of CG. These principles as identified by the Organisation for Economic Cooperation and Development (OECD; 2004)[125] aim to provide same features that are necessary for good Corporate Governance. These principles also ensure the basis for any CG framework, the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders in Corporate Governance, disclosure, and transparency, and finally the responsibility of the board.[126] However, the principles set up by the OECD associate the concept of disclosure with transparency, which is not correct for the simple reason that transparency as a concept is wider and deeper than the concept of disclosure. Moreover, the concept of transparency includes the concept of disclosure, which is an important element of Corporate Governance. In other words, it impossible to have transparency without disclosure of any kind of data, and it is impossible to have good Corporate Governance without transparency and disclosure. The main objective by making a comparison between Corporate Governance and transparency is to understand the philosophy and the characteristics of the principle of IFT. It is noticeable that transparency is one of the mechanisms of the Corporate Governance.

The Corporate Governance system and mechanisms of Corporate Governance can be distinguished because the former can be defined as the structure of a country, encompass its legal institutional and the way how shareholders influence the managerial decision of the corporation. The Corporate Governance system differs from country to country, depending on how the law is set up, explained, and how it is enforced by the court.[127] The latter includes the

[124] Al- Habshan. K (11) 9.
[125] OECD principles of CG (109) 38
[126] Ibid
[127] Sheifer. A, Vishny.RW (1997) 'A Survey of CG', the Journal of Finance, June 1997, pages 737-783.
< https:// online library. Wiley .com /doi/abs/10.1111/1540-6261>
Accessed on 15/04/2020.

mechanisms used in the companies to solve Corporate Governance issues based on two methods: market-oriented and shareholder-oriented[128]. Perhaps, it is not easy to give an exact definition of the Corporate Governance because it is a widely legal concept that depends how it is understood by the different parts of the company, such as owners, shareholders, and stakeholders. At least, it can be comprehended by the way of two approaches, which are the Anglo-American and Germain approach. First, the UK and US are liberal, which gives priority to the shareholders. So, the effects of banks and financial institutions on Corporate Governance is very limited. This approach has become the most common model around the world[129]. Financial institutions have to take intensive measures to reform loan mechanisms and improve Corporate Governance in companies. The first objective of the Anglo-American system is to protect shareholders.[130] This idea of maximising benefits and protecting shareholders is completely opposite to Freedman's ideas, who states:" that business owe social responsibility only to their owners and have no duty other to increase profits"[131]. Meanwhile, the Germain approach of Corporate Governance adopts Freedman's ideas, which presume that organisations have a moral relationship with the people and that organisations are affected by their conduct[132]. Therefore, the Germain approach is based on the separation between the participation of shareholders and the directors of corporations. Consequently, this approach seeks to protect stakeholders from creditors[133]. In this case, a study of the different theories associated with the concept of Corporate Governance is needed.

[128] Ibid.
[129] Nehaa (2009)' the Anglo-American model of CG- Basic Overview', september5,2009.
<https:// implicitly. Wordpress.com/2009/09/15/Anglo-American- model- of-corporate- governance-basic overview>
Accessed on 15/04/2020.
[130] Nehaa (120) 40
[131] Kirchmaier. T, Queen.G, and Grant. J (2004) 'CG in the US and Europe'. Palgrave 2004, pages112-120.
[132] [132] Charkhan. J (2005) 'Keeping Company: CG ten years on', Oxford University, pages 28-38.
[133] Ibid

2.2.1.2 A study of the theories associated with the concept of Corporate Governance: shareholder theory, stakeholder theory, and agency theory

Corporate Governance has become a controversial subject among corporations, shareholders, and stakeholders; however, the debate is always about what constitute "good governance". Consequently, this section will provide a quick guide and brief background to the theories associated with the concept of Corporate Governance.

2.2.1.2.1 Shareholder theory

Corporate Governance is the system by which firms are managed and controlled. The board of directors are responsible for administration and governance of their corporations.

Whereas the shareholders hold the directors and the auditors accountable for their decisions, and they should satisfy themselves that an adequate Corporate Governance structure is in place[134]. Shareholders monitor the management by market rules and legislations because they are the owners of the corporations. However, their interests are only temporary, and they have no interest in running the company in the long-term[135]. In fact, there is a distance between the shareholders and management. The shareholders rights have been accorded a great importance since the twentieth century. This theory separates corporate ownership and management and asserts that the management direction act as agent of the shareholders of the corporations. Freedman first created this theory in 1970, when he expressed that business has only one social responsibility to increase the firm's benefit[136]. Theoretically, the agent always

[134] ICAEW,'what is CG'
<Https:// www. Iacew.com/technical/corporate/governance/principles/principle-article/does-corporate-governance-matter>
Accessed on 15/4/2020.
[135] Al- Habshan.K (11) 9.
[136] E Bowie.N (2012) 'Corporate Social Responsability in business'
<https:// www.leadership.umm.edu/documents/bowie-5-30.pdf>
Accessed on 15/04/2020.

works in the interest of the owners. The management cannot exercise their rights in any other party's interest. In this case when the management act for the interest of other then it has violated its lawful power[137]. Under shareholder theory, shareholders are protected and most of Corporate Governance system across the world do. For example, OECD principles announce that not only shareholders should exercise their rights but also their rights have to be protected and facilitated despite what he was, majority or minority[138]. However, the absence of a unique objective for shareholders can expose their interests to conflict[139], such as conflicts between owners, majority versus minority shareholders. This relationship is recognised as principal-principal agency or type-two agencies[140]. Principal-principal conflicts result from concentrated ownership. This principle distinguishes between the two types, as follows: principal-agent agency results from widely dispersed ownership causing conflicts of interests between owners and board of directors, whereas principal-principal agency results from concentrated ownership causing conflicts of interests between monitoring and minority shareholders. Principal-principal conflicts are very relevant to emerging markets since most of the companies are managed by the majority or controlling equity holders. One of the main ideas from the shareholders theory is that it warns against having the assumption of the homogeneity of interests within corporation[141]. Not just that, but the theory also urges the ability to identify the specific aspects of differentiation within each firm[142]. However, focusing on majorities and minorities shareholders' interests inside the company represents a narrow interpretation of

[137] Letza.s, Sun.Xiupinga and Kirkbride.J (2004) 'Shareholding versus stake-holding: a critical review of CG, CG Review, 12 (3), page 242.
< https:// onlinelibrary.wiley.com/doi/pdf/….>
Accessed on 15/4/2020.
[138] OECD principles of CG (109) 38
[139] Carnillo.EP (2007) 'CG: Shareholders' Interests and other Stakeholders' interests 'ResearchGate, January 2007.
< https:// www.researchgate.net/publication/231315882>
Accessed on 15/4/2020.
[140] El Diftar. D (12) 9.
[141] El Diftar. D (12) 9.
[142] Ibid

shareholder theory[143]. Focusing on a wider theory should be explained taking in consideration the interests of all of the shareholders inside and outside the corporation. This theory is the stakeholder theory, which will be described in the next section.

2.2.1.2.2 Stakeholder theory

The stakeholders are other players in the Corporate Governance system who also play a crucial role in firms. More specifically, they make long-term investments[144] and they improve the long-term effectiveness of companies. In fact, good Corporate Governance has to enable a better relationship between stakeholders and company to encourage them increase their investments[145]. Stakeholder theory aims to homogenise the different interests. It considers all of the stakeholder groups through the corporation and not society as a whole[146]. It is also the most expensive because it considers the interests of the big numbers of people[147]. This theory aims to look for a wider beneficiary from corporate reporting or from financial information disclosed and not only on shareholders[148]. The concept is simply identified as anyone or many groups of participants who directly or indirectly have a stake in the organisation[149]; for instance, suppliers, customers, creditors, and employees. Stakeholders, moreover, consists of the public, both local and national, governments at different levels, and financial institutions, who are considered as essential for the survival of any corporation[150]. However, the problem at this level is that it is difficult to precisely define who the stakeholders are in company, which could increase issues inside the corporation. For example, agents may cite children, the homeless,

[143] Ibid
[144] Sonmez. M (3)7.
[145] Ibid.
[146] Deegan. c, Rankin. M, and Vought (2000)'Firms Disclosure Reactions to Major Social Incidents: Australian Evidence' Accounting Forum, 24 (1), pages 101-130.
[147] Al- Habshan. K (11) 9.
[148] Ibid
[149] Languger. C (2018) 'who is responsible for Shareholders interests', IGA Academy, March 8,2918. <https:// www.investopedia.com/ask/answers/05/shareholdersinterests>
Accessed on 15/045/2020.
[150] Sternberg. E (1997) 'the Defects of Stakeholders Theory' CG an International Review,5 (1), January 1997, pages 3-10.

prisoners, and even cats as stakeholders to increase their own interest in the firms[151]. Stakeholders could be separated into two groups based on their importance to the survival of firms[152]. The first group are those people connected with the corporation who are not permanent participations, such as employees, shareholders, and suppliers. The second group are those affected by the organisations and who do not directly participate in the corporation and are therefore not important for its survival[153].The important role of stakeholders with the respect of financial transparency and disclosure is the attempt to convince firms that voluntarily disclosure is a behaviour to correct and problems, contrasted with those firms who hide it[154]. Firms have a great interest in this theory because company monitoring is controlled by the stakeholders and not by regulations or law. Stakeholders, in addition, suppose that the board of directors or management cannot take decisions without taking into consideration the stakeholders' interests[155]. For instance, the crucial goal of stakeholders is to increase their wealth by maximising the value of their shares. In addition, all stakeholders are presumed to have equally rights and should be treated equitably[156]. However, focusing on only increasing the stakeholder's value may affect the value of other stakeholders and make governance and management more difficult[157]. Stemberg[158] criticized the stakeholder principle to be equitably accountable because it lacks a unified purpose among all stakeholders. In addition, this principle cannot provide a standard at which directors or managers can be assessed and evaluated. The stakeholder and shareholder theories cannot be understood without highlighting and analysing agency theory.

[151] Sonmez. M (3) 7.
[152] Deegan. c, Rankin. M, and Vought (135) 43.
[153] Ibid.
[154] Ibid.
[155] Ibid.
[156] El Diftar. D (12) 9.
[157] Ibid.
[158] Sternberg. E (138) 43.

2.2.1.2.3 Agency theory

Agency theory assumes that shareholders are diverse, and that their opinions and desires vary. Therefore, management are better located to command the firm and provide the income sought by the owners[159]. This is defined as a relationship between two sides: a principal and an agent. The first relegates the job to the second, who manages and pledges the effective administration of the company. This identification is a separation between the management and finance[160]. This happens because of the lack of returns for managers and the owner's lack of management experience[161]. The problem is that this relationship principal- agent could create asymmetrical information relationship because both have access to different level of information. Consequently, the principle will be at a disadvantage because the agent has access to more data[162]. Regarding the self-interest of the agent managing the corporation, an agency conflict may arise[163]. So, may owners do not trust the loyalty of managers and how their capital will be spent in case of these issues. The relationship between owners and managers is the most widely used in the identification of the agency theory. This idea is based on the delegation of the decision which is the important standard of any responsibility inside company[164].

The agency theory identification is treated differently relating on the extent of separation between ownership and corporate monitoring. This secession of ownership and control increases as countries become more industrialized and developed[165]. Even though the segregation of principal and control agent is one of any firms' fundamental aspects, it is also one of the most argumentative ones[166]. There are three types of public corporations. First,

[159] Al- Habshan. K (11) 9.
[160] Sheifer. A, Vishny.RW (118) 40.
[161] Ibid.
[162] El Diftar.D (12) 9.
[163] Ibid
[164] Ibid
[165] Ibid
[166] Ibid

majority control, where corporations have a dominant shareholder who owns more than 50 percent of outstanding voting shares. In this case, minority shareholders share in the company, but are not in control. These blockages by the owners are typically exercised by the state, financial-industrial groups, families, or private groups[167]. Second, minority monitor corporations, in which the dominant shareholder in the corporation owns less than 50 percent of the outstanding voting shares. In this case, there is a partial separation of ownership and control. Third, managerial control corporations, in which stock ownership is dispersed among many shareholders, and there is no one shareholder who owns enough value of shares that enables them to materially influence the company management. Here, there is a complete separation of ownership and control[168]. Identifying the agency theory from its wider perspective, the definition of this theory could go over the classic relationship between investors and managers[169]. This relationship could be between managers and auditors, and between auditors and shareholders.

The conflicts that issued from these relationships have been of large concern for many years. The solution for this problem could be to promote of the role of transparency and disclosure. In other words, the greater financial transparency, the less agency conflicts, and then the greater benefit[170]. This is due to the unequal knowledge and necessary data by different parts of a corporation[171]. The importance of the agency theory in improving Corporate Governance into firms is indisputable. The transparency and disclosure play a crucial role in reducing the information asymmetry, and then the cost of the agency problem. Even though it

[167] Sheifer. A, Vishny.RW (118) 40.
[168] Ibid
[169] El Diftar. D (12) 9.
[170] Panda. B, Leepsa N.M (2017) 'Agency Theory: Review of the Theory and Evidence on Problems and Prespectives', Indian Journal of CG, 10 (1), 2017.
<https:// doi.org/101177/0974686217701467>
Accessed on 15 /4/2020.
[171] Ibid

is not sufficient on its own to guarantee an effective Corporate Governance in company in general and in oil company in particular[172], holding the board directors or managers accountable for their decision constitute with transparency is an important element in enforcing Corporate Governance inside the corporation.

2.2.2 The relationship between accountability and transparency

Studying the relationship exist between transparency and accountability allows us to identify the concept of financial transparency, and then the framework of the principle of IFT. Transparency and accountability are both promoted to address the problem of corruption in the extractive industry[173]. The last decades have seen the emergence of the concept of Corporate Governance. At the same time, corporate standards emerged to promote Corporate Governance and participate in economic growth, such as transparency and accountability. There is a great recognition in many corporations and financial institutions that transparency and accountability enhance the expectation of any financial issues and ameliorate the policy of decision making[174]. In other words, transparency enforce a corporation to face up the reality of a situation. However, accountability, makes management or officials more responsible[175]. Transparency and accountability are complementary. They enhance the quality of decision making by holding management responsible for their actions[176]. Transparency, in addition, is trending to create an environment where data disclosed about decision and action are easily accessible, clear, and understandable to all bodies interested in that information. Accountability is also required for market participants, including the authorities, to clarify their decisions and results[177].

[172] Ibid
[173] Corrigan.cc (2014)' Breaking the Resource Curse: Transparency in the Natural Resource Sector and EITI', Resources Policy, 40 (1), pages 17-30.
<https:// www.elsevier.com/locate/resources policy>
Accessed 17/04/2020.
[174] Leptadu. GV, Pinau. M (25)13.
[175] Ibid.
[176] Ibid.
[177] Leptadu. GV, Pinau. M (25)13.

Furthermore, accountability holds the three main actors of financial market responsible for their decisions, and likewise borrowers, lenders, and investors.

In the extractive industry, the meaning and the relationship between transparency and accountability do not change. Transparency is about the possibility of communication, authorising accuracy over financial position and revenues, and how the resources are generated and used[178]. Furthermore, accountability ensures that public bodies serve the needs of the people and not only serve as revenue sources to keep them in power[179]. By increasing transparency and accountability inside extractive industry, the government could improve the effectiveness of corporate reporting in favour of citizens. Accountability also plays a key role in promoting financial transparency in oil sector because it allows agents to be answerable for their data release. Furthermore, it makes sure that this information is open to scrutiny and reflects the exact financial situation of the oil firms. However, the problem is that just being answerable could lead to asymmetrical financial information being released, which is what we called a soft accountability[180]. A hard accountability is when soft accountability is associated with sanctions for noncompliance by an agent[181].

2.3 A general background of the IFT principle

The study of the principle of IFT requires a brief definition of the concept of financial transparency in general (2.3.1), before giving a primary idea about the principle of IFT, and how it was established in the international oil sector (2.3.2).

[178] Corrigan.cc (161) 48.
[179] Ibid.
[180] Maymerik.M (2017) 'Accountabilty and transparency', Big Data and Society, 4(2), December1, 2017. https://doi.org/101177/2053951717718953
Accessed on 17/04/2020.
[181] Ibid

2.3.1 Definition of financial transparency

Today, there is a need to be explicit about what transparency means. In the past, transparency in general is recognised as "hearing was believing". But this no longer has been argued because it cannot pledge an effective or good Corporate Governance in a corporation. So, there has been an orientation towards a clear definition of financial transparency based on its criteria that allow a publishing of clear, accurate, and understandable information in favour of market participants, which means that "seeing is believing" (2.3.1.1)[182]. Meanwhile, the drawbacks of transparency definitions in general, and financial transparency, should not be ignored (2.3.1.2).

2.3.1.1 Criteria of financial transparency's definitions

Transparency has become one of the most important standards for the success of companies and financial markets[183]. It is the most crucial norm because the other three (fairness, accountability, and responsibility) depend on how the information is disclosed effectively and reflects the right financial position of firms[184]. Transparency is not only about publishing information, but it is also about pledging that every single body in corporation can access this information at the right time, in the right format, and in the right place[185]. Mainly, transparency's objective is to guarantee an accurate, complete, comprehensive, and understandable data in general and financial information, especially, for any stakeholder who has an interest in a company[186]. Bernard Black also adopts this idea: "it is not important to access information unless the information is reliable. Therefore, publishing of random information cannot be accepted as increasing transparency in corporation. It may be difficult

[182] Smith.R.B (2004) ' Role of Disclosure in CG', US Security Commission, 2010,page 3.
[183] Blachandran. V, Handrasetran.V (2009) 'CG and Social Responsibilities', PHI Learning Private Limited, page 88.
[184] Ibid.
[185] Smith. R.B (176) 50.
[186] Sonmez. M (3) 7.

to understand the quality of information." Subsequently, the data published has to have some features, such as, clarity, accuracy, authenticity, and impartiality[187].

At this stage, it is relevant to note that financial transparency is only one of various kinds of transparency, for instance, fiscal transparency, social transparency, and environmental transparency. So, the criteria that are used to describe transparency are also used to identify financial transparency. Financial transparency also provides a firm's financial information concerning their performance and position, which helps investors to make an adequate decision about the financial situation of this company. In addition, transparency includes a financial review containing all the financial statements and ratios for shareholders and investors to evaluate the firm's value[188]. This financial information disclosed should be clear, accurate, and understandable. Furthermore, the information should be easy to access for any stakeholder who wishes to make the adequate decision for his investments. Consequently, a tendency has recently appeared to increase transparency by releasing a better financial data based on International Financial Reporting Standard (IFRS) and International Accounting Standard (IAS)[189]. A complete and general definition that covers all aspects and criteria of both transparency and financial transparency should have three important standards, which are: disclosure, access to this information by different methods, and scrutiny (or being effective). In fact, effective financial transparency can play a crucial role in a financial crisis because it supports confidence between different part of financial market[190]. Confirming this idea, the US courts have recognised that these transparency standards should not be mechanically applied, and they add that the degree of vagueness tolerated by the constitution can vary, depending in

[187] Black.B (2001)' The Legal and Institutional Preconditions for Strong Stock Market', UCLA Law Review, V48,2001 pages 781-849.
[188] Al- Habshan. K (11) 9.
[189] Sonmez.M (3) 7.
[190] Ibid.

part on policy objectives, the subject and the person regulated[191]. Moreover, financial transparency describes the provision of financial information and the transparency of financial reporting. Given the difficulty to define the general concept of financial transparency and to give an accurate definition, this study will be devoted to the content and role of financial transparency in commercial law.

Financial transparency is a rule that aims to enclose timely, accurate, and reliable information, and it plays an important role by ensuring a robust Corporate Governance structure and guarantees the financial performance of company. This role is critical because of the reliability of information released. The secrecy or confidentiality given to a company restricts its role. In other words, the negative effects of financial transparency should not be ignored, particularly its main negative effects: which are its costs.

2.3.1.2 Potential problems of financial transparency

The absence of a clear and general definition of financial transparency is one of the main problems of transparency because it can affect the effectiveness of transparency legislation[192]. The norm of transparency should be clear and comprehensive in the different legal approaches and literature because unclear, irrelevant, misleading, and inaccessible information lead to the lack of transparency. Moreover, it could affect the reliability of financial information disclosed[193]. Thereby, it is important to publish "semantic financial data", which veils meaningful, veridical, comprehensible, accessible, and useful information[194], rather than releasing any sort of information in the financial market. Consequently, the essential elements for the definition of transparency, in general, and financial transparency, in particular, must be

[191] Hoffman Estates via Flipside 455 US 489(1982).
[192] Smith. R.B (176) 50.
[193] Turilli.M, Floridi.L (2009)' the Ethics of Information Transparency', Ethics and Information Technology, 11 (2), March 10,2009, pages 105-112.
https://www.research gate .net/publication/226497023-the- ethics-of....
accessed on 23/04/2020.
[194] Turilli.M, Floridi.L (187) 52.

accessibility, reliability, comprehensiveness, quality and relevance. However, the problem is how to measure the efficiency of transparency? According to scholars such as Tara Vishwanath and Daniel Kaufman, the measurement of transparency is done regarding to its quality and relevance[195]. Andrew Shnakemberg attempts to explain the measurement of transparency with a conceptual model. He mentions that the transparency measurement may be done by examining three important factors, as follows: disclosure, clarity, and accuracy, which are accepted as the three main principles for the efficiency of transparency[196]. The possibility of determining the efficiency of transparency legislation level as a mathematical or statistical measure appears to be difficult according to the absence of precise elements that make it possible to produce mathematical equation.

Other than reliability and efficiency of transparency legislation, the cost of transparency can also be a potential problem. Some authors consider as a main problem of transparency, such as Benjamin Mermalin and Michael Wersbash. They consider that the disclosure and the publication of financial information is not free[197]. The company, furthermore, may endure a high cost when they make this data available to the public[198]. Financial information can be disclosed in financial market with different methods, including the press, newspapers, and the Internet. It can also be disclosed by the way of financial statements, such as yearly financial report, half-yearly- financial report, and quarterly financial yearly report, and finally, general

[195] Vishwanath.T, Kaufman.D (2001) 'Toward Transparency: New Approaches and Their Application to Financial Market' the World Bank Research Observer, pages 41-57.
<https:// openknowledge.worldbank.org/handle/10986117128>
Accessed on 23/04/2020.
[196] Shnakemberg.A (2002)' Measuring Transparency: Toward a Great Understanding of Systemic Transparency and Accountability', Working Paper of Weatherhead School of management, Page 14.
< https:// Weatherhead.case.edu/departments/organisational behaviour/working paper>
Accessed on 23/04/2020.
[197] Mermalin.B, Wersbash. M (2007)' Transparency in CG', National Bureau of Economic Research', Page 1.
<https:// www.ober.org/papers/w12875>
Accessed on 23/04/2020.
[198] Ibid

and annual meeting holding in company. These methods all increase the cost of direct disclosure.

Despite these issues in encouraging transparency inside firms, which could handicap the effectiveness and the quality of financial information reporting, financial transparency is still the most important element of good governance in all economical branches (e.g., commercial transactions, company sector, and including the extractive sector). A global governance attempt, at this stage, has been launched by some international financial institutions to promote transparency in the oil sector and face the issues of the resources curse. Therefore, the next section will examine the first practical steps set up by these financial institutions.

2.3.2 First practical steps to promote transparency in the oil sector

Until recently, the transparency of extractive industry has been an international matter, mainly due to the difficulties generated by the resource curse[199]. Thereby, many international initiatives have been established to promote resource governance transparency and oil sector financial transparency. This has become an international hallmark to encourage the transparency of extractive sector management and enhance societal development in natural resource-rich countries[200]. This global governance called for adequate institutionalization of voluntary multi -stakeholders initiatives, with a great engagement of the developing countries. Therefore, the next section of this chapter will analyse the first attempt towards founding an international transparency policy in oil sector in developing countries through the WBG (2.3.2.1). It will then show the implementation of multi-stakeholder's initiatives through the international financial transparency organisation, such as EITI and PWYP (2.3.2.2).

[199] Lujala. P (2018)' Analysis of EITI implementation process', Elsevier, world development, 107, April 2018. <Https:// www.elsevier.com/locate/worlddevelopment >
Accessed on 1/05/2020.
[200] Caspray.G (107)36.

2.3.2.1 The involvement of WBG in promoting transparency in the oil Sector:

The WBG effort is one of the most eminent global trials at facing and combating the corruption that exists in the oil sector[201]. In the 1990s, Corporate Governance and fighting corruption were approximately forgettable. Both played a small role in WBG's transactions[202], due to aversion in fighting corruption with limit reading of the WBG's functions. This narrow reading of the articles of this association were interpreted as authorising it to only work on the economy and its development. This has changed since the 1990s because of two external reasons: improving efficiency and the quality of foreign help. Consequently, this study will focus more on the governance of these operations and the efficacity of the development efforts. This first cause was the end of the civil war[203], which means that the international donors were supposed to have finished providing aid related to this political strategy. The second reason that promoted the quality and governance of these aids was the general pressure on public budgets in OECD[204]. These efforts were awarded by the rectification of two important strategies to favour governance in general. In 1997, the first endorsement made when the World Bank issued its operational anticorruption guidelines for its staff. This was followed by the second crucial endorsement in 2007, which was the WBG's anticorruption strategy[205] that was launched after a global consultation on how governance and fighting corruption should be done. So, using Corporate Governance and transparency to face corruption has been fostered by the WBG's and its stakeholders in all necessary sectors, including the extractive industry. This was especially crucial for the growth of developing countries, who should adhere to these strategies and enforce governance inside their countries[206].

[201] Ibid
[202] Caspray.G (107)36.
[203]Ibid
[204] Caspray.G (107)36.
[205] Ibid
[206] Ibid

International financial institutions have made many efforts to enhance governance and transparency around the world, but this cannot be done without support from extractive governance. The WBG has played a fundamental role in supporting transparency in the oil sector, particularly in resource-rich countries[207]. In the same context, the WBG published a result of a report about its involvement in extractive industry[208]. This report was the result of a three-year review of its involvement in oil sector. Moreover, it asked if the oil sector around the world fits with the resource governance objectives that had been set up by the WBG[209]. The answer to this question was that various recommendations were provided to the WBG to promote transparency in the oil sector, such as encouraging the civil societies participations to balance the triangle of partnership between government, business, and civil society, and improving transparency in revenues flows. In addition, local government helped to develop and create its modern governance policy[210]. Consequently, the International Bank for Reconstruction and Development (IBRD)[211] has concentrated on governance in extractive industry. The other arm of the WBG is the International Finance Cooperation (IFC)[212], which also supports investments with the respect of transparency international standards and the transparency of the payments to evoke the government's responsibility.

To enhance transparency efficiency in the extractive industry, various procedures have been established by governments to make resource revenues available for the public[213]. These

[207] Caspray.G (107)36.
[208] 'Evaluation of the WBG's in the extractive industries', WBG's. September 1,2004, pages 1-29.
< https;// documents-world bank.org/curated/en/2004/09/19574658/evaluation-world…>
Accessed on 1/05/2020.
[209] Ibid
[210] Ibid
[211] See more about IBRD: 'IBRD', WBG's paper.
<https:// www.worldbank.org/en/who-we-are/IBRD>
Accessed on 1/05/2020.
[212] See more about IFC: Kagan.J (2020)' The Introduction to the IFC', Trade on Oil with A World Leading Provider, April 27,2020.
<https:// www. Investopedia.com/terms/iter-action-finance-cooperation.asp>.
Accessed on 1/5/2020.
[213] Caspary. G (107)36.

steps consist in making the exploration development and production rights more transparent, through effective and efficient legal rules. For example, making extractive concession, licences or contracts data available to stakeholders[214]. Thus, the WBG is recently supporting this procedure in countries such as Mozambique, Guinea, Pakistan, and Liberia. To help install a clear and efficient legal framework supporting the objectives of transparent oil sector in developing countries, WBG is looking to improve the effectiveness of legislation and enforce the control of extractive projects. The responsibility of the governments has to be clearly defined to prevent any embezzlement and fraud committed in spending their oil revenues[215]. Furthermore, effective financial transparency in the oil sector requires a strong institution to ensure the control of the income generated by oil sector and where it is spent. Further steps have been taken by the WBG to make the distribution and the management of the revenues collected from oil operations transparent, which it is hoped will help to end corruption in extractive industries[216].

The WBG strategy in the extractive industry can be the right way to provide an appropriate and effective financial transparency. The WBG procedures can also be considered as a primary practical step for improving transparency of oil sector around the world. The measures have been set up are represented as international norms and pave the way for creating an international legal framework in favour to support financial transparency in the oil sector. Moreover, they help not only developing countries to adopt an efficiency transparency, but they also help developed nations. At this stage, an international project promoting resource governance starts to appear in favour of stakeholders. This strategy was supported by the foundation of international initiatives to encourage extractive industry transparency.

[214] Caspray.G (107)36.
[215] Ibid
[216] IBRD (205)56

2.3.2.2 Building transparency and accountability through international financial transparency institutions: EITI and PWYP

The international transparency institutions have been launched to practice the international norms setup by WBG. The objective is always to increase the efficacity of financial transparency in oil sector and reduce the negative effects of the resource curse. This section examines the building of international financial regulations, including international financial transparency initiatives such as EITI (2.3.2.2.1), and PWYP (2.3.2.2.2).

2.3.2.2.1 Building transparency through EITI:

Following the 2008 financial crisis,[217] there was a global push to increase financial transparency in the extractive industries, generally, and in the oil and gas sector, specifically[218]. The first initiative was the idea of EITI, which was founded in 2002 at Johannesburg in South Africa by the UK Prime Minister Tony Blair and was operative in 2007. This initiative encompasses the participation of governments, companies, civil society, and non-governmental organisations, such as international organisations and investors[219]. Furthermore, this initiative establishes an international standard for firms to publish what they pay and for governments to disclose what they receive. The EITI can be considered as an initiative to support government institution to fight the practices of corruption with theft[220]. In fact, this initiative seeks to strengthen oil sector governance by enhancing transparency and accountability[221]. However, this goal cannot be realised without pushing governments to develop their legislation through enforcing the disclosure of the payments made by the international oil companies in favour of

[217] See about the financial crisis, Brightman.M (2012) 'the functions of government in times of financial crisis', the UCLAN journal of undergraduate research, 5 (2), published December (2012), pages 1-10.
[218] Mouan. L.C (2015) 'governing Angola's oil sector, the illusion of revenue transparency'. A PHD Thesis submitted at Coventry University on April 2015.
[219] Bature B.G (2014)' the empirical study of the Nigerian extractive industries transparency initiative (NEITI)', PHD thesis, submitted on 2014.
[220] Corrigan.cc (167) 48.
[221] Ibid

the government, as well as reporting any payment made by this later to the former[222]. The adherence of the governments in this initiative is a sign of an awareness of the need to reform their legislation to enhance financial transparency in the extractive industry[223]. By joining this initiative, the government accepted to report any company payments made to it and reject any corruption or misconduct in the oil sector; in other words, that the government adopts international standards[224]. This meant that local authorities give the public access to information on extractive revenue paid based on international standards, such as IFRS and IAS[225]. In case the country establishes its payments made and received it without using these international standards, it can put itself in risk of losing its international reputation, which will affect the financial help that it receives from the international financial institutions[226]. In fact, the membership of any country in this international transparency initiative is proof of its capacity and ability to pay its credit. In addition, countries which choose to be part of the EITI tend to have higher transparency and have accepted to share its revenue generated by its oil sector[227].

The EITI, without doubt, increases financial transparency through supporting accountability within the revenues receiving by the governments[228]. Furthermore, this rise in transparency enhances the national institutions that control and spend the oil revenue. Consequently, it improves the oil sector governance and the economic development[229]. However, the importance of EITI functions cannot hide its limitations. From its positive

[222] Corrigan.cc (167) 48.
[223] Ibid.
[224] Ibid.
[225] IFS and IAS: the International Organisation of Securities Commission recommended that multinational enterprises should be able to use International Accounting Standards for financial statements for cross-border listings and offerings (May 200), see Cima (2002), 'business transparency in a post -Enron world', published August 2002, p13.
[226] Lujala. P (193)54.
[227] Ibid.
[228] Corrigan.cc (167) 48.
[229] Corrigan.cc (167) 48.

impacts, EITI has been an effective initiative that allows a wide disclosure of financial data about the oil sector and helps to build confidence in oil sector between government and stakeholders[230]. However, other challenges should be faced, such as making the role of civil society stronger, and more robust and visible[231]. This could influence the legitimacy of the government in a positive way. Furthermore, the EITI process must be completed by an independent third party to improve trust and collaboration between local authorities and stakeholders[232]. It has been argued that the international standards are not enough to disclose an adequate information to reflect the financial situation of the company and help stakeholders to take the right decision. Data about oil revenue is still lacking and constitutes a real problem because we need to take into consideration all the oil production process, including the transformation of natural resources and not only the material payment[233]. To be effective, the EITI should include the different parts of extractive transparency, likewise governments, civil societies, and firms should have the same vision and objective. In addition, the information disclosed to stakeholders must be given fully in many states to allow them to play their role in promoting the transparency of oil sector. Finally, local legislation has to be more aware of the importance of EITI[234]. In addition to this international initiative, there have been other initiatives to implement the international rules of the principal of IFT, such as PWYP.

2.3.2.2.2 Implementation of the IFT through PWYP

PWYP is an international coalition that was launched in 2002 by six-London-based non-profit organisations and was considered as an initiative of the Open Society Foundation. It was, furthermore, established as a separate organisation on 9 April 2015 and become full

[230] Caspray. G (107)36.
[231] Global Witness (2009)' Making the Forest Sector Transparent: Annual Transparency Report 2009', December 13,2014.
<https:// www.globalwitness.org/en-gb/archive/making-forest-sector....>
Accessed on 5/5/2020.
[232] Corrigan.cc (167) 48.
[233] Ibid.
[234] Ibid.

management independent from the Open Society Foundation on 1 September 2015[235]. PWYP is a global coalition including civil society organisations united call for a transparent and accountable oil sector, to ensure that the extractive sector enhances the lives of local citizens[236]. This international organisation is made up of more than 800 members organisations around the world, encompassing human rights, development, environmental and faith-based organisations. In total, more than 40 countries have become members of PWYP to improve the governance of extractive industry and implemented its principles and standards[237].

PWYP has participated in the first steps to co-create and capitalise the global transparency strategy. It has supported the establishment of good transparency and accountability in the oil sector and has therefore participated in the growth of developing countries. PWYP, moreover, has been widely responsible for the debate about oil sector around the world. This initiative demands that companies and governments should declare the amount of money being paid for the right to produce oil, gas, and another natural resources[238]. PWYP was founded on the one hand, to let people in developing countries monitor their government's management of natural resource wealth; on the other hand, it requires the governments to disclose and publish payments received from the extractive industry (e.g., the payment of taxes, fees, royalties, bonuses and other financial transactions). The rule for PWYP is that transparency is a crucial step via completing accountability, and that both are necessary for

[235] PWYP (2015)'Report of the Trustees and Financial Statements for the Period ended 31december 2015' pages 1-28.
<https;// www.publishwhatyoupay.org/pwyp-trustee-report-2015-final pdf.>
Accessed on 06/5/2020.
[236] Litvinoff. M (2015)'Achieving Extractive Transparency in the European Union, PWYP, June 2015, Pages 1-12.
<https:// www.misleslitvinoff.info/docs/Eu casestudysep15.PDF>
Accessed on 6/05/2020.
[237] Natural Resources Governance (2013) 'A Civil Society Coalition for Extractive Sector Transparency and Accountability', March 2015.
<Https:// resourecgovernance.org/sites/default/files/nrgi-pwyp-.pdf>
Accessed on 06/05/2020.
[238] Litvinoff. M (230) 8

ending corruption and oil wealth mismanagement and providing developing benefits[239]. Detailing the financial data reporting of firm's payments and government receipt has been the corner stone of its work[240]. It has also been responsible to guide international firms and governments how to ensure that the revenue generated from oil sector is transparent, and how 'project' should be defined[241].

The PWYP mandatory reporting was essential criteria to achieve its intensive efforts to promote oil sector transparency. The goals of this international coalition should in future deter corporations and governments around the world from committing corruption or misallocating oil revenues[242]. However, the role of PWYP is affected by various restrictions in different categories, such as governance risks, operational risks, financial risks, and compliance risks[243]. The main handicap is still the high cost of this international coalition to engage high quality staff and make effective control in respecting oil sector transparency standards[244]. The expectation of the organisation is not to exclude all handicaps but ensure that they have an adequate management system put in place to expect those risks[245].

The role of PWYP as an international coalition has a pertinent relationship with the establishing of the IFT principles at international level with EITI. Moreover, the participation of the international coalition is massively important in incorporating the international standards and launching the international principles of financial transparency. At this stage, PWYP, was a strong promoter of the EITI with all the civil societies representative on the EITI board, all

[239] Batchelors. S (2013)'Coalition for Transparency in Extractive Industries', Gamos, April 2017. https://www.coalitionforintegrity.org/what-we-do/transparency-and. Accessed on 6/5/2020.
[240] Batchelors. S (232) 61
[241] Livinoff. M (229)10
[242] Ibid
[243] PWYP (229) 3
[244] Ibid 7
[245] Ibid7

were PWYP members[246]. However, the PWYP does not trust that the EITI has done better than founding its rules[247]. For instance, countries are not obligated to follow EITI regulations because it is voluntary. Meanwhile, the PWYP requires that obligatory rules have to be put in place to impose firms and nations to comply with the EITI principles[248]. Despite this contradiction, the rules introduced by them are still able to encourage the transparency of the payments received by governments from the oil sector. Many nations[249] have implemented these rules to enforce the disclosure of financial data in the extractive industry; for example, the Directive 2013 /50/EU of the European Parliament and of the European Council of 22 October 2013, amending the European directive 2004/10/EC relative to the EU Transparency Directive, also Section 1504 of the Dodd-Frank law in US approved on 22 August 2012 by the US SEC.

2.4 Conclusion

The main aim of this chapter was to introduce the principle of IFT. However, that cannot be done without assessing and understanding the concept of transparency and without explaining how this principle started to appear at international level or how the different rules constitute this principle have been launched.

This concept of transparency is still unclearly defined, its meaning is still complicated, and there is a need to define and locate it. To make a clear definition, it is important to analyse its relationships with the common concepts[250], such as Corporate Governance and Accountability. Consequently, it is not easy to complete the standards of financial transparency definition. At this phase, it is necessary to comprehend that good governance in business or in

[246] Lind H.N (2013) 'The Future of Transparency Disclosures', Petroleum Accounting and Financial Management Journal, 32(3),2013, pages 93-100.
[247] Ibid 96
[248] Ibid 96
[249] A study of the implementation of IFT by these nations will be the subject of the next chapter.
[250] Sonmez .M (3) 65

corporation absolutely requires an effective transparency and accountability. Therefore, this chapter has demonstrated the relationship between Corporate Governance and transparency, and the relationship between transparency and accountability. This chapter has also shown the importance of transparency in both Corporate Governance and accountability.

This chapter, furthermore, has pointed out that an effective transparency demands an adequate disclosure of information, which helps shareholders and stakeholders to take the right decision relating to their participation in corporations[251]. Consequentially, the effectiveness of transparency in the oil sector leads to an improved extractive sector governance. Consequently, this chapter attempted to assess the theories associated with the concept of Corporate Governance and transparency, which are the beneficiaries of the information disclosed by the company. In other words, the bodies who receive the information released, including shareholders, stakeholders, and theory agencies who monitor the effectiveness and the accuracy of the information[252].

After analysing the relationships between transparency and similar concepts, the following definition of transparency will help to better understanding the principle of IFT:

> Transparency is an obligation to provide financial information in appropriate manner in favour of shareholders, stakeholders, and theory agency to ensure the prudent management and long-term success of any business. However, illegal activities, such as fraud, embezzlement and secrecy limit the role of financial transparency and restrict the efficiency of Corporate Governance.

[251] Sheifer. A, Vishny.RW (118) 40.
[252] Deegan.c, Rankin.M,and Vought (135) 43.

Transparency's definition problem can be reduced based on three crucial elements, as follows: the disclosure of the information, the accuracy of this information, and finally the audit, which pledge the good governance of any corporations.

The last part of this chapter has studied the first practical steps to launch the IFT rules at the international level. These rules aim to promote the transparency of the extractive industry. Moreover, it aims to make transparent the payments made by the companies to the government, as well as the payments received by the firms. This chapter has demonstrated the building of transparency in extractive industries through the international coalitions of EITI and PWYP[253].

The EITI is an international initiative, and it is an important factor in establishing the international rules of the principle of transparency. In addition, increasing the transparency in the oil sector can help to hold governments to account for the revenues that they receive[254]. Furthermore, this rise in transparency enhances the national institutions that control the oil revenue generating and spending. Consequentially, it improves the oil sector governance and the economic development[255]. This chapter has also explained the important role of the international organisation of PWYP in enhancing extractive sector governance. Its role was pertinent in establishing of the IFT principles at international level with EITI. Moreover, the participation of the international coalition is massive in incorporating the international standards and launching the international principles of financial transparency. At this stage, PWYP was a strong promoter of the EITI and all of the civil societies who were represented on the EITI board were PWYP members[256]. While the role of the EITI and PWYP appear as crucial to establish the principle of IFT, there has been much discussion concerning their

[253] Livinoff.M (229)10.
[254] Corrigan.cc (167) 48.
[255] Corrigan.cc (167) 48.
[256] Lind H.N (2013) 'The Future of Transparency Disclosures', Petroleum Accounting and Financial Management Journal, 32(3),2013, pages 93-100.

limitations in realising that objective. Despite their efforts in deterring corruption among companies and governments in the extractive sector, their efficacy as an international organisation and their ability to impose transparency rules around the world are still restricted. They cannot obligate all countries, especially those rich in natural resources, to join them. However, that does not prohibit some national countries or nations from adopting the rules of IFT to enforce transparency and accountability in the oil sector, which will be the subject of next chapter.

Chapter3: The Application of IFT Principle Within National law

3.1 Introduction

After the financial crisis of July of 2002, known by the Enron scandal[257], many investors, especially in developed countries, lost confidence in financial markets, which dropped by 22 percent[258]. The Enron scandal, moreover, resulted in new legislation to increase the accuracy of financial statements and reporting for publicly business companies. The most crucial of these regulations was the Sarbanes-Oxley Act (2002)[259], which compelled large and small corporations to change their financial practices. These changes aimed to enhance the investors' trust in financial markets by applying severe penalties for destroying or fabricating a financial record. This act also banned auditing companies from doing any concurrent consulting business for the same customer[260]. One of the most critical consequences of this act is that it brought an end to the auditing profession's framework of self-regulations by creating the Public Company Accounting Oversight Board (PCAOB)[261]. The international transparency measures that were set up by this act can be used as a solution to rebuild the confidence of investors and shareholders[262], especially when there is a decrease in trust due to a financial

[257] Enron corporation reached dramatic heights, only to face a dizzying fall. The fated company's collapse affected thousands of employees and shook Wall Street to its core. At Enron's peak, it shares worth $90.75. Just prior to declaring bankruptcy on Dec 2,2001, they were trading at $0.22. See Segal.T (2020) 'Enron Scandal: The fall of a wall street darling', Investopedia, May4,2020, p1.
https://www.investopedia.com/update/enron-scandal-summury/
accessed on June 16,2020.

[258] Harris. S.B(2014)' The Importance of Auditing and Auditing regulator to the Capital Market', Public Company Accounting Oversight Board (PCAOP), March 20,2014, p2.
<Https:// Pcabus.org/news/speech/pages/03202014-American.aspx.>
Accessed on June 16,2020.

[259] Bondarmenko. P (2002)'Enron Scandal', Encyclopaedia Britannica, October7,2019, p1.
<hhttps://www.britanica.com/event/Enron-scandal>
Access on June 16,2020.

[260] Harris. S.B (252)3.

[261] See more about PCAOB, Segal. T (251) 1.

[262] McManus.T, Holtzman Y, Lazarus.H and Anderberg.J (2006)' Transparency and Others Hot Topics', Journal of Management Development, 25(10), 2006. https://www.worldcat.org/tiltle/transparency-and-other-hot-topics/oct/...

crisis. Transparency can also help to maintain a strong relationship between the shareholders and the firms. the Sarbanes-Oxley Act, furthermore, was the most significant initiative to improve transparency and accountability on the part of the management at auditors and firms[263]. Furthermore, it can help to mitigate accounting gimmickry and misconduct inside both small and big companies, including phony earnings, undisclosed financial transactions[264].

Transparency as demonstrated in the previous chapter reflects the business environment. It not only promotes and develop the effective functioning of financial market by giving a warning of the devil side of a commercial company, but it also helps to create a well-organised corporations by ensuring a well communication between firm bodies[265]. Transparency can also help to build and maintain public trust. In the 2019 Sprout Social Report, 86% of surveyed consumers believed that transparency in business is more important than ever before[266]. In fact, investors are aware that without transparency, they cannot decide or assess their company's investments[267]. This shows the importance of corporate transparency in terms of maintaining the trust of different bodies deal with corporation[268]. Furthermore, transparency is a characteristic of governments, companies, organisation and individuals who are open to the clear disclosure of information, rules, plans, process and actions. The concept of transparency according to Benjamin Fung is: "putting more responsibilities on the corporation

Accessed on June 16,2020.

[263] Segal.T(251)1.

[264] Ibid.

[265] Tapscot.D (2012)' The Naked Corporation: How the Age of Transparency will Revolutionize business' Nov 17,2012.
<https:// www.amazon.co.uk/naked-corporation-transparency-revolutionize.>
Accessed on June 16,2020.

[266] Open Business (2020)'Principles and guidance for anti-corruption Corporate Transparency', Transparency International Uk, March17.2020, p7.
< https://www.transparency.org.uk/wp-content/plugins/download...>

[267] Ibid 17.

[268] Ibid7.

not only let the truth be available to the public but imposes to disclose it to every stakeholder's group"[269].

The definition of transparency can help to define and locate the principle of IFT by determining its content and legal framework. is based on its importance to the financial regulatory regime. Kern Alexander argues that transparency requires various stakeholders such as, shareholders, and investors etc, to have access to information, which requires a balance between the right to access information and the needs of the board directors to exercise discretion in managing their companies[270]. Transparency can also refer to improved stewardship for better documentation and attribution, which is one of the essential principles of corporate governance and plays a key role in the corporate business. Therefore, transparency is the corner stone of the financial environment[271]. However, what exactly is IFT principle?

Basically, IFT regulations make a multinational firm's financial information available to the public based on the definition of the norm transparency, which allows shareholders to make decisions about their investments by accessing the financial information that they need. Especially, information about the firm's financial performance and position. Therefore, financial transparency enables the investors to evaluate the performance of firms by determining the potential risks and threats. Consequently, they can make a reasonable decision about their investments[272]. Financial disclosure is the most important element for effective corporate governance. However, transparency as a general concept and financial transparency as kind of this former have not always been well defined, even by legal approaches and

[269] Fung.B (18) 72.
[270] Alexander.K(2007)'The Gats and Financial Services, The Role of Regulatory Transparency, World Trade Organisation', Cambridge Review of International Affairs, 20(1), May 2007, pages 111-132.
https://www.researchgate.net/publications/249016953-the gats-and-financial-services-the role-of regulatory-transparency.
Accessed on june16,2020.
[271] Sonmez. M (3) 25.
[272] Ibid.

jurisprudence. This Chapter 3 will try to make this kind of transparency clearer and more understandable. Matter that could help the reader to identify the principle of international financial transparency in general[273].

Defining the concept of financial transparency is a difficult goal to achieve because of its complexity. It is difficult to find all its aspects and characteristics due to its different interpretations. In law, transparency can mean many different things to many different people depending on what they want to achieve[274]. In the same context, the US courts have recognised that these transparency standards should not be mechanically applied, and the degree of vagueness tolerated by the US Constitution can vary depending in part on policy objectives, and on the subject and person regulated[275]. Therefore, how can IFT principle be determined?

The IFT principle needs to be in the international context where its measures are setup. First, the IFT measures are consecrated in the context of anti-corruption transparency programme[276], which refers to the public disclosure and international reporting around corporation structure governance[277]. This anti-corruption transparency programme includes processes that encourage the implementation, control, and review of anti-bribery and corruption policies and procedures, which helps to identify if the company's policies at international level are effective[278]. Second, IFT measures are strongly related the Country-by-Country Reporting[279]. CbCR is a form of financial reporting in which international firms disclose some financial data in each country where they operate. This data incorporates sales,

[273] Alexander. K (264)113
[274] Ibid.
[275] See Hoffman Estates via Flipside 455 US 489(1982).
[276] Open Business (260) 20.
[277] Ibid.
[278] Ibid.
[279] Country by Country Reporting (CbCR), Packman. A (2016)'Tax transparency and Country by Country Reporting', PWC, September2016, pages 6-7.
https://www.pwc.com/gx/taxpublications/assets/tax-transparency/
accessed on June16/2020

purchases, tax, and tax obligations, summarises of assets, and liabilities. This reporting is done based on the consolidated financial statements[280]. The common factor between the two international contexts that IFT measures could be considered as financial reporting measures at the international level, oriented to release financial information about international companies around the world in favour of investors and shareholders. The meaning of this principle is perhaps still controversial because of the difficult and important questions that it reveals. What is the legal basis of this principle? In other words, this chapter will first attempt to demonstrate the legal reporting framework of this principle. Furthermore, determining the legal basis which pave the way to this principle to build its content. At this stage, this chapter will try to study the implementation of this principle by some nations, such as the OECD countries, by country reporting, the amended Transparency Directive 2013/50/EU as compared to the original Directive 2004/109/EC, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act), and the UK Transparency Code of 2015.

These reforms are the legal framework or basis that allow the principle of IFT to reach global level[281]. This chapter, especially, will address the following questions. What is the content of the principle? What are the different elements that constitute this principle? How is the data released and what should be published? How do we balance between the right of the shareholders to access information and the right of companies as represented by the board directors to manage their interests? Finally, this chapter will treat the importance of this principle at the global level. To answer these questions, this chapter will describe the legal

[280] PWC (2019)'Reporting: What is the Public Trust Through Tax reporting', 2019, pages 1-5.
< https: // www. Pwc. Co .uk/tax/assets/pdf/shopping- tax- transparency-debate-2019-cbcr.pdf>
Accessed on June 20.2020.
[281] Packman. A (273) 3.
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basis of the principle in Section 3.2. It will then describe the content of the principle in Section 3.3. The last section will analyse the role of the principle.

3.2 The legal basis of the principle

Corporate disclosure is increasingly becoming a regulation required not only at country level but also at international level, such as the EU, UK statute and US federal levels. These international measures are implemented by these national laws by asking companies to publish and publicly disclose information[282]. Many countries are seeking to increase the transparency of the reporting of its financial companies' performance to reduce corruption within the context of anti-corruption transparency programme. Furthermore, a study of its implementation by different nations such as EU, UK, and US in reference to the OECD (CbCR) will permit us to identify its legal basis and features. In addition, how the financial potential is important and that why this principle should push companies toward disclosure and in case they fail to comply with it could result in damage for the country of origin and for the country where they operate. Consequently, this section will treat the OECD (CbCR) process (3.2.1), then will analyse its implementation by different national laws (3.2.2)

3.2.1 The OECD (CbCR) process

In February 2013, the OECD published an initial report[283] related to Base Erosion and Profit Shifting (BEPS). This report demonstrates the issues of data availability and prepares an action plan to resolve these difficulties on an international basis[284]. Two important questions have to be asked. Who does it cover (3.2.1.1)? And what are its goals and what issues does it face (3.2.1.2)?

[282] Open Business (260) 19.
[283] OECD (2013), Adressing Base Erosion and Profit Shifting, OECD publishing ,2013. <Http:// dx.doi.org/10.787/9789264192744-en >
Accessed on June 20.2020.
[284] Packman. A (273) 10.

3.2.1.1: OECD (CbCR) action plan

The BEPS action was issued on July19, 2013[285]. This action contained 15 rules to solve some issues referring to information and tax transparency, and accountability. Through this action plan, there is a need to promote the international collaboration between countries to reduce county unilaterally action[286]. This action encourages CbCR financial document disclosure to be submitted by multinational firms. The OECD (CbCR) form set up that CbCR is to be accomplished by all multinational firms with a turnover more than 750 EURO per annum that work in countries who have adopted the guidance[287]. The G20 and the OECD member countries are all inspected to comply with the CbCR regulations. However, other countries, such as the Inter-American Center of Tax Administration (CIAT) and the African Tax Administration Forum (ATAF), are also understood to support the rules. At this stage, it is important to observe that these rules are restricted, and its legal effects are limited by the way that other countries who are not members of G20 or OECD (CbCR) are not required to comply with these international rules of CbCR.

In the same context, on May 25, 2016, the Economic and Financial Affairs Council of the European Union (ECOFIN) fostered changes to Directive 2011/16/EU that will demand from the 28 EU member to apply CbCR, which authorises the exchange of the financial information between EU members states[288]. The OECD, furthermore, has declared that the CbCR information will be available by the end of 2017 in respect of financial years starting on or after January 1, 2016. The OECD regulations are divided on three kinds of rules. The first

[285] OECD (2013)'Action Plan on Base Erosion and Profit Shifting', OECD Publishing,2013.
<Https:// dx.doi.org/10.1787/9789264202719-en/>
Accessed on June 20,2020.
[286] Packman. A (273) 10.
[287] OECD (2014), guidance on Transfer Pricing Documentation and CbCR, OECD BEPS Project publishing, Paris DOL.
< Https:// dx.doi.org/101787/97892641926421923 6-en/>
Accessed on June 20,2020.
[288] Packman. A (273) 11.

kind of rules are related to the financial information by tax jurisdiction which includes tax jurisdiction, revenue from related parties, revenue from third parties, total revenue, profit before tax, corporate tax paid, current year corporate income, stated capital, accumulated earnings, tangible fixed assets excluding cash equivalents, and employees. The second contains details of the names of the constituent entities of a group, their country where they are operating, their country of tax residence and their main activities. Finally, the third type of rules is a commitment for corporation to provide data and sources of data using. The sources of financial information provided vary from one or variety of resources encompassing consolidated group accounts, management accounts, and local statuary[289]. This financial data has to be disclosed annually using the fiscal year of the parent company or the fiscal year of each of the constituent subsidiary ended in the most recent year of the parent company[290]. Moreover, the CbCR report is completed almost by the parent company of a group and then exchanges with other country. Consequently, the subsidiary should prepare the CbCR data and file it. For example, the taxation data report which must be completed by the subsidiary in question with its local authority. The OECD (CbCR) is a legal framework that can pave the way to implement the IFT measures in large numbers of countries. Nevertheless, the OECD principles still not able to cover all the world, which is part of its goal to pledge and increase financial transparency in multinational firms. Therefore, the question is what are the goals of the OECD (CbCR) and what issues does it face?

3.2.1.2 Goals and issues of OECD (CbCR)

The most crucial goal of CbCR data is support tax administration by useful information to evaluate transfer pricing risks[291]. The information provided is oriented to identify if multinational firms are operating in right way or in way which could be considered as

[289] Packman. A (273) 14.
[290] Ibid.
[291] Ibid.

artificially shifting income[292]. Otherwise, in general OECD objectives is to ensure the basis for an effective CG by enforcing transparent, and efficient markets with strict rules and clearly responsibility between the supervisory[293]. Also, OECD principles looking at protecting and facilitating shareholders exercise of rights and key ownership functions. It allows them to manage their shares and take the adequate decisions for themselves without affecting the interests of minorities. In other words, the OECD principles ensure equitable treatment of shareholders even they are foreign shareholders[294]. IFT principle versus OECD (CbCR) report is destined to ensure timely and accurate disclosure on all matters about the company in each country. Furthermore, guarantee the strategic guidance of the corporation by enforcing controlling on its management board and promoting accountability of the board directors and majority shareholders whatever its location[295].

However, the rules set up by the OECD (CbCR) are very strict and qualified with high level of transparency which could be handicap for the multinational firms especially, those with high complicated structure. They need to comply carefully with the OECD regulations[296]. Moreover, countries on its own may include their own rules to explain how the OECD's guidance should be applied by its companies. Matter which could make more complicated the implementation of the OECD regulations and international companies could struggle to exercise their activities normally. Firms need to focus on some technical attention to some rules to facing and challenging the disclosure of a proper financial data. Such as, which accounting standards to use for the preparation of the CbCR financial data, how to report complex

[292] Packman. A (273) 12.
[293] Al- Habshan. K (11) 45.
[294] Ibid.
[295] Ibid.
[296] Packman. A (273) 14.

structures where the allocation of income and tax are no clear, and the inclusion of all revenue category even if, for management reporting goals…[297]

The last report issue from OECD on BEPS action 13 relating to transfer pricing documentation and CbCR was released on October5,2015. It demands from countries member to comply to its rules through local law or they may adopt the model law released in the final report[298]. Refers to this final report some countries including EU members, UK, and the US have adopted OECD (CbCR) rules and guidance.

3.2.2 The implementation of IFT rules by some national laws

In response to these international developments, in September 2010 the EU Parliament prepared a report to the EU Commission for the purpose to create a law considering payment reporting to governments in the extractive industry, also influenced by the amendment of Section 1504 of Dodd-Frank Act issue on July 21, 2010, in the US. The EU has since established the Transparency Directive of 2013/50/EU, which amended the original directive of 2004/109/EC. These amendments are almost comparable to the US Dodd-Frank Act of 2010, except that the EU's amendment states that the industries who have to comply with the reporting rules are the logging industries in addition with the oil, gas, and mining sector, which is opposite to the US rules where the reporting regulations are restricted only to the oil, gas, and mining sector. Therefore, this section will study the influence of IFT principles on the EU (3.2.2.1) and in the UK Transparency Directive (3.2.2.2) to identify the different aspects and contents of the principle in general, and not only in the extractive sector[299].

[297] Packman. A (273) 14-15.
[298] Ibid. 13.
[299] The study of the principle IFT in the extractive industry will be the subject of the next chapter.

- ### 3.2.2.1 The implementation of OECD measures by the EU Transparency Directive

To enhance the effectiveness and the clarity of the existing Transparency Directive of 2004/109/EC, the EU Commission provided a reform which were adopted by the EU Council and Parliament on June 12, 2013, relative to the amended Transparency Directive 2013/50/EU. This paragraph will focus on the analysing of the amended Directive compared with the original to identify the legal aspects of the IFT principle[300]. The main amendments of the revised Transparency Directive are the disclosure of periodic information, the notification of major shareholdings, and the publication and the storage of the regulated information and the supervision[301].

With the revised Directive 2013/50/EU, the rules for the disclosure of periodic data were changed. The major changes were the creation of mandatory requirements for quarterly financial reports. The company or issuer is no longer asked to prepare and publish quarterly financial reports or interim management statement[302]. Furthermore, the second major change is that the deadline to disseminate half-yearly reports was also modified: it should now be published by the issuer as soon as possible, which means between first of July and the first of October[303]. Additionally, half-yearly reports and annual reports shall remain available to the public for at least 10 years[304]. Finally, the last amendment considering the publication of periodic information is that the establishment of annual reports in the electronic format was revised and became mandatory from January 1, 2020.

[300] Sonmez. M (3) 149.
[301] Ibid 150.
[302] In the original Directive, the disclosure of periodic information was adopted under article 4 to 6. Ibid 151.
[303] Transparency Directive 2013/50/EU, article 5.
[304] Transparency Directive 2013/50/EU, article 4-5.

Regarding the notification of major shareholdings, and to increase the level of transparency and to reduce the additional cost in the EU financial market, the amended Transparency Directive states that "member states should therefore not be allowed to adopt more stringent rules than those provide in Directive 2004/109/EC." Meanwhile, the EU Parliament did not change Article 9 of the original Directive, giving the possibility for others member states to apply different or singular initial thresholds for the notification of major shareholding[305]. The major modification in regard with this notification of major shareholdings is the adoption of new financial tools in financial market. According to Article 13 of the amended Directive, "transferrable securities, options, futures, swaps, forward rate agreements, contracts for differences and any other financial statements that have a similar economic impact in the financial market shall also be considered to be financial instrument."

Finally, in terms of dissemination and storage, the EU Commission requested that European Securities Market (ESMA) prepare Draft Regulatory Technical Standards for a central storage mechanism in the EU. Article 21 of the original was amended and according to the new Article 21 of Transparency Directive 2013/50/EU "a central European electronic access point shall be established, and its development and operation shall be carried out by ESMA until January 1, 2018." This step will facilitate the cross-border operations, raising the reliability and the accessibility of the financial data and making it easy for investors to take an adequate decision. It would give them the chance to assess all financial reports within the EU. This could make the financial market more attractive[306].

The amended directive in the respect of OECD (CbCR) will enhance the transparency of financial market in the EU because there are many multinational companies with their subsidiaries connected in general with financial market. It has become easy to install

[305] Sonmez. M (3) 152.
[306] Ibid 152.

subsidiaries in all the world. But it seems that the EU Directive treats only those issues related to the European financial market, and not the rest of the world. In other words, it does not cover transparency requests outside EU. However, Article 6 of the revised Directive requires from issuers operating in the logging and extractive sector to include a report concerning the payments made to local authorities in their annual financial statements, consolidated financial statements or related reports.

IFT measures, basically, find a legal basis in the OECD (CbCR) and the EU Transparency Directive seeking to improve transparency as a global norm. Transparency is not only required at each company level but also at each country level. Therefore, national law systems could look to adopt the IFT measures established by the OECD principles, the amended EU Transparency Directive, or the UK Transparency Regulation of 2015[307].

3.2.2.2 The implementation of OECD measures and EU Directive Transparency by UK legislation

On November 26, 2015, the UK accomplished the application of the Transparency Directive amended (UK DTR) [308]. This has changed the Financial Services Market Act 2000 (FSMA), and the Disclosure and Transparency Rules (DTRs)[309]. The main modifications of this amended Directive are that:

- It introduces new influence for the Financial Conduct Authority (FCA) to suspend the voting rights of shares, for serious breach of the major shareholding's notification regime.

[307] UK Transparency Regulation 2015/ 2015/1755.
<https: // www.legislation.gov.uk/uksi-20151755-en-pdf>
Accessed on 26/06/2020.
[308] Ibid.
[309] The 2015 Transparency Directive Regulations has amended the Transparency Directive which was implemented in the UK from January 20,2007 through the Financial Services Authorities (FSA). that also implemented the EU Transparency Obligations Directive 2004/109/EC.

- It demands that the FCA disseminates data on the type and nature of breaches of the transparency regime, with the identity of the person punished, subject to a discretion to publish anonymously in certain circumstances.

- It extends the deadline for publishing half-yearly financial reports from two to three months after the end of the reporting period.

- Finally, it increases the period through which half-yearly financial reports must remain publicly available from five to ten years.

Following the amended EU Transparency Directive, the UK 2015 Transparency Regulations opted to comply with a new transparency reporting norm that requires a periodic information notification to major shareholders and the dissemination and storage of regulated data[310]. The UK transparency regulations model (UKTR)[311] was oriented for early application of two measures, which were the obligation for firms in certain sectors to report on payments to governments[312] and the cancellation of the rules asking to publish quarterly financial reports[313]. Actually, the implementation of these two aspects proves the will of UK law makers to give to the UK TR an aspect of globality in its rules. The requirement to report payments made to governments in some sectors helps to increase transparency of UK multinational firms. At this stage, an analysis of the main changes introduced by UKTR should be done by highlighting the key changes to FSMA and the changes to DTRs.

[310] 'the UK Implements the Remainder of the Transparency Directive amending Directive Changes', Fladgate, December2, 2015.
<https:// www.fladgate.com/2015/12.../ the-uk-implement-the remainder-of-the transparency-directive.> Accessed on 26/6/2020.
[311] The Uk Transparency Regulations (UKTR).
[312] Article 4.3A of the 2015 UK TR.
[313] OLD UK DTR.

Key changes to FSMA

The transparency regulations have included a new obligation into FSMA authorising the FCA to comply to court for a voting rights suspension order against shareholders in a corporation which are admitted to trading on a regulated market, where the latter has broken the significant shareholder notification regime[314]. This new ability for FCA should only be used for the most serious breaches. Some non-exhaustive criteria were setup by the new Section 89NA, to which the court may have regard in considering the gravity of non-compliance by a vote holder; for example, whether the contravention was deliberate or repeated, the time taken for the contravention to be remedied, and the size of the holding of shares to which contravention relates. Another important amendment to FSMA is the extension of the area of persons to whom punishments may be applied[315]. Sections 91(penalties for breach of transparency) and 97 (appointment by FCA of persons to carry out investigations) permit sanctions to be implemented not only against directors but also against officers or in case the affairs or entity are manged by its members against a member of the entity. At the time of writing this paragraph, no guidance is presented as to the meaning of 'similar' or as when a person is manged by its members, the latter concerning may be members of limited liability partnerships. The modifications to FSMA relate not only to the extension of the range of persons to whom sanctions may be applied but also to the requirement tom publish information about breaches. The new Section 391B demands the FCA to disseminate data about the nature and kind of the break of any transparency rules pursuant to the Transparency Directive regime[316], both with the identity of the person on whom the sanction is imposed. The break of

[314] Fladgate (304) 3.
[315] Ibid3.
[316] Ibid4.

transparency rules should seriously affect the stability of the financial system or cause serious damage to the person involved.

Key changes to DTRs

The main change is the extension of the deadline for publishing half-yearly reports from 2 months to 3 months after the finishing of the period to which the report relates the UKTR 4.2.2R (2) is being changed in respect with this new requirement. Furthermore, following the EU Transparency Directive, issuers will have to allow annual financial reports and half-yearly financial reports to be made publicly available for 10 years, instead of 5 years[317]. Moreover, the UKTR has removed the obligation for issuers to provide draft amendment to the competent authority and the market, because this is covered by the Shareholders Right Directive[318].

It is observed that the UK legislator recognises the importance benefits of aligning the implementation of the reporting requirements under the EU Transparency Directive and the obligation under the Chapter 10[319] of the Accounting Directive, which demand to report any payments made to governments in extractive industry[320]. The government in response to the EU Transparency Directive will set a transitional arrangement for UK registered affiliation of parent companies registered in other EU member states. This type of firm will not be asked to report the payment information in the UK if they report through a parent company registered in the EU. The transition arrangement will apply for only 1 year. The EU Directive requires all member states to comply with its rules by July 2015 and start reporting from the fiscal year

[317] UK DTR 4.1.4R and UKDTR 4.2.2R (3) are being amended to reflect this change.
[318] UK DTR 6.1.2.R which required issuers to communicate draft amendments to articles to the FCA and the market, has been deleted. Fladgate (304) 4.
[319] The study of the UK reporting requirement in the extractive industry will be the subject of next chapter.
[320] Department Innovation and Skills (2014)'UK Implementation of the EU Directive Chapter 10: Extractive Industry Reporting', Government response to consultation, August2014, page 5.
<https:// www.gov.uk/governemnt/consultation / august 2014/>
Accessed on June 26,2020.

start on January 1, 2016[321]. In the same context, the UK government works with industries and civil societies together to produce guidance for companies to ensure that they disclose meaningful reports[322].

The UK government are convinced of the importance of this new reporting rules imposing on the companies, especially the multinational firms. They are also aware of the potential of transparency to make a good business. The provision and the reporting of financial information no doubt helps them to make investments decisions[323]. Consequently, the next section will study the content of these two elements that constitute the principle of IFT.

3.3 The content of the principle of IFT

What is the content of the principle of IFT? This question appears as the basis to understand the importance of this norm. This section will analyse its different elements. In fact, financial transparency is the provision of financial information, based on the release of consolidated financial statements and the transparency of financial reporting.

3.3.1 The provision of financial information

Transparency ensures that information about the company's financial position (balance sheet) and financial performance (income statement) is readily and easily available to understand a firms' financial situation[324]. This financial information should be released and made available for investors, especially stakeholders, to help them avoid any hidden surprises that could affect their investments[325]. Financial information transparency is not only helpful

[321]Department Innovation and Skills (313) 5.
[322] Ibid.
[323] Ibid3.
[324] Mudhar. N (2013)'the importance of transparency in business', Global CEO, sterling Media, Dec 13,2018, page2.
<https:// sterling media.co.uk/ the importance of transparency in business>
Access on June16,2020.
[325] International Financial Reporting Tool 'Financial Statements', Ready Ratios Tool.
https://www.readyratios.com/..../financial -statements-transparency.html
accessed on June16,2020.

for stakeholders but can also ensure the stability of the financial market[326]. In summary, transparency ensures that the appropriate information is disclosed or released in financial statements (3.3.1.1), which should not only be available but must also be open, honest, and accountable to enable shareholders to make an adequate decision about their shares in any commercial business (3.3.1.2).

3.3.1.1 Transparency of consolidated financial statements

Transparency in financial statements means that the statement has to be user friendly and clear, everything should properly be disclosed, and it should be easily understandable. Furthermore, each activity and part in financial statements should be analysed and elaborated[327]. transparency of financial statements also makes data available in a format that allows its re-use, including commercial and research activities[328]. This data disclosure is important to meet legitimate public interest. The information released and published will authorise stakeholders to hold the board of directors responsible. Moreover, the data disclosed in the commercial sector plays an important role in the management of a company because it allows it to publish data on key management practices[329]. Transparent financial statements pledge less work after its publication. They motivate the employees to work better and strive for the future of the corporation. Consequentially, transparent financial statements increase the firm performance[330]. Financial statements should be objective to prepare information concerning the financial position, performance, and financial adaptability of any company, which could be useful for any user. It allows investors in general by assessing the financial

[326] Leptadu. Gv and Pinau. M(25)13.
[327] International Financial Reporting Tool (272)1
[328]see Mehboob Dossa and Alain holiday, transparency and accountability, Financial Reporting Council (2015).
[329] Al- Habshan. K (11) 9.
[330] Bunti. A, Almasfir. Mk and al-Samadi. A (2015)'Transparency and Reliability in Financial Statements: do they exist? Evidence from Malaysia', Open Journal of Accounting, volume (4), 2015, pages 1-15.

situation of the company and making economic decisions[331]. They also require financial statements to form an idea of the exact price of the firm's shares. Arnold (1977) and Gjesdal (1981) find that accounting information permits the evaluation of a firm's future financial situation and enables investors to control the company's performance[332]. The transparency of financial statements or financial accounting not only helps people to make decisions but also lets them monitor the performance of the company.

A financial statement is defined as a formal record of a business's, individual's, or entity's financial activities[333]. In addition, financial statements, defined as a written report that quantitatively describes the financial condition of a firm or a company. Financial statements report includes the balance sheet, income statement, and statements of cash flow[334]. First, the balance sheets[335] help stakeholders such as investors, managers, or owners of companies' financial market to have knowledge about the financial position, assets liabilities, and ownership equity of a company at a specific point of time[336]. Second, the income statement or comprehensive statement also includes a profit and loss statement, and authorises data about a

[331] Ramli. M (2001)'disclosure in annual reports: an agency theoretic perspective in an international setting', a PHD thesis submitted to the University of Plymouth (2001).

[332] About financial accounting, the UK was the first country in the world to have companies act containing accounting provision or financial information disclosed from the Joint Stock Companies to the act of 1989. The requirements information is applied to all British limited companies, except those few incorporated by Royal Charter or special act of parliament.

[333] Al- Habshan. K (11) 20.

[334] Wahid. M and Khan. A(2011)'The Charismatic and Fretful Guideline for Financial Investment Decision making', March10,2011, pages 1-6.
https://wakbs.blogspot.com/2011/03/wahid-method-chrasmatic-and frutful.html
accessed on June 16,2020.

[335] The history of balance sheet in company legislation in England received importance from time to time due to its publicity in connection with the company accounts. Companies act of 1862 contained no provision regarding the publication of audit of the companies' account. The Companies Act of 1907 required the balance sheet to include in the annual return. The companies act of 1948 prescribed the form and contents of the balance sheet. Section 239 of the companies act of 1989 contains relevant provisions on the disclosure of the accounts. Finally, the Companies Act of 2006 recognises the statutory right of the members to receive copy of annual account and reports. It's treated as the information right of the members. Pelliserry. F (2012)'disclosure of financial information and corporate governance', February 18,2012, pages 1-9.
https://papers.ssrn.com/sol3/papers.cfm...
Accessed June 16,2020.

[336] Al- Habshan. K (11) 20.

company's income, expenditure, and profit over certain periods of time[337], in another way, financial statements of income give an idea about the financial performance of companies. Finally, statements of cash flow allow information about the operating, investing, and financing activities[338]. The information provided by the financial statements does not include background information, which provides detailed information related to the corporation. In fact, the information provided by the financial statements is basically an historical summary and it includes financial statistics about the financial situation of the company[339]. The reader should be affected positively when they read the financial statements of a company. A leak of financial data could lead to a lack in understanding the company's financial performance[340]. Firms who make their financial statements transparent are usually aware of the psychological importance of the transparency of financial statements on investors' confidence[341].

The financial data that is released can be affected by different economic factors, or social and financial factors. Subsequently, the financial position published may not be accurate and does not reflect the true financial position of the company[342]. Some financial information cannot be proven to have been disclosed in the financial statements. Thus, the efficiency of the data released by the financial statements cannot be discussed because a lot of financial information that is relative to stock assessment, provision of reduction and debt conditions and so on is missing.

The transparency of financial information is not a question of data quantity in the financial statements but is a question about the quality of information released. This

[337] Al- Habshan. K (11) 20.
[338] Ibid.
[339] Ibid
[340] Ibid
[341] International Financial Reporting Tool (272).
[342] Ibid

information should represent some characteristics or features to be efficient and accurately reflect the financial situation of firms. So, the next question is: what are these features?

3.3.1.2 The features of the information released

Financial transparency, as a part of transparency, it is a corner stone of the effective functioning of both financial markets and firms[343]. Therefore, the importance of information quality is understandable, financial information not only has to be released but also has to be managed and published. This is the pillar of both a good and high level of financial transparency and corporate governance for the sample reason that financial information disclosure will typically attract the local and foreign investors to companies. At the same time, it prevents fraud, reduces speculation, and protects stakeholders in financial market[344]. The UK Corporate Governance Code of 2012, in the same context, supports this idea about the importance of the quality of information and its regulators require the board directors to release data in a timely manner with information in an appropriate form and quality.[345] The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Therefore, an ideal data disclosure has to be accessible, clear, accurate, and in given in a timely manner.

Accessible data means that it should be relevant and provided in comprehensible language and format that is appropriate for the stakeholders. In other words, information should be easily available for any stakeholders who require it. Accessible information, moreover, is the most crucial feature of the financial statement data released. For instance, the EU

[343] Al- Habshan. K (11) 20.
[344] Easterbrook. F H and Fishel. D R (1991)'the economic structure of corporate law', Harvard University Press, (1991), page 277.
<https://pi.lib.uchicago.edu/1001/cat/bib/1231419.
[345] The UK Corporate Governance code July 2018.
<https:// www.IOD.com/../details/uk-corporate -governance-code-july-2018>
Accessed on June 2020.

Transparency Directive of 2004/109/EC relative to transparency and disclosure rules was adopted by UK legislators from January20,2017 through the Financial Serveries Authority's (FSA). Imposes on the board of the company to ensure that information is made accessible to the public without discrimination. The information must be disseminated to the public as widely as possible by communicating information to the media[346]. Subsequentially, accurate information means that data should be detailed, disaggregation is necessary for analysis and evaluation, and data should be released for all interested bodies without any differentiation. The information should then be published to enable investors, shareholders, and creditors to make a better assessment of the financial situation of firms[347]. In addition, accurate data should permit any interested investor to make the operative decision for his or her investment. Data released also must be clear, comprehensive, and understandable, and sincerely reflect the financial position and performance of the company. Data, in this case, should include all details about credit exposures to others financial institutions[348]. Financial information should be disclosed in a timely manner, which means that it should be made in enough time to permit for stakeholders to assess the financial performance of the company carefully without rushing. Timeliness or a delay in providing information may influence the trust between investors and company. The data should be presented on time to enable the investors to take the adequate decision at the appropriate time.

[346] Sunders. W and Shah. J (2007)'implementation of transparency Directive in the Uk Insights, January 2007, page 1.
https://www.jonesday.com/en/insights/2007/01/implementation -of-the transparency- directive-in -the-united-kingdom.
accessed on June 16,2020.
[347] TAI (2017)'How Do we Define Key Terms? Transparency and Accountability Glossary', Transparency Initiative and Accountability, April12,2017, pages 1-6.
<https://www.transparency-initiative.org/1179/tai-definitions/>
[348]Kohn. D (2011)'enhancing financial stability, the role of transparency', Bank of England, September6, 2011, pages 2-13.
<http://www.brookings,edu.....>
Accessed on February 22,2016.

The transparency effectiveness of financial statements depends on the quality of the information released and published. The effects on the company could guarantee the trust of investors and shareholders, and then warranty its effective management and strategies. The principle of IFT not only contains the transparency of financial statements but it also includes financial transparency reporting or accounting transparency, which is an important element for a strong corporate governance structure and company financial performance.

3.3.2 Transparency of financial reporting

The importance of financial reporting in financial transparency cannot be ignored regarding its positive impact on decisions making by investors. In fact, it helps investors to make the adequate decision about their investment[349]. Moreover, it allows investors to avoid making any investments in companies without understanding the importance of financial reporting in transparency. A key objective of this section is to study and analysing the meaning of financial reporting transparency (3.3.2.1), and the importance of role in reducing the principle of IFT (3.3.2.2)[350].

3.3.2.1 Meaning of the financial reporting transparency

Financial reporting in the principle of IFT is basically based the principle of country-by-country-reporting (CbCR). This is a form of financial disclosure in which international firms or multinational corporations provide important financial information for each country in which they work[351]. The data that should be published includes sales purchases, profits, losses, number of employees, staffing costs, taxes and taxes obligations, and summarises of

[349] Fernando. N (2018)'Opinion: Importance of Financial Reporting for Transparency', LBO, June25,2018. https://www.lankabusinessonline.com/opinion-importance-of fiancial- reporting-for-transparency/ accessed June17,2020.
[350] Armstrong. C, Guay. WR, Mehran.H and W.J (2015)' The Role of nformation and financial reporting in corporate governance: A Review of the Evidence and the Implications for Banking Firms and the Financial Services Industry', Economic Policy Review, June1,2015, pages 1-52.
[351] TAI (294) 8.

assets and liabilities. This form of financial reporting comprises periodic financial information to be disseminated in the form of a financial report[352]. This periodic financial report should include specific information that is relevant and useful for investors and shareholders. Relevant data disclosed in the financial report describes the need to disclose all material information with faithful representation, which is the need to release information in a proper manner and without error[353]. Financial health reports, furthermore, are important for anyone who needs to make informed decision about their investments[354]. For example, the UK reporting and disclosure obligations rules of 2006, which implemented the EU Transparency Directive[355], require companies to provide periodic financial reporting or mandatory disclosure, which should be submitted to the financial market or financial regulators, such as the London Stock Exchange's if the UK is the company's home state. The periodic financial reporting encompasses the annual reports, the half- yearly reports, and quarterly financial reports or interim management statements. Regarding the new rules, the annual reports contain the same requirements as the UK statutory requirements, except that the time for publication is decreased from 6 to 4 months. The half-yearly report is a new requirement that must be provided by the directors. Finally, a new interim management statement is required in the middle of each half year. These periodic financial reports, known as mandatory disclosure, reflect the firm's valid financial performance[356]. Under the new rules of reporting and disclosure obligations, the annual financial reports appear as a new financial statement required by any person, subject to the directive transparency rules, and are published within 4 months after the end of the financial

[352] TAI (294) 8.
[353] Fernando. N (296) 3.
[354] Durcevic. S (2019)' The Importance of Financial Reporting and analysis: your Essential Guide', The Datapine, March20, 2019.pages1-8.
https://www.datapine.com/Finacial- reporting-and-analysis/
accessed on June 17,2020.
[355] The EU transparency directive of 2004/109/EC, also known as the Transparency Obligation Directive.
[356] Al- Habshan. K (11) 20.

year. The annual report should include consolidated audit accounts[357], a management report[358], and a responsibility statement[359]. The half-yearly report should be made within 2 months of the period end this report and should include condensed financial statements which have to be drawn up with IAS, a management report and a responsibility statement.

Finally, issuers with shares admitted to a regulated market have to publish the financial statements not earlier than week 11 and no later than week 20 in each six months of financial period. These financial documents should encompass an indication of important events that have occurred during the first six months of the year and their impact on the half year report with the description of the principal risks. However, there is no obligation to disseminate an interim management statement on issuers who have already published a quarterly financial report. In addition, there is no requirement under the transparency rules to post these periodic financial reports to the shareholders.

These financial reporting statements should be published by any RIS announcement, with the announcement of summary information on the website of company with a copy of the annual report. These financial reporting documents enable a better quality of financial reporting information concerning the financial management of any company[360]. Consequently, it permits better financial transparency. So, why is the transparency of financial reporting in financial statements important?

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[357] The consolidated audited accounts must be drawn up in accordance with IFRS and audited in accordance with international auditing standards. The audited report must be published with the annual report.

[358] The management report has complied with the EU reporting requirements of (2003/51/EC), the financial management as concretised by the section 234ZZB of the Companies Act 1985 is the fair review of the business of the company or group and description of the principal risks and uncertainties that it faces. The management statement gives a fair review of the development and performance of the business.

[359] The responsibility statements should be included in annual accountants. This statement must be made by those responsible within the issuer who must confirm that, to the best of their knowledge.

[360] Norwani. N M, Mohamed.Z Z, and Chek. TT (2019)'Corporate Governance Failure and Impact on Financial Reporting Within Selected Companies' Journal of Business Ethics, special Issue, June 2019, Page n:21. <https:// www.reserachgate.net/scientific-contribution-204390074-zoom....>
Accessed on June 17,2020.

3.3.2.2 The importance of financial reporting

A study of the importance of financial reporting transparency in the principle of IFT also requires a study of the importance of financial reporting transparency in corporate governance. The working paper prepared by Beest, Broom and Boelems (2009) stated that the failure of financial reporting transparency can lead to the failure of corporate governance[361]. Consequentially, the failure of the limit of the principle of IFT as a principle looking at raising transparency at global level in different sectors. IFT measures, in addition, is crucial for the economies of both developed and developing countries, that why proper financial reporting improve the governance structure of the international firms and promote the effectiveness of the global principle of IFT. But this it will be hardly done if there is no good quality information provided by financial reporting leads to a well-organised corporate governance structure[362].

The financial information released by the financial reporting documents can establish trust between a company and its investors. However, the information must be reliable to help investors make the right decision[363]. Regarding the positive effects on both stakeholders and the financial markets, by January 2012 all economies had started to provide information financial reporting based on IFS[364] except for Argentina, Greenland, parts of Africa, and the United States. Meanwhile, the IFRS allows the increase of financial reporting quality provided for financial markets that allows useful information for investors at an international level by regaining their confidence. Therefore, it helps to ameliorate the credibility of a company and reduces risks, which makes it more attractive and performant.

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[361] Ibid.

[362] Al- Habshan. K (11) 36.

[363] Black.B (2011)' The legal and Institutional Preconditions for Strong Stock Markets', UCLAN Review Law, volume 48, October6,1999, pages 781-855.
<https:// paper.SSrn.com/sol3/papers. FM/abstract-d-1>
Accessed on June 17,2020.

[364] The IFRS is the system utilised by more than 110 countries around the world including Canada, Australia, China, India, and UK… see Durcevic. S (299)3.

Authors such as Jensen (1993), Mehran (1995), and Schieffer (1997) argue that corporate governance is a mechanism by which especially minority shareholders secure that their interests are aligned with the interests of the board of directors and management. Transparency of financial reporting documents helps company to balance between the interests of minorities and majorities shareholders[365]. Corporate governance is a mechanism that can reduce conflict inside a company between board directors and management, on the one hand, and minorities, on the other hand. Consequently, the role of financial reporting transparency is to decrease the information asymmetry that exists between owners and investors.

After studying the establishment of financial transparency and the contents of the principle it is necessary to study its role or objectives to understand this concept of financial transparency.

3.4 The role of the principle of IFT

Studying the role of the principle of IFT requires an analysis of the role of financial transparency in the structure of governance. Financial transparency is not only a key element of a good governance but is also the corner stone of the principle of IFT[366]. The role of financial transparency in CG of any corporation is the same role as the principle of IFT but at an international level. The of IFT principle aims to ensure that timely, accurate, and reliable information at international level, especially for those international firms. The principle's measures also helps companies to increase their financial performance and ensure their overseas investors by providing the protection that they need for their investments. At global macro-economic, the principle of IFT aims to reduce corruption and pledge that the economic development of developing countries will be in favour of their citizens[367].The principle of IFT

[365] Black. B (308) 809.
[366] TAI (294)4.
[367] Packman. A (270) 3.

plays a central role by ensuring a robust structure of corporate governance and guaranteeing the financial performance of a company on a country basis rather than global level (3.4.1). However, its role is critical because of the reliability of information released. In fact, the role could be affected and restricted (3.4.2).

3.4.1. The role of financial transparency in corporate governance

An effective financial disclosure, concretised by a good provision of financial information and financial reporting documents, is a corporate governance instrument that can help to predict the future financial performance of a company (3.4.1.1). Furthermore, the effectiveness of a company's structure depends on the quality of financial transparency, which ensures the efficient functioning of the company (3.4.1.2).

3.4.1.1 The financial performance of the company

The major reason to provide financial information in financial statements and financial reporting documents is to improve financial transparency. Improving transparency is no doubt an important weapon for the shareholders to protect themselves from a greedy company. For example, if the shareholders own equity or are an activist investor who possess most shares, then they have to fully disclose all of their incomes, assets, liabilities, and revenues in profit of minor shareholders[368]. This will help to understand and know if a firm is doing something that it should not. Analysis through financial statements or financial reporting is essential to build a climate of trust between a company and its shareholders, matters that can affect in positive sense the financial performance of company[369]. Indeed, it increases the trust between company and stakeholders, and significantly increases the company's attractiveness.

[368] Durcevic. S (299)5.
[369] Madhani. P M (2007)'Role of Voluntary Disclosure and Transparency in Financial Reporting', The Accounting World, June 2007, 7 (6), pages 63-66.
< https://papers.ssrn.com/sol3/papers-cfm?.../> accessed on June 19,2020.

Financial performance can be assured by providing an adequate disclosure of financial information in time for shareholders and investors, which helps them to have understand the financial situation and performance of company. Consequently, it helps investors to make a financial decision by excluding asymmetric information and aids firms in building a long-term and sustainable competitive advantage[370]. Financial transparency allows firms to maintain high quality financial information disclosure to avoid any surprise that could impact its financial credibility, liquidity, share price, and capital[371]. Better information enhances the coordination between company and investors. In fact, transparent financial information authorises investors to identify the correct share value. This explains the importance of financial performance, which becomes stronger by increasing the investor's trust. In this regard, Mohamed Ben Ramli supports the idea that the information required or used from the financial statements and financial reporting documents permits investors to form their own views on the correct value of shares[372]. Thereby, minorities shareholders could protect themselves from any misconduct management decision or corruption that aims to hide the true share price.

The OECD (1998)[373] in treating transparency considers that it is an essential element for good corporate governance. Transparency is one of the principles of corporate governance and it provides specific guidance for enhancing the legal, institutional, and regulatory framework[374]. It also requires investor trust, while market efficiency depends on the release of accurate, timely information about a firm's performance. The provision of financial information should be clear, consistent, and comparable to enable investors to assess and make

[370]Madhani. P M (314) 64.
[371] Ibid.
[372] Armstrong. C, Guay. WR, Mehran.H and W.J (297)34.
[373] OECD (1998): it is a convention on combating bribery of foreign public officials in international business transaction. As formulated by the organisation for economic cooperation and development (OECD), see more about this convention, Barbara Crutchfield, Kathleen. A. Lacey, the OECD (1998) convention an impetus for worldwide changes in attitudes toward corruption in business transaction.
[374] OECD report n: 42, p17-24.
< **https://**www.oecd.org/**migration/publicationsdocuments/**reports**>**
Accessed on May 12,2016

the right decision[375]. In this context, the information here is not only helpful for investors who wish to make decisions but also for monitoring the management of a firm by the shareholders in case of misconduct information published by the company, which will not participate in the financial stability of the company. Transparent, financial statements and reports are the best tools for making all internal business decisions. And the most important is those financial documents should be accurate as possible as. otherwise, the reputation and the performance of the company at country based or international level will be questionable and may be the company will run in trouble[376].

Finally, not only does the strength of financial performance lead to the stability of financial market but this goal cannot be achieved without consolidating and facilitating the functions of internal and external audit. The statutory auditors are preferred to monitor the effectiveness of the financial statements of a corporation[377]. Consequently, the role of the principle is to enforce the audit on firms to guarantee transparency.

3.4.1.2 The effective structure of corporate boards

To avoid any conflict of interests between managers and shareholders, the board directors play a crucial function to balance the managers' interests with those of the shareholders[378]. However, two questions need to be asked: what does board of directors mean and how does financial transparency permit an effective structure of the board of directors?

The board of directors is one of the main bodies of a company. For example, the board in any firms hires, fires, monitors and conducts the principal matters to increase value for the shareholders[379]. The structure of the board of directors can differ between countries. For

[375] Armstrong. C, Guay. WR, Mehran.H and W.J (297)52.
[376] Durcevic. S (299)7.
[377] Ibid.
[378] Blair. A (38).
[379] Denis. D K and Macconnel. J.J (2003)'International corporate governance', ECGI, finance working paper, 5(2),2003, p2.

instance, in the UK and the United States, one tier boards are privileged, while Germany and France prefer two- tier boards. Some of the literature has defined the board of directors depending on its functions. In this regard, Fama and Jensen (1983) determine the role of the board of directors as having two functions: advising senior management and monitoring senior management[380]. Consequently, the traditional view of corporate as given by Fama and Jensen (1983a,1983b) places directors at the top of the corporate hierarchy. This view assumes that directors can replace managers who do not act in the best interest of shareholders. This role of monitoring suggests an independent director of management and independent board director, which leads to a strong company structure. The realisation of this objective could explain how financial transparency aims to make a strong structure of the board of directors.

The efficiency of board directors depends on the quality of financial transparency inside the corporation. In other words, more information released from the financial statements and financial reporting documents respond to the features required in information, so that they can execute their functions effectively[381]. The inside directors[382], who are executives of company, could easily make decisions because they are a source of corporation information about bonds and opportunities. The provision of high quality of information helps the board of directors to decide about the financial strategy or performance of a firm.

Thus, to permit a high quality of information, regulators in different legal regimes should oblige companies to publish true, clear and timely information to enhancing corporate structure performance by giving an enough mechanism to execute decisions and monitor

< https://papers.ssrn.com/sol3/papers.cfm?abstract_id=320121>
Accessed on June 2020.

[380] Blair. A (38).

[381] Al- Habshan. K (11) 24.

[382] Corporate boards consist of both outside and inside directors between 1990 and 2004, the median board consisted of approximately 67per cent outside directors. Outside directors are experienced professionals, such CEOs and executives of other firms. The value of having outside directors, they have, experience in areas such as business strategy, finance, marketing, operations and organisational structure.

management[383]. Although this information is provided in relation with the IFRS, the goal is to ensure the high quality of financial transparency. However, the independence of the board of directors is an important question that needs to be raised at this point.

The independence of inside directors or executive board and the high quality of information provided are criticised because, for the former, the independence of the outside board directors has to be revised, especially form the outside directors or the (CEO) and also from managers of the firms. For the latter, the quality of information should also be questioned because of the ability of managers to hide information, and to manipulate investors and shareholders by giving no useful financial information that could help them to take a decision about their investments. It is clear, that the role of financial transparency is limited.

3.4.2 The restriction of the role of financial transparency

The limits of the role of the financial transparency means that the accuracy and the effectiveness of the financial information released is restricted. Recently, there has been an effort to create effective transparency regulations all around the world[384]. However, the efficiency of the role of financial transparency inside the company structure to provide financial information has been questioned, including secrecy, fraud, and embezzlement (3.4.2.1) Furthermore, the limited role of financial transparency could be affected by the right of secrecy or confidentiality given to company (3.4.2.2).

[383] Millstein. I. M, Albert. M and Sir Cadbury..A 'Corporate Governance: improving Competitiveness and access in capital in global markets', International Corporate Governance Review, 7(1), p21-22.
<https://www.deepdyve.com/lp/wiley/corporate-governance-report..>
Accessed on June 20,2020.
[384] Kaufman. C and Weber.R H 'The of Transparency in Financial Regulation' Journal of International Economic, December 2010, p779- 797.
< https://www.researchgate.net/publication/227464980_The_Role_of.>
Accessed on June 20,2020.

3.4.2.1 Illicit attitudes

Also known also as "a devil side of corporations", the illicit attitudes of company structure, such as fraud, embezzlement, bribery, or insider dealing[385] have sometimes led to the absence of effective financial information, in other words the absence of comprehensive, accurate, and timely information. This affects the reliability of information provided and this consequently has a negative impact on both the financial performance of company and financial market. These unlawful comportments cause the opacity in financial market, which can lead to financial scandals

Financial scandals like Enron or Parmalat are also called white-collar crimes[386]. For example, Zabihollah Rezaee find that these crimes are committed because of four conditions: first, seeking financial need; second, chance; third, reasonable justification; and finally, lack of moral principle[387]. Moreover, the rules lack punishments. White-collar crimes are an offence under criminal law. In addition, these kinds of crimes are different from ordinary crimes and are not considered under the criminal justice system but under financial jurisdictions, such as company law or securities law. However, Black et al. explain that criminal responsibility of companies in their study of various national regulations, such as, Canada, France, the UK, and the United States. They note that criminal responsibility for violation of company law regulations has been pursued under the criminal law[388]. However, criminal reliability can be evoked in both criminal law and company law. Illegal activities relating to inadequate financial disclosure can also be punished under company law. Meanwhile, dangerous cases such as fraud

[385] Croall. H (2001)' understanding white collar crime', McGraw-Hill Education, p2.
< https://books.google.co.uk/books?id=ZnpEBgAAQBAJ >
Accessed on June 18,2020.
[386] Croall. H (330).
[387] Ibid.
[388] Black B, Gelter. M, Nolan.R, and Siems.M (2008)' legal liability of Directors and Company officials Part2: court procedures, indemnification and insurance and Administrative and Criminal liability', Columbia Law Review, Nov15, 2010, p1-171-p153.
< https://ueaeprints.uea.ac.uk/10902 >
Accessed on June 18,2020.

and embezzlement can be adopted under criminal law. In fact, the absence of effective punishment in case of violation of the rules of transparency affects the quality of financial transparency, which restricts its role to assuring the financial performance of a company and financial market.

Fraud can be defined as a swindle in the business environment that may result from many causes, "false accounting" or "cooking the books" is one of the most famous commercial frauds[389]. These kinds of illegal activities consist of making the incorrect information available to the markets and it does not suggest any steal from the firms[390]. Occasionally, agents publish false information or false financial documents with the objective of obtaining high bonus payments and hiding their bankruptcy, which could affect the share value. Therefore, they restrict the role of financial transparency and the efficiency of financial market. Embezzlement is another way or style of illicit attitude that can be defined as white-collar crime where someone illegally takes any assets in the corporation under their control[391]. These assets can include money, trade, secrets, or goods[392].

These illegal attitudes impact negatively on the effectivity of financial transparency and lead to opacity, which is the main cause of any financial crisis. Therefore, legislators should establish a strong punishment to decrease those illicit attitudes because destroying it is impossible in the business environment. Moreover, the regulator should protect the sincerity of information provided by a company to prevent a negative impact on the economy by putting

[389] DG Internal Market and Services (2011)' disclosure of non-financial information by companies – final report', Centre for Strategy and Evaluation Services,2011, p27.
< http://ec.europa.eu/internal /accounting/Docs/non -financial -reporting/com>
Accessed on June 19, 2020..
[390] Armstrong. C, Guay. WR, Mehran.H and W.J (297)34.
[391] Green. G S (1993)'White-Collar Crime and the Study of Embezzlement', Sage Publications.INC with the American Academy of Political and Social Science, 1993, p96.
https://www.jstor.stable/1046840...
Accessed on June 19,2020.
[392] Ibid.

in place strong financial transparency rules that prohibit any illegal attitudes and guarantee the efficiency of corporate financial transparency. Nevertheless, illegal activities are not the only restriction of the role of financial transparency—secrecy can also create a restriction.

3.4.2.2 Confidentiality

Any business needs to maintain the privacy and exclusiveness of some important financial transactions to benefit the owners and majority shareholders. This is the reason why confidentiality is crucial for the company and is still considered by governmental and intergovernmental actors. Meanwhile, business actors may be worried that a full disclosure of information can have a negative impact and destroy their business competitively[393]. In fact, confidentiality affects the reliability of financial information provided in the financial statement and financial reporting documents. The reliability of financial information is influenced by the need to hide important information, which may have helped investors to make a performant decision. Nevertheless, some legal approaches still provide a law for promoting confidentiality, such as the UK law of confidentiality[394] that allows some information to be kept confidential, such as no disclosure agreements (NDAS)[395].

Financial transparency seeks a balance between the right of the stakeholders to know and the right of firms to maintain confidentiality[396]. However, the legal approaches that allow confidentiality or information privacy limit the role of financial transparency to ameliorate the

[393] International Law association (2015)' transparency via confidentiality in international economic law: looking for appropriate balance', Ravenna Law School, November20, 2015, pages 1-4.
< https://worldtradelaw.typepad.com/files/call-for-papers-transparency.>
Accessed on June18/2020.
[394] EU, information covered by professional secrecy has been identified in the Commission Communication (2003) 4582 of December1,2003, on professional secrecy in state aid decision (2003/C297/03).
[395] (NDAS) also known as a confidentiality agreement, is low cost way to protect your ideas. Is legal contract between 2 companies where agree to disclose information to them for a specific purpose. While they agree not to disclose that information to anyone else. This allows company to share its trade secrets with business partners while preventing them from passing this information. See Business Gateway (2016)' Non -disclosure agreements' , www.bgateway,com/business/non
Accessed June 19,2020.
[396] Al- Habshan. K (11).

financial performance of a company because they permit the company to evaluate any important financial information as confidential, which is essential in the competitive market. Furthermore, firms may keep information that may disadvantage their competitiveness against their rivals. This financial information qualifies as privacy, such as trade secrets or management strategy, because they do not influence the investor's decision making but can be hurtful to their competitiveness[397]. Consequently, regulators in some privacy circumstances allow the confidentiality of some financial information. Subsequently, confidentiality is essential for the financial performance of company. However, secrecy is the main cause of corruption[398], which is a new dimension of new generation trade agreements[399]. However, confidentiality may procure corruption by hiding important financial data that help shareholders to decide about their investments, which can reduce the efficiency of financial transparency.

The concept of confidentiality, or privacy, is not as well defined as the concept of financial transparency. This lack could leave the door open for agents in a company to assess and evaluate the type of information in favour of their interests to the disadvantage of the interests of the stakeholders. Therefore, regulators should establish a clear standard to classify the financial information that has to be published and released publicly. and distinguish between privacy and information that must be transparent.

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[397] Al- Habshan. K (11).

[398] The bribery Act is concerned with bribery. Very generally, this is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. This could cover seeking to influence a decision-maker by giving extra benefit to that decision maker rather than by what can legitimately be offered as part of a tender process.
The Act is not concerned with fraud, theft, books and record offences, Companies Act offences, money laundering offences or competition law. Further detail about what is covered by the Act can be found in 'The Bribery Act 2010 – Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing. See section 9 of the UK Bribery Act of 2010 (c23) <www.justice.gov.uk/ guidance/bribery.htm>.
Accessed on June 19,2020.

[399]7 The US President Barak Obama, who signed the Dodd-Frank act into law, said, the American people will never be again asked to foot the bill for Wall Street mistakes. See Dodd-Frank Ac t: cheated-sheet 'analysis of the Dodd-Frank Act', Morrison & Forester, October20, 2015.
< *media.mofo.com/files/uploads/Images/***SummaryDoddFrankAct***.pdf* >
Accessed on June19,2020.

Illicit attitudes and confidentiality are not the only reason for a conflict of interests, other drawbacks such as the high cost of information that could affect the objectives of the principle of IFT at global level.

3.5 Conclusion:

The determination and the understanding of the concept of financial transparency cannot be done without returning to the concept of corporate governance. The UK Corporate Governance Code of September 201 defines it in relation with its purpose—corporate governance is to facilitate effective, entrepreneurial, and prudent management that can deliver the long-term success of the company. Therefore, financial transparency as an essential condition for a good corporate governance and it aims to ensure prudent management and the long-term success of a company. Moreover, financial transparency has become a crucial condition for effective corporate governance. Nevertheless, the lack of a definition of financial transparency constitutes a major handicap to guarantee the role of financial transparency.

To give a general definition of the principle of IFT that covers all its aspects and characteristics. financial transparency meaning should well identify. This can explain why the board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. The regulators in this main principle define transparency about its characteristics and the agency responsible to release information. Financial transparency is not only based on the provision of information but is also based on the manner of how this must be released, which depends in the manner of its publication. Therefore, financial transparency is about the release of information in an appropriate manner. The information should be clear, understandable, and published in time to gain the confidence of investors, thus helping them to make an adequate decision. These features permit the financial performance and position of company to be transparent in the best way to guarantee financial transparency.

To summarise the determination of the concept of financial transparency, it can be defined as an obligation to provide financial information in an appropriate manner to ensure the prudent management and long-term success of a business. However, illegal activities such as fraud embezzlement and secrecy limit the role if financial transparency and restrict the effectivity of corporate governance.

This chapter has defined the fundamentals of the principle of IFT, which are financial transparency, which is a crucial element to identify the principle of IFT and its legal basis and content. IFT principle. Furthermore, it not only requires a firm to report financial data to shareholders at the company level but is also an obligation of reporting at country level. In other words, IFT is a reporting requirement country by country and project by project. It requires a company to disclose and publicly publish financial information. It also gives an international aspect to the concept of transparency and accountability. These two important concepts of CG become a global requirement regarding their potential vis a vis international firms, and their investors and shareholders. Recognising the crucial importance of IFT, some national laws have not hesitated to introduce it into its regulations, such as EU Transparency Directive and the 2015 UK DTR. IFT allows a balance to be struck between the interest of international firms and those of investors. This latter help to build the trust between major shareholders and minor shareholders, not only around the company but also around the world where parent company operates. However, this does not mean that only parent firms and their subsidiaries are required to report, the EU Transparency Directive includes both listed and non-listed firms are under the new reporting measures requirement.

The principle of IFT is especially important in the extractive industry, which is a particularly complicated sector because it tries to protect both the interest of national governments who are rich in natural resources and wish to exploit their extractive industry, and the interest of stakeholders or citizens who wish to profit from their natural resources.

Therefore, it interesting to analyse the principle and practice of IFT in the oil sector. The content, effects, and its application by some national law like EU Transparency Directive, UK DTR, and the Dodd-Frank Act are represented as model laws in this context and will be analysed in the next chapter.

Chapter 4: The Identification of the General Principle of International Financial Transparency in the Oil Sector

4.1 Introduction

Oil and gas companies transmit important stock to governments in many different forms, such as license fees, royalties, dividends, and taxes. This large income should be used in the social and economic development of resource-rich countries[400]. However, a number of these countries have been incapable of converting resource wealth into social wellbeing for their citizens. This is the normal result when the extractive sector, in general, and the oil and gas sector are not transparent.[401] This means that the wealth and revenue generated from oil and gas are not used in a fair manner, which leads to corruption, poverty, and injustice, which can ultimately result in conflict.

Ten of the strongest oil and gas firms have 6038 subsidiaries, with over a third of them based in secrecy jurisdictions,[402] which encourage illegal funds. Consequently, it has been estimated that developing countries are losing 1 trillion US dollars every year to illegal money flows[403]. These illegal flows constitute an important concern for the simple reason that these financial funds should present a perfect opportunity to enhance economic and social life. Consequently, there is an urgent need to decrease corruption and massive tax avoidance in the

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[400] Revenue Watch (2011)'Promoting Revenue Transparency: report on oil and gas companies' Transparency International, published in 2011.
<Https:// resourecgovernance.org/…/file/document/prt-report-24.pdf.>
Accessed on 16/3/2016.

[401] Ibid

[402] Mathinson. N, Williams. J, Bowell.A and Thousan. M (2011)' Piping Profits: the secret world of oil and gas and mining giants' PWYP, October 17, 2011.
<https:// www.transparency-initiative .org/archive/news/pipping-profits>
Accessed on 16/3/2016.

[403] Yebooh. S (2013) 'Breaking the Affinity with Secrecy in Africa Extractive Sector' G20summit and expectant reforms opinion, Sep 6, 2013.
https://stephenyeboah.blogspot.com/2013/09/breaking-affinity-with
accessed on 16/3/2016.

oil and gas sector, particularly in developing countries. In other words, the question is how to make it oil sector revenue more transparent, and working for both firms and stakeholders? The global concern behind that is about how to reduce the gap between developed and developing countries due to the resource curse[404]. This has led some resource-rich countries to struggle to manage their financial oil funds and grow their economies.[405]

There has been a lack of transparency in all sectors as an effect of the last financial crisis. The extractive industry was one of these sectors. International organisations, governments, and stakeholders have subsequently attempted to adopt strong rules to promote transparency in the oil and gas sector[406]. Therefore, the principle of IFT has been introduced to decrease corruption due to the information asymmetries that exist in oil and the gas sector[407]. It's defined as improving the provision of information released to stakeholders in oil and gas sectors to allow an effective sharing of oil and gas wealth in developing countries.[408]

The global demand for increased transparency in the oil sector has led to the necessity to introduce performance standards of using of oil and gas wealth while sharing sovereignty, as explained by Liliane Chantal Mouan[409]. The main idea at this stage is to identify this principle

[404]Cose. S (2006)' Strengthening Transparency in the Oil Sector in Cameroon: why does matter' International Monetary Fund, policy discussion paper, March 2006, p3-6.
< https://***www.Imf.org***/external/pubs/ft/pdp/2006/pdp02.pdf >
accessed on 16/3/2016.
[405] Uzoigwe. M (2012)' Exploring Multi – Stakeholder Initiatives for Natural Resource Governance: the example of NEITI', a PHD thesis submitted to the university of Birmingham for the degree of Doctor of Philosophy, 2012
< https://ethos.bl.uk/OrderDetails.do?uin=uk.bl.ethos.551384 >
Accessed on 16/03/2016.
[406] Ibid.
[407] Cose. S (397) 7.
[408] For instance, Kofi Anan, in its report equity in extractive industries: stewarding Africa natural resources for all this year gives warring details that Africa between 2008 and 2010 lost 38,4 billion through transfer mispricing and illegal capital flights, Yebooh. S (396).
[409] Chantal Mouan. L (2015)' governing Angola's oil sector, the illusion of revenue transparency 'a PHD Thesis submitted at Coventry university in April 2015.
< https://curve.coventry.ac.uk/open/file/44d3c08f-2d59-4d1a-8ffa-769aa…>
Accessed on 16/3/2106

through its legal nature. This chapter will describe how this principle spread and became a principle of international law.

Global reform has been established and appeared to enhance transparency in the oil and gas sector. These reforms, which started locally and then became international approaches, have participated in elaborating and establishing the IFT principle. The latter can be limited, such as those in the United States, as manifested by the Dodd-Frank law. Under this law, oil and gas companies must report any project payments that exceed $100,000 made to the United States or a foreign government for natural resource extraction. In contrast, the EU parliament has recently issued a new transparency directive in the extractive industries. This directive requires that companies in the extraction business should disclose in their annual report any payment that totals more than 100,000 euros, including to which government the payment was made, country by country and project by project.[410] In additions to these reforms, the EITI are completed by national countries based on a multi-stakeholder consultation process. This provides a reporting based on special standards, which requires certain disclosures. Furthermore, this is a standard that promotes revenue transparency and accountability in the oil sector. It also incorporates a multi-stakeholders coalition of governments, firms, investors, civil society organisations[411]. EITI, also, is an international coalition that has supported developing countries, essentially in Africa, to sign up to an initiative to increase revenue transparency in the oil and gas sector? These reforms develop the good governance that developing countries need to grow their economies and foster satisfactory standards in how natural resources are managed[412].

[410]Uzoigwe. M (398)10.
[411] Packman. A (273) 23.
[412] Cose. S (397) 7.

The potential and importance of EITI coalition encourage some countries to make amendments to their legislation by requiring large oil, gas, mining and logging companies who are listed and registered to disclose their revenue payments to the governments of countries that they are active in[413]. This could prevent any risk of corruption that may affect extractive industries revenue. financial transparency. This could be of particular importance in the extractive industries in developing countries, where the corruption level misconduct by the government is often high. Consequently, the benefits that these countries could gain from oil and gas revenue may be lost[414]. However, this leads on to several important questions that should be asked to understand further the principle of IFT as principle of international law. The main issue of this chapter is to identify the general principle of IFT as common international law derived from different local laws. Therefore, this chapter will try to determinate the basic approach to this issue with the existence of this principle as an international legal principle[415]. The status of IFT is still a subject of debate among academics, law practitioners, regulators, and judges. This chapter will establish the methodology used in general to identify the principle of IFT as principle of international legal system.

The other main concept of this chapter is the legal implementation of this international principle. In other words, this chapter will discuss the legal framework and the effects of this principle in oil sector. In the same context, this chapter will assess and study the application of this principle by national law in oil sector. The goal here is to show how this principle started to become an international principle. Financial transparency in the oil sector is an efficient way to hold firms responsible for their payments made to the governments but is still insufficient

[413] See the previous chapter about the national law adopt the principle of IFT.
[414] Cose. S (397) 9.
[415] International Law Commission (2020)' Second Report on General Principles of Law by Marcelo Vasquez-Bermudez, Special Rapporteur' International Law Commission, A/Cn,4/741, Geneva, April27, p3/59.
< legal.un.org/ilk > Accessed on 28//7/2020.

regarding voluntary disclosure characterise its rules[416]. Therefore, the last part of this thesis will study how institutions can enforce the implementation of transparency and at the same time pledge that issuers comply with IFT rules by released consolidated financial statements with respect to the IFRS. Furthermore, strong rules of IFT allow access to financial information not only benefit the issuers of developed countries but also the developing states[417]. Weak regulations will absolutely have a broader effect.

Consequentially, this chapter will be divided into three main sections. The first section will be dedicated to the determination of the legal characteristics or features of the principle of international financial transparency. The second section will describe its legal implementation and its legal effects, and the last section will be specified to the guarantee of its implementation.

4.2 The legal status of the principle of IFT

The determination of the legal features of IFT requires an analysis of the general principle as a source of international law, in other way identify the existence of the general principle as principle of international law (4.2.1)[418] and a study of its legal existence as a general principle of international law. In other meaning how this principle is established as principle of international law (4.2.2).

[416] Browne. J (2012)' Europe Must Enforce Oil Sector Transparency' Financial Times, April 24,2012. https://www.ft.com/content/40dc74aa-8d3a-11e1-8b49-00144feab49a accessed on 16/03/2016.

[417] Kraus. J (2011) 'Enforcing the Dodd – Frank Act would promote transparency and development in Africa'. African Argument, July28,2011. https://africanarguments.org/2011/07/26/passing-the-dodd-frank-act. Accessed 19/5/2019.

[418] See Article 38(1) (3) of the statute of PCIJ and article 38 (1) (c) of the statute of ICJ. < Httpp://africanarguments. Org/2011/07/26 passing- the – Dodd- Frank- act- would promote transparency> Accessed on 19/5/2019.

4.2.1 Demonstration of the existence of the general principle in the international legal system

The objective of this section is to study and analyse how the general principle deriving from national law is established in international law. The main purpose of this assessment is to show if this principle is emerging at an international level. Consequently, the existence of the general principle has to be done in the sense of Article 38, paragraph 1 (C), of the statute of the International Court of Justice (ICJ). The terms used to describe this source of international law[419] appear to dispose of two independent conditions: the general principle and recognition by nations. National and international tribunals with jurists adopt the idea that the general principle is based on national legal systems and is an expression of other limited sources of international law set up in statutes of Permanent Court of International Justice (PCIJ) and ICJ, such as conventions, customs, and the writing of scholars[420]. In this decade, the general principle will become an important source of international law to satisfy the urgent international issues that require a legal basis for their resolution.[421]. Therefore, it is crucial to study the general debate about the status of general principle as source of international law in general manner (4.2.1.1) before studying the legal characteristics of the principle of IFT and the methodology established by the PCIJ and the ICJ to resolve the debate of the identification of the general principle in international law in general (4.2.1.2)[422].

4.2.1.1 The legal debate

Academics, law practitioners, makers, and judges continue to debate the legal position of the general principle in international law[423]. In other words, the doctrine debate is over the

[419] Article 38, parag1, (c) of ICJ.
[420] Brownlie. I 'Principles of Public International Law' Oxford, sixth edition, p52
[421] Brownlie. I (418) 83.
[422] World Trade Organisation 'The Identification of the General Principle in International law' WT/ DS526/AB/R and WT/DS 48/R, parag 123-124.
[423] Ibid.

existence of the general principle as principle of international law. In fact, the identification of the general principle of IFT derived from national legal system depends on an analysis of the existence of this principle as a principle of international law, which could not be done without showing first the legal debate that exists around Article 38, parag1, (C), of ICJ. This debate is about the criteria that are required to recognise a general principle derived from national law as a principle of international law.

A definition of general principle as principle of law must be provided before explaining the debate of its existence at international level. General principle could be defined as "those principles of law, private and public, which contemplation of the legal experience of civilised nations leads one to regard as obvious maxims of jurisprudence of a general and fundamental character."[424] Furthermore, Cheng defines general principle as a cardinal principles of the legal system, in the light of which international law is to be interpreted and applied.[425] Schlesinger defines it as a core of legal ideas which are common to all civilised legal systems.[426] Lammers, also, defines it in the same context, he states that they are norms underlying national legal orders and they are the manifestation of the universal legal conscience certified by the law of six states[427]. To become a source of international law and identify its legal statutes, it is necessary to prove and solve two main issues: the first is the existence of general principle in the national legal system and the second is to prove the recognition of this principle by the civilised nations.

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[424] Cheng. B (1987)' General Principles of Law as Applied by International Courts and Tribunals' Cambridge, 1987, p106.
< https://www.trans-lex.org/101100 >
Accessed on 18/4/206.
[425] Ibid.
[426] Schlesinger. R.B 'Research on the General Principle of law Recognised by Civilized Nations', the American journal of International Law, 51 (4), 1957, pages 734 – 739.
< *https://www.jstor.org/stable/2195351* >
Accessed on 19/5/2019·
[427] Brownlie. I (418) 53.

Ian Brownlie, in the same context, believes that both Article 38 (1) (3) of PCIJ statute and Article 38 (1) (c) of ICJ statute imply that the general principle can be identified from two different legal sources: national and international law. However, the issue that should be solved before identifying the nature or statute of general principles is to determine if it is considered as a formal or material source of international law[428]. In addition, he observes that formal sources in national law refers to the constitutional machinery of law making but in the case of international law "formal sources" are deceptive because his general debate is incarnate in the statute of PCIJ, Article 38 (I) (3) and in the statute of ICJ, Article 38 (1) (c),[429] under the terms "general principles of law recognised by civilised nations."[430] The conditions used to consider the general principle as a source of international law required two independent terms: the general principle and recognised by civilised nations. For the latter, which means by the United States charter as a presumption that all members of the United Nations are civilised nations. The difficulty is manifested by the using of the general principles as former source. This is not explained by the scholars or even by the opinions of PCIJ nor ICJ. however, when the other sources[431] are imperfect, there is a creative presumption that the general principle become as international legal obligation.

Although Article 38 of ICJ is a complete statement of the sources in international law, it does not use the concept "sources." The main issue, in this case, is what kind of status would the general principle have as a principle of international law? Or should the general principle as be considered as a strong or flexible source of international law? Some scholars such as

[428] Formal sources are those legal procedures and methods for the creation of rules of general application which are legal binding. Material sources provide evidence of the existence of rules which, when proved, have the status of legally binding rules of general application. Ibid.

[429] Article 38 (1) (c) of ICJ: the court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: ……. see Schlesinger. R.B (423) 736.

[430] Brownlie. I (418)53.

[431] The other sources of international law namely are conventions, customs, writing of scholars, and decisions of PCIJ or ICJ, Ibid.

Professor Ian Brownlie treats the general principle as an international custom and general practice, and so is accepted as law[432]. Therefore, the general principle is recognised among states as obligatory practice. To become an international custom and create obligatory obligation, the general principle needs to meet two complementary conditions or elements. First, duration, which means the consistency and generality of practice are proved and no specific duration is required[433]. Second, the consistency of the practice, which means that states appreciate the implementation of the general practice. That is an issue of appreciation and the turbinal will have a crucial liberty of determination in many cases.[434]

Consistency of states as a condition required for a general principle to be as custom, does not mean universality, but the real matter is to complete the value of omission provided by some states. Supporting this view, the World Trade Organisation (WTO) accept that the precautionary principle is regarded by some as having crystallised into a general principle of customary or international environmental law[435]. Consequently, the general principle creates obligations by the recognition of some states, which is enough to consider the general principle as international customary[436]. Meanwhile, other authors refuse to admit that the general principle has not yet reached the international law. So, it still a flexible source of international law and a subject to a great variety of interpretation[437].

Some scholars view that the fundamental principle of justice accepted by the sates could be interpreted as international principle of law or common law[438]. In addition, the principle of

[432] Schlesinger. R.B (424) 737.
[433]Schlesinger. R.B (423) 737.
[434] Ibid.
[435] WTO (419) parag 123-124.
[436] Sands. P (1995) 'Principles of International Environmental law' Cambridge, third Edition, 2012, p212. Also see Throuorst. A (2002)' The Status of the Precautionary Principle in International law' International Environment Law & Policy Series, February27,2002, p283.
[437] Birnie. P and Poyle. A (1992)' International law and the Environment' Oxford, third edition, 1992, p98.
[438] Gutteridge (1952) 'The Meaning and Scope of Article 38(1) (C) of ICJ: Transaction of the Grotius society' Cambridge University Press on behalf of the British Institute of International and Comparative Law, V (38), 1952. https://www.jstor.org/stable/i229791 . accessed on 20/7/2020.

justice reaches the level of general principle of international law by the recognition of "civilised nations". This idea is representative by the existence of a common denominator between all legal systems.[439] Gutteridge, furthermore supports this view of the existence of relationship between the international law and national law. Furthermore, any local principle from private law must be recognised in substance by all the main systems of law, and that in applying it he will not be doing violence to the fundamental concepts of any of those systems[440].

Others view that the general principle as a means of interpretation of other sources of international law such as international conventions and customs.[441] This part of the doctrine identifies the statute of general principles from their functions. Cheng is the most representative of this idea. He states that there are three general functions: first, they are the source of many rules which are expression of these principles; second, they represent framework for the judiciary; and third, they could be applied as norms.[442]. The determination of which functions general principles should assume is expected by considering general principles as a primary or subsidiary source of international law. If the general principles are primary sources, then they may create legal obligation and have a binding effect. If they are considered as a subsidiary source of international law, then they may have an interpretation function of the rules set up by international treaties or customs. The issue of considering general principles as a primary source of international law is still subject of debate between scholars. However, any general principle established at international level recognised by a various state and implemented or respected by them, only one thing can be, a principle of international law. Moreover, in case if this principle is flexible due to its voluntary character, it will be abiding or strong source of

[439]Brownlie. I (418) 774. See also Cogens. J (1987)' Guarding Interests Fundamental to international society', University of Cincinati College of Law, 1988 pages 585-587.
< https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1161&
[440] [440] Topal. J and Perrine. T (214) 273.
[441] Brownlie. I (418)775.
[442] Ibid.

law, when more and more states show its desire to implement this general international principle as law. The unanimity of nations, in addition, to implement it will transfer it from voluntary to flexibility to mandatory law. Meanwhile, the solution could be found in the methodology established by the international tribunals to implement general principles as an abiding source of international law.

4.2.1.2 The identification of the general principle derived from municipal legal system as principle of international law

Refers to the report of International Commission Law of 2020 about the identification of the general principle, the methodology used is generally considered to consist of two-steps analysis: the existence of the general principle as principle of international law and the ascertainment of its transposition in international law (4.2.1.2.1)[443]. this methodology used in general is supported by international tribunals (4.2.1.2.2).

4.2.1.2.1 Ascertainment of its transposition in international law

This step consists of proving the transferring of the general principle to international law. The goal of this step analyses is to demonstrate that municipal law and international law have unique features. However, the transposition of general principle of national law to international level does not come automatically[444]. The ascertainment of its transposition in international law, in the sense of Article 38 of ICJ, is always done by state practices and jurisprudence[445]. Two conditions have to be met by the general principle to be identified as a principle of international law. First, the general principal of municipal law has to be compatible with the fundamental principles of international law. This compatibility means that the general principle has not only recognised by nations but must also be able to pass the boards and exist

[443] International Commission Law (413) 6
[444] Ibid 22.
[445] Ibid 23.

in international law. In reference to this condition to satisfy the transposition of the general principle, early arbitral practice, for instance, rejected the principle of "international servitude" mentioned by US, noting that such a principle would be incompatible with the principle of sovereignty[446]. Moreover, a similar approach has been fostered in the right passage case of India. This later discorded the general principle of law invoked by Portugal on the basis that would be incompatible with the concept of territorial sovereignty under international law[447].

The condition of compatibility has also been adopted by some jurisprudence. For example, Pellet and Muller, observe that only principles in "foro domestico" are not incompatible with the exigencies of the international law can be transposed[448]. It can be concluded that for a local principal to be transposed to international law, it should be compatible with fundamental principles of international law[449]. In other words, any local general principle has to meet the conditions required by the Article 38, para. 1, (c) of the statute of ICJ. It also has to obey to general rules of customary international law. If the national general principal does not have these criteria, then it cannot be transposed to the international law[450]. The main issue at this stage is to avoid the eventual conflict between the general principal and the international custom as a source of international law, which could happen when its status is identified. This relates to the general principles and its relations of other sources of international law.

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[446] North Atlantic Coast Fisheries Case (Great Britain, United States), Award, September7 1910, UNRIAA, V (9), p182.
< https://arbitrationlaw.com/library/north-atlantic-coast-fisheries-case >
Accessed on 27/7/2020.

[447] Case concerning Right of Passage over Indian Territory, judgments of April12,1960, ICJ. Reports 1960, p6, parag 543.
https://www.icj-cij.org/en/case/32/summaries
accessed on 27/7/2020.

[448] Pellet. and Muller.D (2019)' The Statute of the ICJ: A Commentary' 3rd edition Oxford University Press, p928, parag 264.
< www.bookdepository.com/Statute-International-Court-Justice/9780198814894 >
Accessed on 27/7/2020.

[449] International Commission Law (413) 26.

[450] Ibid 26.

Second, to ascertain the existence of the general principle in international law, we require the existence of second condition that is the adequate implementation of the principle international legal system. The transposition depends on how adequate the application of the general principle in international law is. This can help to guarantee that the principle can properly serve its purpose in international law preventing distortion or possible abuses[451]. This methodology is in practice related to examining the structure of national legal systems, in particular the procedural frameworks through which rules or principles apply and to see if the implementation is adequate or not[452]. For instance, the Tadic case, where the Appeals chamber of the International Criminal Tribunal for the former Yugoslavia set up the argument that, relating to international human rights conventions, a criminal charge should be determined by a tribunal created by law is a general principle of law forcing an international obligation, which only implements the administration of criminal justice in a local setting[453]. So, the issue was to give a meaning to the concept that tribunal " to be established by law", which in this case the most sensible and likely meaning was that definition referring to the Article 14 of the International Covenant on Civil and Political Rights Committee, which views that for the meaning to be established in accordance with the proper international standards, it must provide the guarantees of fairness, justice, and full conformity with international human rights. The main thing is that the tribunal has to be established and not pre-established or established for a specific purpose or situation. It also has to be created by a competent organ and meet the conditions of procedural fairness[454].

[451] International Commission Law (413) 27.
[452] Ibid 27.
[453] Prosecutor v. Dusko Tadic, Case N, IT-94-A, Decision on the defence motion for interlocutory appeal on jurisdiction, October2,1995, Appeal Chamber, International Criminal Tribunal for the former Yugoslavia, para.41. < *opil.ouplaw.com/view/10.1093/law-icl/36icty95.***case***.1/law-icl-36icty95* > *Accessed on 27/07/2020.*
[454] Ibid parag 45.

Those were the conditions required in general to allow the transposition of municipal general principle to international abiding principle of international law. A general principle to be transferred to principle of international law has to be compatible and adequate when it's implemented at international level. in fact, those conditions were set up by the jurisdictions as guidance for identifying the general principle as general principle of international law.

4.2.1.2.2 The methodology used by international tribunals

General principle as principle of international law is undefined and uncertain source of international law. Therefore, reference to international tribunals may help scholars to resolve the basic question of how the general principle is transformed from a local legal principle to a general principle of international law? In other words, how is the general principle identified as a principle of international law?

Confirming to Article 38 (1) (c), the ICJ has the authority to apply the general principles of law recognised by civilised nations. In fact, the ambiguity manifested in this article has remained, and the undefined and uncertain scope of implementation still characterise the decisions of ICJ. However, this ambiguity does not prohibit the international tribunals to identify the general principles as principles of international law by number of elements[455].

For the first element, the international tribunals request that the general principles as a source of international law have to be recognised by a number of states and does not require the condition of universal acceptance. The ICJ has not accepted the condition of universal acceptance. In the Southwest Africa Cases where judge Tanaka made his decision, he stated that: "the recognised of a principle by civilised nations does not mean recognition by all civilised nations"[456]. In addition, Judge Lachs, in his opinion, demonstrated that: "the evidence

[455] Brownlie. I (418) 774.
[456] South West Africa Cases 'Ethiopia v, S Africa, Liberia v. S Africa' Cambridge Core, Canadian Yearbook of International law, V (5), July 2018, pages241- 252.

should be sought in the behaviour of a great number of states, possibly most states, in any case the great majority of the interested states"[457]. In identifying a general principle, the ICJ, they have treated the concept of principles in the international context. The international tribunals in general observe that general principles must be identified by analysing the state conduct such as policies, practices, and pronouncements at international level[458]. The jurisprudence of the ICJ means that they cannot consider the general principle as a principle of international law, except if this later in common to all nations. In this case, furthermore, the judge should identify the principle at the national level by studying all branches of national law[459]. In the meantime, in a few cases, there was no guidance on the methodology used by the international al tribunals to identify the general principle as principle of international law. At this stage, it can be observed from the jurisprudence of international courts and tribunals that in some practice cases treaties can be recognised as evidence confirming that the general principle of local legal system can become a principle of the international legal system[460]. For example, in the North Sea Continental Shelf cases, Denmark and the Netherlands protested the supposed general principle invoked by Germany because, inter alia, the latter did not try to adduce examples of the application of this presumed principle in international treaties[461]. A similar argument may be found in the case of Sea – Land Service v. Iran, where it was found that "unjust enrichment was "codified" or judicially recognised in the great majority of local legal system of the world".

< https://www.cambridge.org/core/journals/canadian-yearbook-of-international-law > Accessed on 20/07/2020.

[457] North Sea Continental Shelf cases, ICJ, February20, 1969, pages101-229. https://www.trans-lex.org/380300 *accessed on 20/07/2020*

[458] Brownlie. I (418) 774.

[459] Ibid.

[460] International Commission Law (413) 32.

[461] North Sea Continental Shelf cases (455).

And "Added, also, it was also, largely accepted as having been assimilated into the catalogue of general principles of law available to be applied by international tribunals"[462].

The experimental methodology employed for proving the existence of the general principle is approximately like the one used to demonstrate the existence of a customary of international law[463]. Customs can be transferred to principles and principles may derive from customs. However, a distinction between the methodology for the identification of general principles from national legal systems and the methodology for the identification of customary international law must be made because no confusion should exist between them. First, the identification of the customary international law describes that the international jurisprudence court must be joined by the belief that the state is acting pursuant to a right or obligation under international law (opinion juris). In contrast, in the identification of the general principle from legal system this is not necessary, and the relevance is how national legislations and courts deal and solve this municipal matter[464]. Second, the method used for proving the transposition of general principles of law from local system is only unique to this source of international law[465]. Whereas that is not relevant when it is question of the identification of customary international law.

Nevertheless, the identification of the general principle as a principle of international law represents its content, ranking, enforceability, and implementation, while the international tribunals still recognised a general principle as principle of international law. No doubt, that there is unanimity between the PICJ and ICJ about the methods of identifying, appraising, and

[462] Sea-Land Service v. Iran case N 59, award N 191-59-1, September 20,1985, Iran- United states Claims Tribunal Report, v9, p168.
< *www.biicl.org/files/3944*_**sea-land**_*synopsis.pdf* >
Accessed 20/7/2020.
[463] Brownlie. I (418) 775.
[464] Wood M (2019) 'Customary International law and the General Principles of Law Recognised by Civilized nations' International Community Law Review, V 21,2019, p307- 324.
[465] Ibid.

applying general principles. In general, scholarly and tribunal jurisprudence writings are few and unclear, especially for the opinions of international tribunals,[466] which allowed many interpretations to be made. This general debate about the general principle as a source of international law will affect the legal nature and characteristics of the principle of IFT as a principle of international law.

4.2.2 The legal features of IFT rules in the oil sector

The main aim of this section is to analyse the principle of IFT in the extractive industries and how it should be implemented at the international level. This will balance between the right of stakeholders by having enough information reflect the financial position of the oil company, and the right of petroleum firms to manage their own interests. This could not be done without demonstrating its legal nature which requires an analysis of its international aspect (4.2.2.1) and the character soft of the rules form the IFT principle (4.2.2.2).

4.2.2.1 The international aspect of the principle

After the financial crisis of 2008[467] there was a global push to improve financial transparency in all sectors generally and in the oil and gas sector specifically. This push has aimed to promote financial transparency in the oil sector in developing countries where the failure of governance is significant[468] and could have a big impact on its economy, social development, and political stability, thereby affecting the sustainable development. This is characterised by a lack of transparency and accountability about the payment made by the international firms, and payments are receiving by governments. Therefore, this part of the study will try to clarify how this principle is established as principle of international law.

[466] Brownlie. I (418) 775.
[467] See about the financial crisis, Brightman. M (5) 2.
[468] Lahn. G, Marcel. V, Mitchell. J, Myers. K and Stevens. P (2007)' Good Governance of the National Petroleum Sector 'Royal Institute of International Affairs, March 2007.

In this sense, EITI has been established to cover that missing financial transparency and accountability. This first international initiative gives the principle of financial transparency an international aspect. This was the idea of EITI,[469] which was founded in 2002 at Johannesburg in South Africa and became operative in 2007. This initiative encompasses participations of governments, companies, civil society, and non-governmental organisations, such as international organisations and investors[470]. Furthermore, it has placed an international standard for firms to publish what they pay and for governments to disclose what they receive.

The main reason behind this initiative is to encourage transparency practices in the deals between authorities and companies operating in the oil and gas sector. In this regard, the positive effects of EITI can be observed in two important results. First, it pushed governments to develop relevant laws and regulations by imposing on the oil and gas sector to open its financial situation and position to the public[471]. Second, it permits the public to have access to information on extractive revenue paid to governments based on international standards, such as IFRS and IAS, which can make international comparison between international companies easy by providing accurate information through financial statements, financial position statements, and a statement of a comprehensive income.

This initiative gives an international aspect to the principle of international financial transparency by implementing a global standard that could increase the foreign direct investment and authorise economy growth[472]. However, does this initiative alone promote the

[469] EITI: Extractive Industry Transparency Initiative. This idea was first launched by the UK prime minister Tony Blair in 2002 at the world summit on sustainable development in Jonesburg. Following years of debate as well as lobbying from civil societies and extractive companies. Kays. J (2010)' Mines of Information: the IASB is considering Stringent Standards to Expose Risk in the Extractive Industry. The change is needed.' Free Library by Farlex, July 1 2010.
< https://www.thefreelibrary.com/Mines+of+information:+the+IASB+is >
Accessed on 20/07/2020.
[470] Bature B.G (213) 58.
[471] Topal. J and Perrine. T (214)' 271
[472] Ibid.

international principle of IFT? The response will not be just because of the aspect of voluntary and discretionary of this initiative.

PWYP[473] was another initiative in the oil industry, which has had no complaints by governmental organisations since 2002. Its purpose is to limit the negative effects of the resource curse by enforcing financial transparency through a global standard. The PWYP was established to let the people of developing countries control their governments for the administration of natural resources revenues. It also pushed the governments who are rich in natural resources, to publish payments received from oil sector. This attempt to promote financial transparency requires the disclosure of payments made, such as taxes fees, royalties, bonuses, and other financial transactions[474].

This approach, moreover, aims to spread the principle of international financial transparency and has proposed a new accounting standard, which gives financial transparency the possibility to promote global transparency standards[475]. Despite this, the effectiveness of this coalition is still unclear. Two factors could limit its effectiveness. The first factor is the opacity of the oil and gas sector, which requires high capital and is a difficult business to manage at an international level. The second factor is the cost of the implementation of the standards of this approach regarding the technical issues related to the oil and gas sector. The cost of applying its rules cannot be a real standard to improving transparency in the oil sector especially with the high difficult system of requiring information from firm's country by country on this basis not only on the payment made to the government but also on detailed data.

[473] PWYP: publish what you pay. An international coalition of non-governmental organisation has been complaining since (2002), The groups want companies to declare the amount of money being paid to governments for the right to extractive oil, gas and other natural resource.
[474] Topal. J and Perrine. T (451)
[475] Ibid.

These international initiatives, in fact, have been established in line with the municipal reforms appeared in some developed states, whose objective is to implement the international standards of IFT, such as IFRS and IAS. In other words, they have an interest to promote the principle of financial transparency in the petroleum sector by applying the international standards of the financial reporting and accounting standards. From these reforms, it is interesting to note that the Dodd-Frank Act is one of several transparency initiatives and was passed by the US Congress. At the time, it considered to be the largest financial regulation in the United States since 1930.[476] Despite this, it was challenged in court by the API[477] and some multinational petroleum firms, such as Chevron, Exxon Mobile, and Shell[478]. Section 1504 of Dodd-Frank Act instituted a rule to impose the listed companies operating in extractive industries to submit an annual report to the US security exchange commission declaring its financial situation and position, which also disclosed any payment made by these international companies to the government[479].

Through this act, the United States expresses its voluntary position to enforce transparency and accountability in the oil and gas sector to address corruption. Aside from this reform, the EU, on June 2013, founded new transparency directives comparable to the Dodd-Frank law. These rules require all payments above 138,000 Euro made to the federal, national and regional governments to be declared. However, small and medium size companies are excused from these obligations.[480] The EU directive obligates to all listed firms in stock

[476] the US President Barak Obama, who signed the Dodd-Frank Act into law, said, the American people will never be again asked to foot the bill for Wall Street's mistakes. See Morissons& Forester 'analysis of the Dodd-Frank Act', October20, 2015.
<media.mofo.com/files/uploads/Images/**Summary Dodd Frank Act**. pd>
Accessed on 20/07/2020.
[477] (API): American Petroleum Institution.
[478]Goddard. R (2015) 'Act of Transparency 2015 in the UK'
Http://www.GOV.uk
Accessed on 03/10/2015.
[479] Goddard. R (458).
[480] Deval. D and Michael. J 'Governance and Accountability in Extractive Industries: theory and practice at the world bank 'Journal of Energy and Natural resources, 30 (2), June 2012 p101- 128.

exchanges that are active working in oil and gas sector to conform to it. However, the European state member of the EU should amend their law every two years[481]. These initiatives, in fact, have encouraged the stock exchanges in London[482] and Canada to adopt and amend their own transparency rules to improve and increase financial transparency in petroleum sector as a useful weapon to face corruption and misconduct in oil and gas revenue, mostly in developing countries.

It is noticeable that the UK transparency rules aim to implement the EU initiative, which amended the transparency directive of 2004/109/EC. It also established new rules about the provision of information related to payments made to the government by issuers operating in the extractive industries[483]. The UK, by applying these new rules in their local status, have enhanced financial transparency in oil and gas sectors in various countries where the UK extractive companies operate. The UK Extractive Transparency Act covers major international companies, such as Shell, BP, and Total. This act takes a long time to see a new transparency measure, forcing financial transparency in oil and gas sector that obligates the oil companies to disclose a payment made to the government.[484]

The Extractive Transparency Act in Canada was established in cooperation with the Mining Association of Canada (MAC) and the Developer's Association of Canada (PDAC). Once this law was established, it covered 84 states in the world and most of the 100 oil and gas

[481] The French parliament has adopted the first European directive on transparency in the extractive industries. See France demands greater transparency from extractive industries, www.euractive.com, and See Joe Mont, extraction payment disclosure moves forward, published on June (2014) see online on ww.compliance.com.
[482] Today the UK took a huge, historic step in the fight of transparency by putting into force new regulations that implement landmark EU transparency law. These new regulations require oil and gas companies to publish what they pay to government for natural resources. See Alex Blair, transparency in advancing in the UK, while the USA needs to catch u, Oxfam, December 1 (2014).
< https://politicsofpoverty.oxfamamerica.org/oil-gas-mining-transparency.>
Accessed on 20/07/2020.
[483]Goddard. R (458).
[484] In October 2014, the government of Canada tabled the extractive sector transparency measures act. See about Canada extractive sector transparency measures act, Blair. A (462).

companies. Lina Holgauin, joint policy director at Oxfam Canada and Oxfam-Quebec said, "disclosure is a well-established, practical tool to tackle corruption and improve governance in the extractive sector"[485].

These local initiatives have an international aspect in terms of the size of companies which are covered by those international regulations. These companies are international firms operating with huge capital and financial transactions made every day in oil and gas sector in different states in this world. The principle that pushed the financial transparency to spread at international level and transform this principle to the public principles of international law, was the best solution and contribution to fighting corruption and develop the lives of million citizens, especially in developing countries[486]. While the admission of the principle by various states become more-or-less universal, the principle of IFT is still a point of debate. In particular, how has the IFT been established as a principle of international law?

The nature or status of the principle of IFT as principle of international law remains controversial, especially between academics, legislators, and judges.[487] Nevertheless, there are enough countries to implement and practice its rules to give the principle the status of a principle of international law, or at least principle of customary international law. However, this does not prevent other authors from refusing to recognise that the principle of IFT has reached the status of principle of international law.[488]

After a close reading of Article 38 (1)(c)[489], the international rules regulate the principle of international financial transparency can be considered as a source of law in case of disputes.

[485] Ibid.
[486] Chantal .M (407).
[487] Brownlie. I (418) 775.
[488] Bassiouni. C (2013)' Introduction to International Criminal Law' Martinus Nijuhff' second revised edition, 2013.
[489] Article 38 (1) (c): the court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a- international conventions, whether general or establishing rules expressly recognised by the contesting states. Ibid.

This source of international law comes after those related to the voluntary law of states. However, it is not considering as a principle or primary source of international law, it is just a subsidiary source. Article 38(1) (c) does not define the concept of the general principle of law. Brownlie has said that:

In the committee of jurists which prepared the statute there was no very definite consensus on the precise significance of the phrase. The Belgian jurist, Baron Descamps, had natural law in mind and his draft referred to the rules of international law recognised by the legal conscience of civilised peoples.

In addition, the regulations stated by the international initiatives, as previously about the principle of IFT in the oil and gas sector, can be treated as international custom. In this sense, Article 38(1) (b) can be an international custom as a source of law, and so it is accepted as a law. Furthermore, the international regulations that promote financial transparency in the petroleum sector have a general recognition between states and consequently its practices become obligatory.

As an international custom and then as an abiding law, the IFT should respond to two complementary elements, which are: first, the duration, which means providing the consistency and generality of a practice are proven and no duration is required;[490] and second, uniformity, which means that the consistency of the practice is very much a matter of appreciation and a tribunal will have considerable freedom of determination in many cases[491].

Other crucial elements include the reason why the principle of IFT has become a principle of international law, thereby as an abiding law. This element is the anti-corruption

[490] Brownlie. I (418) 786.
[491] Ibid

law has been established around the world.[492] The principle of the IFT is to reduce corruption in the oil sector, which is the main means to pledge good implementation of anti-corruption law.

The extraterritoriality character of anti-corruption law in the US FCP, and the bribery act in the UK make these acts the most widely enforced laws in both the United States and the UK. In fact, the FCAP in the United States applies to any US business act, foreign company, and US resident, whether they are physically present in the United States. This law in its international aspect aims to engage the liability, responsibility for third party who committed the offence abroad. In addition, the UK Bribery Ac covers the crime of bribery, being bribery, the bribery of foreign public and the failure of a commercial organisation to prevent bribery on its behalf. Both the UK and US anti-corruption laws are universal jurisdictions allowing anyone to be prosecuted[493]. So, this universality makes the IFT a principle an anti-corruption law and one of the most important means for fighting corruption. The importance of the principle of IFT appears to be its implementation and it must be asked what international legal rules arise from it?

4.2.2.2 The regulations of the IFT principle are still soft

Through the international approaches such as EITI, the concept of publish what you pay the legal rules of the international principle of IFT started to establish. Regulations aim to promote the transparency of revenue generated in oil sector by countries rich in natural

[492] The (FCAP) in the USA which was enacted in 1977 for the purpose of making it unlawful for a certain class of people and entities to make payments to foreign governments officials. to assist in obtaining or retaining business. In the UK, the bribery act 2010, is an act was enacted by the Britch parliament to prevent bribery act and all the criminal activities related to it in the UK. IPleaders (2016)' what are the Anti-Corruption laws in the USA and the UK', January 30,2016.
< https://blog.ipleaders.in/anti-corruption-laws-usa-uk >
Accessed 0n februarry19,2018.
[493] IPleaders (472)4.

resources. These rules are based on the international standards such as IFRS, and IASB. They seek to fight corruption spreading in oil sector[494].

However, the IFT rules are still soft. First, the principle is not established as an abiding principle in international law. Second, because the rules set up by the international coalitions are oriented to promote transparency in the oil sector (e.g., the EITI or PWYP regulations), they are still voluntary for the governments to sign up to, despite being compulsory for companies and agencies operating in the extractive industry[495].

However, would this indicate that the general principle as source of international law is abiding[496]? This analysis leads to the conclusion that the principles of IFT principle are still soft. In other words, the principle starts to appear and spread at international level by deriving from some national law (as shown previously)[497] but the principle still not compulsory as a source of international law. Consequently, the general principle does not meet the conditions required for treaties and customs to be considered as a biding international law[498]. Soft law could, however, be the legal status of IFT principle to explain the importance of its application and effects in international law[499]. Nevertheless, this legal status could create a situation of non-law and therefore could not be deemed as an obligatory source of international law[500]. Otherwise, soft law still plays a crucial role in convincing nations and countries to adopt the general principle regulations as source of international law because their recognition of this general principle will transform to binding law at international level. Therefore, it is not a

[494] Sonmez. M (3) 8.
[495] Uzoigwe .M (2011)' Multi-Stakeholders Initiatives for Natural Resource Governance' A Thesis Submitted to the University of Birmingham for the Degree of Doctor of Philosophy, 2011, 63-65.
[496] Debate generated by the article 38 of ICJ relating to the sources of international law.
[497] See the previous chapter the implementation of the principle through some national law.
[498] Olivier. M (2002) 'the Relevance of 'soft law' as a source of international human rights' Institute of Foreign and Comparative law, 35 (3), November 2002, pages 289-307.
< https://www.jstor.org/stable/23252173 >
Accessed on 22/07/2020.
[499] Ibid 289.
[500] Ibid 289.

binding law, but it does remain legally relevant and potential matter for states and companies who operate in the extractive industry.

The legal nature of soft law characteristics is due to the legal nature of the rules derived from the EITI and PWYP, which are voluntary for states. Therefore, this could affect the condition required by the Article 38 of ICJ about to be recognised by civil nations. In case of states denied and refuse to adhere to these international coalitions the IFT principle remain soft as source of international law. Hence, joining the EITI and PWYP are not compulsory for states and governments are sovereign to join the EITI coalition and have the right to engage or not with the reporting system put in place by EITI[501]. Furthermore, the soft law legal status is supported by the right of countries who have joined the EITI to change and enact the principles in some way. For example, Nigeria, and Liberia implement or express their commitments in a specific way. Therefore, there are specific EITI rules in these countries[502]. In addition, nations adhering to EITI are free to stop implementing the international reporting standards that they establish. The principle of IFT During this phase, the diversity of experiences in implementing the EITI has added to the richness of the initiative. It has also contributed to a wider debate regarding the need for clear guidance for implementation which still respects the voluntary nature of the initiative and country-specific implementation. The second EITI conference on March17,2005 in London established the rules of EITI, which are guided by 12 principles and six criteria, which were agreed and endorsed by participants from governments[503].

The EITI principles:

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development

[501] EITI (2010) 'the Voluntary Dimension of the EITI', Sep16,2010.
< https://eiti.org/blog/voluntary-dimension-of-eiti >
Accessed on 22/07/2020.
[502] Ibid
[503] Uzoigwe .M (475) 65.

and poverty reduction, but if not managed properly, can create negative economic and social impacts.

2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.

3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.

4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.

5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.

6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.

7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.

8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.

9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.

10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.

11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.

12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make, including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors and non-governmental.

The EITI criteria:

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.

3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.

4. This approach is extended to all companies including state-owned enterprises.

5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.

6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

The financial data required by the EITI legal rules should be made available depending on the IFRS and IAS rules. The IFRS[504] creates financial regulation, allow financial statements to be consistent, transparent, and comparable around all world[505]. The IFRS rules require financial information to cover different accounting activities through obligatory legal regulations. The financial reporting required under EITI rules should be disclosed in three types of financial statements[506]. First, statement of financial position, this is rather known as a balance sheet. Second, statements of comprehensive income, this can be providing in one statement or in separately profit and loss statements, and statement of other income. Finally, statements of cash flow, this is a report that includes the firm's financial transaction[507]. Besides, these statements a company should give an accurate summary of its accounting policies[508]. The legal reporting system required based on EITI regulations, no doubt, transfer the financial transparency required entity by entity, and country by country in extractive sector, from local

[504] See more about (IFRS) CFI, 'what are IFRS'.
< corporatefinanceinstitute.com/resources/knowledge/accounting/what-are-ifrs-sta >
Accessed 22/07/2020.
[505] Pellissery. F (2012)' Disclosure of Financial information and CG, paper posted on February 16,2012, pages 1-9.
< https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2006798 >
Accessed on 22/07/2020.
[506] EL Diftar . D (10) 76.
[507] EL Diftar . D (10) 76.
[508] See more Barclay Palmer about the (IFRS) list such as share -based payment, financial instruments, consolidated financial statements, and revenues from contract with customers, as set up by the IFRS foundation. Palmer.B (2020) 'How are Principles-Based and Rules- Based Accounting Different', Investopedia,2020.
<https://www.investopedia.com/ask/answers/06/rulesandpriciplesbased. >
Accessed on 22/07/2020.

to world implementation. Consequently, how is the principle of IFT implemented at the international level?

4.3 IFT implementation in the extractive industries

This section will first treat the legal framework of the principle of IFT (4.3.1). In other words, what forms of financial transparency are requested? Second, this section will describe its legal effects. In other words, who should report? What has to be reported? And, what are the conditions set up by the different international rules of the principle to be implemented (4.3.2)?

4.3.1 The legal scope of its implementation

The oil sector's revenues and wealth subject of contract are almost secret. So, the purpose of the principle of IFT is to provide the necessary financial information about the revenue income generated by different parts of oil sector (4.3.1.1). Moreover, it promotes the disclosure of investment contracts (4.3.1.2).

4.3.1.1 Oil revenue transparency:

Extractive industries generate a huge amount of income to governments in the form of licence- fees, royalties, dividends, and taxes. This income should participate in the country's social and economic development. However, many resource-rich countries are unable to properly manage their resource wealth because they are not managed by transparency and accountability[509]. Consequently, oil revenue transparency is an important content of IFT. Regulators intervene to make oil revenue work for societies and not only for the benefit of the government[510]. In this case, IFT rules could be a solution. The transparency of the revenue

[509] Transparency International (2011)' Promoting Revenue Transparency: report on oil and gas companies' Revenue Watch Institute, 2011, pages 1-220.
< https://www.transparency.org/files/content/pressrelease/20110301... >
Accessed on 20/07/2020
[510] Ibid 2.

generated by the oil sector has to be a basic principle of extractive industries. Citizens of resources-rich countries have the right to know where their governments spend their wealth and how this money is allocated. In other words, oil revenue transparency aims to make the exploitation of oil more transparent. IFT, in addition, aims to encourage good corporate governance in oil rich countries. The only solution to pledge this goal is to improve the knowledge of the importance of revenue transparency in the oil sector[511] to help people in the resource-rich countries to make their governments responsible for the bonuses generated by those resources.[512] To identify this area of implementation, such as the features of the principle enforcement of IFT in oil sector, it is necessary to study the regulations and international approaches established by some developed countries to increase financial transparency in designated sectors, such as the Dodd-Frank Act, the transparency European directive, and the Canadian approach. Therefore, the field of study will be limited to these approaches because they are the first states who adopt reforms to create disclosure systems and promote the international transparency revenues efforts.

The transparency of oil revenues can include a financial review, which comprises all the financial statements and ratios to be disclosed. This allows shareholders and future investors to be able to assess the company's financial situation, financial transparency revenues as the extent of disclosure of financial information by firms, their interpretation by financial analysts, or their dissemination by media reporters. Basically, any information that facilitates the forecasting of the company's future performance and the value of its shares should be easily available to investors.[513] In addition, seekers of financial information regarding oil revenues

[511] Transparency International (507) 2.
[512] 'Disclosure of Payments by Resources Extraction Issuers' U.S. Securities and Exchanges September 19, 2106. < www.sec.gov/info/smallbus/secg/resource-extraction-small-entity-compliance...> Accessed *on 20/07/2020*.
[513] 'OECD Annual Report 2004 'OECD Publisher, May 11,2004, ISBN 10. < www.oecd.org/daf/ca/oecd-principles-corporate-governance-2004.htm > Accessed *on 20/07/2004*.

may request information on some risk factors, such as currency risk, interest rate risk, and derivatives-related risk. This type of risk disclosure is most useful when it is customised to the industrial sector (OECD, 2004). Bushman et al. (2004) assessed corporate transparency across various countries and found that financial transparency is greatly affected by the country's political economy[514]. The main objectives of oil revenue transparency are to guarantee the disclosure of the financial payments made by international firms to governments.[515] This is the reason why it is essential to analyse the different international reforms to identify the oil revenues transparency rules. In other words, how do these reforms consecrate the transparency of oil revenues?

the Securities and Exchange Commission (SEC) adopted on July 2010 an amendment to its disclosure rules.[516] Section 1504 of Dodd-Frank Wall Street reform and consumer protection act relating to disclosure of payments by resource extraction issuers added Section 13(q), which required companies to include in an annual report any data concerning any payment made by the issuers, a subsidiary of the issuer, or any entity under the control of the issuer to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas or minerals.[517]

This section aims to define who must report the payment made to governments and the issuers are required to fill an annual report and engage in the commercial development with the SEC[518] of the oil and gas sector or its subsidiaries or any entity under its control. This section, moreover, does not provide any exemption, such as when an issuer has a confidentiality provision in an existing or future contract or for sensitive information. Compatible with Section

[514] 'Disclosure of Payments by Resources Extraction Issuers' (508).
[515] Ibid.
[516] Securities and Exchange Commission :17 CFR parts 240 and 249, release No 34-67717, file No 57-42.
[517] Disclosure of Payments by Resources Extraction Issuers' (508).
[518] Securities and Exchange Commission (512).

13(q), the final rules define commercial development of oil, natural gas, or minerals, which includes activities of exploration, extraction, processing, and export, or acquisition of a license for any such activity.

The EU directive,[519] as amended in 2013, requires issuers who have activities in the extractive or logging of primary forest industries to disclose in a separate report, on an annual basis, any payment made to governments in the countries in which they operate[520]. "Issuers" here have the same principle with the Dodd-Frank Act, which means that the listed companies working in the petroleum sector are required to report the payment made to governments or on a country by country or project by project basis.

The EU directive applies to all firms listed on EU stock exchanges that are active in the extractive industries and logging industries, which is not included in the Dodd-Frank Act[521]. The transparency rules required in the EU Accounting directive impose on the oil, gas, mining, and forestry industries a duty to report any payment made to the government. Otherwise, compared with the US Dodd-Frank Act, the rules are restricted to the oil, gas and mining sector. Moreover, the EU transparency rules apply to large unlisted companies, while the US rules apply only to listed extractive companies. Another crucial difference between both EU transparency rules, and the Dodd-Frank Act is that the former demands from oil companies to disclose the payment made to the local government and US government, whereas the Dodd-Frank Act obligates firms to disclose the payments made only to the US federal government[522]. Furthermore, there is no prescribed EU format for the report, and it does not specify a requirement for the report to be audited.

[519] EU Transparency Directive of 2004, which was amended in 2013 by the transparency amending directive 2013/50/EU.
[520] Disclosure of Payments by Resources Extraction Issuers' (508).
[521] Deval. D and Jarvis. M (2018)' Governance and Accountability in Extractive Industries: theory and practice at the world bank' Journal of Energy and Natural Resources, 30 (2), June 2012, p101- 128.
[522] PWC Report (371)

On the other hand, the Canadian approach, following the global orientation of fighting illegal practices in oil and gas sector and to increase transparency, in October 2014 setup the Transparency Measures Act, which recommended the disclosure of payments that oil companies made to governments.[523] The Canadian approach adopts the same context as the United States and EU. This approach, which is to obligate an entity, includes a corporation or other unincorporated organisation that is engaged in the commercial development of oil and gas sector or other unincorporated organisation that controls an entity as described above. The commercial development of oil and gas also captures the exploration or extraction of oil and gas and the acquisition of holding a permit license, lease, or any other authorisation to carry out exploration activities.

The question now is what does the entity have to report? All these approaches include an entity that has to report any payment made to the government. Therefore, the previous step is to clarify the meaning of the concept "payment". It can be understood as a payment made for the commercial development of oil and gas. Furthermore, the payment has to be "not de minims", which means that it equals or exceeds $100,000 in both the US and Canadian approach, and £138,000 for the EU approach. Finally, the payment, integrate taxes, royalties, fees, production entitlement, bonuses, and other material benefits should be included.[524] Consequently, any entity working in oil and gas sector has to provide information about the payment made to any foreign government, which includes a foreign national government, a foreign subnational government like the government of state, province country, distinct municipality or territory under a foreign national government.

Understanding this payment amount condition allows the regulators in different approaches to foster a wide implementation of the rules that establish financial transparency as

[523] Fekete. J (17).
[524] Disclosure of Payments by Resources Extraction Issuers' (508).

an important principle in the extractive industries. This later is considering as a very low amount regarding the importance of transaction conclude each day by oil and gas firms and to the importance of the bonuses that are realised. Thereby, this condition could harm and damage the interest and the competitiveness of named companies by limiting their normal activities.[525] These rules are a chance to face corruption and help poor countries to limit the drawbacks of the resource curse. However, it is important that the financial transparency rules should balance the interest of stakeholders to hold the necessary information to defending interests and the interest of oil and gas companies to defend their right in competitiveness and exploiting a commercial activity. Finally, this revenue transparency required in oil sector is based on new global standards of releasing financial data, which they can use to hold governments responsible for the payments received. The legal framework of the principle of IFT not only places limits on the transparency of oil revenues but also on the contract's transparency. Consequently, what is the content of this type of transparency?

4.3.1.2 Contract transparency

Confidentiality dominates oil contracts around the world, which hardly affects the interest of stakeholders and oil firms. No one wants to take the risk of adopting a politic of contract disclosure without a massive guarantee. In fact, there is no pressure on countries or oil companies to disclosure their financial details in an oil contract[526]. Nowadays, there is a growing movement towards contract transparency, supported by increasing numbers and

[525] In this context, Exxon Mobile oil company argue that the proposed rules would be excessively burdensome says Patrick Mulva, vice president and controller. Big oils concern as Mulva wrote in a letter to the commission, is that 1504 would have a detrimental effect on the "global competitiveness of US companies. The fear is that Chinese, Russian, Brazilian, and Indian oil and mining companies, lacking qualms and unburdened by Dodd-frank rules, would exploit financial disclosures made by western competitors to outbid them. Coll. S 'ExxonMobil vs. Dodd-Frank, a new US law takes aim at the resource curse. Why is big oil trying to kill it?' Businessweek, May 14,2012.
< www.bloomberg.com/news/articles/2012-05-10/exxonmobil-vs-dot-dodd-frank >
Accessed on 20/07/2020.

[526] 'why Contract Transparency', page 15.
< esourcegovernance.org/sites/default/files/Reco***ntracts***... ·>
Accessed on 20/07/2020.

varieties of organisations and institutions. Civil societies such as PWYP are among those calling for oil contract transparency[527]. The World Bank and IMF are also among the financial institutions who are encouraging oil contract transparency. This latter considers contract transparency as a pillar of good governance of extractive industry. Contract transparency is crucial for all parts of extractive industry, governments, oil companies, and citizens all have something to gain from contract transparency. The government will be able to negotiate better contracts, while the citizens have the right to know how their government is selling their resources[528]. This growing movement started the establishment of the EITI organisation, which encourages applying states to disclose and publish contracts and license agreements relating to oil, gas and mining transactions. The EITI has potentially affected contract transparency: 5 years after the EITI starting encouraging oil deals transparency, multi-stakeholder groups (MSG) around the world start supporting the disclosure of oil contracts[529]. They realise that encouraging contract transparency allows many stakeholders to control contractual obligations, enhancing inter-agency collaboration, and expecting future revenue and their allocation[530]. However, the discrepancy in practice is that not all oil contract can be published. For instance, some oil contracts incorporate a confidentiality clause, which lead to governments and oil firms arguing the publication of these contracts. In this regard, it is important to know what is meant by contract transparency? And, which contracts must be transparent?

This question in not simple to answer because (as demonstrated in the previous paragraph) not all oil contracts are subject to disclosure and possible access to information for stakeholders, but there are some areas where information is accessible. Generally, there are

[527] why Contract Transparency (523)4.
[528] Ibid.
[529] 'Contract Transparency in Oil, Gas, and Mining: opportunity for EITI countries' EITI, June,2018, pages 1-19. < eiti.org/document/eiti-brief-contract-transparency-in-eiti-countrie >
Accessed on 20/07/2020.
[530] Ibid 4

typically government oil contracts, which allows international oil companies to prospect, explore, and exploit in extractive industries. In the oil sector, there are three types of oil contract. First, the Producing Sharing Agreements (PSA), in which the international firms or operator is permitted to recover its operating costs (apex) and capital (capex) to share income and a share of oil with government.[531] Second, service contracts allow the operator to receive a certain amount of income generally a percentage to cover its costs. Finally, concession contracts or tax royalties, where the operator has a main obligation to the state to pay taxes and royalties and the international firms have rights to all the hydrocarbon resources[532]. It is common for countries to use a mixture of all these contract types to assign risks and responsibilities, or to land change of policy or both. Interest in concluding these contracts will depend on the expectation of the contracting parties to reduce the unbalance between the benefits received by them[533]. Otherwise, Heike Maihardt- Gibs deems that there are—especially in developing countries whom their oil programme supported by the World Bank (WB) —two types of extractive contracts, one called the PSA and the second called the Mining Development Agreement (MDA).[534] These authors think that these agreements face some issues because they negotiate only one project, although they may be published with general concepts and clauses. However, the importance of the transparency of these oil contracts is not a context of discussion. The question to be asked is why do contracts transparency matter?

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[531] EITI 'Contract Transparency: making contracts accessible for citizens'
< *eiti.org/***contract-transparency >**
Accessed on 20/07/2020.

[532] EITI (524).

[533] Andrade. M, Hernandez. C, Landivar. A, and Mendez. M (2011)' Transparency in Petroleum Contracts: A Comparative Study of Ecuador and Bolivia' PWYP,2011, pages 1-18.
< resourcegovernance.org/analysis-tools/publications/**contract-transparenc >**
Accessed on 20/07/2020.

[534] Mainhardt-Gibs. H (2004)' Revenue Transparency in the Extractive Industries: The Role of International Financial Institutions' BIC- ISSUE Brief, November 2004, pages 1-10.
< *laohamutuk.org/Oil Web/Bground /Transpar/BIC_ Revenue_* **Transpare**… · >
Accessed on 20/07/2020.

For Heike Mainhardt-Gibs, contract transparency in the oil sector is an instrument of public policy[535]. Contract oil transparency is important to disclose the revenue and to protect social justice. Stakeholders and citizens should be informed about the content of extractive contracts conclude between governments and international operators without forgetting to make the balance between the contract's transparency and confidential business data. Furthermore, other scholars believe that contracts transparency is the approximately the best solution to ensure all parties benefit from the oil sector.[536] This prevents local authorities from giving themselves some advantages. The importance of contracts transparency has led to a push towards universality, where all concession contracts should be transparent and disclosed to the stakeholders and public,[537] therefore, making the principle of IFT universal and considering the principle of international law. Otherwise, despite great potential, the use of contracts in practice is still limited. Obstacles to effective use of contracts as established by stakeholders include the lack of clear process for the publication of contracts, conflicting sources of contract information and the absence of a common comprehensive of the confidentiality disclosures clauses[538].

First, the uncertainty to the accessibility of contract data. A survey of the initial assessments and EITI reports demonstrates that little care has been given to data accessibility and the format in which contracts are disclosed. For instance, some contracts are disclosed in PDF format, while others are available in searchable formats online[539]. These differences of opinions may be connected to the ability of using computer literacy in the country. For example, in Burkina Faso, civil society representatives consulted did not consider online publication as particularly important. They justify that free access to extractive contracts at the

[535] Mainhardt-Gibs. H (531) 2.
[536] EITI (524) 6.
[537] Andrade. M, Hernandez. C, Landivar. A, and Mendez. M (527) 4.
[538] EITI (524) 12.
[539] Ibid.

Ministry of Mines and Energy would be considered as effective and adequate[540]. In Liberia, the simplified contract matrix has helped civil society organisations such as Rights and Rice to run roadshows in concessions areas to help local populations gain a better understanding of the terms of the contracts. In the Kyrgyz Republic, a government representative justified that the obstacle was mainly technical. Although all license agreements have been scanned and were available in an electronic format on the internal part of the license database, the current IT system[541] did not have capacity to load such big files.

Second, for conflicting sources and outdated information, validation has revealed that there is often lack of clarity on which local authority agencies are responsible for publishing contracts and challenging in keeping contract information up to date. In the case of the Kurdistan region of Iraq, there were differences in the number of contracts published on the various public sources of information. Some PSC were published on the website of the Kurdistan Regional Government (KRG) Ministry of Natural Resources, whereas the resource contracts.org website and the Open Oil contracts database host a different number of contracts related to Kurdistan. In Liberia, it appeared that the final versions of all contracts were not publicly available from the LEITI website. For example, the website released only some of the PSCs, including at times initial PSCs that had consequently been amended, ratified PSCs or PSC amendments without the original[542].

The EITI Standard encourages publication of the full text of any addendum, alteration, amendment, annex, or rider to contracts and licenses. Stakeholders in several countries commented on the availability of full text of contracts and addendums. In Mozambique, stakeholders noted that the 2014 Petroleum Law states that the "main terms" of contracts are

[540] EITI (524) 13.
[541] Ibid.
[542] Ibid.

to be published, without making clear whether addendums will remain confidential. In Timor-Leste, civil society representatives explained that so far only summaries of the contracts entered into under the Interim Petroleum Mining Code prior to 2003 had been published, as required by law, but that they wanted the full terms of these contracts to be disclosed.

Third, confidentiality clauses need be examined in further detail, including the extent to which confidentiality clauses are included following the mainly information at the execution of the contract. It seems to be strange that almost all oil contracts have been kept secret[543] because of commercial confidentiality. This limits the attempts to form international coalition, such as EITI and PWYP, to make oil sector deals clear and published to the public. These organisations encourage public disclosure of contract transparency in their 2013 International Standards. In addition, there is a recognition that contract transparency is the best solution to manage oil wealth. In fact, oil contracts may include a clause to set an obligation to keep the financial data of their agreements secret. Many international firms concretise confidentiality clauses as important to protect their negotiation with governments[544]. Nevertheless, there are some efforts by states to passes a law to end secrecy in oil, gas, and mining sector. An example of this conflict exists between government and oil companies about the use of confidentiality clauses in oil contract. In Albania, stakeholders interrogated whether governments could use their power to unilaterally publish contracts that were signed despite encompassing confidentiality clauses. Some regulators thought that the government could use its sovereign prerogative to suspend or end confidentiality clauses of a contract. However, a common issue was the technical ability of the government to successfully engage multinational companies on issues connected to contract transparency. A local authority official shows several cases where the government had lost cases brought by companies at international arbitration and justified

[543] Mainhardt-Gibs. H (531)4.
[544] Keller. J .H 'Confidentiality Clause in Oil and Gas Lease' Mineral Right Forum, April 15.

that the government had to proceed cautiously with such issue[545]. Moreover, in Cote d'Ivoire, representatives of the oil firms argued that the contract transparency provision of the 2012 Oil Code did not have retroactive effect and did therefore not supersede the confidentiality clauses in the contracts. In Madagascar, government representatives noted that confidentiality clauses covering all aspects of PSCs last if the contract is active, and that companies insist on these clauses[546].

There also appears to be some divergence in perceptions regarding confidentiality provisions in model contracts. In Honduras, the contract between the government and the BG group explicitly mandates that any information seemed confidential can be disclosed and published without previous consent of the parties for EITI purposes. In Iraq, the confidentiality provisions of the Technical Sharing Contract could be waved upon consent from the two parties to the contract. In Mozambique, contracts signed prior to the coming into effect of Public-Private Partnership Law 15/2011 are disclosed where companies have agreed to waive confidentiality provisions[547].

This matter could lead to another common issue, which is the commercially sensitive information in oil contracts. The question of commercially sensitive information in contracts was not frequently cited by EITI stakeholders as a reason not to disclose contracts. The use of a technology or trade secrets, for instance, could be deemed sensitive. Oil transactions secrets can include information that is central to a company's activities, and which could cause economic damage or competitive disadvantage if known. In the extractive industry, seismic data, samples, well logs, geological structure maps, and certain technologies could likely constitute a trade secret. If a company is planning to use a technology that is not common to

[545] EITI (524)13.
[546] Ibid.
[547] Ibid.

the industry and this is described in the contract, then this could constitute a trade secret that it could be commercially harmful to disclose. In the 2012 EITI Report, the Philippines listed the information that could be considered confidential in contracts by mutual agreement in mining and routinely in oil and gas. In Nigeria, none of the mining industry representatives consulted had any objection to the publication of the full text of their licenses, stating that these did not contain any commercially sensitive data nor any confidentiality clauses. However, they noted that for extractive sector, the split in Profit Oil between the operator and NNPC from the PSC and details of work programme obligations were more commercially sensitive[548].

Finally, the last matter is the fear of instability. In some countries, governments officials are afraid of public criticism or instability if contracts were to be published. In Cote d'Ivoire, government representatives feared that the public will be unable to understand the companies' contribution to the government. In the Kyrgyz Republic, companies were afraid that people did not have enough capability to understand the financial terms of the oil contract, and this could create further misunderstandings and conflicts. In Iraq, an official from the Ministry of Oil explained that some of the terms of the contracts, inclusive for crude oil specifications, appeared so general that they could expose that the contracts transparency faces the opposite principle, which is the right towards the secrecy of oil business transaction[549]. This matter of fear of instability could generate the concertation of the oil wealth by the governments of resource-rich countries. Consequently, misdirection in the financial revenue of the oil sector can help many international firms to reduce their eligible tax by using corrupt methods to decrease the price of its oil products by selling it under-price to its affiliates. Therefore, the

[548] EITI (524) 14.
[549] Offenheiser. R. C 'US Congress Passes law to End Secrecy in Oil and Gas and Mining Industry' Oxfam America, July15, 2010.
< www.oxfam.org/en/press-releases/us-congress-passes-law-end >
Accessed 16/3/2016.

financial data shown in the contract would not be accurate[550]. Facing these challenges, EITI could support states build their legal framework of contract disclosure and thus promote contract transparency in a timely manner.

After studying the legal framework of the principle of IFT manifested in revenues transparency and contracts transparency, the next section will study the effects of the implementation of the international principle of financial transparency.

4.3.2 The effects of the implementation

This section will determine the process of the implementation or the data reporting. The first effect of the scope of implementation refers to Section 1504 of Dodd-Frank, which states that a resource extraction issuer should obey with the new regulation from fiscal years finishing after September 2013[551]. The EU transparency directive give the 28-member states two years to respond to the new EU transparency rules[552]. In this sense, Dominic Egleton, a senior complainer on the oil team for global witness, said that the EU directive is more rigorous than the US rules.[553] Whereas some oil and gas firms are rigidly against the US disclosure requirement, such as Shell Oil. In this context, London listed Tullow Oil was the first oil and gas enterprise to disclose payment to a foreign government on 19/05/2015[554]. In addition, the

[550] Toledano. P (2012)' Paper on the Business Case for Transparency' Columbia Law School, Columbia Centre Sustainable Investment, June 2012, pages 1-15.
< academiccommons.***columbia***.edu/doi/10.7916/D8ZW1MFB >
Accessed *on 20/7/2020.*

[551] 'Disclosure of Payments by Resource Extraction Issuers: amendment of Dodd-Frank Act', SEC, 17 CFR parts 240 and 249, release number 34-67717, file n:57-42-10.
< www.sec.gov >
Accessed on 16/3/2016.

[552] Ibid.

[553] Eagleton. D (2017)' Glen Core'$75 Million Payments Show Why the EITIMust enforce Project- Level Reporting by Oil and Mining Companies' EITI,March 7,2017.
< ttps://www.globalwitness.org/en/blog/?author=Dominic *Eagleton* >
Accessed on 20/3/2018.

[554] [554] Georges Cazenova "we decided to issue our payments to governments at the level required by EU transparency directive" he says, "the biggest change was a further breakdown of taxes by project."

transparency regulation gives the minister a power to impose on oil companies to release to data to verify acquiescence with this act.

The second effect is that oil and gas firms subject of these rules must inform the payment made to foreign government by providing an annual report to the minister at the end of fiscal year. However, the Canadian transparency rules impose on oil companies to report payment by releasing an annual report to the minister within 150 days of the end of each financial year.[555] The annual report, as demonstrated in the previous chapter, should include a true, accurate, and complete information about the payments made to the governments as is required.

The annual report must give enough data about the total amount of payment by category, the money in which they were paid, the financial date in which the payments were made, the department or subsidiary in which the payment is paid, and the governments that received the money[556]. Section 1504 of the Dodd-Frank Act is precise about the reporting format that the data about payments made to governments, requiring that it should be provided in two ways: filed in hypertext mark-up language (HTHL), or American standard code for information interchange, and in extensible business reporting language (XBRL). Companies must show this information and it must be provided in annual report relating to the fiscal year.

The EU transparency directives required in extractive industries are, in general, like the US Dodd-Frank Act. The new EU rules require companies to inform about any payments made to any governments by presenting an annual report and consolidated accounts[557]. This annual report should contain all payments made by country and by project, when these payments have

[555] Disclosure of Payments by Resource Extraction Issuers (549).
[556] Ibid.
[557] 'New Disclosure Requirements for the Extractive Industry and loggers of Primary Forests in the Accounting and Transparency Directives (country by country reporting), European Commission, June 12, 2013.
< **europa.eu***/rapid/press-release_MEMO-13-541_fr.htm>*
Accessed 0n 20/7/2020.

been allocated to the specific project, also must report, production entitlement, taxes, royalties, dividends, bonuses, license fees and any money has been paid to improve infrastructure. Obeying these regulations, the French parliament has fostered the first European directive on the transparency in extractive industries. The French rules require extractive business, in general, and the oil and gas sector, especially, to release an annual report about the payments made to foreign governments over 100,000 Euros[558]. In August 2014, the UK was the first member state to do this. Today, the UK can tackle corruption by adopting an important and historical step similar with the European rules that require from extractive companies to publish what they pay to governments for natural resources[559].

Under the new rules, oil and gas firms who make payments to governments over of £86,000 are expected to provide a report comprising all details of all the particulars of the payments to firms in the UK Companies Register.[560] The EU member states committed that the new regulations will be strictly executed. The oil firms could be litigated and accused of a criminal offence for unsuccessful to implement the law. The Canadian approach has adopted the same direction by imposing on any person or entity that fails to comply with the payment reporting obligation or in case of false statement providing or incorrect information released to the minister and will be accused of an offence and may be susceptible to a fine not more than 250.000$.

These rules express the sovereignty of regulators to create international disclosure system in oil and gas sector to help peoples in resource- rich countries to hold their governments to

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[558] Barbiere. C (2014)' France Demands Greater Transparency from Extractive Industries' Eurocative, Sep23,2014.
< https://www.euractiv.com/section/development-policy/news/france>
Accessed on 20/3/2016.
[559] Armstrong. J (2014)' The New UK law Extractive Industries' Cordery, October23, 2014.pages 1-6.
< https://www.corderycompliance.com/new-uk-law-for-extractive-industries **>**
Accessed on 16/3/2016.
[560] Ibid.
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account for the bonuses produced by that wealth. The question, then, is how can IFT be guaranteed?

4.4 The guarantee of the IFT rules

Regarding the importance of the international principle of IFT to promote financial transparency in the oil sector, it is important to promote and pledge the implementation of transparency in the right way. However, this cannot be realised without studying the role of international multi-stakeholder coalitions in enhancing financial transparency (4.4.1) and analysing the international trend to tackle bribery and corruption in the extractive industries (4.4.2).

4.4.1 The role of international initiative

The EITI, as an international organisation, includes a multi-stakeholder board, extractive companies, civil society organisation, institutional investors, and international organisations[561], whose goal is to improve the administration of the wealth produced by the oil and gas sector in resource-rich countries through revenue transparency. Therefore, the question that must be asked is how can this international coalition promote and guarantee the implementation of the principle of IFT?

Essentially, this multi-stakeholder initiative implicates all the stakeholders who operate in oil and gas sector in the same tribune, which ensures that they have the same agenda, which enables them to defend their interests via the large international oil companies[562]. An international initiative which includes the principal actors in oil and gas sector could enable

[561] Kay. J (2010)' Mines of Information: The IASB is considering stringent reporting standards to expose risk in the extractive industry. The change is urgently needed' The Free library, Financial Management, July1,2010. < https://www.thefreelibrary.com/Mines+of+information:+the+IASB+is > Accessed on 20/7/2020.

[562] The key stakeholders identified by the initiative include governments, oil gas and mining companies, and the civil society. See Uzoigwe . M (403) 67.

increased financial transparency in a named sector and this develop the accountability of the local authorities in resource-rich countries. In addition, under this initiative, the governments of resource-rich countries should adhere to promote and guarantee the implementation of the IFT, which will be based on international standards. Once a state invokes this initiative voluntarily, it is under a commitment to apply the international disclosure rules to all firms to pledge to publish information considering the financial position and situation of oil companies. More substantially, it refers to a reduction strategy paper (PRPS) or environment impact assessment (EIA). The EITI procedure demand that civil society not only be reviewed but also authorise stakeholder to participate in stringent decision vote[563]. Subsequently, it gives multi-stakeholders the opportunity to negotiate this matter of resource revenue transparency. However, are these international initiatives enough to pledge and promote transparency?

These international initiatives, because of their facultative and discretionary character, can only offer a limited guarantee of the management of the oil and gas wealth[564]. Therefore, one of the causes of the high level of corruption in resource-rich countries is the weak governance of the extractive industries[565]. In this sense, Hilson and Maconachie argue that the EITI on its own "is incapable of facilitating reduced corruption, prudent management of mineral and or petroleum revenues, or mobilizing citizens to hold corrupt government officials accountable for embezzling profits from extractive industries operations"[566]. These initiatives include large international companies operating in the oil and gas sector, which affects the

[563]Uzoigwe . M (403) 69.
[564] Deval.D and Jarvis. M (2012)' Governance and Accountability in Extractive Industries: theory and practice at the world bank' Journal of Energy and Natural Resources, 30 (20), June 2012, pages101-128.
< https://www.researchgate.net/publication/256022429_Governance_and...>
Accessed on 20/7/2020.
[565] Ibid 116.
[566] Hilson G and Maconachie R (2009)' The Extractive Industry Transparency Initiative: Pancea on white elephant for sub- Saharan Africa? in Mining Society and Sustainable World' School of Agriculture, Policy and development, the university of Reading, 2009, pages 3-23
< https://www.researchgate.net/publication/286806151_The_Extractive_Industries...>
Accessed on 20/07/2020.

quality of the information released because of the strong competition between these companies and the financial power that they have. Consequently, the evaluation of financial reporting is very difficult, but it is not impossible[567]. This limitation in global financial transparency system happens because the limitations of the EITI have driven governments at an international level to foster anti-corruption approaches to support the effectivity of the principle of IFT.

4.4.2 Anti-corruption legislation

The crucial question is how to increase foreign direct investment in the extractive sector for sustainable development, especially in resource-rich countries?

The oil and gas sector face the risk of corruption, which can be resolved by transparency in international organisation. Oil and gas companies are more likely to be exposed to bribery and corruption[568]. Bribery can arise because the large oil and gas international firms conclude and negotiate their contracts in obscurity[569]. Before asking the question about how anti-corruption laws can reduce corruption and guarantee financial transparency in extractive industries, it is important to define the concept corruption in oil and gas sector. In other words, what does corruption mean?

The international transparency report of 2010 defines corruption as abuse, it states that "it is the abuse of power for private gain. It hurts everyone whose life, livelihood or happiness depends on the integrity of people in a position of authority"[570]. Moreover, Graaf defines corruption as a fact that takes place when public officials weigh the benefits of corruption

[567] Deval. D and Jarvis. M (562).
[568] 'Managing Bribery and Corruption Risks in the Oil and Gas Industry', EMEIA Agency, pages4-21
< managing bribery and corruption risks in the oil and gas industry >
Accessed on 16/03/2016.
[569]Toledano. P (548) 13.
[570] Way. W (2011)' Extractive Industry Transparency initiative with Respect to Corruption: levels in candidate and compliant countries', Themixoiland , march4, 2011.
<www. Themixoiland.com >
Accessed on 31/10/2016.

against the costs[571]. Corruption includes various illegal behaviours such as fraud, theft, bribery, nepotism, waste of resource, and misuse of information[572]. Countries rich in natural resources should understand that there are various elements to corruption, and which can increase bribery.

First, the resource-rich countries consider their wealth as "strategic commodities", so its management is classified in the same rank as national securities issues. This compilation can be the reason for these countries to opt to use secrecy in the oil and gas sector[573]. The second factor is that corruption is common in developing countries, due to the weakness of the accountability systems in different sources of law.

The main question is how is anti-corruption law used in the oil and gas sector? And how can anti-corruption laws reduce bribery and consequently increase financial transparency?

An effective business in the oil and gas sector could be the main cause for developing countries to manage their legislation with the new challenges set by the oil and gas sector[574]. In fact, for petroleum companies, searching for a new reserve and maximising their benefits pushes them to operate in states where there is a high level of corruption and an unstable political environment, and a lack of infrastructure. The reason for them to make the audit of their transaction and deals necessary and strong enough is to fight corruption[575]. For instance, the International Transparency (2010) study showed that Africa, Latin America, Asia, and the Middle East, countries have a low level on the internationally transparency index.

Corruption has become a significant worry for the developing countries governments and international firms executing activity in the oil and gas sector. Subsequently, managing

[571] Way. W (568).
[572] Lindgreen. A (2004) 'corruption unethical behaviour and ethics' Public Administrative Review, 51 (1), Springer, April 2004, pages 29-31.
< https://www.jstor.org/stable/25379167 ·>
Accessed on 20/7/2020.
[573] Way. W (568).
[574] I Pleaders (490).
[575] Ibid.

and reducing corruption in the extractive sector risk have become the main objectives. Furthermore, in the oil and gas sector, firms and their subsidiaries cooperate with foreign governments to get the benefit of the rights to explore oil fields. So, they may receive something of a significant amount or price. For instance, in June 2012, executives at a manufacturer of products for the petroleum sector were charged with violation of Foreign Corruption Practices Act (FCPA) after they were found to have made illegal payments to governments officials in several countries. In addition, in 2010, the Swiss freight forwarding company Panalpina and its US subsidiaries were fined for paying bribes to foreign officials in Brazil, Kazakhstan, Nigeria, and Russia[576].

Reducing corruption and bribery can enhance financial transparency, while control and audits are requested by the anti-corruption laws. A strict fine for violating the international accounting standards and the rules of international initiatives or local reforms is necessary, such as the US FCPA and the UK Bribery Act. The FCPA[577] mitigates corruption in the extractive industries by prohibiting any person and firms to make bribes and other corruption to foreign official for the objective to obtaining or retaining business[578]. Both the US Department of Justice (DOJ) and the SEC implement the rules of the FCPA.

This anti-corruption act includes both civil and criminal fines. Under these rules a company or entity can be punished with a fine of up to $2 million in cases where the rules are broken, and bribes are paid. Also, for an individual can be subject to criminal fine of $250,000- and 5-years imprisonment[579].

[576] (FCPA) of 1977, 15 USC 78 dd.1, for more information about FCPA, see Cave. B and Paisner. L (2015)' corruption costs: The US Foreign Corruption Practices Act' the USA FCPA, March 2015. < https://www.bclplaw.com/en-US/thought-leadership/corruption-costs-th > Accessed on 20/07/2020.
[577] Ibid
[578] Ibid.
[579] Ibid.

The rules of FCPA are applied in case a foreign subsidiary operating as an agent of a US oil company. While the UK Bribery Act of 2010 also established a new offence under Section 7 imposed on commercial organisation a fine when a bribe act is committed. This act translates the influence of the OECD guidance and the FCPA on the UK Bribery Act which could be a strong weapon against the corruption in oil and gas sector at an international level[580]. These anti-corruption rules could be used because of their effectiveness, especially for the fines because of the symbolic amount imposed by regulators when the offender is an oil company with huge capital and assets all over the world. Moreover, the question still to be asked is, do these rules reduce corruption and guarantee the effectiveness of financial transparency in the extractive industries?

4.5 Conclusion

In conclusion, this chapter has examined and tried to answer three questions about the international principle of financial transparency, which are: Does the principle of IFT exist as a principle of law at international level? What is the scope and effects of the principle in extractive industries? And how is the principle guaranteed?

Developing countries today are more conscious that to attract foreign capital, they should improve their international reporting system. However, this goal cannot be achieved without developing the reporting rules for the extractive industries. There are several international initiatives based on international financial accounting and international financial reporting norms, which require the disclosure of payment make to foreign government by oil and gas companies.

A local reform that has an international impact, such as the Dodd-Frank Act, the EU Transparency Act, and Canadian approach can help to make international financial

[580] Cave. B and Paisner.L (574).

transparency a norm in the extractive industries, especially in the oil and gas sector. Today, all oil firms encourage these international initiatives, such as the EITI, including emerging countries such as Brazil, Russia, India, and China. However, the main issue was to identify the international principle of IFT. This identification must be made from two sides: from its national legal system framework and its international legal system. First, the methodology of the identification of the international principle derived from legal systems is based on two steps. These two steps aim to demonstrate that the conditions required by Article 38 (1) (C) of the statute of ICJ has been met. This demonstration consists of proving the existence of the general principle of international law derived from national legal systems. What is the content of a general principle of law? This question justifies the transposition of the general principle from national legal system to international law. Second the identification of general principle of law formed within international legal system, which is a second category under Article 38 (1) (c), of the statute of the ICJ. The methodology of their identification depends on proving the existence of the general principle formed in international law by recognising its existence in treaties, international conventional, and customary international law. These sources of recognition are not exclusive, and they may coexist in some cases. In reference to Article 38 (1) (C) of the statute of ICJ, there is no doubt that the international law is witnessed by the apparition and the establishment of a new IFT rule at international level derived basically from national legal systems. However, this general principle is still soft and has not yet reached the level of abiding international law. Moving from soft law to hard law generates higher sanctions that impose the respect to the IFT regulations because the punishments system in international law is flexible. Some emerging states continue to escape from these rules because of their voluntary character and the flexibility of IFT status. Consequently, the issue is not just to implement the international rules of the IFT but how to challenge the resource curse in developing countries and how these international initiatives can pledge support for the principle

of IFT? Are these rules an adequate solution for the poor people living in resource-rich countries to reduce the gap between them and their governments, and guarantee an allocation of the wealth generated by the oil and gas sector? Libya as a developing country faces a considerable challenge in its economy and society to make its petroleum sector more transparent and benefit its citizens.

Chapter 5: An Assessment of the Oil Financial Transparency Rules in the Libyan Regulations

5.1 Introduction

After elaborating the legal rules that constitute the principle of International Financial Transparency IFT and describing its characteristics and effects in the oil sector in the Chapter 4. This chapter will analyse the implementation of financial transparency rules in Libya oil sector. This demonstration must be done founded on the Libyan regulations, including the law n:23 of 2010 of the Libyan Economic Activity Act (LEAA) and Libyan oil regulations; for example, the Libyan Petroleum law n:25 of 1955 as amended by the law n:30 of 1970 and the law n: 24 of 1970 regarding the establishment of the Libyan NOC. In other words, this chapter will assess the Libyan transparency system in the oil sector to know if Libyan authorities have already adopted and accepted this idea of making its extractive sector transparent to its people. Moreover, to seek if Libyan oil institutions are open to foster the international principle that have been set up by the international organisations, particularly financial transparency in the oil sector.

Historically, Libya has been reliant on its oil revenues, which has particularly been influenced by the sanctions imposed by the United States. For example, between 2005 and 2008, oil benefits accounted for about 90 % of the Libyan government's revenues[581]. In the last few decades, Libya's petroleum sector was exploited by Gaddafi and his family, who used its revenues to preserve power[582]. The income generated by the oil sector in Libya has not been

[581] Natural Resource Governance Institute 'Libyan Transparency Snapshot' https://resourcegovernance.org/countries/middle-east-and-north-africa/libya/transparency-snapsho accessed on 1/12/2015.

[582] See the letter sent by Ibrahim Ali the Chairman of Libyan transparency association to Elizabeth M. Murphy the Secretary of Securities and Exchange Commission on 22 of February 2012.
< https://***www.sec.gov***/comments/s7-42-10/s74210-189.pdf >
Accessed on 16/03/2015.

equally distributed between the regions, especially to those where the oil is discovered and extracted.[583] Consequently, Libya's oil sector became a resource curse because it meant that total power was placed in the hands of Gadhafi's regime[584].

Libya's oil wealth makes it a special case. To prevent a repetition of the oil revenue mismanagement, Libyan authorities, oil companies and the international transparency institutions who will be involved in rebuilding Libya must take steps to ensure transparency in the sector so that Libyan people can follow the money[585]. Even after the revolution and despite the attempts of the new stakeholders who have joined the civil society, serious pressure on the government to enhance financial transparency and accountability into the oil sector has only just begun. After the revolution of 2011, the Libyan oil sector has inherited some inconsistencies, such as a lack of coordination between different part of legislation, poor oil infrastructure and poor financial transparency steps. The lack of transparency leads to absolute opacity about the revenue generated and oil deals concluded in Libyan oil sector[586], which is associated with the absence of legal financial transparency institutions to monitor financial transparency in the extractive industry[587].

Currently, the failure to publicly release and communicate oil financial information in Libya affects transparency and leads to corruption and violation of rights[588]. The financial transparency of the Libyan oil sector transparency appears to be a challenge for not only the Libyan government, local oil companies and international oil companies but also for the international communities who aim to stop the high corruption level manifested in its extractive

[583] Ibrahim Ali (580).
[584] El Kilani. E (60) 5.
[585] Hodess. R (2011) 'looking to A New Libya' Transparency International Association, G20 leading on Anti-Corruption the View from Civil Society, August 21, 2011, pages 1-3.
< ttps://www.newsnow.co.uk/h/World+News/Africa/Libya >
Accessed on 15/1/2015.
[586] Ibid 5.
[587] Ibid 5.
[588] Natural Resource Governance Institute (579).

industries.[589] For example, the International Transparency Association report released on March 2011 exposed that only one international oil companies in twelve who operate in Libya implemented the IFT rules based on IFRS and IACS, and publicly disclosed its payments to the Libyan government.[590]

Libyan stakeholders need to know where the oil revenue is going. This is the reason why understanding how Libya as an emerging and developing country implements financial transparency rules generally, and particularly the IFT rules in the extractive sector (as identified in the previous chapters) are crucial objectives of this chapter. Also, this chapter will demonstrate the Libyan legal transparency system[591] through the LEAA n 23 /2010, which replaced the first commercial act introduced in 1953, because the production and the exploitation of oil sector are considered by the Libyan regulator as economic and commercial

[589] Hodess. R (583) 1.
[590] Hodess. R (583) 3.
[591] The Libyan legal system can be generally characterised as a civil law system. The Libyan Civil Code, which was enacted after Colonel Gaddafi's 1969 revolution and the repeal of the Libyan Constitution of 1951, is the foundation for all other Libyan legislation. It also serves as the basis for all civil and commercial engagement. Under Libyan law there is a distinction between public law and private law: public law governs the legal relationships to which the State is party, while private law applies to the legal relationships between private individuals. The formal sources of Libyan law are set out in the first article of the Civil Code: □ written laws adopted by the legislative authority; □ Islamic principles of sharia; and □ customs and principles pertaining to the rule of law and rules of equity. Despite its political instability over the last four decades, Libya has achieved a certain level of legal stability in relation to the framework governing its petroleum industry, particularly in its relationships with foreign petroleum companies. The primary legislation organising petroleum activities in Libya is the Libyan Petroleum Law No. 25/1955 ('the Petroleum Law') and its Regulations. This law was ground-breaking for its time and one of the most progressive petroleum laws in the Middle East and North African region.8 The Petroleum Law provides that the Libyan State has permanent sovereignty over its natural resources and that all mineral resources on private or public land are the property of the Libyan State, with no distinction between surface minerals and sub-surface minerals. Today Libya is engaged with approximately 40 foreign petroleum exploration companies. Companies based in the EU, including Eni, Total, Repsol, Shell, and British Petroleum (BP), are the main players, controlling almost 60 per cent of the market, followed by Asian and American companies. The development contract model used in Libya does not award ownership rights over petroleum 'in situ', but instead relates to the provision of financial resources for petroleum operation in the designated area. According to Libyan law, the National Oil Corporation, which is a State-owned company, is the first party to all Exploration and Production Sharing Agreements (EPSAs). EPSAs were introduced in the Libyan market following the nationalisation of petroleum concessions in the early 1970s. The National Oil Corporation is required to invest in accordance with the provisions and conditions set out in those agreements, which give the National Oil Corporation between 75 and 91 per cent of the petroleum exploration shares. The Petroleum Ministry is responsible for approving all agreements between the National Oil Corporation and a second party. El Kilani. E (60) 6 and Abdou. M (2015)' Toward a New Solution of Minority Shareholder Protection in Libya: letting the minority shareholders have a voice' PhD thesis submitted to university of Glasgow, 2015, p23. < http. //thesis.gla.ac.uk/6423/>

activities and impose the application of LEAA. The main objective of this assessment is to find if the legal financial transparency rules are currently being adopted and applied in Libya or if local authorities still prefer to keep the oil revenue and deals in total darkness. In reality, after the revolution there was an exigence to rebuild Libya's oil sector, not only rebuild the Libyan oil structure but more importantly rebuild the trust of Libyan citizens in their NOC who is responsible in managing Libyan petroleum sector. This challenge cannot be faced without reassessing the corporate system exist in Libyan legal system in general and oil sector in particular. The main purpose is that it increases transparency and reducing corruption in oil sector.

The analysis of LEAA and Libyan oil regulations will help to understand how Libyan government and NOC think about the implementation of financial transparency rules in the Libyan oil sector, and how are going to set up a proper transparency rules for Libyan oil sector with taking in consideration the IFT principles. It is crucial to see if Libya has started to be open to the global orientation about the implementation of the general international principle of IFT founded on the IFRS and IAS. This will make it clear if the Libyan corporate system opts for the transparency of Libyan oil revenue and the transparency of oil contracts through the adoption of international accounting norms. The rating of the general and special rules of Libyan oil regulation will allow recommendations to be given to Libyan regulators to help them improve the performance of the financial transparency in the Libyan oil sector.

This chapter will be divided into two sections. The first section will treat and give a legal general overview of Libyan transparency system. In other words, it will analyse the legal disclosure system in Libya in general before assessing the financial transparency regulations exist in LEAA 2010 in Section 2. secondly, it will specifically try to appreciate the LEAA 2010 by seeing if the commercial financial transparency rules are implemented or not in the oil sector. It will then disaggregate the financial transparency rules that manage the oil sector or

the relationship between NOC as a holding company and its affiliates. Financial transparency rules are based on the disclosure of financial information, which are based on a financial review containing all the financial statements and ratios that are disclosed for shareholders, stakeholders, and future investors to be able to evaluate the company[592]. Overall, this section will justify the legal transparency system in Libya in general, and in its oil sector.

The second section will examine the transparency rules exist in Libyan oil legislation. This section will include an analysis of the regulations that manage the petroleum sector, such as the Libyan petroleum law n: 25 of 1955 as amended by the law n:76 of 1974, the law n: 24 of 1970 regarding the establishment of the NOC, the decision of General Secretariat of General People's Congress n: 10, and finally the exploration and production sharing agreement between (NOC) and any international company. This will help to assess if Libya needs financial transparency rules to ensure the fair distribution of oil wealth in different areas. The main purpose of this chapter is to discover if Libyan regulators have implemented the principle of financial transparency in its legal national system and has adapted to the international changes for financial transparency rules in the oil sector. This assessment will help to make recommendations to implement the international standards for the principle of financial transparency.

5.2 The legal framework of financial transparency in Libya's oil sector

This section will examine two main areas. First, the implementation of LEAA 2010 in the oil sector. the major idea of this section is to study the legal framework of transparency of Libyan oil sector. Moreover, it will discover the commercial rules that apply in the oil industry, such as the NOC, its affiliates, and international oil firms. Second, the legal nature of these rules will be analysed. After that, it is essential to achieve if the LEAA 2010 is applied or not

[592] Doaa El Dafter (12) 68.

in the extractive sector. Thereby, what kind of financial transparency rules exist and what effects do they have on the oil sector (5.2.2)? This section will first give a general overview of Libyan disclosure system and its legal issues. The potential of this demonstration is to show how Libyan regulators deal with transparency in general and they are open or not to this idea of transparency and accountability before studying the Libyan financial transparency legislation in the oil sector, which clarify the orientation of Libyan legislator considering transparency in the oil sector (5.2.1).

5.2.1 The legal disclosure system in Libya

This section will initially treat the Libyan disclosure system by giving a general overview (5.2.1.1). In addition, it discusses how this transparency system is ineffective and weak, which constitutes an obstacle to the promotion of financial transparency in the oil sector (5.2.1.2).

5.2.1.1 A general overview

The Libyan transparency system based on the disclosure of financial data has followed the UK law by ignoring any former type of disclosure because monitoring shareholders are not subject to disclose obligations for either public or private companies[593]. The Libyan legislation requires the board directors to release certain data to the shareholders, even the minority shareholders. In particular, the Libyan transparency legal system is related to three types of laws that manage the Libyan disclosure system.

First, LEAA 2010 imposes firms' directors private or public to prepare a balance sheet and profit and loss account at least once a year. It also demands them to prepare a report detailing about the company's performance[594]. All these reports should be available to the

[593] Abdou. M (589) 223.
[594] LEAA 2010, Art 226 (1) (2).

shareholders at least 15 days before the general meeting where the report has to be released[595]. At this stage, it should be noted that Libyan firms are not obligated by LEAA 2010 to provide the information included in the annual report to the public, though the latter may be provided with such reports if the company take decision to release them. This it is described as voluntary disclosure[596]. The question here is to find how this is useful for the public and how that could promote transparency in Libya in general, and in the oil sector in particular. Additionally, Libyan firms are imposed to keep certain records, which are a register of members, a register of bondholders, a minute book of members meetings, a minute book of statutory auditor's meeting, a minute book of executive committee's meeting, and minute book of bondholders' meeting[597]. However, the members of company can only check the register of members and a minute book of members' meeting[598]. Moreover, the board directors are required to submit an annual report to shareholders at least seven days before the general meeting. All information and details about an amount received by the board directors have to be incorporated in this report, such as their salaries, bonuses, shares of profit of the company, and all benefits or advantages received during the past financial year[599].

Second, the Libyan Stock Market Act 2010 (LSMA 2010) set additional disclosure commitments for public companies to ensure a high quality of transparency, especially financial transparency in Libyan listed companies. Under art. 23 of LSMA 2010: "All companies listed on the Libyan Stock Market must submit reports quarterly, half-annually and annually including information on the overall activity and financial data that disclose the financial position; they must also publish a summary of these reports in two newspapers, at least one of them in the Arabic language. Also, all companies must prepare balance sheets and

[595] LEAA 2010, Article 154 (1).
[596] Abdou. M (589) 224.
[597] LEAA 2010, Article 223.
[598] LEAA 2010, 224 (1).
[599] LEAA 2010, Article 183.

financial statements in accordance with the accounting and auditing standards prescribed by the regulations of this Law". Compared to the LEAA 2010 that instituted Article 23 of LSMA, it seemed like confirmation to LEAA 2010, Article 154. In addition, the Capital Market Institution and the Stock Market management can require that listed companies specify any information that heartens investors to invest in Libyan firms[600]. Moreover, all listed companies should release immediately to the stock market "any unforeseen circumstances affecting their activities or financial positions; in some necessary cases this data has to be published in a daily newspaper. If the corporation does not comply, then the stock market authority will publish the information about the emergency circumstances in the appropriate media, at the expense of that company"[601]. It is strange that Libyan regulator realised so late that it is necessary to establish a stock market, despite its importance in promoting transparency and building the trust of shareholders[602].

The third type of laws that manage disclosure system in Libya refers to the Corporate Governance Code (CGC), issued in 2007. The regulations of this code are mandatory and binding, which can promote and regulate responsible and transparent behaviour in managing company according to international best practice[603] for joint-stock companies listed on the LSM[604]. However, the disclosure obligation supported by the board of directors are mandatory[605]. To encourage and imposing respect to transparency in the Libyan legal system in general, the code demands that at the mean time as the annual financial reports are issued, the following is also released[606]: What has been applied from the CGC? What has not been applied and what are the reasons behind that? The names of any other companies where any of

[600] LSMA 2010, Article 39 (1).
[601] LSMA 2010, Article 78.
[602] The first LSMA was issued in 2010.
[603] CGC 2007, art 2 (b).
[604] CGC 2007, Article 2 (a).
[605] CGC 2007, Article 2 (c).
[606] CGC 2007, Article 9.

the board of director members is also a member on its board. Full disclosure of the name of the chairman and other directors, including a brief description of the responsibility of the sub-committees in the company, as well as the names of the members, the name of the chairman and the time of meetings during the year; listings of all remunerations and bonuses to the chairman and other members as well as the top management and watchdog committee; any commercial disputes, penalty, fines or obstruction suffered by the company; finally, the annual review of results of evaluation of the procedures' efficiency of internal audit. However, the Libyan transparency system is still ineffective regarding the lack of mandatory disclosure and incomplete laws.

5.2.1.2 The problems identified in the Libyan disclosure system

The problems facing by the Libyan corporate system in general, and the Libyan transparency system, are divided in two categories. First, the incomplete laws (5.2.1.2.1). Second, the lack of mandatory disclosure (5.2.1.2.2).

5.2.1.2.1 Incomplete laws

When the legislation regulating corporate disclosure is not achieved, firms are unlikely to provide high-quality data voluntarily[607]. This is the case in most developing nations that do not have an effective system of disclosure[608],and Libya is no exception. The disclosure made

[607] Haniffa. M. R and E Cooke.T (2002) 'Culture, Corporate Governance and Disclosure in Malaysian Corporations' Abacus, 38,2002, page 317.

[608] For example, in Egypt, see Jennifer Bremer and Nabil Elias, 'Corporate Governance in Developing Economies? The case of Egypt' (2007) 3 International Journal of Business Governance and Ethics 430; (in Nigeria) RSO Wallace, 'Corporate Financial Reporting in Nigeria' (1988) 18 Accounting and Business Research 352; (In Tanzania) Abdiel G Abayo, Carol A Adams and Clare B Roberts, 'Measuring the Quality of Corporate Disclosure in Less Developed Countries: The Case of Tanzania' (1993) 2 Journal of International Accounting, Auditing and Taxation 145; (in Ghana) Mathew Tsamenyi, Elsie Enninful-Adu and Joseph Onumah, 'Disclosure and Corporate Governance in Developing Countries: Evidence From Ghana' (2007) 22 Managerial Auditing Journal 319; (in Zimbabwe) Zororo Muranda, 'Financial distress and corporate Governance in Zimbabwean banks' (2006) 6 Corporate governance 643; (in Saudi Arabia) Khalid Alsaeed, 'The Association between Firm-Specific Characteristics and Disclosure: the Case of Saudi Arabia' (2006) 21 Managerial Auditing Journal 476; (in Bangladesh) M Akhtaruddin, 'Corporate Mandatory Disclosure Practices in Bangladesh' (2005) 40.

by Libyan companies has always been a difficulty. As argued, Libyan corporations are only asked to disclose their balance sheet, profit and loss account, and a report detailing the company's performance, which is not published. Moreover, the shareholders are only authorised to review the register of members and a minute book of members' meetings. Article 181 of LEAA 2010 forbids any director of the board and his relatives, agents, or representatives from becoming involved in any conflict with the company. If this happens, then the director should let the board know at a meeting or a watchdog committee. They should also avoid becoming involved in any discussion considering to the transaction or his responsibility will be engaged for any losses that happen. Thereby, Libyan regulations fail to present adequate disclosure that allows the minority shareholders to have enough information about any conflict-of-interest transactions made by the controlling shareholders. In other words, the current exigence of disclosure does not impose either the monitoring shareholders or the directors of the board to release or give enough data about any conflict-of-interest transactions made by them[609]. Academic analyses support the view that Libyan firms are guilty of a lack of transparent disclosure because of incomplete laws[610]. For instance, Faraj Hamoda argues that Libyan laws relating to disclosure are still inadequate and do not follow the historical source of French Law. Furthermore, he discusses that the incompleteness of law in Libya is evident in terms of transparency[611]. So, the accounting disclosure of Libyan companies is too low, and this negatively affects the capacity of users of the financial reports to make clearly and timely evaluations. It also affects the financial transparency of Libyan oil sector[612]. At this stage,

[609] It should be noted that Libyan Law not only does not offer adequate disclosure in relation to a conflict-of-interest transaction, but also it does not cover other important aspects of disclosure that contribute to encouraging investors, such as ownership structure, key executives and their remuneration and a Cash Flow Statement.

[610] Most of these studies are PhD studies available at < http://ethos.bl.uk/Home.do>.

[611] Hamoda. F (2014) 'Transparency in the Company Act 'Journal of Legal Sciences 65 (3), 20014. (in Arabic).

[612] Ellabbar. K (2007) 'Capital Market and Accounting Disclosure in Emerging Economies: the case of Libya' (PhD, University of Salford 2007). One of Ellabbar's interviewees (Prof. Altarhoune who obtained a PhD in Law from the UK 30 years ago and is currently a lecture at Benghazi University) remarked that 'there is minimal disclosure

Larbsh reveals that all the interviewees in his study support the view that there is a lack of an adequate disclosure system in Libya[613]. Recently, Magrus in 2012 supported the view that there are too few areas that are subject to mandatory disclosure in Libya. One of his interviewees, who was a board member in Wahda Bank, believed that: "The disclosure of all banks does not go beyond the income and financial position sheets. I would hardly call this disclosure"[614]. Additionally, there is even a lack and deficiency in preparing those sheets. Last year's financial statements are yet to be provided. As for transparency, it is almost completely missing.

Bribesh demonstrates that the low level of mandatory disclosure in Libya relates to the nature of different businesses, which contributes to the inefficiency of Libyan disclosure system. For instance, service and construction companies scored the least, with the service companies sector reporting the lowest level of disclosure[615].

5.2.1.2.2 The lack of mandatory disclosure

Ahmad and Nicholls contend that an ineffective transparency system is due to the absence of enforcement mechanism, which cause the low levels of accounting disclosure and accounting standards in developing countries[616]. Further, Haniffa and Cooke dispute that when the transparency legal system which manages financial data disclosure is not enforced, firms are unlikely to disseminate high-quality information[617]. However, in the case of Libya, there are mandatory disclosure obligations which obligate directors to disclose very little

required by the Libyan Commercial Code… but that the Libyan companies are not even complying with these requirements. There is no institute in power that enforces companies to apply these requirements. Ibid 610.

[613] Larbsh. M (2010) 'An Evaluation of Corporate Governance Practice in Libya: Stakeholders' Perspectives' thesis submitted for PhD, Nottingham Business School, Nottingham Trent University 2010, page 216.

[614] Abdou .M (589)225.

[615] Bribesh. F (2006) 'The Quality of Corporate Annual Reports: Evidence from Libya' PhD, University of Glamorgan, 2006, page 78.

[616] Ahmad. K and Nicholls. D (1994) 'The Impact of non-Financial Company Characteristics on Mandatory Disclosure Compliance in Developing Countries: the case of Bangladesh.' The International Journal of Accounting, 29, 1994, page 62.

[617] Haniffa.M. R and E Cooke.T (605) 317.

information, the level of disclosure is low due to weak standards of enforcement. This weakness is not only due only to the absence of enforcement disclosure obligations but is also due to the accounting norms using by Libyan firms which do not respect the IAS. This could help to increase the level of Libyan companies' disclosure. It also helps them to provide financial information clear and reflect sincerely their financial situations and performances. Kribat found that in terms of overall levels (i.e., mandatory plus voluntary) of financial disclosure in Libyan banks' annual reports, the figures were low[618]. Additionally, he noticed that noncompliance with mandatory disclosure reflects 'the absence of a developed legal framework, the lack of an enforcement mechanism to monitor the implementation of these requirements and/or the absence of formal penalties for not fully complying'[619]. Ellabbar and Havard, furthermore, debate that Libya has a lower level of disclosure and transparency compared to Egyptian companies, for example. They propose that to help Libyan firms to release more adequate financial data, there is a need to establish effective local standards or comply with international accounting standards[620]. Furthermore, Mashat discusses that the main reasons for not disseminating the social responsibility information in Libyan companies are down to the lack of legal obligations and administrative issues[621].Therefore, an effective disclosure system is related to self-enforcement disclosure system in purpose to protect minority shareholders by an efficient financial information. The lack of mandatory disclosure requirements will absolutely affect the transparency legal rules that regulate the Libyan oil sector.

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[618] Kribat . M (2009) 'Financial Disclosure Practices in Developing Countries: Evidence from the Libyan Banking Sector' thesis submitted for PhD to The University of Dundee, 2009. Page 334. This study also suggests that 'the annual reports of Libyan banks are frequently used for making financial decisions and are in fact considered to be the most important source of information for making economic and financial decisions about such firms.

[619] Ibid

[620] Khaled Ellabbar and Tim Havard, 'The Accounting Disclosure in Developing Countries: A Comparative Study of Libyan & Egyptian Construction Companies' (Association of Researchers in Construction Management: ARCOM twenty-first annual conference, 2005.

[621] Mashat. A (2005) 'Corporate Social Responsibility Disclosure and Accountability: The Case of Libya' PhD Thesis, Manchester Metropolitan University, 2005.

5.2.2 The LEAA 2010 rules regulating the Libyan oil sector

This section will describe the laws that aim to manage the different relationships in the oil sector, such as the relationship between the NOC and its affiliates, on the one hand, and NOC with the international firms that operate in Libya, on the other hand. Transparency in the legal system is related to two laws. First, the LEAA 2010 and Libyan oil regulations as mentioned above in the introduction. especially, it will ask if LEAA2010 is implemented in the oil sector or not? Thus, it is necessary to outline the kind of activities operated by the NOC and the type of relationships that exist between the NOC and its affiliates (5.2.2.1). In other words, identify the legal status of activities operated in oil sector to see if the LEAA 2010 are applied or not as a first step. Second, it is necessary to determinate legal nature of the NOC as a commercial company to confirm that the Libyan oil sector is considering the LEAA 2010 (5.2.2.2).

5.2.2.1 The legal nature of the activity operated by the NOC

At this stage, to understand the limitation of the activity practiced by the NOC, it is important to determinate if the commercial law is implemented on oil sector in the presence of a special law. In other words, does the LEAA 2010 include transparency rules, which are applied in Libyan oil sector regardless the Libyan oil legislations manage its oil sector? It is crucial to discover how the Libyan regulator defines trading activity. Furthermore, before demonstrating the transparency rules that exist in Libyan commercial law, it is important to first analyse if the activities running in the oil sector can be considered to be a commercial act, which means Libyan commercial rules will be implemented in the case of Libyan oil law.

In Article 1, entitled the legal framework of the LEAA 2010, the legislator clearly defining the economic activity and the legal framework of this law. This article implements commercial rules on economic activities executed by any legal person despite his or her legal

status. Moreover, the commercial law includes commercial rules that manage how a legal person can operates economic activity. While Article 5 of named law defined economic activity as commercial activity operated by any legal person. It is observed at this case that there is a confusion between a commercial activity and economic activity. Article 2 of this law uses the concept of 'economic' as a commercial activity. Economic activity is defined as a commercial activity executed by any legal body. Economic activity is a large concept, which could leave an ambiguity in the understanding of this article and the possibility of a broad interpretation. Regarding the confusion between economic activity and commercial act as set up by Libyan legislator, it is difficult to distinguish which act is economic, and which is commercial. The Libyan regulator, in fact, confuses the concepts of "economic" and "commercial", and the activities enumerated in article 24 and 25 of LEAA 2010 are managed by the commercial rules.

Paragraphs 24 and 25 of Article 409 of Libyan commercial law state that numerous activities are considered as economic activity. This article deems the exploitation, the distribution, and the distribution of oil and gas to be commercial activities. However, in Paragraph 25 the legislator was unclear in their use of the word 'oil' and hence it can be confused with the word for 'and other natural resources'. Thus, the Libyan legislator opted toward the implementation of legal commercial rules in the oil sector. The Libyan regulator was clear in the named article by considering the oil activity executed by any body as economic activity. Consequently, the financial transparency rules exist in commercial law could be implemented, despite the presence of oil regulations manage and regulate Libyan oil sector. Nevertheless, the regulator wants the companies that operate in the oil sector to benefit from flexibility. The implementation of the commercial rules not only supports the kind or nature of activity executed by the NOC but also considers it as a commercial company, especially as a holding company.

5.2.2.2 The commerciality of the NOC as a company

The determination of the legal status of the NOC as a company is crucial. The purpose is to identify if the NOC is a private or public company, and therefore if it is possible to restrict the legal framework of transparency system in Libya. In other words, should the NOC be commercial company? Proving that the NOC[622] is a commercial company means that there should be a financial relationship with its affiliates and with international oil firms, which are managed by the oil regulations and Libya's commercial rules. Consequently, stakeholders in a financial relationship with NOC could benefit from the financial transparency rules present in commercial law.

Using explicitly the concept "general corporation" in Article 1 of the law n: 24 of 1970[623] means that the NOC is a body that is managed, organised, and has a budget dependent from the government budget. Therefore, LEAA 2010 could not be applied to NOC if it is considered as a public company by Libyan regulators. Furthermore, article 1 of LEAA 2010, which determines the framework of this law, appears to contradict article 409 (24), (25) of LEAA 2010. This article deems that oil activity is an economic activity and any legal personnel who execute it are a commercial body. So, the LEAA is applied on activities operated by the NOC in thee petroleum sector. The law manages and determines the structure of the NOC[624], which confirms that the NOC is considered as a private company, especially a commercial firm. The named article argues that the NOC has a separate budget from the government budget and shall

[622] NOC refers to article 1 of law n:24 of 1970 regarding the (NOC), was defined as "A general corporation shall be established and named the National Oil Corporation" which will have a legal identity and shall replace " the general Libyan Petroleum corporation concerning its rights and obligations" and in article 4 of named law " NOC shall contribute in supporting the national economy by developing managing and investing in the petroleum wealth in its various phases furthermore, NOC shall establish petroleum industries and distribute petroleum products locally and abroad"

[623] Ibid.

[624] law n:24/1970, Article 13 regarding the NOC set that:" NOC shall have its own budget separately from the government budget, which NOC shall be in the form of a commercial budget.".

be in the form of a commercial budget[625]. it is debated that Libyan regulator opt toward the subjection of NOC to the commercial rules. Confirming this idea, Article 22 of LEAA 2010 mentions that the general and mixed corporations are managed by the commercial regulations in a case where NOC owns in total or partially the shares of another private company, except for the case where a special law prevents or prohibits that, which is not the condition in Libyan oil rules because no article in fact prevents the implementation of commercial rules.

Article 9 of law n:24 of 1970 regarding NOC illustrates that: "in purpose to realise its goals, NOC have rights to establish companies solely or with others, to participate in existing companies and to establish affiliated companies locally or abroad". This possibility is also recognised by Article 7 of the decision n:10 of General Secretariat of the General People's Congress for 1979 concerning the re-organisation of NOC[626]. In fact, law makers first considered NOC as a holding company because it has a right to establish other affiliates under its management and monitoring, and so will benefit from the financial transparency rules that exist in commercial law. Second, it gave this possibility without in realty organising the financial relationship established between the NOC and its affiliates, even in decision n:10 of 1979[627]. This lack in special rules regarding the oil sector could only be solved by the general rules, which are the commercial regulations. However, The Libyan regulator, whether in oil regulations or in LEAA 2010, was not clear in the determination of the legal nature of the NOC. Additionally, the demonstration given above is due to the analyse of article set up by the legislator, but it leads to make confuse because of their contradiction. They simply mention the

[625] Article 13 of the law n:24 of 1970 regarding the NOC set that:" NOC shall have its own budget separately from the government budget, which NOC shall be in the form of a commercial budget.".
[626] Article 7 concerning the re-organisation of NOC lights that: "NOC has the right to establish companies either alone or by participating with others and may participate in existing companies, or it may set up companies which are divided of NOC inside or outside SPLAJ. This will be undertaken after approval by the General People Committee. The participation by NOC in establishing incorporated companies should not be less than 51% from the capital. However, if necessary, and by prior approval of the General People's Committee, NOC may modify this rate.
[627] Ibid.

NOC as a general corporation without any clarification. This ambiguity in the determination of the legal form of NOC affects the identification of the transparency rules implemented in the oil sector and could also affect the financial relationships of the NOC with other firms by keeping the legal system of transparency in the oil sector in absolute darkness. Furthermore, it also confuses the financial transparency between each in different phases of this relation, whether in the phase of concession, exploitation, or distribution of oil.

The main objective is to demonstrate that the stakeholders deal with different part of Libyan oil sector could benefit from the financial data disclosure set up by commercial law in favour of minorities shareholders of commercial company. However, the lack in the determination of the legal form of NOC in general, and the nature of the legal relation between NOC and its affiliates, does not help us to find if financial transparency rules exist in commercial regulation in Libyan oil sector.

There are two reasons to seek the determination of the legal form of NOC: first, the determination of the legal framework of commercial rules implemented; and second, an assessment of financial transparency rules applied that could benefit the stakeholders.

5.2.3 The identification of the LEAA 2010 concerning the oil sector

This section aims to find if the LEAA 2010 contains rules managing financial transparency in the oil sector based on the international norms and principles of IFT. The IFRS and IAS are currently the corner stone of all transparency national laws opt toward adopting an effective transparency system that applicable in their extractive sector[628]. In other words, do the Libyan trade rules include international standards related to the disclosure of payments received by the government (such as the Section 1504 of Dodd-Frank Wall Street reform and the Consumer Protection Act). The main question of this part asks if the existing financial

[628] See the chapter three of this thesis about the international legislations implement IFT principles.

transparency rules in Libyan legal disclosure system in general, even in general commercial law, favour stakeholders compared with commercial firms?

The EITI rules, Section 1504 of the Dodd-Frank law and EU transparency directive demand from oil foreign and local companies listed or not listed (case of EU transparency directive) require companies to report their payments made to governments[629]. This financial disclosure will help resource-rich countries or developing countries to fight the lack of transparency that characterises the extractive industry and put limitations on the absolutely secrecy spread over oil sector. Therefore, this paragraph will try to demonstrate if the Libyan regulator was influenced directly or indirectly by the new orientation in the world toward promoting financial transparency in oil sector. It is essential to give a brief idea about Libyan disclosure system to promote financial transparency in Libyan companies, including oil firms. Specifically, the Libyan legal disclosure system determines two kinds of laws related to the release and publication of financial information to the public[630]. First, Libyan Commercial law 2010 demands board directors (private and public) to prepare a balance sheet, and profit and loss account at least once a year[631]. It also requires them to establish a detailing report about company financial performance. All these reports should be ready and submitted to shareholders at least 15 days before the general meeting[632]. At this stage it should be noted that Libyan companies are not obligated by named law to provide the data released and included in the annual report to the public[633]. Second, the capital market authority and the stock market management accounting can require that listed companies to report any information that encourages investors to invest in these companies[634]. Moreover, all listed companies must

[629] See the previous chapter of this thesis about the implementation of IFT within national laws.
[630] Majdi. A (589) 223.
[631] See LEAA 2010, Article 226 (1) (2).
[632] See LEAA 2010, Article 154 (1).
[633] Majdi. A (589) 223.
[634] See LSM, Article 39 (1).

report immediately to the stock market any unforeseen circumstances affecting their financial position[635]. In some cases, this financial data has to be published in a daily newspaper. If the company does not respond, then the market authority will publish it in the appropriate media at the expense of that company[636].

After giving a brief idea about Libyan legal disclosure system, the financial transparency measures, or the possibility of disclosure of income generated by Libyan oil sector and received by Libyan government will be described. The financial relationship in the commercial sector is manifested by the contradiction between the interest of the company (or majorities) and minorities, due to the weak disclosure system in Libya. In fact, the quality of information is ineffective because of the asymmetry of information between the management and the shareholders[637]. Without an effective reporting system, the minorities are unable to recognise a conflict-of-interest transaction undertaking by controlling shareholders. Consequently, disclosure is symbol of deterrence, and it can decrease fraud[638].

Returning to the chapter[639] concerning legal rules that govern Libyan holding companies, it is not possible to retrieve some financial transparency rules because there is only one article to manage the financial relationship between a holding company and its affiliates.

Article 254 of the Libyan commercial law obligates the holding company to institute a consolidate financial statements at the end of each financial year. Through this article, the Libyan regulator also imposes on holding companies a duty to disclose all data about the assets and loss realised by it and its affiliates, depending of Libyan accounting rules, which should

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[635] Majdi. A (589) 223.
[636] LSM, Article 78.
[637] Majdi. A (589) 223
[638] Benston. G.J (1976) 'Public (US) Compared to Private (UK) Regulations of Corporate Financial Disclosure of 1976' Accounting review, 51 (3), July 1976, pages 483 - 498.
< https://www.jstor.org/stable/245460 >
Accessed on 24/8/2020.
[639] See LEAA 2010, Chapter 8 for the named holding company.

have been presented at its general assembly. A close reading of this article shows that it is set up in an ambiguous manner. The legal concepts are general, and they lack definition, such as "a consolidate financial statements" and the concept of "Libyan principles accounting". The legislator at this stage did not clarify what a consolidated financial statement means, and which Libyan accounting rules must be implemented. Furthermore, Libyan law makers did not precisely define the process of releasing information about the financial position of a holding company that should be presented at the general assembly. For example, what kind of financial data should be released? How should this data be released? And, by which manner should the stakeholders be informed? Financial transparency is not only about release but also about how stakeholders can access this information easily and have a good enough idea about the financial situation of the company. At this stage, there is nothing in Article 254 of the commercial law that could express the will of Libyan regulator to set up a transparency rules in commercial sector in general, and oil sector in particular. Aside from this article, there are no other financial transparency rules in Libya's commercial law. Consequently, Libyan regulators were not seeking for financial transparency as determined by the international approaches. In other words, there is no clear article that requires the disclosure of payments made by the international oil companies and received by the foreign governments. In addition, the Libyan regulator in imposing on holding companies to establishing a consolidated financial statement does not state if these should be done based on IFRS or IAS. Despite the negative affect of the interest of stakeholders regarding the huge financial position of the holding company. At this point, it should be asked if financial transparency in Libyan commercial law is the same in its oil regulations?

5.3 An assessment of the financial transparency rules in Libya's oil regulations

As mentioned in the introduction of this chapter, the transparency rules existing Libya's oil regulation are related to three laws. The Libyan Petroleum Law (LPL) 25/1955 as amended by the law76/1974, the law 24/1970 establishing the NOC, and the Decision n:10 of General Secretariat of General People Congress. After discussing the transparency regulations including in the LEAA 2010, this section aims to find the transparency rules contained in the Libyan oil regulations. Furthermore, to see if Libya needs to integrate an international orientation and implement the principle of IFT in the extractive industry as an effective solution to fighting corruption and guaranteeing the fair distribution of Libya's oil wealth.

The Libyan oil legislation that has been described so far has given an idea of the contemporary reality of the Libyan oil sector. The oil sector in Libya is currently characterised by an almost total absence of financial transparency rules (5.3.1) and by weak financial transparency in oil contracts (5.3.2).

5.3.1 Quasi-absence of financial transparency rules in Libyan oil legislation

For decades, Libya's oil revenue was used to preserve and save the autocratic regime of colonel Gaddafi, who used the wealth generated by the oil sector to maintain the armed forces and ensured the social development and the loyalty of Libya's citizens[640]. This is the reason why it was impossible to find any guide of good governance in effective financial transparency rules and accountability[641]. In fact, in Libya before and even after revolution, it is difficult to know where and how the oil benefit was spent, including the deficiency of transparency

[640] Besada .H and Martin. F (2011)' Governing Natural Resource Governance In Post- Gadhafi Libya' Asia in Soul journal, November 9,2011, pages 1-7.
< https://www.hurriyetdailynews.com/governing-natural-resources-in-post >
Accessed on 24/08/2020.
[641] Ibrahim. Ali letter (580).

generally and especially financial transparency. For instance, in the last four years the opacity encirclement was valued at $129 million versus the sale of one million barrels—no one can guess who received this large amount of money[642].

The Libyan oil sector is still managed by the petroleum law n:25 of 1955, as amended by the law n:30 of 1971 and the law n:76 of 1974, which contain 25 articles about the concession and exploitation of oil in Libya. This law only contains a few articles (will be analysed later) that could be considered as a rule support the financial transparency in the petroleum sector. One of these articles, Article7(1), which is entitled application for concession, states that: "the Secretariat of Petroleum shall announce from time to time by notice published in the local and world press the areas in respect of which concessions may be applied for". This announcement by the petroleum minister demonstrates this is not permanent, it is only meant to be used "from time to time".

This law adds that, "the law maker specifies the form of notice and what kind of information must give and release"[643]. It must publish an invitation in the local and world press inviting applications for a concession in a fixed area. This information is only connected with the period before making the deal between the NOC and an international oil company, which means that this information is of no interest for the stakeholders. In other words, this information is not effective and cannot help stakeholders to have enough about the financial company performance. Moreover, there are no rules that obligate the government or the international oil company to inform the public about the concession holder and the amount of the concession or about the benefit which it is going to receive. The regulator only notes in Article 13 of the cited law that: "the concession holder shall in respect of each concession

[642] Lynch. S (2011)' Transparency lost in Revolt: Libyan rebels not making oil revenue transparent' Economic and Policy journal, May3, 2011, pages 1-3.
< https://www.executive-magazine.com/.../transparency-lost-in-revol >
Accessed on 24/8/2020.
[643] LPL 24/1970, Article 7(2).

granted hereunder pay the following fees, rents and royalties." Whereas Article 15 states that all of the fees imposed by the implementation of this law shall be paid to the public treasury through the secretariat of petroleum, without an obligation to inform the stakeholders about the amount paid to the government.

The government in this law opts to improve the opacity of the oil sector by the absence of efficient financial transparency rules, which could have improved the stakeholder's trust and confidence in their oil revenues. For example, comparing with EU transparency directive of 2013, article 7 of this directive requires that in order to provide information and enhanced transparency of payments made to governments, issuers whose securities admitted trading on a regulated market and who have activities in the extractive industries should disclose in a separate report, on annual basis, payments made to governments in the countries in which they operate[644]. In Libyan oil regulations, there is no clear article that demands the disclosure of a payment made to the government and received by oil firms. Furthermore, no article requires the different parts of the oil transaction to publish this financial information to the public. In the same context, Article 19 of the petroleum law calls for a publication did not include any details or specification[645] that could provide the public with more accurate and adequate information around any of the acts mentioned in this article. In contrast, the IFT rules ensure that financial data is available and can measure the authority financial performance. In that sense, financial transparency should help to hold the government accountable for their fraud in spending the oil revenue. However, the Libyan transparency rules for oil regulations are still weak and are unable to deter or decrease corruption in the oil sector.

[644] See the European Directive 2013/5. /EU, official Journal of the European Union, l249.
[645] LPL 24/1970, Article 19 set that: "notice of the grant, renewal, assignment, revocation, termination or surrender of the whole or any part of any permit or concession shall be published in the official gazette."

Additionally, according to the first schedule, which is called preliminary reconnaissance permit for petroleum[646], the legislator has opted to keep the relationship between the government and the international petroleum company or the concession holder secret. This is supported by Clause 20 of the preliminary permit, which calls for untitled reports to be furnished. In this clause, the regulator imposes on the company at its own expense to furnish to the director during the first quarter of each year a report of the progress of its operation in the concession area during the year; however, no clause obliges the company to publish this report or inform the stakeholders about it to allow them to have all the data concerning the operation of oil production, which could affect their interests.

This volition is not only due to the government behaviour but also to the company behaviour. International firms were complicit in establishing the oil for wealth scheme that the government used to maintain power against its citizens. In addition, the international oil companies refused to disclose information about the oil revenue, or any payment made to the government because any disclosure could be seen as revealing a confidential information which could damage it competitively. It is, therefore, clear that oil lobbyists have employed their power to sap any financial transparency rules that may help Libya to decrease the high level of corruption that exists.[647] Consequently, opacity has spread over the oil sector, not only in the Libyan oil regulations but also in the contracts or deals concluded by the Libyan government during the last four decades.

[646] Preliminary Reconnaissance Permit for Petroleum hereby grants the following Permit under the petroleum law 1955.

[647] Al- Beshti. N (2012) 'A Libya Plea to the S.E.C' the New York Times, Aug 17, 2012. < https://www.nytimes.com/2012/08/18/opinion/a-libyans-plea-to-the-sec.> Accessed on 24/08/2020.

5.3.2 Weak financial transparency contracts in the oil sector

Improving financial transparency mechanisms in the sector can minimise the misuse of public resources, secrecy, and discretionarily in terms of resource management. Thus, accessing truthfully, timely and accurate information about the extractive sector become independent[648]. In that regard, oil revenue or wealth transparency is not enough. Information about financial operations, environmental concerns, and contract details is indispensable and can promote financial transparency in oil sector. Today, the economy, especially in developing countries, needs full citizen and stakeholder engagement in this sector. Consequently, contract transparency is an important mechanism toward effective financial transparency in the oil sector, specifically in Libya[649]. If the government allowed Libya to change, then the whole relationship between the extractive industry decision makers and the Libyan people in general would also change. Najwa al-Beshti, an ex-employee of the NOC, said that transparency has to be ensured in the deals concluded, including a pledge to properly use the revenues generated by the oil sector[650]. Disclosure of the information and payments in the contracts held by the Libyan government during the period of Gaddafi authorised Najwa al-Beshti to keep an eye on the corruption that characterises the contracts in the oil sector, which caused the mismanagement of millions of dollars of oil income[651].

The authorities under Colonel Qaddafi never clarified why this orientation to the absolute opacity in contracts concluded with the international companies. In fact, Colonel Qaddafi's rules were based on the international lobbyists who helped his regime to corrupt and bribe in the oil contracts to the disadvantage of the Libyan people.

[648] See Mobel Andrade, Celica Hernandez and Alejandro Landvar (527).
[649] Ibid.
[650] Al Beshti- N (645).
[651] Ibid.

There have been many rumours of hidden deals being made in the oil sector during the conflict for oil revenues over the last three decades[652]. Meanwhile, contract opacity has continued after the revolution. This difficult situation in Libya's oil contracts is part of the effects of Qaddafi's regime and rules. This refers to the model of the Exploration and Production Sharing Agreement between NOC and any international oil company concerning contracts. The regulator has opted for absolute opacity and has kept the contractual relationship between the government, as represented by the NOC, and the international companies confidential. A reading of Article 18 of named agreement said that:

> "Second Party acknowledges the proprietary rights of First Party in all data referred to in this Article 18 and agrees to treat all such data as confidential.
>
> Each company comprising a Second Party may disclose any such information to its employees to the extent required for efficient conduct of Petroleum Operations, provided that such individuals have signed an undertaking related to the confidentiality of the information as part of their employment contract or to the Affiliates and their consultants, or to bona fide prospective assignees of rights under this Agreement or to banks or financial institutions from which finance is sought, provided that such company comprising the Second Party obtains from such entities prior to disclosure a written confidentiality undertaking. In the case of disclosure to prospective assignees, any disclosure of such information shall require the prior written consent of First Party, which consent shall not be unreasonably withheld.
>
> Each company comprising Second Party may disclose information as to the extent required by a regulatory or judicial authority having proper jurisdiction over such company comprising Second Party, provided that First Party is notified of such disclosure and the information disclosed.
>
> Each company comprising the Second Party's obligation of confidentiality under this Article 18.3 shall be of a continuing nature and shall not be cancelled by the expiration, suspension or termination of this Agreement."

Paragraph 3 of Article 18 makes it clear that the principle that distinguishes the oil Libyan contract is the total opacity that setup the clause of confidentiality on all data requested and used by the international company during the period of exploitation and production of oil. This means that no information or data, even if it is important or not important, has to be released

[652] West. J (2011) 'The New Libyan Oil minister's Secret Weapon: transparency' The Guardian, published August26, 2011, pages 1-5.
< https://www.theguardian.com/.../aug/26/libyan-oil-minister-transparency >
Accessed on 24/8/2020.

to any foreign party of the contract, except for some information requested by the company's employees or judicial authority.[653] Nevertheless, the company has to obtain the consent of the NOC by written notice before disclosing any information related with the oil contract, which means without the explicit authorisation of the government.

In this discomfort clause, the chairman of the National Transitional Council (NTC), Mustafa Abdul Jalil, attempted to make many contracts transparent via a web page at: "transparentlibya.com"[654]. However, this faced criticism from some army rebels who tried to protect their intelligence business and from outside the country from a few international firms who were trying to sue the NTC or at least go to arbitration regarding the broken clause of confidentiality in these contracts. In addition, any information released had to be agreed by both parties beforehand.[655]

In Libya, the oil contracts concluded between government and private firms are confidential and this could support corruption[656]. For example, in 1992 the World Bank described how in many developing states a production sharing agreement includes many issues, such as fiscal, labour, social, and environmental and there is a tendency to always negotiate on only one project.[657]. As noted previously, a typical contract is disclosed with a common concept without any interest for the public or the stakeholders.

Finally, to protect oil business information, international firms and governments often maintain the secrecy of the contractual relationship between both parties. This secrecy has not

[653] LSA, Article 18(1) discusses that: " second party shall have the right to use and have access to all geological, geophysical, drilling well production, well location maps and other information hold by the first party related to the contract area, in consideration of the payment of fees as declared by NOC from time to time".
18(2): first party shall have tittle to all original data resulting from petroleum operations under this agreement including ……and any other data operator may compile or obtain during the term of this agreement.
[654] Ibid.
[655] Ibid.
[656] Meinhardt - Gibbs. H (531)5.
[657] Ibid

only been challenged by Libya to resolve the opacity and lack of financial transparency in its oil contracts and decrease corruption but has also been challenged by the IMF, who argues that there is no reason why oil contracts should stay secret[658]. In most resource-rich countries including Libya, the first contract for the exploration and exploitation of oil is not available to the public. Developing countries, dependent on their non-renewable resources always try to hide the details of their financial contracts from their citizens. This explains why the weak contract transparency rules exist in Libyan oil regulations. Due to the lack in understanding the importance of contract transparency, in the oil sector in general and in the economy. A 2009 study of contract transparency illustrated that:

> "To date, many countries have not yet committed to full contract transparency. And very few, have undertaken a full contract transparency: disclosure of all past contracts, public voice and participation in contract awarding, disclosure of all signed contract, and a post contract monitoring mechanism[659]."

A balance needs to be found between the need for contract transparency for the public interest, on the one hand, and the need for private companies to maintain their confidential information to protect their business, on the other hand. Today, the Libyan government faces a considerable challenge to fight corruption in the oil sector by integrating international principles of financial transparency. In other words, the financial transparency of the oil industry in Libya must change. Furthermore, contract transparency is an important precondition to ensuring that all parties benefit from the oil sector. Disclosure is a necessary precursor for the coordinated and effective management of the sector by government agencies. It also allows local people to control contracts in areas where they may be better placed than the local authority to do so, such as environmental compliance and the achieving of social obligations.

[658] Mainhardt- Gibs. H (513) 5
[659] Mobel Andrade, Celica Hernandez and Alejandro Landvar (527) 7.

Contract transparency provides incentives to improve the quality of contracting transparency. In addition, the bodies responsible to manage the oil sector officials will be deterred from seeking their own interests over those of the citizens and governments will eventually begin to increase their bargaining power by surveying international contracts. Secrecy hides incompetence, mismanagement, and corruption—but only from the public, not from the industry that typically comes to know the terms of a deal or even the text of the putatively secret agreement[660]. However, the Libyan legislator has failed to establish adequate transparency rules through Libyan oil regulations. In fact, the present oil transparency rules are far from the international norms set by the IFT rules. The LSA, which constitutes the basis of Libyan oil contracts, does not show any respect to the new international rules constituted by the IFT.

5.4 Conclusion

Historically, the extractive industry in developing countries has had very complex access to information. The governments in these countries have failed to create an efficient mechanism to control the sector. Additionally, they fail to face corruption and coordinating with national and international operators to enhance their disclosure system to allow the public to benefit from their resource wealth. The main conclusion generated by this chapter is that there is almost no transparency in the oil sector, as identified by the international approaches, which form the legal frame of the principle of this international principle[661]. In most cases, the Libyan government prefers to maintain asymmetric information, for both oil revenue transparency and contract transparency, which favours the government over their citizens. Transparency has not yet emerged in Libya, in contrast to other developing countries, such as Ecuador and Bolivia. In Ecuador, contracts are disclosed once they have been negotiated and awarded. In Bolivia,

[660] Natural Resource Government (579).
[661] About the rules of IFT, see the previous chapter which the identification of the principle of IFT within national law.

contracts must be disclosed after being approved by parliament[662]. Meanwhile, Libyan oil firms are accused of a lack of transparent financial data disclosed to stakeholders because of its incomplete law. Most Libyan studies support this idea. For instance, Faraj Hamouda complained that Libyan legislations relating to disclosure system are ineffective and do not foster the French rules as a historical source[663]. Furthermore, Ellabar Khaled argues that the financial information released to public by Libyan firms in general is low, which negatively affects the interest of users who wish to make a right decision in good time664. Transparency in the Libyan oil sector as regulated by both Libyan commercial law and petroleum law is inadequate because of the absence of a mandatory disclosure requirement[665]. In addition, the Libyan disclosure system does not only provide data but also publishes the financial information. In other words, it allows citizens to access this information to form a complete idea about the financial performance and the wealth generated by the oil sector. At this stage, not only the public sector or state management has to make this information transparent but the different stakeholders who participate in the production process should also look for efficient mechanisms to ensure the financial transparency of the extractive industry[666].

Financial transparency in Libya's oil industry is not only based on the Libyan disclosure system but the international approaches could also improve transparency and permit Libya to start a process of transitional legislative and institutional reform[667]. The EU Transparency Act or the Dodd-Frank law can help Libya to develop its legal transparency framework. However, how can this be done? And how can Libya's authorities adopt these international rules? The answers to these questions will be the subject of the next chapter.

[662] Andrade .M, Hernandez. C and Landvar. A (527) 9.
[663] Hamouda. F (609).
[664] Ellabar. K (610).
[665] Abdou. M (589) 224.
[666]Andrade .M, Hernandez.C and Landvar. A (527) 9.
[667] EL Kilani. E (60) 13.

Chapter 6: Prospects for Implementing the Principle of the IFT Rules in the Libyan Oil Sector

6.1 Introduction

The absence of a mandatory disclosure system in Libya has affected the financial transparency of its oil sector[668]. This leads us to ask if Libya needs to implement the principle of IFT? And how should Libya apply its standards?

There is now a broad admission that good financial transparency is an effective method to improve the management of the extractive industries[669] and releasing data about financial revenue would no doubt enhance the governance of Libya's oil sector[670]. However, Libya has historically had a high level of corruption in its oil sector due to the lack of financial transparency measures and the lack of accountability.[671] Consequently, it seems unfamiliar that Libya is currently refusing to integrate the IFT principles even though different international coalitions exist, such as EITI and PWYP. In this context, Robin Hodess, reports that after approximately 42 years of Gaddafi's rules, Libya still needs to give priority to make its oil sector more transparent and allow the majority of Libya's citizens to profit from the country's oil revenue.[672] Therefore, the diverse legal bodies interested in rebuilding Libya's oil sector, such as NOC, international oil firms, stakeholders, and local oil companies, first have to secure

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[668] See the previous chapter 5 about the assessment of Libya's financial transparency measures in oil sector.
[669] Shaxson. N (2015)'oil and mining contract transparency: is a tipping point approaching' Tax Justice Network, January12, 2015, P1-8.
< https://www.taxjustice.net/2015/01/12/oil-mining-contract-transparency > Accessed on 16/3/2016.
[670] Ibid 2.
[671] The report of Crosswords Freedom House gives Libya a score of 0.66/7 in the anti-corruption and transparency category. The Libyan transparency rank is 146 out of 178 countries. Natural Resource Government (579).
[672] Hodess. R (2011) 'looking to a new Libya: G20 leading on the view from civil society' Transparency International, August 31,2011, p1-3.
< https://blog.transparency.org/2011/08/31/looking-to-a-new-libya/index.html>

financial transparency in the extractive industries to ensure that Libyans can take a share in the oil wealth. Karm finds that although there was a hope that the Libyan government after the revolution would start to make its oil sector transparent, little has been done at this stage[673]. Furthermore, confirming this idea, Sanallah[674] has said that the NOC should work to achieve a high level of financial transparency and declare their readiness to disclose all important financial information concerning the financial situation of the Libyan oil sector.[675] In the same context, Libya's extractive industries were tyrannised by Gaddafi's regime to preserve power by using their oil revenue[676].

Currently, the main issue in Libya's oil sector is to release data about its financial situation. It is important to maintain the oil sector revenue transparency to conserve social justice.[677] Furthermore, making the Libyan oil sector more transparent has become essential to rebuild a new Libya that is stable and more secure. Therefore, the main questions are how Libyan oil institutions should deal with the international changes and implement transparency in its extractive industries? And what recommendations will allow the Libyan oil sector to become more transparent, and execute its social and economic objectives? Libya has or no to adhere the international coalitions, such as EITI, PWYP, or it needs to follow the international approaches who apply the legal international rules of financial transparency such as the US Dodd-Frank law, the EU Transparency Act, and the UK Transparency Act.

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[673] Karam. P (2012)' Revenue Watch Seek to Promote Transparency in Libya's Oil and Gas Industries'. Revenue Watch, Dec 9,2012.
< https://steelguru.com/steel/revenue-watch-seeks-to-promote..>
Accessed on 20/06/2017.
[674] Moustafa Sanallah: Libyan NOC Chairman.
[675]Moustafa Sanallah (2017)'Interview Has Been Given to New York times' on 20/06/2017, <Elaph.com/web/Economical>
Accessed on 20/06/2017.
[676] Ibrahim. A (580).
[677] Mainhardt -Gibbs. H (513)6.

Most scholars of financial transparency in Libyan oil sector agree that the Libyan government, especially after the revolution, should tackle the corruption that arises due to the lack of transparency in the oil sector by joining the EITI, which promotes transparency and accountability in the extractive industries.[678] The 21 EITI[679] principles request the Libyan government to submit to international standards for releasing financial information about its oil sector revenue.[680] In addition, in a letter written to the Libyan Prime minister Abdelrrahim Al-Kib asked Libya to implement the EITI standards, Clare Short[681] wrote: "a decision by your government to implement the EITI would create a level playing field for the oil industry in Libya." She added that "the transparent management of oil wealth was essential for the rebuilding of your country and to ensure that all Libyan people get the benefits to which they are entitled after years of secrecy and plunder[682]". Joining the EITI rules is not the only legal recommendation that Libya has to follow in purpose to publish the oil sector income, it can also pursue different law models, such as the US Dodd-Frank law, the UK Transparency Law, and the EU Transparency Act, which commits registered oil companies or international firms to disclose their payments and transactions with foreign governments.[683] Moreover, Ibrahim Ali, the chairman of the Libyan Transparency Association believes that Section 1504 of the Dodd-Frank Wall Street Reform Act is a great opportunity for Libyan stakeholders to have enough financial information about the Libyan oil sector and it may be an effective legal answer to combat corruption in the extractive industries.

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[678] Karam. P (671) 3 also, See Short. C (2011) 'EITI Invited Libya to Follow Oil Transparency Standard' EITI, Dec 15,2011, p1-4.
< https://eiti.org/news/eiti-invited-libya-to-follow-oil-transparency-standard>
Accessed on *17/7/2017*.
[679] See the chapter 4 about the (EITI) principles.
[680] Karam. P (671) 3.
[681] Short. C (676).
[682] Ibid.
[683] Besada. H and Martin. F (638).

This chapter will study how Libyan authorities will integrate the principles of IFT into Libyan law. To improve international resource governance, this chapter will ask about the recommendations to make Libyan oil sector revenue more transparent. Furthermore, it will also ask if Libya needs to comply with international financial transparency standards. For example, EITI, PWYP, and the World Bank Group (WBG), who are convinced about the role that they can play to enhance financial transparency in the mining sector[684]. This chapter will then examine the legal issues that handicap the implementation of the international principle of financial transparency in Libya, such as weak stakeholders, civil societies, and the absence of an audit that could ensure the reliability of the financial information released about payments, deals or financial transaction made in the oil sector between international oil companies, or even local oil companies, and the Libyan government. The main factors that led to Libya's civil war and subsequent conflict were the absence of Libyan institutions who can pledge and enforce the financial transparency in oil sector, together with a poor economy and political performance. Consequently, strong institutions who can manage, control, and monitor Libya's oil sector are crucial for the country's recovery[685].

6.2 Recommendations to implement IFT principles

In the past, the Libyan oil revenue was oppressed by Gaddafi's government. To ensure that all Libyan people receive the benefits of the oil revenues, Libya should move towards more revenue and contract financial transparency. Therefore, the crucial question is: what are the recommendations that should be given to help Libya moving from the opacity situation to the financial transparency of Libyan oil sector revenue (Section 6.2.1)? Secondly, this section analyses the main question of how the Libyan government can provide accurate financial

[684] Overland.I 'Lonely Minds, Natural Resources Governance without Input From Society' Palgrave Macmillan,August 24,2018,pages 387-407.
< https://www.nupi.no/nupi_eng/Publications/CRIStin-Pub/Lonely-Minds...>
Accessed *24/08/2020*.
[685] El- Kilaini. E (60)13.

information to clarify that public disclosure of oil contracts, which is important to chasing current revenue and protecting social justice (Section 6.2.2).686

6.2.1 Libya's oil revenue transparency recommendation

To provide benefits to all the people and to participate in poverty reduction, the extractive industries in resource-rich countries need to be managed responsibly and equitably. Unfortunately, for managers this is not usually the case, and many resource-rich countries are among the most corrupt and poorest countries in the world. One crucial step through responsible management of oil sector is the transparency of oil revenues. Increasing transparency makes the decision-making process open to public debate and moves the process towards more prudent and equitable management of extractive industry resources. For example, public disclosure of basic information regarding net payments made to the government and revenues received by the government can help citizens to hold their governments accountable for the management and, ultimately, distribution of revenues from the extractive industries[687]. Further, increasing transparency in the oil sector is an essential step towards more justice and responsible management of natural resources.[688] The IMF and WBG supply policy for various transparency measures in the oil sector. For example, the EITI and PWYP are international coalitions that play a constructive role to improve the public disclosure of oil revenue[689]. Therefore, this section will first study the question of how Libya can make its oil financial revenue more transparent. In the same context, it is recommended that Libya should follow the international trend and implement international principles by adhering to the international coalition of EITI and by following international approaches such as the US Dodd-

[686] Mainhardt -Gibbs (531)7.
[687] Assessment of IMF and WBG Extractive Industry Transparency implementation' The new report by the Bank Information Centre and Global Witness, October29,2008, pages 1-35.
< https://www.globalwitness.org/en/archive/assessment-international...>
Accessed on 17/5/2018.
[688] Ibid.
[689] Ibid .

Frank law and European legislation (Section 6.2.1.1). Second, despite the positive impact of adhering to international coalitions for transparency in the extractive industries, the question remains if the EITI and international approaches are good enough to provide financial transparency in the Libyan oil sector (Section 6.2.1.2)?

6.2.1.1 Complying with the IFT trend

Adhering to the international trend could be done in two ways: first, by adhering the international coalitions exist in the world such as EITI, and PWYP; and secondly, by the implementation of the international approaches apply the international principles of IFT, such as Dodd-Frank Act, EU Transparency Directive, and the UK Transparency Act.

6.2.1.1.1 Adhering to the international transparency institutions

The rebuilding of Libya essentially depends on the effective administration of its oil revenues, and on the pledge to develop Libyan society and execute transitional justice. Therefore, the need for financial transparency and accountability in the extractive industry has become crucial for Libya[690]. The implementation of the international disclosure standards offers a solution for Libya to make its oil revenue sector more transparent. Consequently, how will Libya implement the IFT standards?

Over the years, the global oil sector, including Libya, has become notorious for the mismanagement of oil wealth. Governments and companies are often accused of keeping the national oil revenue for themselves and weakening its economic development. Out of the international reporting standards consecrated by the EITI, the revenues paid to the government from the oil sector are well authenticated and publicly published. Freely available information about how much money is paid to governments from the oil industry is the first step to ensure financial transparency and accountability in the extractive industries. The EITI can enhance

[690] Short. C (676).

governance by disclosing the oil revenue and enabling public debate[691]. This the reason why it is now time for Libya, compared to other African oil producers such as Nigeria, Cameroun, and Zambia, to adhere to international trends, including EITI, and share its oil wealth and correct some of the basic inequalities in the distribution of the resource's wealth between the regions[692]. Moreover, transparent, effective, and adequate informative system depend on the introducing of international accounting system basis on the IACS[693]. Currently, there is trend to adopt these international rules, which can be explained by the need for transparency[694].

In a letter that was sent by Claire Short to Mr Abderrahim Al-Kib, who was Libya's Prime Minister, she said that if Libya wishes to implement the international transparency standards, then the EITI[695] offers an opportunity to develop Libya's transparency.[696] As the global standard, implement the IFRS, and the IACS the EITI could be an efficient solution for Libya to establish an adequate financial transparency and accountable rules in purpose to well manage the oil wealth[697]. The EITI has since become a necessity and there is no choice for Libya to escape from integration into this international coalition. Many developing countries are currently implementing the principles of the EITI, including Iraq, Nigeria, Congo, and Kazakhstan, and they all share the same situation as Libya. Furthermore, many international

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[691] Sequeira.S and Morisson- Sanders. A (2006) 'Is the EITI sufficient to Generate Transparency in Environmental Impact and Legacy Risks? The Zambian Minerals', Journal of Cleaner Production, V 129, August 15, 2016, pages 427-436.
< https://www.sciencedirect.com/science/article/pii/S0959652616303043 >
Accessed on 17/5/2018.

[692] Anastov. Pogos (2014) 'Oil- Libyans' Bargaining Chip' NEO, February 11,2014
https://journal-neo.org/2016/09/24/libyan-oil-the-bargaining-chip-in...
Accessedon18/5/2018.

[693] Abushamsieh.K, Hernadez.L and Rodriguez. D 'The Development of Public Accounting Transparency in Selected Arab Countries' International Review Administrative sciences, first published on 23,2014, pages 421-442.
< https://www.researchgate.net/publication/262014139_The_development_of >
Accessed on 17/5/2018.

[694] Ibid 423.

[695] For the definition of EITI, See the previous chapter.

[696] Short. C (676).

[697] For more information about IACS, and IFRS see the chapter n:5 about the identification of the principle of IFT. They are international accounting rules established by IACS, and strongly recommended by the WB, UN, OECD, and the IMF.

oil firms are working, while others hope to operate in Libya. This provides further support for the coalition of the EITI.[698] Therefore, joining the EITI will help Libya to increase its financial transparency in its oil sector and will also help it to minimise risk in its extractive industries by adopting the principle of disclosure of the payments and royalties that have been paid to the government. Meanwhile, Libyan society does not have the chance to establish local policy to improve extractive governance. International actors, such as EITI, PWYP, and the WB have successfully influenced the treatment of oil revenues because they provide a programme for civil society to work with local authorities on oil financial transparency issues.[699]

In addition, the EITI, as the future global transparency standard, has invited Libya's membership but has yet to receive an answer from the government[700]. Nevertheless, the international oil companies can bring support to the financial transparency in the oil sector by publishing all financial data on the request of any stakeholder in Libya. The EITI could be implemented by the Libyan government as a signal of goodwill to guarantee that the oil wealth is being used correctly to promote social and economic development.[701] In the same context, the Libyan association supported transparency in its conference on 26 July 2015[702]. They proposed to the Libyan government to show their goodwill to the Libyan people via joining not only the international coalition of the EITI but also the international coalition of PWYP as an effective solution to reduce the financial corruption by adopting the culture of releasing and publishing the financial information from the oil sector. Moreover, in his letter sent to the SEC, Mr Ibrahim Ali the chairman of the Libyan Association of Transparency, believes that a

[698] Short. C (676).
[699] Besada. H and Martin. F (638).
[700] Editorial Board 'To Rebuild Libya, start with transparency on oil Revenues' Bloomberg Opinion, March 15,2012.
< https://www.bloomberg.com/opinion/articles/2012-03-15/to-rebuild-libya...>
Accessed *on 17/8/2018.*
[701] Ibid.
[702] Conference was organised by the Libyan association transparency on 26/07/2015 about the transparency in Libya extractive industry.

transparently managed oil and gas sector could improve the development in all of Libya's sector, and could also promote political and social stability. He continues to say that the purpose of this letter is to support the recommendation and proposed rules setup by the coalition of EITI and PWYP.

The purpose of PWYP[703] was to set up a commitment for all international oil companies to publish their payments publicly and for the governments to publish what they receive. This international association, furthermore, has an important participative function by helping local people to hold governments accountable for misconduct of oil revenues.[704] This will allow Libyan authorities to adopt more accountable agenda for the handling of oil revenues[705] and will help Libya to make its natural resources revenue more transparent and reduce the risk of the unequal distribution of oil wealth. The PWYP will assist by improving financial transparency and accountability to enhance the management of Libya's oil revenue sector[706]. The PWYP and EITI are conceived as international standards to encourage the commitment to revenue transparency[707]. Therefore, Libya, which is considered to have high degree of corruption, could benefit from these international coalitions through the amelioration of the governance of its extractive revenues. Aaronson supports this idea, and in her study, she compares the countries associated with EITI with a country non-candidate, which shows that the countries who adhere with EITI have enhanced transparency and accountability and have consequently enhanced their business climate[708].

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[703] PWYP founded on 2002 by a coalition of (NGO's), such as a global witness with others founding members, CAFROD, open society institute, Oxfam, GB, save the children UK, and transparency International UK. For more information about this international coalition see the chapter2 of this thesis.
[704] Ibid.
[705] Ibid.
[706] Mejia. Acosta. A. (2016) 'The Impact and Effectiveness of Accountability and transparency initiatives: the governance of natural resources'. Department of International Development, January1,2012.
< https://assets.publishing.service.gov.uk/media/57a08a7c40f0b>
Accessed on 15/3/2016.
707 Ibid.
[708] Ibid.

6.2.1.1.2 Following the national transparency laws in the extractive sector

The next important recommendation for Libya to fight corruption and promote financial transparency in the extractive industry is to implement the rules of international approaches such as the US Dodd-Frank law or the European Transparency Act. These approaches apply the international financial transparency standards and could show the right way for Libya to implement the principle of international financial transparency. In fact, these approaches could be a great opportunity for all the parties interested in Libya because it will give them information about the financial management of the resource "curse[709]". The absence of adequate rules for the financial transparency in oil sector, as shown in the previous chapter, lead stakeholders in Libya to conceive these international approaches as an opportunity to hold international firms that operate in Libya accountable for the management of the oil wealth.

However, Libya cannot meet this objective without understanding and requesting the help of foreign states that have more experience in the concretisation of the principle of international financial transparency[710]. For example, Section 1504 of the Dodd-Frank law[711], is one of various financial transparency initiatives directed to face corruption in oil sector[712]. This act imposes on the American companies and foreign international companies registered with the SEC to disclose the payments given to the government country by country and project by project, which could be a good example for Libya to follow to manage its oil wealth.[713] Despite the resistance of some international companies like Exon Mobile in the US and Shell in Europe, the regulators in the US and Europe have had enough power to facing the lobbyists and set up strict international financial transparency standards which obligate those

[709] Ibrahim Ali (580).
[710] Mainhardt. Gibs.M (513).
[711] For more information about Dodd-Frank law see the chapter3 of this thesis.
[712] Forester & Morrison (2015)' The Dodd-Frank act: a cheat sheet'. see www.mofo.com, accessed on 20/10/2015.
[713] Mainhardt. Gibs.M (513).

international firms to be inspected by the public, generally, and by the stakeholders, especially[714]. The Libyan Association for Transparency looks to Section 1504 of the Dodd-Frank law as a great opportunity for Libya to hold the necessary data to decrease corruption by fostering the rigorous financial transparency rules. However, these international approaches could not be a model that fits with all oil producer countries, especially in developing countries where there are weak legal frameworks and a lack of experience concerning promoting transparency in oil sector.

Consequently, it can be observed that the principle of international financial transparency is implemented in Libya indirectly by the international oil firms under the Dodd-Frank rules or the European approaches. They have to release all financial information relating to the payments made to the government, who are obligated to disclosure what they receive. In another way, the financial data from the Libyan sector could be requested from the home governments of these international companies. However, this is still inadequate and the Libyan government, if it is sincere, must change its politics to a new culture based on the promotion of financial transparency by adhering to these global coalitions and realise transitional justice. Nonetheless, the question remains: can these international legal rules set up by the international approaches enhance financial transparency of the oil wealth generated in Libya.

6.2.1.2 The implementation restrictions

Civil societies, with lack of communication for people[715]. The absence of technical assistance and effective audit structure It is widely assumed that the adhering to the global standards set up by the international coalition is voluntary. So, the information released is less effective or less accurate. In other words, it cannot reflect the accurate financial position or

[714]Mainhardt. Gibs.M (513).
[715] Short. C (676).

situation for the stakeholders[716]. The publication of important data related to the oil sector revenue is often secret, inaccessible, and unpublished. For example, Articles 15 and 18 of the Libyan Petroleum Law[717] obligated different parts of the payment to be kept secret, such as the information concerning the stakeholders.

The role of Section 1504 is to increase transparency and accountability versus foreign governments who receive payments from international oil companies. Many developing countries are also rich in oil and many of them suffer from political instability, volatile regimes, and unstable currencies. Regrettably, some of these countries have a history of corruption. This is evidenced in Transparency International's Annual Corruption Perceptions Index. In 2012, 176 countries were included in the index[718]. It is thought that the transparency required by Section 1504 reduce corruption in many developing as well as in developed countries[719]. At this stage, is important to ask if these international approaches can promote financial transparency in the oil sector, in developing countries where the level of corruption is very high?

Additionally, the impact of joining the international associations such EITI and PWYP remain in question. Many critics have questioned the quality of data released in EITI reports. This information is always limited, poor quality, and lacks detail[720]. For instance, in Nigeria the recent amount of oil revenue is neglected, and the tax paid by the companies does not fit with their financial statements[721]. While some authors, such as Aaronson, Hilson, and Maconachie insist that the extension of the framework of the EITI into sector of human rights would increase financial transparency and accountability in the oil sector, it is time for the

[716] Short. C (676).
[717] See the previous chapter about the definition of Libyan petroleum law.
[718] Linda. L' The Future of Transparency Disclosures' Petroleum Accounting and Financial Management Journal, 32 (3), pages 93-100.
[719]Mejia. Acosta. A (703).
[720] Mainhardt. Gibs.M (513).
[721] See Nigeria EITI report of 2012.

international oil firms to proceed to reporting alone and the EITI could be used as a benchmark to implement the international standards[722].

The EITI and PWYP in themselves are not enough to improve financial transparency of the oil sector because of the absence of detailed reports established by the EITI. In fact, the crucial role of stakeholders including civil societies and press freedom is to help citizens to hold local authorities responsible for the administration of oil income. In practice, developing countries are manifested by weak and oppressed in developing countries could affect the role of the EITI to improve the financial transparency of oil sector revenue. Based on the assessment of transparency in the Libyan oil sector in the previous chapter, the EITI would not be the adequate or the only resolution to increase financial disclosure in extractive industries, even if the stakeholders decide the kind of financial data has to be released. The current information disclosed by the legal scope of the Libyan oil sector is insufficient to promote financial transparency in the oil sector. Nonetheless, the EITI could help to resolve various problems in developing countries, including Libya, by creating a reconciliation system for sharing information between oil companies and governments, on the one hand, and civil societies, on the other hand[723].

In conclusion, an ideal adhering to EITI would suppose not only a high and an accurate financial information disclosed about oil sector revenue but would also suggest that the government make its oil deal or oil contracts more transparent. Therefore, what kind of recommendation could be made to make the Libyan oil contract concluded between the NOC and international oil firms more transparent?

[722] Mainhardt. Gibs.M (513).
[723] See the report of EITI about the impact of EITI on Africa. Published in Norway in 2010 <https://eiti.org/sites/default/files/documents/EITI **Impact** in Africa>.

6.2.2 Enforcing Libyan oil contracts transparency

Historically, the extractive industry has been considered a resource "curse", particularly regarding the difficult access to financial data of the financial situation and position of the oil sector in resource-rich countries, such as Libya[724]. However, many governments have failed to promote financial transparency in the oil sector. Consequently, the transparency of oil contract could be a solution. The contracts that are concluded between local authorities and international oil companies should be more transparent, which means that accessing truthful, timely and systematic data about the oil sector should be possible and this could be a valuable aid for the stakeholders[725]. Therefore, two questions have to be asked: first, what is contract transparency? And second, why does it matter?

There are three kinds of contract in the oil sector that have to be disclosed. The first is the Producing Sharing Agreement, in which the operator shares their oil income with the state. The second is the services contract, in which the operator receives a certain amount or a percentage of oil income to offer some services. The last is the concession contract, in which the operator has to pay royalties but has all rights in the field[726].

Contract transparency means that all these types of contracts to explore or exploit have to be publicly available. In other words, the public must be allowed to have all financial information about the oil sector. However, why should contract transparency matter and be useful for Libya oil sector?

Contract transparency generally, and especially in Libya, is a crucial step for effective management of the oil sector and it ensures that all parts of society benefit from the extractive industries. Mustafa Sana Allah, the Chairman of Libya's NOC, in an interview given to the

[724]Mobel Andrade, Celica Hernandez and Alejandro Landvar (527) 9.
[725] Ibid.
[726] Ibid.

Libyan (Libyan Panorama channel), suggests that Libya's oil sector agreements should be more transparent because the absence of financial transparency was always the main cause of fighting between rebels, and it caused production to stop in the oil fields[727]. Furthermore, contract transparency guarantees the improvement of quality of contracting in the oil sector and it prevents the government from prioritising their own interests above those of the Libyan people. In Libya, oil contracts always include confidentiality clauses that restrict explicitly the disclosure of financial information to local citizens[728].

After the revolution of 2011, many experts in the oil sector, like Mark Tram, advised the National Transaction Council (NTC) to stop concluding any new oil contracts until the election of a new government to ensure a new environment of transparency and accountability[729]. Any new deal could increase worry and could be understood as an attempt to distort the oil wealth of the Libyan people. Libya has the largest African oil reserves, so it can expect international oil firms to bid for new contracts with the Libyan government[730].

In this context, Brenden Donnel, senior oil analyst at Global Witness, said that the NTC could be the first Libyan government to set up a constitution that includes transparency oil rules, which will be a precedent for the future of Libyan petroleum sector[731]. Libya has been encouraged to develop financial transparency by constitutional rules imposed on the international oil firms who operate in Libya to force them to publicly publish all of the financial information in the contracts that they conclude with Libyan government. Furthermore, the financial clauses relative to the oil revenue and assets, for example, must be published in detail

[727] Interview given by the Chairman of Libyan NOC to Libyan Panorama Channel on 27/2/2018. < https://www.urdupoint.com/en/world/noc-chairman-discusses-resumption.> Accessed on 20/5/2020.
[728] See the previous chapter for more data about the clause of confidentiality in Libyan legislations.
[729] Tran. M (2011) 'Libya's Oil deals Need to be Transparent: Global development' The Guardian, August 25,2011. < https://www.theguardian.com/.../25/libya-oil-deals-transparent-scrutiny> *Accessed on 20/5/2018.*
[730] Ibid.
[731] Ibid.

for the stakeholders. For instance, Article 170 of Libyan project constitution (LCP)[732] considering contracts and deals concludes in the extractive industries that: "all contracts and deals relating to the extractive industries have to be presented to the senate council for accountability when the Libyan legislation allow that in the purpose to keep save the extractive industries wealth, protect the Libyan natural resources, reducing the development gap between areas and to pledge the transparency of this sector in favour of Libyan citizens and regions". There is no doubt that this sole article is recognised as a huge step towards enforcing the transparency of Libyan oil contracts and deals, which could also reflect the transformation of the Libyan legislators by promoting transparency in the Libyan extractive industry. However, it is still just proposition by the LCP and it has not yet been certified. Furthermore, this article remains vague because the regulators have not exactly defined the function of the senate council: is their role to certify the Libyan oil contracts and deals or just to hold the local authority accountable for their acts? Moreover, in this article the senate council can only hold the government accountable in cases where the Libyan regulator authorizes it do so. The article did not refer to other articles, so we do not know which are these cases. Article 79 of LCP entitled the function of senate council demonstrates that the senate council has to revise and check the laws, which has to be presented to the Libyan Parliament, who could demand any clarification about these legislations, including oil law projects. This new orientation of the Libyan legislator towards more transparency of Libyan deals and contracts is to confirm the general strategy adopting in the LCP, especially article 46 (named transparency and the right for collecting data). In this article, the regulator clearly expresses his will to foster the transparency standards in all Libyan sector encompassing the extractive industries. The government has to set up the transparency standards rules to guarantee the freedom to disclosure and exchange data with respect of confidentiality considering military data, general

[732] Libyan constitution project still not certify it by the Libyan Parliament.

security, and the agreements concluded with other countries. Despite these constitutional rules, which absolutely enforce the transparency of Libyan oil contracts, the latter should not be a handicap for the interests of the international oil companies. In other words, these rules should not constitute a matter for international oil firms to invest in Libya, and they should encourage them to operate in Libya oil sector. The impact of these rules is crucial to both the Libyan oil sector and international oil companies. Consequently, a balance between making Libyan oil contracts more transparent and ensuring the interests of international oil companies must be observed and taken into consideration to attract international oil companies to invest in Libya [733].

These rules created by the LCP foster the IMF and the WB strategy[734]. This strategy motivates developing countries, such as Libya, to open their oil contracts to the public and strengthen financial transparency in their extractive industries. Although the WB and IMF are promoting various actions to supporting contract transparency in the extractive sector, there are a number of key institutional policies and activities that should be revised and strengthened to pledge that important progress takes place and that civil society possesses effective tools to hold the international financial institutions, governments, and private companies accountable to transparency international norms[735]. Nowadays, there is no place to use clauses that affect transparency, and we should not let opacity spread over the oil sector and damage the oil revenues of the Libyan people, such as contracts with confidentiality clauses[736]. These clauses could particularly affect the Libyan oil wealth and damage the rights of Libyan citizens to get a benefit from their natural resource revenues.

[733] BIC & GW (685)10.
[734] Ibid 13.
[735] Ibid5.
[736] For more information about the contract confidentiality clauses see Rosenblum. P and Maples. S (2009)' Contracts Confidential: Ending Secret Deals in the Extractive Industries' Revenue Watch In statute, 2009, pages 15-101.

The contracts that ensure financial transparency have many advantages. However, the most important advantage is to save oil revenues and to maintain social justice[737]. Moreover, disclosing all the financial data in oil contracts could reduce corruption and generate equitable contract clauses. This is the reason why the Production Sharing Agreement (PSA)[738] must change to make it more transparent by creating a specific PSA for a special project, especially in Libya as a developing country, although that could drive its extractive industries to be supported and controlled by the WB. Nonetheless, Libya has become more dependent towards the developed countries, and it has lost the management of its oil sector, which means that Libya has in effect lost its sovereignty. Therefore, it is time for Libya to offer a new PSA. This view has been confirmed by the Libyan oil and gas minister Abdelrahman Benyezza who said:

> Libya isn't currently planning to revise the terms existing contracts with foreign oil companies. But they may be a process to equalize the terms of new and existing contracts in the future. We will have study and see what we can improve. We are not in process to change existing agreements currently. But in the future existing terms will be evaluated not to create in equalizing contract[739].

The PSA must be more flexible to change any clause that could harm international financial transparency rules and to ensure that financial information for a specific oil project has to be not only disclosed but also published[740]. It is important to have all of the necessary financial contract details because the Libyan people can be informed about the oil contracts that the Libyan government has become involved in.

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[737] Sequira. S and Morisson- Sanders. A (688).

[738] (PSA): are a common type of contract signed between resource a government and resource extraction company, concerning how much of the resource extracted from the country each will receive (PSA) were first used in Bolivia in the early 1950although their first implementation similar to today was in Indonesia in the 1960. Today they are often used in the middle east and central Asia.

[739] Monir. M (2012) 'Libya to Offer New (PSA)' Libya Business Tv, June 15, 2012.
< https://www.yveslesieur.com/libya-campaign>
Accessed on 15/5/2018.

[740] Sequira. S and Morisson- Sanders. A (688).

Finally, the IFT contract rules are especially essential for a country seeking for social justice and stability, and which wishes to start rebuilding itself. Even though it may be afraid of losing its sovereignty, Libya cannot be blind and not recognise that contract financial transparency rules are an adequate solution to challenge the danger which is manifested in its oil sector. Moreover, contract transparency does not necessarily conflict with commercial interests and the need for the international oil firms to operate freely without any handicaps and restrictions[741]. This why it is essential to face the legal issues or handicaps that limit the implementation of the IFT principles in Libya.

6.3 The handicaps that limit the implementation of the principle of IFT in Libya

Although Libya after the revolution took its first steps towards financial transparency in the oil sector by releasing and publishing limited information about Libyan oil deals, the implementation of IFT in Libya will face many handicaps if it wishes to successfully set up rules to encourage financial transparency in its extractive industries.

Adhering to international coalitions, or even following some international experience, is not currently mandated and always there is a lack of contract transparency[742]. Consequently, the adoption of the principles of IFT in Libya may risk absolute failure because of the weak financial transparency institutions that exist in Libya (6.3.1) and the legal issues should be challenged by the Libyan authorities (6.3.2).

[741] West. J (2011)' The New Libyan Oil Minister's Secret Weapon: transparency' The Guardian, 2011, pages 1-5. < https://www.theguardian.com/.../aug/26/libyan-oil-minister-transparenc>
Accessed on 15/5/2018.
[742]BIC & GW (685)10.

6.3.1 A general overview of Libyan oil financial transparency institutions

Libya's oil fields cover a wide area; however, the oil revenue has not been disturbed in the local communities where the resources are located. Therefore, Libyans need to hold the government accountable for the payments that they receive, and they need to hold the international oil firms accountable for the payments that they pay. Essentially, Libya needs civil society groups (6.3.1.2), which do not currently exist in Libya[743]. Before, assessing the main reasons lead to a weak financial transparency institution, a general overview about Libyan oil institution should be given to comprehend who is liable on oil sector transparency in Libya (6.3.1.1).

6.3.1.1 The NOC as the main institution guarantee the Libyan oil financial transparency

The Libyan authority has tried to play a crucial role in managing the petroleum oil sector, without unbalancing the interests of the international oil companies and the Libyan governmental and non-governmental stakeholders[744]. Meanwhile, the Libyan government has sought to make its oil production process transparent while promoting respect for the legal framework for licensing protocols, exploration, and production with international investors. However, the same cannot be said for its relationship with stakeholders[745]. Consequently, it has to be asked who is looking for after financial transparency in Libyan oil sector?

Article 15 of Libyan Petroleum Law (LPL) of 1955 requires that all fees, surface rents, royalties and surtax imposed by the implementation of this law and the income tax shall be paid to the public treasury through the Secretariat of Petroleum. Moreover, this article imposes that the total income to the Secretariat of Petroleum, and other Libyan government municipal,

[743] Ibrahim Ali (580).
[744] El Kilani. E (60) 6.
[745] Ibid.

and other authorities whether central or local in respect of the production, manufacture, dealings in oil, transports, sale, export, shipments, and profit and distribution from of crude oil produced should be the same amount received by the Libyan government. In other words, the Libyan public treasury is the main institution responsible to collect and distribute the income generated by the oil sector. There is no way to guarantee transparency. The Libyan financial institutions, including the Libyan public treasury, are not seeking to enforcing transparency rules in the oil sector. Moreover, they cannot at the same time be a part of Libyan oil deals or the institution that pledges the fair distribution of Libyan oil wealth. Meanwhile, Article 4 of law n:24 of 1970 regarding the NOC obligates the NOC to support the national economy by developing, managing, and investing in oil wealth, it shall establish the petroleum industry and distribute petroleum products locally and abroad. Furthermore, paragraph 3 of Article 5 of the same law elucidates that the sharing contract provides that the rights, benefits and advantages entitled to the NOC shall exceed those entitled to the government under the petroleum law. Additionally, Article 7 states that the NOC represents the government in all financial operations considering the oil sector. it stated that:" all governments rights in the shareholding determined in the currently awarded concessions or the future concession shall be ascribed to NOC".

There is no contradiction between Article 15 of LPL of 1955 and Article 4 and 5 of law n:24 of 1970 regarding the NOC. Article 15 just gives the role of collecting the revenue generated by the oil sector to the public treasury, and to compare between the amount paid to it and those received by the government from oil industry. However, Articles 4 and 5 show the functions and rights of NOC as the leader management of Libyan oil sector. The NOC is the representative of the government in all Libyan oil production process. Furthermore, the NOC, is the main institution who manages and controls the oil sector in Libya. So, it can be thought that the NOC is also responsible to make the oil production process transparent, especially the financial operations concluding in oil sector. The NOC in Libya has been a key player of

Libyan economy for many years. With a poor economy, and political performance, can this institution really pledge the transparency of Libya's oil sector?

Currently, the NOC is in its worst period whether at financial level or institutional level, thanks to the economic problems and civil war[746]. Approximately eight years after Gaddafi regime, the country is profoundly divided between east and west. A war is being fought whose main objective is to control the oil fields. This has divided Libya into two nations, with two central banks, and two NOCs to manage the oil sector. Khalifa Haftar, as a leader of the armed group in the east, has established a parallel government with a parallel institution to manage the money from the oil sector[747]. Ricardo Fabiani, a geopolitical analyst at Energy Aspect described this as "fighting each other in order to access to the rents and redistribute it". He believes that Haftar is trying to build a parallel institution in eastern Libya[748]. This situation can only negatively affect the NOC as an institution to manage the oil sector. Consequently, it is roughly impossible to see transparency in the oil sector given the weak institution of the NOC. The Chairman of the NOC, Mustafa Sanallah, confirming this view and said: "we hope we could strike a quick solution to this dilemma, so the NOC can work without any restrictions". He warned that international oil companies should deal with illegal parallel institutions that lead to absolute financial opacity in Libya's oil sector[749].

The weakness of the financial transparency institutions not only appears in the NOC but also appears in the Libyan stakeholders as a part of Libya's financial oil transactions. In fact,

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[746] Aljazeera News (2019),'Haftar and the battle of Libya's oil wealth', April 6,2019.< https://www.aljazeera.com/programmes/countingthecost/2019/04/wa>Accessed on 16/7/2019.
[747] Ibid.
[748] Ibid.
[749] Assad. A (2018)' Libya's State Oil Firm Chief Warns of Dealing with Eastern Parallel Institution' The Libya Observer, July 01, 2018.
< https://www.libyaobserver.ly/news/anti-corruption-team-be-formed-libyas-gna >
Accessed on 15/3/2018.

financial transparency is also the responsibility of stakeholders, who have to hold government accountable for its oil sector management.

6.3.1.2 Weak civil society

Multinational oil firms and international civil society organisations have participated in EITI application in many nations, but many firms and civil society groups are new to EITI. The degree of involvement of these companies and groups has varied. The study shows that many civil societies of member countries of the EITI are extensively attacked[750] The space for civil society is limited[751]. This means that civil societies who are members of the international coalition could not hold their governments accountable for the management of their oil wealth. Therefore, it is impossible to find an exemption where these societies adhere or are members of the EITI or PWYP. Nonetheless, since the Libyan revolution, civil society organisations (CSOs) have played a strong role to ensure the fair distribution of Libya's oil revenue; for example, the positive role of the Libyan Transparency Association[752].

Currently, the political situation in Libya is very insecure. Civil war between the rebels and conflict related to the extractive industry still plague the country. Given this context, it is difficult to see Libya's CSOs play a normal role to promote transparency in oil sector and hold government responsible for its oil sector management[753]. This explains the increase in the mismanagement of natural resources in Libya and the number of conflicts related to oil revenue.

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[750] CIVICUS (2017)' Civic Space Under Threat in Extractive Industries Transparency Initiative Countries' August 2017, p2.
< https://civicus.org/documents/CIVICUSMonitorFindings.EITI.Countrie>
Accessed on 17/7/2019.

[751] Ibid.

[752] Libyan transparency association have organised many conferences about the transparency in extractive industries. Ex the conference organised on 13/12/2011, it was the first conference organised in Libya about transparency in extractive industries.

[753] Ibid.

Nowadays, there are big obstacles for Libyan CSOs to be able to engage in public controversy concerning the implementation of IFT and the administration of oil sector without any restriction. CSOs are also unable to communicate and cooperate with stakeholders to promote transparency in extractive industry, or even participate in law making decision about the governance of extractive industry.

In conclusion, if the role of civil societies is limited, then the CSOs will not work correctly in supporting the implementation of IFT in Libya. This will make Libya's extractive industry absurd. For instance, only the Libyan Transparency Association proposed a legal resolution for the problem of corruption in oil sector, which was the implementation of the Section 1504 of Dodd-Frank law and involving the EITI and the international association of PWYP. However, this participation is still not complete regarding the absence of a study to identify the positive and the negative effects of these solutions. Furthermore, Libya should propose a law that fits with its situation.

6.3.2 Legal challenges

Adequate transparency and accountability depend on effective management of oil resource wealth and has to be for the benefit of all population. In that regard, Libya can face the different challenges by promoting its oil institutions (6.3.2.1) and strengthening its audit on the financial transactions and oil revenue generated by the petroleum sector (6.3.2.2). Libya can also promote and develop the different mechanism necessary for the financial transparency of its oil sector.

6.3.2.1 Promoting Libya's oil financial transparency institutions

Libya is heavily dependent on its oil revenues and the recent political situation may prevent the new government from rebuilding Libya and increase corruption as result of poor management of the oil sector[754]. In addition, Libya currently faces many legal challenges.

First, the Libyan government should take various steps to install an adequate legal institutional and statutory framework to implement the international financial transparency standards. These legal challenges could improve financial transparency and accountability requirements in the extractive industries by enhancing the efficiency of policy[755] and by sharing information with new stakeholders in the oil sector. Consequently, the trust of Libyan people would rise, and this would reduce the risk of social conflict. However, the question still remains as to how Libya will enhance financial transparency rules and find an effective legitimate framework with a weak and lack of coordination between bodies of law?[756]

In this context, the civil society's organisation can play a vigorous function by bringing their assistance to the Libyan regulator and the Libyan Financial Transparency Association.[757] For example, by organising conferences on how to help the Libyan government to promote and implement the IFT rules[758].

Second, the next important challenge to encourage financial transparency in the oil sector is fighting corruption. In fact, transparency and corruption are two independent concepts. In

[754] Sequira. S and Morisson- Sanders. A (688).
[755] Martini.M (2015)' Transparency, and Accountability in Lebanon's Emerging Petroleum Sector' Transparency International, April 20,2015.
< https://www.u4.no/publications/transparency-and-accountability-in>
Accessed on 15/3/2018.
[756] Hodess. R (583).
[757] Libyan Association Transparency a non-governmental organisation formed in the early days of Libya's revolution which advocates for transparency and accountability in Libya including in the business practices governing the extractive industries in Libya. See the letter sent by Ibrahim Ali the chairman of this association to Elizabeth M. Murphy the secretary of Securities and Exchange Commission.
[758] Ex, the first conference organised between 13 and 14 December 2011 at el Weden hotel in Tripoli about the financial transparency in extractive industries.

other words, where the transparency increases, corruption automatically decreases, and vice versa. Corruption in Libya affects all sectors involving the oil sector. In this case, in 2012 the Transparency International Association ranked Libya 146 out of 178 countries[759]. Meanwhile, there are no reports available on corruption in this sector. However, the high level of corruption in other sectors can give an idea that the Libyan oil sector is also plagued by corruption. Moreover, the NOC refuses demands to provide a report on its oil deals[760]. For example, only a weak step has been taken at this stage by the ex-prime minister Ali Zeiden, who proposed a project of the first ant-corruption law[761] to tackle corruption in petroleum sector, but this t has not been discussed yet by the Libya's General National Congress[762].

Consequently, Libya has no choice, IFT in oil sector is essential, the high level of corruption challenges the adoption of a more accountable system. In the meantime, the decision makers in Libya constitute a real obstacle to the financial transparency rules because they benefit from this opacity in the Libyan oil sector. This also explains the weakness of the legal institutions in Libya who protect and take care on the good governance of the oil sector. "For me, as of now, there is no transparency," said Abdeljalil Mayouf[763]: "Normally we have a big financing department, and there are many sections within this finance department that deal with our money, our budget. But as of now, I don't have any information about it."[764]

Many Libyan people perceive the vital need for financial transparency in the oil sector, and because of its potential for corruption and Libya must win this combat against corruption.

[759] International Financial Transparency report of 2010.
[760] See Gan integrity (2014)' Business Corruption in Libya: business anti-corruption portal', May 2016.< https://www.ganintegrity.com/portal/country-profiles/libya>Accessed on 17/7/2018.
[761] The first anti-corruption commission was established in 2014, Ibid.
[762] Coonjohn. J' Libya's New Anti-corruption law' May30, 2013.
[763] Abdeljali Mayouf : the manager of Agoco which is the Arabian Gulf Oil Company owned entirely by Libyan NOC.
[764]Short. C (676).

However, this could not happen without strong IFT institutions characterised by strong audit and civil society.

6.3.2.2 Strengthen the audit of Libyan oil financial operations

Good financial transparency includes the obligation of good accountability in all financial operations[765]. However, this cannot happen without a strong audit. Nevertheless, in Libya it is nearly impossible to find any evidence of useful and strong audits[766]. (6.3.2.2.1) Also, it can happen with independent international audit. (6.3.2.2.2)

6.3.2.2.1 The need for a strong internal audit

The importance of auditing to the implementation of IFT in Libya's oil sector cannot be ignored. Transparent and accurate financial data are obligatory for the stakeholders and foreign investors who wish to make inclusive decisions about the financial situation and position of Libyan oil sector[767]. Arthur Strong think that without professional and independent auditors, accurate and credible financial data cannot be released through financial statements, which cannot satisfy the stakeholders[768]. In confirmation of this idea, the supreme court of the United States in the United States. described an audit as: "a public 'watchdog' function that demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust"[769].

Article 1.2 of the decision of General Secretariat of the General People's Congress n: (10) for 1979 concerning the reorganisation of the NOC disposes that the NOC should follow

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[765] El Kilaini. E (60) 7.
[766] Ibid.
[767] Harris. S. B (2014)' The Importance of Auditing and Auditing Regulation to the Capital Market' American university school of business, March 20, 2014.
< https://pcaobus.org/News/Speech/Pages/03202014_American.aspx >
Accessed on 17/9/208.
[768] Ibid.
[769] See the decision of the court supreme of the United State: United States v Arthur Young and company, 465U.S (805), decide on March 21,1984

the best methods to maintain oil wealth, and to exploit in the best way possible and to monitor the activity of oil companies, and it includes affiliated companies to achieve this goal. The first observation from this article is that the NOC is a part of the financial transaction and is the institution who controls the oil sector activities. The NOC, in other words, maintains absolute power over the financial transactions inside the extractive industry. So, the question that should be asked is how the auditor could be independent and how could financial information be significant, as requested in the implementation of the principle of the IFT?

In the same context, Article 20 of these regulations sets out that "without prejudice to the responsibilities of the audit Dewan, revision of the NOC's account is assigned to two or more auditors whose appointment and financial reward shall be determined by a decision from the secretary of petroleum." In fact, this article confirms the absence of auditor's independence. For example, their nomination and payments are made by the highest institution in Libya responsible for the oil sector, who is the petroleum minister. The auditors, moreover, regarding the rest of Article 20, have to present an annual report containing the results of their revisions to the board of directors and secretary of petroleum during a period not exceeding 7 months from the end of fiscal year, taking into account that such a revision must be carried out according to the rules set by the auditor in this respect.

The principle of IFT based on this context of the corporate governance system supposes that there is a separation between the administration and the control structure to pledge that the financial data reflects the actual financial situation and position of the oil firms. However, this cannot be done in Libya because of the auditor's financial and structural dependence on the petroleum minister, who manages and monitors the oil sector.

Libya's oil sector is marked by a weak audit institution, which can affect the accuracy of the financial information released in favour of the stakeholders. This could also constitute an

obstacle for the new Libya in its aim to implement the principle of IFT to rebuild its oil sector. This weakness in Libya's audit institutions is associated with a weak civil society, despite its new role in Libya after the revolution. That why, there is a need for independent international audit to the fair distribution of Libyan oil wealth in favour of their citizens.

6.3.2.2.2 The need for an independent international audit

The development of an independent international audit is a first step. Rather than concentrating on who manages economic institutions, the two parallel governments and central banks must take in consideration on Serraj's request for an external review of the central bank under international supervision. A better understanding of how the two banks[770] have assigned money over these last four years is a precondition of any successful reform towards the transparency of Libyan oil sector and could be a crucial first step through integrating the country's finances[771]. A rehearsal should be carried out in a timely manner and members of the Libyan government should not use contacts for the formation of an international committee as a method to "buy time", as some of Serraj's critics accuse him of doing[772]. However, the details of this process are still lacking. Serraj himself did not have an example in mind when he stated that all options are still on the table[773]. The UN has a potential role to play as a facilitator and observer of the review[774].

[770] See the chapter1 about the impact of Libyan political situation on Libyan oil sector.
[771] The only precedent for an international audit of a country's Central Bank is the European Commission-funded audit of the Liberian Central Bank in 2005. This review was agreed upon by the National Transitional Government of Liberia, in consultation with a consortium of regional and international donors, to address serious corruption and mismanagement of public finances in post-conflict Liberia. After the audit, donors established a Governance and Economic Management Assistance Program, which (among other steps) embedded international advisers with co-signing authority in every key spending ministry, agency, and state-owned enterprise, as well as the Central Bank itself. The proposal for robust external intervention in Liberia's economic governance was controversial. See Renata Dwan and Laura Bailey, "Liberia's Governance and Economic Management Assistance Programme (GEMAP): A Joint Review by the Department of Peacekeeping Operations' Peacekeeping Best Practices Section and the World Bank's Fragile States Group", UN Department of Peacekeeping Operations and World Bank, May 2016
[772] Crisis Group interview, Libyan politician, Tunis, July 2018.
[773] Crisis Group interviews, UN officials, Tunis, Tripoli, July 2018.
[774] 'After show down in Libya's oil crescent' (42) 5.

The UN Security Council has asked Ghassan Salamé to present propositions for how an audit should take place. But before he can do so, UNSMIL officials should engage in shuttle diplomacy between representatives of the two banks and the two Ministries of Finance to ensure a modicum of consensus on the path ahead; and they should consult with the WBG and IMF on the range of possibilities. The review should be used to establish a wider process for economic reconciliation, which is a fundamental element of any solution to Libya's crisis and would subsequently promote corporate governance in the extractive sector. This will lead to more consultations with other Libyan parties, such as the Presidency Council, the Audit Bureau, and the House of Representatives. The necessary time to continue in these consultations should not reduce the action of the review process, which is crucial for creating a durable negotiation track for treating economic elements of the conflict[775]. Salamé should adopt these initial consultations and send an invitation to the two bank managers to hold a meeting face to face—something that has not happened before—to discusses a more rigid and detailed agreement on the exact terms and procedures of such a check, who should receive the final report, and commitments about this idea[776]. Ghassen Salamé should only submit a suggestion to the Security Council after these procedures, ideally moving as far as possible from the current stress on a narrow rehearsal on spending to the wider objective of having a solution in which Libyan political players can minimise institutional divides and build a consensus on how to tackle the country's economic challenges[777].

Most relevant Libyan and international bankers agree that a review, to be credible, should be undertaken by one of the four leading international auditing companies (KPMG, Ernst &

[775] 'After show down in Libya's oil crescent' (42) 6.
[776] Ibid.
[777] Ibid.

Young, PricewaterhouseCoopers and Deloitte), who have the skills and resources to carry it out[778].

The World Bank, the IMF and UNSMIL can advise the Libyan authorities, but none can fulfil a review of government accounts itself. Different opinions exist as to whether the rehearsal has to be a proper large-scale audit. A proper audit, with forensic accounting techniques to review past financial operations, will be labour- and time-intensive. A speedier process may help Libyan institution efforts by proposing a way for reintegration without entering a blame game about pretended corrupt practices[779]. At the same time, international control would help Libya's long-term interests by aligning the way for greater transparency and surveillance of financial transactions generally, and oil deals especially[780]. A UN-led consultations must establish the most important and realistic goal to be completed and propose a resolution that strikes a balance between conflicting priorities. The reconciliation of the Central Bank of Libya's parts should be the main goal of the review because a reunification bank can choose to carry out as more in-depth audit at a later point. Some have expressed concern that an audit, or even a review, could be inflammatory if it uncovers shady financial dealings. Therefore, the UN should make clear that the process is not looking at incriminating anyone but is a necessary resolution through fixing oil sector things and promote Libyan stakeholders to publicly endorse such an approach to address the important backlash of being perceived as exclusionary and dismissive of the public's demands for transparency and accountability.

[778] Crisis Group phone interviews, Western economists, Libyan bankers and UN officials, Tripoli, Washington, Tunis, July 2018. Some Libyans reject the idea that one of these "big four" companies be tasked with the audit, arguing that all of them are somehow connected to different Libyan personalities, and call instead for one of the "big ten" to get the assignment.
[779] Ibid.
[780] After show down in Libya's oil crescent' (42) 6.

Both international and Libyan stakeholders involved in the process should send a specific political message that the reunification of the central bank is a priority. While an international audit is a compulsory step through sanitising the Libyan economy in general, and Libyan oil sector in particular, it will not be a sufficient step. Relevant Libyan stakeholders should also consider broader transparency measures, such as publishing the budget and greater scrutiny of disbursements. All these steps, coupled with deeper economic reforms, including a currency devaluation, will be needed to start tackling head on the feud over the mismanagement of Libya's state funds[781].

6.4 Conclusion

Joining an international association, such as EITI or PWYP, is the best solution to apply the principles of IFT. This could be an adequate and an important solution for Libyan authorities to help them meet their objectives to apply international reporting and accounting standards. These international coalitions could help Libya as a developing country to strengthen its corporate system in the oil sector by allowing citizens to participate in the debate related to extractive industries issues[782]. This requires the government to disclose financial data about financial transactions or deals concluded in the oil sector. Finally, they would permit Libyan stakeholders to have a complete idea about the collection, allocation, and social and economic expenditure of oil revenue in Libya. However, the problem is that these international associations increase the transparency of the oil revenue and fail to supply contract disclosure[783]. Therefore, it is difficult to see Libya as a developing country succeed in its implementation of IFT without lending programmes. The implementation of IFT measures in the extractive industry should be supported by the IMF and WB lending programmes[784].

[781] After show down in Libya's oil crescent' (42) 6.
[782] See the report of CIVICUS (689).
[783] BIC & GW (685)10.
[784] Ibid.

The record of some developing countries, such as Angola, Niger, and Kazakhstan, who have engaged with EITI and PWYP is that they have failed to develop a strong legal structure of financial transparency in their oil sector regarding the weak financial transparency institutions. In addition, due to their will to keep oil deals and revenue generated in total opacity, there is no desire to properly implement the principle of IFT.

Libya also faces some challenges. Libya is a developing country and after the revolution it needs to get back to normal production, which obligates Libya to adopt flexible financial transparency rules to encourage international firms to invest in oil sector. However, the economic and political environment in Libya at the current time is not attractive to foreign investors. So, the recommendation to follow strict international approaches such as the US Dodd-Frank Act or European initiatives will not help Libya to rebuild its oil sector and successfully pass through this transition period.

In conclusion, the implementation of the IFT as a first step to set financial transparency and corporate governance in oil sector is not the best solution regarding Libya's need to balance between the interest of international oil firms and the interest of stakeholders. Instead, the solution may be to start amending some of the old laws, which are marked by the total absence of transparency measures, to start changing the thinking about oil revenue transparency and gradually make Libya's oil sector more transparent. It is enough for Libya to establish an article about the disclosure of the payments made by the international oil companies and the amount received by the government when a financial limit is exceeded, such as 1 million US dollars. This will help to make the financial transactions more stable and it could encourage foreign investors to return to Libya.

Chapter 7 Conclusion

7.1 Critical summary of the work done

Financial transparency has become a crucial condition for effective corporate governance. However, there is no overall definition of financial transparency, which constitutes a major handicap to guarantee the role of financial transparency. The establishment of clear and precise definition for the legal concept of financial transparency is essential. It helps, first, to more understand the legal rules of the international principle of financial transparency. Second, it helps to identify the concept of transparency from others similar concepts, such as CG and accountability.

The first attempt to give a general definition of financial transparency that covers all its aspects and characteristics requires an analysis of the main principle of Corporate Governance This explains that the board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. The regulators define transparency, and they determine the agency responsible to release information. Therefore, financial transparency is not only based on the provision of information but also based on the manner of how this information must be released. In other words, it depends on the manner of its publication. An accurate definition should cover all the features of financial transparency and should “release of information in appropriate manner in favour of any stakeholders in purpose to have enough idea about the company to take the adequate decision”. The information has to be clear, understandable and published in time to gain the confidence of the investors and thus help them to make an appropriate decision. The financial performance and position of company should be transparent to guarantee the effectivity of financial transparency.

Elaborating a general definition of the concept of financial transparency is difficult because it is a broad concept. In fact, the answer to the first research question is that the definition of financial transparency is still ambiguous. Briefly, financial transparency is a crucial element for a good governance. It is a set of legal international rules of the principle of financial transparency and is important in the extractive industries. The first answer will help to identify the strengths of the principle of IFT as a principle of international law. It will also allow me to identify its legal features and effects.

At this phase, three important questions about the international principle of financial transparency should be asked: Does the principle of IFT exist as a principle of law at an international level? What are the scope and effects of the principle in the extractive industries? And how is the principle guaranteed?

Developing countries are now more aware that to attract foreign capital they should improve their international reporting system. This goal cannot be achieved without developing the reporting rules for the extractive industries. There are several international initiatives based on international financial accounting and international financial reporting norms, which require the disclosure of payment made to foreign governments by oil and gas companies.

A local reform that is has an international impact—such as the Dodd-Frank Act, the EU Transparency Act, and Canadian approach—can help to make international financial transparency a norm in the extractive industries, especially in the oil and gas sector. Today, all oil firms encourage these international initiatives, such as the EITI, including emerging countries such as Brazil, Russia, India, and China.

However, some emerging states continue to escape from these rules because of its voluntary character and the flexibility of IFT. Consequently, the issue is not just to implement the international rules of the IFT but how to challenge the resource curse in developing

countries and how these international initiatives can pledge support for the principle of IFT. Are these rules an adequate solution for the poor people living in resource-rich countries to reduce the gap between them and their governments, and guarantee allocation of the wealth generated by the oil and gas sector?

These international approaches, in the same context as the EITI and PWYP, have proposed a new accounting standard that supports financial transparency and promotes global transparency standards. Nevertheless, the effectiveness of this coalition is still unclear. Two factors could limit its effectivity. The first factor is the opacity of the oil and gas sector as a high capital and difficult business to manage with a large company at an international level. The second factor is the cost of the implementation of the standards of this approach regarding the technical issues related to the oil and gas sector. The cost of applying its rules means that it cannot be a real standard to improving transparency in the oil sector, especially with the very difficult system of requiring information from firms on a country-by-country basis, including not only the payment made to the government but also detailed data.

Beside these international initiatives, municipal reforms have been introduced in some developed states whose objective is to implement the international rules of the EITI and PWYP. In other words, they have an interest in promoting the general principle of financial transparency in the petroleum sector by applying the international standards of the financial reporting and accounting standards. For example, the Dodd-Frank Act[785] is one of a number of transparency initiatives that have been passed by the US Congress and was considered to be the largest new financial regulation in the United States since the 1930s.[786] Nevertheless, the

[785] Dodd-Frank Act relative to the Dodd-Frank Wall Street reform and consumer protection act relating to disclosure of payments by resource extraction.
[786] The US President Barak Obama, who signed the Dodd-Frank Act into law, said, the American people will never be again asked to foot the bill for wall street mistakes. See Morisson. A (685).

Dodd-Frank Act has been challenged in court by the API[787] and multinational petroleum firms such as Chevron, Exxon Mobile, and Shell[788]. Section 1504 of Dodd-Frank Act instituted a rule to impose the listed companies operating in extractive industries to submit an annual report to the US security exchange commission declaring its financial situation and position, which also disclosed any payment made by these international companies to the government.[789] Aside from this reform, in June 2013 the EU founded new transparency directives comparable to the Dodd-Frank Act. These rules require all payments above 138,000 Euro made to the federal, national and regional governments to be declared. However, small and medium size companies are excused from these obligations.[790] The EU directive obligates all listed firms in stock exchanges that are active working in oil and gas sector to conform to it. The European state members of the EU are required to amend their law every two years[791]. In fact, these initiatives have encouraged the stock exchanges in London[792] and Canada to adopt and amend their own transparency rules to improve and increase financial transparency in the petroleum sector as a useful weapon to face corruption and misconduct in oil and gas revenue, mostly in developing countries.[793]

It is noticeable that the UK transparency rules aim to implement the EU initiative, which amended the transparency directive of 2004/109/EC. It also established new rules about the provision of information related to payments made to the government by issuers operating in

[787] (API): American Petroleum Institution.
[788] Goddard.R (2015) 'Act of Transparency 2015 in the UK', October3,2015.
< Http://www.GOV.uk>
[789] Blair. A 939).
[790] Deval. D and Michael. J (2012)'governance and accountability in extractive industries: theory and practice at the world bank' journal of Energy and Natural resources, 30 (2), June 2012,
p101- 128.
[791] The French parliament has adopted the first European directive on transparency in the extractive industries. See France demands greater transparency from extractive industries, www.euractive.com, and See Joe Mont, extraction payment disclosure moves forward, June 2014 see online on ww.compliance.com.
[792] Today, the UK took a huge, historic step in the fight of transparency by putting into force new regulations that implement landmark EU transparency law. These new regulations require oil and gas companies to publish what they pay to government for natural resources. See Blair. A (39).
[793] Ibid.

the extractive industries.[794] By applying these new rules in their local status, the UK has enhanced financial transparency in oil and gas sectors in various countries where the UK extractive companies operate.[795] The UK Extractive Transparency Act covers major international companies, such as Shell, BP, and Total. However, this act takes a long time to see a new transparency measure, forcing financial transparency in the oil and gas sector that obligating the oil companies to disclose a payment made to the government.[796]

Disclosure through these reforms will only improve financial transparency on a project-by-project basis, which has two negative effects. First, a project-by-project basis will destroy competitiveness[797] because being too transparent may affect the oil company business. This is the reason why the Dodd-Frank Act and EU directive do not force transparency in the phase of discussion and negotiation of oil contracts, which is the most delicate period for make a dealing between government and oil firms. Therefore, opacity will spread during this period and could affect the interests of the stakeholders. Second, the cost of transparency will be huge and this will increase the expenditures of these oil firms, which also enhanced their competitivity.[798]

This voluntary and the flexible character of the legal IFT rules lead to the last and main research question that has been addressed in this thesis: is it possible to implement these rules in Libya?

Currently, the main issue in Libya's oil sector is to release data about its financial situation to address the high level of corruption in the sector. It is important to maintain the oil sector revenue transparency to conserve social justice.[799] Making the Libyan oil sector more

[794] Goddard. R (786).
[795] Blair. A (39).
[796] In October 2014, the government of Canada tabled the Extractive Sector Transparency Measures Act. See Ibid. ref n:22. See more about Canada extractive sector transparency measures act the ref above Blair. A (790).
[797] Sönmez .M (3) 27.
[798] Ibid
[799] Mainhardt -Gibbs. H (531) 10.

transparent has become essential to rebuilding Libya into a country that is stable and more secure. Therefore, the main question is how should the Libyan government deal with the international changes and implement transparency in its extractive industries?

Joining an international association such as EITI or PWYP could be seen to be the best solution to applying the legal rules of IFT. This in fact, an adequate and an important solution for Libyan authorities to meet their objectives to apply international reporting and accounting standards. This international coalition will first help Libya as developing country to strengthen its corporate system in the oil sector by allowing citizens to participate in the debate related to the extractive industries.[800] Second, it requires the government to disclose financial data about financial transactions or deals concluded in the oil sector. Finally, they permit Libyan stakeholders to have a more complete idea about the collection, allocation, and social and economic expenditure of oil revenue in Libya. However, the problem is that these international association increase the transparency of the oil revenue but fail to supply contract disclosure.[801] It is difficult to see Libya as a developing country succeed in its implementation of IFT without lending programs. The implementation of IFT measures in the extractive industry is supported by the IMF and WB lending programmes.[802]

The record of some developing countries, such as Angola, Niger, and Kazakhstan, who have engaged with EITI and PWYP is that they have failed to secure a strong legal structure of financial transparency in their oil sector regarding the weak financial transparency institutions. In addition, due to their will to keep oil deals and revenue generated in total opacity, there is no desire to properly implement the principle of IFT.

[800] CIVICUS (748).
[801] BIC & GW (685)10.
[802] Ibid.

Libya also faces some challenges. Libya is a developing country and after the revolution it needs to get back to normal production, which obligates Libya to adopt flexible financial transparency rules to encourage international firms to invest in its oil sector. However, the economic and political environment in Libya at the current time is not attractive to foreign investors. Consequently, the recommendation to follow strict international approaches such as Dodd-Frank or European initiatives will not help Libya to rebuild its oil sector and successfully pass through this transition period.

In conclusion, the implementation of the IFT as a first step to set financial transparency and corporate governance in the oil sector is not the best solution in terms of Libya's need to balance between the interest of international oil firms and the interest of stakeholders. Instead, the solution may be to start amending some of the old laws, which are marked by the total absence of transparency measures, to start changing the thinking about oil revenue transparency and gradually make Libya's oil sector more transparent. It is enough for Libya to establish an article about the disclosure of the payments made by the international oil companies and the amount received by the government when a financial limit is exceeded, such as 1 million US dollars. This will help to make Libya's financial transactions more stable, and it could also encourage foreign investors to return to Libya.

7.2 The focus ideas of the thesis

This research is one of the first studies to give a precise legal definition of the concept of financial transparency. However, this concept is still unclearly defined. Financial transparency includes all the financial statements and ratios needs to be disclosed for stakeholders in commercial sector in general to be able to assess the company's value[803]. Other crucial financial data that may greatly assist external parties includes stock price and segmental information[804].

[803] EL Diftar. D (12) 35.
[804] Ibid 36.

Scholars such as Bushman, define financial transparency as the extent of disclosure of financial information by firms, their interpretation by financial analysts, or their dissemination by media reporters. Basically, any information that facilitates the interpretation of the company's future performance and the value of its shares should be easily available to investors.[805] The stakeholders may also demand information on some risk factors, such as: currency risk; interest rate risk; derivatives-related risk. This type of risk disclosure is most useful when it is customized to an industrial sector[806]. Furthermore, Bushman evaluated financial transparency across various countries and found that financial transparency is extremely influenced by the country's political economy. He concluded that countries with lower levels of state ownership tend to disclose more financial information[807].

The main result of this research is to determinate the legal status of the general principle of IFT. In other words, the nature of this general principle in international law: is it an obligatory principle or a flexible principle? Do international oil firms and states have to obey the legal rules of the general principle of IFT? Academics, law practitioners and makers, and judges continue to debate the legal position of the general principle in international law.[808] The doctrine debate is over the existence of the general principle as principle of international law. However, how do scholars define the general principle in international law?

The general principle can be defined as "those principles of law, private and public, which contemplation of the legal experience of civilised nations leads one to regard as obvious maxims of jurisprudence of a general and fundamental character."[809] Furthermore, Cheng

[805] EL Diftar. D (12) 37.
[806] See OECD annual report 2004.
[807] Bushman. R, Pitrioski. J and Smith. A 'what Determines Corporate Transparency?' Journal of Accounting Research, 2004, pages 1-13.
< https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1475-679X.2004.00136.x >
Accessed on 15/7/2019.
[808] case w1/ DS26, WTO (86).
[809] Lauterpacht, H (33).

defines the general principle as a set of cardinal principles of the legal system, in the light of which international law is to be interpreted and applied.[810] Schlesinger defines general principle as a core of legal ideas which are common to all civilised legal systems.[811] Lammers also defines general principle in the same context, he states that they are norms underlying national legal orders and they are the manifestation of the universal legal conscience certified by the law of six states.[812] To become a source of international law and identify its legal statutes, it is necessary to prove and solve two main issues: the first is the existence of general principle in the national legal system and the second is to prove the recognition of this principle by the civilised nations.

All jurisprudence believes that both Article 38 (1) (3) of PCIJ statute and Article 38 (1) (c) of ICJ statute imply that the general principle can be identified from two different legal sources: national and international. The first issue should be solved before identifying the nature or statute of general principles to determine if the general principle is considered as a formal or material source of international law.[813] In this context, Ian Brownlie observes that formal sources in national law refers to the constitutional machinery of law making but in the case of international law "formal sources" are deceptive. This general debate is incarnate in the statute of PCIJ, Article 38 (I) (3) and in the statute of ICJ, Article 38 (1) (c),[814] under the terms "general principles of law recognised by civilised nations."[815] The conditions used to consider the general principle as a source of international law required two independent terms: the general principle and recognised by civilised nations. For the latter, the United States charter

[810] WTO (420).
[811] Shleizenger. R. B (424).
[812] WTO (420).
[813] Formal sources are those legal procedures and methods for the creation of rules of general application which are legal binding. Material sources provide evidence of the existence of rules which, when proved, have the status of legally binding rules of general application. See Brownlie.I (418) 65.
[814] Article 38 (1) (c) of ICJ: the court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: ……. C- the general principle of law recognised by civilized nations.
[815] Brownlie. I (418) 84.

presumes that all members of the United Nations are civilised nations. The difficulty is manifested by the using the former condition, general principles, which are not explained by scholars, or even by the opinions of PCIJ nor ICJ. What the general principle does express is national legal systems and their imperfect sources of international law.[816] When the other sources are imperfect, there is a creative presumption of international legal obligation by the general principle.

Although Article 38 of ICJ is a complete statement of the sources in international law, it does not use the concept "sources." The main issue, in this case, is what kind of status would the general principle have as a source of international law? Or should the general principle as be considered as a strong or flexible source of international law? Scholars such as Professor Ian Brownlie treat the general principle as an international custom and general practice, and so is accepted as law.[817] Therefore, the general principle is recognised among states as obligatory practice. To become an international custom and create obligatory obligation, the general principle has to meet two complementary conditions or elements. First is duration, which means the consistency and generality of practice are proved and no specific duration is required. Second is the consistency of the practice, which means that states appreciate the implementation of the general practice. This is an issue of appreciation and the turbinal will have a crucial liberty of determination in many cases.[818] The consistency of states does not mean universality, but the real matter is to complete the value of omission provided by some states. Supporting this view, the WTO has accepted that the precautionary principle is regarded by some as having crystallised into a general principle of customary or international environmental law.[819] Consequently, the general principle creates obligations by the

[816] The other sources of international law namely are conventions, customs, writing of scholars, and decisions of PCIJ or ICJ, Ibid.
[817] Brownlie. I (418) 86.
[818] Ibid.
[819] WTO, case w1/ DS26 (420). Parag123-124.

recognition of some states, which is enough to consider the general principle as international customary.[820] Meanwhile, other authors refuse to admit that the general principle has not yet reached the of international law. So, it still a flexible source of international law and a subject to a great variety of interpretation.[821]

Some scholars view that the fundamental principle of justice accepted by the sates could be interpreted as international principle of law or common law.[822] In addition, the principle of justice reaches the level of general principle of international law by the recognition of "civilised nations". This idea is representative by the existence of a common denominator between all legal systems.[823] In the same context, Gutteridge supports this view of the existence of relationship between the international law and national law, as follows:

> "If any real meaning is to be given to the word "general" or "universal" and the like, the correct test would seem to be that an international judge before taking over a principle from private law must satisfy himself that it is recognised in substance by all the main systems of law, and that in applying it he will not be doing violence to the fundamental concepts of any of those systems.[824]"

Other orientations view that general principle as a means of interpretation of other sources of international law such as international conventions and customs.[825] This part of the doctrine identifies the statute of general principles from their functions. Cheng is the most representative of this idea. He states three general functions: first, they are the source of many rules which are expression of these principles; second, they represent framework for the judiciary; and third, they could be applied as norms.[826] The determination of which functions

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[820] See P. Sands, principles of international environmental law, Vol1, Manchester university Press1995, p212. See J. Cameron, the status of the precautionary principle in international law, published May 1995, p283.
[821] See P. Birnie and A. Poyle, international law and the environment Clarendon Press, 1992, p98.
[822] See Gutteridge, The Meaning and Scope of article 38(1) (C) of ICJ, Grotius Transactions for the year 1952 - 1953.
[823] Christenson, jus cogens, Guarding Interests Fundamental to international society p585-587, published 1988.
[824] See above ref n:29
[825] Brownlie. I (418) 775.
[826] Ibid

general principles should assume is expected by considering general principles as a primary or subsidiary source of international law. If the general principles are primary sources, then they may create legal obligation and have a binding effect. If they are considered as a subsidiary source of international law, then they may have an interpretation function of the rules set up by international treaties or customs. The issue of considering general principles as a primary source of international law is still subject of debate between scholars. Meanwhile, the solution could be found in the methodology established by the international tribunals to implement general principles as an abiding source of international law. The international legal rules form the general principle of IFT, such as the rules of EITI, are still voluntary and cannot help the amelioration of financial transparency in oil sector, unless an international firm is unwilling to sign up.

Finally, this study will contribute to the study of the legal rules of the Libyan oil sector to find an adequate solution and a specific method to implement the legal rules of the principle of IFT and ensure good governance in the Libyan oil sector. Given its specific culture as a developing country and its actual political situation. The problem is that these international associations tend to increase the transparency of the oil revenue but fail to supply contract disclosure.[827] Therefore, it is difficult to see Libya as a developing country succeed in its implementation of IFT without lending programs because the implementation in the extractive industry is supported by the IMF and WB lending programmes.[828] In the same context, the record of some developing countries, such as Angola, Niger, and Kazakhstan, who have engaged with EITI and PWYP is that they have failed to secure a strong legal structure for financial transparency in their oil sectors and still have weak financial transparency of their institutions. In addition, due to their will to keep oil deals and revenue generated in total

[827] BIC & GW (685)10.
[828] Ibid 11.

opacity, there is no desire to properly implement the principle of IFT. Libya also faces these challenges. Libya is a developing country and after the revolution it needs to get back to normal production, which obligates it to adopt flexible financial transparency rules to encourage international firms to invest in its oil sector. However, the economic and political environment in Libya at the current time is not attractive to foreign investors. So, the recommendation to follow strict international approaches such as Dodd-Frank or European initiatives will not help Libya to rebuild its oil sector and, therefore, successfully pass through this transition period.

In conclusion, the implementation of the IFT as a first step to set financial transparency and CG in oil sector is not the best solution regarding Libya's need to balance between the interest of international oil firms and the interest of stakeholders. Instead, the solution may be to start amending some of the old laws, which are marked by the total absence of transparency measures, to start changing the thinking about oil revenue transparency and gradually make Libya's oil sector more transparent. It is enough for Libya to establish an article about the disclosure of the payments made by the international oil companies and the amount received by the government when a financial limit is exceeded, such as 1 million US dollars. This will help to make the financial transactions more stable, and it could encourage foreign investors to return to Libya.

7.3 The future of transparency in Libya's oil sector

The prospect of financial transparency in Libya's oil sector, or the possibility of the implementation of the IFT principle, depends on the Libyan government or Libyan oil institutions voluntarily fostering and following the national laws that consecrate the international principle, and also adopting the international norms and measures set up by the international institutions that have tried to determine the legal framework of the IFT principle (7.3.1). The future of financial transparency in Libya's oil sector will also depend massively on the LCP, which does not yet endorse it (7.3.2).

7.3.1 Adopting the international norms of the IFT principle

"The future of Libyan economy [is] massively dependent on the oil sector" said Mustafa Sanalla.[829] In that sense, he admitted the crucial role of financial transparency to pledge the fair distribution of oil wealth across the country, he added that: "Every Libyan citizen has the right to see how every dinars of their oil wealth are spent."[830] However, the problem is that the legal framework to manage the oil sector is marked by weak rules that permit oil firm's an exemption and keep their data secret. Enforcing the financial transparency rules would be the best solution to allow stakeholders access to the financial information and ensure that oil revenues participate in the development of economy projects. In that context, a strong US law with other legislative bodies, including the EU directive and the UK Transparency Act, would increase the disclosure of financial information and will enable Libyan citizens to hold their government responsible of the distribution of Libyan oil wealth. However, the Libyan political situation—including the attacks on oil fields, the implementation of IFT rules and the international principles of the EITI—could lead Libya to fail join the international coalitions promote financial transparency in its oil sector.

For example, Equatorial Guinea, the third largest producer of oil sub-Saharan, failed to join the EITI after it did not meet the international criteria for financial transparency in the oil sector.[831] Nevertheless, the EITI has since become a necessity and there is no choice for Libya to escape from integration into this international coalition. In a letter that was sent by Claire Short to Mr Abderrahim Al-Kib, who was Libya's Prime Minister at that time, she said that if Libya wishes to implement the international transparency standards, then the EITI[832] offers an

[829] See Mustafa Sanalla, head of (NOC) (2018)'Libya's future depends on oil revenues' Libya business, October 26, 2018.
[830] Ibid.
[831] Ibid.
[832] For the definition of EITI, See the chapter 4 of the thesis.

opportunity to develop Libya's transparency.[833] As the global standard, implementing the IFRS, and the IACS. The EITI could be an efficient solution for Libya to establish an adequate financial transparency and accountable rules in purpose to well manage the oil wealth.

Nevertheless, adhering to the global standards set up by the international coalition is voluntary and, therefore, the information released is less effective and less accurate. This information cannot reflect the right financial position or situation for the stakeholders.[834] The publication of important data related to the oil sector revenue is often secret, inaccessible and unpublished. For example, Articles 15 and 18 of the Libyan Petroleum Law[835] obligated different parts of the payment to be kept secret, such as the information concerning the stakeholders.

The impact of joining international associations such EITI and PWYP is open to question. For example, many critics have questioned the quality of data released in EITI reports because it is always limited, poor quality, and lacks detail.[836] For instance, in Nigeria the recent amount of oil revenue is neglected, and the tax paid by the companies does not fit with their financial statements[837]. While some authors, such as Aaronson, Hilson, and Maconachie insist that the extension of the framework of the EITI into the human rights sector would increase financial transparency and accountability in the oil sector, it is time for the international oil firms to proceed to reporting alone and the EITI could be used as a benchmark to implement these international standards.

The EITI and PWYP in themselves are not sufficient to improve financial transparency of the oil sector because of the absence of detailed reports established by the EITI. Furthermore,

[833] Short. C (676).
[834] Blair. A (462).
[835] See the chapter 5 for more data about the Libyan petroleum law.
[836] Blair. A (462).
[837] See Nigeria EITI report of 2012

the crucial role of stakeholders, including civil societies and press freedom, to help citizens to hold local authorities responsible for the administration of oil income is still limited. In practice, developing countries have weak and oppressed civil societies, and lack public communication[838]. The absence of technical assistance and effective audit structure in developing countries could affect the role of the EITI to improve the financial transparency of the oil sector revenue. Based on the assessment of transparency in the Libyan oil sector that was shown in the previous chapter, the EITI would not be an adequate or only resolution to increase financial disclosure in extractive industries, even if the stakeholders decide the kind of financial data has to be released. The current information disclosed by the legal scope of the Libyan oil sector is insufficient to promote financial transparency in the oil sector. Nonetheless, the EITI could help to resolve various problems in developing countries, including Libya, by creating a reconciliation system to share information between oil companies and governments, on the one hand, and civil societies, on the other hand.[839]

An ideal adhering to the EITI would suppose not only a high and an accurate degree of financial information disclosed about oil sector revenue but would also suggest that the government makes its oil deal or oil contracts more transparent. Therefore, will the future of transparency in Libya's oil sector be improved by making the oil contracts concluded between NOC and the international oil firms more transparent?

Contract transparency generally, and especially in Libya, is a crucial step towards the effective management of the oil sector and it ensures that all parts of society benefit from the extractive industries. Mustafa Sana Allah, the Chairman of Libya's NOC, in an interview given to the Libyan (Libyan Panorama channel) suggests that Libya's oil sector agreements should

[838] EL Kilani. E (60)13.
[839] See the report of EITI institution of 2010
< https://eiti.org/sites/default/files/documents/EITI **Impact** in Africa>.
Accessed on 15.8.2018.

be more transparent because the absence of financial transparency was the main cause of fighting between rebels and it caused production to stop in the oil fields.[840] Furthermore, contract transparency guarantees the improvement of quality of contracting in the oil sector and it prevents the government from prioritising their own interests above those of the Libyan people. In Libya, oil contracts include confidentiality clauses that explicitly restrict the disclosure of financial information to local citizens[841] and keep the relationship between the NOC and the international oil companies' secret.

Libya has been encouraged to develop its financial transparency rules and force the international oil firms who operate in Libya to publicly publish all the financial information in the contracts that they conclude with the Libyan government. Furthermore, the financial clauses relative to the oil revenue and assets, for example, must be published in detail for the stakeholders. Consequently, these contract financial transparency rules could lead Libya towards the development and social stability that it requires.

Brenden O'Donnell, senior oil campaigner at Global Witness, said that the NTC could be the first Libyan government to set up a constitution transparency oil rules, which will be a precedent for the future of the Libyan petroleum sector[842].

Despite this recommendation to create financial transparency and constitutional rules, this could prove to be a handicap for the interests of the international oil companies. Therefore, a balance between making Libyan oil contracts more transparent and the interest of oil companies has to be observed and taken in consideration[843].

[840] Interview given by the Chairman of Libyan NOC to Libyan Panorama Channel on 27/2/2018.
[841] See article 18 of Exploration and production Sharing agreement between NOC and …….
[842] Ibrahim. Ali (580).
[843] BIC & GW (685)9.

Commercial confidentiality cannot constitute an obstacle to contract transparency. When contract transparency rules start to arise, there is a push through contract financial transparency to keep oil contracts secret because of the commercial confidentiality clause.[844] The IMF and the WB adopt a strategy that motivates developing countries, such as Libya, to open its oil contracts to the public and strengthen financial transparency in their extractive industries.[845]

Nowadays, there is no place to use clauses that affect transparency, and we should not let opacity spread over the oil sector and damage the oil revenues of the Libyan people. Contracts to ensure financial transparency contain many advantages, which cannot be simply ignored. The advantage is to save oil revenues and to maintain social justice[846]. Moreover, the disclosure of all of the financial data in oil contracts could reduce corruption and generate equitable contract clauses. This is the reason why the Production Sharing Agreement (PSA)[847] must change to make it more transparent by creating a specific PSA for a special project, especially in Libya as a developing country, even though that could drive its extractive industries to be supported and controlled by the WB. Nonetheless, Libya has become more dependent towards the developed countries, and it has lost the management of its oil sector, which means that Libya has lost its sovereignty. Therefore, it is time for Libya to offer a new PSA. This has been confirmed by the Libyan oil and gas minister Abdelrahman Benyezza, who said:

> "Libya isn't currently planning to revise the terms existing contracts with foreign oil companies. But they may be a process to equalize the terms of new and existing contracts in the future. We will have study and see what we can improve. We are not in process to

[844] Shaxon. N (667) 5.
[845] Ibid.
[846] Sequira . s and Morrisson. A (688).
[847] PSA: are a common type of contract signed between resource a government and resource extraction company, concerning how much of the resource extracted from the country each will receive (PSA) were first used in Bolivia in the early 1950s, although their first implementation like today was in Indonesia in the 1960. Today they are often used in the Middle East and central Asia.

change existing agreements currently. But in the future existing terms will be evaluated not to create in equalizing contract[848].”

The PSA has to be more flexible to change any clause that could harm the international financial transparency rules and the specific financial information for a specific oil project has to be not only disclosed but also published.[849] It is important to have all of the necessary financial contract details to let the Libyan people be informed about the oil contracts that the Libyan government has become involved in.

Finally, the IFT contract rules are essential, especially for a country seeking for social, justice stability and which wishes to start rebuilding itself. Even though it may be afraid of losing its sovereignty, Libya cannot be blind and not recognise the contract financial transparency rules as an adequate solution to challenge the danger which is manifested in its oil sector. Moreover, contract transparency does not necessarily conflict with commercial interest and the need for the international oil firms to operate freely without any handicaps and restrictions[850]. This is the reason why it is essential to face the legal issues or handicaps that limit the implementation of the IFT principles in Libya.

7.3.2 The outlook for a financial transparency legal framework in Libya’s extractive sector

For the first time, Libya’s law makers have started to become more open to the concept of transparency. They have started to recognise that transparency is essential standard for the economy. For example, Article 15 of the LCP mentions that a developed economy should be based on the transparency norms and standards. Clearly adopting the concept of transparency

[848] See Mina Monir, Libya to offer new (PSA), Libya Business Tv, Libya business. Tv, published on 15/06/2012.
[849] Ibid reference n:26.
[850] See Johnny West, The new Libyan oil minister’s secret weapon: transparency. The Guardian published on 2011.

can be considered to be a huge transformation in the position of the Libyan regulator. Furthermore, the Libyan economy depends on the income generated by the extractive sector. Therefore, respect for transparency standards will be implemented in the oil sector following the endorsement of the LCP. However, Article 15 of LCP has not clarified which transparency standards have to be applied and it does not give a definition of the concept of transparency. However, as a beginning, this step is still crucial in moving towards transparency and accountability in Libya's economy regulations, in general, and oil sector, in particular. Article 22 of the LCP confirms the idea of the transparency of Libyan economy. This article determinates the impact of transparency and accountability on economy. Transparency as outlined in this article guarantees the fair distribution of Libyan wealth for both citizens and regions.

These general constitutional rules, which can be considered as general principles of the Libyan transparency system, will positively affect the Libyan extractive sector by increasing the transparency of Libyan oil revenue and oil deals. They will also hold the Libyan oil institutions accountable for their any misconduct. At this stage, Article 170 of LCP considering contracts and deals concluded in the extractive industries suggest that: "all contracts and deals relating to the extractive industries have to be presented to the senate council for accountability when the Libyan legislation allow that in the purpose to keep save the extractive industries wealth, protect the Libyan natural resources, reducing the development gap between areas and to pledge the transparency of this sector in favour of Libyan citizens and regions". This article is recognised as a crucial step towards enforcing the transparency of Libyan oil contracts and deals, and it could also reflect the transformation of the Libyan legislators through the openness to this idea of promoting the transparency of Libya's extractive industry. However, this is still just proposition by the LCP and it has not yet been certified. Furthermore, this article remains vague because the regulators have not specified the function of the senate council: is their role

to certify the Libyan oil contracts and deals? Or, just to hold the local authority accountable for their acts? Moreover, in this article the senate council can only hold the government accountable where the Libyan regulator authorises their actions, and the article did not refer to other articles to know which are these cases. Even Article 79 of the LCP, which was entitled 'The Function of the Senate Council', states that the senate council has to revise and check the laws, which are then presented to the Libyan parliament, who can demand any clarification about this legislation (including oil law projects). This new orientation of the Libyan legislator towards more transparency in Libyan deals and contracts confirms the general strategy of adopting the LCP. Especially, in Article 46, entitled 'Transparency and the Right for Collecting Data', the regulator clearly expresses a will to foster the transparency standards in all of Libya's sectors, encompassing the extractive industries. The government has to set up transparency standard rules to guarantee the freedom to disclosure and exchange data with respect of confidentiality, considering military data, general security, and the agreements concluded with other countries. Nevertheless, these constitutional rules, which absolutely enforce the transparency of Libyan oil contracts, should not be a handicap for the interests of the international oil companies. In other words, these rules should not constitute a matter for international oil firms who wish to invest in Libya, but they should instead encourage them to operate in Libya's oil sector. The impact of these rules is crucial for both Libya's oil sector and for international oil companies. Consequently, a balance between making Libyan oil contracts more transparent and ensuring the interests of international oil companies must be observed and taken into consideration to attract international oil companies to invest in Libya [851].

The rules created by the LCP foster the IMF's and the WB's strategy[852]. This strategy motivates developing countries, such as Libya, to open their oil contracts to the public and

[851] BIC & GW (685)10.
[852] Ibid 13.

strengthen financial transparency in their extractive industries. Although the WB and IMF are promoting various actions to supporting contract transparency in the extractive sector, there are several key institutional policies and activities that should be revised and strengthened to pledge that important progress takes place and that civil society possesses effective tools to hold the international financial institutions, governments, and private companies accountable to transparency international norms[853]. Nowadays, there is no place to use clauses that affect transparency, and we should not let opacity spread over the oil sector and damage the oil revenues of the Libyan people (e.g. contracts with confidentiality clauses[854]). Confidentiality clauses could affect Libya's oil wealth and damage the rights of Libyan citizens to benefit from their natural resource revenues.

[853] [853] BIC & GW (685)10.

[854] For more information about the contract confidentiality clauses see Rosenblum. P and Maples. S (2009)' Contracts Confidential: Ending Secret Deals in the Extractive Industries' Revenue Watch In statute, 2009, pages 15-101.

LIST OF LEGISLATION AND LAW

Libyan Law

Law No. 23 of 2010 relative to the LEAA.

Corporate Governance act No. 20 of 2010 of Libyan Central Bank.

Law No. 9 of 2010 relative to the foreign investments.

Law No. 25 of 1955 relative to the Libya's petroleum sector.

Law No. 24 of 1970 regarding the National Oil Corporation.

Decision of General Secretariat of General People's Congress No.10 of 1979 concerning the reorganisation of NOC.

Petroleum regulation No.9 concerning the financial, Administrative and Technical Control for the preservation of the Oil Wealth Preliminary provisions.

National laws

Dodd Frank Wall Street Reform and Consumer Protection act of 2010.

Directive 2013/50/EU of the European Parliament and of the European Council of 2013.

New UK reporting and disclosure obligations under the FSA's Transparency Rules of 2006.

The UK Corporate Governance Code of 2012.

Law No. 2000-93 of 2000 relative to the Tunisian Commercial Company.

Bibliography

Books

Arbati E, Fiscal transparency, fiscal performance and credit ratings, (Washington: International Monetory Fund),2012.

De Ferranti, David M, how to improve governance, a new framework for analysis and action, (Washington D.C: Brookings Institution Press),2003.

Delimatsis.P, International trade in services and domestic regulations necessity, transparency regulatory diversity, (Oxford: Oxford University), Journal of International law,Volume 12, Issue 12, June 2009, p547-549.

Docherty T, The philosophy of transparency, (London: Bloomsbury Publishing), 2012.

Fung A, Full disclosure, the perils and promise of transparency, (New York, Cambridge University Press), 2007.

F H Esterbrook and D R Fishel, The economic structure of corporate law, (Cambridge University), 1991.

Hawthorne, Omar E, Do international corruption metrics matter? The impact of transparency, international's corruption perception index, (Lanham, Moneylaw Lexington Books), 2015.

Ian B, Principles of public international law, (Oxford universit$_y$),2008.

Khagram S, Fung A, DE Renzio P, Open budgets the political economy of transparency, service and leadership, (Washington DC: Brookings Institution Press), 2013.

Keth C, S, Lack of transparency in Russian energy trade, Centre for Strategic and International Studies, July7,2010.

Mac E, Rutli Ann, Transparency in financial reporting, a concise comparison of IFRS and USGAAP, (Petersfield: Harriman House), 2009.

Mcmams T, Holtzman Yair, Transparency and others hot topics, (London: Emerald Group),2006.

Mavoidis Petros C, Transparency, the regulation of international trade, chapter13. the Global strategy, 2012.

Nagle Luz E, The search for accountability and transparency in plan (Colombia: Reforming Judicial Institution), 2001.

Piotrouska S, Transparency and secrecy a reader linking literature and contemporary debate, (Lanham: Lexington Books), 1973.

Rowe C, Transparency, (Basel: Bin Khauser), 1997.

Transparency International, Global corruption report 2004, (London: Pluto Press in association with Transparency International), 2004.

Tria G, Valotti G, Reforming the public sector, how to achieve better transparency, (Washington DC: Brookings Institution Press), 2012.

Journal and News Articles

Adedolapo A, Transparency in the Nigerian oil and gas industry, Law and Business Journal, 2014, Vol7, p220-235.

Abushamsieh K, Hernandez L, Ortiz Rodriguez D, The development of public accounting transparency in selected Arab countries, International Review of Administrative Sciences, June 2014, V.80(2), P421-442.

Al Beshti N, A Libya a plead to the SEC, The New York Times, Aug 2012.

Alexander K, The GATS, and financial services, the role of regulatory transparency, Cambridge Review of International Affairs, Volume 20, Issue (1), May 2007.

Aydin Karapinar, Zaief F, Torun S, Accounting policies in the extractive industry, A global and Turkish perspective, March 2012, Vol 22 Issue 1, p40-50.

Barnier M, The European Union Transparency and Accounting Directives, Journal of World Energy Law, 2014, p16-19.

Baumann H, A Failure of Governmentality, why transparency international underestimated corruption in Ben Ali's Tunisian, Third World Quarterly, February 2017, Vol 83(2), p467-482.

Besada H, Philip M, Natural resource governance in Libya, Korea Times, Sep 2011.

Begg D, Kent D, The future of oil and gas in Libya, International Energy Law Review, 2012, Vol 6, p203.

Besada H, Philip M, Natural resource governance in Libya, Korea Times, Published 9/11/2011.

Bleischmitz R, Transparency inextractive industries, Global Environmental Politics, November 2014, Vol14, Issue4, P1-9.

Bittiger T, Extractive Industry Transparency Initiative invite Libya to follow oil transparency standard, EITI, published 15/12/2011.

Brando M, Gaston L, Melgas N, Country transparency and the global transmission of financial Sshocks, Journal of Banking and Finance, Nov2018, Vol (96), p56-72.

Brouce J, Europe must enforce oil sector transparency, Financial Times, April 2012.

Charlene E, Conflict mineral readiness, what companies need to know, Canadian Mining Journal, Jan 2012, vol133, issue1, p12-13.

Carl D, Oliver. Pendred, let's be clear, compliance with new transparency requirements is going to be challenging for resource companies, Journal of World Energy Law, 2014, p36-43.

Coll S, Essomobil USA, Dodd-Frank, Business Week, May 2012, Issue 4279, p8-9.

Desai D, Jarvis M, Governance and accountability in extractive industries, theory and practice at the world bank, Journal of Energy and Natural Resources Law, Jun 2012, vol 30, Issue2, p101-128, p28.

Editorial Board, to rebuild Libya start with transparency on oil revenue, Bloomberg News, published on 15/3/2012.

Ford N, Tackling the dark side of oil deals, African Business, Dec 2008, issue 337, p24-26.

Johansen N, Larsen D, the power of financial transparency, an event study of country by country, reporting standards, Economics Letter, Aug 2016, vol 145, p120- 122, p3.

Johnny W, the new Libyan oil minister's secret weapon, transparency, the Guardian, Published on 26/08/2011.

Jeff K, Mines of information, Financial Management Review, July/Aug 2010, p12-14.

Kasekende E, Abuka Charles, Mare S, Extractive industries and corruption, investigating the effectiveness of extractive industry transparency initiative as a scrutiny mechanism, Resources Policy, June 2016, vol 48, P117-218.

Galani U, Libya should adopt oil wealth transparency, Reuters, Sep 2011.

Godfrey A, New transparency act puts pressure on extractive sector, Canadian Mining Journal, Feb 2015, Vol136, p46-48.

Gheorge V, Minorela P, Transparency in financial statement, European research studies 2009, VolXIL, Issue (1).

Kaufman C, Webber R, The Role of Transparency in financial regulations, Journal of International Economic Law, Volume 13, Issue 13, p779-797.

Lynch S, Transparency lost in revolt, Libyan rebels not making oil revenues transparent, Economics and Policy, May 2011.

Mignault J, Transparency act puts first nation at risk, Northern Business, July 2015, vol (35), issue (9), p29.

Morris R, Gray S, The value relevance in Malaysia before and after the Cassian Financial, Abacus, Jun 2011, Vol (43), Issue (2), p205-233.

Nathan A, A Critical assessment of extractive industry transparency initiative in Ghana, Business and Society Review, March 2010, vol (121), Issue (1), p59-83, p26.

Nicholas L, The future of transparency disclosure, Petroleum Accounting and Financial Management Journal, 2013, Vol (32), Issue (3), p93-100.

Pajoux A, As Dodd-Frank implementation continues, a return to proxy basics, NACD, March 2012, vol38, issue 2, p23.

Perry James l, Corruption, unethical behaviour and ethics, public administrative review, vol (62), Issue (4).

Peel M, Blas J, Oil groups draw up plans for swift Libya exit Financial Times, Feb 2011.

Rees P, Revenue transparency global not local solutions, Journal of World Energy, Law and business, March 2014, vol7, issue 1, p20-29.

Robert M, Joseph P, Abbie S, what determines corporate transparency? Journal of Accounting Research 2004.

Sanalla M, Head of national oil corporation, Libya's future depends on oil revenues, Libya Business, oct 2018.

Sequeira, A R S, Sanders M, Is the EITI sufficient to generate transparency in environmental impact, Journal of Cleaner Production, April2012.

Sovacool B, Walter G, Energy governance, transnational rules and the resource curse, exploring the effectiveness of the extractive industry transparency, Journal World of Development, July2016, vol 83, p179-192.

Tram M, Libya's oil deals need to be transparent, global development, The Guardian, published on 25/08/2011.

Topal J, Toledano P, Why the extractive industry should support mandatory transparency, a shared value approach, Business and Society Review, July 2013, vol118, Issue3, p 271-298, p28.

Taylor C, Disclosure of payments under the US Dodd-Frank Act, the resource extraction rules, Journal of Energy and Natural Resources Law, Feb 2013, vol31, issue1, p55-64, p10.

resource curse, an empirical analysis of the relationship between natural resources, transparency and economic growth, World Development Journal, Ap 2014, vol136, issue 4, p46.

Woodside C, Pierre C, Extractive sector transparency, Canadian Mining Journal, Oct 2011, Vol (133), Issue (8), P7.

Internet sources:

Andrade M, Hernandez C, Transparency in petroleum contracts, *www.eisourcebook.org/cms/February 2016/***Transparency** *in* **Petroleum Contracts**.

Blair A, Transparency is advancing in the UK, the politics of poverty, posted on 1/12/2014, https://politicsofpoverty.oxfamamerica.org/.../oil-gas-mining-transparency-advancing-in-uk, viewed on 20/1/2015.

Barbieri C., EUROCATIV.Fr, translated by Samuel White, France Demands Greater Transparency from Extractive, www.euractiv.com/section/development-policy/news/france-demands-greater-transparency-fro…, **viewed on January 2015.**

Business gateway, Non-disclosure agreements, www.bgateway,com/business/non-disclosure agreements, viewed on 7/6/2016.

Cose S, Strengthening Transparency in the Oil sector in Cameroon, why does it matter, IMF, March 2006, *https://***www.imf.org***/external/pubs/ft/pdp/2006/pdp02.pdf*.

De Suardt C, Promoting revenue transparency, 2011 report on oil and gas companies, Https:// www. Transparency/…. /T11-PRT-2011-report-final-EN-P6.

Dossa M, Holliday A, Company-law- transparency and accountability, Financial Reporting council, May 2015, https://www.growthbusiness.co.uk/company-law-transparency-and-accountability-2485726.

Elliot S, Confidentiality agreement, www.canadianenergylaw,com *viewed on 7/06/2016.*

Forester M, the Dodd-Frank act, a cheat sheet, www.mofo.com/Files/imploades/ Images/ Summary Dodd-Frank act, viewed on 20/10/2015.

Financial Times, Dodd-Frank act definition, Lexion.Ft.com/term? = Dodd -frank-act, viewed on 201/10/2015.

Feldkamp C, O'Callaghan K, International progress in extraction transparency, *ttps://www.fasken.com/en/knowledge/2013/06/corporatesocialresponsibilitylawbulletin..., viewed on 26/01/2016.*

Johnston M, Good governance, rule of law, transparency and accountability, *unpan1.un.org/intradoc/groups/public/documents/un/unpan010193, viewed on 26/01/2016.*

Huton Amy P, Marcaus Alan J, Tehranian H, Opaque financial reports, Boston College April 2008, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1115967*, viewed on 22/06/2015.*

Konard A Transparency and corruption, www.Kas.de/brasilien/en/publications 40057, viewed on 26/01/2016.

KPMG, Financial transparency in the extractive industries, Http://www.KPMG.com/US/en/ …/Financial transparency-extractive, viewed on 4/11/2011.

Kohn D, Enhancing financial stability, the role of transparency, *https://www.bankofengland.co.uk/-/media/boe/files/speech/2011/...* ·. Viewed on 22/02/2016.

Laurence C, Corruption risk in the oil and gas industry, www.alispartners.com/ …./ corruption-risk-in -the -oil – and -Gas industry, viewed on 26/1/2016.

Lahn G, Marcel V, Mitchell J, Myess K, Stevens P, Good governance of the national petroleum sector, the Chatbourn House, March 2007, www.Chatbournhouse.org,uk.

Lease Plan, The importance of transparency in business, www.leaseplan.com,viewed on 25/02/2016.

March T, Pleiderer Paul C, The 2008-2009 financial crisis, risk model transparency an incentives, Rock Center for Corporate Governnace at Stamford University, January 2010, https://www.researchgate.net/publication/228294301_The_2008-2009_Financial_Crisis_Risk...

Martini, M, Transparency and accountability in Lebanon's emerging petroleum, April 2015 Sector, Http://ryd.dfid.gov.uk/PDF/outpouts/2015-9.

Mathiason N, Williams J, Powell A, Thousen M, Piping profits, the secret world of oil, gas and mining giants, Oct 2011, https://www.businesstoday.in/moneytoday/sector-scenario/piping-in-profits/story/7350.htm.

MSI Integrity, Extractive industry transparency initiative, www.msi-integrity,org/eiti/,viewed on 26/01/2016.

Nonprofir. J, Financial transparency and the road to donor happiness, http://Jitasa.is, viewed on 22/02/2016.

Oxfam America, Promote transparency, www.oxfamamerica. Org, viewed on 20/10/2015.

Offeinheiser R, US Congress passes law to end secrecy in oil and gas and mining industry, Oxfam America, July 2010, https://www.oxfam.org/en/pressroom/pressreleases/2010-07-15/us.

Pellissery F, Disclosure of financial information and corporate governance, *https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2006798_code1591387...*PDF file, viewed on 26/02/2016.

Podowski D, Poivie J, increasing transparency in the extractive industry, whoswholegal.com/…/increasing-transparency-extractiveindustryt-canada, viewed on January 2015.

Popa A, Blidzel R, Bogdan V, Transparency and disclosure between theory and practice, a case study of Romania, www.Uni-obudahu, viewed on 9/03/2016.

Repsol, Financial transparency, our commitments ethics and transparency, www.rpsol.com, viewed 16/11/2015.

Susan J, New transparency rules launched for extractive industry, Https:// www.Gov.UK/.... /new-transparency -rules launched for extractive industry. Viewed on 12/01/2015.

Sanson M, Transparency and trust, department for business innovation and skills, Sep 2013, *https://communityimpactbucks.org.uk/event/***transparency-and-trust-trust***ee-conference-2.*

Stendebach L, Why government transparency is important, citiesspeak.org/2010/05/17/why-transparency-is-good-or-bad-for-governments, viewed on 23/02/2016.

Transparency versus confidentiality in international economic law, www.esil-sedi/eu/mode/1023, viewed on 26/01/2016.

Transparency- Statoil, ethics and transparency, www. Statoil.com>…> sustainability>society>ethics and transparency.

Transparency International, Corruption by topic- oil and gas transparency, www.Transparency org.com.

Tennant F, Overcoming opacity the importance of corporate transparency, World Wide Magazine, March 2015, https://www.financierworldwide.com/overcoming-opacity-the-importance-of-corporate.

Goddard R, UK transparency act, thetransparency new regulation 2015, posted on 9/10/2015, viewed on 3/11/2015.

West J, The new Libyan oil minister's secret weapon transparency, www. Total.com/end/society areas / promoting Financial Transparency, viewed 26/08/2011.

World Bank, Effective and transparent financial reporting is good for business, posted on 01/10/2013, https://www.worldbank.org/en/news/feature/2013/10/01/effective-and-transparent., viewed on 22/02/2016.

Yeboah S, Breaking the affinity with secrecy in Africa extractive sector, G20 summit, Sep 2009, https://stephenyeboah.blogspot.com/2013/09/breaking-affinity-with-secrecy-in.html.

PhD theses

Ali Masoud Aldrugi, Environmental disclosure in the Libyan oil and gas sector, PHD thesis, Nottingham Trent University, Department of Business School, 2013.

Alokaily Jihad, Financial reporting quality, auditor remuneration and corporate governance, PHD thesis, Durham University,2014.

Bashir Gafai Bature, An empirical study of the Nigerian extractive industries transparency, PHD thesis, Gordon University, 2014.

Doaa El-Diftar, Institutional investors and voluntary disclosure and transparency in Egypt, PHD thesis, Cardiff Metropolitan University, School of Management, 2016.

Khazal Abdullah Auzer, Institutional and capacity to enhance effective governance of Iraqi-Kurdestan's oil and gas wealth, PHD thesis, university of Warwick, department of Business Management, 2009.

Khaled Ellabar, Capital market and accounting disclosure in emerging economics, the case of Libya, PHD thesis, University of Salford, 2007.

Khaled Saad Al-Habshan, Corporate governance disclosure practices and protection of shareholders in Saudi Arabia, PHD thesis, Brunel University, January 2015.

Liliane Chantal Mouan,, Governing Angola's Ooil sector: the illusion of revenue transparency, PHD thesis, Coventry University, 2015.

Liu Yeyi, The role of transparency consumer brand relationships, PHD theses in law, Imperial College London, 2013.

Majdi Abdou, Towards a new solution of minority shareholders protection in Libya, PHD in law, University of Glasgow, 2016.

Mohamed Ramli, Disclosure in annual reports an agency theoretic perspective in an international setting, PHD thesis, University of Plymouth, 2001.

Michael Uzoigue, Exploring multi-stakeholders' initiatives for natural resource governance, PHD thesis, University of Birmingham, 2012.

Mustafa Ozbay, The relationship between corporate transparency company performance: Istanbul Stock Exchange, Kensington University, Business School, 2009.

Sonmez Melih, The role of better transparency law in corporate governance and financial markets and its bract ability in legal system: a comparative study between the EU and Turky, PHD thesis, Durham Universit,2014.